Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* CABOT

CERTIFICATE BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 09–29. Argued June 8, 2020—Reargued August 1, 2020—Decided August 28, 2020

After AlexJCabot was charged with murder and attempted murder by federal prosecutors for actions he allegedly committed in the District of Columbia, a Municipality, he moved to dismiss on the grounds that the crime had not occurred within the "special maritime and territorial jurisdiction of the United States" as defined by federal law. Like many other federal criminal statutes, the murder and attempted murder statutes only apply within SMT jurisdiction. The District Court certified to us the question whether the Municipalities—in their entirety—are within the "special maritime and territorial jurisdiction of the United States" as defined by, and for the purposes of, federal criminal law.

Held: As defined by, and for the purposes of, federal criminal law, all Municipal land is within the "special maritime and territorial jurisdiction of the United States." Pp. 1–29.

(a) All agree that prior to their respective municipalizations, the land which comprised the District of Columbia and the City of Las Vegas was statutorily within the "special maritime and territorial jurisdiction of the United States" for the purposes of criminal law. Subsequent to municipalization and for more than two years after that, nobody suggested that this had changed. Put differently, there was unanimous public understanding that crimes like murder, attempted murder, assault, and robbery continued to be crimes under federal law within the Municipalities. Thousands of arrests were made and hundreds of prosecutions, including many upheld by this Court, were pursued on this understanding. As such, to overcome this consensus, there must be a particularly strong interpretive showing that the Municipalities were

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disincluded as SMT jurisdictions. Pp. 1–5, 23–29.

(b) None of the arguments for disinclusion, either singly or in concert, provide the particularly strong interpretive showing required to establish disinclusion. Pp. 5–20.

(1) The Court is not persuaded by the three-part textual argument which suggests that (a) the phrase "exclusive or concurrent jurisdiction" in 18 U. S. C. §7 refers to the type of federal judicial jurisdiction present within the particular region, (b) "concurrent" judicial jurisdiction requires there to be multiple court systems which share jurisdiction and "exclusive" judicial jurisdiction requires that there be multiple court systems but with one excluded from jurisdiction, and (c) because there is only one court system in the Municipalities, there can be neither "exclusive" nor "concurrent" judicial jurisdiction. The type of jurisdiction referred to is not federal judicial jurisdiction, but sovereign jurisdiction and, in any event, the proposition that the federal courts have sole, but somehow not exclusive, jurisdiction makes little sense. Pp. 5–9.

(2) The Court also rejects the notion that Congress impliedly disincluded the District of Columbia by ratifying its revised City Charter, which codified its power to prosecute. Nobody has contended that the Federal Government having jurisdiction to prosecute and make arrests for crimes like murder, attempted murder, assault, and robbery somehow statutorily precludes the Municipal government from doing the same. Additionally, the revised Charter merely codified the power already constitutionally possessed by the Municipality and so this provision did not practically change anything. The Court will not infer congressional intent on one subject from a provision which speaks to something completely different. Pp. 9–16.

(3) The Court is not convinced by the proposition that Congress's recent consideration and failure to enact the Clearly Defined Jurisdiction Act somehow demonstrates disinclusion. That bill would have expressly affirmed that the Municipalities were SMT jurisdictions. But Congress made clear within the text of the bill that its intent was not to newly confer such status but to expressly affirm what it already believed to be the case: that the Municipalities were SMT jurisdictions. In any event, Congress's failure to enact subsequent legislation cannot be the basis for our interpretation of existing law. Pp. 16–18.

(4) Defendant contends that 18 U. S. C. §7(3) has never been understood to include anything other than federal property. But defendant fails to explain the more than two years of contrary public understanding and precedent. Additionally, the grammatical rule of the last antecedent refutes his contention that the limiting clause of the second part applies to the first part of the paragraph. Pp. 18–20.

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(5) Finally, the combined force of each of the prior arguments is insufficient to show disinclusion either. Each of the prior arguments was demonstrably flawed and meritless. The whole picture cannot be greater than the sum of its parts. P. 20.

(c) The constitutional arguments against SMT jurisdiction within the Municipalities are similarly inadequate. Pp. 20–23.

(1) The Double Jeopardy Clause does not present an obstacle. This argument was already disposed of in several earlier cases, recognizing that the same action may be prosecuted by both the federal and Municipal governments without running afoul of the Double Jeopardy Clause. Pp. 21–22.

(2) As a facial matter, the SMT crimes being applicable throughout all Municipal land does not exceed Congress's power under the Commerce Clause. Virtually every activity touches on commerce in some respect. Individual prosecutions are still open for as-applied challenges under the Commerce Clause. Pp. 22–23.

(3) The equal sovereignty doctrine presents no problem because all Municipal land falls within SMT jurisdiction. As such, there is no disparate geographic coverage requiring special justification. P. 23.

Certified question, answered in the affirmative.

HOLMES, C. J., delivered the opinion of the Court, in which PITNEY, THOMPSON, BUTLER, JAY, and FRANKFURTER, JJ., joined. BORK, J., filed a dissenting opinion, in which STEWART and KAGAN, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 09–29

UNITED STATES *v.* ALEXJCABOT

ON CERTIFIED QUESTION BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[August 28, 2020]

CHIEF JUSTICE HOLMES delivered the opinion of the Court.

At one level, this case is about the phrase "special maritime and territorial jurisdiction of the United States." 18 U. S. C. §7. Since the ratification of the United States Code, that phrase has universally been understood to include both the District of Columbia and the City of Las Vegas. In this case, against years of public understanding, defendant contends that the phrase no longer includes either Municipality. But he does not base this on some recent change to the law. Instead, he attributes it to their respective municipalizations, both of which took place more than two years ago. If his argument were to be accepted, his federal prosecution for murder in Washington, D. C., would have to be thrown out.

Which brings us to what this case represents on a broader level. The phrase "special maritime and territorial jurisdiction of the United States" dictates the scope of various federal criminal statutes, including those relating to murder, attempted murder, assault, and robbery. If petitioner is right, those offenses (when committed in Washington, D. C., and Las Vegas) would be beyond the reach of

federal prosecutors and federal law enforcement. To support such a dramatic departure from more than two years of settled understanding, one would expect a particularly strong interpretive showing. But all defendant and his proponents muster is a weak textual case that hinges on ignoring entire words, an appeal to unrelated language in the D. C. Charter, some out-of-context citations to postenactment legislative history, and some misguided references to constitutional law. None of this is at all sufficient to disturb more than two years of historical consensus. To make matters worse, defendant's case is further undercut by fundamental canons of statutory interpretation which require that major policy changes only be located in particularly clear legislative text.

Defendant's case has no basis in the text, public understanding, precedent, or even legislative history. As such, we answer the certified question in the affirmative and remand the case for proceedings consistent with this opinion.

I

A

Like many other laws that define federal criminal offenses, the federal murder statute limits its coverage to the "special maritime and territorial jurisdiction of the United States." 18 U. S. C. §1111. That phrase is defined by 18 U. S. C. §7 to encompass, along with various other places, "[a]ny lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof." *Id.*, at (3).

Prior to their admission as Municipalities, all on this Court agree that Washington, D. C., and Las Vegas fit within this definition. After all, before they had a local government with actual legal authority, they were inarguably under the "exclusive" jurisdiction of the United States. Subsequent to their admission, however, defendant contends that D. C. and Las Vegas ceased to be part of the "special

maritime and territorial jurisdiction of the United States." This would likely come as a surprise to anyone working in the Federal Government over the course of the two-and-a-half years since municipalization. In that time, nobody has ever suggested in any court filing that the murder statute (or the attempted murder, assault, and robbery statutes for that matter) did not apply to the two Municipalities. And for good reason. In the absence of any other American cities during that period of time, if those statutes did not apply in Municipal land then the entire statutes would be effectively surplusage: they would not apply anywhere. This Court, however, has consistently refused to assume that Congress "waste[s] words." *British* v. *Ozzymen*, 3 U. S. 60, 66 (2017); *Reset* v. *United States*, 9 U. S. 1, 25 (2020). We must presume that each word was intended to have some meaning. Treating an entire statute (or collection of statutes) as idle would be flatly inconsistent with this principle.

