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

REPLY BRIEF OF PETITIONER

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The government barely defends the decision below; instead, seeking to gloss over the Seventh Circuit's deviation from other circuits' definitions of federal bribery law, it defends a different one. The government (at 8) abandons the Seventh Circuit's definition of "corruptly" and embraces "consciousness of wrongdoing"—the definition the district court rejected and the jury never heard. It (at 15-17) agrees that an "official act" under § 201 requires a promise to act on a specific and focused "question or matter," but dismisses the Seventh Circuit's articulation of the question or matter—ComEd's "struggle to control its energy rates"—as a "passing reference" and substitutes a new articulation (again one the jury never heard). The actual decision below splits with other circuits on both the

first and second questions presented. Regarding the third question (which involves the same "official act" definition), the government does not dispute that, a decade after *McDonnell*, courts still cannot locate the line between lawful support and unlawful pressure or advice.

The government's vehicle arguments fare no better. It claims the error in the "corruptly" definition was harmless, but an accurate definition was critical in this atypical bribery case where Madigan received no money from ComEd. The government's suggestion that § 666 may not require an official act ignores its own stipulation that the statute does. And, while the government claims the third question is fact-bound, the question rests on undisputed facts.

Each question is cleanly presented and strikes at the heart of federal bribery law. The Court should grant the petition.

I. The Decision Below Conflicts with This Court's Precedent and Deepens Lower-Court Disagreement

1. As to the first question, the government tellingly does not defend the Seventh Circuit's outlier pattern instruction on "corruptly." Pet. 17. The government (at 8-12) instead equates "corruptly" with "consciousness of wrongdoing," which resembles definitions used in other circuits. Pet. 15-16. The jury, however, never heard that instruction. The government cannot escape the conflict.

a. The jury was instructed with the Seventh Circuit's unique pattern instruction 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." Pet.App.229a; Pet. 17. Two other circuits—the Second Circuit and the D.C. Circuit in a recent

case—have found this pattern instruction or its equivalent erroneous. *See United States v. Burke*, 191 F.4th 698, 713 (D.C. Cir. 2026); *United States v. Ford*, 435 F.3d 204, 211-12 (2d Cir. 2006). Both courts held that an instruction defining "corruptly" based on the official's knowledge of the alleged *bribe-giver's* intent failed to convey the required mens rea or intent.

The government's attempt (at 11) to cabin *Ford* to its factual "context" ignores the Second Circuit's conclusion that the Seventh Circuit's pattern instructions "misread" the law. 435 F.3d at 211-12 & n.4. That holding did not turn on case-specific facts.

The government (at 11 n.*) dismisses *Burke*'s similar holding as dicta that is "potentially subject to further review." But *Burke* held the instruction *was* erroneous before affirming based on invited error, 191 F.4th at 714, and the prospects for rehearing are speculative. The government is also wrong that the instruction here "did not include similar language." BIO 11 n.*. The instruction in *Burke* is virtually identical to the "corruptly" definition here. *See* 191 F.4th at 713.

b. The Second, Ninth, and Eleventh Circuits have embraced "corruptly" definitions similar to the government's "consciousness of wrongdoing" definition and Madigan's knowledge-of-unlawfulness proposal below. Pet. 15-16. The government (at 10) contends these cases did not *disapprove of* the Seventh Circuit's idiosyncratic definition. But the Second Circuit in *Ford* did just that.

Indeed, the Second Circuit has long defined "corruptly" as the "improper motive of accomplishing either an unlawful result or a lawful result by some unlawful method or means." *United States v. Ng Lap Seng*, 934

F.3d 110, 142-43 (2d Cir. 2019); *see Ford*, 435 F.3d at 211.[1] So have the Ninth and Eleventh Circuits. The government does not dispute that the definitions in *Martinez-de Ryan v. Whitaker*, 909 F.3d 247 (9th Cir. 2018), and *United States v. McNair*, 605 F.3d 1152 (11th Cir. 2010), closely mirror Madigan's proposal. Unlike the Seventh Circuit's, those instructions define "corruptly" to capture the official's own "bad purpose" to accomplish an "unlawful end or result"—instead of relying solely on the official's knowledge of someone else's intent. The government is also wrong that the Ninth Circuit's since-overruled decision in *United States v. Lonich*, 23 F.4th 881 (9th Cir. 2022), is aligned with the Seventh Circuit. The instruction in *Lonich* defined corruptly with reference to the official's intent. *Id.* at 902.

