

ETHICAL MISCONDUCT

A Democracy 21 Report Detailing House Majority Leader Tom DeLay's Association and Involvement with Texans for a Republican Majority PAC (TRMPAC), an Ethics Matter Deferred Last Year by the House Ethics Committee, and Summarizing Representative DeLay's Five Past Instances of Ethical Misconduct as Determined by a Bipartisan House Ethics Committee

February 16, 2005

House Majority Leader Tom DeLay has been rebuked by the House Ethics Committee in five separate instances, beginning in November 1997. On a bipartisan basis, the members of the Ethics Committee have repeatedly admonished Representative DeLay for his ethical improprieties and have cited the basic standard of conduct in the House rules that requires every House Member to “conduct himself at all times in a manner that shall reflect creditably on the House.” (Rule 23, cl. 1.)

The most recent admonishments came on October 6, 2004, when the Republican and Democratic members of the House Ethics Committee admonished Representative DeLay for activities involving an energy-industry fundraiser and for using the resources of a federal agency to intervene in a partisan conflict in Texas, that “were objectionable under House standards of conduct.”

Citing the House Rule 23 standard that a Member’s conduct must “reflect creditably” on the House, the Ethics Committee pointedly noted in its letter that it is “particularly important that members of the House leadership, who are the most publicly visible Members, adhere to this requirement scrupulously.”

The Committee also took note in the October 6th letter to Representative DeLay of "the number of instances to date in which the Committee has found it necessary to comment on conduct in which you have engaged."

On the same day, the House Ethics Committee also acted to defer a portion of the complaint pending against Representative DeLay that charged him with violations of House ethics rules in connection with his activities on behalf of Texans for a Republican Majority PAC (TRMPAC).

The decision to defer this matter was made under Committee Rule 15(f) which authorizes the Committee to defer action on a matter that is the subject of a criminal investigation. The Committee deferred action on the TRMPAC allegations against Representative DeLay pending action in Texas on cases “initiated by the recent TRMPAC-related indictments in state court in Texas and in the District Attorney’s continuing investigation [of] TRMPAC’s activities in 2002.”

In a memorandum to the members of the Ethics Committee regarding the TRMPAC charges, Chairman Joel Hefley and Ranking Minority Member Alan B. Mollohan stated:

If the Committee concurs that action on Count II should be deferred, Committee staff will monitor the Travis County proceedings. When circumstances arise indicating that the deferral should end, the Chairman and Ranking Minority Member will make appropriate recommendations for action on Count II to the Committee.

The TRMPAC complaint against Representative DeLay was pending before the Ethics Committee when the 108th Congress drew to a close, awaiting further action by

Texas legal authorities. It is now incumbent upon the Ethics Committee to exercise its jurisdictional powers to place the TRMPAC charges against DeLay on its agenda for the new Congress.

As Committee Rule 18 makes clear: “Notwithstanding the absence of a filed complaint, the Committee may consider any information in its possession indicating that a Member...may have committed a violation of the Code of Official Conduct....” In commenting on this rule, the Ethics Committee Chair and Ranking Member said in a “Dear Colleague” letter dated March 11, 2004, “Member complaints are by no means the only vehicle by which Committee enforcement actions are begun....[A]ny credible information that is submitted to the Committee or otherwise comes to our attention, may be used as the basis for a self-initiated inquiry.”

The DeLay TRMPAC matter is unfinished business that now falls to the 109th Congress to resolve when the Texas investigation is complete. Furthermore, the Ethics Committee has an independent obligation to determine if House ethics rules have been violated by Representative DeLay once the Texas criminal matter is resolved.

Representative DeLay’s involvement in the activities of TRMPAC may violate the House standards of conduct regardless of whether those activities constituted violations of the laws of Texas. Compliance with House ethics rules means something more than simply avoiding illegal conduct. The Ethics Committee made this point in its letter of October 6, 2004 to Representative DeLay, setting forth the latest two admonishments of his actions. The Committee said:

As you are aware, it does not suffice for any House Member to assert that his actions violated no law, or violated no specific prohibition or requirement of the House Rules. The House Code of Official Conduct broadly requires that every House Member, officer and employee “conduct himself at all times in a manner that shall reflect creditably on the House.”

However the Texas matter involving TRMPAC is resolved, the House Ethics Committee will have its own responsibility to determine whether House ethics rules were violated regarding the activities of Representative DeLay in the TRMPAC matter.

Summary of Report

The Democracy 21 report is divided into two parts. The first part details Representative DeLay’s involvement in TRMPAC, and his association with TRMPAC’s operations and with the three TRMPAC operatives who were indicted on September 21, 2004, for felony violations of Texas campaign finance laws related to their TRMPAC activities during the 2002 Texas state legislative elections.

It was compiled in light of Representative DeLay’s efforts to distance himself from TRMPAC’s operations, following the September indictments of three individuals

associated with TRMPAC for their TRMPAC-related activities. As the report shows, it is clear that there would be no TRMPAC if there were no Tom DeLay.

The report details the associations between Representative DeLay and the individuals who were indicted for their TRMPAC-related activities. Two of the individuals – Jim Ellis and John Colyandro – were charged with laundering illegal corporate donations. Colyandro and a third man, Warren RoBold, were indicted on charges of accepting illegal corporate contributions.¹ Eight corporations were also indicted for making illegal contributions to TRMPAC.

