

19-361-cr

United States of America v. Smilowitz

1
2 In the
3 United States Court of Appeals
4 For the Second Circuit
5
6

7 AUGUST TERM, 2019

8
9 ARGUED: FEBRUARY 10, 2020

10 DECIDED: SEPTEMBER 8, 2020

11
12 No. 19-361

13
14 UNITED STATES OF AMERICA,
15 *Appellee,*

16
17 *v.*

18
19 VOLVY SMILOWITZ, AKA ZEV SMILOWITZ,
20 *Defendant-Appellant,*

21
22 SHALOM LAMM, KENNETH NAKDIMEN,
23 *Defendants.*

24
25
26 Appeal from the United States District Court
27 for the Southern District of New York.
28 Vincent Briccetti, *Judge.*

29
30
31 Before: WALKER, PARKER, and CARNEY, *Circuit Judges.*
32
33

1 Volvy “Zev” Smilowitz pled guilty to (1) conspiring to submit
2 false voter registrations and buying voter registrations in violation of
3 18 U.S.C. § 371 and 52 U.S.C. § 10307(c) and (2) conspiring to violate
4 the Travel Act by paying bribes for voter registrations and votes, in
5 violation of 18 U.S.C. §§ 371 and 1952. Specifically, Smilowitz bribed
6 individuals to unlawfully vote in Bloomingburg, New York, and he
7 and his co-defendants falsified voter registration records to make it
8 appear as though these individuals lived in Bloomingburg for at least
9 thirty days prior to their registration. On appeal, Smilowitz argues
10 that the federal election statute, 52 U.S.C. § 10307(c), does not apply
11 because the offense conduct was strictly tied to a local, not federal,
12 election. He also argues that his conviction under the Travel Act was
13 improper because buying voter registrations does not constitute
14 bribery. We conclude that 52 U.S.C. § 10307(c) applied to Smilowitz’s
15 conduct because it exposed future federal elections to corruption. We
16 also conclude that his payment to influence voter conduct fits within
17 the generic definition of bribery and thus violated the Travel Act.
18 Therefore, we AFFIRM the judgment.

19

20

21

22

23

24

25

26

AUDREY STRAUSS, Acting United States Attorney
for the Southern District of New York, Attorney
for United States of America, New York, NY
(Kathryn Martin; Daniel B. Tehrani, New York,
NY; Assistant United States Attorneys, New York,
NY, *on the brief*), *for Plaintiff-Appellee*.

1 BARKET EPSTEIN KEARON ALDEA & LOTURCO, LLP
2 (Donna Aldea, Alex Klein, *on the brief*), Garden
3 City, NY, *for Defendant-Appellant*.

4
5
6 JOHN M. WALKER, JR., *Circuit Judge*:

7 Volvy “Zev” Smilowitz pled guilty to (1) conspiring to submit
8 false voter registrations and buying voter registrations in violation of
9 18 U.S.C. § 371 and 52 U.S.C. § 10307(c) and (2) conspiring to violate
10 the Travel Act by paying bribes for voter registrations and votes, in
11 violation of 18 U.S.C. §§ 371 and 1952. Specifically, Smilowitz bribed
12 individuals to unlawfully vote in Bloomingburg, New York, and he
13 and his co-defendants falsified voter registration records to make it
14 appear as though these individuals lived in Bloomingburg for at least
15 thirty days prior to their registration. On appeal, Smilowitz argues
16 that the federal election statute, 52 U.S.C. § 10307(c), does not apply
17 because the offense conduct was strictly tied to a local, not federal,
18 election. He also argues that his conviction under the Travel Act was
19 improper because buying voter registrations does not constitute
20 bribery. We conclude that 52 U.S.C. § 10307(c) applied to Smilowitz’s
21 conduct because it exposed future federal elections to corruption. We
22 also conclude that his payment to influence voter conduct fits within
23 the generic definition of bribery and thus violated the Travel Act.
24 Therefore, we AFFIRM the judgment.

