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Supreme Court Case Likely To Resolve Dispute On What Government Must Prove In Bank Fraud Prosecutions

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The U.S. Supreme Court plans to hear arguments later this year related to *Loughrin vs. United States*, which involves a bank fraud prosecution out of the Tenth Circuit. At issue is whether the government must prove that the defendant intended to defraud a bank and expose it to risk of loss in every prosecution under 18 U.S.C. § 1344.

The question reflects a split in the federal courts of appeals. The Supreme Court granted Loughrin's petition for certiorari in mid-December 2013. The case was premised on the defendant allegedly stealing checks out of mailboxes, altering the checks, and then using the altered checks for purchases at a large retail store. Even though the defendant did not defraud a financial institution, the prosecution successfully argued in the District Court and Tenth Circuit that Loughrin violated Section 1344 under the so-called "second prong" of the statute because the checks were drawn on accounts at federally insured institutions: "to obtain any of the moneys, funds, credits, assets, . . . , or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises." 18 U.S.C. 1344(2). The Tenth Circuit said: "Loughrin counters that our interpretation of § 1344(2) creates bank fraud liability for any fraudulent scheme as long as a bank's assets are somehow involved, an outcome allegedly contrary to congressional intent and in conflict

with the decisions of several circuits. We recognize that our interpretation of § 1344(2) may cast a wide net for bank fraud liability, but it is dictated by the plain language of the statute and our prior precedent.”

The Supreme Court’s decision in this case is likely to resolve a Circuit split the question whether the prosecution must prove that the defendant intended to defraud a financial institution in order to be convicted of violating Section 1344. In other words, it may well decide that the scope of Section 1344 is not as broad as the government would like.