

No. 23-5572

In The Supreme Court of the United States

JOSEPH W. FISCHER,
Petitioners,

v.

UNITED STATES,
Respondent.

**On Writ Of Certiorari to the United States
Court Of Appeals for the District of Columbia
Circuit**

**BRIEF FOR THE LONANG INSTITUTE
AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONER**

KERRY LEE MORGAN, ESQ.*	GERALD R. THOMPSON, ESQ.
RANDALL A. PENTIUK, ESQ.	37637 Five Mile Rd, #397
PENTIUK, COUVREUR,	Livonia, MI 48154
KOBILJAK, P.C.	(734) 469-7150
2915 Biddle Avenue	thompson@t-tlaw.com
Suite 200	
Wyandotte, MI 48192	<i>Counsel for Amicus Curiae</i>
(734) 281-7100	* <i>Counsel of Record</i>
KMorgan@pck-law.com	
Rpentiuik@pck-law.com	February 2, 2024

TABLE OF CONTENTS

	Pages
TABLE OF AUTHORITIES.....	iii
INTEREST OF THE AMICUS CURIAE.....	1
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	4
ARGUMENT.....	8
I. THE LAW OF NATURE CONTROLS THE MEANING OF “CORRUPTLY” AND REQUIRES THAT THE OFFICIAL PROCEEDING ITSELF BE CORRUPTED, NOT MERELY OBSTRUCTED, INFLUENCED, OR IMPEDED	8
A. The Term “Corruptly” Was Part Of The Old Testament Law Demonstrating Its Meaning Is From Antiquity.....	9
B. The Term “Corruptly” Was Part Of The Common Law Of England Demonstrating Its Long-Standing Usage And Precedent	13
C. Article III, § 3’s Term “Corruption Of Blood” Carries With It The Term’s Ancient And English Roots	16

II.	“CORRUPTLY” IN 18 U.S.C. § 1512(c)(2) IS NOT MERELY A STATE OF MIND, BUT RATHER AN ADVERB, MODIFYING THE VERBS “OBSTRUCTS, INFLUENCES, OR IMPEDES”	17
A.	The Adverb Corruptly Modifies The Verbs Obstruct, Influence, Or Impede	17
B.	<i>Mens Rea</i> Requires An Intent To Corruptly Obstruct, Corruptly Influence, Or Corruptly Impede An Official Proceeding.....	18
C.	The Lower Court’s Definitional Lottery Defining Corruptly Is No Guide	21
D.	The Law Of Nature’s God Completes Judge Walker’s Initial Common Law Focus.....	23
	CONCLUSION	25

TABLE OF AUTHORITIES

Cases	Pages
<i>Andersen LLP v. United States</i> , 544 U.S. 696 (2005).....	22
<i>Elonis v. United States</i> , 575 U.S. 723 (2015).....	19
<i>Furman v. Georgia</i> , 408 U.S. 238 (1972).....	16
<i>Marinello v. United States</i> , 584 U.S. —, 138 S. Ct. 1101 (2018).....	23
<i>Morissette v. United States</i> , 342 U.S. 246 (1952).....	19, 24
<i>Nixon v. Adm'r of Gen. Servs.</i> , 433 U.S. 425 (1977).....	17
<i>Staples v. United States</i> , 511 U.S. 600 (1994).....	19
<i>United States v. Aguilar</i> , 515 U.S. 593 (1995).....	22
<i>United States v. X-Citement Video, Inc.</i> , 513 U.S. 64 (1994).....	19
<i>Wallach v. Van Riswick</i> , 92 U.S. 202, 2 Otto 202 (1875)	17

Organic and Constitutional Law

Laws of Nature and of Nature's God2, 9

The Bible, New King James Version (NKJV)

Deuteronomy 4:16 & 25.....	10
Deuteronomy 9:12.....	10
Exodus 19:7-8.....	10, 11, 12
Exodus 20:3-4.....	9, 11
Exodus 32:1.....	11
Jeremiah 5:23.....	12
Judges 2:19.....	10
Isaiah 33:22.....	11
1 Kings 16:18-20.....	12
2 Kings 9:20-24 & 34.....	12
Micah 1:5.....	12
Nehemiah 1:7.....	9, 10

The Declaration of Independence 1776 1, 4

U.S. Const. Article III, § 3..... 16, 17

U.S. Const. Amend. XII..... 6, 21

Statutes

18 U.S.C. § 111(a).....	3
18 U.S.C. § 231(a)(3).....	3
18 U.S.C. § 1512(c).....	2, 8, 9, 12, 15
18 U.S.C. § 1512(c)(1).....	17
18 U.S.C. § 1512(c)(2).....	3, 6, 17
18 U.S.C. § 1752(a)(1).....	3
18 U.S.C. § 1752(a)(2).....	3
40 U.S.C. § 5104(e)(2)(D).....	3

