

104
**S. 1794—CONGRESSIONAL, PRESIDENTIAL, AND
JUDICIAL PENSION FORFEITURE ACT**

Y 4. G 74/9: S. HRG. 104-710

S. 1794—Congressional, Presidential... **ARING**

BEFORE THE

**COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ONE HUNDRED FOURTH CONGRESS**

SECOND SESSION

ON

S. 1794

TO AMEND CHAPTER 83 OF TITLE 5, UNITED STATES CODE, TO PROVIDE FOR THE FORFEITURE OF RETIREMENT BENEFITS IN THE CASE OF ANY MEMBER OF CONGRESS, CONGRESSIONAL EMPLOYEE, OR FEDERAL JUSTICE OR JUDGE WHO IS CONVICTED OF AN OFFENSE RELATING TO THE OFFICIAL DUTIES OF THAT INDIVIDUAL, AND FOR THE FORFEITURE OF THE RETIREMENT ALLOWANCE OF THE PRESIDENT FOR SUCH A CONVICTION.

SEPTEMBER 17, 1996

Printed for the use of the Committee on Governmental Affairs



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S. 1794, CONGRESSIONAL, PRESIDENTIAL, AND JUDICIAL PENSION FORFEITURE ACT

TUESDAY, SEPTEMBER 17, 1996

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:31 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ted Stevens, Chairman of the Committee, presiding.

Present: Senator Stevens.

OPENING STATEMENT OF CHAIRMAN STEVENS

Chairman STEVENS. S. 1794, the Congressional, Presidential, and Judicial Pension Forfeiture Act, amends current law regarding the forfeiture of a Federal pension upon conviction of certain offenses. It expands the current list of offenses which trigger pension forfeiture. Under this bill, an individual convicted of any of these offenses would forfeit a pension if the individual is a Member of Congress, congressional staff, the President or Vice President, or a member of the Federal judiciary at the time the offense was committed.

Under current law, Federal employees, Members of Congress, and members of the Uniformed Services are deprived of pensions or retiree pay if they are convicted of specific crimes related to disloyalty to the United States or threats to the national security and national defense. This bill, introduced by Mr. Gregg, expands those provisions.

I know that the administration has concerns about the legislation. We expect them to testify today. I also understand the Judicial Conference of the United States has questions about the bill, and we will receive their testimony.

There has been a great deal of media attention given to these provisions in recent days. I am sure that we will have debate on this provision, but we look forward to the testimony of the witnesses and the thoughtful discussion that the bill presents to us.

Senator Gregg?

TESTIMONY OF HON. JUDD GREGG, U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Senator GREGG. Well, I thank you, Senator Stevens. I especially thank you for holding this hearing in a very prompt manner and also rescheduling it as a result of a conflict last week. I appreciate the fact that you did that, and I appreciate your staff's effort, and any inconvenience it may have caused them I apologize for.

This bill, as you mentioned, was brought forward by myself. I would like to mention it is also cosponsored by Senators Reid, Nickles, Warner, Kassebaum, Thurmond, Smith, Bryan, Jeffords, Helms, Boxer, Thomas, Inhofe, Snowe, Abraham, and Robb.

The purpose of this bill is essentially to address what I consider to be an unfortunate fact, which is that in recent history a number of Members of Congress and members of the administration and, unfortunately, even members of the judiciary have taken actions which have violated their oath of office, actions which have violated their trust which they owe to the American people. And in doing so, they have been convicted of felonies. Yet even though they have been convicted of a felony for violating their oath of office and their relationship of trust with the American people, they still continue to receive significant amounts of pension payments, which are paid for by the taxpayers.

We are not discussing in this bill or affecting in this bill contributions made to pension plans made by Members of Congress, the administration, or judges. Those contributions are theirs. They have a right to receive them and to have them paid back to them under the contract agreement that they have under their pensions. What we are talking about here is the taxpayer-funded portion of the pension payments which Members of Congress, members of the administration, or judicial members receive after they have been convicted of a felony.

It is projected that as of today \$21 million will be paid in pension benefits to Members of Congress who have been convicted of felonies—\$21 million; that in 1995 \$670,000 alone was paid and in 1996 the number will be \$680,000 paid in pension benefits, taxpayer obligations, to Members of Congress who have been convicted of felonies. In fact, one Member of Congress, who was a senior Member of Congress, who was convicted of a felony and who is presently serving a prison term this year received approximately \$92,000 in pension benefits paid for by the taxpayers while in jail.

In addition, ironically, as it relates to Members of Congress who are felons and who are in jail, they also receive the COLA. So not only do they receive the taxpayer benefit, but they also receive a COLA payment on top of that, something which Members of Congress have not voted for themselves, but somebody who is a felon who has violated their oath of office and who is actually in jail can receive a COLA on top of receiving their pension benefit.

What this bill does technically, however, is very simple and not complicated at all. Under the present law, a Member of Congress, a member of the administration, or a member of the judiciary who is convicted of a crime, a felony, for disloyalty to the United States or national security offense loses their pension. That is reasonable. What we have done in this is add to the list of crimes for which you would lose your pension. So essentially this bill simply adds a list of crimes. It doesn't change the effect, it doesn't change the manner in which Members of Congress, members of the administration, and members of the judiciary are treated under the present law if they had been convicted of disloyalty or a national defense violation. It simply adds to the disloyalty and national defense violations the crime of bribery, conflict of interest, defrauding and conspiring to defraud the United States, election offenses involving

vote buying, intimidation, or contributions, theft or embezzlement of Government property or funds, false or fraudulent statements to the government, and perjury and subordination of perjury.

So it is very limited in scope to those types of criminal actions which involve violation of trust and the violation of the oath of office. And as such, it is not a dramatic expansion. I believe it is a reasonable approach and one which clearly is logical, and I think if you asked just about anybody whether or not somebody should be getting a pension benefit paid for by the taxpayers after they had violated their oath of office as a result of bribery or some other action relating to their obligation of trust, the answer would be of course not. So this is an attempt to address this.

I certainly appreciate the Chairman's courtesy in holding this hearing and his willingness to take a look at this bill in a prompt manner.

[The prepared statement of Senator Gregg follows:]

PREPARED STATEMENT OF SENATOR JUDD GREGG

Mr. Chairman, I thank you for holding this hearing and providing me the opportunity to testify in support of my legislation to hold our public officials accountable. This bill is, unfortunately, a necessary measure. Even its name—the Congressional, Presidential and Judicial Pension Forfeiture Act—does not give any of us a good feeling. However, I do not introduce this bill apologetically, because I think there is a compelling need to enact these changes in order to regain public confidence and trust in elected officials and top federal appointees.

I urge all of my distinguished colleagues to examine this bill and to ask themselves the same kinds of questions the American people have been asking for a long time. "Why are Members of Congress not held accountable for their decisions, and, more importantly, for their wrongdoing? Why do they seem to think they are above the people who elected them, and even sometimes above the law?"

Recent events have only confirmed such cynicism. I'm sure none of us would like to be reminded of the embarrassment caused by these scandals, which are representative of an increasing trend of privilege abuse. Thirty-four members have served felony prison sentences since 1900, thirteen of those in the last decade. Perhaps we need a deterrent, a statutory deterrent—such as the Congressional, Presidential and Judicial Pension Forfeiture Act—which would cause those of us who may be tempted to abuse the privileges of our offices to think twice before exploiting those powers. More importantly, this bill is also aimed at establishing a common-sense approach to fair play in the use of taxpayers' money—an approach that the public understands instinctively but to which Congress has yet to conform.

This bill would deny Congressional pensions to any members who commit specified felony crimes during their term in office. The crimes relate directly to the execution of Congressional duties and were taken from a compilation of federal ethics laws prepared by the Committee on Government Affairs. These crimes are acts which we all know are wrong, and for which any American citizen would pay dearly in a court of law. Yet we as Members of Congress were elected on the basis of integrity and character, and as such, we should hold ourselves to higher ethical standards than the average citizen. This is true in the military, whose officers, if convicted in a court-martial, lose their pensions for serious wrongdoing. We should ask ourselves if we, too, should submit to the kind of standards worthy of our offices. I think we should.

Mr. Chairman, the question here is accountability. How accountable do we perceive ourselves as being for the decisions we make? While we would never deny that we all make mistakes—and our constituents would never expect us to be perfect—the American people do have a right to expect that we serve them honorably, with a strong mind, and with a clear conscience. More specifically, they have a right to expect that we perform our duties free of corruption. Therefore, I strongly urge all of you to consider the source of public cynicism and the bad image which government has recently acquired. Sixty-six percent of eligible American voters decide to stay home on election night, not because they would rather watch TV, but because they have lost faith in their elected officials—in us—and in the importance of their votes in a democratic system they no longer feel is responsive to them. And this time, it's not about issues; it's about accountability. None of us would claim here

on the floor of the Senate that we do not hold ourselves accountable for our own actions. Hopefully, my colleagues will agree to support this bill as a step towards regaining the respect and the trust of the American people.

Mr Chairman, I again thank you for calling this hearing, and I also thank my colleagues who have come forward and have demonstrated their support for the bill by becoming original cosponsors. It is gratifying, and I am very honored, to have my distinguished colleagues, from both sides of the aisle, joining me on this issue.

Chairman STEVENS. Well, thank you very much. We do have some concerns that have been raised by the Judicial Conference and by the Department of Justice. Are you familiar with those?

Senator GREGG. I am marginally familiar with them, I suspect.

