No. 09-50296

IN THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

PIERCE O'DONNELL,

Defendant-Appellee.

GOVERNMENT'S OPPOSITION TO DEFENDANT'S PETITION FOR PANEL REHEARING AND REHEARING EN BANC

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

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I

INTRODUCTION

Defendant Pierce O'Donnell ("defendant") secretly contributed $26,000 to a presidential candidate by getting 13 people to purport to contribute in their names, with defendant reimbursing or advancing the money. As the Panel recognized, defendant thereby violated 2 U.S.C. § 441f's plain wording: "No person shall make a contribution in the name of another person." United States v. O'Donnell, 608 F.3d 546 (9th Cir. 2010).

Defendant seeks rehearing, but does not suggest the Panel created an intra- or inter-circuit conflict. Fed. R. Crim. P. 35(a)(1). Aside from the district court here, in the nearly 40 years since Congress passed now-§ 441f, no court has adopted

defendant's interpretation and 16 courts, including the Supreme Court and this Court, have at least suggested the Panel's. (608 F.3d at 549 n.1; GRB 17-21; McConnell v. FEC, 540 U.S. 93, 232 (2003) (contributions-by-minors ban unnecessary to protect "against corruption by conduit;" noting "scant evidence" of it, "[p]erhaps" "result[ing] from sufficient deterrence of such activities" by § 441f), overruled in part on other grounds, Citizens United v. FEC, 130 S. Ct. 876 (2010); Goland v. United States, 903 F.2d 1247, 1251 (9th Cir. 1990) (Section 441f "prohibits the use of 'conduits' to circumvent" Act's limits)).[1]

Moreover, the only issue defendant contends is exceptionally important, Fed. R. Crim. P. 35(a)(2), is his argument that the use of statutory interpretation tools creates ambiguity, requiring lenity. (PFR 9). Defendant's argument is contrary to this Court's and the Supreme Court's precedent. It also highlights why using scarce en banc resources here is misplaced. Even were the statute ambiguous, defendant would not prevail. Since 1977, a Federal Election Commission ("FEC") regulation has explained that § 441f prohibits defendant's contributions, and deference to that regulation controls over lenity. Mujahid v. Daniels, 413 F.3d 991 (9th Cir. 2005).

[1] "GOB" refers to the opening brief, "AAB" the answering brief, "GRB" the reply brief, "GER" the excerpts of record, and "PFR" defendant's petition; each is followed by the page number.

II

HISTORY

The indictment alleges defendant and a co-conspirator solicited others to "contribute" to a presidential candidate, with defendant advancing or reimbursing the money.[2] (GER 15-18). At defendant and his co-conspirator's direction, 13 people purported to contribute $2,000 in their names with defendant providing the $26,000. (GER 18). Defendant and his co-conspirator collected and gave the money to the candidate. (GER 16). Defendant was charged, in part, with violating § 441f (GER 12-19), but the district court (Judge Otero) dismissed those counts, relying on statutory context (most notably § 441a(a)(8)), legislative history (not about § 441f), and lenity to conclude § 441f did not apply (GER 1-7). This Court (Judges Goodwin, Canby, and Fisher) unanimously reversed.

The Panel first turned to § 441f's text: "No person shall make a contribution in the name of another person." The Panel noted the Federal Election Campaign Act ("FECA") defined "contribution" as "any gift . . . of money . . . made by any person for the purpose of influencing" a federal election, 2

[2] Defendant suggests only reimbursements are involved, but the indictment alleges the contrary (GER 18), the government did not concede this point (Argument 6:50-8:34), and the Panel held § 441f applies to both, making any distinction irrelevant.

U.S.C. § 431(8)(A)(i). That definition identified "what purpose is required" and the gifts here were made for that purpose. 608 F.3d at 550. The Panel held, however, the definition did not identify "who" makes a contribution, so it looked to the dictionary definition of "contribute," which included "to give," connoting "providing from one's own resources." Id. With straw-donor contributions, "it is the original source who has made the gift." Id. Defendants, thus, violate § 441f if, as here, they provide their own money (directly or through an intermediary), but not their own names. Id.

