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An Action Plan to Take Florida Back from Big Sugar by collecting evidence that Big Sugar's political contributions constitute bribes.

This plan is based on a recent Florida case which held that campaign contributions may constitute bribes. It's an aggressive and unconventional approach, but it will bring attention to the problem and may actually accomplish something.

Take Florida Back Action Plan

Under Florida and Federal Law, political contributions constitute bribes when elected officials take any action within their official discretion because they received a contribution. Bribery is a felony criminal offense.

1. Set up a crowdfunding account
2. Call a press conference
 - a. Announce that we're raising money to pay for a formal, professional investigation designed to gather evidence that elected officials have taken actions that benefitted Big Sugar because they received campaign contributions from Big Sugar.
3. Conduct an investigation:
 - a. Offer rewards for information leading to criminal charges
 - b. Hire professional investigators to collect evidence
 - c. Hire an attorney to evaluate the evidence
4. Use the evidence we gather:
 - a. To identify specific elected officials to target for prosecution
 - b. To convince the appropriate local or federal prosecutor to file criminal charges.
 - c. To help candidates who support the Rivers when they run against elected officials who do Big Sugar's bidding.

THE CASE THAT GIVES US THE POWER TO TAKE FLORIDA BACK

STATE OF FLORIDA v. BETH FLANSBAUM-TALABISCO, No. 4D12-946

<http://www.4dca.org/opinions/July%202013/07-24-13/4D12-946.op.pdf>

This ruling recently became final when the Florida Supreme Court refused to hear the case. The case is currently being tried in Broward County.

Summary Facts of the Case

(The detailed Facts are below.)

Talabisco was charged with four felonies: bribery, official misconduct, unlawful compensation or reward for official behavior, and conspiracy to commit unlawful compensation.

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When Talabisco was running for Mayor, a developer who wanted to get a controversial project approved gave her campaign contributions and indirectly supported her election by conducting a poll and distributing flyers. Talabisco campaigned on the fact that she would hold the developer's "feet to the fire" and made a point of returning the developer's direct campaign contributions. As a result people who opposed the project helped her campaign. The project came up for a vote at her first meeting as Mayor. She wanted to delay the vote, but the developer told her not to. During a break in the meeting, he sent her former campaign manager to talk with her, and she did not delay the vote. The project was approved.

Summary of the Key Holdings in the Case

(The detailed holdings are below.)

1. Assistance in a political campaign constitutes a "benefit" to a politician, even though it is not given to the politician personally.
2. Campaign contributions are not excluded being illegal benefits because they are otherwise legal.
3. Campaign contributions are bribes when elected officials take official acts because they received them.
4. Why an elected official took an official act is a question of intent that requires a trial when there is evidence from which a fact finder could conclude it was because they received a contribution.
5. To prove a campaign contribution is a bribe, the State must prove a *quid pro quo* agreement.
6. The State can prove a *quid pro quo* by indirect or circumstantial evidence.
 - a. The details of the agreement don't need to be stated out loud or spelled out in detail.
 - b. A jury may infer the agreement
 - c.
 - d. from words, conduct, acts, and the surrounding circumstances.

FAQ'S

1. How will we pay for the investigation?
 - a. Through a Crowdfunding account
2. What do we need to get started?
 - a. A Crowdfunding account
 - b. A lot of publicity
 - i. Website, Facebook page, Twitter account
 - ii. Phone Hotline
 - iii. Bank account

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3. How will we find the evidence?
 - a. If we raise enough \$\$,
 - i. Attract whistle blowers by offering rewards for information leading to charges
 - ii. From interested members of the public
 - iii. Hire professional investigators

4. Who are we going after?
 - a. Any state or federal official who has accepted campaign contributions or other “benefits” from Big Sugar and taken any action that benefitted Big Sugar, including
 - i. Introduced or voted on a bill
 - ii. Appointed someone to a board
 - iii. Tried to influence other officials to take action to benefit Big Sugar
 - b. Anybody a whistle blower hands us.

