

## REP. DUNCAN HUNTER

Rep. Duncan Hunter (R-CA) is a 14<sup>th</sup>-term member of Congress, representing California's 52<sup>nd</sup> congressional district. Rep. Hunter is the ranking member<sup>1</sup> and former chair<sup>2</sup> of the House Committee on Armed Services, positions that have afforded him a significant degree of power over the Department of Defense's budget.<sup>3</sup> Rep. Hunter's ethical issues stem from his connection to a number of people at the center of the largest military corruption scandal of the decade -- connections that have been investigated by the FBI<sup>4</sup> -- and his earmarks for projects that benefit his defense industry political donors, but that the military does not want. In addition to ethical issues surrounding his official work, Rep. Hunter purchased his home in a questionable land deal, escaped paying full property taxes for many years on the home and gave conflicting reports of the property's true value. Rep. Hunter also used the power of his office to financially benefit his brother and his presidential campaign has violated federal election law.

### Relationship With Randy "Duke" Cunningham

On November 28, 2005, Rep. Randy "Duke" Cunningham pleaded guilty to federal charges of conspiracy to commit bribery in connection to defense contracts, mail fraud, wire fraud and tax evasion.<sup>5</sup> After resigning his congressional seat,<sup>6</sup> Rep. Cunningham began serving a sentence of more than eight years in federal prison for taking more than \$2.4 million in bribes from defense contractors.<sup>7</sup>

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<sup>1</sup> House Armed Services Committee Website, U.S. House of Representatives, <http://armedservices.house.gov/> and [http://armedservices.house.gov/oversight\\_plan.shtml](http://armedservices.house.gov/oversight_plan.shtml) (Exhibit 1).

<sup>2</sup> Almanac of American Politics, *National Journal*, 2006 (Exhibit 2).

<sup>3</sup> Tom Hamburger, Walter F. Rourke Jr. and Richard Simon, The Nation: California's 'Big 6': Masters of the New Lobbying Game, *Los Angeles Times*, August 5, 2006 (Exhibit 3).

<sup>4</sup> Hark Hosenball, Jamie Reno and Evan Thomas, D.C. Fraud Probe Heats Up, *Newsweek*, June 5, 2006 (Exhibit 4).

<sup>5</sup> Cunningham Pleads Guilty, Resigns From Congress, *San Diego Union Tribune*, November 28, 2005 (Exhibit 5).

<sup>6</sup> Id.

<sup>7</sup> John Marelius, GOP's Hunter Will Run for Presidency in 2008, *San Diego Union-Tribune*, October 31, 2006 (Exhibit 6).

Rep. Hunter was a close friend and political ally of Rep. Cunningham.<sup>8</sup> The two spent 15 years working closely together as members of the House Armed Services Committee and House Defense Appropriations Subcommittee.<sup>9</sup> Upon revelations of Rep. Cunningham's illegal actions, Rep. Hunter launched a limited investigation into the 2005 files of the House Armed Services Committee related to certain defense contracts.<sup>10</sup> Although several defense projects requested by Rep. Cunningham found their way into drafts of several defense authorization bills,<sup>11</sup> the committee records evidenced no wrongdoing.<sup>12</sup> Rep. Hunter subsequently agreed to expand the committee's internal investigation,<sup>13</sup> but nearly five months after the U.S. Attorney pursuing the bribery case requested documents, Rep. Hunter's committee had still not released the records.<sup>14</sup> The FBI is investigating Rep. Hunter's connections to Rep. Cunningham as well as other actors in the scandal.<sup>15</sup>

### **Relationship With Brent Wilkes**

Brent Wilkes has been identified as a co-conspirator in the Rep. Cunningham scandal. As of July 18, 2007, Mr. Wilkes faced 30 counts in two separate indictments, including charges that he bribed Rep. Cunningham with \$600,000 in gifts and cash in exchange for more than \$80 million in defense contracts.<sup>16</sup>

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<sup>8</sup> Roxana Tiron, Hunter is 'Duke's' Friend 'Till the End, *The Hill*, March 7, 2006 (Exhibit 7).

<sup>9</sup> Id.

<sup>10</sup> Otto Kreisher, Rep. Hunter's Committee to Expand Search For Fishy Cunningham Deals, *Copley News Service*, April 15, 2006 (Exhibit 8).

<sup>11</sup> Initial Probe Finds No Improper Dealings With Cunningham, *National Journal's Congress Daily*, April 27, 2006 (Exhibit 9).

<sup>12</sup> Kreisher, *Copley News Service*, Apr. 15, 2006.

<sup>13</sup> Id.

<sup>14</sup> John Bresnahan, No Document Yet For DOJ, *Roll Call*, July 26, 2006 (Exhibit 10).

<sup>15</sup> Hosenball, *Newsweek*, June 5, 2006.

<sup>16</sup> George E. Condon Jr. And Marcus Stern, Imprisoned 'Duke' Tells of Scope of Corruption, *Copley News Service*, July 18, 2007 (Exhibit 11).

Central to the criminal investigation were earmarks for companies associated with Brent Wilkes: Audre, Inc. and ADCS.<sup>17</sup> These companies created “automated document conversion” software that the Pentagon neither wanted nor needed.<sup>18</sup>

Rep. Hunter, a “prominent backer” of these systems, teamed with Rep. Cunningham and other lawmakers to allocate \$190 million for automated data conversion projects from 1993 to 2001.<sup>19</sup> Rep. Hunter also sought out tens of millions of dollars in earmarks for Audre and ADCS, and pushed the Pentagon to purchase their products.<sup>20</sup> In addition, shortly after Rep. Hunter was named chair of the Armed Services Committee, he lent Audre his congressional office for two weeks so the company could showcase its products to Pentagon officials.<sup>21</sup> Two weeks after the demonstrations ended, Audre sold \$1.2 million of the software to the Department of Defense for testing.<sup>22</sup>

Between 1993 and 2001, Audre obtained more than \$12.5 million worth of contracts for document conversion largely through earmarks.<sup>23</sup> The earmarks were included in the Defense Department’s budget even though the Pentagon had never asked for funds for automated document conversion.<sup>24</sup> From 1997 to 2002, Congress budgeted \$60 million in contracts for ADCS.<sup>25</sup>

For his part, Mr. Wilkes has steered at least \$39,200 in campaign contributions to Rep. Hunter.<sup>26</sup> As *USA Today* noted, however, “Wilkes’ ties to Hunter and Cunningham go beyond

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<sup>17</sup> Dean Calbreath and Jerry Kammer, Contractor ‘Knew How To Grease The Wheels’: ADCS Founder Spent Years Cultivating Political Contacts, *Copley News Service*, December 4, 2005 (Exhibit 12).

