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Joan Claybrook, President

November 16, 2005

Hon. Christopher Cox
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Request for investigation into qualified blind trusts of Sen. William H. Frist

Dear Chairman Cox:

As you know, serious questions have been raised about Senate Majority Leader Bill Frist and the conduct of his qualified blind trusts as approved by the U.S. Senate Select Committee on Ethics under Senate ethics rules.[1] The Department of Justice and the Commission are investigating the matter, considering whether Sen. Frist may have directed sale of stock in HCA Inc., a family business, based on insider knowledge that the stock's value was likely to drop.

We write to request that the Commission investigate additional matters regarding Sen. Frist and his blind trusts. As detailed below, our examination of disclosure documents on file with the Senate Office of Public Records indicates that, similar to the situation with HCA, there have also been questionable transactions lucrative to Frist family members in stocks of other companies that had ties to the Frist family.

As you also know, a blind trust is meant to be a way of insulating an official from financial conflicts of interest, and by extension, of shoring up the public confidence in public officials that's necessary for democratic government to function well. Our findings, however, raise a fundamental question about the operation of Sen. Frist's blind trusts: Given exceptionally well-timed transactions by the trusts in the stock of companies that had ties to the Frist family, was any trading based on insider information?

[1] In all, there are 13 publicly disclosed qualified blind trusts covering Sen. Frist, his wife and children.

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Because public confidence in government is so important, we ask that you fully investigate the matters described below. In addition, we note that our examination was necessarily based only on publicly available information, which does not include the full range of information reported to the ethics committee. Examination of all relevant records, from the committee or elsewhere, may change our analysis or indicate additional concerns.

1. <u>Several Frist family trusts may have reaped multimillion-dollar gains through investments in another company that had ties to the Frist family.</u>

American Retirement Corp., headquartered in Brentwood, Tenn., offers services to seniors including independent living, assisted living, skilled nursing and Alzheimer's care. It was established in 1978, and among its chief founders was Dr. Thomas F. Frist Sr., one of the principal founders of HCA and father of Sen. Frist.[2] Frist family members remained major investors in the company until at least the late 1990s, corporate records show.[3] Frist Sr. worked closely with the company for many years, in 1995 joining with American Retirement to found the Frist Center at Belmont University in Nashville.[4] Today, American Retirement regularly touts its past affiliation with Frist Sr.[5], although it's not clear there is a significant continuing association with the family.

In what appear to be exceedingly well-timed transactions in 2003 and 2005, three of the Frist family blind trusts reaped large gains by acquiring and selling American Retirement stock, according to disclosure documents.

In a letter dated November 12, 2003, the law firm of Bass, Berry & Sims PLC reported that the W. Harrison Frist Jr. 1991 Qualified Blind Trust, the Bryan E. Frist 1991 Qualified Blind Trust and the Jonathan M. Frist 1991 Qualified Blind Trust each acquired shares of American Retirement on September 25, 2003 worth between $100,000 and $250,000.[6] This means the aggregate value was between $300,000 and $750,000. The closing price of the stock on this date was $3.13.

The price of American Retirement stock had been languishing for several years, but after acquisition by the Frist family trusts, the price rose dramatically. In a letter dated July

