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In WLF Victory, High Court Throws Back Fisherman's Harsh Prosecution, Limits Sarbanes-Oxley's "Anti-Shredding" Provision

(Yates v. United States)

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—Cory Andrews, Senior Litigation Counsel, Washington Legal Foundation

WASHINGTON, DC—Washington Legal Foundation (WLF) today praised the 5-4 Supreme Court plurality opinion in *Yates v. United States* that reverses a conviction by lower federal courts. The U.S. Justice Department had prosecuted commercial fisherman John Yates under the Sarbanes-Oxley Act for allegedly directing his crew to throw undersized fish back into the sea after receiving a regulatory citation for catching them.

The Act’s anti-shredding provision, 18 U.S.C. § 1519, makes it a crime to destroy or cover up “any record, document, or tangible object” with the intent to obstruct an investigation. Treating undersized fish as “tangible objects” under the statute, federal prosecutors indicted Yates, and the United States Court of Appeals for the Eleventh Circuit affirmed his conviction.

In reversing the appeals court, the Court limits § 1519 (which carries a penalty of up to 20 years’ imprisonment) to the destruction of a tangible object that is “used to record or preserve information.” By cabining the meaning of the term “tangible object” in this manner, the Court ensures that future defendants cannot be convicted (and should not be prosecuted) under § 1519 for disposing of objects that are not ordinarily used to record or preserve data or information.

The plurality also agrees with WLF that construing a “tangible object” as anything that “possesses a physical form” was much too indefinite to place Yates on notice that his conduct ran afoul of this law. WLF’s brief argued that the appeals court’s open-ended interpretation of § 1519 imposed no limits or standards on when prosecution is warranted, but rather invited arbitrary or discriminatory enforcement by law enforcement agents and prosecutors.

In response to the victory, WLF issued a statement by Senior Litigation Counsel Cory Andrews:

“Even the dissent acknowledges that overcriminalization and excessive punishment in the U.S. Code are real problems and that § 1519 is ‘not an outlier, but an emblem of a deeper pathology in the federal criminal code.’ The Court’s unanimous view in that respect should catch the eye of Congress—and U.S. Attorneys—who must exercise renewed prudence, restraint, and greater clarity when enacting—or prosecuting—such crimes in the future.”

WLF is a public interest law firm and policy center concerned with overcriminalization, such as when prosecutors treat business conduct criminally that is better addressed in civil proceedings.