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Calbreath and Kammer, *Copley News Service*, Dec. 4, 2005.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Dean Calbreath, The Power Of Persuasion, *San Diego Union-Tribune*, February 5, 2006 (Exhibit 13).

<sup>26</sup> Id. *USA Today* has put the amount of campaign contributions flowing from Mr. Wilkes at \$40,700: Matt Kelley and Jim Drinkard, Contractor Spends Big on Key Lawmakers, *USA Today*, November 29, 2005 (Exhibit 14).

campaign contributions.”<sup>27</sup> In 2003, Mr. Wilkes’ foundation not only honored Rep. Hunter with a “Salute to Heroes” gala, but also contributed \$1,000 to a charity run by two of Rep. Hunter’s staffers.<sup>28</sup> In December 2006, Rep. Hunter directed that Mr. Wilkes’ contributions be given to the Injured Marine Semper Fi Fund.<sup>29</sup>

### **Relationship With Letitia White**

Letitia White is a former partner in the lobbying firm Copeland Lowery Jacquez Denton & White.<sup>30</sup> Before joining the firm in 2003, she worked for former Appropriations Chairman Jerry Lewis (R-CA) for 21 years.<sup>31</sup>

At Copeland Lowery, Ms. White became known as “K Street’s Queen of Earmarks.”<sup>32</sup> She quickly built a client list of two dozen defense firms that were seeking earmarks.<sup>33</sup> Within a year, she was earning over \$1 million a year at the firm, her clients were paying almost \$1.5 million in lobbying fees and they received at least \$22 million in earmarks in the 2004 defense appropriations bill.<sup>34</sup> For fiscal year 2006, an analysis by the nonprofit Taxpayers for Common Sense revealed that at least two-thirds of Ms. White’s 53 clients received earmarks.<sup>35</sup>

Thomas Casey of Audre, Inc., alleged that in 1993, while Ms. White was employed by Rep. Lewis and working on a provision of a defense spending bill, he and Brent Wilkes met with

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<sup>27</sup> Kelley and Drinkard, *USA Today*, Nov. 29, 2005.

<sup>28</sup> *Id.*

<sup>29</sup> Tiron, *The Hill*, Mar. 7, 2006.

<sup>30</sup> Copeland Lowery & Jacquez, ADCS, Inc., Lobbying Registration, Secretary of Senate, Office of Public Records, 2002 ; Copeland Lowery Jacquez Denton & White, ADCS, Inc., Lobbying Report, Secretary of Senate, Office of Public Records, Midyear 2002 (Exhibit 15).

<sup>31</sup> Zachary Coile, New Move to Trim Political Pork, *San Francisco Chronicle*, February 15, 2006 (Exhibit 16).

<sup>32</sup> David D. Kirkpatrick, Rise of Capitol Lobbyist Shines a Light On House Connections, *The New York Times*, June 3, 2006 (Exhibit 17).

<sup>33</sup> Jerry Kammer, A Steady Flow of Influence, *Copley News Service*, December 23, 2005 (Exhibit 18).

<sup>34</sup> Paul Kane, Pay Cut Let Lewis Aide Dodge Ban, *Roll Call*, July 27, 2006 (Exhibit 19).

<sup>35</sup> Kirkpatrick, *The New York Times*, June 3, 2006.

Ms. White to help secure funding for Audre.<sup>36</sup> Mr. Casey was escorted by the top appropriations aide to a basement room in the Capitol where the committee staffers drafted legislation.<sup>37</sup> There, Mr. Casey typed a paragraph designed to be so specific that it would limit competition.<sup>38</sup>

The final legislation included much of the language that Mr. Casey had written, including \$14 million in funding to “acquire and test an automated document conversion system for the purpose of converting archival drawings and specifications of systems.”<sup>39</sup> Under the 1994 earmark, Audre initially received \$4 million in Pentagon contracts.<sup>40</sup> According to a 1994 article in *Federal Computer Week*, one week before the bill’s final passage, Ms. White bought stock in Audre.<sup>41</sup> Upon leaving the Hill, she became partner of the lobbying firm that represented ADCS.<sup>42</sup>

Rep. Hunter’s connections to Ms. White do not end with her involvement with Brent Wilkes. Ms. White lobbies on behalf of some of Rep. Hunter’s biggest campaign contributors.<sup>43</sup> Since Ms. White became a lobbyist, Rep. Hunter has received \$133,000 in campaign contributions from Ms. White<sup>44</sup> and the political action committees of her clients.<sup>45</sup>

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<sup>36</sup> Peter Pae, Tom Hamburger and Richard Simon, Powerful Lawmaker’s Relative Linked Financially to Contractor, *Los Angeles Times*, June 23, 2006 (Exhibit 20).

<sup>37</sup> Id.

<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>40</sup> Pae, Hamburger and Simon, *Los Angeles Times*, June 23, 2006.

<sup>41</sup> Id.

<sup>42</sup> Copeland Lowery & Jacquez, ADCS, Inc., Lobbying Registration, 2002; Copeland Lowery Jacquez Denton & White, ADCS, Inc., Lobbying Report, Midyear 2002 (*see* Exhibit 15).

<sup>43</sup> The Center for Responsive Politics, [www.opensecrets.org](http://www.opensecrets.org), Duncan Hunter: Career Profile (Since 1989), Top Contributors (Exhibit 21).

<sup>44</sup> Committee to Re-Elect Congressman Hunter, FEC Form 3 April Quarterly Report 2003, April 14, 2003, p. 77 (Exhibit 22); Committee to Re-Elect Congressman Hunter, FEC Form 3 April Quarterly Report 2006, April 14, 2006, p.62 (Exhibit 23).

<sup>45</sup> *See* The Boeing Company Political Action Committee, FEC Form 3X Schedule B Reports, 2003-2006, pages listing contributions attached (Exhibit 24); Copeland Lowery Jacquez Benton & Shockey, The Boeing Company, Lobbying Registration, Secretary of the Senate, Office of Public Records, 2003 (Exhibit 25); Copeland Lowery Jacquez Denton & White, The Boeing Company, Termination Report, Secretary of Senate, Office of Public Records, Midyear 2006 (Exhibit 26); *see* General Atomics Political Action Committee, FEC Form 3X Schedule B

## **Earmarks For L-3 Titan**

Rep. Hunter has sought tens of millions of dollars in earmarks for projects that would benefit the defense contractor L-3 Titan, a company formed in 2005 with the merger of L-3 communications and Titan corporation.<sup>46</sup> For the last two fiscal years, the earmarks have included roughly \$30 million for what is coined an “Affordable Weapon System” and about \$22 million for the “Sea Fighter” project.<sup>47</sup> In 2003, L-3 Titan received a \$59.9 million contract from the Navy to develop and build the Sea Fighter catamaran,<sup>48</sup> despite the Navy’s misgivings about

