No. 25-756

IN THE

Supreme Court of the United States

LARRY HOUSEHOLDER,

Petitioner,

v.

UNITED STATES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF

STEVEN L. BRADLEY
Counsel of Record
MAREIN & BRADLEY, LLC
1300 East 9th Street,
Suite 1000
Cleveland, OH 44114
(216) 781-0722
steve@mareinandbradley.com

Counsel for Petitioner

132119

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

Cases

INTRODUCTION

In responding in opposition to Larry Householder's petition, the government argues:

1. This Court has previously denied similar petitions in the past 14 years. BIO 7.

2. The jury instruction being challenged was not erroneous, in significant part because it tracked this Court's language in *Evans v. United States*, 504 U.S. 255 (1992). BIO 8-9.

3. The question presented in this case is not sufficiently controversial to require this Court's consideration. BIO 10-13.

4. The instant case is a poor vehicle for resolving the question presented because it was not fully preserved below. BIO 13-15.

5. Any error was harmless. BIO 15.

The government's objections should be rejected, as discussed below.

More importantly, the government is missing the forest as it focuses on the trees. Courts, including this Court, have been grappling for years with the distinction between what constitutes an everyday campaign contribution and what constitutes a bribe. The distinction has been at the center of numerous public integrity decisions. But prosecutions for bribery constitute only one portion of the problem that has arisen. The lack of clarity in this area also

chills responsible public officials from being transparent about their views on issues affecting the public, lest their candor on how they stand on a particular issue fosters an expectation that transforms what is otherwise a campaign contribution into a bribe. The importance of the issue presented goes beyond the courtroom.

ARGUMENT

Each of the government's objections outlined above are addressed below.

1. The issue presented is recurring.

The government asserts that, because this Court has denied certiorari multiple times previously, the issue presented is not one worthy of certiorari. The government's list of eight cases that have presented the issue understandably omits *United States v. Sittenfeld*, 128 F.4th 752 (6th Cir. 2025). In *Sittenfeld*, because of the unusual procedural posture presented by the government's decision to seek dismissal of the case post-conviction, this Court granted certiorari without need to address the issue presented. Case No. 25-49 (granting certiorari, vacating and remanding for consideration of pending motion to dismiss, decided April 6, 2026). Adding *Sittenfeld* to the government's count, this Court has been asked nine times since 2012 to address issues akin to the issue presented herein. BIO at 11 (collecting cases).

Rather than view this list of cases as compelling denial of certiorari, this Court should conclude the opposite. The issue presented continues to recur. This speaks to its significance, not its insignificance.

2. Tracking *Evans*' language does not make a jury instruction correct.

The government echoes the same mistake made by the United States Court of Appeals for the Sixth Circuit in the instant case: concluding that a jury instruction that tracks language from an appellate opinion will necessarily be an effective means of communicating to a jury what the law demands. To the contrary, there are times when depositing language from an appellate decision into a jury instruction is the equivalent of pounding a square peg into a round hole.

Numerous courts have recognized for decades that equating appellate language with effective jury instruction is an invitation for error. *E.g.*, *Kent v. Smith*, 404 F.2d 241, 244 (2d Cir. 1968) ("it is generally not helpful to take quotations from the opinions of appellate courts, that were never intended to be used as instructions to juries, and submit these in the form of requests to charge."); *Finch v. Covil Corporation*, 972 F.3d 507, 513 (4th Cir. 2020) (""opinions are not jury instructions, nor are they meant to be,'" *quoting Noel v. Artson*, 641 F.3d 580, 588 (4th Cir. 2011)); *Boyd v. Illinois State Police*, 384 F.3d 888, 894-95 (7th Cir. 2004); *Johnson v. Bryant*, 671 F.2d 1276, n.2 (11th Cir. 1982).

Moreover, even if the government in its brief in opposition is correct that a jury instruction that tracks a controlling appellate opinion is necessarily efficacious, that assertion misses the even bigger question: Was this jury instruction a correct statement of law when it told the jury that "a public official's receipt of things of value when the public official knows that the person who gave

the thing of value was doing so in return for the public official performing or agreeing to perform a specific official action" constitutes bribery. R. 237, Pg. ID 9421. Householder's petition argues that the answer to this question is "no." And, while the government has argued that *Evans v. United States*, 504 U.S. 255 (1992), *is* the law, the government's brief in opposition never goes so far as to address why *Evans should be* the law.

3. The issue is sufficiently controversial to be worthy of certiorari.

The government argues that the appellate cases cited in Householder's petition do not establish a clearcut difference in judgments on the question presented. That observation is as accurate as it is unsurprising. *McCormick v. United States*, 500 U.S. 257 (1991) and *Evans* have established the *status quo ante* with respect to the question presented. Ensuing decision of the courts of appeals have been restricted by those two cases.

