

In the Supreme Court of the United States

MICHAEL J. MADIGAN, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER

Solicitor General

Counsel of Record

A. TYSEN DUVA

Assistant Attorney General

W. CONNOR WINN

Attorney

Department of Justice

Washington, D.C. 20530-0001

SupremeCtBriefs@usdoj.gov

(202) 514-2217

QUESTIONS PRESENTED

1. Whether the district court's jury instructions adequately conveyed that a public official must act "corruptly" to violate the federal-program bribery statute, 18 U.S.C. 666(a)(1)(B).

2. Whether petitioner's advancement of legislation that allowed a bribe-giver to charge higher prices to its customers was an "official act" within the meaning of 18 U.S.C. 201(a)(3).

3. Whether petitioner agreed to perform an "official act" within the meaning of 18 U.S.C. 201(a)(3) by agreeing to advise a Governor-elect to make an appointment.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction.....	1
Statement	1
Argument.....	7
Conclusion	20

TABLE OF AUTHORITIES

Cases:

<i>Arthur Anderson LLP v. United States</i> , 544 U.S. 696 (2005).....	8, 9
<i>Boylard v. United States</i> , 583 U.S. 1107 (2018).....	13
<i>California v. Rooney</i> , 483 U.S. 307 (1987)	15
<i>Carrasco v. United States</i> , 145 S. Ct. 591 (2024)	13
<i>City of Springfield v. Kibbe</i> , 480 U.S. 257 (1987)	19
<i>Gilbert v. United States</i> , 142 S. Ct. 1109 (2022)	13
<i>Martinez-de Ryan v. Whitaker</i> , 909 F.3d 247 (9th Cir. 2018).....	9
<i>Mason v. Muncaster</i> , 16 F. Cas. 1052 (C.C.D.D.C. 1828)	8
<i>McDonnell v. United States</i> , 579 U.S. 550 (2016).....	4, 7, 12, 14, 15, 18
<i>Musacchio v. United States</i> , 577 U.S. 237 (2016).....	14
<i>Ng Lap Seng v. United States</i> , 591 U.S. 1016 (2020).....	13
<i>Roberson v. United States</i> , 142 S. Ct. 1109 (2022)	13
<i>Robles v. United States</i> , 590 U.S. 942 (2020)	13
<i>Snyder v. United States</i> , 603 U.S. 1 (2024)	8, 10, 13
<i>United States v. Burke</i> , No. 25-3104, 2026 WL 2794723 (Sept. 18, 2026).....	11

IV

Cases—Continued:	Page
<i>United States v. De Moya</i> , 180 F.4th 336 (D.C. Cir. 2026)	16
<i>United States v. Denny</i> , 939 F.2d 1449 (10th Cir. 1991)	10
<i>United States v. Fattah</i> , 914 F.3d 112 (3d Cir. 2019)	19
<i>United States v. Ford</i> , 435 F.3d 204 (2d Cir. 2006)	10, 11
<i>United States v. Hills</i> , 27 F.4th 1155 (6th Cir.), cert. denied, 143 S. Ct. 305 (2022), and 143 S. Ct. 606 (2023)	10, 16
<i>United States v. Jennings</i> , 160 F.3d 1006 (4th Cir. 1998)	10
<i>United States v. Lonich</i> , 23 F.4th 881 (9th Cir. 2022), overruled on other grounds, <i>United States v.</i> <i>Lucas</i> , 101 F.4th 1158 (9th Cir. 2024)	10
<i>United States v. Mangano</i> , 128 F.4th 442 (2d Cir. 2025), cert. denied, 146 S. Ct. 1796 (2026)	16
<i>United States v. McCabe</i> , 103 F.4th 259 (4th Cir.), cert. denied, 145 S. Ct. 399 (2024)	16
<i>United States v. McNair</i> , 605 F.3d 1152 (11th Cir. 2010), cert. denied, 562 U.S. 1270 (2011)	10
<i>United States v. Ng Lap Seng</i> , 934 F.3d 110 (2d Cir. 2019), cert. denied, 591 U.S. 1016 (2020)	8, 9, 11
<i>United States v. O'Donovan</i> , 126 F.4th 17 (1st Cir. 2025)	13
<i>United States v. Roberson</i> , 998 F.3d 1237 (11th Cir. 2021), cert. denied, 142 S. Ct. 1109 (2022)	16
<i>United States v. Silver</i> , 948 F.3d 538 (2d Cir. 2020), cert. denied, 592 U.S. 1240 (2021)	16, 17

