
ESSAY

ASTRUE V. RATLIFF AND THE DEATH OF STRONG PURPOSIVISM

FREDERICK LIU[†]

According to conventional wisdom, the Supreme Court is presently embroiled in an interpretive conflict between textualists, on the one hand, who believe that “the Constitution, properly understood, requires judges to treat the clear import of an enacted text as conclusive, even when the text fits poorly with its apparent background purposes,”¹ and purposivists (or more precisely, “strong purposivists”²), on the other, who believe that “the ‘letter’ (text) of a statute must yield to its ‘spirit’ (purpose) when the two conflict[.]”³ This apparent philosophical divide has led one scholar to remark that “textualism has never taken hold as the Court’s single, controlling interpretive method,”⁴ and further, that “interpretive consensus” among the Justices “seem[s] impossible.”⁵

At first glance, *Astrue v. Ratliff*,⁶ a case decided last Term, would seem to confirm the intractability of the conflict. Presented once again with a question of statutory interpretation, the Court rested its decision in *Ratliff* on the plain meaning of the statutory text, as reflected in dictionaries defining a key term and precedent regarding

[†] Associate, Gibson, Dunn & Crutcher LLP, Washington, D.C.

¹ John F. Manning, *What Divides Textualists from Purposivists?*, 106 COLUM. L. REV. 70, 73 (2006).

² John F. Manning, *Textualism and the Equity of the Statute*, 101 COLUM. L. REV. 1, 3 n.3 (2001).

³ Manning, *supra* note 1, at 71.

⁴ Abbe R. Gluck, *The States as Laboratories of Statutory Interpretation: Methodological Consensus and the New Modified Textualism*, 119 YALE L.J. 1750, 1765 (2010).

⁵ *Id.* at 1757.

⁶ 130 S. Ct. 2521 (2010).

similarly worded provisions in other statutes.⁷ Writing separately, a minority of the Justices insisted that Congress likely never intended the result the Court reached,⁸ and feared that the “practical effect” of the Court’s decision would be to “severely undermine[] the [statute’s] estimable aim.”⁹

But *Ratliff* was not just another battle in an ongoing methodological war. What is striking about the case is that the Justices who wrote separately nevertheless joined the Court’s opinion in full; indeed, they accepted the Court’s textual analysis as dispositive, despite acknowledging that congressional intent and statutory purpose pointed the other way.¹⁰ Far from confirming the conventional wisdom, *Ratliff* demonstrates that meaningful, interpretive consensus does exist on the Supreme Court. At long last, textualism’s central tenet—that a clear text must be enforced—has prevailed.

I. THE JUSTICES’ OPINIONS IN *RATLIFF*

At issue in *Ratliff* was section 204(d)(1)(A) of the Equal Access to Justice Act (EAJA), which provides that “a court shall award to a prevailing party . . . fees and other expenses . . . in any civil action . . . brought by or against the United States . . . unless the court finds that the position of the United States was substantially justified.”¹¹ Ruby Willows Kills Ree had obtained an award of attorney’s fees under subsection (d)(1)(A) after prevailing in an action for Social Security benefits against the United States.¹² Rather than pay the fees award, however, the United States sought to use it to offset a preexisting debt Ree owed the federal government.¹³ Ree’s attorney, Catherine Ratliff, challenged the offset, arguing that fees awarded under EAJA belong to the litigant’s attorney, not the litigant, and thus could not be so used.¹⁴

The Supreme Court rejected Ratliff’s challenge. Justice Thomas’s opinion on behalf of a unanimous Court focused on the text of EAJA. The Court began by noting that it had “long held,” in the context of other fee-shifting statutes, that the term “prevailing party” refers to the

⁷ *Id.* at 2525-26.

⁸ *Id.* at 2530 (Sotomayor, J., concurring).

⁹ *Id.* at 2533 (internal quotation marks omitted).

¹⁰ *Id.*

¹¹ 28 U.S.C. § 2412(d)(1)(A) (2006).

¹² *Ratliff*, 130 S. Ct. at 2524.

