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
	)	
MILTON E. McGREGOR,	)	
	)	
Defendant.	)	

DEFENDANT MILTON McGREGOR'S REPLY BRIEF IN SUPPORT OF FIRST MOTION TO DISMISS, REGARDING CHARGES PREMISED ON 18 U.S.C. § 666

Defendant Milton McGregor respectfully submits this reply brief in support of his motion [Doc. 206] to dismiss the charges against him that are premised (either directly, or in the case of Count 1, through an allegation of "conspiracy") on 18 U.S.C. § 666 (a)(2).

The Government's brief, which at times allows an emotional tone to substitute for legal argument, evidences an unfortunately common mindset: some federal prosecutors simply cannot imagine any reason why the Congress might have meant to define a federal crime somewhat narrowly. In this instance, the authors of the Government's brief cannot imagine any reason why the Congress, when enacting 18 U.S.C. § 666, would not have intended a federal takeover of ethical standards for State Legislatures and the citizens who interact with them. The Government's brief takes it as a "given" that everyone must surely agree that policing State Legislatures and citizen advocates, in their interactions about drafting and voting on laws, is an obviously good role for federal prosecutors. The

Government's brief is premised on the belief that this is so obviously a value that Congress shares, that such purpose does not even need to be stated clearly in the law. And so the Government's brief asks the Court to ignore ambiguity or to resolve it in favor of the Government, in order to make the federal prosecutorial power sweep more broadly.

In fact there are good reasons why the Congress would hesitate before writing a criminal statute to cover such things. In our system of federalism, States should generally be left free, and are generally left free, to set and enforce their own standards for ethics, crime, and propriety regarding lobbying and legislative activity. And there are, equally or even more importantly, good reasons why the judiciary should hesitate before reading this particular statute to cover such things. As we showed in our opening brief, many things – the language of this statute, the history leading up to its enactment, a comparison to the statute that Congress was trying to complement when it enacted § 666 (*i.e.*, 18 U.S.C. § 201), and the landscape of the law of federalism and constitutional principles – all combine to show that it is (at least) not clear that § 666 covers the drafting of, and voting on, purely regulatory laws at the State level. And given this lack of clarity, "[w]e interpret ambiguous criminal statutes in favor of defendants, not prosecutors." *United States v. Santos*, 553 U.S. 507, 519, 128 S.Ct. 2020, 2028 (2008).

1. The Government's arguments about the language of the statute, including the words "business" and "any," are not nearly as strong as the Government claims; the Government's arguments are not strong enough to show a clear Congressional intent to intrude on traditional spheres of State sovereignty.

The Government portrays itself as making an unambiguous plain-language argument. premised primarily on the phrase "any business." *See* § 666(a)(2) ("corruptly

gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more"). The Government apparently does not overtly claim that voting on or drafting legislation counts as a "transaction" of the State government. The Government's major claim is that drafting and voting on legislation is "business" in one sense of that word; that the word "any" makes it clear that Congress meant to include this sense of the word "business" as well as all other senses of the word; and that the other troubling aspects of statutory interpretation (such as "agent," and "involving anything of value of $5000 or more") will all fall in line once the Court holds that the creation of purely regulatory legislation at the State level is "business" within the meaning of § 666.

It is true that the word "business," like many words, has multiple meanings or senses. As Mr. McGregor showed in his opening brief, its primary meaning is in reference to commerce – to providing or purchasing goods or services. *Flava Works, Inc. v. City of Miami*, 609 F.3d 1233, 1239 (11th Cir. 2010). The Government does not deny that the word has this common meaning.

The Government insists, though, that the word is sometimes used in another sense, one in which it can refer to the regulatory activities that governmental entities undertake. And this is true: the word "business" can be used in that sense, which is somewhat more metaphorical and less common. But it is equally true that this is a *different* sense of the word, than its most common usage referring to commerce. The senses of the word are so

different, that it was linguistically meaningful for President Coolidge to say, many years ago, "The business of the United States is business." This was not a pointless tautology (business=business), but a rhetorically clever and rather poetic (though politically disputable) linkage of two different meanings of the word.