Cases—Continued:	Page
<i>United States v. Simmons</i> , 599 F.3d 777 (7th Cir. 2010)	12
<i>United States v. Skelos</i> , 988 F.3d 645 (2d Cir. 2021)	16
<i>United States v. Suhl</i> , 885 F.3d 1106 (8th Cir.), cert. denied, 586 U.S. 824 (2018)	10
<i>United States v. Wells</i> , 519 U.S. 482 (1997)	19
<i>United States v. Williams</i> , 553 U.S. 285 (2008)	19
<i>Winfield v. United States Probation & Pretrial Services</i> , 592 U.S. 1177 (2021)	13
Statutes:	
18 U.S.C. 2	2, 4
18 U.S.C. 201	13, 14, 17
18 U.S.C. 201(a)(3)	4, 13-16
18 U.S.C. 201(b)	11
18 U.S.C. 215	10
18 U.S.C. 371	1, 4, 5
18 U.S.C. 666	6-8, 13, 14, 17
18 U.S.C. 666(a)(1)(B)	2, 5, 8, 10, 13
18 U.S.C. 1343	2, 4
18 U.S.C. 1346	2, 4
18 U.S.C. 1952(a)(3)	2, 4, 13
Miscellaneous:	
4 William Blackstone, <i>Commentaries on the Laws of England</i> (1769)	8
<i>Merriam-Webster’s Dictionary of Law</i> (1996)	8

In the Supreme Court of the United States

No. 26-137

MICHAEL J. MADIGAN, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-30a) is reported at 173 F.4th 929. The district court's order (Pet. App. 31a-207a) is available at 2025 WL 1836050.

JURISDICTION

The judgment of the court of appeals was entered on April 27, 2026. On July 17, 2026, Justice Barrett extended the time within which to file a petition for a writ of certiorari to and including August 26, 2026. The petition was filed on July 27, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted on one count of conspiring to defraud the United States, in violation of 18 U.S.C. 371; two counts of federal-program bribery, in violation of 18 U.S.C.

666(a)(1)(B) and 2; three counts of honest-services wire fraud, in violation of 18 U.S.C. 1343 and 1346; and four counts of using a facility in interstate commerce to promote or carry on an unlawful activity, in violation of 18 U.S.C. 1952(a)(3) and 2. Judgment 1. The district court sentenced petitioner to 90 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-30a.

1. Petitioner was the Speaker of the Illinois House of Representatives for over three decades. Pet. App. 1a. During that time, he “leverag[ed] his power as one of the highest-ranking public officials in Illinois in exchange for over \$3 million of financial benefits for his close political allies.” *Id.* at 30a.

a. One scheme involved petitioner’s dealings with Commonwealth Edison (ComEd), a Chicago-based utility company. Pet. App. 2a. Starting in 2007, the state agency responsible for regulating utilities lowered the rates that ComEd could charge its customers. *Id.* at 2a, 11a. In 2011, facing a downward financial spiral, ComEd turned to petitioner for assistance. *Id.* at 2a. Petitioner and ComEd entered into an arrangement under which ComEd “lined the pockets” of petitioner’s allies, in return for petitioner’s facilitation of legislative action that benefited ComEd. *Id.* at 2a-3a.

Through intermediaries and inflated contracts, ComEd directed \$3.1 million to petitioner’s allies, including people denominated as “subcontractors” who actually did “little or no work.” Pet. App. 2a. With petitioner’s blessing, ComEd concealed the subcontractor payments in its internal records. *Id.* at 22a-23a. The allies whom petitioner selected to receive those benefits

were “good soldiers” whom he wanted to “rewar[d].” *Id.* at 14a.

In exchange, petitioner used his position as Speaker to advance, whip support for, or vote for laws enabling ComEd to raise energy rates or maintain high energy rates. Pet. App. 3a, 14a-20a, 24a. For example, he joined in overriding a gubernatorial veto of a “formula-rate” law that limited the responsible state agency’s discretion over ComEd’s rates. *Id.* at 12a. Two years later, he voted to override another gubernatorial veto of legislation that further reined in the state agency’s rate-setting discretion. *Id.* at 15a. Petitioner also supported and marshalled votes for bills extending the sunset date of the formula-rate laws. *Id.* at 15a, 16a-17a. He helped stop a bill that would have compelled ComEd to set a lower rate for poorer customers. *Id.* at 17a-18a. And before the government’s investigation became public, he nearly succeeded in further extending the formula-rate legislation. *Id.* at 18a-20a.

b. A second scheme concerned petitioner’s interactions with Chicago City Alderman Daniel Solis. Pet. App. 3a. Faced with an investigation into his own activities, Solis had agreed to cooperate with the federal government. *Ibid.* Under government direction, he told petitioner that he might retire as an alderman and wanted the Governor to appoint him to a remunerative position on a state board. *Ibid.* Petitioner agreed to recommend Solis to then-Governor-elect JB Pritzker if Solis made referrals to petitioner’s law firm and helped petitioner’s son secure new business. *Id.* at 3a, 25a-27a.

