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Yates v. United States: Floundering About in the Choppy Waters of Statutory Interpretation

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Note

YATES v. UNITED STATES: FLOUNDERING ABOUT IN THE CHOPPY WATERS OF STATUTORY INTERPRETATION

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In *Yates v. United States*,[1] the United States Supreme Court analyzed 18 U.S.C. § 1519[2] of the Sarbanes-Oxley Act, which prohibits persons from "destroy[ing] . . . record[s], document[s], or tangible object[s] with the intent to impede, obstruct, or influence" a federal investigation.[3] Specifically, the Court examined the term "tangible object," as used in Section 1519, in order to determine its meaning and resolve ambiguity. The *Yates* Court considered two possible interpretations of "tangible object": (1) a narrow interpretation, where "tangible object" refers *only* to objects that can be "used to record or preserve information," or (2) a broad interpretation, where "tangible object" refers to *any* physical object.[4] The Court held that the narrow interpretation was correct, and therefore concluded that "tangible object" denoted *only* objects that can "record or preserve information."[5] The Court's judgment was correct due to its accurate interpretation of legislative history and congressional intent, and its use of the canons of construction, *noscitur a sociis* and *ejusdem generis*.[6] The Court erred, however, when it inappropriately discussed the rule of lenity to expound upon

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1. 135 S. Ct. 1074 (2015).

2. 18 U.S.C. § 1519 (2012).

3. *Id.* Section 1519 subjects whoever "knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or *tangible object* with the intent to impede, obstruct, or influence [an] investigation" to up to twenty years imprisonment. *Id.* (emphasis added).

4. *Yates*, 135 S. Ct. at 1079–81.

5. *Id.* at 1079.

6. *See infra* Part IV.A.

policy concerns related to over-criminalization, and it mistakenly applied the canon against surplusage to Section 1512(c)(1) instead of Section 2232(a).[7] Nevertheless, the Court's reasoning did imply that Section 1519 is *only* applicable in financial fraud cases.[8] This inference may provide lower courts with instructive guidelines so as to prevent erroneous application of Section 1519 in the future to non-financial fraud cases.[9]

I. THE CASE

On August 23, 2007, Officer Jones of the Florida Fish and Wildlife Conservation Commission boarded the fishing vessel the *Miss Katie* to ensure it was in compliance with federal fishing laws after noticing that it was using commercial fishing gear.[10] While aboard, Officer Jones observed three red grouper that he suspected were shorter than the legally required twenty inches, which prompted him to measure the rest of the catch.[11] In doing so, he discovered that seventy-two fish were, in fact, shorter than twenty inches.[12] Consequently, Officer Jones placed the undersized fish in crates and instructed the captain, John Yates, to leave them undisturbed until the vessel reached port so that they could be seized on shore.[13]

When the *Miss Katie* arrived at port, Officer Jones returned to measure Yates's catch, but found this time that all of the grouper narrowly met the twenty-inch legal minimum, which lead him to suspect that Yates replaced the small grouper with legal-sized fish after he had departed.[14] Consequently, Officer Jones questioned a *Miss Katie* crewmember, Thomas Lemons, who admitted that Yates had ordered him to throw the undersized fish overboard and replace them with ones from the rest of the catch that were closer to twenty inches.[15] The government charged Yates with violating 18 U.S.C. § 2232(a)[16] and 18 U.S.C. § 1519 in the United States District Court for the Middle District of Florida.[17] At the close of the government's case, Yates

7. *See infra* Part IV.B.

8. *See infra* Part IV.C.

9. *Id.*

10. United States v. Yates, 733 F.3d 1059, 1061 (11th Cir. 2013), *rev'd*, 135 S. Ct. 1074 (2015). Officer Jones was deputized as a federal officer and thus had the authority to enforce federal fishing laws. *Id.*

11. *Id.*

12. *Id.* at 1061 n.2 (citing 50 C.F.R. § 622.37(d)(2)(ii) (2007)) (requiring that all grouper harvested for commercial purposes are a minimum of twenty inches).

13. *Yates*, 733 F.3d at 1061. Officer Jones also issued Yates a citation for the undersized fish before departing. *Id.*

14. *Id.*

15. *Id.* at 1061–62.

16. 18 U.S.C. § 2232 (2012) (prohibiting property destruction where it impairs Government's lawful authority to seize such property).

17. *Yates*, 733 F.3d at 1062–63. The trial court found Yates guilty of violating 18 U.S.C. § 1519 for "destroying or concealing a 'tangible object with the intent to impede, obstruct, or in-

moved for judgment of acquittal on all counts, which the district court denied.[18] Yates contended Section 1519 was inapplicable because it was "a records-keeping statute aimed solely at destruction of records and documents, and could not be applied . . . where it was fish which were destroyed."[19] The district court rejected Yates's argument, and instead, applied the Eleventh Circuit's broad interpretation of Section 1519.[20] Consequently, it concluded that it was reasonable for a jury to find that a fish was a "tangible object" under the statute.[21] The jury subsequently convicted Mr. Yates of violating 18 U.S.C. § 2232(a) and 18 U.S.C. § 1519.[22]

On appeal, Yates argued that the district court erred in denying his motion for judgment of acquittal.[23] Specifically, Yates asserted that the district court erred in convicting him under Section 1519 because a "tangible object," as used in the provision, only applied to objects related to recordkeeping, which fish are not.[24] The Court of Appeals for the Eleventh Circuit rejected Yates's argument and affirmed the district court's ruling.[25] First, the court reasoned that Section 1519's language was unambiguous, making it unnecessary to examine its intent or legislative history.[26] Second, it determined that because "tangible object" was not explicitly defined within the statute, its plain meaning applied, which the court found "unambiguously applies to fish."[27] Finally, the Circuit Court posited that since Section 1519 was unambiguous, the rule of lenity did not apply.[28] The Supreme Court granted certiorari to determine whether "tangible object," as used within 18

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fluence' the government's investigation into harvesting undersized grouper." *Id.* (quoting 18 U.S.C. § 1519 (2012)). The trial court also found Yates guilty of violating 18 U.S.C. § 2232(a) for "knowingly disposing of undersized fish in order to prevent the government from taking lawful custody and control of them." *Id.* at 1062 (citing 18 U.S.C. § 2232(a) (2012)).

18. *Id.* at 1063. With regard to § 2232(a), Yates argued that the fish were not actually undersized, but they only appeared undersized because Officer Jones incorrectly measured them with their mouths closed, and that if the fish were measured properly, with their mouths open, they would have been the requisite twenty inches. *Id.*

19. United States v. Yates, No. 2:10–cr–66-FtM-29SPC, 2011 WL 3444093, at *1–2 (M.D. Fla., Aug. 8, 2011).

20. *Id.* at *1.

21. *Id.*

22. *Yates*, 733 F.3d at 1062–63.

23. *Id.* at 1063.

24. *Id.* Yates also argued on appeal that (1) the rule of lenity should apply because § 1519 is ambiguous; (2) the trial court erred in convicting him under §§ 2232(a) and 1519 because it incorrectly determined that the grouper were less than twenty inches; and (3) the court mistakenly prohibited him from calling a witness. *Id.*

25. *Id.* at 1064.

26. *Id.*

27. *Id.* (quoting BLACK'S LAW DICTIONARY 1592 (9th ed. 2009)) ("defining 'tangible object' as '[h]aving or possessing physical form'"); *see also* THE AMERICAN HERITAGE DICTIONARY 1242 (2d ed. 1985) ("[T]angible—Discernable by the touch; capable of being touched; palpable.").

28. *Yates*, 733 F.3d at 1064.

U.S.C. § 1519, referred to *any* physical object, or referred *only* to objects that can be used to preserve or record information.[29]

II. LEGAL BACKGROUND

The United States Supreme Court employs various analytical tools to interpret statutes, which have developed over time into instructive mechanisms of statutory construction.[30] Part II.A of this Note discusses how the Court examines plain meaning and context to interpret statutes. Part II.B discusses the Court's diverging perspectives as to whether legislative history should be analyzed when construing statutes, and at what point it should be utilized during the process of statutory interpretation. Part II.C illustrates the Court's application of the rule of lenity. Part II.D provides background on (1) the Enron accounting fraud scandal that prompted Congress to enact the Sarbanes-Oxley Act, (2) the legislative history of 18 U.S.C. § 1519, and (3) how Section 1519 has thus far been interpreted and applied by lower courts.

A. The United States Supreme Court Uses Tools of Statutory Interpretation to Determine Whether a Statute's Language Is Ambiguous and to Resolve Apparent Ambiguity

Traditionally, the Court proceeds through the process of statutory interpretation in a systematic manner. First, it will assess whether a statute's "plain meaning" is clear, that is, whether the language of a statute is unambiguous and understandable.[31] If the Court determines that the language is unequivocal, it will end its statutory interpretation analysis and adhere to the provision's text as it is written.[32] However, if the Court determines that the text is unclear, it will use other tools of statutory construction to resolve the ambiguity.[33] The Court has also employed an alternative method of statutory interpretation, however, wherein it construes a provision by *simultaneously* assessing plain meaning and other mechanisms of statutory interpretation because an examination of plain meaning in isolation is never dis-

29. Yates v. United States, 135 S. Ct. 1074, 1081 (2015) (plurality opinion).

30. *See infra* Part II.A–B.

31. *See* Muscarello v. United States, 524 U.S. 125, 127–28 (1998) (initially assessing the plain meaning of "carry" to determine the scope of 18 U.S.C. § 924(c)(1)); *see also* United States v. Am. Trucking Ass'ns, 310 U.S. 534, 543 (1940) (explaining that a statute's text is the most "persuasive evidence" a court may use to resolve ambiguity, and when it is clear, its plain meaning is followed).

32. *See* Nix v. Hedden, 149 U.S. 304, 306 (1983) (relying on the plain meaning of both "vegetable" and "fruit" to reason that a tomato was taxable under the Tariff Act); *see also* United States v. Locke, 471 U.S. 84, 93 (1985) (relying on the plain meaning of the phrase "prior to December 31st" to hold that the language was unambiguous and required filing before December 31st).

33. *See infra* Part II.A–B.

positive.[34] Part II.A.1 outlines the Court's use of plain meaning. Parts II.A.2 and II.A.3 discuss other tools the Court may use to construe a statute, either in conjunction with, or after a plain meaning analysis. Specifically, Part II.A.2 describes the Court's use of three canons of construction, and Part II.A.3 describes how the Court might examine statutory context.

1. The Court Examines the Plain Meaning of Statutory Language to Assess Whether a Statute Is Ambiguous

Absent a statutory definition, the Court will use various mechanisms to try to interpret the meaning of a statute.[35] One of the most prominent tools of statutory interpretation is an analysis of a provision's plain meaning, which courts apply either exclusively, or in conjunction with other mechanisms of statutory construction.[36] To discern plain meaning, the Court has historically considered, among other things, a term's dictionary definition, meaning in "common parlance," and traditional construction in the legal realm.[37] In *Nix v. Hedden*,[38] the Court adamantly adhered to the plain meaning of "tomato" as used in the Tariff Act of March 3, 1883 to resolve ambiguity.[39] In *Nix*, the plaintiff sought to recover duties he paid under the Act for importing tomatoes.[40] He argued that tomatoes were not regulated by the Act because it specifically imposed taxes on the importation of *vegetables*, and tomatoes are a *fruit*.[41] The Court held that a tomato is not a fruit because of the dictionary definitions of "fruit" and "vegetable," and testi-

34. *See infra* note 79.

35. *See, e.g.*, Smith v. United States, 508 U.S. 223, 228 (1993) (noting that "[w]hen a word is not defined by a statute, we normally construe it in accord with its ordinary or natural meaning" (citing Perrin v. United States, 444 U.S. 37, 42 (1979))); Gustafson v. Alloyd Co., 513 U.S. 561, 585 (1995) (Thomas, J., dissenting) (noting that a term in a statute will only be given its ordinary meaning "'[i]n the absence of [a statutory] definition'" (alteration in original) (quoting FDIC v. Meyer, 510 U.S. 471, 476 (1994))).

36. *See* Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253–54 (1978) (noting that the one "cardinal canon before all others" is that "the legislature says in a statute what it means" (first citing United States v. Ron Pair Enter., 489 U.S. 235, 241–42 (1989); then citing United States v. Goldenberg, 168 U.S. 95, 102–03 (1897); and then citing Oneale v. Thorton, 6 Cranch 53, 68 (1810))).

37. *See Nix*, 149 U.S. at 306–07 (interpreting the meaning of "vegetable" within the Tariff Act of March 3, 1883 by analyzing the term's dictionary definitions, trade usage, and common language); *see also* United States v. Resendiz-Ponce, 549 U.S. 102, 107 (2007) (reasoning, in part, that the word "attempt," as used in 8 U.S.C. § 1326(a), refers to a person's intent and action, by noting that in "common parlance" and in the "law for centuries" the word "attempt" encompasses both overt act and intent elements); MCI Telecomms. Corp. v. Am. Tel. & Tel. Co., 512 U.S. 218, 225 (1994) (relying on several dictionary definitions of the word "modify" to reject petitioner's interpretation of 47 U.S.C. § 203(b)(2)).

