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Snyder v. United States: Supreme Court prohibits gratuities prosecutions of state and local officials under 18 U.S.C. § 666

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On June 26, 2024, the Supreme Court decided *Snyder v. United States*. The Petitioner, James Snyder, was the former mayor of Portage, Indiana. During his tenure, the City of Portage — through a bidding process managed by Snyder's friend and Portage's assistant superintendent of streets and sanitation Randy Reeder — awarded two contracts, totaling $1.1 million, to a local truck company.

After the second contract was awarded, Snyder approached the company owners and asked for $15,000; the owners gave him $13,000. Snyder was convicted for violating 18 U.S.C. § 666, which targets corruption within organizations receiving federal funding (most notably, state and local governments).

In *Snyder*, the Supreme Court considered whether § 666 prohibits the offering, solicitating, or receiving of gratuities, in addition to bribery.

Federal criminal law distinguishes between bribery and gratuities. Generally, bribery involves requesting, offering, receiving, or agreeing to offer or receive something of value *in exchange for* official action; colloquially, a *quid pro quo*.

In contrast, a gratuity involves requesting, offering, receiving, or agreeing to offer or receive something of value *because of* official action — no *quid pro quo* is required. Ordinarily, bribery occurs before official action takes place, whereas gratuities usually occur after-the-fact.

There are exceptions, however. A gratuity may be received before an act is taken but after the official committed to taking it. And a bribe may be paid after the official action is taken, if the *quid pro quo* was agreed to in advance.

The Court's decision

In *Snyder*, the Court focused on §§ 666(a)(1)(B)'s and (a)(2)'s language concerning the payor's intent to "influence or *reward*" the official, or the official's "inten[t] to be influenced or *rewarded*." For six reasons, the Court concluded that § 666 is restricted to bribery cases, and despite the statute's "rewarded" language, gratuities are beyond its reach.

First, the Court analyzed the text of § 666. According to the majority, Congress modeled § 666 on the federal bribery statute, 18 U.S.C. § 201(b). It is for that reason, the Court suggested, that § 666 includes a scienter requirement that the official "corruptly" accept the payment; the federal gratuities statute, 18 U.S.C. § 201(c), has no such requirement.

Addressing the "rewarded" language in § 666, the majority reasoned it was an effort by Congress to "close[] off certain defenses that otherwise might be raised in bribery cases[,]" such as an official asserting that his conduct does not violate the statute because the payment was received after the act or after the official decided to take action.

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Second, the *Snyder* majority pointed to the statute's legislative history. Congress enacted § 666 in 1984 and, according to the majority, borrowed language from § 201(c) — the federal gratuities statute.

As originally enacted, the relevant language criminalized the solicitation, acceptance, or agreement to accept "anything of value from a person or organization other than his employer or principal *for or because of* the recipient's conduct in any transaction or matter or a series of transactions or matters involving $5,000 or more concerning the affairs of such organization or State or local government agency."[1]

Through a 1986 amendment, § 666's "for or because of" language changed to "intending to be influenced or rewarded." Legislative history instructs that this amendment was made to "avoid [§ 666's] possible application to acceptable commercial and business practices" and "conform that section to the drafting style and format used generally in title 18 of the United States Code."[2]

According to the *Snyder* majority, in so doing, the amendment eliminated § 666's application to gratuities.

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Third, the Court explained that it "would be highly unusual" to criminalize both bribes and gratuities in the same statutory prohibition.[3] In § 201, each prohibition has its own subsection.

Fourth, the Court highlighted that punishment for violating § 666, whether by bribery or gratuities, is up to ten years' imprisonment. In contrast, § 201's punishment for gratuities is up to two years, while § 201(b)'s punishment for bribery is up to fifteen years. Such disparity, according to the Court, indicates that § 666 covers only bribery.

Fifth, the majority emphasized the importance of permitting states and municipalities to regulate the ethics of their own officials without excessive federal interference. According to the Court, "States have the 'prerogative to regulate the permissible scope of interactions between state officials and their constituents.'"

