Fifth Annual Faulkner Law Review Symposium:  
The Role of the Judge in the Anglo-American Tradition  

Materials for the Honorable William H. Pryor, Jr.’s Keynote Address  

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Petitioner Avondale Lockhart pleaded guilty to possessing child pornography in §2252(a)(4). Because Lockhart had a prior state-court conviction for first-degree sexual abuse involving his adult girlfriend, his presentence report concluded that he was subject to the 10-year mandatory minimum sentence enhancement provided in §2252(b)(2), which is triggered by, inter alia, prior state convictions for crimes “relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward.” Lockhart argued that the limiting phrase “involving a minor or ward” applied to all three state crimes, so his prior conviction did not trigger the enhancement. Disagreeing, the District Court applied the mandatory minimum. The Second Circuit affirmed.

_Held_: Lockhart’s prior conviction is encompassed by §2252(b)(2). Pp. 961 – 969.

(a) A natural reading of the text supports that conclusion. The “rule of the last antecedent,” a canon of statutory interpretation stating that “a limiting clause or phrase ... should ordinarily be read as modifying only the noun or phrase that it immediately follows,” _Barnhart v. Thomas_, 540 U.S. 20, 26, 124 S.Ct. 376, 157 L.Ed.2d 333, clarifies that the phrase “involving a minor or ward” modifies only the immediately preceding noun phrase “abusive sexual conduct” and that the phrases “aggravated sexual abuse” and “sexual abuse” are not so restricted. The rule “can ... be overcome by other indicia of meaning,” ibid., but §2252(b)(2)’s context reinforces its application in this case. Pp. 961 – 964.

(b) Section 2252(b)(2)’s enhancement can also be triggered by, inter alia, a prior federal sexual abuse offense enumerated in Chapter 109A of the Federal Criminal Code. Interpreting §2252(b)(2) using the “rule of the last antecedent,” the headings in Chapter 109A mirror precisely the order, precisely the divisions, and nearly precisely the words used to describe the state sexual-abuse predicates. Applying the modifier “involving a minor or ward” to all three items in §2252(b)(2)’s list, by contrast, would require this Court to interpret the state predicates in a way that departs from the federal template. If Congress had intended that result, it is doubtful that Congress would have followed so closely the structure and language of Chapter 109A. Pp. 963 – 965.

(c) Lockhart’s counterarguments are rejected. Pp. 964 – 968.

(1) _Porto Rico Railway, Light & Power Co. v. Mor_, 253 U.S. 345, 40 S.Ct. 516, 64 L.Ed. 944, _United States v. Bass_, 404 U.S. 336, 92 S.Ct. 515, 30 L.Ed.2d 488, and _Jama v. Immigration and Customs Enforcement_, 543 U.S. 335, 125 S.Ct. 694, 160 L.Ed.2d 708, do not require this Court to apply Lockhart’s countervailing series-qualifier principle. In those cases, the Court simply observed that the last-antecedent rule may be overcome by contextual indicia of meaning. Lockhart’s attempts to identify such indicia are unavailing. He claims that the state predicates are so similar that a limiting phrase could apply equally to all three. But by transforming a list of separate predicates into a set of near-synonyms, Lockhart’s reading results in too much redundancy and risks running headlong into the rule against superfluity. Pp. 966 – 968.

(2) Lockhart contends that the existence of other disparities between §2252(b)(2)’s state and federal sexual-abuse predicates indicate that parity was not Congress’ concern. However, this Court’s construction relies on contextual cues particular to the sexual-abuse predicates, not on a general assumption that Congress sought full parity between all state and federal predicates. Pp. 966 – 967.

(3) The provision’s legislative history “hardly speaks with [a] clarity of purpose,” _Universal Camera Corp. v. NLRB_, 340 U.S. 474, 483, 71 S.Ct. 456, 95 L.Ed. 456, and does nothing to explain why Congress would have wanted to structure §2252(b)(2) to treat state and federal predicates differently. Pp. 966 – 968.

(4) Finally, Lockhart suggests the rule of lenity is...
triggered here, where applying his series-qualifier principle would lead to an alternative construction of §2252(b)(2). The rule of lenity is used to resolve ambiguity only when the ordinary canons have revealed no satisfactory construction. Here, however, the rule of the last antecedent is well supported by context, and Lockhart’s alternative is not. P. 968.

749 F.3d 148, affirmed.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C.J., and KENNEDY, THOMAS, GINSBURG, and ALITO, JJ., joined. KAGAN, J., filed a dissenting opinion, in which BREYER, J., joined.

Opinion

Justice SOTOMAYOR delivered the opinion of the Court.

Defendants convicted of possessing child pornography in violation of 18 U.S.C. § 2252(a)(4) are subject to a 10–year mandatory minimum sentence and an increased maximum sentence if they have “a prior conviction ... under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward.” § 2252(b)(2).

The question before us is whether the phrase “involving a minor or ward” modifies all items in the list of predicate crimes (“aggravated sexual abuse,” “sexual abuse,” and “abusive sexual conduct”) or only the one item that immediately precedes it (“abusive sexual conduct”). Below, the Court of Appeals for the Second Circuit joined several other Courts of Appeals in holding that it modifies only “abusive sexual conduct.” The Eighth Circuit has reached the contrary result. We granted certiorari to resolve that split. 575 U.S. ———, 135 S.Ct. 2350, 192 L.Ed.2d 143 (2015). We affirm the Second Circuit’s holding that the phrase “involving a minor or ward” in §2252(b)(2) modifies only “abusive sexual conduct.”

I


Lockhart’s presentence report calculated a guidelines range of 78 to 97 months for the possession offense. But the report also concluded that Lockhart was subject to §2252(b)(2)’s mandatory minimum because his prior New York abuse conviction related “to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward.” PSR ¶¶ 87–88.

Lockhart objected, arguing that the statutory phrase “involving a minor or ward” applies to all three listed crimes: “aggravated sexual abuse,” “sexual abuse,” and “abusive sexual conduct.” He therefore contended that his prior conviction for sexual abuse involving an adult fell outside the enhancement’s ambit. The District Court rejected Lockhart’s argument and applied the mandatory minimum. The Second Circuit affirmed his sentence. 749 F.3d 148 (C.A.2 2014).

II

Section 2252(b)(2) reads in full:

“Whoever violates, or attempts or conspires to violate [18 U.S.C. § 2252(a)(4) ] shall be fined under this title or imprisoned not more than 10 years, or both, but ... if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.”
This case concerns that provision’s list of state sexual-abuse offenses. The issue before us is whether the limiting phrase that appears at the end of that list—“involving a minor or ward”—applies to all three predicate crimes preceding it in the list or only the final predicate crime. We hold that “involving a minor or ward” modifies only “abusive sexual conduct,” the antecedent immediately preceding it. Although § 2252(b)(2)’s list of state predicates is awkwardly phrased (to put it charitably), the provision’s text and context together reveal a straightforward reading. A timeworn textual canon is confirmed by the structure and internal logic of the statutory scheme.

A

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B

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A

[2] Consider the text. When this Court has interpreted statutes that include a list of terms or phrases followed by a limiting clause, we have typically applied an interpretive strategy called the “rule of the last antecedent.” See Barnhart v. Thomas, 540 U.S. 20, 26, 124 S.Ct. 376, 157 L.Ed.2d 333 (2003). The rule provides that “a limiting clause or phrase ... should ordinarily be read as modifying only the noun or phrase that it immediately follows.” Ibid.; see also Black’s Law Dictionary 1532–1533 (10th ed. 2014) (“[Q]ualifying words or phrases modify the words or phrases immediately preceding them and not words or phrases more remote, unless the extension is necessary from the context or the spirit of the entire *963 writing”); A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 144 (2012).

This Court has applied the rule from our earliest decisions to our more recent. See, e.g., Sims Lessee v. Irvine, 3 Dall. 425, 444, n., 1 L.Ed. 665 (1799); FTC v. Mandel Brothers, Inc., 359 U.S. 385, 389, n. 4, 79 S.Ct. 818, 3 L.Ed.2d 893 (1959); Barnhart, 540 U.S., at 26, 124 S.Ct. 376. The rule reflects the basic intuition that when a modifier appears at the end of a list, it is easier to apply that modifier only to the item directly before it. That is particularly true where it takes more than a little mental energy to process the individual entries in the list, making it a heavy lift to carry the modifier across them all. For example, imagine you are the general manager of the Yankees and you are rounding out your 2016 roster. You tell your scouts to find a defensive catcher, a quick-footed shortstop, or a pitcher from last year’s World Champion Kansas City Royals. It would be natural for your scouts to confine their search for a pitcher to last year’s championship team, but to look more broadly for catchers and shortstops.

Applied here, the last antecedent principle suggests that the phrase “involving a minor or ward” modifies only the phrase that it immediately follows: “abusive sexual conduct.” As a corollary, it also suggests that the phrases “aggravated sexual abuse” and “sexual abuse” are not so constrained.

[2] Of course, as with any canon of statutory interpretation, the rule of the last antecedent “is not an absolute and can assuredly be overcome by other indicia of meaning.” Barnhart, 540 U.S., at 26, 124 S.Ct. 376; see also Davis v. Michigan Dept. of Treasury, 489 U.S. 803, 809, 109 S.Ct. 1500, 103 L.Ed.2d 891 (1989) (“It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme”). For instance, take “ ‘the laws, the treaties, and the constitution of the United States.’ ” Post, at 964, n. 1 (KAGAN, J., dissenting). A reader intuitively applies “of the United States” to “the laws,” “the treaties” and “the constitution” because (among other things) laws, treaties, and the constitution are often cited together, because readers are used to seeing “of the United States” modify each of them, and because the listed items are simple and parallel without unexpected internal modifiers or structure. Section 2252(b)(2), by contrast, does not contain items that readers are used to seeing listed together or a concluding modifier that readers are accustomed to applying to each of them. And the varied syntax of each item in the list makes it hard for the reader to carry the final modifying clause across all three.

More importantly, here the interpretation urged by the rule of the last antecedent is not overcome by other indicia of meaning. To the contrary, § 2252(b)(2)’s context fortifies the meaning that principle commands.

B

Our inquiry into § 2252(b)(2)’s context begins with the internal logic of that provision. Section 2252(b)(2) establishes sentencing minimums and maximums for three categories of offenders. The first third of the section imposes a 10–year maximum sentence on offenders with no prior convictions. The second third imposes a 10–year minimum and 20–year maximum on offenders who have previously violated a federal offense listed within various chapters of the Federal Criminal Code. And the last third
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imposes the same minimum and maximum on offenders who have previously committed state “sexual abuse, aggravated sexual abuse, or abusive sexual conduct involving a minor or ward” as well as a number of state crimes related to the possession and distribution of child pornography.

Among the chapters of the Federal Criminal Code that can trigger § 2252(b)(2)’s recidivist enhancement are crimes “under ... chapter 109A.” Chapter 109A criminalizes a range of sexual-abuse offenses involving adults or minors and wards. And it places those federal sexual-abuse crimes under headings that use language nearly identical to the language § 2252(b)(2) uses to enumerate the three categories of state sexual-abuse predicates. The first section in Chapter 109A is titled “Aggravated sexual abuse.” 18 U.S.C. § 2241. The second is titled “Sexual abuse.” § 2242. And the third is titled “Sexual abuse of a minor or ward.” § 2243. Applying the rule of the last antecedent, those sections mirror precisely the order, precisely the divisions, and nearly precisely the words used to describe the three state sexual-abuse predicate crimes in § 2252(b)(2): “aggravated sexual abuse,” “sexual abuse,” and “abusive sexual conduct involving a minor or ward.”

This similarity appears to be more than a coincidence. We cannot state with certainty that Congress used Chapter 109A as a template for the list of state predicates. He first contends, as does our dissenting colleague, that the so-called series-qualifier principle supports his reading. This principle, Lockhart says, requires a modifier to apply to all items in a series when such an application would represent a natural construction. Brief for Petitioner 12; post, at 970.

[4] This Court has long acknowledged that structural or contextual evidence may “rebut the last antecedent inference.” Jama v. Immigration and Customs Enforcement, 543 U.S. 335, 344, n. 4, 125 S.Ct. 694, 160 L.Ed.2d 708 (2005). For instance, in Porto Rico Railway, Light & Power Co. v. Mor, 253 U.S. 345, 40 S.Ct. 516, 64 L.Ed. 944 (1920), on which Lockhart relies, this Court declined to apply the rule of the last antecedent where “[n]o reason appears why” a modifying clause is not “applicable as much to the first and other words as to the last” and where “special reasons exist for so construing the clause in question.” Id., at 348, 40 S.Ct. 516. In United States v. Bass, 404 U.S. 336, 92 S.Ct. 515, 30 L.Ed.2d 488 (1971), this Court declined to apply the rule of the last antecedent where “there is no reason consistent with any discernable purpose of the statute to apply” the limiting phrase to the last antecedent alone. Id., at 341, 92 S.Ct. 515. Likewise, in Jama, the Court suggested that the rule would not be appropriate where the “modifying clause appear[s] ... at the end of a single, integrated list.” 543 U.S., at 344, n. 4, 125 S.Ct. 694. And, most recently, in Paroline v. United States, 572 U.S. ______, 134 S.Ct. 1710, 188 L.Ed.2d 714 (2014), the Court noted that the rule need not be applied “in a mechanical way where it would require accepting ‘unlikely premises.’” Id., at ______, 134 S.Ct., at 1721.

