

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

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>CR. NO. 2:10cr186-MHT</b>
	)	
<b>JAMES E. PREUITT,</b>	)	
	)	
<b>Defendant.</b>	)	

**MOTION TO DISMISS OF DEFENDANT JAMES E. PREUITT  
AS TO COUNTS ONE AND NINE OF THE INDICTMENT**

COMES NOW the Defendant, James E. Preuitt, and moves the Court to dismiss Counts 1 and 9 of the Indictment, separately and severally, on the following grounds, separately and severally:

1. On August 11, 2011, following an approximately two (2) month trial, the jury returned a partial verdict finding Defendant Preuitt not guilty on 12 of 15 Counts including Count 22 which charged violation of 18 U.S.C. § 1951, and Counts 23 through 33 which charged mail and wire honest services fraud. The jury was unable to reach a verdict on Count 1 which charged conspiracy under 18 U.S.C. § 371 and Count 9 which charged Federal Program Bribery under 18 U.S.C. §§ 666(a)(1)(B) and (2).

2. The Government has indicated that it intends to proceed with a re-prosecution and re-trial as to Defendant Preuitt on Counts 1, 9 and 38. Any further prosecution of the Defendant on Counts 1 and 9 is barred by the issue preclusion component of the double jeopardy provisions of the United States Constitution, Amendment V; *Yeager v. United States*, \_\_\_\_ U.S. \_\_\_\_, 129 S.Ct. 2360, 174 L.Ed.2d 78

(2009); *Ashe v. Swenson*, 397 U.S. 436 (1970). Under *Yeager*, the double jeopardy clause precludes the Government from re-litigating any issue that was necessarily decided by the jury's acquittal in a prior trial.

3. In Counts 23 through 33 the Government described the alleged scheme in terms of the conspiracy alleged in Count 1 by incorporating paragraphs 28 through 37 (the entire conspiracy count less the overt acts) of the Indictment. The alleged scheme and the Defendant's alleged participation in it was a critical issue of ultimate fact in the honest services charges against Defendant. The not guilty verdicts in this case as to Counts 23 through 33 necessarily decided that issue in Defendant Preuitts' favor which protects him from re-prosecution under the conspiracy charge which was incorporated by reference in the honest services charges. In fact, at the hearing on Defendant's Motion to Dismiss Counts 23 through 33 on the ground that no scheme and no "manner and means" were alleged, the Government specifically responded that the scheme and the "manner and means" applicable to Counts 23 through 33 were described in Count 1, paragraphs 28 through 37, and were incorporated by reference in Counts 23 through 33. A finding of not guilty as to Counts 23 through 33 therefore precludes the Government from re-prosecuting the Defendant under Count 1 under the double jeopardy clause of the Fifth Amendment, *United States v. Yeager, supra*.

4. The jury found Defendant Preuitt not guilty of Count 22 of the Indictment which was based solely on the same alleged "course of conduct" alleged in Count 9 of the Indictment, i.e. "PREUITT agreed to accept at least 2 million dollars in campaign support and the services of prominent country music stars for campaign purposes, among other

things of value, from GILLEY, MASSEY, MCGREGOR, COKER, WALKER and Lobbyist A...” see pages 47 and 57 of the Indictment. An essential element of both charges was an explicit *quid pro quo* as provided in the Court’s instructions to the jury. Thus, the jury necessarily decided in finding Defendant Preuitt not guilty of Count 22 that the prosecution had failed to prove beyond a reasonable doubt an explicit *quid pro quo* based upon the same facts upon which the Government based its charge in Count 9. Any further prosecution of Defendant Preuitt under Count 9 is precluded by the Defendant’s acquittal on Count 22 under the Fifth Amendment to the United States Constitution; *Yeager v. United States, supra*.

WHEREFORE THE PREMISES CONSIDERED, Defendant Preuitt respectfully moves the Court to dismiss with prejudice Counts 1 and 9 of the Indictment against Defendant, James E. Preuitt.

RESPECTFULLY SUBMITTED this the 16<sup>th</sup> day of September, 2011.

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 16, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of

such filing to the following counsel of record.

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