Department of Justice

STATEMENT OF

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BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

FOR A HEARING ENTITLED

"H.R. 2572, THE CLEAN UP GOVERNMENT ACT OF 2011"

PRESENTED

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Statement for the Record of
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Before the
Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security
United States House of Representatives

Mr. Chairman, Vice-Chairman, Ranking Member Scott, and distinguished Members of the Subcommittee: thank you for your invitation to address this Subcommittee. I appreciate the opportunity to discuss the Department of Justice's ongoing efforts to combat public corruption and to speak with you about the Subcommittee's important legislation, H.R. 2572, the Clean Up Government Act of 2011. The Department strongly supports H.R. 2572 and the Subcommittee's efforts to bolster our ability to investigate and prosecute public corruption offenses. We are committed to working with the Subcommittee to ensure that the final bill is as clear, comprehensive, and effective as possible, and we appreciate the Subcommittee's leadership on this important issue.

I. INTRODUCTION

Protecting the integrity of our government institutions is one of the highest priorities for the Department of Justice. Our citizens are entitled to know that their public servants are making their official decisions based on the best interests of the citizens who elect them and pay their salaries, and not based on bribes, extortion, or a public official's own hidden financial interests.

The Department's commitment to fighting corruption at every level – federal, state, and local – is evidenced by the extraordinary and sustained efforts that are undertaken every day by

the 94 United States Attorneys' Offices around the country, the Criminal Division's Public Integrity Section, the Federal Bureau of Investigation, and our many other law enforcement partners. Our recent successes speak volumes about the tenacity of our prosecutors and investigators in rooting out corruption wherever it exists.

Let me give you just a few examples of the breadth of our public corruption efforts. As you know, the Criminal Division of the Department of Justice has a dedicated group of prosecutors – in the Public Integrity Section – whose sole task is to prosecute corruption cases involving federal, state, and local officials. As its record demonstrates, the Public Integrity Section has been extraordinarily busy in recent months. In June, the Public Integrity Section began a trial of several Alabama state legislators, local businessmen, and lobbyists for their roles in an alleged, wide-ranging conspiracy to buy and sell votes on pro-gambling legislation. Prior to that, prosecutors from that Section obtained jury convictions against a Senator from Puerto Rico and a local business owner for engaging in a bribery scheme involving the exchange of a lavish trip for votes on specific pieces of legislation. In January, the Public Integrity Section and the United States Attorney's Office in the Eastern District of Virginia secured a 27-month sentence for Paul Magliocchetti, the founder and former president of PMA Group Inc., a lobbying firm, who admitted to using his friends and family to make hundreds of thousands of dollars in illegal campaign contributions for the purpose of enriching himself and his firm. And the Criminal Division recently secured convictions against former Jack Abramoff associate Kevin Ring for his long-running bribery scheme, and a former staff member in the U.S. House of Representatives on corruption charges relating to his acceptance of an all-expenses paid trip to the first game of the 2003 World Series; those convictions were part of the Criminal Division's long-running and extraordinarily successful investigation into Abramoff's activities, which led to

the convictions here in Washington of more than twenty defendants, including public officials and lobbyists.

Across the country, the United States Attorneys' Offices are aggressively pursuing corruption at all levels of government as well. In the Northern District of Illinois, the United States Attorney's Office recently convicted the state's former Governor on substantial public corruption charges, and is aggressively pursuing a long-running scheme involving bribery and extortion by local police officers. Right next door to us, in the District of Maryland, the United States Attorney's Office recently secured the conviction of a former Prince George's County Executive and two others in connection with a scheme involving extortion and evidence tampering . In the District of New Jersey, the United States Attorney's Office has secured the convictions of 27 defendants, including a state assemblyman, city council president, and mayor, in connection with a wide-ranging undercover operation. In Massachusetts, the United States Attorney's Office secured the convictions of a state senator and Boston city councilor for their acceptance of cash bribes in connection with an undercover investigation. Likewise, the United States Attorney's Office for the Southern District of Florida secured the convictions of three high-level officials in Broward County on substantial public corruption offenses, also as a result of an extensive undercover investigation.

To be clear, these are just a few examples of the numerous corruption cases that the Department is currently prosecuting. But as even these few examples illustrate, the Department is committed to combating public corruption at all levels of government, and we will use all of the investigative tools at our disposal to follow the evidence wherever it leads us.

II. H.R. 2572, THE CLEAN UP GOVERNMENT ACT OF 2011

Despite our successes, we believe that there are some gaps in our public corruption statutes that must be closed. For that reason, we appreciate the Subcommittee's leadership in

ensuring that the Department of Justice and FBI have all of the necessary tools to carry out our important mission, and we are pleased to have worked with staff members in both the House and Senate for several years in an effort to address the need for public corruption legislation. H.R. 2572, like S. 401 in the Senate, will bolster our ability to investigate and prosecute public corruption offenses in a variety of important ways, and we strongly support those improvements. Let me mention some of the key elements of this bill that will strengthen our hand in prosecuting public corruption.

First, allegations of public corruption may not surface until years after the crimes were committed, and a thorough and fair investigation of corruption can sometimes be a lengthy process. As a result, the five-year statute of limitations is frequently a barrier to bringing public corruption charges. While we all share an interest in resolving public corruption allegations promptly, H.R. 2572's extension of the statute of limitations for public corruption offenses will help ensure that we are able to uncover and address the full extent of significant public corruption schemes.

Sections 13 and 14 of the bill would provide the Department with two important tools in the investigation and prosecution of Federal program bribery (*see* 18 U.S.C. § 666), theft and embezzlement of United States 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, and predicates for charging violations of the Racketeering Influenced and Corrupt Organizations Act ("RICO"). Prosecutors often have lamented their inability to use these tools in such cases. The bill would significantly enhance our ability to investigate and prosecute these offenses.