¹³ *Id.*

¹⁴ *Id.* at 2525.

prevailing *litigant*.¹⁵ It then pointed to other provisions of EAJA that “clearly distinguish the party who receives the fees award (the litigant) from the attorney who performed the work that generated the fees.”¹⁶ The Court reasoned that these other provisions “underscore that the term ‘prevailing party’ in subsection (d)(1)(A) carries its usual and settled meaning—prevailing litigant.”¹⁷ The Court turned finally to subsection (d)(1)(A)’s use of the verb “award.” Citing the verb’s dictionary definition, the Court concluded that “[t]he plain meaning of the word ‘award’ in subsection (d)(1)(A) is . . . that the court shall ‘give or assign by . . . judicial determination’ to the ‘prevailing party’ (here, Ratliff’s client Ree) attorney’s fees in the amount sought and substantiated under [the statute].”¹⁸ The Court thus held that an award of fees under subsection (d)(1)(A) “is payable to the litigant and is therefore subject to a Government offset to satisfy a pre-existing debt that the litigant owes the United States.”¹⁹

In a concurring opinion joined by Justices Stevens and Ginsburg, Justice Sotomayor doubted that Congress had even considered the question whether the government should be able to use EAJA fee awards to offset a litigant’s preexisting debt, and found it likely that if Congress had done so, “it would not have wanted [them] to be subject to offset.”²⁰ Indeed, she argued, “[s]ubjecting EAJA fee awards to administrative offset for a litigant’s debts will unquestionably make it more difficult for persons of limited means to find attorneys to represent them,”²¹ thereby “undercut[ting]” EAJA’s “admirable purpose.”²² Nevertheless, Justice Sotomayor agreed with the Court’s textual analysis, which she acknowledged “compel[led] the conclusion that an attorney’s fee award under [EAJA] is payable to the prevailing litigant rather than the attorney.”²³ She thus joined the Court’s opi-

¹⁵ *Id.*

¹⁶ *Id.* at 2525-26.

¹⁷ *Id.* at 2525.

¹⁸ *Id.* at 2526 (citing BLACK’S LAW DICTIONARY 125 (5th ed. 1979) and WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 152 (1993)).

¹⁹ *Id.* at 2524.

²⁰ *Id.* at 2530 (Sotomayor, J., concurring); see also *id.* at 2532 (“I ‘find it difficult to ascribe to Congress an intent to throw’ an EAJA litigant ‘a lifeline that it knew was a foot short. . . . Given the anomalous nature of this result, and its frustration of the very purposes behind the EAJA itself, Congress cannot lightly be assumed to have intended it.” (quoting *Sullivan v. Hudson*, 490 U.S. 877, 890 (1989))).

²¹ *Id.* at 2531.

²² *Id.* at 2530; see also *id.* at 2533 (“[T]he practical effect of our decision severely undermines the EAJA’s estimable aim.” (internal quotation marks and brackets omitted)).

²³ *Id.* at 2530. Justice Sotomayor agreed specifically with the Court’s reliance on prior cases interpreting the term “prevailing party.” *Id.* at 2529-30. The Court’s dis-

nion, while urging Congress “to clarify beyond debate” whether the “practical effect” of the Court’s decision is “one it actually intends.”²⁴

II. RATLIFF’S SIGNIFICANCE

That Justices Stevens, Ginsburg, and Sotomayor agreed to give effect to the clear import of EAJA’s text—while acknowledging that both congressional intent and statutory purpose pointed in a different direction—is significant for three reasons. First, it suggests agreement among the Justices about the goal of statutory interpretation. Though discerning the “intent of the legislature” has traditionally been understood to be the general goal,²⁵ the particular kind of “intent” courts should look for has been the subject of some debate. According to one line of thought, courts should look for the legislature’s subjective intent—that is, what the legislature actually thought about an issue, or if the issue was not considered, what the legislature would have thought about it.²⁶ According to another line of thought, associated with textualist theory, courts should look instead for what Justice Scalia calls “a sort of ‘objectified’ intent—the intent that a reasonable person would gather from the text of the law, placed alongside the remainder of the *corpus juris*.”²⁷ In her concurrence in *Ratliff*, Jus-

cussion of those precedents formed the starting point of its textual analysis, which presumed that the term “prevailing party” should be interpreted consistently throughout the U.S. Code. See *id.* at 2525 (majority opinion).

²⁴ *Id.* at 2533 (Sotomayor, J., concurring) (internal quotation marks omitted).

