IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 4:15CR00001-1 BSM
	)	
MICHAEL A. MAGGIO	)	

UNITED STATES' RESPONSE TO MOTION TO WITHDRAW GUILTY PLEA

The United States of America, by and through the Attorney for the United States, Acting Under Authority Conferred by Title 28, United States Code, Section 515, for the Eastern District of Arkansas, Patrick Harris, and Julie Peters, Assistant United States Attorney, and Raymond Hulser, Chief, Public Integrity Section, Criminal Division, United States Department of Justice, and Charles R. Walsh, Trial Attorney, for its Response to defendant Michael A. Maggio's Motion to Withdraw Plea of Guilty and to Dismiss Information (docket no. 21), states as follows.

I. Introduction

On January 9, 2015, defendant Michael A. Maggio, a former state circuit court judge, consented to the entry of an Information (docket no. 2) charging him with one count of Bribery Concerning Programs Receiving Federal Funds, a violation of 18 U.S.C. § 666(a)(1)(B). Maggio contemporaneously entered into a Plea Agreement (docket no. 4) and Addendum (docket no. 5) with the United States, and pleaded guilty to the charge. On February 12, 2016, thirteen months after Maggio's guilty plea, two weeks prior to his sentencing, and two days after the United States notified Maggio that he was in breach of his Plea Agreement and Addendum, resulting in a revocation of the Plea Agreement's favorable sentencing stipulations, Maggio filed a motion to withdraw his guilty plea. In his motion, Maggio asserts that there is no factual basis for his plea, and that he received ineffective assistance of counsel. Because there was an

adequate factual basis for Maggio's plea, and Maggio's counsel was effective, Maggio's motion to withdraw his guilty plea should be denied.

II. Standard for Withdrawal of Guilty Plea

A defendant may seek to withdraw his plea of guilty if he establishes "a fair and just reason for requesting the withdrawal." Fed R. Crim. P. 11(d)(2)(B). The burden of establishing "a fair and just reason" rests with the defendant. *United States v. Alvarado*, 615 F.3d 916, 920 (8th Cir. 2010). Although the standard has been described as "liberal," it is not automatic. *See United States v. Van Doren*, 800 F.3d 998, 1001 (8th Cir. 2015); *United States v. Wicker*, 80 F.3d 263, 266 (8th Cir. 1996). "Post plea regrets by a defendant caused by contemplation of the prison term he faces are not a fair and just reason" to allow a defendant to withdraw his plea of guilty. *United States v. Stuttley*, 103 F.3d 684, 686 (8th Cir. 1996). *See United States v. Teeter*, 561 F.3d 768, 770 (8th Cir. 2009); *United States v. Fabela*, 256 Fed. Appx. 12, 14-15, 2007 WL 4178469, at *15 (8th Cir. 2007) (unpublished).

Even if a court determines there is a "fair and just reason" to withdraw the plea, "a court should also consider whether the defendant has asserted his innocence to the charge, the length of time between the plea of guilty and the motion to withdraw, and whether the government will be prejudiced by the withdrawal." *United States v. Austin*, 413 F.3d 856, 857 (8th Cir. 2005). If the allegations raised in the motion to withdraw are "inherently unreliable, are not supported by specific facts or are not grounds for withdrawal even if true then the court may deny the motion without a hearing." *Alvarado*, 615 F.3d at 920 (internal quotations omitted). Furthermore, if the defendant fails to establish a "fair and just reason" the court need not address the remaining considerations. *Wicker*, 80 F.3d at 266.

III. The Record Establishes An Adequate Factual Basis for Maggio's Guilty Plea

In support of his motion to withdraw his guilty plea, Maggio asserts that the factual basis for his bribery plea is inadequate. More specifically, Maggio challenges the factual basis of his guilty plea as to only one element of the offense: that Maggio corruptly "accepted something of value intending to be influenced in connection with any business, transaction, or series of transactions of the State of Arkansas, Twentieth Judicial District." *See* 18 U.S.C. § 666(a)(1)(B); Eighth Circuit Manual of Model Jury Instructions (Criminal) § 6.18.666B (2014). As set forth below, because the record contained sufficient evidence at the time of the plea from which this Court could "reasonably determine that the defendant likely committed the offense," Maggio's plea was supported by an adequate factual basis. *See United States v. Cheney*, 571 F.3d 764, 769 (8th Cir. 2009).

