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

UNITED STATES OF AMERICA,	}	
	}	
Plaintiff,	}	
	}	
vs.	}	**Case No.: 2:10-CR-186-MHT-WC**
	}	
ROBERT B. GEDDIE, JR.,	}	
	}	
Defendant.	}	

MEMORANDUM OF ROBERT GEDDIE IN SUPPORT OF MOTION TO DISMISS COUNT THREE (3) AND COUNTS TWENTY-THREE (23) THROUGH THIRTY-THREE (33), OR IN THE ALTERNATIVE, FOR A BILL OF PARTICULARS

Defendant Geddie has filed a Motion to Dismiss Count Three (3) and Counts Twenty-Three (23) through Thirty-Three (33) of the Indictment, or in the alternative, for a Bill of Particulars. This memorandum is submitted in support of Mr. Geddie's motion.

I. Introduction.

Defendant Geddie is charged in Count Three of the Indictment with the substantive offense of federal programs bribery, contrary to 18 U.S.C. § 666(a)(2) (hereafter "federal programs bribery"). He is also charged in Counts Twenty-Three through Thirty-Three with mail fraud and wire fraud, contrary to 18 U.S.C. §§ 1341, 1343, and 1346 (hereafter "honest services fraud").[1]

Mr. Geddie is a registered lobbyist and a partner in the lobbying and consulting firm of Fine Geddie & Associates ("FGA"). FGA administers eleven (11) Political Action Committees ("PACs") that accept funds from numerous contributors who have an interest in political issues

[1]The defendant is also charged under 18 U.S.C. §2 with aiding abetting both the federal programs bribery offense and the honest services fraud offenses.

and campaigns in the State of Alabama. These PACs contribute to campaigns of candidates for state and local offices and to "issue specific" or "one issue" campaigns. Once funds are deposited in one of the eleven PACs, FGA exercises complete discretion over disbursement of funds from those PACs to political campaigns and causes. FGA has no legal obligation to allow any contributor to a PAC to direct how any PAC contribution is made.

As discussed below in more detail, the charges against Mr. Geddie relate to him delivering campaign contributions in the form of checks from two of the FGA PACs to Legislator 3. The so-called federal programs "bribe" solely consisted of these campaign contributions. Thus, the Indictment must allege that the campaign contributions delivered by Mr. Geddie to Legislator 3 were an explicit *quid pro quo* in return for official action on the part of Legislator 3. Because the federal programs bribery count, as well as the honest services fraud counts, fail to allege this essential element, these counts must be dismissed. In the alternative, the Government should be required to provide a Bill of Particulars to narrow the allegations of the Indictment and provide Mr. Geddie the basis upon which the Government will establish the explicit *quid pro quo* required by law.

II. The Facts Alleged in the Indictment Do Not Supply the Essential Element that the $5,000 in Campaign Contributions was an Explicit *Quid Pro Quo*.

Count Three of the Indictment charges Mr. Geddie and co-defendant Milton McGregor with the substantive offense of federal programs bribery, contrary to 18 U.S.C. § 666(a)(2). 18 U.S.C. § 666(a)(2), criminalizes conduct where one "corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of . . . a State . . . [that receives federal funds] . . ." The federal programs bribery statute does not contain an explicit *quid pro quo* as an essential element of the offense. The Indictment generally tracks 18 U.S.C. §666(a)(2), alleging the offense occurred "on or about February 15, 2010," when

"GEDDIE, at the direction of MCGREGOR, did give $5,000 to Legislator 3, a member of the Alabama House of Representatives, . . . to influence and reward Legislator 3 in connection with an upcoming vote on pro-gambling legislation."

Counts Twenty-Three through Thirty-Three charge Defendant Geddie and his co-defendants with violating 18 U.S.C. §§ 1341 and 1343. Those statutes authorize prosecution of a defendant who engages in a scheme to defraud through the use of the mails or through wire communications.[2] The Indictment alleges that the particular "scheme" involved in this case was one to defraud the "State of Alabama, the Legislature, the Legislative Reference Service, and the citizens of Alabama of their right to the honest services of elected members and employees of the Legislature through bribery and concealment of material information." Indictment ¶ 234. Similar to the federal funds bribery statute, the honest services fraud statute does not set forth an explicit *quid pro quo* as an essential element of the offense.

