No. 23-108

In the Supreme Court of the United States

JAMES E. SNYDER, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether 18 U.S.C. 666(a)(1)(B), which makes it a crime for certain state, local, and tribal officials whose agencies receive significant federal benefits to "corruptly * * * accept[] or agree[] to accept" payment "intending to be influenced or rewarded in connection with" certain government business, covers gratuities in addition to bribes.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 3a-45a) is reported at 71 F.4th 555. The order of the district court denying petitioner's motion for a judgment of acquittal and a new trial (Pet. App. 53a-69a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 15, 2023. A petition for rehearing was denied on July 14, 2023 (Pet. App. 1a-2a). The petition for a writ of certiorari was filed on August 1, 2023, and granted on December 13, 2023. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 666 of Title 18 provides, in pertinent part:

(a) Whoever, if the circumstance described in subsection (b) of this section exists—

(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof— * * *

(B) 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 any thing of value of $5,000 or more; or

(2) corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, 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;

shall be fined under this title, imprisoned not more than 10 years, or both.

(b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.

(c) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

Other relevant statutory provisions are reproduced in the appendix to this brief. App., *infra*, 1a-12a.

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Indiana, petitioner was convicted on one count of corruptly soliciting an illegal payment in connection with a valuable transaction of a federally funded entity, in violation of 18 U.S.C. 666(a)(1)(B), and one count of corruptly interfering with the administration of the internal revenue laws, in violation of 26 U.S.C. 7212(a). Pet. App. 46a. The district court sentenced him to 21 months of imprisonment, to be followed by one year of supervised release. *Id.* at 47a-48a. The court of appeals affirmed. *Id.* at 3a-45a.

A. Legal Background

In 18 U.S.C. 666, Congress has prohibited agents of entities that receive significant federal benefits from "corruptly" accepting payments "intending to be influenced or rewarded in connection with" certain significant matters. 18 U.S.C. 666(a)(1)(B); see 18 U.S.C. 666(a)(2) (bar on providing such payments). Section 666 protects the federal interest in ensuring that federal monies "are in fact spent for the general welfare, and not frittered away in graft or on projects undermined when funds are siphoned off or corrupt public officers are derelict about demanding value for dollars." *Sabri* v. *United States*, 541 U.S. 600, 605 (2004).

1. The criminalization of the corrupt acceptance of gifts has a long history, with many laws punishing not only bribery, but also illegal gratuity. Illegal gratuity differs from bribery in that "for bribery there must be a *quid pro quo*—a specific intent to give or receive something of value in exchange for an official act. An

illegal gratuity, on the other hand, may constitute merely a reward for some future act that the public official will take (and may already have determined to take), or for a past act that he has already taken." *United States* v. *Sun-Diamond Growers*, 526 U.S. 398, 404-405 (1999) (emphasis omitted).

English laws as old as the Statute of Westminster, The First, 1275, 3 Edw. 1, c.5, prohibited certain public servants from accepting payment for official action beyond their authorized compensation. See *Mason* v. *Muncaster*, 16 F. Cas. 1052, 1054 (C.C.D.D.C. 1828). Closer to the Founding era, Blackstone devoted a section of his treatise to "Bribery," and included a discussion of gratuities in that section. See 4 William Blackstone, *Commentaries on the Laws of England* 139 (1769) (Blackstone). Specifically, Blackstone criticized the Romans because, while they forbade bribery, they nonetheless "allow[ed] the magistrate to receive small presents, provided they did not in the whole exceed a hundred crowns in the year." *Ibid.* Blackstone also observed that Plato's "ideal republic" took the "wise[r]" course by "order[ing] those who take presents for doing their duty to be punished in the severest manner." *Ibid.*

The Emoluments Clauses of the Constitution, in turn, bar federal officials from accepting certain gifts—including after-the-fact gratuities—without congressional authorization. See U.S. Const. Art. I, § 9, Cl. 8 ("[N]o Person holding any Office of Profit or Trust under [the United States], shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State."); Art. II, § 1, Cl. 7 ("The President shall, at stated Times, receive for his Services, a Compensation * * * during the Period for which he

shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them."). The Clauses appear to have been included in part because of a lavish gratuity Benjamin Franklin received from King Louis XVI when his term as the American ambassador to France came to an end.

According to Franklin's grandson, the king gave Franklin a snuff box "set with four hundred and eight Diamonds" because of a European custom of giving an ambassador a gift upon his departure "where he has given Satisfaction by his Conduct." Letter from William Temple Franklin to Thomas Jefferson, Apr. 27 1790, *in* 16 Julian P. Boyd, *The Papers of Thomas Jefferson, 30 November 1789 to 4 July 1790*, at 364-365 (1961). Governor Edmund Randolph referenced that gift as a motivation for the constitutional ban on emoluments, explaining that after "[a] box was presented to our ambassador by the king of our allies[,] [i]t was thought proper, in order to exclude corruption and foreign influence, to prohibit any one in office from receiving or holding any emoluments from foreign states." Edmund Randolph (remarks at the Virginia Convention Debates, June 17, 1788), in David Robertson, *Debates and Other Proceedings of the Convention of Virginia of 1788*, at 330 (2d ed. 1805).

Some of the Nation's earliest anticorruption laws likewise targeted gratuities. See, *e.g.*, Act of Dec. 31, 1792, ch. 1, § 26, 1 Stat. 298 (prohibiting officers registering ships from "tak[ing] any other, or greater fees, than are by this act allowed, or * * * receiv[ing] any voluntary reward or gratuity, for any of the services performed"); see also Ch. XV, 9 Va. Stat. at Large 389 (Oct. 1777) (judges' oath not to take "any gift, fee, or

reward, of gold, silver, or any other thing, directly or indirectly, * * * for any matter done or to be done by virtue of your office"); *State* v. *Brown*, 267 S.W.2d 682, 686-687 (Mo. 1954) (discussing a state gratuity law enacted in 1825); see also Br. in Opp. 11 n.3.

Indeed, "the first federal bribery statute of general application" encompassed gratuities. *Dixson* v. *United States*, 465 U.S. 482, 491 n.8 (1984). That 1853 law prohibited federal officers and Members of Congress from "receiv[ing] any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted, in the prosecution of such claim." Act of Feb. 26, 1853, ch. 81, §§ 2, 3, 10 Stat. 170; see also *Burton* v. *United States*, 202 U.S. 344, 365-370 (1906) (upholding a similar law).

2. The current principal federal-official anticorruption law, 18 U.S.C. 201, which was enacted in 1962, similarly prohibits both bribes and gratuities. Congress enacted Section 201 as the result of an "effort to reformulate and rationalize all federal criminal statutes dealing with the integrity of government." *Dixson*, 465 U.S. at 492; see Act of Oct. 23, 1962 (1962 Act), Pub. L. No. 87-849, 76 Stat. 1119. From its inception, the law included the bar on gratuities that now appears in Section 201(c), which prohibits payments "for or because of any official act." 18 U.S.C. 201(c); see *Sun-Diamond Growers*, 526 U.S. at 404; see also 1962 Act § 201, 76 Stat. 1120 (statute originally prohibited gratuities in Sections 201(f) and (g)).

A 1958 congressional staff report recommending the enactment of Section 201 described the provision as prohibiting "the payment or receipt of anything of value in appreciation of, or as a reward for[,] an official act."

Staff of the H. Comm. on the Judiciary, 85th Cong., 2d Sess., *Federal Conflict of Interest Legislation: A Staff Report to Subcommittee No. 5* at 72 (Comm. Print 1958) (1958 Report); see *Crandon* v. *United States*, 494 U.S. 152, 162 n.15 (1990) (consulting the same report in construing other provisions of the 1962 law). The report also explained that "[w]hile it may at first blush seem harsh to impose a severe penalty for making or receiving a gift for which no corrupt consideration has been given, it is readily apparent that a practice of tacitly 'rewarding' public officials for their official acts could undermine the public service as effectively as if the payments were the fruit of express corrupt agreement." 1958 Report 72.

3. By 1984, a dispute had arisen about "whether or under what circumstances persons not employed by the Federal Government" could "be considered as a 'public official'" subject to 18 U.S.C. 201. S. Rep. No. 225, 98th Cong., 1st Sess. 369 (1983) (Senate Report). Recognizing that dispute, Congress enacted Section 666. See *ibid.*; Comprehensive Crime Control Act of 1984 (Crime Control Act), Pub. L. No. 98-473, Tit. II, § 1104(a), 98 Stat. 2143-2144.

The original version of Section 666 barred covered individuals from, *inter alia*, "accept[ing], or agreeing to accept anything of value * * * for or because of" the recipient's actions on behalf of his organization. 98 Stat. 2143. In a 1986 statute entitled the "Criminal Law and Procedure Technical Amendments Act of 1986," Pub. L. No. 96-646, 100 Stat. 3592, Congress substituted in the current language, which prohibits covered persons from seeking, accepting, or agreeing to payments either "intending to be influenced" or "rewarded," if they do so "corruptly" and "in connection with" a covered entity's

"business" or "transactions" worth "$5,000 or more." 18 U.S.C. 666(a)(1)(B); see Criminal Law and Procedure Technical Amendments Act of 1986, 100 Stat. 3592. A symmetric provision prohibits offering, agreeing to, or providing such payments "with intent" either "to influence or reward" a covered person. 18 U.S.C. 666(a)(2).