Sections 8 and 9 of the bill would remedy problems that have arisen from judicial interpretations of the federal bribery statute in *United States v. Sun-Diamond Growers of California*, 526 U.S. 398 (1999), and *United States v. Valdes*, 475 F.3d 1319 (D.C. Cir. 2007) (*en banc*). In particular, *Sun-Diamond*'s requirement that the Government establish a direct link between a specific official act and the payment of a thing of value is a substantial obstacle to the use of the bribery statute, 18 U.S.C. § 201(c). The bill would eliminate that requirement by clarifying that a public official violates section 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 section 201(c) prior to *Sun-Diamond*, and the amendment would return the law to its earlier status.

Section 9 of the bill 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 of a public official within the range of the official's duties. This amendment would reverse the damaging interpretation of paragraph 201(a)(3) in *United States v. Valdes*, 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 can be a serious impediment to our public corruption enforcement efforts, and the amendment would eliminate it. The revised definition of "official act" would also bolster the Department's ability to address "course of conduct" bribery under section 201, by making clear that the official action that is corrupted may consist of a single act, more than one act, or a course of conduct. While the Department and several courts have interpreted the current law to cover such schemes, the proposed amendment would shore up our ability to reach this conduct under section 201.

Section 15 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 either in the district in which the obstructive acts were committed or in the district in which the obstructed proceeding was pending. The 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 the available venues in obstruction of justice and perjury cases would give the Department greater flexibility in charging these offenses, which are often closely tied to public corruption.

Section 17 of the bill would help ensure the integrity of the judicial branch by authorizing the release of information to the Department of Justice regarding potential criminal violations by federal judges.

Finally, the bill 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. Public corruption is a serious matter and presents a substantial threat to the integrity of government functions. The Department believes that public corruption warrants stiff punishment, and we support increased penalties for these offenses.

III. UNDISCLOSED SELF-DEALING

Unfortunately, one of the corruption-fighting tools that our prosecutors have relied on for more than two decades was substantially eroded as a result of the Supreme Court's decision in *Skilling v. United States* in June of last year. In short, the *Skilling* decision removed an entire category of deceptive, fraudulent, 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. The Department of Justice believes that this creates a substantial gap in our ability to address the

full range of corrupt and fraudulent conduct by public officials, and we urge Congress to pass legislation to close that gap.

For many decades, the two core forms of honest services fraud under 18 U.S.C. § 1346 that were recognized by the courts remained the same: first, schemes involving bribery and kickbacks and, second, schemes involving undisclosed self-dealing. In *Skilling*, the Supreme Court eliminated this entire second category of schemes from the reach of the honest services fraud statute, holding that section 1346 covers only bribery and kickback schemes, but does not cover schemes involving undisclosed self-dealing. The Supreme Court rejected the defendant's argument that the entire statute was unconstitutionally vague, but limited section 1346 to bribery and kickbacks schemes to avoid vagueness concerns.

By eliminating undisclosed self-dealing from the scope of the honest services fraud statute, the *Skilling* decision created a significant gap in the Department's ability to address public corruption. While I cannot comment on any investigations that have not led to criminal charges, I can assure you that the impact of *Skilling* is real, and that there is conduct that would have been prosecuted under the honest services fraud statute that can no longer be prosecuted under the federal criminal law.

As any prosecutor can attest, corrupt officials and those who corrupt them can be very ingenious, and not all corruption takes the form of flat-out bribery. Let me give you an example. If a mayor were to solicit tens of thousands of dollars in bribes in return for giving out city contracts to unqualified bidders, that mayor could be charged with bribery. But if that same mayor decides that he wants to make even more money through the abuse of his official position, he might secretly create his own company, and use the authority and power of his office to funnel city contracts to that company. This undisclosed self-dealing or concealed conflict of

interest is not bribery, and is no longer covered by the honest services fraud statute after the *Skilling* opinion. Although this second kind of scheme is plainly corrupt, and clearly undermines public confidence in the integrity of their government, it can no longer be reached by the honest services fraud statute, and there is no other Federal criminal law to address this conduct.

Section 16 of H.R. 2572 is designed to fill that gap by creating a new undisclosed self-dealing offense, 18 U.S.C. § 1346A, and the Department strongly supports this amendment. In sum, the amendment would restore our ability to use the mail and wire fraud statutes to prosecute state, local, and federal officials who engage in schemes that involve undisclosed self-dealing. Let me provide a few key points regarding this amendment:

First, because of its clarity and specificity, the new section 1346A follows the direction given by the Supreme Court in *Skilling* that any legislation in this area should provide clear notice to citizens as to what conduct is prohibited.

Second, the new provision uses the mail and wire fraud statutes, which provide a reliable and well-established jurisdictional basis, and enable prosecutors to capture the full scope of an expansive criminal scheme in an appropriate criminal charge.

Third, in order to define the scope of the financial interests that underlie improper self-dealing, the provision draws content from the well-established federal conflict-of-interest statute, 18 U.S.C. § 208, which currently applies to the federal Executive Branch.

And finally, under the proposed statute, no public official could be prosecuted unless he or she knowingly conceals, covers up, or fails to disclose material information that he or she is already required by law or regulation to disclose. Because the bill would require the government to prove knowing concealment and that any defendant acted with the specific intent to defraud, there is no risk that a person can be convicted for unwitting conflicts of interest or mistakes.

We believe that this bill would restore our ability to address the full range of criminal conduct by state, local, and federal public officials, whether the corrupting influence comes from an outside third party, or from the public official's own concealed interests.

IV. CONCLUSION

The Department of Justice is committed to prosecuting public corruption offenses at all levels of government using all of the tools available to us. We support the Subcommittee's efforts to bolster our ability to carry out this important mission