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

UNITED STAES OF AMERICA

 \mathbf{V}

Case No.: 2:19-cr-000171

ROBERT JAMES McCABE, et al

Defendant,

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS COUNT 11

The defendant, having filed a motion to dismiss Count 11 of the indictment, now files the memorandum in support of such motion.

In order to prove a conspiracy to commit money laundering in violation of 18 U.S.C. §1956 (H) the government must prove, amongst other elements, beyond a reasonable doubt the following. That the property involved in the transaction represented the proceeds from some form of activity that is a felony. See 18 U.S. Code § 1956. (C) (I).

- 1. The gravaman of the offense is the financial transaction representing the proceeds of a specifically unlawful activity. While in this case there may be a financial transaction that being the \$12,500.00 check, there is no evidence or allegation in the indictment as to the illegal nature of the source of the funds used by Mr. Boyle to satisfy the check.
- 2. As the indictment sets forth, Mr. Boyle was CEO of a major company providing medical services to jails and institutions across the country. Boyle had streams of income from multiple sources, out side from the contract with the City of Norfolk.
- 3. The indictment does not allege, nor can the evidence establish, that the source of the funds for the \$12,5000.00 check came from the contract with the City of Norfolk. Since the funds are not from a specified unlawful activity, the count cannot stand as that is an element of the offense.
- 4. In addition, the \$12,500.00 check represents a campaign contribution which requires an explicit <u>quid pro quo</u> as addressed in other motions.

WHEREFORE, for these reasons and any others that may be developed at a hearing on this motion, Mr. McCabe requests the Honorable Court to dismiss Count 11 of the indictment.

Respectfully submitted,

Robert James McCabe By Counsel

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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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