

BEYOND DELAY

The 13 Most Corrupt Members of Congress



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EXECUTIVE SUMMARY

Over the past year, 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. At a time when a recent Gallup Poll reports only that 36% of those polled express approval of Congress, people are taking a harder look at the actions of their own representatives.

The ethics issues surrounding House Majority Leader Tom DeLay are well documented and frequently reported. In fact, Citizens for Responsibility and Ethics in Washington (CREW) has been one of Rep. DeLay’s harshest critics. Nonetheless, we recognize that Rep. DeLay is not the only Member of Congress whose behavior merits scrutiny. There are a significant number of other members who have engaged in similarly egregious conduct, thus the name of the report: Beyond DeLay.

In the following report, Citizens for Responsibility and Ethics in Washington (CREW) documents the unethical activities of thirteen Members of Congress: 10 House Members and three Senators. Although much of the information is available in a variety of documents, until now it has not been compiled in one place. The allegations against some of those on list have been well publicized while the activities of others have gone relatively unnoticed.

This is not intended to be a definitive list of all of the Members of Congress facing ethics issues. For example, other members, such as Senator David Vitter (R-LA), Rep. Eric Cantor (R-VA), Rep. John Doolittle (R-CA) and Rep. J.D. Hayworth (R-AZ), have connections to now-indicted Republican lobbyist Jack Abramoff that are worth exploring should either the Senate Select Committee on Ethics or the House Committee on Standards of Official Conduct ever decide to initiate an investigation into the range of Mr. Abramoff’s influence on the Congress.

CREW has a dual goal in releasing this report. First, we hope to bring greater attention to the unethical conduct of those named in the report as well as to the subject of congressional ethics in general. Second, we hope to galvanize both the House Committee on Standards of Official Conduct and the Senate Select Committee on Ethics into action. The ethics committees of both houses have lain largely dormant over the past years despite the often appalling conduct of their members. It is time for our representatives to take their constitutional obligation to police themselves seriously, an obligation that members of both political parties have ignored to the detriment of the American people.

METHODOLOGY

To create this report, CREW reviewed articles, Federal Election Commission (FEC) reports 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.

MEMBERS OF THE HOUSE

REP. ROY BLUNT

Rep. Roy Blunt (R-MO) is a fifth-term Member of Congress, representing the 7th district of Missouri. Rep. Blunt is also Majority Leader 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 he became Whip in 2003, when DeLay became the Majority Leader.³ Rep. Blunt's ethics issues stem from the misuse of his position to benefit family members, his connection to lobbyist Jack Abramoff, and a trip paid for by a foreign agent.

Legislative Assistance to Family Members

Legislative Assistance for 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 benefitted 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

¹ Rep. DeLay assigned Rep. Blunt a leading role in maintaining the infamous "K Street Project," an organization that sells access to House Republicans. Blunt is 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.

² In turn, Rep. Blunt is 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.

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

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

⁵ Id.

In addition, Rep. Blunt's son Andrew lobbies on behalf of Philip Morris, a major client he picked up only four years out of law school.⁶ Notably, Altria is Rep. Blunt's largest campaign contributor, having donated more than \$270,000 to political committees tied to him.⁷

Legislative Assistance for United Parcel Service, Inc. and FedEx Corp.

In 2003, Rep. Blunt also helped his lobbyist son Andrew by inserting a provision into the \$79 billion emergency appropriation for the war in Iraq to benefit U.S. shippers like United Parcel Service, Inc. and FedEx Corp.⁸ The provision required that military cargo be carried only by companies with no more than 25% foreign ownership.⁹ The two companies were seeking to block the expansion of a foreign-owned rival's U.S. operations.¹⁰ Andrew Blunt lobbies on behalf of UPS in Missouri, (in addition to Philip Morris)¹¹ and UPS and FedEx have contributed at least \$67,500 to Rep. Blunt since 2001.¹²

Members of the House are prohibited from "taking any official actions for the prospect of personal gain for themselves or anyone else."¹³ House Members are directed to adhere to 5 CFR §2635.702(a),¹⁴ 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

⁶ Editorial, Family Traditions, *St. Louis Post-Dispatch*, April 27, 2005.

⁷ Edsall, *The Washington Post*, May 17, 2005.

⁸ Editorial, Brown and Blunt, *St. Louis Post-Dispatch*, April 9, 2003; Editorial, All in the Family, *St. Louis Post-Dispatch*, November 28, 2004.

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

¹⁰ Id.

¹¹ Id.; Editorial, *St. Louis Post-Dispatch*, Nov. 28, 2004.

¹² Although *The Washington Post* has reported that the two companies contributed a total of \$120,000 to Blunt since 2001 (VandeHei, *The Washington Post*, June 11, 2003), CREW was able to identify contributions to Rep. Blunt and his leadership PAC of only \$27,500 from Fed Ex and \$40,000 from UPS during that period. See <http://www.fec.gov>.

¹³ 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.

¹⁴ Id.

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 pushing for legislation that would benefit Philip Morris, UPS and Fed Ex, and, as a consequence, his then-girlfriend and his son, who worked as lobbyists for Philip Morris and UPS, Rep. Blunt may have violated 5 CFR §2635.702(a). An investigation into Rep. Blunt's actions on behalf of Philip Morris and UPS is warranted.

Federal law also 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 If Rep. Blunt accepted over \$270,000 in campaign contributions from Philip Morris, and \$58,000 from FedEx and UPS in exchange for legislative assistance, he may have violated the bribery statute.

Matt Blunt's Political Campaigns

Family connections have also helped Rep. Blunt's son Matt, the Governor of Missouri, who received contributions during his campaign from nearly three dozen influential Missouri lobbyists and lawyers.¹⁷ Nearly half of those contributors also provided financial support to his father.¹⁸

In 2000, Rep. Blunt was involved in an apparent scheme to funnel money through a local party committee into Matt Blunt's campaign committee when he was running for Secretary of State. Rep. Blunt's campaign committee (Friends of Roy Blunt) and his "leadership" PAC (Rely on Your Beliefs Fund) gave \$90,000 to the 7th District Congressional Republican Committee which, in turn, contributed \$76,000 to Matt Blunt's campaign committee, Missourians for Matt Blunt. Of note, Altria -- the company for which Blunt's wife is the top lobbyist -- made a \$24,000 contribution to Matt Blunt's campaign, the maximum amount allowed

¹⁵ 18 U.S.C. §201(b)(2)(A).

¹⁶ 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).

¹⁷ David Goldstein, D.C. Lobbyists Aid Blunt, *Kansas City Star*, October 15, 2004.

¹⁸ Id.

under state law. Altria also made a \$100,000 contribution to the 7th District Congressional Republican Committee.¹⁹

The IRS has defined “related entity” to include those entities that have “substantial common direction or control.”²⁰ Given that the two organizations list the same deputy treasurer and custodian of records in their IRS 8871 forms, the IRS would likely find them related. Despite the IRS regulations, Missourians for Matt Blunt and the 7th District Congressional Republican Committee failed to disclose that they were related.²¹

The Committee on Standards of Official Conduct should investigate these campaign funding schemes to determine whether Rep. Blunt violated 5CFR §2635.702(a) by improperly using his political connections to fill the coffers of his son’s campaign chest.

Moreover, 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.”²² This ethics standard is considered to be “the most comprehensive provision of the code.”²³ 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.²⁴ 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,²⁵ making false

¹⁹ Id.

²⁰ IRS Publication No. 4216 (7-2003) at 21.

²¹ See 7th District Congressional Republican Committee IRS Form 8871, Political Organization Notice of Section 527 Status, July 28, 2000; Missourians for Matt Blunt, IRS Form 8871, Political Organization Notice of 527 Status, Sept. 18, 2000 (attached as Exhibit 1).

²² Rule 23, clause 1.

²³ House Comm. on Standards of Official Conduct, House Ethics Manual.

²⁴ 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).

²⁵ 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).

statements to the Committee,²⁶ accepting illegal gratuities,²⁷ and accepting gifts from persons with interest in legislation in violation of the gift rule.²⁸

The Committee on Standards of Official Conduct should investigate the various schemes used by Rep. Blunt and his son to fund his son's campaign to determine whether or not they reflect creditably on his position in the House.

Legislative Assistance for Jack Abramoff's Client

Rep. Blunt has ties to uber-lobbyist Jack Abramoff, who is the subject of criminal and congressional probes. In June 2003, Mr. Abramoff persuaded Majority Leader Tom DeLay to organize a letter, co-signed by Speaker Hastert, Whip Roy Blunt, and Deputy Whip Eric Cantor, that endorsed a view of gambling law benefitting Mr. Abramoff's client, the Louisiana Coushatta, by blocking gambling competition by another tribe.²⁹ According to the Center for Responsive Politics, Mr. Abramoff has donated \$8,500 to Rep. Blunt's leadership PAC, Rely on Your Beliefs.³⁰

If, as it appears, Rep. Blunt was accepting campaign contributions from Mr. Abramoff in exchange for using his official position to support a view of gambling law that would benefit Mr. Abramoff's client, he would be in violation of 18 U.S.C. §201(b)(2)(A), discussed above.

Trip to Korea

²⁶ 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, at 3-4 (Counts 3-4).

²⁷ 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).

²⁸ 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).

²⁹ R. Jeffrey Smith, Foundation's Funds Diverted From Mission, *The Washington Post*, September 28, 2004.

³⁰ www.opensecrets.org

Rep. Blunt attended a luncheon in Seoul in January 2002, paid for by the Korea-U.S. Exchange Council (KORUSEC), a registered foreign agent.³¹ KORUSEC is at the heart of a growing scandal over foreign travel, as House ethics rules prohibit its members from accepting trips paid for by foreign agents.³² In March 2002, a delegation of senior congressional staffers that included aides to Rep. Blunt, went to Seoul on a KORUSEC-funded trip.³³

House Rules provide that a Member, officer or employee may **not** accept travel expenses from “a registered lobbyist or agent of a foreign principal.”³⁴ 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.³⁵ The Committee on Standards of Official Conduct should investigate whether Rep. Blunt violated this prohibition by accepting travel payment from a foreign agent, KORUSEC.

³¹ John Bresnahan and Amy Keller, Korean Tycoon’s Big Plans, Network Wider Than DeLay, *Roll Call*, March 21, 2005.

³² Rule 26, clause 5(b)(1)(A).

³³ Bresnahan and Keller, *Roll Call*, March 21, 2005.

³⁴ Rule 26, clause 5(b)(1)(A).

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

REP. RANDY “DUKE” CUNNINGHAM

Randy “Duke” Cunningham (R-CA) is an eighth-term Member of Congress, representing the 50th district of California. Rep. Cunningham’s ethical violations arise from his relationships with individuals and entities from which he has gained financially as well as his misuse of the congressional seal in a commercial enterprise.

Rep. Cunningham and Mitchell Wade

House Sale

In late 2003, defense contractor Mitchell Wade purchased Rep. Cunningham’s Del Mar, California home for \$1.675 million. Property sales records show that the average sales price for similar-size homes in the same area was at least \$500,000 less than the price Mr. Wade paid for Rep. Cunningham’s home.¹ Mr. Wade resold the property in October 2004 for \$975,000, taking a \$700,000 loss on the property.²

Real estate professionals in San Diego have questioned the sale’s circumstances, stating that a review of comparable sales does not support the price Mr. Wade paid Rep. Cunningham for the property.³ Realtors and appraisers have claimed that the house was worth less than \$1 million at the time that Mr. Wade paid Rep. Cunningham \$1.675 million for it.⁴

After reviewing Multiple Listing Service records of houses for sale in the San Diego area at the time Rep. Cunningham sold his house to Mr. Wade, San Diego real estate appraiser Todd Lackner said “[t]here is no logical explanation of comps that could have supported a value of \$1,675,000 in November 2003 . . . the true comps in November 2003 would have been closer to the lower \$900,000 range.” Similarly, realtor Jacque Baker of Prudential Cal Realty valued the home at “less than \$1 million,” citing two properties of roughly the same size that sold for about that price even though they had qualities that Rep. Cunningham’s house lacked.⁵

¹ William Finn Bennett, Cunningham, defense contractor have more ties, *North County Times*, June 18, 2005.

² Id.

³ Marcus Stern and Joe Cantlupe, FBI looking at sale of Cunningham home: Ties between contractor, congressman questioned, *Copley News Service*, appearing in The San Diego Union Tribune, June 17, 2005.

⁴ Id.

⁵ Id.

The realtor who set the sale price for Rep. Cunningham's house was Elizabeth Todd, who had been one of Rep. Cunningham's long-time political contributors, as had been her husband and her husband's late father.⁶ Although Ms. Todd set the price of the house, she was not officially a party to the transaction, which was a private deal without realtor representation on either side. Immediately after the sale of the Del Mar house, Rep. Cunningham hired Ms. Todd to help him buy the \$2.55 million estate in Rancho Santa Fe.⁷

The Duke-Stir

In Washington, D.C., over a 15-month period, Rep. Cunningham lived on a 42-foot yacht, the "Duke-Stir," anchored at a marina on the Potomac River and owned by Mr. Wade.⁸ Rep. Cunningham told reporters that rather than paying rent for the yacht, he paid over \$8,000 in docking fees and \$5,000 in maintenance costs.⁹ Based on current market rates, however, a yacht sales broker recently estimated that the rental market value of the yacht would have been approximately \$600 more per month.¹⁰

MZM, Inc.

