

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	)	
THOMAS E. COKER	)	
ROBERT B. GEDDIE, JR.	)	
JAMES E. PREUITT	)	
LARRY P. MEANS	)	
QUINTON T. ROSS, JR.	)	
HARRI ANNE H. SMITH	)	
JARRELL W. WALKER, JR.	)	
JOSEPH R. CROSBY	)	

**UNITED STATES’ SUBMISSION TO THE COURT REGARDING THE SUFFICIENCY  
OF EVIDENCE AS TO COUNT ONE OF THE INDICMENT**

The United States, through undersigned counsel, hereby submits the following brief in advance of the anticipated Rule 29 at the close of the government’s testimony. As the following makes clear, the evidence adduced at trial establishes the existence of a far-ranging conspiracy, as well as each remaining defendant’s role in it. Viewing the evidence in the light most favorable to the government, the evidence is sufficient as to each defendant charged in Count 1, the conspiracy count.

**I. Standard of Review**

Rule 29 of the Federal Rules of Criminal Procedure provides for a judgement of acquittal if the government’s evidence is insufficient to sustain a conviction. When the Court assesses a motion for a Judgement of Acquittal, it “must view the evidence in the light most favorable to the government, and determine whether a reasonable jury could have found the defendant guilty beyond a reasonable doubt.” United States v. Miranda, 425 F.3d 953, 959 (11th Cir. 2005)

(quoting United States v. Sellers, 871 F.2d 1019, 1021 (11th Cir. 1989)) (internal citations omitted in Miranda); see also Burks v. United States, 437 U.S. 1, 16 (1978) (“The prevailing rule has long been that a district judge is to submit a case to the jury if the evidence and inferences therefrom most favorable to the prosecution would warrant the jury’s finding the defendant guilty beyond a reasonable doubt.”); United States v. Hernandez, 433 F.3d 1328, 1334 (11th Cir. 2005) (“That [the defendant’s] statements and behavior are subject to innocent explanations is also immaterial. A jury is free to choose among reasonable constructions of the evidence. [The defendant] cannot prevail . . . by repeating his unsuccessful argument to the jury.”) (citations and internal quotation marks omitted). In meeting this standard, “[t]he prosecution need not rebut all reasonable hypotheses other than guilt. The jury is free to choose between or among the conclusions to be drawn from the evidence presented at trial, and the district court must accept all reasonable inferences and credibility determinations made by the jury.” Id.

This standard remains unchanged regardless of the nature and substance of the evidence presented at trial. United States v. Lyons, 53 F.3d 1198, 1202 (11th Cir.); United States v. Forszt, 655 F.2d 101, 103 (7th Cir. 1981) (applying usual Rule 29 standard of review to review sufficiency of evidence for bribery conviction). Indeed, the Court may neither weigh the evidence nor assess the credibility of witnesses. Burks, 437 U.S. at 16; see also Hernandez, 433 F.3d 1328. Furthermore, the Court’s inquiry must focus solely on the sufficiency of the evidence—allegations of error are irrelevant. Miranda, 425 F.3d at 962 (quoting United States v. Fozo, 904 F.2d 1166, 1171 (7th Cir. 1990)) (“The sole ground for a post-trial motion under Rule 29(c) is that the evidence was insufficient to sustain a conviction.”); see also, 2A Wright, et.al., Federal Practice and Procedure, Criminal 3d § 466 (2006) (“There is only one ground for a

motion for a judgment of acquittal”—insufficiency of the evidence).

