

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA**

**v.**

**ELLEN CHAPMAN and  
LAWRENCE FARNESE**

**CRIMINAL ACTION NO. 16-199-01, 02**

**MEMORANDUM OPINION**

**Rufe, J.**

**January 20, 2017**

Both Defendants in this criminal case have moved under Federal Rule of Criminal Procedure 12(b)(3) to dismiss the Indictment, arguing that it fails as a matter of law to allege that Defendants have committed a criminal offense. The government opposes the motions. After careful review, the Court will deny the motions.

**I. THE INDICTMENT**

The Indictment charges Defendants with conspiracy in violation of 18 U.S.C. § 371 (Count 1); wire fraud and aiding and abetting in violation of 18 U.S.C. §§ 1343, 1346, and 2 (Counts 2 through 6); mail fraud and aiding and abetting in violation of 18 U.S.C. §§ 1341, 1346, and 2 (Count 7); and violation of the Travel Act and aiding and abetting, 18 U.S.C. §§ 1952(a)(3) and 2 (Counts 8 through 13).

The Indictment alleges by way of background that the City of Philadelphia is divided into approximately 66 wards, each of which comprises several divisions. The Philadelphia Democratic Party has a committee in each ward, whose members are selected by the divisions, with each division electing two people to serve on the ward committee. The ward committee members elect a ward leader, who represents the ward on the Democratic Party's City Committee. The Rules of the Democratic Party of the City and County of Philadelphia provide

that committee members are obligated to act in the “best interests of the party.” In 2011, the time period relevant to the Indictment, Defendant Ellen Chapman was a member of the Eighth Ward Democratic Committee and Defendant Lawrence Farnese was a Pennsylvania State Senator and a candidate for Democratic Ward Leader of the Eighth Ward. Friends of Farnese was a political committee organized to support Mr. Farnese’s campaign for the Pennsylvania State Senate.

The Indictment alleges that the criminal conduct occurred when Ms. Chapman and Mr. Farnese conspired with each other and with an unindicted co-conspirator (“Person A,” a political consultant) in a scheme “to defraud and to deprive the Democratic Party, the members of the Democratic Party, the Democratic Eighth Ward, and the Eighth Ward Democratic Committee, of their intangible right to the honest services of [Ms. Chapman] through bribery, and to defraud and to obtain money from the Friends of Farnese campaign by means of false and fraudulent pretenses, representations and promises” in violation of the federal mail and wire fraud statutes, and the Travel Act.<sup>1</sup> The alleged conspiracy involved the payment of \$6,000 from Friends of Farnese to the college attended by Ms. Chapman’s daughter to pay for a study-abroad program, in exchange for which Ms. Chapman agreed to vote for Mr. Farnese as Democratic Ward Leader of the Eighth Ward instead of another candidate (identified as “Person B”). The funds came from Friends of Farnese through the efforts of Mr. Farnese and Person A; the campaign finance report listed the payment as a “donation.”

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<sup>1</sup> Indictment ¶ 11 (citing 18 U.S.C. §§ 1341, 1343, and 1346; and 17 U.S.C. §§ 1952(a)(3) and 2).

## II. LEGAL STANDARDS

“Federal Rule of Criminal Procedure 7(c) requires an indictment to ‘be a plain, concise, and definite written statement of the essential facts charged.’”<sup>2</sup> An indictment should not be dismissed “unless it is so defective that it does not, by any reasonable construction, charge an offense.”<sup>3</sup> Under Rule 12(b)(3)(B)(v), and as is relevant here, a defendant may argue that the indictment fails to state an offense either because the indictment “fails to charge an essential element of the crime” or “on the basis that the specific facts alleged . . . fall beyond the scope of the relevant criminal statute, as a matter of statutory interpretation.”<sup>4</sup> “[A] pretrial motion to dismiss an indictment is not a permissible vehicle for addressing the sufficiency of the government’s evidence [and] [t]he government is entitled to marshal and present its evidence at trial, and have its sufficiency tested by a motion for acquittal pursuant to Federal Rule of Criminal Procedure 29.”<sup>5</sup> “In evaluating a Rule 12 motion to dismiss, a district court must accept as true the factual allegations set forth in the indictment.”<sup>6</sup>

## III. DISCUSSION

### A. *Wire and Mail Fraud (Counts 2-7 and Related Conspiracy Charge in Count 1)*

The mail fraud statute makes it a crime for any person who:

having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be

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<sup>2</sup> *United States v. Willis*, 844 F.3d 155, 161 (3d Cir. 2016) (quoting Fed. R. Crim. P. 7(c)).

