

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Crim. No. 09-637 (JLL)
v. :
LEONA BELDINI : Hon. Jose L. Linares

MEMORANDUM OF THE UNITED STATES IN OPPOSITION TO
DEFENDANT'S POST-TRIAL MOTIONS

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PRELIMINARY STATEMENT

The United States submits this memorandum of law in response to the “Memorandum of Law in Support of Defendant Leona Beldini’s Motion For A Judgment of Acquittal or Dismissal on Counts Four and Five of the Superseding Indictment. The United States respectfully reserves its right to supplement its response by oral argument.

I. DEFENDANT BELDINI’S BELATED RULE 12(b)(3)(B) MOTION TO DISMISS THE COUNTS OF CONVICTION IS WITHOUT MERIT AND SHOULD BE DENIED

A. Factual Background

On November 19, 2009, a Federal grand jury returned a six-count Superseding Indictment against defendant Leona Beldini (“defendant Beldini”). Counts 4 and 5 charged that defendant Beldini, on the approximate dates of March 26, 2009 and May 5, 2009, “did knowingly and willfully accept and agree to accept things of value from another, intending to be influenced and rewarded in connection with a business, transaction and series of transactions of the City of Jersey City, involving a thing of value of \$5,000 and more,” in violation of 18 U.S.C. § 666(a)(1)(B) (“Theft or bribery concerning Federal funds”) and 18 U.S.C. § 2 (Aiding and abetting). (Super. Indict. Cts. 4 and 5, ¶¶ 1-3.) More specifically, the Superseding Indictment charged that, during the relevant time period, defendant Beldini was Deputy Mayor of Jersey City, New Jersey, reporting directly to Mayor Jerramiah Healy (“Healy”)¹ and acting as Healy’s liaison and representative on certain Jersey City agencies, including the Jersey City Parking Authority and the Jersey City Economic Development Corporation.² (Super. Indict. Ct. 1, ¶ 1(a);

¹Healy is referred to in the Superseding Indictment as “JC Official 1.”

²Allegations contained in the Superseding Indictment, but unrelated to the counts of conviction and thus not relevant for purposes of responding to defendant’s motions, are not recounted herein.

Cts. 4 and 5, ¶ 1.) Healy was running for another term as mayor during the relevant time period, and defendant Beldini served as the treasurer of his personal re-election campaign committee, Healy for Mayor '09. (Id.)³

The Superseding Indictment further alleged that, in a meeting that took place on or about February 12, 2009, Edward Cheatam (“Cheatam”), a local Jersey City and Hudson County public official, introduced cooperating witness Solomon Dwek (“Dwek”) to a Jersey City-based consultant, Jack Shaw.⁴ (Super. Indict. Ct. 1, ¶ 7(b); Cts. 4 and 5, ¶ 1.) Dwek, who assumed the name “David Esenbach,” held himself out as a real estate developer interested in development in the greater Jersey City area, including a property at 750 Garfield Avenue (the “Garfield Avenue project”). (Ct. 1, ¶ 1(b); Cts. 4 and 5, ¶ 1.) During the meeting, Cheatam and Shaw were informed by Dwek that he was willing to pay cash to government officials in exchange for the officials’ help with Dwek’s purported business interests, including approvals for the development of the Garfield Avenue project. (Id.) Days later, in a meeting on or about February 17, 2009, Shaw offered to arrange a meeting between Dwek and Healy, which meeting Shaw would arrange through defendant Beldini. (Ct. 1, ¶ 7(c); Cts. 4 and 5, ¶ 1.) Shaw and Cheatam assured Dwek that Healy would help Dwek with his real estate approvals. They further directed Dwek “not to mention any money” and simply to say that he wanted to “contribute,” and that Shaw and Cheatam would get Dwek’s payments to Healy, through defendant Beldini or another. (Id.)

The Superseding Indictment further alleged that, on or about March 11, 2009,

³Healy for Mayor '09 is referred to in the Superseding Indictment as the “Re-election Campaign Committee.”

⁴Shaw, who died on July 28, 2009, is referred to in the Superseding Indictment as “The Consultant.”

Cheatam and Shaw again met with Dwek and confirmed that a meeting had been arranged among defendant Beldini, Healy and Dwek, to take place on or about March 13, 2009. (Ct. 1, ¶ 7(d); Cts. 4 and 5, ¶ 1.) Shaw confirmed for Dwek that defendant Beldini “operated” the way they “like[d] to operate,” and that she and Shaw had plans to meet on the Saturday after the meeting with Dwek in order to discuss the anticipated “contributions.” Shaw suggested that, for the time being, Dwek start out by paying \$10,000 in “contributions” for the benefit of Healy in exchange for real estate approvals in Jersey City. (Id.) On or about March 13, 2009, prior to the scheduled meeting among defendant Beldini, Healy, Cheatam, Shaw and Dwek, defendant Beldini and Shaw spoke several times on the telephone regarding the upcoming meeting with Dwek. During one such conversation, defendant Beldini expressed concern that Cheatam planned to attend the meeting, because Healy might not be “comfortable talking finances” in front of Cheatam. Defendant Beldini repeatedly questioned Shaw as to whether he “understood” what defendant Beldini was trying to say. (Ct. 1, ¶ 7(e); Cts. 4 and 5, ¶ 1.)

The Superseding Indictment then detailed the meeting that subsequently took place on March 13, 2009 at a luncheonette in Jersey City. (Ct. 1, ¶ 7(g); Cts. 4 and 5, ¶ 1.) During the meeting, initially attended by defendant Beldini, Healy, Shaw and Dwek, the parties discussed the status of Healy’s re-election campaign and Dwek’s purported real estate development projects in Jersey City, including the Garfield Avenue project. (Id.) Partway through the meeting, Cheatam arrived at the luncheonette. After joining the parties, he advised Healy that Dwek was ready to develop real estate with Healy’s “help” and “assistance,” with Dwek making clear that “approvals are key” to such development. (Id.) At the conclusion of the meeting, following Healy’s departure, defendant Beldini privately indicated to Dwek that she understood the contemplated corrupt agreement whereby official influence and approvals would

be garnered in exchange for payments and other benefits, and warned that “we have to be very cautious.” (Ct. 1, ¶ 7(g); Cts. 4 and 5, ¶ 1.) With respect to Dwek’s payments benefitting Healy’s campaign, defendant Beldini agreed that the corrupt payments should be made using Shaw as a conduit, and that Dwek’s name, which she believed to be David Esenbach, should remain concealed in connection with any corrupt payments in the form of political contributions made for the benefit of Healy’s campaign. (Id.) Defendant Beldini assured Dwek that she could “help move” his Jersey City real estate approvals through Jersey City government, and emphasized that she and Dwek could “help each other.” (Id.)

Later on March 13th, as alleged in the Superseding Indictment, in a telephone conversation with Shaw, defendant Beldini confirmed that, because of the large amount of the corrupt payments expected from Dwek, the money could be spread among different campaign and political committees benefitting Healy’s campaign. (Ct. 1, ¶ 7(h); Cts. 4 and 5, ¶ 1.) Defendant Beldini indicated that an upcoming fundraiser to be held at The Beacon, a Jersey City luxury condominium development, was for the mayor himself, but told Shaw that Dwek could “do the Team too, you know ... and then you can do the, uh, JC-- JCDC, they’re all going to the same place, but they’re all different accounts – Team Healy, Healy for Mayor, and JCDC, which is the Jersey City Democratic Committee.” (Id.) In another telephone conversation between defendant Beldini and Shaw on March 13th, defendant Beldini told Shaw that he should obtain specifications for the proposed Garfield Avenue project from Dwek and that she would speak to a high-level Jersey City zoning official about the project. (Ct. 1, ¶ 7(i); Cts. 4 and 5, ¶ 1.)

On or about March 20, 2009, Cheatam, Shaw and Dwek met at a diner in Jersey City. (Ct. 1, ¶ 7(l); Cts. 4 and 5, ¶ 1.) During the meeting, Cheatam and Shaw each accepted \$10,000 in cash from Dwek comprising: (i) two \$5,000 cash payments to be concealed by

converting the cash into four \$2,500 checks totaling \$10,000 benefitting Healy's campaign; and (ii) two \$5,000 cash payments to be retained by Cheatam and Shaw for their assistance in brokering the corrupt agreement through defendant Beldini. (Id.)

The Superseding Indictment further alleged that on or about March 24, 2009, defendant Beldini met with Dwek, Cheatam and Shaw at a diner in Jersey City. (Ct. 1, ¶ 7(m); Cts. 4 and 5, ¶ 1.) During the meeting, defendant Beldini explained the process for obtaining a zone change in Jersey City; touted her own official influence and authority by stating to Dwek, "I can definitely help you get through a lot of red tape;" and further assured Dwek that she could be relied upon to help secure governmental approvals for Dwek's benefit. (Id.) Defendant Beldini and Dwek discussed Dwek's illicit political contributions benefitting defendant Beldini and Healy as follows:

Dwek: I told Jack [Shaw] you know that that ten I gave, that ten thousand that I gave [Healy] is just the first but I'll give him, as the election gets near, I'll give him another ten thousand . . . you can always count on my support.

Beldini: Yeah. It's important. Great, we need it.

Dwek: And I'll count on you for all your help, you know, approvals and stuff.

Beldini: Absolutely. . . No, it's good for the city, it's -- we want it, we want it. The mayor told you we want it.

Dwek: The mayor also, the mayor's not-- doesn't have a campaign fund or what is it, 'cause I was going to do something for him also but I don't --

Beldini: Yes, we do have a campaign fund, it's Healy for Mayor '09.

Dwek: But this is not --

Beldini: This is for JC-- well, what we're trying to do is put money into

different funds so we can, when we need it, funnel it back into the mayor. Which everybody does. So this is for the Jersey City Democratic Committee.

Dwek: Okay, so this ten is for that.

Beldini: I'm the treasurer for the Jersey– Healy for Mayor '09. I think it's a max of twenty-six hundred per person.

Dwek: But we don't have a problem with that.

Beldini: I know.

Dwek: I go through Jack [Shaw] and Ed [Cheatam] with the cash, and they do whatever they got to do with you and Healy.

Beldini: Whatever they have to do, yeah. Healy for Mayor. Mayor '09.

Dwek: So this ten was for this democratic thing [referring to the JCDC]. I'll do him another ten for Healy and then before the election we'll do more.

Beldini: Perfect. Beautiful.

(Id.)

As charged in the Superseding Indictment, on or about March 26, 2009, Cheatam delivered to defendant Beldini two of the four “straw donor” checks used to conceal the source of the \$10,000 corrupt cash payment that Dwek provided to Cheatam and Shaw in order to convert to illicit political contribution checks benefitting Healy's campaign. (Ct. 1, ¶ 7(n); Cts. 4 and 5, ¶ 1.) One \$2,500 “straw donor” check was made out by E. Cheatam Associates to the JCDC, and a second \$2,500 “straw donor” check was made out by another Jersey City official to the JCDC. (Id.)

