

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
)
QUINTON T. ROSS, JR.)

**UNITED STATES' OPPOSITION TO DEFENDANT QUINTON ROSS' MOTION TO
DISMISS FEDERAL PROGRAM BRIBERY CHARGES AND CONSPIRACY
TO COMMIT FEDERAL PROGRAM BRIBERY**

The United States of America hereby opposes defendant Quinton Ross' Motion to Dismiss Federal Program Bribery Charges and Conspiracy to Commit Federal Program Bribery. In his motion, defendant Ross seeks the dismissal of Counts 1, 11, and 12 of the Indictment, which, respectively, charge him with conspiring to violate federal program bribery under 18 U.S.C. § 371, and violating and aiding and abetting the violation of federal program bribery under 18 U.S.C. § 666. His arguments are based on three faulty premises regarding federal program bribery, 18 U.S.C. § 666: (1) it does not criminalize bribery involving non-commercial transactions; (2) campaign contributions do not comprise bribery under § 666; (3) and violating the statute requires a quid pro quo linking bribery to a specific desired official action. Because his motion fails to recognize controlling authority and relies on a faulty understanding of the law, it should be denied.

ARGUMENT

I. 18 U.S.C. § 666 Criminalizes Bribery That Involves Intangibles, Such As Legislative Votes.

Defendant Ross erroneously argues in his motion that § 666(a)(1)(B) does not prohibit state legislators from soliciting or accepting bribes in exchange for influence over drafting or passage of

laws. In order to reach his unlikely conclusion, he argues that (1) legislators are not agents of the state when enacting legislation, and (2) the “business” and “transactions” of state government, including the legislative branch, include only “commercial” activity, and not the routine business of a legislature, such as drafting and voting to pass bills. Defendant Ross is wrong.

Section 666(a)(1)(B) prohibits the agents of a state or local government that receives in excess of \$10,000 in federal funding from soliciting or accepting “anything of value” (i.e., bribes) in connection with “any business, transaction, or series of transactions” of the government involving “any thing of value” of \$5,000 or more. The Supreme Court has explained that the statute broadly prohibits corruption of state agents, without regard to whether the particular business or transaction at issue involved federal funds. In addressing the mirror provision under § 666 that addresses offering or paying bribes to the agents of state or local government, the Supreme Court emphasized that “[s]ection 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 is of a “non-commercial” nature. The statute requires only that a state agent be corrupted in connection with the state’s business, and does not require a direct impact on federal funds, much less an impact on commercial activity.

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 has an impact on 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.

Here, defendant Ross has been charged with committing bribery offenses that corrupted the integrity of the core “business” of the Alabama state legislature—making laws. Excluding such crimes from prosecution under § 666(a)(1)(B) would unduly narrow the government’s “business” and contradict relevant caselaw. Accordingly, the Eleventh Circuit, in addition to courts around the country, have affirmed convictions under § 666 relating to bribes paid to influence non-commercial activity in all three branches of government.

A. The Text of § 666 Makes Clear That the Statute Prohibits Bribes Solicited or Accepted in Connection with Purely Legislative Activity by State Legislators.

The Supreme Court has “stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). Applying that principle here, it is clear that Congress intended § 666 to prohibit the misconduct for which defendant Means was charged in the aforementioned counts of the Indictment. Defendant Ross aims to vitiate § 666 by improperly excluding from the statute’s reach bribes paid to state legislators in the context of “non-commercial” activities. That cramped interpretation ignores, however, the common-sense meaning of the statute’s text, as well as binding authority that squarely undercuts defendant Means’s argument.

1. Binding authority and the common-sense interpretation of the text of § 666 shows that the statute covers bribes offered or given in a non-commercial context.

As previously mentioned, § 666(a)(1)(B) prohibits soliciting or accepting bribes “in connection with any business, transaction, or series of transactions.” § 666(a)(1)(B) (emphasis added). The ordinary meaning of “business” and “transaction”—particularly of “business”—covers, as a primary definition, non-commercial activities. “Business” denotes “[t]hat which habitually busies or occupies or engages the time, attention, labor, and effort of persons as a principal serious concern or interest.” Black’s Law Dictionary 179 (5th ed. 1979); see also United States v. Bonito, 57 F.3d 167, 172 (2d Cir. 1995) (“‘Business,’ broadly defined, includes ‘work,’ ‘professional dealings,’ ‘one’s proper concern,’ and ‘serious work or endeavor that pertains to one’s job.’”); Webster’s Third New International Dictionary 302 (1961) (describing business as “an activity engaged in as normal, logical, or inevitable and usually extending over a considerable period time”; synonymous with “role” or “function”).