BACKGROUND

This conviction stemmed from Smilowitz's involvement in a criminal voting scheme to further a real estate development project in the village of Bloomingburg, New York. With a small population of about 420 people, Bloomingburg is managed only by a mayor and two trustees. Smilowitz was a business associate of Shalom Lamm and Kenneth Nakdimen, two real estate developers. In 2006, these developers planned a development in the village that was expected to house thousands of families from the Hasidic Jewish community. Smilowitz and his father entered into a non-binding letter of intent to buy Chestnut Ridge, the first part of the development, for more than \$29 million. In a confidential "Executive Summary," circulated to potential investors, Lamm and Nakdimen stated that the project would provide an excellent location for an Hasidic community and that, because of Bloomingburg's small population, this religious community would be able to control local government decisions. Wary of local objections to the project, Lamm and Nakdimen kept it secret and repeatedly misrepresented the scope of the development while gaining the requisite real estate approvals.

By late 2013, following years of construction, Bloomingburg's residents learned of the scheme. The village halted Chestnut Ridge's construction, which left it uninhabitable. After local elected officials voted against measures that Lamm, Nakdimen, and Smilowitz

1 needed to complete the Chestnut Ridge project, the three men sought
2 to replace two of the elected officers with their chosen candidates.
3 Specifically, they wanted to install Mark Berensten, a Chestnut Ridge
4 supporter, as mayor and Harold Baird as a trustee. Because Baird did
5 not live in the village, the conspirators helped him find a residence in
6 the Village that he could falsely register as his.

7 With the majority of Bloomingburg residents opposed to the
8 development, Lamm and Nakdimen sought to increase their
9 favorable voting base by encouraging individuals to move into rental
10 properties the defendants purchased in Bloomingburg. To that end,
11 defendants sought out members of the Hasidic community living
12 elsewhere whom they could register to vote. Smilowitz, acting as a
13 liaison, reached out to residents in Kiryas Joel, New York, and the
14 Williamsburg section of Brooklyn, New York, and offered them cash
15 payments and rent subsidies in return for their agreement to move to
16 and register to vote in Bloomingburg. By the residency registration
17 deadline of February 18, 2014, a month before the March 18 election,
18 however, only a few of these individuals had actually moved to
19 Bloomingburg and most of the previously purchased rental
20 properties remained vacant.

21 Undeterred, Lamm, Nakdimen, Smilowitz and others working
22 at their public relations firm, Beckerman PR, fraudulently registered
23 approximately 142 new voters. Each registrant had to submit a

1 signed, sworn New York State voter registration form to the Sullivan
2 County Board of Elections (BOE). Smilowitz and his co-defendants
3 falsified registration forms by listing registrants' addresses as the
4 Bloomingburg properties owned by Lamm and Nakdimen and by
5 stating that these individuals had been living in Bloomingburg for at
6 least thirty days prior to registration, as required by New York law.
7 At Smilowitz's insistence, these ineligible voters signed backdated
8 rental applications. The defendants also had Beckerman PR
9 employees go to the rental residences and leave personal items, such
10 as toiletries, to make the homes appear occupied.

11 Prior to the March 18, 2014 election, after Bloomingburg certain
12 residents sued in state court to invalidate the new voter registrations
13 on the basis of non-residency, a Sullivan County Supreme Court
14 justice ordered the challenged registrants to vote by affidavit ballot,
15 attesting to their residency. On March 13, 2014, federal agents
16 executed search warrants on various business offices and sham
17 residences of Lamm and Nakdimen.

18 On Election Day, Lamm, Nakdimen, and Smilowitz arranged
19 transportation to Bloomingburg for the registrants who lived
20 elsewhere. A total of 265 votes were cast in the election. After 157
21 votes were challenged and invalidated by the BOE in connection with
22 defendants' scheme, incumbent mayor Frank Gerardi, who opposed
23 the development, won reelection.

