INTRODUCTION

On September 4, 2014, a jury found former Virginia Governor Bob McDonnell and his wife, Maureen, guilty of committing a variety of public corruption crimes, including conspiracy, bribery, and extortion.1 The convictions represented the culmination of investigations and trial preparations that lasted several years. In many ways, the prosecution of the McDonnells provides insight into the unique circumstances that often surround public corruption investigations and the difficulties that authorities face in discovering that wrongdoing has occurred.

Authorities were first alerted to potential criminal activity by a seemingly random source: the couple’s chef. In 2012, Virginia State Police officers began investigating the firing of the executive chef of the governor’s mansion for allegedly stealing food.2 As they pursued the case against him, officers learned that a businessman, Jonnie Williams, had paid $15,000 to cover the catering costs of the McDonnells’ daughter’s wedding the year before.3 After discovering that the couple had not properly disclosed this gift, authorities began to probe more deeply into the couple’s relationship with Williams. Investigators learned that the McDonnells had accepted over $165,000 in loans and luxury gifts in exchange for promoting Williams’s dietary supplements company.4 Ultimately, Mr. McDonnell was convicted on eleven counts while Mrs. McDonnell was convicted on nine counts resulting from their relationship with Williams.5 They were sentenced to

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3. Id.
two years in prison\textsuperscript{6} and one year and one day in prison,\textsuperscript{7} respectively.

The downfall of the McDonnells, based on an initial tip from their chef, shows that the discovery of public corruption is often fortuitous. By its nature, public corruption is highly secretive and frequently unreported.\textsuperscript{8} Participants within the schemes are typically highly sophisticated actors who strive to avoid detection.\textsuperscript{9} The public officials who are involved are often intimately familiar with the corruption laws at issue, as well as potential loopholes, because the legislative bodies to which they belong often crafted the criminal statutes.\textsuperscript{10} The victims of public corruption—constituents and taxpayers—may not easily recognize that the redirection of officials’ attention and the increased costs and low quality of public works are the result of specific criminal acts of corruption.\textsuperscript{11} To become alerted of wrongdoing, authorities must often rely on tips from third parties—such as the chef in the McDonnells’ case—since evidence of corruption is seldom readily apparent. Third parties that report wrongdoing typically include auditing, law enforcement, and intelligence services,\textsuperscript{12} journalists,\textsuperscript{13} cooperating witnesses to the questionable dealings,\textsuperscript{14} or whistleblowers who risk their positions and reputations to come forward with allegations of misconduct.\textsuperscript{15}

In situations when public corruption is actually discovered, investigating the alleged wrongdoing often requires more time-consuming methods and resources than ordinary criminal investigations. Because of the high profiles of the figures

\begin{thebibliography}{9}
\bibitem{8} \textit{See, e.g.}, Frank Anechiarico & James A. Jacobs, \textit{The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective}, at xiv (1996) (describing the difficulty in assessing whether corruption has increased or decreased over time in part because it is so rarely reported or disclosed).
\bibitem{9} \textit{See generally} John T. Noonan, Jr., \textit{Bribes} (1984).
\bibitem{10} \textit{See, e.g.}, Thomas Kaplan, William K. Rashbaum & Susanne Craig, \textit{After Ethics Panel Shutdown, Loopholes Live On in Albany}, \textit{N.Y. TIMES} (Dec. 8, 2014), http://www.nytimes.com/2014/12/08/nyregion/after-moreland-commission-shutdown-by-gov-cuomo-loopholes-live-on-in-albany.html (“In Albany, some of the most questionable conduct by elected officials has long been perfectly legal, safeguarded by the only people who can outlaw it: the lawmakers themselves.”).
\end{thebibliography}
being investigated, authorities must act with particular sensitivity to avoid any unwarranted publicity that may affect officials’ ability to serve the public, particularly before charges are filed. Additionally, as is common in many white-collar crimes, the evidence at issue in public corruption cases often includes significant amounts of paperwork. Assessing the documents for relevance to the case and determining whether there is sufficient evidence of wrongdoing to warrant additional investigation is often a highly time-consuming process.

Several institutional challenges have further complicated the difficulties of investigating alleged public corruption in a timely fashion. In the aftermath of the terrorist attacks of September 11, 2001, the FBI and other federal law enforcement agencies shifted their focus from investigating white-collar criminal activity to counterterrorism prevention. In practice, this redirection of attention reduced the manpower and funding available to investigate allegations of public corruption. Recent budgetary constraints—such as the $1.67 billion reduction of the budget of the Department of Justice in the fiscal year 2013 as part of the government sequestration—have undoubtedly made such investigative tasks more difficult as well. Following wrongdoing that prosecutors committed in a previous public corruption investigation, the Department of Justice instituted a new internal policy suggesting the need for even more thorough and sensitive investigations of allegations before charges are pursued. Abiding by this guidance has likewise added to the time required before indictment.

The increased challenges in investigating and prosecuting public corruption have coincided with a dramatic increase in public pressure to hold officials accountable for their wrongdoing. One possible way to alleviate some of these challenges is to increase the time available for investigators and prosecutors to

20. A notable recent example was the investigation and prosecution of Senator Ted Stevens, whose conviction was ultimately voided because of prosecutorial misconduct that included witholding exculpatory evidence from the defense. See Rob Cary, Not Guilty: The Unlawful Prosecution of U.S. Senator Ted Stevens (2014); see also Jeffrey Toobin, Casualties of Justice: The Justice Department Clearly Wronged Senator Ted Stevens. Did It Also Wrong One of Its Prosecutors?, New Yorker (Jan. 3, 2011), http://www.newyorker.com/magazine/2011/01/03/casualties-of-justice.
21. Gallup polls found that between 2006 and 2013, the percentage of Americans who believe that corruption is “widespread throughout the government in this country” increased twenty percent, from fifty-nine to seventy-nine percent of respondents. See Jon Clifton, Americans Less Satisfied With Freedom: Perceived
bring charges for public corruption offenses. The federal statute of limitations for public corruption crimes currently stands at five years. Reducing the time pressure may also produce more thorough investigations. With more time available, authorities may feel less rushed in pursuing allegations. In so doing, they may avoid pursuing innocent suspects in order to meet the five-year window, and prevent negative publicity, marred reputations, and lost positions.

Prosecutors have long recognized the inadequacy of five years and have devised strategies in charging suspects to circumvent the restrictions imposed by the statute of limitations. Congress, too, has been aware of these concerns for several years, as both the House and the Senate have considered proposals to extend the statute of limitations for public corruption crimes. This Note argues that the federal statute of limitations for public corruption crimes should be extended to at least six years. Using a case study of a specific public corruption offense, bribery, this Note examines the law as it currently stands, evaluates the existing difficulties the statute of limitations has imposed on prosecutors and investigators, and explores a possible way to minimize these challenges by extending the statute of limitations.