To that end, petitioner asked Solis for his resume, sent Solis materials concerning the different board positions, and took notes on the board positions that Solis preferred. Pet. App. 27a. Petitioner told Solis to “just

leave it in my hands” and assured Solis that he would “come in as Pritzker’s recommendation.” *Id.* at 28a (brackets omitted). Petitioner knew the weight that his advice carried. *Ibid.* Petitioner’s efforts were thwarted when the investigation into him became public. Gov’t C.A. Br. 14.

2. A grand jury in the Northern District of Illinois returned an indictment against petitioner on multiple counts. Superseding Indictment. The charges included multiple counts of federal-program bribery, in violation of 18 U.S.C. 666(a)(1)(B) and 2; conspiring to commit offenses including federal-program bribery, in violation of 18 U.S.C. 371; and honest-services wire fraud, in violation of 18 U.S.C. 1343, 1346. Pet. App. 22a, 24a-25a. The government agreed for purposes of trial that conviction for honest-services wire-fraud and federal-program bribery required proof that petitioner had agreed to take an “official act,” see 18 U.S.C. 201(a)(3), in exchange for a thing of value. Pet. App. 7a; see *McDonnell v. United States*, 579 U.S. 550 (2016).

At trial, the government called over 50 witnesses, including Solis and some of petitioner’s co-conspirators, and admitted over 1000 exhibits, including recorded calls. Pet. App. 3a. The district court described the evidence on the counts that petitioner now challenges as “voluminous” and “overwhelming.” *Id.* at 20a, 35a. Petitioner testified in his defense, in what the court later described as “a nauseating display” of “perjury and evasion.” D. Ct. Doc. 445, at 114 (June 17, 2025).

The district court’s instructions to the jury included the admonishment that “[j]ob recommendations tendered by a public official” and “[l]obbying, without more,” are “not unlawful.” D. Ct. Doc. 392, at 49 (Mar. 28, 2025). The court also explained that certain cam-

paigned contributions were not bribes and were “legal.” *Id.* at 63-64.

On the federal-program bribery statute’s requirement that the defendant act “corruptly,” 18 U.S.C. 666(a)(1)(B), the district court instructed the jury that a “defendant acts ‘corruptly’ if he acted with the understanding that a ‘thing of value’ is to be exchanged for ‘an official act’ with the intent to influence or reward a state agent in connection with his official duties.” D. Ct. Doc. 392, at 87. The court also stated that “[t]he government need not prove * * * that the defendant knew that the law prohibited his conduct.” *Ibid.* The court informed the jury that the government had to prove that when the “defendant solicited, demanded, accepted or agreed to accept a ‘thing of value’ with the intent to be influenced or rewarded in connection with his official duties, [he] did so knowing it was a ‘this for that’ exchange of a ‘thing of value’ for an ‘official action.’” *Ibid.*; see *id.* at 76-77 (using similar language on the Section 371 count).

The government also “stipulated at [petitioner’s] trial that § 666(a)(1)(B) requires proving that he agreed to take an ‘official act’ as Congress defined that term in § 201(a)(3).” Pet. App. 7a. The district court instructed the jury that a guilty verdict required finding that “when the defendant conspired to solicit, demand, accept, or agree to accept, a ‘thing of value’ in connection with his official duties,” he “understood the conspiracy involved a ‘this for that’ exchange of a ‘thing of value’ for an ‘official action.’” *Ibid.* (brackets, citation, ellipsis, and emphasis omitted). It also defined “official action” as “a specific decision or action on, or an agreement to make a decision or take action on, a specific question or matter,” and clarified that the “‘question’ or ‘matter’ must be something specific and focused, rather than a

broad policy objective.” *Ibid.* (citation, ellipsis, and emphasis omitted).

The jury found petitioner guilty on some counts and acquitted him or failed to reach a verdict on others. Pet. App. 4a. The district court denied petitioner’s motion for a judgment of acquittal or new trial. *Id.* at 31a-207a. It sentenced him to 90 months of imprisonment, to be followed by three years of supervised release. *Id.* at 4a, 211a.