But in none of those cases did the Court describe, much less apply, a countervailing grammatical mandate that could bear the weight that either Lockhart or the dissent places on the series qualifier principle. Instead, the Court simply observed that sometimes context weighs against the application of the rule of the last antecedent. Barnhart, 540 U.S., at 26, 124 S.Ct. 376. Whether a modifier is “applicable as much to the first ... as to the last” words in a list, whether a set of items form a “single, integrated list,” and whether the application of the rule
would require acceptance of an “unlikely premise” are fundamentally contextual questions.

Lockhart attempts to identify contextual indicia that he says rebut the rule of the last antecedent, but those indicia hurt rather than help his prospects. He points out that the final two state predicates, “sexual abuse” and “abusive sexual conduct,” are “nearly synonymous as a matter of everyday speech.” Brief for Petitioner 17. And, of course, anyone who commits “aggravated sexual abuse” has also necessarily committed “sexual abuse.” So, he posits, the items in the list are sufficiently similar that a limiting phrase could apply equally to all three of them.

But Lockhart’s effort to demonstrate some similarity among the items in the list of state predicates reveals far too much similarity. The three state predicate crimes are not just related on Lockhart’s reading; they are hopelessly redundant. Any conduct that would qualify as “aggravated sexual abuse ... involving a minor or ward” or “sexual abuse ... involving a minor or ward” would also qualify as “abusive sexual conduct involving a minor or ward.” We take no position today on the meaning of the terms “aggravated sexual abuse,” “sexual abuse,” and “abusive sexual conduct,” including their similarities and differences. But it is clear that applying *966 the limiting phrase to all three items would risk running headlong into the rule against superfluity by transforming a list of separate predicates into a set of synonyms describing the same predicate. See Bailey v. United States, 516 U.S. 137, 146, 116 S.Ct. 501, 133 L.Ed.2d 472 (1995) (“We assume that Congress used two terms because it intended each term to have a particular, nonsuperfluous meaning”).

Applying the limiting phrase “involving a minor or ward” more sparingly, by contrast, preserves some distinction between the categories of state predicates by limiting only the third category to conduct “involving a minor or ward.” We recognize that this interpretation does not eliminate all superfluity between “aggravated sexual abuse” and “sexual abuse.” See United States v. Atlantic Research Corp., 551 U.S. 128, 137, 127 S.Ct. 2331, 168 L.Ed.2d 28 (2007) (“O)ur hesitancy to construe statutes to render language superfluous does not require us to avoid surplusage at all costs. It is appropriate to tolerate a degree of surplusage”). But there is a ready explanation for the redundancy that remains: It follows the categories in Chapter 109A’s federal template. See supra, at 964. We see no similar explanation for Lockhart’s complete collapse of the list.

The dissent offers a suggestion rooted in its impressions about how people ordinarily speak and write. Post, at 969 – 971. The problem is that, as even the dissent acknowledges, § 2252(b)(2)’s list of state predicates is hardly intuitive. No one would mistake its odd repetition and inelegant phrasing for a reflection of the accumulated wisdom of everyday speech patterns. It would be as if a friend asked you to get her tart lemons, sour lemons, or sour fruit from Mexico. If you brought back lemons from California, but your friend insisted that she was using customary speech and obviously asked for Mexican fruit only, you would be forgiven for disagreeing on both counts.

Faced with § 2252(b)(2)’s inartful drafting, then, do we interpret the provision by viewing it as a clear, commonsense list best construed as if conversational English? Or do we look around to see if there might be some provenance to its peculiarity? With Chapter 109A so readily at hand, we are unpersuaded by our dissenting colleague’s invocation of basic examples from day-to-day life. Whatever the validity of the dissent’s broader point, this simply is not a case in which colloquial practice is of much use. Section 2252(b)(2)’s list is hardly the way an average person, or even an average lawyer, would set about to describe the relevant conduct if they had started from scratch.

Lockhart next takes aim at our construction of § 2252(b)(2) to avoid disparity between the state and federal sexual-abuse predicates. He contends that other disparities between state and federal predicates in § 2252(b)(2) indicate that parity was not Congress’ concern. For example, § 2252(b)(2) imposes the recidivist enhancement on offenders with prior federal convictions under Chapter 71 of Title 18, which governs obscenity. See §§ 1461–1470. Yet § 2252(b)(2) does not impose a similar enhancement for offenses under state obscenity laws. Similarly, § 2252(b)(2)’s neighbor provision, § 2252(b)(1), creates a mandatory minimum for sex trafficking involving children, but not sex trafficking involving adults.

However, our construction of § 2252(b)(2)’s sexual-abuse predicates does not rely on a general assumption that Congress sought full parity between all of the federal and state predicates in § 2252(b)(2). It relies instead on contextual *967 cues particular to the sexual-abuse predicates. To enumerate the state sexual-abuse predicates, Congress used language similar to that in

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Chapter 109A of the Federal Criminal Code, which describes crimes involving both adults and children. See supra, at 964. We therefore assume that the same language used to describe the state sexual-abuse predicates also describes conduct involving both adults and children.

C

Lockhart, joined by the dissent, see post, at 973 – 974, next says that the provision’s legislative history supports the view that Congress deliberately structured § 2252(b)(2) to treat state and federal predicates differently. They rely on two sources. The first is a reference in a Report from the Senate Judiciary Committee on the Child Pornography Prevention Act of 1996, 110 Stat. 3009–26. That Act was the first to add the language at issue here—“aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward”—to the U.S. Code. (It was initially added to § 2252(b)(1), then added two years later to § 2252(b)(2)).

The Report noted that the enhancement applies to persons with prior convictions “under any State child abuse law or law relating to the production, receipt or distribution of child pornography.” See S.Rep. No. 104–358, p. 9 (1996). But that reference incompletely describes the state pornography production and distribution predicates, which cover not only “production, receipt, or distributing of child pornography,” as the Report indicates, but also “production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography,” § 2252(b)(2). For the reasons discussed, we have no trouble concluding that the Report also incompletely describes the state sexual-abuse predicates.

Lockhart and the dissent also rely on a letter sent from the Department of Justice (DOJ) to the House of Representative’s Committee on the Judiciary commenting on the proposed “Child Protection and Sexual Predator Punishment Act of 1998.” H.R.Rep. No. 105–557, pp. 26–34 (1998). In the letter, DOJ provides commentary on the then-present state of §§ 2252(b)(1) and 2252(b)(2), noting that although there is a “5–year mandatory minimum sentence for individuals charged with receipt or distribution of child pornography and who have prior state convictions for child molestation” pursuant to § 2252(b)(1), there is “no enhanced provision for those individuals charged with possession of child pornography who have prior state convictions for child abuse” pursuant to § 2252(b)(2). Id., at 31. That letter, they say, demonstrates that DOJ understood the language at issue here to impose a sentencing enhancement only for prior state convictions involving children.

We doubt that DOJ was trying to describe the full reach of the language in § 2252(b)(1), as the dissent suggests. To the contrary, there are several clues that the letter was relying on just one of the provision’s many salient features. For instance, the letter’s references to “child molestation” and “child abuse” do not encompass a large number of state crimes that are unambiguously covered by “abusive sexual conduct involving a minor or ward”—namely, crimes involving “wards.” Wards can be minors, but they can also be adults. See, e.g., § 2243(b) (defining “wards” as persons who are “in official detention” and “under ... custodial, supervisory, or disciplinary authority”). Moreover, we doubt that DOJ intended to express a belief that the potentially broad scope of serious crimes encompassed by *968 “aggravated sexual abuse, sexual abuse, and abusive sexual conduct” reaches no further than state crimes that would traditionally be characterized as “child molestation” or “child abuse.”

Thus, Congress’ amendment to the provision did give “DOJ just what it wanted,” post, at 973. But the amendment also did more than that. We therefore think it unnecessary to restrict our interpretation of the provision to the parts of it that DOJ chose to highlight in its letter. Just as importantly, the terse descriptions of the provision in the Senate Report and DOJ letter do nothing to explain why Congress would have wanted to apply the mandatory minimum to individuals convicted in federal court of sexual abuse or aggravated sexual abuse involving an adult, but not to individuals convicted in state court of the same. The legislative history, in short, “hardly speaks with [a] clarity of purpose” through which we can discern Congress’ statutory objective. Universal Camera Corp. v. NLRB, 340 U.S. 474, 483, 71 S.Ct. 456, 95 L.Ed. 456 (1951).

The best explanation Lockhart can muster is a basic administrability concern: Congress “knew what conduct it was capturing under federal law and could be confident that all covered federal offenses were proper predicates. But Congress did not have the same familiarity with the varied and mutable sexual-abuse laws of all fifty states.” Brief for Petitioner 27. Perhaps Congress worried that state laws punishing relatively minor offenses like public lewdness or indecent exposure involving an adult would be swept into § 2252(b)(2). Id., at 28. But the risk Lockhart identifies is minimal. Whether the terms in
2252(b)(2) are given their “generic” meaning, see Descamps v. United States, 570 U.S. ——, 133 S.Ct. 2276, 186 L.Ed.2d 438 (2013); Taylor v. United States, 495 U.S. 575, 110 S.Ct. 2143, 109 L.Ed.2d 607 (1990), or are defined in light of their federal counterparts—which we do not decide—they are unlikely to sweep in the bizarre or unexpected state offenses that worry Lockhart.

D

Finally, Lockhart asks us to apply the rule of lenity. We have used the lenity principle to resolve ambiguity in favor of the defendant only “at the end of the process of construing what Congress has expressed” when the ordinary canons of statutory construction have revealed no satisfactory construction. Callanan v. United States, 364 U.S. 587, 596, 81 S.Ct. 321, 5 L.Ed.2d 312 (1961). That is not the case here. To be sure, Lockhart contends that if we applied a different principle of statutory construction—namely, his “series-qualifier principle”—we would arrive at an alternative construction of § 2252(b)(2). But the arguable availability of multiple, divergent principles of statutory construction cannot automatically trigger the rule of lenity. Cf. Llewellyn, Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are To Be Construed, 3 Vand. L. Rev. 395, 401 (1950) (“[T]here are two opposing canons on almost every point”). Here, the rule of the last antecedent is well supported by context and Lockhart’s alternative is not. We will not apply the rule of lenity to override a sensible grammatical principle buttressed by the statute’s text and structure.

* * *

We conclude that the text and structure of § 2252(b)(2) confirm that the provision applies to prior state convictions for “sexual abuse” and “aggravated sexual abuse,” whether or not the convictions involved a minor or ward. We therefore hold that Lockhart’s prior conviction for sexual abuse of an adult is encompassed by § 2252(b)(2). The judgment of the Court of Appeals, accordingly, is affirmed.

So ordered.

Justice KAGAN, with whom Justice BREYER joins, dissenting.

Imagine a friend told you that she hoped to meet “an actor, director, or producer involved with the new Star Wars movie.” You would know immediately that she wanted to meet an actor from the Star Wars cast—not an actor in, for example, the latest Zoolander. Suppose a real estate agent promised to find a client “a house, condo, or apartment in New York.” Wouldn’t the potential buyer be annoyed if the agent sent him information about condos in Maryland or California? And consider a law imposing a penalty for the “violation of any statute, rule, or regulation relating to insider trading.” Surely a person would have cause to protest if punished under that provision for violating a traffic statute. The reason in all three cases is the same: Everyone understands that the modifying phrase—“involved with the new Star Wars movie,” “in New York,” “relating to insider trading”—applies to each term in the preceding list, not just the last.

That ordinary understanding of how English works, in speech and writing alike, should decide this case. Avondale Lockhart is subject to a 10–year mandatory minimum sentence for possessing child pornography if, but only if, he has a prior state-law conviction for “aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward.” 18 U.S.C. § 2252(b)(2). The Court today, relying on what is called the “rule of the last antecedent,” reads the phrase “involving a minor or ward” as modifying only the final term in that three-item list. But properly read, the modifier applies to each of the terms—just as in the examples above. That normal construction finds support in uncommonly clear-cut legislative history, which states in so many words that the three predicate crimes all involve abuse of children. And if any doubt remained, the rule of lenity would command the same result: Lockhart’s prior conviction for sexual abuse of an adult does not trigger § 2252(b)(2)’s mandatory minimum penalty. I respectfully dissent.

I

Begin where the majority does—with the rule of the last antecedent. See ante, at 962. This Court most fully discussed that principle in Barnhart v. Thomas, 540 U.S. 20, 124 S.Ct. 376, 157 L.Ed.2d 333 (2003), which considered a statute providing that an individual qualifies as disabled if “he is not only unable to do his previous
work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.” Id., at 21–22, 124 S.Ct. 376 (quoting 42 U.S.C. § 423(d)(2)(A)) (emphasis added). The Court held, invoking the last-antecedent rule, that the italicized phrase modifies only the term “substantial gainful work,” and not the term “previous work” occurring earlier in the sentence. Two points are of especial note. First, *Barnhart* contained a significant caveat: The last-antecedent rule “can assuredly be overcome by other indicia of meaning.” 540 U.S., at 26, 124 S.Ct. 376; see, e.g., *Nobelman v. American Savings Bank*, 508 U.S. 324, 330–331, 113 S.Ct. 2106, 124 L.Ed.2d 228 (1993) (refusing to apply the rule when a contrary interpretation was “the more reasonable one”). Second, the grammatical structure of the provision in *Barnhart* is nothing like that of the statute in this case: The modifying phrase does not, as here, immediately follow a list of multiple, parallel terms. That is true as well in the other *970* instances in which this Court has followed the rule. See, e.g., *Jama v. Immigration and Customs Enforcement*, 543 U.S. 335, 125 S.Ct. 694, 160 L.Ed.2d 708 (2005); *Batchelor v. United States*, 156 U.S. 426, 15 S.Ct. 446, 39 L.Ed. 478 (1895); *Sims Lessee v. Irvine*, 3 Dall. 425, 1 L.Ed. 665 (1799).