So to say that the word "business" is sometimes used in that sense of referring to governmental regulatory activity, as the Government argues, does not answer the question of what Congress meant when it used the word in this statute. The Congress does not always mean to adopt every sense, or the broadest sense, of every word that it uses; sometimes the best interpretation is that it means to use a word in one sense rather than another. *See Dolan v. United States Postal Service*, 546 U.S. 481, 486, 126 S.Ct. 1252, 1257 (2006) ("A word in a statute may or may not extend to the outer limits of its definitional possibilities. Interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis.") And where there is ambiguity about this (as there is in this case, unless the Court agrees that Mr. McGregor's interpretation is clearly the right one), the ambiguity is resolved in favor of the defendant. *See, e.g., Santos, supra* (where the statutory word "proceeds" has multiple definitions or senses, leading to different scopes of the statutory prohibition, the word is interpreted in favor of the defendant rather than the prosecutors).

The Government also contends that the word "any," preceding "business," requires the Court to resolve this question in the Government's favor. In this argument, the Government is unfortunately ignoring precedent in an effort to expand prosecutorial

power. The word "any" does not always mean that the word following "any" should be interpreted in its broadest possible sense. The Government itself said this to the Supreme Court, in a case that the Government won in that Court just yesterday, *United States v. Williams*, ___ U.S. ___, 2010 US LEXIS 9396 (2010) (granting petition, vacating, and remanding for further consideration in light of *Abbott v. United States*):

> But while any has an "expansive" meaning, ibid., that word, like all others, must be read in context, and this Court has often recognized that "any" does not automatically reach all objects indiscriminately. See Small v. United States, 544 U.S. 385, 388 (2005) (statutory phrase "convicted in any court" does not answer whether it applied to foreign courts); Nixon v. Missouri Mun. League, 541 U.S. 125, 132 (2004) ("any" means "different things depending upon the setting"); United States v. Alvarez-Sanchez, 511 U.S. 350, 357 (1994) (declining to construe phrase "any" law enforcement officer "without considering the rest of the statute"). "Thus, even though the word 'any' demands a broad interpretation, * * * [courts] must look beyond that word itself." Small, 544 U.S. at 388 (citation omitted).

Reply Brief for the United States, in *United States v. Williams*, No. 09-466, p. 6.[1] The Government was right in *Williams*: the word "any" does not swallow up every other indicator of statutory interpretation or legislative intent.

For one thing, adding the word "any" before a word that has multiple definitions does not answer the question of which definition to use. Think of the example that the Supreme Court used in *Small v. United States*, 544 U.S. 385, 125 S.Ct. 1752 (2005) (holding that "any court" does not include a foreign court). The Court wrote, "In ordinary life, a speaker who says, 'I'll see any film,' may or may not mean to include films shown in another city." *Id.*, 544 U.S. at 388, 125 S.Ct. at 1754. Even more obvious and more central to the point in the present case, a person who says "I'll see any film"

[1] <http://www.justice.gov/osg/briefs/2009/2pet/7pet/2009-0466.pet.rep.pdf>

surely would not be satisfied by the retort, "Great – then enjoy your time looking at this unexposed roll of Kodachrome." The speaker did not mean that he would be happy looking at anything that was "film" in any sense of the word, but instead meant the word "film" in one of its senses. So it is with "business": to say that the statute refers to "any business" does not itself say whether the statute means "business" in the sense of commerce in goods or services, or "business" in the looser and more metaphorical sense that encompasses governmental regulatory activity. Answering that question requires the Court to look beyond the word "any." The Supreme Court continued, in *Small*, with citations (going back all the way to Chief Justice Marshall) and commentary that are perfectly applicable here:

