

# Citizens for Responsibility and Ethics in Washington

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October 25, 2005

The Honorable George V. Voinovich, Chair  
The Honorable Tim Johnson, Vice Chair  
Select Committee on Ethics  
United States Senate  
Room 220 Senate Hart Office Building  
Washington, D.C. 20530

Re: Request for Investigation into Senator William H. Frist

Dear Chairman Voinovich and Vice Chairman Johnson:

On September 26, 2005, Citizens for Responsibility and Ethics in Washington requested that you begin an investigation to determine whether Senator Bill Frist committed a violation of the Senate Rules of Conduct by selling stock he held in HCA, Inc. Today, I write to supplement that request with additional information that has come to light over the past month.

First, it has been reported that, in addition to the HCA stock that Senator Frist maintained in the qualified blind trust, Senator Frist also held HCA stock in a family investment partnership.<sup>1</sup> Senator Frist's share of the partnership was placed in a Tennessee blind trust – separate from the blind trust he set up under the guidance of the Senate ethics committee – between 1998 and 2002.<sup>2</sup> Senator Frist reported that Bowling Avenue Partners, made up of mostly non-public HCA stock, earned him \$265,495 in dividends and other income over four years.<sup>3</sup> Sen. Frist's brother, Tom Frist, is the general partner and registered agent of Bowling Avenue Partners and he could influence the partnership's investment decisions.<sup>4</sup>

Senator Frist began transferring the stock in stages into the Senate-approved trust in 2001 and 2002.<sup>5</sup> It was added to the HCA stock already in the Senate-approved trust and it was valued at between \$775,000 and \$1.57 million.<sup>6</sup>

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<sup>1</sup> Larry Margasak and Jonathan M. Katz, Frist Accumulated Stock Outside Trusts, *Associated Press*, appearing in, *USA Today*, October 11, 2005.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Margasak and Katz, *USA Today*, Oct. 11, 2005.

<sup>6</sup> Id.

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Vice Chairman Johnson  
October 25, 2005  
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Second, *The Washington Post* has reported that Senator Frist had considerably more information about how much stock his family held in HCA, and how much HCA stock was in the Senate-approved blind trust, than he has previously admitted. Although Senator Frist has claimed that the Senate-approved trust was totally blind, in fact, managers of the trust regularly informed him when they added new shares of HCA or any other stock to his holdings.<sup>7</sup> Since 2001, the trustees have written to Senator Frist and the Senate on at least 15 separate occasions detailing the sale of assets from or the contribution of assets to the Senate-approved trust.<sup>8</sup> Moreover, at least four of those letters reference HCA stock.<sup>9</sup> The December 20, 2002 letter informed the Senator that, “as a result of the termination of Bowling Avenue Partners, LP,” one of his trusts had received HCA stock valued at between \$15,000 and \$50,000.<sup>10</sup> Thus, the HCA stock held in the Bowling Avenue Partnership combined with the letters sent to Senator Frist by his trustees demonstrate that Senator Frist clearly was aware that he and his family held HCA stock.

Nonetheless, in a January 2003 interview, only a few weeks after receiving the December 20, 2002 letter regarding the transfer of HCA stock into the Senate-approved trust, Senator Frist claimed “. . . as far as I know, I own no HCA stock.”<sup>11</sup> Reportedly, Senator Frist also told the *National Journal* in 2003, “Right now, I don’t know if I own HCA because it is in a qualified blind trust.”<sup>12</sup> These statements are obviously at odds with the truth: Senator Frist was well aware that he owned HCA stock.

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<sup>7</sup> Jeffrey H. Birnbaum, Letters Show Frist Notified of Stocks in ‘Blind’ Trusts, Documents Contradict Comments on Holdings, *The Washington Post*, October 24, 2005.

<sup>8</sup> Id.