c. Attempting to downplay the split, the government cobbles together a different intent instruction from various portions of the jury instructions (some dozens of pages apart in the instructions). BIO 9 (citing D.Ct. Dkt. 392 at 49, 63-64, 87). But the instructions' "corruptly" definition focused only on the official's knowledge of the alleged *bribe-giver's* intent. Pet.App.229a. And the instructions expressly told the jury that Madigan need not know "that the law prohibited his conduct" to act corruptly. Pet.App.229a. That is wrong.

2. On the second question, the government does not dispute that the Second, Sixth, Eleventh, and D.C. Circuits require a promise to act on a specific and focused

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[1] The government (at 9) suggests the Second Circuit in *Ng Lap Seng* distinguished between consciousness of wrongfulness and consciousness of unlawfulness, but the cited passage did no such thing. The court applied its traditional definition, which requires intent to achieve an "unlawful end or result." 934 F.3d at 141-42.

"question or matter" in stream-of-benefits prosecutions, like this one, based on § 201's "official act" definition. Pet. 14. The government takes no issue with that specificity requirement. It (at 17) argues instead that the decision below on the ComEd conspiracy count "is consistent with such a requirement." That argument rewrites the decision.

The Seventh Circuit identified the relevant "question or matter" as ComEd's "struggle to control its energy rates, which drove its financial distress." Pet.App.21a. The government (at 15) dismisses that formulation as a "passing reference." But that sentence was the court's *holding*. Pet.App.20a-21a. The government identifies no other circuit that has accepted a question or matter at that level of generality. The government (at 15) asserts the Seventh Circuit was "plainly referring to the legislation on which petitioner acted." But almost all the at-issue legislation came years after the supposed formation of the bribery conspiracy in 2011. Pet. 7-9. That is why the Seventh Circuit had to describe the supposed conspiracy in vague stream-of-benefits terms tied to ComEd's "struggles."

Notably, the government embraces *United States v. Silver*, 948 F.3d 538 (2d Cir. 2020), agreeing that a "generalized category like 'real estate legislation'" is not a qualifying question or matter. BIO 17 (quoting 948 F.3d at 570 n.22). Yet it inexplicably defends the decision below on the ground that Speaker Madigan purportedly agreed to act on future "rate-setting legislation." *Id.* "Rate-setting legislation" is "real estate legislation" with a different adjective. Neither "rate-setting legislation" nor "real estate legislation" "can be put on an agenda, tracked for progress, and then checked off as complete." *McDonnell*

v. United States, 579 U.S. 550, 570 (2016). *Silver* and the decision below are irreconcilable.

3. On the third question, the government (at 18) notes that Speaker Madigan "does not assert any circuit conflict[.]" True enough, but this question is a natural companion to the second one. *McDonnell* identified "two requirements" for an official act: a qualifying question or matter and a decision or action on it. 579 U.S. at 567. The second question implicates the former requirement; the third question implicates the latter requirement. Resolving both would let the Court address the entire official-act element in a single case.

A decade after *McDonnell*, courts are still searching for the line between lawful support and unlawful pressure or advice. Pet. 21-22. The government (at 19) asserts that "properly instructed juries are well equipped" to distinguish support from pressure or advice, and that "the requirement of proof beyond a reasonable doubt" will resolve "close cases." But the reasonable-doubt standard addresses whether "the incriminating fact" has "been proved," not "the indeterminacy of precisely what that fact is." *United States v. Williams*, 553 U.S. 285, 306 (2008). If appellate courts cannot identify the line, *see, e.g.*, *United States v. Fattah*, 914 F.3d 112, 156 (3d Cir. 2019), how can juries?

II. The Questions Presented Are Important, Recurring, and Squarely Presented

As several amici confirm, the Seventh Circuit's resolution of each question threatens legitimate interactions

between officials and constituents. The petition cleanly presents each question.