Part I of this Note examines the statutes at issue. It first looks at the two criminal statutes for bribery, 18 U.S.C. § 201 and 18 U.S.C. § 666, and then reviews the general federal statute of limitations, 18 U.S.C. § 3282. Part II surveys prosecutors’ attempts to circumvent the statute of limitations by characterizing the criminal activity as a continuing offense or through classification of bribery as part of a continuing course of criminal conduct. It analyzes how courts have reacted to the use of these strategies and describes the circuit split that has developed regarding the continuing course of criminal conduct doctrine. Part III argues that prosecutors, through their unique characterization of bribery in each case, should not have the power to effectively extend the statute of limitations. Instead, Congress should act explicitly by passing a statute that provides additional time for public corruption prosecution. Part IV assesses Congress’s repeated failures to extend the statute of limitations and examines its shortcomings in enacting reforms for how public corruption is prosecuted. Finally, Part V proposes a strategy to gain passage for this change by separating the statute of limitations extension from the more robust and controversial legislative proposals Congress previously considered. This Part situates the proposed extension within a history of other statute of limitations extensions Congress passed in recent decades upon recognizing the unique challenges prosecutors face.


23. See infra Part II.


I. THE STATUTES AT ISSUE

Prosecutors rely on a variety of criminal statutes when pursuing charges for public corruption.26 Most often, the offenses include: bribery,27 illegal gratuities,28 extortion,29 federal program fraud and bribery,30 honest services fraud,31 criminal conflict of interest,32 kickbacks,33 false statements,34 false claims,35 theft of government property,36 theft by government officials,37 conspiracy,38 and violations of the Racketeer Influenced and Corrupt Organizations Act (RICO),39 among others. For the sake of convenience, this Note focuses on bribery charged under 18 U.S.C. § 201 and 18 U.S.C. § 666. These statutes will serve as case studies to demonstrate the difficulties investigators and prosecutors face in pursuing public corruption charges within the five-year statute of limitations imposed by 18 U.S.C. § 3282.

A. 18 U.S.C. § 201

Bribery charged under 18 U.S.C. § 201 criminalizes actions committed by both the giver and receiver of the bribe, and targets both federal public officials and witnesses.40 To prove bribery under 18 U.S.C. § 201, the government must demonstrate that: (i) a thing of value was given, offered, agreed, or promised (or was demanded, sought, received, agreed, or accepted by the recipient), (ii) to a present or future federal public official (or witness), (iii) for an “official act,” (iv) with a corrupt intent or an intent to influence (or for the recipient to be influenced).41 The Supreme Court has held that for bribery to be charged under 18 U.S.C. § 201, “there must be a *quid pro quo*—a specific intent to give or receive something of value in exchange for an official act.”42 Bribery differs from gratuity charged under 18 U.S.C. § 201 in that bribery requires a stricter connection

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27. 18 U.S.C. § 201(b).
between the thing of value and the official act as a quid pro quo. For a gratuity, the connection can be looser. For example, a gratuity may be given in an attempt to “curry favor” with the official, or after the act has been performed as a form of gratitude rather than in exchange for the act.

B. 18 U.S.C. § 666

18 U.S.C. § 666 targets bribery committed by agents and employees of organizations and government entities that receive over $10,000 in federal funds over a twelve-month period. In particular, the statute criminalizes the solicitation, offer, or acceptance of bribes that are connected with any business or transaction of the federally funded agency and involve any thing of value of $5,000 or more. Unlike 18 U.S.C. § 201, which targets federal officials, 18 U.S.C. § 666 reaches state and local officials and government contractors since nearly all states and municipalities receive federal funds in some form that exceed $10,000 each year. While 18 U.S.C. § 201 focuses on the specific office held by the official and the role he or she performs, 18 U.S.C. § 666 instead links prosecution to whether the organization or agency to which the official belongs receives funding from the federal government. Although the statute was initially enacted as a measure to protect federal funding, courts have broadly expanded its reach for the purpose of prosecuting corrupt activity. The Supreme Court has held that prosecutors pursuing charges under 18 U.S.C. § 666 need not prove that the bribe actually affected federal funds in some way, and further clarified that no nexus is required between the federal funds and the corrupt activity at issue.
C. 18 U.S.C. § 3282

Prosecutors charging bribery under both 18 U.S.C. § 201 and 18 U.S.C. § 666 are restricted by the standard statute of limitations for federal crimes, 18 U.S.C. § 3282. The statute provides that for a person to be prosecuted, tried, or punished for any non-capital offense, an indictment must be found or information must be instituted within five years after the commission of the offense. Although Congress has on occasion extended the statute of limitations for certain criminal offenses beyond the standard five years, 18 U.S.C. § 3282 still applies for bribery charged under both 18 U.S.C. § 201 and 18 U.S.C. § 666.

II. PROSECUTORS’ ATTEMPTS TO CIRCUMVENT THE STATUTE OF LIMITATIONS

In targeting public corruption, prosecutors must face the reality that such wrongdoing is rarely disclosed in a timely fashion. In cases when it is discovered, complex and time-consuming investigations are required before a suspect can be charged. In response to this situation, prosecutors have attempted to employ certain legal strategies to circumvent the statute of limitations and target criminal activity that occurred over five years before indictment. Two particular strategies include characterization of bribery as a continuing offense and application of the continuing course of criminal conduct doctrine to bribery. Although both prosecutors and courts sometimes use these two terms interchangeably, this Note will treat them as two distinct strategies and will analyze the application of each one separately when applied to bribery.

A. Continuing Offenses

The statute of limitations is generally calculated from the time when the elements of an offense are met and the crime is considered “complete.” In such situations, the offense is treated as a “‘discrete act’ that occurs at a single, immediate period of time” and causes harm that occurs in that moment and does
Continuing offenses, in contrast, are acts that continue to perpetuate harm after the elements have been met. They are distinct from common schemes of separate offenses that extend over time, and they are not ongoing series of repeated criminal violations. The concept applies to situations where the defendant’s harmful conduct extends beyond the illegal act. Because a crime continues to be committed each moment in which the perpetrator engages in a continuing offense, prosecutors are permitted to calculate the start of the statute of limitations from the time at which the activity ends. Courts have characterized continuing offense as a “term of art,” describing it as having “no everyday notion with an ordinary meaning.” A continuing offense, the Supreme Court has held, is one that “each day’s acts bring a renewed threat of the substantive evil Congress sought to prevent.” The most commonly recognized continuing offenses include: embezzlement, conspiracy, nuisance, and kidnapping, among others.

