

BEYOND DELAY

The 20 most corrupt members of Congress (and five to watch)



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and ethics in washington

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EXECUTIVE SUMMARY

Over the course of the 109th Congress, the issue of congressional ethics has taken on new resonance. Where questionable conduct was once shrugged off as “business as usual,” now both the public and the press are demanding greater accountability from members of Congress. An August 2006 Harris poll shows that 77% of Americans have a negative view of Congress, while a May 2006 Gallup poll indicates that 83% of Americans consider corruption a serious issue and 64% believe that dealing with corruption should be a high priority for Congress.

In the last two years, the careers of three members have ended as a result of corruption: former Majority Leader Tom DeLay has been indicted in Texas and is facing possible federal indictment in the Jack Abramoff scandal; Rep. Randy “Duke” Cunningham is now serving an eight-year jail term for bribery, though the federal probe into his activities remains open and may yet encompass other members of Congress; and Rep. Bob Ney has agreed to plead guilty to crimes that will likely result in a minimum two-year prison term. In addition, several other members, including Reps. William Jefferson, Alan Mollohan and Jerry Lewis, and Sens. Conrad Burns and Bill Frist are also under federal investigation.

When CREW released its report last year, we called it “Beyond DeLay,” because although Rep. DeLay’s ethical transgressions were the most publicized, we believed that there were other members whose behavior merited scrutiny. Last year’s report included 13 members, while this year’s report includes a startling 20 with five dishonorable mentions. We attribute the increase, in part, to a press corps more attuned to the issue of congressional ethics with the result that there have been a greater number of investigative pieces on members’ conduct.

In the following report, Citizens for Responsibility and Ethics in Washington (CREW) documents the unethical activities of 25 members of Congress: 17 House Members and three Senators and five members whose known conduct isn’t severe enough for them to make the list, but bears notice. The biggest problem: the members on this list have abused their positions for the financial benefit of themselves, their friends and their families. Some do this by hiring unqualified family members, some allow family members to lobby them and many use the legislative process to earmark for the financial benefit of themselves and others. Members need to be reminded that a career in public service is not intended to be lucrative. If members want to get rich, they should become lobbyists.

Although much of the information included in this report has been published in other places, there is no other comparable compilation of the information in one place.

Despite the appalling conduct of members of both houses, but particularly the House of Representatives -- as well as the largest scandal in congressional history -- the ethics committees ignominiously persist in turning a blind eye and a deaf ear to the conduct of their colleagues. If Congress is not going to police itself -- and the evidence clearly demonstrates that it is not -- the ethics committees should be disbanded and the charade ended. Thankfully, the Department of Justice does not share Congress’s willful myopia to corruption.

METHODOLOGY

To create this report, CREW reviewed articles, Federal Election Commission reports¹ and audits, sworn testimony, emails, and personal financial and travel disclosure forms. We then analyzed that information to determine whether the information discovered suggested that a Member of Congress's conduct violated any federal laws, regulations or congressional ethics rules.

¹ References to companies making campaign contributions are shorthand for campaign contributions by those companies' political action committees and employees and, in some cases, their immediate families. We are not insinuating that any company named in the report has made contributions in violation of federal campaign finance laws.

MEMBERS OF THE HOUSE

REP. ROY BLUNT

Rep. Roy Blunt (R-MO) is a fifth-term member of Congress, representing Missouri's 7th congressional district. Rep. Blunt is also House Majority Whip and is considered by many to have been Tom DeLay's right-hand man.¹ In 1999, two years after taking office, Rep. Blunt was handpicked by then-Whip DeLay to serve as Chief Deputy Whip,² and when Rep. DeLay became Majority Leader, Rep. Blunt became Whip.³ Rep. Blunt's ethics issues stem from the misuse of his position to benefit family members, his connections to Jack Abramoff, and a trip paid for by a foreign agent.

Altria/Philip Morris

In 2003, Rep. Blunt divorced his wife of 31 years to marry Philip Morris (now Altria) lobbyist Abigail Perlman. Before it was known publicly that Rep. Blunt and Ms. Perlman were dating – and only hours after Rep. Blunt assumed his new role as Majority Whip – he tried to secretly insert a provision into Homeland Security legislation that would have benefited Philip Morris, at the expense of competitors.⁴ Rep. Blunt's provision would have made it harder to sell tobacco products over the Internet, and would have cracked down on the sale of contraband cigarettes.⁵

Rep. Blunt acted in the final hours before a vote on the domestic security legislation after talking with John F. Scruggs, vice president of government affairs for

¹ Rep. DeLay assigned Rep. Blunt a leading role in maintaining the infamous "K Street Project," an organization dedicated to maintaining close relationships between lobbyists and House Republicans. Blunt served as the House GOP's key K Street liaison, directing the flow of individual and political action committee contributions from the 1,600 corporations and 1,200 trade associations with PACs to Republican members of Congress. Thomas B. Edsall, House Majority Whip Exerts Influence by Way of K Street, *The Washington Post*, May 17, 2005. (Exhibit 1)

² In turn, Rep. Blunt was the largest congressional donor to DeLay's defense fund, contributing a total of \$20,000. Philip Shenon and Robert Pear, As DeLay's Woes Mount, so Does Money, *New York Times*, March 13, 2005. (Exhibit 2)

³ Id.; see also Anne E. Kornblut, Hand Out: Tom DeLay's Empire of Favors, *New York Times*, May 8, 2005. (Exhibit 3)

⁴ Jim VandeHei, GOP Whip Quietly Tried to Aid Big Donor: Provision Was Meant to Help Philip Morris, *The Washington Post*, June 11, 2003. (Exhibit 4)

⁵ Id.

Altria.⁶ Philip Morris, the tobacco division of the conglomerate Altria Group, Inc., considered this provision to be vital, as it would have banned two practices of Philip Morris's competitors that cut into the company's profits.⁷ Philip Morris would have benefited from the measure more than any other tobacco company because it was ahead of its competitors in the design and sale of "safer" cigarettes, the anticipated next regulatory step if the FDA gained regulatory power.⁸

In addition, Rep. Blunt's son, Andrew Blunt, was a lobbyist for Philip Morris, a major client Mr. Blunt picked up only four years out of law school.⁹ Mr. Blunt's clients also include Altria-owned Kraft Foods as well as Miller Brewing Company, of which Altria owns 36 percent.¹⁰

Moreover, FEC records reveal that between October 18 and November 8, 2002, within days of being named House Majority Whip, representatives from Philip Morris, Kraft Foods, and Miller Brewing Company contributed a hefty \$32,400 to Rep. Blunt's PAC, Rely on Your Beliefs Fund ("ROYB").¹¹ Overall, Philip Morris has been the largest contributor to Rep. Blunt's PAC, having contributed \$70,900 to ROYB between 1989 and 2006.¹² In addition, according to FEC records, between 1997 and 2006, Altria's PAC contributed \$33,037 to Rep. Blunt's campaign committee, Friends of Roy Blunt.¹³

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Editorial, Family Traditions, *St. Louis Post-Dispatch*, April 27, 2005. (Exhibit 5)

¹⁰ Thomas B. Edsall, *The Washington Post*, May 17, 2005.

¹¹ Federal Election Commission (FEC) report, Rely on Your Beliefs' 2002 post-general filing. (Exhibit 6)

¹² Center for Responsive Politics, <http://www.capitaleye.org/leadpacdetails.asp?CID=N00005195>. (Exhibit 7)

¹³ In their report, Public Citizen provided slightly different numbers. The Public Citizen report states that Altria/Philip Morris contributed a total of \$177,588 to Blunt's political committees: \$32,000 to his federal PAC, \$114,881 to his soft money PAC, and \$30,707 to his campaign committee. Public Citizen, *Rep. Roy Blunt: Ties to Special Interests Leave Him Unfit to Lead*, January 2006, p. 28 (Exhibit 8); FEC report for Friends of Roy Blunt. (Exhibit 9)

United Parcel Service, Inc. and FedEx Corp.

The Altria/Philip Morris imbroglio was not the only time Rep. Blunt used his legislative powers to assist a family member. In April 2003, Rep. Blunt persuaded Senate Appropriations Committee Chairman Ted Stevens (R-AK) to insert a last-minute provision into a \$79 billion emergency appropriations bill for the war in Iraq, benefiting U.S. shippers like United Parcel Service, Inc. and FedEx Corp., by requiring that military cargo be carried only by companies with no more than 25% foreign ownership.¹⁴ United Parcel Service, Inc. and FedEx Corp. were seeking to block the expansion into the United States of a foreign-owned rival, DHL, a German firm then seeking to acquire Airborne Express of Seattle.¹⁵

Within months of the insertion of the provision, FedEx Corp.'s PAC contributed a total of \$9,500 to Rep. Blunt's campaign committee, Friends of Roy Blunt, and his leadership PAC, ROYB. Similarly, United Parcel Service's PAC made the maximum allowed contribution during the 2003-2004 election cycle of \$10,000 to Friends of Roy Blunt and an additional \$10,000 to ROYB.¹⁶ Both UPS and FedEx have been generous contributors to Rep. Blunt's PAC and campaign committee. From 1997 to 2006, according to FEC records, FedEx's PAC contributed \$50,000 to ROYB and Friends of Roy Blunt.¹⁷ Between 1997 and 2006, United Parcel Service's PAC contributed \$50,000 to ROYB and Friends of Roy Blunt.¹⁸ Moreover, at the time Rep. Blunt inserted the provision, Andrew Blunt was a lobbyist on behalf of UPS in Missouri.¹⁹

¹⁴ Editorial, Brown and Blunt, *St. Louis Post-Dispatch*, April 9, 2003 (Exhibit 10); see also Editorial, All in the Family, *St. Louis Post-Dispatch*, November 28, 2004 (Exhibit 11); Dan Morgan, War Funding Bill's Extra Riders, *The Washington Post*, April 8, 2003; VandeHei, *The Washington Post*, June 11, 2003. (Exhibit 12)

¹⁵ Editorial, *St. Louis Post-Dispatch*, April 9, 2003.

¹⁶ www.politicalmoneyline.com. (Exhibit 13)

¹⁷ www.politicalmoneyline.com. (Exhibit 14)

¹⁸ www.politicalmoneyline.com. (Exhibit 15, see also Exhibit 7) Again, Public Citizen's analysis of the contributions resulted in slightly different numbers. According to Public Citizen, between 1999 and 2005, Federal Express and United Parcel Service donated a combined \$128,699 to Blunt's committees. FedEx contributed \$32,499 to Blunt's committees: \$16,000 to his federal PAC and \$16,499 to his campaign committee. UPS contributed \$96,200 to Blunt's committees: \$30,000 to his federal PAC, \$36,200 to his soft money PAC, and \$30,000 to Blunt's campaign committee. Public Citizen, Rep. Roy Blunt: Ties to Special Interests Leave Him Unfit to Lead, January 2006, p. 30.

¹⁹ Id.; Editorial, *St. Louis Post-Dispatch*, Nov. 28, 2004.

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.²⁰ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.²¹

By accepting large campaign contributions from Altria in apparent exchange for the insertion of legislation that would have benefited Philip Morris by making it harder to sell tobacco products over the internet and cracking down on the sale of contraband cigarettes, Rep. Blunt may have violated 18 U.S.C. §201(b)(2)(A).

If, as it appears, Rep. Blunt accepted campaign contributions from FedEx and UPS in exchange for his legislative assistance, he may have violated the bribery statute.

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.²² By using his position as a member of Congress to push for legislation that would financially benefit entities from which Rep. Blunt had received generous campaign contributions, he may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. §1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.²³ In considering this statute, the Supreme Court has held that a link must be

²⁰ 18 U.S.C. §201(b)(2)(A).

²¹ McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

²² 18 U.S.C. §1341.

²³ 18 U.S.C. §201(c)(1)(B).

established between the gratuity and a specific action taken by or to be taken by the government official.²⁴

If a link is established between Rep. Blunt's legislative assistance and his acceptance of campaign donations from the beneficiaries of his assistance, Rep. Blunt would be in violation of the illegal gratuity statute.

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of members, including expulsion.²⁵

5 U.S.C. §7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. §7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."²⁶ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

If Rep. Blunt accepted campaign contributions from Altria, FedEx, and UPS in return for legislative assistance, he likely violated 5 U.S.C. §7353 and House Rule XXIII.

²⁴ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

²⁵ *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the member from the House); *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

²⁶ See House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

5 CFR §2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”²⁷ House members are directed to adhere to 5 CFR §2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

The Code of Ethics also provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not.”²⁸

By accepting almost \$20,000 in campaign contributions from United Parcel Service, Inc. and FedEx Corp. mere months after inserting a provision into an emergency appropriations bill that would have benefitted UPS and FedEx by blocking competition and expanding their business, Rep. Blunt may have dispensed special favors and violated 5 CFR §2635.702(a).

Similarly, by introducing legislation that would have benefitted United Parcel Service and, consequently, his son Andrew Blunt, who worked as a lobbyist for United Parcel Service, Rep. Blunt may have dispensed special favors and violated 5 CFR §2635.702(a).

Conduct Not Reflecting Creditably on the House

Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”²⁹ This ethics standard is considered to be “the most comprehensive provision of the

²⁷ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

²⁸ Id.

²⁹ Rule XXIII, clause 1.

code.”³⁰ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.³¹ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,³² making false statements to the Committee,³³ criminal convictions for bribery,³⁴ or accepting illegal gratuities,³⁵ and accepting gifts from persons with interest in legislation in violation of the gift rule.³⁶

³⁰ House Comm. on Standards of Official Conduct, House Ethics Manual.

³¹ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

³² House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

³³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

³⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

³⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

³⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

Rep. Blunt apparently accepted campaign contributions in return for legislative favors. Accepting anything of value in exchange for official action does not reflect creditably on the House and, therefore, violates House Rule XXIII, clause 1.

Matt Blunt's Political Campaigns

Rep. Blunt's older son, Matt Blunt, who is currently the Governor of Missouri, has benefited from his family connections in his several campaigns for political office. In June 2000, when Matt Blunt was running for Missouri Secretary of State, Rep. Blunt's leadership PAC gave \$100,000 to the Missouri Republican Party.³⁷ In turn, by election day the state party had contributed \$160,000 to Mr. Blunt's campaign for Secretary of State.³⁸ Both Missourians for Matt Blunt and the 7th District Congressional Republican Committee list the same deputy treasurer and custodian of records on their IRS 8871 forms.³⁹

During that same campaign, Altria made a \$24,000 contribution to Matt Blunt's campaign, the maximum amount allowed under state law. Altria also made a \$100,000 contribution to the 7th District Congressional Republican Committee.⁴⁰ In addition, Matt Blunt received \$65,000 from more than 80 of his father's colleagues in the House.⁴¹ The Missouri Ethics Commission found that during 1999 and 2000, Rely on Your Beliefs Fund made contributions and expenditures in excess of \$1,500 per year to support or oppose candidates and ballot measures in Missouri.⁴²

Rely on Your Beliefs Fund did not, however, file a statement of organization with the Missouri Ethics Commission until July 21, 2000, nor did it file quarterly disclosure

³⁷ John Solomon and Sharon Theimer, Key Events in DeLay-Blunt Donation Swaps, *Associated Press*, Oct. 5, 2005. (Exhibit 16)

³⁸ Id.

³⁹ 7th District Congressional Republican Committee, IRS Form 8871, Political Organization Notice of Section 527 Status, August 4, 2000 (Exhibit 17); Missourians for Matt Blunt, IRS Form 8871, Political Organization Notice of 527 Status, September 18, 2000. (Exhibit 18)

⁴⁰ David Goldstein, D.C. Lobbyists Aid Blunt, *Kansas City Star*, October 15, 2004. (Exhibit 19)

⁴¹ Id.

⁴² Missouri Ethics Commission v. Rely on Your Beliefs Fund (No. A0106, Missouri Ethics Commission), Joint Stipulation of Facts, Waiver of Hearing Before the Missouri Ethics Commission May 21, 2002, and Consent Order With Joint Proposed Findings of Fact and Conclusions of Law, May 23, 2002. (Exhibit 20)

reports for July 15, 1999, October 15, 1999, or January 15, 2000, until July 25, 2000.⁴³ Accordingly, the Missouri Ethics Commission concluded that Rely on Your Beliefs Fund violated several Missouri state laws, including §130.021.5, RSMo Supp. 1999 (requiring an organization to file a statement of organization within 20 days of becoming a committee), §§130.041.1(3)(a) and 130.041.1(4), RSMo Supp. 1999 (requiring the filing of financial disclosure reports), and §130.04666.1(3), RSMo Supp. 1999 (requiring that disclosure reports be filed quarterly).⁴⁴ The Commission fined Rely on Your Beliefs Fund \$3,000 for these violations.⁴⁵

During his 2004 gubernatorial race, Matt Blunt received more than \$30,000 from nearly three dozen influential Washington lobbyists and lawyers, including many who supported Rep. Blunt.⁴⁶ Four Republican House members alone contributed nearly \$5,000, including \$1,200 from then-Rep. DeLay's political action committee, Americans for a Republican Majority (ARMPAC).⁴⁷ Rep. Blunt also contributed to his son's gubernatorial campaign. ROYB gave \$1,200 to Matt Blunt in February, and another \$1,200 in June 2004.⁴⁸

Missouri law prohibits donors from giving money before the primary for both primary and general elections.⁴⁹ Because the gubernatorial primary took place after Rep. Blunt made the two donations to Matt Blunt, Mr. Blunt had to return the second donation from the ROYB, which was made in violation of Missouri law.⁵⁰

In addition, Rep. Blunt may have violated 5 CFR §2635.702(a) when he improperly used his political connections to funnel money through a local party committee into Matt Blunt's, campaign committee.

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Goldstein, *Kansas City Star*, Oct. 15, 2004.

⁴⁷ Id.

⁴⁸ Ben Pershing, GOPers Give Generously to Blunt's Son, *Roll Call*, August 9, 2004. (Exhibit 21)

⁴⁹ Id.

⁵⁰ Id.

Rep. Blunt's various schemes to fund Matt Blunt's political campaigns, including funneling money through a local party committee which, in turn, made contributions to Matt Blunt's campaign committee, and Rep. Blunt's use of two related entities – Missourians for Matt Blunt and the 7th District Congressional Republican Committee – do not reflect creditably on the House, in violation of Rule 23, clause 1.

The fact that Rep. Blunt's PAC, Rely on Your Beliefs Fund, made contributions and expenditures in excess of state limits and failed to timely file a statement of organization or quarterly disclosure reports with the Missouri Ethics Commission does not reflect creditably on the House, in violation of Rule 23, clause 1.

By having Rely on Your Beliefs Fund make two separate contributions to Matt Blunt's gubernatorial campaign in violation of Missouri law, Rep. Blunt engaged in conduct that does not reflect creditably on the House, in violation of Rule 23, clause 1.

Foreign-Sponsored Travel

In January 2002, Rep. Blunt attended a luncheon for House Speaker Dennis Hastert in Seoul, Korea, paid for by the Korea-U.S. Exchange Council ("KORUSEC").⁵¹ In August 2001, KORUSEC registered with the U.S. Department of Justice under the Foreign Agents Registration Act.⁵² In March 2002, a delegation of senior congressional staffers, including aides to Rep. Blunt, also went to Seoul on a trip funded by KORUSEC.⁵³

House Rules provide that a Member, officer, or employee may not accept travel expenses from "a registered lobbyist or agent of a foreign principal."⁵⁴ This prohibition applies even where the lobbyist, agent, or firm will later be reimbursed for those expenses by a non-lobbyist client.⁵⁵ Rep. Blunt's January 2002 trip to Seoul, Korea, which was paid for by the Korea-U.S. Exchange Council, a registered foreign agent, violates House Rule 26, clause 5(b)(1)(A). Similarly, the March 2002 KORUSEC-funded trip to Seoul taken by Rep. Blunt's aides also violates this provision.

⁵¹ John Bresnahan and Amy Keller, Korean Tycoon's Big Plans, Network Wider Than DeLay, *Roll Call*, March 21, 2005. (Exhibit 22)

⁵² Id.

⁵³ Id.

⁵⁴ Rule XXVI, clause 5(b)(1)(A).

⁵⁵ House Comm. on Standards of Official Conduct, Travel Booklet.

Ties to Jack Abramoff

Rep. Blunt has ties to well-known Republican lobbyist Jack Abramoff, who has pleaded guilty, *inter alia*, to conspiring to bribe public officials, including at least one member of Congress and congressional staff. In June 2003, Mr. Abramoff persuaded then-Majority Leader Tom DeLay (R-TX) to organize a letter, co-signed by Speaker Hastert (R-IL), then-Whip Roy Blunt, and Deputy Whip Eric Cantor (R-VA), which was sent to the Secretary of the Department of Interior Gale A. Norton. In the letter, the House leaders – all of whom represented districts far away from Louisiana – expressed their opposition to a plan by the Jena Band of Choctaw Indians to open a casino on a non-reservation site expected to be outside Shreveport, Louisiana.⁵⁶ The view of gambling law expressed by Reps. Blunt, Hastert, DeLay, and Cantor would have benefited Mr. Abramoff's client, the Coushatta Tribe of Louisiana, by protecting the tribe's \$300 million yearly income from competition by the Jena Band.⁵⁷

In fact, Rep. Blunt was a signatory on a total of three letters sent to Secretary Norton, including a May 2003 letter as well as the June 2003 letter, opposing any extension of tribal gambling.⁵⁸ Around the time of the May and June letters to Secretary Norton, Mr. Abramoff contributed \$1,000 to Rep. Blunt's PAC, Rely on Your Beliefs Fund, and his lobbying firm contributed another \$2,000 to the PAC.⁵⁹ According to the Center for Responsive Politics, Rep. Blunt received a total of \$8,500 from Mr. Abramoff between 1999 and 2003.⁶⁰

In the spring of 2000, Rep. Blunt's PAC received a \$3,000 donation from another Abramoff client, Concorde Garment Manufacturing, a garment factory in the Northern Mariana Islands. For years Concorde has been the subject of allegations that it operates as a sweatshop, and in the 1990s it paid a \$9 million fine to the United States for failing to pay its workers overtime.⁶¹ Concorde was also a pivotal member of the Marianas garment industry, which the Commonwealth of the Northern Mariana Islands sought to protect by hiring lobbyist Jack Abramoff. Mr. Abramoff, in turn, lobbied Reps. Blunt,

⁵⁶ R. Jeffrey Smith, Foundation's Funds Diverted From Mission, *The Washington Post*, September 28, 2004. (Rule 23)

⁵⁷ Id.

⁵⁸ John Solomon and Sharon Theimer, Lawmakers Acted on Heels of Abramoff Gifts, *Associated Press*, November 17, 2005. (Exhibit 24)

⁵⁹ Id.; see also www.opensecrets.org. (Exhibit 25)

⁶⁰ Center for Responsive Politics, <http://www.capitaleye.org>. (Exhibit 26)

⁶¹ Solomon and Theimer, *Associated Press*, October 5, 2005.

DeLay, and others to keep the Northern Mariana Islands exempt from U.S. minimum wage and other federal labor laws.⁶²

Reps. Blunt and DeLay, as well as some of their aides, met with Mr. Abramoff's lobbying team several times in 2000 and 2001 regarding Marianas issues, according to law firm billing records obtained by *Associated Press*.⁶³ On November 27, 2000, Mr. Abramoff's firm billed its Mariana Islands client for a meeting between its lobbying team and Blunt congressional aide Trevor Blackann.⁶⁴ The following year, on September 5, 2001, a member of Mr. Abramoff's Mariana Islands lobbying team met with one of Rep. Blunt's staffers to discuss strategy to defeat legislation that would have imposed the minimum wage on Mariana Islands employers.⁶⁵ Four days later, a member of Mr. Abramoff's lobbying team discussed the issue with Rep. Blunt himself.⁶⁶ And on September 30, 2001, Mr. Abramoff's lobbying team again met with a staffer of Rep. Blunt to discuss issues including the minimum wage legislation for the Mariana Islands.⁶⁷

At Mr. Abramoff's upscale restaurant, Signatures, where he wined and dined lawmakers and their aides, Rep. Blunt was listed as a "Friend of the Owner," a designation indicating that Rep. Blunt could dine for free.⁶⁸

Given that Rep. Blunt's leadership PAC, Rely on Your Beliefs, accepted donations from Jack Abramoff and his lobbying firm while Rep. Blunt was signing letters to Interior Secretary Gale Norton that advocated a view of gambling law benefitting Mr. Abramoff's client, the Louisiana Coushatta, it appears that Rep. Blunt accepted the campaign contributions in direct exchange for using his official position to assist the Coushatta tribe. Therefore, Rep. Blunt's conduct may have violated the bribery statute, 18 U.S.C. §201(b)(2)(A).

In the spring of 2000, Rep. Blunt's PAC received a \$3,000 donation from an Abramoff client, Concorde Garment Manufacturing. Thereafter, Rep. Blunt and his staff

⁶² Id.

⁶³ Id.

⁶⁴ Solomon and Theimer, *Associated Press*, October 5, 2005.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Glen Justice, For Lobbyist, a Seat of Power Came With a Plate, *The New York Times*, July 6, 2003. (Exhibit 27)

met several times with Mr. Abramoff's lobbying team to discuss strategy on minimum wage legislation that would have impacted the Mariana Islands.

If, as it appears, Rep. Blunt accepted the campaign contribution in exchange for using his official position to defeat changes to federal minimum wage legislation that would have harmed Concorde Garment Manufacturing, Rep. Blunt may have violated 18 U.S.C. §201(b)(2)(A).

Rep. Blunt, by accepting campaign contributions in exchange for using his position to advocate a position with Secretary Norton that benefited Jack Abramoff's tribal clients and to defeat legislation that would have harmed a client of Mr. Abramoff's, may have violated the illegal gratuity statute, 18 U.S.C. §201(c)(1)(B), as well as the solicitation statute, 5 U.S.C. §7353.

By using his position to assist Mr. Abramoff and his clients in exchange for generous campaign contributions, Rep. Blunt may also have dispensed special favors in violation of 5 CFR §2635.702(a). And his acceptance of campaign contributions in apparent exchange for legislative favors also does not reflect creditably on the House and therefore violates House Rule XXIII.

Money Laundering Scheme With Rep. DeLay

Reports indicate that Rep. Blunt participated with Rep. DeLay in a scheme that appears similar to the money-laundering scheme for which Rep. DeLay has been indicted in Texas. According to the *Associated Press*, during the 2000 presidential election campaign, Rep. DeLay deliberately raised more money than he needed for convention parties and then diverted some of the excess funds to Rep. Blunt through a series of donations that benefited both men.⁶⁹ Another of the beneficiaries of Rep. DeLay's largesse was Matt Blunt, who was then running for Secretary of State of Missouri.⁷⁰ Well before the 2000 Republican presidential convention, Rep. DeLay and his political action committee, ARMPAC, transferred a total of \$150,000 to Rep. Blunt's PAC, Rely on Your Beliefs Fund.⁷¹ In turn, Rely on Your Beliefs Fund made a series of payments to, among others, Rep. DeLay's foundation and a political consulting firm, the now defunct Alexander Strategies, Inc., which had been formed by Rep. DeLay's former chief of staff, Ed Buckham.⁷² Rep. Blunt's PAC also donated \$100,000 generated by Rep.

⁶⁹ Solomon and Theimer, *Associated Press*, Oct. 5, 2005.

⁷⁰ Id.

⁷¹ Id.

⁷² Id.

DeLay's convention fund-raising group to the Missouri Republican Party, which, in turn, spent more than \$160,000 on Matt Blunt's campaign for Secretary of State.⁷³

Jack Abramoff and his lobbying team, who were then meeting with Rep. Blunt and his staff to enlist their help with issues relating to the Mariana Islands, were the original source for many of the funds Rep. DeLay raised ostensibly to cover the costs of convention parties.⁷⁴ The complicated funding scheme effectuated by Reps. Blunt and DeLay was likely intended to disguise the root of the funding as well as the purposes for which the funds – initially solicited to cover the costs of convention parties – were actually put to use.⁷⁵

Rep. Blunt's participation with Rep. DeLay in a money-laundering scheme during the 2000 presidential campaign, which was apparently designed to hide the source and use of funds solicited for the expressed purpose of financing Republican convention parties, may have violated 5 CFR §2635.702(a), given that Rep. Blunt diverted \$100,000 of the funds to the Missouri Republican Party to help finance his son Matt's campaign for Secretary of State.

Finally, Rep. Blunt's participation in a scheme apparently intended to hide the source of funds solicited to cover the costs of Republican parties held during the 2000 convention, as well as the diversion of those funds into Matt Blunt's campaign for Missouri Secretary of State, does not reflect creditably on the House, in violation of Rule XXIII, clause 1.

⁷³ Solomon and Theimer, *Associated Press*, Oct. 5, 2005.

⁷⁴ Id.

⁷⁵ Id.

REP. KEN CALVERT

Rep. Ken Calvert (R-CA) is a seventh-term member of Congress, representing California's 44th congressional district. Rep. Calvert's ethics issues stem from his use of earmarks for personal gain and his connections to a lobbying firm under investigation.

Earmarks for Self Enrichment

In 2005, Rep. Calvert and his real estate partner, Woodrow Harpole Jr., paid \$550,000 for a four-acre piece of land at Martin Street and Seaton Avenue in Perris, just four miles south of the March Air Reserve Base in California.¹ Less than a year after buying the land, without making any improvements to the run-down parcel, they sold the property for \$985,000, a 79% increase.² During this period, Rep. Calvert pushed through an earmark to secure \$8 million for an overhaul and expansion of a freeway interchange 16 miles from the property, as well as an additional \$1.5 million for commercial development in the area around the airfield.³

Rep. Calvert and his partner have argued that the increase in value of the land had nothing to do with the earmarks. However, in 2005, Rep. Calvert made a point of noting that the improved interchange would "provide efficient and direct connectivity for the March Air Reserve Base," which would certainly increase the value of the land.⁴ In addition to making money on the sale of the land, Calvert Real Properties, Inc., Rep. Calvert's real estate firm, received brokerage fees from the seller for representing both buyer and seller in the land deal.⁵

In 2005, another deal was brokered by Mr. Harpole with a group of investors. The group of investors bought property at 20330 Temescal Canyon Road, a few blocks

¹ Tom Hamburger, Lance Pugmire and Richard Simon, Calvert's Land of Plenty, *Los Angeles Times*, May 15, 2006 (Exhibit 1); see also Kimberly Trone and Claire Vitucci, Calvert Denies Any Wrongdoing In Land Deal, *The Press Enterprise*, May 16, 2006 (Exhibit 2); David McNaughton, Our Opinions: Power plays go foul on Capitol Hill, *The Atlanta Journal-Constitution*, May 18, 2006. (Exhibit 3)

² Id.; see also Corona Rep. Ken Calvert Earned Big Bucks in Land Deals, *Associated Press*, May 15, 2006. (Exhibit 4)

³ Id.

⁴ Id.

⁵ Id.

from the site of the then-proposed interchange, for \$975,000.⁶ Within six months, after the earmark for the interchange was appropriated, the parcel of land sold for \$1.45 million.⁷ Rep. Calvert's firm received a commission on the sale.⁸

Rep. Calvert also owns other Corona properties likely affected by earmarking.⁹ He and Mr. Harpole own multiple properties close to a bus depot for which Rep. Calvert earmarked money.¹⁰ One of those lots was sold in 2005, but Rep. Calvert maintains that the earmark had no impact on the land's value.¹¹ Rep. Calvert and Mr. Harpole also own a 1,200 square foot office building at 63 W. Grand Boulevard, which will be affected by a \$1.7 million earmark for the Corona Transit Center.¹²

Not only has Rep. Calvert benefited from earmarks, it appears that he has also benefited from preferential treatment on a four-acre land deal with Jurupa Community Services District.¹³ Under the \$1.2 million deal, Rep. Calvert and business associates were allowed to buy a parcel of public land without competition, at a time when the regional real estate market was booming.¹⁴ Although California law requires government agencies to first offer public land for sale to other public entities before making a private sale,¹⁵ Rep. Calvert was able to purchase the land without an initial public offering.¹⁶

⁶ *Associated Press*, May 15, 2006.

⁷ *Id.*

⁸ *Id.*

⁹ Trone and Vitucci, *The Press Enterprise*, May 16, 2006.

¹⁰ Hamburger, Pugmire and Simon, *Los Angeles Times*, May 15, 2006.

¹¹ *Id.*

¹² Trone and Vitucci, *The Press Enterprise*, May 16, 2006.

¹³ David Danelsky and Sandra Stokley, Sale of Park Site Draws Questions, *The Press-Enterprise*, August 18, 2006.(Exhibit 5)

¹⁴ *Id.*

¹⁵ Cal. Gov't Code §54222 (2006).

¹⁶ Danelsky and Stokley, *The Press-Enterprise*, Aug. 17, 2006.

Jurupa, in turn, has benefited from water supply legislation that Rep. Calvert sponsored.¹⁷

5 C.F.R. §2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”¹⁸ House members are directed to adhere to 5 C.F.R. §2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

By using his position to earmark funds to increase the value of his own properties and sponsoring legislation that benefited a municipality that had provided him with preferential treatment on a land deal, Rep. Calvert has violated 5 C.F.R. §2635.702(a).

House Rule XXIII

Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”¹⁹ This ethics standard is considered to be “the most comprehensive provision of the code.”²⁰ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.²¹ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the

¹⁷ Santa Ana River Water Supply Enhancement Act of 2005, H.R. 177, 109th Cong. (1st Sess. 2005). (Exhibit 6)

¹⁸ House Comm. on Standards of Official Conduct, Memorandum For All Members, Officers and Employees, Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

¹⁹ Rule XXIII, cl. 1.

²⁰ House Comm. on Standards of Official Conduct, House Ethics Manual.

²¹ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

failure to report campaign contributions,²² making false statements to the Committee,²³ criminal convictions for bribery,²⁴ or accepting illegal gratuities,²⁵ and accepting gifts from persons with interest in legislation in violation of the gift rule.²⁶

By using his position as a member of Congress to create earmarks that benefited his financial interests, Rep. Calvert engaged in conduct that does not reflect creditably on the House, in violation of Rule XXIII, clause 1. Similarly, by using his position to sponsor legislation that benefited Jurupa Community Services District – an apparent reward for the district’s preferential treatment in the sale of land to him – Rep. Calvert engaged in conduct that does not reflect creditably on the House.

Relationship to Copeland, Lowery, Jacquez, Denton & White

The lobbying firm of Copeland, Lowery, Jacquez, Denton and White is (“Copeland Lowery”) currently under investigation by a federal grand jury for its ties to Rep. Jerry Lewis (R-CA). Rep. Lewis, as Chairman of the House Appropriations

²² House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

²³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

²⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

²⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

²⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

Committee, has approved hundreds of millions of dollars for the firm, and specifically for interests represented by Bill Lowery.²⁷ In apparent return, Mr. Lowery, his partners, and his firm's clients have donated 37% of the \$1.3 million that Rep. Lewis's political action committee has received over the past six years.²⁸ Indeed, an unnamed source on Capitol Hill stated "Word is getting around that if you want to be close to Jerry Lewis, it's a good idea to be close to Bill Lowery."²⁹

Rep. Calvert has ties to both Rep. Lewis and Lowery's firm. Rep. Lewis has been something of a benefactor to Rep. Calvert, and was the main proponent of Rep. Calvert's candidacy for former Rep. Tom DeLay's seat on the Appropriations Committee after the former Majority leader resigned from Congress.³⁰ On May 23, 2006, the FBI obtained Rep. Calvert's financial records at the same time that they pulled Rep. Lewis's financial records.³¹ Rep. Calvert says that no one has contacted his office and maintains that he has not been accused of any wrongdoing.³²

After Rep. Lewis, Rep. Calvert is the inland California representative who has received the most amount of money from Copeland Lowery,³³ receiving \$25,803 from Copeland employees for both his campaign fund and his PAC since the 2000-2001 election cycle.³⁴ Notably, Copeland Lowery was also the single largest donor for Rep. Calvert in the 03-04 election cycle.³⁵

²⁷ Jerry Kammer, Close Ties Make Rep. Lewis, Lobbyist Lowery a Potent Pair, *Copley News Service*, December 23, 2005. (Exhibit 7)

²⁸ Id.

²⁹ Id.

³⁰ Edward Barrera, FBI Reviews Calvert Links, *Inland Valley Daily Bulletin*, June 17, 2006. (Exhibit 8)

³¹ Claire Vitucci, Douglas Quan and Michelle Dearmond, Finances of Lewis, Calvert Inspected, *The Press Enterprise*, June 10, 2006. (Exhibit 9)

³² Barrera, *Inland Valley Daily Bulletin*, June 17, 2006.

³³ Vitucci, Quan and Dearmond, *The Press Enterprise*, June 10, 2006.

³⁴ Id.

³⁵ Edward Barrera, *Inland Valley Daily Bulletin*, June 17, 2006.

Records show that Rep. Calvert has helped pass through at least 13 earmarks sought by Copeland Lowery in 2005, adding up to \$91,300,000.³⁶ Rep. Calvert has put 69 earmarks into spending bills during the 05-06 congressional session, particularly high for someone who does not sit on either the Appropriations or Transportation Committee.³⁷

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.³⁸ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.³⁹ An investigation should be launched into whether Rep. Calvert violated 18 U.S.C. §201(b)(2)(A) by taking money for his campaigns in exchange for earmarks to help the clients of Copeland Lowery.

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.⁴⁰ By accepting campaign contributions in exchange for earmarks to help the clients of Copeland Lowery, Rep. Calvert may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. §1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such

³⁶ United States Senate Office of Public Records, Lobby Filing Disclosure Forms; Rep. Calvert's Office, Press Releases.(Exhibit 10)

³⁷ Hamburger, Pugmire and Simon, *Los Angeles Times*, May 15, 2006.

³⁸ 18 U.S.C. §201(b)(2)(A).

³⁹ McCormick v. U.S., 500 U.S. 257 (1991); United States v. Biaggi, 909 F.2d 662, 665 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

⁴⁰ 18 U.S.C. §1341.

official.⁴¹ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.⁴²

If a link is established between Rep. Calvert's actions to earmark funds for clients of Copeland Lowery and the campaign donations and donations to his PAC that Copeland Lowery, its employees and associates made, Rep. Calvert would be in violation of the illegal gratuity statute.

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of members, including expulsion.⁴³

5 U.S.C. §7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. §7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."⁴⁴ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

If Rep. Calvert accepted campaign contributions from Copeland Lowery and its associates in return for legislative assistance by way of earmarking federal funds for the lobbying firm's clients, he likely violated 5 U.S.C. §7353 and House Rule XXIII.

⁴¹ 18 U.S.C. §201(c)(1)(B).

⁴² United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

⁴³ *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the member from the House); *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

⁴⁴ See House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

5 CFR §2635.702(a)

By funneling federal funds to clients of Copeland Lowery, a lobbying firm that has provided him with generous campaign contributions, Rep. Calvert may have dispensed special favors and violated 5 CFR §2635.702(a).

Houses Rule XXIII

Rep. Calvert apparently accepted campaign contributions in return for legislative favors that financially benefited the clients of Copeland Lowery. Accepting anything of value in exchange for official action does not reflect creditably on the House and, therefore, violates House Rule XXIII, clause 1.

REP. JOHN DOOLITTLE

Rep. John Doolittle (R-CA) is an eighth-term member of Congress representing California's 4th congressional district. He is a member of the House Appropriations Committee. Rep. Doolittle's ethics issues stem from his wife's relationship to his campaign and political action committees, as well as campaign contributions and personal financial benefits he accepted from those who sought his legislative assistance.

Julie Doolittle

Rep. John Doolittle's wife, Julie, is the owner and president of Sierra Dominion Financial Solutions, a fundraising company retained by Rep. Doolittle's campaign committee and his Superior California Leadership PAC.¹ The company was launched by Ms. Doolittle in March 2001, two months after Rep. Doolittle was appointed to the House Committee on Appropriations.² Rep. Doolittle has confirmed that Ms. Doolittle's company receives a 15% commission on what she raises for his campaign, even when Rep. Doolittle is making the actual solicitation calls.³ In fact, since at least 2003, Ms. Doolittle has collected fees of 15% on all contributions to Rep. Doolittle's leadership PAC, and additional commissions on contributions to his campaign committee.⁴ Ms. Doolittle has received at least \$215,000 from Rep. Doolittle's campaign committees since 2001, and has taken in nearly \$100,000 for the 2006 campaign alone.⁵

Notably, the Association of Fundraising Professionals sent a letter to Rep. Doolittle stating that its long-standing ethics code, "explicitly prohibits percentage-based compensation" and urged the campaign to cease this practice with Sierra Dominion Financial Solutions.⁶

¹ Dean Calbreath, Congressman Doolittle, Wife Profited from Cunningham-Linked Contractor, *San Diego Union-Tribune*, March 19, 2006. (Exhibit 1)

² Id.

³ David Whitney, Fundraising Group Assails the Doolittles, *The Sacramento Bee*, April 20, 2006. (Exhibit 2)

⁴ Jonathan Weisman and Jeffrey H. Birnbaum, Lawmaker Criticized for PAC Fees Paid to Wife, *The Washington Post*, July 11, 2006. (Exhibit 3)

⁵ Editorial, The Doolittles' Rich Deal; How One Congressional Couple Collected Campaign Checks – And Put \$215,000 In Their Pocket, *The Washington Post*, April 21, 2006. (Exhibit 4)

⁶ Whitney, *The Sacramento Bee*, Apr. 20, 2006.

In addition, between August 2002 and February 2005, Sierra Dominion received \$67,000 in payments from Greenberg Traurig and disgraced lobbyist Jack Abramoff.⁷ Mrs. Doolittle received a monthly retainer fee of \$5,000 from Greenberg Traurig, the “lion’s share” of which she received after a canceled charity event that was the main justification for the retainer fee.⁸ According to Rep. Doolittle, Sierra Dominion was retained by Greenberg Traurig in connection with a charity event for Mr. Abramoff’s Capital Athletic Foundation.⁹ The event was cancelled and never re-scheduled, after only a few thousand dollars were raised.¹⁰ At the time the retainer fee payments were stopped in January 2003, Mrs. Doolittle had received about \$27,000. In July 2003, Greenberg Traurig resumed payment of Sierra Dominion’s \$5,000 monthly retainer fee.¹¹ From July 2003 through February 2004, Mr. Abramoff’s law firm paid Mrs. Doolittle’s company a total of \$40,000.¹²

Conversation of Campaign Fund to Personal Use

In July 2001, the Federal Election Commission (“FEC”) issued an Advisory Opinion regarding payments by campaign committees to family members.¹³ Rep. Jesse Jackson, Jr. (D-IL) sought an opinion as to whether his principal campaign committee could hire his wife as a consultant to provide fundraising and administrative support.¹⁴ Ms. Jackson had previously served as chief of staff for a congressman, press secretary for another congressman, and she had worked for national presidential campaigns in 1988 and 1996.¹⁵

The FEC noted that the Federal Election Campaign Act prohibits the conversion of campaign funds to personal use.¹⁶ Generally, personal use is “any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any

⁷ Paul Kane, Doolittle Fees Raise Questions, *Roll Call*, July 3, 2006. (Exhibit 5)

⁸ Id.

⁹ Id.

¹⁰ Kane, *Roll Call*, July 3, 2006.

¹¹ Id.

¹² Id.

¹³ FEC, AO 2001-20, July 17, 2001.

¹⁴ Id.

¹⁵ Id.

¹⁶ 2 U.S.C. § 439a; 11 CFR § 113.2(d).

person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder."¹⁷ Certain uses of campaign funds will be considered per se personal use, including salary payments to family members, unless they are fair market value payments for bona fide, campaign related services."¹⁸ If a family member is providing bona fide services to the campaign, any salary payment in excess of the fair market value of the services provided is personal use.¹⁹

In applying these provisions to Rep. Jackson's request for an opinion, the FEC stated that the campaign committee could hire Ms. Jackson as long as she was paid no more than the fair market value of bona fide services, the contract contained terms customarily found in agreements entered into between paid campaign consultants and candidate committees, and the agreement conformed to the standard industry practice for this type of contract.²⁰

House rules echo this prohibition. Clause 6(b) of Rule XXIII provides that a member "may not convert campaign funds to personal use in excess of an amount representing reimbursement for legitimate and verifiable campaign expenditures." According to the Campaign Booklet published by the House Committee on Standards of Official Conduct, the Committee has taken the position that members "must observe these provisions strictly."²¹ With respect to the purchase of campaign services from a relative of the member, the Campaign Booklet provides specifically:

Such a transaction is permissible under the House Rules only if (1) there is a bona fide campaign need for the goods, services or space, and (2) the campaign does not pay more than fair market value in the transaction . . . If a Member's campaign does enter into such a transaction with the Member or a member of his or her family, the campaign's records must include information that establishes both the campaign's need for and actual use of the particular goods, services or space, and the efforts made to establish fair market value for the transaction.²²

¹⁷ 11 CFR § 113.1(g).

¹⁸ 11 CFR § 113.1(g)(1)(I).

¹⁹ 11 CFR. § 113.1(g)(1)(i)(H).

²⁰ FEC, AO 2001-10.

²¹ House Comm. on Standards of Official Conduct, Campaign Booklet at 39.

²² Id. at 44.

Here, Ms. Doolittle does not appear to have previous relevant experience and the only political committee for which she has worked is that of her husband. Moreover, the payment by Rep. Doolittle's campaign committee and leadership PAC of at least \$215,000 since 2001 in percentage-based commissions to his wife does not conform to the Code of Ethical Principles and Standards of Professional Practice adopted by the American Association of Fundraising Professionals, which prohibits fundraising on a percentage basis. Nor does Ms. Doolittle's financial arrangement with Rep. Doolittle's leadership PAC, whereby since at least 2003 she has collected 15% on all contributions to the PAC (whether or not she performed any service that led to those contributions), conform to the Code of Ethical Principles and Standards. In addition, as discussed below, Ms. Doolittle received commissions on contributions of nearly \$50,000 even though the contributions flowed from a dinner, hosted by Brent Wilkes, that Ms. Doolittle did not plan, and were not the result of any solicitation on her part. Taken together, these facts suggest Rep. Doolittle is converting campaign funds to personal use in violation of the Federal Election Campaign Act and House Rule XXIII, clause 6.

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.²³ By using his position as a member of Congress to financially benefit his wife, Rep. Doolittle may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. §1341.

5 CFR §2635.702(a)

Another "fundamental rule[] of ethics" for members of the House is that they are prohibited from "taking any official actions for the prospect of personal gain for themselves or anyone else."²⁴ House members are directed to adhere to 5 CFR §2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the

²³ 18 U.S.C. §1341.

²⁴ House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

employee is affiliated in a nongovernmental capacity.

Rep. Doolittle has provided a financial benefit to his wife and family through the percentage-based compensation his campaign committee and PAC pay her, including payments based on fundraising performed directly by Rep. Doolittle. In this way, Rep. Doolittle has run afoul of 5 CFR §2635.702(a).