1. This decision marks the fourth time the Seventh Circuit has reaffirmed its unique definition of "corruptly." Pet. 17. The Seventh Circuit's definition will chill politicians and constituents from engaging in constitutionally protected interactions for fear that, years later, they may be interpreted as a quid pro quo. *See* McDonnell Amici Br. 13 (decision "leaves state and local officials to question whether they are faithfully doing their jobs or committing federal crimes"); IUOE Local 150 Amicus Br. 6 (officials, lobbyists, and citizen advocates are "left 'entirely at sea' as to where the line is").

The government (at 12) claims any error is harmless because Speaker Madigan is a lawyer and testified it is wrong to accept a bribe. But the question for the jury was whether the alleged exchange was a bribe in the first place. An accurate definition of "corruptly" was critical to that inquiry because, contrary to the government's assertion (at 12), this *was* a case about politics and lobbying. Speaker Madigan did not receive a dime from ComEd. The alleged quids were internships for constituents, lobbying jobs for politically connected individuals, and legal work for a politically connected law firm—all routine occurrences in government. As Sixth Circuit Judge Murphy has observed, "corruptly" would perform "additional work" in cases where the quid is not obviously "wrongful" like a "stack of cash." *United States v. Sittenfeld*, 128 F.4th 752, 789, 794 (6th Cir. 2025) (Murphy, J., concurring), *cert. granted, judgment vacated*, No. 25-49, 2026 WL 922550 (U.S. Apr. 6, 2026).

2. The government does not dispute the broad importance of the second question. Instead, it (at 13-14, 17)

contends that this case is not a good vehicle for deciding the question because § 666 might not require an official act. But the government stipulated to the contrary.

As the Seventh Circuit held, the government "stipulated at Madigan'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 government does not dispute this holding. *See* BIO 4-5. The government defended the evidentiary sufficiency on that basis in the district court, Pet.App.41a-42a, 59a-64a, and on appeal, U.S. C.A. Br. 23. The Seventh Circuit accepted the stipulation and decided sufficiency under § 201's "official act" definition. Pet.App.7a, 20a-22a.

Good reason existed for the government's stipulation. *Snyder* describes § 666 as reaching payments accepted "intending to be influenced or rewarded" for an "official act." *Snyder v. United States*, 603 U.S. 1, 5 (2024); *see also id.* at 12 (analogizing § 666 to § 201(b)); *United States v. Goldy*, 164 F.4th 493, 499 (6th Cir. 2026) (citing *Snyder* for proposition that "[t]he 'official act' requirement also extends to federal program bribery"). And, because the government charged Speaker Madigan with both federal-program bribery and honest-services fraud, applying the same definition across counts let the government try the case under a single standard.

For the first time in this case, the government (at 14) now argues the Court need not find an official act in reviewing evidentiary sufficiency under § 666, citing *Musacchio v. United States*, 577 U.S. 237 (2016). But *Musacchio* is inapposite. There, the government failed to object to an erroneous instruction. *Id.* at 241-42. The defendant argued that the evidentiary sufficiency should be assessed pursuant to the law set forth in the instructions.

This Court held only that the government's "failure to object" did not make the instruction the law of the case for sufficiency review. *Id.* at 243-45. *Musacchio* is irrelevant where the government deliberately stipulates to the applicable law.[2]

By contrast, *McDonnell* involved a stipulation. Like § 666, the honest-services-fraud statute contains no explicit "official act" element. The *McDonnell* parties "agreed that they would define honest services fraud with reference to" § 201. 579 U.S. at 562. This Court accepted that agreement and decided the case on that basis. *Id.* The Court should do the same here.

3. The third question reaches well beyond this case. Public officials "routinely recommend candidates for public positions." Pet. 27. If a promise to do so is an official act, then "every politician who tells a supporter 'I'll see what I can do' is a potential felon." McDonnell Amici Br. 12.

The government (at 19) contends the instructions distinguished support from pressure or advice and that the jury's determination was "fact-bound." Speaker Madigan does not challenge the instructions, however, and the material facts are undisputed: unlike state senators, Madigan had no power over the relevant appointments, and he never recommended Solis to the governor-elect. Pet. 9. Crediting every fact the government proved, what remains is a pure question of law.

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[2] For the same reason, this Court's recent denials of petitions concerning whether § 666 incorporates § 201's official-act requirement are irrelevant. *See* BIO 13.

