

Corruptly or Not Corruptly, That is the Question



By Paul Engel

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- What is “Corrupt Intent” and why does it matter?
- Will the Court of Appeals opinion in *United States v. Fischer* have an impact on other January 6th cases?
- Could the future of those defendants really turn on what “Corrupt Intent” means?

A recent decision by the D.C. Court of Appeals may have an interesting impact on the prosecutions of those charged with the Capitol breach on January 6, 2021. The case of [United States v. Fischer](#) consolidates three decisions in lower courts regarding the charge of “Obstruction of an Official Proceeding” (18 U.S.C. §1512(c)(2)). Since many of those charged regarding the January 6th incident were charged under this statute, the decision could have wide ranging impact. It all comes down to the question of did these people act corruptly?

How often have I said that words matter or that the details matter? In the case of *United States v. Fischer*, Joseph Fischer, along with Edward Lang and Garret Miller who had their cases consolidated with Mr. Fischer’s, were charged with multiple crimes from their actions at the U.S. Capitol on January 6, 2021.

The question raised in this case is whether individuals who allegedly assaulted law enforcement officers while

participating in the Capitol riot can be charged with corruptly obstructing, influencing, or impeding an official proceeding, in violation of 18 U.S.C. § 1512(c)(2).

[United States v. Fischer](#)

It's that word, "corruptly", that's receiving all the attention, but let's back up a little bit. Mr. Fischer (known as the appellee), moved in District Court to dismiss the §1512(c)(2) count against him because it did not prohibit his conduct on Jan. 6th.

(c) Whoever corruptly-

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

[18 U.S.C. § 1512](#)

The district court agreed with Mr. Fischer, but for what appears to me to be a very odd reason.

The district court granted each appellee's motion to dismiss. After carefully reviewing the text and structure of the statute, the district court concluded that § 1512(c) is ambiguous with respect to how subsection (c)(2) relates to subsection (c)(1). ...

*Relying on its understanding of the Supreme Court's holding in *Begay v. United States*, 553 U.S. 137 (2008), as well as canons of statutory construction, statutory and legislative history, and the principles of restraint and lenity, the district court determined that subsection (c)(2) "must be interpreted as limited by subsection (c)(1). ...That led the district court to hold that subsection (c)(2) "requires that*

the defendant have taken some action with respect to a document, record, or other object in order to corruptly obstruct, impede or influence an official proceeding.”

[United States v. Fischer](#)

So the district court seemed to think that subsection (c)(2) had to be related to (c)(1), and since Mr. Fischer did not interfere with any documents, records, or other objects, he did not violate §1512(c)(2). I find this really weird, since the meaning of otherwise is:

in a different way or manner

[Otherwise](#) – Merriam-Webster Dictionary Online

Court of Appeals

Let’s look at how the Court of Appeals looked at this case.

The government asserts that the words “corruptly . . . obstructs, influences, and impedes any official proceeding” in 18 U.S.C. § 1512(c)(2) have a broad meaning that encompasses all forms of obstructive conduct, including appellees’ allegedly violent efforts to stop Congress from certifying the results of the 2020 presidential election. Thus, the government contends, the district court erred when it adopted an unduly narrow interpretation of §1512(c)(2) that limits the statute’s application to obstructive conduct “with respect to a document, record, or other object.”

[United States v. Fischer](#)

So the government claims that the words “corruptly . . . obstructs, influences, and impedes any official proceeding” have a very broad meaning that could include all sorts of obstructive actions, including allegedly violent acts to stop Congress from certifying the results of the 2020 presidential election. I have to point out something that, while not directly related to this case, is something every American

ought to know. Congress does not certify the presidential election, they observe the counting of the votes. From the Twelfth Amendment:

the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;

[U.S. Constitution, Amendment XII](#)

There is not a single mention of Congress voting or otherwise putting their blessing on the election for President. That aside, the court looked at the language of §1512(c) and came to what I think is a quite reasonable conclusion.

In our view, the meaning of the statute is unambiguous. Subsection (c)(1) contains a specific prohibition against “corruptly” tampering with “a record, document, or other object” to impair or prevent its use in an official proceeding, while subsection (c)(2) proscribes “corrupt[]” conduct that “otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so” Under the most natural reading of the statute, § 1512(c)(2) applies to all forms of corrupt obstruction of an official proceeding, other than the conduct that is already covered by § 1512(c)(1).

[United States v. Fischer](#)

At this point you may think that the court is going to side with the government, and you’d be right. However, there is a single word in §1512 (c) which the Court of Appeals mentions that the District Court did not: The word “corruptly”.

