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108TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
108–722

INVESTIGATION OF CERTAIN ALLEGATIONS RELATED TO VOTING ON THE MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003

R E P O R T

OF THE

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

MR. HULSHOF FROM THE INVESTIGATIVE SUBCOMMITTEE SUBMITTED THE FOLLOWING REPORT TO THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

OCTOBER 4, 2004.—Refered to the House Calendar and ordered to be printed

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96–212 WASHINGTON : 2004

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LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, DC, October 4, 2004.

Hon. JEFF TRANDAHL,
Clerk, House of Representatives,
Washington, DC.

DEAR MR. TRANDAHL: Pursuant to Rule 21(a) of the Committee on Standards of Official Conduct, and Clauses 3(a)(2) and (b) of Rule 11 of the House of Representatives, and by direction of the Committee on Standards of Official Conduct, we herewith transmit the attached Report, "Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003"

Sincerely,

JOEL HEFLEY,
Chairman.
ALAN B. MOLLOHAN,
Ranking Minority Member.

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Mr. HEFLEY, from the Committee on Standards of Official Conduct, submitted the following

REPORT

The Committee on Standards of Official Conduct ("Committee") submits this Report pursuant to House Rule XI, Clause 3(a)(2), which authorizes the Committee to investigate any alleged violation by a Member, officer, or employee of the House of Representatives, of the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee.

On March 17, 2004, the Committee adopted a resolution which established an Investigative Subcommittee to investigate alleged communications received by Representative Nick Smith linking support for the congressional candidacy of his son with Representative Smith's vote on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 ("Medicare Prescription Drug Act" or "Medicare legislation"). This action was undertaken following certain public statements made by Representative Smith relating to the vote on the Medicare legislation.

The Investigative Subcommittee completed its investigation in September of this year. Pursuant to its charge, at the conclusion of its inquiry, the Investigative Subcommittee prepared a Report to the full Committee with the Investigative Subcommittee's findings, conclusions, and recommendations.

The Report of the Investigative Subcommittee in this matter was unanimously adopted by that body on September 29, 2004. On that same date, the Investigative Subcommittee transmitted its Report to the Committee.

By unanimous vote on September 30, 2004, the Committee adopted the Report of the Investigative Subcommittee and includes

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that Report herewith as part of the Committee's Report to the House of Representatives in this matter. By this act, the Committee approves and adopts the findings, conclusions, and recommendations of the Investigative Subcommittee, including the recommendation in the Investigative Subcommittee's Report that the publication of its Report will serve as a public admonishment by the Committee to Representative Smith, Representative Miller, and Majority Leader DeLay regarding their conduct in this matter.

For the reasons discussed herein and in the Investigative Subcommittee's Report, the Investigative Subcommittee ultimately concluded that Representative Smith, Representative Miller, and Majority Leader DeLay should be publicly admonished for their conduct as described in the Investigative Subcommittee's Report. The Investigative Subcommittee, however, for the reasons explained in its Report, does not recommend that further proceedings be initiated regarding the conduct of any of these Members pursuant to House and Committee rules.

As explained in detail in the Investigative Subcommittee's Report, the conduct of Representative Smith in this matter could support a finding that he violated the House Code of Official Conduct. Among other findings reached by the Investigative Subcommittee regarding Representative Smith's conduct in this matter, the Investigative Subcommittee found that contrary to public statements made by Representative Smith, no group, organization, business interest, or corporation of any kind, or any individual affiliated with any such entities, offered $100,000 or any other specific sum of money to support the congressional candidacy of Brad Smith in order to induce Representative Nick Smith to vote in favor of the Medicare Prescription Drug Act. Similarly, the Investigative Subcommittee found that Representative Nick Smith was not offered an endorsement or financial support for his son's candidacy from the National Republican Congressional Committee in exchange for voting in favor of the Medicare Prescription Drug Act. Statements made to that effect by Representative Smith appear to have been the result of speculation or exaggeration on the part of Representative Nick Smith. In addition, Representative Smith failed to cooperate fully with the Chairman and Ranking Minority Member of the Committee on Standards of Official Conduct in their efforts to develop information informally about his allegations. As explained in the Report, Representative Smith failed to exercise reasonable judgment and restraint, and is accountable for making public statements that risked impugning the reputation of the House.

The Investigative Subcommittee also found that Majority Leader Tom DeLay offered to endorse Representative Smith's son in exchange for Representative Smith's vote in favor of the Medicare bill. In the view of the Investigative Subcommittee, this conduct could support a finding that Majority Leader DeLay violated House rules. The Investigative Subcommittee concluded that it is improper for a Member to offer or link support for the personal interests of another Member as part of a quid pro quo to achieve a legislative goal.

The Investigative Subcommittee reached a similar conclusion regarding the conduct of Representative Candice Miller, who made a statement to Representative Smith on the House floor during the vote on the Medicare legislation that referenced the congressional

candidacy of Representative Smith's son. Representative Smith fairly interpreted Representative Miller's statements to him during the vote as a threat of retaliation against him for voting in opposition to the bill.

Although the Investigative Subcommittee learned that two other Members—Representative Randall "Duke" Cunningham and Representative James T. Walsh—also made statements to Representative Smith referencing that congressional candidacy of Representative Smith's son, the Committee emphasizes that it was the Investigative Subcommittee's conclusion that neither of those Members violated House rules.

The Report of the Investigative Subcommittee clarifies the standards of conduct applicable to Members and others within the jurisdiction of the Committee. Specifically, Members, employees, and officials of the House are advised that the linking of official actions with personal considerations in the manner described in the Investigative Subcommittee's Report is impermissible and violates House rules.

The Report also contains procedural recommendations for future investigations undertaken by the Committee and for the conducting of House business. The procedural recommendations include a recommendation that House rules be amended so as to limit access to the House floor during House debate by Cabinet-level officials, except for such officials that are former Members. See House Rule IV, Clause 2(a)(12) (permitting "Heads of departments" to "the Hall of the House").

I. Executive Summary

On March 17, 2004, the Committee on Standards of Official Conduct established an Investigative Subcommittee to investigate alleged communications received by Representative Smith linking support for the congressional candidacy of his son with Representative Smith's vote on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (hereafter the "Medicare Prescription Drug Act" or "Medicare legislation"). The investigation encompassed certain public statements made by Representative Smith, including statements in which Representative Smith alleged that "bribes" and other improper offers were made to persuade Members of the House to vote in favor of the Medicare Prescription Drug Act. The Investigative Subcommittee was authorized to conduct a full and complete investigation into the alleged communications received by Representative Smith, and was directed to report to the full Committee at the conclusion of its inquiry with the Investigative Subcommittee's findings, conclusions, and recommendations.

The Investigative Subcommittee concluded that the public allegations made by Representative Smith stemmed from his reaction to a conversation he had with a friend and former staff member, as well as from interactions Representative Smith had with several Members of the House during or near the time of the vote on the Medicare Prescription Drug Act. Regarding the conversation Representative Smith had with the former staff member, the record indicates that the staff member was not attempting to influence Representative Smith's vote, but was merely discussing possible consequences of Representative Smith's vote in favor of or in opposition to the Medicare legislation. Similarly, the information learned

by the Investigative Subcommittee about Representative Smith's encounters with different Members of the House (as described in this Report) did not support many of the allegations made by Representative Smith.

The evidence obtained by the Investigative Subcommittee in this matter included, but was not limited to, the sworn testimony of 17 Members of the House (including Representative Nick Smith), and interviews and sworn testimony obtained from 12 other witnesses. During the inquiry, approximately 1400 pages of transcribed sworn testimony and witness statements resulted from proceedings before the Investigative Subcommittee or interviews with Investigative Subcommittee counsel. In addition, approximately two thousand pages of documents were supplied to the Investigative Subcommittee in response to subpoenas for documents and records.

As explained in this Report, the conduct of Representative Smith in this matter raises concerns that he himself violated a provision of the House Code of Official Conduct. The Investigative Subcommittee reached a similar conclusion regarding the conduct of two other Members of the House in this matter. The Investigative Subcommittee could pursue these matters only if its jurisdiction were expanded pursuant to Committee rules and the resolution adopted by the full Committee on March 17, 2004. For the reasons discussed herein, however, even though the Investigative Subcommittee concluded that there is substantial reason to believe that violations of the Code of Official Conduct occurred, the Investigative Subcommittee does not recommend in this Report that its jurisdiction be expanded so as to seek formal disciplinary action against any Member regarding any matter discussed in this Report.

In addition to the foregoing, a description of the Investigative Subcommittee's investigative efforts, and an explanation of all the Investigative Subcommittee's findings are also delineated in this Report. The Report also contains procedural recommendations for future investigations undertaken by the Committee,[1] as well as proposals for clarification of certain standards of conduct applicable to the conduct of Members, officers, and employees of the House in the performance of their duties or the discharge of their responsibilities.

II. Conduct of the Inquiry

A. ESTABLISHMENT OF INVESTIGATIVE SUBCOMMITTEE

On November 22, 2003, the House approved the Conference Report on the bill H.R. 1, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, by a vote of 220–215.[2] The vote was called at approximately 3:00 a.m., and concluded at approximately 5:51 a.m.

[1] Such recommendations relate to the sequestration and representation of witnesses, and to the current House Rule admitting members of the President's cabinet to the House floor during House proceedings.

[2] See 149 Cong. Rec. H12295–96 (daily ed. Nov. 21, 2003).

The following day, Representative Nick Smith[3] posted a column on his official congressional Web site regarding the November 22 vote on the Medicare legislation.[4]

Exhibit 1. Representative Smith's column included the following statements:

> Votes in the House usually last 15 minutes plus a traditional two minute cushion. But because the leadership did not have the votes to prevail, this vote was held open for a record two-hours-and–51 minutes *as bribes and special deals were offered to convince members to vote yes.* [Emphasis added.]
>
> I was targeted by lobbyists and the congressional leadership to change my vote, being a fiscal conservative and being on the record as a no vote. Secretary of Health and Human Services Tommy Thompson and Speaker of the House Dennis Hastert talked to me for a long time about the bill and why I should vote yes. Other members and groups made offers of extensive financial campaign support and endorsements for my son Brad who is running for my seat. They also made threats of voting against Brad if I voted no. Brad heard about what was going on and called me to say he didn't want to get to Congress that way and that I should do the right thing. That added to my resolve.

On November 24, 2003, Representative Nick Smith issued a press statement

(Exhibit 2), also posted on his Web site, in which he stated

> Washington was abuzz Monday over the resolve of Congressman Nick Smith (R-Michigan) who resisted intense pressure to vote for the Medicare bill. Following a story that appeared on Sunday in the Washington Post, Congressman Nick Smith responded with this statement:
>
> "I thought I knew 'arm-twisting' serving 16 years in the Michigan legislature and 11 years in the United States Congress. However, this was the most intense and strongest pressure to change my vote that I've ever experienced."
>
> "Being a strong fiscal conservative and having voted no on the two prescription drug bills I was a target for early pressure to vote yes on this third go-round."
>
> "My only regret is that it might have hurt my son. Advocates of the Medicare prescription drug bill had figured out that my vulnerability might lie in my strong support for my family. Since I'm retiring and my son Brad is running for my seat. I got significant promises for help for his campaign and threats they'd work against him if I voted no."
>
> "Brad got word of the situation and called me and told me that he didn't want to go to Congress this way. He told me to do the right thing. That helped my resolve."[5]

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[3] Representative Nick Smith has served as a Member of Congress from the Seventh District of Michigan since January 1993.

[4] The address of Representative Nick Smith's congressional Web site is http://www.house.gov/nicksmith/.

[5] The Washington Post article dated November 23, 2003 that is cited in Representative Nick Smith's press statement of November 24, 2003 purported to describe certain activities on the House floor that occurred during the vote on the Medicare Prescription Drug Act, including re-

Continued

The statements by Representative Nick Smith were followed by a series of news reports referencing Representative Smith's vote on the Medicare Prescription Drug Act. For example, an article published by Human Events Online on November 26, 2004, quotes Representative Smith as saying Brad Smith would receive "almost unlimited financial support, plus some nationally recognized names to endorse him" if Representative Smith voted in favor of the Medicare Prescription Drug Act. Exhibit 4.

In addition, the following description of alleged events during the vote on the Medicare Prescription Drug Act was contained in a column published in the Chicago Sun-Times on November 27, 2004 (Exhibit 5):

> [Nick] Smith, self term-limited, is leaving Congress. His lawyer son Brad is one of five Republicans seeking to replace him from a GOP district in Michigan's southern tier. On the House floor, Nick Smith was told business interests would give his son $100,000 in return for his father's vote. When he still declined, fellow Republican House members told him that they would make sure Brad Smith never came to Congress. After Nick Smith voted no and the bill passed, Duke Cunningham of California and other Republicans taunted him that his son was dead meat.[6]

On December 1, 2003, during a radio interview with WKZO-Kalamazoo, Representative Nick Smith made the following additional statements with respect to the passage of the Medicare Prescription Drug Act:[7]

> They threatened—here's what they did. They—they—they started out by offering the carrot. They know what's important to every Member and what's important to me is my family and my kids. And I term-limited myself, and so Bradley, my son, is running for Congress. And so the first offer was to give him $100,000-plus for his campaign and endorsements by national leadership. And—and I said, no, I'm going to stick to my guns on what I think is right for the constituents in my district.
>
> And so what they did then is come—come forth with sort of the stick. And they said, well, if you don't change your vote—this is about 4 a.m., Saturday morning—then some of us are going to work to make sure your son doesn't get to Congress. And that kind of personal attack is just sort of beyond what anybody should do. So I told them to get the heck out of there. And I might have used a different word besides "heck," I don't know. But it's—it's a tough situation when civility breaks down.

On December 4, 2003, Representative Nick Smith issued another press release (Exhibit 8), this time stating that:

---

ported efforts by Speaker J. Dennis Hastert and Health and Human Services Secretary Tommy G. Thompson to persuade Representative Nick Smith to vote in favor of the Medicare Prescription Drug Act. Exhibit 3.

[6] In an article that was published on line in Slate.com on December 1, 2003, Representative Smith's chief of staff Kurt Schmautz is quoted as saying that the allegations in the article published in the Chicago Sun-Times are "basically accurate." Exhibit 6.

[7] See Exhibit 7. Exhibit 7 is a transcript prepared from a digital audio copy of the radio interview.

> I have received many inquiries about lobbying pressure on the Medicare vote that took place on November 21 and the morning of November 22. I talked to a lot of members and organizations about the bill before and during the vote. I think I made it clear that I opposed the legislation because it was not good fiscal policy.
>
> I want to make clear that no member of Congress made an offer of financial assistance for my son's campaign in exchange for my vote on the Medicare bill. I was told that my vote could result in interested groups giving substantial and aggressive "support" and "endorsements." No specific reference was made to money.
>
> Some members said they would work against Brad if I voted no. My son called and said, "I don't want to go to Congress that way" and "Do the right thing."
>
> The vote was taken in the middle of the night. People were frustrated and nerves were frayed on all sides. The lobbying effort on behalf of the legislation was intense. Anyone with information can bend my ear, but they can't twist my arm.
>
> The lobbying from members was intense, but I want to be absolutely clear that I believe that no member violated any ethical rule in this episode. I see no need for an ethics investigation, let alone a criminal investigation.

An article published by the Lansing State Journal on December 5, 2003, reports on Representative Nick Smith's press statement of December 4, 2003, and states that Representative Smith "appeared to backpedal [ ] on his allegation that he was offered a bribe in exchange for voting for major Medicare legislation." Exhibit 9. However, the same article quotes Brad Smith, Representative Smith's son and candidate to replace his father in Congress, as saying that on the evening before the vote on the legislation, he was told by his father that "interest groups and key Republicans" had offered "financial contributions and endorsements" for Brad Smith's congressional campaign.

On December 8, 2003, pursuant to Committee Rule 18(a), the Chairman and Ranking Minority Member of the Committee initiated informal fact-finding concerning the statements made by Representative Nick Smith as to communications he may have received linking his support for the Medicare Prescription Drug Act with support for the congressional candidacy of his son.[8] In a letter to Representative Smith, he was asked to comment upon news accounts of communications to him regarding his vote on the Medicare Prescription Drug Act, as well as to respond to specific questions on this matter. Exhibit 10.

By letter to the Committee December 17, 2003, Representative Smith responded to the Committee's letter to him (Exhibit 11), stating that:

[8] A press statement was issued by the Chairman and Ranking Minority Member on February 4, 2004 announcing that informal fact-finding was initiated on December 8, 2003.

> [T]he news report was incorrect. No House member made an offer of financial assistance to me for my son's campaign in exchange for my vote.
>
> * * * * *
>
> Let me be very clear that the Robert Novak media report that a member told me that business interests would give $100,000 to my son's congressional campaign in exchange for my vote on the Medicare bill is untrue. On the Friday evening before the vote on the bill started, a friend called and told me that if I voted for the bill my son's congressional campaign would receive "substantial and aggressive support" or words very close to that. This person was neither a member of Congress nor a lobbyist. However, combined with members' comments that there could be endorsements, business support and members coming to Michigan to campaign for my son, I deemed the statement credible. In my mind, I believed that this would mean tens of thousands, if not hundreds of thousands of dollars for my son's campaign if I voted for the bill.

Representative Smith also stated in his letter to the Committee that he did not provide the $100,000 figure to Robert Novak,[9] but that "[u]nfortunately, a few days after reading his column, I repeated the same figure in a live radio interview on WKZO, from a cell phone while driving my car. Although I continue to believe Mr. Novak's figure is in the ballpark of what my son's campaign could have received, it was a mistake for me to repeat the $100,000 figure." He also stated that he "regard[ed] as credible the statements that my son's campaign could receive substantial and aggressive support, including support from third parties. But I repeat, no member offered me, or my son, campaign money for my vote." In apparent response to the Committee's request for details about communications made to him regarding his vote on the Medicare Prescription Drug Act, he stated that "[e]ven though I do recall an overarching message that my son's campaign could be affected by my vote, it would be unfair for me to try to reconstruct exactly the words that were said and who said them. I simply cannot do that with precision." Exhibit 11.

On December 23, 2003, the Washington Post published an article that described a gathering at the Hunan Dynasty restaurant that was held on November 21, 2003, the evening before the vote on the Medicare legislation. Exhibit 12. According to the article, Representative Smith reportedly spoke to several Republican Members regarding pressure on him to change his vote. The article reported that at least three other Members of Congress recall Representative Smith telling them of an offer of financial benefits for his son's campaign if he voted in favor of the Medicare Prescription Drug Act. One of the Members mentioned in the Washington Post article is quoted as saying that Representative Smith told attendees at the gathering that "someone had said his son . . . would be the beneficiary if he would vote for the bill, up to the tune of about $100,000 . . . ." Exhibit 12 (Ellipses original).

[9] See Exhibit 5.

A Detroit News article published on February 12, 2004 references additional public comments by Representative Smith on this matter. According to the article, on February 11, 2004, Representative Smith stated that he was offered "aggressive and substantial" support for his son's congressional campaign in connection with his vote on the Medicare Prescription Drug Act. Exhibit 13.

By letter dated February 13, 2004, the Chairman and Ranking Minority Member of the Committee again contacted Representative Smith. Exhibit 14. The purpose of this letter was to obtain additional information from Representative Smith regarding the public allegations he had made. The letter referenced Representative Smith's letter of December 17, 2003 to the Committee, and asked Representative Smith to identify the "friend" referred to in his letter to the Committee, which friend allegedly called Representative Smith and told him that his son's campaign would receive "substantial and aggressive support" or words to that effect if Representative Smith voted for the Medicare Prescription Drug Act.[10] Exhibits 14 and 11. In the letter to Representative Smith, the Chairman and Ranking Minority Member of the Committee communicated to Representative Smith that it considered the call to Representative Smith (as described in Representative Smith's letter of December 17) "to be an extremely serious matter" and further advised Representative Smith that the events as described by Representative Smith "may implicate the Committee's jurisdiction." Exhibit 14.

By letter from his counsel dated March 5, 2004, Representative Smith declined to provide the additional information requested by the Chairman and Ranking Minority Member of the Committee. In the letter, Representative Smith's counsel stated that "[i]n his letter of December 17, Representative Smith confirmed to your Committee that, notwithstanding press reports characterizing some of the speech and debate as implying that financial support for his son's Michigan congressional campaign could be affected by his vote, 'no House member made an offer of financial assistance . . . for my son's campaign in exchange for my vote.' By this reply, Representative Smith reaffirms that recollection." Exhibit 15 (Ellipses original).

After having been unable to obtain full cooperation from Representative Nick Smith in obtaining facts and evidence related to the public allegations made by Representative Smith, and because the allegations—made in several different forums—called into question the integrity of the House and its legislative process, the Committee determined to establish an Investigative Subcommittee to inquire into this matter. The Investigative Subcommittee was established pursuant to a resolution adopted by the Committee on March 17, 2004 and in accordance with the House and Committee rules referenced in the resolution. In subsequent Investigative Subcommittee and Committee proceedings, the Investigative Sub-

[10] The letter from the Chairman and Ranking Minority Member of the Committee to Representative Smith further asked for specific details about Representative Smith's communication with his "friend," and also requested the identity of certain other individuals and other information about events reported in the Washington Post article dated December 23, 2003. Exhibit 14; see also Exhibit 12. As noted later in this Report, from testimony received during its inquiry from Representative Nick Smith and another source, the Investigative Subcommittee learned that the unnamed "friend" referenced in Representative Smith's letter to the Committee dated December 17, 2003 was Jason Roe. Mr. Roe is presently chief of staff to Representative Tom Feeney.

committee's inquiry was referred to as the "Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003."[11]

The resolution adopted by the Committee provides as follows:

> Whereas Representative Nick Smith has made public statements that he received communications linking support for the congressional candidacy of his son with Representative Smith's vote on the Medicare Prescription Drug Improvement and Modernization Act of 2003; and
>
> Whereas pursuant to Committee Rule 18(a) the Chairman and Ranking Minority jointly engaged in informal fact-finding to gather additional information concerning these allegations; and
>
> Whereas the conduct of a Member, officer, or employee of the House, in connection with the aforementioned allegations, may violate the Code of Official Conduct or one or more law, rule, regulation, or other standard of conduct applicable to the conduct of a Member, officer, or employee of the House in the performance of his or her duties or the discharge of his or her responsibilities; and
>
> Whereas the Committee has authority to investigate such conduct pursuant to House Rule XI, clauses 3(a)(2) and (3)(b)(2), and pursuant to Committee Rules 14(a)(3) and 18; and
>
> Whereas the Committee has determined pursuant to Committee Rule 1(c) that the interests of justice require the adoption of special procedures in order for the Committee to carry out its investigative and enforcement responsibilities with respect to the aforementioned allegations;
>
> It is hereby resolved by the Committee
>
> 1. That an Investigative Subcommittee be established with jurisdiction to conduct a full and complete inquiry and investigation into alleged communications received by Representative Nick Smith linking support for the congressional candidacy of his son with Representative Smith's vote on the Medicare Prescription Drug Improvement and Modernization Act of 2003;
>
> 2. That the scope of the inquiry may extend to any matters related to the jurisdiction of the Investigative Subcommittee as set forth in this resolution;
>
> 3. That the Investigative Subcommittee is authorized to advise the public at large that it is interested in receiving information and testimony from any person with first-hand information regarding communications received by Representative Nick Smith linking support for the congressional candidacy of his son with Representative Smith's vote on the Medicare Prescription Drug Improvement and Modernization Act of 2003;

[11] The establishment of the Investigative Subcommittee was publicly announced by the Committee on March 17, 2004. The press statement announcing the establishment of the Investigative Subcommittee also announced "[a]t the conclusion of its inquiry, the investigative subcommittee is to report its findings, conclusions and recommendations to the full Committee," and that "[a]nyone having first-hand knowledge of this matter is encouraged to contact the Committee office."

