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THE ROAD TO HELL IS PAVED WITH VAGUE INTENTIONS: PROSECUTORIAL DEVELOPMENT OF 18 U.S.C. § 666 AND ITS EFFECT ON LOCAL OFFICIALS

by: Theodore Richardson*

ABSTRACT

Over the past century, federal prosecution has expanded to cover behavior without a clear nexus to federal interests. At the same time, the powers of local governments have expanded to areas historically reserved for states. These two trajectories have created a collision course, pitting federal prosecutors against local officials in unexpected ways. Vaguely drafted laws have enabled federal prosecutors to expand their discretionary authority and reach conduct that sits well outside of traditional ideas of criminality.

Corruption is a serious issue that needs to be addressed correctly. But how corruption is addressed and who should address it are two important questions that are often overlooked. The current pattern of prosecutorial development is headed toward a framework wherein every local official is “corrupt” and proving so is only a matter of launching an investigation. Rather than continuing this approach—which itself is ripe for political abuse—legislatures and courts should explore means that empower voters to define and resolve corruption at the local level.

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I. INTRODUCTION

Cinema romanticizes what bribery looks like, portraying it as secret meetings in smoky bars or a man throwing cash at FBI agents on a yacht.¹ The reality of bribery is often much more mundane. The line between acceptable and unacceptable political behavior can be startlingly blurry.² Vaguely drafted criminal statutes contribute to this problem by allowing prosecutors to

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¹ See *PULP FICTION* (Miramax 1994); *THE WOLF OF WALL STREET* (Red Granite Pictures 2013).

² See HARVEY SILVERGLATE, *THREE FELONIES A DAY* 13 (Encounter Books, Paperback ed. 2011) (detailing the reversal of a local official’s conviction because the jury instruction “blurr[ed] the line between extortionate threats and other non-threatening arrangements”).

define corruption in their own way,³ which can run counter to local norms and customs.⁴ By tracing the history of federal bribery, particularly 18 U.S.C. § 666, this Comment will show how prosecutors use their power—with the courts’ acquiescence—to criminalize political activity many would consider normal. There is a real cost to prosecuting local officials for innocuous behavior; namely, denying voters the opportunity to vote for well-liked, but indicted, candidates. Moreover, frivolous corruption accusations lower the faith voters have in their politicians as a whole.⁵

This Comment will explore our nation’s history of distrust toward local officials and how a growing Justice Department both benefits from and furthers this perception. This will include an exploration of bribery and corruption from a theoretical perspective and how these theories influence how anti-corruption laws are drafted. The simultaneous expansion of local power and federal prosecutorial discretion has set these two important government actors on a collision course. Using 18 U.S.C. § 666—the “beast of the federal criminal arsenal”⁶—as an example, this Comment will show how a potentially useful anti-corruption law can be warped out of shape and become a part of a larger overcriminalization problem. Bribery, and corruption as a whole, is a complex topic that requires a nuanced approach. How lawmakers define corruption can have far-reaching effects on what conduct is prohibited and how investigations are carried out.⁷ When taken too broadly, this can lead to unexpected and negative consequences. Ultimately, federal prosecutors should keep their main focus on federal corruption, leaving local corruption to state and local bodies.

In order to better balance the interests of local transparency and local autonomy, Congress should draft anti-corruption laws that can only affect local officials in cases where a significant federal interest is involved—not merely a tangential one. Judges should adopt strict methods of construction for these statutes against prosecutorial interpretation. Further, local governments should encourage competitive local elections and institute strong protocols for transparency. These three factors could create a framework that still gives federal prosecutors a robust toolkit for dealing with corruption that materially harms federal interests while preventing prosecutors from straying onto political crusades. With a more focused approach, prosecutors could deal with serious cases using criminal punishment. This would allow state courts or local ethics committees to handle less serious misconduct in civil or administrative hearings or allow voters to address the problem at the ballot box.

II. A BRIEF HISTORY OF LOCAL GOVERNMENT IN THE UNITED STATES

The role of local power has been a subject of dispute since the drafting of the Constitution.⁸ Political figures, like James Madison, were skeptical about allowing too much power to rest in local hands.⁹ Madison argued that small, self-governing bodies are more susceptible to overbearing

³ Justin Weitz, *The Devil Is in the Details: 18 U.S.C. § 666 After Skilling v. United States*, 14 N.Y.U. J. LEGIS. & PUB. POL’Y 805, 833 (2011).

⁴ See SILVERGLATE, *supra* note 2, at 27–28.

⁵ Sandra Caron George, *Prosecutorial Discretion: What’s Politics Got to Do with It*, 18 GEO. J. LEGAL ETHICS 739, 739 (2005).

⁶ Weitz, *supra* note 3, at 807, 831.

⁷ See Charles F.C. Ruff, *Federal Prosecution of Local Corruption: A Case Study in the Making of Law Enforcement Policy*, 65 GEO. L.J. 1171, 1208–09 (1977).

⁸ GERALD E. FRUG ET AL., *LOCAL GOVERNMENT LAW: CASES AND MATERIALS* 1 (6th ed. 2015).

⁹ See THE FEDERALIST NO. 10 (James Madison).

majorities.¹⁰ These local majorities might abuse democratic systems to oppress minority interest groups.¹¹ Madison believed that the best way to remedy this problem was to centralize power over large areas.¹² With larger, more diverse constituencies, the risk of run-away majorities was much lower.¹³ Madison was not alone in his fear of local power. Even Thomas Jefferson, who viewed local governments as elementary republics, feared the “mobs of great cities” and the tyrannies they might enact.¹⁴ Over time, ideas about mobs and local power led to a dominant view that city leadership lacked essential moral character.¹⁵ This manifested in policies that defined cities as appendices of the state and led to harsh judicial interpretations against the extent of local power.¹⁶ But this view was not without reason; during the industrial revolution, many American cities suffered from widespread corruption.¹⁷ Political machines dominated cities like New York for a time, influencing elections and official decisions on an alarming scale.¹⁸

Founded as a political organization within New York City,¹⁹ Tammany Hall was a famous instance of an urban political machine.²⁰ It operated by organizing and mobilizing voters in exchange for control of government and programs.²¹ Tammany Hall quickly gained power within the city, becoming a leading force by the end of the 19th century.²² The organization was able to make deals with officials at all levels of the federal government, including the president, exchanging endorsements for federal jobs.²³ Even early on, Tammany Hall faced accusations of corruption.²⁴ These accusations came to a head while the organization was under the leadership of William “Boss” Tweed, who was, in fact, using the organization to operate an extremely organized and efficient corruption ring.²⁵ Tweed was eventually arrested, but Tammany Hall continued to be an influential part of New York City politics long after his departure.²⁶ Tammany Hall was eventually brought down by a rival political group that exposed the extent of its impropriety.²⁷ It is worth noting that, in this particular case, the corruption was discovered by a rival local politician, rather than a federal investigation.²⁸

¹⁰ *Id.*

¹¹ *Id.*

¹² *See id.*

¹³ *Id.*

¹⁴ GERALD FRUG, *CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS* 38–45 (1999), as reprinted in FRUG ET AL., *supra* note 8, at 31.