38. 149 U.S. 304 (1983).

39. *Id.*

40. *Id.* at 305–06.

41. *Id.*

mony that the terms did not have "any special meaning in trade and commerce" demonstrated that a tomato was clearly defined as a vegetable.[42]

Likewise, the Court in *Caminetti v. United States*[43] affirmed the convictions of the three petitioners for violating the White Slave Traffic Act by exclusively examining the statute's plain meaning.[44] It reasoned that a statute's meaning must first "be sought in the language in which the act is framed, and if that is plain . . . the sole function of the courts is to enforce it according to its terms."[45] The Court concluded that there was no ambiguity in the Act's language, and therefore additional tools of statutory interpretation were unnecessary.[46] However, in a recent 2012 case, *Roberts v. Sea-Land Services*,[47] the Court readily considered other tools of statutory interpretation to analyze the phrase "newly awarded compensation" within 33 U.S.C. § 906(c) because it initially found the plain meaning to be "indeterminate."[48]

Comparatively, the Court in *Holy Trinity Church v. United States*[49] did not follow the plain meaning approach while interpreting the text of 23 Stat. 332 c. 164, which prohibited facilitating a foreigner's entry into the United States under contract to perform "labor or service of any kind."[50] The Holy Trinity Church Corporation had hired an Englishman to work as a minister in New York, and even though the Court reasoned that the corporation's action clearly violated the statute's language, it found in the corporation's favor.[51] Instead of adopting a plain meaning approach to statutory interpretation and adhering to the provision's text, the Court adopted an intentionalist approach and disregarded plain meaning.[52] It reasoned, first, that it was not

42. *Id.* The dictionary definitions of "fruit" and "vegetable" were taken from Webster's Dictionary, Worcester's Dictionary, and the Imperial Dictionary, and presented as evidence at trial along with testimony regarding the terms' common trade usage. *Id.*

43. 242 U.S. 470 (1917).

44. *Id.* at 485.

45. *Id.* (first citing Lake County v. Rollins, 130 U.S. 662, 670 (1889); then citing Bate Refrigerating Co. v. Sulzberger, 157 U.S. 1, 33 (1895); then citing United States v. Lexington Mill & Elevator Co. 232 U.S. 399, 409 (1914); and then citing United States v. First Nat'l Bank, 234 U.S. 245, 258 (1914)).

46. *Id.*; *see also* Crooks v. Harrelson, 282 U.S. 55, 59–60 (1930) (noting that the plain meaning of a statute can only be overridden by "rare and exceptional circumstances").

47. 132 S. Ct. 1350 (2012).

48. *Id.* at 1356–57. In addition to examining plain meaning, the Court considered the comprehensive scheme of 33 U.S.C. § 901, within which § 906(c) is found. *Id.* at 1357–58. Thirty-three U.S.C. § 906(c) "caps benefits for most types of disability at twice the national average weekly wage for the fiscal year in which an injured employee is 'newly awarded compensation.'" *Id.* at 1354 (quoting 33 U.S.C. § 906(c) (2006)).

49. 143 U.S. 457 (1892).

50. *Id.* at 458 (quoting Ch. 164, 23 Stat. 332) (repealed 1952).

51. *Id.*

52. *Id.* at 464–71; *see also* Garrett v. United States, 471 U.S. 773, 778 (1985) (implementing an intentionalist approach to statutory interpretation, while determining the scope of 21 U.S.C. § 848, by reasoning that the Court's analysis would end once it determined what Congress intend-

"within [the] spirit nor within the intention of [the statute's] makers" to penalize hiring a minister.[53] Second, it reasoned that the Act's title demonstrated that the statute was meant to prohibit "*manual* labor," not the work of a *professional* rector.[54] Finally, the Court noted that the Act was created to prevent an influx of untrained foreign laborers because they impeded the domestic labor market, and that therefore the importation of one adept minister did not fall in this category.[55] Some courts have taken issue with the *Holy Trinity* Court's approach because it disregarded the clear language of the provision's text and declined to adhere to the plain meaning approach.[56] Others consider the case to be an illustration of the Court's ability to stray from the plain meaning approach in order to avoid reading a term in a manner that would "compel an odd result."[57] Nevertheless, the Supreme Court generally adheres to provisions' language when plain meaning is discernable to ensure that it does not improperly alter a statute's function or scope to comport with its own views.[58] Plain meaning remains a "cardinal canon," and a majority of people believe that "courts must presume that a legislature says in a statute what it means."[59]

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ed the provision to mean); United Steelworkers of Am. v. Weber, 443 U.S. 193, 201–02 (1979) (demonstrating an intentionalist approach to statutory interpretation, while determining the scope of the Civil Rights Act of 1964, by ascertaining "Congress' primary concern in enacting" the Act—prohibiting racial discrimination—and concluding that the Court must reject any construction of the Act at odds with this purpose).

53. *Holy Trinity Church*, 143 U.S. at 459. The Court also specifically noted that subjecting a church to a penalty for hiring a pastor who was an immigrant would be an "absurd consequence" that Congress did not intend. *Id.*

54. *Id.* at 462–63 (emphasis added).

55. *Id.* at 463–64.

56. *See* Jaskoloski v. Daniels, 427 F.3d 456, 462 (7th Cir. 2005) (noting that the Court's approach in *Holy Trinity Church* has "no modern traction"); *see also* Soppet v. Enhance Recovery Co., 679 F.3d 637, 642 (7th Cir. 2012) (opposing the intentionalist approach because it allows the judiciary to make "substantive changes" to a law, which would give it too much "law-making power").

57. *See* Pub. Citizen v. U.S. Dep't. of Justice, 491 U.S. 440, 453–54 (1989) (reasoning that congressional intent must be used to ascertain a word's meaning "[w]here the literal reading of a statutory term would 'compel an odd result'" (first quoting Green v. Bock Laundry Mach. Co., 490 U.S. 504, 509 (1989); then citing *Holy Trinity Church*, 143 U.S. at 454)). *But see* Watt v. Alaska, 451 U.S. 259, 266 (1981) ("The circumstances of the enactment of particular legislation may persuade a court that Congress did not intend words of common meaning to have their literal effect." (first citing *Holy Trinity Church*, 143 U.S. at 459; then citing United States v. Ryan, 284 U.S. 167, 175 (1931))).

58. *See* United States v. Locke, 471 U.S. 84, 95 (1985) (noting that courts do not have a "*carte blanche* to redraft statutes" and "the Judiciary [is not] licensed to attempt to soften the clear import of Congress' chosen words whenever a court believes those words lead to a harsh result" (citing Nw. Airlines, Inc. v. Transp. Workers, 451 U.S. 77, 98 (1981)).

59. Conn. Nat'l Bank v. Germain 503 U.S. 249, 253–54 (1978); *see also* Muscarello v. United States, 524 U.S. 125, 127–28 (1998) (beginning the process of statutory interpretation with an analysis of the dictionary definition and general usage of the word "carry"); *Locke*, 471 U.S. at 93 (relying on the plain meaning of the phrase "prior to December 31" to hold that the language was

2. The Court Has Historically Used Canons of Construction to Help Interpret Statutes When They Are Ambiguous

In addition to an assessment of plain meaning, the Court may apply several canons of construction to help resolve statutory ambiguity. In some instances, the Court uses these canons to discern what the legislature intended with regard to a statute's meaning or function.[60] In others, the Court uses these canons as "purely textual devices" to guide its analysis of a statute's language directly.[61] In any event, they "function as helpful guides in construing ambiguous statutory provisions."[62] The canons do not, however, "conclusive[ly]" resolve ambiguity as they are susceptible to many different interpretations, often being "'countered . . . by some maxim pointing in a different direction.'"[63] The Court in *Ali v. Federal Bureau of Prisons*[64] discussed the canons of construction *noscitur a sociis*,[65] that is, "a word is known by the company it keeps," and *ejusdem generis*, which is the principle that when general words follow specific words in a statute, the general words should be interpreted to reference objects similar to those denoted by the previous, specific words.[66] The Court concluded that these canons did not apply to the statute, but the dissent still acknowledged their general utility.[67] Comparatively, the Court in *Gustafson v. Alloyd Co.*[68] relied on *noscitur a sociis* to reason that Congress intended the term "prospectus" to reference *public* communication because it was found within a list of nouns that included "documents of wide dissemination."[69]

Another notable canon of construction is the canon against surplusage, which stipulates that a statute should not be read in a manner that renders

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unambiguous and required mining claimants to file claims with the Bureau of Land Management before December 31 (quoting 43 U.S.C. § 1744(a) (1976)).

60. Ali v. Fed. Bureau of Prisons, 552 U.S. 214, 228–29 (2008) (Kennedy, J., dissenting).

61. *Id.* at 243 (Breyer, J., dissenting).

62. *Id.* at 229 (Kennedy, J., dissenting).

63. *Id.* at 244–45 (Breyer, J., dissenting) (alteration in original) (quoting Circuit City Stores, Inc. v. Adams, 532 U.S. 105, 115 (2001)); Sebelius v. Auburn Reg'l Med Ctr., 133 S. Ct. 817, 825–26 (2013) (noting that the canons of construction are just "'[a] rul[e] of thumb' that can tip the scales when a statute could be read in multiple ways" (quoting Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253 (1992))).

64. 552 U.S. 214 (2008).

65. *Id.* at 225 (quoting S.D. Warren Co. v. Me. Bd. of Envtl. Prot., 547 U.S. 370, 378 (2006)).

66. *Id.* at 223; Wash. State Dep't of Social and Health Servs. v. Guardianship Estate of Keffeler, 537 U.S. 371, 384 (2003) (citing *e.g.*, *Circuit City*, 532 U.S. at 114–15).

67. *Ali*, 552 U.S. at 229 (Kennedy, J., dissenting). The Court specifically listed two cases in which the canons were useful: *Washington State Department of Social and Health Services. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 375 (2003) and *Dolan v. Postal Service*, 546 U.S. 481, 486–87 (2006). *Ali*, 552 U.S. at 224 (plurality opinion).

68. 513 U.S. 561 (1995).

69. *Id.* at 575.

other parts of the statute superfluous.[70] However, the canon's value is strongest when it is used to illustrate the merits of an interpretation of a statute that would "give[] effect to every clause and word" if another interpretation would render part of the statute unnecessary.[71] For example, in *Marx v. General Revenue Corp.*,[72] the petitioner argued that a district court's ability to award costs under 15 U.S.C. § 1692k(a)(3) displaced other courts' ability to award costs under Fed. R. Civ. P. 54(d)(1).[73] Specifically, the petitioner contended that Fed. R. Civ. P. 54(d)(1) rendered the phrase "and costs" within Section 1692k(a)(3) superfluous.[74] The Court rejected this argument and determined that the canon against surplusage was not applicable, in part, because there were no possible interpretations of Section 1692k(a)(3) that would have successfully given effect to every part of the provision.[75] In contrast, the Court in *Gustafson v. Alloyd Co.* rejected the petitioner's argument, in part, by applying the canon against surplusage.[76] It reasoned that the petitioner's broad interpretation of "communication," as meaning "every written communication," was inappropriate because it would render "notice, circular, advertisement [and] letter" redun-redundant given that each are types of "written communication."[77]

3. By Analyzing Statutory Context, the Court May Discern What Congress Intended With Regard to the Function or Meaning of a Provision, and Thereby Resolve Ambiguity

In addition to the canons of construction, analysis of a provision's context has progressively been recognized as a central tenet of statutory interpretation. In some instances, the Court analyzes a statute's context after its plain meaning analysis fails to resolve ambiguity.[78] In other circumstances,

70. *See Ali*, 552 U.S. at 226 (noting that the "rule against superfluities" is applicable only if a statute's construction truly renders other words in a statute unnecessary); *see also* Marx v. Gen. Revenue Corp., 133 S. Ct. 1166, 1178 (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." (citing United States v. Jicarilla Apache Nation, 131 S. Ct. 2313, 2330 (2011)); Gustafson v. Alloyd Co., 513 U.S. 561, 574–75 (1995) (finding that "communication," as defined in § 2(10) of the Securities Act of 1933, could not be read to refer to all written communications because that would render "notice, circular, advertisement, [and] letter, redundant," given that each was likewise a form of written communication (alteration in original) (quoting the Securities Act of 1933 § 2(10))).

71. *Marx*, 133 S. Ct. at 1177 (2013) (quoting Microsoft Corp. v. i4i Ltd. P'ship, 131 S. Ct. 2238, 2248 (2011)).

72. 133 S. Ct. 1166 (2013).

73. *Id.* at 1173–74.

74. *Id.* at 1177–78.

75. *Id.* at 1177.

76. Gustafson v. Alloyd Co., 513 U.S. 561, 574–75 (1995).

77. *Id.* (quoting the Securities Act of 1933 § 2(10)).

