

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 2:10-cr-186-MHT
)	
THOMAS E. COKER,)	
)	
Defendant.)	

DEFENDANT THOMAS E. COKER'S MOTION TO STRIKE SURPLUSAGE

COMES NOW, Defendant Thomas E. Coker, by and through the undersigned counsel and respectfully moves this Honorable Court pursuant to Federal Rule of Criminal Procedure 7(d) to enter an Order striking the surplusage "pro-gambling legislation" from the Indictment. As grounds in support of this Motion, Coker shows the following:

1. Throughout the Indictment, the Government makes repeated references to "progambling legislation. *See e.g.*, Indictment at ¶29 ("It was a purpose of the conspiracy for MCGREGOR and GILLEY to corruptly...effect the passage of pro-gambling legislation[.]").
2. These references "pro-gambling legislation" are argumentative, improperly characterize the legislation, are overly vague, and prejudicial to the jury.
3. The core piece of legislation central to the issues in this case, SB380, "proposed an amendment to the Alabama Constitution permitting the operation and taxation of electronic bingo in Alabama." *See* Indictment at ¶22.

4. The Government's characterization of SB380 as "pro-gambling legislation" misconstrues the effect of the bill and the legislative process itself. If passed in both the Alabama Senate and House, SB380 would have appeared on the ballot in the November 2010 election to allow the people of Alabama the opportunity to vote for **or against** a constitutional amendment providing for the operation and taxation of electronic bingo in Alabama. As written in the Indictment, the Government's characterization is likely to mislead the jury into thinking that the mere passage of the bill itself provided for the operation and taxation of electronic bingo in Alabama **without a vote of the people of Alabama**. This significant mischaracterization in the drafting of the Indictment severely prejudices Coker's right to a fair trial in that the jury will not be sufficiently apprised of the true nature of the issues in the case.

5. Additionally, the Government references other pieces of electronic bingo legislation in the Indictment other than SB380, *see e.g.* Indictment at ¶40, and lumping all pieces of legislation together as "pro-gambling legislation" confuses the facts for the jury and for the preparation of Coker's defense.

6. "A motion to strike surplusage from an indictment should not be granted unless it is clear that the allegations are not relevant to the charge and are inflammatory and prejudicial." *United States v. Brye*, 2009 WL 637553 *1 (11th Cir. 2009) (internal citation and quotations omitted).

7. Here, the language "pro-gambling" undoubtedly will play to prospective jurors personal and religious beliefs regarding gambling and such an inflammatory expression, prejudices Coker's defense.

8. Deletion of the phrase "pro-gambling" while retaining "legislation" still communicates the substance of the charge without characterization and without prejudice.

WHEREFORE, premises considered, Coker respectfully moves this Honorable Court enter an Order striking the surplusage "pro-gambling legislation" from the Indictment.

Respectfully submitted,

/s/ David McKnight
David McKnight
BAXLEY, DILLARD, DAUPHIN
MCKNIGHT & JAMES
2008 Third Avenue South
Birmingham, Alabama 35233
Telephone: 205.271.1100
Fax: 205.271.1108
Email: dmcknight@baxleydillard.com

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 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/ David McKnight
Of Counsel