5. What kind of “benefits” could qualify as bribes or unlawful compensation
 - a. Direct Campaign Contributions
 - b. Indirect campaign support of any kind
 - c. Financial support for a pet project
 - d. Anything of value given to elected officials outside of campaigns
 - i. Trips
 - ii. Other gifts

6. Specific examples of acts we might study?
 - a. Governor and Cabinet for awarding no-bid 30-year leases to Big Sugar
 - b. Legislators who added protection from lawsuit for those leases to legislation
 - c. Governor and Cabinet for appointments made after taking junket to Texas

7. Why not announce targets at the beginning?
 - a. It’s premature.
 - i. The purpose of the investigation is to collect the evidence necessary to identify targets we can prove cases against
 - b. It would blunt the effect
 - i. It’s better if they’re all looking over their shoulders
 - c. Avoid motivating a specific person to stop us or divert our energy and money by suing.
 - i. Material we turn over to the prosecutor is protected

8. What will we do with the evidence?
 - a. Give it to the appropriate prosecutors
 - i. Demand that they start own investigations and bring criminal charges
 - b. Make it public

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9. How can we prove an elected official took a specific act because they received a contribution?
 - a. This is a tricky question that will be decided on a case-by-case basis depending on the evidence we uncover.
 - i. Any case brought against an elected official will help refine this question
 - b. If the prosecutor files charges, someone may cut a plea deal and testify
 - c. In the best case scenario, we'll find direct evidence
 - i. A whistleblower comes forward
 - ii. We uncover carelessly worded documents
 - d. Under the case law, we can use circumstantial evidence of any variety
 - i. Such as a change of position, the timing between a vote and a meeting, the wording of emails, taking votes without proper discussion or study,

10. Do we need to get a conviction to succeed? No, because all of the potential failure points result in net positives for us.
 - a. If we fail to raise enough money,
 - i. We still draw attention to the problem
 1. This could convince elected officials who are not actually corrupt to change their behavior
 2. It should change the conversation
 3. Could motivate others to start looking where they never looked before.
 - b. If we investigate but can't prove the crime
 - i. Just starting the investigation could scare them into taking action that benefits the rivers to avoid prosecution
 1. It could also energize new people to run for office on this platform
 - ii. If we choose to release investigation results to the public, it could help get new people elected.
 - c. If a prosecutor files charges.
 - i. That politician will be out of office.
 - ii. All others will be really scared, because they know a jury would convict them
 - d. If we gain a conviction
 - i. Some of the SOB's will be in jail
 - ii. We might be able to attack the act they took based on a legal claim such as fraud.
 1. This is highly speculative and would depend greatly on what the act was and who took it.

11. Will this initiative affect the Rivers Coalition Defense Fund's pursuit of legal options?
 - a. It doesn't have to, because it can be implemented independently with its own funding
 - b. It makes sense to keep attacking on all fronts

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THE DETAILS OF THE CASE

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This ruling recently became final when the Florida Supreme Court refused to hear the case. The case is currently being tried in Broward County.

Detailed Appeals Court Legal Holdings

Talabisco was charged with four felonies: bribery, official misconduct, unlawful compensation or reward for official behavior, and conspiracy to commit unlawful compensation.

The trial court dismissed the charges holding that the facts did not demonstrate that Talabisco received any “pecuniary or other benefit not authorized by law.” It concluded that “[t]here is no evidence that Beth Flansbaum-Talabisco benefitted [sic] personally in any manner” and noted that donors often seek out candidates for office who agree with them on policy issues. The court held, “This does not equate to . . . candidate[s] selling their vote, and they are not prosecuted for unlawful compensation, bribery, or official misconduct, because they maintain their position and vote accordingly.”

The 4th District Court of Appeal reversed the trial court’s dismissal and reinstated the charges.

On appeal, Talabisco argued that she never received a “benefit” as required for each of the charged crimes. She maintained that the poll and the contributions to her election efforts were not benefits to her personally.

The 4th District Court disagreed, holding that “contrary to Talabisco’s argument, the definition of ‘benefit’ in chapter 838 is broad enough to include receiving assistance in her election effort. The poll conducted and mailers created and distributed were to Talabisco’s ‘advantage’ and she cannot reasonably contend that she did not ‘gain’ from them.”