Particularly with government agencies, the term “business” commonly describes the government’s official powers and duties, without restriction to the government’s commercial business. See, e.g., Ysursa v. Pocatello Educ. Ass’n, 129 S. Ct. 1093, 1096 (2009) (upholding state law barring government paycheck deductions for political action committees because “of the State’s interest in avoiding the appearance that carrying out the public’s business is tainted by partisan political activity”) (emphasis added); Pleasant Grove City v. Sumnum, 129 S. Ct. 1125, 1131 (2009) (in government-speech First Amendment case, stating that “[i]t is the very business of government to favor and disfavor points of view”) (emphasis added) (quoting Nat’l Endowment for Arts v. Finley, 524 U.S. 569, 598 (1998)); Oregon v. Ice, 129 S. Ct. 711, 718 (2009) (in Sixth Amendment

Confrontation case, noting that “preventing and dealing with crime is much more the business of the States than it is of the Federal Government”) (emphasis added) (internal quotation marks and citation omitted); Garcetti v. Ceballos, 547 U.S. 410, 428 (2006) (in government employment case, expressing concern over “the government’s capacity to conduct public business”) (emphasis added); Cheney v. U.S. District Court for D.C., 541 U.S. 913, 921 (2004) (Scalia, J., mem. op.) (in opinion addressing recusal, noting that “social courtesies, provided at Government expense by officials whose only business before the Court is business in their official capacity, have not hitherto been thought prohibited”) (emphases added).¹

Reinforcing the view that “business” and “transaction” should be interpreted broadly is the word “any” that precedes the phrase “business, transaction, or series of transactions.” 18 U.S.C. § 666(a)(1)(B). Such unqualified language signals the statute’s broad reach over all business or transactions, and cautions against attempts to limit the statute’s application to financial activities. Salinas v. United States, 522 U.S. 52, 57 (1997) (holding that “[t]he word ‘any,’ which prefaces the business or transaction clause” undercuts an attempt to narrow the reach of the statute) (citations omitted); see also United States v. Koh, 199 F.3d 632, 637 (2d Cir. 1999) (the term “any” as used

¹ It is telling that Congress, when it sought to prevent kickbacks (a form of bribery in which the transaction generates the funds for the bribe) in federal-government contracting, used much more narrow terms in describing the government activities covered by the Anti-Kickback Act. 41 U.S.C. §§ 51-58. Specifically, prohibited “kickback[s]” are defined as those payments made for the purpose of obtaining or rewarding favorable treatment in connection with a “prime contract” or a “subcontract relating to a prime contract.” 41 U.S.C. § 52(2). “Prime contract” and “subcontract” themselves are specifically defined as a “contract or contractual action” “for the purpose of obtaining supplies, materials, equipment, or services of any kind.” § 52(4), (7). In sharp contrast, § 666 uses the broader term “business.” This contrast highlights the fact that Congress knows how to use narrower terms when discussing commercial or contractual activities of the government, particularly in the context of a bribery statute.

in relation to a bank fraud statute means without limitation); Johnston v. Iowa Dep't of Human Servs., 932 F.2d 1247, 1249 (8th Cir. 1991) (as used in a federal statute, the word “‘any’ literally means ‘any’”).

For example, Salinas v. United States involved a bribery scheme operated by sheriffs who worked in a county prison for which the United States Marshals Service had an agreement to house federal prisoners. 522 U.S. at 54. A prisoner bribed a deputy sheriff in exchange for allowing the prisoner to have conjugal visits with his wife and girlfriend. Id. at 55. Nothing in the Salinas bribery scheme, however, related to commercial activities of the county or the prison; rather, the bribes were paid solely to obtain additional privileges not available to other prisoners. The Fifth Circuit nevertheless affirmed the convictions, holding that conjugal visits for prisoners were a “thing of value” related to the business of properly housing prison inmates. United States v. Marmolejo, 89 F.3d 1185, 1191-92 (5th Cir. 1996) (citing United States v. Mongelli, 794 F. Supp. 529, 531 (S.D.N.Y. 1992)).

The Supreme Court likewise affirmed the convictions. Salinas, 522 U.S. at 54. In doing so, the basis of the Court’s holding was the plain language of the statute and, in particular, the word “any” in the phrase “any business, transaction, or series of transactions.” Id. at 57. Responding to the defendant’s attempt to limit the statute to bribery affecting federal funds, the Court held that “[t]he word ‘any,’ which prefaces the business or transaction clause, undercuts the attempt to impose this narrowing construction.” Id.