78. *See supra* note 36; Roberts v. Sea-Land Serv's, Inc., 132 S. Ct. 1350, 1356–57 (2012) (first quoting Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997); then quoting Ingalls Shipbuilding, Inc. v. Dir., Office of Workers' Comp. Programs, 519 U.S. 248, 255 (1997)).

the Court examines context in conjunction with plain meaning because a term's definition may change depending on circumstance.[79] There are two distinct kinds of context that a court may analyze: (1) historical context, that is, a provision's legislative history, and (2) textual context, that is, a statute or larger Act's terms. Textual context may be discerned by, inter alia, examining a statute's title, analyzing the larger statute within which a provision is located, and comparing similarly situated provisions.[80] For instance, in *Almendarez-Torres v. United States*[81] the Court analyzed the title of 8 U.S.C. § 1326(b)(2) to determine whether it defined a separate offense, or merely increased the penalty for violation of 8 U.S.C. § 1326(a), which forbids immigrants who have been deported from returning to the United States without special permission.[82] It reasoned that because the phrase "criminal penalties" appeared in the title of the 1988 amendment that created Section 1326(b), and in several bills that preceded Section 1326(b)'s enactment, the provision was meant to prescribe criminal punishment standards and not to create a separate offense.[83] Nevertheless, while analysis of a statute's title is useful, it should only be used as a supplement, in conjunction with other mechanisms of interpretation.[84]

Additionally, the Supreme Court may interpret a statute's terms by comparing how they are construed and utilized in similar statutory provi-

79. *See e.g.*, Robinson v. Shell Oil Co., 519 U.S. 337, 341 (1997) ("[P]lainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole" (first citing Estate of Cowart v. Nicklos Drilling Co., 505 U.S. 469, 477 (1992); then citing McCarthy v. Bronson, 500 U.S. 136, 139 (1991))); *see also* Ali v. Fed. Bureau of Prisons, 552 U.S. 214, 234 (2008) (Kennedy, J., dissenting) (noting that statutory context must be examined in conjunction with plain meaning because a term's plain meaning may change depending on context).

80. *See Gustafson*, 513 U.S. at 574–75 (determining the meaning of the word "prospectus," as used in § 12(2) of the Securities Act of 1933, by analyzing and comparing § 2(10) of the Securities Act); *see also* Duncan v. Walker, 533 U.S. 167, 172–73 (2001) (interpreting the scope of the phrase "application for *State* Post-conviction or other collateral review," as used in 28 U.S.C. § 2244(d)(2), by comparing the use of the terms "State" and "Federal" within 28 U.S.C. §§ 2254(i), 2261(e), and 2264(a)(3) (emphasis added)); Holy Trinity Church v. United States, 143 U.S. 457, 462–63 (1892) (analyzing the provision's title, "[a]n act to prohibit the importation and migration of foreigners and aliens under contract or agreement to perform labor in the United States . . . ," in order to construe 23 Stat. 332 c. 164).

81. 523 U.S. 224 (1998).

82. *Id.* at 226; *Holy Trinity Church*, 143 U.S. at 462; United States v. Marek, 238 F.3d 310, 321 (5th Cir. 2001).

83. *Almendarez-Torr*es, 523 U.S. at 234.

84. *See* Fla. Dep't of Revenue v. Piccadilly Cafeterias, 554 U.S. 33, 47 (2008) (explaining that "a subchapter heading cannot substitute for the operative text of the statute" (citing *e.g.*, Pa. Dep't of Corr. v. Yeskey, 524 U.S. 206, 212 (1998)); *see also* Lawson v. FMR LLC, 134 S. Ct. 1158, 1169 (2014) (explaining that a title is merely a "'short-hand reference'" to the provision's "'general subject matter,'" which makes it an ineffective tool of statutory interpretation (quoting Bhd. Of R.R. Trainmen v. Balt. & Ohio R.R., 331 U.S. 519, 528 (1947)); United States v. Lawrence, 727 F.3d 386, 393 (5th Cir. 2013) (noting that analysis of a statute's title "is only relevant where the language is ambiguous").

sions.[85] For example, the Court in *Robinson v. Shell Oil Co.*[86] compared similar provisions to interpret Section 704(a) of Title VII of the Civil Rights Act.[87] Specifically, the Court analyzed the meaning of "employee," as used in Section 704(a), in part, by comparing how the term "employee" was used in Sections 706(g)(1), 717(b), and 717(c) in Title VII.[88] The Court posited that the statutory context of these other provisions indicated that "employee" denoted current and former employees, which supported a parallel, expansive construction of "employee" in Section 704(a).[89]

Likewise, the Court in *Muscarello v. United States*[90] interpreted the term "carry," as used in 18 U.S.C. § 924(c)(1), which makes it a crime to "'use[] or carr[y] a firearm' 'during and in relation to' a 'drug trafficking crime'"[91] by comparing it to surrounding provisions.[92] In *Muscarello*, the petitioner contended that a broad construction of the term "carry," applying to persons who *actually* and *constructively* carry a firearm, was inappropriate.[93] Specifically, he argued that a broad construction would erroneously make "carry" indistinguishable from the word "transport," which was meant to likewise *broadly* reference the "movement of goods in bulk over great distances."[94] The Court rejected petitioner's argument by comparing Section 924(c)(1) to 18 U.S.C. §§ 926(a) and 924(b).[95] It reasoned that the definitions of "transport" and "carry" remained discrete, even if "carry" was construed broadly, because Congress used "transport" in Sections 924(a) and 926(b) to "signify a different, and broader, statutory coverage" than "carry."[96] Therefore, Congress likewise intended "transport" to denote a separate, *broader* scope than "carry," and encompass persons who actually and constructively carry a firearm.[97]

85. *See* Yates v. United States, 135 S. Ct. 1074, 1082–83 (2015) (plurality opinion) (comparing § 1519 to Rule 16 of the Federal Rules of Criminal Procedure); *see also id.* at 1087 (comparing § 1519 to an evidence tampering provision in the Model Penal Code); Muscarello v. United States, 524 U.S. 125, 134–35 (1998) (comparing the use of the term "transport" in 18 U.S.C. § 924(c)(1) to its use in other similar statutory provisions); Duncan v. Walker, 533 U.S. 167, 172–73 (2001) (interpreting the scope of the phrase "application for *State* Post-conviction or other collateral review," as used in 28 U.S.C. § 2244(d)(2), by comparing the use of the terms "State" and "Federal" within 28 U.S.C. §§ 2254(i), 2261(e), and 2264(a)(3) (emphasis added)).

86. 519 U.S. 337 (1997).

87. *Id.*

88. *Id.* at 342–44.

89. *Id.*

90. 524 U.S. 125 (1998).

91. *Id.* at 126 (quoting 18 U.S.C. § 924(c)(1) (1994)).

92. *Id.* at 126–27.

93. *Id.* at 134.

94. *Id.*

95. *Id.* at 134–35.

96. *Id.*

97. *Id.*

B. Perspectives Diverge as to Whether Legislative History Should Be Examined Initially with Other Tools of Statutory Interpretation, or as a Last Resort After a Statute Has Been Deemed Ambiguous

When engaging in statutory interpretation, the Court may analyze a statute's historical context, that is, its legislative history.[98] In doing so, the Court examines, inter alia, congressional records, congressional reports, and the circumstances prompting a provision's enactment. Legislative history is analyzed to discern what Congress intended a statute's purpose and scope to be in an effort to ensure that the Court construes a provision in a manner that maintains its anticipated function.[99] In certain instances, the Court analyzes legislative history from the outset, in conjunction with statutory context and plain meaning, to determine whether a statute is ambiguous.[100] In others, it assesses legislative history only after it has found that a statute is ambiguous.[101] However, some believe that the use of legislative history should be abandoned altogether, or at least substantially limited.[102] This is due to the fact that legislative history can often be construed to either support or oppose a statute's construction depending on a party's preference, which might lead to partisan interpretations and misleading arguments.[103] In *Lamie v. United States Trustee*,[104] the Court analyzed the legislative history of 11 U.S.C. § 330 (a)(1), which "regulates court awards of profession-

98. *See supra* Part II.A.3 discussing two kinds of context, historical context and textual context.

99. *See* United States v. Am. Trucking Ass'ns, 310 U.S. 534, 543–44 (1940) ("When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.'" (footnote omitted)).

100. Gustafson v. Alloyd Co., 513 U.S. 561, 577 (1995); Muscarello v. United States, 524 U.S. 125, 132 (1998).

101. Conn. Nat'l Bank v. Germain, 503 U.S. 249, 251–54 (1992); Lamie v. U.S. Tr., 540 U.S. 526, 534 (2004).

102. *See* MORI Assocs. v. United States, 102 Fed. Cl. 503, 537–40 (2011) (describing the recent trend in the Supreme Court of returning to the traditional approach to statutory interpretation where the Court adheres to interpreting the statute's text and does not examine legislative history); *see also supra* note 36; Crooks v. Harrelson, 282 U.S. 55, 60 (1930) (reasoning that the intentionalist approach used in *Holy Trinity Church* can only apply in "rare and exceptional circumstances").

103. *See e.g.*, Yates v. United States, 135 S. Ct. 1074 (2015). In *Yates*, the plurality interpreted the legislative history of 18 U.S.C. § 1519 to mean that the term "tangible object," as used in § 1519, should be construed to reference only objects that could be used to record or preserve information. *Id.* at 1079. Comparatively, the dissent interpreted the legislative history to mean that "tangible object" should be construed to mean any physical object. *Id.* at 1093; *see also* Tenn. Valley Auth. v. Hill, 437 U.S. 153 (1978). In *Hill*, the plurality interpreted the legislative history of 16 U.S.C. § 1536 to mean that the provision was meant to "halt and reverse the trend toward species extinction, *whatever the cost*." *Id.* at 184 (emphasis added). In contrast, the dissent interpreted the legislative history as providing an exception to this provision for projects that are completed or substantially completed even if they may threaten an endangered species. *Id.* at 195–96; *see infra* notes 104–107.

104. 540 U.S. 526 (2004).

al fees," only after assessing statutory context and plain meaning.[105] The Court reasoned that the legislative history contained "uncertainties," which led to "competing interpretations" of the statute.[106] Therefore, it was more prudent to rely on the preceding statutory context and plain meaning analyses.[107] Similarly, the Court in *Connecticut National Bank v. Germain*[108] rejected the respondent's argument that the legislative history of 28 U.S.C. § 1292, a statute establishing the Court of Appeals' jurisdiction, implied that it should be narrowly construed.[109] Instead, the Court held that inquiry into legislative history was unnecessary because the statute's language was equivocal.[110]

In contrast, the Court in *Gustafson v. Alloyd Co.* simultaneously addressed legislative history and statutory context to discern the meaning of "prospectus," as used in Section 12(2) of the Securities Act of 1933.[111] In distinguishing *United States v. Naftalin*,[112] it reasoned that an analysis of legislative history was "[o]f equal importance" to an analysis of statutory context, even though the history was inconclusive as to congressional intent in this instance.[113] Likewise, in *Muscarello v. United States*, the Court reasoned that Congress intended "carry" to be construed broadly by initially analyzing Section 924 (c)(1)'s legislative history in conjunction with plain meaning.[114]

Nevertheless, there are instances where the Court takes a third, comprehensive approach to statutory interpretation, first ascertaining a term's plain meaning, but also supplementing it with instructive legislative history. The Court in *Bifulco v. United States*[115] adopted this approach to interpret the meaning of "imprisonment" within 21 U.S.C. § 406, a provision of the Comprehensive Drug Abuse Prevention and Control Act of 1960.[116] Specifically, the *Bifulco* Court addressed whether the provision authorized a "special parole term" in *addition* to a term of confinement.[117] In doing so, the Court initially assessed the provision's plain meaning by noting that other courts had held that "special parole term" was *included* in the term of

105. *Id.* at 529.
106. *Id.* at 541–42.
107. *Id.*
108. 503 U.S. 249 (1992).
109. *Id.* at 251–53.
110. *Id.* at 254.
111. 513 U.S. 561 (1995).
112. 441 U.S. 768, 774–78 (1979).
113. *Gustafson*, 513 U.S. at 577.
114. Muscarello v. United States, 524 U.S. 132 (1998).
115. 447 U.S. 381 (1980).
116. *Id.* at 382–83.
117. *Id.* at 388–98.