In a 1999 memorandum, the House Committee on Standards of Official Conduct quoted approvingly the Code of Ethics for Government Service, which provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not.”²⁵ The Committee stated specifically that the provisions of the Code of Ethics for Government Service apply to House members, and that formal charges may be brought against a member for violating that code.²⁶

The Committee on Standards of Official Conduct should investigate whether Ms. Doolittle secured contracts with Greenberg Traurig because of her relationship with Rep. Doolittle and as part of an effort by Mr. Abramoff to reward Rep. Doolittle for his legislative assistance on behalf of Mr. Abramoff and his clients. By using the powers of his office to funnel funds to his wife’s fundraising company, Rep. Doolittle may have dispensed special favors in violation of House rules.

Conduct Not Reflecting Creditably on the House

Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”²⁷ This ethics standard is considered to be “the most comprehensive provision of the code.”²⁸ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.²⁹ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical

²⁵ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

²⁶ Id.

²⁷ Rule XXIII, cl. 1.

²⁸ House Comm. on Standards of Official Conduct, House Ethics Manual.

²⁹ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

conduct including: the failure to report campaign contributions,³⁰ making false statements to the Committee,³¹ criminal convictions for bribery,³² or accepting illegal gratuities,³³ and accepting gifts from persons with interest in legislation in violation of the gift rule.³⁴

The arrangement between a company owned by Rep. Doolittle's wife and his campaign committee and leadership PAC, whereby his wife receives a flat percentage of each campaign contribution Sierra Dominion raises for Rep. Doolittle, is contrary to the ethical standards of the fundraising profession and does not reflect creditably on the House. This is particularly the case given that the income Ms. Doolittle earns in this matter inures directly to the benefit of Rep. Doolittle and his family.

³⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

³¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

³² House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

³³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

³⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

Ties to Brent Wilkes

Rep. Doolittle has acknowledged that he assisted the California company, PerfectWave Technologies LLC, to secure \$37 million in federal earmarks.³⁵ Brent Wilkes is the director of PerfectWave and was identified as “co-conspirator No. 1” in the federal investigation of former Congressman Randy “Duke” Cunningham.³⁶ Between 2002 and 2005, Mr. Wilkes and his associates gave \$118,000 to Rep. Doolittle’s campaign committees, more than they gave to any other politician including Rep. Cunningham.³⁷ Calculations based on federal and state records show that Mrs. Doolittle received \$14,400 of that money in commissions.³⁸ Mr. Wilkes hosted a fundraiser dinner in November of 2003, attended by 15 guests who were his employees and partners.³⁹ Over the next four months the attendees gave a total of \$50,000 to Rep. Doolittle’s PAC.⁴⁰ Mrs. Doolittle claimed commissions on most of those contributions, although there is no evidence she planned the dinner or encouraged the donations.⁴¹

Rep. Doolittle’s last known meeting with Mr. Wilkes was in Las Vegas during a fundraiser for the Congressman’s political action committee.⁴² Ms. Doolittle took a 15% commission for donations made during the Las Vegas event.⁴³ Rep. Doolittle has refused to return or donate the contributions from Mr. Wilkes, claiming they were legal.⁴⁴

³⁵ Jonathan Weisman and Charles R. Babcock, K Street’s New Ways Spawn More Pork: As Barriers With Lawmakers Fall, ‘Earmarks’ Grow, *The Washington Post*, January 27, 2006. (Exhibit 6)

³⁶ Id.

³⁷ Dean Calbreath, *San Diego Union-Tribune*, Mar. 19, 2006.

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

⁴¹ Calbreath, *San Diego Union-Tribune*, Mar. 19, 2006.

⁴² Id.

⁴³ Id.

⁴⁴ Id.

Ties to Jack Abramoff

The Commonwealth of Northern Mariana Islands (CNMI)

In 1999, Rep. Doolittle also assisted Jack Abramoff in securing a lucrative lobbying contract with the Commonwealth of the Northern Mariana Islands, and directing federal funding to CNMI.⁴⁵ Mr. Abramoff had lost his contract with the Mariana Islands a year earlier and, in his strategy to win it back, he supported the candidacy for the CNMI Legislature of a former garment industry vice president, Benigne Fitial.⁴⁶ The garment industry in CNMI has been criticized for human rights abuses, and Mr. Abramoff had previously lobbied to stop Congress from passing a law enforcing immigration and wage laws CNMI. Rep. Doolittle had also opposed the reforms.⁴⁷

On October 3, 1999, Rep. Doolittle received a \$1,000 contribution from Mr. Abramoff.⁴⁸ Three weeks later he wrote a letter in support of Mr. Fitial, which ran in the *Saipan Tribune* on November 2, 1999.⁴⁹ After Mr. Fitial won his election, Mr. Abramoff dispatched former Rep. DeLay aides Ed Buckham and Michael Scanlon to persuade two legislators from Tinian and Rota Islands to switch their votes for Speaker of the House to Mr. Fitial, in exchange for funneling federal money to the islands.⁵⁰ Mr. Fitial was elected Speaker of the House and the government of the Mariana Islands hired Mr. Abramoff's firm on July 27, 2000.⁵¹ On October 30, 2000, Mr. Abramoff contributed \$10,000 to Rep. Doolittle's Superior California State Leadership Fund.⁵²

In 2001, Mr. Abramoff hired one of Rep. Doolittle's former aides, Kevin Ring, to manage the CNMI account.⁵³ Over the next ten months, Mr. Ring met with or contacted Rep. Doolittle's office 19 times regarding CNMI. According to billing records, on March 12, 2001, Mr. Ring

⁴⁵ David Whitney, Lobbyist Donated Cash to Doolittle; Congressman Received \$14,000, Helped Abramoff Win Contract, *The Sacramento Bee*, August 5, 2006. (Exhibit 7)

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Whitney, *The Sacramento Bee*, Aug. 5, 2006.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id.

⁵² Whitney, *The Sacramento Bee*, Aug. 5, 2006.

⁵³ Id.

worked with Rep. Doolittle's office regarding a letter on a new Occupational Health and Safety Administration report.⁵⁴ Ten days later, the *Saipan Tribune* published a letter Rep. Doolittle had written to House colleagues regarding the report, in which Rep. Doolittle concluded that there had been improvements in the garment industry in CNMI. The letter also detailed port projects funded through the U.S. Army Corps of Engineers for the Rota and Tinian Islands for which Rep. Doolittle said he would continue to seek funding.⁵⁵

On May 17, 2001, Rep. Doolittle's re-election committee contributed \$1,000 to Mr. Fitial, and six days later Mr. Abramoff donated \$1,000 to Rep. Doolittle's campaign.⁵⁶ In total Rep. Doolittle received \$14,000 directly from Mr. Abramoff.⁵⁷

Mr. Abramoff's Tribal Clients

In June 2003, Mr. Ring visited Rep. Doolittle's office on behalf of one of Mr. Abramoff's tribal clients, the Sac and Fox tribe of Iowa.⁵⁸ A few days later, Rep. Doolittle wrote a letter to then-Secretary of the Interior Gale Norton in support of the Sac and Fox tribe, asking Secretary Norton to allow the tribe to re-open a casino that had been shut down by the Bureau of Indian Affairs.⁵⁹ Shortly before Rep. Doolittle wrote the letter, in July 2003, Greenberg Traurig resumed paying Ms. Doolittle's company the \$5,000 retainer fee that the firm had begun paying in August 2002, but had stopped in January 2003.⁶⁰ Rep. Doolittle wrote a second letter to Secretary Norton on October 7, 2003, asking her to speed up the federal recognition process for another of Mr. Abramoff's clients, the Mashpee Wampanoag of Massachusetts, which would have allowed the tribe to open its casino more quickly.⁶¹ Even though Rep. Doolittle is an avowed anti-gambling Mormon, he has received \$130,000 from tribal casinos with ties to Mr.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Whitney, *The Sacramento Bee*, Aug. 5, 2006.

⁵⁷ Id.

⁵⁸ David Whitney, Doolittle Defends Helping Iowa Tribe, *The Sacramento Bee*, February 12, 2006. (Exhibit 8)

⁵⁹ Kane, *Roll Call*, July 3, 2006.

⁶⁰ Id.

⁶¹ Id.

Abramoff.⁶²

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.⁶³ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁶⁴

If, as it appears, Rep. Doolittle accepted campaign donations in direct exchange for earmarking federal funds to Perfect Wave Technologies, he may have violated the bribery statute.

If, as it appears, Rep. Doolittle assisted Mr. Abramoff in securing a lucrative lobbying contract with the Commonwealth of the Northern Mariana Islands in direct exchange for campaign contributions, he may have violated the bribery statute.

If, as it appears, Rep. Doolittle accepted campaign donations in direct exchange for writing letters to former Secretary Gale Norton urging her to take actions that would financially benefit Mr. Abramoff's tribal clients, he may have violated the bribery statute.

Honest Services Fraud

By using his position as a member of Congress to earmark funds for Perfect Wave Technologies in exchange for campaign donations, Rep. Doolittle may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. §1341.

By using his position as a member of Congress to assist Mr. Abramoff in securing a lucrative lobbying contract in CNMI in exchange for campaign contributions, Rep. Doolittle may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. §1341.

By using his position as a member of Congress to attempt to influence Secretary Norton to take actions that would benefit Mr. Abramoff's tribal clients in exchange for campaign

⁶² David Whitney, Doolittle Declines to Return \$4,000 in Abramoff Contributions; Aide to Republican Says He Accepted Cash 'Legally And Ethically, *Modesto Bee*, January 6, 2006. (Exhibit 9)

⁶³ 18 U.S.C. § 201(b)(2)(A).

⁶⁴ McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

donations, Rep. Doolittle may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. §1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.⁶⁵ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.⁶⁶

If a link is established between Rep. Doolittle's actions to earmark funds for Perfect Wave Technologies and the campaign donations and donations to his PAC that Brent Wilkes and his associates made, Rep. Doolittle would be in violation of the illegal gratuity statute.

If a link is established between Rep. Doolittle's assistance in helping Mr. Abramoff secure a lobbying contract in the Mariana Islands and campaign contributions Rep. Doolittle received from Mr. Abramoff, he would be in violation of the illegal gratuity statute.

If a link is established between Rep. Doolittle's actions on behalf of Mr. Abramoff's tribal clients and the campaign donations he received from Mr. Abramoff and the tribes, Rep. Doolittle would be in violation of the illegal gratuity statute.

5 U.S.C. §7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. §7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."⁶⁷ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence

⁶⁵ 18 U.S.C. § 201(c)(1)(B).

⁶⁶ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

⁶⁷ See House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

improperly exerted from his position in the Congress.

By accepting campaign contributions from Mr. Wilkes and his associates in apparent exchange for earmarking funds for his companies, Rep. Doolittle likely violated 5 U.S.C. §7353 and House Rule XXIII.

By accepting campaign contributions from Mr. Abramoff in apparent exchange for helping him secure a lucrative lobbying contract, Rep. Doolittle likely violated 5 U.S.C. §7353 and House Rule XXIII.

By accepting campaign contributions from Mr. Abramoff and his tribal clients in apparent exchange using his position to urge Secretary Norton to take action that would benefit the tribes, Rep. Doolittle likely violated 5 U.S.C. §7353 and House Rule XXIII.

5 CFR §2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”⁶⁸ House members are directed to adhere to 5 CFR §2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

The Code of Ethics also provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not.”⁶⁹

If Rep. Doolittle accepted campaign contributions from Brent Wilkes, Mr. Abramoff and his tribal clients in return for legislative assistance by way of federal earmarks, using his position to urge former Secretary Norton to take actions that would benefit the financial interests of two of Mr. Abramoff’s tribal clients, and using his position to help Mr. Abramoff secure a lucrative lobbying contract in the Mariana Islands, Rep. Doolittle may have dispensed special favors and

⁶⁸ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

⁶⁹ Id.

violated 5 CFR §2635.702(a).

Conduct Not Reflecting Creditably on the House

Rep. Doolittle appears to have accepted campaign contributions in return for legislative favors that financially benefited Brent Wilkes, Jack Abramoff, and Mr. Abramoff's tribal clients. Accepting anything of value in exchange for official actions does not reflect creditably on the House and therefore violates House Rule XXIII, clause 1.

REP. TOM FEENEY

Rep. Tom Feeney (R-FL), the former speaker of the Florida House of Representatives, is a second-term member of Congress, representing Florida's 24th congressional district. Rep. Feeney's ethics violations stem from three trips he took in apparent violation of House travel and gift rules.

Trip to Scotland

Rep. Feeney traveled to Scotland -- apparently to play golf -- from August 9-14, 2003. Rep. Feeney initially claimed that the cost of the trip was paid for by the National Center for Public Policy Research,¹ but the Center said that it did not provide "a single dime" for Feeney's trip.² As a result, Rep. Feeney now claims to have discovered recently that the \$5,643 bill was actually paid by lobbyist Jack Abramoff.³ Rep. Feeney claims he was "misled" and "lied to" about who actually paid for the trip.⁴

Rep. Feeney has also claimed that both the trip to Scotland (and the trip to Korea discussed below) were approved verbally by the House Committee on Standards of Official Conduct. According to Rep. Feeney, "[g]iven everything we knew at the time, we didn't make any inappropriate or unethical decisions."⁵ Rep. Feeney acknowledged however, that he had no written proof that the ethics committee approved the trip.⁶

¹ Member/Officer Travel Disclosure Form, filed by Rep. Tom Feeney, December 29, 2003. (Exhibit 1) House rules also require that travel disclosure forms be filed within 30 days after the travel is completed. Rule XXVI, clause 5(b)(1)(A)(ii). Rep. Feeney failed to file the form associated with this trip until January 2004, 4 ½ months after the trip. In addition, whenever a form is filed after the deadline, the rules require that the filer also send a letter to the House Committee on Standards of Official Conduct explaining the reason for the failure to file in a timely manner. Rule XXVI, clause 5(b)(5). No such letter appears to have accompanied this form.

² Chuck Neubauer and Walter F. Roche, Jr., Golf and Playing by the Rules; Lobbyist who arranged a junket for DeLay also set up St. Andrews trips for two of his colleagues, *Los Angeles Times*, March 9, 2005. (Exhibit 2)

³ Tamara Lytle, Congressman Who Traveled to Scotland, Korea Broke Ethics Rules, *Orlando Sentinel*, March 10, 2005. (Exhibit 3)

⁴ Id.

⁵ Lytle, *Orlando Sentinel*, March 10, 2005.

⁶ Id.

Notably, House rules preclude the ethics committee from “approving” any such trip. According to the Committee’s travel booklet, this is because the rule places on individual Members and officers -- and not on the Committee -- the burden of making the determination that a particular trip is in connection with official duties and would not create the appearance of using public office for private gain.

In addition, House rules provide that a member, officer or employee may not accept travel expenses from “a registered lobbyist or agent of a foreign principal.”⁷ The prohibition against accepting travel expenses from a registered lobbyist, an agent of a foreign principal, or a lobbying firm applies even where the lobbyist, agent, or firm will later be reimbursed for those expenses by a non-lobbyist client.⁸ Thus, by accepting payment for his trip to Scotland from Mr. Abramoff, a registered lobbyist,⁹ Rep. Feeney appears to have violated Rule XXVI, clause 5(b)(1)(A) of the House.

The golf trip to Scotland also violates several provisions of the House gift and travel rules. House Rules note that among the gift items as to which Members and staff need to be especially careful are small group and one-on-one meals, tickets to (or free attendance at) sporting events and shows, and recreational activities, **such as a round of golf** [emphasis added].¹⁰ The Committee on Standards of Official Conduct posited the following example as a prohibited gift:

A Member has been invited to play golf by an acquaintance who belongs to a country club, and under the rules of the club, the guest of a club member plays without any fee. Nevertheless, the Member’s use of the course would be deemed a gift to the Member from his host, having a value of the amount that the country club generally charges for a round of golf.¹¹

Under this provision, the expenditures made for Rep. Feeney to play golf at St. Andrews appear to constitute a gift accepted by Rep. Feeney in violation of Rule XXVI.

⁷ Rule XXVI, cl. 5(b)(1)(A).

⁸ House Comm. on Standards of Official Conduct, Travel Booklet.

⁹ See e.g. United States Senate, Office of Public Records, Lobbying Disclosure Records, <http://sopr.senate.gov/>. (Exhibit 4)

¹⁰ *Overview of the Gift Rule*, Rules of the U.S. House of Representatives on Gifts and Travel.

¹¹ *What is a Gift?*, Rules of the U.S. House of Representatives on Gifts and Travel.

In addition, according to the travel rules:

[l]ike any other gift, travel expenses are subject to the basic gift prohibitions . . . including the prohibition against soliciting a gift -- and they may be accepted only in accordance with the provisions of the gift rule. Indeed, travel may be among the most attractive and expensive gifts, and thus, before accepting travel, a Member, officer or employee should exercise special care to ensure compliance with the gift rule and other applicable law.¹²

Rule XXVI, clause 5(b)(1)(A) requires that all travel be related to official duties. Here, it appears that the primary, if not the only purpose of Rep. Feeney's trip was to play golf at St. Andrews. This is a clear violation of the rules which provide specifically that "[e]vents, the activities of which are substantially recreational in nature, are not considered to be in connection with the duties of a Member."¹³

The way the trip was financed also implicates Rule XXVI. The Committee has long taken the position that a Member, officer or employee may accept expenses for officially connected travel only from a private source that has a direct and immediate relationship with the event or location being visited.¹⁴

The rule is concerned with the organization(s) or individual(s) that actually pay for travel. The rule provides:

. . . where a non-profit organization pays for travel with donations that were earmarked, either formally or informally, for the trip, each such donor is deemed a "private source" for the trip and (1) must be publicly disclosed as a trip sponsor on the applicable travel disclosure forms and (2) may itself be required to satisfy the above standards on proper sources of travel expenses. Accordingly, it is advisable for a Member or staff person who is invited on a trip to make inquiry on the source of the funds that will be used to pay for the trip. In addition, the concept of the rule is that a private entity that pays for officially connected travel will both organize and conduct the

¹² *Travel, Rules of the U.S. House of Representatives on Gifts and Travel.*

¹³ Rule XXVI, cl. 5(b)(1)(B).

¹⁴ House Comm. on Standards of Official Conduct, *Investigation of Financial Transactions participated in and Gifts of Transportation Accepted by Representative Fernand J. St. Germain*, H. Rep. No. 100-46, 100th Cong., 1st Sess. 5-6 (1987).

trip, rather than merely pay for a trip that is in fact organized and conducted by someone else.¹⁵

Here, it is unclear who really financed Rep. Feeney's trip. Rep. Feeney's travel disclosure form lists the National Center for Public Policy as the funder, though the Center has emphatically denied paying for the trip. Moreover, Rep. Feeney failed to adequately describe the trip's purpose, explaining only that the purpose was a "Congressional Informative Tour."¹⁶

A full airing of this matter requires the Committee to consider: 1) who paid for Rep. Feeney's trip to Scotland; 2) what activities Rep. Feeney engaged in while on the trip, other than golf; 3) what was the direct and immediate relationship between the sponsoring organization and the trip; 4) who were the actual sources of funding for the trip; 5) why were these private sources not disclosed as required by House Rules; and 6) did these private sources have a direct and immediate relationship with a golf trip to Scotland.

Next, even if the Committee finds that the sources that funded the trip somehow had a direct and immediate relationship with some aspect of Mr. Feeney's trip, under the travel provisions of the gift rule, one may accept reasonable expenses for transportation, lodging, and meals from the private sponsor of an officially connected trip, but may **not** accept recreational activities or entertainment.¹⁷ Thus, the Committee also must ask who paid for Mr. Feeney to play golf at St. Andrews and, given that the green fees were valued at over \$50, the Committee must find him in violation of the gift rule.

Trip to Korea

Rep. Feeney visited South Korea on a trip sponsored by the Korea-U.S. Exchange Council (KORUSEC), despite the fact that the organization is registered with the Department of Justice under the Foreign Agents Registration Act.¹⁸ House rules provide that a Member, officer, or employee may **not** accept travel expenses from "a registered lobbyist or agent of a foreign principal."¹⁹

¹⁵ *Proper Sources of Expenses for Officially Connected Travel*, Rules of the House of Representatives on Gifts and Travel.

¹⁶ Member/Officer Travel Disclosure Form, Dec. 29, 2003. (See Exhibit 1)

¹⁷ Rule XXVI, cl. 5(b)(4)(C); *Acceptable Travel Expenses*, Rules of the U.S. House of Representatives on Gifts and Travel.

¹⁸ John Bresnahan and Amy Keller, Korean Tycoon's Big Plans, Network Wider than DeLay, *Roll Call*, March 21, 2005. (Exhibit 5)

¹⁹ Rule XXVI, cl. 5(b)(1)(A).

A spokesperson for Rep. Feeney told one reporter that the 2003 trip to Korea was “approved by the House ethics committee.”²⁰ There is no evidence, however, that the ethics committee actually approved the trip. In addition, Mr. Feeney has failed to report the trip on his financial disclosure forms.²¹

The Committee on Standards of Official Conduct should investigate whether Rep. Feeney violated House rules by allowing a foreign agent to pay his travel expenses and by omitting the trip from his 2003 financial disclosure statements.

Trip to West Palm Beach

Rep. Feeney and his wife traveled from Orlando, Florida to West Palm Beach, Florida to speak at “Restoration Weekend” from November 13 - 16, 2003. According to the travel disclosure form Rep. Feeney originally submitted to the Clerk’s office, this trip, which cost \$1,430, was paid for by Rotterman and Associates.²² Rotterman and Associates was a registered lobbying firm in 2002 and 2003.²³ House rules provide that a Member, officer or employee may **not** accept travel expenses from “a registered lobbyist or agent of a foreign principal.”²⁴ Thus, Rep. Feeney appears to have violated the travel rules by allowing Rotterman and Associates to pay for his travel.

A year and a half later, when the scandal over Members’ travel broke and reporters began to question this trip, Rep. Feeney filed a new disclosure form indicating that the Center for the

²⁰ Peter H. Stone, U.S.-Korea Council Payment for Trips Appears to Violate House, *Congress Daily*, March 10, 2005. (Exhibit 6)

²¹ The trip was listed neither on Rep. Feeney’s Annual Financial Disclosure Statement for the Calender Year 2003, filed May 10, 2004 (Exhibit 7), nor on his amended Annual Financial Disclosure Statement for the Calender Year 2003, filed July 13, 2004 (Exhibit 8).

²² Member/Officer Travel Disclosure Form, filed by Rep. Tom Feeney, November 19, 2003. (Exhibit 9)

²³ See United States Senate, Office of Public Records, Lobbying Disclosure Records, <http://sopr.senate.gov/>. (Exhibit 10)

²⁴ Rule XXVI, cl. 5(b)(1)(A).

Study of Popular Culture paid for the trip.²⁵ Rep. Feeney also indicated that the costs were much higher than he originally reported -- \$1,947 as opposed to \$1,430.²⁶

This trip apparently lasted four days, which is the longest period for which a Member may accept payment for domestic travel. The gift rule further restricts trip length stating that only “necessary transportation, lodging and related expenses for travel” may be accepted.²⁷ The Travel Booklet provides that a Member “may accept only such expenses as are reasonably necessary to accomplish the purpose of the trip, and thus it may not always be proper to accept expenses for the full four- or seven-day period. This is particularly so where the sole purpose of an individual’s travel to an event is to give a speech.”²⁸ The booklet then provides the following example:

Example 3. A trade association invites a Member to give a speech at its annual meeting in Chicago. The annual meeting is scheduled for December 1 through 4, and the Member’s speech is scheduled for December 3. The Member may travel from Washington to Chicago at the association’s expense on December 2, and after he has completed the speech, he should return to Washington or his district as soon as it is practical to do so.²⁹

Thus, it appears that Rep. Feeney may have violated the rules by accepting expenses for longer than necessary to accomplish the purpose of the trip.

Finally, the Committee on Standards of Official Conduct has long taken the position that a Member, officer or employee may accept expenses for officially connected travel only from a private source that has a direct and immediate relationship with the event or location being

²⁵ Rep. Feeney’s Financial Disclosure Statement for Calender Year 2003, page 8, filed May 10, 2004 (*see* Exhibit 7), as well as his amended Financial Disclosure Statement for Calender Year 2003, page 8 (*see* Exhibit 8), filed July 13, 2003, both list the National Center for Public Policy Research as paying for his trip to West Palm Beach.

²⁶ Member/Officer Travel Disclosure Form, filed by Rep. Tom Feeney, April 20, 2005 (Exhibit 11).

²⁷ Rule XXVI, cl. 5(b)(1)(A); House Comm. on Standards of Official Conduct, Travel Booklet.

²⁸ Id.

²⁹ Id.

visited.³⁰ This presents the question of what relationship, if any, either Rotterman and Associates or the Center for the Study of Popular Culture had with Restoration Weekend that allowed Rep. Feeney to accept travel expenses from either organization.

Thus, with regard to Rep. Feeney's trip to West Palm Beach, the Committee on Standards of Official Conduct should investigate: 1) who actually sponsored the trip; 2) what evidence demonstrates that the trip was paid for by a non-profit and not by a lobbyist; 3) what direct and immediate relationship the Center for the Study of Popular Culture had with Restoration Weekend; 4) whether Rep. Feeney stayed in West Palm Beach longer than necessary to give a speech; and 5) why the cost of the trip changed so dramatically between the two filings.

Personal Financial Disclosure Forms

In May 2006, Rep. Feeney reported on his personal financial disclosure form that he was the joint owner of a condominium at the Royal Mansions resort in Cape Canaveral, Florida.³¹ The congressman listed the purchase date as January 2005.³² In fact, records from the Brevard County Appraiser's office show that unit was sold in late 2003 to James A. Fowler, Rep. Feeney's former law partner.³³ Mr. Fowler claims that he and Rep. Feeney jointly bought the property at a total cost of \$175,000.³⁴ Two identically sized units in the development sold for \$450,000 and \$420,000 in 2006.³⁵

Rep. Feeney has claimed that he did not report the purchase initially because his name was not on the deed.³⁶ He has not explained, however, why, given that he was a full co-owner, he was not on the deed.³⁷ Rep. Feeney's failure to include the property on his financial disclosure forms in 2003 and 2004 is a violation of House rules. Pursuant to 5 U.S.C. app. 4 §101(a)(1)(B),

³⁰ House Comm. on Standards of Official Conduct, *Investigation of Financial Transactions participated in and Gifts of Transportation Accepted by Representative Fernand J. St Germain*, H. Rep. No. 100-46, 100th Cong., 1st Sess. 5-6 (1987).

³¹ Ken Silverstein, Congressman Tom Feeney: An Appreciation, *Harper's Magazine*, July 12, 2006. (Exhibit 12)

³² Id.

³³ Id.

³⁴ Id.

³⁵ Silverstein, *Harper's Magazine*, July 12, 2006.

³⁶ Id.

³⁷ Id.

Members of Congress must disclose all rental property. The instruction booklet accompanying the House financial disclosure forms explains that the Rules require disclosure of “unearned” income, which “consists of rents, royalties, dividends, interest, capital gains, and similar amounts received as a return on investment.” The instructions continue, filers “must disclose . . . real and personal property held for investment or production of income and valued at more than \$1,000 at the close of the reporting period.”³⁸

The standard for disclosure is whether or not the filer received rent on the property, not whether he or she was on the deed for the property. According to Mr. Fowler, he and Rep. Feeney co-own the condominium, rent it, and receive income from it. As a result, by failing to report this information on his financial disclosure forms, Rep. Feeney has violated House rules.

³⁸ House Comm. On Standards of Official Conduct, “Assets and Unearned Income,” Financial Disclosure Instruction Booklet.

REP. KATHERINE HARRIS

Rep. Katherine Harris (R-FL) is a second-term member of Congress, representing Florida's 13th congressional district. Rep. Harris' ethics issues stem from her relationship with convicted defense contractor Mitchell Wade.

Relationship with Mitchell J. Wade

Rep. Harris has been implicated in the scandal that engulfed Mitchell Wade, former head of MZM, Inc., and convicted former Rep. Randy "Duke" Cunningham (R-CA). On February 23, 2006, Mr. Wade pleaded guilty to conspiracy, tax evasion, corrupting defense officials, and election fraud.¹ As part of his plea, Mr. Wade admitted to making illegal contributions to "Representative A and B," who have been identified as Rep. Virgil H. Goode Jr (R-VA), and Rep. Katherine Harris respectively.² Rep. Harris has acknowledged that she is "Representative B."³

Specifically, Rep. Harris is accused of accepted \$32,000 in illegally laundered donations from Mr. Wade and his employees.⁴ Acting on the belief that Rep. Harris had the ability to obtain defense appropriations that would benefit MZM, Mr. Wade reimbursed MZM employees and their spouses for contributions they made to Rep. Harris' campaign at his direction.⁵ Mr. Wade personally handed the checks to Rep. Harris.⁶

In 2004, Rep. Harris met with Mr. Wade over dinner at Citronelle, a top Washington restaurant, to discuss the possibility of MZM obtaining funding and approval for a Navy counterintelligence program in Rep. Harris' district and MZM opening an office in that district.⁷

¹ Charles Babcock, Contractor Pleads Guilty to Corruption; Probe Extends Beyond Bribes to Congressman, *The Washington Post*, February 25, 2006. (Exhibit 1)

² Id.

³ Id.

⁴ Id.

⁵ United States v. Mitchell J. Wade, Statement of Offenses, No. 1:06cr-00049 (D.D.C. Feb. 24, 2006) ¶ 24. (Exhibit 2)

⁶ Id.

⁷ Judy Bachrach, Washington Babylon, *Vanity Fair*, July 2006 (Exhibit 3); United States v. Mitchell J. Wade, Statement of Offenses, ¶ 26.

They also discussed the possibility of MZM hosting a fundraiser for Rep. Harris.⁸ Mr. Wade picked up the \$2,800 dinner bill.⁹ After the dinner Rep. Harris wrote to Mr. Wade: “Mitch, what a special evening! The best dinner I have ever enjoyed in Washington . . . Please let me know if I can ever be of assistance.”¹⁰

In 2005, Rep. Harris had a second dinner at Citronelle with Mr. Wade for which he paid the \$3,300 tab.¹¹ A few months after that dinner Mona Tate Yost resigned from Rep. Harris’ staff to take a position with MZM¹² In her role at MZM, Ms. Yost drafted a proposal to obtain funding for the \$10 million naval counterintelligence facility that Rep. Harris and Mr. Wade had previously discussed.¹³ An employee of MZM, Kay Coles James, e-mailed the draft to Rep. Harris’ office, and the version that Rep. Harris subsequently submitted to Defense Appropriations subcommittee Chairman C.W. Bill Young and Rep. John Murtha on April 26, 2005, contained some of the same language as that in MZM’s draft.¹⁴ Rep. Harris asked that this project be placed third on her list of 2006 Defense Appropriations requests,¹⁵ but her proposal was rejected.¹⁶ Rep. Harris submitted the request against the advice of her political advisor, Ed Rollins, who suggested she speak to an attorney because he was worried that it could be seen as a *quid pro quo* for Mr. Wade’s offer to sponsor a fundraiser for her.¹⁷

After media reports of Rep. Harris’ meals with Mr. Wade surfaced, she insisted that she

⁸ Id.

⁹ Bachrach, *Vanity Fair*, July 2006.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Bachrach, *Vanity Fair*, July 2006.

¹⁴ Id.; see also Charles Babcock, Harris Requested Funds at Behest of Contractor, *The Washington Post*, March 4, 2006. (Exhibit 4)

¹⁵ Letter from Rep. Harris to Chairman Young and Ranking Member Murtha, April 26, 2005. (Exhibit 5)

¹⁶ Jeremy Wallace, Harris Admits 2nd Wade Dinner; Lobbyist Later Convicted of Bribing Another Member of Congress, *Sarasota Herald-Tribune*, May 23, 2006. (Exhibit 6)

¹⁷ Jim Stratton, Feds Query Ex-Adviser on Harris, *Orlando Sentinel*, July 18, 2006. (Exhibit 7)

had paid for her portion of meals.¹⁸ Finally in April 2006, Rep. Harris acknowledged that, in fact, she had not paid her share.¹⁹ She then contributed \$100 to Global Dominion Impact Ministries in Jacksonville, Florida, to offset what she claimed was the cost of her share of the \$2,800 dinner.²⁰

Rep. Harris has repeatedly denied any wrongdoing, claiming that she never requested funding for the naval counterintelligence project in exchange for campaign contributions.²¹

MZM is not, however, the first company to make illegal conduit campaign contributions to Rep. Harris. In 1994, Rep. Harris received \$30,000 from Riscorp, a Sarasota-based insurance company, for her state senate campaign.²² Riscorp executives forced employees to donate to dozens of political candidates in Florida and then reimbursed them for the donations.²³ In the ensuing scandal and investigation, Rep. Harris' former campaign manager was named a "co-conspirator."²⁴ The investigators obtained a Riscorp memo suggesting Rep. Harris' campaign tried to hide the source of the donations: "Katherine's office called and asked if we could give them different addresses to list for each of the checks. All of the checks show the PO Box 1598 address and if they submit these the newspaper will probably make the connection and track them all back to Riscorp."²⁵ At the time Rep. Harris said she was not aware the donations were illegal.²⁶ The similarities between the Riscorp and MZM contributions belie Rep. Harris' claims of ignorance.

Rep. Harris' relationship with Mr. Wade is now the subject of a federal investigation and, according to Glenn Hodas, Rep. Harris' former campaign manager, Rep. Harris has received a

¹⁸ Id.

¹⁹ Wallace, *Sarasota Herald-Tribune*, May 23, 2006.

²⁰ Larry Lipman, Harris Donates Money to Offset Meal With Contractor, *Palm Beach Post*, May 24, 2006. (Exhibit 8)

²¹ Keith Epstein, Harris Shuns Spending Requests, *The Tampa Tribune*, March 3, 2006. (Exhibit 9)

²² Jim Stratton, Harris' Attacks Over Donations Could Backfire, *Orlando Sentinel*, July 8, 2006. (Exhibit 10)

²³ Id.

²⁴ Id.

²⁵ Id.

²⁶ Stratton, *Orlando Sentinel*, July 8, 2006.

grand jury subpoena, which she attempted to conceal from her staff.²⁷ Federal investigators have interviewed at least three of Rep. Harris' staff along with her former campaign manager.²⁸

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.²⁹ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.³⁰

By using her position to request funding for MZM's naval intelligence project in exchange for Mr. Wade's agreement to host a fundraiser and for campaign contributions from Mr. Wade and his employees, Rep. Harris appears to have violated the bribery statute.

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.³¹ By using her position as a member of Congress to attempt to secure funding for an MZM project, Rep. Harris may be depriving her constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. §1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.³² In considering this

²⁷ Id.

²⁸ Anita Kumar, Feds Interview Harris' Ex-Campaign Manager, *St. Petersburg Times*, September 9, 2006. (Exhibit 11)

²⁹ 18 U.S.C. §201(b)(2)(A).

³⁰ McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

³¹ 18 U.S.C. §1341.

³² 18 U.S.C. §201(c)(1)(B).

statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.³³

If a link is established between Rep. Harris' efforts to secure funding for an MZM project and the campaign donations that MZM and its employees made to Rep. Harris, she would be in violation of the illegal gratuity statute.

5 U.S.C. §7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. §7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."³⁴ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

If Rep. Harris accepted campaign contributions from MZM and its employees together with the promise that Mr. Wade would host a fundraiser in return for her assistance to help secure \$10 million in funding for an MZM project, she likely violated 5 U.S.C. §7353 and House Rule XXIII.

5 CFR §2635.702(a)

Members of the House are prohibited from "taking any official actions for the prospect of personal gain for themselves or anyone else."³⁵ House members are directed to adhere to 5 CFR §2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

³³ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

³⁴ See House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

³⁵ House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

The Code of Ethics also provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not.”³⁶

By attempting to use the power of her office to funnel federal funds to MZM, a company that has made generous campaign contributions to Rep. Harris, she may have dispensed special favors and violated 5 CFR §2635.702(a).

Conduct Not Reflecting Creditably on the House

Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”³⁷ This ethics standard is considered to be “the most comprehensive provision of the code.”³⁸ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.³⁹ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,⁴⁰ making false statements to the

³⁶ Id.

³⁷ Rule XXIII, cl. 1.

³⁸ House Comm. on Standards of Official Conduct, House Ethics Manual.

³⁹ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁴⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

Committee,⁴¹ criminal convictions for bribery,⁴² or accepting illegal gratuities,⁴³ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁴⁴

Rep. Harris apparently accepted campaign contributions and lavish dinners in return for her effort to use her legislative powers to benefit MZM and Mr. Wade. Accepting anything of value in exchange for official action does not reflect creditably on the House and, therefore, violates House Rule XXIII, clause 1.

Deferral to Department of Justice

The fact that according to press reports the Department of Justice is currently conducting a criminal investigation of Rep. Harris and her relationship with Mitchell Wade should not be a basis for the Committee to defer any investigation into, or action on, Rep. Harris' ethical violations. Under the Committee on Standards of Official Conduct Rule 15(f), the Committee "may defer action on a complaint against a Member" if: 1) "the complaint alleges conduct that the Committee has reason to believe is being reviewed by appropriate law enforcement or regulatory authorities," or 2) "the Committee determines that it is appropriate for the conduct alleged in a complaint to be reviewed initially by law enforcement or regulatory authorities."⁴⁵

⁴¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

⁴² House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁴³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

⁴⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

⁴⁵ House Comm. on Standards of Official Conduct, Committee Rules, Rule 15(f), 109th Cong. (2005); see also Statement of Committee regarding Disposition of Complaint Filed

A 1975 Committee report explained the Committee's approach in the circumstances of an ongoing investigation by law enforcement authorities as follows:

[W]here an allegation involves a possible violation of statutory law, and the committee is assured that the charges are known to and are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course. This is not to say the committee abandons concern in statutory matters – rather, it feels it normally should not undertake duplicative investigations pending judicial resolution of such cases.⁴⁶

Under Rule 15(f),

[D]eferral by the Committee where there is an ongoing law enforcement proceeding is not mandatory, but rather is discretionary. Historically, the Committee has been more reluctant to defer where the Member conduct that is at issue is related to the discharge of his or her official duties as a Member of the House.⁴⁷

Rep. Harris' conduct unquestionably is related to the discharge of her official duties as a member of the House, as it raises the issues of whether she received financial assistance, a bribe, or illegal gratuity as a *quid pro quo* for exercising her congressional powers to benefit MZM, Inc. and Mr. Wade. As a result, given the Committee's precedents, a Committee investigation into Rep. Harris' activities is appropriate.

Against Tom DeLay: Memorandum of the Chairman and Ranking Member, p. 24, 108th Cong., 2d Sess. (2004).

⁴⁶ Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay, (*quoting* House Comm. on Standards of Official Conduct, Policy of the House of Representatives with Respect to Actions by Members Convicted of Certain Crimes, H. Rep. 94-76, 94th Cong., 1st Sess. 2 (1975)).

⁴⁷ House Comm. on Standards of Official Conduct, Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay.

REP. WILLIAM JEFFERSON

Rep. William Jefferson (D-LA) is an eighth-term member of Congress, representing Louisiana's 2nd congressional district. Rep. Jefferson's ethics issues stem from his business dealings and from the misuse of federal resources.

Federal Investigation into Business Dealings

Rep. Jefferson has been the subject of an ongoing criminal investigation by the federal government since approximately March 2005.¹ In August 2005, federal agents searched his home in New Orleans and his home and car in Washington, D.C., as well as the home and office of his campaign accountant in New Orleans² after Rep. Jefferson was videotaped accepting \$100,000 in \$100 bills from Lori Mody, a Northern Virginia investor and former technology executive who was wearing an FBI wire.³ During the raid on Rep. Jefferson's home, FBI agents found \$90,000 in cash in \$10,000 increments wrapped in foil in the Congressman's freezer.⁴

The 83-page search warrant affidavit released on May 21, 2006, described Rep. Jefferson as a man who solicited hundreds of thousands of dollars in bribes, discussed payoffs with African officials, had a history of involvement in several bribery schemes and used his family to hide his interest in high-tech business ventures he promoted in Cameroon, Ghana, and Nigeria.⁵

According to court documents, the government's 14-month public corruption probe sought information related to Rep. Jefferson's business dealings in Africa with a company that lists Rep. Jefferson's wife as a director, and connections between the congressman and a small technology company called iGate Inc., located in Louisville, KY.⁶

¹ In the Matter of the Search of: Rayburn House Office Bldg. Room Number 2113, Case No. 06-231-M-01 (May 30, 2006). (Exhibit 1)

² James Varney and Martha Carr, FBI raids Jefferson's Car, Homes, Treasurer; Feds Are Mum On Reasons For Searches, *The Times-Picayune*, August 4, 2005. (Exhibit 2)

³ Allan Lengel, FBI Sting Targeted Louisiana Lawmaker, *The Washington Post*, August 13, 2005. (Exhibit 3)

⁴ Id; Molly Hennessy-Fiske, Top Democrats in House Back Jefferson's Ouster From Panel, *Los Angeles Times*, June 9, 2006. (Exhibit 4)

⁵ Lengel, *The Washington Post*, August 13, 2005.

⁶ Bill Walsh, Jefferson Raids May Signal Return of the Sting; Since Abscam, FBI Treads Carefully With Politicians, *The Times-Picayune*, August 21, 2005. (Exhibit 5)

Federal subpoenas indicate that investigators are seeking information about Rep. Jefferson's efforts to find investors to underwrite a deal to bring broadband service to approximately 200,000 people in Nigeria.⁷ iGate has patented technology which, the company claims, can deliver voice, data, and video lines faster and more cheaply than a digital line.⁸ Too small to compete against the large American telecommunications companies, iGate decided to take its technology to Nigeria, which has a fast growing telecommunications market.⁹ The company was seeking financing to launch the project in Nigeria.¹⁰

One of the investors was Ms. Mody.¹¹ Ms. Mody apparently agreed to invest in the deal, but then abruptly pulled out.¹² At that point, Rep. Jefferson intervened, in an attempt to put the deal back together, and asked everyone to come to a meeting in Washington.¹³ Ms. Mody could not be persuaded to continue investing in the deal so Rep. Jefferson began to seek new sources of capital.¹⁴ One such person Rep. Jefferson brought in was Norbert Simmons, a wealthy New Orleans businessman with long-standing political ties to the congressman.¹⁵ Although Mr. Simmons agreed to invest in the deal, the project fell apart.¹⁶

In what may or may not be related to the Nigeria matter, federal agents are also investigating whether Rep. Jefferson illegally pocketed hundreds of thousands of dollars of

⁷ Bill Walsh and Bruce Alpert, Jefferson Probe Focus Is Nigeria Telecom Deal -- Investors Sought to Deliver Broadband, *The Times-Picayune*, August 25, 2005. (Exhibit 6)

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Walsh and Alpert, *The Times-Picayune*, Aug. 25, 2005.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Walsh and Alpert, *The Times-Picayune*, Aug. 25, 2005.

¹⁶ Id.

investors' money from business transactions.¹⁷ Rep. Jefferson allegedly agreed to invest in the start-up company and use his congressional influence to bring in business.¹⁸

In January 2006, one of Rep. Jefferson's former aides, Brett M. Pfeffer, pleaded guilty to charges of conspiracy to commit bribery of a public official and aiding and abetting the bribery of a public official.¹⁹ Mr. Pfeffer's relationship with Rep. Jefferson began in 1995, when he was employed as a Legislative Assistant to Rep. Jefferson.²⁰ In 1998, Mr. Pfeffer left his employment with Rep. Jefferson, but maintained a professional and social relationship with him.²¹ By 2004, Mr. Pfeffer was president of an investment company owned by Ms. Mody, who is a cooperating witness for the government.²²

In a series of meetings between Ms. Mody, Rep. Jefferson, and Vernon L. Jackson, Mr. Pfeffer facilitated Ms. Mody's \$45 million investment into iGate, and the exchange of money to Rep. Jefferson and his family in return for Rep. Jefferson's official acts.²³ Mr. Pfeffer understood these official acts to include efforts to influence high-ranking officials in the Nigerian and Ghanaian government through correspondence and in-person meetings; travel to Nigeria and Ghana to facilitate these meetings; and meetings with personnel of the Export-Import Bank in order to facilitate potential financing for the Nigerian and Ghanaian Deals.²⁴ Mr. Pfeffer also stood to make significant financial gains through his business arrangement with Ms. Mody in the event his promotion of the Nigerian and Ghanaian Deals were successful.²⁵

¹⁷ Lengel, *The Washington Post*, Aug. 13, 2005.

¹⁸ Id.

¹⁹ United States of America v. Brett M. Pfeffer, Crim. No. 1:06cr10, Plea Agreement (Jan. 11, 2006). (Exhibit 7)

²⁰ Id.

²¹ Id.

²² Id.

²³ United States of America v. Brett M. Pfeffer, Crim. No. 1:06cr10, Plea Agreement (Jan. 11, 2006).

²⁴ Id.

²⁵ Id.

On May 25, 2006, Mr. Pfeffer was sentenced to eight years of imprisonment for his aforementioned violation of federal laws, and agreed to cooperate with the ongoing federal investigation and provide testimony against Rep. Jefferson as part of his plea deal.²⁶

On March 23, 2006, a grand jury issued a subpoena for the records of Jones Walker, the law firm that employed Rep. Jefferson's daughter, Jamila Jefferson-Bullock.²⁷ Jamila Jefferson-Bullock was working for the firm in the summer of 2004, at the same time when Mr. Pfeffer's plea documents state he discussed the iGate deal with Rep. Jefferson in the lobby of a law firm where a relative of Rep. Jefferson's worked.²⁸ Eight days after the grand jury subpoena for the law firm's records, six of Rep. Jefferson's aides were subpoenaed by the U.S. District Court for the Eastern District of Virginia in connection with the government's investigation of Rep. Jefferson.²⁹

In May 2006, Vernon L. Jackson, the CEO of iGate, pleaded guilty to paying more than \$400,000 in bribes to the family of Rep. Jefferson.³⁰ Mr. Jackson entered his guilty plea in U.S. District Court in Alexandria, Virginia.³¹ According to the plea agreement entered into by Mr. Jackson, Rep. Jefferson helped arrange U.S. government contracts and set up an Internet service venture in Nigeria.³² In exchange, Mr. Jackson had agreed to pay Rep. Jefferson's wife and daughters \$7,500 per month and 5% of his company's sales over \$5 million.³³

The alleged payments made by Mr. Jackson to Rep. Jefferson's family apparently were through a shell company, ANJ Group LLC, in Louisiana.³⁴ More than \$400,000 in checks and

²⁶ In the Matter of the Search of: Rayburn House Office Bldg Room Number 2113, Case No. 06-231-M-01 (May 30, 2006).

²⁷ Bruce Alpert, Law Firm Records Sought by Feds, *Times-Picayune*, March 23, 2006. (Exhibit 8)

²⁸ Id.

