

**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,)	
)	
Defendant.)	

**OBJECTION TO MAGISTRATE JUDGE’S RECOMMENDATIONS
(DOC. 862 AND DOC. 863) RECOMMENDING THE DENIAL OF
DEFENDANT MEAN’S MOTION TO DISMISS**

COMES NOW, the Defendant, Larry P. Means, and respectfully objects to the recommendations of the Magistrate Judge (Doc. 862 and 863) in that the Magistrate Judge failed to make any findings or recommendations regarding certain grounds raised in Defendant’s Motion to Dismiss (Doc. 474), and in an effort to preserve such grounds sets forth the following:

1. The Magistrate Judge in his recommendations only addressed the issues raised in Defendant’s Motion to Dismiss regarding certain aspects of 18 U.S.C. §666 and 18 U.S.C. §1346 (“honest services”). The Magistrate Judge did not address other grounds in Defendant’s Motion to Dismiss which Defendant feels have merit and are due to be considered by the District Court so as to be preserved for Appellate review if the Motion is denied and there should be a conviction.

2. The Magistrate Judge did not address paragraph 5 of Defendant’s Motion to

Dismiss which asserts that Count 1 of the indictment is duplicitous for the reasons sets forth in said paragraph. While the Defendant is charged with the substantive offense of violating §666, the manner in which the charges are stated in Count 1 invites the Jury to find the Defendant guilty of conspiracy without regard to the “conspiracy”, if they find that he violated §666. The manner in which Count 1 is drawn is highly prejudicial to the Defendant.

See *United States v. Schlei*, 122 F.3d 944 (11th Cir.1997).

3. Defendant objects to the failure of the Magistrate Judge to consider and therefore to make a recommendation as to paragraph 7 of his Motion to Dismiss and he asserts the grounds set forth therein. Defendant contends that the grounds set forth are meritorious and due to be ruled upon by the Court.

4. Defendant objects to the failure of the Magistrate Judge to consider paragraph 9 of his Motion to Dismiss and therefore to make any recommendation thereon.

Defendant asserts that the grounds set forth in said paragraph are meritorious and due to be ruled upon by the Court.

5. Defendant objects to the failure of the Magistrate Judge to consider paragraphs 12, 13, 14, and 18 which were not considered by the Magistrate Judge and which have merit and are due to be ruled upon by the Court. As raised and argued in paragraph 17 the counts fail to describe the alleged scheme and artifice to defraud and deprive. The Eleventh Circuit recently in the case of *United States v. Schmitz*, ___ F.3d _____ (11th Cir. 2011) (No. 09-14452 March 4, 2011) held an indictment purporting to charge a violation of 18 U.S.C. §666

(a)(1)(A) was insufficient in that it did not “notify the accused of the charges to be defended against.” In Schmitz, the counts found to be insufficient alleged that Schmitz did “embezzle, steal, obtain by fraud and without authority convert to her own use, intentionally misapply, the salary and other benefits she received from the City Program.” The indictment did not allege facts to support or explain the charge. In this case the indictment incorporated paragraphs 1 - 26 of the Introduction which does not in any way state an offense, and paragraphs 29-190 which state the purpose of the conspiracy, manner and means of the conspiracy, and alleged overt acts. In none of these is the alleged scheme described. Counts 23 - 33 are due to be dismissed.

6. Defendant objects to the failure of the Magistrate Judge to consider and hence make a recommendation as to the grounds raised in paragraph 10 of Defendant’s Motion to Dismiss. Said grounds have merit and are due to be ruled upon by the District Judge. This ground relates to the Hobbs Act charges in Counts 19 and 20 and the argument that the indictment fails to allege a specific quid pro quo. The United States Supreme Court in *McCormick v. United States*, 500 U.S. 257, 111 S.Ct.1807, 114 L.Ed.2d, 307 (1991), held that an “explicit” quid pro quo is necessary for a conviction under the Hobbs Act when the alleged payment is in the nature of a campaign contribution. See also, *United States v. Davis*, 30 F.3d. 108 (11th Cir.1994). The Magistrate Judge did address this issue in Recommendation of Magistrate Judge (Doc. 864) regarding Defendant’s Ross’ Motion to Dismiss Hobbs Act charges. To the extent the Court may consider that recommendation as

applicable to this Defendant. Defendant objects to the findings and conclusions of law set forth in that Recommendation. The indictment does not allege either an “explicit” or “express” quid pro quo as to this Defendant. Defendant contends that an explicit quid pro quo is required.

7. Defendant further objects to the failure of the Magistrate Judge to consider and hence to make a recommendation as to paragraph 11 of his Motion to Dismiss raising the issue that the charges are unconstitutional in violation of the First Amendment to the Constitution of the United States in that it inhibits the free exercise of the rights of speech and the right to make campaign contributions to a candidate. See *Citizens United v. Federal Election Commission*, 130 S.Ct. 876 (2010).

DATED this 18th day of April, 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 18th of April, 2011.

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s/ William N. Clark
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