> See, e.g., United States v. Palmer, 16 U.S. 610, 3 Wheat. 610, 631, 4 L. Ed. 471 (1818) (Marshall, C. J.) ("[G]eneral words," such as the word "'any,'" must "be limited" in their application "to those objects to which the legislature intended to apply them"); Nixon v. Missouri Municipal League, 541 U.S. 125, 132, 158 L. Ed. 2d 291, 124 S. Ct. 1555 (2004) ("'any'" means "different things depending upon the setting"); United States v. Alvarez-Sanchez, 511 U.S. 350, 357, 128 L. Ed. 2d 319, 114 S. Ct. 1599 (1994) ("[R]espondent errs in placing dispositive weight on the broad statutory reference to 'any' law enforcement officer or agency without considering the rest of the statute"); Middlesex County Sewerage Auth. v. National Sea Clammers Ass'n, 453 U.S. 1, 15-16, 69 L. Ed. 2d 435, 101 S. Ct. 2615 (1981) (it is doubtful that the phrase "'any statute'" includes the very statute in which the words appear); Flora v. United States, 362 U.S. 145, 149, 4 L. Ed. 2d 623, 80 S. Ct. 630, 1960-1 C.B. 660 (1960) ("'[A]ny sum,'" while a "catchall" phase, does not "define what it catches"). Thus, even though the word "any" demands a broad interpretation, see, e.g., United States v. Gonzales, 520 U.S. 1, 5, 137 L. Ed. 2d 132, 117 S. Ct. 1032 (1997), we must look beyond that word itself.

Small, 544 U.S. at 388, 125 S.Ct. at 1754-55 (emphasis supplied).

Second – and here especially the Government demonstrates that it is out of step

with settled law – it is particularly well settled that Congressional use of the word "any" does not generally amount to a Congressional intent to alter the balance between State and federal sovereign spheres. That is a crucial point in this case, and it is a point that the Government does not reckon with. If the federal government were to impose a code of conduct on State Legislatures when drafting and voting on purely regulatory acts (such as, in this case, an act proposing an amendment to the State Constitution), and a code of conduct regulating state campaign finance, that would be a significant recalibration of state and federal power in our federalist system. It is the sort of thing that the courts will not lightly infer that Congress meant to do. And, in particular, the courts will not interpret the word "any" to require that. The Supreme Court recognized this in *Ali v. Federal Bureau of Prisons*, 552 U.S. 214, 220 n.4, 128 S.Ct. 831, 836 n.4 (2008): the courts will not rely heavily on the word "any" in statutory interpretation, when an expansive reading of the statute would "implicate[] sovereignty concerns." In cases implicating sovereignty concerns, the Supreme Court requires a level of clarity in Congressional enactment far beyond the generic "any." Thus the Supreme Court wrote:

> Of course, other circumstances may counteract the effect of expansive modifiers. … We also have construed such phrases narrowly … when a broad reading would have implicated sovereignty concerns, see Raygor v. Regents of Univ. of Minn., 534 U.S. 533, 541-542, 122 S. Ct. 999, 152 L. Ed. 2d 27 (2002) (applying the "clear statement rule" applicable to waivers of sovereign immunity to construe the phrase "all civil actions" to exclude a category of claims, "even though nothing in the statute expressly exclude[d]" them).

Id. Similarly, as the Supreme Court held in *Nixon v. Missouri Municipal League*, 541 U.S. 125, 124 S.Ct. 1555 (2004), the phrase "any entity" will not necessarily be

interpreted to cover *public* entities as well as *private* ones. The word "any," even in conjunction with the word "entity," which by its plain definition would cover a public entity as well as a private one, was not enough to convince the Court in *Nixon* that the Congress actually meant to cover local government entities within that phrase. *Id.*, 541 U.S. at 132-33, 124 S.Ct. at 1561.

