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

UNITED STATES OF AMERICA	)	
	)	
v.	)	CR. NO. 2:10cr186-MHT
	)	
THOMAS E. COKER	)	
MILTON MCGREGOR.	)	

UNITED STATES' COMBINED OPPOSITION TO DEFENDANTS MCGREGOR AND COKER'S THIRD MOTIONS TO DISMISS

The United States of America hereby opposes defendant McGregor and Coker's materially identical Third Motions to Dismiss. In their motions, the defendants seek the dismissal on various grounds of counts of the Indictment charging them with committing federal program bribery, 18 U.S.C. § 666(a)(2), and honest services mail and wire fraud, 18 U.S.C. § 1341, 1343, and 1346. Because the defendants ignore controlling law and overlook the ample factual details regarding the offenses pleaded in the Indictment, their motions should be denied.

ARGUMENT

I. 18 U.S.C. § 666(a)(2) Criminalizes Bribery That Takes The Form Of Campaign Contributions.

Defendants McGregor and Coker move for the dismissal of Counts 1, 3, 4, 5, 8, and 10 of the Indictment, which charge them with violating § 666(a)(2) (federal program bribery), because campaign contributions do not constitute "things of value" under § 666(a)(2). According to their motions, to the extent that the Indictment charges them with violating the statute through such bribes, those charges should be dismissed. Because controlling authority clearly emphasizes the broad reach of § 666 in prohibiting corruption, their claims should be rejected.

Section 666(a)(2) criminalizes offering or paying "anything of value" (i.e., bribes) to an agent of a state or local government that receives in excess of $10,000 in federal funding, in connection with "any business, transaction, or series of transactions" of the government involving anything of value worth $5,000 or more. The Supreme Court has explained that the statute broadly prohibits corruption of state agents: "Section 666(a)(2) addresses the problem at the sources of bribes, by rational means, to safeguard the integrity of the state, local, and tribal recipients of federal dollars." Sabri v. United States, 541 U.S. 600, 605 (2004) (emphasis added). The federal government's interest in safeguarding the integrity of state and local agencies is no less compelling when the business or transactions at issue are of a "non-commercial" nature. The statute requires only that a state agent be corrupted in connection with the state's business.

State legislators and legislative staff wield substantial power in the allocation of state and local funds, which in turn affects the allocation of the hundreds of millions of dollars of federal funds provided to the state. Accordingly, § 666 broadly prohibits acts that corrupt these individuals, regardless of whether the immediate activity impacts federal funds or involves commercial activity. As the Supreme Court stated: "Money is fungible, bribed officials are untrustworthy stewards of federal funds, and corrupt contractors do not deliver dollar-for-dollar value. Liquidity is not a financial term for nothing; money can be drained off here because a federal grant is pouring in there." Id. Put simply, § 666 widely protects the integrity of state governments and prohibits efforts to corrupt them through bribery.

Notably, the Eleventh Circuit has recognized in United States v. Siegelman, 561 F.3d 1215 (11th Cir. 2009), vacated on other grounds by Siegelman v. United States, 130 S. Ct. 3542 (2010),

that campaign contributions may violate § 666.[1] Siegelman concerned the convictions under § 666 of Don Siegelman, former Governor of Alabama, and Richard Scrushy, founder and former Chief Executive Officer of HealthSouth Corporation. The convictions were based on a corrupt agreement whereby Scrushy agreed to pay hundreds of thousands of dollars in contributions to a campaign for voter approval of a ballot initiative sponsored by Siegelman. Id. at 1220. On appeal, the Eleventh Circuit affirmed the convictions, implicitly recognizing that campaign contributions may constitute bribes. Id. at 1229. Just as Scrushy and Siegelman properly faced charges under § 666 for corrupt "campaign contributions," Counts 1, 3, 4, 5, an 8 of the Indictment properly charge defendant McGregor with having bribed Alabama legislators.

