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MARK RIDLEY-THOMAS'S LEGAL TEAM FILES APPEAL TO REVERSE CONVICTIONS OR GRANT NEW TRIAL WITH 9th CIRCUIT COURT OF APPEALS

Appeal challenges U.S. Attorney's novel, unprecedented prosecution on bribery and honest services statute; highlights chilling effect on daily activities of representative government

LOS ANGELES, CA – The legal team representing Dr. Mark Ridley-Thomas filed its appeal of Ridley-Thomas's March 30, 2023 conviction with the Ninth Circuit Court of Appeals today. The brief details how the U.S. Attorney created a novel theory of what constitutes bribery and honest services fraud. Additionally, the prosecution used two preemptory strikes to eliminate all Black women from the jury. Dr. Ridley-Thomas's legal team, led by former Appellate Court Judge Paul Watford, now a partner at Wilson Sonsini Goodrich & Rosati, UC Berkeley School of Law Dean Erwin Chemerinsky, and Alyssa Bell and Michael Schafler, partners with Cohen Williams LLP, contends the Ninth Circuit Court of Appeals must either reverse the convictions or grant a new trial based on the arguments made in the brief.

“Dr. Mark Ridley-Thomas is not guilty of either federal-programs bribery or honest services fraud. The government's prosecution of Dr. Ridley-Thomas involved none of the hallmarks of traditional bribery: no private enrichment, no intent to be influenced, and no deception material to the would-be victims. His convictions cannot stand,” stated Paul Watford, former Ninth Circuit judge and partner at Wilson Sonsini Goodrich & Rosati.

The opening brief, focuses on three areas where either the United States Attorney's office (referenced in the brief as the prosecution or the government) or Federal District Court Judge Dale S. Fischer misapplied the law, erred in instructing the jury, and/or erred in rulings during

jury selection, and details the many ways in which those errors inhibited Dr. Ridley-Thomas's ability to obtain a fair trial.

First, the U.S. Attorney used a bribery theory that was not only incorrect but also chills legitimate policy making. Dr. Ridley-Thomas's prosecution rests on the theory that Dean Flynn's assistance in funding PRPI was a "thing of value" that serves as the *quid* in a *quid pro quo* bribery scheme. But Flynn's assistance cannot be a *quid* as a matter of law because it did not personally enrich Dr. Ridley-Thomas. The appeal also challenges the honest services fraud counts on the ground that the government failed to prove that Dr. Ridley-Thomas engaged in deception that was material to his constituents. At trial, the government argued that Ridley-Thomas deceived USC, but fraud on the public cannot be proven by means of deceptive material to USC.

The government's theory is not only unprecedented but also risks turning ordinary exchanges critical to representative government – from ribbon cutting ceremonies to honorary degrees – into grounds for federal prosecution. Unless overturned, this decision would have a chilling impact on routine government operation.

"The United States Supreme Court has greatly limited the use of the federal fraud statutes. The verdict in this case is clearly inconsistent with these precedents," stated Erwin Chemerinsky, dean, UC Berkeley School of Law. "This decision, unless overturned, threatens to give enormous power to federal prosecutors over local governments across the country."

The second area concerns the government's federal programs bribery conviction. The government's case rests on the theory that Dr. Ridley-Thomas took a "thing of value" and the so-called "funneling" was the same as taking a cash bribe. Under the government's theory, USC School of Social Work Dean Marilyn Flynn's assistance was valuable to Ridley-Thomas because it avoided the "nepotistic optics" of a direct donation to his son's non-profit (PRPI), and thereby protected Dr. Ridley-Thomas public image and enhanced his future electability. Only traditional notions of property can be classified as things of value. USC, which referred this case to the U.S. Attorney's office, at worst lost the ability to control information about Dean Flynn's donation to PRPI, in violation of university policy. The U.S. Attorney's office attempted to call this act a "thing of value." But, in Dr. Ridley-Thomas's case, a "thing of value" can be no broader than property, not the right to control information.

“The government used an unprecedented bribery theory that chills legitimate policymaking,” stated Bell. “A hallmark of traditional bribery is private enrichment at the victim’s expense. In this case, there was no private enrichment. The so-called ‘secret funneling’ is not a thing of value.”

“What should have begun and ended as an internal investigation at USC resulted in a prosecution untethered to federal precedent,” added Bell. “Mark Ridley-Thomas did not line his own pockets. Quite the opposite – he donated \$100,000 of his own ballot committee funds so that PRPI could hire a fulltime staff member and begin its work of polling Black Angelenos about their legislative priorities. This is the first prosecution ever to proceed on such a theory.”

Finally, Dr. Ridley-Thomas’s legal team argues that, during jury selection, the government used two of its pre-emptory challenges in a discriminatory manner to purposefully exclude two Black women from the jury – a *Batson challenge*. As stated in *Batson v Kentucky*, “Purposeful racial discrimination in selection of the jury panel (venire) violates a defendant’s right to equal protection because it denies him the protection that a trial by jury is intended to secure.” Black women face discrimination on two major counts – both race and gender – and their lives are uniquely marked by this combination. Their exclusion deprives the jury of a perspective of human events that may have unsuspected importance in any case that may be presented.

“The L.A. County Telehealth contract focused primarily on low-income, minority children,” added Schafler. “The prosecution’s use of race and gender as proxies for juror competence and reliability violated Ridley-Thomas’s right to a fair trial.”

“The Ninth Circuit has yet to recognize an intersectional race-and-gender class for *Batson* purposes. It’s beyond time that they do so,” concluded Schafler.

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