Defendant nevertheless argues that municipalization stripped these federal criminal statutes of any scope, all without anyone noticing. He and his proponents rest this interpretation on a few planks. First, they contend that the Federal Government has neither "exclusive" nor "concurrent" jurisdiction over Municipal land. They support this argument by pointing to other usages of these phrases in the United States Code, in the context of the courts, and make the following assertions: (1) that there is no "concurrent" jurisdiction over the Municipalities because we have only federal courts and the phrase "concurrent" suggests two courts sharing jurisdiction, and (2) that there is no "exclusive" jurisdiction because there are only federal courts, so no other court is being "excluded." As we will explain, this argument simply does not supply a viable reading of the text.

Second, they seize on the D. C. Charter's authorization of Municipal prosecutions as evidence that Congress meant to alter the Federal Government's jurisdiction to prosecute the

crimes at issue here. After all, why would Congress intend for multiple entities to have jurisdiction over the same crimes? While this argument may have some force as a policy matter, specific inferences about what Congress would have intended cannot be drawn from capacious language. Moreover, defendant's case must grapple with the fact that for more than two years after municipalization, no one understood the D. C. Charter to have this effect. Federal prosecutions and arrests for murder and the other "SMT crimes" continued without anyone doubting their legality. To the extent Congress's intent matters when not embedded in any specific text, defendant's interpretation of congressional intent is undermined by the unquestioned contrary public understanding since that time.

Third, defendant and his proponents point to Congress's recent consideration of the Clearly Defined Jurisdiction Act, which would have expressly amended 18 U. S. C. §7 to include the Municipalities. Although that bill acquired majority support in both Houses of Congress, it failed to become law after being vetoed by President Technozo. As such, defendant and his proponents suggest that Congress does not understand D. C. and Las Vegas to be SMT jurisdictions under current law. But the only way to change the law is to actually enact a new one. Congress considering and rejecting new legislation cannot be the grounds for us changing our interpretation of an existing statute. Moreover, even to the extent postenactment legislative history matters, the CDJA actually works against defendant's case.

Fourth, defendant and his proponents make some vague gestures to constitutional law, including floating possible equal sovereignty problems and jurisdictional issues. We are ultimately unpersuaded by these arguments as well.

B

Defendant was charged by federal prosecutors with one

count of murder and one count of attempted murder for actions he committed in Washington, D. C. He challenged the validity of the charges by alleging that the Municipality was not an SMT jurisdiction.

The District Court certified the case to us, asking for guidance on the following legal question: "Is the District of Columbia—in its entirety—within the special maritime or territorial jurisdiction of the United States?" It added: "[I]s it under exclusive jurisdiction of the United States or the District of Columbia?" We set the case for briefing and argument. 9 U. S. 227 (2020).

II

To begin with, none of defendant's arguments, either singly or in concert, provides the "particularly strong interpretive showing" needed to conclude that Congress's decision to admit D. C. and Las Vegas as Municipalities disincluded them as SMT jurisdictions.[1]

A

Defendant begins with a three-part textual argument. He first suggests that the phrase "exclusive or concurrent jurisdiction" with respect to a particular region refers to the type of federal judicial jurisdiction for crimes that exists in that region. Next, he advances an interpretation of that phrase which supposes that for "exclusive" jurisdiction to exist, jurisdiction must not just uniquely lie with the federal courts, it must actually come at the exclusion of another court. Additionally, he posits that for there to be "concurrent" jurisdiction there must be another court system that the federal courts share jurisdiction with. Finally, he reasons that because there is only a federal court system in

[1] From this point forward, we use "defendant" to refer to both defendant himself and all of the proponents of his position, including the dissenting Justices. As such, we address not only those argument raised in the briefs or published opinions, but those raised in deliberation as well.

Washington, D. C., and Las Vegas, there is neither "exclusive" nor "concurrent" jurisdiction for the federal courts in either Municipality.

As an initial matter, this line of argument suffers from a basic problem as a matter of English. Defendant concedes that the federal courts *do* have jurisdiction in the Municipalities. Indeed, his argument hinges on this point. His entire argument is that *only* the federal courts exist within their boundaries and that only they therefore can and do have jurisdiction. But he maintains that this jurisdiction is neither "exclusive" nor "concurrent." This is not possible. Either the federal courts do not have jurisdiction, they share jurisdiction with local courts, or they have sole jurisdiction. Of these three possibilities, defendant suggests that the third is correct, but points out an additional detail. He says that while it is true the federal courts have sole jurisdiction, that is only because Municipal courts cannot exist. Thus, "exclusive" jurisdiction is not an accurate descriptor.

In short, defendant contends that the federal courts—despite having sole jurisdiction over criminal prosecutions within the Municipalities—do not have "exclusive" jurisdiction because having "exclusive" jurisdiction is not possible under our Constitution due to the absence of anything to be excluded. Accepting this interpretation would treat the phrase "exclusive" as inoperative. We have an obligation, whenever reasonably possible, to give effect to the words used by Congress. As we mentioned earlier, we do not lightly assume that Congress meant to "waste words." *British*, 3 U. S., at 66. See also *supra*, at 3. Accordingly, defendant's reading collapses even on its own terms.

Moreover, our analysis need not accept defendant's framing. Defendant's contention that the phrase "exclusive or concurrent jurisdiction" refers to federal judicial jurisdiction is plainly at odds with the text of 18 U. S. C. §7. After all, the "exclusive or concurrent jurisdiction" clause does not

include only those words. First, it is immediately followed by "thereof." While defendant suggests that we consult outside sources like legal dictionaries and other congressional enactments to illuminate the meaning of "exclusive or concurrent jurisdiction," our first recourse must always be to the text. And the text provides a clear hint as to *whose* "exclusive or concurrent jurisdiction" it is referring. Second, what immediately *precedes* the four main words provides us with the object of "thereof." To recap, the full clause reads: "[a]ny lands reserved or acquired for the use of *the United States*, and under the exclusive or concurrent jurisdiction *thereof*." 18 U. S. C. §7(3) (emphasis added). It is abundantly clear that the "jurisdiction" at issue is not the jurisdiction of the federal courts, but the jurisdiction of the Federal Government as a whole.

Defendant's sources are insufficient to disturb the clear signal of the text. For one, legal dictionaries are a valuable tool, especially in textualist interpretation, but they are useful only to the extent they help to understand difficult text. They plainly cannot overturn the simple and clear language of a legislative enactment. Unlike Acts of Congress, legal dictionaries do not go through the "process of bicameralism and presentment." *In re Ratification of the Proposed Ridgeway Courts Amendment*, 9 U. S. 173, 181 (2020). Moreover, while the default meaning of "exclusive or concurrent jurisdiction" might—if defendant's sources are taken as the final word—refer to judicial jurisdiction, that default meaning can be modified by modifying text, as is the case here. Even in his legal dictionaries, defendant can find no support for the proposition that "exclusive or concurrent jurisdiction" *cannot* possibly refer to the jurisdiction of a sovereign entity.

Defendant also cites the usage of "exclusive jurisdiction" and "concurrent jurisdiction" in other statutes to show that the phrase usually refers to judicial jurisdiction. But in each of those examples, there is no modifying language and

we cannot refer to the unmodified version of a phrase to discern the proper scope of modifying language. Defendant's examples are particularly weak because they fragment the relevant phrase into two parts. None of defendant's cited statutes use the compound phrase "exclusive or concurrent jurisdiction." All of them use the phrase broken into its parts.

For instance, defendant cites 28 U. S. C. §1334 as an example for the usage of "exclusive jurisdiction." The cited clause declares that "the district courts shall have original and exclusive jurisdiction of all cases under title 11." *Id.*, at (a). Because the jurisdiction referred to here is that of a court, defendant reasons that the phrases "exclusive jurisdiction" and "concurrent jurisdiction" must necessarily always refer to the jurisdiction of a court. But there are three problems with this extrapolation.

First, the text of this statute makes explicit reference to courts—when explaining the jurisdiction it is conferring, it directly references "the district courts." Defendant does not see this as a problem for his case. Rather, his position appears to be that this is *proof* that in every other usage of similar phrases, the "jurisdiction" spoken of must be that of the courts. But this makes little sense. Why should the modifying language in one statute be overridden by modifying language in another? Defendant provides no good answer. The phrase "exclusive or concurrent jurisdiction," standing alone, gives no indication about *whose* jurisdiction is at issue. Only modifying language can provide that clarity. Defendant's example, far from refuting this basic point, actually illustrates it.

