

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
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Statement Of Senator Patrick Leahy,
Chairman, Senate Judiciary Committee,
On S. 49, The Public Corruption Prosecution Improvements Act Of 2009
Executive Business Meeting,
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This morning, the Committee will turn to the "Public Corruption Prosecution Improvements Act of 2009," a bill that Senator Cornyn and I introduced to strengthen and clarify key aspects of Federal criminal law and provide new tools and resources to help investigators and prosecutors attack public corruption nationwide.

The Committee agreed to and reported this bipartisan bill last Congress. We reintroduced it on the first day of this new Congress to see it enacted without further delay. It has sadly become apparent that public corruption is a serious and pervasive problem that erodes the trust the American people have in those who are given the privilege of public service.

Make no mistake: The stain of corruption has spread to all levels of government. It is an issue that both parties must address. This is a problem that victimizes every American by chipping away at the foundations of our democracy and, too often, loopholes in existing laws have meant that corrupt conduct can go unchecked. Rooting out the kinds of public corruption that have resulted in convictions of members of the House and the Senate, senior state officials, and many others, requires us to give prosecutors the tools and resources they need to investigate and prosecute criminal public corruption offenses. This bill will do exactly that, and it is past time for Congress to take decisive action to combat this corrosive problem.

The bill provides \$100 million in much-needed additional funding for public corruption enforcement. Since September 11, 2001, Federal Bureau of Investigation (FBI) resources have been shifted away from the pursuit of white collar crime to counterterrorism. The New York Times recently noted that, despite the many high profile corruption cases in recent years, corruption prosecutions fell an estimated 14 percent over the past eight years. We must reverse this trend and make sure that law enforcement has the tools and the resources it needs to confront these serious and corrosive crimes.

The bill also extends the statute of limitations from five to six years for the most serious public corruption offenses. Public corruption cases are among the most difficult and time-consuming cases to investigate. Bank fraud, arson and passport fraud, among other offenses, all have 10-year statutes of limitations. Public corruption offenses cut to the heart of our democracy. This

modest increase to the statute of limitations is a reasonable step to help our corruption investigators and prosecutors do their jobs.

The bill raises the statutory maximum penalties for several laws dealing with official misconduct, including theft of government property and bribery. Such an increase reflects the serious nature of these crimes, and would harmonize the punishment for these crimes with other similar statutes.

This bill goes further by amending several key statutes to broaden their application in corruption and fraud contexts and to eliminate legal ambiguities. It appropriately clarifies the definition of what it means for a public official to perform an "official act" for the purposes of the bribery statute and closes several other gaps in current law. It adds two corruption-related crimes as predicates for the Federal wiretap and racketeering statutes and makes other important statutory fixes.

Much attention has focused on the bill's fix to the gratuities statute making clear that public officials may not accept anything of value, other than what is permitted by existing rules and regulations, given to them because of their official position.

I want to make clear that this fix to the gratuities statute simply restores the law to where it was prior to the Supreme Court's decision in the 1999 Sun-Diamond Growers case. Justice Scalia read into the statute a requirement of essentially the same kind of proof linking a gift to a specific official act for a gratuities violation that would be needed for a bribery violation - even though gratuities is a two-year offense, while bribery is a 15-year offense. As a result of this judicially imposed change, the gratuities statute has all but been rendered obsolete. Some clearly corrupt conduct goes uncharged, while other cases are charged as bribery since so little additional proof is needed for that offense. This bill seeks to return the law to its pre-Sun Diamond status, which was the law the Federal circuits had been implementing.

This important provision contains appropriate safeguards while putting teeth behind the ethical reforms the Senate adopted in the last Congress. In response to concerns expressed by Senator Specter, we added in the last Congress an explicit exception for any gifts permitted by rules or regulations. This exception makes clear that modest ceremonial gifts like caps or jerseys from victorious sports teams, which are permitted by the rules, could never form the basis for a prosecution. It also provides an additional assurance that campaign contributions, which were never covered by the gratuities statute, are not to be prosecuted as illegal gratuities.

This year, we have agreed to further changes suggested by Senator Specter to strengthen this "safe harbor" provision. Senator Cornyn and I are fully committed to continuing to work with Senator Specter after the bill is reported from Committee to add other appropriate safeguards to this provision, as long as they do not undermine the statutes this bill seeks to strengthen.

The bipartisan bill is supported by the Department of Justice, as well as by a wide array of public interest groups that have long advocated for vigorous enforcement of our fraud and public corruption laws, including the Campaign Legal Center, Common Cause, Democracy 21, the League of Women Voters, Public Citizen, U.S. PIRG, and the National Association of Assistant United States Attorneys.

If we are serious about addressing the kinds of egregious misconduct that we have witnessed over the past several years in high-profile public corruption cases, Congress should enact meaningful legislation to give investigators and prosecutors the tools and resources they need to enforce our laws.

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