A defendant carries a “heavy burden” in challenging the sufficiency of evidence under Rule 29. See United States v. McCarrick, 294 F.3d 1286, 1290 (11th Cir. 2002) (noting the defendant’s sufficiency of the evidence burden on appeal); United States v. Evans, 149 F. Supp. 2d 1331, 1336, 1345 (M.D. Fla. 2001) (in considering the defendants’ post-trial motions for judgment of acquittal, the trial court noted that the defendants have the burden to establish that no reasonable jury could have found them guilty beyond a reasonable doubt), aff’d in part, vacated in part, 344 F.3d 1131 (11th Cir. 2003); see also United States v. Irving, 452 F.3d 110, 119 (2d Cir. 2006) (in holding that the trial court did not err in denying the defendant’s Rule 29 motion, the court noted that the defendant did not meet his “weighty” burden); United States v. Jackson, 335 F.3d 170, 180 (2d Cir. 2003) (noting that a defendant who, pursuant to Rule 29, challenges the sufficiency of the evidence supporting his conviction bears a heavy burden); United States v. Ozsusamlar, No. S1 05 CR 1077(PKL), 2006 WL 2051117, at \*3 (S.D. N.Y. July 20, 2006) (noting that the defendant’s burden to persuade the trial court that no rational trier of fact could have found the elements of the offense charged beyond a reasonable doubt is a “very heavy burden”) (quoting United States v. Scarpa, 913 F.2d 993, 1003 (2d Cir. 1990)) (internal quotations omitted).

In order to prevail in a Rule 29 challenge to conspiracy charges, the government need only present sufficient evidence to prove that an agreement existed between two or more persons to commit a crime and that the defendants knowingly and voluntarily joined or participated in the conspiracy.” United States v. Seher, 562 F.3d 1344, 1364 (11th Cir. 2009) (quoting United States v. Silvestri, 409 F.3d 1311, 1328 (11th Cir. 2005)); see also, e.g., United States v. Moore, 525

F.3d 1033, 1039 (11th Cir. 2008) (“The elements of the offense of conspiracy are: (1) an agreement between the defendant and one or more persons, (2) the object of which is to do either an unlawful act or a lawful act by unlawful means.”) (internal quotation marks omitted); United States v. Gupta, 463 F.3d 1182, 1194 (11th Cir. 2006) (government must show “the existence of an agreement to achieve an unlawful objective, the defendant’s knowing and voluntary participation in the conspiracy, and the commission of an overt act in furtherance of it”) (quoting United States v. Suba, 132 F.3d 662, 672 (11th Cir. 1998)) (internal quotation marks omitted).

In proving the existence of a conspiracy, “direct evidence of an agreement is unnecessary.” United States v. McNair, 605 F.3d 1152, 1195 (11th Cir. 2010) (citing United States v. Jennings, 599 F.3d 1241, 1250-51 (11th Cir. 2010)). “Since illegal conspiracies are secretive by nature, the existence of the agreement and the defendant’s participation in the conspiracy may be proven entirely from circumstantial evidence.” United States v. US Infrastructure, Inc., 576 F.3d 1195, 1203 (11th Cir. 2009) (citing Suba, 132 F.3d at 672). Thus, the agreement “may be inferred from the relationship of the parties, their overt acts and concert of action, and the totality of their conduct.” United States v. Schwartz, 541 F.3d 1331, 1361 (11th Cir. 2008) (citing United States v. Guerra, 293 F.3d 1279, 1285 (11th Cir. 2002)). To that end, “[p]roof that the accused committed an act which furthered the purpose of the conspiracy is an example of the type of circumstantial evidence the Government may introduce to prove the existence of an agreement.” United States v. Moore, 525 F.3d 1033, 1040 (11th Cir. 2008) (citing United States v. Sullivan, 763 F.2d 1215, 1218-19 (11th Cir. 1985)).

Further, “[i]t is not necessary for the government to prove that a defendant knew every detail or that he participated in every stage of the conspiracy.” McNair, 605 F.3d 1152, 1196

(11th Cir. 2010) (quoting United States v. Jones, 913 F.2d 1552, 1557 (11th Cir. 1990)) (internal quotation marks omitted). “A defendant may be found guilty of conspiracy if the evidence demonstrates he knew the ‘essential objective’ of the conspiracy, even if he did not know all its details or played only a minor role in the overall scheme.” Id. at 1195-96 (quoting Guerra, 293 F.3d at 1285) (internal quotation marks omitted). Likewise, “[t]he government need not show ‘each defendant had direct contact with each of the other alleged co-conspirators.’” Id.