Moreover, state Attorneys General and local prosecutors may view Snyder *as an invitation to become more aggressive in enforcement actions relating to companies' engagement with public officials.*

Finally, the Court emphasized that the Government's "expansive" reading of § 666 fails to provide sufficient guidance to state and local officials, in contrast to the extensive federal ethics regulations promulgated by the Office of Government Ethics for federal officials.

Analysis & implications

Snyder continues a years-long pattern in which the Court has repeatedly narrowed the scope of federal corruption statutes.[4] As in many of these decisions, public policy and federalism concerns feature prominently in *Snyder*. Yet while state sovereignty is important, federal prosecution is a critical anti-corruption tool when states are unable or unwilling to address official misconduct.

In *Snyder*, as the majority noted, the petitioner's home state of Indiana lacks any general criminal prohibitions on the receipt of gratuities even if the gift is received in relation to a specific exercise of official power and with corrupt intent.

Even after *Snyder*, DOJ can be expected to leverage domestic corruption statutes to fill these gaps. That said, in investigating such cases, federal authorities may place increased emphasis on developing facts relevant to assessing the existence, timing, and details of any *quid pro quo*.

In some respects, *Snyder*'s impact may be limited. Federal gratuities prosecutions are significantly less common than bribery cases. *Snyder* may invite downstream litigation for existing and future cases charged under § 666, particularly where the allegations are such that the jury could convict — or may have already convicted — on the basis of a gratuities violation.

This issue, however, will often be a question of fact, and can be addressed through the use of jury instructions that require convictions to be predicated on a finding of bribery.

The line between a gratuity and a bribe can be a fine one, and the Government will generally be permitted to argue based on circumstantial evidence that what the defense might call a gratuity in actuality reflected a prior, perhaps unspoken, understanding that the bribe would be paid only after the corrupt action was completed.

Jurors, likely finding both sorts of payments distasteful, may well be inclined to accept such prosecution arguments where there is even some circumstantial evidence in support. Thus, DOJ may still be able to secure convictions when the defense claims the corrupt payment was "merely" a gratuity, and defending against bribery prosecutions along these lines may sound better in theory than in practice.

Snyder may also affect the interpretation of other corruption statutes. Section 215 of Title 18, which restricts improper payments to employees of financial institutions, contains identical "influenced or rewarded language." Although legislative history suggests § 215 *was* intended to cover gratuities,[5] *Snyder* may call into question whether gratuities prosecutions remain viable under § 215.

Likewise, *Snyder* reinforces that corruption statutes such as the Foreign Corrupt Practices Act ("FCPA") and the recently-enacted Foreign Extortion Prevention Act ("FEPA"), which refer only to influence without any "reward" language,[6] criminalize only bribes, not gratuities.

Further, the FCPA and FEPA both include a "corrupt" intent requirement,[7] which the *Snyder* majority explained is indicative of a bribery statute.

That said, *Snyder*'s suggestion that § 666's "rewarded" language prevents defenses where a payment is received after the recipient took action is not likely to deter the Government in FCPA or FEPA cases, so long as there is sufficient evidence of a *quid pro quo*, even if under a "stream of benefits" theory. Remember, a thing of value can be both a gratuity, used to reward past conduct, and a bribe, used to induce future conduct.

For example, in the 2012 Pfizer resolution, DOJ identified as an FCPA violation cash payments made to government-employed doctors "to reward past sales [of Pfizer products] and induce future sales."[8]

Moreover, in the same manner that the Court in *McDonnell* acknowledged that prosecutors may present evidence of action that does not satisfy the narrow definition of "official act" in order to establish a corrupt relationship, in certain circumstances courts may still permit prosecutors to offer evidence of uncharged gratuities in a bribery prosecution as evidence of a corrupt intent.[9]

Moreover, state Attorneys General and local prosecutors may view *Snyder* as an invitation to become more aggressive in enforcement actions relating to companies' engagement with public officials. Yet where state corruption statutes include language similar to § 666, evaluation as to whether such statutes criminalize gratuities may be merited after *Snyder*.