As further alleged in the Superseding Indictment, on or about April 1, 2009, defendant Beldini again met with Dwek, Cheatam and Shaw at a diner in Jersey City. (Ct. 1, ¶ 7(o); Cts. 4 and 5, ¶ 1.) During the meeting, defendant Beldini confirmed that Healy knew that

Dwek had funded the purchase of tickets to the JCDC's "Broadway at the Beacon" event the previous Saturday night and agreed with Dwek that Healy "appreciate[d] the way [Dwek did] business." (Id.) Defendant Beldini later was informed by Dwek that he would give another \$10,000 for the benefit of Healy's campaign prior to the election, would provide another \$10,000 after the election, and would again transmit and conceal these corrupt payments using Shaw and Cheatam as conduits. (Id.) Defendant Beldini assured Dwek that she would "absolutely" assist him in expediting Jersey City approvals with respect to the Garfield Avenue project, and agreed with Shaw that "as happy as the mayor was Saturday night" at the "Broadway at the Beacon" event, "[Healy] will be there for you." (Id.) Defendant Beldini told Dwek that defendant Beldini would be the listing real estate broker for the Garfield Avenue site. (Id.) Defendant Beldini further agreed to concealing Dwek's name and involvement in the Garfield Avenue project by forming a company to deal with the project so that, as Dwek observed, "so no one could ever say, you know, she [meaning defendant Beldini], helped me, ah, expedite something." Defendant Beldini told Dwek, "If you're not on it, that's fine." (Ct. 1, ¶ 7(o); Cts. 4 and 5, ¶ 1.)

As further alleged in the Superseding Indictment, on or about April 22, 2009, in a telephone conversation, Shaw informed defendant Beldini that Dwek wanted to "contribute some more money and raise some more money" and asked if she could arrange a meeting at the luncheonette between Dwek and Healy, which defendant Beldini agreed to do. (Ct. 1, ¶ 7(p); Cts. 4 and 5, ¶ 1.)

The Superseding Indictment further charged that, on or about April 30, 2009, defendant Beldini again met with Dwek, along with Healy, Cheatam and Shaw. (Ct. 1, ¶ 7(q); Cts. 4 and 5, ¶ 1.) Before Healy's arrival, defendant Beldini was advised that, immediately following the meeting, Dwek would give the conduit Shaw another \$10,000 payment for the

benefit of Healy's campaign. (Id.) To conceal the arrangement, defendant Beldini agreed with Dwek that his name should not appear on any paperwork. Following Healy's arrival at the meeting, among other things, the parties discussed Dwek's purported Garfield Avenue project. (Id.) Dwek asked that Healy not let Dwek's related applications go to the "bottom of the pile," in response to which Healy said, "Bottom of the pile or top of the pile?" (Id.) When Cheatam made clear that Dwek "want[ed] to be on the top," defendant Beldini told Dwek, "Well, we can flip the pile." (Id.) As the meeting concluded, regarding his Garfield Avenue applications, Dwek reminded defendant Beldini and Healy, "Just make sure I'm on top," to which defendant Beldini replied that she and Healy would "flip it, don't worry." (Id.) After the meeting, Shaw accepted \$10,000 in cash from Dwek to be converted into structured political contributions for the benefit of Healy and defendant Beldini. (Id.)

As further charged in the Superseding Indictment, on or about May 5, 2009, Cheatam and Shaw met with defendant Beldini at a diner in Jersey City where they provided her with four \$2,500 "straw donor" checks made out to Healy for Mayor '09, and which were funded with the \$10,000 corrupt cash payment that Dwek had promised defendant Beldini at the April 30th meeting. (Ct. 1, ¶7(s); Cts. 4 and 5, ¶ 1.)

Both of the \$10,000 corrupt payments from Dwek, each of which had been broken down into multiple \$2,500 "straw donor" checks benefitting, respectively, the JCDC and Healy for Mayor '09, were reported to New Jersey State election officials as legitimate contributions. (Ct. 1, ¶¶ 7(t) and (u); Cts. 4 and 5, ¶ 1.) Defendant Beldini herself signed and certified the Healy for Mayor '09 report. (Ct. 1, ¶ 7(t); Cts. 4 and 5, ¶ 1.)

B. Legal Argument

Prior to the commencement of trial, defendant Beldini moved to dismiss Counts 4 and 5 of the Superseding Indictment on the grounds that § 666 was unconstitutional on its face; she alleged that the statute ran afoul of Congress's spending power and that it offended both the *Ex Post Facto* Clause and Due Process principles. Following comprehensive briefing and oral argument on these issues, the Court denied defendant Beldini's motion to dismiss on all grounds, and the parties proceeded to trial.

On February 11, 2010, a jury found defendant Beldini guilty of violating 18 U.S.C. § 666(a)(1)(B), convicting her of Counts 4 and 5 of the Superseding Indictment. By defendant Beldini's post-trial motions, she again moves to dismiss the counts of conviction, this time claiming that § 666(a)(1)(B) does not apply to defendant Beldini's corrupt agreement to accept, and acceptance of, two \$10,000 campaign contributions given in exchange for her promises of official assistance benefitting Dwek's Garfield Avenue project.⁵ (Def. Br. at 5.) This contention – which requires a twofold analysis – is without merit: first, as a matter of statutory interpretation, the conduct alleged in the Superseding Indictment is embraced, not excluded, by § 666; and second, the Superseding Indictment alleges facts more than sufficient to inform defendant Beldini of the nature of the charges against her as required by Third Circuit jurisprudence.

⁵Defendant Beldini's motion is timely: Federal Rule of Criminal Procedure 12(b)(3)(B) makes clear that, "at any time while the case is pending, the court may hear a claim that the indictment or information fails to invoke the court's jurisdiction or to state an offense." Fed. R. Crim. Pro. 12(B)(3)(B). This is true even after a guilty verdict. However, neither the jury's verdict nor the evidence adduced at trial bear upon defendant Beldini's latest challenge to § 666, which must be "decided based on the facts alleged within the four corners of the [superseding] indictment, not the evidence outside of it." United States v. Vitillo, 490 F.3d 314, 321 (3d Cir. 2007). See also United States v. Panarella, 277 F.3d 678, 685 (3d Cir. 2002) (holding that, for purposes of Rule 12(b)(3)(B), "a charging document fails to state an offense if the specific facts alleged in the charging document fall beyond the scope of the relevant criminal statute").

1. Statutory Interpretation of 18 U.S.C. § 666 Establishes That Campaign Contributions Are Within its Scope

It is well-settled that courts tasked with interpreting a Federal criminal statute such as § 666 “must pay close heed to *language, legislative history, and purpose*” in determining the scope of the legislation’s proscribed conduct. Dowling v. United States, 473 U.S. 207, 213 (1985) (emphasis added). Here, a review of each relevant consideration establishes that defendant Beldini’s acceptance of illicit campaign contributions, as detailed in the Superseding Indictment, falls squarely within the parameters of the corrupt conduct prohibited by Congress under § 666.

In pertinent part, the *language* of § 666 is as follows:

(a) Whoever, if the circumstance described in subsection (b) of this section exists-

(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof-

(B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of \$ 5,000 or more;

shall be [guilty of this offense].

(b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of \$ 10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.

(c) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

18 U.S.C. § 666 (a),(b) & (c). So, among other things, the plain language of the statute prohibits “an agent” of a local government that receives in excess of \$10,000 in federal funds in a year’s time from corruptly accepting or agreeing to accept “anything of value,” when that agent intends to be influenced in connection with a local government business, transaction or series of transactions worth \$5,000 or more.

Section 666 does not define “anything of value;” however, in Salinas v. United States, 522 U.S. 52 (1997) (holding that bribes under § 666 need not have any particular influence on an agency’s federal funds), the Supreme Court emphasized that *the statute places no limitations on the type of bribe penalized*. According to the Salinas Court, “The phrase [‘anything of value’] encompasses *all* transfers of personal property or *other valuable consideration* in exchange for the influence or reward” and must be accorded broad meaning. Id. at 57 (emphasis added). See also United States v. Marmolejo, 89 F.3d 1185 (5th Cir. 1996) (holding that the plain meaning of 18 U.S.C. § 666(a)(1)(B) compels the conclusion that “anything of value” includes transactions involving intangible items such as conjugal visits that an inmate would pay for). Certainly, in the instant case, two \$10,000 campaign contributions constitute both “valuable consideration” (as articulated by the Supreme Court in Salinas), as well as “anything of value” (as pronounced by Congress in the plain language of the statute). Nothing in the language of the statute, which the Supreme Court has stated must be interpreted broadly, implicates a contrary conclusion.

Indeed, subsection (c) of the statute further undermines defendant Beldini’s claims. In drafting § 666, Congress took the additional step of including a safe harbor provision expressly enumerating forms of payment which *could not* form the basis of a bribery charge under the statute: “This section does not apply to bona fide salary, wages, fees, or other

compensation paid, or expenses paid or reimbursed, in the usual course of business.” 18 U.S.C. § 666(c). Unmistakably, Congress could have added campaign contributions to this list of payments outside the scope of § 666, but it did not. This singling out of some, but not other, forms of payment has clear meaning in the context of legislative interpretation. Cf. States v. Stewart, 595 F.3d 197 4th Cir. 2010) (“[B]ecause reductions in sentence under section 5K1.1 and Rule 35 are not mentioned by the guidelines in reference to situations where the sentence may not be reduced upon section 3582(c)(2) motion, the canon of *expressio unius est exclusio alterius* counsels that such a reduction *is* permitted.”) By expressly listing forms of payment it deemed outside the scope of § 666, Congress made it clear that campaign contributions, when given in return for official acts, can (and did, in the case of defendant Beldini) constitute bribes in violation of § 666.

This Court would not be the first to review the salient considerations of the statute and so find. In United States v. Grubb, 11 F.3d 426, 430 (S.D. W. Va. 1993), aff’d 65 F.3d 167 (4th Cir. 1995), the defendant Grubb, a local judge, actively lent his support to the candidacy of an individual, Adams, for county sheriff. During the course of the campaign, Grubb met with another individual, Tomblin, who offered to make a \$10,000 campaign contribution to Adams if Adams would give him two years of part-time work should Adams be elected sheriff. Id. The defendant Grubb relayed this offer to candidate Adams and advised him to consider it; later, Grubb received confirmation that Adams and Tomblin had met and that the \$10,000 conditional contribution had been made. Id. Following Adams’ victory in the election, Grubb was asked by Tomblin to remind Adams about the part-time job Tomblin wanted, and Grubb did so, resulting in Tomblin being awarded the sought job. Id. As a result of Grubb’s involvement in the Tomblin “employment for a campaign contribution” scheme, he was charged with, inter alia,

aiding and abetting the payment of a bribe in violation of 18 U.S.C. § 2 and § 666(a)(2) and convicted following trial.