²⁹ Associated Press, Six Hill Aides Subpoened in Jefferson Investigation, *Washington Post*, March 31, 2006. (Exhibit 9)

³⁰ Ralph Vartabedian, Executive Pleads Guilty to Bribing Congressman's Family, *Los Angeles Times*, May 4, 2006. (Exhibit 10)

³¹ Id.

³² Id.

³³ Id.

³⁴ Vartabedian, *Los Angeles Times*, May 4, 2006.

wire transfers were made through ANJ Group from Mr. Jackson to Rep. Jefferson from February 2001 to September 2004.³⁵ Mr. Jackson's plea agreement states that in July 2003, Mr. Jackson agreed to increase Rep. Jefferson's share of iGate profits from the African deal to 35% from 5%.³⁶ Rep. Jefferson's role involved meeting directly with high-level Nigerian officials to promote the iGate agreement and helping to smooth the deal with the U.S. Export-Import Bank.³⁷

In addition, Mr. Jackson and his wife each contributed \$4,000 to Rep. Jefferson's campaign committee in 2003.³⁸ Mr. Jackson also contributed \$7,500 in 2002 and another \$7,500 in 2003 to the campaign fund for one of Rep. Jefferson's daughters, state Rep. Jalila Jefferson-Bullock, and iGate contributed \$5,000 to her campaign in 2003.³⁹ In addition, iGate helped pay for a four-nation trade trip Rep. Jefferson made to Africa in 2004.⁴⁰

On May 20, 2006, approximately 15 federal agents executed a search warrant on Rep. Jefferson's congressional office for paper documents and computer files related to the government's continued investigation into whether Rep. Jefferson and other individuals bribed or conspired to bribe a public official; committed or conspired to commit wire fraud; or bribed or conspired to bribe a foreign official, all in violation of federal law.⁴¹ After a 17 hour search, federal agents seized several computer files and two boxes of paper records from Rep. Jefferson's congressional office.⁴²

³⁵ Id.

³⁶ Id.

³⁷ Id.

³⁸ Vartabedian, *Los Angeles Times*, May 4, 2006.

³⁹ Id.

⁴⁰ Id.

⁴¹ In the Matter of the Search of: Rayburn House Office Bldg Room Number 2113, Case No. 06-231-M-01 (May 30, 2006).

⁴² Id.

On June 9, 2006, House Democratic leaders endorsed an effort to oust Rep. Jefferson from his post on the Ways and Means Committee.⁴³ Six days later, the Democratic Caucus voted 99-58 to remove Rep. Jefferson from his seat on the committee.⁴⁴

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.⁴⁵ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁴⁶

Rep. Jefferson's investment in and financial enrichment from iGate in exchange for using his influence as a member of Congress, as well as Mr. Jackson's contributions of \$7,500 in 2002 and 2003 to the campaign fund of Rep. Jefferson's daughter State Rep. Jalila Jefferson-Bullock, and iGate's contribution of \$5,000 to her campaign in 2003, warrant further investigation to determine whether Rep. Jefferson and his daughter received campaign donations in direct exchange for Rep. Jefferson's promotion of Mr. Jackson's iGate deal in Nigeria.

Honest Services Fraud

Federal law prohibits a Member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.⁴⁷ By using his position as a member of Congress to financially benefit iGate, Rep. Jefferson may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. § 1341.

⁴³ Molly Hennessy-Fiske, Top Democrats in House Back Jefferson's Ouster From Panel, *Los Angeles Times*, June 9, 2006. (Exhibit 11)

⁴⁴ David Espo, House Dems Strip Jefferson of Panel Seat, *Associated Press*, June 16, 2006. (Exhibit 12)

⁴⁵ 18 U.S.C. §201(b)(2)(A).

⁴⁶ McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d. Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

⁴⁷ 18 U.S.C. §1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.⁴⁸ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.⁴⁹

Rep. Jefferson's actions on behalf of iGate in apparent exchange for donations made to him by iGate and its CEO Mr. Jackson appear to violate the illegal gratuity statute.

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of Members, including expulsion.⁵⁰

5 U.S.C. §7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. §7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."⁵¹ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

If Rep. Jefferson advanced his personal business interests in Africa through the authority of his congressional position, he likely violated 5 U.S.C. §7353 and House Rule XXIII.

⁴⁸ 18 U.S.C. §201(c)(1)(B).

⁴⁹ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

⁵⁰ *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of Member from the House); *In the Matter of Representative David J. Flood*, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

⁵¹ See House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

5 CFR §2635.702(a) and Conflict-of-Interest Rules

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”⁵² House members are directed to adhere to 5 CFR §2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

In addition, House conflict-of-interest rules provide that a Member should never accept “benefits under circumstances which might be construed by reasonable persons as influencing the performance” of his official duties.⁵³ To do so “would raise the appearance of undue influence or breach of the public trust.”⁵⁴

By benefitting financially both personally and through his family members from a variety of business ventures in Africa while using his influence as a member of Congress in order to support those business ventures, Rep. Jefferson appears to have violated 5 CFR §2635.702(a) and the House conflict-of-interest rules

Conduct Not Reflecting Creditably on the House

Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”⁵⁵ This ethics standard is considered to be “the most comprehensive provision of the code.”⁵⁶ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on

⁵² House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

⁵³ H. Con. Res. 175, 85th Cong., 2d Sess, 72 Stat., pt 2, B12, para. 5 (1958).

⁵⁴ Id.

⁵⁵ Rule 23, clause 1.

⁵⁶ House Comm. on Standards of Official Conduct, House Ethics Manual.

“Congress as a whole,” and that might otherwise go unpunished.⁵⁷ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,⁵⁸ making false statements to the Committee,⁵⁹ criminal convictions for bribery,⁶⁰ or accepting illegal gratuities,⁶¹ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁶²

Rep. Jefferson’s conduct, which includes accepting donations and bribes in excess of \$400,000, clearly does not reflect creditably on the House.

Deferral to Department of Justice

The fact that the Department of Justice is currently conducting a criminal investigation of Rep. Jefferson should not be a basis for the Committee to defer any investigation into, or action on, Rep. Jefferson’s ethical violations. Under the Committee on Standards of Official Conduct

⁵⁷ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁵⁸ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

⁵⁹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

⁶⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁶¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

⁶² House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

Rule 15(f), the Committee, “may defer action on a complaint against a Member” if: 1) “the complaint alleges conduct that the Committee has reason to believe is being reviewed by appropriate law enforcement or regulatory authorities,” or 2) “the Committee determines that it is appropriate for the conduct alleged in a complaint to be reviewed initially by law enforcement or regulatory authorities.”⁶³

A 1975 Committee report explained the Committee’s approach in the circumstances of an ongoing investigation by law enforcement authorities as follows:

[W]here an allegation involves a possible violation of statutory law, and the committee is assured that the charges are known to and are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course. This is not to say the committee abandons concern in statutory matters -- rather, it feels it normally should not undertake duplicative investigations pending judicial resolution of such cases.⁶⁴

Under Rule 15(f),

[D]eferral by the Committee where there is an ongoing law enforcement proceedings is not mandatory, but rather is discretionary. Historically, the Committee has been more reluctant to defer where the Member conduct that is at issue is related to the discharge of his or her official duties as a Member of the House.⁶⁵

Rep. Jefferson’s conduct unquestionably is related to the discharge of his official duties as a Member of the House, as it raises the issue of whether he received financial assistance, a bribe or illegal gratuity as a *quid pro quo* for exercising his congressional influence. As a result,

⁶³ House Comm. On Standards of Official Conduct, Committee Rules, Rule 15(f) 109th Cong. (2005); *see also* Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay: Memorandum of the Chairman and Ranking Member, p. 24, 108th Cong., 2d Sess (2004).

⁶⁴ Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay, (*quoting* House Comm. on Standards of Official Conduct, Policy of the House of Representatives with Respect to Actions by Members Convicted of Certain Crimes, H. Rep. 94-76, 94th Cong., 1st Sess. 2 (1975)).

⁶⁵ House Comm. on Standards of Official Conduct, Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay.

given the Committee's precedents, a Committee investigation into Rep. Jefferson's activities is appropriate.

Use of the National Guard to Visit Home and Retrieve Property

Five days after Hurricane Katrina hit the Gulf Coast, on September 2, 2005, Rep. Jefferson allegedly used National Guard troops to check in on his home and collect a few belongings – a laptop computer, three suitcases, and a large box.⁶⁶ Military sources told *ABC News* that Rep. Jefferson asked the National Guard to take him on a tour of the flooded portion of his congressional district.⁶⁷ Lt. Col. Pete Schneider of the Louisiana National Guard said that during the course of the tour, Rep. Jefferson asked that the truck stop at the Congressman's home.⁶⁸ The Congressman entered his house and collected his belongings, returning to the truck, which was now stuck in the mud.⁶⁹ The National Guard ultimately sent a second truck to rescue the first truck and Rep. Jefferson and his belongings were returned to the Superdome.⁷⁰

Rep. Jefferson explained that he had not sought military assistance in touring the city, but because of the gunfire, “[t]hey thought I should be escorted by some military guards.”⁷¹ Rep. Jefferson claimed that he was curious about the condition of his house and that he would have been happy to go by himself.⁷²

5 CFR §2635.702(a)

By using the National Guard to visit his home and retrieve property -- at a time when the citizens of New Orleans had no such similar opportunities -- Rep. Jefferson appears to have violated 5CFR §2635.702(a).

⁶⁶ Jake Tapper, Amid Katrina Chaos, Congressman Used National Guard to Visit Home, *ABC News*, September 14, 2005. (Exhibit 13)

⁶⁷ Id.

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Tapper, *ABC News*, Sept. 14, 2005.

⁷¹ Id.

⁷² David Pace, La. Congressman Had Guard Escort to Home, *Associated Press*, September 14, 2005. (Exhibit 14)

Conduct Not Reflecting Creditably on the House

At a time when the nation was facing its worst natural disaster ever, and when New Orleans lacked the requisite federal resources to rescue all of its citizens in a timely manner, Rep. Jefferson's use of the National Guard to check on his house and retrieve belongings does not reflect creditably on the House.

REP. JERRY LEWIS

Rep. Jerry Lewis (R-CA) is a 14th-term member of Congress, representing California's 41st congressional district. Rep. Lewis has been a member of the House Appropriations Committee since 1980, and has served as chairman of the full committee since 2005. Rep. Lewis also served as chairman of the Defense Appropriations Subcommittee from 1999 to 2005.¹

Rep. Lewis' ethics issues stem primarily from misuse of his position on the powerful Appropriations Committee to steer hundreds of millions of dollars in earmarks to family, friends, former employees, and corporations in exchange for contributions to his campaign committee and political action committee, Future Leaders PAC. Rep. Lewis is currently under federal investigation by the Department of Justice.

Relationship with Bill Lowery and Copeland Lowery Jacquez Denton & White

Rep. Lewis has a close personal and business relationship with lobbyist and former Congressman Bill Lowery, and his lobbying firm, the now-defunct Copeland Lowery Jacquez Denton & White (Copeland Lowery).² The two served on the Appropriations Committee together from 1985 until 1993, when Mr. Lowery left Congress and opened his own lobbying firm.³ According to press reports, as chairman of the House Appropriations Committee Rep. Lewis has approved hundreds of millions of dollars in federal projects for Mr. Lowery's clients.⁴ As a result of those generous earmarks, Copeland Lowery's income had more than tripled from 1998 to 2004, and its client size had grown from 28 to 101.⁵ In turn, Mr. Lowery, his partners and their spouses contributed \$480,000 to Rep. Lewis' campaign committee and Future Leaders PAC between 2000 and 2005, often giving the maximum contribution allowed under law.⁶ Mr. Lowery's relationship with Rep. Lewis is under intense scrutiny by federal investigators because of its apparent similarity to relationships between former lobbyist Jack Abramoff and other members of Congress.⁷

¹ <http://www.house.gov/jerrylewis/bio.html>.

² Jerry Kammer, A Steady Flow of Financial Influence, *Copley News Service* appearing in *San Diego Union-Tribune*, December 23, 2005. (Exhibit 1)

³ Id.

⁴ Id.

⁵ Id.

⁶ Kammer, *Copley News Service*, Dec. 23, 2005.

⁷ Id.

Copeland Lowery's staff included Letitia White, who joined the firm in 2003, after working in Rep. Lewis' office for 22 years, most recently as a staffer to the Appropriations Committee.⁸ In the year before Ms. White left Rep. Lewis's employ, her salary was cut from the equivalent of \$125,000 per year to \$80,000. In this way, Ms. White was able to evade federal conflict-of-interest laws that impose a one-year lobbying ban on any congressional staffer who earns a salary equal to or above 75% of a member's salary.⁹

At Copeland Lowery Ms. White became known as "K Street's Queen of Earmarks."¹⁰ She quickly built a client list of two dozen defense firms that were seeking earmarks.¹¹ Within a year, she was earning over \$1 million a year at the firm, her clients were paying almost \$1.5 million in lobbying fees, and they received at least \$22 million in earmarks in the 2004 defense appropriations bill.¹² For fiscal year 2006, an analysis by the nonprofit Taxpayers for Common Sense revealed that at least two-thirds of Ms. White's 53 clients received earmarks.¹³

One of Ms. White's first major clients was General Atomics and one of its aeronautics

⁸ A one-time San Diego defense contractor, Thomas Casey of Audre Recognition Systems Inc., has alleged that in 1993, while Ms. White was on Rep. Lewis' staff and working on a provision in a spending bill that would have steered \$20 million to Audre, she met with Mr. Casey and another defense contractor, Brent Wilkes. The purpose of the meeting was to draft language for a defense bill that would have secured funding for Audre and limited its competition. The final bill included much of the language that Mr. Casey wrote, although the funding was reduced to \$14 million. One week prior to final passage of the bill, Ms. White bought stock in Audre, according to a November 1994 article in the trade journal *Federal Computer Week*. Under the 1994 earmark, Mr. Casey initially received \$4 million in Pentagon contracts and no further awards. Audre filed for Chapter 11 bankruptcy in 1995. Peter Pae, Tom Hamburger and Richard Simon, Powerful Lawmaker's Relative Linked Financially to Contractor, *Los Angeles Times*, June 23, 2006. (Exhibit 2). Mr. Casey – who also alleged on *NBC News* that Rep. Lewis asked him to provide stock options to the Congressman's friends, including Mr. Lowery – and his associates gave \$9,253 in political contributions to Rep. Lewis in 1993 alone. Dean Calbreath, Ex-contractor Says Lewis Asked Him for Favors, *San Diego Union-Tribune*, June 8, 2006. (Exhibit 3)

⁹ Paul Kane, Pay Cut Let Lewis Aide Dodge Ban, *Roll Call*, July 27, 2006. (Exhibit 4)

¹⁰ David D. Kirkpatrick, Rise of Capitol Lobbyist Shines a Light On House Connections, *The New York Times*, June 3, 2006. (Exhibit 5)

¹¹ Kammer, *Copley News Service*, Dec. 23, 2005.

¹² Kane, *Roll Call*, July 27, 2006.

¹³ Kirkpatrick, *The New York Times*, June 3, 2006.

subsidiaries. The companies received several multimillion-dollar earmarks in the defense spending bill for fiscal year 2004, including \$3 million for General Atomics and \$15.3 million for the aeronautics division.¹⁴ During the 2004 election cycle, General Atomics executives were the second-highest donors to Rep. Lewis' campaign committee, giving \$18,000.¹⁵

When Rep. Lewis took charge of the defense appropriations subcommittee, Richard White, Ms. White's husband and a former tobacco industry lobbyist, switched to defense lobbying.¹⁶ Mr. White secured a \$4.5 million earmark for a project for Tessera Technologies, and in return received \$180,000 in payments from the company in 2003 and 2004.¹⁷ Tessera's partner in the project was Isothermal Systems Research, for which Ms. White was a lobbyist. She charged the company \$120,000 for lobbying services in 2003 and 2004.¹⁸

Since 2003, the Whites have contributed \$30,000 to Rep. Lewis' campaign committee and PAC.¹⁹

Jeffrey Shockey, another staffer for Rep. Lewis until 1999, also left to join Copeland Lowery. Mr. Shockey stayed with the firm for six years before returning to Capitol Hill in January 2005, for a second stint with Rep. Lewis as deputy staff director of the Appropriations Committee, at a salary of approximately \$170,000.²⁰ To compensate for Mr. Shockey's drop in income, Copeland Lowery paid him nearly \$2 million in departure payments²¹ and hired his wife, Alexandra Shockey, as a subcontractor.²² His wife is also a former employee of Rep. Lewis and has her own lobbying firm, Hillscape Associates, with an address identical to that of Copeland

¹⁴ Erica Werner, Receptionist-Turned-Lobbyist Gets Attention of Federal Investigators, *Associated Press*, August 24, 2006. (Exhibit 6)

¹⁵ Id.

¹⁶ Kammer, *Copley News Service*, Dec. 23, 2005.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Tom Hamburger, Lewis Aide Got \$2-Million Buyout From Lobby Shop: The Firm Paid Jeffrey Shockey as he Returned to Capitol Hill as an Appropriations Staffer, *Los Angeles Times*, June 10, 2006. (Exhibit 7)

²¹ Id.

²² Kammer, *Copley News Service*, Dec. 23, 2005.

Lowery.²³ Mrs. Shockey has admitted that her client roster includes some of her husband's former clients.²⁴

While Mr. Shockey was with Copeland Lowery he handled the account for Environmental Systems Research Institute Inc. (ESRI). ESRI hired Copeland Lowery in June 2000, and paid the firm between \$40,000 and \$80,000 annually.²⁵ ESRI received at least \$55.4 million in earmarks in 2004 and 2005.²⁶ The co-founders and heads of ESRI, Jack and Laura Dagermond, donated over \$23,000 to Rep. Lewis and his PAC in the 2002, 2004, and 2006 election cycles.²⁷

Since 1999, the Shockeys have contributed \$40,000 to Rep. Lewis' campaign committee and PAC.²⁸

Federal officials currently are investigating the cozy relationship between Rep. Lewis and Copeland Lowery. The activities of Ms. White and Mr. Shockey are also part of that probe.²⁹ The investigators have issued at least 10 subpoenas seeking details on why counties, towns and businesses in Rep. Lewis' Southern California district chose to hire Mr. Lowery's lobbying firm, how much they paid, and the nature of the communications between Copeland Lowery and Rep. Lewis.³⁰

Cerberus Capital Management

Cerberus Capital Management, a New York investment company, is another defense

²³ Id.

²⁴ Id.

²⁵ Jeremiah Marquez, Defense Contractor Targeted in Lewis Probe, *Associated Press*, June 29, 2006. (Exhibit 8)

²⁶ Id.

²⁷ Id.

²⁸ Kammer, *Copley News Service*, Dec. 23, 2005.

²⁹ Werner, *Associated Press*, Aug. 24, 2006; Jerry Kammer, Contractor Adds Layer to Rep. Lewis' Sphere, *Copley News Service*, June 24, 2006. (Exhibit 9)

³⁰ Werner, *Associated Press*, Aug. 24, 2006.

contractor that has benefited from Rep. Lewis' earmarks.³¹ On July 7, 2003, Cerberus hosted a fundraiser for Rep. Lewis, raising \$110,000 for the Congressman's Future Leaders PAC. The next day, the House passed a defense spending bill, sponsored by Rep. Lewis, that secured \$160 million for a Navy project critical to Cerberus.³² A few weeks after the vote, former Vice President Dan Quayle and several others associated with Cerberus donated \$12,500 to Rep. Lewis' Future Leaders PAC, for a combined monthly contribution of \$133,000 by Cerberus and its associates. Future Leaders PAC collected a total of \$522,725 in 2003, one-fourth of which was connected to Cerberus.³³

According to a *USA Today* analysis, none of the people associated with Cerberus had ever given money to Rep. Lewis or his PAC prior to the fundraiser or the vote on the defense spending bill.³⁴

Relationship to Brent Wilkes and Rep. Duke Cunningham

Rep. Lewis is also under investigation because of his ties to the same contractors who had ties to former Rep. Randy "Duke" Cunningham (R-CA). Rep. Cunningham pleaded guilty to taking bribes from contractor Brent R Wilkes, who has been identified as a co-conspirator in Rep. Cunningham's plea agreement.³⁵ After Rep. Cunningham pleaded guilty, Rep. Lewis resisted an independent investigation of Rep. Cunningham's activities on the Appropriations Committee, stating that his own personal informal review of Rep. Cunningham's earmarks was satisfactory and that the earmarks Rep. Cunningham doled out were legitimate.³⁶

Rep. Lewis worked with Rep. Cunningham to help secure contracts for Mr. Wilkes' companies, ADCS, Inc. and Perfect Wave Technologies.³⁷ In April 1999, three months after becoming chairman of the Defense Appropriations Subcommittee, Rep. Lewis received \$17,000

³¹ Matt Kelley, The Congressman & the Hedge Fund, *USA Today*, January 19, 2006. (Exhibit 10)

³² Id.

³³ Id.

³⁴ Id.

³⁵ Jerry Kammer and Dean Calbreath, Lewis Subject of 'Earmarks' Investigation, Source Says, *Copley News Service*, May 12, 2006. (Exhibit 11)

³⁶ Id.

³⁷ Id.

in campaign contributions from Mr. Wilkes and his associates.³⁸ At the time of these contributions, Mr. Wilkes was seeking a contract to digitize documents for the Pentagon, which did not want to give ADCS, Inc. as much money as Mr. Wilkes was seeking.³⁹ In a July 1999 memo to Rep. Cunningham, Mr. Wilkes wrote, "We need \$10 m[illion] more immediately . . . This is very important and if you cannot resolve this others will be calling also."⁴⁰ Following Mr. Wilkes' memo, in a closed-door Appropriations meeting, Reps. Lewis and Cunningham cut funding for the Pentagon prized F-22 fighter jet. Soon after, the Pentagon found the \$10 million for ADCS' document conversion contract.⁴¹

In total, Rep. Lewis has received \$88,252 from Mr. Wilkes and his associates, making him the third-highest recipient of campaign contributions from Mr. Wilkes, after Reps. Cunningham and John Doolittle (R-CA).⁴²

Assistance to Step-Daughter

Rep. Lewis' stepdaughter, Julia Willis-Leon (the daughter of Arlene Lewis, Rep. Lewis' wife and chief of staff), has also benefited from her relationship with Rep. Lewis. Federal investigators are looking into Rep. Lewis' role in urging defense industry lobbyists to contribute money to a PAC Ms. Willis-Leon runs.⁴³

Ms. Willis-Leon has received thousands of dollars in fundraising fees from Small Biz Tech PAC, a political committee headed by defense contractor Nicholas Karangelen.⁴⁴ Mr. Karangelen is the president of Trident Systems, a company that has received earmarks from the House Appropriations Committee and lobbied Rep. Lewis.⁴⁵ Records show that Trident, one of Ms. White's lobbying clients, has received at least \$23.6 million in earmarked funds since Rep.

³⁸ Id.

³⁹ Kammer and Calbreath, *Copley News Service*, May 12, 2006.

⁴⁰ Id.

⁴¹ Id.

⁴² Id.

⁴³ Editorial, Earmarker in Chief, *The Wall Street Journal*, June 15, 2006. (Exhibit 12)

⁴⁴ Pae, Hamburger and Simon, *The Los Angeles Times*, June 23, 2006.

⁴⁵ Jerry Kammer and Marcus Stern, Political Money From Lobbyist Flows to Lewis' Stepdaughter, *Copley News Service*, June 8, 2006. (Exhibit 13)

Lewis has served on the Appropriations Committee.⁴⁶ Last year alone Trident received five contracts and at least one \$9.62 million contract in 2006.⁴⁷ In the three years Ms. White has represented Trident, her firm has billed the company \$340,000.⁴⁸

Only a year-and-a-half old, Small Biz Tech PAC was formed one month after Rep. Lewis became chairman of the Appropriations Committee.⁴⁹ Nearly all the money it has raised has come from lobbyists and defense contractors who have business before the Appropriations Committee, and of that total, more than one-third has gone to pay Ms. Willis-Leon's salary and expenses.⁵⁰ The PAC has paid Ms. Willis-Leon \$37,420 in fundraising services, while paying less than half that amount – \$15,600 – to political candidates.⁵¹ Although Small Biz PAC is run from Ms. Willis-Leon's home in Las Vegas, Nevada, its website lists its street address as a million-dollar Capitol Hill townhouse co-owned by Letitia White and Mr. Karangelen.⁵²

In total, Small Biz PAC has raised \$113,700. Of that, \$46,000 came from Ms. White, her husband, and small defense contractors represented by Copeland Lowery.⁵³

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.⁵⁴ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁵⁵

⁴⁶ Kammer, *Copley News Service*, June 24, 2006.

⁴⁷ Pae, Hamburger and Simon, *The Los Angeles Times*, June 23, 2006.

⁴⁸ Kammer and Stern, *Copley News Service*, June 8, 2006.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id.

⁵² Kammer and Stern, *Copley News Service*, June 8, 2006.

⁵³ Id.

⁵⁴ 18 U.S.C. §201(b)(2)(A).

⁵⁵ McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

If, as it appears, Rep. Lewis accepted donations to his campaign and political action committees in direct exchange for earmarking federal funds to clients of Copeland Lowery, he may have violated the bribery statute.

If, as it appears, Rep. Lewis accepted donations to his campaign and political action committees in direct exchange for earmarking federal funds to Cerebus, he may have violated the bribery statute.

If, as it appears, Rep. Lewis accepted campaign donations in direct exchange for earmarking federal funds for an ADCS, Inc. contract, he may have violated the bribery statute.

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.⁵⁶ By using his position as a member of Congress to financially benefit clients of a lobbying firm owned by his close friend and staffed by his former associates, Rep. Lewis may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. §1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.⁵⁷ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.⁵⁸

If a link is established between Rep. Lewis' actions to earmark funds for clients of Copeland Lowery and the campaign donations and donations to his PAC that Copeland Lowery, its employees and associates made, Rep. Lewis would be in violation of the illegal gratuity statute.

Rep. Lewis, by apparently accepting campaign donations from Cerberus and its associates in exchange for earmarking funds for a Navy project critical to the firm, appears to be in

⁵⁶ 18 U.S.C. §1341.

⁵⁷ 18 U.S.C. §201(c)(1)(B).

⁵⁸ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

violation of 18 U.S.C. §201(c)(1)(B).

Rep. Lewis, by apparently accepting campaign donations from Mr. Wilkes and his associates in exchange for earmarking funds for a contract for Mr. Wilkes' company, ADCS, Inc., appears to be in violation of 18 U.S.C. §201(c)(1)(B).

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of members, including expulsion.⁵⁹

5 U.S.C. §7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. §7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."⁶⁰ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

If Rep. Lewis accepted campaign contributions from Copeland Lowery and its associates in return for legislative assistance by way of earmarking federal funds for the lobbying firm's clients, he likely violated 5 U.S.C. §7353 and House Rule XXIII.

By accepting hundreds of thousands of dollars in campaign contributions from Cerberus and its associates in apparent exchange for earmarking \$160 million for a Navy project critical to Cerebus, Rep. Lewis likely violated 5 U.S.C. §7353 and House Rule XXIII.

By accepting thousands of dollars in campaign contributions from Mr. Wilkes and his associates in apparent exchange for earmarks for ADCS, Inc. and affiliated companies, Rep. Lewis likely violated 5 U.S.C. §7353 and House Rule XXIII.

⁵⁹ *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the member from the House); *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

⁶⁰ See House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

5 CFR §2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”⁶¹ House members are directed to adhere to 5 CFR §2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

The Code of Ethics also provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not.”⁶²

By funneling federal funds to clients of Copeland Lowery, the lobbying firm of his close friend and business associate Bill Lowery, Rep. Lewis may have dispensed special favors and violated 5 CFR §2635.702(a).

By funneling federal funds to Cerberus, a company that has provided him with very generous campaign contributions, Rep. Lewis may have dispensed special favors and violated 5 CFR §2635.702(a).

By funneling federal funds to ADCS, Inc., a company that has provided him with very generous campaign contributions, Rep. Lewis may have dispensed special favors and violated 5 CFR §2635.702(a).

Conduct Not Reflecting Creditably on the House

In addition, Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”⁶³ This ethics

⁶¹ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

⁶² Id.

⁶³ Rule XXIII, cl. 1.

standard is considered to be “the most comprehensive provision of the code.”⁶⁴ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.⁶⁵ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,⁶⁶ making false statements to the Committee,⁶⁷ criminal convictions for bribery,⁶⁸ or accepting illegal gratuities,⁶⁹ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁷⁰

Rep. Lewis apparently accepted campaign contributions in return for legislative favors that financially benefited personal friends and former staff. Accepting anything of value in exchange for official action does not reflect creditably on the House and, therefore, violates House Rule XXIII, clause 1.

⁶⁴ House Comm. on Standards of Official Conduct, House Ethics Manual.

⁶⁵ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁶⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

⁶⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

⁶⁸ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁶⁹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

⁷⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

Similarly, Rep. Lewis' use of his legislative position to ultimately benefit his stepdaughter does not reflect creditably on the House and, therefore violates House Rule XXIII, clause 1.

Deferral to Department of Justice

The fact that according to press reports the Department of Justice is currently conducting a criminal investigation of Rep. Lewis and his relationship with Copeland Lowery should not be a basis for the Committee to defer any investigation into, or action on, Rep. Lewis' ethical violations. Under the Committee on Standards of Official Conduct Rule 15(f), the Committee "may defer action on a complaint against a Member" if: 1) "the complaint alleges conduct that the Committee has reason to believe is being reviewed by appropriate law enforcement or regulatory authorities," or 2) "the Committee determines that it is appropriate for the conduct alleged in a complaint to be reviewed initially by law enforcement or regulatory authorities."⁷¹

A 1975 Committee report explained the Committee's approach in the circumstances of an ongoing investigation by law enforcement authorities as follows:

[W]here an allegation involves a possible violation of statutory law, and the committee is assured that the charges are known to and are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course. This is not to say the committee abandons concern in statutory matters – rather, it feels it normally should not undertake duplicative investigations pending judicial resolution of such cases.⁷²

Under Rule 15(f),

[D]eferral by the Committee where there is an ongoing law enforcement proceeding is not mandatory, but rather is discretionary. Historically, the Committee has been more reluctant to defer where the Member conduct that is at

⁷¹ House Comm. on Standards of Official Conduct, Committee Rules, Rule 15(f), 109th Cong. (2005); *see also* Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay: Memorandum of the Chairman and Ranking Member, p. 24, 108th Cong., 2d Sess. (2004).

⁷² Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay, (*quoting* House Comm. on Standards of Official Conduct, Policy of the House of Representatives with Respect to Actions by Members Convicted of Certain Crimes, H. Rep. 94-76, 94th Cong., 1st Sess. 2 (1975)).

issue is related to the discharge of his or her official duties as a Member of the House.⁷³

Rep. Lewis' conduct unquestionably is related to the discharge of his official duties as a member of the House, as it raises the issues of whether he received financial assistance, a bribe, or illegal gratuity as a *quid pro quo* for exercising his congressional powers to benefit the clients of Copeland Lowery and Brent Wilkes. As a result, given the Committee's precedents, a Committee investigation into Rep. Lewis' activities is appropriate.

Security Bank of California

In 2005, shortly after becoming chairman of the Appropriations Committee, Rep. Lewis was asked to buy into an initial public offering of a fledgling bank, Security Bank of California, headed by his close friend James Robinson.⁷⁴ Rep. Lewis' initial investment of \$22,000 for 2,200 stocks in Security Bank is now worth nearly \$60,000, an increase of almost 300%.⁷⁵

The stock was recommended to Rep. Lewis by Mr. Robinson's wife, a former chair and board member of the Loma Linda University Children's Hospital Foundation, a branch of Loma Linda University Medical Center. Rep. Lewis helped direct more than \$200 million in federal dollars to the medical center, where there are facilities named in his honor.⁷⁶ In June 2006, Rep. Lewis acknowledged that the medical center had benefited from \$40 million in earmarks.⁷⁷

Many of Security Bank's board members have also contributed to Rep. Lewis' campaign and are linked to businesses that received federal earmarks. They include Zareh Sarrafian, an executive with Loma Linda Medical Center and president of the Hospital Foundation's board, and Bruce Varner, a friend of Rep. Lewis' who serves on the board of the National Orange Show Events Center in San Bernardino.⁷⁸ The center has received more than \$800,000 in federal funds.⁷⁹

⁷³ House Comm. on Standards of Official Conduct, Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay.

⁷⁴ Michael R. Blood, Calif. Congressman Saw Profit From Bank, *Associated Press*, July 19, 2006. (Exhibit 14)

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ Blood, *Associated Press*, July 19, 2006.

⁷⁹ Id.

The Ethics Committee should investigate whether Rep. Lewis received preferential treatment in being offered participation in the initial public offering of Security Bank, given that the offer coincided with his assuming chairmanship of the Appropriations Committee.

In addition, if Rep. Lewis repaid the opportunity to personally acquire stock that subsequently proved to be worth considerably more than its initial asking price through earmarking funds for entities associated with Security Bank and its board, he may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. §1341.

Use of Detailee

Marine Lt. Col. Carl Kime is a military officer in the Department of Defense (DOD) and, until recently, tracked defense appropriations as a staff member for Rep. Lewis.⁸⁰ Lt. Col. Kime's business cards indicated that he worked on appropriations in Rep. Lewis' personal office with primary oversight for earmark requests in the defense appropriations bill.⁸¹ He remained on the Pentagon's payroll while working in Rep. Lewis' office and did not receive a congressional salary.⁸²

According to *The Hill*, its review of House disbursement records dating back to 2001 does not indicate that Lt. Col. Kime served on Rep. Lewis' personal staff.⁸³ Old House phone directories show that Lt. Col. Kime has worked in Rep. Lewis' office since at least spring 2001.⁸⁴ From the time of his arrival until the summer 2002, Lt. Col. Kime's title was listed in the directory as military fellow. By the spring of 2003, his title had been changed in the directory to appropriations associate.⁸⁵

In July 2004, during House consideration of the 2005 fiscal year defense appropriations bill, Rep. Lewis – who was then chairman of the Defense Subcommittee – thanked Lt. Col. Kime for his work on the appropriations process. As reflected in the Congressional Record, Rep.

⁸⁰ Alexander Bolton, Lewis's Use of Military Aide May Break the Rules, *The Hill*, February 2, 2006. (Exhibit 15)

⁸¹ Id.

⁸² Alexander Bolton, Pentagon Recalled Lewis's Approps Staffer, *The Hill*, February 2, 2006. (Exhibit 16)

⁸³ Bolton, *The Hill*, Feb. 2, 2006.

⁸⁴ Id.

⁸⁵ Id.

Lewis said, “I must thank Carl Kime, of my personal office, who watches this bill for me and does an outstanding job for me.”⁸⁶

Following *The Hill*'s reports on the matter, nearly five years after he joined Rep. Lewis's office, the Pentagon recalled Lt. Col. Kime in February 2006.⁸⁷

2 U.S.C. §72a(f)

Under federal law, congressional committees are permitted to detail or assign staff from other government departments or agencies, but only with the written permission of the Committee on House Administration (formerly the Committee on House Oversight). 2 U.S.C. §72a(f). Rules published by the Administration Committee governing expenditures from committee funds interpret this statute to require “*prior* written authorization” of all detailing agreements.⁸⁸ The Committee's rules specify further that “[d]etailing agreements may not exceed a 12-month period or the end of a Congress, whichever occurs first.”⁸⁹

Department of Defense (DOD) regulations mirror these restrictions. Department directive 1000.17, issued on February 24, 1997, provides that DOD personnel serving in the legislative branch “shall be limited to performing duties for a specific duration, in a specific project and as a member of a staff or a committee of the Congress.”

Rep. Lewis' use of a detailee from the U.S. Department of Defense for a five-year period appears to violate the 12-month limitation imposed by the Committee on House Administration which implements 2 U.S.C. §72a(f), and DOD regulations. Moreover, to the extent Rep. Lewis' use of this detailee was not pursuant to prior written authorization by the Committee on House Administration, he also violated the Committee's rules.

Administration Committee Rules also provide that “[d]etailees may not be assigned to a Member office.”⁹⁰ If, as it appears, Rep. Lewis actually assigned Lt. Col. Kime to his office, Rep. Lewis would be in violation of Committee rules, 2 U.S.C. §72a(f), and DOD regulations.

⁸⁶ Id.

⁸⁷ Bolton, *The Hill*, Feb. 2, 2006.

⁸⁸ Committee on House Administration, Committees' Congressional Handbook, Detailees (*emphasis added*).

⁸⁹ Committee on House Administration, Committees' Congressional Handbook, Committee Staff, Consultants, and Detailees, Detailees Guideline 2.

⁹⁰ Committee on House Administration, Committees' Congressional Handbook, Detailees.

REP. GARY MILLER

Rep. Gary Miller (R-CA) is a fourth-term member of Congress, representing California's 42nd congressional district. Rep. Miller's ethics issues stem from apparent tax evasion and his relationship with Lewis Operating Corporation.

California Land Deals

Rep. Miller has invoked Internal Revenue Code ("IRC") § 1033 on three separate real estate sales to the cities of Monrovia, California and Fontana, California since 2002.¹ In this way, he was able to avoid capital gains taxes from the proceeds of the sales. In 2002, Rep. Miller sold 165 acres to the city of Monrovia, making a profit of approximately \$10 million.² In 2004, Rep. Miller reinvested the proceeds of the sale in land and building purchases in Fontana, California, and Rancho Cucamonga, California.³ Rep. Miller again claimed IRC § 1033 exemption when he sold some of his Fontana land and building acquisitions in April and June of 2005.⁴ He used proceeds from this sale to purchase additional land in Fontana, which he subsequently sold to the city in 2006 for \$50,000 more than his original purchase price.⁵

Despite Rep. Miller's claims of eminent domain, his sale of land in 2002 to the city of Monrovia was not an involuntary conversion within the meaning of IRC § 1033. Rep. Miller had taken an aggressive, public campaign to sell his property to the city for several years prior to the sale. He was videotaped at a February 2000 City Council meeting repeatedly asking the city to purchase his property.⁶ Monrovia purchased Rep. Miller's property in 2002 pursuant to a state statute that prohibited the use of eminent domain proceedings, according to Glen Owens, a member of Monrovia's planning commission and Scott Ochoa, then assistant city manager.⁷ A May 2002 letter from the

¹ William Heisel, Official's Tax Break: on Firm Ground?, *Los Angeles Times* (August 13, 2006). (Exhibit 1)

² Id.

³ Id.

⁴ Heisel, *Los Angeles Times*, Aug. 13, 2006.

⁵ Martin Wisckol and Norberto Santana Jr., Miller's land deals ethically questionable, *The Orange County Register* (August 10, 2006). (Exhibit 2)

⁶ Heisel, *Los Angeles Times*, Aug. 13, 2006.

⁷ Id.

Monrovia City Manager confirmed that all property owners were “willing sellers.”⁸ On Aug. 1, 2002, in an amendment to his escrow instructions for the transaction Rep. Miller confirmed that the Monrovia sale was not a forced condemnation.⁹

Rep. Miller’s sales of land and buildings to the city of Fontana in April and June of 2005 also were not involuntary conversions within the meaning of IRC § 1033. A March 22, 2005 letter from City Manager Kenneth Hunt stated that the “redevelopment plan for this project area does not currently authorize the use of eminent domain.”¹⁰ In addition, both Clark Alsop, the attorney representing Fontana in the transaction, and Ray Bragg, the Fontana redevelopment director, have stated publicly that the city did not even threaten the use of eminent domain in the land acquisition.¹¹

Internal Revenue Code Violations

Federal tax law protects property owners from facing unexpected capital gains taxes due to involuntary conversion by government entities through eminent domain proceedings.¹² The law allows a taxpayer, at his or her option, up to two years to reinvest any capital gains realized from a forced sale in replacement property that is similar or related to the converted property.¹³ A taxpayer that voluntarily sells his property to a government entity does not qualify for the non-recognition of capital gains pursuant to the Code.¹⁴ The taxpayer would then be subject to taxation on those capital gains.¹⁵ A taxpayer who fails to report these capital gains on a federal income tax return is in violation of IRC § 6011(a), and is subject to civil and criminal penalties for tax evasion pursuant to IRC § 7201.

It appears that Rep. Miller has engaged in three counts of tax evasion in violation of IRC § 7201 by improperly claiming IRC § 1033 exemptions on capital gains from the sale of real estate that was not due to involuntary conversion through eminent domain proceedings. The IRS should conduct a full-scale investigation to determine whether

⁸ Id.

⁹ Id.

¹⁰ Heisel, *Los Angeles Times*, Aug. 13, 2006.

¹¹ Id.

¹² IRC § 1033.

¹³ IRC § 1033(a)(2)(B)(i).

¹⁴ *See* IRC § 1033(a).

¹⁵ IRC § 1(h)(1).

Rep. Miller's 2002 and 2005 real estate transactions qualified for non-recognition of capital gains pursuant to IRC § 1033.

House Rule XXIII

Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves "at all times in a manner that reflects creditably on the House."¹⁶ This ethics standard is considered to be "the most comprehensive provision of the code."¹⁷ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with "flagrant" violations of the law that reflect on "Congress as a whole," and that might otherwise go unpunished.¹⁸ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,¹⁹ making false statements to the Committee,²⁰

¹⁶ Rule XXIII, cl. 1.

¹⁷ House Comm. on Standards of Official Conduct, House Ethics Manual.

¹⁸ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

¹⁹ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

²⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

criminal convictions for bribery,²¹ or accepting illegal gratuities,²² and accepting gifts from persons with interest in legislation in violation of the gift rule.²³

The House Committee on Standards of Official Conduct should investigate Rep. Miller's land transactions as tax evasion does not reflect creditably on the House.

Relationship with Lewis Operating Corp.

Before entering Congress, Rep. Miller had a lucrative career as a developer of planned communities. After launching G. Miller Development Co. in his twenties, Rep. Miller found himself in competition with Richard Lewis, the owner of Lewis Operating Corp.²⁴ The two men have had a relationship for over 30 years.²⁵

Lewis Operating, Mr. Lewis, and several of his family members have been Rep. Miller's top campaign donors since he was elected to Congress in 1998.²⁶ Since that time, Lewis Operating employees have donated \$19,300 to Rep. Miller's campaign

²¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

²² House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

²³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

²⁴ Susan Crabtree, Miller helped free land for a business partner, *The Hill*, March 30, 2006. (Exhibit 3)

²⁵ Id.

²⁶ Id.

committees.²⁷ The National Association of Home Builders, of which Mr. Lewis is a member, has also donated \$44,000 to Rep. Miller.²⁸ In addition, Rep. Miller has been involved in a number of land transactions with Lewis Operating.²⁹ In 2005 alone, Rep. Miller made between \$1.1 and \$6 million off of land deals with Lewis Operating.³⁰

In 2004, Rep. Miller took out three separate promissory notes from the Lewis Operating group of companies: \$4.75 million from Lewis Investment Co.; \$1.26 million from Fontana Library Co.; and \$1.45 million from Church Haven Co.³¹ All three companies share Lewis Operating Company's southern California office address.³² Using the money obtained through these loans, Rep. Miller bought land from Lewis Investment in "seller-financed" deals, which often result in better deals for the person buying the land.³³

House Rule XXVI

House rules provide that members, officers and employees may accept opportunities and benefits that are "in the form of loans from banks and other financial institutions on terms generally available to the public."³⁴ In addition, the Committee on Standards of Official Conduct has determined that members and staff may accept a loan from a person other than a financial institution, provided that the loan is on commercially reasonable terms, including requirements for repayment and a reasonable rate of interest.³⁵ That determination was based on a separate provision of the gift rule, clause

²⁷ Susan Crabtree, Miller may have violated House ethics rules by borrowing \$7.5M, *The Hill*, August 9, 2006. (Exhibit 4)

²⁸ Susan Crabtree, *The Hill*, Mar. 30, 2006.

²⁹ Id.

³⁰ Id.

³¹ Susan Crabtree, Miller borrowed \$7.5M to buy contributor's land, *The Hill*, July 13, 2006. (Exhibit 5)

³² Id.

³³ Crabtree, *The Hill*, Aug. 9, 2006.

³⁴ House Rule XXVI, cl. 5(a)(3)(R)(v).

³⁵ House Comm. on Standards of Official Conduct, Gift and Travel Booklet.

5(a)(3)(A), which allows the acceptance of "[a]nything for which the Member . . . officer, or employee pays the market value."³⁶

The Committee has further stated

Whether a loan from a person other than a financial institution is on terms that are "commercially reasonable," and hence acceptable under the Committee's determination, will depend on a number of facts and circumstances. Thus, *before* entering into a loan arrangement with a person other than a financial institution, Members and staff should contact the Committee for a review of the proposed terms, and a determination by the Committee on whether the loan is acceptable under the gift rule.³⁷

Rep. Miller's office has refused to state whether the loans he received from Lewis Operating were reviewed by the ethics committee,³⁸ suggesting that they were not. Given the extensive business relationship between Rep. Miller and Lewis Operating, the significant financial benefits both have realized from that relationship, and Rep. Miller's refusal to verify whether the ethics committee has reviewed these substantial loans, the ethics committee should investigate whether, by accepting loans from Lewis Operating, Rep. Miller violated House Rule XXVI.

Diamond Bar Village and Rialto Airport

In a 2005 highway bill, Rep. Miller earmarked \$1.28 million for street improvements near Diamond Bar Village, a planned residential and commercial development in Diamond Bar, California, that Rep. Miller co-owns with Lewis Operating.³⁹ The proposed development will include a Target, 70 single-family homes, 110 condos and two restaurants.⁴⁰ The earmarks will likely improve the value of the land.

³⁶ Id.

³⁷ Id.

³⁸ Id.

³⁹ Jonathan Weisman, Lawmakers' Profits Are Scrutinized, *The Washington Post*, June 22, 2006. (Exhibit 6)

⁴⁰ Congressman Gary Miller's business dealings scrutinized, *Associated Press*, January 10, 2006. (Exhibit 7)

In 2005, Rep. Miller, as a member of the House Committee on Transportation and Infrastructure, pushed for a provision in a highway bill that allowed the city of Rialto to close down its airport. This is the first time the legislative process has been used to allow a city to close its airport; normally the Federal Aviation Administration (FAA) has sole authority to close airports.⁴¹ The FAA opposed the closing. Rialto has borrowed \$15 million in federal government loans since 1984 to improve the airport.⁴² Closing the airport allowed Lewis Operating to win a contract from the city of Rialto to develop the airport land and build a planned community consisting of 2,500 homes, parks and 80 acres of retail space on the former airport and adjacent land.⁴³

5 C.F.R. §2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”⁴⁴ House members are directed to adhere to 5 C.F.R. §2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

By using his position to earmark funds to increase the value of his own property, and by using his position to close an airport for the benefit of Lewis Operating, Rep. Miller likely violated 5 C.F.R. §2635.702(a).

In addition, House conflict-of-interest rules provide that a Member should never accept “benefits under circumstances which might be construed by reasonable persons as influencing the performance” of his official duties.⁴⁵ To do so “would raise the

⁴¹ Crabtree, *The Hill*, Mar. 30, 2006.

