No. CR-16-0012

IN THE COURT of CRIMINAL APPEALS of ALABAMA

MICHAEL GREGORY HUBBARD,
Appellant,

v.

STATE OF ALABAMA,
Appellee.

On Appeal from the Circuit Court of Lee County, Alabama (CC-14-565)

BRIEF OF THE APPELLEE

Steve Marshall
Attorney General

Megan A. Kirkpatrick*
Assistant Attorney General
*Counsel of Record

Miles M. Hart
Michael B. Duffy
Deputy Attorneys General

Office of the Attorney General
501 Washington Avenue
Montgomery, AL 36104
Phone: (334) 353-2128
Fax: (334) 353-0766
mkirkpatrick@ago.state.al.us

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STATEMENT REGARDING ORAL ARGUMENT

The issues in this case are important, but the briefs adequately present the relevant facts and legal arguments. Ala. R. App. P. 34(a)(3). As a result, oral argument is not necessary. But if the Court determines that oral argument is appropriate, the State would welcome the opportunity to present its argument.

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INTRODUCTION

If anything is illegal under Alabama's Ethics Laws, Hubbard's conduct is. Hubbard spends much of his brief decrying what he casts as the State's (and presumably the circuit court's) broad interpretation of the Ethics Laws. But Hubbard's conduct goes to the very heart of what the Ethics Laws prohibit, and the jury found that his conduct violated the law, as properly explained by the circuit court. At every turn, he sought to use his position to benefit himself and his businesses, while hiding the true nature of his interests from his colleagues, the public, and his staff. If Hubbard's conduct is not prohibited by the Ethics Laws, then the laws are a sham designed to let lawmakers disguise unethical conduct with a veneer of legality.

Hubbard sold his office to benefit himself. He voted on legislation containing language that would give a monopoly to the same company that was paying him $5,000 per month at the time. He received over $300,000 from two companies that hired him because of his position as Alabama's House Speaker. Just after he received his tenth check for $10,000 from yet another company, he told his chief of staff that he had "a hundred thousand reasons" to service that client using the resources

of his office. He contacted Publix on behalf of "a company here in Auburn (my district)," that same client, and because he was the Speaker, Publix listened. To hide the money he received, Hubbard directed each of these entities to pay his business, Auburn Network, so that he did not have to list the money as income on his Statement of Economic Interests report before the Ethics Commission. Hubbard also convinced principals to invest in his troubled Craftmaster Printers, complaining that he helped get a business-friendly legislature elected and expecting help from those businesses in return.

On appeal, Hubbard protests that Alabama's part-time legislators will be unable to find paying jobs if his convictions stand. He is wrong. The Ethics Laws specifically permit legislators to receive "compensation"—even from principals—for "non-governmental business activities under circumstances which make it clear that the [compensation] is provided for reasons unrelated to the recipient's public service as a public official." Ala. Code § 36-25-1(34)(b)(10). Hubbard knew this authorization did not apply to his conduct. He did not even request a jury instruction on this provision of the Ethics Laws. Hubbard's scare tactics

are no reason to adopt his self-serving interpretation of the law.

STATEMENT OF THE CASE

In October 2014, the Lee County Special Grand Jury indicted then-House Speaker Michael Gregory Hubbard on 23 counts, charging him with violating Alabama's Ethics Laws. C.57–65. Relevant to this appeal, the grand jury charged Hubbard with intentionally:

- Voting with a conflict of interest, in violation of Ala. Code § 36-25-5(b) (Count 5),
- Soliciting or receiving a thing of value—money—from principal American Pharmacy Cooperative, Inc., in violation of Ala. Code § 36-25-5.1(a) (Count 6),
- Soliciting or receiving a thing of value—money—from principal E2020/Edgenuity, in violation of Ala. Code § 36-25-5.1(a) (Count 10),
- Using his official position or office to obtain personal gain—money—from Robert Abrams, doing business as CV Holdings, LLC, for himself or Auburn Network, in violation of Ala. Code § 36-25-5(a) (Count 11),

- Representing Abrams, doing business as CV Holdings, for a fee before the Alabama Department of Commerce, in violation of Ala. Code § 36-25-1.1 (Count 12),
- Representing Abrams, doing business as CV Holdings, for a fee before the Office of the Governor, in violation of Ala. Code § 36-25-1.1 (Count 13),
- Using or causing to be used a state computer, a state email account, or the human labor and time of himself and his chief of staff Josh Blades, for his private or business benefit by receiving money from Abrams, doing business as CV Holdings, which materially affected his financial interest, in violation of Ala. Code § 36-25-5(c) (Count 14),
- Soliciting or receiving a thing of value—a $150,000 investment in Craftmaster Printers—from principal Will Brooke, executive committee member of the Business Council of Alabama's board, in violation of Ala. Code § 36-25-5.1(a) (Count 16),
- Soliciting or receiving a thing of value—a $150,000 investment in Craftmaster Printers—from principal James Holbrook and/or Sterne Agee Group, Inc., in violation of Ala. Code § 36-25-5.1(a) (Count 17),

- Soliciting or receiving a thing of value—a $150,000 investment in Craftmaster Printers—from principal Jimmy Rane, President of Great Southern Wood, in violation of Ala. Code § 36-25-5.1(a) (Count 18),
- Soliciting or receiving a thing of value—a $150,000 investment in Craftmaster Printers—from principal Robert Burton, President of Hoar Construction, in violation of Ala. Code § 36-25-5.1(a) (Count 19), and
- Soliciting or receiving a thing of value—financial advice about Craftmaster Printers and/or help finding clients—from principal Brooke, in violation of Ala. Code § 36-25-5.1(a) (Count 23).

C.59–64.

After the grand jury indicted Hubbard, he filed multiple motions to dismiss or otherwise challenge the indictment. He argued that the grand jury was not properly empaneled and challenged Acting Attorney General Van Davis's authority. C.130–144, 2560–85. He argued that the grand jury exceeded its jurisdiction in issuing the indictment. C.170–79. He argued that there were violations of Alabama's Grand Jury Secrecy Act. C.253–311. He moved for a more definite statement. C.554–559. He argued that the indictment should be

dismissed for prosecutorial misconduct. C.1951–78. He argued that the indictment should be dismissed because of selective and vindictive prosecution. C.3369–75. He argued that the Ethics Laws—the same laws he boasts of amending in 2010—were unconstitutional. Appellant Br. 1, C.3376–3438. He asked for the appointment of an independent counsel. C.3515–26. He challenged the State's discovery submissions. See, e.g., C.1196–1201, 2107–33. He subpoenaed statewide officials and current and former employees of the Attorney General's Office. C.1302–1347, 2091–2105.

The circuit court fully considered all of Hubbard's motions. The court appointed a Special Master to adjudicate Hubbard's discovery allegations. C.4002–06. Ultimately, the Special Master determined that the State had complied with its obligations, and her only recommendation was to implement the State's proposal of producing its trial exhibits 60 days before trial. C.4613–27. The court heard testimony in court and by deposition from multiple witnesses concerning Hubbard's other allegations. C.5107. But the court denied all of Hubbard's motions to dismiss. C.4738–41, 5107–24.

After extensive pretrial litigation, Hubbard's case went to trial in May 2016. For 10 days, the State's 41 witnesses

testified. Among these witnesses was the former Executive Director of the Ethics Commission, James Sumner. R.5383–5621. At the close of the State's evidence, Hubbard moved to dismiss the indictment and for judgment of acquittal. R.7112–99. The court denied his motion. R.7199.

Hubbard testified in his defense for three days. R.7249–7349, 7367–7585. He proffered testimony about a former governor's reasons for encouraging passage of the 2010 ethics reform, but the circuit court excluded that testimony. C.7349–66. No other witnesses testified in Hubbard's defense. The State called one rebuttal witness. R.7588–97. Hubbard again moved for a judgment of acquittal. R.7603–06, C.5367–5402. The court denied Hubbard's motion. R.7606. On the thirteenth day, the case was submitted to the jury.

After deliberating for approximately 7 hours, the jury found Hubbard guilty on counts 5, 6, 10, 11–14, 16–19, and 23. R.8102–33, C.5463–85. The jury acquitted Hubbard of 11 counts (1–4, 7–9, 15, and 20–22). Id.

The circuit court later sentenced Hubbard. R.8210–20. On each of counts 5 and 6, the court sentenced Hubbard to 10 years in prison, split to serve 2 years, followed by 8 years of probation, with a fine of $30,000. C.5615–16. On count 10,

the court sentenced Hubbard to 6 years in prison, split to serve 18 months, followed by 4 years of probation, with a fine of $30,000. C.5617. These three sentences were set to run concurrently. C.5615–17.

On each of counts 11-14, the circuit court sentenced Hubbard to 10 years in prison, split to serve 2 years, followed by 8 years of probation. C.5618–21. The court imposed fines of $30,000 on each of counts 11, 13, and 14, and a fine of $20,000 on count 12. The sentences on counts 11–14 are set to run concurrently with each other but consecutively to the sentences imposed on counts 5 and 6. Id.

On each of counts 16, 18, 19, and 23, the circuit court sentenced Hubbard to 5 years in prison, split to serve 18 months, followed by 3.5 years of probation. C.5622, 5624–26. The court did not impose a fine on these counts. The sentences on counts 16, 18, 19, and 23 run concurrently with the others. Id.

On count 17, the court sentenced Hubbard to 10 years in prison, split to serve 2 years, followed by 8 years of probation. C.5623. The court ordered Hubbard to pay a fine of $20,000. The sentence on this count was set to run concurrently with the others. Id.

Hubbard again moved for a judgment of acquittal and a new trial. C.5564–5602. He also moved "for investigation by [the] Lee County Sheriff into juror misconduct." C.5540–50. That motion included one juror's affidavit with four allegations of misconduct: (1) a juror commented about testimony and expressed an opinion of Hubbard's guilt; (2) another juror talked about upcoming witnesses, including Robert Bentley; (3) unspecified jurors said that Hubbard should plead guilty and questioned his need for so much money; and (4) an unspecified juror commented, "Yeah, right," about his statement during voir dire that he could be impartial. C.5548–49, 5673–74.

At the hearing on his post-trial motions, Hubbard continued asking for an investigation by the Sheriff. R.8230–33. The court explained that no case permitted such an investigation and stated that Hubbard could subpoena jurors to testify about the allegations in the affidavit. R.8231–42. The court also noted that court staff were available to testify about their interactions with the jury concerning the first allegation. R.8235–36. But the defense responded that "it needs to be investigated before we get to taking testimony." R.8250. The court again explained its expectation

of hearing testimony about the allegations in the affidavit, including testimony from the affiant. R.8258–59. The defense reiterated its argument for an investigation by the Sheriff before any hearing. R.8260–61.

Despite the defense's failure to subpoena any witnesses, the court heard testimony from two bailiffs and the court administrator. R.8262–72, 8328–8332. The court administrator testified that a juror told her about another juror making distracting comments in the jury box, like "[Y]es; now the truth is coming out." R.8329. The administrator confirmed that juror's identity, then told the court. R.8330. The court directed her to have a bailiff tell the juror "that they probably didn't realize that they were talking out loud and not to do that any longer." R.8330–31. The court administrator and bailiff did as directed, and the juror told the bailiff "she wasn't saying anything." R.8263–68. Neither bailiff heard any jurors talking. R.8263–64, 8270–71.

The court denied Hubbard's request for an investigation by the Sheriff. R.8338. The court noted that the parties could file additional briefs on the juror issue and asked them to remain available for a further hearing on the juror issue if necessary. R.8339–40. The defense responded that their

previously-filed brief "covered everything." R.8340. At no point did Hubbard file additional briefing on the juror issue, subpoena jurors, request an additional hearing, or otherwise challenge the court's failure to hold a mid-trial hearing.

In a written order, the court rejected Hubbard's allegations of juror misconduct. C.5673–79. The court noted that Hubbard did not request a bifurcated hearing on juror misconduct, instead seeking an investigation by the Sheriff. C.5674. The court explained that Hubbard failed to show that any of the allegations actually affected the verdict and reasoned that the split verdict demonstrated that the jurors "were not unduly prejudiced and carefully considered the evidence before them regarding each count and rendered verdicts consistent with those deliberations." C.5675–76. The court also noted that Hubbard's motion for a new trial had been denied by operation of law. C.5675.

STATEMENT OF THE ISSUES

1. Was the evidence sufficient for the jury to find Hubbard guilty of the charges in Counts 5, 6, 10, 11, 12, 13, 14, 16, 17, 18, 19, and 23?

2. Did the trial court abuse its discretion in denying Hubbard's motion to dismiss the indictment for prosecutorial misconduct?
3. Did the trial court abuse its discretion in following this Court's Fitch precedent by allowing the former executive director of the Ethics Commission to testify as an expert in this ethics case?
4. Did the trial court abuse its discretion in denying Hubbard's motion for a new trial based on jury misconduct after holding a post-trial hearing and determining that any alleged misconduct did not influence the jury's guilty verdict?

STATEMENT OF THE FACTS

In 1998, the voters of Lee County's House District 43 elected Michael Gregory Hubbard as their representative. He later became the chair of the Alabama Republican Party, where he orchestrated a Republican takeover of the Alabama House and Senate in 2010. As a result, the House elected him Speaker when the new Republican majority took office that December. Cooperating with then-Governor Bob Riley, the Alabama Legislature passed a legislative package of ethics reforms.

1. Hubbard's business interests lost money.

Before he was elected District 43's Representative, Hubbard acquired interests in two businesses. First, he created Auburn Network and obtained the broadcast media rights for Auburn University sports in 1994. R.4580, 4537. Then, in 2000, he purchased a part interest in Craftmaster Printers, a local printing company. R.4470–71.

These businesses did not reward Hubbard as he had hoped. When Hubbard invested in Craftmaster Printers, it was $8.8 million in debt. R.4473. In 2005, Craftmaster Printers declared bankruptcy, overburdened with loans used to purchase state-of-the-art German printing presses. R.4474. Auburn Network experienced changes as well. In 2003, International Sports Properties ("ISP") bought the Auburn University sports media rights from Auburn Network. R.4537–38. ISP continued employing Hubbard. R.4538. But another company, International Management Group ("IMG"), purchased ISP in 2011. R.5770. For three months, IMG also employed Hubbard. R.5770–71. In March 2011, IMG terminated his employment. R. 5771, C.6970. IMG gave Hubbard one year of severance pay, which ran out on March 31, 2012. Id.

As his source of funding began to dry up, Hubbard began asking around for other funding sources. Hubbard asked lobbyist and former Governor Bob Riley: "Can I just come work for BR&A? I need a job and this way I would work [for] someone I respect." C.7193. Riley warned him: "Again question now is DO YOU 'WANT' to be Gov – or – make alot of money: good thing is you could do either but I am not sure it's possible to do both." C.7209. And eventually Riley said, "Also quit telling people you may have to step down as speaker due to financial concerns." C.7232.

Hubbard also sent several emails to Will Brooke, executive committee member of the Business Council of Alabama's board ("BCA"). In one email, he explained his financial woes while touting his legislative successes, including successes for Brooke's wife, Maggie:

> enjoyed being with Maggie earlier this month as she and others lobbied for the Boys and Girls Club funding to be included in the budget again this year. I have a feeling that I will make it happen. I do not want to get Maggie on my bad side!
>
> Politically for me, things are going very well. We continue to shake up the status quo in Montgomery and I am extremely pleased with the progress we are making in changing the mindset at the State House. It is very refreshing, as I'm sure Billy has relayed to you. We will be rolling out the Charter School legislation and the "fix" for the immigration law over the next few days.
>
> Personally, however, my employment with IMG, Auburn's multi-media rights holder, ends at the end of this month. It has been quite tough on me to see my athletic career wind down, especially since I created the Auburn Network from scratch back in 1990 when I was 28 years old (I turned 50 last month). But, I suppose things change for a reason and turn out for the best in most cases.
>
> As you know, my concern is financial and the fact that serving as Speaker consumes a enormous amount of time and generates virtually no income. I have been in discussions with Governor Riley and believe I would have an opportunity to work with him and his company if I were to give up being Speaker and resign from the Legislature. Although I believe I am making positive changes in Montgomery, I need to think of my obligations to my family. Please keep me in your thoughts as I make this decision.

C.7064. In other emails, he continued his refrain, questioning whether "putting a conservative, pro-business legislature in power would be worth the personal sacrifice in the end." C.7056. In yet another email to Brooke, Hubbard said, "Perhaps I might need to scale back and be a slightly better than mediocre Speaker in order to devote more time to supporting my family[]!" C.7054.

Over time, Hubbard found ways to replace his IMG paycheck, continue receiving his $132,000 yearly Auburn Network salary, and fortify struggling Craftmaster Printers.