4. That at the conclusion of its inquiry, the Investigative Subcommittee shall report to the Committee its findings, conclusions, and recommendations;

5. That the Members of the Investigative Subcommittee shall be designated pursuant to Committee Rule 19(a);

6. That Committee Rules 7 (Confidentiality), 8(a) (Subcommittees—General Policy and Structure), 9 (Quorums and Member Disqualification), and 10 (Vote Requirements) are fully applicable to this inquiry by the Investigative Subcommittee;

7. That the Investigative Subcommittee is authorized to obtain evidence and relevant information by the means and in the manner set forth in Committee Rules 19(b)–(c), except as those rules apply to respondents;

8. That witnesses before the Investigative Subcommittee shall be furnished with a copy of the special procedures for this inquiry (as set forth in this resolution), as well as accorded the rights set forth in Committee Rules 26(k)–(o);

9. That the Committee intends that all witnesses who provide testimony before the Investigative Subcommittee should be sequestered and should not communicate with any other witnesses regarding any aspect of their testimony unless the Investigative Subcommittee permits otherwise;

10. That at any point during its inquiry, or at the conclusion of its inquiry, the jurisdiction of the Investigative Subcommittee may be expanded in accordance with the requirements of Committee Rule 19(d) if the Investigative Subcommittee obtains information indicating that a Member, officer, or employee of the House may have committed a violation of the Code of Official Conduct or any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his or her duties or the discharge of his or her responsibilities. If the scope of jurisdiction of the Investigative Subcommittee is expanded to investigate the conduct of an identified Member, officer, or employee of the House, the inquiry regarding the identified Member, officer, or employee shall proceed before the same Investigative Subcommittee and in accordance with all the Rules of the Committee regarding an inquiry involving a respondent;

11. That except as otherwise provided in this Resolution, the Rules of the Committee shall be applicable in this matter and will be interpreted by the Investigative Subcommittee and the Committee in a manner not inconsistent with this Resolution.

In a public statement issued on March 25, 2004, the Chairman and Ranking Minority Member of the Committee announced that Representative Kenny C. Hulshof would serve as Chairman of the Investigative Subcommittee, Representative Michael F. Doyle would serve as its Ranking Minority Member, and the other two members of the Investigative Subcommittee would be Representative John B. Shadegg and Representative William D. Delahunt.

B. INVESTIGATIVE PROCESS

The Investigative Subcommittee was established on March 17, 2004, and after its members were designated on March 25, 2004, the Investigative Subcommittee investigated this matter until early September 2004. The Investigative Subcommittee interviewed and deposed witnesses, and authorized the issuance of subpoenas for testimony and documents. The vast majority of witnesses that provided sworn testimony to the Investigative Subcommittee or consented to interviews with Investigative Subcommittee counsel did so on a voluntary basis.

The most critical evidence procured by the Investigative Subcommittee was the approximately 1400 pages of transcribed sworn testimony and witness statements procured during proceedings before the Investigative Subcommittee or during interviews with Investigative Subcommittee counsel. In addition, approximately two thousand pages of documents were supplied to the Investigative Subcommittee pursuant to subpoena. Documents were obtained from Representative Nick Smith in both his personal and official capacities. Documents were also obtained from Brad Smith, as well as from Members of the House and House employees. In addition to subpoenaed materials, documents were also voluntarily supplied to the Investigative Subcommittee from several sources. The Investigative Subcommittee also obtained and reviewed the C-Span videotape of the vote on H.R. 1 on November 22, 2003, and examined publicly-available records maintained by the Federal Election Commission.

The documentary materials furnished by witnesses included, but were not limited to, personal, official, and campaign-related written correspondence and records in both final and draft form, telephone records (including records of cellular phone communications), official and campaign-related e-mail, personal calendars or records, and other records memorializing meetings on critical days or otherwise related to consideration of Medicare legislation by Members of the House.

During its inquiry, the Investigative Subcommittee formally deposed 17 Members of the House regarding matters within its jurisdiction, including Representative Nick Smith, the Chairs of House Committees and Subcommittees, Speaker J. Dennis Hastert, and Majority Leader Tom DeLay. A House employee (Jason Roe) and an individual not affiliated with the House (Brad Smith) were also deposed by the Investigative Subcommittee. Each of the witnesses who were deposed by the Investigative Subcommittee was placed under oath. See Committee Rule 19(b)(6). At least two Members of the Investigative Subcommittee were present at all times for all sworn depositions as required by Committee rules, although in fact, all four Members were present for a majority of the depositions before the Investigative Subcommittee. In addition, as authorized by the Investigative Subcommittee, counsel for the Investigative Subcommittee interviewed ten other individuals. Each of the interviews was transcribed by a stenographer with the consent of the individual being interviewed. Answers (made under penalty of perjury) to written questions posed by the Investigative Subcommittee

were provided by the Honorable Tommy G. Thompson, Secretary of Health and Human Services.[12] Exhibits 16 and 17.

The Investigative Subcommittee notes the cooperation of Members of the House with the Investigative Subcommittee's inquiry. No Member of the House that was asked to provide voluntary testimony declined to do so; indeed, no Member who testified voluntarily offered any resistance to testifying or any objection to questions posed to them. The Investigative Subcommittee appreciates the cooperation of the Members who voluntarily provided testimony to it, and who rearranged their official schedules—often on short notice—to accommodate the needs of the Investigative Subcommittee.[13] The only Member of the House subpoenaed to give testimony was Representative Nick Smith.

As noted in the resolution it adopted on March 17, 2004, the Committee determined, pursuant to Committee Rule 1(c), to adopt special procedures for this inquiry. One of the special procedures included in the resolution provides that unless the Investigative Subcommittee permitted otherwise, witnesses who provided testimony to the Investigative Subcommittee should be sequestered from other witnesses. The purpose of this provision was to discourage communications between witnesses before the Investigative Subcommittee regarding their testimony, thereby maintaining the confidentiality and reliability of information provided by and asked of witnesses during this inquiry.

The Investigative Subcommittee took appropriate measures to insure witnesses complied with the sequestration provision in the Committee's resolution. Not only was each witness provided with a copy of the resolution, but accompanying correspondence to witnesses noted the resolution's sequestration provision and further advised all witnesses of the intention of the Investigative Subcommittee to "inquire on the record" regarding witnesses" compliance with the instruction that communications with the Investigative Subcommittee be kept confidential.[14] In addition, every proceeding before the Investigative Subcommittee or its counsel began with an "on the record" inquiry regarding communications a witness may have had related to his or her contact with the Investigative Subcommittee, and every proceeding concluded with an admonishment that the witness should continue to comply with the resolution's sequestration provision. It was the position of the Investigative Subcommittee that Members and employees of the House were obligated to comply with the sequestration rule and not discuss any aspect of their testimony with anyone other than their counsel, and that failure to comply with this request could

[12] Early in its inquiry, the Investigative Subcommittee also sought information from the White House regarding a meeting between a White House official and Representative Nick Smith in Representative Smith's congressional office prior to the vote on the Medicare Prescription Drug Act. The White House would not make the individual available to be interviewed by Investigative Subcommittee counsel, and further declined to respond to a written request for information. During the course of its inquiry, the Investigative Subcommittee did not find any link between the allegations made by Representative Nick Smith and any communication or other action undertaken by anyone employed within the White House. For this reason, the Investigative Subcommittee did not endeavor further to obtain information from the White House regarding this matter.

[13] The Investigative Subcommittee similarly appreciates the cooperation of the many House employees that consented to be interviewed by Investigative Subcommittee counsel.

[14] Witnesses who provided statements during interviews with Investigative Subcommittee counsel were given a similar admonishment.

form the basis of disciplinary proceedings in the House in accordance with House and Committee rules.[15]

The Investigative Subcommittee encountered no violations of the sequestration provision contained in the resolution. Further, it found the provision's inclusion in the resolution to have been useful in maintaining the confidentiality of the Investigative Subcommittee's activities, and in the preventing orchestration or coordination of testimony by witnesses. The Investigative Subcommittee recommends that a "sequestration of witnesses" requirement be implemented in future inquires, whether by Committee policy, rule, or resolution.[16]

III. Narrative Summary of Evidence

A. Events Preceding the Vote on the Medicare Prescription Drug Act

1. Telephone Conversations Between Representative Nick Smith and a Former Member of his Congressional Staff

By Friday, November 21, 2003, the day preceding the House vote on the Conference version of the Medicare bill, Representative Nick Smith was expected to vote against the legislation. Representative Smith had voted against the House version of the legislation earlier in the year and had, at some point prior to November 21, communicated to his party's leadership his intention to vote against the final version of the bill. Earlier in the week, lobbyists from industry and a White House employee had visited Representative Smith in his congressional office and had presented him with arguments in favor of the Medicare legislation.[17]

Representative Smith plans to retire at the end of the 108th Congress and his son, Brad Smith, had formally announced his candidacy for his father's seat in Congress in October 2003. Even prior to his formal announcement, it was known among many Members of Congress that Brad Smith would be running for his father's seat. It was apparent in his testimony before the Investigative Subcommittee, that Representative Smith wanted his son to be successful in his campaign.[18] Several other Members who testified before the Investigative Subcommittee noted that Representative Smith had sought their support for Brad Smith's campaign.[19]

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[15] In the view of the Investigative Subcommittee, private counsel engaged to represent Members and staff during proceedings before the Investigative Subcommittee were also required to comply with the sequestration rule and not discuss any aspect of the proceedings they attended with any other person. See Committee Rule 26(m).

[16] A recent report of the Committee raised a concern over multirepresentation of witnesses by the same attorney. See In the Matter of Representative Earl F. Hilliard, H. Rep. 107–130, 107th Cong., 1st Sess. 98 (July 10, 2001) (describing multirepresentation of witnesses as "inimical to the fact-finding process"). The Investigative Subcommittee in the instant matter did encounter instances of representation of more than one witness by the same attorney. In these instances, the Investigative Subcommittee found no indication that the attorney had disclosed the testimony of a witness with any other witness. Nonetheless, the Investigative Subcommittee believes that multirepresentation of witnesses by the same attorney poses a substantial risk to the integrity of an investigation, and if necessitated by the circumstances it would have considered steps to limit or prohibit the same attorney from attending the testimony of more than one witness.

[17] Transcript of Interview of Kurt Schmautz, Chief of Staff to Representative Nick Smith, at pages 7–11 (hereinafter Schmautz Int.)

[18] *See, e.g.,* Deposition of Representative Nick Smith (hereinafter Rep. N. Smith Dep.) at pages 166–167.

[19] *See, e.g.,* Deposition of Representative Tom Reynolds (hereinafter Rep. Reynolds Dep.) at page 10; Deposition of Representative Jeff Flake (hereinafter Rep. Flake Dep.) at pages 19–20; Deposition of Representative Tom Tancredo (hereinafter Rep. Tancredo Dep.) at page 16; Deposition of Representative Tom Feeney (hereinafter Rep. Feeney Dep.) at pages 9–10).

Sometime during the late afternoon on Friday November 21, prior to a Republican Conference meeting scheduled for approximately 7:00 p.m., Representative Smith received at least one call from a former staff member, Jason Roe. Mr. Roe had been employed as the Press Secretary in Representative Smith's congressional office from February through August 1999 and then again from July through December of 2001. In addition, during testimony before the Investigative Subcommittee, Representative Smith described Jason Roe as a friend from his congressional district whose family Representative Smith had known for 40 years. Representative Smith told the Investigative Subcommittee that Jason Roe had "been supportive of [his son's] campaign."[20] Mr. Roe is currently Chief of Staff to Representative Tom Feeney.

Jason Roe testified that he remembers speaking with Representative Smith once during the afternoon or evening of Friday November 21 but concedes that he may have spoken with him more than once that day. According to notes Representative Smith made in his diary calendar approximately seven to ten days later, Mr. Roe called him at 5:30 p.m. on November 21 and then again at 6:30 that evening.[21]

Both Representative Smith and Mr. Roe testified that their conversation or conversations on November 21 were brief. According to Representative Smith, during their conversations, Mr. Roe told him that there could be substantial support for Brad Smith's campaign if Representative Smith voted in favor of the Medicare bill and that he understood from a source close to Majority Leader Tom DeLay's office that Brad Smith could get a National Republican Congressional Committee (NRCC) endorsement if Representative Smith voted in favor of the legislation.[22]

Jason Roe denied referring to a source close to the Majority Leader's office during his conversation, or conversations, with Representative Smith. He told the Investigative Subcommittee that he called Representative Smith because throughout the day on November 21, he had been hearing about pressure that was being put on Republicans who intended to vote against the Medicare bill and he wanted to discuss the vote and Representative Smith's own circumstances with him. Mr. Roe testified:

> There had been—. . . [during] the course of the day, talking to various lobbyists and Mr. Feeney just hearing about people switching votes and the pressure that was being applied to some of the conservative holdouts on the legislation. . . .—[A]fter hearing a number of these stories . . . I just more out of curiosity gave him a call and asked him what he thought he was going to do. . . . And just based

[20] *See* Rep. N. Smith Dep. at page 18.

[21] Relevant portions of Representative Smith's diary calendar for 2003 were obtained by the Investigative Subcommittee pursuant to a subpoena for documents issued to Representative Smith. See Exhibit 19. Representative Smith testified that he used his diary calendar to make notes of certain events that occurred in connection with the Medicare vote after his allegations started receiving media attention. He told the Investigative Subcommittee that the notes in the diary calendar were made a week to ten days after the events occurred and were not made contemporaneously with the events. See Rep. N. Smith Dep. at page 16.

[22] See Rep. N. Smith Dep. at page 18. In his notes, Representative Smith wrote: "Jason Roe called at 5:30 and said Business would contribute 'heavy' to Brad's campaign—IF—6:30 ALSO—NRCC would endorse Brad if I would vote yes—said no—." (See Exhibit 19) Representative Smith told the Investigative Subcommittee that the internal quotation marks around the word "heavy" in his notes were not meant to indicate that Mr. Roe had actually used the word in their conversation. See Rep. N. Smith Dep. at page 17.

> on people telling me people were switching votes, I called him and asked him about that; and we had a brief, maybe four- or five-minute conversation, in my recollection, about his vote.[23]

Mr. Roe told the Investigative Subcommittee that he and Representative Smith engaged in a discussion about hypothetical pros and cons of voting for or against the legislation. Mr. Roe told the Investigative Subcommittee that everything he might have said in that conversation, including any references to substantial support or endorsements for Brad Smith, were hypothetical.

Mr. Roe told the Investigative Subcommittee:

> And [Representative Smith] said, you know, kind of thinking out loud . . . what do you think? . . . Should I stick to it? . . . So it was more or less talking about what he was going to do and what the repercussions were going to be of him voting no as it applied to Brad.
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> * * * * *
>
> . . . I think we probably talked about conservatives are going to probably rally to you if you vote no. There is [sic] probably benefits from the House leadership that could help you for Brad, but, you know, you are going to alienate the conservative base in Michigan. . . . So just I guess kind of generally how does this vote affect Brad as it relates to the campaign.[24]

A Member of the Majority Leader's staff, Deputy Chief of Staff Dan Flynn, stated in an interview conducted by staff counsel to the Investigative Subcommittee that he called Mr. Roe on Friday November 21 seeking information on Representative Smith's son's primary race. Mr. Flynn said that because Mr. Roe had "previously . . . worked for Nick Smith" he believed Mr. Roe would know "more about the primary situation" than Mr. Flynn himself knew.[25] However, Mr. Flynn did not recall telling Mr. Roe that the Majority Leader would or might take any position on the primary and does not believe he asked Mr. Roe to call Representative Smith regarding Representative Smith's vote on the Medicare legislation. Mr. Flynn also said that he did not recall discussing an NRCC endorsement for Brad Smith with Mr. Roe or anyone else.[26]

Mr. Roe testified that the subject of the Michigan Seventh District primary never came up during the multiple conversations he had with Mr. Flynn prior to the vote on the Medicare legislation. He testified that he spoke with Mr. Flynn several times prior to the vote, but that their conversations always focused on Mr. Flynn's attempts to persuade Representative Tom Feeney to vote in favor of the bill.[27]

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[23] See Deposition of Jason Roe (hereinafter Roe Dep.) at pages 39–40.

[24] See Roe Dep. at pages 44–45.

[25] See Transcript of Interview with Dan Flynn (hereinafter Flynn Int.) at page 28–29.

[26] See Flynn Int. at pages 45–46.

[27] See Deposition of Jason Roe (Roe II) at pages 4–6. The Investigative Subcommittee does not find it necessary to determine whether the Majority Leader's Deputy Chief of Staff called Mr. Roe to ask about Brad Smith's primary. Mr. Flynn did not recall discussing any endorsements with Mr. Roe and did not recall asking or instructing Mr. Roe to call Representative Smith to relay any offers or information. If a conversation related to Brad Smith's campaign did occur between Mr. Roe and Mr. Flynn prior to the Medicare vote, and was in whole or in part the motivation behind Mr. Roe's decision to call Representative Smith, without a request or an instruction to him to convey an offer, Mr. Roe's conversation with Representative Smith remained mere speculation.

Mr. Roe told the Investigative Subcommittee that he was not trying to influence Representative Smith's vote by calling him and he further testified that he did not call Representative Smith on behalf of any other person or entity.[28] Representative Smith testified that Mr. Roe had not mentioned calling on behalf of any other person or entity. Representative Smith and Representative Tom Feeney, whom Mr. Roe had informed of his conversation with Representative Smith shortly after it occurred, told the Investigative Subcommittee that they did not believe Mr. Roe was trying to influence Representative Smith's vote.

Representative Smith told the Investigative Subcommittee that he did not regard the phone calls from Jason Roe as important immediately after speaking with his former staff member. He assumed what Mr. Roe was communicating was in the nature of rumor and, at that time, he did not give a lot of credibility to whether the things they discussed were actual fact or mere speculation. Representative Smith told the Investigative Subcommittee that his impression at that time was that what Mr. Roe was saying was closer to gossip than to hard information.[29]

The Investigative Subcommittee found no evidence that there was any consideration given to having the NRCC endorse Representative Smith's son in his primary race. Individuals appearing before the Investigative Subcommittee who were asked about whether they had knowledge of an offer of an NRCC endorsement expressed the view that such an endorsement would have been unusual and unlikely in a closely contested Republican primary involving five candidates, such as the race in the Michigan Seventh District primary. Representative Tom Reynolds, Chairman of the NRCC, testified that any consideration of an offer of endorsement in any primary would have come to his attention at some point. He said that there had been no consideration of an endorsement for Brad Smith in the Michigan District Seven primary and that he had no knowledge of an offer of an endorsement being made.[30]

Jason Roe who was, according to Representative Smith, the initiator of the discussion about a possible NRCC endorsement, told the Investigative Subcommittee that he would not have told Representative Smith that Brad Smith would receive an NRCC endorsement if Representative Smith voted for the Medicare bill and that he had "no authority to offer the NRCC to anybody."[31] Representative Smith also told the Investigative Subcommittee that he

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[28] See Roe Dep. at pages 50–51, 53.

[29] Under questioning from a Member of the Investigative Subcommittee, Representative Smith testified:

> Q: On a continuum between * * * personal advice and * * * offering * * * a bribe from somebody else, did you have a sense for which of these it was?
> A: Probably closer to—my impression at that time was closer to gossip.
> Q: Gossip about what might happen——
> A: Yeah.
> Q: —or what things he heard?
> A: Correct.
> Q: Without any greater specificity than that?
> A: Correct.

See Rep. N. Smith at pages 24–25.

[30] See Rep. Reynolds Dep. at pages 7–8, 19.

[31] See Roe Dep. at page 51.

thought it would have been "strange"[32] for the NRCC to have made an endorsement in the primary.

Based on Representative Smith's schedule for November 21 and his recollection of the events of that afternoon and evening, some time after he spoke with his former staff member, he attended the Republican Conference meeting. Representative Smith's recollection is that the Medicare legislation was the main topic of discussion at the conference meeting. He testified that no one directly attempted to influence his vote during the Conference meeting.[33]

2. Conversation with Majority Leader Tom DeLay

The record of roll call votes for November 21, 2003 indicates there were several votes called between 7:09 and 11:37 that evening.[34] According to Representative Smith, on the House floor, during one of the votes that evening, Majority Leader DeLay approached him and told him that he would personally endorse Representative Smith's son in the Republican primary in Michigan District Seven if Representative Smith voted in favor of the Medicare legislation. In his testimony before the Investigative Subcommittee, Representative Smith stated that the Majority Leader said: "I will personally endorse your son. That's my last offer."[35] In handwritten notes in his diary calendar, Representative Smith wrote that he "teared up" in response to the Majority Leader's statement.[36]

Representative Smith testified that the exchange lasted about eight seconds. He recalls saying nothing to the Majority Leader in response, other than to perhaps thank him for the offer. Representative Smith told the Investigative Subcommittee that, although the Majority Leader used the phrase "final offer" or "last offer" in conveying the offer of endorsement, he had not in fact made previous offers of support for Representative Smith's son's campaign or offers of any other inducements to persuade Representative Smith to vote in favor of the Medicare legislation.[37]

According to Representative Smith, Representative Lamar Smith was sitting near him when the Majority Leader made his offer to personally endorse Representative Smith's son and witnessed the exchange.[38] However, Representative Lamar Smith told the Investigative Subcommittee that he did not recall witnessing this interaction between the Majority Leader and Representative Smith. Rather, Representative Lamar Smith testified that, while the Medicare vote was open during the wee hours of Saturday November 22, he saw Representative Nick Smith sitting by himself. As part of his opening statement to the Investigative Subcommittee, Representative Lamar Smith testified as follows:

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[32] See Rep. N. Smith Dep. at page 18.

