

United States Senate

SELECT COMMITTEE ON ETHICS
HART SENATE OFFICE BUILDING, ROOM 220
SECOND AND CONSTITUTION AVENUE, NE
WASHINGTON, DC 20510-6425

May 25, 2012

Mr. Bret Bernhardt
Office of Senator Jim DeMint
United States Senate
Washington, DC 20510

Public Letter of Admonition

Dear Mr. Bernhardt:

After an investigation, the Select Committee on Ethics found that your communications with and actions on behalf of Doug Hampton were improper conduct which reflects on the Senate, and it is therefore issuing you this Public Letter of Admonition. Further, in order to assure that the Senate community fully understands the law and rules that prohibit such conduct, the Committee is issuing guidance later today.

The Committee found that you had a personal friendship with Mr. Hampton, the former Administrative Assistant to Senator John Ensign and were aware he had left his Senate position. Nevertheless, starting immediately after he left the Senate, you had multiple contacts about official business with Mr. Hampton, who was representing Allegiant Air ("Allegiant"), including setting up a March 11, 2009 meeting with Senator Jim DeMint that involved a discussion of legislative matters, which is not permitted by law. Your relationship and communications with Mr. Hampton provided you with a basis to have known that he was engaging in prohibited post-employment communications during this entire period.

In reaching its determination to issue this Public Letter of Admonition, the Committee took into consideration that your multiple communications with Mr. Hampton on official matters started within days of his leaving his Senate position, and that you expressed no regret for your conduct. Although there is troubling evidence of willful conduct by you in this matter, the Committee did not find that your conduct constituted actionable violations of criminal law. However, the Committee believes that Senate employees are obligated to meet a higher standard, and it has the authority and responsibility to investigate Members and staff who may engage in improper conduct which reflects on the Senate.

Scope of the Committee's Inquiry

The Committee initiated its investigation following the conclusion of the Preliminary Inquiry of Senator John Ensign ("Ensign Inquiry") to determine whether your conduct in

communicating with, acting on behalf of, and helping to set up an official meeting for Mr. Hampton violated any law, rule, or standard of conduct within the Committee's jurisdiction. The Committee reviewed many documents including your emails with and on behalf of Mr. Hampton. It also conducted interviews with multiple witnesses, including Mr. Hampton, Allegiant representatives, and members of Senator DeMint's staff who were involved in setting up or attending the March 11, 2009 meeting. Finally, it reviewed the relevant information and testimony developed during the Ensign Inquiry, including your testimony in that matter, and your response to its Request for Information.

Federal criminal law (18 U.S.C. § 207(e)) prohibits former "senior" staff, like Mr. Hampton, for one year from knowingly communicating or appearing before their former Senate colleagues if their intent is to influence official actions and they are acting on behalf of any other person. The statutory ban, or "cooling off" period, applies to any matter on which the former employee seeks official action on behalf of someone else, regardless of whether the former employee is a registered lobbyist or works for those who lobby. Senate rules also prohibit lobbying contacts by all former staff during the one year cooling off period. Additionally, the Committee also considered whether you knowingly associated with, participated in, and furthered Mr. Hampton's impermissible contacts, in violation of the general aiding and abetting and conspiracy statutes (18 U.S.C. §§ 2 and 371).

Your Communications with Mr. Hampton During His Cooling Off Period

The Committee found that starting within days of leaving his leaving the Senate, you communicated with and acted on behalf of Mr. Hampton on official business even though you had reason to know that he was legally prohibited from seeking and receiving such assistance. You acknowledged that Mr. Hampton was a personal friend and that, during his time in the Senate, you and he would meet occasionally for coffee and Bible study. Right after leaving the Senate, Mr. Hampton informed you that he had left his job, told you he was now working for November Inc. as a government affairs consultant, provided you with his contact information, and sought information about an energy provision in a farm bill that was of interest to Allegiant.

