ARTICLE

THE INTENDED AND RESULTING INTERPRETATIONS OF ARTICLE 9 CONSIDERING THE RISE OF TEXTUALISM

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This Article is the first to examine the interpretive choices of judges for Article 9 of the UCC. Textualism has become one of the predominant methods of interpretation for courts across the state and federal systems in the United States. While there is a great deal of academic work on what this means for traditional statutes, there is limited discussion of the interpretive effects of textualism on the UCC, much less Article 9, which governs secured transactions. The continuity and uniformity of secured transactions jurisprudence is fundamental as it underlies bankruptcy proceedings, debt and credit financing, and commercial transactions more broadly.

While judges typically employ a range of strategies when interpreting statutes, like looking to legislative history, dictionaries, or a variety of canons, the UCC presents a different set of tools for statutory interpretation. Unlike traditional legislation, the drafters created official comments to accompany the text and explicitly instructed judges to construe the text liberally in line with the underlying purpose of the Code: to simplify and clarify the law of commercial transactions while maintaining uniformity.

This Article offers a close study of how federal and state judges interpret Article 9 in light of the popularity of textualism as an interpretive method. After overviewing the rise of textualism and the drafting history of the UCC, the Article surveys the interpretive choices

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of federal, bankruptcy, and state courts to provide a descriptive analysis of judges' interpretive choices when analyzing Article 9 of the UCC. These cases highlight the need for courts to maintain a purposivist interpretation of Article 9 to prevent discordant interpretations that could disrupt the field of commercial transactions.

INTRODUCTION

The American Law Institute and the National Conference of Commissioners on Uniform State Laws issued the first version of the Uniform Commercial Code ("UCC") in 1952. This document extensively codified existing commercial law, including Article 9 which deals with the law of secured transactions. This codification signaled a transition from the relative instability of the previous legal landscape governing secured transactions created by the disparities in practice from state to state.[1] In the lead-up to the drafting of the UCC, secured transactions legislation was a disparate grouping of "uniform and non-uniform legislation, various common law devices existing side by side with statutory ones, an overlay of federal bankruptcy law, a multiplicity of diverse filing requirements."[2] Grant Gilmore and the other drafters of Article 9 took on the project of simplifying and organizing the law of secured transactions in a manner that both

1. *See* JAMES J. WHITE, G. ERIC BRUNSTAD JR. & HEATHER HUGHES, SECURED TRANSACTIONS: TEACHING MATERIALS (2020).
2. *See id.*

reflected contemporary transactions and promulgated uniformity for participating states.

Article 9 is far from a straightforward enactment. Looking more like a complex financial agreement than other forms of statutory law, Article 9 requires some form of instruction or background knowledge for application. The UCC and Article 9 were developed with a particular mode of statutory interpretation in mind to guide the uniform application of the UCC to increasingly complex commercial transactions. The drafters favored a purposivist and legal process approach to interpretation,[3] contrasting strongly with modern textualism, which is now popular at all levels of the judiciary since the late 20th century. The preference for purpose and process modes of interpretation manifests most clearly in the official comments to the UCC and general provisions in Article 1 which indicate a preference for liberal construction in pursuit of the goal of uniformity and general purposes behind the provisions.

While textualism has taken hold as the primary mode of interpretation in many courts around the United States, this approach has developed unevenly when it comes to the interpretation of Article 9 by the judiciary. In examining opinions issued by federal, bankruptcy, and state courts, the common approaches to interpreting Article 9 reveal an atypical preference for promoting uniformity and technical expertise. Judges explicitly reference the decisions of other jurisdictions and look to the official UCC commentary to construe the underlying purpose of Article 9.

This Article proceeds in four parts. Following this introduction, Part I overviews textualist interpretive methods and the potential interactions with Article 9 of the UCC by cross-applying textualist approaches to legislative history, substantive canons, and unenacted materials to the official comments for Article 9. Part II provides a brief outline of the structure and intended interpretation of the UCC and Article 9, including the interpretive and policy preferences of drafters like Karl Llewellyn and Grant Gilmore. Subsequently, Part III traces how federal, bankruptcy, and state courts have interpreted Article 9, discussing

3. *See* Gregory E. Maggs, *Karl Llewellyn's Fading Imprint on the Jurisprudence of the Uniform Commercial Code*, 71 U. COLO. L. REV. 541, 543 (2000).

the use of unenacted comments, policy preferences for uniformity with other states, and legislative intent through a series of case studies. Part IV proposes potential normative approaches to the interpretation of Article 9, emphasizing the essential role of the Comments and preference for uniformity to accomplish the goal of maintaining a stable field for commercial transactions.

I. A BRIEF OVERVIEW OF TEXTUALISM AND ITS IMPLICATIONS FOR ARTICLE 9

The dominant methods of statutory interpretation at the time the UCC was originally promulgated in 1952 favored a purpose or process-based approach to statutory interpretation.[4] This method, known as purposivism, requires judges to implement, as closely as possible, the intent and instructions of the legislature through statutes.[5] Legislative history effectuated this goal as courts attempted to reconstruct what any given legislature may have intended at the time that it passed a law to confirm judicial efforts at interpretation.[6] During this period, the Supreme Court viewed its role as a faithful agent to the relevant lawmakers, executing the intent of the enacting Congress.[7] In this role, legislative history

4. HENRY M. HART, JR. AND ALBERT M. SACKS, THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAKING AND APPLICATION OF LAW 1124 (William N. Eskridge, Jr. & Philip P. Frickey eds., 1994) (discussing the fundamental premises underlying purposivism, such as the purposive nature of legislation, the legislature as chief policymaker, and the responsibility of the interpreter to respect the decisions produced by the legislative process).

5. John Manning, *The New Purposivism*, 2011 SUP. CT. REV. 113, 120 (2012).

6. Stuart Minor Benjamin & Kristen M. Renberg, *The Paradoxical Impact of Scalia's Campaign Against Legislative* History, 105 CORNELL L. REV. 1023, 1028–29 (2020) (describing the broad consensus on the Supreme Court in the 20th century about the permissible use of legislative history to interpret statutes). See*, e.g.*, Zuber v. Allen, 396 U.S. 168, 186 (1969); Schwegmann Bros. v. Calvert Distillers Corp., 341 U.S. 384, 395–96 (1951) (Jackson, J., concurring).

7. *See* William N. Eskridge, Jr., *Spinning Legislative Supremacy*, 78 GEO. L.J. 319, 320 (1989); John F. Manning, *Textualism and the Equity of the Statute*, 101 COLUM. L. REV. 1 (2001) (interpreting history to support the argument that federal courts are Congress's faithful agents, not its cooperative partners); Richard A. Posner, *Statutory Interpretation—in the Classroom and in the Courtroom*, 50 U. CHI. L. REV. 800, 817 (1983) ("The judge should try to think his way as best he can into the minds of the enacting legislators and imagine

serves either to clarify an ambiguous statute or to endorse or refute the plain meaning of a clearer statute.[8]

According to scholars such as William Eskridge, the practice of statutory interpretation has long roots in the United States. As early as the Founding, "judges were bound to begin with the words enacted into law by the legislature, [but] they would not slavishly or mechanically follow those words," straying from the text to fulfill the requisite purpose as needed.[9] The Supreme Court continued to progress and evolve in interpretive methods over the centuries, and its analysis "spread from common law and constitutional matters to federal statutory matters, [resulting] in a newly aggressive approach to statutory interpretation—an aggressive purposivism that grew out of the Court's strong formalism."[10] In 1892, *Church of the Holy Trinity v. United States* famously prompted this new approach to interpretation, surpassing the text and looking directly to the spirit behind the words of legislation.[11]

Statutory interpretation has emerged and developed substantially as both a practice and academic field since the late 19th and 20th centuries. But the approach endorsed in *Holy Trinity* continued into the 1940s, as seen in *United States v. American Trucking Associations*, when the Supreme Court advocated

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how they would have wanted the statute applied to the case at bar."); *see, e.g.*, United States v. Am. Trucking Ass'n, 310 U.S. 534, 543 (1940) (asserting that when applying a statute's plain meaning would yield a result "'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words" (quoting Ozawa v. United States, 260 U.S. 178, 194 (1922))); Church of the Holy Trinity v. United States, 143 U.S. 457, 459 (1892) ("It is a familiar rule 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.").

8. *See* William N. Eskridge, Jr., *The New Textualism*, 37 UCLA L. REV. 621, 626 (1990).

9. Jonathan T. Molot, *The Rise and Fall of Textualism,* 106 COLUM. L. REV. 1, 9 (2006).

10. *See id.* at 14.

11. *See id.* at 14–15. The Supreme Court held in *Holy Trinity* that a contract between a church in the United States and an Anglican minister from England did not violate an 1885 immigration statute banning contracts that brought an alien into the United States for "labor or service of any kind." 143 U.S. at 458, 472. The text of the statute clearly included any labor or service, but the Court held 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" and concluded that the church's actions were permissible under the statute. *Id.* at 459.

following purpose over the plain meaning of the text, even if the text "did not produce absurd results but merely an unreasonable one."[12] As purposivism strengthened on the Supreme Court,[13] a strong resistance to the focus on legislative history and substantive canons emerged in the form of textualism.[14] Textualism is frequently associated with Justice Scalia, whom many have credited with ushering in textualism not only to the Supreme Court, but to courts around the country.[15] And the popularity of this new interpretive method grew particularly strong following Justice Scalia's appointment to the Supreme Court in 1986.[16] As an academic, Justice Scalia expressed his disillusionment with substantive canons, arguing that such tools added a "thumb of indeterminate weight" to the 'scale' of judicial interpretation, frustrating any attempt at uniformity or objectivity.[17] Beyond the issues with objectivity, Justice Scalia also took issue with the authority of judges to use these tools, as he believed that the use of extratextual materials to manipulate the text of a statute surpassed a judge's authority under Article III of the Constitution.[18] As a result, textualism and its proponents tend to deprioritize policy outcomes compared to other approaches to

12. *Am. Trucking Ass'n*, 310 U.S. at 543; United Steelworkers v. Weber, 443 U.S. 193, 201–04 (1979).

13. Leo Sheep Co. v. United States, 440 U.S. 668, 681 & n.18 (1979).

14. John Manning, *Second-Generation Textualism*, 98 CAL. L. REV. 1287, 1312–14; Philip P. Frickey, *From the Big Sleep to the Big Heat: The Revival of Theory in Statutory Interpretation*, 77 MINN. L. REV. 241, 254–56 (1992); William N. Eskridge Jr., *The New Textualism*, 37 UCLA L. REV. 621, 640–56 (1991).

15. *See* FRANK B. CROSS, THE THEORY AND PRACTICE OF STATUTORY INTERPRETATION 189 (2008) (discussing the increase in textualism in circuit courts beginning in 1990s, and describing the increase as a possible effect of "Justice Scalia's aggressive advocacy for textualism in statutory interpretation"); Abbe R. Gluck, *The States as Laboratories of Statutory Interpretation: Methodological Consensus and the New Modified Textualism*, 119 YALE L.J. 1750, 1754 (2010) (discussing how "Justice Scalia's textualist statutory interpretation methodology has taken startlingly strong hold in some states").

