

HOW DEFINITIVE IS FOURTH AMENDMENT TEXTUALISM?

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Review of Jeffrey Bellin, *Fourth Amendment Textualism*, 118 MICH. L. REV. 233 (2019).

INTRODUCTION

Professor Jeffrey Bellin's excellent article advances a comprehensive and straightforward textual approach to determining what policing activities constitute "searches" triggering the protections of the Fourth Amendment. Bellin's thesis is that a text-based approach to interpreting the Amendment is superior to the Supreme Court's current approach,¹ which ever since *Katz v. United States*² has defined "search" primarily by reference to a non-textual "reasonable expectation of privacy" standard. After soundly criticizing the ungrounded and highly subjective nature of the *Katz* test, Bellin declares that the Court should instead simply follow where the text leads: the Amendment protects people from a search, meaning an "examination of an object or space to uncover information"³ of their own "persons, houses, papers, and effects."⁴ No more, no less. Such a textual approach generates new doctrinal rules that would replicate *Katz*'s outcomes in many respects and provide either more or less protection in others.

But Bellin's reformist agenda isn't driven by outcomes.⁵ Rather, he claims two primary advantages: his approach "infuses [Fourth Amendment] jurisprudence with a heavy dose of legitimacy and determinacy."⁶ Textualism promotes legitimacy because it dictates a specific doctrine; and textualism promotes determinacy because that doctrine "asks clearer questions and provides clearer answers than the *Katz* test, leaving fewer opportunities for subjectivity to infiltrate the doctrine."⁷ In other words, Bellin claims, a text-

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1. Jeffrey Bellin, *Fourth Amendment Textualism*, 118 MICH. L. REV. 233, 234–37 (2019).

2. 389 U.S. 347 (1967).

3. Bellin, *supra* note 1, at 257 (emphasis omitted).

4. U.S. CONST. amend. IV.

5. Bellin, *supra* note 1, at 281.

6. *Id.* at 283.

7. *Id.* at 281.

based approach generates doctrinal rules that are more justifiable and objective than does the Court's *Katz*-based approach.

I find Bellin's prescribed doctrinal rules acceptable on the whole—perhaps even preferable. But I'm not as quickly convinced that his rules are either more determined by text or more determinate of clear answers.

Bellin ably covers so much ground that I can't fully develop these reactions in this brief Essay. Building on Professor Christopher Slobogin's excellent review that succinctly lays out Bellin's entire textualist project,⁸ I'll dive deeper into two specific definitional claims to illustrate two general points.

First, as Bellin derives his proffered definitions for a Fourth Amendment "search," he unearths but silently dismisses alternative definitions that are equally consistent with the constitutional text. I'll sketch two such alternatives here: (1) police activity constitutes a "search" only if it "uncovers" some erstwhile barrier to ordinary human perception of the information acquired; and (2) a "search" triggers Fourth Amendment protection if it acquires information tethered to the target's person, house, papers, or effects, even if it does not directly search any of those things.

Second and relatedly, choosing among text-consistent definitions requires looking beyond the language. Indeed, while claiming his project divines the Amendment's original public meaning,⁹ Bellin admits to "drawing on historical sources, textual interpretation, and common sense"¹⁰ though he doesn't explain what underlying values drive his "common sense" judgments. This quiet concession confirms that textualism may help constrain options, but it cannot by itself resolve all Fourth Amendment interpretive questions.

I. "UNCOVERING" SEARCHES

Bellin defines "search" to mean "examination of an object or space to uncover information," each term of which "fleshes out an intuitive aspect of the widely understood meaning of the term."¹¹ In brief, "examination" entails "a degree of conscious effort" rather than automatic human perception.¹² "[O]f an object or space" rules out more metaphorical definitions (such as searching for truth or searching one's brain).¹³ And, of greatest in-

8. Christopher Slobogin, *The Sacred Fourth Amendment Text*, 119 MICH. L. REV. ONLINE 17 (2020).

9. Bellin embraces "the 'new textualism' approach" that "start[s] with a determination, based on evidence from the text, structure, and enactment history, of what the language in the Constitution actually means," which he also describes as divining the Constitution's "original public meaning." Bellin, *supra* note 1, at 237–38 n.24, 256 n.161 (quoting James E. Ryan, *Laying Claim to the Constitution: The Promise of New Textualism*, 97 VA. L. REV. 1523, 1524 (2011)).