Post-trial, Grubb argued that § 666 did not apply to the granting of employment in exchange for political support or apply to payments made to candidates who are not government agents at the time of the bribe. 11 F.3d at 434. “Finding no merit to these contentions,” *id.*, the court dispensed of the defendant Grubb’s arguments and affirmed the conviction. Although defendant Beldini claims that the Grubb court “provides no explanation or analysis” and fails to “address any of the concerns raised here” (Def. Br. at 18), that simply is not true. The court addressed head on the case relied upon both by defendant Grubb more than a decade ago, as well as by defendant Beldini in the instant case – United States v. Cicco, 938 F.2d 441 (3d Cir. 1991).

In Cicco, defendants were municipal officials charged under § 666 with corruptly soliciting political party loyalty and active support (but not campaign contributions) in exchange for municipal jobs as part-time police officers. 938 F.2d at 442-43. Following a jury verdict of guilty, the district court entered judgments of acquittal as to the defendants, ruling both that Congress did not intend § 666 to apply to defendants’ actions and that the statute did not provide defendants with fair notice. *Id.* at 444. The Third Circuit affirmed the district court’s judgment of acquittal based on the district court’s reasoning that § 666 was not applicable to the defendants’ solicitation of party loyalty and support; it did not address the constitutional basis of the district court’s ruling. *Id.* In sum, the Cicco court first opined that § 666 was intended to ensure that corrupt local officials employed by entities receiving federal funds were not beyond the reach of the federal criminal code by virtue of their local employment, a troubling reality under 18 U.S.C. § 201 (bribery statute applicable to federal officials only). Preoccupied with the federal funds aspect of the statutes, the Cicco court stated that crimes embodied by § 201 and, by

extension it believed, the newer § 666, were “simply different” than the offenses charged against the defendants in Cicco – which did not directly implicate any federal funds – and stated that § 666 should be interpreted narrowly.⁶ Id. at 445-46. Further, the court emphasized that even though the conduct at issue in the case did in fact appear to come within the literal language of § 666, another section, 18 U.S.C. § 601 (deprivation of employment for political contribution), clearly covered the conduct in the Cicco case and, indeed, the Government had secured convictions on those § 601 counts at trial. See Cicco, 938 F.2d at 446 (“The statute [§ 601] addresses the sort of ‘political patronage harassments’ alleged here.”)

The Grubb Court’s treatment of Cicco was straightforward. It emphasized that the Cicco court itself had acknowledged that trading municipal employment for party services and loyalty came within the plain language of § 666; so too, the Grubb court concluded, did the similar conduct at issue in the case before it clearly fall under the plain language of § 666. 11 F.3d at 434. The existence of an alternative statute like § 601, the Grubb court reasoned, provided no basis to exclude such conduct from the plain prohibitions codified at § 666. Id. The Grubb Court further agreed with the court’s observation in Cicco that legislative history indicated that Congress enacted § 666 to extend the reach of § 201 to local officials, but made clear that nothing in that *legislative history* pointed to excluding conduct like that confronted by the courts in Cicco and Grubb from the ambit of § 666. Id.

Even if this Court were to credit the outdated rationale of Cicco, the facts of that case are wholly distinguishable from those at issue here. Unlike the defendants in Cicco,

⁶Of course, since the time Cicco was decided, the Supreme Court has held that bribes under § 666 need not have any particular influence on or connection to an agency’s federal funds, Salinas v. United States, 522 U.S. 52 (1997), and the Third Circuit has emphasized that, in fact, “§ 666 is extremely broad in scope.” United States v. Vitillo, 490 F.3d 314, 321 (3d Cir. 2007).

defendant Beldini was not charged with agreeing to give or withhold employment in exchange for official action – she was charged with agreeing to accept and accepting bribes in the form of illicit campaign contributions in exchange for official action benefitting Dwek’s Garfield Avenue project. Defendant Beldini’s conduct is not plainly dictated by an alternative statute like § 601 as in Cicco; rather, it falls squarely within the scope of § 666(a)(1)(B), which expressly prohibits individuals from corruptly accepting or agreeing to accept “anything of value” for official action. Salinas, 522 U.S. at 57; United States v. Siegelman, 561 F.3d 1215 (11th Cir. 1009) (governor of Alabama and CEO of HealthSouth convicted of bribery under § 666 where governor accepted political contributions from CEO in exchange for official action benefitting CEO). The plain language of the statute establishes that the conduct alleged in the Superseding Indictment is well within its scope and, as the Grubb court noted, “we see no clearly expressed legislative intent to the contrary.” 11 F.3d at 434.⁷ Indeed, our court of appeals’ most recent pronouncement makes clear that “§ 666 is extremely broad in scope.” Vitillo, 490 F.3d at 321.

The *purpose* of § 666 only serves to buttress what the plain language and legislative history of the statute establish – that the scope of the legislation’s proscribed conduct

⁷Defendant Beldini complains that the Grubb opinion does not mention United States v. McCormick, 500 U.S. 257 (1991) (addressing need for explicit *quid pro quo* in a Hobbs Act prosecution involving campaign contributions), seemingly shifting the focus off of the question of whether campaign contributions constitute “anything of value” under § 666 and on to the propriety of importing legal standards from the Hobbs Act. (Def. Br. at 18-19.) This is both confusing and disingenuous; defendant Beldini has not objected to the jury instructions given at trial and, even if she had, the standard of proof has no bearing on the motion to dismiss under Rule 12 currently before this Court. It is defendant Beldini who framed the issue by her own post-trial motion: “Is the Federal Programs Bribery statute intended to apply where the ‘bribes’ are campaign contributions accepted by the defendant with the intent to be influenced in taking official action in connection with [the Garfield Avenue project]?” (Id. at 9.) And, as discussed in footnote 5, supra, defendant Beldini’s motion to dismiss Counts 4 and 5 of the Superseding Indictment is limited to the parameters of § 666 and the four corners of the charging document itself – not the jury charge, not the evidence adduced at trial, not the verdict, and most certainly not the Hobbs Act. See Vitillo, 490 F.3d at 321; Panarella, 277 F.3d at 685.

encompasses campaign contributions. In Sabri v. United States, 541 U.S. 600 (2004), the Supreme Court confronted and rejected a facial challenge to § 666, holding that there was no requirement of a connection between the federal funds received by an entity and the alleged bribe accepted by an agent of that entity. In so ruling, the Sabri Court stressed the necessity for its broad holding, “Money is fungible, *bribed officials are untrustworthy stewards of federal funds*, and corrupt contractors do not deliver dollar-for-dollar value.” Id. at 606. “Congress was within its prerogative to protect spending objects from *the menace of local administrators on the take*.” Id. at 608 (emphasis added). The Supreme Court’s unvarnished analysis makes clear that if Congress is to protect federal funds, even after they have been doled out to state and local agencies, it only can accomplish that aim by ensuring that the local officials populating such local governments are not “on the take” – that these officials do not corruptly accept “anything of value,” 18 U.S.C. § 666, intending to be influenced in connection with official business. “On the take” surely includes the taking of illicit campaign contributions; to conclude otherwise merely because what is being “taken” is deposited into a campaign committee account instead of a personal account defies logic. The *purpose* of § 666 – to ensure the mutual exclusivity of federal funds and local officials who would act corruptly – is equally undermined by conduct like that engaged in by defendant Beldini.

2. Counts 4 and 5 of the Superseding Indictment Charging Violations of § 666(a)(1)(B) Were Sufficiently Alleged

Not only do the language, legislative intent and purpose of § 666 make clear that the statute covers corrupt campaign contributions, but Counts 4 and 5 of the Superseding Indictment alleged more than sufficient facts to state § 666 offenses.

As a threshold matter, “Indictments which are tardily challenged are liberally constructed in favor of validity.” United States v. Wander, 601 F.2d 1251, 1259 (3d Cir. 1979)

(citation omitted). Although defendant Beldini is entitled to move for dismissal based on the faulty contention that the Superseding Indictment did not state an offense, the Third Circuit clearly disfavors such belated claims:

[J]udicial interests require that such challenges be made at the earliest possible moment. One interest is in avoiding the needless waste of limited judicial resources. Another important interest is in discouraging tactical delays by defendants seeking a convenient ground of appeal in the event of a guilty verdict. We will uphold the indictment against [a defendant who tardily moves to dismiss the indictment] unless it is so defective that it does not, by any reasonable construction, charge an offense under § 666.

Vitillo, 490 F.3d 324 (internal quotation marks and citations omitted). See also Panarella, 277 F.3d at 686 (citing 4 Wayne R. LaFave et al., *Criminal Procedure* § 19.1(d), at 741 n.50 (2d ed. 1999) (“The facts of various cases indicate that the practice of sandbagging, by deliberately postponing the objection, continues as to these defects, particularly the failure to charge an offense.”)). In this case, whether liberally or strictly construed, the Superseding Indictment is more than sufficient, and defendant Beldini’s motion fails.

An indictment’s “primary office” is “to inform the defendant of the nature of the accusation against [her].” Russell v. United States, 369 U.S. 749, 767 (1962). The Third Circuit “deem[s] an indictment sufficient so long as it “(1) contains the elements of the offense intended to be charged, (2) sufficiently apprises the defendant of what he must be prepared to meet, and (3) allows the defendant to show with accuracy to what extent he may plead a former acquittal or conviction in the event of a subsequent prosecution.”” United States v. Kemp, 500 F.3d 257, 280 (3d Cir. 2007) (quoting Vitillo, 490 F.3d at 321 (3d Cir.2007)). Our court of appeals also has stressed that “no greater specificity than the statutory language is required so long as there is sufficient factual orientation to permit the defendant to prepare his defense and to invoke double

jeopardy in the event of a subsequent prosecution.” Kemp, 500 F.3d at 280 (quoting United States v. Rankin, 870 F.2d 109, 112 (3d Cir.1989)).

The Superseding Indictment in this matter was a highly detailed charging instrument which more than sufficiently set forth the elements of the § 666(a)(1)(B) offenses with which defendant Beldini was charged in Counts 4 and 5. It further apprised her of what she had to prepare to meet, and allowed her to plead a former acquittal or conviction in the event of an acquittal. The elements of § 666(a)(1)(B) are:

First: that at the time alleged in the Superseding Indictment, the defendant was an agent of a local government;

Second: that City of Jersey City received federal benefits in excess of \$10,000 in a one-year period;

Third: that the defendant accepted or agreed to accept something of value from Solomon Dwek;

Fourth: that the defendant acted knowingly and corruptly with the intent to be influenced or rewarded in connection with a business, transaction or series of transactions of the City of Jersey City; and

Fifth: that the value of the business, transaction or series of transactions to which the payment related was at least \$5,000.

(Final Jury Charge in U.S. v. Beldini, 09-637 at p. 34; Third Circuit Model Criminal Jury Instructions.) With respect to the sufficient pleading of each of the essential elements, first, defendant Beldini was alleged to have been an agent of a local government, Jersey City at all relevant times. Defendant Beldini was Jersey City Deputy Mayor. (Super. Indict. Ct. 1, ¶ 1(a); Cts. 4 and 5, ¶ 1.) More specifically, the Superseding Indictment charged that in that role, defendant Beldini reported directly to Healy and acted as Healy’s liaison and representative on certain Jersey City agencies, including the Jersey City Parking Authority and the Jersey City Economic Development Corporation. (Id.)