The report details why Representative DeLay created TRMPAC and looks at his relationships with the three TRMPAC operatives now under criminal indictment.

The second part of the report summarizes the five separate instances in which Majority Leader DeLay's activities have been called to account by the House Ethics Committee. According to the report, Representative DeLay has received a warning, a private rebuke, and three public admonishments for his ethical misconduct in five Ethics Committee actions.

Representative DeLay's response to the charges and findings against him of ethical improprieties has been to consistently deny he did anything wrong and to attribute these "problems" to partisan attacks against him.

The claims of "partisanship" made by Representative DeLay belie the facts, including the fundamental point that *all* of the findings of DeLay's ethics improprieties have been made by Republicans and Democrats on a bipartisan House Ethics Committee.

Similarly, the facts plainly show that Representative DeLay is wrong in claiming that the "attacks" on his ethics that have been "hurled" against him for years "all have fallen short...because of insufficient merit."

The 38-page report of the House Ethics Committee released on October 6th details two separate instances in which Representative DeLay was found to have engaged in improper conduct, and for which the Committee determined that a letter admonishing DeLay was appropriate. These two admonishments followed by only one week a separate admonishment of Representative DeLay by the Ethics Committee for his actions during the 108th Congress, in pressuring a colleague to vote for the Medicare reform bill.

The October 6th letter of admonishment to Representative DeLay from the Ethics Committee also refers to a separate "confidential Committee letter to you of May 7, 1999," on an undisclosed matter. According to reports published at the time, this letter was "a rare private rebuke" of Representative DeLay "for badgering a lobbying organization over its hiring of a Democrat as its president." (*The New York Times*, May 14, 1999). Published reports stated that Representative DeLay had threatened an industry

¹ L. Copelin, "DeLay denies key role in group; Founder contradicts documents' boasts about his involvement," *Austin American-Statesman* (Oct. 10, 2004).

trade group with “retaliation” for hiring a Democrat. (*The Washington Post*, May 14, 1999).

All of these ethics improprieties came after the Ethics Committee sent a letter to Representative DeLay, dated November 7, 1997, that, as described in the October 6, 2004 Ethics Committee letter, “concerned, in part, statements that may create the impression that official access or action are linked with campaign contributions...”

In its October 6th letter to Representative DeLay, the Ethics Committee, noting “the number of instances to date in which the Committee has found it necessary to comment on conduct in which you have engaged,” warned the Majority Leader that “it is clearly necessary for you to temper your future actions” to assure compliance with the House ethics rules.

Part I

House Majority Leader Tom DeLay’s Involvement in TRMPAC and His Association with TRMPAC Operatives

House Majority Leader Tom DeLay has been closely associated with Texans for a Republican Majority (TRMPAC) since he, along with two DeLay associates, Jim Ellis and John Colyandro, founded the group in 2001.² Yet, after the indictment of three TRMPAC operatives, including Ellis and Colyandro, DeLay has tried to distance himself from the organization.

DeLay has stated, “This investigation isn’t about me.”³ According to press reports, DeLay is “downplaying” his role with TRMPAC.⁴ He has been quoted as saying, “For some reason, particularly in the Texas media, it is like TRMPAC has a last name and it is called Tom DeLay.”⁵ DeLay has told *The Wall Street Journal*, “I didn’t have anything to do with the day-to-day operations of TRMPAC.”⁶

The record, however, refutes Representative DeLay’s efforts to distance himself from TRMPAC. DeLay created the organization as part of his “daring plan” to alter the Texas congressional delegation.⁷ His “most trusted political aide,”⁸ Jim Ellis, helped decide which Texas candidates would get TRMPAC money and “shuttled frequently to

² R. Oppel Jr., “Inquiry Focuses on Group DeLay Created,” *The New York Times* (Feb. 16, 2004).

³ L. Copelin, “DeLay denies key role in group; Founder contradicts documents’ boasts about his involvement,” *Austin American-Statesman* (Oct. 10, 2004).

⁴ *Austin American-Statesman* (Oct. 10, 2004), *supra*.

⁵ *Austin American-Statesman* (Oct. 10, 2004), *supra*.

⁶ “U.S. Rep. DeLay on Defensive Over Texas, House Probes,” *The Wall Street Journal* (Sept. 21, 2004).

⁷ L. Dubose and J. Reid, “The Man with the Plan,” *Texas Monthly* (Aug. 2004).

⁸ “The Texas Indictments,” *Congressional Quarterly* (Sept. 24, 2004).

Austin last year, carrying DeLay's directions to state lawmakers working in private to draw new congressional districts."⁹ According to published reports, DeLay raised funds for TRMPAC, sat in on planning sessions, provided assistance with "leading strategists," and briefed would-be donors.¹⁰

DeLay served as chairman of the TRMPAC five-member advisory board.¹¹ According to a published report, John Colyandro, a founder and former executive director of TRMPAC, stated in a deposition that the TRMPAC advisory board played an active role:

We would have regular meeting conference calls to discuss matters related to the overall administration of [TRMPAC]. And when it came to broadly making decisions about who, which candidates we would support and with what amount of financial assistance, at that point the advisory board was involved with those types of decisions.¹²

In October, 2002, an email to TRMPAC donors said that DeLay would participate in a conference call to brief the donors about TRMPAC's activities. A fundraiser for TRMPAC wrote to the donors, "Congressman DeLay will join us for a brief conference call to update everyone on TRMPAC's efforts to date and to discuss our strategy for victory in the final weeks of the campaign."¹³

TRMPAC is Representative DeLay's brainchild.