16. Philip P. Frickey, *supra* note 14, at 255.

17. *See* ANTONIN SCALIA, A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 28 (Amy Guttman ed., 1997).

18. *Id.* at 28–29.

interpretation, like dynamic statutory interpretation or purposivism.[19]

Beginning with Justice Scalia's first term on the Supreme Court, he disparaged the tendency of judges to "rely[] on legislative history to confirm or rebut the apparent plain meaning of a statute in other specially concurring and dissenting opinions."[20] As early as 1990, the effects of Justice Scalia's 1986 appointment could be seen on Supreme Court jurisprudence as opinions increased usage of text and procedure-based canons, constructed textual arguments to elucidate plain meaning, and became less likely to refer to legislative history when the text was clear on its face.[21]

In addition to his disdain for policy canons as "dice-loading rules," Justice Scalia expressed discontent with the weight given to legislative staff or unelected officials in the use of legislative history by the Court.[22] The theory behind this criticism rests on the frequent involvement of staff who are not democratically elected by the citizenry in composing committee reports and other central documents in legislative histories, or the potential manipulation by legislators for judicial review.[23] As Justice Scalia

19. *See* Bradford Mank, *Textualism's Selective Canons of Statutory Construction: Reinvigorating Individual Liberties, Legislative Authority, and Deference to Executive Agencies*, 86 KY. L.J. 527, 537 (1998).

20. *See* Eskridge, *supra* note 8, at 623.

21. *See id.* at 656. *See also* Michael H. Koby, *The Supreme Court's Declining Reliance on Legislative History: The Impact of Justice Scalia's Critique*, 36 HARV. J. ON LEGIS. 369, 369–70 (1999); Philip P. Frickey, *supra* note 14, at 256.

22. *See, e.g.*, Blanchard v. Bergeron, 489 U.S. 87, 98–99 (1989) (Scalia, J., concurring) ("As anyone familiar with modern-day drafting of congressional committee reports is well aware, the references to the cases [cited by the majority] were inserted, at best by a committee staff member on his or her own initiative, and at worst by a committee staff member at the suggestion of a lawyer-lobbyist; and the purpose of those references was not primarily to inform the Members of Congress what the bill meant . . . but rather to influence judicial construction.")

23. *See Hirschey v. Federal Energy Regulatory Commission*, 777 F.2d 1, 7–8 (D.C. Cir. 1985) (Scalia, J., concurring) (discussing the deference to legislative history as creating a "system of judicial construction into a system of committee-staff prescription" and specifically pointing to an instance in the congressional record where senators had not written and possibly not even read the relevant committee report); Daniel A. Farber & Philip P. Frickey, *Legislative Intent and Public Choice,* 74 VA. L. REV. 423, 438 (1988) (discussing the concerns by Justice Scalia on misleading judges through curating legislative history or abdicating legislative responsibility to staff).

saw it, "[t]he legislative power is the power to make laws, not the power to make legislators. It is nondelegable."[24] Further, Justice Scalia articulated that it is the province of the judiciary to construe the statutory language as written, not to guess at the state of mind of the legislators.[25] Following this line of thinking, comments in the UCC ought to be less valuable than even committee reports composed by legislative staff, as the authors of the official comments are not democratically elected legislators but rather private legislators elected by no one.

Textualism has only gained in strength on the Supreme Court during the 21st century, demonstrating the reach of the ideology as younger, more recently appointed justices profusely express to adhere to the law as written. For instance, Justice Kavanaugh has expressed a similar skepticism to Scalia about legislative history, but with much of Justice Kavanaugh's criticism stemming from the fact that it is unenacted and thus non-authoritative.[26] In regard to legislative history, Justice Kavanaugh has argued that if legislative history mattered, Congress ought to vote on key parts of committee reports or other legislative history to make it authoritative.[27] The purpose-based approach in *Holy Trinity* has fallen into disfavor and now symbolizes what judges should not do when interpreting a statute.[28] Both "liberal" and "conservative" justices have expressed ideological alignments with textualism and the rejection of legislative history. For instance, Justice Kagan stated in a lecture on the reading of statutes on the topic of legislative history: "[i]t's not what Congress passed, right? If they want to pass a committee report, they can go pass a committee report. They can incorporate a committee report into the legislation if they want to."[29] This commentary reflects the true aims of "new" textualism: limiting judicial discretion and policy

24. *See* SCALIA, *supra* note 17, at 35.

25. *See* Eskridge, *supra* note 8, at 653.

26. Brett M. Kavanaugh, *Fixing Statutory Interpretation,* 129 HARV. L. REV. 2118, 2123 (2016) (reviewing ROBERT A. KATZMANN, JUDGING STATUTES (2014)).

27. *See id.*

28. John Manning, *supra* note 5, at 125 (noting that the Court has not cited *Holy Trinity* favorably in more than two decades).

29. *See* Kavanaugh, *supra* note 26, at 2123 (citing Justice Elena Kagan, The Scalia Lecture: A Dialogue with Justice Kagan on the Reading of Statutes at 32:10 (Nov. 17, 2015), https://hls.harvard.edu/today/in-scalia-lecture-kagan-discusses-statutory-interpretation/ [https://perma.cc/4S2R-EGAL]).

preferences in statutory interpretation through a more "objective" method that eliminates intent guesswork.[30] The preeminence of textualism is evident in the Supreme Court cases in recent years, where majority and dissenting opinions, both using textualist methods, have divided on the correct definitions and use of grammatical constructions to construe statutory text.[31]

The principal textualist tenets, as far as they may be circumscribed, are:

> (1) [T]he text is not merely a means to an end—an aid, if you will, in ascertaining congressional intent. Instead, it is the end within itself. (2) Only the text is the law; only the text represents the congressional will as expressed through the constitutionally-prescribed procedures for lawmaking. (3) Ambiguities in the text should not be lightly inferred. Where they do exist, they should be resolved, if at all possible, by applying the objective canons of construction, particularly those that operate within the four corners of the text. (4) Legislative history can never trump the plain text and should not be used to resolve statutory ambiguity, except when the statutory language is hopelessly ambiguous or unclear.[32]

The normative implications of this method of interpretation should mean that, absent a finding of ambiguity in the plain text, analysis of Article 9 should be cabined to the words on the page. Even then, many strict textualists would prefer alternate tools of interpretation, with Justices like Scalia, Kavanaugh, and Barrett discussing the preferred application of canons before resorting to

30. *See* John M. Breen, *Statutory Interpretation and the Lessons of Llewellyn,* 33 LOY. L.A. L. REV. 263, 278 (2000).

31. *See* Victoria Nourse, *Textualism 3.0: Statutory Interpretation After Justice Scalia,* 70 ALA. L. REV. 667, 668 (2019); *see also* Niz-Chavez v. Garland, 593 U.S. 155 (2021) (where the majority and dissenting opinions differed on what "a notice" means for the stop-time rule in immigration proceedings, focusing on what the indefinite article "a" means); Van Buren v. United States, 593 U.S. 374 (2021) (where the majority and dissenting opinions differed over what the word "so" meant for purposes of law enforcement access to department databases).

32. Robert J. Gregory, *Overcoming Text in an Age of Textualism: A Practitioner's Guide to Arguing Cases of Statutory Interpretation,* 35 AKRON L. REV. 451, 460 (2004).

something unenacted like legislative history.[33] In the case of Article 9, this should mean that judges display a hesitancy to resort to the official comments of the UCC before policy or canon application to attempt to resolve ambiguity, precisely because the Comments are unenacted materials.

II. A BRIEF OVERVIEW OF THE STRUCTURE AND INTENT BEHIND THE UNIFORM COMMERCIAL CODE

The UCC, even today, is an atypical form of legislation due to the functional need for uniformity in interpretation across a variety of jurisdictions, the internal construction of an intended method of purposive interpretation by the drafters, and its origin in a private legislature.[34] The impetus behind the codification of Article 9 emerged from an increased desire for uniformity in the laws pertaining to secured transactions, and this policy objective became important during the late 20th and early 21st centuries as the number of commercial transactions increased.[35] The UCC, especially in Article 9, codified centuries of historic practice and procedure in commercial law, and as such, judicial interpretation must build not only on the words of the Code but also on this extensive history of commercial practice.

One of the first provisions in Article 1 of the UCC dictates how the Code ought to be construed by the judiciary. Section 1-103 instructs that the Code is to be liberally construed to promote the underlying policies: "(1) to simplify, clarify, and modernize the law governing commercial transactions; (2) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and (3) to make uniform the law among the various jurisdictions."[36] This instruction reveals a preference for purpose-based approaches to statutory interpretation to fulfill these objectives.

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33. *See e.g.*, Scalia, *supra* note 17, at 35; Kavanaugh, *supra* note 26, at 2123; Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. REV. 109, 110–11 (2010) (describing other methods of interpretation as "judicial policy choices").

34. Sean Michael Hannaway, *Jurisprudence and Judicial Treatment of the Comments to the Uniform Commercial Code*, 75 CORNELL L. REV. 961, 966 (1990).

35. William A. Schnader, *A Short History of the Preparation and Enactment of the Uniform Commercial Code*, 22 U. MIA. L. REV. 1 (1967).

36. U.C.C. § 1-103 (A.L.I. & UNIF. L. COMM'N 1977).

In the formulation of the Code, one of the principal drafters, Karl Llewellyn, built in his own desired method of statutory interpretation to facilitate subsequent interpretation by the judiciary.[37] As Llewellyn and the other reporters for the UCC constructed the various articles, they favored a purposive interpretation as opposed to one focusing on a literal textual interpretation.[38] This preference became explicit in the beginning sections of the UCC by instructing judges to engage in purposive interpretation, and the drafters supplemented this instruction by providing judges with the tools needed to fulfill it: the official comments for every section of the UCC.[39] The official comments invite atextual interpretation in their very title, denoting "Purposes" or "Purposes of Change."[40] It was the intention for the official comments to convey an organizing principle as the drafters believed that "'construction and application are intellectually impossible except with reference to *some* reason and theory of purpose and organization.'"[41] As such, each individual comment serves its own purpose as above all, Llewellyn intended each comment to demonstrate "'where the particular sections are trying to go.'" [42] This approach permitted the Code to evolve with modern business practices.[43] The philosophy of the drafters in the formulation stands directly at odds with the contemporary endeavor of textualism, as the text was never intended to stand alone in judicial interpretation.

While the official commentaries to the UCC are a point of almost singular importance to its effective enactment and administration, they are not law themselves. As they have not

37. John L. Gedid, *U.C.C. Methodology: Taking a Realistic Look at the Code*, 29 WM. & MARY L. REV. 2 (1988); s*ee also* Maggs, *supra* note 3, at 541 ("Llewellyn consistently strived to make the U.C.C. distinct from other statutes and laws by imbuing it with features that reflected his deeply held juridical beliefs.").