In *Toussie v. United States*, the Supreme Court introduced a test to assess whether a crime can be characterized as a continuing offense. The Court held that courts should first decide whether the “explicit language of the substantive criminal statute compels such a conclusion,” and then determine if “the nature of the crime involved is such that Congress must assuredly have intended that it be treated as a continuing one.” The Court recognized that Congress rarely describes criminal offenses as “continuing” in explicit terms in accordance with the

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59. *See United States v. De La Mata, 266 F.3d 1275, 1288 (11th Cir. 2001)* (“A continuing offense is one which is not complete upon the first act, but instead continues to be perpetrated over time.”).
60. *See United States v. Reitmeyer, 356 F.3d 1313, 1321 (10th Cir. 2004)*. Continuing offenses “[are] not the same as a scheme or pattern of illegal conduct. Separate offenses may be part of a common scheme without being continuing for limitations purposes.” *Id.* (internal quotation marks omitted) (citation omitted). *See also Boles, supra note 58, at 228* (“There is a legal distinction between conduct that the legislature and judiciary declare as a ‘continuing offense’ and conduct that constitutes an ongoing course of criminal activity but is not deemed a ‘continuing offense.’”) (citing United States v. Rivlin, No. 07-CR-524, 2007 WL 4276712, at *2 (S.D.N.Y. Dec. 5, 2007)).
61. *See De La Mata, 266 F.3d at 1288* (explaining that “each part of [a] scheme that creates a separate . . . risk . . . constitutes a separate execution”); *United States v. Jaynes, 75 F.3d 1493, 1506 (10th Cir. 1996)* (“[A] continuing offense is not the same as a scheme or pattern of illegal conduct.”).
65. *Id.* at 134–35 (White, J., dissenting) (“The ‘continuing offense’ is hardly a stranger to American jurisprudence. The concept has been extended to embrace such crimes as embezzlement, conspiracy, bigamy, nuisance, failure to provide support, repeated failure to file reports, failure to register under the Alien Registration Act, failure to notify the local board of a change in address, and, until today, failure to register for the draft.”).
66. *See United States v. Sunia, 643 F. Supp. 2d 51, 70 (D.D.C. 2009)* (describing “those few ‘fundamentally different’ offenses where ‘an unlawful course of conduct . . . perdure[s] after the fulfillment of each element of the crime in question, such as in a conspiracy or a kidnapping prosecution” (quoting *McGoff*, 831 F.2d at 1078)).
68. *Id.* at 115.
first prong of *Toussie*.\(^{69}\) The Court also advised that, under the second prong, any reading that dramatically redefines a criminal penalty likely indicates that the limited application of the continuing offense doctrine is not permitted for that crime.\(^{70}\)

In practice, the Court’s minimal guidance for assessing “the nature of the crime involved” has provided insight “so vague as almost to defy analysis.”\(^{71}\) In the aftermath of *Toussie*, some courts have refused to look beyond the exact words of the statutory text at issue,\(^{72}\) while others have examined structure and purpose, legislative history, and precedent when determining whether Congress “assuredly” intended to treat the offense as continuing.\(^{73}\)

Courts are especially reluctant to classify crimes as continuing offenses, however, because they fear the possible effects of this classification on extending the statute of limitations. In introducing the *Toussie* test, the Court advised that continuing offenses should be found “in only limited circumstances,” because “Congress has declared a policy that the statute of limitations should not be extended except as otherwise expressly provided by law.”\(^{74}\) The Court feared that deeming crimes continuing offenses could detrimentally impact criminal defendants by reducing the protections afforded to them by the statute of limitations.\(^{75}\) In particular, the Court defended maintaining the statute of limitations as a finite period of time to encourage law enforcement to investigate quickly and to protect defendants from having to rely on memories, evidence, and witness testimony that may become diminished or even inaccessible as time passes.\(^{76}\) In the aftermath of *Toussie*, courts have not always heeded the Supreme Court’s warning to limit characterization of crimes as continuing offenses to rare circumstances. Courts in recent decades have expanded the continuing offense doctrine to cover more

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69. *Id.* at 120 (“[A]ny argument based on congressional silence is stronger in favor of not construing this Act as incorporating a continuing-offense theory.”).

70. *Id.* at 122 (“Basically we are faced with the task of construing a somewhat ambiguous statute in one of two ways. One way would limit institution of prosecution to a period of five years following the initial violation, while the other could effectively extend the final date for prosecution until as late as 13 years after the crime is first complete . . . . ‘[W]hen choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite. We should not derive criminal outlawry from some ambiguous implication.’” (quoting United States v. Universal C.I.T. Credit Corp., 344 U.S. 218, 221–22 (1952))).


72. See, e.g., United States v. Reitmeyer, 356 F.3d 1313, 1322 (10th Cir. 2004) (“If Congress intended [a crime] to be a ‘continuing offense,’ it could have clearly stated so.” (quoting United States v. Dunne, 324 F.3d 1158, 1164 (10th Cir. 2003))) (internal quotation marks omitted).

73. See Boles, *supra* note 58, at 232–33.

74. *Toussie*, 397 U.S. at 115 (citation omitted) (internal quotation marks omitted).

75. See id. at 114–15.

76. See id.; see also Boles, *supra* note 58, at 221.
crimes than ever before, including failure to pay child support\textsuperscript{77} and failure to appear for sentencing,\textsuperscript{78} among others.\textsuperscript{79}

\textbf{B. Bribery as a Continuing Offense}

While courts have been willing to expand the application of the continuing offense doctrine to include additional crimes,\textsuperscript{80} they have repeatedly held that bribery charged under either 18 U.S.C. § 201 or 18 U.S.C. § 666 does not constitute a continuing offense.\textsuperscript{81} Unlike other criminal statutes, Congress never used the term “continuing offense” to describe bribery in either 18 U.S.C. § 201 or 18 U.S.C. § 666.\textsuperscript{82} Thus, when applying the first prong of the \textit{Toussie} test and evaluating the text of the criminal statutes, courts have found that Congress never explicitly characterized bribery in the language of a continuing offense.\textsuperscript{83} In looking at the statutory text, rather than the defendant’s specific conduct in each case, courts have declined to recognize that bribery continues once its elements have been met.\textsuperscript{84}

