

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA

v

2:19-cr-000171

ROBERT JAMES McCABE, et al

Defendant,

MOTION TO STRIKE CAMPAIGN CONTRIBUTIONS

COMES NOW, the Defendant, by Counsel, and moves the Court to strike from the indictment and from the use at trial any campaign contributions given to the defendant by coconspirator #1 and codefendant Gerard Boyle as such use is a violation of the First Amendment to the United States Constitution.

The defendant, a former Sheriff of the City of Norfolk, received campaign contributions from multiple sources, including coconspirator #1 and the codefendant, Gerard Boyle. The allegations in the indictment are that these contributions were payment of things of value given to the defendant as part of a quid pro quo.

The United States Supreme Court in *McCormick v. U.S.*, 500 U.S. 257, 111, S.Ct. 1807, 114 L.Ed. 2d 303 (1991), held that in order to prove that a political contribution is the subject of a bribe, the government must prove an explicit quid pro quo. Multiple other circuits have relied upon *McCormick* in excluding campaign contributions from consideration as a bribe. See *United States v. Siegelman*, 640 F3d 1159 (11th Cir. 2011); *United States v. Menendez*, 291 F. Supp. 3rd 606

(D.N.J.) (2018). The receipt of such contributions can be the subject of the bribe, but only if those payments are made in return for an explicit promise or undertaking.

In *Menendez*, the government relied on the chronology of the events and the temporal relationship between the political contributions and the official acts. In addition, the government argued that the explicit quid pro quo was demonstrated through context, chronology, escalation, concealment, and was a pattern of corrupt activity.

The Court held that the First Amendment issues are implicated when the thing of value is a political contribution. Therefore a close temporal relationship between political contributions and favorable action without more is not sufficient to prove the existence of an explicit quid pro quo.

The indictment in this case, paragraph 16, alleges that Conspirator #1 understood that McCabe would not use his company if such personal benefits were not provided. An understanding is not the explicit quid pro quo that the Courts require in the context of campaign contributions. By its very language, the indictment precludes the findings of an explicit quid pro quo. As such, the giving of campaign contributions by Conspirator #1 must be excluded.

Likewise with respect to codefendant Boyle there is no explicit quid pro quo alleged with respect to any official acts related to campaign contributions. As the indictment alleges, acts were performed on an “as needed” basis. The absence of any allegations of any explicit quid pro quo prevents the government from introducing evidence of campaign contributions with respect to codefendant Boyle

Wherefore, for all the above reasons, your defendant requests entry of an order consistent with this motion.

Respectfully submitted,

Robert James McCabe

By Counsel

_____/s/_____

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of February, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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