



U.S. Department of Justice

United States Attorney
Southern District of West Virginia

CHARLESTON, WV

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U.S. ATTORNEY

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December 28, 2011

Tim C. Carrico, Esquire
Carrico Law Offices
1412 Kanawha Boulevard, East
Charleston, WV 25301

Re: United States v. Donald C. Whitten

Dear Mr. Carrico:


This will confirm our conversations with regard to your client, Donald C. Whitten (hereinafter "Mr. Whitten"). As a result of these conversations, it is agreed by and between the United States and Mr. Whitten as follows:

1. **CHARGING AGREEMENT.** Mr. Whitten agrees to waive his right pursuant to Rule 7 of the Federal Rules of Criminal Procedure to be charged by indictment and will consent to the filing of a one-count information to be filed in the United States District Court for the Southern District of West Virginia, a copy of which is attached hereto as "Plea Agreement Exhibit A."

2. **RESOLUTION OF CHARGES.** Mr. Whitten will plead guilty to a violation of 18 U.S.C. § 1001 (false statement) as charged in said information.

3. **MAXIMUM POTENTIAL PENALTY.** The maximum penalty to which Mr. Whitten will be exposed by virtue of this guilty plea is as follows:

- (a) Imprisonment for a period of five years;
- (b) A fine of \$250,000, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;



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- (c) A term of supervised release of three years;
- (d) A mandatory special assessment of \$100 pursuant to 18 U.S.C. § 3013; and
- (e) An order of restitution pursuant to 18 U.S.C. §§ 3663 and 3664, or as otherwise set forth in this plea agreement.

4. **SPECIAL ASSESSMENT.** Prior to the entry of a plea pursuant to this plea agreement, Mr. Whitten will tender a check or money order to the Clerk of the United States District Court for \$100, which check or money order shall indicate on its face the name of defendant and the case number. The sum received by the Clerk will be applied toward the special assessment imposed by the Court at sentencing. Mr. Whitten will obtain a receipt of payment from the Clerk and will tender a copy of such receipt to the United States, to be filed with the Court as an attachment to this plea agreement. If Mr. Whitten fails to provide proof of payment of the special assessment prior to or at the plea proceeding, the United States will have the right to void this plea agreement. In the event this plea agreement becomes void after payment of the special assessment, such sum shall be promptly returned to Mr. Whitten.

5. **PAYMENT OF MONETARY PENALTIES.** Mr. Whitten agrees not to object to the District Court ordering all monetary penalties (including the special assessment, fine, court costs, and any restitution that does not exceed the amount set forth in this plea agreement) to be due and payable in full immediately and subject to immediate enforcement by the United States. So long as the monetary penalties are ordered to be due and payable in full immediately, Mr. Whitten further agrees not to object to the District Court imposing any schedule of payments as merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment.

6. **RESIGNATION FROM OFFICE / POLITICAL ACTIVITY.** Mr. Whitten agrees that, on or before the date his guilty plea is entered, he will officially resign from the office of County Clerk of Lincoln County, West Virginia. Moreover, Mr. Whitten agrees that he will not seek nor serve in any public office at any time after his


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resignation from office pursuant to this agreement, nor engage in political campaigning at any time after the date of this agreement.

7. **COOPERATION.** Mr. Whitten will be forthright and truthful with this office and other law enforcement agencies with regard to all inquiries made pursuant to this agreement, and will give signed, sworn statements and grand jury and trial testimony upon request of the United States. In complying with this provision, Mr. Whitten may have counsel present except when appearing before a grand jury. Further, Mr. Whitten agrees to be named as an unindicted co-conspirator and unindicted aider and abettor, as appropriate, in subsequent indictments or informations.

8. **USE IMMUNITY.** Unless this agreement becomes void due to a violation of any of its terms by Mr. Whitten, and except as expressly provided for in paragraph 9 below, nothing contained in any statement or testimony provided by Mr. Whitten pursuant to this agreement, or any evidence developed therefrom, will be used against him, directly or indirectly, in any further criminal prosecutions or in determining the applicable guideline range under the Federal Sentencing Guidelines.

9. **LIMITATIONS ON IMMUNITY.** Nothing contained in this agreement restricts the use of information obtained by the United States from an independent, legitimate source, separate and apart from any information and testimony provided pursuant to this agreement, in determining the applicable guideline range or in prosecuting Mr. Whitten for any violations of federal or state laws. The United States reserves the right to prosecute Mr. Whitten for perjury or false statement if such a situation should occur pursuant to this agreement.

10. **STIPULATION OF FACTS AND WAIVER OF FED. R. EVID. 410.** The United States and Mr. Whitten stipulate and agree that the facts comprising the offenses of conviction include the facts outlined in the "Stipulation of Facts," a copy of which is attached hereto as "Plea Agreement Exhibit B." The Stipulation of Facts does not include all relevant facts or conduct.