Paragraphs 67 through 73 of the Indictment set forth the overt acts relating to Mr. Geddie's involvement with Legislator 3, including the events of February 15, 2010. Those overt acts confirm that Mr. Geddie did not simply "give $5,000 to Legislator 3." To the contrary, the allegations of the Indictment make it clear the $5,000 was composed of two checks for campaign contributions to Legislator 3's political campaign delivered to him at a campaign fundraiser – not an under-the-table cash payment to Legislator 3 for his personal use. The Indictment alleges:

Legislator 3

> 67. On or about February 14, 2010, MCGREGOR left a voicemail for Legislator 3, a member of the Alabama House of Representatives, who had not spoken to MCGREGOR in approximately two years. At the time of the call, Legislator 3 believed that MCGREGOR had financially supported Legislator 3's opponent in a prior election.

[2]Under 18 U.S.C. §1346 a "scheme to defraud" includes a "scheme or artifice to deprive another of the intangible right of honest services."

68. On or about February 15, 2010, after Legislator 3 called him back, MCGREGOR and Legislator 3 discussed whether Legislator 3 would support pro-gambling legislation, with MCGREGOR offering significant campaign contributions to Legislator 3 in return for a favorable vote on the pro-gambling legislation. In light of MCGREGOR's affiliation with gambling interests, MCGREGOR stated, "Yeah and I can get you support from people, uh, I, I would, I wouldn't think that you would want support directly from me." Later during the call, MCGREGOR told Legislator 3, "I can get you significant help in your campaign not from me, from people that I have a great working relationship with, business type people. That some of them that you could never get by yourself." When Legislator 3 inquired whether the amount of any contributions would be "500 or a couple of thousand," MCGREGOR responded, "Oh no, I, I said significant help . . . . I can and will get you significant help from people that fall in this category. That's the commitment I'll make to you right now and it's as good as, as, as, as any commitment you will ever get. I will do it, and I will prove it to you." After Legislator 3 mentioned he had a fundraiser that evening, MCGREGOR reiterated that the "commitment I made to you is as good as gold."

69. Later that same day, on or about February 15, 2010, following MCGREGOR's conversation with Legislator 3, MCGREGOR called GEDDIE and told him about Legislator 3's fundraiser.

70. Later on or about February 15, 2010, GEDDIE and an employee of his lobbying firm delivered two checks, each in the amount of $2,500, drawn from GEDDIE-controlled PACs, to Legislator 3 at the fundraiser for Legislator 3 at a Tallassee, Alabama, restaurant.

71. On or about February 16, 2010, MCGREGOR apologized to Legislator 3 for missing the fundraiser; however, MCGREGOR said that he "got Bob [GEDDIE] and [one of GEDDIE's employees] to go over to your function last night and they were impressed." When Legislator 3 expressed uncertainty about whether GEDDIE and his employee were there on MCGREGOR's behalf, MCGREGOR stated, "Oh yeah. Yeah . . . . I called Bob [GEDDIE] right at well, about thirty minutes after I talked with you to see if he could go and represent, represent me and, and he said he'd be glad to and, uh, so anyway we talked about what, what I wanted him to do and, uh, and he did it."

72. Sometime after on or about February 16, 2010, GEDDIE instructed an employee to record the two checks he delivered to Legislator 3 as attributable to MCGREGOR in a contribution ledger maintained by GEDDIE's lobbying business. Then, at a later date, GEDDIE told the same employee that the contributions to Legislator 3, in fact, should not be

> attributed to MCGREGOR. GEDDIE further instructed the employee to alter the contribution ledger to reflect that two other clients were the source of the contributions to Legislator 3, when in fact GEDDIE knew that the contributions were made on behalf of and at the direction of MCGREGOR and that the other two clients had no knowledge of and did not authorize such contributions.
>
> 73. Between in or about May 2010 and in or about August 2010, in response to grand jury subpoenas, GEDDIE caused to be produced to law enforcement officials the altered contribution ledgers.

As the Court can readily discern, neither the substantive charge in Count Three, nor the facts pertaining to Mr. Geddie's involvement with Legislator 3 contained in paragraphs 67 through 73, make an allegation that there was an explicit *quid pro quo* for the campaign contributions. More importantly, there is no indication that, when Mr. Geddie delivered the campaign contributions, there was any discussion between Legislator 3 and Mr. Geddie. There is no allegation that Mr. Geddie was aware of the details of the prior discussion between Mr. McGregor and Legislator 3, nor whether there was any explicit *quid pro quo* that may have existed during that discussion. Certainly, the quotes from the conversation between Mr. McGregor and Legislator 3 do not establish a *quid pro quo* agreement.