B. Factual Background

Petitioner is the former mayor of Portage, a city in Indiana that receives grants substantially in excess of $10,000 from numerous federal agencies, including the Department of Justice, the Department of Transportation, and the Federal Emergency Management Agency. Pet. App. 27a; 3/10/21 Trial Tr. (Tr.) 486; Trial Ex. 149. When petitioner assumed his office in January 2012, he was experiencing financial difficulties: he owned and operated First Financial Trust Mortgage, which by 2009 owed nearly $100,000 in payroll taxes, and he was also behind in paying his personal taxes. Pet. App. 18a-19a. In December 2010 and February 2011, the IRS had levied petitioner's personal bank accounts. *Id.* at 19a.

Around the time that petitioner assumed office, Portage needed to buy new garbage trucks. Pet. App. 27a. Although the city purported to conduct a fair public bidding process, "there were significant irregularities in the bidding process" indicating that petitioner "had it set up to come out in * * * favor" of Great Lakes Peterbilt (GLPB), a trucking company owned by two brothers, Robert and Stephen Buha, who were "in serious financial difficulty" of their own. *Id.* at 56a-57a.

At the outset, petitioner "hand-picked" his "close friend" Randy Reeder to administer the bidding process, even though Reeder had "no experience" with administering public bids. Pet. App. 27a, 57a. And when petitioner did so, he told a "longtime veteran" of the

city's Streets and Sanitation Department, who had "extensive experience overseeing public bid processes[,] * * * not to get involved in the bid processes and that he and Reeder would handle it." *Id.* at 57a.

Reeder then "tailored the bid specifications to favor GLPB." Pet. App. 27a. Among other things, Reeder "based the chassis specifications on a Peterbilt chassis," the precise type that GLPB sold, and "specified that the trucks must be delivered within 150 days, a deadline that was suggested to him by GLPB, but was an unusually fast turnaround for a new garbage truck." *Ibid.* Petitioner knew that GLPB "could meet 150 days and the other companies could not." 3/16/21 Tr. 1457. Portage could have saved about $60,000 by not demanding such expedited delivery. 3/11/21 Tr. 679, 690; 3/16/21 Tr. 1431.

Reeder also directed that bids be submitted to petitioner, rather than the city clerk-treasurer, and he "turned down equipment demonstrations offered by a number of [other] prospective suppliers." Pet. App. 58a; see *id.* at 57a. Both of those practices were unusual or unprecedented. See 3/10/21 Tr. 494; 3/12/21 Tr. 893, 945-946. GLPB was the only bidder whose bid was able to satisfy all of the requirements that Reeder had imposed, 3/16/21 Tr. 1431-1432, and a board consisting of petitioner and two of his appointees voted to award the contract to GLPB. Pet. App. 27a-28a.

Later in his term, petitioner attempted to have the city buy "an unused, 2012 model truck that had been sitting on GLPB's lot for two years," exposed to the elements. Pet. App. 28a; see 3/18/21 Tr. 1992. The Buhas had been unable to sell the truck and soon "would have had to start making balloon payments on [a] loan in order to avoid losing [it]." Pet. App. 59a. After a city lawyer advised "that the truck was too expensive to be purchased without going

through the public bidding process," Portage opened a new round of bidding for two additional trucks in November 2013. *Id.* at 28a.

Reeder "adjusted th[e] specifications" for bidding on one of the trucks "to match the truck sitting on GLPB's lot," notwithstanding that the truck was not the current model (a fact that petitioner and Reeder never disclosed to the other contracting-board members) and that, "from a maintenance standpoint, it made little sense to purchase trucks with different specifications." Pet. App. 28a. During the contracting process, petitioner personally exchanged dozens of phone calls and text messages with the Buhas—but none with any other bidders. *Id.* at 29a, 60a. GLPB again won the contract, *id.* at 28a; the total value of the two contracts awarded to GLPB was $1.125 million. *Id.* at 27a.

Less than three weeks after the second contract was awarded, GLPB issued a check for $13,000 to a defunct firm owned by petitioner. Pet. App. 28a-29a, 56a. Most of the funds were "quickly transferred to [petitioner's] personal account." *Id.* at 57a. Petitioner offered various conflicting explanations for the payment, telling a city planning consultant that GLPB paid him "to lobby the state legislature on its behalf"; telling Reeder that the money was for "phone and payroll consulting" for GLPB; and later telling the FBI that it was for "health insurance and information technology consulting." *Id.* at 29a; see 3/16/21 Tr. 1489.

But neither petitioner nor the Buhas produced any "documentation relating to any consulting agreement or services performed by [petitioner] for GLPB," and petitioner did not include the $13,000 payment on a form to disclose compensation he received from parties doing business with the city. Pet. App. 61a; see *id.* at 30a, 44a;

J.A. 65, 67-76. And at the time GLPB's controller issued the check, Robert Buha told the controller that "they were paying [petitioner] for his influence." Pet. App. 29a; see *id.* at 60a-61a.

C. Procedural History

1. In 2016, a federal grand jury in the Northern District of Indiana indicted petitioner on two counts of corruptly taking money "intending to be influenced or rewarded in connection with" city business, in violation of 18 U.S.C. 666(a)(1)(B), and one count of corruptly interfering with the administration of the internal revenue laws, in violation of 26 U.S.C. 7212(a). J.A. 1-13. One of the Section 666 counts concerned the truck purchases; the other concerned city towing contracts. See *ibid.*

a. Before trial, petitioner moved to dismiss the indictment "[i]nsofar as the government is attempting to build a 'gratuity' case," asserting that Section 666 prohibits only *quid pro quo* bribery. J.A. 16. The district court denied the motion, explaining that the Seventh Circuit had already recognized that Section 666 prohibits both bribery and gratuities. Pet. App. 161a-163a (citing *United States* v. *Johnson*, 874 F.3d 990, 1001 (7th Cir. 2017), cert. denied, 583 U.S. 1172 (2018), and *United States* v. *Hawkins*, 777 F.3d 880, 881 (7th Cir. 2015)).

A jury found petitioner guilty on the tax count and the Section 666 count premised on the truck purchases, but acquitted him on the Section 666 count premised on the towing contracts. Pet. App. 5a. The district court subsequently granted petitioner a new trial on the Section 666 count premised on the truck purchases due to the "cumulative effect of several irregularities," *id.* at 143a —principally that the Buhas had surprised petitioner and the court by invoking their privilege against self-incrimination and refusing to testify. See *id.* at 145a-150a.

b. During the second trial, Robert Buha appeared as a witness for the defense under a grant of immunity. Pet. 11. Buha testified that right after GLPB won the second contract, petitioner appeared unannounced at the brothers' offices and told them "he needed money," requesting $15,000 to deal with his tax problems and holiday expenses. 3/18/21 Tr. 1956, 1999, see *id.* at 1932-1934, 1998-1999; Pet. App. 29a.

When the brothers refused to loan him the money, according to Buha, petitioner said, "Well, I could work for it," and purportedly agreed to provide a year's worth of healthcare consulting to GLPB for an upfront payment of $13,000. 3/18/21 Tr. 1936; see *id.* at 1931-1932, 1960, 2000. While Buha claimed that petitioner had "ideas and advice" that GLPB "[c]ould well have" used, he acknowledged his prior grand-jury testimony that he did not view petitioner's offer to work for the money as genuine. *Id.* at 1940, 1957; see also *id.* at 2014 (prior testimony that petitioner did not provide "[a]nywhere close" to $13,000 worth of consulting). And Buha could not identify any concrete work that petitioner had done. *Id.* at 2016-2019, 2023.

Petitioner proposed a jury instruction distinguishing bribes and gratuities and directing acquittal if the government proved the latter but not the former. J.A. 18. The district court, however, declined to instruct the jury in those terms. J.A. 26-28. It instead repeated terms in the statute by instructing the jury that the government was required to prove that petitioner "solicited, demanded, accepted or agreed to accept a thing of value from another person," and that petitioner "acted corruptly, with the intent to be influenced or rewarded in connection with contracts with the City of Portage." J.A. 27; see 18 U.S.C. 666(a)(1)(B).

The district court further instructed the jury as to the meaning of the term "corruptly," using the definition of the term that had been agreed upon by both parties in their proposed instructions. See J.A. 28 (defining acting "corruptly" as "act[ing] with the understanding that something of value is to be offered or given to reward or influence [the recipient] in connection with his official duties"); D. Ct. Doc. 458, at 3 (Feb. 16, 2021) (petitioner's proposed jury instructions containing identical language).

The second jury, like the first, found that petitioner's acceptance of $13,000 in connection with the garbage-truck contracts awarded to the Buhas violated Section 666. Pet. App. 5a.

c. Petitioner renewed his argument that Section 666 does not apply to gratuities in a posttrial motion for a judgment of acquittal, which the district court denied. Pet. App. 53a-69a. The court observed that petitioner's argument was not only foreclosed by circuit precedent, but inconsistent with "a plain-language reading" of the statute. *Id.* at 63a. The court moreover found that "even if [petitioner] were right, * * * there was ample evidence permitting a rational jury to find, from the circumstantial evidence, that there was an up-front agreement to reward [petitioner] for making sure GLPB won the contract award(s)." *Ibid.*; see *id.* at 63a-64a.