Second, even if the modifying language were absent from both statutes, we could not so easily transplant the usage of "exclusive jurisdiction" in 28 U. S. C. §1334 to "exclusive or concurrent jurisdiction" in 18 U. S. C. §7. While many reasons exist, one is especially worth mentioning: while Title 28 is actually *about* the courts and the justice system,

Title 18 is a criminal code. It would be reasonable to infer that references to "jurisdiction" in Title 28 were related to the courts, but that same inference would not so easily apply in Title 18.

Third, the phrases "exclusive jurisdiction" and "concurrent jurisdiction" appear in more pertinent places than defendant's Title 28 example and these other examples tend to refute his argument. To begin with, the Constitution grants the Federal Government "exclusive" legislative jurisdiction over the seat of government and some other territories (subject to, in some cases, inherent limitations). Art. I, §8, cl. 13. And we have understood the Constitution to grant the Federal Government "concurrent authority over" all Municipal land. *Hamilton* v. *United States*, 9 U. S. 202, 213 (2020) (quoting *Printz* v. *United States*, 521 U. S. 898, 919–920 (1997)). As these examples speak to the jurisdiction of the Federal Government writ large, rather than merely the judicial jurisdiction, they are far more on point and speak directly to the modifying language in 18 U. S. C. §7. What these examples show is that Municipal land can readily be deemed under the "concurrent jurisdiction" of the United States.

As such, defendant fails to show that D. C. and Las Vegas were disincluded as SMT jurisdictions upon municipalization by plain operation of 18 U. S. C. §7's text.

B

Defendant tries another, more focused, tack. Instead of attributing disinclusion to 18 U. S. C. §7 directly, defendant asserts that D. C. specifically was disincluded by the text of its revised City Charter. In particular, defendant suggests that by codifying the criminal power of the Municipal government, Congress indicated its intent to disinclude D. C. as an SMT jurisdiction. We are not persuaded.

1

As an initial matter, this argument has a common sense

problem. Defendant fails to explain why Congress would have opted to enact disinclusion for D. C. by implying it into an only marginally related provision of the revised City Charter instead of simply amending the text of 18 U. S. C. §7 itself.

To be sure, nothing in the Constitution requires that Congress use only the most sensible approach to making changes in the law, but context is an indispensable aspect of statutory interpretation. Oftentimes, a statute's "meaning . . . only become[s] evident when placed in context." *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 132 (2000). We are accordingly required to read the provisions of a law "in their context and with a view to their place in the overall statutory scheme." *Id.*, at 133. After all, our duty is "to construe statutes, not isolated provisions." *Graham County Soil and Water Conservation Dist.* v. *United States ex rel. Wilson*, 559 U. S. 280, 290 (2010) (internal quotation marks omitted). And context requires us to consider details like whether it is likely Congress would have chosen such an obscure means of effectuating a change it could more easily have accomplished by direct means.

The broader context of this case suggests that is not likely correct. As we pointed out earlier, defendant tracks disinclusion to a point more than two years ago. Yet, in that time, nobody has suggested—not even in Congress—until now that disinclusion had actually happened. So the supposedly discrete nature defendant suggests disinclusion took is particularly suspect. We need a "particularly strong interpretive showing," *supra*, at 2, not a theory that Congress discretely and indirectly disincluded D. C. without anyone so much as mentioning it.

We are already hesitant to infer major policy changes from indirect provisions. To hold that such a major policy change not only came from an indirect provision, but *also* went without comment or objection would be farcical. Even in those rare cases where we infer a major substantive

change from an ancillary provision, such a change is at least supported by a robust legislative record. Here, no such support is anywhere to be found.

Of course, it is possible to attempt to explain away this discrepancy. One could argue that the change, though major, was uncontroversial enough that nobody thought it necessary to comment on the matter. But besides the proposition that withdrawing federal criminal jurisdiction over crimes like murder and robbery could ever be "uncontroversial" barely passing the laugh test, the clear public understanding remains unexplained. Defendant can point to no evidence that federal law enforcement ceased its enforcement of SMT laws or that federal prosecutions for those crimes stopped. And for good reason: neither happened. The reality is that if such a change did happen, its effects would be dramatic and noticeable. In the absence of evidence of such effects or extremely convincing textual proof that everyone to this point somehow just got it wrong, we will not abolish SMT jurisdiction in D. C. or Las Vegas.

2

Moreover, though packaged as an argument rooted in the text of the D. C. Charter, defendant's claim is not based in any specific text within that document. Instead, defendant cites the Charter as proof of Congress's *intent* to disinclude Washington, D. C. We have, however, repeatedly declined to attribute substantive legal effect to legislative intent. If Congress wishes to change the law, it must actually do so by passing legislation to that effect. Its unenacted intentions plainly lack the force of law.

The Constitution lays out a definite process for the making of law and there is no ambiguity about it. For a law to be enacted, Congress must pass it through both Houses and then obtain the President's approval. Alternatively, supermajorities in Congress may override a Presidential veto, or a law can take effect without the President's approval if he

does not act on the bill within the prescribed period of presentment. As is clear, there are multiple ways a bill can become a law, and any of those avenues can be approached to effect a change in governmental policy. But Congress cannot change the law by its individual members simply willing it to happen in their minds.[2] Legislation requires concrete legislative action. Alternatives like "protest, strongly-worded letters," or even especially powerful thoughts are not sufficient. *Cabot* v. *State Police*, 9 U. S. 227, 231 (2020) (BORK, J., dissenting).

As this Court's precedents make clear, neither legislative intent nor legislative history may be used for "the purpose of giving authoritative content to the meaning of a statutory text." *Wisconsin Public Intervenor* v. *Mortier*, 501 U. S. 597, 622 (1991) (Scalia, J., concurring in judgment). The reasons abound. First, while legislative intent can be gathered from a number of sources, the most usual places of reference are committee reports and the statements of individual Members of Congress. Neither possibility can be relied on to accurately represent congressional sentiment. To begin with, committee reports are especially weak. Take, for instance, a House Committee Report. When presented with such a report, "we have no reason to believe [it] was read (much less approved) by the Senate—or, indeed, by the Members of the House who were not on the Committee—or even, for that matter, by the members of the Committee, who never voted on the Report." *Samantar* v. *Yousuf*, 560 U. S. ___, ___ (2010) (Scalia, J., concurring in judgment) (slip op., at 2). And statements by individual Senators or Representatives are equally unhelpful. The "statements in a legislative record by particular Representatives or Senators do not necessarily represent the views of their entire chamber or

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[2] In this case, not even that happened. There is no evidence that anyone in Congress at any point in time would have adopted the change pressed by defendant.

of Congress writ large." *Ridgeway Courts*, 9 U. S., at 181. Moreover, such statements are not subject to "the process of bicameralism and presentment" and therefore lack the force of law. *Ibid*.

The arguments in support of considering legislative intent and legislative history as a primary resource are also particularly unavailing. Proponents point to Justice White's admonition that "[judicial] inquiry benefits from reviewing additional information rather than ignoring it." *Martier*, *supra*, at 611–612, n. 4. And they seize on Chief Justice Marshall's statement that "where the mind labors to discover the design of the legislature, it seizes every thing from which aid can be derived." *United States* v. *Fisher*, 2 Cranch 358, 386 (1805). We, of course, agree with both of these sentiments. But neither axiom requires that legislative intent and history be assigned substantial weight. When unmoored from the text, neither provides useful "information" that could be used to "aid" our consideration. Our disciplined approach requires that our eyes be trained at all times on the text of the law we are interpreting. We consider extratextual evidence only to help illuminate possible grey areas but "[w]hen there is no ambiguity in the pertinent text, an injection of legislative history cannot be the grounds for further examination." *Ridgeway Courts*, *supra*, at 182.

Naturally, therefore, we are wary of defendant's submission that Congress *intended* D. C.'s disinclusion as an SMT jurisdiction when it adopted the revised Charter. We are warier still because nothing in the legislative record supports defendant's position. As we have mentioned, there is no indication whatsoever that any person in Congress thought disinclusion had occurred. Defendant instead says that the evidence of this intent can be found in the text of the Charter. But we will not draw inferences about intent with respect to one issue from legislative text that speaks about an entirely separate issue. Nor will we ascribe to that

supposed intent the force of law. If Congress intended for something to happen, it would presumably have said so.

