U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 7, 2012

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Department of Justice strongly supports H.R. 2572, the "Clean Up Government Act of 2011", as approved by the House Judiciary Committee on December 1, 2011. This legislation would close significant gaps in current law and provide additional tools to the Justice Department in public corruption cases. We look forward to working with the Committee on the minor revisions recommended below to ensure that the bill enhances our ability to prosecute public corruption cases as effectively as possible.

Combating public corruption is one of the Department's top priorities, and this bill would improve our ability to do so in several significant ways. Section 2 of the legislation addresses a specific problem that has arisen in identifying the appropriate venue in certain prosecutions under the mail-fraud statute. This provision remedies that problem by expanding the permissible venue in such cases to include not only the district in which a mailing took place, but also any district in which the defendants otherwise devised and carried out their scheme to defraud.[1]

Section 3 would amend 18 U.S.C. § 666, the Federal program bribery and fraud statute, by lowering the dollar threshold for application of the statute to public-corruption offenses from $5,000 to $1,000. Our experience has shown that significant abuses of the public trust take place in circumstances in which the dollar amount involved is relatively low, but the threat to the integrity of a government function is relatively high. This amendment would enable the Department to bring charges in such corruption cases.

Sections 5 and 7 would remedy problems that have arisen from the Supreme Court's interpretation of the Federal gratuity statute in *United States v. Sun-Diamond Growers of California*, 526 U.S. 398 (1999). *Sun-Diamond*'s requirement that the Government establish a

[1] We note that the amendment would add the phrase "or in any district in which an act in furtherance of an offense is committed" at the end of the first paragraph of 18 U.S.C. § 3237(a), rather than the second paragraph. To achieve the desired goal, the phrase should be placed at the end of the second paragraph, which focuses on offenses involving the use of the mails.

direct link between a specific official act and the payment of a thing of value is a substantial obstacle to the use of 18 U.S.C. § 201(c). Section 7 would clarify that a public official violates subsection 201(c) when he or she accepts a thing of value that is given for, or because of, the defendant's official position. This was a well-established interpretation of subsection 201(c) prior to *Sun-Diamond*, and the amendment would simply return the law to its earlier meaning. Section 5 also contains a $1,000 threshold for gratuities that are paid for, or because of, the person's official position.[2]

Section 8 would amend the definition of the term "official act" in 18 U.S.C. § 201(a)(3) to ensure that the bribery statute applies to all conduct within the range of a public official's duties. This amendment would reverse the damaging interpretation of paragraph 201(a)(3) in *Valdes v. United States*, 475 F.3d 1319 (D.C. Cir. 2007) (*en banc*), which held that a law enforcement officer did not violate section 201 when he accepted cash payments in exchange for obtaining information from a sensitive law enforcement database. The *Valdes* case presents a potentially serious impediment to public-corruption enforcement efforts.

Sections 5 and 8 would also amend subsections 201(b) and (c) to bolster the Department's ability to address "course of conduct" bribery. In many public-corruption cases, it may be difficult to establish a one-for-one link between a particular gift and a particular official act because there is an ongoing stream of financial benefits flowing to a public official. While several courts have interpreted the current law to cover such schemes, the proposed amendments would strengthen our ability to reach this conduct under section 201. Likewise, Section 3 of the legislation would amend 18 U.S.C. § 666 to bolster our ability to reach this same type of conduct when committed by state and local officials who act as agents for programs that receive Federal funds.

Section 6 of the bill would expand 18 U.S.C. § 641 to not only theft of property of the United States, but also property of the District of Columbia. We do not believe that this section is critical to combating corruption in the District of Columbia since the Department can still prosecute these types of crimes under existing statutory authorities.

Section 10 of the legislation would extend the statute of limitations to six years for serious public-corruption offenses. The investigation of public-corruption offenses is complex and time-consuming, and Federal authorities often do not receive allegations regarding public corruption until long after the crime has been committed. Extending the statute of limitations by one year would provide the Department with additional time to pursue public-corruption investigations and discover the full scope of the conduct under review.

Section 12 of the legislation would provide the Department with an important tool in the investigation and prosecution of Federal program bribery (*see* 18 U.S.C. § 666), and theft or

---

[2]We note that the language in section 5 should be revised to reflect that the $1,000 threshold will apply only to gratuities paid for or because of the person's official position, and not to gratuities that are paid for or because of specific official acts as required under the current law.

embezzlement of government property (*see* 18 U.S.C. § 641), and major fraud against the United States (*see* 18 U.S.C. § 1031). Specifically, the legislation would make these offenses predicates for the use of court-ordered wiretaps to gather evidence. This change will aid our ability to investigate and prosecute these offenses.

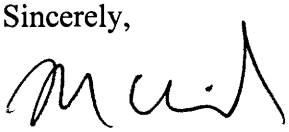
Section 13 of the bill would enhance our ability to prosecute obstruction of justice and perjury by expanding the number of districts in which such prosecutions may be brought. The amendment of 18 U.S.C. § 1512(i) would enable the Department to prosecute obstruction of justice in the district in which the obstructive acts were committed or the district in which the obstructed proceeding was pending. Furthermore, this section's addition of 18 U.S.C. § 1624 would enable the Government to bring charges for perjury in either the district in which the defendant took an oath or the district in which the relevant proceeding was pending. This expansion of venue in obstruction of justice and perjury cases would give the Department greater flexibility in charging these offenses, which are closely related to public corruption.

Section 14 of the legislation would prohibit undisclosed self-dealing by public officials. In *Skilling v. United States,* 130 S. Ct. 2896 (2010), one of the corruption-fighting tools that prosecutors relied upon for more than two decades was substantially eroded. The *Skilling* decision removed an entire category of deceptive and corrupt conduct from the scope of 18 U.S.C. § 1346, the honest-services fraud statute, and placed that conduct beyond the reach of Federal criminal law. Section 14 is a carefully crafted, clear, and fair provision that will close a substantial gap in the Department's ability to address the full range of corrupt conduct by public officials.

The bill also would increase the statutory maximum penalties for many public-corruption offenses and direct the United States Sentencing Commission to review the sentencing guidelines for such offenses. The Department believes that public corruption warrants significant punishment because public corruption presents a substantial threat to the integrity of government functions.

In sum, we support H.R. 2572 and stand ready to work with the Committee on any issues relating to the legislation, including the minor revisions discussed above. The Office of Management and Budget has advised us that, from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,



Ronald Weich
Assistant Attorney General

cc: The Honorable John Conyers, Jr.
Ranking Minority Member