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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

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Ex parte Michael Gregory Hubbard

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS

(In re: Michael Gregory Hubbard

v.

State of Alabama)

(Lee Circuit Court, CC-14-565; Court of Criminal Appeals, CR-16-0012)

PARKER, Chief Justice.

Michael Gregory Hubbard was charged with 23 counts of violating Alabama's "Code of Ethics for Public Officials, Employees, Etc.," §§ 36-25-1 to -30, Ala. Code 1975 ("the Ethics Code").[1] The Lee Circuit Court entered a judgment on a jury verdict convicting Hubbard on 12 of the 23 counts. Hubbard appealed to the Court of Criminal Appeals, which affirmed the convictions on 11 counts and reversed the conviction on 1 count. Hubbard petitioned this Court for certiorari review of the 11 counts affirmed by the Court of Criminal Appeals, and we granted review. For the reasons below, we affirm the judgment of the Court of Criminal Appeals as to Hubbard's convictions on six counts, and we reverse as to the convictions on five counts because they were based on insufficient evidence or incorrect interpretations of the Ethics Code.

I. Factual Background

In 1994, Hubbard formed Auburn Network, Inc. ("Auburn Network"), a radio network that held the media rights for

[1]The Ethics Code has been amended several times during the last several years. None of the sections at issue in this case, however, has been amended in any relevant way.

Auburn University athletics. Hubbard later sold the broadcasting/media portion of Auburn Network to International Sports Properties, Inc. ("ISP"), and stayed on as president of Auburn ISP Network. Hubbard received a salary from ISP but also continued to operate what remained of Auburn Network.

In 1998, Hubbard was elected to the Alabama House of Representatives. He was elected minority leader of the House in 2004 and then was elected chairman of the Alabama Republican Party. As chairman, he helped orchestrate the Republican takeover of both chambers of the Alabama Legislature in the 2010 election. That statewide effort was conducted on a platform dubbed "The Handshake with Alabama," which included a promise of ethics reform.

Thus, shortly after the 2010 election, the Governor called a special session of the new Republican-majority legislature to reform the Ethics Code. At the beginning of the session, Hubbard was elected Speaker of the House. Under Hubbard's leadership, the legislature revised the Ethics Code to, among other things, tighten restrictions on gifts to public officials and employees from lobbyists and their employers.

Soon thereafter, Hubbard began experiencing personal financial difficulties. In January 2011, ISP was purchased by International Management Group, which laid off Hubbard two months later. Hubbard began looking for ways to replace his lost income. In particular, he began seeking clients with which he could contract as a consultant. To that end, he enlisted the aid of Will Brooke, an executive of an asset-management firm and the then chairman of the Business Council of Alabama ("the BCA"). Brooke was ultimately unable to find any clients for Hubbard, but Hubbard eventually obtained several clients through other means.

In 2012, Hubbard experienced further difficulties when Craftmaster Printers, Inc. ("Craftmaster"), a printing company in which he held a 25 percent interest, was teetering on the edge of financial collapse. Hubbard again reached out to Brooke, who crafted a turnaround plan for the company. To implement the plan, Hubbard located eight investors who each contributed $150,000 in exchange for Craftmaster stock.

In 2014, Hubbard was indicted on 23 counts of violating the Ethics Code. After a 4-week jury trial, he was convicted on 12 of those counts. The trial court ordered that some of

his sentences were to run concurrently and some consecutively, for an effective total of 4 years in prison and 16 years of probation, and he was ordered to pay various fines.

On appeal, the Court of Criminal Appeals affirmed Hubbard's convictions on 11 counts and reversed the conviction on 1 count. Hubbard v. State, [Ms. CR-16-0012, Aug. 27, 2018] ___ So. 3d ___, ___ (Ala. Crim. App. 2018). Hubbard petitioned this Court for certiorari review of the 11 affirmed counts, and we granted review.

II. Discussion

A. Craftmaster investments and Brooke's assistance (counts 16-19, 23)

Hubbard was convicted on five counts of soliciting or receiving a thing of value from a principal of a lobbyist, in violation of § 36-25-5.1(a), Ala. Code 1975. Counts 16-19 were based on Hubbard's receiving the Craftmaster investments. Count 23 was based on Hubbard's soliciting Brooke's help with finding new clients and Hubbard's receiving Brooke's advice regarding the financial-turnaround plan for Craftmaster.[2]

[2]Hubbard does not argue that the Craftmaster investments and Brooke's financial advice were not solicited or received by Hubbard in his personal capacity. Thus, for purposes of this discussion, we treat Craftmaster and Hubbard as synonymous.

1. Facts relating to counts 16-19 and 23

In 2008, Craftmaster obtained a loan of approximately $600,000 from Regions Bank, of which Hubbard personally guaranteed 33 percent. In August 2012, Regions Bank determined that Craftmaster was not generating enough income to repay the loan. In addition, Craftmaster had defaulted on the loan by failing to pay $350,000 in payroll taxes. Regions Bank transferred the loan to its problem-assets department.

Hubbard reached out to Brooke for advice. Based on financial information provided by Hubbard, Brooke concluded that Craftmaster was undercapitalized, and he developed a financial-turnaround plan. Under Brooke's plan, Hubbard would locate several investors to each invest $150,000 in Craftmaster. Craftmaster would then use the money to pay off part of the Regions Bank loan and to pay all the payroll taxes. Each investor would receive Craftmaster stock with a promise of a quarterly dividend at an annualized rate of six percent of the invested amount.

Hubbard procured eight investors, including Brooke. At the time, Brooke was a member of the BCA's executive committee. The BCA retained lobbyists to represent its

interests before the legislature. The lobbyists reported to the BCA's executive director (a lobbyist), who in turn reported to the executive committee. Among the other Craftmaster investors were Sterne Agee Group, Inc. ("Sterne Agee"); Jimmy Rane, president of Great Southern Wood; and Rob Burton, president of Hoar Construction, LLC.

Brooke testified that he received the promised six percent return, which he said was a "very, very good return." A Sterne Agee employee testified that the investment was a "good business deal." Rane testified that the stock "was a good investment" and that Craftmaster never missed a dividend payment. Burton testified that he received a four percent return, although he was supposed to receive six percent.

Based on Hubbard's receiving the subject four investments in Craftmaster, he was convicted of receiving a thing of value from Brooke (count 16), from Sterne Agee (count 17), from Rane (count 18), and from Burton (count 19). (The State did not charge Hubbard with any offense for receiving the investments from the remaining four investors.) Based on Hubbard's requests to Brooke for help in obtaining clients for his consulting work and based on Hubbard's receiving Brooke's

turnaround plan for Craftmaster, Hubbard was convicted on an additional count of soliciting or receiving a thing of value from Brooke (count 23).

2. Discussion regarding counts 16-19 and 23

The section of the Ethics Code under which Hubbard was convicted provides: "[N]o public employee or public official or family member of the public employee or family member of the public official shall solicit or receive a thing of value from a lobbyist, subordinate of a lobbyist, or principal." § 36-25-5.1(a), Ala. Code 1975 (emphasis added). Thus, on counts 16-19 and 23, the State was required to prove (1) that Hubbard was a public employee or public official (2) who solicited or received a "thing of value" (3) from a lobbyist, a lobbyist's subordinate, or a "principal," and (4) that he did so intentionally (see § 36-25-27(a)(1), Ala. Code 1975).

Hubbard challenges these convictions on two bases. First, he argues that his receiving the Craftmaster investments from Brooke, Sterne Agee, Rane, and Burton did not violate the Ethics Code because, he argues, the investments came within a statutory exclusion for when an official "pays full value" for the thing received. Second, Hubbard contends

that Brooke, Rane, and Burton were not "principals" because they did not hire lobbyists to represent them personally. Hubbard does not dispute that Sterne Agee was a principal.

a. The full-value exclusion

For purposes of the prohibition of receiving a thing of value from a principal, the Ethics Code broadly defines "thing of value" as "[a]ny gift, benefit, favor, service, gratuity, tickets to or passes to an entertainment, social or sporting event, unsecured loan, other than those loans and forbearances made in the ordinary course of business, reward, promise of future employment, or honoraria or other item of monetary value." § 36-25-1(34)a, Ala. Code 1975. The Ethics Code then sets forth a negative definition of "thing of value": "The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof ...." § 36-25-1(34)b. The negative definition includes 18 subparts, which we will refer to in this opinion as "exclusions."[3] In particular, the

[3]Our use of this term is for convenience only and does not suggest or imply that anyone other than the State bears the burden of persuasion ("proof") as to each subpart of § 36-25-1(34)b that is at issue in a case.

Ethics Code defines as not being a thing of value "[a]nything for which the recipient pays full value." § 36-25-1(34)b.9.

As to counts 16-19, Hubbard relies on this full-value exclusion, arguing that, by providing stock to the Craftmaster investors, he paid full value for their investments.[4] The State, on the other hand, contends that Hubbard did not "pay" the investors because the meaning of the word "pays," as used in the statute, is limited to the payment of money. Alternatively, the State argues that the stock did not constitute "full value" for the investments.

The Court of Criminal Appeals characterized Hubbard's argument as attacking the weight of the evidence. See Hubbard v. State, ___ So. 3d at ___, ___. That characterization missed the mark. Hubbard's argument challenged not the weight of the evidence, but the circuit court's interpretation of the full-value exclusion and the sufficiency of the State's evidence to prove that the exclusion did not apply. Alternatively, the Court of Criminal Appeals held that the

[4]Hubbard also argues in his brief that the circuit court erred by failing to instruct the jury on the full-value exclusion. However, Hubbard did not raise that issue in his certiorari petition, so it is outside the scope of our review. See Ex parte Franklin, 502 So. 2d 828, 828 n.1 (Ala. 1987).

term "pays" is limited to the payment of money. ___ So. 3d at ___, ___.

We first address the meaning of "pays" and then whether the Craftmaster stock constituted "full value" for the investments.

i. Meaning of "pays"

We review issues of statutory interpretation de novo. Ex parte Kennemer, 280 So. 3d 367, 370 (Ala. 2018). "'Absent any indication to the contrary, the words [of a statute] must be given their ordinary and normal meaning.'" Ex parte Ankrom, 152 So. 3d 397, 409 (Ala. 2013) (quoting Walker v. State, 428 So. 2d 139, 141 (Ala. Crim. App. 1982)).

In determining whether the plain meaning of the word "pays" includes transfers of nonmonetary items such as stock, several legal reference works are informative. Black's Law Dictionary defines "payment" as: "1. Performance of an obligation by the delivery of money or some other valuable thing accepted in partial or full discharge of the obligation. 2. The money or other valuable thing so delivered in satisfaction of an obligation." Black's Law Dictionary 1243

(9th ed. 2009) (emphasis added).[5] The term is similarly defined in Corpus Juris Secundum:

> "Payment is the discharge in money of a sum due or the performance or satisfaction of a pecuniary obligation in whole or in part, by compliance with the terms of the obligation, or by the actual or constructive delivery of money or its equivalent, by the obligor or someone for him or her to the obligee for the purpose of extinguishing the obligation in whole or in part and the acceptance as such by the obligee. Payment has also been defined as the full or partial discharge of a pecuniary obligation by money or what is accepted as the equivalent of a specific sum of money; delivery and acceptance of money or its equivalent in discharge of an obligation; and the discharge in money or its equivalent of an obligation or debt owing by one person to another. ...
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> "....
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> "Payment requires a tender, or the actual or constructive delivery by a debtor or someone for the debtor to the debtor's creditor, or some other person authorized to receive it, of money or something accepted by the creditor as the equivalent of money, with the intention or purpose on the part of the payor or transferor to extinguish a debt or obligation in whole or in part and its acceptance by the creditor for the same purpose.
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> "....
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> "Generally, nothing is to be considered as payment in fact except money unless the creditor expressly agrees to receive something else in its

[5]We refer to the ninth edition of Black's Law Dictionary because that was the most recent edition available when the legislature enacted the full-value exclusion in 2010.