Talabisco also argued that the ECO contributions were not benefits which were “not authorized by law” under the anti-corruption statutes.

The appellate court disagreed. Noting that “[i]t is not difficult to conceive of scenarios in which behavior that would otherwise be considered bribery would become entirely legal were we to adopt Talabisco’s suggested interpretation” it held that “Talabisco’s statutory interpretation of the bribery statute could lead to absurd results.”

The court then addressed the remaining question of “whether Talabisco obtained the benefit in exchange for an affirmative public policy vote,” and held that “is an issue of intent and therefore most appropriate for the fact-finder to resolve,” which meant it was an issue the judge could not decide as a matter of law. The case had to go to trial.

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The court then explained what the State had to prove at trial by adopting “the federal law requirement that an explicit quid pro quo is necessary for a conviction under corruption related statutes when a government representative accepts a campaign contribution.”

Then citing additional federal cases, it clarified the kind of evidence the State could rely on, by holding that “‘there is no requirement that this [quid pro quo] agreement be memorialized in a writing, or even . . . be overheard by a third party.’ Although ‘the agreement must be explicit . . . there is no requirement that it be express. To hold otherwise . . . would allow defendants to escape criminal liability through ‘knowing winks and nods.’” Further, a jury ‘is quite capable of deciding the intent with which words were spoken or actions taken as well as the reasonable construction given to them by the official and the payor.’ Moreover, “[a]s most bribery agreements will be oral and informal, the question is one of inferences taken from what the participants say, mean and do, all matters that juries are fully equipped to assess.”

“That a bribe doubles as a campaign contribution does not by itself insulate it from scrutiny ... and context may show that an otherwise legitimate contribution is a bribe.”

More on the kind of evidence needed to prove a quid pro quo

In deciding the Talabisco case, the 4th District Court relied heavily on *US v. Terry*, 707 F. 3d 607 (6th Cir. 2013). That case explained the evidence necessary to prove a quid pro quo agreement as follows:

“The agreement between the public official and the person offering the bribe need not spell out which payments control which particular official acts. Rather, ‘it is sufficient if the public official understood that he or she was expected to exercise some influence on the payor's behalf as opportunities arose.’”

...

Additionally, “Terry's intent to exchange official acts for contributions could be ‘based on [Terry's] words, conduct, acts, and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn from them.’”

Detailed Facts of the Talabisco Case

In 2006, Talabisco was running for the office of mayor of the City of Tamarac... Bruce Chait and his son, Shawn Chait, owned a company, Prestige Homes of Tamarac, Inc., which sought government approval to build a residential housing development (the “project”) within the City of Tamarac.

Accordingly, the project required the approval of the Tamarac City Commission. Prior to the election and before providing assistance to the Talabisco campaign, the Chaits believed that Talabisco was in favor of the project and would vote in favor of it. Bruce Chait knew Talabisco was “on board” for the project and would support it when it came before the commission. Shawn Chait recognized that Talabisco’s support

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for the project was clear from the beginning of his involvement in her campaign but both Chait wanted to be part of the effort to ensure Talabisco's election and show support.

According to the motion to dismiss, in February of 2006, Shawn Chait met with lawyer/lobbyist Alex Heckler, political operative Russell Oster, and another individual to discuss ways in which Shawn Chait could get involved in the Tamarac mayoral race to influence the outcome. Heckler specialized in establishing electioneering communications organizations ("ECOs"). Oster suggested conducting a poll, which Shawn Chait agreed to pay for, to assist in determining if Talabisco was doing well in the campaign and "get the lay of the land." The poll would determine what campaign strategies would be necessary to support Talabisco's election. Oster conducted the poll and the results showed that Talabisco was tied with her opponents.

As a result of the poll's findings, the Chait decided to create and fund an ECO to campaign for Talabisco. Heckler received a phone call from a friend of Talabisco's instructing him to create the ECO and alerting Heckler that he would receive a phone call from Shawn Chait. Heckler created the ECO, named "Tamarac Residents for Good Government," and the Chait financially contributed to it via two "conduit entities," which the Chait later reimbursed, to create political advertisements including campaign flyers.

