

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	4:17-cr-116 (2)
	§	(Hon. Lee H. Rosenthal)
STEPHEN STOCKMAN	§	

**DEFENDANT STOCKMAN’S MOTION TO DISMISS
COUNTS 9 THROUGH 11 OF THE INDICTMENT
(CONSPIRACY AND FALSE STATEMENTS)
FOR FAILURE TO ALLEGE A CRIME**

COMES NOW STEPHEN STOCKMAN, DEFENDANT, through counsel Sean Buckley and Gary Tabakman, and files this his Motion to Dismiss Counts 9 through 11 of the Indictment (Conspiracy and False Statements) for Failure to Allege a Crime, for cause showing the Honorable Court as follows:

1. The Indictment—Counts 9 through 11.

Count 9 of the Indictment alleges Stockman’s participation in a conspiracy to make (i) conduit contributions in violation of the Federal Election Campaign Act¹ and (ii) false statements in reports filed with the Federal Election Commission (“FEC”). Counts 10 and 11 charge Stockman with making false statements in related filings with the FEC, in violation of 18 U.S.C. § 1001.

¹ Although Count 9 alleges that there were two objects of the conspiracy, it is surprising that the Indictment alleges substantive violations as to only one of those objects: false statements. *See* Counts 10 and 11. The Indictment contains no substantive count alleging an actual violation of the law banning conduit contributions.

2. Count 9 fails to charge a conspiracy to violate 52 U.S.C. §30122 of the Federal Election Campaign Act.

52 U.S.C. § 30122 states:

No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person. [Emphasis added.]

Count 9 alleges (incorporating ¶¶ 1-53 of the Indictment) that Stockman and Posey conspired under 18 U.S.C. §371:

a. To knowingly and willfully make contributions to a candidate for federal office in the names of other persons, aggregating to more than \$10,000² in a calendar year, in violation of Title 52, United States Code, Sections 30122 and 30109(d)(1)(D) (formerly codified as Title 2, United States Code, Sections 441f and 437g(d)(1)(D)); and

b. To knowingly and willfully make materially false, fictitious, and fraudulent statements and representations in a matter within the jurisdiction of the Federal Election Commission, a department or agency of the United States government, in violation of Title 18, United States Code, Section 1001(a)(2). [Stockman, First Superseding Indictment (March 28, 2017), III. The Scheme to Defraud, “Unlawful Conduit Contributions Using Charitable Donation” at ¶¶ 55.]

The crux of this is that contributions were allegedly made to Stockman’s congressional campaign with money provided by Stockman to Posey and Dodd. To adequately allege that an intended contribution was a “conduit contribution,” also known as a “contribution in the name of another,” the Indictment would be required to allege that the funds contributed were not the property of the named contributor. 52 U.S.C. §10122 (“in the name of another”). However, the Indictment fails to allege that Stockman made the payments to Posey and Dodd for the purpose of

² In its allegation that a \$10,000 threshold was exceeded, the government appears to have aggregated the \$7,500 Posey contribution with the \$7,500 Dodd contribution in order to exceed the \$10,000 threshold, so that it can trigger more severe penalties.

making contributions to his campaign,³ or that the funds donated to Stockman's campaign by Posey and Dodd were not the legal property of Posey and Dodd at the time the contributions were made. There is no federal law prohibiting any otherwise eligible individual from contributing funds earned from any source to a political campaign. Once the funds are earned and received, they become the property of the individual, who is generally free to give them to anyone, including a political campaign.⁴

While it is admittedly well settled that a conspiracy count is not duplicitous for alleging multiple facets of a scheme within the same count, in this case Count 9 is intentionally drafted to include two "related" objectives for a particular and underhanded reason: the overt acts collectively alleged in ¶ 56 — taken as a whole — are a sneaky attempt to bolster the sufficiency of Paragraph (a) of Count 9 with overt acts that relate only to Paragraph (b) of Count 9 — which occurred chronologically after the completion of the conduct alleged in Paragraph (a).⁵ Notwithstanding this attempted parlour trick, Count 9 fails to allege an offense as to Paragraph (a).

³ The Indictment's only direct inference toward this purpose occurs in Counts 10 and 11, but those paragraphs of the Indictment (¶¶ 57-60) are not incorporated into Count 9 as required as a matter of law. *See United States v. Knowles*, 29 F.3d 947, 952 (5th Cir. 1994) (when allegations in one count are incorporated into another count under Rule 7(c), such incorporation must be express). Even if the language of Counts 10 and 11 were incorporated into Count 9, the sum total would remain deficient.

