SUPREME COURT OF THE UNITED STATES

Nos. 01–1118 and 01–1119

JOSEPH SCHEIDLER, ANDREW SCHOLBERG, TIMOTHY MURPHY, AND THE PRO-LIFE ACTION LEAGUE, INC., PETITIONERS

01–1118 *v.*

NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL.

OPERATION RESCUE, PETITIONER

01–1119 *v.*

NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[February 26, 2003]

JUSTICE STEVENS, dissenting.

The term "extortion" as defined in the Hobbs Act refers to "the obtaining of property from another." 18 U. S. C. §1951(b)(2). The Court's murky opinion seems to hold that this phrase covers nothing more than the acquisition of tangible property. No other federal court has ever construed this statute so narrowly.

For decades federal judges have uniformly given the term "property" an expansive construction that encompasses the intangible right to exercise exclusive control over the lawful use of business assets. The right to serve customers or to solicit new business is thus a protected property right. The use of violence or threats of violence to persuade the owner of a business to surrender control of such an intangible right is an appropriation of control

embraced by the term "obtaining." That is the commonsense reading of the statute that other federal judges have consistently and wisely embraced in numerous cases that the Court does not discuss or even cite. Recognizing this settled definition of property, as I believe one must, the conclusion that petitioners obtained this property from respondents is amply supported by the evidence in the record.

Because this construction of the Hobbs Act has been so uniform, I only discuss a few of the more significant cases. For example, in *United States* v. *Tropiano*, 418 F. 2d 1069 (1969), the Second Circuit held that threats of physical violence to persuade the owners of a competing trash removal company to refrain from soliciting customers in certain areas violated the Hobbs Act. The court's reasoning is directly applicable to these cases:

> "The application of the Hobbs Act to the present facts of this case has been seriously challenged by the appellants upon the ground that the Government's evidence indicates that no 'property' was extorted and that there was no interference or attempted interference with interstate commerce. They assert that nothing more than 'the right to do business' in the Milford area was surrendered by Caron and that such a right was not 'property' 'obtained' by the appellants, as those terms are used in the Act. While they concede that rubbish removal accounts which are purchased and sold are probably property, they argue that the right to solicit business is amorphous and cannot be squared with the Congressional expression in the Act of 'obtaining property.' The Hobbs Act 'speaks in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or physical violence.' Stirone v. United

States, 361 U. S. 212, 215 (1960). The concept of property under the Hobbs Act, as devolved from its legislative history and numerous decisions, is not limited to physical or tangible property or things (United States v. Provenzano, 334 F. 2d 678 (3d Cir. 1964); United States v. Nedley, 255 F. 2d 350 (3d Cir. 1958)), but includes, in a broad sense, any valuable right considered as a source or element of wealth (Bianchi v. United States, 219 F. 2d 182 (8th Cir. 1955)), and does not depend upon a direct benefit being conferred on the person who obtains the property (United States v. Green, 350 U. S. 415 (1956)).

"Obviously, Caron had a right to solicit business from anyone in any area without any territorial restrictions by the appellants and only by the exercise of such a right could Caron obtain customers whose accounts were admittedly valuable. . . . The right to pursue a lawful business including the solicitation of customers necessary to the conduct of such business has long been recognized as a property right within the protection of the Fifth and Fourteenth Amendments of the Constitution (Louis K. Ligget Co. v. Baldridge, 278 U. S. 105 (1928); cf., Duplex Printing Press Co. v. Deering, 254 U. S. 443, 465 (1921) . . . . Caron's right to solicit accounts in Milford, Connecticut constituted property within the Hobbs Act definition." *Id.,* at 1075–1076 (some citations omitted).

The *Tropiano* case's discussion of obtaining property has been cited with approval by federal courts in virtually every circuit in the country. See, *e.g.*, *United States* v. *Hathaway*, 534 F. 2d 386, 396 (CA1 1976); *United States* v. *Arena,* 180 F. 3d 380, 392 (CA2 1999); *Northeast Women's Center, Inc.* v. *McMonagle*, 868 F. 2d 1342, 1350 (CA3 1989); *United States* v. *Santoni*, 585 F. 2d 667, 673 (CA4 1978); *United States* v. *Nadaline*, 471 F. 2d 340, 344 (CA5

1973); *United States* v. *Debs*, 949 F. 2d 199, 201 (CA6 1991); *United States* v. *Lewis*, 797 F. 2d 358, 364 (CA7 1986); *United States* v. *Zemek*, 634 F. 2d 1159, 1174 (CA9 1980).[1] Its interpretation of the term "property" is consistent with pre-Hobbs Act decisions of this Court, see *Buchanan* v. *Warley,* 245 U. S. 60, 74 (1917) (property "consists of the free use, enjoyment, and disposal of a person's acquisitions without control or diminution"), the New York Court of Appeals, see *People* v. *Barondess*, 133 N. Y. 649, 31 N. E. 240 (1892), the California Supreme Court, *People* v. *Cadman*, 57 Cal. 562 (1881), and with our recent decision in *Carpenter* v. *United States,* 484 U. S. 19 (1987).

