

Tulsa Law Review

Volume 58
Numbers 2 & 3

Spring 2023

Modernizing Textualism: How to Better Interpret the Work of Congress

Matthew J. Razzano

Follow this and additional works at: <https://digitalcommons.law.utulsa.edu/tlr>



Part of the [Law Commons](#)

Recommended Citation

Matthew J. Razzano, *Modernizing Textualism: How to Better Interpret the Work of Congress*, 58 *Tulsa L. Rev.* 219 (2023).

Available at: <https://digitalcommons.law.utulsa.edu/tlr/vol58/iss2/7>

This Article is brought to you for free and open access by TU Law Digital Commons. It has been accepted for inclusion in *Tulsa Law Review* by an authorized editor of TU Law Digital Commons. For more information, please contact megan-donald@utulsa.edu.

MODERNIZING TEXTUALISM: HOW TO BETTER INTERPRET THE WORK OF CONGRESS

Matthew J. Razzano*

I. INTRODUCTION.....	220
II. TEXTUALISM AND SUPREME COURT TREATMENT OF STATUTORY TITLES AND HEADINGS THROUGH HISTORY	221
A. Textualism as the Modern Court’s Preferred Approach	221
B. Early Cases: Splitting with the English Tradition	223
C. The Modern Approach	225
III. BICAMERALISM, PRESENTMENT, AND FAITHFUL AGENCY.....	226
A. The Constitutional Requirement of Bicameralism and Presentment	227
B. Bicameralism, Presentment, and Faithful Agency	228
IV. THE EVOLVING ROLE OF TITLES AND HEADINGS IN AMERICAN STATUTES.....	229
A. A Brief History of Titles and Headings in Statutes.....	229
B. The Function of Modern Titles and Headings.....	232
V. TITLES AND HEADINGS AS NECESSARY CONTEXTUAL CANONS OF CONSTRUCTION ..	235
A. Linguistic Canons of Construction and their Relation to Titles and Headings	235
i. Whole Text	235
ii. <i>Ejusdem Generis</i> and <i>Noscitur a Sociis</i>	236
iii. Surplusage.....	238
B. Titles and Headings in Practice.....	239
i. <i>United States v. Rand</i>	239
ii. <i>Rajah v. Mukasey</i>	241
VI. CONCLUSION	242

*Matthew J. Razzano is an attorney in Washington, DC and graduated from Notre Dame Law School in 2019. This Article was adapted from a paper written for a Statutory Interpretation class. I would like to thank Justice Amy Coney Barrett for her guidance of the seminar and thoughtful feedback, my classmates for the lively discussion each week, and my wife, Kari Lorentson, for encouraging me to publish this Article. I would also like to thank the editorial team at the *Tulsa Law Review* for their hard work and dedication. All errors are my own. The views in this Article are my own and do not reflect those of any past, current, or future employers.

I. INTRODUCTION

The Bible is largely responsible for the modern narrative structure.¹ To better organize the dense text, Christian scholars subdivided its thousands of pages in the thirteenth century.² Verses were added three-hundred years later, making it even more accessible to readers.³ The novel would later parallel this structure by including breaks in the text to “permit[] a reading oriented around pauses . . . for reflection or rumination.”⁴ During the eighteenth century, authors commonly added chapters “to meditate upon how different temporal units [affected] human agency in different ways.”⁵ These chapters used titles that began with a common phrase—“concerning” or “in which”—offering readers a descriptive introduction to the content that followed.⁶ In modern literature, chapter titles became “a subject of play”—designed to perform an active role in the storytelling.⁷ Accordingly, formalist literary critics adapted to the novel’s new structure and read titles as part of the plot, not as meaningless organizational tools.⁸

Textual division and subdivision are not, however, confined to the Bible or literature; titles and headings in American statutes serve a similar function. At the Founding, subdivisions acted merely as references to categorize congressional mandates, but titles and headings eventually became more prevalent and descriptive within legislation—and thus better able to provide judges with interpretive guidance.⁹ Yet, the Supreme Court of the United States has not respected or adapted to this historical development. While the Court recognized titles as an interpretive device as early as 1805,¹⁰ the Court’s reasoning has not matured beyond this initial examination.

1. See Nicholas Dames, *The Chapter*, in OXFORD RSCH. ENCYC. (Nov. 22, 2016), <http://literature.oxfordre.com/view/10.1093/acrefore/9780190201098.001.0001/acrefore-9780190201098-e-15> (hereinafter *The Chapter 2016*) (documenting the travails of Stephen Langton—the instrumental scholar-turned-priest who cataloged the Bible—and how compilation of the Bible in the late-Classical period gave rise for the first time in history to chaptering long prose texts).

2. See *id.* at 1 (“Biblical chapters formed a template for how to segment ongoing plots or actions which was taken up by writers, printers, and editors from the late medieval period onward.”).

3. See *id.* at 12.

4. Nicholas Dames, *The Chapter: A History*, NEW YORKER (Oct. 29, 2014), <https://www.newyorker.com/books/page-turner/chapter-history> (hereinafter *The Chapter 2014*) (Note, however, Dames’ acknowledgement that, “[a]mong others, John Locke made it a habit to lament the way Bibles came so elaborately subdivided, destroying the thread of argument or narrative and producing readers who remembered sentences rather than concepts.”).

5. *The Chapter 2016*, *supra* note 1.

6. *The Chapter 2014*, *supra* note 4.

7. *Id.* (“Obviously, the headers . . . in Talmud or Euclid are navigational features. They organize the presentation of the text in graphic form.”).

8. See W.K. Wimsatt, Jr. & M.C. Beardsley, *The Intentional Fallacy*, 54 SEWANEE REV. 468 (1946). Formalist literary critics argued that meaning arose exclusively from the text, which includes informative titles and headings. *Id.* at 484–85 (“[T.S.] Eliot’s titles for poems and his epigraphs are informative apparatus[es] . . .”). Cf. Quentin Skinner, *Meaning and Understanding in the History of Ideas*, 8 HIST. & THEORY 3, 3 (1969) (arguing how historical context influences the interpretation of any text).

9. Throughout this Article, the phrase “titles and headings” is mostly used synonymously with “titles” alone. At certain points, however, “titles” is purposefully used on its own because statutes of the era did not include section headings. For our purposes, heading denotes a secondary title situated beneath a primary one. See *infra* Section III.A. Later, subheadings are discussed in the context of modern statutes, and these are situated beneath headings.

10. See discussion *infra* Section I.B.

Consequently, it has become necessary to reevaluate how judges interpret titles and headings in light of Congress' evolving application.¹¹

Part II of this Article examines how different eras of Supreme Court jurisprudence have treated statutory titles and headings, concluding by exploring the Court's current approach. Part III discusses how titles and headings fit into the statutory text, which implicates Bicameralism and Presentment. Part IV argues that Congress' eighteenth-century drafting style was drastically different from how it constructs modern statutes. Part V highlights linguistic canons that textualists frequently employ to evaluate language in context; similar to the canons, modern titles and headings can frame the textual body in a way that aids statutory interpretation. This Article concludes by analyzing two lower court cases that misapplied headings and recommending an alternative application going forward. In sum, this Article argues that, while oft-ignored as a secondary component of textual analysis, titles and headings contextualize statutory language in a manner that dictates meaning.

II. TEXTUALISM AND SUPREME COURT TREATMENT OF STATUTORY TITLES AND HEADINGS THROUGH HISTORY

Titles and headings are statutory text passed by congress, and the early judiciary had to decide how to treat these parts of the law. Only a few years after *Marbury*,¹² the Supreme Court first declared that titles may provide interpretive guidance.¹³ Nevertheless, few Court cases have critically engaged this aspect of a statute because titles were historically treated as superfluous or unnecessary to derive meaning from the statute's core language.¹⁴ Today's Supreme Court is more prone to textual analysis,¹⁵ but its guiding precedent regarding titles and headings remains unwilling to treat them on par to the rest of the statutory text. The first section of Part II offers a brief description of textualism and sets up my argument that an increased respect for titles and headings aligns with this interpretive method. The next two sections review Supreme Court cases related to titles and headings to demonstrate that, in spite of the modern Court's textualist tendencies, it continues to treat titles and headings with suspicion.

A. Textualism as the Modern Court's Preferred Approach

Different eras of Supreme Court jurisprudence have produced varied interpretive styles. The Warren Court, for instance, was known for its purposivist approach, with an emphasis on preserving individual rights.¹⁶ “[F]idelity to Congress” motivated this judicial philosophy, as its proponents sought “all available clues to figure out what Congress was really driving at, even if it did not always correspond to what the statute

11. See John F. Manning, *What Divides Textualists from Purposivists?*, 106 COLUM. L. REV. 70, 94–95 (2006) (hereinafter *What Divides?*).

12. See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

13. *United States v. Fisher*, 6 U.S. (2 Cranch) 358 (1805).

14. *Salkeld v. Johnson* (1848) 154 Eng. Rep. 487, 499.

15. See Jonathan R. Siegel, *The Legacy of Justice Scalia and His Textualist Ideal*, 85 GEO. WASH. L. REV. 857 (2017).

16. See Jonathan T. Molot, *The Rise and Fall of Textualism*, 106 COLUM. L. REV. 1, 20 (2006).

said.”¹⁷ The Court has since shifted away from this approach, with more members subscribing to a textualist form of statutory interpretation.¹⁸

As a baseline, textualists believe that “statutes have serious consequences for people outside of the legislature and that people should not be held to legal requirements of which they lack[] fair notice.”¹⁹ To offer such notice, the words of a statute should be interpreted in light of their public meaning, not what the legislature intended them to mean.²⁰ In terms of methodology:

[T]extualists acknowledge that “a certain degree of discretion” is inevitable in “most” judicial decisionmaking. When statutory ambiguity leaves room for the exercise of such discretion, textualists believe it is appropriate, if not necessary, for an interpreter to consider a statute’s apparent background purpose or policy implications in choosing among competing interpretations.²¹

But this is not a license to legislate from the bench. Rather, “[t]he bedrock principle of textualism . . . is its insistence that federal courts cannot contradict the plain language of a statute.”²² For Justice Scalia, plain language meant interpreting statutes “reasonably”—not “strictly” or “leniently.”²³ Thus, textualists occupy the space between loose constructionism and literalism.