<sup>3</sup> *Id.* at 162 (internal quotation marks and citation omitted).

<sup>4</sup> *United States v. Stock*, 728 F.3d 287, 292 (3d Cir. 2013) (internal quotation marks and citations omitted).

<sup>5</sup> *United States v. DeLaurentis*, 230 F.3d 659, 660-61 (3d Cir. 2000) (citations omitted).

<sup>6</sup> *United States v. Huet*, 665 F.3d 588, 595 (3d Cir. 2012).

or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing . . . .<sup>7</sup>

Similarly, the wire fraud statute makes it a crime for any person who:

having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice. . . .<sup>8</sup>

To establish a violation of these statutes, the government must prove “(1) the defendant's knowing and willful participation in a scheme or artifice to defraud, (2) with the specific intent to defraud, and (3) the use of the mails or interstate wire communications in furtherance of the scheme.”<sup>9</sup>

According to the government, the alleged scheme had two objects: “(1) to deprive the Democratic Party, the Democratic Eighth Ward, and the Eighth Ward Democratic Committee of their intangible right to the honest services of Chapman through bribery; and (2) to defraud [Friends of Farnese] of money.”<sup>10</sup> Defendants raise several arguments as to why the Indictment fails as a matter of law to allege fraud.

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<sup>7</sup> 18 U.S.C. § 1341.

<sup>8</sup> 18 U.S.C. § 1343.

<sup>9</sup> *United States v. Antico*, 275 F.3d 245, 261 (3d Cir. 2001), *abrogated on other ground by Shilling v. United States*, 561 U.S. 358 (2010).

<sup>10</sup> Gov't Opp. to Mots. to Dismiss [Doc. No. 36] at 4.

1. Honest Services Fraud

Under the mail and wire fraud statutes, “the term ‘scheme or artifice to defraud’ includes a scheme or artifice to deprive another of the intangible right of honest services.”<sup>11</sup> In *United States v. Skilling*, the Supreme Court acknowledged that § 1346 potentially could reach so much conduct as to become unconstitutionally vague, and therefore specifically limited the statute to “offenders who, in violation of a fiduciary duty, participated in bribery or kickback schemes.”<sup>12</sup> “The bribery-and-kickback theory of honest services fraud requires ‘a *quid pro quo*, that is, a specific intent to give or receive something of value *in exchange* for an official act.”<sup>13</sup> The Third Circuit has “emphasized the need to establish a violation of state law in such cases to serve as a limiting principle on the federal prosecution of local political actors.”<sup>14</sup>

The Indictment alleges that Ms. Chapman, as a member of the Eighth Ward Democratic Committee, had the responsibility and the fiduciary duty to act in the best interests of the Democratic Party in the selection of the Ward Leader. In connection with honest services fraud, the Indictment alleges that “[t]he duties and responsibilities of ward committee members are set forth in the Rules of the Democratic Party of the City and County of Philadelphia, which provide that ward committee members are obligated to be faithful to the Democratic Party and to act in the ‘best interests of the party.’”<sup>15</sup> In response to the Motions to Dismiss, the government argues

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<sup>11</sup> 18 U.S.C. § 1346.

<sup>12</sup> *Skilling*, 561 U.S. at 407.

<sup>13</sup> *United States v. Ciavarella*, 716 F.3d 705, 729 (3d Cir. 2013) (quoting *United States v. Wright*, 665 F.3d 560, 567-68 (3d Cir. 2012)).

<sup>14</sup> *United States v. Murphy*, 323 F.3d 102, 104 (3d Cir. 2003) (citations omitted).

<sup>15</sup> Indictment ¶ 5.

that Pennsylvania common law establishes a general fiduciary duty,<sup>16</sup> and relies upon the Second Circuit's recent decision in *United States v. Halloran*.<sup>17</sup>

In *Halloran*, the defendant was a Republican member of the New York City Council, who was convicted of crimes relating to actions that included brokering bribes of the members of the members of the county Republican executive committees to support a potential mayoral candidate who was a Democrat.<sup>18</sup> The Second Circuit upheld the challenge to the honest services wire fraud conviction, rejecting a void-for-vagueness argument similar to that raised by Defendants here, finding that the Republican county chairs “were under a cognizable fiduciary duty to their party not to accept payments in exchange for” allowing a Democrat to run on the Republican ticket.<sup>19</sup> In finding a fiduciary duty, the court noted that the legislature had granted to the party committees the authority to determine whether to allow a Democrat to run in the Republican primary, thus requiring them to “act as gate-keepers, using independent judgment.”<sup>20</sup>

In contrast, Defendants rely upon the Third Circuit's decision in *United States v. Murphy*.<sup>21</sup> In *Murphy*, the prosecution alleged that the chairman of the Republican Party in Passaic County, New Jersey used his influence over county officials to procure contracts for a company, which would then direct some of the funds to individuals chosen by the defendant.