At the outset, the United States notes that Maggio does not challenge the factual basis for the remaining elements of the offense, namely, that he was an agent of the State of Arkansas, Twentieth Judicial District; that the business, transaction, or series of transactions involved something of a value of $5,000 or more; and that the State of Arkansas, Twentieth Judicial District received benefits in excess of $10,000 in a one-year period pursuant to a federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of federal assistance. See 18 U.S.C. § 666(a)(1)(B); Eighth Circuit Manual of Model Jury Instructions (Criminal) § 6.18.666B (2014); Plea Agreement, docket no. 4, p. 1-2, paragraph 2A, 2C, 2D. The United States notes, however, that although Maggio does not challenge the factual basis on the "agent" element, he wrongly assumes that "to face charges under § 666, the recipient of a bribe must be in a position where he or she could affect the expenditure of funds." Maggio's Brief, docket no. 21, p. 4, n.1. In fact, the Eighth Circuit has rejected that assertion. *See United States v. Hines*, 541 F.3d 833, 836 (8th Cir. 2008) (affirming § 666 conviction for sheriff's

deputy even though "he was not entrusted with the disbursements of any money, federal or otherwise," and "the federal monies given to [the] County did not reach his department").

In reviewing whether a factual basis exists for a plea, the court may consider the language of the plea agreement, the colloquy between the defendant and court, the stipulated facts provided to the court at the change of plea hearing, and the facts set forth in the presentence report. *See United States v. Norvell*, 729 F.3d 788, 794 (8th Cir. 2013); *United States v. Brown*, 331 F.3d 591, 595 (8th Cir. 2003); *United States v. Christenson*, 653 F.3d 697, 700 (8th Cir. 2011). In this case, at the Court's direction, the United States narrated facts it would prove at trial during the Change of Plea Hearing. *See* Plea Tr. at 16-22; Fed. R. Crim. P. 11 (b)(3) ("[b]efore entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea."). Maggio agreed that these stated facts were accurate, and that he had committed the bribery offense charged. See Plea Tr. at 22-23. Maggio stipulated to the truth of these same facts in his Plea Agreement. See Plea Agreement, docket no. 4, p. 5-10, paragraph 5F. As the Eighth Circuit has stated, "The plea of guilty is a solemn act not to be disregarded because of belated misgivings about [its] wisdom." *United States v. Woosley*, 440 F.2d 1280, 1281 (8th Cir. 1971). "Solemn declarations in open court carry a strong presumption of verity." *Blackledge v. Allison*, 431 U.S. 63, 74 (1977).

As pertinent here, Maggio argues that his factual basis fails to establish that "between in or about February 2013 and continuing until in or about mid-2014, the defendant corruptly accepted and agreed to accept from another something of value, that is, campaign contributions, in connection with a business, transaction, or series of transactions of the State of Arkansas, Twentieth Judicial District, Second Division . . . ." Plea Agreement, docket no. 4, p. 1-2, paragraph 2B. To put a finer point on it, Maggio contends that his "alleged conduct in accepting a bribe in order to issue a ruling in a civil case had no connection with or to the business of the

State of Arkansas." Maggio's Brief, docket no. 21, p. 4-5. In support of that argument, Maggio offers the sweeping (and erroneous) proposition that "a judge who accepts a bribe in exchange for a favorable ruling in a civil case cannot be convicted under section 666 as a matter of law." *Id.* at 5. The Fifth Circuit case upon which he relies, *United States v. Whitfield*, 590 F.3d 325 (5th Cir. 2009), says no such thing.

Whitfield involved two Mississippi state court judges convicted on various charges for accepting bribes in exchange for favorable rulings in civil cases. *Whitfield*, 590 F.3d at 336-41. Included among the charges was a violation of 18 U.S.C. § 666, which alleged that the judges were agents of the Mississippi Administrative Office of the Courts (AOC), which is a Mississippi state agency charged with administering the "nonjudicial business of the courts of the state." *Id.* at 344. Following their conviction at trial, the judges appealed, and the Fifth Circuit requested briefing to address whether the judges' rulings in the underlying civil cases "were made in connection with the transactions or business of the AOC." *Id*.