38. Maggs, *supra* note 3, at 542.

39. *Id.* at 566.

40. Julian B. McDonnell, *Purposive Interpretation of the Uniform Commercial Code: Some Implications for Jurisprudence*, 126 U. PA. L. REV. 795, 800 (1978).

41. Robert A. Hillman, *Construction of the Uniform Commercial Code: UCC Section 1-103 and 'Code' Methodology*, 18 B.C. INDUS. & COM. L. REV. 554, 681 (1977).

42. Maggs, *supra* note 3, at 566 (citing Karl Llewellyn, *Why a Commercial Code?*, 22 TENN. L. REV. 779, 782 (1953)).

43. Maggs, *supra* note 3 at 560.

been enacted by state legislatures, the official comments are not technically authoritative.[44] The Comments are also not technically legislative history in the way that committee reports or comments made by a Senator on the Senate floor would be, since the Comments are the product of a private legislature, not a democratically elected body. But the official comments are similar to legislative history because they explain the statutory text and purpose of each provision in a similar vein to how committee reports provide an informative lens for understanding a law. As such, the official commentaries could serve a similar function to legislative history in the toolbox of statutory interpretation.

While the drafters of the UCC encouraged judges to use extratextual devices like the official comments, they did not support the use of other types of legislative history, such as the use of previous drafts of the UCC, in the interpretation of the Code. In the original draft of the UCC, Section 1-102(3)(g) explicitly instructed judges not to "resort to prior drafts either of text or comment to ascertain intent."[45] Instead, the drafters indicated that "the only safe guide to intent lies in the final text and comments."[46] In the displayed preference to discern intent from the "final text" and not the differences between the previous and final drafts, the drafters demonstrated some agreement with the tenets of textualism. This provision was eventually dropped from the published iteration of the Code due to criticism from the New York Law Revision Commission, which criticized attempts to limit the interpretive choices of courts and lawyers, especially because of the popularity of drawing conclusions from legislative history as an interpretive method[47] The statutory text of the UCC was amended to avoid any explicit mention of the Comments, with the intention of binding courts to uniform interpretation through amendment alone.[48] Objections like this one demonstrate the tension between the legislature and judiciary when it comes to

44. Maggs, *supra* note 3, at 566; *id.*

45. Breen, *supra* note 30, at 271.

46. *Id.*

47. *Id.* at 271–72 (citing N.Y. L. REVISION COMM'N, REPORT OF THE LAW REVISION COMMISSION FOR 1956: REPORT RELATING TO THE UNIFORM COMMERCIAL CODE 26 (1956)).

48. *See* Kenneth C. Kettering, *Coordination of the Uniform Commercial Code and Common Law*, 92 U. CIN. L. REV. 31 (2023).

interpretation. To what degree can the judiciary instruct the legislature how to write legislation based on its own interpretive preferences? Can the legislature constrain the courts to methods of interpretation or determine which tools in the toolbox of statutory construction they can use? While the UCC has undergone revisions since its original promulgation in 1952, these changes have continually reemphasized the preference for purposive interpretation of the UCC.[49]

Karl Llewellyn was heavily involved in the Legal Realism movement.[50] Legal Realism has contested meanings, but central to its overarching philosophy is the idea that legal decisions incorporate more than just abstract legal principles.[51] Rather, there are other determinants of legal outcomes, such as political or economic values that factor into judicial decision-making, even when not explicitly referenced.[52] For Llewellyn, this meant the law was dynamic, importing meaning from societal customs.[53] This influence also added to Llewellyn's skepticism regarding other forms of interpretation, such as formalism. Specifically, he rejected the idea that legislation had to be articulated so formally as to preclude a good judge's ability to promote sound legal policies.[54] His statutory preferences resulted in several key features of the UCC, such as the use of broad standards to encourage purposive interpretation, "direct[ing] courts to supplement its rules with general legal and equitable principles; and provid[ing] a range of remedies that principally serve[] to make injured parties whole."[55] The UCC provided judges with a roadmap with the intention of encouraging the use of judicial knowledge of trade and commercial customs to supplement the text of the Code.

In comparison with adherents to textualist modes of interpretation, Llewellyn did not believe that it was possible to

49. Breen, *supra* note 30, at 271.

50. *See* Maggs, *supra* note 3, at 542; Kettering, *supra* note 48, at 47 (2023).

51. *See* WILLIAM TWINING, KARL LLEWELLYN AND THE REALIST LEGAL MOVEMENT XI-XII (2012) (discussing the various approaches to legal realism).

52. *See id.*

53. *See* Hannaway, *supra* note 34, at 964.

54. Breen, *supra* note 30, at 267.

55. *See* Maggs, *supra* note 3, at 543.

completely eliminate ambiguity from a statute.[56] So, Llewellyn provided judges with a patent reason for interpretation which would serve as a more effective guide for implementation than reliance on a purely textual analysis. The principle of the patent reason is that the underlying policy of a provision should be immediately recognizable so that the provision will always be construed uniformly.[57] The 'patent reason' was supposed to prevent distortion because any conclusion reached by a judge would make sense in light of the purpose laid out by particular provisions of the Code.[58] Further, Llewellyn strongly believed that statutes without such a guiding force were nonsensical.[59]

While Llewellyn was responsible for the overall structure and guiding patent reason of the UCC, Grant Gilmore was the principal reporter for Article 9. Gilmore expressed similar skepticism as Llewellyn on the philosophies behind textualism, finding the idea of absolute clarity in statutes both impossible and undesirable due to the need for law to adapt to changing circumstances in commercial law over time.[60]

The intentional construction of the Code under a particular ideology of statutory interpretation raises the question of how legislation functionally premised on the idea of legal process and purposivism endures in an era of predominantly textualist interpretation. Not only was the Code conceived of prior to our contemporary textualist movement, but the drafters of the Code believed that a strict textualist interpretation would be ineffective at best in the efficient administration of the UCC. This presents a clear tension between contemporary interpretive methods and the principles of the UCC. With the textualist rejection of unenacted materials and distaste for policy canons, the approach to the Comments of the UCC by courts should parallel approaches to other unenacted materials, like legislative history. And, the attitude toward the patent reason for interpretation should mirror

56. Karl N. Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are to Be Construed*, 3 VAND. L. REV. 395, 400 (1950) (discussing how a statute declaring a rule without a purpose or objective is nonsense).

57. Hannaway, *supra* note 34, at 961.

58. Maggs, *supra* note 3, at 567; *see also* Gedid, *supra* note 37, at 372 (citing Karl N. Llewellyn Papers § (J)(V)(i), at 5 (1944), *reprinted in* WILLIAM TWINING, KARL LLEWELLYN AND THE REALIST MOVEMENT 321–22 (1st ed. 1973)).

59. *See* Llewellyn, *supra* note 56, at 400.

60. Ellen Ash Peters, *Grant Gilmore and the Illusion of Certainty*, 92 YALE L.J. 8, 9 (1982).

the attitudes toward other substantive canons. These considerations prompt concern regarding whether, and by what means, uniformity has been accomplished in contemporary interpretation of Article 9, considering the intent of the drafters of the UCC.

III. The Interpretation of Article 9 by the Courts

Federal courts, bankruptcy courts, and state courts look to the official comments of Article 9, with some even expressing a preference for policy objectives of uniformity. This tendency reflects a methodology inconsistent with typical approaches to textualism. All three courts provide appropriate avenues for evaluating the interpretation of Article 9. Security interests are commonly central to bankruptcy proceedings, which then appeal to federal district and circuit courts. Article 9 is state law, so state courts commonly interpret it. Looking to the state courts for analysis demonstrates how Llewellyn's preference for uniformity as a guiding purpose actually plays out in the courts. The cases surveyed for this Article[61] span a thirty-four-year period, bookended by 1991 and 2025. The survey begins approximately five years after Justice Scalia's appointment to the Supreme Court, when the influences of his textualist approach were at least visible on the Supreme Court. The case analyses are grouped according to the three most prominent tools used by courts in interpreting Article 9: (A) the official comments, (B) purposive arguments favoring uniformity, and (C) legislative history or legislative intent.

A. Interpretations Utilizing the UCC Official Comments

Despite professing a commitment to textualist principles, both bankruptcy courts and state courts have demonstrated continuous adherence to interpretations set out by the official

61. This Article does not purport to conduct an exhaustive or statistical analysis of interpretive methods. The cases were selected through a series of Westlaw searches for state and related federal cases using search terms of "Article 9" or "secured transactions" or "security interests" AND "text!" "stat! interp!". Then, cases explicitly discussing interpretive methods or textualism were selected for the survey.

comments of Article 9. Typically, the opinions fail to explain the clear tension between textualist interpretive methods and the use of the Comments. The following subsection analyzes the ways in which bankruptcy courts and state courts have interpreted Article 9 provisions utilizing the Comments through a series of case studies.

For instance, in *In re Graupner*, a bankruptcy court in Georgia needed to decide whether the creditor held a purchase money security agreement in the debtor's 2005 Chevrolet Silverado pursuant to Article 9 in the state of Georgia and, if so, what the price of that vehicle would be for the purposes of the Georgia's adopted form of the UCC[62] Before fully analyzing the issue, the court walked through the Georgia rules of statutory interpretation and construction.[63] Georgia interpretive rules permit courts to endeavor to find legislative intent after finding ambiguity within the statute, but note that, absent an official record of legislative history, "courts must discern legislative intent from the language of the statute itself" in accordance with "plain-meaning doctrine, a basic tenet of statutory construction."[64] Pursuant to this reasoning, absent legislative history created by the Georgia General Assembly in the enactment of Article 9 or its subsequent revisions, the court should not be able to look to external devices such as the official comments for interpretation. And courts especially cannot do so absent a determination that the provision in question is ambiguous. Despite the explicit preferences for textualist interpretation, the court here turned to the Comments to discern whether ambiguity exists or not.[65] In doing so *before* declaring ambiguity, the Georgia bankruptcy court impliedly preferences UCC commentary over other forms of secondary, external materials such as legislative history because the court does not need to first find that the provision is ambiguous to justify

62. *In re* Graupner, 356 B.R. 907, 911 (Bankr. M.D. Ga. 2006), *aff'd sub nom.* Graupner v. Nuvell Credit Corp., No. 07-CV-37CDL, 2007 WL 1858291 (M.D. Ga. June 26, 2007), *aff'd sub nom. In re* Graupner, 537 F.3d 1295 (11th Cir. 2008).

63. *See id.* at 912.

64. *Id.*

65. *Id.* at 919–20 (determining that the "exact meaning of the term 'price' as found in the definition of Purchase money obligation'" in Georgia's Article 9 is not clear and not fully explained by "Uniform Commercial Code comment 3 to the purchase money security interest provision [which] expands the meaning of 'price' beyond simply the 'sticker' cost of the collateral.").

its use. The tendency of the Georgia bankruptcy court to look to the official comments to derive the plain meaning presents the fundamental tension between contemporary textualist approaches and Article 9 interpretation Article 9 is not a plainly accessible text.