Here, the evidence adduced at trial is sufficient to satisfy the deferential Rule 29 standard as to each defendant charged in Count One of the Indictment. Indeed, both direct and circumstantial evidence, in the form of witness testimony, documentary exhibits, and recorded conversations, establishes the defendants’ roles in the overarching conspiracy. As described in the Indictment and further illustrated at trial, the purpose of the conspiracy was threefold. First, co-conspirators strove to ensure the passage of pro-gambling legislation favorable to the interests of gambling-facility operators. Second, members and staff of the Alabama State legislature participated in the conspiracy in order to enrich themselves through the acceptance of illicit payments and campaign contributions, and offers of payments and campaign contributions with the intent of being influenced or rewarded for supporting the interests of gambling-facility operators with respect to pro-gambling legislation. Third, lobbyists joined the conspiracy in order to assist gambling-facility operators by corruptly providing and offering to provide things of value to members of the Alabama State legislature.<sup>1</sup>

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<sup>1</sup> The evidence referenced herein is not exhaustive, and the United States anticipates providing supplemental argument at the Rule 29 conference based on any submissions from the defendants, as well as additional evidence—admitted both previous and subsequent to the government’s submission.

## II. Summary of the Evidence

### A. Defendant McGregor

The evidence admitted at trial establishes that defendant McGregor was not only a co-conspirator, but the conspiracy's kingpin.<sup>2</sup> Evidence shows that defendant McGregor believed that anti-gambling political efforts threatened his significant investment in Victoryland. Driven by this financial desperation, McGregor believed that his very "survival" depended on the legalization of electronic bingo in the State of Alabama. See, e.g., Ex. J-140 (referring to the 2010 pro-gambling legislation as a "survival bill"). Accordingly, he conspired with the other defendants to buy the 21 votes necessary for the passage of Senate Bill 380, which would have put electronic bingo, Victoryland's financial mainstay, one step closer to legalization.

To that end, defendant McGregor guided Ronnie Gilley's decisions regarding which Alabama State legislators to bribe, as well as how best to approach the legislators to ensure their involvement in the conspiracy. Defendant McGregor, who had invested a significant amount of money in Gilley's Country Crossing establishment, provided a \$5 million loan to Gilley "to pass the legislation and whatever we needed to do to get the legislation passed." 6/24/2011 Trial Tr. at 43.<sup>3</sup>

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<sup>2</sup> Because he was the central figure in the conspiracy, additional evidence supporting defendant McGregor's role as a co-conspirator appears in the analysis regarding the other defendants.

<sup>3</sup> Many of the daily transcripts have not been completed. As a result, the United States has created paginated versions of the rough transcripts provided in real time to the parties. For the Court's convenience, the government will submit to chambers and all defendants a copy of the paginated versions.

To that end, it was defendant McGregor who initially urged Mr. Gilley to reach out to Senator Scott Beason in February 2010 in order to buy the Senator's vote. 6/24/2011 Trial J 174, June 24, 2011, rough transcript at 90-93 (discussing Ex. J-174). Gilley consulted with defendant McGregor regarding the decision to secure Beason's vote for \$500,000, 6/24/2011 Trial Tr. at 71, 81, and after consulting with defendant McGregor, raised the amount to \$ 1,000,000. 6/24/2011 Trial Tr. at 82.

Likewise, after Mr. Gilley argued with Representative Scott Beason during a dinner at Garrett's Restaurant defendant McGregor directed Mr. Gilley to take a conciliatory approach to Representative Lewis because "we may need Lewis later." 6/24/2011 Trial Tr. at 61. Furthermore, during a private meeting between defendant McGregor, Mr. Gilley, and Senator Beason on February 18, 2010, the co-conspirators emphasized the considerable support that they would provide to the Senator if he agreed to vote for the passage of Senate Bill 380. Id. at 82. It was also clear that at least one co-conspirator (defendant Smith) viewed defendant McGregor as the conspiracy's dominant member. Notably, defendant Smith expressed her desire to deal with defendant McGregor, rather than Mr. Gilley, for reassurances regarding bribes to be paid to Senator Beason because of concerns about Mr. Gilley's financial solvency. 6/24/2011 Trial Tr. at 74-75.