[33] See Rep. N. Smith at page 14. See also Exhibit 22.

[34] See Exhibit 20.

[35] See Rep. N. Smith Dep. at page 31.

[36] Representative Smith recorded the statement in notes he made in his diary calendar approximately seven to ten days after the vote on the Medicare legislation. (See Exhibit 19) In those notes, Representative Smith wrote: "[T.D.] said he would personally endorse Brad. (I teared up)." In the line immediately preceding this statement in Representative Smith's notes, he wrote "More Pressure—1:30 AM." (See Exhibit 19) Representative Smith testified that his reference to pressure at 1:30 a.m. did not refer to the Majority Leader's offer of an endorsement. See Rep. N. Smith Dep. at pages 32, 96.

[37] See Rep. N. Smith Dep. at page 160.

[38] See Rep. N. Smith Dep. at page 33.

> * * * Regarding the situation with Nick Smith, I did not hear anyone say to him anything about his vote or his son's candidacy for Congress.
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> At one point during the evening, I saw Nick sitting by himself. It was general knowledge that his vote was considered important to passage of the Medicare bill. I sat next to him and asked him what he was thinking. He replied that he was told that his son would be endorsed if he voted for the legislation. He did not mention who told him that. The exchange was brief and it seemed to me that the conversation lasted less than a minute.[39]

Representative Nick Smith told the Investigative Subcommittee that the Majority Leader did not say he would provide money to his son's campaign. However, during his testimony Representative Smith stated that he would have associated the offer of an endorsement with willingness to provide financial assistance in the form of contributions to his son's campaign.[40]

Majority Leader DeLay's account of his conversation with Representative Nick Smith differs in some respects from Representative Smith's testimony, but is materially consistent. The Majority Leader testified that he did say words to the effect of: "I will personally endorse your son. That's my final offer" to Representative Smith in connection with his efforts to persuade him to vote in favor of the Medicare legislation.[41] However, the Majority Leader does not recall speaking with Representative Smith regarding the legislation before the time that the Medicare vote was open.

Majority Leader DeLay told the Investigative Subcommittee that he does not believe he would have spoken to Representative Smith earlier than that because he did not believe that Representative Smith was open to persuasion to change his vote. Attempting to persuade Representative Smith to change his vote prior to the time that the vote was open would therefore have been, in the Majority Leader's view, an inefficient use of the time he had available to persuade others who might be willing to vote in favor of the bill. Majority Leader DeLay told the Investigative Subcommittee that, in his recollection: "I might have been asked, but I didn't before the vote talk to Nick Smith, because I knew he was a no, and there was a waste of my time."[42] Nonetheless, the Majority Leader said that it was possible he spoke to Representative Smith earlier than the time during which the vote on the Medicare legislation was open.[43]

The Majority Leader told the Investigative Subcommittee that someone, he does not recall who, told him at some point between late on Friday November 21 and the time of the vote on the Medi-

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[39] See Deposition of Representative Lamar Smith (hereinafter Rep. L. Smith Dep.) at pages 3–4. The Majority Leader testified that he did not remember Representative Lamar Smith sitting next to Representative Nick Smith during his conversation with Nick Smith. The Majority Leader testified that "there were people sitting next to [Representative Nick Smith] but I couldn't tell you who they were." See Deposition of Majority Leader Tom DeLay (hereinafter Majority Leader Dep.) at pages 34–35.

[40] See Rep. N. Smith Dep. at pages 43, 46.

[41] See Majority Leader Dep. at page 35.

[42] See Majority Leader Dep. at page 28–29.

[43] The Majority Leader told the Investigative Subcommittee that he recalls speaking with Representative Smith twice, both times while the vote on the Medicare legislation was open. He was seen engaged in conversation with Representative Smith on the House floor while the vote was open. See Deposition of Representative Randy "Duke" Cunningham (hereinafter Rep. Cunningham Dep.) at pages 12, 14.

care legislation, that Representative Smith was a "gettable"[44] vote.[45] The Majority Leader did not believe the assessment of Representative Smith as a "gettable vote" but he nonetheless approached Representative Smith and asked him whether he would vote with the majority. Majority Leader DeLay's recollection is that Representative Smith's response to him was "Well, maybe."[46] They began to discuss the merits of the bill and the Majority Leader believed, based on past experience with Representative Smith, that he would be "stuck"[47] talking to him for a lengthy period of time.[48]

According to Majority Leader DeLay, during their conversation, Representative Smith himself first raised the subject of his son's campaign. The Majority Leader believed that by doing so, Representative Smith was "fishing to see what I would say" in response.[49] He believed Representative Smith was looking for an offer of an endorsement from the Majority Leader for his son. Majority Leader DeLay testified that Representative Smith had several weeks or months prior to the Medicare vote approached him about an endorsement and support for his son.[50] The Majority Leader declined Representative Smith's request at that time, with the stated reason to Representative Smith being that he rarely provides endorsements in primaries.[51]

Majority Leader DeLay indicated that at some point during their conversation on the House floor, he made the offer of a personal endorsement for Representative Smith's son. Although the Majority Leader used the phrase "final offer," he testified that he used it as a way to end his conversation with Representative Smith and not because he had previously made other offers to endorse or otherwise support Representative Smith's son.[52]

When asked by a Member of the Investigative Subcommittee what Representative Smith's response had been to his offer, the

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[44] See Majority Leader Dep. at page 31.

[45] The Majority Leader's Deputy Chief of Staff, Dan Flynn, indicated that late on November 21, prior to the Medicare vote and in the course of discussing various Members' anticipated votes on the legislation, he mentioned to the Majority Leader that several months earlier, a member of Representative Nick Smith's staff had asked him whether the Majority Leader would consider endorsing Brad Smith. Mr. Flynn stated that he believed it was possible that the offer of an endorsement for his son might persuade Representative Smith to vote in favor of the legislation. (See Flynn Int. at pages 15–17). However, he never learned whether the Majority Leader had used the information he provided in this way. (See Flynn Int. at pages 20–21.)

The Majority Leader's Chief of Staff, Tim Berry, stated in an interview with Subcommittee counsel that, although he recalled that Mr. Flynn mentioned the inquiry about an endorsement for Brad Smith during the course of a discussion about various Members' anticipated votes, the Majority Leader was not present when Mr. Flynn raised this point. (See Transcript of Interview of Tim Berry (hereinafter Berry Int.) at pages 37–39).

During an interview with Investigative Subcommittee counsel, Brett Shogren, the Majority Leader's Senior Advisor and Director of National Security Policy, said that he remembered the subject of an endorsement for Representative Smith's son coming up during the course of discussion about the Medicare vote that occurred during the evening or night preceding the vote. Mr. Shogren remembered the remark being made in the midst of a great deal of activity and discussion about the vote in the Majority Leader's office. Mr. Shogren remembered the Majority Leader being present when the remark was made. He did not remember who made the remark and did not himself discuss the issue with the Majority Leader. (See Transcript of Interview of Brett Shogren (hereinafter Shogren Int.) at pages 15–18; 20, 23–24.)

[46] See Majority Leader Dep. at page 31.

[47] See Majority Leader Dep. at page 31.

[48] Majority Leader DeLay told the Investigative Subcommittee that in past dealings with Representative Smith, he had learned that attempts to persuade him to reconsider his positions on legislative issues could lead to extensive and lengthy discussions. The Majority Leader was leery of getting caught up in such an extended discussion when he was trying to reach and persuade as many Members as possible. See Majority Leader Dep. at pages 27–29; 31, 35.

[49] See Majority Leader Dep. at page 32.

[50] See Majority Leader Dep. at page 20.

[51] See Majority Leader Dep. at pages 20, 24.

[52] See Majority Leader Dep. at page 44.

Majority Leader testified: "I seem to remember it was, 'That's not good enough,' something like that. And then he goes off . . . into a diatribe about how bad this bill is."[53] The Majority Leader told the Investigative Subcommittee that if Representative Smith had changed his mind and voted in favor of the legislation, he would have made good on his promise and endorsed Brad Smith.[54]

According to Representative Smith, the Majority Leader's offer of an endorsement for his son caused him to lend more credence to the comments his former staff member had made during their telephone conversations earlier that day. He told the Investigative Subcommittee that based on the combination of his interaction with the Majority Leader and his conversations with his former staff member, he came to believe his son's candidacy could be significantly impacted by his vote on the Medicare Prescription Drug Act. Representative Smith therefore decided to try to reach his son to talk to him before the vote on the Medicare legislation.[55]

3. Representative Smith's Telephone Conversation with Brad Smith

Representative Smith made at least one or two attempts to telephone his son and eventually left a voice message asking his son to call him. Brad Smith returned his father's call, leaving him a message on the answering machine in his Washington apartment urging him to maintain his resolve to vote against the Medicare bill. According to a transcript later made of Brad Smith's voice message on Representative Smith's answering machine, the message was recorded at 8:49 p.m. on Friday November 21. According to the transcription, Brad Smith left the following message on his father's answering machine at that date and time:

> Hi, Dad. It's Brad calling . . . about 10 to 8. I'm sorry I missed your call. I left you a message on your cell. Ah, it's about 10 to 9, rather. I was at a fundraiser. I really hope that you pick this up . . . and that you don't sway from your convictions and support the Medicare bill. Who cares what they say about me. This is our country we're talking about . . . and your grandchildren's future. So, please stick to your guns. Thanks, bye.[56]

Representative Smith was not able to produce the original tape of his son's message to the Investigative Subcommittee. He testified that he had his son's message transcribed because he wanted to save it.[57] When asked why he wanted to save the message, Representative Smith said: "I don't know. To put in my memoirs or put in Brad's memoirs or whatever."[58] Representative Smith played the tape of the message for other people, including visitors to his congressional office and members of the Republican Study Committee.

Representative Smith indicated that he would not have voted in favor of the Medicare legislation in order to benefit his son's campaign, even if his son had asked him to do so. He said that he called his son for two reasons; because he wanted his son to know

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[53] See Majority Leader Dep. at page 36.
[54] See Majority Leader Dep. at page 49.
[55] See Rep. N. Smith Dep. at pages 31–32; 113–116.
[56] See Exhibit 21.
[57] See Rep. N. Smith Dep. at page 105.
[58] See Rep. N. Smith Dep. at page 105.

"what it might be like down here"[59] and because he believed his son should know that his vote on the legislation could have an impact on his candidacy.

Representative Smith testified that he finally reached his son in person just before going to a gathering with other Members of Congress at the Hunan Dynasty restaurant, just before 10:00 p.m. on Friday November 21. In that telephone conversation, as he had in the message he left on his father's answering machine, Brad Smith urged Representative Smith to maintain his resolve to vote against the Medicare legislation, regardless of whatever impact it might have on his candidacy.[60]

4. Remarks Made by Representative Smith to Fellow Members at the Hunan Dynasty Restaurant

The gathering of certain Members of the Republican Study Committee (RSC) at Hunan Dynasty restaurant had been planned in advance of Friday November 21 as a way for Members intending to vote against the Medicare legislation to get together in a mutually supportive environment before the vote.[61] Based on testimony presented to the Investigative Subcommittee, there were as few as 10 and perhaps as many as 25 Members present at various points throughout the time that the gathering lasted. Only two individuals in attendance were not Members of Congress, the RSC's Executive Director, Neil Bradley, and Guy Short, Chief of Staff to Representative Marilyn Musgrave, who accompanied Representative Musgrave to the gathering.[62]

At some point during the gathering, various Members began to describe efforts that had been directed at convincing them to vote in favor of the Medicare legislation. Representative Smith was among those who addressed the group. One Member who was present at Hunan Dynasty during the gathering, Representative Jeff Flake, told the Investigative Subcommittee that he believed it was at Hunan Dynasty that Representative Smith told him and others present that he had been promised support for his son in terms of money and an endorsement from the NRCC if he would back the legislation.[63] Representative Flake told the Investigative

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[59] See Rep. N. Smith Dep. at page 96.

[60] Brad Smith testified before the Investigative Subcommittee that in response to a message from his father on the Friday evening before the vote on the Medicare Prescription Drug Act, he

> [T]ried to call Dad back several times at his apartment, at his office, and on his cell phone, and I left a message at his apartment saying that I wanted him to stick to his guns and not change his vote.
>
> At about 10 o'clock that night, I was in a checkout line in a grocery store and my cell phone rang. Dad was on his way to a Chinese restaurant, and he was calling to check in. He said he was with a bunch of people who were getting out from the heat of the Chamber, and he basically confirmed what Mom told me, that there were people that were ready to give substantial support to my campaign if he voted for the Medicare bill. I told him that it was a terrible bill, that I was quite expressive and animated in my opinions on the bill, and told him that he should not do it and certainly not because of me.

See Deposition of Brad Smith (hereinafter B. Smith Dep.) at pages 6–7.

[61] The gathering had originally been scheduled for 8:15 p.m., according to Representative Smith's schedule. (See Exhibit 22) However, it was delayed to a later start because of votes and the GOP conference meeting.

[62] Both of these individuals were interviewed by staff counsel to the Investigative Subcommittee in this matter.

[63] According to Brad Smith, the Saturday afternoon after the Medicare vote, his father also told him that he had been told by a former staff member that the "NRCC would look to get involved in my primary race and get behind me." See B. Smith Dep. at pages 8–9. Brad Smith also testified that his father told him that afternoon that the former staff member had told him

Subcommittee that he recalled Representative Smith saying that, in the end, he had decided not to vote in favor of the Medicare legislation.[64]

Representative Flake also told the Investigative Subcommittee that Representative Smith did not mention having been offered a specific dollar amount for his son's campaign in exchange for a vote in favor of the Medicare legislation. He did not remember Representative Smith saying by whom the offer of an NRCC endorsement and money had been made. Representative Flake recalled that Representative Smith also told him and others present that his son had called him and urged him not to change his vote in response to the pressure.[65]

Representative Gil Gutknecht, who was also present at the Hunan Dynasty gathering, told the Investigative Subcommittee that the "story"[66] Representative Smith told the group gathered at the restaurant was the most compelling one he recalled being recounted that evening. Representative Gutknecht told the Investigative Subcommittee that Representative Smith said he had received a call or calls in which he was offered "a carrot and stick"[67] regarding his son.[68] Representative Gutknecht remembered Representative Smith telling the group that if he voted for the bill, there would be people who would like to help his son in his election effort. But, Representative Gutknecht recalled, Representative Smith said he had been told that if he voted against it, there would be people who would make his son's task of succeeding him very difficult. In the Washington Post article dated December 23, 2003 (see Exhibit 12), Representative Gutknecht was quoted as having said that "people from leadership" had offered Representative Smith money. With regard to the phrase "people from leadership," Representative Gutknecht told the Investigative Subcommittee that he believes Representative Smith "used that term in the conversation at the Chinese restaurant."[69]

Although Representative Gutknecht does not recall Representative Smith mentioning a specific sum of money being offered for his son's campaign, he told the Investigative Subcommittee that Representative Smith made statements that left the group with the impression that large sums of money had been at least referred to if not offered as part of the effort to persuade him to vote in favor of the legislation. Representative Gutknecht also said he believed, based on what Representative Smith said, that the offer had to have come from someone in leadership who had the ability to raise a substantial amount of money for Representative Smith's son's campaign.[70]

Representative Tom Tancredo was also present at the Hunan Dynasty gathering. He testified that at some point during the evening "[Representative] Smith said they offered me $100,000 . . . [or] he

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"the pharmaceutical industry had prepared to back me . . . in the primary election and that the support would be substantial." See B. Smith Dep. at page 8–9.

[64] See Rep. Flake Dep. at page 7.

[65] See Rep. Flake Dep. at pages 8, 12–13, 28.

[66] See Deposition of Representative Gil Gutknecht (hereinafter Rep. Gutknecht Dep.) at page 10.

[67] See Rep. Gutknecht Dep. at page 10.

[68] Representative Smith also used the analogy to a "carrot" and a "stick" in this way during a radio interview he did on a Michigan radio station. See Exhibit 7.

[69] See Rep. Gutknecht Dep. at pages 14–15.

[70] See Rep. Gutknecht Dep. at pages 15–17.

may have said they promised $100,000 if [he] voted the right way.[71] Representative Tancredo further testified that he remembered Representative Smith "explaining the fact that they were talking about the possibility that his son could receive $100,000 if he were to vote for the bill" or "it could also have been that . . . he would not receive $100,000 if he voted no.[72] Representative Tancredo told the Investigative Subcommittee that his recollection on the point of Representative Smith's use of the $100,000 figure was clear and specific. He stated that his memory had not been influenced by a columnist's use of the figure in a column published in the Chicago Sun-Times on November 27, 2003.[73] Representative Tancredo said that Representative Smith did not identify the source of the $100,000 offer but that, based on what Representative Smith had said, Representative Tancredo believed the offer was made by lobbyists. Representative Tancredo told the Investigative Subcommittee his inference that the offer was made by lobbyists was based on his belief that only large industry lobbyists would have ready access to as large a sum of money as $100,000 to be donated to a campaign.

Representative Tom Feeney, who was also present at the Hunan Dynasty restaurant gathering, stated that during the gathering Representative Smith "suggested"[74] that pharmaceutical companies were going to work against his son's campaign if Representative Smith voted against the Medicare bill. Representative Feeney recalled Representative Smith saying that when he told his son about the situation, Brad Smith had told him to do what was right regardless of what was said about his campaign. Representative Feeney indicated that, although he could not recall whether Representative Smith specifically said that pharmaceutical companies had made the offer, whatever term Representative Smith used had created the impression in Representative Feeney's mind that the pharmaceutical industry was behind the combined offer and threat.[75]

Representative Smith told the Investigative Subcommittee that he recalls telling the group at Hunan Dynasty that efforts to persuade him to change his vote on the Medicare legislation were "about as tough as I've ever had it because it involves my son Brad. That there had been offers of big-time support for Brad's campaign, offers of endorsements by leadership"[76] and that, consequently, his vote on the Medicare legislation would be "a tough decision."[77] He also recalls telling the group: "I'm sticking to my guns on voting

[71] See Rep. Tancredo Dep. at pages 15–16.

[72] See Rep. Tancredo Dep. at page 16.

[73] As previously noted, the sum of $100,000 was cited as having been offered to Representative Smith in a Chicago Sun-Times column dated November 27, 2003. (See Exhibit 5) Representative Tancredo told the Investigative Subcommittee that he was not the source of information about the $100,000 figure cited in the column. See Rep. Tancredo Dep. at page 20.

[74] See Rep. Feeney Dep. at pages 21–22.

[75] Representative Feeney told the Investigative Subcommittee that as he listened to Representative Smith that evening at Hunan Dynasty, it occurred to him that Representative Smith might have been referring to his conversation with Jason Roe, although it seemed to him that Representative Smith was characterizing their conversation in a much more "aggressive" way than had been described by Mr. Roe. Representative Feeney said: "I didn't know for sure that he was talking about Jason's conversation or Jason's conversation alone, because . . . Nick's characterization of the conversation, the way he described it to the group was a lot more aggressive and assertive than what Jason told me he had relayed to Nick, a whisper down the lane type of thing." See Rep. Feeney Dep. at page 22.

[76] See Rep. N. Smith Dep. at pages 109–110.

[77] See Rep. N. Smith Dep. at page 110.

no against the bill. And what's nice for me is Brad left me a message saying, Stick to your guns, I don't want to go to Congress that way."[78] Representative Smith also recalled telling the group at the restaurant that he had been told his son could receive an NRCC endorsement if he voted in favor of the Medicare legislation.

Brad Smith testified that his father told him about the events at the Hunan Dynasty gathering the night before the Medicare vote during a face-to-face conversation they had in Michigan the Saturday afternoon following the vote. According to Brad Smith, his father told him that when he told the people at the gathering that "Brad had said, stick to my guns . . . the room erupted in applause."[79]

Representative Smith said his remarks to the group at Hunan Dynasty were based on the two telephone calls he received from his former staff member, Jason Roe, and the offer of a personal endorsement for his son that he had received from the Majority Leader. Representative Smith stated that neither the Majority Leader nor Mr. Roe mentioned a specific dollar amount in connection with any discussion of his vote on the Medicare legislation. He did not recall telling the group at Hunan Dynasty that he had been offered $100,000 or any other specific sum of money.[80]

After reading press reports published in the wake of his allegations of wrongdoing in connection with the vote on the Medicare Prescription Drug Act, including the column published in the Chicago Sun-Times on November 27, 2003, Representative Smith called Neil Bradley, the RSC's Executive Director who had also been present at the Hunan Dynasty gathering, and asked him if he recalled Representative Smith referring to the $100,000 figure when he spoke to the group at the restaurant. Mr. Bradley told Representative Smith that he did not cite the figure during his comments to the group. In an interview conducted by counsel to the Investigative Subcommittee, Mr. Bradley similarly stated that he had not heard Representative Smith cite the $100,000 figure during his remarks to the group.[81]

Representative Smith told the Investigative Subcommittee that, regardless of what he might have said at Hunan Dynasty or in subsequent media comments, no one in fact offered him $100,000 or any other specific sum of money in exchange for changing his vote to one in favor of the Medicare legislation.[82]

The gathering at the Hunan Dynasty restaurant appears to have broken up some time after 10:00 p.m. on Friday, November 21.

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[78] See Rep. N. Smith Dep. at page 110.

[79] See B. Smith Dep. at page 71. Representative Smith testified that he had no recollection of speaking with his son in Michigan the Saturday afternoon following the Medicare vote. He said that if his wife and son had not told him about their conversation, he would not have known that it occurred. See Rep. N. Smith Dep. at pages 150, 195.

[80] See Rep. N. Smith Dep. at pages 109–110.

[81] See Transcript of Interview of Neil Bradley (hereinafter Bradley Int.) at page 18. Guy Short, Chief of Staff to Representative Musgrave, was also interviewed by Investigative Subcommittee counsel. Mr. Short said during the interview that there were "many different conversations going on all at the same time" during the gathering at Hunan Dynasty and that he did not hear any of the statements made by Representative Nick Smith that had been described by Representatives Tancredo, Gutknecht or Feeney. See Transcript of Interview of Guy Short (hereinafter Short Int.) at pages 15–19.