2. Principal E2020/Edgenuity hired Hubbard for $7,500 per month.

In late 2011, Hubbard met Mike Humphrey, an executive with an education company called E2020, at an education conference. R.5631. E2020 later became known as Edgenuity after a buyout. R.5623–24. Humphrey learned that Hubbard was a legislator. R.5632. As they talked, they discovered that they both knew Ferrell Patrick, an Alabama lobbyist. R.5634. Patrick worked for E2020/Edgenuity in Alabama and other states. R.5634. After the conference, Humphrey learned that Hubbard was Alabama's House Speaker. R.5636. At some point, Humphrey talked with Patrick about the possibility of hiring Hubbard, believing that his role as Speaker would give

E2020/Edgenuity "an ability to meet legislators or leaders in other states just to talk about what we did." R.5636–37. Patrick then talked with Hubbard about the possibility. R.5639. Humphrey testified that Patrick reviewed "[e]very lobby contract, every consulting contract that I do." R.5665.

In February 2012, Hubbard emailed Patrick, "I am very excited about the opportunity to work with some of your clients and appreciate your assistance." C.6977. He attached a generic consulting agreement, listing Auburn Network as a party and himself as a consultant. C.6972–76. He also mentioned meeting with the State Superintendent about iTeach, one of Patrick's other clients. C.6977, R.5640–45. In the beginning of March, Hubbard emailed Patrick about a conversation he had with James Sumner, the Executive Director of the Alabama Ethics Commission, and forwarded a letter from Sumner. C.6980. The letter he forwarded was not specifically about E2020/Edgenuity. C.6595, R.5652–53. Patrick forwarded that letter to Humphrey, who forwarded it to "the guy from NYC who controls the cash," commenting, "I am considering a deal with the House Speaker in Alabama as you know . . . . he can get us in front of any speaker in the country regardless of party[. . .]I think this would help us [i]n states that

we do not have a lobby presence." C.6979 (ellipses in original except where bracketed). After receiving a positive response, Humphrey emailed Patrick, "[W]e are good." Id.

E2020/Edgenuity staff then got to work drafting the contract. Internal emails reflect that they initially called it a "lobby contract" and discussed filing "supporting docs (not our actual contract) with the State of Alabama as we do for all of our lobbyists." C.6983–84. Because Hubbard was not a registered lobbyist, they decided to make the contract for "more general consulting-type services where lobbyist registration is not an issue." C.6983. When asked to explain the difference between a lobbyist and a consultant, Humphrey said, "A lobbyist is registered in the state where they operate . . . . And we file all the filings with the lobbyist in the state where they lobby, that they are registered. A consultant is just a consulting contract that we don't use as a lobbyist." R.5659.

After receiving the draft agreement, Hubbard sent a signed copy back to Patrick, noting that he had edited it "to make the Agreement between Auburn Network, Inc., and [E]2020 rather than directly with me. That way, [E2020] is contracting

with Auburn Network, Inc. so I only have to list Auburn Network as my employer." C.6986.

Once Patrick confirmed that E2020/Edgenuity received his edited contract and approved the changes, Hubbard emailed him, "Perfect! Will they send a fully executed Agreement? E-mail the invoice each month? Now, how do I learn more about what they do and how I can help outside the state [o]f Alabama?" C.7002. Patrick offered "tutorials over a glass of scotch." Id.

This all happened just days before Hubbard's IMG severance pay ended. C.6659–65, 6970. Under the contract, Hubbard would "provide certain consulting services" for E2020/Edgenuity. C.6659. An addendum to the contract specifies that Hubbard's services were "limited to speaking engagements on behalf of E2020, and/or public awareness and advisory Services at events or locations pre-approved by E2020." C.6663. The contract provided that these services would be performed outside Alabama. For these limited services, E2020 paid Hubbard $7,500 per month. Id. Hubbard's contract with E2020 was renewed in December 2012 and renewed again with E2020's successor, Edgenuity Inc., in January 2014. C.6665–79. Pursuant to these contracts, Hubbard

received a total of $210,000 between April 2012 and July 2014. C.7726, 7735, 7827.[1] Humphrey testified that he hired Hubbard because he was a legislator. R.5662–64.

An internal email from E2020/Edgenuity illustrates how the company viewed Hubbard, with the subject line "Lobby" and a draft list of "Lobby/Consultants." C.6685. Among these consultants were "Falcon," the name of Ferrell Patrick's Company, and "Mike Hubbard – Auburn Network." C.6685, R.5670. The author characterized Falcon as a "[r]egistered lobbyist in Alabama and helps with other states," while Hubbard was "our contact for House Speakers in all 50 states." C.6685.

Consistent with this expectation, Hubbard contacted House Speakers from other states on E2020/Edgenuity's behalf. While at a legislative conference, he talked to South Carolina's Speaker, Bobby Harrell, about an E2020/Edgenuity contract with the Charleston school district. R.5675–76, 5681, C.7010. When the North Carolina legislature was considering a bill that would have limited the state's options to one of E2020/Edgenuity's competitors, effectively shutting

[1] These composite exhibits summarize and refer to the State's exhibits showing the deposited checks, which appear in the record at C.6350–98.

E2020/Edgenuity out of that state, Hubbard called the North Carolina Speaker and arranged a meeting with E2020/Edgenuity representatives to stop the bill. R.5684-85. Humphrey also emailed Hubbard about introducing himself to the Speaker of Idaho. C.7014.

After arranging a meeting with NCAA officials, Hubbard emailed Humphrey seeking an update. C.6683. He also wrote, "I hope the contract in Charleston you were having issues with a while back is still going well. I know Speaker Harrell got involved in that one following my call to him." C.6681. Humphrey responded, "We are in great shape with the NCAA . . . . Also, we were publicly approved by the Charleston board as well. Neither of these things happen without your help." C.6683. Hubbard wrote back, "Well, I want to earn my keep." Humphrey answered, "Those two deals earned it for sure!" Id.

3. Principal APCI hired Hubbard for $5,000 per month, and he voted on its language.

In June 2012, just months after Hubbard's IMG severance pay ended and he signed the E2020/Edgenuity contract, Hubbard signed another contract with the American Pharmacy Cooperative, Inc. ("APCI"). C.6606. APCI represents community-based independent pharmacies in Alabama and 23

other states. R.5275. Under the contract, APCI agreed to pay Hubbard $5,000 per month through Auburn Network, and Hubbard agreed to "advise" and "represent" APCI. The contract "explicitly prohibited" Hubbard from providing these services "within the state of Alabama." C.6606. Pursuant to this contract, APCI paid Hubbard a total of $95,000 between August 2012 and January 2014. C.7726, 7733, 7827.[2]

Tim Hamrick, APCI's president and CEO, testified that APCI hired Hubbard "to represent our interests in other states" because Hubbard "knew the Speakers and Legislators from other states." R.5274, 5276–77. Hamrick decided to hire Hubbard on the recommendation of APCI's lobbyist, Ferrell Patrick. R.5275, 5277. Internal emails from APCI reflect that the APCI board also valued Hubbard's leadership position with the Southern Legislative Conference. C.7007–08.

A few months after signing Hubbard's contract, APCI staff were compiling a staff directory. C.6609. When one staff member suggested including Hubbard and Patrick among "any lobbyist[s] who are representing ou[r] interest in any state," their supervisor nixed that idea, explaining:

[2] These composite exhibits summarize and refer to the State's exhibits showing the deposited checks, which appear in the record at C.6400–34.

"Because he is Speaker of the House in Alabama, he is not able to help us in Alabama. If something favorable happens for us, we don't need anyone to think it happened because of his relationship with us." C. 6609.

But Hubbard and others working with him did "something favorable" for APCI during the 2013 legislative session. In spring 2013, APCI had a problem with Medicaid's plans for managing pharmacy costs. R.5281-82. Hamrick testified that after several meetings with officials at Medicaid, APCI representatives learned that Medicaid was considering employing a pharmacy benefit manager ("PBM") to manage claims and keep prescription costs down. R.5282; see also R.4953 (Don Williamson). Don Williamson, the Director of the Alabama Department of Health at the time, testified that Medicaid was also considering a "narrow network" solution, requiring all prescriptions to go through one provider. R.4979. Before making any changes, Medicaid officials wanted time to study the pros and cons of each option. R.4982-83. But they were "actively engaged" in considering a PBM model. R.5024. As Hubbard himself testified, APCI was not the only contender for Medicaid's PBM program; Wal-Mart also wanted the job. R.7406-09.

APCI believed that a PBM would be bad for its members and sought to mitigate the damage. R.5283–85. To protect its interests and shut out Wal-Mart, APCI created language to ensure that only APCI could serve as Alabama's PBM, then supplied the language to its lobbyist, Patrick. R.5283–85, 7406–09.

Luckily for APCI, the Speaker of the House was also on its payroll. Patrick asked Hubbard's Chief of Staff, Josh Blades, for a meeting with Hubbard to discuss this legislation. R.4640. They arranged a meeting with Hubbard, Patrick, another APCI lobbyist named John Ross, Blades, Representative Greg Wren, and Representative Steve Clouse, who was the acting chair of the committee responsible for considering the 2014 General Fund Budget. R.4640–43, 4837–41. Before the meeting, an APCI staff member sought to confirm on Patrick's behalf how much money an APCI PBM could save the State, noting that "[t]he legislat[ive] leadership has told us they need at least $10 million." C.7719.

At the meeting, Hubbard posed a hypothetical savings of $10 million dollars from one of Patrick's clients (without mentioning that the client was APCI) and asked whether that savings could be transferred from Medicaid to the court

budget. R.4840. But Clouse was concerned that this could cause Alabama to lose federal matching funds for Medicaid. R.4841.

To evaluate Clouse's concern, Legislative Fiscal Office ("LFO") Director Norris Green met with Clouse and most of those who attended the meeting in Hubbard's office. R.4645, 4890, 4893. Green explained that, in his estimation, the courts did not need additional funding. R.4894. Hubbard responded that, "if he could help [then-Chief Justice] Roy Moore, Roy Moore could be of some help to him in the future." R.4894. Green also explained that he needed to see the proposed language to evaluate its fiscal effects. R.4894–96.

Eventually, Patrick and Wren brought Green language that would have directed Medicaid to adopt a PBM program, and only APCI could have met its requirements. R.4896–4900. Concerned that Medicaid would not like being directed to start such a program, Green suggested adding language to the effect that "if the Medicaid program adopts a PBM program, then we will do these things." R.4900–4901. Green said he would submit the language to Clouse for approval, and Patrick reminded him that "they were sent by the Speaker." R.4929, R.4937.

Around this time, Blades received additional language from Clouse and asked Hubbard's chief counsel, Jason Isbell,

to review it. R.4646. This time, the language directed Medicaid to "fully analyze" whether to use a PBM, with the same requirements that only APCI could meet. C.7019. Once Isbell approved the language, Blades asked him to "get it into the budget." R.4646. Clouse approved this language, and Green put it in the House substitute budget. R.4912-13.

After these machinations, the APCI language in the House 2014 General Fund Budget, SB143, read:

> Recognizing the need to achieve cost savings in the pharmacy program as well as the need to serve the interests of Medicaid recipients and Alabama taxpayers, the Alabama Medicaid Agency shall fully analyze the consideration and implementation of a pharmacy benefit manager program. The Alabama Medicaid Agency, in order to implement a pharmacy benefit manager program, must seek a pharmacy benefit management organization or manager that will: (i) act in fiduciary capacity and perform its duties in accordance with standards of conduct applicable to a fiduciary, including the allocation of all drug manufacturer rebates, discounts, and incentives to the State General Fund; (ii) establish a maximum allowable cost list; and **(iii) operate a group purchasing function with a purchasing base for generic drugs consisting of at least 30% of the retail pharmacies in Alabama.** The Alabama Medicaid Agency shall provide quarterly reports to the Chair of the House Ways and Means General Fund Committee, the Chair of the Senate Finance and Taxation Committee, the Chair and Vice-Chair of the Permanent Joint Legislative Committee on Medicaid Policy, and the Legislative Fiscal Officer regarding the analyses and recommendations related to a pharmacy benefit manager, including timelines for any request for proposals and the implementation of a pharmacy benefit manager program.

C.7659 (emphasis added). Although APCI sought to include all of this language in the General Fund Budget, the bold language in (iii) was crucial; it would have made APCI the only candidate for an Alabama PBM program. R.4961–62, 4985.

The House was scheduled to vote on its version of the 2014 General Fund Budget on April 23, 2013. R.4648. On that day, Ross told Blades that he had just learned about Hubbard's contract with APCI. R.4649. Blades and Ross decided to talk to Hubbard. R.4650–51. Hubbard confirmed that he had a contract but said that it was for out-of-state work. R.4651. Blades and Ross warned him that "it was a problem" and they "did not think he should move forward with the language in the budget because it looked bad." R.4651. Blades told Hubbard "that he should not vote on the language." R.4652.

Now that his true interests had been revealed, Hubbard directed Blades to "fix the budget" by removing the APCI language. R.4652–53. Because the budget was already on the floor, it was not possible to remove the language before the vote. R.4653–55. Blades told Hubbard he could not "fix" the budget. R.4656.

When SB143, the 2014 General Fund Budget, came up for a vote that night, Hubbard asked Blades, "What do you think I should do?" R.4657.

"[D]on't do it," Blades said. R.4657.

"It would raise too many red flags if the Speaker did not vote on his own budget," Hubbard said. R.4658. And he pushed the green button to vote for the budget. R.4658–59.

Eventually, Medicaid officials became aware of the language that would give APCI a monopoly over any PBM program. After the 2014 General Fund Budget with the APCI language passed the House, Williamson and acting Medicaid Commissioner Stephanie Azar met with Hubbard, Blades, the Governor's legislative liason, and a few others about removing the APCI language. R.4986, 5029–30. When Williamson explained his concern that APCI would be the only possible PBM under the language, Hubbard "committed to help us get that language out" and agreed to keep Wren off the conference committee tasked with finalizing the budget. R.4985–87. Williamson testified that he was "surprised" when he learned later that Hubbard had a contract with APCI. R.4991. Before the 2014 General Fund Budget passed the legislature and went to the Governor for his signature, the APCI language was removed.

R.5035. As a result, Medicaid would not implement a PBM, which was APCI's initial goal. See R.5282–83.

But Hubbard's secret was out. Blades worried that Hubbard's decision to vote on the budget with the APCI language would result in "some sort of legal trouble." R.4661. Ross, who had lobbied for APCI under a contract with Patrick, decided that he could no longer work with Patrick on anything related to APCI. C.7024. Shortly after that, Ross's lobbying group terminated their entire relationship with Patrick. C.7027.

Even though the language was ultimately removed, APCI thanked Hubbard for "adding the necessary language to the 2014 General Fund Budget." C.6604. In a letter to member pharmacies, Hamrick touted APCI's "major victory" of "adding the necessary language to the 2014 General Fund Budget," which "eliminate[d]" the "threat of an out-of-state PBM taking over the pharmacy program." C.7021. An entire paragraph of this letter describes how "our industry had no greater champion than Speaker Mike Hubbard throughout this process." C.7021.

4. Hubbard solicited and received from principal Will Brooke advice about obtaining clients and a plan to save Craftmaster Printers.

Hubbard struggled not only with his personal financial situation but also with Craftmaster Printers' financial woes. He reached out to Will Brooke, an attorney and financial professional, for help. R.5962. At the time, Brooke was an executive vice president and managing partner with Harbert Management Corporation, an asset management firm with about $4 billion in managed assets. R.5934–36. Brooke was also the chairman of Harbert Realty Services, a real estate subsidiary of Harbert Management. R.5936. In addition, Brooke occupied a leadership position on the executive committee of the board of the Business Council of Alabama, a political interest group representing small and large businesses. R.5939–41. Brooke became Vice Chair of the BCA board in 2010 and Chair in 2011. R.5942–43. The BCA board's executive committee also has a specific seat and title for immediate past chairs, which Brooke occupied in 2012. R.5943. The executive committee of that board—which includes the chair, the vice chair, and the

immediate past chair—employs and directs the BCA's lobbyists. R.5952–54.

Hubbard began asking Brooke for help finding consulting clients in 2011, becoming increasingly more desperate and threatening to step down as Speaker of the House. C.7044, 7050, 7054, 7056, R.5966–67, 5980. In one email, Hubbard lamented, "I have probably been naïve in believing that putting a conservative, pro-business legislature in power would be worth the personal sacrifice in the end. I am beginning to think that perhaps my role was to simply lead us to this point and I now am just supposed [to] turn it over to someone else and exit public service." C.7056. In another, Hubbard discussed the success of immigration legislation Brooke favored, then asked, "On another note, did you ever run across any company or companies interested in my services?" C.7059. In March 2012, Hubbard emailed "one more time" to ask Brooke about "any potential business clients." C.7061. Although this was just days before he signed a contract with E2020/Edgenuity for $7,500 a month, he did not mention that contract to Brooke. See C.6662.

Brooke testified that he told the BCA's head lobbyist Billy Canary and others in the BCA leadership group that

"basically, we have got a problem, the speaker is asking for help finding a job. And . . . that presents the risk of conflict of interest." R.5987–88. Brooke "considered it to be a real problem" because a man in "a major leadership position in the State is at risk" of undue influence from people who could offer him money. R.5989. Neither Brooke nor others at the BCA could find a solution. R.5988–89. As Brooke emailed Hubbard, "I think that folks are afraid to mess up, on either their or your side of the equation." C.7063. Brooke testified, "[E]mployment relationships can run afoul of one[']s responsibilities in State Government. And I think it's important for people to be independent and able to . . . stand on their own two feet with their own business as opposed to being dependent on an employment relationship." R.6016.

