



United States Senate

Committee on Homeland Security and Governmental Affairs

Chairman Joseph I. Lieberman, ID-Conn.

Opening Statement of Chairman Joseph Lieberman
Homeland Security and Governmental Affairs Committee
Insider Trading and Congressional Accountability
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As Prepared for Delivery

The hearing will come to order; good afternoon. A recent book by Peter Schweizer and a story based on it on “60 Minutes” have raised the very serious question of whether members of Congress have been using “insider information” to make investments that enable them to make money they could not have made if they were not members of Congress.

The members of Congress who have been specifically accused have denied the allegations. Our purpose here this afternoon is not to determine the guilt or innocence of individual cases. Our purpose is to determine whether the existing law is sufficient to prevent and punish Congressional insider trading.

Perceptions are very important in public service. That means if the law seems to allow members of Congress to take advantage of their public position for personal gain, the trust that needs to exist between the American people and our government will be further eroded than it already is.

So what is the state of the law governing insider trading by members of Congress?

It will surprise most people to learn that there is no explicit prohibition in our laws against insider trading by anyone including members of Congress. That is to say, the term “insider trading” is not defined in statute. All the investigations and prosecutions of insider trading over the years by the Securities and Exchange Commission and the Department of Justice have been carried out pursuant to the broad anti-fraud provisions of the Securities Exchange Act of 1934, which makes it unlawful, in section 10b, to “use or employ, in connection with the purchase or sale of any security – any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest for the protection of investors.”

The specific rules making insider trading illegal are found in a large body of SEC regulatory activities pursuant to section 10b, that broad anti-fraud statute and court decisions interpreting those activities. The rules against insider trading now clearly encompass not just corporate “insiders” but others who have bought and sold securities based on material, nonpublic information they obtained and used in violation of a duty of trust. Now I gather that some have said that Congress has exempted itself from these insider trading rules but that is not true. In fact, in a statement submitted to our Committee for the record for this hearing, the Director of Enforcement at the SEC itself makes clear that it has authority to prosecute such wrongful conduct, declaring that “trading by

Congressional Members or their staffs is not exempt from the federal securities laws, including the insider trading prohibitions.”

This afternoon, we are going to hear testimony that a member of Congress or a Congressional staffer who buys or sells stock based on inside information they obtain as a result of their job not only violates Congressional ethics rules, but violates the securities laws as well.

On the other hand, we’re going to hear testimony that the law is not as clear as it needs to be and that Congress should specifically proscribe Congressional insider trading.

I’m with the second school of thought. In my opinion, whether or not there is clear and conclusive evidence that members of Congress or our staffs have benefitted financially from insider information and whether or not the SEC believes it can act against members of Congress under its existing authority, there ought to be a law that explicitly deters such unethical, illegal behavior by members of Congress and punishes it when it happens.

Our goal today is to sort out the facts and determine precisely what legal reforms are needed to ensure that regulators and law enforcers have the tools they need to bring to justice members of Congress and our staffs who defy the public trust by using insider information for personal gain.

Our first witnesses today, who we will call on in a short while, will be Senators Kirsten Gillibrand and Scott Brown, a valued member of this Committee, who have taken the lead in the Senate in introducing legislation on this problem and that has been referred to our committee, which is why we’re convening this hearing here today.

The point we’re focused on today is narrow, but touches on much broader realities. The fact is the American people’s faith in their elected representatives is the cornerstone around which our democratic republic was built. When that faith ebbs, as it now has to historic lows, we must increase our efforts to ensure that the people who did us the honor of sending us to Washington to represent them are confident that our only business is their business. I’ve been reading a lot about George Washington lately and he said it well long ago on the first day of our new government, “The foundations of our national policy will be laid in the pure and immutable principals of private morality, and the preeminence of free government [will] be exemplified by all the attributes which can win the affections of its citizens and command the respect of the world.” Adopting a new law that explicitly makes insider trading by members of Congress illegal would strengthen the “foundations of our national policy” and I hope, in a small way, help repair the breach that exists today between our government and our people.

Senator Collins.