

The Case

Questions Presented

1. Regarding the defendant-appellant's conviction for misapplication of funds in violation of 18 U.S.C. § 666:

a. Whether the district court erred in instructing the jury that § 666 criminalizes the use of government money for personal political ends by an official with control over that money, and if so, whether a correct instruction would require dismissal of the indictment.

b. Whether the evidence adduced at trial was sufficient to convict on the jury instruction given.

2. Regarding the defendant-appellant's conviction for conspiracy against rights under 18 U.S.C. § 241 and deprivation of rights under 18 U.S.C. § 242:

a. Whether the district court erred in instructing the jury that the right to vote includes a guarantee of freedom from illegitimate, intentional government interference with the free exercise of that right and if so, whether a correct instruction would require dismissal of the indictment.

b. Whether the evidence adduced at trial was sufficient to convict on the jury instruction given.

Case Summary

This problem involves an appeal from criminal convictions under 18 U.S.C §§ 241 (“Conspiracy against rights”), 242 (“Deprivation of rights under color of law”), and 666 (“Theft or bribery concerning programs receiving federal funds”). The first issue concerns whether the use of government money for personal political ends by an official with control over that money constitutes a “misapplication” of funds under § 666. The second issue concerns whether a campaign to deceive voters into removing themselves from voter rolls constitutes a violation of “clearly established” rights within the meaning of §§ 241 and 242.

In the aftermath of the 2016 election, Congress decided to pass legislation for the purpose of protecting election machinery and restoring voter confidence in the election process, culminating in the “Stop Threats to Our Polls and Recreate Understanding, Security, Safety, and Integrity in America Act” of January 25, 2017 (“STOP RUSSIA Act”). The STOP RUSSIA Act allocated funds to the states for these purposes, but instructed that states could not use any of these funds to prevent voting by lawfully registered voters.

The governor and secretary of state of Catan, a state within the jurisdiction of the 7th Circuit, decided to accept these funds and oversee a grant program providing money to third parties for voter registration campaigns. The secretary of state (“SOS”), Jeffrey Greene, used the money to establish a program to restore voter confidence. Greene, a member of the National Party (one of Catan’s two dominant political parties along with the Future Party), instructed his staff to select third-party organizations to implement the program by setting up a bidding program, and the Secretary of State’s Office published an invitation to bid on February 1, 2017.

After the invitation to bid was announced, Cheryl David, a longtime associate of Greene’s who had served as his chief of staff in the past, notified Greene that Defenders of American Prosperity (“DAP”), a nonprofit organization run by David, planned to submit a bid. Greene then directed his subordinates to award a grant to DAP without scoring DAP’s bid under the terms of the SOS’s invitation to bid. On March 19, 2017, the SOS’s office awarded a grant to DAP in the amount of \$15,000. In the following weeks, Greene and David had several conversations regarding the design of mailers DAP would produce and distribute



using STOP RUSSIA funds pursuant to its contract with the State of Catan.

In April of 2017, DAP distributed mailers to Future Party voters in low-information, low-turnout areas of Catan. The mailers contained misleading information, warning voters that they could be prosecuted for voting if they had ever been arrested for marijuana possession or drunk driving and reminding voters of the substantial penalties for voter fraud. The actual state laws only prevented voters with felony convictions from voting, and the crimes listed in the mailers tended to be misdemeanors. The mailers also encouraged voters to voluntarily remove their names from the state's voter rolls if they believed themselves to be in violation of any provision of Catan law.

Media organizations quickly discovered the DAP mailers and publicized the falsehoods. Amid this outcry, David was arrested by agents from the IRS on charges unrelated to the distribution of the mailers. Following her arrest, David confessed that she and Greene had conspired to deceive voters receiving the mailers into removing themselves from the voter rolls. David agreed to plead guilty to various offenses and to cooperate with the government's investigation and prosecution of Greene in exchange for the government's recommendation of a reduced sentence for David.

On May 5, 2017, a grand jury issued an indictment charging Greene with misapplying federal funds (those received under the STOP RUSSIA Act) in violation of 18 U.S.C. § 666, conspiring to deprive citizens of the right to vote in violation of 18 U.S.C. § 241, and actually depriving citizens of the right to vote in violation of 18 U.S.C § 242.

At trial, David testified that Greene had orchestrated the scheme to send the misleading mailers to Catan voters and that his intention was to get voters to deregister. Additionally, several voters testified that they did in fact deregister after receiving the misleading mailers. Over objection by Greene's counsel, the district court judge instructed the jury that § 666 criminalizes the use of government money for personal political ends by an official with control over that money and that the Constitution of the United States guarantees the right to vote, free from illegitimate, intentional government interference with the free exercise of that right.

