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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CR No. 2:10cr186-MHT**
	)	
RONALD E. GILLEY, et al.,	)	**ORAL ARGUMENT REQUESTED**
	)	
Defendants.	)	

DEFENDANT RONALD E. GILLEY'S MOTION TO DISMISS
COUNT ONE – CONSPIRACY (18 U.S.C. § 371)

COMES NOW, Defendant RONALD E. GILLEY ("Mr. Gilley" or "Defendant"), by and through the undersigned counsel and respectfully moves this Honorable Court pursuant to Fed. Re. Crim. P. 12(b)(3)(B) to enter an Order dismissing Count One – Conspiracy under 18 U.S.C. § 371. As grounds in support of this Motion, Mr. Gilley shows the following:

I. THE INDICTMENT CHARGES MULTIPLE CONSPIRACIES IN ONE COUNT.

The Indictment in this case charges a single massive, overarching conspiracy to corrupt the Alabama Legislature. *See e.g.* Indictment at ¶29 ("It was a purpose of the conspiracy for MCGREGOR and GILLEY to corruptly provide and offer to provide payments and campaign contributions, among other things of value, to members and staff of the Alabama Legislature[.]"). Similarly, in its press release announcing the Indictment in this case, the Government confirmed its theory of a single, overarching conspiracy to corrupt the Alabama Legislature as charged in Count One, "Today, charges were unsealed against 11 legislators, businessmen, lobbyists and associates who, together, are alleged to have formed a corrupt network whose aim was to buy and sell votes in the Alabama legislature in order to directly benefit the business interests of two

defendants, Milton McGregor and Ronald Gilley[.]" *See* Press Release, Department of Justice, Alabama Legislators, Staff Member, Lobbyists, and Businessmen Charged in 39-count Indictment for Roles in Wide-ranging Conspiracy to Influence and Corrupt Votes Related to Electronic Bingo Legislation (October 4, 2010), http://www.justice.gov/opa/pr/2010/October/10-crm-1114.html.

The substance of Count One, however, tells a different story. Instead of a single, massive conspiracy in which all alleged conspirators, named and unnamed, conspired together to corrupt the Alabama **Legislature**, there are multiple, distinct conspiracies alleged in which certain groupings of Co-Conspirators are alleged to have conspired together to corrupt certain Alabama **Legislators** and staff. To illustrate this point, the Court need look no further than the groupings of the overt acts alleged in Count One: Legislator 1, ¶¶ 39 – 44; Legislator 2, ¶¶ 45 – 66; Legislator 3, ¶¶ 67 – 73; Larry P. Means, ¶¶ 74 – 82; James E. Preuitt, ¶¶ 83 – 117; Quinton T. Ross, Jr., ¶¶ 118 – 132; Harri Anne H. Smith, ¶¶ 133 – 155; Joseph R. Crosby, ¶¶ 156 – 181. As these groupings evidence, the alleged conduct charged actually consists of separate conspiracies. Nowhere in the overt acts is there anything linking the alleged bribery conspiracy relating to Legislator 3 to any bribery conspiracy relating to Senator Smith.

II. ARGUMENT.

"[I]ndictments under the broad language of the conspiracy statute [18 U.S.C. § 371] must be scrutinized carefully." *Dennis v. United States*, 384 U.S. 855, 860 (1966) (noting, "the possibility, inherent in a criminal conspiracy charge, that its wide net may ensnare the innocent as well as the culpable"). Here, the Government has failed to allege facts evidencing a single agreement, an "essential fact[] constituting the offense" of conspiracy. *See* Fed. R. Crim. P. 7(c)(1).

In general, "[a] conspiracy is an agreement between two or more persons to accomplish an unlawful plan." *United States v. Chandler*, 376 F.3d 1303, 1315 (11th Cir. 2004) (citing 18 U.S.C. § 371). *See also United States v. Parker*, 839 F.2d 1473, 1477 (11th Cir. 1988). The "agreement" is the "essence" of the conspiracy and the "essential evil at which the crime of conspiracy is directed." *Chandler*, 376 F.3d at 1315 (quoting *Ianelli v. United States*, 420 U.S. 770, 777 n.10 (1975)). "Proof of a true agreement is the only way to prevent individuals who are not actually members of the group from being swept into the conspiratorial net." *Id.*

Moreover, "[u]nder federal conspiracy law, the government must allege…that the defendants knowingly entered into an agreement to commit an unlawful act." *Chandler*, at 1307 (emphasis in original). *See also United States v. Adkinson*, 158 F.3d 1147, 1155 (11th Cir. 1998) (government must prove existence of agreement to achieve unlawful object and defendant's knowing participation in the agreement); *United States v. Suba*, 132 F.3d 662, 672 (11th Cir. 1998) (same); *United States v. Calderon*, 127 F.3d 1314, 1326 (11th Cir. 1997), *cert. denied*, 522 U.S. 113 (1998) ("To prove knowing and voluntary participation, the government must prove beyond a reasonable doubt that the appellants had a specific intent to join the conspiracy."). Here, the Indictment fails to allege "an essential element of the crime of conspiracy – knowing agreement to commit the illegal act." *Chandler*, 376 F.3d at 1307.