1 On December 12, 2016, a grand jury charged Lamm, Nakdimen,
2 and Smilowitz with one count of conspiring to submit false voter
3 registrations and buy voter registrations in violation of 18 U.S.C. § 371
4 and 52 U.S.C. § 10307(c), and conspiring to violate the Travel Act by
5 paying bribes for voter registrations and votes, in violation of 18
6 U.S.C. §§ 371 and 1952.

7 On November 10, 2017, Smilowitz moved to dismiss the
8 Indictment on three grounds. He argued first, that 52 U.S.C. §
9 10307(c), the federal election statute, did not apply to him because the
10 alleged scheme related solely to a local election; second, that the
11 Indictment should be dismissed because it was “vague” as applied to
12 him; and finally, that the Travel Act object of the conspiracy was
13 invalid because purchasing voter registrations and votes does not
14 constitute bribery under the applicable New York statute. The
15 District Court for the Southern District of New York (Briccetti, J.)
16 rejected these arguments and denied the motion.

17 On June 15, 2018, Smilowitz pled guilty pursuant to a written
18 plea agreement to Count One of the Superseding Indictment
19 containing the foregoing single conspiracy count. On January 24,
20 2019, the district court sentenced Smilowitz to three months’
21 imprisonment, followed by one year of supervised release, together
22 with 200 hours of community service.

DISCUSSION

On appeal, Smilowitz presses the arguments made before the district court, except for the vagueness claim.¹ We review “questions of statutory interpretation *de novo*.”² We also “review a district court’s denial of a motion to dismiss an indictment *de novo*.”³

I. The Federal Election Statute

Smilowitz first contends that his conviction under 52 U.S.C. § 10307(c), which pertains to federal elections, must be vacated because his admitted conduct related only to a local election with no federal candidate on the ballot. In connection with this argument, it is critical to note that New York’s election system is unitary, whereby registration entitles an individual to vote in all local, state and federal government elections.

Congress enacted § 10307 under its constitutional power to shield federal elections from fraud or corruption. That power is found in Article I, Section 4 of the Constitution which specifies that: “The

¹ The government contends that Smilowitz’s claims are waived by his unconditional guilty plea. Smilowitz argues that *Class v. United States*, 138 S. Ct. 798 (2018), preserves his challenge to the constitutionality of his conviction. *Class* held that a guilty plea, by itself, does not bar a defendant from challenging the constitutionality of the statute of conviction on appeal. *Id.* at 803. Because we reject Smilowitz’s arguments on the merits, we do not address the contours of appellate review following a guilty plea post-*Class*.

² *United States v. Epskamp*, 832 F.3d 154, 160 (2d Cir. 2016) (quoting *Roach v. Morse*, 440 F.3d 53, 56 (2d Cir. 2006)).

³ *United States v. Canori*, 737 F.3d 181, 182 (2d Cir. 2013) (citations omitted).

1 Times, Places and Manner of holding Elections for Senators and
2 Representatives, shall be prescribed in each State by the Legislature
3 thereof; but the Congress may at any time by Law make or alter such
4 Regulations, except as to the Places of chusing Senators.”⁴ The
5 Supreme Court has recognized that if Congress does not “have the
6 power to protect the elections on which its existence depends . . . it
7 is left helpless before the two great natural and historical enemies of
8 all republics, open violence and insidious corruption.”⁵ This
9 authority is augmented by the Necessary and Proper Clause, which
10 empowers Congress: “To make all Laws which shall be necessary and
11 proper for carrying into Execution the foregoing Powers, and all other
12 Powers vested by this Constitution in the Government of the United
13 States, or in any Department or Officer thereof.”⁶

14 Notwithstanding this express constitutional authority to
15 regulate federal elections, case law has made clear that Congress must
16 not encroach on the states’ authority to regulate their own electoral
17 processes.⁷ Because the “Constitution grants to the States a broad

⁴ U.S. Const. art. I, § 4, cl. 1.

