

Partial Victory For Blagojevich: Seventh Circuit Concludes Criminal Statutes Do Not Prohibit “Logrolling”

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In mid-July, the Seventh Circuit reversed five of former Illinois Governor Rod Blagojevich’s 18 felony convictions. The court’s ruling may not be of much help to Blagojevich – the court noted that his sentence remains below guidelines – but it does have significant implications for public officials who face federal prosecution for “logrolling,” or trading one public act for another. In 2008, Blagojevich infamously sought to benefit from his power to appoint a successor to Barack Obama’s soon-to-be vacated Senate seat. The Seventh Circuit focused on the government’s claim that Blagojevich offered to appoint Obama advisor Valerie Jarrett to the Senate in return for, alternatively, a Cabinet appointment or help obtaining a private-sector job. The court found a critical difference between these two offers: “a proposal to trade one public act for another, a form of logrolling, is fundamentally unlike the swap of an official act for a private payment.” The latter, the court held, is a criminal violation; the former, however, is not (at least as to the charges Blagojevich faced). The court framed Blagojevich’s offer to appoint Jarrett to the Senate in return for a Cabinet appointment as “a common exercise in logrolling.” The court struggled to distinguish Blagojevich’s offer from that of a Senator who seeks a post-retirement appointment in return for supporting a President’s agenda. The court even spent some time discussing allegations that President Eisenhower appointed Earl Warren to be Chief Justice because Warren delivered California to Eisenhower at the 1952 Republican convention. If the government’s argument were correct, the court said, Warren and Eisenhower could have gone to prison. The five vacated convictions were based on three criminal statutes – the Hobbs Act, 18 U.S.C. § 1951, 18 U.S.C. § 666, and the wire fraud statute, 18 U.S.C. § 1343. The Hobbs Act criminalizes extorting another out of “property,” but the court held that Obama’s right to appoint Cabinet members was not a form of property. Section 666 makes it a crime for certain public officials to solicit bribes, but the court held that trading political favors is not a bribe. And the wire fraud statute could penalize honest services fraud over the phone, but the court found that political logrolling does not rise to the level of honest services fraud. Because the district court’s jury instruction permitted the jury to convict Blagojevich of violating these statutes based solely on a finding that he offered to appoint Jarrett to the Senate in return for a Cabinet position, the Seventh Circuit vacated five of his convictions. The court’s holding could have wide-ranging effect for public officials who engage in logrolling. At least in the Seventh Circuit, those officials do not commit federal criminal violations when they offer to trade political favors. Even if those officials seek public jobs for themselves because they want a salary, according to the court, “the interest in receiving a salary from a public job is not a form of private benefit for the purpose of federal criminal statutes.”

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