⁴² Id.

⁴³ Id.

⁴⁴ House Comm. on Standards of Official Conduct, Memorandum For All Members, Officers and Employees, Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

⁴⁵ H. Con. Res. 175, 85th Cong., 2d Sess., 72 Stat., pt 2, B12, para. 5 (1958).

appearance of undue influence or breach of the public trust.” Rep. Miller’s use of his position to benefit himself and Lewis Operating violates this prohibition.⁴⁶

In addition, Rep. Miller’s record of assistance to Lewis Operating, which in turn has generously donated to his campaigns and has cut him in on lucrative land deals does not reflect creditably on the House.

⁴⁶ House Comm. on Standards of Official Conduct, In the Matter of Representative Mario Biaggi, H.Rep.No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending); House Comm. on Standards of Official Conduct, In the Matter of Representative Charles H. Wilson (of California), H.Rep.No. 969-930, 96th Cong., 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

REP. ALAN MOLLOHAN

Rep. Alan Mollohan (D-WV) is a 12th-term member of Congress, representing West Virginia's 1st congressional district. He is a member of the House Appropriations Committee, sitting as the Ranking Member on the Subcommittee on Science, State, Justice, Commerce and Related Agencies and a member of the Subcommittee on Interior, Environment and Related Agencies. In addition, until April 2006 when he stepped down, he was the Ranking Member of the House Committee on Standards of Official Conduct.¹

Rep. Mollohan's ethics issues stem primarily from misuse of his position on the powerful Appropriations Committee to steer hundreds of millions of dollars in earmarks to family, friends, former employees, and corporations in exchange for contributions to his campaign committee and political action committee. In addition, Rep. Mollohan misreported his personal assets on his financial disclosure forms. He is currently the subject of a U.S. Department of Justice investigation.

Earmarking of Funds for His Personal Benefit

Over the last decade, Rep. Mollohan has earmarked \$369 million in federal grants to his district for 254 separate projects and programs.² Between 1997 and 2006, \$173 million of that total was directed to five nonprofit organizations that Rep. Mollohan created, that are staffed by close associates, and that are the recipients of the largest earmarks from Rep. Mollohan.³

The nonprofits include: the Institute for Scientific Research, the West Virginia High Technology Consortium Foundation, the Canaan Valley Institute, the Vandalia Heritage Foundation and MountainMade Foundation. All of the organizations are run by friends of Rep. Mollohan who contribute regularly to his campaign, his political action committee, Summit PAC, and his family foundation, the Robert H. Mollohan Family Charitable Foundation.⁴

Between 1997 and 2006, top-paid employees, board members and contractors of these five nonprofit organizations gave at least \$397,122 to Rep. Mollohan's campaign and political

¹ <http://www.house.gov/mollohan/welcome.htm>.

² Eric Bowen, Five Nonprofits Reap Big Mollohan Earmarks: Congressman's Creations Net 46% of All his Funding, *The Dominion Post*, May 28, 2006. (Exhibit 1)

³ *Id*; but see Judi Rudoren, David Johnston and Aron Pilhofer, Special Projects by Congressman Draw Complaints, *The New York Times*, April 8, 2006 (Exhibit 2), which reports that Rep. Mollohan funneled \$250 million into the five nonprofits.

⁴ John R. Wilke, Appropriations, Local Ties and Now a Probe of a Legislator, *The Wall Street Journal*, April 7, 2006. (Exhibit 3)

action committees.⁵ Thirty-eight individuals with leadership roles gave the maximum amount allowed, and workers at companies that receive subcontracts through these nonprofits, such as TMC Technologies and Electronic Warfare Associates, are among Rep. Mollohan's leading contributors.⁶

- *Institute for Scientific Research*

Launched by Rep. Mollohan in 1990, the Institute for Scientific Research (ISR) conducts scientific and software projects for federal agencies.⁷ Due to Rep. Mollohan's efforts, ISR has won \$108 million in earmarks since 1995.⁸ A majority of ISR's earmarked funds are being used to construct the organization's new headquarters which is likely to sit empty because ISR is in disarray.⁹ The chief executive of ISR resigned after a controversy erupted over his \$500,000 annual compensation paid with earmarked federal money.¹⁰

- *West Virginia High Technology Consortium Foundation*

The second highest beneficiary of Rep. Mollohan-backed earmarks is the West Virginia High Technology Consortium Foundation (WVHTCF),¹¹ which is headquartered in the Alan B. Mollohan Innovation Center.¹² Started in 1990, WVHTCF is the largest nonprofit set up by Rep. Mollohan. It has received approximately \$35 million in earmarks for education programs, economic development, and construction of its headquarters.¹³ The organization is absorbing the troubled ISR.¹⁴

⁵ Rudoren, Johnston and Pilhofer, *The New York Times*, April 8, 2006.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Rudoren, Johnston, and Pilhofer, *The New York Times*, Apr. 8, 2006.

¹⁰ Wilke, *The Wall Street Journal*, Apr. 7, 2006.

¹¹ Bowen, *The Dominion Post*, May 28, 2006.

¹² Rudoren, Johnston, and Pilhofer, *The New York Times*, Apr. 8, 2006.

¹³ Bowen, *The Dominion Post*, May 28, 2006.

¹⁴ Rudoren, Johnston, and Pilhofer, *The New York Times*, Apr. 8, 2006.

WVHTCF is run by a network of Rep. Mollohan's friends. Jack Carpenter is the foundation's vice president as well as chairman of another Mollohan-created foundation, MountainMade. Raymond Oliverio is the foundation's executive vice president, and also the treasurer of the Alan H. Mollohan Innovation Center. Rep. Mollohan's wife Barbara was once on WVHTCF's board of directors.¹⁵

- *Canaan Valley Institute*

The Canaan Valley Institute (CVI), also launched by Rep. Mollohan, works on stream restoration and wastewater treatment.¹⁶ Currently, it is building a \$33 million headquarters, on 3,028 acres that it bought with earmarks secured by Rep. Mollohan.¹⁷ Having received \$28 million in federal funds since 1995,¹⁸ CVI relies on earmarks for 97% of its funding.¹⁹

CVI is housed in the office building of a fourth Mollohan-created nonprofit, Vandalia Heritage Foundation. CVI's \$5,100 monthly rent, paid to Vandalia, is covered by earmarks from the Environmental Protection Agency and the National Oceanic Atmospheric Administration.²⁰

- *Vandalia Heritage Foundation*

Founded in 1998, Vandalia Heritage Foundation restores historic buildings and invests in devalued property.²¹ Relying on earmarks for 92% of its funding, it has received \$31.5 million in federal grants since 1999.²² Vandalia is coordinating construction of ISR's new building. Its funds have decreased since Rep. Mollohan left the subcommittee that appropriates Housing and Urban Development money.²³

¹⁵ Id.

¹⁶ Rudoren, Johnston, and Pilhofer, *The New York Times*, Apr. 8, 2006.

¹⁷ Id.

¹⁸ Bowen, *The Dominion Post*, May 28, 2006.

¹⁹ Rudoren, Johnston, and Pilhofer, *The New York Times*, Apr. 8, 2006.

²⁰ Id.

²¹ Wilke, *The Wall Street Journal*, Apr. 7, 2006.

²² Rudoren, Johnston, and Pilhofer, *The New York Times*, Apr. 8, 2006.

²³ Wilke, *The Wall Street Journal*, Apr. 7, 2006.

Since 2000, Vandalia Heritage Foundation has been run by Laura Kurtz Kuhns. A former appropriations staffer in Rep. Mollohan's office, Ms. Kuhns is a key player in Rep. Mollohan's effort to earmark funds for West Virginia and is also the Congressman's investment partner.²⁴

In addition to Vandalia, Ms. Kuhns serves on the board of three other nonprofits funded via earmarks. These include a fifth Mollohan-created foundation, MountainMade, ISR and the National Housing Development Corp. (NHDC), the only out-of-state nonprofit supported by Rep. Mollohan.²⁵ NHDC has received \$31 million in earmarks over the last five years.²⁶

- *MountainMade Foundation*

Created in 2000, MountainMade Foundation is a federally funded nonprofit dedicated to promoting West Virginia crafts.²⁷ The smallest of the nonprofits funded by Rep. Mollohan, MountainMade has received \$3.3 million in earmarks since 1995.²⁸

MountainMade is housed on the first floor of the Vandalia Heritage Foundation's building and uses earmarks from the Small Business Administration to pay Vandalia its monthly rent of over \$5,166.67.²⁹

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.³⁰ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.³¹

²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ Wilke, *The Wall Street Journal*, Apr. 7, 2006.

²⁸ Bowen, *The Dominion Post*, May 28, 2006.

²⁹ Rudoren, Johnston, and Pilhofer, *The New York Times*, Apr. 8, 2006.

³⁰ 18 U.S.C. §201(b)(2)(A).

³¹ McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

If Rep. Mollohan accepted campaign donations as well as donations to his family foundation in direct exchange for earmarking federal funds to the nonprofits run by these donors, he may have violated the bribery statute.

Honest Services Fraud

Federal law prohibits a Member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.³² By using his position as a Member of Congress to financially benefit nonprofit organizations that he created, staffed by his friends, Rep. Mollohan may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. §1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.³³ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.³⁴

If a link is established between Rep. Mollohan's actions to earmark funds for five nonprofits run by friends and the campaign donations and donations to his family foundation that those friends and their nonprofit organizations made, Rep. Mollohan would be in violation of the illegal gratuity statute.

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of Members, including expulsion.³⁵

³² 18 U.S.C. §1341.

³³ 18 U.S.C. §201(c)(1)(B).

³⁴ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

³⁵ *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the Member from the House); *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

5 U.S.C. §7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. §7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including “anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties.”³⁶ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

If Rep. Mollohan accepted campaign contributions in return for legislative assistance by way of earmarking federal funds, he likely violated 5 U.S.C. §7353 and House Rule XXIII.

5 CFR §2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”³⁷ House Members are directed to adhere to 5 CFR §2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

The Code of Ethics also provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not.”³⁸

³⁶ See House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

³⁷ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

³⁸ Id.

By funneling federal funds to nonprofits that he established and that help finance his family foundation, Rep. Mollohan may have violated 5 CFR §2635.702(a).

Conduct Not Reflecting Creditably on the House

Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”³⁹ This ethics standard is considered to be “the most comprehensive provision of the code.”⁴⁰ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.⁴¹ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,⁴² making false statements to the

³⁹ Rule XXIII, cl. 1.

⁴⁰ House Comm. on Standards of Official Conduct, House Ethics Manual.

⁴¹ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁴² House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

Committee,⁴³ criminal convictions for bribery,⁴⁴ or accepting illegal gratuities,⁴⁵ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁴⁶

Rep. Mollohan apparently accepted campaign contributions in return for legislative favors that financially benefited campaign contributors and nonprofits that he established. Accepting anything of value in exchange for official action does not reflect creditably on the House and, therefore, violates House Rule XXIII, clause 1.

Trip to Bilboa, Spain

In June 2004, Rep. Mollohan, his wife, and two top aides took a five-day trip to Bilboa, Spain. The trip, arranged by the West Virginia High Technology Consortium and costing over \$36,000, was paid for by a group of government contractors to whom Rep. Mollohan funneled more than \$250 million in earmarked funds.⁴⁷ Disclosure forms list the sponsor of the Spain trip as the “West Virginia (WV)-01 Trade Delegation”⁴⁸ which, according to Rep. Mollohan’s office

⁴³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

⁴⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁴⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

⁴⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

⁴⁷ John Bresnahan, W. Va. Firms Footed Mollohan Trip, *Roll Call*, May 8, 2006. (Exhibit 4)

⁴⁸ Rep. Alan Mollohan, Member/Officer Travel Disclosure Form, filed July 23, 2004 (Exhibit 5).

is an ad hoc group of 19 government contractors and West Virginia nonprofits.⁴⁹ Officials with the nonprofit groups, in turn, donated nearly \$400,000 to Rep. Mollohan's re-election campaigns from 1997 through 2006.⁵⁰

TMC Technologies, a West Virginia high-tech firm also accompanied Rep. Mollohan on his trip to Spain.⁵¹ According to a press release TMC issued on July 28, 2004, the company "was invited by Congressman Alan B. Mollohan to participate in a trade mission to the Biscay region of Spain."⁵² In 2004, TMC gave \$5,000 to Mollohan's foundation.⁵³ Since 2001, TMC's President, Wade Linger, and his wife have given at least \$54,450 to Mollohan's PAC, and his company and employees have given another \$20,095.⁵⁴ A month before the trip, TMC received a \$5 million contract from the National Oceanic and Atmospheric Administration as a result of an earmark from Rep. Mollohan.⁵⁵ Since 2001, TMC has secured at least \$10 million in federal contracts and company officials have openly thanked Rep. Mollohan for adding the earmarks into spending bills.⁵⁶

A representative from FMW Composite Systems also accompanied Rep. Mollohan on the Spain trip.⁵⁷ FMW's Chief Executive Officer, Dale McBride, is a life-long friend of Rep. Mollohan, and in May 2005, the two purchased a 300-acre farm together in West Virginia.⁵⁸ In December 2005, FMW won a \$2.1 million NASA contract from a program funded through a Mollohan earmark.⁵⁹

⁴⁹ Bresnahan, *Roll Call*, May 8, 2006.

⁵⁰ Id.

⁵¹ Id.

⁵² Id.

⁵³ Michael Forsythe, Mollohan Helped Steer U.S. Contracts to Family-Charity Donors, *Bloomberg*, June 22, 2006. (Exhibit 6)

⁵⁴ Id.

⁵⁵ Bresnahan, *Roll Call*, May 8, 2006.

⁵⁶ John Bresnahan, Mollohan Got \$23K From MZM, *Roll Call*, December 8, 2005. (Exhibit 7)

⁵⁷ Bresnahan, *Roll Call*, May 8, 2006.

⁵⁸ Id.

⁵⁹ Id.

Azimuth, Inc., another West Virginia company that provides electronic and software engineering support services, also helped underwrite the Spain trip.⁶⁰ Azimuth won a \$20 million contract from the Department of Homeland Security in 2006.⁶¹ and its employees gave \$12,600 to Rep. Mollohan during the 2006 election cycle and \$16,000 in the 2004 cycle.⁶²

Illegal Gratuity

If Rep. Mollohan solicited funding for his trip to Spain from TMC Technologies one month after TMC received a \$5 million contract as a result of an earmark from him, he would be in violation of 18 U.S.C. §201(c)(1)(B). Similarly, the funding of the trip by FMW Composite Systems and Azimuth, Inc., two companies that received government contracts and earmarks from Rep. Mollohan, appears to represent an illegal gratuity.

Solicitation of Gifts

Rep. Mollohan's conduct also may have violated federal law prohibiting Members from soliciting a gift from any person who has interests before the House.⁶³ This provision limits not only what government officials may **accept**, but also that for which they may **ask**. The statute provides:

(a) Except as permitted by [applicable gift rules or regulations], no Member of Congress or officer or employee of the executive, legislative, or judicial branch shall **solicit** or accept anything of value from a person –

(1) seeking official action from, doing business with, or . . . conducting activities regulated by, the individuals employing agency; or

(2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.⁶⁴

⁶⁰ Id.

⁶¹ Bresnahan, *Roll Call*, May 8, 2006.

⁶² www.opensecrets.org. (Exhibit 8)

⁶³ 5 U.S.C. § 7353.

⁶⁴ Id. (*emphasis added*).

The prohibition against solicitation applies to the solicitation not only of money, but “anything of value.” In addition, the prohibition covers solicitations of things for the personal benefit of the member, officer or employee, as well as things that would involve no personal benefit.

House Rule XXIII, clause 3 similarly prohibits members from receiving compensation or asking for anything of value in exchange for exercising influence they enjoy as Members of Congress.

Rep. Mollohan’s “invitation” to TMC Technologies to participate in the trip to Spain appears to constitute a solicitation for Rep. Mollohan’s personal benefit in violation of 5 U.S.C. §7353. By accepting more than \$74,000 in campaign contributions from TMC Technologies, its President and employees and funding for the trip to Spain in apparent exchange for helping TMC secure more than \$10 million in federal contracts since 2001, Rep. Mollohan also likely violated clause 3 of Rule XXIII .

The financing for the trip may also implicate House Rule XXVI. The Committee on Standards of Official Conduct has long taken the position that a member, officer or employee may accept expenses for officially connected travel only from a private source that has a direct and immediate relationship with the event or location being visited.⁶⁵

The rule is concerned with the organization’s or individual(s) that actually pay for travel. “[T]he concept of the rule is that a private entity that pays for officially connected travel will both organize and conduct the trip, rather than merely pay for a trip that is in fact organized and conducted by someone else.”⁶⁶

Here the exact role of those financing Rep. Mollohan’s trip to Spain is not entirely clear. Rep. Mollohan’s travel disclosure forms list the trip sponsor as the West Virginia (WV)-01 Trade Delegation, while the trip was arranged by the West Virginia High Technology Consortium Foundation, a collection of 19 government contractors and West Virginia-based entities. It is not known whether any of the West Virginia companies and nonprofit entities created by Rep. Mollohan that sponsored the trip have any connection to Bilboa, Spain, much less a direct and immediate relationship with the trip. These issues warrant further consideration to determine if Rep. Mollohan’s trip violated House rules.

⁶⁵ House Comm. on Standards of Official Conduct, *Investigation of Financial Transactions Participated in and Gifts of Transportation Accepted by Representative Fernand J. St. Germain*, H. Rep. No. 100-46, 100th Cong., 1st Sess. 5-6 (1987).

⁶⁶ *Proper Sources of Expenses for Officially Connected Travel*, Rules of the House of Representatives on Gifts and Travel.

The Robert H. Mollohan Family Charitable Foundation

In addition to Rep. Mollohan's campaign and political action committees, the Robert H. Mollohan Family Charitable Foundation, for which Rep. Mollohan has served as secretary for the past six years, functions as a third conduit for donations from government contractors and executives of nonprofit organizations to which Rep. Mollohan has steered federal funds.⁶⁷ The foundation holds an annual charity golf tournament at the Pete Dye Golf Club in Bridgeport, West Virginia – a top-100 course according to *Golf Magazine*. The tournament received \$455,000 in contributions in 2003, and its donors included at least two of Rep. Mollohan's federally funded nonprofits, ISR and Vandalia.⁶⁸ Additionally, the West Virginia High Technology Consortium provides staff and office services to the foundation.⁶⁹

Among those who have profited from making contributions to the foundation is D.N. American Inc., an information technology company with headquarters in the Alan B. Mollohan Innovation Center.⁷⁰ D.N. American gave \$20,000 to the Mollohan Foundation in 2004, and according to a press release from Rep. Mollohan's office, the company received part of a \$3 million government contract.⁷¹

The foundation has a total donor list of 43 companies, including nine of the top 10 contributors to Rep. Mollohan's reelection campaign in 2004.⁷²

Acceptance of a Bribe

The substantial contributions that Rep. Mollohan's private foundation has received from companies that benefited from federal contracts earmarked by Rep. Mollohan raise a serious question as to whether this was a *quid pro quo* in violation of the bribery statute.

⁶⁷ Wilke, *The Wall Street Journal*, Apr. 7, 2006.

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Forsythe, *Bloomberg*, June 22, 2006.

⁷¹ Id.

⁷² Id.

Honest Services Fraud

By using his position as a Member of Congress to financially benefit his private foundation Rep. Mollohan may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. §1341.

Illegal Gratuity

To the extent Rep. Mollohan has accepted donations to his family charity in exchange for earmarking federal funds to government contractors making those donations, he may have violated the illegal gratuity statute.

5 U.S.C. §7353 and House Rules

If Rep. Mollohan accepted donations to this private family charity in exchange for earmarking federal funds to government contractors making those donations, he may have violated 5 U.S.C. §7353 and House Rule XXIII.

5 CFR §2635.702(a)

By funneling federal funds to companies that help finance his family foundation, Rep. Mollohan may also have violated 5 CFR §2635.702(a) which, as discussed above, prohibits members from taking actions for the prospect of personal gain for themselves or others.

Personal Finances/Real Estate Investments

Between 2000 and 2004, Rep. Mollohan saw a spike in his personal assets and income from the rental properties he owns.⁷³ According to the nonprofit National Legal and Policy Center (NLPC), between 1996 and 2004, Rep. Mollohan filed financial disclosure forms that showed 260 instances of omitted or undervalued assets in an effort to disguise the dramatic increase in Rep. Mollohan's personal wealth.⁷⁴ Those forms show a jump in Rep. Mollohan's portfolio from less than \$500,000 in assets generating less than \$80,000 in income in 2000, to at least \$6.3 million in assets earning \$200,000 to \$1.2 million in 2004.⁷⁵ As of 2005, Rep. Mollohan's reported personal assets were worth at least \$8 million and his liabilities were in

⁷³ Rudoren, Johnston and Pilhofer, *The New York Times*, Apr. 8, 2006.

⁷⁴ Id.

⁷⁵ Id.

excess of \$3.43 million.⁷⁶ Rep. Mollohan credits part of this increase in assets to a sizeable inheritance from his father's estate.⁷⁷

Rep. Mollohan's real estate holdings include 17 units in The Remington, a Washington, D.C. condominium complex that he purchased in 1996 along with his wife Barbara, his third cousin, Joseph L. Jarvis, and Mr. Jarvis' wife.⁷⁸ Within the next seven years, they added 10 units,⁷⁹ and between 1999 and 2003, The Remington increased in value by more than 9,000% .⁸⁰ The condos are now valued at \$8 million.⁸¹

In 2002, Rep. Mollohan and his wife invested in a North Carolina beachfront property with Rep. Mollohan's former staffer Laura Kuhns and her husband Donald.⁸² The two families owned five properties jointly in Baldhead Island, North Carolina, listed in local real estate records as having a total value of \$2 million.⁸³

Finally, in May 2005, Rep. Mollohan and Dale McBride, whom Rep. Mollohan has described as a life-long friend and who is the CEO of FMW, purchased a 300-acre farm together in West Virginia.⁸⁴ All of these real estate deals are currently under scrutiny by the U.S. Department of Justice.⁸⁵

⁷⁶ John Bresnahan, Mollohan Made \$1M-Plus in Real Estate in 2005, *Roll Call*, June 14, 2006. (Exhibit 9)

⁷⁷ Id.

⁷⁸ Eric Bowen, Mollohan Relative Has Past in Government Contracting; 2 Jarvis Companies Brought in \$86M in Fed Contracts, *The Dominion Post*, June 25, 2006. (Exhibit 10)

⁷⁹ Id.

⁸⁰ Bresnahan, *Roll Call*, June 14, 2006.

⁸¹ Jodi Rudoren and Aron Pilhofer, Congressman's Condo Deal Is Examined, *The New York Times*, May 17, 2006. (Exhibit 11)

⁸² Wilke, *The Wall Street Journal*, Apr. 7, 2006.

⁸³ Id.

⁸⁴ Id.; Bresnahan, *Roll Call*, May 8, 2006.

⁸⁵ Rudoren and Pilhofer, *The New York Times*, May 17, 2006.

In June 2006, in reaction to NLPC's complaint, Rep. Mollohan filed two dozen corrections to his past six financial disclosure forms.⁸⁶

18 U.S.C. §1001

Federal law prohibits Members of Congress from making "any materially false, fictitious, or fraudulent statement or representation"⁸⁷ on "a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch."⁸⁸

If Rep. Mollohan failed to disclose or misrepresented the true value of his personal assets on his financial disclosure forms to disguise the dramatic increase in his personal wealth during the past several years, he would appear to be in violation of 18 U.S.C. §1001.

House Rules

Rep. Mollohan's failure to include property on his financial disclosure forms is a violation of House rules. Pursuant to 5 U.S.C. app. 4 §101(a)(1)(B), Members of Congress must disclose all rental property. The instruction booklet accompanying the House financial disclosure forms requires disclosure of "unearned" income, which "consists of rents, royalties, dividends, interest, capital gains, and similar amounts received as a return on investment." The instructions continue, filers "must disclose . . . real and personal property held for investment or production of income and valued at more than \$1,000 at the close of the reporting period."⁸⁹

Rep. Mollohan's failure to include all of his assets on his financial disclosure forms violates House rules.

Deferral to Department of Justice

The fact that according to press reports the Department of Justice is currently conducting a criminal investigation of Rep. Mollohan's activities should not be a basis for the ethics committee to defer any investigation into, or action on, Rep. Mollohan's ethical violations. Under the Committee on Standards of Official Conduct Rule 15(f), the Committee "may defer

⁸⁶ Eric Bowen, Mollohan Fixes Finance Reports: Amendments Correct 'Handful of Mistakes', *The Dominion Post*, June 14, 2006 (Exhibit 12); see also Letter from Rep. Alan Mollohan to Clerk of the House, June 13, 2006. (Exhibit 13)

⁸⁷ 18 U.S.C. §1001(a)(2).

⁸⁸ *Id.* at §1001(c)(2).

⁸⁹ House Comm. On Standards of Official Conduct, "Assets and Unearned Income," Financial Disclosure Instruction Booklet.

action on a complaint against a Member” if: 1) “the complaint alleges conduct that the Committee has reason to believe is being reviewed by appropriate law enforcement or regulatory authorities,” or 2) “the Committee determines that it is appropriate for the conduct alleged in a complaint to be reviewed initially by law enforcement or regulatory authorities.”⁹⁰

A 1975 Committee report explained the Committee’s approach in the circumstances of an ongoing investigation by law enforcement authorities as follows:

[W]here an allegation involves a possible violation of statutory law, and the committee is assured that the charges are known to and are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course. This is not to say the committee abandons concern in statutory matters – rather, it feels it normally should not undertake duplicative investigations pending judicial resolution of such cases.⁹¹

Under Rule 15(f),

[D]eferral by the Committee where there is an ongoing law enforcement proceeding is not mandatory, but rather is discretionary. Historically, the Committee has been more reluctant to defer where the Member conduct that is at issue is related to the discharge of his or her official duties as a Member of the House.⁹²

Rep. Mollohan’s conduct unquestionably is related to the discharge of his official duties as a member of the House, as it raises the issues of whether he received financial assistance, a bribe, or illegal gratuity as a *quid pro quo* for exercising his congressional powers. As a result,

⁹⁰ House Comm. on Standards of Official Conduct, Committee Rules, Rule 15(f), 109th Cong. (2005); *see also* Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay: Memorandum of the Chairman and Ranking Member, p. 24, 108th Cong., 2d Sess. (2004).

⁹¹ Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay, (*quoting* House Comm. on Standards of Official Conduct, Policy of the House of Representatives with Respect to Actions by Members Convicted of Certain Crimes, H. Rep. 94-76, 94th Cong., 1st Sess. 2 (1975)).

⁹² House Comm. on Standards of Official Conduct, Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay.

given the Committee's precedents, a Committee investigation into Rep. Mollohan's activities is appropriate.

REP. MARILYN MUSGRAVE

Rep. Marilyn Musgrave (R-CO), is a second-term member of Congress, representing Colorado's 4th congressional district. Rep. Musgrave's ethical improprieties involve the misuse of official resources for political campaign activity and abuse of franking privileges.

2004 Re-election Campaign

Although reports indicate that both Rep. Musgrave's district office and campaign headquarters were located at 5401 Stone Creek Circle in Loveland, CO,¹ Rep. Musgrave claimed that her congressional campaign was run out of suite 777, while her district office was in suite 204.² A floor plan of the building, however, indicates that there is no suite 777, and people who have visited her campaign office have been directed to an alarmed fire door as the main entrance to that office.³ The only other entrance is through the congressional office itself, suggesting the front door of the campaign office is actually the district office's back door.⁴

A spokesperson for Group Real Estate, which owns the building housing the offices, has confirmed that there is no suite 777 in the building and has stated that Rep. Musgrave's office made arrangements with the post office to have the suite recognized as the address for her campaign office.⁵

In a visit to 5401 Stone Creek Circle, the publisher for the *Fort Morgan Times* attempted to locate the campaign office and was unable to find it.⁶ He noted that while suite 777 suggests a 7th floor office, the building at 5401 Stone Creek Circle is only comprised of two floors.⁷ Also, the lobby directory for the building only listed Rep. Musgrave's district office, suite 204, it failed to list a campaign office.⁸ Moreover, when the publisher asked a building receptionist where

¹ Michael Becker, Campaign Office Spat Erupts, *Sterling Journal-Advocate*, October 28, 2004. (Exhibit 1)

² Id.

³ Id.

⁴ Becker, *Sterling Journal-Advocate*, October 28, 2004.

⁵ Id.

⁶ William R. Holland, Out and about Suite 777: The Ghost Suite, *Fort Morgan Times*, October 27, 2004. (Exhibit 2)

⁷ Id.

⁸ Id.

suite 777 was located, she advised him that there was no such suite 777.⁹ When he asked her where Rep. Musgrave's campaign office was, she directed him to leave the building and locate an outside door. The publisher found the door, climbed two flights of stairs and found two separate doors side-by-side, but neither had a sign for suite 777 or Rep. Musgrave's campaign office.¹⁰ One door did not have a knob so it could not be opened from the outside, the other door appeared to be unmarked emergency exit door with a key lock, but no handle on the outside. Thus, the publisher found that there was, in fact, no access to the "suite" Rep. Musgrave claimed as her campaign office.¹¹

Federal law prohibits members of Congress from soliciting contributions in a manner that directs contributors to mail or deliver a contribution to "any room or building occupied in the discharge of official duties . . ."¹² Violations of this section are subject to fines and up to three years imprisonment.¹³ If, as the evidence suggests, Rep. Musgrave has been soliciting campaign contributions from her district office, she is in violation of this provision.

In addition, another federal statute prohibits members of Congress from soliciting political contributions from employees.¹⁴ Violations of this section are subject to fines and up to three years imprisonment.¹⁵ Federal election law defines "contribution" to include "any gift . . . or anything of value . . ."¹⁶ Federal Election Commission regulations define "anything of value" to include all in-kind contributions. Unless specifically exempted under 11 CFR part 100, subpart C, the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services constitutes a contribution.¹⁷ Thus, if district office employees were also staffing the campaign office, Rep. Musgrave illegally solicited contributions, in the form of service, from her employees.

⁹ Id.

¹⁰ Holland, *Fort Morgan Times*, October 27, 2004.

¹¹ Id.

¹² 18 U.S.C. §607(b).

¹³ Id.

¹⁴ 18 U.S.C. §602.

¹⁵ Id.

¹⁶ 2 U.S.C. §431(8)(A)(I).

¹⁷ 11 CFR §100.52(d)(1).

Using a district office as a campaign office also violates the House of Representatives Standards of Official Conduct. According to the Campaign Booklet published by the House Committee on Standards of Official Conduct, there is a “basic principle that government funds should not be spent to help incumbents gain re-election.”¹⁸ The official allowance of House offices, and the goods and services acquired with those allowances, are to be used for House business and are not to be used for campaign or political purposes.¹⁹ The Campaign Booklet clearly states that House offices, including district offices, are supported with official funds and, therefore, are considered official resources.²⁰ As a result, they may not be used to conduct campaign or political activities.²¹ Thus, Rep. Musgrave’s use of her district office to campaign for re-election is a clear violation of House Standards of Official Conduct.

The House Committee on Standards of Official Conduct has also noted that the misuse of official House resources for campaign purposes may violate federal criminal law as well as House ethics rules.²² The Campaign Booklet provides two cases in which Members were criminally prosecuted for misusing official resources: in 1993, a former House employee pleaded guilty to a charge of theft of government property after he was found doing campaign work at a time that he claimed he was conducting official business;²³ and in 1979, a former Member pleaded guilty to charges of mail fraud and income tax evasion in a case centering on claims that individuals on the congressional payroll were paid not for the performance of official duties, but instead for staffing and operating various campaign headquarters in his re-election campaign.²⁴ Thus, if Rep. Musgrave’s district office employees were working in the campaign office during working hours, they likely violated federal law.

¹⁸ House Comm. on Standards of Official Conduct, *General Prohibition Against Using Official Resources for Campaign or Political Purposes*, Campaign Booklet (citing Common Cause v. Bolger, 574 F. Supp. 672, 683 (D.D.C. 1982), *aff’d*, 461 U.S. 911 (1983)).

¹⁹ Campaign Booklet.

²⁰ Id.

²¹ Id.

²² Id.

²³ Campaign Booklet (citing United States v. Bresnahan, Criminal No. 93-0409 (D.D.C. 1993); see Senate Comm. on Rules and Administration, *Senate Election Law Guidebook 2000*, S. Doc. 106-14, 106th Cong., 2d Sess. 250).

²⁴ Campaign Booklet (citing United States v. Clark, Criminal No. 78-207 (W.D. Pa. 1978); see *id.* 249-50).

Misuse of Franking Privilege

Rep. Musgrave appears to have misused the franking privileges afforded Members of Congress by sending a letter on congressional stationery endorsing district attorney candidate Bob Watson.²⁵ Rep. Musgrave claimed that the endorsement was sent on campaign stationery rather than congressional stationery on the grounds that the address on the paper was “Suite 777” (the “phantom” campaign office, discussed above), in all other respects the stationery used was identical to Rep. Musgrave’s congressional stationery.²⁶ While Rep. Musgrave claimed that Mr. Watson’s campaign paid for the mailing, neither one of them provided any evidence supporting that claim.²⁷

Federal law prohibits the use of franking privileges for campaign material, stating:

a Member of . . . Congress may not mail as franked mail . . . mail matter which constitutes or includes any article, account, sketch, narration, or other text laudatory and complimentary of any Member of, or Member-elect to, Congress on a purely personal or political basis rather than on the basis of performance of official duties as a Member or on the basis of activities as a Member-elect . . .²⁸

The franking laws define “mail matter” as including “mail matter which specifically solicits political support for . . . any other person . . . or financial assistance for any candidate for any public office.”²⁹ By mailing campaign material from what appears to be her congressional office, Rep. Musgrave may have violated 39 U.S.C. §3210. Therefore, the Committee on Standards of Official Conduct should investigate this matter.

²⁵ Holland, *Fort Morgan Times*.

²⁶ Id.

²⁷ Id.; see also Jason Kosena, Musgrave Mail Causes Stir, *Fort Collins Coloradoan*, June 14, 2004. (Exhibit 3)

²⁸ 39 U.S.C. §3210(a)(5)(A).

²⁹ 39 U.S.C. §3210(a)(5)(C).

REP. RICHARD POMBO

Rep. Richard Pombo (R-CA) is a sixth-term member of Congress, representing California's 11th congressional district. In 2003, he took over the chairmanship of the House Resources Committee, becoming the youngest chairman in the House, and winning the post over nine more senior Republicans with the strong backing of then-Majority Leader Tom DeLay (R-TX). Rep. Pombo's ethics violations include misusing his franking privileges, accepting campaign contributions in return for legislative assistance, keeping family members on his campaign payroll, and misusing official resources.

Apparent Exchange of Campaign Contributions for Legislative Assistance

Legislative Assistance to Indian Tribes

As Chairman of the House Resources Committee, Rep. Pombo is responsible for tribal-related legislation. Since Rep. Pombo became chair, Indian tribes have invested increasingly in his political campaigns. From 1999 through 2006, 65 Indian tribes contributed a total of \$428,829 to Rep. Pombo's campaign and leadership political action committee, Rich PAC, which was created in June 2003.¹

The tribal contributions have often coincided with House Resources Committee hearings on and Rep. Pombo's involvement in Indian issues. For example, in March 2005, the Potawatomi tribe, which enjoyed a monopoly on off-reservation casinos with its Milwaukee gambling hall, made three contributions totaling nearly \$6,000 to Rep. Pombo's campaign,² reportedly to prevent the Menominee tribe from buying land in nearby Kenosha, Wisconsin, for an off-reservation casino.³ At the same time, Rep. Pombo was pushing a proposal that would make it more difficult, if not impossible, for tribes to open off-reservation casinos in the future.⁴

The Osage Tribe of northern Oklahoma gave Rich PAC \$2,500 on March 10, 2004, and another \$2,500 on March 18, 2004.⁵ Notably, on March 15, 2004, the House

¹ www.politicalmoneyline.com. (Exhibit 1)

² Id.

³ Cary Spivak and Dan Bice, A Sop to the Liquor Lobby? Cheers!, *Milwaukee Journal Sentinel*, May 4 2005. (Exhibit 2)

⁴ Id.

⁵ www.politicalmoneyline.com (see Exhibit 1); see also Josh Richman, Tribes Help Fill Pombo PAC's Coffers, *Alameda Times-Star*, June 22, 2004. (Exhibit 3)

Resources Committee held a hearing on a bill to free the Osage Tribe from a 1906 treaty that deprived the tribe of certain sovereign rights enjoyed by other tribes.⁶

According to the *Alameda Times-Star*, six members of the Mashpee Wampanoag Tribe of Cape Cod, Massachusetts, which has fought for federal recognition since 1990, each gave Rich PAC \$2,000 on September 29, 2003.⁷ The donors included the tribal president, who was called to testify before a March 31, 2004 House Resources Committee oversight hearing on the tribal recognition and acknowledgment process.⁸

Just days before a July 14, 2005 House Resources Committee hearing on land claims involving the Shinnecock Tribe, Rep. Pombo attended a \$5,000 per person fundraiser for Rich PAC held at a baseball All Star Game.⁹ The fund-raiser was co-hosted by Christopher Illitch and Mike Malik. Mr. Illitch's mother and Mr. Malik are partners in Gateway Funding Associates, which is bankrolling the Shinnecock's efforts to build a casino in Southampton, New York.¹⁰

Legislative Assistance to Mining Interests

In the fall of 2005, Rep. Pombo inserted a provision into a budget bill that would have opened national forests and other public land to mining.¹¹ Although the provision passed the House without floor debate, the Senate ultimately deleted it from the budget bill in response to complaints from western state legislators that Rep. Pombo's provision would endanger large portions of federal land.¹² Three months earlier, Duane Gibson, a Washington lobbyist, held a \$1,000-a-head fundraiser for Rep. Pombo, at which Mr. Gibson reportedly contributed \$1,000¹³ and at least one mining company represented by

⁶ Richman, *Alameda Times-Star*, June 22, 2004.

⁷ Id.

⁸ Id.

⁹ Erica Werner, Congressman Donors Tied to Tribal Dispute, *Associated Press*, July 12, 2005. (Exhibit 4)

¹⁰ Id.

¹¹ Richard A. Serrano, Lobbyist's Ties to Lawmaker Examined, *Los Angeles Times*, February 8, 2006. (Exhibit 5)

¹² Id.

¹³ www.politicalmoneyline.com. (Exhibit 6); *see also* Serrano, *Los Angeles Times*, Feb. 8, 2006.

Mr. Gibson made additional donations. Mr. Gibson's mining clients would have benefitted from the legislative provision Rep. Pombo was championing.¹⁴

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.¹⁵ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.¹⁶

By accepting numerous and very generous campaign contributions from a number of tribes in apparent exchange for supporting legislation that would favor those tribes, Rep. Pombo appears to have violated 18 U.S.C. §201(b)(2)(A).

Rep. Pombo's acceptance of campaign contributions from Duane Gibson and at least one of his mining company clients in apparent exchange for Rep. Pombo's introduction of a legislative amendment favoring the mining companies may have violated 18 U.S.C. § 201(b)(2)(A).

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.¹⁷

By using his position as a member of Congress to support legislation favorable to tribes that made generous campaign contributions to him as well as legislation favoring mining companies, Rep. Pombo may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. §1341.

¹⁴ Serrano, *Los Angeles Times*, Feb. 8, 2006.

¹⁵ 18 U.S.C. § 201(b)(2)(A).

¹⁶ *McCormick v. United States*, 500 U.S. 257, 273 (1991); *United States v. Biaggi*, 909 F.2d 662, 665 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

¹⁷ 18 U.S.C. §1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.¹⁸ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.¹⁹

If a link is established between Rep. Pombo's support for legislation favoring certain Indian tribes and the tribes' campaign contributions, Rep. Pombo would be in violation of the illegal gratuity statute.

Similarly, if a link is established between Rep. Pombo's support for legislation favoring mining interests and campaign donations from Mr. Gibson and at least one of his mining company clients, Rep. Pombo would be in violation of 18 U.S.C. §201(c)(1)(B).

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of members, including expulsion.²⁰

5 U.S.C. §7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. §7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."²¹ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee

¹⁸ 18 U.S.C. §201(c)(1)(B).

¹⁹ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

²⁰ *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the member from the House); *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

²¹ See House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

If Rep. Pombo accepted campaign contributions from Indian tribes in return for his legislative assistance he likely violated 5 U.S.C. §7353 and House Rule XXIII.

In addition, by accepting campaign contributions from Mr. Gibson and at least one of his mining company clients in apparent exchange for supporting legislation favorable to the mining industry, Rep. Pombo may have violated 5 U.S.C. §7353 and House Rule XXIII.

5 CFR §2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”²² House members are directed to adhere to 5 CFR §2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

The Code of Ethics also provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not.”²³

By pushing legislation that favored entities from which Rep. Pombo had received generous campaign contributions, he may have dispensed special favors and violated 5 CFR §2635.702(a).

²² House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

²³ Id.

Conduct Not Reflecting Creditably on the House

In addition, Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”²⁴ This ethics standard is considered to be “the most comprehensive provision of the code.”²⁵ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.²⁶ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,²⁷ making false statements to the Committee,²⁸

²⁴ Rule XXIII, cl. 1.

²⁵ House Comm. on Standards of Official Conduct, House Ethics Manual.

²⁶ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

²⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

²⁸ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

criminal convictions for bribery,²⁹ or accepting illegal gratuities,³⁰ and accepting gifts from persons with interest in legislation in violation of the gift rule.³¹

Rep. Pombo apparently accepted campaign contributions in return for legislative favors. Accepting anything of value in exchange for official action does not reflect creditably on the House and, therefore, violates House Rule XXIII, clause 1.

Abusing Position for Financial Benefit

Opposition to Environmental Guidelines

Rep. Pombo has used his legislative powers to enhance and protect his and his family's financial interests. In 2004, Rep. Pombo's office sent a letter to then-Secretary of the Department of the Interior Gale Norton, urging the Department to suspend environmental guidelines opposed by the wind power industry.³² Wind farm regulation falls under the jurisdiction of the Resources Committee chaired by Rep. Pombo.³³ Notably absent from the letter was any mention of the fact that Rep. Pombo's parents have received hundreds of thousands of dollars in royalties from wind-powered turbines

²⁹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

³⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

³¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

³² Lisa Vorderbrueggen, Activists Seek Ethics Probe for Pombo, *Contra Costa Times*, April 21, 2005. (Exhibit 7)

³³ Id.

on their 300-acre ranch.³⁴ Rep. Pombo also stood to gain financially from his parents' wind-power contracts, as he owns an interest in his parents' ranch and maintains substantial monetary ties with his family.

By using his position as a member of Congress to support legislation favorable to his own personal financial interests as well as those of his family, Rep. Pombo may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. §1341.

By benefiting financially from business interests that Rep. Pombo and his family held while using his position as Chairman of the House Resources Committee to push for the suspension of environmental rules that would adversely affect those interests, Rep. Pombo engaged in conduct that does not reflect creditably on the House, in violation of Rule XXIII, clause 1.

Support for Proposed Freeways

Rep. Pombo has used his legislative powers to support two new freeways in California's Central Valley and East Bay.³⁵ According to public records, the Pombo family owns more than 1,500 acres of land near the two proposed freeways, the value of which will likely skyrocket because of the federal funds Rep. Pombo has obtained to study the highway projects.³⁶ If even one of the proposed freeways is eventually built, the value of the 183.6 acres of property owned by the Pombos and located near the proposed freeway will far exceed its currently assessed value of \$1.19 million.³⁷

Rep. Pombo benefited financially from business interests that he and his family held while using his position as Chairman of the House Resources Committee to push for the suspension of environmental rules that would adversely affect those interests. In this way, Rep. Pombo may have violated 5 CFR § 2635.702(a). Similarly, Rep. Pombo's support for legislation that would authorize and fund two new freeways in California's Central Valley and East Bay, where he and his family own more than 1,500 acres of land, the value of which would increase significantly if the proposed freeways were built, may be a violation of 5 CFR § 2635.702(a).

³⁴ Rone Tempest, Rep. With Wind Farm Ties Denies Power Play, *San Jose Mercury News*, April 7, 2005. (Exhibit 8)

³⁵ Robert Gammon, Welcome to Pombo County, *East Bay Express*, August 24, 2005. (Exhibit 9)

³⁶ Id.

³⁷ Id.

Interference in a Pending Federal Banking Investigation

Rep. Pombo joined with another California congressman, Rep. John T. Doolittle (R-CA), to use his official position to stop a federal investigation of a wealthy Texas businessman who had provided both congressmen with political contributions.³⁸ The Federal Deposit Insurance Company (“FDIC”) was looking into the business dealings of Houston millionaire Charles Hurwitz, specifically regarding his role in the collapse of a Texas savings and loan, the United Savings Association of Texas, that cost taxpayers \$1.6 billion and was one of the worst savings and loan disasters of the 1980s.³⁹ According to reports, Mr. Hurwitz had provided both Rep. Pombo and Rep. Doolittle with political contributions, including a \$1,000 donation to Rep. Pombo for his 1996 reelection campaign.⁴⁰

Initially, in 1999, Rep. Tom DeLay (R-TX) took steps to stymie the FDIC’s investigation by denouncing it as “harassment and deceit on the part of government employees.”⁴¹ Thereafter, Reps. Pombo and Doolittle, both protégés of Rep. DeLay, used their powers as members of the House Resources Committee to subpoena confidential FDIC records in the case, under the auspices of a special task force for which Duane Gibson – who later became a lobbyist and Pombo campaign donor – was the chief investigator.⁴² Over the objections of the FDIC and the Office of Thrift Supervision, Reps. Pombo and Doolittle inserted many of the documents they obtained through the subpoenas into the Congressional Record in 2001, along with floor statements strongly condemning the investigation.⁴³ According to FDIC officials, this disclosure of sensitive documents damaged the government’s investigation of Mr. Hurwitz, which the FDIC was forced to drop in 2002.⁴⁴

Not long after Rep. Pombo used the powers of his position on the House Resources Committee to aid Rep. DeLay’s effort to stymie the FDIC investigation of Mr.

³⁸ Richard A. Serrano and Stephen Braun, *A Donor Who Had Big Allies*, *Los Angeles Times*, January 8, 2006. (Exhibit 10)

³⁹ Id.

⁴⁰ Serrano and Braun, *Los Angeles Times*, Jan. 8, 2006.

⁴¹ Id.

⁴² Id.

⁴³ Id.

⁴⁴ Serrano and Braun, *Los Angeles Times*, Jan. 8, 2006.

Hurwitz, Rep. Pombo, with Rep. DeLay's support, was elected chairman of the Resources Committee, jumping over several members with greater seniority.⁴⁵

By interfering in a pending federal banking investigation for the apparent purpose of protecting a campaign contributor, Rep. Pombo engaged in conduct that does not reflect creditably on the House in violation of Rule XXIII, clause 1.