To construct a reasonable interpretation, however, textualists necessarily utilize context—the idea that words derive meaning from their environment. John F. Manning explained that “context of course is essential even to determine the way words are used in everyday parlance, textualists (like everyone else) necessarily resort to context even in cases in which the meaning of the text appears intuitively obvious.”²⁴ He further posited that the interpreter of a legal text is required to view it in light of the “specialized conventions and linguistic practices peculiar to the law.”²⁵ Driving this theory is the judiciary’s interpretive duty to Congress and a belief in the democratic processes that produce legislation.²⁶ Textualists believe that “any attempt to overlay coherence on a

17. See John F. Manning, *The New Purposivism*, 2011 SUP. CT. REV. 113, 121 (2011).

18. See Siegel, *supra* note 15, at 870 (“Justice Scalia undoubtedly changed the Supreme Court’s interpretive practices. His long-term, persistent textualist campaign reminded everyone of the importance of statutory text.”).

19. Caleb Nelson, *What is Textualism?*, 91 VA. L. REV. 347, 352 (2005).

20. See ANTONIN SCALIA, *A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW* 23 (1998).

21. John F. Manning, *The Absurdity Doctrine*, 116 HARV. L. REV. 2387, 2408–09 (2003) (citing *Mistretta v. United States*, 488 U.S. 361, 417 (1989) (Scalia, J., dissenting)) (hereinafter *Absurdity Doctrine*).

22. Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. REV. 109, 164 (2010).

23. SCALIA, *supra* note 20, at 23.

24. *What Divides?*, *supra* note 11, at 80 (footnote omitted).

[M]odern textualism necessarily—and quite properly—draws upon contextual cues far less obvious to the ordinary user of language. Because textualists want to know the way a reasonable user of language would understand a statutory phrase in the circumstances in which it is used, they must always ascertain the unstated “assumptions shared by the speakers and the intended audience.”

Id. at 81 (quoting Frank H. Easterbrook, *What Does Legislative History Tell Us?*, 66 CHI.-KENT L. REV. 441, 445 (1990)).

25. *Id.* See also ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 167 (2012) (“Context is a primary determinant of meaning. A legal instrument typically contains many interrelated parts that make up the whole. The entirety of the document thus provides the context for each of its parts.”).

26. See John F. Manning, *Constitutional Structure and Judicial Deference to Agency Interpretations of Agency Rules*, 96 COLUM. L. REV. 612, 648–50 (1996).

statutory text that otherwise seems to have problems of fit unacceptably threatens to undermine the bargaining process that produced it.”²⁷

These considerations shape how many modern judges interpret statutes.²⁸ But despite this emphasis on language, textualists have not embraced titles and headings as a necessary tool to interpret statutory text. The next two sections examine Supreme Court cases regarding titles and headings to provide the backdrop for this textualist problem.

B. Early Cases: Splitting with the English Tradition

The English began formal law codification in 1215.²⁹ But it was not until centuries later when Parliament asserted greater authority against the King that “it then became necessary to devise a plan for authenticating, preserving, and transmitting their decisions, or acts.”³⁰ As legislators became more active, they sought to organize the growing “rolls of Parliament” by adding titles to separate acts.³¹ These titles, however, were “not prepared by the legislative body but [were] supplied by a Parliamentary clerk.”³² As a result, they constituted “no part of the law.”³³ English case law recognized this practice, holding that “an Act may be without any title at all, as most of the ancient Acts are; and therefore a variance in the title is nothing.”³⁴ Early American commentators adhered to this no-part-of-the-law mentality, believing that titles were “carelessly inserted” and “not safe expositors of the law.”³⁵

The Supreme Court first considered whether to deviate from this English practice in *United States v. Fisher*—a nineteenth-century bankruptcy case.³⁶ At the time, congressional acts included a single introductory title, but they lacked the length and sectional divisions embedded in modern statutes.³⁷ Chief Justice John Marshall delivered the *Fisher* opinion, first lamenting that, “[t]he title of the act has led to the whole opposition in this case.”³⁸ Acknowledging the history of statutory headings, Marshall reiterated that, in England, the title was “no part of the law. . . . [I]t [was] prefixed by the

27. John F. Manning, *Textualism and Legislative Intent*, 91 VA. L. REV. 419, 445 (2005) (hereinafter *Legislative Intent*).

28. See Harvard Law School, *The 2015 Scalia Lecture | A Dialogue with Justice Kagan on the Reading of Statutes*, YOUTUBE (Nov. 25, 2015) <https://www.youtube.com/watch?v=dpEtszFT0Tg> (acknowledging publicly that, “we’re all textualists now,” at 8:29).

29. See FORTUNATUS DWARRIS, A GENERAL TREATISE ON STATUTES: THEIR RULES OF CONSTRUCTION, AND THE PROPER BOUNDARIES OF LEGISLATION AND JUDICIAL INTERPRETATION 40 (Platt Potter ed., 1885).

30. *Id.* at 41.

31. *Id.* at 102.

32. JABEZ GRIDLEY SUTHERLAND, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 47:3 (Norman J. Singer & Shambie Singer eds., 7th ed. 2010).

33. *Mills v. Wilkins*, (1706) 87 Eng. Rep. 822, 822 (Q.B.).

34. *Id.* See also *Johnson*, 154 Eng. Rep. 487, 499 (“The title of the act has also been mentioned; but although it has occasionally been referred to as aiding in the construction of an act . . . it is certainly no part of the law, and, in strictness, ought not to be taken into consideration at all.”).

35. JAMES KENT, COMMENTARIES ON AMERICAN LAW 184 (Hardcastle Browne ed., 1894).

36. 6 U.S. (2 Cranch) 358 (1805).

37. See discussion *infra* Section III.A. A fine example is the statute at issue in *Fisher*. See Act to Regulate the Collection of Duties on Imports and Tonnage, Pub. L. No. 5-2, 1 Stat. 627 (1799) (depicting the organizational limits of early congressional drafting).

38. *Fisher*, 6 U.S. (2 Cranch) at 363.

clerk, and [was] never passed upon by parliament.”³⁹ Nevertheless, the Chief Justice explained that while “neither a title nor preamble can control the express words of the enacting clauses; but if these are ambiguous, you may resort to the title . . . to elucidate them.”⁴⁰ Perhaps more important, he wrote that when a judge is unable to discern the text’s meaning, he or she should consider the title of the act to aid in the interpretation.⁴¹

In *Postmaster General v. Early*, however, Chief Justice Marshall took a narrower approach than in *Fisher*.⁴² There, he wrote that titles could not limit the meaning of the body’s text.⁴³ Where doubt or ambiguity arose, “the intent of the legislature, if it can be plainly perceived, ought to be pursued.”⁴⁴ Chief Justice Marshall went on to describe an early version of the “whole-text” canon, stating “that the whole law is to be taken together, and one part expounded by any other, which may indicate the meaning annexed by the legislature itself to ambiguous phrases.”⁴⁵ This initial retreat from *Fisher* would portend later limitations on using titles and headings, but for a few decades, the Court remained relatively silent.⁴⁶

The Court revisited this doctrine of statutory interpretation after the Civil War, but with a more skeptical view. Justices openly questioned what, if any, descriptive assistance titles might bring to bear on the text.⁴⁷ In *Hadden v. Collector*, for example, the Court held that titles “furnish[] little aid in the construction of its provisions.”⁴⁸ Compared to the English tradition, “the title constitutes a part of the act, but it is still considered as *only a formal part*; it cannot be used to extend or to restrain any positive provisions contained in the body of the act.”⁴⁹ This rejection—a far cry from Chief Justice Marshall’s language in *Fisher*—was no aberration. In *United States v. Union Pacific Railroad Co.*, the Court also held that judges should not embrace titles “because the body of the act, in so many cases has no reference to the matter specified in the title.”⁵⁰ Both cases acknowledged the potential for discrepancies between information contained in the title and body, and concluded that an invisible interpretive line separated the two.

By the end of the nineteenth century, however, the Supreme Court had decided on a slightly more inclusive approach—one that would become the modern standard. In *Smythe v. Fiske*, the Court held that, “[w]here *doubt exists* as to the meaning of a statute, the title may be looked to for aid in its construction.”⁵¹ In *Coosaw Mining Co. v. South Carolina*, the Court reaffirmed this stance: “While express provisions in the body of an act cannot be controlled or restrained by the title or preamble, the latter may be referred to when

39. *Id.* at 365.

40. *Id.* at 368.

41. *See id.*

42. 25 U.S. (12 Wheat.) 136 (1827).

43. *See id.* at 148.

44. *Id.* at 152.

45. *Id.* at 152.

46. *Compare id.* (arising in 1827), with *Hadden v. Collector*, 72 U.S. (5 Wall) 107 (1866) (published nearly forty years after *Early*).

47. *See generally Hadden*, 72 U.S. (5 Wall) 107.

48. *Id.* at 110.

49. *Id.* (emphasis added).

50. 91 U.S. 72, 82 (1875).

51. 90 U.S. (23 Wall.) 374, 380 (1874) (emphasis added).

ascertaining the meaning of a statute which is susceptible of different constructions.”⁵² Thus, the Supreme Court opened the door to a more inclusive reading of *all* statutory text, even if it failed to provide a roadmap or framework to systematically interpret titles and headings.

C. The Modern Approach

The Court vacillated between the English and *Fisher* modes of interpretation during the nineteenth century, eventually adopting a middle-ground approach at the turn of the twentieth century—an approach that leaned closer to the English position.⁵³ This section describes how the Court coalesced around this method.