Later in 2012, Hubbard began asking Brooke for help with Craftmaster Printers. R.5962, C.7066. As a guarantor of Craftmaster-related debt, Hubbard had a total potential liability of $470,000. R.5254–55. Regions Bank had given Craftmaster a line of credit, with $600,000 outstanding and a maturity date in 2012. R.5240–56. Regions Bank had also loaned about $1.6 million to Swann Investments, a group that

included Hubbard and owned the Craftmaster building and real estate. R.5240–41. Hubbard was a guarantor for both loans. R.5246–47. He had personally guaranteed 33% of the $600,000 Craftmaster loan and 17% of the $1.6 million Swann loan. R.5254–55. Craftmaster had insufficient cash flow to meet operating expenses and loan payments. R.5242–43. As a result, although Craftmaster had not yet missed a loan payment, Regions Bank transferred the Swann and Craftmaster loans to its Problem Asset Management Department. R.5242–43, C.6876–84.

Brooke agreed to give Hubbard advice and reviewed Craftmaster's financial statements. C.7066–77. Brooke then sent Hubbard a detailed financial turn-around plan. C.7079–95. This plan called for Hubbard to find ten people to invest $150,000, for a total of $1.5 million. C.7079–95, R.6020. The $1.5 million would allow Craftmaster to satisfy part of the Regions Bank loan and continue to grow its business. R.6023–24. The investors would receive preferred stock with a 6% dividend. C.7111. In addition to creating the plan, Brooke also reviewed Hubbard's prospective investor documents. C.7097–7106.

After Hubbard began implementing Brooke's plan, staff from Regions Bank's Problem Asset Management Department met with Hubbard and other Craftmaster guarantors at the plant. R.5247. Among the problems they discussed was declining revenue. R.5247. The Craftmaster guarantors explained that they had made some changes at the business, and Hubbard explained Brooke's turnaround plan. R.5249–50. During this meeting, Regions staff learned for the first time that Craftmaster had failed to pay the U.S. Government $350,000 in payroll withholding taxes. R.5250. Craftmaster planned to pay those taxes with the investor money. R.5251. Failing to pay payroll taxes was a violation of the terms of Craftmaster's loan agreement with Regions, and the bank could have declared Craftmaster in default and called the loan immediately. R.5251–53.

Also with the investor money, Craftmaster planned to pay off an equipment loan to another bank, another equipment loan with the manufacturer of its printing presses, and $350,000 toward the $600,000 Regions loan. R.5253–54. Regions and Craftmaster renegotiated the loan maturity date to sometime in 2013, and Regions placed a lien on the equipment to ensure that the bank took priority if the company failed. R.5255–

56, C.6887–93, 6895–6919. Regions initially indicated that it could not allow Craftmaster to pay dividends to investors because it wanted to be paid first. R.5260, C.6921–40. The bank ultimately agreed to the dividend payments because it believed that the $1.5 million investment was crucial. R.5260–61. Ultimately, before the renegotiated maturity date, Hubbard refinanced the Craftmaster and Swann loans through another bank, ending Craftmaster's relationship with Regions. R.5262. To permit this, Regions had to take a $200,000 loss on the Swann loan. R.5262–63. Despite the loss, Regions disentangled itself from Craftmaster because "they were not making money from the operations of the business. And our concern was eventually that million five that had been injected into the company would run out and we would be back—back where we started. And we were concerned about it at some point and we might not get it paid back." R.5263–64.

5. Hubbard solicited and received $150,000 investments in Craftmaster Printers from principals Brooke, Sterne Agee, Jimmy Rane, and Rob Burton.

Brooke did not just devise the financial turnaround plan for Craftmaster Printers and review the prospective investor documents; he also became one of the ten investors. R.6022. Hubbard asked Brooke to invest. R.6029. After Harbert

Management Company signed off, Brooke agreed to do it. R.6029, C.7115–16. In October 2012, Brooke signed a stock purchase agreement and wired $150,000 to Craftmaster's account. C.6944, 7108–12, 7561, 7563. Hubbard confirmed receipt. C.7114.

To implement Brooke's turnaround plan, Hubbard needed to find other individuals with high net worth who could afford to invest $150,000. He described his plan to lobbyist and former Governor Bob Riley, noting that investing would "help[] Coach Dye and me." C. 7350. Hubbard included a list of potential investors, asking whether Riley knew "some other folks who might be prospects." C.7350–51. Riley suggested that Hubbard talk with Coach Dye because he would know "twice the potential investors" and "it would be better that this be perceived as a CORPORATE problem[,] not just a Mike Hubbard problem." R.7354.

Hubbard found investors, telling Riley he had secured 8 of the 10 by November 2012. C.7365. Brooke was not the only principal who invested in Craftmaster Printers. Hubbard also solicited investments from James Holbrook of Sterne Agee, Jimmy Rane, and Rob Burton. And Sterne Agee, Jimmy Rane, and Rob Burton delivered.

Holbrook was the president and CEO of the Sterne Agee Group, Inc., a full-service stock brokerage firm. R.5860, 5863-64. Steve French worked in governmental relations for Sterne Agee.[3] R.5862–63. French's job duties did not require him to lobby; Sterne Agee had retained Fine, Geddie, and Associates as its lobbyists. R.5864–66. As a result, Sterne Agee was a principal. R.5886–87, C.7807–10.

Holbrook and Hubbard had never met or talked before. R.5876. In fall 2012, Holbrook asked French to reach out to Hubbard about Jefferson County's financial state and potential bankruptcy. R.5866. As a business leader in Birmingham, Holbrook did not want Jefferson County to go bankrupt. R.5866. He and other business leaders had discussed potential solutions to help the County avoid bankruptcy, and they wanted Hubbard's support. R.5867–68.

[3] French agreed to testify only after reaching an immunity agreement with the State. Under this agreement, he obtained immunity from prosecution for any potential quid pro quo with Hubbard about Jefferson County and the Craftmaster Printers investment; potential Revolving Door Act violations for talking with various senators on behalf of his client, E2020/Edgenuity; and potential Revolving Door Act violations for activities pursuant to a consulting agreement with APCI, which lobbyist Ferrell Patrick arranged. R.5931–32, 5919–20, 5927–29.

So French met with Hubbard. R.5868. He explained Holbrook's wishes and asked Hubbard to support any forthcoming solutions from the Jefferson County legislative delegation. R.5868–70. French asked Hubbard as Speaker to "be helpful in that process and not allow unnecessary obstacles to get in the way," and Hubbard understood. R.5869-71. Hubbard then asked "if we could talk about his business." R.5873. Hubbard told French about Craftmaster's financial difficulties, explaining that if Craftmaster went bankrupt, "it wouldn't be an East Alabama printing company that went bankrupt, it would be the Speaker—the printing company owned by the Speaker of the House of Representatives goes bankrupt." R.5873–74. Hubbard told French that he had a plan, and he asked whether French thought Holbrook would want to hear it. R.5874. French asked for documentation. R.5875. Hubbard sent the plan and general information about Craftmaster. R.5876.

After French told Holbrook about his meeting with Hubbard on the Jefferson County solution, as well as Hubbard's investment request, Holbrook reviewed the Craftmaster materials and agreed to meet with Hubbard. R.5877–79. Hubbard emailed further information, including the names of existing investors. C.7142–43. At the meeting, French introduced

Holbrook to Hubbard, then left. R.5879. Holbrook decided to invest. R.5884.

After others at Sterne Agee reviewed the proposal, Holbrook and French finalized the investment documents. R.5884–85, C.7147–59. In November 2012, Holbrook signed the stock purchase agreement. C.7164–66. French drove from Birmingham to Auburn to deliver the check for $150,000. R.5885–86, C.7145. This check was drawn from Sterne Agee's account. C.7167. Holbrook chose to invest through Sterne Agee rather than using his own money. R.5895–96. Hubbard initially believed Holbrook would invest personally, but he agreed to the change. R.5896.

Hubbard also reached out to Jimmy Rane, President of Great Southern Wood Preserve. R.6227–28, 6258, C.7031. As president, Rane hired lobbyists Fine, Geddie, and Associates. R.6267. He also signed and filed principal statements for Great Southern Wood. C.7779–82. Before investing, Rane had his financial manager review the investment documents. R.6261, C.7031, 7033. In October 2012, Rane invested $150,000 in Craftmaster Printers. R.6262, C.7036. He signed a stock purchase agreement, as well as a separate addendum. R.6264, C.7038–42. Rane also filed a statement of lobbying activities

in 2012. C.7819. He answered, "No," to questions about financial interactions with public officials, including, "Do you have any direct business association or partnership with any public official [excluding campaign contributions]?" C.7819.

Finally, Hubbard solicited Rob Burton for an investment in Craftmaster Printers. Burton is the president of the holding company Hoar Holdings, as well as one of its subsidiaries, Hoar Construction. R.6187–88. Hoar Construction is a construction manager that operates in 20 states. R.6188, 6192. When asked about his role in the company, Burton testified, "I am boss." R.6189. Hoar Construction employs lobbyists, including Bob Riley and Associates; Fine, Geddie, and Associates; and Dax Swatek. R.6193–95, C.7770, 7773.

Hubbard called Burton, then met him at his office to discuss investing in Craftmaster Printers. R.6204. He explained the preferred stock investment for $150,000 to help Craftmaster overcome its financial difficulties. R.6205–06. Before investing, Burton called Brooke, who confirmed that he had helped Hubbard devise the turnaround plan and investment scheme. R.6210–11. Ultimately, Burton signed a check for $150,000 and invested in Craftmaster. R.6214, C.6946.

6. Robert Abrams, doing business as CV Holdings, hired Hubbard for $10,000 per month, and Hubbard used his office to serve his client.

Inventor Robert Abrams also signed a contract with Hubbard. At the time, Abrams was the majority owner of a holding company called CV Holdings. R.6093–94. Among the companies in the CV Holdings family were Capitol Cups and Si02, and, at the time of Hubbard's criminal activity, Abrams was the majority owner of those companies as well. Abrams has since sold Capitol Cups and CV Holdings, but he remained president and majority owner of Si02. Id.

Capitol Cups manufactured insulated travel cups, including children's sippy cups and adult coffee mugs. The sippy cups were sold under the USA Kids Brand through large retailers. The travel cups were distributed in various ways, including through sports entities. Major League Baseball and the National Football League licensed their logos to Capitol Cups, then sold Capitol Cups products with those logos at sporting events. R.6119–20. Abrams had not been able to obtain such an arrangement with college athletic departments. R.6119–20. Knowing that Hubbard had a relationship with Auburn and thereby the SEC, Abrams asked Hubbard who he should contact about distributing Capitol Cups through colleges.

R.6120. Hubbard eventually told Abrams that he had been unable to find any contacts, but he offered to use his own connections on Abrams's behalf. R.6121.

In fall 2012, Hubbard signed a consulting contract with Abrams. C.6612. Like his other contracts, this one listed Auburn Network—not Hubbard himself—as a party, along with Capitol Cups. Id. For his advice "with sales and marketing of its products," Abrams and Capitol Cups agreed to pay Hubbard $10,000 per month. C.6612. Pursuant to this contract, Hubbard received a total of $220,000 between October 2012 and July 2014. C.7726, 7736, 7827.[4]

Wal-Mart, Dunkin Donuts, 7-11, and Circle K sold Capitol Cups products, and Capitol Cups wanted to expand its market into quick service restaurant chains like Chick-fil-a and Waffle House and grocery stores like Publix. R.6150. Through a college acquaintance, Hubbard arranged a meeting at Chick-fil-a headquarters for Capitol Cups general manager Tina Belfance. R.6151–53. Hubbard gave Belfance a contact for a person at Waffle House, but no meetings materialized. R.6154–55. Later, from a legislative conference in Scotland, Hubbard

[4] These composite exhibits summarize and refer to the State's exhibits showing the deposited checks, which appear in the record at C.6436–78.

emailed Belfance that he had visited with Georgia Senator Don Balfour, a Waffle House executive, about "the dead end" Capitol Cups had hit with Waffle House. C.6950, R.6158. Neither Chick-fil-a nor Waffle House ever made a contract with Capitol Cups. R.6154–55.

Hubbard also reached out to Publix. R.6159–62. To show his work, Hubbard forwarded to Belfance an email string of his interactions with Publix staff. C.6614–22. Hubbard had emailed Michael Mitchell and another Publix employee, saying, "There is a company here in Auburn (my district) that manufactures high quality plastics called Capitol Cups." C.6616. Hubbard described the company's USA Kids sippy cups and continued, "It would be a huge favor for me if you could help arrange a meeting with these folks with a decision-maker at Publix in Lakeland." C.6616. Noting that Capitol Cups employed "several hundred people here in Auburn," Hubbard said, "It would be wonderful if a mutually beneficial relationship could come out of a meeting, but it would mean a great deal to me if such a meeting could be arranged." C.6616. Hubbard signed this email "Rep. Mike Hubbard, Speaker of the House, Alabama House of Representatives." C.6616.

Mitchell took the hint. He forwarded Hubbard's email to the Publix employee who handled purchasing for children's items, saying, "Mike Hubbard is the Speaker of the House of the Alabama State House of Representatives. He sent the email below on behalf of a constituent of his, USA Kids." C.6615–16. The purchaser emailed Hubbard, explaining Publix's standard purchasing process and requesting information about the company. C.6614–15. Hubbard ultimately forwarded this to Belfance, commenting that he would push for a face-to-face meeting. C.6614, R.6164–68. But Capitol Cups never met with Publix or sold Publix a single cup. R.6160, 6168.

Si02 was another CV Holdings company; it manufactured medical vials to hold particular types of live drugs. R.6095. Because these vials had to be perfectly sterile to properly maintain the drugs, Si02 had to manufacture them in a sterile environment. R.6096. Most manufacturers that use sterile environments use class 7 clean rooms, which permit 100,000 bacteria. R.6098. Si02 used class 5 clean rooms, which permit only 100 bacteria. Id. Si02's specific manufacturing requirements necessitated particular training. When Abrams read about Alabama giving $51 million to Airbus for a training

facility, he wondered whether Alabama would do the same for Si02. R.6099-100.

Abrams then learned that the Airbus money came from a special Governor's fund for major projects. R.6100. In conversations with Secretary of Commerce Greg Canfield, Abrams learned that he needed to meet with the Governor because Secretary Canfield lacked authority to release the funds. R.6105. He called Hubbard, explained the situation, and asked him to arrange a meeting with the Governor. R.6100. When Abrams emailed Hubbard late in 2013 to ask for an update on the training center, Hubbard responded, "Yes, sir. I have spoke[n w]ith Governor Bentley and Secretary Canfield." C.6654. Hubbard had his executive assistant at the House arrange a meeting about funding for the training center between Abrams and the Governor in Montgomery and another meeting at Si02 between Abrams and Secretary Canfield. R.6101–02, 6105, C.6655–56.

Abrams's companies also had over 550 patents. R.6106. One Si02 patent was involved in significant litigation over a ten-year period. R.6106, 6108. That patent had been pending at the U.S. Patent and Trademark Office ("USPTO"), and the USPTO notified Abrams in summer 2013 that it had been allowed.

R.6106. Abrams could not use the patent in litigation until it was numbered, officially printed by the Government Printing Office, and mailed to him. R.6107. There was some delay in printing the patent, and government staff told Abrams that because of staff shortages, they did not know where the patent was. R.6108. Abrams testified that this was "extremely frustrating" because he had spent over $12 million in legal fees litigating this case. R.6109.

Abrams called Hubbard to find out who in Alabama's Congressional delegation had oversight of the Government Printing Office. R.6110. Hubbard could not find anyone who did, but he promised to do his best to get the patent printed. R.6111. Abrams sent Hubbard the relevant information, including proof that the patent had been allowed. R.6111–13, C.6624, 6626, 6631. Hubbard then asked Blades, his legislative chief of staff, to help. R.4670. Blades went to school in Mississippi, and Hubbard asked if he had connections with a particular Mississippi Congressman who was on the Patent Oversight Committee so they could help a business in Hubbard's district. R.4670–71. Blades called the Mississippi House Speaker's chief of staff to obtain contact information for the Congressman's chief of staff. R.4671. The

Congressman's chief of staff put Blades in touch with Talis Dzenitis, a USPTO employee. R.4671–72.

Blades told Dzenitis about the problem with Abrams's patent, and Dzenitis agreed to help. R.4672, 4680, C.6965. Hubbard periodically asked Blades for updates. R.4673. At one point, Hubbard told Blades "that he had 100,000 reasons to get this done." R. 4673. This made Blades uncomfortable because he "immediately thought . . . that the Speaker meant money in some form." R.4674. By that time in August 2013, Abrams had paid Hubbard $100,000. R.7088, C.7827.

After that conversation, Blades asked Hubbard to handle the patent issue himself. R.4675. When Hubbard asked for "the guy's name at the U.S. Patent Office," Blades forwarded Dzenitis's contact information to Hubbard. C.6598, 6600. Hubbard called Dzenitis. R.4682, C.6491, 6602.

