

SENATE RESOLUTION 403—TO AUTHORIZE TESTIMONY, DOCUMENT PRODUCTION, AND LEGAL REPRESENTATION IN UNITED STATES V. RICHARD F. "DICKIE" SCRUGGS

Mr. REID of Nevada (for himself and Mr. McCONNELL) submitted the following resolution; which was considered and agreed to:

S. RES. 403

Whereas, in the case of United States vs. Richard F. "Dickie" Scruggs, Case No. 3:09-CR-00002-GHD-SAA, pending in the United States District Court for the Northern District of Mississippi, the defense has served a subpoena for testimony on Hugh Gamble, a former employee of Senator Trent Lott, and a subpoena for testimony and document production on Brad Davis, an employee of Senator Thad Cochran;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent employees of the Senate with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial or administrative process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

*Resolved*, That Hugh Gamble, Brad Davis, and any other employee from whom testimony may be necessary are authorized to testify, and Brad Davis is authorized to produce documents, in the case of United States vs. Richard F. "Dickie" Scruggs, except concerning matters for which a privilege should be asserted.

SEC. 2. The Senate Legal Counsel is authorized to represent Hugh Gamble, Brad Davis, and any other employee of the Senate from whom evidence may be sought, in connection with the testimony and document production authorized in section one of this resolution.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1945. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 2038, to prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 1945. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 2038, to prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the House amendment, add the following:

TITLE II—PUBLIC CORRUPTION PROSECUTION IMPROVEMENTS

SEC. 201. SHORT TITLE.

This title may be cited as the "Public Corruption Prosecution Improvements Act of 2012".

SEC. 202. VENUE FOR FEDERAL OFFENSES.

(a) IN GENERAL.—The second undesignated paragraph of section 3237(a) of title 18, United States Code, is amended by adding before the period at the end the following: "or in any district in which an act in furtherance of the offense is committed".

(b) SECTION HEADING.—The heading for section 3237 of title 18, United States Code, is amended to read as follows:

"SEC. 3237. OFFENSE TAKING PLACE IN MORE THAN ONE DISTRICT."

(c) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 211 of title 18, United States Code, is amended so that the item relating to section 3237 reads as follows:

"Sec. 3237. Offense taking place in more than one district."

SEC. 203. THEFT OR BRIBERY CONCERNING PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE.

Section 666(a) of title 18, United States Code, is amended—

(1) by striking "10 years" and inserting "20 years";

(2) by striking "\$5,000" the second place and the third place it appears and inserting "\$1,000";

(3) by striking "anything of value" each place it appears and inserting "any thing or things of value"; and

(4) in paragraph (1)(B), by inserting after "anything" the following: "or things".

SEC. 204. PENALTY FOR SECTION 641 VIOLATIONS.

Section 641 of title 18, United States Code, is amended by striking "ten years" and inserting "15 years".

SEC. 205. BRIBERY AND GRAFT; CLARIFICATION OF DEFINITION OF "OFFICIAL ACT"; CLARIFICATION OF THE CRIME OF ILLEGAL GRATUITIES.

(a) DEFINITION.—Section 201(a) of title 18, United States Code, is amended—

(1) in paragraph (2), by striking "and" at the end;

(2) by amending paragraph (3) to read as follows:

"(3) the term 'official act'—

"(A) means any act within the range of official duty, and any decision or action on any question, matter, cause, suit, proceeding, or controversy, which may at any time be pending, or which may by law be brought before any public official, in such public official's official capacity or in such official's place of trust or profit; and

"(B) may be a single act, more than one act, or a course of conduct; and"; and

(3) by adding at the end the following:

"(4) the term 'rule or regulation' means a Federal regulation or a rule of the House of Representatives or the Senate, including those rules and regulations governing the acceptance of gifts and campaign contributions."

(b) CLARIFICATION.—Section 201(c)(1) of title 18, United States Code, is amended to read as follows:

"(1) otherwise than as provided by law for the proper discharge of official duty, or by rule or regulation—

"(A) directly or indirectly gives, offers, or promises any thing or things of value to any public official, former public official, or person selected to be a public official for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official;

"(B) directly or indirectly, knowingly gives, offers, or promises any thing or things of value with an aggregate value of not less than \$1000 to any public official, former public official, or person selected to be a public official for or because of the official's or person's official position;

"(C) being a public official, former public official, or person selected to be a public official, directly or indirectly, knowingly demands, seeks, receives, accepts, or agrees to receive or accept any thing or things of value with an aggregate value of not less than \$1000 personally for or because of the official's or person's official position; or

"(D) being a public official, former public official, or person selected to be a public official, directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept any thing or things of value personally for or because of any official act performed or to be performed by such official or person;"

SEC. 206. AMENDMENT OF THE SENTENCING GUIDELINES RELATING TO CERTAIN CRIMES.