3. The Seventh Circuit affirmed. Pet. App. 1a-30a.

The court of appeals upheld the jury instruction on Section 666’s “corruptly” element. Pet. App. 8a-9a. The court observed that its precedent “foreclose[d]” the claim that a person “acts ‘corruptly’ only when he knows his actions are unlawful or wrong.” *Id.* at 8a. The court explained that one acts “corruptly” for purposes of Section 666 if “he understands that the bribe-giver intends to influence or reward him in connection with his official duties,” just as the district court here had instructed the jury. *Ibid.*

The court of appeals also found that the district court’s instructions to the jury on the meaning of “official act” properly conveyed that petitioner promised “at the time the bribe was accepted to take official action on a specific and focused question or matter.” Pet. App. 7a (citation omitted). And it determined that sufficient evidence supported the jury’s finding that petitioner agreed to take official acts in return for things of value from ComEd. *Id.* at 10a-22a, 24a. The court identified “plenty of evidence” from which the jury could “find that [petitioner] promised to take official action to help ComEd with a specific question or matter, namely, its struggle to control its energy rates.” *Id.* at 21a. The court highlighted the bills that petitioner had advanced

or prevented in the state legislature about the ComEd's formula rate. See *id.* at 21a-22a, 24a.

The court of appeals separately determined that sufficient evidence supported the jury's finding that petitioner agreed to take official acts as part of the scheme to appoint Solis. Pet. App. 27a-28a. The court observed that the evidence showed that petitioner had agreed to recommend that the Governor-elect appoint Solis to a state board and that petitioner knew that his advice in this regard carried weight. *Ibid.* The court further observed that the evidence showed that the Governor-elect acted on those recommendations half the time and that petitioner took concrete steps toward recommending Solis. *Ibid.* And the court determined that a reasonable jury could find that petitioner had agreed to use "his official position to provide advice to another official, knowing or intending that such advice will form the basis for an 'official act' by another official," which would itself be an official act under this Court's decision in *McDonnell v. United States*. *Id.* at 27a (quoting 579 U.S. at 572).

ARGUMENT

Petitioner contends (Pet. 13-32) that the district court erroneously instructed the jury on Section 666's "corruptly" element and that he did not agree to take an "official act" in support of ComEd or Solis. The court of appeals correctly rejected those contentions, and its decision does not conflict with any decision of this Court or any other court of appeals. The petition for a writ of certiorari should be denied.

1. Petitioner's challenge to the jury instructions defining the "corruptly" element of federal-program bribery does not warrant further review.

a. The federal-program bribery statute, 18 U.S.C. 666, prohibits an agent of a covered organization from “corruptly solicit[ing] or demand[ing] for the benefit of any person, or accept[ing] or agree[ing] to accept, anything of value * * * intending to be influenced or rewarded” in connection with official business of a certain value. 18 U.S.C. 666(a)(1)(B). Section 666 does not define “corruptly,” but this Court has stated that the term’s “natural meaning” is “normally associated with wrongful, immoral, depraved, or evil” conduct. *Arthur Andersen LLP v. United States*, 544 U.S. 696, 705 (2005); see, e.g., *Merriam-Webster’s Dictionary of Law* 109 (1996) (defining “corrupt” as “having an unlawful or evil motive”) (emphasis omitted). This Court has therefore associated the term “corruptly” with “consciousness of wrongdoing.” *Arthur Andersen*, 544 U.S. at 706.

“American law generally treats bribes as inherently corrupt and unlawful.” *Snyder v. United States*, 603 U.S. 1, 5 (2024). That view emerged in England as early as the 13th century and carried over into the American tradition. See *Mason v. Muncaster*, 16 F. Cas. 1052, 1054 (C.C.D.D.C. 1828) (No. 9248); 4 William Blackstone, *Commentaries on the Laws of England* 139 (1769). Those centuries of history have made it nearly a truism that “a public official acts corruptly”—knowing that his conduct is wrongful—at least “whenever he ‘accepts or demands a personal benefit intending to be improperly influenced in his official duties.’” *United States v. Ng Lap Seng*, 934 F.3d 110, 143-144 (2d Cir. 2019) (brackets, citation, and emphasis omitted), cert. denied, 591 U.S. 1016 (2020). Knowingly agreeing to a quid pro quo exchange of a thing of value for official action is “an obvious violation of duty and public trust” and inher-

ently reflects an official's corrupt intent. *Id.* at 144 (citation omitted).