In September 2013, the patent was officially issued and printed. R.6117–18, C.6633–52. Abrams thanked Hubbard. C.6629. Hubbard responded, "My pleasure! I am close personal friends with the guy in the patent office in Washington." C.6629. Abrams testified that at the time he thought Hubbard's assistance was valuable, but ultimately he was unable to use

the printed patent in litigation because the relevant court deadlines had passed. R.6118–19.

STATEMENT OF THE STANDARDS OF REVIEW

When reviewing the sufficiency of the evidence to support a conviction, this Court "must accept as true all evidence introduced by the State, accord the State all legitimate inferences therefrom, and consider all evidence in a light most favorable to the prosecution." Hunt v. State, 642 So. 2d 999, 1040 (Ala. Crim. App. 1993) (internal quotation marks and citations omitted). The evidence is sufficient if, "viewing the evidence in the light most favorable to the prosecution, a rational finder of fact could have found the defendant guilty beyond a reasonable doubt." Wilson v. State, 142 So. 3d 732, 809 (Ala. Crim. App. 2010).

When reviewing the denial of a motion for judgment of acquittal based on sufficiency, this Court considers whether, when the motion was made, "evidence existed . . . from which the jury could by fair inference find the defendant guilty." Ex parte Williford, 931 So. 2d 10, 13 (Ala. 2005) (internal alterations and quotation marks omitted).

This Court reviews pure questions of law de novo. Simons v. State, No. CR-14-0335, 2016 WL 661284, *4 (Ala. Crim. App. 2016).

This Court reviews a trial court's denial of a motion to dismiss an indictment for abuse of discretion. Burt v. State, 149 So. 3d 1110, 1112 (Ala. Crim. App. 2013), Hunter v. State, 867 So. 2d 361, 362 (Ala. Crim. App. 2003). De novo review is only appropriate when this Court is considering the trial court's "application of the law to undisputed facts." Burt, 149 So. 3d at 1112. Hubbard cites only federal cases to support his argument for de novo review on his prosecutorial misconduct claims, but, as one of his cited cases reflects, the federal courts are split on whether the appropriate standard is de novo or abuse of discretion. Appellant Br. 31–32. See United States v. Hillman, 642 F.3d 929, 933 n.1 (10th Cir. 2011) (noting split among federal courts).

When reviewing a circuit court's decision to allow an expert to testify, this Court determines whether the trial court exceeded its discretion. Farmers Ins. Exch. v. Morris, No. 1121091, 2016 WL 661671, *4 (Ala. 2016); Kyser v. Harrison, 908 So. 2d 914, 919–20 (Ala. 2005).

Because circuit courts are "vested with discretion in the conduct of a trial," this Court does not overturn their decisions "unless there has been a clear abuse of that discretion. Smith v. State, 432 So. 2d 550, 552 (Ala. Crim. App. 1983).

SUMMARY OF THE ARGUMENT

The State presented sufficient evidence for a reasonable fact-finder to find Hubbard guilty of voting with a conflict of interest (Count 5); soliciting and receiving money from principal APCI (Count 6); soliciting and receiving money from principal E2020/Edgenuity (Count 10); soliciting and receiving help finding clients and making a financial turnaround plan for Craftmaster from principal Will Brooke (Count 23); soliciting and receiving $150,000 investments in Craftmaster from principal Brooke (Count 16), principal Sterne Agee (Count 17), principal Jimmy Rane (Count 18), and principal Rob Burton (Count 19); using his office for personal gain from Robert Abrams, doing business as CV Holdings (Count 11); using his chief of staff and public property to benefit himself by obtaining money from Abrams (Count 14); and representing Abrams before the Secretary of Commerce for a fee (Count 12) and before the Governor for a fee (Count 13).

The circuit court properly rejected Hubbard's prosecutorial misconduct claims and concluded that no prosecutorial misconduct had affected the grand jury's decision to indict. In any event, such claims are moot now that the petit jury has found Hubbard guilty on 12 of the indictment's 23 counts.

The circuit court also properly permitted the former executive director of the Ethics Commission to testify as an expert about the Ethics Laws. The court followed this Court's precedent, and it did not exceed its discretion.

Finally, the circuit court properly concluded that no jury misconduct affected the jury's verdict. Hubbard failed to present any admissible evidence to show that any misconduct existed. Even the inadmissible evidence he presented did not demonstrate prejudice. The jury ultimately convicted Hubbard on 12 counts and acquitted him on 11, demonstrating that the jurors weighed the evidence as required by law.

ARGUMENT

The jury heard extensive evidence of Hubbard's criminal conduct. Just like other defendants convicted under Alabama's Ethics Laws, Hubbard seeks to obscure the facts with the same kind of vagueness challenges this Court has rejected time and

again. See Langham v. State, 662 So. 2d 1201, 1206–07 (Ala. Crim. App. 1994); Hunt, 642 So. 2d at 1026–29. See also State v. Turner, 96 So. 3d 876, 878–82 (Ala. Crim. App. 2011) (reversing the dismissal of an indictment and holding that Section 36-25-5(a) was not unconstitutionally vague). The Ethics Laws put him on notice that his conduct was unlawful. After hearing extensive evidence, the jury concluded that Hubbard had violated the Ethics Laws. This Court should not overturn the jury's carefully considered split verdict.

I. The evidence was sufficient for a reasonable fact-finder to convict Hubbard.

Hubbard says he should receive a new trial because of "insufficiency of the evidence." Appellant Br. 6. But Hubbard does not point to any count where the State failed to present sufficient evidence for a reasonable fact-finder to find him guilty beyond a reasonable doubt. Wilson, 142 So. 3d at 809. He instead argues that his interpretation of the Ethics Laws should govern. His arguments are essentially factual ones that the jury rejected. The State presented sufficient evidence for the jury to find Hubbard guilty on counts 5, 6, 10, 11, 12, 13, 14, 16, 17, 18, 19, and 23. The court's instructions, as well as the jury's verdict, were proper. The circuit court properly rejected Hubbard's sufficiency

arguments, denying his post-trial motion for new trial or judgment of acquittal by operation of law. See C.5675; Ala. R. Crim. P. 24.4. This Court should likewise reject Hubbard's sufficiency arguments and affirm his convictions and sentences.

A. The State presented sufficient evidence for the jury to convict Hubbard of voting with a conflict of interest (Count 5).

While receiving $5,000 per month from APCI, Hubbard voted "yes" on the House version of the 2014 General Fund Budget, SB143, after participating in various meetings to ensure that the language APCI drafted to uniquely benefit itself was in that bill. After hearing this evidence on count 5, the jury found Hubbard guilty of voting with a conflict of interest, in violation of Section 36-25-5(b). C.5463. As the court instructed the jury, the State was required to prove beyond a reasonable doubt that (1) Hubbard was a member of the House of Representatives, (2) Hubbard voted on SB143, (3) Hubbard knew or should have known that he had a conflict of interest, and (4) Hubbard acted intentionally. R.8036. The evidence showed that Hubbard did exactly what the law prohibits. This Court should affirm Hubbard's conviction and sentence on Count 5.

By finding Hubbard guilty, the jury rejected Hubbard's version of the events surrounding his vote on SB143. R.7383–7415, C.5463. As for the State's evidence, APCI's president and CEO testified that APCI did not want Medicaid to adopt a PBM plan because it could decrease revenues for its members. R.5282–83. Because Medicaid was considering a PBM plan to cut costs, APCI set about mitigating the damage by ensuring that its members would benefit. APCI did not want Medicaid to hire Wal-Mart or any other competitors as the PBM. R.5339–40, 7406–09.

To ensure that APCI would manage the program instead, APCI drafted language to give itself a monopoly and had Patrick, its lobbyist, work with Hubbard to put the language in the 2014 General Fund Budget. R.4640–43, 4837–41, 5283–85. Initially, the language would have created a PBM program with requirements that only APCI could meet. R.4900. Ultimately, the language directed Medicaid to study whether to adopt a pharmacy benefit manager program and, if it chose to adopt such a program, to require that the PBM to "operate a group purchasing function with a purchasing base for generic drugs consisting of at least 30% of the retail pharmacies in

Alabama." C.7659. Only APCI could meet this requirement. R.4961–62, 4985.

As part of their scheme to enrich APCI, Patrick and Wren met with Hubbard and his staff, who ultimately ensured that the APCI language was in the House version of the 2014 General Fund Budget, SB143. R.4640–43, 4646, C.7018–19, 7659. Before the budget came up for a vote, Hubbard's chief of staff discovered that Hubbard was being paid by APCI. R.4649. He urged Hubbard not to vote on the budget, knowing that the language would benefit Hubbard's employer and concerned that voting would result in legal troubles for Hubbard. R.4651–52. But Hubbard voted "yes" on the budget. R.4657–59.

After that vote, APCI thanked Hubbard for "adding the necessary language to the 2014 General Fund Budget." C.6604. Although the language did not ultimately become law, APCI clearly thought it was important. R.5283–85. If Medicaid adopted a PBM program, APCI's members would be saved from the negative effects because only their organization could be the PBM. And because the language was ultimately removed, APCI accomplished its primary goal: Medicaid did not adopt a PBM program. See R.5282.

Hubbard did not deny voting on the legislation. His main defense, below and on appeal, was that the language was one small part of the budget; that, after his scheme to benefit APCI was discovered, he ensured the language was removed from the final version of the budget before it went to the Governor for signing; and that the language merely required Medicaid to study whether to adopt a PBM program. See Appellant Br. 45–46, 51–52. But the jury applied the facts to the law and found Hubbard guilty of voting with a conflict of interest. On appeal, Hubbard focuses his challenge on whether the State proved the existence of a conflict of interest, arguing that he had no conflict of interest as a matter of law.

The State proved, and the jury found, that Hubbard had a conflict of interest because the language in SB143 would exclusively benefit APCI, a business with which Hubbard was associated as an employee, over all other pharmacies and pharmacy organizations. C.5463. Not only is this consistent with the evidence; it is consistent with the purposes of Alabama's Ethics Laws, consistent with their text, and consistent with the Alabama Supreme Court's advisory opinions discussing conflicts of interest.

The legislature explicitly declared the purpose of the Ethics Laws: to ensure that no public official uses his office for private gain and to protect against conflicts of interest between "the private interests of a public official . . . and the duties of the public official." Ala. Code § 36-25-2(a). The Ethics Laws are specifically designed to ensure that public officials can exercise "the opportunity, available to all other citizens, to acquire and retain private and economic interests, except where conflicts with the responsibility of public officials . . . to the public cannot be avoided." Id. § 36-25-2(b). Hubbard's $5,000 per month contract with APCI because of his position as Speaker is not the kind of "economic interest" that the legislature had in mind.

Hubbard's conviction is also consistent with the statutory text. The circuit court read the jury both subsections of the Ethics Laws that discuss the meaning of "conflict of interest." R.8065-67. One appears in the definitions section. Ala. Code § 36-25-1(8). The other appears in Section 5, and it amplifies one kind of personal

financial interest that creates a conflict of interest for a legislator. Id. § 36-25-5(f).[5]

"The starting point for all statutory interpretation is the language of the statute itself." Ex parte L.J., 176 So. 3d 186, 191 (Ala. 2014) (internal quotation marks and alterations omitted). Courts should "give effect, if possible, to every clause and word of a statute." Advocate Health Care Network v. Stapleton, 137 S. Ct. 1652, 1659 (2017) (internal quotation marks omitted).

The definitions section begins with the language, "Whenever used in this chapter, the following words and terms shall have the following meanings." Ala. Code § 36-25-1. It defines conflict of interest as a conflict between the public official's "private interests and the official

[5] Hubbard notes that the State, during the hearing on the first motion for judgment of acquittal, indicated that Section 36-25-5(f) was the definition of conflict of interest for Section 36-25-5. R.7152. But the prosecutor simply misspoke. The State consistently maintained, throughout its written filings and at trial, that the appropriate definition for the entire Ethics Law appears in the definitions section. See, e.g., C.3770–72 (State's Response to Hubbard's Motion to Dismiss Based on Unconstitutionality of the Ethics Act), C.5644–46 (State's Response to Hubbard's Motion for New Trial). At the charge conference, the State agreed with the court that Section 36-25-1(8) was the appropriate definition. R.7678–79. The circuit court properly instructed the jury on both definitions. R.8065–67.

responsibilities inherent in an office of public trust." Ala. Code § 36-25-1(8). Such a conflict exists if a public official takes "any action, inaction, or decision" that (a) would materially affect his own financial interest, (b) would materially affect his family member's financial interest, or (c) would materially affect the financial interest of a business with which he is associated. And those financial interests are materially affected if the legislation would affect them "in a manner different from the manner it affects the other members of the[ir] class." Id. There are also several exceptions not relevant here.

Section 36-25-5(f) describes one way an individual legislator's financial interest would be materially affected. That subsection provides that a conflict of interest "shall exist" if a public official has "a substantial financial interest" because he owns, controls, or exercises "power over any interest greater than five percent of the value" of a business "which is uniquely affected by proposed or pending legislation". Ala. Code § 36-25-5(f).

Hubbard argues that only Section 36-25-5(f) applies in a prosecution for voting with a conflict of interest under Section 36-25-5(b). He proceeds as if the definitions section

began, "**[Except as otherwise provided, w]**herever used in this chapter, the following words and terms shall have the following meanings." See Ala. Code § 36-25-1. Unfortunately for him, the bold words are not part of the Ethics Laws. His argument would render superfluous the definition of "conflict of interest" that appears in the definitions section. The words "conflict of interest" appear in only three sections of the Ethics Laws. First, the definitions section. Ala. Code § 36-25-1(8). Second, the legislative purpose section. Ala. Code § 36-25-2. The third and final place where "conflict of interest" appears is Section 5, which prohibits voting with a conflict of interest as Hubbard did and contains the amplification text. Ala. Code § 36-25-5(b) & (f).

The best reading of the statute gives effect to the entire statutory text. Both -1(8) and -5(f) may apply in any given case, and whether a conflict of interest exists is a question for the jury. In general, a conflict of interest exists when a public official takes "any action, inaction, or decision" in his role as a public official "which would materially affect" his own financial interest, his family member's financial interest, or the financial interest of any business with which he is associated "in a manner different

from the manner it affects the other members of the class to which he . . . belongs." Ala. Code § 36-25-1(8). If the legislator owns more than 5% of a business that is "uniquely affected by proposed or pending legislation," or he is an officer or director of it, then his financial interest is "substantial" for that reason. Ala. Code § 36-25-5(f). This latter provision amplifies the words "his or her financial interest" in the conflict of interest definition. See Ala. Code § 36-25-1(8).

The Alabama Supreme Court's non-binding advisory opinions interpreting Section 82 of the Alabama Constitution are consistent with this interpretation. See Opinion of the Justices No. 380, 892 So. 2d 332, 334 (Ala. 2004) (explaining that advisory opinions are non-binding in part because they are rendered without litigation by adverse parties). Section 82 provides: "A member of the legislature who has a personal or private interest in any measure or bill proposed or pending before the legislature, shall disclose the fact to the house of which he is a member, and shall not vote thereon." ALA. CONST. art IV, § 82. Interpreting that provision, the Supreme Court opined that a legislator who was a teacher or who was married to a teacher could vote on a pay raise for teachers,

"at least so long as the bill does not affect the legislator in a way different from the way it affects the other members of the class to which he belongs." Opinion of the Justices No. 317, 474 So. 2d 700, 704 (Ala. 1985).

In No. 368, the Court considered whether legislators could participate in any part of the legislative process on a bill that would give tax incentives to certain companies if the legislators owned stock in those companies. Opinion of the Justices No. 368, 716 So. 2d 1149, 1150–51 (Ala. 1998). The Court concluded that "vote" in Section 82 included participating in the "intricate process" of bringing a bill through the legislature, not merely the final vote. Id. at 1152–53. It also opined that merely owning stock in a company that could benefit from legislation was not a sufficient financial interest to create a conflict of interest, noting that Section 36-25-5(f) provided that a conflict existed if the legislator owned 5% or more of the company or was an officer or director thereof. Id. at 1153.

Justice See, joined by Justice Houston, wrote specifically to explain that "the main opinion does not state that Ala. Code 1975, § 36-25-5(f), which focuses solely on the percentage of an affected business owned by a legislator,

establishes an exhaustive definition of 'personal or private interest' for purposes of § 82 of the Constitution of Alabama of 1901." Id. at 1155. Instead, Section 36-25-5(f) "provides a reasonable construction of one means by which a legislator may have a personal or private interest—ownership of a substantial portion of a business." Id. But a legislator would also have a substantial financial interest in legislation that particularly affected a company if his "entire net worth is composed of the ownership of one percent of the outstanding stock" of that company. Id. at 1156.

Because the State's theory of the case was not about whether the APCI language would materially affect Hubbard's financial interest, but instead about whether the APCI language would materially affect APCI's financial interest, Section 36-25-5(f) was not relevant. A conflict of interest exists if a legislator's vote "would materially affect . . . any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs." Ala. Code § 36-25-1(8). Neither the Supreme Court's advisory opinions nor 5(f) have anything to say about that language. And that is the kind of conflict of interest at issue here: Hubbard

voted on legislation that would materially affect APCI, a business with which he was associated as an employee. See Ala. Code § 36-25-1(2) & (8). This Court should reject Hubbard's arguments about the definition of conflict of interest.