Chairman STEVENS. Would you like to join us at the table here while we listen to their testimony if you have time? I don't know whether you do or not.

Senator GREGG. I have another hearing that is proceeding in my Labor Committee, unfortunately.

Chairman STEVENS. Thank you very much, Senator.

Senator GREGG. Thank you.

Chairman STEVENS. We will next call on William Flynn, the Associate Director for Retirement and Insurance, Office of Personnel Management—I am sorry, his deputy, John Landers, is here. Our next witness after that will be John Keeney, Acting Assistant Attorney General for the Crime Division, and then the Hon. S. Jay Plager, Judge, U.S. Court of Appeals for the Federal Circuit.

Mr. Landers?

TESTIMONY OF JOHN LANDERS, DEPUTY DIRECTOR, RETIREMENT AND INSURANCE SERVICE, RETIREMENT POLICY DIVISION, OFFICE OF PERSONNEL MANAGEMENT

Mr. LANDERS. Good morning, Senator. Thank you.

Mr. Flynn was unable to remain. He had a sudden family emergency—

Chairman STEVENS. Do you want to pull that mike up to you? Yes, we understand he has a personal problem, and we appreciate your being here to take his place.

Mr. LANDERS. I am pleased to appear today to discuss the Congressional, Presidential, and Judicial Pension Forfeiture Act. The bill would expand the list of offenses in current law that trigger a loss of Federal retirement rights. It would add to the current list of national security violations a wide range of offenses, from accepting a bribe to making false statements on a Federal benefit application. The expanded list would apply to violations committed in office, if punishable by imprisonment for more than 1 year, by a Member of Congress, including the Vice President, a congressional employee, or a Federal justice or judge. In addition, a former President would lose the former President's allowance, which is equal to a Cabinet member's salary, if convicted of one of the listed offenses and the offense was committed while the President was still in office.

With one exception, under both current law and the bill's expanded list of offenses, survivor annuities for the widow or widower and children of an offender are barred. Payment of spousal benefits is permitted in forfeiture cases when the Attorney General determines that the spouse cooperated with Federal authorities in the conduct of a criminal investigation and subsequent prosecution of

the individual which resulted in such forfeiture. With regard to former Presidents, a conviction for an offense listed in the bill would not affect a former President's survivor's benefit.

We defer to others who are more directly concerned parties, such as the Department of Justice, with respect to the possible impact of this proposal on the criminal justice system. However, we would like to take this opportunity to discuss technical issues related to the bill, including its effect on an offender's spouse and children.

The Hiss Act, Public Law 83-769, approved in 1954, contained a list of job-related Federal felonies, the conviction of which would bar retirement benefit payments to Federal employees and their families. Most of the convictions under which annuities were denied were for violations of postal law and other felony convictions that did not involve national security.

Controversy over the Hiss Act arose in cases where the courts had imposed minimal penalties, such as suspended sentences, small fines, or probation, yet the offenders and their families suffered the additional penalty of losing all annuity benefits, sometimes based on decades of service. In some cases, individuals were re-employed by the Federal Government subsequent to their convictions and were denied annuity benefits based on that employment as well.

Due to these effects and other concerns, Congress made major changes in the Hiss Act in 1961. The amendments strengthened the provisions dealing with national security offenses and eliminated the provisions applicable to non-security offenses. The amendments also provided for retroactive annuity benefits for individuals who had lost them based upon the commission of offenses unrelated to national security.

The bill being considered today, while expanding the types of violations that would result in forfeiture of annuity, would apply only if the offense is punishable by imprisonment for more than 1 year. Even if the actual sentence imposed in a case was suspended or was probation, the annuity would be forfeited.

Under certain circumstances, all of the offenses listed in the bill may be punished by imprisonment for more than 1 year. However, for six of the listed crimes, conviction is punishable by imprisonment for not more than 1 year if the individual engaged in the conduct, but by imprisonment for up to 5 years if the individual "willfully" engaged in the conduct. Similarly, two more of the criminal statutes provide for imprisonment for not more than 1 year, except that imprisonment can be for up to 2 years "if violation is willful." This could lead to the following situations under the proposal:

One individual, a congressional file clerk with 35 years of service, misrepresents his income on a federally insured loan application. He is charged with and convicted of making a false statement under 18 U.S.C. Section 1001 and received a suspended sentence. While his actions were certainly improper, under this bill the employee's annuity would be forfeited, even though the offense committed was completely unrelated to the employee's official duties.

In a second case, if a Member of Congress is charged with and convicted of a non-willful violation of 18 U.S.C. Section 203—"Compensation to Members of Congress, officers, and others in matters affecting the Government"—the offense would not be subject to im-

prisonment for more than 1 year. Consequently, the former member and his or her spouse and children would not lose the annuity.

This type of apparent inconsistency in some cases led to the 1961 repeal of the original list of felonies in the forfeiture provisions. Because of this, the Committee may wish to consider limiting application of the Congressional, Presidential, and Judicial Pension Forfeiture Act—other than for Members, judges, and the President—only to very high level congressional employees and making some provision for families.

Finally, the bill would apply to convictions that occur after enactment. As currently written, this effective date provision may constitute an *ex post facto* law. In 1972, in the *Hiss* case, the United States District Court for the District of Columbia forbade application of the forfeiture law to the very individual whose misfeasance led to its passage. The Committee may wish to consider amending the effective date provision of the bill so that it will apply only if the offense, rather than the conviction, occurred after enactment.

I hope this information is helpful to the Committee. I will be glad to answer any questions.

[The prepared statement of Mr. Flynn, submitted by Mr. Landers, follows:]

PREPARED STATEMENT OF WILLIAM E. FLYNN, III

Mr. Chairman and Members of the Committee: I am pleased to appear today to discuss the Congressional, Presidential, and Judicial Pension Forfeiture Act. The bill would expand the list of offenses in current law that trigger a loss of federal retirement rights. It would add to the current list of national security violations a wide range of offenses, from accepting a bribe to making false statements on a federal benefit application. The expanded list would apply to violations committed in office, if punishable by imprisonment for more than 1 year, by a Member of Congress (including the Vice President), a Congressional employee, or a Federal justice or judge. In addition, a former president would lose the former president's allowance, which is equal to a cabinet member's salary, if convicted of one of the listed offenses and the offense was committed while the president was still in office.

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In a second case, if a Member of Congress is charged and convicted of a non-willful violation of 18 U.S.C. § 203 ("Compensation to Members of Congress, officers, and others in matters affecting the Government") the offense would not be subject to imprisonment for more than 1 year. Consequently, the former member and his or her spouse and children would not lose the annuity.

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Finally, the bill would apply to convictions that occur after enactment. As currently written, this effective date provision may constitute an *ex post facto* law. In 1972, in *Hiss v. Hampton*, the United States District Court for the District of Columbia forbade application of the forfeiture law to the very individual whose misfeasance led to its passage. The committee may wish to consider amending the effective date provision of the bill, so that it will apply only if the offense occurred after enactment.

I hope this information has been helpful to the committee. I will be glad to answer any questions you may have.

Chairman STEVENS. Thank you very much. I think that the statement speaks very well for your position, Mr. Landers.

Let me inquire, Senator, are you coming from another meeting? Would you like to proceed now?

Senator REID. If I could, Mr. Chairman, I would appreciate your allowing me to speak out of order.

Chairman STEVENS. Judge, Mr. Keeney, I hope you will understand. We will proceed as a courtesy.

Senator REID. I will be quick.

Chairman STEVENS. Please, Senator.

TESTIMONY OF HON. HARRY REID, U.S. SENATOR FROM THE STATE OF NEVADA

Senator REID. Mr. Chairman, I appreciate it very much. First of all, let me say I could probably come up with a lot of reasons why this legislation may not be technically perfect, but I would hope the Committee would take that into consideration and, if there are problems, that they will change the measure accordingly.

I would ask unanimous consent that my full statement be made part of the record.

Chairman STEVENS. It will be, Senator.

Senator REID. Mr. Chairman, you and I have served with people over the years who have been convicted of felonies and are still

drawing their pensions. I have been involved in impeachment proceedings regarding members of the Federal judiciary. They have been impeached. They are still drawing their pensions.

This puts a real sour taste in the mouth of the American public, and I think we need to do something to put a stop to it. I know that we cannot do anything about that which has already gone on. We cannot do that, but we can do something about acts, criminal in nature, that take place in the future. I think that we need to do something.

Although I have expressed it numerous times before, I would like to reiterate my appreciation to Senators Judd Gregg and Don Nickles for working with me on this issue, as they have for many months. As the Chairman knows, we have had difficulty getting this legislation before the body. With all the things that we have done this past year, it has been difficult procedurally. And I recognize, as do Senators Gregg and Nickles, we are not going to get anything done this year. But I would hope that the Chairman would keep this in mind as one of the things on which we need to have a full and complete hearing early next year.

We are all aware of the recent cases where there have been egregious violations of the public trust. Unfortunately, these individuals, even though isolated cases, tarnish the image of all public office holders. They do so because the public is led to believe that crime committed while serving in public office pays. And to a certain extent, under the present law it does. Public officials can commit fraud or perjury while in public office and are still able to collect pensions. I do not believe this is appropriate.

This bipartisan legislation would put an end to this. It would apply to judges, Members of Congress, and the President. There has been some movement to say to Senators that are pushing this legislation, "Why don't we just limit it to the legislative branch?" But I think that we have done enough public flagellation of ourselves, and if this is going to be a law, it should apply to all branches of Government. We have a tendency on pay raises and other matters, to limit our focus to the legislative branch. I think that is inappropriate.

