EXECUTIVE SUMMARY

In light of several well publicized cases of members of Congress using their positions to financially benefit their family members, Citizens for Responsibility and Ethics in Washington ("CREW") decided to undertake a systematic investigation to uncover the extent of this activity. CREW limited its investigation to 2002, 2004 and 2006 election cycles, and examined the 337 members of the House of Representatives who are the chairs or ranking members of House committees and subcommittees as well as the five House leadership positions: Speaker of the House, Majority and Minority Leaders and the Majority and Minority Whips.

Some members of Congress who have been publicly criticized for paying family members, like Rep. John Doolittle (R-CA), are not included in the report because they are neither committee chairs nor ranking members. There may well be other members who should have been included in the report but are not because -- as a result of name changes and a lack of available information -- CREW did not uncover the family relationships. Similarly, because members of Congress are not required to disclose their affiliation with political action committees ("PACs"), CREW inadvertently may have omitted PAC disbursements that should have been included.

CREW's key findings:

- 96 (41 Democrats and 55 Republicans) used their positions to financially benefit family members;
- 64 (26 Democrats and 38 Republicans) paid family members through their campaign committees or PACs;
- 24 (10 Democrats and 14 Republicans) have relatives who lobby Congress;
- 19 (9 Democrats and 10 Republicans) used campaign committees or PACs to pay a family business or a business that employs a family member;
- 17 (11 Democrats and 6 Republicans) used campaign committee funds or PAC funds to make campaign contributions to relatives;
- 15 (3 Democrats and 12 Republicans) used their positions to benefit a family member or a family member's client;
- At least 7[1] (all Republicans) paid offspring who ranged from school-age to college-age.

Although it is illegal for members of Congress to hire family members as employees on their official staff,[2] it is not illegal for lawmakers to employ family members through campaign

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[1]Reps. Joe Barton, Brian Bilbray, Chris Cannon, Randy Forbes, Steven LaTourette, Don Manzullo and Joseph Wilson.

[2]5 U.S.C. § 3110; *see also* Congressional Handbook, note 6, sec. 2.I.A.2, at 2.1.

committees or PACs. It is illegal, however, to convert campaign funds to personal use. The Federal Election Commission ("FEC") has indicated that certain uses of campaign funds will be considered per se personal use, including salary payments to family members, unless such payments are at fair market value for bona fide campaign related services. The FEC presumes that a relative is hired because he or she is qualified for the job and is paid what a similarly qualified professional would be paid.[3] CREW has rarely been able to verify the qualifications of relatives on the campaign payroll, but the legitimacy of at least some payments -- those made to children, for example -- appears dubious.

It is also legal for the close relatives of members to lobby, yet the unique access offered to these lobbyists creates a situation ripe for abuse.

CREW hopes that this report will shine a spotlight on the troubling practice of lawmakers treating their congressional positions as profit centers for family members. Based on these findings, Congress and the FEC should seriously consider changing existing law to end these abuses.

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[3] FEC Advisory Opinion 2001-10, July 17, 2001.

LEGAL IMPLICATIONS

Many of the financial arrangements uncovered during this project are legal. In some cases, however, the practices revealed may violate existing federal laws and/or rules of the House of Representatives. The Department of Justice, the Federal Election Commission ("FEC") and the House Committee on Standards of Official Conduct may wish to consider whether the actions of any of the members of Congress named in this report violated any of the following laws or rules.

Conversion of Campaign Fund to Personal Use

In July 2001, the FEC issued an Advisory Opinion regarding payments by campaign committees to family members.[1] Rep. Jesse Jackson, Jr. (D-IL) sought an opinion as to whether his principal campaign committee could hire his wife as a consultant to provide fundraising and administrative support.[2] Ms. Jackson had previously served as chief of staff for a congressman, press secretary for another congressman, and she had worked for national presidential campaigns in 1988 and 1996.[3]

The FEC noted that the Federal Election Campaign Act prohibits the conversion of campaign funds to personal use.[4] Generally, personal use is "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder."[5] Certain uses of campaign funds will be considered per se personal use, including salary payments to family members, unless they are fair market value payments for bona fide, campaign related services."[6] If a family member is providing bona fide services to the campaign, any salary payment in excess of the fair market value of the services provided is personal use.[7]

In applying these provisions to Rep. Jackson's request for an opinion, the FEC stated that the campaign committee could hire Ms. Jackson as long as she was paid no more than the fair market value of bona fide services, the contract contained terms customarily found in

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[1]FEC, AO 2001-20, July 17, 2001.