Mitchell Wade and his defense contracting firm MZM, Inc. have contributed more than \$50,000 to Rep. Cunningham since 2000.¹¹ The financial relationship between Rep. Cunningham and MZM appears to have commenced in 2000, when MZM made a \$5,000 corporate contribution to the American Prosperity PAC State Fund, a non-federal account created by Rep. Cunningham under section 527 of the Internal Revenue Code. In 2001, MZM donated an additional \$10,000 to the PAC.¹²

Also in 2001, MZM established the MZM PAC, a federal committee registered with the Federal Election Commission, and the Eagle Group, a 527 organization.¹³ Both committees are registered at 1523 New Hampshire Ave., N.W., the address of MZM's

⁶ Stern and Cantlupe, *Copley News Service*, June 17, 2005.

⁷ Id.

⁸ Id.

⁹ Tony Perry, Cunningham Breaks Silence Over Real Estate Deal, *Los Angeles Times*, June 24, 2005.

¹⁰ Id.

¹¹ Ben Pershing, MZM 527 Gave to Just One Lawmaker, *Roll Call*, July 13, 2005.

¹² Id.

¹³ Pershing, *Roll Call*, July 13, 2005.

corporate headquarters. Since it was formed, the Eagle Group has received only one contribution of \$10,000 from MZM in 2002, and it has made only three contributions: \$5,000 to Rep. Cunningham's 527 organization, \$1,000 to the D.C. Republican Committee and \$1,000 to D.C. Councilman David Catania's campaign committee.¹⁴

In addition, since 2001, the MZM PAC has donated \$10,000 to Rep. Cunningham's American Prosperity PAC, as well as \$12,000 to Rep. Cunningham's campaign committee, Friends of Duke Cunningham. Mr. Wade and his wife have personally given \$10,000 to Rep. Cunningham's campaign committee.¹⁵

According to three former senior officials of MZM, Mitchell Wade forced employees to make political contributions that likely benefitted Rep. Cunningham.¹⁶ One former employee explained that employees were told "either donate to the MZM PAC or . . . be fired." Another employee recalled being rounded up with other MZM employees in the Washington headquarters and told to write a check with the political recipient standing by.¹⁷

Rep. Cunningham is also listed on the web site of the Sure Foundation, a charitable group with ties to MZM and Mr. Wade, as a member of the "honorary committee" for the Foxfield Races, a twice yearly horse race in Charlottesville, Virginia that raises money for the foundation.¹⁸ Nancy and April Cunningham, Rep. Cunningham's wife and daughter, respectively, are among four people listed on the foundation's website as members of the foundation's "advisory council."¹⁹ Last year, a congressional subcommittee on District of Columbia operations, on which Rep. Cunningham sits, allocated \$100,000 to the foundation.²⁰

¹⁴ Id.

¹⁵ Id.

¹⁶ Marcus Stern, Contractor who bought Cunningham's house made employees give political contributions, *Copley News Service*, appearing in, *The San Diego Union-Tribune*, June 20, 2005.

¹⁷ Id.

¹⁸ Jeffrey Birnbaum and Renae Merle, California lawmaker's deals with donors questioned, *The Washington Post*, June 20, 2005.

¹⁹ Id.

²⁰ Perry, *Los Angeles Times*, June 24, 2005.

The Violations

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.²¹

It appears that Rep. Cunningham accepted the equivalent of a \$700,000 gift from Mr. Wade when Rep. Cunningham sold his house to Mr. Wade for \$1.675 million, despite the fact that houses comparable to Rep. Cunningham's were being sold for substantially less. Notably, at the same time Rep. Cunningham received the \$700,000 from Mr. Wade, Rep. Cunningham has admitted that he was supporting MZM's efforts to receive tens of millions of dollars in defense contracts.²² In fact, records show that MZM has received over \$66 million through at least 93 government contracts.²³

Mr. Wade's assistance to Rep. Cunningham does not end there. It appears that for at least 15 months, when in Washington, Rep. Cunningham lived on Mr. Wade's yacht, the Duke-Stir, without paying adequate rent. Again, this raises the question of whether or not there was some sort of *quid pro quo*: what, if anything, did Rep. Cunningham do for Mr. Wade in return for the use of Mr. Wade's yacht?

The continuing and generous contributions MZM PAC made to Rep. Cunningham and his 527 organization and the ties between Rep. Cunningham's family members and MZM are further evidence that the partnership between MZM, Inc. and Rep. Cunningham benefitted both parties.

Rep. Cunningham may also have violated the illegal gratuity statute by soliciting or allowing Mr. Wade to purchase his home. 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.²⁴

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

²¹ 18 U.S.C. §201(b)(2)(A).

²² See Stern and Cantlupe, *Copley News Service*, June 17, 2005.

²³ Perry, *Los Angeles Times*, June 23, 2005.

²⁴ 18 U.S.C. §201(c)(1)(B).

government official.²⁵ There may well be a link between Rep. Cunningham's sale of his house to Mr. Wade for \$700,000 more than it was worth and Rep. Cunningham's efforts to assist MZM in securing contracts with the Department of Defense and the Department of Homeland Security.²⁶ In fact, on July 21, 2005, the U.S. Department of Justice filed a lawsuit against Rep. Cunningham contending that, under asset forfeiture law, he should forfeit the Rancho Santa Fe house to the government because it was purchased with illegally obtained money.²⁷ The court papers filed by the Department of Justice state that the money Rep. Cunningham used to buy the house was obtained through bribery.²⁸

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.²⁹

In addition to being illegal, the conduct of Rep. Cunningham also may have violated clause 3 of House Rule 23, which provides:

A Member, Delegate, Resident Commissioner, officer, 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.

²⁵ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398, 414, 119 S.Ct. 1402, 1411 (1999).

²⁶ Citizens for Responsibility and Ethics in Washington and various media organizations have filed Freedom of Information Act requests with the Department of Defense and the Department of Homeland Security seeking information regarding contacts Rep. Cunningham may have had with those agencies regarding MZM, but the agencies have yet to respond to those requests. According to press reports, the U.S. Attorney's Office for the District of Columbia has asked the Defense Department to stay all such requests until the conclusion of the investigation. Seth Hettena, Four from Washington yacht club subpoenaed in Cunningham probe, *Associated Press*, appearing in The San Diego Union-Tribune, July 14, 2005.

²⁷ Dani Dodge, U.S. lawsuit seeks forfeiture of property, *The San Diego Union-Tribune*, August 18, 2005.

²⁸ Id.

²⁹ *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).

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.³⁰

By accepting \$700,000 more than his house was worth and by living rent-free on Mr. Wade's boat, the Duke-Stir, while assisting MZM to obtain defense contracts, Rep. Cunningham likely violated Rule 23.

Moreover, even if the Committee is not convinced that Rep. Cunningham solicited a bribe in violation of federal law, another Committee memorandum authorizes the Committee on Standards of Official Conduct to take action. In that memorandum, the Committee approvingly quoted 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.”³¹ The Committee specifically stated that the provisions in the *Code of Ethics for Government Service* are applicable to House Members, and that formal charges may be brought against a Member for violating that code.³²

As a result, even without finding that Rep. Cunningham accepted a bribe in violation of 18 U.S.C. §201(b)(2)(A), that he solicited a gratuity in violation of 18 U.S.C. §201(c)(1)(B), or violated clause 3 of House Rule 23 of the *Standards of Official Conduct*, the Committee on Standards of Official Conduct Committee could still find that Rep. Cunningham was “dispensing special favors” in violation of House rules.

³⁰ 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.

³¹ 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.

³² Id.

The fact that the Department of Justice is currently conducting a criminal investigation of MZM, Inc.³³ should not be a basis for the Committee to defer any investigation into, or action on, Rep. Cunningham's 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."³⁴

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 is normally should not undertake duplicative investigations pending judicial resolution of such cases.³⁵

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.³⁶

³³ See Letter from Suzanne Council, Department of the Army, to Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, August 12, 2005 (attached as Exhibit 1).

³⁴ 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).

³⁵ 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)).

³⁶ Statement of Committee regarding Disposition of Complaint Filed Against Tom
(continued...)

Rep. Cunningham'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 influence. As a result, given the Committee's precedents, a Committee investigation into Rep. Cunningham's activities is appropriate.

Rep. Cunningham and Thomas Kontogiannis

The Kelly C

In 1997 Rep. Cunningham purchased a yacht named the Kelly C from then-Rep. Sonny Callahan (R-AL) for \$200,000.³⁷ Five years later, in 2002, Rep. Cunningham sold the yacht for \$600,000 to Thomas Kontogiannis, a businessman who had been convicted in a bid-rigging scheme. U.S. Coast Guard records do not reflect the sale of the Kelly C, which still shows Cunningham as the boat's owner.³⁸

Moreover, according to the U.S. Coast Guard, in May 2005, Rep. Cunningham requested and received a reissuance of the certificate of documentation, a document that shows Rep. Cunningham as the registered owner.³⁹ Although Mr. Kontogiannis' company, Axxiom, had applied for a certificate of documentation in 2003, the certificate was not issued because the company failed to present a bill of sale or other documentation demonstrating that it owned the boat.⁴⁰ Coast Guard officials decided to reissue the certificate to Rep. Cunningham in May after Axxiom failed to respond to a letter asking for documentation that it owned the boat.⁴¹

(...continued)
DeLay.

³⁷ Jerry Kammer and Marcus Stern, Boat sale by "Duke" made him \$400,000: Buyer's kin were lenders of Cunningham mortgage, *Copley News Service*, appearing in *The San Diego Union-Tribune*, July 5, 2005.

³⁸ Id.

³⁹ William Finn Bennett, Second boat deal surfaces, *North County Times*, July 6, 2005; *see also* U.S. Coast Guard Application for Initial Issue, Exchange, or Replacement of Certificate of Documentation; Redocumentation, filed May 23, 2005 and Letter from Randy "Duke" Cunningham to Pat Williams, National Vessel Documentation Center, May 26, 2005 (attached as Exhibit 2).

⁴⁰ Bennett, *North County Times*, July 6, 2005.

⁴¹ Id.

According to Mr. Kontogiannis, at the time he purchased the boat, Rep. Cunningham offered to help him seek a pardon from President Bush and put him in touch with lawyers who might have been able to assist him.⁴²

Coastal Capital

In 2003, when Rep. Cunningham bought a \$2.55 million home in Rancho Santa Fe, the Congressman asked if a mortgage company owned by Mr. Kontogiannis's nephew and daughter, Coastal Capital, could finance the mortgage at its wholesale price, which had a slightly lower interest rate than retail mortgage lenders. The mortgage company agreed to do so.⁴³

Mr. Kontogiannis also reported that – at the Congressman's request – he recently paid off Rep. Cunningham's second \$500,000 mortgage, mostly with money he owed Rep. Cunningham for the Kelly C.⁴⁴

In 2002, Coastal Capital also helped Rep. Cunningham finance a \$150,000 mortgage on a Virginia condominium Rep. Cunningham purchased at a cost of \$350,000. Rep. Cunningham sold the condominium in 2004.⁴⁵

The Violations

In the Gifts and Travel Booklet, published by the Committee on Standards of Official Conduct, the Committee approvingly cites the 1951 Senate report entitled *Ethical Standards in Government* issued by Senator Paul H. Douglas, which states “expensive gifts, lavish or frequent entertainment, paying hotel or travel costs, valuable services, inside advice as to investments, discounts and allowances in purchasing are in an entirely different category. They are clearly improper . . .”⁴⁶ The booklet further provides that “there can be an improper gift to a Member, officer or employee where, for example, he or she is sold property at less than market value, or receives more than market value in selling property. There can also be an improper gift where a Member or staff person is given a

⁴² Kammer and Stern, *Copley News Service*, July 5, 2005.

⁴³ Charles R. Babcock, Developer Helped Congressman By Buying Boat, Arranging Loan, *The Washington Post*, July 5, 2005.

⁴⁴ Id.

⁴⁵ Seth Hettena, Condo Financing Probed, *Associated Press*, appearing in Monterey County Herald, July 9, 2005.

⁴⁶ Comm. on Standards of Official Conduct, Gift and Travel Booklet.

loan at a below-market interest rate . . .”⁴⁷ An exception to the gift rule allows Members to accept gifts given on the basis of personal friendship, but even so, Members may not accept a gift, the value of which exceeds \$250 on the basis of the personal friendship exception unless the Committee on Standards of Official Conduct issues a written determination that the exception applies.⁴⁸

Rep. Cunningham’s financial transactions with Mr. Kontogiannis likely violate the gift rule. First, the circumstances surrounding Mr. Kontogiannis’s alleged purchase of the Kelly C, namely the vastly inflated price at which he claims to have purchased the boat and the lack of documentation demonstrating any change of title from Rep. Cunningham to Mr. Kontogiannis, suggest that the transaction was actually a sham, designed to allow Mr. Kontogiannis to pay for the \$100,000 refitting of the boat. If this occurred, Rep. Cunningham accepted a gift valued at over \$250, thereby exceeding the personal gift exception and violating the gift rule.⁴⁹ Moreover, even if there was an actual sale, the fact that the boat was sold for a price apparently substantially greater than its market value violates the gift rule as well.⁵⁰

Second, Mr. Kontogiannis, at Rep. Cunningham’s request, asked his daughter and nephew through their company Coastal Capitol, to finance the mortgages of Rep. Cunningham’s San Diego home and Virginia condominium. According to Mr. Kontogiannis, Rep. Cunningham was given a mortgage at a discount not available to the general public. Therefore, the Committee on Standards of Official Conduct should investigate whether the loans violate the gift rule.⁵¹

Top Gun Enterprises, Inc.