⁴ By contrast to the general allegations in the Indictment, a district court upheld an indictment for a conduit contribution where that indictment alleged with specificity that the defendant recruited individuals to make contributions from funds that were not their own, promised to reimburse them for their contributions, had the contributions collected and delivered to the political committee, and then caused the reimbursements to be made to the contributors. *United States v. Danielczyk*, 788 F.Supp 2d 472, 478 (VA. E.D. 2011).

⁵ This attempted sleight of hand provides a likely window into why the Indictment makes no attempt to charge any substantive count involving the making of a conduit contribution (alleged in Paragraph (a) of Count 9), while freely charging two substantive counts involving the making of false statements (alleged as Counts 10 and 11, in addition to their superfluous presence for bolstering purposes in Paragraph (b) of Count 9).

3. Counts 10 and 11 fail to adequately allege the making of a conduit contribution.

The Indictment alleges in Counts 10 and 11 that defendants Stockman and Posey:

“caused STOCKMAN’s congressional campaign committee to file a ... report ... which falsely stated that POSEY and Dodd had contributed \$7,500 each ... when ... the contributions were made using funds provided to POSEY and Dodd by STOCKMAN, who in turn fraudulently obtained the funds from Person B and Foundation B.” [¶¶ 58, 60 (Emphasis added.)]

The Indictment’s stated theory here is that Stockman was the true source of the money and that Posey and Dodd were used as conduits for Stockman to make contributions. This makes no sense.

It is axiomatic that a conduit contribution occurs when a donation is made by a person who cannot donate the money or wants to hide his identity, through a person who can donate the money.⁶ However, Stockman could have donated unlimited funds to his political campaign because he was the candidate. *See* 11 C.F.R. § 110.10; *Buckley v. Valeo*, 424 U.S. 1, 54 (1976). The Indictment makes no factual or legal allegation, express or implied, that Stockman was not the legal owner of the funds provided to Posey and Dodd at the time he provided them notwithstanding the alleged source of the funds, or that Stockman was not legally permitted to donate an unlimited amount of funds in his possession to his own campaign, or that the Federal Election Campaign Act prohibited Stockman from donating those particular funds to his own campaign for some specific reason. Without such allegations, the Indictment’s theory in Counts 10 and 11 is the opposite of a conduit contribution. The Indictment alleges a conduit donation originating from a person who could have donated the money legally in any amount, channeling

⁶ The FEC Website illustrates a contribution made in the name of another as follows: “an individual who has already contributed up to the limit to the campaign may not give money to another person to make the contribution to the same candidate.” FEC, “Who can and can’t contribute.” (Emphasis added.) Note that money “given” implies funds received as a gift, not funds earned.

the contributions through persons who were not legally able to donate the money. Without additional allegations building upon additional essential facts, Counts 10 and 11 allege the making of statements that — even if they were false — show no tendency to affect, or capability of affecting, the decision-making of anyone at the FEC. In other words, Counts 10 and 11 have failed to adequately allege the essential element of materiality⁷ and must be dismissed.

In the alternative, the allegations in Counts 9 through 11 are so factually and legally convoluted that they fail to convey constitutionally adequate notice of what is being charged. Indeed, by the Indictment's own facts it would have been a material false statement to report Stockman as the contributor because that money had already been paid to Dodd and Posey, and it was their money and was contributed by them.

4. Conclusion and request for relief.

For the reasons set forth above, Stockman respectfully requests that the Honorable Court DISMISS Counts 9, 10, and 11. Furthermore, Stockman respectfully requests a hearing on this Motion.

⁷ Materiality is an essential element of every §1001 violation. *United States v. McGough*, 510 F.2d 598, 602 (5th Cir. 1975). In the context of §1001, “materiality” means that the false statement must have a natural tendency to influence, or be capable of affecting or influencing, a government function. *Id.* at 602.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I certify that on October 26, 2017 I discussed this Motion with Mr. Ryan Ellersick, counsel for the United States, and the Government is OPPOSED.

/s/ Sean Buckley
Sean Buckley

CERTIFICATE OF SERVICE

I certify that on October 26, 2017 I provided a copy of this Motion to counsel for the United States, and all parties, via the ECF system.

/s/ Sean Buckley
Sean Buckley

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**ORDER ON DEFENDANT STOCKMAN'S
MOTION TO DISMISS COUNTS 9 THROUGH 11**

ON THIS DATE THE COURT came to consider Defendant Stephen Stockman's Motion to Dismiss Counts 9 through 11 of the Indictment. Upon consideration, the Motion is:

_____ GRANTED.

_____ DENIED.

SIGNED ON THIS THE _____ DAY OF _____, 201_____.

UNITED STATES DISTRICT JUDGE