The Fifth Circuit began its analysis by considering whether the judges were in fact "agents" of the AOC. Taking a narrow view of the "agent" element based on prior circuit precedent, the Fifth Circuit reasoned that the judges were agents of the AOC, "but only in so far as they performed functions that involved AOC funds." *Id.* at 345. Having determined that the judges were agents of the AOC, the court turned to the question of whether the judges' decisions in the underlying civil cases "were connected with the transactions or business of the AOC." *Id.* Unlike the charges and facts here, in *Whitfield* the court concluded that, "insofar as [the judges] may have been agents of the AOC, their role as such had nothing to do with their capacity as judicial decisionmakers." *Id.* at 346. This was so because the AOC expressly dealt with the administration of *nonjudicial* court business (such as hiring employees), whereas the judges' rulings involved "*judicial* business of the Mississippi courts." *Id.* (emphasis in original). Thus,

in the Fifth Circuit's view, bribing a judge to perform a *judicial* function had no "'connection with any business, transaction, or series of transactions'" of the AOC, which dealt solely with *nonjudicial* administration. *Id.* (quoting 18 U.S.C. § 666(a)(1)(B), (2)).

The facts and holding of *Whitfield* are readily distinguishable from this case.[1] The key fact driving the Fifth Circuit's analysis in *Whitfield* was that the Mississippi judges were charged to be agents only of the AOC, *a nonjudicial administrative agency*. The judges' judicial rulings could not be "in connection with the business, transaction, or series of transactions" of the AOC because the AOC simply did not conduct judicial business. Here, by contrast, Maggio stipulated to being an agent—not of some administrative agency—but of the court itself: a judicial institution designated as the Twentieth Judicial District for the State of Arkansas.[2] Thus, when Maggio made a judicial ruling on the motion for remittitur,[3] he was performing a quintessential judicial function within the scope of his agency relationship with a judicial institution. *See United States v. Fernandez*, 722 F.3d 1, 11 (1st Cir. 2013) (holding that § 666 applies to a lawmaker engaged in the "business" of passing laws, not merely the "commercial conduct" of the legislature); *United States v. Robinson*, 663 F.3d 265, 274 (7th Cir. 2011) (holding that in the context of § 666 "[t]he 'business' of a federally funded "organization, government, or agency' is not commonly 'business' in the commercial sense of the word"). The judicial act that constituted

[1] It is the position of the United States that *Whitfield*, which is non-binding in the Eighth Circuit, in addition to being distinguishable from Maggio's case, is an overly-narrow interpretation of § 666.

[2] "In 2013 and 2014, the defendant, Michael A. Maggio, was an elected circuit judge for the State of Arkansas, Twentieth Judicial District, Second Division. During his tenure as a circuit judge, Maggio was an agent of the State of Arkansas and the Twentieth Judicial District, and he presided over criminal, civil, domestic relations, and probate cases filed in Faulkner, Van Buren, and Searcy counties." Plea Tr. at 17; Plea Agreement, docket no. 4, p. 5, paragraph 5F.

[3] "On or about July 8, 2013, during the early afternoon, Maggio held a hearing on Company A's pending post-verdict motions, including the motion for remittitur. On or about July 10, 2013, Maggio signed an order denying Company A's motion for a new trial, but granting Company A's motion for remittitur. Maggio reduced the judgment against Company A from $5.2 million to $1 million." Plea Tr. at 19; Plea Agreement, docket no. 4, p. 7, paragraph 5F.

the subject of the bribe therefore had a direct "connection with the business, transaction, or series of transactions" of the Twentieth Judicial District. *Whitfield* does not insulate Maggio from criminal liability.

The other cases relied upon by Maggio are likewise inapposite. In *United States v. Frega*, 933 F. Supp. 1536 (S.D. Cal. 1996), for instance, the district court in California found that bribing state judges to fix civil cases did not violate 18 U.S.C. § 666 on the narrow ground that the conduct did "not appear to have threatened, either directly or indirectly, federal funds." *Frega*, 933 F. Supp. at 1543. *Frega*'s reasoning has since been rejected by both the Supreme Court and the Eighth Circuit. *See Sabri v. United States*, 541 U.S. 600, 604-06 (2004) (refusing to read into 18 U.S.C. § 666 a requirement to prove a "connection between a bribe or kickback and some federal money"); *Salinas v. United States*, 522 U.S. 52 (1997) (government is not required to trace the federal money to the corrupted business or transaction itself); *Hines*, 541 F.3d at 836 (no requirement of connection between federal funds and the activity that constitutes a violation of § 666). Maggio's reliance on *United States v. Scruggs*, 2011 WL 1832769 (N.D. Miss. 2011) (unpublished), is similarly misplaced. There, like in *Frega*, the district court in Mississippi found that bribing a state judge to fix a civil court case did not constitute a violation of 18 U.S.C. § 666. *Scruggs*, 2011 WL 1832769 at *14. Although the judge in *Scruggs* was alleged to be "an agent of a subdivision of the judicial branch of the state government of Mississippi," the district court assumed (without explanation) that the judge was an agent of the Mississippi AOC and therefore found *Whitfield* controlling. Here, by contrast, Maggio admitted to being an agent of the court—a judicial institution—thus bringing his judicial rulings on pending cases in direct connection with the business of the court itself.

