

Defendant Smith objects on the basis that if the government fails to prove all persons charged in the indictment were members of the conspiracy, then that changes the charges against each defendant in violation of constitutional rights to a fair trial including rights to due process. (Smith further objects to the Court's oral charge as it relates to the Conspiracy Count as it conflicts with the defendants' theory of the proof required under a Conspiracy charge that the object of the conspiracy must be unlawful as discussed by counsel for McGregor during the Rule 29 arguments.)

2. Smith further objects to the potential implication created by the charge that no agreement is necessary for a conspiracy.

Smith requests the following modification:

The government does not have to prove that all the people named in the indictment were members of the plan, or that those who were members made any kind of formal agreement, although an agreement is required.

3. Smith objects to the Court's Oral charge where, in describing Count Two, the charge fails to describe with any specificity the allegations of the indictment. At least 4 legislators testified during the course of this trial. Count II only alleges Smith bribed Benjamin Lewis. Smith asks the Court's oral charge be made clear that this is the transaction to which Count II refers, and no other. By including a date range of March 1, 2009 through February 2010, it could be confusing to the jury as to exactly what Smith is charged with in Count II. In the alternative, Smith requests Count II of the redacted indictment be amended to name Lewis specifically, rather than referring to him as "Legislator 1." Failure to identify Lewis to the jury would cause confusion and may allow them to convict Smith of something with which she is not charged.

4. Smith objects to the portion of the Court's Oral charge stating:

An explicit promise or solicitation can be inferred from both direct and circumstantial evidence, including the defendant's words, conduct, acts, and all the surrounding circumstances disclosed by the evidence, as well as the rational or logical inferences that may be drawn from them.

This explanation of the term "explicit" is contrary to Smith's understanding of the meaning of explicit under existing caselaw. Allowing "inferences" based on "surrounding circumstances" contradicts the explicit agreement requirement.

5. Smith objects to the Court's oral charge where the Court states:

It is not a defense that the agent would have lawfully performed the specific official action even without the agreement for a thing of value or having been promised or accepted a thing of value. In other words, it is not a defense that the agreement for or offer or promise of anything of value was made to the agent or official in exchange for a specific official action that is actually lawful, desirable, or even beneficial to the

public, or which the agent would have taken anyway.

This portion of the charge is misleading and unnecessary. It is Smith's position that evidence that a public official was going to act in a certain way regardless of a contribution can support a defense to bribery as it serves as evidence of lack of criminality. As such, the charge as written is misleading. If the request to remove this portion of the charge is denied, Smith requests an explanation from the Court that evidence that the official would have taken certain action anyway CAN be considered as evidence that no quid pro quo existed. Smith suggests adding the following language to the end of the passage:

However, evidence that the agent would have performed the specific official action in the absence of the contribution can be considered by you as evidence of the lack of an explicit quid pro quo.

6. Smith objects to the following portion of the Court's charge:

It does not matter whether or not the public officer employed force threats or fear.

Such a charge is contrary to the indictment which charges that Smith "pressured" Gilley. To charge the jury in this way would alleviate the government's responsibility to prove this count against Smith as it was charged and would violate Smith's rights to a fair trial and due process. Additionally, because it is contrary to the indictment, this language would cause the jury confusion.

7. Smith further objects the portion of the charge which states:

If you decide that there would be any effect at all on interstate commerce, then that is enough to satisfy this element. The effect can be minimal.

As written, it suggests that the jury be allowed to base their decision on information not presented in evidence with no requirement of proof by the Government. It also overemphasizes the minimal effect necessary to prove this element.

Smith suggests the following change:

If you decide that the government has proven beyond a reasonable doubt that the defendant's actions have an effect on interstate commerce, then that is enough to satisfy this element. The effect can be minimal.

8. Smith objects to the following: "The defendant herself need not be a public official", on page 36. Smith is the only female defendant of 9 charged with these honest service fraud counts, and the use of "herself" could be construed as singling her out for these charges. It is also inconsistent with the word "he" used later in the same paragraph.

9. Smith requests additional instruction on the Money Laundering Counts which begin on Page 40.

Smith would note for the Court that on page 19 under the Federal Programs Bribery counts the Court properly explains:

For all of the alleged bribes in these counts, the thing of value promised or

exchanged took the form of a campaign contribution. Campaign contributions and fundraising are an important unavoidable and legitimate part of the American system of privately-funded elections. . . . (continuing on P. 20) Therefore, the solicitation or acceptance by an elected official of a campaign contribution does not, in itself, constitute a federal crime. . .

The lack of such an explanation under the Money Laundering Counts could be misleading to the jury and could unfairly prejudice Smith. Smith requests a similar explanation be given under the money laundering count as it relates to legal uses of political actions committees.

Smith suggests the following:

The transactions alleged to be money laundering are four separate checks written to four political action committees, also referred to as "PACs". PACs are commonly used in the privately-funded elections in Alabama. Therefore, the use of a PAC in disguising the original source of a campaign contribution does not, in itself, constitute a federal crime.

10. Similarly, in discussing the honest services fraud counts, the Court stated on Page 38 of the oral charge:

Because the subject of the bribes alleged in the honest services mail and wire fraud counts is campaign contributions, the government must also prove that there was an illegal quid pro quo before these contributions could be considered illegal and before a defendant could be guilty of these counts.

Smith requests the following similar charge as it relates to the Money Laundering counts:

Because the subject of the unlawful activity alleged in the money laundering counts is bribery through campaign contributions, the government must also prove that there was an illegal quid pro quo before these contributions could be considered illegal and before Smith could be guilty of these counts.

11. Smith objects to the inclusion of a *Pinkerton* charge.

12. Smith objects to the rejection of each of her requested charges (Doc. 1193) that is not incorporated in the Court's charge.

13. Smith adopts the objections of all other defendants raised in regard to the proposed charge.

14. Smith reserves the right to make additional objections upon hearing the Court's final charge at the conclusion of the trial.

Respectfully submitted this 4th day of August, 2011.

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Certificate of Service

I hereby certify that I have electronically filed the foregoing document with the Clerk of Court and I have served a copy of same upon the following counsel of record by email on this the 4th day of August, 2011:

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