The Panel also rejected defendant's timing argument that the contributions were complete before his reimbursements. Id. at 550-51. Although the Panel suggested defendant's argument "would be troubling" if there was no prior arrangement, here because defendant arranged to have intermediaries deliver money promising reimbursement and he actually provided reimbursement, defendant made contributions. Id. at 551. "Considering the plain language of § 441f itself," the Panel held it prohibited defendant's contributions. Id.

Because context is "relevant to plain meaning," the Panel next considered § 441a(a)(8), on which defendant and the district court focused. Id. The Panel noted it used the terms "conduit" and "indirectly" whereas § 441f did not, and

recognized the Russello presumption: the inclusion of wording in one section but omission in another of the same Act is generally intentional. Id. at 551-52. The Panel, however, held the provisions did not have parallel purposes and structures and, "even if the parallels were stronger," Congress passed § 441f three years before § 441a(a)(8), so the "wording in the latter offers little insight into the meaning of the former." Id. at 552. Moreover, the presumption had "limited force" "because the language used in § 441f is broad rather than specific." Id. Section 441f did not include "directly," but omit "indirectly," nor did it specify ways to contribute "while omitting 'conduit.'" Id. Had it done either, the absence of the words in § 441a(a)(8) "could indicate an intention to exclude" them in § 441f, but no such presumption arose from § 441f's broad wording. Id. Indeed, the Panel held § 441a(a)(8) "actually undermines [defendant's] interpretation:" (1) it is written such that indirect gifts "are merely particular types of contributions, subsumed within the general" definition applying to § 441f; and (2) defendant agreed he made contributions under § 441a(a)(8), but his same timing argument (above) also applied there, meaning, if he made contributions under § 441a(a)(8), he also did under § 441f. Id. at 553.

The Panel next discussed statutory purpose, noting Congress passed § 441f in 1971, when it chose disclosure over contribution limits, believing disclosure made limits unnecessary. Id. Straw-donor contributions, however, undermine transparency "no less than false name contributions." Id. at 554. Adopting defendant's interpretation would have allowed straw-donor contributions until Congress passed § 441a(a)(8) in 1974, and it was "highly unlikely" a Congress focused on disclosure would have omitted such contributions, "which were a recognized concern." Id. The Panel also rejected defendant's suggestion that Congress designed § 441a(a)(8) to fix this loophole because: (1) Section 441a(a)(8) "served primarily to reinstate contribution limits;" (2) "had Congress been concerned about a loophole in § 441f, it likely would have amended that provision rather than enacting § 441a(a)(8);" and (3) Section 441a(a)(8)'s reporting requirement applies only to intermediaries, not "the principal offender in a straw donor scheme," unlike § 441f, which "properly criminalizes the conduct" of both actors. Id.

The Panel, thus, held "[t]he text, purpose and structure of § 441f" demonstrated it barred defendant's straw-donor contributions. Id. at 555. Because FECA was unambiguous, lenity did not apply. Id.

III

ARGUMENT

A. THE PANEL CORRECTLY HELD THAT DEFENDANT VIOLATED § 441f's PLAIN WORDING

The Panel held that defendant violated § 441f's plain wording by contributing $26,000 in 13 other people's names. Defendant argues, however, § 441f is limited to false-name contributions. That is, defendant concedes if he handed $100 to a candidate and provided his friend's name (a false name), he would violate § 441f. But defendant argues if he, instead, gave his friend $100 and directed her to give $100 to the same candidate in her name (a so-called straw-donor contribution), he would not violate § 441f. In both cases, however, defendant contributed to the same candidate, in the same amount ($100), in the same name (his friend's). As the Panel recognized, § 441f prohibits both contributions.

Section 441f provides, in part: "No person shall make a contribution in the name of another person." As is apparent, it prohibits a person from: (1) making a contribution, (2) in the name of another person.

Turning to the first requirement, "contribution" includes "any gift . . . of money . . . made by any person for the purpose of influencing" a federal election, 2 U.S.C. § 431(8)(A)(i), which defendant satisfied by giving $26,000 to

elect a presidential candidate. Indeed, it is undisputed defendant gave money for that purpose. 608 F.3d at 550. Although the Panel recognized § 431(8)(A)(i) identified "what" purpose is required, it turned to a dictionary definition because it did not address "who" makes a contribution. Defendant challenges the use of that definition and argues the statute applies only to the person handing money to the candidate. (PFR 8, 2). There are three problems with defendant's argument.