Therefore, based on the text of the statute considered in light of background federalism principles, the statutory word "business" in § 666 should not be interpreted as covering the drafting of, and voting on, purely regulatory laws at the State level. The best interpretation – and in fact the interpretation that is rather clear given the statutory language as a whole – is that "business" was used in its most common definition, as having to do with the procuring or providing of goods or services. (This, for instance, is the only way really to make sense of the "involving anything of value of $5000 or more" part of the statute; that part of the statute would be a strikingly bizarre element, if the Congress had really intended to impose a federal criminal standard on the basic processes of drafting and enacting regulatory laws in State Legislatures.)

If this is not perfectly clear from the statutory language itself, it is still reasonable enough as one interpretation that it calls upon the Court to apply the two things that will settle an ambiguity in a case like this: the rule of lenity, and the requirement of a clear statement if Congress seeks to inject federal authority in traditionally sovereign spheres of State governance. Again, the holdings of the Supreme Court in *Nixon v. Missouri* are relevant here. The Supreme Court recognized that reading "any entity" to cover municipalities would mean that the statute was an intrusion on the States' ability to

structure their own governments; and the Court recognized that Congress must speak clearly if it wants to do that sort of thing.

> Hence the need to invoke our working assumption that federal legislation threatening to trench on the States' arrangements for conducting their own governments should be treated with great skepticism, and read in a way that preserves a State's chosen disposition of its own power, in the absence of the plain statement *Gregory* [*v. Ashcroft*, 501 U.S. 452, 111 S.Ct. 2395 (1991)] requires. What we have said already is enough to show that § 253(a) is hardly forthright enough to pass *Gregory*: "ability of any entity" is not limited to one reading, and neither statutory structure nor legislative history points unequivocally to a commitment by Congress to treat governmental telecommunications providers on par with private firms. The want of any "unmistakably clear" statement to that effect, 501 U.S. 452, at 460, 115 L. Ed. 2d 410, 111 S. Ct. 2395, would be fatal to respondents' reading.

Nixon, 541 U.S. at 140-41, 124 S.Ct. at 1565-66 (emphasis supplied).

Here, Congress did not clearly indicate that it meant to cover pure State-level Legislative regulatory activity, or citizen advocacy for such activity, in § 666. It is not at all clear that this is what the word "business," in the context of this statute, means. The same considerations apply also to the other parts of the text of the statute that Mr. McGregor addressed in his opening brief, including "agent" and "involving anything of value of $5000 or more." If the governing rule of statutory interpretation was to read every word in a criminal statute as broadly as it can possibly be stretched, then the Government might stretch those words to cover this sort of case as well. But that is not the way interpretation of criminal statutes is supposed to be approached, especially not in cases that impact the balance of power between state and federal sovereignty. *See, e.g.*, *Cleveland v. United States*, 531 U.S. 12, 25, 121 S.Ct. 365, 373 (2000) ("unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the

federal-state balance' in the prosecution of crimes.")

2. The Government's argument does not fairly take into account the history of the statute and a comparison to 18 U.S.C. § 201.

As Mr. McGregor also showed in his opening brief, the inapplicability of § 666 to State-level drafting and voting on legislation is confirmed by the legislative history of the statute, and by a comparison to the statute that the Congress was trying to complement when it enacted § 666.

The Government agrees that when Congress enacted § 666, it was reacting to a dispute that was coming up through the courts over the coverage of 18 U.S.C. § 201; and the Government agrees that Congress was acting with three reported cases, about that topic, in mind. *See Salinas*, 522 U.S. 52, 58, 118 S.Ct. 469, 474 (1997); *Sabri*, 541 U.S. 600, 606-07, 124 S.Ct. 1941, 1946-47 (2004).