²⁵ See Antonin Scalia, *Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws*, in A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 3, 16 (Amy Gutmann ed., 1997).

²⁶ See *United States v. Klinger*, 199 F.2d 645, 648 (2d Cir. 1952) (L. Hand, J.) (“Flinch as we may, what we do, and must do, is to project ourselves, as best we can, into the position of those who uttered the words, and to impute to them how they would have dealt with the concrete occasion.”), *aff’d per curiam by an equally divided court*, 345 U.S. 979 (1953); Richard A. Posner, *Statutory Interpretation—in the Classroom and in the Courtroom*, 50 U. CHI. L. REV. 800, 817 (1983) (“[T]he task for the judge called upon to interpret a statute is . . . one of imaginative reconstruction. The judge should try to think his way as best he can into the minds of the enacting legislators and imagine how they would have wanted the statute applied to the case at bar.” (footnote omitted)); Roscoe Pound, *Spurious Interpretation*, 7 COLUM. L. REV. 379, 381 (1907) (describing, as legitimate means of interpretation, efforts to “find out directly what the law-maker meant by assuming his position, in the surroundings in which he acted, and endeavoring to gather from the mischiefs he had to meet and the remedy by which he sought to meet them, his intention with respect to the particular point in controversy”). See generally WILLIAM N. ESKRIDGE, JR., PHILIP P. FRICKEY & ELIZABETH GARRETT, *LEGISLATION AND STATUTORY INTERPRETATION* 222-28 (2d ed. 2006) (describing the “specific intent” and “imaginative reconstruction” strains of intentionalist theory).

²⁷ Scalia, *supra* note 25, at 17.

tice Sotomayor argued that the Court's holding was contrary to the result Congress would have intended if it had actually considered the issue of offsets.²⁸ But her recognition that the Court's holding was nevertheless compelled by EAJA's text implies that the object of statutory interpretation is, in the end, not the legislature's subjective intent, but its objectified intent, as textualists have long maintained.

Second, the opinions in *Ratliff* indicate that the Justices agree that the various sources of statutory meaning should be considered in a hierarchical manner, as opposed to a holistic one. According to Professors William Eskridge and Philip Frickey, courts interpret statutes by considering each source of statutory meaning (such as text, legislative history, purpose, and societal values) in light of all the others.²⁹ Eskridge and Frickey compare the process to a "hermeneutical circle," where "[a] part can only be understood in the context of the whole, and the whole cannot be understood without analyzing its various parts."³⁰ Neither of the opinions in *Ratliff*, however, seemed to follow such a holistic model. Justice Thomas's opinion for the Court proceeded beyond the text of the statute only to address *Ratliff*'s counterarguments.³¹ And Justice Sotomayor's concurrence—though it discussed other interpretive sources such as subjective legislative intent and statutory purpose—viewed them each in isolation, separate from the text itself.³² The opinions in *Ratliff* thus suggest a strict hierarchy of sources, whereby each is exhausted one at a time, rather than evaluated in relation to all the others.³³

Finally, and most importantly, *Ratliff* signals consensus about what lies at the top of the interpretive hierarchy. For Justices Stevens, Ginsburg, and Sotomayor, the case presented a rare opportunity to answer what is perhaps the most fundamental question of statutory interpretation: When the text of a statute conflicts with its purpose, which should prevail? Textualism has long been defined by the answer that the text should take precedence.³⁴ Purposivism, as reflected

²⁸ *Ratliff*, 130 S. Ct. at 2530 (Sotomayor, J., concurring).

²⁹ William N. Eskridge, Jr. & Philip P. Frickey, *Statutory Interpretation as Practical Reasoning*, 42 STAN. L. REV. 321, 351-52 (1990).

³⁰ *Id.* at 351.

³¹ See *Ratliff*, 130 S. Ct. at 2527-29.

³² Indeed, nothing in Justice Sotomayor's concurrence suggests that these other sources influenced her view of the text. See *id.* at 2529-30, 2533 (Sotomayor, J., concurring).

³³ Cf. Gluck, *supra* note 4, at 1758 (noting the rise of strict interpretive hierarchies in state methods of statutory interpretation).