III. The Decision Below Is Incorrect

1. The government's failure to defend the Seventh Circuit's "corruptly" instruction and its current embrace of "consciousness of wrongdoing" effectively concede error. The government even draws its "corruptly" definition from *Arthur Andersen LLP v. United States*, 544 U.S. 696, 705 (2005), which Madigan cited below and the district court rejected. Pet.App.120a-121a n.45. The Seventh Circuit's "corruptly" instruction is wrong for two reasons: it fails to convey "consciousness of wrongdoing," and it makes the official's liability turn on his knowledge of someone else's intent, not his own.

The government (at 8-9) counters that, in bribery cases, the quid pro quo element sufficiently captures the idea of corrupt intent. That argument incorrectly writes "corruptly" out of the statute. "[C]orruptly" is a separate intent element, *see Snyder*, 603 U.S. at 11; Pet. 30, with independent work to do in this close, atypical case.

The D.C. Circuit in *Burke* rejected a similar argument. 191 F.4th at 713. Even though the instructions there repeatedly referenced the official's own intent to be influenced, they "deviated" "in the most important place": the "corruptly" definition. *Id.* There, as here, the definition required only "knowledge that another person expects him to be influenced[.]" *Id.* The D.C. Circuit was "skeptical" the remaining instructions could "cure[]" this error. *Id.*

2. To avoid defending the Seventh Circuit's holding on the evidentiary sufficiency of the § 666 conspiracy conviction, the government (at 16) invents a new question or matter: the State's "annual" adjudication of ComEd's rates. At trial, however, the government told the jury the quid pro quo was "official action on future legislation."

Pet. 10-11. On appeal, the question or matter became "regulations directed at companies providing electric service to Illinois residents." Pet. 26. At oral argument, it was ComEd's "bottom line." *Id.* The Seventh Circuit defined it as ComEd's "struggle to control its energy rates." Pet.App.21a. A question or matter so vague that it must be redefined at each stage of the litigation is, by definition, not specific or focused.

In any event, the government never proved that Madigan agreed at the outset of the alleged scheme in 2011 to act on a specific annual rate proceeding. The government's new articulation is nonsensical. The Illinois Commerce Commission, not the General Assembly, sets rates. Pet.App.12a. The government's own account describes only four legislative enactments related to formula rates and two unenacted bills across nine years. BIO 3; Pet.App.14a-20a. Four laws in nine years is not "annual." Nor were those laws about higher rates, *contra* BIO I, 3; they produced more predictable rates (sometimes-lower) and reached beyond rates altogether, including support for energy infrastructure and nuclear plants. *See* Pet.App.14a-20a; D.Ct. Dkt. 334 at 661. They involved enduring policy interests and compromises, much like the "Virginia business and economic development" that *McDonnell* held is not a qualifying question or matter. 579 U.S. at 570.

3. On the Solis counts, the Seventh Circuit incorrectly treated a bare promise of support as an official act. The government (at 18) responds that "it is enough that the official agree" to act. But the official must agree to perform an *official act*. A promise to recommend is a promise to express support, and support "without more" is not an official act. *McDonnell*, 579 U.S. at 574.

The government claims Speaker Madigan provided unlawful "advice," because the governor-elect accepted "nearly half" of Madigan's recommendations. But *McDonnell* describes qualifying "advice" as advice "using [one's] official position" on which the recipient "would *necessarily* rely." 579 U.S. at 572-74 (emphasis added) (citation omitted). No evidence proved that standard. If this record sufficed, every official's support would be unlawful advice, and *McDonnell*'s line between support and official action would disappear.

Finally, the government (at 18) says *McDonnell* contains no "same-branch limitation." Speaker Madigan does not advance a categorical same-branch rule. But the relationship between the officials matters to whether a recommendation crosses *McDonnell*'s line. The pressure in *McDonnell* came from a governor heading the branch in which the targeted officials served, 579 U.S. at 579-80, while Madigan had no authority over the governor-elect's appointments. "[W]ithout more," *id.* at 574, Madigan's potential expression of support would be mere advocacy, not an exercise of the power of his office.

* * *

Federal prosecutors cannot use the federal bribery laws as a tool for "setting standards" of "good government for local and state officials." *McDonnell*, 579 U.S. at 577 (citation omitted). Ambiguous, shifting theories of criminality should not suffice to put local and state officials in federal prison. That is all the government offered here.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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