What makes the instant case worthy of certiorari is the number of times that courts of appeals dealing with issues related to Hobbs Act bribery have noted that *Evans* needs to be revisited because *Evans* uses language that conflates everyday political financing and bribery. Lower-court discomfort with *Evans* is manifested in the numerous cases where the question presented in this case was effectively raised in other certiorari petitions. Lower-court discomfort has also been expressed in other cases, including those discussed in Householder's petition (*e.g.* at 19-20).

This same discomfort was echoed in the numerous briefs of *amici curiae* filed on behalf of Sittenfeld's petition for certiorari in Case No. 25-49. *See*, *e.g.*, Brief of Former Federal Officials as Amici Curiae Supporting Petitioner, at 4 ("The lower courts' contrived attempts to square *McCormick* and *Evans* have resulted in a vague and unworkable standard that subjects public officials to criminal liability for everyday statements to their supporters and contributors"); Brief of *Amici* Law Professors Daniel Hemel, et al. in Support of Petitioner at 3, 22-23 (Sixth Circuit has "watered down " *McCormick*; which "exposes elected officeholders across all levels of government to the risk of retaliatory federal prosecution, thus discouraging state and local officials from fulfilling the checking-and-balancing function assigned to them in the Framers' grand plan.").

Which is why the instant case should be heard by this Court.

4. The instant case is an appropriate vehicle to decide the question presented.

The government's brief in opposition argues that the jury instruction given by the district court that is the subject of the question presented is indistinguishable from that proposed by Householder in his proposed jury instructions. Significantly, but not surprisingly as discussed below, this concern was not raised by the government in its briefing or argument at the Sixth Circuit (CA 23-3565, Doc. 47, at 82-85), nor was it raised by the Sixth Circuit in its decision below. Pet. App. 21A-23A.

Householder's proposed jury instructions included the following: "if the public official knows that the donor believes that the public official has entered into such an agreement [*i.e.* an explicit *quid pro quo*], then the contribution is a bribe." D.Ct. Doc. 174 at 27. This instruction recognized that *McCormick's* explicit *quid pro quo* could be established without a verbalized agreement. The key to this proposed instruction is that the public official is aware, not just that the donor believes that the public official will take specific action but is also aware that the donor believes the public official and donor are in "agreement." This is consistent with Justice Kennedy's concern in *Evans* that "the law's effect could be frustrated by knowing winks and nods." *Id.* at 274 (Kennedy, J., concurring in part and concurring in judgment). The key to Householder's proposed instruction was that the public official knew that the donor believed not just that the public official would take action but also that the action was being taken because of an explicit *quid pro quo* agreement. In other words, the public official could not successfully lead the donor to believe there was an agreement and then, knowing of the donor's reliance on there being an agreement, take the donor's money.

But what the district court gave as its instruction was markedly different. The jury in the instant case was not instructed that the public official needed to know the donor believed there was an *agreement to act* in order to find Householder guilty. Rather, the jury was instructed that guilt was established if the public official knew that the donor believed the public official *would act* as a result of the contribution: "a public official's receipt of things of value when the public official knows that the person who gave the thing of value was doing so in return for the

public official performing or agreeing to perform a specific official action." R. 237, Pg. ID 9421.

In the end, the district court's instruction, unlike the Householder proposed instruction, allowed the jury to find Householder guilty if Householder knew that First Energy expected him to take official action. This is a far cry from *McCormick*'s requirement of an explicit *quid pro quo* agreement.

5. The error was not harmless.

The government's brief in opposition cites to the government's brief of appellee in the Sixth Circuit, at page 24, for the proposition that Householder used a portion of the Generation Now funds for personal expenses. BIO at 4, citing Gov't C.A. Br. 24. But the brief in opposition fails to mention that, elsewhere in its appellate brief, at pp. 49-50, n. 7, the government acknowledged that the funds obtained by Householder were actually funds that cooperating witness Jeffrey Longstreth had siphoned from Generation Now and then given to Householder from Longstreth's personal accounts. *Id.* at 49-50, n. 7. Moreover, as the government further acknowledged in that same footnote, Householder testified (contrary to Longstreth) that the payments were loans that Householder intended to repay. Thus, the evidence was not such that it would render harmless the error in the jury instructions discussed herein. And the Sixth Circuit's opinion suggests nothing to the contrary.

CONCLUSION

For these additional reasons, the Court should grant the petition.

April 15, 2026

Respectfully submitted,

Steven L. Bradley
Counsel of Record
Marein & Bradley, LLC
1300 East 9th Street,
Suite 1000
Cleveland, OH 44114
(216) 781-0722
steve@mareinandbradley.com

Counsel for Petitioner