10. Bellin, *supra* note 1, at 255.

11. *Id.* at 257 (emphasis omitted).

12. *Id.*

13. *Id.* at 257–58.

terest to me here, “uncover information” entails a purposive effort to obtain information “that is hidden or otherwise not apparent,” which in turn means the information is not “already apparent through standard visual and audio observation” (I’ll shorten this to “standard perception”).¹⁴

Thus defined, “search” excludes many commonplace investigative efforts such as observing a fleeing suspect,¹⁵ estimating a suspect’s height in a public place (and presumably mentally recording any other visible features),¹⁶ observing a house’s exterior and readily visible interior,¹⁷ and reading a car’s license plate.¹⁸ These exemplars are not “searches” for Bellin because the desired information is already apparent to the police through standard perception.

This is surely a commonsensical position. Indeed, although Bellin doesn’t directly compare them, this component of his proposed definition mimics *Katz* jurisprudence. Under *Katz*, people lack a reasonable expectation of privacy in information they have exposed to others.¹⁹ In each of the previous paragraph’s exemplars, the person, house, and car in public view expose those things (losing *Katz* privacy protection) in a way that makes the information obtained “readily apparent” (losing Bellin search protection). Depending on how Bellin would apply “readily apparent,” these two doctrines sufficiently converge to make Bellin’s endpoint seem eminently sensible.²⁰

That said, I’m not persuaded that Bellin’s position is determined by (rather than merely consistent with) textualism in a meaningful sense, original public meaning or otherwise.²¹

Bellin first points to “historical sources,” offering a cursory review of the two British cases widely viewed as generating the Framers’ worries about abusive searches of houses per general warrants.²² Although this history certainly suggests “search” must encompass such practices, it doesn’t guide a choice among potential broader applications. And even if “Framing-era Americans thought the term ‘search’ was self-explanatory,”²³ that doesn’t help us now.

14. *Id.* at 257–59.

15. *Id.* at 257.

16. *Id.* at 258–59.

17. *Id.* at 276–77.

18. *Id.* at 277.

19. *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

20. Bellin’s test is broader in one important respect. Under *Katz*, public exposure to anyone defeats a reasonable expectation of privacy. For Bellin, police conduct a search if they acquire information that is not readily apparent to them, even if it might be readily apparent to members of the public through standard perception. Bellin, *supra* note 1, at 259 n.171. In this respect, Bellin would find searches even where *Katz* would not.

21. See *supra* note 9 and accompanying text.

22. Bellin, *supra* note 1, at 255–56.

23. *Id.* at 256.

Bellin then offers a more straightforward “textual interpretation,” referencing four Framing-era dictionary definitions. Collectively, the definitions for “search” include these: “to seek after something lost, hid, or unknown”,²⁴ “[t]o examine; to try; to explore; to look through”;²⁵ “[t]o look over or through for the purpose of finding something; to explore; to examine by inspection”;²⁶ and “[t]o seek, look for, or be in quest of.”²⁷

To my mind, these definitions sort into two different sets. The first and more relaxed set includes “to examine,” “to explore,” “to seek,” and “to look for” (along with their variants). These terms do support Bellin’s requirement of intentional examination rather than inadvertent glance, but I see nothing in these terms suggesting that an effort to obtain information isn’t a “search” just because the information is “readily apparent” through standard human perception. Surely I “seek” or “look for” crumbs on a table or letters in a mailbox even though, if present, they will be readily apparent. Returning to Bellin’s exemplars, police “examine/explore/seek/look for” information when they estimate a suspect’s height, read a house’s address, and read a car’s license plate even though the information is readily apparent based on standard human vision. So when Bellin insists that a “search” requires information acquisition that is *not* readily apparent, he clearly embraces a narrower definition than this set of broad terms implies.

The second and much stricter set of Framing-era definitions for “search” includes “to seek after something hid” or “to look over or through.” These terms suggest that some sort of sensory barrier initially obstructs direct access to the information, such that the information is “hid[den]” and the police must “look over or through” the obstruction.²⁸ Notably, Bellin appears to capture this stricter notion by insisting that a Fourth Amendment search must “uncover” information. And the Framing-era dictionaries he consults for “search” underscore this overcome-an-obstruction notion with respect to “uncover” as well. Those early dictionaries containing an entry for “uncover” define its general sense by clearly referencing some tangible, perception-obscuring item: “to divest of a covering” and “to shew openly; to strip off a veil, or concealment,”²⁹ and “to divest of a cover; to remove any covering

24. *Id.* at 255 (quoting JAMES BARCLAY, A COMPLETE AND UNIVERSAL ENGLISH DICTIONARY ON A NEW PLAN (1782)).