(a) DIRECTIVE TO SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission forthwith shall review and, if appropriate, amend its guidelines and its policy statements applicable to persons convicted of an offense under section 201, 641, 1346A, or 666 of title 18, United States Code, in order to reflect the intent of Congress that such penalties meet the requirements in subsection (b) of this section.

(b) REQUIREMENTS.—In carrying out this subsection, the Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect Congress's intent that the guidelines and policy statements reflect the serious nature of the offenses described in paragraph (1), the incidence of such offenses, and the need for an effective deterrent and appropriate punishment to prevent such offenses;

(2) consider the extent to which the guidelines may or may not appropriately account for—

(A) the potential and actual harm to the public and the amount of any loss resulting from the offense;

(B) the level of sophistication and planning involved in the offense;

(C) whether the offense was committed for purposes of commercial advantage or private financial benefit;

(D) whether the defendant acted with intent to cause either physical or property harm in committing the offense;

(E) the extent to which the offense represented an abuse of trust by the offender and was committed in a manner that undermined public confidence in the Federal, State, or local government; and

(F) whether the violation was intended to or had the effect of creating a threat to public health or safety, injury to any person or even death;

(3) assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

**SEC. 207. EXTENSION OF STATUTE OF LIMITATIONS FOR SERIOUS PUBLIC CORRUPTION OFFENSES.**

(a) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

**“§ 3302. Corruption offenses**

“Unless an indictment is returned or the information is filed against a person within 6 years after the commission of the offense, a person may not be prosecuted, tried, or punished for a violation of, or a conspiracy or an attempt to violate the offense in—

- “(1) section 201 or 666;
- “(2) section 1341 or 1343, when charged in conjunction with section 1346 and where the offense involves a scheme or artifice to deprive another of the intangible right of honest services of a public official or when charged in connection with section 1346A;
- “(3) section 1951, if the offense involves extortion under color of official right;
- “(4) section 1952, to the extent that the unlawful activity involves bribery; or
- “(5) section 1962, to the extent that the racketeering activity involves bribery chargeable under State law, involves a violation of section 201 or 666, section 1341 or 1343, when charged in conjunction with section 1346 and where the offense involves a scheme or artifice to deprive another of the intangible right of honest services of a public official, or section 1951, if the offense involves extortion under color of official right.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 213 of title 18, United States Code, is amended by adding at the end the following new item:

“3302. Corruption offenses.”.

(c) APPLICATION OF AMENDMENT.—The amendments made by this section shall not apply to any offense committed before the date of enactment of this Act.

**SEC. 208. INCREASE OF MAXIMUM PENALTIES FOR CERTAIN PUBLIC CORRUPTION RELATED OFFENSES.**

(a) SOLICITATION OF POLITICAL CONTRIBUTIONS.—Section 602(a)(4) of title 18, United States Code, is amended by striking “3 years” and inserting “5 years”.

(b) PROMISE OF EMPLOYMENT FOR POLITICAL ACTIVITY.—Section 600 of title 18, United States Code, is amended by striking “one year” and inserting “3 years”.

(c) DEPRIVATION OF EMPLOYMENT FOR POLITICAL ACTIVITY.—Section 601(a) of title 18, United States Code, is amended by striking “one year” and inserting “3 years”.

(d) INTIMIDATION TO SECURE POLITICAL CONTRIBUTIONS.—Section 606 of title 18, United States Code, is amended by striking “three years” and inserting “5 years”.

(e) SOLICITATION AND ACCEPTANCE OF CONTRIBUTIONS IN FEDERAL OFFICES.—Section 607(a)(2) of title 18, United States Code, is amended by striking “3 years” and inserting “5 years”.

(f) COERCION OF POLITICAL ACTIVITY BY FEDERAL EMPLOYEES.—Section 610 of title 18, United States Code, is amended by striking “three years” and inserting “5 years”.

**SEC. 209. ADDITIONAL WIRETAP PREDICATES.**

Section 2516(1)(c) of title 18, United States Code, is amended—

- (1) by inserting “section 641 (relating to embezzlement or theft of public money, property, or records), section 666 (relating to theft or bribery concerning programs receiving Federal funds),” after “section 224 (bribery in sporting contests);”; and
- (2) by inserting “section 1031 (relating to major fraud against the United States)” after “section 1014 (relating to loans and credit applications generally; renewals and discounts).”.

**SEC. 210. EXPANDING VENUE FOR PERJURY AND OBSTRUCTION OF JUSTICE PROCEEDINGS.**

(a) IN GENERAL.—Section 1512(i) of title 18, United States Code, is amended to read as follows:

“(i) A prosecution under section 1503, 1504, 1505, 1508, 1509, 1510, or this section may be brought in the district in which the conduct constituting the alleged offense occurred or in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected.”.

