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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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SABRI *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 03–44. Argued March 3, 2004—Decided May 17, 2004

After petitioner Sabri offered three separate bribes to a Minneapolis councilman to facilitate construction in the city, Sabri was charged with violating 18 U. S. C. §666(a)(2), which proscribes bribery of state and local officials of entities, such as Minneapolis, that receive at least $10,000 in federal funds. Before trial, Sabri moved to dismiss the indictment on the ground that §666(a)(2) is unconstitutional on its face for failure to require proof of a connection between the federal funds and the alleged bribe, as an element of liability. The District Court agreed, but the Eighth Circuit reversed, holding that the absence of such an express requirement was not fatal, and that the statute was constitutional under the Constitution's Necessary and Proper Clause in serving the objects of the congressional spending power.

Held: Section 666(a)(2) is a valid exercise of Congress's Article I authority. Pp. 3–9.

(a) Sabri's "facial" challenge that §666(a)(2) must, as an element of the offense, require proof of connection with federal money is readily rejected. This Court does not presume the unconstitutionality of all federal criminal statutes from the absence of an explicit jurisdictional hook, and there is no occasion even to consider the need for such a requirement where there is no reason to suspect that enforcing a criminal statute would extend beyond a legitimate interest cognizable under Article I, §8. Congress has Spending Clause authority to appropriate federal moneys to promote the general welfare, Art. I, §8, cl. 1, and corresponding Necessary and Proper Clause authority, Art. I, §8, cl. 18, to assure that taxpayer dollars appropriated under that power are in fact spent for the general welfare, rather than frittered away in graft or upon projects undermined by graft. See, *e.g.,*

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McCulloch v. *Maryland,* 4 Wheat. 316. Congress does not have to accept the risk of getting poor performance for its money, owing to local and state administrators' improbity. See, *e.g.*, *id.,* at 417. Section 666(a)(2) addresses the problem at the sources of bribes, by rational means, to safeguard the integrity of federal dollar recipients. Although not every bribe offered or paid to covered government agents will be traceably skimmed from specific federal payments, or be found in the guise of a *quid pro quo* for some dereliction in spending a federal grant, these facts do not portend enforcement beyond the scope of federal interest, for the simple reason that corruption need not be so limited in order to affect that interest. Money is fungible, bribed officials are untrustworthy stewards of federal funds, and corrupt contractors do not deliver dollar-for-dollar value. It is enough that the statute condition the offense on a threshold amount of federal dollars to the government such as that provided here and a bribe that goes well beyond liquor and cigars. The legislative history confirms that §666(a)(2) is an instance of necessary and proper legislation. Neither of Sabri's arguments against §666(a)(2)'s constitutionality helps him. First, his claim that §666 is of a piece with the legislation ruled unconstitutional in *United States* v. *Lopez,* 514 U. S. 549, and *United States* v. *Morrison,* 529 U. S. 598, is unavailing because these precedents do not control here. In them, the Court struck down federal statutes regulating gun possession near schools and gender-motivated violence, respectively, because it found the effects of those activities on interstate commerce insufficiently robust. Here, in contrast, Congress was within its prerogative to ensure that the objects of spending are not menaced by local administrators on the take. Cf. *Lopez, supra,* at 561. Second, contrary to Sabri's argument, §666(a)(2) is not an unduly coercive, and impermissibly sweeping, condition on the grant of federal funds, but is authority to bring federal power to bear directly on individuals who convert public spending into unearned private gain. *South Dakota* v. *Dole,* 483 U. S. 203, distinguished. Pp. 3–7.

(b) The Court disapproves Sabri's technique for challenging his indictment by facial attack on the underlying statute. If Sabri was making any substantive constitutional claim, it had to be seen as an overbreadth challenge; the most he could seriously say was that the statute could not be enforced against him, because it could not be enforced against someone else whose behavior would be outside the scope of Congress's Article I authority to legislate. Facial challenges of this sort are to be discouraged because they invite judgments on fact-poor records and entail a departure from the norms of federal-court adjudication by calling for relaxation of familiar standing requirements to allow a determination that the law would be unconsti-

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tutionally applied to different parties and different circumstances from those at hand. See, *e.g.*, *Chicago* v. *Morales,* 527 U. S. 41, 55–56, n. 22. Thus, the Court has recognized the validity of facial attacks alleging overbreadth (though not necessarily using that term) in relatively few settings, and, generally, only on the strength of a specific reason, such as free speech, that is weighty enough to overcome the Court's well-founded reticence. See, *e.g.*, *Broadrick* v. *Oklahoma,* 413 U. S. 601. Pp. 8–9.

326 F. 3d 937, affirmed and remanded.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, GINSBURG, and BREYER, JJ., joined, and in which KENNEDY and SCALIA, JJ., joined as to all but Part III. KENNEDY, J., filed an opinion concurring in part, in which SCALIA, J., joined. THOMAS, J., filed an opinion concurring in the judgment.