 Likewise, under the second prong of \textit{Toussie}, most courts have not been convinced that the nature of bribery “is such that Congress must assuredly have intended that it be treated as a continuing [offense].”\textsuperscript{85} The statutory text for bribery under 18 U.S.C. § 666, for example, criminalizes three distinct actions: (1) giving, (2) offering, or (3) agreeing to give a thing of value to someone.\textsuperscript{86} By definition, each one of these actions is an instantaneous and discrete act that occurs at a single, immediate point in time.\textsuperscript{87} In choosing these elements for the crime of bribery, courts have reasoned, Congress neglected to penalize acts that would be more akin to continuing offenses, such as maintaining a corrupt relationship

\begin{itemize}
\item \textsuperscript{77} See United States v. Edelkind, 525 F.3d 388, 396 (5th Cir. 2008) (holding that 18 U.S.C. § 228 is a “continuing offense”).
\item \textsuperscript{78} See United States v. Gray, 876 F.2d 1411, 1419 (9th Cir. 1989) (holding that 18 U.S.C. § 3146 is a “continuing offense”).
\item \textsuperscript{79} See Boles, supra note 58, at 237–38.
\item \textsuperscript{80} See supra Part II.A.
\item \textsuperscript{81} See, e.g., United States v. Yashar, 166 F.3d 873, 876 (7th Cir. 1999) (“Yashar and the government agree that § 666 is not a ‘continuing offense’ as that term is defined in \textit{Toussie}.”); United States v. Morales, 11 F.3d 915, 918 (9th Cir. 1993) (“The doctrine of ‘continuing offense’ has no applicability to a situation like this where the charged criminal conduct itself [bribery under 18 U.S.C. § 201] extends over a period of time.”).
\item \textsuperscript{82} Cf. 18 U.S.C. § 3284 (2012) (stating explicitly that the concealment of a bankrupt debtor’s assets “shall be deemed to be a continuing offense”).
\item \textsuperscript{83} See, e.g., Yashar, 166 F.3d at 877; United States v. Jones, 676 F. Supp. 2d 500, 518 (W.D. Tex. 2009).
\item \textsuperscript{84} See Yashar, 166 F.3d at 877–78.
\item \textsuperscript{85} Toussie, 397 U.S. at 115.
\item \textsuperscript{86} 18 U.S.C. § 666(a)(2) (2012).
\item \textsuperscript{87} See supra Part II.A (describing an instantaneous offense as distinct from a continuing offense because it is a “discrete act that occurs at a single, immediate period of time and causes harm that occurs in that moment and does not continue” (internal quotation marks omitted)).
\end{itemize}
between a public official and a private party.  
Prosecutors have not been deterred by the characterization of bribery as an instantaneous offense, however. In situations when the five-year statute of limitations under 18 U.S.C. § 3282 poses challenges in how they charge defendants, prosecutors often charge and prove all three acts and then determine whether any one of those acts occurred during the five years preceding the indictment. For example, if “giving” the bribe occurred on a later date than the “offer” or “agreement,” then prosecutors can calculate the statute of limitations from the date on which the bribe was given. Prosecutors are limited in the use of this strategy, however. Calculating the statute of limitations from the “giving” of the bribe means that the limitations period begins at the point of exchange, not when the government establishes the link between the bribe and the subsequent official act.

C. The Continuing Course of Criminal Conduct Doctrine

Another strategy prosecutors have sought to use to circumvent the five-year statute of limitations when charging bribery is through application of the continuing course of criminal conduct doctrine. Although courts sometimes treat a continuing course of criminal conduct as indistinguishable from a continuing offense and use the two terms interchangeably, the doctrines are distinct. Unlike continuing offenses, a continuing course of criminal conduct refers to schemes or patterns of unlawful conduct that unite discrete acts into a single count. The doctrine’s primary use is not to extend the statute of limitations. Instead, this strategy is typically employed to avoid duplicity, the possibility that a defendant is indicted for two or more distinct and separate offenses that have been joined together in a single count. When prosecutors rely on the strategy, its application can affect the statute of limitations. In particular, the indictment is considered timely “as long as a single act within the continuing course of conduct occurred after the limitations cut-off date, even if the act does not satisfy all the elements, or any element in its entirety, within the limitations period.” While a continuing offense looks at the statutory text at issue to assess the nature of the crime,

88. See United States v. Morales, 11 F.3d 915, 921 (9th Cir. 1993) (O’Scannlain, J., concurring in part and dissenting in part).
89. See, e.g., United States v. Pacchioli, 718 F.3d 1294, 1302 (11th Cir. 2013) (“The question is not whether bribery is a continuing offense but rather whether the crime was completed—that is, applying the ordinary rule, whether the last of the necessary elements occurred—after June 12, 2006.”).
90. See, e.g., id. at 1301.
91. See, e.g., Jones, 676 F. Supp. 2d at 518.
95. Yashar, 166 F.3d at 876 (internal quotation marks omitted).
application of the continuing course of criminal conduct doctrine instead focuses on the specific facts of each case and the behavior of the individual defendant.96

D. Bribery as a Continuing Course of Criminal Conduct

Many courts have held that in situations in which there have been a series of multiple bribes or official actions, prosecutors may apply the continuing course of criminal conduct doctrine.97 A circuit split has developed, however, regarding whether application of this doctrine permits prosecutors to circumvent the statute of limitations and target bribes that occurred over five years before indictment. This situation is consistent with the haphazard manner in which courts have applied the continuing course of criminal conduct doctrine when assessing whether to extend the statute of limitations for crimes other than bribery.98

Both the Fifth and Ninth Circuits have suggested that the continuing course of criminal conduct doctrine may be applied to bribery for purposes of the statute of limitations. Lower courts subsequently applied the analysis to extend the statute of limitations beyond five years. In United States v. Morales, the Ninth Circuit held that the continuing course of criminal conduct doctrine could be applied to a series of bribery payments to an IRS employee that had been combined and charged as a single count.99 The defendant challenged his sentence on ex post facto concerns because of a change in the Federal Sentencing Guidelines that occurred in between corrupt acts that were part of his bribery scheme.100 Since the court considered the bribery offenses to be “part of a course of criminal conduct,” the court applied the changed Guidelines to all of the bribery payments, including to his conduct that occurred before the Guidelines were amended.101 Despite criticism from other circuits,102 Morales remains good law and its reasoning would likely apply to a lower court case in the Ninth Circuit in which prosecutors attempt to charge bribery that occurred over five years earlier as part of a continuing course of criminal conduct.

In United States v. Bustamante, the Fifth Circuit applied the Ninth Circuit’s analysis in Morales to a series of bribes that were treated as a continuing course of

