

Statement of  
**The Honorable Patrick Leahy**

United States Senator  
Vermont  
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Statement Of Senator Patrick Leahy,  
Chairman, Senate Judiciary Committee,  
Hearing On "Restoring Key Tools To Combat Fraud And Corruption  
After The Supreme Court's Skilling Decision"  
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Today, the Judiciary Committee considers another in a series of recent cases in which the Supreme Court appears to have undermined congressional efforts to protect hardworking Americans from powerful interests. In *Skilling v. United States*, the Court sided with an Enron executive who had been convicted of fraud, and gutted a statute vital to combating public corruption, corporate fraud and self-dealing.

We will explore today the kinds of problematic conduct that may now go unchecked in the wake of the *Skilling* decision and consider what Congress can and should do to fill those gaps and restore strong enforcement against corrupt and fraudulent conduct. I thank Assistant Attorney General Lanny Breuer for coming in to share the Justice Department's focus on this important issue, and I look forward to hearing from our panel of distinguished experts.

In recent years, 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 the faith that Americans have in their government.

Too often, loopholes in existing laws have meant that corrupt conduct can go unchecked. Senator Cornyn and I introduced the Public Corruption Prosecution Improvements Act last year to try to address some of these gaps. It was passed by this Committee, and the Senate should pass that important bill. The honest services fraud statute has in the past served to fill in some of the gaps in corruption laws, but now it too has been greatly limited. We must act aggressively but carefully to strengthen our laws to root out the kinds of public corruption that have resulted in convictions of high state officials, members of Congress, and many others.

Recent years have also seen a plague of financial and corporate frauds that have severely undermined our economy and hurt too many hardworking people in this country. These frauds have robbed people of their savings, their retirement accounts, college funds for their children, and have cost too many people their homes. Congress has acted, by passing the Fraud Enforcement and Recovery Act and other key provisions, to give prosecutors and investigators more tools to combat fraud. We must remain vigilant, as the methods and techniques used by

those who would defraud hardworking Americans continue to change. The honest services fraud statute has allowed prosecutors the flexibility to keep up with corporate criminals.

For decades, courts and prosecutors agreed that the Federal mail and wire fraud laws could be used to prosecute individuals for "deprivation of honest services." That included cases in which public officials acted to benefit their own hidden financial interests, rather than the interests of the people they were supposed to be serving, and cases in which corporate executives secretly enriched themselves at the expense of their companies.

In 1987, the Supreme Court, over Justice Stevens' dissent, overturned those decades of case law, holding that the mail and wire fraud statutes only outlawed fraud aimed at stealing money or property. Congress responded quickly, explicitly adding in 1989 a provision for prosecuting deprivations of honest services under the mail and wire fraud statute. In the 21 years following that congressional action, every circuit court upheld the honest services fraud statute, and no court had limited it in the sweeping way the Supreme Court chose to in the Skilling decision.

The honest services statute was used to prosecute lobbyist Jack Abramoff, Congressman Bob Ney, many corrupt state and local officials, and corporate wrongdoers like Enron executive Jeff Skilling and multi-millionaire Canadian publisher Conrad Black, whose conviction for blatant self-dealing was called into question by the Supreme Court's ruling in the Skilling case.

The Court in Skilling ruled that the honest services fraud statute may be used to prosecute only bribery and kickbacks, but no other conduct. Of course, a number of statutory tools are already available to go after bribery and kickbacks, so the honest services fraud statute was always more important in other contexts.

Honest services fraud allowed prosecutors to go after public officials who hid their own financial interests and then acted to benefit those interests or who took a string of gifts intending to act in the interest of a benefactor in the future and then did so when the time was right. It allowed prosecutors to go after corporate executives who acted to benefit themselves financially at the expense of the shareholders and employees of their company. Now these cases are at risk. I look forward to hearing from Assistant Attorney General Breuer about the impact on prosecutions has been, but I am confident that important cases have been undermined.

I understand the concerns in many circles about vague or undefined Federal laws which could leave some public officials or executives uncertain about what kind of conduct could leave them susceptible to criminal charges. But that is no reason for us to let corrupt or fraudulent conduct go unchecked. Rather, we need to identify the gaps in current law after the Skilling case and act promptly with precise, careful legislation that fills those gaps in clear terms.

We should be clear about what conduct is unacceptable, but surely we can agree that undisclosed self-dealing by public officials and corporate executives is clearly unacceptable. I look forward to learning more today about exactly what the gaps are that need to be filled and how best to fill them, and I plan to introduce legislation shortly to take on this important issue.

I thank the Senators of both parties who have been working with me to find the best way to appropriately restore our fraud and corruption laws, and I will continue working with them to make sure we get it right. Today's hearing will help us get there.

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