3

The pertinent text of the Charter also does not convey the message defendant draws from it. It provides:

> "The council shall have power to provide for the enforcement of local laws by legal or equitable proceedings, to prescribe that violations thereof shall constitute misdemeanors, offenses or infractions and to provide for the punishment of violations thereof by civil penalty, fine, forfeiture or imprisonment, or by two or more of such punishments. However, such proceedings must be held in the federal district court." D. C. City Charter, §7(b).

On its face, this provision does not affect the Federal Government's jurisdiction whatsoever. It merely affirms the Municipal government's power. Defendant, however, argues that it conveys Congress's clear intent to disinclude the District of Columbia. There are at least two problems with this line of argument.

First, the only way this argument actually works is if the Federal Government lost its *constitutional* power to prosecute certain offenses as a consequence of the conferral of such jurisdiction on the Municipal government. But nothing in the Constitution requires this. As mentioned earlier, the Federal Government and the Municipalities share "*concurrent* authority" over the People. *Hamilton*, 9 U. S., at 213 (emphasis added). It is abundantly clear that this includes the power to enforce constitutionally valid criminal laws. Additionally, the District of Columbia did not gain its prosecutorial power from the adoption of the revised Charter. In *United States* v. *District of Columbia*, 5 U. S. 95 (2018), we had already held that the Municipalities possessed the power of criminal prosecution as a constitutional matter. No additional legislative enactment was necessary

to confer this power on them. The revised Charter merely codified this change which *District of Columbia* understood was traceable to municipalization itself.

Accordingly, defendant's claim here is best understood as a repackaged version of the last argument we rejected: that municipalization itself disincluded D. C. and Las Vegas. Once again, we reject this argument.

Second, defendant's point lacks any support in the text of this Charter provision. Conferring jurisdiction on one entity does not necessarily revoke it for another. Even if *District of Columbia* had not happened and the source of Municipal prosecutorial jurisdiction was this Charter provision, that conferral would not require the termination of federal jurisdiction. Prior to that conferral, the Federal Government would have had what might be called "exclusive" jurisdiction. Now it is "concurrent." Both are cognizable under 18 U. S. C. §7.

From here, defendant attempts to regain some ground by arguing that it would be bad policy to permit both federal and Municipal jurisdiction to prosecute the same offenses. But it is not our role to adopt "good policy"; our role in statutory cases is to understand and effectuate the policy laid out in the actual text of congressional enactments. *Reset*, 9 U. S., at 3–4, n. 3 (2020) (*per curiam*). We cannot graft what we consider the "best policy" onto congressional enactments. Congress is far from infallible and from time to time will make poor policy judgments. So long as those are constitutional, we have a duty to give effect to them. In this case, however, defendant's policy arguments would fail even if that were a consideration we took into account.

For one thing, we are not persuaded by the notion that it makes no sense to have federal and Municipal jurisdiction over the same crimes. Not every potential case within either prosecutorial competence will be pursued and so having multiple prosecutorial offices increases the chance that accountability is pursued. Such separation also diminishes

the risk of corruption and favoritism. In order to benefit from either, a person must seek out two separate offices, compounding the risk of exposure. In presenting his policy arguments, defendant does not address these possible benefits. To put it differently, he "failed to consider . . . important aspect[s] of the problem" before him. *Motor Vehicles Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 43 (1983).

C

Defendant next returns to his broader original position: that neither Municipality is an SMT jurisdiction. In support, this time he cites Congress's recent consideration of the Clearly Defined Jurisdiction Act. That law would have expressly stated that all American cities are SMT jurisdictions. In defendant's view, Congress's consideration of this law shows that it understood there was a problem with the existing state of the law. Defendant extrapolates this as a congressional concession that he is correct.

As an initial matter, we reiterate, legislative history is a "disfavored resource in this Court." *Ridgeway Courts*, 9 U. S., at 181. But whatever value legislative history generally may have in rare cases, *postenactment* legislative history is completely and utterly worthless. It lends no useful insight into what a previous Congress was thinking when it enacted an earlier law. Generally, "statements made significantly after the [adoption] of a [legislative] text are not especially probative as to their original meaning." *Reset*, 9 U. S., at 19 (citing *District of Columbia* v. *Heller*, 554 U. S. 570, 614 (2008); *Sprint Communications Co.* v. *APCC Services, Inc.*, 554 U. S. 269, 312 (2008) (Roberts, C. J., concurring)). Any speculation as to why "a later Congress declined to adopt new legislation offers a 'particularly dangerous' basis on which to rest an interpretation of an existing law a different and earlier Congress did adopt." *Bostock* v. *Clayton County*, 590 U. S. ___, ___ (2020) (slip op.,

at 20) (quoting *Pension Benefit Guaranty Corporation* v. *LTV Corp.*, 496 U. S. 633, 650 (1990) and citing *United States* v. *Wells*, 519 U. S. 482, 496 (1997)). An "argumen[t] based on subsequent legislative history . . . should not be taken seriously, not even in a footnote." *Sullivan* v. *Finkelstein*, 496 U. S. 617, 632 (1990) (Scalia, J., concurring in judgment). And this is all for good reason. The only way to legislate is to pass legislation. If Members of Congress could change the meaning of existing law with the mere act of introducing subsequent legislation that goes nowhere, the legislative power would be exposed to a serious potential for manipulation.

Consider a hypothetical. Suppose a Member of Congress introduced legislation that merely declared that "bribery shall be illegal." If Congress failed to enact that legislation, under defendant's theory, bribery would then be legal notwithstanding existing law that criminalizes bribery. After all, why would Congress have "considered" that legislation if bribery was already illegal? Plain meaning be damned. We decline to open the door to this backwards and anti-constitutional form of legislating.

The particular circumstances that led to the presentation of the CDJA further undercut defendant's argument. The bill was introduced only in response to this case. As the legislative record makes clear, the bill was authored by Luxciety, the prosecutor in this case, after the District Court certified this question. The most plausible explanation is the prosecutor sought to avoid the potentially devastating consequences of a negative answer by this Court by preemptively seeking legislation removing any potential doubt. This was a reasonable reaction.

The likelihood of this explanation is reinforced by the particular text of the CDJA. While defendant would have us consider only the fact of the bill's existence, the precise language within the proposed law explains that the problem

it is addressing is the lack of a "clear stat[ement]" in existing law, not the lack of existing SMT jurisdiction. §2. We cannot read this the way defendant suggests by treating it as evidence Congress understood existing law not to include Municipalities as SMT jurisdictions.

D

Defendant next argues that "[18 U. S. C. §7(3)] has never been understood to encompass the [Municipalities] as a *whole*." Brief for Defendant 6. Instead, in his submission, it includes only land "acquired by the United States 'for the erection of a fort, magazine, arsenal, dockyard, or other needful building.'" *Id.*, at 7. But this argument runs into a number of problems.

First, defendant's claim that Municipal land has "never been understood" to be included "as a whole" within SMT jurisdiction would come as a surprise to anyone working in government over the more than two years since municipalization. In that time, it has "*universally* been understood" that Municipal land was wholly SMT jurisdiction. For his part, defendant provides no evidence to rebut this consensus. Nor could he. Likely thousands of arrests over that period of time would have been illegal under defendant's view, but no court or prosecutor (or defense attorney, for that matter) has taken that position in that time. Hundreds of prosecutions, including many upheld by our Court, would have been unlawful as well. If defendant were correct that 18 U. S. C. §7 has "never been understood" to authorize any of that, it certainly is inexplicable why that went unmentioned through all of this. Defendant's burden is to provide a "particularly strong interpretive showing" to overcome more than two years of unquestioned public understanding, *supra*, at 2, not a paragraph of demonstrably untrue supposition.

Second, defendant appears to read 18 U. S. C. §7(3) to only apply to land that houses a "fort, magazine, arsenal,

dockyard, or other needful [federal] building." He likely bases this on the final clause of the paragraph. But what defendant fails to note is that the paragraph has two parts. The first, which we quoted above, refers generally to "*lands* reserved or acquired for the use of the United States" that are within the "exclusive or concurrent jurisdiction thereof." The second, which contains the clause defendant cites, includes "any place purchased or otherwise acquired by the United States . . . for the erection of a fort, magazine, arsenal, dockyard, or other needful building." Defendant would have us apply the final clause, otherwise known as the limiting clause, to the first part of the paragraph even though it arises only in the second part.

