The following case concerns a controversy with a provision of the Sarbanes-Oxley Act, which was passed in 2002 in reaction the scandal surrounding the collapse of Enron. Section 806 of Sarbanes-Oxley is entitled "Protection for Employees of Publicly Traded Companies Who Provide Evidence of Fraud," and is codified as § 1514A of Title 18 of the United States Code:

> **Civil action to protect against retaliation in fraud cases**
>
> (a) WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES.—No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(d)), or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—
>
> (1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341 [mail fraud], 1343 [wire fraud], 1344 [bank fraud], or 1348 [securities or commodities fraud], any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by [a federal agency, Congress, or supervisor] . . . .

Lawson v. FMR LLC

Supreme Court of the United States, 2014.

■ JUSTICE GINSBURG delivered the opinion of the Court.

To safeguard investors in public companies and restore trust in the financial markets following the collapse of Enron Corporation, Congress enacted the Sarbanes-Oxley Act of 2002, [citation]. A provision of the Act, 18 U.S.C. § 1514A, protects whistleblowers. Section 1514A, at the time here relevant, instructed:

> "No [public] company . . . , or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of [whistleblowing or other protected activity]." § 1514A(a)

(2006)

This case concerns the definition of the protected class: Does § 1514A shield only those employed by the public company itself, or does it shield as well employees of privately held contractors and subcontractors—for example, investment advisers, law firms, accounting enterprises—who perform work for the public company?

We hold, based on the text of § 1514A, the mischief to which Congress was responding, and earlier legislation Congress drew upon, that the provision shelters employees of private contractors and subcontractors, just as it shelters employees of the public company served by the con- tractors and subcontractors. We first summarize our principal reasons, then describe this controversy and explain our decision more comprehensively.

Plaintiffs below, petitioners here, are former employees of private companies that contract to advise or manage mutual funds. The mutual funds themselves are public companies that have no employees. Hence, if the whistle is to be blown on fraud detrimental to mutual fund investors, the whistleblowing employee must be on another company's payroll, most likely, the payroll of the mutual fund's investment adviser or manager.

Taking the allegations of the complaint as true, both plaintiffs blew the whistle on putative fraud relating to the mutual funds and, as a consequence, suffered adverse action by their employers. Plaintiffs read § 1514A to convey that "[n]o . . . contractor . . . may . . . discriminate against [its own] employee [for whistleblowing]." We find that reading consistent with the text of the statute and with common sense. Contractors are in control of their own employees, but are not ordinarily positioned to control someone else's workers. Moreover, we resist attributing to Congress a purpose to stop a contractor from retaliating against whistleblowers employed by the public company the contractor serves, while leaving the contractor free to retaliate against its own employees when they reveal corporate fraud.

In the Enron scandal that prompted the Sarbanes-Oxley Act, contractors and subcontractors, including the accounting firm Arthur Andersen, participated in Enron's fraud and its coverup. When employees of those contractors attempted to bring misconduct to light, they encountered retaliation by their employers. The Sarbanes-Oxley Act contains numerous provisions aimed at controlling the conduct of accountants, auditors, and lawyers who work with public companies. [Citations.] Given Congress' concern about contractor conduct of the kind that contributed to Enron's collapse, we regard with suspicion construction of § 1514A to protect whistleblowers only when they are employed by a public company, and not when they work for the public company's contractor.

Congress borrowed § 1514A's prohibition against retaliation from the wording of the 2000 Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), 49 U.S.C. § 42121. That Act provides: "No air carrier or contractor or subcontractor of an air carrier may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment" when the employee provides information regarding violations "relating to air carrier safety" to his or her employer or federal authorities. § 42121(a)(1). AIR 21 has been read to cover, in addition to employees of air carriers, employees of contractors and subcontractors of the carriers. Given the parallel statutory texts and whistleblower protective aims, we read the words "an employee" in AIR 21 and in § 1514A to have similar import.

