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WLF Urges Supreme Court To Reject Overbroad Reading Of Criminal Statute

(Snyder v. United States)

“The Department of Justice refuses to accept that it cannot criminalize normal conduct of state and local officials.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—On February 9, 2024, Washington Legal Foundation (WLF) filed an amicus curiae brief urging the U.S. Supreme Court to reverse a Seventh Circuit decision that threatens representative democracy at the state and local levels. Although the Court’s recent decisions make clear that certain conduct is not a federal crime, the Department of Justice continues to charge state and local officials for their innocent behavior. WLF’s brief was prepared with the pro bono assistance of Christopher D. Man and Abbe David Lowell of Winston & Strawn LLP.

The appeal arises from a criminal prosecution of a small-town Indiana mayor. After improving the trash service for his city’s residents, the part-time mayor agreed to consult for a local business. The business paid him \$250 per week for his services. Finding this to be unacceptable, the DOJ charged the mayor with violating 18 U.S.C. § 666, which bans bribery of state and local officials.

Despite the statute banning bribery, the jury was instructed that even gratuities given without any quid pro quo is a crime under Section 666. The jury thus found the mayor guilty. Splitting from the First and Fifth Circuits, the Seventh Circuit affirmed the conviction and held that gratuities are covered by the statute. The Supreme Court granted certiorari to resolve the circuit split.

As WLF’s brief shows, the Supreme Court has placed limits on federal criminal liability theories to preserve federalism and ensure due process of law. Federal criminal law should not set ethical standards for state and local officials; that is one reason recent Supreme Court cases have rejected expansive liability theories. WLF’s brief highlights the practical consequences of the Seventh Circuit’s rule. Under that rule, giving an apple to a public-school teacher may lead to ten years’ imprisonment. That absurd result shows that the Seventh Circuit’s interpretation of Section 666 is wrong.

Celebrating its 47th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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