Public service, Mr. Chairman, is both an honor and a privilege. It represents a trust, and we ought to have harsh penalties for those who breach that trust. Those who violate this trust while serving in public office should not be entitled to pensions. The taxpayers have helped finance these pensions. At a minimum, they are owed this type of accountability.

I personally appreciate, Mr. Chairman, your willingness to schedule this hearing. I know it has been difficult, and we have had to reschedule on a number of occasions. But you have stuck with it, and I appreciate that.

I would hope, as I repeat, that this is an issue on which we can have a full and complete hearing. It is an issue that needs to be discussed, and I appreciate your allowing me to speak out of order here this morning.

[The prepared statement of Senator Reid follows:]

PREPARED STATEMENT OF SENATOR HARRY REID

Mr. Chairman, I wish to thank you for scheduling a hearing today on a matter I believe is of great importance to all of us who serve in the United States Senate. The issue is whether we should enhance penalties for those who engage in criminal acts while serving in public office. More specifically, whether such officials should be rewarded with large pensions after they have been convicted of certain criminal offenses.

As you know, legislation was introduced by myself and Senators Gregg and Nickles which creates tough new sanctions for public officials who engage in wrongdoing while they are in office. This legislation, the Congressional, Presidential and Judicial Pension Forfeiture Act, prohibits the receipt of pension benefits by Members of Congress, Presidents and members of the judiciary who engage in criminal conduct while in office. Those who engage in felonies that relate to abuse of office and undermine confidence in public officials should not be entitled to receive generous pension benefits.

Recently, I have heard from many constituents about this issue. This is really something that reflects on the integrity of this institution. It is an issue that affects any individual who aspires to public service. Most I have heard from are upset with the ability of public servants to collect pension benefits after they have been convicted of a felony while serving in a public office. Current law allows former Members of Congress or judges to collect their taxpayer financed pensions even after they have been convicted of such offenses as perjury.

The bipartisan legislation we have introduced today would put an end to this practice. Taxpayer financed pensions are not an entitlement. If public officials breach the public's trust they should forfeit their right to these pensions. They do not deserve these benefits if they commit crimes while serving in office. Serving in public office is an honor carrying tremendous responsibility. Whether you are the president, a federal judge or a Member of Congress you are always aware of this responsibility. Few undertake this responsibility lightly.

Yet all of us are aware of recent cases involving egregious violations of the public trust. Unfortunately, these individual cases, while isolated, tarnish the image of all public officeholders. They undermine public confidence in our democracy. They do so because the public is led to believe that crime committed while serving in public office pays. And to a certain extent, under the current law, it does. Public officials can commit fraud or perjury while in public office and are still able to collect generous pensions. This is simply not right.

The bipartisan legislation we have introduced will put an end to this. Judges, Members of Congress and the President will forfeit their pension benefits if they commit felonies while in public office. The list of felonies which would result in a loss of pension are directly related to the performance of official duties. Among the offenses listed in the bill are

- bribery and illegal gratuities,
- improper representation before the government,
- violation of antilobbying restrictions,
- false claims and fraud,
- abuse of the electoral process,
- conspiracy to defraud the United States, and
- perjury

Public service is both an honor and a privilege. It represents a sacred trust and thus we ought to have harsh penalties for those who breach that trust. Those who violate this trust while serving in public office should not be entitled to their pensions. The taxpayers have helped finance these pensions. At a minimum, they are owed this kind of accountability.

I wish to thank Senators Gregg and Nickles for their leadership and support on this issue. Senator Gregg and I had both been working on a solution to this issue and I am confident that this legislation is the appropriate response. I believe this is a problem in need of bipartisan attention. Greater accountability will ultimately produce public greater confidence in our three branches of government.

Finally, I appreciate the Chairman's willingness to schedule a hearing on this issue before we adjourn. I realize there are a limited number of legislative days remaining in this session but would encourage the Committee to take a serious look at the proposal we have drafted. I believe this to be an issue of great importance to all who aspire to public office. I am confident our legislation would take significant steps toward restoring public trust in government.

Chairman STEVENS. Thank you very much, Senator. It is late in the session, but we will do our best to see what we can do with some of the comments that are made on the legislation and get back to you about that.

Mr. Landers, there is no reason for you to stay unless you want to hear the rest of the witnesses.

Our next witness in order was Mr. Keeney, but I have to inquire whether the judge has to get back also. Judge?

Judge PLAGER. I am at your disposal, Senator.

Chairman STEVENS. Thanks. Well, I will listen to Mr. Keeney first. Mr. Keeney?

TESTIMONY OF JOHN C. KEENEY, ACTING ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. KEENEY. Mr. Chairman, my formal statement, I request that it be put in the record, and I would like to take about 4 minutes to just summarize the points that are made in that statement, if I may.

Chairman STEVENS. Yes, sir. I have it before me. It will be placed in the record in total.

Mr. KEENEY. Thank you, Senator.

While the Department of Justice has made the investigation and prosecution of corruption offenses a top priority and fully supports the goal of enhancing the penalties for public corruption offenses, we believe that the current bill would impair our ability to prosecute public corruption offenses. As has been pointed out, the current bill would expand 5 U.S.C. 8312 and 8313, which require the forfeiture of Federal pensions upon conviction of certain criminal offenses that threaten the national security.

Section 2 of the bill would require the forfeiture of annuities or retirement pay of Members of Congress, congressional employees, Federal judges, and the Vice President upon conviction of certain specified felony offenses, including bribery, conflicts of interest crimes, conspiracy, and false statements.

Section 3 would further require such forfeiture when one of the enumerated office holders willfully remains outside of the United States for more than 1 year with knowledge that he or she has been indicted for one of the listed offenses.

Finally, Section 5 of the bill would require the forfeiture of the retirement allowance for former Presidents upon conviction of one of the offenses specified if the offense was committed during the individual's term of office.

We have several significant concerns with the bill. First, the bill does not require any connection at all between the offense for which the defendant is convicted and the defendant's official position. That is a technical defect which can be readily taken care of. As a result, the bill will not achieve its stated goal of enhancing the punishment for public officials who violate the public trust in connection with their official duties.

Second, by requiring mandatory forfeiture of pensions, the bill would reduce our ability to negotiate appropriate guilty pleas and obtain cooperation from defendants where it is most needed. Evidence that we obtain from low-level participants in crimes who

plead guilty often enables us to prosecute all of the persons responsible for a crime, including in public corruption cases higher-ranking officials who insulate themselves from direct involvement.

The third problem is that the bill's mandatory forfeiture of pension funds would lead to a significant disparity in sentencing. The provision would apply without regard to the defendant's length of public service, the value of the pension involved, the nature of the particular offense, the amount of any loss to the Government, or the financial gain obtained by the defendant.

Finally, because the Constitution guarantees that the compensation of Article III judges will not be reduced while they hold office and that they may be removed only by impeachment, the bill would encourage a Federal judge who is convicted of a criminal offense to remain on the bench as long as possible so as to continue receiving a full salary rather than resigning with no prospect for retirement compensation.

One of the central goals in pursuing cases against all corrupt public officials should be to remove them from office as quickly as possible, and the current bill would create a disincentive for such individuals to surrender their public office.

The Department believes that the best manner of increasing our ability to punish public corruption offenses is through a more flexible approach that works within the framework of the Sentencing Commission. A flexible approach would eliminate the potential disparities that would occur under the bill and preserve our ability to attack corruption.

Although our concerns regarding the bill's impact on criminal law enforcement lead us to oppose the bill, we would very much appreciate the opportunity to work with your Committee on these issues, Mr. Chairman.

We wish to take this opportunity to again recommend passage of the Department of Justice anti-public corruption proposal, which has been introduced as S. 1738.

Thank you for the opportunity to address the Committee, Mr. Chairman.

[The prepared statement of Mr. Keeney follows:]

PREPARED STATEMENT OF JOHN C. KEENEY

Mr. Chairman and Members of the Committee, I appreciate this opportunity to provide the Committee with the views of the Department of Justice regarding S. 1794, the "Congressional, Presidential, and Judicial Pension Forfeiture Act." The Administration is continuing to review this bill and may submit additional views in the future.

While the Department of Justice fully supports the goal of enhancing the penalties for public corruption offenses, we believe that the bill contains several problems, and would impair our ability to prosecute public corruption offenses. As I will address more fully in a few moments, we believe that the Federal Sentencing Guidelines provide the most effective vehicle for adjusting the penalties for public corruption offenses.

At the outset, I wish to make clear that the Department of Justice takes public corruption very seriously. We have made the investigation and prosecution of corruption offenses a top priority, and we have sought to increase the penalties imposed for public corruption offenses. Establishing an effective response to public corruption, however, is not an easy task.

The current bill would expand 5 U.S.C. §§ 8312 and 8313, which require the forfeiture of federal pensions upon conviction of certain criminal offenses that threaten the national security. Specifically, Section Two of the bill would require the forfeiture of annuities or retirement pay of Members of Congress, congressional employ-

ees, federal judges, and the Vice President upon conviction of certain specified felony offenses, including bribery, conflicts of interest crimes, conspiracy, and false statements. Section Three would further require such forfeiture when one of the enumerated officeholders willfully remains outside the United States for more than one year with knowledge that he or she has been indicted for one of the listed offenses. Finally, Section Five of the bill would require the forfeiture of the retirement allowance for former Presidents upon conviction of one of the offenses specified if the offense was committed during the individual's term of office.