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Reports, 2003-2006, pages listing contributions attached (Exhibit 27); Copeland Lowery Jacquez Denton & Shockey, General Atomics, Lobbying Registration, Secretary of the Senate, Office of Public Records, 2003 (Exhibit 28); Innovative Federal Strategies, General Atomics, Lobbying Report, Secretary of Senate, Office of Public Records, Midyear 2007 (Exhibit 29); *see* General Dynamics Voluntary Political Action Committee, FEC Form 3X Schedule B Reports, 2004-2006, pages listing contributions attached (Exhibit 30); Copeland Lowery Jacquez Denton & Shockey, General Dynamics, Lobbying Registration, Secretary of the Senate, Office of Public Records, 2004 (Exhibit 31); Innovative Federal Strategies, General Dynamics, Lobbying Report, Secretary of Senate, Office of Public Records, Midyear 2007 (Exhibit 32); *see* Titan Corporation Political Action, FEC Form 3X Schedule B Reports, 2003-2005, pages listing contributions attached (Exhibit 33); L-3 Communications Political Action Committee, FEC Form 3X, Schedule B, 2004-2006 pages listing contributions attached (Exhibit 34); Copeland Lowery Jacquez Denton & Shockey, Titan, Lobbying Registration, Secretary of the Senate, Office of Public Records, 2003 (Exhibit 35); Innovative Federal Strategies, L-3 Communications, Lobbying Report, Secretary of Senate, Office of Public Records, Midyear 2007 (Exhibit 36); *see* EDS Political Action Committee, FEC Form 3X Schedule B Reports, 2004-2005 pages listing contributions attached, (Exhibit 37); Copeland Lowery Jacquez Denton & Shockey, EDS Global Government Affairs, Lobbying Registration, Secretary of the Senate, Office of Public Records, 2004 (Exhibit 38); Innovative Federal Strategies, Electronic Data Systems Corporation, Lobbying Report, Secretary of Senate, Office of Public Records, Midyear 2007 (Exhibit 39); *see* United Technologies Corporation Political Action Committee, FEC Form 3X Schedule B Reports, 2004-2006 pages listing contributions attached, (Exhibit 40); Copeland Lowery Jacquez Denton & Shockey, United Technologies, Lobbying Registration, Secretary of the Senate, Office of Public Records, 2003 (Exhibit 41); Innovative Federal Strategies, United Technologies, Lobbying Report, Secretary of Senate, Office of Public Records, Year End 2006 (Exhibit 42).

<sup>46</sup> Press Release, Rep. Duncan Hunter, Hunter Announces FY2008 Funding Initiatives June 18, 2007 (Exhibit 43); Roxana Tiron and Ilan Wurman, \$8 B of Pork: Dems Take 60 Percent, *The Hill*, May 21, 2007 (Exhibit 44); California Congressman Opens Up About Earmarks, *The Washington Post*, June 19, 2006 (Exhibit 45).

<sup>47</sup> Id.

<sup>48</sup> Hunter Adds Language Pressuring Navy to Give Mission to Unwanted, *National Journal's Congress Daily*, June 15, 2007 (Exhibit 46).

the project. As Rep. Hunter once noted of the Navy, “They hated the idea.”<sup>49</sup> Nevertheless, the 2008 defense authorization bill included money for both projects.<sup>50</sup>

From 2003 through 2006, Ms. White was listed as a lobbyist for either Titan Corporation or L-3 Communications.<sup>51</sup> The San Diego firm also employed lobbyist Frank C. Collins III, a former aide to Rep. Hunter and one-time chief of staff to Rep. Randy “Duke” Cunningham.<sup>52</sup>

Since 2001, interests in L-3 Communications and Titan Corporation (including the company’s PAC, company employees and their spouses) have contributed \$65,000 to Rep. Hunter, ranking them among his top contributors.<sup>53</sup> In 2005, Titan Corp. pleaded guilty to bribery charges, falsifying company books and records and preparing a false tax return.<sup>54</sup>

### **Earmarks For Boeing**

Andrew K. Ellis, former staff director of the Committee on Armed Services and former legislative assistant for Rep. Hunter, joined Boeing as a vice president in the company’s government relations office in February 2000.<sup>55</sup> Two months later, Boeing paid \$448 for Rep. Hunter’s meal expenses and one night’s lodging for a “briefing” in Seal Beach, California,<sup>56</sup>

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<sup>49</sup> Id.

<sup>50</sup> Tiron and Wurman, *The Hill*, May 21, 2007.

<sup>51</sup> Copeland Lowery Jacquez Denton & Shockey, Titan, Lobbying Registration, 2003 (*see* Exhibit 35); Innovative Federal Strategies, L-3 Communications, Lobbying Report, Midyear 2007 (*see* Exhibit 36).

<sup>52</sup> Center for Responsive Politics, Lobbying Database, Frank C. Collins III, Career Client List, (Exhibit 47); Center for Responsive Politics, Revolving Door Database, Frank C. Collins III, (Exhibit 48).

<sup>53</sup> *See* Titan Corporation Political Action, FEC Form 3X Schedule B Reports, 2003-2005, pages listing contributions attached (Exhibit 49); *see* L-3 Communications Political Action Committee, FEC Form 3X, Schedule B, 2001-2005 pages listing contributions attached (Exhibit 50); The Center for Responsive Politics, www.opensecrets.org, Duncan Hunter: Career Profile (Since 1989), Top Contributors (*see* Exhibit 21).

<sup>54</sup> Roseanne Gerin, Titan Pleads Guilty to Bribery Charges, *Washington Technology*, March 2, 2005 (Exhibit 51).

<sup>55</sup> Press Release, The Boeing Company, Andrew K. Ellis Joins The Boeing Company In Washington, D.C., (Feb. 2, 2000) (Exhibit 52).