Indeed, this Court has made clear that the last-antecedent rule does not generally apply to the grammatical construction present here: when “[t]he modifying clause appear[s] ... at the end of a single, integrated list.” *Jama*, 543 U.S., at 344, n. 4, 125 S.Ct. 694. Then, the exact opposite is usually true: As in the examples beginning this opinion, the modifying phrase refers alike to each of the list’s terms. A leading treatise puts the point as follows: “When there is a straightforward, parallel construction that involves all no or verbs in a series,” a modifier at the end of the list “normally applies to the whole list boasts a fancy name—the “series-qualifier canon,” see Black’s Law Dictionary 1574 (10th ed. 2014)—but, as my opening examples show, it reflects the completely ordinary way that people speak and listen, write and read.1

Even the exception to the series-qualifier principle is intuitive, emphasizing both its common-sensical basis and its customary usage. When the nouns in a list are so disparate that the modifying clause does not make sense when applied to them all, then the last-antecedent rule takes over. Suppose your friend told you not that she wants to meet “an actor, director, or producer involved with Star Wars,” but instead that she hopes someday to meet “a President, Supreme Court Justice, or actor involved with Star Wars.” Presumably, you would know that she wants to meet a President or Justice even if that person has no connection to the famed film franchise. But so long as the modifying clause “is applicable as much to the first and other words as to the last,” this Court has stated, “the natural construction of the language demands that the clause be read as applicable to all.” *Paroline v. United States*, 572 U.S. ——, ——, 134 S.Ct. 1710, 1721, 188 L.Ed.2d 714 (2014) (quoting *Porto Rico Railway, Light & Power Co. v. Mor*, 253 U.S. 345, 348, 40 S.Ct. 516, 64 L.Ed. 944 (1920)). In other words, the modifier then qualifies not just the last antecedent but the whole series.

As the majority itself must acknowledge, see ante, at 964 – 965, this Court has repeatedly applied the series-qualifier rule in just that manner. In *Paroline*, for example, this Court considered a statute requiring possessors of child pornography to pay restitution to the individuals whose abuse is recorded in those materials. The law defines such a victim’s losses to include *971* “medical services relating to physical, psychiatric, or psychological care; physical and occupational therapy or rehabilitation; necessary transportation, temporary housing, and child care expenses; lost income; attorneys’ fees, as well as other costs incurred; and any other losses suffered by the victim as a proximate result of the offense.” 18 U.S.C. §§ 2259(b)(3)(A)-(F) (lettering omitted). The victim bringing the lawsuit invoked the last-antecedent rule to argue that the modifier at the end of the provision—“as a proximate result of the offense”—pertained only to the last item in the preceding list, and not to any of the others. See 572 U.S., at ——, 134 S.Ct., at 1721. But the Court rejected that view: It recited the “canon[ ] of statutory construction,” derived from the “natural” use of language, that “[w]hen several words are followed by a clause” that can sensibly modify them all, it should be understood to do so. *Ibid.* Thus, the Court read the proximate-cause requirement to cover each and every term in the list.

United States v. Bass, 404 U.S. 336, 92 S.Ct. 515, 30 L.Ed.2d 488 (1971), to take just one other example, followed the same rule. There, the Court confronted a statute making it a crime for a convicted felon to “receive [, possess[, ] or transport[,] in commerce or affecting commerce ... any firearm.”
(1970 ed.) (current version at 18 U.S.C. § 922(g)). The Government contended that the modifying clause—“in commerce or affecting commerce”—applied only to “transport” and not to “receive” or “possess.” But the Court rebuffed that argument. “[T]he natural construction of the language,” the Court recognized, “suggests that the clause ‘in commerce or affecting commerce’ qualifies all three antecedents in the list.” 404 U.S., at 339, 92 S.Ct. 515 (some internal quotation marks omitted). Relying on longstanding precedents endorsing such a construction, the Court explained: “Since ‘in commerce or affecting commerce’ undeniably applies to at least one antecedent, and since it makes sense with all three, the more plausible construction here is that it in fact applies to all three.” Id., at 339–340, 92 S.Ct. 515 (citing United States v. Standard Brewery, Inc., 251 U.S. 210, 218, 40 S.Ct. 139, 64 L.Ed. 229 (1920); Porto Rico Railway, 253 U.S., at 348, 40 S.Ct. 516); see also, e.g., Jones v. United States, 529 U.S. 848, 853, 120 S.Ct. 1904, 146 L.Ed.2d 902 (2000) (similarly treating the interstate commerce element in the phrase “any building, vehicle, or other real or personal property used in interstate or foreign commerce” as applying to buildings and vehicles).

That analysis holds equally for § 2252(b)(2), the sentencing provision at issue here. The relevant language—“aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward”—contains a “single, integrated list” of parallel terms (i.e., sex crimes) followed by a modifying clause. Jama, 543 U.S., at 344, n. 4, 125 S.Ct. 694. Given the close relation among the terms in the series, the modifier makes sense “as much to the first and other words as to the last.” Paroline, 572 U.S., at ——, 134 S.Ct., at 1721. In other words, the reference to a minor or ward applies as well to sexual abuse and aggravated sexual abuse as to abusive sexual conduct. (The case would be different if, for example, the statute established a mandatory minimum for any person previously convicted of “arson, receipt of stolen property, or abusive sexual conduct involving a minor or ward.”) So interpreting the modifier “as applicable to all” the preceding terms is what “the natural construction of the language” requires. Ibid.; Bass, 404 U.S., at 339, 92 S.Ct. 515.

The majority responds to all this by claiming that the “inelegant phrasing” of *972 § 2252(b)(2) renders it somehow exempt from a grammatical rule reflecting “how people ordinarily” use the English language. Ante, at 966. But to begin with, the majority is wrong to suggest that the series-qualifier canon is only about “colloquial” or “conversational” English. Ibid. In fact, it applies to both speech and writing, in both their informal and their formal varieties. Here is a way to test my point: Pick up a journal, or a book, or for that matter a Supreme Court opinion—most of which keep “everyday” colloquialisms at a far distance. Ibid. You’ll come across many sentences having the structure of the statutory provision at issue here: a few nouns followed by a modifying clause. And you’ll discover, again and yet again, that the clause modifies every noun in the series, not just the last—in other words, that even (especially?) in formal writing, the series-qualifier principle works.2 And the majority is wrong too in suggesting that the “odd repetition” in § 2252(b)(2)’s list of state predicates causes the series-qualifier principle to lose its force. Ibid. The majority’s own made-up sentence proves that much. If a friend asked you “to get her tart lemons, sour lemons, or sour fruit from Mexico,” you might well think her list of terms perplexing: You might puzzle over the difference between tart and sour lemons, and wonder why she had specifically mentioned lemons when she apparently would be happy with sour fruit of any kind. But of one thing, you would have no doubt: Your friend wants some produce from Mexico; it would not do to get her, say, sour lemons from Vietnam. However weird the way she listed fruits—or the way § 2252(b)(2) lists offenses—the modifying clause still refers to them all.

The majority as well seeks refuge in the idea that applying the series-qualifier canon to § 2252(b)(2) would violate the rule against superfluity. See ante, at 965 – 966. Says the majority: “Any conduct that would qualify as ‘aggravated sexual abuse ... involving a minor or ward’ or ‘sexual abuse ... involving a minor or ward’ would also qualify as ‘abusive sexual conduct involving a minor or ward.’ ” Ante, at 965. But that rejoinder doesn’t work. “[T]he canon against superfluity,” this Court has often stated, “assists only where a competing interpretation gives effect to every clause and word of a statute.” Microsoft *973 Corp. v. i4i Ltd. Partnership, 564 U.S. 91, 106, 131 S.Ct. 2238, 180 L.Ed.2d 131 (2011) (internal quotation marks omitted); see, e.g., Bruesewitz v. Wyeth LLC, 562 U.S. 223, 236, 131 S.Ct. 1068, 179 L.Ed.2d 1 (2011). And the majority’s approach (as it admits, see ante, at 965) produces superfluity too—and in equal measure. Now (to rearrange the majority’s sentence) any conduct that would qualify as “abusive sexual conduct involving a minor or ward” or “aggravated sexual abuse” would also qualify as “sexual abuse.” In other words, the majority’s reading as well, two listed crimes become subsets of a third, so that the three could have been written as one. And indeed, the majority’s superfluity has an especially odd quality, because it relates to the
modifying clause itself: The majority, that is, makes the term “involving a minor or ward” wholly unnecessary. Remember the old adage about the pot and the kettle? That is why the rule against superfluity cannot excuse the majority from reading § 2252(b)(2)’s modifier, as ordinary usage demands, to pertain to all the terms in the preceding series.¹

II

Legislative history confirms what the natural construction of language shows: Each of the three predicate offenses at issue here must involve a minor. The list of those crimes appears in two places in § 2252(b)—both in § 2252(b)(1), which contains a sentencing enhancement for those convicted of distributing or receiving child pornography, and in § 2252(b)(2), which includes a similar enhancement for those (like Lockhart) convicted of possessing such material. Descriptions of that list of offenses, made at the time Congress added it to those provisions, belie the majority’s position.

The relevant language—again, providing for a mandatory minimum sentence if a person has a prior state-law conviction for “aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward”—first made its appearance in 1996, when Congress inserted it into § 2252(b)(1). See Child Pornography Prevention Act of 1996, § 121(5), 110 Stat. 3009–30, 18 U.S.C. § 2251 note. At that time, the Senate Report on the legislation explained what the new language meant: The mandatory minimum would apply to an “offender with a prior conviction under ... any State child abuse law.” S.Rep. No. 104–358, p. 9 (1996) (emphasis added). It is hard to imagine saying anything more directly that the just-added state sexual-abuse predicates all involve minors, and minors only.²

Two years later, in urging Congress to include the same predicate offenses in § 2252(b)(2), the Department of Justice (DOJ) itself read the list that way. In a formal bill comment, DOJ noted that proposed legislation on child pornography failed to fix a statutory oddity: Only § 2252(b)(1), and not § 2252(b)(2), then contained the state predicates at issue here. DOJ described that discrepancy as follows: Whereas § 2252(b)(1) provided a penalty enhancement for “individuals charged with receipt or distribution of *974 child pornography and who have prior state convictions for child molestation,” the adjacent § 2252(b)(2) contained no such enhancement for those “charged with possession of child pornography who have prior convictions for child abuse.” H.R.Rep. No. 105–557, p. 31 (1998) (emphasis added). That should change, DOJ wrote: A possessor of child pornography should also be subject to a 2–year mandatory minimum if he had “a prior conviction for sexual abuse of a minor.” Ibid. (emphasis added). DOJ thus made clear that the predicate offenses it recommended adding to § 2252(b)(2)—like those already in § 2252(b)(1)—related not to all sexual abuse but only to sexual abuse of children. And Congress gave DOJ just what it wanted: Soon after receiving the letter, Congress added the language at issue to § 2252(b)(2), resulting in the requested 2–year minimum sentence. See Protection of Children From Sexual Predators Act of 1998, § 202(a)(2), 112 Stat. 2977, 18 U.S.C. § 1 note. So every indication, in 1998 no less than in 1996, was that all the predicate crimes relate to children alone.

The majority’s response to this history fails to blunt its force. According to the majority, the reference to “any state child abuse law” in the Senate Report is simply an “incomplete[ ] descri[ption]” of “the state sexual-abuse predicates.” Ante, at 967. And similarly, the majority ventures, the DOJ letter was merely noting “one of the provision’s many salient features.” Ibid. But suppose that you (like the Senate Report’s or DOJ letter’s authors) had to paraphrase or condense the statutory language at issue here, and that you (like the majority) thought it captured all sexual-abuse crimes. Would you then use the phrase “any state child abuse law” as a descriptor (as the Senate Report did)? And would you refer to the whole list of state predicates as involving “sexual abuse of a minor” (as the DOJ letter did)? Of course not. But you might well use such shorthand if, alternatively, you understood the statutory language (as I do) to cover only sexual offenses against children. And so the authors of the Report and letter did here. Such documents of necessity abridge statutory language; but they do not do so by conveying an utterly false impression of what that language is most centrally about—as by describing a provision that (supposedly) covers all sexual abuse as one that reaches only child molestation.³

*975 Further, the majority objects that the Senate Report’s (and DOJ letter’s) drafters did “nothing to explain why” Congress would have limited § 2252(b)’s state sexual-abuse predicates to those involving children when the provision’s federal sexual-abuse predicates (as all agree) are not so confined. Ante, at 967 (emphasis in original). But Congress is under no obligation to this Court to justify its choices. (Nor is DOJ obliged to explain them to Congress itself.) Rather, the duty is on

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*974 child pornography and who have prior state convictions for child molestation.”
this Court to carry out those decisions, regardless of whether it understands all that lay behind them. The Senate Report (and DOJ letter too) says what it says about § 2252(b)’s meaning, confirming in no uncertain terms the most natural reading of the statutory language. Explanation or no, that is more than sufficient.