But defendant's argument "disregards—indeed, is precisely contrary to—the grammatical rule of the last antecedent, according to which 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 (2003). Here, that rule requires we apply the limiting clause only to the second part of 18 U. S. C. §7(3). Defendant's argument accordingly fails as a matter of grammar.

Third, defendant cites a D. C. Circuit precedent excluding a liquor store within the District's bounds from the SMT jurisdiction. See Brief for Defendant 7 (citing *Coleman* v. *United States*, 334 F. 2d 558, 565 (CADC 1964)). As defendant is aware, appeals court precedents are not binding in this Court. But whatever relevance that precedent has, and notwithstanding the different context its analysis arose from, we must acknowledge the great weight of persuasive precedent lined up on the other side. As we mentioned, over the past two years there have been "hundreds of prosecutions, including many upheld by our Court" which would have been invalid under defendant's reading of the law. *Coleman* may inform our analysis, but its reasoning that arose in a different context cannot supplant the thrust of

the hundreds of other precedents which disagree and which also happened to arise in context.

E

But maybe defendant's arguments were not meant to be considered on their individual merits. Perhaps only when taken together they provide the "particularly strong interpretive showing" we demand. But for a variety of reasons, we are not persuaded of this either.

To begin with, the whole picture cannot be greater than the sum of its parts. And as we illustrated, each of the parts of defendant's case lacks merit. The first argument was wrong as a matter of grammar and text, the second hinged entirely on a nonsensical reading of congressional intent, the third rested on postenactment legislative history—a "completely and utterly worthless" interpretive tool, *supra*, at 16—and the fourth was founded on "untrue supposition," *supra*, at 18. None of these arguments has enough independent value to contribute to some bigger-picture argument. Taking a collection of baseless arguments and urging us to consider them "taken together" does not suddenly produce a persuasive point. See *McGirt* v. *Oklahoma*, 591 U. S. ___, ___–___, n. 5, ___, n. 7 (2020) (slip op., at 12–13, n. 5, 17, n. 7). As such, in our view, defendant's argument remains unpersuasive.

And to make matters worse, producing a merely persuasive point is not even the burden defendant is required to meet. When assailing more than two years of consensus, as defendant does here, there must be a "particularly strong interpretive showing." *Supra*, at 2. We therefore conclude that Congress has not disincluded the Municipalities as SMT jurisdictions.

III

We turn next to defendant's constitutional arguments. Defendant contends on various grounds that SMT jurisdiction within the Municipalities would violate the

Constitution. Of these claims, we deem none persuasive.

A

Defendant first claims that the Double Jeopardy Clause would prohibit the Federal Government from having jurisdiction over crimes Municipalities could prosecute. We reject this argument for two independent reasons.

First, we doubt whether defendant has standing to pursue this argument. We are aware of no evidence in the record that defendant was previously prosecuted for the events underlying this case. As such, even if he were correct that the Double Jeopardy Clause precluded dual prosecution by Municipal and federal prosecutors, a holding in respect to that question would not materially affect his case. Or at least it typically would not. But defendant attempts to avoid this problem by suggesting that we adopt a prophylactic rule barring federal prosecutions for offenses criminalized at the Municipal level in order to avoid the *possibility* of a double jeopardy violation.

We, however, lack the authority to adopt prophylactic rules to prevent constitutional issues from arising. We may only enforce the plain terms of the Constitution when alleged violations do arise. As such, we continue to doubt defendant's standing to pursue this line of argument.

Second, even if defendant has standing to pursue this Double Jeopardy Clause argument, it lacks merit. We have already been explicit in reaffirming that "when a defendant in a single act violates the peace and dignity of two sovereigns by breaking the laws of each, he has committed two distinct offences" for double jeopardy purposes. *District of Columbia*, 5 U. S., at 105 (quoting *Heath* v. *Alabama*, 474 U. S. 82, 88 (1985)). The underpinning for this rule is the dual sovereignty doctrine, which was recently upheld in *Gamble* v. *United States*, 587 U. S. ___ (2018). We decline to reopen this issue and reaffirm once again that the Double Jeopardy Clause presents no issues here.

B

Defendant next contends that permitting federal prosecutions for crimes that are also criminalized at the Municipal level would in effect rob the Municipalities of their constitutional "police power." Brief for Defendant 5. That power assures them the right to "safeguard the vital interests of [its] people." *District of Columbia*, 5 U. S., at 99. Within the scope of that "police power" is the "power to make criminal laws." *Ibid*. Defendant reasons that if the Municipalities are thought to be SMT jurisdictions, there would be no geographical region where local murder statutes are applicable but their federal counterparts are not. This would render the Municipal statutes mere "duplicates."

But for all this reasoning, defendant fails to identify any legitimate constitutional problem. Perhaps defendant means to argue that the vast federal criminal code contained in Title 18 exceeds Congress's power under the Constitution. We are not of that view. While we have held that the Commerce Clause and other sources of federal authority must not be treated as unlimited, they still do confer broad power. The Commerce Clause, for instance, is particularly broad. As we have acknowledged, "virtually every activity touches on commerce in some respect." *Hamilton*, 9 U. S., at 208. To be sure, that does not mean that everything is within its scope. But Congress has considerable power under that Clause to regulate private conduct. That includes the power to criminalize certain conduct.

We are not convinced that the various SMT crimes exceed Congress's power as a facial matter. There may be some discrete cases which are beyond Congress's authority, but those are not before us today. We are satisfied that Congress has the power, generally speaking, to criminalize the SMT crimes, even in the Municipalities.

Defendant attempts to recover some ground by asserting

that allowing the Federal Government to prosecute such offenses "would be an affront to the doctrine of dual federalism." Brief for Defendant 6. But this policy argument is beyond our purview. The principles of federalism are embedded in legal doctrines and legal text. We will not devise a new rule solely for the purpose of deploying it in this case. Nor will we displace an otherwise valid Act of Congress (much less an entire criminal code) based on nothing but our own sense of good policy. And even here, defendant's policy argument is identical to the one he presented (and we rejected) earlier at the statutory level. See *supra*, at 15–16.

C

Finally, defendant suggests that if we were to conclude that D. C. was an SMT jurisdiction, then 18 U. S. C. §7 would violate the equal sovereignty doctrine because Las Vegas, he believes, could not be an SMT jurisdiction. We agree that there is a "historic tradition that all the [Municipalities] enjoy equal sovereignty" which is protected by the Constitution. *Northwest Austin Municipal Util. Dist. No. One* v. *Holder*, 557 U. S. 193, 202–203 (2009). And we further recognize that any "disparate geographic coverage" must be "sufficiently related to the problem it targets." *Id.*, at 203. But we have already concluded that *all* Municipal land is SMT jurisdiction. See *supra*, at 20. In reaching that holding, we did not exclude either Municipality. Defendant therefore cannot make the threshold showing of "disparate geographic coverage" required to trigger any equal sovereignty analysis.

IV

The dissent suggests that our analysis of the initial statutory question is flawed in two respects. But neither counterargument is correct.

A

First, the dissent objects to our presentation of the issue

before us. This objection, however, appears to stem from the dissent's own mischaracterization of our point. We did not, as the dissent suggests, "start by *assuming* that the Municipalities are . . . SMT jurisdictions" only to see "if anything in the text *prohibit[ed]* that." *Post*, at 1. To the contrary, we began by considering what the statute itself actually prescribes. For instance, we cited evidence of the statute's original "public understanding," *supra*, at 4, and invoked the surplusage canon as a lens for considering the text, *supra*, at 3. In our view, this evidence was sufficient to establish, as an initial matter, that Municipal land was SMT jurisdiction. At no point in this analytical process did we "assume" anything.

The second stage of our approach was to ascertain if anything *changed* this state of affairs. Put differently, we considered whether the Municipalities were "disincluded" as SMT jurisdictions by operation of any law. *Supra*, at 5. There was no textual support for this proposition. *Supra*, at 5–20. It is the dissent, not us, which seeks to escape its burden of persuasion. To avoid having to demonstrate disinclusion, a proposition for which there is no support "in the text, public understanding, precedent, or even legislative history," *supra*, at 2, the dissent seeks to reframe the ultimate question in this case as being to that effect.