The jury found Greene guilty of violating 18 U.S.C. §§ 241, 242, and 666. Greene filed a post-verdict motion for judgment of acquittal, arguing that the district court's jury instructions were in error and that the evidence adduced at trial was insufficient to support the jury's verdict. The government filed a motion in opposition, arguing that the district court's jury instructions were proper and that the trial record contained sufficient evidence to sustain the jury's verdict. The district court issued an opinion denying the defendant's motion for judgment of acquittal and entered a final judgment on September 29, 2017. On October 5, 2017, the defendant filed a timely notice of appeal.

The Court

The Honorable Kim Wardlaw, United States Court of Appeals for the 9th Circuit



Judge Kim McLane Wardlaw was confirmed on the U.S. Court of Appeals for the 9th Circuit on July 31, 1998. She had previously served on the U.S. District Court for the Central District of California. Judge Wardlaw graduated from UCLA, summa cum laude and Phi Beta Kappa, in 1976, and from UCLA Law School. In law school, she was awarded Order of the Coif and Outstanding Graduate of the Class, in 1979. Prior to her judicial appointment, Judge Wardlaw was a litigation partner of the international law firm O'Melveny & Myers and served in various offices of the Women Lawyers Association of Los Angeles, the Women Lawyers Public Action Grant Foundation, and the Association of Business Trial Lawyers. Also while in private practice, Judge Wardlaw was involved in numerous community, political, and government activities. She served as a law clerk for District Court Judge William P. Gray in the Central District of California.

The Honorable Bob Bacharach, United States Court of Appeals for the 10th Circuit



Judge Bob Bacharach was appointed to the U.S. Court of Appeals for the 10th Circuit on February 28, 2013. He graduated from Washington University School of Law in 1985, where he was awarded Order of the Coif and served on the law review's executive editorial board. After law school, Judge Bacharach clerked for Judge William J. Holloway Jr. in the 10th Circuit Court of Appeals. Prior to his current appointment, he practiced civil litigation for more than 12 years at Crowe & Dunlevy in Oklahoma City and earlier served as a U.S. magistrate judge in the Western District of Oklahoma for 14 years. He is the author of five articles and a co-author of a sixth that have been published in the *Indiana Law Review*, *Oklahoma Law Review*, *Oklahoma City University Law Review*, *Memphis State University Law Review*, and *Washington University Law Quarterly*.

The Honorable Cornelia T.L. Pillard, United States Court of Appeals for the District of Columbia Circuit



Judge Cornelia T.L. Pillard was appointed to the United States Court of Appeals for the District of Columbia Circuit in December 2013. She graduated from Yale College in 1983 and Harvard Law School in 1987. Following graduation, she served as a law clerk to Judge Louis H. Pollak, and then held the Marvin M. Karpatkin Fellowship at the American Civil Liberties Union. From 1989 to 1994 Judge Pillard was assistant counsel at the NAACP Legal Defense and Educational Fund and then served as an assistant to the solicitor general of the United States until 1997. Pillard then joined faculty of Georgetown Law. She served from 1998 to 2000 as deputy assistant attorney general in the Office of Legal Counsel and then returned to Georgetown Law, where she served from 2008 to 2009 as inaugural academic co-director and professor at the Center for Transnational Legal Studies, a London-based, Georgetown-led law study program. Pillard was an active member of the Georgetown Law Supreme Court Institute from its founding in 2003, and became the institute's faculty co-director in 2011. She was a fellow of the Woodrow Wilson International Center for Scholars during 2012–2013.

A Note from the Student Co-Directors



It has been an honor to serve as directors of the Harlan Fiske Stone Moot Court Competition of the Paul, Weiss, Rifkind, Wharton & Garrison Moot Court Program in our final year of law school. In creating this problem, we hoped to provide our competitors with a challenging and interesting fact pattern that brought together several areas of law and forms of legal analysis. Watching our competitors bring this problem to life has been immensely rewarding.

Over the past eight months, we have enjoyed working with this year's 56 competitors. We have been immensely impressed by their dedication, enthusiasm, intellectual curiosity, and rigor. To reach the finals, our competitors had to make it past hours of demanding arguments, a cadre of high-level competitors, and a series of exacting judges. After all that, we are sure that the finals will include some of the best law-student oral advocates in the country.

We are grateful to be a part of this competition, now in its 93rd year. It was humbling to meet the alumni of the Law School, representing more than six decades of graduates, and other qualified attorneys who participated as judges. We hope that a diverse array of other alumni will continue to use the Harlan Fiske Stone Moot Court Competition as a way to connect back to current Columbia Law School students.

To all our competitors, judges, bailiffs, professors, and fellow moot court directors, it was an honor to work with you all. We hope you enjoy the final argument.

S. Julia Choi '18 is the executive director of the Columbia Law School Moot Court Programs, and Sam Callaghan '18 and Gideon Hanft '18 are the co-directors of the Harlan Fiske Stone Moot Court Competition of the Paul, Weiss, Rifkind, Wharton & Garrison Moot Court Program.