

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

UNITED STATES OF AMERICA            )  
  )  
v.    )  
  )  
QUINTON T. ROSS, JR.                    )  
  )

CR. NO. 2:10cr186-MHT  
UNDER SEAL

**QUINTON T. ROSS, JR.'S RESPONSE TO THE  
GOVERNMENT'S PROPOSED FINDINGS REGARDING  
THE ALLEGED CONSPIRACY (COUNT ONE) AT THE END  
OF THE GOVERNMENT'S CASE-IN-CHIEF**

Quinton T. Ross, Jr., submits this response to the Government's proposed findings regarding the existence of an alleged conspiracy. At the end of the Government's case-in-chief, the evidence is *insufficient* (1) to support the existence of the single massive overarching conspiracy to corrupt the Alabama Legislature alleged in Count One; (2) to find that Senator Ross even knew of, much less willfully and voluntarily joined in, any such alleged overarching conspiracy; (3) to find that Senator Ross even knew of, much less willfully and voluntarily joined in, any smaller, even unconnected conspiracy beyond his own vote to illegally exchange votes in favor of SB380 for campaign contributions or other "things of value"; or (4) to find that Senator Ross even entered into an agreement, whether explicit or implied, to exchange his own vote in favor of SB380 for a campaign contribution or other "thing of value." Senator Ross accordingly is entitled to entry of a judgment of acquittal as to Count One of the indictment.

## I. Introduction: The Conspiracy Charge Against Senator Ross

Senator Ross is charged, along with all other defendants and one additional alleged co-conspirator, Lobbyist A or Jennifer Pouncy, in Count One's alleged conspiracy to commit federal programs bribery, in violation of 18 U.S.C. §371.

As it applies to Senator Ross, this case is a "pure" campaign contribution case. That is, the only conduct the indictment charges against Senator Ross is that he requested and accepted campaign contributions from persons said to have financial or other interests in the outcome of a legislative vote, i.e., the vote on SB380, or other asserted pro-gambling legislation.

Unlike some of the broader charges asserted against others here, Senator Ross is *not* accused of requesting, being offered, accepting, or agreeing to accept *anything other than* "pure" campaign contributions – no fundraising help, no campaign appearances by country music stars, no political polls, no media buys, no offers to pay money to any candidate opposing him to withdraw from the race, no promises of business patronage, no other "thing of value" or benefit of any kind. And, there is no evidence that Senator Ross received any "thing of value" or benefit of any kind other than campaign contributions.

The Government has asserted repeatedly that this is a "tapes case," relying heavily on consensual recordings made by individuals who were cooperating with the Government, and on recordings of communications (telephone calls and text messages) intercepted by wiretaps installed in response to three court orders authorizing electronic surveillance. Of the over twelve

thousand calls and text messages intercepted by those wiretaps, Senator Ross participated (as caller or as recipient of the call) in ten or fewer of those calls.

The Government has offered limited evidence of 1) a few conversations in which Senator Ross requested, or discussed a previous request for, campaign contributions from certain co-defendants, including Mr. McGregor; 2) certain campaign contributions Senator Ross received in late 2009 and 2010, including the dates, amounts, and sources of those contributions; 3) Senator Ross' vote in favor of SB380, a bill to submit to the Alabama electorate a proposed constitutional amendment to regulate and tax electronic bingo; and 4) circumstances that the Government contend show that Senator Ross voted for SB380 in exchange for certain campaign contributions from specified co-defendants.

## **II. Senator Ross Is Entitled to Judgment of Acquittal on Count One – Conspiracy to Commit Federal Programs Bribery (18 U.S.C. §371)**

### **A. Allegations**

Count One alleges that all defendants conspired “to commit federal programs bribery” in that (A) the defendants and others “corruptly gave, offered, and agreed to give money and other things of value to Alabama state legislators and legislative staff ... with the intent to influence and reward them in connection with pro-gambling legislation,” and correspondingly (B) “Alabama State legislators and legislative staff ... corruptly solicited, demanded, accepted and agreed to accept money and things of value from defendants and others, intending to be influenced and rewarded in connection with” such legislation.