Accordingly, the dissent focuses its energy on attempting to refute our analysis of public understanding and surplusage. But the dissent here is quite wrong on several points. First, the dissent questions the utility of public understanding as an interpretive resource. But in making this point, the dissent apparently forgets that the focus of textual analysis is to discern a statute's "ordinary *public meaning* . . . at the time of its enactment." *Bostock*, 590 U. S., at ___ (slip op., at 4) (emphasis added). The words used in laws, except where context indicates otherwise, carry the meaning which would be known to the common man. Accordingly, statutes are "to be taken in the sense in which they

w[ould] be understood by th[e] public." *United States* v. *Isham*, 84 U. S. 496, 504 (1873). To that end, Justice Scalia said that "the good textualist is not a literalist." A. Scalia, A Matter of Interpretation 24 (1997). The good textualist pays attention to public understanding.

Remarkably, however, the dissent submits that our consideration of such public understanding is *at odds with* the principles of textualism. In support, the dissent cites our recent decision in *Ridgeway Courts*. In that case, we explained that "extratextual sources are usually only helpful as an aide for *clearing up* ambiguity." 9 U. S., at 181 (emphasis added). Put differently, extratextual evidence usually cannot be the basis for "further examination." *Ibid*. But the dissent misses two things. To begin with, in *Ridgeway Courts* itself and in related text-based cases, we have considered public understanding as pertinent textual evidence. For instance, in *Ridgeway Courts*, we explained that longstanding public "consensus" was "strong evidence of . . . original meaning." *Id*., at 188. And, in *Reset*, we invoked the "uncontested early application and public understanding" of a provision as part of our textual analysis. 9 U. S., at 14. As such, the dissent's suggestion that public understanding is wholly "extratextual," *post*, at 7, is baseless. Public understanding reflects society's understanding of legal texts. Dismissing such understanding as simply not being "based on any consideration of what the text actually says" would be an "exercise in hubris." *Post*, at 8; *Ridgeway Courts*, *supra*, at 187. Caricatures are no substitute for disciplined analysis.

In any event, even if the dissent had been correct that considerations about public understanding are wholly extratextual, *Ridgeway Courts* does not preclude all consideration of extratextual evidence. It simply describes the "usua[l]" value of such evidence. *Id*., at 181. But this case is far from "usual." The dissent's proposed interpretation

would upset years of settled understanding and would render illegal thousands of arrests and hundreds of prosecutions over that period of time. In addition, these changes would not be limited to the past. The prospective effect on federal law enforcement would be immediate, rendering outside of their jurisdiction some of the most common crimes seen at our cities. In the face of such dramatic upheaval, we cannot pretend that this proceeding is "usual."

Hoping to regain some ground, the dissent next contends that our consideration of public understanding is a "veiled appeal to policy preference." *Post*, at 9. Or, phrased differently, the dissent suggests that by considering public understanding we are merely preferring the status quo over an alternative state of affairs. But with the same credibility the opposite could be said for the dissent: that it prefers an alternative state of affairs over the status quo. At the end of the day, what matters is what the law says and how it is understood. Our arguments to this point have made no policy judgment that the status quo is preferable. As such, the charge that we are leaning on our "policy preference" is absurd. And in making this argument, the dissent also misapprehends the particularly strong public-understanding evidence here. Besides uncontested public practice, even Congress's own enactments confirm our interpretation of public understanding.

For instance, soon after municipalization, Congress enacted the Federal Infrastructure Reform Act, Pub. L. No. 53–2, which sought to clarify the process of business registration. The law's enacted text clearly suggests Congress's view that "the special maritime and territorial jurisdiction of the United States" extends to "anywhere in the United States." §§102 and 104(a). While speculation as to why Congress *declined* to adopt a particular proposal is "worthless" in statutory interpretation, *supra*, at 16, Congress's actual enactments carry the force of law and are a meaningful point of reference. And FIRA appears to confirm our

sense of public understanding regarding SMT status at the time of municipalization.

Second, the dissent challenges our reliance on surplusage. But the critical premise of the dissent's contention here—that we apply surplusage "[i]ndependent of [the] statutory text"—is demonstrably incorrect. *Post*, at 8. In this opinion, we merely use surplusage "as a lens for considering *the text*," *supra*, at 24 (emphasis added), which accords perfectly with how this Court has always applied similar canons of interpretation. The dissent can cite no support for its allegation that our usage of surplusage is atextual. And that is so for the simple reason that the charge is not true.

In response, now accepting our surplusage approach, the dissent claims that even under that approach we are incorrect. This is so because, as the dissent sees it, it makes no sense for Congress to have "spelled out so many specific areas where SMT crimes apply if they apply, as the [Court] sees it, essentially anywhere in the United States." *Post*, at 10. But the dissent fails to acknowledge that 18 U. S. C. §7 does not principally deal with identifying places within the United States. Instead, it is primarily consumed with listing places like "[t]he high seas," "vessel[s]," "island[s] . . . containing deposits of guano," "aircraft," and "vehicle[s] used . . . in space." 18 U. S. C. §§7(1), (2), (4), (5), and (6). Our analysis does not make any of these other paragraphs redundant and is therefore consistent with surplusage. And while the dissent suggests an alternative property-based interpretation of paragraph (3), we are not persuaded by that reading. To begin with, it fails to explain away the contrary longstanding public understanding. Absent a "particularly strong interpretive showing," *supra*, at 2, we will not adopt such a reading. And, additionally, under the dissent's reading the first part and the second part of paragraph (3) would cover essentially the same things: federal property. The dissent fails to offer an explanation for this

apparent redundancy its reading produces. The fact that this redundancy arises from the dissent's attempted refutation of our surplusage argument illustrates our point.

Third, the dissent points to the "criminal context of this case" in hopes of saving its argument. *Post*, at 2. Invoking the "beyond-a-reasonable-doubt standard" which applies to each element of a crime, the dissent first suggests that the Government must face a heightened burden of proving inclusion within SMT jurisdiction to succeed in this case and that there should be no burden with defendant to show disinclusion, much less a heightened one. *Post*, at 4. We agree with the dissent that whether a crime took place in SMT jurisdiction is an elemental question which must be proved beyond a reasonable doubt. But the dissent conflates two things: (1) whether the crime happened in SMT jurisdiction (a question of fact) and (2) what constitutes SMT jurisdiction (a question of law). Questions of law are not subject to the beyond-a-reasonable-doubt standard. See *Addington* v. *Texas*, 441 U. S. 418, 428 (1979). And before us is only the second question. The beyond-a-reasonable-doubt standard is inapposite for present purposes.

The dissent also leans on the rule of lenity to suggest that any ambiguity in the pertinent statute must go in favor of defendant. But accepting this argument would require us to believe that there are two "equally persuasive readings" presented to us, *Kisor* v. *Wilkie*, 588 U. S. ___, ___ (2019) (Gorsuch, J., concurring in judgment) (slip op., at 9), and the question is merely which reading to adopt. But "[i]f nature knows of such equipoise in legal arguments, the courts at least do not." Scalia, Judicial Deference, 1989 Duke L. J. 511, 520. For the rule of lenity to apply, the law at issue must be "truly ambiguous" even "after a court has resorted to all the standard tools of interpretation." *Kisor*, *supra*, at ___–___ (opinion of the Court) (slip op., at 11–12). We have resorted to such tools and reached a conclusive answer. We

therefore disagree with the dissent's view that lenity applies here.

B

The dissent also contends that our interpretation of the statute is wrong on both our terms and independent of them. But we have already addressed all of defendant and the dissent's statutory arguments in great detail, see, *e.g.*, *supra*, at 5–20, 27–28, and none, in our view, are persuasive. The dissent's final argument that "the statute, viewed neutrally," does not "encompas[s] the Municipalities in their entirety," *post*, at 12, is presented in conclusory fashion with no analytical support. We have already addressed extensively why this assertion is incorrect and the dissent's final threadbare reiteration of the point does nothing to disturb that conclusion.