Although the text of § 1512(c)(2) plainly extends to a wide range of conduct, the statute contains some important limitations: The act of “obstruct[ing], influenc[ing], and imped[ing]” described in subsection (c)(2) must be accompanied by “corrupt” intent; and the behavior must target an “official

proceeding.” Those other elements of a § 1512(c)(2) offense are not the focus of this appeal, but we nevertheless note that they provide significant guardrails for prosecutions brought under the statute.

[United States v. Fischer](#)

So the Court of Appeals notes the proper application of §1512(c), even though it is not a question the court is considering. I think most of us can agree that the counting of the votes in the presidential election is an official proceeding. The question is, did Mr. Fischer act with corrupt intent to obstruct that counting?

cor·rupt (kə-rŭpt´)adj.

- 1. Marked by immorality and perversion; depraved.*
- 2. Venal or dishonest: a corrupt mayor.*
- 3. Containing errors or alterations, especially ones that prevent proper understanding or use: a corrupt translation ; a corrupt computer file.*

[Corrupt](#) – The Free Legal Dictionary

Were the actions Mr. Fischer was alleged to have committed done with corrupt intent? According to the actions against Mr. Fischer, the actions he took on January 6th do appear to be obstructive:

Fischer allegedly belonged to the mob that forced Congress to stop its certification process. On January 6, 2021, he encouraged rioters to “charge” and “hold the line,” had a “physical encounter” with at least one law enforcement officer, and participated in pushing the police.

[United States v. Fischer](#)

It should be noted that a footnote in that quote argues that Fischer could not have obstructed the counting of the votes since Mr. Fischer claims to have arrived after Congress had

recessed. However, the actions Mr. Fischer allegedly took before January 6th certainly do seem to point to a corrupt intent.

Before January 6, he allegedly sent text messages to acquaintances, stating: "If Trump don't get in we better get to war"; "Take democratic [C]ongress to the gallows. . . . Can't vote if they can't breathe ... lol"; and "I might need you to post my bail.... It might get violent. . . . They should storm the capital [sic] and drag all the democrates [sic] into the street and have a mob trial."

[United States v. Fischer](#)

Conclusion

Based on the evidence and discussion included in the opinion and concurrence, the court decided 2-1 to find that the district court was wrong to dismiss the obstruction charge.

For all the foregoing reasons, we conclude that the district court erred in dismissing the counts charging each appellee with Obstruction of an Official Proceeding under 18 U.S.C. § 1512(c)(2). Appellees' alleged conduct falls comfortably within the plain meaning of "corruptly ... obstruct[ing], influenc[ing], or imped[ing] [an] official proceeding, or attempt[ing] to do so." The alternative interpretations of § 1512(c)(2) proffered by the district court and appellees fail to convince us to depart from the natural reading of the statute's unambiguous text. Accordingly, we reverse the orders of the district court, and remand for further proceedings consistent with this opinion.

[United States v. Fischer](#)

If that is true, why do I say this case could have a wide ranging impact for many accused of obstruction on January 6th? For the simple reason that while Mr. Fischer's words and actions do show that he violated §1512(c)(2), I do not believe

that everyone who has been caught in the FBI's dragnet of January 6th "rioters" acted with corrupt intent.

I have long pointed out that at least five (5) states appointed presidential electors in a manner other than the one determined by their state's legislature, in direct violation of the Constitution.

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress:

[U.S. Constitution, Article II, Section 1, Clause 2](#)

Furthermore, there was sufficient evidence by January 6, 2021, that problems with the elections in several states, including credible allegations of illegal activity in the collection and counting of ballots, meant that some of the electors may have been appointed by their state fraudulently. If the people who demonstrated on the capitol on January 6th did so to protest the illegal appointment of electors, especially due to the illegal actions taken by members of the executive and judicial branches in several states, then their acts were not with corrupt intent. Rather, their actions were attempts to bring to light the corrupt intent of those who were violating the Constitution of the United States and the constitutions and laws of the several states. Petitioning your representatives in government for a redress of such a grievance is not immoral, perverse, dishonest, or otherwise considered corrupt, but an attempt to restore justice to the process of choosing a President of the United States.

While I cannot condone the obstructive acts committed by Mr. Fischer and others inside the capitol that day, there is plenty of evidence that their entry was sanctioned by the Capitol Police, that most of them were not violent or disruptive, and they did not get near enough to the House

chambers to be considered obstructive. I can only hope that some of the legal teams for those who have been the victims of apparent overzealous prosecution by the City of Washington, D.C., in cooperation with the U.S. Dept. of Justice, will find this opinion and use it to the benefit of those peaceful protestors being illegally held as political prisoners in our nation's capitol.

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E-Mail Paul Engel: paul@constitutionstudy.com