

THE FOURTH CIRCUIT’S REJECTION OF LEGISLATIVE HISTORY: PLACING GUNS IN THE HANDS OF DOMESTIC VIOLENCE PERPETRATORS

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I. INTRODUCTION

The relationship between domestic violence and firearms is an incredibly dangerous one, as a simple argument can escalate and result in the death of an individual.¹ In 1996, Congress added the Lautenberg Amendment to the Gun Control Act of 1968 in an attempt to prevent these types of violent incidents by prohibiting perpetrators of domestic violence from possessing a firearm.² However, in 2007, the Fourth Circuit decided *United States v. Hayes*, where it completely disregarded basic rules of statutory interpretation and Congress' stated legislative purpose.³ This decision caused a circuit split between the Fourth Circuit and the nine other circuits that had previously decided the question of whether the Lautenberg Amendment requires a domestic relationship as a statutory element.⁴

The Supreme Court overturned the Fourth Circuit's decision in 2009 after interpreting the plain language of the statute and considering congressional intent.⁵ Dissenting, Justice Roberts, joined by Justice Scalia, argued that the majority incorrectly utilized legislative history and laid a

1. See 142 CONG. REC. S11876 (daily ed. Sept. 30, 1996) (statement of Sen. Lautenberg) (providing a hypothetical scenario of how the presence of a firearm in a domestic violence dispute can result in death or serious injury, particularly when a history of domestic violence exists).

2. See *id.* at S11878 (statement of Sen. Lautenberg) (arguing that the provision should not be interpreted to allow law enforcement agencies to ignore violent misdemeanor convictions when determining whether a person is barred from possessing a firearm).

3. See 482 F.3d 749, 752 (4th Cir. 2007) (holding that a "domestic relationship" must be a statutorily designated element of the underlying offense for the offense to qualify as a misdemeanor crime of domestic violence that would prohibit an individual from possessing a firearm).

4. See *United States v. Hayes*, 129 S. Ct. 1079, 1083-84 (2009) (acknowledging the Court granted certiorari to resolve the conflict between the Fourth Circuit and the majority of other circuits, including the First and D.C. Circuits).

5. See *id.* at 1089 (holding that a domestic relationship is not required as a specified element of the predicate offense).

foundation for an impractical and unfair application of the law.⁶ The dissent's approach hinders the purpose of the Amendment, giving guns a place in an abusive domestic relationship.⁷

This note argues that the Supreme Court was justified in its use of legislative history to interpret the Lautenberg Amendment, and that the dissent is incorrect in placing less importance on the legislative record. Part II examines the Lautenberg Amendment, some basic rules of statutory interpretation, and how different circuits and the Supreme Court have approached the interpretation and application of the Amendment.⁸ Part III posits that the Fourth Circuit was incorrect in its holding and argues the Supreme Court is justified in its opinion.⁹ Part IV discusses the policy implications of the Fourth Circuit's holding, which would have rendered the Amendment meaningless and significantly increased the danger in an abusive domestic relationship.¹⁰ Finally, Part V concludes that legislative history and prior court decisions, even non-binding decisions, should play an important role in statutory interpretation, particularly when ambiguity exists in a federal statute that has nationwide impact.¹¹

II. BACKGROUND

A. The Gun Control Act of 1968

Congress passed the Gun Control Act ("the Act") in 1968, outlining various restrictions on who could legally possess firearms.¹² At the beginning of the Act, Congress explicitly states that the Act's purpose is to promote safety.¹³ The first part of the Act provides definitions for terms used throughout, including the term misdemeanor crime of domestic

6. See *id.* at 1089-93 (Roberts, C.J., dissenting) (emphasizing that rules of statutory construction, such as the Rule of Last Antecedent and the rule of lenity, compel the majority to find a domestic relationship as a required element).

7. See *id.* at 1092 (arguing that the majority was misguided by legislative intent, which will cause juries and judges to perform factfinding missions).

8. See *infra* Part II (discussing two landmark cases from the First and D.C. Circuits decided prior to the Fourth Circuit's decision, as well as Justice Roberts' dissent in *Hayes*).

9. See *infra* Part III (arguing that the Supreme Court correctly utilized rules of statutory construction and legislative history due to the nature of the Amendment).

10. See *infra* Part IV (explaining the implications of refusing to consider legislative history in cases of statutory ambiguity).

11. See *infra* Part V (recommending that courts look to legislative history even when they do not find glaring statutory ambiguities).

12. See generally 18 U.S.C. § 921 (2006).

13. See Gun Control Act of 1968, Pub. L. No. 90-618, § 101, 82 Stat. 1213, 1213 (1968) (codified as amended in scattered sections of 18 U.S.C.) (stating that the purpose of the title is to assist law enforcement officials in fighting crime and violence).

violence ("MCDV") that this note discusses.¹⁴

B. The 1996 Lautenberg Amendment

In 1996, Congress added the Lautenberg Amendment to the Act. The Amendment made it unlawful for a person convicted of a MCDV, in any court of the United States, to possess a firearm.¹⁵ The Amendment also specifically defines what constitutes a MCDV.¹⁶

Senator Frank Lautenberg (D-NJ), the chief sponsor of the Amendment, emphasized in his floor statements that the purpose of the bill was to close certain loopholes in the Act, specifically focusing on the dangers of firearms in a domestic violence dispute.¹⁷ Senator Lautenberg also noted that special provisions were added to protect the due process rights of these misdemeanants.¹⁸ Federal and state courts have generally interpreted the language of the Amendment broadly to effectuate the stated purpose Senator Lautenberg outlined in his floor statements.¹⁹

1. Legal Elements of a Misdemeanor Crime of Domestic Violence

The definition contained in the Act enumerates two elements that compose a MCDV.²⁰ The first element requires that the underlying act must be an offense that is a misdemeanor under federal, state, or tribal law.²¹ The second element states the offense must have, as one of its own elements, the use or the threatened use of physical force committed against an individual with whom the person is in a domestic relationship.²²

14. § 921(33)(A).

15. See 18 U.S.C. § 922(g) (2006) (making it unlawful for certain persons "to ship or transport in interstate commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce"); § 922(g)(9) (delineating that one of the many categories of prohibited persons is anyone who has been convicted of a MCDV).

16. See § 921(a)(33)(A) (defining a MCDV as an offense which is considered a misdemeanor under federal or state law and has the element of the use or attempted use of physical force or threatened use of a deadly weapon, committed against an individual with whom the offender maintains a domestic relationship).

17. See 142 CONG. REC. S11877 (daily ed. Sept. 30, 1996) (statement of Sen. Lautenberg) (stating that the provision prevents domestic violence offenders from falling into a loophole since they would not be considered convicted felons and might otherwise be allowed to possess a firearm that may contribute to a deadly situation in a domestic violence dispute).

18. See *id.* (showing that there are provisions within the Amendment protecting individuals who have had their convictions expunged or set aside and assuring that no individual will lose their right to a jury trial).

19. See *infra* Part II.B (discussing state and federal court applications of the Amendment prior to the Fourth Circuit's decision in *Hayes*).

20. § 921(a)(33)(A).

21. See § 921(a)(33)(A)(i) (stating the first element in clear and simple terms that do not require judicial interpretation).

22. See § 921(a)(33)(A)(ii) (defining such individuals to include: "current or

2. *The Domestic Relationship “Element”*

One of the contested parts of the Amendment’s definition involves the requisite domestic relationship.²³ The majority of the circuits have determined that a domestic relationship is not required to be a statutorily specified element of the predicate offense, but the Fourth Circuit determined that the domestic relationship had to be specified as an element of the underlying crime.²⁴ However, it is clear from the statute’s language and legislative history that Congress did not intend the statute’s meaning to be the one the Fourth Circuit found.²⁵

C. Rules of Statutory Interpretation

When interpreting a statute, a court must first look to the text and structure of the statute and determine whether a plain meaning exists.²⁶ However, when statutory language is ambiguous, courts are to examine the legislative history, scope, and stated purpose of the statute.²⁷ A statute is ambiguous if two reasonable persons can differ on the meaning of the statute.²⁸

Additionally, when a criminal statute is ambiguous, the court must apply the rule of lenity and resolve the ambiguity in favor of the defendant.²⁹ Courts also retain an interest in interpreting terms in a way that encourages uniformity in the application of the law.³⁰

former spouse[s], parent[s], or [a] guardian of the victim . . . person[s] with whom the victim shares a child in common . . . person[s] . . . cohabiting with or [who have] cohabited with the victim as a spouse, parent, or guardian, or . . . person[s] similarly situated to a spouse, parent, or guardian of the victim”).