And the majority (as it concedes) cannot claim that Congress simply must have wanted § 2252(b)(2)’s federal and state predicates to be the same. See ante, at 966 (“[O]ur construction of § 2252(b)(2)’s sexual-abuse predicates does not rely on a general assumption that Congress sought full parity between all of the federal and state predicates”). That is because both § 2252(b)(1) and § 2252(b)(2) contain many federal predicates lacking state matches. Under § 2252(b)(1), for example, a person is subject to a mandatory minimum if he previously violated 18 U.S.C. § 1591, which prohibits “[s]ex trafficking of children or [sex trafficking] by force, fraud, or coercion.” But if the prior conviction is under state law, only sex trafficking of children will trigger that minimum; trafficking of adults, even if by force, fraud, or coercion, will not. That mismatch—trafficking of both adults and children on the federal side, trafficking of children alone on the state side—precisely parallels my view of the sexual-abuse predicates at issue here. More generally, ten federal obscenity crimes trigger both § 2252(b)(1)’s and § 2252(b)(2)’s enhanced punishments; but equivalent state crimes do not do so. And five federal prostitution offenses prompt mandatory minimums under those provisions; but no such state offenses do. Noting those disparities, the Government concedes: “When Congress adds state law offenses to the lists of predicate offenses triggering child-pornography recidivist enhancements, it sometimes adds state offenses corresponding to only a subset of the federal offenses” previously included. Brief for United States 43. Just so. And this Court ought to enforce that choice.

III

As against the most natural construction of § 2252(b)(2)’s language, plus unusually limpid legislative history, the majority relies on a structural argument. See ante, at 963 – 965. The federal sexual-abuse predicates in § 2252(b)(2), the majority begins, are described as crimes “under ... Chapter 109A,” and that chapter “criminalizes a range of sexual-abuse offenses involving adults or minors.” Ante, at 963 – 964 (emphasis in original). Once again, the majority cannot say that this fact alone resolves the question presented, given the many times (just discussed) that Congress opted to make federal crimes, but not equivalent state crimes, predicates for § 2252(b)(2)’s mandatory minimums. But *976 the majority claims to see more than that here: The headings of the sections in Chapter 109A, it contends, “mirror precisely the order ... and nearly precisely the words used to describe” the state predicate crimes at issue. Ante, at 964. The majority “cannot state with certainty,” but hazards a guess that Congress thus used Chapter 109A “as a template for the list of state predicates”—or, otherwise said, that Congress “followed” the “structure and language of Chapter 109A” in defining those state-law offenses. Ibid.

But § 2252(b)(2)’s state predicates are not nearly as similar to the federal crimes in Chapter 109A as the majority claims. That Chapter includes the following offenses: “Aggravated sexual abuse,” § 2241, “Sexual abuse,” § 2242, “Sexual abuse of a minor or ward,” § 2243, and “Abusive sexual contact,” § 2244. The Chapter thus contains four crimes—one more than found in § 2252(b)(2)’s list of state offenses. If the drafters of § 2252(b)(2) meant merely to copy Chapter 109A, why would they have left out one of its crimes? The majority has no explanation. And there is more. Suppose Congress, for whatever hard-to-fathom reason, wanted to replicate only Chapter 109A’s first three offenses. It would then have used the same language, referring to “the laws of any State relating to aggravated sexual abuse, sexual abuse, or sexual abuse of a minor or ward.” (And had Congress used that language, the phrase “of a minor or ward” would clearly have applied only to the third term, to differentiate it from the otherwise identical second.) But contra the majority, see ante, at 964, 965 – 966, that is not what § 2252(b)(2)’s drafters did. Rather than repeating the phrase “sexual abuse,” they used the phrase “abusive sexual conduct” in the list’s last term—which echoes, if anything, the separate crime of “abusive sexual contact” (included in Chapter 109A’s fourth offense, as well as in other places in the federal code, see, e.g., 10 U.S.C. § 920(d)). The choice of those different words indicates, yet again, that Congress did not mean, as the majority imagines, to duplicate Chapter 109A’s set of offenses.

Indeed, even the Government has refused to accept the notion that the federal and state sexual-abuse predicates mirror each other. The Government, to be sure, has argued that it would be “anomalous” if federal, but not state, convictions for sexually abusing adults trigger § 2252(b)(2)’s enhanced penalty. Brief for United States 23. (I have discussed that more modest point above:...
Anomalous or not, such differences between federal and state predicates are a recurring feature of the statute. See supra, at 967 – 968.) But the Government, in both briefing and argument, rejected the idea that Congress wanted the list of state predicates in § 2252(b)(2) to mimic the crimes in Chapter 109A; in other words, it denied that Congress meant for the state and federal offenses to bear the same meaning. See Brief for United States 22, n. 8; Tr. of Oral Arg. 26. Even in the face of sustained questioning from Members of this Court, the Government held fast to that *977 position. See, e.g., Tr. of Oral Arg. 25–26 (Justice ALITO: “[W]hy do you resist the argument that what Congress was doing was picking up basically the definitions of the Federal offenses [in Chapter 109A] that are worded almost identically?” Assistant to the Solicitor General: “[W]e don’t think that Congress was trying” to do that). The listed state and federal offenses, the Government made clear, are not intended to be copies.

The majority seems to think that view somehow consistent with its own hypothesis that Chapter 109A served as a “template” for § 2252(b)(2)’s state predicates, ante, at 964; in responding to one of Lockhart’s arguments, the majority remarks that the state predicates might have a “generic” meaning, distinct from Chapter 109A’s, ante, at 968. But if that is so, the majority’s supposed template is not much of a template after all. The predicate state offenses would “follow” or “parallel” Chapter 109A in a single respect, but not in any others—that is, in including sexual abuse of adults, but not in otherwise defining wrongful sexual conduct (whether concerning adults or children). Ante, at 964. The template, one might say, is good for this case and this case only. And the majority has no theory for why that should be so: It offers not the slimmest explanation of how Chapter 109A can resolve today’s question but not the many issues courts will face in the future involving the meaning of § 2252(b)(2)’s state predicate offenses. That is because no rationale would make sense. The right and consistent view is that Chapter 109A, like the other federal predicates in § 2252(b)(2), is across-the-board irrelevant in defining that provision’s state predicates. Thus, the federal chapter’s four differently worded crimes are independent of the three state offenses at issue here—all of which, for the reasons I’ve given, must “involv[e] a minor or ward.”

IV

Suppose, for a moment, that this case is not as clear as I’ve suggested. Assume there is no way to know whether to apply the last-antecedent or the series-qualifier rule. Imagine, too, that the legislative history is not quite so compelling and the majority’s “template” argument not quite so strained. Who, then, should prevail?

This Court has a rule for how to resolve genuine ambiguity in criminal statutes: in favor of the criminal defendant. As the majority puts the point, the rule of lenity insists that courts side with the defendant “when the ordinary canons of statutory construction have revealed no satisfactory construction.” Ante, at 968 (citing Callanan v. United States, 364 U.S. 587, 596, 81 S.Ct. 321, 5 L.Ed.2d 312 (1961); see also Bifulco v. United States, 447 U.S. 381, 387, 100 S.Ct. 2247, 65 L.Ed.2d 205 (1980) (holding that the rule of lenity “applies not only to interpretations of the substantive ambit of criminal prohibitions, but also to the penalties they impose”). At the very least, that principle should tip the scales in Lockhart’s favor, because nothing the majority has said shows that the modifying clause in § 2252(b)(2) unambiguously applies to only the last term in the preceding series.

But in fact, Lockhart’s case is stronger. Consider the following sentence, summarizing various points made above: “The series-qualifier principle, the legislative history, and the rule of lenity discussed in this opinion all point in the same direction.” Now answer the following question: Has only the rule of lenity been discussed in this opinion, or have the series-qualifier principle and the legislative history been discussed as well? Even had you not read the preceding 16–plus pages, you would know the right answer—because of the *978 ordinary way all of us use language. That, in the end, is why Lockhart should win.

All Citations

The majority’s baseball example, see ante, at 963, reads the other way only because its three terms are not parallel. The words “catcher” and “shortstop,” but not “pitcher,” are qualified separate and apart from the modifying clause at the end of the sentence: “Pitcher” thus calls for a modifier of its own, and the phrase “from the Kansas City Royals” answers that call. Imagine the sentence is slightly reworded to refer to a “defensive catcher, quick-throwing pitcher from the Kansas City Royals.” Or, alternatively, suppose the sentence referred simply to a “catcher, shortstop, or pitcher from the Kansas City Royals.” Either way, all three players must come from the Royals—because the three terms (unlike in the majority’s sentence) are a parallel series with a modifying clause at the end.

Too busy to carry out this homework assignment? Consider some examples (there are many more) from just the last few months of this Court’s work. In OBB Personenverkehr AG v. Sachs, 577 U.S. ——, ——, 136 S.Ct. 390, 395, 193 L.Ed.2d 269 (2015), this Court described a lawsuit as alleging “wrongful arrest, imprisonment, and torture by Saudi police.” In James v. Boise, 577 U.S. ——, ——, 136 S.Ct. 685, 686–687, ——L.Ed.2d —— (2016) (per curiam) (quoting Martin v. Hunter’s Lessee, 1 Wheat. 304, 348, 4 L.Ed. 97 (1816)), this Court affirmed that state courts must follow its interpretations of “the laws, the treaties, and the constitution of the United States.” In Musacchio v. United States, 577 U.S. ——, ——, 136 S.Ct. 709, 715, ——L.Ed.2d —— (2016) (quoting Reed Elsevier, Inc. v. Muchnick, 559 U.S. 154, 166, 130 S.Ct. 1237, 176 L.Ed.2d 18 (2010)), this Court noted that in interpreting statutes it looks to the “text, context, and relevant historical treatment of the provision at issue.” In FERC v. Electric Power Supply Assn., 577 U.S. ——, ——, 136 S.Ct. 760, 774, ——L.Ed.2d —— (2016), this Court applied a statute addressing “any rule, regulation, practice, or contract affecting [a wholesale] rate [or] charge.” And in Montanile v. Board of Trustees of Nat. Elevator Industry Health Benefit Plan, 577 U.S. ——, ——, 136 S.Ct. 651, 655, ——L.Ed.2d —— (2016), this Court interpreted an employee benefits plan requiring reimbursement “for attorneys’ fees, costs, expenses or damages claimed by the covered person.” In each case, of course, the italicized modifying clause refers to every item in the preceding list. That is because the series-qualifier rule reflects how all of us use language, in writing and in speech, in formal and informal contexts, all the time.

The majority asserts that it has found, concealed within § 2252(b)(2)’s structure, an “explanation” for its own superfluity, ante, at 965, but that claim, as I’ll soon show, collapses on further examination. See infra, at 975–977.
And it makes no difference that the Senate Report accompanied § 2252(b)(1)’s, rather than § 2252(b)(2)’s, amendment. No one can possibly think (and the majority therefore does not try to argue) that the disputed language means something different in § 2252(b)(2) than in its neighbor and model, § 2252(b)(1).

The majority tries to bolster its “incomplete description” claim by highlighting another summary statement in the Senate Report, but that reference merely illustrates my point. In amending § 2252(b)(1) (and later § 2252(b)(2)), Congress added not only the child sexual-abuse predicates at issue here, but also a set of predicate state offenses relating to child pornography. Specifically, Congress provided a mandatory minimum sentence for individuals previously convicted of the “production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography.” Child Pornography Prevention Act, § 121(5), 110 Stat. 3009–30. The Senate Report described those predicate crimes in an abbreviated fashion as “relating to the production, receipt or distribution of child pornography.” S.Rep. No. 104–358, p. 9 (1996). That synopsis doubtless leaves some things out, as any synopsis does; but no reader of the Report would be terribly surprised to see the fuller statutory list. The same cannot be said of the phrase “any state child abuse law” if that in fact refers to laws prohibiting all rape, sexual assault, and similar behavior.

The majority makes the identical mistake in asserting that the DOJ letter merely “highlight[s]” one of § 2252(b)(1)’s many features. Ante, at 967. To support that claim, the majority notes that the letter omits any discussion of sexual crimes against adult wards, even though the statute covers those offenses on any theory. But that elision is perfectly natural. The number of sex crimes against adult wards pales in comparison to those against children: In discussing the latter, DOJ was focused on the mine-run offense. (For the same reason, this opinion’s descriptions of § 2252(b) often skip any reference to wards. See supra, at 965, 966; infra, at 975. Count that as a writer’s choice to avoid extraneous detail.) The majority cannot offer any similar, simple explanation of why DOJ would have repeatedly referred only to sex crimes against children if the statutory language it was explicating—and proposing to add to another provision—also covered sex crimes against all adults.

In a footnote, the majority intimates that Chapter 109A contains only three crimes—but that reading is unambiguously wrong. Unlike the fifth through eighth sections of that chapter (which the majority invokes to no purpose), the fourth—again, entitled “[a]busive sexual contact”—sets out an independent substantive offense, criminalizing acts not made illegal in the first three sections. §§ 2244(a)-(c); see also 42 U.S.C. § 16911 (separately listing this offense in identifying who must register as a sex offender). The majority, as noted above, gives no reason why Congress would have ignored that fourth crime had it been using Chapter 109A as a template.
BARNHART, COMMISSIONER OF SOCIAL SECURITY
v. THOMAS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

No. 02–763. Argued October 14, 2003—Decided November 12, 2003

A person is disabled, and thereby eligible for Social Security disability insurance benefits and Supplemental Security Income (SSI), “only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.” 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B) (emphasis added) (hereinafter § 423(d)(2)(A)). After her job as an elevator operator was eliminated, respondent Thomas applied for disability insurance benefits and SSI. An Administrative Law Judge (ALJ) found that her impairments did not prevent her from performing her past relevant work as an elevator operator, rejecting her argument that she is unable to do that work because it no longer exists in significant numbers in the national economy. The District Court affirmed the ALJ, concluding that whether Thomas’s old job exists is irrelevant under the Social Security Administration’s (SSA) regulations. In reversing and remanding, the en banc Third Circuit held that § 423(d)(2)(A) unambiguously provides that the ability to perform prior work disqualifies from benefits only if it is substantial gainful work which exists in the national economy.

