

**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 OF DEFENDANT, LARRY P. MEANS TO THE
RECOMMENDATION OF THE MAGISTRATE JUDGE (DOC. 862)
RECOMMENDING DENIAL OF
MOTION TO DISMISS (RE: 18 U.S.C. §666)**

COMES NOW, the Defendant, Larry P. Means, and respectfully objects to the Recommendation of the Magistrate Judge (Doc. 862) regarding that portion of Defendant Means Motion to Dismiss (Doc. 474) relating to 18 U.S.C. §666, and in support thereof states the following specific objections and grounds:

1. At the outset the recommendation of the Magistrate Judge here, and recommendation of the Magistrate Judge (Doc. 863) dealing with Defendant Mean’s Motion to Dismiss regarding 18 U.S.C. §1346 (“honest services”) do not deal with other issues raised in Defendant’s Motion to Dismiss. Consequently, Defendant objects to the recommendation in that it omits any findings or statements of law regarding those issues. They will be raised more specifically in a separate objection for purposes of clarity.

2. Defendant adopts and incorporates by reference those objections made on behalf of Defendant McGregor (Doc. 917) which are applicable to this Defendant, e.g., the

Court addresses in its recommendation re: 18 U.S.C. §666 (a)(2). However, Defendant is charged in Count One with conspiring to violate, 18 U.S.C. § 666 (a)(1)(B) and in Counts Six and Seven of violating the substitutive offense 18 U.S.C.

§666 (a)(1)(B). Nevertheless, the objections to both are applicable.

3. Defendant objects to the Court's findings and conclusions of law regarding whether a State Legislator is an "agent" under §666, for reasons set forth in his brief in support of Motion to Dismiss (Doc. 480). Neither the Magistrate Judge nor the cases cited consider that 18 U.S.C. §666 was enacted to fulfill the perceived gap under 18 U.S.C. §201, the statute under which federal officials may be charged. Section 201 specifically includes members of Congress. Section 666 does not. That absence, coupled with the "any business, transaction action, or series of transactions of ... government ..." indicate that Congress did not intend to apply this Statue to the acts of State Legislators, particularly as it may apply to campaign contributions which are is what is involved in the charges against this Defendant. The Magistrate Judge's reliance on *United States v. Townsend*, 630 Fed.3d. 1003, (11th Cir.2011), is misplaced. The Magistrate Judge did not address that a State Legislator is not agent of the State, but is an agent of the people acting on their behalf. A State Legislator individually has no authority to bind the State.

4. The Defendant objects to that portion of the Magistrate Judge's recommendation regarding Constitutional requirements and concerns. Section 666, if applied to the facts of this case, constitutes denial of due process under the Fifth Amendment

and further violates Defendant's rights under the First and Tenth Amendments. To permit these charges to proceed would provide encouragement to the Government to act as they did here, i.e. to return an indictment in the middle of a legislative session so as to influence the legislature. One could ask: was that done "corruptly" so as to support an indictment against the state legislators who have been charged?

5. The Magistrate Judge did not address the issues raised in paragraphs 5, 6, 7, 9, and 11 of Defendant's Motion to Dismiss all of which addressed §666. Defendant reasserts the authorities cited in those paragraphs and adopts the same as if set forth herein.

6. Defendant objects to the failure of the Magistrate Judge to consider Defendant's ground and argument that when campaign contributions are involved under §666 that there is a requirement for a specific quid pro quo for the same reasons set forth in *McCormick v. United States*, 500 U.S. 257, 114 L.Ed. 2d 307 (1991). Even though *McCormick* dealt with the Hobbs Act, the grounds stated in paragraph 11 are likewise applicable to this issue and should be considered in support thereof. The indictment here makes no such allegations. Neither the payment of nor the solicitation of campaign contributions is illegal. In fact, campaign contributions are essential to the electoral process. And, it is not illegal for a citizen to engage in efforts to influence legislation. 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 day of April, 2011.

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s/ William N. Clark
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