Mr. Hampton contacted you again about the bill, and later made several attempts to meet with you. At a meeting on or about January 9, 2009 in your Senate office, Mr. Hampton provided you with a brief introduction to Allegiant and left some materials with you, including a presentation on Allegiant's government relations plan. You forwarded the materials to staffers in Senator DeMint's office via email, noting that Allegiant "may come by at some point to discuss FAA" and the "contact is Doug Hampton who used to be Ensign's CoS."

Mr. Hampton later emailed you to set up the March 11 meeting and made it clear that the purpose was to discuss official matters of interest to the airline, specifically referencing Senator DeMint's position as the ranking Member of the aviation subcommittee. You forwarded Mr. Hampton's request to the scheduler, stating that Mr. Hampton "used to work for Ensign and now represents Allegiant which has operations in SC." At Mr. Hampton's request, you also provided the contact information for two other Senate individuals so that he could arrange additional meetings on behalf of Allegiant.

During the meeting you helped schedule between Senator DeMint, Mr. Hampton, and other Allegiant officials, participants discussed the airline's service in South Carolina and substantive matters of legislative concern to Allegiant, including unionization legislation and FAA reauthorization. Allegiant, however, did not make any request for official action, nor did Senator DeMint's office take any official action on Allegiant's behalf. The Committee found no evidence that you provided your employer, Senator DeMint, with any advance information or warning that the meeting you helped arrange was with a banned lobbyist in violation of Senate rules.

During this entire period, there is no dispute that Mr. Hampton was a former senior employee subject to the statutory post-employment restrictions, which he is now charged with violating. Throughout Mr. Hampton's cooling off period, which ran from May 2, 2008 to May 1, 2009, he communicated with you about official business on multiple occasions, including a successful attempt to arrange a meeting on behalf of Allegiant in order to further its business interests. Mr. Hampton is currently under indictment for improper contacts that he had with Senator Ensign and his office during his cooling off period.

Your Actions Were Improper and Reflect Upon the Senate

Although the post-employment statute and corresponding Senate Rule (Rule 37.9) apply to contacts by former Members and employees of the Senate, and do not address conduct by current Members and employees who receive the contacts, current Members and employees have an obligation to refrain from knowingly participating in conduct that is prohibited under either the law or Senate rule. Consistent with Committee guidance that Senate staff must meet a higher standard of conduct, ¶ 2 of the Code of Ethics for Government Service admonishes government employees to "[u]phold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion." Other provisions of the Code state that government employees must "[p]ut loyalty to the highest moral principles and the country" above loyalty to others, and to uphold all of these principles, "ever conscious that public office is a public trust."

The Committee determined that you violated these higher standards by your multiple communications with and actions on behalf of Mr. Hampton on official matters. While the Committee did not find substantial credible evidence that you intended to aid and abet Mr. Hampton's violations of the law or that you conspired with Mr. Hampton to violate the law, it was deeply troubled by your conduct. In deciding to issue this Public Letter of Admonition, the Committee took note of your multiple communications about official matters with Mr. Hampton, some within days of his departure; your actions on his behalf; and your refusal to acknowledge that Mr. Hampton's contacts were prohibited or even inappropriate.

The Committee issues this Public Letter of Admonition, and hereby considers this matter closed.

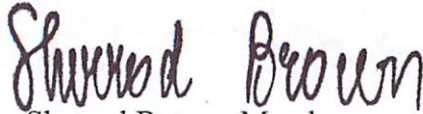
Sincerely,



Barbara Boxer
Chairman



Johnny Isakson
Vice Chairman



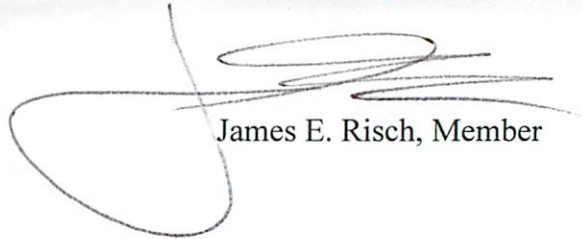
Sherrod Brown, Member



Pat Roberts, Member



Benjamin L. Cardin, Member



James E. Risch, Member