Hubbard also argues that APCI was not a business with which he was associated "as a matter of law" because he was not an APCI employee, merely a "contract consultant." Appellant Br. 50. He provides no authority for this repackaging of his sufficiency challenge as a legal one. Like the rest of his factual arguments, "the question was properly submitted to the jury," and the jury rejected his arguments. Allen v. State, 380 So. 2d 313, 332 (Ala. Crim. App. 1979).

In addition, Hubbard never requested a jury charge on the definition of "employee" and, therefore, waived such a challenge on appeal. See Ala. R. Crim. P. 21.3. Nor was such a charge necessary. The term "employee" is not defined in the Ethics Laws, but it is "understood by the average juror in their common usage." Lansdell v. State, 25 So. 3d 1169, 1180 (Ala. Crim. App. 2007); see Ala. Code § 25-5-1(5) (defining "employee," for purposes of Alabama's Workers' Compensation Statute, as "every person in the service of another under any

contract of hire, express or implied, oral or written"). Based on the evidence, a reasonable fact-finder could conclude that Hubbard was an employee of APCI. APCI and Hubbard signed a contract for Hubbard's services, and APCI paid Hubbard $5,000 per month. C.6606. Hubbard himself suggests that he was an employee of APCI. See Appellant Br. 71.

The State presented sufficient evidence for a reasonable fact-finder to conclude that Hubbard was guilty beyond a reasonable doubt of voting with a conflict of interest. Hubbard essentially asks this Court to find that his version of the story is what happened. But the jury was entitled to disbelieve his testimony. See R.7396–99. The jury could also conclude that the opposite of his testimony was true, treating it as "substantive evidence of his guilt." United States v. Croteau, 819 F.3d 1293, 1305 (11th Cir. 2016). This Court should affirm Hubbard's conviction and sentence on Count 5.

B. The State presented sufficient evidence for the jury to convict Hubbard of soliciting or receiving things of value from principals (Counts 6, 10, 23, and 16–19).

The jury also found Hubbard guilty of soliciting or receiving things of value from principals, in violation of Ala. Code § 36-25-5.1(a). That section provides:

> No lobbyist, subordinate of a lobbyist, or principal shall offer or provide a thing of value to . . . a public official . . .; and no . . . public official . . . shall solicit or receive a thing of value from a lobbyist, subordinate of a lobbyist, or principal.

Ala. Code § 36-25-5.1(a). The State's evidence showed three main courses of conduct in violation of this provision. First, APCI and E2020/Edgenuity, two businesses that employ lobbyists, gave him over $300,000 total (Counts 6 and 10). Representatives of both APCI and E2020/Edgenuity testified that they hired him because he was House Speaker and a legislator. Second, Will Brooke, then an executive committee member of the BCA's board, gave Hubbard a financial turnaround plan for Craftmaster Printers and advice about finding clients (Count 23). Third, Brooke, Sterne Agee, Jimmy Rane, and Rob Burton gave Hubbard a total of $600,000 for Craftmaster (Counts 16, 17, 18, and 19).

1. Hubbard solicited and received things of value—money—from principals APCI (Count 6) and E2020/Edgenuity (Count 10).

The State's evidence showed that Hubbard received over $300,000 total from principals APCI and E2020/Edgenuity, both of whom hired him expressly because of his position as House Speaker. The jury so found and convicted Hubbard of Counts 6 and 10. C.5464–65. Hubbard's arguments on appeal focus mainly

on whether the money he received was a thing of value because it was compensation. But he waived that argument by failing to ask for a jury instruction on the compensation exception to the definition of thing of value, and it fails on the merits. Ala. R. Crim. P. 21.3; C.5424–61; R.7654–76. And his argument about the pays-full-value exception depends on a twisted reading of the statute, which this Court should reject just like the circuit court did. R.7656–64.

As the court instructed the jury on Count 6, the State was required to prove beyond a reasonable doubt that (1) Hubbard was a public official, (2) Hubbard solicited or received things of value (checks) from APCI, (3) APCI hired lobbyists, and (4) Hubbard acted intentionally. R.8043–44. The evidence showed that Hubbard did exactly what the law prohibits.

The State's evidence showed that APCI signed a contract with Hubbard for $5,000 per month. C.6606. APCI's president and CEO testified that he hired Hubbard in part because, "Being Speaker of the House in Alabama, he . . . knew the Speakers and Legislators from other states," and APCI could use his contacts to further its interests. R.5276–77. Between August 2012 and January 2014, APCI paid Hubbard a total of

$95,000. C.7726, 7733, 7827. APCI employed a lobbyist at the time, which made it a principal. R.5277, C.7784–95. Based on the evidence, the jury reasonably found Hubbard guilty. C.5465.

Similarly, on count 10, the State had to prove beyond a reasonable doubt that (1) Hubbard was a public official, (2) Hubbard solicited or received a thing of value (checks) from E2020/Edgenuity, (3) E2020/Edgenuity hired lobbyists, and (4) Hubbard acted intentionally. R.8045–47. The evidence showed that Hubbard did exactly what the law prohibits.

The State's evidence showed that E2020/Edgenuity signed several successive contracts with Hubbard, each for $7,500 per month. C.6659–79. An E2020/Edgenuity executive testified that he hired Hubbard because of his position as Speaker. R.5636–37. E2020/Edgenuity hired Hubbard specifically because he was a legislator. R.5662–64. E2020/Edgenuity employed lobbyists during this time (one of whom assisted with Hubbard's contract negotiations), so it was a principal. R.5634, C.7533–35, 7541–59. Between April 2012 and July 2014, E2020/Edgenuity paid Hubbard $210,000. C.7726, 7735, 7827. Based on this evidence, the jury reasonably found Hubbard guilty. C.5464.

On appeal, Hubbard's main argument about Counts 6 and 10 is that he did not intentionally violate Section 36-25-5.1(a) because APCI and E2020/Edgenuity employed him in some fashion, and the payments he received were compensation and, therefore, not a thing of value. Appellant Br. 70–72. But this is a factual question, and Hubbard failed to request an instruction on the compensation exception to the definition of thing of value. See C.5424–62, R.7654–76. He cannot now raise this issue on appeal. Ala. R. Crim. P. 21.3. And he cannot ask this Court to find new facts.

In any event, the jury reasonably determined that $95,000 from APCI and $210,000 from E2020/Edgenuity were a thing of value. See Ala. Code § 36-25-1(34). The compensation exception would not remove APCI and E2020/Edgenuity's money from that definition. Compensation is not a thing of value only if it is "earned . . . in the ordinary course of employment or non-governmental business activities under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's public service as a public official." Ala. Code § 36-25-1(34)(b)(10). The circumstances of Hubbard's APCI and E2020/Edgenuity contracts show that he was hired specifically because of his "public

service" as Speaker. Id. APCI's president and CEO testified that he was hired because he was Speaker, which gave him the ability to interact with legislators in other states. R.5276–77. E2020/Edgenuity's president testified similarly. R.5637–38, 5671. In his role as Speaker, Hubbard contacted various legislators from other states on E2020/Edgenuity's behalf. R.5675–85. On these facts, it is irrelevant whether APCI and E2020/Edgenuity contracted for Hubbard's services only outside Alabama.

Hubbard's hypotheticals do not change this analysis. His expert witness example is inapposite. Appellant Br. 76. Setting aside whether a state board empowered to issue administrative regulations could be a principal, see Ala. Code §§ 34-9-1 to -90, Ala. Admin. Code §§ 270-X-2-.01 to .22, an expert witness hired for his expertise is not like hiring a House Speaker so he can influence other legislators. APCI and E2020/Edgenuity cared about Hubbard's public office and resulting contacts, not his expertise.

Hubbard's example about Coach Saban is even further afield. Appellant Br. 77–78. The Ethics Laws specifically recognize that coaches like Saban have unique contracts that may include "income, donations, [and] gifts or benefits,

other than salary . . . as a condition of the employment contract." Ala. Code § 36-25-14(b). Presumably, Hubbard is referring to the 2014 Regions Bank Commercial wherein Saban appeared wearing a crimson shirt with the University of Alabama's logo.[6] Hubbard's argument requires an awful lot of presumption to be relevant on appeal. One could just as easily presume that the University of Alabama contracted with Regions Bank for Coach Saban to appear in its advertisement, and any compensation he received for that appearance was pursuant to his contract.

Hubbard also argues that the court should have instructed the jury on the pays-full-value exception. Appellant Br. 79. "Anything for which the recipient pays full value" is not a thing of value. Ala. Code § 36-25-1(34)(b)(9). But the circuit court properly declined to charge the jury on this exception. The "recipient" is the public official. Although the Ethics Laws do not define "pay," Black's Law Dictionary defines it as "[c]ompensation for services performed; salary, wages, stipend, or other remuneration given for work done."

[6] If this is the video to which Hubbard refers, it is available on YouTube. See Regions Bank, Regions Bank: The Voice of Reason with Coach Saban, (Sept. 20, 2014), available from https://www.youtube.com/watch?v=zR_-YIPP49U (last visited June 26, 2017).

Pay (n.), BLACK'S LAW DICTIONARY (10th ed. 2014). Alternative definitions also focus on giving money to someone for an item, for a job, or pursuant to a court order. Pay (v.), BLACK'S LAW DICTIONARY (10th ed. 2014). Hubbard's argument that he "paid" for the $95,000 and $210,000 with his services requires an unusual understanding of a word that, in common English parlance, means giving someone money for an item or service. Reading the exception like Hubbard suggests would make the actual exception for compensation redundant.

Alabama's Ethics Laws certainly permit public officials, including legislators, to continue working in their chosen professions while serving the public. See Ala. Code § 36-25-1(34)(b)(10). But that is not what happened here. Hubbard received over $300,000 from businesses that employ lobbyists, and both of them employed him precisely because he was a legislator. The jury reasonably concluded that the Ethics Laws do not permit a legislator to sell his public office like this. This Court should affirm Hubbard's convictions on Counts 6 and 10.

2. Hubbard solicited and received advice about finding clients and a financial plan for Craftmaster Printers from principal Will Brooke (Count 23).

The State's evidence showed that Hubbard asked for advice and a financial plan from Brooke, who occupied a leadership role on the executive committee of the BCA's board. Based on the evidence, the jury convicted Hubbard on Count 23. C.5474. The State had to prove that (1) Hubbard was a public official, (2) Hubbard solicited or received help obtaining new clients and/or financial advice from Brooke, a board member of the BCA, (3) Brooke was a lobbyist, subordinate of a lobbyist, or principal, and (4) Hubbard acted intentionally. R.8062–63. The evidence showed that Hubbard did exactly what the law prohibits.

The State's evidence showed that as Hubbard faced the prospect of losing his $132,000 per year salary from ISP/IMG, he asked Brooke for help. R.5966–67. He emailed Brooke multiple times to ask for help finding paying clients. R.5967–6017. He sent Brooke his resume and a headshot "in case you think of someone to pass it along to." C.7044–48. He sent Brooke his proposal to IMG for his continued employment. C.7050–52. He sent multiple emails asking whether Brooke had thought of any employment options for him. C.7054, 7056, 7059,

7061, 7063–64. Brooke testified that he talked with BCA leadership, as well as its head lobbyist, about finding paying clients for Hubbard. R.5987–88.

When Craftmaster Printers failed to pay its payroll taxes and Regions Bank transferred the Craftmaster-related loans to the Problem Asset Management Department, Hubbard again reached out to Brooke for help. C.7066. He met with Brooke and sent him Craftmaster's financial statements. C.7067–77, R.5962–64. And Brooke came through, creating a turnaround plan for Craftmaster. C.7079–95, R.6017–24. Under this plan, Craftmaster needed 10 investors to invest $150,000 each. R.6020. With $1.5 million, Craftmaster could satisfy some of its existing debts. R.6023–24. After receiving Brooke's plan, Hubbard asked Brooke to review his investor pitch. C.7097-7106, R.6024–28.

Brooke was not only an experienced lawyer and financial professional at Harbert Management Corporation. R.5934–37. At the time, he was also on the executive committee of the BCA's board. R.5939, 5942–46, 5953–55. The executive board employs lobbyists, which are supervised by head lobbyist Billy Canary. R.5952–55, C.7802–05. The lobbyists focus on promoting the BCA's legislative agenda. R.5950–51, 5956.

Brooke accompanied Canary to Hubbard's office when Canary presented the BCA's legislative agenda to him as Speaker. R.5960–62. Based on this evidence, the jury reasonably concluded that Brooke, in his role on the executive committee of the BCA board, had "employ[ed], hire[d], or otherwise retain[ed] a lobbyist." Ala. Code § 36-25-1(24); C.5474.

On appeal, Hubbard argues that "principal" means only the entity listed on a lobbyist's contract, but the definition is broader than that. Appellant Br. 60–68. The legislature recognized that businesses act through people in its definition of principal, which explicitly encompasses both people and businesses. Ala. Code § 36-25-1(24). This definition is not limitless. It encompasses a given entity that hires, employs, or retains a lobbyist, as well as the people that entity acts through to hire, employ, or retain its lobbyist. Whether a person is a principal by virtue of his or her position in an entity depends on the facts.

This is consistent with the purpose of the Ethics Laws. See Ala. Code § 36-25-2. The legislature wanted to ensure that public officials made decisions based on what was best for all of their constituents, not only those who could afford to give them things of value. Those most likely to influence

public officials are lobbyists and those who hire them. Thus, a public official cannot ask for or receive anything of value from such people or entities. It would make little sense to say that a legislator could not ask for or receive a thing of value from an entity that hires a lobbyist but could ask for or receive anything from the president of the entity or another person who supervises the entity's lobbyist. Under Hubbard's interpretation, a company that wanted specific legislation could send its president or a board member along with its lobbyist to encourage a legislator to pass legislation, and the president or board member could give the legislator thousands of dollars in cash (or a boat, or a motorcycle, or anything else of value), as long as the lobbyist did not. If that is the proper interpretation of the Ethics Laws, they are a cover for corruption and a sham.

This Court should reject Hubbard's arguments about the Ethics Commission's principal forms. Appellant Br.62–65. The Legislature gave the Commission authority to "[p]repare guidelines setting forth recommended uniform methods of reporting for use by persons required to file statements required by this chapter." Ala. Code § 36-25-4(a)(2). Section 19 requires lobbyists and principals to file reports of their

activities. Ala. Code § 36-25-19(a). The Commission could require separate filings by each and every person who is a principal by virtue of his or her position at an entity, but it determined that principals can satisfy their obligations by reporting the main entity only.

Hubbard also points to lobbyists' complaints that businesses will be unable to determine who qualifies as a principal if "principal" is not limited to the entity that contracts with a lobbyist. Appellant Br. 66–67. But the test is simple. Does the person hire, employ, or retain a lobbyist by virtue of his or her position at a company? For a president, CEO, or executive board member who is in charge of hiring lobbyists, the answer is yes. For people who have no say in hiring the entity's lobbyist, the answer is no. If a person is concerned that he or she may be a principal, he or she can seek a formal opinion from the Ethics Commission. See Ala. Code § 36-25-4(a)(9) . Ultimately, in a prosecution under Section 5.1, this is a question for the jury.

Hubbard admits that he "did seek and receive [Brooke's] advice," but points to "undisputed evidence of their friendship" to excuse his conduct. Appellant Br. 68. The circuit court concluded that this was enough to submit to the

jury the question whether the advice and financial plan were given "under circumstances which make it clear that it is motivated by a friendship and not given because of the recipient's official position." Ala. Code § 36-25-1(34)(b)(3). The jury rejected this view of the evidence. C.5474.

The evidence vindicates the jury's verdict. Brooke and Hubbard met through politics after Hubbard became a Representative, so their friendship did not "preexist[] the recipient's status as a . . . public official." R.5938; Ala. Code § 36-25-1(34)(b)(3). Nor did Brooke or Hubbard show that "gifts have been previously exchanged between them." Ala. Code § 36-25-1(34)(b)(3). In addition, the friendship exception applies to "gifts," not business advice and financial plans. Ala. Code § 36-25-1(34)(b)(3). Given the statutory language, it is irrelevant whether Brooke provided financial plans to other friends. Appellant Br. 68–69.

In addition, the evidence showed that Hubbard routinely mixed his private business and official business with Brooke. Throughout his emails to Brooke, Hubbard threatened to resign as Speaker if he did not find more income, and he lamented the business community's desertion of him after he helped get

a business-friendly legislature elected. See, e.g., C.7056. The jury reasonably rejected Hubbard's "friendship excuses everything" defense based on the evidence. This Court should affirm Hubbard's conviction on Count 23.

3. Hubbard solicited and received a thing of value—$150,000 investments in Craftmaster Printers—from principals Brooke, Sterne Agee, Rane, and Burton (Counts 16–19).

The State's evidence showed that Hubbard solicited and received $150,000 investments in Craftmaster from principals Brooke, Sterne Agee, Jimmy Rane, and Rob Burton. Based on the evidence, the jury reasonably concluded that these investments were things of value and that Brooke, Rane, and Burton were principals and found Hubbard guilty on Counts 16 through 19. C.5470–73. This Court should affirm Hubbard's convictions on these counts.

i. The Craftmaster investments were things of value.