³⁴ See, e.g., *INS v. Cardoza-Fonseca*, 480 U.S. 421, 452 (1987) (Scalia, J., concurring in the judgment) ("[I]f the language of a statute is clear, that language must be given effect—at least in the absence of a patent absurdity."); Scalia, *supra* note 25, at 22

in cases such as *Church of the Holy Trinity v. United States*,³⁵ has long been associated with the view that the purpose should prevail. In *Ratliff*, Justices Stevens, Ginsburg, and Sotomayor sided definitively with textualism. As Justice Sotomayor's concurrence forthrightly explained, the purpose of EAJA cut clearly in Ratliff's favor, but the text of the statute compelled the Court to rule against her.³⁶ So much for *Holy Trinity* and the notion that "a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers."³⁷ Unwilling to ignore EAJA's text to advance its clear purpose, the concurring Justices joined the rest of the Court in placing the statutory text at the top of the interpretive hierarchy.

What about Justice Breyer, arguably the Court's leading purposivist, who signed the Court's opinion but not Justice Sotomayor's concurrence? What accounts for his vote? One explanation may be that he was content to join the Court's opinion because he thought the statute's text accurately expressed its purpose.³⁸ But that would have required him to disregard the strong evidence that EAJA's text and purpose in fact conflicted.³⁹ The more likely explanation is that Justice Breyer is a purposivist in only the "weak" sense of the term—an interpreter who is willing to rely on purpose "to clarify an *ambiguous* text," but who is unwilling to use it "to depart from a *clear*" one.⁴⁰ His own writings suggest as much. The discussion of statutory interpretation in his book *Active Liberty* focuses on the "interpretive problem [that] arises when statutory language does *not* clearly answer the question of what the statute means or how it applies."⁴¹ In "difficult cases of interpretation in which language is not clear," Justice Breyer argues, "judges should pay primary attention to a statute's purpose."⁴² The implication is that when the statutory language *does* give a clear an-

("The text is the law, and it is the text that must be observed.").

³⁵ 143 U.S. 457 (1892).

³⁶ *Ratliff*, 130 S. Ct. at 2529-30, 2533 (Sotomayor, J., concurring).

³⁷ *Holy Trinity*, 143 U.S. at 459.

³⁸ *Cf. Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985) ("Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.").

³⁹ *See Ratliff*, 130 S. Ct. at 2530-32 (Sotomayor, J., concurring).

⁴⁰ Manning, *supra* note 2, at 3 n.3 (emphasis added).

⁴¹ STEPHEN BREYER, *ACTIVE LIBERTY: INTERPRETING OUR DEMOCRATIC CONSTITUTION* 85 (2005) (emphasis added).

⁴² *Id.*

swer, consulting such purpose is unnecessary.⁴³ If this account of Justice Breyer's approach is correct, then his vote in *Ratliff* is easy to explain. For him, as for all the other Justices, statutory text ranks at the top of the interpretive hierarchy and must be enforced when it is clear.

CONCLUSION

Interpretive consensus on the Supreme Court is not impossible. It is real. If *Ratliff* is any indication, strong purposivism is dead; there is agreement now that a clear text must be given effect. This is not to say that interpretive differences no longer remain, for there will still be disputes over whether a text is clear and what to do if it is ambiguous. But at least for now,⁴⁴ a key battle is over: In the fight for the top spot in the Court's interpretive hierarchy, the text can declare victory.

Preferred Citation: Frederick Liu, Essay, *Astrue v. Ratliff and the Death of Strong Purposivism*, 159 U. PA. L. REV. PENNUMBRA 167 (2011), <http://www.pennumbra.com/essays/03-2011/Liu.pdf>.

⁴³ See also *Zuni Pub. Sch. Dist. No. 89 v. Dep't of Educ.*, 550 U.S. 81, 93-94 (2007) (Breyer, J.) ("A customs statute that imposes a tariff on 'clothing' does not impose a tariff on automobiles, no matter how strong the policy arguments for treating the two kinds of goods alike.").

⁴⁴ It is too early to say conclusively what kind of approach Justice Kagan, who recently replaced Justice Stevens, will bring to statutory interpretation. Her first opinion for the Court, however, suggests an approach consistent with textualist principles. See *Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. 716, 723-24 (2011) (Kagan, J.) (interpreting the term "applicable" in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, 11 U.S.C. § 707(b)(2)(A)(ii)(I) (2006), according to its plain meaning).