No. 26-137

In the Supreme Court of the United States

MICHAEL J. MADIGAN,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT.

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

BRIEF FOR THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL-CIO AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

INTEREST OF *AMICUS CURIAE*[*]

The International Union of Operating Engineers, Local 150, AFL-CIO ("Local 150") is a labor organization and the exclusive collective bargaining representative of more than 24,000 members working in various industries throughout northwest Indiana, northern Illinois, and eastern Iowa. By filing this *amicus* brief, Local 150 seeks to assist the Court in a case that presents an issue of exceptional importance for public advocacy and lobbying by labor organizations. The appropriate scope of prosecutions under 18 U.S.C. § 666—the most-prosecuted federal corruption statute[1]—directly impacts Local 150's efforts to educate government officials, and to advocate for, support, and draft legislation that promotes bidding opportunities for responsible contractors and gainful employment for Local 150 members. Local 150 is well-positioned to offer insight into the need for this Court's review of the decision below because of the serious consequences for public advocacy groups, lobbyists, and active citizens in labor industries if the reach of § 666 is not properly defined.

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[*] No counsel for any party in this case authored this brief in whole or in part. No person or entity, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. *See* Sup. Ct. R. 37.6. All parties of record were timely notified of our intent to file an amicus brief in support of this Petition, pursuant to Sup. Ct. R. 37.2.

[1] U.S. Dep't of Just., Bureau of Just. Stat., *FY 2013-2023 Number of Defendants in Cases Filed: 18 U.S.C. § 666*, https://bjs.gov/fjsrc (last visited August 24, 2026).

SUMMARY OF ARGUMENT

The Seventh Circuit's decision below permits prosecution of individuals for felony criminal offenses under 18 U.S.C. § 666 based on a "stream of benefits"—without requiring proof of a specific agreement made as to an identifiable "matter" at a particular point in time and prior to the official acts alleged to be the "*quo*" of the corrupt agreement. So construed, § 666 violates the fundamental principle that a criminal law must "give ordinary people fair notice of the conduct it punishes." *Johnson v. United States*, 576 U.S. 591, 605 (2015). The Seventh Circuit's interpretation also renders the statute so standardless as to invite arbitrary enforcement. See *id*.

There now exists a conflict among several circuit courts on the elements of proof necessary to support a conviction under the "stream of benefits" theory. Law-abiding participants in the American political process, including lobbyists, public advocacy groups, and politically involved citizens, could be subject to prosecution for commonplace (and perfectly legitimate) interactions with state and local officials. To avoid these substantial due process concerns, the Court should resolve the circuit split and require proof beyond a reasonable doubt of a corrupt agreement to exchange a benefit or thing of value, made at a time certain and as to an identified "matter," in order to sustain a criminal prosecution under § 666 on a stream-of-benefits theory.

Certiorari should be granted to resolve the established circuit split, and requiring these elements of proof would properly delineate between criminal bribery, on the one hand, and lawful advocacy, on the other.

ARGUMENT

Every day, in virtually every state and city across the nation, interest groups, lobbyists, employers, and businesspeople interact with state and local officials. In these dealings, law-abiding citizens legitimately and appropriately seek to influence the officials or persuade them to act on various matters of public importance. Such activity—educating public officials and attempting to influence them as to both general policy and specific legislation—serves core First Amendment interests and is a well-established part of the political process in our society.

Much of this activity also customarily involves providing officials with what federal courts have construed to constitute "anything of value" within the meaning of § 666, including, for example, meeting with an official over lunch or dinner, hosting a legislative reception, or putting on an educational conference for legislators, or even donating to a worthy charity favored by the public official. Likewise, employment referrals or positive references to potential employers is a commonplace, and benign, occurrence between individuals and entities which interact professionally. Indeed, in *United States v. Donagher*, the government and the district court agreed that the defendant's relatively modest charitable donations ($869 for plaques and $1,000 for food) to a cause also supported by a local county official (a luncheon honoring Women Judges of Illinois) were sufficient "things of value" to support a felony conviction and prison sentence under § 666.

United States v. Donagher, Case No. 19 CR 240 (N.D. Ill.), Doc. 97-98, 121.

Section 666 makes it a felony offense for anyone who "corruptly[2] gives, offers, or agrees to give anything of value to any person, with intent to influence or reward" a state or local official "in connection with any" government business "involving anything of value of $5,000 or more." 18 U.S.C. § 666(a)(2). The statute prohibits actual bribery of public officials, not merely a generalized course of favorable votes by the official alongside certain benefits provided over time.