25. *Id.* (quoting 2 SAMUEL JOHNSON, A DICTIONARY OF THE ENGLISH LANGUAGE (London, 6th ed. 1785)).

26. *Id.* (quoting 2 NOAH WEBSTER, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (New York, S. Converse 1828)).

27. *Id.* at 255 n.147 (quoting N. BAILEY, AN UNIVERSAL ETYMOLOGICAL ENGLISH DICTIONARY (26th ed. 1789)).

28. “Look over or through” is somewhat ambiguous—it might fall in set two as in “to look over or through an otherwise obscuring object” (such as a fence or curtain), or it might fall in set one as in “to look over or through something thoroughly or carefully” (such as a book index).

29. 2 SAMUEL JOHNSON, A DICTIONARY OF THE ENGLISH LANGUAGE (London, 6th ed. 1785).

from" and "to strip of a vail [original spelling], or of anything that conceals; to lay open; to disclose to view."³⁰

These definitions of Bellin's "uncover" component suggest that police "search" for information only when the information is initially *covered by something* that frustrates the police's ability to perceive it through standard visual or audio observation, and then the police do something to actively remove, pierce, or otherwise overcome that obstacle so that afterwards standard perception suffices to obtain the previously inaccessible (or "hidden") information. This definition is consistent with the Framers' worries about general warrants for house inspections; the house's physical structure "covered" the items and papers inside, and the writs "uncovered" the contents by permitting officers to enter the enclosed structure (or to coerce the owner to bring papers outside). Indeed, the definition encompasses pretty much all old-school searches that physically overcome tangible barriers or coverings, such as "when police enter residences, offices, and cars looking for information" and "when they look inside a bag, pat down someone's pockets, or manipulate a smart phone to access the data inside."³¹ And, depending on how one translates original public meanings into modern contexts, the definition encompasses police use of modern technologies to overcome tangible barriers or coverings, such as "when they attempt to gather information with metal detectors" (of objects hidden underneath clothing or in boxes, etc.) or with "heat sensors" (of heat contained behind walls, etc.).³²

If Bellin stopped here, he'd have a defensible text-based definition: a "search" entails the physical or technological circumvention of some sort of covering or barrier that initially precludes police from acquiring information through normal visual, audio, or other sensory perception. And, I submit,

30. 2 NOAH WEBSTER, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (New York, S. Converse 1828). The other definitions involve specific examples of physical uncoverings, including removal of clothing, roofs, and hats. *Id.*

Contemporary usage continues to suggest that "uncover" means to undo, to circumvent, or to pierce something that obstructs standard sensory perception of an underlying thing, though some definitions might invite a broader perspective. Popular dictionaries define "uncover" with such terms as "to expose to view by removing some covering," to "lay open or bare by the removal of some covering thing or matter," and "to deprive of protection" (which clearly involve overcoming a barrier to perception), along with "to make known," to "bring to light," to "lay bare," to "disclose," or to "discover (something previously secret or unknown)" (admittedly somewhat less clear). See, e.g., *Uncover*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/uncover> [<https://perma.cc/AY8U-H54J>]; *Uncover*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/dictionary/english/uncover> [<https://perma.cc/X569-QP3Z>]; *Uncover*, DICTIONARY.COM, <https://www.dictionary.com/browse/uncover> [<https://perma.cc/9MW8-7DAD>]; *Uncover*, MACMILLAN DICTIONARY, <https://www.macmillandictionary.com/dictionary/british/uncover> [<https://perma.cc/6JEH-A242>]; *Uncover*, OXFORD ENGLISH DICTIONARY, <https://www.oed.com/view/Entry/210997> (on file with the *Michigan Law Review*); *Uncover*, LEXICO, <https://www.lexico.com/en/definition/uncover> [<https://perma.cc/Y7X8-ZVAG>].

31. Bellin, *supra* note 1, at 259.

32. *Id.*

this definition could support a plausible and provocative set of doctrinal rules.