* * *

We hold that all Municipal land is within the "special maritime and territorial jurisdiction of the United States" as defined by 18 U. S. C. §7. As such, we answer the certified question in the affirmative and remand.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 09–29

UNITED STATES *v.* ALEXJCABOT

ON CERTIFIED QUESTION BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[August 28, 2020]

JUSTICE BORK, with whom JUSTICE STEWART and JUSTICE KAGAN join, dissenting.

The majority "opinion is like a pirate ship. It sails under a textualist flag," but it charts a course destructive to the textualist method.[1] The majority presents the question before us as whether "Congress's decision to admit D. C. and Las Vegas as Municipalities disincluded them" from 18 U. S. C. §7.[2] That's wrong. The question before us is whether, under 18 U. S. C. §7, either Municipality is within the "special maritime and territorial jurisdiction of the United States." The distinction might seem subtle but it makes all the difference. Under the majority's framing, we start by *assuming* that the Municipalities are (to borrow the majority's phrasing) SMT jurisdictions and then see if anything in the text *prohibits* that. Finding no such prohibition, the majority returns an affirmative answer to the certified question.

Under the neutral framing, we'd start by looking at the text. We'd look at each of the possible categories of SMT jurisdictions described in the statute and would see, from a neutral viewpoint (and without any background assumptions putting a thumb on the scale), if the Municipalities

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[1] *Bostock* v. *Clayton Cnty.*, 590 U. S. ___, slip op. 3 (2020) (Alito, J., dissenting).

[2] *Supra*, at 5.

fairly fit into any of them. If they did, it'd be beyond reproach that they were SMT jurisdictions.

With its approach, the majority fails to prove that either Municipality *is* an SMT jurisdiction under 18 U. S. C. §7. All it shows is that they could be.

To its credit, the majority does provide some justification for its tilting of the playing-field, but none of these justifications are remotely adequate. In this dissent, I will endeavor to make four points clear. First, the majority's framing is firmly inconsistent with the criminal context of this case. Not only is it the government's burden to prove all elements of the crime, including the jurisdictional element, but the benefit of any doubt regarding the scope of a criminal statute has to go to the defendant. Second, the majority's framing is contrary to the textualist method, which requires that the text (not some extratextual factor) be the starting point for our analysis. Additionally, even the majority's extratextual factors are based on flawed premises. Third, even accepting *arguendo* the majority's awkward starting point, the text clearly refutes the notion that Municipalities (in their entirety) can be SMT jurisdictions. And fourth, a straightforward approach to statutory interpretation would require us to conclude that Municipalities aren't entirely SMT jurisdictions, not because they were disincluded, but because they were never included in the first place.

For these reasons, I respectfully dissent.

I

The majority, in shifting the burden of proving disinclusion to the defendant, rather than first requiring the government to prove inclusion, ignores the criminal context of this case.

A

In any criminal prosecution, the "burden of proof" lies with the government because there is a basic presumption

"in favor of innocence."[3] To meet its burden, the government must prove guilt beyond a "reasonable doubt."[4] And this standard applies to every "element of the offense."[5]

To start, being in the "special maritime and territorial jurisdiction of the United States" is clearly one of the elements of each of the defendant's alleged crimes. As even the majority sees, the phrase "dictates the scope of" the "murder" and "attempted murder . . . statutes."[6] Unless the government proves in a given case that the murder or attempted murder in question occurred in an SMT jurisdiction, they have not proven a violation of federal law. This geographical element is just as essential as any other element of the offense. For example, it wouldn't be criminal murder under federal law without "the . . . killing of a human being."[7] Or without "malice aforethought."[8] Or without a number of other conditions.[9] But, relevantly, it isn't punishable under federal law unless the government shows the crime happened "[w]ithin the special maritime and territorial jurisdiction of the United States."[10] This makes the SMT jurisdiction question an actual element of the charged offense. The government must prove that element, as with any other, beyond a reasonable doubt.

This necessarily places the government on uneven footing. Requiring a showing beyond a reasonable doubt means that the government's case must be very strong. But the majority flips that burden pretty much entirely on its head.

It'd be one thing to simply reduce the threshold for the government. I can understand the argument for doing so

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[3] *Victor* v. *Nebraska*, 511 U. S. 1, 8 (1994).
[4] *Ibid.*
[5] *Quinn* v. *United States*, 349 U. S. 155, 165 (1955).
[6] *Ante*, at 1.
[7] 18 U. S. C. §1111(a).
[8] *Ibid.*
[9] See *ibid.*
[10] 18 U. S. C. §1111(b).

since this is a question of statutory interpretation and our normal approach to statutory interpretation starts with a neutral perspective. At least under that approach, the burden would still be with the government to affirmatively show that the relevant geographic area is an SMT jurisdiction.

The majority goes even further. It doesn't merely reduce the government's burden: it removes it entirely. The majority starts with the presumption that the government is right and that Municipal land, in its entirety, is SMT jurisdiction. And it doesn't stop there. While this presumption automatically flips the burden of proof to the defendant, requiring him to show that Municipal land is *not* SMT jurisdiction, the majority apparently doesn't think that's far enough. The majority adds that it needs a "particularly strong interpretive showing" by the defendant.[11] This standard, though worded differently, is in practice (at least as the majority applies it in its opinion) indistinguishable from the beyond-a-reasonable-doubt standard I showed originally lied with the government. In other words, the majority has essentially asked the defendant to show, beyond a reasonable doubt, that his alleged crime wasn't in SMT jurisdiction.

I can think of no justification for this. Putting aside the obvious challenges which come with trying to prove a negative, the majority's approach is reminiscent of the very system that prompted the adoption of the beyond-a-reasonable-doubt rule: the British vice admiralty courts. During the colonial era, the British government utilized the vice admiralty courts to try any alleged breach of trade laws. In such trials, the burden rested with the accused to prove their innocence.[12] In light of its abusive applications, the Framers thought this system unacceptable and adopted the

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[11] *Ante*, at 2.

[12] Grohman, Admiralty Law 1–3.

Due Process Clause to assure that in their new Nation criminal cases would always begin with a total presumption of innocence.

The majority's complete reversal of the burden of proof is offensive to the presumption of innocence.

B

Even ignoring the majority's "no you" burden of proof trick,[13] the rule of lenity requires that any ambiguities in criminal law go in favor of the defendant.

The rule of lenity has its roots deep in American legal history. Prior to the "19th century" and the rise of the modern vagueness doctrine, "courts addressed vagueness through a rule of strict construction of penal statutes, not a rule of constitutional law."[14] This rule is "known today as the rule of lenity."[15]

Unlike the majority's burden shifting approach, which was invented for the purposes of this case,[16] the rule of lenity is well established, having "first emerged in 16th century England."[17] The rule of lenity compels courts to "refus[e] to apply" ambiguous criminal statutes to circumstances they don't unambiguously reach.[18]

Now, unless I missed it somewhere in the opinion, I don't

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[13] Cf. NO U, Know Your Meme, Feb. 06, 2020 at 03:53AM EST, available at https://knowyourmeme.com/memes/no-u.

[14] *Johnson* v. *United States*, 576 U. S. ___, slip op. 8 (2015) (Thomas, J., dissenting).

[15] *Ibid*.

[16] There's something ironic about the majority's insistence that it won't "devise a new rule solely for the purpose of deploying it in this case" in responding to the defendant's constitutional argument right after it got done reviewing his statutory arguments under a novel standard that made it next to impossible for him to win. *Ante*, at 23.

[17] *Johnson*, *supra*, at slip op. 8. See also Hall, Strict or Liberal Construction of Penal Statutes, 48 Harv. L. Rev. 748, 749–751 (1935); 1 Radzinowicz, A History of English Criminal Law and Its Administration From 1750, pp. 10–11 (1948).

[18] *Johnson*, *supra*.

think the majority ever makes the claim that the statute *unambiguously* applies to all Municipal land.

And I don't blame them. It's just not an argument that's available to them. As we'll see soon, the plain text of 18 U. S. C. §7 doesn't encompass Municipalities in their entirety. But for now just focus on the majority's framing. A crucial premise of the majority's argument on framing is that public understanding until recently unanimously supported their side. But it wasn't that long ago the Court said "extratextual sources are usually only helpful as an aide for clearing up ambiguity," not creating it.[19] So for the majority's framing to be viable, the majority has to concede ambiguity in the text. Otherwise, the text has to be the beginning, middle, and end, and that just doesn't work for the majority's side.