23. See *infra* Parts III.C, III.D (explaining the debate that resulted in differing opinions between the circuits).

24. See *United States v. Hayes*, 129 S. Ct. 1079, 1083 (2008) (noting the Fourth Circuit’s deviation from nine other circuits’ published opinions).

25. See *infra* Part III (discussing why the reasoning of the courts that determined a domestic relationship is not a required element is correct).

26. See, e.g., *United States v. Smith*, 171 F.3d 617, 620 (8th Cir. 1999) (stating that the court should look to the legislative history or other sources only when there is ambiguity in the plain meaning).

27. See *Consumer Prod. Safety Comm’n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980) (noting that to reject the plain language based on congressional purpose, the legislative intent must be clearly expressed).

28. See, e.g., *United Serv. Auto. Ass’n v. Perry*, 102 F.3d 144, 146 (5th Cir. 1996) (stating that a statute is ambiguous if it is susceptible to more than one meaning).

29. See *United States v. Bass*, 404 U.S. 336, 348 (1971) (citing *McBoyle v. United States*, 51 S. Ct. 340 (1931)) (highlighting the importance of fair notice to potential offenders, for Due Process reasons, as to what the law intends to punish and reflecting the view that the legislature, and not courts, should determine what conduct warrants imprisonment).

30. See, e.g., *Taylor v. United States*, 495 U.S. 575, 590-92 (1990) (encouraging courts to find a uniform definition for federal statutes that broadly captures their goals and encourages equitable application).

*D. Meade and Barnes: Interpretations of the Lautenberg Amendment
Before Hayes*

Most federal and state courts have used similar reasoning to hold that the Lautenberg Amendment does not require that the statute criminalizing the predicate offense contain a domestic relationship as an element.³¹ A predicate offense is the offense that is used as the basis for convicting an individual for unlawful possession of a firearm under the Amendment.³² The Fourth Circuit, however, recently created a circuit split by using statutory construction to narrowly interpret the Amendment.³³

Multiple federal circuit courts reject the argument that the Amendment requires the underlying statute of the predicate offense to include a domestic relationship element when reviewing appeals based on that argument, partially in light of policy considerations.³⁴ When interpreting the language of Amendment, these circuit courts looked at the specific language of the provision, but also pointed to Senator Lautenberg's intent regarding domestic violence-related crimes.³⁵

Meade is a well-reasoned, landmark decision in which the First Circuit held that a domestic relationship is not required as a specified element of the underlying offense for the purposes of the Amendment.³⁶ In *Meade*, the defendant, who had been previously convicted in Massachusetts, argued that the federal statute making it unlawful for him to possess a firearm did not apply because the statute underlying his conviction did not contain a domestic relationship as an enumerated element.³⁷ The defendant argued

31. See generally *United States v. Barnes*, 295 F.3d 1354 (D.C. Cir. 2002); *United States v. Meade*, 175 F.3d 215 (1st Cir. 1999); *King v. Wyoming. Div. of Crim. Invest.*, 89 P.3d 341, 350 (Wyo. 2004) (holding that the provision does not require that the predicate offense include a domestic relationship between the perpetrator and the victim as an element).

32. See BLACK'S LAW DICTIONARY 1110 (8th ed. 2004) (explaining that predicate offenses are defined by statute and hence are not uniform state to state).

33. See generally *United States v. Hayes*, 482 F.3d 749 (4th Cir. 2007), *rev'd*, 129 S. Ct. 1079 (2009).

34. See, e.g., *Barnes*, 295 F.3d at 1364 (holding that interpreting the Act to require a domestic relationship as an element would create a practical anomaly and make the law a nullity in many states and at the federal level); *Meade*, 175 F.3d at 220 (stating that requiring the predicate offense to have a domestic relationship as an element would make the statute a dead letter law, particularly since Massachusetts did not have a specific misdemeanor domestic assault offense).

35. See, e.g., *Barnes*, 295 F.3d at 1365 (pointing to Senator Lautenberg's floor statements to find that the "as an element" language of the Act was not intended to apply to the domestic relationship portion of the statute).

36. See *Meade*, 175 F.3d at 215 (examining statutory language, but relying on both Senator Lautenberg's statements and policy considerations to justify the court's interpretation).

37. See *id.* at 218 (stating that the defendant was convicted under a general assault and battery statute rather than a specific domestic violence statute).

that the only crimes fitting the statutory language of the Amendment were those that had, as a part of their formal definitions, elements of physical force and a domestic relationship.³⁸

The First Circuit decided that the language was plain and unambiguous.³⁹ However, the court acknowledged that the defendant's interpretation was possible, even though it declined to adopt it.⁴⁰ The court noted that although courts should not base the interpretation of a statute on floor statements, Senator Lautenberg's specifically directed statements were of particular importance.⁴¹

The court in *Meade* also supported its holding by considering alternative readings of the statute.⁴² The court noted that the defendant's interpretation would make the statute a dead letter law in most jurisdictions because only a few states' misdemeanor statutes contain relationship status as a formal element.⁴³ The court also declined to utilize Congress' employment of parallel language in other statutes to support the defendant's position.⁴⁴

The reasoning of the *Meade* court is supported by *Barnes*, another important case decided three years later.⁴⁵ In *Barnes*, the defendant was convicted under a general assault statute for attacking his son's mother.⁴⁶ The defendant argued that no law prohibited him from possessing a firearm because the definition of a MCDV required, as an element, a domestic relationship, particularly when construing the Act using the rule of last antecedent.⁴⁷

38. See *id.* (rejecting the defendant's argument that the word "element" combines the mode of aggression and the relationship with the victim into one crime).

39. See *id.* at 219 (reasoning that since the court found one plain meaning, it did not need to examine other sources of statutory interpretation).

40. See *id.* (stating that legislative history is often used to remove doubts as to other suggested meanings).

41. See *id.* (asserting that the court should pay more attention to floor statements when the statements are intended to explain how specific provisions should work).

42. See *id.* at 220 (noting that considering possible alternatives can assist in determining the persuasiveness of a statute's plain meaning).

43. See *id.* (arguing that the defendant's interpretation would inhibit the uniform and consistent application of the statute).

44. See *id.* at 220-21 (rejecting the parallel language contention because the other statutes the defendant mentioned are significantly different from the Amendment).

45. See *United States v. Barnes*, 295 F.3d 1354, 1356-57 (D.C. Cir. 2002) (noting that the issue is one of first impression for the D.C. Circuit and holding that a domestic relationship is not a required element of the predicate offense).

46. See *id.* at 1357 (showing that the convicting court required Barnes to complete a domestic violence program).

47. See *id.* at 1360 (explaining that the rule of last antecedent—which states that qualifying phrases should only modify immediately preceding words or phrases—is flexible and does not always apply, particularly when using the rule would result in an unnatural reading). For the purposes of the Amendment, the rule would have the qualifying phrase "as an element" modify both the "use of force" and the "domestic relationship," as both phrases immediately follow the qualifier. Cf. 18 U.S.C. §

The D.C. Circuit, looking at the language, stated that the interpretation was possible, but did not support the purpose of the Amendment.⁴⁸ The court found a plain meaning in the statute, noting that its opinion was not alluding to any ambiguity in the language of the Amendment, but the imprecision of the statute's grammar.⁴⁹ Additionally, the court emphasized that the language of the Amendment was clear enough that the court did not need to rely on legislative history to find a plain meaning.⁵⁰ However, the court still pointed out that very few states have specifically targeted statutes dealing with domestic violence, as many states rely on generic assault and battery statutes, and the court referenced Senator Lautenberg's statements regarding this potential interpretative issue.⁵¹

Following the decisions in *Meade* and *Barnes*, other circuits followed suit, using the same general reasoning and explaining that there was no reason to depart from their sister circuits that had already determined the issue.⁵² State court decisions on this question have also aligned with the majority view in the circuits and similarly reflect a trend of broadly interpreting controversial parts of the Amendment.⁵³

E. United States v. Hayes: The Fourth Circuit Creates a Split

Although many federal and state courts decided that the Amendment did not require a domestic relationship as an element of the predicate offense, in 2008, the Fourth Circuit held that the federal statute did, in fact, require

922(g)(9) (2006).