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<sup>16</sup> See, e.g., *Clark v. Smith*, 359 A.2d 777, 781 (Pa. 1976) (holding that a confidential relationship or fiduciary duty may be established “as a matter of fact whenever one person has reposed a special confidence in another to the extent that the parties do not deal with each other on equal terms, either because of an overmastering dominance on one side, or weakness, dependence or justifiable trust, on the other”) (internal quotation marks and citations omitted; emphasis added).

<sup>17</sup> 821 F.3d 321 (2d Cir. 2016).

<sup>18</sup> *Id.* at 325.

<sup>19</sup> *Id.* at 338.

<sup>20</sup> *Id.* at 339.

<sup>21</sup> 323 F.3d 102 (3d Cir. 2003).

The prosecution argued that the defendant’s standing in the party created a fiduciary duty to the county, a theory rejected by the Court of Appeals, which held that the government was required to allege the existence of a fiduciary relationship established by state or federal law.<sup>22</sup>

The Indictment here alleges that Defendants’ actions deprived a local political party unit of the honest services of a leader of that party in violation of the fiduciary relationship under Pennsylvania law, not a broader duty to the citizenry. Because the government has alleged that Defendants engaged in a “fraudulent scheme[] to deprive another of honest services through bribes or kickbacks,”<sup>23</sup> and such activity is not protected by the associational rights of the First Amendment, the motion will be denied.<sup>24</sup> It may be that the evidence adduced at trial will be insufficient to establish the existence of a fiduciary duty or confidential relationship that warrants the imposition of criminal liability, but the “question of whether or not a confidential relationship exists . . . is intensely fact-specific.”<sup>25</sup> As the hearing held on January 18, 2017, made clear, the nature and scope of Ms. Chapman’s role as a Democratic committee member is very much in dispute, and the Court requires an evidentiary record to make that determination.

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<sup>22</sup> *Id.* at 104.

<sup>23</sup> *Skilling*, 561 U.S. at 404.

<sup>24</sup> Defendants also argue that the Supreme Court’s decision in *McDonnell v. United States*, 136 S. Ct. 2355, (2016), requires dismissal of the Indictment. In *McDonnell*, the defendant was charged with honest services fraud relating to his service as the governor of Virginia. *Id.* at 2365. The Supreme Court reversed the bribery conviction, holding that the prosecution had not established that the defendant had accepted funds in exchange for performing official acts, as required by the federal bribery statute. *Id.* at 2367-68. In this case, the facts at trial will determine whether Ms. Chapman is a public official and whether she accepted a bribe in exchange for a vote, as contemplated by the Pennsylvania statute.

<sup>25</sup> *Wisniski v. Brown & Brown Ins. Co. of PA*, 906 A.2d 571, 578 (Pa. Super. Ct. 2006) (citations omitted).

## 2. Traditional Mail and Wire Fraud

The government also argues that Defendants committed what may be called “traditional” mail and wire fraud.<sup>26</sup> Here, the Indictment alleges that Defendants “devised a scheme and artifice . . . to defraud and to obtain money from the Friends of Farnese campaign by means of false and fraudulent pretenses, representations, and promises.”<sup>27</sup> False or fraudulent representations “may be effected by deceitful statements or half-truths or the concealment of material facts and the devising of a scheme for obtaining money or property by such statements or concealments.”<sup>28</sup>

Defendants argue that the Indictment fails to allege any misrepresentation made to Friends of Farnese. Because the parties interpret the relevant allegations of the Indictment differently, the Court quotes the Indictment directly:

k. On or about July 12, 2011, Person A emailed an invoice for the tuition for CHAPMAN’s daughter’s study-abroad program to the treasurer of Friends of Farnese, instructing the treasurer to put CHAPMAN’s daughter’s name and student identification number in the memo line of the check.

l. On or about July 12, 2011, FARNESE, through Person A, caused the treasurer of Friends of Farnese to send a check in the amount of \$6,000 drawn on the Friends of Farnese bank account by U.S. mail from Pennsylvania to Bard College in Annandale, New York to help pay the tuition for CHAPMAN’s daughter’s study-abroad program.

m. In or about 2012, FARNESE and Person A caused Friends of Farnese to file a campaign finance report with the City of Philadelphia and the Commonwealth of Pennsylvania reporting the \$6,000 expenditure to Bard College for CHAPMAN’s daughter’s study-abroad tuition as a “donation” without mentioning either CHAPMAN or her daughter.<sup>29</sup>

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<sup>26</sup> *Wright*, 665 F.3d at 573.