But Bellin does not appear to stop here, as he instead translates “uncover” into the broader concept of “hidden or otherwise not apparent” and sometimes illustrates uncoverings through scenarios that don’t involve overcoming any obstruction. For example, Bellin juxtaposes two different police efforts to obtain information from inside a house. First, he says, “[p]ointing a flashlight or binoculars at a house to identify the address, or the source of a strange noise, is not a search of the house” because “[t]he police officer who observes the house’s exterior, *and even what is displayed in a window*, gleans only what is already apparent.”³³ In other words, standing outside and looking through the window to see objects sitting on an interior windowsill is not a search. Second, by contrast, “[s]tanding on a porch ‘to peer through your windows, *into your home’s furthest corners*’ . . . is a search of the house” because “[t]he officer on the porch using a flashlight or binoculars to peer into the house examines the house *to uncover* information, conducting a Fourth Amendment ‘search.’”³⁴ In other words, standing outside and looking through the window to see objects much further inside the house is a search. Although Bellin may be correct that only the second observation of the house’s furthest corners acquires information that’s not “readily apparent,” it’s difficult to attribute this conclusion to any police activity removing an erstwhile barrier to standard perception. Let’s ponder some options.

Perhaps the window constitutes a “cover” that the second observation circumvents? We don’t normally think of a presumably transparent window as imposing a barrier for human vision. Of course, if the police officer in the second scenario cleared some smudges off the glass or pushed aside leaves that didn’t obscure vision of a large object on the interior windowsill but did initially obscure vision of items deeper within the house, her acts of clearing the window for better sight would easily qualify as uncovering. Here’s a harder case: suppose the officer could see large items on the windowsill but nothing beyond because the window reflected most light due to glare of sunshine or reflection of streetlamps, or because partly closed blinds made it difficult to identify objects that were visible but positioned further back. And suppose the officer in the second scenario repositioned herself by moving closer or taking a different angle until the reflection dissipated or the blinds obscured less. Moving to improve her sightline circumvented the erstwhile barrier to her vision, even without her physically removing a tangible barrier. Should this qualify as uncovering? Interesting questions abound as to what

33. *Id.* at 276–77 (emphasis added).

34. *Id.* (emphasis added) (quoting *Florida v. Jardines*, 569 U.S. 1, 12 (2013) (Kagan, J., concurring)).

acts might qualify as overcoming an obstruction. But Bellin doesn't explore let alone rely on them.³⁵

Or perhaps using a flashlight or binoculars circumvents some erstwhile barrier to standard perception? This also can't explain Bellin's distinction, as the officer uses these tools in both of Bellin's aforementioned scenarios. But again, this hypothesis is interesting. Might we view the flashlight as overcoming an *intangible* barrier imposed by darkness (as in "under cover of darkness"), treating the darkness as interfering with a standard of normal daytime vision? Perhaps other technologies might similarly overcome such intangible barriers, such as infra-red goggles detecting things "through cover of" darkness or fog, or parabolic microphones detecting sounds "through cover of" ambient noise.³⁶ A rule encompassing intangible as well as tangible "coverings" would also be interesting to explore, potentially defining some efforts as "searches" that *Katz* jurisprudence does not.³⁷

So when comparing Bellin's two scenarios (which again both involve perception-enhancing technologies), the second police act of "peer[ing] . . . into your home's furthest corners" seems not to be associated with piercing or circumventing any erstwhile tangible or even intangible covering or sensory barrier. Rather, in Bellin's view, this second act apparently "uncovers" information, whereas the first act of seeing what's "displayed in a window" does not, merely because the second act requires more effort—"peering"—perhaps looking longer, squinting, or focusing more intently. In other words, whatever is visible in the house's furthest corners is *apparent*, just not *readily* so. And again Bellin gets to this point by broadening "uncover" to include information that is "hidden or otherwise not apparent" (or not "readily" or "already" apparent) rather than requiring any actual uncovering.