40 U.S.C. § 5104(e)(2)(G).....	3
--------------------------------	---

English Treatises

W. Blackstone, 1 <u>Commentaries on the Laws of England</u> (1765).....	4
---	---

W. Blackstone, 4 <u>Commentaries on the Laws of England</u> (1769).....	13-16
---	-------

E. Coke, 3 <u>Institutes of the Lawes of England</u> (1628-44).....	13
---	----

Other References

Brief <i>Amicus Curiae</i> of America’s Future, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund in Support of Petitioner	3
---	---

W. LaFave, 1 <u>Substantive Criminal Law</u> § 5.1 (2d ed. 2003).....	19
---	----

K. Morgan, <u>The Laws of Nature and of Nature’s God: The True Foundation of American Law</u> , [Lonang]	1
--	---

H. Titus & G. Thompson, <u>America’s Heritage: Constitutional Liberty</u> , [Lonang].....	1
---	---

Dictionaries

<u>Black’s Law Dictionary</u> (11th ed. 2019).....	24
--	----

<u>Oxford English Dictionary</u> (2d ed. 1989)	24
N. Webster, <u>A Compendious Dictionary of the English Language</u> (1806 ed.)	9
N. Webster, <u>An American Dictionary of the English Language</u> (1828 ed.)	8, 9

INTEREST OF THE AMICUS CURIAE¹

The LONANG Institute is a Michigan-based, nonprofit and nonpartisan research and educational institute. Application of the “Laws of Nature and Nature’s God” to contemporary legal disputes is its specialty. The “Laws of Nature and Nature’s God” constitute the legal foundation of the civil governments established State by State and of the United States. The law was specifically adopted and referenced in the Declaration of Independence of 1776. Though widely disregarded, it nevertheless legally binds the States and the national government.² Its legal principles also bind this Court. See <https://lonang.com/>

The Laws of Nature expresses various legal principles of relevance here, including the unalienable

¹ It is hereby certified that no counsel for a party authored this brief in whole or in part; and that no person other than the amicus curiae, their members, or their counsel made a monetary contribution to its preparation or submission.

² For a legal analysis of the binding effect of the laws of nature through the Declaration of Independence, see, K. Morgan, The Laws of Nature and of Nature’s God: The True Foundation of American Law.

<https://lonang.com/commentaries/conlaw/declaration/laws-of-nature-and-natures-god/>

For an examination of the true roots of American constitutional law as found in the Bible and the nation’s civil covenants, see H. Titus & G. Thompson, America’s Heritage: Constitutional Liberty.

<https://lonang.com/commentaries/conlaw/americas-heritage-constitutional-liberty/introduction/>

right of freedom of speech, protest, and petitioning the government for a redress of grievances. It also informs the meaning of legal terms, such as “corruptly,” and the burden of proof in criminal proceedings.

As friend of the Court, the LONANG Institute offers insight into the legal implications of the Law of Nature in the context of the government’s prosecution of petitioner under 18 U.S.C. § 1512(c) regarding the term “corruptly.” The government is not free to merely select from among a menu of possible definitional options by consulting contemporary dictionaries. Instead, it is bound to consider the Laws of Nature and of Nature’s God as embodied in the Declaration, as well as the English and common law historical meaning of the very narrow and limited class of “acting corruptly” offenses.

STATEMENT OF THE CASE

Joseph W. Fischer attended the “Stop the Steal” rally on January 6, 2021, at the Ellipse along with an estimated 120,000 other people.³ He then returned to his home. His desire to make his voice further known led him to drive back to Washington, D.C., arriving after Congress had recessed. Access to the Capitol being then unobstructed and the building’s entranceway already filled with a large public crowd, he entered the building only to be caught up with others that were pepper sprayed by the Capitol police.

³ <https://www.newsweek.com/exclusive-classified-documents-reveal-number-january-6-protestors-1661296>

Mr. Fischer then left the building four minutes after entering.

At no time did Mr. Fischer act to corrupt the official electoral vote proceeding itself. He did not influence the official electoral vote proceeding by bribing a member of Congress to exclude votes. He did not interfere with the official electoral vote proceeding by rigging the vote counting. He did not obstruct the official electoral vote proceeding by corrupting the certificates or imposing an alternative counting method in lieu of the Constitutional one. Nor did he intend any of these results. Nevertheless, Fischer was charged with violating 18 U.S.C. § 1512(c)(2) and six other crimes.⁴

The Court of Appeals focused on the meaning of the statute's term "corruptly." Each of the three appellate judges weighed in accordingly. After review of the lower court's decision, the parties' briefs, and a single *Amici* brief,⁵ this Court granted certiorari on

⁴ Fischer was also charged with one count each of obstructing or interfering with a law enforcement officer during the commission of a civil disorder, in violation of 18 U.S.C. § 231(a)(3); assaulting a federal officer, in violation of 18 U.S.C. § 111(a); entering or remaining in a restricted area, in violation of 18 U.S.C. § 1752(a)(1); engaging in disorderly conduct in a restricted area, in violation of 18 U.S.C. § 1752(a)(2); engaging in disorderly conduct in the Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(D); and parading, demonstrating, or picketing in the Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(G). Gov't C.A. App. 443-447.