Moreover, defendant McGregor's leadership in the conspiracy was not limited to efforts to bribe Beason and Lewis. Defendant McGregor and Mr. Gilley discussed offering things-of-value to additional legislators, including defendant Preuitt and former Alabama State Senator Wendell Mitchell, in exchange for votes to pass Senate Bill 380. 6/27/2011 Trial Tr. at 3-4. Defendant McGregor also undertook efforts involving buying the votes of defendant Means, id.

at 19, and defendant Ross, id. at 28-29. Furthermore, defendant McGregor single-handedly paid defendant Crosby, a senior analyst with the Legislative Reference Service (“LRS”), \$3,000 per month over at least a two-year period in exchange for the ability to shape the wording of gambling legislation.

In sum, substantial evidence strongly supports defendant McGregor’s guilt for the conspiracy charged in Count One of the Indictment. He was no mere co-conspirator, but the very hub at the center of the scheme to buy legislative votes that is the Indictment’s core.

B. Defendant Coker

During the 2009 and 2010 legislative sessions, defendant Coker, as one of defendant McGregor’s primary lobbyists, played a central role in the conspiracy to secure votes in favor of pro-gambling legislation. In 2009, when defendant Ross introduced the Sweet Home Alabama pro-gambling legislation in the Alabama Senate, defendant Coker attended meetings with cooperating defendant Jarrod Massey to discuss strategy for securing votes in support of the bill. 7/7/2011 Trial Tr. at 176. Later, in 2010, defendant Coker met with Massey to discuss strategy and count votes in favor of SB380 on close to ten different occasions. 7/8/2011 Trial Tr. at 67.

Indeed, after the BIR vote on SB380 failed on March 3, 2010, defendant Coker began coordinating the lobbying effort in support of the legislation. Id. at 68. He was Massey’s “chief point of contact,” and Massey took direction from defendant Coker regarding lobbying efforts. Id. at 69.

Defendant Coker was instrumental in securing defendant Preuitt’s vote, which was critical to passing SB380 in the Alabama Senate. According to Massey, although he worked closely with defendants Walker and Smith, as well as Jennifer Pouncy and Gilley, to secure



defendant Preuitt's vote, Id. at 176, defendant Coker spearheaded the effort. Id. at 178.<sup>4</sup> To that end, on March 8, 2010, defendant Coker told Massey that defendant Preuitt was "in play." Id. at 214; see also Ex. J-604. Later, on the day of the vote, March 30, 2010, defendant Coker, who had an "unbelievably solid relationship" with defendant Preuitt, 7/8/2011 Trial Tr. at 215, told Massey that he (Coker) had confirmed the illicit commitments Massey, defendant Walker, and Gilley made to defendant Preuitt. Id. at 178. Recorded conversations confirm that defendant Coker visited defendant Preuitt in Talladega the day before on March 29, 2010. See, e.g., Ex. J-88. In a recorded conversation with defendant McGregor, defendant Coker solidified his conspiratorial involvement, telling defendant McGregor that Gilley and his camp put the "icoin' on the cake" with respect to defendant Preuitt. Ex. J-150.

Defendant Coker also played a central role in securing defendant Means's vote in favor of SB380. Pouncy testified that Means told her defendant Coker was "putting a deal together for him for the rest of tracks." 7/9/2011 Trial Tr. at 57. Pouncy understood defendant Means's statement to mean that defendant Coker was securing additional money from other gambling operators for defendant Means. Id. at 58. Later, on March 29, 2010, the same day that he visited defendant Preuitt to solidify his illicit commitments, defendant Coker also visited defendant Means in Gadsden, his hometown.

C. Defendant Geddie

Evidence admitted at trial also shows that defendant Geddie, a lobbyist employed by defendant McGregor, participated in the conspiracy to buy the votes of Alabama State legislators

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<sup>4</sup> Massey testified that he had great respect for defendant Coker and, as a result, was careful to make sure that defendant Coker knew exactly what he and defendant Gilley were doing. 7/8/2011 Trial Tr. at 213.

and effect the passage of pro-gambling legislation by serving as defendant McGregor's "bag man" and financier. That is, he knowingly delivered illicit payments on defendant McGregor's behalf, and managed the funds used to make the payments through political action committees ("PACs").

