US Law Week
July 9, 2024, 4:30 AM EDT

Supreme Court Leaves It to States to Prosecute Corrupt Gratuities

Documents

Opinion

- *Skadden attorneys review SCOTUS anti-corruption case*
- *Officials accused of corruption have 'friendly ear' at court*

The Department of Justice failed in their latest attempt to add an arrow in its anticorruption quiver when Supreme Court decided *Snyder v. United States*, leaving prosecutions for gratuities to states. Still, the DOJ will likely continue to pursue its anticorruption strategy with new and creative theories.

In a 6-3 decision June 26, the court overturned the conviction of James Snyder, the former Mayor of Portage, Indiana, under 18 U.S.C. § 666. Justice Brett Kavanaugh authored the majority opinion, with Justice Ketanji Brown Jackson authoring the dissent, and Justice Neil Gorsuch filing a concurrence.

Section 666 prohibits the provision of anything of value with the intent to "influence or reward" an official regarding a federally-funded program or accepting a thing of value for such purpose. Snyder accepted $13,000 in allegedly fraudulent consulting payments from a truck dealership after the city purchased more than a million dollars worth of trucks from that dealership. He was subsequently arrested, convicted of violating Section 666, and sentenced to 21 months in prison.

Many refer to *Snyder* as a bribery case, but in reality, it's a gratuities case aimed at state and local officials. A different statute, 18 U.S.C. § 201, prohibits a bribe (a quid pro quo payment to an official for the purpose of influencing an official's future decision) and also a gratuity (a "thank you" payment made after the decision is made).

But Section 201 applies only to federal officials. Over the years, federal prosecutors have pursued a variety of bribery, or even "bribery-light," cases against state and local officials using the honest services fraud provision of the federal wire fraud statute, 18 U.S.C. § 1346.

In *Snyder*, the prosecutors attempted to enhance their anticorruption tool chest by using Section 666 to convict a local official of accepting a gratuity. Unlike Section 201, this law applies to any official of a state or local agency that receives federal funding, thereby covering a large swath of such officials. It bans an official from accepting a thing of value "intending to be influenced or rewarded" regarding a transaction. Specifically, the prosecutors relied on the law's reference to the term "rewarded" to argue that it forbids gratuities provided after a government decision is made.

The majority and dissenting opinions duel using arguments based on statutory construction. For example, the majority focuses on the textual similarities between Section 666 and Section 201(b), which is the quid pro quo bribery provision for federal officials, in determining that Section 666 is merely a bribery statute. These similarities include the mens rea requirement under both laws referring to an intent to influence, and Section 666's reference to "reward" modifying that common mens rea.

It also finds persuasive the difference in the potential punishments between Section 666 and Section 201. Under Section 201, federal officials convicted of bribery face a fifteen-year sentence; in contrast, accepting a gratuity carries a two-year maximum. In contrast, if Section 666 were read to include gratuities, officials would face a ten-year sentence for both accepting bribes and gratuities, even though the latter violation is of lesser degree.

The dissent counters that the majority reading ignores the plain meaning of the word "reward." It also looks to other provisions of federal law that use the term "reward" in a gratuity context to argue that Congress intended Section 666 to apply to payments after a government decision.

In his succinct concurring opinion, Gorsuch aptly observed that the *Snyder* decision is really about lenity. The majority's underlying concern, he observed, is that when prosecutors bring cases using novel theories based on ambiguous statutory language, they can deny defendants fair notice of what conduct will violate the law.

This view continues the Supreme Court's trend of limiting the scope of federal public corruption statutes based on fair notice. Indeed, in *McDonnell v. United States*, the Supreme Court, in overturning the honest services fraud conviction of the former Virginia governor also expressed its concern that public officials could be subject to prosecution for "prosaic" interactions, which would violate the principle of fair notice.

This brings us to the question of what impact the *Snyder* case will have. To a large degree, the case brings the legal landscape back to where we started: Federal prosecutors can pursue state and local officials for bribery violations on an honest services fraud theory, but not for receiving gratuities. Rather, gratuity violations will have to be enforced by state and local prosecutors under state anticorruption laws.

Although most, if not all, states have their own bribery laws, they may not have a gratuity statute. Also, despite having lost the *Snyder* case, the DOJ likely won't be more hesitant in bringing anticorruption cases. Indeed, despite several Supreme Court decisions including the *McDonnell* case increasing the evidentiary showing required under the honest services fraud provision, prosecutors haven't reduced their efforts to bring cases under that law.

When defendants feel that they are targets of a creative or novel prosecution theory, however, they appear to have a friendly ear at the Supreme Court.

The case is Snyder v. United States, U.S., No. 23-108, decided 6/26/24.

This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law and Bloomberg Tax, or its owners.

Author Information

Ki P. Hong is partner and the head of Skadden's Political Law Compliance and Investigations Group.

Jessie K. Liu is partner in Skadden's White Collar Defense and Investigations Group.

Alessio Evangelista is partner in Skadden's White Collar Defense and Investigations Group.

The authors would like to thank Skadden associate Theodore Grodek for his contributions to the article.

Write for Us: Author Guidelines

To contact the editors responsible for this story: Jessie Kokrda Kamens at jkamens@bloomberglaw.com; Jada Chin at jchin@bloombergindustry.com