TRMPAC: Tom DeLay's Plan

In 2001, House Majority Leader Tom DeLay launched a plan to dramatically alter the makeup of the Texas congressional delegation by eliminating the districts of as many as seven of the incumbent Democratic House Members, and redrawing those districts to be favorable to Republican candidates.

Since the lines for congressional districts are drawn by state legislatures, DeLay's plan required the Texas Legislature to pass a new congressional redistricting plan. But since the Texas House was controlled by the Democrats, his plan first required Republicans be elected to a majority in that body.

In September 2001, DeLay, along with two associates, founded a new non-federal political committee, Texans for a Republican Majority (TRMPAC), whose goal was to do just that. As one article described DeLay's plan:

⁹ C. Lindell, "DeLay's point man led charge on redistricting," *Austin American-Statesman* (Sept. 22, 2004).

¹⁰ *Austin American-Statesman* (Oct. 10, 2004), *supra*; *Texas Monthly* (Aug. 2004), *supra*.

¹¹ *Austin American-Statesman* (Oct. 10, 2004), *supra*.

¹² R.G. Ratcliffe, "Old law gives DeLay new trouble," *Houston Chronicle* (March 1, 2004).

¹³ *Austin American-Statesman* (Oct. 10, 2004), *supra*.

Target a few linchpin races in 2002 where Republican victories would enable the party to break the Democrats' lock on the Texas House of Representatives, help recruit the strongest possible candidates, and pour in money and assistance just as his national political action committee, Americans for a Republican Majority (ARMPAC), had done in so many congressional races in 2000. The Legislature would push through a redistricting plan that would allow gerrymandering arithmetic to accomplish what the Republicans weren't getting done at the polls, and soon the Texas congressional delegation would include a rightful commanding majority of Republicans (who would, among other virtues, leap to show their gratitude in the event that DeLay offered himself for Speaker of the U.S. House).¹⁴

TRMPAC's financing was seeded with a \$50,000 donation from another political committee controlled by DeLay, ARMPAC.¹⁵

TRMPAC had great success. In the 2002 election, 18 of the 21 state House candidates backed by TRMPAC won election. This helped Republicans to take control of the Texas House.¹⁶

In 2003, after a period of extraordinary partisan controversy, the Texas Legislature passed a new congressional redistricting plan that was signed by Republican Governor Rick Perry. DeLay is considered to be an architect of the plan, which was aimed at the elimination of as many as seven incumbent congressional Democrats. According to *National Journal*, "DeLay waged a highly controversial backroom effort to urge the GOP-controlled Texas Legislature to pass a new congressional redistricting map, even though Texas, like other states, had just completed redistricting following the 2000 census."¹⁷ According to the *Journal* article:

Although state and national Republicans emphasize that DeLay did not write the actual details, there is widespread agreement that he placed redistricting on the table in Austin and that he overcame numerous obstacles to win the enactment of a new map...In the final stages of negotiations among Republicans in the Texas House and Senate, DeLay engaged in shuttle diplomacy between the two sides for three days.¹⁸

Congressional Quarterly said that TRMPAC is an organization "DeLay created to help finance the Republican takeover of the state capitol [in 2002], which led to a

¹⁴ *Texas Monthly* (Aug. 2004), *supra*.

¹⁵ R.G. Ratcliffe, "DeLay PAC took Enron funds," *Houston Chronicle* (July 14, 2004).

¹⁶ *The New York Times* (Feb. 16, 2004), *supra*.

¹⁷ R. Cohen, "The Evolution of Tom DeLay," *National Journal* (Nov. 15, 2003).

¹⁸ *National Journal* (Nov. 15, 2003), *supra*.

congressional redistricting of Texas that will probably expand DeLay's already considerable power base again next year."¹⁹

Last month, three individuals associated with TRMPAC were indicted for campaign finance practices involving TRMPAC activities. The indictments charge that TRMPAC illegally raised and spent \$600,000 in corporate funds to influence the Texas House elections in violation of state law. Texas law permits a committee to spend corporate money on its administrative overhead like rent and utilities. The law, however, prohibits the spending of corporate money for the purpose of influencing the election of candidates, and also prohibits corporate contributions to state legislative candidates.

(In addition to the \$600,000 in corporate funds, TRMPAC gave about \$900,000 in non-corporate donations directly to state legislative candidates in 2002.)²⁰

The key issue in the case is whether TRMPAC spent corporate funds on its own overhead costs, or on illegal activities to promote the election or defeat of the state legislative candidates, including illegally laundering corporate contributions through the RNC to these state candidates.

According to a report in *The New York Times*, records show that TRMPAC fundraisers "who were paid with corporate money solicited donations on behalf of individual candidates backed by the committee, which also spent corporate donations on fund-raising events, polling and a voter identification project."²¹ According to this report, TRMPAC officials were also involved in raising corporate funds that were sent directly to the candidates.²²

The charge of illegal money laundering arises from a transaction between TRMPAC and an arm of the Republican National Committee. A published report describes the alleged scheme as follows:

According to the indictment, Colyandro sent Ellis, who works in Washington, a check for \$190,000 in corporate donations. Ellis then gave national committee officials the check and a list of Republican House candidates who were to receive a total of \$190,000 in noncorporate donations from the national committee.²³

¹⁹ S. Ferrechio, "DeLay Maintains Strong GOP Support Despite Indictment of His Advisers," *Congressional Quarterly* (Sept. 24, 2004).