A more apposite comparison to this case is the Eighth Circuit's decision in *Hines*. Hines was a deputy sheriff with the St. Louis County Sheriff's Office tasked with enforcing court

orders of eviction. *See Hines*, 541 F.3d at 835. Hines was charged and convicted under 18 U.S.C. § 666 based on his receipt of cash payments from a real estate firm in exchange for conducting timely evictions. *See id.* On appeal, Hines argued that § 666 did not apply to him because "he was not entrusted with the disbursements of any money, federal or otherwise; his dealings were purely local and could not jeopardize in any significant manner the integrity of federal programs; and the federal monies given to St. Louis County did not reach his department." *Id*. at 836. The Eighth Circuit rejected each of these arguments, reiterating its longstanding interpretation of § 666 to not require "any connection between federal funds and the activity that constitutes a violation of § 666." *Id*.

Hines underscores the compelling federal interest in maintaining the integrity of federally funded institutions against the threat of corruption. *Cf. Salinas v. United States*, 522 U.S. 52, 61 (1997) (stating that acceptance of bribes by an official of a jail housing federal prisoners pursuant to an agreement with the federal government "was a threat to the integrity and proper operation of the federal program"); *Fischer v. United States*, 529 U.S. 667, 681-82 (2000) (highlighting in a case under § 666(b) that "[f]raudulent acts threaten the program's integrity," and "raise the risk participating organizations will lack the resources requisite to provide the level and quality of care envisioned by the program"); *United States v. Keen*, 676 F.3d 981, 990 (11th Cir. 2012) (noting that "fraudulent conduct poses a threat to the integrity of the entity, which in turn poses a threat to the federal funds entrusted to that entity"); *Fernandez*, 722 F.3d at 11 (highlighting § 666's purpose of protecting the integrity of institutions receiving federal funds). The Eighth Circuit found this interest sufficiently compelling to apply § 666 to a deputy sheriff who accepted bribes wholly unrelated to the federal money received by the sheriff's office. If § 666 applies to Hines's conduct, the same interests warrant application of § 666 to Maggio's conduct.

The integrity of the court system suffers potentially irreparable harm when a judge fixes a court case in exchange for a bribe. The federal government has a compelling interest in ensuring that its limited funding is not disbursed to a judicial institution plagued by corruption. Section 666 provides a mechanism to protect that interest. Because Maggio's conduct falls squarely within reach of § 666, and because the factual basis for Maggio's plea was adequate on all elements, Maggio cannot show a fair and just reason to withdraw his guilty plea. Accordingly, Maggio's motion to withdraw his guilty plea should be denied.

IV. Maggio's Received Effective Assistance of Counsel in Negotiation of His Plea

Claims of ineffective assistance can only serve as a "fair and just" reason for withdrawal if defendant demonstrates: (1) that his attorney's performance was deficient and (2) he was prejudiced by the performance. *See Norvell*, 729 F.3d at 795-96; *United States v. McMullen*, 86 F.3d 135, 137 (8th Cir.1996). "To establish deficient performance, the defendant must show his counsel's 'representation fell below an objective standard of reasonableness.'" *Norvell*, 729 F.3d at 795-96 (quoting *Strickland v. Washington*, 466 U.S. 668, 688 (1984)).

Maggio suggests that his then-counsel were ineffective for allowing him to plead guilty to a § 666 offense because (relying on *Whitfield*) his conduct could not violate § 666. For the reasons previously stated in this Response, the § 666 plea was legally and factually appropriate, and Maggio was well-advised by his counsel. The effectiveness of Maggio's attorneys' representation during the plea negotiation process is manifest in the fact that Maggio was not indicted on two more serious charges, Hobbs Act (extortion under color of official right) in violation of 18 U.S.C. §1951, and Honest Services Wire Fraud, in violation of 18 U.S.C. §§ 1343 and 1346, both of which carry statutory maximum terms of twenty years imprisonment, as compared to the ten year maximum term of federal program bribery under 18 U.S.C. § 666.