> place, but what the parties to the contract agree be accepted as payment is, in fact, payment."

70 C.J.S. Payment § 1 (2018) (footnotes omitted; emphasis added). Further, American Jurisprudence specifically addresses "payment" in stock: "With the parties' agreement, corporate stock may be given in payment of an obligation ...." 60 Am. Jur. 2d Payment § 29 (2014). These standard references suggest that the meaning of "pays" is not limited to payment in money. See also, e.g., B.M. v. Jefferson Cty. Dep't of Human Res., 183 So. 3d 157, 163 (Ala. Civ. App. 2015) (noting that witness testified that party was "paid in food and gas").

The State contends, however, that "pays" is commonly understood as the payment of money only. The State relies on a definition from the 10th edition of Black's Law Dictionary of the word "pay":

> "1. To give money for a good or service that one buys; to make satisfaction <pay by credit card>. 2. To transfer money that one owes to a person, company, etc. <pay the utility bill>. 3. To give (someone) money for the job that he or she does; to compensate a person for his or her occupation ... <she gets paid twice a month>. 4. To give (money) to someone because one has been ordered by a court to do so <pay the damages>."

Black's Law Dictionary 1309 (10th ed. 2014) (emphasis added). Further, the State asserts, no one ordinarily speaks of

"paying" nonmonetary items in exchange for money, as Hubbard argues he did here. The State points out that the legislature chose to use the word "pays," not the broader term "exchanges."

The State's interpretation of "pays" is unreasonably narrow and inconsistent with the common and ordinary meaning of the word. The legal references discussed above, including Black's Law Dictionary, recognize that the concept of payment is broader than money. Moreover, the definition on which the State relies did not appear in Black's until the 10th edition was issued in 2014. Thus, that definition was not available for the legislature's reference when it enacted the full-value exclusion in 2010. Indeed, at that time the most recent Black's definition of "pay" had specifically included nonmonetary items. See Black's Law Dictionary 1128 (6th ed. 1990) ("To discharge a debt by tender of payment due; to deliver to a creditor the value of a debt, either in money or in goods, for his acceptance." (emphasis added)).

As for the State's argument that one cannot "pay" nonmonetary items for money, it is worth noting that the full-value exclusion applies to "[a]nything for which the recipient

pays full value." § 36-25-1(34)b.9 (emphasis added). "Anything" ordinarily means anything. See United States v. Gonzales, 520 U.S. 1, 5 (1997) ("Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" (quoting Webster's Third New International Dictionary 97 (1976))). So, if the "anything" that a public official receives includes money, there is no reason why, given the breadth of the concept of payment, the official could not "pay" for that money with a nonmonetary item such as stock.

In addition, the State contends that reading "pays" as including nonmonetary items would render other thing-of-value exclusions inoperative or superfluous. Specifically, the State asserts that this interpretation would destroy restrictions contained in the bank-loan exclusion (§ 36-25-1(34)b.5) and the compensation exclusion (§ 36-25-1(34)b.10).

The bank-loan exclusion carves out from the definition of "thing of value" "[l]oans from banks and other financial institutions on terms generally available to the public." § 36-25-1(34)b.5. The State posits that if, under the full-value exclusion, an official could obtain a private loan from

any principal simply by "pay[ing] full value" for it (presumably in the form of a promise to repay with interest), then the official could circumvent the requirements of the bank-loan exclusion that loans be from an institutional lender and on publicly available terms.

Similarly, the compensation exclusion allows an official to receive certain business compensation that is "unrelated" to public service. § 36-25-1(34)b.10. The State contends that if, under the full-value exclusion, an official could receive money from a principal for any reason merely by "pay[ing] full value" for it with nonmonetary items, then the official could render nugatory the requirement of the compensation exclusion that the compensation be "unrelated" to the official's service.

The State overlooks an important principle of statutory interpretation that intervenes when provisions seem facially inconsistent: the general/specific canon. As explained by Justice Antonin Scalia, writing for the United States Supreme Court:

> "'[I]t is a commonplace of statutory construction that the specific governs the general.' Morales v. Trans World Airlines, Inc., 504 U.S. 374, 384 (1992). That is particularly true where ... '[the

> legislature] has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions.' Varity Corp. v. Howe, 516 U.S. 489, 519 (1996) (THOMAS, J., dissenting); see also HCSC-Laundry v. United States, 450 U.S. 1, 6 (1981) (per curiam) (the specific governs the general 'particularly when the two are interrelated and closely positioned, both in fact being parts of [the same statutory scheme]').
>
> "The general/specific canon is perhaps most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission. To eliminate the contradiction, the specific provision is construed as an exception to the general one. See, e.g., Morton v. Mancari, 417 U.S. 535, 550-551 (1974). But the canon has full application as well to statutes such as the one here, in which a general authorization and a more limited, specific authorization exist side by side. There the canon avoids not contradiction but the superfluity of a specific provision that is swallowed by the general one, 'violat[ing] the cardinal rule that, if possible, effect shall be given to every clause and part of a statute.' D. Ginsberg & Sons, Inc. v. Popkin, 285 U.S. 204, 208 (1932). The terms of the specific authorization must be complied with. For example, in [Ginsberg,] a provision of the Bankruptcy Act prescribed in great detail the procedures governing the arrest and detention of bankrupts about to leave the district in order to avoid examination. The Court held that those prescriptions could not be avoided by relying upon a general provision of the Act authorizing bankruptcy courts to '"make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of [the] Act."' Id., at 206 (quoting Bankruptcy Act of 1898, § 2(15), 30 Stat. 546). The Court said that '[g]eneral language of a statutory provision,

> although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment.' 285 U.S., at 208. ... Or as we said in a much earlier case:
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> > "'It is an old and familiar rule that, where there is, in the same statute, a particular enactment, and also a general one, which, in its most comprehensive sense, would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment. This rule applies wherever an act contains general provisions and also special ones upon a subject, which, standing alone, the general provisions would include.' United States v. Chase, 135 U.S. 255, 260 (1890) (citations and internal quotation marks omitted).
> >
> > "....
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> "... [Further], we know of no authority for the proposition that the canon is confined to situations in which the entirety of the specific provision is a 'subset' of the general one. When the conduct at issue falls within the scope of both provisions, the specific presumptively governs, whether or not the specific provision also applies to some conduct that falls outside the general."

RadLAX Gateway Hotel, LLC v. Amalgamated Bank, 566 U.S. 639, 645-46, 648 (2012).

This application of the general/specific canon makes clear that interpreting the word "pays" as including

nonmonetary items does not render any of the other exclusions superfluous. Simply put, if particular conduct is addressed by more than one exclusion, the most specific exclusion is the legally relevant one. In this way, each exclusion has a field of operation, and none destroys any other.

Accordingly, in light of the plain meaning of the word "pays," we hold that, within the full-value exclusion of § 36-25-1(34)b.9, "pays" is not limited to the payment of money but also includes nonmonetary items such as stock that a public official or employee transfers in a transaction. Therefore, Hubbard's transfer of the Craftmaster stock in exchange for the investments by Brooke, Sterne Agee, Rane, and Burton comes within the meaning of "pays."

ii. "Full value" for investments

We must next address whether the Craftmaster stock constituted "full value" for the investors' money. Specifically, we must determine whether the State presented evidence that the stock did not constitute full value. In reviewing the sufficiency of the evidence, we determine whether, at the time the motion for a judgment of acquittal was made, the evidence supported a reasonable inference of

guilt, viewing the evidence in the light most favorable to the State. Ex parte Burton, 783 So. 2d 887, 890-91 (Ala. 2000).

As previously noted, the Craftmaster stock came with a promise of dividends equaling a six percent annual return, which multiple investors testified was a good return. There was also evidence that that promise was not a sham or illusory. Brooke testified that he received the promised six percent return. Rane testified that Craftmaster never missed a dividend payment. Although Burton testified that he received a four percent return rather than six percent, we do not consider that two percent deviation material to whether the promise was a sham, and the State does not argue that it is material.

Nevertheless, the State contends that it presented evidence that the stock did not constitute "full value" for the $150,000 investments. The only evidence to which the State points are (1) Hubbard's e-mail to a prospective investor, stating, "I suspect [that two investors other than those at issue here] are both doing it more to help me than for the return on their investment," and (2) Craftmaster's poor financial state at the time of the investments. Contrary

to the State's argument, Hubbard's e-mail concerned investors' motives for investing, which are irrelevant to whether Hubbard objectively paid, and the investors received, full value for their money. Nor did Craftmaster's financial state imply an absence of full value. Although the company's dire condition created a large element of risk in the investments, the potential for a commensurate return was, as confirmed by later events, real.

Accordingly, the State failed to present evidence that the value of each investor's Craftmaster stock was less than $150,000. Therefore, the State failed to prove that Hubbard did not pay full value for the Craftmaster investments, and thus failed to prove the offense of receiving a thing of value from a principal. Accordingly, we reverse the Court of Criminal Appeals' judgment as to Hubbard's convictions on counts 16-19.

b. "Principal"

In count 23, Hubbard was convicted of violating § 36-25-5.1(a) for soliciting and receiving business advice from Brooke, who the State alleged was a principal. At all times relevant to this appeal, Brooke was a member of the BCA's

board and the BCA's executive committee; it is undisputed that the BCA is a principal. Hubbard argues, however, that the State failed to present sufficient evidence from which the jury could have fairly concluded beyond a reasonable doubt that Brooke was a principal, which is defined in § 36-25-1(24), Ala. Code 1975, as "[a] person or business which employs, hires, or otherwise retains a lobbyist." Hubbard's argument is that the BCA, not Brooke, employed, hired, or otherwise retained a lobbyist.[6]

Hubbard presented this same argument to the Court of Criminal Appeals, which analyzed the issue as follows:

> "Hubbard argues that Brooke was not a principal because the statute provides that a principal is a person or business that hires a lobbyist, and Brooke did not do so. James Sumner, the former director of the Alabama Ethics Commission and an expert witness at trial, testified:
>
> > "'What we have always said is that, clearly the person who signs on behalf of that business is a principal. But there are

[6]Hubbard does not argue that the business advice he solicited and received from Brooke was not a "thing of value"; that element of § 36-25-5.1(a) as it pertains to count 23 is not at issue on appeal.

Also, as to counts 18 and 19, Hubbard contends that Rane and Burton were not principals. However, because we are reversing as to those counts based on the full-value exclusion, we need not address this additional contention.

> others, decision makers, who are officers. And of those two, can be and shall be, considered as principals as well. That could be the officers. It could be like an executive committee of the company and -- and so forth, and -- but it is -- for a company, it is broader than just one individual.'
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> "....
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> "Sumner further explained that, in political-interest groups or advocacy organizations, several people would be considered principals: presidents, vice presidents, chairs, vice chairs, and the leadership at the top of the organization. Therefore, based on the evidence presented at trial, the jury could reasonably have found that Brooke was a principal in the BCA."

Hubbard v. State, ___ So. 3d at ___.

In concluding as it did, the Court of Criminal Appeals failed to engage in an analysis of the plain language of the definition of "principal" to ascertain its meaning but, instead, relied exclusively on the expert testimony of James Sumner, former director of the Alabama Ethics Commission. The expert testimony of Sumner concerning the meaning of § 36-25-1(24) is not authoritative, nor even all that persuasive. We must determine the plain meaning of § 36-25-1(24) by applying the relevant principles of statutory interpretation.

Under § 36-25-1(24), a "principal" is the "person or business which employs, hires, or otherwise retains a lobbyist." (Emphasis added.) This definition makes clear that the thing that qualifies a person or business as a principal is the act of "employ[ing], hir[ing], or otherwise retain[ing] a lobbyist." As noted above, it is undisputed that the BCA is a principal in that it employed, hired, or otherwise retained lobbyists. The question before this Court, however, is whether Brooke was a principal.