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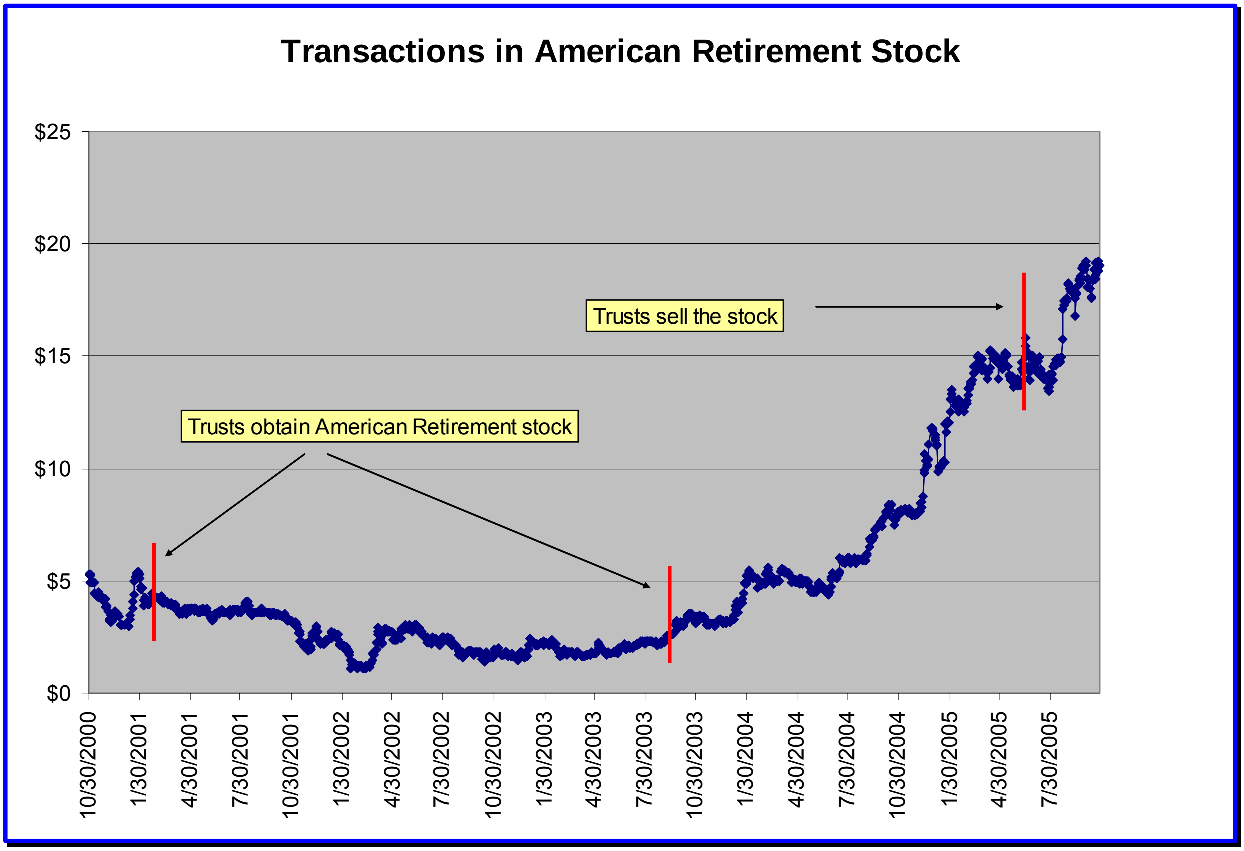
[2] See "Corporate Profile" at www.arclp.com/investor-overview.html.
[3] See, for example, American Retirement Corp. proxy statements filed with the Securities and Exchange Commission for 1998 and 1999.
[4] See American Retirement's S-1 statement filed with the Securities and Exchange Commission, March 12, 1997. "…[T]he Company, together with Dr. Frist, founded The Frist Center at Belmont University in Nashville, Tennessee. The Frist Center is a non-profit foundation providing training, education, and career services for management and front line personnel involved in the senior living and health care services industry. The Company works closely with The Frist Center…."
[5] As American Retirement said, in a representative statement in its 2004 10-K filing with the Securities and Exchange Commission: "We were established in 1978 and our operating philosophy was inspired by the vision of our founders, Dr. Thomas F. Frist, Sr. and Jack C. Massey, to enhance the lives of seniors by striving to provide the highest quality of care and services in well-operated communities designed to improve and protect the quality of life, independence, personal freedom, privacy, spirit, and dignity of our residents."
[6] We note a slight discrepancy: Although the lower bound of the value range in Senate reporting documents is "$100,001," it was stated as "$100,000" in the letter.

8, 2005, Northern Trust reported American Retirement shares had been "completely disposed of" as of June 30, 2005. Although the exact date of that sale was not reported, on that day, the closing price was $14.62 – a 367 percent gain over the price at time of acquisition. The following chart shows the well-timed acquisition and subsequent run-up in price.



Based on this price move, the aggregate value would have increased to $1.4 million to $3.5 million. However, as also shown in the chart, there was also an earlier acquisition of American Retirement shares. It was reported in a February 26, 2001, letter from Bass, Berry & Sims.[7] This acquisition also consisted of three Frist trusts – the WHF Jr. 2000 Qualified Blind Trust, the BEF 2000 Qualified Blind Trust, and the JMF 2000 Qualified Blind Trust – each receiving stock valued between $100,001 and $250,000. This means the aggregate value was between $300,003 and $750,000.[8] The closing price of the stock on February 26, 2001 was $4.25. Assuming these shares, plus the shares acquired in 2003,

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[7] The February 26 letter reports the acquisitions, but does not give a date for them. Thus, the February 26 date is taken as a proxy for the date of the transactions.

[8] The acquisitions were not actually meant for the three trusts indicated here. In a letter dated November 12, 2003, Berry, Bass & Sims said the American Retirement shares had been mistakenly placed in the three trusts indicated here, and that they were transferred into the correct trusts – the W. Harrison Frist Jr. 1991 Qualified Blind Trust, the Bryan E. Frist 1991 Qualified Blind Trust Agreement and the Jonathan M. Frist 1991 Qualified Blind Trust Agreement – in 2002.

were held until sale on June 30, 2005, the total value would have been between $2.4 million and $6.1 million.

The sale of the American Retirement shares apparently came at the same time as Sen. Frist's well-publicized sale of HCA stock.

