

Show Me the Money ... or Property: SCOTUS Overturns 'Bridgegate' Convictions

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On May 7, the United States Supreme Court released a unanimous opinion overturning the convictions of two New Jersey officials involved in the "Bridgegate" scandal on grounds that "not every corrupt act by state or local officials is a federal crime." In finding that the scheme could not have violated federal-program fraud or wire fraud laws because it was not aimed at obtaining money or property, the Court struck another blow against prosecutors attempting to shoehorn politically motivated exercises of regulatory power into federal fraud statutes.

In *Kelly v. United States*, appellant defendants Bridget Anne Kelly and William Baroni sought to overturn their prior convictions for wire fraud, fraud on a federally funded program or entity, and conspiracy to commit the same, in association with the Bridgegate scandal. Ms. Kelly, as New Jersey Governor Chris Christie's Deputy Chief of Staff, and Mr. Baroni, the Port Authority Deputy Executive Director, concocted a plan to punish the mayor of Fort Lee, NJ, for his refusal to endorse Governor Christie. That scheme involved reducing, from three to one, the number of lanes reserved at the George Washington Bridge's toll plaza for Fort Lee's morning commuters. They created a cover story that the closures were related to a traffic study and asked Port Authority traffic engineers to collect data. Predictably, the changes resulted in four days of gridlock in Fort Lee. Mr. Baroni never asked to review what the study engineers found, and only learned of the results weeks later (when a journalist filed a public records request). As such, although the Port Authority engineers spent valuable time assessing the lane change, their work was never utilized in policy decisions.

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Writing for the Court, Justice Kagan wrote that while “the evidence the jury heard no doubt shows wrongdoing – deception, corruption, abuse of power ... the federal fraud statutes at issue do not criminalize all such conduct.” In particular, the statutes – 18 U.S.C. Sections 1343 and 666(a)(1)(A) – both target fraudulent schemes for obtaining money or property. Unless the object of the defendants’ scheme was to obtain the Port Authority’s money or property, they could not have violated those specific crimes. The government took the position that the schemes did just that, as the defendants sought to “commandeer” the bridge lanes and divert the wage labor of the Port Authority employees used in that effort. Both theories, it argued, involved the defendants targeting valuable rights or interests that constituted “property” under the fraud statutes. The Court disagreed, however, as “the realignment of the toll lanes was an exercise of regulatory power” and a “scheme to alter such a regulatory choice is not one to appropriate the government’s property.” Further, the employees’ labor was just the incidental cost of implementing that regulation, not the object of the scheme. Indeed, the Court even took issue with the government’s assertion that the defendants “commandeered” the lanes, noting that they “did not walk away with the lanes; nor did they take the lanes from the Government by converting them to a non-public use.” Instead, the defendants “exercised the regulatory rights of allocation, exclusion, and control” albeit “for bad reasons” and “by resorting to lies.”

This is not the first time the Court has stressed statutory money or property requirements in limiting prosecutors’ ability to criminalize all acts of dishonesty by state and local officials. In *McNally v. United States*, 483 U.S. 350 (1987), the Court ruled that the fraud statutes were “limited in scope to the protection of property rights” and did not authorize federal prosecutors to “set[] standards of disclosure and good government for local and state officials.” More recently, the Court adopted a “limiting construction” of the Honest Services Fraud Statute, 18 U.S.C. Section 1346 (enacted in 1988 in response to the Court’s decision in *McNally*). On its face, Section 1346 bars fraudulent schemes “to deprive another of the intangible right of honest services” regardless of whether the scheme sought to divest the victim of any property. But in *Skilling v. United States*, 551 U.S. 358 (2010), the Court ruled the statute vague and confined it to schemes involving bribes and kickbacks and rejected the proposition that it should be construed as prohibiting all “undisclosed self-dealings by a public official.” In short, as Justice Kagan reiterated in *Kelly*, “save for bribes and kickbacks ... a state or local official’s fraudulent schemes violate th[e] law only when ... they are for obtaining money or property.”

This ruling adds to the Roberts Court’s growing body of public corruption jurisprudence – which also includes *McDonnell v. United States* – and further raises the bar for prosecutors trying to apply federal fraud laws to amorphous political schemes. It also raises questions about how the Court might view cases like those associated with the college admission scandal, where the defendants allegedly acted to obtain non-tangible privileges and benefits. However, in no way should this case be seen as giving blanket protection to all political schemes, as such schemes could run afoul of state or local anti-corruption laws or be targeted at depriving an opponent or an entity of money or property interests. Indeed, Justice Kagan’s opinion warns that “a government’s right to its employees’ time and labor ... can undergird a property fraud prosecution,” and cites examples of a mayor using on-the-clock city employees to renovate a daughter’s home or a city parks commissioner having employees do gardening for political contributors. In both examples, the entire point of the official’s scheme was to obtain the employees’ services – it was the object of the fraud, not some “bit part of a scheme.”