Syllabus

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

SUPREME COURT OF THE UNITED STATES

Syllabus

BATES *v.* UNITED STATES

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

No. 96 7185. Argued October 7, 1997 Decided November 4, 1997.

James and Laurenda Jackson owned and operated Education America, Inc., a for-profit consulting and management firm for technical and vocational schools. In 1986, the Jacksons acquired the Acme Institute of Technology, a not-for-profit technical school, and appointed petitioner Bates, then vice president of Education America, to serve as Acme s treasurer. In 1987, James Jackson, as Acme s president, signed a program participation agreement with the Department of Education that authorized the school to receive student loan checks through the Title IV Guaranteed Student Loan (GSL) program. See 20 U. S. C. §1070 *et seq.* Acme s participation hinged upon both its continued accreditation by an approved accrediting association and Jackson s promise to comply with all applicable statutes and regulations. Under the GSL program, banks and other private institutions lent money to Acme students for tuition and other educational expenses. The Federal Government administered the program and guaranteed payment if a student borrower defaulted. Acme would receive a loan check directly from the lender, endorse the check, and credit the amount of the check against the student s tuition debt. If a GSL student withdrew from Acme before the term ended, the governing regulations required the school to return to the lender, within a specified time, a portion of the loan proceeds. The lender would then deduct the refund from the amount that the student owed. If Acme did not repay the lender, the student and if she defaulted, the Government would remain liable for the full amount of the loan. In late 1987, pursuant to decisions made by the Jacksons and Bates, Acme initiated a pattern and practice of not making GSL refunds. Bates gave priority to the payment of a management fee to Education America and salaries to the Jacksons, and instructed other Acme

Syllabus

employees not to make the required GSL refunds. Bates, as Education America s vice president, wrote a letter that stated the unmade refunds were solely the responsibility and decision of the corporate office. By March 1989, Acme s refund liability had grown to approximately $85,000. Acme subsequently lost its accreditation, and, in 1990, the Department of Education notified the school that Acme was no longer eligible to participate in the GSL program. A few months later, Acme ceased operations. In 1994, Bates was indicted on twelve counts of knowingly and willfully misapply[ing] federally insured student loan funds, in violation of 20 U. S. C. §1097(a) (1988 ed.) and 18 U. S. C. §2. Agreeing with Bates that conviction under §1097(a) for willful misapplication required an allegation of the defendant s intent to injure or defraud the United States, the District Court dismissed the indictment because it lacked such an allegation. The Seventh Circuit vacated the judgment and reinstated the prosecution, concluding that §1097(a) required the Government to prove only that Bates knowingly and willfully misapplied Title IV funds.

Held: Specific intent to injure or defraud someone, whether the United States or another, is not an element of the misapplication of funds proscribed by §1097(a). The text of §1097(a) does not include an intent to defraud requirement, and this court ordinarily resists reading words into a statute that do not appear on its face. In contrast, 20 U. S. C. §1097(d), enacted at the same time as §1097(a), has an intent to defraud requirement. It is generally presumed that Congress acts intentionally and purposely where it includes particular language in one section of a statute but omits it in another. See *Russello* v. *United States,* 464 U. S. 16, 23. Despite the contrasting language of §§1097(a) and (d), Bates relies on decisions interpreting 18 U. S. C. §656, which proscribes willful misapplication of bank funds. An intent to defraud element, originally included in the text of §656, was dropped from the text during a technical revision of the criminal code. In view of that history, courts have continued to hold that an intent to defraud is an element of the offense described in §656. Assuming, without deciding, that §656 is correctly read to retain an intent to defraud element, §1097(a) never contained such a requirement, one present from the start and still contained in §1097(d). Neither text nor history warrants adoption of Bates s construction of §1097(a). Nor does §1097(a) set a trap for the unwary. As construed by the Seventh Circuit, §1097(a) catches only the transgressor who intentionally exercises unauthorized dominion over federally insured student loan funds for his own benefit or for the benefit of a third party. So read, the measure does not render felonious innocent maladministration of a business enterprise or a merely unwise use of funds. Furthermore, a 1992 amendment adding fails to refund to

Syllabus

§1097(a) s text does not demonstrate that the deliberate failure to return GSL funds, without an intent to defraud, became an offense within §1097(a) s compass only under the statute s current text. The added words simply foreclose any argument that §1097(a) does not reach the failure to make refunds. Cf. *Commissioner* v. *Estate of Sternberger*, 348 U. S. 187, 194. Finally, as nothing in the text, structure, or history of §1097(a) warrants importation of an intent to defraud requirement into the misapplication proscription, the rule of lenity does not come into play in this case. See *United States* v. *Wells*, 519 U. S. ___, ___. Pp. 5 9.

96 F. 3d 964, affirmed.

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