In the present case, the evidence presented by the State indicates that Brooke was a member of the BCA's board and of its executive committee. The State notes in its brief that "Brooke occupied one of the top leadership positions on the BCA board's executive committee from 2010-2012. ... The BCA's lobbyists reported to the group's top lobbyist, [Billy] Canary. And he 'report[ed] to the executive committee of the BCA Board,' which included Brooke." The State's brief, at p. 47. The State did not present any evidence that Brooke was the individual who employed, hired, or otherwise retained the BCA's lobbyists. Neither did the State present any evidence that Brooke negotiated or signed on behalf of the BCA the

contractual agreements with Billy Canary or the BCA's other lobbyists. We note that the definition of "principal" unequivocally does not include a person or business that supervises or manages a lobbyist, but includes only those that "employ[], hire[], or otherwise retain[] a lobbyist." Accordingly, based on the facts presented by the State, the issue is whether the definition of "principal" is broad enough to encompass a member of the board of an entity that has employed, hired, or otherwise retained a lobbyist, even though there is no evidence that the member of the board was involved with the actual employing, hiring, or otherwise retaining of the entity's lobbyist.

The State appears to take the position that the terms "business" and/or "person," as used in the definition of "principal" in § 36-25-1(24), include not only the entity itself that employs, hires, or otherwise retains the lobbyist, but also all the individual members of the entity's board. See the State's brief, at pp. 48-51. In other words, according to the State, it is insignificant that Brooke had no personal or direct involvement with employing, hiring, or otherwise retaining the BCA's lobbyists because Brooke was a

member of the BCA's board. The State argues that the only evidence it needed to present to support the jury's verdict finding Brooke to be a principal was that the BCA was a principal. We disagree.

The terms "business" and "person" used in § 36-25-1(24) are terms of art defined in that statute as follows:

> "(1) BUSINESS. Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, or any other legal entity.
>
> "....
>
> "(23) PERSON. A business, individual, corporation, partnership, union, association, firm, committee, club, or other organization or group of persons."

§ 36-25-1(1) and (23), Ala. Code 1975 (capitalization in original). The definitions of both terms include the word "corporation." According to the Alabama Secretary of State's records, the BCA is a corporation.[7] The legislature did not define the term "corporation" in the Ethics Code; thus, this Court must give the term its plain and ordinary meaning. "Corporation" is defined as

[7]See Rimpsey Agency, Inc. v. Johnston, 218 So. 3d 1242, 1243 n.1 (Ala. Civ. App. 2016)("[T]his court may take judicial notice of matters of public record, including records of the Secretary of State ....").

> "[a]n entity (usu[ally] a business) having authority under law to act as a single person distinct from the shareholders who own it and having rights to issue stock and exist indefinitely; a group or succession of persons established in accordance with legal rules into a legal or juristic person that has a legal personality distinct from the natural persons who make it up, exists indefinitely apart from them, and has the legal powers that its constitution gives it."

Black's Law Dictionary 391 (9th ed. 2009) (emphasis added).

When the word "corporation" is given its plain and ordinary meaning, it is clear that the BCA is "a legal or juristic person that has a legal personality distinct from the natural persons that make it up" and that the BCA "exists ... apart from them."[8] In other words, the BCA and the individual members of the BCA's board are not the same legal person; they exist distinct from one another. Therefore, we conclude that the Court of Criminal Appeals' interpretation of the word "principal" was in error. The term "principal" is not broad

[8]This principle is well established in our caselaw. See, e.g., Hill v. Fairfield Nursing & Rehab. Ctr., LLC, 134 So. 3d 396, 407 (Ala. 2013)("'"[A] corporation is a legal entity existing separate and apart from the persons composing it ...."'" (quoting Cohen v. Williams, 294 Ala. 417, 420, 318 So. 2d 279, 280 (1975), quoting in turn 18 Am. Jur. 2d Corporations § 14, p. 559)); Ex parte AmSouth Bank of Alabama, 669 So. 2d 154, 156 (Ala. 1995) ("A corporation is generally regarded as a legal entity separate from its directors, officers, and shareholders.").

enough to encompass within its meaning a member of the board of an entity that has employed, hired, or otherwise retained a lobbyist when there is no evidence that the board member was involved with the employing, hiring, or otherwise retaining of the entity's lobbyist.[9]

We note that our conclusion that a board member of an entity that has employed, hired, or otherwise retained a lobbyist is not a "principal" solely based on the individual's position as a board member does not foreclose the possibility that a board member of such an entity could, in fact, satisfy the definition of "principal." In other words, there is no "bright-line" rule that a member of the board of an entity

[9]Our interpretation of "principal" is further supported by the fact that the legislature employed specific language in § 36-25-1(2), Ala. Code 1975, to include a reference to officers, owners, partners, board-of-directors members, and employees within the definition of the term "business with which the person is associated." The entirety of the definition of "business with which the person is associated" states: "Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business." The legislature clearly understands the difference between a corporation and the individuals who compose it. In defining "principal," the legislature chose not to include the specific language it employed in defining "business with which the person is associated." This Court cannot include within the definition of "principal" that which the legislature specifically chose to exclude.

that has employed, hired, or otherwise retained a lobbyist cannot be considered a "principal." Again, the key to whether an individual fits within the definition of "principal" is the activity of the person, not the person's title, position, or job description. The hallmark of a "principal" is one that employs, hires, or retains a lobbyist; this will necessarily be determined on a case-by-case basis.

In light of the foregoing, the jury could not have reasonably concluded that Brooke was a principal based on the mere facts that the BCA was a principal and that Brooke was a member of its board and its executive committee. The State was required to present sufficient evidence that Brooke himself was a "person or business which employs, hires, or otherwise retains a lobbyist." The State failed to present any such evidence. Accordingly, we reverse the Court of Criminal Appeals' judgment as to Hubbard's conviction on count 23.

B. Consulting payments from American Pharmacy Cooperative, Inc., and Edgenuity, Inc. (counts 6 and 10)

Hubbard was convicted on two other counts of soliciting or receiving a thing of value from a principal in violation of § 36-25-5.1(a), Ala. Code 1975. Counts 6 and 10 were based on Hubbard's receiving payments from two companies -- American Pharmacy Cooperative, Inc. ("APCI"), and Edgenuity, Inc. ("Edgenuity").

1. Facts relating to counts 6 and 10

In 2011, Hubbard met Michael Humphrey at an education-products conference in San Francisco. Humphrey was executive vice president of E2020, Inc., a company that provided online digital curriculum to public schools. The company's name was later changed to Edgenuity, Inc.

Hubbard and Humphrey later discussed through a mutual acquaintance, Ferrell Patrick (Edgenuity's Alabama lobbyist), the possibility of Edgenuity's hiring Hubbard as a consultant. Humphrey e-mailed one of Edgenuity's owners, stating:

> "I am considering a deal with the House Speaker in Alabama as you know....he can get us in front of any speaker in the country regardless of party....but way more influence with the R[epublican]s...I think this would help us in states that we do not have a lobby presence."

Michelle Freeman, an Edgenuity paralegal, helped Humphrey draft a contract with Hubbard. In an e-mail sending Freeman his initial draft of the contract, Humphrey wrote: "Mike is the current Speaker of the House in Alabama....my thought in using him would be for intros into House and Senate leadership in states where we do not have lobby support (and even states where we do, when necessary)." Freeman noted that Hubbard "could speak on our behalf: (i) at regional/national political party conferences; or (ii) meetings with his elected colleagues in other states; (iii) roundtables sponsored by think tanks; or (iv) at education industry conferences."

In March 2012, Edgenuity and Hubbard (on behalf of Auburn Network) signed the contract. It provided that Edgenuity would pay Hubbard $7,500 per month and that his services would not take place within Alabama. After Patrick told Hubbard that Edgenuity had approved the contract, Hubbard responded: "Now, how do I learn more about what they do and how I can help outside the state [o]f Alabama?" In response, Patrick offered Hubbard "tutorials over a glass of [S]cotch."

On Edgenuity's behalf, Hubbard contacted the speakers of the Houses of Representatives of North Carolina and South

Carolina and contacted officials of the National Collegiate Athletic Association. Between April 2012 and July 2014, Edgenuity paid Hubbard a total of $210,000.

Patrick also helped Hubbard obtain a consulting contract with another of Patrick's lobbying clients, APCI. APCI's president, Timothy Hamrick, described APCI as "a corporate office for ... community owned, community based, independent pharmacies." APCI's purpose was to help these pharmacies compete with larger chains through legislative efforts and advertising.

In June 2012, Hubbard, as president of Auburn Network, signed a contract with APCI. Like the Edgenuity contract, it prohibited Hubbard from providing services within Alabama. Under the contract, Hubbard would be paid $5,000 per month. Between August 2012 and January 2014, APCI paid Hubbard $95,000.

Hamrick testified at trial that, when APCI hired Hubbard, "[t]he main focus was to represent [APCI's] interest in these other states that we were expanding to." Hamrick also noted that, "[b]eing Speaker of the House in Alabama, [Hubbard] ... knew the Speakers and Legislators from other states." Hamrick

testified that he thought Hubbard could use the contacts he had developed as Speaker of the House in states where APCI did business.

In 2013, APCI lobbied the Alabama Legislature for a budget provision that would make APCI the statewide manager of Medicaid pharmacy benefits and would prevent an out-of-state entity from becoming the manager. The provision was included in the proposed budget for the upcoming fiscal year. Hamrick wrote to Hubbard, thanking him for "championing" the provision. Just before the budget came up for a vote in the House of Representatives, Hubbard's chief of staff, Josh Blades, became aware of Hubbard's contract with APCI and warned Hubbard that he should not vote on the budget, which contained the Medicaid-manager provision. At Hubbard's request, Blades tried to get the provision removed before the budget came up for a vote, but he was not successful. Blades again advised Hubbard not to vote on the budget, but Hubbard, concerned about how it would look for him not to vote on "his own budget," went ahead and voted in favor of it. The budget passed the House of Representatives, but the language

favorable to APCI was removed by a conference committee before the final budget was approved by the full legislature.

In connection with these consulting contracts with APCI and Edgenuity, Hubbard had written to Sumner, then director of the Alabama Ethics Commission, requesting clarification about the legality of entering into such contracts. In response, Sumner wrote:

> "As a general rule, the law prohibits you from using your position or the mantle of your office to provide a personal benefit to yourself or to your company, Auburn Network, Inc. This means that should any issue affecting Auburn Network, Inc.[,] differently from all other similarly situated businesses come before the Legislature, you need to remove yourself from any discussions, votes, etc. dealing with Auburn Network, Inc."

Sumner testified at trial that, during various conversations with Hubbard, Sumner or other Commission staff told Hubbard that he could not use his official position to benefit himself or his business.

Based on Hubbard's receiving the payments under these consulting contracts, he was convicted of receiving a thing of value from APCI (count 6) and Edgenuity (count 10).

2. Discussion regarding counts 6 and 10

Hubbard argues that the payments he received under his contracts with APCI and Edgenuity came within the Ethics Code's "compensation" exclusion from the definition of "thing of value."[10] This exclusion provides:

> "The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof:
>
> > "....
> >
> > "... Compensation and other benefits earned from a non-government employer, vendor, client, prospective employer, or other business relationship in the ordinary course of employment or non-governmental business activities under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's public service as a public official or public employee."

§ 36-25-1(34)b.10, Ala. Code 1975.[11]

[10]Hubbard does not argue that the payments from APCI and Edgenuity to Auburn Network were not ultimately received by Hubbard personally. Thus, for purposes of this discussion, we treat Auburn Network and Hubbard as synonymous.

[11]Hubbard also contends in his brief that the payments came within the full-value exclusion. However, Hubbard did not raise that issue in his certiorari petition; thus, it is outside the scope of our review. See Ex parte Franklin, 502 So. 2d 828, 828 n.1 (Ala. 1987).