<sup>27</sup> Indictment ¶¶ 17, 20.

<sup>28</sup> *Wright*, 665 F.3d at 573 (internal quotation marks and citations omitted).

<sup>29</sup> Indictment at ¶¶ 15k-m.

The Indictment further alleges that the following wire communications were sent: “Email communication from Person A to treasurer of Friends of Farnese with the subject line ‘Fwd: Bard invoice’” and “Email communication from Person A to treasurer of Friends of Farnese with the subject line ‘Fwd:Fw:Fwd: info for farnese’s person.’”<sup>30</sup> The contents of these emails are not set forth in the Indictment. Defendants are correct that the Indictment fails to allege specific misrepresentations of material fact that were made to Friends of Farnese, the ostensible victim of the scheme.<sup>31</sup> However, specific allegations are not required “so long as there is sufficient factual orientation to permit a defendant to prepare his defense and invoke double jeopardy.”<sup>32</sup> The allegation that Friends of Farnese listed the payment as a “donation”<sup>33</sup> on campaign reports may permit the inference that Friends of Farnese had been misled as to the purpose of the payment. Factual development of the evidence through trial is required to determine the existence and nature of any alleged misrepresentations.

Defendants also argue that state law did not prohibit the use of campaign funds for the purposes alleged in the Indictment and therefore, there can have been no criminal use of the mails or wires.<sup>34</sup> Campaign expenditures are regulated by Pennsylvania law, which provides that “[n]o candidate, chairman or treasurer of any political committee shall make or agree to make

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<sup>30</sup> Indictment at ¶ 18 (spelling and capitalization in original).

<sup>31</sup> The government alleges in its opposition to the motions to dismiss that “Person A emailed the treasurer of Farnese’s state senate campaign committee, Friends of Farnese (“FOF”), with instructions to make a \$6,000 payment to a ‘scholarship fund’ at Bard College. Indict. ¶ 15k.” [Doc. No. 36 at 3]. As set forth above, the Indictment does not mention a representation regarding a “scholarship fund” at Bard College.

<sup>32</sup> *Huet*, 665 F.3d at 595 (internal quotation marks and citation omitted).

<sup>33</sup> Indictment ¶ 15m.

<sup>34</sup> Defendants cite *United States v. Pisani*, 773 F.2d 397, 410 (2d Cir. 1985). Notably, in *Pisani*, the Second Circuit did not determine “whether a mail fraud charge might be based on misleading contributors through false reports of campaign fund expenditures.” *Id.* at 411.

any expenditure or incur any liability except as provided in [25 Pa. Stat. § 3241(d)].”<sup>35</sup> Section 3241(d) defines expenditure broadly,<sup>36</sup> and Defendants argue that any expenditure that did not violate state law and that tended to advance the re-election prospects of Senator Farnese, was permissible. Defendants acknowledge that bribery of a party official would not be permitted under state law, but argue that Ms. Chapman was not such an official.

The Court thus must determine whether, under the allegations of the Indictment, Ms. Chapman, as a ward committee member, may be viewed as a “party official” under Pennsylvania law, and whether the Indictment sufficiently alleges that the payments violated the Pennsylvania bribery statute, which makes it a crime to offer or accept “any pecuniary benefit as consideration” for a “vote” of a party official.<sup>37</sup> The Commonwealth defines a party official as

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<sup>35</sup> 25 Pa. Stat. § 3254.1.

<sup>36</sup> Under the statute:

(d) The word “expenditure” shall mean:

- (1) the payment, distribution, loan or advancement of money or any valuable thing by a candidate, political committee or other person for the purpose of influencing the outcome of an election;
- (2) the payment, distribution, loan, advance or transfer of money or other valuable thing between or among political committees;
- (3) the providing of a service or other valuable thing for the purpose of influencing the outcome of a nomination or election of any person to any public office to be voted for in this Commonwealth; or
- (4) the payment or providing of money or other valuable thing by any person other than a candidate or political committee, to compensate any person for services rendered to a candidate or political committee.