¹⁵ *Id.* at 45–50, as reprinted in FRUG ET AL., *supra* note 8, at 151–56.

¹⁶ FRUG ET AL., *supra* note 8, at 127.

¹⁷ Mariano-Florentino Cuellar & Mathew C. Stephenson, *Taming Systemic Corruption: The American Experience and Its Implications for Contemporary Debates* 15 (Quality of Gov’t Inst., Working Paper No. 06, 2020).

¹⁸ *See id.*

¹⁹ *Tammany Hall*, HISTORY.COM, <https://www.history.com/topics/us-politics/tammany-hall> (Aug. 21, 2018) [<https://perma.cc/64SH-PK5B>].

²⁰ Cuellar & Stephenson, *supra* note 17, at 15.

²¹ Braxton Fralick, *The Legacy of Boss Tweed on Tammany Hall*, 2015 BELMONT U. RSCH. SYMP. 1, 1 (2015).

²² *Id.*

²³ Robert McNamara, *Tammany Hall*, THOUGHTCO., <https://www.thoughtco.com/history-of-tammany-hall-1774023> (Apr. 5, 2019) [<https://perma.cc/4LMC-LJUG>].

²⁴ *See* Fralick, *supra* note 21, at 1.

²⁵ *Id.*

²⁶ *See id.* at 6–8.

²⁷ Cuellar & Stephenson, *supra* note 17, at 16.

²⁸ *Id.*

Throughout early America, corruption was a systemic problem at the federal, state, and local levels.²⁹ This was particularly the case during the “Era of Good Feelings,” which lasted from 1817 to 1825.³⁰ This period saw officials at the highest levels of the federal government engaging in outright theft of public money.³¹ However, it seems today that historic local corruption left a bigger impression than federal or state corruption. It was corruption at the local level that resulted in a view that cities were not run by leaders “best fitted by their . . . moral character.”³² This led legal theorists, such as John Dillon, to suggest shifting power away from local governments to higher levels of government and having judicial supervision over city decisions.³³

Contrary to this notion, there have long been supporters and advocates for local autonomy.³⁴ Alexis de Tocqueville wrote that decentralized power brought with it tremendous political energy, which, while not entirely efficient, could do much more good than centralized authority.³⁵

Over the last century, the United States has made major strides in dealing with systemic corruption at every level of government. Factors like civil service reform, independent regulatory commissions, secret ballots, and American citizens’ growing awareness of corruption have all contributed to the decline of widespread corruption.³⁶ As time goes on, the de Tocquevillian view of the city has become more popular with voters and lawmakers.³⁷ As a result, the legal structure surrounding cities has deferred more and more autonomous power from the state to local governments.³⁸

Despite these changes, local leaders remain consistent targets for accusations of corruption.³⁹ One factor that may contribute to these accusations lies in the nature of local constituencies. Local government requires different skills from politicians than higher levels of government.⁴⁰ Because a local candidate is seeking votes from a smaller population, it is much easier to find sets of interests that cover a narrow-winning majority.⁴¹ This reduced need for broad appeal can result in politically relevant, but numerically small, groups that feel their interests are not being taken into account.⁴² This observation echoes the predictions of Madison but falls short of the lawless tyranny that he feared. It is possible that this behavior could come off as corrupt to the average voter or potentially a federal prosecutor not versed in local customs. Prosecutors have no shortage of opportunities to investigate local authorities with possible ties to corruption.⁴³

²⁹ *Id.* at 15.

³⁰ *Id.* at 10–11.

³¹ *Id.* at 11.

³² FRUG ET AL., *supra* note 8, at 152–53 (emphasis omitted).

³³ *Id.*

³⁴ *See id.* at 4.

³⁵ *See* ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 160 (Eduardo Nolla ed., James T. Schleifer trans., 2010).

³⁶ Cuellar & Stephenson, *supra* note 17, at 18–25.

³⁷ *See* FRUG ET AL., *supra* note 8, at 174–76.

³⁸ *Id.*

³⁹ Charles N. Whitaker, *Federal Prosecution of State and Local Bribery: Inappropriate Tools and the Need for a Structured Approach*, 78 VA. L. REV. 1617, 1617 (1992).

⁴⁰ *See generally* BRUCE BUENO DE MESQUITA & ALASTAIR SMITH, *THE DICTATOR’S HANDBOOK: WHY BAD BEHAVIOR IS ALMOST ALWAYS GOOD POLITICS* 4–7 (1st ed., 2011) (explaining how the relative size of the electorate affects political needs).

⁴¹ *Id.*

⁴² *Id.*

⁴³ Ruff, *supra* note 7, at 1211.

III. EXPANSION OF PROSECUTORIAL DISCRETION

Beginning in the 1970s, the federal government took a new interest in targeting local corruption.⁴⁴ This resulted in a substantial increase in the prosecution of elected and appointed officials.⁴⁵ Between 1970 and 1985, federal prosecutors indicted 2,735 local officials with corruption charges and convicted 1,993.⁴⁶ That number increased during the 2003 to 2018 period, in which 4,317 local officials were indicted and 3,824 local officials were convicted.⁴⁷ In states such as New Jersey, Illinois, and New Mexico, corruption sits at the top of federal law enforcement's agenda.⁴⁸

A prosecutor represents the sovereignty of the government, and, by extension, prosecutors are expected to wield the government's power in an impartial way.⁴⁹ However, attempts to fight corruption often veer into political territory, where the goal is to attack certain political figures rather than to seek out and remedy injustice.⁵⁰ Political corruption is an important priority for law enforcement, but this interest must still be checked against potentially political motives.⁵¹ Prosecutors have a lot of discretion when it comes to whom they prosecute, what charges are brought, and what arguments are put forward.⁵² These factors, combined with often permissive judicial interpretation, give prosecutors a lot of power to shape the development of laws.⁵³