48. See *Barnes*, 295 F.3d at 1363-64 (stating that simply because the word "element" was singular rather than plural was not determinative of whether the word applied to both clauses, but that rationale supported the purpose of the Amendment).

49. See *id.* at 1362 (pointing out that the dissent is incorrect in stating that the majority opinion alludes to inherent ambiguity in the language and that grammatical imprecision is not a problem when it does not result in an unnatural reading).

50. See *id.* at 1365 (stressing that the court will not use legislative history to cloud clear language, but if the language were unclear, the court could look to the legislative history).

51. See *id.* (citing Senator Lautenberg's statement that many convictions for domestic violence-related crimes are under laws that are "not explicitly identified as related to domestic violence," so law enforcement officers will not always be able to determine from the face of an individual's criminal record whether the crime was one of domestic violence).

52. See, e.g., *United States v. Belless*, 338 F.3d 1063, 1067 (9th Cir. 2003) (finding the argument regarding ambiguity and imprecision not compelling enough to cause the court to disagree with the other circuits).

53. See *King v. Wyoming Div. of Crim. Investig.*, 89 P.3d 341, 349 (Wyo. 2004) (determining that "the purpose of the law would be thwarted if the only actionable crimes" were those labeled as domestic violence statutes and "containing the element of the domestic relationship"); see also *State v. Kosina*, 595 N.W.2d 464, 467 (Wis. Ct. App. 1999) (finding, in examining its application, that the crime charged under the federal statute was not a direct consequence of the guilty plea to the state crime, but a collateral consequence, meaning the defendant did not have to be previously informed of the federal statute's effects).

the predicate offense to list a domestic relationship as an element.⁵⁴ The Fourth Circuit, much like the courts that had previously examined the issue, looked at the language of the statute and placed less emphasis on legislative history, yet reached a holding contrary to the majority of other courts.⁵⁵

In *Hayes*, the defendant was convicted in 1994 under West Virginia's general battery statute.⁵⁶ The defendant committed the battery against his wife.⁵⁷ In 2004, police officers responded to a domestic violence call and found a rifle in the defendant's home after he consented to a search.⁵⁸ The trial court convicted the defendant under the Lautenberg Amendment and the defendant appealed.⁵⁹

On review, the Fourth Circuit emphasized the particular language of the federal statute in holding that a domestic relationship must be a statutorily specified element of the predicate offense.⁶⁰ In looking at the language and syntax of the Amendment, the Fourth Circuit determined that since the phrases delineating the use of physical force and the domestic relationship were not separated by punctuation, Congress had purposefully drafted the Amendment to require both factors as essential and necessary elements of the offense.⁶¹

Although the Fourth Circuit stated that the natural reading of the statute required a domestic relationship as an element of the predicate offense, the court conceded to an examination of the legislative history.⁶² The court acknowledged that Senator Lautenberg and other legislators put forth the view that the Amendment's purpose was to close a loophole and subject domestic violence misdemeanants to the same firearm restrictions imposed

54. See *United States v. Hayes*, 482 F.3d 749, 759 (4th Cir. 2008) (arguing that the statute requires a domestic relationship and that this requirement is consistent with legislative intent).

55. Compare *Hayes*, 482 F.3d at 752 (finding that the text and structure of the statute clearly require a predicate offense to have, as a formal element, one of the examples of domestic relationships), with *Barnes*, 295 F.3d at 1362 (finding that the statute plainly requires only one element, the use or attempted use of force).

56. See *Hayes*, 482 F.3d at 750 (noting that Hayes' sentence was one year of probation for the misdemeanor battery).

57. See *id.* (indicating that Hayes lived with his wife and child).

58. See *id.* (declaring that Hayes was indicted on three counts of unlawful possession of a firearm).

59. See *id.* at 751 (restating Hayes's challenge that his 1994 conviction was not a MCDV).

60. See *id.* at 752 (asserting that a statute is conclusive when it contains an unambiguous, plain meaning, unless that meaning is at odds with the legislative intent).

61. See *id.* at 753 (finding that the phrase "has, as an element" applied to both the clause regarding physical force and the clause regarding a domestic relationship, due to the lack of a semicolon or other structure separating the two clauses).

62. See *id.* at 756 (explaining that the court is obliged to apply a statute as written when there is a clear meaning, unless the literal application of the statute would be contrary to the drafters' intentions).

on felons.⁶³ However, the court determined that Senator Lautenberg only made one statement addressing the issue of whether a domestic relationship was a required element of the predicate offense and that the available legislative history, being so sparse, was not reliable for determining congressional intent.⁶⁴ The court decided that a plain reading of the statute was not at odds with any legislative intent because the court found no determinative legislative history suggesting that a domestic relationship was not a necessary element for the predicate offense to qualify as a MCDV.⁶⁵ The court held that a domestic relationship was a required element of the predicate offense in order for the Amendment to apply, contradicting the other circuits and resulting in a circuit split.⁶⁶

F. The Supreme Court Overturns United States v. Hayes

1. The Reasoning

After the Fourth Circuit created a circuit split, the Supreme Court granted certiorari to determine whether a predicate offense required a domestic relationship element for the purposes of the Amendment.⁶⁷ The Court first began by interpreting the specific language of the statute to determine that a domestic relationship does not need to be a formal element of the predicate offense.⁶⁸ The Court also focused on practical considerations to support its reading of the statute and drew the same conclusion as the majority of the circuits in holding that a domestic relationship element is not required.⁶⁹

The Court addressed the congressional intent to close the loophole and subject domestic violence misdemeanors to the same firearm restrictions

63. *See id.* at 757 (noting that the most common domestic violence offenses are usually misdemeanors under state law).

64. *See id.* at 758 (holding that the lack of congressional hearings on the statute rendered the legislative history insufficient to contradict the court's plain language interpretation of the Amendment).

65. *See id.* at 759 (averring the court is not at liberty to rewrite the statute to say what it "think[s]" Congress intended).

66. *Compare id.* at 752 (reversing the lower court decision in finding that the offense did not fit the definition of a MCDV because it did not specify a domestic relationship as an element), *with* *United States v. Meade*, 175 F.3d 215, 219 (1st Cir. 1999) (finding that a domestic relationship is not a required element of the predicate offense under the Amendment).

67. *See* *United States v. Hayes*, 129 S. Ct. 1079, 1083 (2009) (acknowledging that the Fourth Circuit was the only circuit to find that a domestic relationship was a required element).

68. *See id.* at 1087 n.7 (relaying that the most sensible and natural reading of the statute is that any conviction for "battering a spouse or other domestic victim" is one of domestic violence).

69. *See id.* (noting that the statute would be a dead letter law in many jurisdictions under the Fourth Circuit's reading).

as felons.⁷⁰ The Court acknowledged that the Fourth Circuit's decision would render the statute meaningless in many states, particularly since Congress passed the Amendment at a time when only a minority of states had criminal statutes specifically addressing domestic violence.⁷¹

The Court, going against the Fourth Circuit's opinion and even those of some other circuits, placed heavy emphasis on the Senator's floor statements.⁷² In using Senator Lautenberg's statements to justify its reading of the statute, the Court pointed to the lack of additional legislative history on the matter.⁷³ By finding there was, in fact, legislative history to support the Court's reading of the statute and no legislative history opposing its reading, the Court held that a domestic relationship is not required as an element of the predicate offense when applying the Amendment.⁷⁴

2. *The Dissenting Opinion of Justice Roberts, Joined by Justice Scalia*

The Supreme Court's decision to overturn the Fourth Circuit's holding was not unanimous.⁷⁵ Justices Roberts and Scalia dissented on grounds of statutory interpretation and policy.⁷⁶ The Justices' arguments regarding statutory construction paralleled those of the Fourth Circuit, but the Justices also introduced different and novel arguments regarding the statute's legislative history and its practical application.⁷⁷

First, the dissent argued that the majority improperly relied on the floor statements because there was no reason to accord the statements such great

70. *See id.* (stating that the Fourth Circuit's decision would frustrate Congress's purpose because it would free misdemeanants of domestic violence, convicted under statutes that did not specify a domestic relationship as an element, from the intended scope of the Amendment).