Abuse of Franking Privileges

In October 2004, Rep. Pombo used the franking privileges afforded members of Congress to mail approximately 175,000 copies of a two-page leaflet that openly praised the House Resources Committee and the Bush Administration for overturning Clinton Administration limits on snowmobiling in national parks.⁴⁶ The leaflets, which were sent to snowmobile owners in the swing states of Wisconsin and Minnesota,⁴⁷ referred to the ban on snowmobiling in Yellowstone National Park as "the most infamous ban," and included the following statement:

*The House Resources Committee worked with President Bush to end the Yellowstone ban. As you may know, environmentalist groups have filed a lawsuit in Washington, DC to keep the ban in place. The House Resources Committee is working with President Bush to make sure you always have access to ride.*⁴⁸

Rep. Pombo authorized the expenditure of \$68,081 from House Resources Committee funds for the mailing of the leaflets as "official business."⁴⁹

Public Citizen and two Minnesota environmental lawyers filed a complaint against Rep. Pombo with the House Commission on Congressional Mailing Standards (better known as the "Franking Commission"), alleging that Rep. Pombo had illegally used public money to send the pro-Bush mailers. The Commission, chaired by Rep. Bob

⁴⁵ Id.

⁴⁶ See Mailer, Exhibit 1 to Frank Clemente et al. v. Richard Pombo, Complaint to House Commission on Congressional Mailing Standards, November 11, 2004. (Exhibit 11)

⁴⁷ Art Levine, The DeLay Wannabes, *American Prospect*, June 1, 2005. (Exhibit 12)

⁴⁸ See Mailer, Exhibits 1 and 2 to Frank Clemente et al. v. Richard Pombo. (See Exhibit 11)

⁴⁹ Greg Gordon, Democrats Fuming Over GOP Mailing, *Star Tribune*, October 13, 2004. (Exhibit 13)

Ney (R-OH), dismissed the complaint for lack of jurisdiction because the Commission failed to act on the complaint within 30 days.⁵⁰

The mailing of these leaflets to snowmobilers was the latest of ten policy newsletters Rep. Pombo had issued in a two-year period since becoming Chairman of the House Resources Committee.⁵¹ During that period, Rep. Pombo spent \$500,000 of taxpayer-funded postage to send newsletters across the nation touting the work of his committee.⁵² Rep. Pombo requested more money for official postage than any other chairman.⁵³

In recognition of the fact that franking privileges put incumbents at a significant advantage over their opponents by providing them with additional resources to communicate with constituents, federal law also prohibits mass mailings using franking privileges within 90 days of an election.⁵⁴ Only “normal and regular business” of the House Resources Committee, which is generally defined as press releases and meeting agendas, would be exempt from this ban.⁵⁵ These mailers sent out by Rep. Pombo clearly fall outside material prepared in the scope of the normal and regular course of business.

The franking laws also ban the use of franking privileges for excessive “partisan, politicized or personalized” rhetoric.⁵⁶ The leaflets sent out by Rep. Pombo were excessively “partisan, politicized or personalized” in that they assert that the Bush administration is working to “protect your right to ride” and they refer to the Clinton

⁵⁰ Jennifer Yachnin, Ney Dismisses Mail Complaint Against Pombo, *Roll Call*, July 14, 2005 (Exhibit 14); *see also* Lisa Vorderbrueggen, Congressman Escapes Censure, *Monterey County Herald*, July 15, 2005 (Exhibit 15); Jennifer Yachnin, Democrats Seek Review of Franking Dismissal, *Roll Call*, July 21, 2005. (Exhibit 16)

⁵¹ Lisa Vorderbrueggen, Lawyers File Complaint Against Pombo, *Contra Costa Times*, October 30, 2004. (Exhibit 17)

⁵² Lisa Friedman, Taxpayer Funds Going Postal; Congressman Wants Extra Committee Spending on Mail Stamped Out, *Daily News of Los Angeles*, July 25, 2004. (Exhibit 18)

⁵³ Juliet Eilperin, Bush Policy Gets a Ride on the House; Taxpayers Pay for Election Year Mailing, *The Washington Post*, October 13, 2004. (Exhibit 19)

⁵⁴ 39 U.S.C. §3210(a)(6)(A).

⁵⁵ 39 U.S.C. §3210(a)(6)(B).

⁵⁶ Red Book, ch.2, para. 4a.

administration's policy on snowmobiles in national parks as "infamous."⁵⁷ Moreover, as a guide, the laws recommend that any partisan or politicized references not exceed two references per page.⁵⁸ Rep. Pombo's mailers include five references to President Bush, thereby running afoul of the law.

Finally, members are required to see prior approval and obtain advisory opinions before sending out franked mail.⁵⁹ No such approval was obtained prior to the October mailing.⁶⁰

Rep. Pombo's mailing of approximately 175,000 leaflets in October 2004, less than 90 days from the 2004 Presidential election, sent without prior approval of the Franking Commission, clearly violates the franking rules and merits investigation by the Committee on Standards of Official Conduct.

Payments to Family Members

Rep. Pombo has made significant payments to family members since becoming a member of Congress; indeed, family members are among the recipients of the largest payments made by his campaigns.⁶¹ In the last three election cycles, Rep. Pombo has paid his wife and brother \$377,141 from his political fund, the majority of which has been for bookkeeping, fund-raising, [and] consulting.⁶² More specifically, Rep. Pombo paid his wife Annette a total of \$153,015 between 2000 and 2006 and his brother Randall a total of \$224,126 during that same time period.⁶³

⁵⁷ See Mailer, Exhibit 1 to Frank Clemente, et. al v. Rep. Richard Pombo. (See Exhibit 11)

⁵⁸ Id.

⁵⁹ 2 U.S.C. §311(F).

⁶⁰ Frank Celemente, et. al. v. Rep. Richard Pombo. (See Exhibit 11)

⁶¹ Jim Drinkard and Kathy Kiely, DeLay has Company in 9 Ethical Gray Areas, *USA Today*, April 27, 2005. (Exhibit 20)

⁶² www.opensecrets.org (Exhibit 21); see also Richard Simon, Chuck Neubauer, and Rone Tempest, Political Payrolls Include Families, *Los Angeles Times*, April 14, 2005. (Exhibit 22); see also Howard Kurtz, On the Hill, Business and Politics as Usual, *The Washington Post*, May 16, 2005. (Exhibit 23); see also Critics Rap Amount Pombo Paid Family for Campaign Work, *Congress Daily*, December 6, 2004. (Exhibit 24)

⁶³ www.opensecrets.org. (see Exhibit 21)

Candidates for federal office are prohibited from using campaign funds for personal use.⁶⁴ Federal Election Commission regulations define “personal use” as: any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.⁶⁵ Personal use includes salary payments to family members, “unless they are fair market value payments for bona fide, campaign-related services.”⁶⁶ Any salary payments to family members in excess of their fair market value are considered to be for “personal use.”⁶⁷

The excessive size of payments purportedly for bookkeeping, fundraising, and consulting that Rep. Pombo made to his wife and brother suggest they were for personal use and were not legitimate campaign expenditures. Accordingly, these payments appear to violate 2 U.S.C. § 439(a).

Use of Federal Funds for Campaign Expenses

Just prior to the November 2004 election, Rep. Pombo granted paid leave to much of his committee staff. At least some of his staff then left to work on political campaigns.⁶⁸ Four members of Rep. Pombo’s staff submitted travel reimbursement requests totaling \$3,872 for travel during this period.⁶⁹ One staffer’s travel bill was for \$1,042 incurred the day after the election.⁷⁰ If Rep. Pombo was using his staff to help campaign for other candidates, that is a clear violation of the House rule that no Congressional staffers may be used for electioneering, especially if they are on paid leave and having their travel expenses paid for by the government. An investigation should be launched into whether these travel expenses are related to the campaign activities of these members.

⁶⁴ 2 U.S.C. § 439(a); 11 CFR §113.2(d).

⁶⁵ 11 CFR § 113.1(g).

⁶⁶ FEC Advisory Opinion 2001-10 (July 17, 2001).

⁶⁷ Id.

⁶⁸ Lisa Vorderbrueggen, Legislators Say Pombo Misuses His Resources, *Contra Costa Times*, March 26, 2005. (Exhibit 25); see also Jennifer Yachnin, Ney, Lofgren Battling Over Questions on Travel, *Roll Call*, April 4, 2005. (Exhibit 26)

⁶⁹ Vorderbrueggen, *Contra Costa Times*, Mar. 26, 2005.

⁷⁰ Member/Officer Travel Disclosure Form, filed by Rep. Richard Pombo, December 20, 2000. (Exhibit 27)

Privately Funded Foreign Travel

In November 2000, Rep. Pombo traveled to Nelson, New Zealand, accompanied by his wife. The \$10,120 cost of the trip was paid for by the nonprofit International Foundation for the Conservation of Natural Resources (IFCNR).⁷¹ Rep. Pombo took another IFCNR-sponsored trip in May 2002 to Shimonoseki, Japan, accompanied by a member of his staff, at a total cost of \$13,189 for them both.⁷² The purpose of the trip was for Rep. Pombo to chair a meeting of the Sustainable Use Parliamentarians Union.⁷³ IFCNR is a private foundation bankrolled in large part by Darden Restaurants, the parent company of the Red Lobster and Olive Garden restaurant chains.⁷⁴ According to publicly available tax documents, IFCNR did not pay taxes on the more than \$23,000 it paid to fund Rep. Pombo's two foreign trips. In fact, IFCNR checked a box on all of its tax forms for years 2000 through 2004 indicating it did not "provide a grant to an individual for travel, study, or other similar purposes."⁷⁵

Rep. Pombo has also acknowledged that he neither paid taxes on these two foreign trips nor reimbursed IFCNR for the costs of the trips.⁷⁶ Rep. Pombo claimed that he was unaware that the foundation was private, although he was chairman of the Sustainable Use Parliamentarians Union, an IFCNR subsidiary, from its formation in 2000 until July 2005.⁷⁷

Private foundations may only pay for or reimburse government officials for expenses for travel within the United States.⁷⁸ Any payment to a government official for foreign travel is considered to be an act of self-dealing that must be reported as taxable

⁷¹ Id.; see also Bob Williams and Steve Henn, Report: Murky Waters, *The Center for Public Integrity*, October 18, 2005 (hereinafter "Williams and Henn Report"). (Exhibit 28)

⁷² Member/Officer Travel Disclosure Form, filed by Rep. Richard Pombo, June 6, 2002. (Exhibit 29). Member/Officer Travel Disclosure Form, filed by Steven Ding Pombo, June 10, 2002. (Exhibit 30)

⁷³ Id.

⁷⁴ Williams and Henn Report.

⁷⁵ Publicly available tax forms, See "International Foundation for the Conservation of Natural Resources" filings. (Exhibit 31)

⁷⁶ Williams and Henn Report.

⁷⁷ Id.

⁷⁸ Internal Revenue Code ("IRC") § 4941(d)(2)(G)(vii).

income.⁷⁹ Government officials are subject to taxation for knowing acts of self-dealing.⁸⁰ Rep. Pombo's acceptance of trips to New Zealand in 2000 and Japan in 2002 from IFCNR, a subsidiary of which Rep. Pombo chaired for five years, at a total cost of over \$23,000, were knowing acts of self-dealing and therefore taxable income to Rep. Pombo. Rep. Pombo's failure to either reimburse IFCNR for the costs of the trips or pay taxes on their costs is an apparent violation of Internal Revenue Code §4941(d)(1)(F).

Use of Federal Funds for Personal Travel

In August 2003, Rep. Pombo used \$4,035.87 in House Resources Committee funds to rent a recreational vehicle.⁸¹ Accompanied by his family, Rep. Pombo spent ten days traveling in the RV to a number of national parks. Despite the fact that Rep. Pombo's website characterized this trip as a "family vacation,"⁸² Rep. Pombo claimed more recently that "there was no personal travel on this trip," and that he had met with park officials while on official business.⁸³ Several of the parks, however, had no record of such official visits. For example, William Tweed, the chief park naturalist for Sequoia and Kings Canyon National Parks, could find no record of an official meeting with Rep. Pombo in August 2003.⁸⁴ Likewise, a spokesperson for Joshua Tree National Park, also on Rep. Pombo's itinerary, said that no one could recall meeting with the Congressman.⁸⁵

Federal law prohibits the embezzlement, theft or conversion of "any record, voucher, money, or thing of value of the United States," which includes the use of both tangible and intangible property.⁸⁶ Rep. Pombo, by using House Resources Committee

⁷⁹ IRC § 4941(d)(1)(F); See also Rev. Rul. 74-601, 1974-2 C.B. 385.

⁸⁰ IRS Publication 578, Tax Information for Private Foundations and Foundation Managers, at 15, 26.

⁸¹ Michael Doyle, Critics Assail Pombo for Trips, *Sacramento Bee*, February 13, 2006. (Exhibit 32)

⁸² Lisa Vorderbrueggen, No Need to Trip Over RV Rental, *Contra Costa Times*, February 19, 2006. (Exhibit 33)

⁸³ Doyle, *Sacramento Bee*, Feb. 13, 2006.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ United States v. Collins, 56 F.3d 1416 (D.C. Cir. 1995) (personal use of government copy machine held to violate § 641); United States v. Croft, 750 F.2d 1354 (7th Cir. 1984) (university professor convicted of illegally using federal grant money to fund private research project); United States v. Yokum, 417 F.2d 253 (4th Cir. 1969) (sale of a government surplus fire truck constituted conversion).

funds to rent a recreational vehicle that he apparently used for personal travel with his family, may have violated 18 U.S.C. § 641.

Use of Detailees Beyond One-Year Limit

Beginning in mid-2003, Rep. Pombo had two Department of the Interior employees, Jackson Coleman and Rick Deery, detailed to the House Resources Committee. Both of these individuals played key roles in helping Rep. Pombo's committee develop controversial environmental legislation that dealt with issues each had specialized in while at Interior.⁸⁷ During their details with Rep. Pombo, which lasted more than double the 12-month limitation for detailing agreements, Messrs. Coleman and Deery continued to receive salaries from Interior.⁸⁸ After the Department of the Interior employees had exceeded the 12-month limitation for details, and before he stepped down as Chair of the Committee on House Administration, Rep. Bob Ney signed letters purporting to give Messrs. Coleman and Deery permission to serve beyond the 12-month time limit set by House rules. A spokesperson for the new Administration Committee chair, Rep. Vernon Ehlers (R-MI), said they were relying on a Republican committee staff interpretation of the rule "to allow for detailees to apply for extensions of service."⁸⁹

Under federal law, congressional committees are permitted to detail or assign staff from other government departments or agencies, but only with the written permission of the Committee on House Administration (formerly the Committee on House Oversight).⁹⁰ Rules published by the Administration Committee governing expenditures from committee funds interpret this statute to require "prior written authorization" of all detailing agreements.⁹¹ The Committee's rules specify further that "[d]etailing agreements may not exceed a 12-month period or the end of a Congress, whichever occurs first."⁹² Rep. Pombo's knowing use of two Interior Department detailees for a period greater than 24 months appears to violate the 12-month limitation

⁸⁷ Alexander Bolton, DoI Staffers Stayed on With Pombo, *The Hill*, March 1, 2006. (Exhibit 34)

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ 2 U.S.C. § 72a(f).

⁹¹ Comm. on House Administration, Committees' Congressional Handbook, "Detailees."

⁹² Committee's Congressional Handbook, "Committee Staff, Consultants, and Detailees, Detailees Guideline 2."

imposed by the Committee on House Administration as well as the requirement of prior written authorization mandated by the Committee on House Administration's codified interpretation of federal law.⁹³ Given the absence of any provision permitting an extension of a detailing period, Rep. Ney's letter purporting to grant such an extension does not excuse Rep. Pombo's violation of House rules and federal law. Furthermore, in light of the Committee on House Administration's clear requirement that all details be authorized prior to their commencement, the *ex post facto* extension is of no effect.

Inappropriate Use and Payment of Committee Staff

In January 2003, Rep. Pombo named Steven Ding, a member of his personal staff, to be chief of staff to the House Resources Committee at an annual salary of \$150,000. Although the Resources Committee is based in Washington, D.C., Mr. Ding remained in Stockton, California, and traveled to Washington when Congress was in session.⁹⁴ Mr. Ding is the only chief of staff of a House committee who does not live in the Washington, D.C. area.⁹⁵

Rep. Pombo's California district office paid \$87,000 for travel, meals and other expenses Mr. Ding incurred over the two and one-half years he commuted between California and Washington, D.C.⁹⁶ During this same period, Mr. Ding continued to earn a monthly salary of \$100 for serving in Rep. Pombo's personal office.⁹⁷ According to Mr. Ding, he worked 80 to 90 hours a week for both the Resources Committee and Rep. Pombo's district office. At the same time, Mr. Ding also earned \$57,000 in outside political consulting fees for work he performed in California.⁹⁸ Mr. Ding has acknowledged that if he had been required to move to Washington, D.C. after 2003, when Rep. Pombo appointed him to be chief of staff to the Resources Committee, Mr. Ding would have had to quit his outside consulting work.⁹⁹

⁹³ See Committees' Congressional Handbook, "Detailees," see also 2 U.S.C. § 72a(f).

⁹⁴ Thomas Peele, Pombo aide under fire for finances, *Contra Cost Times*, January 15, 2006. (Exhibit 35)

⁹⁵ Thomas Peele, Lawmakers request audit of Pombo aide, *Contra Costa Times*, February 8, 2006. (Exhibit 36)

⁹⁶ Peele, *Contra Costa Times*, Jan. 15, 2006.

⁹⁷ Id.

⁹⁸ Id.

⁹⁹ Id.

After the *Contra Costa Times* reported the details of Rep. Pombo's questionable use of taxpayer funds on Mr. Ding's behalf, Reps. Ellen Tauscher (D-CA) and George Miller (D-CA) wrote to the Committee on House Administration, asking that the Committee investigate whether the arrangement violated "one or more rules of the House and regulations set forth by the House Administration Committee."¹⁰⁰ On March 7, 2006, Rep. Vernon Ehlers (R-MI) – who replaced Rep. Ney as chair of the Committee – responded that the unique arrangement did not violate any House regulation.¹⁰¹ Without any apparent investigation or bipartisan consultation, Rep. Ehlers justified Rep. Pombo's reimbursement of Mr. Ding's travel expenses as permitted by House regulations that authorize reimbursement of a Member's personal staff for travel to Washington, D.C., for official purposes.¹⁰² Rep. Ehlers concluded that while living and commuting expenses are not reimbursable, Mr. Ding's expenses when he is traveling away from his primary duty station are reimbursable.¹⁰³

Rep. Pombo's knowing and active participation in a scheme under which Mr. Ding's commuting expenses were covered by Rep. Pombo's district office while Mr. Ding was working as chief of staff of the House Resources Committee, receiving a nominal salary of \$100 per month to serve as chief of staff for Rep. Pombo's personal office, and continuing his outside consulting work, does not reflect creditably on the House.

¹⁰⁰ Letter from Reps. George Miller and Ellen Tauscher to Hon. Vern Ehlers, Chairman, Comm. on House Administration, and Hon. Juanita Millender-McDonald, Ranking Member, Comm. on House Administration, February 1, 2006. (Exhibit 37)

¹⁰¹ Letter from Vernon J. Ehlers, Chairman, Comm. on House Administration, to Hon. George Miller and Hon. Ellen Tauscher, March 7, 2006. (Exhibit 38)

¹⁰² Id.

¹⁰³ Id.

REP. RICK RENZI

Rep. Rick Renzi (R-AZ) is a second-term member of Congress, representing Arizona's 1st congressional district. Rep. Renzi's ethics issues stem from the outside employment of his top Washington, D.C. aide and legislation he sponsored that benefited his father.

Administrative Assistant Patty Roe

In December 2005, Rep. Renzi hired Patty Roe to run his Washington, D.C. office.¹ Previously, Ms. Roe had spent five years running her own consulting business, "specializing in fundraising efforts."² Despite joining Rep. Renzi's staff, Ms. Roe continued to work as a fundraising consultant. In fact, records show that since January, Rep. Renzi's campaign committee has paid Ms. Roe \$5,000 a month for fundraising activities,³ and she has made an additional \$30,000 fundraising on behalf of Reps. Tom Feeney (R-FL), whose chief of staff is Ms. Roe's husband, Lincoln Diaz-Balart (R-FL), Mario Diaz-Balart (R-FL), and Patrick McHenry (R-NC).⁴ In total, it appears that Ms. Roe will earn about \$90,000 this year, in addition to her congressional salary.

House ethics rules limit outside earned income to \$24,780 per year.⁵ This limitation applies to "senior staff," defined as anyone paid at an annual rate of \$109,808 or more for over 90 days.⁶ Ms. Roe, who is being paid at a rate of about \$95,000 per year, is not bound by this limitation, though the top staff member in a member's D.C. office would generally be considered a senior staff member.

The outside income restrictions were created to attempt to avoid any possible conflict between the narrow interests of private employers and the broader interests of the general public.⁷ The Bipartisan Task Force on Ethics explained that the restrictions had three purposes: 1) substantial payments for rendering personal services to outside organizations presents a

¹ Office of Rep. Rick Renzi, Renzi Names Patty Roe to Head Washington Office, December 13, 2005. (Exhibit 1)

² Id.

³ www.politicalmoneyline.com. (Exhibit 2)

⁴ Ken Silverstein, The Patty Roe Story: the interesting ethics of Congressman Rick Renzi, *Harper's Magazine*, Sept. 14, 2006. (Exhibit 3)

⁵ www.house.gov/ethics/Highlights2006.htm#OutsideEarnedIncomeRestrictions.

⁶ Id.

⁷ House Comm. on Standards of Official Conduct, House Ethics Manual, ch.3.

significant and avoidable potential for a conflict of interest; 2) substantial earnings from other employment is inconsistent with the concept that being a member of Congress or senior staffer is a full-time job; and 3) substantial outside earned income creates at least the appearance of impropriety and thereby undermines public confidence.⁸

Given that Ms. Roe's position as head of Rep. Renzi's office is a full-time job and is generally considered a "senior staff" position, it is difficult to imagine when she has time to engage in the fundraising activities for which she is being paid a salary nearly equal to her congressional salary. The fact that Ms. Renzi's salary is lower than that of nearly all of her House counterparts suggests that Rep. Renzi is paying Ms. Roe a salary under the "senior staff" limit precisely so that she can earn a substantial outside income. This creates exactly the sort of appearance of impropriety contemplated by the Bipartisan Ethics Task Force. As a result, the committee ought to investigate whether Rep. Renzi and Ms. Roe are attempting to end-run the outside income restrictions.

Rep. Renzi Sponsored Legislation Financially Benefiting His Father

In 2003, Rep. Renzi sponsored legislation (signed into law in November 2003) that earmarked hundreds of millions of dollars to his father's business while, according to environmentalists, devastating the San Pedro River.⁹ The provision, which was added to the National Defense Authorization Act for Fiscal Year 2004, exempted the Army's Fort Huachuca base in Sierra Vista, Arizona from maintaining water levels in the San Pedro River as called for in an agreement made in 2002 with the U.S. Fish and Wildlife Service.¹⁰ Rep. Renzi claimed he introduced the measure to prevent the closing of the Fort and to promote its enlargement. Environmentalists, however, concerned about the impact Fort Huachuca's expansion may have on water consumption and the fate of the San Pedro River, argued that as the fort expands, so too would the local population, draining water from the river.¹¹ Notably, neither the fort nor the river is located in Rep. Renzi's district.¹²

⁸ *Id.*; citing House Bipartisan Task Force on Ethics, Report on H.R. 3660, 101st Cong., 1st Sess. 12 (Comm. Print, Comm. on Rules 1989), reprinted in 135 Cong. Rec. H9253, H9256 (daily ed. Nov. 21, 1989).

⁹ Julie Cart, A Threat to a Lifeline in Arizona: Legislation would free an Army base from maintaining the level of a free-flowing river, *Los Angeles Times*, September 25, 2003. (Exhibit 4)

¹⁰ *Id.*

¹¹ Cart, *Los Angeles Times*, Sept. 25, 2003.

¹² John Dougherty, River Gamble, *Phoenix New Times*, September 18, 2003. (Exhibit 5)

A key beneficiary of Rep. Renzi's legislation was ManTech International Corp., a Fairfax, Virginia based defense contractor where Rep. Renzi's father, Retired Major General Eugene Renzi, is an executive vice president.¹³ General Renzi served at Fort Huachuca during his career in the military.¹⁴ ManTech had \$467 million in contracts at Fort Huachuca with options for an additional \$1.1 billion between 2004 through 2008.¹⁵ In addition, the company, which has an office in Sierra Vista, Arizona, was the largest contributor to Renzi's 2002 congressional campaign and the second largest in his 2004 campaign.¹⁶

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.¹⁷ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.¹⁸ If Rep. Renzi accepted campaign contributions from ManTech in exchange for pushing through legislation benefitting the company, he would be in violation of 18 U.S.C. §201(b)(2)(A).

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption. 18 U.S.C. §1341. By using his position as a member of Congress to push legislation that would benefit ManTech and therefore his father, Rep. Renzi may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. §1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for

¹³ Id.

¹⁴ Id.

¹⁵ Brody Mullins, Renzi Under Fire for Defense Provision, *Roll Call*, September 11, 2003. (Exhibit 6)

¹⁶ www.opensecrets.org. (Exhibit 7)

¹⁷ 18 U.S.C. §201(b)(2)(A).

¹⁸ McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

or because of any official act performed or to be performed by such official.¹⁹ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.²⁰

If a link is established between Rep. Renzi's actions on behalf of ManTech and his acceptance of generous campaign donations, Rep. Renzi would be in violation of the illegal gratuity statute.

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of members, including expulsion.²¹

5 U.S.C. §7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. §7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."²² House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

If Rep. Renzi accepted campaign contributions from Man Tech and its associates in return for legislative assistance by way of earmarks he likely violated 5 U.S.C. §7353 and House Rule XXIII.

¹⁹ 18 U.S.C. §201(c)(1)(B).

²⁰ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

²¹ *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the member from the House); *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

²² See House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

5 CFR §2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”²³ House members are directed to adhere to 5 CFR §2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

The Code of Ethics also provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not.”²⁴

In addition, House conflict-of-interest rules provide that a Member should never accept “benefits under circumstances which might be construed by reasonable persons as influencing the performance” of his official duties.²⁵ To do so “would raise the appearance of undue influence or breach of the public trust.”²⁶

By funneling federal funds to ManTech, a company that employed his father as an executive vice president, Rep. Renzi may have dispensed special favors and violated 5 CFR §2635.702(a) and run afoul of conflict-of-interest rules.

Conduct Not Reflecting Creditably on the House

Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”²⁷ This ethics standard is considered to be “the most comprehensive provision of the code.”²⁸ When this section was first

²³ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

²⁴ Id.

²⁵ H. Con. Res. 175, 85th Cong., 2d Sess., 72 Stat., pt 2, B12, para. 5 (1958).

²⁶ Id.

²⁷ Rule XXIII, cl. 1.

²⁸ House Comm. on Standards of Official Conduct, House Ethics Manual.

adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.²⁹ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,³⁰ making false statements to the Committee,³¹ criminal convictions for bribery,³² or accepting illegal gratuities,³³ and accepting gifts from persons with interest in legislation in violation of the gift rule.³⁴

By pushing legislation which stood to financially benefit his father, Rep. Renzi may have engaged in conduct that does not reflect creditably on the House. As a result, the Committee on Standards of Official Conduct should investigate this matter further.

²⁹ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

³⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

³¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

³² House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

³³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

³⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

REP. PETE SESSIONS

Rep. Pete Sessions (R-TX) is a seventh-term member of Congress, representing Texas' 32nd congressional district. His ethical issues stem from his ties to Jack Abramoff and his links to Promia, a defense contracting company.

Actions on Behalf of Jack Abramoff's Tribal Clients

On December 11, 2001, Rep. Sessions co-signed a letter addressed to then-Attorney General John Ashcroft asking him to shut down a casino operated by the Alabama Coushatta Tribe of Livingston, Texas. The Alabama Coushatta was a client of Mr. Abramoff's that ran a competing casino.¹ The closure of the Alabama-Coushatta casino would have benefited Mr. Abramoff's client by eliminating competition.² Representatives Tom DeLay (R-TX), John Culberson (R-TX), and Kevin Brady (R-TX) also signed the letter.

On February 27, 2002, Mr. Abramoff attempted to stop another tribe, the Jena Choctaw, from building a new casino that would have competed with a casino owned by one of Mr. Abramoff's clients, the Louisiana Coushatta.³ In order to block the Jena Choctaw's casino, Mr. Abramoff asked several members of Congress to send letters condemning the planned casino to then-Secretary of the Department of the Interior Gale Norton.⁴ Rep. Sessions signed one such letter to Secretary Norton opposing the development of a casino by the Jena and asserting that the "societal damage caused by gambling far outweighs any purported benefits."⁵ A month after Rep. Sessions sent the letter, his leadership political action committee, People for Enterprise, Trade and Economic Growth ("PETE PAC"), received \$3,500 from the Louisiana Coushatta and \$3,500 from other tribes that owned casinos.⁶ Within 18 months of sending the letter, Rep. Sessions received a total of \$20,500 from tribes associated with Mr. Abramoff.⁷ When asked whether Rep. Sessions had previously taken a stance on Louisiana tribes or Indian casinos in

¹ Suzanne Gamboa, DeLay Tried, Failed to Aid Abramoff Client, *The Associated Press*, January 11, 2006. (Exhibit 1)

² Id.

³ Todd J. Gillman, Sessions, Others In Casino Crusade Got Tribal Cash, *The Dallas Morning News*, January 6, 2006. (Exhibit 2)

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Gillman, *The Dallas Morning News*, Jan. 6, 2006.

general, his spokeswoman declined to comment.⁸

An attorney for the Louisiana Coushatta Tribe, Charles Elliott, explained Mr. Abramoff's system for getting influential lawmakers to act on behalf of his tribal clients' interests: "How those letters came about, I don't think anybody at the tribe knows. That's something Abramoff put together."⁹ As for the donations, "Abramoff would tell the tribes, 'I need you to make this donation to this person,' for whatever reason. And they would send him a check. He would deliver it and get the credit."¹⁰ It appears that under this system, the Coushatta Tribe donated \$3,500 to Rep. Sessions' PAC in March of 2002, just one month after Rep. Sessions sent a letter to Secretary Norton. As described by Mr. Elliott, Rep. Sessions would have received the money directly from Mr. Abramoff.

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.¹¹ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.¹²

Rep. Sessions' involvement with Mr. Abramoff warrants further investigation to determine whether Rep. Sessions received campaign donations in direct exchange for writing letters on behalf of Mr. Abramoff's clients.

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption. 18 U.S.C. §1341. If Rep. Sessions used his position to attempt to influence Secretary Norton not to approve certain casinos in exchange for campaign donations from tribes that would benefit from the Secretary's disapproval, he may be depriving his constituents, the House of Representatives,

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ 18 U.S.C. §201(b)(2)(A).

¹² McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

and the United States of his honest services in violation of 18 U.S.C. §1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.¹³ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.¹⁴

If a link is established between Rep. Sessions' actions on behalf of the Louisiana Coughatta and the campaign donations made to Rep. Sessions by the Coughatta, Rep. Sessions would be in violation of the illegal gratuity statute.

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of Members, including expulsion.¹⁵

5 U.S.C. §7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. §7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."¹⁶ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

¹³ 18 U.S.C. §201(c)(1)(B).

¹⁴ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

¹⁵ *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the Member from the House); *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

¹⁶ See House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

If Rep. Sessions accepted campaign contributions from Mr. Abramoff and his tribal clients in return for using the power of his office to benefit the tribes, he likely violated 5 U.S.C. §7353 and House Rule XXIII.

5 CFR §2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”¹⁷ House members are directed to adhere to 5 CFR §2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

The Code of Ethics also provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not.”¹⁸

By using the power of his office to provide benefits to the tribal clients of Mr. Abramoff, Rep. Sessions may have dispensed special favors in violation of 5 CFR §2635.702(a) and House rules.

Conduct Not Reflecting Creditably on the House

Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”¹⁹ This ethics standard is considered to be “the most comprehensive provision of the code.”²⁰ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on

¹⁷ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

¹⁸ Id.

¹⁹ Rule XXIII, cl. 1.

²⁰ House Comm. on Standards of Official Conduct, House Ethics Manual.

“Congress as a whole,” and that might otherwise go unpunished.²¹ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,²² making false statements to the Committee,²³ criminal convictions for bribery,²⁴ or accepting illegal gratuities,²⁵ and accepting gifts from persons with interest in legislation in violation of the gift rule.²⁶

Rep. Sessions apparently accepted campaign contributions in return for legislative favors that benefited Mr. Abramoff’s tribal clients. Accepting anything of value in exchange for official action does not reflect creditably on the House and, therefore, violates House Rule XXIII, clause 1.

Malaysia

On January 11, 2002, Rep. Sessions traveled to Malaysia with two of Mr. Abramoff’s

²¹ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

²² House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

²³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

²⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

²⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

²⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

former co-workers from the law firm Greenberg Traurig.²⁷ Also accompanying Rep. Sessions on this trip were Tony Rudy, Deputy Chief of Staff to former House Majority Leader Tom DeLay who has since been convicted of federal crimes, Rep. Dana Rohrabacher (R-CA), a long-time friend of Mr. Abramoff, and Rep. Gregory Meeks (D-NY). The stated purpose of the trip was to examine the “Malaysian effort on terrorism,” particularly in light of September 11.²⁸

The Institute of Strategic and International Studies (ISIS) and a Malaysian think tank with ties to the country’s government allegedly sponsored the Malaysia trip. Various news reports, however, suggest that a Malaysian client secretly paid Mr. Abramoff and Mr. Michael Scanlon, an associate of Mr. Abramoff, through a sham think tank that Mr. Scanlon created, the American International Center (AIC).²⁹ In 2001, prior to the Malaysia trip, and in 2002, the Malaysian government paid almost \$1 million to the think tank.³⁰ Mr. Scanlon, in turn, hired Greenberg Traurig, the law and lobbying firm at which Mr. Abramoff was then employed, at a cost of \$1.5 million to lobby and work on behalf of the government of Malaysia.³¹ By funneling money through the fake AIC, Messrs. Scanlon and Abramoff were able to skirt foreign agent disclosure rules.³²

Of note, Rep. Sessions had no recorded interest in Malaysia prior to his Malaysian trip. A group known as the Lone Star Project has accused Rep. Sessions of developing a “suspicious interest in Malaysia after a nine-day trip arranged by disgraced lobbyists Jack Abramoff and Michael Scanlon.”³³ Four months after the trip, Rep. Sessions became an advocate for Malaysia and helped form the Malaysia Trade, Security and Economic Cooperation Caucus in the House. Rep. Meeks, who accompanied Rep. Sessions on the trip to Malaysia, joined him as co-chair of the 15-member caucus.³⁴ Rep. Sessions also hosted a reception for the Malaysian Ambassador

²⁷ Todd J. Gillman, Frost Links Sessions Trip to Sullied Lobbyist, *The Dallas Morning News*, January 18, 2006. (Exhibit 3)

²⁸ www.politicalmoneyline.com. (Exhibit 4)

²⁹ Id.; Suzanne Gamboa, Democrats Raise Questions About Sessions’ Tie to Abramoff, *Associated Press*, January 17, 2006. (Exhibit 5)

³⁰ Id.

³¹ Id.

³² Gillman, *The Dallas Morning News*, Jan. 18, 2006.

³³ Id.

³⁴ Stephen La Rocque, Lawmakers Launch Malaysia Trade and Security Cooperation Caucus, *Washington File* (U.S. Department of State), May 14, 2002. (Exhibit 6)

and co-sponsored a resolution honoring the country.³⁵

Despite Rep. Sessions' questionable political activities funded directly or indirectly by Messrs. Abramoff and Scanlon, Rep. Sessions' Chief of Staff, Guy Harrison, has claimed that "Sessions has never met, nor seen, nor had any contact with Jack Abramoff," and further that "Mr. Sessions never met or took money from Mr. Abramoff or Mr. Scanlon."³⁶

House Rule XXVI

Clause 5(b)(1)(A) of House Rule XXVI provides that a Member, officer, or employee may not accept travel expenses from "a registered lobbyist or agent of a foreign principal." The prohibition against accepting travel expenses from a registered lobbyist, an agent of a foreign principal, or a lobbying firm applies even where the lobbyist, agent or firm will later be reimbursed for those expenses by a non-lobbyist client.³⁷ Accordingly, if either an agent of the Malaysian government or Mr. Abramoff, a registered lobbyist,³⁸ actually paid for the trip to Malaysia, Rep. Sessions may have violated House Rule XXVI, clause 5(b)(1)(A).

The financing for this trip also implicates Rule XXVI. The Committee has long taken the position that a member, officer, or employee may accept expenses for officially connected travel only from a private source that has a direct and immediate relationship with the event or location being visited.³⁹ The rule is concerned with the organization(s) or individual(s) that actually pays for travel. Under the terms of the rule,

. . . where a non-profit organization pays for travel with donations that were earmarked, either formally or informally, for the trip, each such donor is deemed a "private source" for the trip and (1) must be publicly disclosed as a trip sponsor on the applicable travel disclosure forms and (2) may itself be required to satisfy the above standards on proper sources of travel expenses. Accordingly, it is advisable for a Member or

³⁵ Gamboa, *Associated Press*, Jan. 17, 2006.

³⁶ *Id.*

³⁷ House Comm. on Standards of Official Conduct, Travel Booklet.

³⁸ See e.g. United States Senate, Office of Public Records, Lobbying Disclosure Records, <http://sopr.senate.gov/>. (Exhibit 7)

³⁹ House Comm. on Standards of Official Conduct, Investigation of Financial Transactions Participated in and Gifts of Transportation Accepted by Representative Fernand J. St. Germain, H. Rep. No. 100-46, 100th Con., 1st Sess. 5-6 (1987).

staff person who is invited on a trip to make inquiry on the source of the funds that will be used to pay for the trip. In addition, the concept of the rule is that a private entity that pays for officially connected travel will both organize and conduct the trip, rather than merely pay for a trip that is, in fact organized and conducted by someone else.⁴⁰

Here, it is unclear who actually financed Rep. Sessions' trip to Malaysia. His travel disclosure form lists the Institute of Strategic and International Studies and a Malaysian think tank as the sponsor, although AIC, Greenberg Traurig, or the government of Malaysia may have paid for the trip. Only after determining (1) who paid for Rep. Sessions' trip to Malaysia; (2) what was the direct and immediate relationship between the sponsoring organization and the trip; (3) who were the actual sources of funding for the trip; (4) why these private sources were not disclosed as required by House rules, and (5) whether these private sources have a direct and immediate relationship with terrorism in Malaysia can it be determined whether Rep. Sessions' trip to Malaysia violated House rules.

Ties to Promia, Inc.

Rep. Sessions has also promoted the interests of Promia, Inc., a San Francisco-based defense technology company that employs Rep. Sessions' former aide, Adrian Plesha. Promia was started in the early 1990s and now has several offices throughout the United States.⁴¹ Promia has earned several multi-million dollar contracts with the United States Navy for research and development of software aimed at preventing computer network hacker attacks.⁴²

In February 2003, Promia hired Rep. Sessions' former communications director, Adrian Plesha, as its vice president and director of its Washington office. Mr. Plesha had worked for Rep. Sessions from July 1999 to February 2003. During this employment in November 2003, Mr. Plesha pleaded guilty to felony charges of violating the Federal Election Campaign Act and lying to the Federal Election Commission.⁴³ A *Washington Post* article indicates that at least as

⁴⁰ Proper Sources of Expenses for Officially Connected Travel, Rules of the House of Representatives on Gifts and Travel.

⁴¹ Promia, Inc. Awarded Internet Security Contract for the U.S. Navy; U.S. Congressman Pete Sessions Proposes \$8 Million Budget Authorization to Support Effort, *Business Wire*, May 9, 2000. (Exhibit 8)

⁴² Mission Critical, *San Francisco Business Times*, October 11, 2002. (Exhibit 9)

⁴³ Press Release, Former Campaign Manager Sentenced For Making False Statements To The Federal Election Commission, Department of Justice, November 21, 2003. (Exhibit 10) Mr. Plesha was charged with sending mailers to and contacting registered Democrats by phone

of December 2005, Mr. Plesha was still working as a lobbyist for Promia.⁴⁴

Rep. Sessions has been an advocate for Promia and the nearly \$800,000 contract the Navy awarded Promia in May 2000 for research and development.⁴⁵ At that time Rep. Sessions announced that he was working with Rep. Curt Weldon (R-PA) to get an additional \$8 million during the next fiscal year to allow the software Promia was developing to be deployed through the Department of Defense.⁴⁶

In October 2000, the same month that Promia received \$2 million from a New York venture capital firm, Trautman Wasserman & Co.,⁴⁷ Rep. Sessions received contributions of \$1,000 each – the maximum allowed by law – from eight Promia executives for his re-election campaign.⁴⁸ Promia executives contributed more to Rep. Sessions' campaign than to any other candidate in that election cycle.⁴⁹

On March 2, 2002, Rep. Sessions was the key-note speaker for Promia's 6th Annual Workshop on Distributed Objects and Components Security.⁵⁰ In the 2002 election cycle, Promia contributed \$30,000 in soft money to Rep. Sessions' PETE PAC.⁵¹ The non-federal PAC

falsely saying he was from the "East Bay Democratic Committee," a fictitious Democratic organization, and urging them not to vote for the incumbent Democratic congresswoman. Mr. Plesha subsequently lied to the FEC, denying he had any connection to the mailers and phone calls. He pleaded guilty to lying and was sentenced to a three-year probation, fines, and 160 hours of community service. Id.

⁴⁴ Thomas B. Edsall, Lobbyists' Emergence Reflects Shift in Capital Culture, *The Washington Post*, January 12, 2006. (Exhibit 11)

⁴⁵ *Business Wire*, May 9, 2000.

⁴⁶ Id.

⁴⁷ Promia Incorporated Announces \$2,000,000 of Equity Funding through Trautman Wasserman & Co, Inc., *Business Wire*, October 2, 2000. (Exhibit 12)

⁴⁸ www.politicalmoneyline.com. (Exhibit 13)

⁴⁹ Id.

⁵⁰ OMG Hosts Sixth Workshop on Distributed Object Component Security; Congressman Pete Sessions to Keynote, *Business Wire*, February 14, 2002. (Exhibit 14)

⁵¹ People for Enterprise, Trade and Economic Growth, I.R.S. Form 8872, Political Organization Report of Contributions and Expenditures, October 10, 2002. (Exhibit 15)

received a total of about \$130,000 and Promia's contributions were the second largest.⁵² Between 2003 and 2005, Rep. Sessions' campaign committee and PAC received \$4,000 from Promia's Chief Executive Officer, \$4,000 from Promia's Chief Operating Officer, and \$6,000 from Promia's Chief Financial Officer.⁵³ In total, Promia and its employees have contributed at least \$22,250 to Rep. Sessions and his PAC in the last four election cycles – by far the largest contribution Promia has made to a member of Congress.⁵⁴

Acceptance of a Bribe

Rep. Sessions' involvement with Promia raises serious questions about why Promia, which engaged in very little political activity prior to the company's support of Rep. Sessions and which has no affiliation with Rep. Sessions' district in Northern Texas, would suddenly make such substantial contributions to Rep. Sessions at the same time the company was gaining lucrative financial contracts with the U.S. government. If Rep. Sessions provided legislative assistance to Promia in direct exchange for campaign contributions, he may be in violation of federal bribery laws.

Honest Services Fraud

By using his position as a Member of Congress to financially benefit Promia, Rep. Sessions may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. §1341.

Illegal Gratuity

Rep. Sessions' involvement with Promia also raises a question of whether, by accepting generous campaign donations in apparent exchange for promoting Promia's interests, Rep. Sessions violated the illegal gratuity statute.⁵⁵

5 U.S.C. §7353 and House Rules

Rep. Sessions' actions on behalf of Promia may also violate 5 U.S.C. §8353 and House Rule XXIII which, as discussed above, prohibit members from receiving compensation or asking for anything of value in exchange for exercising influence they enjoy by virtue of their position in

⁵² Id.

⁵³ www.politicalmoneyline.com. (Exhibit 16)

⁵⁴ www.politicalmoneyline.com. (Exhibit 17)

⁵⁵ 44 U.S.C. §201(c)(1)(B).

Congress.⁵⁶

5 CFR §2635.702(a)

By using the power of his office to provide benefits to Promia, Rep. Sessions may also have dispensed special favors in violation of 5 CFR §2635.702(a) and House rules.

Conduct Not Reflecting Creditably on the House

Rep. Sessions apparently accepted campaign contributions in return for legislative favors that benefited Promia. Accepting anything of value in exchange for official action does not reflect creditably on the House and, therefore, violates House Rule XXIII, clause 1.

⁵⁶ See House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

REP. JOHN SWEENEY

Rep. John Sweeney (R-NY) is a fourth-term member of Congress, representing New York's 20th Congressional district. His ethics issues stem from a ski trip to New York with lobbyists and the hiring of his wife through his campaign fund, as well as other ethical lapses.

Misuse of Public Funds to Pay for Trip to New York

Rep. Sweeney invited 53 people to join him from January 6-9, 2006, for a "Congressional Winter Challenge" at the Lake Placid Olympic facilities. There, Rep. Sweeney and his guests enjoyed pretending to be Olympic athletes by participating in events including skiing, bobsledding and hockey, all paid for with New York taxpayer dollars.¹

The United States Olympic Committee ("USOC") rents space near Lake Placid from a New York public authority called the Olympic Regional Development Authority ("ORDA").² Here the USOC hosts "Winter Challenges" where invitees can come and pretend to be Olympic athletes, complete with a medal ceremony at the end.³ Sandy Calgiore, a spokesman for ORDA, says the goal of these retreats is to make the Olympic venue as attractive as possible in order to secure continued funding.⁴

The New York Power Authority funded Rep. Sweeney's trip with public money, at a cost of \$25,000,⁵ allegedly because the venue buys its electricity from the Authority.

When organizing the trip, Rep. Sweeney contacted Rep. Doc Hastings (R-WA), Chairman of the House Committee on Standards of Official Conduct to seek approval for the trip.⁶ Rep. Sweeney listed objectives of the trip as the inspection of the facilities in order to judge how federal funds have helped the area, as well as evaluation of further

¹ Michelle Breidenbach, Congressmen, Staff, Lobbyists Share A Winter Weekend On Public's Dime, *The Post-Standard*, March 26, 2006. (Exhibit 1)

² Michelle Breidenbach, Guess Who Came to Dinner; Guess Who Paid, *The Post-Standard*, March 30, 2006. (Exhibit 2)

³ Id.

⁴ Id.

⁵ Id.