Similarly, the honest services fraud counts fail to allege an explicit *quid pro quo* for the campaign contributions and there is no other allegation in the Indictment that would supply that missing essential element. Moreover, other than the conclusory assertion that Mr. Geddie was involved in a scheme to defraud, there is no allegation in the honest services fraud counts of any overt act committed by Mr. Geddie. The substantive mail and wire fraud allegations have no relationship to Mr. Geddie's involvement with Legislator 3.

Under these circumstances, the federal funds bribery count and the honest services fraud counts must be dismissed.

III. An Explicit *Quid Pro Quo* is an Essential Element of these Offenses.

When campaign contributions are involved, it is clear that an explicit *quid pro quo* is an essential element of the offenses of federal funds bribery and honest services fraud. This conclusion is compelled by the reasoning of *McCormick v. United States*, 500 U.S. 257 (1991). In *McCormick*, a prosecution under the Hobbs Act (18 U.S.C. § 1951), the Supreme Court held that a *quid pro quo* was "necessary for conviction under the Hobbs Act when an official receives a campaign contribution." 500 U.S. at 274. Because making a campaign contribution impacts First Amendment and other constitutional concerns, the Supreme Court said:

> To hold otherwise would open to prosecution not only conduct that has long been thought to be well within the law but also conduct that in a very real sense is unavoidable so long as election campaigns are financed by private contributions or expenditures, as they have been since the beginning of the Nation.

500 U.S. at 272. The Supreme Court further held that, as to campaign contributions, only if "payments are made in return for an **explicit** promise or undertaking, by the official to perform or not to perform an official act, are they criminal." *Id.* at 273 (emphasis added). Thus, the law is clear that an explicit *quid pro quo* is an essential element of a Hobbs Act prosecution, when campaign contributions are involved. *United States v. Davis*, 30 F.3d 108, 109 (11th Cir. 1994) ("under United States Supreme Court precedent, an explicit promise by a public official to act or not act is an essential element of Hobbs Act extortion.")

Although the Supreme Court has not yet directly held that similar offenses, such as federal programs bribery or honest services fraud, also require proof of an explicit *quid pro quo* when campaign contributions are involved, that conclusion naturally follows. As confirmed by several lower court decisions, there is virtually no difference between extortion under the Hobbs Act and offenses such as federal funds bribery or honest services fraud, when campaign

contributions are involved. For example, in *United States v. Allen*, 10 F.3d 405, 411 (7th Cir. 1993), the Seventh Circuit said:

> Given the minimal difference between extortion under color of official right and bribery, it would seem that courts should exercise the same restraint in interpreting bribery statutes as the *McCormick* court did in interpreting the Hobbs Act . . . accepting a campaign contribution does not equal taking a bribe unless the payment is made in exchange for an explicit promise to perform or not perform an official act. Vague expectations of some future benefit should not be sufficient to make a payment a bribe.

See also *United States v. Martin*, 195 F.3d 961, 966 (7th Cir. 1999) (discussing the *McCormick* rationale in a prosecution for mail fraud and federal programs fraud stating, "the courts have made clear that criminal inducement of a legislator to take particular action cannot be inferred from the legislator's acceptance of campaign contributions from interests urging the action."); *United States v. Kemp*, 500 F.3d 257, 281 (3d Cir. 2007) ("[t]his discussion is equally applicable to bribery in the honest services fraud context, and we thus conclude that bribery requires "a specific intent to give or receive something of value *in exchange* for an official act.").

In *United States v. Siegelman*, 561 F.3d 1215, 1225 n. 14 (11th Cir. 2009), vacated and remanded *Siegleman v. United States*, --- U.S. ---, 130 S.Ct. 3542, --- L.Ed.2d --- (2010),[3] the district court did, in fact, give a *quid pro quo* instruction in a prosecution for federal programs bribery and honest services fraud. 561 F.3d at 1225. Thus, the Eleventh Circuit was not required to decide if an explicit *quid pro quo* was required in a prosecution for those offenses; however, the Eleventh Circuit cited *United States v. Allen*, *supra.*, and acknowledged that several courts have "extended the *McCormick* rationale to the bribery and honest services statutes,"

[3]Vacated and remanded for reconsideration in light of *Skilling v. United States*, 561 U.S.---, 130 S.Ct. 2896, --- L.Ed.2d --- (2010) [hereafter "*Skilling*"].

noting that "[t]he government points to no contrary authority, relying instead on inapposite authority not involving campaign contributions."[4] 561 F.3d at 1225 n.14.