There are three elements to this compensation exclusion: the compensation or other benefits must be (1) earned from a nongovernmental business relationship (such as an employer, client, or vendor), (2) in the ordinary course of employment or nongovernmental business activity, (3) under circumstances that make clear that the compensation or benefits are provided for reasons unrelated to the recipient's public service. Hubbard contends that the third element must be understood as meaning only that the compensation must not be a quid pro quo for the public official's exercise of official power. When this element is so understood, Hubbard argues, the State failed to disprove its applicability because the State presented no evidence that the consulting payments were such a quid pro quo.

Initially, the State responds that Hubbard waived the compensation-exclusion argument because he did not request a jury instruction on this exclusion. However, Hubbard's argument is not a failure-to-instruct argument, but a sufficiency-of-the-evidence argument: he contends that the State failed to present evidence to disprove the applicability of the exclusion. To preserve such a sufficiency argument, a

party is not required to request a jury instruction. Cf. Complete Cash Holdings, LLC v. Powell, 239 So. 3d 550, 557 n.7 (Ala. 2017) (holding in a civil case that an objection to a jury instruction was not necessary to preserve a sufficiency-of-the-evidence issue). Instead, a sufficiency argument is preserved by a motion for a judgment of acquittal. Ex parte McNish, 878 So. 2d 1199 (Ala. 2003). When Hubbard raised the compensation exclusion in his motion for a judgment of acquittal, he preserved it.

On appeal, the Court of Criminal Appeals incorrectly understood Hubbard's argument as challenging the weight of the evidence. See Hubbard v. State, ___ So. 3d at ___, ___. Instead, Hubbard's argument raised issues of statutory interpretation and the sufficiency of the evidence. The Court of Criminal Appeals alternatively held that the evidence was sufficient to prove that the compensation exclusion did not apply. Id. at ___, ___.

We first address the meaning of the compensation exclusion's third element, which requires that the compensation be "under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's

public service as a public official or public employee." We then apply our interpretation of this element to the facts of this case.

a. Meaning of compensation exclusion's "unrelated" element

We review issues of statutory interpretation de novo. Ex parte Kennemer, 280 So. 3d at 370. "'Absent any indication to the contrary, the words [of a statute] must be given their ordinary and normal meaning.'" Ex parte Ankrom, 152 So. 3d at 409 (quoting Walker v. State, 428 So. 2d at 141).

As previously noted, the compensation exclusion carves out from the definition of "thing of value" certain types of compensation that are earned "under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's public service as a public official or public employee." § 36-25-1(34)b.10. Hubbard argues that this restrictive language should be interpreted as precluding only compensation to an official as quid pro quo for exercising his or her official governmental power. Without question, the language clearly shuts out from the scope of the exclusion all quid pro quo exchanges. Yet, on its face, the language is much broader than that. To come within the language of the

exclusion, the compensation must be "for reasons unrelated to" the official's public "service," and that unrelatedness must be "clear" from the "circumstances." Plainly, the kinds of compensation shut out by this element of the exclusion are not limited to quid pro quo exchanges.

In support of his quid pro quo reading, Hubbard relies on Ethics Commission Advisory Opinion No. 2018-08. There, the Ethics Commission advised that an off-duty police officer could obtain a job performing private security work, as long as the officer did not provide or promise the employer any favorable police treatment to obtain the job. Hubbard contends that, like the officer, his skills and expertise made him desirable to hire, and the fact that those skills and expertise were also used in his public service did not disqualify his consulting contracts from the compensation exclusion.

But that is not the question the Ethics Commission was addressing in Advisory Opinion No. 2018-08. Rather, the Commission was addressing whether the officer's off-duty work, which he could also have performed while on duty, violated the Ethics Code's separate prohibition of using public property

for private benefit. See § 36-25-5(c) ("No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, [or] any other person ...."). Because the person who requested the ethics opinion apparently did not specify that the employer was a lobbyist or principal, the Commission had no occasion to address the Ethics Code's prohibition of receiving a thing of value from a lobbyist or principal (§ 36-25-5.1(a)) or the compensation exclusion from the definition of a "thing of value" (§ 36-25-1(34)b.10). Therefore, Advisory Opinion No. 2018-08 has no bearing on our interpretation of the compensation exclusion.

Similarly, Hubbard misplaces reliance on another Ethics Commission opinion, Advisory Opinion No. 2018-09. There, the Commission applied a 10-factor "test" to advise a public employee whether his proposed post-retirement employment by a principal would come within the compensation exclusion. After that multi-factor discussion, the Commission noted that the employee had not "leverage[d]" his public position to obtain

the employment or engaged in quid pro quo corruption. However, those latter conclusory comments were apparently based on the per se prohibition of quid pro quo corruption in § 36-25-7, not on the compensation exclusion. See id. at 6 & n.2. It does not appear that the Commission conflated the third element of the compensation exclusion with the concept of "leveraging" or quid pro quo, as Hubbard would have us do.

Hubbard similarly contends that this element of the compensation exclusion allows compensation that is based on an official's "status" but not compensation in exchange for his or her "service." However, that is not the distinction drawn by the plain language of § 36-25-1(34)b.10. The statute instead distinguishes between compensation that is clearly unrelated to public service and compensation that is not.

In light of the plain language of the third element of the compensation exclusion and Hubbard's failure to convince this Court that it means anything other than what it says, we reject his reading of it as shutting out only quid pro quo exchanges. Instead, we hold that, to meet this element of the compensation exclusion, the compensation must be provided solely for reasons unrelated to the official's or employee's

public service, and that unrelatedness must be clear from the circumstances of the compensation.[12]

We recognize that this interpretation of the statutory language could result in shutting out from the compensation exclusion some forms of private employment or advertising that might otherwise be assumed innocuous. To the extent that that result may be in tension with perceived public policy, any remedy lies with the legislature, not the courts. We are not at liberty to ignore or adjust the plain meaning of the statute. Morgan Cty. Comm'n v. Powell, 292 Ala. 300, 310, 293 So. 2d 830, 839 (1974).

b. Application to this case

In light of our interpretation of the compensation exclusion, we must determine whether the State presented evidence that Hubbard's consulting payments were not earned "under circumstances which make it clear that the [payments were] provided for reasons unrelated to [Hubbard's] public

[12]Hubbard also argues that, if we do not accept his interpretation of the compensation exclusion, then the exclusion is unconstitutionally vague. But a statute can be unconstitutionally vague only if its meaning is not plain, see Ex parte Hicks, 153 So. 3d 53, 65-66 (Ala. 2014), and we have determined that the meaning of the exclusion is plain as applied to counts 6 and 10. Thus, we need not further address Hubbard's vagueness argument.

service" -- in other words, whether the State presented evidence that the payments were provided for reasons related to his public service. In reviewing the sufficiency of the evidence, we determine whether, at the time the motion for a judgment of acquittal was made, the evidence supported a reasonable inference of guilt, viewing the evidence in the light most favorable to the State. Ex parte Burton, 783 So. 2d at 890-91.

The State presented evidence that Edgenuity's and APCI's payments to Hubbard were provided for reasons related to his public service. Edgenuity executive Humphrey stated in an e-mail that Hubbard "can get [Edgenuity] in front of any speaker in the country regardless of party....but way more influence with the R[epublican]s." Humphrey also wrote: "Mike is the current Speaker of the House in Alabama....my thought in using him would be for intros into House and Senate leadership in states where we do not have lobby support ...." Paralegal Freeman responded that Hubbard "could speak on [Edgenuity's] behalf ... at regional/national political party conferences ... or ... meetings with his elected colleagues in other states."

Likewise, APCI president Hamrick testified that APCI hired Hubbard because, "[b]eing Speaker of the House in Alabama, he ... knew the Speakers and Legislators from other states." In addition, when given an opportunity to support legislation granting APCI a monopoly in Alabama, Hubbard, in Hamrick's words, "champion[ed]" -- and voted for -- that legislation.[13]

Hubbard contends that the payments for his consulting work could not have been related to his public service because APCI and Edgenuity hired him to work outside Alabama. However, the language of the compensation exclusion does not support a per se distinction between work inside and outside

[13]Hubbard argues that his legislative work in support of APCI cannot be considered evidence to support his conviction on count 6 because, he asserts, the State agreed at trial that it was not charging him with engaging in a quid pro quo. But Hubbard cites merely comments by the State in an objection and a question during tangentially related testimony of witnesses. The State did not enter into a stipulation that the APCI-legislation matter could not be considered as evidence in support of count 6. Nor did Hubbard request a limiting instruction or jury instruction to that effect. Cf. Rule 105, Ala. R. Evid. ("When evidence which is admissible ... for one purpose but not admissible ... for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly."). Thus, the jury was free to consider Hubbard's support of the legislation in determining whether Hubbard was guilty on count 6.

Alabama. Cf. Ethics Commission Advisory Opinion No. 2016-27, at 6 (advising that a compensation-exclusion analysis must be undertaken even if work is to be performed outside Alabama); Ethics Commission Advisory Opinion No. 97-25 (advising that certain other Ethics Code provisions applied to consulting work both inside and outside Alabama). And even if such a distinction existed, it would not affect count 6 because Hubbard supported APCI's legislation within Alabama.

Therefore, the State presented evidence sufficient to prove that the compensation exclusion did not apply to APCI's and Edgenuity's payments to Hubbard. Accordingly, we affirm the Court of Criminal Appeals' judgment as to Hubbard's convictions on counts 6 and 10.

C. Consulting payments from Capitol Cups, Inc. (count 11)

Hubbard was convicted on one count of using his official position for personal gain in violation of § 36-25-5(a), Ala. Code 1975. This count was based on Hubbard's conduct while promoting products of another company from which he received payments for consulting work, Capitol Cups, Inc. ("Capitol Cups").

1. Facts relating to count 11

Robert Abrams, an inventor from the State of New York, was the majority owner of several businesses operating in Lee County, Alabama. One of the businesses, Capitol Cups, manufactured insulated plastic cups. Abrams and Hubbard occasionally met for breakfast when Abrams was in Alabama. Hubbard told Abrams that he had ideas about companies that might be interested in Capitol Cups' products. As a result, Hubbard and Abrams signed a consulting contract under which Capitol Cups would pay Auburn Network $10,000 per month. The contract was for one year and would be automatically renewed annually unless terminated by one of the parties. Hubbard received $220,000 from Capitol Cups between October 2012 and July 2014.

In performing his role under the contract, Hubbard e-mailed two of his contacts at Publix Super Markets, Inc. ("Publix"), asking if they could arrange a meeting with Capitol Cups. Hubbard identified Capitol Cups as "a company here in Auburn (my district)" "that employs several hundred people." At the bottom of the e-mail, Hubbard identified himself as "Rep. Mike Hubbard[,] Speaker of the House[,]

Alabama House of Representatives." Hubbard did not disclose that he was a paid consultant of Capitol Cups. One of the e-mail recipients forwarded it to another Publix employee, identifying Hubbard only as "the Speaker of the House of the Alabama State House of Representatives" who "sent the email below on behalf of a constituent of his."

2. Discussion regarding count 11

The Ethics Code subsection under which Hubbard was convicted provides:

> "No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law."

§ 36-25-5(a), Ala. Code 1975 (emphasis added). Thus, on count 11, the State was required to prove (1) that Hubbard was a public official or public employee (2) who used or caused to be used his official position or office (3) to obtain personal gain (4) for himself, a family member, or a business with

which he was associated, and (5) that he did so intentionally (see § 36-25-27(a)(1)).[14]

Hubbard challenges the second and third elements, arguing that the evidence at trial was insufficient to prove that he used his official position to obtain personal gain. Specifically, he posits that the State presented no evidence that he used his position as Speaker of the House to obtain the consulting contract with Capitol Cups or to increase his compensation under that contract. The Court of Criminal Appeals concluded that the State presented evidence sufficient to support this count. Hubbard v. State, ___ So. 3d at ___-___.

We first interpret the statutory language "use or cause to be used his or her official position or office to obtain personal gain" in the context of Hubbard's argument here. We then apply our interpretation to the evidence presented.