Although Salinas did not directly address the definition of “business” and “transaction,”² the

² Whether conjugal visits were a thing of value in connection with the business of the prison was not raised as an issue before the Supreme Court. Salinas, 522 U.S. at 61 (“[W]e do not address § 666(a)(1)(B)’s applicability to intangible benefits such as contact visits, because that question is

Supreme Court rejected any constitutional question about whether § 666 applied to the facts of the case, stating that the “preferential treatment accorded to [the defendant] was a threat to the integrity and proper operation of the federal program.” Id. at 61. The decision’s focus on the integrity of the recipient of the federal funding, and its reliance and emphasis on the word “any” in the business or transaction clause, cautions against narrowing the construction of the business or transaction clause of § 666.

Consistent with the Supreme Court’s approach in Salinas, on January 13, 2011, the Eleventh Circuit decided United States v. Townsend, No. 09-12797, 2011 WL 102765 (11th Cir. 2011) (publication pending). Townsend squarely undercuts defendant Ross’ argument.

Townsend concerned an indicted drug dealer who was released under supervision pending trial. Id. at *1. In an attempt to purchase freedom of movement, the drug dealer had bribed the state corrections officer responsible for his supervision. Id. at *1-4. On appeal, the Eleventh Circuit affirmed the officer’s conviction under § 666(a)(1)(B) for accepting the bribes. Id. at *9. Beginning with the plain language of § 666, the Court noted that the statute merely required that the “business, transaction, or series of transactions” to which the bribes were directed involved “any thing of value” worth in excess of \$5,000. Id. at * 4. Indeed, with respect to § 666, the Eleventh Circuit firmly held that “‘any thing’ means quite literally ‘any thing whatever; something, no matter what.’” Id. (citation omitted). Townsend explicitly dispels any lingering doubts regarding whether bribes prohibited by § 666 must directly involve some tangible commercial benefit, such as a contract. As the Court ruled, the thing-of-value requirement

not fairly included within the questions on which we granted certiorari.”).

“unambiguously includes intangibles.”³ Id. (citation omitted).

Other courts around the country have likewise agreed that the phrase “business, transaction, or series of transactions” should apply broadly when interpreting the statute. See, e.g., United States v. Bonito, 57 F.3d 167, 172 (2d Cir. 1995) (holding that the word “business” as used in § 666 includes “‘work,’ ‘professional dealings,’ ‘one’s proper concern,’ and ‘serious work or endeavor that pertains to one’s job’”); United States v. Apple, 927 F. Supp. 1119, 1126-27 (N.D. Ind. 1996) (denying motion to dismiss indictment charging defendant with bribing an officer of the state environmental agency and concluding that the agency’s primary business is preventing pollution, which is encompassed by § 666 even though such a “business” does not involve government contracting); United States v. Marlinga, No. 04-80372, 2006 WL 2086027, at *5 (E.D. Mich. July 25, 2006) (rejecting defendant’s arguments that the prosecution of criminal cases was not a “business or transaction” under § 666 and holding that a prosecutor’s job to properly, and without corrupt intent, proceed in criminal cases “is plainly” within the definition of “business” as used in § 666).

Despite this widespread understanding that the meaning of “business” and “transaction” extends beyond direct financial activity, defendant Ross urges the Court to view § 666 in a

³ In response, defendant Ross erroneously claims 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. Defendant Ross also complains that Townsend fails to assess legislative history, but the Eleventh Circuit made 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).

narrow commercial sense. He relies on inapposite caselaw, unsupported contentions, and misleading statutory interpretation to confine the full common-sense meaning of these terms.

Defendant Ross cites two decisions from the Eleventh Circuit as support for his hobbled definitions of the terms. Br. at 6. Neither decision carries any force here. Both decisions involve commercial litigation claims: it is therefore unsurprising that they define “business” and “transaction” solely in commercial terms. One decision, Hawthorne v. Mac Adjustment, 140 F.3d 1367 (11th Cir. 1998), refers only to “transactions” in the very specific commercial context of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692. 140 F.3d at 1371 (“[W]e do not hold that every consensual or business dealing constitutes a ‘transaction’ triggering application of [the Act].”). That definition has no relevance to criminal law, let alone § 666. The other decision, Flava Works, Inc. v. City of Miami, 609 F.3d 1233 (11th Cir. 2010), addresses whether commercially related activity that took place at a residence made the residence “a business.” 609 F.3d at 1239 (emphasis added). Similarly, Flava Works is concerned only with whether certain commercial activity can comprise a business; the decision is silent regarding the full scope of what business activity may include in other contexts.