The reason the *McCormick* rationale for treating campaign contributions differently must be extended to prosecutions under other related bribery/honest services fraud statutes is because campaign contributions are **in fact** different, *i.e.*, there is a major difference between giving a politician an under-the-table cash bribe and giving a politician a campaign contribution. Clearly, campaign contributions enjoy First Amendment protection. *Federal Election Comm'n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 486 (2007) ("contributing money to, and spending money on behalf of, political candidates implicates core First Amendment protections," and therefore "such contributions and expenditures 'operate in an area of the most fundamental First Amendment activities'," Justice Scalia concurring, quoting *Buckley v. Valeo*, 424 U.S. 1, 14 (1976)).

Undeniably, many political contributors are hoping to get something in return for their campaign contributions. It was that type of "expectation" *McCormick* specifically rejected as a basis for prosecution. *McCormick*, 500 U.S. at 274 (jury was erroneously instructed McCormick could be found guilty if the campaign contribution was made with "the expectation that McCormick's official action would be influenced" by the contribution); see also *United States v. Tomblin*, 46 F.3d 1369, 1379 (5th Cir. 1995) ("[i]ntending to make a campaign contribution does not constitute bribery, even though many contributors hope that the official will act favorably because of their contributions"). Indeed, if expecting to receive some benefit as a result of a

[4]Similarly, Defendant Geddie expects the government to argue this issue was put to rest by the Eleventh Circuit's decision in *United States v. McNair*, 605 F.3d 1152, 1188 (11th Cir. 2010), which held, "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*." *McNair* did not involve a campaign contribution and therefore is "inapposite authority" as applied to Mr. Geddie's case.

campaign contribution were a crime, this country's entire system of campaign financing would be turned on its head. *McCormick* recognized this and simply applied a common sense approach to the realities of modern day campaign financing. A political contribution can cross the line from protected First Amendment activity to criminal conduct only when that contribution is given to a politician "in return for an explicit promise or undertaking by the official to perform or not to perform an official act." *McCormick*, 500 U.S. at 273.

What constitutes an "explicit" promise remains subject to debate. The Second Circuit has concluded that to be explicit, the promise must be expressed. In *United States v. Ganim*, 510 F.3d 134, 142 (2d Cir. 2007), a case cited with approval in *Skilling*, 130 S.Ct. at 2934, then Circuit Judge Sotomayor said, "proof of an express promise is necessary when the payments are made in the form of campaign contributions." The Eleventh Circuit disagreed finding that, although "*McCormick* does use the word 'explicit' when describing the sort of agreement that is required to convict a defendant for extorting campaign contributions . . . [i]t does not, however mean 'express'." *United States v. Siegleman*, 561 F.3d at 1225-26.[5] As noted above, however, the Eleventh Circuit decision in *Siegleman* has been vacated and remanded for further consideration in light of the Supreme Court's decision in *Skilling* and *Skilling* fully supports the arguments made by Defendant Geddie in this motion.

In *Skilling*, the Supreme Court narrowly construed the honest services fraud statute because to do otherwise would render the statute unconstitutionally vague. Thus, *Skilling* strictly limited application of the statute to the "core" of "pre-*McNally*[6] cases" that "involved

[5]Regardless of whether the *quid pro quo* must be expressed, for it to be "explicit" there must be a clear understanding that the campaign contribution is being given in return for some specific official action. Simply making a campaign contribution with the expectation that it will influence a legislator's future vote is obviously insufficient.

[6]*McNally v. United States*, 483 U.S. 350, 107 S.Ct. 2875, 97 L.Ed.2d 292 (1987).

fraudulent schemes to deprive another of honest services through bribes or kickbacks supplied by a third party who had not been deceived." 130 S.Ct. at 2928. The Supreme Court observed:

> [W]e acknowledge that Skilling's vagueness challenge has force, for honest-services decisions preceding *McNally* were not models of clarity or consistency. . . [citations omitted] . . . While the honest services cases preceding *McNally* dominantly and consistently applied the fraud statute to bribery and kickback schemes – schemes that were the basis of most honest-services prosecutions – there was considerable disarray over the statute's application to conduct outside that core category.