96 Id. at 877.
97 See, e.g., United States v. Jennings, 160 F.3d 1006, 1014 (4th Cir. 1998) (finding that in a bribery prosecution under 18 U.S.C. § 666, “each payment need not be correlated with a specific official act . . . . In other words, the intended exchange in bribery can be ‘this for these’ or ‘these for these,’ not just ‘this for that’”).
98 The court in Yashar surveyed other criminal cases in the Third, Fifth, Seventh, and Tenth Circuits in which the “continuing course of criminal conduct” doctrine was considered as a possible justification for extending the statute of limitations. Yashar, 166 F.3d at 878. The court concluded that the “cases in other circuits are ambiguous regarding the proper approach to this issue.” Id.
99 United States v. Morales, 11 F.3d 915, 916–17 (9th Cir. 1993).
100 Id. at 917.
101 Id.
102 See, e.g., Yashar, 166 at 878 (“[T]he statute of limitations, designed as a control on governmental action, would instead be defined by it.”).
criminal conduct.\textsuperscript{103} Here, the court upheld prosecutors’ attempts to target bribes that occurred over five years before indictment.\textsuperscript{104} \textit{Bustamante} arose in the context of a racketeering prosecution against a former Congressman.\textsuperscript{105} The predicate acts charged under the RICO statute consisted of accepting a bribe and several illegal gratuities under 18 U.S.C. § 201.\textsuperscript{106} The court held that since the Congressman’s acceptance of a series of gratuities constituted “continuing criminal behavior,” prosecutors could target every act in the scheme, including his initial 1985 acceptance of a loan guarantee that occurred eight years before the 1993 indictment.\textsuperscript{107} At least one lower court has relied on the reasoning of both \textit{Bustamante} and \textit{Morales}—despite questioning their holdings.\textsuperscript{108} The court applied the continuing course of criminal conduct doctrine to a series of bribes charged together under 18 U.S.C. § 666 for the explicit purpose of extending the statute of limitations beyond five years.\textsuperscript{109} In contrast, the Seventh Circuit has refused to apply the continuing course of criminal conduct doctrine to charges brought under 18 U.S.C. § 666. The court found that application of this doctrine would treat “a continuing course of conduct or scheme the same as a continuing offense.”\textsuperscript{110} This situation directly conflicts with the Supreme Court’s guidance in \textit{Toussie} to deem crimes continuing offenses only in rare circumstances.\textsuperscript{111} In \textit{United States v. Yashar}, the court held that 18 U.S.C. § 666 could not be charged as a continuing course of criminal conduct.\textsuperscript{112} Here, prosecutors charged a defendant with receiving wage payments and health insurance coverage for doing little or no work for several years. They attempted to combine the series of payments and coverage into a single count in order to meet the statutory minimum of $5,000.\textsuperscript{113} By characterizing the defendant’s wages and insurance as a scheme or pattern of illegal conduct, prosecutors sought to target the benefits the defendant received over five years before indictment.\textsuperscript{114} The Seventh Circuit refused to permit prosecutors to charge the defendant for the crimes that occurred five years before indictment and treated each act as a separate crime.\textsuperscript{115}

\begin{thebibliography}{9}
\bibitem{103} 45 F.3d 933, 941–42 (5th Cir. 1995).
\bibitem{104}  Id. at 942.
\bibitem{105}  Id. at 935.
\bibitem{106}  Id.
\bibitem{107}  Id. at 941–42.
\bibitem{108}  See \textit{United States v. Shoemaker}, No. 11-CR-00038, 2012 WL 313620, at *2 (N.D. Miss. Feb. 1, 2012) (holding that because the bribery and kickback scheme was combined into a single count under 18 U.S.C. § 666, the court was bound by \textit{Bustamante} to permit prosecutors to charge acts that occurred over five years before indictment since they were part of a common illegal scheme).
\bibitem{109}  Id.
\bibitem{110}  See \textit{United States v. Yashar}, 166 F.3d 873, 877 (7th Cir. 1999).
\bibitem{111}  Id.
\bibitem{112}  Id.
\bibitem{113}  See id. at 875.
\bibitem{114}  See id.
\bibitem{115}  Id. at 879.
\end{thebibliography}
The court worried that if prosecutors could charge the series of payments as a single scheme such that the statute of limitations would run from the last act, then the statute of limitations would essentially be unbounded.116 If permitted to pursue charges based on this strategy, the court feared, prosecutors “could then wait to prosecute until well beyond five years, and regardless of whether that one act constituted an element of the charged crime.”117 Although the court analyzed the issue through 18 U.S.C. § 666’s embezzlement prohibition, the analysis would likely similarly apply to bribery charged under the statute. At least one lower court has replicated the Seventh Circuit’s reasoning in Yashar in assessing 18 U.S.C. § 666’s bribery provisions for purposes of analyzing the statute of limitations.118

Nearly two decades earlier, the Fourth Circuit considered bribery in a manner similar to the Seventh Circuit in Yashar. In United States v. Hare, prosecutors charged the defendant, an IRS agent, with bribery under 18 U.S.C. § 201.119 The head of a foundation gave the agent an $11,000 loan with favorable interest rates in return for conducting an audit and recommending that the foundation retain its tax-exempt status.120 Although the defendant received the loan in 1970, he was not indicted until 1979.121 In attempting to charge the defendant with accepting the loan nine years earlier, prosecutors sought to characterize the bribe as part of a continuing course of criminal conduct.122 They argued that each repayment made at a favorable interest rate, or missed payment that did not incur a late fee, in the five years before indictment was a benefit that constituted a part of a scheme of illegal conduct.123 The court refused to approve the use of this strategy, however, and contended that the criminal statute, not the term of the loan, should dictate how the statute of limitation applies.124

III. RESOLVING THE CIRCUIT SPLIT

In many ways, prosecutors’ attempts to characterize bribes as part of a continuing course of criminal conduct has been a response to the difficulty they face in discovering and investigating public corruption in a timely manner. To hold public officials accountable, prosecutors have adopted this strategy to circumvent the statute of limitations. Despite prosecutors’ understandable aim, the courts of appeals that have permitted the use of the continuing course of criminal conduct doctrine to extend the statute of limitations have created a dangerous situation.

116. See id.
117. Id.
119. United States v. Hare, 618 F.2d 1085, 1086 (4th Cir. 1980).
120. Id.
121. Id.
122. Id.
123. Id. at 1087.
124. Id. at 1086–87.
Namely, the power of federal prosecutors has been expanded to redefine congres-
sionally passed statutes.

Statutes of limitations for criminal offenses are in many ways the product of balancing competing policy interests. Equitable in nature, they "represent legisla-
tive assessments of relative interests of the State and the defendant in administer-
ning and receiving justice."\(^{125}\) Extending the statute of limitations through the use of prosecutorial strategies and without congressional oversight ignores that careful legislative assessment. The balance is tipped in favor of the state at the expense of the rights of criminal defendants. While serving as United States Attorney General, Robert H. Jackson, who later became an Associate Justice of the Supreme Court and served as a Nuremberg prosecutor, recognized that "the prosecutor has more control over life, liberty, and reputation than any other person in America."\(^{126}\) The extension of the statute of limitations beyond five years based on a strategic characterization of an offense affords prosecutors even more control over life, liberty, and reputation. Until Congress explicitly extends the statute of limitations for public corruption offenses beyond the existing standard statute of limitations under 18 U.S.C. § 3282, courts should follow the guidance of the Fourth and Seventh Circuits. As Judge Ilana Rovner recognized in \textit{Yashar}, permitting the alternative would create a situation in which "the statute of limitations, designed as a control on governmental action, would instead be defined by it. Virtually any criminal actions that extend over time could fall within this expansive definition depending upon how a prosecutor chose to charge a case."\(^{127}\)

As the Supreme Court has explained, the primary protection the statute of limitations provides criminal defendants is evidentiary in nature. The statute of limitations "reflects a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict. And that judgment typically rests, in large part, upon evidentiary concerns—for example, a concern that the passage of time has eroded memories or made witnesses or other evidence unavailable."\(^{128}\) In many ways, the difficulties prosecutors face in bringing public corruption charges against suspects are evidentiary. Wrongdoing is rarely disclosed, and in situations when authorities do learn about it, the time that has passed since the criminal activity has made investigation and gathering evidence particularly difficult.\(^{129}\) However, Congress, not the prosecutors who pursue such charges against defen-
dants, should conduct this balancing. Congress should assess whether the compi-
cated investigations and evidentiary concerns warrant an extension of the statute of


\(^{127}\) United States v. Yashar, 166 F.3d 873, 878 (7th Cir. 1999).