25 Pa. Stat. § 3241(d).

<sup>37</sup> 18 Pa. Stat. § 4701 provides in full that:

- a) Offenses defined.--A person is guilty of bribery, a felony of the third degree, if he offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:
- (1) any pecuniary benefit as consideration for the decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter by the recipient;

“[a] person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility.”<sup>38</sup> Defendants argue that Ms. Chapman was too far down the chain of authority to participate in directing or conducting party affairs, interpreting the statute as reaching only a party member who “has the power to “*direct or conduct party affairs at some level* (i.e. National, State, or local).”<sup>39</sup> But the Court cannot determine on the present record whether Ms. Chapman had such power; the Indictment alleges that she did. Once the facts are developed through trial, it may be that the statute does not reach Ms. Chapman’s conduct, but that does not mean that the statute is impermissibly vague or that it traduces upon protected First Amendment associational conduct; it means only that the present argument is premature.

*B. Travel Act (Counts 8-13 and Related Conspiracy Charge in Count 1)*

The Travel Act provides in relevant part:

(a) Whoever travels in interstate ... commerce or uses . . . any facility in interstate . . . commerce, with intent to . . . promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform ... an act [so] described . . . shall be fined under this title, imprisoned not more than 5 years, or both. . .

(b) As used in this section (i) “unlawful activity” means . . . (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.<sup>40</sup>

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(2) any benefit as consideration for the decision, vote, recommendation or other exercise of official discretion by the recipient in a judicial, administrative or legislative proceeding; or

(3) any benefit as consideration for a violation of a known legal duty as public servant or party official.

(b) Defenses prohibited.--It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, had left office, or lacked jurisdiction, or for any other reason.

<sup>38</sup> 18 Pa. Stat. § 4501.

<sup>39</sup> Farnese Mem. Supp. Mot. Dismiss at 26 [Doc. No. 34].

<sup>40</sup> 18 U.S.C. § 1952(a)-(b).

“There are three basic elements required to establish a violation of the Travel Act: (1) interstate travel or use of an interstate facility; (2) with intent to promote, direct, or manage unlawful activity; and (3) a subsequent overt act in furtherance of the unlawful activity.”<sup>41</sup> A “Travel Act conviction based on bribery requires an underlying violation of a federal or state bribery statute.”<sup>42</sup> The Indictment charges that the email messages and the mailing of the check that form the basis of the wire and mail fraud counts constituted the use of a facility in interstate commerce to commit bribery in violation of Pennsylvania law.<sup>43</sup> The government charges that Defendants violated Pennsylvania’s bribery statute, as discussed above. For the same reasons that mail and wire fraud charges are not properly dismissed at this juncture, the Court will deny the motions to dismiss the Travel Act count.

#### **IV. CONCLUSION**

In ruling on the motions to dismiss pursuant to Rule 12(b)(3)(B), the Court has considered only the allegations contained in the Indictment, which “must be tested by its sufficiency to charge an offense” not by whether the “charges have been established by the evidence.”<sup>44</sup> Defendants forcefully argue that the government has brought a prosecution under statutes that are unconstitutionally vague as applied to Defendants, threaten the associational freedoms of private political parties, and raise federalism concerns by overreaching into matters subject only to state regulation, if at all. Upon careful consideration of all these arguments, the

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<sup>41</sup> *United States v. Manzo*, 851 F. Supp. 2d 797, 804 (D.N.J. 2012) (citing *United States v. Wander*, 601 F.2d 1251 (3d Cir. 1979)).

<sup>42</sup> *Halloran*, 821 F.3d at 332.

<sup>43</sup> 18 Pa. Stat. § 4701.

<sup>44</sup> *United States v. Sampson*, 371 U.S. 75, 78-79 (1962).

Court concludes that because the Indictment alleges an illegal bribery scheme, the facts must be developed at trial. For the reasons set forth above, the motions will be denied. An order will be entered.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA**

v.

**ELLEN CHAPMAN  
LAWRENCE FARNESE**

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**CRIMINAL ACTION NO. 16-199-01, 02**

**ORDER**

**AND NOW**, this 20th day of January 2017, upon consideration of the Defendants' Motions to Dismiss [Doc. Nos. 33 and 34], and the responses and replies thereto, and after a hearing, it is hereby **ORDERED** that the Motions are **DENIED** for the reasons stated in the accompanying Memorandum Opinion.

It is so **ORDERED**.

**BY THE COURT:**

/s/Cynthia M. Rufe

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CYNTHIA M. RUFÉ, J.