[2]Id.

[3]Id.

[4]2 U.S.C. § 439a; 11 C.F.R. § 113.2(d).

[5]11 C.F.R. § 113.1(g).

[6]11 C.F.R. § 113.1(g)(1)(i).

[7]11 C.F.R. § 113.1(g)(1)(i)(H).

agreements entered into between paid campaign consultants and candidate committees, and the agreement conformed to the standard industry practice for this type of contract.[8]

House rules mirror this prohibition. Clause 6(b) of Rule XXIII provides that a member "may not convert campaign funds to personal use in excess of an amount representing reimbursement for legitimate and verifiable campaign expenditures." According to the Campaign Booklet published by the House Committee on Standards of Official Conduct, the Committee has taken the position that members "must observe these provisions strictly."[9] With respect to the purchase of campaign services from a relative of the member, the Campaign Booklet provides specifically:

> Such a transaction is permissible under the House Rules only if (1) there is a bona fide campaign need for the goods, services or space, and (2) the campaign does not pay more than fair market value in the transaction . . . If a Member's campaign does enter into such a transaction with the Member or a member of his or her family, the campaign's records must include information that establishes both the campaign's need for and actual use of the particular goods, services or space, and the efforts made to establish fair market value for the transaction.[10]

CREW found only that many members of Congress have used campaign funds to pay family members. CREW was unable to discover the qualifications of those family members, whether the payments were for bona fide campaign services or whether the payments were fair market value. The FEC and the House ethics committee may want to request further information to determine whether any member violated the provisions against converting campaign funds to personal use. In our view, worth particular scrutiny are payments made children ranging from to school-age to college-age and payments made to multiple family members.

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.[11]

Department of Justice officials may want to consider whether, by using his or her position as a member of Congress to financially benefit a family member, any member of Congress deprived

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[8]FEC, AO 2001-10.

[9]House Comm. on Standards of Official Conduct, Campaign Booklet at 39.

[10]Id. at 44.

[11]18 U.S.C. §1341.

his or her constituents, the House of Representatives and the United States of his or her honest services in violation of 18 U.S.C. § 1341.

5 C.F.R. § 2635.702(a)

Another "fundamental rule of ethics" for members of the House is that they are prohibited from "taking any official actions for the prospect of personal gain for themselves or anyone else."[12] House members are directed to adhere to 5 C.F.R. § 2635.702(a), which provides:

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

In a 1999 memorandum, the House Committee on Standards of Official Conduct quoted approvingly the Code of Ethics for Government Service, which provides that government officials should "[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not."[13] The committee stated specifically that the provisions of the Code of Ethics for Government Service apply to House members and that formal charges may be brought against a member for violating that code.[14]

The House ethics committee may want to consider whether, by using the powers of his or her office to funnel funds to a family member or a family member's business, any member of Congress dispensed special favors in violation of House rules.

Conduct Not Reflecting Creditably on the House

Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves "at all times in a manner that reflects creditably on the House."[15] This ethics standard is considered to be "the most comprehensive provision of the code."[16] 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

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[12] 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.

[13] Id.

[14] Id.

[15] Rule XXIII, cl. 1.

[16] House Comm. on Standards of Official Conduct, House Ethics Manual.

that reflect on "Congress as a whole," and that might otherwise go unpunished.[17] 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,[18] making false statements to the committee,[19] criminal convictions for bribery,[20] or accepting illegal gratuities,[21] and accepting gifts from persons with interest in legislation in violation of the gift rule.[22]

The House ethics committee may want to consider whether, by abusing his or her position to financially benefit a family member, any member of Congress named in this report engaged in conduct that does not reflect creditably on the House of Representatives.

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[17]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).

[18]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).

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

[20]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)).

[21]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).

[22]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).

