

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA,)
)
)
v.)
)
MILTON E. MCGREGOR,)
RONALD E. GILLEY,)
ROBERT B. GEDDIE JR.,)
LARRY P. MEANS,)
JAMES E. PREUITT,)
QUINTON T. ROSS JR.,)
HARRI ANNE H. SMITH,)
JARRELL W. WALKER JR.,)
and)
JOSEPH R. CROSBY)
)
Defendants.)

CR. NO. 2:10cr186-MHT

**UNITED STATES’ OMNIBUS RESPONSE TO DEFENDANTS’ MOTIONS TO DRAW
THE NAMES OF PETIT JURORS RANDOMLY FROM THE MIDDLE DISTRICT**

The United States of America, through undersigned counsel, opposes defendants’ motions to deviate from the current practice and Plan of the United States District Court Middle District of Alabama for the Random Selection of Grand and Petit Juries (the “2007 Jury Plan”). The 2007 Jury Plan designates that petit jurors are to be drawn randomly from the Northern Division of the Middle District of Alabama. The defendants request the Court to disregard the current plan and draw names of petit jurors from the entire Middle District of Alabama. The defendants’ arguments lack merit and should be denied.¹

¹ The defendants’ motions are almost identical in that they rely on the same arguments and almost the same case law to promote their request for a district wide juror pool.

ARGUMENT

The defendants' motions concede that the Middle District's jury selection process of drawing names at random from the qualified jury wheel for the Northern Division is widely accepted and is Constitutional. *Ruthenberg v. United States*, 245 U.S. 480, 482 (1918). See, also Title 28, U.S.C., 1865 (a).² Pursuant to the 2007 Jury Plan, Section 16(b), the defendants may make a motion to the Court to state their rationale to the Court as to why certain other communities should be included in their potential jury pool. However, the defendants utterly fail to provide support for their preference.

First, the defendants claim that "it will be far more difficult to select an impartial jury" from the Northern Division because of the publicity in the Montgomery area. Defendants fail to note that publicity has been widespread throughout the State, with interest particularly keen in communities in both the Southern and Eastern Divisions. Defendants also fail to note that publicity alone does not make for impartial jurors or a tainted jury pool. In short, defendants' first reason fails to state a rationale for deviating from the well conceived 2007 Jury Plan.

Second, defendants claim that the jury pool should include residents who live nearest the two gambling facilities most affected by the legislation cited in the indictment. In setting forth this argument, defendants contradict their first point: if potential jurors who have been subjected

² The defendants make a point of noting that the Eleventh Circuit has approved District-wide jury selection. They base their arguments on two cases that pre-date the 2007 Plan: *United States v. Grisham*, 63 F.3d 1074 (11th Cir. 1995) *cert. denied*, 516 U.S. 1084 (1996)(defendants failed to have their jury selected from a defined "community" which favored a particular group to which they belonged) and *United States v. Carmichael*, 467 F.Supp.2d 1282 (M.D. Ala.2006); (Magistrate Judge findings adopted by the District Court, 560 F.3d 1270 (11th Cir. 2009) *cert. denied*, 130 S.Ct.1093 (2010))(after his 2005 guilty verdict, defendant failed to demonstrate that his jury lacked a fair cross-section of the community).

to publicity in the Northern District cannot be fair and impartial, how can the Eastern and Southern Division residents most affected be fair and impartial? Nowhere do they explain why the 2007 Jury Plan should be abandoned because the issues in this case are of “great importance to all Alabama residents.” Nor do they explain why jurors from the Southern and Eastern Divisions are better suited to sit in judgement on this case solely because one of the defendants is a politician from the Southern Division. In fact, what the defendants are really asking for is a jury drawn from areas where the defendants are most likely to have friends, neighbors, constituents, or persons economically impacted by the closings of Country Crossing and Victoryland. In doing so, they do not even come close to making a sufficient showing under Section 16(b).

Since the inception of the 2007 Jury Plan, juries in the Middle District of Alabama, Northern Division, have consistently been chosen from pools of residents drawn from the Northern Division. These cases include *United States v. Goff*, — F.3d —, 2010 WL 4055941 (11th Cir. 2011), a high-profile matter involving prominent public figures, intense media coverage, and multi-million dollar fraud schemes that affected citizens across the State of Alabama. In each case, a fair and impartial jury was selected from the Northern Division and the defendant was afforded a fair trial.

The Constitution requires jury selection to draw jurors from a fair cross-section of the community. This does not mean that every class or sub-class or identifiable group must be represented on every jury list. *Holland v. Illinois*, 493 U.S. 474, 483 (1990)(The Constitution does not entitle the defendant to a jury of any particular composition.). The Constitution does not demand a “representative jury . . . but an *impartial* one.” *Id* at 480.

The government submits that the defendants' motions, if granted, would cause undue delay and expense to the Court. To deviate from the current jury selection practice would greatly enhance the time the Court and the parties would require on *voir dire*. Moreover, expanding the area of the jury selection would also increase the Court costs for housing jurors during trial due to burdensome travel time from the jurors' homes to the courthouse in Montgomery.

Defendants' motions ignore these facts.

CONCLUSION

The defendants do not challenge the objectivity or randomness of the current 2007 Jury Plan to compose an impartial jury that reflects the community at large. Instead, the defendants express their preference to have jurors selected from the communities in which the defendants reside and/or do business. The public attention this case has drawn is even more significant in the districts where the defendants live, work, and have constituents.

The current 2007 Jury Plan is widely accepted as fair, reasonable, and Constitutional. The jury selection process in the Middle District has proven itself to result in fair and impartial juries. *See, Goff*. For the foregoing reasons, the Court should deny defendants' motions.

Respectfully submitted this the 9th day of February, 2011.

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Acting Under Authority of 28 U.S.C. § 515

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CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of records.

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