(Indictment, para. 28). The alleged conspiracy started in or about February 2009, and continued through in or about August 2010. (*Id.*)

Purposes or objects alleged for the conspiracy were for (a) defendants McGregor and Gilley to provide “payments and campaign contributions,” (b) legislators, including Senator Ross, and staff to accept those “payments and campaign contributions,” and (c) the lobbyist defendants (and defendant Senator Smith) to assist McGregor and Gilley in making such “payments and campaign contributions” to legislators, including Senator Ross, in a way to conceal that McGregor and Gilley were the source, “in return for their favorable votes on and support of pro-gambling legislation.” (Para. 29-31).

#### **B. Applicable Law**

18 U.S.C. §371 provides: “If two or more persons conspire ... to commit any offense against the United States ... and one or more of such persons do any act to effect the object of the conspiracy, each [shall be guilty of an offense against the United States.]” The federal offense that the indictment charges all defendants with conspiring to commit is federal programs bribery, by agreeing to exchange campaign contributions or “other things of value” in return for favorable votes on “pro-gambling legislation.” The specific official act alleged on the part of Senator Ross is voting in favor of SB380; the Government accordingly is bound to that theory.

“A conspiracy is an agreement between two or more persons to accomplish an unlawful plan.” *United States v. Chandler*, 388 F.3d 796, 805 (11<sup>th</sup> Cir. 2004). “The essence of the conspiracy is this agreement to commit an

unlawful act.” *Id.* “It is essential that the object of the agreement must be illegal.” *United States v. Hansen*, 262 F.3d 1217, 1246 (11<sup>th</sup> Cir. 2001) (quotations omitted). Stated differently, the completed act that the agreement concerns must constitute a criminal offense. Here, Senator Ross contends that in order for his solicitation or receipt of campaign contributions to qualify as federal programs bribery, the Government must prove the existence of an explicit quid pro quo between Senator Ross’ receipt of such contributions and his vote in favor of SB380.

To obtain a conviction under 18 U.S.C. §371, the government must show: “(1) the existence of an agreement to achieve an unlawful objective; (2) the defendant's knowing and voluntary participation in the conspiracy; and (3) the commission of an overt act in furtherance of the conspiracy.” *Id.* (quotations omitted); *accord, e.g., United States v. Adkinson*, 158 F.3d 1147, 1153 (11<sup>th</sup> Cir. 1998). “The government must prove an agreement between at least two conspirators to pursue jointly an illegal objective. The government must also prove beyond a reasonable doubt that each defendant had a ‘deliberate, knowing, specific intent to join the conspiracy.’” *Adkinson*, 158 F.3d at 1153 (citations omitted).

Further, because the defendants in this indictment are people who normally communicate with each other in the furtherance of their entirely legal endeavors and occupations, there is a danger that the jury will infer guilt by association – especially in light of the guilty pleas that have already been entered in this case. But, mere presence, guilty knowledge, and even sympathetic

observation have all been held by the Eleventh Circuit to fall short of the proof required to support a conspiracy conviction. A showing of knowing participation is required. *E.g.*, *United States v. Lyons*, 53 F.3d 1198, 1201 (11<sup>th</sup> Cir. 1995); *United States v. Sullivan*, 763 F.2d 1215, 1218 (11<sup>th</sup> Cir. 1985).

Accordingly, Senator Ross can be found guilty of the charged conspiracy only if the Government proves all of the following facts beyond a reasonable doubt:

(1) (a) two or more of the alleged conspirators in some way (b) agreed to try to accomplish (c) a shared and (d) unlawful plan to commit federal programs bribery, specifically involving as to Senator Ross an explicit promise by Senator Ross to vote for SB380 in return for his receipt of specific campaign contributions from identified co-defendants who would benefit financially from passage of the legislation, both as specified in the indictment;

(2) (a) Senator Ross (b) knew (c) the unlawful purpose of the plan and (d) willfully (e) joined in it;

(3) (a) during the conspiracy, (b) one of the conspirators (c) knowingly engaged (d) in at least one overt act as described in the indictment; and

(4) (a) the overt act was committed at or about the time alleged and (b) with the purpose of carrying out or accomplishing (c) some object of the conspiracy.