<sup>9</sup> Letter from M. Kirk Scobey, Jr. to Pamela Gavin, Custodian of Records, Secretary of the Senate, cc: Senator William H. Frist, September 4, 2001; Letter from Nancy Felton-Elkins to Senator William H. Frist re: Senator William H. Frist Qualified Trust for his Child Bryan E., January 14, 2002; Letter from Nancy Felton-Elkins to Senator William H. Frist re: Senator William H. Frist Qualified Trust for his Child Jonathan M., January 14, 2002; and Letter from M. Kirk Scobey, Jr. to Senator William H. Frist re: WHF 2000 Qualified Blind Trust #12991, December 20, 2002 (letters attached).

<sup>10</sup> Letter from M. Kirk Scoby, Jr. To Senator William H. Frist, Dec. 20, 2002.

<sup>11</sup> Birnbaum, *The Washington Post*, Oct. 24, 2005.

<sup>12</sup> David D. Kilpatrick, Frist Sale of Stock Spurs Inquiries Into Trusts, *The New York Times*, September 24, 2005.

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Vice Chair Johnson  
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The Senate Ethics Manual provides that “[c]ertain conduct has been deemed by the Senate in prior cases to be unethical and improper even though such conduct may not necessarily have violated any written law, or Senate rule or regulation. Such conduct has been characterized as “improper conduct which may reflect upon the Senate.”<sup>13</sup> This rule is intended to protect the integrity and reputation of the Senate as a whole.<sup>14</sup> The Ethics Manual explains that “improper conduct” is given meaning by considering “generally accepted standards of conduct, the letter and spirit of laws and Rules. . .”<sup>15</sup> Sen. Frist’s repeated misstatements and lies that he did not know whether he held any HCA stock constitute improper conduct reflecting on the Senate.

As I noted in my earlier letter, the Select Committee on Ethics also has the option of merely criticizing Sen. Frist’s conduct. On some occasions, the Committee has stopped short of finding that alleged conduct was “improper conduct reflecting upon the Senate,” but has found “that the conduct should not be condoned or should otherwise be criticized in a public statement by the Committee.”<sup>16</sup> For example, the Committee has found that: a senator’s “interven[tion] with regulators gave the appearance of being improper and was attended with insensitivity and poor judgement,” that a senator “exercised poor judgment in intervening with regulators,” and that another senator conducted office business “in an inappropriate manner...”<sup>17</sup> Therefore, even if the Committee is not persuaded that Sen. Frist’s conduct reaches the level of improper conduct, at the very least, the Committee should issue a public statement criticizing the Senator’s conduct.

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<sup>13</sup> *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service, Senate Ethics Manual*, Appendix E, p. 432.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 433; *see also* fn. 10 citing a 1964 investigation into the activities of Bobby Baker, then Secretary to the Majority of the Senate, the Committee on Rules and Administration, which stated, “It is possible for anyone to follow the ‘letter of the law’ and avoid being indicted for a criminal act, but in the case of employees of the Senate, they are expected, and rightly so, to follow not only the ‘letter’ but also the ‘spirit’ of the law.” S. Rep. No. 1175, 88<sup>th</sup> Cong., 2d Sess. 5 (1964).

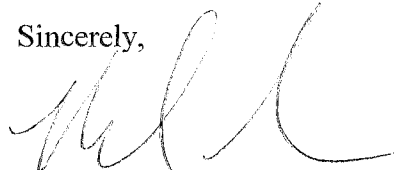
<sup>16</sup> *Senate Ethics Manual* at 435.

<sup>17</sup> *Id.*, fn. 19.

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Vice Chair Johnson  
October 25, 2005  
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Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'MS', with a long horizontal flourish extending to the right.

Melanie Sloan  
Executive Director  
Citizens for Responsibility and  
Ethics in Washington

Encls.

**EQUITABLE**  
Trust Company

SECRETARY OF THE SENATE  
Investment Management and Trust Services  
01 SEP 10 AM 10:06

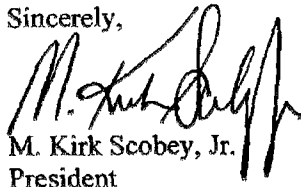
September 4, 2001

Office of Public Records  
Attn: Pam Gavin, Custodian  
Secretary of the Senate  
232 Hart Senate Office Building  
Washington, DC 20510

Dear Ms. Gavin:

Please be advised that on August 7, 2001, HCA-Healthcare Company stock having a value between \$250,000 and \$500,000 was contributed to the WHF 2000 Qualified Blind Trust; and HCA-Healthcare Company stock having a value between \$100,000 and \$250,000 was contributed to the William H. Frist GST Exempt Trust.

