UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

UNITED STATES OF AMERICA	)	
	)	
v.	)	**CR. NO. 2:10cr186-MHT**
	)	
QUINTON T. ROSS, JR.	)	

MOTION OF QUINTON T. ROSS, JR., TO SEVER

Quinton T. Ross, Jr., respectfully moves the Court to sever the charges against him, from the charges of the other Defendants, and that he be tried separately on the charges against him on the following grounds, separately and severally under Rule 8(b) and Rule 14 of the Federal Rules of Criminal Procedure:

1. There are eleven Defendants named in this indictment. In Count 1, the conspiracy count, there are one hundred fifty-one overt acts alleged. Only fifteen of those alleged acts involve this Defendant. There are thirty-nine counts charged in the indictment. Senator Ross is charged in Counts 1, 11, 12, 17, 18, and 23 through 33. Count 1 is a conspiracy charge; Counts 11 and 12, federal programs fraud; Counts 17 and 18, extortion under color of official right; and Counts 23 through 33, "honest services fraud.

2. The indictment and the discovery reviewed to date reflect Senator Ross' minimal role in the overall range of conduct alleged against the Defendants. As to Senator Ross, this case is a "pure" campaign contribution case. That is, the only misconduct the indictment charges against Senator Ross

is requesting and accepting campaign contributions from persons said to have financial or other interests in the outcome of a legislative vote.

3. The allegations against Senator Ross are qualitatively different from those against most of the other Defendants. There are no factual allegations accusing Senator Ross, unlike many of his co-defendants, of requesting, being offered, accepting, or agreeing to accept anything other than "pure" campaign contributions – no fundraising help, no campaign appearances by country music stars, no political polls, no media buys, no offers to pay money to any candidate opposing him to withdraw from the race, no promises of extravagant patronage of a Defendant's business, no other "thing of value" or benefit of any kind. Even the amount of campaign contributions associated with Senator Ross pales in comparison with the amounts alleged to have been made to other Defendants.

4. The indictment's factual allegations reflect, and Senator Ross has argued strenuously in seeking dismissal of the charges against him, that the contributions he received were lawful campaign contributions with no *quid pro quo* for his vote attached. *See McCormick v. United States*, 500 U.S. 257, 273-74 (1991).

5. The allegations against Senator Ross are quantitatively different from those against nearly all of the other Defendants as well. In a case that the Government keeps representing is a "recordings" cases, the indictment identifies four brief conversations between Senator Ross and three other persons (co-defendants Massey and McGregor and Lobbyist A) in which Senator Ross solicited campaign contributions; as well as three conversations between co-

defendants (not Senator Ross) in which those co-defendants discuss either having been solicited by Senator Ross for campaign contributions or making "additional campaign contributions." Conspicuously absent from either the conversations in which Senator Ross participated or the conversations other had regarding Senator Ross, is any discussion of a) Senator Ross' vote or even position on SB380 or other "pro-gambling legislation," b) any future contemplated official action by Senator Ross, c) any request that Senator Ross take any action, specific or otherwise, or d) Senator Ross' intentions regarding SB380 or other "pro-gambling legislation," much less e) even the whiff of any exchange or campaign (or other) contributions in return for his vote or other official action. And, in the discovery reviewed to date, Senator Ross is involved in only a handful of the thousands of recordings (most of which are alleged in the indictment), and is mentioned in few more.

6. On the face of the indictment, and in the discovery reviewed to date, there is little connection between Senator Ross and most of the other 11 Defendants, no overlap whatever with several of them with respect to the conduct charged, and the apparent operation (if the allegations are all proved) of multiple smaller conspiracies instead of the one overarching conspiracy alleged by the Government.