Similarly, in *In re Ocean Place Development,* the New Jersey bankruptcy court examined the application of New Jersey's Article 9 to hotel room revenues.[66] Ultimately, the court found that Article 9 did extend to these revenues.[67] In analyzing Section 9-109(d), an exception provision in Article 9, the court stated that it "adopts the cogent analysis found in Judge Howard C. Buschman, III's holding in *In re Kearney Hotel Partners v. Richardson*[.]"[68] The cited explanation emphasizes the importance of starting with the plain text of a statute.[69] However, after citing this explanation, the court turns to the official comments for support of its statutory construction, articulating that "the [o]fficial comments to the UCC, which clarify and relate the philosophy undergirding Article 9, further support the Court's construction."[70] The court cites the official comments as persuasive in demonstrating the intent of the UCC drafters. This opinion demonstrates a clear tension between

66. *See In re* Ocean Place Dev., LLC., 447 B.R. 726, 731 (Bankr. D.N.J. 2011).

67. *Id.* at 732.

68. *Id.* (internal citation omitted).

69. *See id.* "As in any case involving the construction of a statute, the starting point is the language of the statute itself." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 197 (1976) (Powell, J., concurring) (quoting Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 756 (1975)). "The language of [U.C.C. § 9–109(d)(11)] clearly excludes only interests in real estate, including "a lease or rents thereunder," from the requirements of Article 9. By this, mortgages, leases and other instruments conveying an interest in real estate are excluded. Conversely, the language gives no indication that the income from the use of real estate . . . are excluded. . . . The significance of the plain meaning of the statutory language . . . lies in the general rule that 'guests in a hotel . . . are mere licensees and not tenants, and . . . they have only a personal contract and acquire no interest in the realty . . . .'" *In re* Greater Atl. & Pac. Inv. Group, 88 B.R. 356, 359 (Bankr. N.D. Okla. 1988) (quoting 49 AM. JUR. 2D *Landlord and Tenant* § 6 (1970)). *See also In re Ocean Place Dev.*, 447 B.R. at 732 ("A room in an inn is not, in a legal sense, the 'dwelling house' of a guest, and the relation is not that of landlord and tenant, for notwithstanding the guest's occupancy, it is the house of the innkeeper . . . It simply would distort the statutory language to hold that a guest in a hotel is a lessee and that the fee paid, although perhaps referred to in common parlance as 'rent,' is rent attributable to a lease." (quoting *In re* Kearney Hotel Partners v. Richardson, 92 B.R. 95, 99 (Bankr. S.D.N.Y. 1988)).

70. *In re Ocean Place Dev.*, 447 B.R. at 733.

the stated mode of interpretation of textualism, as supported by the emphasis on beginning with the plain language of the provision at issue, and what the court cites as determinative in its decision-making process: the official commentary. Since the official comments are definitively not a part of "the language of the statute itself,"[71] they should not be utilized at all were the court to authentically adhere to textualist interpretation, but especially not before declaring the statute to be ambiguous.

But this is not always the case. In *In re Pizzano,* a bankruptcy court in Michigan analyzed whether a security agreement granting a security interest in goods described a Corvette under either Michigan's or New Hampshire's Article 9.[72] The court rejected a textual argument by the plaintiff based on the official comments, where the plaintiff argued that under Section 9-102, Official Comment 4.a, "'the term 'goods' includes four mutually exclusive 'types' of collateral, one of which is 'consumer goods.' 'Goods,' although defined in the UCC, is not a 'type of collateral.'"[73] Instead, the court found that this reading of the Comments "sacrifice[ed] the statute's plain meaning and purpose," and that goods are a type of collateral according to the UCC.[74] While the plaintiff may have misconstrued the analysis of the Comments, the rebuttal by the court indicates a more textualist than purposive approach to statutory interpretation. This case demonstrates that while courts have relied on the official comments to elucidate the meaning of particular provisions, textualism has resulted in a renewed concentration on the plain meaning of Article 9 that was not originally envisioned by the UCC drafters.

But despite the above exception, the trend of relying on the official comments despite professing adherence to textualism is clear as recently as 2025, as demonstrated in a recent case by the Fifth Circuit Court of Appeal of Louisiana. At issue was a dispute over a promissory note secured by a mortgage on a property. After the note changed hands, defendants in the case claimed sale of litigious rights as an affirmative defense, so they needed only to pay U.S. Bank the price it paid for assignment of the note plus

71. *Id.* at 732 (citing *In re Kearney Hotel Partners,* 92 B.R. at 98).

72. 439 B.R. 445, 448 (Bankr. W.D. Mich. 2010).

73. *Id.* at 452.

74. *Id.*

interest on the price, not the unpaid principal balance on the note plus interest.[75] In that case, the court considered whether Louisiana's adopted Article 9, excepting such rights, controlled over a provision in the civil code on litigious rights.[76] The plaintiffs argued that the "plain language" of Article 9 applied. The court explicitly stated that "[w]hen a statute is clear and unambiguous and its application does not lead to absurd consequences, the provision must be applied as written, with no further interpretation made in search of the legislature's intent."[77] The court looked first to the statutory provisions discussing security interests, but then to the Louisiana Practice Series discussing Secured Transactions. The court quoted the Practice Series analysis of the Louisiana Official Revision Comments under the UCC to explain the rationale of excluding security interests from the right of redemption.[78] The court then stated that "[c]onsidering the foregoing . . . we find that [the provision of Article 9] is clear and unambiguous." However, the court never explained the rationale for considering the Comments or external sources in its textual analysis, which is plainly contrary to traditional tenets of textualism.[79]

While many courts do not explicitly acknowledge the reasoning for utilizing the Comments after professing a dedication to plain text and meaning interpretations, several have explained their reasoning for using the Comments in interpretation. For instance, the Supreme Court of Kentucky recently professed a preference for plain language interpretation in all cases concerning statutory interpretation.[80] However, in instances when the statute is ambiguous, the court may turn to substantive canons and legislative history. For the UCC, the court can turn to interpretations by other courts in an effort to promote uniformity.[81] In the case of the UCC, the court also acknowledged

75. Deutsche Bank Nat'l Tr. Co. *ex rel.* Argent Sec. Inc., v. Reyes, No. 24-C-630, 418 So. 3d 923 (La. Ct. App. Apr. 9, 2025)

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *See* Delphi Auto. Sys., LLC v. Cap. Cmty. Econ./Indus. Dev. Corp., 434 S.W.3d 481, 485 (Ky. 2014).

81. *See id.*

"the benefit of Official comments to the UCC provisions, Comments which the legislature has indicated 'represent the express legislative intent of the General Assembly and shall be used as a guide for interpretation.'"[82] The legislative indication referenced by the Supreme Court of Kentucky is a provision added by the Kentucky General Assembly to supplement Section 1-103 of the Model UCC. The provision reads in whole:

> Official comments to the Uniform Commercial Code, as published from time to time by the National Conference of Commissioners on Uniform State Laws, represent the express legislative intent of the General Assembly and shall be used as a guide for interpretation of this chapter, except that if the text and the official comments conflict, the text shall control.[83]

In this instance, it is clear that the official comments are permissible in the interpretation of Article 9 because they are expressly designated to reflect legislative intent, even in a way that legislative history is not, as most legislative history does not claim to be an official representation of the General Assembly.[84] However, this provision does conflict with the method of interpretation as envisioned by Karl Llewellyn because it privileges the plain text above the Comments. To follow this direction too narrowly would lead to outcomes where the text did not achieve the desired "patent reason" behind the UCC or Article 9, resulting in outcomes the drafters of the UCC did not intend. However, in *Delphi Automotive Systems v. Capital Community Economic/Industrial Development Corp.*, the court found the official comments and decisions in other jurisdictions determinative in its conclusion that "the transactions excluded by the language 'a transfer by a government or governmental unit' are those in which the government/governmental unit borrows money and transfers

82. *Id.*

83. KY. REV. STAT. ANN. § 355.1-103 (West 2025).

84. Legislative history, on the other hand, is usually thought to be helpful by its proponents in understanding what the legislators were trying to accomplish in a particular statute but not the as binding as the words of the statute itself. Judges may have to parse conflicting floor statements, committee reports, hearing, or other materials to evaluate how legislative history can help elucidate ambiguous text. *See* Robert A. Katzmann *Response to Judge Kavanaugh's Review of Judging Statutes*, 129 HARV. L. REV. F. 388 (2016) (discussing his approach to legislative history and responding to textualist critiques).

a security interest."[85] This outcome aligns with the intended interpretations of the drafters of the UCC as well as promotes consistency in the interpretation of Article 9 across jurisdictions.

Similar to the kind of statutory instruction for interpretation in Kentucky, Colorado statutes discussing the purpose of statutes related to title and interest in real property explicitly promote liberal construction over technical defects rendered by overly narrow text.[86] In *Columbus Investments v. Lewis,* the Supreme Court of Colorado analyzed whether Article 9 of the UCC or other state law governed real property interests.[87] To make this decision, the court looked to the official comments in discerning the extent of Article 9, but without an explicit justification or explanation for their use.[88] In finding that the comment accompanying the relevant section "stresse[d] that 'other law' determines the effect of rights under the mortgage,"[89] the Supreme Court of Colorado reasoned that Article 9 could not apply in this instance. The court found the Comments helpful in exploring the limitations of Article 9 and its interactions with other forms of state law.[90] While Article 9 did not apply to the issue arising in this case, the inclination of the Supreme Court of Colorado to rely on the official comments in deciding the applicable law could have resulted from the instructions by the Colorado General Assembly, codified at Section 38-34-101, "to liberally construe" articles and laws relating to property interests "so that the record title of the party in possession is sustained and not defeated by technical or strict constructions."[91]

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85. Delphi Auto. Sys., LLC v. Cap. Cmty. Econ./Indus. Dev. Corp., 434 S.W.3d 487, 485 (Ky. 2014).

86. Columbus Invs. v. Lewis, 48 P.3d 1222, 1225 (Colo. 2002) (en banc) (citing COLO. REV. STAT. ANN. § 38-34-101 (West 2002)) ("[T]his article and all other laws concerning or affecting title to real property and every interest therein . . . shall be liberally construed with the end in view of rendering such titles absolute and free from technical defects . . . so that the record title of the party in possession is sustained and not defeated by technical or strict constructions.").

87. *Id.* at 1226.

88. *Id.*

89. *Id.* at 1227.

90. *Id.*

91. COLO. REV. STAT. ANN. § 38-34-101 (West 2025).

The Supreme Court of Nebraska has also espoused the need for courts to follow the plain and ordinary meaning in construing a statute, pending a finding of ambiguity.[92] However, the court justified the use of the official comments as "components" of a collection of statutes [which] are "in pari materia," and "[] may be considered to promote consistency."[93] The court specified that the official commentary is not binding but persuasive as judges endeavor to interpret Article 9.[94] The court does not elaborate further on the reasoning why the official comments are "persuasive," after acknowledging their non-binding nature.