"imprisonment," not supplementary.[118] It determined, however, that the views of these courts were not persuasive because not all substantive offenses to which Section 406 applies can legally designate a "special term of parole."[119] Subsequently, the Court evaluated Section 406's legislative history, which revealed that Congress enacted the provision with no intention of systematically including a special parole term.[120] Therefore, the Court reasoned that the term "imprisonment" could not automatically implement one.[121]

C. Viewpoints Vary as to What 18 U.S.C. § 1519's Legislative History Reflects With Regard to Congressional Intent

Given the contrasting views, the *Yates* Court readily assessed the legislative history of Section 1519 and the Sarbanes-Oxley Act[122] to resolve Section 1519's ambiguity.[123] Citing to the Senate Report on the Act, the Court noted that Congress enacted the Sarbanes-Oxley Act in response to Enron's massive accounting fraud scandal to "restore confidence" in financial markets and "enhance accountability" for financial fraud.[124] It also posited that Section 1519 was created as a provision of the Sarbanes-Oxley Act to specifically prevent persons from shredding documents related to corporate fraud in an attempt to destroy evidence and conceal misconduct.[125] However, the Justices differed as to what the legislative history means, that is, whether Section 1519 is meant to only apply to corporate fraud, or if it is meant to cover the "whole world of evidence-tampering."[126]

Part II.C.1 provides background on Enron's collapse, which prompted Congress to enact the Sarbanes-Oxley Act and Section 1519. Part II.C.2 discusses the provisions' legislative history. Part II.C.3 describes lower courts' varied applications of Section 1519 resulting from conflicting interpretations of the legislative histories.

118. *Id.* at 388.

119. *Id.*

120. *Id.* at 398.

121. *Id.*

122. 18 U.S.C. § 1519 (2012).

123. *See infra* Part IV.A.2.

124. Yates v. United States, 135 S. Ct. 1074, 1079 (2015) (plurality opinion); S. REP. NO. 107–146, at 2, 11 (2002).

125. *Yates*, 135 S. Ct. at 1079–81 (plurality opinion); *compare* 148 CONG. REC. 12,512 (2002) (statement of Sen. Lott), *with* S. REP. NO. 107–146, at 14 (2002) (noting that § 1519 was created as a "general anti shredding provision" to "close loopholes in the existing criminal laws relating to the destruction . . . of evidence"). *But see Yates*, 135 S. Ct. at 1093 (Kagan, J., dissenting) (arguing that § 1519 was created to supplement § 1512(b)(2)).

126. *Yates*, 135 S. Ct. at 1092 (Kagan, J., dissenting).

1. Historical Background on Enron's Financial Fraud

During the 1990s, Enron experienced a period of rapid growth and became one of the world's leading energy companies, trading its stock at about $90.00 a share by 2000.[127] On October 16, 2001, however, Enron announced a "$618 million net loss for the third quarter"[128] and a "$1.01 billion charge to earnings."[129] A few days later, the company released another statement announcing that between 1997 and 2001 it had overstated its earnings by $586 million, which caused Enron's stock value to abruptly drop below $1.00.[130] The company filed for bankruptcy in December of 2001, prompting the United States Department of Justice to form an "Enron Task Force" in order to investigate the company's collapse.[131] The inquiry revealed two things: (1) several of Enron's executives and its accountant, Arthur Andersen LLP, facilitated and benefited from a massive accounting fraud maneuver where the company used "thousands of off-the-books entities to overstate corporate profits, understate corporate debts and inflate Enron's stock price,"[132] and (2) even after being subpoenaed by the Securities and Exchange Commission, Arthur Andersen LLP had ordered several employees on its Enron team to institute a "wholesale destruction" of any documents relating to the fraud.[133] Andersen was found guilty of obstructing justice in June 2002.[134] Enron's collapse had a widespread effect; its investors lost billions of dollars, its employees were left with worthless retirement funds, and companies that Enron had regularly invested in suffered systematic losses.[135] The fraud revealed severe deficiencies in the legal system with regard to regulating and punishing corporate fraud, and Congress enacted the Sarbanes-Oxley Act to provide prosecutors with a mechanism by which they could prevent future financial fraud and "restore trust in the financial markets."[136]

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127. Arthur Andersen LLP v. United States, 544 U.S. 696, 698 (2005); S. REP. NO. 107–146, at 2–3.

128. S. REP. NO. 107–146, at 3.

129. *Arthur Andersen*, 544 U.S. at 700.

130. S. REP. NO. 107–146, at 3.

131. Skilling v. United States, 561 U.S. 358, 367–68 (2010); *see also* S. REP. NO. 107–146, at 3.

132. S. REP. NO. 107-146, at 2–4.

133. *Id.* at 4; *see also Skilling*, 561 U.S. at 367–68.

134. United States v. Arthur Andersen LLP, 374 F.3d 281, 284 (2004), *rev'd*, Arthur Andersen LLP v. United States, 544 U.S. 696 (2005).

135. S. REP. NO. 107–146, at 3–4.

136. *Id.* at 2; *Yates*, 135 S. Ct. at 1079; *see also* Lawson v. FMR LLC, 134 S. Ct. 1158, 1162 (2014) (noting that the Enron scandal demonstrated a need for provisions that would safeguard financial fraud "whistleblowers," which the Sarbanes-Oxley Act implemented).

2. Courts Have Gleaned Two Different Interpretations of Section 1519 by Examining Legislative History

Some courts have held that the legislative history of Section 1519 and the Sarbanes-Oxley Act illustrates that Congress intended Section 1519 to apply *narrowly*, only in cases of financial fraud.[137] Other courts have interpreted the history to mean that Section 1519 should be applied *broadly*, to the "whole world of evidence-tampering."[138] The 2002 Senate Report on the Sarbanes-Oxley Act declares that the Act's purpose, in pertinent part, "is to provide for criminal prosecution . . . of persons who defraud investors in publicly traded securities or alter or destroy evidence in certain Federal investigations . . . and for other purposes."[139] Furthermore, legislators have identified "three major components" of the Act: (1) it provides prosecutors with a means to punish and indict "those who defraud investors;" (2) it increases investigators' ability to "collect and preserve evidence which proves fraud;" and (3) it "protects victim's rights to recover from those who have cheated them."[140]

Sources support both the narrow interpretation of Section 1519 and the broad interpretation of Section 1519.[141] For instance, some senator's statements from congressional reports seem to support a narrow scope: Senator Trent Lott identifies the purpose of Section 1519 as "increas[ing] penalties for *corporate* fraud" and related document shredding;[142] Senator Orrin Hatch describes the individual whom the provision is meant to punish as: "A person who steals, defrauds, or otherwise deprives unsuspecting Americans of their life savings . . .; the crook who cooks the books . . .; the charlatan who sells phony bonds . . .; and the . . . man who runs a Ponzi scheme . . . ," and he continues, stating "[i]t is time . . . to get tough with these offenders."[143] Furthermore, Senator Barbara Boxer specifically mentions that the provisions' ultimate goals are to protect corporate fraud victims, "preserve evidence of corporate crimes and hold corporate wrongdoers accountable."[144]

Language from the 2002 Senate Report could, however, be construed to support a broad interpretation of Section 1519. The report describes a need for wider reaching "obstruction of justice statutes relating to document destruction" because current provisions are interpreted too narrowly and

137. *See infra* Part II.B.3.

138. *Yates*, 135 S. Ct. at 1092 (Kagan, J., dissenting); *see also infra* Part II.B.3.

139. S. REP. NO. 107-146, at 2.

140. S. REP. NO. 107-146, at 11.

141. *See* S. REP. NO. 107-146; 148 CONG. REC. 14,447 (2002); 148 CONG. REC. 12,512 (2002).

142. 148 CONG. REC. 12,512 (statement by Sen. Lott).

143. 148 CONG. REC. 12,513 (statement by Sen. Hatch).

144. 148 CONG. REC. 14,447 (statement by Sen. Boxer).

create "loopholes in the existing criminal laws."[145] The report even specifically relays that "Section 1519 is meant to apply broadly to any acts to destroy or fabricate physical evidence so long as they are done with the intent to obstruct, impede or influence the investigation."[146] Contradictory language in the Senate Report and congressional record demonstrates the difficulties associated with the Court's use of legislative history to construe statutes, showing that these kinds of texts are often interpreted in various ways.[147]

3. Courts Have Applied 18 U.S.C. § 1519 Inconsistently

Since its enactment, Section 1519 has raised, in pertinent part, two main issues in district and appellate courts. First, is the definition of "tangible object" broad, including *any* physical object, or is it narrow, including *only* objects that can record or preserve information?[148] Second, is Section 1519 applicable in cases that do not involve financial fraud?[149] Addressing both of these questions, the United States District Court for the District of Connecticut in *United States v. Russell*[150] rejected the defendant's contention that "tangible object" referred only to "storage media that contain records and documents."[151] It reasoned that "tangible object's" ordinary meaning, *any* physical object, controlled because that statutory language was unambiguous and because a narrow interpretation of "tangible object" would render the term useless.[152] The *Russell* court also determined that Section 1519 applied outside of financial fraud cases because its legislative history indicated that Congress intended for the provision to be used in various circumstances.[153]

In *United States v. Diana Shipping Services*[154] the United States District Court for the Eastern District of Virginia upheld a co-defendant's conviction under Section 1519 for inaccurately documenting the disposal of several pipes, which crewmembers threw overboard a commercial shipping

145. S. REP. NO. 107-146, at 14.

146. *Id.*

147. *See supra* note 103.

148. United States v. Yates, 733 F.3d 1059 (11th Cir. 2013), *rev'd*, 135 S. Ct. 1074 (2015); United States v. Russell, 639 F. Supp. 2d 226 (D. Conn. 2007).

149. *Russell*, 639 F. Supp. 2d at 238; United States v. Wortman, 488 F.3d 752 (7th Cir. 2007); United States v. Smyth, 213 F. App'x 102, 103–04 (3d Cir. 2007); United States v. Jackson, 186 F. App'x 736, 738 (9th Cir. 2006).

150. 639 F. Supp. 2d 226 (D. Conn. 2007).

151. *Id.* at 238.

152. *Id.*; *see also Yates*, 733 F.3d at 1059 (holding that the language of § 1519 was unambiguous and so the ordinary meaning of "tangible object" controlled); United States v. Wortman, 488 F.3d 752, 755 (7th Cir. 2007) (interpreting § 1519 broadly and finding the defendant guilty of violating the provision for destroying a CD containing child pornography).

153. *Russell*, 639 F. Supp. 2d at 237–38.

154. 985 F. Supp. 2d 719 (E. D. Va. 2013).

vessel, in the boat's log.[155] Confronting the question of Section 1519's scope, the court determined that, while this case did not involve financial fraud, Section 1519 still applied.[156] It reasoned that Section 1519's "broad statutory language set[ting] forth numerous clauses criminalizing various conduct," and its legislative history, illustrated the provision's "intentionally broad reach."[157] Similarly, the United States District Court for the District of Maryland in *United States v. Stevens*[158] and the Eleventh Circuit in *United States v. Hunt*[159] applied Section 1519 in instances that did not relate to financial fraud—finding defendants guilty under Section 1519 for composing documents with falsified information.[160]

D. If the Court Cannot Resolve a Criminal Statute's Ambiguity Through Tools of Statutory Construction It May Invoke the Rule of Lenity

After the *Yates* Court concluded its statutory interpretation analysis it discussed the rule of lenity and its applicability to Section 1519.[161] The rule of lenity counsels that, if a court cannot reasonably interpret a criminal statute, it should resolve any uncertainty in favor of the defendant.[162] The "policy of lenity" emphasizes that courts should discern legislative intent through sound principles of statutory interpretation to avoid construing statutes as imposing criminal penalties "based on no more than a guess as to what Congress intended."[163] The rule is founded on two traditional policies

155. *Id.*

156. *Id.*

157. *Id.* at 727, 729.

158. 771 F. Supp. 2d 556 (D. Md. 2011).

159. 526 F.3d 739 (11th Cir. 2008).

160. *Compare Hunt*, 526 F.3d at 744 (reasoning that the defendant's false entry in a police report violated 18 U.S.C. § 1519), *and Stevens*, 771 F. Supp. 2d at 558 (holding that defendant violated 18 U.S.C. § 1519 by falsifying and concealing documents related to her company's alleged "off-label promotion of Wellbutrin"), *with* United States v. Mermelstein, 487 F. Supp. 2d 242, 248 (E.D.N.Y. 2007) (mem.) (involving a defendant charged with falsifying documents in order to fraudulently obtain payment for medical procedures), *and* United States v. Lessner, 498 F.3d 185, 196 (3d Cir. 2005) (finding defendant guilty under § 1519 for destroying evidence related to her falsification of contracts of sale that misrepresented prices of military merchandise to overcharge the federal government).

161. 135 S. Ct. 1074, 1088–89 (2015).

162. *See* Adamo Wrecking Co. v. United States, 434 U.S. 275, 284–85 (1978) (explaining that the rule of lenity states that if a criminal statute is deemed ambiguous, the ambiguity is resolved in favor of the defendant (first quoting United States v. Bass, 404 U.S. 336, 348 (1971); then citing Rewis v. United States, 401 U.S. 808, 812 (1971))); *see also* Muscarello v. United States, 524 U.S. 125, 138–39 (1997) (noting that the rule of lenity only applies in the face of "grievous ambiguity" (footnote omitted) (quoting Staples v. United States, 511 U.S. 600, 619 (1994))).