In 1987, Rep. Cunningham established Top Gun Enterprises, Inc. The company’s web site, www.topguninc.com, sells knives, including the “Randy ‘Duke’ Cunningham Fighter Ace Kalinga Style Buck Knife.” According to the web site, the knife includes the emblem of the American Fighter Aces Association and the “Official Seal of the United States Congress.”⁵² Notably, shortly after stories appeared in the media regarding the use

⁴⁷ *Id.*; see also Rule 26, clauses 5(a)(3)(A) and 5(a)(3)(R)(v).

⁴⁸ Rule 26, clause 5(a)(5).

⁴⁹ *Id.*

⁵⁰ Rule 26, clause 5(a)(3)(A).

⁵¹ Rule 26, clause 5(a)(3)(R)(v).

⁵² Mark Walker, Use of congressional seal on knife questioned, *North County Times*, June 29, 2005.

of the congressional seal on the knife, the products listed on the site were removed and the site stated only that it was “under construction.”⁵³

Federal law prohibits anyone, except as directed by the United States House of Representatives or the Clerk of the House, from knowingly using, manufacturing, reproducing, selling or purchasing for resale, either separately or appended to any article manufactured or sold, any likeness of the seal of the United States Congress, or any substantial part thereof.⁵⁴ Violations of this title are punishable by fine or imprisonment of up to six months or both.⁵⁵

In flagrant violation of this law, Rep. Cunningham’s company, Top Gun Enterprises, Inc. has sold knives that -- according to the company’s own web site -- include the “Official Seal of the United States Congress.” Therefore, the Committee on Standards of Official Conduct should investigate whether Rep. Cunningham misused the Congressional seal on knives he sold through his web site.

⁵³ Mark Walker, ‘Top Gun’ Web site missing in action, *North County Times*, July 1, 2005.

⁵⁴ 18 U.S.C. §713(d).

⁵⁵ Id.

REP. TOM FEENEY

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

Trip to Scotland

Rep. Feeny traveled to Scotland -- apparently to play golf -- from August 9-14, 2003. Rep. Feeny 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 Feeny's trip.² As a result, Rep. Feeny now claims to have discovered recently that the \$5,643 bill was actually paid by lobbyist Jack Abramoff.³ Rep. Feeny claims he was "misled" and "lied to" about who actually paid for the trip.⁴

Rep. Feeny 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. Feeny, "[g]iven everything we knew at the time, we didn't make any inappropriate or unethical decisions."⁵ Rep. Feeny 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 Feeny, December 29, 2003 (attached as Exhibit 1). House rules also require that travel disclosure forms be filed within 30 days after the travel is completed. Rule 26, clause 5(b)(1)(A)(ii). Rep. Feeny 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 26, 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.

³ Tamara Lytle, Lawmaker's trips abroad may have violated rules, *Knight Ridder*, appearing in *Bradenton Herald Tribune*, March 13, 2005.

⁴ Id.

⁵ Lytle, *Knight Ridder*, March 13, 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 26, 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 26.

In addition, according to the travel rules:

⁷Rule 26, clause 5(b)(1)(A).

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

⁹ See http://sopr.senate.gov/cti-win/m_opr_viewer.exe?DoFn=3&LOB=ABRAMOFF,%20JACK%20A.&LOBQUAL==

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.

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

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

¹³ Rule 26, clause 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).

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

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, if 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

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, House rules also require that travel disclosure

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

¹⁷ Rule 26, clause 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.

¹⁹ Rule 26, clause 5(b)(1)(A).

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

forms be filed within 30 days after the travel is completed.²¹ To date, Mr. Feeney has failed to file any forms in connection with this trip.²²

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, by failing to file the required travel disclosure forms 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-November 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.²³ Rotterman and Associates was a registered lobbying firm in 2002 and 2003.²⁴ House rules provide that a Member, officer or employee may **not** accept travel expenses from "a registered lobbyist or agent of a foreign principal."²⁵ 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

²¹ Rule 26, clause 5(b)(1)(A)(ii).

²² The trip was listed neither on Rep. Feeney’s Annual Financial Disclosure Statement for the Calender Year 2003, filed May 10, 2004 (attached as Exhibit 2), nor on his amended Annual Financial Disclosure Statement for the Calender Year 2003, filed July 13, 2004 (attached as Exhibit 3).

²³ Member/Officer Travel Disclosure Form, filed by Rep. Tom Feeney, November 19, 2003 (attached as Exhibit 4).

²⁴ *See*
http://sopr.senate.gov/cgi-win/m_opr_viewer.exe?DoFn=3&LOB=ROTTERMAN,%20MARC&LOBQUAL==

²⁵ Rule 26, clause 5(b)(1)(A).

Study of Popular Culture paid for the trip.²⁶ Rep. Feeney also indicated that the costs were much higher than he originally reported -- \$1,947 as opposed to \$1,430.²⁷

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.²⁸ 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.”²⁹ 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.³⁰

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 visited.³¹ 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.

²⁶ Rep. Feeney’s Financial Disclosure Statement for Calender Year 2003, page 8, filed May 10, 2004 (*see* Exhibit 2), as well as his amended Financial Disclosure Statement for Calender Year 2003, page 8, filed July 13, 2003 (*see* as Exhibit 3), both list the National Center for Public Policy Research as paying for his trip to West Palm Beach.

²⁷ Member/Officer Travel Disclosure Form, filed by Rep. Tom Feeney, April 20, 2005 (attached as Exhibit 5).

²⁸ Rule 26, clause 5(b)(1)(A); House Comm. on Standards of Official Conduct, Travel Booklet.

²⁹ Id.

³⁰ Id.

³¹ 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).

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.

REP. WILLIAM JEFFERSON

William Jefferson (D-LA) is an eighth-term Member of Congress, representing the 2nd district of Louisiana. Rep. Jefferson is a member of the Ways and Means Committee, the Africa Trade and Investment Caucus, and the Congressional caucuses on Brazil and Nigeria. Rep. Jefferson's ethics issues stem from his business dealings and from the misuse of federal resources.

Federal Investigation into Business Dealings

Rep. Jefferson is the subject of an ongoing criminal investigation. 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 Orleans.¹ As part of the investigation, the U.S. home of the Vice President of Nigeria also was searched.² During the raid on Rep. Jefferson's home, FBI agents apparently found a large amount of cash in the Congressman's freezer.³

According to sources who have seen the search warrants, the government is seeking information about Rep. Jefferson's possible African business dealings, 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.⁴ Investigators are also interested in iGate's Chief Executive Officer, Vernon Jackson.⁵ Mr. Jackson and his wife contributed \$4,000 apiece to Rep. Jefferson's campaign committee in 2003.⁶ Campaign records also show that Mr. Jackson contributed \$7,500 in 2002 and 2003 to the campaign fund for one of Mr. Jefferson's daughters, state Rep. Jalila Jefferson-Bullock and that iGate contributed \$5,000

¹ 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.

² Paul Schwartzman and Elizabeth Williamson, Nigerian official's Md. home searched, *The Washington Post*, August 29, 2005.

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

⁴ Bill Walsh, Jefferson raids may signal return of the sting; Since Abscam, FBI treads carefully with politicians, *The Times-Picayune*, August 21, 2005.

⁵ Bruce Alpert, Tech firm CEO is probe figure; Correspondence with Jefferson is sought, *The Times-Picayune*, August 16, 2005.

⁶ Id.

to her campaign in 2003.⁷ In addition, iGate helped pay for a four nation trade trip Rep. Jefferson made to Africa in 2004.⁸

Federal subpoenas issued in the case 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.⁹ iGate has patented technology which, the company claims, can deliver voice, data and video lines faster and more cheaply than a digital line.¹⁰ 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.¹¹ The company was seeking financing to launch the project in Nigeria.¹²

One of the investors was Lori Mody, a wealthy former technology executive who lives in northern Virginia.¹³ Ms. Mody apparently agreed to invest in the deal, but then abruptly pulled out.¹⁴ At that point, Rep. Jefferson intervened, in attempt to put the deal back together, and asked everyone to come to a meeting in Washington.¹⁵ Ms. Mody could not be persuaded to continue investing in the deal so Rep. Jefferson began to seek new sources of capital.¹⁶ One such person Rep. Jefferson brought in was Norbert Simmons, a wealthy New Orleans businessman with long-standing political ties to the Congressman.¹⁷ Although Mr. Simmons agreed to invest in the deal, the project fell apart.¹⁸

⁷ Id.

⁸ Id.

⁹ Walsh and Alpert, Jefferson probe focus is Nigeria telecom deal -- Investors sought to deliver broadband, *The Times-Picayune*, August 25, 2005.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Walsh and Alpert, *The Times-Picayune*, Aug. 25, 2005.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ Walsh and Alpert, *The Times-Picayune*, Aug. 25, 2005.

¹⁸ Id.

In what may or may not be related to the Nigeria matter, federal agents are investigating whether Rep. Jefferson illegally pocketed hundreds of thousands of dollars of investors' money from business transactions.¹⁹ According to sources who spoke with *The Washington Post*, a high-tech company that was starting up in northern Virginia agreed to cooperate with the FBI and conversations with Rep. Jefferson were secretly recorded.²⁰ Rep. Jefferson allegedly agreed to invest in the start-up company and use his congressional influence to bring in business.²¹

The news reports indicate that Rep. Jefferson is under investigation for serious crimes. At this point, however, there is a lack of sufficient information for the Committee on Standards of Official Conduct to begin its own investigation. Nonetheless, we suggest that the Committee keep a close eye on the case as it develops and, if the information so warrants, begin an investigation at a later date.

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.²² 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.²³ 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.²⁴ The Congressman entered his house and collected his belongings, returning to the truck, which was now stuck in the mud.²⁵ The National Guard ultimately sent a second truck to rescue the first truck and Rep. Jefferson and his belongings were returned to the Superdome.²⁶

¹⁹ Lengel, *The Washington Post*, Aug. 13, 2005.

²⁰ Id.

²¹ Id.

²² Jake Tapper, Amid Katrina Chaos, Congressman Used National Guard to Visit Home, *ABC News*, September 14, 2005.

²³ Id.

²⁴ Id.

²⁵ Id.

²⁶ Tapper, *ABC News*, Sept. 14, 2005.

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.”²⁷ Rep. Jefferson claimed that he was curious about the condition of his house and that he would have been happy to go by himself.²⁸

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”²⁹ House Members are also directed to adhere to 5 C.F.R. §2635.702(a),³⁰ 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.

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 this rule.

Moreover, even if the Committee on Standards of Official Conduct does not find that Rep. Jefferson violated 5 C.F.R. §2635.702(a), he certainly 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.”³¹ This ethics standard is considered to be “the most comprehensive provision of the code.”³² 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

²⁷ Id.

²⁸ David Pace, La. Congressman Had Guard Escort to Home, *Associated Press*, appearing in, *Seattle Post-Intelligencer*, *On Line Edition*, September 14, 2005.

²⁹ 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.

³⁰ Id.

³¹ Rule 23, clause 1.

³² House Comm. on Standards of Official Conduct, House Ethics Manual.

unpunished.³³ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including accepting illegal gratuities³⁴ and accepting gifts from persons with interest in legislation in violation of the gift rule.³⁵ Certainly, at a time when the nation is 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.

³³ 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).

³⁴ 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).

³⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 960930, 96th Cong., 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 20, 1980) (debate and vote of censure).

REP. MARILYN MUSGRAVE

Marilyn Musgrave (R-CO), is a second-term Member of Congress, representing the 4th district of Colorado. 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

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

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.

⁷ Id.

⁸ Id.

where 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.

²⁸ 39 U.S.C. §3210(a)(5)(A).

²⁹ 39 U.S.C. §3210(a)(5)(C).

REP. BOB NEY

Rep. Bob Ney (R-OH) is a sixth-term Republican Member of Congress, representing the 18th district of Ohio. Rep. Ney's ethics violations arise from campaign contributions and travel he has accepted from those who sought his legislative assistance, as well as from the misuse of his office to influence a private, commercial transaction.

