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News

KEY TAKEAWAYS FROM SNYDER V. UNITED STATES

GREAT FOR THE WHITE-COLLAR BAR? FOR NOW.

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SUMMARY

Snyder v. United States, 144 S. Ct. 1947 (2024), which held that a federal bribery statute (18 U.S.C. § 666) does not criminalize "gratuities"—payments made corruptly to public officials after-the-fact as rewards for their actions—was lauded as a great win for the white-collar bar. But what about the Supreme Court's approach to statutory interpretation in *Snyder*? Not so great, at least in our view. *Snyder*'s majority opinion provides a playbook for the Supreme Court, in this and future iterations, to engage in a policy-first, text-last approach to statutory interpretation that should make our profession wary, white-collar bar included.

In law school, we spend hundreds of hours poring through the pages of inches-thick red-backed tomes, reading arcane appellate opinions. Doing so, we're told, prepares us for future careers as practicing attorneys. Here, we don't judge the utility of the case-book method of teaching law. But from our textbooks, we all learned how to interpret statutes using a common methodology.

Step one: *start with the statute's plain text*. If the text is unambiguous, the job's done. The statute says what it says and means what it means. If, however, the text is ambiguous, then—and only then—do we turn to other interpretive aids. Such as comparable statutory provisions. Or legislative history. Or policy considerations. These are all tools used to interpret *ambiguous* statutes, but none of them precedes, let alone supplants, step one.

This approach to statutory interpretation didn't arise spontaneously. It derives, among other things, from generations of Supreme Court opinions, crossing different ideological compositions of high-court justices, who—in case after case—coalesced around a common approach: *start* with the plain language of the statute, and go from there. *See Flora v. United States*, 357 U.S. 63, 65 (1958) (Warren, C.J.) ("In matters of statutory construction the duty of this Court is to give effect to the intent of Congress, and in doing so our first reference is of course to the literal meaning of words employed."); *Park 'N Fly, Inc. v. Dollar Park and Fly, Inc.*, 469 U.S. 189, 194 (1985) (O'Connor, J.) ("Statutory construction must begin with the language employed by Congress and the assumption

that the ordinary meaning of the language accurately expresses the legislative purpose."); *Leocal v. Ashcroft*, 543 U.S. 1, 8 (2004) (Rehnquist, C.J.) ("Our analysis begins with the language of the statute."); *Honeycutt v. United States*, 581 U.S. 443, 454 n.2 (2017) (Sotomayor, J.) ("[T]he Court cannot construe a statute in a way that negates its plain text[.]"); *Food Marketing Inst. v. Argus Leader Medai*, 588 U.S. 427, 436 (2019) (Gorsuch, J.) ("In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself."); *Corner Post, Inc. v. Bd. of Governors of Fed. Reserve Sys.*, 603 U.S. —, 144 S. Ct. 2440, 2454 (2024) (Barrett, J.) ("As this Court has repeatedly stated, the text of a law controls over purported legislative intentions unmoored from any statutory text; the Court may not replace the actual text with speculation as to Congress' intent.") (cleaned up).

Yet according to the majority opinion in last term's *Snyder*, it appears we have it all wrong. Perhaps the approach to statutory interpretation we all learned in law school is exactly backwards. Because now, if five or more votes (six, in *Snyder*) coalesce around a common policy position, maybe it doesn't matter what the statute says. According to *Snyder*, maybe we should start with policy first, and retrofit the statute's words to meet that policy objective.

The Issue

> *Snyder* concerns 18 U.S.C. § 666(a)(1)(B), which provides:
>
> Whoever[,] being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof . . . corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be ***influenced or rewarded*** in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of $5,000 or more[,] shall be fined under this title, imprisoned not more than 10 years, or both.

(Emphasis added.) Before its prohibitions come into play, the statute requires "that the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance." 18 U.S.C. § 666(b).

