



Department of Justice

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**SUPERSEDING INDICTMENT CHARGES FORMER
NEW YORK STATE SENATE MAJORITY LEADER JOSEPH L. BRUNO
WITH SCHEME TO DEFRAUD CITIZENS OF HIS HONEST SERVICES**

*Explicitly Charges Bribery and Kickback Theory, Pursuant to
Decision of the U.S. Court of Appeals for the Second Circuit*

ALBANY, N.Y.- A federal grand jury in Albany returned a superseding indictment today against Joseph L. Bruno, the former New York State Senate Majority Leader. Bruno is charged with carrying out a scheme to defraud the State of New York and its citizens of the right to his honest services through bribery and kickbacks by soliciting and accepting payments from an Albany businessman totaling \$440,000. Bruno will be arraigned this afternoon at 2:00 p.m. before United States Magistrate Judge David R. Homer in Albany, New York.

Today's indictment follows a trial and an appeal. In December of 2009, a jury convicted Bruno of two counts of honest services fraud. Then, in 2010, the United States Supreme Court decided *United States v. Skilling*, holding that the honest services statute criminalizes only fraudulent schemes involving bribes or kickbacks. On November 16, 2011, the United States Court of Appeals for the Second Circuit issued an opinion vacating Bruno's conviction and authorizing a retrial, as requested by the United States. The Court of Appeals noted that the jury had been instructed pursuant to the law in effect at the time of the trial, which had not required bribery or kickbacks to constitute honest services fraud, but the subsequent *Skilling* decision had changed the law. In determining that a retrial was proper, the Court of Appeals reviewed the case against the elements of honest services fraud as altered by *Skilling* and held that the evidence presented at trial was sufficient for a reasonable jury to find that Bruno accepted "payments that were intended to and did influence his conduct as a public official," and to find that "Bruno's actions deprived New York citizens of his honest services as a New York senator under the standard announced in *Skilling*." The Court of Appeals also endorsed the Government's proposal to seek a superseding indictment, commenting: "While the Indictment alleges sufficient facts to support a bribery charge, it does not explicitly charge a bribery or kickback theory, and does not contain language to the effect that Bruno received favors or gifts 'in exchange for' or 'in return for' official actions. It would be preferable and fairer, of course, for the government to proceed on explicit rather than implicit charges, and as the government intends to seek a superseding indictment, we dismiss the Indictment, without prejudice."

United States Attorney Richard S. Hartunian said: "Based on the decision issued by the Second Circuit, a federal grand jury has returned a superseding indictment today charging Joseph

L. Bruno with depriving New York of his honest services through bribery, kickbacks, and the exploitation of his official position for personal enrichment. Before *Skilling*, a trial jury determined that Bruno committed honest services fraud, and the Court of Appeals determined that the evidence presented at that trial was sufficient to convict Bruno under the *Skilling* standard. We look forward to having an impartial jury consider this superseding indictment and the evidence in this case as soon as possible.”

According to the indictment:

◆ Bruno solicited payments from an Albany businessman who directed that several companies pay Bruno a total of \$440,000. The payments were disguised as “consulting” payments and \$80,000 in payments for a virtually worthless horse. Bruno did not perform legitimate consulting work commensurate with the money that he was paid; the horse payments were to make up for expected consulting payments that had been stopped; and Bruno accepted the payments knowing, understanding, and believing that (a) he was not entitled to the payments; (b) the payments were made in return for official acts as opportunities arose rather than being given for reasons unrelated to his office; and (c) his reasonably perceived ability to influence official action, at least in part, motivated the making of the payments.

◆ The payments gave the Albany businessman greater access to the New York State Senate Majority Leader than was available to the other citizens of New York State. In return for the payments, Bruno would and did perform official acts benefitting the interests of the Albany businessman and his companies as opportunities arose, including (a) in or about February 2004, Bruno directed the award of a \$250,000 grant to Evident Technologies, Inc.; (b) in or about April 2004, Bruno recommended that the Albany’s businessman’s partner be appointed to the board of the New York Racing Association; (c) in or about July 2005, Bruno directed the award of a \$2.5 million grant to the Sage Colleges for the benefit of Evident Technologies, Inc.; (d) in or about the fall of 2005, Bruno sought the acceleration of the award of the NYRA franchise; and (e) in or about November 2005, Bruno sought the dismissal of certain NYRA officials.

An indictment is merely an accusation, and Bruno is presumed innocent unless and until proven guilty. None of the other persons or entities identified in the indictment have been accused of federal criminal violations. If convicted, Bruno faces a maximum sentence of up to 20 years imprisonment and fines of up to \$250,000 on each of the two counts of the indictment under the federal mail fraud statute.

The investigation which led to this indictment was conducted by the Albany Division of the Federal Bureau of Investigation. The United States is represented in this prosecution by Assistant United States Attorneys Elizabeth C. Coombe and William C. Pericak.

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