The Government also agrees, at least implicitly, that all of those three cases on the mind of Congress concerned "business" or "transactions" in the traditional sense of those words that Mr. McGregor advocates: commerce in goods or services rather than pure regulatory governmental activity. Certainly none of them involved anything remotely like, or nearly so close to the core of State sovereign activity as, the drafting or voting on regulatory laws in the State Legislature. And as Mr. McGregor showed in his opening brief, the Congressional concern with those three cases matches up perfectly with the language that Congress chose to use. The cases on Congress's mind, when it wrote § 666, were cases about "business" and "transactions" in the sense akin to commerce; and the Congress wrote § 666 in language that naturally speaks to that kind of case.

Yet the Government claims that the legislative history supports its view that § 666 was meant to sweep much more broadly than that. The Government theorizes that Congress meant to cut right to the core of State sovereignty, to create a new federal crime applicable to State sovereign legislative (and purely regulatory) activity. But what does the Government point to, in the legislative history? Nothing at all. It merely *postulates* that the Congress wanted to make the statute as broad as the Government wants it to be. It quotes nothing from the legislative history, instead quoting only out of context from Supreme Court decisions that addressed entirely different questions about the scope of § 666. There is literally nothing in the legislative history that supports the Government's view on the questions that are at issue in this motion.

Moreover, Mr. McGregor pointed out in his opening brief that the textual differences between § 666 and § 201 are quite telling. Again, when it was writing § 666, the Congress was undisputedly thinking about § 201, and about how that particular statute should be expanded or supplemented. Had the Congress wanted to do what the Government claims, i.e., make a new criminal prohibition covering the regulatory activities of State Legislatures and the activities of those who advocate for State legislative activity, the Congress could have written words to accomplish that. The Congress had, in § 201, a good model right at hand for how to do that. Had the Congress wanted even beyond that to cover *every* sort of allegedly "corrupt" official action by any official of any state or local government receiving federal funds, again § 201 offered the linguistic model for how to do that. Section 201 sweeps very broadly, covering every "official act" by covered officials, including (specifically) Members of Congress. That

text, § 201, was known to every Member of Congress and every aide who worked on the text of § 666. Did Congress, then, decide to use the same language in § 666, so that it would sweep as broadly as § 201 did, covering state and local officials instead of just the federal ones that § 201 covered? No, it did not. It chose instead to use words that are very different: "business," "transaction," and so forth. Congress chose words that, to say the least, would have been a questionable way of referring to Statehouse votes or other sovereign regulatory activity. (And of course Congress was not laboring under a word- or page-limit like a lawyer writing a brief; the Congress could have used as many words as it felt it needed to cover all aspects of state and local government regulatory activity, if it wanted; nobody was telling Congress that it had to come up with some single phrase that would cover every category of covered thing in a single clause.)

Yet the Government simply responds that this intentional difference in language, chosen by Congress for § 666 in contrast to § 201, is "without significance." (Brief, p. 14). Why the Congress would have done something so clearly intentional, yet done it utterly without significance, is never explained. And to the Government, it must be just a funny but ultimately meaningless coincidence that the words that Congress chose ("business," "transaction," and so forth, words that will call up visions of commercial interactions in many readers' minds) match up so closely with the limited range of the three published cases that Congress had on its mind when it was writing. To the Government, all of this has to be "without significance"; because if it does have significance, it undermines the Government's theory about the breadth of § 666. This Court should not share the Government's confidence that the Congress was using

intentionally-chosen words for no reason at all.

3. The Government's citation of caselaw under § 666 is unpersuasive; and neither the statute nor the caselaw gives qualified-immunity-like fair warning that § 666 applies in this context.