<sup>56</sup> Rep. Duncan Hunter, Member/Officer Travel Disclosure Form, filed April 17, 2004 (Exhibit 53).

approximately 1.5 hours from Rep. Hunter's home town of San Diego.<sup>57</sup> In February 2003, Letitia White became a lobbyist for the defense contractor.<sup>58</sup>

From fiscal year 2000 through fiscal year 2003, Boeing was awarded \$59.2 billion in federal contracts.<sup>59</sup> From 2001 through 2005, Rep. Hunter took in \$32,800 from Boeing interests.<sup>60</sup>

### **Earmarks For DuPont Aerospace**

Congress has spent more than \$63 million over a 19-year period on an experimental jet, the DP-2, that has not flown and has been rejected repeatedly by military analysts.<sup>61</sup> In 1986, two years before the DP-2 plane received its first earmark, the Navy concluded that the contractor's concept should be "dropped as a solution,"<sup>62</sup> and since that time the jet has been consistently judged as technically flawed.<sup>63</sup> John Eney, the former head of the aircraft conceptual design group at the Naval Air Development Center and Naval Air Systems Command, claimed, "To continue to fund [the program] would be an insult to the aerospace industry at large and to the taxpayers."<sup>64</sup>

Despite the Pentagon's misgivings, Rep. Hunter has been a consistent supporter of the project<sup>65</sup> and introduced the project's first funding bill in 1988.<sup>66</sup> The congressman has defended

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<sup>57</sup> Yahoo Driving Directions, August 24, 2007 (Exhibit 54).

<sup>58</sup> Copeland Lowery Jacquez Benton & Shockey, The Boeing Company, Lobbying Registration, 2003 (*see* Exhibit 25).

<sup>59</sup> The Center for Public Integrity, [www.publicintegrity.org](http://www.publicintegrity.org), Outsourcing the Pentagon, Search Companies, Boeing (Exhibit 55).

<sup>60</sup> *See* The Center for Responsive Politics, [www.opensecrets.org](http://www.opensecrets.org), Duncan Hunter: Top Contributors 1999-2006 (Exhibit 56).

<sup>61</sup> Brian Ross and Rhonda Schwartz, The Aircraft That Can't Fly; Congress' \$63 Million Boondoggle, *ABC News*, June 11, 2007 (Exhibit 57).

<sup>62</sup> Hunter Backs 19-Year Aircraft Project That Has Yet To Fly, *National Journal's Congress Daily*, June 12, 2007 (Exhibit 58).

<sup>63</sup> Ross and Schwartz, *ABC News*, June 11, 2007.

<sup>64</sup> Erica Werner, Lawmakers Argue Over Spending on Aircraft that Has Yet to Fly, *Associated Press*, June 12, 2007 (Exhibit 59).

<sup>65</sup> Ross and Schwartz, *ABC News*, June 11, 2007.

<sup>66</sup> Dean Calbreath, Cunningham Helped Hunter Push for Locally Made Jet; Congress Reviewing Funding for Plane Pentagon Rejected, *San Diego Union-Tribune*, June 15, 2007

his role in helping steer tens of millions of dollars to the program,<sup>67</sup> listing \$6 million in funding among his fiscal year 2008 priorities.<sup>68</sup> “The point is the Pentagon doesn’t come up with every great idea,” he claimed.<sup>69</sup>

Since 1998, related interests of the aircraft’s contractor, DuPont Aerospace, have given \$36,000 in campaign contributions to Rep. Hunter.<sup>70</sup>

### Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.<sup>71</sup> It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.<sup>72</sup>

If, as it appears, Rep. Hunter accepted donations to his campaign and political action committees from Mr. Wilkes in direct exchange for earmarking federal funds to companies associated with Mr. Wilkes, Ms. White, Audre and ADCS, he may have violated the bribery statute.

If, as it appears, Rep. Hunter accepted campaign donations in direct exchange for earmarking federal funds for defense contractor L-3 Titan, he may have violated the bribery statute.

If, as it appears, Rep. Hunter accepted campaign donations in direct exchange for earmarking federal funds for Boeing, he may have violated the bribery statute.

If, as it appears, Rep. Hunter accepted campaign donations in direct exchange for earmarking federal funds for DuPont Aerospace, he may have violated the bribery statute.

### Honest Services Fraud

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(Exhibit 60).

<sup>67</sup> Jerry Kammer and Paul M. Krawzak, Hunter Defends Aircraft Project in Face of Criticism, *Copley News Service*, June 12, 2007 (Exhibit 61).

<sup>68</sup> Press Release, Rep. Duncan Hunter, June 18, 2005.

<sup>69</sup> *National Journal’s Congress Daily*, June 12, 2007.

<sup>70</sup> Ross and Schwartz, *ABC News*, June 11, 2007.

<sup>71</sup> 18 U.S.C. § 201(b)(2)(A).

<sup>72</sup> McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

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.<sup>73</sup> By using his position as a member of Congress to financially benefit clients of Mr. Wilkes and defense contractors, Rep. Hunter may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. § 1341.

### Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.<sup>74</sup> In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.<sup>75</sup>

If a link is established between Rep. Hunter's earmarking funds for Audre and ADCS, companies associated with Mr. Wilkes and Ms. White, and campaign contributions Mr. Wilkes' and Ms. White's clients have made to him, Rep. Hunter would be in violation of the illegal gratuity statute.

If a link is established between the campaign donations Rep. Hunter received from L-3 Titan interests and the funds he earmarked for two projects for the defense contractor, Rep. Hunter would be in violation of the illegal gratuity statute.

If a link is established between the campaign donations Rep. Hunter received from Boeing interests and the funds Rep. Hunter earmarked for federal contracts with Boeing, Rep. Hunter would be in violation of the illegal gratuity statute.

If a link is established between the campaign donations Rep. Hunter has received from DuPont Aerospace and the millions of dollars Rep. Hunter has steered to the company for the discredited DP-2 plane, Rep. Hunter would be in violation of the illegal gratuity statute.

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of members, including expulsion.<sup>76</sup>

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<sup>73</sup> 18 U.S.C. § 1341.

<sup>74</sup> 18 U.S.C. § 201(c)(1)(B).

<sup>75</sup> United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

<sup>76</sup> *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100<sup>th</sup> 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, 96<sup>th</sup> Cong., 2d Sess. (1980).

5 U.S.C. § 7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including “anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties.”<sup>77</sup> House Rule XXIII, clause 3, similarly provides:

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

If Rep. Hunter accepted campaign contributions from Mr. Wilkes, Ms. White and her clients in return for legislative assistance by way of earmarking federal funds for their clients and companies associated with them, he likely violated 5 U.S.C. § 7353 and House Rule XXIII.

By accepting thousands of dollars in campaign contributions from L-3 Titan interests in apparent exchange for earmarking money for two projects L-3 Titan was pushing, despite the Navy’s misgivings about the projects, Rep. Hunter likely violated 5 U.S.C. § 7353 and House Rule XXIII.

By accepting thousands of dollars in campaign contributions from Boeing interests in apparent exchange for earmarks for federal contracts for Boeing, Rep. Hunter likely violated 5 U.S.C. § 7353 and House Rule XXIII.

By accepting thousands of dollars in campaign contributions from DuPont Aerospace interests in apparent exchange for earmarking millions of dollars for the DP-2 plane, Rep. Hunter likely violated 5 U.S.C. § 7353 and House Rule XXIII.