\(^{129}\) \textit{See supra} Introduction.
limitations and an erosion—even a minimal one—of the protections the statute of limitations affords criminal defendants.

This situation also raises separation of powers concerns. In 18 U.S.C. § 3282, Congress explicitly stipulated that the five-year statute of limitation applies “except as otherwise expressly provided by law.”130 In targeting instantaneous crimes that were committed before the limitations period, members of the executive branch—federal prosecutors—have circumvented the direct pronouncement of Congress. While there are certainly legitimate policy reasons to extend the statute of limitations for public corruption offenses, prosecutors should not assume that Congress’s failure to adopt an extension is evidence of its approval.131 Likewise, in upholding this strategy in defiance of congressional statute, the judiciary has overstepped its role within the separation of powers.132 As the Supreme Court has long recognized, “the cases in which ‘a statute of limitation may be suspended by causes not mentioned in the statute itself . . . are very limited in character, and are to be admitted with great caution; otherwise the court would make the law instead of administering it.’”133

Extending the statute of limitations for public corruption offenses would constitute an important policy measure to hold those who violate citizens’ trust and threaten our system of government responsible for their wrongdoing. Members of Congress, who have been afforded the power to craft law under the Constitution as elected representatives of the American people, should conduct this balancing. Electorally unaccountable prosecutors and judges of the executive and judicial branches are ill-suited for this policymaking task.

IV. CONGRESSIONAL ATTEMPTS TO EXTEND THE STATUTE OF LIMITATIONS FOR PUBLIC CORRUPTION OFFENSES

Within the last decade, Congress has considered extending the statute of limitations for public corruption offenses on several occasions as part of broader efforts to reform the federal prosecution of public corruption. Although public officials would be directly affected by the changes if they were to commit wrongdoing, members of the House and the Senate in both parties initially welcomed discussion on the proposed measures.

132. “The judiciary . . . may truly be said to have neither the force nor will, but merely judgment.” The Federalist No. 78 (Alexander Hamilton).
A. Congressional Proposals Since 2007

Since 2007, both houses of Congress have considered a number of bills that included proposals to extend the statute of limitations for certain public corruption offenses from five to six years. Each of these proposals included bribery charged under both 18 U.S.C. § 201 and 18 U.S.C. § 666. This reform was included among proposed measures that would significantly amend the elements and sentencing of a variety of existing public corruption laws. Because of the controversy surrounding such significant changes, the legislation failed to garner enough support for passage by either the House or Senate each time it was considered.

In 2007, Democratic Senator Patrick Leahy of Vermont, the Chairman of the Senate Judiciary Committee, and co-sponsor Republican Senator John Cornyn of Texas, first introduced the “Public Corruption Prosecution Improvements Act.” This proposed legislation garnered significant bipartisan support in the Senate Committee on the Judiciary. The Committee voted to report the bill favorably for consideration by the entire Senate, where it ultimately died. A similar, though not identical, measure was introduced by Representative Henry Johnson, Jr. to the House during that same session of Congress, but was not acted upon when referred to committee. During the 111th and 112th Congresses in 2009 and 2011, the Judiciary Committees of both the House and the Senate considered and approved similar bills. These bills failed to garner enough support for passage when presented to the entire chambers for vote. Each time the bills were introduced in both houses of Congress, the proposed legislation largely targeted the same aspects of public corruption prosecution. The legislative history surrounding the proposals shows that the bills’ sponsors were influenced by a number of court decisions that limited prosecutors’ abilities to target behavior that had previously been considered corrupt.

First, in the 1999 case United States v. Sun-Diamond Growers of California, the Supreme Court unanimously held that for an illegal gratuity conviction to be sustained, prosecutors must prove a clear quid pro quo link between the gratuity

the public official received and the performance of a specific “official” act within the past, present, or future. Writing for the Court, Justice Antonin Scalia expressed worry over how to distinguish gifts public officials receive based on the office they hold—such as when the President receives a framed sports jersey—from bribes intended to motivate officials to act in a certain way. Secondly, in 2007, the United States Court of Appeals for the District of Columbia further limited potential prosecution for gratuities under 18 U.S.C. § 201 when it narrowed the definition of an “official act” under the statute from “any action which implicates the duties and powers of a public official” to “questions, matters, causes, suits, proceedings, and controversies that are decided by the government.” Finally, three years later, the Supreme Court restricted public corruption prosecutions even further. In the 2010 case Skilling v. United States, the Court unanimously found that 18 U.S.C. § 1346, which targets fraud that deprives the public of “the intangible right of honest services,” only applied to bribery and kickback schemes. The Court’s holding prevented prosecutors from targeting undisclosed self-dealing charged under 18 U.S.C. § 1346, as they once could, among other restrictions.

In response to the decisions in Sun Diamond, Valdes, and Skilling, members of Congress sought to minimize the restrictions prosecutors face when pursuing defendants charged with these crimes. The initial proposals came during a period marked by high-profile public corruption cases. Nevertheless, at that time, public corruption prosecutions had fallen by nearly fourteen percent during the Bush administration. Among other reforms in the proposed legislation, the federal gratuities provisions were clarified to distinguish “goodwill” gifts from bribes in response to Sun Diamond, to alter the definition of “official act” to cover more types of behavior in the aftermath of Valdes, and to expand the reach of the federal mail and wire fraud statutes to target undisclosed self-dealing by public officials.