²⁰ L. Copelin, "Craddick downplays \$100,000 exchange," *Austin American-Statesman* (Sept. 23, 2004).

²¹ *The New York Times* (Feb. 16, 2004), *supra*.

²² *The New York Times* (Feb. 16, 2004), *supra*.

²³ L. Copelin, "2 DeLay aides booked, freed," *Austin American-Statesman* (Oct. 12, 2004).

The TRMPAC donation of corporate funds to the RNC was made on September 10, 2002. On October 4, 2002, the RNC wrote checks totaling the same amount to seven Texas House candidates supported by TRMPAC.²⁴

Jim Ellis, who is “DeLay’s most trusted political aide” as well as the head of ARMPAC and an officer of TRMPAC, was charged with one felony count of money laundering.²⁵

John Colyandro, the executive director of TRMPAC in 2002, was charged with one count of money laundering and 13 counts of illegally accepting corporate contributions.²⁶

Warren RoBold, a fundraiser for TRMPAC, was charged with nine counts each of accepting corporate contributions.²⁷

In addition, eight corporations – Sears Roebuck, Inc., Bacardi USA, Cracker Barrel Old Country Store, Westar Energy, Inc., Diversified Collection Services, Inc., Williams Companies, Inc., Questerra Corp., and Alliance for Quality Nursing Home Care Corp. – were indicted for making illegal corporate contributions in amounts between \$20,000 and \$100,000.²⁸

DeLay’s Connections with TRMPAC.

As noted above, House Majority Leader Tom DeLay, along with two associates, founded TRMPAC and DeLay served as chairman of its advisory board.²⁹ He “sat in on planning sessions,”³⁰ and “was called on to brief would-be donors” on TRMPAC’s efforts.³¹ A fellow TRMPAC advisory board member, state Rep. Diane White Delisi, wrote in a memo to a potential donor that DeLay “has been an ardent advocate for us by raising money, making phone calls, serving as a special guest at events and providing assistance with leading strategists.”³² According to the *Houston Chronicle*, DeLay “was more than a passive participant in TRMPAC fundraising events.”³³

DeLay ties to TRMPAC are extensive:

²⁴ *The New York Times* (Feb. 16, 2004), *supra*.

²⁵ “The Texas Indictments,” *Congressional Quarterly* (Sept. 24, 2004).

²⁶ *Congressional Quarterly* (Sept. 24, 2004), *supra*.

²⁷ *Congressional Quarterly* (Sept. 24, 2004), *supra*.

²⁸ *Congressional Quarterly* (Sept. 24, 2004), *supra*.

²⁹ *The New York Times* (Feb. 16, 2004), *supra*; *Austin American-Statesman* (Oct. 10, 2004), *supra*.

³⁰ *Texas Monthly* (August, 2004), *supra*.

³¹ *Austin American-Statesman* (Oct. 10, 2004), *supra*.

³² *Austin American-Statesman* (Oct. 10, 2004), *supra*.

³³ R.G. Ratcliffe, “PAC memo links DeLay to fundraiser,” *Houston Chronicle* (Oct. 7, 2004).

- DeLay participated in a November 2001 press conference in Austin, announcing the creation of TRMPAC.³⁴
- According to published reports, DeLay traveled to Texas “at least five times” on behalf of TRMPAC, “mostly to raise money.”³⁵
- In June 2002, DeLay hosted a two-day golf tournament at a Virginia resort, the Homestead, for a group of energy industry executives, as Congress was finalizing energy legislation. The event was a joint fundraiser for TRMPAC and for ARMPAC, DeLay’s leadership committee. Participants were required to donate at least \$25,000 to one of the committees. DeLay was “admonished” by the House Ethics Committee for his participation in this fundraising event.³⁶
- A vice president for one corporate donor to TRMPAC, Williams Company Inc., an Oklahoma-based energy provider, sent a \$25,000 check for TRMPAC to the committee’s Austin address, but addressed the cover letter to “Dear Congressman DeLay.” The letter said, I am pleased to forward our contribution of \$25,000 for the TRMPAC that we pledged at the June 2, 2002 fundraiser.”³⁷
- In August, 2002, a fundraising consultant for TRMPAC sent an email to the director of a political committee headed by Rep. Billy Tauzin, seeking Tauzin’s help in setting up a fundraising event. The email stated, “Congressman DeLay and others founded TRMPAC to help elect conservative Republican members to the Texas state legislature...To that end, Congressman DeLay is extremely committed to TRMPAC and suggested that we contact Congressman Tauzin to enlist his support for our organization.” As the *Houston Chronicle* notes, this memo indicates that DeLay “had personal involvement in directing some of the fundraising activities” of TRMPAC.³⁸
- In August, 2002, DeLay headlined a fundraising luncheon in Houston and, according to committee documents, met privately with a group called the finance committee for TRMPAC before the event.³⁹
- In October, 2002, an email to TRMPAC donors said that DeLay would brief the donors about TRMPAC’s activities on a conference call. A fundraiser for TRMPAC wrote to the donors, “Congressman DeLay will join us for a brief conference

³⁴ *Austin American-Statesman* (Oct. 10, 2004), *supra*.

