

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
UNITED STATES OF AMERICA)

)

vs.) No. 08 CR 888

) Honorable James B. Zagel

ROD BLAGOJEVICH)
MOTION TO DISMISS THE SECOND TRIAL
AND PROCEED TO SENTENCING
IN THE INTEREST OF JUSTICE AND SAVING TAXPAYER FUNDS

NOW COMES Rod Blagojevich, by and through his counsel, and moves this Court to dismiss this cause and proceed to sentencing on the conviction from the first trial, in the interests of justice and saving taxpayer funds. In support of this motion, Blagojevich states as follows:

The government's continued prosecution of this case should cease. This case was tried once, at a full trial which lasted over two months¹. While Blagojevich still maintains his innocence on every charge, he stands convicted, after the first trial, of the offense of making a false statement.² He must be sentenced on that conviction. This offense carries a potential significant jail sentence.

¹ Contrary to some reports of a "lone holdout" juror (who was actually heralded by other jurors as thoughtful and intelligent), many of the counts were closely balanced (6-6 votes) and some even favored acquittal (7-5 votes). See, for example, Elizabeth Bracket, "Inside the Jury Room: Their Vote on Every Count," available at <http://blogs.wttw.com/moreonthestory/2010/08/19/inside-the-jury-room-their-vote-on-every-count/>.

² This count purported that Blagojevich lied when he told the F.B.I. in March of 2005 that he does not track, or know, or want to know, who contributes to him or how much they contribute.

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A second prosecution of this case is an irresponsible use of taxpayer funds in light of the current economic crisis and Blagojevich's imminent sentencing on the conviction from the first trial.

The Federal Government is facing a budgetary crisis that could lead to a possible government shutdown. Courts and legal agencies including the Federal Defender have been instituting payment freezes. The federal budget is being drastically cut. Specifically, the funds for lawyers to defend indigent defendants have been suspended.

To date, Blagojevich's lawyers have not been compensated for work performed in preparation for the second trial. All Court personnel have been

diligent in processing paperwork requirements, but federal budget funds were exhausted in February³, and there is an uncertain future as to the availability of funds in the new federal budget for attorneys representing indigent defendants nationwide.

³ At the time of this filing, it is believed that there was a temporary two-week extension of funds after the exhaustion in February. Future authorizations by Congress are unknown.

Should this motion be granted, and preparation for retrial is no longer required, funds for the second trial would no longer be necessary. There would be no further cost to taxpayers. The Court could immediately conduct a sentencing hearing on Blagojevich's conviction from the first trial. The government could, in turn, focus its financial resources on new investigations that have come to their attention.

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At a time when Courts and agencies around the country have been directed to freeze hiring, and jobs are in jeopardy nationwide, the use of funds on this second trial, when Blagojevich can be sentenced immediately on the standing conviction, is an imprudent use of taxpayer funds. It is worth noting that in the first trial, the bulk of the funds were expended during the trial. Between the cost of government prosecutors, FBI Agents, defense funds, juror compensation, Court personnel and extra court security (because of the high profile nature of this case), among other costs, the second trial will have a hefty cost.

At the first trial, defense counsel were funded by the Friends of Blagojevich campaign fund – not by taxpayers. The campaign fund was exhausted toward the end of trial and counsel for Blagojevich received only partial compensation (one-fifth of payment) for the last month of trial, July 2010.

Since that time, because of Blagojevich's indigency, the defense team was reduced in size and appointed pursuant to the Criminal Justice Act. The Court made the appointments based on "the complexity and expected length of the case and the anticipated hardships to the persons providing services."⁴

⁴ Orders Approving Interim Payments, February 7, 2011.

To date, defense counsel have been working on the Blagojevich case for almost nine months without pay. This has caused a significant hardship and has deprived Blagojevich of his right to effective assistance of counsel as required by the Sixth Amendment to the Constitution.

The financial hardship this has caused defense counsel has created a vast inequity in this case between the government and the defense. The government

continues to have every resource at its disposal. Yet, the defense is stymied in its ability to prepare for trial. For example, among other concerns, counsel has not been able to rent private office space, and cannot conduct investigations or seek expert opinions (e.g., counsel has been unable to obtain experts to review and examine the improper minimization of certain tape recordings which are the subject of a pre-trial motion before this Court).

As such, preparation for retrial is not complete and will not be complete by April 20, 2011. Blagojevich has the right to a fair trial and to present a defense, as well as the right to effective assistance of counsel. (U.S. Const. Amends V, VI). Blagojevich's aforementioned rights cannot be sustained under the current economic situation.

The right to appointed counsel may be somewhat taken for granted in this country, some five decades after the landmark decision of *Gideon v. Wainwright*, 372 U.S. 335 (1963). *Gideon* led to the establishment of the public defender system in the U.S., after the Supreme Court held that the right of an indigent defendant in a criminal trial to have the assistance of counsel is a fundamental right essential to a fair trial. Due process, the right to a fair trial and the right to effective assistance of counsel were all re-enforced in *Gideon*. Each of those rights is compromised in the continued prosecution of Blagojevich under the current circumstances.

Based upon the economic hardships, the inequities and the unnecessary drain on taxpayer funds (funds may not even exist in the future), this case should

be dismissed. The Court can proceed immediately to sentencing on the conviction from the first trial.

WHEREFORE, Blagojevich prays that this Court will dismiss this cause for the above-stated reasons.

Respectfully Submitted,

/s/ Lauren Kaeseberg

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for Rod Blagojevich

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