Skilling, 130 S.Ct. at 2929. The Supreme Court held, "§ 1346 criminalizes *only* the bribe-and-kickback core of the pre-*McNally* case law." 130 S.Ct. at 2931. In further defining that "core" of case law, the Supreme Court cited a number of Circuit Court cases that discussed pre-*McNally* honest services fraud cases in which bribes or kickbacks formed the "core . . . honest services fraud precedents," 130 S.Ct. at 2931, *i.e.*, the type of bribery or kickback case that would survive post-*Skilling*. Not one of those cases involved a theory of bribery which involved campaign contributions. Instead, the cases discussed the pre-*McNally* bribery or kickback cases involving public officials in terms of under-the-table cash or gratuities. The Supreme Court cited the following:

- *United States v. Czubinski*, 106 F.3d 1069 1076 (1st Cir. 1997) ("honest services convictions of public officials typically involve serious corruption, such as embezzlement of public funds, bribery of public officials, or the failure of public decision-makers to disclose certain conflicts of interest");

- *United States v. deVegter*, 198 F.3d 1324, 1327-28 (11th Cir. 1999) ("this Court has noted that . . . the paradigm case of honest services fraud is the bribery of a public official");

- *United States v. Carbo*, 572 F.3d 112, 115 (3d Cir. 2009) ("The most obvious form of honest services fraud is outright bribery of a public official");
- *United States v. Urciuoli*, 513 F.3d 290, 294 (1st Cir. 2008) (the "core misconduct [that is] covered by the statute (*e.g.*, taking a bribe for a legislative vote)");
- *United States v. Sorich*, 523 F.3d 702, 707 (7th Cir. 2008) ("in most honest services cases, the defendant violates a fiduciary duty in return for cash-kickbacks, bribes, or other payments");
- *United States v. Brown*, 540 F.2d 364, 374 (8th Cir. 1976) ("it has been held in recent years that a public official may be prosecuted under 18 U.S.C s.1341 if he devises a scheme whereby bribes or kickbacks are accepted in the course of conduct of his office");
- *United States v. Mandel*, 591 F.2d 1347, 1362-63 (4th Cir. 1979) ("When a public official has been bribed, he breaches his duty of honest, faithful and disinterested service" because bribery is a "clear-cut" violation of the honest services statute);
- *United States v. Paradies*, 98 F.3d 1266, 1283 (11th Cir. 1996) ("It should be plain to ordinary people that offering and accepting large sums of money in return for a city councilman's vote is the type of conduct prohibited by the language of §§1346." Pre-*McNally*, "federal courts had uniformly construed the mail fraud statute to cover the situation where public officials received bribes and kickbacks thereby depriving the citizenry of their 'intangible rights' to good and honest government").

Our research has failed to locate any pre-*McNally* case in which an honest services fraud prosecution relied upon a campaign contribution as the alleged "bribe." Pre-*McNally*, campaign contributions were simply not one of the "heartland applications" of § 1346 bribery cases, *Skilling*, 130 S.Ct. at 2931 n. 44, and the Supreme Court emphasized that it was "[r]eading §1346

to proscribe bribes and kickbacks – **and nothing more**," 130 S.Ct at 2932 (emphasis added). "[N]o other misconduct falls within §1346's province." 130 S.Ct. at 2933.

Honest services fraud prosecutions based on a theory that a campaign contribution constitutes a "bribe" of an elected official appear to be foreclosed by *Skilling*. There is no indication in any of the pre-*McNally* cases that a campaign contribution was the basis for an honest services prosecution. Indeed, given the fact that *McNally* was decided in 1987 and *McCormick* was decided in 1991, it is impossible for the pre-*McNally* case law to have contemplated the explicit *quid pro quo* requirement when campaign contributions are involved that is now required by *McCormick*. In short, these type of prosecutions are not part of the pre-*McNally* core and did not survive *Skilling*.

