

GIBSON DUNN



Appellate & Constitutional Law Update

June 28, 2024

## Supreme Court Limits Scope Of Sarbanes-Oxley’s Prohibition On Obstructing Official Proceedings

*Fischer v. United States*, No. 23-5572 – Decided June 28, 2024

**Today, the Supreme Court held 6-3 that Section 1512(c) of the Sarbanes-Oxley Act—which prohibits obstructing official proceedings—is limited to acts that impair the availability or integrity of evidence in an official proceeding.**

*“Although the Government’s all-encompassing interpretation may be literally permissible, it defies the most plausible understanding of why (c)(1) and (c)(2) are conjoined, and it renders an unnerving amount of statutory text mere surplusage.”*

**CHIEF JUSTICE ROBERTS, WRITING FOR THE COURT**

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**Background:**

Section 1512(c) of the Sarbanes Oxley Act provides criminal penalties for anyone who corruptly:

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

(2) *otherwise* obstructs, influences, or impedes any official proceeding, or attempts to do so.

On January 6, 2021, Joseph W. Fischer allegedly forced his way into the Capitol and assaulted members of the Capitol Police. Fischer was arrested and charged with violating Section 1512(c) by obstructing an official proceeding. Fischer moved to dismiss, arguing that the statute prohibits only acts that impair the integrity or availability of *evidence* in an official congressional proceeding. The district court agreed and dismissed the count. The D.C. Circuit reversed, holding that Section 1512(c)(2) is a catchall provision that reaches beyond the specific examples in subsection (c)(1). Judge Katsas dissented, construing Section 1512(c)(2) as limited to acts that affect the integrity or availability of evidence in an official proceeding.

#### **Issue:**

Is 18 U.S.C. § 1512(c)(2) limited to actions pertaining to evidence for official proceedings?

#### **Court's Holding:**

Yes. Section 1512(c)(2) requires the Government to establish that a defendant impaired or attempted to impair the availability or integrity of evidence intended for use in an official proceeding.

#### **What It Means:**

- The Court's decision means that the Government cannot use Section 1512(c)(2) to prosecute obstructive conduct that is unrelated to evidence intended for use in an official proceeding. To reach this conclusion, the Court relied on canons of construction that limit generalized statutory terms and phrases—"otherwise" clauses in particular—by reference to more specific neighboring or preceding terms and phrases.
- The Court emphasized that Section 1512(c)(2) still has teeth. For example, the Court noted that it is possible to violate Section 1512(c)(2) by creating false evidence, impairing witness testimony, or tampering with intangible information.
- Justice Jackson voted with the majority and wrote a concurrence to emphasize that the Court's holding "follows from" the statute's "legislative purpose." Justice Barrett, joined by Justice Sotomayor and Justice Kagan, dissented and would have adopted a broader construction of Section 1512(c)(2) that covered Fischer's alleged conduct even though it was not related to evidence tampering.
- Today's decision is the latest example of the Court narrowly construing broad criminal law provisions to avoid sweeping in conduct addressed by other statutes. Earlier this week, in *Snyder v. United States*, the Court narrowly construed the federal bribery statute to exclude after-the-fact gratuities that may be regulated by state law. And in 2015, in *Yates*

*v. United States*, the Supreme Court construed Sarbanes-Oxley’s criminal spoliation provision, 18 U.S.C. § 1519, to limit the broad phrase “a tangible object” to one used to record or preserve information.

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### Gibson Dunn Appellate Honors



The Court’s opinion is available [here](#).

Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding developments at the U.S. Supreme Court. Please feel free to contact the following practice group leaders:

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