With respect to Count 16, 17, 18, and 19, the same evidence proved that the Craftmaster investments were things of value to Hubbard. As the State's evidence showed, Hubbard repeatedly told others that if Craftmaster failed, everyone would see it as the Speaker of the House's business failure. See, e.g., R.5873–74 (to Steve French), C.7066 (to Brooke, "Failure is not an option as it means personal and political

ruin."), 7354–57 (to Riley, "I have more to lose than the other[investors]," and Riley's response, "I also think it would be better that this be perceived as a CORPORATE problem[,] not just a Mike Hubbard problem). Hubbard saw it as his personal responsibility to implement Brooke's financial turnaround plan by finding investors. See C.7355, 7365 (to Riley, "I have secured 8 of the 10 $150,000 investors I need for Craftmaster.").

A thing of value is "[a]ny gift, favor, service, gratuity, tickets or passes to an entertainment, social or sporting event, unsecured loan, other than those loans and forbearances made in the ordinary course of business, reward, promise of future employment, or honoraria or other item of monetary value." Ala. Code § 36-25-1(34)(a). These investments were at least a "favor" or "other item of monetary value" to Hubbard. See id. Hubbard was part owner of Craftmaster; he took its potential failure personally; and he solicited the majority of the investments. Perhaps most importantly, the additional cash flow protected Hubbard by preventing default or bankruptcy; between the Craftmaster and Swann loans at Regions Bank, Hubbard had personally guaranteed up to $470,000. R.5254–55.

The circuit court instructed the jury below on two exceptions to "thing of value": friendship and the loan exception. R.8076-77. But the facts did not support either of these two exceptions, and the jury reasonably rejected them based on the evidence the State provided. First, although Brooke, Rane, and Burton testified that they were Hubbard's friends, the jury reasonably concluded that $150,000 investments in Hubbard's company were not gifts from friends. See Ala. Code § 36-25-1(34)(b)(3). That exception contemplates the exchange of gifts, and the investments were business transactions. Second, they were not "[l]oans from banks and other financial institutions on terms generally available to the public." Ala. Code § 36-25-1(34)(b)(5). The investors received stock purchase agreements, not loan agreements; the investors were not banks or financial institutions; and the Craftmaster investments were not generally available to the public.

Hubbard now focuses his argument on the pays-full-value exception. Appellant Br. 55-59. He requested this jury instruction, but the circuit court properly denied such a charge because the evidence did not support it. C.5446, R.7656-65. See Hemphill v. State, 669 So. 2d 1020, 1021 (Ala.

Crim. App. 1995), Geckles v. State, 440 So. 2d 1189, 1191 (Ala. Crim. App. 1983). That provision excepts from the definition of "thing of value" "[a]nything for which the recipient pays full value." Ala. Code § 36-25-1(34)(b)(9). Logically, "recipient" refers to the public official. See Ala. Code § 36-25-5.1(a). As argued above, "pays" means giving money in exchange for an item or service. Supra at 70-71. For Hubbard's argument to make any sense, this Court would have to conclude that he "paid" for the $150,000 by giving the investors preferred stock. The circuit court rightly rejected this unreasonable interpretation of the law and declined to charge the jury on the pays-full-value exception because the evidence did not support it.

Hubbard's hypotheticals do not change this analysis. He says public officials must be able to get "lightbulbs, gasoline[,] or cable tv service," "Apple computers, lumber from Great Southern Wood, Michelin tires, [and] Rheem air conditioners." Appellant Br. 56. But they can. Under his examples, public officials can pay full value for those items or services, just like the rest of the public, without doing anything criminal. But Hubbard's parade of horribles is not

analogous to his Craftmaster investments because he has the money-item analogy backwards.

Nor do Hubbard's car- and house-selling examples help him. If a "school teacher, firefighter, or government secretary" wanted to "sell their car or their house," they can. But that is not because they are "paying full value" for the money they receive by giving a house or car to the buyer "at a completely fair price." Appellant Br. 57. It is because they are receiving "compensation" from "[an]other business relationship in the ordinary course of . . . non-governmental business activities under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's public service as a public official or public employee." Ala. Code § 36-25-1(34)(b)(10). Hubbard did not request this jury instruction. C.5424–61.

In any event, the State's evidence showed that the Craftmaster investments were related to Hubbard's public service. Hubbard needed the Craftmaster investments to prevent his own "personal and political ruin." C.7066. The jury reasonably concluded that these investments from principals Brooke, Sterne Agee, Rane, and Burton were things of value to Hubbard. C.5470–73.

ii. Hubbard solicited and received a thing of value—a $150,000 investment in Craftmaster—from principal Will Brooke (Count 16).

Based on the State's evidence that Hubbard solicited and received a $150,000 investment from principal Brooke, the jury convicted Hubbard on Count 16. C.5470. The State had to prove that (1) Hubbard was a public official, (2) Hubbard solicited or received a thing of value (a $150,000 investment in Craftmaster) from Brooke, (3) Brooke was a principal, and (4) Hubbard acted intentionally. R.8049–50. The evidence showed that Hubbard did exactly what the law prohibits.

The State's evidence showed that after Hubbard received Brooke's financial turnaround plan for Craftmaster and began implementing it, he asked Brooke to invest. C.7108. After Brooke's employer gave him permission, Brooke signed the stock purchase agreement and wired $150,000 to the Craftmaster account. C.6944, 7108–12, 7114. As discussed above, the State presented sufficient evidence for the jury to find that Brooke was a principal by virtue of his role on the executive committee of the BCA's board. Supra at 73-76. This Court should affirm Hubbard's conviction on Count 16.

iii. Hubbard solicited and received a thing of value—a $150,000 Craftmaster investment—from principal James Holbrook/Sterne Agee (Count 17).

Based on the State's evidence that Hubbard solicited and received a $150,000 investment from principal Sterne Agee, the jury found Hubbard guilty on Count 17. C.5471. The State had to prove that: (1) Hubbard was a public official, (2) Hubbard solicited or received a thing of value (a $150,000 investment in Craftmaster) from Holbrook and/or the Sterne Agee Group, Inc., (3) Holbrook and/or Sterne Agee was a principal, and (4) Hubbard acted intentionally. R.8051–52. The evidence showed that Hubbard did exactly what the law prohibits.

The State's evidence showed that Holbrook was chairman of the board, CEO, and president of Sterne Agee. R.5864. Holbrook retained lobbyists Fine, Geddie, and Associates on Sterne Agee's behalf. R.5864, C.7807–7810. As a result, Holbrook and Sterne Agee were principals.

When Hubbard was seeking investors in Craftmaster Printers, former legislator Steve French arranged a meeting with Hubbard to discuss one of Holbrook's legislative priorities, preventing the Jefferson County bankruptcy. R.5866–73. After French explained Holbrook's priorities,

Hubbard asked French "if we could talk about his business and a topic that was on his mind." R.5873. Hubbard then explained that he was a part owner of Craftmaster Printers, which was in trouble. R.5873. Hubbard said, if it went bankrupt, "it wouldn't be an East Alabama printing company that went bankrupt, it would be the Speaker—the printing company owned by the Speaker of the House of Representatives goes bankrupt." R.5873-74. He asked French if Holbrook would be willing to help him, and French thought he would be willing to listen. R.5874-75. Hubbard had never met Holbrook, so French arranged a meeting between them. R.5876-79. After the meeting, Holbrook signed a stock purchase agreement on behalf of Sterne Agee. C.7164-66. French personally delivered to Hubbard a check drawn from Sterne Agee's account. C.6948, 7167, R.5895-96. Based on the evidence, the jury found Hubbard guilty, and this Court should affirm his conviction. C.5471.

iv. Hubbard solicited and received a thing of value—a $150,000 investment in Craftmaster—from principal Jimmy Rane (Count 18).

Based on the State's evidence that Hubbard solicited and received a $150,000 investment from principal Rane, the jury found him guilty on Count 18. C.5472. The State had to prove that: (1) Hubbard was a public official, (2) Hubbard

solicited or received a thing of value (a $150,000 investment in Craftmaster Printers from Rane, (3) Rane was a principal, and (4) Hubbard acted intentionally. R.8053. The evidence showed that Hubbard did exactly what the law prohibits.

As the State's evidence showed, Jimmy Rane is the president of Great Southern Wood Preserve. R.6227. Rane hired lobbyists Fine, Geddie, and Associates on behalf of Great Southern Wood. R.6229. He also signed Great Southern Wood's principal registration forms. C.7779–82. These facts are sufficient for a reasonable fact-finder to find that Rane was a principal, and this jury found that he was.

Hubbard talked with and emailed Rane about investing in Craftmaster. R.6258, C.7031, 7033. After Rane's financial advisor reviewed the documentation and made a few changes to the stock purchase agreement, Rane signed it. R.6261–64, C.7038–42. He also wrote a check for $150,000 to Craftmaster Printers. C.6942, 7036. Based on the evidence, the jury found Hubbard guilty, and this Court should affirm Hubbard's conviction on count 18. C.5472.

v. Hubbard solicited and received a thing of value—a $150,000 investment in Craftmaster—from principal Rob Burton (Count 19).

Based on the State's evidence that Hubbard solicited and received a $150,000 investment from principal Burton, the jury found Hubbard guilty on Count 19. C.5473. The State had to prove that (1) Hubbard was a public official, (2) Hubbard solicited or received a thing of value (a $150,000 investment in Craftmaster) from Burton, (3) Burton was a principal, and (4) Hubbard acted intentionally. R.8055. The evidence showed that Hubbard did exactly what the law prohibits.

As the State's evidence showed, Burton is president of the holding company Hoar Holdings, as well as president of one of its subsidiaries, Hoar Construction. R.6187–88. As president, Burton testified, "I am boss." R.6189. Hoar Construction hired lobbyists Bob Riley and Associates; Fine, Geddie, and Associates; and Dax Swatek. R.6193–96, C.7770, 7773. These facts are sufficient for a reasonable fact-finder to find that Burton was a principal, and this jury did.

Hubbard called Burton about investing in Craftmaster, and the two ultimately met at Burton's office. R.6204. Hubbard asked Burton to invest $150,000. R.6205–06. Burton decided to invest in Craftmaster and signed a check to Craftmaster

Printers for $150,000. R.6206, 6214, C.6946. Based on the evidence, the jury found Hubbard guilty, and this Court should affirm his conviction on Count 19. C.5473.

C. The State presented sufficient evidence for the jury to find Hubbard guilty of the counts involving Robert Abrams, doing business as CV Holdings (Counts 11-14).

Hubbard's final scheme of conduct involves Robert Abrams, then-owner of CV Holdings and its subsidiaries, Capitol Cups and Si02. Hubbard was charged with and convicted of using his official position for personal gain when he received money from Abrams, doing business as CV Holdings, in violation of Section 36-25-5(a) (Count 11). C.5466. He was charged with and convicted of using a state computer, a state email account, or the human labor of himself and his chief of staff for his private or business benefit, which was receiving money from Abrams, doing business as CV Holdings, in violation of Section 36-25-5(c) (Count 14). C.5469. And he was charged with and convicted of representing Abrams, doing business as CV Holdings, before Secretary of Commerce Greg Canfield for a fee (Count 12) and representing Abrams, doing business as CV Holdings, before Governor Bentley for a fee (Count 13), both in violation of Section 36-25-1.1. C.5467–68. Based on

the State's evidence, the jury found Hubbard guilty, and this Court should affirm his convictions.

1. Hubbard used his official position to obtain a thing of value—money—from Abrams (Count 11).

Based on the State's evidence that Hubbard used his position to earn money from Abrams, the jury convicted Hubbard of using his office for personal gain. C.5466. The State had to prove that: (1) Hubbard held an official position or office, (2) Hubbard used his official position or office to obtain personal gain (checks) from Abrams, doing business as CV Holdings, (3) the personal gain was for himself or a business with which he was associated and was not otherwise specifically authorized by law, and (4) Hubbard acted intentionally. R.8033–34. The evidence showed that Hubbard did exactly what the law prohibits.

The State's evidence showed that Abrams signed a contract with Hubbard for $10,000 per month. C.6612. Between October 2012 and July 2014, Hubbard received $220,000 from Abrams. C.7726, 7736, 7827. At the time, Capitol Cups was one of Abrams's businesses under the CV Holdings umbrella. R.6093–94. Abrams and Tina Belfance, Capitol Cups's general manager, wanted Hubbard to use his contacts at the NCAA and elsewhere to help Capitol Cups expand its cup sales. R.6120–21, 6145,

6150. Those contacts included people at Chick-fil-a, Waffle House and Publix. R.6150.

After contracting with Abrams and his company, Hubbard emailed Michael Mitchell and another Publix employee about "a company here in Auburn (my district) that manufactures high quality plastics called Capitol Cups." C.6616. He described Capitol Cups's USA Kids sippy cups and asked "if you could help arrange a meeting with these folks with a decision-maker at Publix in Lakeland." C.6616. He added, "It would be wonderful if a mutually beneficial relationship could come out of a meeting, but it would mean a great deal to me if such a meeting could be arranged." C.6616. Hubbard signed his email "Rep. Mike Hubbard, Speaker of the House, Alabama House of Representatives." C.6616.

Mitchell forwarded Hubbard's email to the purchaser for children's items, saying, "Mike Hubbard is the Speaker of the House of the Alabama State House of Representatives. He sent the email below on behalf of a constituent of his, USA Kids." C.6615. And he asked whether USA Kids could have a meeting with Publix. C.6615. The purchaser emailed Hubbard to explain the standard purchasing process and ask for more information about Capitol Cups and USA Kids. C.6614–15. And Hubbard

forwarded this email to Belfance, giving her the relevant sales contact at Publix. C.6614.

Hubbard testified about these emails. When asked why he implied to Mitchell that Capitol Cups was a constituent, without telling him that Capitol Cups was a client, he said, "I didn't think it was relevant." R.7547. Hubbard testified that he had known Mitchell since 2008. R.7567. He volunteered: "A great guy. He worked for Publix. He—he actually had an aneurysm and died. But he was a great guy. So I knew him. So I was just seeking advice from him on where to go, seeking—and—and told the truth. They are a constituent." R.7567. But when the prosecutor asked whether Hubbard was aware that the prosecution had spoken with Mitchell "a few days ago," Hubbard said, "I must have him confused with someone else." R.7585.

The Publix emails alone were enough to convince the jury that Hubbard used his public position to obtain his paycheck from Abrams, but Hubbard also emailed Belfance from a legislative conference in Scotland about his discussions with Georgia Senator Don Balfour, who was a Waffle House executive. C.6950, R.6158. Hubbard told Belfance that he told Senator Balfour about the "dead end" in Capitol Cups's sales discussions with Waffle House. C.6950. Hubbard only had

access to Senator Balfour because of his public office. The State presented sufficient evidence for the jury to find Hubbard guilty of using his office to obtain personal gain from Abrams and his companies.

Hubbard attempts to minimize his conduct, saying that he merely "identified himself from time to time as Speaker." Appellant Br. 87. He analogizes his conduct to a university professor identifying himself as a paid expert witness, but he did not simply introduce himself as Speaker. Id. His ostensible job was to sell cups for Abrams's company. In order to do that, he described that company as a constituent and reminded Mitchell that he was Alabama's House Speaker. While he was at a legislative conference in Scotland—where he should have been serving the people of Alabama—he was serving his own interests by talking with another legislator about Capitol Cups. Without his public position, he would have had little access and little to say beyond, "I sell cups for this great company—would your company like to buy some?" That is not the kind of language he used. Instead, he used his public position to gain access for Abrams's company, receiving $10,000 a month for his "work." Based on the evidence, the jury reasonably found him guilty. C.5466.

2. Hubbard used public property and human labor under his control for his own benefit or Auburn Network's (Count 14).

Hubbard did not stop at using his public position for personal gain. Based on the State's evidence that Hubbard used or caused to be used a state computer, state email, and the time and work of his chief of staff for his own benefit by receiving money from Abrams, doing business as CV Holdings, the jury reasonably found him guilty of violating Section 36-25-5(c). C.5469. The State had to prove that: (1) Hubbard was a public official, (2) Hubbard used a state computer, a state email account, or human labor and/or his own time or that of another state employee, which was under his discretion or control, (3) Hubbard used the computer, email, or human labor for his own benefit or the benefit of a business with which he was associated by receiving money from Abrams, (4) the money materially affected his financial interest and was not otherwise authorized by law, and (5) Hubbard acted intentionally. R.8039-40. The evidence showed that Hubbard did exactly what the law prohibits.

The State's evidence showed that Abrams and his companies had been involved in protracted litigation over a patent on a particular product. R.6106, 6108. The USPTO notified Abrams

that the patent had been allowed, or approved, but he could not use it until the Government Printing Office officially printed it. R.6106–07. While Hubbard was under contract with Abrams, receiving $10,000 per month, Abrams asked Hubbard to help him find the right people who could get his patent printed. R.6110. Hubbard obliged.

