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OPINION | REVIEW & OUTLOOK

Judges vs. Telepathists

Are the Supreme Court Justices all textualists now?

By The Editorial Board

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Liberals are predicting that the Supreme Court's conservative majority will rewrite laws according to their policy preferences. So someone should point out that the conservatives this week behaved as if laws mean what they say regardless of the policy outcome.

In *Mount Lemmon Fire District v. Guido*, the Court unanimously ruled Tuesday that small municipal employers could be

sued under federal law for age discrimination. The case involved two laid-off firefighters of Mount Lemmon, Arizona, who said their employer violated the Age Discrimination in Employment Act. That law defines "employer" as a person "engaged in an industry affecting commerce who has twenty or more employees," and the "term also means (1) any agent of such a person, and (2) a State or political subdivision of a State."

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00:00 / 24:49



Mount Lemmon Fire District argued it isn't an employer under the law since it employed fewer than 20 workers. But as Justice Ruth Bader Ginsburg wrote for the majority, "the ordinary meaning of 'also means' is additive rather than clarifying." The Court's conservatives agreed with liberals though the ruling may subject cities

to more litigation.

The Court on Monday also heard oral arguments in *Virginia Uranium Inc. v. Warren*, which challenges Virginia's 1983 moratorium on uranium mining. Owners of a uranium deposit in south-central Virginia claim the state mining ban is pre-empted by the federal Atomic Energy Act's regulation of radiation safety for milling and tailings.

While states have nearly carte blanche to regulate mining within their borders, the landowners say the legislature was motivated by concern for the safety of uranium processing—not mining. But this is reading a legislative intent unsupported by the text.

As Justice Neil Gorsuch mused, "Don't we get into trouble . . . guessing what the motivations of a state legislature are and all the methodological, epistemological, and federalism questions that that raises?" One problem with divining legislative intent, as Justice Elena Kagan pointed out, is that courts could come down different ways on identical state laws merely "because the legislative history was different."

Chief Justice John Roberts raised a hypothetical in which some lawmakers asserted that banning mining "is a great way to keep nuclear energy out of the state. What is the purpose of

that legislation? How do you analyze that question?” Justice Sonia Sotomayor chimed in: “Is this going to require deposing every single legislative member?” All good questions.

The judiciary’s job is not to be legislative mind-readers. As Justice Gorsuch noted, the Court has allowed investigations into legislative intent in the narrow context of applying the Fourteenth Amendment. Yet the left has abused this exception to allege racial animus behind all sorts of neutrally applied state laws including voter ID requirements and bans on local minimum wages.

Upholding Virginia’s uranium moratorium may make it harder to challenge state actions that thwart mineral development like New York Gov. Andrew Cuomo’s veto of a natural gas pipeline on the pretext of protecting the state’s water supply. But it will be a victory for judicial modesty if liberals join conservatives in agreeing that deducing legislative intent is a rabbit hole judges shouldn’t be diving down.

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