I

A

The Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley or Act) aims to "prevent and punish corporate and criminal fraud, protect the victims of such fraud, preserve evidence of such fraud, and hold wrongdoers accountable for their actions." Of particular concern to Congress was abundant evidence that Enron had succeeded in perpetuating its massive shareholder fraud in large part due to a "corporate code of silence"; that code, Congress found, "discourage[d] employees from reporting fraudulent behavior not only to the proper authorities, such as the FBI and the SEC, but even internally." When employees of Enron and its accounting firm, Arthur Andersen, attempted to report corporate misconduct, Congress learned, they faced retaliation, including discharge. As outside counsel advised company officials at the time, Enron's efforts to "quiet" whistleblowers generally were not proscribed under then-existing law. Congress identified the lack of whistleblower protection as "a significant deficiency" in the law, for in complex securities fraud investigations, employees "are [often] the only firsthand witnesses to the fraud." [Citations.]

Section 806 of Sarbanes-Oxley addresses this concern. [See provision reproduced before opinion.] . . .

B

Petitioners Jackie Hosang Lawson and Jonathan M. Zang (plaintiffs) separately initiated proceedings under § 1514A against their former employers, privately held companies that provide advisory and management services to the Fidelity family of mutual funds. . . . [A]s is common in the mutual fund industry, the Fidelity funds themselves have no employees. Instead, they contract with investment advisers like respondents to handle their day-to-day operations, which include making investment decisions, preparing reports for shareholders, and filing reports with the Securities and Exchange Commission (SEC). . . .

Lawson worked for FMR for 14 years, eventually serving as a Senior Director of Finance. She alleges that, after she raised concerns about certain cost accounting methodologies, believing that they overstated expenses associated with operating the mutual funds, she suffered a series of adverse actions, ultimately amounting to constructive discharge. Zang was employed by FMR for eight years, most recently as a portfolio manager for several of the funds. He alleges that he was fired in retaliation for raising concerns about inaccuracies in a draft SEC registration statement concerning certain Fidelity funds. . . .

FMR moved to dismiss the suits, arguing, as relevant, that neither plaintiff has a claim for relief under § 1514A. FMR is privately held, and maintained that § 1514A protects only employees of public companies—i.e., companies that either have "a class of securities registered under section 12 of the Securities Exchange Act of 1934," or that are "required to file reports under section 15(d)" of that Act. § 1514A(a).[1] In a joint order, the District Court rejected FMR's interpretation of § 1514A and denied the dismissal motions in both suits. [Citation.]

On interlocutory appeal, a divided panel of the First Circuit reversed. The Court of Appeals majority acknowledged that FMR is a "contractor" within the meaning of § 1514A(a), and thus among the actors prohibited from retaliating against "an employee" who engages in protected activity. The majority agreed with FMR, however, that "an employee" refers only to employees of public companies and does not cover a contractor's own employees. Judge Thompson dissented. In her view, the majority had "impose[d] an unwarranted restriction on the intentionally broad language of the Sarbanes-Oxley Act" and "bar[red] a significant class of potential securities-fraud whistleblowers from any legal protection." [Citations.] . . .

We granted certiorari to resolve the division of opinion on whether § 1514A extends whistleblower protection to employees of privately held contractors who perform work for public companies.

II

A

[1] Here, as just noted, the public company has no employees.

In determining the meaning of a statutory provision, "we look first to its language, giving the words used their ordinary meaning." *Moskal v. United States*, 498 U.S. 103, 108 (1990) (citation and internal quotation marks omitted). As Judge Thompson observed in her dissent from the Court of Appeals' judgment, "boiling [§ 1514A(a)] down to its relevant syntactic elements, it provides that 'no . . . contractor . . . may discharge . . . an employee.'" [Citation.] The ordinary meaning of "an employee" in this proscription is the contractor's own employee.