7. If Senator Ross is tried with the other Defendants, it will be highly prejudicial to him. First , the sheer length of a trial with all 10 remaining defendants and all 39 counts tried at once potentially limits the complexity the jury can handle, increases the likelihood of juror confusion, and makes it more

likely the jury will not be able to render an intelligent, true verdict. *United States v. Warner*, 506 F.3d 517, 523 (7th Cir. 2007); *United States v. DeCologero*, 364 F.3d 12, 24 (1st Cir. 2004). Also, a joint trial would cause significant logistical and procedural problems that the Court has already recognized.

8. If all or most Defendants are tried jointly, evidence of other alleged misconduct and alleged criminal acts unrelated to Senator Ross would be presented; there likely will be prejudicial "spillover" effect of unrelated misconduct by other defendants on Senator Ross, *United States v. Baker*, 432 F.3d 1189, 1239 (11th Cir. 2005); and despite instructions from the Court, a jury will be hard-pressed to keep straight and to recall which alleged conduct applied to which defendant (and to keep from allowing alleged misconduct of other defendants from jaundicing their view of Senator Ross and prejudicing the reliability of their verdict regarding Senator Ross' innocence.

9. Because of the extensive allegations against certain of the other Defendants, this trial has been projected to last six weeks or more. The trial of Senator Ross individually could likely be completed in a week and not more than two weeks. To force a defendant to commit the time and resources, including loss of wages, and the expenses and fees of a long trial, is unnecessary and unreasonable under these circumstances; and denies the Defendant the right to due process and a fair trial, in violation of the Fifth and Sixth Amendments to the United States Constitution.

10. The Government's justification for joining the Defendants in a single indictment and trial is for the alleged purpose of judicial efficiency and economy.

But, in such a large trial, severance and separate trials would likely better each. *United States v. Ellender*, 10 F.3d 1374, 1389-90 (9th Cir. 1993). And, the Government knows that the right of a defendant to due process and a fair trial should not be sacrificed for the purposes of economy. Defendant's liberty is at stake.

11. The indictment alleges multiple, separate conspiracies involving other defendants that do not involve Senator Ross, and separate and distinct alleged criminal acts of other defendants. Severance is necessary where there joined defendants all seeking a similar purpose but involved in parallel conspiracies. *United States v. Nettles*, 570 F.2d 547, 552 (5th Cir. 1978). Joinder of those conspiracies in one trial would result in actual prejudice to Senator Ross. *United States v. Bovain*, 708 F.2d 606, 610 (11th Cir. 1983). If Senator Ross is forced to be tried at the same time as the other Defendants on these charges, separate conspiracies, and other charges which are unrelated to this Defendant, despite the Court's instructions, the Defendant will be severely prejudiced by the introduction of evidence unrelated to him placing a tremendous burden on the jury to attempt to recall and segregate what was alleged and proven as to each Defendant.

12. Rule 14 of the Federal Rules of Criminal Procedure provides that if a joinder of defendants in an indictment for trial "appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires." The denial of a motion to sever is within the discretion of the trial judge and will not be reversed

"absent a clear abuse of discretion resulting in compelling prejudice against which the district court could offer no protection." *United States v. Bennett*, 368 F.3d 1343, 1351 (11th Cir. 2004); *see also Barton v. United States*, 263 F.2d 894 (5th Cir. 1959) (reversal of district court's denial of motion for severance); *Schaffer v. United States*, 221 F.2d 17 (5th Cir. 1955) (reversal of district court's denial of motion for severance). "A district court should grant a severance under Rule 14 only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, *or prevent the jury from making a reliable judgment about guilt or innocence*." *Zafiro v. United States*, 506 U.S. 534, 539 (1993) (emphasis added).

13. Senator Ross submits that this is just such a case. A joint trial here would result in "compelling prejudice" to him, i.e., the jury will be unable to fairly and "separately appraise the evidence as to each Defendant and enter a fair and independent verdict." *United States v. Liss*, 265 F.3d 1220, 1228 (11th Cir. 2001).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February, 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 counsel of record.

/s/ Mark Englehart
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