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DAVID WILDSTEIN and Company may not have been aware of it, but there is actually a federal statute that makes it a crime to deliberately interfere with the right to travel across the George Washington Bridge.

The statute, 18 U.S.C. 241, dating from 1871, makes it a crime punishable by 10 years in jail for two or more persons to conspire to interfere with the right to travel between the states, which is the obvious purpose of the GWB.

The actual words of neither the statute nor the Constitution mention travel, but prohibit interference with the privileges and immunities of U.S. citizens. But for more than 200 years, the right to travel among the states has been recognized as one of those privileges.

The original Articles of Confederation, which predated our current Constitution, provided that "the people of each state shall have free ingress and regress to and from any other state."

As the Supreme Court has noted, the reason the right was not included in the Constitution itself "is that a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created."

Indeed, the right to travel is considered so important that it is one of the very few rights that the federal government can protect against interference not only by governmental officials but by private individuals as well. The major prosecution under the law, *United States v. Guest* in 1966, involved a conspiracy of private individuals to prohibit blacks from traveling to and from the state of Georgia.

Hurdle

However, there is a major hurdle to enforcement of this criminal statute. The court has also held that there is a heavy standard of proof imposed upon the government. The prosecutor must prove that the defendants acted with something called "specific intent" to interfere with the right involved.

As the court said in *Guest*, "the predominant purpose of the conspiracy [must be] to impede or prevent the exercise of the right of interstate travel, or to oppress a person because of the exercise of that right."

Thus, if the defendants were able to convince a jury that their intent was to punish the mayor of Fort Lee or its inhabitants, and not prevent travel across the bridge, that might prevent their conviction.

But that does not mean that anyone who participated in the scheme to block access to the bridge is immune from legal liability under federal law.

The civil counterpart to the federal Civil Rights Act of 1871 also provides a civil remedy to any person who is deprived of any right, privilege or immunity secured by the Constitution and laws of the United States by anyone acting under the color of state law, that is, a person who performed the wrongful acts pursuant to the authority granted by a state.

And such plaintiffs do not need to prove “specific intent” to prevail in court. The standard of proof required in a civil action is that the damage resulting from the wrongful conduct was the natural consequences of the defendants’ behavior.

Such public defendants are immune from civil liability if they can demonstrate that they had acted in good faith, that is pursuant to a lawful activity such as conducting a traffic study. But the public record already seems to bar such a defense. That defense was presumably abandoned when Wildstein responded approvingly to Bridget Kelly’s suggestion that it was “time for a traffic jam in Fort Lee” — despite Governor Christie’s insistence that he still doesn’t know if there really was a traffic study.

A cottage industry

In other words, ‘Bridgegate’ may turn out to be a cottage industry for plaintiffs’ lawyers who round up clients who can demonstrate the financial injury they suffered as a result of being stranded for hours on the streets of Fort Lee while attempting to engage in interstate travel.

And that is not even to consider other causes of action that may have resulted on behalf of local travelers.

In fact, the biggest hurdle for the lawyers may be to try to figure out a way to hold the Port Authority and the State of New Jersey additionally liable for the misdeeds of its agents — in other words, the search for deep pockets. The entities will claim that these employees were acting beyond the scope of their official authority and thus their employers are not responsible. That is an issue that may take years to litigate.