The Government relies on some reported cases upholding § 666 convictions involving state or local officials, on fact patterns that (according to the Government) support a broad view of the statute's reach. This caselaw offers much less actual reasoned support for the Government's argument, than the Government suggests. The Government's collection of caselaw consists primarily of cases that have either or both of the following qualities: (a) they do not address the issues of statutory interpretation that that Mr. McGregor is presenting here, but instead present very different issues (and so the cases are not precedent against Mr. McGregor on these issues, since cases are precedent only on issues that they address, *see, e.g.*, *Estate of Amergi v. Palestianian Authority*, 611 F.3d 1350, 1363 n.11 (11th Cir. 2010)); and (b) they are different from this case in that they involve local officials rather than State officials exercising or considering pure sovereign regulatory functions. (As will be explained below, the distinction between States and municipalities is very important in the law, in ways that directly pertain to the issues of statutory interpretation in this case.) So, the Government's citation of caselaw involving a few other prosecutions under § 666 actually has much less weight in this case than the Government suggests. They involve scenarios very different from this case, and almost without exception they do not even address arguments like the ones made in the present case.

In *Salinas v. United States*, the Supreme Court recognized that the question it was addressing, about the interpretation of § 666, was very different from the question presented here. The question the Court addressed was "is … 18 U.S.C. § 666 limited to cases in which the bribe has a demonstrated effect upon federal funds?" *Salinas v. United States*, 522 U.S. 52, 54 118 S.Ct. 469, 472 (1997). The Court was crystal-clear that it was *not* addressing the question of what counts as "business" or "transaction" as those terms are used in the statute. It was not even addressing the application of those terms to the particular conduct at issue in the case: jail administrators' *ad hoc* decisionmaking about prisoners' conjugal visits (which is not nearly as close to the core of State sovereignty than Legislative law-making is). *Id.*, 522 U.S. at 61, 118 S.Ct. at 475 (emphasizing at some length that the Court was not deciding these issues, but was instead deciding only the narrow issue quoted above). *Salinas* held nothing, and suggests nothing, about what "business" means in this statute. The Supreme Court expressly left that question for another day.[2]

The Government cites *United States v. Lipscomb*, 299 F.3d 303 (5th Cir. 2002) but the Government's reliance on that case suffers from both of the flaws we have mentioned above: it was a case about local government rather than State-level sovereignty, and it was a case that did not address the issues raised here (such as the definition of

[2] If the Supreme Court *had been* intimating that *Salinas* really did involve "business" within the meaning of § 666, it would still be very different from this case. In *Salinas*, the prisoners at issue were federal prisoners, and the local government was holding them for the federal government in exchange for payment. That arrangement – selling prison services on an intergovernmental basis – could perhaps be said to constitute "business," in a way very different from the sovereign act of legislating.

"business"). The same is true of the Government's reliance on *United States v. Oros*, 578 F.3d 703, 710-11 (7th Cir. 2009) (involving local administrator; and reflecting that the arguments on appeal did not pertain to statutory interpretation issues like those presented here, but were instead just issues of fact and credibility); *United States v. Fernandes*, 272 F.3d 938, 944 (7th Cir. 2001) (involving local traffic court prosecutor; and reflecting again that the arguments on appeal about § 666 did not include these issues of statutory interpretation); *United States v. Zimmerman*, 509 F.3d 920 (8th Cir. 2007) (involving local city council member; and likewise reflecting absence of these present issues on appeal). The Government is even reduced so low as to cite an unpublished opinion that plainly addresses only an entirely different and losing contention about § 666, and does not address the issues raised in this case. *United States v. Guishard*, 163 Fed. Appx. 114, 2006 U.S. App. LEXIS 643 (3rd Cir. 2006) (unpublished). [3]

As noted above, the difference between States and municipalities is very important in the law of federalism. Perhaps in a future case it may ultimately be held that local officials' regulatory actions – maybe even city council votes on ordinances and the like – are covered under § 666. That result could conceivably be reached, by resolving some textual ambiguities in the law in the Government's favor. But that would not necessarily

[3] The Government cites one case, *United States v. Marlinga*, 2006 U.S. Dist. LEXIS 50601 (E.D. Mich. 2006), involving a county prosecutor; the Court in that case rejected arguments that are similar to those that Mr. McGregor is making in this case. The existence of one District Court decision from a different Circuit could not be said to dispositively answer the important questions raised herein, even if that were factually on all fours with this case. Moreover, the county prosecutorial function involved in *Marlinga* is not the same as the State-level and purely legislative function involved in this case.

