

7 Takeaways For Companies After Justices' Bribery Ruling

By **Carole Rendon, George Stamboulidis and John Carney** (September 24, 2024)

On June 26, the U.S. Supreme Court handed down a controversial decision in *Snyder v. U.S.* that will likely have major ripple effects on the anti-corruption landscape.

In a 6-3 decision, the Supreme Court held that Title 18 of the U.S. Code, Section 666, criminalizes only bribes received in exchange for official acts. The court held that the statute does not apply to gratuities or gifts — such as gift cards or lunches — given for past acts, absent a quid pro quo agreement between the payer and the official.

The court explained that "bribes are payments made or agreed to before an official act ... to influence the official" to carry out "that future official act." By contrast, gratuities are "payments made to an official after an official act ... with no agreement beforehand," and "are not the same as bribes before the official act."

Having made that distinction between what separates bribes from gratuities, the court said that "American law generally treats bribes as inherently corrupt and unlawful ... [b]ut the law's treatment of gratuities is more nuanced."

In this article, we discuss the specifics of the court's ruling and practical tips companies should keep in mind in the wake of this decision.

Background

In 2012 and 2013, while James Snyder was the mayor of Portage, Indiana, the city purchased garbage trucks from a local trucking company, Great Lakes Peterbilt, for roughly \$1.1 million.

A few months later, Snyder solicited and eventually accepted \$13,000 from Peterbilt's owners, which Snyder said he received for providing the company with independent consulting services.

In November 2016, Snyder was charged with and indicted for federal fund fraud in violation of Title 18 of the U.S. Code, Section 666. After he was convicted and then granted a new trial on the same charges, he was convicted a second time, in March 2021.

Snyder appealed his conviction to the U.S. Court of Appeals for the Seventh Circuit, arguing that Section 666 does not apply to after-the-fact gratuities. Snyder said that Section 666 was inapplicable because there was no agreement made in exchange for the \$13,000 payment prior to the city awarding the contract to Peterbilt.

The Seventh Circuit rejected that argument in 2023 and affirmed Snyder's conviction.



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The Supreme Court's Decision

In holding that Section 666 applies only to bribes, and not to gratuities, the court looked to the statute's origins and explained that it was modeled after Title 18 of the U.S. Code, Section 201(b), the federal bribery statute for federal officials.

Both statutes have express mens rea requirements: Section 201(b) "requires an official to have a corrupt state of mind and to accept (or agree to accept) a payment intending to be influenced in an official act," and Section 666 requires an official to "'corruptly' solicit, accept, or agree to accept 'anything of value.'"

The court contrasted this with Title 18 of the U.S. Code, Section 201(c), the federal anti-gratuity provision, which contains no express mens rea requirement.

The court also expressed federalism concerns, noting that the application of Section 666 to all gratuities would significantly infringe states' rights, as Section 666 "covers virtually all state and local officials — about 19 million nationwide." The court reasoned that the government's position would "subject ... state and local officials to a new and different regulatory regime for gratuities."

The opinion highlighted the risk that an overbroad application of Section 666 could lead to unfortunate, unintended results. For example, a county official could face up to 10 years in federal prison for accepting a \$100 gift card from a grateful neighbor for their work on a new city park.

The court said that interpreting Section 666 to criminalize this interaction "would significantly infringe on bedrock federalism principles," and that states should have the "prerogative to regulate the permissible scope of interactions between state officials and their constituents."

What This Mean for Companies

Snyder raises several issues that companies must strongly consider going forward.

1. "Thank you" gifts may be OK in limited circumstances.

Snyder confirms that companies engaging with state, local and tribal governments may offer small, more traditional corporate marketing items as gifts to their government customers after their work is awarded or completed.

However, best practices dictate that companies refrain from these types of interactions or wait a significant amount of time after the companies' work is complete.

2. Stay vigilant.

While Snyder limits the reach of Section 666, it underscores the need for companies dealing with government officials to carefully navigate the complex patchwork of local, state and federal laws and regulations with respect to gift giving and lobbying.

Most states have adopted distinct laws regarding the types of gifts that can be made to public employees and officials. Some states' laws criminalize gifts of minimal value. Snyder could encourage state and local governments to bolster existing gift-gifting laws.

The court's ruling may also encourage local prosecutors to more aggressively enforce existing gift prohibitions, as the federal government likely now has less authority to prosecute corruption by state and local officials under Section 666.

As the court noted, "different governments draw lines in different places." And, as the court also indicated, even if a gratuity does not breach Section 666, "a gratuity offered and accepted after the official act may be unethical or illegal under other federal, state, or local laws."

Companies that transact with state, local and tribal governments are advised to stay current on their state's applicable gratuity laws.

3. Consider self-disclosure.

Companies serving as government contractors should consider self-disclosure to the relevant authorities if a potential bribery payment does arise. Evidence of violations of federal criminal law, including gratuity payments, must be reported under the terms of most government contracts.

Additionally, recent U.S. Department of Justice initiatives suggest that companies that self-disclose potential misconduct, such as an improper bribe, may be rewarded.

4. Be aware of how Snyder applies to other corruption statutes.

The court's holding suggests that companies and other entities subject to other federal public corruption statutes, such as the Foreign Corrupt Practices Act, will likely not face liability under Section 666 for after-the-fact gratuities.

Similar to the text of Section 666, the text of the FCPA prohibits companies from offering, promising or making a payment of anything of value to improperly influence foreign officials, but it does not make any mention of after-the-fact gratuities.

While the effects that Snyder has on other anti-corruption statutes have yet to be seen, Snyder will likely encourage prosecutors to focus on developing evidence of an agreement before an official act is carried out by a government official.

This requirement is mirrored in the text of the FCPA, and Snyder may reinforce focus on that requirement in future FCPA prosecutions.

5. Note the limits on prosecutorial authority.

While Section 666 has historically been seen as one of the most important legal tools used by prosecutors in addressing state and local corruption, Snyder and other recent Supreme Court decisions, such as *Percoco v. U.S.* and *Ciminelli v. U.S.* in 2023, suggest that the court aims to curtail federal prosecutors' ability to broadly interpret anti-corruption laws.

6. Review existing policies and procedures.

Businesses that interact with state and local officials should thoroughly review existing policies and procedures regarding government interactions and gift giving.

Additionally, companies should bolster employee training on government interactions to cover the above nuances and ensure future conduct will not be viewed as bribery.

This is key for corporations, given the DOJ's recent changes to its Evaluation of Corporate Compliance Programs, which focuses on the importance of strong compliance regimes.

7. Document retention is key.

To prove that an agreement between a payer and an official was reached before undertaking any official act, prosecutors will likely be required to have cooperator testimony and/or documentary evidence — such as texts, emails and agreements — tying the potential after-the-fact payment to the official act before that act is undertaken.

Companies are advised to retain accurate gift records to clarify the timing of the relevant conduct.

Conclusion

While the real-world implications of *Snyder v. U.S.* have yet to be seen, there are several measures companies can take to avoid liability under Section 666.

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