71. *See id.* (explaining that it is unlikely that Congress only intended to include defendants who had been convicted specifically under domestic violence statutes when only one-third of states had specific domestic violence statutes).

72. *See id.* at 1088 (noting Senator Lautenberg's statements that domestic violence offenders are often convicted under related criminal statutes, such as assault, which do not have a domestic relationship as part of their express definition).

73. *See id.* (stating that although floor statements of the chief sponsor are not controlling, nothing in the legislative history suggests that Congress intended the statute to apply only to domestic abusers convicted under domestic violence-specific statutes).

74. *See id.* at 1089 (reversing the Fourth Circuit and remanding the case).

75. *See id.* at 1089-90 (Roberts, C.J., dissenting) (arguing that the majority incorrectly utilized tools of statutory interpretation and that the domestic relationship is a required element of the predicate offense for the purposes of the statute).

76. *See id.* at 1089-92 (listing the reasons for dissent: erroneous plain meaning analysis that relied on an incorrect view of statutory structure, legislative history, and the rule of lenity, plus, the potential for unfairness in practical application).

77. *Id.* at 1092.

significance.⁷⁸ The dissent also disagreed with the Court's use of only one sponsor's statements, stating that the Court ignored the complexities of legislative action.⁷⁹

Second, the dissent argued that the Court's decision would cause problems in the practical application of the statute because law enforcement agencies would have to undertake an elaborate factfinding process.⁸⁰ The dissent, however, did not address any of the alleged unfairness or specific difficulties that it contended the majority's holding would create.⁸¹

III. ANALYSIS

A. The Fourth Circuit Incorrectly Interpreted the Lautenberg Amendment when There Was No Compelling Reason to Part with the Reasoning of Other Circuits

The Fourth Circuit did not have a compelling reason for holding against its sister circuits in *Hayes* that a domestic relationship is a required element of the Lautenberg Amendment. The Fourth Circuit found its own interpretation of the statute to be clear and unambiguous, which created an unwarranted circuit split.⁸²

The definitions section of the Gun Control Act specifically enumerates only two factors necessary for an underlying offense to be considered a MCDV.⁸³ The offense must be a misdemeanor under state or federal law and must have, "as an element, the use or the attempted use" of physical force committed against an individual with whom the defendant is in a domestic relationship.⁸⁴ The Fourth Circuit, however, created an addition, interpreting the Amendment to require the element of a specified domestic

78. *See id.* (contending that floor statements have "inherent flaws" when used "as guides for legislative intent," particularly when nothing else indicates Congressional intent).

79. *See id.* (explaining that legislative enactments are the result of many compromises).

80. *See id.* (asserting that it is easier to look at an individual's record of conviction and examine the predicate's statutory definition than to delve into the underlying facts to determine if the offense was a crime of domestic violence).

81. *See id.* (presenting only cases where the Court had examined a predicate offense to determine the existence of a prior conviction or the element of charged crime, but presenting no cases where the Court had to analyze the nature of the prior conduct involved).

82. *See United States v. Hayes*, 482 F.3d 749, 751 (4th Cir. 2007) (stating that whether a domestic relationship was a required element of the underlying offense was a question of pure statutory interpretation).

83. 18 U.S.C. § 921(a)(33)(A) (2006).

84. § 921(a)(33)(A)(i)-(ii).

relationship in the underlying crime.⁸⁵ The court found this interpretation to be clear and unambiguous from the grammatical structure of the statute itself.⁸⁶

This argument is weak because the other circuits examined the plain language and held that the domestic relationship was not an element.⁸⁷ A statute cannot have an unambiguous meaning when circuits facing the issue interpreted the statute in a directly opposite manner from the so-called unambiguous meaning. The Fourth Circuit is not correct in arguing that the plain meaning of the statute requires a domestic relationship as an element. However, other circuits have acknowledged that, when looking at the plain and natural meaning of the statute, a Fourth Circuit interpretation is possible.⁸⁸ Even so, the Fourth Circuit failed to consider other possible plain readings of the statute.⁸⁹

The Fourth Circuit, while acknowledging other circuits' holdings, dismissed their reasoning when examining the statute's plain meaning.⁹⁰ Even though other circuits' decisions are merely persuasive and not binding, those circuits have emphasized the importance of following the prior holdings, when possible, at the circuit level.⁹¹ A possible difference in using the plain meaning canon of statutory interpretation does not justify creating a circuit split and an inequitable application of the law throughout the nation.⁹² Courts have an interest in uniformly defining a term in a federal statute.⁹³ A vast majority of circuit court decisions found that a

85. See *Hayes*, 482 F.3d at 753 (stating that the lack of punctuation separating the domestic relationship clause from the use of force clause makes a domestic relationship an essential element of the crime). *Contra* *United States v. Meade*, 175 F.3d 215, 218 (1st Cir. 1999) (asserting that the fact that the word "element" in the statute was singular, not plural, supported the court's holding that a domestic relationship was not a required element).

86. See *Hayes*, 482 F.3d at 756 (stating that the most natural and plain reading of the statute requires the offense to have the relationship component as an element).

87. Compare *id.*, with *United States v. Griffith*, 455 F.3d 1339, 1342 (11th Cir. 2006) (examining neighboring provisions in the Act to resolve any possible ambiguity in the Amendment), *United States v. Barnes*, 295 F.3d 1354, 1365-66 (D.C. Cir. 2002) (holding that the natural reading of the text does not require the domestic relationship to be an element of the underlying offense), and *Meade*, 175 F.3d at 218 (finding that the statute unambiguously does not require a domestic relationship as an element).

88. See *United States v. Belless*, 338 F.3d 1063, 1067 (9th Cir. 2002) (stating that Congress could have made a syntactical error in drafting the Amendment).

89. See *Hayes*, 482 F.3d at 752-53 (focusing only on the grammatical and structural properties of the statute as opposed to any indecisiveness in meaning).

90. See *id.* at 754-56 (presenting the analyses of *Barnes* and *Belless* as "erroneous" readings of the statute).

91. See, e.g., *Barnes*, 295 F.3d at 1362 (noting that other courts' similar determinations based upon plain reading bolster its own).

92. See *Belless*, 338 F.3d at 1067 (finding that a possible syntactical error in the drafting of a statute is not a compelling reason to depart from other circuit opinions).

93. See *Taylor v. United States*, 495 U.S. 575, 592 (1990) (stating that certain

domestic relationship was not a required element of the predicate offense, and their reliance on each others' holdings implies that this definition of the Amendment, rather than the Fourth Circuit's definition, is correct.⁹⁴

In examining this issue, each of the circuits placed heavy emphasis on the statute's text and grammar.⁹⁵ Supporters of the Fourth Circuit's holding argue that because each court had taken such an extensively text-based approach in interpreting the statute's plain meaning, the courts unnecessarily relied on extrinsic sources to determine the Amendment's application.⁹⁶ On the contrary, the other circuits did not assert that their textualist approaches established a single plain meaning, and the courts sometimes acknowledged that another meaning was possible even when a single meaning seemed apparent.⁹⁷ The Fourth Circuit, therefore, was incorrect in justifying its holding by stating that the plain and most natural reading of the statute required a domestic relationship as an element of the predicate offense and by barely using extrinsic sources in its interpretation.⁹⁸

The other circuits acknowledged that the use of the extrinsic sources supplemented their analyses of the plain meaning of the statute.⁹⁹ Therefore, the Fourth Circuit incorrectly interpreted the Amendment and demonstrated no compelling reason for rejecting other circuit opinions when it held that a domestic relationship is a required element for a predicate offense.

terms, such as "burglary," when used in federal statutes, should be uniformly defined to encourage equitable application of the law).

94. See *United States v. Griffith*, 455 F.3d 1339, 1346 (11th Cir. 2006) (relying heavily on eight other circuit court opinions and its own precedent in holding that a domestic relationship does not need to be an element of the prior offense, but that it must exist in the facts underlying the predicate crime).

95. See, e.g., *Barnes*, 295 F.3d at 1360 (breaking down the statute's language and considering specific interpretation rules, such as the rule of last antecedent).