We underscore that we have no information confirming that anything improper took place in these Frist family trust transactions. Yet the favorable timing, coupled with the company's past ties to the Frist family, raise questions about whether the transactions were proper. Once again, if only from a public confidence standpoint, resolving the questions are important.

2. Another Frist trust made well-timed sales in the stocks of two other companies that were spun off from Frist's family company.

The pattern of well-timed stock transactions by the Frist family trusts can be seen in both large and small investments.

A) Triad Hospitals Inc., a Plano, Texas, company that owns and manages hospitals and ambulatory surgery centers, was spun off from HCA in 1999.[9] In a letter dated May 7, 2002, Equitable Trust Co. reported sale of Triad stock from the William H. Frist GST Exempt Trust.[10] This sale took place six weeks before the stock reached a peak and began a 10-month-long slide during which the price fell 56 percent. Disclosure documents suggest, but do not clearly show, that the value of the stock involved was relatively small – about $12,350. Thomas F. Frist III, Sen. Frist's nephew, is a director and major shareholder of Triad,[11] and the company is in business dealings with HCA.[12]

B) LifePoint Hospitals Inc., a Brentwood, Tenn. hospital company that focuses on non-urban care, was likewise spun off from HCA in 1999.[13] Two transactions are of interest for this company. In a letter dated July 27, 2001, Equitable Trust reported the sale of LifePoint stock from the William H. Frist GST Exempt Trust.[14] This sale took place about four weeks before the stock reached a peak and began a three-month decline during which the price fell 40 percent. About 10 months later, in a letter dated May 7, 2002,

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[9] See "Corporate Profile" at http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=TRI&script=2100, and "About the Company" at http://media.corporate-ir.net/media_files/NYS/TRI/reports/99AR.pdf.
[10] The May 7 letter reports the sale, but does not give a date for it. Thus, the May 7 date is taken as a proxy for the date of the transaction.
[11] See 2005 proxy statement filed with the Securities and Exchange Commission April 22, 2005.
[12] "While independent, Triad continues to have HCA connections. It is midway through a seven-year contract to acquire information systems technology from HCA and has an equity share in a buying cooperative whose members include HCA and another HCA spin-off, LifePoint Hospitals of Brentwood (Tenn)." "Building bridges to better health care," *The Tennessean*, Dec. 29, 2002.
[13] See "About LifePoint" at www.lifepointhospitals2.com/.
[14] The July 27 letter reports the sale, but does not give a date for it. Thus, the July 27 date is taken as a proxy for the date of the transaction.

Equitable Trust reported the sale of LifePoint stock from the same trust.[15] This sale took place very near a peak, from which the price fell 57 percent over the following 12 months. Disclosure documents likewise suggest the value of the stock was relatively small. LifePoint continues to have business dealings with HCA, including through HealthStream Inc., a health care industry training company.[16] The chief executive officer and a co-founder of HealthStream is Robert A. Frist Jr., Sen. Frist's nephew.[17]

Once again, we have no confirmation of impropriety, but the timing of these transactions in advance of steep declines raises questions.

For all the foregoing reasons, we believe our examination has raised substantive questions about handling of Sen. Frist's qualified blind trusts. Given the fact that Sen. Frist has significant financial interests in health care matters; that he has played a key role in health care legislation; that he is one of the highest-ranking officers of the Senate; and that the public has an overriding interest in ethical government, we believe an investigation into these matters is necessary and appropriate.

We look forward to your prompt action.

Sincerely yours,

Joan Claybrook

Frank Clemente
Director
Public Citizen's Congress Watch

[15] The May 7 letter reports the sale, but does not give a date for it. Thus, the May 7 date is taken as a proxy for the date of the transaction.

[16] See for example:

- "While independent, Triad continues to have HCA connections. It is midway through a seven-year contract to acquire information systems technology from HCA and has an equity share in a buying cooperative whose members include HCA and another HCA spin-off, LifePoint Hospitals of Brentwood (Tenn)." "Building bridges to better health care," *The Tennessean*, Dec. 29, 2002 (emphasis added).
- HealthStream Inc. news release Oct. 24, 2001: "HealthStream, Inc. … today announced that HealthTrust Purchasing Group (HPG), a group purchasing organization, has signed an agreement that establishes HealthStream as the endorsed provider of e-learning solutions for their 587 hospital members. … HPG's decision to sign with HealthStream allows their major hospital network members -- including Health Management Associates, LifePoint Hospitals, and Triad Hospitals -- to take advantage of HPG's negotiated agreement to adopt the Web-based Healthcare Learning Center(TM) for their employees." (emphasis added)
- Exhibit 10.25 to S-1/A statement filed with the Securities and Exchange Commission March 30, 2000.

[17] See background information for Robert A. Frist Jr. at http://www.b2i.us/profiles/investor/Management.asp?BzID=804&sm_quote_field=HSTM&CName=