Additionally, there must be "concert of action" namely, a "common decision and a common activity for a common purpose." *Dennis*, 384 U.S. at 860. And "mere knowledge, acquiescence or approval without cooperation or agreement to cooperate is not enough to constitute one a party to a conspiracy." *United States v. Mendez*, 496 F.2d 128, 130 (5th Cir. 1974). Indeed, there must be proof that an alleged co-conspirator "actively participated in the

conspiracy charged" and "mere association with conspirators is not enough to establish participation in the conspiracy." *Mendez*, 496 F.2d at 130. As the Eleventh Circuit has declared:

> The government may not rest upon proof that a defendant acted in a way that would have furthered the goals of the conspiracy *if there had been one*. Without some independent evidence that these defendants *knew* there was a [ ] conspiracy in progress and that they voluntarily and knowingly joined this conspiracy, the proof of the requisite agreement [to commit the offense] is sufficient.

United States v. Adkinson, 158 F.3d 1147, 1155 (11th Cir. 1998). *See also Chandler*, 376 F.3d at 1318.

If anything, the allegations in the overt acts suggest multiple conspiracies – to bribe specific legislators, not the entire Alabama legislature – all of which have been pled under a single count. Consequently, the Indictment fails to satisfy Mr. Gilley's "Sixth Amendment right to have notice of the specific offense" so that he may defend against the charge. *United States v. Maldenaldo Sanchez*, 269 F.3d 1250,1315 n.17 (11th Cir. 2001); *see also Hamling v. United States*, 418 U.S. 87 at 117 – 118 (1974).

Specifically, Count One is pled in a manner which leaves open the possibility of the Government broadening the charge at trial; a possibility that Fed. R. Crim. P. 7(c)(1) and the dual protections of the Fifth and Sixth Amendments are designed to prevent. "[i]f the government envision[s] a broader common goal for the conspirators, ... it [is] obligated to ensure that the Grand Jury stated that goal with certainty and thereby conformed to the 'basic principles of fundamental fairness' underlying the two key purposes of an indictment--notice to the defendant and protection against double jeopardy." *United States v. Hitt*, 249 F.3d 1010, 1026 (D.C. Cir. 2001) (quoting *Russell v. United States*,, 369 U.S. 749, 763, 765-66 (1962)).[1]

[1] Appellate courts regularly reverse convictions when the various alleged violations of the law are not drawn together into a single comprehensive conspiracy as alleged in an indictment. *See e.g., Kotteakos v. United States*, 326 U.S. 750 (1946); *United Statesv. Ellis*, 709 F.2d 688, 690 (11th Cir. 1983) (three conspiracies shown, not one); *United States v. Varelli*, 407 F.2d 735 (7th Cir. 1969) (jury not properly instructed on multiple conspiracies when

It is "clearly not sufficient simply to say that the [D]efendants each shared a common goal." *United States v. Glinton*, 154 F.3d at 1251. Rather, "to constitute a single conspiracy there must be a single enterprise which sets up a common goal connecting each defendant." *Id.* (noting that the government had not proven a single conspiracy) (citing, *inter alia*, *United States v. Castro*, 829 F.2d 1038, 1045 (11th Cir. 1987) ("similar illegal objective" not enough to support single conspiracy)).

No single plan or enterprise has been alleged here; in fact, Count One is a multi-object conspiracy containing an unknown number of unnamed co-conspirators allegedly making multiple agreements to violate numerous substantive offenses. *See* Indictment at ¶¶ 27 – 190. As a conspiracy charge is "broadened" in numbers of defendants and offenses alleged, "the possibilities for miscarriage of justice to particular individuals becomes greater and greater." *Kotteakos v. United States*, 328 U.S. at 776; *see also Hitt*, 249 F.3d at 1026 ("Defining the goal of the conspiracy in the broad manner that the government proposes would frustrate..the indictment's purpose of giving notice to a defendant[.]") (citing, *inter alia*, *Grunewald v. United States*, 353 U.S. 391, 401-02 (1957)).