Defendant Ross also claims that the requirement in § 666 that the “business, transaction, or series of transactions” at issue must “involve anything of value of \$5,000 or more” further emphasizes the statute’s exclusive application to commercial bribery. Br. at 9-10. Once again, his argument improperly constricts the statute’s meaning by pointedly ignoring the word “anything.” As the Eleventh Circuit recently held in Townsend, with respect to § 666, “‘any thing’ means quite literally ‘any thing whatever; something, no matter what.’” Id. (citation omitted). Caselaw from other jurisdictions further clarifies that “[t]he term ‘anything of value’ . .

. is broad in scope and contains no language restricting its application to transactions involving money, goods, or services.” Marmolejo, 89 F.3d at 1191 (holding that “business, transaction, or series of transactions” under § 666(a)(1)(B) may involve intangibles); see also United States v. Santopietro, 166 F.3d 88, 92 (2d Cir. 1999), abrogated on other grounds, Sabri, 541 U.S. 600 (same); Mongelli, 794 F. Supp. at 531 (holding that § 666(a)(2), the mirror provision to § 666(a)(1)(B), applies to bribes paid or offered in exchange for intangibles). Far from limiting § 666 to commercial bribery concerning public contracts and the like, the “anything of value” requirement makes it even clearer that the statute applies also to intangible benefits, such as the passage of legislation.⁴

2. The plain meaning of the terms “agent” and “government agency” in § 666 further confirms that the phrase “business, transaction, and series of transactions” applies to non-commercial governmental activity.

Section 666 criminalizes bribery that “influence(s) or reward(s) an agent of an organization or of a State.” The statute defines “agent” to mean “a person authorized to act on behalf of another person or a government and, in the case of an organization or government, includes a servant or employee, and a partner, director, officer, manager, and representative.” § 666(d)(1). State legislators and legislative staff fall within the plain terms of this simple definition. Yet defendant Means wishes to read more into the statute, suggesting that they may only be deemed “agents” when they are engaged in commercial activity. His proposed gloss to

⁴ Defendant Ross also mentions the distinction between the government as a market participant versus a regulatory body in a strained effort to bolster his conclusion that § 666 focuses on the former. Br. at 7. Notably, defendant Means fails to cite to a single decision regarding § 666 that touches on that alleged distinction—because there is none. The distinction is merely a red herring that has no bearing on the present case.

the plain language of the statute finds no support in the statute itself or its straightforward definition of the term “agent.” Nothing in the language of § 666 suggests that the term “agent” means something less than what it says on its face, and defendant Means offers no reason to limit it to a subset of executive, judicial, and legislative officers who have commercial responsibilities. Indeed, in Townsend, the agent in question was a state corrections officer who accepted bribes in exchange for overlooking violations of a defendant’s supervised release. Thus, Townsend makes clear that under § 666 agents need not act only with respect to commercial interests, and that the phrase “business, transaction, or series of transactions” embraces intangibles, including legislative votes. Put simply, a state legislator with no direct role in contracting or procurement activities of the government would still be an “agent” of state government.

There can be no question that a member of a state legislature is an agent of that state. See United States v. Lipscomb, 299 F.3d 303, 333 n.155 (5th Cir. 2002) (describing a city councilman whose duties included voting on local measures as an officer of that city). State legislators are “authorized to act on behalf of . . . a government,” § 666(d)(1), in its most important affairs: passing laws in that state’s name. Through the power to legislate, Alabama State legislators are agents of the Alabama State government for purposes of § 666. So too are the employees of the Alabama State legislature mentioned in the Indictment, such as defendant Crosby, who help legislators draft bills. As “employees” and “servants” who serve the State of Alabama through its legislature, they also fall directly under the definition of government agents found in § 666(d)(1).

The primary, if not sole, duties of these governmental agents—drafting and voting on legislation—is not commercial in nature. While it is true that they may also at times engage in

commercial activities, such as issuing a contract to a supplier for office equipment, this occasional involvement does not explain why the statute's scope should be limited to the corruption of purely commercial activity. Nothing in the statute suggests that § 666 does not apply to the legislative process.

Furthermore, under the theory that "business" or "transaction" applies solely to commercial activities, lower-level government procurement employees could be prosecuted under the statute, but higher-level officials who have a much broader impact on the integrity of government functions and the allocation of state and federal funding could not. Under such a crabbed reading of the statute, an Alabama State senator who accepted bribes in connection with a contract for Senate office supplies could be prosecuted under § 666, but if the same senator accepted bribes to pass legislation affecting the entire State of Alabama, § 666 would not apply. This example illustrates the oddity of limiting the phrase "any business, transaction, or series of transactions" to commercial transactions. There simply is no reason why Congress would want § 666 to apply to low-level procurement issues, but not to corruption related to the most critical of governmental business, the making of laws.