⁵ See Brief *Amicus Curiae* of America's Future, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund in Support of Petitioner.

the petitioner's writ. *United States v. Fischer*, 64 F.4th 329 (D.C. Cir. 2023), *cert. granted*, No. 23-5572, 2023 WL 8605748 (U.S. Dec. 13, 2023).

SUMMARY OF ARGUMENT

Jura naturae sunt immutabilia. The laws of nature are immutable. The law of nature establishes that when a person acts corruptly, they do so with the intent to achieve two outcomes. First, they intend to break or pervert the integrity of a legal proceeding itself. Second, they intend to substitute in lieu of the legitimate proceeding, an alternate arrangement lacking integrity, though appearing legitimate as the original. There can be no acting "corruptly" without both of these elements present.

A study of the use of the term corruptly in the laws of nature's God as found in the Old Testament scriptures incorporates this meaning. Sir William Blackstone noted that the revealed or divine law (referred to in the Declaration of Independence as the Laws of Nature's God) "are to be found only in the holy scriptures. These precepts, when revealed, are found upon comparison to be really a part of the original law of nature."⁶ Thus, according to Blackstone, the Old

http://www.supremecourt.gov/DocketPDF/23/23-5572/285048/20231013165450220_Fischer%20v%20US%20amicus%20brief.pdf

⁶ W. Blackstone, 1 *Commentaries on the Laws of England*, 42, (1765).

<https://lonang.com/library/reference/blackstone-commentaries-law-england/bla-002/>

Testament is competent evidence for what the law of nature provides.

That law as recorded by Moses, describes an ancient Israelite population acting corruptly when they broke apart their previously embraced form of government with nature's God as their king, lawgiver, and judge. In lieu thereof, they instituted a government by idols (a golden calf) as their king, lawgiver and judge. The people treated that corrupt alternative as a legitimate one. Both elements of corruptly were present in this description. According to the law of nature, as laid down in this ancient text, to act corruptly means to break apart the official form (or proceeding) and embrace in lieu therefore, a corrupted alternative posing as the legitimate original.

The English common law recognized this concept of corruptly and applied it to specific judicial and religious proceedings. It criminalized perjury, "embracery" (the "attempt to influence a jury corruptly to one side by promises, persuasions, entreaties, money, entertainments, and the like), and simony (the corrupt presentation of any one to an ecclesiastical benefice or ministry for gift or reward.) Each of these in turn corrupted a judicial or ecclesiastical proceeding. Each also pretended to substitute the false and unfaithful, in lieu of the true and faithful official proceeding itself. Broken was the integrity of juror testimony, and of appointment of faithful clergy.

Applying these principles and history to the term corruptly in 18 U.S.C. § 1512(c)(2) requires an intent to destroy the integrity of an official proceeding and in its place, an intent to substitute a corrupt proceeding in lieu thereof posing as the true one. When a person intentionally obstructs, influences, or impedes an official proceeding within the meaning of 18 U.S.C. § 1512(c)(2), it is not enough for the government to simply prove a defendant intentionally obstructed, intentionally influenced, or intentionally impeded an official proceeding. The government must also show the defendant also corrupted that official proceeding.

That is to say, the defendant in addition to obstructing, influencing, or impeding an official session of Congress, must have also intended thereby to impose an alternative method of opening the certificates or counting the vote (a corrupted method), than as prescribed in the Twelfth Amendment, i.e., “the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.” The counting process itself in the official proceeding must have been corrupted, not merely obstructed, influenced, or impeded. The law of nature controls the meaning of “corruptly” and requires an intent to corrupt the official proceeding itself, not merely to obstruct, influence, or impede it. Absent this showing, the government fails to establish a defendant’s acts were done *corruptly*.

The court of appeals’ multiple versions of the term corruptly, fail to appreciate this rich history and

full-bodied meaning. Absent congressional definition of the term, the courts (set adrift from the law of nature and the common law) are thrown into the definitional deep end, without any historical definitional buoys or life vest. The lower court runs aground.

The lower court failed to properly parse the *actus reus* (the actual criminal act or conduct), and the *mens rea* (the individual's mental state or intent at the time of the crime) applicable to the statute. Corruptly is not just a state of mind, but an adverb modifying the action verbs obstructing, influencing, or impeding. It acts to heighten the verb's action thereby increasing the government's burden.