First, the government respectfully disagrees that a dictionary is needed. Section 431(8)(A)(i) states "any person" who made any gift of money for the purpose of influencing a federal election makes a "contribution." The reference to "any person" demonstrates that anyone providing a gift of money for the specified purpose (influencing a federal election) makes a "contribution." Ali v. Federal Bureau of Prisons, 552 U.S. 214, 218-20 (2008) ("any" generally has expansive meaning). As the Panel recognized, defendant made such gifts with that purpose, 608 F.3d at 550, meaning he made "contributions." For the same reason, defendant is wrong to suggest the definition turns on how contributions reach the candidate (directly or through an intermediary). Whether defendant gave a candidate $100 or a

friend $100 to forward to the same candidate, he would have made a "contribution," i.e., given $100 to elect that candidate.

Second, if § 431(8)(A)(i) does not identify "who" makes a contribution, the Panel's use of the dictionary definition of "contribute" is permissible, Carcieri v. Salazar, 129 S. Ct. 1058, 1064 (2009); Burgess v. United States, 553 U.S. 124, 131 n.3 (2008), and the result is the same if the meaning of the undefined term "gift" is used instead. 608 F.3d at 550 ("giving" connotes "providing from one's own resources").

Third, defendant conceded he made "contributions" under § 441a. 608 F.3d at 553. Like § 441f, however, § 441a also refers to "mak[ing] contributions" and it uses the same generally-applicable definition of "contribution" from § 431(8)(A)(i). Because defendant agrees he made "contributions" under § 441a, he also made them under § 441f.[3]

[3] Defendant repeats his timing argument: The straw donors made completed contributions when they delivered money to the candidate, rendering defendant's separate and later reimbursements irrelevant. (PFR 3, 14; AAB 5). But the indictment alleges defendant and his co-conspirator delivered that money to the candidate, and it charges a single course of conduct (not independent acts): Defendant recruited people promising reimbursement, the straw donors agreed to "contribute" based on the promise, and defendant provided them the money. (GER 15-16). Defendant's argument also lacks textual support in FECA: Whether defendant made contributions focused on whether he gave money for the required purpose, which he did. Defendant finally questions the Panel's dictum that his timing argument

Turning to the second requirement in § 441f, defendant made his contributions "in the name of another person," specifically, 13 other people. Indeed, it is undisputed that defendant's name was not submitted to the candidate. 608 F.3d at 550.

Defendant, thus, contributed $26,000 in 13 other people's names, violating § 441f's straightforward bar that "[n]o person shall make a contribution in the name of another person." Defendant has not demonstrated the Panel's opinion so holding is wrong, much less that it created an intra- or inter-circuit conflict.

B. THE PANEL CORRECTLY DECLINED TO READ DEFENDANT'S NONTEXTUAL LIMIT INTO § 441f

Defendant wants a nontextual limit read into § 441f, suggesting when Congress wrote "[n]o person shall make a contribution in the name of another," it prohibited only some contributions in the name of another -- those in false names -- not those in the names of straw donors/conduits. Had Congress

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"would be troubling" if there was no promise of reimbursement. (PFR 7-8). The dictum is, however, irrelevant: (1) here there were such promises; (2) the dictum does not turn promises into contributions (PFR 8); defendant (and the conduits) providing money under the scheme meant defendant made contributions; and (3) as the Panel stated, this timing argument "fails for an additional reason:" Defendant conceded he made contributions under § 441a, but his same timing argument applied there, 608 F.3d at 551 n.3, 553.

intended such a limit, however, it would have stated so in § 441f. Maine v. Thiboutot, 448 U.S. 1, 4 (1980).

Defendant seeks this nontextual limit because Congress did not use the words "reimbursement," "indirect," or "conduit" in § 441f.[4] (PFR 4-5). But the focus is on the words Congress actually used, not those it could have included, Pavelic & LeFlore v. Marvel Entertainment Group, 493 U.S. 120, 126 (1989), and, as the Panel recognized, § 441f does not list any manners of contributing, such that the absence of these terms is significant, nor is there reason to expect such a list given Congress' focus on the name of the contributor, not manner of contribution. Congress' choice to simply provide, "[n]o person shall make a contribution in the name of another person" demonstrates breadth, not ambiguity, United States v. Monsanto, 491 U.S. 600, 609 (1989), and that broad wording prohibits

