



September 27, 2005

Chairman George V. Voinovich
Vice Chairman Tim Johnson
The Select Committee on Ethics
220 Hart Building
United States Senate
Washington, DC 20510

Dear Chairman Voinovich and Vice Chairman Johnson:

Common Cause calls on the Senate Ethics Committee to initiate an investigation to determine whether Senate Majority Leader Bill Frist (R-TN) violated Senate ethics rules by directing trustees to sell his HCA Inc. stock held in a blind trust.

Additionally, we ask the Committee to clarify how the numerous communications between the senator and trustees of his blind trust during a period when the senator was working on legislation of interest to HCA did not qualify as a conflict of interest.

Federal investigators and the Securities and Exchange Commission are investigating Senator Frist, whose family founded and whose brother sits on the board of HCA, because the stock sale occurred shortly before a poor earnings report. That report caused the stock price to fall by 9 percent, prompting accusations of insider trading. While these particular allegations may be outside the jurisdiction of the Committee, it is the Committee's responsibility to investigate whether Senator Frist's stock sale from a qualified blind trust violated Senate ethics rules.

Senate rules require senators who set up blind trusts to surrender control of those accounts to private trustees, except under extraordinary circumstances.

The model blind trust agreement available on the Committee's website states that there shall be no "direct or indirect communication" between senators and trustees unless the senator is directing the trustee "to sell all of an asset . . . [which] creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties" by the senator.

First, Senator Frist appears to have had regular contact with trustees concerning the contents of the qualified blind trusts and exercised an unusual level of control over the assets in the trusts.

Derek Bok
Chairman

Chellie Pingree
President and CEO

Archibald Cox
Chairman Emeritus

John Gardner
Founding Chairman

Apparently, Senator Frist was also regularly kept appraised of the contents of his qualified blind trust by trustees and family members. This appears to be in conflict with the requirements established to keep senators at “arm’s length” from decisions regarding financial investments to avoid possible conflicts of interest. According to published reports, Senate records show that trustees for Senator Frist and members of his family wrote the senator nearly two dozen times between 2001 and July 2005, about transfers of assets to his blind trusts and sales of assets.

Secondly, it is difficult to identify what Senator Frist’s “subsequent assumption of duties” will be or how they might differ from his current duties. A spokesperson for Senator Frist has indicated that the sale was initiated to avoid a conflict of interest because the senator is preparing to promote health care legislation in the 109th Congress. However, the stated intention of promoting legislation does not appear to meet a reasonable definition of a “subsequent assumption of duties.” Especially since Senator Frist has made countless decisions affecting the health care industry during the last three years as Senate Majority Leader, such as decisions on committee appointments, executive branch appointments, budget and appropriations measures, etc.

Senator Frist also sponsored the Medicare Prescription Drug Benefit bill in 2003. HCA had a clear legislative interest in this bill. Lobby disclosure reports filed by a lobbyist firm working for HCA, The Smith-Free Group, indicate that it lobbied members of the Senate on this bill on behalf of HCA. Senator Frist owned HCA stock at the time, and according to published reports was in communication with his trustees concerning his financial assets. It defies logic that Senator Frist’s recently stated intention of promoting health care legislation in the coming months qualifies as a possible conflict of interest while his sponsorship of major health care legislation in the past, such as the Medicare Prescription Drug Benefit bill, did not.

It is difficult to believe that the Committee would consider Senator Frist’s justification for intervening in the administration of a “qualified blind trust” satisfactory because it would severely weaken the “arm’s length” restrictions placed on qualified blind trusts that are meant to prevent conflicts of interest or the appearance thereof. The new standard for a “subsequent assumption of duties” that would allow members to sell assets in a qualified blind trust would become meaningless. Senators would merely have to announce the intention of working on certain legislation in order to qualify.

A spokesman for Senator Frist has indicated that Frist “received approval from the Ethics Committee prior to issuing the divestiture order.” We ask that the Committee make public the precise request and approval granted to Senator Frist, which allowed the Senator to direct the trustee of his blind trust to sell the HCA stock. We also ask that the Committee clarify how the communications between Senator Frist and his trustees about his blind trust are consistent with Senate rules governing senators’ access to information about the contents of qualified blind trusts.

There is an obvious conflict of interest that exists when a member of Congress has a large, personal financial stake in a specific company or industry that has a direct interest in pending legislation. For years, Senator Frist has held a large stake in HCA while working closely on legislation of interest to HCA. This was allowed, presumably, because that stock was held in a qualified blind trust. However, it now appears that Senator Frist had extraordinary information about and control over these assets.

Blind trusts are used to avoid a conflict of interest by keeping senators “at arm’s length” from investments that might conflict with their official duties. Therefore, it is critical that the Senate Ethics Committee exercise effective oversight and enforcement of rules relating to the use of blind trusts in order to maintain public credibility and avoid conflicts of interest or the appearance thereof.

Common Cause calls on the Senate Ethics Committee to initiate an investigation to determine whether Senate Majority Leader Bill Frist (R-TN) violated Senate ethics rules by directing trustees to sell HCA Inc. stock held in a blind trust for the senator and to clarify how the numerous communications between the senator and trustees of the blind trust concerning its contents are consistent with rules governing such communications.

Sincerely,

A handwritten signature in black ink that reads "Chellie R." with a stylized flourish at the end.

Chellie Pingree
President
Common Cause