Thus, acting corruptly is not confined to merely playing a solo *mens rea* part. To corruptly obstruct is to obstruct by intending to impose an electoral vote counting procedure in lieu of the constitutional one, not merely to obstruct the counting procedure itself. The government's current proofs are anchored in the shallows, not the deep end, of law and history.

ARGUMENT

I. THE LAW OF NATURE CONTROLS THE MEANING OF “CORRUPTLY” AND REQUIRES THAT THE OFFICIAL PROCEEDING ITSELF BE CORRUPTED, NOT MERELY OBSTRUCTED, INFLUENCED, OR IMPEDED.

Title 18 U.S.C. § 1512(c) provides:

Whoever corruptly—

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

What does “corruptly” mean? Before Henry C. Black’s first law dictionary published in 1891, Noah Webster’s 1828 dictionary was in wide use. Since the term corruptly is of ancient origins, consulting a dictionary contemporaneous with the early period of the American Republic is critical.

According to Webster’s 1828 Dictionary, the term “corrupt” is a verb itself which from the Latin means “to break, separate or dissolve.” Let us not rush by the concept of breaking, nor forget that corruptly in the above statute is an adverb which grammatically describes needed detail of the underlying act. According to Webster, to act corruptly,

thus as an adverb is to act: “1) In a corrupt manner; with corruption; viciously; wickedly; without integrity. ‘We have dealt very corruptly against thee.’ Nehemiah 1:7; 2) By bribery. A judgment was obtained corruptly.”⁷ His reference to the scripture is significant to understand the term.

A. The Term “Corruptly” Was Part Of The Old Testament Law Demonstrating Its Meaning Is From Antiquity.

The meaning of the adverb “corruptly” in 18 U.S.C., § 1512(c) did not materialize with the statute. Webster points us back to the laws of nature and of nature’s God. To understand its ancient meaning, we must travel back and understand what it originally meant when the term was first enacted. Indeed, the penultimate lawgiver Moses employed the term “corruptly” to describe nationwide idolatry. Idolatry itself was already prohibited (Exodus 20:3-4), but when undertaken on a national scale a separate offense was involved.

The offence of making idols *corruptly* is about understanding what idolatry meant as a civil offense in relationship to the legitimate government of the nation and how it breaks that official government by

⁷ In 1806, Noah Webster published his first dictionary, [A Compendious Dictionary of the English Language](#). He completed a more comprehensive edition published in 1828 as [An American Dictionary of the English Language](#) (1828 ed.)
<https://webstersdictionary1828.com/Dictionary/corruptly>

substitution, or intending to substitute a false one in its stead.⁸

To grasp what is happening as a matter of law in these ancient statutory texts, which should be of interest to attorneys and judges, we must dispense with dismissing Old Testament laws out of hand as mere religion, or some doctrinal dispute. We must transcend our understanding of these passages perhaps learned as children or considered with professional disdain. Isn't Moses the "prophet, lawgiver, and judge" whose likeness is sculpted on the East Pediment of the Supreme Court building and who appears in the South Wall Frieze, and elsewhere, worth consideration or a judicial reference from time to time?⁹

The Decalogue, the supreme law of the land, already affirmed that the people had consented to God as the King, legislator, and judge of their infant Republic.¹⁰ By statute, they were to have no other

⁸ Specific references include Deuteronomy 4:16 & 25 (making a carved image), Deuteronomy 9:12 (making a molded image/golden calf), Judges 2:19 (following other gods to serve them), and Nehemiah 1:7 (not keeping the commandments, the statutes, or the ordinances Moses commanded.) Scriptural references throughout are to the New King James Version (NKJV), by Thomas Nelson, Inc. 1982.

⁹<https://www.supremecourt.gov/about/buildingfeatures.aspx>

¹⁰ "So Moses came and called for the elders of the people, and laid before them all these words which the Lord commanded him. Then all the people answered together and said, 'All that the Lord has spoken we will do.'" Exodus 19:7-8. For the Lord is our Judge,

gods and “You shall not make for yourself a carved image . . . you shall *not bow down to them nor serve them*. For I, the Lord your God, am a jealous God, visiting the iniquity of the fathers upon the children to the third and fourth generations of those who hate Me, but showing mercy to thousands, to those who love Me and keep My commandments.”¹¹

Whether such a law would ever be appropriate to enact in the United States is neither the point nor purpose. It merely serves to illustrate what ‘corruptly’ means.