Following *Snyder v. United States*, 603 U.S. 1 (2024), the government cannot prove a violation of § 666 merely by establishing a series of benefits or "things of value" going to an official and a corresponding series of favorable official acts over an extended period. Rather, it must prove a genuine and specific *quid pro quo*—an agreement made at a particular point in time that some benefit or "thing of value" would be exchanged for official action on a

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[2] There is also a longstanding Circuit split regarding the definition of "corrupt" under § 666—another reason *certiorari* should be granted in this case. *Compare*, *e.g.*, *United States v. Ng Lap Seng*, 934 F.3d 110, 142 (2d Cir. 2019) (requiring "consciousness of wrongdoing"); *Martinez-de Ryan v. Whitaker*, 909 F.3d 247, 250 (9th Cir. 2018) (similar); and *United States v. McNair*, 605 F.3d 1152, 1188, 1193 (11th Cir. 2010) (similar), *with United States v. Hawkins*, 777 F.3d 880, 881-82 (7th Cir. 2015) (a person acts corruptly when he acts with understanding that something of value is being offered or given to reward or influence him in connection with his official duties); and *United States v. Cui*, 163 F.4th 1072, 1087 (7th Cir. 2026) (same). See *United States v. Ford*, 435 F.3d 204, 211-14 (2d Cir. 2006) (recognizing circuit conflict).

defined matter. The Court's decision in *McDonnell v. United States* likewise makes clear that the "question, matter, cause, suit, proceeding or controversy" as to which the parties agree the official action will be taken "must be more specific and focused than a broad policy objective"; it must be "the kind of thing that can be put on an agenda, tracked for progress, and then checked off as complete." 579 U.S. 550, 570 (2016). And importantly the corrupt promise to take the official action on a defined and "circumscribed" matter in exchange for an identified benefit conveyed must have been reached "*at the time*" of that conveyance and promise. *Id.* at 579. These required elements of proof cannot be satisfied merely by a timeline showing that a lobbyist provided various benefits over time while an official acted favorably toward certain issues of concern to the lobbyist.

An open-ended "stream-of-benefits" or "as-opportunities-arise" theory of prosecution is particularly problematic in the lobbying context. Lobbyists, by definition, regularly communicate and interact with public officials. Their job description is to develop professional relationships with public officials and to advocate and influence on one side or the other of public policy and political issues, many of which are related over time. The same is true for policy advocates representing all sorts of organizations and groups that have interests in public policy and actively participate in the political process. And the entities that employ those lobbyists or rely on citizen advocates quite naturally tend to meet with, lobby, and support officials who agree with, or are sympathetic to, their policy views.

The current "stream of benefits" theory creates the same fair-notice problem called out in *Snyder*. 603 U.S. at 12-13. Without the requirements of a specific agreement, on a specific matter, made at a specific time, no one can determine when an ongoing professional, political, and/or personal relationship becomes a federal felony carrying ten years' imprisonment. There are tens of thousands of state and local officials, lobbyists, union and trade association representatives, and issue-based citizen advocates who interact with each other—and properly so—every day as part of our representative democracy, all of whom are currently left "entirely at sea" as to where the line is. *Snyder*, 603 U.S. at 16.

Thus, as the law currently stands in the Seventh Circuit and elsewhere, "nothing but the Government's discretion prevents" it from prosecuting the good-faith policy advocate or lobbyist in this circumstance. *United States v. Sun-Diamond Growers of California*, 526 U.S. 398, 408 (1999). But prosecutorial assurances that innocent conduct will not be charged is plainly an insufficient remedy. *Id.*; *Snyder*, 603 U.S. at 12-13; *United States v. Stevens*, 559 U.S. 460, 480 (2010) ("[T]he First Amendment protects against the Government; it does not leave us at the mercy of *noblesse oblige*."); *Marinello v. United States*, 138 S. Ct. 1101, 1106, 1108 (2018) (citizens are constitutionally entitled to "fair warning" of what conduct risks criminal prosecution) (quoting *United States v. Aguilar*, 515 U.S. 593, 600 (1995)). Perhaps worse, the same lobbyist who does work in both New York and Indiana could engage in precisely the same conduct in both places, and in New York be on safe ground, but in Indiana be exposed to a felony conviction and 10 years in prison. That is an untenable situation, particularly given the First Amendment implications of involvement in our political process.