Here, the district court instructed the jury that, to find that petitioner acted “‘corruptly,’” it had to find that he “solicited, demanded, accepted or agreed to accept a ‘thing of value’ with the intent to be influenced or rewarded in connection with his official duties” and “did so knowing it was a ‘this for that’ exchange of a ‘thing of value’ for an ‘official action.’” D. Ct. Doc. 392, at 87. The court also noted that the bribes alleged here were not campaign contributions, see *id.* at 63-64, and that lobbying and making job recommendations, “without more, [are] not unlawful,” *id.* at 49. And it correctly informed the jury that the government did not need to prove that petitioner “knew that the law prohibited his conduct.” *Id.* at 87. The word “corruptly” requires only that the defendant be conscious that his conduct was “wrongful,” *Arthur Andersen*, 544 U.S. at 705; it does not require proof that the official knew that the conduct was unlawful, see *Ng Lap Seng*, 934 F.3d at 142-144.

b. Contrary to petitioner’s contention (Pet. 16-18), the decisions of other courts of appeals do not show that they would have disapproved the jury instructions here. For example, petitioner notes (Pet. 16) that the Ninth Circuit has read “corruptly” in bribery statutes to mean “voluntarily, deliberately, and dishonestly, for the purpose of either accomplishing an unlawful end or result or of accomplishing some otherwise lawful end or lawful result by an unlawful method or means.” *Martinez-de Ryan v. Whitaker*, 909 F.3d 247, 250 (2018) (citation omitted), cert. denied, 589 U.S. 916 (2019). Given the traditional understanding of the typical implications of agreeing to a quid pro quo exchange, that definition is consistent with the jury instruction here. Indeed, the

Ninth Circuit has approved a jury instruction like this one, stating that a defendant charged with the bribery offense in 18 U.S.C. 215 acts “‘corruptly’” if he “‘intend[s] to be influenced or rewarded in connection with any business or transaction of’ a financial institution.” *United States v. Lonich*, 23 F.4th 881, 902 (2022), overruled on other grounds, *United States v. Lucas*, 101 F.4th 1158 (9th Cir. 2024) (en banc); see *Snyder*, 603 U.S. at 12 n.4 (Section 215’s language “mirrors” Section 666’s).

Petitioner asserts (Pet. 16) that the Eleventh Circuit shares the Ninth Circuit’s understanding of “corruptly,” see *United States v. McNair*, 605 F.3d 1152, 1188, 1193 (11th Cir. 2010), cert. denied, 562 U.S. 1270 (2011), but identifies no Eleventh Circuit decision disapproving a jury instruction like the one given here. Nor does he identify a Third, Fifth, or Tenth Circuit decision doing so. See Pet. 16, 20 (citing *United States v. Hills*, 27 F.4th 1155, 1179 (6th Cir.), cert. denied, 143 S. Ct. 305 (2022), and 143 S. Ct. 606 (2023); *United States v. Denny*, 939 F.2d 1449, 1451 (10th Cir. 1991). And, as he acknowledges (Pet. 16 n.5), the Fourth and Eighth Circuits disapproved an instruction like this one only where (unlike here) the instructions as a whole did not require proof of a quid pro quo. See *United States v. Suhl*, 885 F.3d 1106, 1114 n.5 (8th Cir.), cert. denied, 586 U.S. 824 (2018); *United States v. Jennings*, 160 F.3d 1006, 1020-1021 (4th Cir. 1998).

Contrary to petitioner’s contention (Pet. 17), the Second Circuit’s decision in *United States v. Ford*, 435 F.3d 204 (2006), does not show that it would disapprove of the jury instruction in this case. The defendant in *Ford* was convicted under Section 666(a)(1)(B) for having accepted “volunteer services and related goods” in

a union-election campaign in return for steering work to the donor. *Id.* at 212. The Second Circuit reasoned that acceptance of such services and goods in that context was “not only innocuous but also rather commonplace.” *Ibid.* The court agreed that “[a] recipient who knows of the donor’s intent to arrange a *quid-pro-quo* or to seek special consideration may, in certain circumstances, be said to be acting ‘corruptly,’” but deemed “such knowledge * * * insufficient, by itself, to prove the Section 666 violation charged in this case.” *Ibid.* That does not suggest that the Second Circuit would disapprove of the instruction given in the context of this case, which does not involve a similarly “innocuous” or “commonplace” exchange. Indeed, the Second Circuit has subsequently stated that “a public official acts corruptly” “whenever he ‘accepts or demands a personal benefit intending to be improperly influenced in his official duties.’” *Ng Lap Seng*, 934 F.3d at 143-144 (brackets and emphasis omitted).*

c. In any event, this case would be a poor vehicle for this Court’s review because petitioner could not prevail

* After the petition was filed, the D.C. Circuit in *United States v. Burke*, No. 25-3104, 2026 WL 2794723 (Sept. 18, 2026), in the course of upholding a jury instruction jointly proposed by both parties, stated that an instruction that an official acts “corruptly” under the federal-official bribery statute, 18 U.S.C. 201(b), if he “‘agrees to accept something of value with the understanding, at least in part, that, in exchange, the public official is expected to be influenced in the performance of an official act’” “misstated the law.” *Burke*, 2026 WL 2794723, at *10 (emphases omitted). It is far from clear that the statement would bind future panels, and the decision is still potentially subject to further review. Regardless, the instruction here did not include similar language. To the contrary, it informed the jury that petitioner acted corruptly only if he acted “with the intent to be influenced” in an official act. D. Ct. Doc. 392, at 87.

