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# The High Court: When is a campaign contribution a bribe?

By Robert Barnes Reporter August 12, 2012

Former Alabama governor Don Siegelman heads back to prison next month, contrite about and embarrassed by his bribery conviction. But when he faced resentencing earlier this month, he still was not quite ready to concede that he knowingly broke the law.

"If I had known I was coming close to the line where a campaign contribution becomes a bribe and a crime, I would have stopped," Siegelman told U.S. District Judge Mark Fuller, who sentenced Siegelman to $6^{1}/_{2}$ years in prison.

Siegelman's long and tangled legal journey — the charges date back to a 1999 state referendum — appears to be over.

But the debate over "the line where a campaign contribution becomes a bribe," especially relevant in a year when campaign spending has become a paramount issue, shows no signs of fading away.

Not long before Siegelman learned his fate, a different federal judge who had presided over a different public corruption trial in the same Montgomery courthouse issued his own demarcation plea.

"The Supreme Court needs to address this issue and provide guidance to the lower courts, prosecutors, politicians, donors and the general public," wrote U.S. District Judge Myron H. Thompson, who was appointed to the federal bench in 1980.

He added: “Much ink has been spilled over the contours of campaign finance law. Far less attention has been paid to what actually constitutes a ‘bribe.’”

A precise definition, Thompson wrote, was needed to bring cohesion to campaign finance jurisprudence, “as the government’s interest in curbing corruption is now the sole basis for placing limits on campaign contributions.”

Thompson had just presided over a massive public corruption case brought by the Justice Department’s Public Integrity Section against several state legislators and two of the state’s most powerful lobbyists. After a jury hung on some charges in the first trial, the defendants were acquitted in a second trial of charges of bribery, extortion, and mail and wire fraud, among others, some of which involved campaign contributions alleged to be bribes.

Federal law makes it a crime to corruptly solicit or accept money with the intent of being rewarded or influenced in official actions, and prosecutors have said campaign contributions can be part of such a scheme.

The Supreme Court’s guidance on the issue is thin. In 1991, it ruled that a campaign contribution could be a bribe if prosecutors proved a quid pro quo — that the contribution was “made in return for an explicit promise or undertaking by the official to perform or not to perform an official act.”

In a subsequent case, Justice Anthony Kennedy said the quid pro quo need not be expressly stated. But lower courts have differed, since then, on exactly what standards apply.

Thompson said the “murky” result implicates the constitutional right to participate in the political process and deprives politicians and citizens of fair notice of what is illegal.

“Distinguishing an illicit bribe from a genuine donation is sometimes no easy task,” Thompson wrote.

As the defendants in his case regularly pointed out, Thompson wrote, what about the moderate Republicans in the New York legislature who provided the margin of victory for legalizing same-sex marriage and then were rewarded with substantial contributions for their reelection efforts?

In Siegelman’s case, the contribution at issue was to his pet project, a lottery referendum measure that would help education. Richard Scrushy, a health-care facility magnate who had been appointed to a state hospital facility planning board by previous

Republican governors, gave $500,000 to the referendum campaign. Siegelman, a Democrat, later reappointed him to the board.

Both men were convicted of bribery.

Siegelman's case, considered by the Supreme Court in June, drew an outpouring of support. Election law experts such as Rick Pildes, a New York University law professor, said the vague guidelines gave too much leeway to prosecutors who might have partisan agendas.

And 113 former state attorneys general from both parties asked the court to take the case. They said they had run for office under such laws and prosecuted those who violated them and were concerned about "unacceptable and counterproductive ambiguity."



But, without comment, the justices in June rejected Siegelman's petition.

Sam Heldman, Siegelman's attorney, said he hoped Thompson's initiative will have an impact on a future case.

"He has probably spent more time wrestling with this area of law than any other judge has," Heldman said. "So when he tells us that the law in this area is murky and that the Supreme Court needs to address the issue, we should listen."

But at Siegelman's resentencing last month, Thompson's colleague Fuller suggested that the court might have been right not to use Siegleman's case as the test.

"The facts of this case for years have been misrepresented," Fuller said. "There is no doubt in this court's mind that what took place was a bribe."

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