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[1] Indeed, the Ninth Circuit's discussion of the nature of property under the Hobbs Act illustrates just how settled this issue was in the Courts of Appeals:

"The concept of property under the Hobbs Act has not been limited to physical or tangible 'things.' The right to make business decisions and to solicit business free from wrongful coercion is a protected property right. *See, e. g.*, *United States v. Santoni*, 585 F. 2d 667 (4th Cir. 1978) (right to make business decisions free from outside pressure wrongfully imposed); *United States v. Nadaline*, 471 F. 2d 340 (5th Cir.) (right to business accounts and unrealized profits) . . . . *Cf. United States v. Hathaway*, 534 F. 2d 386, 395 (1st Cir.) (rejection of narrow perception of 'property'); *Battaglia* v. *United States*, 383 F. 2d 303 (9th Cir. 1967) (right to lease space in bowling alley free from threats). . . . Chase's right to solicit business free from threatened destruction and physical harm falls within the scope of protected property rights under the Hobbs Act.

. . . . . .

"Evidence of the previously described acts of intimidation and violence suffices. Appellants' objective was to induce Chase to give up a lucrative business. The fact that their threats were unsuccessful does not preclude conviction." *United States* v. *Zemek*, 634 F. 2d, at 1174 (some citations omitted).

None of the cases following *United States* v. *Tropiano*, 418 F. 2d 1069 (CA2 1969), even considered the novel suggestion that this method of obtaining control of intangible property amounted to nothing more than the nonfederal misdemeanor of "coercion," see *ante*, at 9–10 (majority opinion); *ante*, at 1 (GINSBURG, J. concurring).

The courts that have considered the applicability of the Hobbs Act to attempts to disrupt the operations of abortion clinics have uniformly adhered to the holdings of cases like *Tropiano*. See, *e.g., Libertad* v. *Welch*, 53 F. 3d 428, 438, n. 6 (CA1 1995); *Northeast Women's Center, Inc.* v. *McMonagle*, 868 F. 2d, at 1350); *United States* v. *Anderson*, 716 F. 2d 446, 447–450 (CA7 1983). Judge Kearse's endorsement of the Government's position in *United States* v. *Arena,* 180 F. 3d 380 (CA2 1999), followed this consistent line of cases. The jury had found that the defendants had engaged in "an overall strategy to cause abortion providers, particularly Planned Parenthood and Yoffa, to give up their property rights to engage in the business of providing abortion services for fear of future attacks." *Id.,* at 393. Judge Kearse described how this behavior fell well within the reach of the Hobbs Act:

> "[P]roperty may be tangible or intangible, and the property at issue here was the intangible right to conduct business free from threats of violence and physical harm. . . . A perpetrator plainly may 'obtai[n]' property without receiving anything, for obtaining includes 'attain[ing] . . . disposal of,' *Webster's Third New International Dictionary* 1559 (1976); and 'disposal' includes 'the regulation of the fate . . . of something,' *id.* at 655. Thus, even when an extortionist has not taken possession of the property that the victim has relinquished, she has nonetheless 'obtain[ed]' that property if she has used violence to force her victim to abandon it. The fact that the target of a threat or attack may have refused to relinquish his property does not lessen the extortionist's liability under the Hobbs Act, for the Act, by its terms, also reaches attempts. *See* 18 U. S. C. §1951(a); *McLaughlin v. Anderson*, 962 F. 2d 187, 194 (2d Cir. 1992).
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> "In sum, where the property in question is the vic-

> tim's right to conduct a business free from threats of violence and physical harm, a person who has committed or threatened violence or physical harm in order to induce abandonment of that right has obtained, or attempted to obtain, property within the meaning of the Hobbs Act." *Id.,* at 394.

In my opinion Judge Kearse's analysis of the issue is manifestly correct. Even if the issue were close, however, three additional considerations provide strong support for her conclusion. First, the uniform construction of the statute that has prevailed throughout the country for decades should remain the law unless and until Congress decides to amend the statute. See *Reves* v. *Ernst & Young,* 494 U. S. 56, 74 (1990) (STEVENS, J., concurring); *Chesapeake & Ohio R. Co.* v. *Schwalb,* 493 U. S. 40, 51 (1989) (STEVENS, J., concurring in judgment); *McNally* v. *United States,* 483 U. S. 350, 376–377 (1987) (STEVENS, J., dissenting);[2] *Shearson/American Express Inc.* v. *McMahon,* 482 U. S. 220, 268–269 (1987) (STEVENS, J., concurring in part and dissenting in part). Second, both this Court and all other federal courts have consistently identified the Hobbs Act as a statute that Congress intended to be given a broad construction. See, *e.g.*, *Stirone* v. *United States,* 361 U. S. 212 (1960); *United States* v. *Staszcuk*, 517 F. 2d 53 (CA7 1975). Third, given the fact that Congress has enacted specific legislation responsive to the concerns that gave rise to these cases,[3] the principal beneficiaries of the Court's dramatic retreat from the position that federal

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[2] Congress corrected the Court's narrow reading of the mail fraud statute in *McNally* by passing 18 U. S. C. §1346, which overruled *McNally*. See, *e.g.*, *United States* v. *Bortnovsky*, 879 F. 2d 30, 39 (CA2 1989) ("Section 1346 . . . overrules *McNally*") Of course, Congress remains free to correct the Court's error in these cases as well.

[3] See Freedom of Access to Clinic Entrances Act of 1994, 108 Stat. 694.

prosecutors and federal courts have maintained throughout the history of this important statute will certainly be the class of professional criminals whose conduct persuaded Congress that the public needed federal protection from extortion.[4]

I respectfully dissent.

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[4] The concern expressed by JUSTICE GINSBURG, *ante*, at 1, is misguided because an affirmance in these cases would not expand the coverage of the Racketeer Influenced and Corrupt Organizations Act but would preserve the Federal Government's ability to bring criminal prosecutions for violent conduct that was, until today, prohibited by the Hobbs Act.