IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 1:11-CR-161-1-CCE
	)	
JOHNNY REID EDWARDS	)	

GOVERNMENT'S MEMORANDUM IN SUPPORT OF
REQUEST TO CHARGE NO. 24

The United States of America, through the undersigned attorneys, respectfully moves the Court to include in its instructions to the jury the following statement (contained in the Government's Request to Charge No. 24): "Because people rarely act with a single purpose in mind, it is not necessary that you find that a gift, purchase, or payment was made solely for the purpose of influencing a federal election. It is sufficient under the law if you find that the gift, purchase, or payment was made for, among other purposes, the purpose of influencing any election for federal office." This instruction is supported by the language and purpose of the Federal Campaign Election Act ("Election Act") and applicable case law. An interpretation or instruction requiring that influencing an election for Federal office be the sole purpose of a payment in order for it to be a contribution would permit easy circumvention of the statute and defeat the core purpose of the Election Act.

I. Background

The single purpose argument, as related to the wording of the Election Act, was raised with the Court in the pre-trial motions practice last October. Edwards argued in a brief in support of one of his motions to dismiss that the Election Act's contribution limits apply only to payments that are made for the sole purpose of influencing an election for Federal office. (Dkt No. 30 at 18-21). In its response, the Government argued that the statutory language, applicable case law, and the judicially recognized purpose of the Election Act utterly undercut this view. (Dkt. No. 59 at 41-44).

At the hearing on Edwards' motions to dismiss on October 27, 2011, the Court ruled orally and deferred this issue until after the evidence had been presented at trial. (Oct. 27, 2011, Hearing Tr. at 4).

Nevertheless, and without a clear directive from this Court, Edwards' counsel repeated throughout her opening statement that a payment is not a contribution under the Election Act unless it is made for the sole purpose of influencing an election.[1]

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[1] The transcript will not reflect the emphasis counsel placed on the word "the" in her presentation, but is was clear throughout. For example, defense counsel told the jury, "To be a campaign contribution—we've already talked about this—the money has to be for the purpose of influencing the election. That's what the statute says, ***the*** purpose. What Judge Eagles read to you, ***the*** purpose. Not a purpose, ***the*** purpose." (Apr. 23, 2012, Trial Tr. at 27, lines 11-15). Later during opening statement, defense counsel commented, "Judge Eagles will talk to you about the meaning of 'campaign contribution.' One part of that definition is that for the money to be for a contribution, it has to be for the purpose of influencing the election. The law uses that phrase 'for the purpose of influencing the election.' It does not say 'a' purpose. It does not say 'one of a

II. Argument[2]

"As in all cases of statutory interpretation, our inquiry begins with the text of the statute." *Chesapeake Branch Water Co. v. Bd. of Commissioners of Calvert County*, 401 F.3d 274, 279 (4th Cir. 2005). The core provisions of the Election Act are at the center of this case. In pertinent part, the Election Act defines "contribution" as follows:

> The term "contribution" includes–
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> any gift, subscription, loan, advance, or deposit of money or anything of value made by any person ***for the purpose of influencing any election for Federal office***.

2 U.S.C. § 431(8)(A) (emphasis added).

Likewise, "expenditure" is also a defined term in the Election Act and includes, in pertinent part,

> any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person ***for the purpose of influencing any election for Federal office***.

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number of' purposes. It says the money has to be for 'the' purpose." (Apr. 23, 2012, Trial Tr. at 47, lines 3-10); *see also* Apr. 23, 2012, Trial Tr. at 48, lines 19-20 ("To be a crime, [the money] has to be for 'the' purpose of influencing the election, and the evidence shows otherwise.").

[2] In its response to Edwards' pre-trial motion to dismiss, the Government spent considerable time addressing the sole purpose argument. The Government will not repeat all of those arguments here, but respectfully refers the Court to pages 41 through 44 of its response brief (Dkt. No. 59).

2 U.S.C. §431(9)(A) (emphasis added).

As the Court knows, under the Election Act, expenditures that are coordinated with a candidate are considered contributions:

> For purposes of this subsection– . . .
>
> expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered a contribution to such a candidate.

2 U.S.C. §441a(a)(7)(B)(I).[3]

As emphasized above, these definitions contain the simple and unremarkable phrase "for the purpose of influencing any election for federal office." And it is this phrase upon which the defense made its stand in opening statements. However, the defendant essentially seeks to add the word "sole" to the language of the statute.

Efforts to add exclusivity to the phrase "for the purpose of" contained in criminal statutes have been rejected by appellate courts. "[I]n ordinary usage, doing X 'for the purpose of' Y does not imply that Y is the exclusive purpose." *United States v. Hughes*, 282 F.3d 1228, 1231 (9th Cir. 2002) (holding that the phrase "for the purpose of" in U.S.S.G. § 2G1.1(c)(1) does not mean "for the sole purpose of").[4] Indeed, the

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[3] These expenditures are commonly referred to in shorthand as "coordinated expenditures," even though the word "coordinated" does not appear in the definition.

[4] The provision at issue there read in pertinent part,"If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a person less than 18 years of age to engage in sexually explicit conduct for the purpose of producing a visual

alternative wording – "for a purpose of" – "does violence to ordinary usage." *United States v. Banks*, 514 F.3d 959, 966 (9th Cir. 2008) (holding that "for the purpose of" in 18 U.S.C. § 1959(a) does not mean "for the sole purpose of").

The Fourth Circuit and several of its sister circuits have reached the same conclusion in interpreting the phrase "for the purpose of". Specifically, the violent crimes in aid of racketeering ("VICAR") statute, 18 U.S.C. § 1959(a), makes it illegal to commit certain acts "for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity . . . ." In *United States v. Fiel*, 35 F.3d 997, 1005 (4th Cir. 1994), the court concluded that "for the purpose of" in the VICAR statute "should be accorded its ordinary meaning," and did not require the government to prove that gaining membership in a group be the sole or primary reason for committing the crime.