Defendant Geddie served as one of two principals with Fine and Geddie Associates ("Fine and Geddie"), a governmental affairs lobbying firm. Defendant McGregor was one of the firm's clients. Transcript Vol. 7 at 121. In February 2010, defendant McGregor attempted to contact Representative Mask by telephone, leaving a telephone message. Ex. J-003. When Mask returned defendant McGregor's call, defendant McGregor promised him significant campaign help, explicitly connecting campaign contributions to the need for Mask's vote on the pro-gambling legislation. Ex J-004. During the call, Representative Mask mentioned to defendant McGregor that a fundraiser was being held for Mask that evening. Id.

Later, defendant McGregor called defendant Geddie and told him about Representative Mask's fundraiser. 6/29/2011 Trial Tr. at 164-66; Ex. J-005. At the fundraiser, defendant Geddie delivered two checks, each in the amount of \$2,500, made out to Representative Mask's campaign. 6/16/2011 Trial Tr. at 20-21. The checks were written from two accounts maintained on behalf of PACs operated by Fine and Geddie. In their subsequent call, defendant McGregor confirmed for Mask that he told defendant Geddie what to do, and defendant Geddie followed his instructions. Ex. J-005. However, in contribution ledgers maintained by Fine and Geddie, defendant Geddie subsequently instructed an employee, Cheryl Farrow, to alter the contributions to Mask that previously were attributed to defendant McGregor so that the ledgers reflected other lobbying clients as the source of the funds. Effectively, then, defendant Geddie's actions served

to conceal the illicit contributions to Mask, initiated by defendant McGregor in an effort to purchase Mask's vote. Defendant Geddie's efforts to conceal the corrupt nature of the payment and, in turn, provides evidence of Geddie's and McGregor's criminal intent.

More generally, according to Massey, defendant Geddie was a primary lobbyist in the effort to secure votes in favor of pro-gambling legislation. Indeed, defendant Geddie was a member of the Sweet Home Alabama Coalition that supported the 2009 pro-gambling legislation, 7/7/2011 Trial Tr. at 177, and was responsible for securing votes in favor of SB380 in 2010 until the failure of the BIR on March 3, 2010, at which point defendant Coker took the lead. 7/8/2011 Trial Tr. at 68. During the pendency of SB380, Massey spoke with defendant Geddie on seven or eight occasions, *Id.* at 67, and relied on him for information about the bill. *Id.* at 70. Defendant Geddie's knowledge and approval of the illicit effort to pass the pro-gambling legislation was confirmed in a call with defendant McGregor regarding Representative David Grimes. During the call, defendant Geddie told defendant McGregor that the only reason people were supporting Grimes was because of "one fucking vote." Ex. J-169. In short, the evidence at trial, as with defendant Coker, establishes that defendant Geddie was a willing participant in the effort to secure passage of pro-gambling legislation through illicit means.

D. Defendant Preuitt

The evidence further establishes defendant Preuitt's willing participation in the conspiracy to commit bribery in an effort to effect the passage of the pro-gambling legislation. After defendant Preuitt voted against the BIR on an earlier version of SB380, the evidence shows that he held out for the entire month of March 2010 before committing to vote in favor of the bill—and only after securing offers of things of value from defendant McGregor, defendant

Walker, defendant Smith, and defendant Coker, as well as Pouncy, Gilley, and Massey. 7/8/2011 Trial Tr. at 176, 178, 180. Indeed, Massey testified that he specifically sought to change defendant Preuitt's view on SB380 through offers of things of value. 7/8/2011 Trial Tr. at 72.