163. Bifulco v. United States, 447 U.S. 382, 387 (1980) (first quoting Lander v. United States, 358 U.S. 169, 178 (1958); then citing Whalen v. United States, 445 U.S. 684, 695 n.10 (1980); and then citing Simpson v. United States, 435 U.S. 6, 14–15 (1978))); *Yates*, 135 S. Ct. at 1088 (plurality opinion) (quoting Cleveland v. United States, 531 U.S. 12, 25 (2000)).

derived from the idea of due process. First, to be constitutional, a statute must clearly and understandably provide citizens with fair warning that certain criminal conduct is prohibited.[164] Second, due to the "seriousness of criminal penalties," *legislatures* must delineate punishment, and the Court should implement those penalties as prescribed by Congress.[165] The rule of lenity is not used to interpret statutes. It is only implemented when "traditional tools of statutory interpretation" fail to remedy ambiguity.[166] In some instances, the Court has noted that the rule of lenity should only be applied in the face of *grave* ambiguity, after all reasonable mechanisms of statutory construction have been "exhausted."[167] In others, the Court has applied the rule of lenity more willingly, when "*any* doubt" is left as to a statute's meaning.[168] For instance, the Court in *United States v. Granderson*[169] applied the rule of lenity to 18 U.S.C. § 3565(a), which provides that "if a person serving . . . probation possesses illegal drugs, 'the court shall revoke the . . . probation and sentence the defendant to not less than one-third of the *original sentence*.'"[170] After failing his drug test, the defendant's five-year probation was revoked under Section 3565(a), and he was resentenced to twenty months in prison because the trial court defined the defendant's "original sentence" as his sixty-month probation.[171] However, the Court of Appeals for the Eleventh Circuit applied the rule of lenity with regard to Section 3565(a), and vacated the defendant's sentence, resentencing him to a term of zero to six months imprisonment.[172] The Supreme Court affirmed the court of appeals' ruling.[173] The Court reasoned that Congress left Section 3565(a) "susceptible to at least three interpretations" with regard to the

164. *See, e.g.*, *Bass*, 404 U.S. at 347–48 (reasoning that in order to provide fair warning, a statute must clearly describe, in understandable language, "what the law intends to do if a certain line is passed" (first quoting McBoyle v. United States, 283 U.S. 25, 27 (1931) (Holmes, J.) (footnote omitted); then citing United States v. Cardiff, 344 U.S. 174, 176–77 (1952))); *see also* Bouie v. City of Columbia, 378 U.S. 347, 350–51 (1964) (noting that the Due Process Clause of the Fifth Amendment requires a statute to provide fair warning (citing United States v. Harriss, 347 U.S. 612, 617–618 (1954)).

165. *Bass*, 404 U.S. at 348, 347–48; *infra* note 298 and accompanying text.

166. *Yates*, 135 S. Ct. at 1088.

167. Abramski v. United States, 134 S. Ct. 2259, 2281 (2014) (Scalia, J. dissenting); *see also* Moskal v. United States 498 U.S. 103, 108 (1990) ("[W]e have declined to deem a statute 'ambiguous' for purposes of lenity merely because it was *possible* to articulate a construction more narrow than that urged by the Government." (citing *e.g.*, McElroy v. United States, 455 U.S. 642, 657–58 (1982))); *see also* Muscarello v. United States, 524 U.S. 125, 138–39 (1997) (noting that the rule of lenity only applies in the face of "grievous ambiguity" (footnote omitted) (quoting Staples v. United States, 511 U.S. 600, 619 (1994))).

168. *See Yates*, 135 S. Ct. at 1088 (emphasis added).

169. 511 U.S. 39 (1994).

170. *Id.* at 41 (quoting 18 U.S.C. § 3565(a) (1988)) (emphasis added).

171. *Id.* at 43.

172. *Id.* at 43–44.

173. *Id.* at 56.

meaning of the term "original sentence."[174] Therefore, it was appropriate to resolve the case in favor of the defendant, and implement a lesser sentence.[175]

III. THE COURT'S REASONING

In *Yates v. United States*, the Supreme Court reversed the Eleventh Circuit, holding that that the term "tangible object" in 18 U.S.C. § 1519 only refers to objects that can be used to "record or preserve" information.[176] Justice Ginsburg announced the judgment of the Court, in which Chief Justice Roberts, Justice Breyer, and Justice Sotomayor joined, and Justice Alito filed an opinion concurring in the judgment.[177] The Court reasoned that it was Congress's intent that "tangible object" be narrowly construed by assessing several different mechanisms of statutory construction: the Sarbanes-Oxley Act's purpose, the ordinary meaning of "tangible object," "tangible object's" meaning in other similar provisions, the title of Section 1519, Section 1519's position within Title 18 Chapter 73, the canon against surplusage, and the canons *noscitur a sociis* and *ejusdem generis*.[178]

The *Yates* Court began its analysis by examining the purpose of the Sarbanes-Oxley Act. It noted that the Act was created in response to Enron's large-scale accounting fraud, and that its function was to "restore trust in financial markets" and prevent further financial fraud.[179] Furthermore, the Court explained that Section 1519 was enacted as part of the Sarbanes-Oxley Act to supplement 18 U.S.C. § 1512(b),[180] another provision of the Act that barred persons from "persuad[ing] *another person* to shred documents," in order to specifically prohibit persons from *directly* destroying documents.[181] Consequently, the *Yates* Court concluded that Congress intended "tangible object," as used in Section 1519, to refer only to objects that can record or preserve information, as opposed to *any* physical objects.[182]

Next, the Court considered the ordinary meaning of "tangible object," but noted that a term's ordinary meaning is not dispositive in isolation because a term can mean different things in different contexts.[183] The Court

174. *Id.* at 41.
175. *Id.* at 56.
176. 135 S. Ct. 1074, 1081 (2015) (plurality opinion).
177. *Id.* at 1078.
178. *Id.* at 1081–89.
179. *Id.* at 1079–81; *see also supra* Part II.D.1.
180. 18 U.S.C. § 1512(b) (2012).
181. *Yates*, 135 S. Ct. at 1081.
182. *Id.* at 1079–81.
183. *Id.* at 1081 (defining "tangible object" as "a discrete . . . thing" that "possess[es] physical form" (alteration in original) (first quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1555 (2002); then quoting BLACK'S LAW DICTIONARY 1683 (10th ed. 2014))); *see also Yates*, 135

used this rationale to reject the government's argument that "tangible object's" ordinary meaning was any physical object here because "tangible object" meant any physical object in Federal Rule of Criminal Procedure 16.[184] The Court determined that, while a broad interpretation of "tangible object" was appropriate within Rule 16—in light of the Rule's broad scope—Section 1519's much narrower scope required a much narrower interpretation.[185] The Court similarly rejected the government's comparison of "tangible object's" meaning in Section 1519 to its meaning in a 1962 Model Penal Code evidence tampering statute.[186] It reasoned that the Model Penal Code provision was incomparable to Section 1519 because it imparted different penalties and prohibited different conduct; therefore, its definition of "tangible object" as *any* physical evidence had no bearing on Section 1519's definition of "tangible object."[187]

In addition, the Court analyzed the context of Section 1519 by examining its caption and title, its placement in Title 18 Chapter 73, and several instructive canons of construction. First, the *Yates* Court examined Section 1519's caption, and the title of Section 802, that is, the Section of the Sarbanes-Oxley Act within which Section 1519 is found.[188] The Court reasoned that the caption and title indicated that Congress intended "tangible object" to be construed narrowly because they referenced "specific subset[s] of records and documents."[189] Next, the Court determined that Section 1519's position in Title 18 Chapter 73 suggested that "tangible object" must be construed narrowly because the preceding sections, Sections 1516, 1517, and 1518, all prohibited *specific* obstructive behavior.[190] Therefore, Section 1519 should likewise "prohibit[] obstructive acts in *specific* contexts."[191]

S. Ct. at 1081–82 (noting that "[t]he plainness or ambiguity of statutory language is determined [not only] by reference to the language itself, [but as well by] the specific context in which that language is used, and the broader context of the statute as a whole." (alteration in original) (quoting Robinson v. Shell Oil Co., 519 U.S. 337, 341 (1997))).

184. *Yates*, 135 S. Ct. at 1082–83.

185. *Id.* Rule 16 requires that prosecutors give defense counsel evidence that is "material to the charges at issue." *Id.* at 1083.

186. *Id.* at 1087.

187. *Id.*

188. *Id.* at 1083 (noting that the caption of §1519 is "[d]estruction, alteration, or falsification of records in Federal investigations and bankruptcy," and the title of Section 802 of the Sarbanes-Oxley Act is "[c]riminal penalties for altering documents").

189. *Id.*

190. *Id.*

191. *Id.* at 1083–84 (emphasis added). The Court also reasoned that Congress intended § 1519 to be construed narrowly because it specifically chose to place other provisions of the Sarbanes-Oxley Act next to sections that prohibited broad obstructive acts, which indicated that congress had the option, but actively chose not to place § 1519 in proximity to the broad provisions. *Id.*

The *Yates* Court also applied three canons of construction in order to examine Section 1519's context: the canon against surplusage, the canon *noscitur a sociis*, and the canon *ejusdem generis*. The Court employed the canon against surplusage, which compels courts to interpret statutory language in a manner that does not render other parts of a statute superfluous, while comparing Section 1519 to 18 U.S.C. § 1512(c)(1).[192] Section 1512(c)(1) prohibits "alter[ing], destroy[ing], mutilat[ing], or conceal[ing] a record, document, or *other object*."[193] The Court reasoned that the phrase "or other object" in Section 1512(c)(1) meant any physical object.[194] Therefore, if "tangible object" in Section 1519 also referred to any physical object, Section 1512(c)(1) would be rendered useless.[195] The Court posited that any act violating Section 1519 would also violate Section 1512(c)(1) because both provisions would prohibit altering the same list of items.[196] Consequently, it concluded that "tangible object" must be construed narrowly to reference only objects that could "record or preserve information" to avoid rendering Section 1512(c)(1) superfluous.[197]

The Court also relied on the canons *noscitur a sociis* and *ejusdem generis*.[198] Applying *noscitur a sociis*, the Court noted that "tangible object" was the last term in a list of nouns preceded by "record" and "document."[199] Consequently, the Court concluded that "tangible object" was meant to refer to a "subset of tangible objects involving records or documents, i.e., objects used to record or preserve information."[200] Also, given that the verbs "falsifies" and "makes a false entry in" precede the nouns, the Court determined the list must reference objects that *can* be "falsified" or used to "make a false entry in."[201] Applying *ejusdem generis*, the Court posited

192. *Id.* at 1084–85; *see also* 18 U.S.C. § 1512(c)(1) (2012) ("Whoever corruptly alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the objects integrity or availability for use in an official proceeding . . . .").

193. *Id.* (emphasis added) (quoting 18 U.S.C. § 1512(c)(1)).

194. *Id.*

195. *Id.*

196. *Id.* at 1084–85. The Court also reasoned that § 1512(c)(1) would be rendered useless as § 1519 applies to "any matter within the jurisdiction . . . of the United States . . . or in relation to . . . any such matter," which overlaps with § 1512(c)(1) because it is likewise applicable in "an official proceeding." *Id.* The Court further noted that a broad interpretation of § 1519 would also render 18 U.S.C. 2232(a) useless. *Id.* at 1085 n.6.

197. *Id.* at 1085.

198. *See* text accompanying *supra* notes 65–66.

199. *Yates*, 135 S. Ct. at 1085 (plurality opinion).

200. *Id.* The Court also noted that it should avoid giving a word a meaning that is "so broad that it is inconsistent with its accompanying words [that it] giv[es] unintended breadth to Acts of Congress." *Id.* (first quoting Gustafson v. Alloyd Co., 513 U.S. 561, 575 (1995); then citing United States v. Williams, 553 U.S. 285, 294 (2008)).

201. *Id.* at 1086 (plurality opinion). The Court also noted that the absence of "falsifies" and "makes a false entry in," in the similar provision, § 1512(c)(1), indicates that the framers intentionally included those verbs in § 1519 to give it a narrower scope. *Id.*

that Congress did not intend "tangible object" to encompass *any* physical object because *any* physical object would logically include a "record" or "document," rendering "record" and "document" "surplusage."[202]

Finally, the Court noted that if any doubt remained as to what "tangible object" meant, it would turn to the rule of lenity, which provides that if a criminal statute's language is so ambiguous that a logical interpretation cannot be discerned, the ambiguity must be resolved in favor of the defendant.[203] The *Yates* Court explained that the rule of lenity is a valuable doctrine because it compels Congress to compose clear statutes that provide citizens with fair warning of criminally culpable conduct.[204] It reasoned that the rule of lenity, in this instance, was particularly important because Section 1519 imposed a severe penalty of up to twenty years in confinement.[205] The Court determined that before imposing such a harsh penalty, it must require that Congress speak in "clear and definite language"; thus, if Section 1519's ambiguity could not be resolved, the rule of lenity would be invoked.[206]

In his concurrence, Justice Alito agreed with the plurality's judgment, but departed from its reasoning because he believes that the "case [can] and should be resolved on narrow grounds."[207] Unlike the plurality, Justice Alito limited his analysis to a discussion of Section 1519's (1) list of nouns, (2) list of verbs, and (3) title, noting that that these three features taken together were enough to resolve the provision's ambiguity.[208] Similar to the plurality, Justice Alito applied the canons *noscitur a sociis* and *ejusdem generis* while analyzing Section 1519's list of verbs and nouns.[209] He reasoned that by including the terms "records" and "documents" in Section 1519, Congress intended for "tangible object" to reference items similar to "records" or "documents," which fish are not.[210] He also reasoned that Section 1519's verbs, specifically "makes a false entry in," indicated that Congress meant for "tangible object" to reference a "category of nouns" associated with "filekeeping," that is, things like e-mails and hard drives.[211] Justice Alito explained that this was because only items associated with filekeeping could logically retain a false entry, and therefore come within

202. *Id.* at 1086–87; *see also supra* Part II.D.