FMR's interpretation of the text requires insertion of "of a public company" after "an employee." But where Congress meant "an employee of a public company," it said so: With respect to the actors governed by § 1514A, the provision's interdictions run to the officers, employees, contractors, subcontractors, and agents "of such company," i.e., a public company. § 1514A(a). Another anti-retaliation provision in Sarbanes-Oxley provides: "[A] broker or dealer and persons employed by a broker or dealer who are involved with investment banking activities may not, directly or indirectly, retaliate against or threaten to retaliate against any securities analyst employed by that broker or dealer or its affiliates . . . ." 15 U.S.C. § 78o–6(a)(1)(C) (emphasis added). In contrast, nothing in § 1514A's language confines the class of employees protected to those of a designated employer. Absent any textual qualification, we presume the operative language means what it appears to mean: A contractor may not retaliate against its own employee for engaging in protected whistleblowing activity.[2] Section 1514A's application to contractor employees is confirmed when we enlarge our view from the term "an employee" to the provision as a whole. The prohibited retaliatory measures enumerated in § 1514A(a)— discharge, demotion, suspension, threats, harassment, or discrimination in the terms and conditions of employment—are commonly actions an employer takes against its own employees. Contractors are not ordinarily positioned to take adverse actions against employees of the public company with whom they contract. FMR's interpretation of § 1514A, therefore, would shrink to insignificance the provision's ban on retaliation by contractors. . . .

FMR urges that Congress included contractors in § 1514A's list of governed actors simply to prevent public companies from avoiding liability by employing contractors to effectuate retaliatory discharges. FMR describes such a contractor as an "ax-wielding specialist," illustrated by George Clooney's character in the movie *Up in the Air*. [Citation.] As portrayed by Clooney, an ax-wielding specialist is a contractor engaged only as the bearer of the bad news that the employee has been fired; he plays no role in deciding who to terminate. If the company employing the ax-wielder chose the recipients of the bad tidings for retaliatory reasons, the § 1514A claim would properly be directed at the company. Hiring the ax-wielder would not insulate the

[2] We need not decide in this case whether § 1514A also prohibits a contractor from retaliating against an employee of one of the other actors governed by the provision.

company from liability. Moreover, we see no indication that retaliatory ax-wielding specialists are the real-world problem that prompted Congress to add contractors to § 1514A.

Moving further through § 1514A to the protected activity described in subsection (a)(1), we find further reason to believe that Congress presumed an employer-employee relationship between the retaliator and the whistleblower. Employees gain protection for furnishing information to a federal agency, Congress, or "a person with supervisory authority over *the employee* (or such other person working for *the employer* who has the authority to investigate, discover, or terminate misconduct)." § 1514A(a)(1) (emphasis added). And under § 1514A(a)(2), employees are protected from retaliation for assisting "in a proceeding filed or about to be filed (*with any knowledge of the employer*) relating to an alleged violation" of any of the enumerated fraud provisions, securities regulations, or other federal law relating to shareholder fraud. § 1514A(a)(2) (emphasis added). The reference to employer knowledge is an additional indicator of Congress' expectation that the retaliator typically will be the employee's employer, not another entity less likely to know of whistleblower complaints filed or about to be filed.

Section 1514A's enforcement procedures and remedies similarly contemplate that the whistleblower is an employee of the retaliator. . . .

Regarding remedies, § 1514A(c)(2) states that a successful claimant shall be entitled to "reinstatement with the same seniority status that the employee would have had, but for the discrimination," as well as "the amount of back pay, with interest." As the Solicitor General, for the United States as amicus curiae, observed, "It is difficult, if not impossible, to see how a contractor or subcontractor could provide those remedies to an employee of a public company." [Citation.] The most sensible reading of § 1514A's numerous references to an employer-employee relationship between the respondent and the claimant is that the provision's protections run between contractors and their own employees. . . .