Conduct Not Reflecting Creditably on the House

In addition, Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”<sup>78</sup> This ethics standard is considered to be “the most comprehensive provision of the code.”<sup>79</sup> 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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<sup>77</sup> See House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

<sup>78</sup> Rule XXIII, cl. 1.

<sup>79</sup> House Comm. on Standards of Official Conduct, House Ethics Manual.

that reflect on “Congress as a whole,” and that might otherwise go unpunished.<sup>80</sup> 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,<sup>81</sup> making false statements to the Committee,<sup>82</sup> criminal convictions for bribery,<sup>83</sup> or accepting illegal gratuities,<sup>84</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>85</sup>

Rep. Hunter’s apparent acceptance of campaign contributions in return for legislative favors does not reflect creditably on the House and, therefore, violates House Rule XXIII, clause 1.

#### Violation of Gift Rules

House gift rules restrict travel expenses that may be accepted to only “necessary transportation, lodging and related expenses for travel.”<sup>86</sup> The Travel Booklet provides that a

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<sup>80</sup> 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).

<sup>81</sup> 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).

<sup>82</sup> 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).

<sup>83</sup> 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)).

<sup>84</sup> 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).

<sup>85</sup> 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).

<sup>86</sup> Rule XXVI, cl. 5(b)(1)(A); House Comm. on Standards of Official Conduct, Travel Booklet.

Member “may accept only such expenses as are reasonably necessary to accomplish the purpose of the trip.” 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.<sup>87</sup>

It appears that Rep. Hunter may have violated the rules by accepting a night’s lodging from Boeing to attend a briefing at a location less than two hours from his home town of San Diego.

### **Relationship With Pete Geren**

In 1996, Rep. Hunter built a cabin in the Blue Ridge Mountains with former Congressman Pete Geren and Al Tierney.<sup>88</sup> Rep. Geren had served with Rep. Hunter on the Armed Services Committee before his retirement in 1997.<sup>89</sup>

In September 2001, Rep. Geren joined the Department of Defense as a special assistant to Secretary Rumsfeld with responsibility for legislative affairs<sup>90</sup> and treatment of military detainees.<sup>91</sup>

In January 2003, Rep. Hunter became the chair of the House Armed Services Committee with oversight responsibilities over the Pentagon that included compelling senior Pentagon officials to testify before the committee.<sup>92</sup>

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<sup>87</sup> Id.

<sup>88</sup> Rep. Duncan Hunter, U.S. House of Representatives, Financial Disclosure Statement for Calendar Year 1996, Form A, May 15, 1997 (Exhibit 62).

<sup>89</sup> Bio of Pete Geren, Secretary of the Army; Pete Geren, Former Under Secretaries of the Army, Senior Army Leadership (Exhibit 63).

<sup>90</sup> Id.

<sup>91</sup> George Cahlink, Former Texas Congressman Pete Geren Named Acting Air Force Secretary, *Defense Daily*, August 1, 2005 (Exhibit 64).

<sup>92</sup> Otto Kreisher, Hunter Assumed Armed Services Chair; Sets Bold Agenda, *Copley New Service*, January 9, 2003. (Exhibit 65). Rules of the House of Representatives, Rule X(1)(c), Rule X(2), 108<sup>th</sup> Congress (2003) (Exhibit 66).

In July 2005, Rep. Geren was appointed acting Secretary of the Air Force.<sup>93</sup> On August 1, 2005, Rep. Hunter spoke with *Defense Daily* about Rep. Geren's appointment, telling the publication he "could not think of a better-qualified person to lead the Air Force during this time."<sup>94</sup> Roughly seven months later, in February 2006, Rep. Geren began working as under secretary of the Army, where he advised the secretary of defense on the Army's capabilities and was responsible for justifying policies, plans, programs and the budget to the secretary, the executive branch and Congress.<sup>95</sup> Before Rep. Geren was confirmed to the Army's No. 2 civilian post, Rep. Hunter sent out a press release in his official capacity as chair of the House Armed Services Committee praising Rep. Geren and expressing his "full confidence in Pete's ability to faithfully serve the men and women of the U.S. Army."<sup>96</sup> Rep. Hunter did not disclose his personal or financial relationship with Rep. Geren.<sup>97</sup> After Rep. Geren was appointed to be secretary of the Army, Rep. Hunter again issued a press release on behalf of the House Armed Services Committee, stating "Pete's experience in Congress and within the Defense Department will facilitate the House Armed Services Committee's ongoing efforts to support the Department of the Army. We look forward to working with him in his new role."<sup>98</sup> Once again, Rep. Hunter failed to mention his financial and personal connection to Rep. Geren. In July 2007, Rep. Geren was confirmed by the Senate as the 20<sup>th</sup> secretary of the Army.<sup>99</sup>

Rep. Hunter claimed that he sold the Blue Ridge Mountain cabin that he co-owned with Rep. Geren in April 2007.<sup>100</sup> He did not, however, report the amount of the sale on the disclosure report he is required to file as a presidential candidate.<sup>101</sup>

*Conduct Not Reflecting Creditably on the House*

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<sup>93</sup> Bio of Pete Geren, Secretary of the Army.

<sup>94</sup> Kreisher, *Defense Daily*, August 1, 2005.

<sup>95</sup> Bio of Pete Geren, Secretary of the Army.

<sup>96</sup> Press Release, Rep. Duncan Hunter, House Armed Services Committee Chairman Hunter Issues Statement on Nomination of Pete Geren for Undersecretary of Army, January 20, 2007 (Exhibit 67).

<sup>97</sup> Id.

<sup>98</sup> Press Release, Rep. Duncan Hunter, Rep. Hunter Issues Statement on Senate Confirmation of Pete Geren as Army Secretary, July 13, 2007 (Exhibit 68).

<sup>99</sup> Bio of Pete Geren, Secretary of the Army.

<sup>100</sup> Rep. Duncan Hunter, U.S. Office of Government Ethics, Executive Branch Personal Public Financial Disclosure Report, OMB No. 3209-0001, May 11, 2007 (Exhibit 69).

<sup>101</sup> Id.

Rep. Duncan's use of his position as chair of the House Armed Services Committee on two separate occasions to promote Rep. Geren's selection, first for the Army's No. 2 civilian post and then as secretary of the Army, without revealing that he had both a personal and financial connection to Rep. Geren does not reflect creditably on the House and, therefore, violates House Rule XXIII, clause 1.