Mr. Whitten agrees that if he withdraws from this agreement, or this agreement is voided as a result of a breach of its terms by


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Mr. Whitten, and he is subsequently tried on any of the charges in the information, the United States may use and introduce the Stipulation of Facts in the United States' case-in-chief, in cross-examination of Mr. Whitten or of any of his witnesses, or in rebuttal of any testimony introduced by Mr. Whitten or on his behalf. Mr. Whitten knowingly and voluntarily waives, see United States v. Mezzanatto, 513 U.S. 196 (1995), any right he has pursuant to Fed. R. Evid. 410 that would prohibit such use of the Stipulation of Facts. If the Court does not accept the plea agreement through no fault of the defendant, or the Court declares the agreement void due to a breach of its terms by the United States, the Stipulation of Facts cannot be used by the United States.

The United States and Mr. Whitten understand and acknowledge that the Court is not bound by the Stipulation of Facts and that if some or all of the Stipulation of Facts is not accepted by the Court, the parties will not have the right to withdraw from the plea agreement.

11. **AGREEMENT ON SENTENCING GUIDELINES.** Based on the foregoing Stipulation of Facts, the United States and Mr. Whitten agree that the following provisions of the United States Sentencing Guidelines apply to this case.

USSG § 2B1.1

Base offense level	<u>6</u>
Adjusted Offense Level	6

The United States and Mr. Whitten acknowledge and understand that the Court and the Probation Office are not bound by the parties' calculation of the United States Sentencing Guidelines set forth above and that the parties shall not have the right to withdraw from the plea agreement due to a disagreement with the Court's calculation of the appropriate guideline range.

12. **WAIVER OF APPEAL AND COLLATERAL ATTACK.** Mr. Whitten knowingly and voluntarily waives the right to seek appellate review of any sentence of imprisonment or fine imposed by the District

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Court, or the manner in which the sentence was determined, on any ground whatsoever including any ground set forth in 18 U.S.C. § 3742, so long as that sentence of imprisonment or fine is below or within the Sentencing Guideline range corresponding to offense level 6. The United States also waives its right to seek appellate review of any sentence of imprisonment or fine imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever including any ground set forth in 18 U.S.C. § 3742, so long as that sentence of imprisonment or fine is within or above the Sentencing Guideline range corresponding to offense level 4.

Mr. Whitten also knowingly and voluntarily waives the right to challenge his guilty plea and his conviction resulting from this plea agreement, and any sentence imposed for the conviction, in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255.

The waivers noted above shall not apply to a post-conviction collateral attack or direct appeal based on a claim of ineffective assistance of counsel.

13. **WAIVER OF FOIA AND PRIVACY RIGHT.** Mr. Whitten knowingly and voluntarily waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without any limitation any records that may be sought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a, following final disposition.

14. **FINAL DISPOSITION.** The matter of sentencing is within the sole discretion of the Court. The United States has made no representations or promises as to a specific sentence. The United States reserves the right to:

- (a) Inform the Probation Office and the Court of all relevant facts and conduct;
- (b) Present evidence and argument relevant to the factors enumerated in 18 U.S.C. § 3553(a);


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- (c) Respond to questions raised by the Court;
- (d) Correct inaccuracies or inadequacies in the presentence report;
- (e) Respond to statements made to the Court by or on behalf of Mr. Whitten;
- (f) Advise the Court concerning the nature and extent of Mr. Whitten's cooperation; and
- (g) Address the Court regarding the issue of Mr. Whitten's acceptance of responsibility.

15. **VOIDING OF AGREEMENT.** If either the United States or Mr. Whitten violates the terms of this agreement, the other party will have the right to void this agreement. If the Court refuses to accept this agreement, it shall be void.

16. **ENTIRETY OF AGREEMENT.** This written agreement constitutes the entire agreement between the United States and Mr. Whitten in this matter. There are no agreements, understandings, or recommendations as to any other pending or future charges against Mr. Whitten in any Court other than the United States District Court for the Southern District of West Virginia.

Acknowledged and agreed to on behalf of the United States:


R. BOOTH GOODWIN II
United States Attorney

By:


STEVEN R. RUBY
Assistant United States Attorney

SRR/vld

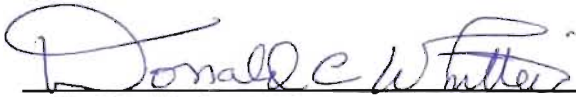
I hereby acknowledge by my initials at the bottom of each of the foregoing pages and by my signature on the last page of this seven-page agreement that I have read and carefully discussed every part


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Tim C. Carrico, Esquire
December 28, 2011
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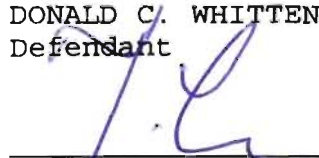
Re: Donald C. Whitten

of it with my attorney, that I understand the terms of this agreement, and that I voluntarily agree to those terms and conditions set forth in the agreement. I further acknowledge that my attorney has advised me of my rights, possible defenses, the Sentencing Guideline provisions, and the consequences of entering into this agreement, that no promises or inducements have been made to me other than those in this agreement, and that no one has threatened me or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.



