

November 30, 2011

Honorable Lamar Smith, Chairman
Honorable John Conyers, Ranking Member
House Committee on the Judiciary
United States House of Representatives
Washington, DC 20510

Re: Full Committee Markup of H.R. 2572, the “Clean Up Government Act of 2011”

Sent Via Fax

Dear Chairman Smith, Ranking Member Conyers and Members of the Committee:

Today our organizations write to strongly endorse and call for swift committee passage of the “Clean Up Government Act of 2011” (H.R. 2572), which is scheduled for full committee markup on December 1. Among other things, this legislation will restore important tools for federal prosecutors fighting public corruption – revisions to the Honest Services and illegal gratuities statutes.

Last year’s 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. This revised version the honest services statute is constitutionally sound and heeds the Supreme Court’s directive for more clarity and specificity.

The “Clean Up Government Act” addresses the Court’s concerns about vagueness and lack of clarity 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 that has been upheld as constitutionally sound by the Supreme Court¹ and U.S. Court of Appeals for the Fifth Circuit.² 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.

¹ *United States v. Hedges*, 364 U.S. 520 (1961).

² *United States v. Richard J. Nevers*, 7 F.3d 59 (5th Cir. 1993).

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Thus as crafted, H.R. 2572 removes the risk that a public official can be convicted for unwitting conflicts of interest or mistakes.

The legislation also revises the illegal gratuities statute which was eviscerated by the Supreme Court in *United States v. Sun-Diamond Growers*, 526 U.S. 398 (1999). The bill makes clear that 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 bill makes clear government officials who accept private compensation for using the powers their jobs afford them may be subject to criminal prosecution.

Our organizations applaud Rep. James Sensenbrenner (R-WI) and Rep. Mike Quigley (D-IL) for their bipartisan leadership on this issue. We urge all committee members to support and pass this critically needed reform legislation to ensure that prosecutors have the tools they need to fight public corruption.

Sincerely,

Campaign Legal Center

Citizens for Responsibility and Ethics in Washington (CREW)

Common Cause

Democracy 21

League of Women Voters of the United States

Public Campaign

Public Citizen

U.S. PIRG