We have several significant concerns with the bill. First, the bill does not require any connection at all between the offense for which the defendant is convicted, and the defendant's official position. As a result, a congressional employee who submits a false statement to any executive agency—such as an application for a federally insured home loan or veteran's benefits—would forfeit his or her entire pension, although the false statement had no connection at all to the person's official duties. As a result, the bill will not achieve its stated goal of enhancing the punishment for public officials who violate the public trust in connection with their official duties. We believe that any effort to attack the pension funds of a public official should require a clear nexus between the criminal offense and the employee's official responsibilities.

Second, from a law enforcement perspective, we are greatly concerned that the bill's inflexibility would impair our ability to prosecute public corruption offenses. By requiring mandatory forfeiture of pensions, the bill would raise the stakes substantially for certain defendants, and reduce our ability to negotiate appropriate guilty pleas and obtain cooperation from defendants where it is most needed.

Effective plea negotiations serve the public in two important ways. First, they conserve our limited government resources. Simply put, when defendants do not plead guilty the government must prove their guilt at trial, and this requires the expenditure of substantial prosecutorial and judicial resources. A plea of guilty allows us to direct those resources to address other crimes and other important priorities.

Second, plea negotiations increase our ability to successfully prosecute all of the persons involved in committing a crime. Defendants who plead guilty are generally required to cooperate in the government's investigation of others who were involved in that crime. The evidence that we obtain from such insiders would otherwise be lacking in the case of high-ranking officials, who may insulate themselves from scrutiny by numerous layers of lower-level participants. In the sensitive and difficult area of public corruption investigations, the cooperation of inside witnesses is not only extremely valuable, it may be the deciding factor in holding high-level public officials accountable for their crimes.

The third problem is that the bill's mandatory forfeiture of pension funds would lead to significant disparity in sentencing. The provision would apply without regard to the defendant's length of public service, the value of the pension involved, the nature of the particular offense, the amount of any loss to the government, or the financial gain obtained by the defendant. As a result, a defendant who had provided valuable public service for many years but committed a single criminal offense would suffer substantial financial consequences that would not be imposed on a defendant who committed a more egregious crime immediately upon taking office. Likewise, two defendants who commit very different crimes might suffer exactly the same financial penalty, simply because the amounts of their pensions were the same for reasons that have no connection to the nature of the crime. Such disparate results should be avoided.

Finally, because of the unique constitutional status of Article III judges, the bill may actually encourage a corrupt judge to remain on the bench and on the payroll. The Constitution guarantees that the compensation of Article III judges—whether active or in senior status—will not be reduced while they hold office, and the only mechanism for the removal of federal judges from office is impeachment by Congress. As a result, a federal judge who is convicted of a criminal offense continues to receive an undiminished salary until he or she resigns from the bench or is impeached by Congress. Impeachment, of course, is a time-consuming and difficult process that is not undertaken frequently. By taking away the judge's pension, the bill would encourage a convicted judge to remain on the bench as long as possible so as to continue receiving a full salary, rather than resigning with no prospect for retirement compensation. One of the central goals in pursuing judicial corruption should be to remove corrupt judges from the bench as quickly as possible, and the current bill could impair our ability to do so. Indeed, we seek that objective with all corrupt public officials, and the bill would create a disincentive for such officials to resign or retire from public office.

We also note that the bill may present a problem under the *Ex Post Facto* Clause of the Constitution. Although 5 U.S.C. § 8312 is not a criminal statute, the act of taking away a person's pension benefits upon conviction of a crime may be viewed by the courts as punishment. Under the *Ex Post Facto* Clause, the punishment for a criminal offense cannot be increased after the date that the crime was committed. In its current form, however, the bill would apply to anyone who is convicted of the enumerated offenses after the date that the law is enacted, even if the crime was committed before enactment. That *ex post facto* problem prevented the forfeiture of pension benefits by Alger Hiss under the original version of Section 1812. In order to avoid any such questions under the *Ex Post Facto* Clause, any provision that takes away pension benefits based upon a criminal conviction should apply only in cases where the offense is committed after the date that the provision is enacted.

There are many complex factors that must be considered in making the punishment fit the crime. The Federal Sentencing Guidelines reflect the detailed evaluation of such factors that is necessary to effective criminal sentencing, and the Guidelines carefully quantify each factor. The Department of Justice believes that the best manner of increasing our ability to punish public corruption offenses is through a more flexible approach that works within the framework of the Sentencing Guidelines. A flexible approach that increases the penalties for offenses involving an abuse of the public trust would eliminate the potential disparities that would occur under the bill, and preserve our ability to attack corruption.

Although our concerns regarding the bill's impact on criminal law enforcement lead us to oppose the bill, we would appreciate the opportunity to work with your Committee and the Congress to increase the penalties for public corruption and the effectiveness of our response to these crimes.

We wish to take this opportunity to again recommend passage of the Department of Justice's anti-public corruption proposal, which has been introduced as S. 1378. Our proposal would significantly reduce current loopholes and increase our ability to combat these serious crimes. We appreciate that the Senate has passed this proposal on several occasions—most recently as title XLIV of H.R. 3355, the "Violent Crime Control and Law Enforcement Act of 1994"—and we look forward to working with you to achieve passage of this important anti-corruption initiative.

Thank you for the opportunity to address the Committee. I would be pleased to answer any questions at this time.

4 **TITLE XLIV—PUBLIC**
5 **CORRUPTION**

6 **SEC. 4401. SHORT TITLE.**

7 *This title may be cited as the "Anti-Corruption Act*
8 *of 1998".*

9 **SEC. 4402. PUBLIC CORRUPTION.**

10 *(a) OFFENSES.—Chapter 11 of title 18, United States*
11 *Code, is amended by adding at the end the following new*
12 *section:*

13 **"§ 226. Public corruption**

14 **"(a) STATE AND LOCAL GOVERNMENT.—**

15 **"(1) HONEST SERVICES.—***Whoever, in a cir-*
16 *cumstance described in paragraph (3), deprives or de-*
17 *frauds, or endeavors to deprive or to defraud, by any*
18 *scheme or artifice, the inhabitants of a State or polit-*
19 *ical subdivision of a State of the honest services of an*
20 *official or employee of the State or political subdivi-*
21 *sion shall be fined under this title, imprisoned not*
22 *more than 10 years, or both.*

23 **"(2) FAIR AND IMPARTIAL ELECTIONS.—***Who-*
24 *ever, in a circumstance described in paragraph (3),*
25 *deprives or defrauds, or endeavors to deprive or to de-*

1 *fraud, by any scheme or artifice, the inhabitants of a*
2 *State or political subdivision of a State of a fair and*
3 *impartially conducted election process in any pri-*
4 *mary, run-off, special, or general election through one*
5 *or more of the following means, or otherwise—*

6 *“(A) through the procurement, casting, or*
7 *tabulation of ballots that are materially false,*
8 *fictitious, or fraudulent or that are invalid,*
9 *under the laws of the State in which the election*
10 *is held;*

11 *“(B) through paying or offering to pay any*
12 *person for voting;*

13 *“(C) through the procurement or submission*
14 *of voter registrations that contain false material*
15 *information, or omit material information; or*

16 *“(D) through the filing of any report re-*
17 *quired to be filed under State law regarding an*
18 *election campaign that contains false material*
19 *information or omits material information,*
20 *shall be fined under this title, imprisoned not more*
21 *than 10 years, or both.*

22 *“(3) CIRCUMSTANCES IN WHICH OFFENSE OC-*
23 *CURS.—The circumstances referred to in paragraphs*
24 *(1) and (2) are that—*

1 “(A) for the purpose of executing or conceal-
2 ing a scheme or artifice described in paragraph
3 (1) or (2) or attempting to do so, a person—

4 “(i) places in any post office or au-
5 thorized depository for mail matter, any
6 matter or thing to be sent or delivered by
7 the Postal Service, or takes or receives there-
8 from any such matter or thing, or know-
9 ingly causes to be delivered by mail accord-
10 ing to the direction thereon, or at the place
11 at which it is directed to be delivered by the
12 person to whom it is addressed, any such
13 matter or thing;

14 “(ii) transmits or causes to be trans-
15 mitted by means of wire, radio, or television
16 communication in interstate or foreign com-
17 merce any writings, signs, signals, pictures,
18 or sounds;

19 “(iii) transports or causes to be trans-
20 ported any person or thing, or induces any
21 person to travel in or to be transported in,
22 interstate or foreign commerce; or

23 “(iv) uses or causes the use of any fa-
24 cility of interstate or foreign commerce; -

1 “(B) the scheme or artifice affects or con-
2 stitutes an attempt to affect in any manner or
3 degree, or would if executed or concealed affect,
4 interstate or foreign commerce; or

5 “(C) in the case of an offense described in
6 paragraph (2), an objective of the scheme or arti-
7 fice is to secure the election of an official who,
8 if elected, would have any authority over the ad-
9 ministration of funds derived from an Act of
10 Congress totaling \$10,000 or more during the 12-
11 month period immediately preceding or follow-
12 ing the election or date of the offense.

13 “(b) FEDERAL GOVERNMENT.—Whoever deprives or
14 defrauds, or endeavors to deprive or to defraud, by any
15 scheme or artifice, the inhabitants of the United States of
16 the honest services of a public official or a person who has
17 been selected to be a public official shall be fined under this
18 title, imprisoned not more than 10 years, or both.