If the Government is not required to identify and establish a *specific benefit* that was exchanged for a promise of official action on an *identified matter* and *at the time the alleged corrupt agreement was made* in order to prove a felony offense under § 666, a prosecutor can simply aggregate a series of entirely lawful interactions and events, and transform a routine lobbying relationship into a federal bribery scheme exposing both lobbyist and public official to 10-year prison sentences. This cannot be the law—a conclusion that follows necessarily from the Court's decisions in *McDonnell* and *Snyder*.

A few examples illustrate the point.

1. <u>Job References and Hiring of Capable Personnel Can Be Made Criminal</u>

Suppose a local union leader successfully advocates to state Representative A for legislation funding roadwork construction under a state capital improvement plan that would create hundreds of good jobs for the union's members. After the legislation passes, Representative A forwards resumés to the union leader, suggesting that the job applicants, who live in his district where unemployment is high, are well qualified to be employed by contractors who employ union members. The union official passes those resumés on to the Union's hiring hall, and some of the applicants—who are, in fact, well-qualified—are hired. Later in time, Representative A supports a separate regulatory reform that is supported by the union leader because it will expand job opportunities for his members. At some point, the Union hires a well-regarded legislative aide from Representative A's office who wants to move from government employment to the private sector, and Representative A provides the union leader with a positive job reference for his aide, whom he likes. And following a positive experience with that hire, the union hires two other former aides on a lobbying retainer who also come highly recommended by Representative A. Assume further that there is no direct evidence of any illicit or untoward *quid pro quo* agreement between Representative A and the union leader.

Under the Seventh Circuit's interpretation of § 666, this mere sequence of events is sufficient to allow a prosecutor to indict—and more than likely convict—both Representative A and the union leader on a "stream of benefits" theory under § 666. Absent a requirement of proof that an "official act *on a particular question or matter*," *McDonnell*, 579 U.S. at 570 (emphasis added); *id.* ("the kind of thing that can be put on an agenda, tracked for progress, and then checked off as complete" which "must be more specific and focused than a broad policy objective"), was corruptly agreed to in exchange for a particular benefit or "thing of value" conveyed "*at the time" of that conveyance or promise, id.* at 579 (emphasis added); *Snyder*, 603 U.S. at 19 ("the timing of the agreement is key"), perfectly ordinary employment and networking decisions become evidence of a criminal conspiracy under § 666. That comports neither with due process nor the fundamental tenet of our criminal law that policy advocates and public officials must know in advance what conduct crosses the line.

The fact that a series of patently legal interactions can be (mis)characterized by an aggressive prosecutor as a "stream" of criminal bribery is, alone, a compelling reason for this Court to grant *certiorari* to clearly delineate the boundary between lawful long-term advocacy, on the one hand, and a criminal conspiracy on the other.

2. Part-Time State and Local Legislators With Other Private Employment

As another example, City Council Member B—like many part-time state and local legislators—must also hold private employment to make a living and provide for his family. *See* Nat'l Conf. of State Legislatures, *Full- and Part-Time Legislatures* (July 28, 2021), http://tinyurl.com/eramrn5y (finding that 40 states have part-time legislatures). The part-time city council member owns and operates an insurance agency in the small city where he lives, and he also sits on the City Council's Zoning Committee. The owner of a local construction company has purchased both his business and personal insurance policies from Council Member A's insurance agency yearly for the past eight years, all at market rates. At some point in the middle of those eight years, Council Member B votes to approve a zoning request sought by the owner of the local construction company, who wants to build a shopping center. At another point during that eight-year stretch, Council Member B votes in favor of an unrelated housing development, also lobbied for by the construction company's owner.

Under the stream-of-benefits theory espoused by the government—successfully—in the case below, both the Council Member and the principal of the construction company could be charged and convicted of a felony under § 666 based on these fairly innocuous facts, without even an allegation, much less proof, that there was an agreement *at the time the benefit (the alleged bribe) was promised or conveyed* to exchange the routine purchase of insurance for a *specific official act* by the councilman. More is required when one's liberty is at risk.