[82] See Rep. N. Smith Dep. at pages 16, 77.

Members who were still at the restaurant when the gathering ended remembered leaving because a vote had been called.[83]

B. EVENTS ON THE HOUSE FLOOR DURING AND IMMEDIATELY FOLLOWING THE VOTE

As noted, the vote on the Medicare legislation was called at 3:00 a.m. on Saturday, November 22 and was held open until approximately 5:51 a.m. Representative Smith recalls casting his "no" vote early on during the time that the vote was open. He considered voting and leaving the floor early as well but then he "decided if I was voting against the conference I should stay there and take my licks."[84] Representative Smith also decided against staying in the company of other Republicans who had voted against the bill, as some of his fellow members of the RSC chose to do. Representative Smith told the Investigative Subcommittee that after he cast his vote he sat "approximately eight rows up in the northwest quadrant of the Republican area."[85]

Representative Smith told the Investigative Subcommittee that during the time the vote was open, between 20 and 30 Members approached him or, while in close proximity to him, said things directed at him that were intended to persuade him to change his vote. All of these contacts occurred after Representative Smith had already cast his vote and all but one of the contacts occurred while the vote was open.[86]

1. Representative Smith's Interaction with Speaker Hastert and Secretary Tommy Thompson

The Investigative Subcommittee became aware of information that Representative Smith had been seen talking with Speaker J. Dennis Hastert and Health and Human Services Secretary Tommy Thompson on the House floor while the vote on the Medicare bill was open. For this reason, the Investigative Subcommittee requested information from the Speaker and Secretary Thompson regarding their communications with Representative Smith.

Representative Smith testified that he recalled speaking with Speaker Hastert and Secretary Tommy Thompson while the vote was open. In a written response to interrogatories provided voluntarily and under penalty of perjury, Secretary Thompson informed the Investigative Subcommittee that he was in the House cloakroom while the vote was open and had been asked to be available to answer questions from Members regarding the Medicare legisla-

[83] The restaurant apparently stayed open for some period of time after its normal closing time in order to accommodate the Members. The record indicates that a vote was called for 11:19 p.m. on Friday, November 21. (See Exhibit 20).

[84] See Rep. N. Smith Dep. at page 49.

[85] See Rep. N. Smith Dep. at page 50.

[86] Jason Roe told the Investigative Subcommittee that Representative Smith called him from Michigan during the day on Saturday November 22 and recounted various incidents that had occurred on the House floor while the vote was open. Mr. Roe recalled that during the conversation, Representative Smith said that Representative David Dreier had offered to help Representative Smith's daughter find a job as an actress in Hollywood. (See Roe Dep. at page 47) Representative Smith did not recall this November 22 telephone conversation with Mr. Roe and denied that Representative Dreier had made an offer to help his daughter in connection with the vote on the Medicare legislation. (See Rep. N. Smith Dep. at pages 149–150.) Representative Dreier similarly told the Investigative Subcommittee that he had made no such offer in connection with the vote. See Deposition of Representative David Dreier (hereinafter Rep. Dreier Dep.) at pages 10–11.

tion.[87] He stated that someone asked him to speak to Representative Smith "because he or she thought that Representative Smith could be convinced to change his mind and vote in favor"[88] of the legislation. He does not recall who asked him to speak to Representative Smith. Secretary Thompson stated that he spoke briefly with Representative Smith on the House floor, "asking Representative Smith if he had any questions on the bill that I could answer, or if there was any information that I could provide to him. He said no."[89] Secretary Thompson also asked Representative Smith "if there was any chance that he would vote for the bill. He said no."[90] While the Secretary was "in the presence of Representative Smith," the Speaker joined them.[91]

The Speaker told the Investigative Subcommittee that he prevailed on Representative Smith to vote in favor of the legislation based on the bill's merits. The Speaker testified that he spoke with Representative Smith for about ten minutes. He described their discussion as being "pretty much focused on policy,"[92] including discussion of cost-containment measures the Speaker said he knew would be of interest to Representative Smith.

Knowing that Representative Smith was going to retire after the 108th Congress, the Speaker recalls telling him that he had a legacy in the House of being very fiscally conservative and that if he wanted to pass on a legacy to his children and grandchildren, a vote in favor of the Medicare legislation would be a good vote for him because, the Speaker believed, the legislation started to "bend the cost curve"[93] on Medicare. The Speaker also recalls that, because he presumed Representative Smith would be interested in them, he discussed health savings accounts and mentioned that this would be the only chance for Representative Smith to vote on health savings accounts.

Representative Smith told the Investigative Subcommittee that he recalls the Speaker telling him a vote in favor of the legislation would "be good for the Republican Party" and "good for the President" and "that if we didn't vote this one then it could be . . . a real possibility that even a more serious vote" would come "from the Democrats" that could "get to the floor and be passed."[94] According to Representative Smith, neither the Speaker's comments nor those of Secretary Thompson formed any part of the basis for his subsequent allegations that "bribes and special deals" were offered to him in an effort to convince him to change his vote.[95]

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[87] In his response to the Investigative Subcommittee's request for information, Secretary Thompson stated that he believed staff from the Department of Health and Human Services and from the White House were also in the cloakroom while the vote was open. Exhibit 17 at pages 2–3.

[88] See Exhibit 17 at page 4.

[89] See Exhibit 17 at page 4.

[90] See Exhibit 17 at page 4.

[91] See Exhibit 17 at page 4.

[92] See Deposition of Speaker J. Dennis Hastert (hereinafter Speaker Dep.) at page 11.

[93] See Speaker Dep. at page 10.

[94] See Rep. N. Smith Dep. at page 56.

[95] In the notes in his diary calendar, Representative Smith wrote: "Sec. T. Thompson and Speaker D. Hastert sat next to me and ask 'personal' favor—." See Exhibit 19. The Speaker testified that in early December 2003, following the vote on the Medicare bill, he had occasion to ask Representative Smith about the allegations or wrongdoing he had made in connection with the vote. The Speaker said that Representative Smith told him "it's just a misunderstanding." See Speaker Dep. at page 22. The Speaker also received a handwritten note from Representative Smith after the Medicare vote in which Representative Smith wrote that "[i]t was so difficult

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2. Representative Smith's Interaction with Representative William Thomas and Representative Nancy Johnson

The Investigative Subcommittee also became aware of information that Representative William Thomas, Chairman of the House Ways and Means Committee, and Representative Nancy Johnson, Chair of the Ways and Means Health Subcommittee, spoke with Representative Smith on the House floor while the vote on the Medicare legislation was open. For this reason, the Investigative Subcommittee requested testimony from Representative Thomas and Representative Johnson regarding their communications with Representative Smith.

Chairman Thomas told the Investigative Subcommittee that he spoke to Representative Smith for ten or fifteen seconds early during the period in which the Medicare vote was open. He recalls telling Representative Smith "[W]e need your vote, I'd like to have you vote for [the Medicare bill]."[96] Representative Smith said no and, having received what he felt was a "hard no,"[97] Representative Thomas did not speak with Representative Smith again while the vote was open. Representative Smith told the Investigative Subcommittee that he did not recall speaking with Chairman Thomas at all while the vote was open.

Representative Nancy Johnson testified that she recalls having spoken with Representative Smith "probably . . . two, maybe three times, about changing his vote"[98] on the Medicare bill while the vote was open. Representative Johnson told the Investigative Subcommittee that Representative Smith "felt very, very strongly about the budget implications and his vote was based on that."[99] She told the Investigative Subcommittee that, as a result, she "spent a great deal of time talking to him about how [she] felt the structure of the bill would control Medicare spending in the future, and, therefore, was a prodeficit reduction vote."[100] In another instance while the vote was open, Representative Johnson talked to Representative Smith "about the problem with the hospitals"[101] and the fact that the legislation was aimed at "fixing a number of those problems."[102] Representative Johnson said that she "took various lines of reasoning to get him to change his vote"[103] but Representative Smith remained a no vote.

3. Representative Smith's Interaction with Representative Candice Miller

During the course of its inquiry, the Investigative Subcommittee also obtained information that Representative Candice Miller and Representative Smith were involved in an exchange on the House floor while the Medicare vote was open. The Investigative Sub-

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to say no to someone I respect so much yesterday morning. . . . On the drug entitlement, we both felt strongly about our positions." See Exhibit 23.

[96] See Deposition of Representative William Thomas (hereinafter Rep. Thomas Dep.) at page 8.

[97] See Rep. Thomas Dep. at page 9.

[98] See Deposition of Representative Nancy Johnson (hereinafter Rep. N. Johnson Dep.) at page 6.

[99] See Rep. N. Johnson Dep. at page 6.

[100] See Rep. N. Johnson Dep. at page 6.

[101] See Rep. N. Johnson Dep. at page 6.

[102] See Rep. N. Johnson Dep. at page 6.

[103] See Rep. N. Johnson Dep. at page 6.

committee therefore requested that Representative Miller provide testimony.

Representative Miller told the Investigative Subcommittee that the first time she spoke to Representative Smith about his vote on the Medicare legislation was on the House floor while the vote was open, after Representative Smith had cast his vote. She estimated that she spoke with him during the first hour of the time that the vote was held open. Representative Miller saw Representative Smith's no vote on the board and she "didn't like the way that he voted."[104] Representative Miller testified that, on her own initiative, she approached Representative Smith and said words to the effect of: "Is this how you're going to vote; or, This is how you're going to vote? And he said, Obviously."[105]

Representative Miller recalled that she responded by saying words to the effect of: "Well, I hope your son doesn't come to Congress, or I'm not going to support your son, or something to that effect."[106] Representative Smith then "rose up out of his seat and said, You get out of here."[107] That was the end of the interaction between the two Members. Representative Miller estimated that the exchange lasted for about ten seconds. She told the Investigative Subcommittee that she did not at any point ask Representative Smith to change his vote on the Medicare legislation.

Representative Miller told the Investigative Subcommittee that she approached Representative Smith after she saw that he had voted against the Medicare bill because she was angry he had voted against legislation that, in her view, would help "poor seniors" get "a break on prescription drugs."[108] She told the Investigative Subcommittee that Representative Smith was obviously angered by her remarks about his son. She testified that Representative Smith was "constantly asking [her] to support his son and help his son"[109] because she had been a statewide officeholder in their home state of Michigan before she was elected to Congress and had been "the highest vote-getter in Michigan history."[110] Representative Miller noted that she "probably could have some impact on his son's election."[111] She told the Investigative Subcommittee that, even after the Medicare vote, Representative Smith invited her to a fundraiser for his son.[112]

Representative Smith denied ever having asked Representative Miller for support for his son's campaign. He also denied inviting her to a fundraiser at any time after the Medicare vote. Representative Smith's recollection of his interaction with Representative Miller on the House floor while the Medicare vote was open was substantially similar to Representative Miller's recollection except in one respect. Representative Smith told the Investigative Subcommittee that Representative Miller specifically threatened to work against his son if he did not change his vote. Representative

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[104] See Deposition of Representative Candice Miller (hereinafter Rep. C. Miller Dep.) at page 9.
[105] See Rep. C. Miller Dep. at page 9.
[106] See Rep. C. Miller Dep. at page 9.
[107] See Rep. C. Miller Dep. at page 9.
[108] See Rep. C. Miller Dep. at page 10.
[109] See Rep. C. Miller Dep. at page 10.
[110] See Rep. C. Miller Dep. at page 11.
[111] See Rep. C. Miller Dep. at page 11.
[112] Representative Miller told the Investigative Subcommittee that she had not in fact gotten involved in the Michigan Seventh District primary, nor had she worked against Brad Smith in any capacity, after the Medicare vote. See Rep. C. Miller Dep. at pages 11, 16.

Smith's recollection was that Representative Miller "came up and said something like, I haven't been involved in this campaign before, but if you don't change your vote, I'll get involved, and I'll make sure Brad isn't elected." [113]

Representative Howard P. ("Buck") McKeon was sitting near Representative Smith during the time of his interaction with Representative Miller. Representative McKeon told the Investigative Subcommittee that he did not believe Representative Miller linked a demand that Representative Smith change his vote to her statement that she would work against his son Brad's campaign. Representative McKeon recalls that Representative Miller "came up and said, you are really going to do this, Nick? And he said yeah. . . . [S]he got mad and she said, well, I'm going to do all I can to beat your son. And then they kind of swore at each other a little bit. It was not pleasant. And then she left." [114]

Representative Smith, Representative Miller and Representative McKeon recalled that Representative Curt Weldon was also sitting next to Representative Smith during his interaction with Representative Miller. Each of these Members recalled Representative Weldon trying to calm Representative Smith down after he got to his feet in response to Representative Miller's comments. However, although he remembers having to calm him at some point during the open vote, Representative Weldon told the Investigative Subcommittee that he did not recall the details of the interaction between Representatives Miller and Smith.[115]

4. Representative Smith's Interaction with Representative James T. Walsh

While Representative McKeon was sitting near Representative Smith, Representative James Walsh also approached Representative Smith. Representative Walsh told the Investigative Subcommittee that he had "worked very hard" on the Medicare bill and was "pretty invested in the success of [the] legislation" because it would have a "great impact on [his] community." [116] Representative Walsh noted that his district "had already lost one hospital . . . [that] was in bankruptcy" and had another hospital "on the ropes." [117] He believed that the Medicare legislation would improve the situation in his home district.

Most Members had already voted and Representative Walsh was feeling "frustrated" and "impatient" waiting for the outcome of the vote.[118] These feelings led him to approach Representative Smith, knowing that Representative Smith had voted against the bill. Representative Walsh said that he made the decision to approach Representative Smith on his "own initiative." [119] He asked Representative Smith "[C]an't you help us on this one?" [120] Representative Smith said no and Representative Walsh responded by saying

[113] See Rep. N. Smith Dep. at page 58. In his diary calendar, Representative Smith wrote: "Candice M. said she would work against B. if I voted no /// Got mad." See Exhibit 19.

[114] See Deposition of Representative Howard "Buck" McKeon (hereinafter Rep. McKeon Dep.) at page 7.

[115] See Deposition of Representative Curt Weldon (hereinafter Rep. Weldon Dep.) at pages 6–8.

[116] See Deposition of Representative James T. Walsh (hereinafter Rep. Walsh Dep.) at page 6.

[117] See Rep. Walsh Dep. at page 6.

[118] See Rep. Walsh Dep. at pages 6, 9.

[119] See Rep. Walsh Dep. at page 6.

[120] See Rep. Walsh Dep. at page 6.

words to the effect of: " [W]ell . . . then, Nick, maybe you ought to think about sending me back that check that I sent to your son," referring to a campaign contribution Representative Walsh believed he had already made to Representative Smith's son's campaign.[121]

Representative Walsh explained that, approximately "3 or 4 or 5 weeks prior"[122] to the time of the Medicare vote, Representative Smith had asked him to contribute to Brad Smith's campaign. He believed that he had between that time and the time of the Medicare vote instructed his campaign to make a $1,000 contribution to Brad Smith's campaign. At the time of the Medicare vote, he believed that the contribution had been made.

Representative Walsh told the Investigative Subcommittee that he regretted making the statements to Representative Smith that he made during the Medicare vote. Representative Walsh said that he believed "it was a stupid thing to say"[123] and that he had not planned to say it when he approached Representative Smith. Representative Walsh attributed his remarks to Representative Smith to "a combination of frustration and fatigue and a desire to get the bill passed."[124]

Representative Walsh told the Investigative Subcommittee that on the Monday or Tuesday after Congress was back in session after the Medicare vote, he ran into Representative Smith, who told him that he had not in fact made the contribution to Brad Smith's campaign. Representative Walsh told the Investigative Subcommittee that he responded to Representative Smith by saying that what he had said on the floor was "stupid" and that he was going to make the contribution to Brad Smith's campaign anyway.[125]

Representative Smith's recollection of his interaction with Representative Walsh while the Medicare vote was open differed somewhat from Representative Walsh's recollection. Representative Smith told the Investigative Subcommittee that, prior to the Medicare vote, Representative Walsh had promised to contribute $1,000 to Brad Smith's campaign but that he told him while the vote was open that he was not going to make the contribution.[126]

Federal Election Commission records of disbursements from Representative Walsh's campaign indicate that on December 11, 2003, his campaign made a $1,000 contribution to Brad Smith's campaign,[127] thus apparently corroborating Representative Walsh's recollection of the interactions he had with Representative Smith during and subsequent to the Medicare vote.[128] In addition, Representative McKeon recalls witnessing the exchange between Representatives Smith and Walsh. He told the Investigative Subcommittee, as Representative Walsh had, that Representative

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[121] See Rep. Walsh Dep. at page 6.
[122] See Rep. Walsh Dep. at page 6.
[123] See Rep. Walsh Dep. at page 7.
[124] See Rep. Walsh Dep. at page 7.
[125] See Rep. Walsh Dep. at page 7–8.
[126] See Rep. N. Smith Dep. at page 151.
[127] See Exhibit 24.
[128] According to the record of roll call votes, the next votes after November 22 were called on Monday, December 8, 2003. See Exhibit 20 If Representative Walsh saw Representative Smith after Members returned to the House on Monday December 8 or Tuesday December 9, he would have made his contribution to Brad Smith's campaign within two or three days after apologizing to Representative Smith.

Walsh asked for his contribution back rather than saying he would not make the contribution.[129]

5. Representative Smith's Interaction with Representative Randy "Duke" Cunningham

Representative Cunningham testified that, at some point while the vote on the Medicare legislation was open, someone on the whip team told him the names of various Members who were expected to vote against the legislation. Representative Cunningham told the Investigative Subcommittee that, based on that information, he approached several Members who were expected no votes to try to convince them to vote in favor of the bill. When he approached Representative Nick Smith, members of leadership were already sitting with him. Representative Cunningham took a seat near the group, "three or four, maybe five people back"[130] from where Representative Smith was sitting. At some point, Representative Cunningham testified, Secretary Thompson was also part of the group talking to Representative Smith.

Representative Cunningham told the Investigative Subcommittee that he wanted to hear the arguments in favor of the legislation that were being made to Representative Smith so that he could use them to persuade others. He recalls Majority Leader DeLay, Speaker Hastert and Secretary Thompson being among the group talking with Representative Smith at that time. He recalled hearing them present Representative Smith with arguments in favor of the legislation including "specifics on why the bill was good . . . why we had wanted the bill to pass."[131] They argued that the bill "was good for seniors; that we had invested a great deal of money"; that it "was a compromise between the Republicans and Democrats [;] that originally they wanted this amount of money to go into it and we actually added more money to it."[132] Representative Cunningham told the Investigative Subcommittee that while he was listening, he heard no one mention Representative Smith's son's campaign.[133]

After listening to the discussion involving Representative Smith for some period of time, and while the vote was still open, Representative Cunningham recalls remarking to Representative Smith "Nick, you know, Nancy Pelosi wants this bill to go down."[134]

Representative Smith did not recall specifically what Representative Cunningham said to him while the vote was open. However, he told the Investigative Subcommittee that "Duke Cunningham said something very briefly that . . . that led me to believe that

[129] See Rep. McKeon Dep. at page 9.
[130] See Rep. Cunningham Dep. at page 13.
[131] See Rep. Cunningham Dep. at page 15.
[132] See Rep. Cunningham Dep. at page 15.
[133] If Secretary Thompson was part of the group talking to Representative Smith when Representative Cunningham was observing them, it appears that Representative Cunningham would not have overheard the exchanges between Representative Walsh and Representative Smith or between Representative Candice Miller and Representative Smith that related to Representative Smith's son. Representative McKeon told the Investigative Subcommittee that he recalls Representative Smith's interactions with Representative Miller and Representative Walsh occurring prior to the time that the Secretary approached Representative Smith. See Rep. McKeon Dep. at pages 9–10.
[134] See Rep. Cunningham Dep. at page 13

he was suggesting that he would also work against Brad in his campaign."[135]

Representative Cunningham told the Investigative Subcommittee that the only reference to Representative Smith's son's campaign that he heard the morning of the Medicare vote was one that he himself made after the vote was closed. Representative Cunningham told the Investigative Subcommittee that after most Members had left the House floor, and as he was walking out past Representative Smith, he said words to the effect of: "[W]ell, if your son is as hard headed as you, I will be damned if I will vote for him or help him."[136]

Representative Smith told the Investigative Subcommittee that after the vote was over and Members were leaving the floor, Representative Cunningham walked by him and waved what appeared to be a billfold at him while saying something to the effect of: "[W]e've got $10,000 already . . . to make sure your son doesn't get elected."[137] When asked whether he waved a wallet or checkbook at Representative Smith while making such comments, Representative Cunningham said: "I don't remember if I waved the checkbook. I don't remember if I did or not. But I don't know. But I'm sure about that not supporting him."[138] Representative Cunningham denied mentioning $10,000 or any other specific sum of money in connection with his remarks about not supporting Brad Smith's candidacy.

Representative Cunningham told the Investigative Subcommittee that he made those final remarks as he was leaving the House floor in part because he "believed in the bill" and was "disappointed" that Representative Smith had voted against it despite "all the information that he had been given" and the efforts that had been made by leadership and by Secretary Thompson to convince him to vote for the bill.[139] Representative Cunningham testified that he regretted making the comments about Representative Smith's son almost immediately after having said them. He told the Investigative Subcommittee: "I remember even thinking as I walked off the floor I shouldn't have said that to Nick in the heat of things."[140] Representative Cunningham and Representative Smith both testified that Representative Cunningham apologized for making remarks about Representative Smith's son the first time he saw Representative Smith after Congress was back in session.