[14]In this case, there is no dispute that Hubbard's conduct and compensation were not "otherwise specifically authorized by law." Thus, we need not address whether that proviso in the statute constitutes an element of the offense or a matter of defense.

a. Meaning of use of official position to obtain personal gain

We review issues of statutory interpretation de novo. Ex parte Kennemer, 280 So. 3d at 370. "'Absent any indication to the contrary, the words [of a statute] must be given their ordinary and normal meaning.'" Ex parte Ankrom, 152 So. 3d at 409 (quoting Walker v. State, 428 So. 2d at 141). Given Hubbard's argument, we must decide whether the statutory language "use ... his ... official position ... to obtain personal gain" is plainly limited to conduct used to obtain a contract or to increase compensation, or whether it also plainly includes conduct in performance of a fixed-compensation contract.[15]

Two considerations persuade us that the latter is the correct interpretation. First, although a contract may set a party's compensation at a fixed periodic amount, if that party

[15]For purposes of our discussion, a "fixed-compensation contract" is a contract under which the amount of compensation is not expressly correlated to performance (e.g., not commission-based compensation). See, e.g., Wellborn v. Buck, 114 Ala. 277, 281, 21 So. 786, 788 (1897) ("In this case there was ... an actual, subsisting engagement for the rendition of services at a fixed compensation ...."); Hughes v. Jefferson Cty. Bd. of Educ., 370 So. 2d 1034, 1036 (Ala. Civ. App. 1979) ("The Board has the authority to enter into contracts of employment with teachers for fixed compensation.").

materially fails to perform his or her contractual duties at any time during the life of the contract, then ordinarily the other party may terminate the contract, see Edwards v. Allied Home Mortg. Capital Corp., 962 So. 2d 194, 207 (Ala. 2007). Thus, an official's performance under such a contract may be "use[d] ... to obtain [further] personal gain" in the form of continued performance (payment of compensation) by the other party.

Second, if a contract leaves open the possibility that it will be renewed (as here), then a party's performance may persuade the other party to renew the contract. Therefore, an official's performance under such a contract may be for the purpose of "obtain[ing further] personal gain" in the form of a renewal of the contract.

For these reasons, we hold that the language "use or cause to be used his or her official position or office to obtain personal gain" plainly includes an official's conduct in performance of a fixed-compensation contract.[16]

[16]Because we conclude that the meaning of the statute is plain, we need not address Hubbard's alternative argument that the statute is unconstitutionally vague. See Ex parte Hicks, 153 So. 3d 53, 65-66 (Ala. 2014).

Hubbard posits various hypothetical scenarios in which he argues that, under our plain-language reading, § 36-25-5(a) would criminalize otherwise innocent conduct. To the extent that the plain meaning of the statute may be at odds with Hubbard's view of public policy, that is a matter for the legislature; this Court is without power to change the statute. See Ex parte Hicks, 153 So. 3d 53, 63 (Ala. 2014). We note, too, that criminalization of otherwise noncriminal conduct is the ordinary function of much criminal statutory law. Cf. State v. Southern Express Co., 200 Ala. 31, 37, 349 So. 343, 349 (1917) ("[T]he state [has power] to create and define as a crime the mere doing of an act which but for the statute would be innocent of offense."). This kind of criminalization would at least not be unexpected from an Ethics Code that was designed to thwart corruption with prophylactic measures.

b. Application to this case

We must next determine whether the State presented evidence that Hubbard "use[d] ... his ... official position ... to obtain personal gain" by using that position in performing his consulting contract with Capitol Cups. In

reviewing the sufficiency of the evidence, we determine whether, at the time the motion for a judgment of acquittal was made, the evidence supported a reasonable inference of guilt, viewing the evidence in the light most favorable to the State. Ex parte Burton, 783 So. 2d at 890-91.

As noted above, when Hubbard e-mailed his Publix contacts, he identified himself as a state legislator and as Speaker of the House of Representatives. He identified Capitol Cups simply as a company in his district, without disclosing his paid-consultant relationship with the company. And the success of that impression -- that he was contacting Publix merely as a legislator on behalf of a constituent -- was confirmed by Publix personnel's subsequent internal e-mail describing Hubbard's request. In view of this evidence, we conclude that the State presented evidence that Hubbard "use[d]" his "official position" of legislator and Speaker in performance of the Capitol Cups contract.[17]

[17]Hubbard also engaged in efforts to promote sales of Capitol Cups' products to the Chick-fil-A and Waffle House restaurant companies. Because we conclude that the evidence relating to Hubbard's communication with Publix was sufficient to support this offense, we need not address Hubbard's efforts relating to Chick-fil-A and Waffle House.

Therefore, the evidence was sufficient to support the jury's conclusion that Hubbard "use[d] ... his ... official position or office to obtain personal gain." Accordingly, we affirm the Court of Criminal Appeals' judgment as to Hubbard's conviction on count 11.

D. Work regarding CSP Technologies, Inc., patent (count 14)

Hubbard was convicted on one count of using public property for private benefit in violation of § 36-25-5(c), Ala. Code 1975. This count was based on Hubbard's using his chief of staff's time to assist with finalizing a patent owned by a company controlled by Robert Abrams, while Hubbard was receiving consulting payments from Abrams's company Capitol Cups.

1. Facts relating to count 14

In 2013, a company controlled by Abrams, CSP Technologies, Inc. ("CSP"), had been in patent litigation for over 10 years. CSP received notice that the United States Patent and Trademark Office ("USPTO") had approved a patent that would resolve several issues in the litigation. The patent would not be official, however, until it was issued by the Government Printing Office ("the Printing Office").

Abrams contacted the Printing Office and was told that, because of staff shortages, the Printing Office did not know where the patent was. By then, CSP had spent more than $12 million in legal fees on the litigation.

Abrams asked Hubbard if he knew anyone who could help speed up the issuance of the patent. Hubbard discovered that a Congressman from Mississippi sat on the Congressional committee with oversight of the USPTO. Accordingly, Hubbard turned to his chief of staff, Josh Blades, who had connections in Mississippi. Blades contacted the Congressman's staff, who put Blades in contact with a USPTO employee, Talis Dzenitis. Despite their best efforts, however, neither Blades nor Dzenitis could speed up the issuance of the patent.

During this process, Hubbard occasionally telephoned Blades to check on the status of the patent. On one such occasion, Hubbard said he "had 100,000 reasons to get this done." That comment was made shortly after Hubbard had received his 10th $10,000 check from Capitol Cups. Blades testified that, although he did not know about the Capitol Cups contract, Hubbard's comment made Blades uncomfortable because he immediately thought Hubbard meant money in some

form. Later, Blades told Hubbard that he had done all he could to push the project along and that Hubbard might need to handle it from that point. Hubbard personally contacted Dzenitis, and, shortly thereafter, the patent was issued.

2. Discussion regarding count 14

The Ethics Code subsection under which Hubbard was convicted provides:

> "No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2[, Ala. Code 1975], which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. ..."

§ 36-25-5(c), Ala. Code 1975 (emphasis added). Thus, on count 14, the State was required to prove (1) that Hubbard was a public official or public employee (2) who used or caused to be used (3) public time or human labor under his discretion or control, (4) for his private benefit that would materially

affect his financial interest, and (5) that he did so intentionally (see § 36-25-27(a)(1)).[18]

Hubbard challenges the State's case as to the fourth element, arguing that the State failed to present evidence that Blades's patent-related work "would materially affect [Hubbard's] financial interest." Specifically, Hubbard contends that there was no evidence that Blades's work enabled Hubbard to obtain the contract with Capitol Cups initially or that it had an effect on the longevity of that consulting relationship. The Court of Criminal Appeals held that the evidence was sufficient to support this count. Hubbard v. State, ___ So. 3d at ___-___.

In reviewing the sufficiency of the evidence, we determine whether, at the time the motion for a judgment of acquittal was made, the evidence supported a reasonable inference of guilt, viewing the evidence in the light most favorable to the State. Ex parte Burton, 783 So. 2d at 890-91. As previously discussed, it is a fundamental principle of

[18]Hubbard does not contend that his conduct was "as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy." Thus, we need not address whether that statutory proviso constitutes an element of the offense or a matter of defense.

corporate law that entities are separate legal persons from their owners. Therefore, the fact that a public official uses public property to serve the interests of an entity, and also receives a financial benefit from another entity owned by the person who owns the first entity, does not necessarily mean that the official's use of public property is "for private benefit" that "would materially affect his ... financial interest." In other words, mere common ownership, standing alone, is not per se sufficient to support the fourth element of this offense. Ordinarily, there must be something else to connect the two entities -- in the circumstances, in the financial arrangements, or in the statements of the persons involved.

Here, that "something else" was present in the words of Hubbard himself. Shortly after Hubbard received a 10th $10,000 check from Capitol Cups, he telephoned Blades about the CSP patent-related work and said that he had "100,000 reasons to get this done." Indeed, something about the way Hubbard said it gave Blades the impression that Hubbard was referring to money. From this evidence, the jury could reasonably have concluded that Hubbard saw the CSP patent work

as directly connected to his Capitol Cups payments. It was not necessary for the State to show that the patent work convinced Capitol Cups to hire Hubbard initially or that the patent work actually affected the longevity of that relationship. Rather, to overcome the legal implications of separate corporate identities, it was sufficient for the State to show that Hubbard understood the CSP patent work to be on the basis of, and in furtherance of, his payments from Capitol Cups.

Thus, the State's evidence was sufficient to support the jury's conclusion that Hubbard used Blades's time and labor "for [Hubbard's] private benefit" that "would materially affect his ... financial interest." Accordingly, we affirm the Court of Criminal Appeals' judgment as to Hubbard's conviction on count 14.

E. Representing SiO2 Medical Products, Inc., before executive branch (counts 12-13)

Hubbard was convicted on two counts of representing, for compensation, a business entity before an executive department or agency, in violation of § 36-25-1.1, Ala. Code 1975. These counts were based on Hubbard's obtaining meetings with executive-branch officials on behalf of SiO2 Medical Products,

Inc. ("SiO2"), another Abrams-controlled company, while Hubbard was receiving consulting payments from Capitol Cups.

1. Facts relating to counts 12-13

Abrams owned another business, SiO2, that manufactured vials for biotechnological drugs. The vials were required to be manufactured in a sterile environment, which required special employee training. Thus, Abrams began seeking funding from the Alabama government to build a training center.

Abrams learned that another company had obtained funding for a training center from a fund controlled by the Governor. Accordingly, Abrams asked Hubbard to help set up a meeting with then Governor Robert Bentley. Hubbard had his legislative executive assistant arrange two meetings for Abrams -- one with then Governor Bentley and the other with Secretary of Commerce Greg Canfield. At that time, Hubbard was receiving payments under his consulting contract with Capitol Cups.

2. Discussion regarding counts 12-13

The Ethics Code section under which Hubbard was convicted provides:

> "No member of the Legislature, for a fee, reward, or other compensation, in addition to that

> received in his or her official capacity, shall represent any person, firm, corporation, or other business entity before an executive department or agency."

§ 36-25-1.1, Ala. Code 1975. Thus, the State was required to prove (1) that Hubbard was a member of the legislature (2) who represented a person, firm, corporation, or other business entity (3) before an executive department or agency (4) for a fee, reward, or other compensation (in addition to that received in his official capacity), and (5) that he did so intentionally (see § 36-25-27(a)(1)).

Hubbard challenges the fourth element, arguing that the State failed to present evidence that he arranged the SiO2 meetings with executive-branch officials "for" the compensation he received from Capitol Cups. That is, he contends that there was no evidence of a connection between his representation of SiO2 and his compensation from Capitol Cups.[19] The Court of Criminal Appeals held that the State presented sufficient evidence to support these counts. Hubbard v. State, ___ So. 3d at ___-___.

[19]Hubbard does not argue that his arranging of meetings was not "represent[ation]" of SiO2. Therefore, we need not address whether the evidence supported the second element of the offense.