When Congress detects a problem that falls within its enumerated powers, it can pass a law to remedy the issue.⁵⁴ It then falls upon the Executive Branch to carry out these laws.⁵⁵ Federal prosecutors must decide whom to indict using these laws and may pick what arguments to pursue during trial.⁵⁶ Prosecutorial discretion is bound by the resources available to the department, as well as an interest in federalism and preserving areas of criminal law traditionally reserved for the state.⁵⁷ Federal prosecutors are also meant to follow guidelines laid out by centralized standards.⁵⁸ Even still, federal prosecutors may seek to push their reach to the fullest extent, even when Congress intended a limited solution.⁵⁹ "Like Nature, the federal prosecutor abhors a vacuum."⁶⁰ This is especially the case for situations involving corruption, where federal prosecutors—enabled by judicial interpretation—have historically pushed laws far beyond their common law counterparts.⁶¹

⁴⁴ Arthur Maass, *U.S. Prosecution of State and Local Officials for Political Corruption: Is the Bureaucracy Out of Control in a High-Stakes Operation Involving the Constitutional System?*, 17 *PUBLIUS* 195, 201 (1987).

⁴⁵ *Id.* at 202.

⁴⁶ *Id.*

⁴⁷ PUBLIC INTEGRITY SECTION, UNITED STATES DEPARTMENT OF JUSTICE, REPORT TO CONGRESS ON THE ACTIVITIES AND OPERATIONS OF THE PUBLIC INTEGRITY SECTION FOR 2018 23–24 (2018).

⁴⁸ Weitz, *supra* note 3, at 805–06.

⁴⁹ George, *supra* note 5, at 741–42.

⁵⁰ *See id.* at 739–40.

⁵¹ *Id.* at 741.

⁵² *Id.* at 742.

⁵³ *See* Weitz, *supra* note 3, at 817–18.

⁵⁴ *See* U.S. CONST. art I, § 1.

⁵⁵ *See* U.S. CONST. art. II, § 1.

⁵⁶ George, *supra* note 5, at 740.

⁵⁷ *See* Ruff, *supra* note 7, at 1201.

⁵⁸ *Id.* at 1202.

⁵⁹ *Id.* at 1228.

⁶⁰ *Id.*

⁶¹ *See id.* at 1225–26.

What motivates this tendency toward expansion? One critical factor may be the intangible rewards a prosecutor obtains for prosecuting corruption cases.⁶² A big corruption conviction looks impressive on a prosecutor's resume when it comes time for a promotion, or when a prosecutor embarks on a career in politics.⁶³ It might be hard to measure exactly how much of a role this incentive structure plays in generating corruption charges, but it almost certainly has some influence.⁶⁴ Another related factor is that prosecutors are a part of a political system and, as a result, must make political decisions based on their position.⁶⁵ More than seeking a promotion or future career, prosecutors must attend to the executive that appointed them or the people that elected them in order to keep their job.⁶⁶ If the perception of a prosecutor as a zealous champion against public corruption can help with a reelection campaign, it stands to reason that the inverse—a reputation for being lax on political corruption—would not fare well at the ballot box.⁶⁷

There is also a great deal of nuance that comes along with local politics.⁶⁸ Different localities might have different customs when it comes to what is acceptable behavior by officials.⁶⁹ For example, it is not uncommon for cities to pay their officials less than a livable wage.⁷⁰ Unless cities expect only wealthy candidates to run for office, these low salaries require officials to have some sort of private career outside of politics.⁷¹ While this does not excuse using political influence to gain an unfair advantage, it is almost impossible to expect certain officials to abstain from private business relations altogether.⁷² It is inevitable that a mayor's title will affect his or her relationship with the local business community, and that is not always a bad thing.⁷³ Further, politicians are still people outside of their public role. The breadth of these laws creates potential for all aspects of personal affairs to be criminalized.

It seems only fair to give a locality some leeway in determining what they want in a leader. Overly broad statutory language, combined with prosecutors' unfamiliarity with an area's unique political climate, is bound to lead to unnecessary indictments.⁷⁴ In order to efficiently carry out the will of their constituents, politicians should be able to conduct their day-to-day affairs without having to constantly look over their shoulder.⁷⁵

The issue here is with *federal* prosecutors entering into the local sphere. Investigation and prosecution are crucial ways to fight serious corruption.⁷⁶ While indirect strategies have proven to be very effective at combatting corruption, there is still a need for direct means to fight the problem.⁷⁷ The primary argument for allowing federal prosecutors to enter into local affairs for corruption matters is that they are more distant from—and thus less likely to be personally involved

⁶² See SILVERGLATE, *supra* note 2, at 14–27 (illustrating the story of William Floyd Weld, a federal prosecutor who used his “crusading prosecutor” image to become the governor of Massachusetts).

⁶³ George, *supra* note 5, at 752.

⁶⁴ *Id.* at 748.

⁶⁵ *Id.* at 751–52.

⁶⁶ *Id.*

⁶⁷ See *id.* at 752–53.

⁶⁸ See SILVERGLATE, *supra* note 2, at 43–44.

⁶⁹ *Id.*

⁷⁰ *Id.* at 11–12.

⁷¹ *Id.*

⁷² *Id.*

⁷³ See *id.* at 4–5.

⁷⁴ See *id.* at 14, 43–44.

⁷⁵ *Id.*

⁷⁶ Cuellar & Stephenson, *supra* note 17, at 7.

⁷⁷ *Id.*

in—the corruption at hand.⁷⁸ However, this runs contrary to the notion that federal prosecutors should focus on matters that affect federal activity and should not intervene in purely local matters.⁷⁹ The more local a proceeding, the more apt the local courts will be to consider the unique circumstances surrounding a given case.⁸⁰

IV. CORRUPTION AND BRIBERY DEFINED

Before proceeding, it will be helpful to define corruption and explore how its definition affects what conduct is legal or illegal. Corruption is, in a broad sense, “misuse of public office for private gain.”⁸¹ While this is a good definition for examining the large-scale ethics of politicians, it is too broad to be used as a legal foundation. This definition only allows for two variables, namely: (1) was the public office misused, and (2) was this misuse for personal gain?⁸² This definition could cover the questionable behavior of prosecutors using their position to further political agendas (discussed below).⁸³ A better definition may be, “the illegal and generally unacceptable use of public position for private advantage or exceptional party profit, and the subversion of the political process for personal ends beyond those of ambition.”⁸⁴ This definition, while similar, allows for more depth of analysis for different behaviors. A more variable approach would allow lawmakers to differentiate between behavior that threatens the integrity of a given level of government, and behavior that should simply be frowned upon. This definition excludes merely ambitious and partisan tendencies, which are, unfortunately, almost unavoidable in the public arena. It also includes “generally unacceptable” behavior, which adds an important element—constituents’ concern regarding the actions of their representatives. By incorporating this flexibility, lawmakers could narrow the scope of their laws while still creating exceptions that recognize local political norms.