[4] The district court's error resulted largely from its belief § 441f could not prohibit conduit/reimbursed contributions because § 441a(a)(8) allows them (GOB 43-44), which defendant reiterates (PFR 1, 5-6 n.3). Section 441f, however, does not prohibit reimbursed/conduit contributions; it prohibits only reimbursed/conduit contributions made in the name of another (so-called straw-donor contributions). A properly disclosed (within-limit) reimbursed/conduit contribution is lawful under §§ 441f and 441a. Defendant also suggests the Panel criminalizes innocent conduct, but § 437g(d) requires knowing and willful violations for criminal liability.

defendant's contributions, Royal Foods Co., Inc. v. RJR Holdings, Inc., 252 F.3d 1102, 1107 n.6 (9th Cir. 2001).

Defendant, however, relies on statutory context, arguing two canons of construction compel inserting his nontextual limit. Defendant cites the Russello presumption, noting § 441a(a)(8) uses "conduit" and "indirectly," but § 441f does not. (PFR 6). As the Panel held, however, Congress passed § 441f three years before § 441a(a)(8); the "wording in the latter offers little insight into the meaning of the former." 608 F.3d at 552; see Almendarez-Torres v. United States, 523 U.S. 224, 237 (1998).[5]

Second, as the Panel likewise recognized, the provisions' structure and purpose differ. City of Columbus v. Ours Garage, 536 U.S. 424, 435-36 (2002) ("presumption . . . grows weaker with each difference in the formulation"). Unlike other FECA provisions, 2 U.S.C. § 441b(c)(2), Congress did not include "directly" and omit "indirectly," which would suggest Congress considered and rejected applying § 441f to indirect contributions. Duncan v. Walker, 533 U.S. 167, 172-73 (2001) ("State and Federal" in multiple provisions invoked presumption

[5] The Panel noted United States v. Youssef, 547 F.3d 1090 (9th Cir. 2008) (per curiam), applied the presumption to statutes passed in different years, but distinguished those statutes. 608 F.3d at 552. Defendant neither challenges the distinction nor suggests an intra-circuit conflict.

"State" in another meant "Federal" excluded); Barnhart v. Peabody Coal Co., 537 U.S. 149, 168 (2003) (unnamed not excluded unless suggestion Congress "considered the unnamed" and "meant to say no"). Indeed, § 441f is one of several absolute FECA bars omitting the direct-and-indirect framework altogether. 2 U.S.C. §§ 441f, 441g, 441k. The presumption does not control in such circumstances, Ours Garage, 536 U.S. at 435-36, as the Panel recognized.

Nor does § 441f omit "conduit" from a list of manners of contributing, but the government nevertheless seeks to apply it to conduit contributions. Barnhart v. Sigmon Coal Co., Inc., 534 U.S. 438, 452-54 (2002). Rather, § 441f is a broad provision that does not list manners of contributing. The Panel correctly recognized the Russello presumption does not support reading nontextual limits into it. Russello v. United States, 464 U.S. 16, 25 (1983) (specific in one statute not "read as imposing a limitation upon the general provision in the other").

Second, defendant argues applying § 441f here renders "indirectly" and "conduit" in § 441a(a)(8) superfluous because the definition of "contribution" (§ 431(8)(A)(i)) would already embrace them. (PFR 6). As the Panel held, however, § 441a(a)(8)'s wording "shows that indirect gifts are merely particular types of contributions, subsumed within the general"

definition, 608 F.3d at 553, meaning there is no superfluity. Congress appears to have included § 441a(a)(8)'s wording to provide "guidance on accounting" for the newly-re-imposed contribution limits. Id. at 554; see Ali, 552 U.S. at 226 (no superfluity; "Congress may have simply intended to remove any doubt" particular officers were included).[6]

Defendant has not explained why this analysis is wrong, nor identified an intra- or inter-circuit conflict.