⁵ *The Ku Klux Cases*, 110 U.S. 651, 658 (1884).

⁶ U.S. Const. art. I, § 8, cl. 18.

⁷ See, e.g., *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (“recogniz[ing] that States retain the power to regulate their own elections”); *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 217 (1986) (“The Constitution grants to the States

1 power” to regulate their election procedures, long-standing
 2 federalism principles limit congressional infringement on state
 3 elections.⁸

4 Title 52, section 10307(c) of the United States Code, under which
 5 Smilowitz was convicted, regulates only federal elections. It states in
 6 relevant part:

7 Whoever knowingly or willfully gives false information . . .
 8 for the purpose of establishing his eligibility to register or
 9 vote, or conspires with another individual for the purpose
 10 of encouraging his false registration to vote or illegal
 11 voting, or pays or offers to pay or accepts payment either
 12 for registration to vote or for voting shall be fined not more
 13 than \$10,000 or imprisoned not more than five years, or
 14 both: *Provided, however,* That this provision shall be
 15 applicable only to general, special, or primary elections
 16 held solely or in part for the purpose of selecting or electing
 17 any candidate for the office of President, Vice President,
 18 presidential elector, Member of the United States Senate,
 19 Member of the United States House of Representatives
 20

21 Smilowitz contends that the plain text of the “provided,
 22 however” clause limits the reach of the statute to only those elections

a broad power to prescribe the ‘Times, Places and Manner of holding Elections for Senators and Representatives.’”); *Boyd v. Nebraska*, 143 U.S. 135, 161 (1892) (“Each state has the power to prescribe the qualifications of its officers, and the manner in which they shall be chosen”); *United States v. Bowman*, 636 F.2d 1003, 1008 (5th Cir. 1981) (noting that Congress added qualifying language to the initial federal election statute because “it was felt that Congress had no constitutional authority to enact legislation to prevent corruption in all elections, both state and federal”).

⁸ *Tashjian*, 479 U.S. at 217.

1 that include a federal candidate, and that because no federal
2 candidate was on the ballot in the March 18, 2014 Bloomingburg
3 election in this case, § 10307(c) has no application here. He further
4 argues that allowing the statute to reach state-only elections would
5 violate the principles of federalism that limit Congress's authority
6 over state elections.

7 The government responds with two arguments. First, the
8 government counters Smilowitz's textual argument with a textual
9 argument of its own: the "provided, however" clause is expressly
10 limited to actual "elections," and because voter registrations are not
11 elections and are not tied to any particular election, the "provided,
12 however" limitation does not limit the government's power to
13 regulate voter registrations regardless of whether they pertain to state
14 or federal elections or a combination of the two. Therefore, the
15 government maintains, the fact that only local candidates were on the
16 ballot to which the registrations would immediately apply does not
17 matter because the statute reaches Smilowitz's admitted tampering
18 with voter registration in a state-only election.

19 We disagree with the government's textual argument. First, the
20 plain text of § 10307 before the "provided, however" clause reaches
21 both elections and registrations, and the text of the "provided,
22 however" clause itself is most naturally read to modify all of that
23 which precedes the clause. The "provided, however" clause refers to

1 the prohibitory command of the entire section preceding it when it
2 states that “this *provision* shall be applicable” to the election of the
3 specified federal candidates. The entire provision offers no indication
4 that the “provided, however” clause is carving out “false registration
5 to vote” from the language it modified.