Campaign Donations in Exchange for Legislation for the Tigua Tribe

Rep. Ney is a close associate of the now infamous Republican lobbyist, Jack Abramoff. In the fall of 2004, Senator John McCain (R-AZ) and the Senate Select Committee on Indian Affairs held hearings regarding Mr. Abramoff's relationship with several Indian tribes, including the Tigua tribe of El Paso, Texas.¹

Evidence demonstrates that from late 2001 through early 2002, Mr. Abramoff worked behind the scenes in Texas with his friend and business partner Michael Scanlon, as well as with Christian activist Ralph Reed, to ensure that the Tigua's Speaking Rock Casino was shut down. Once the casino was shuttered, Abramoff then convinced the Tigua to hire him and Mr. Scanlon to re-open the casino with the assistance of "Republican leaders in Washington." To accomplish this, Mr. Abramoff determined that the tribe would need to make "approximately \$300,000 in federal political contributions."² According to Sen. McCain, Mr. Abramoff's plan was to have "one or more Representatives or Senators slip into a conference report very discreet language allowing the Tigua to re-open their casino."³

Rep. Ney had an integral role in this plan. On March 20, 2002, Mr. Abramoff sent Mr. Scanlon an e-mail stating, "Just met with Ney!!! We're f'ing gold!!!! He's going to do Tigua. Call me."⁴ On March 26, 2002, Mr. Abramoff sent Tigua political consultant Marc Schwartz an e-mail explaining that Rep. Ney was the "chairman of the committee doing election reform," and asking that Mr. Schwartz "get us the following checks for him asap: Bob Ney for Congress - \$2,000, American Liberty PAC - Federal

¹ Oversight Hearing Regarding Tribal Lobbying Matters, et. al. Before the Senate Comm. on Indian Affairs, S. Hrg. 108-720 at 222 (2004) [hereinafter *Hearing*].

² E-mail from Jack Abramoff to Marc Schwartz, February 18, 2002 (attached as Exhibit 1).

³ *Hearing* at 225.

⁴ E-mail from Jack Abramoff to Mike Scanlon, March 20, 2002 (attached as Exhibit 2).

[Rep. Ney's PAC] - \$5,000 and American Liberty PAC - non-Federal - \$25,000.”⁵ Later the same day, Mr. Schwartz was sent an e-mail containing the addresses for each of the three PACs.⁶ Rep. Ney disclosed the contributions as required by law.⁷

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.⁸ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁹ By accepting \$32,000 in campaign contributions from the Tigua in apparent exchange for supporting an amendment to reopen the Speaking Rock Casino, Rep. Ney appears to have violated 18 U.S.C. §201(b)(2)(A).

Golf Trip to Scotland

Illegal Gratuity

In June 2002, Rep. Ney asked his friend Mr. Abramoff to arrange a golf trip to Scotland. Ever accommodating, Mr. Abramoff asked Mr. Schwartz to help pay for the trip. Mr. Abramoff sent Mr. Schwartz an e-mail with the subject line “our friend,” continuing “asked if we could help (as in cover) a Scotland golf trip for him and some staff (his committee chief of staff) and members for August. The trip will be quite expensive . . . I anticipate that the total cost -- if he brings 3-4 members and wives -- would be around \$100K or more. I can probably get another of my tribes to cover some of it. let [*sic*] me know if you guys could do \$50K”¹⁰ In his testimony before the Senate Indian Affairs Committee, Mr. Schwartz stated that Mr. Ney was “our friend.”¹¹ He also

⁵ E-mail from Jack Abramoff to Marc Schwartz, March 26, 2002 (attached as Exhibit 3).

⁶ E-mail to Marc Schwartz, March 26, 2002 (attached as Exhibit 4).

⁷ See FEC Disclosure Form 3 for Bob Ney for Congress, Schedule A, filed August 7, 2002 (attached as Exhibit 5); FEC Disclosure Form 3 for American Liberty PAC, filed on May 20, 2002 (attached as Exhibit 6); and IRS Form 8872 for American Liberty PAC [non-federal], filed on July 12, 2002 (attached as Exhibit 7).

⁸ 18 U.S.C. §201(b)(2)(A).

⁹ McCormick v. U.S., 500 U.S. 257, 273, 111 S.Ct. 1807, 1816 (1991), U.S. v. Biaggi, 909 F.2d 662, 695 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

¹⁰ E-mail from Jack Abramoff to Marc Schwartz, June 7, 2002 (attached as Exhibit 8).

¹¹ *Hearing, supra* at 229 and 240.

testified that the request for the Tigua to help fund the cost of the golf trip **had been made directly by Rep. Ney.**¹²

As it is clear that Rep. Ney solicited the funding for the trip, the only remaining question is whether or not this request was linked to a specific act, *i.e.* adding the Tigua's legislation to the election reform bill. Evidence demonstrates that there was, in fact, such a link. Members of the Tigua tribal council were scheduled to meet with Rep. Ney on August 12, 2002 to discuss the status of the legislation. Prior to the meeting, Mr. Schwartz received an e-mail from Mr. Abramoff specifically mentioning the golf trip. Mr. Abramoff stated: "BN had a great time and is very grateful, but is not going to mention the trip to Scotland for obvious reasons. He said he'll show his thanks in other ways which is what we want. We can discuss on the phone. did [*sic*] you get the other \$50K done?"¹³ In other words, Rep. Ney would show his gratitude for the trip by ensuring that the Tigua's legislation passed.

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.¹⁴ Regardless of whether or not the Tigua ultimately paid for the golf trip, Rep. Ney, in soliciting funding for the trip, linked the payment with his legislative assistance in violation of 18 U.S.C. §201(c)(1)(B).

Solicitation of Gifts

Rep. Ney's conduct also may have violated the federal law prohibiting Members from soliciting a gift from any person who has interests before the House.¹⁵ 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 individual's employing agency; or

¹² Id. at 238.

¹³ E-mail from Jack Abramoff to Marc Schwartz, August 10, 2002 (attached as Exhibit 9).

¹⁴ 18 U.S.C. §201(c)(1)(B).

¹⁵ 5 U.S.C. §7353.

(2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties. [Emphasis added.]¹⁶

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. Again, the e-mail from Mr. Abramoff to Mr. Schwartz (Exhibit 8), evidences that Rep. Ney solicited the golf trip for his personal benefit in violation of 5 U.S.C. §7353.

House Rules

In addition to being illegal, the conduct of Rep. Ney also likely violated clause 3 of House Rule 23 which provides 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.”

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.¹⁷

Thus, by accepting \$32,000 in campaign donations at the same time he agreed to push legislation benefitting the Tigua, and by soliciting funding for a golf trip to Scotland, Rep. Ney likely violated Rule 23.

Moreover, even if the House Committee on Standards of Official Conduct does not believe there is sufficient evidence that Rep. Ney solicited a bribe in violation of federal law, a 1999 Committee memorandum authorizes the Committee on Standards of

¹⁶ Id.

¹⁷ 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.

Official Conduct to take action for violations of House Rules.¹⁸ In that memorandum, the Committee approvingly quoted 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.”¹⁹ The Committee specifically stated that the provisions in the *Code of Ethics for Government Service* are applicable to House Members, and that formal charges may be brought against a Member for violating that code.²⁰

As a result, even without finding that Rep. Ney accepted a bribe in violation of 18 U.S.C. §201(b)(2)(A), solicited a gratuity in violation of 18 U.S.C. §201(c)(1)(B), or violated clause 3 of House Rule 23 of the *Standards of Official Conduct*, the Committee on Standards of Official Conduct Committee should still find that Rep. Ney was “dispensing special favors” in violation of House Rules.

The golf trip to Scotland also violates several provisions of the House gift and travel rules. House Rules note 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, **such as a round of golf**.²¹ 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.²²

Under this provision, the expenditures made for Rep. Ney to play golf at St. Andrews appear to constitute a gift accepted by Rep. Ney in violation of Rule 26.

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 Id.

²⁰ Id.

²¹ Overview of the Gift Rule, Rules of the U.S. House of Representatives on Gifts and Travel.

²² 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.²³

Rule 26, clause 5(b)(1)(A) requires that all travel be related to official duties. As the June 7, 2002 e-mail from Mr. Abramoff to Mr. Schwartz demonstrates, however, the primary purpose -- indeed perhaps the only purpose -- of Rep. Ney's trip to Scotland was to play golf at St. Andrews.

Further evidence that the trip was recreational is provided by a recently released affidavit in support of a criminal complaint against the recently-resigned General Services Administration Chief of Staff, David Safavian. The complaint includes the text of an e-mail sent by Mr. Safavian, who accompanied Rep. Ney and Mr. Abramoff on the golf trip, to the GSA ethics officer regarding his acceptance of free airfare for the August 2002 trip to Scotland.²⁴ The July 25, 2002 e-mail states, "I (along with members of Congress and a few Congressional staff) have been invited by a friend and former colleague on a trip to Scotland to play golf for four days."²⁵

The e-mails written by Mr. Abramoff and Mr. Safavian demonstrate that the trip was purely recreational. This is a clear violation of the rules which specifically provide 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."²⁶ Therefore, Rep. Ney violated House rules by going on the trip at all. In fact, he also seems to have lied on his travel disclosure forms on which, under the heading "Purpose of Trip" he wrote: "speech to Scottish parliamentarians; attend Edinburgh Military Tattoo, visit British Parliament."²⁷

²³ Travel, Rules of the U.S. House of Representatives on Gifts and Travel.

²⁴ Affidavit F.B.I. Special Agent Jeffrey A. Reising in Support of Criminal Complaint Charging David Hossein Savian, par. 29, Sept. 16, 2005 (attached as Exhibit 10).

²⁵ Id.

²⁶ Rule 26, clause 5(b)(1)(B).

²⁷ Member/Officer Travel Disclosure Form, filed by Rep. Ney on Sept. 9, 2002 (attached as Exhibit 11).

The way the trip was financed also implicates Rule 26. 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.²⁸

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 trip, rather than merely pay for a trip that is in fact organized and conducted by someone else.²⁹

Here, it is unclear who really financed Rep. Ney’s trip. Rep. Ney’s travel disclosure form lists the National Center for Public Policy as the funder, although Mr. Abramoff’s e-mails indicate that the trip was actually funded through the Capital Athletic Foundation.³⁰ Allegedly, the purpose of the trip was for Rep. Ney to make a speech to Scottish parliamentarians, to visit the British Parliament and to attend the Edinburgh Military Tattoo. It is unclear whether Rep. Ney actually did any of this.³¹ Moreover, Mr. Abramoff’s e-mails to Mr. Schwartz, both before and after the trip, indicate that it was

²⁸ 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).

²⁹ *Proper Sources of Expenses for Officially Connected Travel*, Rules of the House of Representatives on Gifts and Travel.

³⁰ Member/Officer Travel Disclosure Form, filed by Rep. Bob Ney on Sept. 9, 2002.

³¹ Although Rep. Ney claimed he would be meeting Scottish parliamentarians, a spokesperson at the Scottish Parliament said that there was a visit by a U.S. delegation in August 2002, but could find no records including the name of Rep. Ney. Neither was there a record of Rep. Ney visiting the Military Tattoo, though a spokesperson at the Tattoo said that tickets could have been purchased from outside vendors. Alex Massie and Iain Lundy, Congress bunkered over Scots junkets, <http://scotlandonsunday.scotsman.com/print.cfm?id=274232005>, March 13, 2005.

the Capital Athletic Foundation, a charity created and overseen by Mr. Abramoff, that covered the expenses. In any event, whichever alleged “charity” Mr. Abramoff chose as the conduit, clients of Mr. Abramoff’s apparently provided the actual funding for the trip.

In addition to the more serious ethical issues raised above, the trip may well run afoul of the travel rules. A full airing of this matter requires the Committee to consider: 1) which organization sponsored the trip, the Capital Athletic Foundation or the National Center for Public Policy; 2) what, if any, official activities Rep. Ney engaged in while on the trip, i.e. whether he actually gave a speech to Scottish parliamentarians and attended Edinburgh Military Tattoo; 3) what the direct and immediate relationship between the sponsoring organization and the trip was; 4) who the real sources of funding for the trip were; 5) why these private sources were not disclosed as required by House Rules; and 6) whether these private sources had a direct and immediate relationship with the golf trip to Scotland.

Next, even if the sources that funded the trip somehow had a direct and immediate relationship with some aspect of Mr. Ney’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.³² Thus, the Committee must also ask who paid for Mr. Ney to play golf at St. Andrews and, if the green fees were valued at over \$50, the Committee must find him in violation of the gift rule.

SunCruz Casinos

SunCruz, originally owned by Greek immigrant Gus Boulis, operated casino cruise ships off the coast of Florida.³³ In 1999, Mr. Boulis was charged with violating the Shipping Act by purchasing the vessels as a non-United States citizen. The federal government gave Mr. Boulis 36 months to sell the cruise line and Mr. Boulis turned to his lawyers at Preston Gates Ellis Rouvelas Meeds, LLP to assist him in finding a buyer. Mr. Abramoff, a partner at the firm, contacted his long-time friend, Adam Kidan, and the two of them, along with a third partner, Ben Waldman, decided to buy the cruise line. The plan was to have Mr. Kidan put up most of the money and Mr. Abramoff “use his lobbying expertise and network to help expand the new company’s markets both in the U.S. and abroad.”³⁴

³² Rule 26, clause 5(b)(4(C); *Acceptable Travel Expenses*, Rules of the U.S. House of Representatives on Gifts and Travel.

³³ Susan Schmidt and James V. Grimaldi, Casino fraud, politics and murder: How a lobbyist gained control, *The Washington Post*, May 4, 2005.

³⁴ Id.