C. THE PANEL CORRECTLY RECOGNIZED DEFENDANT'S NONTEXTUAL LIMIT WAS INCONSISTENT WITH FECA'S PURPOSE

Defendant suggests adopting his nontextual limit "results in no logical inconsistencies." (PFR 9). But, as the Panel

[6] Defendant also suggests the word "indirectly" is rendered superfluous in §§ 441b, 441c, and 441e. (PFR 7 n.4). Section 441b, however, has its own definition of contribution, meaning the mention of "indirect" there does not suggest reading a limit into § 441f. And the histories of now-§§ 441c (54 Stat. 772 (1940)) and 441e (80 Stat. 248 (1966)) show why such canons are "not a license . . . to rewrite language enacted by the legislature," Monsanto, 491 U.S. at 611 (citation and internal quotations omitted); see Lamie v. United States Trustee, 540 U.S. 526, 536 (2004), particularly for Acts, like FECA, spanning numerous years and amendments. Both statutes were passed before FECA (1971) and before FECA's (or its predecessors') generally-applicable definition applied to them. 18 U.S.C. § 591 (1970) (identifying pre-FECA definition's scope). Both thus prohibited direct or indirect/intermediary "contributions" "of money" or "other thing of value," 18 U.S.C. §§ 611, 613 (1970), although money and things of value are in the generally-applicable definition. When Congress applied the definition to these provisions, the now-unnecessary wording was not eliminated.

recognized, defendant's argument is inconsistent with FECA's purpose. 608 F.3d at 553-54. Congress created now-§ 441a(a)(8) three years after now-§ 441f in 1971. Defendant agreed "full disclosure of campaign contributions, including their source, was an objective of the 1971" Act. (AAB 44). To accomplish that objective, Congress required records/reports with the names of contributors. 608 F.3d at 553. Now-§ 441f was the only provision in the 1971 Act compelling contributors to use their own names, meaning, if defendant's interpretation were correct, no provision in that Act prohibited people from hiding their identities by contributing in conduits' names, rendering the recordkeeping/reporting conditions meaningless. As the Panel recognized, it is "highly unlikely" that a Congress focused on disclosure would have intended to omit such contributions, "which were a recognized concern." Id. at 554.

Defendant suggested Congress passed now-§ 441a(a)(8) in 1974 to fix this loophole. Id. As noted above, however, § 441f's broad language has no loophole, and includes neither textual limit, nor suggestion it reaches only some contributions in the name of another. Moreover, as the Panel recognized, id., it is unlikely Congress would fix a loophole in § 441f by creating § 441a(a)(8), rather than amending § 441f, and § 441f potentially places liability on all actors in the prohibited

conduct: the contributor, the person allowing his/her name to be used, and the candidate. Section 441a(a)(8), by contrast, imposes a reporting duty only on the conduit. Placing liability solely on straw donors -- the least culpable party -- is contrary to traditional liability principles, Bartnicki v. Vopper, 532 U.S. 514, 529 (2001), and leaving defendant free from liability under FECA for using conduits' names creates, rather than fixes, a loophole.

Indeed, defendant's argument centers on the lower threshold for felony penalties under § 441f and his view Congress created this lower threshold because false-name contributions (§ 441f) are "a greater evil" than contributions in conduits' names (§ 441a(a)(8)). (AAB 26, 2). But, as the Panel recognized, the evil is the same: The lack of transparency. Reading FECA as prohibiting this same evil in separate provisions renders the one with more severe penalties (§ 441f) avoidable. Indeed, under defendant's view, people can hide their identity by: (1) contributing in false names, facing liability/penalties under § 441f; or (2) contribute in conduits' names, facing no liability/penalties under FECA for hiding their identity. Defendant's interpretation renders § 441f avoidable and essentially superfluous.

Moreover, Congress first created differing penalties in 2002, enacting a general felony provision triggered by contributions of $25,000 or more, 116 Stat. 106, § 312, and carving out a lower threshold (exceeding $10,000) for felony violations of § 441f, 116 Stat. 108, § 315. But (1) Congress passed this § 441f carve-out after hearings on conduit/straw-donor violations from the 1996 election, during which, Congress said § 441f applied to them (GOB 53-54); (2) the legislative history shows Congress created § 441f's carve-out because of unhappiness over penalties for conduit/straw-donor contributions (GRB 16); and (3) Congress entitled § 441f's carve-out provision, "[i]ncrease in penalties imposed for violations of conduit contribution ban," 116 Stat. 108, § 315.

