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The Supreme Court Agrees to Resolve Circuit Split on Local Official Bribery Statute

On December 13, 2023, the Supreme Court agreed to hear the appeal of ex-Portage, Indiana Mayor James Snyder. The court's ruling will settle a circuit split involving 18 U.S.C. § 666(a)(1)(B). The statute penalizes any state or local official who:

“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.”

Currently, there is disagreement whether the statute allows officials to receive gratuities for actions already taken or committed to be taken without a previous quid pro quo.

The case involves James Snyder, who was elected as the Portage, Indiana mayor in 2011. To improve waste management, Mayor Snyder asked the assistant superintendent of streets to oversee the public bidding process to purchase improved garbage trucks. The Portage Board of Works reviewed all the bids and awarded Great Lakes Peterbilt a contract for \$1.125 million. After the first contract, Mayor Snyder discovered Great Lakes had a truck the company may sell to the city at a discount. Mayor Snyder asked the city attorney whether the city could purchase the truck. The city attorney responded that the truck could only be purchased after public bidding. Accordingly, the Board of Works opened another round of bidding resulting in another award to Great Lakes.

While this was ongoing, Mayor Snyder opened a consulting business. After the bidding process was completed, Mayor Snyder approached Great Lakes to offer his services. Great Lakes accepted the proposal and, after negotiations, paid Mayor Snyder \$13,000 for a year's worth of services. There is a dispute whether the payment was for consulting services or a gratuity for the awarded contracts. However, the parties agree that Mayor Snyder did not approach the company until after the bidding was closed.

In 2016, Mayor Snyder was indicted on two counts of violating § 666 and several other crimes. At trial, Mayor Snyder argued that § 666 requires a quid pro quo. The district court agreed with the government holding that § 666 also criminalizes gratuities, payments made to officials for actions already taken or intending to be taken regardless of a quid pro quo. Peterbilt owners testified that Snyder did not approach the company until after the bids and that the money was for consulting services. Nevertheless, the jury convicted Mayor Snyder for violating § 666.

Mayor Snyder appealed to the 7th Circuit. The conviction was upheld following longstanding precedent within the circuit. They reasoned, first, that the word "rewarded" is expansive enough to cover gratuities. Second, the circuit acknowledged the divergent penalties for local officials compared to federal officials, but believe the concern is mitigated by the requirement that the gratuity be accepted "corruptly." And, finally, the court explained that the other circuits' theory poses a challenge where federal officials would be criminalized for accepting gratuities whereas local officials would not. The affirmance of Mayor Snyder's conviction is reflective of a deeper divide amongst multiple Courts of Appeal.

There is a 5-2 split amongst the circuits about whether a local official may accept gratuities. The 1st and 5th Circuit agree that § 666 only criminalizes quid pro quo bribery. They rely on the similarity of § 666 to the federal official bribery statute at 18 U.S.C. § 201(b). Both statutes require the defendants to act "corruptly," but gratuities for federal officials are penalized elsewhere. The prohibition against federal officials receiving gratuities, 18 U.S.C. § 201(c), does not include "corrupt" acts. The 1st and 5th Circuits do not believe Congress would have combined two distinct offenses to penalize local officials.

Alternatively, the 2nd, 6th, 7th, 8th, and 11th Circuits do not believe § 666 requires quid pro quo, thus, criminalizing gratuities. The circuits argue there is no statutory requirement that the government prove a quid pro quo. Furthermore, they conclude that the "influenced or rewarded" language is broad enough to include gratuities. While many judges and scholars recognize the split, it remains unresolved.

In light of the contradictory circuit decisions, the Supreme Court has granted Snyder's petition to review § 666. Specifically, the court will review, "Whether section 666 criminalizes gratuities, i.e., payments in recognition of actions the official has already taken or committed to take, without any

quid pro quo agreement to take those actions.” The ensuing decision has significant implications for state and local officials.

§ 666 is the most used public corruption statute. Those found guilty could face up to 10 years in federal prison. Due to the circuits’ contradictions, officials would be guilty of public corruption only in certain parts of the country. The court’s resolution is important to understand whether an individual’s actions constitute crimes. Stay tuned to find out whether the Supreme Court will extend § 666 to gratuities or require the government to prove quid pro quo arrangements.

Contact us

If you have any questions regarding this update, please contact Peter Strickland or your Husch Blackwell attorney.