Jennifer Pouncy testified that she was assigned by Massey to secure defendant Preuitt's and defendant Means's votes. 7/19/2011 Trial Tr. at 31. With respect to defendant Preuitt, Pouncy testified that she first approached defendant Preuitt with a monetary offer on March 3, 2010, after he voted against the BIR on SB380. Id. at 43. Specifically, Pouncy testified that she offered him \$2 million for his campaign, at the direction of Massey and Gilley. Id. at 41. Massey corroborated her testimony. 7/8/2011 Trial Tr. at 215. Three weeks later, on March 24, 2010, after Massey, Gilley, and defendant Walker had promised defendant Preuitt things of value, including significant campaign support (in the form of contributions and the appearance of prominent country music stars), defendant Preuitt specifically asked Pouncy if Gilley's and Massey's commitments would still be honored if SB380 did not pass in the Alabama House of Representatives. 7/19/2011 Trial Tr. at 55. Despite believing that she had just offered a bribe to defendant Preuitt, which he accepted, Pouncy confirmed that the commitments would be honored. Id. Indeed, Pouncy testified that she in fact conspired with defendant Preuitt to commit bribery. Id.

E. Defendant Means

Evidence adduced at trial in the form of witness testimony and wiretap recordings establishes that defendant Means worked in concert with defendant Preuitt to further the conspiracy to pass the pro-gambling legislation. Indeed, each defendant knew that their vote was critical to passing the bill, and they worked in tandem to seek the best possible deal.

To that end, Pouncy testified that on March 24, 2010—after she had confirmed to defendant Preuitt that Gilley’s and Massey’s bribes would be honored regardless of what happened in the House of Representatives—defendant Means asked Pouncy for \$100,000 in exchange for his vote in favor of SB380. 7/9/2011 Trial Tr. at 56. Pouncy relayed the demand to Massey, and he told Gilley that Means was shaking them down for his vote. 7/19/2011 Trial Tr. at 63. When Pouncy confirmed Gilley’s willingness to pay defendant Means, he (Means) confirmed their understanding and asked, “Are we talking about the same thing?” Id. at 66. Pouncy confirmed that they were. Id. As with defendant Preuitt, Pouncy also testified specifically that she conspired to commit bribery with defendant Means. Id. at 78.

Further, the evidence established that defendant Means’s willingness to be bribed in exchange for his vote on SB380 was not confined to Gilley, Massey, and Pouncy. Rather, in recorded conversations with defendant McGregor, defendant explicitly tied his vote on SB380 to the fact that he was “gonna need a lot of help” from McGregor and others to defeat the strong opponent defendant Means had in the 2010 election. Defendant McGregor confirmed in the same conversation that he would “support” defendant Means. Ex. J-146. In addition, Pouncy testified that Means told her defendant Coker was “putting a deal together for him for the rest of tracks.” 7/9 at 57. Pouncy understood defendant Means’s statement to mean that defendant Coker was securing additional money from other gambling operators for defendant Means. 7/9 at 58. Ultimately, defendant Means voted in favor of SB380, after securing these illicit commitments from defendant McGregor, as well as Pouncy, Gilley, and Massey, despite the fact that the final version of the bill did not provide for a bingo location in defendant Means’s district. 7/8 at 58.

Additional evidence establishes his collusion with defendant Preuitt. Indeed, it was only after Pouncy told defendant Preuitt that Gilley's commitments would be honored regardless of how the House of Representatives voted on the bill that defendant Means initiated the \$100,000 shakedown. And on a recorded conversation with defendant McGregor, defendant Means told defendant McGregor that he had spoken to defendant Preuitt about the vote and that they were trying to "stay together" on the issue. Ex. J-146. This admission provides significant proof of defendant Means's and defendant Preuitt's joint efforts to secure bribe payments in exchange for their critical votes on SB380.

F. Defendant Ross

The government's evidence also established Ross's willing participation in the conspiracy to pass pro-gambling legislation. Testimony from Pouncy, Gilley, and Massey makes clear that in the months and days leading up to a vote on SB380 defendant Ross actively solicited campaign contributions in connection with such legislation. Specifically, in November or December 2009 defendant Ross demanded campaign contributions from defendant Gilley and Jarrod Massey, through Jennifer Pouncy, claiming that he was not "feeling the love" after sponsoring pro-gambling legislation during the 2009 legislative session. 7/7/2011 Trial Tr. at 172; 7/19/2011 Trial Tr. at 17-19. Later, as the legislative session progressed, defendant Ross demanded additional campaign contributions in the amount of \$25,000 from Massey and Pouncy. 7/18/2011 Trial Tr. at 24. As late as the day of the vote on SB380, March 30, 2010, defendant Ross approached Pouncy yet again seeking additional contributions. Id. at 27-28. During her testimony, Pouncy confirmed her belief that she had conspired with defendant Ross to commit bribery. 7/19/2011 Trial Tr. at 78.