19 “(c) OFFENSE BY AN OFFICIAL AGAINST AN EMPLOYEE
20 OR OFFICIAL.—

21 “(1) CRIMINAL OFFENSE.—Whoever, being an of-
22 ficial, public official, or person who has been selected
23 to be a public official, directly or indirectly dis-
24 charges, demotes, suspends, threatens, harasses, or in
25 any manner discriminates against an employee or of-

1 *ficial of the United States or of a State or political*
2 *subdivision of a State, or endeavors to do so, in order*
3 *to carry out or to conceal a scheme or artifice de-*
4 *scribed in subsection (a) or (b), shall be fined under*
5 *this title, imprisoned not more than 5 years, or both.*

6 *“(2) CIVIL ACTION.—(A) Any employee or offi-*
7 *cial of the United States or of a State or political*
8 *subdivision of a State who is discharged, demoted,*
9 *suspended, threatened, harassed, or in any manner*
10 *discriminated against because of lawful acts done by*
11 *the employee or official as a result of a violation of*
12 *this section or because of actions by the employee on*
13 *behalf of himself or herself or others in furtherance of*
14 *a prosecution under this section (including investiga-*
15 *tion for, initiation of, testimony for, or assistance in*
16 *such a prosecution) may bring a civil action and ob-*
17 *tain all relief necessary to make the employee or offi-*
18 *cial whole, including—*

19 *“(i) reinstatement with the same seniority*
20 *status that the employee or official would have*
21 *had but for the violation;*

22 *“(ii) 3 times the amount of backpay;*

23 *“(iii) interest on the backpay; and*

24 *“(iv) compensation for any special damages*
25 *sustained as a result of the violation, including*

1 reasonable litigation costs and reasonable attor-
2 ney's fees.

3 “(B) An employee or official shall not be af-
4 forded relief under subparagraph (A) if the employee
5 or official participated in the violation of this section
6 with respect to which relief is sought.

7 “(C)(i) A civil action or proceeding authorized
8 by this paragraph shall be stayed by a court upon
9 certification of an attorney for the Government that
10 prosecution of the action or proceeding may adversely
11 affect the interests of the Government in a pending
12 criminal investigation or proceeding.

13 “(ii) The attorney for the Government shall
14 promptly notify the court when a stay may be lifted
15 without such adverse effects.

16 “(d) DEFINITIONS.—As used in this section—

17 “(1) the term ‘official’ includes—

18 “(A) any person employed by, exercising
19 any authority derived from, or holding any posi-
20 tion in the government of a State or any sub-
21 division of the executive, legislative, judicial, or
22 other branch of government thereof, including a
23 department, independent establishment, commis-
24 sion, administration, authority, board, and bu-
25 reau, and a corporation or other legal entity es-

1 *established and subject to control by a government*
2 *or governments for the execution of a govern-*
3 *mental or intergovernmental program;*

4 *“(B) any person acting or pretending to act*
5 *under color of official authority; and*

6 *“(C) any person who has been nominated,*
7 *appointed, or selected to be an official or who*
8 *has been officially informed that he or she will*
9 *be so nominated, appointed, or selected;*

10 *“(2) the term ‘person acting or pretending to act*
11 *under color of official authority’ includes a person*
12 *who represents that he or she controls, is an agent of,*
13 *or otherwise acts on behalf of an official, public offi-*
14 *cial, and person who has been selected to be a public*
15 *official;*

16 *“(3) the terms ‘public official’ and ‘person who*
17 *has been selected to be a public official’ have the*
18 *meanings stated in section 201 and also include any*
19 *person acting or pretending to act under color of offi-*
20 *cial authority;*

21 *“(4) the term ‘State’ means a State of the United*
22 *States, the District of Columbia, Puerto Rico, and*
23 *any other commonwealth, territory, or possession of*
24 *the United States; and*

1 “(5) the term ‘uses any facility of interstate or
2 foreign commerce’ includes the intrastate use of any
3 facility that may also be used in interstate or foreign
4 commerce.”.

5 (b) *TECHNICAL AMENDMENTS.*—(1) The chapter anal-
6 ysis for chapter 11 of title 18, United States Code, is
7 amended by adding at the end the following new item:

“226. Public corruption.”.

8 (2) Section 1961(1) of title 18, United States Code,
9 is amended by inserting “section 226 (relating to public
10 corruption),” after “section 224 (relating to sports brib-
11 ery),”.

12 (3) Section 2516(1)(c) of title 18, United States Code,
13 is amended by inserting “section 226 (relating to public
14 corruption),” after “section 224 (bribery in sporting con-
15 tests),”.

16 **SEC. 4403. INTERSTATE COMMERCE.**

17 (a) *IN GENERAL.*—Section 1343 of title 18, United
18 States Code, is amended—

19 (1) by striking “transmits or causes to be trans-
20 mitted by means of wire, radio, or television commu-
21 nication in interstate or foreign commerce, any
22 writings, signs, signals, pictures, or sounds” and in-
23 serting “uses or causes to be used any facility of
24 interstate or foreign commerce”; and

1 (2) by inserting "or attempting to do so" after
2 "for the purpose of executing such scheme or artifice".

3 (b) *TECHNICAL AMENDMENTS.*—(1) The heading of
4 section 1343 of title 18, United States Code, is amended
5 to read as follows:

6 "**§1343. Fraud by use of facility of interstate com-**
7 **merce**".

8 (2) The chapter analysis for chapter 63 of title 18,
9 United States Code, is amended by amending the item re-
10 lating to section 1343 to read as follows:

"1343. *Fraud by use of facility of interstate commerce.*".

11 **SEC. 4404. NARCOTICS-RELATED PUBLIC CORRUPTION.**

12 (a) *OFFENSES.*—Chapter 11 of title 18, United States
13 Code, is amended by inserting after section 219 the follow-
14 ing new section:

15 "**§220. Narcotics and public corruption**

16 "(a) *OFFENSE BY PUBLIC OFFICIAL.*—A public official
17 who, in a circumstance described in subsection (c), directly
18 or indirectly, corruptly demands, seeks, receives, accepts, or
19 agrees to receive or accept anything of value personally or
20 for any other person in return for—

21 "(1) being influenced in the performance or non-
22 performance of any official act; or

23 "(2) being influenced to commit or to aid in
24 committing, or to collude in, or to allow or make op-

1 *portunity for the commission of any offense against*
2 *the United States or any State,*
3 *shall be guilty of a class B felony.*

4 *“(b) OFFENSE BY PERSON OTHER THAN A PUBLIC*
5 *OFFICIAL.—A person who, in a circumstance described in*
6 *subsection (c), directly or indirectly, corruptly gives, offers,*
7 *or promises anything of value to any public official, or of-*
8 *fers or promises any public official to give anything of value*
9 *to any other person, with intent—*

10 *“(1) to influence any official act;*

11 *“(2) to influence the public official to commit or*
12 *aid in committing, or to collude in, or to allow or*
13 *make opportunity for the commission of any offense*
14 *against the United States or any State; or*

15 *“(3) to influence the public official to do or to*
16 *omit to do any act in violation of the official's lawful*
17 *duty,*

18 *shall be guilty of a class B felony.*

19 *“(c) CIRCUMSTANCES IN WHICH OFFENSE OCCURS.—*
20 *The circumstances referred to in subsections (a) and (b) are*
21 *that the offense involves, is part of, or is intended to further*
22 *or to conceal the illegal possession, importation, manufac-*
23 *ture, transportation, or distribution of any controlled sub-*
24 *stance or controlled substance analogue.*

25 *“(d) DEFINITIONS.—As used in this section—*

1 “(1) the terms ‘controlled substance’ and ‘con-
2 trolled substance analogue’ have the meanings stated
3 in section 102 of the Controlled Substances Act (21
4 U.S.C. 802);

5 “(2) the term ‘official act’ means any decision,
6 action, or conduct regarding any question, matter,
7 proceeding, cause, suit, investigation, or prosecution
8 which may at any time be pending, or which may be
9 brought before any public official, in such official’s of-
10 ficial capacity, or in such official’s place of trust or
11 profit; and

12 “(3) the term ‘public official’ means—

13 “(A) an officer or employee or person acting
14 for or on behalf of the United States, or any de-
15 partment, agency, or branch of Government
16 thereof in any official function, under or by au-
17 thority of any such department, agency, or
18 branch of Government;

19 “(B) a juror;

20 “(C) an officer or employee or person acting
21 for or on behalf of the government of any State,
22 territory, or possession of the United States (in-
23 cluding the District of Columbia), or any politi-
24 cal subdivision thereof, in any official function,

1 under or by the authority of any such State, ter-
2 ritory, possession, or political subdivision; and

3 “(D) any person who has been nominated
4 or appointed to a position described in subpara-
5 graph (A), (B), or (C), or has been officially in-
6 formed that he or she will be so nominated or
7 appointed.”.

8 (b) *TECHNICAL AMENDMENTS.*—(1) Section 1961(1) of
9 title 18, United States Code, is amended by inserting “sec-
10 tion 220 (relating to narcotics and public corruption),”
11 after “Section 201 (relating to bribery),”.

12 (2) Section 2516(1)(c) of title 18, United States Code,
13 is amended by inserting “section 220 (relating to narcotics
14 and public corruption),” after “section 201 (bribery of pub-
15 lic officials and witnesses),”.

16 (3) The chapter analysis for chapter 11 of title 18,
17 United States Code, is amended by inserting after the item
18 for section 219 the following new item:

“220. Narcotics and public corruption.”.

Chairman STEVENS. That bill is not before our Committee, Mr. Keeney.

