### Humphreys

#### Scratch second CP

#### New: The United States Federal Government should overrule Humphrey’s Executor.

### CP---1NC

Distinguish CP---

#### The United States Federal Government should establish property is subject to regulations by narrowing its understanding of what constitutes inviolable but clarify that factors specific solely to collective bargaining rights render it inapplicable in that context.

#### The United States Congress should ban bankruptcy collective bargaining rights.

#### That solves and avoids the DA.

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Daniel B. Rice and Jack Boeglin, Associate, Covington & Burling LLP, “Confining Cases to Their Facts,” Virginia Law Review, Vol. 105:865, 2019, https://www.virginialawreview.org/wp-content/uploads/2020/12/RiceBoeglin\_Book.pdf

Perhaps this hypothetical is not as far-fetched as it seems. Through the little-known practice of “confining a case to its facts,” courts can achieve the near-equivalent of overruling with only a fraction of the trouble. Under our definition, when a court engages in confining, it repudiates the legal principle underlying a case, replacing it with a new, “correct” principle.5 In this respect, confining is very much like overruling. But unlike overruling, confining preserves the precedential force of a repudiated principle for future cases presenting the same facts as the one being confined.6 Confining thus splits a doctrinal area in two. When a confined case’s facts recur, the case will continue to be treated as good law. In all other factual scenarios, however, the confined case will be regarded as having been overruled. 7

How, one might ask, does creating this doctrinal fissure reduce the costs of overruling? Remember first that courts’ desire not to disturb reliance interests ordinarily functions as a brake on legal correction.8 Confining eases off this brake by enabling certain reasonable expectations— those formed in reliance on the particular facts of the confined case—to remain unaffected by a principle’s repudiation. Under certain conditions, then, confining can permit a court to move the law in its preferred direction and avoid overly disrupting reliance on an earlier decision.

Of course, respect for reliance interests is not the only reason courts maintain fealty to precedent. The pace of legal change is slowed, too, by the formal constraints courts have imposed on themselves when deciding whether to overrule a case. Confining has found use as an effective mechanism for casting off these constraints. Consider the Supreme Court’s avowed commitment to overruling a case only when it can articulate a “special justification” for doing so—one that transcends mere disagreement with the case’s reasoning. This requirement has not been understood to apply to confining,9 even though confining eviscerates everything a case stands for except its precise result.10 Similarly, although each federal court of appeals forbids three-judge panels from overruling circuit precedent, panels have frequently gutted earlier decisions through the use of confining.11 By labeling these deviations from precedent “confining,” in short, courts have successfully skirted the formal requirements of stare decisis.

Confining likewise enables federal courts to sidestep the Supreme Court’s prohibition on “prospective overruling”—i.e., continuing to treat a case as good law only with respect to conduct predating its overruling.12 During the Warren Court era, prospective overruling was often called upon to soften the blow to reliance interests occasioned by the Court’s doctrinal course-corrections.13 The Court’s retroactivity doctrine has since made clear, however, that federal courts may not apply new principles selectively in order to accommodate reasonable expectations.14 But this is precisely what happens with confining.15 This discrepancy— oddly—appears to have gone unnoted by jurists and scholars alike. Finally, courts may have engaged in confining precisely because it is so poorly understood. Judge for yourself the more eye-grabbing headline: “Supreme Court Overrules Smith v. Jones” or “Supreme Court Confines Smith v. Jones to Its Facts.” Confining’s relative lack of name recognition has allowed courts to quietly sweep aside disfavored precedents. A confining judge can say “with a straight face, ‘I didn’t vote to overrule it. I simply limited the earlier decision to its facts.’”16

Confining can thus embolden courts to depart from precedent even when overruling might come at too dear a price. But the very features of confining that make it so appealing to judges also pose considerable— and strangely underexplored—threats to a judicial system predicated on principled adjudication. By providing a method for courts to carve out exceptions to generally applicable doctrinal rules, confining encourages judges to decide cases based purely on pragmatic concerns, rather than on principle. By creating an easy workaround to the formal obligations that attend overruling precedent, confining dangerously loosens the constraints of stare decisis. And by allowing courts to undermine precedent in a low-visibility manner, confining impairs the public’s ability to oversee the work of the judiciary.

Confining also runs headlong into fundamental concerns about the nature and scope of judicial authority.17 The practice of confining entails a marked departure from the ordinary judicial role in two key respects. First, it causes courts to decide future cases in a concededly unprincipled manner. Once a case has been confined to its facts, the operative question becomes whether a new case is factually distinguishable from it in any respect—even if the cases cannot be distinguished in any principled manner. And second, confining requires courts to continue applying principles that they have already held to be invalid. In this way, confining causes incompatible legal principles to coexist with one another, with each regarded as “good law” in some sense. No other method of treating precedent calls upon courts to engage in purely fact-bound adjudication, or to construct a jurisprudence at war with itself.18