Second, the Superseding Indictment specifically alleged that “the City of Jersey City received in excess of \$10,000 in federal funds during a one-year period,” (Super. Indict. Cts. 4 and 5, ¶ 2.)

Third, the Superseding Indictment was littered with facts demonstrating defendant Beldini’s corrupt agreement to accept and acceptance of illicit campaign contributions. For example, at the conclusion of the March 13th luncheonette meeting, with respect to Dwek’s payments benefitting Healy’s campaign, defendant Beldini agreed that the corrupt payments should be made using Shaw as a conduit, and that Dwek’s name, which she believed to be David Esenbach, should remain concealed in connection with any corrupt payments in the form of political contributions made for the benefit of Healy’s campaign. (Ct. 1, ¶ 7(g); Cts. 4 and 5, ¶ 1.) Later on March 13th, as alleged in the Superseding Indictment, in a telephone conversation with Shaw, defendant Beldini confirmed that, because of the large amount of the corrupt payments expected from Dwek, the money could be spread among different campaign and political committees benefitting Healy’s campaign. (Ct. 1, ¶ 7(h); Cts. 4 and 5, ¶ 1.) During the same conversation with Shaw, defendant Beldini indicated that an upcoming fundraiser at the Beacon was for the mayor himself, but told Shaw that Dwek could “do the Team too, you know ... and then you can do the, uh, JC-- JCDC, they’re all going to the same place, but they’re all different accounts – Team Healy, Healy for Mayor, and JCDC, which is the Jersey City Democratic Committee.” (Id.) The Superseding Indictment even provided an excerpt of a conversation between defendant Beldini and Dwek during which she expressly agreed to accept Dwek’s illicit political contributions:

Dwek: I told Jack [Shaw] you know that that ten I gave, that ten thousand that I gave [Healy] is just the first but I’ll give him, as the election gets near, I’ll give him another ten thousand . . . you can always count on my support.

Beldini: Yeah. It's important. Great, we need it.

Dwek: And I'll count on you for all your help, you know, approvals and stuff.

Beldini: Absolutely. . . No, it's good for the city, it's – we want it, we want it. The mayor told you we want it.

Dwek: The mayor also, the mayor's not-- doesn't have a campaign fund or what is it, 'cause I was going to do something for him also but I don't --

Beldini: Yes, we do have a campaign fund, it's Healy for Mayor '09.

Dwek: But this is not –

Beldini: This is for JC– well, what we're trying to do is put money into different funds so we can, when we need it, funnel it back into the mayor. Which everybody does. So this is for the Jersey City Democratic Committee.

Dwek: Okay, so this ten is for that.

Beldini: I'm the treasurer for the Jersey– Healy for Mayor '09. I think it's a max of twenty-six hundred per person.

Dwek: But we don't have a problem with that.

Beldini: I know.

Dwek: I go through Jack [Shaw] and Ed [Cheatam] with the cash, and they do whatever they got to do with you and Healy.

Beldini: Whatever they have to do, yeah. Healy for Mayor. Mayor '09.

Dwek: So this ten was for this democratic thing [referring to the JCDC]. I'll do him another ten for Healy and then before the election we'll do more.

Beldini: Perfect. Beautiful.

(Ct. 1, ¶ 7(m); Cts. 4 and 5, ¶ 1.) This same blatant brand of interchange occurred, as further alleged in the Superseding Indictment, on or about April 30, 2009, at another meeting between defendant Beldini, Dwek, Healy, Cheatam and Shaw. (Ct. 1, ¶ 7(q); Cts. 4 and 5, ¶ 1.) Before

Healy's arrival, defendant Beldini was advised that, immediately following the meeting, Dwek would give Shaw another \$10,000 payment for the benefit of Healy's campaign. (Id.)

The facts alleged in the Superseding Indictment also included specifics about defendant Beldini's receipt of the converted cash payments she accepted and agreed to accept. As set forth in the Superseding Indictment, on or about March 26, 2009, Cheatam delivered to defendant Beldini two of the four "straw donor" checks used to conceal the source of the \$10,000 corrupt cash payment that Dwek provided to Cheatam and Shaw in order to convert to illicit political contribution checks benefitting Healy's campaign. (Ct. 1, ¶ 7(n); Cts. 4 and 5, ¶ 1.) As further alleged in the Superseding Indictment, on or about April 22, 2009, in a telephone conversation, Shaw informed defendant Beldini that Dwek wanted to "contribute some more money and raise some more money" and asked if she could arrange a meeting at the luncheonette between Dwek and Healy, which defendant Beldini agreed to do. (Ct. 1, ¶ 7(p); Cts. 4 and 5, ¶ 1.) The Superseding Indictment alleged that defendant Beldini met with Shaw and Cheatam on or about May 5, 2009 at a diner in Jersey City, where they provided her with four \$2,500 "straw donor" checks made out to Healy for Mayor '09, and which were funded with the \$10,000 corrupt cash payment that Dwek had promised defendant Beldini at the April 30th meeting. (Ct. 1, ¶ 7(s); Cts. 4 and 5, ¶ 1.)

Fourth, the Superseding Indictment contained more than sufficient allegations of defendant Beldini's corrupt intent to be influenced or rewarded in connection with a business, transaction or series of transactions of the City of Jersey City, the local government of which she was an agent. Specifically, it is alleged that, at the conclusion of the March 13th luncheonette meeting, defendant Beldini privately indicated to Dwek that she understood the contemplated corrupt agreement whereby official influence and approvals would be garnered in exchange for

payments and other benefits, and warned that “we have to be very cautious.” (Ct. 1, ¶ 7(g); Cts. 4 and 5, ¶ 1.) There also are numerous allegations concerning defendant Beldini’s agreement to conceal the arrangement, evincing the corrupt nature of her dealings with Dwek. With respect to Dwek’s payments benefitting Healy’s campaign, defendant Beldini agreed that the corrupt payments should be made using Shaw as a conduit, and that Dwek’s name should remain concealed in connection with any corrupt payments in the form of political contributions made for the benefit of Healy’s campaign. (*Id.*) During an April 1, 2009 meeting, defendant Beldini confirmed that Healy knew that Dwek’s \$10,000 corrupt payment had funded the purchase of tickets to the JCDC’s “Broadway at the Beacon” event the previous Saturday night and she agreed with Dwek that Healy “appreciate[d] the way [Dwek] does business.” (*Id.*) Defendant Beldini later was informed by Dwek that he would give another \$10,000 for the benefit of Healy’s campaign prior to the election, would provide another \$10,000 after the election, and would again transmit and conceal these corrupt payments using Shaw and Cheatam as conduits. (Ct. 1, ¶ 7(o); Cts. 4 and 5, ¶ 1.) Defendant Beldini agreed.

As to what Jersey City government business it was that defendant Beldini was to be influenced and rewarded for, the Superseding Indictment contained more than sufficient factual allegations spelling out what Dwek expected – approvals and official assistance on his Garfield Avenue project – and defendant Beldini’s agreement to give him what he wanted. On March 13, 2009, defendant Beldini assured Dwek that she could “help move” his Jersey City real estate approvals through Jersey City government, and noted that defendant Beldini and Dwek could “help each other.” (Ct. 1, ¶ 7(g); Cts. 4 and 5, ¶ 1.) On the same day, in a telephone conversation with Shaw on March 13th, defendant Beldini told Shaw that he should obtain specifications for the proposed Garfield Avenue project from Dwek and that she would speak to

a high-level Jersey City zoning official about the project. (Ct. 1, ¶ 7(i); Cts. 4 and 5, ¶ 1.) The Superseding Indictment further alleged that, during a March 24, 2009 meeting, defendant Beldini explained the process for obtaining a zone change in Jersey City and told Dwek, “I can definitely help you get through a lot of red tape.” (Ct. 1, ¶ 7(m); Cts. 4 and 5, ¶ 1.) As alleged, on April 1, 2009, defendant Beldini assured Dwek that she would “absolutely” assist him in expediting Jersey City approvals. (Ct. 1, ¶ 7(o); Cts. 4 and 5, ¶ 1.) On April 30, 2009, as alleged in the Superseding Indictment, defendant Beldini assured Dwek that, should his zone change application somehow end up on the bottom of the pile, that she and Healy would “flip the pile” and not to worry about it. (Ct. 1, ¶ 7(q); Cts. 4 and 5, ¶ 1.)

Fifth, and finally, the Superseding Indictment sufficiently alleged that the value of the business, transaction or series of transactions to which the payment related – was at least \$5,000. (Cts. 4 and 5, ¶ 3.) The Superseding Indictment sets forth ample facts concerning defendant Beldini’s acceptance of two \$10,000 illicit contributions on or about March 26, 2009 and May 5, 2009. (*Id.*) Moreover, as described in the Superseding Indictment, defendant Beldini knew that the Garfield Avenue project was slated to be large in scale, requiring approvals, zone changes and the installation of a broker on-site to handle the sales of hundreds of residential units. (Ct. 1, ¶ 7(o); Cts. 4 and 5, ¶ 1.) The value of the purported project to defendant Beldini, as well as to Dwek, also plainly was in excess of \$5,000.

The detailed nature of the Superseding Indictment in this matter more than sufficiently fulfilled the dictates established by the Third Circuit for sufficiency of an indictment. This Court is bound to construe the Superseding Indictment liberally based on defendant Beldini’s belated motion to dismiss under Rule 12; however, under any construction, the

Superseding Indictment here properly stated the offenses with which defendant Beldini is charged in Counts 4 and 5 and provided abundant facts in support of those charges.

Accordingly, defendant Beldini's latest attempt to dismiss the Superseding Indictment (Counts 4 and 5) fails. The plain language, legislative history and purpose of § 666 establish that campaign contributions are among the things "of value" that the statute prohibits an official like defendant Beldini from accepting while corruptly intending to be influenced in connection with government business. Against that backdrop, the Superseding Indictment here more than sufficiently alleged defendant Beldini's corrupt conduct in accepting illicit campaign contributions, which conduct served as the basis for the charges returned against her. The motion to dismiss must be denied.

II. THE GOVERNMENT'S EVIDENCE IS SUFFICIENT TO SUSTAIN THE CONVICTION, THEREFORE DEFENDANT BELDINI'S RULE 29 MOTION MUST BE DENIED

On February 11, 2009, a jury convicted defendant Beldini of two counts of violating § 666(a)(1)(B), finding that the Government proved each of the following elements beyond a reasonable doubt: (1) at the time of the conduct in question defendant Beldini was an "agent" of Jersey City; (2) that Jersey City received federal benefits in excess of \$10,000 during a one-year period; (3) that defendant Beldini accepted or agreed to accept "something of value," namely, illicit campaign contributions from Dwek; (4) that defendant Beldini acted corruptly with the intent to be influenced or rewarded in connection with a transaction of the government or agency, namely, Dwek's Garfield Avenue project; and (5) that the value of such transaction exceeded \$ 5,000. See 18 U.S.C. § 666(a)(1)(B); United States v. Bryant, 556 F. Supp. 2d 378, 423 (D. N.J. 2008).