141. Id. at 406–07.
142. Valdes v. United States, 475 F.3d 1319, 1322 (D.C. Cir. 2007) (en banc).
143. Id. at 1325.
146. Two of the most notable cases at the time were those of lobbyist Jack Abramoff and Congressman William Jefferson. Abramoff, who ultimately pleaded guilty and cooperated with authorities, was involved in a massive lobbying scandal that led to the convictions of twenty people, including many congressional staff members. See Kate Zernike & Anne E. Kornblut, From Big-Time Lobbyist to Object of Derision, N.Y. TIMES (Jan. 9, 2006), http://www.nytimes.com/2006/01/10/washington/10lobbyist.html. Jefferson was convicted on eleven counts related to bribery and money laundering. His case was particularly noteworthy because agents found $90,000 in cash hidden in his freezer during a raid. See John Bresnahan, William Jefferson Convicted in Freezer Cash Case, POLITICO (Aug. 6, 2009, 6:18 AM), http://www.politico.com/news/stories/0809/25850.html.
officials to overcome the limitations imposed by Skilling.148 The proposed legislation also sought to increase the punishments for a variety of the offenses, and also targeted issues related to venue, among other reforms.149

Every time the House and the Senate considered the bills, the proposed measures included provisions to extend the statute of limitations for a variety of public corruption offenses.150 The public corruption offenses targeted in the legislation included: theft, bribery, and illegal gratuities (18 U.S.C. § 201 and 18 U.S.C. § 666), mail and wire fraud (18 U.S.C. § 1341, 18 U.S.C. § 1343, and 18 U.S.C. § 1346), extortion (18 U.S.C. § 1951), and racketeering (18 U.S.C. § 1962).151 In first introducing the proposed measures to the Senate Judiciary Committee in 2007, Senator Leahy explained that the one-year extension of the statute of limitations was meant to accommodate the time and complex techniques necessary to adequately investigate alleged public corruption.152 The Senate report contrasted the six years proposed to the much longer statutes of limitations of up to ten years for other crimes, like bank fraud, arson, and passport fraud.153 Although the first proposal introduced in the House of Representatives, which never made it out of committee, initially suggested extending the statute of limitations to eight years,154 every subsequent bill that the Committee approved and the entire House considered included a six-year extension proposal.155

B. Responses to the Congressionally Proposed Reforms

Although both the Senate and House proposals received bipartisan support within their respective Judiciary Committees, the legislation failed to garner sufficient votes to gain passage by the entire Congress. Outside of Congress, responses to the proposed legislation were mixed. A variety of diverse groups—such as the Campaign Legal Center, Common Cause, the League of Women Voters, Democracy 21, U.S. PIRG, Public Citizen, and the National Association of Assistant United States Attorneys—voiced support for passing the proposed legislation.156

149. Id.
151. Id.
153. Id. at 4–5.
156. See Crites, Lanham & Richard, supra note 139, at 261.
The six years proposed differed from the initial suggestion of the Department of Justice, which had previously called for an eight-year statute of limitations for public corruption offenses.\textsuperscript{157} M. Faith Burton, the Acting Assistant Attorney General, argued that just like prosecutors of financial crimes enjoy a ten-year statute of limitations, prosecutors of public corruption should benefit from additional time because of the document-intensive investigation required to examine such long-term, systemic, and insidious conduct.\textsuperscript{158} Nevertheless, Burton recognized the evidentiary dangers of a longer statute of limitations since the Office of Government Records only maintains records for six years under statute.\textsuperscript{159} In the years following Burton’s letter, the Department indicated its support for the proposed bills, even though the proposals always contained a six-year extension.\textsuperscript{160}

The proposed reforms garnered significant criticisms, however, which ultimately led to their failure to be put forth to a vote by the entire Congress. During a period of great concern with federal spending, the Congressional Budget Office estimated that implementing the proposed reforms would cost approximately $100 million.\textsuperscript{161} Additionally, most critics focused on the proposed expansion of the illegal gratuities statute. The Heritage Foundation, for example, identified the lack of a \textit{mens rea} requirement as a cause for concern. It feared that prosecutors were afforded so much discretion that they could potentially pursue charges against individuals at least partially based upon political or ideological considerations.\textsuperscript{162} Others believed that the expansion of the criminal statutes did not comport with the complex and arcane House and Senate ethics rules and could cause seemingly innocuous gifts to be charged as crimes.\textsuperscript{163} Critics also targeted the extension of prison sentences for certain offenses because of concerns related to existing trends


\textsuperscript{158} Id.

\textsuperscript{159} Id. at n.1.

\textsuperscript{160} See, e.g., \textit{Restoring Key Tools to Combat Fraud and Corruption After the Supreme Court’s Skilling Decision: Hearing Before the S. Comm. on the Judiciary, 111th Cong. 6–7} (2011) (statement of Lanny A. Breuer, Assistant Att’y Gen. of the United States).

\textsuperscript{161} \textit{CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE, S. 49 PUBLIC CORRUPTION PROSECUTION IMPROVEMENTS ACT} 1 (2009), \textit{available at} \url{http://www.cbo.gov/sites/default/files/s49_0.pdf}.


\textsuperscript{163} For example,

\textsuperscript{[T]he} gift rules generally prohibit providing lawmakers with meals. Appetizers, however, if given in certain settings, are permitted. So: Hot dogs and hamburgers are prohibited, pigs-in-a-blanket and sliders are fine. Will anyone be comfortable having a jury determine criminal liability based upon whether the food was an entrée or finger-food?

in over-criminalization.\textsuperscript{164}

The proposed extension of the statute of limitations also concerned critics. The National Association of Criminal Defense Lawyers, for instance, pondered why “an increase in the statute of limitations for these specific types of crimes, as opposed to thousands of other crimes, is necessary.”\textsuperscript{165} The organization posited that increasing the statute of limitations would harm individual lives and reputations, particularly in situations in which charges are not ultimately filed.\textsuperscript{166} The additional year would also affect witnesses, who could remain in criminal jeopardy for six years. This situation could lead to the presentation of “a distorted picture of the facts at trial, which not only undermines the fairness of trials but also the public’s respect for the criminal justice system generally.”\textsuperscript{167}

Even the Congressional Research Service report questioned why the statute of limitations was extended for only a subset of criminal activity and implicitly suggested improper drafting. In particular, the report stipulated that the bill would extend the statute of limitations for only one embezzlement offense, 18 U.S.C. § 666. The bill would leave the existing statute of limitations in place for other embezzlement-related crimes, creating a disparity in how charges for similar crimes are pursued.\textsuperscript{168} In addition, the statute of limitations extension was set to apply to honest services mail and wire fraud, but not to the self-dealing mail and wire fraud proposed by the statute in response to the court cases.\textsuperscript{169} The extension also targeted the narrow money laundering statute, 18 U.S.C. § 1952, but not the more general money laundering statute, 18 U.S.C. § 1956.\textsuperscript{170} The report also expressed concern that the statute of limitations was extended to cover attempts to commit the listed crimes. However, attempting to commit certain crimes does not actually constitute criminal activity, such as attempts to violate the bribery provisions of 18 U.S.C. § 201 and 18 U.S.C. § 666 as well as the RICO provisions.\textsuperscript{171}

V. MOVING FORWARD IN PURSUIT OF A CONGRESSIONAL EXTENSION OF THE STATUTE OF LIMITATIONS FOR PUBLIC CORRUPTION OFFENSES

The House and Senate proposals to extend the statute of limitations are not unique to public corruption crimes. Congress began enacting exceptions to the general limitations period in 1804.\textsuperscript{172} Since the 1990s, Congress has granted more