The separate offense of national idolatry was not merely an individual or personal moral deficiency. It was an act that influenced, interfered, or obstructed the current official government under God, and in its place substituted an official false alternative, a government where the people chose to be legitimately governed by idols.¹², and which claimed the later was legitimate. In other words, it broke the official form of government requiring the people to worship only God, and in its place substituted a new form of government overseen by idols. The national effect of such a corrupt offense is reinforced by highlighting its longevity and generational curse. This is real corruption.

The Lord is our Lawgiver, The Lord is our King; He will save us.”
Isaiah 33:22.

¹¹ Exodus 20:3-4.

¹² “Come, make us gods that shall go before us; for as for this Moses, the man who brought us up out of the land of Egypt, we do not know what has become of him.” Exodus 32:1.

To act corruptly in the foregoing sense is not merely to violate the law or in this case the prohibition against idolatry. It is a description of the nationwide rejection of the supreme law of the nation and its form of government. The listed offenses were corrupt, precisely because they constituted a rejection of the form of government itself, substituting a false head of government for the proper one.¹³

According to this illustration of the law of nature, to act corruptly means to break apart the official form (or proceeding) and intend to embrace in lieu therefore, a corrupted alternative posing as the legitimate original. Thus, to act corruptly according to the laws of nature's God, was reserved to a narrow class of offenses more treacherous than treason.¹⁴ These elements are also the necessary elements of an offense under 18 U.S.C., § 1512(c)—to interfere, influence, or obstruct the official proceeding by intending to substitute corrupted one in its stead.

¹³ See Jeremiah 5:23. Micah 1:5. Exodus 19:7-8. Idolatry contradicted the nation's purpose: to "be to me [God] a kingdom of priests and a holy nation."

¹⁴ Treason on the other hand was confined to an inferior class of offenses—the murder of or deposing a King. 1 Kings 16:18-20; 2 Kings 9:20-24 & 34.

B. The Term “Corruptly” Was Part Of The Common Law Of England Demonstrating Its Long-Standing Usage and Precedent.

Turning to the English common law, Sir William Blackstone used the term “corrupt” in defining offenses against public justice. This class of offenses is where “corruptly” is to be found, not run of the mill offenses. This includes “the crime of willful and corrupt perjury.” As previously defined by Sir Edward Coke, this was a “crime committed when a lawful oath is administered, in some judicial proceeding, to a person who swears willfully, absolutely and falsely, in a matter material to the issue or point in question.”¹⁵

Swearing an oath willfully and absolutely was not enough. This was no crime at all as it reflected lawful activity - taking a lawful oath in a judicial proceeding. The element that rendered that which was lawful, now corruptly unlawful, was swearing falsely and doing so in a “matter material to the issue or point in question.” It was corrupt because it perverted the critical significance of testimony in an official judicial proceeding and sought to make it appear that the testimony so given was official and unbiased. It broke

¹⁵ W. Blackstone, 4 Commentaries on the Laws of England (1769), 136-138, *citing* E. Coke, 3 Institutes of the Lawes of England (1628-44) 164.
<https://lonang.com/library/reference/blackstone-commentaries-law-england/bla-410/>

the judicial system by making it appear to be free from bias when in fact the proceeding itself was corrupted by bias in testimony.

So also, the crime of “embracery” referenced corruptly. Embracery was an “attempt to influence a jury *corruptly* to one side by promises, persuasions, entreaties, money, entertainments, and the like.” Blackstone notes that the punishment for the person embracing is “by fine and imprisonment; and, for the juror so embraced, if it be by taking money, the punishment is ... perpetual infamy, imprisonment for a year, and forfeiture of the tenfold value.”¹⁶

Blackstone also describes civil Offenses Against God and Religion that implicate corrupt conduct. The crime of “simony”, “or the corrupt presentation of any one to an ecclesiastical benefice for gift or reward, is also ... always attended with perjury in the person presented,” and is therefore particularly abhorrent.

He states that persons who shall corruptly “ordain or license any minister, or procure him to be ordained or licensed, (which is the true idea of simony) shall incur a like forfeiture of forty pounds; and the minister himself of ten pounds, besides an incapacity to hold any ecclesiastical preferment for seven years afterwards.” Corrupt elections and appointments in colleges, hospitals, and other eleemosynary corporations, are also punished by the same statute.

¹⁶ W. Blackstone, 4 Commentaries, 140.
<https://lonang.com/library/reference/blackstone-commentaries-law-england/bla-410/>

Another offense “of the same species” is the “oppression and tyrannical partiality of judges, justices, and other magistrates, in the administration and under the color of their office.” In England it was “prosecuted, either by impeachment in parliament, or by information in the court of king’s bench.”¹⁷

In each case the official proceeding is corrupted not by mere interference, influence, or obstruction. The official proceeding itself is corrupted, meaning that a false process parading as the true one prevails. It should come as no surprise that corruptly implicates “promises, persuasions, entreaties, money, entertainments, and the like” as the practical and typical means of corrupting a proceeding under common law.