Notwithstanding the jury's verdict, defendant Beldini claims that the Government's presentation failed to provide adequate proof of each of the required elements of § 666(a)(1)(B) and moves this Court for a judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29(c). Of course, she faces an "uphill battle," United States v. Fernandes, 272 F.3d 938, 943 (7th Cir. 2001); it is axiomatic that a defendant like Beldini challenging sufficiency of the evidence "bears a heavy burden." United States v. Casper, 956 F.2d 416, 421 (3d Cir. 1992). In this case, defendant Beldini, who claims insufficiency as to all elements save that to which she stipulated, does not come close to making it up the proverbial hill. The Government's proofs were more than sufficient, and the motion should be denied.

With respect to those proofs, in the context of Rule 29, the Court "must view the evidence and the inferences logically deducible therefrom in the light most favorable to the government to determine if there is sufficient evidence to support the factfinder's verdict." United States v. McNeill, 887 F.2d 448, 450 (3d Cir. 1989), cert. denied, 493 U.S. 1087 (1990). Circumstantial evidence and testimonial evidence are indistinguishable insofar as the jury's fact-finding function is concerned, therefore, "evidence which is sufficient to support a conviction need not be direct evidence." United States v. Fenech, 943 F. Supp. 480, 483 (E.D. Pa. 1996). Evidentiary sufficiency is the sole issue for the reviewing court's consideration, and the court must take care not to invade the jury's province by, for example, evaluating the credibility of witnesses. See United States v. Cothran, 286 F.3d 173, 175 (3d Cir. 2002). Indeed, all credibility issues must be resolved in the Government's favor. United States v. Scanzello, 832 F.2d 18, 21 (3d Cir. 1987). A finding of insufficiency therefore should "be confined to cases where the prosecution's failure is clear." United States v. Leon, 739 F.2d 885, 891 (3d Cir. 1984) (quoting Burks v. United States, 437 U.S. 1, 17 (1978)); see United States v. Smith, 294

F.3d 473, 477 (3d Cir. 2002). Accordingly, “[a] verdict will be overruled only if no reasonable juror could accept the evidence as sufficient to support the conclusion of the defendant’s guilt beyond a reasonable doubt.” United States v. Coleman, 811 F.2d 804, 807 (3d Cir. 1987) (emphasis added). Defendant Beldini does not come close to establishing entitlement to such an extraordinary remedy. The evidence introduced during the course of trial demonstrated defendant Beldini’s knowing, intentional and corrupt conduct, and the Government succeeded in proving each of the essential elements of § 666(a)(1)(B).

A. Defendant Beldini Was an “Agent” Under the Meaning of 18 U.S.C. § 666

Section 666(d)(1) defines the term “agent” as “a person authorized to act on behalf of another person or a government and, in the case of an organization or government, includes a servant or employee, and a partner, director, officer, manager, and representative.” 18 U.S.C. § 666(d)(1). At trial, Exhibit 226 – defendant Beldini’s business card bearing her title Jersey City Deputy Mayor, and Exhibit 215 – defendant Beldini’s Jersey City salary history, were entered in evidence, establishing her employ with the City of Jersey City and ample compensation. Time and again, on recordings played during the course of trial, defendant Beldini not only self-identified as Jersey City Deputy Mayor but touted her responsibilities, her access to Healy and even her authority to represent Healy himself on city boards and agencies. During a meeting with Dwek, Cheatam and Shaw on March 24, 2009, defendant Beldini told Dwek, “I represent the mayor on a few boards.” (Exhibit 107A at line 201.)⁸ She specified, “I’m the mayor’s liaison to the Parking Authority. I’m on the board of the JCEDC Economic

⁸For sake of ease, when dealing with the contents of recordings not transcribed by the court reporter, the Government will refer to the exhibits contained in the Government’s transcript binder, e.g., 107A, although not admitted in evidence, as opposed to the exhibit number associated with the accompanying recordings in evidence, e.g., 107. All recordings played by the Government at trial are transcribed and marked as exhibits, and at no point during trial did defendant Beldini take issue with the Government’s transcriptions.

Development.” (*Id.* at lines 198-99.) Referring to a change in leadership at the Parking Authority, defendant Beldini referred to herself and Healy as a unit acting in concert, telling Dwek, “In fact, we’re switching the director of the Parking Authority now” Of course, with respect to Dwek’s requests for her official assistance in expediting his approvals for the Garfield Avenue project, she assured Dwek that she could “definitely help [him] get through a lot of red tape.” (*Id.* at line 126.) And, in the event that his applications were on the bottom of the pile at City Hall, defendant Beldini, in Healy’s presence on April 30, 2009, told Dwek, “Well, we can flip the pile don’t worry about it.” (Exhibit 110A at line 226.) Later during the same meeting, defendant Beldini reiterated that she and Healy had the authority, based on their roles as Jersey City officials later, to “flip it don’t worry!” (*Id.* at line 311.) Accordingly, there was more than enough evidence presented that defendant Beldini was an “agent” of a local government as set forth in the plain defining language of § 666(d)(1), as she was both an “employee” and a “representative” of a “local government,” the City of Jersey City, that received \$10,000 in federal funds during the relevant one-year period.

In hopes of distracting the Court from the plain language of the statute and defendant Beldini’s indisputable employ as deputy mayor, defendant Beldini advances as supportive two cases wholly unhelpful to her cause. First, in United States v. Phillips, 219 F.3d 404 (5th Cir. 2000), the court held that a Louisiana parish tax assessor was not an “agent” of the parish which received federal funds and therefore could not be liable for theft and fraud under § 666. The Fifth Circuit observed that, although the tax assessor had jurisdiction over an assessment district that included property in the parish, the parish had no power, authority and control over the tax assessor’s duties or job. *Id.* at 412. The tax assessor’s duties were set forth by state law, and the parish simply was not the source of his salary or employee benefits.

Moreover, the tax assessor's office itself received no federal funds. Accordingly, the Fifth Circuit observed that the tax assessor was by law and practice removed from parish government and concluded, therefore, that the tax assessor was not "an employee of officer of the parish," nor was he authorized to act for the parish with respect to the federal funds it received. *Id.* at 411 (holding that for an individual to be an "agent" under § 666, he must be "authorized to act on behalf of [the agency] with respect to its funds.") As such, his actions were not within the scope of § 666. *Id.* at 413.

The facts of Phillips could not be more different than those in defendant Beldini's case. The defendant tax assessor in Phillips simply was not an employee of the parish – the entity receiving federal funds. On the other hand, defendant Beldini was an employee of, and was paid by, the City of Jersey City – the entity receiving federal funds. Moreover, in Phillips, the Fifth Circuit clearly was concerned over whether there was some nexus between the offense conduct and the expenditure of federal funds, so that the statute would pass constitutional muster and not be overresponsive.⁹ This concern has no place here; the Phillips case, of course, preceded the significant Supreme Court precedent of Sabri establishing that no demonstrated effect on federal funds is necessary. 541 U.S. at 606. This conclusion only strengthened the

⁹The Fifth Circuit itself so noted in United States v. Lipscomb, 299 F.3d 303 (5th Cir. 2002), as it struggled to reconcile its prior opinion in Phillips, noting that:

The panel instead viewed [tax assessor] Phillips as an agent of the Louisiana Tax Commission, which received no federal funds, and concluded that the statute did not reach his activity. Underlying this definitional question about "agent," however, lurked the majority's concern that the defendant was too functionally distant from the flow of federal funds to the parish. . . . Only by interpreting "agent" narrowly was the Phillips majority able to avoid the constitutional question.

299 F.3d at 314.

Supreme Court’s position establishing as inherent the federal interest in insuring that agencies receiving significant amounts of federal funding are not populated by corrupt officials. See Sabri, 541 U.S. at 607-08 (holding that § 666 was not an unconstitutional exercise of congressional authority under the Spending Clause and stating that no connection is required between criminal conduct and federal funds).¹⁰ This undermines both the narrow interpretation embraced in Phillips of an “agent” under § 666, and defendant Beldini’s reliance on the outdated Fifth Circuit case. There is absolutely no requirement that defendant Beldini had access to or authority over federal funds received by Jersey City, much less that her criminal activity had to enjoy some nexus with or connection to those federal funds. See Sabri, 541 U.S. at 607-08.

More recently, in Vitillo, the Third Circuit affirmed the district court’s denial of a motion to dismiss based on a claim that the defendant was not an “agent” under § 666. 490 F.3d 314. Defendant Beldini asserts that this case inures to her benefit, claiming that the defendant in Vitillo, allegedly unlike defendant Beldini, did indeed have some control over the federal funds received from the Federal Aviation Administration and intimating that this supposed control

¹⁰Numerous other circuits have followed the Supreme Court’s lead in Sabri and held that § 666 does not require a nexus between the alleged offense conduct and the receipt of federal funds under § 666. See United States v. Harris, 296 Fed. Appx. 402, 404 (5th Cir. 2008) (holding that no connection between offense conduct and federal funds is necessary); United States v. Cianci, 378 F.3d 71, 96 (1st Cir. 2004) (rejecting challenge to a conviction under section 666 in which the defendants contended that there was an insufficient connection between their conduct and federal funds received by a municipal police department); United States v. Spano, 401 F.3d 837 (7th Cir. 2005) (“although Sabri involved a facial constitutional challenge only, the opinion also forecloses the defendants’ as-applied challenge. The district court was correct in finding that a nexus between the theft/bribe and the federal funds received by the Town of Cicero was not an element of the crimes with which the defendants were charged”); United States v. Kranovich, 401 F.3d 1107 (9th Cir. 2005) (“[W]e . . . hold the government was not required to establish any connection between the embezzled funds and a federal interest, apart from the express requirement in section 666(b) that the County received federal benefits in excess of \$ 10,000”); United States v. Mirikitani, 380 F.3d 1223, 1225 (9th Cir. 2004) (“the Supreme Court [in Sabri] not only held that a federal nexus was not an element of the crime, but it held that no federal nexus must be shown at all.”).

formed the basis for the court's holding in that case. (Def. Br. at 37-38). The problem for defendant Beldini, however, is that the Third Circuit makes no such finding and, even more damaging to her cause, actually held that *no such control over federal funds by a defendant was necessary*. 490 F.3d at 323 (“Because § 666(d)(1) does not define an ‘agent’ as someone who necessarily controls federal funds, we conclude that the Vitillo argument fails.”) It bears noting that the Third Circuit, in so holding, repeatedly cited to the dissent in the very case on which defendant Beldini relies, United States v. Phillips, 219 F.3d 404, 422 n.3 (5th Cir. 2000) (Garza, J., dissenting) (“[T]he expansive statutory definition of ‘agent’ . . . recognizes that an individual can affect agency funds despite a lack of power to authorize their direct disbursement.”). Defendant Beldini was an “employee” and “representative” of the City of Jersey City; therefore, she was an “agent” under § 666. The law is clear that she need not have had any degree of control or authority over the federal funds received by the City of Jersey City, and that no nexus between her criminal conduct and those federal funds is required.