mean that the law reaches legislative regulatory activity (or advocacy of such activity) at the State level. There could be a difference in scope of coverage as between the State level and the municipal level, because the law of federalism is much more firm about requiring Congressional "clear statements" for federal intrusions at the State level than at the municipal level. *See, e.g., Jinks v. Richland County*, 538 U.S. 456, 123 S.Ct. 1667 (2003) (holding that a "clear statement" of Congressional intent to allow tolling of suits against *municipalities* was not required, even though the Court had required such a Congressional "clear statement" regarding tolling of suits against *States* in *Raygor v. Regents of U. Minn*, 534 U.S. 533, 122 S.Ct. 999 (2002)).

As the Supreme Court explained in *Jinks*, the difference has to do with sovereignty interests, which exist at the State level but not at the local level. So a federal statute might be held to apply at the municipal level, yet the same statutory language would not be a sufficiently "clear statement" to apply at the State level. *Jinks*, 538 U.S. at 465-66, 123 S.Ct. at 1673. *See also, e.g., Cook County v. United States ex rel Chandler*, 538 U.S. 119, 123 S.Ct. 1239 (2003) (counties are subject to suit under *qui tam* statute); *Vermont Agency of Natural Resources v. United States ex rel Stevens*, 529 U.S. 765, 120 S.Ct. 1858 (2000) (States are not subject to suit under *qui tam* statute, relying on a "clear statement" requirement). Therefore, this Court does not need to decide at this point how § 666 does or does not apply to city councils, county commissions, and the like; this case, unlike any case that the Government cites, involves the sovereign functioning of a State Legislature.

In its attempt to refute Mr. McGregor's arguments, the Government has scraped

the bottom of the caselaw barrel and has come up with very little; that fact in itself is very telling. Mr. McGregor has raised substantial and important issues about the reach of § 666. It is far, far from clear that the statute covers the conduct alleged in this case. This lack of clarity is itself enough to require dismissal of these charges, under the principles of federalism and fair notice that Mr. McGregor discussed in his opening brief.

Respectfully submitted,

/s/ Joe Espy, III
Joe Espy, III (ASB-6591-S82J)
One of the Attorneys for Milton E. McGregor

OF COUNSEL:

Benjamin J. Espy (ASB-0699-A64E)
William M. Espy (ASB-0707-A41E)
MELTON, ESPY & WILLIAMS, P.C.
P.O. Drawer 5130
Montgomery, AL 36103
Telephone: 334-263-6621
Facsimile: 334-263-7252
jespy@mewlegal.com
bespy@mewlegal.com
wespy@mewlegal.com

Fred D. Gray (ASB-1727-R63F)
Walter E. McGowan (ASB-8611-N27W)
GRAY, LANGFORD, SAPP
McGOWAN, GRAY, GRAY
& NATHANSON, P.C.
P.O. Box 830239
Tuskegee, AL 36083-0239
Telephone: 334-727-4830
Fax: 334-727-5877
fgray@glsmgn.com
wem@glsmgn.com

Robert D. Segall (ASB-7354-E68R)
David Martin (ASB-7387-A54J)
Shannon Holliday (ASB-5440-Y77S)
COPELAND, FRANCO, SCREWS & GILL, P.A.
P.O. Box 347
Montgomery, Alabama 36101-0347
Telephone: 334-834-1180
Fax: 334-834-3172
segall@copelandfranco.com
martin@copelandfranco.com
holliday@copelandfranco.com

Sam Heldman (ASB 3794 N60S)
THE GARDNER FIRM, P.C.
2805 31st Street NW
Washington, DC 20008
Telephone: (202) 965-8884
Fax: (202) 318-2445
sam@heldman.net

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2010, 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/ Joe Espy, III
Of Counsel