

Prosecuting Public Corruption: Bad Actors and Regulatory Consequences

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A slew of recent convictions and sentencings demonstrates how bad actors can abuse the political process, applicable pay-to-play and bribery regulations, and the trust placed in them by their constituents. Given the complex and ever-changing regulations that dictate the bounds of acceptable behavior for public officials and the presence of these bad actors, it is important that companies consult compliance counsel before giving or receiving gifts and contributions.

Pennsylvania

In the U.S. District Court for the Eastern District of Pennsylvania, former Allentown, PA Mayor Edwin Pawlowski was sentenced to 15 years in federal prison following his conviction for soliciting donations to his U.S. Senate campaign from city vendors. In exchange for promises of lucrative municipal business, Pawlowski pursued contributions to his Senate campaign from city vendors and prospective city vendors that included law firms, an IT provider, a company seeking a streetlight contract, an architectural firm bidding to renovate a swimming pool, a firm that won roadway construction inspection work, and a local developer seeking zoning approvals.

New York

In the U.S. District Court for the Southern District of New York, former New York State Senate Majority Leader Dean Skelos was sentenced to four years and three months in prison for coercing businesses into directing payments to his son, Adam Skelos. For his role in the corruption scheme, Adam Skelos was sentenced to 48 months behind bars. Previously, Dean and Adam Skelos had been convicted and sentenced on federal charges of bribery, extortion, wire fraud, and

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conspiracy. Their convictions were vacated and remanded for retrial, however, by the Second Circuit in light of the Supreme Court's new articulation in *McDonnell v. United States* for what constituted an official act that could support a bribery charge. In July 2018, the pair were convicted again on the eight counts of conspiracy, extortion under color of official right, and soliciting bribes and gratuities. They were found to have used the senator's role as one of the state's most important politicians to threaten and coerce real estate, environmental consulting, and medical malpractice insurance businesses into hiring or paying Adam Skelos.

Alabama

In the U.S. District Court for the Northern District of Alabama, a former environmental attorney, Joel Gilbert, and a former vice president for government and regulatory affairs at a coal company, David Roberson, were sentenced to 5 years and 2.5 years imprisonment, respectively, for bribing an Alabama legislator to help the company dodge cleanup liability with the Environmental Protection Agency (EPA). The pair were convicted by a Birmingham jury based on their attempts to convince former Alabama legislator Oliver Robinson to oppose EPA actions in North Birmingham. Roberson's companies had been tagged by the EPA as "potentially responsible" for pollution migrating from a North Birmingham industrial site to surrounding neighborhoods. Federal prosecutors had accused Roberson and Gilbert of setting up an ongoing contract to pay Robinson's literacy foundation with the understanding that Robinson would attempt to influence state activity for the benefit of the Roberson's coal company and its subsidiary. This scheme was apparently hatched after Robinson alerted Gilbert that he was going to meet with high-level EPA officials after the EPA had proposed putting the entire site on the Superfund National Priorities List. In addition, Robinson allegedly used his Alabama House of Representatives letterhead to advocate on behalf the coal company, allowed Gilbert to ghostwrite a letter to the Alabama Department of Environmental Management, and helped pass a similarly ghostwritten resolution against "EPA overreach."

These recent cases demonstrate that even after the Supreme Court narrowed the definition of "official act" in its 2016 *McConnell* decision, federal prosecutors retain powerful tools to charge and combat public corruption. Although a bulwark of regulations and checks surround public officials and exist to prevent such corruption, bad actors can nevertheless find ways to abuse the process. In response, municipalities and states continue to crack down on corruption and impose more stringent and vigilant measures. For example, after Mayor Pawlowski's conviction, Allentown and Lehigh County adopted separate (but similar) pay-to-play laws, which allow contractors and prospective contractors to contribute no more than \$250 to certain candidates and elected officials. These types of additional measures as well as the ever-present threat of bad actors highlight the need for relevant expertise to help public officials and contractors alike navigate this complicated, and potentially fraught, framework.