Hubbard first directed Blades, his chief of staff, to reach out to his contacts in Mississippi. R.4670–71. Those contacts gave Blades the name of a USPTO employee, Talis Dzenitis. R.4671–72. Blades called Dzenitis and talked to him about the patent, and Dzenitis agreed to help. R.4672, 4680, C.6965. Pressing Blades for results, Hubbard said "he had 100,000 reasons to get this done." R.4673. Blades believed Hubbard meant money, which "made [him] uncomfortable." R.4674. As it turns out, by that point, Abrams had paid Hubbard $100,000. R.7088, C.7827. Hubbard testified at trial that he thought he said "hundreds of thousands of reasons," and that Abrams told him that he had paid "over a hundred thousand dollars a day in legal fees." R.7426. But the jury, by finding Hubbard guilty, rejected his testimony. See Croteau, 819 F.3d at 1305.

After that, Blades asked Hubbard to handle the patent issue, and they exchanged emails about Dzenitis, including at least one from Blades's state email with the domain "@speaker.alhouse.gov." C.6598, 6600. Hubbard called Dzenitis from his state phone. R.4682, C.6491, 6602. Within a month, the Government Printing Office officially printed the patent. R.6117–18, C.6633–52. Abrams thanked Hubbard, who responded, "I am close personal friends with the guy in the patent office in Washington." C.6629.

The evidence showed that Hubbard caused Blades to use a state phone and email account, used Blades's time, and used his own time for his own benefit. It also showed that Hubbard benefited to the tune of $10,000 per month, especially given his statement to Blades about having "100,000 reasons" to get the patent printed. And it showed that this materially affected his financial interest because the money went to Auburn Network, a business he owned, and enabled him to continue paying employees and drawing a $132,000 salary after he lost IMG's business. C.7604–05. Finally, the record showed that Hubbard did all this intentionally. The jury found Hubbard guilty, and this Court should not undo its verdict. C.5469.

Hubbard argues on appeal that his contract was with Capitol Cups, not Si02. Appellant Br. 86. Because the patent was Si02's, Hubbard argues, the money he received from Abrams had nothing to do with his actions in obtaining the printed patent. But the jury was free to, and did, reject his testimony that he acted on behalf of Abrams "as a constituent and as an employer of 500 people in the district that I represent," and that this had "nothing to do with Capitol Cups," R.7428, instead treating his testimony as substantive evidence of his guilt. See Croteau, 819 F.3d at 1305. Hubbard was charged with receiving money from Abrams, doing business as CV Holdings, and CV Holdings was the parent company of both Si02 and Capitol Cups. Hubbard made similar factual arguments below, and the jury reasonably rejected Hubbard's factual arguments at trial. He cannot now turn his factual arguments into legal ones.

3. Hubbard represented Abrams before the Secretary of Commerce and the Governor for a fee (Counts 12 and 13).

Finally, based on the State's evidence that Hubbard represented Abrams, doing business as CV Holdings, for a fee before the Secretary of Commerce (Count 12) and the Governor (Count 13), the jury reasonably found Hubbard guilty of

violating Section 36-25-1.1. C.5467–68. Incidentally, this is a section Hubbard and the rest of the legislature added to the Ethics Laws as part of the 2010 ethics reform. See Ala. Act. No. 2010-762, 1st Sp. Sess., § 1.

To prove that Hubbard violated Section 36-25-1.1, the State had to show that (1) Hubbard was a member of the legislature, (2) Hubbard received a fee, reward, or other compensation (checks from Abrams, doing business as CV Holdings), (3) Hubbard represented Abrams, doing business as CV Holdings, (4) Hubbard represented Abrams, doing business as CV Holdings, before an executive department or agency (the Alabama Department of Commerce on count 12, the Office of Governor of Alabama on count 13), (5) Hubbard received this compensation in addition to that received in his official capacity, and (6) Hubbard acted intentionally. R.8016–20. The evidence showed that Hubbard did exactly what the law prohibits.

The State's evidence showed that Si02 was a subsidiary of Abrams's CV Holdings that manufactured sterile vials that could hold drugs. R.6095. Si02's manufacturing process required an environment that was sterile beyond the level used by most manufacturers. R.6096–98. After hiring Hubbard

for $10,000 per month, Abrams read about Alabama giving Airbus $51 million from a special Governor's fund for a training center. R.6099–6100. He called Hubbard, wanting meetings with the Governor to obtain a similar arrangement for Si02. R.6099.

In December 2013, Hubbard directed his executive assistant at the House to arrange meetings for Abrams with Governor Bentley in Montgomery and Secretary of Commerce Canfield in Auburn so Canfield could tour Si02's facility. R.6101–05, C.6654–57. The Commerce Department is part of the executive branch. R.5760. By this point, Hubbard had been on Abrams's payroll for 15 months, having received a total of $150,000 between October 2012 and December 2013. C.7827.

Based on these facts, the jury reasonably concluded that Hubbard represented Abrams and CV Holdings (which included Si02) for a fee ($10,000 per month) before an executive department or agency (the Governor and Secretary of Commerce). See ALA. CONST. art. V, § 112 ("The executive department shall consist of a governor . . . ."); Ala. Code § 41-29-1(a)(1) ("There is hereby created the Department of Commerce within the office of Governor and directly under his or her supervision and control."). This Court should affirm the jury's verdict. C.5467–68.

On appeal, Hubbard argues that he acted on behalf of Si02 as a constituent and that there was no evidence that Hubbard's paycheck from Abrams was "'really,' secretly a payment in exchange for arranging a meeting or meetings for Si02." Appellant Br. 82. This is his only argument with respect to Counts 12 and 13. Appellant Br. 82–85. But the jury did not have to believe the payments were secretly for anything. And the jury could, and likely did, reject Hubbard's testimony that Capitol Cups was "completely different" from Si02, as well as his testimony that he arranged meetings for Abrams "[a]s a constituent" with the Governor and Secretary Canfield. R.7421–30. The jury could instead consider this testimony that they disbelieved as substantive evidence of Hubbard's guilt. See Croteau, 819 F.3d at 1305.

* * *

On each count of conviction, the State presented sufficient evidence for the jury to find Hubbard guilty. This Court should reject Hubbard's baseless arguments and affirm his convictions and sentences.

II. The trial court did not abuse its discretion by denying Hubbard's motion to dismiss the indictment for prosecutorial misconduct, and the jury's guilty verdict mooted this claim.

The State has consistently maintained that no prosecutor engaged in prosecutorial misconduct before the Lee County Special Grand Jury. See, e.g., C.2166–2219. The circuit court did not find that any prosecutorial misconduct existed, and it did not abuse its discretion in denying Hubbard's motion to dismiss the indictment based on his allegations of prosecutorial misconduct. C.5107–24; See Burt, 149 So. 3d at 1112, Hunter, 867 So. 2d at 362. In addition, Hubbard's claim is moot because a jury found him guilty beyond a reasonable doubt. C.5463–74. See Hillman, 642 F.3d at 933 ("And even if we found evidence of prosecutorial misconduct, under applicable law Hillman's claims are moot because a petit jury found him guilty of the charges beyond a reasonable doubt.").

When a trial jury finds a defendant guilty beyond a reasonable doubt, that verdict necessarily vindicates the grand jury's finding of probable cause and supersedes any errors in the grand jury proceedings. In United States v. Mechanik, the U.S. Supreme Court considered whether the trial court should have dismissed the indictment because two witnesses testified at the same time before the grand jury,

in violation of rules governing federal grand jury proceedings. 475 U.S. 66, 67 (1986). The Court noted that this error could theoretically have improperly influenced the grand jury to indict. Id. at 70. But because the trial jury found the defendants guilty beyond a reasonable doubt, their verdict demonstrated that the lesser standard of probable cause was also met. Id. As a result, that verdict "rendered harmless any conceivable error in the charging decision that might have flowed from the violation." Id. at 73. In addition, the Court noted, "the societal costs of retrial after a jury verdict of guilty are far too substantial to justify setting aside the verdict simply because of an error in the earlier grand jury proceedings." Id. Because a jury found Hubbard guilty after a trial, this Court should hold that his claim of prosecutorial misconduct during the grand jury proceedings is moot.

Alternatively, the circuit court did not abuse its discretion in denying Hubbard's motion to dismiss the indictment. A court should not dismiss an indictment for prosecutorial misconduct unless the violations "substantially influenced the grand jury's decision to indict" or "if there is grave doubt that the decision to indict was free from the

substantial influence of such violations." Bank of Nova Scotia v. United States, 487 U.S. 250, 256 (1988) (internal quotation marks omitted). Hubbard agrees that this is the appropriate standard for evaluating his claims. Appellant Br. 101.

During pretrial litigation, Hubbard's allegations of prosecutorial misconduct fell into three categories. First, Hubbard alleged that Prosecutor Miles M. Hart influenced the grand jury by intimidating witnesses. Second, Hubbard submitted information from disgruntled former Attorney General's Office employees Sonny Reagan and Gene Sisson in an attempt to show that Hart said negative things about Hubbard. Third, Hubbard alleged that Hart communicated grand jury material to members of the media. C.1951–2073, 4742–51. The circuit court rejected all of his claims. C.5107–24.

To evaluate Hubbard's allegations about Hart's conduct before the grand jury, the circuit court reviewed multiple grand jury transcripts and audio in their entirety. C.5112. In addition, the court reviewed the pages of the transcripts reflecting every grand jury witness's response to the question whether they felt threatened while testifying. The court also heard testimony from certain witnesses. And

finally, over the State's objection, the court heard testimony from defense witness Bennett Gershman, who opined at length despite reviewing only a small sample of grand jury transcripts. R.1718–1828. After considering all this evidence, the court found that "the only witness who did not testify in the negative when asked if he or she felt threatened gave neither a positive nor a negative response." C.5112. The court further found that Hart's actions did not affect the grand jury's decision to indict under Nova Scotia. C.5112.

Hubbard now relies extensively on Gershman's testimony. Appellant Br. 104–107. That testimony was unnecessary in the first place, as Gershman essentially regurgitated legal arguments for the defense, and the court could draw its own legal conclusions. The circuit court implicitly rejected that testimony by concluding that Hubbard failed to meet the Nova Scotia standard. See R.1757–58 (Gershman's testimony that Hart's actions influenced the grand jury's decision to indict). See also Ryburn v. Huff, 565 U.S. 469, 476 (2012) (noting that a finding contrary to a witness's testimony is an implicit rejection of that testimony). Rather than refusing to correct an error, as Hubbard suggests, the court

properly concluded that the evidence did not support Hubbard's allegations and denied Hubbard's motion to dismiss the indictment for that reason. C.5112, 5122.

Hubbard also alleged that Hart made negative comments about him to former Attorney General's Office employee Henry "Sonny" Reagan. Reagan made various memoranda purporting to record Hart's remarks or actions and complained to others in the Attorney General's Office about the reassignment of his office space. C.5109. The court reviewed Reagan's memoranda and heard his testimony. C.5108–10. Another former Attorney General's Office employee, Howard "Gene" Sisson, wrote a letter to the then-Executive Director of the Ethics Commission, James Sumner, about the same issues. The court reviewed Sisson's materials and heard his testimony. C.5110–11. Employees of the Attorney General's Office also testified concerning these issues, and Sumner testified that Sisson's letter did not allege any violations of the Ethics Laws. C.5109–11.

The court also considered evidence that Hart talked with members of the media. C.5112–14. Several of these interactions were recorded and transcribed. After reviewing them, the court found that the conversations occurred after

indictment and "would not be considered 'leaking' information." C.5114. Finally, the court reviewed materials and testimony from Baron Coleman. C.5114–22.

Coleman told the court at one point, "I know nothing about the grand jury." C.5115. But later, he told the court that he concluded Hart had talked with him about "information I concluded was discussed in the Lee County Special Grand Jury." C.5115. The court also heard evidence, including a recording Coleman made, that Hart used Coleman as a confidential source. C.5119–20. Ultimately, the court concluded that, in conversations with Coleman, Hart was investigating leaks from the grand jury, not leaking information himself. C.5121–22.

The jury's guilty verdict moots Hubbard's prosecutorial misconduct claims. C.5463–74. Hubbard provided no evidence that Hart leaked grand jury information. He provided no evidence that Hart improperly influenced the grand jury to indict. The circuit court properly rejected Hubbard's claims under Nova Scotia. C.5107–24. This Court should, too.

III. The trial court did not abuse its discretion in following this Court's Fitch precedent and allowing the former executive director of the Alabama Ethics Commission to testify as an expert in this ethics case.

In Fitch v. State, this Court held that an expert from the Ethics Commission with "a specialized knowledge of the ethics law" may testify in cases involving the Alabama Ethics Laws. 851 So. 2d 103, 118 (Ala. Crim. App. 2001).[7] The circuit court did not exceed its discretion by following this Court's precedent and permitting James Sumner, the former executive director of the Ethics Commission, to testify about the Ethics Laws. Farmers Ins. Exch. v. Morris, 2016 WL 661671 at *4.

Sumner served as the executive director of the Ethics Commission from 1997 until 2014. R.5384. In that position, Sumner trained those who are covered by the Ethics Laws,

[7] Hubbard argues that the circuit court's decision to allow Sumner's testimony was "manifestly inappropriate under Alabama's law of evidence," implying that this is an issue of first impression and citing this Court's controlling precedent only in a footnote. Appellant Br. 89 & 91 n.15. The State recognizes that cases designated as "No-opinion" are not precedential. Ala. R. App. P. 54(b); Billingsley v. State, 115 So. 3d 192, 194 n.3 (Ala. Crim. App. 2012). But in an unpublished opinion of the Court in Stone v. State, this Court rejected the same argument Hubbard makes: "Moreover, this Court in Fitch did not find that the circuit court erred in allowing [the expert's] testimony on the ultimate issue in the case, indeed, in Fitch this Court found that [the expert's] testimony was admissible." CR-14-0497, Mem. Op. at *27 (Ala. Crim. App. Aug. 5, 2016). The circuit court's reliance on Fitch was uncontroversial and completely proper.

counseled the legislature on changes to the Ethics Laws, and participated in the drafting and review process for formal opinions applying the Ethics Laws. R.5386–87, 5419. The circuit court properly determined that Sumner is an expert with special knowledge of Alabama's Ethics Laws and permitted him to testify in this case involving those laws. R.5420.

In addition, the court gave Hubbard's requested jury instruction about Sumner's testimony. C.5437, R.8070–71. In Fitch, this Court held that any potential error in allowing an expert witness to testify about the Ethics Laws was cured with a similar instruction. Fitch, 851 So. 2d at 118–19.

Hubbard makes several other arguments in challenging Sumner's testimony, but this Court should reject them all. He argues that the State was required to notify him that Sumner would testify as an expert because his discovery request asked for such notification. See C.81–82. No such requirement exists. The State must disclose expert reports when a defendant requests them, but Sumner did not make any reports. Ala. R. Crim. P. 16.1(d). Nor did the circuit court order the State to disclose its expert.

Hubbard also had notice that the State could call Sumner as an expert. In pretrial litigation, Hubbard qualified

Sumner as an expert and called him to testify. R.1386–87. At that hearing, one of the prosecutors objected to inquiries going beyond the subject of the hearing, explaining: "I think Mr. White knows that Mr. Sumner may well be a trial witness, and he wants to know how he is going to testify as to the conduct of the defendant Hubbard in this regard and how these things would apply to him." R.1409. The State is not required to disclose its witnesses before trial, but its decision to call Sumner as a witness was not a surprise to the defense.

Hubbard also argues that the State's objections to Gershman's testimony were inconsistent with calling Sumner to testify. But Gershman added nothing to the court's understanding of the law or facts, and no Alabama case permits a circuit court to hear testimony from a purported expert on prosecutorial misconduct. This Court has held, however, that an expert on the Ethics Laws may explain those laws to the jury in an ethics case. Fitch, 851 So. 2d at 118–19.

Nor did Hubbard demonstrate that lobbyist and former Governor Riley was qualified as an expert to testify about the Ethics Laws. After Riley was dismissed as a witness, Hubbard sought to recall him to testify about what he thought the 2010 amendments to the Ethics Law were about. The court

permitted Hubbard to proffer Riley's testimony outside the jury's presence. R.7348–60. But the court properly excluded Riley's additional testimony about the amendments because he would merely "give [his] interpretation of the Bill" as someone who signed it, and no case permitted such testimony. R.7360–66. Hubbard responded that he wanted to rebut what he characterized as Sumner's testimony about why Riley wanted the amendments to pass. R.7362–66. Hubbard did not then and has not now provided any legal support for his argument about Riley returning to testify about his state of mind when encouraging passage or signing the 2010 amendments.

Hubbard also complains that Sumner improperly discussed the "mantle" of a public office. Appellant Br. 29–30, 92–93. Yet, one of Hubbard's own trial exhibits contains this term. C.7836. In a letter about the Southeast Alabama Gas District—relevant to counts on which Hubbard was acquitted—the general counsel of the Ethics Commission wrote, "The general prohibitions continue to apply, in that the Speaker may not use his position or the mantle of his office to assist him in obtaining consulting opportunities or providing benefits to his consulting business or his clients." C.7836. Asked to explain the phrase "mantle of his office," Sumner said, "It

means the . . . aura of the office, the influence, the power, . . . in other words, the respect that others might have for it." R.5489–90. This reasonable explanation of a term in Hubbard's own exhibit was not improper.