[Were the other view of § 1514A's reach to prevail, there would be a substantial gap in its coverage:] Contractors' employees would be disarmed; they would be vulnerable to retaliation by their employers for blowing the whistle on a scheme to defraud the public company's investors, even a scheme engineered entirely by the contractor. Not only would mutual fund advisers and managers escape § 1514A's control. Legions of accountants and lawyers would be denied § 1514A's protections. Instead of indulging in fanciful visions of whistleblowing babysitters and the like, the dissent might pause to consider whether a Congress, prompted by the Enron debacle, would exclude from whistleblower protection countless professionals equipped to bring fraud on investors to a halt.

B

We turn next to two textual arguments made by FMR. First, FMR urges that "an employee" must be read to refer exclusively to public company employees to avoid the absurd result of extending protection to the personal employees of company officers and employees, e.g., their housekeepers or gardeners. [Citation.] Plaintiffs and the Solicitor General do not defend § 1514A's application to personal employees. They argue, instead, that the prohibition against an "officer" or "employee" retaliating against "an employee" may be read as imposing personal liability only on officers and employees who retaliate against other public company employees. FMR calls this reading "bizarre," for it would ascribe to the words "an employee" in § 1514A(a) "one meaning if the respondent is an 'officer' and a different meaning if the respondent is a 'contractor.'"

We agree with FMR that plaintiffs and the Solicitor General offer an interpretation at odds with the text Congress enacted. If, as we hold, "an employee" includes employees of contractors, then grammatically, the term also includes employees of public company officers and employees. Nothing suggests Congress' attention was drawn to the curiosity its drafting produced. The issue, however, is likely more theoretical than real. Few housekeepers or gardeners, we suspect, are likely to come upon and comprehend evidence of their employer's complicity in fraud. In any event, FMR's point is outweighed by the compelling arguments opposing FMR's contention that "an employee" refers simply and only to public company employees.

Second, FMR argues that the statutory headings support the exclusion of contractor employees from § 1514A's protections. Although § 1514A's own heading is broad ("Civil action to protect against retaliation in fraud cases"), subsection (a) is captioned "Whistleblower Protection for Employees of Publicly Traded Companies." Similarly, the relevant public law section, § 806 of Sarbanes-Oxley, is captioned "Protection for Employees of Publicly Traded Companies Who Provide Evidence of Fraud." The Court of Appeals described the latter two headings as "explicit guides" limiting protection under § 1514A to employees of public companies. [Citations.]

This Court has placed less weight on captions. In *Trainmen v. Baltimore & Ohio R. Co.*, we explained that where, as here, "the [statutory] text is complicated and prolific, headings and titles can do no more than indicate the provisions in a most general manner." 331 U. S. 519, 528 (1947). The under-inclusiveness of the two headings relied on by the Court of Appeals is apparent. The provision indisputably extends protection to employees of companies that file reports with the SEC pursuant to § 15(d) of the 1934 Act, even when such companies are not "publicly traded." And the activity protected under § 1514A is not limited to "provid[ing] evidence of fraud"; it also includes reporting violations of SEC rules or regulations. § 1514A(a)(1). As in *Trainmen*, the headings here are "but a short-hand reference to the general subject matter" of the provision, "not meant to take the place of the detailed provisions of the text." 331 U. S. at 528. Section 1514A is attended by numerous indicators that the statute's prohibitions govern the relationship between a contractor and its own employees; we do not read the headings to "undo or limit" those signals. *Id.* at 529.

III

A

Our textual analysis of § 1514A fits the provision's purpose. It is common ground that Congress installed whistleblower protection in the Sarbanes-Oxley Act as one means to ward off another Enron debacle. And . . . "Congress plainly recognized that outside professionals—accountants, law firms, contractors, agents, and the like—were complicit in, if not integral to, the shareholder fraud and subsequent cover-up [Enron] officers . . . perpetrated." Indeed, the Senate Report demonstrates that Congress was as focused on the role of Enron's outside contractors in facilitating the fraud as it was on the actions of Enron's own officers. [Citations.]