Nor were defendant Ross's solicitations confined to defendant Gilley, Massey, and Pouncy. Indeed, defendant Ross also sought campaign contributions from one of defendant McGregor's principal lobbyists, defendant Coker, and ultimately from defendant McGregor personally. In a conversation the day before the vote on SB380, defendant Ross allegedly asked defendant McGregor, "You feel like you got the twenty-one [votes] in the Senate?" Ex. J-159. Defendant McGregor responded that he was "cautiously optimistic." Later in the very same conversation, defendant Ross repeatedly solicited campaign contributions. Id.

And if the connection between defendant Ross's demand for contributions and the vote on SB380 were not sufficiently clear, in a conversation the next day—the day of the actual vote, March 30, 2010—defendant Ross again solicited contributions, stating "we're just getting down to the wire." Putting a fine point on this understanding, defendant Ross told defendant McGregor that "we know the window is closing on us fast and so I'm just trying to do everything I can to, uh, make sure I can raise [funds] . . . ." Ex. J-161. In response, defendant McGregor promised to help however he could. Id. As with defendants Preuitt and Means, the evidences establishes his willingness to participate in a conspiracy to commit bribery in an effort to secure the passage of pro-gambling legislation.

G. Defendant Smith

Trial testimony also established defendant Smith's membership in the conspiracy during the legislative sessions in both 2009 and 2010. Indeed, she was a key figure. Although defendant Smith previously opposed pro-gambling legislation, and, in fact, introduced an anti-gambling bill in 2008—that is, until Gilley began exchanging campaign contributions for her support of any legislation that would benefit Country Crossing. Specifically, in 2008, Gilley

funneled \$40,000 in conduit payments to defendant Smith's campaign at her direction. 6/24/2011 Trial Tr. at 20-21; Gov. Ex. 1002, 1005. Upon receiving the money from Gilley (through Massey), defendant Smith thanked Gilley and told him, "From here on you just tell me what you want and I'm yours." 6/23/2011 Trial Tr. at 66. Both Scott Beason and Benjamin Lewis testified that defendant Smith offered them bribes at Garrett's Restaurant in Montgomery, during a dinner with Gilley, Massey, and others. Beason testified, for example, that defendant Smith offered him several hundred thousand dollars in campaign contributions, through Gilley, if Beason voted for the Sweet Home Alabama bill introduced by defendant Ross. 7/8/2011 Trial Tr. at 46. According to Gilley, defendant Smith specifically asked him if he and defendant McGregor would pay Beason \$500,000 in campaign contributions in exchange for a vote on the 2009 legislation. 6/24/2011 Trial Tr. at 60. Lewis recalled a similar offer during his testimony.

After the 2009 legislation failed to gain traction, defendant Smith worked with Gilley, Massey, and other co-conspirators during the 2010 legislative session to secure passage of SB380. In exchange for her official actions, Gilley helped secure hundreds of thousands of dollars in direct and in-kind campaign contributions to defendant Smith's campaign beginning in December 2009. See, e.g., 6/24/2011 Trial Tr. at 72. In February 2010, she told Gilley that Beason was "back in play," and inquired whether Gilley and defendant McGregor were still willing to fund Beason's campaign because they had a "prime opportunity to obtain his vote." 6/24/2011 Trial Tr. at 66-67.