RECOMMENDATIONS

The issues raised by this report could be addressed through amendments to the Federal Election Campaign Act ("FECA"), revisions to Federal Election Commission ("FEC") regulations, changes to House rules and stronger enforcement of existing House rules.

Payments to Family Members

First, the issues of personal enrichment and self-dealing could be significantly reduced by either prohibiting or restricting greatly the use of political committee funds, including leadership political action committees ("PACs"), to make payments to candidates' or officeholders' family members or the entities they control. Alternatively, the practice of compensating candidates' or officeholders' family members for *bona fide* work done for political committees could be made more transparent to dispel the appearance of personal enrichment or self-dealing.

Congress could follow the lead of several states, including Connecticut, Idaho, Minnesota, Missouri, Ohio, Rhode Island and Texas, and simply prohibit the use of campaign funds to make payments to family members. In Texas, for example, it is a misdemeanor for a candidate or officeholder to use political contributions to make payments for personal services provided by the spouse or dependent children of the candidate or officeholder.[1] It is also a misdemeanor for a candidate or officeholder to use political contributions to make payments for personal services to any business in which the candidate or officeholder has an interest of more than ten percent, holds a position on the governing body, or serves as an officer.[2]

In June 2007, Rep. Adam Schiff (D-CA) introduced the Campaign Expenditure Transparency Act,[3] which would both prohibit the payment of campaign or leadership PAC funds to spouses of candidates or officeholders and require the disclosure of any disbursements by a campaign committee or leadership PAC to the immediate family members of candidates or officeholders. Payments to business entities would be treated as payments to family members if the spouse or an immediate family member of the candidate or officeholder was an officer or director of the business entity.

Even if not outright prohibited, the role of family members in the operation of political committees could be made more transparent. First, candidates and officeholders could be required to publicly disclose all of the political committees, including leadership PACs, which they establish, finance, maintain or control. Second, candidates and officeholders could be required to identify individuals as family members when reporting political committee expenditures made to them.

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[1] Tex. Elec. Code Ann. § 253.041(a)(2).

[2] Id. at § 253.041(a)(1).

[3] H.R. 2630, 110th Cong., 1st Sess. (2007).

Currently, candidates and lawmakers can maintain and operate leadership PACs without disclosing the identities of the candidates or lawmakers associated with the PACs and the names of PACs often do little to illuminate the connection. For example, Rep. Tom Davis (R-VA) is affiliated with the Federal Victory Fund PAC and Rep. Paul Kanjorski (D-PA) is affiliated with the Citizens for Action PAC. The lack of a clear, easily discoverable connection between a member of Congress and his or her leadership PAC leaves the public with an incomplete picture of a lawmaker's campaign finances and allows members to spend PAC funds freely, with minimal concern of criticism.

In January 2007, Rep. Walter Jones (R-NC) introduced the Leadership PAC Disclosure Act,[4] which would amend the FECA to require political committees that are established, financed, maintained or controlled by one or more candidates or officeholders to disclose the identities of those candidates or officeholders on the political committees' Statement of Organization and all subsequent reports filed with the FEC. Making members accountable for the activities of their PACs might lead them to more carefully consider their expenditures.

As is so frequently the case in the House of Representatives, some of the problems identified by this report could be alleviated by stronger enforcement of existing ethics rules. For example, according to a 1999 advisory memorandum, a "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."[5] The House ethics committee should investigate lawmakers who use their positions to financially benefit family members and take action against those found to have violated the rules. Similarly, the ethics committee should consider whether such actions violate the rule requiring members to conduct themselves in a manner that reflects creditably on the House."[6]

Lobbyists

Given that a significant number of lawmakers have relatives who are lobbyists, at a minimum, such relationships should be disclosed. CREW recommends that all members of Congress be required to provide the clerk of the House with the names and employers of all relatives who lobby and that this information be made publicly available on the Internet. Similarly, in the disclosure reports filed with the clerk's office, lobbyists should be required to provide the names of any lawmakers to whom they are related. In addition, lobbyists should be prohibited from contacting their lawmaker relatives on behalf of their firms or clients.

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[4] H.R. 347, 110th Cong., 1st Sess. (2007).

[5] 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.

[6] Rule XXIII, cl. 1.