DONALD C. WHITTEN
Defendant

12-28-11
Date Signed



TIM C. CARRICO
Counsel for Defendant

12-28-11
Date Signed

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO.

18 U.S.C. § 1001

DONALD C. WHITTEN

I N F O R M A T I O N

The United States Attorney Charges:

On or around December 7, 2011, at or near Hamlin, Lincoln County, West Virginia, and within the Southern District of West Virginia, defendant DONALD C. WHITTEN knowingly and willfully made materially false, fictitious, and fraudulent statements and representations in a matter within the jurisdiction of the executive branch of the Government of the United States, in that defendant DONALD C. WHITTEN stated and represented to an investigator that he had never provided absentee ballots to a certain person known to the United States Attorney (the "Known Person") so that the Known Person could hand-deliver those absentee ballots to voters. These statements and representations were materially false, fictitious, and fraudulent, as defendant DONALD C. WHITTEN then and there well knew, because in or around March 2010 defendant DONALD C. WHITTEN provided the Known Person with absentee ballots for a primary election scheduled to take place on

PLEA AGREEMENT EXHIBIT A

or around May 11, 2010, which election involved a race for the United States House of Representatives, so that the Known Person could hand-deliver those absentee ballots to voters.

In violation of Title 18, United States Code, Section 1001.

UNITED STATES OF AMERICA

R. BOOTH GOODWIN II
United States Attorney

By:

STEVEN R. RUBY
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. _____

DONALD C. WHITTEN

STIPULATION OF FACTS

The United States and Donald C. Whitten stipulate and agree that the facts comprising the offense of conviction for the single count contained in the foregoing Information designated Plea Agreement Exhibit A include the following:

On or around December 7, 2011, James Wise, an investigator for the office of the West Virginia Secretary of State, interviewed Mr. Whitten about possible violations of federal law in connection with a primary election conducted on or around May 11, 2010 (the "Election"). The Election involved a race for the United States House of Representatives. Both at the time of the Election and on or around December 7, 2011, Mr. Whitten was the Clerk of the County Commission of Lincoln County, West Virginia. Near the beginning of the interview, Mr. Wise informed Mr. Whitten that Mr. Wise was investigating possible violations of federal law in connection with the Election.

During the interview, Mr. Wise asked Mr. Whitten about a certain person known to Mr. Wise, Mr. Whitten, and the United States Attorney for the Southern District of West Virginia (The "Known Person"). Mr. Whitten stated to Mr. Wise that Mr. Whitten had never provided absentee ballots to the Known Person so that the Known Person could hand-deliver those ballots to voters (the "False Statement").

At the time that Mr. Whitten made the False Statement, he knew that it was false. In truth and fact, in or around March 2010, Mr. Whitten provided the Known Person with absentee ballots for the Election so that the Known Person could hand-deliver those absentee ballots to voters. Moreover, at the time Mr. Whitten made the False Statement, he knew that he was making the False Statement in a matter within the jurisdiction of the executive branch of the Government of the United States and that

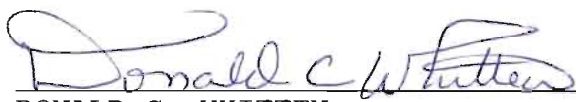
PLEA AGREEMENT EXHIBIT B

the falsehood in the false statement was material to that matter. Mr. Whitten made the False Statement willfully. His willfulness extended to, but was not necessarily limited to, the False Statement's falsity, the fact that he was making the False Statement in a matter within the jurisdiction of the executive branch of the Government of the United States, and the fact that the falsehood in the False Statement was material to that matter.

All of the above-described events occurred in or around Hamlin, Lincoln County, West Virginia, and within the Southern District of West Virginia.

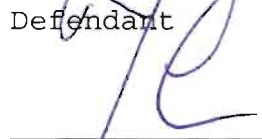
This Stipulation of Facts does not contain each and every fact known to Mr. Whitten and to the United States concerning his involvement and the involvement of others in the charges set forth in the Information, and is set forth for the limited purpose of establishing a factual basis for Mr. Whitten's guilty plea.

Stipulated and agreed to:



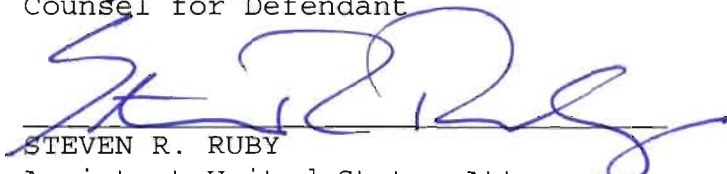
DONALD C. WHITTEN
Defendant

12-28-11
Date



TIM C. CARRICO
Counsel for Defendant

12-28-11
Date



STEVEN R. RUBY
Assistant United States Attorney

1/25/12
Date