Also clear from the legislative record is Congress' understanding that outside professionals bear significant responsibility for reporting fraud by the public companies with whom they contract, and that fear of retaliation was the primary deterrent to such reporting by the employees of Enron's contractors. Congressional investigators discovered ample evidence of contractors demoting or discharging employees they have engaged who jeopardized the contractor's business relationship with Enron by objecting to Enron's financial practices. [Citations.]

In the same vein, two of the four examples of whistle-blower retaliation recounted in the Senate Report involved outside professionals retaliated against by their own employers. Emphasizing the importance of outside professionals as "gatekeepers who detect and deter fraud," the Senate Report concludes: "Congress must reconsider the incentive system that has been set up that encourages accountants and lawyers who come across fraud in their work to remain silent." From this legislative history, one can safely conclude that Congress enacted § 1514A aiming to encourage whistleblowing by contractor employees who suspect fraud involving the public companies with whom they work.

. . . Although lawyers and accountants are subject to extensive regulations and sanctions throughout Sarbanes-Oxley, no provision of the Act other than § 1514A affords them protection from retaliation by their employers for complying with the Act's reporting requirements. In short, we cannot countenance the position advanced by FMR and the dissent, that Congress intended to leave these professionals vulnerable to discharge or other retaliatory action for complying with the law.

B

Our reading of § 1514A avoids insulating the entire mutual fund industry from § 1514A, as FMR's and the dissent's "narrower construction" would do. As companies "required to file reports under section 15(d) of the Securities Exchange Act of 1934," 18 U.S.C. § 1514A(a), mutual funds unquestionably are governed by § 1514A. Because mutual funds figure prominently among such report-filing companies, Congress presumably had them in mind when it added to "publicly traded companies" the discrete category of companies "required to file reports under section 15(d)."

Virtually all mutual funds are structured so that they have no employees of their own; they are managed, instead, by independent investment advisers. The United States investment advising industry manages $14.7 trillion on behalf of nearly 94 million investors. These investment advisers, under our reading of § 1514A, are contractors prohibited from retaliating against their own employees for engaging in whistleblowing activity. This construction protects the "insiders [who] are the only firsthand witnesses to the [shareholder] fraud." Under FMR's and the dissent's reading, in contrast, § 1514A has no application to mutual funds, for all of the potential whistleblowers are employed by the privately held investment management companies, not by the mutual funds themselves. [Citations.] . . .

[A]ffording whistleblower protection to mutual fund investment advisers is crucial to Sarbanes-Oxley's endeavor to "protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws." As plaintiffs observe, these disclosures are written, not by anyone at the mutual funds themselves, but by employees of the investment advisers. "Under FMR's [and the dissent's] proposed interpretation of section 1514A, FMR could dismiss any FMR employee who disclosed to the directors of or lawyers for the Fidelity funds that there were material falsehoods in the documents being filed by FMR with the SEC in the name of those funds." It is implausible that Congress intended to leave such an employee remediless. [Citations.]

C

. . . The dissent's fears that household employees and others, on learning of today's decision, will be prompted to pursue retaliation claims, and that OSHA will find them meritorious under § 1514A, seem to us unwarranted. If we are wrong, however, Congress can easily fix the problem by amending § 1514A explicitly to remove personal employees of public company officers and employees from the provision's reach. But it would thwart Congress' dominant aim if contractors were taken off the hook for retaliating against their whistleblowing employees, just to avoid the unlikely prospect that babysitters, nannies, gardeners, and the like will flood OSHA with § 1514A complaints.

Plaintiffs and the Solicitor General observe that overbreadth problems may be resolved by various limiting principles. . . .