### **Real Estate Taxes**

In 1993, a 6,200-square-foot, six-bedroom, 2 ½-bath home sitting on 2.7 acres of land on Vista Viejas Road in Alpine, California went into foreclosure.<sup>102</sup> The Resolution Trust Corporation ("RTC"), the government entity created in the wake of the 1980s savings and loan crisis,<sup>103</sup> bought the property for \$175,000.<sup>104</sup> While county records indicate the RTC sold the land to State Street Bank, a global financial-services provider for institutional investors, a spokesperson for the company claimed it never owned the property and was merely acting as trustee for the RTC.<sup>105</sup>

Despite federal regulations preventing what was described as "key federal employees" from purchasing properties from the RTC to avoid conflicts of interest, less than two months later, in February 1994, Rep. Hunter and his wife Helynn, purchased the Alpine home for \$175,000 -- the same amount the State Street Bank had reportedly paid for the property.<sup>106</sup>

While the home had fallen into disrepair, similar sized properties were selling for more than double the amount the Hunters paid.<sup>107</sup> The same month that they bought their house, a five-bedroom, five-bath home on 2.9 acres was listed for \$495,000 and a four-bedroom home on 1.2 acres was selling for \$359,000.<sup>108</sup> The listing agent for the Hunters' property, Ron Hart, claimed there was nothing unusual about the transaction, but also acknowledged that most buyers would

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<sup>102</sup> Jeff McDonald, Hunter Got Break on Taxes for Home, *San Diego Union-Tribune*, October 8, 2006 (Exhibit 70).

<sup>103</sup> Bert Ely. "The Resolution Trust Corporation in Historical Perspective." *Housing Policy Debate* 1, no. 1 (1990): 53,53 (Exhibit 71).

<sup>104</sup> McDonald, *San Diego Union-Tribune*, Oct. 8, 2006.

<sup>105</sup> Id.

<sup>106</sup> Id.

<sup>107</sup> Id.

<sup>108</sup> McDonald, *San Diego Union-Tribune*, Oct. 8, 2006.

be fortunate to get Rep. Hunter's deal.<sup>109</sup> "The man had his ducks in a row," Mr. Hart said.<sup>110</sup> "He had all his financing."<sup>111</sup>

According to Rep. Hunter, a county official reassessed his home after the purchase.<sup>112</sup> Property records, however, had incorrectly listed the home as having only two bedrooms and 2 ½ bathrooms, less than half its actual size of almost 6,200 square feet.<sup>113</sup> The estate, reappraised at \$249,000, was above the sales price but still well below its market value. As a result, Rep. Hunter paid less in taxes than other owners of similar-sized properties.<sup>114</sup>

In 2005, Rep. Hunter applied for a permit to rebuild the house, which had been destroyed in the worst forest fire in California history.<sup>115</sup> He provided a letter from his insurance carrier stating that the original main house was 6,200 square feet and a guest house was over 2,000 square feet.<sup>116</sup> When county officials discovered the discrepancy between the property's appraised value and its actual value, they demanded almost \$5,000 in back taxes and reassessed the property at \$315,000.<sup>117</sup> Rep. Hunter agreed to pay only \$667 in back taxes and an \$85 late fee and appealed the revaluation of his home, claiming he had never noticed the discrepancy.<sup>118</sup> On September 7, 2007, it was reported that Rep. Hunter had withdrawn his appeal of the assessment not because he was conceding its correctness, but rather because of "other priorities and overwhelming time constraints."<sup>119</sup>

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<sup>109</sup> Id.

<sup>110</sup> Id.

<sup>111</sup> Id.

<sup>112</sup> McDonald, *San Diego Union-Tribune*, Oct. 8, 2006.

<sup>113</sup> Id.

<sup>114</sup> Id.

<sup>115</sup> Jeff McDonald, Reassessed House Keeps Hunter in Tax Struggle, *San Diego Union-Tribune*, July 24, 2007 (Exhibit 72).

<sup>116</sup> McDonald, *San Diego Union-Tribune*, Oct. 8, 2006.

<sup>117</sup> McDonald, *San Diego Union-Tribune*, July 24, 2007.

<sup>118</sup> Id.

<sup>119</sup> Jeff McDonald, Appeal Dropped on Assessment of House Burned in Cedar Fire, *San Diego Union-Tribune*, September 7, 2007 (Exhibit 73).

Notwithstanding his challenge to the reappraisal of his pre-fire home based on its actual size, Rep. Hunter listed the property's value as being between \$500,000 and \$1,000,000 on his most recent financial disclosure form filed with the House of Representatives.<sup>120</sup>

The remodeled 5,265-square-foot home, which will include five bedrooms, six ½ baths, an interior courtyard, a swimming pool, tennis court and a two-bedroom guest house on top of a 1,600 square-foot garage and workshop, has a newly assessed value of \$401,583, but is scheduled to climb to between \$550,000 and \$600,000 later in 2007.<sup>121</sup> Even with an assessed value of \$600,000, the Hunters will pay lower taxes than new buyers of like-sized homes in Alpine as Proposition 13 protects them from steep increases.<sup>122</sup> Other than the Hunter residence the least expensive home in Alpine County with at least 5,200 square feet is listed for \$1.55 million.<sup>123</sup>

### Financial Disclosure Requirements

The Ethics in Government Act of 1967<sup>124</sup> requires all members of Congress to file financial disclosure reports. Under the statute, the attorney general may seek a civil penalty of up to \$11,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.<sup>125</sup> The same reporting requirements attach to any candidate for the office of president, who is required to file the report within 30 days of becoming a candidate.<sup>126</sup>

In addition, 18 U.S.C. § 1001 prohibits Members of Congress from making “any materially false, fictitious, or fraudulent statement or representation”<sup>127</sup> on “a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch.”<sup>128</sup>

The discrepancy between the value Rep. Hunter assigned to his home for purposes of his financial disclosure forms and the value he claimed the property was worth in response to an

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<sup>120</sup> Rep. Duncan Hunter, U.S. House of Representatives, 2007 Financial Disclosure Statement, Form A, May 11, 2007, p. 5 (Exhibit 74).

<sup>121</sup> McDonald, *San Diego Union-Tribune*, July 24, 2007.

<sup>122</sup> Id.

<sup>123</sup> McDonald, *San Diego Union-Tribune*, July, 24, 2007.

<sup>124</sup> Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

<sup>125</sup> 5 U.S.C. app. 4, § 104.

<sup>126</sup> 5 U.S.C. app. § 101(c).

<sup>127</sup> 18 U.S.C. §1001(a)(2).

<sup>128</sup> Id. at §1001(c)(2).

increased assessment by San Diego County suggests, at the very least, that Rep. Hunter may have misrepresented the true value of his home on his financial disclosure forms, which would be a violation of 18 U.S.C. § 1001.

Moreover, the financial disclosure report that Rep. Hunter filed as a presidential candidate on May 11, 2007, does not include the value of his home.<sup>129</sup> His failure to attribute a value to this property at a time when he was contesting its value with the County of San Diego suggests that he may have violated the Ethics in Government Act.

