

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Crim. Case No.: 04-80372
Honorable Victoria A. Roberts

D-1 CARL MARLINGA,

D-2 RALPH R. ROBERTS, and

D-3 JAMES BARCIA,

Defendants.

**ORDER DENYING DEFENDANT'S MOTION FOR DISCLOSURE OF
GRAND JURY MINUTES AND VOTING RECORD**

I. INTRODUCTION

This matter is before the Court on Defendant Marlinga's Motion for Disclosure of Grand Jury Minutes and Voting Record (Doc. #26). For the reasons stated, the Court **DENIES** Defendant's Motion.

II. BACKGROUND

Carl Marlinga is charged in a nine-count Indictment issued against him, Ralph R. Roberts and James Barcia. In Counts One and Two, Marlinga and Roberts are indicted for mail fraud and conspiracy to commit mail fraud. Counts Three and Four indict Marlinga only for wire fraud. Each of the four counts is centered on an alleged scheme to defraud and deprive the citizens of their intangible right to the honest services of the Macomb County Prosecutor.

Marlinga opines that the Indictment "suggests" that grand jurors were improperly instructed and may have failed to obtain the required twelve votes for indictment. He

seeks access to the grand jury minutes and voting record relating to Counts One through Four to “shed light on the questions so raised.” Marlinga Mo. for Disclosure at 6.

III. APPLICABLE LAW AND ANALYSIS

“Courts [are] reluctant to lift unnecessarily the veil of secrecy from the grand jury.” *Douglas Oil Co. v. Petrol Stops Northwest*, 411 U.S. 211, 219 (1979). Indeed, “[t]here is a strong policy in favor of maintaining the secrecy of grand jury proceedings. *United States v. Azad*, 806 F.2d 291, 294 (6th Cir. 1986). However, the rule of secrecy has exceptions, which are set forth in Federal Rule of Criminal Procedure 6(e)(3). “The court may authorize disclosure— at a time, in a manner, and subject to any other conditions that it directs— of a grand-jury matter... at the request of a defendant who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury.” Fed.R.Cr.P. 6(e)(3)(E)(ii). This showing must be demonstrated with particularity. See *In re Grand Jury 89-4-72*, 932 F.2d 481, 488-89 (6th Cir. 1991) (stating that this heavy burden is to protect the secrecy of grand jury proceedings). The need for the grand jury materials must be compelling. *Id.* at 483.

“A presumption of regularity attaches to grand jury proceedings, and [the party seeking grand jury proceedings has]... the ‘difficult burden’ of proving any irregularity.” *Azad*, 809 F.2d at 295. Additionally, Court have held that “the mere suspicion that the grand jury may not have been properly instructed with respect to [a] legal definition... is insufficient to establish [a sufficient reason] to disclosure of grand jury materials.” *United States v. Trie*, 23 F.Supp.2d 55, 62 (D.D.C. 1998); see *United States v. Buchanan*, 787 F.2d 477, 487 (10th Cir. 1986); *United States v. Abdul-Malik*, 903 F. Supp. 550, 553 (S.D.N.Y. 1995). “[T]he district court has wide discretion to decide whether the need for

secrecy predominates or the need for disclosure predominates.” *FDIC v. Ernst & Whinney*, 921 F.2d 83, 86 (6th Cir. 1990).

A. Marlinga Fails To Demonstrate A Compelling Need For Access to Grand Jury Minutes and Voting Record

Marlinga urges this Court to grant access to the grand jury minutes and voting record. To support this request, Marlinga argues that because the Indictment alleges that he agreed both “implicitly and explicitly” to be influenced or affected by the receipt of campaign contributions tends to “suggest that the grand jurors were improperly instructed on the law pertaining to Counts One through Four.” Marlinga Mo. Grand Jury Minutes and Voting Record at ¶ 4. Marlinga contends that only explicit agreements to provide *quid pro quo* in exchange for campaign contributions may be prosecuted under the honest services provision of the Mail and Wire Fraud statutes. *Id.* at ¶ 3.

Additionally, Marlinga opines because the Indictment states that the influence agreement was both implicit and explicit “suggests that 12 grand jurors may have voted to Indict Mr. Marlinga on Counts One through Four on the basis that six of them found probable cause to believe that there had been an ‘explicit’ agreement, and six because they found probable cause to believe that there had been an ‘implicit’ agreement.” *Id.* at ¶ 9.

The Court rejected this very argument in denying Marlinga’s Motion to Dismiss. *See United States v. Marlinga, et al.*, No. 04-80372, Order and Opinion Regarding Motions to Dismiss at pp. 5- 10 (E.D. Mich. Feb. 28, 2005). As noted in the Order and Opinion Regarding Motions to Dismiss, “the Court rejects Defendant’s contention that the Grand Jury may have been confused or returned an Indictment on impermissible

grounds.” *Id.* at 10. Thus, Marlinga has not carried the heavy burden of demonstrating a compelling need in support of granting access to the grand jury minutes and voting record.

IV. CONCLUSION

For the reasons stated, the Court **DENIES** Defendant Marlinga’s Motion for Disclosure of Grand Jury Minutes and Voting Record.

IT IS SO ORDERED.

/s/ Victoria A. Roberts
VICTORIA A. ROBERTS
United States District Judge

DATED: 3/2/05