6. Representative Smith's Contacts with Unidentified Members

Representative Smith told the Investigative Subcommittee that he could not recall every one of the 20 to 30 Members who spoke to him on the House floor while the Medicare vote was open.[141] He

[135] See Rep. N. Smith at pages 62–63.
[136] See Rep. Cunningham Dep. at page 16.
[137] See Rep. N. Smith Dep. at page 63.
[138] See Rep. Cunningham Dep. at page 39.
[139] See Rep. Cunningham Dep. at page 24.
[140] See Rep. Cunningham Dep. at page 41.
[141] A February 12, 2004 Detroit News article stated that Representative Smith "estimated that between 40 and 60 lawmakers pressured him" while the vote was open. (See Exhibit 13) In his December 17, 2003 letter to the Chairman and Ranking Member of the Standards Committee, Representative Smith stated that he had "conversations with at least 30–40 members of Congress." (See Exhibit 11) Representative Smith told the Investigative Subcommittee that

Continued

said, for example, that someone had said that if he changed his vote to support the legislation, three out of the five members of House leadership would be willing to go to his home district to campaign for his son. Representative Smith testified:

> A lot of it was fairly—look, Nick, help us if you can. Nick, this could—this could be important to you and your son. From the more subtle to the more aggressive, that, look, three of the five—it seems like I remember somebody saying three of the five leadership would be willing to come to Michigan to campaign for your son. Somebody saying, look, you've got a pharmaceutical—you've got two pharmaceutical companies in your district. There is [sic] important to them.[142]

Representative Smith testified that he could not recall specifically who made those comments. Representative Smith further testified that there seemed "to be a constant stream of people coming by me to say, Nick, we really need your help on this one. Nick, this can be important to your future; and it can be important to your son's future. Nick—you know, just sort of a constant help us out on this one, and it can be important to you and your son."[143] Various Members who appeared before the Investigative Subcommittee recalled seeing several people around Representative Smith at different points during the hours that the vote was open.[144]

C. REPRESENTATIVE SMITH'S ACTIONS AFTER THE VOTE AND HIS ALLEGATIONS OF WRONGDOING

Representative Smith told the Investigative Subcommittee that after the vote was over, he felt "beat . . . tired, physically and mentally. And angry, as you might guess."[145] Representative Smith could not recall whether, after he left the House floor at the conclusion of the proceedings, he went home to his Washington apartment or if he went directly to his office in the Rayburn building to finish writing his weekly column. Representative Smith speculated that since he intended to finish the column, he probably went from the floor to his office without going to his apartment first.[146]

Representative Smith told the Investigative Subcommittee that he and his Chief of Staff had written the bulk of the November 23, 2003 column prior to the actual vote on the Medicare legislation.[147] After the vote, Representative Smith himself added the first two paragraphs of the column in which he expressed publicly for the first time his allegations of wrongdoing in connection with the Medicare vote.

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that the estimate of 20–30 Members was the more accurate estimate. He said that he did not recall telling the Detroit News that he had been approached by between 40 and 60 lawmakers.

[142] See Rep. N. Smith Dep. at page 68.

[143] See Rep. N. Smith Dep. at pages 70–71.

[144] Staff counsel to the Investigative Subcommittee reviewed a C–SPAN videotape of activity in the House chamber while the vote on the Medicare legislation was open. After the first approximately 15 minutes of the time that the vote was held open, the camera remained focused on the other side of the chamber from where Representative Smith was sitting.

[145] See Rep. N. Smith Dep. at page 64.

[146] See Rep. N. Smith Dep. at pages 85–86.

[147] In an interview conducted by Investigative Subcommittee staff, Kurt Schmautz, Representative Nick Smith's Chief of Staff, stated that he wrote the last four paragraphs of the column having to do with substantive aspects of the Medicare legislation on Friday, November 21, before the vote. Representative Smith made some revisions to what Mr. Schmautz had written and then added "[m]ost of the stuff about Brad" after the vote. (See Schmautz Int. at pages 31–32).

As has been previously summarized (see Section I.A., above), in the first paragraph of the column, Representative Smith asserted that "bribes and special deals were offered to convince members to vote yes." In the second paragraph of the column, he asserted that he had been "targeted by lobbyists and the congressional leadership" and that "members and groups made offers of extensive financial campaign support and endorsements for my son Brad" if he voted yes.[148]

When asked by the Investigative Subcommittee to state specifically what he was referring to when he said that "bribes and special deals" had been offered, Representative Smith at first attempted to make a distinction between what he characterized as the legal definition of a bribe and the dictionary definition of a bribe. He, nevertheless, failed to state specifically what communications were made to him in connection with his vote on the Medicare legislation that would constitute a bribe under either a legal or a dictionary or colloquial definition of the word.

Eventually, under persistent questioning from a Member on the Investigative Subcommittee, Representative Smith defined what he meant by the word "bribe" and what communications he was referring to when he used the word in his November 23, 2003 column:

> A [By Representative Nick Smith] I think it essentially says trying to offer somebody something for doing something they might not otherwise do. But that's certainly probably isn't the legal definition.
>
> * * * * *
>
> A I don't think what happened, trespassing on my family, is the proper thing to do.
>
> * * * * *
>
> Q [by a Member of the Investigative Subcommittee] . . .—[A]t least at some level, you used the word bribe, not in the legal sense, in the dictionary sense, what were you referring to?
>
> A Like I've said, that offers were made that were very emotional involving the success or failure of my son in his campaign to become a congressman.
>
> * * * * *
>
> Q So your use of the term bribes . . . isn't from your conversations with Jason [Roe] but rather from something that happened on the floor.
>
> A Correct.
>
> * * * * *
>
> A [by Representative Nick Smith] No. No. It's both a threat—you know, I assume that leadership endorsements of Brad and coming to the district, which I was told could very well happen, means not only strong Republican support for Brad in the Republican primary but also probably in my mind means money. It means fundraising.[149]

When asked to identify by name individuals whose conduct had been inappropriate, Representative Smith said that anyone who

[148] See Exhibit 1.
[149] See Rep. N. Smith Dep. at pages 45–46.

had brought his family, specifically his son Brad, into any discussion of his vote on the Medicare legislation had "crossed the line of civility." [150]

Based on his testimony before the Investigative Subcommittee, Representative Smith characterized as bribes comments, some apparently made by Members he could not identify, referring to the possibility of endorsements from members of leadership for his son Brad. He found the conduct objectionable because the comments involved benefits, and in the case of perceived threats the suggestion of detriments, for his son's campaign based on Representative Smith's vote on the Medicare legislation. It was on this basis that Representative Smith made public allegations of serious wrongdoing in connection with the Medicare vote.

IV. Findings and Recommendations

A. SUMMARY OF FINDINGS

As described in this Report, the Investigative Subcommittee carried out a full investigation into public statements made by Representative Nick Smith that he received communications linking support for his son's congressional candidacy with his vote on the Medicare Prescription Drug Act.

The Investigative Subcommittee finds that the late-night timing of the vote, the extended period of time for which the vote was held open,[151] and the unusual lobbying pressure on Members (which included the appearance on the House floor by a member of the President's Cabinet),[152] exacerbated tensions on the House floor and contributed to an environment in which the usual traditions of civil discourse and decorum amongst Members were not always followed.

In addition, based on the record of evidence developed during its investigation, the Investigative Subcommittee reached the following conclusions regarding the public statements made by Representative Nick Smith:

The Investigative Subcommittee finds that no group, organization, business interest, or corporation of any kind, or any individual affiliated with any such entities, offered $100,000 or any other specific sum of money to support the congressional candidacy of Brad Smith in order to induce Representative Nick Smith to vote in favor of the Medicare Prescription Drug Act.

The Investigative Subcommittee finds that Representative Nick Smith was not offered an endorsement or financial support for his son's candidacy from the National Republican Congressional Committee in exchange for voting in favor of the Medicare Prescription

[150] See Rep. N. Smith Dep. at page 119.

[151] The Investigative Subcommittee made no attempt to explore the history of the use of the device of the Chair holding a vote open to achieve a majority of votes for a particular piece of legislation. Based on its observations in the instant matter, however, regardless of when this device may have been utilized in the past, it is the view of the Investigative Subcommittee that the House is not well-served by repetition of this practice.

[152] The extraordinary involvement of the Executive Branch during House floor proceedings on the Medicare Prescription Drug Act included the presence on the House floor by the Secretary of Health and Human Services for the purpose of speaking directly with Members and answering their questions, and to assist in securing passage of the Medicare legislation. It is the view of the Investigative Subcommittee that the rules of the House should be revised so as to limit access to the House floor by Cabinet-level officials, except for such officials that are former Members. See House Rule IV, Clause 2(a)(12) (permitting "Heads of departments" to "the Hall of the House").

Drug Act. There was no evidence adduced that any consideration or discussion of an endorsement was undertaken within the National Republican Congressional Committee with respect to the Republican primary election in the Seventh District of Michigan held on August 3, 2004. Any statements made by Representative Nick Smith in any setting related to an endorsement or other support for his son by the National Republican Congressional Committee appear to have been the result of speculation or exaggeration on the part of Representative Nick Smith and speculation on the part of Jason Roe, a former employee of Representative Smith.

The Investigative Subcommittee finds that Representative Randall "Duke" Cunningham, Representative James T. Walsh, and Representative Candice Miller, acting independently from each other, and not in coordination with any other person or organization, made statements to Representative Nick Smith on the House floor after learning of Representative Nick Smith's vote in opposition to the Medicare Prescription Drug Act. Each of these statements referenced the congressional candidacy of Representative Nick Smith's son. The statements made by Representative Walsh and Representative Miller were made before the vote on the Medicare Prescription Drug Act was closed. The statement made by Representative Cunningham was made after the vote on the Medicare Prescription Drug Act was concluded. All of the statements to Representative Nick Smith by these three Members were made after Representative Smith had cast his vote against the Medicare Prescription Drug Act.

The Investigative Subcommittee finds that Majority Leader Tom DeLay, prior to the vote on the Medicare legislation on November 22, 2003 and most likely during a vote held on the evening of November 21, 2003, offered to endorse Brad Smith in exchange for Representative Nick Smith's vote in favor of the Medicare Prescription Drug Act.

The Investigative Subcommittee finds that to the extent that other Members of the House or the Secretary of Health and Human Services attempted to persuade Representative Nick Smith to vote in favor of the Medicare Prescription Drug Act, such attempts did not involve any offers of improper "special deals." Rather, such individuals attempted to persuade Representative Smith to vote in favor of the bill on the basis of policy or party loyalty.

The Investigative Subcommittee finds that Representative Nick Smith failed to cooperate fully with the Chairman and Ranking Minority Member of the Committee on Standards of Official Conduct in their efforts to develop information informally about public statements made by Representative Nick Smith that he was the recipient of communications linking his vote on the Medicare Prescription Drug Act with support for his son's congressional candidacy.[153] Given the nature of the allegations made publicly by Representative Smith, his complete cooperation still may not have eliminated the need for empanelment of this Investigative Subcommittee. Representative Nick Smith's early and complete co-

[153] Early and complete cooperation were lacking on the part of Representative Smith. He failed not only to provide the Committee with an explanation of inconsistent public statements made by him, but he did not respond to the specific request of the Chairman and Ranking Minority Member of the Committee that he identify the individual that he alleged was the impetus for his public statement that his son's campaign would receive "substantial and aggressive support" if he voted in favor of the Medicare Prescription Drug Act. Exhibit 8.

operation, however, would have shortened and streamlined the Investigative Subcommittee's inquiry, and would have likely rendered unnecessary the testimony of several witnesses and other investigative steps undertaken by the Investigative Subcommittee.

The Investigative Subcommittee finds that while Representative Nick Smith's initial public announcement of his allegations on November 23, 2003 may have been fueled by emotion and anger stemming from certain statements made to him by other Members in connection with his vote on the Medicare Prescription Drug Act, he failed to exercise reasonable judgment and restraint under the circumstances. Moreover, no mitigating circumstance exists for Representative Smith's continued publication of his allegations in the days and weeks following November 23, 2003.

B. REVIEW OF RELEVANT STANDARDS OF CONDUCT

Pursuant to House Rule XI, clauses 3(a)(2) and (3)(b)(2), and pursuant to Committee Rules 14(a)(3) and 18, the Committee has the authority to investigate any alleged violation by a Member, officer, or employee of the House, of the Code of Official Conduct or one or more law, rule, regulation, or other standard of conduct applicable to the conduct of a Member, officer, or employee of the House in the performance of his or her duties or the discharge of his or her responsibilities.

In the discharge of its responsibilities, the Investigative Subcommittee considered what provisions of the Code of Official Conduct or other applicable laws and standards would be implicated by the information garnered by the Investigative Subcommittee during its investigation.

The Code of Official Conduct of the House of Representatives is set forth in House Rule 23. The Investigative Subcommittee determined that only Clause 1 of House Rule 23 would be applicable to this matter. House Rule 23, Clause 1 (the "Code of Official Conduct") provides that "[a] Member, Delegate, Resident Commissioner, officer, or employee of the House shall conduct himself at all times in a manner that shall reflect creditably on the House." As noted previously by the Committee, this provision (House Rule 23, Clause 1) is the most comprehensive provision of the Code of Official Conduct and was adopted in part so that the Committee, in applying the Code, would retain "the ability to deal with any given act or accumulation of acts which, in the judgment of the committee, are severe enough to reflect discredit on the Congress."[154] This provision serves "as a safeguard for [ ] the House as a whole."[155]

The Investigative Subcommittee concluded that the Code of Ethics for Government Service, which is applicable to Members and employees of the House, is also implicated in this matter.[156] In par-

[154] House Ethics Manual, 102d Cong., 2d Sess. (April 1992) at 12 (quoting 114 Cong. Rec. 8778 (Apr. 3, 1968); In the Matter of Representative Earl F. Hilliard, H. Rep. 107–130, 107th Cong., 1st Sess. (July 10, 2001) at 12; In the Matter of Representative E.G. "Bud" Shuster, H. Rep. 106–979, 106th Cong., 2d Sess. (Oct. 16, 2000) at 9.

[155] Inquiry into the Operation of the Bank of the Sergeant-At-Arms of the House of Representatives, H. Rep. 102–452, 102d Cong., 2d Sess. (March 10, 1992) at 22 (citing H. Rep. 90–1176, 90th Cong., 2d Sess. at 17 (1968).

[156] See In the Matter of Representative James A. Traficant, Jr., H. Rep. 107–594, 107th Cong., 2d Sess. Vol. 1 (July 19, 2002) (Violations of the Code of Ethics for Government Service, along with violations of the Code of Official Conduct, formed the basis of a Statement of Alleged Viola-

ticular, Clause 5 of the Code of Ethics for Government Service provides that "[a]ny person in Government service should . . . [n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and 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." In addition, Clause 9 of the Code of Ethics for Government Service provides that "[a]ny person in Government service should . . . [e]xpose corruption wherever discovered."

The Investigative Subcommittee also took notice of 18 U.S.C. §201. This federal statute prohibits the offer or acceptance of bribes and gratuities by public officials, including Members of the House. The Investigative Subcommittee is aware that the Federal Bureau of Investigation was conducting its own inquiry into the allegations made by Representative Smith. Presumably, any violations of the cited federal statute in connection with this matter will be addressed by that federal agency in the normal course of carrying out its law enforcement responsibilities.

C. CONCLUSIONS REGARDING THE CONDUCT OF CERTAIN MEMBERS

1. Representative Nick Smith

The Investigative Subcommittee concludes that Representative Nick Smith is accountable for his conduct related to his vote on the Medicare Prescription Drug Act, including his making of statements that impugned the reputation of the House of Representatives. The excesses of Representative Smith's rhetoric—initially made public in a press statement issued the day after the vote on the Medicare Prescription Drug Act, but continuing in subsequent press statements and press interviews—cannot be excused either by personal exhaustion or anger he may have felt following the vote on the Medicare Prescription Drug Act, or by his emotional attachment to his son and his personal belief that his vote in opposition to that legislation might have negative consequences for his son's congressional candidacy. Indeed, as discussed in this Report, the record indicates that Representative Smith's overstated account of events began as early as the evening before the vote during a gathering with his colleagues at the Hunan Dynasty restaurant.

While this Report addresses the Investigative Subcommittee's significant concerns about improper statements made by certain Members to Representative Smith, it is Representative Smith who is responsible for making unsupported assertions in reacting to communications made to him related to his vote on the Medicare Prescription Drug Act. While some highly charged language or exaggeration can be excused in the wake of intense pressure to vote for or against a particular piece of legislation, Representative Smith went too far by making statements that erode public confidence in the integrity of this lawmaking institution, and by misleading the public with his assertion that he was offered $100,000 for his son's campaign in exchange for his vote in favor of the Medicare bill. The damage caused by Representative Smith to the reputation of the House was compounded by Representative Smith's

tions adopted by an Investigative Subcommittee against a Member, and that led to the expulsion from the House of that Member.).

continued publication in various media outlets of allegations that were unsupported by events as they actually occurred.[157]

The Investigative Subcommittee found that Representative Smith's press statement of December 4, 2003 (Exhibit 8)—in which he stated that "no member violated any ethical rule"—was not a mitigating act. Indeed, that statement did not retract fully his earlier allegations and, further, in the statement Representative Smith continued to suggest publicly that he had been offered "substantial and aggressive 'support' and 'endorsements'" by "interested groups."

Even if a reasonable basis existed for all the statements made by Representative Smith regarding his vote on the Medicare Prescription Drug Act, Representative Smith did not act in a responsible manner in seeking redress for the alleged improper conduct he believed he had witnessed. As noted, the Code of Government Ethics obligates Representative Nick Smith, and all other Members, to "expose corruption wherever discovered." An allegation of "bribery" is an allegation of "corruption." If Representative Smith believed that bribes had been offered and accepted, he was obligated under the Code of Ethics for Government Service to share the basis for his beliefs with the appropriate governmental authorities. At a minimum, Representative Smith was obligated to cooperate fully and candidly with the Committee on Standards of Official Conduct regarding his allegations. Instead, Representative Smith declined to cooperate fully, and required the Committee to authorize a costly and time-consuming investigation.

In the view of the Investigative Subcommittee, were the Investigative Subcommittee's jurisdiction to be expanded to address the specific conduct of Representative Smith that is described in this Report, his conduct could support a finding that Representative Smith violated House Rule 23, Clause 1, which requires Members to conduct themselves at all times in a manner that shall reflect creditably on the House.

However, even though the Investigative Subcommittee concluded that Representative Nick Smith did not meet the standard of conduct required of Members, the Investigative Subcommittee does not recommend that its jurisdiction be expanded pursuant to Committee Rule 19(d) and the resolution adopted by the full Committee on March 17, 2004. Such a step—required to obtain a formal sanction under House and Committee rules—is not justified by the circumstances and facts presented, and is outweighed by the interest in bringing this matter to closure.[158]

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[157] The record further indicates that the controversy may have been utilized for political purposes by Brad Smith to promote the cause of his congressional candidacy, with the possible result of further exacerbating the harm caused by Representative Smith's publication of substantially unsupportable allegations.

[158] The Investigative Subcommittee notes that Representative Smith is retiring from the House at the end of this Congress. Due to Representative Smith's retirement, the Committee will lose jurisdiction over Representative Smith at the end of this Congress. Accordingly, as a practical matter, there is insufficient time remaining in the current Congress for an Investigative Subcommittee with expanded jurisdiction to complete the steps necessary under Committee Rules for Representative Smith to be charged formally with violations of the Code of Official Conduct, and to obtain sanctions as appropriate for such violations.

2. Representative James T. Walsh and Representative Randall "Duke" Cunningham

The Investigative Subcommittee concluded that the statements made by Representative Jim Walsh and Representative Randy "Duke" Cunningham that referenced the candidacy of Representative Smith's son were inconsistent with the civility generally expected of Members during a vote on the House floor. Nonetheless, it is not the view of the Investigative Subcommittee that either of these Members violated any rule within the jurisdiction of the Committee. To the extent that the comments made by these Members were regrettable, the Investigative Subcommittee concluded that such a finding was mitigated by the intensity of the circumstances, as well as by the personal, unsolicited, and independent apologies these Members made to Representative Smith in the days following the vote on the Medicare legislation. Further, in separate, candid testimony under oath before the Investigative Subcommittee, both Representative Cunningham and Representative Walsh acknowledged their conduct, and expressed contrition and regret for the statements they made to Representative Smith.

3. Representative Candice Miller

In contrast to its conclusions regarding the statements made by Representative Cunningham and Representative Walsh, the Investigative Subcommittee viewed differently the statements made by Representative Candice Miller to Representative Smith during the vote on the Medicare legislation. Representative Miller's interaction with Representative Smith can fairly be characterized as a specific and unprovoked threat of retaliation against Representative Smith because of his vote in opposition to the Medicare Prescription Drug Act. Given Representative Miller's status as a well-known figure in Michigan politics, from the mindset of Representative Smith, Representative Miller could possibly have had a deleterious impact on Brad Smith's candidacy. Representative Miller never sought to mitigate her conduct by apologizing to Representative Smith, or by otherwise expressing contrition for her conduct. The Investigative Subcommittee concluded that Representative Miller's statements to Representative Smith on the House floor were improper and contributed to his decision to make his public allegations of alleged misconduct related to his vote on the Medicare Prescription Drug Act, and therefore Representative Miller shares a portion of the responsibility for a course of events that risked impugning the reputation of the House of Representatives.

In the view of the Investigative Subcommittee, Representative Miller's conduct could support a finding that she violated House Rule 23, Clause 1, were the Investigative Subcommittee's jurisdiction to be expanded to address Representative Miller's specific conduct in this matter. The Investigative Subcommittee, however, does not recommend that its jurisdiction be expanded regarding Representative Miller's conduct. While Representative Miller committed a discrete violation of the rules, there was no evidence adduced of a pattern of misconduct. The Investigative Subcommittee concludes that further proceedings are not necessary to carry out the full Committee's oversight responsibilities.

4. Majority Leader Tom DeLay

It is not controverted in this matter that Majority Leader Tom DeLay offered his personal endorsement of Brad Smith in exchange for Representative Nick Smith's vote in favor of the Medicare Prescription Drug Act. This offer was made personally by the Majority Leader to Representative Smith, most likely during a vote on November 21, 2003, on a matter unrelated matter to the Medicare Prescription Drug Act. The Investigative Subcommittee concludes that the interaction between the Majority Leader and Representative Smith, in significant part, precipitated the public allegations by Representative Smith that ultimately led to this inquiry. 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 for his son's campaign that Representative Smith believed 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.

The Investigative Subcommittee deliberated extensively over the ramifications of the Majority Leader's conduct in this matter. It is well-settled that the process of garnering a majority of legislators for the passage of legislation in a legislative body involves a process of political compromise and coalition-building through offers of reciprocal official support among fellow legislators. Such practices are common in the functioning of a representative democracy. There are limits, however, to the methods that may be used to bring legislators of different views together to achieve action. For example, the "corrupt" offer or acceptance of "things of value" such as remunerations, gifts, or other like benefits to a legislator is long-prohibited conduct.[159] By contrast, the practice of what some have termed "log-rolling" is a longstanding and accepted part of the legislative process. The essence of this practice involves compromises based on legislative or official acts or programs within the official government process. In other words, under most circumstances it is an accepted practice for legislators to trade legislative votes to achieve policy goals or if to do so would serve the interests of constituents.

