mysticism. Short of summoning ghosts and spirits, how are we to know what those in a past Congress might think about a question they never expressed any view on—and may have never foreseen?

Let's be honest, too. These legislative séances usually wind up producing only the results intended by those conducting the performance: "When you are told to decide, not on the basis of what the legislature said, but on the basis of what it *meant*, . . . your best shot at figuring out what the legislature meant is to ask yourself what a wise and intelligent person *should* have meant; and that will surely bring you to the conclusion that the law means what you think it *ought* to mean." Scalia, Common Law Courts in a Civil-Law System, in A Matter of Interpretation: Federal Courts and the Law 18 (A. Gutmann ed. 1997); see also *United States* v. *Public Util. Comm'n of Cal.*, 345 U. S 295, 319 (1953) (Jackson, J., concurring) (describing that process as "not interpretation of a statute but creation of a statute"). The crystal ball ends up being more of a mirror.

Our case illustrates the problem. The Court apparently believes that Congress would have wanted us to render PTAB decisions reviewable by the Director. This regime is consistent with the "'standard federal model'" for agency adjudication. Walker & Wasserman, The New World of Agency Adjudication, 107 Cal. L. Rev. 141, 143–144 (2019). It's easy enough to see why a group of staid judges selecting among policy choices for itself might prefer a "standard" model. But if there is anything we know for certain about the AIA, it is that Congress *rejected* this familiar approach when it came to PTAB proceedings. Multiple *amici* contend that Congress did so specifically to ensure APJs enjoy "independence" from superior executive officers and thus possess more "impartiality." Brief for Fair Inventing Fund as *Amicus Curiae* 20–21 (quoting legislative history that Congress desired a "'fairer'" and "'more objective'" process); see also, *e.g.*, Brief for New Civil Liberties Alliance as *Amicus*

Curiae 6 (Congress sought "to preserve the independence of those conducting inter partes review"); Brief for US Inventor Inc. as *Amicus Curiae* 22 ("[I]t is plainly evident that Congress would not have enacted an APJ patentability trial system that was more political than the one they did enact"); Brief for Cato Institute et al. as *Amici Curiae* 20 (It was a "conscious congressional decision to provide individuals with the power to adjudicate (and often destroy) vested patent rights with some level of independence"). All of which suggests that the majority's severability analysis defies, rather than implements, legislative intent. At the least, it is surely plausible that, if faced with a choice between giving the power to cancel patents to political officials or returning it to courts where it historically resided, a Congress so concerned with independent decisionmaking might have chosen the latter option.

My point here isn't that I profess any certainty about what Congress would have chosen; it's that I confess none. Asking what a past Congress would have done if confronted with a contingency it never addressed calls for raw speculation. Speculation that, under traditional principles of judicial remedies, statutory interpretation, and the separation of powers, a court of law has no authority to undertake.

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If each new case this Court entertains about the AIA highlights more and more problems with the statute, for me the largest of them all is the wrong turn we took in *Oil States*. There, the Court upheld the power of the Executive Branch to strip vested property rights in patents despite a long history in this country allowing only courts that authority. See 584 U. S., at ___–___ (GORSUCH, J., dissenting) (slip op., at 8–10). In the course of rejecting a separation-of-powers challenge to this novel redistribution of historic authority, the Court acknowledged the possibility that permitting politically motivated executive officials to "cancel"