⁶ Letter from Rep. John E. Sweeney to Rep. Doc Hastings, August 23, 2005. (Exhibit 3)

funding required to “strengthen the regional tourism industry.”⁷ Rep. Hastings replied that the trip was acceptable only under certain conditions, pointing out that a House member may only accept “necessary” travel expenses. “Necessary” is defined to include “reasonable expenses for transportation, lodging, food and refreshments, but does not include expenditures for recreational activities.”⁸ Rep. Hastings later stressed that “any trip [must] be substantially devoted to the officially connected activities, and that any recreational activities [must] be merely incidental to the trip.”⁹ An inspection of the trip’s itinerary, however, shows the vast majority of time was devoted to recreational activities. In addition to curling, hockey, skating, speed skating, snowshoeing, bobsledding, snowboarding and skiing, there were cocktail receptions and a chance for the participants to reenact the running of the Olympic torch and the lighting of the Cauldron.¹⁰ In many cases equipment was provided free of charge to the participants.¹¹ There was also time left free to engage in “retail therapy.”¹²

In addition, the alleged purpose of the trip – to show off the facilities to those who could help secure its funding -- was a sham. The attendees were primarily people in no position to help ORDA. Aside from Rep. Sweeney, the only congressman on the trip was Rep. Pete Sessions (R-TX).¹³ Otherwise, the guest list was made up of family, friends and at least a dozen Washington lobbyists.¹⁴ Rep. Sweeney’s wife, son and daughter all attended as well as one person listed on event teams as “Mary S’s Best Friend.”¹⁵ At least ten current and former staffers for Rep. Sweeney, including lobbyist Brad Card, brother to former White House Chief of Staff Andrew Card, also attended.¹⁶ In fact, at

⁷ Id.

⁸ Letter from Doc Hastings to Rep. John E. Sweeney, September 28, 2005. (Exhibit 4)

⁹ Id.

¹⁰ 2006 Congressional Winter Olympic Challenge, Trip Itinerary. (Exhibit 5)

¹¹ Id.

¹² Id.

¹³ Maury Thompson, Sweeney Ski guests contributed \$12,400 to his re-election campaign, *The Post-Star*, May 17, 2006. (Exhibit 6)

¹⁴ Michelle Breidenbach, Hearing Scheduled about Ski, Lobby Event, *The Post-Standard*, June 22, 2006. (Exhibit 7)

¹⁵ Breidenbach, *The Post- Standard*, Mar. 30, 2006.

¹⁶ Id.

least 15 registered lobbyists attended the event.¹⁷ Notably, nine of the guests contributed a total of \$30,100 to Rep. Sweeney's campaign committee this election cycle.¹⁸ Essentially, Rep. Sweeney brought along friends and family for a fun-filled three-day recreational trip at the expense of New York's taxpayers.

Rep. Hastings's letter to Rep. Sweeney also informed him that ORDA and USOC must be the ones to invite people, without input from Rep. Sweeney. "Once the ORDA and the [U.S. Olympic Committee]-- without your involvement -- have issued an initial invitation to House members and staff to take part in the trip, you may send a follow-up to that invitation."¹⁹ Rep. Hastings warned Rep. Sweeney to "take care that there is no suggestion therein that private individuals or organizations have official status or the endorsement of the House of Representatives, or that the trip is being organized by you or your staff or paid for with official funds."²⁰

Rep. Sweeney has explained that, technically, the trip was organized by the ORDA. ORDA President Ted Blazer contradicted Rep. Sweeney, testifying before a New York State Assembly panel that Rep. Sweeney's office helped assemble lists of possible people to invite to the event.²¹ Mr. Blazer testified: "[the guest list] was assembled by the Washington office of Congressman Sweeney and the United States Olympic Committee."²²

The trip to Lake Placid appears to violate several provisions of the House gift and travel rules. First, House rules provide that a member may participate in a privately sponsored trip only if the primary purpose of the trip "is to engage in activity that is connected with his or her duties as an officeholder."²³

¹⁷ Id.

¹⁸ Elizabeth Benjamin, Sweeney donors under scrutiny; \$30,100 came from attendees at winter events now under investigation by committee, *The Times-Union*, July 18, 2006. (Exhibit 8)

¹⁹ Letter from Doc Hastings to John E. Sweeney, September 28, 2005.

²⁰ Id.

²¹ Elana Schor, State Assembly questions funding of Sweeney's trips to Lake Placid, *The Hill*, June 18, 2006. (Exhibit 9)

²² Id.

²³ Rule XXV, cl. 5(b)(1)(A), 5(b)(3)(F).

The gift rule notes that among the gift items of which Members and staff need to be especially careful are small group and one-on-one meals, tickets to (or free attendance at) sporting events and shows, and recreational activities.²⁴

In general, when opportunities to engage in sporting events during a privately sponsored trip occur, the costs of such events must have a total value of less than \$50 per person during the entire trip and may only be accepted if the recipient does not exceed the annual limit on gifts from any one source of less than \$100.²⁵ Because this trip was sponsored by a government entity, the New York Power Authority, this restriction does not apply.²⁶ Regardless of the source of the funding, however, the gift rule requires that “recreational activities be merely incidental to the trip.”²⁷

As the trip’s itinerary clearly demonstrates, the primary purpose -- indeed the only purpose -- of Rep. Sweeney’s trip to Lake Placid was recreational; as such it violates House rules.

Relationship with National Marine Manufacturers Association

In May 2006, Rep. Sweeney introduced the Boating Safety Tax Incentive Act, legislation that the National Marine Manufacturers Association (NMMA) strongly supported²⁸ and even helped draft.²⁹ The bill allows boat manufacturers to supply new boats with free safety equipment, including up-to-date life jackets, in exchange for a tax deduction.³⁰

NMMA’s PAC has supported Rep. Sweeney and contributed to his campaign committee for the past three years.³¹ In the 2006 election cycle alone, NMMA’s PAC donated \$4,500 to Rep. Sweeney, making him the third highest recipient of contributions

²⁴ *Overview of the Gift Rule, Rules of the U.S. House of Representatives on Gifts and Travel.*

²⁵ Rule XXVI, cl. 5(b)(4)(C); *Acceptable Travel Expenses, Rules of the U.S. House of Representatives on Gifts and Travel.*

²⁶ See Rule XXV, cl. 5(a)(3)(O).

²⁷ Letter from Rep. Hastings to Rep. Sweeney.

²⁸ <http://www.nmma.org/news/news.asp?id=12781&sid=43>. (Exhibit 10)

²⁹ John Ferro, *Sweeney Takes Heat Over Boat Safety Bill, Poughkeepsie Journal*, September 6, 2006. (Exhibit 11)

³⁰ *Id.*

³¹ <http://blogs.timesunion.com/capitol/?p=1720>. (Exhibit 12)

from NMMA's PAC.³² Additionally, the PAC has hosted fundraisers for Rep. Sweeney on its luxurious Meridian 381 Yacht,³³ which offers, among other things, two large staterooms, plush carpeting, and a deluxe entertainment center.³⁴ At the first fundraiser, held on July 7, 2004, Rep. Sweeney raised \$4,150, and he raised an additional \$8,000 at a second fundraiser held on July 20, 2005.³⁵ NMMA confirmed Rep. Sweeney's use of its yacht to host fundraisers – a \$500 in-kind contribution – in its 108th Congress Report,³⁶ and until recently, even posted photos of Rep. Sweeney at the helm of the yacht during one of the fundraisers.³⁷

According to NMMA's website, Rep. Sweeney is a member of the Congressional Boating Caucus, an informal group of bipartisan Congressional members concerned with issues affecting the recreational marine industry created by NMMA in 1989.³⁸

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.³⁹ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁴⁰

To the extent Rep. Sweeney used his legislative position to support legislation that would benefit NMMA in exchange for NMMA's campaign contributions and hosting of fundraisers for Rep. Sweeney on a luxury yacht, Rep. Sweeney would be in violation of the bribery statute.

³² www.politicalmoneyline.com. (Exhibit 13)

³³ www.nmma.org/government/pac/documents/108th_Congress_Report.pdf. (Exhibit 14)

³⁴ www.boats.com/new-boats/meridian/423350/details.jsp (Exhibit 15)

³⁵ Ferro, *Poughkeepsie Journal*, Sept. 6, 2006.

³⁶ www.nmma.org/government/pac/documents/108th_Congress_Report.pdf

³⁷ Mike Dorning, Waters Grow Choppy for Lobby's Perk to Lawmakers, *Chicago Tribune*, September 4, 2006. (Exhibit 16)

³⁸ <http://www.nmma.org/government/federal/bc.asp>. (Exhibit 17)

³⁹ 18 U.S.C. §201(b)(2)(A).

⁴⁰ McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

In addition, Rep. Sweeney may be in violation of the illegal gratuity statute, which prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.⁴¹ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.⁴²

If a link is established between Rep. Sweeney's legislative support for the Boating Safety Tax Incentive Act and campaign donations that NMMA made to Rep. Sweeney, he would be in violation of the illegal gratuity statute.

Members of the House are prohibited from "taking any official actions for the prospect of personal gain for themselves or anyone else."⁴³ House Members are directed to adhere to 5 CFR §2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

By his support for legislation that benefited NMMA, an organization that has provided Rep. Sweeney with campaign contributions and hosted fundraisers for him, Rep. Sweeney may have violated 5 CFR §2635.702(a).

In addition to being illegal, the conduct of Rep. Sweeney may have violated clause 3 of House Rule XXIII, which provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

⁴¹ 18 U.S.C. §201(c)(1)(B).

⁴² United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

⁴³ House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

A 1997 memorandum issued by the Committee on Standards of Official Conduct clarified this rule, providing:

House Members, officers and employees are generally *prohibited* from asking for anything of value from a broad range of persons: specifically, anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties.⁴⁴

If Rep. Sweeney accepted campaign contributions from NMMA in exchange for his support for legislation that benefited NMMA, Rep. Sweeney likely violated Rule XXIII.

In a 1999 memorandum, the House Committee on Standards of Official Conduct quoted approvingly the Code of Ethics for Government Service, which provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not.”⁴⁵ The Committee stated specifically that the provisions in the Code of Ethics for Government Service apply to House members, and that formal charges may be brought against a member for violating that code.⁴⁶

By using the power of his office to introduce legislation that benefited NMMA, an organization that has made generous campaign contributions to Rep. Sweeney, he may have dispensed special favors in violation of House rules.

In addition, Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”⁴⁷ This ethics standard is considered to be “the most comprehensive provision of the code.”⁴⁸ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal

⁴⁴ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

⁴⁵ House Comm. on Standards of Official Conduct, Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

⁴⁶ Id.

⁴⁷ Rule XXIII, cl. 1.

⁴⁸ House Comm. on Standards of Official Conduct, House Ethics Manual.

with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.⁴⁹ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,⁵⁰ making false statements to the Committee,⁵¹ criminal convictions for bribery,⁵² or accepting illegal gratuities,⁵³ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁵⁴

Rep. Sweeney apparently accepted campaign contributions and fundraisers on a luxury yacht in return for his use of his legislative powers to benefit NMMA. Accepting anything of value in exchange for official action does not reflect creditably on the House and, therefore, violates House Rule XXIII, clause 1.

⁴⁹ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁵⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

⁵¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

⁵² House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁵³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

⁵⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

Employment of Spouse Gayle Ford

On September 16, 2003, Rep. Sweeney proposed to his girlfriend Gayle Ford on the steps of the Capital.⁵⁵ In April of that year, Rep. Sweeney had begun to use Ms. Ford as a fundraiser.

Specifically, on April 10, 2003, under the name of “Gaia Mashanta Ford,” Creative Consulting was registered with the Albany County Clerk’s office.⁵⁶ One day later, Rep. Sweeney hired Creative Consulting to do fundraising work for his campaign.⁵⁷ Ms. Ford, who had no previous fundraising experience and appears to have no other clients through Creative Consulting was not paid a salary. Instead, she was paid a 10% commission on the money she brought in.⁵⁸ This arrangement is similar to one used by Rep. John Doolittle’s (R-CA) wife, Julie, who takes a 15% cut of all money she raises on behalf of her husband.⁵⁹

Rep. Sweeney’s campaign paid Creative Consulting \$42,570 during the 2004-2005 election cycle and as of April 2006, has paid the firm \$30,879 for the current election cycle.⁶⁰ Checks from Rep. Sweeney’s campaign go to a P.O. box in Clifton Park, the town where the couple lives.⁶¹ Notably, records show that Rep. Sweeney has had a fundraising consultant on monthly retainer since June of 2004, Mike Burton, who is paid \$8,583 a month.⁶² In the past, Rep. Sweeney has also contracted with The Victory Group, based in Maryland, to help with fundraising at a cost \$2,500 a month.⁶³

⁵⁵ Rep. Sweeney proposes to girlfriend on Capitol steps, *Associated Press*, September 18, 2003. (Exhibit 18)

⁵⁶ Elizabeth Benjamin, For politicians, family ties can include payroll, *The Times-Union*, May 8, 2005. (Exhibit 19)

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Editorial, Doolittle must lead by example on ethics debate; Commission arrangement for his wife is unseemly, *The Sacramento Bee*, April 9, 2006. (Exhibit 20)

⁶⁰ Elizabeth Benjamin, *The Times-Union Blog*, April 11, 2006. (Exhibit 21)

⁶¹ Benjamin, *The Times-Union*, May 8, 2005; *see also* www.politicalmoneyline.com. (Exhibit 22)

⁶² www.politicalmoneyline.com. (Exhibit 23)

⁶³ Id.

Aside from Creative Consulting, Ms. Ford also has an unspecified job with Powers, Crane and Company, a consultancy firm run by Bill Powers, the former head of the New York GOP and a longtime friend of Rep. Sweeney.⁶⁴ Powers and Company employees and members of the Powers family have donated a combined \$14,600 to Rep. Sweeney over the past two election cycles.⁶⁵

In July 2001, the FEC issued an Advisory Opinion regarding payments by campaign committees to family members.⁶⁶ Rep. Jesse Jackson, Jr. (D-IL) sought an opinion as to whether his principal campaign committee could hire his wife as a consultant to provide fundraising and administrative support.⁶⁷ Ms. Jackson had previously served as chief of staff for a congressman, press secretary for another congressman and she had worked in national presidential campaigns in 1988 and 1996.⁶⁸

The FEC noted that the Federal Election Campaign Act prohibits the conversion of campaign funds to personal use.⁶⁹ Generally, personal use is “any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.”⁷⁰ Certain uses of campaign funds will be considered per se personal use, including “salary payments to family members, unless they are fair market value payments for bona fide, campaign related services.”⁷¹ If a family member is providing bona fide services to the campaign, any salary payment in excess of the fair market value of the services provided is personal use.⁷²

In considering the applicability of these provisions to Rep. Jackson’s request for an opinion, the FEC stated that the campaign committee could hire Ms. Jackson as long as she was paid no more than the fair market value of bona fide services, the contract contained terms customarily found in agreements entered into between paid campaign

⁶⁴ Benjamin, *The Times-Union*, May 8, 2005.

⁶⁵ www.politicalmoneyline.com. (Exhibit 24)

⁶⁶ Federal Election Commission, AO 2001-20, July 17, 2001.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ 2 U.S.C. § 439a; 11 CFR § 113.2(d).

⁷⁰ 11 CFR § 113.1(g).

⁷¹ 11 CFR § 113.1(g)(1)(i).

⁷² 11 CFR § 113.1(g)(1)(i)(H).

consultants and candidate committees, and the agreement conformed to the standard industry practice for this type of contract.⁷³

House rules echo this prohibition. Clause 6(b) of Rule XXIII provides that a Member “may not convert campaign funds to personal use in excess of an amount representing reimbursement for legitimate and verifiable campaign expenditures.” According to the Campaign Booklet published by the House Committee on Standards of Official Conduct, the Committee has taken the position that members “must observe these provisions strictly.”⁷⁴ With respect to the purchase of campaign services from a relative of the member, the Campaign Booklet provides specifically:

Such a transaction is permissible under the House Rules only if (1) there is a bona fide campaign need for the goods, services or space, and (2) the campaign does not pay more than fair market value in the transaction . . . If a Member’s campaign does enter into such a transaction with the Member or a member of his or her family, the campaign’s records must include information that establishes both the campaign’s need for and actual use of the particular goods, services or space, and the efforts made to establish fair market value for the transaction.⁷⁵

Here, Ms. Ford does not appear to have previous relevant experience, she apparently works for only her husband’s campaign committee, and the campaign committee has also been paying others for fundraising services. In addition, the Code of Ethical Principles and Standards of Professional Practice adopted by the American Association of Fundraising Professionals prohibits fundraising on a percentage basis. Taken together, these facts suggest that Rep. Sweeney is converting campaign funds to personal use in violation of the Federal Election Campaign Act and House Rules.

In addition, Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”⁷⁶ This ethics standard is considered to be “the most comprehensive provision of the code.”⁷⁷ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal

⁷³ FEC, AO 2001-20.

⁷⁴ House Comm. on Standards of Official Conduct, Campaign Booklet at 39.

⁷⁵ Id. at 44.

⁷⁶ Rule XXIII, cl. 1.

⁷⁷ House Comm. on Standards of Official Conduct, House Ethics Manual.

with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.⁷⁸ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct, including: the failure to report campaign contributions, making false statements to the Committee, accepting illegal gratuities, and accepting gifts from persons with interest in legislation in violation of the gift rule.⁷⁹ The House ethics committee could rely on this provision in investigating the financial arrangement between Rep. Sweeney’s wife and his campaign committee.

Son Avoids Jail

On August 19, 2004, Rep. Sweeney’s son John J. Sweeney and a friend, John J. Manupella, became involved in a fight involving 15 to 20 people.⁸⁰ During the fight, the pair brutally beat another teenager, Matthew Brady. Mr. Sweeney knocked Mr. Brady to the ground and kicked him in the head while Mr. Manupella kicked his ribs.⁸¹ Mr. Brady’s skull was fractured in the attack and he continues to suffer from double vision.⁸²

As the case began, both District Attorney James A. Murphy III and County Court Judge Jerry J. Scarano recused themselves because of their links to Rep. Sweeney. The case was finally tried by Acting County Court Judge Richard C. Giardino.

After their guilty pleas to assault charges, it was expected that Mr. Sweeney and Mr. Manupella would receive some jail time.⁸³ On the day of sentencing, however, Judge Giardino unexpectedly dropped the jail time from the plea bargain, stating that while he had come “here today with the intention of giving you a taste of jail,” the fight could

⁷⁸ House Comm. on Standards of Official Conduct, Report under the Authority of H. Res. 418, H.Rep.No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁷⁹ House Comm. on Standards of Official Conduct, In the Matter of Representative Mario Biaggi, H.Rep.No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending); House Comm. on Standards of Official Conduct, In the Matter of Representative Charles H. Wilson (of California), H.Rep.No. 969-930, 96th Cong., 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

⁸⁰ Kenneth C. Crowe II, Sweeney’s son gets no jail time for assault, *The Times-Union*, December 17, 2005. (Exhibit 25)

⁸¹ Id.

⁸² Id.

⁸³ Congressman’s Son Pleads Guilty to Felony Assault, *Associated Press*, November 22, 2005. (Exhibit 26)

have gone either way and he didn't believe it would be fair to sentence the two to jail time.⁸⁴ Judge Giardino then asked the pair what sentence they would want Mr. Brady to serve had they been the victims and was satisfied when they both replied that they would not want him to go to jail.⁸⁵ As a result, Mr. Sweeney and Mr. Manupella were both given a six-month suspended sentence, five years of probation and granted youthful offender status.⁸⁶

The House ethics committee should investigate whether Rep. Sweeney's son was afforded special treatment by the New York court because of his status as the son of a member of Congress. The committee should also investigate whether Rep. Sweeney made any efforts to secure special treatment for his son.

⁸⁴ Crowe, *The Times-Union*, Dec.17, 2005.

⁸⁵ Id.

⁸⁶ Id.

REP. CHARLES H. TAYLOR

Rep. Charles H. Taylor (R-NC) is an eighth-term member of Congress, representing North Carolina's 11th congressional district. Rep. Taylor is the Chairman of the House Appropriations Subcommittee on Interior, Environment, and Related Agencies and also sits on the Science, State, Justice, and Commerce, and Related Agencies subcommittee. Rep. Taylor's ethics issues arise from his lucrative outside business interests and his apparent use of his office in exchange for campaign contributions.

Blue Ridge Savings Bank

One of Rep. Taylor's outside business interests is the Blue Ridge Savings and Loan, an Asheville, North Carolina bank he founded, chairs and in which he holds a majority interest.¹ Ample evidence suggests Rep. Taylor has been involved in a series of fraudulent loans made by the bank to his long-time friend and political supporter, Charles Cagle. Blue Ridge made loans to Mr. Cagle and to Mr. Cagle's mother, daughter, and son-in-law, his mother's estate and a man whose family relationship was unclear.² The loans totaled \$2.27 million, in violation of lending rules that limited individual loans to \$500,000.³ In 2001, Mr. Cagle pleaded guilty to bank fraud for borrowing \$1.3 million from Blue Ridge.⁴

Also in 2001, Hayes C. Martin, the former president of Blue Ridge, pleaded guilty to bank fraud for making a series of loans to Mr. Cagle.⁵ According to news reports based on court testimony and an FBI interview with Mr. Martin, Rep. Taylor had extensive knowledge about, and was involved in the making of, the loans to Mr. Cagle.⁶ Rep. Taylor led nearly all meetings of the bank's board of directors and, until 1999, the board approved all new loans. Throughout the 1990s, most members of the Board were relatives or close associates of Rep. Taylor. After

¹ Damon Chappie, Taylor May Be Sued Over Bank Killings, *Roll Call*, July 15, 2004. (Exhibit 1)

² Joseph Neff, Two plead guilty in bank-fraud case, *The News & Observer*, December 6, 2001. (Exhibit 2)

³ Id.

⁴ Damon Chappie, Feds: No Taylor Shield, *Roll Call*, June 9, 2003. (Exhibit 3)

⁵ Neff, *The News & Observer*, Dec. 6, 2001.

⁶ Pat Stith, Taylor linked to loan fraud, *News & Observer*, July 6, 2003 (Exhibit 4); John Wagner, Taylor Inquiry Urged, *The News & Observer*, August 15, 2003. (Exhibit 5)

1999, new loans had to be approved by a committee consisting of Rep. Taylor and the bank's president, Dwayne Wiseman.⁷

During the criminal trial, Mr. Martin testified that when the FBI began to investigate the Cagle loans, Rep. Taylor ordered the removal of an employee who was suspected of cooperating with federal investigators.⁸ Mr. Martin further testified that he spent a fair amount of his time "helping Charles Taylor to skirt issues with the Office of Thrift Supervision."⁹

Despite all of the information implicating Rep. Taylor in the issuance of the fraudulent loans and money laundering, he was neither subpoenaed to appear before the grand jury, nor interviewed by the FBI or the federal prosecutors in the case.¹⁰ The U.S. Department of Justice, responding to a recent letter urging that Rep. Taylor's activities with respect to the Blue Ridge Savings Bank be investigated, stated merely that "each United States Attorney has considerable latitude in determining whom to investigate and prosecute and how to prosecute."¹¹

Bank Fraud

Federal law prohibits any person from knowingly obtaining "any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises."¹² Federal law also prohibits conspiracy to commit bank fraud. 18 U.S.C. §1349.

There is ample evidence from FBI interviews, the sworn testimony of Hayes Martin and the statements of Charles Cagle, showing that Rep. Taylor was an active participant in the series of fraudulent series of loans made to Mr. Cagle by Blue Ridge. At the time, Rep. Taylor was personally involved in approving all loan requests, and according to Mr. Cagle and Mr. Martin, Rep. Taylor knew that Charles Cagle was taking out loans in the names of others. By providing Mr. Cagle with fraudulent bank loans, Rep. Taylor likely violated 18 U.S.C. §§ 1344, 1349.

⁷ Neff, *The News & Observer*, Dec. 6, 2001.

⁸ *Id.*

⁹ Tammy Jones, Testimony closes in fraud trial linked to Rep. Taylor, *Asheville Citizen-Times*, April 11, 2003. (Exhibit 6)

¹⁰ Chappie, *Roll Call*, July 15, 2004.

¹¹ Letter from David M. Dalton, Senior Legal Counsel, U.S. Department of Justice, Executive Office for United States Attorneys, to Grant Millin, May 19, 2005. (Exhibit 7)

¹² 18 U.S.C. §1344(s).

Banned Fiduciary Relationship

Despite House restrictions that limit the amount of outside income Members can earn and the Ethics Reform Act's ban on compensation for providing services involving a fiduciary relationship,¹³ the House ethics committee has never looked into any of Rep. Taylor's outside activities, including those involving Blue Ridge Savings Bank.¹⁴ The Ethics Reform Act prohibits Members from engaging in professions that provide services involving fiduciary relationships.¹⁵ Under the terms of that statute, Members "shall not . . . receive compensation for affiliating with . . . [an] entity which provides professional services involving a fiduciary relationship."¹⁶

As defined by the House Ethics Manual, a banned fiduciary relationship is one involving a company where its "regular work is to transact business or to handle money or property for another's benefit in a relation implying and necessitating great confidence and trust on the one part and a high degree of good faith on the other part."¹⁷ The fiduciary restriction flows from "the fundamental principle that a public office is a public trust, all officials of the government are expected to act in the interests of the beneficiaries of that trust, that is, the general public."¹⁸ Professional activities involving a fiduciary relationship with a "private client or a limited number of private parties . . . create the potential for a serious conflict of interest" with that public trust.¹⁹

According to Rep. Taylor's financial disclosure forms, he does not directly receive compensation for his role as founder, chairman of the board of directors, and majority owner of Blue Ridge.²⁰ This appears to be a mere subterfuge, however, since Rep. Taylor is intimately involved with the day-to-day operation of Blue Ridge to the same, if not a greater degree than if he were actually on the bank's payroll.

¹³ See Ethics Manual for Members, Officers and Employees of the U.S. House of Representatives, Chapter 3 (102nd Cong., 2d Sess.).

¹⁴ Chappie, *Roll Call*, July 15, 2004.

¹⁵ 5 U.S.C. app. 7, §502.

¹⁶ Id.

¹⁷ House Comm. on Standards of Official Conduct, House Ethics Manual.

¹⁸ Id.

¹⁹ Id.

²⁰ See Rep. Charles Taylor, Financial Disclosure Statements, 1995-2005.

The substantial degree of control Rep. Taylor exercises over the bank's operations and his daily constant contact with the bank, including direct participation in approving every bank loan, bear a direct relationship to the many millions of dollars in dividends and interest Rep. Taylor has earned from Blue Ridge. Rep. Taylor is the virtual alter ego of Blue Ridge, for which he has reported owning stock worth over \$50 million.²¹ As such, he has a fiduciary relationship with that entity that raises the same conflicts with his public obligations as those that arise from being a paid employee. Accordingly, Rep. Taylor appears to have a fiduciary relationship that is prohibited by 5 U.S.C. app. 7, §502.

Business Interests in Russia

Rep. Taylor has established new enterprises in Russia for his own financial gain, even while he has taken numerous taxpayer-sponsored trips to Russia and used those trips to further his individual business interests. Since 1994, Rep. Taylor has spent at least \$25,000 on 10 official trips to Russia.²²

Beginning in the mid-1990s, Financial Guaranty Corp., the holding company for Blue Ridge Savings, and an entity chaired and owned by Rep. Taylor, made a series of loans to Russian companies with interest rates as high as 60%.²³ For example, Financial Guaranty agreed to loan Ivanovo businessman Sergei Zvonov \$100,000 to finance the construction of an apartment building.²⁴ The loan carried a 60% interest rate and required an additional \$10,000 payment to help finance the construction of an apartment building in Russia.²⁵

While active in pushing Congress to support a western-style home mortgage program in Russia, Rep. Taylor bought an 80% stake in a Russian bank in Ivanovo, making it the first

²¹ Tim Funk, A Peek Into Congress Members' Finances: Disclosures Indicate Taylor is Wealthiest From the Carolinas, *The Charlotte Observer*, June 19, 2006. (Exhibit 8)

²² See politicalmoneyline.com (Exhibit 9); Angie Newsome, The Businessman and Congressman: Taylor's Interest Puts Russian Town on Political Map Amid Praise, Criticism, *Asheville Citizen-Times*, August 28, 2005. (Exhibit 10)

²³ Greg Walters, *Moscow Times*, American Lawmaker Banks on Ivanovo, May 26, 2005 (Exhibit 11); James Rosen, Russian Dealings Blur Public, Private, *The News & Observer*, August 22, 2000. (Exhibit 12)

²⁴ Id.

²⁵ Id.

American-owned bank in Russia.²⁶ Rep. Taylor also founded a Russian investment company called Columbus, which appears to work in concert with the Commercial Bank of Ivanovo.²⁷ Columbus was formed to overcome some of the restrictions of Russian banking law and expand the kind of investments Rep. Taylor could make in Russia.²⁸ Blue Ridge Savings Bank and the Commercial Bank of Ivanovo have also been coordinating a local, bank-based trade bridge.²⁹

Rep. Taylor's closest associate in Russia is Boris Bolshakov, a former Soviet KGB colonel who worked as a senior officer in a bank, SBS-Agro, that has been linked to an international multibillion-dollar money-laundering scheme.³⁰ Since their initial meeting in 1993, Mr. Bolshakov has visited Rep. Taylor's state at least twice, and met him in Washington where Bolshakov was introduced to Republican congressional leaders.³¹ Boris and Marina Bolshakov own the remaining 20 percent interest of both the Commercial Bank of Ivanovo and Columbus investment company.³²

Rep. Taylor has told his constituents very little, if anything, about his activities in Russia, heightening concerns that he has mixed his public and private business in ways that create conflicts.³³ Between December 1966 and June 2000, Rep. Taylor sent 77 reports and letters to constituents at public expense. None said anything about any of his Russian enterprises, and his congressional web site is equally silent on this subject.³⁴

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest services, including conscientious,

²⁶ Angie Newsome, Russian Trade May Jolt WNC Economy, *Asheville-Citizen Times*, February 19, 2004. (Exhibit 13)

²⁷ Walters, *Moscow Times*, May 26, 2005.

²⁸ Id.

²⁹ Id.

³⁰ Rosen, *The News & Observer*, Aug. 22, 2000.

³¹ Id.

³² Walters, *Moscow Times*, May 26, 2005.

³³ Rosen, *The News & Observer*, Aug. 22, 2000.

³⁴ Id.

loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud, and corruption.³⁵

By using his position as a member of Congress to gain business contacts in Russia, by allowing the Commercial Bank of Ivanovo to capitalize on his position as a member of Congress, by knowingly and willfully conducting business and politics at the same time, and potentially by conducting bank business while on taxpayer funded trips to Russia, Rep. Taylor may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. §1341.

5 CFR §2635.702(a) and House Rules

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”³⁶ House Rules further provide that “a Member . . . may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.”³⁷ A 1997 memorandum issued by the Committee on Standards of Official Conduct clarified this rule, stating:

House Members, officers and employees are generally *prohibited* from asking for anything of value from a broad range of persons: specifically, anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties.³⁸

In addition, House Members are directed to adhere to 5 CFR §2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another

³⁵ 18 U.S.C. § 1341.

³⁶ See House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers, and Employees,” Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

³⁷ Rule XXIII, clause 3.

³⁸ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers, and Employees,” Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

Thus, if Rep. Taylor advanced his personal business interests in Russia through the authority of his congressional position by taking taxpayer-funded trips to Russia to explore and advance his personal business interests, he likely violated 5 CFR §2635.702(a) and House Rule XXIII. The Committee on Standards of Official Conduct should also investigate Rep. Taylor's support of a western-style mortgage program from which he stood to benefit personally, as well as his business relationships with Russian individuals whom Rep. Taylor has entertained in the United States in his official capacity.

House conflict-of-interest rules provide that a Member should never accept "benefits under circumstances which might be construed by reasonable persons as influencing the performance" of his official duties.³⁹ To do so "would raise the appearance of undue influence or breach of the public trust."⁴⁰ By benefitting financially from a variety of business investments in Russia while taking taxpayer-funded trips to Russia and supporting legislation that would benefit those investments, Rep. Taylor appears to have violated the House conflict-of-interest rules. The Committee on Standards of Official Conduct should investigate further the network of Rep. Taylor's business interests in Russia and the extent to which they have been affected by his official actions.

Legislative Assistance for General Electric

Rep. Taylor has come to the aid of campaign contributor General Electric, which contributed \$8,250 to his 2004 re-election.⁴¹ Subsequently, at the company's request, Rep. Taylor inserted language in a spending bill that would have benefitted the company by calling for further study of PCB dredging projects.⁴² If approved, General Electric could have used the bill to justify further delay in its clean-up of the Hudson River.⁴³

³⁹ H. Con. Res. 175, 85th Cong., 2d Sess, 72 Stat., pt 2, B12, para. 5 (1958).

⁴⁰ Id.

⁴¹ Daren Fonda and Perry Bacon, Jr., GE's Green Awakening: Jeff Emmelt is Making General Electric a More Eco-trendy Company -- Because That's Where the Profits Are, *Time*, July 11, 2005. (Exhibit 14)

⁴² Id.

⁴³ Id.; see also Ned Sullivan and Rich Schiafo, Talking Green, Acting Dirty, *The New York Times*, June 12, 2005 (Exhibit 15); Rich Schiafo, GE Refuses to Admit Responsibility for PCBs, *Poughkeepsie Journal*, June 18, 2005. (Exhibit 16)

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.⁴⁴ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁴⁵ If, as it appears, Rep. Taylor accepted over \$8,000 from General Electric in exchange for supporting legislation that would benefit General Electric, Rep. Taylor would be in violation of 18 U.S.C. §201(b)(2)(A).

Honest Services Fraud

By accepting a campaign contribution from General Electric in apparent exchange for supporting legislation that would benefit the company, Rep. Taylor may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. §1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official. 18 U.S.C. §201(c)(1)(B). In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.⁴⁶

If a link is established between Rep. Taylor's support for legislation that would benefit General Electric and the acceptance of a campaign contribution from the company, Rep. Taylor would be in violation of the illegal gratuity statute.

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of members, including expulsion.⁴⁷

⁴⁴ 18 U.S.C. §201(b)(2)(A).

⁴⁵ McCormick v. U.S., 500 U.S. 257, 273, 111 S.Ct. 1807, 1816 (1991); United States v. Biaggi, 909 F.2d 662, 695 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

⁴⁶ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

⁴⁷ *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the Member from the House); *In the Matter of*

5 U.S.C. §7353 and Solicitation

A provision of the Ethics Reform Act of 1989, 5 U.S.C. §7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including “anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties.”⁴⁸ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

If Rep. Taylor accepted a campaign contributions from General Election in return for his support for legislative favorable to the company he likely violated 5 U.S.C. §7353 and House Rule XXIII.

5 CFR §2635.702(a) and House Rules

If Rep. Taylor accepted a campaign contribution from General Electric in return for supporting legislation that would favor the company, he may have violated 5 CFR §2635.702(a) and House Rule XXIII.

In addition, the Code of Ethics provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not.”⁴⁹ The House Committee on Standards of Official Conduct is authorized to take action for violation of House Rules.⁵⁰ In a 1999 memorandum, the Committee specifically stated that the provisions in the *Code of Ethics for Government Service* apply to House Members,

Representative Daniel J. Flood, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

⁴⁸ See House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

⁴⁹ Id.

⁵⁰ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

and that formal charges may be brought against a Member for violating that code.⁵¹ The Committee should therefore consider whether Rep. Taylor was “dispensing special favors” in violation of the House Rules.

The Saginaw Chippewa Tribe

In 2002, the Saginaw Chippewa tribe of Michigan, working with Greenberg Traurig, LLP and its lobbyist Jack Abramoff, was trying to secure federal funding to construct a school on its reservation.⁵² The funding was held up due to objections made by Department of Interior officials and a House Appropriations Committee staff member.⁵³

On April 11, 2003, Greenberg Traurig held a major fundraiser for Rep. Taylor’s campaign committee, which collected \$2000 from Mr. Abramoff, \$3000 from other Greenberg Traurig employees, and \$1000 from the Saginaw Chippewa tribe.⁵⁴

On May 16, 2003, Rep. Taylor and Sen. Conrad Burns (R-MT) wrote a letter to the Assistant Secretary of the Department of Interior, P. Lynn Scarlet, supporting the Saginaw Chippewa request for the school construction appropriation.⁵⁵ In the letter, the two members of Congress referenced correspondence that had been drafted at the Department of Interior to be sent to the House and Senate Interior Appropriations subcommittees, but was never actually sent.⁵⁶ Federal agents are now investigating whether an Interior official leaked a draft of the letter to Mr. Abramoff’s team so that lawmakers could use it to pressure the Department.⁵⁷

⁵¹ Id.

⁵² John Solomon and Sharon Theimer, Emails Show Abramoff’s Donation Leverage, *Associated Press*, April 11, 2006. (Exhibit 17)

⁵³ Id.

⁵⁴ Charles Taylor for Congress Committee, FEC Form 3, July Quarterly Report, September 23, 2003. (Exhibit 18)

⁵⁵ Letter from Sen. Conrad Burns and Rep. Charles Taylor to P. Lynn Scarlet, May 16, 2003. (Exhibit 19)

⁵⁶ Solomon and Theimer, *Associated Press*, Apr. 11, 2003.

⁵⁷ Id.

On June 27, 2003, one month after Rep. Taylor and Sen. Burns sent their letter, the Saginaw Chippewa tribe donated an additional \$3000 to Rep. Taylor's campaign.⁵⁸

Acceptance of a Bribe

Rep. Taylor accepted campaign contributions from the Saginaw Chippewa tribe and Jack Abramoff in apparent exchange for his support of the Saginaw Chippewa appropriation. By accepting contributions in apparent return for his assistance, Rep. Taylor may have violated the federal bribery statute, 18 U.S.C. § 201(B)(2)(A).

Honest Services Fraud

By using his position as a Member of Congress to benefit the Saginaw Chippewa in exchange for campaign contributions from the tribe and Jack Abramoff, Rep. Taylor may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. §1341.

Illegal Gratuity

If a link is established between Rep. Taylor's efforts to influence the Interior Department's appropriation of money for a school construction project and contributions he received from the tribe and its lobbyist, he would be in violation of the illegal gratuity statute.

5 U.S.C. §7353 and Solicitation

If Rep. Taylor accepted campaign contributions in return for using the power of his office to provide benefits to the Saginaw Chippewa, he likely violated 5 U.S.C. §7353 and House Rule XXIII.

5 CFR §2635.702(a) and House Rules

Moreover, by using the power of his office to provide benefits to the Saginaw Chippewa tribe, Rep. Taylor may have dispensed special favors in violation of House Rules, and 5 CFR §2635.702(a).

⁵⁸ Charles Taylor for Congress Committee, FEC Form 3, July Quarterly Report, Sept. 23, 2003.

Conduct Not Reflecting Creditably on the House

In addition, Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”⁵⁹ This ethics standard is considered to be “the most comprehensive provision of the code.”⁶⁰ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.⁶¹ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,⁶² making false statements to the Committee,⁶³ criminal convictions for bribery,⁶⁴ or accepting illegal gratuities,⁶⁵ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁶⁶

⁵⁹ Rule XXIII, clause 1.

⁶⁰ House Comm. on Standards of Official Conduct, House Ethics Manual.

⁶¹ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁶² House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

⁶³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

⁶⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁶⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

⁶⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126

Rep. Taylor's receipt of campaign contributions in exchange for earmarks he secured for a school does not reflect creditably on the House.

Earmarks for Russian Student Exchange Program

In 2005, Rep. Taylor used earmarks to create the International Trade and Small Business Institute, a program that sends seven Russian students to eight North Carolina schools for business courses.⁶⁷ Two of the students in the study program are from Ivanovo, the city where Rep. Taylor is majority owner of the local bank.⁶⁸ The overseas study program is coordinated by his ex-KGB friend and business partner's wife, Marina Bolshakova, who also co-owns the Bank of Ivanovo and Columbus with Rep. Taylor.⁶⁹

Although Rep. Taylor claims that the program's goal is "to increase trade in small businesses," he frequently opposes other free-trade agreements, including the Central America Free Trade Agreement (CAFTA).⁷⁰

Ivanovo State University's website states that "the program is financially supported by US congress [sic] and implemented under the supervision of Rep. Taylor," and boasts a visit Rep. Taylor made to the school to promote the overseas exchange program.⁷¹ The website also mentions Ms. Bolshakova's role as Russian coordinator of the program.⁷²

In 1997, Rep. Taylor helped found the nonprofit Education and Research Consortium of the Western Carolinas,⁷³ which he chaired for two years,⁷⁴ it receives its entire \$12 million

Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

⁶⁷ Elana Schor, Rep. Taylor earmarks for Russia business connection, *The Hill*, July 19, 2006. (Exhibit 20)

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Schor, *The Hill*, July 19, 2006.

⁷² Id.

⁷³ Id.

⁷⁴ Rep. Charles Taylor, Financial Disclosure Statement for Calender Year 2002, p. 8 (Exhibit 21); Rep. Charles Taylor, Financial Disclosure Statement for Calender Year 2001, p. 5. (Exhibit 22)

budget from federal grants and earmarks, and it participates in the Russian study program.⁷⁵ Rep. Taylor earmarks money to the Small Business Administration – an agency overseen by his appropriations subcommittee – for the program and then the Consortium applies for a grant out of that earmark.⁷⁶ According to Consortium Executive Director John Hunter, the entire Russian study program is funded through that earmark.⁷⁷

5 CFR §2635.702(a) and House Rules

Rep. Taylor's use of earmarks to create a Russian study program that benefits his business partner's wife appears to have violated 5 C.F.R. §2635.702(a) and House ethics rule XXIII.

⁷⁵ Schor, *The Hill*, July 19, 2006.

⁷⁶ Id.

⁷⁷ Id.

REP. MAXINE WATERS

Rep. Maxine Waters (D-CA) is an eighth-term member of the Congress, representing California's 35th congressional district. A powerful and renowned politician in her state, Rep. Waters is recognized for her unique ability to unite voters in South Los Angeles around causes she deems important.¹ Her ethics issues stem from the exercise of this power to financially benefit her daughter, husband and son.² Rep. Waters' family has earned a total of more than \$1 million in the last eight years through business dealings with companies and issue organizations Rep. Waters has assisted.³

Karen Waters

Rep. Waters' daughter, Karen Waters, has benefited primarily through charging for spots on her mother's "slate mailers" issued by L.A. Vote.⁴ L.A. Vote is a non-profit political organization that sends sample ballots to South Los Angeles residents featuring the photo of Rep. Waters and the names of candidates she supports.⁵ Charges for a spot on the ballot have ranged widely from \$171,000 for an affluent California businessman running for elected office, to tens of thousands of dollars for candidates such as former Gov. Gray Davis, to \$250 for a school board candidate.⁶ Of the \$1.7 million collected by L.A. Vote over the last eight years, mainly from candidates who have paid to have their names appear on slate mailers, approximately \$450,000 has gone to Karen Waters and her consulting firm, Progressive Connections, and \$115,000 to Rep. Waters' son, Edward.⁷

Karen Waters also has collected \$20,000 from a small non-profit organization called African American Committee 2000 & Beyond that she established with her mother.⁸ Many corporations and organizations seeking to win Rep. Waters' favor have donated to African

¹ Chuck Neubauer and Ted Rohrich, Capitalizing on Clout, *Los Angeles Times*, December 19, 2004. (Exhibit 1)

² Id.

³ Dana Milbank, Lowering the Bar for Government Ethics? *The Washington Post*, December 31, 2004. (Exhibit 3)

⁴ Neubauer and Rohrich, *Los Angeles Times*, Dec. 19, 2004.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Neubauer and Rohrich, *Los Angeles Times*, Dec. 19, 2004.

American Committee 2000 & Beyond.⁹ The non-profit has used this money to pay for parties hosted by Rep. Waters at the Democratic national conventions. Sponsors of these convention parties include Fannie Mae, a company that has been cited for manipulating earnings and accounting misconduct.¹⁰

Sidney Williams

Rep. Waters' husband, Sidney Williams, has also benefited financially from his wife's political clout, working as a part-time consultant for a bond underwriting firm, Siebert, Brandford, & Shank.¹¹ Despite having no apparent background in the bond business prior to his work as a consultant for the company, Mr. Williams has collected close to \$500,000 by making valuable introductions for Siebert to politicians who have received his wife's support.¹² Government bond deals are awarded based on negotiations, allowing Mr. Williams to capitalize on his wife's connections to close many lucrative business deals for Siebert, from which he has personally profited.¹³ For example, when school board members in Inglewood, a city in Rep. Waters' congressional district to which she guaranteed a \$10 million loan from the Department of Housing and Urban Development, needed a bond underwriting firm to handle a \$40 million school bond sale, they chose Siebert. Mr. Williams earned \$54,000 in commission from the deal.¹⁴

Edward Waters

Rep. Waters' son, Edward Waters, together with her husband Sidney Williams, benefited from Rep. Waters' political connections when they won a 20-year lease to run the county-owned Chester Washington Golf Course in South Los Angeles. The key decision-maker for the deal was County Supervisor Yvonne Brathwaite Burke, in whose district the golf course was located.¹⁵ Rep. Waters handed the County Supervisor a victory just several months earlier when

⁹ Id.

¹⁰ See Fannie Mae Board, Management Cited for Misconduct, AFX News Limited, May 23, 2006, available at www.forbes.com/markets/feeds/afx/2006/05/23/afx2768468.html.

¹¹ Neubauer and Rohrich, *Los Angeles Times*, Dec. 19, 2004.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Neubauer and Rohrich, *Los Angeles Times*, Dec. 19, 2004.

she endorsed Ms. Burke in a close election. Financial records indicate that Mr. Williams and Mr. Waters earned between \$140,000 and \$400,000 through the golf venture.¹⁶

In addition, both of Rep. Waters' children have collected money working as paid consultants for politicians and interests endorsed by their mother.¹⁷

Rule 23 of the House Ethics Manual requires all members of the House to conduct themselves "at all times in a manner that reflects creditably on the House."¹⁸ This ethics standard is considered to be "the most comprehensive provision of the code."¹⁹ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with "flagrant" violations of the law that reflect on "Congress as a whole," and that might otherwise go unpunished.²⁰ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,²¹ making false statements to the

¹⁶ Id.

¹⁷ Id.

¹⁸ Rule 23, clause 1.

¹⁹ House Comm. on Standards of Official Conduct, House Ethics Manual.

²⁰ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

²¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

Committee,²² criminal convictions for bribery,²³ or accepting illegal gratuities,²⁴ and accepting gifts from persons with interest in legislation in violation of the gift rule.²⁵

Another “fundamental rule[] of ethics” for Members of the House is that they are prohibited from taking any official actions for the prospect of personal gain for themselves or anyone else.²⁶ In that memorandum, the Committee directed House members to adhere to 5 CFR §2635.702(a),²⁷ issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

²² House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

²³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

²⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

²⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

²⁶ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

²⁷ Id.

Rep. Waters has assisted her family in making commercial deals from which they have reaped personal financial gain. By allowing the use of her name and authority associated with her position as a member of the House in this manner, Rep. Waters has run afoul of 5 CFR §2635.702(a). In addition, this conduct does not reflect creditably on the House of Representatives. Therefore, the Committee on Standards of Official Conduct should investigate Rep. Waters' connections with L.A. Vote, the African American Committee 2000 & Beyond, the firm of Siebert, Brandford and Shank, and the Chester Washington Golf Course.