Talabisco claimed that her vote for the project was never contingent upon the Chait's financial support of her mayoral campaign. Talabisco further claimed that she "received no payment, financial benefit, or anything of value from the Chait." Talabisco asserted that only her campaign and the ECO received benefits.

...

According to the state, Talabisco's support for the project was not a foregone conclusion, as she had previously met with and convinced a Tamarac resident who opposed the project that Talabisco opposed the project as well. Because the resident believed Talabisco's opposition to the project to be genuine, the resident assembled a group of volunteers to hand out 1500 flyers (that the Talabisco campaign supplied) which claimed Talabisco would not "bow to developers" as mayor. The flyers were distributed within the project's neighboring Mainlands community and contained language which assured Mainlands' residents that Talabisco would stand up against Prestige Homes.

The state further alleged that at some point Talabisco was worried about the perception created by the Chait's support for her campaign and she therefore returned contributions that had been made in the Chait's names. The flyer distributed within the Mainlands community extolled that Talabisco was the "FIRST AND ONLY Mayoral Candidate to offer to refund campaign contributions to the Developer! [sic]"

Talabisco was elected to the office of mayor of Tamarac on March 14, 2006. At her first meeting as mayor—on March 22, 2006—the Tamarac City Commission was scheduled to take its first vote on the Chait's project. Talabisco wanted to delay the vote but Bruce Chait told her not to delay it. On the day of the vote, Talabisco's support for the project appeared to be wavering. During a break in the meeting, Bruce Chait sent Talabisco's former campaign manager to speak to Talabisco to make sure she voted for the project. The vote on the project was not delayed and Talabisco voted to approve the development.

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FLORIDA STATUTORY LAW

838.014 Definitions.—As used in this chapter, the term:

(1) “Benefit” means gain or advantage, or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.

....

(4) “Corruptly” or “with corrupt intent” means acting knowingly and dishonestly for a wrongful purpose.

...

(6) “Public servant” means:

(a) Any officer or employee of a state, county, municipal, or special district agency or entity;

(b) Any legislative or judicial officer or employee;

...

(d) A candidate for election or appointment to any of the positions listed in this subsection, or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

838.015 Bribery.—

(1) “Bribery” means corruptly to give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit not authorized by law **with an intent or purpose to influence the performance of any act** or omission which the person believes to be, or the public servant represents as being, **within the official discretion of a public servant**, in violation of a public duty, or in performance of a public duty.

(2) Prosecution under this section shall not require any allegation or proof that the public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way, that the public servant had assumed office, that the matter was properly pending before him or her or might by law properly be brought before him or her, that the public servant possessed jurisdiction over the matter, or that his or her official action was necessary to achieve the person’s purpose.

(3) Any person who commits bribery commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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838.016 Unlawful compensation or reward for official behavior.—

- (1) It is unlawful for any person corruptly to give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept, any pecuniary or other benefit not authorized by law, **for the past, present, or future performance, nonperformance, or violation of any act or omission which the person believes to have been, or the public servant represents as having been, either within the official discretion of the public servant**, in violation of a public duty, or in performance of a public duty. Nothing herein shall be construed to preclude a public servant from accepting rewards for services performed in apprehending any criminal.
- (2) It is unlawful for any person corruptly to give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept, any pecuniary or other benefit not authorized by law **for the past, present, or future exertion of any influence upon or with any other public servant** regarding any act or omission which the person believes to have been, or which is represented to him or her as having been, either within the official discretion of the other public servant, in violation of a public duty, or in performance of a public duty.
- (3) Prosecution under this section shall not require that the exercise of influence or official discretion, or violation of a public duty or performance of a public duty, for which a pecuniary or other benefit was given, offered, promised, requested, or solicited was accomplished or was within the influence, official discretion, or public duty of the public servant whose action or omission was sought to be rewarded or compensated.
- (4) Whoever violates the provisions of this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.