It is tempting to think about bribery, and corruption as a whole, as a black-and-white affair.⁸⁵ Ideally, our legal system would be able to draw clear lines between what sort of conduct is acceptable and what is not.⁸⁶ However, experience shows many cases where a politician’s behavior falls between clearly acceptable and clearly illegal.⁸⁷ Even if bribery exists on a spectrum of gray, bribery laws should pertain only to “the most blatant and specific attempts of those with money to influence governmental action.”⁸⁸ Accordingly, if there is an issue with a bribery statute, that issue should be with the statute being too narrow rather than too broad.⁸⁹ This has not been the case.⁹⁰ Bribery statutes can and have been applied to everyday situations in American politics.⁹¹

⁷⁸ Ruff, *supra* note 7, at 1212 (quoting WHITNEY N. SEYMOUR, UNITED STATES ATTORNEY 174–75 (1975)).

⁷⁹ *Id.* at 1212–13.

⁸⁰ *See id.* at 1214.

⁸¹ Cuellar & Stephenson, *supra* note 17, at 3 n.1.

⁸² *Id.*

⁸³ *See infra* note 94 and accompanying text.

⁸⁴ Cuellar & Stephenson, *supra* note 17, at 3 n.1 (quoting MARK W. SUMMERS, THE ERA OF GOOD STEALINGS, at ix (1993)).

⁸⁵ Daniel H. Lowenstein, *Political Bribery and the Intermediate Theory of Politics*, 32 UCLA L. REV. 784, 786–87 (1985).

⁸⁶ *Id.*

⁸⁷ *See id.* at 788.

⁸⁸ *Id.* at 786 (quoting *Buckley v. Valeo*, 424 U.S. 1, 28 (1976)).

⁸⁹ *Id.* at 786–87.

⁹⁰ *See infra* notes 121–61 and accompanying text.

⁹¹ Lowenstein, *supra* note 85, at 787.

In light of this reality, we must ask how lines should be drawn to determine what sorts of behavior should be acceptable. The way prosecutors carry out anti-corruption statutes often impinges on localities' ability to make their own judgments about what type of political culture is acceptable. We must address whether there is any value in allowing a locality to self-determine its ethical standards. Should we treat the same behavior as corrupt or acceptable depending on where it occurred? Or should we instead apply a universal standard to behavior?

There are two dominant theories that dictate how a public official should operate, namely: trusteeship theory and mandate theory.⁹² To summarize, trusteeship theory views political representatives as keepers of the public's trust.⁹³ When elected, representatives must follow their own judgment as to what is in the public's best interest, superseding even the public's opinion of its own best interest.⁹⁴ This theory rejects the notion that politicians should ever succumb to outside pressure, and prescribes that they follow a more objective "natural law."⁹⁵ This theory supports broad readings of anti-corruption statutes and would impose a singular standard of ethics not affected by local circumstance.⁹⁶ While this theory presents a straightforward answer to the bribery problem (any influence is corrupt influence), it fails in other critical ways.⁹⁷ The trusteeship theory puts little value on voter autonomy, casting individual citizens as passive actors who need to be told right from wrong.⁹⁸ Also, trusteeship theory does little to help candidates hold on to their position.⁹⁹ A candidate who consistently ignores external pressure from voters will quickly find himself out of the job.¹⁰⁰

Mandate theory serves to fix some of these issues, but still falls short of giving a satisfactory answer to what should or should not be criminal behavior.¹⁰¹ Mandate theory views the politician as a representative of public opinion.¹⁰² Under this theory, rather than relying on her own judgment, a good steward of the public's intent will listen to her constituents.¹⁰³ With this view, exerting influence on a politician is not a problem by itself.¹⁰⁴ Politicians are expected to listen to community advocates and business leaders in order to make decisions.¹⁰⁵ The way the politician weighs different opinions is set by the local constituents' expectations.¹⁰⁶ Under the mandate theory, political officials may be influenced in their decision-making, provided the source of the influence is legitimate.¹⁰⁷ The difficulty is separating legitimate from illegitimate influence. Things like voter opinion polls or city hall meetings where voters voice their concerns are key parts of democracy, and thus are safely legitimate.¹⁰⁸ But what about when an official has a one-on-one meeting with a constituent? And what if that constituent is a local business leader with

⁹² *Id.* at 831–32.

⁹³ *See id.* at 833–34.

⁹⁴ *Id.*

⁹⁵ *See id.* at 832–34.

⁹⁶ *See id.* at 833.

⁹⁷ *Id.* at 834.

⁹⁸ *Id.*

⁹⁹ *Id.* at 844.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 835–36.

¹⁰² *Id.* at 834.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *See id.*

upcoming projects, or a local community leader who wants to discuss their interests? The politician will surely benefit from being on the good side of these sorts of people,¹⁰⁹ but what exactly causes the conduct to cross the line? One possible solution is to look at the good faith of the office holder. If the office holder is operating under the bona fide belief that they are doing what is best for the city, then he should not bear any liability.¹¹⁰

This view of representation is beneficial because it places a higher weight on voter intent and autonomy, and it provides a practical way for reelection to occur.¹¹¹ The problem with this view is that, even though it establishes that there is some variation in what might rightfully be called corruption, it does not provide any tools to help sort out individual cases.¹¹²

Any well-designed bribery statute must determine what separates criminal conduct from unethical conduct and should acknowledge widely disapproved of conduct that is still locally acceptable.¹¹³ Some authors have suggested shifting the construction of anti-corruption statutes so that their jurisdictional element is broad, but their behavioral requirements are narrow.¹¹⁴ Even when statutes contain elements that should narrow the range of activities that they target, prosecutorial expansion generally erodes these distinctions.¹¹⁵ The end result is a legal framework where criminal liability could be extended to any pressure that a public official receives.¹¹⁶ This leaves matters of local ethics not to the voters, but instead to the judgment of federal prosecutors (ironically, these are the very same prosecutors who are subject to political pressures pushing them to prosecute local officials in the first place).¹¹⁷