James Snyder was the former mayor of Portage, a small town in northern Indiana, about a 45-minute drive east from Chicago in neighboring Illinois. In 2013, while Snyder was mayor, Portage awarded two contracts to a local trucking company to purchase garbage trucks valued at around $1.1 million. Later, in 2014, Snyder received a $13,000 check from the same trucking company. He was federally indicted—and convicted following a jury trial—of accepting an illegal "gratuity," in violation of 18 U.S.C. § 666(a)(1)(B). At the trial-court level, and again on appeal to the Seventh Circuit, Snyder argued (unsuccessfully) that § 666 criminalizes only bribes, not gratuities.

The Seventh Circuit affirmed, noting that while the "governing statutory language does not use the terms 'bribe' [meaning, "a *quid pro quo*—an agreement to exchange this for that, to exchange money

or something else of value for influence *in the future*"] or 'gratuity' [meaning, something "paid as a reward for actions the payee has already taken or is already committed to take"], the "statutory language 'influenced or rewarded' easily reaches both bribes and gratuities." *United States v. Snyder*, 71 F.4th 555, 579 (7th Cir. 2023) (cleaned up). On further appeal to the Supreme Court, Snyder argued again that § 666 criminalizes only bribes, not gratuities.

The Majority Opinion

Does § 666 cover gratuities? "The answer is no," according to the Supreme Court. 144 S. Ct. at 1951. In a 6-3 decision split along ideological lines—a marked departure from its recent unanimous opinions curtailing federal prosecutions (*Ciminelli* and *Kelly*, which we address further below)—*Snyder* held that § 666 is a bribery-only statute, which "leaves it to state and local governments to regulate gratuities to state and local officials." *Id.* How *Snyder* gets there is, put mildly, *different* than the approach to statutory interpretation we were taught in law school.

Justice Kavanaugh took the pen, writing for the majority. When he sat on the D.C. Circuit, Justice Kavanaugh "align[ed] [him]self" with the view that "the best tool of statutory interpretation" was to "'(1) Read the statute; (2) read the statute; (3) read the statute!'" *Sierra Club v. E.P.A.*, 536 F.3d 673, 681 (D.C. Cir. 2008) (Kavanaugh, J., dissenting). And while there may be "policy arguments for and against" a particular interpretation, for then-Circuit Judge Kavanaugh, a court's "task . . . [was] to interpret statutes as passed by Congress," starting with the "plain text," *Baker & Hostetler LLP v. U.S. Dep't of Commerce*, 473 F.3d 312, 326 (D.C. Cir. 2006), and guided by the principle that the "precise words of the statutory text matter." *City of Anaheim v. F.E.R.C.*, 558 F.3d 521, 522 (D.C. Cir. 2009). So, in *Snyder*—an opinion assessing what the words of a statute mean—we might expect the majority opinion, authored by the same jurist, would take a similar text-first approach.

Not so. The *Snyder* majority doesn't start by addressing the "plain text" of § 666. In fact, the phrases "plain language" or "plain text" are nowhere in the majority opinion. The first time the words "plain text" appear together are in the dissent (which uses the phrase four more times in characterizing the majority's reading of § 666 as "atextual" and "unnatural"). *See* 144 S. Ct. at 1961, 1964, 1966 (Jackson, J., dissenting). Instead, the majority takes a long detour through "holiday tip[s]" to "mail carrier[s]," "end-of-year gift basket[s]" to "public school teacher[s]," and a host of other "innocuous" gratuities that fall within the "threshold amounts" for lawful gifts to public officials under the laws of different "States[,] counties, cities, and towns of America." 144 S. Ct. at 1952–53. The majority then examines the statute proscribing bribery and gratuities for *federal* officials, 18 U.S.C. § 201, which it views as "closely resembl[ing]" (but not duplicating, as we note below) the language of § 666, the provision actually under review. *Id.* at 1953. It takes pages and pages before the full text of § 666(a)(1)(B) is even quoted by the majority, that too, in a footnote. *See id.* at 1954 n.1. All this exposition regarding statutory schemes, rules, and gratuities ***not*** before the Court lays foundation for the policy thesis at the heart of the majority's opinion: that the federal government has no business regulating the conduct of "19 million state and local officials," particularly where "[s]tate and local governments often" (but not always) "regulate the gifts that state and local officials may

accept." *See id.* at 1951. Put differently, **federalism** (or, at least, the majority's version of it) dictates that § 666 does not—indeed, *may not*—criminalize gratuities.