In a recent case, *First State Bank Nebraska v. MP Nexlevel,*[95] the Supreme Court of Nebraska cites a series of previous cases that make the same contention: *Blue Valley Co-op v. National Farmers Organization*[96] and *Fjellin ex rel. Leonard Van Liew v. Penning*.[97] Tracing this line of reasoning back, these cases also do not expound on why the official comments are persuasive, but cite other cases making the exact same claim.[98] The origin of this line of jurisprudence in Nebraska is a 1976 footnote to an Eighth Circuit case and an explanatory comment that "the Nebraska Supreme Court cited a Comment to the Code."[99] The line of reasoning leads back further to a 1966 Second Circuit case which stated that the while the official commentary was not binding on the court, "they are powerful dicta for the Code [which] is 'well on its way to becoming a truly national law of commerce,' and is, therefore, as we have noted, a most appropriate source of federal law."[100] Although the Nebraska Supreme Court did not explicitly affirm the reasoning in the referenced case, the implication of the "national law of commerce" policy argument is that the Comments serve to aid courts in the promotion of uniformity in the Code and Article 9, which justifies their usage.

92. First State Bank Neb. v. MP Nexlevel, LLC, 948 N.W.2d 708, 719 (Neb. 2020).

93. *Id.*

94. *Id.*

95. *Id.* at 708.

96. 600 N.W.2d 786 (1999).

97. 41 F. Supp. 3d 775 (D. Neb. 2014).

98. *Blue Valley*, 600 N.W.2d at 792 (citing Omaha Pollution Control Corp. v. Carver-Greenfield Corp., 413 F. Supp. 1069 (D. Neb. 1976)).

99. *Omaha Pollution Control Corp.*, 413 F. Supp. at 1087 n. 4.

100. Freuehauf Corp. v. Yale Express Sys., Inc. (*In re* Yale Exp. Sys., Inc.), 370 F.2d 433, 437 (2d Cir. 1966) (citing United States v. Wegematic, 360 F.2d 674, 676 (2d Cir. 1966)).

The above-surveyed cases discussing the use of the official comments by state and bankruptcy courts provide possible insight into the minds of judges in the administration of Article 9. The tendency among state judiciaries to utilize the official commentary despite espousing commitment to textualism might best be explained by concerns that a fully textualist interpretation of Article 9 may result in inconsistent interpretations of the Code that could then have devastating effects on commercial transactions. To avoid this acrimonious result, looking at the official comments as "persuasive" or in manners that are inconsistent with contemporary textualist interpretation could demonstrate an implicit preference by judges for extratextual interpretations of Article 9 for pragmatic concerns.

Courts' use of the official comments also demonstrates that the Comments are on par with official legislative history despite their origin in a private legislature. As evidenced by the reasoning in decisions like *In re Ocean Place Development* and other state court cases, judges find the official comments indicative of the legislative intent of the private legislators of the UCC and the policies officially endorsed by democratically-elected state legislators. The approach to the Comments indicates a distinction in the weight given to the perceived legislative intent of the Comments as opposed to traditional legislative history, like floor statements or committee reports. Put simply, the Comments appear to be more persuasive. While courts have professed that the text should control over conflicts with the official comments, the above-surveyed cases do not demonstrate that this approach controls in the interpretation of Article 9. Instead, judges appear to carry out interpretation more in line with Karl Llewellyn's 'patent reason' approach, construing terms in the statute in light of the Comments. As such, it appears that courts view the official comments as being much more coextensive with the actual text of a given section of Article 9 than serving a purely clarifying role, in comparison with traditional legislative history materials.

B. Interpretations Discussing Policy and Legal Realism

In addition to using the official comments to supplement interpretation, federal, bankruptcy, and multiple levels of state courts favor interpretations promoting uniformity and other policy goals among the various enactments of Article 9 across the states. This practice falls in line with Llewellyn's vision of 'patent reasoning' guiding judicial interpretation. The following subsection analyzes how courts have interpreted Article 9 provisions to promote policy objectives through a series of case studies.

While a sizeable number of courts state a preference for use of both textualist interpretation and the official comments, there are also courts that do not cite textualism as the preferred method of interpretation. Instead, those courts adhere to the purpose-forward methods advanced by Llewellyn and the initial drafters of the Code. This method is clear in *In re Cruz Rivera*, a case in the Bankruptcy Appellate Panel of the First Circuit, when the court acknowledged that the intent of Article 9 is to "'expedite and facilitate [] banking transactions in Puerto Rico . . . by creating uniformity and consistency[.]'"[101] The court cited this purpose in its analysis to determine which version of Article 9 applied to whether authentication was required for a pledge of an account to be enforceable against third parties without relying on a corresponding or supplementary textualist justification.[102]

In *In re Linder Oil Co.*, a Louisiana bankruptcy court was faced with the question of whether security interests in unearned premiums are excluded from Article 9 under Louisiana law as a matter of first impression.[103] As the court addressed this issue, it noted the uniform interpretation of Article 9 by courts in other jurisdictions that had addressed the same issue, and as such, concluded that "security interests in unearned insurance premiums are not covered by Article 9."[104] In addition to asserting this observation, the court identified the significant weight that uniformity among jurisdictions holds in analyzing the application of Article 9.[105] Ultimately, the decisions by other jurisdictions proved determinative, as the court found the unanimity of the

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101. Wiscovitch-Rentas v. Banco Popular de Puerto Rico (*In re* Cruz Rivera), 600 B.R. 132, 146 (B.A.P. 1st Cir. 2019) (citing *In re* Nat'l Promoters & Serv., Inc., 499 B.R. 192, 201 (Bankr. D.P.R. 2013)).

102. *Id.*

103. Sikes v. AFCO Credit Corp. (*In re* Linder Oil Co.), No. 17-51323, 2021 WL 1244536, at *8 (Bankr. W.D. La. Mar. 31, 2021).

104. *Id.*

105. *Id.* (citing *In re* JII Liquidating, Inc., 344 B.R. 875, 884 (Bankr. N.D. Ill. 2006)) (internal quotation omitted).

other jurisdictions decisive in finding that Article 9 did not apply to security interests in unearned insurance premiums.[106] In conducting this analysis, the court did not look to the text at all before determining whether security interests in unearned premiums were excluded under Article 9. Instead, the court looked to uniformity with other jurisdictions. While that goal may be in line with the prescription by the UCC drafters in Section 1-103, it is certainly not a textualist endeavor.

Similarly, in a 2025 case, Division 2 of the Court of Appeals in Washington evaluated whether Article 9 of the UCC governed the plaintiff's consignment arrangement.[107] To do so, the court needed to understand whether the priority interests of a consignment not covered by Washington's UCC Article 9 could apply to the arrangement. Instead of conducting a textual analysis of the provisions discussing priority, the court instead looked at what other jurisdictions with the same definition of "consignment" had determined and accepted the same conclusions.[108] This approach is in strong contrast with the tendency of federal courts to look to other circuits when construing the statute as informative but certainly not binding on its final determination.

Even in cases where courts have analyzed the text of a provision, judges have chosen to preference the policy objectives of uniformity over a more literal interpretation. For example, in *Shurlow v. Bonthuis,* the Michigan Supreme Court explicitly chose to promote the purpose of Article 9 over a literal textual reading that would have been at odds with the policy objectives and intent of Article 9.[109] The issue at hand was whether a provision of Michigan's Article 9 applied to security interests established by contract with landlords or whether the only exception was landlords' liens arising under the common law.[110] The court elucidated that "[w]hile a literal reading of subsection 9-104(b) supports plaintiffs' argument [that Article 9 excludes contractual landlords' liens], we cannot ignore the clear intent of [A]rticle

106. *Id.* at 9.

107. Wren v. Whitehead, 2025 WL 398883 (Wash. Ct. App. 2025), *review denied sub nom.* Wren v. Stanford & Sons, LLC, 570 P.3d 710 (Wash. 2025).

108. *Id.* at *32.

109. Shurlow v. Bonthius, 576 N.W.2d 159, 163 (Mich. 1998)

110. *Id.* at 162.

9."[111] Further, the court cited the interpretive direction contained in Michigan's version of Section 1-103 of the UCC, stating that the Code must be construed liberally with the objective of promoting the intended purpose of Article 9.[112] In doing so, the court did not read the text in isolation from the patent reason underlying this provision of the Code. Rather, the court "constru[ed] the act in accordance with its purposes, [reading] the text of each section . . . in the light of the purpose and policy of the rule or principle in question."[113] Following the discussion of the policy objectives of the relevant section, the court then looked to the official comments to confirm this supposition.[114] In this analysis, the court effectuated the intent of the drafters responsible for designing the UCC, with the official comments serving as a manifestation of purpose for any given provision.

Article 9 has presented issues for state courts in the analysis of how the provisions of the UCC interact with existing state law related to liens. For example, *Stockman Bank of Montana v. Mon-Kota, Inc.* tasked the Supreme Court of Montana with deciding how existing state law on agricultural liens related to the revised Article 9.[115] In this case, the court discussed the need to construe the text in line with policy objectives and considered the difficulties of reconciling uniform state enactments with existing state law.[116] The court held that "conveniently pre-packaged uniform legislation can [] cause unforeseen side effects, because the enactment of uniform laws 'often sets off a chain reaction among [a jurisdiction's] existing statutes.'"[117] In Montana, methods of statutory interpretation are dictated by both statute and case law. Methods of statutory interpretation are supposed to be "'holistic'" and "'account for the statute's text, language, structure, and object'" with the ultimate goal of "'giv[ing] effect to

111. *Id.* at 163.
112. *Id.* (citing MICH. COMP. LAWS ANN. § 440.1102 (West 1998).
113. *Id.*
114. *Id.*
115. Stockman Bank of Mont. v. Mon-Kota, Inc., 180 P.3d 1125, 1133 (Mont. 2008).
116. *Id.*
117. *Id.* (citing Scott J. Burnham, *Agricultural Liens Under Revised Article 9*, 63 MONT. L. REV. 91, 93 (2002)).

the legislative will'" as instructed by statute.[118] The court concluded that the legislature did not intend for existing state law to be supplanted by revisions to Article 9 but for superpriority to be granted after perfection in satisfaction of both existing state law on agricultural liens and Article 9 requirements.[119]

Ultimately, it was a textual argument that decided this case, not the policy of uniformity. The Supreme Court of Montana ruled that agricultural liens are not security interests under the revised Article 9, supported by the observation that "when the UCC drafters desired to apply a particular provision to both agricultural liens and to security interests, the drafters expressly referred to both."[120] This is functionally a macro-level *expressio unius est exclusio alterius* argument, as the court based its conclusion on the observation that specifications within the UCC create a negative inference about inclusion elsewhere. Essentially, if the UCC drafters intended a particular provision to apply to both, they would have done so because they expressly did so elsewhere. This serves as evidence of how textual canons have influenced the evolving interpretation of the UCC, perhaps counter to what was envisioned by the drafters, who may not have had these exact textual canons in mind in 1952.