96. See, e.g., Melanie C. Schneider, *The Imprecise Draftsmanship of the Lautenberg Amendment and the Resulting Problems for the Judiciary*, 17 COLUM. J. GENDER & L. 505, 515 (2008) (arguing that since courts took a textualist approach and refused to declare the Amendment absurd or ambiguous, they should not have relied so extensively on extrinsic sources, such as Senator Lautenberg's floor statements).

97. See, e.g., *Belless*, 338 F.3d at 1067 (acknowledging that Congress may have made a syntactical error, which could make the reading of the statute so as to require a domestic relationship element at least plausible).

98. See *United States v. Hayes*, 482 F.3d 749, 756 (4th Cir. 2007) (maintaining that because the statute has a plain meaning, the court is obligated to apply it unless the literal application is demonstrably at odds with the legislative intent).

99. See *Barnes*, 295 F.3d at 1364-65 (stating that the court's interpretation of the natural meaning is influenced by the practical anomaly that the opposite interpretation would create and stating that the issue is confirmed by Senator Lautenberg's floor statements); *United States v. Kavoukian*, 315 F.3d 139, 144-45 (2d Cir. 2002) (finding that the legislative history clears up any ambiguity because it supports the court's interpretation of the plain meaning).

B. The Supreme Court Correctly Placed Great Importance on Senator Lautenberg's Specific Floor Statements

The Supreme Court correctly emphasized the importance of Senator Lautenberg's statements in interpreting the Amendment, especially considering the dearth of other legislative history concerning its enactment.¹⁰⁰ The majority of circuits acknowledged the ambiguity that potentially existed in the Amendment's format, so the courts correctly examined the legislative history to determine the proper interpretation.¹⁰¹ In interpreting the statutory definition of a MCDV, the courts looked to the Amendment's legislative history, which consisted mainly of Senator Lautenberg's floor statements.¹⁰² Additionally, even when the statute's plain language reveals a seemingly unambiguous meaning that is not absurd, a court may still use other sources to confirm its take on the proper meaning.¹⁰³

Asserting that the plain meaning it discovered did not contradict legislative intent, the Fourth Circuit was able to impose the domestic relationship element because it characterized the legislative history as unreliable.¹⁰⁴ The court found that the legislative history was insufficient to indicate any clear legislative intent that would require the court to disregard the supposedly unambiguous plain meaning established by the Fourth Circuit.¹⁰⁵ The Amendment had been included in a larger bill on an unrelated topic.¹⁰⁶ Yet in actuality, because ambiguity possibly exists in the statute's plain language, the legislative history is particularly important in establishing the meaning the drafters intended to give to the statute. This is especially true in light of the Supreme Court's observation that although

100. Adam Piore, *Republicans Give up Fight on Gun Ban; Lautenberg Bill Targets Batterers*, THE RECORD, Sept. 29, 1996, at A17 (discussing how Senator Lautenberg fought Republicans' attempts to strip-down the bill and effectively close the existing loophole in the Gun Control Act).

101. See *Belless*, 338 F.3d at 1067 (suggesting that the statute's language could have different meanings and that each meaning should therefore be compared to congressional intent).

102. See, e.g., *Kavoukian*, 315 F.3d at 144-45 (attributing the plain meaning that best expresses Congress' intention to be the one supported by the legislative history of the Amendment).

103. See *United States v. Meade*, 175 F.3d 215, 219 (1st Cir. 1999) (justifying the use of secondary sources to remove lingering doubts, even when the court has already found a plain meaning).

104. See *United States v. Hayes*, 482 F.3d 749, 756-59 (4th Cir. 2007) (stating that a court cannot rewrite the definition of a MCDV based solely on what it supposes Congress meant).

105. See *id.* at 758 (pointing to the lack of congressional hearings on the statute and the idea that the Amendment was passed as a part of a last minute series of congressional maneuvers).

106. See Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3001 (1996) (showing that the main focus of the bill was fiscal).

the legislative history was minimal and that the remarks of a single senator are not usually controlling, the legislative record on the Amendment was otherwise silent.¹⁰⁷

Although the legislative record regarding the Amendment is indeed minimal, evidence suggests that Congress did not intend to require a domestic relationship as an element of the predicate offense and no evidence exists that argues otherwise.¹⁰⁸ The main legislative history that exists on the record is the chief sponsor's floor statements, which are directed specifically toward the provision in question.¹⁰⁹ The majority of circuits and the Supreme Court properly used these specific statements to influence their interpretation of the Amendment.¹¹⁰ In fact, Senator Lautenberg's statements imply that law enforcement agents and prosecutors should not hesitate to inquire into the underlying facts of a violent misdemeanor conviction to ascertain whether it involved domestic violence if this is not apparent from the formal elements of the offense.¹¹¹

It is important that Senator Lautenberg's statements were specifically directed toward this particular provision and that the Senator had the foresight to predict that the statute, as drafted, might cause uncertainty, despite the fact that the comments came from only a single sponsor.¹¹² When analyzing legislative history, courts have held that explanations that are directed towards the implementation of specific provisions are more

107. See *United States v. Hayes*, 129 S. Ct. 1079, 1088 (2009) (discerning that nothing in the minimal legislative history suggests that Congress intended to confine the Amendment to abusers who violated statutes formally containing a domestic relationship element and that the available legislative evidence suggests the opposite).

108. See *id.* at 1087 (noting that such a limitation would frustrate Congress' purpose of closing the dangerous loophole).

109. See 142 CONG. REC. S11878 (daily ed. Sept. 30, 1996) (statement of Sen. Lautenberg) (stating that many convictions for domestic violence-related crimes are under criminal statutes that are not explicitly domestic violence-related and encouraging law enforcement agencies to thoroughly investigate misdemeanor convictions in an individual's record to ensure an absence of a history of domestic violence).

110. See *Hayes*, 129 S. Ct. at 1087 (applying Senator Lautenberg's statement that he intended to close the gap between the many people who engage in serious spousal or child abuse who are not convicted of felonies and the then-existing possession laws which barred only felons); *United States v. Barnes*, 295 F.3d 1354, 1365 (D.C. Cir. 2002) (relying on Senator Lautenberg's specific statement that it would not always be possible for law enforcement to know from the face of an individual's criminal record whether the particular misdemeanor conviction involved domestic violence).

111. Cf. *United States v. Siegel*, 477 F.3d 87, 92-93 (3d Cir. 2007) (citing *United States v. Shepherd*, 544 U.S. 13, 16-17 (2005)) (holding, in the context of the Amendment's use of force provision, that a presentence report is perfectly acceptable evidence to admit when a court is forced to look beyond the formal elements of the predicate act and into the underlying facts of the defendant's conduct).

112. See *United States v. Meade*, 175 F.3d 215, 219 (1st Cir. 1999) (explaining that although limitations exist on the extent to which courts may rely on an individual legislator's statements in interpreting a statute, contemporaneous statements by a sponsor are entitled to consideration even if they are not conclusive).

instructive than general statements regarding legislation.¹¹³ Senator Lautenberg's statements clearly show an intention to include convictions for offenses that do not contain a domestic relationship as an element; he specifically pointed out that many domestic violence-related convictions are not obtained under statutes that mention domestic violence and that law enforcement agencies should make reasonable efforts to ensure whether an offense involved domestic violence.¹¹⁴

Furthermore, the fact that the senator's floor statements align with the plain language meaning that the majority of courts established supports the interpretation that a domestic relationship is not required as an element of the underlying offense.¹¹⁵ When more than one plausible, plain meaning exists, it is helpful to examine legislative history to determine the congressional intent behind the word or phrase.¹¹⁶ In interpreting the Amendment, the legislative intent is clear from the legislative record. Few states have actual domestic assault statutes; rather, individuals convicted of domestic violence-related crimes are convicted under general assault or similar offense statutes.¹¹⁷ Therefore, requiring a domestic relationship as an element of the predicate offense would render the Amendment a nullity in most states.¹¹⁸

Critics of this 'dead letter' argument counter that Congress intended for the Amendment to encourage more states to enact specific and separate domestic assault statutes for convicting domestic violence offenders.¹¹⁹

113. See *id.* (noting that "specificity breeds credibility" because there is a reason that floor statements would be directed to specific provisions).

