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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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CLEVELAND *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 99–804. Argued October 10, 2000– Decided November 7, 2000

Louisiana law authorizes the State to award nontransferable, annually renewable licenses to operate video poker machines. License applicants must meet suitability requirements designed to ensure that they have good character and fiscal integrity. The State itself does not run any video poker machinery. In 1992, Fred Goodson and his family formed a limited partnership, Truck Stop Gaming, Ltd. (TSG), to participate in the video poker business in Louisiana. Petitioner Carl W. Cleveland, a lawyer, assisted Goodson in preparing TSG's initial and subsequent video poker license applications, each of which identified Goodson's children as the sole beneficial owners of the partnership. The State approved the initial application, and TSG successfully renewed its license in 1993, 1994, and 1995. In 1996, Cleveland and Goodson were charged with money laundering under 18 U. S. C. §1957 and racketeering and conspiracy under §1962 in connection with a scheme to bribe state legislators to vote in a manner favorable to the video poker industry. Among the predicate acts supporting these charges were four counts of violating the mail fraud statute, §1341, which proscribes use of the mails in furtherance of "any scheme or artifice to defraud, or for obtaining . . . property by means of . . . fraudulent . . . representations." The indictment alleged that, because Cleveland and Goodson had tax and financial problems that could have undermined their suitability to receive a video poker license, they fraudulently concealed that they were the true owners of TSG in the license applications they had mailed to the State. Before trial, Cleveland moved to dismiss the mail fraud counts on the ground that the alleged fraud did not deprive the State of "property" under §1341. The District Court denied the motion, concluding that licenses constitute property even before they are issued. A jury found

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Cleveland guilty on two mail fraud counts and on other counts predicated on the mail fraud. The Fifth Circuit affirmed the conviction, considering itself bound by an earlier decision holding that Louisiana video poker licenses constitute "property" in the State's hands.

Held: State and municipal licenses in general, and Louisiana's video poker licenses in particular, do not rank as "property," for purposes of §1341, in the hands of the official licensor. Pp. 5–14.

(a) Section 1341 is largely limited to the protection of money and property. *McNally* v. *United States*, 483 U. S. 350, 360; *Carpenter* v. *United States,* 484 U. S 19, 25. The only nonproperty right protected by §1341 is "the intangible right of honest services," §1346, a right not implicated by this case. Pp. 5–7.

(b) Section 1341 does not reach fraud in obtaining a state or municipal license of the kind here involved, for such a license is not "property" in the government regulator's hands. Whatever interests Louisiana might be said to have in its video poker licenses, the statute itself shows that the State's core concern is *regulatory:* It licenses, subject to certain conditions, engagement in pursuits that private actors may not undertake without official authorization. The Government offers two reasons why the State also has a property interest in its video poker licenses. The Court rejects both because they stray from traditional concepts of property. First, the Government stresses that the State receives a substantial sum of money in exchange for each license and continues to receive payments from the licensee as long as the license remains in effect. However, Louisiana receives the lion's share of its expected revenue not while the licenses remain in its own hands, but only *after* they have been issued to licensees. Licenses pre-issuance merely entitle the State to collect a processing fee from applicants. Were such an entitlement sufficient to establish a state property right, then States would have property rights in drivers' licenses, medical licenses, and other licenses requiring an up-front fee— licenses that the Government concedes are purely regulatory. Tellingly, the Government does not allege that Cleveland defrauded Louisiana of any money to which it was entitled by law. If Cleveland defrauded the State of "property," the nature of that property cannot be economic. The Government's second assertion— that the State has significant control over the issuance, renewal, suspension, and revocation of licenses— is also unavailing. Far from composing an interest that "has long been recognized as property," *Carpenter*, 484 U. S., at 26, these intangible rights of allocation, exclusion, and control amount to no more and no less than paradigmatic exercises of the State's traditional police powers. Pp. 7–10.

(c) Comparison of the State's interest in video poker licenses to a patent holder's interest in an unlicensed patent does not aid the Gov-

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ernment. Although both involve the right to exclude others, a patent also protects the holder's right to use, make, or sell the invention herself. Louisiana does not conduct gaming operations itself, does not hold video poker licenses to reserve that prerogative, does not "sell" licenses in the ordinary commercial sense, and may not sell its licensing authority. Comparison of the State's licensing power to a franchisor's right to select its franchisees fares no better. While the latter right typically derives from a franchisor's ownership of some product that it may trade or sell in the open market, Louisiana's authority to select video poker licensees rests on no similar asset. It rests upon the State's sovereign right to exclude applicants deemed unsuitable to run video poker operations. Pp. 10–11.

(d) The Government's reading of §1341 invites the Court to approve a sweeping expansion of federal criminal jurisdiction in the absence of a clear statement by Congress. Equating issuance of licenses or permits with deprivation of property would subject to federal mail fraud prosecution a wide range of conduct traditionally regulated by state and local authorities. Unless Congress conveys its purpose clearly, the Court will not read a statute to have significantly changed the federal-state balance in the prosecution of crimes. *E.g.*, *Jones* v. *United States*, 529 U. S. 848, 858. Pp. 11–12.

(e) Finally, the Government argues that §1341 defines two independent offenses: (1) "any scheme or artifice to defraud" and (2) "any scheme or artifice . . . for obtaining . . . property by means of false . . . representations." Proceeding from that argument, the Government asserts that a video poker license is property in the hands of the licensee, hence Cleveland "obtain[ed] . . . property" and thereby committed the second offense even if the license is not property in the State's hands. But *McNally* refused to construe the two phrases identifying the proscribed schemes independently. 483 U. S., at 358. Indeed, *McNally* explained that §1341 had its origin in the desire to protect individual property rights and that any benefit the Government derives from the statute must be limited to the Government's interests as property holder. *Id.*, at 359, n. 8. Pp. 12–14.

182 F. 3d 296, reversed and remanded.

GINSBURG, J., delivered the opinion for a unanimous Court.