

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

UNITED STATES OF AMERICA	)	
	)	
v.	)	CR. NO. 2:10cr186-MHT
	)	
MILTON E. McGREGOR,	)	
RONALD E. GILLEY,	)	
THOMAS E. COKER,	)	
ROBERT B. GEDDIE, JR.,	)	
LARRY P. MEANS,	)	
JAMES E. PREUITT,	)	
QUINTON T. ROSS JR.,	)	
HARRI ANNE H. SMITH,	)	
JARRELL W. WALKER JR., and	)	
JOSEPH R. CROSBY	)	
	)	
Defendants.	)	

**UNITED STATES' PARTIAL OBJECTION TO THE MAGISTRATE'S REPORT AND  
RECOMMENDATION REGARDING THE HONEST SERVICES CHARGES**

The April 4, 2011 Recommendation of the Magistrate Judge (Doc. No. 863) properly recommends denial of the Defendants' motions to dismiss the honest services fraud charges in the indictment. (Those motions are set forth in Docs. #208, 411, 437, 442, 445, 450, 456, 460, 471, 474, 485, and 486.) The defendants argued that bribery under the honest services fraud statute cannot include campaign contributions following the Supreme Court's decision in *Skilling v. United States*, 130 S.Ct. 2896 (2010). The Magistrate Judge's Recommendation correctly rejected that argument, and the government fully supports the Magistrate Judge's conclusion that bribery under the honest services fraud statute, 18 U.S.C. § 1346, includes the exchange of campaign contributions for official action, just as it does under other corruption statutes.

In the Recommendation at pages 6-9, however, the Magistrate Judge suggested that bribery

under the honest services statute also requires an additional element that other bribery and extortion statutes, such as 18 U.S.C. §§ 201, 666, and 1951, do not: “personal benefit.” Specifically, the Recommendation states: “[t]he court agrees with Defendants that any honest-services bribery must involve a personal benefit to the ‘offender.’” Recommendation at 8, *citing Ryan v. United States v. Ryan*, — F. Supp.2d, 2010 WL 5495015 (N.D.Ill.Dec.21, 2010). The government objects to this limited portion of the Recommendation. Just as with bribery and extortion payments under other corruption statutes, bribery under the honest services statute may be accomplished by providing a thing of value to a third party, such as a campaign committee, and need not involve a “personal benefit” to the offender.

The answer to the question of whether bribery under section 1346 includes payments to third parties, with or without personal benefit to the public official, is provided by *Skilling* itself. Specifically, the Supreme Court held that §1346’s “prohibition on bribes and kickbacks draws content not only from the pre-*McNally* case law, but also from federal statutes proscribing—and defining—similar crimes.” *Skilling*, 130 S. Ct. at 2933. At that point, the Court specifically cited 18 U.S.C. §§ 201(b) (federal bribery), 666(a)(2) (federal program bribery); 41 U.S.C. § 52(2) (antikickback statute); *United States v. Ganim*, 510 F.3d 134, 147-49 (2d Cir. 2007) (Sotomayor, J.) (reviewing honest-services conviction involving bribery in light of elements of bribery under other federal statutes, including §§ 201, 666, and 1951 (Hobbs Act extortion)); *United States v. Whitfield*, 590 F.3d 325, 352-53 (5th Cir. 2009); and *United States v. Kemp*, 500 F.3d 257, 281-86 (3d Cir. 2007)) (emphasis added).

Two of the statutes to which *Skilling* pointed in defining the content and elements of bribery expressly included payments to third-parties, without regard to personal benefit to the public official.

See 18 U.S.C. § 201(b)(1) (“Whoever . . . directly or indirectly, corruptly gives, offers or promises anything of value to any public official . . . or promises any public official . . . to give anything of value to any other person or entity, with intent to influence any official act . . . shall be [guilty of bribery].” (emphasis added)); 18 U.S.C. § 666(a)(1)(B) (“Whoever . . . being an agent of . . . a State . . . government . . . corruptly solicits or demands for the benefit of any person . . . anything of value from any person, intending to be influenced or rewarded in connection with any business . . . of such . . . government . . . shall be [guilty of federal program bribery].” (emphasis added). The Court’s direction that we look to the existing federal bribery statutes for the elements of bribery under section 1346 could not have been more clear. Those statutes leave no doubt that payments for the personal benefit of third parties may constitute bribery, and there is no additional element requiring personal benefit to the public official.

Moreover, honest services cases prior to *McNally* also included things of value provided for the benefit of third parties. See *United States v. Mandel*, 591 F.2d 1347, 1356 (jewelry for defendant’s wife in addition to direct payments); *United States v. Brown*, 540 F.2d 364, 374 (8th Cir. 1976) (rental payments for defendant’s girlfriend).

Given the broad definition of a thing of value and how it can be paid, it is unsurprising that the case law construing the crimes of federal bribery, federal program bribery, and extortion under color of official right recognize the propriety of prosecutions involving campaign-contribution-based bribery schemes. See, e.g., *Evans v. United States*, 504 U.S. 255, 267 (1992) (upholding conviction under 18 U.S.C. § 1951 for extortion under color of official right based on campaign contributions); *United States v. Siegelman*, 561 F.3d 1215, 1224-28 (11th Cir. 2009) (upholding federal program bribery conviction under 18 U.S.C. § 666 involving receipt of campaign contributions as bribe),

*vacated and remanded on other grounds, Siegelman v. United States*, 130 S. Ct. 3542 (2010); *United States v. Brewster*, 506 F.2d 62, 77-78 (D.C. Cir. 1974) (holding that former version of federal bribery statute, 18 U.S.C. § 201, applied to illicit campaign contributions). The cases under these statutes do not require an additional element that the public official received a “personal benefit.”

This conclusion is also bolstered by *Skilling*’s direct citation, 130 S. Ct. at 2933, to *United States v. Whitfield*, 590 F.3d at 352-53, an honest services case in which the Fifth Circuit addressed the appropriate standard of proof where, as here, illicit payments were characterized as campaign contributions. By citing to *Whitfield*, the *Skilling* Court itself endorsed the viability of honest services prosecutions premised on bribes that were paid in the form of campaign contributions. There is no suggestion in *Whitfield* that the government must also show a distinct personal benefit to the public official.

In sum, the Supreme Court’s opinion in *Skilling* defines the contours and elements of bribery under the honest services fraud statute, and there is no support in *Skilling* for an additional “personal benefit” element. The *Ryan* case cited by the defendants says nothing to the contrary. Indeed, the “private gain” in *Ryan* went not only to the public official, but to family members, his son’s business, and a business involving the public official’s brother. *Ryan*, 2010 WL 5495015 at 20. Like the campaign contributions involved in this case, payments for the benefit of third parties were sufficient in *Ryan*, and there was no requirement that the government prove a “personal benefit” to the public official himself.

#### CONCLUSION

The United States fully supports the Magistrate Judge’s Recommendation that the defendants’ motions to dismiss the honest services fraud charges be denied. For the foregoing reasons, and the

reasons described in the government's opposition to the defendants' motions (Doc. No. 237) the government respectfully objects only to the limited portion of the Recommendation suggesting that the government must also prove an additional element of "personal benefit" to the public official.

Respectfully submitted this 18th day of April, 2011.

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Acting Under Authority of 28 U.S.C. § 515

JACK SMITH, Chief  
Public Integrity Section

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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 on this the 18<sup>th</sup> day of April, 2011.

/s/ Louis V. Franklin  
LOUIS V. FRANKLIN  
Assistant United States Attorney