To be clear, the United States does not assert that § 666 is a boundless anti-bribery provision. In addition to requiring that a "business" or "transaction" of government, organization, or agency be involved in the corruption, the statute has a number of other threshold requirements that must be met for prosecution. See, e.g., United States v. Whitfield, 590 F.3d 325, 345 (5th Cir. 2009) (recognizing that bribes must be accepted in connection with any business or transaction of the particular governmental agency of which the employee at issue is charged with being an agent); United States v. McNair, 605 F.3d 1152, 1186 n.38 (11th Cir.

2010) (noting that the \$5,000 statutory threshold applies to the “business, transaction, or series or transactions,” as opposed to the value of the bribe). But these requirements do not restrict the statute’s application solely to commercial bribery.

Caselaw directly supports this conclusion. Under facts analogous to those in the Indictment, courts have affirmed convictions under § 666 in cases that involved the bribery of local and state agents in connection with non-commercial activity. See, e.g., United States v. Oros, 578 F.3d 703, 705 (7th Cir. 2009) (affirming conviction of a City of Chicago building inspector charged with accepting bribes in exchange for expediting architectural plans through the City’s approval process); Fernandes, 272 F.3d at 938 (affirming conviction of a local prosecutor who accepted bribes in exchange for accessing driver’s license files and expunging convictions); United States v. Zimmerman, 509 F.3d 920, 926-27 (8th Cir. 2007) (affirming conviction of a city councilman for accepting items of value in exchange for influencing the councilman’s vote on a zoning application); United States v. Guishard, 163 Fed. Appx. 114, 116 (3d Cir. 2006) (unpublished opinion) (affirming conviction of a conservation enforcement officer for accepting a bribe in return for misidentifying the suspect of an investigation).

For example, in United States v. Lipscomb, the Fifth Circuit held that a member of the Dallas City Council who had accepted bribes from a taxicab company in exchange for casting votes favorable to the company’s interests could be convicted under § 666. Lipscomb, 299 F.3d at 303. Importantly, the assistance provided by the council member in exchange for the bribes was not strictly financial in nature. Rather, it related to measures designed to increase the business of the taxicab company or harm the business of the company’s competitors. Id. at 307. Like the convicted defendant in Lipscomb, the defendants in the present case faces charges

relating to bribes that were paid to buy legislative votes. Lipscomb and the other caselaw cited above make clear that § 666 prohibits such non-commercial bribery.

Even so, defendant Ross struggles to deflect the weight of this caselaw by pointing to a single case, Single Moms, Inc. v. Montana Power Co., 331 F.3d 743 (9th Cir. 2003), which involved a § 1983 civil suit and addressed neither § 666 nor criminal law in general. Id. at 746. Moreover, in Single Moms, the Ninth Circuit sought to define the term “agent” only with respect to whether state legislators were “acting for the state with private parties in a ‘joint activity,’” as opposed to legitimately carrying out their legislative duties. Id. at 747. Noting that the legislators at issue did not represent the state in a “joint activity” with private parties, the Ninth Circuit concluded that the legislators were not state “agents”—for purposes of a § 1983 lawsuit. Id. The question in the present case is distinguishable: it asks whether legislators and legislative employees acted as agents, as § 666 defines that term, of the State of Alabama when they voted on and drafted legislation. As shown above, decisions regarding § 666 make it clear that they did.

Defendant Ross’ strained effort to use the noscitur a sociis doctrine⁵ to support his interpretation of § 666 likewise falls short. Br. at 9. Citing this canon, he argues that “officer,” under § 666, should, like the other terms that help define “agent” under § 666(d)(1) (e.g., “servant,” “employee,” “partner,” “director,” “manager,” and “representative”) have a purely commercial connotation. Once again, defendant Ross’ argument ignores both the plain text of

⁵ This canon of statutory construction stands for the proposition that words are best understood by the company they keep. See, e.g., Edison v. Douberly, 604 F.3d 1307, 1309 (11th Cir. 2010). Put differently, the doctrine holds that words in a statute should be interpreted in light of the other words that surround them. Id.

the statute and caselaw from a number of jurisdictions.