³⁵ *Austin American-Statesman* (Oct. 10, 2004), *supra*.

³⁶ Memorandum from Reps. Joel Hefley and Alan B. Mollohan to House Ethics Committee re “Recommendation for disposition of the complaint filed against Representative DeLay,” at 14-16, 21-22.

³⁷ L. Dubose, “The decay of DeLay,” *Salon.com* (Oct. 4, 2004); *Austin American Statesman* (Oct. 10, 2004), *supra*.

³⁸ *Houston Chronicle* (Oct. 7, 2004), *supra*.

³⁹ *Austin American Statesman* (Oct. 10, 2004), *supra*.

call to update everyone on TRMPAC's efforts to date and to discuss our strategy for victory in the final weeks of the campaign."⁴⁰

- According to a published report, John Colyandro, a founder and former executive director of TRMPAC, stated in a deposition that the TRMPAC advisory board played an active role in TRMPAC activities. According to Colyandro, "We would have regular meeting conference calls to discuss matters related to the overall administration of the committee [TRMPAC]. And when it came to broadly making decisions about who, which candidates we would support and with what amount of financial assistance, at that point the advisory board was involved with those types of decisions."⁴¹ The TRMPAC advisory board was chaired by DeLay.

- According to published reports, DeLay's daughter, Dani DeLay Ferro, was paid by TRMPAC to organize fundraising events such as the group's fundraising kickoff in January, 2002.⁴²

DeLay's Associations with TRMPAC Operatives

In addition to his ties to TRMPAC itself, DeLay has associations with the three TRMPAC operatives who were recently indicted in Texas for campaign finance violations related to TRMPAC.

DeLay's Association with Jim Ellis

Jim Ellis, indicted on one count of felony money-laundering, has been called "DeLay's most trusted political aide,"⁴³ "DeLay's top political aide,"⁴⁴ and "DeLay's point man" on Texas redistricting.⁴⁵

As one published report states, "If U.S. House Majority Leader Tom DeLay was the public face of last year's redistricting wars in Texas, his close aide, Jim Ellis, was a behind-the-scenes force in the ambitious effort to topple Democratic incumbents."⁴⁶ According to the report, Ellis, who is based in Washington, "shuttled frequently to Austin last year, carrying DeLay's directions to state lawmakers working in private to draw new congressional districts."⁴⁷ According to another published report, Ellis said that he was in Texas "frequently" during the redistricting battle, and "attended meetings with Gov. Rick Perry, DeLay and other state leaders as early as January [2003] and worked off and

⁴⁰ *Austin American-Statesman* (Oct. 10, 2004), *supra*.

⁴¹ *Houston Chronicle* (March 1, 2004), *supra*.

⁴² *Austin American-Statesman* (Oct. 10, 2004), *supra*.

⁴³ "The Texas Indictments," *Congressional Quarterly* (Sept. 24, 2004).

⁴⁴ S. Ferrechio, "DeLay Maintains Strong GOP Support Despite Indictment of His Advisers," *Congressional Quarterly* (Sept. 24, 2004).

⁴⁵ *Austin American-Statesman* (Sept. 22, 2004), *supra*.

⁴⁶ *Austin American-Statesman* (Sept. 22, 2004), *supra*.

⁴⁷ *Austin American-Statesman* (Sept. 22, 2004), *supra*.

on in Austin until legislation was passed in October.”⁴⁸ According to one press report, the sponsor of the redistricting bill in the House, state Rep. Phil King, said Ellis “served as the funnel for Republican members of Congress to tell King what they wanted in the map.”⁴⁹

Ellis is executive director of ARMPAC, a leadership committee that is chaired by DeLay. He also was a founder of TRMPAC, as well as an officer of the committee, and a paid consultant to it.⁵⁰ He “helped decide which Republican candidates for the Texas House would share in the \$1.5 million [TRMPAC] raised before the 2002 election.”⁵¹ According to another published report, Ellis “was one of three officers authorized to make decisions about expenditures and contributions by” TRMPAC.⁵²

DeLay’s Association with Warren RoBold

Warren RoBold, a Washington, D.C.-based consultant, was indicted on nine felony counts of soliciting and accepting illegal corporate contributions. RoBold “helped raise money” for both ARMPAC and TRMPAC.⁵³ According to the *Houston Chronicle*, “RoBold had been DeLay’s fund-raiser for several years.”⁵⁴ The *Chronicle* also reported that, “While raising money for TRMPAC, RoBold kept his office in the offices of DeLay’s ARMPAC...”⁵⁵ The *Chronicle* report also states:

Colyandro testified in a civil lawsuit that RoBold was assigned to raise \$600,000 in corporate cash in Washington for TRMPAC. Almost all the controversial corporate money came from RoBold events, most of which featured DeLay as the honored guest.⁵⁶

The *Chronicle* describes a fundraising brochure created by RoBold that said corporate donations to TRMPAC will be put to “productive” use. “The same brochure contained a direct solicitation for donations from DeLay and put him at the top of the list of advisory board members.”⁵⁷

⁴⁸ L. Copelin, “DeLay aide fights return to Texas,” *Austin American-Statesman* (April 6, 2004).

⁴⁹ *Austin American-Statesman* (April 6, 2004), *supra*.