The district court sentenced petitioner to 21 months of imprisonment, to be followed by one year of supervised release. Pet. App. 47a-48a.

2. The court of appeals affirmed. Pet. App. 3a-45a.

Like the district court, the court of appeals rejected petitioner's claim that Section 666 is limited solely to bribes. Pet. App. 38a-41a. The court observed that "the statutory text"—and in particular, the phrase

"'influenced or rewarded'"—"easily reaches both bribes and gratuities." *Id.* at 38a.

The court of appeals also noted that it had "repeatedly held that § 666(a)(1)(B) 'forbids taking gratuities as well as taking bribes,'" and that "[m]any other circuits have taken the same position." Pet. App. 39a (quoting *Hawkins*, 777 F.3d at 881, and collecting authority). The court declined petitioner's suggestion that it "reconsider [its] precedent in light of contrary decisions by the First and Fifth Circuits." *Ibid.* (citing *United States* v. *Hamilton*, 46 F.4th 389 (5th Cir. 2022), and *United States* v. *Fernandez*, 722 F.3d 1 (1st Cir. 2013)). The court explained that while those other circuits focused on "similarities between the language" of Section 666 and the language of the federal-official bribery statute (Section 201), Section 666 uses the word "rewarded," which does not appear in Section 201 and "is a strong indication that § 666 covers gratuities as well as bribes." *Id.* at 39a-40a. The court further observed that while the other circuits had noted the difference in penalties between Section 666 and the federal-official gratuity statute (Section 201(c)), the difference was "mitigated" by the requirement that a Section 666 defendant act "'corruptly.'" *Id.* at 41a (citation omitted).

The court of appeals also rejected petitioner's challenge to the sufficiency of the evidence. Pet. App. 41a-45a. Summarizing the evidence against petitioner, the court found that "a reasonable jury could conclude that [petitioner] accepted the [$13,000] check as a bribe or gratuity for steering the contracts to GLPB." *Id.* at 43a.

SUMMARY OF ARGUMENT

The court of appeals correctly held that petitioner violated 18 U.S.C. 666 when he solicited and accepted an after-the-fact payment for having steered the garbage-

truck contracts to the Buhas. While petitioner contends that the statute excludes "gratuities," the statutory language—which employs the term "rewarded"—is precisely suited to cover after-the-fact payments like the one that he received. Context and history likewise demonstrate that both bribes and gratuities are covered, consistent with the threat that both forms of graft pose to federal programs.

A. The plain text of 18 U.S.C. 666 covers "gratuit[ies]"—a term that this Court has defined as a "reward for" some act that the recipient has already taken or resolved to take. *United States* v. *Sun-Diamond Growers*, 526 U.S. 398, 405 (1999). Section 666 prohibits "corruptly" accepting "anything of value * * * intending to be influenced or *rewarded*." 18 U.S.C. 666(a)(1)(B) (emphasis added). The pairing of the terms "influenced" and "rewarded" covers both the beforehand agreements to trade payment for influence that constitute *quid pro quo* bribery and the after-the-fact payments intended to "make a return * * * for a service," *Webster's New International Dictionary of the English Language* 2136 (2d ed. 1958) (parentheses omitted)—*i.e.*, payments to "reward"—that constitute gratuities.

Petitioner identifies no definition to the contrary. And his efforts to confine Section 666 solely to *quid pro quo* bribery, which is traditionally defined using just the term "influenced" by itself, would leave the word "rewarded" with no meaningful work to do. Petitioner suggests that Section 666's inclusion of the "corruptly" mens rea somehow limits the statute's actus reus to *quid pro quo* bribery, but the more obvious inference is that Congress narrowed the statute through a stringent mens rea as a means of excluding the innocuous gifts that the ban on gratuities might otherwise reach.

B. The history of Section 666 shows that its coverage of gratuities is the direct product of congressional design. The statute was originally enacted in 1984 amidst confusion about whether the bribery statute applicable to federal officials, 18 U.S.C. 201, applied to some state and local officials as well. Section 201 covers both bribes and gratuities, and petitioner acknowledges that as originally enacted, Section 666, which covered payments "for or because of" a recipient's action, 18 U.S.C. 666(b) (Supp. II 1984), did as well.

In 1986, Congress restyled Section 666's operative language to its current form, modeling it on the operative language of 18 U.S.C. 215, which is well understood to prohibit both bribes and gratuities given to bank officials. Congress had updated Section 215 to include the phrase "intending to be influenced or rewarded" just three months before it amended Section 666 to include the identical phrase. And the 1986 amendments to Section 666 also added other features—the "corruptly" mens rea and an exclusion for bona fide compensation—drawn from Section 215's bar on bribery and gratuities. The update was therefore a reinforcement of, not a retreat from, the coverage of gratuities.

C. Petitioner attempts to support his reading with various canons of construction and clear-statement rules, but none of them can obscure what Section 666 directly and unambiguously says. His suggestion of First Amendment concerns with applying the statute in the context of payments that are claimed to be campaign contributions can be addressed, if such applications arise, in case-specific ways that do not require his facial—and atextual—limitation of the statute's language. Moreover, petitioner's constitutional-avoidance argument is difficult to square with the fact that Section

201—whose constitutionality is not disputed—also bars gratuities. And contrary to his contention, Section 666's language is not vague—instead, it provides a "clear rule[]" prohibiting "bribes and gratuities to public officials." *Sorich* v. *United States*, 555 U.S. 1204, 1207 (2009) (Scalia, J., dissenting from denial of certiorari).

D. Petitioner's policy concerns about the statute provide no basis to override its text and in any event are overblown. Limiting features of Section 666 preclude its application to the sorts of innocuous gift-giving that petitioner hypothesizes it might cover. The statute includes a stringent mens rea of "corruptly"; an exception for bona fide compensation received "in the usual course of business," 18 U.S.C. 666(c); and a requirement that a payment be "in connection with" specific business or transactions worth more than $5,000, 18 U.S.C. 666(a)(1)(B).

This Court has already found that Section 201(c)'s bar on gratuities excludes innocuous gift-giving by requiring that a reward be "linked to a particular 'official act.'" *Sun-Diamond Growers*, 526 U.S. at 408 (quoting 18 U.S.C. 201(c)). Section 666 not only includes a parallel requirement that a reward be "in connection with" particular business or transactions, but also *adds* a $5,000 floor on the value of those transactions, as well as the "corruptly" mens rea and the exception for bona fide compensation. Section 666's prohibition on gratuities thus readily excludes everyday occurrences like performance bonuses, routine birthday and holiday gifts, and tokens of thanks for small kindnesses or overall service. Likewise, the many gifts accepted in compliance with commonplace ethics rules adopted by the recipient's employer will not be corrupt.

It is therefore unsurprising that petitioner fails to cite a single case that would substantiate his claim that a parade of horribles would follow if the Court accords Section 666 the same plain-meaning interpretation that the lower courts have given it for decades. Nor does the single sentencing range for bribes and gratuities suggest that gratuities will be overpunished.

ARGUMENT

PETITIONER VIOLATED 18 U.S.C. 666 BY CORRUPTLY ACCEPTING A REWARD FOR RIGGING OVER $1.1 MILLION IN GOVERNMENT CONTRACTS

Petitioner contends that 18 U.S.C. 666 prohibits only bribery before the recipient acts and not gratuities awarded after favorable action. The text speaks clearly to the contrary. By barring payments both to "influence[]" and to "reward[]," 18 U.S.C. 666(a)(1)(B) and (a)(2), Section 666 enacts a "clear rule[]" prohibiting "bribes and gratuities to public officials." *Sorich* v. *United States*, 555 U.S. 1204, 1207 (2009) (Scalia, J., dissenting from denial of certiorari). The statutory history confirms that understanding, and petitioner's interpretive and extratextual arguments are unavailing. Nor do petitioner's hypothetical applications provide a basis to supersede Section 666's text, which already contains express limits on the application of the actus reus that foreclose the prosecutions that he posits. His conviction should be affirmed.

A. Section 666's Text Unambiguously Covers Gratuities

Where, as here, "the plain language" of the statute is "'unambiguous,'" the Court's inquiry "'begins with the statutory text, and ends there as well.'" *National Ass'n of Mfrs.* v. *Department of Def.*, 583 U.S. 109, 127 (2018) (citation omitted). Section 666's prohibition on payments

to "reward[]" as well as payments to "influence[]" is a direct reference to gratuities. This Court has distinguished "illegal gratuit[ies]" from *quid pro quo* bribes by noting that a gratuity "may constitute * * * a reward for some future act that the public official will take (and may already have determined to take), or for a past act that [the recipient] has already taken." *United States* v. *Sun-Diamond Growers*, 526 U.S. 398, 405 (1999).