203. *Yates*, 135 S. Ct. at 1088.

204. *Id.*

205. *Id.*

206. *Id.* The Court did not apply the rule of lenity in this instance, but merely discussed its applicability. *Id.*

207. *Id.* at 1089 (Alito, J., concurring) (alteration in original).

208. *Id.* Justice Alito emphasized that the list of nouns, verbs, and title, are indicative of congressional intent when taken together, not in isolation. *Id.*

209. *Id.* at 1089–90.

210. *Id.* Justice Alito referred to e-mails or hard drives as examples of objects that would read naturally as a tangible object that was similar in nature to a record or document. *Id.*

211. *Id.* at 1090.

the scope of Section 1519.[212] Finally, he reasoned that the use of the term "record" in Section 1519's title, "Destruction, alteration or falsification of records in Federal investigations and Bankruptcy," "point[ed] to filekeeping, not fish."[213]

In her dissent, Justice Kagan contended that "tangible object's" plain meaning, and Section 1519's context and legislative history indicate that the term should be construed broadly, meaning any physical object.[214] She began by determining that the ordinary meaning of "tangible object," "a discrete thing that possesses a physical form," unambiguously encompassed fish.[215] Next, Justice Kagan addressed Section 1519's context. She agreed with the plurality's position that a statute's terms should not be analyzed in isolation, but argued that Section 1519's context still supported the conclusion that Congress intended Section 1519 to be construed broadly.[216] She specifically noted that the inclusion of the word "any" in Section 1519, and the provision's long list of verbs, "alters, destroys, mutilates . . ." denoted an "expansive meaning" that "covers the whole world of evidence-tampering."[217] Justice Kagan also reasoned that Section 1519's list of nouns were instructive. She argued that they signified that Congress intended Section 1519 apply broadly because other statutes containing the same nouns, such as Section 1512(c)(1), are "understood to embrace things of all kinds."[218]

The dissent further contended that Section 1519's legislative history also supports a broad interpretation of the term "tangible object."[219] Justice Kagan specifically took issue with the plurality's proposition that Section 1519 should be narrowly construed because of its origins in the Sarbanes-Oxley Act. Instead, she argued that Section 1519's legislative history actually suggests it began as a separate bill, meaning its scope was not limited by the Act's financial fraud origins.[220] Justice Kagan also reasoned that, while the plurality was correct to note that Section 1519 may have been enacted to supplement Section 1512(b)(2), it incorrectly determined that Section 1519 must be construed narrowly to successfully fulfill this purpose.[221]

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212. *Id.* (noting that "'makes a false entry in'—makes no sense outside of file keeping. How does one make a false entry of a fish? . . . '[M]akes a false entry in' is always inconsistent with the aquatic").

213. *Id.*

214. *Id.* at 1091 (Kagan, J., dissenting). Justice Scalia, Justice Kennedy, and Justice Thomas joined Justice Kagan in her dissent.

215. *Id.* at 1091.

216. *Id.* at 1092.

217. *Id.*

218. *Id.* at 1092–93. Justice Kagan also noted that the broad application of "evidence tampering" in the Model Penal Code was likewise instructive. *Id.*

219. *Id.* at 1093.

220. *Id.*

221. *Id.* at 1093.

The plurality explained that Section 1512(b)(2) only made it a crime to "'persuad[e] *another* person' to shred documents."[222] Therefore, Section 1519 was created in order to close the gap, and make it a crime for persons to *directly* shred or destroy documents.[223] However, Justice Kagan contended that even if "tangible object" were construed to mean *any* physical object, the provision would still ensure that persons who *directly* destroy evidence receive punishment equal to those who *order* evidence destroyed.[224]

Justice Kagan continued by disputing the Court's analysis of Section 1519's title, its placement in Chapter 73, the canon against surplusage, *noscitur a sociis* and *ejusdem generis*, and its discussion of the rule of lenity. Justice Kagan reasoned that the Court erred in examining Section 1519's title initially because the Court should always analyze the text of a statute first, and consider a title only *after* its text had been examined.[225] Furthermore, Justice Kagan argued that the plurality erred by examining Section 1519's title because a title is a synopsis of a statute, and does not accurately reflect congressional intent.[226] Specifically, the dissent posited that Section 1519's title omits keywords such as "mutilation, concealment, [and] covering up," and therefore does not correctly represent the text or meaning of a provision.[227] The dissent also argued that Section 1519's position in Chapter 73 of Title 18 has no bearing on the statute's construction.[228] Justice Kagan reasoned that the Sarbanes-Oxley Act is simply ordered chronologically—meaning the legislature did not make a calculated decision regarding its organizational structure—therefore Section 1519's position was not instructive.[229]

Justice Kagan also took issue with the Court's analysis under the canon against surplusage.[230] While she acknowledged that Section 1519 and Section 1512(c)(1) "*significantly* overlap," Justice Kagan argued they do not *always* overlap.[231] She explained that Section 1519 applies to "'matter[s] within the jurisdiction of any [federal] department or agency,'"[232] while Section 1512(c)(1) comparatively "safeguards 'official proceed-

222. *Id.* at 1081 (plurality opinion) (alteration in original) (quoting 18 U.S.C. § 1512(b)(2) (2012)).

223. *Id.*

224. *Id.* at 1093 (Kagan, J., dissenting) (citing S. REP. NO. 107-146, at 14 (2002)).

225. *Id.*; *see also supra* note 84 and accompanying text.

226. *Yates*, 135 S. Ct. at 1094.

227. *Id.* Specifically, the dissent argued that the plurality's analysis is flawed because a title is only an "abridgement" of the statute, and thus not indicative of its full purpose. *Id.*

228. *Id.* at 1095.

229. *Id.*

230. *Id.*

231. *Id.* (emphasis added).

232. *Id.* (alteration in original) (quoting 18 U.S.C. § 1519 (2012)).

ing[s].'"[233] Therefore, the provisions apply in different instances, and so the canon against surplusage is inapplicable.[234] Moreover, she contended that the legislative history illustrates that Congress was aware of the potential for overlap when the statutes were created, but enacted them regardless.[235] Consequently, this demonstrated that the legislature did not believe the overlap created a surplusage issue.[236]

Justice Kagan further argued that the plurality improperly utilized the canons *noscitur a sociis* and *ejusdem generis*.[237] She contended that the canons should only be used to remedy ambiguity if a term is actually ambiguous.[238] Therefore, seeing as the meaning of "tangible object" is unambiguous, the canons should not be utilized to alter that definition.[239] Nevertheless, she contended that an analysis under the canons, if done properly, still illustrates that "tangible object" should be construed broadly.[240] She reasoned that the canons show that Section 1519's purpose is to prevent the obstruction of law enforcement investigations by prohibiting the destruction of items that *provide evidence*.[241] Therefore, Justice Kagan asserted that a broad construction of "tangible object" comports with this function given that *any* physical object with evidentiary value would hinder the "administration of justice" if destroyed.[242] Finally, the dissent challenged the Court's discussion of the rule of lenity, contending that the rule should be used only in instances of grave ambiguity, but where the term's definition is clear, as in Section 1519, there is no need.[243]

IV. ANALYSIS

In *Yates v. United States*, the Supreme Court held that "tangible object," as used in 18 U.S.C. § 1519, refers only to objects capable of recording or preserving information.[244] The plurality's judgment was correct due to its effective use of the canons *noscitur a sociis* and *ejusdem generis*, and its accurate interpretation of Section 1519's legislative history. However, the Court's reasoning was flawed because (1) its discussion of the canon

233. *Id.* (emphasis added) (quoting 18 U.S.C. § 1512(c)(1) (2012)). As an example of an instance where the provisions do not overlap, Justice Kagan noted that an FBI investigation would fall within the scope of § 1519 but not § 1512(c)(1). *Id.*

234. *Id.*

235. *Id.* at 1096.

236. *Id.*

237. *Id.* at 1097.

238. *Id.*

239. *Id.*

240. *Id.* at 1097–98.

241. *Id.*

242. *Id.*

243. *Id.* at 1098–99.

244. *Id.* at 1079 (plurality opinion).

against surplusage improperly focused on Section 1512(c)(1), and (2) because it erroneously examined the rule of lenity in order to opine on issues related to over-criminalization.[245] Nevertheless, the *Yates* Court's reasoning correctly implied that Section 1519 is only applicable in financial fraud cases, providing lower courts with instructive guidelines that could help prevent any future improper application of Section 1519 in cases that do not involve corporate fraud.[246]

A. The Court's Holding Is Correct Because It Properly Discerned Congressional Intent with Regard to Section 1519's Function by Examining Its Context and Legislative History

The *Yates* Court correctly held that "tangible object," as used in Section 1519, denotes only objects that are capable of recording or preserving information.[247] The Court came to this precise conclusion because it (1) accurately examined Section 1519's context by proficiently applying the canons *noscitur a sociis* and *ejusdem generis*, and (2) properly discerned congressional intent regarding Section 1519's scope by correctly interpreting the legislative history of Section 1519 and the Sarbanes-Oxley Act.[248] Part IV.A.1 discusses the Court's correct application of the canons *noscitur a sociis* and *ejusdem generis*. Part IV.A.2 discusses why its interpretation of legislative history is accurate.

1. The Court Accurately Reasoned That the Term "Tangible Object" Does Not Encompass Fish by Applying the Canons of Construction Noscitur a Sociis *and* Ejusdem Generis

The *Yates* Court correctly reasoned that "tangible object" referred only to objects that could "record or preserve information," in part, by utilizing two canons of statutory interpretation.[249] First, the Court applied *noscitur a sociis*, which means, "a word is known by the company it keeps."[250] Second, the Court applied *ejusdem generis*, which counsels that "[w]here general words follow specific words in a statutory enumeration, the general words are [usually] construed to embrace only objects similar in nature."[251] The Court applied these canons in order to analyze Section 1519's lists of

245. *See infra* Part IV.A–IV.B.
246. *See infra* Part IV.C.
247. *Yates*, 135 S. Ct. at 1079.
248. *See supra* Part III.
249. *Yates*, 135 S. Ct. at 1085–86.
250. *Id.* at 1085.
251. *Id.* at 1086 (alteration in original) (citing Wash. State Dep't of Social and Health Servs. v. Guardianship Estate of Keffeler, 537 U.S. 371, 384 (2003)).

verbs and nouns.[252] Specifically, the Court reasoned that (1) by adding the verbs "falsifies, or makes a false entry in" Congress intended for "tangible object" to refer to items that *could* be falsified or retain a false entry, and (2) by adding "records" and "documents" Congress intended to define a specific subset of objects that *could* all "record or preserve information."[253] Furthermore, the Court noted that if Congress intended Section 1519 to be construed broadly, it could have easily omitted these terms and simply enacted a statute that read "whoever . . . destroys . . . any . . . object," but it did not.[254]

As a result of this analysis, the Court correctly concluded that the addition of the verbs and nouns in Section 1519 was a calculated decision made by Congress in order to limit the meaning of "tangible object."[255] In doing so, the *Yates* Court appropriately gleaned legislative intent from Congress's purposeful textual choices as the Supreme Court has done before.[256] Furthermore, the plurality's application of the canons is proper given that the Court has consistently noted that the canons are best used to narrow a term's meaning, as the plurality did in this instance, in order to avoid "giving [] unintended breadth to acts of Congress."[257]

Even though the plurality correctly applied the canons, Justice Alito, in his concurring opinion, utilized them in a more practical and effective manner.[258] By applying the canons, Justice Alito came to the same conclusion as the plurality, that is, "tangible object" should be construed narrowly.[259]

252. *Id.* The list of nouns at issue being "record, document, or other tangible object," and the list of actions being "alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in." *Id.*

253. *Id.* at 1085–86 (plurality opinion).

254. *Id.* at 1086–87.

255. *Id. But see* WILLIAM N. ESKRIDGE, JR., PHILIP P. FRICKEY & ELIZABETH GARRETT, CASES AND MATERIALS ON LEGISLATION STATES AND THE CREATION OF PUBLIC POLICY 909 (3d ed. 2004) (noting that a person can almost always find two conflicting canons of construction related to one point).