⁵⁰ *Austin American-Statesman* (Oct. 12, 2004), *supra*.

⁵¹ *Associated Press*, “A look at the three men indicted in election investigation,” (Sept. 22, 2004).

⁵² *The New York Times* (Feb. 16, 2004), *supra*.

⁵³ *AP* (Sept. 22, 2004), *supra*.

⁵⁴ R.G. Ratcliffe, “Records show ties of DeLay, Craddick to PAC,” *Houston Chronicle* (Sept. 24, 2004).

⁵⁵ *Houston Chronicle* (Sept. 24, 2004), *supra*.

⁵⁶ *Houston Chronicle* (Sept. 24, 2004), *supra*.

⁵⁷ *Houston Chronicle* (Sept. 24, 2004), *supra*.

RoBold “has known DeLay...for years” and also has “raised money for a DeLay charity to help abused and neglected children.”⁵⁸

DeLay’s Association with John Colyandro

John Colyandro, a Texas political consultant and the former executive director of TRMPAC,⁵⁹ was indicted on one count of money laundering and 13 counts of accepting illegal corporate contributions. Colyandro, along with DeLay and Ellis, created TRMPAC,⁶⁰ and Colyandro was “DeLay’s choice to lead” TRMPAC.⁶¹ According to one report, “Colyandro and Jim Ellis were listed as decision-makers on the paperwork establishing TRMPAC.”⁶²

Part II

The House Ethics Committee Case Against House Majority Leader Tom DeLay

House Majority Leader Tom DeLay has received one warning, one private rebuke, and three admonishments concerning his ethical misconduct from the House Ethics Committee since 1997.

In repeatedly admonishing DeLay, the Ethics Committee has relied on the broad standard of conduct in the House rules that requires every House Member to “conduct himself at all times in a manner that shall reflect creditably on the House.” (Rule 23, cl. 1.) In its October 6, 2004 letter to DeLay, the Committee noted that it is “particularly important that members of the House leadership, who are the most publicly visible Members, adhere to this requirement scrupulously.”

This section of the report excerpts findings and conclusions by the House Ethics Committee regarding multiple instances of improper conduct and ethics improprieties by Representative DeLay.

1. Admonishment: “Objectionable” Energy-Industry Fundraiser

House ethics rules prohibit a Member from making any solicitation “that may create even an appearance that, because of a contribution, a contributor will receive or is entitled to either special treatment or special access to the Member in his or her official capacity.” (Ltr. at 1).⁶³ Similarly, under House rules, a Member “should not participate

⁵⁸ AP (Sept. 22, 2004), *supra*.

⁵⁹ AP (Sept. 22, 2004), *supra*.

⁶⁰ *The New York Times* (Feb. 16, 2004), *supra*.

⁶¹ L. Copelin, “Colyandro was immersed in campaign politicking,” *Austin American Statesman* (Sept. 22, 2004).

⁶² AP (Sept. 22, 2004), *supra*.

⁶³ “Ltr” refers to the letter of October 6, 2004 from Joel Hefley, chairman, and Alan B. Mollohan, ranking minority member, of the House Ethics Committee, to Tom DeLay. “Rpt”

in a fundraising event that gives even an appearance that donors will receive or are entitled to either special treatment or special access.” *Id.*

In June, 2002, DeLay hosted a two-day fundraising event at the Homestead Resort in Virginia. Executives from only five companies, all in the energy industry, attended the event. In order to attend, each company had to make a contribution of \$25,000 to \$50,000 either to the nonfederal account of DeLay’s leadership PAC, ARMPAC, or to another nonfederal committee he was associated with, TRMPAC. (Rpt. at 14).

Over the course of the two-day event, which included a golf outing, a briefing on energy issues, and meals, each of the energy industry participants had repeated personal access to DeLay and his key congressional staff.

The Committee concluded that DeLay’s participation in the fundraiser “did not conform to House standards providing that fundraising activities should not involve even an appearance that donors are being provided with special access to a Member in his or her official capacity.” (Rpt. at 21).

The Committee said that “at a minimum,” DeLay’s actions “created the appearance that donors were being provided with special access to him with regard to the pending energy legislation.” (Rpt. at 21).

The Committee cited a number of considerations that made the fundraiser “objectionable.” (Ltr. at 2):

First, the timing of the fundraiser took place “just as the House-Senate conference on major energy legislation, H.R. 4, was about to get underway.” (Ltr. at 2). The Committee said that the energy legislation “was of critical importance” to the attendees at the Homestead event. It also cited an email between two organizers of the fundraiser – one a lobbyist and former DeLay staff member on energy issues, the other an employee of ARMPAC – that “notes the legislative interests of each of the attendees...” *Id.*

In addition, the Committee said DeLay was “in a position to significantly influence the conference,” on the energy bill, both as a member of the House leadership, and as a conferee himself. *Id.*

The Committee cited two other factors that had the effect “of furthering the appearance that the contributors were receiving impermissible special treatment or access” (Ltr. at 2) and that “raise serious concerns under the standards of conduct...” (Rpt. at 14). One of these was the presence at the fundraiser of “two of your key staff

refers to the Memorandum from Hefley and Mollohan to the Members of the Ethics Committee re “Recommendations for disposition of the complaint filed against Representative DeLay.” Both documents are available on the website of the House Ethics Committee at http://www.house.gov/ethics/DeLay_Cover.htm.

members from your leadership office,” one who handled energy issues and the other who was DeLay’s counsel. (Ltr. at 2).