1. The word "rewarded" describes gratuities

By prohibiting giving and receiving payments while intending to "reward" or "be rewarded," Section 666 unambiguously covers gratuities, such as gifts or payments offered to or accepted by an official for having undertaken (or resolving to undertake) some business or transaction of a covered organization. *Sun-Diamond Growers*, 526 U.S. at 405; *Ballentine's Law Dictionary* 534 (3d ed. 1969) (defining "gratuity" as, *inter alia*, "a reward") (emphasis omitted).

a. Dictionaries consistently define the verb "reward" as "[t]o make a return, or give a reward to (a person) or for (a service, etc.); to requite; recompense; repay." *Webster's New International Dictionary of the English Language* 2136 (2d ed. 1958) (*Webster's Second*); 8 *Oxford English Dictionary* 621 (1933) (*OED*) ("[t]o repay, requite, [or] recompense (one) for some service, merit, etc."). Similarly, they define the noun "reward" as "[t]hat which is given in return for good or evil done or received," and especially "that which is offered or given for some service or attainment, as a prize for excellence in studies, a sum of money for the return of something lost or for the capture of a criminal." *Webster's Second* 2136 (emphasis omitted); 8 *OED* 620 (similar). *Black's Law Dictionary*, on which petitioner relies (Br. 17), similarly defines "reward" as a "sum of money paid or

taken for doing, or forbearing to do, some act." *Black's Law Dictionary* 1322 (6th ed. 1990) (*Black's Sixth*).

Under the unambiguous dictionary definitions of "reward," someone accepts a thing of value "intending to be * * * rewarded," 18 U.S.C. 666(a)(1)(B), whenever she accepts that thing "in return for," *Webster's Second* 2136, or "for doing," *Black's Sixth* 1322, something. No prior meeting of the minds between payor and payee is necessary. Someone may be "rewarded" for returning a lost wallet, for example, even if she did not enter into any agreement with the owner to find the wallet in exchange for the money. Likewise, a public official may be "rewarded" for steering lucrative contracts to a business, even if the official and the business owners did not agree on the payment beforehand.

Accordingly, for purposes of legal nomenclature, "unlawful rewarding offenses * * * are termed * * * 'illegal gratuities' by many courts." H.R. Rep. No. 1396, 96th Cong., 2d Sess. 186 (1980)). As petitioner recognizes (Br. 31), Congress has repeatedly used the term "reward" to criminalize a "gratuity." For example, 18 U.S.C. 1912 bars federal shipping agents from accepting gratuities by prohibiting them from receiving "any fee or *reward*" beyond what the law permits for performing their duties. *Ibid.* (emphasis added); see Pet. Br. 31. Similarly, 22 U.S.C. 4202 bars customs officials from accepting gratuities by prohibiting them from receiving "any fee or *reward*" greater than what is allowed by law. *Ibid.* (emphasis added); see Pet. Br. 31. Nor are those the only statutes that use the word "reward" to describe an illegal-gratuity offense. See 26 U.S.C. 7214(a)(2) (crime for an IRS agent to "receive[] any fee, compensation, or *reward*, except as by law

prescribed, for the performance of any duty") (emphasis added).

b. The scope of the word "reward" is particularly clear where, as in Section 666, it is paired disjunctively with the word "influence." It is undisputed (Pet. Br. 17) that payments made to "influence" an official refer to "*quid pro quo*" bribery—*i.e.*, payment with "specific intent to give or receive something of value in exchange for an official act." *Sun-Diamond Growers*, 526 U.S. at 404 (emphasis omitted). But while a "payment made to 'influence' connotes bribery," a payment made "'to 'reward' connotes an illegal gratuity." *United States* v. *Ganim*, 510 F.3d 134, 150 (2d Cir. 2007) (Sotomayor, J.) (citation omitted), cert. denied, 552 U.S. 1313 (2008).

The addition of a bar on payments to "reward" alongside payments to "influence" therefore extends Section 666's prohibition beyond bribes, to cover after-the-fact gratuities as well. A comparison with 18 U.S.C. 201(b), the statute that criminalizes "bribery" for federal officials, *Sun-Diamond Growers*, 526 U.S. at 404, illustrates the point. Section 201(b) covers only payments made "'to influence any official act' (giver) or in return for 'being influenced in the performance of any official act' (recipient)." *Ibid.* (quoting 18 U.S.C. 201(b)(1) and (2)). Section 201(b) is therefore limited to bargains (explicit or implicit) that are offered, solicited, or struck before the official act. See, *e.g.*, *McDonnell* v. *United States*, 579 U.S. 550, 572 (2016). Section 666, however, uses both the term "influence" and the term "reward." The former covers up-front bribery; the latter extends the statute to cover after-the-fact payments, which are "gratuit[ies]." *Sun- Diamond Growers*, 526 U.S. at 405.

2. Section 666's text cannot support a limitation to up-front bribes

Despite the plain meaning of the term "rewarded," petitioner insists (Br. 17-19) that the term covers only up-front *quid pro quo* agreements. But petitioner identifies nothing in the text that imposes such a limit, and such beforehand agreements are already covered by the prohibition on payments to influence, leaving "rewarded" with no meaningful work to do. See *TRW Inc.* v. *Andrews*, 534 U.S. 19, 31 (2001) ("It is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" (quoting *Duncan* v. *Walker*, 533 U.S. 167, 174 (2001)).

a. No definition of "rewarded" supports petitioner's reading

Petitioner cites no source that defines "rewarded" to require an up-front *quid pro quo* agreement. Using the word that way would be at odds with not only dictionary definitions, but also common understanding. Someone who receives a $50,000 bonus at work has been "rewarded" for his efforts, whether or not he was promised the bonus beforehand. Either way, if asked whether he was "rewarded," the only correct answer would be "yes." And the Court has accordingly recognized that both "a reward * * * for a past act * * * already taken," *and* "a reward for some future act" are types of "illegal gratuit[ies]." *Sun-Diamond Growers*, 526 U.S. at 405.

Where Congress does wish to limit the word "reward" solely to cover up-front *quid pro quo* agreements, it makes that limitation clear. In 18 U.S.C. 600, for example, Congress prohibited "*promis*[*ing*] any employment

* * * as consideration, favor, or reward." *Ibid.* (emphasis added). The term "promising" shows that the provision is violated only if there is an agreement beforehand. Similarly, 33 U.S.C. 447 prohibits giving a "bribe, present, or reward" "with intent to influence" a harbor inspector. And, looking further back, the 1790 Crimes Act criminalized giving a "bribe, present or reward * * * *to obtain or procure* an opinion" or other judgment, expressly restricting the offense to cases where the reward is used as a means of acquiring the judgment. Act of Apr. 30, 1790, ch. 9, § 21, 1 Stat. 112, 117 (emphasis added).

While petitioner tries to marshal those statutes in support of his own argument (see Br. 19-21), they in fact cut in the opposite direction. All of them place express textual limits on the reach of the term "reward" to make clear that the statute requires an up-front agreement, demonstrating that the term "reward" by itself does not imply such a limit and instead covers any payment "to recompense; requite; [or] repay" a covered employee. *Webster's Second* 2136.

b. Petitioner's reading assigns "rewarded" no role

Lacking the sort of explicit limitation that he identifies in other statutes, petitioner's principal textual argument (Br. 17) is that the term "rewarded" in Section 666 "shares the same essential characteristic of its neighboring word 'influenced,'" and thus likewise refers only to bribes and not to gratuities. But pairing the word "influenced" with the word "rewarded" neither suggests a limitation on the term "rewarded" nor imbues that word with a new and unprecedented definition. And it would be quite strange for Congress to pair "influenced" and "rewarded" if it intended simply to cover conduct—bribery—that is already described

completely by the word "influenced" alone. See *Sun-Diamond Growers*, 526 U.S. at 404; see also, *e.g.*, 18 U.S.C. 201(b)(1) and (2).

Petitioner tries to avoid that oddity by asserting (Br. 20) that the term "rewarded" is necessary to cover bribe recipients who "would have acted the same way" irrespective of the gifts or payments that they agreed to accept. Br. 20 (citation omitted). But the word "influenced" already covers those circumstances. This Court has recognized that the definition of federal-official bribery, which includes only the word "influence," 18 U.S.C. 201(b)(1) and (2), is satisfied "so long as an official agrees" to be influenced in the performance of an official act—even if he does not "in fact intend to perform" that act. See *McDonnell*, 579 U.S. at 572. By the same token, an official cannot evade a Section 201(b) bribery charge by claiming that, although he agreed to be influenced, he in fact planned to do the act even without the bribe. "Under this Court's precedents, * * * it is enough that the official agree[d]." *Ibid.* Petitioner offers no reason why the term "influenced" in Section 666 would have a different scope.

Petitioner repeats the same error in contending (Br. 20) that the word "rewarded" is necessary to clarify "that a bribe can be promised before, but paid after, the official's action on the payor's behalf." *Ibid.* (citation omitted). Even if the statute only prohibited "agree-[ing] to accept" payment with the intent "to be influenced," 18 U.S.C. 666(a)(1)(B), an up-front agreement with that payment structure would be barred. See *McDonnell*, 579 U.S. at 572. And petitioner's hypothetical "state legislator who solicits or demands $10,000 payable once he votes yes on a bill," Br. 21, would likewise be covered by a statute without the word

"rewarded." Because the hypothetical official would be soliciting or demanding that the bribe payor enter into a *quid pro quo* agreement before he votes, the official's conduct would be covered even if the statute used only the term "influenced"; the timing (or even the fact) of the promised payment is irrelevant. See *McDonnell*, 579 U.S. at 572.