The above-described practice is well-established in the House; there is nothing improper about a Member's conditioning support for particular legislation on, for example, future consideration by another Member of an official matter of importance to that Member's constituents or legislative agenda. It is also a long-established and recognized practice to seek to persuade a Member to vote a certain way on proposed legislation on the basis of maintaining party discipline. An appearance of impropriety might be created, however, 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.

Such is the conclusion reached by the Investigative Subcommittee regarding the statements by the Majority Leader to Representative Smith in this matter. 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 bar-

[159] *See, e.g.,* 18 U.S.C. § 201.

gain 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. While the political consequences of a Member's vote on legislation are usually inherent and exist even if unspoken, the use of political incentives to obtain passage of legislation, or the mixing of political and official incentives to obtain such a goal, risks undermining the confidence of the public that legislation was supported or opposed by Members on the basis of the interests of the public, and no other interest.

Accordingly, the Investigative Subcommittee concludes that it is improper for a Member to offer or link support for the personal interests of another Member as part of a quid pro quo to achieve a legislative goal. In the view of the Investigative Subcommittee, depending on the circumstances, such conduct may violate House Rule 23, Clause 1. Another provision implicated by the acceptance of such an improper offer is Clause 5 of the Code of Ethics for Government Service, which provides that "[a]ny person in Government service should . . . [n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; *and 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.*" (Emphasis added).

The issues raised by the conduct of the Majority Leader in this matter are novel in that conduct of this nature and the implications of such conduct have never before been addressed or resolved by the Committee on Standards of Official Conduct. Indeed, the Majority Leader's testimony indicates that he did not believe he acted improperly under House rules during his encounter with Representative Nick Smith. In addition, the Investigative Subcommittee believes that the relevant facts related to the Majority Leader's conduct—described in detail in this Report—already have been fully developed. In the view of the Investigative Subcommittee, these factors mitigate against further investigation and proceedings in this matter.[160]

D. ADDITIONAL RECOMMENDATIONS

The Investigative Subcommittee further recommends that the Committee adopt this Report as the Report of the full Committee and approve its dissemination to the House and to the public. It is the intention of this Investigative Subcommittee that publication

[160] The Investigative Subcommittee reached a similar conclusion regarding the conduct of Dan Flynn in this matter. As noted, Mr. Flynn serves as Deputy Chief of Staff in the Office of the Majority Leader, and he stated during an interview with Investigative Subcommittee counsel that in this capacity he contacted Jason Roe on November 21, 2003 to ascertain information about primary election candidates in the Seventh District of Michigan. During his interview, he stated that the purpose of the call was to assess whether the Majority Leader's endorsement of Representative Smith's son in that election could be used to obtain Representative Smith's vote for the Medicare Prescription Drug Act. To the extent that Mr. Flynn may have contacted Jason Roe, no evidence was adduced that Mr. Flynn undertook this action at the request or direction of the Majority Leader. Under the circumstances presented, the Investigative Subcommittee did not find that Mr. Flynn violated House rules. Nonetheless, in the view of the Investigative Subcommittee, it is not appropriate for congressional staff to research the status of congressional election contests for the purpose of obtaining information to influence a Member's vote on pending legislation.

of this Report will serve as a public admonishment by the Committee to Representative Smith, Representative Miller, and Majority Leader DeLay regarding their conduct in this matter. The Investigative Subcommittee also intends that the publication of this Report will serve as an advisory for all Members, employees, and officials of the House that the linking of official actions with political considerations in the manner described in this Report is impermissible and violates House rules.

EXHIBIT LIST

Exhibit 1: Rep. Nick Smith's column dated 11/23/03
Exhibit 2: Rep. Nick Smith's press release dated 11/24/03
Exhibit 3: Washington Post article dated 11/23/03
Exhibit 4: Human Events Online column dated 11/26/03
Exhibit 5: Column appearing in Chicago Sun-Times dated 11/27/03
Exhibit 6: Slate.com article dated 12/1/03
Exhibit 7: Transcript of Rep. Nick Smith's WKZO-Kalamazoo radio interview on 12/1/03
Exhibit 8: Rep. Smith's press release dated 12/4/03
Exhibit 9: Lansing State Journal article dated 12/5/03
Exhibit 10: Letter from Chairman and Ranking Minority Member of Committee on Standards of Official Conduct to Rep. Nick Smith dated 12/8/03
Exhibit 11: Letter from Rep. Nick Smith to Chairman and Ranking Minority Member of Committee on Standards of Official Conduct dated 12/17/03
Exhibit 12: Washington Post article dated 12/23/03
Exhibit 13: Detroit News article dated 2/12/04
Exhibit 14: Letter from Chairman and Ranking Minority Member of Committee on Standards of Official Conduct to Rep. Nick Smith dated 2/13/04
Exhibit 15: Letter from counsel to Rep. Nick Smith to Chairman and Ranking Minority Member of Committee on Standards of Official Conduct dated 3/5/04
Exhibit 16: Letter from Investigative Subcommittee to Secretary Tommy Thompson dated 7/8/04
Exhibit 17: Letter to Investigative Subcommittee from General Counsel of Department of Health and Human Services and accompanying statement from Secretary Tommy Thompson dated 8/4/04
Exhibit 18: Subpoena to Rep. Nick Smith dated 6/21/04
Exhibit 19: Notes from Rep. Nick Smith's diary calendar for 11/17–12/14/03
Exhibit 20: Relevant portions of record of roll call votes for 11/21/03
Exhibit 21: Transcript of voicemail message left by Brad Smith for Rep. Nick Smith on 11/21/03
Exhibit 22: Rep. Nick Smith's schedule for 11/19–11/23/03
Exhibit 23: Letter to Speaker J. Dennis Hastert from Rep. Nick Smith dated 11/23/03
Exhibit 24: Excerpt from Walsh for Congress Committee report to Federal Election Commission disclosing contribution to Brad Smith for Congress on 12/11/03

Exhibit I

Column by Congressman Nick Smith - November 23, 2003

A Medicare Showdown

The House passed a deeply flawed Medicare prescription drug bill by a vote of 220-215 at 6:00am, November 22. Votes in the House usually last 15 minutes plus a traditional two minute cushion. But because the leadership did not have the votes to prevail, this vote was held open for a record two-hours-and-51-minutes as bribes and special deals were offered to convince members to vote yes.

I was targeted by lobbyists and the congressional leadership to change my vote, being a fiscal conservative and being on record as a no vote. Secretary of Health and Human Services Tommy Thompson and Speaker of the House Dennis Hastert talked to me for a long time about the bill and about why I should vote yes. Other members and groups made offers of extensive financial campaign support and endorsements for my son Brad who is running for my seat. They also made threats of working against Brad if I voted no. Brad heard about what was going on and called me to say he didn=t want to get to Congress that way and that I should do the right thing. That added to my resolve.

I told all those urging a yes vote the same thing: This bill will lead to explosive new costs and huge unfunded liabilities that will unfairly burden future generations. The current unfunded liability for Medicare is about $14 trillion in current dollar value. Adding the new Medicare drug provision increases the unfunded liability by $7.6 trillion for a total of $21.6 trillion in today=s dollars. The bill promised trillions in new benefits with no idea how to pay for them other than passing the bill to future generations.

A universal benefit is also unnecessary right now. It would have been sufficient to help those who are going without. The National Center for Policy Analysis estimates that under this bill, only one of every 16 dollars spent helps purchase drugs for seniors who would otherwise have gone without them. In fact, 74 percent of seniors have some drug coverage now. That is why about a fifth of the cost of the bill is paid to employers if they don't drop the benefit. The bill will result with millions of Americans losing part of their existing coverage. As drug costs increase, more and more companies will drop their drug coverage and force retirees into the government program.

If that happens, it will reduce coverage for many. I find that many seniors are surprised by how little coverage is provided under this bill. The premium is expected to be $35 a month. Then there's a deductible on the first $275 of drugs purchased every year. After that, the senior pays 25 percent of their drug costs between $275 and $2200, and then there is no coverage at all between $2200 in expenses up to $5044. Above that the government will pay 95 percent, but that still means that seniors will have to pay $4020 of their first $5044 of drugs with this bill.

I think that we have a problem with some people who can't afford drugs. We can deal with that problem with a much smaller, cheaper, and efficient program. I have also supported other approaches to cutting drug costs, such as safe and regulated re-importation of American drugs from Canadian and European markets, increased access to lower cost generic drugs, and controls on unreasonable medical malpractice costs. In the end, asking young workers to pay for more and more senior benefits is not good long-term policy. Instead, we need to make the case for reasonable change in both Social Security and Medicare.

Exhibit 2

Nick Smith's Press Release - November 24, 2003

Smith Plays Key Role in Medicare Debate

Resists Intense Pressure to Vote for Medicare Bill

(Washington, D.C.) -- Washington was abuzz Monday over the resolve of Congressman Nick Smith (R-Michigan) who resisted intense pressure to vote for the Medicare bill. Following a story that appeared on Sunday in the Washington Post, Congressman Nick Smith responded with this statement:

"I thought I knew 'arm-twisting' serving 16 years in the Michigan legislature and 11 years in the United States Congress. However, this was the most intense and strongest pressure to change my vote that I've ever experienced."

"Being a strong fiscal conservative and having voted no on the two prescription drug bills I was a target for early pressure to vote yes on this third go-round."

"My only regret is that it might have hurt my son. Advocates of the Medicare prescription drug bill had figured out that my vulnerability might lie in my strong support for my family. Since I'm retiring and my son Brad is running for my seat. I got significant promises for help for his campaign and threats they'd work against him if I voted no."

"Brad got word of the situation and called me and told me that he didn't want to go to Congress this way. He told me to do the right thing. That helped my resolve."

The Sunday Washington Post reported the following on the front page regarding Congressional lobbying efforts for the Medicare Bill:

> *"Health and Human Services Secretary Tommy G. Thompson, who had been working the Capitol all day, defied custom and moved onto the House floor. He and Hastert avoided the back rows where many of the conservatives were clustered, and targeted "no" voters such as Reps. John Shadegg (R-Ariz.) and Nick Smith (R-Mich.), who were standing or sitting alone.*
>
> *The broad-shouldered speaker, moving through the crowded aisles like a fullback, plumped down next to Smith, who is retiring next year after 40 years in a succession of public offices. Hastert threw an arm around Smith's shoulder and leaned in as Thompson moved into the seat on the other side. Aides recounted that Hastert said Smith's help was vital to the party and the president -- a fitting gift at the end of a long career -- and suggested it would also help Smith's son, who plans to run for the seat.*
>
> *But the former dairy farmer, a budget hawk, waved his hands as if in dismissal and told Hastert that his son had advised him, "Do what is right." He was unmoved -- and remained so as Hastert and other legislators returned often to plead the case."*

This and other newpaper articles pertaining to stories of Congressman Nick Smith can be obtained on his Newslinks page in his Newsroom section of his website.

Exhibit 3

Time Was GOP's Ally On the Vote

By David S. Broder
Washington Post Staff Writer
Sunday, November 23, 2003; Page A01

At exactly 3 a.m. yesterday, Rep. Richard "Doc" Hastings (R-Wash.), presiding over the House of Representatives, announced that time for debate on President Bush's Medicare reform and prescription drug bill had expired. "Members will have 15 minutes to record their votes," he said.

The forecast turned out to be wildly off the mark. It was nearly 6 a.m. when the longest roll call in House history ended, with Republicans cheering a 220 to 215 victory and embittered Democrats denouncing it as a travesty.

The 2-hour-and-51-minute ordeal -- more than double the previous record -- saw Democrats savoring the possibility of their biggest victory of the Bush years -- an apparent 216 to 218 rejection of the $400 billion plan -- for almost an hour. But in that final hour, the president, jet-lagged from his flight home from Britain, phoned recalcitrant Republicans from the White House, and his secretary of health and human services, defying custom, jawboned members on the floor.

Their exhortations, even when added to all the pressure and pleading from the usually efficient GOP leadership team, failed to crack a solid phalanx of more than two dozen conservatives who insisted they had not come to Washington to expand the popular but expensive Great Society entitlement program.

Several times, Speaker J. Dennis Hastert (R-Ill.) and his lieutenants were on the verge of conceding defeat and moving to reconsider the issue later, only to pull back and give their lobbying another try. In the end, they switched two of the conservatives by telling them of a Democratic legislative plot that may have been either fictional or real.

The outcome -- even more dramatic than the one-vote preliminary victory for the Medicare bill in the House last summer -- may have huge political ramifications in the coming campaign and beyond. Democrats -- as frustrated by the long count as they had been in 2000 by the 36-day aftermath to the presidential election in Florida -- denounced the process and the outcome. Rep. Steny H. Hoyer (D-Md.), the minority whip, said Republicans "stole" the victory through "undemocratic subversion of the will of the House." He vowed they would pay a political price when seniors examine the bill's contents.

But the president hailed the outcome and urged the Senate to add its stamp of approval, a step that would give Republicans bragging rights for the biggest expansion ever of a program that has been an icon of Democratic politics.

The debate opened with notable decorum, but tension mounted in the chamber as time passed.

Early in the evening, Republicans held a final caucus in the Capitol basement. Despite last-minute concessions on such issues as improved reimbursements for oncologists, Nancy L. Johnson (R-Conn.), the health subcommittee chairman, told a reporter, "We're not there yet."

Majority Whip Roy Blunt (R-Mo.) said in an interview last night, "We never thought we could win it just on the Republican side." In June, when the House passed its own version of Medicare-prescription drugs, 19 Republicans had defected, and it took lengthy efforts to squeeze out a one-vote victory.

The compromise House-Senate version up for a vote yesterday was even harder for some conservatives to swallow, because of features added to satisfy some Senate Democrats. Hastert said in an interview last night: "A lot of our folks, the hard-right guys, are not for Medicare. It's an entitlement they don't want to add on to. I had to convince them we had a chance really to reform Medicare and bend those cost curves so my kids don't end up paying 30 percent of their salaries for it."

One of the conservatives, Rep. Mike Pence (R-Ind.) said before the vote that the "hard-core" conservative opposition bloc had grown to 26, enough to sink the bill. But a leadership aide said that Rep. Calvin M. Dooley (Calif.), a middle-road Democrat who is retiring next year, had told Rep. David Dreier (R-Calif.) that if Republicans could show 208 votes from their side, "we'll give you 15" -- enough to pass it 223 to 212.

To Hastert, that suggested a majority of the House wanted the bill. But to pass it, he would have to deliver enough Republicans for the Democrats to come out of hiding. The problem, Blunt said, was that "17 of our members voted no almost immediately, and we didn't get our first Democratic vote until the 15 minutes were almost up." As a result, when the nominal time expired, the measure was trailing by 15 votes -- with 24 Republican defectors and only seven Democratic crossovers. Another 30 members, most of them Democrats, had not voted.

At that point, Hastert, Majority Leader Tom DeLay (R-Tex.) and Blunt swung into action, stressing to Republicans the importance of the issue to the party and the president. The margin of defeat narrowed steadily. By 4 a.m., it stood at 216 to 218.

But then it stuck. David Hobbs, the White House legislative liaison, operating from a room just off the floor, decided about 5 a.m. it was time to call in the president. Knowing Bush is an early riser by nature, he figured the president might be up even earlier, still tuned to London time. He was right. Bush, who had made a dozen or so calls to members en route home, made five or six more -- reaching members in their offices or on cell phones.

Meantime, Health and Human Services Secretary Tommy G. Thompson, who had been working the Capitol all day, defied custom and moved onto the House floor. He and Hastert avoided the back rows where many of the conservatives were clustered, and targeted "no" voters such as Reps. John Shadegg (R-Ariz.) and Nick Smith (R-Mich.), who were standing or sitting alone.

The broad-shouldered speaker, moving through the crowded aisles like a fullback, plumped down next to Smith, who is retiring next year after 40 years in a succession of public offices. Hastert threw an arm around Smith's shoulder and leaned in as Thompson moved into the seat on the other side. Aides recounted that Hastert said Smith's help was vital to the party and the president -- a fitting gift at the end of a long career -- and suggested it would also help Smith's ***son***, who plans to run for the seat.

But the former dairy farmer, a budget hawk, waved his hands as if in dismissal and told Hastert that his ***son*** had advised him, "Do what is right." He was unmoved -- and remained so as Hastert and other legislators returned often to plead the case.

Meantime, a drama was unfolding on the Democratic side. Rep. David Wu, a third-termer and Portland, Ore., lawyer, was refusing to vote. A changing circle of Democrats surrounded the 48-year-old Taiwan-born Stanford and Yale Law School graduate, who remained stubbornly silent with a gaze one legislator described as "almost catatonic." Rep. Zoe Lofgren (D-Calif.), a friend, put her hands to his face, but he did not respond.

With still no movement on the Republican side, Hastert and Company were almost ready to concede. Reporters in the gallery thought they heard Rep. Bill Thomas (R-Calif.), chairman of the Ways and Means Committee, say, "It's over." Leadership aides said last night that the fallback plan being discussed was for DeLay to switch his vote to "no," so he could be on the prevailing side when the bill's defeat was announced, and then immediately move to reconsider the result -- as any member of the winning side can do. Democrats say they even received a message on their Blackberries advising there would be a reconsideration vote at 9 a.m. Saturday.

But each time DeLay was ready to move to the microphone, the whip team would spot another possible switcher -- and he stepped back.

The breakthrough finally came when seven of the "no" voters met with Hobbs and leadership people just off the floor to discuss the situation. Rumors were circulating on the House floor that if the measure were defeated, Democrats would seek to revive their own Medicare bill or the more liberal Senate version. Hastert said last night that he had been told that Minority Leader Nancy Pelosi (D-Calif.) was planning to move such a bill to a quick floor vote by a "discharge petition," a rarely used device requiring signatures from 218 members, a House majority.

Pelosi was not available for comment, but two well-connected Democrats, Reps. Rahm Emanuel (Ill.) and Albert R. Wynn (Md.), said they had heard such talk. Emanuel said the idea being discussed was to wed the more generous Senate bill with a House provision allowing reimportation of drugs from Canada -- a combination some thought might prevail.

But a senior House GOP aide said the threat of a Democratic bill was concocted to pry loose some conservative votes. "We didn't know what they [the Democrats] might do, but this was a logical step for them," he said. "We couldn't get the votes we needed by promising bridges or roads. The conservatives opposed this bill on policy grounds, so we had to give them a policy reason to be for it."

It worked. Two of the seven conservatives in the meeting -- Reps. C.L. "Butch" Otter of Idaho and Trent Franks of Arizona -- agreed to switch. It was not easy for either of them. Franks, a freshman, is a staunch conservative, a former consultant to Patrick J. Buchanan's presidential campaign. Otter had told a reporter just before the vote that "I could stomach this bill if we were going to pay for it, but borrowing that much money -- that means we're voting for the next election, not the next generation."

After his switch, still looking dazed, Otter told reporters he had turned down Bush's personal plea for support. But when faced with the prospect of a Democratic bill "with fewer reforms, less cost-containment and probably even higher spending," he said, he chose what he thought the lesser of evils.

A moment later, DeLay strode to the microphone. Many members thought he was about to concede at least temporary defeat. Instead, the scoreboard over his head now flashed new numbers: Yeas 218,

Nays 216. Within seconds, a flurry of last-minute converts had boosted the margin to five. Wu, the last to vote, was a Yea.

Pelosi fired off an angry statement, calling the extended vote an outrage. "We won it fair and square," she said, "so they stole it by hook or crook."

Hastert said last night he had no apologies. "They criticize me for keeping the vote open so long," he said, "but I've been working that issue for 20 years, and seniors have been waiting through three Congresses for a prescription drug benefit. So I don't think waiting three hours to get it done is too much."

Staff writers Amy Goldstein and Mike Allen and researcher Brian Faler contributed to this report.

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Exhibit 4

Arm-Twisting and Vote-Switching on RX Drug Entitlement

by David Freddoso
Posted Nov 26, 2003

The final vote on the bill to create the largest new entitlement in decades was 220-215, but it was even closer than that for most of Saturday morning.

Rep. Mike Pence (R.-Ind.), who spearheaded the conservative opposition to the prescription drug entitlement (H.R.?1) in the House, called his own efforts a "successful failure." Pointing out that the conservative opposition to the bill grew by six votes since June, he compared the stand by 25 principled House conservatives against the bill to the battle of the Alamo. The new votes for the bill, whose earlier version passed by just one vote in June, came from Democrats who had opposed it before.

The House leadership had to keep the vote on H.R.?1 open for nearly three hours, during which House leaders and administration officials twisted arms and offered extra pork in exchange for votes. The bill seemed on its way to failure?216 to 218?for two full hours, until some Democrats and a few Republicans changed their votes a few minutes before 6 a.m.

Health and Human Services Secretary Tommy Thompson succeeded in wooing several Democrats to vote for the bill who had opposed it in the past. He reportedly did this, House sources tell HUMAN EVENTS, by "handing out" over a billion dollars worth of discretionary spending to anyone willing to switch.

On the Republican side, threats carried the day. That prompted Rep. Pat Toomey (R.-Pa.) and Pence, along with 23 others, to leave the Capitol building and seclude themselves at a Chinese restaurant on Pennsylvania Ave. for part of the evening. They avoided constant reproaches from the likes of Thompson and the House Republican leaders for a few hours, but they could not avoid the hours of threats dealt out on the House floor.

Among those treated most brutally was Rep. Nick Smith (R.-Mich.). Although Smith is retiring next year, his son Brad hopes to win his safe 7th district seat by surviving a crowded Republican primary.

"It's pretty personal," Smith told Human Events. Smith was told that his son would get "almost unlimited financial support, plus some nationally recognized names to endorse him," if Rep. Smith would just vote for the drug bill. "This comes after [Brad] had sold part of his property to put his own $100,000 into his campaign," he said. But when Brad learned about the deal being offered, he called his father. "He said, 'Hey, Dad, you stick to your guns and do the right thing. I don't want to go to Congress that way.' That increased my resolve for sure."

Smith stood firm and voted "no." "The only sad part is that I may have hurt Brad's chances of getting in, because some of the members were pretty adamant that they were going to work to make sure he didn't," said Smith. He would not specify whether the members in question were other Michigan congressmen.

More pressure came down on the conservatives when the National Right to Life Committee announced

it might score the vote on its congressional scorecard. In other words, congressmen voting "no" on the bill would look like they had cast a vote against the right to life.

"I'm very curious about what their position on the omnibus [spending] bill will be," deadpanned Pence, one of the most outspoken pro-lifers in Congress. "I want to protect my pro-life voting record."

