CLIENT ALERTS & INSIGHTS

Supreme Court to Weigh in on Scope of Federal Bribery Statute

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Authors: Ryan J. Levitt, SaDella Duval D'Adrian, Emily Wilbur

In Snyder v. United States, the Supreme Court of the United States could redefine the legal boundaries regarding federal bribery as it prepares to answer whether the primary federal bribery statute, 18 U.S.C. § 666, criminalizes gratuity payments to officials in recognition of actions the official had previously taken, absent any quid pro quo agreements to take those actions. This client alert provides an overview of the case and its potential landscape changes, including potential changes if the Supreme Court determines gratuities without a quid pro quo agreement do not violate 18 U.S.C. § 666.

Snyder v. United States

James Snyder, former mayor of Portage, Indiana, was convicted under 18 U.S.C. § 666 for accepting $13,000 in connection with contracts awarded through the city's bidding process for garbage truck acquisitions after having previously helped a local corporation secure lucrative city contracts, Mr. Snyder was alleged to have shown up at the garbage company unannounced requesting payment for "consulting" work that was never fully performed. In response, the company sent him a $13,000 payment check the next day.

The conviction was affirmed by the Seventh Circuit, and a petition for writ of certiorari was granted by the Supreme Court for the October 2023-2024 term. The main issue the Supreme Court will decide is whether the government must prove a quid pro quo under Section 666, or whether gratuities without such explicit agreement is classified as an impermissible bribe. A "gratuity" as framed by the district court in *Snyder* is a payment made to the official to show appreciation for an action the official already took. These payments can take the form of campaign contributions, payments, prizes, or gifts. A "bribe" is defined as a "quid pro quo" or the "specific intent to give or receive something of value in exchange for an official act." *See United States v. Sun-Diamond Growers of California*, 526 U.S. 398, 405 (1999).

Section 666 as written provides that a state or federal official is guilty under federal law if he or she "corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more. . . ." 18 U.S.C. § 666(a)(1)(B). However, Section 666 does not explicitly address situations where there was no quid pro quo, such as the facts present in the *Snyder* case. As discussed in the following section, Federal Circuit Courts of Appeals are currently split 5-2 on that question.

The Circuit Split

In the petition to the Supreme Court, it was specifically noted that "this petition is an ideal vehicle for resolving an entrenched and widely recognized 5-2 split over the scope of the most widely used federal public-corruption statute." *Snyder* Petition, *supra* at p. 4.

The First and the Fifth Circuits are the only two circuits to hold that Section 666 does not criminalize gratuities and only criminalizes quid pro quo bribes. *See United States v. Fernandez*, 722 F.3d 1, 6 (1st Cir. 2013); *United States v. Hamilton*, 46 F.4th 389, 397 (5th Cir. 2022). These circuits require the official to agree to receive payment before the act is performed, holding that agreeing to receive payment after the act is already performed does not constitute bribery because the act happened before the agreement. In contrast, the Second, Sixth, Seventh, Eighth, and Eleventh circuits all have held that Section 666 does not require the government to prove a quid pro quo agreement for conviction, with all five circuits criminalizing officials that have received gratuities, absent a quid pro quo agreement. *See United States v. Ganim*, 510 F.3d 134, 150 (2d Cir. 2007); *United States v. Abbey*, 560 F.3d 513, 520 (6th Cir. 2009); *United States v. Johnson*, 874 F.3d 990, 1001 (7th Cir. 2017); *United States v. Zimmermann*, 509 F.3d 920, 927 (8th Cir. 2007); *United States v. McNair*, 605 F.3d 1152, 1188-89 (11th Cir. 2010).

Impact on Federal Corruption Cases

In light of the Supreme Court taking up the *Snyder* question, federal courts are faced with balancing the resolution of prominent corruption cases and determining the accurate interpretation of federal legislation, which could have monumental implications for future corruption prosecutions.

Perhaps no case is feeling the pressure of the Supreme Court's interpretation of 18 U.S.C. § 666(a)(1)(B) more than the Mike Madigan prosecution (*United States v. Madigan*, No. 22 CR 115 (N.D. Ill Mar. 2, 2022)) and the related prosecution of four defendants convicted of providing alleged gratuities to secure favorable legislative action on behalf of a regional utility company (*United States v. McClain et al.,* No. 20 CR 812 (N.D. Ill. Nov. 18, 2020)). The final resolution of these cases likely hinges on the Supreme Court aligning with the Seventh Circuit's current interpretation of the statute, which includes gratuities. These convictions will likely be subject to review-and may have a substantial impact on Mike Madigan's future trial-if the Supreme Court overrules the Seventh Circuit in *Snyder*.