In reviewing the sufficiency of the evidence, we determine whether, at the time the motion for a judgment of acquittal was made, the evidence supported a reasonable inference of guilt, viewing the evidence in the light most favorable to the State. Ex parte Burton, 783 So. 2d at 890-91. Under § 36-25-1.1, the fourth element of this offense requires that the legislator's representation be "for" nonofficial compensation. In this context, "for" plainly carries the sense of "in exchange for." See Merriam-Webster's Collegiate Dictionary 488 (11th ed. 2003) (listing part of definition 8a of "for" as "a function word to indicate equivalence in exchange <$10 [for] a hat>"). Logically, then, this reference in the statute to an exchange requires evidence of a causal link between the representation and the compensation. Moreover, as we similarly emphasized in our analysis of count 14, mere common ownership of the two companies involved is not sufficient to establish such a link.

Here, the State's evidence was sufficient to support an inference of a causal link between Hubbard's compensation from Capitol Cups and his arranging meetings with executive-branch officials for SiO2. As we discussed in the context of count

14, shortly after having received $100,000 from Capitol Cups, an Abrams-controlled company, Hubbard told Blades that he had "100,000 reasons" to secure a patent for CSP, another Abrams-controlled company. From this evidence, the jury could reasonably have inferred that Hubbard was willing to do whatever was necessary to assist companies controlled by Abrams, on the basis of, and in furtherance of, the payments from Capitol Cups. Thus, the jury could reasonably have concluded that Hubbard's arranging of meetings between SiO2 and executive-branch officials was motivated by his compensation from Capitol Cups, providing the causal link between the representation and the compensation.

Therefore, the State presented evidence sufficient to support the jury's conclusion that Hubbard represented a corporation before an executive department or agency "for" nonofficial compensation. Accordingly, we affirm the Court of Criminal Appeals' judgment as to Hubbard's convictions on counts 12 and 13.

III. Conclusion

Our role as Justices is not to praise or question the wisdom of the Ethics Code or to reprove or excuse Hubbard's

behavior. We must interpret and apply the law. And every person accused of breaking the law -- even one who had a hand in creating that law -- is entitled to (and bound by) the same rules of legal interpretation. When charged with a crime, public officials must be treated no better -- and no worse -- than other citizens in this State where all are guaranteed equal justice under law.

We affirm the judgment of the Court of Criminal Appeals as to counts 6, 10, 11, 12, 13, and 14. We reverse the judgment as to counts 16, 17, 18, 19, and 23 and remand this case to the Court of Criminal Appeals for further proceedings consistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Mendheim and Stewart, JJ., concur.

Parker, C.J., concurs specially.

Bolin, Wise, and Bryan, JJ., concur in part and concur in the result in part.

Sellers, J., concurs in part and dissents in part.

Shaw and Mitchell, JJ., recuse themselves.

PARKER, Chief Justice (concurring specially).

I write specially to address the definition of "principal" in § 36-25-1(24), Ala. Code 1975. I would go further than the main opinion and hold that, as a matter of law, the phrase "person or business which employs, hires, or otherwise retains a lobbyist" does not include owners, directors, officers, employees, or other individuals associated with a corporate entity if the lobbyist represents the entity and not the individual personally.

Alabama's "Code of Ethics for Public Officials, Employees, Etc.," §§ 36-25-1 to -30 ("Ethics Code"), defines a "principal" as "[a] person or business which employs, hires, or otherwise retains a lobbyist." § 36-25-1(24). Michael Gregory Hubbard argues that this definition plainly refers only to a person or corporate entity that hires a lobbyist to lobby on behalf of that person or entity and that the definition does not include individuals associated with such an entity. In support, Hubbard contends that the language of the definition assumes a contractual relationship between the principal and lobbyist and that that relationship is absent between a lobbyist and an individual corporate agent.

The State, by contrast, argues that the definition plainly includes associated individuals if they participate in hiring or supervising the entity's lobbyist. In support, the State points out that a person responsible for hiring employees of an entity is commonly said to "hire" those employees. For example, a law firm's hiring partner is commonly said to "hire" associates, even though the associates sign a contract with the firm.

The State relies on Ex parte Hicks, 153 So. 3d 53 (Ala. 2014), in which this Court observed that the word "child" in § 26-15-3.2(a), Ala. Code 1975, plainly "'encompass[ed] all children -- born and unborn.'" Id. at 59 (quoting Ex parte Ankrom, 152 So. 3d 397, 411 (Ala. 2013)). But there is a crucial distinction between Hicks and this case. Here, Hubbard presents a facially reasonable interpretation of the definition of "principal," based on the underlying question of who can properly be said to have legally "employ[ed], hire[d], or otherwise retain[ed]" a corporate lobbyist. In contrast, the Hicks defendant's interpretation of "child," as excluding unborn children, was patently not a reasonable one. Id. at 59-60.

Unlike in Hicks, here each party advances a plausible reading of the statute, and neither is patently unreasonable. See S & S Distrib. Co. v. Town of New Hope, 334 So. 2d 905, 907 (Ala. 1976) ("'A statute ... is ambiguous when it is capable of being understood by reasonably well-informed persons in either of two or more senses.'" (quoting State ex rel. Neelen v. Lucas, 24 Wis. 2d 262, 267, 128 N.W.2d 425, 428 (1964)); Slagle v. Ross, 125 So. 3d 117, 136 (Ala. 2012) (Shaw, J., concurring in result in part and dissenting in part) ("The [statute] is susceptible to at least two reasonable interpretations; therefore, it is ambiguous ...."). Therefore, I would hold the definition of "principal" ambiguous as applied to this case and proceed to apply principles of statutory construction.

"Statutory language 'cannot be construed in a vacuum.'" Sturgeon v. Frost, ___ U.S. ___, ___, 136 S. Ct. 1061, 1070 (2016) (quoting Roberts v. Sea-Land Servs., Inc., 566 U.S. 93, 101 (2012)). When a statute is ambiguous, courts attempt to construe its language within the broader context of general principles of law governing similar persons, things, or relationships. See 82 C.J.S. Statutes § 472 (2009) ("Each

statute is to be construed in the context of the existing law and as a part of a general and uniform system of jurisprudence."); 73 Am. Jur. 2d Statutes § 91 (2012) ("[A] statute ... is to be read in connection with[] the whole body of the law."); 2B Norman J. Singer & Shambie Singer, Sutherland Statutes and Statutory Construction § 50:1 (7th ed. 2012) ("[L]egislation is interpreted in the light of the common law and the scheme of jurisprudence existing at the time of its enactment."); id. § 53:3 ("[I]nterpretation of a doubtful statute may be influenced by the language of other statutes which are not specifically related, but which apply to similar persons, things, or relationships."). Thus, in this context of corporate entities, employees, and lobbyists, our construction of the words "person or business which employs, hires, or otherwise retains a lobbyist" must be informed by general principles of law regarding corporate action.

As the main opinion recognizes, a fundamental principle of corporate law is that a corporate entity has a legal identity separate from its owners, directors, officers, and employees. As explained in the very first section of a

standard corporate-law treatise, "[a] corporation is a form of business association, having the rights, relations, and characteristic attributes of a legal entity distinct from that of the persons who compose it or act for it in exercising its functions." 1 Fletcher Cyclopedia of the Law of Corporations § 1 (2015) (emphasis added). As Howard P. Walthall, professor of business law at Cumberland School of Law, puts it:

> "The [Alabama] Business Code treats business corporations as jural entities that exist separate and apart from those persons, such as shareholders, officers, and directors, whose activities are channeled through the entity ....
>
> "... [U]pon the commencement of corporate existence, ... a new legal being comes into existence. And that new legal being ... is separate and distinct from those who act through it ...."

Brief of Howard P. Walthall as amicus curiae, at pp. 6-7. This distinction between entities and natural persons associated with them is embedded throughout our State's business code. See, e.g., §§ 10A-2-8.30(d) (director of corporation not personally liable for performance of official duties in compliance with Code section) and 10A-2-8.42(d) (same for officers), Ala. Code 1975.

As a corollary to this distinction, another important principle is that corporate agents do not ordinarily act on

their own behalf, but rather act on behalf of the entity they represent. See 19 C.J.S. Corporations § 673 (2018) ("The agent of a corporation stands in place of the corporation itself in the line of his or her assigned duties, and any acts within his or her authorized employment are the acts of the corporation ...." (footnote omitted)); 18B Am. Jur. 2d Corporations § 1310 (2015) ("A corporate entity and its agents are not distinct parties for contracting purposes because the corporation ... may only act through its officers, directors, and agents."); In re Infocure Sec. Litig., 210 F. Supp. 2d 1331, 1359 (N.D. Ga. 2002) ("[It is basic corporation law that, i]f a corporate officer acts on behalf of the corporation, then he is not considered to be acting in his individual capacity, unless so stated."). As Professor Walthall observes, "a corporate officer ... carrying out his or her duties ... is not acting on his or her own, but is fulfilling a role within the separate corporate structure." Walthall's amicus curiae brief, at p. 10.

A third relevant corporate-law principle is that, in light of the second principle, a representative of an entity is employed or contracted with by the entity itself, not the

individual corporate agents who perform the function of hiring or overseeing the representative. See 1 Fletcher Cyclopedia of the Law of Corporations § 29 ("[T]he corporation ... is the employing party in an employment relationship.").

Taken together, these principles of corporate law strongly suggest that, when an individual owner, director, officer, or employee hires or oversees a corporate lobbyist, the "person or business which employs, hires, or otherwise retains [the] lobbyist" is the entity, not the individual.

The State attempts to sidestep these corporate-law principles, arguing that an entity can act only through individuals who act on its behalf. Although that is true, it misses the point. Acts of individuals on behalf of an entity are just that -- acts on behalf of the entity. "[T]he acts of [a] corporation's agents within their authorized employment are the acts of the corporation." 2 Fletcher Cyclopedia of the Law of Corporations § 275 (2014). Thus, although individuals do the hiring and supervising of corporate lobbyists, that does not mean that those individuals thereby become "principals" of those lobbyists.

As an additional aid in construing an ambiguous statutory definition, courts examine whether the legislature omitted from the definition relevant language that the legislature included in other statutory provisions. See 2A Norman J. Singer & Shambie Singer, Sutherland Statutes and Statutory Construction § 46:6 (7th ed. 2019-2020 Supp.) ("Where a legislature includes particular language in one section of a statute but omits it from another section of the same or a related act, it generally acts intentionally and purposely in the disparate inclusion or exclusion."); 2B Singer, supra, § 51:2 ("[W]here a legislature inserts a provision in only one of two statutes that deal with a closely related subject, courts construe the omission as deliberate rather than inadvertent."). Significantly, the Ethics Code defines "lobbyist" to include certain subordinates of a lobbyist, including "[a]n employee, a paid consultant, or a member of the staff of a lobbyist." § 36-25-1(21)a.4, Ala. Code 1975. As seen from that definition, if the Legislature had intended "principal" to include an entity's individual agents who hire or oversee a lobbyist, it knew how to do so. The fact that the Legislature did not suggests that such agents are not

embraced by the definition of "principal." See City of Pinson v. Utilities Bd. of Oneonta, 986 So. 2d 367, 373 (Ala. 2007) ("The legislature did not create such an exemption, even though it has done so in the case of [a similar subject]. ... 'It is not proper for a court to read into the statute something which the legislature did not include although it could have easily done so.'").

The State, however, takes the converse position: If the Legislature had intended to exclude corporate agents from the definition of "principal," it would have done so expressly. As examples of this kind of express exclusion, the State points to Kentucky's and South Carolina's exclusions, from their definitions of terms parallel to Alabama's "principal," of any "employee, officer, or shareholder of a person who employs a lobbyist." Ky. Rev. Stat. Ann. § 6.611(12); S.C. Code Ann. § 2-17-10(14). The State would have us infer that, absent a similar exclusion here, the Legislature intended to include these individuals.