### **Liberty Station Development Project**

Rep. Hunter assisted his brother's employer in obtaining a contract for a land development project in San Diego, California. Rep. Hunter's brother, Jim Hunter, is Vice President of Acquisitions for The Corky McMillin Cos., a land developer.<sup>130</sup> Rep. Hunter helped draft a bill that allowed over 235 acres of a former Navy boot camp to be given away free to the City of San Diego.<sup>131</sup> Rep. Hunter then co-authored a letter to San Diego city council members urging them to consider McMillin to redevelop the property into a new community called Liberty Station.<sup>132</sup> McMillin won the contract, but has not followed through on an agreement to share profits with the City of San Diego.<sup>133</sup> Jim Hunter was one of the first to buy a home in Liberty Station.<sup>134</sup> He took out a \$150,000 mortgage from McMillin Real Estate & Mortgage Co. on the \$715,500 property, the least expensive property in Liberty Station.<sup>135</sup>

#### 5 C.F.R. § 2635.702(a)

Members of the House are prohibited from "taking any official actions for the prospect of personal gain for themselves or anyone else."<sup>136</sup> House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

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<sup>129</sup> See Exhibit 69.

<sup>130</sup> Brooke Williams, Boom for McMillin, Bust For the City, *San Diego Union-Tribune* March 3, 2007 (Exhibit 75).

<sup>131</sup> Id.

<sup>132</sup> Id.

<sup>133</sup> Williams, *The San Diego Union-Tribune*, Mar. 3, 2007.

<sup>134</sup> Id.

<sup>135</sup> Id.

<sup>136</sup> House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

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

The Code of Ethics also provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not.”<sup>137</sup>

By directly assisting the employer of his brother to obtain a contract for a land development project, Rep. Hunter may have dispensed special favors in violation of 5 C.F.R. § 2635.702(a).

House Rule XXVI

House rules provide that members, officers and employees may accept opportunities and benefits that are "in the form of loans from banks and other financial institutions on terms generally available to the public."<sup>138</sup> In addition, the Committee on Standards of Official Conduct has determined that members and staff may accept a loan from a person other than a financial institution, provided that the loan is on commercially reasonable terms, including requirements for repayment and a reasonable rate of interest.<sup>139</sup> That determination was based on a separate provision of the gift rule, clause 5(a)(3)(A), which allows the acceptance of "[a]nything for which the Member . . . officer, or employee pays the market value."<sup>140</sup>

The Committee has further stated

Whether a loan from a person other than a financial institution is on terms that are “commercially reasonable,” and hence acceptable under the Committee’s determination, will depend on a number of facts and circumstances. Thus, *before* entering into a loan arrangement with a person other than a financial institution, Members and staff should contact the Committee for a review of the proposed terms, and a determination by the Committee on whether the loan is acceptable under the gift rule.<sup>141</sup>

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<sup>137</sup> Id.

<sup>138</sup> House Rule XXVI, cl. 5(a)(3)(R)(v).

<sup>139</sup> House Comm. on Standards of Official Conduct, Gift and Travel Booklet.

<sup>140</sup> Id.

<sup>141</sup> Id.

Given that McMillin Real Estate & Mortgage Co., the company that gave Rep. Hunter a mortgage, appears to be associated with The Corky McMillin Cos. -- the developer of the housing community in which he purchased a home, the employer of his brother and on whose behalf he provided extensive assistance in securing the property for development -- the ethics committee should investigate whether, by accepting a loan from McMillin Real Estate & Mortgage Co., Rep. Hunter violated House Rule XXVI.

### **Presidential PAC Advertising**

Beginning in October 2006, Rep. Hunter publicly announced his interest in running for president of the United States.<sup>142</sup> Between October 2006 and January 2007, Rep. Hunter traveled to the early primary states of New Hampshire, Iowa and South Carolina on behalf of PTS PAC.<sup>143</sup> For the period from November 28, 2006 through December 31, 2006, PTS PAC reported receiving contributions from 11 individuals in excess of \$2,300.<sup>144</sup> PTS PAC produced a television advertisement featuring Rep. Hunter that supports the construction of a fence along the United States-Mexico border.<sup>145</sup> PTS PAC's website, [www.peacethroughstrengthpac.com](http://www.peacethroughstrengthpac.com), is prominently displayed at the beginning and end of the advertisement.<sup>146</sup>

On December 14, 2006, PTS PAC paid the Rapid City, South Dakota television station KEVN \$1,000 for advertisement airtime.<sup>147</sup> On December 14, 2006, PTS PAC paid the Spartanburg, South Carolina television station WSPA \$4,998 for advertisement airtime.<sup>148</sup> On December 14, 2006, December 19, 2006 and December 24, 2006, PTS PAC paid the Greenville, South Carolina television station WHNS a total of \$19,900 for advertisement airtime.<sup>149</sup> On December 19, 2006, PTS PAC paid the Columbia, South Carolina television station WACH \$5,000 for advertisement airtime.<sup>150</sup> On December 19, 2006, PTS PAC paid the Charleston,

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<sup>142</sup> Jim Davenport, Hunter Makes Presidential Bid Official, *Associated Press*, January 25, 2007 (Exhibit 76).

<sup>143</sup> James W. Pindell, Hunter to visit N.H. for First Time Since Announcing Presidential Ambitions, *The Boston Globe*, January 5, 2007 (Exhibit 77).

<sup>144</sup> PTS PAC, FEC Form 3x, January 17, 2007, pp. 8-12 (Exhibit 78).

<sup>145</sup> Duncan Hunter on the Border Fence (January 4, 2007), <http://www.youtube.com/watch?v=hNGCZ2LoYhU> ("the border fence advertisement").

<sup>146</sup> Id.

<sup>147</sup> PTS PAC, FEC Form 3x, p. 16.

<sup>148</sup> Id. at p. 19.

<sup>149</sup> Id. at pp. 18-19.

<sup>150</sup> Id. at p. 19.