Consistent with Siegelman, the Eleventh Circuit very recently reaffirmed the broad reach of § 666 in United States v. Townsend, No. 09-12797, 2011 WL 102765 (11th Cir. 2011) (publication pending).[2] In Townsend, the Court noted that § 666 requires that the "business, transaction, or series

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[1] The Supreme Court also made clear in McCormick v. United States, 500 U.S. 257, 273-74 (1991), and Evans v. United States, 504 U.S. 255 (1992) that "property," as defined under the Hobbs Act, 18 U.S.C. § 1951, includes campaign contributions that may comprise bribes. There is no reason why a campaign contribution would have a corrupt purpose under the Hobbs Act, but not under §666.

[2] Defendants McGregor and Coker also comment on the applicability of Townsend to their respective First Motions to Dismiss, Dkt. No. 413 (McGregor); Dkt. No. 410 (Coker). They erroneously claim that the decision fails to address the proper definitions of the terms "agent" and "business, transaction, or series of transactions" under § 666. In Townsend, however, the Eleventh Circuit affirmed that the conditions of supervised release of a convicted felon constituted a "business, transaction, or series of transactions." Townsend, No. 09-12797, 2011 WL at *1-4. The Court further held that a "business, transaction, or series of transactions" includes conduct involving non-commercial intangible interests, such as legislative votes. Id. at *5. Moreover, the Court implicitly viewed the state corrections officer who had received the bribes at issue in the decision as an "agent," even though she was not responsible for official decisions regarding financial transactions. Id. at *5. Thus, Townsend directly contradicts the argument that for purposes of § 666 an agent must be involved in a financial activity that bribes are intended to influence. While the defendants also complain that Townsend fails to assess legislative history, the Eleventh Circuit made

of transactions" to which bribes are directed must involve "any thing of value" worth in excess of $5,000. Id. at * 4. Focusing on the statute's language regarding the type of activity that such bribes must target, the Eleventh Circuit stressed that "'any thing' means quite literally 'any thing whatever; something, no matter what.'" Id. (citation omitted). Although defendants McGregor and Coker try to argue otherwise, the logic behind that expansive interpretation applies equally to the understanding of the term "anything" that qualifies the form that bribery may assume under § 666. Indeed, why should the term "any thing" be read broadly, and the parallel term "anything," not? When the statute defines bribery through the phrase "anything of value," it surely means anything, including campaign contributions.

Defendants McGregor and Coker attempt to deflate the broad scope with which the Supreme Court and the Eleventh Circuit have interpreted § 666, but their efforts are misplaced. They refer loosely to caselaw that stands for the general proposition that courts should not read into a statute's meaning. McGregor Br. at 1-2; Coker Br. at 1-2.[3] As the Eleventh Circuit has emphasized, however, its views on the applicability of section 666 are grounded in the statute's plain meaning. Townsend, No. 09-12797, 2011 WL at *4.

Furthermore, citing identical arguments presented in previous briefs, Dkt. No.s 207 and 410, defendants McGregor and Coker claim that the statute's legislative history shows that § 666 does not criminalize campaign contributions. In order to avoid needless repetition, the United States

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clear that this was unnecessary because of the clarity of the statute's plain meaning. Id. at *5 (discussing the statute's plain meaning and congressional intent).

[3] They cite Skilling v. United States, ___ U.S. ___, 130 S. Ct. 2896, 2927-28 (2010); United States v. Santos, 553 U.S. 507, 514, 523 (2008); and Cleveland v. United States, 531 U.S. 12, 25 (2000).

hereby incorporates the response to defendant McGregor's faulty assessment of the statute's drafting in its Opposition to Defendant McGregor's First Motion to Dismiss, Dkt. No. 238, at 14-16. As the United States' Opposition makes clear, legislative history shows that Congress intended the statute to have a broad reach, without limitation to the particular forms that corrupt payments may assume, such as campaign contributions. Id.

Finally, the defendants object that if § 666 does, in fact, cover campaign contributions, there will be no way to distinguish lawful from unlawful campaign funding. This objection misses the point. As shown above, the statue's language, caselaw construing the statute, and legislative history repeatedly emphasize that § 666 targets conduct that involves corruptly providing anything of value in exchange for influence over state activity. While the defendants may quibble regarding the precise distinction between corrupt versus legitimate influence in a political context, the present case illustrates the clarity of that distinction. Simply put, § 666 prohibits buying votes. That prohibition stands whether the votes are purchased through money deposited into a personal bank account, or through campaign contributions that benefit a candidate.