6 The government’s strained textual reading would permit
7 federal regulation of voter registration that applies only to state and
8 local elections, even though federal courts have consistently held that,
9 because core principles of federalism limit federal control over state
10 matters, federal courts lack jurisdiction over a “pure” state or local
11 election.⁹ We reject the government’s argument because it cannot be
12 reconciled with the text and it offends federalism principles and
13 related caselaw.¹⁰

14 The government’s second argument fares much better,
15 however. The government contends that, because New York’s

⁹ See, e.g., *United States v. Slone*, 411 F.3d 643, 649 (6th Cir. 2005); *Bowman*, 636 F.2d at 1011 (concluding that “Congress may regulate ‘pure’ federal elections, but not ‘pure’ state or local elections”); see also *United States v. Cole*, 41 F.3d 303, 306 (7th Cir. 1994) (holding that federal courts have jurisdiction in a mixed federal/state election); *Schuler v. Bd. of Educ. of Cent. Islip Union Free Sch. Dist.*, No. 96-CV-4702 (JG), 2000 WL 134346, at *12 n.18 (E.D.N.Y. Feb. 1, 2000) (noting that *Bowman* stands for the proposition that Congress may not regulate “pure” state or local elections).

¹⁰ See *Burdick*, 504 U.S. at 433 (interpreting Art. I, § 4, cl.1 of the Constitution and noting that “the Court . . . has recognized that States retain the power to regulate their own elections”).

1 registration process is unitary, Smilowitz's fraudulent conduct has
2 the potential to affect future federal elections.

3 The registration process implicated here was not confined to a
4 "pure" state or local election of the sort that would be beyond the
5 power of Congress to regulate. New York's unitary registration
6 process *permanently* qualifies a registrant to cast ballots in any local,
7 state, or federal election. Thus, Smilowitz's conduct is within the
8 statute's purview. Because § 10307(c) reaches voter registrations that
9 pertain to the federal elections specified in the "provided, however"
10 clause, and because the registrations here cover future federal
11 elections, the statute applies to the fraudulent conduct in this case.

12 Our ruling is in keeping with the purpose of the Voting Rights
13 Act of 1965: to protect the integrity of the federal vote through new
14 enforcement tools.¹¹ The fact that no federal candidate was on the
15 Bloomingburg ballot on March 18, 2014 is of no moment. Because of
16 New York's unitary registration system, Smilowitz's actions exposed
17 future federal elections to corruption. To hold otherwise would
18 arbitrarily limit voter registration challenges because, in the context
19 of a unitary registration, it is "impossible to isolate a threat to the

¹¹ See *Bowman*, 636 F.2d at 1008 (noting that the "legislative history of the Act reveals a Congressional desire to protect the integrity of a person's right to vote by protecting the integrity of that vote"); see also *United States v. Cianciulli*, 482 F. Supp. 585, 617 (E.D. Pa. 1979) (discussing the legislative history and Congress's intent to protect the federal electoral process from corruption).

1 integrity of the state electoral process from a threat to the integrity of
2 the federal contest.”¹²

3 Smilowitz argues that recognizing federal jurisdiction because
4 of New York’s unitary registration system violates principles of
5 federalism since “unitary registration prevails in practically every
6 state in America.” While unitary registration is prevalent, applying
7 the prohibition to unitary registrations raises no federalism concerns
8 because the crime affects voter registrations that permit federal
9 voting. Moreover, any lingering federalism concerns could be
10 mitigated by any state’s modifying its local election laws to have a
11 separate registration process for purely state elections.

12 Our reasoning aligns with that of several of our sister circuits.¹³
13 The Seventh Circuit’s decision in *United States v. Lewin* is instructive.¹⁴
14 There, the appellants were convicted of conspiracy to pay and offer to
15 pay persons for registering to vote in violation of 42 U.S.C. § 1973i(c)
16 (now codified at 52 U.S.C. § 10307(c)).¹⁵ The Seventh Circuit rejected
17 the same local election argument that Smilowitz makes here,

¹² *Bowman*, 636 F.2d at 1012.

¹³ See, e.g., *id.*; *United States v. McCranie*, 169 F.3d 723, 727 (11th Cir. 1999) (citing *Bowman*, 636 F.2d at 1012); *United States v. Mason*, 673 F.2d 737, 739 (4th Cir. 1982); *United States v. Lewin*, 467 F.2d 1132, 1136 (7th Cir. 1972).