256. *See* Begay v. United States, 553 U.S. 137, 142 (2008) (noting that if Congress intended for 18 U.S.C. § 824(e)(2)(B)(ii) to be construed broadly, then it would not have included specific examples of crimes that fell within the provision's scope including burglary, arson, and extortion); Duncan v. Walker, 533 U.S. 167, 172–73 (2001) (reasoning that a *federal* habeas corpus petition was not within the scope of 28 U.S.C. § 2244(d)(2) because Congress purposefully chose the word "state," not "federal," to modify "post conviction and other collateral review" within the statute).

257. Jarecki v. G.D. Searle & Co., 367 U.S. 303, 307 (1961) (citing *e.g.*, Neal v. Clark, 95 U.S. 704, 708–09 (1877)); *see also* Maracich v. Spears, 133 S. Ct. 2191, 2201–02 (2013) (reasoning, under the canon *noscitur a sociis*, that the phrase "in connection with" as used in the Driver's Privacy Protection Act of 1994 should be narrowly construed due to specific examples of the term's meaning provided in a supplementary section); United States v. Williams, 553 U.S. 285, 294 (2008) (reasoning that the meanings of "promotes" and "presents" within 18 U.S.C. § 2252A(a)(3)(b) are narrowed according to the canon *noscitur a sociis* because of the verbs which surround them).

258. *Yates*, 135 S. Ct. at 1089 (Alito, J., concurring).

259. *Id.*

However, instead of merely defining "tangible object" as the plurality did, Justice Alito more expansively concluded that the focus of Section 1519 was meant to be on "filekeeping."[260] From this conclusion, he logically determined that a fish is not an item that is associated with "filekeeping," and therefore destroying a fish cannot be prohibited by Section 1519.[261] Justice Alito's application of the canons is more effective than the plurality's in two ways. First, he appeals to common sense, making his opinion more persuasive and credible. For example, while reasoning that the term "tangible object" should refer to objects that are similar to "records" and "documents" under *noscitur a sociis*. Justice Alito contended that a fish would not "spring to mind" as such an object, and further questioned "[w]ho wouldn't raise an eyebrow if a neighbor, when asked to identify something similar to a 'record' or 'document,' said 'crocodile'?"[262] Second, Justice Alito provides and explains several real-world examples of items that *would* come to mind when imagining a "tangible object" in the context of "filekeeping."[263] By doing so, he demonstrates how his reasoning may be practically applied, which makes his opinion more germane and therefore decisive. In addition to applying the canons more effectively than the plurality, Justice Alito also rightly omitted any discussion of the rule of lenity and the canon against surplusage from his opinion.[264] Why did he omit these components when the plurality did not? It could be that Justice Alito's proficient application of the canons *noscitur a sociis* and *ejusdem generis* facilitated this narrowed, more appropriate, reasoning. His persuasive analysis of the canons might have been evidence enough—in his mind—that the term "tangible object" did not encompass fish.[265] Consequently, Justice Alito could have determined that he did not need to implement other tools of statutory interpretation to support his conclusion.

260. *Id.* at 1079 (plurality opinion) (defining "tangible object" as an object that could "record or preserve information).

261. *Id.* at 1089–90 (Alito, J., concurring).

262. *Id.* Additionally, while analyzing Section 1519's verbs, Justice Alito appeals to common sense when he explains that the verb "makes a false entry in" would "make no sense out of filekeeping. How does one make a false entry of a fish?" *Id.* at 1090.

263. *Id.* at 1089–90. Justice Alito notes that e-mails, hard drives, and other items included in various dictionary definitions of tangible object would fall within the meaning of "tangible object" as used in Section 1519. *Id.*

264. *See infra* Part IV.B.

265. *Compare supra* Part II.A.1, *with Yates*, 135 S. Ct. at 1089–90 (Alito, J., concurring). Justice Alito's approach is similar to the Court's traditional plain meaning approach. In using this approach, the Court typically refuses to employ other mechanisms of statutory interpretation once it determines that plain meaning is clear and lends itself to one, logical interpretation of a statute. Here, it might be said that Justice Alito determined that the canons, along with a brief discussion of Section 1519's title, were evidence enough that "tangible object" should be construed narrowly. Thus, he refused to apply other tools of statutory interpretation. *Id.*

2. *The Court Properly Employed Legislative History to Construe Section 1519 in a Manner That Maintained the Purpose of the Sarbanes-Oxley Act*

The *Yates* Court correctly determined that the impetus behind the Sarbanes-Oxley Act—the Enron scandal—demonstrated that the Act's purpose was to further prevent and punish *financial fraud*.[266] The Court also accurately reasoned that, by enacting Section 1519 as a provision of the Sarbanes-Oxley Act, Congress intended that it carry out the Act's purpose.[267] In light of this reasoning, the Court determined that Section 1519 could not be construed broadly as a general evidence tampering statute because that would ultimately remove Section 1519 from its "financial fraud moorings."[268] It appropriately concluded, instead, that Section 1519 had to be interpreted narrowly—meaning "tangible object" could only reference objects that could "record or preserve information"—because only then could the provision target persons for destroying objects in cases of *financial fraud* and facilitate the Sarbanes-Oxley Act's function.[269] The Supreme Court has regularly followed the policy that when interpreting a provision, it should construe statutory language in a way that ensures a larger statutory scheme or purpose is upheld.[270] Therefore, by interpreting "tangible object" in a manner that facilitates the successful operation of the Sarbanes-Oxley Act,

266. *See supra* Part III.

267. *Yates*, 135 S. Ct. at 1084 (plurality opinion); *see also* LISA SCHULTZ BRESSMAN, EDWARD L. RUBIN & KEVIN M. STACK, THE REGULATORY STATE 332 (2010) ("[I]ntentionalism directs courts to ascertain statutory meaning by looking at 'the legislatures original intent' . . . courts should act as faithful agents of Congress because Congress is the primary lawmaker in a representative democracy." (quoting WILLIAM N. ESKRIDGE, JR., DYNAMIC STATUTORY INTERPRETATION 14 (1994)). *But compare* KENT GREENAWALT, LEGISLATION STATUTORY INTERPRETATION: 20 QUESTIONS 177–83 (1999) (identifying and expounding upon five categories of arguments against the use of legislative history in an analysis of statutory interpretation), *with* Stephen Breyer, *On the Uses of Legislative History in Interpreting Statutes*, 65 S. CAL. L. REV. 845, 846 (1992) (noting that the Court's use of legislative history fluctuates over time depending on the presiding Justices and historical context).

268. *Yates*, 135 S. Ct. at 1079.

269. *Id.* The *Yates* plurality specifically noted that the Sarbanes-Oxley Act "trained its attention on corporate and accounting deception and cover ups." *Id. But see* ANTONIN SCALIA, A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 29–31 (1997). Justice Scalia expressly supports a view that legislative history should not be examined when construing statutes because the intent of the legislature is not the "proper criterion of law." *Id.* at 31.

270. *See* Abramski v. United States, 134 S. Ct. 2259, 2267 (2014) (construing 18 U.S.C. § 922(a) to maintain the statute's larger purpose of regulating background checks amongst gun buyers to prevent criminals from falsely purchasing guns); Johnson v. United States, 529 U.S. 694, 709–10 (2000) (refusing to construe a statute in a manner that would be "fundamentally contrary" to the statute's scheme). *But see* Baker Botts L.L.P. v. ASARCO LLC, 135 S. Ct. 2158, 2169 (2015) (noting that in interpreting statutes, the Court must follow a provision's text even if it would result in undermining a provision's objective).

the Court upheld the Act's purpose and adhered to traditional principles of interpretation.[271]

B. The Court Erroneously Utilized the Canon Against Surplusage and Inappropriately Applied the Rule of Lenity

The *Yates* Court erred when it applied the canon against surplusage and discussed the rule of lenity, and should have omitted the analyses altogether.[272] First, the *Yates* Court erred when it argued that a broad interpretation of "tangible object" in Section 1519 would render Section 1512(c)(1) superfluous according to the canon against surplusage.[273] The Court should have noted, instead, that a broad interpretation of "tangible object" would render Section 2232(a) unnecessary. In addition, the Court inappropriately included a discussion of the rule of lenity in order to expound upon its own policy values pertaining to over-criminalization.[274] Part IV.B.1 discusses the Court's source of error in applying the canon against surplusage, and Part IV.B.2 discusses the Court's improper application of the rule of lenity.

1. The Court Should Have Applied the Canon Against Surplusage to Section 2232(a) Instead of Section 1512(c)(1)

The *Yates* Court held that "tangible object" referred only to objects that could be used to "record or preserve information," in part, based on its canon against surplusage analysis.[275] This analysis, however, was misdirected. The Court correctly reasoned that a broad interpretation of "tangible object" would render certain provisions superfluous, but improperly determined that it was the impact on Section 1512(c)(1) that was the crux of the issue.[276] The Court concluded that Section 1512(c)(1) would be rendered superfluous if "tangible object" were read to include *any* physical object because "[v]irtually any act that would violate [Section] 1512(c)(1) no

271. *See* Patricia M. Wald, *Some Observations on the Use of Legislative History in the 1981 Supreme Court Term*, 68 IOWA L. REV. 195, 195–96, 215–16 (1983) (noting (1) the Supreme Court's increased use of legislative history to clarify the meaning of statutory language, (2) how the "plain meaning rule" has been laid to rest, and (3) how the Court implements tools of statutory construction as needed); *see also* Stephen Breyer, *On the Uses of Legislative History in Interpreting Statutes*, 65 S. CAL. L. REV. 845, 861 (1992) (noting that legislative history is a useful supplement to help interpret unclear statutory language in order to "(1) avoi[d] an absurd result; (2) preven[t] the law from turning on a drafting error; (3) understand[] the meaning of specialized terms; (4) understand[] the 'reasonable purpose' a provision might serve; and (5) choos[e] among several possible 'reasonable purposes' for language in a politically controversial law").

272. *See supra* Part III.

273. *Id.*

274. *Id.*

275. Yates v. United States, 135 S. Ct. 1074 (2015) (plurality opinion).

276. *Id.* at 1084–85.

doubt would violate [Section] 1519 as well."[277] The dissent, nonetheless, countered this reasoning with two meritorious arguments.[278] First, the dissent argued that Section 1512(c)(1) does not apply to the same instances as Section 1519.[279] Justice Kagan contended that Section 1512(c)(1) applies to "official proceedings" as defined in Section 1515(a)(1)(A), while Section 1519 applies to "matter[s] within the jurisdiction of any [federal] department or agency."[280] Therefore, Section 1512(c)(1) would not be rendered superfluous.[281]

Second, the dissent countered the plurality's conclusion by discussing Section 1519's legislative history.[282] The plurality contended that the legislative history shows Section 1512(c)(1) was "drafted and proposed *after* Section 1519."[283] Therefore, Congress would not have enacted Section 1512(c)(1) *after* Section 1519 if Section 1519 already encompassed the same matters as 1512(c)(1).[284] Comparatively, the dissent argued that the legislative history indicates that when the provisions were enacted "lawmakers knew that Section 1519 and Section 1512(c)(1) share[d] much common ground."[285] Justice Kagan posited that Congress anticipated Section 1512(c)(1) and Section 1519 might overlap and apply to the same acts, but still enacted both provisions because it believed the overlap was insignificant; therefore, the canon did not apply.[286]

277. *Id. But see* Chickasaw Nation v. United States, 534 U.S. 84, 88–89 (2001) (construing 25 U.S.C. § 2719(d)(1) narrowly, despite the fact that the Court's interpretation rendered part of the statute superfluous, because there was no other reasonable interpretation).

278. *Yates*, 135 S. Ct. at 1095–96 (Kagan, J., dissenting).

279. *Id.*; *see also supra* note 70.

280. *Yates*, 135 S. Ct at 1095–96.

281. *See* Marx v. Gen. Revenue Corp., 133 S. Ct. 1166, 1177 (2013) (noting that the "canon against surplusage is not an absolute rule"); *see also* Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253 (1992) (noting that redundancy across statutes is not unusual and the Court must give meaning to both provisions unless an interpretation would render a section *entirely* superfluous); *see also* J.E.M. Ag. Supply v. Pioneer Hi-Bred Int'l, 534 U.S. 124, 144 (2001) (reasoning that the canon against surplusage need only be used when two statutes clearly "cannot mutually coexist," and because the Plant Patent Act and Plant Variety Protection Act merely overlap, the Court can still construe the Plant Protection Act, 35 U.S.C. § 101, to ascribe meaning to each (quoting Radzanower v. Touche Ross & Co., 426 U.S. 148, 155 (1976))).

282. *Yates*, 135 S. Ct. at 1095.

283. *Id.* at 1084 (emphasis added) (plurality opinion).

284. *Id.* at 1084–85.

285. *Id.* at 1096 (Kagan, J., dissenting).