Defendant Ross also suggests that comparison of the language of § 201 to the language of § 666 reveals an effort to limit the latter. Br. at 15-17. Specifically, he points to two things. First, he notes that § 666 prohibits bribery with respect to “business” and “transactions,” whereas § 201 prohibits bribery with respect to “official acts,” which he views as a broader category. Id. at 12. Second, he notes that § 201 specifically identifies Members of Congress as “public officials” who fall under that statute’s anti-bribery provisions. 18 U.S.C. § 201(a)(1). These differences in language are without significance. The meaning of the terms “business” and “transactions” in § 666 is clear enough without requiring reference to a totally different bribery provision. Moreover, the caselaw cited above clearly indicates that when adjudicating convictions under § 666, courts adopt the plain meaning of “business” and “transaction,” and widely agree that the business of state and local officials may include non-commercial acts, such as drafting and voting on legislation. See, e.g., Lipscomb, 299 F.3d at 303.

In sum, despite defendant Ross’ attempts to argue to the contrary, the plain language of the phrase “business, transaction, or series of transactions” in § 666 requires that “business” or “transaction” be interpreted to cover non-commercial functions of the government. A contrary reading of the statute would “exclude conduct clearly intended to be within in its scope.” Salinas, 522 U.S. at 59 (“No rule of construction, however, requires that a penal statute be strained and distorted in order to exclude conduct clearly intended to be within its scope.”) (internal quotation marks omitted); Grossi, 143 F.3d at 350 (“It is not our part to trim § 666 by giving its text a crabbed reading.”) (citing Salinas). Moreover, as noted above, the statute clearly applies to legislators and legislative employees. It must therefore also apply to the legislative

process because legislatures do not, per se, engage in commercial activity.

B. The Legislative History of § 666 Further Establishes That the Statute Covers Non-Commercial Business and Transactions.

Defendant Ross contends that the legislative history of § 666 shows that Congress did not intend the statute to apply to non-commercial or non-financial business or transactions. Br. at 10-14. As shown above, it is unnecessary to look any further than the statute's plain language in order to understand that the statute does, in fact, prohibit bribes made or offered to state legislators in relation to their non-commercial business, such as voting on laws. See United States v. Albertini, 472 U.S. 675, 680 (1985) ("Courts in applying criminal laws generally must follow the plain and unambiguous meaning of the statutory language."). But, assuming for the sake of argument that it is necessary to look further, legislative history indicates that congressional intent in passing § 666 explicitly focused on extending federal law to public corruption offenses committed by state and local officials.

Before the passage of § 666, the sole federal anti-bribery provision was 18 U.S.C. § 201, which applies only to "public officials" acting under federal authority. Salinas, 522 U.S. at 58. The federal courts of appeals were divided over whether state and local officials fell within the scope of § 201. Id. In response, Congress enacted § 666 for the express purpose of permitting the federal prosecution of state and local officials engaged in bribery. Id. As the Supreme Court has emphasized, Congress passed § 666 in order to fill "regulatory gaps" left by the question of whether local officials could face federal prosecution for bribery offenses. Sabri, 541 U.S. at 607.

Defendant Ross notes that Congress mentioned three cases in the legislative history of

§ 666, and that all three concerned bribery in connection with how the recipients of federal funds secured or provided governmental goods and services. Br. at 11 (referring to United States v. Del Toro, 513 F.2d 656 (2d Cir. 1975); United States v. Mosely, 659 F.2d 812 (7th Cir. 1981); United States v. Hinton, 683 F.2d 195, 197-200 (7th Cir. 1982)). Defendant Ross is wrong, however, when he concludes that Congress meant for these three cases to signal the outer reaches of § 666. The cases served merely as the impetus for congressional action aimed at closing a loophole that excepted local and state officials who committed corruption offenses from facing prosecution under the federal bribery statute, § 201. See Salinas, 522 U.S. at 58 (“Congress enacted § 666 and made it clear that federal law applies to bribes of the kind offered to the state and local officials in Del Toro, as well as those at issue in Mosley and Hinton.”); Sabri, 541 U.S. at 607 (“Those laws had proven inadequate to the task.”).

In short, congressional intent in passing § 666 was not to focus on certain types of bribery, but to broaden the scope of who could be prosecuted for bribery. “Thus [the Supreme Court has] said that § 666 ‘was designed to extend the federal bribery prohibitions to bribes offered to state and local officials employed by agencies receiving federal funds’ . . . thereby filling the regulatory gaps.” Id. (quoting Salinas, 522 U.S. at 58). Many state and local officials (such as state legislators) engage in business (such as passing and drafting laws) that is not directly related to commercial activity. It would make no sense for Congress to enact a statute explicitly intended to prohibit public corruption among those officials that also does not permit prosecution for bribery relating to those officials’ primary duties.

C. None of the Rules of Interpretation or Constitutional Principles Cursory Raised by Defendant Ross Alter the Conclusion That § 666 Prohibits Bribing and Offering or Agreeing to Offer a Bribe to a State Official in Connection With Voting and Drafting Legislation.