Finally, the Solicitor General suggests that we need not determine the bounds of § 1514A today, because plaintiffs seek only a "mainstream application" of the provision's protections. We agree. Plaintiffs' allegations fall squarely within Congress' aim in enacting § 1514A. Lawson alleges that she was constructively discharged for reporting accounting practices that overstated expenses associated with managing certain Fidelity mutual funds. This alleged fraud directly implicates the funds' shareholders: "By inflating its expenses, and thus understating its profits, [FMR] could potentially increase the fees it would earn from the mutual funds, fees ultimately paid by the shareholders of those funds." Zang alleges that he was fired for expressing concerns about inaccuracies in a draft registration statement FMR prepared for the SEC on behalf of certain Fidelity funds. The potential impact on shareholders of false or misleading registration statements needs no elaboration. If Lawson and Zang's allegations prove true, these plaintiffs would indeed be "firsthand witnesses to [the shareholder] fraud" Congress anticipated § 1514A would protect. [Citations.] . . .

IV

. . . For the reasons stated, we hold that 18 U.S.C. § 1514A whistleblower protection extends to employees of contractors and subcontractors. The judgment of the U.S. Court of Appeals for the First Circuit is therefore reversed, and the case is remanded for further proceedings consistent with this opinion.
It is so ordered.

■ JUSTICE SCALIA, with whom JUSTICE THOMAS joins, concurring in principal part and concurring in the judgment.

I agree with the Court's conclusion that 18 U.S.C. § 1514A protects employees of private contractors from retaliation when they report covered forms of fraud. As the Court carefully demonstrates, that conclusion logically flows from § 1514A's text and broader context. I therefore join the Court's opinion in principal part.

I do not endorse, however, the Court's occasional excursions beyond the interpretative terra firma of text and context, into the swamps of legislative history. Reliance on legislative history rests upon several frail premises. First, and most important: That the statute means what Congress intended. It does not. Because we are a government of laws, not of men, and are governed by what Congress enacted rather than by what it intended, the sole object of the interpretative enterprise is to determine what a law says. Second: That there was a congressional "intent" apart from that reflected in the enacted text. On most issues of detail that come before this Court, I am confident that the majority of Senators and Representatives had no views whatever on how the issues should be resolved—indeed, were unaware of the issues entirely. Third: That the views expressed in a committee report or a floor statement represent those of all the Members of that House. Many of them almost certainly did not read the report or hear the statement, much less agree with it—not to mention the Members of the other House and the President who signed the bill.

. . . I do not agree with the Court's acceptance of the possible validity of the Government's suggestion that "§ 1514A protects contractor employees only to the extent that their whistleblowing relates to 'the contractor . . . fulfilling its role as a contractor for the public company.'" [Citation.] Although that "limiting principl[e]," may be appealing from a policy standpoint, it has no basis whatsoever in the statute's text. So long as an employee works for one of the actors enumerated in § 1514A(a) and reports a covered form of fraud in a manner identified in § 1514(a)(1)– (2), the employee is protected from retaliation.

For all the other reasons given by the Court, the statute's text is clear, and I would reverse the judgment of the Court of Appeals and remand the case.

■ JUSTICE SOTOMAYOR, with whom JUSTICE KENNEDY and JUSTICE ALITO join, dissenting.

. . . The Court's interpretation gives § 1514A a stunning reach. As interpreted today, the Sarbanes-Oxley Act authorizes a babysitter to bring a federal case against his employer—a parent who happens to work at the local Walmart (a public company)—if the parent stops employing the babysitter after he expresses concern that the parent's teenage son may have participated in an Internet purchase fraud. And it opens the door to a cause of action against a small business that contracts to clean the local Starbucks (a public company) if an employee is demoted after reporting that another nonpublic company client has mailed the cleaning company a fraudulent invoice.

Congress was of course free to create this kind of sweeping regime that subjects a multitude of individuals and private businesses to litigation over fraud reports that have no connection to, or impact on, the interests of public company shareholders.

But because nothing in the text, context, or purpose of the Sarbanes-Oxley Act suggests that Congress actually wanted to do so, I respectfully dissent.