The twentieth-century Court sought to systematize *Coosaw Mining*’s reasoning by including titles in judicial analysis under limited circumstances.⁵⁴ For example, *Cornell v. Coyne* held that titles ought to be used “*only* in cases of doubt or ambiguity.”⁵⁵ Likewise, *Lapina v. Williams* concluded that titles may be used to “control the meaning of the enacting clauses” only where there is “a doubtful case.”⁵⁶ By mid-century, the Court’s skeptical approach took root. In *Brotherhood of Railroad Trainmen v. Baltimore & Ohio Railroad Co.*, the Court held that “headings and titles are not meant to take the place of the detailed provisions of the text,” and that judges should avoid them when possible.⁵⁷ Though *Trainmen* now represents the paradigmatic titles-and-headings case,⁵⁸ the opinion as a whole appears more hostile to their use.⁵⁹ The Court wrote that,

[Headings are not] necessarily designed to be a reference guide or a synopsis. Where the text is complicated and prolific, headings and titles can do no more than indicate the provisions in a most general manner; to attempt to refer to each specific provision would often be ungainly as well as useless. As a result, matters in the text which deviate from those falling within the general pattern are frequently unreflected in the headings and titles. Factors of this type have led to the wise rule that the title of a statute and the heading of a section cannot limit the plain meaning of the text.⁶⁰

Since *Trainmen*, most courts quote this final line,⁶¹ with the Supreme Court citing

52. 144 U.S. 550, 563 (1892). While *Holy Trinity* has become textualists’ *bête noire*, that Court’s treatment of titles still holds favor: “Among other things which may be considered in determining the intent of the legislature is the title of the act. We do not mean that it may be used to add to or take from the body of the statute, but it may help to interpret its meaning.” *Holy Trinity Church v. United States*, 143 U.S. 457, 462 (1892).

53. See discussion *supra* Section II.B.

54. 144 U.S. at 563.

55. 192 U.S. 418, 430 (1904) (emphasis added).

56. 232 U.S. 78, 92 (1914). *Strathearn Steamship Co. v. Dillon* held that titles were acceptable tools when the case was in doubt; but titles could not “limit the plain meaning of the text.” 252 U.S. 348, 351–52 (1920). See also *Maguire v. Comm’r of Internal Revenue*, 313 U.S. 1, 9 (1941) (“While the title of an act will not limit the plain meaning of the text, it may be of aid in resolving an ambiguity.” (citations omitted)); *Fairport, Painesville & Eastern R.R. Co. v. Meredith*, 292 U.S. 589, 594 (1934) (“The title of an act and the history leading up to its adoption, as aids to statutory construction, are to be resorted to only for the purpose of resolving doubts as to the meaning of the words used in the act in case of ambiguity.”).

57. 331 U.S. 519, 528 (1947).

58. SCALIA & GARNER, *supra* note 25, at 221.

59. *Trainmen*, 331 U.S. at 528.

60. *Id.* at 528–29.

61. See, e.g., *Fla. Dep’t of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 47 (2008) (“Nonetheless, statutory titles and section headings ‘are tools available for the resolution of a doubt about the meaning of a

the case as recently as 2015.⁶² But despite the longevity—or perhaps stagnation—of this rule, the surrounding language in *Trainmen* suggests a Court averse to titles.⁶³

The Court's modern approach to titles and headings is largely unchanged from these earlier twentieth-century cases. Lower courts have generally taken a binary view that either: (1) allows judges to evaluate titles and headings *only* in doubtful cases,⁶⁴ or (2) restricts their inclusion outright.⁶⁵ But why should judges who purportedly respect the text take such a limited approach? After all, titles and headings are part of congressionally enacted laws, and textualists respect all of the words in a statute.⁶⁶ Perhaps the concern is that additional inputs into the interpretive equation would allow judges more latitude to introduce their policy preferences into opinions. Though such a holistic analysis potentially opens the door for abuse, textualists also risk misrepresenting the statutory text if they ignore titles and headings.⁶⁷ Therefore, the Court's current interpretive approach toward titles and headings seems to depart from textualism's core tenets, and the remainder of this Article aims to reconcile this departure.

III. BICAMERALISM, PRESENTMENT, AND FAITHFUL AGENCY

The argument for a more robust approach to titles and headings proceeds in three steps. First, titles and headings are part of the law because they undergo Bicameralism and Presentment.⁶⁸ Next, statutes have changed over time and now include headings and subsections with greater detail.⁶⁹ Finally, frequently used contextual canons of construction offer an interpretive analogue for courts to incorporate titles and headings into their analyses.⁷⁰ The following Section briefly discusses Bicameralism and Presentment, arguing that the Supreme Court's current approach relegates title and

statute.” (quoting *Porter v. Nussle*, 534 U.S. 516, 528 (2002)); *Immigr. & Naturalization Servs. v. Nat'l Ctr. for Immigrants' Rights, Inc.*, 502 U.S. 183, 189 (1991) (“In other contexts, we have stated that the title of a statute or section can aid in resolving an ambiguity in the legislation’s text.”); and *FTC v. Mandel Bros.*, 359 U.S. 385, 388–89 (1959) (“The Title of the Act . . . which, though not limiting the plain meaning of the text, is nonetheless a useful aid in resolving an ambiguity . . .”).

62. *Yates v. United States*, 574 U.S. 528, 559 (2015) (Kagan, J., dissenting).

63. *See, e.g., Trainmen*, 331 U.S. at 527–29.

64. *See, e.g., United States v. Noel*, 893 F.3d 1294, 1300 (11th Cir. 2018) (“[T]he title of a statute . . . cannot limit the plain meaning of the text. For interpretative purposes, [it is] of use only when [it] shed[s] light on some ambiguous word or phrase.” (quoting *Pa. Dep’t Corr. v. Yeskey*, 524 U.S. 206, 212 (1998))); *Miller v. FDIC*, 738 F.3d 836, 845 (7th Cir. 2013) (“Titles to statutes may be helpful as interpretive tools to resolve ambiguities in the statutory text, but they cannot undermine otherwise clear statutory meaning.”); and *Appert v. Morgan Stanley Dean Witter, Inc.*, 673 F.3d 609, 619 (7th Cir. 2012) (“Although the heading of a section cannot limit the plain meaning of the statutory text, it is useful when it sheds light on ambiguous language.”).

65. *See, e.g., Bibiano v. Lynch*, 834 F.3d 966, 972 (9th Cir. 2016) (“[T]he title of a statute cannot trump the statute’s plain meaning . . .”); *Avila v. U.S. Att’y Gen.*, 560 F.3d 1281, 1284 (11th Cir. 2009) (“[T]he title of a statute cannot trump its clear terms . . .”); and *Samirah v. O’Connell*, 335 F.3d 545, 548–49 (7th Cir. 2003) (“We, however, disagree. ‘[T]he heading of a section cannot limit the plain meaning of the text.’”) (quoting *Bhd. of R.R. Trainmen v. Balt. & Ohio R.R. Co.*, 331 U.S. 519, 528 (1947)).

66. *See* discussion of Textualism *supra* Section II.A.

67. The dissent in *Yates* included Justice Scalia and Justice Thomas, two of the most ardent textualists. Its reliance on *Trainmen* suggested a limited view of titles. *See Yates*, 574 U.S. at 559 (Kagan, J., dissenting). While textualists have, at times, appeared open to using titles, this Essay nevertheless argues for an expansion of the doctrine.

68. *Infra* Section III.A.

69. *Infra* Section III.B.

70. *Infra* Section III.C.

headings to a secondary status beneath other parts of the statute—a distinction that the Constitution does not endorse. The final Section examines the relationship between Congress and courts to assert that including titles and headings better adheres to the textualist notion of agency.

A. The Constitutional Requirement of Bicameralism and Presentment

To protect minority interests, the Founders wanted legislation to travel an arduous path before becoming law.⁷¹ Accordingly, the Constitution required Bicameralism and Presentment to ensure that bills were critically analyzed and vetted before they affected the rights of American citizens.⁷² The Constitution stipulates that “[e]very bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States”⁷³ Though instructive on legislative procedure, the Constitution is silent as to what actually governs after this process is completed. Is it everything in the “slip law” that each house passes? Is it just the body of text? Is it the codified version of a law?

Courts have derived answers to these questions from the Constitution’s Journal Clause, which directs Congress to publish its laws on a regular basis.⁷⁴ Moreover, federal law establishes a “trinity structure for communicating the results of the legislative process, with the ‘slip law’ as the first official publication . . . followed by the publication in the Statutes at Large . . . and the publication in the constantly updated U.S. Code.”⁷⁵ Today, courts rely on the Statutes at Large to express the “law”⁷⁶ because the Code may have

71. See THE FEDERALIST No. 62, at 343 (James Madison) (Robert A. Ferguson ed., 2006).

Another advantage accruing from this ingredient in the constitution of the senate, is the additional impediment it must prove against improper acts of legislation. No law or resolution can now be passed without the concurrence first of a majority of the people, and then of a majority of the states.

Id.

72. U.S. CONST. art. I, § 7.

73. See *id.*

74. U.S. CONST. art. I, § 5, cl. 3.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal.

Id.

75. Marci A. Hamilton & Clemens G. Kohnen, *The Jurisprudence of Information Flow: How the Constitution Constructs the Pathways of Information*, 25 CARDOZO L. REV. 267, 279–80 (2003). See also John G. Garvin, *Congress in Action*, 3 A.F. L. REV. 20, 23 (1961).

The last step is to . . . [send it] from the White House to the Administrator of General Services for publication. There it is assigned a Public Law number. These numbers run in sequence for each Congress and, beginning in 1957, are prefixed by the number of the Congress Copies, called slip laws, are printed by a photoelectric offset process from the original Enrolled Bill, and are available the next day. At the end of each session of the Congress, bound volumes, called Statutes at Large, are printed and contain the laws of that session.

Id. The trend toward codification altered our thinking about statutory structure. The first compilation of federal law occurred in 1874, and “Congress approved the creation of the U.S. Code in 1926–27.” Dru Stevenson, *Costs of Codification*, 2014 U. ILL. L. REV. 1129, 1139–40 (2014). One might question the circular nature of federal law needing to define how federal law ought to be constitutionally documented, but this structure is firmly cemented in American governmental procedures.

76. U.S. Nat’l Bank Or. v. Indep. Ins. Agents Am., Inc., 508 U.S. 439, 448 (1993).

Though the appearance of a provision in the current edition of the United States Code is “prima facie”

slight “changes from the original statute, particularly with regard to section numbers and cross-references.”⁷⁷ As a result, the Code acts as a convenient tool or database to topically organize statutes over time, but not necessarily the law itself.⁷⁸

Within the Statutes at Large, all of the text “shall be legal evidence of law.”⁷⁹ Courts have debated whether the primary title of the act is included in this “evidence,” especially considering that the enacting clause for the act in question will immediately follow the title.⁸⁰ But this formality “should not be determinative” because “[a] legislature considers and passes an entire act, including the title.”⁸¹ Furthermore, in modern statutes, the primary title rarely contains the specific language at issue. Rather, headings and subheadings that are inserted to subdivide the text often provide the basis for the dispute, and there is no debate as to whether the legislature properly and knowingly enacted these parts of a bill into law.⁸² Thus, titles and headings travel the precarious path from committee, to each house of Congress, and finally to the President for signature.⁸³ Congress votes on the entire bill—not specific parts⁸⁴—and the President’s signature represents an endorsement of everything that Congress passed, not just the parts without section numbers or bold font.⁸⁵ Therefore, titles and headings earn the status of law when properly understood in the context of Bicameralism and Presentment.