South Carolina television station WTAT \$5,005 for advertisement airtime.<sup>151</sup> PTS PAC reported disbursements, however, only to television stations in South Carolina and South Dakota.<sup>152</sup>

According to media reports, the border fence advertisement began airing in Iowa, New Hampshire and South Carolina on December 19, 2006.<sup>153</sup> A second advertisement focusing on Rep. Hunter's stance on trade policies with China began airing on an unknown date in South Carolina, North Carolina and South Dakota.<sup>154</sup>

On January 8, 2007, Rep. Hunter established the Hunter for President Exploratory Committee.<sup>155</sup> On January 25, 2007, Rep. Hunter registered Hunter for President as his principal campaign committee.<sup>156</sup> In his announcement speech, Rep. Hunter stated that he would lead with a policy of "peace through strength," the same phrase that serves as PTS PAC's name.<sup>157</sup> Following the formation of Hunter for President, PTS PAC paid the Manchester, New Hampshire television station WMUR a total of \$17,575 to broadcast the border fence advertisement.<sup>158</sup> At the time WMUR aired the border fence advertisement in February 2007, PTS PAC's website directed readers to "please visit Duncan Hunter for President 2008," and provided a direct hyperlink to Hunter for President's website, [www.gohunter08.com](http://www.gohunter08.com).<sup>159</sup> PTS PAC has since removed the message and hyperlink from its website.<sup>160</sup> PTS PAC reportedly paid for additional television advertisements during the week of February 11, 2007 in South Carolina, North Carolina and South Dakota.<sup>161</sup> On March 1, 2007, the FEC approved PTS PAC's request to

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<sup>151</sup> PTS PAC, Form 3x, p. 20.

<sup>152</sup> *See id.*

<sup>153</sup> Jessica Holzer, The 2008 Ad Blitz Begins, *The Hill*, February 9, 2007 (Exhibit 79).

<sup>154</sup> Dana Wilkie, Hunting for Votes in S.C., *The San Diego Union-Tribune*, February 26, 2007 (Exhibit 80).

<sup>155</sup> Hunter for President Exploratory Committee, FEC Form 1, January 8, 2007 (Exhibit 81).

<sup>156</sup> Hunter for President, FEC Form 1, January 25, 2007 (Exhibit 82).

<sup>157</sup> Davenport, *Associated Press*, Jan. 25, 2007.

<sup>158</sup> *See* James W. Pindell, Candidate used PAC funds for N.H. ads, *The Boston Globe*, February 27, 2007 (Exhibit 83).

<sup>159</sup> Id.

<sup>160</sup> PTS PAC, Home (March 12, 2007), <http://www.peacethroughstrengthpac.com/Home.spx>

<sup>161</sup> William Macklin, Romney Touts Business Savvy in New Presidential Ads, *All Headline News*, February 20, 2007 (Exhibit 84).

change its receipts and disbursements report filing frequency from monthly to quarterly.<sup>162</sup> Because quarterly filers report semi-annually in off-election years, PTS PAC's next filing due date for receipts and disbursements is not until July 31, 2007.<sup>163</sup>

### Election Law Violations

An individual who is determining whether to run for federal office must comply with Federal Election Campaign Act (FECA) contribution limits for money received during the time the individual is "testing the waters."<sup>164</sup> "Testing the waters" activities include, but are not limited to, "conducting a poll, telephone calls, and travel" for the purpose of determining whether to become a candidate. 11 C.F.R. §§ 100.72 and 100.131. Rep. Hunter traveled extensively to early presidential primary states beginning in October 2006, using PTS PAC to "test the waters" for his presidential candidacy within the meaning of 11 C.F.R. § 100.72. An individual "testing the waters" in the 2007-2008 election cycle may not receive a contribution from any individual in excess of \$2,300.<sup>165</sup> While supporting Rep. Hunter's "testing the waters" efforts, PTS PAC received 11 individual contributions totaling \$52,650 that exceeded FECA's \$2,300 individual contribution limit. Because PTS PAC knowingly accepted \$27,350 in excessive contributions, PTS PAC violated 2 U.S.C. § 441a(f).

When an individual begins to campaign or otherwise decides to become a candidate, the individual must register a candidate committee with the FEC.<sup>166</sup> An individual is no longer "testing the waters," and must, therefore, register a candidate committee with the FEC if the individual expends \$5,000 or more to purchase general public political advertising to publicize his or her intention to campaign for federal office.<sup>167</sup> Because PTS PAC expended over \$5,000 on advertisements that were designed to publicize Rep. Hunter's intention to campaign for federal office by introducing him to early primary voters, PTS PAC was required to register with the FEC as the principal campaign committee for Rep. Hunter.<sup>168</sup> By failing to register as a candidate committee, PTS PAC violated 2 U.S.C. § 433(a).

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<sup>162</sup> Letter from Patricia Carmona, Chief, Compliance Branch Reports Analysis Division, FEC to Meredith G. Kelley, Treasurer, PTS PAC, March 1, 2007 (Exhibit 85).

<sup>163</sup> Id.

<sup>164</sup> 11 C.F.R. §§ 100.72 and 100.131. See also FEC, Campaign Guide for Congressional Candidates and Committees (May 2004) at 5 ("Funds raised to test the waters are subject to the Act's contribution limits.").

<sup>165</sup> 11 C.F.R. § 110.1(b)(1).

<sup>166</sup> 11 C.F.R. § 100.72.

<sup>167</sup> 11 C.F.R. § 100.72(b)(1).

<sup>168</sup> 11 C.F.R. § 100.72(b)(1).

Advertisements that promote a candidate are considered in-kind contributions to the candidate's principal campaign committee and are subject to FECA contribution limits.<sup>169</sup> The maximum legal contribution from a federally registered political committee to a candidate committee is \$5,000 per election.<sup>170</sup> A contribution to a political committee that exceeds \$5,000 in a calendar year constitutes an illegal contribution.<sup>171</sup> PTS PAC's alleged \$17,575 aggregate payment to WMUR to air the border fence advertisement constitutes an in-kind contribution to Hunter for President.<sup>172</sup> Any payments PTS PAC may have made to air advertisements in South Carolina, North Carolina and South Dakota during the week of February 11, 2007 constitute in-kind contributions of an unknown amount. PTS PAC's \$17,575 in-kind contribution to Hunter for President constitutes a \$12,275 excessive contribution in violation of 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 110.2(b)(1). PTS PAC's in-kind contributions to air advertisements in South Carolina, North Carolina and South Dakota are excessive contributions of an unknown amount in violation of 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 110.2(b)(1).

Political committees are required to report to the FEC the name and address of each person to whom it makes disbursements over \$200.<sup>173</sup> To the extent PTS PAC failed to report disbursements for television advertisements aired in Iowa and New Hampshire in December 2006, PTS PAC violated 11 C.F.R. §§ 104.3(b) and 104.9(a).

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<sup>169</sup> See 11 C.F.R. § 100.52(d)(1).

<sup>170</sup> 2 U.S.C. § 441a(a)(2)(A); 11 C.F.R. § 110.2(b)(1).

<sup>171</sup> 2 U.S.C. § 441a(f).

<sup>172</sup> 11 C.F.R. § 100.52(d)(1).

<sup>173</sup> 11 C.F.R. §§ 104.3(b) and 104.9(a).