

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

UNITED STATES OF AMERICA            )  
  )  
v.    )  
  )  
MILTON E. McGREGOR                    )  
  )

CRIMINAL ACTION NO.  
2:10-cr-186-MHT

**ORDER**

Pending before the Court is the *United States' Motion to Quash Trial Subpoenas for Records Issues to Scott Beason, Parker and Townes, P.C., Benjamin Harrison Lewis, and Charles B. Mask* (Doc. 1211, filed 6/1/11). The motion has been referred by the District Judge to the undersigned for disposition. The United States' motion originally sought to quash subpoenas seeking records from Scott Beason, Parker and Townes, P.C., Benjamin Harrison Lewis, and Charles B. Mask. Doc. 1211 at 1. At the June 11, 2011 hearing, the parties informed the Court that all issues had been resolved by agreement, with the exception of the tax records sought from Scott Beason for calendar years 2008, 2009, and 2010. After hearing all arguments presented at the hearing and after due consideration of the applicable law, the Court DENIES the motion to quash for lack of standing.

**I. STANDING**

The Court must first decide whether the United States has standing to file a motion to quash on behalf of Scott Beason. See United States v. Tomison, 969 F.Supp. 587, 596 (E.D. Cal. 1997) (“Since standing goes to the jurisdiction of the court, the government, as the party

attempting to invoke the court's jurisdiction, has the burden to demonstrate that it has standing."). A number of persuasive opinions hold that a party "lacks standing to challenge a subpoena issued to a third party absent a claim of privilege or proprietary interest in the subpoenas matter." United States v. Nachamie, 91 F.Supp.2d 552, 558 (S.D.N.Y. 2000); *see also* United States v. Reyes, 162 F.R.D. 468, 470 (S.D.N.Y.1995) (citing Langford v. Chrysler Motors Corp., 513 F.2d 1121 (2d Cir. 1975) (absent claim of privilege, party usually has no standing to object to subpoena directed at non-party); Ponsford v. United States, 771 F.2d 1305, 1308 (9th Cir. 1985) (absent proprietary interest in documents sought, no standing to quash)).

Courts have routinely found that the government does not have the ability to "stand in [the witness'] shoes and assert their rights to quash the subpoenas." Nachamie, 91 F.Supp.2d at 560. Even in cases wherein the government claims standing to assert specific privileges or claims a shared interest with the court to expedite the trial proceedings or a general interest to protect the witnesses from harassment, the courts generally find the government lacks standing. Id. at 558 (citing United States v. Raineri, 670 F.2d 702, 712 (7th Cir. 1982) (addressing the issue of government attempting to quash third party subpoena in order to prevent undue lengthening of the trial, undue harassment of its witness, and prejudicial over-emphasis on the credibility)). Furthermore, "the Government cannot undertake to act as counsel to its witnesses." Id. at 560.

Recent holdings continue to uphold the principle that "[a] party generally lacks

standing to challenge a subpoena issued to a third party absent a claim of privilege or a proprietary interest in the subpoenaed material.” United States v. Dupree, 2011 WL 2006295, \*3 (E.D.N.Y. 2011); *see also* United States v. Daniels, 95 F.Supp.2d 1160, 1164 (D.Kan. 2000)(government did not argue, nor show, either a privilege or a proprietary interest and therefore did not have standing).

## II. DISCUSSION AND ANALYSIS

The government states that Senator Beason asked that the United States Attorney’s Office to act in his behalf in this matter. The Court accepts the representation from the United States as true, however, the application of the well established case law prevents the government from filing, arguing or prevailing in this matter because the government lacks standing. *See, e.g.,* Nachamie, 91 F.Supp.2d 552. To rule otherwise would allow the government to invoke the court’s jurisdiction on behalf of a third party and to bootstrap itself into standing which it does not have under the law. Tomison, 969 F.Supp. at 596 (E.D. Cal. 1997). The government asserts that the information sought through the subpoena is not relevant and that it provides personal information that should not be disclosed to the defense for any reason. Neither of these arguments fall within the established exceptions wherein there must be either “a claim of privilege or proprietary interest in the subpoenas matter” Nachamie, 91 F.Supp.2d at 560.

Ordinarily, after the Court finds that a party lacks standing the matter concludes as to the party which lacks standing. In the context of the case at bar, Senator Beason is the first

witness which the United States intends to call in what is likely to be a long trial. The Court accepts the representation from the United States that Senator Beason opposes the disclosure of his tax returns. Given the impending trial and the interests of judicial economy, the Court will discuss the issues presented during the hearing for the benefit of the District Court.

Defendant McGregor seeks production of the tax returns filed by Senator Beason for calendar years 2008, 2009, and 2010. He argues the tax returns are relevant because Senator Beason cooperated with authorities by wearing a recording device and by providing information to the Federal Bureau of Investigation (FBI). Defendant McGregor alleges the tax returns are necessary to show bias, prejudice, or motive Senator Beason might have to testify for the government. Defendant McGregor argues that the tax returns may be relevant to counter the United States' claims that Senator Beason was not paid to assist the government and that the return information is not otherwise relevant. To the credit of the United States, it concedes that it is possible, in a metaphysical sense, that Senator Beason could testify in some matter which might make the tax returns relevant, and perhaps admissible. *See, e.g., United States v. Nixon*, 418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974) (establishing the three pronged test for production of documents).

### **III. CONCLUSION**

Pursuant to the findings and conclusions detailed in this Order, the Court concludes that the Government lacks standing and the motion to quash is, therefore, DENIED as to the records of Senator Beason. It is further ORDERED that Senator Beason shall have available

a copy of his 2008, 2009, and 2010 tax returns. It is NOT the order of the Court that these documents be disclosed to the defense unless Senator Beason should either elect to do so on his own or the District Court orders it. It is also ORDERED that all documents provided will be treated in compliance with a protective order as agreed to by the parties.

DONE this 13th day of June, 2011.

/s/Terry F. Moorner  
TERRY F. MOORER  
UNITED STATES MAGISTRATE JUDGE