To assist Mr. Abramoff with making the purchase, on March 30, 2000, Rep. Ney inserted into the *Congressional Record* a statement criticizing Mr. Boulis. Rep. Ney stated, “Mr. Speaker, how SunCruz Casinos and Gus Boulis conduct themselves with regard to Florida laws is very unnerving. Florida authorities have repeatedly reprimanded SunCruz Casinos and its owner Gus Boulis for taking illegal bets, not paying their customers properly and had to take steps to prevent SunCruz from conducting operations altogether.”³⁵

By late June 2000, Mr. Abramoff, Mr. Kidan and Mr. Waldman had reached an agreement to purchase SunCruz. On June 30, 2000, Mr. Kidan, Mr. Abramoff, Mr. Abramoff’s wife and Mr. Scanlon each made \$1,000 contributions to Rep. Ney’s re-election campaign.³⁶ On October 26, 2000, Rep. Ney inserted additional remarks regarding SunCruz into the *Congressional Record*. This time he stated:

“ . . . SunCruz Casinos now finds itself under new ownership and . . . its new owner has a renowned reputation for honesty and integrity. While Mr. Kidan certainly has his hands full in his efforts to clean up SunCruz’s reputation, his track record as a businessman and as a citizen lead me to believe that he will easily transform SunCruz from a questionable enterprise to an upstanding establishment that the gaming community can be proud of.”³⁷

Ironically, Mr. Kidan had been disbarred in New York following allegations of fraud in a business deal.³⁸ In March 2001, Mr. Abramoff, Mr. Kidan and three other SunCruz officials once again donated \$1,000 each to Rep. Ney’s re-election campaign and Mr. Abramoff donated another \$2,500 to Rep. Ney’s political action committee in October 2001.³⁹

Mr. Kidan and Mr. Abramoff were indicted on August 11, 2005, for bank fraud in connection with the purchase of SunCruz.⁴⁰ The six count indictment charges the men with faking a \$23 million payment to Mr. Boulis. As part of the fraud, Mr. Kidan and

³⁵ *Congressional Record*, March 30, 2000 at E469.

³⁶ John Bresnahan, Ney, Abramoff Have Long Ties, *Roll Call*, December 6, 2004.

³⁷ *Congressional Record*, October 26, 2000 at E1953.

³⁸ Bresnahan, *Roll Call*, Dec. 6, 2004.

³⁹ Id.

⁴⁰ James V. Grimaldi, Abramoff Indicted in Casino Boat Purchase; Lobbyist, Associate Charged with Fraud, *The Washington Post*, August 12, 2005.

Mr. Abramoff lied on their personal financial disclosure statements to lead the bank financing the purchase to believe the men had cash that they, in fact, did not have.⁴¹

Mr. Boulis was murdered in a gangland-style killing in February 2001.⁴² The crime remains under investigation.

Rep. Ney now claims to have inserted the remarks into the *Congressional Record* at the behest of Mr. Scanlon.⁴³ He also claims he did not know that Mr. Abramoff was connected to the deal.⁴⁴

House Rules require that Members shall conduct themselves “at all times in a manner which shall reflect creditably on the House of Representatives.”⁴⁵ Rep. Ney’s inserting statements into the *Congressional Record* in an effort to influence a commercial purchase in which Mr. Abramoff had a personal financial interest certainly does not “reflect creditably on the House.” In addition, the fact that Rep. Ney received campaign contributions from Mr. Abramoff, Mr. Scanlon and Mr. Kidan shortly after he inserted his initial comments into the *Congressional Record* suggests the possibility of a *quid pro quo* which clearly merits investigation by the House Committee on Standards of Official Conduct.

⁴¹ Id.

⁴² Id.

⁴³ Malia Rulon, Ney had praised now-indicted businessman, *Gannett News Service*, appearing in, *The Newark Advocate*, August 13, 2005.

⁴⁴ Id.

⁴⁵ Rule 23, clause 1.

REP. RICHARD POMBO

Richard Pombo (R-CA) is a sixth-term Member of Congress, representing the 11th district of California. In 2003, he took over the chairmanship of the House Resources Committee,¹ becoming the youngest chairman in the House, and winning the post over nine more senior Republicans with the strong backing of Majority Leader Tom DeLay.² Rep. Pombo, in turn, has made contributions to Rep. DeLay's legal defense fund,³ and working with Rep. John Doolittle (R-CA), has forced through an ethics committee rule change designed to protect Rep. DeLay from further investigation by the Committee on Standards of Official Conduct.⁴ Rep. Pombo's ethics violations include: misuse of the franking privilege, accepting campaign contributions in return for legislative assistance, keeping family members on his campaign payroll, and misusing official resources.

Misuse 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 their promotion of a series of regulations expanding snowmobiling in national parks.⁵ The leaflets were sent to snowmobile owners in the swing states of Wisconsin and Minnesota.⁶ Rep. Pombo authorized the expenditure of \$68,081 from House Resources Committee funds for the mailing as "official business."⁷

When Public Citizen and two Minnesota environmental lawyers filed complaints against Rep. Pombo with the House Commission on Congressional Mailing Standards (better known as

¹ Mike Soraghan, Money Accelerates Congressional Climb; Ability to Raise Cash, Spread it Around Are Clear Factors in House Leadership Choices, *Denver Post*, January 12, 2003.

² Zachary Coile, Profile: Rep. Richard Pombo, *San Francisco Chronicle*, May 3, 2004.

³ National Briefing DeLay: Taking the Fun Out of Fun-D?, *American Political Network*, June 16, 2005.

⁴ Pete McCloskey, Editorial, Republicans Rebel Against DC Gang Environmental Stance and Ethics Issues Trouble 'Elders', *Sacramento Bee*, April 22, 2005.

⁵ See Exhibits 1 and 2 to Frank Clemente, et al. V. Rep. Richard Pombo, Complaint to House Commission on Congressional Mailing Standards, November 11, 2004 (complaint and exhibits attached as Exhibit 1).

⁶ Art Levine, The DeLay Wannabes, *American Prospect*, June 1, 2005.

⁷ Greg Gordon, Democrats Fuming Over GOP Mailing, *Star Tribune*, October 13, 2004.

the “Franking Commission”), alleging he had illegally used public money to send pro-Bush mailers to snowmobilers, the Commission – chaired by Rep. Bob Ney – failed to act.⁸ Instead, the Commission asserted that the panel had forfeited jurisdiction over the matter when it failed to act on the complaints within 30 days.⁹

The mailing to snowmobilers was the last of ten newsletters on policies Rep. Pombo had issued since becoming Chairman of the House Resources Committee before the November election.¹⁰ Over that two-year period Rep. Pombo spent \$500,000 worth of taxpayer-funded postage to send newsletters across the nation touting the work of his committee,¹¹ and he requested more money for official postage than any other chairman.¹²

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.¹³ 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.¹⁴ These mailers 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.¹⁵ The mailers are excessively “partisan, politicized or personalized” in that they assert that the Bush administration is working to “protect your right to

⁸ Levine, *American Prospect*, June 1, 2005.

⁹ Jennifer Yachin, Ney Dismisses Complaint Against Pombo, *Roll Call*, July 14, 2005; see also Lisa Vorderbrueggen, Congressman Escapes Censure, *Monterey County Herald*, July 15, 2005; Jennifer Yachin, Democrats Seek Review of Franking Dismissal, *Roll Call*, July 21, 2005.

¹⁰ Lisa Vorderbrueggen, Lawyers File Complaint Against Pombo, *Contra Costa Times*, October 30, 2004.

¹¹ Lisa Friedman, Taxpayer Funds Going Postal; Congressman Wants Extra Committee Spending on Mail Stamped Out, *Daily News of Los Angeles*, July 25, 2004.

¹² Juliet Eilperin, Bush Policy Gets a Ride on the House; Taxpayers Pay for Election Year Mailing, *The Washington Post*, October 13, 2004.

¹³ 39 U.S.C. §3210(a)(6)(A).

¹⁴ 39 U.S.C. §3210(a)(6)(B).

¹⁵ Red Book, ch.2, para. 4a.

ride”and they refer to the Clinton administration’s policy on snowmobiles in national parks as “infamous.”¹⁶ Moreover, as a guide, the laws recommend that any partisan or politicized references not exceed two references per page.¹⁷ Rep. Pombo’s mailers include five references to President Bush, thereby running afoul of the law.

Finally, Members are required to seek prior approval and obtain advisory opinions before sending out franked mail.¹⁸ No such approval was obtained prior to the October mailing.¹⁹

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.

Campaign Donations In Exchange for Use of Official Powers

Support for Chevron in Opposing Competitor’s Bid for Unocal

Rep. Pombo has taken actions that suggest he is trading votes for campaign contributions. For example, he has been an outspoken critic of an unsuccessful attempt by a Chinese company, China National Off-Shore Oil Corp. (CNOOC), to buy Unocal, a California energy company.²⁰ Rep. Pombo went so far as to send a letter to President Bush raising his concerns about the deal,²¹ and, in an effort to create a legislative advantage for Chevron, sponsored a resolution criticizing the CNOOC bid.²² Chevron, a chief opponent of the deal and rival for the purchase of

¹⁶ See Mailer, Exhibit 1 to Frank Clemente, et al. v. Rep. Richard Pombo, Complaint to House Commission on Congressional Mailing Standards, November 11, 2004.

¹⁷ Id.

¹⁸ 2 U.S.C. §311(F).

¹⁹ Frank Clemente, et al. v. Rep. Richard Pombo, Complaint to House Commission on Congressional Mailing Standards, November 11, 2004.

²⁰ Emily Pierce and Tory Nermyer, A War Over Oil, *Roll Call*, June 29, 2005.

²¹ Edward Alden and Stephanie Kirchgassner, Political Payments Raise Questions, *Financial Times UK*, June 30, 2005.

²² Bennett Roth, Texas Firm Hired by Chinese Oil Company, *Houston Chronicle*, July 12, 2005.

Unocal, has contributed \$13,000 to Rep. Pombo since 2003.²³ Chevron lobbyists also helped draft at least one letter from lawmakers -- including Rep. Pombo -- to Treasury Secretary John Snow that claimed CNOOC's bid challenges American jobs, energy production and national security interests.²⁴

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.²⁵ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.²⁶ If Rep. Pombo accepted campaign contributions from Chevron in exchange for opposing CNOOC's bid to buy Unocal, he would be in violation of 18 U.S.C. §201(b)(2)(A).

In addition to being illegal, the conduct of Rep. Pombo may have violated clause 3 of House Rule 23 which provides 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."

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.²⁷

Thus, if Rep. Pombo accepted money from Chevron in exchange for his use of his opposition to CNOOC's bid to purchase Unocal, he likely violated Rule 23.

²³ www.opensecrets.org. In the two years since becoming Chairman of the House Resources Committee, Rep. Pombo has accepted \$151,552 from energy and natural-resources companies, including Chevron. Robert Gammon, Welcome to Pombo Country; Congressman Richard Pombo Always Sides With Property Owners; *East Bay Express*, August 24, 2005.

²⁴ Pierce and Nermyer, *Roll Call*, June 29, 2005.

²⁵ 18 U.S.C. §201(b)(2)(A).

²⁶ 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).

²⁷ 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.

In a 1999 memorandum, the House Committee on Standards of Official Conduct approvingly quoted 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.”²⁸ The Committee specifically stated 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.²⁹ Therefore, the Committee should consider whether Rep. Pombo violated 18 U.S.C. §201(b)(2)(A) and whether he “dispens[ed] special favors” in violation of House Rules.

Opposition to Environmental Guidelines

In 2004, Rep. Pombo’s office sent a letter to Secretary of the Department of Interior Gail Norton, urging the Department of the Interior to suspend environmental guidelines opposed by the wind-power industry.³⁰ The letter failed to disclose, however, that Rep. Pombo’s parents have received hundreds of thousands of dollars in royalties from wind-power turbines on their 300-acre ranch.³¹ Moreover, Rep. Pombo himself 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.³² The wind-farm regulation falls under the jurisdiction of the Resources Committee, chaired by Rep. Pombo.³³

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”³⁴ House Members are also directed to adhere to

²⁸ 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.

²⁹ Id.

³⁰ Lisa Vorderbrueggen, Activists Seek Probe for Pombo, *Contra Costa Times*, April 21, 2005.

³¹ Rone Tempest, Lawmaker Denies Vested Interest in Wind-Power Rules, *San Jose Mercury News*, April 7, 2005.

³² Gammon, *East Bay Express*, August 24, 2005.

³³ Vorderbrueggen, *Contra Costa Times*, April 21, 2005.

³⁴ 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.

5 CFR §2635.702(a),³⁵ 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.

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.³⁶ To do so “would raise the appearance of undue influence or breach of the public trust.”³⁷

Finally, 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.”³⁸ This ethics standard is considered to be “the most comprehensive provision of the code.”³⁹ 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.⁴⁰ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including accepting illegal gratuities⁴¹ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁴²

³⁵ Id.

³⁶ H. Con. Res. 175, 85th Cong., 2d Sess., 72 Stat., pt 2, B12, para. 5 (1958).

³⁷ Id.

³⁸ Rule 23, clause 1.

³⁹ House Comm. on Standards of Official Conduct, House Ethics Manual.

⁴⁰ 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).

⁴¹ 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).

⁴² House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 960930, 96th Cong., 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 20, 1980) (debate and vote of censure).

By continuing to financially benefit from business interests that he and his family held at the same time he was 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 appears to have violated 5 C.F.R. §2635.702(a), run afoul of House conflict-of-interest rules and 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.