At best, the Government has alleged multiple conspiracies with multiple objectives among multiple players. *See* Indictment at ¶¶ 27 – 190. Numerous overt acts alleged in the Indictment make no mention of Mr. Gilley or indicate in any way that Mr. Gilley had any

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two conspiracies proved instead of single conspiracy). Also, where a single conspiracy is alleged but proof at trial reveals multiple conspiracies, courts must engage in prejudicial variance and misjoinder analysis. *See e.g.*, *United States v. Adkinson*, 135 F.3d 1363 (11th Cir. 1998) (disapproving joinder); *United States v. Coy*, 19 F.3d 629, 633-634 (11th Cir. 1994), *cert. denied*, 513 U.S. 946 (1994) ("no reasonable jury could have determined beyond a reasonable doubt that there was a single conspiracy"); *United States v.G1inton*, 154 F.3d 1245 (11th Cir. 1998), *cert. denied*, 526 U.S. 1032 (1999); *United States v. Castro*, 829 F.2d 1038 (11th Cir. 1987) (disapproving joinder); *United States v. Levine*, 546 F.2d 658 (5th Cir. 1977) (same), overruled on other grounds by *United States v. Lane*, 474 U.S. 438 (1986) (overruling *Levine* only regarding misjoinder being *per se* reversible error).

knowledge of, agreement to, or participation in the conduct alleged. *See e.g.*, Indictment at ¶¶ 67 – 73. However, "[in] order to prove a single, unified conspiracy as opposed to a series of smaller, uncoordinated conspiracies, the government must show an interdependence among the alleged co-conspirators." *Chandler*, 376 F.3d at 1320 (citing *United States v. Toler*, 144 F.3d 1423, 1426 (11th Cir. 1998)). If there is no "interdependence" among defendants, as is the case here, then a single conspiracy can not be shown. *Id.*, at 1320-1321. The only connection between the Defendants here, is the fact that each individual Defendant had some relation to electronic bingo legislation in Alabama at one time or another. While the facts alleged in the indictment show some interdependence regarding some specific legislators, the indictment also clearly shows that there is no interdependence with regard to others. The Government has essentially conceded the lack of interdependence by charging only certain individuals with specific substantive crimes, but not charging other members of the conspiracy with the same crimes. The most glaring example of this lack of interdependence are the allegations contained in Counts Fifteen and Sixteen, which only charge Defendants McGregor and Crosby with violation of 18 U.S.C. § 666. The Indictment does not allege any fact which would indicate that any other defendant had any knowledge of the specific allegations involving Mr. McGregor and Mr. Crosby, but yet these same allegations are contained within the broad sweep of the conspiracy set out in Count 1. The lack of interdependence is also true for the allegations concerning the alleged bribery of Senators Smith and Ross. At best, the indictment alleges mere association, in one way or another, among Co-Defendants. This "mere association" among Defendants is not sufficient to prove participation in a conspiracy. *See Mendez*, 496 F.2d at 130.

Even assuming all the overt acts alleged in Count One are true, the Government has only managed to allege several purported bad acts by various actors. However, "[f]ederal conspiracies

are not proved by evidence of illegitimate conduct." *Chandler*, 376 F.3d at 1323. And "a person who has no knowledge of a conspiracy, but who happens to act in a way which advances some purpose of one, does not thereby become a conspirator." *Glinton*, 154 F.3d at 1252 (quoting the district court's jury instructions approvingly). The Government cannot rely on "a ubiquitous conspiracy charge[d] to provide a common link" between acts or "to demonstrate the existence of a common scheme or plan among the several defendants." *See United States v. Levine*, 546 F.2d 658, 662-63 (5th Cir. 1977); *see also Chandler*, 376 F.3d at 1319 ("If the defendants have no knowledge of the overall conspiracy," their independent acts "do not supply that link.") (citing *United States v. Simon*, 839 F.2d 1461, 1468 (11th Cir. 1988)).

A charge in an indictment is valid only when it "fully, directly, and expressly, without any uncertainty or ambiguity," sets forth the charged offense. *United States v. Ramos*, 666 F.2d 469, 474 (11th Cir. 1982) (citing *Hamling v. United States*, 418 U.S. 87, 117 (1974)). Rather than allege a single common conspiracy, Count One of the Indictment insinuates that multiple conspiracies and plans existed. Count One is confused and confusing and leaves open the chance that the Government might expand the charge at a later date. Rule 7(c)(1) does not permit this type of ambiguous charge in an indictment. Furthermore, the fact that multiple conspiracies are alleged in a single count prevents the jury from separately deciding the issue of guilt or innocence with respect to the specific offenses or objects described in the conspiracy, creating uncertainty as to whether a jury's verdict is based on a unanimous decision, and is likely to lead to prejudicial evidentiary rulings because of evidence admissible against Mr. Gilley in one offense may not be admissible in another.

WHEREFORE, premises considered, Mr. Gilley respectfully requests that this Honorable Court enter an Order dismissing Count One.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have on this the 4th day of February, filed the foregoing with the Clerk of Court via CM/ECF and an electronic copy of the same has been sent to the following:

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