In support of this holding, the court relied on the Second Circuit's decision in *United States v. Concepcion*, 983 F.2d 369, 381 (2d Cir. 1992), which "reject[ed] any suggestion that the 'for the purpose of' element requires the government to prove that maintaining or increasing position in the RICO enterprise was the defendant's sole or principal motive."

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depiction of such conduct, apply § 2G2.1 . . . ." U.S.S.G. § 2G.1(c)(1) (2002 ed.).

Other circuits agree. *See Bank*s, 514 F.3d at 966 ("[I]f Congress had meant for VICAR to apply only to defendants acting solely (or primarily) for the purpose of entering a gang or maintaining or enhancing their position within it, it could easily—and much more naturally—have adopted language referring to 'the sole (or exclusive, or primary) purpose' of the defendant."); *United States v. Smith*, 413 F.3d 1253, 1277 (10th Cir. 2005) ("The Government need not establish that Mr. Smith's sole or principal motive for conspiring to murder Mr. Miera was to maintain or increase his position in KMD in order for it to convict Mr. Smith under § 1959(a)."") (overruled on other grounds); *United States v. Tse*, 135 F.3d 200, 206 (1st Cir. 1998) (citing *Fiel* to support the conclusion that VICAR "does not require the government to prove that increasing or maintaining position in an enterprise be the sole or principal motive in committing a crime"); *United States v. Wilson*, 116 F.3d 1066, 1078 (5th Cir.1997) ("Self-promotion need not be the defendant's sole or primary concern [for committing the crime]; rather, Congress intended to proscribe violent acts committed as an integral aspect of membership in such enterprises.") (internal quotation marks omitted) (overruled on other grounds).

Likewise, under the mail fraud and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, a defendant must use the mail or wires "for the purpose of executing such scheme or artifice," but no court has held that the defendant must act with the sole purpose of furthering an unlawful scheme. *See, e.g., Schmuck v. United States*, 489 U.S. 705, 712 (1989) (holding that a mailing which is "'incident to the essential part of the scheme'" is

sent for the purpose of executing that scheme) (quoting *Perira v. United States*, 347 U.S. 1, 8 (1954)); *United States v. Hasson*, 333 F.3d 1264, 1273 (11th Cir. 2003) ("An interstate wire transmission is 'for the purpose of executing' the scheme to defraud if it is 'incident to an essential part of the scheme' or 'a step in the plot.'") (quoting *Schmuck*, 489 U.S. at 710-711); *United States v. French*, 88 F.3d 686, 688 (8th Cir. 1996) (noting that "it is not necessary that the schemes contemplate the use of the mails as an essential element").[5]

The plain meaning of the statute is bolstered by the regulations propounded by the Federal Election Commission. Title 11, Section 113.1(g)(6) of the Code of Federal Regulations provides that third party payment of expenses for a candidate's personal use are contributions under the Election Act "unless the payment would have been made

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[5] Analogously, courts have interpreted a variety of statutes to reach defendants who act with multiple purposes where only one of their purposes is identified as unlawful in the applicable statute. *See, e.g., United States v. Woodward*, 149 F.3d 46 (1st Cir. 1998) ("[A] defendant may be prosecuted for deprivation of honest services if he has a dual intent, i.e., if he is found to have intended both a lawful and an unlawful purpose to some degree."); *United States v. Coyne*, 4 F.3d 100, 113 (2d Cir. 1993) (concluding that a "valid purpose that partially motivates a transaction does not insulate participants in an unlawful transaction from criminal liability"); *United States v. McClatchey*, 217 F.3d 823, 835 (10th Cir. 2000) (Medicare fraud case involving payment to doctors to induce future business; payment is illegal so long as one purpose is to induce future business); *United States v. Davis*, 132 F.3d 1092, 1094 (5th Cir.1998) (same); *United States v. Kats*, 871 F.2d 105, 108 (9th Cir.1989) (same); *United States v. Gerber*, 760 F.2d 68, 72 (3d Cir. 1985) ("If the payments were intended to induce the physician to use [defendant's] services, the statute was violated, even if the payments were also intended to compensate for professional services.").

irrespective of the candidacy." Because Congress has expressly authorized the FEC to prescribe rules and regulations to carry out the provisions of the Election Act, 2 U.S.C. §§ 438(a)(8), such regulations are to be given "controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute." *Suisa v. Holder*, 609 F.3d 314, 319 (4th Cir. 2010) (citing *Chevron, U.S.A., Inc. v. Nat'l Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984)).

The plain language of the statute and this clear case law are also supported by common sense. If the Court were to accept Edwards' argument, no gift or expenditure could meet the definition of a contribution so long as the donor acted with more than one purpose. Yet donors routinely act with more than one purpose, such as to raise the donor's own profile, to ingratiate himself or herself with powerful figures, or to enhance business prospects or personal relationships with candidates. Making donations or expenditures with these purposes in mind does not undermine the donor's purpose of influencing an election, nor does it place those donations or coordinated expenditures outside the reach of the Election Act. To hold otherwise would undermine the core prohibitions of the Election Act.

III. Conclusion

For the foregoing reasons, the United States respectfully requests that, at the close of the evidence, the Court include the Government's Request to Charge No. 24 in its instructions to the jury.

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Respectfully submitted,

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Acting under authority
conferred by 28 U.S.C. § 515

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CERTIFICATE OF SERVICE

This is to certify that on May 10, 2012, I filed the foregoing document on the Court's CM/ECF system, which will transmit a copy to the following counsel of record in this case:

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