¹⁴ 467 F.2d 1132.

¹⁵ *Id.* at 1134.

1 reasoning that because Illinois had “permanent registration” for “all
2 elections in Illinois,” there was “no merit in the contention” that the
3 statute did not apply.¹⁶

4 The Fifth Circuit in *Bowman* employed similar reasoning in
5 addressing 42 U.S.C. § 1973i(c)’s applicability to certain registration
6 conduct. Specifically, the Fifth Circuit referred to *Lewin* for the
7 proposition that because “permanent voter registration in Illinois
8 carried with it the privilege of voting in both federal and non-federal
9 elections,” and because the “act of registering, whether or not it occurs
10 in the same year as a federal election, creates an eligibility to vote in a
11 federal election,” the fraudulent conduct would have “an equal
12 impact” upon the federal and non-federal elections.¹⁷

13 Likewise, we hold here that the prohibitions in 52 U.S.C. §
14 10307(c) apply to any voter registration practices that expose federal
15 elections – present or future – to corruption, regardless of whether

¹⁶ *Id.* at 1136.

¹⁷ *Id.* The Fifth Circuit also cited *United States v. Cianciulli* for the proposition that 1973i(c) includes “false voter registrations occurring in both federal and non-federal election years because the act of registering, whether or not it occurs in the same year as a federal election, creates an eligibility to vote in a federal election” and thus, corrupt practices “would have equal impact upon the federal and the non-federal election.” *Bowman*, 636 F.2d at 1011 (citing *Cianciulli*, 482 F. Supp. 585, 617-18 (E.D. Pa. 1979)). Here, the district court relied on *Cianciulli* and *United States v. Lewis*, 514 F. Supp. 169 (M.D. Pa. 1981). In both those cases, the courts found that, because Pennsylvania had a unitary registration system, Section 1973i(c) outlawed all fraudulent registrations.

1 any federal candidate is on the immediate ballot. Because Smilowitz's
2 conduct, due to New York's unitary registration format, had "the
3 *potential* to affect the 'integrity and purity' of [a federal] election,"¹⁸
4 we conclude that § 10307(c) is applicable.

5 II. The Travel Act

6 Smilowitz next contends that the Travel Act component of his
7 conspiracy conviction should be reversed because his conduct did not
8 satisfy the requisite predicate offense of "bribery." The Travel Act
9 criminalizes, among other things, interstate travel and use of the mail
10 in connection with conduct related to "unlawful activity." In
11 particular, 18 U.S.C. § 1952(a), in pertinent part, prohibits individuals
12 from travelling interstate and using the mail to "promote, manage,
13 establish, carry on, or facilitate the promotion, management,
14 establishment or carrying on, of any unlawful activity," or who
15 attempt to do the same.¹⁹

16 Section 1952(b) defines "unlawful activity," in relevant part,
17 as "extortion, bribery, or arson in violation of the laws of the State in

¹⁸ *McCranie*, 169 F.3d at 727 (citing *Bowman*, 636 F.2d at 1012); *see also Mason*, 673 F.2d at 739 (holding that Congress "clearly includes the power to regulate conduct which, although directed at non-federal elections, also has an impact on the federal races").

¹⁹ 18 U.S.C. § 1952(a).

1 which committed or of the United States”²⁰ Here we are
 2 concerned with the meaning of the term “bribery” in that section.

3 The question before us is whether the New York state offense to
 4 which Smilowitz pled guilty, New York Election Law § 17-142,
 5 amounted to “bribery” within the meaning of § 1952(b). Under § 17-
 6 142, a person is guilty of a felony if he:

7 Pays, lends or contributes or promises to pay, lend or
 8 contribute any money or other valuable consideration to or
 9 for any voter, or to or for any other person, to induce such
 10 voter or other person to vote or refrain from voting at any
 11 election, or to induce any voter or other person to vote or
 12 refrain from voting at such election for any particular
 13 person or persons, or for or against any particular
 14 proposition submitted to voters, or to induce such voter to
 15 come to the polls or remain away from the polls

16 Smilowitz argues that because § 17-142 does not punish bribery
 17 as defined by the New York state bribery statutes,²¹ which requires
 18 the payee to be a “public servant,”²² his violation of § 17-142 cannot

²⁰ *Id.* § 1952(b).