Mr. KEENEY. I don't think it is, no.

Chairman STEVENS. I do have a couple questions for you, if you could remain while I listen to Judge Plager.

Judge I think we have something in common, knowing that your daughter is part of the administration in my State.

Judge PLAGER. Yes, sir, she is. She is superintendent of parks for the northern area of Alaska, and I was just up there last month visiting your lovely State and my lovely daughter and grandchildren.

Chairman STEVENS. Right. Nice to have you. My sister-in-law who works with her is in town right now. That is how I was reminded. We are pleased to hear from you.

TESTIMONY OF HON. S. JAY PLAGER, JUDGE, U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Judge PLAGER. Thank you, sir. Mr. Chairman, I am here on behalf of the Judicial Conference of the United States, which is the governing body of the judiciary. We have submitted a written statement to you, sir, and we would be grateful if you would permit it to be entered in the record.

Chairman STEVENS. We will print it in full.

Judge PLAGER. And we want to express to you our appreciation for the opportunity to be heard on this bill.

Mr. Chairman, the spectacle of a high Government official—Congressman, Executive Office official, judge, whoever—being convicted of a serious crime, particularly one involving misconduct in office, and then retiring on Government pension is a spectacle that I think we would all agree is abhorrent to most Americans, certainly to the taxpaying Americans. Senator Gregg's bill addresses that picture and would prevent it in most instances.

There is another spectacle that may be equally abhorrent to most Americans, and that is the spectacle of a Federal judge who has been convicted of a serious crime in office, involving misconduct in office, such as bribery in a case or something of that nature, who continues to sit on the bench and hear cases. Perhaps an even worse spectacle is that Federal judge having a bench in a prison cell and continuing to hear cases. We think that is perhaps an even more abhorrent spectacle.

It has happened a couple of times in recent memory, and I hasten to add that over the history of this great country it has happened very seldom as far as Federal judges are concerned. This is not a continuing problem, but it has happened. And it is one that the judiciary is most sensitive to, and I think other Americans are.

Senator Gregg focuses primarily on Members of Congress, but his bill sweeps more broadly and deals with Executive Branch Members and with judges. And on its face, one would think that is quite appropriate. Why should any senior Government official be exempt from a rule that says you can't benefit from your crime by retiring on a Government salary?

The problem for the judges' situation is our Constitution. In a sense, it is a problem here, but it is not really a problem. Our Founding Fathers concluded that the best way to have an inde-

pendent judiciary was to guarantee to them their compensation without fear of undue pressure from either the Executive Branch or, with all due respect, sir, the Congress to allow judges to make decisions as they had to be made. And so we have in Article III a constitutional protection that their compensation cannot be diminished during their lifetime.

There are two exceptions, of course. One of them is a judge can voluntarily retire under the retirement provisions established by Congress, or resign, of course; and the second is a judge can be impeached. The problem created here is that if we have the spectacle of a judge who has been convicted of a crime in office dealing with the conduct of that office, most of us, I think—and certainly this is the viewpoint of the judiciary—most of us would think that the highest priority is to get that person out of office. We do not want a judge who has been convicted under those circumstances to continue to exercise the powers and duties of that office.

The bill before us creates a dilemma. The dilemma is if a judge is convicted in that manner, we can't really expect that individual to take the public interest to heart. That is not the kind of person we are dealing with, I am afraid. So that individual is likely to hang on to that office as long as he or she can in order to continue to get paid, which means there is no incentive to leave office, and that can only be forced then by impeachment.

What we in the judiciary feel is that the highest priority is to get that person out of the judiciary and not be an embarrassment to the Government of the United States. And, frankly, we think it ought to be done at almost any cost. In fact, there is very little cost because the convicted judge is going to draw that salary as long as the judge serves on the bench. And the judge is entitled to serve by the Constitution until that judge is impeached.

We are of the view that we would rather—if the judge is going to get that salary, we would rather the judge get that salary away from the court, away from the bench, even if it means paying retirement in order to get that judge away.

Senator Gregg's bill, though perfectly well intentioned and one that we all support in principle, creates a disincentive for the judge to go away because it says you are not going to get your retirement; so that that judge is going to stay in active service. We would like to have the Justice Department have the option in an appropriate case of forcing the judge out even if it means allowing the judge to retire with a salary. We support the Justice Department's concern.

Does that mean that we ought to let judges off the hook? And the answer is no. There are ways of addressing this problem that would be more finely tuned to this particular circumstance of an Article III judge, and we have, in fact, sent correspondence to your Committee, I believe, suggesting a bill which would have the effect of the denying a convicted judge the accrual of pension time for a 2-year period in order to give Congress an opportunity to bring impeachment proceedings and to impeach and remove that judge. If Congress chooses not to do so in a 2-year period, then the bill would propose that judge can retire. And we get that judge off the bench and away from court.

The bottom line of all of this, Mr. Chairman, is that we support the principle of Senator Gregg's bill. We think judges ought not to be exempt in any way from the concept of not gaining from their wrong, but we would like to see a bill applicable to the judge's situation that more finely deals with that peculiar protection of Article III, which we don't think works under the bill presently proposed by Senator Gregg. We offer to help your Committee or the Senator or anyone else work towards that end in the drafting and production of such a bill.

I would be glad to answer any questions that you may have.
[The prepared statement of Judge Plager follows:]

PREPARED STATEMENT OF JUDGE S. JAY PLAGER

Mr. Chairman and Members of the Committee, I am S. Jay Plager, a judge of the United States Court of Appeals for the Federal Circuit here in Washington, D.C. I also served as Vice Chairman of the National Commission on Judicial Discipline and Removal, a Commission created by Congress to investigate and study issues involved in the tenure, discipline and removal of federal judges. Public Law No. 101-650, Dec. 1, 1990 (104 Stat. 5122), § 410(l). That Commission did its work in 1992 and 1993, culminating in a report published in 1993.

I am here today as the representative of the Judicial Conference of the United States, which is the governing body of the nation's federal judges, to discuss the issues raised in S. 1794, the "Congressional, Presidential, and Judicial Pension Forfeiture Act." We very much appreciate the opportunity to present the federal judiciary's views on this bill. With your permission, I will offer brief remarks concerning the provisions of the bill and then answer any questions you may have.

S. 1794, as you know, would amend chapter 83 of title 5, United States Code, to provide that any of a number of specified federal officers or employees, including a Supreme Court Justice or federal judge, who has been convicted of any of several enumerated offenses would, if the offense of conviction is punishable by imprisonment for more than 1 year, be prohibited from receiving any retirement "annuity or retired pay on the basis of the service of the individual which is creditable toward the annuity or retired pay." 5 U.S.C. § 8312(a). The covered offenses include a wide range of violations of the public trust, such as bribery, conflict of interest, and fraud.

The purpose of S. 1794 is apparent on its face. The spectacle of a discredited government official, and particularly one convicted of a crime involving abuse of office, continuing to draw pay from the Federal Government is offensive to every law-abiding citizen. No one can quarrel with the desire of Congress to rid the public payroll of such persons. The difficulty with S. 1794, when it is applied to federal judges holding office under Article III of the Constitution, is that it has unintended consequences which, in some cases at least, may be worse than the evil it is intended to cure.

All would agree, I believe, that the first priority when a federal officer is found guilty of abusing the office is to stop any potential for further abuse, and that this most often is best accomplished by separating the wrong-doer from the office. In the case of a federal judge, separation from office can be accomplished involuntarily only by the arduous process of impeachment. Otherwise, separation from office requires the voluntary agreement of the judge, even of a judge subject to legal discipline resulting from a criminal conviction.

The explanation for this is of course the provision in Article III of the Constitution that provides: "The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office." Art. III, Sec. 1. The only means permissible under the Constitution by which a judge appointed under Article III, who enjoys life tenure, can be removed from the judicial office is by impeachment by the House and conviction by the Senate under Article I. Accordingly, a judge who has been convicted of one of the offenses enumerated in S. 1794 continues to hold office and continues to be entitled to the full salary of that office, unless and until that judge is removed by impeachment, or unless that judge can be convinced that it is in the judge's best interest to retire without waiting to see if he or she will be impeached.

S. 1794 provides that a judge who has been convicted of one of the enumerated offenses automatically forfeits his or her prospective future retirement annuity. However, under the Constitution, the judge retains, until removed through impeach-

ment, both the office and the salary of the office. The judge therefore will have little incentive voluntarily to retire from the office. Unless removed by impeachment, the judge can simply choose to continue in the office until death, collecting the full judicial salary.

This is why, with regard to federal judges, S. 1794 is unlikely to accomplish its purpose. The convicted federal judge—as distinguished from the President, a Member of Congress, or a congressional employee—can simply hold on to the office for life, unless impeached, and suffer no pecuniary loss whatsoever. Given that a judge's retirement annuity in almost all cases is equal to his or her salary, the federal judge in a sense receives the retirement benefit anyway, S. 1794 notwithstanding. Giving the judge incentive to remain on the court could damage the affected court, and damage the paramount interest of the public in the effective and expeditious administration of justice, in that the affected court would be saddled with a discredited judge clinging to office and unable to retire. If this were to happen to a justice of the Supreme Court, the resulting harm to the public interest could be even more severe.