even under his interpretation of the word “corruptly.” The district court correctly noted that, in “practic[e],” there are few cases where a public official could knowingly agree to accept a thing of value “intending to be influenced in the performance of an official action,” yet plausibly claim to have believed that his conduct was neither unlawful nor wrong. D. Ct. Doc. 384, at 190 (Mar. 28, 2025). And this is not such a case.

Petitioner was a lawyer and Speaker of the Illinois House of Representatives for three decades, not a low-level or novice official. D. Ct. Doc. 389, at 81-82 (Mar. 28, 2025). When he testified at trial, he affirmed that he had known that accepting a thing of value in return for official action was unlawful, not just wrong. *Id.* at 82-84, 86. The evidence also showed that petitioner’s scheme was “not politics as usual or ordinary lobbying.” Pet. App. 20a. The jury’s finding that petitioner knowingly entered into a quid pro quo with ComEd, together with petitioner’s own testimony and background, leave no doubt that the jury would have reached the same verdict even if instructed on “corruptly” as petitioner urges. See, e.g., *United States v. Simmons*, 599 F.3d 777, 780 (7th Cir. 2010) (any error was harmless given defendant’s testimony).

2. Petitioner separately claims (Pet. 28, 31-32) that he did not agree to take an “official act”—that is, formal action on a qualifying “question or matter,” see *McDonnell v. United States*, 579 U.S. 550, 574 (2016)—on behalf of ComEd. In particular, he contends that the court of appeals misapplied this Court’s decision in *McDonnell v. United States* in stating that ComEd’s “struggle to control its energy rates” is a qualifying “question or matter.” Pet. 14 (citation omitted). That contention does not warrant review.

a. As an initial matter, a conviction under Section 666(a)(1)(B) does not require proof that the defendant agreed to take an official act as defined in 18 U.S.C. 201(a)(3). See, *e.g.*, *Ng Lap Seng*, 934 F.3d at 129-138. Unlike Section 201, Section 666 does not refer to an “official act.” Section 666 instead prohibits a covered organization’s agent from corruptly soliciting or accepting a bribe “in connection with any business, transaction, or series of transactions” of the organization. 18 U.S.C. 666(a)(1)(B). Petitioner provides no reason to believe that those words bear the same meaning as “official act” as defined in 18 U.S.C. 201(a)(3).

Although this Court used the phrase “official act” when discussing Section 666(a)(1)(B) in *Snyder v. United States*, see, *e.g.*, 603 U.S. at 19, the Court neither cited Section 201(a)(3) nor invoked its definition of that phrase. See *United States v. O’Donovan*, 126 F.4th 17, 39 n.14 (1st Cir. 2025). And both before and after *Snyder*, the Court has denied petitions for writs of certiorari concerning whether Section 666 convictions require an agreement to take a Section 201 official act. See *Carrasco v. United States*, 145 S. Ct. 591 (2024) (No. 23-7754); *Gilbert v. United States*, 142 S. Ct. 1109 (2022) (No. 21-706); *Roberson v. United States*, 142 S. Ct. 1109 (2022) (No. 21-605); *Winfield v. United States Probation & Pretrial Services*, 592 U.S. 1177 (2021) (No. 20-731); *Ng Lap Seng v. United States*, 591 U.S. 1016 (2020) (No. 19-1145); *Robles v. United States*, 590 U.S. 942 (2020) (No. 19-912); *Boyland v. United States*, 583 U.S. 1107 (2018) (No. 17-7192).

It makes no difference that the government agreed at trial to a jury instruction that a Section 666(a)(1)(B) conviction requires proof of an official act under Section 201. “[W]hen a jury instruction [correctly] sets forth all

the elements of the charged crime but incorrectly adds one more element, a sufficiency challenge should be assessed against the elements of the charged crime,” not against the overly “heightened command in the jury instruction.” *Musacchio v. United States*, 577 U.S. 237, 243 (2016).

b. Even assuming that Section 666 requires proof of an agreement to accept a thing of value in exchange for an official act under Section 201, petitioner’s challenge would lack merit. Section 201 defines an official act as “any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official’s official capacity.” 18 U.S.C. 201(a)(3). To satisfy that requirement, the government must identify a “focused and concrete” question or matter involving “a formal exercise of governmental power,” and must prove that the defendant made a decision or took an action on that question or matter. *McDonnell*, 579 U.S. at 570-571; see *id.* at 567.