Against this backdrop, one might fairly ask, what happened to the "read the statute!" edict? The majority attempts to fashion an answer, giving six reasons to support its conclusion that "§ 666 is a bribery statute and not a gratuities statute—[1] text, [2] statutory history, [3] statutory structure, [4] statutory punishments, [5] federalism, and [6] fair notice." 144 S. Ct. at 1954. Reasons one through four give the majority's opinion the appearance of engaging in the age-old, text-first methodology of statutory interpretation, with policy considerations (reasons five and six) as tiebreakers when text, alone, can't resolve the question. On closer examination, however, that veneer melts away, laying bare the majority's novel policy-first canon of statutory interpretation.

Reasons one and two—text and statutory history—go hand-in-hand for the majority, as it quotes "Section 666(a)(1)(B)," which "makes it a crime for state and local officials to 'corruptly' accept a payment 'intending to be influenced or rewarded' for an official act." *See id.* Ordinarily, we might next ask: what does "influenced" mean? What does "rewarded" mean? And what, if any, impact do those words have on whether § 666 reaches both bribery and gratuities?

The majority skips those questions, instead pivoting to its assertion that "Congress modeled the text of § 666(a)(1)(B) for state and local officials on § 201(b), the bribery provision for federal officials," which also "makes it a crime for federal officials to 'corruptly' accept a payment 'in return for' 'being influenced' in an official act." *See id.* at 1955–56. Highlighting the similarities between §§ 666 and 201(b) (the federal bribery provision) and the differences between §§ 666 and 201(c) (the federal gratuities provision), the majority concludes that "§ 666—like § 201(b)—is a bribery statute, not a gratuities statute." *See id.*

The problem? The word "rewarded" appears nowhere in § 201(b). Or § 201(c). So, what does that word mean here? By ending its textual analysis at the superficial similarities between §§ 666 and 201, the majority reads the word "rewarded" out of the statute, as Justice Jackson aptly notes in her dissent. *See id.* at 1963 ("Snyder concedes that the term 'rewarded' can encompass the concept of gratuities. The majority—which doesn't bother to interpret 'rewarded' until the end of its opinion—eventually admits the same.") (citations omitted). Attempting to respond, the majority—in the final paragraphs of its opinion—references *other* "bribery statutes" that "sometimes use the term 'reward'" to describe illegal payments or benefits, concluding from that exercise that the terms "influenced" ***and*** "rewarded" in § 666 cover bribery, and nothing more. *See id.* at 1959 (18 U.S.C. § 600; 33 U.S.C. § 447). This exposes the flaw, however, in the majority's overreliance on § 201, the statute it claims served as the "model" for § 666, yet does not contain the word "rewarded." The majority can't have it both ways. Either § 666 is modeled off § 201, but the former's inclusion of the term "rewarded" is superfluous. Or § 201 cannot inform what "rewarded" means, because that word appears nowhere in its text. Simply put, reasons one and two—"text and statutory history"—don't get the job done for the majority.