In addition, the Committee said, “there were the limited number of attendees, and the fact that the fundraiser included several events at a resort over a two-day period, both of which facilitated direct contact with you and your congressional staff members.” (Ltr. at 2).

One of the energy companies at the event was Westar, which was seeking a special provision in the energy bill conference report that would exempt it from certain federal regulation. Internal corporate documents reviewed by the Committee make clear that Westar sought to attend the fundraising event in an effort to gain access to DeLay as part of its lobbying effort on the energy bill. An internal memorandum from a Westar lobbyist written in April, 2002 and cited by the Committee states:

We believe that the most beneficial way to spend corporate dollars – as opposed to cutting personal or PAC checks – is with the House Leadership. This means joining the fold, so to speak, of House Majority Leader Tom Delay (R-TX)....

We may have an opportunity later this summer, for an energy industry ‘roundtable’ golf match at the Homestead for a ‘mere’ \$25,000....
(Rpt. at 12).

Westar made a \$25,000 contribution to TRMPAC in May, 2002, and two Westar officials attended the Homestead fundraising event in June, 2002. (Rpt. at 13).

According to a description of the event provided to the Committee by counsel for the Westar officials, the Westar representatives attended a dinner and reception with 15 to 20 others at the Homestead. There, “DeLay asked the group to advise him of any interest we had in the Federal Energy Legislation.” (Rpt. at 15). One of the Westar executives “advised” DeLay that the company “needed” a grandfather provision to be inserted in the energy bill to protect its interests. The following day the Westar official provided a DeLay staff aide with a briefing book that Westar had prepared on the issue. (Rpt. at 15).

The next day, also, the same Westar official participated in a round of golf and “shared a cart with an aide to Congressman DeLay...” (Rpt. at 15). The Westar official told the aide he would provide him with the Westar briefing materials, and later did so. During lunch the same day, the Westar official “restated to Rep. DeLay Westar’s position regarding the need for a grandfather clause...” (Rpt. at 15).

According to the Committee, DeLay and his aides could not recall “having any conversation” with the Westar executive “or receiving any materials from him.” (Rpt. at 15).

A subsequent internal Westar memo, however, noted that the company had made “significant progress with House Majority Whip Tom DeLay...” and that the soft money contributions “made in the first round were successful in opening the appropriate dialogue.” (Rpt. at 16). In response to a question from the Committee about the meaning of this statement, the Westar executive who authored the memo said he was referring to “the opportunities he had at the Homestead event to meet with Representative DeLay, make a presentation on Westar’s position..., and present a briefing book to a DeLay staff member.” (Rpt. at 16).

The Committee noted that the House standards of conduct regarding fundraising activity by Members “are extremely important ones.” (Rpt. at 21). Those standards provide that fundraising activities “should not involve even an appearance” that donors are being provided with special access to the Member. “There are certain proffered campaign contributions that must be declined, and certain fundraising opportunities that must be foregone, solely because they create an appearance of improper conduct.” (Rpt. at 21).

The Committee said that DeLay’s “facilitation of and participation in that [Homestead] event were contrary to those standards,” (Rpt. at 21), were “not proper,” (Rpt. at 22) and “raise an appearance of impropriety under House standards of conduct.” (Rpt. at 2, 22). In its letter of October 6th, the Committee told DeLay that he is being “admonished” because his actions “were objectionable under House standards of conduct because, at a minimum, they created an appearance that donors were being provided special access to you regarding the then-pending energy legislation.” (Ltr. at 1).

2. *Admonishment: “Objectionable” Use of the FAA for Partisan Purposes*

House ethics rules prohibit Members from taking (or withholding) any official action on the basis of the partisan affiliation of the individuals involved. Federal laws generally prohibit the use of governmental resources for political purposes. (Ltr. at 3). Violation of these rules “also implicate the fundamental requirement of the House Code of Official Conduct that a Member, officer or employee ‘shall conduct himself at all times in a manner that shall reflect creditably on the House.’” (Rpt. at 25).

In May, 2003, Democratic state legislators in Texas began a boycott of the legislature in an effort to block a pro-Republican congressional redistricting bill, then pending in the legislature, that DeLay was publicly identified as supporting. The Texas House Speaker, a Republican, called DeLay and told him that some of the Democratic legislators were being “shuttled” away by plane from the state capital. The Speaker gave DeLay the tail number of the plane and asked if he could “help locate the plane.” (Rpt. at 26).

DeLay asked one of his staff members to contact the FAA and see if it were possible to determine the location of the plane. The staff member called an FAA official and requested help in locating the plane, but did not disclose the reason. The FAA

official was able to determine the location of the plane, and called back the DeLay staffer with the information. She gave the information to DeLay, who relayed it to the Texas House Speaker. (Rpt. at 26-7).

In its letter of admonishment to DeLay, the Committee said DeLay's actions "raise serious concerns" under the applicable ethics rules:

[T]hose contacts [with the FAA] were made solely at the request of the Texas House Speaker, the request was made in connection with a partisan conflict in which he was engaged at the time with Democratic Members of the Texas House, and the information that Representative DeLay's office obtained from the FAA was relayed solely to the Texas House Speaker. (Rpt. at 28).