### **C. Grounds for Acquittal as to the Charged Conspiracy**

The Government has failed to offer evidence sufficient to allow the jury to find Senator Ross guilty beyond a reasonable doubt, and Senator Ross is therefore entitled to entry of a judgment of acquittal, as to the charged conspiracy for each of the following reasons:

(1) The evidence is insufficient to allow the jury to find beyond a reasonable doubt that Senator Ross entered into an agreement with anyone to

do anything – much less an agreement to commit an unlawful act, or an agreement to pursue a lawful end by illegal means -- with respect to Senate Bill 380 (“SB380”);

(2) The evidence is insufficient to allow the jury to find beyond a reasonable doubt that Senator Ross knew of any agreement or plan to commit federal programs bribery, and specifically any agreement or plan to exchange a vote in favor of SB380 for campaign contributions or other thing(s) of value;

(3) The evidence is insufficient to allow the jury to find beyond a reasonable doubt that Senator Ross knew of any overarching agreement or plan (as charged) to commit federal programs bribery, and specifically any agreement or plan to explicitly exchange sufficient votes for campaign contributions as to ensure passage of SB380 and its companion bill in the Alabama House;

(4) The evidence is insufficient to allow the jury to find beyond a reasonable doubt that Senator Ross knew of any agreement to enter into an explicit quid pro quo involving the receipt of campaign contributions and the specific official act of voting in favor of SB380, that is, the contributions are made in return for an explicit promise or undertaking by the official to vote for SB380, such that the recipient is asserting that his or her official act of voting for SB380 will be controlled by the terms of his or her promise or undertaking;

(5) The evidence is insufficient to allow the jury to find beyond a reasonable doubt that Senator Ross joined any agreement or plan to commit federal programs bribery, specifically to explicitly exchange a vote in favor of SB380 for campaign contributions or other thing(s) of value;

(6) The evidence is insufficient to allow the jury to find beyond a reasonable doubt that Senator Ross joined any overarching agreement or plan (as charged) to commit federal programs bribery, and specifically any agreement or plan to explicitly exchange sufficient votes for campaign contributions as to ensure passage of SB380 and its companion bill in the Alabama House;

(7) The evidence is insufficient to allow the jury to find beyond a reasonable doubt that any joinder by Senator Ross in any such agreement or plan to exchange a vote in favor of SB380 for campaign contributions or other thing(s) of value was knowing, willful, and voluntary;

(8) The evidence is insufficient to allow the jury to find beyond a reasonable doubt that Senator Ross or any alleged conspirator with Senator Ross committed an overt act with the purpose of carrying out one or more of the objects of the overarching charged conspiracy to corrupt the Alabama Legislature by exchanging sufficient votes for campaign contributions as to ensure passage of SB380 and its companion bill in the Alabama House;

(9) The evidence is insufficient to allow the jury to find beyond a reasonable doubt that Senator Ross was enriched or received any personal benefit from any campaign contribution, or that he received any benefit or “thing of value” other than campaign contributions.

**D. Failure to Prove Senator Ross Joined Either the Overarching Alleged Conspiracy or Any Potential Smaller Conspiracy**

In Count One, the Government claims a single, massive conspiracy in which all alleged conspirators, named and unnamed, conspired together to corrupt the Alabama Legislature. The evidence is insufficient to allow the jury to

find such a single overarching conspiracy existed. If the Court finds any conspiracy exists, the allegations of the indictment and the evidence in the Government's case-in-chief suggest at most smaller distinct, even unrelated or unconnected conspiracies in which certain groupings of co-conspirators are alleged to have conspired together to corrupt certain individual Alabama legislators and staff, or no conspiracies at all. Even so, the Government's evidence is insufficient for the jury to find that Senator Ross is part of even a smaller, unconnected conspiracy.