I

Although the majority correctly starts its analysis with the statutory text, it fails to recognize that § 1514A is deeply ambiguous. Three indicators of Congress' intent clearly resolve this ambiguity in favor of a narrower interpretation of § 1514A: the statute's headings, the statutory context, and the absurd results that follow from the majority's interpretation.

A

. . . [T]he statute is ambiguous. The majority is correct that it may be read broadly, to create a cause of action both for employees of public companies and for employees of the enumerated public company representatives. But the statute can also be read more narrowly, to prohibit the public company and the listed representatives—all of whom act on the company's behalf—from retaliating against just the public company's employees. . . .

The majority responds by suggesting that the narrower interpretation could have been clearer if Congress had added the phrase "'of a public company' after 'an employee.'" Fair enough. But Congress could more clearly have dictated the majority's construction of the statute, too: It could have specified that public companies and their officers, employees, contractors, subcontractors, and agents may not retaliate against "their own employees." In any case, that Congress could have spoken with greater specificity in both directions only underscores that the words Congress actually chose are ambiguous. To resolve this ambiguity, we must rely on other markers of intent.

B

We have long held that where the text is ambiguous, a statute's titles can offer "a useful aid in resolving [the] ambiguity." *FTC v. Mandel Brothers, Inc.*, 359 U.S. 385, 388–89 (1959). Here, two headings strongly suggest that Congress intended § 1514A to apply only to employees of public companies. First, the title of § 806—the section of the Sarbanes Oxley Act that enacted § 1514A—speaks clearly to the scope of employees protected by the provision: "Protection for Employees of Publicly Traded Companies Who Provide Evidence of Fraud." [Citation.] Second, the heading of § 1514A(a) reinforces that the provision provides "[w]histleblower protection for employees of publicly traded companies." . . .

Recognizing that Congress chose headings that are inconsistent with its interpretation, the majority notes that the Court has "placed less weight on captions." But where the captions favor one interpretation so decisively, their significance should not be dismissed so quickly. As we have explained, headings are important "'tools available for the resolution of a doubt' about the meaning of a statute." *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998).

C

1

Statutory context confirms that Congress intended § 1514A to apply only to employees of public companies. To start, the Sarbanes-Oxley Act as a whole evinces a clear focus on public companies. . . .

When Congress wanted to depart from the Act's public company focus to regulate private firms and their employees, it spoke clearly. For example, § 307 of the Act ordered the Securities and Exchange Commission (SEC) to issue rules "setting forth minimum standards of professional conduct for attorneys appearing and practicing before the [SEC]," including a rule requiring outside counsel to report violations of the securities laws to public company officers and directors. 15 U.S.C. § 7245. Similarly, Title I of the Act created the Public Company Accounting Oversight Board (PCAOB) and vested it with the authority to register, regulate, investigate, and discipline privately held outside accounting firms and their employees. §§ 7211–7215. And Title V required the SEC to adopt rules governing outside securities analysts when they make public recommendations regarding securities. § 78o–6.

Section 1514A, by contrast, does not unambiguously cover the employees of private businesses that contract with public companies or the employees of individuals who work for public companies. . . . Yet as the rest of the Sarbanes-Oxley Act demonstrates, if Congress had really wanted § 1514A to impose liability upon broad swaths of the private sector, it would have said so more clearly. . . .

D

1

Finally, the majority's reading runs afoul of the precept that "interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available." *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982). The majority's interpretation transforms § 1514A into a sweeping source of litigation that Congress could not have intended. As construed by the majority, the Sarbanes-Oxley Act regulates employment relationships between individuals and their nannies, housekeepers, and caretakers, subjecting individual employers to litigation if their employees claim to have been harassed for providing information regarding any of a host of offenses. If, for example, a nanny is discharged after expressing a concern to his employer that the employer's teenage son may be participating in some Internet fraud, the nanny can bring a § 1514A suit. The employer may prevail, of course, if the nanny cannot prove he was fired "because of" the fraud report. § 1514A. But there is little reason to think Congress intended to sweep such disputes into federal court. . . .