B. Bicameralism, Presentment, and Faithful Agency

At the core of judicial agency is a balancing of powers between the branches of government.⁸⁶ The judiciary’s role of deciding cases and controversies necessarily involves a dispute with one of the other branches through the interpretation of statutes or regulations.⁸⁷ Textualists hold that it is impossible to impute intent to Congress because it is composed of several hundred individual legislators.⁸⁸ Under this reasoning, there is no

evidence that the provision has the force of law, it is the Statutes at Large that provides the “legal evidence of laws,” . . . and despite its omission from the [Code, it] remains on the books if the Statutes at Large so dictates.

Id. (citations omitted).

77. See generally EVA M. TARNAY, CONG. RSCH. SERV., R45190, FROM SLIP LAW TO UNITED STATES CODE: A GUIDE TO FEDERAL STATUTES FOR CONGRESSIONAL STAFF 5 (2018), <https://www.llsdc.org/assets/sourcebook/CRS-R45190.pdf>.

78. See *id.* at 4–5; *Stephan v. United States*, 319 U.S. 423, 426 (1943).

79. 1 U.S.C. § 112 (proclaiming that the Statutes at Large act as the best expositor of law).

80. *Id.*; SUTHERLAND, *supra* note 32, at § 47:3.

81. SUTHERLAND, *supra* note 32, at § 47:3.

82. See *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.”) (internal citations omitted); see also *In re Arnold*, 471 B.R. 578, 598–607 (Bankr. C.D. Cal. 2012) (applying the rule in *Andrews* to statutory subheadings).

83. See *Hamilton & Kohnen*, *supra* note 75, at 279–80.

84. See *id.*

85. See *id.*

86. The paradigmatic separation of powers cases typically demonstrate disputes between Congress and the Executive Branch. See, e.g., *Bowsher v. Synar*, 478 U.S. 714 (1986) (striking down a law that afforded Congress the ability to remove an individual with executive powers); *Immigr. & Naturalization Servs. v. Chadha*, 462 U.S. 919 (1983) (holding that Congress could not give itself a legislative veto over an executive function).

87. See *Absurdity Doctrine*, *supra* note 21, at 2432.

88. See John F. Manning, *Inside Congress’s Mind*, 115 COLUM. L. REV. 1911, 1919 (2015).

way of knowing the underlying purpose of any statute.⁸⁹ Therefore, to strike the proper balance between the branches and appropriately respect the role of Congress, judges ought to limit their statutory analysis to the text alone without attempting to glean legislative intent.⁹⁰ That is, judges are, or try to be, faithful agents of the legislative branch.

When courts assign alternative meanings to the text that the democratically elected body enacted into law, however, the judiciary becomes more powerful at the expense of Congress.⁹¹ The same result occurs when courts ignore parts of a statute.⁹² Again, because the House of Representatives and the Senate passed the law and sent it to the President to sign, every part of the statute acts as law.⁹³ The judiciary then reacts to the text and brings meaning to the language, acting as the backstop for our republican form of government through its rulings on democratically enacted legislation.⁹⁴ This function only occurs when courts faithfully adhere to the text that Congress enacts, and they can only accomplish this feat when they interpret the entire act.⁹⁵

In treating titles and headings as extraneous, courts miss an opportunity to reach a comprehensive understanding of the text. Ignoring these features may result in an improper reading of the statute that lacks additional context from titles and headings. When titles and headings change the meaning of the text, but courts fail to apply them as proper law, they misappropriate—even if just slightly—the legislative function of Congress. To avoid such a result and to respect the separation of powers between courts and Congress, textualists should incorporate titles and headings into their interpretive frameworks.

IV. THE EVOLVING ROLE OF TITLES AND HEADINGS IN AMERICAN STATUTES

Congress' application of titles and headings has transformed drastically since the days of *Fisher*, but the Supreme Court's jurisprudence on this subject has not adjusted. While textualists debate the extent to which courts are agents of or partners with Congress,⁹⁶ the judiciary should strive to respond appropriately to the transformation of statutes. The next section offers a brief history of statutory structure, illustrating how titles and headings have changed since the early 1800s. The following section looks closely at the functions of modern titles and headings.

A. A Brief History of Titles and Headings in Statutes

Today, statutes follow a familiar organizational pattern. Each act begins with a title: a formal, and often an informal, name by which the law is known.⁹⁷ Most include a

89. *Id.*

90. *Legislative Intent*, *supra* note 27, at 445. *But see* Lisa Schultz Bressman & Abbe R. Gluck, *Statutory Interpretation from the Inside—An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part II*, 66 STAN. L. REV. 725 (2014) (arguing that the agency theory may not hold when considering congressional practices).

91. *See Legislative Intent*, *supra* note 27, at 420–21.

92. *See id.*

93. *See* discussion *supra* Section III.A.

94. *Cf.* Jeremy Waldron, *Separation of Powers in Thought and Practice*, 54 B.C. L. REV. 433, 458 (2013) (arguing that the courts are the final link in the separation of powers chain).

95. *See generally Legislative Intent*, *supra* note 27; *but see* Bressman & Gluck, *supra* note 90.

96. *See* Molot, *supra* note 16, at 6.

97. For instance, the Dodd-Frank Wall Street Reform and Consumer Protection Act full title reads: “An Act

preamble, laying out the justifications or overall schematic purpose for the law.⁹⁸ Congress began including preambles in the early 1800s as a means of introducing legislation.⁹⁹ However, statements of policy often serve the same purpose today.¹⁰⁰ In addition to the body of the text, most statutes include a table of contents—especially longer acts—as well as schedules (e.g., tariff measures), tables, headings, and organizational subheadings to separate distinct parts of the law.¹⁰¹ Additionally, most laws have enactment clauses and marginal notes.¹⁰²

Congress, however, has not always drafted statutes in this fashion.¹⁰³ During the Founding Era laws had a simpler aesthetic.¹⁰⁴ The first law that Congress passed was entitled: “An Act to regulate the Time and Manner of administering Oaths.”¹⁰⁵ This act had no headings or subheadings, but was divided into smaller numbered sections.¹⁰⁶ These sectional divides included no descriptive clauses, just the repeated phrase “and be it further enacted” to introduce each new paragraph of text.¹⁰⁷ A more familiar statute is the Judiciary Act of 1789.¹⁰⁸ It also began with a short title and was divided into thirty-five distinct sections.¹⁰⁹ This statutory structure persisted through the Civil War,¹¹⁰ and it was not until Reconstruction that Congress began making significant changes.¹¹¹

Congress added headings to appropriations acts in the second half of the nineteenth century to organize expenditures to the various governmental departments.¹¹² An appropriations act in 1860, for example, had numeric sectional divides and included italicized descriptive phrases to denote the federal funding recipients.¹¹³ In the late 1860s,

to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ‘too big to fail’, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.” Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

98. *Id.*

99. *See* Beard v. Rowan, 34 U.S. (9 Pet.) 301 (1835) (discussing the relevance of a statute’s preamble).

100. *See, e.g.,* Maracich v. Spears, 570 U.S. 48, 60 (2013) (“An exception to a ‘general statement of policy’ is ‘usually read . . . narrowly in order to preserve the primary operation of the provision.’”) (quoting *Comm’r v. Clark*, 489 U.S. 726, 739 (1989)).

101. *See, e.g.,* Appropriations Act, Pub. L. No. 112-55, 125 Stat. 552 (2012) (depicting a standard, modern, appropriations law).

102. *See id.* (showing notes alongside the statute and pointing the reader to its codified location).

103. *See, e.g.,* Act of June 1, 1789, Pub. L. No. 1-1, 1 Stat. 23.

104. *See, e.g., id.*

105. *Id.* (capitalization as indicated in the original act).

106. *See id.* (demonstrating the sections as divisions).

107. *See id.* This statute’s structure parallels the novel’s structure at the time, where chapters begin with a short descriptive phrase. *See The Chapter 2014, supra* note 4.

108. *See generally* Judiciary Act of 1789, Pub. L. No. 1-20, 1 Stat. 73 (establishing rules for the federal court system).

109. *See id.*

110. *See, e.g.,* Flag Act, Pub. L. No. 15-34, 3 Stat. 415 (1818) (dictating the design of the United States flag); Federal Crimes Act, Pub. L. No. 18-65, 4 Stat. 115 (1825) (establishing one of the earliest examples of federal criminal legislation); *and* Bankruptcy Act, Pub. L. No. 27-9, 5 Stat. 440 (1841) (implementing uniform bankruptcy rules).

111. *See, e.g.,* Appropriations Act, Pub. L. No. 36-157, 12 Stat. 44 (1860).

112. *See, e.g., id.;* Appropriations Act, Pub. L. No. 40-8, 15 Stat. 35 (1868). *But see* An Act to Establish a Territorial Government for Utah, Pub. L. No. 31-51, 9 Stat. 453 (1850) (establishing a new territory and containing only numerical subdivisions without descriptive parts).

113. *See* Appropriations Act, Pub. L. No. 36-10, 12 Stat. 4 (1860) (italicizing various tribes and the associated

appropriations acts began using bolded headings with spacing to separate the sections of the laws¹¹⁴—typically, with broader department headings (e.g., War Department) and subheadings for the specific branch (e.g., Public Works).¹¹⁵ Other statutes at the time, however, maintained the eighteenth-century structure.¹¹⁶ The Civil Rights Act of 1875¹¹⁷ and the Sherman Act of 1890,¹¹⁸ for instance, each had distinct sections but did not include descriptive headings to guide readers.