Defendant Beldini also cites to a second Fifth Circuit opinion, United States v. Whitfield, 590 F.3d 325 (5th Cir. 2009) (involving allegations of state court judges accepting bribes in the form of loans from an attorney in exchange for favorable determinations in the attorney's cases before the judges), in support of her dubious contention she was not an “agent” of a local government for the purposes of § 666. In that case, the defendants attacked their § 666 convictions by challenging two essential elements of the statute: (1) whether state court judges were “agents” of a particular local government agency – the Mississippi Administrative Office of the Courts (the “AOC”); and (2) whether the judges' corrupted judicial rulings were a “business, transaction, or series of transactions” of the AOC. The Whitfield opinion hinders, and does not help, defendant Beldini.

First, the Whitfield defendants contended that the judges were not “agents” of the AOC. Although the judges possessed control over certain funds that came from the AOC – for example, funds used to pay judicial court staff – such judicially-controlled funds were purportedly entirely unrelated to and separate from *the federal funds* that the AOC received. Therefore, the defendants claimed, they could not be “agents” of the AOC for purposes of § 666 because they had no authority over the federal funds received by the AOC, only some other AOC funds which, presumably for the sake of their argument, could not have been co-mingled with federally-received funds. 590 F.3d at 344-45.

In resolving this issue, the Fifth Circuit first made clear that it intended to rely on its prior ruling in Phillips, which required the defendants to possess some degree of authority over the federal funds (again, the very concept with which the Third Circuit in Vitillo expressly disagreed). But, even that reliance did not result in a winning argument for the defendant judges on the issue of agency, because the Fifth Circuit said more in Phillips, as the court in Whitfield was forced to acknowledge. For example, it noted that under § 666 “the funds in questions need not be purely federal, nor must the conduct in question have a direct effect on federal funds. [Section 666] possibly can reach misuse of virtually all funds of an agency that administers the federal program in question.” Id. at 345 (quoting Phillips, 219 F.3d at 411). The Whitfield court went on to repeat the Supreme Court’s more recent explanation in Sabri as to why § 666 is entitled to the broad interpretation it is accorded today: “Money is fungible, bribed officials are untrustworthy stewards of federal funds, and corrupt contractors do not deliver dollar-for-dollar value. Liquidity is not a financial term for nothing; money can be drained off here because a federal grant is pouring in there.” Whitfield, 590 F.3d at 345 (quoting Sabri, 541 U.S. at 608). Therefore, the Whitfield court held, the defendant judges, who had control over some AOC

funds, did not have to possess control over over the specific federal funds received by the AOC; the judges could properly be considered “agents” under § 666, so long as some nexus between their criminal conduct and the AOC existed. 590 F.3d at 345.

The same rationale applies here (without the threshold need for defendant’s authority over any federal funds that was disavowed in Vitillo) – there is no required connection between defendant Beldini and the federal funds flowing to Jersey City. There only need be some nexus between her criminal conduct and the City of Jersey City to establish agency. And, here, there was more than sufficient proof of the required nexus between the criminal conduct and the local government: defendant Beldini accepted and agreed to accept illicit campaign contributions to influence her for providing official assistance in gaining Jersey City government approvals for Dwek’s Garfield Avenue project. Nothing in Whitfield comes close to establishing that defendant Beldini is anything but an “agent” of the City of Jersey City.

Defendant Beldini also focuses on the second portion of the Fifth Circuit’s ruling in Whitfield, wherein the court found that the defendant judges’ crooked *judicial rulings* were not made “in connection with a business, transaction, or series of transactions” of the AOC, the administrative arm of the courts charged with *non-judicial business*. 590 F.3d at 346-47. Based on this finding, the appellate court reversed the defendants’ § 666 convictions. Id. The Whitfield court emphasized that the scope of the defendant judges’ agency, which was based on their receipt of funds from the non-judicial AOC to pay court staff, was not connected to the crux of their corrupt conduct – manipulating judicial rulings. Had the defendant judges been bribed in exchange for the appointment of a law clerk or staff member, the court reasoned, then the defendants judges would have been liable as “agents” of the AOC for their conduct under § 666, because of the connection between the criminal conduct and the agency receiving federal funds.

Id. at 346. The Fifth Circuit’s determination in Whitfield certainly does not advance defendant Beldini’s argument; indeed, it only serves to undermine her hollow assertion that she is not an “agent” of Jersey City for purposes of § 666.

There can be no doubt that defendant Beldini’s corrupt conduct was undertaken “in connection with a business, transaction, or series of transactions” of the City of Jersey City, the local government for which she was an “agent.” She received bribes for her official influence – to “get through a lot of red tape,” to talk to Jersey City zoning officials, to “absolutely” help expedite and even to “flip the pile” of applications so as to favor Dwek – in her role as Jersey City deputy mayor and in connection with a Jersey City transaction, namely, the Garfield Avenue project. Thus, there is no concern that defendant Beldini was charged as the agent of a government entity not covered by the statute either because it did not receive the requisite \$10,000 funding in the relevant one-year period or because her criminal conduct was not connected with the local government in receipt of the federal funding. Both were proved beyond a reasonable doubt at trial. But, in trying to force the square peg of Whitfield into the round hole of this case, defendant Beldini persists, falling back on the contention that she was not a Jersey City funds administrator or a federal funds administrator. She continues to assert that her \$66,000 per year position was ceremonial (a fact, in any event, for which no evidence was adduced at trial, but merely asserted through questioning and argument). However, there simply is no requirement in the plain language of the statute that defines “agent” that defendant Beldini have any control over the federal or local government’s funds; that defeats her argument. See Vitillo, 490 F.3d at 323.

The Third Circuit observed this very point in United States v. Brann, 990 F.2d 98, 101, 28 V.I. 274 (3d Cir. 1993). There, in dealing with the similar issue of whether a narcotics

agent who embezzled money in violation of § 666 held a position of trust pursuant to U.S.S.G. § 3C1.1, the Third Circuit quoted the plain language of § 666(d)(1) and stressed that the definition of “agent” included “an employee of *any* level from the lowest clerk to the highest administrator. It does not, however, require that the employee held a position of trust.” *Id.* at 101 (emphasis added). See also United States v. Sotomayor-Vazquez, 249 F.3d 1, 10 (1st Cir. 2001) (“[Section] 666 has been given a wide scope, to include all employees ‘from the lowest clerk to the highest administrator.’”) (quoting Brann, 990 F.2d at 101 (3d Cir. 1993)).¹¹ Perhaps that is why the Third Circuit’s Model Jury Instruction makes no such distinction regarding control over local government funds.

Finally, with regard to the charge, the Court instructed the jury in this case, without objection, that “an agent does not necessarily have to have any control over the federal funds received by the local government,” (2/8/10 Trial Trans. p. 11.40 at l. 13-17), which instruction is a verbatim recitation of the relevant excerpt of Third Circuit Model Instruction 6.18.666A1A-1.

Defendant Beldini’s cited cases are unavailing (and do not control in any event) and in conflict with the Third Circuit Model Jury Instructions, the statute’s plain language and Third Circuit case law. Ample evidence admitted at trial clearly allowed a reasonable juror to

¹¹The Fifth Circuit itself, in United States v. Ollison, 555 F.3d 152, 161 (5th Cir. 2009), noted the very plain language of § 666 with regard to the definition of “agent.” There, the defendant, who was convicted under fraud/embezzlement prong of § 666, argued that the statute did not apply to her because she was a low-level employee, not an administrator who had authority to effect significant transactions. *Id.* at 160. The Fifth Circuit observed that Ollison’s argument was in tension with the plain language of the statute which made no distinction between high- and low-level employees. The court declined to upset the defendant’s conviction on this ground and specifically indicated that it was avoiding creating a circuit split with the First Circuit in United States v. Sotomayor-Vazquez, 249 F.3d 1, 10 (1st Cir. 2001) (“[Section] 666 has been given a wide scope, to include all employees ‘from the lowest clerk to the highest administrator.’”) (quoting United States v. Brann, 990 F.2d 98, 101, 28 V.I. 274 (3d Cir. 1993)).

conclude that defendant Beldini, the Deputy Mayor of Jersey City, met the statute's definition of an "agent."

B. There is Sufficient Evidence that Defendant Beldini Agreed to Accept or Accepted Bribes

Defendant Beldini argues that there is not enough proof that she "accepted" bribes or took cash for any reasonable juror to have convicted her as a unanimous jury voted to do. (Def. Br. at 38.) Of course, under § 666(a)(1)(B), the Government was required to prove either that defendant Beldini accepted bribes *or* agreed to accept bribes, see 18 U.S.C. § 666(a)(1)(B), and in no way was required to prove that she lined her own pockets with cash. (Indeed, the Government never even *alleged* that defendant Beldini personally retained corrupt cash payments.) The Government offered sufficient evidence of both defendant Beldini's agreement to accept bribes in the form of illicit campaign contributions benefitting her and Healy, as well as her actual acceptance of those bribes.

As to Count 4 and the first \$10,000 bribe, on March 24, 2009, defendant Beldini and Dwek discussed the JCDC-sponsored "Broadway at the Beacon" fundraiser, and Dwek's intention to give \$10,000 for tickets in exchange for defendant Beldini's promises of official action. Dwek asked, "It's \$500 a ticket right?" and defendant Beldini responded in the affirmative. (Exhibit 107A at lines 153-55.) Dwek then said, "Okay, yeah, so 10 and 10, 20 is ten grand right?" (Id. at line 157.) Later during that same encounter, defendant Beldini and Dwek spoke in plain terms about the \$10,000 cash payment to the JCDC, which they agreed would be concealed through Shaw and Cheatam.

Beldini: This is for JC— well, what we're trying to do is put money into different funds so we can, when we need it, funnel it back into the mayor. Which everybody does. So this is for the Jersey City Democratic Committee.

Dwek: Okay, so this ten is for that.

Beldini: I'm the treasurer for the Jersey– Healy for Mayor '09. I think it's a max of twenty-six hundred per person.

Dwek: But we don't have a problem with that.

Beldini: I know.

Dwek: I go through Jack [Shaw] and Ed [Cheatam] with the cash, and they do whatever they got to do with you and Healy.

Beldini: Whatever they have to do, yeah. Healy for Mayor. Healy '09.

Dwek: So this ten was for this democratic thing [referring to the JCDC]. I'll do him another ten for Healy and then before the election we'll do more.

Beldini: Perfect. Beautiful.