I am not persuaded by this argument. Courts' interpretations of other states' statutes may have value, particularly when our State's language has been borrowed from

them. See 73 Am. Jur. 2d Statutes § 98 (2012) ("In interpreting statutes, a court may consider similar provisions in sister jurisdictions."); 82 C.J.S. Statutes § 486 (2009) ("When a statute is patterned after a statute of another jurisdiction, whether state or federal, it is appropriate to consider interpretations of the statute in the jurisdiction from which it has been borrowed."). Yet the text itself of those statutes carries little interpretive relevance, in the absence of such borrowing or other historical relationship between those statutes and ours. Here, there is no evidence that the Alabama Legislature, in defining "principal," borrowed language from Kentucky or South Carolina but left out their exclusions. Compare Ky. Rev. Stat. Ann. § 6.611(12) (2010) (defining "[e]mployer" primarily as "any person who engages a legislative agent") and S.C. Code Ann. § 2-17-10(14) (2010) (defining "[l]obbyist's principal" primarily as "the person on whose behalf and for whose benefit the lobbyist engages in lobbying and who directly employs, appoints, or retains a lobbyist to engage in lobbying") with § 36-25-1(24), Ala. Code 1975 (defining "principal" as "[a] person or business which employs, hires, or otherwise retains a

lobbyist"). Rather, it appears that the legislatures of those states simply chose to make explicit in their definitions what seems to already be implicit in ours: a corporate agent is not a "principal" of a corporate lobbyist.

For further help in construing an ambiguous statute, courts consider how the statute has been interpreted by government agencies. Ex parte Chesnut, 208 So. 3d 624, 640 (Ala. 2016). This principle is especially applicable when the relevant agency has been empowered to issue interpretive opinions providing a "safe harbor" from liability for those who comply with them. Cf. United States v. Mead Corp., 533 U.S. 2018, 229-30 (2001). Here, the Alabama Ethics Commission has been tasked with advising public officials and employees on the meaning and application of the Ethics Code, including issuing safe-harbor opinions. See §§ 36-25-4(a)(9)-(10) and 36-25-4.2(a)-(b), Ala. Code 1975.

However, the Commission has not issued a permanent, definitive opinion on whether "principal" includes corporate agents for purposes of § 36-25-5.1(a)'s prohibition of soliciting or receiving things of value from a principal. As the main opinion notes, the Court of Criminal Appeals, in

holding that "principal" includes corporate agents, relied on the following testimony of James Sumner, former director of the Commission:

> "'What we have always said is that, clearly the person who signs on behalf of that business is a principal. But there are others, decision makers, who are officers. And of those two, can be and shall be, considered as principals as well. That could be the officers. It could be like an executive committee of the company and -- and so forth, and -- but it is -- for a company, it is broader than just one individual.'"

Hubbard v. State, [Ms. CR-16-0012, Aug. 27, 2018] ___ So. 3d ___, ___ (Ala. Crim. App. 2018).

There are several problems with the Court of Criminal Appeals' reliance on this testimony. First, Sumner did not identify any instance in which the Commission had publicly interpreted "principal" to include corporate officers or decision-makers. The Commission's interpretation cannot be established by testimony of an individual staff member without some written pronouncement by the Commission. See Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 212 (1988) ("We have never applied the principle of [administrative deference] to agency litigating positions that are wholly unsupported by regulations, rulings, or administrative practice. To the

contrary, we have declined to give deference to an agency counsel's interpretation of a statute where the agency itself has articulated no position on the question ...."); cf. State v. Louisville & Nashville R.R., 398 So. 2d 288, 290 (Ala. Civ. App. 1980) ("The failure of the [Department of Revenue] to attempt to collect a tax does not establish a precedent nor constitute an administrative ruling or interpretation absent a formal ruling or order."), reversed on other grounds, Ex parte Louisville & Nashville R.R., 398 So. 2d 291 (Ala. 1981). Indeed, a private, unannounced understanding of Commission staff would be a dubious basis for sustaining a criminal conviction. See United States v. Farley, 11 F.3d 1385, 1390 (7th Cir. 1993) ("Courts may not ... rely on unpublished opinions of agency staff.").

Second, Sumner's testimony that the Commission has "always said" that certain corporate agents are "principals" is belied by the fact that the Commission does not consider them "principals" under other portions of the Ethics Code. In accordance with §§ 36-25-18(b)(6) and 36-25-19(a), "principal[s]" must file reports and statements with the Commission. It is undisputed that the Commission has never

required individual directors or officers to file those reports and statements.

Third, even if Sumner's testimony were an accurate statement of the Commission's interpretation, an executive agency's interpretation of a statute is not binding on the courts.

> "[A] reviewing court will accord an interpretation placed on a statute or an ordinance by an administrative agency charged with its enforcement great weight and deference. ... '[However], that deference has limits. When it appears that the agency's interpretation is unreasonable or unsupported by the law, deference is no longer due.'"

Chesnut, 208 So. 3d at 640 (quoting Alabama Dep't of Revenue v. American Equity Inv. Life Ins. Co., 169 So. 3d 1069, 1074 (Ala. Civ. App. 2015)). For the reasons discussed above, Sumner's interpretation appears to be unsupported by law and thus deserves little weight.

In sum, these principles of statutory construction strongly favor reading the Ethics Code's definition of "principal" as encompassing only those persons and businesses that are directly represented by a lobbyist. Accordingly, I would hold that, as a matter of law, the phrase "person or business which employs, hires, or otherwise retains a

lobbyist" does not include owners, shareholders, directors, officers, employees, or other individuals associated with a corporate entity if the lobbyist represents the entity and not the individual personally.[20]

[20]I recognize that an individual owner, director, officer, or employee could seek to evade the prohibition of § 36-25-5.1(a) by providing a thing of value to a public official and later claiming that the thing was from the individual personally rather than from the (principal) entity. However, this policy concern is addressed by the obvious reality that the capacity in which the individual provided the thing -- personally versus as an agent of the entity -- will often be a question of fact for a jury. (Here, the State does not argue that Will Brooke gave his employment assistance or financial advice as an agent of the Business Council of Alabama.) Beyond that, any policy concern about evasion is a matter for the Legislature. It is not the function of the courts to address such concerns by adopting an expansive interpretation of "principal" that is not supported by the above principles of construction.

BOLIN, Justice (concurring in part and concurring in the result in part).

I fully concur in the holding of the main opinion regarding counts 16, 17, 18, 19, and 23. I concur in the result only as to counts 6, 10, 11, 12, 13, and 14.

I agree with Chief Justice Parker's conclusion in his special writing that the phrase "person or business which employs, hires, or otherwise retains a lobbyist" in § 36-25-1 (24), Ala. Code 1975, does not include owners, shareholders, directors, officers, employees, or other individuals associated with a corporate entity if the lobbyist represents the entity and not the individual personally.

BRYAN, Justice (concurring in part and concurring in the result in part).

I concur to affirm the Court of Criminal Appeals' judgment as to counts 6 and 10 and to reverse its judgment affirming the convictions on counts 16 through 19 and count 23. I concur in the result insofar as its judgment as to counts 11 through 14 are affirmed. I write specially to express why I believe the convictions on count 6 and counts 10 through 14 must be affirmed.

I must begin by noting that I have serious concerns about some of the language used in the current version of the Alabama Ethics Code, § 36-25-1 et seq., Ala. Code 1975 ("the Ethics Code"), some of which I find to be inexplicably broad and somewhat confusing. Thus, I encourage the legislature to take immediate action to once again revise and clarify the language of the Ethics Code. However, after a thorough and exhaustive review of the pertinent provisions of the Ethics Code and the arguments presented by Michael Gregory Hubbard to this Court, I can reach no other conclusion than that the convictions on count 6 and counts 10 through 14 must be affirmed. Even under the most broad reading of the specific provisions of the Ethics Code at issue in this case, the

record contains several key facts that require me to conclude that a reasonable juror, faced with the evidence that was presented, could have found Hubbard guilty of violating the Ethics Code as charged in count 6 and counts 10 through 14. See Ex parte Burton, 783 So. 2d 887, 890-91 (Ala. 2000) (noting that, when viewing the evidence in the light most favorable to the State, as we must, we may consider only whether the jury could have, by fair inference, found the defendant guilty).

Specifically, in counts 6 and 10, for the reasons set forth in the main opinion, the jury could have reasonably concluded that the payments made to Hubbard by American Pharmacy Cooperative, Inc. ("APCI"), and Edgenuity, Inc., were provided for reasons related to Hubbard's public service. Regarding Hubbard's contention that his employment agreements with APCI and Edgenuity were for work performed out of state, the jury could have concluded (1) that Hubbard performed work for APCI in state and (2) that Hubbard actually knew and understood that the work he was performing, even out of state, was not allowed under the Ethics Code if the payments he was receiving for that work were for reasons related to his public

service. For example, the jury could have concluded that Hubbard was warned by Josh Blades, his chief of staff, not to vote on legislation that would have greatly benefited APCI but that Hubbard voted on the legislation anyway -- an action obviously taken in the State of Alabama -- even after taking actions that indicated that he knew that he should not vote on the legislation. In addition, the jury heard evidence from James Sumner, former director of the Alabama Ethics Commission, indicating that Hubbard was repeatedly told that he could not use his official position or "the mantle of his office" to benefit himself or his business. Specifically, Sumner testified that he instructed Hubbard that, even though Hubbard was free to conduct business outside Alabama, he still could not "use [his] position to benefit [him]self, [his] business, [or his] family." Thus, the jury could have reasonably inferred that Hubbard knew that receiving compensation from APCI and Edgenuity for work related to his official position as Speaker of the House of Representatives -- whether in state or out of state -- was prohibited by the Ethics Code.

In counts 11 through 14, all of which involve Hubbard's dealings with Robert Abrams and Abrams's businesses, a reasonable juror could have concluded that, when Hubbard told Blades that he had "100,000 reasons" for Blades to secure a copy of a patent for Abrams, which was shortly after Hubbard received his 10th $10,000 check from Capitol Cups, Inc., Hubbard was expressing that he understood his arrangement with Abrams to be that Abrams paid him $10,000 a month and that, in return, Hubbard intended to use his position, or the time and labor of his staff -- the power of his office -- to do things that Abrams asked, such as obtain meetings in order to sell Capitol Cups' products, set up meetings for Abrams with the Governor and the Secretary of Commerce, and obtain a copy of a patent for one of Abrams's businesses.

I really do not know how I would have decided this case if I had been a Lee County juror tasked with hearing the evidence presented and making a determination of Hubbard's guilt or innocence. However, I was not a Lee County juror in this case and what I might have done if I had been a Lee County juror sitting on this case is irrelevant for purposes of deciding the issues presented to this Court at this time.

At this point, my position as a Justice allows me to consider only whether there was sufficient evidence from which the Lee County jurors who did actually sit on this case could have reasonably found Hubbard guilty. See Ex parte Burton, supra. Based on the above facts, I cannot conclude that the jury's verdict as to count 6 and counts 10 through 14 was not supported by sufficient evidence.

Finally, although a jury could have found Hubbard guilty of the crimes he was charged with in count 6 and counts 10 through 14, given my concerns about the current version of the Ethics Code, I am not entirely convinced that the sentences Hubbard received were the most appropriate form of punishment. The length of Hubbard's sentences, in comparison to his conduct, has been a concern since my initial consideration of this case. However, Hubbard did not challenge his sentences, nor did he ask this Court to consider whether the jury should have been instructed on misdemeanor charges rather than felonies. See § 36-25-27(a)(1) and (2), Ala. Code 1975. In light of the arguments that Hubbard did and did not present to this Court and the standard of review that must be applied to a judgment entered on a jury's verdict, I must conclude that

the Court of Criminal Appeals correctly affirmed his convictions on count 6 and counts 10 through 14.

Wise, J., concurs.

SELLERS, Justice (concurring in part and dissenting in part).

I concur with those parts of the main opinion reversing the Court of Criminal Appeals' judgment as to counts 16, 17, 18, 19, and 23. I dissent from those parts of the main opinion affirming the judgment as to counts 6, 10, 11, 12, 13, and 14.