The question or matter must be “similar in nature to a ‘cause, suit, proceeding or controversy’” and must be “the kind of thing that can be put on an agenda, tracked for progress, and then checked off as complete.” *McDonnell*, 579 U.S. at 569-570. Qualifying questions or matters do not include abstract concepts such as “justice” and “national security,” but do include focused and concrete matters such as whether researchers at state universities would initiate a study of a particular drug, or whether a state agency would allocate grant money for the study. *Id.* at 570; see *id.* at 570-571.

As the court of appeals recognized, the jury here had “plenty of evidence” from which to find an official act under *McDonnell*. Pet. App. 21a. For example, peti-

tioner agreed to help ComEd secure more favorable energy rates by introducing, whipping support for, and voting for legislation creating and maintaining a favorable formula rate. See *id.* at 21a-22a. Set by statute, the formula rate was a “specific and focused” issue resolved by the state legislature. *Ibid.* Legislation concerning the formula rate was also something that “may at any time be pending” or “may by law be brought” before the legislature and governor. 18 U.S.C. 201(a)(3).

c. Petitioner highlights the court of appeals’ description of the “question or matter” as ComEd’s “struggle to control its energy rates.” Pet. 14 (quoting Pet. App. 21a). Petitioner’s siloed view of that statement, bereft of the surrounding discussion, is misplaced. In context, the court was plainly referring to the legislation on which petitioner acted. The court discussed at length how ComEd supported legislation establishing and modifying the formula rate. See Pet. App. 12a-18a, 21a-22a. That rate and the legislation concerning it qualified as a question or matter under *McDonnell*. Particularly given that this Court “reviews judgments, not statements in opinions,” *California v. Rooney*, 483 U.S. 307, 311 (1987) (per curiam), the court of appeals’ passing reference to ComEd’s “struggle to control its energy rates,” Pet. App. 21a, does not justify certiorari.

The “energy rates” that ComEd struggled to control, Pet. App. 21a, are a quintessential question or matter under *McDonnell*. ComEd’s rates were set annually through adjudication by a state agency, subject to legislative oversight. *Id.* at 11a-12a. The State’s annual approval of ComEd’s preferred rates was “the kind of thing that can be put on an agenda, tracked for progress, and then checked off as complete,” *McDonnell*, 579 U.S. at 570. Nothing in *McDonnell* suggests that

inherently recurring issues, such as ComEd’s annual rates, lack the required focus, concreteness, and specificity to qualify as a question or matter. See *United States v. Skelos*, 988 F.3d 645, 652-653, 657 (2d Cir. 2021) (medical-malpractice issue voted upon annually by legislature is a qualifying matter). Even if particular legislation had not yet been introduced at the time that petitioner agreed to support ComEd’s legislative efforts, the definition of “official act” encompasses matters that “*may by law be brought* before any public official, in such official’s official capacity.” 18 U.S.C. 201(a)(3) (emphasis added).

d. Petitioner errs in suggesting (Pet. 18-21) that this case implicates asserted disagreement about the requisite specificity of a qualifying “question or matter” when an official enters into an illegal *quid pro quo* under what courts call the “stream-of-benefits,” “as-the-opportunity-arises,” or “retainer” theories of bribery. The courts whose decisions he cites all agree that *McDonnell* did not alter federal bribery statutes to “reward corrupt bribery schemes” because they “involve multiple exchanges over a period of time.” *United States v. McCabe*, 103 F.4th 259, 284 (4th Cir.), cert. denied, 145 S. Ct. 399 (2024); see *United States v. De Moya*, 180 F.4th 336, 343 n.1 (D.C. Cir. 2026); *United States v. Mangano*, 128 F.4th 442, 475-476 (2d Cir. 2025) (interpreting *United States v. Silver*, 948 F.3d 538 (2d Cir. 2020), cert. denied, 592 U.S. 1240 (2021)), cert. denied, 146 S. Ct. 1796 (2026); *Hills*, 27 F.4th at 1179 (6th Cir.); *United States v. Roberson*, 998 F.3d 1237, 1251 (11th Cir. 2021), cert. denied, 142 S. Ct. 1109 (2022).