A federal district court in Pennsylvania, in *Interbusiness Bank N.A. v. First National Bank of Mifflintown,* discussed the lack of a definition for "type" in Pennsylvania's Article 9 in the provision outlining the minimum requirements for description of collateral.[121] The court first exhausted textualist modes of interpretation in an attempt to resolve this definitional issue, consulting "general reference materials" such as Merriam-Webster's Dictionary, but found that to do so would result in an overly-broad and superfluous construction.[122] Subsequently, the court attempted to use the *noscitur a sociis* canon to find meaning from surrounding words such as "goods" and "accounts[,]"

118. *Id.* at 1135 (citing State v. Heath, 90 P.3d 426, 432 (Mont. 2004); MONT. CODE ANN. § 1-2-102 (West 2008) ("In the construction of a statute, the intention of the legislature is to be pursued if possible.")).

119. *Id.*

120. *Id.* at 1134.

121. 318 F. Supp. 2d 230, 241 (M.D. Pa. 2004).

122. *Id.* at 241–42.

ultimately finding that they may be interpreted as "types" of collateral despite the lack of an express label as such.[123] The court concluded that the defined terms must be "types" of collateral to properly restrict Article 9 from being absurdly broad and discussed important policy motivations behind construing the above definition as limiting.

Similar to the state legislative directions for statutory construction discussed in Part III.A, Pennsylvania has a statute instructing courts to prioritize the policy of uniformity among the states in statutory construction.[124] The district court elaborated on the consequences of not pursuing uniformity, as "[t]he alternative would be an *ad hoc* analysis of each specific term used in every financing statement to decide whether . . . it constitutes a "type" of collateral[,] . . . engender[ing] doubt in the commercial community and defeat[ing] the central purpose of the UCC: uniformity in transactions."[125] This case evidences the inclination of the court to begin with textualist interpretations, as it focused on textual and grammatical canons before turning to the purpose behind the text. Even then, the court roots its authority to pursue policy objectives in an explicit authorization from the Pennsylvania Code. This statement, along with the prior analysis of similar authorizations in *Delphi Automotive Systems,* suggests that with the increase in textualism, statutes directing construction for uniform enactments may become increasingly important for consistent interpretation of Article 9.

Despite this desire for uniformity, courts have, at times, interpreted provisions of Article 9 differently. For instance, the Court of Appeals of Ohio, First District, Hamilton County, recognized in *First Financial Bank v. Tailored Fund Cap, LLC*, that courts have differed in whether a transferee of funds from a deposit account to a non-colluding transferee takes those funds free of a security interest.[126] A minority of courts have held that when the proceeds are identifiable and related to a definitive

123. *Id.* ("Words draw meaning from those around them, and context sheds light on language otherwise obscured Among these terms are 'goods' and 'accounts.'").

124. *Id.* at 243 (citing 1 PA. STAT. AND CONS. STAT. ANN. § 1927 (West 2004)).

125. *Id.*

126. First Fin. Bank v. Tailored Fund Cap, LLC, Appeal No. C-230626, ¶ 48, 256 N.E.3d 744, 752 (Ohio Ct. App. 2024).

security interest, transferees are not protected from claw-back suits.[127]

One of these minority courts includes the U.S. Court of Appeals for the Fifth Circuit, reviewing a decision on appeal from a Texas bankruptcy court, *In re Tusa-Expo Holdings, Inc*.[128] The court there looked only to the text of the newly adopted section, 9-332, and found it to be unambiguous. The Fifth Circuit discounted a divergent interpretation by a state appeals court favoring stripping the security interest because "[the state appeals] court disregarded the plain language of Section 9-332 in favor of the comments."[129] Further, the Fifth Circuit emphasized that it did not view the Comments as being an "explicit statement of legislative intent" and distinguished the funds in the deposit account from the deposit account itself, which the Fifth Circuit viewed to be supported by the text.[130] The court contrasted Section 9-332(b) with Section 9-332(a), which addresses the non-collusive transfer of money free of a security interest, to illustrate that a security interest in a deposit account is distinct from a security interest in the money held in that account.[131] Section 9-332(a) expressly states the transferee takes the funds free of "a security interest," whereas Section 9-332(b) states that the transferee "takes the funds free of a security interest in the deposit account."[132] The Fifth Circuit then presumed this drafting difference to be intentional, because the drafters could have written free from "a security interest," which the court reads to signify "any" security interest.[133] In doing so, the court relies on traditional textual canons to reach this conclusion, presuming that this drafting difference signifies a disparate meaning in interpretation.[134]

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127. *Id.*

128. 811 F.3d 786, 796 (5th Cir. 2016).

129. *Id.* (discussing Madisonville State Bank v. Canterbury, 209 S.W.3d 254, 258 (Tex. Ct. App. 2006)).

130. *Id.*

131. *Id.*

132. *Id.* at 795–96.

133. *Id.*

134. *See* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 170 (2012) (discussing the presumption that when a document uses one term in one place and a materially different term in another, the different term denotes a different idea).

In the Court of Appeals of Ohio, Eleventh District case *Cortland Savings & Banking Co. v. Platinum Rapid Funding Group*, a case involving a bank's security interest in a debtor's accounts receivable and deposit account, the court repudiated the reasoning of *In re Tusa-Expo*. According to the Ohio Court of Appeals, an account refers to a right to payment of a monetary obligation, rather than a device containing funds in ordinary speech when we think of an account at a bank.[135] *Cortland* attributes the erroneous conclusion in *In re Tusa-Expo* to the failure of the Fifth Circuit to consider the definition of "an account" under Article 9, when the UCC explicitly defines the term. As the court identifies, the result of the majority interpretation is transactional finality, which is in line with the policy objectives for this section of Article 9 as explained by the accompanying comment.[136] Academic literature also confirms this understanding, characterizing the *In re Tusa-Expo* decision as a faulty interpretation of the UCC and, more specifically, Article 9.[137] Following the *In re Tusa-Expo* decision, at least three Texas courts have followed the same method of interpretation, introducing discordant interpretations across jurisdictions.[138]

Ultimately, the court in *First Financial* agreed with the decision in *Cortland*.[139] The *First Financial* court found that the reluctance of the Fifth Circuit to discuss the legislative history of Section 9-332, or discuss contradictory federal authority, were

135. Cortland Sav. & Banking Co. v. Platinum Rapid Funding Grp., Ltd., No. 2021-T-0006, ¶ 15, 182 N.E.3d 1259, 1263 (Ohio Ct. App 2021), *dismissed sub nom.* Farmers Natl. Bank of Canfield v. Platinum Rapid Funding Grp., Ltd., No. 2022-0177, ¶ 15, 209 N.E.3d 705 (Ohio 2023).

136. *Id.* at 1264–65.

137. See Jeanne L. Schroeder & David Gray Carlson, *Three Against Two: On the Difference Between Property and Contract and the Example of Deposit Accounts in Bankruptcy*, 35 EMORY BANKR. DEV. J. 417, 457 (2019); Thomas E. Plank, *Security Interests in Deposit Accounts, Securities Accounts, and Commodity Accounts: Correcting Article 9's Confusion of Contract and Property*, 69 OKLA. L. REV. 339, 353 (2017); Jason J. Kilborn, *A Deposit Account Is Not A Box of Money*, 6 TRANSACTIONAL L. 1, 3 (2016); Carl S. Bjerre & Stephen L. Sepinuck, *UCC Spotlight*, COM. L. NEWSL. (ABA Bus. L. Section/Com. Fin. and Uniform Com. Code Comm., Chicago, Ill.), Apr. 21, 2016, at 7, 8 (describing the distinction between a deposit account and the deposited funds as "utter nonsense"); Stephen L. Sepinuck, *Personal Property Secured Transactions*, 77 BUS. L. 1323, 1334 (2022).

138. *More Confusion About Section 9-332*, 56 U.C.C. L. LETTER, Mar. 2022, No. 1.

139. First Fin. Bank v. Tailored Fund Cap, LLC, Appeal No. C-230626, ¶ 48, 256 N.E.3d 744 (Ohio Ct. App. 2024).

factors in deciding which side of the judicial split to join.[140] As explained by the court in *First Financial*, the disputed provision actually began as a Comment to the UCC, Comment 2(c) to UCC 9-306.[141] The court concluded that Section 9-322 was intended to have the same effect as the previous suggested commentary, and "entrench the majority view that transferees of funds from a deposit account take free of a security interest."[142] The court also noted that the fact that the majority of courts had not followed the reasoning in *In re Tusa-Expo* was another important factor to consider.[143] Supplemented by the commentary emphasizing that there is a "high value on finality" and the "opportunities for upsetting completed transactions should be 'severely limited'," the court concluded that transferees of funds from deposit accounts take free of a security interest.[144]

The ability to consult the decisions of other courts to promote uniformity permits judges to supplement their own first impressions about the meaning of a particular provision with expertise developed across multiple other jurisdictions. Outside of the context of bankruptcy courts, most judges are not experts in Article 9; rather, they are generalists, as is necessary to preside over a whole host of complex state and federal law issues. It is clear from the survey that a number of judges still approach Article 9 from a purpose-based and pragmatic perspective with the knowledge that any opinion could substantially affect commercial transactions not only in its own jurisdiction, but also in others when choice of law issues arise. The desire for uniformity not only clarifies the administration of Article 9 but also simplifies forays of judges into its complex material. The preference for policy objectives by courts could show a needed pragmatism in this area of law due to the undesirable outcomes of dissonant interpretations state-to-state, and the resulting complications for both creditors and debtors. As it is, there are slight variations state-to-state in Article 9, with some states enacting alternate provisions or omitting provisions altogether.

140. *See id.* at 755.
141. *Id.* at 753.
142. *Id.*
143. *Id.* at 754.
144. *Id.* at 753.

Although Article 9 itself has provisions designed to mitigate choice of law problems, interpretations of courts defining important terms differently based on jurisdiction could create issues that are not self-enforcing. This suggests that judges look to create uniformity under the knowledge that, while textualism prohibits this type of analysis, the pragmatic goal of uniformity outweighs textualist concerns.

C. Interpretations Utilizing Legislative History or Favoring Legislative Intent

The majority of cases concerning Article 9 do not look to the legislative history behind the UCC in contemplating Article 9's application to the respective issues arising before the courts. However, a few cases demonstrate endeavors by courts to approximate legislative intent or legislative history through statements by the drafters, preliminary drafts of the UCC, reports by the Permanent Editorial Board ("PEB Reports"), and initial proposals for state legislatures to pass Article 9.

In *U.S. National Bank of Oregon v. Boge*, the Oregon Supreme Court examined the drafting history of the UCC in making a determination as to whether the duty of good faith in Article 9 displaced the common law duty of good faith.[145] The court contrasted the 1950 draft with the official version, observing that the 1952 version of the UCC contains a definition of good faith consisting of honesty in fact that the 1950 draft did not. The court interpreted this change as supporting the exclusivity of the statutory duty in Article 9.[146] The official comments further stated that good faith means what is stated in the Code definition unless further specified by particular provisions.[147] The court analogized the official comments to legislative history, finding it indicative of not only of the private legislature that conceived it, but also the Oregon legislature. The Oregon Supreme Court found the Comments persuasive because "the legislature took note of [the Comments] at the time of adoption."[148] The court relied on reasoning in a prior case by the Oregon Supreme Court, noting

145. U.S. Nat'l Bank of Or. v. Boge, 814 P.2d 1082, 1083, 1089 (Or. 1991).

146. *Id.* at 1089.

