

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

UNITED STATES OF AMERICA,)	
)	
)	
v.)	CR. NO. 2:10cr186-MHT
)	
)	
MILTON E. MCGREGOR)	

**UNITED STATES’ NOTICE OF SUPPLEMENTAL AUTHORITY IN OPPOSITION TO
DEFENDANT MILTON MCGREGOR’S FIRST MOTION TO DISMISS
CHARGES BROUGHT UNDER 18 U.S.C. § 666**

The United States of America, through undersigned counsel, hereby provides supplemental authority in support of its previously filed Opposition to Defendant Milton McGregor’s First Motion to Dismiss Charges Brought under 18 U.S.C. § 666. On November 12, 2010, defendant McGregor filed his motion, Dkt. No. 207; the United States filed its opposition on November 22, 2010, Dkt. No. 238; and defendant McGregor filed his reply on November 30, 2010, Dkt. No. 245. Subsequent to these filings, the Eleventh Circuit issued binding authority that directly supports the government’s arguments.

ARGUMENT

The central argument in defendant McGregor’s First Motion to Dismiss is that § 666 prohibits only bribes paid or solicited in order to influence “business” or “transactions”—i.e., the manner in which government uses money or other property. According to defendant McGregor, § 666 does not criminalize bribes paid or solicited to state officials in order to influence intangibles, such as the passage of pro-gambling legislation in the present case. In

addition to arguments against these claims presented by the United States in its Opposition, on January 13, 2011, the Eleventh Circuit decided United States v. Townsend, No. 09-12797, 2011 WL 102765 (11th Cir. 2011) (publication pending). Townsend squarely undercuts defendant McGregor's First Motion to Dismiss.

Townsend concerned an indicted drug dealer who was released under supervision pending trial. Id. at *1. In an attempt to purchase freedom of movement, the drug dealer had bribed the state corrections officer responsible for his supervision. Id. at *1-4. On appeal, the Eleventh Circuit affirmed the officer's conviction under § 666(a)(1)(B) for accepting the bribes. Id. at *9. Beginning with the plain language of § 666, the Court noted that the statute merely required that the "business, transaction, or series of transactions" to which the bribes were directed involved "any thing of value" worth in excess of \$5,000. Id. at * 4. Examining legislative history, the Eleventh Circuit also emphasized that Congress easily could have—but did not—exclude intangibles from the statute's reach. Id. at *5. Indeed, with respect to § 666, the Eleventh Circuit firmly held that "'any thing' means quite literally 'any thing whatever; something, no matter what.'" Id. (citation omitted). Townsend explicitly dispels any lingering doubts regarding whether bribes prohibited by § 666 must directly involve some tangible commercial benefit, such as a contract. As the Court ruled, the thing-of-value requirement "unambiguously includes intangibles." Id. (citation omitted).

What is more, Townsend further contradicts defendant McGregor's pinched definition of the term "agent" under § 666. Section 666 criminalizes bribery that "influence(s) or reward(s) an agent of an organization or of a State." Section 666 further provides that an "agent" is "a person authorized to act on behalf of another person or a government." Nevertheless, in his First Motion

to Dismiss, defendant McGregor attempts to disqualify state legislators as agents for purposes of § 666 by claiming that an agent, by definition, must act with respect to tangible commercial interests. Br. at 7-9. But in Townsend, the agent in question was a state corrections officer who accepted bribes in exchange for overlooking violations of a defendant's supervised release. Thus, Townsend makes clear that under § 666 agents need not act only with respect to commercial interests, and that the phrase "business, transaction, or series of transactions" embraces intangibles, including legislative votes.

CONCLUSION

For the foregoing reasons, in addition to those already offered by the United States in its previously filed Opposition, the Court should deny defendant McGregor's First Motion to Dismiss Charges Brought under § 666.

Respectfully submitted,

LANNY A. BREUER
Assistant Attorney General, Criminal
Division
Attorney for the United States
Acting Under Authority of 28 U.S.C. § 515

JACK SMITH, Chief
Public Integrity Section

By: /s/ Barak Cohen
Barak Cohen
Trial Attorney
Public Integrity Section
U.S. Department of Justice
1400 New York Ave., NW, Suite 12100
Washington, DC 20005
(202) 514-1412

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on counsel of record through the Court's electronic filing system this 2nd day of February, 2011.

/s/ Barak Cohen

Barak Cohen
Trial Attorney
Public Integrity Section
U.S. Department of Justice
1400 New York Ave., NW, Suite 12100
Washington, DC 20005
(202) 514-1412