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\textsuperscript{164} See Crites, Lanham & Richard, supra note 139, at 260.
\textsuperscript{166} Id.
\textsuperscript{167} Id. at 7.
\textsuperscript{168} See Doyle, supra note 148, at 17.
\textsuperscript{169} Id.
\textsuperscript{170} Id.
\textsuperscript{171} Id.
\textsuperscript{172} Lindsey Powell, Unraveling Criminal Statutes of Limitations, 45 Am. Crim. L. Rev. 115, 122 (2008).
\end{flushleft}
extensions than at any other point in history. These changes have affected a variety of distinct crimes, including terrorism offenses, fraud, and offenses against children. The proposed extension of the statute of limitations for public corruption crimes is thus in line with the congressional practice of creating exceptions to the general statute of limitations, 18 U.S.C. § 3282, in recognition of changes in criminal activity since the general statute was enacted in 1954.

An extension of the statute of limitations by one year is, admittedly, an arbitrary determination. As the Supreme Court once observed, “it is difficult to fit [statutes of limitations] into a completely logical and symmetrical system of law.” Nevertheless, as Judge Richard Posner has noted, the determination of a statute of limitations, “because of its inescapable arbitrariness, is a legislative rather than a judicial task.” He wrote, “Legislators can be as arbitrary as they please within the broad limits set by the Constitution but judges are supposed to reason to their conclusions, and how can you reason to 3 years over 2, 300 days over 240, 20 years over 15? You cannot.” Members of Congress, not the unelected prosecutors who characterize public corruption offenses to circumvent the statute of limitations and the unaccountable judges who uphold the use of these strategies, should weigh the competing policy aims and extend the statute of limitations. Members of the House and Senate from both political parties already approved six years in the previously proposed reformed bills. Consequently, maintaining this extension of one year, although it may seem arbitrary, makes sense to garner enough congressional support for passage. Although a period of time longer than six years may be more helpful to prosecutors, such a proposal was not considered by Congress when assessing the reforms and likely would attract more criticism, making an extension harder to pass.

The extension of the statute of limitations also meets another goal that Congress has previously recognized when extending the limitations period for other crimes. As a legal commentator noted in 1954, when evaluating the policy rationales for setting statutes of limitations, “no limitation can be set without regard to the length of time reasonably necessary to discover and investigate crimes.” In extending the statute of limitations for other crimes, members of Congress explicitly justified setting a limitations beyond the standard five years based on this rationale. Senator Orrin Hatch, for example, in supporting a longer limitations period for criminal offenses committed against children, stated, “Too often victims of such crimes do

173. See id. at 124 (finding that, unlike previous decades, “the past two decades have seen about a dozen new exceptions to the rule, some of them quite sweeping”).
174. Id. at 124–28.
178. Id.
not come forward until years after the abuse because they fear their disclosures will lead to further humiliation, shame, and even ostracism.”\textsuperscript{180} Although similar psychological concerns with the welfare of victims are not at issue with public corruption offenses, the difficulty in discovering that wrongdoing has occurred similarly justifies the rationale for extending the statute of limitations.

Because of the significant criticism that the robust public corruption reform proposals garnered, an extension of the statute of limitations by one year should be considered independently of the other reforms. Realistically, for this measure to pass, the extension should be separated from the more controversial amendments to what constitutes the offenses under the criminal statutes. If Congress seeks to redefine the elements in light of the difficulties the court decisions have imposed on prosecutors, then it should amend the crimes in a separate bill so that extending the statute of limitations will not be delayed any longer. Additionally, before being proposed again, the extensions should close the loopholes identified in the Congressional Research Services report.\textsuperscript{181}

**CONCLUSION**

As the framers debated the shape of the new American government, James Madison reportedly remarked, “My wish is that the national legislature be as uncorrupt as possible.”\textsuperscript{182} Over two centuries later, Madison’s exhortation remains just as true as when it was first uttered. Americans continue to seek a political system in which their public officials pursue their constituents’ interests with integrity and are held accountable when they fail to do so. Extending the statute of limitations to permit prosecutors to target more corrupt activity serves as one way to achieve a political system that is “as uncorrupt at possible.”

Recent newspaper headlines demonstrate that the statute of limitations continues to pose difficulties for prosecutors in holding public officials accountable for their corrupt activities.\textsuperscript{183} Of course, extending the statute of limitations represents only a small step in ridding our political system of behavior that takes advantage of citizens for personal gain. In general, public corruption prosecution is a reaction to past wrongdoing and occurs once the public has already suffered. Extending the statute of limitations serves as just a small way to increase accountability long after the illegal activity has subsided.

\textsuperscript{181} See Doyle, supra note 148; see also supra Part IV.B.
\textsuperscript{182} See Zephyr Teachout, Corruption in America: From Benjamin Franklin’s Snuff Box to Citizens United 14 (2014).
\textsuperscript{183} See, e.g., Stephanie Clifford, 2 of 10 Counts Against Sampson, a Brooklyn State Senator, Are Dismissed, N.Y. TIMES (Oct. 31, 2014), http://www.nytimes.com/2014/11/01/nyregion/2-of-10-counts-against-sampson-a-brooklyn-state-senator-are-dismissed.html (describing how federal embezzlement charges against a state senator were dismissed due to the statute of limitations).
Former U.S. Attorney Patrick Fitzgerald once noted the difficulties his office faced in targeting public corruption in Illinois, which had garnered a reputation as a hotbed for such wrongdoing at both the state and local levels. He remarked:

Undoubtedly the most harmful consequence of endemic public corruption in a community is the apathy that it engenders—the culture of acceptance. Over many years of seeing corruption in almost every facet of government, many residents of a community begin to simply accept corruption as the immutable status quo. They come to assume government is broken and ineffective and destined to function corruptly. The consequences of this culture of acceptance in a community are many. Some residents simply disengage from the political process and no longer trust their government to function well or in their interest. Other residents may come to believe they must engage in corruption in order to gain government benefits themselves. Still others will begin to look the other way when they witness corrupt transactions. And honest folks are discouraged from entering politics or suffer from the skepticism engendered by others’ misdeeds.184

This culture of acceptance makes it even more difficult for cooperating witnesses to come forward and for corruption to be discovered, let alone prosecuted. Until Americans, and their representatives in government, unite in a vision for a political system untarnished by corruption and stand unwilling to tolerate such abuses, then an extension of the statute of limitations will remain a small solution to a large problem. Nevertheless, extending the statute of limitations will permit prosecutors to target more corrupt activity. In passing this proposal, Congress can demonstrate affirmatively to the American people that wrongdoing by public officials will not be tolerated and is a pressing matter of national importance.