The gravamen, and an essential element, of any conspiracy is an agreement to commit an unlawful act. *E.g. Chandler*, 388 F.3d at 805-06. "[T]he government must prove the existence of an **agreement** to achieve an unlawful objective and the defendant's **knowing** participation in that agreement." *Id.* at 806 (emphasis in original). "[P]roof of **knowledge** of the overall scheme is critical to a finding of conspiratorial intent." *Id.* (emphasis in original). "Proof of a true agreement is the only way to prevent individuals who are not actually members of the group from being swept into the conspiratorial net." *Id.*

To show a single, overarching conspiracy, as opposed to several, similar, even broadly related conspiracies, there must be proof that the alleged conspirators shared the overarching common goal. And, with a wheel conspiracy as alleged here (where not every co-conspirator is alleged to have worked with all their co-conspirators), *see id.* at 807 (discussing the differences between "hub-and-spoke" and "rimless wheel" conspiracies), there must be proof that each individual defendant knew of the existence of other participants (besides

himself and the “hub” or key central conspirator(s)) in such an overall scheme, and that Senator Ross knew of and agreed to join in that scheme. *Id.*

The Government has failed to offer evidence sufficient to allow the jury to find Senator Ross joined in any smaller conspiracy, and Senator Ross is therefore entitled to entry of a judgment of acquittal as to any conspiracy, for each of the following reasons:

(1) The evidence is insufficient to allow the jury to find beyond a reasonable doubt that Senator Ross knew of any alleged agreement to illegally exchange a vote in favor of SB380 for a campaign contribution or other “thing of value” that involved any other member of the Alabama Senate specifically or the Alabama Legislature generally;

(2) The evidence is insufficient to allow the jury to find beyond a reasonable doubt that Senator Ross knew of any alleged agreement or plan to expressly exchange or promise to exchange a vote in favor of SB380 for a campaign contribution or other “thing of value” that involved any other member of the Alabama Senate specifically or the Alabama Legislature generally;

(3) The evidence is insufficient to allow the jury to find beyond a reasonable doubt that Senator Ross participated in any alleged agreement to illegally exchange a vote in favor of SB380 for a campaign contribution or other “thing of value” that involved any other member of the Alabama Senate specifically or the Alabama Legislature generally;

(4) The evidence is insufficient to allow the jury to find beyond a reasonable doubt that Senator Ross participated in any alleged agreement to

expressly exchange or promise to exchange a vote in favor of SB380 for a campaign contribution or other “thing of value” that involved any other member of the Alabama Senate specifically or the Alabama Legislature generally;

(5) The evidence is insufficient to allow the jury to find beyond a reasonable doubt that Senator Ross knowingly participated in any alleged agreement to illegally exchange a vote in favor of SB380 for a campaign contribution or other “thing of value” that involved any other member of the Alabama Senate specifically or the Alabama Legislature generally;

(6) The evidence is insufficient to allow the jury to find beyond a reasonable doubt that Senator Ross knowingly participated in any alleged agreement to expressly exchange a vote or promise to exchange a vote in favor of SB380 for a campaign contribution or other “thing of value” that involved any other member of the Alabama Senate specifically or the Alabama Legislature generally;

(7) The evidence is insufficient to allow the jury to find beyond a reasonable doubt that Senator Ross agreed to illegally exchange his own vote in favor of SB380 for a campaign contribution or other “thing of value” from either Milton McGregor, Ronnie Gilley, or any person working on behalf of either;

(8) The evidence is insufficient to allow the jury to find beyond a reasonable doubt that Senator Ross explicitly exchanged or promised to exchange his own vote in favor of SB380 for a campaign contribution or other “thing of value” from either Milton McGregor, Ronnie Gilley, or any person working on behalf of either.

### **Conclusion**

The Government's evidence at the end of its case-in-chief is insufficient to support finding the existence of any conspiracy in which Quinton Ross willfully and knowingly joined and participated. Senator Ross accordingly is entitled to entry of a judgment of acquittal as to Count One of the indictment.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 26th day of July, 2011, I have filed the foregoing with the Clerk of the Court by hand-delivery, and an electronic copy of the same has been sent by e-mail to the following:

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/s/ Mark Englehart  
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