Further, as § 666 applies not only to government entities but also to private organizations receiving in excess of $10,000 in annual

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federal funding,[10] *Snyder* also reduces potential federal exposure associated with *commercial* gratuities by employees and agents of private companies.

Yet increased attention from state and local authorities could somewhat offset the reduced risk of federal enforcement, particularly in states where commercial bribery is criminalized, such as New York,[11] New Jersey,[12] and California,[13] among others.[14]

Companies should ensure their policies and internal controls adequately address key anti-corruption risk areas including travel, gifts, and entertainment; political contributions; corporate sponsorships and charitable donations; and management of higher-risk third parties. Although U.S. companies' anti-corruption controls are often focused on foreign bribery risks (and rightly so), companies should also assess the efficacy of their domestically-focused controls.

Snyder is thematically consistent with the Court's handling of public corruption cases in recent years. Although its impact remains to be seen, DOJ should not be expected to back away from corruption cases, even those involving state and local officials.

Thus, companies, their counsel, and compliance professionals should remain vigilant in their domestic compliance programs and anti-corruption initiatives. They should work with subject matter experts and outside counsel to evaluate their policies and practices in that context, and engage counsel immediately if government enforcers come knocking.

Notes:

[1] Pub. L. 98-473, Title II, § 1104(a), Oct. 12, 1984 (emphasis added).

[2] H.R. Rep. 99-797, 30.

[3] *But see* 18 U.S.C. § 1951(a) (criminalizing both robbery and extortion "under color of official right" (essentially, bribery) in the same provision).

[4] *See, e.g.*, *Percoco v. United States*, 598 U.S. 319 (2023); *Ciminelli v. United States*, 598 U.S. 306 (2023); *Kelly v. United States*, 590 U.S. 391 (2020); *McDonnell v. United States*, 579 U.S. 550 (2016); *Skilling v. United States*, 561 U.S. 358 (2010); *McCormick v. United States*, 500 U.S. 257 (1991); *McNally v. United States*, 483 U.S. 350 (1987).

[5] Dissent, *Snyder v. United States*, 23-108 (S. Ct. 2024), at 9-11.

[6] *See* 15 U.S.C. §§ 78dd-1(a), 78dd-2(a), 78dd-3(a); 18 U.S.C. § 201(f)(1).

[7] *Id.*

[8] Deferred Prosecution Agreement, *United States v. Pfizer H.C.P. Corp.*, 12-cr-169 (D.D.C. Aug.7, 2012), ECF No. 2, at A-11-12.

[9] *McDonnell*, 579 U.S. at 573 ("Of course, this is not to say that setting up a meeting, hosting an event, or making a phone call is always an innocent act, or is irrelevant, in cases like this one. If an official sets up a meeting, hosts an event, or makes a phone call on a question or matter that is or could be pending before another official, that could serve as evidence of an agreement to take an official act. A jury could conclude, for example, that the official was attempting to pressure or advise another official on a pending matter. And if the official agreed to exert that pressure or give that advice in exchange for a thing of value, that would be illegal.").

[10] 18 U.S.C. § 666(a)(1); *see also* S. Rep. No. 225, 98th Cong., 2d Sess. 369 (1984), reprinted in 1984 U.S.C.C.A.N. 3182, 3510 (noting that § 666 was enacted "to augment the ability of the United States to vindicate significant acts of theft, fraud, and bribery involving Federal monies that are disbursed to private organizations or State and local governments pursuant to a Federal program").

[11] N.Y. Penal Law § 180.00.

[12] N.J. Stat. Ann. § 2C:21-10.

[13] Cal. Penal Code § 641.3.

[14] Notably, the Supreme Court has held that state commercial bribery can serve as a predicate for a violation of the Travel Act, 18 U.S.C. § 1952. *See Perrin v. United States*, 444 U.S. 37, 50 (1979).

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