Petitioner errs in suggesting (Br. 22) that his understanding of "rewarded" is necessary to avoid rendering "influenced" superfluous. Because the term "rewarded" most obviously covers gifts and payments given to "make a return" to "a person for a service," *Webster's Second* 2136, that has already been completed, the term "influenced" is necessary to eliminate any ambiguity as to whether the statute also prohibits the up-front *quid pro quo* payments and agreements to pay that the term "influenced" traditionally covers, see *McDonnell*, 579 U.S. at 572.

c. Nothing in Section 666 suggests an unnatural definition of "rewarded"

Petitioner alternatively suggests (Br. 23-26) that Section 666's mens rea of "corruptly" implicitly restricts the actus reus to bribery. If anything, however, the opposite is true. Congress has frequently viewed a mens rea of "corruptly" as one appropriate way to narrow the application of a potentially broad actus reus. See, *e.g.*, 18 U.S.C. 1503(a) ("corruptly" obstructing "due administration of justice"); 18 U.S.C. 1505 ("corruptly" obstructing agency proceeding or congressional inquiry); 26 U.S.C. 7212(a) ("corruptly" obstructing "due administration" of tax code).

Although the word "corruptly" unquestionably narrows the statute's scope, see pp. 39-40, *infra*, it does so through a stringent mens rea requirement, not an

artificially limited actus reus. And it is unremarkable that Congress would have limited the liability of state and local officials to those who acted "corruptly" in their receipt of improper payments. While "Congress was within its prerogative to protect spending objects from the menace of local administrators on the take," *Sabri* v. *United States*, 541 U.S. 600, 608 (2004), it could—and did—expressly adopt a stringent mens rea to account for federalism concerns.

Indeed, the addition of the "corruptly" mens rea is not the only way that Congress accounted for those concerns. It also included 18 U.S.C. 666(c), which provides that Section 666 "does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business." That proviso has no analogue in the prohibition on bribes and gratuities to federal officials, see 18 U.S.C. 201, and further constrains the application of the statute's actus reus. Furthermore, salary, wages, and the like are far more likely to be mistaken for a gratuity than for a *quid pro quo* bribe. The proviso, like the mens rea, thus underscores that the actus reus should be interpreted according to its plain text, and that narrowing of its potential scope is addressed in other ways.

Finally, shifting focus away from the statute's operative language, petitioner claims (Br. 26) that Section 666's title, which mentions bribery but not gratuities, cabins the statute's scope solely to bribes. But Section 201 likewise omits gratuities from its title ("Bribery of public officials and witnesses"), even though it undisputedly covers gratuities in 18 U.S.C. 201(c), see *Sun-Diamond Growers*, 526 U.S. at 404-405. If anything can be gleaned from the titles, it is that Congress thinks of the offenses of bribery and illegal gratuity as so closely

linked that it sometimes refers to both under the "bribery" heading. Blackstone himself did the same. Blackstone 139 (discussing Roman judges' improper practice of accepting small gifts in connection with their duties in the portion of his treatise titled "Bribery").[1]

B. The Background And History Of Section 666 Confirm Its Coverage Of Gratuities

Congress enacted Section 666 against the backdrop of a long line of government measures designed to eliminate corruption by prohibiting bribery and gratuities. See pp. 3-7, *supra*. Section 666's language draws on two of those statutes in particular. The provision's original language was modeled on Section 201, which undisputedly includes a prohibition of both bribes and gratuities. Section 666 was then retooled to track the recently amended 18 U.S.C. 215, which uses precisely the same language as Section 666 ("intending to be influenced or rewarded") to encompass both bribery and gratuities.

1. Section 666 was originally modeled on the provisions of Section 201 barring both bribes and illegal gratuities

Congress first enacted Section 666 in 1984 to extend Section 201's prohibitions on bribery and illegal gratuity to cover state and local officials, as well as employees

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[1] This Court has similarly used the word "bribery" as a generic term to cover related corruption offenses, describing Section 666(a)(2) as "proscribing" bribery, while acknowledging that it also covers, for example, "kickbacks." *Sabri*, 541 U.S. at 602, 604; see *Salinas* v. *United States*, 522 U.S. 52, 54 (1997) (referring to Section 666 as a "federal bribery statute"). Given the statute's title, and the fact that those cases focused on bribes, see *Sabri*, 541 U.S. at 603-604; *Salinas*, 522 U.S. at 54, that was a natural way to refer to the statute in cases that did not present the question whether the operative terms of the statute extend beyond bribes.

of other entities, whose organizations administer federally provided funds. *Salinas* v. *United States*, 522 U.S. 52, 58 (1997). As this Court has expressly recognized, Section 201 covers both bribery (in Section 201(b)) and illegal gratuities (in Section 201(c)). See *Sun-Diamond Growers*, 526 U.S. at 404-405. And it is undisputed that, when Congress first enacted Section 666, it extended Section 201's bar on *both* bribery and illegal gratuities to state and local officials, as well as tribal officials and private employees, whose organizations that have received more than $10,000 in federal funding in a single year. See Pet. Br. 34-35.

In the years following Section 201's enactment, questions had arisen in the lower courts about "whether or under what circumstances persons not employed by the Federal Government," such as a state or local official or private party who administers a federally funded program, "may be considered as a 'public official'" subject to Section 201. Senate Report 369. Congress enacted Section 666—pursuant to its constitutional authority under the Spending Clause and the Necessary and Proper Clause, see *Sabri*, 541 U.S. at 605—to reach agents of entities receiving more than $10,000 per year in federal benefits, and thereby "protect the integrity of * * * Federal programs." Senate Report 370; see Crime Control Act § 1104(a), 98 Stat. 2143-2144.

In its original form, Section 666 covered illegal gratuities using language nearly identical to Section 201(c)'s. See *Taggart* v. *Lorenzen*, 139 S. Ct. 1795, 1801 (2019) (explaining that when Congress has "'obviously transplanted'" language "'from another legal source,' it 'brings the old soil with it'") (citation omitted). Like Section 201(c)'s gratuity provision, Section 666 as originally enacted barred covered individuals from, *inter*

alia, "accept[ing], or agreeing to accept anything of value * * * for or because of," 18 U.S.C. 666(b) (Supp. II 1984), an employee's actions on behalf of his organization. Compare Crime Control Act § 1104(a), 98 Stat. 2143, with 18 U.S.C. 201(f) and (g) (1982). Therefore, as petitioner acknowledges (Br. 34-35), Section 666 covered not only bribes, but also gratuities.

2. Section 666 was retooled to track the language of Section 215, which also bars bribery and gratuities

Two years after Section 666's enactment, Congress substituted the substantively equivalent phrase "intending to be influenced or rewarded" in place of "for or because of" as part of a statute entitled the "Criminal Law and Procedure Technical Amendments Act of 1986," Pub. L. No. 96-646, 100 Stat. 3592. Contrary to petitioner's contention (Br. 34-35), that restyling was not a dramatic retreat from coverage of gratuities; if it were, Congress would not have used the word "rewarded," with its plain inclusion of after-the-fact payments and its common association with gratuities. Instead, Congress was retooling Section 666 to accord with 18 U.S.C. 215, a statute recently amended to include identical language, which is well understood to cover gratuities.

a. Section 215, titled "Receipt of commissions or gifts for procuring loans," prohibits bank employees from "corruptly accept[ing] or agree[ing] to accept[] anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of" their organizations. 18 U.S.C. 215(a)(2). Congress drew Section 666's restyled actus reus language—as well as the mens rea of "corruptly" and the express exemption for bona fide salary and compensation—nearly verbatim from Section 215, which had been

amended just three months before. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 30 n.9 (1986) (1986 House Report) (Section 666 "parallels the bank bribery provision (18 U.S.C. 215)"); see Bank Bribery Amendments Act of 1985 (BBAA), Pub. L. No. 99-370, § 2, 100 Stat. 779-780.

Both statutes appear to have been amended for the same basic purpose: to ensure that the prohibitions reach corrupt gratuities without criminalizing routine gift-giving activity in the workplace. The committee report accompanying Section 215's amendments explained that they were designed to prevent that provision from covering "trivial" gratuities by (among other things) "requiring that the acceptance of the gratuity be done corruptly." H.R. Rep. No. 335, 99th Cong., 1st Sess. 6 n.25 (1985). And the committee report explaining the origins of the 1986 amendments to Section 666 similarly explained that the changes were designed to "avoid [the provision's] possible application to acceptable commercial and business practices." 1986 House Report 30.

Both statutes were thus designed to, and do, cover gratuities, with language precisely suited to that task. See, *e.g.*, *Bank Bribery: Hearings on H.R. 2617, H.R. 2839, & H.R. 3511 Before the Subcommittee on Criminal Justice of the House Committee on the Judiciary*, 99th Cong., 1st Sess. 61 (1985) (*Bank Bribery Hearings*) (statement of Stephen M. Shapiro) (supporter of the 1986 amendments to Section 215 explaining gratuities would remain covered by "influenced or rewarded" language). Petitioner offers no support for his contrary assertion (Br. 42) that Section 215 excludes gratuities. Indeed, he discusses—and virtually endorses—federal guidance that is premised on Section 215's coverage of gratuities. See Br. 41-42.