When applied to the necessary elements of an offense under 18 U.S.C., § 1512(c), “Whoever corruptly” requires the government to prove that the interference, influence, or obstruction of the official proceeding is accomplished by substituting a false or corrupted proceeding in its stead.¹⁸ This the heart of the matter.

¹⁷ W. Blackstone, 4 Commentaries, 140-141.

<https://lonang.com/library/reference/blackstone-commentaries-law-england/bla-410/>

¹⁸ The term corruptly also appears in multiple state statutes pertaining to corruptly influencing legislators, corruptly influencing voting, corruptly allowing claims, corruptly permitting violation of a contract, corruptly influencing jurors, arbitrators, and referees, corruptly attempting admission or commitment, and corrupt interference with the administration of revenue laws.

C. Article III, § 3's Term "Corruption Of Blood" Carries With It The Term's Ancient And English Roots.

Many states as well as the federal constitution prohibit the "corruption of blood" of those adjudged guilty of treason. In England under the common law such were considered attainted, "or stained, meaning dead in the eyes of the law—even before execution." This court has observed that:

Not content with capital punishment as a means of retribution for crimes, the English also provided for attainder ('dead in law') as the immediate and inseparable concomitant of the death sentence. . . . An attainted person could not inherit land or other hereditaments, nor retain those he possessed, nor transmit them by descent to any heir.¹⁹

Blackstone traced the practice of corruption of blood to the Norman conquest. He considered the practice as an "oppressive mark of feudal tenure" and hoped that it "may in process of time be abolished by act of parliament."²⁰ The Framers of the United States Constitution agreed, banning corruption of

¹⁹ *Furman v. Georgia*, 408 U.S. 238 (1972).

²⁰ W. Blackstone, 4 *Commentaries*, 381.
<https://lonang.com/library/reference/blackstone-commentaries-law-england/bla-429/>

blood as a punishment of treason.²¹ The corruption at issue was one's ability to inherit or devise an inheritance.

The concept of corruption cannot be understood in any other way than by reference to its ancient usage. So too with the term corruptly. The meaning and nature of the terms corruptly and corruption, can neither be understood nor applied to modern statutes employing them, without first understanding their historical context. The meaning of these terms must be derived from historical legal sources, not modern dictionaries.

II. “CORRUPTLY” IN 18 U.S.C. § 1512(c)(2), IS NOT MERELY A STATE OF MIND, BUT RATHER AN ADVERB, MODIFYING THE VERBS “OBSTRUCTS, INFLUENCES, OR IMPEDES.”

A. The Adverb Corruptly Modifies The Verbs Obstruct, Influence, Or Impede.

The relevant verbs in 18 U.S.C. 1512(c)(1) are “alters, destroys, mutilates, or conceals,” and in 18 U.S.C. 1512(c)(2), the verbs are “obstructs, influences, or impedes.” The relevant adverb for both subsections is “corruptly.” A verb is a word that describes an

²¹ See U.S. Const. Art. III, § 3. See *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425 (1977). *Wallach v. Van Riswick*, 92 U.S. 202, 2 Otto 202 (1875).

action. An adverb is a word that describes or gives more information about a verb.²²

What additional information or proof does the adverb “corruptly” add to the verbs “obstructs, influences, or impedes?” To obstruct, influence, or impede speaks to the act. Corruptly as an adverb modifies how and to what degree the actor obstructs, influences, or impedes. Each of the three verbs as modified by the adverb corruptly, requires the government to apply the *mens rea* element. The *mens rea* element is not just limited to the adverb corruptly, but fully applies to the verbs it modifies. Let us keep our verbs and adverbs straight.

**B. *Mens Rea* Requires An Intent To
Corruptly Obstruct, Corruptly
Influence, Or Corruptly Impede An
Official Proceeding.**

Let us also review our basic Latin. *Actus reus* is Latin for “guilty act.” The *actus reus* is the event, action, consequence or situation prohibited by the offence provision. The *actus reus* generally consists of an act bringing about a prohibited consequence. *Mens rea* is Latin for “guilty mind.” An offence cannot be complete without proof of the requisite blameworthy state of mind, the “*mens rea*”. *Mens rea* addresses the defendant’s mental state and intent.