So let's take stock. In deriving his textual definition of Fourth Amendment "search," Bellin exercises discretion twice. First, he includes "uncover" as one component even though only some of his Framing-era dictionary definitions suggest such a concept, implicitly dismissing the broader definitions that would encompass "seeking" or "looking for" anything perceptible even if readily apparent. Second, he defines "uncover" to include obtaining information that is "hidden or otherwise not apparent," implicitly dismissing a consistently narrower Framing-era definition that requires overcoming or circumventing some barrier to or interference with standard human perception. I think these two alternatives deserve greater consideration, whether by Bellin or others (including me!). In the end, perhaps "common sense" sup-

35. He does describe the officer in the second scenario as standing on the house's porch, but he doesn't suggest that this explains the difference (either along the lines discussed above or any others). *Id.* at 276–78.

36. It's difficult to extend the same characterization to binoculars, which might be said to *transcend* a natural distance limitation on visual perception but not to pierce erstwhile tangible or intangible barriers to vision. Same for conventional eyeglasses, contact lenses, and hearing aids.

37. See, e.g., *Texas v. Brown*, 460 U.S. 730, 739–40 (1983) (using a flashlight to peer inside car isn't a search).

ports Bellin's Goldilocks position. But this deep dive uncovers (hah!) one place (among several, in my view) where Bellin defines terms in a way that is consistent with—but certainly not determined by—a method meaningfully described as “textualism,” original public meaning or otherwise.

Thus far I've focused on Bellin's claim that his definition of “search” is more determined by the Fourth Amendment text, and therefore more “legitimate,” than *Katz*'s current approach. Recall that Bellin also claims that his definition enhances “determinacy” by “provid[ing] clearer answers” than does *Katz*.³⁸ It's worth noting that of the three plausible definitions of “search” discussed above, Bellin's definition seems the least doctrinally determinate. Equating “search” with “examine/explore/seek/look for” would provide very clear (if very broad) answers. And equating “search” with “to remove a cover” would provide fairly clear (if much narrower) answers, with some quibbling over tangible vs. intangible covers, etc. But equating “search” with “to acquire information not readily apparent” largely replicates the *Katz*-based test of whether the information has been publicly exposed, at least to the police. I'm not sure this approach moves the needle much re: determinacy.

II. SEARCH “OF” TETRAD OBJECTS

Now let's turn to a second Bellin proposal. While *Katz* protects people from any search that invades their reasonable expectations of privacy, Bellin's text-based approach would protect people from searches of only what I call their tetrad objects: “their persons, houses, papers, and effects.”³⁹ More specifically, claims Bellin, the Fourth Amendment is triggered only if the search is *of* one of those objects and not merely informative *about* one of those objects. As he puts it: “The terms ‘persons, houses, places and effects’ are listed in the Fourth Amendment as potential objects of searches: things the police might search. These terms are not search outcomes: things police might find.”⁴⁰ This search-of reading excludes Fourth Amendment scrutiny of many common surveillance practices. There's a difference, he explains, between searching open space (whether by eyesight, satellite camera, or whatever) to locate a particular person/house/car and searching a particular person/house/car to determine its location. Police obtain the same information—where the object is located—but only the second search triggers Fourth Amendment scrutiny as a *search of* a tetrad object.⁴¹

38. Bellin, *supra* note 1, at 281.

39. U.S. CONST. amend. IV.

40. Bellin, *supra* note 1, at 260 (quoting U.S. CONST. amend. IV).

41. *Id.* at 260–61. As elsewhere, I'm not convinced this line is as clear as Bellin suggests. Apparently police search open space to find a car when they use their own eyesight to track the car's route, but they search the car itself if they affix to the car a beeper emitting signals that lets them remotely track the car's location. *Id.* at 277. Why does the beeper necessarily “examine . . . the vehicle,” *id.*, rather than examine space to find the car? Don't the police search open airspace for a particular radio signal in order to locate the source of that signal from which they

Bellin declares that this search-of limitation “follows from the text,” without further explanation.⁴² But this simple pronouncement is complicated by his own recounting of the Amendment’s drafting history.

When later defining the term “effects,” Bellin finds it significant that the Amendment’s language was derived from two state models. The Massachusetts Constitution stated: “Every subject has a right to be secure from all unreasonable searches and seizures, of his person, his houses, his papers, and all his possessions.”⁴³ And Virginians proposed “[t]hat every freeman has a right to be secure from all unreasonable searches and siezures [sic] of his person, his papers and his property.”⁴⁴ Bellin uses the shift from “possessions” and “property” in the state models to “effects” in the federal text to help define the latter term.⁴⁵

But note that both the Massachusetts and Virginia models specifically describe “*searches . . . of*” the listed objects, whereas the Fourth Amendment text does not. Rather, the enacted text gives people the right to be *secure in* their tetrad objects *from* unreasonable searches. That modified language does not quite say, as did the state models, that searches threatening the security of the tetrad objects must be searches of those objects.