The first step to determine what makes bribery a crime is to ask who is harmed by bribery.¹¹⁸ From some perspectives, bribery is inherently harmful because it violates the public's trust.¹¹⁹ In a more conventional sense, bribery is considered harmful because when politicians are subject to undue influence, they will often make suboptimal choices for their constituents.¹²⁰

V. THE DEVELOPMENT OF 18 U.S.C. § 666

There are many federal statutes dedicated to bribery's definition and prosecution.¹²¹ The primary federal statute used to cover bribery is 18 U.S.C. § 201.¹²² This statute defines bribery as a crime committed by *federal* officials.¹²³ It requires that something of value be given to an official with the corrupt intent of influencing them in one of their official duties.¹²⁴ Further, the official

¹⁰⁹ See SILVERGLATE, *supra* note 2, at 5 (alleging that local politicians can use their status as leverage in private business dealings).

¹¹⁰ See Cynthia Farina, *Keeping Faith: Government Ethics & Government Ethics Regulation*, 45 ADMIN. L. REV. 287, 305 (1993).

¹¹¹ Lowenstein, *supra* note 85, at 134–35.

¹¹² *Id.* at 135–36.

¹¹³ See Farina, *supra* note 110, at 305.

¹¹⁴ See Whitaker, *supra* note 39, at 1619.

¹¹⁵ See *infra* notes 121–61 and accompanying text.

¹¹⁶ Weitz, *supra* note 3, at 837.

¹¹⁷ SILVERGLATE, *supra* note 2, at 28–29.

¹¹⁸ Lowenstein, *supra* note 85, at 844.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ See 18 U.S.C. §§ 201, 666. See also § 1343 (indirectly related to, but dependent on, bribery).

¹²² *Id.* § 201.

¹²³ *Id.*

¹²⁴ *Id.*

must have corrupt intent to be influenced when receiving the thing of value in order to be indicted.¹²⁵

However, 18 U.S.C. § 201 left a gap in the statutory structure that Congress later wanted to fill.¹²⁶ Since 18 U.S.C. § 201 only applied to federal officials, there was some debate as to whether it could be used to stop the misappropriation of federal funds through bribery at the state or local level.¹²⁷ The general animus about § 201's limited applicability led to the passage of 18 U.S.C. § 666.¹²⁸ Through Congress's spending power, prosecutors can now clearly indict a non-federal official who receives federal funds and misuses them under corrupt influence.¹²⁹ The range of people that can be indicted under 18 U.S.C. § 666 includes anyone who is "an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof," that receives \$10,000 dollars or more per year from the federal government.¹³⁰ The crime itself requires that the actor "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 . . . of such organization, government, or agency involving anything of value of \$5,000 or more."¹³¹ To clarify, the \$5,000 amount refers to the value of the business transaction; there is no minimum monetary amount for the thing of value given as a gift.¹³²

The Justice Manual, the source that prosecutors are meant to refer to when bringing charges, reflects a more limited scope for 18 U.S.C. § 666.¹³³ The Justice Manual states that "federal prosecutors should be prepared to demonstrate that a violation of 18 U.S.C. § 666 affects a substantial and identifiable Federal interest before bringing charges."¹³⁴ This is presumably meant to keep 18 U.S.C. § 666 focused on matters that pertain more to the federal government rather than serving a general purpose. The Justice Manual notes that the statute was not meant to reach every federal dollar.¹³⁵ However, over time, the bounds of 18 U.S.C. § 666 have expanded, transforming what started as a niche statute for regulating federal monies into a general anti-bribery statute with nearly limitless application.¹³⁶

A large prosecutorial expansion of § 666 resulted from *Sabri v. United States*, where the Supreme Court established that it is not necessary to show a nexus between federal spending and criminal activity.¹³⁷ The appellant argued that because 18 U.S.C. § 666 did not contain language requiring the money in question to be related to federal funds, the statute extended beyond Congress's authority to legislate.¹³⁸ The Court determined that because money is fungible, misappropriation of any funds was equivalent to misappropriation of federal funds.¹³⁹ The appellant in *Sabri* attempted to make a facial challenge against 18 U.S.C. § 666, a strategy the

¹²⁵ *Id.*

¹²⁶ See Weitz, *supra* note 3, at 816.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ 18 U.S.C. § 666(a), (b).

¹³¹ *Id.* § 666(a)(1)(B).

¹³² Ralph Gerstein, *Proof of Bribery and Extortion in Political Corruption Cases*, 172 AM. J. PROOF OF FACTS 3d 139 § 5 (2018).

¹³³ U.S. Dep't of Just., Just. Manual § 9-46.110 (2020).

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Weitz, *supra* note 3, at 817–18.

¹³⁷ *Sabri v. United States*, 541 U.S. 600, 606–07 (2004).

¹³⁸ *Id.*

¹³⁹ *Id.*

Court strongly frowned upon.¹⁴⁰ While the Court ruled the statute constitutional on its face, the possibility was left open for there to be a specific instance where the application of 18 U.S.C. § 666 would be unconstitutional.¹⁴¹ Unconstitutional vagueness is a very real risk for a statute like 18 U.S.C. § 666. Criminal laws must make clear the conduct they prohibit in order to discourage “arbitrary and discriminatory enforcement.”¹⁴²

In a related strain, prosecutors can use this statute to indict anyone in an organization that takes more than \$10,000 of federal funds per year.¹⁴³ This easily covers all local municipalities, and many other less noteworthy organizations as well.¹⁴⁴ Importantly, all members of these organizations are possible targets for prosecution.¹⁴⁵ Therefore, liability for federal bribery can extend to the lowest level of city workers, who themselves have no discretionary power.¹⁴⁶ Even more extreme, 18 U.S.C. § 666 can be applied to private citizens if they are part of an organization that takes the requisite federal funds.¹⁴⁷ “With minor—or even theoretical—power, it seems, comes great criminal liability.”¹⁴⁸

The largest expansion of 18 U.S.C. § 666 rests with what can constitute a thing of “value.” Despite dicta from justices indicating that there should be some floor to the intrinsic value needed to qualify for this statute,¹⁴⁹ no such limit has been established.¹⁵⁰ Bribery, structured in this way, is unbelievably broad. This usage also runs counter to the Justice Manual, which urges prosecutors to only pursue cases that involve a substantial federal interest.¹⁵¹