REP. CURT WELDON

Rep. Curt Weldon (R-PA) is a 10th-term member of Congress, representing the 7th congressional district of Pennsylvania. Rep. Weldon's ethics issues stem from using his position to financially benefit his children and a family friend as well as his relations with Italian company Finmeccanica.

Misuse of Position

Cecilia Grimes

Cecilia Grimes was a small town real estate agent from Media, PA, until March of 2003, when she became a lobbyist.¹ Working out of Media, with absolutely no prior lobbying experience, her firm – Grimes & Young Lobbying – has become quite successful, especially for a firm of one lobbyist.² The firm deals exclusively with businesses with interests before Rep. Weldon, whom Ms. Grimes describes as a “longtime family friend.”³

Although both Rep. Weldon and Ms. Grimes deny that their relationship has any effect on her lobbying business, the evidence is to the contrary.⁴ A representative from a company that has lobbied Rep. Weldon's office said that a senior aide to the congressman suggested that the firm retain Ms. Grimes.⁵ According to the unnamed official, “[the aide] didn't flat out say to hire her, but he said... it would be good to have her on our side.”⁶ The company declined to hire Ms. Grimes because “the situation didn't feel right.”⁷ Another company's representative said an aide to Rep. Weldon referred him to Ms. Grimes, who the aide described as someone who would “help our cause.”⁸

¹ Ken Silverstein, A Small Town Lobbyist and Her Big Connection, *Los Angeles Times*, January 28, 2006. (Exhibit 1)

² Ms. Grime's partner is 28 year-old Cynthia Young, daughter-in-law of Rep. C.W. “Bill” Young (R-FL). Id.

³ Silverstein, *Los Angeles Times*, Jan. 28, 2006.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Silverstein, *Los Angeles Times*, Jan. 28, 2006.

⁸ Id.

FSI Energy Inc. already had a massive gas pipeline project supported by Rep. Weldon by the time it decided to hire Ms. Grimes on the recommendation of Frank Rapoport, a Washington lobbyist and longtime political ally of Rep. Weldon.⁹ Mr. Rapoport has declined to discuss why he recommended Ms. Grimes.¹⁰

One of Ms. Grimes most successful contracts has been with Advanced Ceramics Research, a firm from Tuscon, Arizona, that had been trying for years to get an earmark in a defense appropriations bill.¹¹ The firm hired Ms. Grimes in 2003, and in 2005, as a result of Ms. Grimes' successful lobbying efforts, the firm was awarded a \$3 million contract.¹² Rep. Weldon has twice invited Advanced Ceramics President Anthony Mulligan to appear before the House Tactical Air and Land Forces Subcommittee, and has publicly praised the company's "outstanding products."¹³ Since its initial \$3 million contract, Advanced Ceramics has won \$43.5 million in Navy contracts and congressional funding for its unmanned probes, including \$5 million from an agency that Rep. Weldon's subcommittee directly oversees.

When Oto Melara, the weapons manufacturing arm of Finmeccanica announced plans to open a new plant in Rep. Weldon's district in 2004, the Congressman began pressuring the Navy to use the firm's deck guns on new combat ships, despite the fact that a different company's weapons had already been selected.¹⁴ Even though the Navy had pledged to use the rival company's guns, Rep. Weldon managed to push through an amendment requiring the Navy to test Oto Melara's cannons on the next generation of Littoral Combat Ships.¹⁵ In 2005, Oto Melara hired Ms. Grimes as a lobbyist for \$20,000 a year.¹⁶

Through May of 2006, employees of companies represented by Ms. Grimes contributed \$27,300 to Rep. Weldon's re-election campaign or his CURT PAC.¹⁷ Since hiring Ms. Grimes, executives from Advanced Ceramics Research have donated a

⁹ Id.

¹⁰ Id.

¹¹ Silverstein, *Los Angeles Times*, Jan. 28, 2006.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Silverstein, *Los Angeles Times*, Jan. 28, 2006.

¹⁶ Id.

¹⁷ www.politicalmoneyline.com. (Exhibit 2)

combined \$7,000 to Rep. Weldon's re-election fund and his PAC and¹⁸ between October 2004 and March 2006, the CEO of Oto Melara donated \$2,400 to Weldon's campaign committee.¹⁹

Karen Weldon

Karen Weldon is Rep. Weldon's 31-year old daughter. After graduating from college with a major in education, Ms. Weldon went on to get a graduate degree in information systems. After working for Boeing, but with no prior lobbying experience, Ms. Weldon opened her own lobbying firm, Solutions North America ("Solutions").²⁰ Ms. Weldon's company racked up almost a million dollars a year in business from clients with interests before her father.²¹

One of Ms. Weldon's clients is Saratov Aviation. In January 2003, Rep. Weldon and Ms. Weldon visited the Saratov Aviation plant at the same time that Ms. Weldon was negotiating a deal to consult with the company.²² Shortly thereafter, the company hired Solutions for \$20,000 a month, along with 10% of any new business that Ms. Weldon could generate for the company.²³ Around the same time, Rep. Weldon began pitching the company's unmanned drone to the Navy.²⁴ The Navy later signed a letter of intent to invest in the company's technology and Rep. Weldon has worked hard to find the money for the project.²⁵ The finders fee in the contract has since been removed, as federal law bars companies from giving commission to lobbyists.²⁶

¹⁸ Id.

¹⁹ Id.

²⁰ Ken Silverstein, Chuck Neubauer and Richard T. Cooper, Lucrative Deals for a Daughter of Politics: Karen Weldon, Whose Dad is a Pennsylvania Congressman, is a Lobbyist for Three Foreign Clients Who Need His Help, and Get It, *Los Angeles Times*, February 20, 2004. (Exhibit 3)

²¹ Id.

²² Anthony J. Sanfilippo and Timothy Logue, Weldon Defends Record after Report, *Delco Times.com*, February 21, 2004. (Exhibit 4)

²³ Id.

²⁴ Lara Jakes Jordan, Government Watchdog Requests Justice Department Probe of Weldon, *Associated Press*, April 8, 2004. (Exhibit 5)

²⁵ Silverstein, Neubauer and Cooper, *Los Angeles Times*, Feb. 20, 2004.

²⁶ Id.

In March 2002, a Russian energy company, Itera International Energy Corporation, lost a U.S. Trade and Development Agency grant after questions were raised about the company's background.²⁷ Two months later, Rep. Weldon led a congressional delegation to Moscow, during which he toured Itera's offices, praised the company and recommended it as a partner for U.S. energy firms.²⁸ After returning home, Rep. Weldon tried, without success, to persuade the Trade and Development Agency to change its decision. A few months later, from September 5-6, 2002, Itera paid for Rep. Weldon's lodging in New York, where he conducted an interview with Russian radio about energy.²⁹

A week later, Itera sent emails to Ms. Weldon telling her that the company would complete a contract with her firm at an upcoming dinner in Washington that Rep. Weldon was co-hosting to honor Itera's chairman.³⁰ Rep. Walden gathered 30 congressmen to attend the dinner, which Solutions helped to arrange and which was held on September 24, 2002, at the Library of Congress.³¹ Six days later, Itera agreed to pay Solutions \$500,000 a year for public relations work, considering the dinner one of the firm's first efforts on the company's behalf.³² In addition, in 2006, Itera donated \$5,000 in soft money to CURT PAC's nonfederal account and its vice president donated \$2,000 to the Weldon Victory Fund.³³

Ms. Weldon was awarded a \$240,000 contract to promote the cause of two Serbian brothers, Dragomir and Bogoljub Karic, who had been unsuccessful in their attempts to procure U.S. visas from the State Department, which refused them visas due to their closeness with former President Slobodan Milosevic.³⁴ Solutions was awarded the contract after Rep. Weldon began to champion the brothers' cause, praising them as humanitarians.³⁵ In addition to the contract, Solutions paid for Rep. Weldon's chief of

²⁷ Id.

²⁸ Id.

²⁹ Silverstein, Neubauer and Cooper, *Los Angeles Times*, February 20, 2004.

³⁰ Id.

³¹ Id.

³² Id.

³³ www.politicalmoneyline.com. (Exhibit 6)

³⁴ Silverstein, Neubauer and Cooper, *Los Angeles Times*, Feb. 20, 2004.

³⁵ Art Levine, The DeLay Wannabes, *The American Prospect Online*, June 6, 2005. (Exhibit 7)

staff, Michael Conallen, Jr., to take a trip to Serbia, where he met with the U.S. Embassy to argue on behalf of the Karics.³⁶

Kim Weldon

Kim Weldon is Rep. Weldon's younger daughter. Since the fall of 2005, Ms. Weldon has worked in the public relations office of AgustaWestland, the helicopter division of Finmeccanica.³⁷ Rep. Weldon helped AgustaWestland secure a \$1.6 billion contract to build a new presidential helicopter.³⁸ A report in *Aviation Week and Space Technology* listed Rep. Weldon's support as key to the success of the underdog bid.³⁹ In November 2005, AgustaWestland broke ground on an addition to their factory within Weldon's district.⁴⁰ AgustaWestland executives and their families have donated \$6,000 to Rep. Weldon this cycle, and the president of its subsidiary, Agusta Aerospace, has contributed an additional \$1,000.⁴¹

Andrew Weldon

Andrew Weldon is Rep. Weldon's son and he has recently started a career in automobile racing.⁴² Mr. Weldon was lucky enough to secure the sponsorship of Schaffer Motorsports, which is owned by Tom Schaffer, a senior employee at Boeing. In turn, one of the sponsors for Schaffer Motorsports is Boeing Helicopters Credit Union,

³⁶ Silverstein, Neubauer and Cooper, *Los Angeles Times*, Feb. 20, 2004. House rules specifically bar members of Congress and staff from accepting trips paid for by lobbyists. Rule XXVI, cl. 5(b)(1)(A). After reporters questioned the trip, Mr. Conallen repaid Solutions for his travel. *Id.*

³⁷ Ken Silverstein, The Curt Weldon Employment Agency, *Harper's Online*, April 20, 2006. (Exhibit 8)

³⁸ *Id.*

³⁹ Bob Warner, Mag: Weldon's Kin Works for Firm that Got Copter Contract, *Philadelphia Daily News*, April 21, 2006. (Exhibit 9)

⁴⁰ Silverstein, *Harper's Online*, April 20, 2006.

⁴¹ www.politicalmoneyline.com. (Exhibit 10)

⁴² Ken Silverstein, Another Trip to the Curt Weldon Employment Agency, *Harper's Online*, July 25, 2006. (Exhibit 11)

which has its logo on Mr. Weldon's race car.⁴³ Boeing employees are also Rep. Weldon's top campaign contributors, having donated \$62,050 since he was first elected.⁴⁴

The relationship between Mr. Schaffer and Rep. Weldon is a long one. Mr. Schaffer had a senior position working on Boeing's V-22 Osprey at a plant just outside Rep. Weldon's district. The Osprey was designed to take off like a helicopter and then fly like a plane, but the design was flawed, leading to multiple crashes that resulted in the deaths of over two dozen marines. Testing of the plane from 1990 to 2003 was estimated at \$12.6 billion.⁴⁵ The Osprey's design was so controversial that then-Secretary of Defense Dick Cheney tried for years to have the program canceled, but was constantly blocked in Congress -- thanks largely to the work of Rep. Weldon.⁴⁶ Rep. Weldon emerged as the largest proponent of the Osprey, forming the Tilt-rotor Technology Coalition in Congress.⁴⁷ Rep. Weldon has managed to save the Osprey against every attempted cutback or program cancellation.⁴⁸

Acceptance of a Bribe

Rep. Weldon's most egregious violation stems from his abuse of his position on behalf of Karen Weldon and Cecilia Grimes.

Rep. Weldon's activities on behalf of Karen Weldon's clients both shortly before and shortly after Ms. Weldon won contracts from those clients appear to violate the bribery laws. The clear inference to be drawn is that Karen Weldon was highly compensated in return for her father's official assistance.

In United States v. Biaggi,⁴⁹ former New York Congressman Mario Biaggi was convicted of accepting bribes in violation of the federal bribery statute after he and his girlfriend took several trips paid for by Coastal Dry Dock and Repair Company ("Coastal"), which the congressman had been assisting. The Second Circuit Court of

⁴³ Id.

⁴⁴ Id.

⁴⁵ Alan C. Miller and Kevin Sack, Storming Capital Hill: The Few, The Proud, The Politically Wired; The Marine Corps, Thanks for a Tenacity Honed on the Battlefield, Sees its Unique Aerial Fleet Taking Shape, *Los Angeles Times*, December 18, 2002. (Exhibit 12)

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ 853 F.2d 89 (2d Cir. 1989) *cert. denied*, 489 U.S. 1052 (1989).

Appeals found that Mr. Biaggi's activities – writing letters on behalf of Coastal using official congressional and committee stationery, assigning his administrative assistant, the top aide in his office, to handle issues related to the company, and offering to sit in on meetings between the Mayor of New York and the Navy with respect to issues affecting the company – all constituted official action.⁵⁰

After determining that the congressman had taken official action to assist Coastal, the Court considered whether the vacations given to and accepted by the congressman and his girlfriend and paid for by Coastal constituted payment for the congressman's official assistance. The Court was particularly struck by the timing between the vacations and Mr. Biaggi's assistance to Coastal. Shortly after one of the vacations paid for by Coastal, the congressman called the deputy mayor and sent a follow-up letter to the mayor seeking assistance for the company. Within a few months of a second vacation, the congressman offered to attend a meeting between the company and the Navy to demonstrate congressional concern.⁵¹ Concluding that the vacations, valued at thousands of dollars, did in fact constitute something of value given in return for official acts, the Court upheld the bribery conviction.⁵²

The Second Circuit's consideration of the timing between Mr. Biaggi's assistance to Coastal and the vacations paid for by the company is instructive. While Rep. Weldon was working to obtain visas for the wealthy Serbian brothers, he introduced the brothers to his daughter, who shortly thereafter won a consulting contract for \$240,000 a year from them. Similarly, shortly after the aerospace manufacturer hired Ms. Weldon's firm for \$20,000 a month, Rep. Weldon began lobbying the Navy to do business with the company. Finally, the gas company agreed to pay Rep. Weldon's daughter \$500,000 per year to "create good public relations" shortly before Rep. Weldon co-hosted and persuaded 30 congressional colleagues to attend a dinner sponsored by the company. Notably, the gas company told Ms. Weldon that it would complete the terms of her contract at the dinner.⁵³ Thus, the evidence strongly suggests that in return for lucrative consulting contracts for his daughter, Rep. Weldon offered assistance based on his position as a member of Congress.

Similarly, it appears that Rep. Weldon has done favors for and granted greater access to companies that hired his friend, Ms. Grimes, a real estate agent, as a lobbyist. As a result, it appears that Rep. Weldon has violated federal bribery laws.

⁵⁰ 853 F.2d at 98.

⁵¹ *Id.*

⁵² *Id.* at 100.

⁵³ See Silverstein, Neubauer and Cooper, *Los Angeles Times*, Feb. 20, 2004.

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.⁵⁴

By using his position as a member of Congress to financially benefit his children and a family friend, Rep. Weldon may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. §1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.⁵⁵ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.⁵⁶

If, as it appears, there is a link between Rep. Weldon's actions to steer funds to clients of the lobbying firm of his friend Cecilia Grimes and his acceptance of generous campaign donations from the employees of those companies, he would be in violation of the illegal gratuity statute.

If Rep. Weldon steered earmarks to companies that used his daughter Karen Weldon's lobbying services, thereby generating significant income for his daughter, he would be in violation of the illegal gratuity statute.

Similarly, if there is a link between Boeing's sponsorship of his son's automobile racing through Schaffer Motorsports and Rep. Weldon's repeated congressional intervention to save the Boeing's Osprey, he would be in violation of the illegal gratuity statute.

⁵⁴ 18 U.S.C. §1341.

⁵⁵ 18 U.S.C. §201(c)(1)(B).

⁵⁶ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

5 U.S.C. §7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. §7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including “anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties.”⁵⁷ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

Rep. Weldon’s acceptance of campaign contributions and aid to his children, in apparent exchange for his legislative intervention, likely violates 5 U.S.C. §7353 and House Rule XXIII.

5 CFR §2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”⁵⁸ House members are directed to adhere to 5 CFR §2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

⁵⁷ See House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

⁵⁸ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

The Code of Ethics also provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not.”⁵⁹

Conduct Not Reflecting Creditably on the House

In addition, Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”⁶⁰ This ethics standard is considered to be “the most comprehensive provision of the code.”⁶¹ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.⁶² This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,⁶³ making false statements to the Committee,⁶⁴

⁵⁹ Id.

⁶⁰ Rule XXIII, cl. 1.

⁶¹ House Comm. on Standards of Official Conduct, House Ethics Manual.

⁶² House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁶³ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

⁶⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

criminal convictions for bribery,⁶⁵ or accepting illegal gratuities,⁶⁶ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁶⁷

By using his position for the financial benefit of Ms. Grimes and his daughter, Rep. Weldon has run afoul of 5 CFR §2635.702(a) and his behavior does not reflect creditably on the House.

In addition, the fact that Rep. Weldon's other daughter Kim, may have been hired by AugustaWestland in gratitude – if not direct repayment – for Rep. Weldon's promotion of the company, and the fact his son is receiving a financial benefit from another company with strong ties to the congressman strongly support the conclusion that Rep. Weldon has consistently abused his position to financially benefit his family and friends in violation of federal law and House rules.

⁶⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁶⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

⁶⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

MEMBERS OF THE SENATE

SEN. CONRAD BURNS

Conrad Burns (R-MT) is a third-term Senator from Montana. Sen. Burns is Chairman of the Senate Interior Appropriations Subcommittee, giving him jurisdiction over all of the country's federal lands, the National Park Service, and the budget of the Bureau of Indian Affairs. He also sits on the Senate Indian Affairs and Natural Resources Committee. Sen. Burns's ethics issues stem from his acceptance of campaign contributions in apparent exchange for exercising his authority as chairman and for changing his position on legislation favoring the Mariana Islands garment industry.

Senator Burns and Jack Abramoff

Sen. Burns's campaign committees have received substantial contributions from well-known Republican lobbyist Jack Abramoff,¹ who has pleaded guilty, *inter alia*, to conspiring to bribe public officials, including at least one member of Congress and congressional staff,² as well as Mr. Abramoff's associates and tribal clients. In fact, between 2000 and 2002, these donors contributed a whopping 42% of the total money received by Sen. Burns's Friends of Big Sky political action committee.³ Sen. Burns received approximately \$150,000 in Abramoff-related donations,⁴ more than any other member of Congress.⁵ In December 2005, Sen. Burns pledged to return all donations from Mr. Abramoff and his clients and associates.⁶

Of his relationship with Senator Burns's staff and committee, Mr. Abramoff stated in a 2005 interview: "Every appropriation we wanted (from Burns's committee) we got," and "[o]ur staffs were as close as they could be. They practically used Signatures (Mr. Abramoff's now

¹ Editorial, The Super Bowl Earmark, *The Washington Post*, March 6, 2005. (Exhibit 1)

² Susan Schmidt and James V. Grimaldi, Abramoff Pleads Guilty to 3 Counts; Lobbyist to Testify About Lawmakers in Corruption Probe, *The Washington Post*, January 4, 2006. (Exhibit 2)

³ Susan Schmidt, Tribal Grant is Being Questioned; Senator Who Had Dealings With Lobbyist Abramoff Pushed for Award, *The Washington Post*, March 1, 2005. (Exhibit 3)

⁴ Mary C. Jalonick, In reversal, Burns to return money from convicted lobbyist, *Associated Press*, December 16, 2005. (Exhibit 4)

⁵ Charles Johnson, Burns tops donation list of lobbyist, *Billings Gazette*, May 24, 2005. (Exhibit 5)

⁶ Jalonick, *Associated Press*, Dec. 16, 2005.

defunct restaurant) as their cafeteria.”⁷ Sen. Burns has denied being influenced by Mr. Abramoff.⁸

Tribal Gaming

Mr. Abramoff’s largesse to Sen. Burns benefited Mr. Abramoff’s clients. At least \$80,000 in donations from tribal clients of Mr. Abramoff appears to have been directly intended to influence particular official actions taken by Sen. Burns.⁹ In 2004, Sen. Burns applied pressure to the Interior Department to direct a \$3 million federal grant intended for poor tribal schools to the Saginaw Chippewa tribe of Michigan, one of the wealthiest tribes in the country and a client of Mr. Abramoff’s.¹⁰ The tribe owns a posh resort that boasts 4,700 slot machines¹¹ and each member of the tribe receives \$70,000 annually.¹²

In February 2002, Sen. Burns and Sen. Byron Dorgan (D-ND) sent a letter to the Senate Appropriations Committee requesting that it extend funding for the Indian school building program to other tribes.¹³ Sen. Burns’s PAC collected \$70,000 in Abramoff tribal donations during the fiscal quarter in which that letter was sent, as well as a \$2000 contribution to his campaign.¹⁴ In January 2003, Sen. Burns, along with Sen. Debbie Stabenow (D-MI), placed comments in the Congressional Record urging that the Saginaw receive federal school funds.¹⁵ In May 2003, Burns co-wrote a second letter with Chairman of the House Appropriations Subcommittee on the Interior, Rep. Charles Taylor (R-NC), specifically urging the Interior

⁷ David Margolick, Washington’s Invisible Man, *Vanity Fair*, April 2006, at 201 (first parenthetical by the author, second parenthetical added). (Exhibit 6)

⁸ Id.

⁹ John Solomon and Sharon Theimer, Lawmakers helped Abramoff tribes get fed money, collected donations, *Associated Press*, November 24, 2005. (Exhibit 7)

¹⁰ Schmidt, *The Washington Post*, March 1, 2005; Editorial, Lobbyist as Snapping Turtle, *The New York Times*, March 5, 2005. (Exhibit 8)

¹¹ Editorial, Gazette opinion: Burns must uphold higher ethical standards, *Billings Gazette*, April 17, 2005. (Exhibit 9)

¹² Editorial, *The Washington Post*, Mar. 6, 2005.

¹³ Solomon and Theimer, *Associated Press*, Nov. 24, 2005.

¹⁴ Id.

¹⁵ Schmidt, *The Washington Post*, Mar. 1, 2005.

Department to fund the Saginaw's school.¹⁶ Shortly before the letter went out, Burns received \$1,000 from the Saginaw and \$5,000 from another Abramoff tribe.¹⁷ A month later, the Saginaw sent an additional \$2,000.¹⁸

Sen. Burns pressured the Interior Department to reverse its ruling that the tribe was not entitled to receive the federal funds to build a new school. Stymied by Interior's unwillingness to change the rule, Sen. Burns earmarked the money for the Saginaw Chippewa in the 2004 spending bill.¹⁹ Montana state democrats filed a complaint with the Senate Ethics Committee asking the Committee to investigate whether Sen. Burns accepted a bribe to direct the grant to the tribe.²⁰ As a result of the scandal, the Saginaw Chippewa tribe decided to return the \$3 million federal grant.²¹

Mariana Islands

Another pair of Mr. Abramoff's clients that benefited from Sen. Burns's legislative assistance were the Commonwealth of the Northern Mariana Islands and the Saipan Garment Manufacturers Association. The Commonwealth is a United States territory known for questionable labor practices, particularly in its garment industry,²² and Saipan is one of its fourteen islands. Sen. Burns switched his position on a bill related to the Marianas garment industry following intense lobbying by Mr. Abramoff and a donation from one of his Marianas clients.²³

In 1999, the Senate Energy and Natural Resources Committee, of which Sen. Burns is a member, unanimously approved a bill phasing out a worker program that favored the Marianas's

¹⁶ Solomon and Theimer, *Associated Press*, Nov. 24, 2005.

¹⁷ Id.

¹⁸ Id.

¹⁹ Editorial, *The Washington Post*, Mar. 6, 2005.

²⁰ Johnson, *Billings Gazette*, May 24, 2005.

²¹ Jerry Reynolds, Saginaw Chippewa return Abramoff-tainted funds, *Knight-Ridder Tribune Business News*, April 19, 2006. (Exhibit 10)

²² See, e.g. David Whitney, California Congressman Helped Abramoff Win Contract, *San Jose Mercury News*, August 4, 2006. (Exhibit 11)

²³ Jennifer McKee, Burns Changed Position After Donation, *Billings Gazette*, December 3, 2005. (Exhibit 12)

garment industry.²⁴ In 2000, the committee passed a bill that would have increased federal oversight of the Commonwealth's immigration and labor rules. There is no record of individual committee votes, but the bill went to the Senate floor, where it was not opposed and passed by unanimous consent.²⁵ The bill was never voted on in the House of Representatives.²⁶ The Commonwealth and the Saipan Garment Manufacturers Association then both hired Mr. Abramoff to fight the legislation, paying him \$1.1 million and \$460,000, respectively, in 2001.²⁷ Among the lobbyists on the project was Sen. Burns' former state staff director, Shawn Vassell.²⁸

On May 23, 2001, following at least eight meetings between Mr. Abramoff's lobbying team and Sen. Burns and his staff, Sen. Burns voted against the same immigration and labor bill when it again came before the committee.²⁹ One of those meetings reportedly took place six days before the vote.³⁰

Also, on April 4, 2003, Sen. Burns met with Rita Inos, Commissioner of Education for the Marianas.³¹ Three weeks later, and a month before the vote on the bill, Sen. Burns received a \$5,000 donation to his Friends of Big Sky political action committee from Inos's brother-in-law, Saipan resident Eloy Inos.³² Mr. Inos's employer is a member of the Saipan Garment Manufacturers Association and an owner of garment manufacturing facilities on the Marianas.³³

²⁴ Marianas Records Reveal Burns, Abramoff Connections, *CongressDaily*, December 7, 2005. (Exhibit 13)

²⁵ McKee, *Billings Gazette*, Dec. 3, 2005.

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ *CongressDaily*, Dec. 7, 2005.

³⁰ Id.

³¹ IR State Bureau, Newspaper: Burns met with relative of Abramoff client before vote switch, *Helena Independent Record* (MT), January 25, 2006. (Exhibit 14)

³² Id.

³³ McKee, *Billings Gazette*, Dec. 3, 2005.

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.³⁴ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.³⁵

If, as it appears, Sen. Burns accepted campaign donations in exchange for his actions on behalf of the Saginaw Chippewa tribe, he may have violated the bribery statute.

If, as it appears, Sen. Burns accepted a donation to his political action committee in exchange for his opposition to increase regulation of the Mariana Islands garment industry, he may have violated the bribery statute.

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the Senate, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.³⁶ By using his position as a member of Congress to financially benefit Mr. Abramoff and Mr. Abramoff's tribal clients, Sen. Burns may be depriving his constituents, the Senate, and the United States of his honest services in violation of 18 U.S.C. §1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.³⁷ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.³⁸

³⁴ 18 U.S.C. §201(b)(2)(A).

³⁵ McCormick v. United States, 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

³⁶ 18 U.S.C. §1341.

³⁷ 18 U.S.C. §201(c)(1)(B).

³⁸ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

Sen. Burns, by apparently accepting campaign donations from the Saginaw Chippewa tribe in exchange for his various efforts on their behalf, appears to be in violation of 18 U.S.C. §201(c)(1)(B).

Sen. Burns, by apparently accepting a donation to his political action committee from Eloy Inos in exchange for his opposition to legislation increasing regulation of the Mariana Islands garment industry, appears to be in violation of 18 U.S.C. §201(c)(1)(B).

Improper Conduct

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.”³⁹ This rule is intended to protect the integrity and reputation of the Senate as a whole.⁴⁰ 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. . . .”⁴¹ Sen. Burns’s legislative assistance on behalf of campaign donors, particularly given his role as Chairman of the Indian Affairs and Resources Committee, constitutes improper conduct reflecting on the Senate.

Trip to the 2001 Super Bowl

Sen. Burns’s Appropriations Committee staffer, Ryan Thomas, and Sen. Burns’s chief of staff, Will M. Brooke,⁴² flew to the 2001 Super Bowl on a corporate jet leased by Mr. Abramoff and accompanied by several staff from then-House Majority Leader Tom DeLay’s office.⁴³ During the same junket, these staff also visited a SunCruz gambling ship, partly owned by Mr.

³⁹ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432.

⁴⁰ *Id.*

⁴¹ *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, 88th Cong., 2d Sess. 5 (1964).

⁴² Schmidt, *The Washington Post*, Mar. 1, 2005. Of note, at the end of 2003, Mr. Brooke left Sen. Burns’s office to work for Mr. Abramoff. *Id.*

⁴³ Schmidt, *The Washington Post*, Mar. 1, 2005.

Abramoff.⁴⁴ When news of the trip broke in March 2005, Mr. Brooke claimed that he was told that the trip was funded by Indian tribes.⁴⁵ Neither Sen. Burns nor his aides have stated which tribe allegedly picked up the tab.⁴⁶ According to some news reports, it was SunCruz that actually picked up the tab;⁴⁷ however, there is no clear evidence of this.

The Senate Select Committee on Ethics should investigate the many questions raised by the trip. For example, the Senate gift rules restricts gifts from lobbyists.⁴⁸ Members, officers, and employees of the Senate may not accept “gifts of personal hospitality” from registered lobbyists.⁴⁹ Jack Abramoff was a registered lobbyist.⁵⁰ As a result, neither Sen. Burns nor any member of his staff was permitted to accept reimbursement for travel expenses from Mr. Abramoff. Even if SunCruz, rather than Mr. Abramoff personally, paid the travel expenses, it is unclear whether this would be permissible given that Mr. Abramoff was a part owner of SunCruz.

Second, members and staff of the Senate are only permitted to accept reimbursement for officially related travel.⁵¹ “Reimbursement for necessary expenses for events which are substantially recreational in nature, however, is not considered to be ‘in connection with the duties of a Member, officer or employee . . . and will not be allowed.’”⁵² As examples of travel that may not be accepted, the Senate Ethics Manual includes “charity golf, tennis, fishing, or ski

⁴⁴ John Bresnahan, Burns Goes on Offense Against Ethics Charge, *Roll Call*, March 28, 2005. (Exhibit 15)

⁴⁵ Schmidt, *The Washington Post*, Mar. 1, 2005.

⁴⁶ Bresnahan, *Roll Call*, Mar. 28, 2005.

⁴⁷ Schmidt, *The Washington Post*, Mar. 1, 2005; John Bresnahan, Burns Won't Duck Tribal Controversy, April 11, 2005. (Exhibit 16)

⁴⁸ *Who is a “Lobbyist” for Purposes of the Gifts Rule*, Senate Ethics Manual, ch.2, p. 43; see also Rule 35.2.

⁴⁹ Id.

⁵⁰ See U.S. Senate, Office of Public Records, http://sopr.senate.gov/cgi-win/m_opr_viewer.exe?DoFn=3&LOB=ABRAMOFF,%20JACK%20A.&LOBQUAL==.

⁵¹ Rule 35, Senate Ethics Manual, Travel, p. 44.

⁵² Id. (emphasis in original).

tournaments.”⁵³ A trip to the Super Bowl -- with a side trip to a gambling ship -- seems quite likely to fall into the same category.

Third, Senate rules require staff members to file form RE-1/2 with the Senate Office of Public Records within 30 days after travel is completed.⁵⁴ Moreover, Senators are required to sign authorization forms allowing staff members to accept reimbursement for travel.⁵⁵ Such forms must include a “determination that the travel is in connection with the duties of the employee as an officeholder, and would not create the appearance that the employee is using public office for private gain.”⁵⁶

A review of the travel records maintained by the Senate Office of Public Records reveals that neither Mr. Brooke nor Mr. Thomas ever filed a travel form reporting the trip to Florida.⁵⁷ Given the lack of such filings, Sen. Burns obviously failed to sign any forms authorizing the travel. The question then is whether Sen. Burns was aware that members of his staff went on the Super Bowl trip.

In sum, because a trip to the Super Bowl on a private jet combined with an excursion to a gambling ship clearly creates the appearance that Sen. Burns’s employees were using public office for private gain, because Sen. Burns failed to sign the forms authorizing the trip as required by Senate rules, and because the trip may have been paid for by a registered lobbyist, the Select Committee on Ethics should consider whether Sen. Burns violated the gift rules or the travel rules.

Even if the Committee finds itself unable to determine definitively what Sen. Burns knew about the trip and whether he approved it, the Committee has another option. 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

⁵³ Id.

⁵⁴ Rule 35.2(a)(1), Senate Ethics Manual, Travel, p. 44.

⁵⁵ Senate Rule 35.2(c)(1) through (5).

⁵⁶ Senate Rule 35.2(b)(1) through (4).

⁵⁷ On September 14, 2005, CREW employee Peter Slutsky, with the assistance of Public Records staff members, reviewed the records maintained by the Office of Public Records and discovered that neither Mr. Brooke nor Mr. Thomas has filed travel forms for the 2001 trip to Florida.

which may reflect upon the Senate.”⁵⁸ This rule is intended to protect the integrity and reputation of the Senate as a whole.⁵⁹

The Senate Select Committee on Ethics should investigate whether Sen. Burns engaged in such improper conduct by legislatively earmarking funds to benefit the client of a key campaign donor, and by permitting his staffers to accept an extravagant junket in clear violation of Senate travel rules. The Committee should also investigate whether the campaign contributions made by Mr. Abramoff and the Super Bowl trip for two of Sen. Burns’s key staffers influenced Sen. Burns’s legislative activity.

⁵⁸ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432.

⁵⁹ Id.

SEN. BILL FRIST

Sen. Bill Frist (R-TN), a wealthy doctor-turned-politician, is a second-term Senator, representing Tennessee. He has served as Senate Majority Leader since 2002. Sen. Frist and his campaign committees have engaged in dubious financial activities that evidence possible violations of campaign finance law, securities law and Senate ethics rules.

Senator Frist Violated Federal Campaign Finance Laws

Sen. Frist's financial problems began in June 2000, when he took \$1 million of the donations that had been contributed to his 2000 Senate campaign, Frist 2000, Inc., and invested it in the stock market, where the funds promptly began losing money.¹ This loss was compounded by Sen. Frist's efforts, in November 2000, to collect \$1.2 million he had lent his 1994 Senate campaign committee, Bill Frist for Senate, Inc., out of his personal funds.² Of the \$6.6 million Sen. Frist had lent his 1994 committee, \$1.2 million still had not been repaid by the end of 2000.³ As a result of the stock market losses, however, Frist 2000, Inc. did not have enough money to repay the loan.⁴

Sen. Frist solved this problem by having the 1994 and the 2000 campaign committees jointly take out a \$1.44 million bank loan at a cost of \$10,000 a month in interest.⁵ While loan documents demonstrate that the two campaign committees jointly borrowed the money, it was Sen. Frist who personally signed the promissory note in two places: as President of Bill Frist for Senate, Inc. and as President of Frist 2000, Inc.⁶ On November 28, 2000, Sen. Frist used that money to pay himself back with a check for \$1.25 million.⁷

¹ Bob Kemper and Tom Baxter, Frist's Political Funds in Disarray: Questions, Criticism, *Atlanta Journal-Constitution*, June 12, 2005. (Exhibit 1)

² Id.

³ Paul Kane, CREW Hits Frist With FEC Complaint, *Roll Call*, June 28, 2005. (Exhibit 2)

⁴ Kemper and Baxter, *Atlanta Journal-Constitution*, June 12, 2005.

⁵ Id.

⁶ Promissory Note, November 24, 2000. (Exhibit 3)

⁷ Id.; see also Kane, *Roll Call*, June 28, 2005.

Although bank records show Frist 2000, Inc. as the borrower, Frist 2000 failed to report this debt on its Federal Election Commission (“FEC”) disclosure forms.⁸ Instead, Sen. Frist’s 1994 campaign committee, Bill Frist for Senate, Inc., which was then dormant, was the only committee to declare the loan, making it difficult for the Senator’s donors and political opponents to understand how financially unstable his campaign really was.⁹

The Federal Election Campaign Act requires each treasurer of a political committee to file reports of receipts and disbursements signed by the treasurer.¹⁰ Any loans made or received by the political action committee must be included in those reports.¹¹ The fact that the \$1.44 million loan was disclosed only by one authorized committee, Bill Frist for Senate, Inc., and not also by Frist 2000, Inc., even though the two committees jointly took out the loan, suggests that Frist 2000, Inc. committed a knowing and willful violation of the reporting requirements of 2 U.S.C. §434(b). Moreover, Sen. Frist’s financial activities are of concern not only because they indicate illegality, but also because they suggest that the Senator went to great lengths to protect his own fortune, while squandering the money of his contributors.

In June 2006, the FEC released a Conciliation Agreement, finding that Sen. Frist’s campaign committee violated the law by failing to report the loan on the 2000 Year End Report, as well as failing to report the repayment of the loan in the 2001 Mid Year Report.¹² The FEC fined Frist 2000 \$11,000.¹³

According to the Senate Ethics manual, “[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

⁸ Kemper and Baxter, *Atlanta Journal-Constitution*, June 12, 2005; *see also* Year End Report of Bill Frist for Senate, Inc., Schedule C, filed January 31, 2005. (Exhibit 4)

⁹ Kemper and Baxter, *Atlanta Journal-Constitution*, June 12, 2005; *see also* Frist Says No Attempt to Hide Campaign Finance Laws, *Associated Press*, July 15, 2005. (Exhibit 5)

¹⁰ 2 U.S.C. § 434(a)(2).

¹¹ 2 U.S.C. §§ 434(b)(2)(G) and (H).

¹² FEC Conciliation Agreement, In the Matter of Frist 2000, Inc., May 26, 2006. (Exhibit 6)

¹³ Id.

as “improper conduct which may reflect upon the Senate.”¹⁴ The drafters of the rule intended to protect the integrity and reputation of the Senate as a whole.¹⁵

In a case with precedential value here, in 1980, the Select Committee on Ethics investigated financial irregularities in the office of Senator Herman Talmadge (D-GA) regarding, among other things, inaccurate financial disclosure and reporting and the failure to timely and properly file campaign disclosures.¹⁶ Finding that Sen. Talmadge “either knew, or should have known, of these improper acts and omissions,” the Committee recommended and the Senate adopted a finding that the Senator’s conduct was “reprehensible and tends to bring the Senate into dishonor and disrepute and is hereby denounced.”¹⁷

Similarly, Sen. Frist’s conduct -- violating federal campaign finance laws that he either knew about or should have known about, and protecting his own fortune while squandering the money of campaign contributors -- requires the Senate Select Committee on Ethics to investigate whether Sen. Frist violated Senate ethics rules as well as federal law.

Senator Frist May Have Engaged in Insider Trading

In June 2005, Sen. Frist sold all of his stock, as well as the stock of his wife and children, in HCA, Inc., his family’s hospital corporation.¹⁸ Shortly thereafter, the value of the stock dropped by 9% when the company disclosed that hospital admissions of insured patients had been lower than expected.¹⁹ Sen. Frist’s brother sits on HCA, Inc.’s board of directors.²⁰ For many years, Sen. Frist has maintained that, because he put the stock in a blind trust, his stock holdings in the hospital posed no conflict of interest, despite the fact that his work in the Senate has often included legislation on health care matters.²¹ Blind trusts generally require assets to be

¹⁴ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432.

¹⁵ Id.

¹⁶ Id. at 434.

¹⁷ Id.; S. Rep. No. 96-337, 96th Cong., 1st sess. 18 (1979).

¹⁸ R. Jeffrey Smith and Jeffrey H. Birnbaum, Frist Stock Sale Raises Questions on Timing, *The Washington Post*, September 22, 2005. (Exhibit 7)

¹⁹ Id.

²⁰ Id.

²¹ Id.

turned over to a trustee who manages them without divulging any purchases or sales.²² It was Sen. Frist, however, not the trustee who made the decision to sell the HCA, Inc. stock.²³

In addition to the HCA stock that Sen. Frist maintained in the qualified blind trust, the Senator also held HCA stock in a family investment partnership.²⁴ Sen. 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 2002.²⁵ Sen. 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.²⁶ 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.²⁷

Senator Frist began transferring the stock in stages into the Senate-approved trust in 2001 and 2002.²⁸ 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.²⁹

Press reports indicate that Sen. 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 admitted. Although Sen. 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.³⁰ Since 2001, the trustees have written to Sen. Frist and the Senate on at least 15 separate occasions detailing the sale of assets from or the contribution of

²² Jonathan M. Katz, Senator Sold Stock Before Price Dropped, *Associated Press*, appearing in *The Washington Post*, September 21, 2005. (Exhibit 8)

²³ Smith and Birnbaum, *The Washington Post*, Sept. 22, 2005.

²⁴ Larry Margasak and Jonathan M. Katz, Frist Accumulated Stock Outside Trusts, *Associated Press*, appearing in, USA Today, October 11, 2005. (Exhibit 9)

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Margasak and Katz, *Associated Press*, Oct. 11, 2005.

²⁹ Id.

³⁰ Jeffrey H. Birnbaum, Letters Show Frist Notified of Stocks in 'Blind' Trusts, Documents Contradict Comments on Holdings, *The Washington Post*, October 24, 2005. (Exhibit 10)

assets to the Senate-approved trust.³¹ Moreover, at least four of those letters reference HCA stock.³² 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 \$50,000.³³ Thus, the HCA stock held in the Bowling Avenue Partnership combined with the letters sent to Sen. Frist by his trustees demonstrate that Sen. 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, Sen. Frist claimed “as far as I know, I own no HCA stock.”³⁴ Reportedly, Sen. 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.”³⁵ These statements are obviously at odds with the truth: Sen. Frist was well aware that he owned HCA stock.

Ethics experts have questioned the terms of Sen. Frist’s blind trust.³⁶ The former executive director of the non-partisan Center for Responsive Politics, Larry Noble, stated that in a blind trust, “[s]omebody else is supposed to have control over it to avoid potential conflicts of interest.”³⁷ Recognizing that the Senate Ethics Committee had previously ruled that Sen. Frist’s holdings in HCA, Inc. did not present a conflict of interest for Sen. Frist, Republican ethics expert Jan Baran asked: “why did he sell the stock at that time? What conflicts arose in June that

³¹ *Id.*

³² 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 Frist re: Senator William H. Frist Qualified Trust for his Child Bryan E., January 14, 2002; Letter from Nancy Felton-Elkins to Senator William 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. (Exhibit 11)

³³ Letter from M. Kirk Scobey, Jr. To Senator William H. Frist re: WHF 2000 Qualified Blind Trust #12991, December 20, 2002 .

³⁴ Birnbaum, *The Washington Post*, Oct. 24, 2005.

³⁵ David D. Kilpatrick, Frist Sale of Hospital Stock Spurs Inquiries Into Trusts, *The New York Times*, September 24, 2005. (Exhibit 12)

³⁶ Smith and Birnbaum, *The Washington Post*, Sept. 22, 2005.

³⁷ *Id.*

did not exist beforehand?”³⁸ Mr. Baran further noted that the Securities and Exchange Commission (“SEC”) might find the answer to this question important.³⁹

In fact, Sen. Frist’s stock sale is being investigated by the SEC and the United States Attorney’s Office for the Southern District of New York.⁴⁰ Sen. Frist’s spokesperson confirmed that the Senator has been contacted about the sale by both the SEC and the U.S. Attorney’s Office.⁴¹ Separately, an HCA, Inc. spokesperson disclosed that the company had received a subpoena from the U.S. Attorney’s Office and that the summons requires the company to turn over documents that appear related to the stock sale.⁴² In addition, other shareholders with close ties to HCA, Inc.’s leaders also sold off stock in the weeks leading up to the earnings announcement.⁴³

Sen. Frist’s comments following the stock sale also lead to troubling questions. A spokesperson for Sen. Frist said the decision to sell the stock was based “purely on wanting to avoid any future appearances of conflict.”⁴⁴ Sen. Frist’s office also claimed that the sale occurred in June, at least in part, because he was being criticized for the conflict of interest, yet all of the criticism provided by the spokesperson occurred before May 2004.⁴⁵ The question arises: why would Sen. Frist suddenly become so concerned about a possible conflict created by his ownership of HCA stock when he had denied the existence of any such conflict for the preceding 10 years?

Moreover, when asked whether he had spoken with anyone at HCA about the sale, Sen. Frist’s office initially stated that the senator had not discussed the sale in advance with any HCA

³⁸ Id.

³⁹ Id.

⁴⁰ Elana Schor, Frist’s Selling Of Stock Triggers Investigation, *The Hill*, September 23, 2005. (Exhibit 13)

⁴¹ Id.

⁴² Id.

⁴³ Paul Davies, David Rogers, Deborah Solomon, Inquiry Into Stock Sales by Frist Widens as HCA Gets Subpoena, *Wall Street Journal*, September 24, 2005. (Exhibit 14)

⁴⁴ Smith and Birnbaum, *The Washington Post*, Sept. 22, 2005.

⁴⁵ Id.

executive.⁴⁶ The next day, however, Sen. Frist issued another statement, this one stating that he “had no information about the company or its performance that was not available to the public when he directed the trustees to sell the HCA stock. His only objective in selling the stock was to eliminate the appearance of a conflict of interest.”⁴⁷ Comparing the two statements, Sen. Frist’s clarification indicates that he well may have discussed the stock sale with somebody at HCA.

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 which may reflect upon the Senate.”⁴⁸ This rule is intended to protect the integrity and reputation of the Senate as a whole.⁴⁹ 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 . . .”⁵⁰

The evidence strongly suggests that Sen. Frist may have sold his HCA stock based on insider knowledge that the stock’s value was about to drop. Not only would such conduct violate federal securities laws, it would also constitute improper conduct which may reflect upon the Senate, making it an appropriate matter for the Ethics Committee to investigate. In addition, Sen. Frist’s repeated claims that he did not know whether he held any HCA stock, despite clear evidence that he was aware that he held the stock, constitute improper conduct reflecting on the Senate.

Should the Senate be hesitant to find that Sen. Frist’s conduct reached the level of improper conduct, the Select Committee on Ethics also has the option of 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

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432.

⁴⁹ *Id.*

⁵⁰ *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, 88th Cong., 2d Sess. 5 (1964).

be condoned or should otherwise be criticized in a public statement by the Committee.”⁵¹ For example, the Committee has found that Senator Dennis DeConcini’s “intervention with regulators gave [the] appearance of being improper and was attended with insensitivity and poor judgment”; that Senator John McCain “exercised poor judgment in intervening with regulators”; and that Senator Al D’Amato “conduct[ed] the business of his office in an improper and an inappropriate manner . . .”⁵²

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.

⁵¹ Senate Ethics Manual at 435.

⁵² Id., fn. 19.

SEN. RICK SANTORUM

Sen. Rick Santorum (R-PA) is a second-term Senator, representing Pennsylvania. Sen. Santorum's ethics issues stem from the manner in which he funded his children's education and his misuse of his legislative position in exchange for contributions to his political action committee and his re-election campaign.