II. The Indictment Provides Ample Detail Regarding The Honest Services Fraud Charges.

Counts 23 through 33 of the Indictment charge defendants McGregor and Coker with violating 18 U.S.C. §§ 1341, 1343, and 1346 (honest services fraud). Both defendants seek the dismissal of those counts because the Indictment allegedly pleads insufficient details regarding the fraudulent scheme that is charged. Defendant McGregor made nearly identical claims in his Motion for a Bill of Particulars, Dkt. No 359, which the Court denied, Dkt. No. 429. Indeed, in its denial the Court ruled that "the indictment does set forth with detail the allegations against McGregor for

each count." Dkt. No. 429, at 2. Defendant Coker did not file a like Motion for a Bill of Particulars. Still, the Court's denial of defendant McGregor's motion applies with equal force to defendant Coker because Counts 22 through 33 describe the honest services fraud in a uniform manner that applies to both defendants.

Defendant McGregor strains to distinguish how the claims in his rejected Motion for a Bill of Particulars differ from the claims in his Third Motions to Dismiss. According to defendant McGregor, in his Motion for a Bill of Particulars he complained only that the Indictment failed to provide him with adequate notice of the charged offense. Id. Here, on the other hand, he argues that the Indictment failed to inform grand jurors regarding the elements of the charged offense. Id. This is a distinction without a difference. Because the same details that provided defendant McGregor with notice would also have informed grand jurors of the elements of honest services fraud, the nearly identical claims in all three motions are equally baseless.

Defendants McGregor and Coker further argue that the honest services charges are fatally vague because they improperly incorporate overt acts in furtherance of a conspiracy detailed elsewhere in the Indictment. The Court rejected this contention, too, in its denial of defendant McGregor's Motion for a Bill of Particulars. Dkt. No. 429, at 2-3. In striving to resurrect the argument, defendants McGregor and Coker cite two decisions. The Court has already rejected such reliance on one of the decisions, United States v. Bobo, 344 F.3d 1076 (11th Cir. 2003), in its denial of defendant McGregor's Motion for a Bill of Particulars, Dkt. No. 429, at 2-3. The other decision, United States v. Adkinson, 135 F.3d 1363 (11th Cir. 1998), involves facts that are wholly distinguishable from the facts of this case. Adkinson concerned an indictment from which the district court had redacted key details that had provided essential context to the incorporated overt

acts at issue. Adkinson, 135 F.3d at 1376-77. On appeal, the Eleventh Circuit held that the redaction rendered the overt acts unacceptably vague–not to the defendant or the grand jury, but to the petit jury. Id. at 1377 ("The complete elimination of the bank fraud scheme from Count I left Counts II and III with no scheme to be incorporated by reference."). In the present case, however, the Court has already ruled that the Indictment provides sufficient notice, and no redaction or revision has occurred that would diminish the Indictment's clarity when the petit jury deliberates. Thus, there is no basis for the dismissal of Counts 23 and 33.

III. Assuming That Campaign-Contribution-Based Honest Services Fraud And Federal Program Bribery Require Showing A Quid Pro Quo Linking Bribes To Official Conduct, The Indictment Satisfies That Requirement.

Defendants McGregor and Coker argue that honest services fraud and § 666 charges that allege bribery in the form of campaign contributions require a quid pro quo linking bribes to specific official action. There is no controlling law that mandates such a quid pro quo. Even if there were such a law, the Indictment sufficiently pleads a clear connection between campaign contributions involving defendants McGregor and Coker, and official acts that the bribes were intended to influence.

As an initial matter, the Eleventh Circuit recently concluded that proving a violation of § 666 does not require a quid pro quo. United States v. McNair, 605 F.3d 1152, 1188 (11th Cir. 2010) ("[W]e now expressly hold there is no requirement in § 666 (a)(1)(B) or (a)(2) that the government allege or prove an intent that a specific payment was solicited, received, or given in exchange for a specific official act, termed a quid pro quo."). Furthermore, at least one court in the Eleventh Circuit has refused to impose a quid pro quo requirement on the honest services fraud doctrine. See United States v. Nelson, 2010 WL 4639236, at *2 (M.D. Fla. Nov. 8, 2010) ("the Court is not prepared to

find that an honest services mail fraud charge alleging a bribery scheme requires identifying a quid pro quo as an element of the offense").