Among the Republicans who changed their votes on the floor were Trent Franks (Ariz.) and Butch Otter (Idaho). Franks held out for much of the evening, but after a full night of being lobbied intensely, he took Pence aside and told him he was going to switch.

For Otter, this represents the second time has switched his vote from "no" to "yes" on the prescription drug entitlement. He switched his vote after telling HUMAN EVENTS' John Gizzi that he would vote against the bill.

Also of interest are Republican Congressmen Richard Burr (N.C.), Steve Buyer (Ind.), and James Sensenbrenner (Wis.). All three voted against a similar bill in June, then turned around and voted for this bill, even though it is worse than its earlier version in several respects. Also, Rep. Ernest Istook (R.-Okla.) voted in favor, even though he opposed the bill in June.

Rep. John Culberson (R.-Tex.) changed his vote the opposite way, from "yes" to "no," at the last minute, once the bill's passage was ensured. His staff had no explanation.

On the other hand, in addition to the 16 Republicans who stayed solid throughout, nine GOP lawmakers found their courage in the fall and switched to vote "no" on this final version of the bill. They include Pat Toomey (Pa.) and freshmen Scott Garrett (N.J.), Gresham Barrett (S.C.), and Tom Feeney (Fla.), among others. These freshmen were pushed hardest to change their votes, but refused.

"I came to Washington to reform Great Society programs, not to ratify and enlarge them," said Feeney in a written statement released the same day the vote was taken. Pence told Human Events that Feeney, who stood with him on the House floor throughout the three-hour vote, warded off those pressuring him with the same line: "This isn't about my career?it's about my country."

A Bad Bill

The prescription drug bill, covered extensively by HUMAN EVENTS, represents the most expensive vote-buying measure since President Lyndon Johnson. U.S. Comptroller General David Walker testified before Congress in 2001 that Medicare's liabilities "represent an unsustainable burden on future generations."

Thanks to this added entitlement, the program will bankrupt the treasury even more quickly, all but ensuring a payroll tax-hike on younger workers within 30 years.

This bill is being enacted by the first Republican controlled government since the Eisenhower administration.

Most Democrats opposed the bill, but only because they wanted an even bigger new entitlement. Also, House Democrats did not want President Bush to get credit for the bill among the senior citizen voters who stand to gain.

Below is the tally of the House vote, by party and position. A "yes" vote was a vote for the new, government-expanding entitlement. A "no" vote was a vote against the entitlement.

Exhibit 5

GOP pulled no punches in struggle for Medicare bill

November 27, 2003

BY ROBERT NOVAK SUN-TIMES COLUMNIST

During 14 years in the Michigan Legislature and 11 years in Congress, Rep. Nick Smith had never experienced anything like it. House Speaker Dennis Hastert and Health and Human Services Secretary Tommy Thompson, in the wee hours last Saturday morning, pressed him to vote for the Medicare bill. But Smith refused. Then things got personal.

Smith, self term-limited, is leaving Congress. His lawyer son Brad is one of five Republicans seeking to replace him from a GOP district in Michigan's southern tier. On the House floor, Nick Smith was told business interests would give his son $100,000 in return for his father's vote. When he still declined, fellow Republican House members told him they would make sure Brad Smith never came to Congress. After Nick Smith voted no and the bill passed, Duke Cunningham of California and other Republicans taunted him that his son was dead meat.

The bill providing prescription drug benefits under Medicare would have been easily defeated by Republicans save for the most efficient party whip operation in congressional history. Although President Bush had to be awakened to collect the last two votes, Majority Leader Tom DeLay and Majority Whip Roy Blunt made it that close. "DeLay the Hammer" on Saturday morning was hammering fellow conservatives.

Last Friday night, Rep. Pat Toomey of Pennsylvania hosted a dinner at the Hunan restaurant on Capitol Hill for 30 Republicans opposed to the bill. They agreed on a scaled-down plan devised by Toomey and Rep. Mike Pence of Indiana. It would cover only seniors without private prescription drug insurance, while retaining the bill's authorization of private health savings accounts. First, they had to defeat their president and their congressional leadership.

They almost did. There were only 210 yes votes after an hour (long past the usual time for House roll calls), against 224 no's. A weary George W. Bush, just returned from Europe, was awakened at 4 a.m. to make personal calls to House members.

Republicans voting against the bill were told they were endangering their political futures. Major contributors warned Rep. Jim DeMint they would cut off funding for his Senate race in South Carolina. A Missouri state legislator called Rep. Todd Akin to threaten a primary challenge against him.

Intense pressure, including a call from the president, was put on freshman Rep. Tom Feeney. As speaker of the Florida House, he was a stalwart for Bush in his state's 2000 vote recount. He is the Class of 2002's contact with the House leadership, marking him as a future party leader. But now, in those early morning hours, Feeney was told a "no" vote would delay his ascent into leadership by three years -- maybe more.

Feeney held firm against the bill. So did DeMint and Akin. And so did Nick Smith. A steadfast party regular, he has pioneered private Social Security accounts. But he could not swallow the unfunded liabilities in this Medicare bill. The 69-year-old former dairy farmer this week was still reeling from the threat to his son. "It was absolutely too personal," he told me. Over the telephone from Michigan on Saturday, Brad Smith urged his father to vote his conscience.

However, the leadership was picking off Republican dissenters, including eight of 13 House members who signed a Sept. 17 letter authored by Toomey pledging to support only a Medicare bill very different from the measure on the floor Saturday. That raised the Republican total to 216, still two votes short.

The president took to the phone, but at least two Republicans turned him down. Finally, Bush talked Reps. Trent Franks of Arizona (a ninth defector from the Toomey letter) and Butch Otter of Idaho -- into voting "yes." They were warned that if this measure failed, the much more liberal Democratic bill would be brought up and passed.

The conservative Club for Growth's Steve Moore, writing to the organization's directors and founders, said defeat of the Medicare bill "would have been a shot across the bow at the Republican establishment that conservatives are sick of the spending splurge that is going on inside Washington these last few years."

Hammering the conservatives to prevent that may have been only a short-term triumph.

Exhibit 6

Who Tried To Bribe Rep. Smith?

Stop protecting him, Congressman.
By Timothy Noah
Posted Monday, Dec. 1, 2003, at 3:17 PM PT

Rep. Nick Smith, R-Mich., says that sometime late Nov. 21 or early in the morning Nov. 22, somebody on the House floor threatened to redirect campaign funds away from his son Brad, who is running to succeed him, if he didn't support the Medicare prescription bill. This according to the Associated Press. Robert Novak further reports,

> **On the House floor, Nick Smith was told business interests would give his son $100,000 in return for his father's vote. When he still declined, fellow Republican House members told him they would make sure Brad Smith never came to Congress. After Nick Smith voted no and the bill passed, [Rep.] Duke Cunningham of California and other Republicans taunted him that his son was dead meat.**

Speaking through Chief of Staff Kurt Schmautz, Smith assured Chatterbox that Novak's account is "basically accurate." That means Smith was an eyewitness to a federal crime. United States Code, Title 18, Section 201, "Bribery of public officials and witnesses," states that under federal law, a person commits bribery if he

> **directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or *promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity*** [italics Chatterbox's], **with intent to influence any official act. ...**

Promising to direct $100,000 to Rep. Smith's son's campaign clearly meets the legal definition of bribery. The only question, then, is who to prosecute. The AP had Smith attributing threats to support his son's opponent to "House GOP leaders," but that was a paraphrase, and it is possible Smith meant someone else when he spoke of an actual offer of $100,000. We know House Speaker Dennis Hastert spent a lot of time that night trying to win over Smith. The trade publication *CongressDaily* spotted Hastert around 4 a.m., about an hour into the extended Medicare roll call, placing his arm around Smith and gesturing. Twenty minutes later, *CongressDaily* saw Hastert work Smith over again, this time with Health and Human Services Secretary Tommy Thompson. At 5:30 a.m., with less than half an hour left until the final tally, *CongressDaily* saw Hastert and Thompson give it one final try. The *Washington Post*'s David Broder, in his Nov. 23 column, wrote that House aides "recounted that Hastert said Smith's help was vital to the party and the president—a fitting gift at the end of a long career—and suggested it would also help Smith's son, who plans to run for the seat." That's pretty close to Novak's version.

But according to Hastert spokesman John Feehery (as quoted by the AP), Hastert merely said "that a vote on this would help him and help his son because it would be a popular vote." Ordinarily, Chatterbox would consider that a laughably weak denial. But Feehery told Chatterbox that Smith had *personally assured* the speaker that he wasn't the individual he'd complained about. Schmautz, Smith's chief of staff, said Smith had further clarified that the perpetrator not only wasn't Hastert; it wasn't Thompson or House Majority Leader Tom "the Hammer" DeLay, either.

Obviously Smith doesn't want to alienate the GOP establishment by hurling criminal accusations at whoever this phantom bribe-giver may be. But it's a little late for that. If Smith witnessed an attempted

bribery, he has an obligation as a citizen—and even more so, as member of Congress—to make that person's identity known to law enforcement officials. Marc Miller, a Washington attorney who advises clients on ethics issues, told Chatterbox that what Novak described not only looked like "a slam-dunk violation of the bribery law" but probably also included "a smorgasbord of other criminal violations." Rep. Smith, Miller said, "should really be sharing the specifics with the Justice Department."

So, Congressman. Enough with the guessing games. Who tried to bribe you?

[*Update, Dec. 2*: In a Nov. 28 commentary in the *Lenawee (Michigan) Connection*, Rep. Smith himself made reference to "bribes and special deals" that "were offered to convince members to vote yes," though he shed little further light on who, his own case, the perpetrator or perpetrators were:

> **Other members** [i.e., not Hastert] **and groups made offers of extensive financial campaign support and endorsements for my son, Brad, who is running for my seat. They also made threats of working against Brad if I voted no.**

If the Bush Justice department hasn't made inquiries about this yet, it isn't doing its job.]

Timothy Noah writes "Chatterbox" for ***Slate****.*

Exhibit 7

RPTS STRICKLAND

Mr. Vandenbroek. WKZO time, 1:26.

Let me set this up briefly. I spoke with Congressman Nick Smith on Monday. This is right after the President visited Detroit and Dearborn. I have not edited this tape. In the midst of it, you will hear the quality change. That is because he went from a digital phone service to an analog phone service. You all know what that's like. But here now, unedited, Nick Smith:

Now, just last week the controversial bill passed, the health care bill passed the Congress. Have kind of the axes been buried? Is everybody just kind of make up and move on? How did you communicate with the President about the vote from last week?

Mr. Smith. When civility -- when civility breaks down and arm twisting gets so serious -- Kevin, here is sort of what happened. If the bill gets on the floor and and it's up for a vote and they start the vote, the prestige of leadership is partially at stake if the vote doesn't succeed for the Majority. And that's what happened in this case. They didn't have the votes.

I had voted against -- last year and last spring against the prescription drug add-on provisions that -- that's gonna

cost a heck of a lot of money. And the arm twisting was probably as strong as I've ever seen it in my 16 years in the Michigan legislature and my 11 years in Congress.

They threatened -- here's what they did. They -- they -- they started out by offering the carrot. They know what's important to every Member and what's important to me is my family and my kids. And I term-limited myself, and so Bradley, my son, is running for Congress. And so the first offer was to give him $100,000-plus for his campaign and endorsements by national leadership. And -- and I said, no, I'm going to stick to my guns on what I think is right for the constituents in my district.

And so what they did then is come -- come forth with sort of the stick. And they said, well, if you don't change your vote -- this is about 4 a.m., Saturday morning -- then some of us are going to work to make sure your son doesn't get to Congress. And that kind of personal attack is just sort of beyond what anybody should do. So I told them to get the heck out of there. And I might have used a different word besides "heck," I don't know. But it's -- it's a tough situation when civility breaks down.

Mr. Vandenbroek. A week later, are we seeing that we are getting back to more civil climes, more civil environments under the Dome?

Mr. Smith. Well, you know the leadership is -- they

talk -- when they scrunched me in between the Secretary of Health and Human Services, Tommy Thompson, and the Speaker of the House, Denny Hastert, they talked about philosophy and principle and what this would mean policywise maybe in future years. And it's still, in terms of the tremendous increase in cost to future generations, it was a "no" for me.

It doesn't do that much for seniors. It will probably help in the election next year, but 3 and 5 years from now people are going to find out what's in the bill and they're gonna -- they're gonna start hurting and I think they are going to start blaming the people that voted for it.

Mr. Ford. It's 1:30 and Robert Ford in the 59-second local news update.

Kalamazoo's proximity to big cities like Chicago and Detroit is part of the reason former Pfizer scientists have decided to locate new company, Seetox, in Kalamazoo's --

Exhibit 8

Nick Smith's Press Release - December 4, 2003

Smith Comments on Allegations Surrounding Medicare Vote

(Washington, D.C.) -- "I have received many inquiries about lobbying pressure on the Medicare vote that took place on November 21 and the morning of November 22. I talked to a lot of members and organizations about the bill before and during the vote. I think I made it clear that I opposed the legislation because it was not good fiscal policy.

"I want to make clear that no member of Congress made an offer of financial assistance for my son's campaign in exchange for my vote on the Medicare bill. I was told that my vote could result in interested groups giving substantial and aggressive campaign 'support' and 'endorsements.' No specific reference was made to money.

"Some members said they would work against Brad if I voted no. My son called and said, 'I don't want to go to Congress that way' and 'Do the right thing.'

"The vote was taking place in the middle of the night. People were frustrated and nerves were frayed on all sides. The lobbying effort on behalf of the legislation was intense. Anyone with information can bend my ear, but they can't twist my arm.

"The lobbying from members was intense, but I want to be absolutely clear that I believe no member violated any ethical rule in this episode. I see no need for an ethics investigation, let alone a criminal investigation."

LSJ.com
Lansing State Journal

Exhibit 9

Published December 05, 2003

Rep. Smith backpedals on claims of vote bribery

'No specific reference was made to money,' he says

By Katherine Hutt Scott
State Journal Correspondent

WASHINGTON - U.S. Rep. Nick Smith of Addison appeared to backpedal Thursday on his allegation that he was offered a bribe in exchange for voting for major Medicare legislation.

Smith, a six-term Republican who will retire next year, has said he was told that if he voted for the bill, his son would receive money for his 2004 congressional campaign. Brad Smith, also a Republican, is running to replace his father in Congress.

But in a statement Thursday, Nick Smith said, "No specific reference was made to money."

"I want to make clear that no member of Congress made an offer of financial assistance for my son's campaign in exchange for my vote on the Medicare bill," the statement said.

"I was told that my vote could result in interested groups giving substantial and aggressive campaign 'support' and 'endorsements.' Some (House) members said they would work against Brad if I voted no."

Smith did vote against the bill, which has since passed the House and the Senate and is awaiting President Bush's signature. Smith has not identified who made the offer.

Also Thursday, the Justice Department said it would review complaints from political watchdog groups about the alleged bribe, which is normal procedure.

Syndicated columnist Robert Novak wrote in a Nov. 27 column that Smith was told business interests would give $100,000 to his son's congressional campaign if Smith voted in favor of the bill.

What's next

- The Justice Department said Thursday it will review complaints from political watchdog groups that Republican House leaders tried to bribe Rep. Nick Smith, R-Addison, to vote for a Medicare bill.

- Justice Department spokesman Mark Corallo said the complaints were received and will be reviewed, which is normal procedure.

Source: Associated Press

Smith's chief of staff, Kurt Schmautz, said Smith told him Novak's account was "basically accurate."

In a column the day after the Nov. 22 House vote, Smith wrote, "Bribes and special deals were offered to convince members to vote yes.

"I was targeted by lobbyists and the congressional leadership to change my vote," Smith wrote. "Other members and groups made offers of extensive financial campaign support and endorsements for my son."

Brad Smith said his father told him the evening before the vote that a combination of "interest groups and key Republicans" had offered the congressman "financial contributions and endorsements" for Brad Smith's campaign.

Novak's column said fellow Republican House members told Smith that if he voted no, they would make sure Brad Smith never came to Congress. After Smith voted no and the bill passed, Rep. Duke Cunningham of California and other Republicans told Smith his son was "dead meat," according to Novak.

In a letter dated Thursday, a watchdog group called upon Smith to name the individuals he says tried to bribe him.

The letter was written by Melanie Sloan, executive director of the Citizens for Responsibility and Ethics in Washington, which describes itself as nonpartisan. Sloan said she once worked for Democratic members of Congress.

Thursday's letter also said "it appears likely" that House Speaker J. Dennis Hastert of Illinois or Health and Human Services Secretary Tommy Thompson, or both, "attempted to bribe and extort you." The letter said that was based on accounts in the publication Congress Daily about which members clustered around Smith on the House floor as the Medicare vote neared completion.

Spokesmen for Hastert and Thompson denied that the two directed promises or threats at Smith.

Sloan's group, the Democratic National Committee and The Campaign Legal Center, a nonpartisan watchdog group on campaign and election law issues, have called for federal investigations of the alleged bribe.

Exhibit 10

JOEL HEFLEY, COLORADO
CHAIRMAN
DOC HASTINGS, WASHINGTON
JUDY BIGGERT, ILLINOIS
KENNY C. HULSHOF, MISSOURI
STEVEN C. LATOURETTE, OHIO

JOHN E. VARGO,
CHIEF COUNSEL/STAFF DIRECTOR
VIRGINIA H. JOHNSON,
COUNSEL TO THE CHAIRMAN
COLLEEN McCARTY,
ASSISTANT TO THE RANKING
MINORITY MEMBER

ONE HUNDRED EIGHTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515–6328

ALAN B. MOLLOHAN, WEST VIRGINIA
RANKING MINORITY MEMBER

STEPHANIE TUBBS JONES, OHIO
GENE GREEN, TEXAS
LUCILLE ROYBAL-ALLARD, CALIFORNIA
MICHAEL F. DOYLE, PENNSYLVANIA

SUITE HT-2, THE CAPITOL
(202) 225-7103

December 8, 2003

Personal and Confidential

The Honorable Nick Smith
U.S. House of Representatives
2305 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Smith:

This concerns a report that appeared in the news media indicating that during the night of November 21-22, 2003, when the Medicare Prescription Drug Act was before the House, a Member of the House told you that business interests would give $100,000 to your son's congressional campaign in return for your vote in support of the legislation. We are aware that while reportedly a member of your staff confirmed the accuracy of this report, you subsequently issued a statement saying that no House member made an offer of financial assistance for your son's campaign in exchange for your vote.

Rule 18(a) of the Rules of the Committee on Standards of Official Conduct authorizes us, as Chairman and Ranking Minority Member of the Committee, to jointly gather information concerning any alleged violation by any House Member or staff person of any law, rule or standard governing official conduct. Pursuant to Committee Rule 18(a), we are requesting that you provide us with a complete statement of your recollections of this matter. The provision of information to the Committee under this rule is voluntary. We believe, however, that your cooperation in this matter will be helpful to us in discharging our duties as Chairman and Ranking Minority Member of the Committee, and to the Committee in discharging its responsibilities to the House of Representatives.

Specifically, we request that you provide us with a description of each conversation, discussion or other communication in which you participated in the period of November 21-22, 2003 that included the subject of your vote on the Medicare Prescription Drug Act and your son's congressional campaign. Regarding each such communication, to the best of your ability, please provide the name(s) of the other participant(s) and any other individual(s) who were present, and a statement of the substance of the communication.

We request that your response be as specific and detailed as possible, and that you also provide us with any documents in your possession that support your response. We request that you submit your response to the Committee by December 18, 2003.

Enclosed is a copy of the Committee's rules for your information. If you have any questions, please contact the Committee's Chief Counsel, John E. Vargo, at (202) 225-7103.

Sincerely,

Joel Hefley
Chairman

Alan B. Mollohan
Ranking Minority Member

Exhibit 11

Nick Smith
7TH DISTRICT, MICHIGAN

COMMITTEE ON SCIENCE
CHAIRMAN, SUBCOMMITTEE ON RESEARCH

COMMITTEE ON AGRICULTURE

COMMITTEE ON INTERNATIONAL RELATIONS

REPUBLICAN POLICY COMMITTEE

REPUBLICAN STUDY COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515–2207

2305 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
202.225.6276

JACKSON:
517.783.4486

BATTLE CREEK:
616.965.9066

ADRIAN:
517.265.5012

CHARLOTTE:
517.543.0055

December 17, 2003

The Hon. Joel Hefley
Chairman
Committee on Standards of Official Conduct
HT2 Capitol
Washington, D.C. 20515-6328

The Hon. Alan B. Mollohan
Ranking Member
Committee on Standards of Official Conduct
HT2 Capitol
Washington, D.C. 20515-6328

Dear Chairman Hefley and Ranking Member Mollohan:

Thank you for your December 8, 2003 letter and for the opportunity to speak to my peers about the vote on the Medicare Prescription Drug Act ("Medicare bill"). Your letter refers to a news report about the Medicare vote. Let me say at the outset that the news report was incorrect. No House member made an offer of financial assistance to me for my son's campaign in exchange for my vote.

In my 11 years representing the Seventh District of Michigan and my 16 years serving in the Michigan state legislature, the vote on the Medicare bill occurred in one of the toughest environments I have ever experienced. I think most of our colleagues would say the same. As you know, the vote was held open for two hours and fifty-one minutes – a historic event in and of itself. During that time, the vote was very close and tensions were running very high. Pressure was being applied to members on both sides of the aisle, and there were several news stories about those efforts. We are all familiar with discussions that take place during the legislative process: deals are made and bridges get built. But, the vote on the Medicare bill evoked a particularly strong emotional reaction from me because some comments by members and others involved my son.

Let me be very clear that the Robert Novak media report that a member told me that business interests would give $100,000 to my son's congressional campaign in exchange for my vote on the Medicare bill is untrue. On the Friday evening before the vote on the bill started, a friend called and told me that if I voted for the bill my son's congressional campaign would receive "substantial and aggressive support" or words very close to that. This person was neither a member of Congress nor a lobbyist. However, combined with members' comments that there could be endorsements, business support and members coming to Michigan to campaign for my son, I deemed the statement credible. In my mind, I believed that this would mean tens of thousands, if not hundreds of thousands of dollars for my son's campaign if I voted for the bill.

Robert Novak reported the $100,000 figure in his November 27 column in the *Chicago Sun-Times* without citing a source. I did not provide this figure to Mr. Novak. Unfortunately, a

few days after reading his column, I repeated the same figure in a live radio interview on WKZO, from a cell phone while driving my car. Although I continue to believe Mr. Novak's figure is in the ballpark of what my son's campaign could have received, it was a mistake for me to repeat the $100,000 figure.