From the outset, my review of this case has been based on what I believe to be fundamental principles of criminal law. Statutes imposing criminal penalties should be clear and concise to give reasonable persons subject to the statute's limitations on conduct fair notice of the penalty to be exacted when a specific line is crossed and a law is violated. See McBoyle v. United States, 283 U.S. 25 (1931), and Lanzetta v. New Jersey, 306 U.S. 451 (1939). If a law cannot be simply understood, then any punishment for its violation would be arbitrary and subject to speculation or, worse, prosecutorial manipulation. The law, especially as it relates to conduct deemed criminal, requires clear rules, easily discernible so that everyone can know with certainty what specific acts are forbidden and the concomitant consequences.

I am not convinced that all the statutes applied in this case are clear and concise, and I am troubled by a strained statutory interpretation that was aimed at finding criminal conduct on the part of Michael Gregory Hubbard. I am specifically concerned by the State's broad construction of the term "principal" in § 36-25-1(24), Ala. Code 1975, a statutory definition that is clearly unambiguous. That statute defines a "principal" as a "person or business which employs, hires, or otherwise retains a lobbyist." As pointed out in the main opinion, what qualifies a person or business as a principal is the act of employing, hiring, or otherwise retaining a lobbyist. The State's interpretation of the term broadens the definition to encompass individuals who were never designated as principals and who had no personal or direct involvement with the employing, hiring, or otherwise retaining of lobbyists. The Ethics Code, § 36-25-1 et seq., Ala. Code 1975, requires "principals" to register publicly. The State's overly broad definition deems many people to be principals who were never advised to register. Those people would be surprised to learn that they are principals under the State's interpretation and have apparently violated the Ethics

Code, subjecting themselves to potential criminal culpability never imagined or intended. In stretching the law in a direction never intended by the legislature, the State violates core principles of criminal law. I thus concur with that part of main opinion holding that the term "principal" does not include a member of the board of an entity that has employed, hired, or otherwise retained a lobbyist, especially when there is no evidence indicating that the member of the board was involved with employing, hiring, or otherwise retaining the entity's lobbyist.

I dissent from that part of the main opinion affirming the Court of Criminal Appeals' judgment as to counts 6 and 10, soliciting or receiving a thing of value from a principal. Section 36-25-1(34)b.10, Ala. Code 1975, exempts the following from the definition of a "thing of value":

> "Compensation and other benefits earned from a non-government employer, vendor, client, prospective employer, or other business relationship in the ordinary course of employment or non-governmental business activities under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's public service as a public official or public employee."

I read the statute's reference to "public service" as the exercise of an official's governmental authority. In my

opinion, compensation under the Ethics Code is not a "thing of value" unless it is given in exchange for the recipient's use of actual governmental power. To hold otherwise would appear to criminalize legitimate business arrangements in which part-time legislators and other part-time elected officials routinely engage. There are part-time officials who are slightly compensated for their official duties, but who are sustained by other employment and earn income outside their governmental positions. The State's interpretation of this statute could call into question employment arrangements of those officials and discourage qualified candidates who have outside employment from seeking political office or part-time government employment. Simply put, an elected official cannot be compensated for the specific use of his or her public office. Hubbard would have clearly violated § 36-25-1(34)b.10 had he used his office to advance legislative initiatives in Alabama for which he was specifically compensated. Because we are imposing a criminal penalty, we must strictly construe the statute and resolve any ambiguity in favor of Hubbard. Accordingly, I would reverse the Court of Criminal Appeals' judgment as to counts 6 and 10.

Further, I find the conviction under count 11, based on an alleged violation of § 36-25-5(a), Ala. Code 1975, i.e., that Hubbard used his official position as Speaker of the House of Representatives to obtain the consulting contract with Capitol Cups, Inc., or to increase his compensation under that contract, equally suspect. Section 36-25-5(a) provides:

> "No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. ..."

The evidence indicated that Hubbard sent two e-mails to a contact at Publix Super Markets, Inc., telephoned a contact for Waffle House restaurants, and visited Chick-fil-A's corporate headquarters in route to an official meeting. The evidence proved that Hubbard's efforts were futile and that none of the companies he solicited actually agreed to purchase Capitol Cups' product. Moreover, the evidence demonstrated that Capitol Cups entered into the consulting contract with Hubbard, not because he was Speaker of the House, but because he had experience in college athletics and sports media. Thus, I do not believe the evidence was sufficient to support

a conclusion that Hubbard used his official position or office to obtain the consulting contract with Capitol Cups. I also do not believe the evidence was sufficient to support a conclusion that, after obtaining the contract, Hubbard used his official position or office to increase his personal gain. He had already obtained the consulting contract because of his nongovernment experience. None of the direct communications at issue resulted in any of the proposed vendors contracting to purchase any cups or in any specific gain to Hubbard. For these reasons, I dissent from that part of the main opinion affirming the Court of Criminal Appeals' judgment as to count 11.

I further dissent from those parts of the main opinion affirming the Court of Criminal Appeals' judgment as to counts 12 and 13, because I find no support that Hubbard represented SiO2 Medical Products, Inc., a company in his legislative district, before an executive department or agency for nonofficial compensation in violation of § 36-25-1.1, Ala. Code 1975. Section 36-25-1.1 provides:

> "Lobbying includes promoting or attempting to influence the awarding of a grant or contract with any department or agency of the executive, legislative, or judicial branch of state government.

> "No member of the Legislature, for a fee, reward, or other compensation, in addition to that received in his or her official capacity, shall represent any person, firm, corporation, or other business entity before an executive department or agency."

Section 36-25-1.1 provides a definition of lobbying and precludes legislators from receiving payment to lobby an executive department or agency. The facts indicate that Hubbard made two telephone calls to arrange for Robert Abrams to meet with the Governor and Secretary of Commerce. The purpose of those meetings was to discuss funding from the State to build a training facility in Alabama for SiO2. This type of "work" would be normal for any legislator and would be deemed a prime example of acceptable and ordinary constituent services. The State implied that Hubbard arranged the meetings on behalf of Si02 in order to continue receiving compensation from his consulting contract with Capitol Cups. But a legislator calling an executive agency to set up a meeting (that the legislator does not attend) on behalf of a company in his legislative district is a far cry from representing the company to influence the award for a grant or contract. Given the expansion of government and growth of executive agencies with funds for any number of worthy

projects, a legislator becomes a de facto ombudsman to connect constituents with an agency that can provide or explain the availability of a program that might be of assistance to the legislator's constituents or their business. To violate § 36-25-1.1, a legislator would have to be specifically paid to be an advocate for a particular project. Even reviewing the evidence in a light most favorable to the State, I cannot find sufficient evidence that Hubbard was motivated by his contract with Capitol Cups to arrange for two meetings for a constituent. Moreover, the term "represent" means much more than making a telephone call to schedule a meeting; rather, it implies an insistent advocacy to obtain a specific grant or contract for remuneration with a direct connection to the representation. In this case, merely inquiring whether a training facility might be available does not violate § 36-25-1.1. Attempting to link payment under one contract for a particular purpose to another company, for what can only be described as de minimis contact with an executive agency, is simply too tenuous a connection to imply criminality. Accordingly, I would reverse the Court of Criminal Appeals' judgment as to counts 12 and 13.

I also dissent from the main opinion's affirmance of the Court of Criminal Appeals' judgment as to count 14, using public property for a private benefit. Section 36-25-5(c), Ala. Code 1975, reads:

> "No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, [Ala. Code 1975,] which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. ..."

Section 36-25-5(c) prohibits a public official from using the publicly supplied facilities of his or her office, which would include publicly paid staff, to advance his or her personal financial interest in a material way. The use of public facilities must be directly related to the material advancement of the public official's financial interest and not tangential to the official's nongovernmental lawful employment. In this case, it was undisputed that Abrams controlled both Capitol Cups and SiO2, in addition to other companies. The State claimed that, because Hubbard was getting paid from Abrams through Capitol Cups, he benefited

financially from assisting Abrams with the patent issue. Hubbard, on the other hand, asserted that his actions in assisting Abrams with the SiO2 patent issue were ordinary constituent services.[21]

Although Hubbard's chief of staff made several telephone calls concerning the patent issue, evidence of such calls is insufficient to support a conclusion that those calls materially affected Hubbard's financial interest. In my opinion, § 36-25-5(c) requires a showing of consistent action for personal financial gain, not a de minimis use that is insignificant or inadvertent when compared to the totality of the work of the official's office and his or her financial interests. Because I do not agree with the main opinion's

[21]In conflict with the main opinion, the Court of Criminal Appeals' opinion and the parties' briefs to this Court suggest that SiO2, not CSP Technologies, Inc., was involved in patent litigation. Although the record does contain a copy of the patent indicating that CSP was an assignee of the patent, there was no direct testimony on that point. Rather, Abrams testified that, in the summer of 2013, SiO2 had received notice that one of its significant patents had been granted but that the official patent certificate had not been printed in a timely manner. Abrams stated that SiO2 was involved in major patent litigation and that those legal proceedings had been protracted and expensive. According to Abrams, the new patent would have settled some of the issues in the patent litigation, but delivery of the official printed patent had been delayed by approximately a month.

broad interpretation of § 36-25-5(c), I would reverse the Court of Criminal Appeals' judgment as to count 14.

Finally, and with respect to all counts, I note that, in order for there to be a crime, there must be criminal intent or, as Blackstone commented: a "vicious will." See Morissette v. United States, 342 U.S. 246, 251 (1952)(citing 4 Bl. Comm. 21). Severely punishing the inadvertent or unintentional breaking of a law omits an appeal to reasonableness. The adage that "reason is the life of the law" is an acknowledgment that fair-mindedness animates the law; the law as applied in the main opinion is neither fair nor reasonable in its application or interpretation.

Hubbard regularly and routinely contacted the Alabama Ethics Commission to establish and maintain his compliance with the Ethics Code. Hubbard's conduct exhibited no "vicious will" to violate the law; he attempted to stay within its confines. His culpability is not based on readily defined violations of the law but is maintained primarily by statutory interpretations that are suspect and convoluted. To support a conviction, laws governing the conduct of public officials must be clear and not manipulated to criminalize politics. In

Castillo v. United States, 530 U.S. 120, 131 (2000), the United States Supreme Court discussed ambiguous statutes and cited approvingly Staples v. United States, 511 U.S. 600, 619 n. 17 (1994), stating that the rule of lenity requires that "ambiguous criminal statute[s] ... be construed in favor of the accused." In Ex parte Bertram, 884 So. 2d 889, 892 (Ala. 2003), this Court adopted that principle, agreeing that any ambiguity in a criminal statute must be construed against the State and in favor of the defendant; to do otherwise is "contrary to the traditional, well-settled rules of statutory construction."[22] The laws should not be used to remove political leaders merely because their leadership is abrasive or strident. Even public officials accused of criminal activity are presumed innocent, and the burden is on the State to prove guilt beyond a reasonable doubt. Accordingly, I respectfully dissent from those parts of the main opinion affirming the Court of Criminal Appeals' judgment as to counts 6, 10, 11, 12, 13, and 14.

[22]As indirect support for my belief that the law here is ambiguous is the fact that this case was orally argued on June 4, 2019, and it has taken us over 10 months to render a decision. If the criminal statutes in question were clear, concise, and unambiguous, no doubt a decision would have been reached earlier.

SHAW, Justice (statement of recusal).

I have known the petitioner for many years, and he and I attend the same church. In order to avoid any appearance of impropriety, I have recused myself from the cases in which he has been the petitioner since March 2016. See, e.g., Ex parte Hubbard (case no. 1150631). Therefore, I have not discussed any of the issues in this case with my colleagues, and I have not voted or otherwise participated in this case in any manner.

MITCHELL, Justice (statement of recusal).

The law firm at which I was a shareholder before I became an Associate Justice on this Court represented person(s) in connection with this case while I was an attorney there. I therefore recuse myself.