To the extent that courts have required that the “question or matter” on which a public official will take official action must be sufficiently defined when a crim-

inal *quid pro quo* is struck, see, *e.g.*, *Silver*, 948 F.3d at 552-553, this case is consistent with such a requirement. This case did not involve future action of some unspecified type, or even a generalized category like “real estate legislation,” *id.* at 570 n.22 (citation omitted); instead it “focus[ed] on [a] particular program[],” *ibid.* (recognizing that “tax abatement” or “rent stabilization programs” would qualify). Indeed, the court of appeals measured the jury instructions delivered in this case against the standard that other courts of appeals have applied. See Pet. App. 7a (citing *Silver*, 948 F.3d at 569). And the court correctly determined that sufficient evidence supported a finding that petitioner agreed to act on the specific issue of rate-setting legislation when he entered into an illegal *quid pro quo*. See *id.* at 21a-22a.

e. This case would in all events be a poor vehicle for considering petitioner’s contentions. As noted above, it is at best debatable whether Section 666 requires proof of an “official act” under Section 201. Even if the court of appeals erred in stating that the relevant question or matter is ComEd’s “struggle to control its energy rates,” Pet. App. 21a, any such error would have no effect on the outcome of this case, given the court’s evaluation of the jury instructions in light of petitioner’s preferred standard, see *id.* at 7a, and its assessment of the sufficiency of the record to show his agreement to act on a specific legislative subject, see *id.* at 17a-20a, 24a.

3. Finally, petitioner contends (Pet. 32), with respect to his convictions for honest-services wire fraud, that he did not agree to take an official act when he agreed to advise the Governor-elect to appoint Solis to a position on a state board. That fact-bound claim lacks merit and does not warrant this Court’s review.

In *McDonnell*, this Court recognized that an “‘official act’ * * * may include using [one’s] official position to * * * advise another official, knowing or intending that such advice will form the basis for an ‘official act’ by another official.” 579 U.S. at 574. The evidence here showed that the Governor-elect “accepted nearly half of [petitioner’s] recommendations” and that petitioner “understood the weight of his recommendation.” Pet. App. 28a. The evidence also showed that petitioner took steps toward recommending Solis to the Governor-elect. *Id.* at 27a. The jury could find, based on that evidence, that petitioner agreed to advise the Governor-elect to appoint Solis, knowing or intending that the Governor-elect would perform an official act (making the appointment) based on that advice. *Ibid.*

Petitioner notes that “the recommendation was never made,” Pet. 21, but “a public official is not required to actually make a decision or take an action”; “it is enough that the official agree to do so.” *McDonnell*, 579 U.S. at 572. It is likewise of no moment that petitioner promised to recommend Solis’s appointment to a position in another “branch of government,” Pet. 21; neither *McDonnell* nor the statutory text contains a same-branch limitation. *McDonnell*, in fact, made clear that the defendant there, a state governor, could be found guilty if he “agreed to exert pressure” on state-university officials to initiate research studies, even though the governor claimed “‘limited decision-making power’” over the university officials’ decisions. 579 U.S. at 560, 579 (citation omitted).

Petitioner does not assert any circuit conflict on this issue. He instead asserts (Pet. 14) “confusion” in the lower courts about “how to distinguish between an expression of support that does not constitute an official

act, on the one hand, and pressure or advice that constitutes an official act under § 201(a)(3), on the other hand.” But properly instructed juries are well equipped to perform the fact-intensive task of separating mere expressions of support from pressure or advice. See *United States v. Fattah*, 914 F.3d 112, 156 (3d Cir. 2019). Any “[c]lose cases” in the performance of that task are addressed by the “requirement of proof beyond a reasonable doubt.” *United States v. Williams*, 553 U.S. 285, 306 (2008).

Regardless, this case would be a poor vehicle for considering petitioner’s contention. The instructions here distinguished between expressing support and exerting pressure or giving advice. See D. Ct. Doc. 392, at 49 (“Job recommendations tendered by a public official, without more, are not unlawful.”). And petitioner never challenged those instructions. D. Ct. Doc. 314, at 1 (Feb. 3, 2025) (no objection in district court to instruction); Pet. C.A. Br. 57, 65-67 (no challenge to instruction on appeal); cf. *United States v. Wells*, 519 U.S. 482, 488 (1997) (an “inconsistency between a party’s request for a jury instruction and its position before this Court” should “bea[r] on” whether an issue is appropriate for resolution by this Court); *City of Springfield v. Kibbe*, 480 U.S. 257, 259 (1987) (per curiam) (“[T]here would be considerable prudential objection to reversing a judgment because of instructions that petitioner accepted, and indeed itself requested.”). Addressing petitioner’s claim purely in a sufficiency-of-the-evidence posture would involve highly fact-bound questions regarding the inferences that could properly be drawn from the evidence.

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

D. JOHN SAUER
Solicitor General
A. TYSEN DUVA
Assistant Attorney General
W. CONNOR WINN
Attorney

OCTOBER 2026