Mike Madigan is the ex-Illinois House Speaker, and one of the most powerful politicians in Illinois history. He is currently facing charges of bribery and racketeering, among others. Madigan cited *Snyder* in a motion to delay his trial which was originally set for April 2024. The United States Attorney's Office maintains that there is no quid pro quo requirement within the relevant provision of Section 666, but over its objection, and in order to preserve court time and resources and reduce the risk of a retrial, Madigan's case pending the Supreme Court's ruling in *Snyder*. Specifically, on January 3, 2024, the District Court granted Madigan's motion, moving the trial date to October 8, 2024, on the grounds that Supreme Court's interpretation of Section 666(a)(1)(B) could change the outcome of the case. *Madigan*, *supra* at Dkt. # 91. The related prosecution of four defendants in *United States v. McClain et al., supra*, may also be affected by the interpretation. The defendants have already been convicted of bribery conspiracy and willfully falsifying company books based upon payments made to Madigan's allies in an effort to obtain favorable legislation for the company. In a motion to stay sentencing because of cert on *Snyder*, their attorneys argued: "[i]f the Court finds that the statute does not include gratuities and criminalizes only quid pro quo bribery then Defendants

are entitled to acquittal because the Government failed to allege or prove a quid pro quo, or at a minimum, a new trial because the jury could have found the Defendants guilty based on provision of legal gratuities." *Id.* at Dkt. # 347. That sentencing has been briefly delayed for other reasons as the *Snyder* decision looms. *Id.* at Dkt. # 355. Ultimately, what seemed to be a case nearing its (lower court) conclusion now carries a greater degree of uncertainty given the Supreme Court's review.

Other cases of public corruption face this same uncertainty. New Jersey Senator Bob Menendez was indicted for bribery in connection with allegations of accepting of cash, gold, mortgage payments, vehicles, and other gratuities from Egyptian-American businessman in exchange for using his power and influence to protect and enrich those individuals. *United States v. Menendez et al.,* No. 23 CR 490 Dkt. # 115 (S.D.N.Y Jan. 2, 2024). There is a pending motion to dismiss that indictment, which, in addition to other arguments, posits that the indictment failed to allege the required *quid pro quo* agreement. *See id.* at Dkt. # 119-120. Briefing remains pending on this motion, but it will no doubt prove another important case to watch. Back in Illinois, Timothy Mapes, Madigan's ex-chief of staff was convicted on perjury and attempted obstruction of justice in connection to the investigation of Madigan in his own, separate prosecution (*United States v. Mapes*, No. 21 CR 345 (N.D. Ill. May 26, 2021)). Likewise, Ed Burke, the former 14th Ward Alderman, was recently convicted on 13 counts of corruption. *United States v. Burke*, No. 19 CR 322 Dkt. # 322 (N.D. Ill. Dec. 21, 2023).

Ultimately, as these cases demonstrate, the Supreme Court's interpretation of Section 666 will have widespread, immediate impact on the resolution of high-profile cases.

Post-Snyder Future

Snyder could change the legal landscape regarding what is classified as illegal bribes under Section 666. Section 666 is one of the most widely used federal public-corruption statute, so the implications of the *Snyder* decision could result in changes. If the Supreme Court creates a rule aligned with the reasoning in the First and Fifth Circuits then facts such as those in *Snyder* would not result in a Section 666 conviction since both parties contend there was no quid pro quo. However, if the Supreme Court aligns Section 666 with the interpretation of the Seventh and four other circuits and criminalizes gratuities, then the potential criminal penalties would constrain public officials and necessitate change in relationships and interactions.

Since *Snyder* is a pending case, the full implications are not yet clear; however, it is apparent that by affirming *Snyder*, the Supreme Court would likely require businesses and public officials to be more cautious when engaging in lobbying activities, and when offering gratuities and benefits to public officials. Businesses should review policies and procedures regarding government interactions and lobbying. Additionally, companies should use the opportunity to train and educate employees to ensure future actions will not be interpreted as offering a gratuity. Those engaged in lobbying or government contracting, especially, should pay attention to the potential changes a *Snyder* decision might bring to ensure they do not run afoul of Section 666, and perhaps even more so if an already emboldened Justice Department achieves a significant legal victory before the Supreme Court.

For more information, please contact a member of Benesch's White Collar, Government Investigations & Regulatory Compliance Practice Group.

Ryan J. Levitt at rlevitt@beneschlaw.com or 312.517.9550.

SaDella Duval D'Adrian at sduval@beneschlaw.com or 312.624.6387.

Emily Wilbur at ewilbur@beneschlaw.com or 312.624.6380.