(Id. at lines 271-88.) Only a few days later, on March 27, 2009, Shaw called Cheatam and told him that defendant Beldini “is looking for checks” and that “she will be in City Hall from 12 to 3 [o'clock]” that day. (Exhibit 120A at lines 6, 9.) Four structured checks in the amount of \$2,500 each, the jury heard – made out by Shaw, Catherine Chin, E. Cheatam Associates and Maher Khalil – made their way into the Jersey City Democratic Committee's account as recorded on the JCDC second quarterly ELEC Report, admitted in evidence through Carr Daley accountant Teresa Smiley. (See Exhibit 200.) The JCDC threw a lavish fundraiser on March 28, 2009, “Broadway at the Beacon,” in support of Mayor Healy's campaign, and as stated on the face of the event's invitation, the “Executive Producer” of the event was defendant Beldini. (See Exhibit 213.) After the “Broadway at the Beacon” event took place, defendant Beldini responded to Dwek's question “[T]he mayor knows, you know, where all the tickets came from?” by stating, “Absolutely.” (Exhibit 109A at lines 29-32.)

As to Count 5 and the second \$10,000 bribe, the evidence adduced at trial included a recording of a meeting attended by defendant Beldini, Shaw, Cheatam and Dwek on April 1, 2009. (See Exhibit 109A.) During the meeting, defendant Beldini was informed by Dwek, “What I wanna do is, when I get back, maybe ah, you know, for you and for the Mayor, ah, I’ll do another ah, 10 or you know, if you need more, I’ll give you more,” to which defendant Beldini replied, “Yeah, because, yeah, the election is May 12th.” (Id. at lines 423-28.) On April 30, 2009, during another meeting with Dwek and defendant Beldini in attendance, defendant Beldini was further informed by Dwek, “I was uh, telling uh, Jack [Shaw] after uh, the lunch, after uh, the breakfast I’m gonna give him uh, you know another ten thousand, and then he’ll do what, you know business with you. Just don’t, make sure you don’t put my name on anything. I don’t wanna have any conflicts or anything. And then after the election another 10 we’ll do.” Defendant Beldini responded, “No. We don’t want conflicts anyway.” (Exhibit 110A at lines 131-37.)

A series of telephone calls just days later, on May 5, 2009, provide a clear picture of the events culminating in defendant Beldini accepting Dwek’s second \$10,000 corrupt payment (by that time, structured into campaign contributions) at the Brownstone Diner. In an initial phone call from Shaw, he stated, “I gotta couple of donations for you,” to which defendant Beldini replied, “That’s lovely. Nothing more than \$2,500 right?” (122A at lines 6-9.) Shaw and defendant Beldini concluded the conversation by agreeing to meet later that afternoon at the Brownstone Diner in order to pass the checks. (Id. at lines 23-24.) Immediately thereafter, Shaw called Cheatam, who asked Shaw to “reach out for Mike” and “tell him to make it out for, um, twenty-five” to go “for Healy.” (Exhibit 123A at lines 4-9.) Earlier that same day, Shaw had spoken to Michael Schaffer (“Schaffer”) and told Schaffer that he or Cheatam may reach out

to him later that afternoon “to get a contribution” for Healy, but one for which they “would provide the funds.” (Exhibit 128A at lines 1, 8.) Schaffer told Shaw, “You could use my name, sure.” (Id.) Early that afternoon, Shaw called Cheatam and told him about the scheduled Brownstone meeting with defendant Beldini, stating that Shaw would be “giving her my checks, if you want to stop by.” (Exhibit 129A at line 13.) Cheatam told Shaw that he would meet with Schaffer at the Port of Spain restaurant and then join Shaw and defendant Beldini at the Brownstone. (Id. at lines 20-26.) At the conclusion of that conversation, Cheatam asked Shaw to confirm that he should write one of the \$2,500 checks from his “business account” rather than his “personal account.” (Id. at line 27.) At 4:08 p.m. that afternoon, Shaw called Schaffer to thank him for the use of his straw donor check. (Exhibit 131A.) Schaffer informed Shaw that he had met Cheatam and “gave him that,” and Shaw confirmed everything had gone smoothly, stating, “Yeah. He came down and met, uh, Leona [Beldini] and I at the Brownstone. So it’s much appreciated.” (Id. at lines 4-7.) Defendant Beldini proceeded to deposit four straw donor checks in the amount of \$2,500 each – made out by Shaw, Catherine Chin, E. Cheatam Associates and Michael Schaffer – into the Healy for Mayor ‘09 campaign account and forward the same checks to Carr Daley accountant Teresa Smiley for inclusion on the ELEC report. (See Exhibit 201; 2/4/10 Trial Trans. pp. 9.68-9.73)

There is more than sufficient evidence – both direct and circumstantial – in the form of recordings, documents and testimony, establishing that defendant Beldini agreed to accept or accepted the two \$10,000 bribe payments forming the basis of Counts 4 and 5.¹²

¹²Defendant Beldini also was charged in Counts 4 and 5 with aiding and abetting violations of § 666 pursuant to 18 U.S.C. § 2. So, the Government was able to establish defendant Beldini’s guilt as to Counts 4 and 5 by proving beyond a reasonable doubt that she counseled and commanded the acceptance of Dwek’s corrupt payment or that she knew about the substantive crime and she acted with the intent to facilitate it.

C. There Was Overwhelming Proof of Corrupt Intent on the Part of Defendant Beldini

Defendant Beldini again chooses an improper forum – this time, her Rule 29(c) sufficiency motion – to complain about the legal standards of proof required by the Hobbs Act and even to offer a halfhearted “as applied” challenge to § 666 (Def. Br. at pp. 39-42.) The facts remain: defendant Beldini did not object to the § 666 jury charges at trial; the § 666 charges, in any event, are taken from the Third Circuit Model Jury Instructions; the instant Rule 29 motion concerns the counts of conviction, not the Hobbs Act; the instant Rule 29 motion more specifically concerns sufficiency of the evidence offered at trial, not what defendant Beldini wishes the Government had to prove; and, most significantly, there was overwhelming evidence of defendant Beldini’s corrupt intent put before the jury at trial.

Time and again, evidence was admitted at trial showing defendant Beldini agreeing to accept and accepting, see subsection B, supra, illicit campaign contributions, and explicitly promising Dwek, the man that she believed was a crooked real estate developer, that in exchange she would take official action to assist him with his Garfield Avenue project. Moreover, the jury heard defendant Beldini, in her own words, agreeing to conceal Dwek as the source of the illicit campaign contributions and even as the developer associated with the Garfield Avenue project she was promising to assist him with.

It took no more than a single meeting with Dwek for defendant Beldini revealed her corrupt intent. On March 13, 2009, as she was leaving the luncheonette, and when asked to confirm by Dwek, “Jack told you, you know, what I’m trying to do,” defendant Beldini said, “Yeah, yes, I understand,” and quickly added, lowering her voice, “We have to be very cautious how we do that.” (Exhibit 103A at lines 568-571.) In this same conversation, defendant Beldini made it clear that she was on board with concealing Dwek’s identity as a source of cash: Dwek

said, “I mean anything I’ll do, I’ll do through Jack [Shaw],” and defendant Beldini replied, “Oh absolutely, absolutely.” It was the first of many times that defendant Beldini was informed by Dwek that he would provide Shaw and Cheatam with \$10,000 payments and that those two conduits would proceed to “do business” with defendant Beldini. (Exhibit 110A at line 133.) There was ample evidence that defendant Beldini clearly understood the arrangement. The jury heard candid and unequivocal interchanges between Dwek and defendant Beldini proving her corrupt intent:

Dwek: Okay but just make sure, you know, with you and the mayor, you know, to help me out expediting my stuff with Garfield.

Beldini: Absolutely.

(Exhibit 109A at lines 456-58.) And, again, there was substantial evidence of defendant Beldini’s agreement to conceal the arrangement. On March 24, 2009, when discussing the first \$10,000 bribe going to the JCDC for the Broadway at the Beacon fundraiser and what the *legal* campaign contribution limits were:

Dwek: But we don’t have a problem with that.

Beldin: I know.

Dwek: I go through Jack [Shaw] and Ed [Cheatam] with the cash, and they do whatever they got to do with you and Healy.

Beldini: Whatever they have to do, yeah. Healy for Mayor. Healy ‘09.

(Exhibit 107A at lines 275-79.) Indeed, defendant Beldini actively participated in the concealment of Dwek’s bribe payments by accepting the straw donor checks, see subsection B, supra, and, in the case of the Healy for Mayor ‘09 ELEC report, swearing to the accuracy of the report that concealed Dwek as the source of the second \$10,000 bribe. (See Exhibit 201.) Carr Daley accountant Teresa Smiley testified that defendant Beldini never discussed with her a

donor named David Esenbach and never reported contributions in the amount of \$10,000; what defendant Beldini did do was fax Smiley four checks dated on or about May 5, 2009, each in the amount of \$2,500 from Shaw, Chin, Cheatam and Schaffer. (See Exhibit 204.)

There is more than sufficient evidence, in the form of recordings, documents and testimony, establishing defendant Beldini's corrupt intent.

D. The Bribes Accepted by Defendant Beldini Were In Connection With A Business, Transaction or Series of Transactions of The City of Jersey City

As discussed above in subsection A, supra, there was overwhelming evidence presented at trial that the bribes accepted by defendant Beldini – in the form of illicit campaign contributions – “were in connection with a business, transaction or series of transactions” of the City of Jersey City, namely, Dwek's Garfield Avenue project. Whitfield is unavailing in this case – the case law in this circuit is clear that defendant Beldini need not have any control or authority over federal funds received by the City of Jersey City. See Vitillo. All that is required is proof of some nexus between the local government that employed her and her criminal conduct.

Defendant Beldini met with Dwek time and again throughout March and April of 2009, and on each occasion the Garfield Avenue project (and what defendant Beldini agreed to do in order to get the project pushed through) was a primary topic of discussion. Defendant Beldini was informed by Dwek that “approvals were key” to his purported development at their initial March 13th luncheonette meeting (Exhibit 103A at line 452). Defendant Beldini made it clear that she understood that Dwek's clear plan for Garfield Avenue was to “step it up.” (Exhibit 103A at line 149). Dwek testified during direct examination as to what this meant and what would be needed to achieve it:

Q. -- what did you understand the defendant Beldini to [mean] by, quote, “Step it up”?

A. That I would have to step the building -- the units up. It would be stacked approximately 25 stories in order to fit the magnitude of 750 condominium units on a site of that size, and I would have to step the height of the building up in order to achieve that height with her help.

* * *

Q. In your experience, what does that increase of height require from a city or town when you are developing?

A. Dozens of different approvals, variances, and permissions from numerous Boards. You need assistance of dozens of departments to achieve a development of any size, especially the size of 750 condominium units on 25 stories.

(1/29/10 Trial Trans. pp. 5.38-5.39.) Defendant Beldini also expressly agreed to provide official assistance to Dwek in order that he get what he wanted:

Dwek: And I’ll count on you for all your help, you know, approvals and stuff.

Beldini: Absolutely. . . No, it’s good for the city, it’s – we want it, we want it. The mayor told you we want it.

(Exhibit 107A at lines 251-260.) Again, on April 30th:

Dwek: Okay but just make sure, you know, with you and the mayor, you know, to help me out expediting my stuff with Garfield.

Beldini: Absolutely.

(Exhibit 109A at lines 456-58.)