Held: The SSA’s determination that it can find a claimant not disabled where she remains physically and mentally able to do her previous work, without investigating whether that work exists in significant numbers in the national economy, is a reasonable interpretation of § 423(d)(2)(A) that is entitled to deference under Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837. Section 423(d)(2)(A) establishes two requirements: An impairment must render an individual “unable to do his previous work” and must also preclude him from “engag[ing] in any other kind of substantial gainful work.” The clause “which exists in the national economy” clearly qualifies the latter requirement. The issue in this case is whether that clause also qualifies the former requirement. The SSA’s regulations, which create a five-step sequential evaluation process to determine disability, answer that question in the negative. At step four, the SSA will find not disabled a claimant who can do his previous work, without inquiring
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whether that work exists in the national economy. Rather, it reserves inquiry into the national economy for the fifth step, when it considers vocational factors and determines whether the claimant can perform other jobs in the national economy. See 20 CFR §§ 404.1520(f), 404.1560(c), 416.920(f), 416.960(c). That interpretation is a reasonable construction of § 423(d)(2)(A). The Third Circuit's contrary reading ignores the grammatical "rule of the last antecedent," under which a limiting clause or phrase should be read to modify only the noun or phrase that it immediately follows. Construing § 423(d)(2)(A) in accord with this rule is quite sensible. Congress could have determined that an analysis of a claimant's capacity to do his previous work would in most cases be an effective and efficient administrative proxy for the claimant's ability to do some work that exists in the national economy. There is good reason to use such a proxy to avoid the more expansive and individualized step-five analysis. The proper Chevron inquiry is not whether an agency construction can give rise to undesirable results in some instances (which both the SSA's and the Third Circuit's constructions can), but whether, in light of the alternatives, the agency construction is reasonable. Here, the SSA's authoritative interpretation satisfies that test. Pp. 23–30.

294 F. 3d 568, reversed.

Scalia, J., delivered the opinion for a unanimous Court.

Jeffrey A. Lamken argued the cause for petitioner. With him on the briefs were Solicitor General Olson, Assistant Attorney General McCallum, Deputy Solicitor General Kneedler, William Kanter, Wendy M. Keats, and Barbara L. Spivak.

Abraham S. Alter argued the cause and filed a brief for respondent.

Justice Scalia delivered the opinion of the Court.

Under the Social Security Act, the Social Security Administration (SSA) is authorized to pay disability insurance benefits and Supplemental Security Income to persons who have a "disability." A person qualifies as disabled, and thereby eligible for such benefits, "only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering
his age, education, and work experience, engage in any other
kind of substantial gainful work which exists in the national
issue we must decide is whether the SSA may determine
that a claimant is not disabled because she remains physi-
cally and mentally able to do her previous work, without
investigating whether that previous work exists in signifi-
cant numbers in the national economy.

I

Pauline Thomas worked as an elevator operator for six
years until her job was eliminated in August 1995. In June
1996, at age 53, Thomas applied for disability insurance bene-
fits under Title II and Supplemental Security Income under
Title XVI of the Social Security Act. See 49 Stat. 622,
as amended, 42 U. S. C. § 401 et seq. (Title II); as added, 86
Stat. 1465, and as amended, § 1381 et seq. (Title XVI). She
claimed that she suffered from, and was disabled by, heart
disease and cervical and lumbar radiculopathy.

After the SSA denied Thomas’s application initially and on
reconsideration, she requested a hearing before an Adminis-
trative Law Judge (ALJ). The ALJ found that Thomas had
“hypertension, cardiac arrythmia, [and] cervical and lumbar
strain/sprain.” Decision of ALJ 5, Record 15. He con-
cluded, however, that Thomas was not under a “disability”
because her “impairments do not prevent [her] from per-
forming her past relevant work as an elevator operator.”
Id., at 6, Record 16. He rejected Thomas’s argument that
she is unable to do her previous work because that work no
longer exists in significant numbers in the national economy.
The SSA’s Appeals Council denied Thomas’s request for
review.

Thomas then challenged the ALJ’s ruling in the United
States District Court for the District of New Jersey, renew-
ing her argument that she is unable to do her previous work
due to its scarcity. The District Court affirmed the ALJ,
concluding that whether Thomas’s old job exists is irrelevant under the SSA’s regulations. *Thomas v. Apfel*, Civ. No. 99–2234 (Aug. 17, 2000). The Court of Appeals for the Third Circuit, sitting en banc, reversed and remanded. Over the dissent of three of its members, it held that the statute unambiguously provides that the ability to perform prior work disqualifies from benefits only if it is “substantial gainful work which exists in the national economy.” 294 F. 3d 568, 572 (2002). That holding conflicts with the decisions of four other Courts of Appeals. See *Quang Van Han v. Bowen*, 882 F. 2d 1453, 1457 (CA9 1989); *Garcia v. Secretary of Health and Human Services*, 46 F. 3d 552, 558 (CA6 1995); *Pass v. Chater*, 65 F. 3d 1200, 1206–1207 (CA4 1995); *Rater v. Chater*, 73 F. 3d 796, 799 (CA8 1996). We granted the SSA’s petition for certiorari. 537 U. S. 1187 (2003).

II

As relevant to the present case, Title II of the Act defines “disability” as the “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” 42 U. S. C. § 423(d)(1)(A). That definition is qualified, however, as follows:

“An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy. . . .” § 423(d)(2)(A) (emphases added).

“[W]ork which exists in the national economy” is defined to mean “work which exists in significant numbers either in the
region where such individual lives or in several regions of the country.” *Ibid.* Title XVI of the Act, which governs Supplemental Security Income for disabled indigent persons, employs the same definition of “disability” used in Title II, including a qualification that is verbatim the same as §423(d)(2)(A). See 42 U. S. C. §1382c(a)(3)(B). For simplicity’s sake, we will refer only to the Title II provisions, but our analysis applies equally to Title XVI.

Section 423(d)(2)(A) establishes two requirements for disability. First, an individual’s physical or mental impairment must render him “unable to do his previous work.” Second, the impairment must also preclude him from “engag[ing] in any other kind of substantial gainful work.” The parties agree that the latter requirement is qualified by the clause that immediately follows it—“which exists in the national economy.” The issue in this case is whether that clause also qualifies “previous work.”

The SSA has answered this question in the negative. Acting pursuant to its statutory rulemaking authority, 42 U. S. C. §§405(a) (Title II), 1383(d)(1) (Title XVI), the agency has promulgated regulations establishing a five-step sequential evaluation process to determine disability. See 20 CFR §404.1520 (2003) (governing claims for disability insurance benefits); §416.920 (parallel regulation governing claims for Supplemental Security Income). If at any step a finding of disability or nondisability can be made, the SSA will not review the claim further. At the first step, the agency will find nondisability unless the claimant shows that he is not working at a “substantial gainful activity.” §§404.1520(b), 416.920(b). At step two, the SSA will find nondisability unless the claimant shows that he has a “severe impairment,” defined as “any impairment or combination of impairments which significantly limits [the claimant’s] physical or mental ability to do basic work activities.” §§404.1520(c), 416.920(c). At step three, the agency determines whether the impairment which enabled the claimant to survive step
two is on the list of impairments presumed severe enough to render one disabled; if so, the claimant qualifies. §§ 404.1520(d), 416.920(d). If the claimant’s impairment is not on the list, the inquiry proceeds to step four, at which the SSA assesses whether the claimant can do his previous work; unless he shows that he cannot, he is determined not to be disabled.\(^1\) If the claimant survives the fourth stage, the fifth, and final, step requires the SSA to consider so-called “vocational factors” (the claimant’s age, education, and past work experience), and to determine whether the claimant is capable of performing other jobs existing in significant numbers in the national economy. §§ 404.1520(f), 404.1560(c), 416.920(f), 416.960(c).\(^2\)

As the above description shows, step four can result in a determination of no disability without inquiry into whether the claimant’s previous work exists in the national economy; the regulations explicitly reserve inquiry into the national economy for step five. Thus, the SSA has made it perfectly clear that it does not interpret the clause “which exists in the national economy” in § 423(d)(2)(A) as applying to “previous work.”\(^3\) The issue presented is whether this agency interpretation must be accorded deference.

\(^1\)The step-four instructions to the claimant read as follows: “If we cannot make a decision based on your current work activity or on medical facts alone, and you have a severe impairment(s), we then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled.” 20 CFR §§ 404.1520(e), 416.920(e) (2003).

\(^2\)In regulations that became effective on September 25, 2003, the SSA amended certain aspects of the five-step process in ways not material to this opinion. The provisions referred to as subsections (e) and (f) in this opinion are now subsections (f) and (g).

\(^3\)This interpretation was embodied in the regulations that first established the five-step process in 1978, see 43 Fed. Reg. 55349 (codified, as amended, at 20 CFR §§ 404.1520 and 416.920 (1982)). Even before enactment of § 423(d)(2)(A) as part of the Social Security Amendments of 1967, the SSA disallowed disability benefits when the inability to work was
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As we held in *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843 (1984), when a statute speaks clearly to the issue at hand we “must give effect to the unambiguously expressed intent of Congress,” but when the statute “is silent or ambiguous” we must defer to a reasonable construction by the agency charged with its implementation. The Third Circuit held that, by referring first to “previous work” and then to “any other kind of substantial gainful work which exists in the national economy,” 42 U. S. C. § 423(d)(2)(A) (emphasis added), the statute unambiguously indicates that the former is a species of the latter. “When,” it said, “a sentence sets out one or more specific items followed by ‘any other’ and a description, the specific items must fall within the description.” 294 F. 3d, at 572. We disagree. For the reasons discussed below, the interpretation adopted by SSA is at least a reasonable construction of the text and must therefore be given effect.

The Third Circuit’s reading disregards—indeed, is precisely contrary to—the grammatical “rule of the last antecedent,” according to which a limiting clause or phrase (here, the relative clause “which exists in the national economy”) should ordinarily be read as modifying only the noun or phrase that it immediately follows (here, “any other kind of substantial gainful work”). See 2A N. Singer, Sutherland on Statutory Construction § 47.33, p. 369 (6th rev. ed. 2000) (“Referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent”). While this rule is not an absolute and can assuredly be overcome by other indicia of meaning, we have said that construing a statute in accord with the rule is “quite sensible as a matter of grammar.” *Nobelman v. American Savings Bank*, 508 U. S. 324, 330 (1993). In *FTC v. Mandel Brothers, Inc.*, 359 U. S. 385 (1959), this Court employed the rule to interpret a statute strikingly similar in structure to

caused by “technological changes in the industry in which [the claimant] has worked.” 20 CFR § 404.1502(b) (1961).
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§ 423(d)(2)(A)—a provision of the Fur Products Labeling Act, 15 U. S. C. § 69, which defined “‘invoice’” as “‘a written account, memorandum, list, or catalog . . . transported or delivered to a purchaser, consignee, factor, bailee, correspondent, or agent, or any other person who is engaged in dealing commercially in fur products or furs.’” 359 U. S., at 386 (quoting 15 U. S. C. § 69(f)) (emphasis added). Like the Third Circuit here, the Court of Appeals in Mandel Brothers had interpreted the phrase “‘any other’” as rendering the relative clause (“‘who is engaged in dealing commercially’”) applicable to all the specifically listed categories. 359 U. S., at 389. This Court unanimously reversed, concluding that the “limiting clause is to be applied only to the last antecedent.” Id., at 389, and n. 4 (citing 2 J. Sutherland, Statutory Construction § 4921 (3d ed. 1943)).

An example will illustrate the error of the Third Circuit’s perception that the specifically enumerated “previous work” “must” be treated the same as the more general reference to “any other kind of substantial gainful work.” 294 F. 3d, at 572. Consider, for example, the case of parents who, before leaving their teenage son alone in the house for the weekend, warn him, “You will be punished if you throw a party or engage in any other activity that damages the house.” If the son nevertheless throws a party and is caught, he should hardly be able to avoid punishment by arguing that the house was not damaged. The parents proscribed (1) a party, and (2) any other activity that damages the house. As far as appears from what they said, their reasons for prohibiting the home-alone party may have had nothing to do with damage to the house—for instance, the risk that underage drinking or sexual activity would occur. And even if their only concern was to prevent damage, it does not follow from the fact that the same interest underlay both the specific and the general prohibition that proof of impairment of that interest is required for both. The parents, foreseeing that assessment of whether an activity had in fact “damaged” the house
could be disputed by their son, might have wished to preclude all argument by specifying and categorically prohibiting the one activity—hosting a party—that was most likely to cause damage and most likely to occur.