The Progressive Era made further innovations, with non-appropriations measures adding headings to their subdivided parts. While headings in most statutes were simply general references and not overly descriptive, the Bankruptcy Act of 1898 emerged as the new model in statutory design—including a definitions section, section headings, and even a few examples of subheadings.¹¹⁹ This novel structure augured future statutory drafting, but it would take decades to become the norm. More common at the time were statutes like the Federal Reserve Act, which used headings like “Federal Reserve Districts” and “Federal Reserve Banks” and was modeled after appropriations acts with generic headings¹²⁰ and non-descriptive section numbers.¹²¹ Nevertheless, smaller acts still maintained the eighteenth-century structure, listing a lone title and section numbers.¹²²

By the Great Depression and New Deal eras, definition sections, titles, and subheadings became more prevalent, and the modern statutory structure began to materialize.¹²³ Tables of contents started to appear more frequently in the 1940s and early 1950s.¹²⁴ These additions coincided with the burgeoning post-New Deal administrative

appropriations).

114. See Act Making Appropriations for Diplomatic Expenses, Pub. L. No. 40-38, 15 Stat. 56 (1868).

115. See, e.g., Appropriations Act, Pub. L. No. 44-88, 19 Stat. 41 (1876); Appropriations Act, Pub. L. No. 46-85, 21 Stat. 114 (1880). Still, more targeted appropriations acts at the time maintained the Founding-era structure. See Appropriations Act, Pub. L. No. 44-135, 19 Stat. 59 (1876) (limiting congressional funding to defense fortifications).

116. See, e.g., Appropriations Act, Pub. L. No. 46-85, 21 Stat. 114 (1880).

117. See Civil Rights Act, Pub. L. No. 43-114, 18 Stat. 335 (1875) (responding to civil rights violations in the Reconstruction Era).

118. See Sherman Antitrust Act, Pub. L. No. 51-647, 26 Stat. 209 (1890) (establishing federal antitrust laws).

119. See Bankruptcy Act, Pub. L. No. 55-541, 30 Stat. 544 (1898) (giving descriptive section headings such as “Sec. 4 Who May Become Bankrupts”).

120. See Federal Reserve Act, Pub. L. No. 63-6, 38 Stat. 251 (1913) (establishing the Federal Reserve and organizing the statute into several sections with headings).

121. See *id.*; see also Radio-Communications Act, Pub. L. No. 62-287, 37 Stat. 302 (1912) (regulating radio communication and using minor section divisions).

122. See, e.g., First Liberty Bond Act, Pub. L. No. 65-4, 40 Stat. 35 (1917) (creating a system to sell bonds for the allied war effort); Future Trading Act, Pub. L. No. 67-86, 42 Stat. 187 (1921) (taxing futures contracts).

123. See, e.g., Hawley-Smoot Tariff Act, Pub. L. No. 71-361, 46 Stat. 590 (1930) (incorporating a series of schedules to depict the variety of newly-created tariffs); Emergency Banking Relief Act, Pub. L. No. 73-1, 48 Stat. 1 (1933) (dividing the statute into titles with subsections); Agricultural Adjustment Act, Pub. L. No. 73-10, 48 Stat. 31 (1933) (including a “declaration of policy” section); and Securities Exchange Act, Pub. L. No. 73-291, 48 Stat. 881 (1934) (depicting many of the modern features of statutes: definitions, titles, and headings). *But see* Tennessee Valley Authority Act of 1933, Pub. L. No. 73-17, 48 Stat. 58 (1933) (suggesting that not all statutes followed this modern structure).

124. National Security Act of 1947, Pub. L. No. 80-253, 61 Stat. 495 (1947) (creating the Defense Department); Uniform Code of Military Justice, Pub. L. No. 81-506, 64 Stat. 169 (1950) (creating a framework for military laws).

state¹²⁵ and expansion of regulation.¹²⁶ For example, the Federal-Aid Highway Act of 1956 included names for each title of the bill,¹²⁷ as well as headings assigned to each section.¹²⁸ Furthermore, subheadings offered additional contextual description to guide readers through the legislation.¹²⁹ In 1970, this drafting style became firmly cemented in Congress with the passage of the Legislative Reorganization Act,¹³⁰ which created the Office of the Legislative Counsel (“OLC”) to promote consistent practices.¹³¹ From this point forward not all bills mirrored this precise structure, but it became more ubiquitous, especially among larger pieces of legislation.¹³²

B. *The Function of Modern Titles and Headings*

Today, legislative drafters incorporate titles, headings, and subheadings into statutes for a variety of reasons. First, titles have a navigational function.¹³³ As described above, laws have become longer over time.¹³⁴ The Affordable Care Act¹³⁵ and the Dodd-Frank Wall Street Reform and Consumer Protection Act¹³⁶ were each nearly one-thousand pages in length. To help legislators manage this deluge of information, drafters insert headings and subheadings that are cross-referenced with the table of contents to guide readers to specific provisions¹³⁷ Similarly, Congress rarely drafts bills from scratch.¹³⁸ Rather, a new law is typically composed of amendments to or retractions from older statutes; titles

125. Cf. LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 510 (3d ed. 2005) (“And the growth of big government also has a kind of snowball effect. The more government does, the more money it needs to finance itself; and the more men and women to run its affairs.”); *id.* at 511 (“The Internal Revenue Code grew into a kind of monster—the longest, most complicated law of the land.”). See also ROBERT H. BORK, *THE TEMPTING OF AMERICA* 129 (1990) (“[A]ny Court that imposes values not found in the Constitution to that degree makes national policy that obliterates local and state policies. The New Deal Court centralized with gusto by refusing to limit Congress’ powers over commerce, taxation, and spending.”).

126. *Vital Statistics on Congress*, BROOKINGS (Nov. 21, 2022), <https://www.brookings.edu/multi-chapter-report/vital-statistics-on-congress/> (hereinafter *Congressional Statistics*) (showing in the sixth graph that, while Congress now passes fewer laws, the number of pages of legislation has increased).

127. See Federal-Aid Highway Act of 1956, Pub. L. No. 84-627, 70 Stat. 374 (1956) (authorizing an expansion to the interstate highway system).

128. See *id.* § 103 (“Forest Highways and Forest Development Roads and Trails”).

129. *Id.* § 103(a) (“Authorization of Appropriations”). Another example is the Federal Aviation Act of 1958, which depicts a similar structure and a table of contents. See Federal Aviation Act, Pub. L. No. 85-726, 72 Stat. 731 (1958).

130. See Legislative Reorganization Act of 1970, Pub. L. No. 91-510, 84 Stat. 1140 (1970) (codified at 2 U.S.C. §§ 281–82).

131. See Jarrod Shobe, *Intertemporal Statutory Interpretation and the Evolution of Legislative Drafting*, 114 COLUM. L. REV. 807, 816 (2014).

132. See, e.g., Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) (authorizing the expansion of Medicare and establishing exchanges to increase the number of insured Americans); Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (regulating financial markets in the wake of the Great Recession).

133. See *House Legislative Counsel’s Manual on Drafting Style*, OFF. LEGISLATIVE COUNS. U.S. H.R., at 17 (1995) (hereinafter *House Manual*).

134. See *Congressional Statistics*, *supra* note 126.

135. See Pub. L. No. 111-148.

136. See Pub. L. No. 111-203.

137. See e.g., *House Manual*, *supra* note 133, at 18, 31.

138. See RICHARD BETH, CONG. RSCH. SERV., RS20617, HOW BILLS AMEND STATUTES (2003), <https://sgp.fas.org/crs/misc/RS20617.pdf>.

and headings assist drafters in navigating these changes.¹³⁹

Second, titles and headings act as organizational tools.¹⁴⁰ A recent study found that Congress passes fewer laws today than in the mid-1900s, but these modern laws tend to be longer.¹⁴¹ This development suggests that bills affix multiple, sometimes unrelated provisions to the primary legislation to account for this productivity gap.¹⁴² Because these bills do not materialize overnight, they are constructed in a piecemeal fashion with input from a variety of interest groups.¹⁴³ Moreover, other members of Congress include amendments during the process, adding to the parliamentary disorder.¹⁴⁴ Titles and headings, however, ensure that these disparate statutory provisions fit together and that the bill is logically organized before passage.

Third, titles and headings provide descriptive assistance to the text.¹⁴⁵ Beyond the organizational effect, they often describe the content contained below.¹⁴⁶ OLC instructs drafting attorneys to add headings that “accurately and briefly describe what the bill does.”¹⁴⁷ Although somewhat trite, this function nevertheless evidences this explanatory purpose that headings serve. Drafters must synthesize the text prior to penning an appropriate heading. Typically, the text underneath a heading is more expressive, but a heading has the ability to contextualize these words—to orient the reader to the upcoming paragraph.

Finally, titles and headings perform a scope-setting function.¹⁴⁸ That is, they may limit the language of a specific provision in a statute. Congress can draft a section using broad language, but a heading operates as a convenient ceiling to constrain the meaning of the text. For example, the Senate OLC Manual asserts that headings usually “name[]

139. *Id.*

140. *See e.g., House Manual, supra* note 133, at 14–15.

141. *See* Congressional Statistics, *supra* note 126.

142. *See* Nat’l Fed’n Indep. Bus. v. Sebelius, 567 U.S. 519, 705 (2012) (Scalia, J., dissenting) (describing the mammoth law as a “Christmas tree” with “nongermane ornaments”—unrelated provisions—attached to it); *see also* Robert L. Nightingale, Note, *How To Trim a Christmas Tree: Beyond Severability and Inseparability for Omnibus Statutes*, 125 YALE L.J. 1672, 1676 (2016) (“Today’s Congress tends to pass long, complex statutes that reflect numerous compromises and bargains. Because omnibus statutes do not fall under the purview of a single congressional committee, they are less likely than ordinary statutes to be internally consistent.”).

143. *See* Bressman & Gluck, *supra* note 90, at 762.

As one of many possible examples, in the first year of the 112th Congress, only 7 (8%) of the 91 measures that passed went through the ‘textbook’ process in both houses, passing through committees on each side . . . [T]he rest were worked out by leadership deals, special legislative processes such as reconciliation, or ‘preconference’—a process in which differences are negotiated behind the scenes by staff, and then each chamber passes the amendments necessary to make the bills identical without going through conference.

Id. (footnotes omitted). *See also* Einer R. Elhauge, *Does Interest Group Theory Justify More Intrusive Judicial Review?*, 101 YALE L.J. 31 (1991) (describing some of the lobbying practices, outside of normal congressional procedures, that go into legislation).

