

Supreme Court weakens law used to convict corporate criminals

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The Supreme Court on Thursday scaled back an anti-corruption law used by federal prosecutors to bring to justice crooked politicians and executives.

The 6-3 decision potentially undermines the high-profile convictions of former Enron chief executive Jeffrey Skilling and Canadian newspaper magnate Conrad Black.

In a unanimous opinion in the Skilling case, Justice Ruth Bader Ginsburg wrote that it is clear Congress in 1988 intended to address bribes and kickbacks in a 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.

However, the statute covers only bribery and kickback schemes and not the less precise conflict-of-interest cases that prosecutors brought against those officials, the justices wrote.

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," she wrote.

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.

The justices sent the cases of Skilling and Black back to the lower courts, as well as a third case involving former Alaska state Rep. Bruce Weyhrauch, who federal prosecutors alleged solicited legal work from the oilfield services company Veco Corp. at a time when Veco was pushing hard to win support for lower oil taxes in the state Legislature.

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.

Sen. Patrick Leahy, D-Vt., the chairman of the Judiciary Committee, 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.

A jury in 2006 convicted Skilling of 19 counts of conspiracy, insider trading and lying to auditors in his role at Enron. Black, the former publisher of The Chicago Sun Times and other newspapers, is serving a 6-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 he was confident that lower courts "will quickly conclude that the errors that the Supreme Court has now conclusively found tainted every aspect of this case."

Justice Department spokeswoman Tracy Schmalzer said Thursday that 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.

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.

Anticipating the Supreme Court would curtail the use of the statute, one government watchdog group said Thursday that it already has suggested legislation to make the law more specific on 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."

However, many criminal defense lawyers argue that the decision could improve prosecutions by forcing government attorneys to be more precise in their indictments. Relying on the vague honest 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."