That result can be avoided only through impeachment proceedings to remove the judge. Thus, S. 1794, by encouraging a convicted federal judge to cling to office for as long as possible, may require more impeachment proceedings by Congress in order to bring about the removal of such judges. Under current law, impeachment proceedings frequently may be forestalled by the judge's retirement from office, when the judge is eligible, but S. 1794 would render that possibility unrealistic. Given how burdensome impeachment proceedings have been for Congress, we wonder whether this is a sound policy. As Senator Trent Lott has observed, "The existing process of impeachment is cumbersome, time-consuming and unproductive for the Senate, for Senators, and for the Nation's business." 135 Cong. Rec. 515267 (daily ed. Nov. 8, 1989, 101st Cong., 1st Sess.).

The National Commission on Judicial Discipline and Removal, of which I was Vice Chairman, exhaustively considered the problems raised by the felony conviction of a federal judge, and specifically looked at the role of the judges' retirement system in that context. See, e.g., *Report of the National Commission on Judicial Discipline and Removal* (August 1993), at 114–16. The Commission shared with the authors of S. 1794 an abhorrence of continuing to pay tax money to convicted felons, but suggested a slightly different approach, one tailored to the special constitutional and statutory framework governing federal judges.

The Commission recommended "that Congress consider enacting a statute providing that, upon conviction of a felony or more specifically defined crimes, a federal judge shall cease to accrue credit, through age or years of service, toward retirement under the Rule of 80." *Id.* at 115. This was a reference to section 3710 of title 28, United States Code, which sets out the age and years of service requirements that a federal judge must meet in order to be eligible to retire from the judicial office. This provision, generally referred to as the "Rule of 80," requires that in order to be eligible to retire, a federal judge must be at least 65 years of age, must have at least 10 years of service on the federal bench, and must have a combination of age and years of service totaling 80.

The Judicial Conference of the United States has responded to the Commission's finding by passing a resolution requesting

"that Congress consider enacting a statute which provides that (a) upon conviction of a felony involving a crime of moral turpitude subject to punishment by imprisonment of 1 year or more, a federal judge shall cease to accrue credit, through age or years of service, toward retirement under the "Rule of 80"; (b) such tolling shall not operate for more than 2 years subsequent to the resolution of all appeals by a convicted judge; and (c) if conviction is reversed on appeal or set aside on collateral attack, a judge should have service credit restored, absent impeachment in the interim. . . ."

Report of the Proceedings of the Judicial Conference of the United States, Sept. 19, 1995, at 86.

This proposed legislation would provide that a federal judge who has been convicted of a felony that meets the prescribed prerequisites will cease accruing credit toward retirement under the Rule of 80 for 2 years subsequent to the final resolution of all appeals from the conviction. The purpose of this 2-year period following final conviction is to provide Congress an opportunity to undertake the judge's impeachment and removal from office without concern that, if the judge happens to accrue sufficient credit to satisfy the Rule of 80 during this period, the judge will be able to avoid impeachment by retiring from the office with full benefits. Under the proposed statute, the judge cannot have that option because the judge will cease accruing credit under the Rule of 80 while impeachment proceedings go forward. If,

subsequently, Congress fails to impeach the judge within the 2-year period, or the judge's conviction is reversed on appeal, the judge will immediately resume accruing credit under the Rule of 80, and all of the credit lost during the time the accrual of credit was tolled will be retroactively restored to the judge.

This represents a more finely-tuned approach to the problem that lies behind S. 1794. As I have explained, S. 1794 may have the unintended consequence of forcing Congress to undertake impeachment proceedings whenever Congress wishes to ensure that an offending judge leaves the bench. Under the statute proposed by the Judicial Conference, the convicted judge, if not immediately eligible for retirement, is prevented from retiring until Congress has had an opportunity to consider the matter of removing the convicted judge from office. The proposed statute would thus allow Congress to make the choice whether the judge's misdeeds demanded impeachment, or whether, instead, the public interest would be best served by the offending judge's retirement from the bench, without need for Congress to shoulder the burden of impeachment proceedings.

It should also be noted that there may be constitutional objections to certain aspects of S. 1794. For example, there may be a question whether a federal judge (or other public servant) who has already retired, and is already collecting a vested retirement benefit, at the time that he or she is convicted can constitutionally be divested of that vested benefit upon conviction.

In sum, S. 1794 has a laudable purpose, one with which we in the judicial branch are in full accord. We believe, however, that S. 1794 would be better addressed only to government officials other than judges, and that a different piece of legislation, crafted to account for the special circumstances of the judiciary, would better achieve the purpose sought.

Mr. Chairman, Members of the Committee, I again thank you for the opportunity to appear before you today to present the views of the Judicial Conference.

Chairman STEVENS. Having lived through some impeachment proceedings to know how they tie up the Congress, I think we would rather have a constitutional amendment to change the provision of the Constitution than to have to go through that every time. Have you thought about that?

Judge PLAGER. Yes, sir. I have thought about that quite a bit. I served as Vice Chairman of the National Commission on Judicial Discipline and Removal, which was a commission created by Congress. It included Members of the Senate and of the House and Executive Branch, and I was one of the three representatives of the judiciary. And we looked at that issue, among many others. There is a full report which I would be glad to make available to your Committee, if you don't have, by the commission dealing with all of these issues, including this one that we are talking about today.

The commission came to the conclusion that there were ways of streamlining and improving the impeachment process without undercutting the protections that officials were entitled to and ease some of the burden on Congress in the impeachment process.

We are very aware, we were certainly aware of the burden that impeachment imposes in addition to all the other work that Senators and Congressmen have to do. We were less inclined to see a constitutional amendment because these are difficult balancing problems, and the problem of writing language to incorporate the right balance between—for example, in dealing with the judiciary, protecting the independence of the judiciary, which is an essential part of our separation of powers concept, and at the same time reaching these kinds of problems. We thought it could best be worked out actually in legislation and in dialogue such as this one rather than in a fixed effort like a constitutional amendment. So we were not in favor of reopening the Constitution on this issue.

Chairman STEVENS. Not surprising, but a judge can only be convicted of a crime, a felony, by the judicial branch. It is not a ques-

tion of independence. I don't agree with the conclusion, but it is not surprising. The time it takes for impeachment speaks for itself. We have only had one such provision in recent years, and the person impeached is now a Member of Congress, if I remember correctly.

Judge PLAGER. Yes, sir.

Chairman STEVENS. So I think it calls for a constitutional amendment. But beyond that, I am concerned about the problems Mr. Keeney has discussed. Judge, I don't have any further questions for you. I do think the public, however, has the same feeling about a member of the judiciary that is convicted of a crime and has had an impact on official duties as much as anyone else. And I don't think that the current state of the Constitution ought to be used as a shield for those who should get the same—have the same impact of law as Members of the Executive or Congressional Branch.

Judge PLAGER. We would agree with that.

Chairman STEVENS. We should work on that.

Judge PLAGER. Yes, sir.

Chairman STEVENS. But that is not the place to do it, certainly not this Committee would be involved in that, although I think a general constitutional amendment dealing with the whole Government would be within the jurisdiction of this committee. But you may leave. Thank you very much, Judge. I appreciate your being here.

Judge PLAGER. Thank you, sir.

Chairman STEVENS. Mr. Keeney, I want to talk to you about the problems of the scope of this bill and particularly the spouse benefit.

Mr. KEENEY. Excuse me, sir?

Chairman STEVENS. I want to talk to you about the problem of the benefit to the spouse and dependents. The impact of this—you know, we do have a changing circumstance, and some people don't understand the changes we have brought about in our basic retirement laws that apply to Members of the Congressional and Executive Branch. It is not quite the same as it used to be in terms of the old Civil Service Retirement Act. In the future, we are talking about the Federal Employees Retirement System, and I do think that there are differences there, particularly with regard to the spousal benefits.

Can you tell me, in terms of your judgment, is it possible to live under the provisions of this bill that deal with spousal benefits? How would you interpret this provision that says "fully cooperate" with the Department?

Mr. KEENEY. Senator, I regret to tell you we haven't really focused on the impact of spouses, but it is an important issue, and I would like, if I may, to get back to you in writing with the position of the Department on it. It is a little bit too complicated to go into off the top of my head. And as I said, we haven't focused on it.

Chairman STEVENS. Well, I would appreciate it if you would take a look at that. I do think that there have been reservations expressed similar to yours by OPM.

There has been a new provision added by the intelligence bill this year dealing with the spousal benefit. That bill has not been

submitted to the President yet, so it is not law yet. But I do believe that we ought to have—I am not going to get into the details of that, but apparently the existing intelligence authorization bill for this year made a change in this law. I have the view that spouses do have a vested interest in their benefits if there has, in fact, been a retirement and the employee has not taken the full benefit because of the contract with the Government to provide benefits to the spouse at the time of the employee's death.

I would like to see us be more aware of the circumstance as far as the spousal benefit and would appreciate the Department's opinion on the workability of the provisions of this bill.

I also would like to have the Department's opinions, if it is a good thing to apply to executive and legislative people at a high level, why shouldn't it apply to all Federal employees if it is a crime that really has an impact on official duties? Have you looked at that subject?

Mr. KEENEY. Well, we thought a little bit about that, and we have noted that while Members of Congress and congressional staff are fully covered, the executive is not covered at all except for the President and the Vice President. The judiciary is covered insofar as judges and justices, but not as to staff.

Chairman STEVENS. And the President's wife is not covered.

Mr. KEENEY. Right. So there is an inequity there, Senator, but frankly, we didn't know exactly what the Committee was trying to achieve. I have been led to believe that they were concerned about the pensions being received presently by Members of Congress who are in prison or recently out of prison and focused to a large extent on Congress and swept in everybody who is connected with the Congress and swept in all judges, but not all judicial employees, with the exception I mentioned, not covering the executive at all.