The Third Circuit suggested that interpreting the statute as does the SSA would lead to “absurd results.” Ibid. See also Kolman v. Sullivan, 925 F. 2d 212, 213 (CA7 1991) (the fact that a claimant could perform a past job that no longer exists would not be “a rational ground for denying benefits”). The court could conceive of “no plausible reason why Congress might have wanted to deny benefits to an otherwise qualified person simply because that person, although unable to perform any job that actually exists in the national economy, could perform a previous job that no longer exists.” 294 F. 3d, at 572–573. But on the very next page the Third Circuit conceived of just such a plausible reason, namely, that “in the vast majority of cases, a claimant who is found to have the capacity to perform her past work also will have the capacity to perform other types of work.” Id., at 574, n. 5. The conclusion which follows is that Congress could have determined that an analysis of a claimant’s physical and mental capacity to do his previous work would “in the vast majority of cases” serve as an effective and efficient administrative proxy for the claimant’s ability to do some work that does exist in the national economy. Such a proxy is useful because the step-five inquiry into whether the claimant’s cumulative impairments preclude him from finding “other” work is very difficult, requiring consideration of “each of th[e] [vocational] factors and . . . an individual assessment of each claimant’s abilities and limitations,” Heckler v. Campbell, 461 U. S. 458, 460–461, n. 1 (1983) (citing 20 CFR §§ 404.1545–404.1565 (1982)). There is good reason to use a workable proxy that avoids the more expansive and individualized step-five analysis. As we have observed, “[t]he Social Security hearing system is ‘probably the largest adjudicative
agency in the western world.’ . . . The need for efficiency is self-evident.” 461 U. S., at 461, n. 2 (citation omitted).

The Third Circuit rejected this proxy rationale because it would produce results that “may not always be true, and . . . may not be true in this case.” 294 F. 3d, at 576. That logic would invalidate a vast number of the procedures employed by the administrative state. To generalize is to be imprecise. Virtually every legal (or other) rule has imperfect applications in particular circumstances. Cf. Bowen v. Yuckert, 482 U. S. 137, 157 (1987) (O'Connor, J., concurring) (“To be sure the Secretary faces an administrative task of staggering proportions in applying the disability benefits provisions of the Social Security Act. Perfection in processing millions of such claims annually is impossible”). It is true that, under the SSA’s interpretation, a worker with severely limited capacity who has managed to find easy work in a declining industry could be penalized for his troubles if the job later disappears. It is also true, however, that under the Third Circuit’s interpretation, impaired workers in declining or marginal industries who cannot do “other” work could simply refuse to return to their jobs—even though the jobs remain open and available—and nonetheless draw disability benefits. The proper Chevron inquiry is not whether the agency construction can give rise to undesirable results in some instances (as here both constructions can), but rather whether, in light of the alternatives, the agency construction is reasonable. In the present case, the SSA’s authoritative interpretation certainly satisfies that test.

We have considered respondent’s other arguments and find them to be without merit.

*   *   *

We need not decide today whether § 423(d)(2)(A) compels the interpretation given it by the SSA. It suffices to conclude, as we do, that § 423(d)(2)(A) does not unambiguously require a different interpretation, and that the SSA’s regula-
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tion is an entirely reasonable interpretation of the text. The judgment of the Court of Appeals is reversed.

It is so ordered.
18 U.S. Code § 2252 - Certain activities relating to material involving the sexual exploitation of minors

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

(a) Any person who—

(1) knowingly transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mails, any visual depiction, if—

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;

(2) knowingly receives, or distributes, any visual depiction using any means or facility of interstate or foreign commerce or that has been mailed, or has been shipped or transported in or affecting interstate or foreign commerce, or which contains materials which have been mailed or so shipped or transported, by any means including by computer, or knowingly reproduces any visual depiction for distribution using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or through the mails, if—

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;

(3) either—

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly sells or possesses with intent to sell any visual depiction; or

(B) knowingly sells or possesses with intent to sell any visual depiction that has been mailed, shipped, or transported using any means or facility of interstate or foreign commerce, or has been shipped or transported in or affecting interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported using any means or facility of interstate or foreign commerce, including by computer, if—

(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and
(ii) such visual depiction is of such conduct; or

(4) either—

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly possesses, or knowingly accesses with intent to view, 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction; or

(B) knowingly possesses, or knowingly accesses with intent to view, 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction that has been mailed, or has been shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer, if—

(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(ii) such visual depiction is of such conduct;

shall be punished as provided in subsection (b) of this section.

(b)

(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), or (3) of subsection (a) shall be fined under this title and imprisoned not less than 5 years and not more than 20 years, but if such person has a prior conviction under this chapter, section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 40 years.

(2) Whoever violates, or attempts or conspires to violate, paragraph (4) of subsection (a) shall be fined under this title or imprisoned not more than 10 years, or both, but if any visual depiction involved in the offense involved a prepubescent minor or a minor who had not attained 12 years of age, such person shall be fined under this title and imprisoned for not more than 20 years, or if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 40 years.
conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.

(c) Affirmative Defense.—It shall be an affirmative defense to a charge of violating paragraph (4) of subsection (a) that the defendant—

(1) possessed less than three matters containing any visual depiction proscribed by that paragraph; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof—

(A) took reasonable steps to destroy each such visual depiction; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

18. Last-Antecedent Canon

A pronoun, relative pronoun, or demonstrative adjective generally refers to the nearest reasonable antecedent.

In 1841, President William Henry Harrison died in office—barely a month into the ninth presidency of the United States. At his inauguration, he had spoken for nearly two hours in the rain and contracted pneumonia, from which he died: a lesson to all bloators. His vice president, John Tyler, became the new president.

Or did he?

The answer turned on the wording of Article II of the Constitution: “In Case of the Removal of the President from Office, or of his Death, Resignation or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President.” The question was what it was, precisely, that devolved. Was it the office, or was it the powers and duties of said office? From a grammatical point of view, what is the antecedent of the legalistic pronoun same? Did John Tyler become the tenth president, or did he remain the vice president while having the powers and duties of the presidency? Constitutional scholars long debated the point.

The so-called last-antecedent canon resolves the issue favorably to Tyler: office is the nearest reasonable antecedent of same; the phrase powers and duties is a more remote antecedent. As a result, we can now confidently pronounce that there have been 44 presidents in the history of the United States as of 2012.

This rule is the legal expression of a commonsense principle of grammar, here rather technically expressed by a British grammarian: “It is clearly desirable that an anaphoric (backward-looking) or cataphoric (forward-looking) pronoun should be placed as near as the construction allows to the noun or noun phrase to which it refers, and in such a manner that there is no risk of ambiguity.”

In what has been called the “seminal authority” on the last-antecedent canon, Barnhart v. Thomas, the Supreme Court of the United States illustrated how the rule works. Let us say that parents warn a teenage son: “You will be punished if you throw a party or engage in any other activity that damages the house.” With this homey example, the Court said in a unanimous opinion: “If the son nevertheless throws a party and is caught, he should hardly be able to avoid punishment by arguing that the house was not damaged.” The relative pronoun that attaches only to other activity, not to party as well:

The parents proscribed (1) a party, and (2) any other activity that damages the house. As far as appears from what they said, their reasons for prohibiting the home-alone party may have had nothing to do with damage to the house—for instance, the risk that underage drinking or sexual activity would occur. And even if their only concern was to prevent damage, it does not follow from the fact that the same interest underlay both the specific and the general prohibition that proof of impairment of that interest is required for both.

The actual language at issue in Barnhart was closely analogous. A social-security disability claimant was capable of performing her old job—but her old job (that of an elevator operator) was no longer available in the national economy. The relevant statute allows benefits “only if [the claimant’s] physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.” The claimant argued that she should be able to receive disability benefits because elevator-operator jobs were no longer available in the national economy,

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1 See David P. Currie, His Accidency, 5 Green Bag 2d 151, 154 (2002). See also Garner’s Modern American Usage 726 (3d ed. 2009).
5 Id. at 27.
6 Id.
7 Id.
even though she was physically capable of doing the work required by such a job. The Court rightly rejected the argument. The restrictive relative clause (which exists in the national economy) modified only substantial gainful work; it did not reach all the way back to previous work.9

The very first recital of the canon by the Supreme Court of the United States involved the demonstrative adjective such—in a case that arose in 1799.10 A Virginia statute provided that "no person, his heirs or assigns, ... shall hereafter be admitted to any warrant [entitling compensation] for ... military service, unless he, she, or they, produce ... a proper certificate of proof made before some court of record within the commonwealth, by the oath of the party claiming, or other satisfactory evidence that such party was bona fide an inhabitant of this commonwealth." In a footnote, Chief Justice Oliver Ellsworth stated: "The rule is, that 'such' applies to the last antecedent, unless the sense of the passage requires a different construction."11 Here, he said, such party "must, in order to preserve the sense of the context," refer to the donee of the warrant, his heirs, or assigns, referred to earlier in the passage.12

One caveat. The last-antecedent canon may be superseded by another grammatical convention: A pronoun that is the subject of a sentence and does not have an antecedent in that sentence ordinarily refers to the subject of the preceding sentence. And it almost always does so when it is the word that begins the sentence. For example: "The commission may find that discrimination has occurred. It must be clear and explicit." The nearest potential antecedent of it is discrimination, but without some other indication of meaning its proper referent is The commission.

19. Series-Qualifier Canon

When there is a straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series.

The Fourth Amendment begins in this way, with a prepositive (pre-positioned) modifier (unreasonable) in the most important phrase: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated ..." The phrase is often repeated: unreasonable searches and seizures. Does the adjective unreasonable qualify the noun seizures as well as the noun searches? Yes, as a matter of common English. A similar question arises with the Impeachment Clause's reference to high crimes and misdemeanors. And the answer is the same: The misdemeanors must be "high" no less than the crimes. In the absence of some other indication, the modifier reaches the entire enumeration.2 That is so whether the modifier is an adjective or an adverb.3

Consider application of the series-qualifier canon to the following phrases:

- Charitable institutions or societies—held, that charitable modifies both institutions and societies.4

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9 540 U.S. at 26.
10 Simi's Lessee v. Irvine, 3 U.S. (3 Dall.) 425 (1799) (per Ellsworth, C.J.).
11 Id. at 444 n.7.
12 Id.
• Internal personnel rules and practices of an agency—held, that internal personnel modifies both rules and practices, and of an agency held to modify both nouns as well.5
• Intentional unemployment or underemployment—held, that intentional modifies both nouns.6
• Intoxicating bitters or beverages—held, that intoxicating modifies both bitters and beverages.7
• Forcibly assaults, resists, opposes, impedes, intimidates, or interferes with—held, that forcibly modifies each verb in the list.8
• Willfully damage or tamper with—held, that willfully modifies both damage and tamper with.9

Similar results obtain with postpositive modifiers (that is, those “positioned after” what they modify) in simple constructions:

• Institutions or societies that are charitable in nature (the institutions as well as the societies must be charitable).
• A wall or fence that is solid (the wall as well as the fence must be solid).
• A corporation or partnership registered in Delaware (a corporation as well as a partnership must be registered in Delaware).

The typical way in which syntax would suggest no carryover modification is that a determiner (a, the, some, etc.) will be repeated before the second element:

• The charitable institutions or the societies (the presence of the second the suggests that the societies need not be charitable).

With postpositive modifiers, the insertion of a determiner before the second item tends to cut off the modifying phrase so that its backward reach is limited—but that effect is not entirely clear:

• An institution or a society that is charitable in nature (any institution probably qualifies, not just a charitable one).
• A wall or a fence that is solid (the wall may probably have gaps).
• A corporation or a partnership registered in Delaware (the corporation may probably be registered anywhere).

To make certain that the postpositive modifier does not apply to each item, the competent drafter will position it earlier:

• Societies that are charitable in nature or institutions.
• A fence that is solid or a wall.
• A partnership registered in Delaware or a corporation.

A case exemplifying the simple construction contemplated by the blackletter canon arose in Minnesota.11 A state statute allowed medical professionals access to certain hospital records if they were “requesting or seeking through discovery data, information, or records relating to their medical staff privileges [etc.]”.12 In 1997, two doctors at Saint Cloud Hospital requested such information about themselves, and they were denied. The question was how to read the phrase through discovery—as modifying just seeking or also requesting. Did the statute mean “medical professionals requesting—or seeking through discovery—data, infor-

6 Hiff v. Hiff, 339 S.W.3d 74, 80 (Tex. 2011).
7 Ex parte State ex rel. Attorney Gen., 93 So. 382, 383 (Ala. 1922).
8 Long v. United States, 199 F.2d 717, 719 (4th Cir. 1952).
11 Amanal v. Saint Cloud Hosp., 598 N.W.2d 379 (Minn. 1999).
suits resulting from “any infringement of copyright or improper or unlawful use of slogans in your advertising.” When PCS was sued for copyright infringement in the preparation of a business proposal, INA declined to defend on grounds that the infringement had not occurred in advertising. The Arizona Supreme Court held that the modifier in your advertising did not reach back to infringement of copyright. This would seem to contradict the canon here under discussion, but the holding was justified by the rule that ambiguities in contracts will be interpreted against the party that prepared the contract (contra proferentem).

13 598 N.W.2d at 388 (with added support from other contextual factors).
14 470 F.2d 455 (D.C. Cir. 1972).
16 Id. § 22-3205 (1932) (emphasis added).
17 470 F.2d at 459.
19 Id. at 465 (emphasis added).
26. Surplusage Canon

If possible, every word and every provision is to be given effect (verba cum effectu sunt accipienda). None should be ignored. None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.