For context, some discussion regarding the difference between various corruption crimes is necessary. Bribery differs from illegal gratuities because of the requirement for a “quid pro quo.”¹⁵² A quid pro quo is a specific “this for that” arrangement in which the official action desired to be influenced is defined.¹⁵³ The official receives the thing of value (or expects to receive the thing of value) predicated on being influenced by a single concrete action.¹⁵⁴ Bribery requires a quid pro quo while illegal gratuity does not.¹⁵⁵ Illegal gratuities essentially bar inappropriate gifts to public officials.¹⁵⁶ They do not bar all gifts, as long as the gift is reasonable and not tied to a particular act by a public official.¹⁵⁷

Because of the quid pro quo requirement of bribery, gifts for general favor or for general influence should not qualify, no matter how facially inappropriate they are.¹⁵⁸ The statutory

¹⁴⁰ *Id.* at 608–09.

¹⁴¹ *Id.*

¹⁴² *Skilling v. United States*, 561 U.S. 358, 402–03 (2010).

¹⁴³ 18 U.S.C. § 666(b).

¹⁴⁴ *Weitz*, *supra* note 3, at 816.

¹⁴⁵ *Id.* at 824.

¹⁴⁶ *Id.* at 823.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 824

¹⁴⁹ *Sabri v. United States*, 541 U.S. 600, 606 (2004).

¹⁵⁰ *Weitz*, *supra* note 3, at 837.

¹⁵¹ U.S. Dep’t of Just., Just. Manual § 9-46.110 (2020).

¹⁵² 172 AM. JUR. PROOF OF FACTS 3d *Proof of Bribery and Extortion in Political Corruption Cases* § 10 (2018).

¹⁵³ James Lockhart, Annotation, *Validity, Construction, and Application of 18 U.S.C.A. § 1346, Providing that, for Purposes of Some Federal Criminal Statutes, Term “Scheme or Artifice to Defraud” Includes Scheme or Artifice to Deprive Another of Intangible Right to Honest Services*, 172 A.L.R. FED. 109 (2001).

¹⁵⁴ *Id.*

¹⁵⁵ *United States v. Sun-Diamond Growers*, 526 U.S. 398, 404–05 (1999).

¹⁵⁶ *See id.*

¹⁵⁷ *See id.* at 404–07.

¹⁵⁸ *Weitz*, *supra* note 3, at 828.

language of 18 U.S.C. § 666 has been construed broadly enough to essentially render this requirement nonexistent. The statutory requirement “intending to be influenced,”¹⁵⁹ by some constructions, requires no explicit acknowledgment from either party.¹⁶⁰ In some cases, the prosecution need only show that there was a common understanding between the parties.¹⁶¹ While this interpretation helps get around some of the clever ways corrupt officials operate, it essentially removes illegal gratuities from the table. If the giver of a gift is aware of a decision that involves them, it can be inferred that any gift they give comes tied to an explicit understanding that that decision will be influenced.

VI. JUDICIAL PUSHBACK TO FEDERAL CORRUPTION PROSECUTION

Not all judicial rulings expand prosecutorial power. In fact, there are a growing number of cases where the Supreme Court has limited how anti-corruption statutes are interpreted. One of the first in this line of cases is *Skilling v. United States*.¹⁶² This landmark case was against the former chief executive officer of the now-infamous Enron Corporation.¹⁶³ Jeffrey Skilling, the former CEO, was accused of committing honest services fraud as a part of his undisclosed self-dealing.¹⁶⁴ Honest service fraud provides a way to prosecute crimes of corruption that do not have a clear victim.¹⁶⁵ The underlying principle is that officials owe their constituents (or shareholders) good faith execution of their duties.¹⁶⁶ This takes the form of an intangible right that can be violated even if no harm to property is done.¹⁶⁷ Corrupt decisions violate the right to honest services by the sole virtue that they are corrupt; no actual harm needs to be shown.¹⁶⁸ For example: If a city administrator has the choice between two private services that are of equal quality and price, but selects one over the other as the result of a bribe, the city administrator has not hurt the residents of the city, but the administrator has acted in bad faith.

Skilling argued that the honest services doctrine was unconstitutionally vague, but the Court declined to take such a drastic step.¹⁶⁹ The Court was willing to confine the range of honest service fraud so that it could only reach bribery and kickback-related schemes.¹⁷⁰ The Court reasoned that under a broad reading, the crime “honest services fraud” could potentially reach areas that created constitutional concerns.¹⁷¹ The Court reasoned that the sort of conflict-of-interest case brought by Skilling must be excluded under a fair reading of the statutory language.¹⁷² In a concurring opinion, Justice Scalia argued that the honest services doctrine should be made entirely unconstitutional, instead of being pared down to only covering bribes and kickbacks.¹⁷³ Despite

¹⁵⁹ 18 U.S.C. § 666(a)(1)(B).

¹⁶⁰ Weitz, *supra* note 3, at 828.

¹⁶¹ *Id.*

¹⁶² *Skilling v. United States*, 561 U.S. 358 (2010).

¹⁶³ *Id.* at 367.

¹⁶⁴ *Id.* at 369.

¹⁶⁵ *See* 18 U.S.C. § 1346.

¹⁶⁶ *See* Lockhart, *supra* note 153.

¹⁶⁷ Weitz, *supra* note 3, at 808–09.

¹⁶⁸ *Id.*

¹⁶⁹ *Skilling*, 561 U.S. at 403.

¹⁷⁰ *Id.* at 404.

¹⁷¹ *Id.*

¹⁷² *Id.* at 414.

