Why Every President Violates 18 U.S.C. Sections 599 and 600 and Gets Away with It

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In every U.S. presidential election cycle, a similar ritual unfolds—campaign stops, fundraising dinners, and carefully rehearsed speeches. Often, somewhere in the middle of it all, a sitting president dangles the possibility of an appointment, an ambassadorship, or a cushy advisory role. They promise access, influence, and maybe even a direct hand in policymaking. Believe it or not, this practice is illegal. Title 18, United States Code, Section 599 bans a president from using government jobs as campaign currency, and Section 600 explicitly forbids offering federal benefits or employment in exchange for political support.[1] Yet nearly every modern occupant of the White House has done this.[2]

President Donald Trump, standing before the 2024 Libertarian National Convention, promised the party a seat at his table if they backed him.[3] In exchange for endorsement, President Trump agreed to put a libertarian in his cabinet.[4] It was a straight trade—full support for a political coronation. Joe Biden did the same, only with a different price tag: He handed out ambassadorships to big donors and campaign bundlers.[5] Just a decade earlier, Barack Obama's White House enlisted Bill Clinton to push Representative Joe Sestak out of a 2010 U.S. Senate race with the offer of an "unpaid advisory position" on a federal policymaking board.[6] The common denominator in all of those dealings is that not a single president has been indicted or

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[1] 18 U.S.C. §§ 599–600 (1948).
[2] *See generally infra* notes 3 & 5.
[3] Lauren Floyd, *Trump Promises Libertarian in His Cabinet if Party Backs Him*, Axios (May 2024), axios.com/2024/05/26/trump-libertarian-national-convention-2024-voters.
[4] *Id.*
[5] Robbie Grammer, *Biden Taps Billionaire Campaign Donors for Ambassador Posts*, Foreign Policy (Dec. 2021), foreignpolicy.com/2021/12/20/biden-ambassador-posts-billionaires-campaign-donors.
[6] Peter Baker, *White House Used Bill Clinton to Ask Sestak to Drop Out of Race*, N.Y. Times (May 2010), archive.nytimes.com/thecaucus.blogs.nytimes.com/2010/05/28/white-house-used-bill-clinton-to-ask-sestak-to-drop-out-of-race/.

investigated. They have not faced a scintilla of accountability. In fact, the American public greatly *rewarded* all of them—they elected, or even reelected, each of them to the highest office in the land. This pattern is not unique to just those examples.

The statutes lay out the crime in plain terms. Title 18, United States Code, Section 599 makes it a crime for political candidates to directly or indirectly promise appointment to any public office or private employment in exchange for support in an election.[7] Section 600 mirrors and expands on Section 599, banning the promise of "any employment, position, compensation, contract, appointment, or other benefit" funded by Congress or influenced by government action.[8] Per the Department of Justice's *Federal Prosecution of Election Offenses* manual, Section 599 "has potential application" when "one candidate attempts to secure an opponent's withdrawal, or to elicit the opponent's endorsement," by offering them a public or private job;[9] Section 600 applies to "corrupt public officials [who] use government-funded jobs or programs to advance a partisan political agenda."[10] Those descriptions—put together by the top prosecutorial minds in our country—sound eerily familiar to the conduct in the above examples.

But why is no president ever prosecuted under Section 599 or 600? President Trump certainly offered the Libertarian National Convention a "public office" in exchange for the full endorsement of his presidential candidacy; President Biden appointed his deep-pocketed campaign bankrollers to diplomatic posts; President Obama, at the *very least*, aided and abetted a violation of either statute.[11] But nothing ever happened—why? Enlisting an opinion of the Department of Justice's Office of Legal Counsel, the simplest but utterly paradoxical answer to this query, at least with regard to Section 600, is *confusion*:

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[7] 18 U.S.C. § 599 (1948).
[8] 18 U.S.C. § 600 (1948).
[9] U.S. Dep't of Just., *Federal Prosecution of Election Offenses* 110 (8th ed. 2017).
[10] *Id.* at 108.
[11] *See supra* notes 3, 5, & 6.

> Section 600 punishes only a person who promises a benefit in return for political support or activity; it conspicuously does not make it illegal simply to grant a benefit. While it is possible to read § 600 to apply to a promise given as a reward for political activity done in the past, such a reading is illogical. . . . We believe it only logical to conclude that Congress was concerned with eliminating the use of federal funds as an enticement for future political support.[12]

In their words: You may promise a federal benefit—but not if the political motive applies to the *future*. Patronage for "political activity done in the past" is perfectly fine.[13] But does this apply to several hours ago, a year ago, or ten decades ago? Unfortunately, the issue of timing is unanswered. And beyond "logic," it is unclear what the Office of Legal Counsel relied on to deduce the intent of Section 600.[14]

The other consideration is whether the Department of Justice chooses not to prosecute out of reverence to the Office of Legal Counsel's long-standing presidential immunity memorandum, which concluded that the prosecution of a sitting president would "unduly interfere in a direct or formal sense with the conduct of the Presidency."[15] Then again, what happens after a president leaves office? The Justice Department just spent two years prosecuting President Trump in two federal cases—one in Florida, and another in the District of Columbia—both aimed at actions he took while still in office.[16] If they could bring *those* cases, why not prosecute violations of Section 599 or Section 600? What about a presidential candidate who violates these statutes

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[12] Memorandum from Larry A. Hammond, Deputy Assistant Attorney General, Off. Legal Couns., *Effect of 18 U.S.C. § 600 on Proposal for Hiring Census Enumerators* (Feb. 1980) (1980 OLC Opinion).
[13] *Id.*
[14] Our goal in interpreting any statute should be "to give effect to the intent of Congress." United States v. American Trucking Ass'ns., Inc., 310 U.S. 534, 542 (1940); Fischer v. United States, 144 S. Ct. 2176, 2191 (2024) ("Intent is generally expressed through the text of a statute.") (Jackson, J., concurring) (citing American Tobacco Co. v. Patterson, 456 U.S. 63, 68 (1982)). The Office of Legal Counsel's "logic," however, is certainly not "the intent of Congress" based on the "text of [the] statute" if it draws artificial distinctions that frustrate the statute's purpose. *Cf. Fischer*, 144 S. Ct. at 2191.
[15] Memorandum from Robert G. Dixon, Jr., Assistant Attorney General, Off. Legal Couns., *Re: Amenability of the President, Vice President, and other Civil Officers to Federal Criminal Prosecution while in Office* at 32 (Sept. 1973) ("Because only the President can receive and continuously discharge the popular mandate expressed quadrennially in the presidential election, an interruption would be politically and constitutionally a traumatic event.").
[16] *See generally* Trump v. United States, 603 U.S. 593 (2024).

before winning an election? A candidate is not a sitting president and has no immunity—not under the Office of Legal Counsel's standards. Yet, the Justice Department still looks the other way.

For now, the law will stay on the books, but never in the courtroom. Presidents will keep making deals. Candidates will keep offering jobs for endorsements. Federal benefits will remain political bargaining chips. And every four years, that same cycle will repeat. After all, the law is only as strong as those who have the *will* to enforce it—and when it comes to Sections 599 and 600, perhaps no one in power has ever had the will.