

**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
)	
LARRY P. MEANS,)	
)	
Defendants.)	

**MOTION TO DISMISS OF DEFENDANT LARRY P. MEANS
AND
PARTIAL BRIEF IN SUPPORT THEREOF**

Comes now the Defendant, Larry P. Means, in the above styled cause, and moves the Court to dismiss the Indictment herein, and each count thereof, separately and severally, on the following grounds(separate briefs have been filed as to issues re 18 U.S.C. §666 and the honest services charges):

1. The indictment and each count thereof fail to state an offense against this Defendant under the laws of the United States in that the allegations set forth in the indictment do not constitute criminal conduct.

2. The indictment and each count thereof are so vague, indefinite, uncertain and confusing as to fail to adequately advise the Defendant of the offenses with which he is charged in violation of the Fifth and Sixth Amendment to the Constitution of the United States of America. See Russell v. United States, 369 U.S. 749, 763 (1962); See also United States v. Bobo, 344 F.3d 1076, 1083 (11th Cir. 2003); United States v. Sanchez, 269 F.3d 1250, 1314 (11th Cir. 2001) (en banc).

3. The indictment and each count thereof are so vague, indefinite, uncertain and confusing as to deny the Defendant his right to protection from double jeopardy in violation of the Fifth Amendment to the Constitution of the United States of America.

4. Counts 1, 6, and 7 of the indictment fail to state an offense against this Defendant under the laws of the United States in that as to each count of the foregoing counts the indictment fails to allege any basis for concluding that the alleged transactions involv[ed] anything of value of \$5,000 or more, in connection with which the agreement was intended to be influenced in that the transaction involved was a vote on a bill to decide whether the people of Alabama would be allowed to vote on a state constitutional amendment. The allegation in paragraph 26 of the indictment is speculative, and would only be applicable if SB380 passed and then the people passed the constitutional amendment. This argument is covered in more detail in Defendant's separate brief regarding §666.

5. Count 1 of the indictment is so vague, indefinite, uncertain and confusing as to deny the Defendant his right to due process, a fair trial and protection from double jeopardy in violation of the Fifth and Sixth Amendments to the Constitution of the United States of America, in that in paragraph 28 of the indictment it is alleged that the Defendant along with others conspired to "commit federal program bribery" , and then states "in that", and then proceeds in paragraphs 28A and 28B to state that the Defendants did in fact commit violations of 18 U.S.C. §666(a)(2) in paragraph 28A, and violations of 18 U.S.C. §666(a)(1)(B) in paragraph 28B. Consequently, Count 1 alleges not only an allegation of conspiracy, but also in paragraphs 28A and 28B that they in fact committed the alleged

substantive offenses. Multiple offenses are alleged in the same indictment.

6. Counts 1, 6 and 7 of the indictment fail to state an offense or in the alternative are vague, indefinite, uncertain, and confusing as to deny the Defendant his right to due process, fair trial, and protection from double jeopardy in violation of the Fifth and Sixth Amendments to the Constitution of the United States of America, in that said counts fail to allege there was a specific quid pro quo arrangement, i.e., that there was a specific agreement or arrangement that if certain campaign funds were paid to Defendant he would vote in a way favorable to the individual making the campaign contribution. The allegation of a specific quid pro quo has been held to be necessary in the context of the Hobbs Act. See McCormick v. United States, 500 U.S. 257, 114 L.Ed. 2d 307 (1991) (Quid pro quo is necessary for conviction under the Hobbs Act when an official receives campaign contribution.); See also United States v. Sun-Diamond Growers of California, 526 U.S. 398, 404-05 (1999). (Specific quid pro quo is necessary under 18 U.S.C. §201), United States v. Ganim, 510 F.3d 134, 148 (2d Cir. 2007); United States v. Jennings, 160 F. 3d 1006, 1013 (4th Cir. 1998).; but see United States v. McNair, 605 F.3d 1152 (11th Cir. 2010) (holding in a non-campaign funds case no quid pro quo required) (Petition for Certiorari filed in companion case United States v. Rast (filed October 18, 2010).

7. Count 1 of the indictment is so vague, indefinite, uncertain, and confusing as to deny the Defendant his right to due process, fair trial, and protection from double jeopardy in violation of the Fifth Amendment to the Constitution of the United States of America in that considering the allegations in paragraphs 28A and 28B in conjunction with the alleged “purposes of the conspiracy” in paragraphs 29 through 31, and the “Manner and Means of

the Conspiracy” alleged in paragraphs 32 through 37, the indictment is in fact alleging separate and multiple conspiracies in the same count rather than the “Manner and Means” in which a single conspiracy was carried out. For example the allegations of paragraph 31 and 36 of the indictment allege separate and different conspiracies. The manner in which the indictment is alleged or the charges are made in Count 1 is highly prejudicial to this Defendant in that it would be very difficult for a lay person not to be confused and believe that all of the allegations in the “Manner and Means of the Conspiracy” section of Count 1 are applicable to this Defendant when in fact that is not the case. See citations in paragraph 1 above; United States v. Schlei, 122 F. 3d 944 (11th Cir. 1997).