The Committee concluded that DeLay should be "admonished" for his intervention in the "partisan conflict" in Texas. The Committee found that DeLay's actions "raise serious concerns" under House standards of conduct that prohibit members from taking any official action on the basis of the partisan affiliation of the individuals involved, and that preclude the use of governmental resources for a political undertaking. (Ltr. at 1, 3).

In addition, the Committee noted a "separate basis on which the contacts with the FAA were objectionable," namely that is that "such use of federal executive branch resources to resolve an issue before a state legislative body raises serious concerns under the fundamental concepts of separation of powers and federalism." (Ltr. at 5).

3. *Admonishment: "Improper" Pressure on Colleague in Medicare Vote*

The Code of Ethics for Government Service provides that a person in government should "never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties." (Rpt. at 60-1).⁶⁴ In addition to violating the code of ethics, such behavior could in addition fail to "reflect creditably" on the House, in violation of House Rule 23, cl. 1.

In a close and highly contested vote on passage of the Medicare reform act in November, 2003, DeLay offered one wavering Republican Member, Representative Nick Smith, a promise to endorse Smith's son, who was a candidate in a Republican primary for Congress, if Smith would vote for the bill. According to a report by an investigative subcommittee of the Ethics Committee, it is "not controverted" that DeLay offered his "personal endorsement" of Smith's son "in exchange for" Smith's vote in favor of the Medicare bill. (Rpt. at 59).

⁶⁴ In this context, "Rpt." refers to a report of the Ethics Committee dated September 30, 2004, and titled "Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug Improvement and Modernization Act of 2003." This report is also available on the Ethics Committee website at http://www.house.gov/ethics/Medicare_Report_Cover.htm.

This was important. According to the subcommittee:

At the time the offer was made, Representative Smith believed that the endorsement of his son by the Majority Leader, combined with the publicity and substantial financial support that would follow the Majority Leader's endorsement, would greatly assist, if not assure, his son's election in the primary held on August 3, 2004. *Id.*

In discussing this, the subcommittee noted that compromise and "logrolling" are familiar parts of the legislative process. "There are limits, however, to the methods that may be used to bring legislators of different views together to achieve action." (Rpt. at 59):

An appearance of impropriety might be created....if support for legislation were linked to a personal benefit, such as the promise of one Member to provide another Member with goods or services. Such incentives cannot be used to influence voting behavior. (Rpt. at 60).

The subcommittee concluded that DeLay's behavior exceeded the bounds of ethical behavior. It said:

The promise of political support for a relative of a Member goes beyond the boundaries of maintaining party discipline, and should not be used as the basis of a bargain for Members to achieve their respective goals. The endorsement of a political candidate is not related to the functioning of government, and the promise of such an endorsement is not a proper offer, and therefore should not be made or accepted, in exchange for a vote in favor or against a particular piece of legislation. *Id.*

The subcommittee recommended that DeLay be admonished regarding his conduct in this matter. (Rpt. at 61). The subcommittee report and its recommendations were adopted in full by the Ethics Committee, and were issued as part of the full Committee's own report. The full Committee concluded that DeLay, as well as two other Members, "should be publicly admonished for their conduct" in the Medicare vote. (Rpt. at ii). It said that DeLay's conduct "could support a finding" that DeLay violated House rules. (Rpt. at iii).

4. *Private Rebuke: "Improper" Partisan Pressure on Lobbyists*

In May, 1999, according to published reports, the Ethics Committee gave "a rare private rebuke" to DeLay for badgering a lobbying organization over its hiring of a Democrat as its president."⁶⁵

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D. Stout, "Ethics Panel Gives Rare Rebuke," *The New York Times* (May 14, 1999).

According to a report in *The Washington Post*, DeLay threatened an industry trade group, the Electronics Industries Alliance, with “retaliation” for hiring a Democrat, former Congressman Dave McCurdy, as its president.⁶⁶ The Ethics Committee rebuke followed efforts by DeLay to “pressure” the EIA into dropping plans to hire McCurdy.

The *Post* story said that the private letter to DeLay mirrored a public letter sent to all House Members at the time. The letter stated:

[G]overnment officials, including House Members and staff, are prohibited from taking or withholding any official action on the basis of the partisan affiliation or the campaign contributions or support of involved individuals, or the prospect of personal gain either for oneself or anyone else. House members and staff are likewise prohibited from threatening punitive action on the basis of such consideration. (emphasis added).

5. Warning: Creating Impression that Official Access or Action Are Linked with Campaign Contributions

On November 7, 1997, the House Ethics Committee sent DeLay a letter which, as described in the October 6, 2004 letter, “concerned, in part, statements that may create the impression that official access or action are linked with campaign contributions....” (Ltr. At 6 n.2).

According to a statement issued by the Committee in 1997, as described in the October 6 report, DeLay was “advised” that it is “particularly important” a Member not make statements that create the impression that the Member would “consider an individual’s requests for access or for official action based on...campaign contributions.” (Rpt. at 22). In admonishing DeLay for the energy industry fundraiser at the Homestead resort in 2002, the Committee noted that its 1997 warning to DeLay is “pertinent” here because his recent actions in regard to the energy industry fundraiser “raise the very same concern expressed in that earlier Committee statement.”

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⁶⁶ J. Eilperin, “Ethics Panel Chastises DeLay for Threatening Trade Group,” *The Washington Post* (May 14, 1999).