114. See 142 CONG. REC. S11878 (daily ed. Sept. 30, 1996) (statement of Sen. Lautenberg) (stating that the existence of domestic violence will not always be clear on the face of the record); see also *United States v. Kavoukian*, 315 F.3d 139, 145-46 (2nd Cir. 2002) (reasoning that many statutes used to combat domestic violence lack specific language, such that requiring a domestic relationship as an element would render the Amendment nearly meaningless, even under federal domestic abuse law).

115. See *Meade*, 175 F.3d at 219 (citing *Brock v. Pierce County*, 476 U.S. 253, 263 (1986)) (noting that floor statements can be evidence of legislative intent when consistent with the plain meaning of statutory language).

116. See *United States v. Belless*, 338 F.3d 1063, 1067 (9th Cir. 2003) (appreciating that the legislative process may have subordinated clear writing to some other goal and that the construction that attributes a rational purpose to Congress is the proper interpretation).

117. See *United States v. Barnes*, 295 F.3d 1354, 1364 (D.C. Cir. 2002) (remarking that fewer than half the states have domestic assault statutes that include, as formal elements, both the use of force and a specified relationship between the offender and the victim); see also *United States v. Smith*, 171 F.3d 617, 623 (8th Cir. 1999) (averring that when a state has a separate domestic assault statute and an individual is convicted of a domestic violence-related crime under the general assault statute, the Amendment is still applicable to the general assault conviction).

118. See *United States v. Hayes*, 129 S. Ct. 1079, 1087 (2009) (stating that at the time of the Amendment's enactment, only about one-third of the states had statutes which specifically mentioned a domestic relationship as an element).

119. See *Schneider*, *supra* note 96, at 546 (arguing that Congress may have intended

After all, the legislative history presents a clear intention to close the dangerous loophole that existed by allowing those convicted of misdemeanor crimes of domestic violence to possess firearms.¹²⁰ However, as previously noted, no evidence in the statutory language or the legislative record demonstrates an intent to incentivize legislative changes at the state level, and when the court settles on one natural meaning, the court selects the construction that parallels the evidenced legislative intent, not a hidden or unstated intention.¹²¹

Finally, the Fourth Circuit, without explicitly relying on the rule of lenity, attempts to use the rule to bolster its holding by asserting that the rule of lenity would lead it to the same outcome.¹²² The court, however, inappropriately invokes the rule of lenity in *Hayes* because its use is inconsistent with express congressional intent and the statutory language is not hopelessly ambiguous.¹²³ The Supreme Court, on the other hand, did not discuss the rule of lenity in its analysis of *Hayes*.¹²⁴ Therefore, if the Fourth Circuit truly believed it found the most natural meaning through statutory construction, it cannot use the rule of lenity in bolstering its holding, because according to the Fourth Circuit, the statute was not ambiguous enough to even look to legislative history for clarification. Further, even if it had noted ambiguity in the plain language, it cannot use the rule of lenity when it has refused to place the necessary importance on the legislative history prior to applying the rule.

C. The Dissent Reached a Misguided Conclusion in Finding that the Sponsor's Statements Were Irrelevant

The dissent in *Hayes* incorrectly posited that Senator Lautenberg's floor statements were insufficient for the purpose of interpreting the Amendment. Chief Justice Roberts' dissent argues that the majority

to create a long-term solution by incentivizing state legislatures to specifically criminalize domestic violence).

120. See *Hayes*, 129 S. Ct. at 1087-88 (maintaining that firearms and domestic strife are a potentially deadly combination).

121. See *Belless*, 338 F.3d at 1067 (declaring that the court must choose the construction that attributes a rational purpose to Congress).

122. See *United States v. Hayes*, 482 F.3d 749, 759 (4th Cir. 2007) (stating that the rule of lenity, which says that ambiguities in a criminal statute must be resolved in favor of the defendant, requires the court to hold that a domestic relationship must be an element of the predicate offense).

123. See *United States v. Kavoukian*, 315 F.3d 139, 144 (2d Cir. 2002) (holding that the rule of lenity is inapposite when congressional intent is evident).

124. See *Hayes*, 129 S. Ct. at 1089 (pronouncing that the rule of lenity does not apply because the language of the statute is not grievously ambiguous); see also *Kavoukian*, 315 F.3d at 144 (refusing to apply the rule of lenity because no reasonable doubt persisted about the statute's intended scope after resorting to its language and structure, legislative history, and motivating policies).

incorrectly relied on Senator Lautenberg's floor statements when interpreting the Amendment.¹²⁵ Although in certain cases, a single sponsor's statements should not serve as a basis for statutory interpretation, the Supreme Court majority correctly utilized Senator Lautenberg's statements in *Hayes*.

The dissent correctly argues that, ordinarily, divining the broad purpose of legislation according to a single sponsor's objective can ignore the complexities of the legislative process.¹²⁶ Admittedly, legislative action is often the result of a compromise between competing interests.¹²⁷ Courts generally look for a clear direction when using congressional intent as a means of interpretation.¹²⁸ This sensible means of statutory interpretation encounters practical difficulty most often in cases where the sponsor's intent appears to disregard the plain language of the statute.¹²⁹ Other cases demonstrate various situations in which the Court will not place any weight on a sponsor's statements. For example, the Court ignored a congressional statement when the person speaking was not the sponsor of the legislation at issue, but instead, the author of a similar bill containing different, less restrictive provisions.¹³⁰ The Court also ignored a sponsor's floor statements when they did not specifically apply to the provision in question.¹³¹ In that case, the statements were not clear enough to provide legitimate support for the proposed interpretation.¹³²

In *Hayes*, Senator Lautenberg's floor statements are not contrary to the plain meaning of the statute; rather, Senator Lautenberg's objective

125. See *Hayes*, 129 S. Ct. at 1092 (Roberts, C.J., dissenting) (arguing that relying on a single legislator's objective does not reflect the true nature of legislative action, which is the product of compromise reached by competing interests).

126. See *id.* (expressing that the majority inappropriately took the sponsor's objective to represent the entirety of Congress' manifest purpose).

127. See *Bd. of Governors of the Fed. Reserve Sys. v. Dimension Fin. Corp.*, 474 U.S. 361, 373-74 (1986) (arguing that although "Congress may be unanimous" in intending to eradicate "social or economic evil," individual members may have very different views on a solution).

128. See, e.g., *United States v. Bass*, 404 U.S. 336, 339 (1971) (refusing to adopt a broader meaning of the statute in the absence of clearer direction from Congress).

129. See *Dimension Fin. Corp.*, 474 U.S. at 374 (noting that the invocation of the legislature's "plain purpose" at the expense of the statute's terms ignores the compromise process and prevents the effectuation of true congressional intent).

130. See *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 118-19 (1980) (explaining that the statement of a non-sponsor of the ultimately-enacted bill is an unreliable indicator of congressional intent).

131. See *Bass*, 404 U.S. at 345 (finding that the government could not use a congressional statement to argue for removal of a jurisdictional nexus when the law explicitly contained a commerce clause provision and the sponsoring senator never spoke on the provision).

132. See *id.* at 346 (recognizing that the sponsor's statements were ambiguous regarding the issue in question and only created a "mutually destructive dialectic" rather than assisting in statutory interpretation).

parallels the plain meaning found by the Supreme Court and the majority of the circuit courts.¹³³ The majority did not use the floor statements as the *only* basis for its holding, but simply used the statements to buttress the majority's plain reading.¹³⁴ The Court did not ignore the statute's plain meaning and specific terms when it examined the purpose of the legislation; the Court first analyzed the statute's text and structure to find a plain meaning and subsequently supported its conclusion by demonstrating congressional intent through legislative history.¹³⁵

Ordinarily a single legislator's statements are not controlling.¹³⁶ However, only minimal legislative history exists on the record for this Amendment.¹³⁷ Senator Lautenberg, however, was not only a general sponsor of the Amendment, but a main sponsor of the specific provision in question.¹³⁸ Furthermore, Senator Lautenberg's floor statements should be considered the definitive congressional discussion on the issue because there were no other statements made regarding the Amendment and there were no rebuttals to Senator Lautenberg's comments.¹³⁹

The Court has held that a sponsor's statements are irrelevant when they

133. See *United States v. Hayes*, 129 S. Ct. 1079, 1088-89 (2009) (citing Senator Lautenberg's floor statements and observing that a domestic relationship would often not be a designated element of the predicate offense, which supports the Court's chosen plain meaning); see also *United States v. Barnes*, 295 F.3d 1354, 1365 (D.C. Cir. 2002) (agreeing with Senator Lautenberg's statement that law enforcement authorities would not always know "from the face of a criminal record whether a conviction" involved domestic violence and using this statement in support of the court's natural reading of the statute).