Legislative Assistance to Indian Tribes

As chairman of the House Resources Committee, Rep. Pombo is responsible for tribal-related legislation. As a result, Indian tribes have invested increasingly in Rep. Pombo's political campaigns.⁴³ From the creation of Rich PAC, Rep. Pombo's leadership political action committee, in June 2003 through the end of May 2004, the PAC received \$76,500 from tribes and more from individual tribal members and representatives.⁴⁴ So far this year, 15 tribes have contributed a total of \$71,000 to Rich PAC.⁴⁵ This accounts for three out of every four dollars raised by the PAC since January.⁴⁶ In total, Rep. Pombo's campaign and leadership committees have collected \$221,000 from tribes since 1999.⁴⁷

The tribal contributions have often coincided with House Resource Committee hearings on Indian issues. For example, to prevent the Menominee tribe from buying land in Kenosha, Wisconsin for an off-reservation casino, the Potawatomi, which enjoyed a monopoly on off-reservation casinos with its Milwaukee gambling hall, gave nearly \$6,000 to Rep. Pombo's campaign.⁴⁸ A spokesperson for the Potawatomi explained that they supported Rep. Pombo's proposal to make it more difficult for other tribes to open off-reservation casinos in the future.⁴⁹

⁴³ Michael Doyle, Donor Tribes Seek Pombo's Ear Tracy Congressman's Committee Oversees Indian-Related Issues, *Fresno Bee*, April 22, 2005.

⁴⁴ Josh Richman, Tribes Help Fill Pombo PAC's Coffers, *Alameda Times-Star*, June 22, 2004.

⁴⁵ Michael Doyle, Indian Tribes Contribute Heavily to Pombo's PAC, *Fresno Bee*, July 14, 2005.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Cary Spivak and Dan Bice, A Sop to the Liquor Lobby?, *Milwaukee Journal*, May 4, 2005.

⁴⁹ Id.

Other examples abound. The Osage Tribe of northern Oklahoma gave Rich PAC \$2,500 on March 10, 2004 and another \$2,500 on March 18, 2004 while the Resources Committee held a hearing on March 15, 2004 on a bill to free the Osage Tribe from a 1906 treaty that deprived the tribe of certain sovereign rights enjoyed by other tribes.⁵⁰ Six members of the Mashpee Wampanoag Tribe of Cape Cod, which has fought for federal recognition since 1990, each gave Rich PAC \$2,000 on September 29, 2003.⁵¹ Among the donors was the tribal president, who was called to testify at the Resource Committee's March 31, 2004 oversight hearing on the tribal recognition and acknowledgment process.⁵² In addition, just days before the July 14, 2005 hearing that the House Resources Committee was holding on land claims involving the Shinnecock Tribe, Rep. Pombo attended a \$5,000 per person fund-raiser for Rich PAC held at a baseball All Star Game.⁵³ The event was co-hosted by Christopher Illitch and Mike Malik. As it happens, Mr. Illitch's mother and Mr. Malik are partners in Gateway Funding Associates, which is bankrolling the Shinnecoaks' efforts to build a casino in Southampton, New York.⁵⁴

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), discussed above.

Support for Proposed Freeways

Rep. Pombo's support for two new freeways in California's Central Valley and East Bay has also raised the specter that he is using his position to financially benefit him and his family. 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 just because of the federal funds Rep. Pombo has obtained to study the highway projects.⁵⁵ 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 be worth far more than its currently assessed value of \$1.19 million.⁵⁶

⁵⁰ Richman, *Alameda Times-Star*, June 22, 2004.

⁵¹ Id.

⁵² Id.

⁵³ Erica Werner, Congressman Donors Tied to Tribal Dispute, *Associated Press*, appearing in, *The Washington Post*, July 12, 2005.

⁵⁴ Id.

⁵⁵ Gammon, *East Bay Express*, August 24, 2005.

⁵⁶ Id.

Thus if, as it appears, Rep. Pombo has supported legislation that would financially benefit him and his family, he would likely be in violation of 5 CFR §2635.702(a) (discussed above) as well as the House conflict-of-interest rules (also discussed above).

Payments to Family Members

Rep. Pombo has made significant payments to family members since becoming a Member of Congress.⁵⁷ While lawmakers are prohibited from putting relatives on their congressional payrolls, it is not illegal to employ family members to work on campaigns, as long as the family member is not paid significantly more than the market rate and does bona fide campaign work.⁵⁸ Rep. Pombo's family are among the recipients of the largest payments made by his campaigns. Over the last four years he paid his wife and brother \$357,325 from his political funds, allegedly for "bookkeeping, fund-raising, [and] consulting."⁵⁹ Rep. Pombo's payments to his wife and brother amounted to 25 percent of what he raised.⁶⁰ In addition, his son has run virtually all of his political campaigns.⁶¹

By law, candidates are prohibited from using campaign funds for personal use.⁶² 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.⁶³

⁵⁷ See, e.g., Jim Drinkard and Kathy Kiely, DeLay has Company in Ethical Gray Areas, *USA Today*, April 27, 2005.

⁵⁸ Richard Simon, Lawmakers Paying Family Members is Not Uncommon Practice, *Los Angeles Times*, April 14, 2005.

⁵⁹ Id.; see also Howard Kurtz, Scandal and the System, *The Washington Post*, May 15, 2005. Specifically Pombo paid his wife and brother a total of \$255,916 between 2002 and 2004, an additional \$39,938 to his wife from 2001-02, and \$169,299 to his brother during that same period. Critics Rap Amount Pombo Paid Family for Campaign Work, *Congress Daily*, December 6, 2004.

⁶⁰ Id.

⁶¹ David A. Keene, Conservatives Must Defend DeLay, *Human Events*, May 2, 2005.

⁶² 2 U.S.C. §439a; 11 C.F.R. §113.2(d).

⁶³ 11 C.F.R. §113.1(g).

Personal use includes salary payments to family members, “unless they are fair market value payments for bona fide, campaign-related services.”⁶⁴ Any salary payments to family members in excess of their fair market value are considered to be for “personal use.”⁶⁵

The excessive size of the payments Rep. Pombo made to family members suggest they were for personal use, and were not legitimate campaign expenditures, in violation of campaign finance laws, making these payments an appropriate matter for investigation by the Committee on Standards of Official Conduct.

Misuse of Federal Funds for Campaign Expenses

Rep. Pombo also appears to have misused staff time and federal dollars. Just prior to the November 2004 election, he granted paid leave to much of his committee staff, at least some of whom left to work on campaigns.⁶⁶ During this period of leave, four members of Pombo’s staff submitted travel reimbursement requests totaling \$3,872.⁶⁷ One staffer’s travel bill was for \$1,042 incurred the day after the election.⁶⁸

Using district office funds for campaign purposes violates the House of Representatives Standards of Official Conduct. According to the Campaign Booklet published by the Committee on Standards of Official Conduct, there is a “basic principle that government funds should not be spent to help incumbents gain re-election.”⁶⁹ 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.⁷⁰

The 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

⁶⁴ FEC Advisory Opinion 2001-10, July 17, 2001.

⁶⁵ Id.

⁶⁶ Lisa Vorderbrueggen, Legislators Say Pombo Misuses His Resources, *Contra Costa Times*, March 26, 2005; see also Jennifer Yachnin, Ney, Lofgren Battling Over Questions on Travel, *Roll Call*, April 4, 2005..

⁶⁷ Vorderbrueggen, *Contra Costa Times*, March 26, 2005.

⁶⁸ Id.

⁶⁹ 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)).

⁷⁰ Campaign Booklet.

House ethics rules.⁷¹ 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 he claimed he had been conducting official business.⁷² 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.⁷³

Applying these precedents, Rep. Pombo's reimbursement of his employees for time they spent working on political campaigns and for travel expenses related to campaign work, he would likely be in violation of federal law as well as the House Standards of Official Conduct.

⁷¹ Campaign Booklet.

⁷² 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).

⁷³ Campaign Booklet (*citing* United States v. Clark, Criminal No. 78-207 (W.D. Pa. 1978); *see id.* 249-50).

REP. RICK RENZI

Rick Renzi (R-AZ) is a second-term Member of Congress, representing the 1st district of Arizona. In addition to his position as a Member of Congress, Rep. Renzi maintains business and real estate interests.¹ Rep. Renzi's ethics issues stem from the illegal financing of his 2002 congressional campaign and from legislation he sponsored that benefitted his father.

Illegal Financing of His 2002 Campaign

Use of Corporate Contributions

In 2004, the Federal Election Commission ("FEC") concluded an audit of Rep. Renzi's campaign committee, Rick Renzi for Congress ("RRFC") and found that the committee had illegally financed much of the Congressman's 2002 election campaign.² Rep. Renzi made 11 loans to RRFC totaling \$585,090, which the campaign committee alleged were made through Rep. Renzi's personal funds.³ In fact, the FEC found that, based on the documentation submitted by RRFC, \$369,090 of the loans were made using impermissible corporate funds.⁴

The Federal Election Campaign Act ("FECA") prohibits corporations from making any contribution in connection with a federal election.⁵ Similarly, candidates and committees may not accept contributions -- in the form of money, in-kind contributions or loans -- from any corporation.⁶

The FEC Audit staff reviewed the source of the funds for all of the 11 loans made to the committee and determined that \$585,090 was funded by Renzi & Co. Inc., in which the candidate held a 90% interest, and Renzi Investments Inc. (now Fountain Realty Development Inc.), in which the candidate held a 50% interest.⁷ The Audit staff found that the loans were made by

¹ Jon Kamman, Renzi Got Banned Finances, Audit says: Banned Funds Are In Question, *Arizona Republic*, December 19, 2004.

² Federal Election Commission, Report of the Audit Division on Rick Renzi for Congress, Dec. 18, 2001 - Dec. 31, 2002, [hereinafter Audit Report] page 3 (attached as Exhibit 1).

³ Id.

⁴ Id.

⁵ 2 U.S.C. §441b(a).

⁶ 2 U.S.C. §441b.

⁷ Audit Report at 5.

check drawn on the corporate accounts, deposited into the candidate's personal bank account, and then transferred by wire or check to RRFC's bank account.⁸

When the Audit staff confronted RRFC with its findings, RRFC first claimed that the funds in question were generated through the sale of business assets owned solely by the candidate making the profits of these sales the funds of the candidate.⁹ RRFC next argued that because the corporations were organized under subchapter S of the Internal Revenue Code, they were sole proprietorships, making the earnings of those corporations the personal income of the candidate.¹⁰ Subsequently, RRFC claimed that the loans made to the campaign committee were funded by repayment of loans made by the candidate to the corporations, though no evidence was offered to support this claim.¹¹ The FEC explained that the Commission has long maintained that subchapter S corporations are not differentiated from any other corporations under the FECA.¹²

The Audit reports that the Audit staff met with RRFC representatives and their legal counsel several times before issuing the Interim Audit Report and that during that process, RRFC again revised their characterizations of the source of the candidate's funds.¹³ As a result of evolving explanations, the Audit staff was required to request additional information from RRFC.¹⁴ Eventually after reviewing the information RRFC provided, the Audit staff concluded that of the \$585,090 loaned to RRFC, loans totaling \$369,090 were made using impermissible corporate funds.¹⁵

Misstatement of Financial Activity

In addition, when RRFC's reported activity was compared to its bank records, the Audit staff found that, for the 2002 calendar year, receipts, disbursements and cash on hand had been misstated.¹⁶ Reports filed by campaign committees must accurately disclose the amount of cash

⁸ Id.

⁹ Audit Report at 6.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Audit Report at 6.

¹⁴ Id. at 7.

¹⁵ Id. at 9.

¹⁶ Audit Report at 14.

on hand at the beginning and end of the reporting period, the total amount of receipts for both the reporting period and the election cycle, and the total amount of disbursements for both the reporting period and the election cycle.¹⁷ The Audit staff found that RRFC had understated its receipts by \$37,539, its disbursements by \$101,105, and had overstated its cash on hand by \$63,566.¹⁸

Failure to Itemize Contributions

Political committees must itemize every contribution from any political committee, regardless of the amount, and every transfer from another political party committee.¹⁹ This means that for each such contribution, the recipient must provide the amount of the contribution, the date of receipt of the contribution, the name and address of the contributor, and the election cycle-to-date total of all contributions for the same contributor.²⁰

The Audit staff reviewed all of the contributions RRFC received from political committees and found that it had failed to itemize 13 such contributions totaling \$20,745.²¹ RRFC offered no explanation for this failure.²²

Failure to Disclose Transfers

After receiving proceeds of a joint fundraiser, each participating committee must report its share of net proceeds received as a transfer from the fundraising representative and its share of gross receipts from each contributor as memo entries.²³ RRFC failed to report three transfers it received totaling \$134,495 from The Leadership Committee, which RRFC has claimed as an affiliated committee with a relationship as a fundraising representative.²⁴ Further, memo entries disclosing individuals who contributed over \$200 or political committees that contributed any amount were not provided for any of the three transfers as required.²⁵

¹⁷ 2 U.S.C. § 434(b)(1), (2) and (4).

¹⁸ Audit Report at 15.

¹⁹ 2 U.S.C. §434(b)(3)(A),(B) and (D).

²⁰ 11 C.F.R. §§100.12, 104.3(a)(4) and 2 U.S.C. §424(b)(3)(A) and (B).

²¹ Audit Report at 16.

²² Id.

²³ 11 C.F.R. §102.17(c)(8)(i)(B).

²⁴ Audit Report at 17.

²⁵ Id.

