IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	No. 09 CR 002-2
v.	)	Judge Glen H. Davidson
	)	Magistrate Judge S. Allan Alexander
BOBBY B. DELAUGHTER,	)	
	)	
Defendant.	)	

DEFENDANT DELAUGHTER'S MOTION TO DISMISS
COUNT ONE FOR FAILURE TO CHARGE AN OFFENSE

Defendant **BOBBY B. DELAUGHTER**, by and through his attorneys, **THOMAS ANTHONY DURKIN**, **JOHN D. CLINE**, and **LAWRENCE L. LITTLE**, moves the Court for an Order dismissing Count One of the indictment for failure to charge an offense. Count One purports to charge a conspiracy to violate 18 U.S.C. § 666. The count fails to charge an offense because it omits the required exchange of an official action for a thing of value.[1]

BACKGROUND

Count One purports to charge a conspiracy to violate 18 U.S.C. § 666, captioned "[t]heft or bribery concerning programs receiving Federal funds." As relevant for purposes of this motion, Count One alleges that Judge DeLaughter "knowingly and willfully" conspired with Richard F. "Dickie" Scruggs, Joseph C. Langston, Timothy R. Balducci, Steven A. Patterson, Ed Peters, and unnamed others to "accept and agree to accept for himself and others, anything of value with the intent" that he "would be corruptly influenced and rewarded in connection with his handling of the *Wilson* case."

[1] We respectfully incorporate by reference in this motion Defendant DeLaughter's Motion to Dismiss Counts Two, Three, and Four for Failure to Charge an Offense, filed at the same time as this motion. That motion will be cited as "Counts 2-4 Memo."

Count One refers to two potential "things of value." First, it alleges that Langston paid Peters a total of $1 million for his alleged role in "corruptly influencing his very close friend" Judge DeLaughter. Indictment at 3, ¶ 9.b.; *id*. at 4, ¶ 9.i. But Count One does not allege that Peters passed any of this money to Judge DeLaughter, nor does it allege that Judge DeLaughter knew Peters had received the money. Thus, Count One does not charge that the $1 million that Langston paid Peters is a "thing of value" that Judge DeLaughter allegedly "accept[ed] and agree[d] to accept for himself and others."

Second, Count One charges that "[o]n or about March 29, 2006, in order to exploit Judge DeLaughter's aspirations to become a federal judge, RICHARD F. "DICKIE" SCRUGGS caused [Senator Trent Lott] to offer Judge DeLaughter consideration for appointment to a federal judgeship then open in the Southern District of Mississippi." Indictment at 4, ¶ 9.h. Count One does not allege that Senator Lott actually obtained a federal judgeship for Judge DeLaughter, or even that he used (or offered to use) his influence to *help* Judge DeLaughter obtain the judgeship. In fact, Senator Lott did *nothing* to advance Judge DeLaughter's aspiration to become a federal judge; he simply made a courtesy call to acknowledge Judge DeLaughter's interest in the position. And Senator Lott made that courtesy call, the evidence will show, in accordance with his usual practice, shortly after Judge DeLaughter had sent letters to him and to Senator Cochran (without any prompting by Scruggs or anyone associated with Scruggs) requesting consideration for an open judgeship.

As we demonstrate below, Count One does not sufficiently allege that Judge DeLaughter conspired to accept or agree to accept "anything of value" from Scruggs or the other alleged conspirators.

ARGUMENT

By its plain terms, § 666(a)(1)(B) requires (among other elements) that the defendant public official "accept[] or agree[] to accept, *anything of value* from any person, intending to be influenced or rewarded . . . ." 18 U.S.C. § 666(a)(1)(B) (emphasis added). The phrase "anything of value" encompasses "all transfers of personal property or *other valuable consideration* in exchange for the influence or reward." *Salinas v. United States*, 522 U.S. 52, 57 (1997) (emphasis added). Dictionary definitions of "value" include "a fair return or equivalent in goods, services, or money for something exchanged," and "the monetary worth of something." Merriam Webster's Online Dictionary (available online at http://www.merriam-webster.com/dictionary/value). If neither the recipient public official nor any other rational person would be willing to pay for what is offered--if, in the words of *Salinas*, neither the official nor anyone else considers what is offered to be "valuable consideration" for an official act--then the thing offered cannot be "anything of value" under § 666(a)(1)(B).

The only thing (tangible or intangible) that Count One alleges Judge DeLaughter accepted or agreed to accept is "consideration for appointment to a federal judgeship then open in the Southern District of Mississippi." Indictment at 4, ¶ 9.h. But *any* qualified attorney could obtain such "consideration for appointment" *for free*. The evidence will show that almost three weeks before Senator Lott's courtesy call, Judge DeLaughter had availed himself of that free "consideration for appointment" by sending his resume to Senators Lott and Cochran and expressing interest in the open judgeship. Absent an offer by Senator Lott to *assist* Judge DeLaughter in obtaining the judgeship--which Count One does not allege and the evidence will not show--the alleged March 29 offer of "consideration for appointment" had no "value."

Compare, e.g., United States v. Schwartz, 785 F.2d 673, 679-81 (9th Cir. 1986) ("thing of value" under 18 U.S.C. § 1954 includes "*assistance* in arranging the merger of [two union locals], as well as other services") (emphasis added).

We recognize that courts have, in a variety of contexts, interpreted the phrase "thing of value" broadly. *See, e.g., United States v. Marmolejo*, 89 F.3d 1185, 1192 (5th Cir. 1996) (citing cases), *aff'd on other grounds*, 522 U.S. 52 (1997). But we have found no case in any context in which an intangible "thing" that a person *had already obtained for free* was held to be a "thing of value," under § 666(a)(1)(B) or any other statute.

If the Court concludes that the phrase "anything of value" in § 666(a)(1)(B) includes intangible "consideration for appointment" to a position, where the recipient had already obtained that "consideration" for free, then the statute must be held void for vagueness as applied. *See, e.g., United States v. Williams*, 128 S. Ct. 1830, 1845 (2008); *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999) (plurality opinion). On this point, we respectfully incorporate the argument set out in Part V of the Count 2-4 Memo.

CONCLUSION

For the foregoing reasons, the Court should dismiss Count One for failure to charge an offense.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Thomas Anthony Durkin, Attorney at Law, hereby certifies that the foregoing Defendant DeLaughter's Motion To Dismiss Count One For Failure To Charge An Offense was served on March 26, 2009, in accordance with Fed.R.Crim.P.49, Fed.R.Civ.P.5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

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