134. See *Hayes*, 129 S. Ct. at 1087-89 (referring to Senator Lautenberg's floor statements to inform its holding in terms of practical considerations and the broadly remedial purposes of the Amendment).

135. Compare *id.* at 1084-87 (utilizing various textualist approaches in interpreting the Amendment before referring to external sources), with *Bd. of Governors of the Fed. Reserve Sys. v. Dimension Fin. Corp.*, 474 U.S. 361, 373 (1986) (critiquing the Board's "reasonable interpretation" of statutory language: the meaning the Board gave to the term was at odds with its ordinary usage and the Board disingenuously cited the "policy of the [Bank Holding Company Act] as a whole" while ignoring the plain language of the specific provision).

136. See *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 118 (1980) (establishing that the statements of a single sponsor who only generally sponsored the bill and did not draft its language carried no weight).

137. See *Hayes*, 129 S. Ct. at 1088 (announcing that even though a sponsor's statements are only persuasive, no evidence on the legislative record supports a contrary interpretation).

138. Compare 142 CONG. REC. S11876 (daily ed. Sept. 30, 1996) (statement of Sen. Lautenberg) (identifying himself as the author of the provision which prohibited anyone convicted of a MCDV from possessing firearms), with *Consumer Prod. Safety Comm'n*, 447 U.S. at 118 (holding that the senator's statements were irrelevant because he was merely a general sponsor).

139. Cf. *James v. United States*, 550 U.S. 192, 201 (2007) (holding that the Court could not use proffered legislative history of the original bill because it was not Congress' last word on the issue and the language in question had been added subsequently to expand the scope of the bill).

are unclear and do not specifically apply to the issue at hand.¹⁴⁰ However, Senator Lautenberg made his floor statements for the purpose of clarifying the meaning of the provision in the Amendment defining a MCDV.¹⁴¹ Additionally, a senator's floor statements that are directed to specific provisions carry more weight than general floor statements regarding a statute as a whole.¹⁴²

Courts have a history of referring to sponsor's floor statements specifically when considering the Gun Control Act.¹⁴³ In *Taylor v. United States*, the Supreme Court closely examined the legislative history of the Act to determine what constituted a violent felony and whether the definition included a non-violent burglary.¹⁴⁴ The Court specifically utilized a senator's floor statements in holding that the statute's language would not categorically exclude a burglary from being a violent felony.¹⁴⁵

Since Senator Lautenberg's floor statements were: directed towards the specific provision; made by the sponsor who authored the enacted provision; not at odds with the statute's plain meaning; and not the sole basis for the Court's interpretation of the Amendment, the dissent incorrectly refused to find significance in Senator Lautenberg's floor statements.

D. The Dissent's Practical Considerations and Implications Are Not Problematic when the Majority Interpretation Mirrors Congressional Intent

The *Hayes* dissenters' second argument for rejecting the majority

140. See *United States v. Bass*, 404 U.S. 336, 345-46 (1971) (dismissing the sponsor's statement because it did not relate directly to or clarify the issue); see also *Consumer Prod. Safety Comm'n*, 447 U.S. at 119-20 (finding that congressional statements are not authoritative when the statements were not intended to address the issue in question but another issue completely).

141. Compare 142 CONG. REC. S11876 (statement of Sen. Lautenberg) (specifying that the face of a criminal record may not always show that a conviction involved domestic violence, for example, when the defendant pleaded down to lesser offense), with *Bass*, 404 U.S. at 345 (opining that the senator's floor statements were too general and not targeted at the relevant provision so as to be a reliable interpretive guide).

142. See *United States v. Meade*, 175 F.3d 215, 219 (1st Cir. 1999) (insisting that a court should pay more attention to statements explaining specific provisions because their "specificity lends credibility").

143. See *Taylor v. United States*, 495 U.S. 575, 590 n.5 (1990) (highlighting a senator's floor statements to interpret another definition in the Gun Control Act); see also *United States v. Nason*, 269 F.3d 10, 16-17 (1st Cir. 2001) (using, to support a circuit court's plain reading of the use of force element, Senator Lautenberg's targeted statement that acts like "cutting up a credit card with scissors" were not crimes of violence for the purposes of the Amendment).

144. 495 U.S. at 581-90.

145. See *id.* at 581 (noting that the sponsor's floor statements acknowledged that although burglary is generally non-violent, the character of a burglary can change rapidly).

holding is that the Court's interpretation would create unfairness and problems in practical application.¹⁴⁶ The dissent argues that due to judicial precedent, the Court must embrace the categorical approach, where courts look only to statutory elements of a predicate offense in interpreting the statute.¹⁴⁷

Generally, the Court prefers a categorical approach when examining predicate offenses.¹⁴⁸ Undoubtedly, under certain circumstances, the categorical approach is appropriate because a factual approach can cause practical difficulties.¹⁴⁹ The Court has properly refused to require an elaborate factfinding process when nothing in the legislative history supports such a requirement.¹⁵⁰

Although this is the general approach, the Court has stated that certain situations will require a factual approach: *Hayes* constitutes one of these situations.¹⁵¹ First, the minimal legislative history here demonstrates a clear congressional intent to require the so-called elaborate factfinding process.¹⁵² Second, this is not a situation where the factfinding process would necessarily be overly burdensome.¹⁵³ For the purposes of

146. See *United States v. Hayes*, 129 S. Ct. 1079, 1092-93 (2009) (Roberts, C.J., dissenting) (arguing that the Court is incorrect in not taking the "categorical approach" to predicate offenses, which requires the judge or jury to examine the statutory elements of the predicate offense in the abstract, rather than inquire into the underlying facts of a defendant's conviction).

147. See *id.* (stating that the factual approach can create difficulties, increase potential unfairness, and require elaborate factfinding processes).

148. See *Taylor*, 495 U.S. at 602 (finding that although courts should take a categorical approach to predicate offenses, there is a narrow range of situations where courts may look to the underlying facts); see also *Nason*, 269 F.3d at 14 ("[T]his case differs from *Taylor* in that it deals with the examination of a predicate offense that constitutes a formal element of the charged crime, whereas *Taylor* deals with the examination of predicate offenses to determine the applicability of provisions mandating enhanced sentences.").

149. See *Taylor*, 495 U.S. at 601-02 (providing examples of the difficulties a factual approach may create, such as when a trial court and a sentencing court make different factual conclusions).

150. See *id.* at 601 (claiming that if Congress meant to adopt an approach that would require the sentencing court to engage in an elaborate factfinding process, it would have been mentioned in the legislative history); see also *Shepard v. United States*, 544 U.S. 13, 15 (2005) (noting that the rule of reading statutes embraces the categorical approach and limits the scope of judicial factfinding to avoid serious risks of unconstitutionality).

151. See *Taylor*, 495 U.S. at 602 (noting that there is a narrow range of cases that require courts to look beyond the mere conviction, particularly when juries have considered facts in determining the conviction).

152. Compare 142 CONG. REC. S11878 (daily ed. Sept. 30, 1996) (statement of Sen. Lautenberg) (urging law enforcement authorities to thoroughly investigate misdemeanor convictions to ensure that none involve domestic violence), with *Taylor*, 495 U.S. at 601 (finding nothing in the legislative history to indicate that Congress intended to require courts to engage in a factfinding process rather than consider only the statutory elements of a predicate offense).

153. See *United States v. Hayes*, 129 S. Ct. 1079, 1088 n.8 (2009) (pointing out that

determining if the predicate crime was one of domestic violence, the answer may be as simple as examining the record of the offense or a charging document to find the victim's last name or residency, which could indicate a spousal or familial relationship.