Sincerely,



M. Kirk Scobey, Jr.  
President

MKS:jlf

CC: Mr. Adam Bramwell  
Senate Select Committee on Ethics  
220 Hart Senate Office Building  
Washington, DC 20510

Senator William H. Frist

One Belle Meade Place  
4400 Harding Road  
Nashville, Tennessee 37205

Tel 615-460-9240  
WATS 866-442-3564  
Fax 615-460-9242

*Frist, Wm*

The Wealth Management Group  
50 South La Salle Street  
Chicago, Illinois 60675  
(312) 557-2937 Direct  
(312) 444-4476 Facsimile



## Northern Trust

Nancy Felton-Elkins  
Vice President

SECRETARY OF THE SENATE  
02 FEB 27 AM 8:19

3

January 14, 2002

Secretary of the Senate  
Office of Public Record  
232 Hart Senate Office Building  
Washington, D.C. 20510

RE: Senator William H. Frist Qualified Trust for his Child, Jonathan M.

Dear Sir:

As Independent Trustee of the Jonathan M. Frist 1991 Vested Trust, The Northern Trust Company informs you of the following additions:

1. December 21, 2001, received shares of S&P Depository Receipts with a value between \$5,000 and \$10,000.
2. December 21, 2001, received shares of HCA stock with a value of between \$5,000 and \$10,000.

Sincerely,

Nancy Felton-Elkins  
Vice President

Frist, Wm.

10/27

The Wealth Management Group  
50 South La Salle Street  
Chicago, Illinois 60675  
(312) 557-2937 Direct  
(312) 444-4476 Facsimile



## Northern Trust

Nancy Felton-Elkins  
Vice President

SECRETARY OF THE SENATE

02 FEB 27 AM 8:20

January 14, 2002

Secretary of the Senate  
Office of Public Record  
232 Hart Senate Office Building  
Washington, D.C. 20510

RE: Senator William H. Frist Qualified Trust for his Child, Bryan E.

Dear Sir:

As Independent Trustee of the Byran E. Frist 1991 Vested Trust, The Northern Trust Company informs you of the following additions:

1. December 21, 2001, received shares of S&P Depository Receipts with a value between \$5,000 and \$10,000.
2. December 21, 2001, received shares of HCA stock with a value of between \$5,000 and \$10,000.

Sincerely,

  
Nancy Felton-Elkins  
Vice President

**EQUITABLE**  
Trust Company

SECRETARY OF THE SENATE  
Investment Management and Trust Services  
03 JAN -3 PM 2:58

03

December 20, 2002

Senator William H. Frist  
c/o Deborah A. Kolarich, CPA  
3010 Poston Avenue, Suite 220  
Nashville, TN 37203

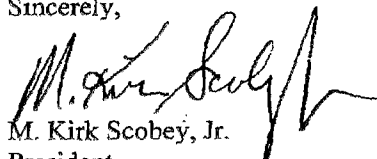
RE: WHF 2000 Qualified Blind Trust #12991

Dear Senator Frist:

As a result of the termination of Bowling Avenue Partners LP, please be advised that the following security was contributed to the above-referenced trust:

HCA - Healthcare Company stock - a value between \$15,000 and \$50,000

Sincerely,

  
M. Kirk Scobey, Jr.  
President

MKS:jlf

CC: John Lewter  
Senate Select Committee on Ethics  
220 Hart Senate Office Building  
Washington, D. C. 20510

Office of Public Records  
Attn: Pam Gavin, Custodian  
Secretary of the Senate  
232 Hart Senate Office Building  
Washington, D. C. 20510

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Frist