3. Repeated Provision of Conferences or Educational Seminars on a Policy Issue Followed By Favorable Official Action

Suppose an industry lobbyist spends several years educating a legislator about a complicated regulatory issue, like "prevailing wage" laws, which is particularly important to the industry he represents. The lobbyist hosts conferences on the topic to which the legislator is invited, arranges meetings between the legislator and subject-matter experts over dinners—in amounts that that comply with the state-defined Ethics Code[3]—and provides proposed

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[3] In Illinois, for instance, legal guidance from the Secretary of State's Office indicates that lobbyists may provide a public official with "[f]ood or refreshments not exceeding $75 per person in value on a single day..." Illinois Secretary of State, *Illinois Lobbyist Ethics Training* (Feb. 2025), http://tinyurl.com/uswbcwpw. But under the current state of the law in the Seventh Circuit (and others), even if a lobbyist's meal expenditures comply with this guidance, a federal prosecutor can still allege and argue such mundane and state-law-approved meal expenditures are part of a "stream of benefits" that violate § 666.

statutory language to the legislator and her staff. After several years of these events and interactions, the legislator publicly supports and votes for legislation that is in line with the industry's position.

While the official act—a vote in favor of industry-supported legislation—certainly flows from the long course of contacts, that chronology alone should not support a federal bribery conviction.[4] Yet the stream-of-benefits theory as it currently exists allows the government to argue that the lobbyist's string of otherwise lawful expenditures on conferences, educational seminars, and even permitted meals—all designed to legitimately educate and influence the legislator—are all part of a corrupt exchange if the legislator is persuaded to the lobbyist's point of view. All that stands between an honest, scrupulous lobbyist and exposure to a decade in prison is the persuasion of a jury by a skilled prosecutor. More is required, and only this Court can set that line as to which the Circuits currently diverge. *Compare United States v. Silver*, 948 F.3d 538, 568 (2d Cir. 2020) (requiring Government to "prove that, at the time the bribe was accepted, [the official] promised to take official action on a specific and focused question or matter as the opportunities to take such action arose"); *United States v. Burnette*, 65 F.4th 591, 601 (11th Cir. 2023) (similar); *United States v. Hills*, 27 F.4th 1155, 1179 (6th Cir. 2022) ("convictions for

[4] To be sure, a pattern of parallel streams of benefits and favorable official conduct may be relevant circumstantial evidence of a criminal bribery agreement under § 666, but it is not alone sufficient proof of the subject-matter defined and time-specific agreement *Snyder* and *McDonnell* require.

bribery schemes that are akin to payment of a retainer for services yet to be determined" are not valid); and *United States v. De Moya*, 180 F.4th 336 (D.C. Cir. 2026 (similar); *with United States v. Madigan*, 173 F.4th 929 (7th Cir. 2026) (unknown and unidentified potential future legislation is sufficient to satisfy the "specific matter" requirement).

4. Long-Term Lobbying on a Diverse and Continuing Legislative Agenda

A labor union, trade association, or professional organization typically does not care about only one piece of legislation. Its representatives and lobbyists often advocate with public officials on a wide range of issues (*e.g.*, zoning, taxation, regulatory issues, employment, licensing, appropriations, etc.) that impact their particular organization and its goals. A state or local official with whom they regularly interact may well share the organization's general policy outlook and support many of its positions over time. If "advancing the organization's agenda" is sufficiently specific to constitute the corrupt *quo*, the government never has to identify what precisely the official allegedly sold. It can define the *quo* at a high level—"helping the industry," "supporting labor," or "protecting the utility"—and then point to a list of favorable votes by the official over time in urging conviction under a stream-of-benefits theory. But those facts prove only an alignment of political interests, not a corrupt exchange of specific official action promised, at a particular point in time, in return for a specified benefit given.

Because the "stream of benefits" theory under § 666, as currently interpreted by some lower courts, dispenses with certain of those required elements, this Court must set the boundaries of § 666 consistent with the principles set forth in *Snyder* and *McDonnell*. Moreover, absent such definition, the stream-of-benefits theory effectively preserves the "gratuity" offense the Court specifically rejected in *Snyder*, allowing the government to relabel a series of benefits and favorable official acts as a nebulous "stream" without need for proof of a specific agreement, on a specific matter, made at a specific time before the subject benefits were conveyed and official acts taken.

An ascertainable line between a long-term, cultivated relationship of goodwill and shared policy views, on the one hand, and a criminal bribe, on the other, must be drawn. As it stands now, not even the most well-versed lawyer can advise a lobbyist or citizen-advocate client in advance what conduct with a public official could form the basis of a § 666 prosecution over time. Because § 666 is widely used, and because there is a material circuit split on the issues, a grant of *certiorari* and resolution of these questions by the Court is necessary.

CONCLUSION

For the reasons stated above, the Court should grant *certiorari* and resolve the well-defined circuit split on the proof necessary to sustain a conviction under 18 U.S.C. § 666.

Respectfully submitted,

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