¹⁷³ *Id.* at 423–24 (Scalia, J., concurring).

avoiding a conviction for honest services fraud, Jeffrey Skilling was still sentenced to 24 years in prison and was fined 45 million dollars based on his other charges.¹⁷⁴

In *McDonnell v. United States*, the Supreme Court rejected the argument that the term “official act” includes things like setting up meetings, hosting events, or calling other officials to discuss a research study.¹⁷⁵ In this case, Robert McDonnell, a former governor of Virginia, was charged with bribery for receiving improper gifts from a business seeking approval for a new dietary supplement.¹⁷⁶ McDonnell agreed to organize meetings to discuss the company’s product with other officials.¹⁷⁷ Prosecutors argued that organizing these meetings qualified as an official act and consequently violated anti-corruption laws.¹⁷⁸ The Court found these arguments concerning from a constitutional standpoint; allowing a definition so broad to be the basis for prosecution might cause a huge range of normal political activity to be subject to criminal prosecution.¹⁷⁹ In an argument that embodies mandate theory, the Court opined that “[t]he basic compact underlying representative government assumes that public officials will hear from their constituents and act appropriately on their concerns.”¹⁸⁰ Despite not serving prison time, the details surrounding the indictment marked a sharp end to McDonnell’s political career.¹⁸¹

In a recent case, *Kelly v. United States*, the Supreme Court ruled that in order to commit wire fraud, the object of a defendant’s fraud must be property.¹⁸² This case involved a plot to punish a local mayor for not supporting the governor’s reelection campaign by engineering a massive traffic jam.¹⁸³ While the officials involved undoubtedly engaged in deceptive practices to achieve their means, the Supreme Court found that their conduct did not reach the federal wire fraud statute.¹⁸⁴ The officials, in carrying out their scheme, did not seek to deprive anyone of property, or to misappropriate property for themselves.¹⁸⁵ The totality of their plan was petty revenge on a political opponent.¹⁸⁶ While this behavior was shocking, it was not a federal offense.¹⁸⁷ As Justice Kagan opined, “[N]ot every corrupt act by state or local officials is a federal crime.”¹⁸⁸

Despite not facing federal charges, each of the officials involved with the scheme have either been fired or have resigned from the position that they held at the time the plan was enacted.¹⁸⁹ Bridget Kelly, one of the figures central to the scheme, has recently run for public

¹⁷⁴ Scott Cohn, *Former Enron CEO Jeffrey Skilling Wants Back into the Energy Business*, CNBC (Mar. 23, 2019, 12:32 AM) <https://www.cnbc.com/2019/03/23/former-enron-ceo-jeffrey-skilling-wants-back-into-the-energy-business.html> [<https://perma.cc/944J-ZV9G>].

¹⁷⁵ *McDonnell v. United States*, 579 U.S. 550, 567 (2016).

¹⁷⁶ *Id.* at 555.

¹⁷⁷ *Id.* at 556–60.

¹⁷⁸ *Id.* at 563–64.

¹⁷⁹ *Id.* at 567.

¹⁸⁰ *Id.* at 575 (emphasis omitted).

¹⁸¹ See *Gov. Robert McDonnell*, NATIONAL GOVERNORS ASSOCIATION, <https://www.nga.org/governor/robert-mcdonnell/> [<https://perma.cc/L6T2-KSQA>].

¹⁸² *Kelly v. United States*, 140 S. Ct. 1565, 1573–74 (2020).

¹⁸³ *Id.* at 1568–69.

¹⁸⁴ *Id.* at 1574.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Andrea Bernstein & Matt Katz, *The Bridgegate 5: Where Are They Now*, WNYC (Sept. 9, 2014), <https://www.wnyc.org/story/bridgegate-five-where-are-they-now/> [<https://perma.cc/H67T-A27C>].

office and lost.¹⁹⁰ Even without jail time, the judgment of higher-up officials and local voters has largely removed these bad actors from political positions.¹⁹¹

The decision in *Kelly* was largely based on an earlier opinion, *McNally v. United States*, which first began to draw limits around what type of behavior could be prosecuted under a mail fraud statute.¹⁹² In *McNally*, the Court ruled that the mail fraud statute was limited to protection of property rights.¹⁹³ The Court reaffirmed the notion that in order to charge someone with a criminal offense, their conduct must violate the language of a statute.¹⁹⁴ “Rather than construe the statute in a manner that leaves its outer boundaries ambiguous and involves the federal government in setting standards of disclosure and good government for local and state officials, we read § 1341 as limited in scope”¹⁹⁵ The Court continued: “If Congress desires to go further, it must speak more clearly than it has.”¹⁹⁶

These cases demonstrate what may be the start of a trend by the Supreme Court to restrain the breadth of anti-corruption laws. By no means should these opinions create the perception of being soft on corruption; they instead indicate a growing wariness of federal reach when it comes to prosecuting non-federal government officials. Each defendant in these cases behaved in ways that were at best unethical, and at worst illegal. The Court took issue with who was doing the prosecuting, rather than finding the behavior itself acceptable. Despite having sentences reversed or reduced, each of the defendants faced serious consequences for their actions. All of them were removed from their positions of power, many in a career-ending fashion. It is beyond the scope of this Comment to decide whether justice was served in these cases; what is important here is that even when courts found there would be no consequences based on federal law, there were still real consequences for acting in a corrupt manner.

VII. PROPOSAL

Corruption has been, and still is, a major issue that must be addressed. But, like all complex problems, moderation and careful planning are essential to arriving at an optimal solution. There is little doubt that extensive top-down enforcement is capable of stopping corruption.¹⁹⁷ But this sort of remedy comes at a steep price.¹⁹⁸ To paraphrase James Madison: liberty is to disorder as air is to fire; there is never a time when eliminating the first is an adequate solution to the second.¹⁹⁹ Direct interference with local affairs destroys notions of local autonomy and logically restricts voters’ ability to get what they want by limiting the pool of candidates. Moreover, there are other ways to prevent and deal with corruption that are more conducive to a healthy democratic order.²⁰⁰ Rather than arming federal prosecutors with nuclear-grade statutory weapons, the federal

¹⁹⁰ Amanda Hoover, *Bridget Anne Kelly, Key Bridgegate Figure, Loses Race for Bergen County Clerk*, NEW JERSEY.COM, <https://www.nj.com/politics/2021/11/bridget-anne-kelly-key-bridgegate-figure-loses-race-for-bergen-county-clerk.html> (Nov. 4, 2021, 1:04 PM) [<https://perma.cc/8EZF-XBWP>].

¹⁹¹ *See id.*

¹⁹² *See McNally v. United States*, 483 U.S. 350, 356 (1987).

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 360.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *See Cuellar & Stephenson, supra* note 17, at 3–5.

¹⁹⁸ *Id.*

¹⁹⁹ THE FEDERALIST NO. 10 (James Madison).

²⁰⁰ *See Cuellar & Stephenson, supra* note 17, at 6–7.

government should leave local corruption to state and local governments to deal with—only intervening in special cases by indirect means.