Further, Maggio's counsel negotiated a significant benefit by way of sentencing stipulations. *See* Plea Agreement, docket no. 4, page 4-10, paragraph 5. As with all Plea Agreements under Fed. R. Crim. P. 11(c)(1)(A) and (B), the stipulations were non-binding on the Court. However, these stipulations secured an agreement that the United States would not advocate for sentencing enhancements that would greatly increase the potential sentencing range. For example, under the Plea Agreement, the parties stipulated that the things of value and benefits received by Maggio totaled between $10,000 and $30,000, resulting in a four-level increase. Absent the Plea Agreement, pursuant to USSG § 2C1.1(b)(2) & Application Note 3, and USSG § 2B1.1(b)(1)(J), because the benefit received by Individual A in return for the bribe to Maggio was $4.2 million (the amount of the remittitur), the offense level would have been increased by 18 levels. Similarly, the Plea Agreement secured the United States' agreement to recommend a sentence within the guidelines range. The Plea Agreement Addendum also left open the possibility of a sentencing reduction pursuant to USSG § 5K1.1 or Fed. R. Crim. P. 35 for substantial assistance. Effectively, Maggio's counsel reduced his exposure under the sentencing guidelines from a potential high of 293 months to a potential (but not guaranteed) low of 30 months.

Further, except for a self-serving, one sentence, unsworn allegation, Maggio, a former attorney and judge, provides no detail or evidence suggesting he was forced to plead guilty or accept the statement of facts while protesting his innocence. If necessary, the United States will present testimony of Maggio's former counsel that Maggio was never threatened, as he theatrically alleges in his motion, with the indictment and prosecution of his wife. Rather, Maggio was presented with the evidence of his own guilt, and the United States offered him the option to proceed by Information and Plea prior to presenting any Indictment. A hearing should not be necessary, however, on the basis of Maggio's thin assertion, because the record flatly

proves the opposite true. At the Change of Plea Hearing, the Court inquired whether Maggio was "satisfied with the legal representation you have received," and Maggio replied, "Yes, sir." Plea Tr. at 3. The Court also asked Maggio, "Have any threats or promises been made to you to get you to plead guilty?" to which Maggio replied, "No, sir." *Id*. at 15. The Court further asked, "Are you pleading guilty because it's what you want to do?" and Maggio responded, "Yes, sir." *Id*. at 16. Therefore, Maggio's bare allegation that he was pressured by his former attorneys and the government to plead guilty is insufficient to permit him to withdraw his plea.

V. Additional Factors Weighing Against Withdrawal

Not only are Maggio's sworn admissions before this Court sufficient to support a violation of 18 U.S.C. § 666(a)(1)(B), the remaining factors all favor heavily for denying the motion to withdraw.

A. Maggio's Motion to Withdraw His Guilty Plea Is An Effort to Avoid the Consequences of his Breach of the Plea Agreement and Addendum

With respect to the timing of Maggio's motion to withdraw, the timing of his filing in conjunction with the sequence of events makes clear that Maggio is simply seeking to avoid the consequences of his breach of the Plea Agreement and Addendum.[4] Notably, Maggio's motion fails to point out that the request to withdraw the plea came immediately after Maggio received notice that he was not in compliance with the requirements of the Plea Agreement and Addendum, and that as a result of his breach the United States was revoking the part of his Plea Agreement that pertained to sentencing stipulations.

Paragraph 13 of Maggio's Plea Agreement addresses the "Effect of Defendant's Breach of Plea Agreement and Addendum." Under this provision, if Maggio violates any term of the Agreement and Addendum, the United States may:

[4] Furthermore, thirteen months elapsed after his change of plea which weighs against granting the motion, even where Maggio blames the performance of counsel. *See, e.g., United States v. Beasley*, 73 Fed. Appx. 119, 2003 WL 21801448, at *3 (6th Cir. Aug. 4, 2003) (unpublished) (five month delay; collecting cases).

> proceed with this Agreement and Addendum and (a) deny any and all benefits to which the defendant would otherwise be entitled under the terms of this Agreement and Addendum; and/or (b) advocate for any sentencing enhancement that may be appropriate.

