

March 6, 2012

The Honorable Harry Reid
U.S. Senate
Washington, D.C. 20510

Dear Majority Leader Reid:

We strongly urge the Senate to restore critical anti-corruption provisions to the STOCK Act that were stripped from the legislation before passed by the House of Representatives. While the bill as whole contains many laudable provisions, among the most significant was the Leahy-Cornyn amendment, which strengthened prosecutors' ability to target public corruption. These provisions, which also were approved by a unanimous House Judiciary Committee, amended the honest services fraud, illegal gratuities and bribery statutes.

The Supreme Court decision in *Skilling v. United States*, 130 S. Ct. 2896 (2010), eliminated an entire category of deceptive, fraudulent and corrupt conduct from the scope of what was known as the honest services fraud statute (18 U.S.C. § 1346). For decades, §1346 was available to prosecute public officials who engage in malfeasance, such as undisclosed self-dealing. Unfortunately, the *Skilling* decision effectively struck down as unconstitutionally vague the honest services language. Consequently, there remains a gaping hole in the ability of federal prosecutors to address a vast swath of public corruption.

The language in the Senate-passed STOCK Act repairs the problem, It also heeds the Supreme Court's directive for more clarity and specificity by borrowing existing language from 18 U.S.C. § 208, a well-established federal conflict-of-interest statute that already applies to the executive branch and has been upheld as constitutionally sound.¹ Notably, under the proposed statute, no public official could be prosecuted unless he or she *knowingly* conceals, covers up, or fails to disclose material information – which the official already is already required by law or regulation to disclose – with the specific intent to defraud. Thus as crafted, it removes the risk that a public official can be convicted for unwitting conflicts of interest or mistakes.

The Leahy-Cornyn amendment also revises the illegal gratuities statute -- eviscerated by the Supreme Court in *United States v. Sun-Diamond Growers*, 526 U.S. 398 (1999) -- to make clear public officials may not accept gifts given because of their governmental positions. In addition, responding to *United States v. Valdes*, 475 F.3d 1319 (D.C. Cir. 2007), the provision makes clear government officials who accept private compensation for using the powers their jobs afford them may be subject to criminal prosecution.

Given the wide bipartisan support of these measures in both the House and Senate, it is difficult to understand why House Majority Leader Eric Cantor chose to delete them before bringing them before bringing the STOCK Act to the floor.

¹ *United States v. Richard J. Nevers*, 7 F.3d 59 (5th Cir. 1993).

In light of the recent congressional scandals, it is no wonder Americans have lost faith in their elected leaders. While the STOCK Act is not a panacea, enacting the strong anti-corruption sections included in the Senate bill would be a step in the right direction. We strongly urge you to use your leadership to restore these provisions before final passage.

Sincerely,

Campaign Legal Center

Citizens for Responsibility and Ethics in Washington

Common Cause

Democracy 21

Public Citizen

U.S. PIRG