Turning to reason three: statutory structure. Bribery and gratuity are "'two separate crimes' with "two different sets of elements,'" so it "would be highly unusual, if not unique," according to the majority, for Congress to prohibit both "in a single statutory provision." *See id.* at 1955. Yet Congress stuffs multiple offenses into single provisions all the time. Take 21 U.S.C. § 841(a)(1), for instance, which prohibits *manufacturing*, *distributing*, or *possessing with intent to distribute* a controlled substance —three different crimes, with unique elements, in a single sentence. Or 18 U.S.C. § 924(c)(1)(A), which prohibits *using or carrying a firearm during*, or *possessing a firearm in furtherance of*, a crime of violence or drug-trafficking crime. Or 18 U.S.C. § 2113(a), which criminalizes bank robbery *by intimidation*, bank robbery *by extortion*, or *entering a bank with the intent to commit a felony*. Separate offenses; separate elements; all in one tidy provision. Is the majority's view that multiple drug or violent crimes can be proscribed by a single statutory provision, but white-collar crimes need to be parsed out into separate subsections? If so, it never says that, or—more pressingly—why such a rule makes sense. And without a principled basis to distinguish § 666 from the above provisions, "statutory structure" (reason three) doesn't help the majority here.

Reason four, "statutory punishments," fares no better. *See id.* at 1956. According to the majority, it's an "entirely inexplicable regime" for federal officials who receive illegal gratuities to be subjected to a maximum of 2 years' imprisonment under § 201(c), while state and local officials who receive illegal gratuities face a potential 10 years' imprisonment under § 666. Yet here, material differences emerge between § 666 and its alleged "model," § 201. As the majority itself notes, "§ 201(c)" contains "no express *mens rea* requirement." *Id.* at 1955. Rather, it operates essentially as a strict-liability statute for any federal official who accepts a payment "for or because of any official act." *Id.* Section 666, by contrast, requires—as a precondition to liability—that the defendant acts "corruptly." At trial, that required the government to prove, beyond a reasonable doubt, that James Snyder acted "*with the understanding* that something of value is to be offered or given to reward or influence him in connection with his official duties." *See United States v. James Snyder*, No. 2:16-cr-00160-MFK (N.D. Ind.), Dkt. # 505, at 18 (Jury Instruction – "The charge – definitions of certain terms") (emphasis added). So, perhaps it isn't "entirely inexplicable" that a state or local official who acts "corruptly" in accepting a gratuity may be subject to more severe penalties than a federal official who does not (or, at least, need not to be prosecuted under § 201(c)).

Federalism comes fifth among the majority's stated reasons for gutting gratuities from § 666. But this is the majority's driving concern, particularly where it repeatedly invokes the plight of "19 million state and local officials," 144 S. Ct. at 1951 who—in its view—are victims of vast federal overreach if § 666 covers gratuities, which many (but not all) state and local governments have addressed in their own statutes or rules. By its plain language, however, § 666 applies only to: (1) state or local governments that receive $10,000 or more a year in federal benefits; and (2) transactions valued at $5,000 or more. Does that cover ***all*** "19 million state and local officials" nationwide, on whose behalf the majority tolls the bell of federalist panic? The majority doesn't answer that question. Further, even if state and local governments implement their own gratuities regimes, why can't the

federal government regulate gratuities paid to public officials working for entities that receive at least $10,000 in ***federal taxpayer funds*** per year? The majority doesn't answer that either.

Snyder's 6-3 split, along ideological lines, contrasts starkly with the 9-0 decisions in *Ciminelli* and *Kelly*, which curtailed prosecutions under the wire-fraud statute (18 U.S.C. § 1343) on decidedly federalist grounds. Both opinions declare: "Federal prosecutors may not use property fraud statutes to set standards of disclosure and good government for state and local officials." *Ciminelli v. United States*, 598 U.S. 306, 316 (2023); *Kelly v. United States*, 590 U.S. 391, 399 (2020). What changed in *Snyder*? Perhaps, it was that in both earlier cases, the Court started with the text first, asking, what does the wire-fraud statute prohibit? The answer: "'scheme[s] or artifice[s] to defraud, or for obtaining ***money or property*** by means of false or fraudulent pretenses, representations or promises.'" *Ciminelli*, 598 U.S. at 312 (emphasis added); *see also Kelly*, 590 U.S. at 398. In *Ciminelli*, the Court addressed whether the phrase "money or property" includes depriving a victim of "potentially valuable economic information necessary to make discretionary economic decisions," otherwise known as the "right-to-control" theory of fraud. *Ciminelli*, 598 U.S. at 308 (cleaned up). And *Kelly* asked whether the "time and labor of Port Authority employees"—constituting "the implementation costs of the defendants' scheme to reallocate the [George Washington] Bridge's access lanes" in an act of political retribution (*i.e.*, "BridgeGate")—were "money or property" under the wire-fraud statute. *Kelly*, 590 U.S. at 402–03. In both cases, the Supreme Court unanimously answered "no," starting with the text, and buttressing with federalism. That's not the approach taken in *Snyder*, at least according to the three dissenters, who accuse the majority of "elevat[ing] nonexistent federalism concerns over the plain text of [§ 666]," in "a quintessential example of the tail wagging the dog." *Snyder*, 144 S. Ct. at 1961.