Disclosure of Name and Employer of Contributor

For each itemized contribution from an individual, political committees must provide the contributor's full name and address, the contributor's occupation and name of employer, the date of receipt of the contribution, the amount of the contribution, and the election cycle-to-date total of all contributions from the same individual.²⁶ When the treasurer of a political committee shows that the committee used "best efforts" to obtain, maintain and submit the information required, the committee's reports and records will be considered in compliance with Act.²⁷

After reviewing the contributions of over \$200 made to RRFC, the Audit staff identified 200 contributions totaling \$132,811 (42% of contributions from individuals) from 159 contributors that did not have the occupation and/or name of employer properly disclosed.²⁸ Moreover, the Audit staff discovered no evidence that any attempts were made by RRFC to locate the missing contributor information.²⁹ As a result, the Audit staff found that RRFC had failed to demonstrate that "best efforts" were made to obtain, maintain and submit the missing information.³⁰

The severity of Rep. Renzi's campaign finance violations suggest that not only the FEC, but the House Committee on Standards of Official Conduct should investigate this matter. 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."³¹ This ethics standard is considered to be "the most comprehensive provision of the code."³² 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.³³

Rep. Renzi's illegal use of corporate money to fund his 2002 election is the very definition of a flagrant violation that reflects on Congress as a whole and that might otherwise go

²⁶ 2 U.S.C. §434(b)(3)(A) and 11 C.F.R. §§100.12 and 104.3(a)(4).

²⁷ 2 U.S.C. §432(h)(2)(i).

²⁸ Audit Report at 18.

²⁹ Id.

³⁰ Id.

³¹ Rule 23, clause 1.

³² House Comm. on Standards of Official Conduct, House Ethics Manual.

³³ 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).

unpunished. Absent the influx of illegal corporate dollars, Rep. Renzi might not have won election to Congress. The FEC audit was not conducted until late 2004 and, to date, there has been no known enforcement action against Rep. Renzi or his campaign committee. Thus, Rep. Renzi was able to violate the law, get elected to Congress and remain unpunished. Should the FEC ever engage in an enforcement action, the worst Rep. Renzi is likely to suffer is a fine -- a small penalty to pay once elected to federal office. There are few things that bring greater dishonor to the institution of the House of Representatives than the act of violating federal law to become a Member of that body. As a result, the House Ethics Committee should investigate Rep. Renzi's conduct and, if it finds that he knowingly and willfully violated the law to buy his election, the Committee should take appropriate action.

Rep. Renzi Sponsored Legislation Financially Benefitting His Father

In 2003, Rep. Renzi sponsored legislation (signed into law in November 2003) that dealt hundreds of millions of dollars to his father's business while, according to environmentalists, devastating the San Pedro River.³⁴ 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.³⁵ 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.³⁶ Notably, neither the fort nor the river are located in Rep. Renzi's district.³⁷

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.³⁸ General Renzi served at Fort Huachuca during his career in the military.³⁹ ManTech had \$467 million in contracts at Fort Huachuca with options for an

³⁴ 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.

³⁵ Id.

³⁶ Cart, *Los Angeles Times*, September 25, 2003.

³⁷ John Dougherty, River Gamble, *Phoenix New Times*, September 18, 2003.

³⁸ Id.

³⁹ Id.

additional \$1.1 billion between 2004 through 2008.⁴⁰ 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.⁴¹

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.⁴² It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁴³ 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).

In a 1999 memorandum, the House Committee on Standards of Official Conduct approvingly quoted 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.”⁴⁴ The Committee specifically stated 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.⁴⁵ Therefore, the Committee should consider whether Rep. Renzi violated 18 U.S.C. §201(b)(2)(A) and whether he “dispens[ed] special favors” by passing legislation that aided his father’s company.

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”⁴⁶ House Members are also directed to adhere to 5

⁴⁰ Brody Mullins, Renzi Under Fire for Defense Provision, *Roll Call*, September 11, 2003.

⁴¹ www.opensecrets.org.

⁴² 18 U.S.C. §201(b)(2)(A).

⁴³ 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).

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 Id.

⁴⁶ 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.

CFR §2635.702(a),⁴⁷ 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.⁴⁸ To do so “would raise the appearance of undue influence or breach of the public trust.”⁴⁹

Finally, 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.”⁵⁰ This ethics standard is considered to be “the most comprehensive provision of the code.”⁵¹ 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.⁵² This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including accepting illegal gratuities⁵³ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁵⁴

⁴⁷ Id.

⁴⁸ H. Con. Res. 175, 85th Cong., 2d Sess., 72 Stat., pt 2, B12, para. 5 (1958).

⁴⁹ Id.

⁵⁰ Rule 23, clause 1.

⁵¹ House Comm. on Standards of Official Conduct, House Ethics Manual.

⁵² 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).

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. 960930, 96th Cong., 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 20, 1980) (debate and vote of censure).

By pushing legislation which stood to financially benefit his father, Rep. Renzi may have violated 5 C.F.R. §2635.702(a), run afoul of House conflict-of-interest rules and 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.

REP. CHARLES H. TAYLOR

Charles H. Taylor (R-NC) is an eighth-term Member of Congress, representing the 11th district of North Carolina. Rep. Taylor sits on the Appropriations Committee. Rep. Taylor's ethics issues arise from his lucrative outside business interests.

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 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 to borrowing \$1.3 million from Blue Ridge.⁴

In 2001, Hayes C. Martin, the former president of Blue Ridge, pled 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 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

¹ Damon Chappie, Taylor May Be Sued Over Bank Killings, *Roll Call*, July 15, 2004.

² Joseph Neff, Two plead guilty in bank-fraud case, *The News & Observer*, December 6, 2001.

³ Id.

⁴ Damon Chappie, Feds: No Taylor Shield, *Roll Call*, June 9, 2003.

⁵ Neff, *The News & Observer*, Dec. 6, 2001.

⁶ Pat Stith, Taylor linked to loan fraud, *News & Observer*, July 6, 2003; John Wagner, Taylor Inquiry Urged, *The News & Observer*, August 15, 2003;

⁷ Neff, *The News & Observer*, Dec. 6, 2001.

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, responded merely that “each United States Attorney has considerable latitude in determining whom to investigate and prosecute and how to prosecute.”¹¹ The weight of evidence suggesting that Rep. Taylor was personally involved in fraud and money laundering warrants further investigation for possible criminal prosecution.

Moreover, 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,¹² the House ethics committee has never looked into any of Taylor’s outside activities, including those involving Blue Ridge Savings Bank.¹³ The Ethics Manual defines a banned fiduciary relationship as 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.”¹⁴ Given the degree of ownership and control Rep. Taylor exercises over the Blue Ridge Savings Bank, the Committee on Standards of Official Conduct should investigate whether this constitutes a banned fiduciary relationship in violation of House rules.

⁸ *Id.*

⁹ Tammy Jones, Testimony closes in fraud trial linked to Rep. Taylor, *Asheville Citizen-Times*, April 11, 2003.

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 (attached as Exhibit 1).

¹² *See* Ethics Manual for Members, Officers and Employees of the U.S. House of Representatives, Chapter 3 (102nd Cong., 2d Sess.).

¹³ Chappie, *Roll Call*, July 15, 2004.

¹⁴ House Comm. on Standards of Official Conduct, House Ethics Manual.

Business Interests in Russia

There is ample evidence that Rep. Taylor has established new enterprises in Russia for his own 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 taken 10 official trips to Russia.¹⁵

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%.¹⁶ For example, Financial Guaranty agreed to loan Ivanovo businessman Sergei Zvonov \$100,000 to finance the construction of an apartment building.¹⁷ 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.¹⁸

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 American-owned bank in Russia.¹⁹ Rep. Taylor also founded a Russian investment company called Columbus, which appears to work in concert with the Commercial Bank of Ivanovo.²⁰ 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.²¹ Blue Ridge Savings Bank and the Commercial Bank of Ivanovo have also been coordinating a local, bank-based trade bridge.²²

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

¹⁵ See Politicalmoneyline.com at <http://www.politicalmoneyline.com/cgi>.

¹⁶ Greg Walters, *Moscow Times*, American Lawmaker Banks on Ivanovo, May 26, 2005; James Rosen, Russian dealings blur public, private, *The News & Observer*, August 22, 2000.

¹⁷ Id.

¹⁸ Id.

¹⁹ Angie Newsome, Russian Trade May Jolt WNC Economy, *Asheville-Citizen Times*, February 19, 2004.

²⁰ Walters, *Moscow Times*, May 26, 2005.

²¹ Id.

²² Id.

international multibillion-dollar money-laundering scheme.²³ 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.²⁴ Boris and Marina Bolshakov own the remaining 20 percent interest of both the Commercial Bank of Ivanovo and Columbus investment company.²⁵

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.²⁶ 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.²⁷

House Rules 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."²⁸ 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.²⁹

Thus, if Rep. Taylor advanced his personal business interests in Russia through the authority of his congressional position, he likely violated Rule 23.

²³ Rosen, *The News & Observer*, August 22, 2000.

²⁴ Id.

²⁵ Walters, *Moscow Times*, May 26, 2005.

²⁶ Rosen, *The News & Observer*, August 22, 2000.

²⁷ Id.

²⁸ Rule 23, clause 3.

²⁹ 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.

Members of the House are also prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”³⁰ House Members are also directed to adhere to 5 CFR §2635.702(a),³¹ 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 taking taxpayer-funded trips to Russia to explore and advance his personal business interests, Rep. Taylor may have violated 5 CFR §2635.702(a). The Committee on Standards of Official Conduct should also investigate Rep. Taylor’s support for 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.³² To do so “would raise the appearance of undue influence or breach of the public trust.”³³ 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

³⁰ 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.

³¹ Id.

³² H. Con. Res. 175, 85th Cong., 2d Sess, 72 Stat., pt 2, B12, para. 5 (1958).

³³ Id.

Rep. Taylor has come to the aid of campaign contributor, General Electric, which contributed \$8,250 to his 2004 re-election.³⁴ 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.³⁵ If approved, General Electric could have used the bill to justify further delay in its clean-up of the Hudson River.³⁶

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.³⁷ It is well-settled that accepting a contribution to a political campaign can constitute a bribe of a *quid pro quo* can be demonstrated.³⁸ 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).

Rep. Taylor may also be in violation of Rule 23, clause 3 which, as discussed above, prohibits a Member from receiving compensation for the improper exercise of the Member's position in Congress. If Rep. Taylor accepted money from General Electric in exchange for supporting legislation that would aid General Electric, he likely violated Rule 23.

The House Committee on Standards of Official Conduct is authorized to take action for violation of House Rules.³⁹ In a 1999 memorandum, the Committee approvingly quoted 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,

³⁴ 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.

³⁵ Id.

³⁶ Id.; see also Ned Sullivan and Rich Schiafo, Talking Green, Acting Dirty, *The New York Times*, June 12, 2005; Rich Schiafo, GE Refuses to Admit Responsibility for PCBs, *Poughkeepsie Journal*, June 18, 2005.

³⁷ 18 U.S.C. §201(b)(2)(A).

³⁸ 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).

³⁹ 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.

whether for remuneration or not.”⁴⁰ The Committee specifically stated 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.⁴¹ The Committee should therefore consider whether Rep. Taylor was “dispensing special favors” in violation of the House Rules.

⁴⁰ Id.

⁴¹ Id.

REP. MAXINE WATERS

Maxine Waters (D-CA) is an eighth-term member of the U.S. House of Representatives, representing the 35th district of California. 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 benefitted primarily through charging for spots on her mothers' "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 8 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.

² Id.

³ Dana Milbank, Lowering the Bar for Government Ethics? *The Washington Post*, December 31, 2004.

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 investigated for alleged accounting misconduct.¹⁰

Sidney Williams

Rep. Waters' husband, Sidney Williams, has also benefitted 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, benefitted 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

⁹ Id.

¹⁰ Id.

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.

when 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

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).

statements to the 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 then 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.

²²House 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, the firm of Siebert, Brandford and Shank, and the Chester Washington Golf Course.

MEMBERS OF THE SENATE

SENATOR CONRAD BURNS

Conrad Burns (R-MT) is a third-term Senator from Montana. Senator 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. Questions of unethical conduct have arisen because of his acceptance of campaign contributions in apparent exchange for exercising his authority as Chairman.

Senator Burns and Jack Abramoff

Sen. Burns' campaign committees have received substantial contributions from now-infamous Republican lobbyist Jack Abramoff, Mr. Abramoff's associates and Mr. Abramoff's tribal clients.¹ In fact, between 2000 and 2002, these donors contributed a whopping 42% of the total money received by Burns' political action committee.² These contributions totaled more than \$137,000.³ Sen. Burns received more money from Mr. Abramoff than did any other Member of Congress.⁴

Mr. Abramoff's largesse to Sen. Burns appears to have benefitted Mr. Abramoff's clients. Last year, 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.⁵ The tribe owns a posh resort that boasts 4,700 slot machines⁶ and each member of the tribe receives \$70,000 annually.⁷

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

¹ Editorial, The Super Bowl Earmark, *The Washington Post*, March 6, 2005.

² Susan Schmidt, Tribal Grant is Being Questioned; Senator Who Had Dealings With Lobbyist Abramoff Pushed for Award, *The Washington Post*, March 1, 2005.

³ Editorial, *The Washington Post*, March 6, 2005.