Here, there can be no doubt that defendant Beldini’s corrupt conduct was undertaken “in connection with a business, transaction, or series of transactions” of the City of Jersey City, the local government for which she was an “agent.” She received bribes for her official influence – to “get through a lot of red tape,” to talk to Jersey City zoning officials, to “absolutely” help expedite and even to “flip the pile” of applications so as to favor Dwek – in her

role as Jersey City Deputy Mayor and in connection with a Jersey City transaction, namely, the Garfield Avenue project. As the jury in this case was properly instructed, there was no requirement that defendant Beldini had the power to vote on certain matters. Moreover, there was not requirement that she had the power to dole out federal funds received by Jersey City. See Salinas v. United States, 522 U.S. 52 (1997) (holding that bribes under § 666 need not have any particular influence on an agency's federal funds); Sabri v. United States, 541 U.S. 600 (2004) (holding that there is no need to prove a connection between a case-specific federal interest – or, more narrowly, federal funds – and the bribe itself); Vitillo, 490 F.3d at 323. Defendant Beldini understood what Dwek wanted in furtherance of the Garfield Avenue project, knew what “stepping it up” would require in terms of Jersey City official action and approvals favoring the Garfield Avenue project, agreed that she would assist Dwek with the Garfield Avenue project in her official capacity as an agent of Jersey City and, in fact, took two \$10,000 bribes in the form of campaign contributions in exchange for that promised assistance.

E. The \$5,000 Value Threshold Was Met As Required Under 18 U.S.C. § 666

As to value (the true crux of this element), in pertinent part, the jury charge give by this Court on element 5 of § 666, reads:

This \$5,000 threshold can be reached by determining how much the business or transactions were worth to the local government, the payor, or the public official who was soliciting, demanding, accepting or agreeing to accept the payment. *For instance, if the value of the corrupt payment that the public official accepts is \$5,000 or more*, or if the value of the contract or matter in issue is worth \$5,000 or more to the payor or the local government, then this is evidence that the value of the particular transaction or business at issue was worth \$5,000 or more.

(2/8/10 Trial Trans. p. 11.44.) United States v. Zwick, 199 F.3d 672, 689-90 (3d Cir. 1999) (finding that § 666 does not require that value be measured from the perspective of the organization, government, or agency), abrogated on other grounds by Sabri, 541 U.S. at 604.

There was no objection to this charge by defendant Beldini. As discussed throughout Point II of this response, supra, there was sufficient evidence at trial that defendant Beldini agreed to accept and accepted \$10,000 bribe payments, in the form of campaign contributions, on two occasions.

These payments obviously exceed the \$5,000 value required under § 666.¹³

III. DEFENDANT BELDINI WAS APPROPRIATELY CHARGED WITH AND CONVICTED OF 18 U.S.C. § 666

A. “Fairness”

Defendant Beldini, by the final argument in her post-trial motions, appears to simply cry foul, without advancing any cognizable legal claim under a rule that might entitle her to relief and without citing any applicable cases.¹⁴ In short, defendant Beldini apparently finds it unfair that her corrupt conduct subjected her to multiple felony charges. But it did. Each of the offenses with which she was charged, to include § 666, applies to the facts alleged in the case and each comprises distinct essential elements.

B. There Was No Jury Confusion By Defendant’s Acts of Concealment Involving Straw Donors and ELEC Forms

¹³The threshold similarly is met – indeed, far exceeded – by determining what “the value of the contract or matter in issue is worth . . . to the payor.” See United States v. Hines, 541 F.3d 833 (8th Cir. 2008) (things of value can be assessed by valuing worth to briber or any other party with an immediate interest in the transaction). Throughout the trial, the jury heard recordings on which Dwek stated the Garfield Avenue project was slated to be huge, an estimated 750 units with a starting price of \$500,000 per unit. Clearly, the value of the massive project to the payor in this case, Dwek, was worth \$5,000 or more as required under § 666.

¹⁴At the same time, defendant Beldini alleges that the Government must have failed to research the application of § 666 to corrupt conduct like that she engaged in, claiming that there are no reported cases supporting its use. This is a blatant misrepresentation. See, e.g., United States v. Siegelman, 561 F.3d 1215 (11th Cir. 1009) (governor of Alabama and CEO of HealthSouth convicted of bribery under § 666 where governor accepted political contributions from CEO in exchange for official action benefitting CEO); United States v. Grubb, 11 F.3d 426, 430 (S.D. W. Va. 1993), aff’d 65 F.3d 167 (4th Cir. 1995) (involving bribes in the form of campaign contributions to county sheriff candidate); United States v. Jones, 2009 U.S. Dist. LEXIS 100969 (W.D. Tex. Oct. 28, 2009) (taking no issue with charge of § 666 in contribution case but dismissing said counts due to statute of limitations).

Proof of defendant Beldini's corrupt intent was at the heart of the case. Evidence of defendant Beldini's concealment was properly admitted at trial, and this Court later instructed the jury in this case, in pertinent part:

Now, in this case, you have heard testimony that after the crime was supposedly committed, the defendant and others endeavored to structure the two \$10,000 cash payments from David Esenbach or Solomon Dwek as David Esenbach into four separate checks of \$2,500 each, and then certify and submit to the New Jersey Election Law Enforcement Commission certain campaign disclosure forms that did not list David Esenbach as the contributor or his payments of \$10,000. If you believe that the defendant engaged in acts of concealment, then you may consider this conduct along with all of the other evidence in deciding whether the Government has proved beyond a reasonable doubt that the defendant committed the crime charged. This conduct may indicate that the defendant thought she was guilty of the crime charged and was trying to avoid punishment. On the other hand, sometimes an innocent person may engage in similar conduct for some other reason. Whether or not this evidence causes you to find that a defendant was conscious of his or her guilt of the crime charged, and whether that indicates that this defendant committed the crime charged is entirely up to you as the sole judges of the facts in this case.

(2/8/10 Trial Trans. p. 11.50-11.51; Third Circuit Model Criminal Jury Instruction 4.30.) This instruction was proper. This Court made no reference to state campaign laws but, even if it had, it would not bolster defendant Beldini's claim of confusion or impropriety. Courts routinely have held that evidence of state law is admissible to show knowledge and intent. See, e.g., Grubb, 11 F.3d at 433 (evidence of the judicial canon of ethics was admissible and relevant to prove intent and absence of mistake, when coupled with an appropriate limiting instruction); United States v. Reamer, 589 F.2d 769, 770 (4th Cir.) (evidence of state law and Code of Professional Responsibility admissible to prove intent in trial against attorney for mail fraud), cert. denied, 440 U.S. 980 (1978); United States v. Morlang, 531 F.2d 183, 191-92 n.16 (4th Cir. 1975) (holding the standard of conduct of HUD employees in trial of HUD director admissible); United States v. Chartock, 283 Fed. Appx. 948, 955 (E.D. Pa. 2008). And, clearly, acts of

concealment – here, in the form of breaking up corrupt payments and failing to name the source of the payments on state election forms – constitute evidence of defendant Beldini’s consciousness of guilt. See United States v. Kemp, 500 F.3d 257, 296 (3d Cir. 2007).

The Government’s rebuttal emphasizing proof of defendant Beldini’s criminal intent was entirely proper: “Yet, she is agreeing to conceal the true source of these payments. She is agreeing to break the law.” Again, defendant Beldini’s acts of concealment are evidence of her consciousness of guilt. See United States v. Middlemiss, 217 F.3d 112, 119 (2d Cir. 2000); United States v. Bonito, 57 F.3d 167, 174 (2d Cir. 1995) (evidence regarding consciousness of guilt includes a defendant’s efforts to conceal material information regarding the bribery or providing false explanations concerning the corrupt payments). Here, counsel argued in rebuttal that defendant Beldini’s concealment of Dwek as the true source of the \$10,000 illicit campaign contributions is just that – evidence of her agreement to violate the federal laws with which she was charged. The argument, which does not even mention state law, was proper.

As to baseless claims of jury confusion, defendant Beldini is barred from speculating as to the jury’s ultimate findings. See United States v. Vastine, 363 F.2d 853, 854-55 (3d Cir. 1996) (refusing to engage in any speculation as to why the jury reached the verdict that it did). This is true even in cases where the reviewing court is confronted with a claim of inconsistent verdicts. See United States v. Powell, 469 U.S. 57 (1984). Here, defendant Beldini has not advanced the unavailing claim that the verdicts in this case were inconsistent, as she is fully aware that the Supreme Court has emphasized that “such inconsistencies often are a product of jury lenity” favoring the defendant. Id. at 65. Of course, then, as the Supreme Court has explained, it is wholly improper to inquire “into a jury’s thought processes” and attempt to

understand why it acquitted on some counts and convicted on others. Id. at 67. Such an inquiry would be “pure speculation,” and a defendant’s attempt to capitalize on it ignores the possibility that the jury acquitted on some counts solely on the basis of leniency, or even mistake. Id. at 63-68. Because it cannot be assumed that the acquittal verdict was “the one the jury ‘really meant,’” any attempts to parlay an acquittal on one or more counts into an attack on the sufficiency of the evidence for counts of conviction must be rejected. Id. Rather, a defendant's safeguard against conviction on insufficient evidence is sufficiency of the evidence review, which must be conducted “independent of the jury’s determination that evidence on another count was insufficient.” Id. at 67; see United States v. Messerlian, 832 F.2d 778, 797 (3d Cir. 1987) (on sufficiency review, the role of the court is “not to attempt to rationalize the jury's verdict or to reconcile apparently inconsistent findings”). And, for all of the reasons set forth in Point II of this response, defendant Beldini’s claims as to insufficient evidence under Rule 29(c) are without merit and should be denied.

IV. CONCLUSION

Defendant Beldini's belated Rule 12 motion to dismiss has no merit. As a matter of statutory interpretation, the corrupt conduct alleged in the Superseding Indictment falls squarely within the scope § 666, and the Superseding Indictment alleges facts more than sufficient to inform defendant Beldini of the nature of the charges against her as required by Third Circuit jurisprudence.

Similarly, there is no basis for a judgment of acquittal under Rule 29(c). There was substantial evidence introduced throughout the course of trial that led to defendant Beldini's convictions as to Counts 4 and 5 of the Superseding Indictment. That evidence included, inter alia, video and audio recordings showcasing defendant Beldini's own statements – whereby she agreed to accept illicit campaign contributions, agreed to assist the purported developer David Esenbach in expediting his approvals, agreed corruptly to conceal his name in connection both with the Garfield Avenue project and the bribe payments – testimony of various witnesses, including Dwek, and documents, to include copies of the straw donor checks defendant Beldini transmitted to accountant Smiley. Accordingly, defendant Beldini's motion for a judgment of acquittal should be denied, as well.

Respectfully submitted,

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DATED: April 19, 2010
Newark, New Jersey

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of April, 2010, a true and correct copy of the foregoing Memorandum of the United States in Opposition to Defendant's Post-Trial Motions was sent by Federal Express and provided via electronic filing to:

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/s/ Sandra L. Moser
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Dated: April 19, 2010