Assuming, however, that campaign-contribution-based prosecutions for federal program bribery and honest services fraud require a quid pro quo, the Indictment sufficiently pleads such a showing with respect to defendants McGregor and Coker.

Neither defendant is entitled to have the Indictment read in a manner that makes best sense to them, and no mandate requires the charging document to include the Latin phrase "quid pro quo." See United States v. Seminerio, 2010 WL 3341887, at *6 (S.D.N.Y. Aug. 20, 2010) ("[T]he Indictment need not utter the 'magic words' 'quid pro quo' or even 'bribe' or 'bribe receiving' or 'kickbacks'—so long as a jury could find that Seminerio understood what was expected as a result of the payments to exercise particular kinds of influence as opportunities arose."); see also United States v. Giles, 246 F.3d 966, 973 (7th Cir. 2001) (upholding bribery instruction in a Hobbs Act extortion despite that "the magic words quid pro quo were not uttered [in a challenged charge]"); United States v. Cincotta, 689 F.2d 238, 242 (1st Cir. 1982) ("But, to be sufficient, these elements need not always be set forth in haec verba. Indictments must be read to include facts which are necessarily implied by the specific allegations made."). This is especially true where the statutory test implies a required element. United States v. Aliperti, 867 F. Supp. 142, 145 (E.D.N.Y. 1994) ("[T]he requirement of a quid pro quo, rather than amounting to an additional element unspecified in the [Hobbs Act], is encompassed within the language of the statute itself."); United States v. Malone, 2006 WL 2583293, at *2 (D. Nev. Sept. 6, 2006) ("Although it is necessary to show quid pro quo where it is alleged that a campaign contribution is part of the illegal conduct, . . . a criminal indictment does not need to specifically allege quid pro quo."). But even without use of the specific

words "quid pro quo," the Indictment alleges a clear link between defendant McGregor and Coker's campaign support and the desire to influence official acts. Indeed, ¶ 35 of the document, which is incorporated into defendant McGregor and Coker's honest services charges, describes the quid pro quo:

> It was a further part of the conspiracy that ROSS, MEANS, SMITH, and PREUITT would and did solicit and demand payments and campaign contributions from MCGREGOR and GILLEY and the lobbyists and other individuals working for them, including GEDDIE, COKER, MASSEY, WALKER and Lobbyist A, in return for their votes and support for pro-gambling legislation.

If that language were not enough, the charges plead with great specificity the details of the two defendants' corrupt dealings with Alabama State legislators. For example, the Indictment alleges the following:

- In March 2010, defendants McGregor and Coker, among others, offered things of value to defendant Preuitt in exchange for preuitt's vote to support pro-gambling legislation. See, e.g., Indict. ¶¶ 85-87, 90-94, 100-05, 106-08, and 115.

- In February 2010, defendant McGregor and others offered Legislator 2 $1 million per year in connection with a public relations job in exchange for Legislator 2's vote in support of pro-gambling legislation. Id. ¶¶ 47, 50-51, 54, 59, 60, 62, 64.

- In December 2009, defendants McGregor and Coker, among others, worked together to distribute corporate checks totaling nearly $2 million, which had been deposited into dozens of Political Action Committees, as campaign contributors to legislators, including defendant Ross, in exchange for votes in support of pro-gambling legislation. Id. ¶¶ 121-31.

Taken as a whole, these acts and others in the Indictment comprise the factual basis of the federal program bribery and honest services charges as to defendants McGregor and Coker. See, e.g., Indict. ¶¶ 28, 194, 196, 198, 204, 208, 218, and 234. The acts show with great clarity the specific intent of defendants McGregor and Coker to offer and provide campaign contributions to

Alabama State legislators in exchange for votes in support of pro-gambling legislation. Thus, even if those charges were required to include an explicit quid pro quo, the Indictment makes that showing. Because the Indictment satisfactorily alleges all elements of the charged offenses, defendants McGregor and Coker's arguments fail.

CONCLUSION

For the foregoing reasons, the Court should deny defendant McGregor and Coker's Third Motions to Dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 14, 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 record.

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