⁴ Charles Johnson, Burns tops donation list of lobbyist, *Billings Gazette*, May 24, 2005.

⁵ Schmidt, *The Washington Post*, March 1, 2005; Editorial, *The New York Times*, March 5, 2005.

⁶ Editorial, Gazette opinion: Burns must uphold higher ethical standards, *Billings Gazette*, April 17, 2005.

⁷ Editorial, *The Washington Post*, March 6, 2005.

spending bill.⁸ 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.⁹

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.¹⁰ Sen. Burns' receipt of hefty campaign contributions from Mr. Abramoff and his associates and clients in exchange for his legislative assistance may well violate this statute.

Trip to the 2001 Super Bowl

Sen. Burns' Appropriations Committee staffer, Ryan Thomas, and Sen. Burns' chief of staff, Will M. Brooke,¹¹ flew to the 2001 Super Bowl on a corporate jet leased by Mr. Abramoff and accompanied by several staffers from House Majority Leader Tom DeLay's office.¹² These staffers also visited a SunCruz gambling ship, partly owned by Mr. Abramoff, during the same junket.¹³ When news of the trip broke, in March 2005, Mr. Brooke claimed that he was told that the trip was funded by Indian tribes.¹⁴ Neither Senator Burns nor his aides have stated which tribe allegedly picked up the tab.¹⁵ According to some news reports, it was SunCruz that actually picked up the tab,¹⁶ however, there is no clear evidence of this.

⁸ Id.

⁹ Charles Johnson, Burns tops donation list of lobbyist, *Billings Gazette*, May 24, 2005.

¹⁰ 18 U.S.C. §201(c)(1)(B).

¹¹ Schmidt, *The Washington Post*, March 1, 2005. Also worth noting, at the end of 2003, Mr. Brooke left Sen. Burns' employ to work for Mr. Abramoff. Id.

¹² Schmidt, *The Washington Post*, March 1, 2005.

¹³ John Bresnahan, Burns Goes on Offense Against Ethics Charge, *Roll Call*, March 28, 2005.

¹⁴ Schmidt, *The Washington Post*, March 1, 2005.

¹⁵ Bresnahan, *Roll Call*, March 28, 2005.

¹⁶ Schmidt, *The Washington Post*, March 1, 2005; John Bresnahan, Burns Won't Duck Tribal Controversy, April 11, 2005.

The Senate Select Committee on Ethics should investigate the many questions raised by the trip. For example, the Senate Gifts Rule restricts gifts from lobbyists.¹⁷ Members, officers, and employees of the Senate may not accept “gifts of personal hospitality” from registered lobbyists.¹⁸ Jack Abramoff was a registered lobbyist.¹⁹ 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.²⁰ “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.’”²¹ As examples of travel that may not be accepted, the Senate Ethics Manual includes “charity golf, tennis, fishing, or ski tournaments.”²² A trip to the Super Bowl with a side trip to a gambling ship seem 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.²³ Moreover, Senators are required to sign authorization forms allowing staff members to accept reimbursement for travel.²⁴ 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.”²⁵

¹⁷ *Who is a “Lobbyist” for Purposes of the Gifts Rule*, Senate Ethics Manual, ch.2, p. 43; *see also* Rule 35.2.

¹⁸ Id.

¹⁹ *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==

²⁰ Rule 35, Senate Ethics Manual, Travel, p. 44.

²¹ Id.

²² Id.

²³ Rule 35.2(a)(1), Senate Ethics Manual, Travel, p. 44.

²⁴ Senate Rule 35.2(c)(1) through (5).

²⁵ Senate Rule 35.2(b)(1) through (4).

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.²⁶ 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.

Thus, 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' 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 Gifts Rule or the Travel Rule.

Even if the Committee finds itself unable to definitively determine 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 which may reflect upon the Senate.”²⁷ This rule is intended to protect the integrity and reputation of the Senate as a whole.²⁸

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' key staffers influenced Sen. Burns' legislative activity.

²⁶ 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.

²⁷ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432.

²⁸ Id.

SENATOR BILL FRIST

Sen. Bill Frist (R-TN), a wealthy doctor-turned-politician, is a second term Member of the United States Senate, representing the State of 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 it 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

Although bank records show Frist 2000, Inc. as the borrower, Frist 2000 did not report

¹ Bob Kemper and Tom Baxter, Frist's political funds in disarray: loans, losses raise questions, criticism, *Atlanta Journal-Constitution*, June 12, 2005.

² Id.

³ Paul Kane, CREW hits Frist with FEC complaint, *Roll Call*, June 28, 2005.

⁴ Kemper and Baxter, *Atlanta Journal-Constitution*, June 12, 2005.

⁵ Id.

⁶ Promissory Note, November 24, 2000 (attached as Exhibit 1).

⁷ Id.; *see also* Kane, *Roll Call*, June 28, 2005.

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 insecure 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 that of his contributors.

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 as “improper conduct which may reflect upon the Senate.”¹² The drafters of the rule intended to protect the integrity and reputation of the Senate as a whole.¹³

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.¹⁴ Finding that Sen. Talmadge “either knew, or should have known, of these improper acts and omissions,” the Committee recommended and the Senate

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 (attached as Exhibit 2).

⁹ Kemper and Baxter, *Atlanta Journal-Constitution*, June 12, 2005; see also Frist says no attempt to hide campaign finance laws, *The Associated Press*, July 15, 2005.

¹⁰ 2 U.S.C. §434(a)(2).

¹¹ 2 U.S.C. §§434(b)(2)(G) and (H).

¹² *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432.

¹³ Id.

¹⁴ Id. at 434.

adopted a finding that the Senator's conduct was "reprehensible and tends to bring the Senate into dishonor and disrepute and is hereby denounced."¹⁵

Similarly, Senator 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.¹⁶ 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.¹⁷ Sen. Frist's brother sits on HCA, Inc.'s board of directors.¹⁸

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.¹⁹ Blind trusts generally require assets to be turned over to a trustee who manages them without divulging any purchases or sales.²⁰ It was Sen. Frist, however, not the trustee who made the decision to sell the HCA, Inc. stock.

Ethics experts have questioned the terms of Sen. Frist's blind trust.²¹ The 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."²² Recognizing that the Senate Ethics Committee had previously ruled that Sen. Frist's

¹⁵ Id.; S. Rep. No. 96-337, 96th Cong., 1st sess. 18 (1979).

¹⁶ R. Jeffrey Smith and Jeffrey H. Birnbaum, Frist Stock Sale Raises Questions on Timing, *The Washington Post*, September 22, 2005.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Jonathan M. Katz, Senator Sold Stock Before Price Dropped, *Associated Press*, appearing in, *The Washington Post*, September 21, 2005.

²¹ Smith and Birnbaum, *The Washington Post*, Sept. 22, 2005.

²² Id.

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 did not exist beforehand?”²³ Mr. Baran further noted that the Securities and Exchange Commission (“SEC”) might find the answer to this question important.²⁴

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.²⁵ 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.²⁶ 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.²⁷ 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.²⁸

Taken together, all of this information strongly suggests that Sen. Frist may have sold the 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.

²³ Id.

²⁴ Id.

²⁵ Elana Schor, Frist’s selling of stock triggers investigation, *The Hill*, September 23, 2005.

²⁶ Id.

²⁷ Id.

²⁸ HCA Gets Subpoena Over Frist Stock Sale, *Wall Street Journal, Online Edition*, September 23, 2005.

SENATOR RICK SANTORUM

Rick Santorum (R-PA) is a second-term United States Senator, representing the people of Pennsylvania. Sen. Santorum's ethics issues stem from the manner in which he funded his children's education and the close timing between the Senator's introduction of a weather service bill benefiting for-profit weather companies and a donation from a private Pennsylvania weather company to Sen. Santorum's political action committee.

School Funding

Since the 2001-2002 school year, at least three of Sen. Santorum's children have attended a Pennsylvania cyber charter school in Penn Hills, PA, costing local taxpayers about \$67,000,¹ although the Senator and his family spend most of the year in Virginia.² 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.³ Under Pennsylvania law, local school districts are required to pay for the tuition of students in their district who choose the cyber-school option.⁴

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 students who have disabilities and are enrolled in schools which cannot satisfactorily meet their needs.⁵ Otherwise, Virginia children must attend their local public schools.⁶

When Sen. Santorum first ran for Congress, he lived in Mt. Lebanon and commuted to Washington.⁷ After he was elected to the Senate in 1994, he sold the Mt.

¹ 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.

² Vera Miller, Taxes pay Santorums' tuition costs, *Pittsburgh Tribune-Review*, November 6, 2004.

³ Daniel Reynolds, Santorum school flap continues, *Pittsburgh Tribune-Review*, November 19, 2004.

⁴ 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.

⁵ Miller, *Pittsburgh Tribune-Review*, Nov. 6, 2004.

⁶ Id.

⁷ Chute, *Pittsburgh Post-Gazette*, Nov. 14, 2004.

Lebanon house and bought a home in Herndon, Virginia.⁸ In 1997, Sen. Santorum purchased a house in Penn Hills for \$87,800.⁹ In 2001, the Santorums sold the Herndon house and bought a house in Leesburg, Virginia for \$643,361, now valued at \$757,000.¹⁰ 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, though he has admitted to living in Leesburg most of the time.¹¹

On November 17, 2004, Penn Hills School Superintendent Patricia Gennari telephoned the Senator to arrange for the district to query him about his residency.¹² 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.¹³ The next day, the Senator stated that he wanted to keep two of his five children enrolled in the online classes.¹⁴ 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.¹⁵

In December, Superintendent Gennari sent a letter to the state Department of Education questioning whether Penn Hills had to pay for the education of Sen. Santorum’s children at the cyber school.¹⁶ Sen. Santorum announced he would register his kids for home schooling in Penn Hills, claiming that it was “absurd” to conclude that he does not live there.¹⁷

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Reynolds, *Pittsburgh Tribune-Review*, Nov. 19, 2004.

¹² Id.

¹³ Id.

¹⁴ Reid R. Frazier, Santorum’s kids can stay in class, but it won’t count, *Pittsburgh Tribune-Review*, November 20, 2004.

¹⁵ Id.

¹⁶ Eleanor Chute, Penn Hills school district challenges Santorum residency, *Pittsburgh Post-Gazette*, December 10, 2004.

¹⁷ Id.

In July 2005, the Penn Hills school district lost its bid to recover tuition it had paid to educate Sen. Santorum's children at the cyber school.¹⁸ A state hearing officer recommended that the state education secretary dismiss the Penn Hills school district's request for a refund because it waited too long to object to the situation.¹⁹ In August 2005, the school district board changed its cyber school policy, allowing students of families sometimes living outside the district to receive free tuition for their children. Specifically, the rule stated 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.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 the taxpayers no less -- 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.

Legislation Favoring AccuWeather

Two days before he introduced a bill that would benefit private national weather companies, the Senator's political action committee, America's Foundation, received a \$2,000 donation from the chief executive officer of a leading weather data provider located in State College, PA., called AccuWeather, Inc.²³ The controversy raised questions regarding Sen. Santorum's motivation in introducing the legislation.

¹⁸ Budoff, *The Philadelphia Inquirer*, July 12, 2005.

¹⁹ Id.

²⁰ Reid Frazier, Board revises cyber policy, *Pittsburgh Tribune-Review*, August 11, 2005.

²¹ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432.

²² Id.

²³ Kimberly Hefling, Critics question timing of AccuWeather donation, Santorum's Weather Service bill, *Associated Press*, May 27, 2005.

Sen. Santorum's bill, titled the National Weather Services Duties Act of 2005,²⁴ would require 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's political links run deep. According to Open Secrets, which tracks campaign money, AccuWeather CEO, Joel Myers, and his brother, Barry Myers, also the company's executive vice president, together have contributed \$33,500 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 again 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 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.

²⁴ S.786, 109th Congress.

²⁵ Richard Schwartz and Michael G. Sciulla, Behind the Buoy, *Boat U.S. Magazine*, September 2005.

²⁶ Id.

²⁷ www.opensecrets.org.

²⁸ Schwartz and Sciulla, *Boat U.S. Magazine*, Sept. 2005.

²⁹ Sean D. Hamill, Santorum Gets Heat from Weather Service Union, *Associated Press*, appearing in, *Centre Daily Times*, September 10, 2005.

³⁰ Charles Babington, Some GOP Legislators Hit Jarring Notes in Addressing Katrina, *The Washington Post*, September 10, 2005.

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 28th, the day before Katrina struck, with the headline, “A most powerful hurricane with unprecedented strength.”³³ *NBC Nightly News* reported that on August 28th, 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 Senate Select Committee on Ethics should consider whether Sen. Santorum has violated 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.³⁵ Sen. Santorum’s receipt of campaign contributions from AccuWeather officials only two days before he introduced legislation benefitting AccuWeather -- to the grave detriment of the National Weather Service -- suggests a possible violation of this statute.

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.

³² John Pain, Federal Forecasters Got Hurricane Right, *Associated Press*, September 16, 2005.

³³ Urgent Warning Proved Prescient, *The New York Times*, September 7, 2005.

³⁴ Brian Williams, Robert Ricks of the National Weather Service writes report predicting extent of damage to New Orleans from Katrina, *NBC Nightly News*, September 15, 2005.

³⁵ 18 U.S.C. §201(c)(1)(B).