286. *Id.*; *see* 148 CONG. REC. 12,512, 12,513 (2002) (statement of Sen. Lott) ("[I]n at least one area they overlap in what they propose . . . . But I don't see there are major problems."); *see also* S. REP. NO. 107–146, at 27 (2002) (noting that even though § 1519 applied to matters that other obstruction of justice statutes already encompassed, the framers enacted it because the provision uniquely omitted any requirement that the obstructive conduct relate to a "pending or imminent proceeding matter").

Overall, it seems the legislative history is inconclusive because it can be construed to support both the plurality's and the dissent's opinion.[287] Therefore, the Court should have either expounded on its alternative argument—that if "tangible object" were construed as applying to *any* physical object it would render Section 2232(a) superfluous—or omitted the analysis altogether.[288] Section 2232(a) prohibits persons from "destroy[ing] . . . or otherwise tak[ing] any action, for the purposes of preventing or impairing the Government's lawful authority to take such *property*."[289] The *Yates* Court could have contended that Section 2232(a) would be rendered superfluous if Section 1519 were construed broadly because then "tangible object" might cover the same group of items that the term "property" would cover in Section 2232(a). It could have also alternatively argued that if Section 1519 were construed narrowly, "tangible object" would focus on issues separate from those covered by the term "property" in Section 2232(a). Whether this argument would be successful is unclear. However, it is clear that Section 2232(a)'s legislative history would be easier to interpret because it does not overlap with Section 1519's legislative history. Unlike Section 1512(c)(1), Section 2232(a) was unquestionably enacted before Section 1519, and separate from the Sarbanes-Oxley Act. Therefore, an argument based on Section 2232(a) would, in the least, be stronger than one based on Section 1512(c)(1).

2. The Court Erred in Applying the Rule of Lenity

After the Court concluded its statutory interpretation analysis, it reasoned that if any doubt was left regarding the scope of "tangible object" in Section 1519, then the rule of lenity might apply.[290] The Court noted that the rule of lenity, which counsels that any ambiguity in a criminal statute must be resolved in favor of the defendant, was particularly appropriate in this case because persons who violate Section 1519 could be subject to twenty years in prison.[291] However, many courts have held that the rule of

287. *See* Breyer, *supra* note 267 (noting that it is easy to find examples of vague or conflicting legislative history); *see also* Lamie v. U.S. Tr., 540 U.S. 526, 539 (2004) (finding that the legislative history "creates more confusion than clarity about the congressional intent").

288. *Yates*, 135 S. Ct. at 1085 n.6 (plurality opinion).

289. 18 U.S.C. § 2232(a) (2012) (emphasis added).

290. *Yates*, 135 S. Ct. at 1088.

291. *Id.* The Court explained that "before we choose the harsher alternative," it is prudent "to require that Congress . . . sp[eak] in language that is clear and definite." *Id.*; *see also* Lander v. United States, 358 U.S. 169, 178 (1958) (noting that "the Court will not" increase criminal penalties when a statute's language is ambiguous). *But see Yates*, 135 S. Ct. at 1100–01 (Kagan, J., dissenting) (noting that § 1519's broad reach does not mean it is ambiguous, that the twenty year punishment is § 1519's *maximum*, and that even though the statute is "too broad and undifferentiated . . . . [T]his Court does not get to re-write the law" because "'[r]esolution . . . of whether a statute should sweep broadly or narrowly is for Congress'" (quoting United States v. Rodgers, 466 U.S. 475, 484 (1984))).

lenity only applies after a court has exhausted every tool of statutory interpretation, and concluded that it cannot even suppose what Congress intended the statute to mean.[292] While the *Yates* Court initially found Section 1519's language ambiguous, it resolved that ambiguity by applying several tools of statutory interpretation, ultimately holding that a "tangible object" was one that could "record or preserve information."[293] Consequently, the Court's discussion of the rule of lenity is out of place.[294] Furthermore, through its discussion of the rule of lenity, the Court seemingly infers that "tangible object" should be construed narrowly to avoid the "absurd result" of subjecting persons to twenty years in prison for violating language that is extremely broad.[295] As a result, it appears that one of the reasons why the plurality felt Section 1519 should be construed narrowly was based on its own desire to frame valuable policy decisions and prevent "over criminalization and excessive punishment."[296] However, courts and commentators have long been cautious with regard to the Court's attempts to "avoid absurd results" because of the risk that a "'remedial statute[]' [will] be liberally construed to achieve [*the Court's*] purposes," and not *Congress's* purpose.[297] It is the job of the judiciary to interpret a statute's language and define its purpose within the parameters that the legislature intended. It is

292. *Yates*, 135 S. Ct. at 1098; *see e.g.*, Muscarello v. United States, 524 U.S. 125, 138–39 (1997) (noting the rule of lenity is applicable only in the face of "grievous ambiguity" (quoting Chapman v. United States 500 U.S. 453, 463 (1991))). *But see* Abramski v. United States, 134 S. Ct. 2259, 2281 (2014) (Scalia J., dissenting) (noting that the rule of lenity applies whenever a "reasonable doubt persists," and the "tools" of statutory interpretation "do not *decisively* dispel the statute's ambiguity" (first citing Moskal v. United States, 498 U.S. 103, 108 (1990); then citing *e.g.*, Skilling v. United States, 561 U.S. 358, 410 (2010) (emphasis added))).

293. *See supra* Part III; *compare Yates*, 135 U.S. at 1088 (plurality opinion) (discussing the rule of lenity), *with* United States v. Granderson, 511 U.S. 39, 56–57 (1994) (applying the rule of lenity because the language and context of 18 U.S.C. 3565(a) left it open to several different reasonable interpretations).

294. *See* United States v. Wells, 519 U.S. 482, 499 (1997) (noting that the rule of lenity "applies only if, 'after seizing everything from which aid can be derived,' . . . we can make 'no more than a guess as to what Congress intended'" (alteration in original) (quoting Reno v. Koray, 515 U.S. 50, 65 (1995))).

295. *See Breyer*, *supra* note 267 at 848 (noting that an absurd result occurs when "some collateral matter arises out of the general words . . . and happens to be unreasonable; there the judges are in decency to conclude that this consequence was not foreseen by the parliament" (quoting 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAW OF ENGLAND 90–91 (15th ed. 1809)); *Yates*, 135 S. Ct. at 1088 (plurality opinion).

296. *Yates*, 135 S. Ct. at 1100 (Kagan, J., dissenting).

297. SCALIA, *supra* note 269 (emphasis added); *compare* Griffin v. Oceanic Contractors, 458 U.S. 564, 575–76 (1982) (reasoning that even though respondent might have been correct to argue that a literal interpretation of ch. 153 § 3, 38 Stat. 1164 would produce an absurd result, any "dissatisfaction with the result" is for Congress to deal with, not the Court (first citing Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 123–24 (1980); then citing Reiter v. Sonotone, 442 U.S. 330, 344–45 (1979))), *with* Lawson v. FMR LLC, 134 S. Ct. 1158 (2014) (noting that even though there may be a chance that construing the term "employee" within 18 U.S.C. § 1514(a) to reference employees of contractors and subcontractors may lead to an absurd result, the danger is mostly hypothetical and does not warrant a narrower interpretation).

not within the Court's power to make substantive changes to improve a statute as it sees fit and interfere with Congress's job of legislating.[298] The *Yates* Court should have reached its holding based on the statute's language and its analysis of the tools of statutory interpretation, not a desire to mold Section 1519 to its own purpose.

C. The Court's Reasoning Correctly Implied That Section 1519 Only Applies in Financial Fraud Cases, Which Set Forth Instructive Guidelines for Lower Courts

The *Yates* Court properly held that "tangible object" referred only to objects that could be used to "record or preserve information," but its reasoning also implied that Section 1519 is only applicable in financial fraud cases.[299] The *Yates* Court was not presented with the question of Section 1519's general scope on review, and consequently did not rule on the issue. However, its analyses of the provision's legislative history and context rightly imply that Section 1519's applicability is limited to corporate fraud cases in three ways.[300] First, given that Section 1519 originated as a provision of the Sarbanes-Oxley Act,[301] the Court emphasized that the provision should only apply in financial fraud cases to maintain the Act's purpose and "financial fraud mooring."[302] Second, because the Court explicitly noted that it "resist[s] . . . creating a coverall spoliation of evidence statute," it may be deduced that the Court meant Section 1519 as a *specific* evidence tampering statute, mainly a specific *financial fraud* evidence tampering provision.[303] Finally, by holding that "tangible object" should be *construed* narrowly, the Court seemingly implied that Section 1519 should be *applied*

298. *See* Lamie v. U.S. Tr., 540 U.S. 526, 542 (2004) (citing United States v. Granderson, 511 U.S. 39, 68 (1994) (Kennedy, J., concurring)); Jaskolski v. Daniels, 427 F.3d 456, 462 (7th Cir. 2005).

299. *See supra* Part III.

300. *See* Brief for Petitioner at i, United States v. Yates, 135 S. Ct. 1074 (2015) (No. 13-7451) ("The question presented here is: 'Whether the ordinary or natural meaning of the phrase 'tangible object' . . . is a thing used to preserve information . . . .'"); *see also* Brief for the United States at (I), United States v. Yates, 135 S. Ct. 1074 (2015) (No. 13-7451) ("The question presented is whether Section 1519's reference to 'any . . . tangible object' encompasses ordinary physical evidence . . . or is limited to 'thing[s] used to preserve information'" (alteration in original) (quoting Brief for Petitioner, at i, 8)).

301. *See Yates*, 135 S. Ct. at 1079 (plurality opinion) (noting that the Sarbanes-Oxley Act was prompted by the Enron Corporation's accounting fraud, so Congress enacted it to prevent financial fraud).

302. *Id.* at 1079–81. *But see* United States v. Russell, 639 F. Supp. 2d 226, 238 (D. Conn. 2007) (noting that even if § 1519 was made to penalize persons who shredded financial documents, it "would not prevent the government from using it to prosecute the destruction of evidence in connection with the investigation of other crimes").

303. *Yates*, 135 S. Ct. at 1088.

narrowly because such a narrow category of "tangible objects" may not rationally apply in a general evidence-tampering statute.[304]

The *Yates* Court's implicit determination that Section 1519 is only germane in financial fraud cases may drastically impact lower courts that are presented with claims involving Section 1519 in the future. While many courts have utilized Section 1519 in accordance with the *Yates* Court's narrow construction of "tangible object," they have also repeatedly applied the provision in instances that do not involve corporate fraud.[305] In light of the Supreme Court's reasoning, it seems the lower courts' application of Section 1519 in non-financial fraud instances directly contradicts the provision's context and legislative history, which supports a narrow interpretation of Section 1519's scope.[306] Therefore, the *Yates* Court's reasoning may (1) counsel lower courts faced with a determination of whether Section 1519 is being appropriately employed, (2) provide instructive guidelines that might direct them to remedy improper utilization of the provision, and (3) prevent courts from applying Section 1519 in cases not involving corporate fraud altogether. More importantly, the *Yates* Court's decision may *alert* lower courts faced with cases involving Section 1519 that they might need to carefully scrutinize, possibly sua sponte, whether the provision is being properly utilized. However, whether lower courts will adhere to the Court's implicit determination has yet to be revealed given that this reasoning is merely dicta. Therefore, the Supreme Court could very well encounter a direct question on appeal regarding Section 1519's scope in the future, and look back at the *Yates* Court's reasoning to direct its judgment.

V. CONCLUSION

In *Yates v. United States*, the Court held that the term "tangible object," as used in Section 1519, encompasses *only* objects that can be used to "record or preserve information."[307] The Court came to this correct holding by accurately examining the provision's legislative history, and by proficiently applying the canons *noscitur a sociis* and *ejusdem generis*.[308] However, its reasoning was flawed in two respects. First, the Court mistakenly

304. *See id.* at 1089–90 (Alito, J., concurring) (noting that the verbs, nouns, and title of § 1519 lead to the conclusion that some things would not be considered "tangible" within the provision).

305. *See supra* notes 149, 154, and 158; *compare* United States v. Jackson, 186 F. App'x 736, 738 (9th Cir. 2006) (convicting defendant under 18 U.S.C. § 1519 for falsifying an investigation report by omitting a Federal Protective Services officer's confession), *with* United States v. Lessner, 498 F.3d 185, 196 (3d Cir. 2005) (finding defendant guilty under § 1519 for destroying evidence related to her falsification of contracts of sale that misrepresented prices of military merchandise to overcharge the federal government).

306. *See supra* Part II.A.1–2.

307. 135 S. Ct. 1074 (2015).

308. *See supra* Part IV.A.

applied the canon against surplusage, arguing that Section 1512(c)(1) would be rendered superfluous instead of Section 2232(a).[309] Second, it inappropriately applied the rule of lenity in order to expound upon its own desire to effectuate policy change.[310] Nevertheless, the Court's analysis did implicitly establish that Section 1519 is only applicable in financial fraud cases. In doing so, it provided lower courts with instructive guidelines that will hopefully prevent them from improperly applying Section 1519 to non-financial fraud cases in the future.[311]

309. *See supra* Part IV.B.1.
310. *See supra* Part IV.B.2.
311. *See supra* Part IV.C.