Indeed, the federal language is fully consistent with the notion that searches trigger Fourth Amendment coverage if they reveal information *about* those tetrad objects that violates their owner’s security. And if security is defined to encompass notions of privacy as well as property, one might just as plausibly declare it “follows from the text” that the Amendment protects people from unreasonable searches of *anything* when the search reveals information that violates their privacy interests in their persons, houses, papers, and effects.

Under this security-of approach, the information might be meaningfully tethered to a tetrad object in various ways. Perhaps it suffices that during the Framing era, the revealed information typically would have been hidden within one of those objects (say, information about the target’s sexual interests and habits typically would have been revealed only within her home). Perhaps it suffices that the revealed information is particularly intimate or sensitive and is about one of those objects (say, information about a tattoo on the target’s body). Perhaps other connections suffice.

can infer the car’s location? Sure, the ping in some sense “comes from” the car. But when police visually follow a car, the information enabling the police to keep identifying its location (the car’s model, color, license plate) likewise “comes from” the car. Suppose instead the police secretly mount on the car’s hood a small video camera and view the camera’s live feed to determine where the car is (by reading street signs, recognizing visible markers, etc.). Wouldn’t the police thereby search open space (in front of the car) through the affixed camera rather than search the car itself? How is this meaningfully different from using a beeper?

42. *Id.* at 260.

43. *Id.* at 263 (quoting MASS. CONST. art. XIV).

44. *Id.* (quoting THE COMPLETE BILL OF RIGHTS: THE DRAFTS, DEBATES, SOURCES, AND ORIGINS 343 (Neil H. Cogan ed., 2d ed. 2015)).

45. *Id.* at 262–66.

Such a security-of approach would trigger broader Fourth Amendment scrutiny than Bellin's search-of limitation, but narrower scrutiny than *Katz*'s open-endedness. Contra Bellin's position, the security-of approach might encompass searches that compromise Mary's privacy qua security in her tetrad objects even if the searches were of something else—whether of someone else's tetrad objects (say, a tattoo-revealing photo of Mary taken in her home by Bob who owns the “paper” photo), or indeed of something that isn't a tetrad object at all (say, an open field in which Mary stands revealing her tattoo). And contra *Katz*, the security-of approach might exclude, say, long-term location information in which people have a reasonable expectation of privacy per *Carpenter v. United States*⁴⁶ (absent a persuasive tethering argument that such information implicates one's “person”), and it might also exclude the conversation recorded in *Katz* itself (absent a persuasive tethering argument that such incriminating conversations would traditionally have not been overheard because they typically would have occurred inside a house⁴⁷).

Is this security-of limiting principle a *better* reading of the text than Bellin's search-of limiting principle? I dunno: it seems to me that either proposal is consistent with the text and neither is driven by it. I'm hard-pressed to say that textualism, without more, clearly points in Bellin's direction.

CONCLUSION

Bellin's careful doctrinal analysis produces an eminently reasonable definition of a Fourth Amendment-triggering search, one I might even ultimately embrace—though only after exploring the counterproposals Bellin has provoked me to identify here. Despite the interpretive trappings, however, I think Bellin's own position is neither as textually determined nor as doctrinally determinate as he claims. Perhaps it “outperform[s] *Katz*” in these respects.⁴⁸ But the Fourth Amendment's text can support multiple plausible interpretations, and choosing among them therefore requires some normative guidepost(s). Bellin himself invokes only “common sense” as if that's self-defining, without explaining what underlying values make one position more commonsensible than others. In my view, Bellin must offer more to seal the deal. Despite his admirable efforts—for which he deserves great kudos—textualism may narrow the set of options, but it alone doesn't dictate all of the answers.

46. 138 S. Ct. 2206 (2018).

47. Bellin, *supra* note 1, at 265 n.213. This argument strikes me as quite a stretch. But note that Bellin himself teasingly suggests that “phone booths” might be included in the term “house” (which again questions how determinate the text might be). *Id.* at 265 n.213.

48. *Id.* at 281.