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Media Contact: Cory Andrews | 202-588-0302

WLF Asks High Court to Declare Sarbanes-Oxley's "Anti-Shredding" Provision Void for Vagueness

(Yates v. United States)

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—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—The Washington Legal Foundation today asked the U.S. Supreme Court to reverse a federal appeals court decision upholding the conviction, under the Sarbanes-Oxley Act, of a commercial fisherman who allegedly directed his crewmen to throw undersized fish back into the sea after receiving a regulatory citation for catching them.

The case raises important questions about the permissible scope of the Sarbanes-Oxley Act, a law passed by Congress in 2002 to restore integrity to and faith in public companies’ disclosure and accounting practices in the wake of corporate scandals such as Enron and WorldCom. John Yates was convicted for violating the Act’s so-called anti-shredding provision, 18 U.S.C. § 1519, which 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 under § 1519. The United States Court of Appeals for the Eleventh Circuit affirmed his conviction.

In its brief urging reversal of Yates’s conviction, WLF argues that the Eleventh Circuit’s construction of “tangible object” as anything that “possesses a physical form” is too indefinite to place Yates on notice of what conduct would run afoul of the law and is thus void for vagueness. Likewise, WLF argues that the appeals court’s open-ended interpretation of § 1519 imposes no limits or standards on when prosecution is warranted, but rather invites arbitrary or discriminatory enforcement of the provision by law enforcement agents and prosecutors.

Upon filing its brief, WLF issued the following statement by Senior Litigation Counsel Cory Andrews: “Overcriminalization occurs when vague, ambiguous language in a criminal statute deprives citizens of the appropriate ‘fair warning’ needed to comply with the law. The Eleventh Circuit’s overreaching interpretation of the Sarbanes-Oxley Act’s ‘anti-shredding’ provision would radically transform the law into a trap for the unwary.”

WLF is a public interest law firm and policy center concerned with overcriminalization, including where federal prosecutors seek to expand federal statutes to criminalize business conduct that is better addressed in administrative or civil proceedings.

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