

Supreme Court curtails federal public corruption prosecutions in “Bridgegate” case

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Overview

On May 7, 2020, in the case of [Kelly v. United States](#), the Supreme Court unanimously reversed the federal fraud convictions for the defendants involved with the closely-watched “Bridgegate” scandal. In the opinion by Justice Elena Kagan, the Court ruled that former officials connected to then-New Jersey governor Chris Christie’s administration did not violate federal laws prohibiting wire fraud (18 U.S.C. § 1343) and fraud on a federally funded program (18 U.S.C. § 666(a)(1)(A)) because their “scheme . . . did not aim to obtain money or property” from the victim—here, the Port Authority—as required under Supreme Court precedent. The Court found that although the evidence demonstrated that the defendants’ conduct constituted “wrongdoing—deception, corruption, [and] abuse of power,” not every such corrupt act by a state or local official amounts to a federal crime.

The Court thus reaffirmed that, absent some scheme to obtain property, lies during government decision-making do not amount to a federal property fraud crime. To hold otherwise, the Court said, would result in a “sweeping expansion of federal criminal jurisdiction.” Among other consequences, this ruling will constrain federal prosecutors’ ability to successfully bring criminal fraud cases against public officials who purportedly lie about the reasons behind official actions—even where, for instance, a defendant is alleged to have jeopardized public safety for the sole purpose of political payback.

The Supreme Court’s Decision

As of 2013, defendant Bridget Anne Kelly served as Governor Christie’s deputy chief of staff, while defendant William Baroni was a Christie-appointed Port Authority official. Kelly and Baroni, along with a third official who pled guilty, were involved in a scheme to reduce the number of lanes—from three, down to one—available for drivers from Fort Lee, New Jersey to access Manhattan via the George Washington Bridge, to punish the mayor of Fort Lee for his refusal to support Christie’s 2013 reelection bid. In the lead-up to the lane closures, Kelly somewhat infamously emailed: “Time for some traffic problems in Fort Lee.” This reduction in lanes created gridlock and chaos in Fort Lee for four days, causing significant disruption and public safety issues. To implement the lane reduction scheme, the Port Authority incurred several thousand dollars in employee labor costs. The defendants falsely claimed to the Port Authority that the lanes were closed to conduct a traffic study. When the traffic scheme was discovered by the executive director of the Port Authority, the three officials in question were removed from their positions. Kelley and Baroni were subsequently convicted of fraud and conspiracy and sentenced to prison, and the Third Circuit affirmed their convictions.

Under Supreme Court precedent, both statutes at issue prohibit fraudulent schemes for the purpose of obtaining money or property. The government argued that the defendants sought to obtain the Port Authority’s money or property by (1) commandeering part of the bridge by taking physical control of the access lanes, and (2) by depriving the Port Authority of the additional employee resources necessary to realign the lanes and cope with the ensuing chaos. However, the Supreme Court rejected both of the government’s theories.

As to the argument that the defendants “commandeered” the bridge lanes for their own use by taking control of the physical lanes, the Court held that the lane realignment was a “quintessential exercise of regulatory power,” and that such a scheme to alter such a regulatory choice was simply not one to take the government’s property, even where done for “bad reasons” and “by resorting to lies.”

The Court further rejected the argument that the defendants’ deprivation of the Port Authority of its right to its employees’ time and labor supported their convictions. While the Court noted that a scheme to usurp public employees’ paid time and labor could implicate a property interest sufficient to support a property fraud prosecution, in this case, any employee costs incurred in implementing the scheme were merely an “incidental (even if foreseen) byproduct” of the defendants’ regulatory objective to reallocate the bridge’s access lanes. Both fraud statutes at issue require that obtaining property be the object of the scheme itself, but here, “[n]either defendant sought to obtain the services that the employees provided.” In the Court’s view, upholding these convictions “would undercut [its] oft-repeated instruction [that] [f]ederal prosecutors may not use property fraud statutes to . . . set standards of . . . good government for local and state officials.”

Implications of Kelly

The *Kelly* decision continues the Supreme Court’s steady narrowing of what constitutes public corruption under federal criminal law. For example, in 2010, in [Skilling v. United States](#), the Court held that the honest services fraud statute, which prohibits “a scheme or artifice to deprive another of the intangible right of honest services” and is frequently used in federal public corruption prosecutions, criminalizes only bribe and kickback schemes, as opposed to undisclosed self-dealing or similar conduct. Most recently, in 2016, the Court issued a unanimous decision in [McDonnell v. United States](#), vacating the conviction of the former governor of Virginia for honest services fraud and Hobbs Act extortion. The Court found that although the governor’s actions, including granting access to meetings and hosting events in exchange for loans and gifts, were “distasteful,” they did not constitute “official acts” of the sort covered by these federal bribery laws.

Continuing these trends, the *Kelly* decision limits federal prosecutors’ ability to target public officials and, conceivably, undermines pending investigations and prosecutions. For defendants, this decision highlights the importance and potential payoff of challenging the government’s legal theory from the earliest stages of a case and of properly preserving issues for appellate review. For prosecutors, this decision may serve as a caution against more assertive uses of federal fraud statutes to police what amounts to ill-advised political conduct.

We think it is unlikely that Congress will create legislation to broaden federal corruption statutes to attempt to capture the type of conduct that was the subject of the “Bridgegate” prosecution. As the Supreme Court made clear, “federal fraud law leaves much public corruption to the States (or their electorates) to rectify.” Time will tell whether state authorities—including state Attorneys General—will take this ruling as an invitation to use (potentially broader) state statutes to more frequently investigate and prosecute potential corruption involving public officials.

Authors



Gejaa Gobena
Partner, Washington, D.C.
T +1 202 637 5416
gejaa.gobena@hoganlovells.com



Julia McLetchie
Counsel, Boston
T +1 617 371 1036
julia.mcletchie@hoganlovells.com



Matthew C. Sullivan
Counsel, New York
T +1 212 918 3084
matthew.sullivan@hoganlovells.com

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