"These words cannot bemeaningless, else they would not have been used."


The surplusage canon holds that it is no more the court's function to revise by subtraction than by addition. A provision that seems to the court unjust or unfortunate (creating the so-called casus male inclusus) must nonetheless be given effect. As Chief Justice John Marshall explained: "It would be dangerous in the extreme, to infer from extrinsic circumstances, that a case for which the words of an instrument expressly provide, shall be exempted from its operation."

Or in the words of Thomas M. Cooley: "[T]he courts must . . . lean in favor of a construction which will render every word operative, rather than one which may make some idle and nugatory." This is true not just of legal texts but of all sensible writing: "Whenever a reading arbitrarily ignores linguistic components or inadequately accounts for them, the reading may be presumed improbable."

Sometimes lawyers will seek to have a crucially important word ignored—such as only, solely, or exclusively—and nontextualist judges will often oblige them. In one such case, Abright v. Shapiro, the New York Rent Stabilization Code excluded from rent stabilization “housing accommodations used exclusively for professional, commercial, or other nonresidential purposes.” In this particular case, which took 13 years for the courts finally to resolve, 52 physicians used their residential apartments for professional purposes, as a result of which the landlords began charging higher rent based on the fair market value of the building used as professional premises. The physicians sued on grounds that their rents had been stabilized and they were not using the premises exclusively for professional purposes since they also continued to live there. The Appellate Division essentially read the word exclusively out of the statute and allowed the landlords to have their higher rent on wholly nontextual grounds reflecting purposivism: “[R]ent stabilization was not adopted to provide a means for those with the ability to pay to avoid having to pay a market rent for premises in which to practice their profession.” Perhaps not. But the legislature used the adverb exclusively, and the court was wrong to negate its clear meaning.

Lawyers rarely argue that an entire provision should be ignored—but it does happen. For example, in Fortec Constructors v. United States, the quality-control paragraph of a construction contract with the Army read as follows:

All work . . . shall be subject to inspection and test by the Government at all reasonable times and at all places prior to acceptance. Any such inspection and test is for the sole benefit of the Government and shall not relieve the Contractor of the responsibility of providing quality control measures to assure that the work strictly complies with the contract requirements. No inspection or test by the Government shall be construed as constituting or implying acceptance.

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1 Ulpian, Digest 2.7.5.2 (“Words are to be taken as having an effect.”).
2 Sturges v. Crowninshield, 17 U.S. (4 Wheat.) 122, 202 (1819) (per Marshall, C.J.). See Ernst Freund, Interpretation of Statutes, 65 U. Pa. L. Rev. 207, 218 (1917) (“The legislator is presumed to, as in fact he does, choose his words deliberately intending that every word shall have a binding effect.”).
3 Thomas M. Cooley, A Treatise on the Constitutional Limitations Which Rest upon the Legislative Power of the States of the American Union 58 (1868). See Kangas v. United States, 485 U.S. 759, 778 (1988) (Scalia, J., plurality opinion) (calling it a "cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant").
6 N.Y. Rent Stabilization Code § 2520.11(n) (emphasis added).
7 614 N.Y.S.2d at 409.
8 760 F.2d 1288 (Fed. Cir. 1985).
9 Id. at 1292 (emphasis in original).
When the Army demanded that the contractor demolish and reconstruct noncompliant work, the contractor protested that the on-site Army inspector had failed to notify Fortec of the defects and that this silence constituted an acceptance of the original work. The court correctly rejected this argument:

To agree with Fortec's contention would render clause 10 meaningless. This court must be guided by the well accepted and basic principle that an interpretation that gives a reasonable meaning to all parts of the contract will be preferred to one that leaves portions of the contract meaningless. Therefore, Fortec's contention is rejected for being inconsistent with contract clause 10. The Corps quality assurance inspections did not constitute an acceptance of the work. 10

More frequently, however, this canon prevents not the total disregard of a provision, but instead an interpretation that renders it pointless. Because legal drafters should not include words that have no effect, courts avoid a reading that renders some words altogether redundant. 11 If a provision is susceptible of (1) a meaning that gives it an effect already achieved by another provision, or that deprives another provision of all independent effect, and (2) another meaning that leaves both provisions with some independent operation, the latter should be preferred.

Put to a choice, however, a court may well prefer ordinary meaning to an unusual meaning that will avoid surplusage. So like all other canons, this one must be applied with judgment and discretion, and with careful regard to context. It cannot always be dispositive because (as with most canons) the underlying proposition is not invariably true. Sometimes drafters do repeat themselves and do include words that add nothing of substance, either

out of a flawed sense of style or to engage in the ill-conceived but lamentably common belt-and-suspenders approach. Doublets and triplets abound in legalese: Execute and perform—what satisfies one but not the other? Rest, residue, and remainder—could a judge interpret these as referring to three distinct things? Peace and quiet—when is peace not quiet? A clever interpreter could create unforeseen meanings or legal effects from this stylistic mannerism. This consequence, indeed, has befallen the phrase indemnify and hold harmless: The two parts of the phrase are historically synonymous, but some modern courts have purported to find distinct senses. 12 The English law lords once held, quite properly, that the second part of the statutory phrase in addition to and not in derogation of added nothing but emphasis. 13 Before the 2007 revisions, the Federal Rules of Civil Procedure contained varying requirements for cause, for good cause, for cause shown, and for good cause shown. There was no reason to believe that, after removal of the attendant modifiers, the cause did not have to be good or did not have to be shown.

A United States Supreme Court case testing the canon's application against duplication of meaning was Moskal v. United States. 14 The defendant had participated in a scheme that altered the odometer readings on used vehicles, and then obtained (through the mail from another state) new titles that showed the falsified readings. The state officials who issued the new titles did not know that the readings were fraudulent. The defendant was convicted under 18 U.S.C. § 2314, which punishes anyone who, "with unlawful or fraudulent intent, transports in interstate commerce any falsely made, forged, altered or counterfeited securities . . . knowing the same to have been falsely made, forged, altered or counterfeited." The same titles were obviously not "falsely made, forged, altered or counterfeited"; Moskal argued that they were not "falsely made" either, since those who made them believed them to be accurate. The Court rejected this argument in part because it would make

10 Id.
11 See, e.g., Larson v. SEC, 472 U.S. 181, 207 n.53 (1985) (per Stevens, J.) ("[W]e must give effect to every word that Congress used in the statute."); Reiter v. Sonotone Corp., 442 U.S. 330, 339 (1979) (per Burger, C.J.) ("In construing a statute we are obliged to give effect, if possible, to every word Congress used."); Burden Cent. Sugar Ref. Co. v. Payne, 167 U.S. 127, 142 (1897) (per Fuller, C.J.) ("[T]he contract must be so construed as to give meaning to all its provisions, and . . . that interpretation would be incorrect which would obliterate one portion of the contract in order to enforce another part . . .").

“falsely made” redundant with “forged” and “counterfeited,” and would thus “violate[] the established principle that a court should give effect, if possible, to every clause or word of a statute.”

We agree with (and one of us wrote) the dissent, which explained Congress’s quadrupling of near-synonyms:

As the United States conceded at oral argument, and as any dictionary will confirm, “forged” and “counterfeited” mean the same thing. Since iteration is obviously afoot in the relevant passage, there is no justification for extruding an unnatural meaning out of “falsely made” simply in order to avoid iteration. The entire phrase “falsely made, forged, altered, or counterfeited” is self-evidently not a listing of differing and precisely calibrated terms, but a collection of near synonyms which describes the product of the general crime of forgery.

Yet words with no meaning—language with no substantive effect—should be regarded as the exception rather than the rule. In one interesting case, the absurdity doctrine (§ 37) might have tempted a court to disregard a word (male) incorporated by reference into a statute, but that doctrine could not overcome the constitutional provision that had been incorporated. In People ex rel. Ahrens v. English, an Illinois suffrage statute provided that any woman 21 or older could vote for school officers if she belonged to one of the three classes mentioned in Article 7 of the Illinois Constitution. Those classes consisted of (1) those who were electors in the state on April 1, 1848; (2) those who were naturalized before January 1, 1870; and (3) male citizens of the United States over the age of 21. The Illinois Supreme Court recognized that reading the word male as being incorporated into the statute “is wholly inconsistent with the entire scope and the manifest intent of the act,” and seemed prepared, because of the absurdity, to disregard that word insofar as interpretation of the statute was concerned. It found, however, that the constitutional provision governed the voting qualifications for the office in question, and that provision could not be disregarded. The would-be voter’s petition for mandamus was denied.

At least one commentator has suggested that the surplusage canon is fundamentally wrong: “Statutes are not always carefully drafted. Legal drafters often include redundant language on purpose to cover any unforeseen gaps or simply for no good reason at all. And legislators are not likely to waste time or energy arguing to remove redundancy when there are more important issues to address. Thus, the presumptions (underlying this canon) simply do not match political reality.” We think the objection ill-founded for four reasons. First, the surplusage canon is well known: Statutes should be carefully drafted, and encouraging courts to ignore sloppily inserted words results in legislative free-riding and increasingly slipshod drafting. Nothing should be included in a legal instrument “for no good reason at all.” Second, general language—not redundancy—is the accepted method for covering “unforeseen gaps.” Third, if the legislators themselves are not mindful of ferreting out words and phrases that contribute nothing to meaning, they ought to hire eagle-eyed editors who are. (Many, in fact, do.) Finally, when a drafter has engaged in the retrograde practice of stringing out synonyms and near-synonyms (e.g., transfer, assign, convey, alienate, or set over), the bad habit is so easily detectable that the canon can be appropriately discounted: Alienate will not be held to mean something wholly distinct from transfer, convey, and assign, etc.

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15 Id. at 109 (internal quotation marks omitted).
16 Id. at 120–21 (Scalia, J., dissenting).
17 29 N.E. 678 (Ill. 1892).
18 Id. at 679.
19 Id. at 679–80.
20 Id. at 680.
49. Rule of Lenity

Ambiguity in a statute defining a crime or imposing a penalty should be resolved in the defendant’s favor.

"Blurred signposts to criminality will not suffice to create it."

The rule of lenity—sometimes cast as the idea that “[p]enal statutes must be construed strictly” and sometimes as the idea that if two rational readings are possible, the one with the less harsh treatment of the defendant prevails—was termed by Jeremy Bentham “the subject of more constant controversy than perhaps any in the whole circle of the Law.”

The rule originally rested on the interpretive reality that a just legislature will not decree punishment without making clear what conduct incurs the punishment and what the extent of the punishment will be; or at least on the judge-made public policy that a legislature ought not to do so. Chief Justice John Marshall explained it this way in 1820:

The rule that penal laws are to be construed strictly... is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the Court, which is to define a crime, and ordain its punishment.

Some authorities consider the rule to be based on constitutional requirements of fair notice and separation of powers (federal courts have no power to define crimes). But application of the rule of lenity, vague as it is, does not coincide with the constitutional requirement of fair notice—or even with that requirement plus the constitutional-doubt canon (§ 38). And as for the separation of powers, the rule antedates both state and federal constitutions, and it applies not only to crimes but also to civil penalties.

Consider a straightforward case. With respect to certain specified institutions, including federally insured banks, a federal statute made it a crime to “knowingly mak[e] any false statement or report” or to “willfully overvalu[e] any land, property, or security” for the purpose of influencing action “upon any application,... commitment, [or] loan.” A Louisiana bank president was convicted of writing bad checks on accounts that had insufficient funds. But were the bad checks themselves “false statements” that give rise to criminal liability under the statute? Justice Blackmun wrote for a seven-member majority of the Supreme Court of the United States in holding no: “Congress should have spoken in language that is clear and definite.... ‘[The rule of lenity] would require statutory language much more explicit than that before us here to lead to the conclusion that Congress intended to put the Federal Government in the business of policing the deposit of bad checks.’"

One interpretive problem sometimes arises when the same violation of law is made subject to both a civil or criminal penalty and a private claim for the injury inflicted. Is the language defining the violation to be given one meaning (a narrow one) for the penal sanction and a different meaning (a more expansive one) for the private compensatory action? That seems inconceivable. The Supreme Court of the United States says as much: “[The dissent] further suggests that lenity is inappropriate because we construe the statute today ‘in a civil setting’ rather than ‘a criminal prosecution.’ The rule of lenity, however, is a rule of statutory construction
whose purpose is to help give authoritative meaning to statutory language. It is not a rule of administration calling for courts to refrain in criminal cases from applying statutory language that would have been held to apply if challenged in civil litigation.  

The main difficulty with the rule of lenity is the uncertainty of its application. Its operation would be relatively clear if the rule were automatically applied at the outset of textual inquiry, before any other rules of interpretation were invoked to resolve ambiguity. Treating it as a clear-statement rule would comport with the original basis for the canon and would provide considerable certainty. But that is not the approach the cases have taken. The Supreme Court of the United States expresses the consensus when it says that “[t]he rule comes into operation at the end of the process of construing what Congress has expressed, not at the beginning as an overriding consideration of being lenient to wrongdoers.” Fair enough. But less comprehensible is the Court’s statement in a later case that the rule applies “only when the equipoise of competing reasons cannot otherwise be resolved.” If that were so, the rule either would never apply (when is the last time you read a decision saying that an interpretive “equipoise” could not be resolved?) or would be superfluous (if alternative meanings were in utter equipoise, the statute would be inoperative as meaningless).  