8. Said indictment fails to state an offense under the laws of the United States of America in that the Defendant was not a “agent of the State of Alabama” as alleged in the indictment under 18 U.S.C. §666. See separate brief filed regarding 18 U.S.C. §666.

9. Counts 6 and 7 of the indictment purport to charge violations of 18 U.S.C. §666(a)(1)(B) and 18 U.S.C. §2. The allegations of said counts are so vague, indefinite, uncertain, and confusing as to make it very difficult if not impossible for Defendant and certainly not a juror to understand the allegations. The Government has incorporated in said counts paragraphs 39 through 190 of the indictment which are the overt acts alleged in the conspiracy count, Count 1. There are one hundred fifty-one alleged overt acts. Only nine of those alleged acts involve this Defendant. The inclusion of the alleged overt acts adds to the confusion which renders these counts defective. See United States v. Bobo, 344 F.3d 1076 (11th Cir. 2003).

10. Counts 19 and 20 of said indictment, separately and severely, fail to state an offense under the laws of the United States in that said counts fail to allege that there was a specific quid pro

quo arrangement i.e., that campaign contributions were made to Defendant in exchange for his vote in a particular matter favorable to the individual making the campaign contribution. See citations in paragraph 6 above.

11. Each of the charges against this Defendant, i.e. Counts 1, 6, 7, 19, 20, and 23-33 are unconstitutional in violation of the First Amendment to the Constitution of the United States of America in that they inhibit the free exercise of the right to speech and further would inhibit the right of corporations to make campaign contributions to a candidate. This is particularly so in that the Government's indictment served to inhibit legislation which in and of itself would do nothing more than to allow the people of the State of Alabama to vote on certain issues. See Citizens United v. Federal Election Commission, 130 S. Ct. 876 (2010) and citations and argument in Brief re Honest Services charges.

12. Counts 23 through 33, separately and severally, of the indictment, fail to state an offense against this Defendant under the laws of the United States in that the allegations set forth in the indictment do not allege a criminal offense as to this Defendant.

13. The allegations of Counts 23 through 33, separately and severally, are so vague, indefinite, uncertain and confusing as to fail to adequately advise the Defendant of the offenses with which he is charge in violation of the Sixth Amendment to the Constitution of the United States of America.

14. Counts 23 through 33 of the indictment, separately and severally, are so vague, indefinite, uncertain and confusing as to deny the Defendant his right to a fair trial in violation of the Fifth and Sixth Amendments to the Constitution of the United States of America.

15. Counts 23 through 33, separately and severally, are so vague, indefinite, uncertain and confusing as to deny the Defendant his right to due process in violation Fifth Amendment to the

Constitution of the United States of America.

16. Counts 23 through 33, separately and severally, of the indictment are so vague, indefinite, uncertain and confusing as to deny the Defendant his right to protection from double jeopardy in violation of the Fifth Amendment to the Constitution of the United States of America.

17. Counts 23 through 33, separately and severally, fail to state an offense under the laws of the United States of America or under 18 U.S.C. §§1341, 1343 or 1346 in that there is no allegation of what the alleged scheme and artifice to defraud was. In paragraph 23 of the indictment under the heading “Execution of the Scheme”, it is alleged that the Defendants “for the purpose of executing and attempting to execute the above-described scheme and artifice to defraud and deprive, placed and caused to be placed.” However, there is no “above described scheme and artifice to defraud and deprive” described in the indictment. There is an allegation of the “goal” of the scheme, but no description of the scheme. Further, the Government’s incorporation in these counts of the alleged overt acts paragraphs 38 through 190 set forth in Count 1 further add to the confusion which further rendered these counts unconstitutional. The mere allegation of overt acts is insufficient. See Russell v. United States 369 U.S.749, 763 (1962) See also United States v. Bobo, 344 F.3d, 1076, (11th Cir. 2003); United States v. Sanchez, 269 F.3d 1250, 1314 (11th Cir. 2001 (en banc)).

18. Counts 23 through 27 are so vague, indefinite, uncertain and confusing as to fail to state an offense under the laws of the United States or in the alternative to clearly advise the Defendant of the offense with which he is charged. Paragraph 235 of the indictment alleges that all eleven defendants caused to be mailed or certified mail; however, it is obvious that not all Defendants were involved in each of the mailings, and none of the alleged mailings involve this Defendant. The same is true for the alleged wire fraud counts, 28-33, such charges deprive the Defendant of the right to due process and to a fair trial under the Fifth and Sixth Amendment of the

Constitution of the United States. See citations in paragraph 2 of this Motion and Brief.

22. Counts 23 through 33 of the indictment which purport to charge “honest services” violations fail to state a claim under the laws of the United States or in the alternative are unconstitutionally vague in violation of the Fifth Amendment to the Constitution of the United States. See Skilling v. United States, 130 S. CT. 2896, 2927-28 (2010). See separate brief filed on this issue.

Dated this 4th day of February, 2011.

s/ William N. Clark
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following and all counsel of record electronically on this the 4th day of February, 2011.

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s/ William N. Clark
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