Congress itself has endorsed that same guidance, which was promulgated pursuant to an express congressional directive. When Congress amended Section 215 to include the phrase "intending to be influenced or rewarded," 18 U.S.C. 215(a)(2), it simultaneously enacted a provision directing financial regulators to promulgate guidance to help financial institutions avoid violations. See 18 U.S.C. 215(d); BBAA § 2, 100 Stat. 779-780. The next year, the regulators issued guidance making clear that Section 215(a) prohibits gratuities. See 52 Fed. Reg. 43,939 (Nov. 17, 1987); 52 Fed. Reg. 46,046 (Dec. 3, 1987). And the year after that, Congress then amended the statute—not to withdraw gratuities from its scope, but instead to increase the statutory-maximum sentence. Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101-73, § 961(a), 103 Stat. 499. "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change," *Lorillard* v. *Pons*, 434 U.S. 575, 580 (1978)—as it did with Section 215.

As this Court has observed, "when Congress uses the same language in two statutes having similar purposes, particularly when one is enacted shortly after the other, it is appropriate to presume that Congress intended that text to have the same meaning in both statutes." *Smith* v. *City of Jackson*, 544 U.S. 228, 233 (2005) (plurality opinion) (citing *Northcross* v. *Board of Educ.*, 412 U.S. 427, 428 (1973) (per curiam)). Section 666 traces its enactment and current language to two statutes—Section 201 and Section 215—that both prohibit the illegal acceptance of gratuities. That is a clear sign that Section 666 prohibits illegal gratuities as well.

C. Petitioner Identifies No Interpretive Principle Or Precedent That Would Limit Section 666 Solely To Bribes

Notwithstanding the absence of textual, contextual, or historical support for his position, petitioner claims that interpretive principles or precedents support it. But none counsels in favor of his fundamentally atextual reading of the statute.

1. This Court has already squarely held that Section 666 clearly regulates the conduct of state and local officials

Petitioner asserts that "a 'clear statement'" is required to either place "a 'condition on the grant of federal moneys'" or "reach 'local conduct.'" Br. 46-47 (citations omitted). But this Court has already recognized that Section 666 contains whatever express statement might be necessary in that regard. In *Sabri* v. *United States*, this Court held that Congress permissibly exercised its Spending Clause powers to enact Section 666 "to safeguard the integrity of the state, local, and tribal recipients of federal dollars." 541 U.S. at 605. And the Court explained that, in doing so, Congress "addressed a legitimate federal concern by licensing federal prosecution in an area historically of state concern." *Id.* at 608 n.*.

2. Prohibiting gratuities does not implicate the constitutional-avoidance canon

Petitioner is similarly mistaken in his assertion (Br. 48-49) that the canon of constitutional avoidance counsels in favor of his position. That canon "comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction." *Clark* v. *Martinez*, 543 U.S. 371, 385 (2005). That is not the case here, because

petitioner cannot point to any text in Section 666 that is "susceptible" to his reading. *Ibid.*; see pp. 18-27, *supra.*

In any event, petitioner fails to identify any constitutional concern that would justify his narrowing construction. See *Jennings* v. *Rodriguez*, 583 U.S. 281, 296 (2018) (recognizing that there must be "serious doubt" as to a statute's constitutionality before the canon applies). Petitioner suggests (Br. 38-39) that a First Amendment problem might arise in a Section 666 prosecution in the context of a payment styled as a campaign contribution. But petitioner's own offense conduct does not involve campaign contributions, and his speculation about other cases does not justify his effort to facially narrow the statute in this case by excising gratuities.

In the context of an elected state official's prosecution for extortion, this Court has held that the "receipt of [campaign] contributions" can support a conviction so long as "the payments are made in return for an explicit promise or undertaking by the official to perform or not to perform an official act." *McCormick* v. *United States*, 500 U.S. 257, 273 (1991); see *Evans* v. *United States*, 504 U.S. 255, 268 (1992) (approving jury instructions premised on *McCormick*). And there is "[n]o doubt" that "a contribution is more likely to be a duty-free gift than a bribe" or a gratuity—and thus not prosecutable—"because a contribution has a legitimate alternative explanation: The donor supports the candidate's election for all manner of possible reasons." *United States* v. *Terry*, 707 F.3d 607, 613 (6th Cir. 2013), cert. denied, 571 U.S. 1237 (2014). But if an appropriate case arose, the Court could make clear the boundaries of prosecutions for gratuities disguised as campaign contributions.

Even if that limited class of potential cases created First Amendment concerns, that would not show that

"the statute prohibits a substantial amount of protected speech' relative to its 'plainly legitimate sweep,'" so as to render it wholly overbroad. *United States* v. *Hansen*, 599 U.S. 762, 770 (2023) (citation omitted). Even assuming that certain hypothetical prosecutions might be invalid, "case-by-case" challenges are the "usual[ ]" and preferred method for adjudicating First Amendment claims. *Ibid.* Indeed, unless petitioner means to suggest that *any* statutory prohibition on gratuities—including the undisputed ones in Section 201(c) and elsewhere—is constitutionally infirm, he cannot establish that it would be facially constitutional to accord Section 666 its ordinary meaning.

3. Petitioner's vagueness argument is misdirected

Petitioner is similarly mistaken in invoking (Br. 40) the narrowing constructions that this Court applied to honest-services fraud in *Skilling* v. *United States*, 561 U.S. 358 (2010), and to the definition of "official act" in *McDonnell* v. *United States*, to avoid vagueness concerns. In *Skilling*, the Court limited the honest-services fraud offense in 18 U.S.C. 1346 to its historical "core" of "bribery or kickback schemes" to avoid vagueness that might otherwise have arisen from the lack of clear textual limits on the offense. *Skilling*, 561 U.S. at 407. *McDonnell* expressed similar vagueness concerns in narrowly construing the definition of "official act" under Section 201 to avoid the risk of criminalizing "the most prosaic interactions" between public officials and their constituents. 579 U.S. at 576; see *id.* at 562-563.

There are no similar vagueness concerns here. Petitioner appears to accept that a ban on gratuities, like Section 201(c)'s, is both possible and permissible. And the question in this case is not whether vagueness concerns might limit the definition *of* gratuities; the

question instead is whether Section 666 covers *any* gratuities to begin with. The statute is not vague about that. As Justice Scalia observed, in contrasting Section 666 to the honest-services-fraud statute at issue in *Skilling*, Section 666 contains a "clear rule[]" prohibiting "bribes and gratuities to public officials." *Sorich*, 555 U.S. at 1207 (dissenting from denial of certiorari).

4. The rule of lenity does not apply

Finally, petitioner errs in relying (Br. 49-50) on the rule of lenity. That rule comes into play "only when a criminal statute contains a 'grievous ambiguity or uncertainty,' and 'only if, after seizing everything from which aid can be derived,' the Court 'can make no more than a guess as to what Congress intended.'" *Ocasio* v. *United States*, 578 U.S. 282, 295 n.8 (2016) (citation omitted). Here, the statute's plain language contains no ambiguity, let alone the "grievous ambiguity," *ibid.* (citation omitted), that the rule of lenity requires.

D. Petitioner's Policy Arguments Do Not Justify Reading Gratuities Out Of Section 666

At bottom, petitioner's reading rests on the policy arguments that pervade his brief, in which he suggests that coverage of gratuities is "[i]mplausible," Br. 35 (emphasis omitted); "inconceivable," Br. 42; or simply too "sweeping," Br. 4. This Court has frequently emphasized that "policy arguments * * * 'cannot supersede the clear statutory text.'" *United States ex rel. Schutte* v. *SuperValu Inc.*, 598 U.S. 739, 758 (2023) (citation omitted). And given that Congress undisputedly did cover gratuities in the original version of Section 666, Pet. Br. 34, this case would be an especially poor candidate for giving weight to petitioner's asserted policy concerns. Cf. *Sabri*, 541 U.S. at 608 n.* (upholding

Section 666 against constitutional federalism challenge, while "express[ing] no view as to its soundness as a policy matter"). In any event, petitioner's concerns overlook limiting features of the statute and are otherwise overstated.

1. Section 666's text contains clear limits on the scope of the gratuities it criminalizes

Section 666(a)(1)(B) prohibits the acceptance of a gratuity only when, among other things: (1) the gratuity does not constitute "bona fide salary" or other compensation received "in the usual course of business"; (2) the gratuity is "in connection" with business or transactions involving more than $5,000; and (3) the employee procured, agreed to, or accepted the gratuity "corruptly." 18 U.S.C. 666(a)(1)(B) and (c). Taken together, those limits ensure that Section 666(a)(1)(B) covers corrupt gratuities—like an official's illicit acceptance of money from a contractor to whom he has steered lucrative city business—while excluding the sort of trivial holiday, birthday, and thank-you gifts that those in public service may receive as benign thanks for performing their roles.

a. Section 666 exempts bona fide compensation

As a threshold matter, Section 666 expressly exempts "bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business." 18 U.S.C. 666(c). That exemption ensures that an employee of a covered entity cannot be prosecuted for routine and traditional forms of remuneration.