144. *See* CHRISTOPHER M. DAVIS, CONG. RSCH. SERV., 98-995, THE AMENDING PROCESS IN THE HOUSE OF REPRESENTATIVES 2–3 (2015), <https://crsreports.congress.gov/product/pdf/RL/98-995>.

145. *See House Manual, supra* note 133, at 19 n.9.

146. *Id.* at 38 (showing how amendments are grouped with a broader bill, and how the heading helps to connect the disparate content).

147. *Id.* at 17.

148. *Legislative Drafting Manual*, OFF. LEGISLATIVE COUNS. U.S. S. 12–13 (1997) (hereinafter *Senate Manual*).

the persons or things to which the provisions appl[y].”¹⁴⁹ Therefore, headings should signal courts to critically consider the relationship between the body and its heading.¹⁵⁰ This function in particular supports the idea that titles and headings are not merely a “convenient reference,” but also a way to supply meaning to the statutory text.¹⁵¹

Comparing the issues presented in two paradigmatic cases illustrates how the evolving role of titles and headings affects statutory interpretation. Chief Justice John Marshall first commented on the use of titles in *Fisher*, noting that the title—“An Act to regulate the collection of duties on imports and tonnage”—may assist with statutory interpretation.¹⁵² Still, the Chief Justice admitted the difficulty of using a twelve-word title to decipher the meaning of a specific provision in a law spanning 112 sections.¹⁵³ There, the title merely acted as a descriptive reference, as suggested by *Hadden* and later opinions.¹⁵⁴

Conversely, in *Yates v. United States*, the Court used the heading “Destruction, alteration, or falsification of records in Federal investigations and bankruptcy”¹⁵⁵ to limit the serial nouns—“any record, document, or *tangible object*.”¹⁵⁶ There, the eleven-word heading sat atop an eighty-two-word paragraph—not an entire act.¹⁵⁷ Accordingly, the question that Chief Justice Marshall attempted to answer in *Fisher* was drastically different from the statutory question addressed in *Yates*. The nexus between the heading and the statutory language was more closely tied in *Yates* than in *Fisher*, suggesting that modern headings supply more context to the statutory language.

In sum, the nineteenth and early-twentieth century characterization of headings as mere “reference”¹⁵⁸—a characterization that still carries the day in the Supreme Court¹⁵⁹—is outdated and does not align with congressional drafting practices. No court has taken a critical lens to how laws have structurally changed through time. Therefore, textualists should not cling to the Court’s antiquated precedents regarding titles and headings because the statutes that modern courts construe are entirely different from those construed in 1805.¹⁶⁰ Today, titles play a greater organizational role in how statutes are designed, as they are more descriptive and can set the scope of the text. As a result, courts should recognize that titles and headings operate in conjunction with the statute’s body to express the appropriate meaning of the text.¹⁶¹

149. *Id.* at 13.

150. Cf. B.J. Ard, Comment, *Interpreting by the Book: Legislative Drafting Manuals and Statutory Interpretation*, 120 YALE L.J. 185, 186 (2010) (suggesting that the Supreme Court has not placed enough emphasis on drafting manuals).

151. *Hadden v. Collector*, 72 U.S. (5 Wall.) 107, 110 (1866).

152. *United States v. Fisher*, 6 U.S. (2 Cranch) 358, 368 (1805).

153. *See id.* (“No[] argument therefore can be drawn from the title.”).

154. *Hadden*, 72 U.S. (5 Wall.) at 110.

155. 574 U.S. 528, 539 (2015) (discussing language in the Sarbanes-Oxley Act, Pub. L. No. 107-204, § 802(a), 116 Stat. 745 (codified as 18 U.S.C. § 1519)).

156. *See id.* at 540 (emphasis added).

157. *See* 18 U.S.C. § 1519.

158. *Bhd. R.R. Trainmen v. Balt. & Ohio R.R. Co.*, 331 U.S. 519, 529 (1947).

159. *Yates*, 574 U.S. at 558–59 (Kagan, J., dissenting).

160. *See* discussion *supra* Part IV.

161. *See* discussion *supra* Part I.

V. TITLES AND HEADINGS AS NECESSARY CONTEXTUAL CANONS OF CONSTRUCTION

Statutory interpretation requires various tools to find the meaning of words.¹⁶² Thus, the canons of construction serve an important function in creating a framework to interpret the text.¹⁶³ The most ardent textualists, from Justice Antonin Scalia to Justice Clarence Thomas, have willingly employed the linguistic canons. In fact, they “routinely bring canons to bear on the interpretation of statutes,” acting as “the biggest proponents of linguistic canons.”¹⁶⁴ While textualists begin their analysis with the specific statutory language at issue, they understand the need to place words in context.¹⁶⁵ This Part describes how linguistic canons situate words within their proper context and demonstrates how titles and headings operate in a similar fashion. It concludes by applying these arguments to two lower court cases that did not treat headings properly.

A. Linguistic Canons of Construction and their Relation to Titles and Headings

i. Whole-Text

First, the most fundamental linguistic tool is the *whole-text* canon.¹⁶⁶ Justice Scalia wrote that “[p]erhaps no interpretive fault is more common than the failure to follow the whole-text canon, which calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts.”¹⁶⁷ He claimed that most canons stem from the *whole-text*, but given its broad directive, it often becomes the subject of abuse.¹⁶⁸ The proper use of the canon requires “that only one of the possible meanings that a word or phrase can bear is compatible with use of the same word or phrase elsewhere in the statute.”¹⁶⁹ This canon is not meant to impute a broad purpose on distinct parts of the statute that might come into conflict, but rather to emphasize the need to place words in context.¹⁷⁰

In *Utility Air Regulatory Group v. EPA*, the Court asked whether EPA’s vehicle regulations automatically triggered certain permitting requirements under the Clean Air Act.¹⁷¹ Writing for the Court, Justice Scalia held that

the Act is far from a *chef d’oeuvre* of legislative draftsmanship. But we, and EPA, must do our best, bearing in mind the “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.”¹⁷²

Likewise, Justice Scalia delivered a scathing dissent in *King v. Burwell*, criticizing

162. See generally SCALIA & GARNER, *supra* note 25 (exploring the myriad tools of statutory construction and interpretation).

163. *Id.*

164. Barrett, *supra* note 22, at 121.

165. *Id.* at 159, 164.

166. SCALIA & GARNER, *supra* note 25, at 167.

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.* at 167–69.

171. *EPA v. Util. Air Regul. Grp.*, 573 U.S. 302, 314 (2014).

172. *Id.* at 320 (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)).

the “outlandish” interpretation of the Affordable Care Act.¹⁷³ He wrote that “sound interpretation requires paying attention to the whole law Context always matters. Let us not forget, however, *why* context matters: It is a tool for understanding the terms of the law, not an excuse for rewriting them.”¹⁷⁴ Criticizing the majority opinion for only highlighting isolated parts of the statute, Justice Scalia forcefully argued that the operative sections of the Act needed to be read against the entire statute.¹⁷⁵

For present purposes, because the *whole-text* canon values each part of a law, it treats titles and headings equally with the statute’s body.¹⁷⁶ It asks the judge to look at the textual paragraph in light of the heading and consider that all of the language has the effect of law.¹⁷⁷ Often, the heading will not alter the meaning of the subsequent text, but both parts of the statute matter and require consideration.¹⁷⁸ If the heading necessitates a narrower reading, on the other hand, the body’s text needs to be construed as such. This imperative is even more important when one considers the heightened importance of headings and titles in modern legislation.¹⁷⁹ In order to be a faithful agent of statutory interpretation and respect the tripartite constitutional structure, the judiciary must consider both the body and headings of statutes when declaring “what the law is.”¹⁸⁰

ii. *Ejusdem Generis* and *Noscitur a Sociis*

Ejusdem generis comes from the Latin phrase “of the same general kind or class.”¹⁸¹ It is often employed with lists and schedules to categorize words into particular groupings.¹⁸² Justice Scalia has justified *ejusdem generis* as follows: “When the initial terms all belong to an obvious and readily identifiable genus, one presumes that the speaker or writer has that category in mind for the entire passage.”¹⁸³ While some have dismissed this canon, believing it gives rise to ambiguity, it has become a common tool for textualists.¹⁸⁴ In *Sossamon v. Texas*, the Court considered the legality of prisoners engaging in certain religious services against the backdrop of security concerns.¹⁸⁵ Justice Clarence Thomas wrote that general words should be interpreted in light of the neighboring specific words.¹⁸⁶ He used this same reasoning in *Bloate v. United States*,

173. 576 U.S. 473, 500 (2015) (Scalia, J., dissenting).

174. *Id.* at 500–01 (emphasis in original).

175. *Id.* at 500–09.

176. SCALIA & GARNER, *supra* note 25, at 167.

177. *Id.*

178. *Id.*

179. See discussion *supra* Part IV.

180. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

181. SCALIA & GARNER, *supra* note 25, at 199.

182. See *id.*

183. *Id.*

184. *Id.* at 212.

The truly knowledgeable interpreter (and drafter) knows the *ejusdem generis* canon; it has become part of the accepted terminology of legal documents. Any lawyer or legislative drafter who writes two or more specifics followed by a general residual term without the intention that the residual term be limited may be guilty of malpractice.

Id.

