

US Supreme Court ruling favors convicted corporate swindlers

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The US Supreme Court has significantly restricted the ability of federal prosecutors to bring criminal charges against corrupt politicians and corporate CEOs who plunder their own companies, setting strict limits on the use of a 1988 law making it a crime for such officials to deprive constituents or shareholders of their “intangible right of honest services.”

The court took action on three cases brought under the “honest services” law, ordering lower courts to review the fraud convictions of jailed former Enron president Jeffrey Skilling, jailed publishing magnate Conrad Black, and former Alaska state legislator Bruce Weyhrauch. Neither Skilling nor Black will be released from jail immediately as a result of the decision, although that is possible after the lower court review.

The Supreme Court overturned only one of the 19 charges against Skilling, and sent all the remaining charges back to the Fifth Circuit Court of Appeals for review. Black was also convicted of obstruction of justice charges, which were unaffected by the overturning of three counts of fraud, which must now be reviewed by the Seventh Circuit Court of Appeals in Chicago.

Justice Ruth Bader Ginsburg wrote the opinions on the Skilling and Black appeals, while the decision on Weyhrauch was issued without an opinion. Her ruling defines a new standard, limiting the “honest services” fraud charge to those cases where the politician or corporate executive receives a bribe or kickback.

This means that in those cases where the executive profits directly from his misconduct rather than taking money from an outside party—as in the cases of Skilling and Black, who reaped benefits from stockholdings, huge salaries and fees charged to their companies—the charge of fraud could not be brought.

While the nine justices gave different rationales for

limiting the applicability of the “honest services” fraud charges in this way, that part of the decision for both Skilling and Black was backed by a unanimous 9-0 vote.

Three of the right-wing bloc on the court, Antonin Scalia, Clarence Thomas and Anthony Kennedy, wanted to go even further, and declare the “honest services” law unconstitutional, on the ground that it was too vague and effectively criminalized even minor mistakes by political officeholders and corporate executives.

Three of the court’s moderate liberal wing, Sonya Sotomayor, Stephen Breyer and John Paul Stevens, wanted to throw out all charges against Skilling on another ground entirely, his claim that he did not get a fair trial in Houston, where Enron was headquartered and where its collapse had the greatest impact in terms of lost jobs, pensions and livelihoods.

In other words, a clear majority of the high court wanted to free the corrupt executives entirely, pending new trials, but because they couldn’t agree on what legal technicality would provide the right rationale, both Skilling and Black will remain in jail for some longer time.

Skilling is serving a 24-year term in federal prison, the longest jail sentence ever handed down for corporate crime. His attorneys argued that the inclusion of the “honest services” fraud charge tainted the entire jury verdict on all 19 counts, which include lying about the financial health of Enron while he was cashing in \$15 million in shares before the collapse.

The Court of Appeals agreed with this legal argument, but upheld the “honest services” fraud charge and therefore all 19 counts on which Skilling was convicted. In her opinion, Justice Ginsburg explicitly rejected this linkage, and told the lower court

to review the remaining 18 charges independently, without reference to the “honest services” charge.

Conrad Black, former publisher of major newspapers in many countries—including the *Chicago Sun-Times*, the *Daily Telegraph* in Britain, and the flagship of his right-wing editorial empire, the Canadian *National Post*—was convicted of looting his holding company, Hollinger International, with fraudulent invoices for fees that he devised to evade taxation. Black’s initial defense was that as only Canadian taxpayers were harmed by his manipulations, there was no basis for charging him with defrauding Hollinger stockholders.

Weyhrauch was a much lower profile defendant. He was facing federal prosecution for failing to disclose that he was seeking legal work from an oil services firm at the same time that the company was lobbying him to support favorable provisions in a state tax bill. Weyhrauch did not deny his conduct, but challenged the “honest services” law under which the federal prosecutor claimed jurisdiction.

The legal ban on defrauding constituents and shareholders of “honest services” was passed by Congress in 1988 in response to an earlier Supreme Court decision, in *US v. McNally*, which made it more difficult to convict corrupt politicians and businessmen on mail-fraud charges.

Among those prosecuted under this provision in the last decade are Republican lobbyist Jack Abramoff, former Democratic congressman William Jefferson, and former Alabama governor Don Siegelman, also a Democrat.

In sharply limiting the scope of the law, the court is undermining the prosecution of such well-known figures as former Illinois Gov. Rod Blagojevich, impeached for attempting to sell the US Senate seat vacated by Barack Obama.

The Supreme Court has compiled a revealing record of sympathy and support for the many corporate criminals prosecuted as a result of the Enron collapse. Every Enron-related case that has reached the high court has led to a complete or partial reversal of convictions, including the conviction of Enron’s auditing firm, Arthur Andersen, and the appeal by Enron Internet executive Scott Yeager, which was ultimately quashed after it was sent back to a lower court, and now the conviction of Skilling, the most notorious of the surviving Enron looters (CEO Kenneth

Lay died in 2006 while his appeal was pending).



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