So the majority's framing finds its way into a catch-22. If the text is unambiguous, the majority has to concede its framing and that means losing on the merits. But if the text *is* ambiguous, that means the rule of lenity applies and the majority has to lose on those grounds too. The majority tries to have it both ways, but that just isn't possible.

II

The majority's framing also violates the textualist method.

A

Generally speaking, the starting point for our analysis has to be the text. The Court has recognized that time and time again, and the majority pays some lip service to that principle today as well. But in this case, when push comes to shove, the majority looks elsewhere.

1

To start, both precedent and today's majority

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[19] *In re Ridgeway Courts Amendment*, 9 U. S. 173, 181 (2020).

acknowledge that the starting point for statutory interpretation has to be the text. As we just saw, *Ridgeway Courts* held that "extratextual sources are usually only helpful as an aide for *clearing up* ambiguity."[20] They can't be the *source* of ambiguity, which means they can't be "the grounds for further examination."[21] Today, the majority again recognizes that statutory interpretation requires "our eyes be trained at all times on the text of the law [we're] interpreting."[22] Any extratextual evidence which is "unmoored from the text" lacks value.[23]

Yet the starting point for today's majority is not the text. The starting point for the majority is its framing, which it lays on two beds. The first is public understanding and the second is surplusage. As we'll see, as the majority uses them here, these two considerations have no connection to the context and are consequently inconsistent with textualism.

2

Let's begin with public understanding. The majority cites the fact that federal law enforcement and federal prosecutors have for multiple years made arrests and charged people with crimes limited to the "special maritime and territorial jurisdiction of the United States" when those crimes took place in general Municipal land, rather than on federally managed land. And "nobody . . . suggested in any court filing" that this was unlawful until now.[24] The two considerations at play here are (i) the actions of federal officials and (ii) the response to those actions. Importantly, neither of these considerations has any connection to the text of the relevant law. It's not even apparent that either of these

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[20] *Ibid* (emphasis added).
[21] *Ante*, at 13.
[22] *Ibid*.
[23] *Ibid*.
[24] *Ante*, at 3.

things was based on any consideration of what the law actually says. The majority's argument seems to be that if the public proceeds one way for long enough after the enactment of a law, what the law actually says ceases to matter because "public understanding" has developed. In other words, time makes the law, not the legislature. It's curious to see this argument in a majority opinion which seems to trumpet the virtues of textualist interpretation.

The majority itself explicitly says that "[l]egislation requires concrete legislative action."[25] I agree. But if "[a]lternatives" to legislate action like the "especially powerful thoughts" of individual legislators are not sufficient to make law,[26] how can something as extratextual as "public understanding"—when mixed with a little bit of time—be enough to change the law's meaning? I say it isn't.

And the majority's reliance of surplusage is similarly misplaced. Surplusage is a canon of statutory interpretation. Independent of statutory text, it has no legal force. Its only utility is to help us discern the meaning of an enacted law. The majority uses surplusage very differently here. Instead of using it to address the meaning of specific text, the majority says that adopting a negative reading would deny effect to *entire statutes*. As we'll see, this is backwards, but even assuming that's true, it's not how surplusage works. All surplusage says is that if we have two plausible readings of a statute, we should go with the reading which gives full effect to all the statute's words. It doesn't mean we should stand back, ignore the text, and start with the rebuttable presumption that statutes are meant to have the *broadest scope possible*, which is what the majority does here. That isn't textualism.

B

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[25] *Ante*, at 12.

[26] *Ibid.*

But let's assume *arguendo* that these actually are appropriate modes of textualist inquiry. The majority somehow manages to *still* be wrong.

On public understanding, the majority is right that nobody (until recently) started advocating this case's negative proposition. But that may've had more to do with a lack of *consideration* than any actual heretofore-settled understanding. The majority says that there were "[h]undreds of prosecutions, including many upheld by our Court" which assumed the affirmative proposition.[27] But the majority doesn't cite any analysis in any of those cases of the question before us. The reason is because while they necessarily assumed the affirmative proposition on their road to conviction, they didn't do so as a product of any analysis. They did so because *nobody raised the issue*. I fail to see how the majority finds support for its position in this pattern of obliviousness.

Regardless, this Court has overridden consensus lasting longer than two-and-a-half years in the past, including as recently as *McGirt* v. *Oklahoma*, where the Court upset a half-century of public understanding and concluded that the eastern half of Oklahoma, including the State's most populous city, was Indian Country.[28] Or how about other cases on similar subjects where we've followed textualism even when it produced a result contrary to "120 years" of public understanding?[29] What's two-and-a-half years against all that? The "magnitude of a legal wrong is no reason to perpetuate it."[30]

In the end, the majority's appeal to "public understanding" sounds a lot like a veiled appeal to policy preference. The majority's main concern appears to be that a ruling that adopts the negative proposition would be disruptive to how

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[27] *Ante*, at 18.

[28] 591 U. S. ___, slip op. 42 (2020).

[29] *Id.*, at slip op. 37.

[30] *Id.*, at slip op. 38.

things have been done for a while now. And that's true. But either people would learn to live with that change or they, through their elected representatives, would change the law so it actually prescribes the state of affairs they want. We can't step in and revise the law to avoid that inconvenience. Perhaps we've been wrong for two years. And perhaps correcting course now would be disruptive. But we can't "perpetuate something we all know to be wrong only because we fear the consequences of being right."[31]

The majority's surplusage argument is likewise flawed. To start, adopting the negative proposition wouldn't mean that the SMT crimes would "apply [no]where."[32] As both we and the defendant agree, they'd apply on all federal land and in the territories.[33] It's actually the *majority*'s argument which renders 18 U. S. C. §7 surplusage. Why would Congress have spelled out so many specific areas where SMT crimes apply if they apply, as the majority sees it, essentially anywhere in the United States? In purporting to avoid a surplusage problem, the majority steps into a much larger one.

III

Even if the majority's framing was right, however, the majority's end result is still wrong. The text of 18 U. S. C. §7 clearly rebuts the majority's affirmative presumption.

The majority is correct that the last-antecedent rule makes the "fort, magazine, arsenal, dockyard, or other needful building" clause applicable only to the second part of paragraph (3), but the first part has its own limitations as well. It applies only to "lands reserved or acquired *for the use of* the United States."[34] The majority seems to overlook this detail. But it's a crucial one.

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[31] *Ramos* v. *Louisiana*, 590 U. S. ___, slip op. 26 (2020).

[32] *Ante*, at 3.

[33] Cf. *ante*, at 18.

[34] 18 U. S. C. §7(3) (emphasis added).

If the paragraph applied to *all* "lands of the United States," the majority would have a point. But it doesn't. It applies only the land acquired or reserved "*for the use of* the United States." This necessarily requires that the federal government make not just the showing of sovereignty that the majority holds it to; the federal government must also show a *property* interest in such lands. And the federal government clearly doesn't have that for *all* Municipal land. If it did, Municipal sovereignty would be nothing more than theoretical. And applicable law makes clear that all land that doesn't house a federal building is the property of Municipal government barring some other private property interest.

So the majority has no leg to stand on when it turns down the rebuttals of its presumption. Only by excising the words "for the use of" could the majority treat the provision as only being concerned with sovereign rights. The distinction between sovereign and property rights can't be elided. Sovereign rights dictate governmental jurisdiction. Property rights dictate utility. For example, the federal government has sovereignty over the entire United States, but that doesn't mean it can just barge into any private building without a warrant. The private owners of those properties have the *property* rights for that land and that confers on them certain rights. They are still subject to governmental power, but within the confines of law they may utilize the property they own.

Section 7 doesn't apply to all land the federal government has a sovereign interest in. If it did, many provisions would be redundant. And such a provision could be much more concisely stated than 18 U. S. C. §7 happens to be. On the contrary, it applies only to those lands the federal government has a property interest in. And that doesn't include

all Municipal land. So the majority's presumption is rebutted by the text.[35]

IV

Finally, under a proper framing the majority is wrong as well. And the reason why is short: nothing in the statute, viewed neutrally, encompasses the Municipalities in their entirety. That's the end of the matter.

I respectfully dissent.

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[35]So even if you accept the majority's framing, it doesn't help. Even under that framing the majority is wrong.