

NEWS & INSIGHTS

BLOOMBERG LAW QUOTES BRANDON ESSIG ON SCOTUS 'FRAUDULENT INDUCEMENT' CASE

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Bloomberg Law turned to Lightfoot partner and white-collar defense litigator **Brandon K. Essig** for his insights recently when the U.S. Supreme Court (SCOTUS) agreed to hear *Kousisis v. United States*. For this important case, the SCOTUS justices will scrutinize how federal enforcement agencies apply the “fraudulent inducement” theory in mail and wire fraud.

Essig, **quoted extensively in the article** (subscription required), told Bloomberg Law that the Supreme Court has an established pattern of siding with criminal defendants in these cases — reversing convictions and narrowing the scope of federal statutes. In *Skilling v. United States*, for example, SCOTUS limited the scope of the honest services fraud statute to “official acts.” Similarly, in *Kelly v. United States* and *Ciminelli v. United States*, the court found federal mail and wire fraud statutes only applied to fraud targeting money or property.

As Essig noted for Bloomberg Law, each of the above decisions was unanimous.

“Think about that for a second,” Essig said. “The court has been very strong in its skepticism of the DOJ's creative application of federal criminal statutes. With that in mind, I don't like the government's chances (in *Kousisis*).”

Discussing *Kousisis*, which is currently on appeal from the U.S. Court of Appeals for the Fifth Circuit, Essig pointed out the unique aspects of the case. The allegation involves a company conspiring to defraud the U.S. Department of Transportation and the Pennsylvania Department of Transportation (PennDOT) by falsely portraying a subcontractor as a disadvantaged business enterprise. Interestingly, the scheme led to PennDOT paying less than it otherwise would have. This key detail lies at the center of the SCOTUS case — whether deception to induce a commercial exchange can be mail or wire fraud even where there is no economic harm.

Essig told Bloomberg Law that this may set *Kousisis* apart from those previous cases because its facts are more like traditional theories of fraud. However, he noted there are enough of the same weaknesses in *Kousisis* that SCOTUS could still overturn the Fifth Circuit's ruling.

A veteran litigator and former assistant U.S. attorney, Essig maintains a robust civil, white-collar criminal defense and investigations practice. He has tried dozens of high-profile jury cases, and his courtroom experience includes civil and criminal trials in state and federal courts and multiple appellate arguments. Essig also handles a diverse docket of civil cases for the firm's clients in state and federal courts and arbitration forums.