²²<https://dictionary.cambridge.org/dictionary/english/verb>

The law, however, requires that the *mens rea*, or scienter requirement apply to *each* of the underlying acts even if no statutory scienter is articulated.²³ *Morissette* further “instructs that the standard presumption in favor of a scienter requirement should apply to *each of the statutory elements* that criminalize otherwise innocent conduct” (emphasis added).²⁴

Engrafting a scienter requirement onto each of the corruptly modified verbs and not limiting it to the term corruptly only, translates into the following test. Subsection (c)(2) consists of three elements. First, the *actus reus* verbs and adverbs must be satisfied—the defendant must corruptly obstruct, corruptly influence, or corruptly impede. This covers both the

²³ The Court has repeatedly held that “mere omission from a criminal enactment of any mention of criminal intent” should not be read “as dispensing with it.” *Morissette v. United States*, 342 U.S. 246, 250 (1952); *Staples v. United States*, 511 U.S. 600, 619 (1994). This rule of construction reflects the basic principle that “wrongdoing must be conscious to be criminal.” *Id.*, at 252, 72 S. Ct. 240.

As Justice Jackson explained, this principle is “as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.” *Id.*, at 250. The “central thought” is that a defendant must be “blameworthy in mind” before he can be found guilty, a concept courts have expressed over time through various terms such as *mens rea*, scienter, malice aforethought, guilty knowledge, and the like. *Id.*, at 252; 1 W. LaFare, Substantive Criminal Law § 5.1, pp. 332–333 (2d ed. 2003). *Elonis v. United States*, 575 U.S. 723, 734 (2015).

²⁴ *United States v. X-Citement Video, Inc.*, 513 U.S. 64 (1994).

verbs and adverb because they are statutorily linked together. The adverb corruptly defines how one obstructs, influences, or impedes. This means the government must prove a defendant acted to influence, interfere, or obstruct the official proceeding for counting electoral votes, and intended to impose an alternative corrupt proceeding posing as legitimate in lieu thereof.

Second, the government must prove the defendant corruptly obstructed, corruptly influenced, or corruptly impeded an official proceeding. Third, is the *mens rea* requirement. In connection with an official proceeding, the government must also prove that defendant intended to corruptly obstruct, corruptly influence, or corruptly impede. This means also proving the defendant meets the definition of corruptly—the defendant intended to impose an alternative corrupt proceeding posing as legitimate in lieu of the true official proceeding.

This is the best reading of the text because it is the one most consistent with the term's history and meaning. Here, the government must establish that the defendant intended to break the system of counting electoral votes by intending to obstruct, or intending to influence, or intending to impede the very system of counting. It is not enough to establish a defendant knowingly entered the Capital. It is not enough to establish that a defendant obstructed a proceeding of Congress on January 6, 2021. Corruptly requires more. It sets a higher bar. It requires the government to establish a defendant intended to corrupt the official electoral vote proceeding itself.

For example, did the defendant influence the official electoral vote proceeding by intending to bribe a member of Congress to exclude votes? Did the defendant interfere with the official electoral vote proceeding by intending to rig the vote counting process? Did the Defendant obstruct the official electoral vote proceeding by intending to corrupt the certificates or impose an alternative counting method in lieu of the Constitutional one?

Corruptly requires that a defendant intended to do more than impede, obstruct, or influence an official Congressional session. It requires the government to establish that the defendants' intent in so doing was to break the very system of counting the electoral votes. To meet this burden, the government must prove that a defendant intended to corrupt the official proceeding itself by introducing evidence that the defendant intended by "promises, persuasions, entreaties, money, entertainments, and the like" such as bribery of Congressional members, to influence, interfere with, or obstruct the Twelfth Amendment process of opening the certificates and counting them. Absent this showing, the defendant has not acted corruptly.

C. The Lower Court's Definitional Lottery Defining Corruptly Is No Guide.

How did the lower court parse these matters? Writing for the majority, Judge Pan sized up the term corruptly. "As relevant to the instant case, the allegations against appellees appear to be sufficient to

meet any proposed definition of “corrupt” intent.”²⁵ Three versions are then identified. First, from *Arthur Andersen LLP v. United States*, the “natural meaning” of “corruptly” is “normally associated with wrongful, immoral, depraved, or evil” conduct.²⁶ Second, from the government, a corrupt state of mind is satisfied when a defendant acts “with a corrupt purpose,” through “independently corrupt means,” or both. Third, from *United States v. Aguilar*, “[a]n act is done corruptly if it's done voluntarily and intentionally to bring about either an unlawful result or a lawful result by some unlawful method, with a hope or expectation of either financial gain or other benefit to oneself or a benefit of another person.”²⁷

Judge Katsas also weighed in. He wrote: “Subsection (c)(2) consists of four elements. First are its *actus rei* verbs—the defendant must obstruct, influence, or impede. Second is the adverb otherwise, which qualifies the verbs by indicating some relationship between the covered obstruction and the acts prohibited by subsection (c)(1). Third is the direct object—the defendant must obstruct an official proceeding. Fourth is a *mens rea* requirement — in obstructing an official proceeding, the defendant must act corruptly.”²⁸

²⁵ *Fischer* at 339. (Judge Pan, Circuit Judge).