In a last-ditch effort to save his motion, defendant Ross refers in cursory fashion to a hodgepodge of statutory rules of interpretation and constitutional principles. Br. at 17-20. The medley of claims that he raises include constitutional due process, First Amendment, and Tenth Amendment federalism concerns; the rule of lenity; the doctrine of fair notice; the clear statement rule of statutory interpretation; and the doctrine of constitutional avoidance. These claims are baseless, and should be rejected.

As an initial matter, defendant Ross' various claims are wholly unsupported by relevant caselaw. Not a single claim cites a decision involving § 666 for support. In addition, defendant Ross' First Amendment concerns are particularly unwarranted. He contends that the term "corruptly" in § 666 is unconstitutionally vague when used in prosecutions involving campaign contributions. Br. at 19-20. According to defendant Ross, this is because "[t]here is no settled understanding as to what connection between a campaign contribution and a legislative vote or other action must be proven in order to constitute a crime." *Id.* The Supreme Court has made it clear that a statute is unconstitutionally vague only (1) if it fails to provide adequate notice to people of ordinary intelligence that specified conduct is proscribed or (2) if it permits arbitrary and discriminatory enforcement. Gonzales v. Carhart, 127 S. Ct. 1610, 1615-16 (2007). But as previously explained, the statutory text, legislative history, and caselaw all clearly illustrate what is required to obtain a conviction under § 666 in cases where bribery involves non-financial business and transactions, such as legislative action. There is no constitutional vagueness

problem with respect to § 666 prosecutions that involve campaign contributions in exchange for votes.

Furthermore, some of defendant Ross' claims apply only when there is ambiguity regarding the meaning of a statute. In particular, as defendant Ross notes, Fifth Amendment due process requirements, the rule of lenity, and the doctrine of fair notice all apply only in situations when statutory ambiguity jeopardizes the rights of defendants. But as explained above, the plain meaning of the text of § 666, relevant caselaw, and statutory history make it clear that there is no ambiguity here. Although defendant Ross would surely prefer otherwise, § 666 means what it says: the statute prohibits bribery of exactly the sort that defendant Ross is charged with committing in the Indictment.

II. 18 U.S.C. § 666 Criminalizes Bribery That Takes The Form Of Campaign Contributions.

Defendant Ross argues that Counts 1, 11, and 12 of the Indictment should be dismissed because campaign contributions do not constitute “things of value” under § 666. Because controlling authority makes clear that § 666 has an expansive ambit, his argument should be rejected.

As previously discussed, the Supreme Court has emphasized the broad scope of § 666 in prohibiting bribery. Sabri, 541 U.S. at 605 (“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.”). Indeed, the Eleventh Circuit 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 § 666.⁶ 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, and 8 of the Indictment properly charge defendant McGregor with having bribed Alabama legislators.

What is more, as mentioned above, the Eleventh Circuit also recently affirmed the broad reach of § 666 in Townsend. As previously noted, in Townsend, the Court noted that § 666 requires that the “business, transaction, or series of transactions” to which bribes are directed must involve “any thing of value” worth in excess of \$5,000. Id. at * 4. The Eleventh Circuit stressed that “‘any thing’ means quite literally ‘any thing whatever; something, no matter what.’” Id. (citation omitted). Although defendant Ross tries 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 take 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

⁶ 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.

phrase “anything of value,” it surely means anything, including campaign contributions.

Defendant Ross attempts to deflate the broad scope with which the Supreme Court and the Eleventh Circuit have interpreted § 666, but his efforts are misplaced. He refers loosely to caselaw that stands for the general proposition that courts should not read into a statute’s meaning. Br. at 20-21.⁷ 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.

Defendant Ross further claims that the statute’s legislative history shows that § 666 does not criminalize campaign contributions. But as the discussion of the statute’s legislative history above made clear, 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, defendant Ross objects that if § 666 were to cover campaign contributions, there would be no way to distinguish lawful from unlawful campaign funding. He further claims that the rule of lenity should resolve this ambiguity in his favor. As shown above, however, the statute’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 defendant Ross 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

⁷ He`cites 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).

through campaign contributions that benefit a candidate. There is no ambiguity here: The law clearly establishes that corrupt campaign contributions fall under § 666.

Nor can he credibly argue that a campaign contribution does not constitute a personal benefit. Any contribution to the campaign fisc necessarily serves his personal political interests. To claim otherwise, as he does, is the height of hypocrisy.

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

Moving away from his arguments regarding whether § 666 reaches corrupt campaign contributions, defendant Ross argues that § 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 defendant Ross and official acts that the bribes were intended to influence.

