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Supreme Court Overturns 'Bridgegate' Convictions in Unanimous Decision

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The U.S. Supreme Court last week unanimously overturned the convictions of two top associates and allies of former New Jersey Governor Chris Christie in *Kelly v. United States*, 590 U.S. ___ (2020), a case stemming from the 2013 George Washington Bridge lane closure scandal infamously tagged "Bridgegate." The scandal centered around the efforts of Bridget Kelly and Bill Baroni, both government employees, to shut down several lanes on the GW Bridge as political retaliation for a New Jersey mayor's refusal to support Christie's re-election bid, and led to their convictions in 2016 for wire fraud and other related federal charges. But on May 7, 2020 – four years after a jury's guilty verdict – the Supreme Court tossed those convictions, finding that although there was evidence of wrongdoing, indeed, "corruption," there was no federal crime.

Background

Kelly and Baroni were federally indicted in 2015 on a combination of federal charges, including wire fraud (18 U.S.C. § 1343) and government property fraud (18 U.S.C. § 666(a)(1)(A)), for their roles in devising a scheme that snarled traffic for four days on the world's busiest bridge under the guise of conducting a "traffic study." Because the fraud charges at issue both targeted schemes that sought to obtain property or money by use of lies and/or false pretenses, the government was required to show not only that Kelly and Baroni engaged in deception, but also that an object of their fraud was to obtain money or property. The government alleged that Kelly and Baroni had engaged in deception by concocting the "sham" traffic study to justify the lane realignment and deprived the government of property or money in the form of, for instance, the employment of an extra toll booth worker required as a result of the lane realignment scheme; the payment of monies to other government workers to collect and analyze the data for the supposed "traffic study"; and commandeering the physical property of the lanes themselves.

Kelly and Baroni were convicted on all charges in 2016, and the charges were largely affirmed by a unanimous panel of judges from the U.S. Court of Appeals for the Third Circuit. On appeal to the Supreme Court, Kelly presented the following issue: "Does a public official 'defraud' the government of its property by advancing a 'public policy reason' for an official decision that is not her subject 'real reason' for making that decision?" The crux of her argument was that her actions amounted to nothing more than concealing political motives – *i.e.*, punishing the New Jersey mayor for refusing to endorse Christie – for an otherwise legitimate official act – *i.e.*, reallocating the traffic lanes on the bridge.

Supreme Court's Unanimous Decision

In a rare unanimous decision, the Supreme Court held that Kelly and Baroni's conduct was an abuse of power, but not a federal crime. Justice Kagan, unsparing in her criticism of the scheme, wrote for the Court, "[t]he evidence the jury heard no doubt shows wrongdoing – deception, corruption, abuse of power. But the federal fraud statutes at issue do not criminalize all such conduct." Rather, she wrote, "[u]nder settled precedent the officials could violate those laws only if an object of their dishonesty was to obtain the [government's] money or property." In other words, the Court acknowledged that Kelly and Baroni had given false reasons for their actions, but that lying by government officials was not by itself a federal crime; the lies must also result in "obtaining money or property."

The Court rejected the government's theory that the officials' efforts to "commandeer" access lanes and divert the wage labor of government employees were intended to obtain "property," instead finding that the lane realignment was an exercise of "regulatory power" – something the Court "has already held fails to meet the statutes' property requirement." The Court noted that Kelly and Baroni "did not walk away with the lanes," nor did they "take the lanes from the [g]overnment by converting them to a non-public use"; rather, these officials, as is their authority, regulated the use of the lanes, albeit for "bad reasons." Thus, using – or abusing – quintessential regulatory power, even for improper purposes, cannot form the basis of money or property fraud, according to the Court. As it relates to the labor of government workers, the Court concluded that such labor "was the incidental cost of that regulation, rather than itself an object of the officials' scheme." Accordingly, neither conviction could stand.

Striking a practical chord, the Court highlighted that "[i]f U. S. attorneys could prosecute as property fraud every lie a state or local official tells in making such a decision, the result would be . . . 'a sweeping expansion of federal criminal jurisdiction.'" "[I]n effect," the Court held, "the Federal Government could use the criminal law to enforce (its view of) integrity in broad swaths of state and local policymaking. The property fraud statutes do not countenance that outcome."

The Court's Trend of Limiting Political Corruption Theories of Prosecution

The Bridgegate opinion is yet another example of the Court's pattern of expressed skepticism in public corruption cases and its trend narrowing the ability of federal law enforcement to prosecute political corruption and white-collar crime. For decades, a popular theory for federal prosecutors has been one of "honest services fraud," which theorizes that a corrupt public official whose official acts were influenced in some unlawful way deprives the government or the public of the "intangible right" to his or her honest services. But beginning in 1987, the Supreme Court has chipped away at such an "intangible rights theory" of fraud.

In recent times, the Court overturned former Enron CEO Jeff Skilling's honest services fraud conviction, finding that such a theory only applies to classic bribe-and-kickback schemes in exchange for official acts by a public official on the matter at issue – rather than, for instance, undisclosed conflicts of interest possessed by the defendant. *Skilling v. United States*, 561 U.S. 358, 398-411 (2010). Likewise, in 2016, the Court unanimously overturned the conviction of former Virginia Governor Bob McDonnell, who had arranged meetings, attended events, and pulled strings for a businessman who had plied him with luxury vacations, products, and loans, finding that federal bribery law did not cover such conduct and that something more – like significant policy decisions – was required to demonstrate official action. *McDonnell v. United States*, 136 S. Ct. 2355 (2016). Similar reasoning underlies the Bridgegate opinion, likely signaling a continuation of the Court's scaling back of anti-corruption laws.

What Does Bridgegate Mean for Future Political Prosecutions?

As noted above, *Kelly* is one in a long line of cases where the Court has limited prosecutorial power against public corruption in the name of improper federal overreach, but it remains to be seen whether the opinion will have a long-lasting impact on the application of government fraud cases. The Court was clear that traditional fraud schemes in the public corruption arena – such as a mayor using city workers to renovate his daughter's new home, or a park commissioner inducing employees to do gardening work for political contributors – would still be considered valid fraud prosecutions because the *object* of those fraud schemes *is* the property at issue, *i.e.* the cost of the employees' services. By contrast, although the indictment against Kelly and Baroni alleged actual money and property loss to the government as the object of the scheme – and, indeed, money and/or property *was* lost – the Court concluded that the property at issue simply played a "bit part" or was an "incidental byproduct" of the scheme. This is true even if, as the Court acknowledged, those costs were foreseen by the defendants.

So where is the dividing line between those cases where the property loss is the *true object* of the scheme and those where the property loss occurs but is simply a *byproduct* of the conspiracy? The answer to that question is a factual one, which apparently will rise and fall depending on the circumstances. For Kelly and Baroni, it was enough that neither of them "sought to obtain the services" of government employees – *i.e*. they did not care about the sham "traffic study" they created, nor did they, according to the Court, seek to deprive the government of funds for the extra workers because, in their original plan, the extra workers were not even needed. Suffice it to say that the Court's emphasis on requiring that the property loss be the aim of the scheme may create additional hurdles for public corruption prosecutions going forward.

If you have any questions on this topic, please contact one of the authors or any member of Baker Donelson's Government Enforcement and Investigations Team.