²¹ The crimes of bribery under New York law—New York Penal Law §§ 200.00 (third degree), 200.03 (second degree), 200.04 (first degree)—each require that the “benefit” the guilty party “confers, or offers or agrees to confer” be directed to “a public servant.” Under New York Election Law § 17-142, however, the consideration that must be paid or promised by the guilty party may be directed to “any . . . person.”

²² N.Y. Penal Law §§ 200.00, 200.03, 200.04.

1 serve as the Travel Act predicate “crime of bribery.” However,
2 precedent forecloses this argument.

3 First, the Supreme Court held forty years ago in *Perrin v. United*
4 *States* that in enacting the Travel Act, Congress intended “the generic
5 definition of bribery, rather than a narrow common-law definition
6 limited to public officials, was intended by Congress.”²³ In describing
7 the activities that fit within the generic definition, the Supreme Court
8 noted that even at the time of Blackstone, “the crime of bribery had
9 been expanded to include the corruption of any public official *and the*
10 *bribery of voters* and witnesses as well.”²⁴ The Court pointed to the
11 legislative history of § 1952 to indicate that Congress “used ‘bribery’
12 [in the Travel Act] to include payments to private individuals to
13 influence their actions.”²⁵ A decade earlier, in *United States v. Nardello*,
14 the Court held that in a Travel Act prosecution, the predicate
15 unlawful activity of extortion includes all acts within its generic
16 description.²⁶ *Nardello* made clear that “the inquiry is not the manner

²³ 444 U.S. 37, 49 (1979).

²⁴ *Id.* at 43 (emphasis added). The Model Penal Code also defines “bribery” to include conferring “any pecuniary benefit as consideration for the recipient’s decision, opinion, recommendation, *vote* or other exercise of discretion as a public servant, party official, or *voter*. Model Penal Code § 240.1(1) (emphasis added).

²⁵ *Id.* at 46.

²⁶ 393 U.S. 286, 295 (1969).

1 in which States classify their criminal prohibitions but whether the
2 particular State involved prohibits the extortionate activity
3 charged.”²⁷ The same reasoning applies here. It is undisputed based
4 on the text of § 17-142 that New York prohibited Smilowitz from
5 paying voters. His conduct thus is within the federal definition of
6 “bribery” under § 1952.

7 Second Circuit case law also supports our conclusion. We have
8 held that the generic description of bribery applies to Travel Act
9 convictions. In *United States v. Walsh*, the defendants challenged their
10 Travel Act conviction on the basis that the applicable New Jersey
11 bribery statute failed to specifically charge an “intent to corrupt
12 official action.”²⁸ We held that even though the applicable state
13 statute was “technically a ‘gratuity’ or ‘corrupt solicitation’ statute,
14 not a ‘bribery’ statute, [it] proscribe[d] conduct which fits within the
15 broad generic description of bribery” and thus “was properly charged
16 to the jury as a Travel Act predicate of bribery.”²⁹ Because Travel Act
17 bribery is construed broadly, the lack of a precise fit between § 17-142
18 and the New York bribery statute does not matter. We therefore agree

²⁷ *Id.*

²⁸ 700 F.2d 846, 858 (2d Cir. 1983).

²⁹ *Id.* (citing *United States v. Forsythe*, 560 F.2d 1127, 1137-38 (3d Cir. 1977));
Nardello, 393 U.S. at 295-96).

1 with the district court that Smilowitz's admitted payment to voters
2 suffices as a Travel Act predicate.

3 **CONCLUSION**

4 For the reasons stated above, we AFFIRM the judgment of the
5 district court.