²⁶ *Andersen LLP v. United States*, 544 U.S. 696, 705 (2005).

²⁷ *United States v. Aguilar*, 515 U.S. at 616-17 (1995).

²⁸ *Fischer* at 364. (Katsas, Circuit Judge, dissenting).

These approaches pay no attention to the immutable law of nature, the law of nature's God, Blackstone or the common law. They import a confusing gloss into the statute. They rob corruptly of its verb modifying quality and reduce it to a mere *mens rea* requirement.

D. The Law Of Nature's God Completes Judge Walker's Initial Common Law Focus.

Judge Walker's concurrence looks first to case law and then back to the common law. He argued *Marinello v. United States* controls and that "corruptly" requires a defendant to act "with an intent to procure an unlawful benefit either for [himself] or for some other person."²⁹ "The defendant must "not only kn[ow] he was obtaining an 'unlawful benefit,' " it must also be "his 'objective' or 'purpose.' " . . . Read that way, "corruptly" makes sense of (c)(2)'s place in the statutory scheme and avoids rendering it a vague and far-reaching criminal provision."³⁰

The Judge then undertakes an initial, though basic review of the common law, noting that the term corruptly "likely originated as the mental state for common-law corruption crimes like extortion and bribery." The court noted that "common-law courts almost always treated the intent to procure an unlawful benefit — that is, the intent to procure a

²⁹ *Marinello v. United States*, 584 U.S. —, 138 S. Ct. 1101, 1114 (2018) (Thomas, J., dissenting).

³⁰ *Fischer* at 352. (Walker, Circuit Judge, concurring in part and concurring in the judgment).

benefit which the offender knows is unlawful — as a crucial part of the “cluster of ideas” that defined it as a unique mental state.³¹

“Likely originated”? “Terms of art”? “Cluster of ideas”? Surely, we can be more precise than this. A sharper focus is needed. A deeper look into corruptly in the common law as previously discussed by Blackstone for instance, requires more than an “intent to procure an unlawful benefit.” It requires an intent to corrupt the official proceeding itself which typically involves bribery or extortion of a public official. Judge Walker points us in the right direction, while Moses and Blackstone provide the details this Court needs to escape the lower court’s lottery of meaning and incantation of Black’s Law Dictionary or the Oxford English Dictionary (2d ed. 1989).³²

³¹ *Fischer* at 354. (Walker, Circuit Judge, concurring in part and concurring in the judgment.) See *Morissette v. United States*, 342 U.S. 246, 263 (1952) (legal “terms of art” often carry a “cluster of ideas” from “centuries of practice”).

³² *Fischer* at 339, 364, *citing* Black's Law Dictionary that the word corruptly usually “indicates a wrongful desire for pecuniary gain or other advantage.” Black's Law Dictionary (11th ed. 2019). This dictionary definition is of modern derivation and does not reflect any historical understanding. Moreover, Amicus do not see how this definition is all that helpful as it is somewhat circular. It begs for a further definition of an equally broad term., i.e., “wrongful.” The court should avoid reliance upon it.

CONCLUSION

Allowing the lower court's contemporary definition of 'corruptly' to stand, not only suppresses its historical meaning, but also makes the term susceptible to apply unrestrained to all kinds of otherwise lawful conduct.

For instance, whenever a parent attends a local school board meeting (an official government proceeding) intending to delay same by extended public comment, such interruption will be said to be done corruptly. If protesters fill the parking lot of a post office with immovable vehicles in order to protest postage increases, thereby disrupting official business, such blockage will be considered as done corruptly. If a union march blocks a city street or sidewalk intending to slow the ability of government employees to get to their desks to participate in an official meeting, it will be claimed by the government that such an act is done corruptly.

Affirming the lower court would create more havoc and uncertainty, not settle the issue. Indeed, using the government's low standard for corruptly, would an attorney who talks beyond the time limit assigned for oral argument intending to prolong argument thereby disrupting an official court proceeding, act "with a corrupt purpose," through "independently corrupt means," or both?

Embracing the term's meaning as grounded in the law of nature's God and its historical common law context, and rejecting all other meanings as

contemporary authoritarian departures is the right decision.

Respectfully submitted,

KERRY LEE MORGAN*
RANDALL A. PENTIUK
PENTIUK, COUVREUR, &
KOBILJAK, P.C.
2915 Biddle Avenue
Suite 200
Wyandotte, MI 48192
(734) 281-7100
Kmorgan@pck-law.com
Rpentiuk@pck-law.com

GERALD R. THOMPSON
37637 Five Mile Rd, #397
Livonia, MI 48154
(734) 855-6494
thompson@t-tlaw.com

Counsel for Amicus Curiae
** Counsel of Record*

February 2, 2024