E. A Domestic Relationship Is Not a Required Element of the Predicate Offense Because Application of the Federal Law Would Improperly Depend on State Law

A court should not interpret a federal statute in a manner which causes the statute to rely completely on state law.¹⁵⁴ The majority in *Hayes* points out that it is impractical and implausible to require a domestic relationship as an element of the predicate offense for the purposes of the Amendment.¹⁵⁵ It is true that, at times, Congress passes unwise and poorly written legislation, and the courts, rather than attempting to fix the legislation according to congressional intent, should uphold the statute according to the meaning the courts determine from the plain language.¹⁵⁶ Although courts should not attempt to cure drafting issues in federal legislation, they should not read federal statutes in a manner that makes the application of the federal law dependent on state law.¹⁵⁷

The dissent argues for a categorical approach that examines only the statutory elements of the predicate offense, but this appears to ignore the maxim that application of a federal law should not depend on state law.¹⁵⁸ The dissent appears to suggest that when pursuing convictions under the Amendment, law enforcement agents, prosecutors, and courts should rely

generally, an elaborate factfinding process would not be necessary to determine whether a domestic relationship existed between the perpetrator and the victim).

154. See, e.g., *United States v. Weyhrauch*, 548 F.3d 1237, 1246 (9th Cir. 2008) ("Congress has a legitimate interest in ensuring that . . . the happenstance of whether state law prohibits particular conduct should not control Congress' ability to protect federal interests through the federal . . . statutes.").

155. See *Hayes*, 129 S. Ct. at 1087 (stating that the Fourth Circuit's interpretation would have made the Amendment dead letter law upon enactment in approximately two-thirds of the states).

156. See *Bd. of Governors of the Fed. Reserve Sys. v. Dimension Fin. Corp.*, 474 U.S. 361, 374 (1986) (acknowledging that sometimes, applying a statute the way Congress has written it might create anomalies, but that the Court should simply uphold it because problems in the statute's drafting are for Congress, and not the courts, to fix); see also *United States v. Bass*, 404 U.S. 336, 344 (1971) (stating that guiding principles of statutory interpretation are not substitutes for congressional lawmaking).

157. See *Taylor*, 495 U.S. at 591-92 (illuminating that federal laws should be construed so they do not depend on state law because the application of federal law is nationwide and the federal program would be impaired if state law controlled its application).

158. See *Hayes*, 129 S. Ct. at 1092 (Roberts, C.J., dissenting) (noting that the Court has previously utilized a categorical approach in various situations, including the interpretation of the term "burglary" in the Gun Control Act).

on definitions and labels established by the states.¹⁵⁹

By relying only on the face of the criminal records and not looking further to see whether a domestic relationship existed between the perpetrator and the victim, courts will likely apply the Amendment in a disparate manner since jurisdictions have different laws for convicting perpetrators of domestic violence.¹⁶⁰ When applying the Amendment, a factual approach is appropriate because it more effectively supports a definition of misdemeanor crimes of domestic violence that would result in the uniform application of the firearms prohibition across the nation, regardless of the statute under which the individual was convicted.¹⁶¹ Although generally, the categorical approach has precedent on its side and may be simpler to apply in some circumstances, courts should not choose it where it would weaken the impact of a federal law by allowing state law to heavily dictate the federal law's application.

IV. POLICY IMPLICATIONS

The Fourth Circuit's reasoning provides individuals who are guilty of domestic violence with the opportunity to introduce a firearm into an already dangerous situation.¹⁶² According to the court, only individuals convicted under specific, state domestic violence statutes containing the requisite relationship "element" cannot possess firearms.¹⁶³ Such reasoning has two negative policy implications. First, individuals convicted of assault and battery for acts against a partner in a domestic relationship can possess firearms, freeing them from the restrictions specifically intended for them.¹⁶⁴ Second, in states without specific domestic violence statutes,

159. *But see Taylor*, 495 U.S. at 592 (insisting that the term in question should have some uniform definition independent of the labels used by various states' criminal codes).

160. *See Hayes*, 129 S. Ct. at 1087 (observing that at the time Congress enacted the Amendment, only about one-third of states had criminal statutes specifically proscribing domestic violence, and even as recently as 2009, approximately half of the states still prosecute domestic violence exclusively under general criminal statutes).

161. *See, e.g., Taylor*, 495 U.S. at 592 (noting that the federal law there would be applied unevenly depending on state law, even when states were prohibiting identical criminal conduct, as a result of the varying labels state laws place on offenses).

162. *See United States v. Hayes*, 482 F.3d 749, 750 (4th Cir. 2008) (permitting the defendant, who abused his spouse, to lawfully possess a firearm because he was convicted of battery, not domestic violence).

163. *See id.* at 759 (holding that a predicate offense, to qualify as a MCDV, must contain the domestic relationship element).

164. *See, e.g., id.* (allowing a defendant to possess firearms even though he committed a battery against his wife); *see also* 142 CONG. REC. S11876 (daily ed. Sept. 30, 1996) (statement of Sen. Lautenberg) (imagining a situation where an individual commits a crime of domestic violence, is convicted of a misdemeanor, and later brings a firearm into his abusive relationship, creating a life or death situation).

the Lautenberg Amendment becomes meaningless altogether.¹⁶⁵

Contrastingly, other circuit courts and the Supreme Court addressed the Amendment's potential ambiguity and looked to the Amendment's legislative history to effectuate the law's purpose: to prevent deadly incidents of domestic violence.¹⁶⁶ The Supreme Court's holding in *Hayes* ensures that courts will apply the Lautenberg Amendment appropriately to properly punish domestic violence perpetrators.¹⁶⁷

V. CONCLUSION

The Supreme Court correctly held that a domestic relationship is not a required element of the predicate offense for the purposes of the Lautenberg Amendment. The discrepancies evident in several courts' interpretations of this statute encourage placing more importance on legislative history, since each court found a plain meaning, but not necessarily the same plain meaning.¹⁶⁸ This clearly demonstrates that although a plain, unambiguous meaning may appear obvious to one reader, another may interpret the language in a contrary manner.

To resolve this, courts should look to legislative history when there is evidence of ambiguity in other judicial opinions, even if the court, like the Fourth Circuit in *Hayes*, does not feel the statute is glaringly ambiguous, and even if the prior decisions are not binding. The Fourth Circuit ignored the reasonable plain readings of its sister circuits and managed to avoid looking at legislative history by summarily concluding that the Amendment's language was not ambiguous. Ignoring non-binding, yet well-reasoned decisions when examining a statute's plain meaning

165. See NAT'L CTR. ON FULL FAITH AND CREDIT, STATE STATUTES: MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE, (2008), <http://www.abanet.org/domviol/docs/State-MCDV-Matrix.pdf> (demonstrating that many states do not have domestic violence statutes, including populous states such as Texas, Florida, New York, and Massachusetts).

166. See, e.g., *United States v. Belless*, 338 F.3d 1063, 1067 (9th Cir. 2003) (stating that since the statute is susceptible to at least two interpretations, the court must look to congressional purpose to determine which meaning applies).

167. See *United States v. Hayes*, 129 S. Ct. 1079, 1087 (2009) (highlighting the Amendment's purpose of keeping firearms out of abusive domestic relationships because firearms and domestic strife are a deadly combination); see also Dep't of Defense, Directive 6400.06, at 10-11 (Aug. 21, 2007), available at <http://www.dtic.mil/whs/directives/corres/pdf/640006p.pdf> (highlighting that military personnel have an ongoing, affirmative obligation to inform their superiors if they have or receive a "qualifying conviction" for domestic violence, causing the person to relinquish his or her military issued firearm and to dispose of privately-owned guns).

168. Compare *Hayes*, 482 F.3d at 752 (finding that the plain meaning of the statute requires a domestic relationship as a designated element of the predicate offense), with *Hayes*, 129 S. Ct. at 1087 (finding the statute's plain meaning is that a domestic relationship must be established but need not be a denominated element of the predicate offense), and *Belless*, 338 F.3d at 1066-67 (acknowledging that either reading of the statute is possible).

constitutes a brand of judicial activism that can have serious implications for the equitable application of federal law.

Examining legislative history when potential ambiguity exists will assist courts in furthering Congress' purpose. Although courts are not to do Congress' job, at times, particularly in situations such as the one involving the Lautenberg Amendment, a court should be able to discover Congress' purpose—despite grammatically weak legislation—and apply it. Finally, legislative history is particularly important when dealing with legislation related to state law, especially when the state law may weaken the intended effect of the federal law. Congressional intent should not be sacrificed simply because a court unilaterally shuts its eyes to potential ambiguities.