The first step is for Congress to redraft statutes that are overly broad to better serve direct federal interests. Like honest service fraud, 18 U.S.C. § 666 is overly broad. Congress should revisit 18 U.S.C. § 666 and legislate more constraints on its use by prosecutors, particularly in municipal settings. Congress should also require misappropriation of federal funds to trigger a violation. If Congress is unable to solve this issue, it is also possible for the Supreme Court to intervene, as it did in *Skilling*, to constrain the interpretations of the language.²⁰¹ As the prosecutorial history of 18 U.S.C. § 666 has shown, restrictive language will not prevent broad application by itself.²⁰² The judiciary should play a role in limiting the language of criminal statutes. On the topic of bribery, the Supreme Court has opined that “a statute in this field that can linguistically be interpreted to be either a meat axe or a scalpel should reasonably be taken to be the latter.”²⁰³

Ultimately, 18 U.S.C. § 666 should be reconfigured to ensure that it only applies to matters that are logically connected to the federal government. While widespread systemic corruption at the local level is something that might require federal intervention, local governments should be allowed to deal with isolated incidents of bribery and kickbacks.²⁰⁴ Local hearings and sanctions can appropriately remove offenders from office, and state laws can allot criminal punishment if needed.²⁰⁵

The American Bar Association (“ABA”) recommends decriminalizing conflict of interest policies.²⁰⁶ In its view, broad and vaguely defined statutes carry the risk of creating a chilling effect on public officials who may fear accidentally triggering criminal liability.²⁰⁷ The ABA would instead have these matters resolved by administrative or civil proceedings, and reserve criminal liability for exceptional cases where a knowing and corrupt abuse of power can be shown.²⁰⁸ In addition, increasing ethics education and transparency are also factors that could relieve the need for criminal prosecution.²⁰⁹ By cultivating an ethically supportive environment, civil employees would have a heightened awareness of ethically risky situations, and would have access to non-judgmental processes for resolutions.²¹⁰ The ABA is not alone in its belief that certain anti-corruption violations should be decriminalized. Former Attorney General Richard Thornburgh also feels that civil and administrative remedies might help reduce a broader problem with overcriminalization.²¹¹

In tandem with reduced federal criminalization, steps should be taken at the local level to ensure corruption can be dealt with in-house. Increasing financial transparency is one way to make misappropriation of public funds more difficult.²¹² Not only does it apply passive pressure on an officeholder to behave well, but it provides voters with the tools they need to make educated

²⁰¹ See *Skilling v. United States*, 561 U.S. 358, 408–09 (2010).

²⁰² See *supra* notes 121–61 and accompanying text.

²⁰³ *United States v. Sun-Diamond Growers*, 526 U.S. 398, 412 (1999).

²⁰⁴ See Farina, *supra* note 110, at 305.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ Weitz, *supra* note 3, at 833.

²¹² Cuellar & Stephenson, *supra* note 17, at 37.

decisions about their representative's ethical choices.²¹³ Even if a politicians are acting on what they subjectively consider "good behavior," transparency will ensure that voters are able to decide for themselves what is acceptable.²¹⁴ A side benefit to both financial and regulatory transparency is an increase in public trust for government.²¹⁵ Overcomplication of ethics regulation can create the perception that local officials cannot be trusted.²¹⁶ By making the ethical standards expected of politicians more intuitive and clear, politicians are treated by the law and looked upon by the public as being more trustworthy.²¹⁷ Localities should also encourage competitive elections for as many positions as possible. Competitive elections create incentives for political rivals to research and expose the wrongdoings of their opponents.²¹⁸ Competitive elections can also encourage local politicians to seek out wider voter bases, ensuring they are less swayed by self-serving interests.²¹⁹ Finally, the federal government could lend its resources for investigation to state and local agencies. This would empower localities to conduct meaningful investigations into suspicious activity without losing control over the operation.²²⁰

VIII. CONCLUSION

Corruption is a terrible thing, but it must be dealt with the right way, by the right people. Ultimately, the goal should be to reduce abuse of power, and to strengthen local voters' connection to their government. Local government plays a key role in our democracy. Permitting meaningful self-governance requires a careful balance between federal intervention and local control. While corruption at the local level is a real problem, there is reason to believe it could be handled more appropriately by state or local laws. Trust in local governments is an important part of their independent function.

Prosecutors play an important role in upholding and protecting our legal system. But like all people in positions of power, they are subject to pressures that may lead them to misuse that power. Vaguely drafted laws and permissive courts have enabled this negative trend. The resulting interference with local autonomy is likely not a result any singular party intended, but it is still the unfortunate product. Not only will prosecutors need to adjust the way they pursue corruption, but the tools they use also need refining.

The federal arsenal's "beast," 18 U.S.C. § 666, is a statute that fills an important niche in the statutory framework.²²¹ It allows the federal government to protect its money, even after it enters the hands of local stewards. However, as the result of progressively broader readings, 18 U.S.C. § 666 has morphed into a general-purpose anti-corruption statute that allows prosecution of activity that hardly makes sense.

²¹³ Lena Eisenstein, *Why Is Transparency Critical in Local Government?*, DILIGENT (June 19, 2019), <https://www.diligent.com/insights/public-transparency-local-government/why-transparency-critical-local-government/> [https://perma.cc/5QNF-3SBA].

²¹⁴ *See id.*

²¹⁵ Farina, *supra* note 110, at 293–94.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ Gary S. Becker, *If You Want to Cut Corruption, Cut Government*, BLOOMBERG (Dec. 10, 1995, 11:00 PM), <https://www.bloomberg.com/news/articles/1995-12-10/if-you-want-to-cut-corruption-cut-government> [https://perma.cc/BPB9-J6QD].

²¹⁹ *See generally* DE MESQUITA & SMITH, *supra* note 40.

²²⁰ Ruff, *supra* note 7, at 1210.

²²¹ Weitz, *supra* note 3, at 815–16.

When statutes like 18 U.S.C. § 666 are allowed to be read as broadly as they are, it is not hard to imagine how they may be leveraged for political gain. A redrafting or reinterpretation of 18 U.S.C. § 666 could ensure that it is used for its originally intended role, rather than overused as a political tool. In addition, there are steps that localities can take themselves to reduce corruption, and thus reduce the perceived need for federal intervention. If the law treats local officials as though they are trustworthy, the public will follow suit. With heightened transparency and clear, intuitive requirements for behavior, the voting public might be able to serve as the most powerful check against corruption. With careful implementation of these ideas, localities could enjoy more freedom to operate as they see fit, without an influx of corruption.