But not to worry: Supreme Court opinions provide an ample supply of other criteria for determining when the rule of lenity applies, ranging from when the court “can make ‘no more than a guess’” to when the court is “left with an ambiguous statute.”

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11 See § 16 (unintelligibility canon).

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approval. Nor are statutes providing remedies for fraud considered penal laws subject to the canon. As Blackstone described it:

[W]here the statute acts upon the offender, and inflicts a penalty, as the pillory or a fine, it is then to be taken strictly: but when the statute acts upon the offence, by setting aside the fraudulent transaction, here it is to be construed liberally.

The rule of lenity is often overlooked when it ought to apply. Consider the Kentucky statute making it a crime to “sell, lend, or give” liquor to a minor—unless you are the minor’s parent or guardian. Sixteen-year-old Davis and seventeen-year-old Rison decided to pool their money to buy and then drink whiskey. They did so, were caught, and were arrested. Davis, the younger boy, was charged with “giving” whiskey to Rison. The trial court dismissed the indictment without explanation, and the prosecution appealed to the Kentucky Supreme Court. Davis argued that he did not “sell, lend, or give” whiskey to Rison—and that give means “to bestow a gift.” The prosecution argued that, in an expanded sense, give means “to furnish, provide, or supply.” The court agreed with the prosecution’s argument and remanded the case for trial—quite erroneously. The rule of lenity militated in favor of a judgment for Davis, as did noscitur a sociis (see § 31 [associated-words canon]), but the court dismissed the first and missed the second.

On the whole, it might fairly be said that the rule of lenity is underused in modern judicial decision-making—perhaps the consequence of zeal to smite the wicked. The defendant has almost always done a bad thing, and the instinct to punish the wrongdoer is a strong one. But a fair system of laws requires precision in the definition of offenses and punishments. The less the courts insist on precision, the less the legislatures will take the trouble to provide it.

Naturally, the rule of lenity has no application when the statute is clear—though just as naturally counsel will try to manufacture ambiguity when there is none. In Sullivan v. United States, the District of Columbia’s Sex Offender Registration Act required registration by any person who “[c]ommitted a [sex] offense at any time and is in custody or under supervision on or after July 11, 2000” because of “[b]eing convicted of . . . an offense under the District of Columbia Official Code.” Two years before the Act was enacted, Sullivan was convicted of assault with intent to rape. He was jailed and later released. After the Act took effect, he was convicted of driving without a permit, was placed on supervised probation, had his probation revoked, and was jailed once again.

After his release, District authorities repeatedly notified Sullivan.

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19 See, e.g., Colgate-Palmolive-Peet Co. v. United States, 320 U.S. 422, 429–30 (1943) (per Reed, J.) (upholding government’s imposition of excise tax despite ambiguity in Revenue Act of 1934); Burnet v. Guggenbush, 288 U.S. 280, 263 (1933) (per Cardozo, J.) (upholding imposition of tax despite ambiguity in Revenue Act of 1924); Stryker Corp. v. Director, Div. of Taxation, 773 A.2d 674, 684 (NJ 2001) (recognizing well-settled rule that tax laws are construed strictly against the state, yet imposing tax because “tax laws also must be construed reasonably so that the Legislature’s purpose in enacting the statute is not destroyed”); Johnson v. State Tax Comm’n, 411 P.2d 831, 834 (Utah 1966) (interpreting ambiguous tax statute against taxpayer to accomplish the legislative purpose and bring about “equal and non-discriminatory taxation”).


22 See James v. United States, 550 U.S. 192, 219 (2007) (Scalia, J., dissenting) (“The rule of lenity, grounded in part on the need to give ‘fair warning’ of what is encompassed by a criminal statute, . . . demands that we give this text the more narrow reading of which it is susceptible.”); Almendarez-Torres v. United States, 535 U.S. 224, 271 (1998) (Scalia, J., dissenting) (“[W]here the doctrine of constitutional doubt does not apply, the same result may be dictated by the rule of lenity, which would preserve rather than destroy the criminal defendant’s right to jury findings beyond a reasonable doubt.”); United States v. O’Hagan, 521 U.S. 642, 679 (1997) (Scalia, J., concurring in part and dissenting in part) (“While the Court’s explanation of the scope of § 10(b) and Rule 10b-5 would be entirely reasonable in some other context, it does not seem to accord with the principle of lenity we apply to criminal statutes.”); Smith v. United States, 508 U.S. 223, 246 (1993) (Scalia, J., dissenting) (“Even if the reader does not consider the issue to be as clear as I do, he must at least acknowledge, I think, that it is eminently debatable—and that is enough, under the rule of lenity, to require finding for the petitioner here.”).

23 990 A.2d 477 (D.C. 2010).


25 990 A.2d at 478.
that he must register under the Act, yet he repeatedly failed to do so. He was then convicted of failing to register as a sex offender.

On appeal, Sullivan (or, more properly, his lawyer) argued that he did not have to register under the Act because (1) he had been released from custody for his sex offense before the Act took effect, and (2) his post-Act conviction of driving without a license (a nonviolent traffic offense) was not the type of offense that could bring him within the reach of the Act. The District of Columbia Court of Appeals correctly held otherwise. The language “convicted of . . . an offense under the District of Columbia Official Code” was broad (see § 9 [general-terms canon]) and unambiguous, and it did not exclude any type of conviction for which a court might order a person into custody or supervision.26 Hence, the rule of lenity had no application.

26 Id. at 482.
39. Related-Statutes Canon

Statutes in pari materia are to be interpreted together, as though they were one law.

“We generally presume that Congress is knowledgeable about existing law pertinent to the legislation it enacts.”


Any word or phrase that comes before a court for interpretation is part of a whole statute, and its meaning is therefore affected by other provisions of the same statute. It is also, however, part of an entire corpus juris. So, if possible, it should no more be interpreted to clash with the rest of that corpus than it should be interpreted to clash with other provisions of the same law. Hence laws dealing with the same subject—being in pari materia (translated as “in a like matter”)—should if possible be interpreted harmoniously. As James Kent explained in 1826: “Several acts in pari materia, and relating to the same subject, are to be taken together, and compared in the construction of them, because they are considered as having one object in view, and as acting upon one system.”

Though it is often presented as effectuating the legislative “intent,” the related-statute canon is not, to tell the truth, based upon a realistic assessment of what the legislature actually meant. That would assume an implausible legislative knowledge of related legislation in the past, and an impossible legislative knowledge of related legislation yet to be enacted. The canon is, however, based upon a realistic assessment of what the legislature ought to have meant. It rests on two sound principles: (1) that the body of the law should make sense, and (2) that it is the responsibility of the courts, within the permissible meanings of the text, to make it so.

“Statutes,” Justice Frankfurter once wrote, “cannot be read intelligently if the eye is closed to considerations evidenced in affiliated statutes.” Part of the statute’s context is the corpus juris of which it forms a part, and this corpus can be dauntingly substantial. What is required, according to a British judge, is a “conspicuousness of the entire relevant body of the law for the same purpose.”

The critical questions are these: Just how affiliated must “affiliated” be, and what purposes are the same? The cases provide—properly, in our view—a good deal of leeway. In one case, the defendant was indicted for agrivated arson, which was committed by “whosoever shall unlawfully and maliciously set fire to any dwelling-house, any person being therein.” The charge against the defendant was that he himself was inside the dwelling when he started the fire. The defense objected that the statute prohibits only harm to others—not to oneself—and the court was persuaded only because another statute, the Offenses Against the Person Act (which speaks of “unlawfully and maliciously . . . wound[ing] . . . any person”), had never been understood as including self-mutilation or suicide.

Consider a case arising under the Minnesota Human Rights Act, which read: “It is an unfair discriminatory practice . . . for an owner . . . to refuse to sell, rent, or lease . . . any real property because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, or familial status.” The Act did not define the term marital status. Layle French refused to let his rental house to Susan Parsons because she intended to cohabit with her fiancé before marriage, which was inconsistent with French’s religious beliefs. The question was whether French violated the Act. French argued that the term marital status is ambiguous because it is susceptible of two meanings: one that includes cohabiting couples, and one that does not. He contended that the second meaning must be preferred because Minnesota law had always discouraged fornication in favor of protecting the institution of marriage. The Minnesota Attorney General contended that the first meaning should be preferred because

1 James Kent, Commentaries on American Law 433 (1826).
2 Felix Frankfurter, Some Reflections on the Reading of Statutes, 47 Colum. L. Rev. 527, 539 (1947).
5 State v. French, 460 N.W.2d 2 (Minn. 1990).
6 Minn. Stat. § 363.03, subd. 2.
the fornication statute had fallen into complete disuse and did not accurately reflect the state's public policy. (On the impermissibility of this argument, see § 57 [desuetude canon].) Without using the phrase in pari materia, the Minnesota Supreme Court held that the Minnesota Human Rights Act must be read harmoniously with the anti-fornication statute. Hence it correctly held that French did not violate the Act.\(^7\)

In Title 18 of the United States Code, two statutes have similar wordings: § 924(e)(1)(A) enhances the criminal penalty if a perpetrator carries a firearm "during and in relation to . . . [a] drug trafficking crime,"\(^8\) while § 844(h)(2) enhances the penalty if the perpetrator "carries an explosive during the commission of any felony."\(^9\) In *United States v. Ressam*,\(^10\) Ahmed Ressam was carrying explosives in the trunk of his car when he arrived by ferry at Port Angeles, Washington. After he gave false information on a customs form, customs officials searched his car and discovered the explosives. The penalty imposed for Ressam's felony conviction of lying on the customs form was enhanced under § 844(h)(2). On appeal, he argued that he possessed the explosives for reasons unrelated to the underlying felony—and hence did not carry the explosives "during" the commission of that felony. The Supreme Court of the United States rightly held that during is a purely temporal word, especially when contrasted with the wording of the related firearm statute: during and in relation to.\(^11\) In fact, Congress originally enacted § 844(h)(2) shortly after § 924(c) and used the same language—both with only the preposition during—and only later amended the latter to contain the additional phraseology and in relation to.\(^12\) The Court correctly considered the cognate firearm provision while interpreting the explosives provision.

It is a logical consequence of this contextual principle that the meaning of an ambiguous provision may change in light of a subsequent enactment.\(^13\) But can that be so even when the ambiguous provision has already been given an authoritative judicial interpretation? No, by reason of the principle of stare decisis, which has special force in statutory cases. The legislature, naturally, can change the law whose meaning the prior judicial interpretation established. But once that meaning has been established, the meaning cannot change "in light of" a later statute with which a different meaning would be more compatible. This would be repealer by the weakest of implications; and repeals by implication are disfavored (see § 55).

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7 460 N.W.2d at 11.
9 Id. § 844(h)(2) (emphasis added).
11 Id. at 274–76.
12 Id. at 275–76.
Contextual Canons

24. Whole-Text Canon

The text must be construed as a whole.

"In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole."


Perhaps no interpretive fault is more common than the failure to follow the whole-text canon, which calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts. Sir Edward Coke explained the canon in 1628: "[I]t is the most natural and genuine exposition of a statute to construe one part of the statute by another part of the same statute, for that best expresseth the meaning of the makers." Coke added: "If any section [of a law] be intricate, obscure, or doubtful, the proper mode of discovering its true meaning is by comparing it with the other sections, and finding out the sense of one clause by the words or obvious intent of the other." In more modern terms, the California Civil Code states, with regard to private documents: "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other."

Context is a primary determinant of meaning. A legal instrument typically contains many interrelated parts that make up the whole. The entirety of the document thus provides the context for each of its parts. When construing the United States Constitution

1 Edward Coke, The First Part of the Institutes of the Laws of England, or a Commentary upon Littleton § 728, at 381a (1628; 14th ed. 1791). See Herbert Broom, A Selection of Legal Maxims 440 (Joseph Gerald Pease & Herbert Chitty eds., 8th ed. 1911) ("the construction must be made upon the entire instrument, and not merely upon disjointed parts of it").
in *McCulloch v. Maryland*, Chief Justice John Marshall rightly called for "a fair construction of the whole instrument." More than a century later, Justice Benjamin Cardozo echoed the point in the context of legislation: "[T]he meaning of a statute is to be looked for, not in any single section, but in all the parts together and in their relation to the end in view." The Supreme Court of the United States has said that statutory construction is a "holistic endeavor," and the same is true of construing any document.

Many of the other principles of interpretation are derived from the whole-text canon—for example, the rules that an interpretation that furthers the document's purpose should be favored (§ 4 [presumption against ineffectiveness]), that if possible no word should be rendered superfluous (§ 26 [surplusage canon]), that a word or phrase is presumed to bear the same meaning throughout the document (§ 25 [presumption of consistent usage]), that provisions should be interpreted in a way that renders them compatible rather than contradictory (§ 27 [harmonious-reading canon]), that irreconcilably contradictory provisions should be given no effect (§ 29 [irreconcilability canon]), and that associated words bear on one another's meaning (*noscitur a sociis*) (§ 31 [associated-words canon]).

The canon can lend itself to abuse. Properly applied, it typically establishes that only one of the possible meanings that a word or phrase can bear is compatible with use of the same word or phrase elsewhere in the statute; or that one of the possible meanings would cause the provision to clash with another portion of the statute. It is not a proper use of the canon to say that since the overall purpose of the statute is to achieve x, any interpretation of the text that limits the achieving of x must be disfavored. As we have said, limitations on a statute's reach are as much a part of the statutory purpose as specifications of what is to be done.

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5 Id. at 406.
10 285 B.R. at 248.
11 Id. at 247.