Thus, accepting defendant's argument would mean: (1) Section 441f's prohibition -- "No person shall make a contribution in the name of another person" -- applies only to some such contributions (false-name contributions) despite the lack of textual limit and despite Congress passing it as part of a 1971 Act focused on disclosure; (2) Congress prohibited contributions in the names of conduits three years later in a different provision, placing liability only on conduits, flipping traditional liability principles; and (3) Congress did so because it wanted lesser penalties for contributions in

conduits' names, although when it created the differing penalties, Congress indicated the opposite. The Panel properly rejected this interpretation.

D. THE PANEL CORRECTLY HELD LENITY DID NOT APPLY

Based on text, structure, and purpose, the Panel held § 441f unambiguously prohibited defendant's contributions. 608 F.3d at 555. Defendant suggests the Panel's use of interpretative tools demonstrates ambiguity, requiring lenity. (PFR 9-10). Such tools, however, determine a statute's plain meaning; their use does not create ambiguity. 608 F.3d at 549 (citing cases); Wilderness Soc'y v. United States Fish & Wildlife Serv., 353 F.3d 1051, 1060 (9th Cir. 2003) (en banc). And lenity applies "only when, after consulting traditional canons of statutory construction, we are left with an ambiguous statute." United States v. Hayes, 129 S. Ct. 1079, 1088-89 (2009) (citation and internal quotations omitted); United States v. Iverson, 162 F.3d 1015, 1025 (9th Cir. 1998). The Panel analyzed FECA using long-accepted interpretative principles, determined it was unambiguous, and correctly declined lenity.

Even were FECA ambiguous, lenity would not apply. Since 1977, an FEC regulation has explained that defendant's conduct violated § 441f, 11 C.F.R. § 110.4(b)(2)(i), that regulation is entitled to deference, FEC v. Democratic Senatorial Campaign

Comm., 454 U.S. 27, 37 (1981), and deference controls over lenity, Mujahid, 413 F.3d at 998-99; Pacheco-Camacho v. Hood, 272 F.3d 1266, 1271-72 (9th Cir. 2001).

Defendant also suggests First Amendment concerns require narrowing § 441f but, like lenity, constitutional avoidance applies only when a statute is ambiguous -- which the Panel held FECA is not -- and the constitutional issue must raise "serious" concerns. (GRB 22-23). The district court recognized precedent barred defendant's First Amendment claim (GER 144), and defendant has neither argued to the contrary nor identified a viable First Amendment right § 441f impacts. Defendant suggests it interferes with his freedom of association, but it does not, limiting only his use of others' names. The Supreme Court upheld FECA's disclosure provisions and contribution limits, Buckley v. Valeo, 424 U.S. 1, 23-68 (1976) (per curiam), and defendant lacks a right to use straw donors' names to circumvent either, Goland, 903 F.2d at 1258-61. Constitutional avoidance is, thus, misplaced.

E. THE PANEL CORRECTLY UPHELD THE INDICTMENT'S WORDING

Defendant also seeks rehearing on his newly-raised challenges on appeal to the indictment's wording. (PFR 12-16). Defendant argues the indictment's references to "contributions" by conduits and defendant's "reimbursement" suggest only the

conduits made "contributions." (PFR 15). The indictment, however, states defendant made "contributions" in others' names. (GER 15, 18). The Panel held this language together "reasonably describe[d]" reimbursement as defendant's method of contributing in others' names. 608 F.3d at 556. Defendant neither explains why that analysis is wrong, nor expresses confusion about the charges. United States v. Lopez-Gonzalez, 183 F.3d 933, 935 (9th Cir. 1999) (indictment provides notice of charges). Indeed, the indictment referred to "conduit" contributors as people permitting their names to be used to effect contributions in others' names and cited 13 people in whose name defendant contributed, with the dates and amounts. (GER 14, 18).

Defendant also suggests the indictment fails to allege he knew the conduits would not report his name. (PFR 15-16). Defendant waived this claim by first raising it in his PFR. Picazo v. Alameida, 366 F.3d 971 (9th Cir. 2004). Regardless, the claim lacks merit because the indictment alleges defendant "knowingly and willfully conspired and agreed to make . . . contributions in the name of others" (GER 15; see also GER 18), which does not reasonably suggest defendant believed the contributions would be made in his name.

IV

CONCLUSION

Accordingly, this Court should deny defendant's petition.

DATED: October 1, 2010

Respectfully submitted,

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