The proviso thereby protects the many city and state officials who—unlike petitioner—obtain "*bona fide* salary" in connection with legitimate outside work. It

would preclude, for example, a prosecution based on the signing bonus that a departing state legislator might receive from his new employer (Pet. Br. 27). And it would preclude prosecutions in the private-sector context as well, such as a prosecution for the tips that a waitress receives in the one exceptional year when her restaurant obtained a large pandemic-based government benefit (*id.* at 39).

b. Section 666 requires a nexus to significant action of a covered entity

Other hypotheticals offered by petitioner are foreclosed by Section 666's nexus requirement, which parallels Section 201(c)'s.

In *United States* v. *Sun-Diamond Growers*, this Court emphasized that Section 201(c)'s bar on gratuities applies only to payments given "for or because of *any official act* performed or to be performed," 526 U.S. at 406 (quoting 18 U.S.C. 201(c)(1)(A)) (emphasis in original). And the Court construed that requirement to preclude the prosecution of gratuities given simply because of the recipient's "official position" or his general "'capacity to exercise governmental power or influence in the donor's favor.'" *Id.* at 405-406 (citation and emphasis omitted).

The parallel requirement in Section 666 similarly restricts the statute's scope. Like Section 201(c), Section 666 does not prohibit all payments to a covered person. Instead, it prohibits only payments "in connection with any business, transaction, or series of transactions" of a covered entity "involving any thing of value of $5,000 or more." 18 U.S.C. 666(a)(1)(B) and (a)(2). Thus, while Section 666 does not adopt the Section 201 term "official act"—presumably because it would not have obvious application to nongovernmental organizations—the

statute likewise requires a nexus with a specific and significant activity. See, *e.g.*, *United States* v. *Lindberg*, 39 F.4th 151, 174 (4th Cir. 2022) (recognizing that Section 666 requires a nexus to specific business or transactions).

As with Section 201(c), the nexus requirement in Section 666 avoids "peculiar results" like "criminaliz[ing] * * * token gifts" to public officials. *Sun-Diamond Growers*, 526 U.S. at 406; see *id.* at 406-407 (providing as examples of excluded conduct "replica jerseys given" to the President "by championship sports teams" or "a high school principal's gift of a school baseball cap to the Secretary of Education"). Gifts "in connection" with a holiday or a birthday, for example, would plainly lie beyond the statute's reach.

So would many of the prosaic hypotheticals posited by petitioner. In particular, the $5,000 monetary threshold—which has no analogue in Section 201(c)—ensures that the statute will not reach a gift offered by a grateful parent to a teacher who helps his child with a paper, nor reach the tokens of thanks a citizen might offer to the municipal employee that plows her road, processes her marriage license, or helps to restore power after a major storm. None of those individual transactions is likely to exceed the $5,000 threshold.

c. Section 666 requires that a gratuity be offered or accepted "corruptly"

Section 666's ban on gratuities also contains a major limiting feature that Section 201(c) does not—namely, an express mens rea of "corruptly." 18 U.S.C. 666(a)(1)(B) and (2).

i. Congress did not define "corruptly" for purposes of Section 666, but this Court has explained that the "natural meaning" of that term is "normally associated

with wrongful, immoral, depraved, or evil" conduct. *Arthur Andersen LLP* v. *United States*, 544 U.S. 696, 705 (2005) (citing dictionaries); see, *e.g.*, *Black's Law Dictionary* 348 (7th ed. 1999) (defining "corruptly" to mean "[i]n a corrupt or depraved manner") (emphasis omitted); *Merriam Webster's Dictionary of Law* 109 (1996) (defining "corrupt" to mean "having an unlawful or evil motive") (emphasis omitted). The Court has accordingly associated the term with "consciousness of wrongdoing." *Arthur Andersen*, 544 U.S. at 706.

Section 666 thus does not criminalize innocuous tokens of gratitude. Police officers do not act corruptly when, for example, they accept coffee and donuts from a crime victim's family as thanks for their round-the-clock work, see Pet. Br. 2. Petitioner's various other hypotheticals of obviously benign gifts, Br. 2-3, 39, would likewise be excluded. And an official who has sought in good faith to follow commonplace ethics rules need not have any fear of a Section 666 conviction.

ii. Rather than engage with the meaning of "corruptly" as a statutory matter, petitioner focuses (*e.g.*, Br. 13) on the definition from the jury instructions in his particular case. But he did not object to that definition at trial—indeed, it was identical to the one in his own jury-instruction submission, which copied and edited the government's proposed instructions without proposing any changes to the definition of "corruptly." See D. Ct. Doc. 458 at 3 (observing that petitioner's "sole[]" objection to the government's proposed instruction containing the definition of "corruptly" was to a different aspect of that instruction); see also Fed. R. Crim. P. 30(d) (requiring timely objection to jury instructions).

Petitioner then failed to raise a forfeited challenge to the mens rea instruction on appeal, see Pet. C.A.

Opening Br. 28-103; Pet. C.A. Reply Br. 1-51 (omitting any such challenge), or include it in the question presented to this Court, see Pet. I. That jury instruction accordingly provides no basis for relief from this Court in this case. Nor does it provide a basis for reading gratuities out of the statute in every case.

d. Petitioner's hypotheticals are misplaced

Tellingly, while petitioner offers a hypothetical parade of horribles, he fails to cite a single case involving the prosecution of the kind of innocuous conduct that he posits the statute might cover. Given that Section 666 has been in existence for almost 40 years and no court of appeals had interpreted it to exclude gratuities until 2013, see *United States* v. *Fernandez*, 722 F.3d 1 (1st Cir.), the absence of any real-world examples of the excess envisioned by petitioner illustrates that the text simply does not permit those sorts of prosecutions. Cf. *Hansen*, 599 U.S. at 782 (relying on case reports to identify the "heartland" of criminal prosecutions as relevant to confirming a criminal law's confirming a criminal law's "plainly legitimate sweep" in a constitutional overbreadth analysis).

Petitioner's hypotheticals also focus heavily on the ways in which Section 666 could affect private businesses like restaurants and hotels. See, *e.g.*, Br. 39 (discussing waitresses and hoteliers). But outside the extraordinary circumstances of government aid in light of a global pandemic, see Pet. Br. 37, the coverage of such businesses will be the exception, not the rule. Among other things, the statute applies only where a business has accepted more than $10,000 in "benefits" that calendar year. See *Fischer* v. *United States*, 529 U.S. 667, 681 (2000) (observing that, even where a private entity has some financial interaction with the federal

government, the money it receives may not qualify as "benefits").

Furthermore, petitioner's focus on hypotheticals overlooks the very real harm that gratuities inflict, and that Congress chose to legislate against. Contrary to petitioner's repeated suggestion (*e.g.*, Br. 12), gratuities are not simply a "lesser-included offense" of bribery (*e.g.*, Pet. Br. 12), which includes conduct that would not be a gratuity, see p. 25, *supra*. Instead, gratuities are a different type of pernicious graft. As lawmakers have recognized for centuries, see pp. 3-7, *supra*, corrupt gratuities give rise to deceitful behavior by their recipients, who may carry out their duties in a way designed to maximize the rewards to themselves instead of to the local government or other federally funded entity they serve. This case illustrates the point. After scheming to steer over $1.1 million in public contracts to the Buhas, petitioner sought and received a $13,000 payment to enrich himself, but the city lost out on at least $60,000 in potential savings and whatever superior purchases it might otherwise have made. See p. 9, *supra* (explaining that the city could have saved $60,000 by eliminating an expedited delivery requirement that was added to the bid specifications to favor the Buhas).

2. Section 666's sentencing range is not a reason to atextually narrow its substantive scope

Petitioner also errs in focusing (Br. 32-33, 43) on Section 666's sentencing range, which has no minimum and caps a potential prison term at ten years. 18 U.S.C. 666(a). That sentencing range neither implies the exclusion of gratuities nor provides a reason to depart from Section 666's plain text.

First and foremost, petitioner's focus on the sentencing range is misplaced because Section 666 has had the

same sentencing range throughout its existence—including the period of time during which petitioner acknowledges that it covered gratuities. See 18 U.S.C. 666(b) and (c) (Supp. II 1984); Pet. Br. 34-35. While Section 201's sentencing ranges for bribes and gratuities were (and are) 0-15 and 0-2 years respectively, see 18 U.S.C. 201(f)(2); 18 U.S.C. 201(f) and (g) (1982), Congress chose a single sentencing range for Section 666 that fell in between to cover both offenses.[2]

As Congress was undoubtedly aware and presumably expected, that sentencing range allows the judge to tailor the sentence to fit the particular crime. In particular, the absence of a minimum allows for sentences commensurate with (or lower than) the two-year maximum for providing a federal official with a gratuity. See

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[2] Congress's choice of a single penalty for both the bribery and gratuity offense accords with its approach to the similar offenses proscribed by Section 215. See 18 U.S.C. 215(a)(2) (prescribing a single 30-year maximum sentence); pp. 29-30, *supra* (explaining parallels between statutes). In advocating for the single penalty in Section 215, the Department of Justice pointed out that because "the seriousness of graft is just as serious as the quid pro quo loan, * * * the penalty provisions ought to be the same." *Bank Bribery Hearings* 8 (testimony of Stephen Learned, Criminal Division). And the suggestion that Congress viewed Section 201(c)'s sentencing range as the appropriate one for all possible gratuities is further undermined by Section 215's 30-year maximum—the result of two separate increases from the original five years. See FIRREA § 961, 103 Stat. 499; Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990, Pub. L. No. 101-647, Tit. XXV, § 2504(a), 104 Stat. 4789. Congress's differing choices about appropriate penalty ranges for gratuities are also evident in the statutes prohibiting gratuities and bribes in the context of federal tax collection or immigration proceedings, which have a five-year maximum. See 18 U.S.C. 1422; 26 U.S.C. 7214(a); see also 18 U.S.C. 206, 207 (1958) (15-year maximum for both bribes and gratuities to judicial personnel).

