

Banking and Finance Law Daily Wrap Up, CRIMES AND OFFENSES—Bank officer seeks Supreme Court review of bank bribery conviction, (Apr. 29, 2024)

Banking and Finance Law Daily Wrap Up

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By Joe Cox, J.D.

The appeal questions two interpretations of the statute in question regarding value received and corrupt intent.

On April 19th, counsel for bank officer Stephen Calk filed a [petition](#) for a writ of certiorari with the Supreme Court, seeking review of Calk's conviction for financial institution bribery and intention to commit the same crime. That conviction was affirmed by the U.S. Court of Appeals for the Second Circuit Court in 2023. The petition seeks review on two questions regarding interpretation of the financial institution bribery statute codified at 18 U.S.C §215.

History of the Original Conviction. Stephen Calk was the Chairman and CEO of The Federal Savings Bank (TFSB). He was also the principal shareholder of National Bancorp Holdings, Inc., which owned TFSB. TFSB's deposits were insured by the Federal Deposit Insurance Corporation.

In 2016, Trump associate Paul Manafort approached TFSB to obtain loans. The government charged that Calk used his influence to obtain approval of Manafort's loans in exchange for a promised position with the Trump campaign or administration. Calk was ultimately not chosen for a position with the Trump administration and was instead indicted.

Calk was tried by jury and convicted of financial institution bribery and conspiracy to commit financial institution bribery. After he was convicted, Calk moved to set aside the convictions on the basis that the evidence against him was insufficient to satisfy 18 USC §215 with regard to proving that Calk received a "thing of value" and that he acted "corruptly." The trial court denied the motion and sentenced Calk to 366 days in prison with two years of supervised release. Calk was also fined \$1.25 million.

History of the Appeals. Calk raised four issues on his appeal to the Second Circuit Court of Appeals. He challenged the meanings of "corruptly" and "thing of value" regarding his conviction. He also asserted that the evidence against him was insufficient to sustain his conviction. He also argued that the jury instructions utilized in his trial were erroneous, and that it was error to admit testimony secured through purportedly improper use of a grand jury subpoena.

The appellate court rejected all these arguments. The court ruled that acting corruptly, within the meaning of the statute, did not require a breach of Calk's duty to the bank. The court found that a valid and legitimate purpose which partially motivated an act did not save that act from corruption as a whole. Even correct outcomes did not cure an improper decision-making process, the court found, noting that such a ruling was in line with analogous requirements for government employees under similar statutes.

Furthermore, the appellate court found that the thing of value with regard to bribery did not have to have an objective market value. On the other hand, Calk's subjective value of political influence was sufficient to allow a jury's findings.

The issues regarding jury instructions and evidence obtained by subpoena were likewise unpersuasive to the appellate court. Calk has dropped those questions in his current appeal. (See [Business and Finance Law Daily](#), November 29, 2023).

Current Appeals Brief. Calk now seeks review on two issues. First, he argues that political influence, having no commercial or objective value, should not be construed as a "thing of value" per 18 USC §215. Secondly, Calk

submits that the status of corrupt acts should not be met by acts (even if otherwise improper) which are taken with a good-faith belief that the acts would benefit the bank in question.

In regard to the value of the political influence, Calk asserts that the appellate court's ruling conflicts with the text of the statute and raises due process concerns. Calk argues that the statute is clear that "thing of value" was intended by Congress to apply "only to things susceptible to objective, monetary valuation." Failing to enforce such a standard, Calk argues, makes the statute's \$1,000 threshold "a nullity." Calk also notes that the penalties for violation allow a fine of \$1,000,000 or three times the value of the thing given, whichever is greater. Calk's argument boils down to the failure to mandate an objective monetary value would make it "impossible for ordinary citizens to identify any clear demarcation between things with value and things without."

Calk then turns his attention to the corrupt intent standard. He argues that the appellate court's interpretation is essentially standardless, and that it raises due process concerns. Indeed, the petition characterizes their findings as creating "an amorphous, malleable concept" which would risk arbitrary enforcement and deprives citizens of fair notice as to what constitutes corrupt intent. Calk argues that statutory language and history require that corrupt intent demonstrate an intentional breach of duty.

Finally, Calk argues that two other cases presently before the Court, *Snyder v. United States*, No. 23-108 (Dec. 13, 2023) and *Fischer v. United States*, No. 23-5572 (Dec. 13, 2023) consider the meaning of the term "corruptly" and could inform the instant case. Accordingly, the petition seeks reversal of Calk's conviction or holding the matter in abeyance pending one or both of those other rulings.

Supreme Court docket. For more details about this case and other petitions and cases pending before the Supreme Court, please consult [this list](#). Issued opinions, granted petitions, pending petitions, and denied petitions are listed separately, along with a summary of the questions presented and the status of each case.

Attorneys: Alexandra A.E. Shapiro (Shapiro Arato Bach LLP) for Stephen M. Calk.

Companies: National Bancorp Holdings, Inc.; The Federal Savings Bank

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