

## Supreme Court Reverses “Bridgegate” Convictions, Clarifies Meaning of “Property” Under Federal Fraud Statutes

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**On May 7, 2020, the United States Supreme Court in *Kelly v. United States*<sup>1</sup> reversed the convictions of two former New Jersey officials charged with fraud after closing lanes of the George Washington Bridge to punish the mayor of Fort Lee, New Jersey for refusing to endorse then-governor Chris Christie’s reelection campaign. News of the scheme resulted in a political scandal known as “Bridgegate.” The Court’s unanimous opinion, written by Justice Elena Kagan, acknowledges that while the defendants’ actions may have involved deception, corruption, and abuse of power, their aim was not to obtain money or property as required by federal fraud laws. This decision continues a recent trend narrowing the ability of federal law enforcement to prosecute political corruption, and may have implications for other fraud cases in which the definition of property in the hands of the government is at issue.**

### ***Background***

In late summer 2013, William Baroni, Port Authority Deputy Executive Director, and Bridget Anne Kelly, the Deputy Chief of Staff for New Jersey Governor Chris Christie, developed and executed a scheme to create traffic congestion at the George Washington Bridge after Mark Sokolich, the mayor of Fort Lee, declined to support Christie’s reelection bid. Fort Lee sits along the Hudson River, on the New Jersey side, and is the last borough in the state before entering the bridge. As a cover story, Baroni and Kelly claimed the lane closures were part of a traffic study. The closures created traffic chaos as intended, and in the process cost the Port Authority wasted engineering time and payments to extra toll collectors.

Amid the political fallout from the Bridgegate scandal, the U.S. Attorney’s Office charged Baroni and Kelly on eight counts, including misapplication of and conspiracy to misapply property of an organization receiving federal benefits, wire fraud and conspiracy to commit wire fraud, and deprivation of and conspiracy to deprive civil rights. The jury convicted on all counts, and the defendants appealed to the Third Circuit Court of Appeals, which reversed the civil rights convictions based on qualified immunity.<sup>2</sup> The Third Circuit affirmed the remaining convictions, holding that the defendants had deprived the Port Authority of tangible property through employee time and labor, and in the alternative, had deprived the Port Authority of its right to control traffic over the George Washington Bridge.<sup>3</sup>

### ***Money or Property Requirement***

Under both the wire fraud and federal program fraud provisions, the government must show that an object of the fraud was obtaining money or property. The federal wire fraud statute criminalizes “any scheme or

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<sup>1</sup> No. 18-1059, 2020 WL 2200833 (U.S. May 7, 2020).

<sup>2</sup> See *United States v. Baroni*, 909 F.3d 550, 588 (3d Cir. 2018).

<sup>3</sup> See *id.* at 562–75.

artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises.”<sup>4</sup> Similarly, the federal program fraud statute bars “obtain[ing] by fraud” the “property”—including money—of a federally funded program or entity.<sup>5</sup> These statutes are “limited in scope to the protection of property rights,” and do not authorize federal prosecutors to “set[ ] standards of disclosure and good government for local and state officials.”<sup>6</sup> Thus, under either provision, the government had to show not only that Baroni and Kelly engaged in deception, but that an object of their fraud was money or property.

The government argued that the object of the scheme was indeed to obtain money or property. Specifically, prosecutors claimed Kelly and Baroni sought to obtain the Port Authority’s money or property by “commandeering” traffic lanes and by depriving it of the costs incurred paying traffic engineers and back-up toll collectors. In its unanimous opinion, the Court first rejected the notion that control over the bridge constituted property, instead defining that as a regulatory power belonging to the Port Authority. The Court cited its 2000 decision in *Cleveland v. United States*,<sup>7</sup> in which a government license to operate poker machines was deemed a purely regulatory interest and not property under the mail fraud statute, and reiterated that a scheme to alter a government’s exercise of its regulatory authority does not itself deprive the government of property. As for the costs incurred paying workers, the Court acknowledged that those employees’ time *did* constitute a government property right, but nonetheless found that the object of the defendants’ fraud was not to divert the employees’ labor. Rather, deprivation of the employees’ time was merely incidental to the broader scheme, which targeted control over bridge traffic. Accordingly, with the scheme falling outside the scope of the federal fraud statutes, the Supreme Court overturned Baroni and Kelly’s remaining convictions.

### **Implications**

The Court’s reversal continues a trend of judicial decisions narrowing the scope of statutes federal prosecutors use to address public corruption. In 2010, the Court in *Skilling v. United States* held that the federal honest services fraud statute is confined to schemes involving bribery and kickbacks. In 2016, the Court held in *McDonnell v. United States* that setting up meetings and calling other officials were not “official acts” for the purposes of federal bribery statutes.<sup>8</sup>

Beyond the corruption context, this ruling may potentially impact other prosecutions where the property nature of government information is at issue. For example, in *United States v. Blaszczyk*,<sup>9</sup> the defendant was convicted on insider trading charges after tipping off individuals about a government agency’s confidential information. The Second Circuit affirmed the conviction, holding that such information may constitute property in the hands of the government for the purposes of a scheme to defraud. The Second Circuit distinguished the Supreme Court’s opinion in *Cleveland*, noting that “courts have consistently rejected attempts . . . to apply its holding expansively.”<sup>10</sup> If *Blaszczyk* is granted certiorari, the Supreme Court’s reliance here on *Cleveland* to limit the fraud statutes’ scope may support the defendant’s argument that the government’s interest in confidential information was similarly regulatory in nature.

The Supreme Court’s decision in *Kelly* can be found [here](#).

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<sup>4</sup> 18 U. S. C. § 1343.

<sup>5</sup> 18 U.S.C. § 666(1)(A).

<sup>6</sup> *McNally v. United States*, 483 U. S. 350, 360 (1987).

<sup>7</sup> See *Cleveland v. United States*, 531 U.S. 12 (2000).

<sup>8</sup> 136 S.Ct. 2355 (2016).

<sup>9</sup> 947 F. 3d 19 (2d Cir. 2019).

<sup>10</sup> *Id.* at 32.

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