185. See *Sossamon v. Texas*, 563 U.S. 277, 280 (2011).

186. *Id.* at 292.

where a defendant sought to dismiss gun and drug charges because of a failure to meet the Speedy Trial Act's requirements.¹⁸⁷

The canon of *noscitur a sociis* comes from the Latin idea that words are known by the company they keep.¹⁸⁸ That is, a word's meaning is derived from the words in its vicinity.¹⁸⁹ The crux of this canon is that “[w]hen several nouns or verbs or adjectives or adverbs—any words—are associated in a context suggesting that the words have something in common, they should be assigned a permissible meaning that makes them similar.”¹⁹⁰ In *United States v. Williams*, Justice Scalia employed *noscitur a sociis* to reverse a lower court decision rendering a child pornography law overbroad under the First Amendment after an individual was convicted of promoting violative material.¹⁹¹ Justice Scalia wrote that “promotes,” alongside “solicits,” “distributes,” and “advertises,” reasonably means “the act of recommending purported child pornography to another person for his acquisition.”¹⁹² He reached this conclusion using *noscitur a sociis*, “which counsels that a word is given more precise content by the neighboring words with which it is associated.”¹⁹³ Similarly, the *Yates* majority reiterated that a word's meaning should be confined to the words around it.¹⁹⁴ Similar to *Williams*, in *Yates* the neighboring words referred to financial documents and records, which constricted the meaning of “tangible object” to comparable material.¹⁹⁵ Justice Kagan dissented to what, in her view, was an improper use of *noscitur a sociis*, stating that the Court should use “*noscitur a sociis* . . . to resolve ambiguity, not create it.”¹⁹⁶

Ejusdem generis may not often apply to titles and headings because it speaks to a specific list of words, but the motivating principles still apply.¹⁹⁷ *Noscitur a sociis*, on the other hand, better aligns with how titles and headings affect the text.¹⁹⁸ The canon's goal is to restrict the meaning of a word to that of its surrounding words.¹⁹⁹ Titles and headings can have a similar function; when the title's language frames the statute within a specific range of outcomes,²⁰⁰ broader language that follows is restricted to that title's range of meaning. To ignore titles and headings would be the equivalent of removing the ceiling of meaning that these two canons capture.²⁰¹ This strategy would amount to a more literalist interpretation of text—an interpretation that textualists admonish.²⁰²

187. *Bloate v. United States*, 559 U.S. 196, 202–03 (2010).

188. See SCALIA & GARNER, *supra* note 25, at 195.

189. See *id.*

190. See *id.* Justice Scalia notes that the most common application of *noscitur a sociis* is not to “establish which of two totally different meanings applies but rather to limit a general term to a subset of all the things or actions that it covers—but only according to its ordinary meaning.” *Id.* at 196.

191. See *United States v. Williams*, 553 U.S. 285, 294 (2008).

192. *Id.* at 294–95.

193. *Id.* at 294.

194. *Yates v. United States*, 574 U.S. 528, 543–44 (2015).

195. *Id.* at 538–39, 544.

196. *Id.* at 564–65 (Kagan, J., dissenting).

197. SCALIA & GARNER, *supra* note 25, at 199, 211–13.

198. *Id.* at 195.

199. *Id.*

200. See *Senate Manual*, *supra* note 148, at 9–10, 12–14, 16.

201. See *supra* text accompanying notes 181–200.

202. See SCALIA, *supra* note 20, at 23–24.

iii. Surplusage

If titles and headings provide no independent meaning, as some argue, why should drafters include them in statutes at all? Fortunately, courts have a canon to answer this question. *Surplusage* holds that “it is no more the court’s function to revise by subtraction than by addition. A provision that seems to the court unjust or unfortunate . . . must nonetheless be given effect.”²⁰³ This principle stems from the notion that legal drafters would not inject excess words into a statute—that everything has significance.²⁰⁴ Courts must not abuse this canon, however, as it might lead to over-ascribing meaning to certain words or phrases.²⁰⁵ Nevertheless, *surplusage* makes clear that, because Congress includes titles and headings in its drafting, they must be given effect.²⁰⁶

Overall, how do these canons instruct judicial analysis? Textualists admit that words do not have a fixed meaning; rather, they are derived from context.²⁰⁷ The canons have evolved to assist judges with this contextual analysis.²⁰⁸ *Whole-text* establishes that provisions in a specific section cannot be fully understood without understanding how the constituent pieces of a statute work together.²⁰⁹ *Ejusdem generis* demonstrates how lists and schedules might affect general terms, whereas *noscitur a sociis* applies more broadly to show how the surrounding text influences the meaning of a word or phrase in question.²¹⁰ Finally, *surplusage* is premised on the notion that Congress does not add superfluous words to a statute; it ensures that the judge gives effect to the entire law.²¹¹ By contextualizing the text below, titles and headings operate similarly to these interpretive tools.²¹² Thus, judges that only consider titles and headings when a word is ambiguous operate antithetically to the directives that these canons proffer. And while textualists on the Supreme Court have deprioritized titles and headings, this Article counsels against such a prioritization. Faithful textualists should resist the temptation to rely on precedents that mischaracterize the role that titles and headings play.

203. SCALIA & GARNER, *supra* note 25, at 174.

204. *But see id.* at 176–77.

Put to a choice, however, a court may well prefer ordinary meaning to an unusual meaning that will avoid surplusage. So like all other canons, this one must be applied with judgment and discretion, and with careful regard to context. It cannot always be dispositive because (as with most canons) the underlying proposition is not invariably true. Sometimes drafters do repeat themselves and do include words that add nothing of substance, either out of a flawed sense of style or to engage in the ill-conceived but lamentably common belt-and-suspenders approach.

Id. (emphasis in original).

205. See William Baude & Stephen E. Sachs, *The Law of Interpretation*, 130 HARV. L. REV. 1079, 1126 (2017) (“Consider the more famous canon against superfluity or surplusage, which also purports to be linguistic. . . . Lawmakers might use repetitive ‘doublet’ phrases such as ‘metes and bounds’ or ‘cease and desist’ And readers of statutes may well expect and comprehend such redundancy.”).

206. SCALIA & GARNER, *supra* note 25, at 174.

207. *Id.*

208. See discussion *supra* Section V.A.

209. See *supra* Section V.A.i. Legal scholars as early as William Blackstone have argued for this statutory construction. See 1 WILLIAM BLACKSTONE, COMMENTARIES *89 (“One part of a statute must be so construed by another, that the whole may (if possible) stand.”).

210. See *supra* Section V.A.ii.

211. See *supra* Section V.A.iii.

212. See SCALIA & GARNER, *supra* note 25, at 167–68.

B. Titles and Headings in Practice

This Article has argued that courts should treat titles and headings equally with the rest of the text. The reasons arise from Bicameralism, Presentment, changes in drafting design through time, and similarities to other contextual canons.²¹³ Though Chief Justice Marshall initially asserted this argument in 1805, courts have subsequently diluted its potency.²¹⁴ This abstract discussion prompts an important question: How should courts use titles and headings to interpret text in practice? Often, the title may simply act as a general reference.²¹⁵ Perhaps a title will only reinforce the text below. Other times, however, a title may shed new light on the meaning of a particular word or phrase beneath it.²¹⁶ To move beyond abstraction, this section examines how two lower court cases misinterpreted the headings at issue. Both opinions originally applied the *Trainmen* approach, holding that titles and headings could not constrain plain meaning.²¹⁷ This section offers a revisionist interpretation.

i. *United States v. Rand*

In *United States v. Rand*, the Seventh Circuit Court of Appeals demonstrated how ignoring statutory headings can be dispositive to the outcome of a case.²¹⁸ *Rand* involved a strange series of events, beginning when Joseph Kalady masterminded a fraud scheme to issue counterfeit U.S. birth certificates.²¹⁹ The police investigated this plot and eventually arrested Kalady.²²⁰ Released from jail on bail, Kalady concocted a plot with an accomplice named James Rand to elude the police with a body double before his arraignment.²²¹ Following Kalady's plan, Rand found an individual who looked like Kalady and brought him to his house.²²² Eventually, Kalady killed this individual in an attempt to "fake" his own death.²²³ Rand was arrested and charged with aiding and abetting this murder under 18 U.S.C. § 1512(a)(1)—which includes anyone who kills "another person" to "prevent . . . communication . . . to a law enforcement officer."²²⁴ The heading of this statute, though, read: "Tampering with a witness, victim, or an informant."²²⁵ Consequently, the defendant argued that this law was limited to witness tampering, but the court held that the broadness of the "another person" language reached this particular murder.²²⁶ The Seventh Circuit affirmed the district court decision to convict Rand, reasoning that "it is well-settled that [headings do] not 'limit the plain

213. See discussion *supra* Parts II–V.

214. See cases discussed *supra* Section II.B.

215. Bhd. R.R. *Trainmen v. Baltimore & Ohio R.R. Co.*, 331 U.S. 519, 528 (1947).

216. See discussion *supra* Section V.A.

217. *Infra* Sections V.B.i., V.B.ii.

218. 482 F.3d 943, 944 (7th Cir. 2007).

219. *Id.*

220. *Id.*

221. *Id.* at 944–45.

222. *Id.* at 945.

223. *Rand*, 482 F.3d at 945–46.

224. 18 U.S.C. § 1512(a)(1)(C) (emphasis added).

225. 18 U.S.C. § 1512.

226. *Rand*, 482 F.3d at 946.

meaning of the text.”²²⁷

A different outcome obtains when the headings analysis, described *supra*, is applied to the facts of *Rand*. First, this statute went through Bicameralism and Presentment, giving the heading the force of law.²²⁸ Next, the court should consider the statute’s modern structure. In the nineteenth century, this Act would not have had a heading.²²⁹ Instead of “Tampering with a witness, victim, or an informant,”²³⁰ it would have had a section number, or perhaps a roman numeral depending on its passage date.²³¹ Thus, courts would only have evaluated the Act’s primary title—“Victim and Witness Protection Act”—which sheds little light on the text’s meaning.²³² At that time, the “another person” passage would have been read in isolation, giving it a broader meaning when not situated beneath the more specific title.²³³ A contemporary court, however, should have incorporated the descriptive heading and limited the statute’s application to charges related to witness tampering.²³⁴

The canons of statutory interpretation further support incorporating the heading into the analysis. The *whole-text* canon suggests that the body must be interpreted in light of the heading.²³⁵ Under the court’s reading, the text under the heading would include most fathomable murders.²³⁶ But the statute is aimed specifically at *ex post* witness tampering, whereby a witness is threatened or killed before testifying against an individual charged with a different crime.²³⁷ The heading lists the specific parties that fall within its scope—aligning with OLC’s guidance.²³⁸ Further, *ejusdem generis* and *noscitur a sociis* work in conjunction to similarly limit the text.²³⁹ Similar to *Yates*, where the nearby financial document language affected the meaning of “tangible object,” in *Rand* the term “another person” is constrained by the heading’s references to witness and informant tampering.²⁴⁰ The individual murdered was not party to the ongoing fraud investigation, nor privy to the defendant’s scheme with Kalady; rather, he was killed in a collateral incident.²⁴¹ Finally,

227. *Id.* at 947 (quoting *United States v. Krilich*, 159 F.3d 1020, 1028 (7th Cir. 1998)).

