

Textualism's Failures: A Study of Overruled Bankruptcy Decisions

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Professor Bussel presents new empirical evidence bearing on the efficacy of textualism as a method of statutory interpretation. Bankruptcy cases subsequently overruled by statute are compared with randomly selected decisions of the federal courts of appeals interpreting the Bankruptcy Code. The overruled cases are much more likely to adopt textualist methods of interpretation ($p < .001$). Although the study is limited to bankruptcy decisions superseded by amendments to the Bankruptcy Code 1978-1998 ($N=58$), the results have meaningful implications for theory and practice in interpreting statutes outside the bankruptcy field. If rational and efficient development and administration of complex statutory schemes in a manner consistent with democratically selected policies is the primary goal of interpretation, then this evidence supports judicial reconsideration of textualism and should reinforce pragmatists' commitment to pragmatic interpretation. Analysis of legislatively overruled bankruptcy decisions also lends insight into other variables (including court, region, age, prevailing party, and chapter) associated empirically or theoretically with statutory overruling and the efficacy of legislative error-correction by amendment.