(b) PERJURY.—

(1) IN GENERAL.—Chapter 79 of title 18, United States Code, is amended by adding at the end the following:

**“§ 1624. Venue**

“A prosecution under section 1621(1), 1622 (in regard to subornation of perjury under 1621(1)), or 1623 of this title may be brought in the district in which the oath, declaration, certificate, verification, or statement under penalty of perjury is made or in which a proceeding takes place in connection with the oath, declaration, certificate, verification, or statement.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 79 of title 18, United States Code, is amended by adding at the end the following:

“1624. Venue.”.

**SEC. 211. PROHIBITION ON UNDISCLOSED SELF-DEALING BY PUBLIC OFFICIALS.**

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by inserting after section 1346 the following new section:

**“§ 1346A. Undisclosed self-dealing by public officials**

“(a) UNDISCLOSED SELF-DEALING BY PUBLIC OFFICIALS.—For purposes of this chapter, the term ‘scheme or artifice to defraud’ also includes a scheme or artifice by a public official to engage in undisclosed self-dealing.

“(b) DEFINITIONS.—As used in this section:

“(1) OFFICIAL ACT.—The term official act—

- “(A) means any act within the range of official duty, and any decision or action on any question, matter, cause, suit, proceeding, or controversy, which may at any time be pending, or which may by law be brought before any public official, in such public official’s official capacity or in such official’s place of trust or profit; and
- “(B) may be a single act, more than one act, or a course of conduct.

“(2) PUBLIC OFFICIAL.—The term ‘public official’ means an officer, employee, or elected or appointed representative, or person acting for or on behalf of the United States, a State, or a subdivision of a State, or any department, agency or branch of government thereof, in any official function, under or by authority of any such department, agency, or branch of government.

“(3) STATE.—The term ‘State’ includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

“(4) UNDISCLOSED SELF-DEALING.—The term ‘undisclosed self-dealing’ means that—

- “(A) a public official performs an official act for the purpose, in whole or in material part, of furthering or benefitting a financial interest, of which the public official has knowledge, of—
  - “(i) the public official;
  - “(ii) the spouse or minor child of the public official;
  - “(iii) a general business partner of the public official;
  - “(iv) a business or organization in which the public official is serving as an employee, officer, director, trustee, or general partner;
  - “(v) an individual, business, or organization with whom the public official is negotiating for, or has any arrangement con-

cerning, prospective employment or financial compensation; or

“(vi) an individual, business, or organization from whom the public official has received any thing or things of value, other than as provided by law for the proper discharge of official duty, or by rule or regulation; and

“(B) the public official knowingly falsifies, conceals, or covers up material information that is required to be disclosed by any Federal, State, or local statute, rule, regulation, or charter applicable to the public official, or knowingly fails to disclose material information in a manner that is required by any Federal, State, or local statute, rule, regulation, or charter applicable to the public official.

“(5) MATERIAL INFORMATION.—The term ‘material information’ means information—

“(A) regarding a financial interest of a person described in clauses (i) through (iv) paragraph (4)(A); and

“(B) regarding the association, connection, or dealings by a public official with an individual, business, or organization as described in clauses (iii) through (vi) of paragraph (4)(A).”.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 63 of title 18, United States Code, is amended by inserting after the item relating to section 1346 the following new item:

“1346A. Undisclosed self-dealing by public officials.”.

(c) APPLICABILITY.—The amendments made by this section apply to acts engaged in on or after the date of the enactment of this Act.

**SEC. 212. DISCLOSURE OF INFORMATION IN COMPLAINTS AGAINST JUDGES.**

Section 360(a) of title 28, United States Code, is amended—

- (1) in paragraph (2) by striking “or”;
- (2) in paragraph (3), by striking the period at the end, and inserting “; or”;
- (3) by inserting after paragraph (3) the following:

“(4) such disclosure of information regarding a potential criminal offense is made to the Attorney General, a Federal, State, or local grand jury, or a Federal, State, or local law enforcement agency.”.

**SEC. 213. CLARIFICATION OF EXEMPTION IN CERTAIN BRIBERY OFFENSES.**

Section 666(c) of title 18, United States Code, is amended—

(1) by striking “This section does not apply to”; and

(2) by inserting “The term ‘any thing or things of value’ that is corruptly solicited, demanded, accepted or agreed to be accepted in subsection (a)(1)(B) or corruptly given, offered, or agreed to be given in subsection (a)(2) shall not include,” before “bona fide salary”.

**SEC. 214. CERTIFICATIONS REGARDING APPEALS BY UNITED STATES.**

Section 3731 of title 18, United States Code, is amended by inserting after “United States attorney” the following: “, Deputy Attorney General, Assistant Attorney General, or the Attorney General”.

**NOTICES OF HEARINGS**

**COMMITTEE ON INDIAN AFFAIRS**

Mr. AKAKA. I would like to announce that the Committee on Indian Affairs will meet on Thursday, March 22, 2012, at 2:15 p.m. in Room 628 of the Dirksen Senate Office Building to conduct legislative hearings on S. 1684, the Indian Tribal Energy Development and Self-Determination Act Amendments