18 U.S.C. 201(c). Indeed, both types of gratuities would fall under the same Sentencing Guideline, § 2C1.2. See Sentencing Guidelines App. A (statutory index). And a sentencing court would be required to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct"—irrespective of the statute under which the conduct was charged. 18 U.S.C. 3553(a)(6).

Petitioner's own total sentence of 21 months of imprisonment, for example, falls within the two-year maximum for Section 201(c). Pet. App. 47a. And petitioner identifies no Section 666 defendant who has received a sentence at or near the statutory ten-year maximum solely for an illegal-gratuity offense. Accordingly, neither theory nor real-world experience supports petitioner's reliance on the sentencing range as a reason to narrow the plain language of Section 666's actus reus.[3]

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[3] If the Court does adopt petitioner's limiting construction of Section 666, it should remand for the court of appeals to assess in the first instance whether error in the jury instructions was prejudicial. See Fed. R. Crim. P. 52; see, *e.g.*, *Neder* v. *United States*, 527 U.S. 1, 10 (1999) (holding that instructional error is subject to prejudice analysis); see also, *e.g.*, *Greer* v. *United States*, 593 U.S. 503, 507 (2021) (rejecting claim that instructional error warrants automatic relief). Any claim that the evidence was legally insufficient to establish guilt on a bribery theory is refuted by the district court's determination that "even if" Section 666 covered only *quid pro quo* bribery, "there was ample evidence permitting a rational jury to find, from the circumstantial evidence, that there was an up-front agreement to reward [petitioner] for making sure GLPB won the contract award(s)." Pet. App. 63a.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

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APPENDIX

1. 18 U.S.C. 201 provides:

Bribery of public officials and witnesses

(a) For the purpose of this section—

(1) the term "public official" means Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror;

(2) the term "person who has been selected to be a public official" means any person who has been nominated or appointed to be a public official, or has been officially informed that such person will be so nominated or appointed;

(3) the term "official act" means 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;

(4) the term "foreign official" means—

(A)(i) any official or employee of a foreign government or any department, agency, or instrumentality thereof; or

(ii) any senior foreign political figure, as defined in section 1010.605 of title 31, Code of Federal Regulations, or any successor regulation;

(B) any official or employee of a public international organization;

(C) any person acting in an official capacity for or on behalf of—

(i) a government, department, agency, or instrumentality described in subparagraph (A)(i); or

(ii) a public international organization; or

(D) any person acting in an unofficial capacity for or on behalf of—

(i) a government, department, agency, or instrumentality described in subparagraph (A)(i); or

(ii) a public international organization; and

(5) the term "public international organization" means—

(A) an organization that is designated by Executive order pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288); or

(B) any other international organization that is designated by the President by Executive order for the purposes of this section, effective as of the date of publication of such order in the Federal Register.

(b) Whoever—

(1) directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent—

(A) to influence any official act; or

(B) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of the lawful duty of such official or person;

(2) being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for:

(A) being influenced in the performance of any official act;

(B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) being induced to do or omit to do any act in violation of the official duty of such official or person;

(3) directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom;

(4) directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity in return for being influenced in testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absenting himself therefrom;

shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

(c) Whoever—

(1) otherwise than as provided by law for the proper discharge of official duty—

(A) directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official; or

(B) being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or person;

(2) directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of such person's absence therefrom;

(3) directly or indirectly, demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon any such trial, hearing, or other proceeding, or for or because of such person's absence therefrom;

shall be fined under this title or imprisoned for not more than two years, or both.

(d) Paragraphs (3) and (4) of subsection (b) and paragraphs (2) and (3) of subsection (c) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or in the case of expert witnesses, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.

(e) The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503, 1504, and 1505 of this title.

(f) PROHIBITION OF DEMAND FOR A BRIBE.—

(1) OFFENSE.—It shall be unlawful for any foreign official or person selected to be a foreign official to corruptly demand, seek, receive, accept, or agree to receive or accept, directly or indirectly, anything of value personally or for any other person or nongovernmental entity, by making use of the mails or any means or instrumentality of interstate commerce, from any person (as defined in section 104A of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-3), except that that definition shall be applied without regard to whether the person is an offender) while in the territory of the United States, from an issuer (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))), or from a domestic concern (as defined in section 104 of the For-

eign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-2)), in return for—

(A) being influenced in the performance of any official act;

(B) being induced to do or omit to do any act in violation of the official duty of such foreign official or person; or

(C) conferring any improper advantage,

in connection with obtaining or retaining business for or with, or directing business to, any person.

(2) PENALTIES.—Any person who violates paragraph (1) shall be fined not more than $250,000 or 3 times the monetary equivalent of the thing of value, imprisoned for not more than 15 years, or both.

(3) JURISDICTION.—An offense under paragraph (1) shall be subject to extraterritorial Federal jurisdiction.

(4) REPORT.—Not later than 1 year after the date of enactment of the Foreign Extortion Prevention Act,[1] and annually thereafter, the Attorney General, in consultation with the Secretary of State as relevant, shall submit to the Committee on the Judiciary and the Committee on Foreign Relations of the Senate and the Committee on the Judiciary and the Committee on Foreign Affairs of the House of Representatives, and post on the publicly available website of the Department of Justice, a report—

(A) focusing, in part, on demands by foreign officials for bribes from entities domiciled or in-

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[1] See References in Text note below.

corporated in the United States, and the efforts of foreign governments to prosecute such cases;

(B) addressing United States diplomatic efforts to protect entities domiciled or incorporated in the United States from foreign bribery, and the effectiveness of those efforts in protecting such entities;

(C) summarizing major actions taken under this section in the previous year, including enforcement actions taken and penalties imposed;

(D) evaluating the effectiveness of the Department of Justice in enforcing this section; and

(E) detailing what resources or legislative action the Department of Justice needs to ensure adequate enforcement of this section.

(5) RULE OF CONSTRUCTION.—This subsection shall not be construed as encompassing conduct that would violate section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd-1) or section 104 or 104A of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-2; 15 U.S.C. 78dd-3) whether pursuant to a theory of direct liability, conspiracy, complicity, or otherwise.

2. 18 U.S.C. 215 provides:

Receipt of commissions or gifts for procuring loans

(a) Whoever—

(1) corruptly gives, offers, or promises anything of value to any person, with intent to influence or reward an officer, director, employee, agent, or attorney

of a financial institution in connection with any business or transaction of such institution; or

(2) as an officer, director, employee, agent, or attorney of a financial institution, corruptly solicits or demands for the benefit of any person, or corruptly accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of such institution;

shall be fined not more than $1,000,000 or three times the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted, whichever is greater, or imprisoned not more than 30 years, or both, but if the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted does not exceed $1,000, shall be fined under this title or imprisoned not more than one year, or both.

[(b) Transferred]

(c) This section shall not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

(d) Federal agencies with responsibility for regulating a financial institution shall jointly establish such guidelines as are appropriate to assist an officer, director, employee, agent, or attorney of a financial institution to comply with this section. Such agencies shall make such guidelines available to the public.

3. 18 U.S.C. 666 provides:

Theft or bribery concerning programs receiving Federal funds

(a) Whoever, if the circumstance described in subsection (b) of this section exists—

(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof—

(A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that—

(i) is valued at $5,000 or more, and

(ii) is owned by, or is under the care, custody, or control of such organization, government, or agency; or

(B) 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 any thing of value of $5,000 or more; or

(2) corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, 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;

shall be fined under this title, imprisoned not more than 10 years, or both.

(b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.

(c) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

(d) As used in this section—

(1) the term "agent" means a person authorized to act on behalf of another person or a government and, in the case of an organization or government, includes a servant or employee, and a partner, director, officer, manager, and representative;

(2) the term "government agency" means a subdivision of the executive, legislative, judicial, or other branch of government, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established, and subject to control, by a government or governments for the execution of a governmental or intergovernmental program;

(3) the term "local" means of or pertaining to a political subdivision within a State;

(4) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(5) the term "in any one-year period" means a continuous period that commences no earlier than twelve months before the commission of the offense or that ends no later than twelve months after the commission of the offense. Such period may include time both before and after the commission of the offense.