See Plea Agreement, docket no. 4, p. 13, paragraph 13A. In Maggio's Plea Agreement Addendum, Maggio agreed to "fully cooperate with the United States," as relevant here, as follows:

> (1) To truthfully disclose all information and knowledge regarding any other criminal conduct in Arkansas and elsewhere by the defendant and any and all other persons; . . . [and] (3) To be available for interview upon reasonable request . . . .

See Plea Addendum, docket no. 5, p. 1, paragraph 1A. The Plea Agreement Addendum also contained a provision requiring Maggio to submit to polygraph examinations if requested by the United States. *See id*. at 13(A)(4).

On January 19, 2016, after four prior debriefings (three pre-plea and one post-plea), Maggio took a polygraph examination at the request of the United States. Maggio signed both a consent form and an Advice of Rights form prior to the polygraph examination. During the polygraph, Maggio was asked about direct communications with Individual B. Maggio's results indicated deception, which is commonly known as failing the polygraph. Immediately after the polygraph, Maggio revealed that his communications with Individual B were more detailed than he had previously disclosed to the United States. The materiality of those details was substantial. Maggio revealed that Individual B told him that Individual A was following the case and would be appreciative of Maggio making the right decision. Maggio also revealed that Individual B told Maggio that Individual A's contributions to Maggio would have to be handled differently than Individual A's contributions to other candidates. Maggio further revealed that sometime between November 2013 and January 2014, Maggio approached Individual B to ask where the rest of the promised $50,000 was, since Maggio had only received $25,000.

After Maggio revealed this information, the United States showed this interview to Maggio's previous counsel on January 26, 2016, and requested an explanation as to why Maggio had failed to provide this information in four prior interviews. Maggio was expected to view the interview with his counsel at that time. However, to the best of the United States' knowledge, Maggio ceased communicating with his counsel, in part resulting in the motions to withdraw. On February 5, 2016, current counsel entered an appearance for Maggio. The United States, continuing to attempt to understand what motives or pressures caused Maggio to omit this information in prior interviews, immediately invited present counsel to view the post-polygraph interview and to discuss the case, but present counsel declined to review this evidence.

On February 10, 2016, the United States informed the probation office that Maggio had failed to comply with the terms of the Plea Agreement and Addendum, despite being provided numerous opportunities to do so. Specifically, Maggio failed to truthfully disclose all information and knowledge regarding his, Individual A's, and Individual B's criminal conduct; failed to be available for interview upon reasonable request; and ceased cooperating with the United States.

A revised Presentence Report with this information was released on February 11, 2016. The next day, February 12, 2016, Maggio filed the present motion.

B. Prejudice to the United States

With respect to prejudice to the United States, in this particular case, the United States recognizes that it could proceed with other, more serious, charges that are also supported by the evidence in this case. Indeed, Maggio's factual admissions would be admissible against him pursuant to the plain terms of Plea Agreement. *See* Plea Agreement, docket no. 4, p. 14-15, paragraph 13D. However, the United States would be prejudiced by the granting of the motion inasmuch as the passage of a substantial period of time would provide similarly situated

defendants with the ability to escape their obligations under valid and binding plea agreements and affect witness memories. Furthermore, unlike many bribery cases, there are direct and proximate victims in this case. Both the plaintiffs in the civil litigation, whose verdict Maggio reduced by $4.2 million in exchange for the bribe, and the United States have an interest in the finality of the proceedings.

VI. Conclusion

Maggio has failed to establish a fair and just reason to withdraw his plea of guilty, thirteen months after it was entered, and two weeks before he faces sentencing for his illegal conduct. His solemn adoption of facts during the plea colloquy readily satisfies all the elements of 18 U.S.C. § 666(a)(1)(B). Up to the filing of the present motion, Maggio received effective representation throughout. Maggio's motion to withdraw his guilty plea is a clear attempt to escape the consequences of his criminal corruption and should be rejected.

WHEREFORE, the United States respectfully requests that this Court deny Maggio's Motion to Withdraw Plea of Guilty and to Dismiss Information (docket no. 21) and proceed to Sentencing on February 29, 2016.

Respectfully submitted,

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Title 28, United States Code, Section 515

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Dated: February 19, 2016

CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2016, a copy of the foregoing was filed electronically using the CM/ECF system and a copy was sent to all counsel of record.

/s/ Julie Peters