School Funding

Sen. Santorum has admitted that he lives with his family in Leesburg, Virginia, spending "maybe a month a year, something like that" in a home he owns in Penn Hills, Pennsylvania.¹ From 2001 to 2005,² five of Sen. Santorum's six children attended a Pennsylvania cyber charter school in Penn Hills, PA, at an estimated cost to local taxpayers of \$72,000.³ Cyber-school students attend classes via the internet, for which the connection is paid by the school; they use school-provided computers, textbooks, and evaluations services.⁴ Under Pennsylvania law, local school districts are required to pay for the tuition of students in their district who choose the cyber-school option.⁵

In Virginia, where Sen. Santorum owns a house and lives with his wife and children, state law only requires local school districts to pay for the private education of

¹ Transcript: *Meet the Press*, September 3, 2006 (Exhibit 1); *see also* Vera Miller, Taxes pay Santorums' tuition costs, *Pittsburgh Tribune-Review*, November 6, 2004. (Exhibit 2)

² Some of Sen. Santorum's five children began attending the charter school during the 2001-2002 school year, while others began during the 2003-2004 school year. Eleanor Chute and James O'Toole, State Agrees to Pay Penn Hills Schools for Santorum; Accord Doesn't Address Residency, *Pittsburgh Post-Gazette*, September 2, 2006. (Exhibit 3)

³ Chute and O'Toole, *Pittsburgh Post-Gazette*, Sept. 2, 2006. Sen. Santorum argued that the amount was closer to \$34,000. Carrie Budoff, Pa. Ruling favors Santorum; A school district should not be repaid for his children's tuition, *The Philadelphia Inquirer*, July 12, 2005. (Exhibit 4)

⁴ Daniel Reynolds, Santorum school flap continues, *Pittsburgh Tribune-Review*, November 19, 2004. (Exhibit 5)

⁵ Eleanor Chute, Penn Hills studying Santorum issue; Residency question fans debate on cost of cyber-education senator's children, *Pittsburgh Post-Gazette*, November 14, 2004. (Exhibit 6)

students who have disabilities and are enrolled in schools which cannot satisfactorily meet their needs.⁶ Otherwise, Virginia children must attend their local public schools.⁷

When Sen. Santorum first ran for Congress, he lived in Mt. Lebanon and commuted to Washington.⁸ After he was elected to the Senate in 1994, he sold the Mt. Lebanon house and bought a home in Herndon, Virginia.⁹ In 1997, Sen. Santorum purchased a house in Penn Hills for \$87,800.¹⁰ In 2001, the Santorums sold the Herndon house and bought a house in Leesburg, Virginia for \$643,361 (reportedly valued at \$757,000 in 2004).¹¹ Notably, Sen. Santorum receives a homestead exemption tax break on his Penn Hills residence, which is granted to individuals who use their homes as their primary residence, even though he has admitted to living in Leesburg most of the time.¹²

On November 17, 2004, Penn Hills School Superintendent Patricia Gennari telephoned the Senator to arrange for the district to query him about his residency.¹³ That evening, Sen. Santorum issued a statement saying that he decided to pull his children out of the cyber school after learning that “only children who live in a community on a full-time basis” are eligible for tuition money.¹⁴ The next day, the Senator stated that he wanted to keep two of his children enrolled in the online classes.¹⁵ On November 19, 2004, the Pennsylvania Cyber Charter School responded that the children could continue taking classes, but not for a grade and only if the Senator paid for their tuition.¹⁶

⁶ Miller, *Pittsburgh Tribune-Review*, Nov. 6, 2004.

⁷ *Id.*

⁸ Chute, *Pittsburgh Post-Gazette*, Nov. 14, 2004.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Reynolds, *Pittsburgh Tribune-Review*, Nov. 19, 2004.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Reid R. Frazier, Santorum’s kids can stay in class, but it won’t count, *Pittsburgh Tribune-Review*, November 20, 2004. (Exhibit 7)

¹⁶ *Id.*

In December 2004, Superintendent Gennari sent a letter to the Pennsylvania Department of Education questioning whether Penn Hills had to pay for the education of Sen. Santorum's children at the cyber school.¹⁷ Sen. Santorum announced he would register his children for home schooling in Penn Hills, claiming that it was "absurd" to conclude that he does not live there.¹⁸

In August 2005, the school district board changed its cyber school policy to allow students of families sometimes living outside the district to receive free tuition for their children. Specifically, the changed rule provides that federal elected officials, military personnel and humanitarian and emergency workers called to work temporarily out of the state do not have to meet the residency requirements for cyber-schooling.¹⁹ Although the Penn Hills school district initially lost its bid to recover tuition it had paid to educate Sen. Santorum's children at the cyber school, the Pennsylvania Department of Education agreed to settle the matter in September 2006, by offering the district \$55,000.²⁰

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."²¹ This rule is intended to protect the integrity and reputation of the Senate as a whole.²²

The fact that Sen. Santorum ignored the Penn Hills school district's residency requirements and enrolled his children in a cyber school in Pennsylvania at a time when the children clearly resided in Virginia -- at significant cost to Pennsylvania taxpayers -- demonstrates a level of dishonesty that brings the reputation and integrity of the Senate into question. As a result, the Select Committee on Ethics should investigate this matter.

¹⁷ Eleanor Chute, Penn Hills school district challenges Santorum residency, *Pittsburgh Post-Gazette*, December 10, 2004. (Exhibit 8)

¹⁸ Id.

¹⁹ Reid Frazier, Board revises cyber policy, *Pittsburgh Tribune-Review*, August 11, 2005. (Exhibit 9)

²⁰ Chute and O'Toole, *Pittsburgh Post-Gazette*, Sept. 2, 2006.

²¹ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432.

²² Id.

Legislative Assistance in Exchange for Campaign Donations

AccuWeather

Two days before he introduced a bill that would benefit private national weather companies, Sen. Santorum's political action committee, America's Foundation, received a \$2,000 donation from the chief executive officer of AccuWeather, Inc., a leading weather data provider located in State College, PA.²³

Sen. Santorum's bill, titled the National Weather Services Duties Act of 2005,²⁴ would have required the taxpayer-funded National Weather Service to collect weather information using taxpayer money, but only distribute it to private sector weather companies like AccuWeather and the Commercial Weather Services Association (CWSA).²⁵ The National Weather Service would be permitted to share weather information directly with the public only in the case of severe weather.²⁶

AccuWeather has key political ties to Sen. Santorum. According to Political Moneyline, which tracks campaign money, AccuWeather Chief Executive Officer Joel Myers, and his brother, Barry Myers, also the company's executive vice president, together have contributed over \$40,000 to Sen. Santorum and the Republican Party since 2003.²⁷ Furthermore, the Legislative Committee Chairman of CWSA, another private sector weather company, is employed by AccuWeather. Reports indicate that CWSA has brought on board several skilled and well-connected lobbyists -- including former senior congressional staffers -- to assist in getting Sen. Santorum's bill, which initially appeared unlikely to be ratified because it was too broadly phrased, passed through Congress.²⁸

Sen. Santorum's legislation caused a stir in the aftermath of Hurricane Katrina, when he stated in an interview with a local Philadelphia radio station that the National Weather Service failed to predict the storm's fury and that its warnings were "not

²³ Kimberly Hefling, Critics question timing of AccuWeather donation, Santorum's Weather Service bill, *Associated Press*, May 27, 2005. (Exhibit 10)

²⁴ S.786, 109th Congress.

²⁵ Richard Schwartz and Michael G. Sciulla, Behind the Buoy, *Boat U.S. Magazine*, September 2005. (Exhibit 11)

²⁶ Id.

²⁷ www.politicalmoneyline.com. (Exhibit 12)

²⁸ Schwartz and Sciulla, *Boat U.S. Magazine*, Sept. 2005.

sufficient.”²⁹ In response, Paul Greaves, President of the National Weather Service Employees Organization said in a statement: “We did our job well and everyone knows it. By falsely claiming that we got it wrong, Rick Santorum is continuing his misguided crusade against the National Weather Service.”³⁰ Mr. Greaves continued to say it was unfortunate that the Senator “would try to use this tragedy to push his own agenda. Senator Santorum’s comments are aimed at jump starting his bizarre stalled legislation to undermine the mission of the National Weather Service, legislation that has failed to garner the support of even one of his colleagues in the U.S. Senate.”³¹

In fact, the early warnings about Hurricane Katrina issued by the National Weather Service have been praised for their accuracy. The *Associated Press* stated the National Weather Service and the National Hurricane Center “forecast the path of the storm and the potential for devastation with remarkable accuracy.”³² *The New York Times* noted that the National Weather Service issued a bulletin on August 28, the day before Katrina struck, with the headline, “A most powerful hurricane with unprecedented strength.”³³ *NBC Nightly News* reported that on August 28, National Weather Service meteorologist Robert Ricks sent out a bulletin stating that as a result of the hurricane, “[m]ost of the area will be uninhabitable for weeks, perhaps longer. At least one half of well constructed homes will have roof and wall failure . . . The vast majority of native trees will be snapped or uprooted . . . [and] water shortages will make human suffering incredible by modern standards.”³⁴ Such warnings hardly seem insufficient.

The Library of Congress reports that the bill, S.786, has been read twice to the Senate Committee on Commerce, Science, and Transportation, where it was referred

²⁹ Sean D. Hamill, Santorum Gets Heat from Weather Service Union, *Associated Press*, appearing in, *Centre Daily Times*, September 10, 2005. (Exhibit 13)

³⁰ Charles Babington, Some GOP Legislators Hit Jarring Notes in Addressing Katrina, *The Washington Post*, September 10, 2005. (Exhibit 14)

³¹ Maeve Reston, Santorum criticizes weather service has sponsored bill to prevent government weather notices, to benefit private companies, including donor, *Pittsburgh Post-Gazette*, September 10, 2005. (Exhibit 15)

³² John Pain, Federal Forecasters Got Hurricane Right, *Associated Press*, September 16, 2005. (Exhibit 16)

³³ Urgent Warning Proved Prescient, *The New York Times*, September 7, 2005. (Exhibit 17)

³⁴ Transcript, *NBC Nightly News*, September 15, 2005. (Exhibit 18)

upon its introduction in April 2005, but no other action has been taken.³⁵ Sen. Santorum continues to be the bill's sole sponsor.³⁶

U.S. Tobacco Corporation

On October 11, 2004, the U.S. Senate passed a \$137 billion corporate tax bill that included a \$10 billion industry buyout of tobacco farmers.³⁷ A bipartisan group of senators had attempted to amend the bill to allow the Food and Drug Administration to regulate the tobacco industry.³⁸ Sen. Santorum cast a crucial vote in the House-Senate conference committee against the provision.³⁹ On October 12, the day after the final bill was passed, the U.S. Tobacco Corporation's PAC, U.S. Team, donated \$3,000 to Sen. Santorum's Leadership PAC, America's Foundation, capping off \$9,000 worth of donations to America's Foundation over the preceding 16 months.⁴⁰ That donation exceeded all previous Team PAC donations to America's Foundation by \$1,000.⁴¹ Three weeks later on election day, November 2, 2004, when the Republican party retained control of Congress and Sen. Santorum retained his place as the third most powerful member of the Senate, four U.S. Team executives donated a total of \$10,000 to America's Foundation.⁴²

³⁵ www.thomas.gov (Library of Congress Legislative Service). (Exhibit 19)

³⁶ Id.

³⁷ Sumana Chatterjee, Senate OKs \$137 billion in tax breaks, *The Philadelphia Inquirer*, October 12, 2004. (Exhibit 20)

³⁸ Id.

³⁹ Will Bunch, With a Little Help From His Friends: An investigation into the private and public finances of Rick Santorum suggests that the Senate GOP might want to reconsider making him its ethics czar, *American Prospect Online*, March 10, 2006, <http://www.prospect.org/web/page.wv?section=root&name=ViewPrint&articleId=11174> (Exhibit 21)

⁴⁰ www.politicalmoneyline.com. (Exhibit 22)

⁴¹ Id.

⁴² www.politicalmoneyline.com. (Exhibit 23)

Beer Companies

The Miller Brewing Company PAC and Anheuser-Busch PAC donated a total of \$6,000 to America's Foundation in the fall of 2004.⁴³ Just six months later, Sen. Santorum introduced legislation designed to reduce by half the federal excise tax large brewers have to pay on beer, from \$18 to \$9 per barrel.⁴⁴

Puerto Rico

On one day -- December 31, 2003 -- America's Foundation received \$48,765 from donors in Puerto Rico.⁴⁵ Hospital executives and administrators and others whose occupation denotes their association with the healthcare industry were responsible for \$34,500 of that total.⁴⁶ Previously, in April of that year, Sen. Santorum introduced the Medicare Puerto Rico Hospital Payment Parity Act of 2003 and reportedly "pushed to get reimbursement moneys for Puerto Rico in the reform package enacted by Congress that same year."⁴⁷

On April 20, 2005, Sen. Santorum introduced the Puerto Rico Medicare Reimbursement Equity Act of 2005.⁴⁸ Since then, Sen. Santorum's campaign committee has received a total of \$44,750 from donors in Puerto Rico, including \$10,000 from healthcare executives and administrators.⁴⁹ The coincidence of the timing of these donations with Sen. Santorum's Puerto Rico healthcare legislation raises serious questions as to the motivations behind the Senator's legislative interest in the Commonwealth.

Energy Interests

Energy interests have also contributed heavily to Sen. Santorum and America's Foundation. According to the *American Prospect Online*, "[n]o one has been a bigger governmental supporter" of a \$612-million coal-to-diesel fuel plant being built in

⁴³ www.politicalmoneyline.com. (Exhibits 24 and 25)

⁴⁴ Bunch, *American Prospect Online*, March 10, 2006.

⁴⁵ www.politicalmoneyline.com. (Exhibit 26)

⁴⁶ *Id.*; see also Bunch, *American Prospect Online*, Mar. 10, 2006.

⁴⁷ Bunch, *American Prospect Online*, Mar. 10, 2006.

⁴⁸ Office of Sen. Rick Santorum: Sen. Santorum Introduces Puerto Rico Medicare Reimbursement Equity Act of 2005, April 20, 2005. (Exhibit 27)

⁴⁹ www.politicalmoneyline.com. (Exhibit 28)

Schuylkill County, Pennsylvania. Sen. Santorum inserted a provision in the National Energy Security Act of 2000 to federally subsidize construction of the fuel plant, which came in the form of a \$100 million Department of Energy grant to the builder, Waste Management and Processes, Inc., in 2003. From 2002 to 2006, Waste Management Chief Executive Officer John Rich and his relatives contributed at least \$16,400 to Sen. Santorum's campaign committee,⁵⁰ and in 2001 they contributed at least \$8,500 to America's Foundation.⁵¹

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.⁵² It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁵³

If, as it appears, Sen. Santorum accepted donations to his political campaign committee in exchange for his introduction of legislation and statements favoring AccuWeather, Inc., he may have violated the bribery statute.

If, as it appears, Sen. Santorum accepted donations to his political action committee in exchange for fighting the tobacco regulation amendment to the 2003 corporate tax bill, he may have violated the bribery statute.

If, as it appears, Sen. Santorum accepted donations to his political action committee in exchange for his introduction of legislation to halve the per-barrel excise tax on beer sold by large brewers, he may have violated the bribery statute.

If, as it appears, Sen. Santorum accepted donations to his political action committee in exchange for his introduction of and support for legislation benefiting the healthcare industry in Puerto Rico, he may have violated the bribery statute.

⁵⁰ www.politicalmoneyline.com. (Exhibit 29)

⁵¹ www.politicalmoneyline.com. (Exhibit 30); *see also* Bunch, *American Prospect Online*, Mar. 10, 2006.

⁵² 18 U.S.C. §201(b)(2)(A).

⁵³ McCormick v. United States, 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

If, as it appears, Sen. Santorum accepted donations to his campaign and political action committee in exchange for his support for federal construction subsidies for the Schuylkill County fuel plant, he may have violated the bribery statute.

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the Senate, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.⁵⁴ By using his position as a member of Congress to financially benefit those who have made contributions to his campaign committee and political action committee, Sen. Santorum may be depriving his constituents, the Senate, and the United States of his honest services in violation of 18 U.S.C. §1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.⁵⁵ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.⁵⁶

Sen. Santorum, by apparently accepting donations to his political campaign from AccuWeather Business Executive Barry Myers and President Joel Myers in exchange for his actions favoring AccuWeather, appears to be in violation of U.S.C. §201(c)(1)(B).

Sen. Santorum, by apparently accepting donations to his PAC from U.S. Team PAC and U.S. Tobacco executives in exchange for his actions against the tobacco regulation amendment, appears to be in violation of U.S.C. §201(c)(1)(B).

Sen. Santorum, by apparently accepting donations to his PAC from Miller and Anheuser-Busch Brewing companies in exchange for his introduction of legislation designed to halve the federal excise tax on barrels of beer, appears to be in violation of 18 U.S.C. §201(c)(1)(B).

⁵⁴ 18 U.S.C. §1341.

⁵⁵ 18 U.S.C. §201(c)(1)(B).

⁵⁶ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

Sen. Santorum, by apparently accepting donations to his PAC and political campaign from donors in the Puerto Rico health industry in exchange for his sponsorship of the Medicare Puerto Rico Hospital Payment Parity Act of 2003 and the Puerto Rico Medicare Reimbursement Equity Act of 2005 appears to be in violation of 18 U.S.C. §201(c)(1)(B).

Sen. Santorum, by apparently accepting donations to his campaign and PAC from the Chief Executive Officer of Waste Management Processes and his family in exchange for support for federal subsidies for Waste Management's construction of the Schuylkill fuel plant, appears to be in violation of 18 U.S.C. §201(c)(1)(B).

Improper Conduct

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.”⁵⁷ This rule is intended to protect the integrity and reputation of the Senate as a whole.⁵⁸ 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. . .”⁵⁹ Sen. Santorum’s legislative assistance on behalf of donors to his campaign and political action committee, particularly given his role as Chair of the Republican Caucus, constitutes improper conduct reflecting on the Senate.

Violation of the Senate Gift Rule by Accepting a Special Loan

In 2002, Sen. Santorum and his wife received a \$500,000 five-year mortgage for their Leesburg, Virginia home from a small, private Philadelphia bank, The Philadelphia Trust Company (“Philadelphia Trust”), that makes loans only to affluent investors.⁶⁰ Philadelphia Trust advertises itself as an independent private bank for investors who have

⁵⁷ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432.

⁵⁸ Id.

⁵⁹ 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, 88th Cong., 2d Sess. 5 (1964). (Exhibit 31)

⁶⁰ Will Bunch, PAC-man’s game, *Philadelphia Daily News*, February 21, 2006.

liquid assets of at least \$250,000.⁶¹ The bank's web site states that "banking services are available only to investment advisory clients whose portfolios we manage, oversee or administer."⁶² The bank confirmed to the *Philadelphia Daily News* that it offers mortgages only to investors and not to the general public.⁶³

Sen. Santorum's financial disclosure forms for 2001 and 2002 show no investment portfolio with Philadelphia Trust. Moreover, in 2002, the year Sen. Santorum obtained the mortgage, his financial disclosure forms indicate that his investments did not exceed \$145,000.⁶⁴

Rule 35, paragraph 1(a)(1) of the Senate Code of Official Conduct states that "No Member, officer or employee of the Senate shall knowingly accept a gift except as provided in this rule."⁶⁵ The Ethics Manual defines "gift" to mean "any gratuity, favor, discount, entertainment, hospitality, **loan**, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred."⁶⁶

Rule 35, paragraph 1(c)(19)(E) allows Members, officers, and employees to accept opportunities and benefits that are available to a wide group, specifically providing that they may accept "loans from banks and other financial institutions on terms **generally available to the public**."⁶⁷

Given that "loans" are included in the definition of "gifts," that Sen. Santorum did not meet Philadelphia Trust's clientele criteria, and that the Senator was not, in fact, a bank client at the time he received the mortgage, Sen. Santorum violated Rule 35 by accepting a mortgage from Philadelphia Trust.

⁶¹ Id.

⁶² See <http://www.philadelphiatrust.com/pages/banking.htm>. (Exhibit 32)

⁶³ Bunch, *Philadelphia Daily News*, Feb. 21, 2006.

⁶⁴ Amendment to United States Senate Public Financial Disclosure Report for Annual and Termination Reports, p. 3, filed by Sen. Richard J. Santorum, May 13, 2003. (Exhibit 33)

⁶⁵ Senate Ethics Manual, Select Committee on Ethics, U.S. Senate, p. 314 (2003 ed.).

⁶⁶ Senate Rule 35, paragraph 2(b)(1) (*emphasis added*).

⁶⁷ Senate Ethics Manual at 40 (*emphasis added*).

It is also notable that officials with Philadelphia Trust have contributed to Sen. Santorum's campaigns since the bank first opened in 1998. Federal Election Commission records show that the company's executives, directors and their spouses have donated \$23,250⁶⁸ to Sen. Santorum's campaign or to his political action committee, America's Foundation. Of that \$23,250, \$13,000 came from Philadelphia Trust Chief Executive Officer Michael Crofton and his wife.⁶⁹

The Senate Ethics Manual states:

The public has a right to expect Members, officers, and employees to exercise impartial judgment in performing their duties. The receipt of gifts, entertainment, or favors from certain persons or interests may interfere with this impartial judgment, or may create an appearance of impropriety that may undermine the public's faith in government.

Although there is no evidence that Sen. Santorum has used his official position to benefit Philadelphia Trust or the bank's Chief Executive Officer, the receipt of the loan from the bank creates exactly the sort of appearance of impropriety that the Gift Rule was designed to address. The Senate Select Committee on Ethics should investigate this likely infraction and take appropriate disciplinary action against Sen. Santorum.

⁶⁸Although the *Philadelphia Daily News* article states that Sen. Santorum received \$24,000 in campaign contributions, upon a review of the data available at opensecrets.org, CREW has concluded that the actual figure is \$23,250. (Exhibit 34)

⁶⁹ *See Id.*

DISHONORABLE MENTIONS

REP. CHRIS CANNON

Rep. Chris Cannon (R-UT) is a fourth-term member of Congress representing Utah's 3rd congressional district. Rep. Cannon's ethics issues stem from abuse of his position to benefit his brother Joseph Cannon, a registered lobbyist.

Joseph Cannon leads a team of ten lobbyists for the law and lobbying firm, Pillsbury Winthrop Shaw Pittman LLP.¹ Representing almost a dozen lobbying clients and specializing in environmental issues, Mr. Cannon has repeatedly sought the assistance of Rep. Cannon to push issues on behalf of his clients.² Rep. Cannon has a financial interest in his brother's lobbying success because Joseph Cannon owes him more than \$250,000 from his unsuccessful 1992 campaign for the U.S. Senate.³

In July 2006, at his brother's request, Rep. Cannon joined three other members in signing a letter that Mr. Cannon's firm helped draft to Rep. Lamar Smith, Chairman of the House Judiciary Subcommittee on Courts, the Internet and Intellectual Property, urging a congressional hearing into a proposed contract that would permit Verisign, Inc. to increase the wholesale price it charges for each dot-com address.⁴ Mr. Cannon represents Network Solutions, a company opposed to the contract because it would result in the company paying higher fees to Verisign.⁵

Mr. Cannon has also lobbied his brother on other issues, including on behalf of their alma mater, Brigham Young University, which last year paid the lobbyist approximately \$70,000 for his services.⁶

When questioned about his brother's role Rep. Cannon stated: "If my wife decided to lobby, then we would probably say 'No Talking to my office.' I just don't see my brother in the same category."⁷ Rep. Cannon continued, "A lot of people I know are lobbyists. I would put Joe

¹ John Solomon, Lawmaker Helped Brother's Lobby Clients, *Associated Press*, August 17, 2006. (Exhibit 1)

² Id.

³ Id.

⁴ Id.

⁵ Solomon, *Associated Press*, Aug. 17, 2006.

⁶ Id.

⁷ Id.

in that category, not as a family member.”⁸

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”⁹ House members are also directed to adhere to 5 C.F.R. §2635.702(a),¹⁰ issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a non-governmental capacity.

Here, not only is Rep. Cannon using his position for his brother’s financial benefit, but because his brother owes him \$250,000, he has a vested interest in his brother’s financial success. In effect, by assisting his brother, Rep. Cannon is improving his own financial status as well.

Even if the Committee on Standards of Official Conduct does not find that Rep. Cannon violated 5 C.F.R. §2635.702(a), he certainly has violated Rule XXIII of the House Ethics Manual, which requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”¹¹ This ethics standard is considered to be “the most comprehensive provision of the code.”¹² When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.¹³ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including:

⁸ Id.

⁹ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

¹⁰ Id.

¹¹ Rule XXIII, clause 1.

¹² House Comm. on Standards of Official Conduct, House Ethics Manual.

¹³ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

the failure to report campaign contributions,¹⁴ making false statements to the Committee,¹⁵ criminal convictions for bribery,¹⁶ or accepting illegal gratuities,¹⁷ and accepting gifts from persons with interest in legislation in violation of the gift rule.¹⁸

Rep. Cannon's intervention into an internet contract business dispute on behalf of his brother's client clearly does not reflect creditably on the House.

¹⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

¹⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

¹⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

¹⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

¹⁸ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

REP. DENNIS HASTERT

Rep. Dennis Hastert (R-IL) is a 10th-term member of Congress, representing Illinois' 14th congressional district. He currently is serving his fourth-term as Speaker of the House. Rep. Hastert's ethics issue stems from his real estate investments near the proposed route of a highway project for which he has secured federal transportation earmarks.

According to newspaper reports, Rep. Hastert made a \$2 million profit on the sale of land several miles away from a highway project called the Prairie Parkway for which he secured \$207 million in federal funds.¹ In 2002, Rep. Hastert purchased a home near Plano, Illinois, along with 195 acres for \$2.1 million.² In February 2004, Rep. Hastert's campaign committee treasurer, Dallas Ingemunson, established Little Rock Trust #225. A week later, through the trust, Rep. Hastert and his business partners purchased a 69-acre parcel for \$340,000, providing road access to part of Rep. Hastert's previously purchased farm that had been landlocked.³

In May 2005, Rep. Hastert transferred 69 acres from his farm to Little Rock Trust #225. During House and Senate negotiations over the highway authorization bill, Rep. Hastert added two separate earmarks: \$152 million to help build a highway project, and \$55 million for an interchange several miles from his property.⁴ Just four months after President Bush signed the legislation that included the \$207 million in earmarks, Little Rock Trust #225 sold Rep. Hastert's parcels for nearly \$5 million to a real estate development firm that has plans to build a 1600-home community, netting Rep. Hastert a \$2 million profit.⁵

Although Rep. Hastert lists several real estate transactions that were executed by Little Rock Trust #225 in his 2005 financial disclosure form, he makes no mention of the trust in the form.⁶ The Kendall County public records show no record of Rep. Hastert making the real estate

¹ Jonathan Weisman, Lawmakers' Profits Are Scrutinized, *Washington Post*, June 22, 2006. (Exhibit 1)

² Id.

³ Id.

⁴ Id.

⁵ Weisman, *Washington Post*, June 22, 2006.; Mike Dorning, James Kimberly, Ray Gibson, Andrew Zajac, Hastert's Wealth is Grounded in Land, *Chicago Tribune*, July 6, 2006. (Exhibit 2)

⁶ Bill Allison, Dennis Hastert's Real Estate Investments, *See* <http://www.sunlightfoundation.com/node/793>, June 14, 2006. (Exhibit 3)

sales because they were all executed by the trust.⁷

5 CFR §2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”⁸ House Members are also directed to adhere to 5 CFR §2635.702(a),⁹ issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a non-governmental capacity.

In addition, House conflict-of-interest rules provide that a Member should never accept “benefits under circumstances which might be construed by reasonable persons as influencing the performance” of his official duties.¹⁰ To do so “would raise the appearance of undue influence or breach of the public trust.”¹¹

By championing \$207 million in federal earmarks from which he would financially benefit, Rep. Hastert may have violated 5 CFR §2635.702(a) and run afoul of House conflict-of-interest rules. As a result, an investigation into Rep. Hastert’s actions is warranted.

Moreover, even if the Committee on Standards of Official Conduct does not find that Rep. Hastert violated 5 CFR §2635.702(a), he certainly has violated Rule XXIII of the House Ethics Manual, which requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”¹² This ethics standard is considered to be “the

⁷ Id.

⁸ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

⁹ Id.

¹⁰ H. Con. Res. 175, 85th Cong., 2d Sess., 72 Stat., pt 2, B12, para. 5 (1958).

¹¹ Id.

¹² Rule XXIII, cl. 1.

most comprehensive provision of the code.”¹³ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.¹⁴ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,¹⁵ making false statements to the Committee,¹⁶ criminal convictions for bribery,¹⁷ or accepting illegal gratuities,¹⁸ and accepting gifts from persons with interest in legislation in violation of the gift rule.¹⁹

Rep. Hastert’s personal profit from earmarks he secured for a road does not reflect creditably on the House.

¹³ House Comm. on Standards of Official Conduct, House Ethics Manual.

¹⁴ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

¹⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

¹⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

¹⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

¹⁸ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

¹⁹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

REP. J.D. HAYWORTH

Rep. J.D. Hayworth (R-AZ) is a sixth-term member of Congress, representing Arizona's 5th congressional district. His ethics issues stem from his relations with Jack Abramoff and the hiring of his wife to run his political action committee.

Connections to Jack Abramoff

Rep. Hayworth is one of the "top tier" representatives allegedly under investigation in relation to the Abramoff case, mainly due to the large number of donations to his campaign and PAC from Abramoff-related Indian tribes.¹ He is among the top Republican recipients of donations from Indian tribes represented by Mr. Abramoff, receiving a total of \$101,620 between 1994 and 2005.² The next highest recipient was Speaker Dennis Hastert (R-IL) with \$69,000.³ Rep. Hayworth has kept the majority of that money; when the return of Abramoff related donations began in the wake of the scandal, Rep. Hayworth chose to donate only \$2,250 to the Salvation Army.⁴

More damaging than the donations, Rep. Hayworth used Mr. Abramoff's skyboxes five times without reporting the costs in his Federal Election Commission filings.⁵ Rep. Hayworth used the skyboxes to hold fundraisers between 1999 and 2001. The value of the contributions was listed, but not the value of the skyboxes, which also must be reported under campaign finance law.⁶ The boxes were located at different sports venues in the Washington, D.C. area: FedEx Field, MCI Center and Camden Yards.⁷ Once the issue became public, Rep. Hayworth stated that he thought the

¹ Jerry Seper and Audrey Hudson, Abramoff-linked Probe Focuses on 5 Lawmakers; 3 Republicans, 2 Democrats Deny Wrongdoing, *The Washington Times*, January 11, 2006. (Exhibit 1)

² Top Recipients by Political Party, *USA Today*, January 5, 2006. Rep. Hayworth is the second highest recipient of funds from all tribes, having received a total of \$525,040 in contributions between 1999 and 2006. www.politicalmoneyline.com. (Exhibit 2)

³ Id.

⁴ Mary Curtius, Janet Hook and John-Thor Dahlburg, GOP Tries to Outrun Scandal, *Los Angeles Times*, January 5, 2006. (Exhibit 3)

⁵ Congressman's Committee Failed to Report Value of Skybox Gifts, *Associated Press*, December 29, 2004. (Exhibit 4)

⁶ 2 U.S.C. § 434(b)(3); 11 C.F.R. § 100.52(d)(1).

⁷ Id.

skyboxes were provided to him by two tribes and that he did not know Mr. Abramoff was the actual contributor.⁸ Rep. Hayworth eventually paid the Choctaw and Chitimacha tribes back \$12,800 for the use of the suites.⁹

Federal campaign law defines “contribution” to include “any gift . . . or anything of value.”¹⁰ “Anything of value” includes all in-kind contributions.¹¹ Federal law requires candidates and their authorized committees in a federal election to report to the FEC, according to a defined schedule, all contributions made to candidates and their authorized committees in a federal election.¹²

Employment of Mary Hayworth

Since 1999, Rep. Hayworth’s wife, Mary, has been the sole paid employee of Rep. Hayworth’s TEAM PAC.¹³ During the last three election cycles, TEAM PAC raised \$560,561.¹⁴ In that time, according to the most recent TEAM PAC disbursements, Ms. Hayworth has collected \$145,212 in fees.¹⁵ In that same time frame, TEAM PAC paid other outside sources over \$58,000 for booking and fundraising.¹⁶ This means that approximately 26 % of the money brought in by TEAM PAC was paid to Ms. Hayworth.

In addition, \$83,000 of the money in the PAC came from Abramoff-related donations.¹⁷ If Rep. Hayworth has been using his PAC to pay money to his wife for their personal enrichment, then it may be a violation of House standards.

⁸ Id.

⁹ Peter Slevin, Arizona Race Tests A Hard Line on Immigration; Six-Term GOP Congressman Faces a Challenge in a State Seen as Moving to the Center, *The Washington Post*, June 12, 2006. (Exhibit 5)

¹⁰ 2 U.S.C. §431(8)(A)(i).

¹¹ 11 CFR 100.52(d)(1).

¹² 2 U.S.C. § 434(a)-(b).

¹³ Joe Kamman, Campaign Committee Nepotism Under Fire; Family Ties Are Legal But Are They Right?, *The Arizona Republic*, April 10, 2005. (Exhibit 6)

¹⁴ www.politicalmoneyline.com. (Exhibit 7)

¹⁵ See www.opensecrets.org. (Exhibit 8)

¹⁶ See www.politicalmoneyline.com (Exhibit 9)

¹⁷ Link Between Abramoff and Mary Hayworth, *KPHO-TV CBS 5, transcribed for Arizona News*, January 16, 2006. (Exhibit 10)

House Rule XXIII

In July 2001, the FEC issued an Advisory Opinion regarding payments by campaign committees to family members.¹⁸ Rep. Jesse Jackson, Jr. (D-IL) sought an opinion as to whether his principal campaign committee could hire his wife as a consultant to provide fundraising and administrative support.¹⁹ Ms. Jackson had previously served as chief of staff for a congressman, press secretary for another congressman and she had worked for national presidential campaigns in 1988 and 1996.²⁰

The FEC noted that the Federal Election Campaign Act prohibits the conversion of campaign funds to personal use.²¹ Generally, personal use is “any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.”²² Certain uses of campaign funds will be considered per se personal use, including “salary payments to family members, unless they are fair market value payments for bona fide, campaign related services.”²³ If a family member is providing bona fide services to the campaign, any salary payment in excess of the fair market value of the services provided is personal use.²⁴

In considering the applicability of these provisions to Rep. Jackson’s request for an opinion, the FEC stated that the campaign committee could hire Ms. Jackson as long as she was paid no more than the fair market value of bona fide services, the contract contained terms customarily found in agreements entered into between paid campaign consultants and candidate committees, and the agreement conformed to the standard industry practice for this type of contract.²⁵

House rules echo this prohibition. Clause 6(b) of Rule XXIII provides that a member “may not convert campaign funds to personal use in excess of an amount representing reimbursement for legitimate and verifiable campaign expenditures.”

¹⁸ Federal Election Commission, AO 2001-20, July 17, 2001.

¹⁹ Id.

²⁰ Id.

²¹ 2 U.S.C. § 439a; 11 CFR § 113.2(d).

²² 11 CFR § 113.1(g).

²³ 11 CFR § 113.1(g)(1)(i).

²⁴ 11 CFR § 113.1(g)(1)(i)(H).

²⁵ FEC, AO 2001-20.

According to the Campaign Booklet published by the House Committee on Standards of Official Conduct, the Committee has taken the position that members “must observe these provisions strictly.”²⁶ With respect to the purchase of campaign services from a relative of the member, the Campaign Booklet provides specifically:

Such a transaction is permissible under the House Rules only if (1) there is a bona fide campaign need for the goods, services or space, and (2) the campaign does not pay more than fair market value in the transaction . . . If a Member’s campaign does enter into such a transaction with the Member or a member of his or her family, the campaign’s records must include information that establishes both the campaign’s need for and actual use of the particular goods, services or space, and the efforts made to establish fair market value for the transaction.²⁷

TEAM PAC’s employment of Mrs. Hayworth appears to violate this rule.

Conduct Not Reflecting Creditably on the House

In addition, Rep. Hayworth has violated the rule requiring all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”²⁸ This ethics standard is considered to be “the most comprehensive provision of the code.”²⁹ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.³⁰

Rep. Hayworth’s failure to report campaign contributions, as required by federal campaign finance law, until caught red-handed by the press, as well as TEAMPAC’s employment of Ms. Hayworth does not reflect creditably on the House.

²⁶ House Comm. on Standards of Official Conduct, Campaign Booklet at 39.

²⁷ Id. at 44.

²⁸ Rule XXIII, cl. 1.

²⁹ House Comm. on Standards of Official Conduct, House Ethics Manual.

³⁰ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

REP. JOHN MURTHA

Rep. John Murtha (D-PA) is a 17th-term member of Congress, representing Pennsylvania's 12th congressional district. Rep. Murtha's ethics violations stem from abuse of his position as Ranking Member of the Defense Appropriations Subcommittee of the House Appropriations Committee to benefit the lobbying firm of a former long-term staffer and clients of his brother, Robert "Kit" Murtha, a registered lobbyist.

PMA Group

Paul Magliocchetti worked with Rep. Murtha as a senior staffer on the Defense appropriations subcommittee for 10 years.¹ After leaving the committee, Mr. Magliocchetti founded the PMA Group, which has become one of the prominent Washington, D.C. defense lobbying firms. In the current campaign cycle, the PMA Group and 11 of the firm's clients rank in the top 20 contributors to Rep. Murtha, having made campaign contributions totaling \$274,649.² In the 2004 and 2002 cycles, PMA and nine of the firm's clients ranked in the top 20 contributors having made \$236,799³ in contributions and \$279,074, respectively.⁴

In turn, many of PMA's clients have benefited significantly from Rep. Murtha's earmarks. In the 2006 Defense appropriations bill, PMA clients received at least 60 earmarks at a total of \$95.1 million.⁵

Robert "Kit" Murtha

KSA Consulting is a lobbying firm hired by defense contractors in the hopes of securing funding from the Defense Appropriations Subcommittee.⁶ The firm was retained by most of its clients after Rep. Murtha's brother, Kit Murtha, joined the firm in 2002.⁷ Mr. Murtha joined the

¹ See www.thepmagroup.com/An_Elite_Team/Paul_Magliocchetti/paul_magliocchetti.html.

² PMA Lobbying Disclosure Report for 2006 cycle; www.opensecrets.com. (Exhibit 1)

³ PMA Lobbying Disclosure Report for 2004 cycle; www.opensecrets.com. (Exhibit 2)

⁴ PMA Lobbying Disclosure Report for 2002 cycle; www.opensecrets.com. (Exhibit 3)

⁵ Roxana Tiron, Hill Ties Reap Rewards for Top Defense Firms, *The Hill*, June 15, 2006. (Exhibit 4)

⁶ Ken Silverstein and Richard Simon, Lobbyist Brother Guided House Bill, *The Los Angeles Times*, June 13, 2005. (Exhibit 5)

⁷ Id.; Kit Murtha is no longer with KSA. See www.ksaconsulting.net/profiles.htm.

firm at the invitation of top KSA official Carmen Scialabba, who had worked for Rep. Murtha on the House Appropriations Committee for 27 years.⁸

Mr. Murtha's first client at KSA was AEPTEC Microsystems, Inc., a wireless networking company based in Maryland that was seeking a grant from the State of Pennsylvania to fund construction of a new business complex in Rep. Murtha's district.⁹ Notably, AEPTEC donated more than \$12,000 to Rep. Murtha's reelection campaign in 2002.¹⁰

Mr. Murtha successfully lobbied the state for a \$1.5 million grant to build the complex.¹¹ Although Mr. Murtha has claimed that his brother played no role in helping secure that funding, in an April 2004 press release, Rep. Murtha claimed credit for "introducing AEPTEC to the opportunities" in Pennsylvania and several of the Congressman's staff attended groundbreaking ceremonies for construction of the complex.¹²

Two months later, as part of a defense appropriations bill, Rep. Murtha's subcommittee approved a \$4.2 million appropriation for an AEPTEC wireless network that supported the Aegis cruiser program. KSA founder, chief executive and lead lobbyist Ken Stalder lobbied Rep. Murtha to obtain the earmark.¹³

In 2004, Congress passed a \$417 billion defense appropriations bill that went through Rep. Murtha's subcommittee.¹⁴ The bill benefited at least 10 companies represented by KSA and KSA lobbied Rep. Murtha's office directly on behalf of seven of those companies, which received a total \$20.8 million in earmarks.¹⁵ For example, Arkansas based Cal-Zark won \$1.7 million -- more than tripling the firm's 2004 sales -- after KSA's founder and head lobbyist, Ken Stalder, joined Cal-Zark officials on a trip to lobby Rep. Murtha's office.¹⁶ KDH Defense Systems was awarded \$2.6 million and soon thereafter, opened a body armor plant and moved its

⁸ Id.

⁹ Id.

¹⁰ Silverstein and Simon, *Los Angeles Times*, June 13, 2005.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Silverstein and Simon, *Los Angeles Times*, June 13, 2005.

¹⁵ Id.

¹⁶ Id.

headquarters into Rep. Murtha's district.¹⁷ Mobilvox Inc, which received \$1.7 million,¹⁸ held a press conference with Rep. Murtha to announce the opening of a new Pennsylvania office shortly before the bill passed.¹⁹ Mr. Murtha and one of his staff, Jack Frank, attended Mobilvox's new office open house in 2005.²⁰ Other KSA clients that received earmarks include Applied Ordnance Technology Inc., which received \$3.4 million; ChemImage Corp., which received \$3.5 million;²¹ and Mountaintop Technologies Inc., which received \$1 million.²²

5 U.S.C. §7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. §7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."²³ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

If Rep. Murtha accepted campaign contributions from the PMA Group and its associates in return for legislative assistance by way of federal earmarks for the lobbying firm's clients he likely violated 5 U.S.C. §7353 and House Rule XXIII.

5 CFR §2635.702(a)

Members of the House are prohibited from "taking any official actions for the prospect of

¹⁷ Id.

¹⁸ Silverstein and Simon, *Los Angeles Times*, June 13, 2005.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Silverstein and Simon, *Los Angeles Times*, June 13, 2005.

²³ See House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

personal gain for themselves or anyone else.”²⁴ House members are directed to adhere to 5 CFR §2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

The Code of Ethics also provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not.”²⁵

By funneling federal funds to clients of the PMA Group, the lobbying firm of a former staff, Rep. Murtha may have dispensed special favors and violated 5 CFR §2635.702(a).

Rep. Murtha’s earmarking on behalf of his brother’s clients also appears to violate 5 CFR §2635.702(a).

Conduct Not Reflecting Creditably on the House

In addition, Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”²⁶ This ethics standard is considered to be “the most comprehensive provision of the code.”²⁷ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.²⁸ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found

²⁴ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

²⁵ Id.

²⁶ Rule 23, clause 1.

²⁷ House Comm. on Standards of Official Conduct, House Ethics Manual.

²⁸ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

unethical conduct including: the failure to report campaign contributions,²⁹ making false statements to the Committee,³⁰ criminal convictions for bribery,³¹ or accepting illegal gratuities,³² and accepting gifts from persons with interest in legislation in violation of the gift rule.³³

If Rep. Murtha accepted campaign contributions in return for legislative favors that financially benefited a former staffer, it would be conduct that does not reflect creditably on the House and, therefore, violates House Rule XXIII, clause 1.

The House Ethics Committee should also investigate whether Rep. Murtha's earmarking on behalf of his brother's clients violates House Rule 23.

²⁹ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

³⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

³¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

³² House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

³³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

REP. DONALD SHERWOOD

Rep. Donald Sherwood (R-PA) is a fourth-term member of Congress, representing the 10th district of Pennsylvania. His ethics issues arise from a domestic violence charge lodged against him by a woman with whom he had a five-year affair and earmarking for his own financial benefit.

On September 15, 2004, Washington, D.C. police responded to a 911 call placed by Cynthia Ore, 29, who said she had locked herself in the bathroom of Rep. Sherwood's apartment after he began choking her while giving her a back rub.¹ Ms. Ore later filed a lawsuit alleging Rep. Sherwood "repeatedly and violently physically assaulted and abused" her during a five-year affair that ended in September 2004.² An out-of-court settlement was reached between the two.³

Undoubtedly, Rep. Sherwood's conduct does not reflect creditably on the House in violation of House Rule XXIII, clause 1 which requires all members of the House to conduct themselves "at all times in a manner that reflects creditably on the House" and, therefore, merits investigation.⁴

In 2003, Rep. Sherwood, a member of the House Appropriations Committee, secured \$750,000 in federal money for the Tunkhannock Creek and Bowman Creek Assessment and Restoration Project, which is overseen by the Wyoming County, PA Conservation District.⁵ In 2004, Rep. Sherwood obtained another \$750,000 in federal money for a similar project within the Bentley Creek watershed in Bradford County, PA.⁶ The Wyoming County Conservation District then used \$10,000 of the money Rep. Sherwood helped secure to purchase a \$21,000 truck from a dealership owned by Rep. Sherwood.⁷ Rep. Sherwood claimed he had no knowledge of the

¹ Richard Leiby, The Rubdown that Left Police Tied in Knots, *Washington Post*, May 4, 2005. (Exhibit 1)

² Borys Krawczeniuk, Sherwood Settles Lawsuit, *CitizensVoice.com*, November 9, 2005. (Exhibit 2)

³ Id.

⁴ Rule XXIII, cl. 1.

⁵ Kevin Amerman, Critics: Sherwood Wrong on Truck Sale, *Times Leader*, July 10, 2006. (Exhibit 3)

⁶ Id.

⁷ Id.

transaction until after it occurred, but then refused to return the money.⁸

5 C.F.R. §2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”⁹ House Members are also directed to adhere to 5 C.F.R. §2635.702(a),¹⁰ issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a non-governmental capacity.

Rep. Sherwood’s receipt of a financial benefit through federal money he earmarked for a Pennsylvania entity appears to have violated this rule.

Moreover, even if the Committee on Standards of Official Conduct does not find that Rep. Sherwood violated 5 C.F.R. §2635.702(a), he certainly has violated Rule XXIII of the House Ethics Manual, which requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”¹¹ This ethics standard is considered to be “the most comprehensive provision of the code.”¹² When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.¹³ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including:

⁸ Id.

⁹ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

¹⁰ Id.

¹¹ Rule XXIII, cl. 1.

¹² House Comm. on Standards of Official Conduct, House Ethics Manual.

¹³ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

the failure to report campaign contributions,¹⁴ making false statements to the Committee,¹⁵ criminal convictions for bribery,¹⁶ or accepting illegal gratuities,¹⁷ and accepting gifts from persons with interest in legislation in violation of the gift rule.

Rep. Sherwood's personal benefit from earmarks he secured for a Wyoming County Conservation District clearly does not reflect creditably on the House.

¹⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

¹⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

¹⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

¹⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

EXHIBITS

To view all the exhibits cited in this report, please visit www.beyonddelay.org.