Finally, Hubbard ridicules Sumner's vacuum cleaner example by taking it completely out of context. Appellant Br. 30, 94. At trial, the prosecutor asked Sumner whether a public official could avoid all problems under the Ethics Laws by working out of state. R.5492. Sumner responded that it "alleviates a number of problems, but it depends on what that person does with the State as . . . an employee . . . of that business or a consultant of that business." Id. Asked to respond to a hypothetical, Sumner said that a public official who went door-to-door selling vacuums in his district could "present a potential ethics issue" because "they would have influence over those people." R.5492–93. On the other hand, if the Alabama official sold vacuums in Montana, he would avoid that potential ethics problem because he would not run the risk of influencing his constituents while selling vacuums. R.5493. Sumner did not say that it was illegal for a public official to sell vacuums in his district.

The circuit court properly allowed Sumner to testify as an expert in Alabama's Ethics Laws, pursuant to this Court's precedent. Hubbard has failed to show that any of Sumner's testimony is inconsistent with the Ethics Laws or the court's jury instructions. This Court should reject Hubbard's demands to depart from precedent.

IV. The trial court did not abuse its discretion in rejecting Hubbard's juror misconduct claims, and Hubbard has waived them by failing to pursue an evidentiary hearing below and failing to brief several of his claims on appeal.

During trial, one juror told court staff that another juror was commenting on the evidence under her breath in the jury box. R.8329. Through court staff, the circuit court determined that she was not making comments and directed her to be careful not to make any. R. 8263–68, 8330–31. Although the court did not notify the parties when this happened, the court held a post-trial hearing and took testimony from court staff. R.8230–72, 8328–41. Hubbard declined to subpoena jurors or participate in any additional hearing or briefing, instead seeking an investigation by the Lee County Sheriff into this and additional allegations in an affidavit about premature deliberations. R.8230–61, 8338–41. The court determined that the jury based its verdict on the evidence and that Hubbard suffered no prejudice from these events. On

appeal, Hubbard characterizes this as a "failure to investigate" and criticizes the court's ex parte actions. But he waived his opportunity to subpoena jurors, whose testimony about premature deliberations and internal influences would have been inadmissible under Rule 606(b) anyway.

This Court has explained that a "reasonable investigation of irregularities . . . will necessarily differ in each case." Phillips v. State, No. CR-12-0197, 2015 WL 9263812, *45 (Ala. Crim. App. 2015) (internal quotation marks omitted). The circuit court's wide discretion in conducting this investigation includes "determining the scope of the investigation that should be conducted." Id.

Here, the juror denied making any comments in the jury box. R.8268. Neither bailiff, seated next to the jury in the courtroom, heard any such comments. R.8263–65, 8270–71. The court did not abuse its discretion in concluding that neither this nor Hubbard's other allegations of juror misconduct prejudiced him. C.5673–76.

Nor should this Court reverse because of the communications between court staff and jurors during trial. Considering a claim about ex parte communications with jurors, the U.S. Supreme Court held that harmless error was

the appropriate standard of review. Rushen v. Spain, 464 U.S. 114, 117–120 (1983) (per curiam). In Rushen, one of the defendants was a Black Panther, and a juror remembered mid-trial that her friend had been murdered by a Black Panther. Id. at 115–16. The juror notified the court, which did not notify the parties but confirmed that the juror could base her verdict on the evidence. Id. at 116. The Supreme Court concluded that although "the trial judge promptly should have notified counsel for all parties after the juror approached him," "[t]he prejudicial effect of a failure to do so . . . can normally be determined by a post-trial hearing." Id. at 119 & n.3. The circuit court here properly determined, in a post-trial hearing, that Hubbard suffered no prejudice from the alleged conduct. C.5673–76. Hubbard has not shown that anything would have been different if the court had notified the parties of the juror complaint during trial.

Furthermore, the circuit court gave Hubbard the opportunity to examine the jurors about whether the comments or Hubbard's other three allegations affected their verdict, and he chose to forego that opportunity. Below, Hubbard declined to subpoena jurors, even when the court offered to hold an additional hearing. R.8230–61, 8338–41. Instead, he

insisted that the Sheriff should investigate what happened. Id. His refusal to participate in any further hearing with juror testimony, given the opportunity post-trial, means that he has not preserved any of his jury misconduct claims. See Johnson v. State, 479 So.2d 1377, 1382 (Ala. Crim. App. 1985).

Even if jurors had been summoned to testify at a post-trial hearing, however, their testimony, as well as Hubbard's juror affidavit, would have been inadmissible under Rule 606(b). That rule prohibits jurors from impeaching their verdict, distinguishing between internal (or intrinsic) and external (or extrinsic) influences on the jury. Ala. R. Evid. 606(b). Jurors may testify only about external influences on their verdict. Whitten v. Allstate Ins. Co., 447 So. 2d 655, 657 (Ala. 1984); Nichols v. Seaboard Coastline Ry. Co., 341 So. 2d 671, 673 (Ala. 1976); McWhorter v. State, 142 So. 3d 1195, 1222–24 (Ala. Crim. App. 2011).

All of Hubbard's allegations—including the one the court investigated during trial—concern internal influences. These additional allegations, which neither the court nor the parties knew about until after trial, were: (1) a juror talked about upcoming witnesses, including Robert Bentley; (2) unspecified jurors said that Hubbard should plead guilty

and questioned his need for so much money; and (3) an unspecified juror commented, "Yeah, right," about his statement during voir dire that he could be impartial. C.5548–49, 5673–74.

Internal influences include "potentially premature deliberations." Perkins v. State, 144 So. 3d 457, 494 (Ala. Crim. App. 2012) (internal alterations and quotation marks omitted). See also Tanner v. United States, 483 U.S. 107, 117–27 (1987) (holding that juror drug and alcohol use during trial is not an internal influence). Interpreting Rule 606(b), this Court has held that testimony about "internal influences," including "premature deliberations," is not admissible. Perkins, 144 So. 3d at 494 (internal alterations and quotation marks omitted). The U.S. Supreme Court has interpreted this "no-impeachment" rule similarly, holding that the analogous federal rule renders inadmissible statements of most kinds of juror bias, even if the juror lied during voir dire. Warger v. Shauers, 135 S. Ct. 521, 528–30 (2014). The only constitutional exception to the no-impeachment rule is that a juror's clear statements of race-based bias must be investigated. Peña Rodriguez v. Colorado, 137 S. Ct. 855, 869 (2017).

The allegations here—that jurors discussed Hubbard's guilt and trial witnesses—concern internal influences, and testimony about such discussions is inadmissible. Below, Hubbard inferred that the jury's discussion of witnesses evidenced an external influence, but the entire venire heard the names of every potential witness before the jury was empaneled, including Robert Bentley. R.3497. Even the allegation of an unspecified juror's alleged bias based on an ambiguous statement is inadmissible. See Warger, 135 S. Ct. at 528–30. Thus, juror testimony would have been inadmissible under Rule 606(b), even if Hubbard had not declined the opportunity to participate in an evidentiary hearing.

Hubbard reads Holland v. State, 588 So. 2d 543, 548–49 (Ala. Crim. App. 1991), too broadly; it does not apply here. Appellant Br. 96. In that case, before jury selection, veniremember Ward commented, "[Y]ou can tell by looking at [the defendant] that he is guilty," and another person responded, "Yes. They could save us a lot of money if they would just simply take a vote now and let us vote whether he was guilty or not." Id. at 545. Ward sat on the jury, but the court never determined whether the other person was ultimately a juror. Id. Before trial began, defense counsel

notified the court of Ward's comments. Id. at 545 n.2. Instead of questioning Ward and the other jurors to determine the effect of Ward's comments, the court asked each juror whether he or she could put aside preconceived notions and decide the case based on the evidence. Id. at 545. This Court determined that because Ward disregarded the circuit court's initial instructions not to discuss the case, making inherently prejudicial remarks, the court's later actions and instructions were insufficient. Holland, 588 So. 2d at 549. Holland involved specific prejudicial statements made before trial, as well as the external influence of a person who may not have been on the jury, and the defendant was convicted. Such external influences are prejudicial if the "misconduct *might* have unlawfully influenced the verdict." Ex parte Troha, 462 So. 2d 953, 954 (Ala. 1984). But even external influences do not automatically entitle a defendant to a new trial. Compare Ross v. State, 41 So. 3d 106, 110–11 (Ala. Crim. App. 2009) (information about a codefendant's prior conviction did not require new trial) with Taite v. State, 48 So. 3d 1, 6–12 (Ala. Crim. App. 2009) (information about the defendant's prior conviction required a new trial).

On appeal, Hubbard has also waived any argument about the three post-trial allegations because his entire argument focuses on the circuit court's failure to notify the parties and hold a hearing mid-trial about a juror's complaint that another juror commented on Hubbard's guilt during the trial. Appellant Br. 96–100, C.5548. This was the only allegation brought to the court's attention at that time. C.5548, R.8235. Under Alabama Rule of Appellate Procedure 45B, this Court should decline to address claims that Hubbard failed to include in his brief, even if he raised them before the circuit court. Ala. R. App. P. 45B; Hulsey v. State, 196 So. 3d 342, 357–58 (Ala. Crim. App. 2015). Because Hubbard focuses solely on the court's failure to hold a mid-trial hearing on this allegation, he has waived his other claims of jury misconduct error.

Here, Hubbard's waived and inadmissible allegations involve alleged comments and premature deliberations among jurors after trial began. The circuit court determined that Hubbard was not prejudiced, and the jury issued a split verdict, demonstrating that the jurors weighed the evidence and decided the case based on the law and facts before them. See United States v. Siegelman, 640 F.3d 1159, 1187 (11th

Cir. 2011), United States v. Dominguez, 226 F.3d 1235, 1248 (11th Cir. 2000). This Court should not disturb that verdict.

* * *

Hubbard argues generally that he did not receive due process. The circuit court went beyond what due process required, giving Hubbard extensive pre-trial hearings and appointing a Special Master to adjudicate some of Hubbard's claims. The court carefully considered Hubbard's many allegations from October 2014 when he was indicted until October 2016 when the court denied his last motion. Hubbard might not like the Ethics Laws, including the amendments he helped pass, but Alabama has "the prerogative to regulate the permissible scope of interactions between state officials and their constituents," even where Alabama's laws are more restrictive than the federal government's or other states'. McDonnell v. United States, 136 S. Ct. 2355, 2373 (2016). Hubbard received a fair trial by a jury of his peers, who carefully considered the evidence, found him guilty on 12 counts, and acquitted him on 11. His conduct fit squarely within the purpose and text of the Ethics Laws, and this Court should affirm his convictions.

CONCLUSION

For these reasons, this Court should **AFFIRM** Hubbard's convictions and sentences on Counts 5, 6, 10, 11, 12, 13, 14, 16, 17, 18, 19, and 23.

Respectfully submitted,

Steve Marshall
Attorney General

By:

/s/ Megan A. Kirkpatrick
Megan A. Kirkpatrick
Assistant Attorney General
Miles M. Hart
Michael B. Duffy
Deputy Attorneys General

ADDRESS OF COUNSEL:

Office of the Attorney General
501 Washington Avenue
Post Office Box 300152
Montgomery, Alabama 36130-0152
Telephone: (334) 353-2128
Fax: (334) 353-0766
Email: mkirkpatrick@ago.state.al.us

APPENDIX: STATUTES TO BE CONSTRUED

Pursuant to Ala. R. App. P. 28(h), this Appendix reproduces the relevant parts of statutes required to determine the issues in this appeal.

Ala. Code § 36-25-1. Definitions.

Whenever used in this chapter, the following words and terms shall have the following meanings:

> (2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business.
>
> (8) CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs.
>
> (24) PRINCIPAL. A person or business which employs, hires, or otherwise retains a lobbyist. A principal is not a lobbyist but is not allowed to give a thing of value.
>
> (34) THING OF VALUE.
>
> > a. Any gift, benefit, favor, service, gratuity, tickets or passes to an entertainment, social or sporting event, unsecured loan, other than those loans and forbearances made in the ordinary course

of business, reward, promise of future employment, or honoraria or other item of monetary value.

b. The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof:

3. Anything given by a friend of the recipient under circumstances which make it clear that it is motivated by a friendship and not given because of the recipient's official position. Relevant factors include whether the friendship preexisted the recipient's status as a public employee, public official, or candidate and whether gifts have been previously exchanged between them.

5. Loans from banks and other financial institutions on terms generally available to the public.

9. Anything for which the recipient pays full value.

10. Compensation and other benefits earned from a non-government employer, vendor, client, prospective employer, or other business relationship in the ordinary course of employment or non-governmental business activities under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's public service as a public official or public employee.

Ala. Code § 36-25-1.1. Lobbying.

No member of the Legislature, for a fee, reward, or other compensation, in addition to that received in his or her official capacity, shall represent any person, firm, corporation, or other business entity before an executive department or agency.

Ala. Code § 36-25-2. Legislative findings and declarations; purpose of chapter.

(a) The Legislature hereby finds and declares:

(1) It is essential to the proper operation of democratic government that public officials be independent and impartial.

(2) Governmental decisions and policy should be made in the proper channels of the governmental structure.

(3) No public office should be used for private gain other than the remuneration provided by law.

(4) It is important that there be public confidence in the integrity of government.

(5) The attainment of one or more of the ends set forth in this subsection is impaired whenever there exists a conflict of interest between the private interests of a public official or a public employee and the duties of the public official or public employee.

(6) The public interest requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to the conduct of public officials and public employees in situations where conflicts exist.

(b) It is also essential to the proper operation of government that those best qualified be encouraged to serve in government. Accordingly, legal safeguards against conflicts of interest shall be so designed as not to unnecessarily or unreasonably impede the service of those men and women who are elected or appointed to do so. An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided.

(c) The Legislature declares that the operation of responsible democratic government requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to the legislative bodies and to officials of the Executive Branch, their opinions on legislation, on pending governmental actions, and on current issues. To preserve and maintain the integrity of the legislative and administrative processes, it is necessary that the identity, expenditures, and activities of certain persons who engage in efforts to persuade members of the legislative bodies or members of the Executive Branch to take specific actions, either by direct communication to these officials, or by solicitation of others to engage in such efforts, be publicly and regularly disclosed. This chapter shall be liberally construed to promote complete disclosure of all relevant information and to insure that the public interest is fully protected.

(d) It is the policy and purpose of this chapter to implement these objectives of protecting the integrity of all governmental units of this state and of facilitating the service of qualified personnel by prescribing essential restrictions against conflicts of interest in public service without creating unnecessary barriers thereto.

Ala. Code § 36-25-5. § 36-25-5. Use of official position or office for personal gain.

(a) No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.

(b) Unless prohibited by the Constitution of Alabama of 1901, nothing herein shall be construed to prohibit a public official from introducing bills, ordinances, resolutions, or other legislative matters, serving on committees, or making statements or taking action in the exercise of his or her

duties as a public official. A member of a legislative body may not vote for any legislation in which he or she knows or should have known that he or she has a conflict of interest.

(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. Provided, however, nothing in this subsection shall be deemed to limit or otherwise prohibit communication between public officials or public employees and eleemosynary or membership organizations or such organizations communicating with public officials or public employees.

(f) A conflict of interest shall exist when a member of a legislative body, public official, or public employee has a substantial financial interest by reason of ownership of, control of, or the exercise of power over any interest greater than five percent of the value of any corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation; or who is an officer or director for any such corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation.

§ 36-25-5.1. Limitation on actions of lobbyists, subordinates of lobbyists, and principals.

(a) No lobbyist, subordinate of a lobbyist, or principal shall offer or provide a thing of value to a public employee or public official or to a family member of the public employee or family member of the public official; and no public employee or public official or family member of the public employee or family member of the public official shall solicit or receive a thing of value from a lobbyist, subordinate of a lobbyist, or principal. Notwithstanding the foregoing, a lobbyist, or principal may offer or provide and a public

official, public employee, or candidate may solicit or receive items of de minimis value.

Alabama R. Evid. 606(b). Competency of juror as witness.

(b) *Inquiry into validity of verdict or indictment*. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify in impeachment of the verdict or indictment as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes. Nothing herein precludes a juror from testifying in support of a verdict or indictment.

CERTIFICATE OF SERVICE

I certify that on the 3rd day of July, 2017, I served a copy of the foregoing document by email on the following counsel for the Appellant:

William J. Baxley
Joel E. Dillard
David McKnight
Baxley, Dillard, McKnight, James & McElroy
Suite 110 East
2700 Highway 280
Birmingham, AL 35223
bbaxley@baxleydillard.com
dmcknight@baxleydillard.com
jdillard@baxleydillard.com

R. Lance Bell
Trussell, Funderburg, Rea & Bell, PC
1905 1st Ave South
Pell City, AL 35125
lance@tfrblaw.com

Sam Heldman
The Gardner Firm
2805 31st Street, NW
Washington, DC 20008
sam@heldman.net

Phillip E. Adams, Jr.
Blake Oliver
Adams, White, Oliver, Short & Forbus, LLP
205 S. 9th Street
Post Office Box 2069
Opelika, AL 36803-2069
padams@adamswhite.com
boliver@adamswhite.com

/s/ Megan A. Kirkpatrick
Megan A. Kirkpatrick
Assistant Attorney General