# Supreme Court agrees to hear appeal of Enron's Jeffrey Skilling

**Joe Kishore**
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The US Supreme Court announced on Tuesday that it would hear an appeal from Jeffrey Skilling, the former CEO of Enron who was convicted of fraud in 2006.

The decision—aside from a personal victory for Skilling—is a sign that the high court is considering curbing use of the "honest services" fraud statute to prosecute corporate corruption.

The move surprised some commentators, who noted that the court had already agreed to hear two other cases involving the relevant law, which makes it a crime to "deprive another of the intangible right of honest services." These include cases brought by former Alaskan legislator Bruce Weyhrauch and media mogul Conrad Black. The law has been frequently used to prosecute executives for corporate corruption.

In an article Wednesday, the *New York Times* commented, "The court's typical practice when appeals in similar cases are already pending is to hold the later cases until the earlier ones have been decided."

The court has declined to hear some 2,000 cases filed for its fall term, including several that involve fundamental questions of democratic rights. However, the well-financed attempt by the former Enron executive to get out of prison is, for the court, deserving of a special hearing.

Skilling was found guilty in May 2006 of 12 counts of securities fraud, five counts of making false statements to auditors, one count of insider trading, and one count of conspiracy. He was convicted along with Kenneth Lay, the longtime chairman and CEO of Enron. Lay died in July 2006, and his charges were subsequently vacated.

Enron collapsed into bankruptcy in December 2001, four months after Skilling resigned as CEO. It was at the time the largest bankruptcy in US history. The rise of Enron in the 1990s was bound up with the deregulation of the energy markets, which the company was able to exploit in part thanks to its political connections. It was hailed as a poster company for the "new economy," and when it collapsed it exposed the rot of much of American capitalism, based on fraud, speculation, and debt—but little else.

When it fell, the web of off-balance-sheet entities and fictitious earnings was exposed, as was the insider dealings of Enron's top executives. More than 20,000 workers lost their jobs and life savings as a result. The government responded to the wave of popular anger over Enron and a series of further corporate corruption scandals by prosecuting a number of executives, including Skilling and Lay.

These prosecutions were from the beginning conducted on a very narrow basis, intended to cover over the fundamental questions and leave the underlying roots of criminality intact. In particular, the prosecution and the media sought to deliberately obscure the deep political ties between Lay, Enron, and the Bush administration. The executives, moreover, were treated as "bad apples," as exceptions to an otherwise healthy system.

In the course of the trial, the government made the concession that the fraud carried out by Skilling was not intended for private gain. Skilling's lawyers are seizing on this admission in their appeal, arguing that the Supreme Court should rule that it is unconstitutional to prosecute employees at private companies for fraud where no private gain is proven. They are also arguing that Skilling could not receive a fair trial in Houston because of the widespread hostility to Enron and its executives.

The Supreme Court brief filed by Skilling's lawyers states that, if broadly interpreted, the law has the effect of "impermissibly criminalizing whatever wrongful or

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unethical corporate acts a given prosecutor decides to attack."

Arguing along similar lines in his closing arguments in 2006, Skilling's lawyer Dan Petrocelli said that if the government's arguments were accepted, "We might as well put every CEO in jail." The essential argument is that corporate wrongdoing is pervasive and should not be the subject of criminal prosecution.

In fact, the idea that Skilling and other top executives at Enron did not benefit from the fraud personally is absurd. According to the government's own indictment, "Between 1998 and 2001, Skilling received approximately $300 million from the sale of Enron stock options and restricted stock, netting over $89 million in profit, and was paid more than $14 million in salary and bonuses."

The honest services statute has long been targeted by those who want to limit even further the ability to prosecute executives. In February, Justice Antonin Scalia wrote a protest over the court's decision not to hear another challenge to the law, saying that it had "been invoked to impose criminal penalties upon a staggeringly broad swath of behavior."

Scalia denounced the law for allowing "headline-grabbing prosecutors in pursuit of local officials, state legislators and corporate CEOs who engage in any manner of unappealing or ethically questionable conduct."

Commenting on these words, *New York Times* correspondent Adam Liptak noted, "Justice Scalia's dissent, which was vigorous even by his own muscular standards, seems to have had an impact. In the following months, the Supreme Court agreed to hear not one but two cases exploring the honest services law." Now it is three.

If the court upholds a narrower reading of the fraud statute, it could have far-reaching implications. Attorneys for HealthSouth CEO Richard Scrushy and former Alabama governor Don Siegelman, for example, hailed the court's decision. The two were convicted of corruption and insider dealing in 2006.

Siegelman's lawyer, Sam Heldman, responded to Tuesday's announcement by saying, "It shows that some members of the court are concerned prosecutors are overreaching in this whole area of the law."

This will be the third Enron-related case the Supreme Court has decided. In 2005, the court reversed the 2002 conviction of Enron's accounting firm, Arthur Andersen. The company had shredded vast amounts of paperwork after the initiation of the fraud investigation into Enron. In a unanimous ruling, the court said that jury instructions given by the judge were flawed. As Andersen had already declared bankruptcy, the government did not reprosecute the case.

Earlier this year, the court ruled that Enron broadband executive Scott Yeager could not be retried on some charges because he was previously acquitted on similar charges in another case.

When Enron collapsed, the *World Socialist Web Site* explained that the company was not an aberration, but reflected basic tendencies of capitalist development in the United States—including the immense growth of speculation and fraud, in which the accumulation of massive sums of money was largely or entirely divorced from actual production.

In the nearly eight years since Enron's bankruptcy, this analysis has been completely confirmed. The financial crisis that erupted last year was the result of the collapse of the vast bubble in subprime mortgages—itself only one instance of speculative and parasitic activities carried out by the financial elite that have now led to the worst economic crisis since the Great Depression.

None of those who are responsible for the crisis have been convicted. Indeed, many of these firms, the most powerful banks in the country, were also instrumental in facilitating Enron's crimes. Far from being held to account, they are now doing better than ever, posting record profits and bonuses even as the conditions for millions of people continue to deteriorate.

The Obama administration, an instrument of the financial elite, has shown no interest in curbing the speculative activities of these individuals, let alone prosecuting anyone.

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