

Supreme Court Narrows Interpretation of Federal Corruption Statute



CLIENT ALERT | June 29, 2016

Martin S. Bloor | bloorm@pepperlaw.com

Linda Regis-Hallinan | hallinanl@pepperlaw.com

Christen Tuttle | tuttlec@pepperlaw.com

THE SUPREME COURT'S DECISION HALTS THE GOVERNMENT'S TREND TO BROADLY INTERPRET THE FEDERAL CORRUPTION STATUTES IN ITS AGGRESSIVE PROSECUTION OF POLITICIANS AND NARROWS THE GOVERNMENT'S DISCRETION IN PROSECUTING FUTURE FEDERAL CORRUPTION CASES.

On June 27, the U.S. Supreme Court vacated the conviction of former Virginia Governor Robert McDonnell, narrowing the definition of an "official act" in federal corruption cases. *McDonnell v. United States* (available at http://www.supremecourt.gov/opinions/15pdf/15-474_ljgm.pdf), No. 15-474 (2016). McDonnell was previously found guilty of honest services fraud and extortion in the Eastern District of Virginia.

THIS PUBLICATION MAY CONTAIN ATTORNEY ADVERTISING

The material in this publication was created as of the date set forth above and is based on laws, court decisions, administrative rulings and congressional materials that existed at that time, and should not be construed as legal advice or legal opinions on specific facts. The information in this publication is not intended to create, and the transmission and receipt of it does not constitute, a lawyer-client relationship. Please send address corrections to phinfo@pepperlaw.com.

© 2016 Pepper Hamilton LLP. All Rights Reserved.

While he was the governor of Virginia, McDonnell and his wife, Maureen McDonnell, who was also convicted and is in the process of a separate appeal, accepted \$175,000 in various gifts and loans from Jonnie Williams, the then-CEO of the company Star Scientific. Star Scientific sought approval from the Food and Drug Administration of Anatabloc, a nutritional supplement derived from a tobacco compound called anatabine, as an anti-inflammatory drug. To that end, Williams sought McDonnell's assistance in getting Virginia's public universities to conduct research studies on the effects of anatabine. Williams also sought McDonnell's assistance in getting Virginia's Tobacco Commission to allocate grant money to study anatabine and Virginia's state employee health plan to cover Anatabloc. McDonnell set up several meetings for Williams, held events for Star Scientific and met with other government officials regarding Anatabloc at Williams' request.

As construed by the Supreme Court in *Skilling v. United States*, 561 U.S. 358, 404 (2010), in order to be found guilty of honest services fraud, a public official must be found to have committed or agreed to commit an "official act" in exchange for monetary or other benefits or the promise of such benefits. See 18 U.S.C. §§ 1343, 1346, 201. An "official act" is defined by statute as "any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit." 18 U.S.C. § 201(a)(3).

McDonnell did not contest that he and his wife had received gifts and loans from Williams, but he asserted that he did not commit any "official act" in exchange for those gifts and loans. McDonnell argued that merely setting up meetings and hosting events was insufficient to meet the definition of an "official act" under the law. In contrast, the government argued that McDonnell's actions constituted "official acts." Adopting the government's view, the district court instructed the jury that "official acts" included "acts that a public official customarily performs," including those that are "in furtherance of longer-term goals" or "in a series of steps to exercise influence or achieve an end." The district court declined to provide the limiting instruction proposed by McDonnell that "merely arranging a meeting, attending an event, hosting a reception or making a speech are not, standing alone, 'official acts,' even if they are settled practices of the officials."

McDonnell was found guilty of honest services fraud and extortion, and the U.S. Court of Appeals for the Fourth Circuit affirmed his conviction. The Supreme Court granted certiorari and, on June 27, 2016, overturned the decision. Writing for the unanimous

Court, Chief Justice John Roberts wrote, “we reject the Government’s reading of §201(a)(3) and adopt a more bounded interpretation of ‘official act.’ Under that interpretation, setting up a meeting, calling another public official, or hosting an event does not, standing alone, qualify as an ‘official act.’” No. 15-474, slip op. at 14. The Supreme Court held that such actions could be considered by a jury as evidence that the official in fact had agreed to take official action or agreed to exert pressure on or advise another official to take official action. However, those acts without more are not “official acts” for purposes of the federal corruption statutes. *Id.* at 20-22.

The Supreme Court also addressed the definition of the “question, matter, cause, suit, proceeding or controversy” on which a public official makes a decision or takes an action under § 201(a)(3). The Supreme Court held that that definition had been met in this case, as described by the Fourth Circuit. However, the Court rejected as overly general the district court’s conclusion that “Virginia business and economic development” was the “question, matter, cause, suit, proceeding or controversy” at issue in the case. The Supreme Court held that the question or matter must be “more specific and focused than a broad policy objective” and “must involve a formal exercise of governmental power. . . .” *Id.* at 21, 26.

Finally, the Supreme Court held that an overly broad construction of the federal corruption statute would be impermissibly vague and would potentially chill the interactions between public officials and their constituents. *Id.* at 22-23. The Supreme Court’s decision halts the government’s trend to broadly interpret the federal corruption statutes in its aggressive prosecution of politicians and narrows the government’s discretion in prosecuting future federal corruption cases. The Supreme Court’s narrow interpretation of an “official act” under the statute may also impact recent convictions of politicians for public corruption, including the convictions of former New York State Assembly Speaker Sheldon Silver and former State Senate Majority Leader Dean Skelos, both of which are currently on appeal.