Finally, it must be noted that § 1514A protects the reporting of a variety of frauds—not only securities fraud, but also mail, wire, and bank fraud. By interpreting a statute that already protects an expansive class of conduct also to cover a large class of employees, today's opinion threatens to subject private companies to a costly new front of employment litigation. Congress almost certainly did not intend the statute to have that reach. . . .

The Court's interpretation of § 1514A undeniably serves a laudatory purpose. By covering employees of every officer, employee, and contractor of every public company, the majority's interpretation extends § 1514A's protections to the outside lawyers and accountants who could have helped prevent the Enron fraud.

But that is not the statute Congress wrote. Congress envisioned a system in which public company employees would be covered by § 1514A, and in which outside lawyers, investment advisers, and accountants would be regulated by the SEC and PCAOB. Congress did not envision a system in which employees of other private businesses—such as cleaning and construction company workers who have little interaction with investor-related activities and who are thus ill suited to assist in detecting fraud against shareholders—would fall within § 1514A. Nor, needless to say, did it envision § 1514A applying to the household employees of millions of individuals who happen to work for public companies—housekeepers, gardeners, and babysitters who are also poorly positioned to prevent fraud against public company investors. And to the extent § 1514A may have been underinclusive as first drafted, Congress has shown itself capable of filling in any gaps. [citing sections of the Dodd-Frank Wall Street Reform and Consumer Protection Act]

The Court's decision upsets the balance struck by Congress. Fortunately, just as Congress has added further protections to the system it originally designed when necessary, so too may Congress now respond to limit the far-reaching implications of the Court's interpretation.[3] But because that interpretation relies on a debatable view of § 1514A's text, is inconsistent with the statute's titles and its context, and leads to absurd results that Congress did not intend, I respectfully dissent.

Questions

1. Which of the following groups mentioned in the *Lawson* opinions are protected by § 1514A under the Court's decision:

   (a) employees of mutual fund investment advisors
   (b) outside firms providing legal and accounting services
   (c) consultants, such as the one portrayed by George Clooney in *Up in the Air*, who are contracted to fire employees
   (d) "personal" or "household" employees of individuals who work for public companies

2. What is the dissent's strongest argument that § 1514A should not be read to protect the plaintiffs? Is the statute ambiguous?

3. Is this an appropriate application of the "absurdity canon"? How absurd is it that Congress would write a statute that could be read to protect household employees against retaliation for reporting securities, mail, wire, and bank fraud to federal officials? Does 1514A protect a nanny who reports violations of maximum hour laws (assuming these exist)?

4. Does the "absurdity canon" apply with equal weight when the statutory interpretation determines the fate of the parties to the case, as in *Holy Trinity*, and when the alleged absurd result affects a hypothetical situation not in fact before the Court?

5. What do you think of the concurrence's observations regarding legislative intent? What arguments—in the majority and dissent—do the concurring Justices object to?

6. The Court appears to both reject limiting principles ("plaintiffs and the Solicitor General offer an interpretation at odds with the text Congress

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[3] Congress could, for example, limit § 1514A to contractor employees in only those professions that can assist in detecting fraud on public company shareholders, or it could restrict the fraud reports that trigger whistleblower protection to those that implicate the interests of public company investors

enacted"), yet does not clearly hold that personal employees are protected by § 1514A ("we need not determine the bounds of § 1514A today, because plaintiffs seek only a 'mainstream application' of the provision's protections").

a. If you were advising personal employees planning on reporting their employer's securities, mail, wire, or bank fraud, what would you tell them regarding whether a court would protect them under § 1514A?

b. What parts of the majority opinion would support protection?

c. Does the concurrence support protection for your clients?