

Court ruling on anti-corruption law impacts Alaska cases

VAGUENESS: Less precise conflict-of-interest statute thrown out by justices.

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WASHINGTON -- The U.S. Supreme Court on Thursday scaled back an anti-corruption law used by federal prosecutors to bring to justice crooked politicians and executives, including some cases connected to the Alaska public corruption probe.

The decision threatens the prosecution of former Alaska state Rep. Bruce Weyhrauch for his role in a wide-ranging federal investigation of the state's politics, and also raises questions about the high-profile convictions of former Enron CEO Jeffrey Skilling and newspaper magnate Conrad Black.

In a unanimous opinion on the Skilling case, Justice Ruth Bader Ginsburg wrote that it's clear Congress in 1988 intended to address bribes and kickbacks in 28-word honest-services statute, which is based on the idea that people are entitled to the honest services of their elected officials and the executives in charge of big companies.

But the statute covers only bribery and kickback schemes, the justices determined, and not the less precise conflict-of-interest cases that prosecutors also have brought against those same officials, including Weyhrauch.

Skilling's conduct "entailed no bribe or kickback," Ginsburg wrote. "Construing the honest-services statute to extend beyond that core meaning, we conclude, would encounter a vagueness shoal."

Three of the justices - Anthony Kennedy, Antonin Scalia and Clarence Thomas - said they would have found the honest services law unconstitutional and would have overturned it.

Criminal defense attorneys called the decision a "huge narrowing of a very broad statute," but it may mean a more difficult time for prosecutors pursuing white collar and corruption cases. The law was often used when federal prosecutors couldn't prove someone accepted bribes -- but where they had enough evidence to show they took freebies such as tickets or jobs.

"I feel vindicated on so many levels," said Weyhrauch's attorney, Doug Pope of Anchorage. "I used to be a prosecutor, and I understand the heavy power of the government. If you're going to have a statute that makes it a felony, ordinary people have to understand what it is, where the line is. The court drew this bright line."

Often, prosecutors had a "very abstract and indefinite standard" in honest services cases, particularly those where they sought to prove conflicts of interest, said Don Ayer, a Washington, D.C., lawyer who argued Weyhrauch's case in front of the Supreme Court.

"They can't continue to build on that kind of a theory, they've got to have something they can call a bribe or a kickback," Ayer said.

Federal prosecutors alleged Weyhrauch solicited legal work from the oil-field service company Veco Corp. at a time when Veco was pushing hard to win support for lower oil taxes in the state Legislature. Federal prosecutors said Weyhrauch should have disclosed his job search as a conflict of interest.

Weyhrauch's attorneys argued that state law didn't specifically require such disclosure and, as a

result, the federal fraud statute couldn't be used to charge him with defrauding Alaskans of his honest services.

A federal judge in Alaska agreed with Weyhrauch, but the government appealed and won in the 9th U.S. Circuit Court of Appeals. The appeals court sided with prosecutors, saying legislators had a duty to disclose such conflicts. The court reasoned that even if a state has weak ethics laws, that was no reason for its citizens to be deprived of the honest services of their public officials.

But on Thursday, the Supreme Court vacated the 9th Circuit's decision and sent the Weyhrauch case back for reconsideration in light of the Skilling decision. Weyhrauch has not yet gone to trial in Alaska. He still faces two other counts in the case, but neither apply the honest services statute.

Justice Department spokeswoman Tracy Schmalzer said Thursday the government would continue to "vigorously defend" its successful prosecutions in the Skilling and Black cases as they return to a lower court for review. She wouldn't say how the government plans to proceed in the Weyhrauch case.

Anticipating the Supreme Court would curtail the use of the statute, one government watchdog group said Thursday it already has suggested legislation to make it more specific when it comes to conflicts of interest.

"Federal law currently prohibits executive branch employees from taking any official action that affects their personal financial interest, said Melanie Sloane of Citizens for Responsibility and Ethics in Washington. "This statute could easily be extended to cover members of Congress and state and local officials to ensure Americans are protected from government officials who sacrifice the public interest for their own private gain."

Schmalzer said the Justice Department is disappointed the Supreme Court narrowed the honest services law, and is determining whether "the court's interpretation leaves us with all the tools we need to ferret out corruption."

"The American people are entitled to the honest services of both public servants and corporate executives, and the Department will continue to bring all appropriate cases in order to hold corrupt officials accountable for their actions," she said.

The head of the Senate Judiciary Committee, Sen. Patrick Leahy, D-Vt., said the decision undermined congressional efforts to "protect Americans from abuses by powerful corporate and political interests."

"By issuing decisions benefitting corrupt officials who violate the peoples' trust, and corrupt business people who disregard fairness and risk, the court has once again undermined the government's ability to protect the interests of hardworking Americans," Leahy said.

But many criminal defense lawyers argue the decision could improve prosecutions by forcing attorneys for the government to be more precise in their indictments. Relying on the vague dishonest services statute has resulted in an "intellectual laziness" on the part of the Justice Department, said Cory Andrews of the Washington Legal Foundation.

"I think it's going to improve them and force them to sharpen their indictments, to sharpen their cases," Andrews said. "Part of the culture there, and even the mentality among the U.S. attorney's office, is that this very blunt instrument doesn't require them to have good aim."

A jury in 2006 convicted Skilling of 19 counts of conspiracy, insider trading and lying to auditors in his role at Enron. Black is serving a 6 1/2 year prison term for depriving shareholders of the Hollinger International media company of his honest services when he and other executives schemed to pay themselves a \$5.5 million management fee.

Black's attorney, Miguel Estrada, said that they were confident lower courts "will quickly conclude that the errors that the Supreme Court has now conclusively found tainted every aspect of this

case."