147. *Id.*

148. *Id.* at 1090.

that the UCC was passed by the Oregon Legislative Assembly "with little debate or discussion of the legislative intent. It is possible . . . to discern the basic intent of the legislature in adopting the UCC [as it] was proposed . . . so that Oregon could obtain the same advantages that other states had gained from the adoption of a uniform and comprehensive set of commercial statutes."[149] This examination of prior drafts of the UCC to evaluate intent demonstrates exactly what the drafters did not want in the interpretation of the Code in their initial drafting of the UCC, as discussed in Part II, when they had wanted to instruct judges *not* to review drafts to determine intent.[150] However, due to the reliance on the official comments in the decision-making by the court, the resulting interpretation did not stray from the desires of the drafters.

Along similar lines of reasoning to the Oregon court, the Delaware Court of Chancery recently referenced both the official UCC comments and its own State comments, called the Delaware Study Comments.[151] In *Lady Benjamin PD Cannon,* the court analyzed whether a misdescription of a "fixed-share" warrant for one million shares instead of a "fixed-percentage" warrant was sufficient for the description of collateral under Article 9.[152] In doing so, the court explained that it would consider the Delaware Study Comments to the UCC, which were prepared to supplement the official comments. The court acknowledged that while Delaware never adopted the Comments, they were useful in ensuring the uniform and liberal construction of the UCC alongside caselaw from other jurisdictions. This approach has long been endorsed in Delaware, with the Chancery Court adopting similar reasoning in cases from 1995 and 2001.[153] In *PNC Bank v. Marty's Mobile Homes, Inc.,* the Chancery Court supported the interpretive choice of relying on the official comments and

149. *Id.* (citing Sec. Bank v. Chiapuzio, 747 P.2d 335 (Or. 1987)).

150. Breen, *supra* note 30, at 271. *See also supra* Part II discussing the drafters' interpretive choices.

151. Cannon v. Romeo Sys., Inc., No. 2021-0171-PAF, 2025 WL 2848069, at *20 (Del. Ch. Oct. 7, 2025)

152. *Id.*

153. *See e.g.,* Acierno v. Worthy Brothers Pipeline Corp., 656 A.2d 1085, 1090-91 (Del. 1995); PNC Bank v. Marty's Mobile Homes, Inc., No. CIV.A.1434-K, 2001 WL 849866, at *1 (Del. Ch. July 10, 2001).

Delaware Study Comments because "[a]n official comment written by the drafters of a statute and available to a legislature before the statute is enacted has considerable weight as an aid to statutory construction."[154] But, the Supreme Court of Delaware has made clear that in the order of operations for construing the UCC, the official comments should control over the Delaware Study Comments.[155] This ordering of which sources are more persuasive demonstrates the deference courts in Delaware give to the official comments because "[t]he Delaware Study Committee did not draft" the relevant UCC section, but rather, the Uniform Laws Commissioners did.[156] So the Delaware Study Comments, while helpful, are subordinate to the official comments that accompany the Code.

In *Ford & Vlahos v. ITT Commercial Finance Corp.*,[157] the plaintiff sued the defendant for deficient notice for the sale of collateral. The Supreme Court of California evaluated whether the California version of the UCC limits a secured party's duty to advertise to the mere placement of an ad in a newspaper, or if there are additional obligations that the notice be commercially reasonable. There, the court relied on a report promulgated by a group of academics, lawyers, and business representatives recommending the adoption of Article 9 as legislative history.[158] The court noted that the "845-page report is the authoritative source of legislative history . . . and it reflects the great care that was given to drafting the California Uniform Commercial Code."[159] The report led the court to conclude that California's legislature had not "conclusively define[d] the publicity required for a public sale of foreclosed collateral" with the statutory notice requirements under Article 9. The court further held that publicity and notice are different, though related, concepts according to the legislature.[160] The use of an 845-page report in support of the court's conclusion is more similar to the way courts approach traditional legislative history than to how they typically approach

154. *PNC Bank*, 2001 WL 849866, at *1.
155. Acierno v. Worthy Brothers Pipeline Corp., 656 A.2d 1085, 1090 (Del. 1995).
156. *Id.*
157. 885 P.2d 877 (Cal. 1994).
158. *Id.* at 886.
159. *Id.*
160. *Id.* at 881.

Article 9 interpretation. Here, it is likely that the drafters of the UCC would side with textualists in condemning the use of this sort of material in the interpretation of Article 9, largely because the official comments and the purpose of the section should guide interpretation.

While it is by no means common in cases interpreting Article 9, in *In re Outboard Marine Corp.*, an Illinois bankruptcy court considered statements by Grant Gilmore when analyzing whether a security agreement may serve as a financing statement before turning to the decisions of other courts in pursuit of uniformity.[161] The court first discussed the "express grant rule," where a security agreement must contain technical words of conveyance or grant to be considered a financing statement, as defined in *American Card Co. v. H.M.H. Co.*[162] The court noted that Gilmore, "a former Comment writer for Article 9," criticized the *American Card* decision.[163] The court then examined the decisions of courts from a variety of jurisdictions, including Tennessee, Georgia, and Virginia, ultimately finding that the majority of jurisdictions had found "enforceable security interests where no separately executed written agreements existed."[164] Although not explicitly phrased as such, the use of Gilmore's opinion effectively serves as a demonstration of the legislative intent behind Article 9, supporting the court's contention that the specific grant and conveyance language suggested by *American Card* was not intended as necessary by the drafters of Article 9.

Several courts have relied on PEB reports as evidence of legislative history and intent, either alone or to supplement the official commentary. In *In re Gamma Center, Inc.*, an Ohio bankruptcy court looked to the PEB Report preceding revised Article 9 for support that a "Debtor's accounts receivable do not constitute proceeds."[165] In interpreting what qualifies as "proceeds" under Article 9, the court first employed a textual

161. Bank of Am. v. Outboard Marine Corp. (*In re* Outboard Marine Corp.), 300 B.R. 308, 321 (Bankr. N.D. Ill. 2003)

162. *Id.*

163. *Id.*

164. *Id.* at 322–23.

165. Swope v. Com. Sav. Bank (*In re* Gamma Ctr.), 489 B.R. 688, 696 (Bankr. N.D. Ohio 2013).

analysis of where the comma fell in the relevant provision.[166] The court then cited the PEB Report in support of its interpretation. This approach bears similarity to the traditional uses of legislative history to support the plain meaning of the text as typically employed pre-Scalia.

Three of the above cases using legislative history occurred on the earlier side of the surveyed time period. The decrease in the use of legislative history in favor of textual methods could explain its relative underrepresentation in Article 9 case law. Or, from the perspective of judicial efficiency, constructing an opinion underpinned by legislative history to support interpretations as opposed to official comments would be more time-consuming because of the need to sift through a variety of materials to determine what is indicative of legislative intent and what is not. The Delaware line of cases is perhaps the most significant outlier. By producing its own Study Comments related to the UCC, the Delaware Committee to Study and Report on the Uniform Commercial Code for Delaware gave judges another readily available tool for interpreting the UCC. The comparative difficulty in creating a legislative history to answer the stated question in an Article 9 case, when a judge could simply use the ready-made official comments, may explain the relative infrequency of traditional legislative history usage in the interpretation of Article 9.

IV. NORMATIVE APPROACHES FOR ARTICLE 9 INTERPRETATION

The use of the official comments and policy preferences for uniformity is normatively positive in the development of Article 9 case law. These tools serve to simplify, clarify, and maintain the complex system of secured transactions codified in Article 9 that underpins the United States economy.

Objections to the influence of the official comments may include the capture of the UCC process by private interests and an unelected legislature as a reason to start with the text itself. However, from a political economy perspective, interest groups and other coopting influences influence state legislatures rather than judges interpreting the UCC. It is not uncommon for private

166. *Id.*

interest groups, such as the National Right to Life Committee,[167] to provide legislators with pre-packaged, model legislation. At both the state and federal levels, many special interest groups meet with legislators in the promulgation and adoption of legislation. Against this backdrop, it cannot fairly be said that Article 9 and the UCC are subject to *more* outside influence than any other legislative aids. And in the case of the UCC, its Code reflects broadly held interests relating to the field of commercial transactions, not niche positions held by small but vocal special interest groups. In many cases, the technocratic knowledge imparted by the lawyers and specialists involved in the construction of Article 9 is advantageous to its effective administration. Prior to its uniform reconstruction, the legal landscape governing secured transactions involved disparate and conflicting laws, and it took specific expertise to ensure that it could be codified in a manner that would not wreak havoc on commercial transactions. The fact that the official comments were drafted by subject matter experts and serve as a one-stop-shop for interpretation sets them apart from other extra-textual interpretive tools

Departures from using the official comments and extratextual approaches may exhibit a disappearing preference for technocratic deference, but it would be a mistake to treat the UCC like other forms of legislation. It is unlikely that the majority of legislators comprehensively understood the intricacies of Article 9 upon its enactment. Fundamentally, legislators are generalists, and they frequently put stock in the opinions of specialists at both the federal and state levels. As such, approaching the interpretation of Article 9 in the same way as laws written by state legislators could result in incorrect interpretations. As it stands, courts have typically assumed that they understand the approaches of legislators to the drafting

167. *See, e.g.*, Ximena Bustillo, *Who and What Is Behind Abortion Ban Trigger Law Bills? Two Groups Laid the Groundwork*, NPR (July 8 2022, at 05:01 ET), https://www.npr.org/2022/07/08/1110299496/trigger-laws-13-states-two-groups-laid-groundwork [https://perma.cc/B2DC-478B] (discussing the work of groups like the National Right to Life Committee and Americans United for Life to provide state legislatures with model legislation, with over 13 states passing the National Right to Life Committee's model legislation).

process. For example, the Supreme Court has frequently presumed which canons Congress uses in statutory construction, although the accuracy of these assumptions is questionable.[168] This type of analysis is predominantly a guessing game, and in the case of Article 9, it was rendered completely unnecessary by the roadmap given to judges by the drafters. The UCC presents a far more linear approach to interpretation because the drafters told judges and state legislatures *verbatim* how the Code is to be interpreted.

Reviews of the "correctness" of interpretation by courts conclude that more often than not, courts are able to reach the correct interpretation of Article 9.[169] Thus, propositions that counter-textual interpretations would leave behind a twisted landscape of law have not borne out in the administration of Article 9 across the states. In fact, the opposite has been shown to be true. Frequently, academics have posited that conforming to the legal realist approach advanced by the drafters and Llewellyn would solve for non-uniform or unpredictable interpretations of the UCC.[170] Not only could this explain why judges continue to utilize the official comments and policy canons in interpretation despite the continued advances of textualism across the judiciary, but it also vindicates the utility of such interpretations. To diverge from these accepted methods of interpretation in favor of strictly textualist methods could irreparably harm Article 9 jurisprudence as well as reduce the overall "correctness" of subsequent interpretations by the courts.