As an initial matter, defendant Ross incorrectly relies on McCormack v. United States, 500 U.S. 257, 273 (1991), and Evans v. United States, 504 U.S. 255, 268 (1992), which mandate quid pro quos in the context of Hobbs Act extortion. No controlling caselaw holds that such a requirement exists in the context of federal program bribery. To the contrary, the Eleventh Circuit recently concluded that proving a violation of § 666 does not require a quid pro quo.⁸ United States v. McNair, 605 F.3d 1152, 1188 (11th Cir. 2010) (“[W]e now expressly hold there is no requirement

⁸ Likewise, at least one court in the Eleventh Circuit has refused to import the quid pro quo requirement into 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”).

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.”).

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 defendant Ross.

Defendant Ross is not 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 corruption and defendant Ross’ solicitations for campaign contributions. Indeed, ¶ 35 of the document describes the quid pro quo with respect to the conspiracy spelled out in Count 1:

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.

Each of the substantive federal program bribery charges faced by defendant Ross incorporates at least 178 specific, detailed allegations regarding how and by whom that conspiracy was carried out. See Indict. ¶¶ 209 and 211. In particular, the allegations contained in ¶¶ 29 through 190 provide detailed descriptions of his misconduct, in addition to that of his co-conspirators, thereby establishing the conspiracy to violate § 666 charged in Count 1.

Of the incorporated acts, fifteen pertain directly to defendant Ross. These allegations make clear that in the months and days leading up to a vote on SB380 defendant Ross actively solicited campaign contributions in connection with such legislation, and they identify the particular conversations in which the requests occurred. Specifically, in late December 2009 or early January 2010, defendant Ross demanded campaign contributions from defendant Gilley and Jarrod Masey, through Jennifer Pouncy, claiming that he was not “feeling the love” after sponsoring pro-gambling legislation during the 2009 legislative session. Indict. ¶¶ 20, 119. Later, as the legislative session progressed, defendant Ross introduced competing pro-gambling legislation on March 9, 2010, id. ¶ 124, before demanding additional campaign contributions in the amount of \$25,000 from Massey, id. ¶ 125, who backed SB380.

Nor were defendant Ross's solicitations confined to defendant Gilley, Massey, and Pouncy. Indeed, defendant Ross also sought campaign contributions from one of defendant McGregor's principal lobbyists, defendant Coker, id. ¶¶ 126-127, and ultimately from defendant McGregor personally. To that end, the Indictment alleges with precision the direct connection between defendant Ross's demands for campaign contributions and the pending vote on the pro-gambling legislation. In a conversation the day before the vote on SB380, defendant Ross allegedly asked defendant McGregor, "You feel like you got the twenty-one [votes] in the Senate?" id. ¶ 128. Defendant McGregor responded that he was "cautiously optimistic." Later in the very same conversation, defendant Ross repeatedly solicited campaign contributions. Id.

And if the connection between defendant Ross's demand for contributions and the vote on SB380 were not sufficiently clear, in a conversation the next day—the day of the actual vote, March 30, 2010—defendant Ross again solicited contributions, stating "we're just getting down to the wire." Putting a fine point on this understanding, defendant Ross told defendant McGregor that "we know the window is closing on us fast and so I'm just trying to do everything I can to, uh, make sure I can raise [funds]" Id. ¶ 129. In response, defendant McGregor promised to help however he could. Id.

Taken as a whole, these acts and others in the Indictment comprise the factual basis of the federal program bribery charges as to defendant Ross. The acts show with great clarity the specific intent of defendant Ross in demanding campaign contributions 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.

Defendant Ross makes the related claims that the Indictment fails to allege a conspiracy to

violate § 666 in Count 1, or that he aided and abetted federal program bribery in Counts 11 and 12. Specifically, he argues that those counts fail to plead the requisite criminal intent. To the contrary, the references to the Indictment above clearly illustrate that defendant Ross was specifically demanding campaign contributions in exchange for his support of pro-gambling legislation. And, as previously explained, § 666 criminalizes bribes that take the form of campaign contributions. Thus, Count 1 properly alleges conduct that squarely places defendant Ross within the conspiracy at the heart of this case, and Counts 11 and 12 likewise properly allege defendant Ross' corrupt intent. In sum, because the Indictment satisfactorily alleges all elements of the charged offenses, defendant Ross' motion fails.

CONCLUSION

For the foregoing reasons, the Court should deny defendant Ross' Motion to Dismiss Federal Program Bribery Charges and Conspiracy to Commit Federal Program Bribery.

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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