I spend a lot of time thinking about statutory interpretation. As a professor of legislation, I teach the dominant theories of textualism, intentionalism and purposivism. The students learn the canons of construction, the use of dictionaries and the policies driving certain interpretive choices.

Inevitably there comes a point each semester where the students, armed with tons of new information about interpretive methodology, begin to feel a little disheartened.

Is interpretation really just a matter of which judge writes the opinion? Does this make our system of law too arbitrary? At this point, I generally ask the students to consider how they were sold to voters. Here is the role of the voters in all of this. After all, lawmakers ultimately are held accountable through the vote and people vote on their understandings of the laws that their lawmaker has supported while in office.

While there is an official legislative record for each federal law — including transcripts of floor speeches, amendments and committee reports — these official records do not contain the innumerable “unofficial” ways that lawmakers communicate with their constituents.

New media technologies like Twitter and Facebook provide multiple forums, in addition to the more traditional television and press quotes, for legislators to market their laws to the people during the legislative process.

This marketing keeps their constituents apprised of their doings and allows the lawmakers to win political favor and spin legislation as a public good, regardless of the legislation’s actual intent or text. The marketing of the law forms a sort of “public” legislative history, but one the courts generally ignore.

I believe the courts should give this “public” legislative history more weight, both to give a democratically principled backbone to the interpretive process and also to try to offset situations where legislators say one thing publicly and write another. And if the “public” legislative history conflicts with the text or the official legislative history, courts should honor the way in which the law was sold to the voters.

This type of interpretive methodology could have very practical effects. Last week, the U.S. Supreme Court received a petition that contains a legislative process precisely on point. Mississippi ex rel Hood v. AU Optronics Corp. asks the U.S. Supreme Court to decide whether a parens patriae action brought by a state attorney general under state law, and where the state is the sole plaintiff, is considered a “mass action” under the Class Action Fairness Act of 2005 and thus removable to federal court.

The Class Action Fairness Act of 2005 (CAFA) grants federal jurisdiction to class actions and mass actions. Mass actions are defined in the law as simultaneous claims of 100 or more persons involving minimal diversity, which is satisfied when “any member of a class of plaintiffs” has different state citizenship from any defendant.

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While the 7th U.S. Circuit Court of Appeals and others have held that parens patriae lawsuits are neither class actions nor mass actions under CAFA, the 5th Circuit held that these lawsuits, like AU Optronics Corp., should be considered mass actions under the act.

If the court grants cert, it will face the task of interpreting whether the law encompasses these types of parens patriae lawsuits, although the text itself is silent on this issue. What makes this particular legislative history so compelling from the perspective of democratic accountability is that there was an amendment proposed by U.S. Sen. Mark Pryor, D-Ark., to clarify that CAFA would not apply to state attorneys general and their parens patriae lawsuits.

The amendment failed, but only after the bill’s supporters repeatedly, and in many public forums, stated that there is no danger of this law being interpreted to include state attorneys general. One of the bill’s supporters was quoted in an Associated Press news report as stating the amendment was unnecessary because the bill “does not impede any authority of any attorney general.” There were many similar sentiments expressed in multiple forums by most of the bill’s supporters who nevertheless voted against the Pryor Amendment.

The legislative history gets even more interesting. The Senate committee report makes clear that the law was intended to “strongly favor federal jurisdiction” and instructs the courts to interpret the law “liberally.” The committee report also states that the vast majority of cases brought under state consumer fraud laws could qualify as removable mass actions. But the committee report was not entered into the record until 10 days after the law was passed.

While the 5th Circuit emphasized the language in the Senate report when it held that parens patriae suits are mass actions, many other courts have discounted the Senate committee report due to its questionable timing.

However, no court has taken the interpretive approach of holding lawmakers to their public statements on pending legislation when faced with ambiguity. To do so would remove the possibility of lawmakers receiving public credit for a law that was drafted vaguely and combined with an “official” legislative record setting up the opposite interpretation from the public marketing of the law.

If the court grants certiorari in this case, it has a chance to interpret silent text in a democratically sound and accountability-enforcing manner. By focusing on the clear public message by the bill’s supporters, that CAFA in no way applies to these types of state attorney general lawsuits, the court would set a positive precedent for the interpretive process.