

PUBLICATION

Timing is Everything: The Court's Latest Gift to Defendants in Bribery Prosecutions (*Snyder v. United States*)

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Readers of prior Firm client alerts in the white-collar criminal space will no doubt recall the Supreme Court's recent trend of scaling back the powers of the Department of Justice (DOJ) in prosecuting public corruption cases.¹ On June 26, 2024, in *Snyder v. United States*, 603 U.S. ___, 2024 WL 3165518 (2024), the U.S. Supreme Court continued that trend by limiting DOJ's power to bring criminal prosecutions premised on "tips" or "gratuities" – so-called "tokens of appreciation" – paid to, and agreed with, state or local officials *after* official acts are undertaken.

Majority Opinion

At issue in *Snyder* was \$13,000 in payments made by a city contractor in Portage, Indiana, to the town's mayor after the Mayor undertook official acts – assisting in awarding municipal contracts – to benefit the contractor and whether the after-the-fact payments were criminalized by 18 U.S.C. § 666.

18 U.S.C. §666(a)(1)(B) prohibits a state official from "corruptly solicit[ing] or demand[ing] for the benefit of any person, or accept[ing] or agree[ing] 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." In *Snyder*, overruling a theory used by prosecutors for decades, the Supreme Court held that this statute only prohibits forward-looking "bribes," not gratuities offered and accepted for past official acts. The six-justice majority, in an opinion written by Justice Kavanaugh (and joined by Chief Justice Roberts and Justices Thomas, Alito, Gorsuch, and Barrett) rested its decision on six separate bases, including the text of 18 U.S.C. § 666 (Section 666), the legislative history of that statute, its statutory structure, the punishments provided in that statute, federalism concerns, and a lack of fair notice. Among other things, the Court was persuaded that Section 666 was not intended to criminalize gratuities by comparing and contrasting it to 18 U.S.C. § 201 (which criminalizes both bribery and gratuities directed to federal officials). For instance, the use of the word "corruptly" in Section 666 is mirrored in the bribery provision of 18 U.S.C. § 201 (and, conversely, is not included in the 18 U.S.C. § 201's separate gratuity provision). Similarly, the Court held the fact that Section 666 does not have a separate gratuity provision – which distinguishes it from 18 U.S.C. § 201 – further supports its position that it was not intended to criminalize gratuities. Likewise, the Court pointed to the strong punishment contained in Section 666 (ten-year maximum sentence) as being much closer to the 15-year maximum sentence contained in 18 U.S.C. § 201's bribery provision – whereas 18 U.S.C. § 201's gratuity provision only contains a maximum punishment of two years.

The six-justice majority also expressed concerns over line-drawing, raising hypotheticals that could *conceivably* be criminal under the DOJ's reading of Section 666, including a \$100 Dunkin' Donuts gift card for the neighborhood trash collector for a job well done, an end-of-the-term celebration meal for a college professor paid for by students, or a bottle of wine paid for by a neighbor and given to a state legislator to congratulate the legislator on the passage of a new law. In all these scenarios, according to the Court, state and local officials could face criminal liability – as high as ten years imprisonment – for such actions. The "line-drawing" argument was reiterated by Justice Gorsuch in his concurring opinion highlighting the importance of the rule of lenity in connection with the Court's decision.

The Dissent

The forceful dissent, authored by Justice Jackson (and joined by Justices Sotomayor and Kagan) argued that the petitioner's (and the majority's) twisted reading is "one only today's Court could love." Among other things, the dissent reasoned that the use of the word "rewarded" in 18 U.S.C. § 666 "easily covers the concept of gratuities paid after the fact," a reading bolstered by the dictionary definition of that term, which makes it clear "rewarded" encompasses payment after an official has already taken it. Likewise, the dissent pointed to the use of that term in other statutes which outlaw gratuities in certain contexts.

Perhaps most persuasively, the dissent detailed the facts of *Snyder*, including highlighting the efforts of the defendant to tailor certain public bid specifications to benefit a contractor, Great Lakes Peterbilt, so that it would win public works contracts totaling more than \$1 million; the requests by the Mayor for "money" to Great Lakes Peterbilt after the awarding of the contracts at issue; and the various and differing explanations provided by the Mayor for the funds he received from Great Lakes Peterbilt. The "line-drawing" concerns, the dissent argued, were not presented with the instant case.

Impact of *Snyder*

Historically, Section 666 has been used to target a wide variety of alleged fraud and corruption at the state and local level under several theories, including an after-the-fact gratuity theory, *i.e.* payments made to public officials and agreements effected between officials and payors after an official act has been undertaken. Under *Snyder*, that theory no longer exists: the timing of the agreement between payor and payee is "the key," and where the agreement is effected and payment is executed *after* the official act is undertaken by the public official, 18 U.S.C. § 666 does not criminalize such behavior. This ruling could impact pending high-profile prosecutions, such as the racketeering trial of former Illinois House Speaker Michael J. Madigan, which was postponed by a federal judge while awaiting the *Snyder* decision.

Going forward, *Snyder's* impact will be felt by prosecutors across the country. To prove that the agreement between payor and payee was reached *before* undertaking any official act, prosecutors almost certainly will be required to have cooperator testimony and/or documentary evidence – texts, emails, agreements, and the like – linking the potential after-the-fact payment to the official act *before* that act is undertaken. Simply compensating a state or local official after he/she has undertaken that act – absent anything more – may be unethical or subject to regulation by state or local entities but, according to the Court, is not federally criminalized by 18 U.S.C. § 666.

As the law and corresponding DOJ guidance continue to evolve in the area of fraud and public corruption, please reach out to [Matthew S. Chester](#), [Annie M. Kenville](#), or any member of Baker Donelson's [Government Enforcement and Investigations Group](#) if you have questions.

¹ See "Reining it in: Supreme Court Again Restricts Honest-Services Fraud," available at [Supreme Court Again Restricts Honest-Services Fraud | Baker Donelson](#) (May 16, 2023); "Supreme Court Overturns 'Bridgegate' Convictions in Unanimous Decision," available at [Supreme Court Overturns "Bridgegate" Convictions in Unanimous Decision | Baker Donelson](#) (May 11, 2020).