

The McDonnell Case: Limitations on public corruption prosecutions and a victory for the social compact of representative government

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On Monday June 27, 2016, the US Supreme Court published a unanimous opinion reinforcing what is quickly becoming a contemporary trend in both public corruption and campaign finance regulation cases across the country. By overturning the conviction of former Virginia Governor Robert McDonnell under the federal Hobbs Act extortion and "honest services fraud" statutes (18 U.S.C. § 1343, 1349 & 1951(a)), the Court once again signaled to the legal and regulatory enforcement community that pursuing public corruption charges against elected officials and attempting to regulate potentially-dishonest political acts require much more than the *appearance of*, or the *potential for*, ethical impropriety. Rather, the Court determined that to pass constitutional muster, such laws and regulations must center on an actual *quid pro quo* exchange involving the undertaking by the elected official of a clearly defined "official act" as that term is defined in 18 U.S.C. § 201.

Governor McDonnell and his wife were indicted in 2014 on charges arising out of their acceptance of \$175,000 worth of loans, gifts and other benefits from Jonnie Williams, the CEO of Star Scientific Inc. Williams, in conjunction with the provision of these items of value, sought McDonnell's assistance in getting a nutritional supplement his company produced tested by Virginia's public universities. The government alleged that the Governor, in response to this request, arranged meetings between Williams and Virginia's Secretary of Health and Human Resources and hosted events at the Governor's Mansion for Star Scientific. Although Virginia's public universities never conducted the research desired by Williams, Governor McDonnell was nevertheless indicted for "accepting payments, loans, gifts, and other things of value from Williams and Star Scientific in exchange for 'performing official actions on an as-needed basis, as opportunities arose, to legitimize, promote, and obtain research studies for Star Scientific's products.'"

In its opinion, the Court refused to interpret the bribery statute at the heart of the case so expansively that "merely setting up a meeting, hosting an event, or calling another official" constituted a violation of federal law. Instead, it held that more was required to support a conviction for honest services fraud or extortion. In this case, the Court stated, actions such as narrowing down the list of potential research topics, intending to exert pressure on another official or providing advice with the intention that it form the basis for an official action would have put McDonnell in violation of the statutes at issue. However, because the district court instructed the jury on an overly expansive view of what could comprise an "official act," McDonnell's conviction could not stand.

The Court again signaled a growing judicial trend that government enforcement of public corruption statutes and regulations must be balanced against due process concerns, i.e., that people have adequate notice of what is and is not deemed illegal under statute. The Court also signaled its substantial concern that improper application of a vague law could quickly cast "a pall of potential prosecution" over benign, and in fact necessary, parts of our political process. Indeed, the Court made clear that the government's overbroad interpretation of the criminal law threatened the basic compact underlying representative government. Elected officials are expected to take meetings with their constituents and address the constituents' concerns as part of their duties. They should not have such open lines of communication chilled by the overbroad interpretation of federal law.

In the final analysis, although the Court disapproved of McDonnell's relationship with Williams, it used this case to highlight its concern that public corruption statutes should not be applied so broadly as to criminalize legitimate interactions within the American political process. The Court further made clear that it will strictly interpret criminal statutes that carry substantial penalties and the potential for deprivation of freedom, and no longer rely upon prosecutorial discretion as the sole means to remedy overbroad or ill-defined laws.

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