228. *See id.* at 946 (recognizing the legitimacy of the statute, and therefore, implying that the statute went through the constitutional process of bicameralism and presentment). Although the court never explicitly discussed the heading as law, this step has been implied since *Fisher*. *See United States v. Fisher*, 6 U.S. (2 Cranch) 358, 368 (1805). Furthermore, the Office of the Legislative Counsel—given authority under 2 U.S.C. § 281b(4) to assist in preparing legislative drafts—has standardized practices to recognize the regular incorporation of headings and subheadings into the law. *See House Manual, supra* note 133, at 17.

229. *See, e.g.*, Pub. L. No. 27-9, 5 Stat. 440.

230. 18 U.S.C. § 1512.

231. *See, e.g.*, Pub. L. No. 27-9, 5 Stat. 440.

232. Victim and Witness Protection Act, Pub. L. No. 97-291, 96 Stat. 1248 (1982).

233. WILLIAM D. POPKIN, *STATUTES IN COURT: THE HISTORY AND THEORY OF STATUTORY INTERPRETATION* 73–75, 112–13 (1999).

234. The Senate Manual suggests that headings are often meant to limit the persons or things to which the text aims to address. This case provides an example of such a limitation. *See Senate Manual, supra* note 148, at 13–14.

235. *See SCALIA & GARNER, supra* note 25, at 167.

236. *See United States v. Rand*, 482 F.3d 943, 946 (7th Cir. 2007).

237. *See* 18 U.S.C. § 1512(a)(1)(A).

238. *See Senate Manual, supra* note 148, at 13–14; *see also* 18 U.S.C. § 1512.

239. *See SCALIA & GARNER, supra* note 25, at 195, 199.

240. *Yates v. United States*, 574 U.S. 528, 543–44 (2015). *See also* 18 U.S.C. § 1512.

241. *Rand*, 482 F.3d at 944–45.

the court treats the heading as *surplusage* when it fails to ascribe it any meaning.²⁴² Therefore, in *Rand*, the court prioritized the body’s language over the heading’s limiting text,²⁴³ when in fact the two should work in tandem to generate meaning.

ii. *Rajah v. Mukasey*

Rajah arose from a post-September 11, 2001 deportation statute.²⁴⁴ There, the Second Circuit Court of Appeals held that the statute in question was constitutionally authorized.²⁴⁵ Yet, the Second Circuit also considered to what extent the government could collect information from immigrants.²⁴⁶ The statute at issue allowed the Attorney General to collect “current addresses and furnish *such additional information* as the Attorney General may require.”²⁴⁷ The court read this as a “broad grant of power,” an extension that effectively went beyond addresses.²⁴⁸ The subheading resting above this language, however, read: “Current address of natives of any one or more foreign states.”²⁴⁹ And the heading of Section 1305 broadly stated: “Notices of change of address.”²⁵⁰ Petitioners argued that the headings limited the data collection to addresses alone, but the court held that the heading could not “limit the plain meaning of the text.”²⁵¹

Again, after acknowledging that each part of this statute is law,²⁵² the court should have recognized the modern nature of this statute. Although originally drafted in 1981, in 1988 it provided a descriptive heading that limited the government’s information gathering to addresses.²⁵³ This provision originated from amendments to the “Immigration Technical Corrections Act”—a title that provides little interpretive assistance.²⁵⁴ Again, the Second Circuit would have license to read the phrase “such additional information” broadly without the heading, but because the statute supplies it, the heading constrains the phrase.²⁵⁵

With the heading and body on equal footing, the canons offer further clarification. The *whole-text* canon would stipulate that “such additional information” must be read in light of the subheading and heading that rest above the text.²⁵⁶ While “additional information” could be read as expansive authority to request any material, the entire

242. See SCALIA & GARNER, *supra* note 25, at 174; see also *Rand*, 482 F.3d at 946–47.

243. See *Rand*, 482 F.3d at 946–47.

244. *Rajah v. Mukasey*, 544 F.3d 427, 433, 436 (2d Cir. 2008).

245. *Id.* at 432, 438–43.

246. *Id.* at 436.

247. 8 U.S.C. § 1305(b) (emphasis added). See also *Rajah*, 544 F.3d at 436.

248. *Rajah*, 544 F.3d at 436.

249. 8 U.S.C. § 1305(b).

250. 8 U.S.C. § 1305.

251. *Rajah*, 544 F.3d at 436.

252. See *id.* (recognizing the legitimacy of the law by upholding its authority). Also keep in mind that recognizing the heading as law has been implied since *Fisher*. *United States v. Fisher*, 6 U.S. (2 Cranch) 358, 368 (1805). Additionally, the Office of the Legislative Counsel has standardized practices to recognize the regular incorporation of headings and subheadings into the law. See *House Manual*, *supra* note 133, at 17.

253. Compare Immigration and Nationality Act, Pub. L. No. 97-116, § 11, 95 Stat. 1611, 1617 (1981), with Immigration Technical Corrections Act, Pub. L. No. 100-525, § 9(o), 102 Stat. 2609, 2620–21 (1988).

254. Pub. L. No. 100-525, § 9(o), 102 Stat. 2609, 2620–21.

255. 8 U.S.C. § 1305.

256. SCALIA & GARNER, *supra* note 25, at 167.

section relates to the text of the heading, namely “[c]urrent addresses” and “change[s] of address[es].”²⁵⁷ *Ejusdem generis* and *noscitur a sociis* further support a narrow understanding.²⁵⁸ Because of the restrictive headings, “additional information” is likely limited to information closely related to addresses—that is, general information about the property or past residences.²⁵⁹ But “additional information” certainly does not extend to interrogation or bank accounts.²⁶⁰ The descriptive headings do not evince a broad grant of authority. Again, reading “additional information” without reference to the heading treats these limitations as *surplusage*, and no textualist would willingly render statutory language meaningless.²⁶¹

Of course, there may have been other reasons to rule against the defendants in *Rand* and *Rajah*.²⁶² For instance, in *Rand*, it is likely that the defendant would have been guilty of aiding and abetting crime.²⁶³ Likewise, in *Rajah*, the immigration regulatory regime is highly complex and encompasses a myriad of statutes, with the court citing a few different sources of authority.²⁶⁴ But if the *Rand* and *Rajah* courts were constrained to the language of Sections 1512 and 1305, respectively, then their analysis would have been significantly altered.²⁶⁵ The problem is not so much the outcome, but rather the mischaracterization of headings as second-class statutory actors. These words should be treated equally to the rest of the law, and it is the duty of textualists to uphold this principle.

VI. CONCLUSION

This Article has argued from three pillars of legislative procedure and statutory interpretation. First, all parts of a statute undergo Bicameralism and Presentment, including titles and headings.²⁶⁶ This suggests that courts ought to treat them with the same respect afforded to the rest of the text. Second, statutory drafting practices have evolved since the 1790s; where statutes once included a lone title with numbered sectional breaks, they now have headings and subheadings to better organize the law and guide readers through the text.²⁶⁷ Because of these more descriptive titles and headings,²⁶⁸ courts should also evolve in how they interpret them. Finally, the linguistic canons that courts often cite provide context to the language at issue.²⁶⁹ Titles and headings can have

257. 8 U.S.C. § 1305.

258. See SCALIA & GARNER, *supra* note 25, at 195, 199.

259. 8 U.S.C. § 1305. See also SCALIA & GARNER, *supra* note 25, at 195, 199.

260. *Rajah v. Mukasey*, 544 F.3d 427, 433–34 (2d Cir. 2008). See also Heidee Stoller et al., *Developments in Law and Policy: The Costs of Post-9/11 National Security Strategy*, 22 YALE L. & POL’Y REV. 197, 220 (2004) (elaborating on the National Security Entry-Exit Registration System, which is what led to the statutory issue in *Rajah*, as “[s]ome INS offices . . . collected more personal information such as personal bank account information, credit card information, and even affiliations with campus political, religious, or social groups.”).

261. 8 U.S.C. § 1305(b). See also SCALIA & GARNER, *supra* note 25, at 174.

262. See *United States v. Rand*, 482 F.3d 943, 945 (7th Cir. 2007); see also *Rajah*, 544 F.3d at 432–33, 435.

263. See *Rand*, 482 F.3d at 945.

264. See *Rajah*, 544 F.3d at 435 (citing 8 U.S.C. § 1303(a)).

265. See *Rand*, 482 F.3d at 947; see also *Rajah*, 544 F.3d at 436.

266. U.S. CONST. art. I, § 7, cl. 2. See also *United States v. Fisher*, 6 U.S. (2 Cranch) 358, 368 (1805); *Senate Manual*, *supra* note 148, at 13–14; and *House Manual*, *supra* note 133, at 17.

267. *Compare* Act of June 1, 1789, Pub. L. No. 1-1, 1 Stat. 23, with 18 U.S.C. § 1512 and 8 U.S.C. § 1305.

268. See, e.g., 18 U.S.C. § 1512; 8 U.S.C. § 1305.

269. See SCALIA & GARNER, *supra* note 25, at 167, 174, 195, 199 (discussing the *whole text*, *ejusdem generis*,

the same function; therefore, textualists should *always* consider how these statutory features affect the meaning of the text.

The modern Supreme Court has trumpeted its faithfulness to the text, with justices on both ends of the ideological spectrum admitting to its necessity.²⁷⁰ But in order to properly adhere to this interpretive method, the Court cannot continually relegate titles and headings to a class of subordinate text, only able to aid when ambiguous language is present.²⁷¹ Textualism requires a “reasonable” understanding of language—one that places the words in context.²⁷² This framework is only successful, however, when a judge evaluates all aspects of the statute that weigh on the operative language. Accordingly, to faithfully work alongside Congress and respect the legislation it passes, textualists need a more robust approach to titles and headings that fully captures the meaning of the statutory text.

noscitur a sociis, and *surplusage* linguistic canons).

270. See Diarmuid F. O’Scannlain, “*We’re All Textualists Now*”: *The Legacy of Justice Antonin Scalia*, 91 ST. JOHN’S L. REV. 303, 304–06 (2017).

271. See, e.g., *United States v. Rand*, 482 F.3d 943, 947 (7th Cir. 2007); *Rajah v. Mukasey*, 544 F.3d 427, 436 (2d Cir. 2008).

272. *What Divides?*, *supra* note 11, at 81.