

# ORANGE COUNTY REGISTER

## Supreme Court unanimous, but wrong

[By ERWIN CHEMERINSKY](#)

2016-07-27 17:38:11

In the flurry surrounding the end of the Supreme Court's term, too little attention was paid to an important case that will make it far harder to prosecute government corruption. In *McDonnell v. United States*, the Supreme Court redefined what is misconduct by elected officials sufficient to violate federal law. From the earliest days of law school, I have taught my students that just because the Supreme Court decides something doesn't mean it is right, even if the court is unanimous. I think the court got it wrong in *McDonnell*.

Robert McDonnell was the governor of Virginia. He and his wife, Maureen, received more than \$175,000 in gifts and loans from Virginia businessman Jonnie Williams. Williams took Maureen McDonnell on a shopping trip and bought her \$20,000 of designer clothes, Williams gave the McDonnells \$15,000 for their daughter's wedding and Williams gave the McDonnells \$70,000 in loans.

Williams, of course, had a reason for doing all of this. Williams was the CEO of Star Scientific, a Virginia-based company that developed and marketed Anatabloc, a nutritional supplement. Star Scientific wanted to obtain Food and Drug Administration approval of Anatabloc as an anti-inflammatory drug. A crucial step in securing that approval was independent research studies on the health benefits of Anatabloc. Williams and Star Scientific hoped Virginia's public universities would undertake such studies, pursuant to a grant from Virginia's Tobacco Commission.

McDonnell introduced Williams to key state officials and hosted dinners with Williams and Virginia policymakers in attendance. McDonnell met with the Virginia secretary of administration and the director of the Department of Human Resource Management and told them that he was taking Anatabloc, saying that the pills "were working well for him" and "would be good for" state employees.

McDonnell was convicted under federal anti-corruption laws, and the federal court of appeals affirmed the conviction. It seems obvious that he used his government position for his own personal gain. But the Supreme Court, in a unanimous opinion on June 27, reversed the convictions. Chief Justice John Roberts wrote the opinion for the court. The court said that federal law is violated only if a government official commits an "official act." The court concluded that "official act" requires a decision or an action; it must involve a formal exercise of governmental power.

The court concluded that McDonnell did not engage in any official act because all he did was introduce Williams to government officials and set up meetings.

Although the justices were unanimous, I believe that the court interpreted “official act” far too narrowly. Making introductions and arranging meetings and providing endorsements are all, by definition, actions taken as a government official. McDonnell could and did take these actions entirely because he was governor and in that role could do so. The conduct was done in exchange for a substantial amount of money. Government officials should not be using their positions for their own personal gain. Period. The federal anti-corruption laws were intentionally broadly written and meant to be broadly interpreted.

If I were to get \$10,000 or a Rolex watch (something else that McDonnell received from Williams) in exchange for recommending a student for admission to UC Irvine Law School or personally introducing the student to the Law School admissions dean, I surely would have taken an official action. I do not have the authority to admit a student to UC Irvine Law School and never once have been involved in any admission decision. But I likely have influence with the admissions dean who reports to me and with my colleagues on the admissions committee. That influence never should be for sale. Using my influence in exchange for money should be illegal, whether or not the student was actually accepted for admission, or would have been accepted regardless. Government officials have influence even when there is not a formal decision, and their actions never should be in exchange for money or things of value.

The Supreme Court’s decision in *McDonnell v. United States* will make it harder for the government to prosecute and convict those who misuse their official power for their personal gain. I don’t care if it was unanimous. The court was wrong.

*Erwin Chemerinsky is dean of the UC Irvine School of Law.*

© Copyright 2016 Freedom Communications. All Rights Reserved.