

Supreme Court Limits Reach of Federal Bribery Law Aimed at State and Local Officials

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In a 6-3 holding in *Snyder v. United States*, the Supreme Court overturned the conviction of James Snyder, former mayor of Portage, Indiana, who was found guilty of accepting an unlawful gratuity in violation of 18 U.S.C. § 666(a)(1)(B). In overturning Snyder's conviction, Justice Kavanaugh, writing for the majority, rejected the argument that Section 666 makes it a crime for state and local officials to accept gratuities, distinguishing gratuities as less harmful than bribes. According to the decision, a bribe is something of value provided illegally *before* an official act with the intent to influence the action, whereas gratuities are "tokens of appreciation" given *after* the official act and include a wide range of benign practices. Resolving a circuit split, this decision will limit the federal prosecution of state and local public officials going forward, leaving regulation of their conduct to the states. Justices Roberts, Thomas, Gorsuch and Barrett joined in the majority, with Justice Gorsuch adding a concurring opinion. Justice Jackson, joined by Justices Sotomayor and Kagan, dissented.

The Majority Opinion: Section 666 Does Not Prohibit Gratuities for Past Official Acts

Snyder accepted a \$13,000 gratuity while he was the Portage mayor. In 2013, the city awarded two contracts to a local truck company, Great Lakes Peterbilt, purchasing five trucks for just over \$1 million. In 2014, Snyder received \$13,000 from Peterbilt, in exchange for what Snyder said were his consulting services. Suspecting the \$13,000 was a gratuity for the truck contracts, the federal government indicted Snyder for violating 18 U.S.C. § 666(a)(1)(B), which proscribes corrupt acceptance of "anything of value" with the intent "to be influenced or rewarded" for official conduct. Snyder was convicted and sentenced to one year and nine months imprisonment. The Seventh Circuit upheld his conviction and sentence.

On appeal from the Seventh Circuit, the Supreme Court addressed whether 18 U.S.C. § 666(a)(1)(B) prohibited state and local officials from accepting gratuities for prior official acts. In its opinion, the majority identified six reasons that led the Court to hold Section 666 prohibits bribes, but not gratuities: text, legislative history, statutory construction, statutory punishments, federalism, and fair notice.

Specifically, the text of § 666(a)(1)(B) is modeled after the bribery provision of the statute aimed at federal officials, 18 U.S.C. § 201(b), rather than the gratuities provision of that statute, 18 U.S.C. § 201(c). The legislative history of Section 666 also persuaded the Court because Congress first borrowed language from the gratuities statute and two years later amended the language to model the bribery statute, in such form as it remains today. The government's statutory construction argument failed because the government could not identify any other statute which prohibited bribes and gratuities in the same provision. Moreover, the punishment scheme in Section 201 treats the violations distinctly different, providing a potential 10-year sentence for accepting a bribe but only a potential two-year punishment for accepting a gratuity. The majority also focused on principles of federalism, highlighting that Congress will not lightly intrude on state regulation of state and local governance. Given the array of innocuous conduct that may be considered "gratuities" and variation amongst states and localities delineating the contours of unlawful gratuities, the majority holding leaves regulation of this conduct to the states, electing to read Section 666 narrowly. Finally, the Court noted that the government's interpretation would set traps, leaving 19 million state and local officials "at sea" guessing about what is legal and what is not.

Practical Implications of the *Snyder* Holding

It will be interesting to see whether the Court's decision in *Snyder* will extend to other contexts in which the federal government regulates bribery and corruption. But from the perspective of the state and local officials directly impacted by this holding—state and local politicians, lobbyists and consultants, human resource officers, building code inspectors, and countless others—the practical implications from this holding are significant and immediate.

Specifically, the holding in *Snyder* will likely have a substantial impact on two of the biggest recent public corruption cases pending in the Northern District of Illinois. In *United States v. McClain*, four defendants, colloquially known as the “ComEd Four,” were tried and convicted of violations of 18 U.S.C. § 666(a)(2) for providing illegal gratuities to state officials. Those defendants have yet to be sentenced, and the legality of their convictions may well be in doubt after *Snyder*. Moreover, in *United States v. Madigan*, the government charged defendants with similar violations of Section 666, among other charges. That case has yet to be tried, and it is likely that the *Snyder* opinion will substantially limit the scope of the indictment in the *Madigan* case.

Overall, the Court's holding in *Snyder* imposes another limitation on the broad discretion of federal prosecutors while providing some assurance that surprise investigations are unlikely and some clarification on the nuanced definition of an acceptable gratuity.

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