Sixth, and last, among the *Snyder* majority's interpretive rationales is "fair notice," and the concern that allowing § 666 to encompass gratuities would "create traps for unwary state and local officials." *Id.* at 1957. Here, the majority asks whether a "$100 Dunkin' Donuts gift card" or a celebratory meal at "Chipotle" could land unwitting officials in the crosshairs of hard-charging federal prosecutors. *Id.* The majority takes the government to task for failing to "identify any remotely clear lines separating an innocuous or obviously benign gratuity from a criminal gratuity." *Id.* And yet, despite putting text *first* among its supposed interpretive tools, the majority never once cites
§ 666(c), which etches those dividing lines in plain English: "This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business." In fact, the only reference to § 666(c) comes in the dissent. *Id.* at 1968. What's more, while discussing the facts and procedural history of Snyder's case, the majority does not cite the jury instructions from his trial, which included the same language. *See United States v. James Snyder*, No. 2:16-cr-00160-MFK (N.D. Ind.), Dkt. # 505, at 18 (Jury Instruction – "The charge – definitions of certain terms"). More to the point, the majority does not address how a small-town mayor, who accepted a $13,000 payment from company that received a million-dollar contract from the mayor's administration (which a federal jury—unanimously—found was *not* bona fide

compensation paid in the usual course of business), didn't have "fair notice" that he may have done something wrong. Given the plain language of § 666(c), and the jurisdictional threshold set forth in § 666(b), perhaps the dissent has it right that "[l]imits *within the text* of § 666 provide 'fair notice' that commonplace gratuities are typically not within the statute's reach[,] and they suffice to prevent prosecution of the gift cards, burrito bowls, and steak dinners that derail today's decision." 144 S. Ct. at 1967.

Takeaways from *Snyder*

The dissent characterizes "Snyder's absurd and atextual reading" of § 666 as "one only today's Court could love." *Id.* at 1961. Sharply worded barbs aside, what's the alternative? Precisely what the dissent (and, for that matter, the majority of federal circuits that considered the question before *Snyder*) concluded: that § 666 includes the words "influenced" and "rewarded," that each word must have a meaning, that the former covers *quid pro quo* bribery, while the latter reaches after-the-fact gratuities, both of which must have been given or received "corruptly." Unlike the majority opinion, the *Snyder* dissent offers a statutory interpretation that starts and ends with the plain text of § 666. And comparing the approaches taken by the majority and the dissent, only one appears to comport with the text-first methodology to statutory interpretation that we were all taught in law school.

However much the white-collar bar may love *Snyder*, the majority's approach marks a notable change in how the Supreme Court tackles questions of statutory interpretation. Gone, apparently, is the age-old process of examining a statute's text first, determining whether its terms are ambiguous, and only then turning to other interpretative tools, such as legislative history or policy considerations (*e.g.*, federalism). In an era where *stare decisis* itself appears under siege, consistency in statutory interpretation is paramount. With *Snyder*, that consistency appears to be imperiled.

Yes, *Snyder* represents a giant win for the white-collar bar, today. It remains to be seen what tomorrow holds, with this Supreme Court's policy-first approach to statutory interpretation.

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