

McDonnell v. United States

ABOUT

Former Virginia Governor Robert F. McDonnell was convicted on public corruption charges for accepting \$175,000 in gifts and loans—including a Rolex watch, a custom golf bag, and expensive vacations and shopping sprees—from multi-millionaire Jonnie Williams, and then using his official position to promote the interests of Williams and his company, Star Scientific.

Gov. McDonnell appealed his conviction to the U.S. Supreme Court arguing, among other things, that campaign finance cases like *Citizens United v. FEC* (2010) and *McCutcheon v. FEC* (2014) recognized a “fundamental constitutional right” under the First Amendment to buy “access” to public officeholders.

But those cases never recognized the “purchase of access” as a constitutional right. What’s more, the Court’s 2003 decision in *McConnell v. FEC* explicitly acknowledged that because “large soft money donations . . . are likely to buy donors preferential access,” those types of campaign contributions can be limited.

In any case, Gov. McDonnell was not convicted for receiving campaign contributions, which are protected under the First Amendment, but instead for taking \$175,000 in personal gifts and loans, which are not. And he did far more than provide mere “access” to Williams in the way an official might take a donor’s phone call; instead, he facilitated access to other governmental officials and exerted his considerable influence over those officials in an effort to secure the governmental actions requested by Williams.

WHAT’S AT STAKE

For the last several years, five justices on the U.S. Supreme Court have been sympathetic to challenges to campaign finance regulations, and by putting a First Amendment gloss on corruption, McDonnell is hoping that bribery laws will be their next target. But as the Campaign Legal Center lays out in an *amicus curiae* brief, he simply goes too far. If McDonnell is successful in getting the Court to recognize a constitutional right to buy “access” and to extend protections for campaign spending to private gifts to elected officials, then government truly is for sale.