Defendant Smith's role also involved gathering the votes of other legislators. The evidence establishes that, in order to achieve the goal of the conspiracy, defendant Smith facilitated and made bribe offers to defendants Preuitt and Means, as well as then-Senator Steve



French. To that end, on March 2, 2010, defendant Smith and Massey met with defendant Preuitt in an unsuccessful effort to get him to vote for the BIR on SB380 the next day. 7/8/2011 Trial Tr. at 184. According to Massey, defendant Smith acted at the direction of Gilley and Massey. 7/8/2011 Trial Tr. at 109. Indeed, when defendant Preuitt spoke to Gilley and referenced commitments he received from defendant Coker and defendant Walker on March 31, 2011, he spoke to Gilley on defendant Smith's phone. In exchange for her behind the scenes efforts, Gilley testified that he agreed to funnel \$400,000 in campaign contributions to defendant Smith. Trial testimony from Gilley established that defendant Smith facilitated payment of half of the money, \$200,000, in four separate checks to four separate PACs. Moreover, defendant Walker and Massey discussed the remaining balance, although it was not provided. Finally, testimony from former Senator Steve French on July 22, 2011, provided additional evidence of defendant Smith's efforts to buy votes. At a dinner during the legislative session, defendant Smith explicitly offered campaign contributions in exchange for French's vote in favor of SB380. In short, the evidence establishes that throughout the life of the conspiracy, defendant Smith was beholden to defendant and was willing to sell her votes and seek the votes of other legislators.

H. Defendant Walker

Defendant Walker, Gilley's former spokesperson at Country Crossing, was also intimately involved in the corrupt efforts to passing pro-gambling legislation and specifically SB380. Indeed, beginning in early March 2010, defendant Walker willingly participated in the conspiracy to secure passage of pro-gambling legislation through bribery. According to Massey, who worked closely with defendant Walker during the legislative session, it was defendant Walker's idea to purchase a significant number of trucks from defendant Preuitt's dealership.

7/8/2011 Trial Tr. at 181, 198. Walker first brought up the idea on March 2, 2010, the day before the BIR vote on SB380. Id. at 188. Later, prior to the vote on SB380 on March 30, 2010, defendant Walker told Pouncy that they should try to buy defendant Preuitt's vote by purchasing vehicles from his dealership and conducting a poll for his campaign. 7/19/2011 Trial Tr. at 50. During her testimony, Pouncy also confirmed her belief that defendant Walker conspired with her to commit bribery. 7/19 at 78. As such, although defendant Walker did not play as central a role in the conspiracy, the evidence nonetheless establishes that he was more than willing to do whatever it took to pass SB380.

I. Defendant Crosby

Finally, the evidence established that defendant Crosby served as defendant McGregor's inside man. As an employee of the Alabama Legislative Reference Service, he performance an instrumental role in the conspiracy to effect the passage of SB380 through bribery. Defendant Crosby, who drafted SB380, consistently acted to benefit defendant McGregor by, among other official actions, crafting language in the bill to maximize defendant McGregor's profit (through the imposition of the lowest feasible tax rate) and making sure defendant McGregor was informed of all developments with the bill.

Defendant McGregor's influence over and collusion with defendant Crosby is born out on the recorded conversations between the two defendants, in which defendant Crosby repeatedly took direction from defendant McGregor, at times without the knowledge of the bill's sponsor, Senator Roger Bedford. Throughout the drafting process, the evidence established that defendant Crosby regularly forwarded updated versions of the bill before they were circulated to other individuals.

Critically, the evidence has established that throughout the fight over the gambling legislation—in 2009 and 2010—defendant Crosby was not a disinterested public servant. Rather, defendant McGregor paid him \$3,000 every month during the pendency of pro-gambling legislation in the Alabama Legislature, including SB380. Not surprisingly, defendant Crosby failed to report the illicit payments he accepted from defendant McGregor on mandatory statements of economic interest until after he was approached by law enforcement officials. Defendant Crosby was well aware of the financial importance of SB380 to his benefactor, defendant McGregor, and the bill's failure threatened to cut off his then-hidden stream of benefits. As a result, defendant Crosby, along with his co-conspirators, had a significant incentive to ensure the passage of SB380—the common goal.

### **III. Conclusion**

For the foregoing reasons, the evidence of each defendant's involvement in the charged conspiracy is sufficient to withstand the deferential Rule 29(a) standard.

Respectfully submitted,

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

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By:           /s/ Eric G. Olshan            
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CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2011, I filed the foregoing using the Court's CM/ECF system, which will provide notice to counsel of record.

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