Proponents of textualist interpretations of the UCC have distinguished other articles of the Code, like Article 2, as presenting an untechnical enactment of law that runs in favor of text-centered interpretation.[171] To accept a similar approach to Article 9 would wreak havoc on the jurisprudential landscape of secured transactions with potentially devastating practical effects

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168. *See* Abbe R. Gluck & Lisa Schultz Bressman, *Statutory Interpretation from the Inside—An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part I*, 65 STAN. L. REV. 901, 917, 1016 (2013).

169. Margit Livingston, *Bewitched, Bothered and Bewildered: The Courts and Revised Article 9 of the Uniform Commercial Code Ten Years Later*, 9 DEPAUL BUS. & COM. L.J. 169, 214 (2011).

170. Gedid, *supra* note 37, at 343.

171. Nicholas J. Johnson, *The Statutory UCC: Interpretative License and Duty Under Article 2*, 61 CATH. U. L. REV. 1073, 1098 (2012)

on commercial transactions more generally. Due to its construction by drafters with a high degree of expertise in secured transactions, Article 9 does not lend itself to a plain meaning approach. There are sections of Article 9 that do not provide any definitions[172] and provisions where the terminology used was left intentionally broad and vague so as to evolve with commercial practices without the need for constant re-definition.[173] To take a Merriam-Webster's dictionary or equivalent external source to define a term within any given section of the Code would be to take a sledgehammer to the provisions of Article 9. The limited functionality of a textualist, general definition-based approach to Article 9 interpretation failed in *Interbusiness Bank*, demonstrating the potential irreconcilability of pure textualism and the efficient and correct administration of Article 9. And the repercussions of the textualist approach are plainly visible in *In re Tusa-Expo*, where the failure to recognize the more technical definition for accounts created a schism in the uniformity of Section 9-332 across jurisdictions. Taken to the extreme, repeated textualist interpretations could return Article 9 to the disparate field of law the that the UCC was intended to unify. The architecture of Article 9 makes the official comments and a policy canon of uniformity essential to its interpretation to avoid overly constricting, static, or even erroneous analyses of a given section.

While Justice Scalia feared that substantive canons eroded chances at uniformity and objectivity, in the case of Article 9, the official comments and decisions of other jurisdictions actually serve as a check to promote those very goals. In the Article 9 context, cabining interpretation to the text alone could serve to decrease chances at uniformity among jurisdictions, and textualism is by no means a purely objective science. The interpretive outcome of textualism can vary depending on the dictionary chosen to define a given term, the textual or

172. Gerald T. McLaughlin, *The Evolving Uniform Commercial Code: From Infancy to Maturity to Old Age*, 26 LOY. L.A. L. REV. 691, 693 (1993) ("The UCC does not define key terms such as 'offer,' 'acceptance' and 'possession,' thus requiring courts to utilize state common-law definitions of these terms when applying the Code.").

173. *Id.* at 698 ("Normally, UCC definitions are purposely left open-ended-precisely to allow the definition to accommodate itself to new business practices. Article 9, for example, defines 'general intangibles' as 'any personal property . . . other than goods, accounts, chattel paper, documents, instruments, and money.'").

grammatical canons selected, and the order in which they are employed. Supreme Court cases, like *Lockhart v. United States*, demonstrate the indeterminate nature of textualism, with the majority and minority opinions dividing on whether to use the last-antecedent canon or series qualifier to decide the meaning of the statute at issue.[174]

Despite the judiciary's embrace of textualism in recent years, judges like Judge Rachel Kovner, a district court judge for the U.S. District Court for the Eastern District of New York, have emphasized that purpose-based approaches to interpretation are far from obsolete.[175] Though the Supreme Court tends to adopt a textualist approach, Judge Kovner identified recently in the 2025 Antonin Scalia Lecture at Harvard Law School the ways in which purpose may still live beside text in Supreme Court decisions.[176] Largely, this approach involves identifying what Congress intended when it adopted a specific provision, and then, in light of that purpose, evaluating the definitions of the controversial text of the statute.[177] Other scholars have also recognized this trend as a contemporary approach to purposivism.[178] New purposivism recognizes the boundaries set by Congress "on the purposes it wishes courts and agencies to pursue," usually in reference to the text.[179] At the very least, this acknowledgment of the role of context and purpose in textual interpretation suggests that Justice Scalia's theory of textualism and New Textualism continue to

174. *See* Lockhart v. United States, 577 U.S. 347 (2016) (arguments presented by both the majority and dissenting opinions quoting Justice Scalia's opinions and his book with Bryan Garner on statutory interpretation as support for why their textualist interpretation was the correct one).

175. *Are We All Purposivists Now?*, HARV. L. NEWS. (Apr. 3, 2025), https://hls.harvard.edu/today/are-we-all-purposivists-now/ [https://perma.cc/H3WY-BEK6] .

176. *Id.*

177. *Id.*

178. Manning, *supra* note 5, at 114, 118, 129 (describing a "textually-structured" approach to purposivism by Justices on the court); Anita S. Krishnakumar, *Backdoor Purposivism*, 69 DUKE L.J. 1275, 1299 (2020) (discussing the continued prevalence of purposive analysis and interpretation on the Roberts Court alongside textual canons); Richard M. Re, *The New Holy Trinity*, 18 GREEN BAG 2D 407, 417 (2015) (describing the theory of the 'New Holy Trinity' where text continues to play a role in interpretation but purposive and pragmatic considerations first set the "interpretive expectations").

179. Manning, *supra* note 5, at 147 (describing opinions on the Roberts court that exhibit a "propensity to rely on background purpose [depending] upon the degree to which the text of the statute permits it.").

evolve and adapt over time. And with that evolution comes the recognition that purpose has its own, necessary role to play in statutory interpretation. The text of the UCC not only permits the reliance on statutory purpose, but it also encourages it. In comparison with the boundaries set on purpose by Congress, the UCC invites judges to supplement its provisions. And by providing comments to guide interpretation, judges need not guess at what the "spirit" of the relevant provision may be. That purpose is immediately knowable. For Article 9, the interpretation of any provision ought to be read in light of the purpose of the Code, which is made readily and explicitly available for judges in the official comments. The nuances of new purposivism fit readily with the interpretation of Article 9.

When a court is confronted with an Article 9 interpretation issue, the first step ought to be to look to the official comments alongside the text of the provision at issue. To do so mitigates the possibility that the text may be construed in a mode inconsistent with the intended purpose of the section. Subsequently, to confirm uniformity, judges should then analyze whether the issue before them has been heard by other jurisdictions. If that answer is "yes," then the court should attempt to substantiate the interpretive outcome with decisions by other jurisdictions. Following this two-step method to support a first impression of the text and official comments should work to maintain the efficient and consistent administration of Article 9. The above-discussed case, *Shurlow v. Bonthius*, provides an effective roadmap to the interpretation of Article 9 by courts in cases where the literal interpretation of the text does not align with that of other jurisdictions or the official comments. From a pragmatic perspective, to do away with interpretation preferencing the Comments or policy objectives would not only frustrate the intent of the drafters but could serve to disrupt the landscape of commercial transactions in the United States. To do so would have devastating effects on the complicated scheme of property rights and allocations comprising Article 9.

CONCLUSION

While textualism has become increasingly popular since the 1980s, as evidenced by its dominance on the Supreme Court, strict textualist approaches to the interpretation of Article 9 are not consistently employed by federal, bankruptcy, or state courts. Textualism endeavors to simplify statutory interpretation to an objective science, where judges can curate a series of textual and grammatical inputs within the 'four corners of the text' to find the resulting 'correct' interpretation of any given statute. However, in the case of Article 9, this approach proves difficult due to the discordance of plain meaning definitions with both the specialized expertise needed to interpret the provisions and the intentional construction of Article 9 for a purpose-based approach to interpretation.

While many legislators have an idea or hope of how legislation will be implemented and often supplement the legislative record to convey policy preferences, the UCC presents a unique quandary for judicial interpretation. The intentional construction of the Code under a legal process and purposivist ideology of statutory interpretation raises the question of how methods of legislation premised on the idea of legal process and purposivism function during an era of predominantly textualist interpretation. Not only was the Code conceived prior to our contemporary textualist movement, but the drafters of the Code believed that a strict textualist interpretation would be ineffective in efficient administration of the UCC at best and disastrous at worst.

The normative implications of textualist interpretation should mean that, absent a finding of ambiguity in the plain text, analysis of Article 9 should be cabined to the words on the page. Even then, many strict textualists would prefer alternate methods of interpretation, exemplified by Justices like Scalia and Kavanaugh in discussions on the preferred application of canons, before resorting to something unenacted like legislative history. The surveys of Article 9 interpretation demonstrate that, despite the advent of textualism, courts have largely continued to construe the provisions in line with the purposivist ideals of drafters like Karl Llewellyn. The continued reliance on the official comments to the UCC and policy preferences of uniformity in the interpretation of Article 9 reveal inconsistencies in both the premise and application of textualist interpretations, especially for state enactments of uniform laws. Considering the inherent difficulty in applying plain meaning rationale to provisions constructed not only with technical expertise but a particular manner of interpretation in mind, the use of the Comments and uniformity in interpretations of Article 9 wins out over strict textualism.

However, Article 9 jurisprudence has not escaped the effects of textualism on contemporary statutory interpretation. As exemplified by cases like *In re Pizzano, In re Tusa-Expo,* and *Interbusiness Bank*, courts have begun to endeavor to find the 'plain meaning' in the text of Article 9 provisions. This application prompts concern for the future of Article 9 if it continues to increase, as the drafters never intended for it to be interpreted as such. The schism in interpretations over Section 9-332 discussed in Part III is the clearest example of the repercussions of a text-only approach to Article 9. A rise in this type of interpretation could necessitate increased state legislative directives explicitly dictating methods of statutory construction for uniform codes, such as to pursue the purpose of the statute above the text to maintain uniformity with other jurisdictions

The interpretation of Article 9 by the surveyed courts highlights the potential for enhanced statutory interpretation using extratextual sources, particularly for complex and technocratic areas of law not written with plain meaning or public accessibility in mind. Instead of instantly jumping to discern plain meaning interpretation, complex codifications ought to first distinguish the audience of the statute and evaluate accordingly. Further, the success of the official comments to the UCC in the efficient and effective administration of the Code suggests that other areas of law could benefit from similar accompanying materials to the official text.

Consistent interpretation is imperative to the survival of Article 9 and the efficient administration of secured transactions across the United States. As discussed in Part IV, consistency has largely been achieved through references to the official comments or decisions of other jurisdictions to achieve uniformity. As such, despite the increasing popularity of textualism at all levels of the judiciary, the acknowledgment that Article 9 ought to be approached with a purposive and legal-process mode of interpretation is not just an arbitrary or philosophical academic preference but a pragmatic necessity.