There is a disparity of treatment, no question about it.

Chairman STEVENS. But I do think that there is a sufficient impetus behind this bill now that we ought to try and get some language that the Department could live with. We do have the suggestion from the judiciary, and we have some suggestions from OPM. But I do ask that you give us a draft of a bill that you believe would be acceptable.

Mr. KEENEY. Yes, sir. We will come back to you addressing all of these points, Senator.

Chairman STEVENS. Thank you. Incidentally, my staff tells me that Section 8318, Restoration of Annuity and Retired Pay, notwithstanding forfeiture, the spouse would be eligible for benefits if the Attorney General determines the spouse fully cooperated with Federal authorities in conduct of the criminal investigation and subsequent prosecution of the individual resulted in forfeiture. That apparently was signed by the President on January 6, 1996.

If that is the trend of the law, the question is: What is fully cooperating? And I have got to say that this Senator doesn't quite like that. I do believe that we ought to have some recognition of the rights of the spouse and dependents once the contract has been entered into that assures them of annuity in the event of the death of the person who is the employee.

But it is a very complicated subject, and I don't think it ought to be disposed of without some very serious thought. So I would ap-

preciate your help, since we are obviously going to be back at this Committee table next year with the same subject, that we start thinking about what is the best way to handle it. It is a proposition that has great momentum now in the Congress, and I think we have to make certain that, when the bill is presented, it is a fair one.

We appreciate your help, gentlemen. Thank you very much. We will keep the record open for a few days to have any comments that you may want to add in addition to the ones we have already put in the record.

[Whereupon, at 10:15 p.m., the Committee was adjourned.]

A P P E N D I X

II

104TH CONGRESS
2D SESSION

S. 1794

To amend chapter 83 of title 5, United States Code, to provide for the forfeiture of retirement benefits in the case of any Member of Congress, congressional employee, or Federal justice or judge who is convicted of an offense relating to the official duties of that individual, and for the forfeiture of the retirement allowance of the President for such a conviction.

IN THE SENATE OF THE UNITED STATES

MAY 22, 1996

Mr. GREGG (for himself, Mr. REID, Mr. NICKLES, Mr. WARNER, Mrs. KASSEBAUM, Mr. THURMOND, Mr. SMITH, and Mr. BRYAN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend chapter 83 of title 5, United States Code, to provide for the forfeiture of retirement benefits in the case of any Member of Congress, congressional employee, or Federal justice or judge who is convicted of an offense relating to the official duties of that individual, and for the forfeiture of the retirement allowance of the President for such a conviction.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Congressional, Presi-
3 dential, and Judicial Pension Forfeiture Act”.

4 **SEC. 2. CONVICTION OF CERTAIN OFFENSES.**

5 (a) IN GENERAL.—Section 8312(a) of title 5, United
6 States Code, is amended—

7 (1) by striking “or” at the end of paragraph
8 (1);

9 (2) by striking the period at the end of para-
10 graph (2) and inserting “; or”;

11 (3) by adding after paragraph (2) the following
12 new paragraph:

13 “(3) is convicted of an offense named by sub-
14 section (d), to the extent provided by that sub-
15 section.”;

16 (4) by striking “and” at the end of subpara-
17 graph (A);

18 (5) by striking the period at the end of sub-
19 paragraph (B) and inserting “; and”; and

20 (6) by adding after subparagraph (B) the fol-
21 lowing new subparagraph:

22 “(C) with respect to the offenses named by sub-
23 section (d) of this section, to the period after the
24 date of the conviction.”.

25 (b) IDENTIFICATION OF OFFENSES.—Section 8312
26 of title 5, United States Code, is amended—

1 (1) by redesignating subsection (d) as sub-
2 section (e); and

3 (2) by inserting after subsection (c) the follow-
4 ing new subsection:

5 “(d)(1) The offenses under paragraph (2) are the of-
6 fenses to which subsection (a) of this section applies, but
7 only if—

8 “(A) the individual is convicted of such offense
9 after the date of the enactment of the Congressional,
10 Presidential, and Judicial Pension Forfeiture Act;

11 “(B) the individual was a Member of Congress
12 (including the Vice President), a congressional em-
13 ployee, or a Federal justice or judge at the time of
14 committing the offense; and

15 “(C) the offense is punishable by imprisonment
16 for more than 1 year.

17 “(2) The offenses under this paragraph are as
18 follows:

19 “(A) An offense within the purview of—

20 “(i) section 201 of title 18 (bribery of pub-
21 lic officials and witnesses);

22 “(ii) section 203 of title 18 (compensation
23 to Members of Congress, officers, and others in
24 matters affecting the Government);

1 “(iii) section 204 of title 18 (practice in
2 United States Court of Federal Claims or the
3 United States Court of Appeals for the Federal
4 Circuit by Members of Congress);

5 “(iv) section 205 of title 18 (activities of
6 officers and employees in claims against and
7 other matters affecting the Government);

8 “(v) section 207 of title 18 (restrictions on
9 former officers, employees, and elected officials
10 of the executive and legislative branches);

11 “(vi) section 208 of title 18 (acts affecting
12 a personal financial interest);

13 “(vii) section 209 of title 18 (salary of
14 Government officials and employees payable
15 only by the United States);

16 “(viii) section 219 of title 18 (officers and
17 employees acting as agents of foreign
18 principals);

19 “(ix) section 286 of title 18 (conspiracy to
20 defraud the Government with respect to
21 claims);

22 “(x) section 287 of title 18 (false, ficti-
23 tious, or fraudulent claims);

24 “(xi) section 371 of title 18 (conspiracy to
25 commit offense or to defraud the United States;

1 “(xii) section 597 of title 18 (expenditures
2 to influence voting);

3 “(xiii) section 599 of title 18 (promise of
4 appointment by candidate);

5 “(xiv) section 602 of title 18 (solicitation
6 of political contributions);

7 “(xv) section 606 of title 18 (intimidation
8 to secure political contributions);

9 “(xvi) section 607 of title 18 (place of
10 solicitation);

11 “(xvii) section 641 of title 18 (public
12 money, property or records); or

13 “(xviii) section 1001 of title 18 (state-
14 ments or entries generally).

15 “(B) Perjury committed under the statutes of
16 the United States in falsely denying the commission
17 of an act which constitutes an offense within the
18 purview of a statute named by subparagraph (A).

19 “(C) Subornation of perjury committed in con-
20 nection with the false denial of another individual as
21 specified by subparagraph (B).”.

22 **SEC. 3. ABSENCE FROM THE UNITED STATES TO AVOID**
23 **PROSECUTION.**

24 (a) IN GENERAL.—Section 8313 of title 5, United
25 States Code, is amended—

1 (1) by redesignating subsection (b) as sub-
2 section (c); and

3 (2) by inserting after subsection (a) the follow-
4 ing new subsection:

5 “(b) An individual, or his survivor or beneficiary, may
6 not be paid annuity or retired pay on the basis of the serv-
7 ice of the individual which is creditable toward the annuity
8 or retired pay, subject to the exceptions in section 8311(2)
9 and (3) of this title, if the individual—

10 “(1) is under indictment, after the date of the
11 enactment of the Congressional, Presidential, and
12 Judicial Pension Forfeiture Act, for an offense
13 named by section 8312(d)(2) of this title, but only
14 if such offense satisfies section 8312(d)(1)(C) of this
15 title;

16 “(2) willfully remains outside the United
17 States, or its territories and possessions including
18 the Commonwealth of Puerto Rico, for more than 1
19 year with knowledge of the indictment or charges, as
20 the case may be; and

21 “(3) is an individual described in section
22 8312(d)(1)(B).”.

23 (b) CONFORMING AMENDMENT.—Subsection (c) of
24 section 8313 of title 5, United States Code (as so des-

1 ignated under subsection (a)(1)) is amended by inserting
2 “or (b)” after “subsection (a)”.

3 **SEC. 4. REFUND OF CONTRIBUTIONS AND DEPOSITS.**

4 Section 8316(b) of title 5, United States Code, is
5 amended—

6 (1) by striking “or” at the end of paragraph
7 (1);

8 (2) by striking the period at the end of para-
9 graph (2) and inserting “; or”; and

10 (3) by adding at the end the following new
11 paragraph:

12 “(3) if the individual was convicted of an of-
13 fense named by section 8312(d) of this title, for the
14 period after the conviction of the violation.”.

15 **SEC. 5. FORFEITURE OF PRESIDENTIAL ALLOWANCE.**

16 Subsection (a) of the first section of the Act entitled
17 “An Act to provide retirement, clerical assistance, and free
18 mailing privileges to former Presidents of the United
19 States, and for other purposes”, approved August 25,
20 1958 (Public Law 85-745; 72 Stat. 838; 3 U.S.C. 102
21 note) is amended—

22 (1) by striking “Each former President” and
23 inserting “(1) Subject to paragraph (2), each former
24 President”; and



1 (2) by inserting at the end the following new
2 paragraph:

3 “(2) The allowance payable to an individual under
4 paragraph (1) shall be forfeited if—

5 “(A) the individual is convicted of an offense
6 described under section 8312(d)(2) of title 5, United
7 States Code, after the date of the enactment of the
8 Congressional, Presidential, and Judicial Pension
9 Forfeiture Act;

10 “(B) such individual committed such offense
11 during the individual’s term of office as President;
12 and

13 “(C) the offense is punishable by imprisonment
14 for more than 1 year.”.

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