IV. An Indictment that Fails to allege an Essential Element of the Offense is Subject to Pre-trial Dismissal.

Rule 12(b)(3), Fed. R. Crim. P., requires a defendant to raise certain issues by pretrial motion including any "defect in the indictment or information." The failure to file a pretrial motion can result in a defendant waiving the argument that the indictment fails to allege an essential element of the offense. For example, in *United States v. Ramirez*, 324 F.3d 1225, 1227 (11th Cir. 2003), the defendants did not challenge the sufficiency of an indictment charging first degree murder that failed to allege the essential elements of "malice aforethought" and "premeditation." The Eleventh Circuit held that this argument, which was based upon a "defect[] in the indictment," was "waived . . . by failing to raise it in a pretrial motion." 324 F.3d at 1227-28; see also *United States v. Suescun*, 237 F.3d 1284 (11th Cir. 2001).

As a general rule, an indictment that tracks the statutory language will be sufficient; but "[t]he degree to which simple 'tracking' of the pertinent statute is permissible depends on the language of the statute itself." *United States v. Ramos*, 666 F.2d 469, 474 (11th Cir. 1982). "If

the statute omits an essential element, the indictment must supply it with certainty." *Babb v. United States*, 218 F.2d 538, 539 (5th Cir. 1955); *United States v. Wayerski*, 624 F.3d 1342, 1350 (11th Cir. 2010) ("the constitutional standard is fulfilled by an indictment that tracks the wording of the statute, as long as the language sets forth the essential elements of the crime") (citing *United States v. Ndiaye*, 434 F.3d 1270, 1299 (11th Cir. 2006)). In *United States v. Bobo*, 344 F.3d 1076, 1084 (11th Cir. 2003), the Eleventh Circuit vacated a defendant's conviction because an "indictment that requires speculation on a fundamental part of the charge is insufficient."

Here, the indictment does not allege an explicit *quid pro quo* and Mr. Geddie must speculate concerning this fundamental part of the charge. Thus, the Indictment must be dismissed.

V. In the Alternative, the Government Should be Required to Provide a Bill of Particulars.

As demonstrated in this motion, the Indictment fails to allege an essential element of the offenses charged in Count 3 and Counts twenty-three through thirty-three. If a dismissal is not granted, the Government should be required to file a Bill of Particulars and provide Mr. Geddie the particulars of these offenses, specifically the explicit *quid pro quo*, sufficiently to allow him to prepare a defense.

Rule 7(f), Fed. R. Crim. P., authorizes the court to "direct the government to file a bill of particulars." In *Will v. United States*, 389 U.S. 90, 98-99, 88 S.Ct. 269, 19 L.Ed.2d 305 (1967), the Supreme Court said, "Rule 7(f) . . . specifically empowers the trial court to 'direct the filing of a bill of particulars,' and . . . federal trial courts have always had very broad discretion in ruling upon requests for such bills. . . . it is not uncommon for the Government to be required to disclose the names of some potential witnesses in a bill of particulars, where this information is necessary or useful in the defendant's preparation for trial."

"The purpose of a bill of particulars is to inform the defendant of the charge against him with sufficient precision to allow him to prepare his defense, to minimize surprise at trial, and to enable him to plead double jeopardy in the event of a later prosecution for the same offense." *United States v. Cole*, 755 F.2d 748, 760 (11th Cir. 1985). Moreover, "[i]t is well settled law that 'where an indictment fails to set forth specific facts in support of requisite elements of the charged offense, and the information is essential to the defense, failure to grant a request for a bill of particulars may constitute reversible error.'" *Id.* at 760 (citing *United States v. Crippen*, 579 F.2d 340, 347 (5th Cir. 1978)).

Here, the Indictment fails to allege the essential element of an explicit *quid pro quo* that is required for conviction. This Court should order the government to file a bill of particulars to provide this essential element.

Dated: Friday, February 4, 2011

Respectfully submitted,

/s/ Jackson R. Sharman, III
One of the Attorneys for Defendant,
Robert B. Geddie, Jr.

OF COUNSEL:

Samuel H. Franklin
sfranklin@lightfootlaw.com
Jackson R. Sharman, III
jsharman@lightfootlaw.com
Jeffrey P. Doss
jdoss@lightfootlaw.com
LIGHTFOOT, FRANKLIN & WHITE LLC
The Clark Building
400 20th Street North
Birmingham, Alabama 35203
Telephone: (205) 581-0700
Facsimile: (205) 581-0799

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all counsel of record through the Court's electronic filing system this 4th day of February, 2011.

/s/ Jackson R. Sharman, III
One of the Attorneys for Defendant,
Robert B. Geddie, Jr.