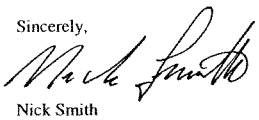
It is true that I – like many others on both sides of the aisle – faced significant pressure that night. It is true that statements were made regarding members' support and/or endorsements. It is also true that members suggested opposition to my son's campaign if I persisted in voting against the bill. Again, I regard as credible the statements that my son's campaign could receive substantial and agressive support, including support from third parties. But I repeat, no member offered me, or my son, campaign money for my vote.

I appreciate your inquiry and respect your duty to discharge your responsibilities to the House of Representatives. However, as you might imagine, I had many conversations with members and others in the course of being lobbied for this bill. I had conversations with at least 30-40 members of Congress. Even though I do recall an overarching message that my son's campaign could be affected by my vote, it would be unfair for me to try to reconstruct exactly the words that were said and who said them. I simply cannot do that with precision. What I am certain about is that my colleagues and others would probably have varied, and oftentimes contradictory, recollections that would lead to an unresolvable, distasteful, and unproductive fact dispute.

Mr. Chairman and Mr. Mollohan, the Medicare vote evoked strong emotions. I firmly believe that my colleagues and others were doing what they believed was necessary to pass this legislation. I do not believe they meant to do me any harm. Ultimately, in a time of high emotion, we were all doing our jobs: people were working very hard to pass a bill, and I was working equally hard to hold my position, which I did.

I hope the foregoing is both informative and responsive to the concerns of the Committee. If I can be of further assistance in helping your committee conclude this matter expeditiously, please do not hesitate to contact me.

Sincerely,



Nick Smith
Member of Congress

NS/ks

Exhibit 12

GOP's Pressing Question on Medicare Vote

Did Some Go Too Far To Change a No to a Yes?

By R. Jeffrey Smith
Washington Post Staff Writer
Tuesday, December 23, 2003; Page A01

About 20 Republican congressmen -- all fiscal conservatives -- gathered nervously in a back room at the Hunan Dynasty restaurant on Capitol Hill on Nov. 21, trying to shore up their resolve to defy President Bush. It was the night of the big vote on the Bush administration's Medicare prescription drug bill, which they had concluded was too costly, and they began swapping tales about the intense lobbying bearing down on them.

Over egg rolls and pu-pu platters, one complained that a home-state politician had insinuated that he would run against him in the next primary unless the lawmaker voted for the bill. Another said House leaders had warned that if the bill was defeated because of his no vote, he might lose his subcommittee chairmanship. Several recalled being telephoned by insistent lobbyists from the health care industry.

But the most dramatic account was given by Rep. Nick Smith (Mich.), who is to retire next year and hopes his son will succeed him. According to two other congressmen who were present, Smith told the gathering that House Republican leaders had promised substantial financial and political support for his son's campaign if Smith voted yes. Smith added that his son, in a telephone call, had urged him to vote his conscience, and with the support of dissident colleagues, Smith stuck to his no vote.

The matter might have ended there had Smith not written his account in a Michigan newspaper column, adding an allegation involving threats of retaliation against his son's campaign if he voted no. Since then, he has declined to specify who might have pressured him, but his complaints have prompted outrage among Democrats and consternation among some Republican colleagues.

Lawmakers from both parties have complained about the tactics used on the night when the House leadership pushed the Medicare bill through by a vote of 220 to 215. The margin would have been even closer if some lawmakers had not changed no votes to yes when it became clear the bill would pass.

The Democratic National Committee and two independent groups that work on ethics issues have requested a Justice Department investigation into whether the pressure was not just routine Capitol Hill horse-trading but a violation of federal anti-bribery law.

The statute in question, Section 201 of U.S. Title 18, bars the offer or promise of anything of value for a decision or action on any "question, cause, suit, proceeding or controversy" pending before a public official. But the language leaves room for uncertainty about what the proper code of conduct is.

So far, the department says, no decision has been made on an investigation. "We are reviewing [the request] . . . to see what if any action would be taken," a spokeswoman said late last week, declining to comment further.

It was a little before dawn on Nov. 22 that the House passed the Medicare bill. And it was the next day that Smith wrote a column for the Lenawee Connection about the House leadership's use of what he called "bribes

and special deals" to eke out that margin of victory.

During the deliberations, Smith wrote, some "members and groups" had not only offered extensive financial support and endorsements for the campaign of his son, Bradley L. Smith, but also "made threats of working against Brad if I voted no."

In a subsequent interview with Michigan radio station WKZO, he spoke about being pressured by the "leadership" and said "they" had offered "$100,000-plus" before threatening that "some of us are going to work to make sure your son doesn't get to Congress" unless Smith relented.

Since then, Smith has declined to specify who allegedly offered the rewards and made the threats. A taciturn six-term lawmaker and part-time farmer who says he is withdrawing from Congress next year out of respect for the concept of term limits, Smith said he will cooperate with any official inquiry but does not want to point fingers publicly.

Smith has also qualified his initial criticisms in a way that has clouded identification of who may have made such offers or threats. In a Dec. 4 statement, he said that no member of Congress had directly offered money for his son's campaign. Instead, he said, he was "told that my vote could result in interested groups giving substantial and aggressive campaign 'support' and 'endorsements.' "

That wording left open the possibility that someone in the leadership had offered the prospect of substantial industry donations to his son's campaign. In his original statement to WKZO, Smith said "the first offer I got was from the pharmaceutical business groups that are pushing for this bill."

Smith made clear in his Dec. 4 statement that House Speaker J. Dennis Hastert (R-Ill.), who many witnesses saw in lengthy conversation with Smith the night of the vote, was not the lawmaker who dangled the prospect of such support. Smith's chief of staff, Kurt Schmautz, said it was not House Majority Leader Tom DeLay (R-Tex.), but he declined to comment on reports that Smith had told colleagues the offers were extended by members of the House leadership.

Smith also has said he misspoke when specifying that the offer was for about $100,000, but he has not clarified the issue.

Regarding the alleged threats, Smith said in a brief interview at his office that around 4 a.m. on Nov. 22, at least two members of Congress said they would do what they could to keep his son from being elected, a statement with less clear-cut legal implications. He said he interpreted that as a threat to finance his son's opponents in the Republican primary and to arrange for national endorsements of those opponents.

"I told them, not very politely, to get away from me," Smith said. "Threatening your kids is beyond the pale. It caught me by surprise. It made me mad."

Smith, 69, a veteran of the Michigan legislature, was elected to Congress in 1992 from Addison, Mich. (population 630). He has mostly kept a low profile in Washington, but he has a reputation for independence and for bridling at improprieties in public life.

He proudly directed a probe into the Michigan horse-racing industry that led to death threats against his family, and later pronounced himself "appalled" by the prevalence of check-writing in exchange for votes at the Michigan statehouse.

Smith, who farms soybeans and corn on 2,000 acres, has the seniority to be an Agriculture subcommittee chairman. According to three colleagues, he was denied the post last year in retaliation for his long-standing efforts to cap federal subsidies to large farmers.

Smith's colleagues say that in any event he would be an unlikely target for the financial reward he was allegedly offered. They note that when he first ran for the House, he vowed to refuse contributions from political action committees; since then, he has had some of the cheapest winning campaigns in the House.

"I thought it was easier to sell a cow or two than to feel any obligation for depending on somebody or owing them because I took PAC contributions," Smith said in the interview. "We're in a rural district . . . [with] strong values and convictions" about avoiding debts of any sort, he said.

In his radio interview, Smith described the arm-twisting he got during the Medicare vote as the strongest he has seen in 27 years in politics.

Once a vote is started, he told the radio station, "the prestige of leadership is partially at stake if the vote doesn't succeed for the majority. And that's what happened in this case. They didn't have the votes. . . . They started out by offering the carrot, and they know what's important to every member, and what's important to me is my family and my kids."

No other House Republicans have reported being offered campaign funds or being threatened during the vote. Since the Democrats lodged their ethics complaint, members of the House Republican leadership have issued statements saying they had no involvement in or knowledge of any untoward pressures.

Hastert spokesman Peter M. Jeffries described Smith's allegations as being without "foundation." House Majority Whip Roy Blunt (R-Mo.) said he offered no deals to Smith. Like other Republican leaders, he called attention to Smith's clarification of his initial remarks, saying, "Nick has learned that words do matter, and they need to be both thoughtful and accurate."

House Ways and Means Committee Chairman Bill Thomas (R-Calif.), whose political action committee donated $360,000 to Republican candidates in 2002, has said through a spokesman that he "did not offer campaign support" to Smith's son that night. Rep. Nancy L. Johnson (R-Conn.), who chairs the Ways and Means subcommittee on health, said her discussions that night "were focused solely and exclusively on the merits of the bill."

Only Rep. Randy "Duke" Cunningham (R-Calif.) has acknowledged speaking directly with Smith about his son. He said if Smith's son would vote the way Smith did, "he would not support the son's candidacy," spokeswoman Jessica Boulanger said. But Cunningham "did not threaten him," she added.

On the other hand, at least eight members of the Republican Study Committee -- a group of fiscally conservative House lawmakers, including many who opposed the Medicare bill -- said in interviews that they believe Smith told the truth about the pressure he received.

Rep. Gil Gutknecht (R-Minn.), who was present at the dinner, recalled Smith saying it was "people from leadership" who had offered the money. He said Smith did not say who it was, but he assumed it was someone who controlled a "large leadership PAC, who can raise a hundred thousand dollars by hosting a few fundraisers."

"I think something happened," Gutknecht said. "If it happened, then somebody in the leadership is guilty of at least gross stupidity. . . . Whoever made that comment should resign."

Rep. Tom Tancredo (R-Colo.), who was also at the dinner, recalls Smith telling the group that "someone had said his son . . . would be the beneficiary if he would vote for the bill, up to the tune of about $100,000. . . . If Nick Smith said it happened, it happened."

Rep. Jeff Flake (R-Ariz.) recalls Smith telling the group that his son was promised an endorsement and funds

from the National Republican Congressional Committee. Carl Forti, a spokesman for NRCC Chairman Thomas M. Reynolds (R-N.Y.), said Reynolds "did not make any sort of offers to Mr. Smith."

"It's all going to be just as Nick said," said Rep. Roscoe G. Bartlett (R-Md.). "When you see people making more than a million dollars a year on K Street, there is just too much money in the process."

Researchers Karl Evanzz and Margaret Smith contributed to this report.

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Exhibit 13

Thursday, February 12, 2004

Exclusive Report

Smith: Heavy arm-twisting, no money offered

Congressman details pressure for 'yes' vote on drug bill, says he's cooperating with probe.

By Lisa Zagaroli and Deb Price / Detroit News Washington Bureau

Smith

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WASHINGTON — U.S. Rep. Nick Smith, the Michigan Republican under fire for suggesting he was promised money for his son's Congressional campaign in exchange for a vote, reaffirmed Wednesday he was offered "aggressive and substantial" support that he interpreted to include finances.

"Nobody mentioned any dollar amount," Smith said. "Members of Congress are really too smart to come up to you on the floor and say, 'We'll give you so many dollars for this.' "

In his first extensive comments on the matter since shortly after he refused to vote for a controversial Medicare prescription drug benefit in late November, Smith told The Detroit News that he would cooperate with a House ethics committee inquiry that may be the subject of a closed-door hearing today.

The case has become a political hot potato, with some Democrats and other critics calling for an investigation into whether the incident strayed beyond intense but normal legislative arm-twisting into the realm of bribery.

The case could have broad impact for Smith and the U.S. House.

Smith, due to retire this year, could find his six-term career and reputation as a lawmaker of high integrity overshadowed by the controversy.

Politically, the flap already is adding fuel to the Democrats' election-year pitch to voters to return them to control over the House, arguing that Republican stewardship has deteriorated into a hardball game heavily influenced by business interests.

Republicans counter that the Democrats, also skilled arm-twisters, are bitter about having been voted into the minority and are merely trying to gain political advantage.

Meanwhile, congressional watchdog groups are seizing on the incident to call for a sweeping overhaul of how the chamber polices itself.

Smith, a farmer from the south central Michigan town of Addison, last

year announced he wouldn't seek re-election this November. One of his sons, Brad, launched a bid to replace him.

A longtime fiscal conservative who frets over matters like the national debt limit and the long-term solvency of Social Security, Smith decided to vote against President Bush and many of his fellow Republicans because he thought the prescription drug benefit for senior citizens was underfunded.

"I had researched and studied this bill I suspect as well as any member who was on the committees that put it out," he said.

Because the legislation was so important, Smith said he decided to stay on the House floor after casting his no vote. "I took a lot of heat," he said.

Smith estimated that between 40 and 60 lawmakers pressured him the night of Nov. 21 and into the morning of Nov. 22, as Republicans held the vote open for about three hours to collect enough votes for the final 220-215 passage.

First, lawmakers offered help getting his son elected, Smith said.

"I was told we could give Brad aggressive and substantial campaign support," he said. "I interpreted that as to include financial support for his campaign. Nobody actually said there will be financial support for Brad."

Made two mistakes

Smith said he made two mistakes after the vote. In a column he wrote the next morning for a Michigan newspaper, he used the word "financial" when he wrote that "members and groups made offers of extensive financial campaign support and endorsements for my son, Brad."

In the same column, he wrote that "bribes and special deals were offered to convince members to vote yes."

He said his second mistake was repeating on the radio a figure he read in syndicated columnist Robert Novak's column, which claimed Smith had been offered $100,000.

Smith insisted nobody had attached a dollar figure to their support. Nonetheless, he reportedly told colleagues at dinner that the amount was offered to help his son.

Under federal bribery law, it is illegal if anyone "directly or indirectly, corruptly gives, offers, or promises anything of value to any public official" to influence an official act.

When Smith wouldn't change his vote, his son was "threatened," Smith said. He wouldn't elaborate on what was said or name those who did so, saying, "I'm going to leave this up to the ethics committee."

However, he did tell of money-tinged threats. "One person came by and said 'We've got some money collected already to make sure your son doesn't get here,' but that was after the vote," he said.

Dems aggressive, too

Smith said he regretted that the issue had become politicized by Democrats he claims were leaning just as heavily on their own members to oppose the bill.

"This is where $20 million bridges get built, when leadership is pushing votes like this," he said of the negotiating that goes on during close votes.

"Democrats and Republicans know no side is less guilty in the pressure and the arm-twisting they put on members. Part of the question this is bringing up as far as us examining ourselves is what's reasonable. The

Democrats were just as aggressive."

Smith said he's been on the receiving end of high-pressure tactics before, but this case was different for one reason:

"With me personally they crossed the line when they threatened my son," he said.

"I'm very insulted. I was angry. There's no question when they start using my family and threatening my son," he said.

'New level of hardball'

Former House Minority Whip David Bonior, D-Mount Clemens, said what he has heard of the Medicare vote suggests the arm-twisting had reached "a new level of hardball."

Before leaving Congress in 2000, Bonior served as a whip, a leadership role whose job it is to gather votes to pass party-backed legislation.

Arm-twisting is part of good politics, he said, and lawmakers are sometimes rewarded with pet projects for their district, plum committee assignments or fund-raising visits by high-profile lawmakers to their district to return the favor of a much-needed vote.

Threatening a member would be counter-productive, Bonior said, as would be offering money, which could raise ethical and legal questions.

"You make your best case," he said of what he considers acceptable arm-twisting. "You would hurt your case by threatening people in an adult world. It is not worth doing for practical or moral purposes.

"You give it your best shot, with your best argument. And when they are in a tough situation, that's the kind of person you will want to help."

Bonior said holding a vote open for three hours to get enough support is unheard of.

The House Committee on Standards of Official Conduct said it has begun a fact-finding inquiry into the case, and has a meeting scheduled today. But because it conducts its business behind closed doors, it's unclear whether Smith is on the agenda.

Exhibit 14

JOEL HEFLEY, COLORADO
CHAIRMAN
DOC HASTINGS, WASHINGTON
JUDY BIGGERT, ILLINOIS
KENNY C. HULSHOF, MISSOURI
STEVEN C. LATOURETTE, OHIO

JOHN E. VARGO,
CHIEF COUNSEL/STAFF DIRECTOR
PAUL M. LEWIS,
COUNSEL TO THE CHAIRMAN
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MINORITY MEMBER

ONE HUNDRED EIGHTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
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Washington, DC 20515–6328

ALAN B. MOLLOHAN, WEST VIRGINIA
RANKING MINORITY MEMBER

STEPHANIE TUBBS JONES, OHIO
GENE GREEN, TEXAS
LUCILLE ROYBAL-ALLARD, CALIFORNIA
MICHAEL F. DOYLE, PENNSYLVANIA

SUITE HT-2, THE CAPITOL
(202) 225-7103

February 13, 2004

Personal and Confidential

The Honorable Nick Smith
U.S. House of Representatives
2305 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Smith:

This concerns your response of December 17, 2003 to our letter of December 8, 2003 requesting information on communications made to you concerning your vote on the Medicare Prescription Drug Act and your son's candidacy for the House. Pursuant to Committee Rule 18(a), we wish to follow up on three points.

First, your letter of December 17th states that before the vote started on the evening of November 21st, a friend, who was neither a Member of Congress nor a lobbyist, called and told you that if you voted for the bill, your son's campaign would receive "substantial and aggressive support" or words to that effect. We consider that call to be an extremely serious matter, and while this Committee's jurisdiction is limited to House Members and staff, we believe there are a number of circumstances in which a call such as you have described may implicate the Committee's jurisdiction. Accordingly, we request that you identify the individual who called you, and that you describe in as much detail as you can what the individual said to you, and what you said to that individual.

Second, your letter refers to "members' comments that there could be endorsements, business support and members coming to Michigan to campaign for my son" if you voted for the legislation, but also states that "it would be unfair for me to try to reconstruct exactly the words that were said and who said them. I simply cannot do that with precision." While you may not be able to recall the precise words that were said, to the best of your ability, please identify any individuals whose comments to you referred to "business support" for your son's campaign or expressly or impliedly referred to financial support for his campaign, or included any representation whatsoever that a benefit, monetary or otherwise, would result to you or your son or materialize in any fashion in exchange for your vote on the Medicare legislation. In addition, please describe those comments in as much detail as you can, and identify any other individuals who were present when those comments were made.

Finally, our letter of December 8th, which was based on a report that had appeared in the news media, asked about communications made to you in the period of November 21-22, 2003. In view of an article that appeared in the *Washington Post* of December 23, 2003, a copy of which is enclosed, we are now concerned that the time frame we utilized in that letter was unduly limited. That article describes a meeting of certain Members regarding that legislation that occurred at a local restaurant on November 21. It states that according to two Members who were present at the meeting, you "told the gathering that House Republican leaders had promised substantial financial and political support for [your] son's campaign if [you] voted yes." It quotes one of the Members as recalling that you told the group that someone had said that if you voted for the bill, your son would be the beneficiary of "up to the tune of about $100,000." The article also states that another Member recalled your telling the group that your son was promised an endorsement and funds from the National Republican Congressional Committee.

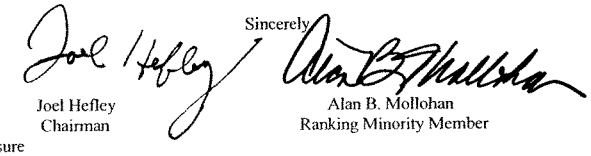
With regard to each statement, promise or other communication relating to your son's campaign that you referred to at the above-noted meeting of November 21st, we request that you provide us with a complete description of the statement, promise or communication, irrespective of when it was made. Regarding each, to the best of your ability, please provide the name(s) of the other participant(s) and any other individual(s) who were present when it was made, and a description of the substance of the promise, statement or communication.

We request that your responses to our requests be as specific and detailed as possible, and that you also provide us with any documents in your possession that support your response. As we noted in our previous letter, the provision of information to us under Committee Rule 18(a) is voluntary. However, we urge you to be entirely forthcoming, so that the decisions we are required to make on this matter will be made in the most informed manner possible.

We also note that you are free to retain a private attorney to advise you regarding, or to represent you in, your communications with the Committee on this matter. Particularly in that, as you noted to Committee counsel, the Justice Department is also making inquiry on this matter, you should consider consulting with private counsel.

We request that you submit your response to the Committee by February 24, 2004. If you have any questions, please contact the Committee's Chief Counsel, John E. Vargo, at (202) 225-7103.

Sincerely,



Joel Hefley
Chairman

Alan B. Mollohan
Ranking Minority Member

Enclosure

Exhibit 15

LAW OFFICES
WILLIAMS & CONNOLLY LLP
725 TWELFTH STREET, N.W.
WASHINGTON, D. C. 20005-5901
(202) 434-5000
FAX (202) 434-5029

DAVID D. AUFHAUSER
(202) 434-5049
daufhauser@wc.com

EDWARD BENNETT WILLIAMS (1920-1986)
PAUL R. CONNOLLY (1922-1978)

March 5, 2004

PRIVILEGED AND CONFIDENTIAL

VIA FACSIMILE AND FIRST-CLASS MAIL

The Hon. Joel Hefley, Chairman
The Hon. Alan B. Mollohan, Ranking Member
House Committee on Standards of Official Conduct
HT2 Capitol
Washington, DC 20515-6328

Re: Representative Nick Smith

Dear Chairman Hefley and Ranking Member Mollohan:

I am in receipt of your February 13, 2004 letter to Representative Nick Smith. As suggested by your correspondence, Representative Smith has referred the matter to undersigned counsel.

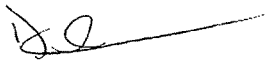
In December 2003, Representative Smith submitted to your Committee a lengthy and complete statement of his recollection of events surrounding the somewhat tumultuous late evening and early morning hour November 21-22 vote on amendments to the federal Medicare program, particularly as they apply to prescription drugs. Representative Smith heard argument and debate from numerous sources about the merits of the bill and the political cost of opposing it. In the end, Nick Smith followed his long-standing principles and voted "no."

In his letter of December 17, Representative Smith confirmed to your Committee that, notwithstanding press reports characterizing some of the speech and debate as implying that financial support for his son's Michigan congressional

PRIVILEGED AND CONFIDENTIAL

campaign could be affected by his vote, "no House member made an offer of financial assistance . . . for my son's campaign in exchange for my vote." By this reply, Representative Smith reaffirms that recollection.

Very truly yours,



David D. Aufhauser

cc: Representative Nick Smith

Exhibit 16

JOEL HEFLEY, COLORADO
CHAIRMAN
DOC HASTINGS, WASHINGTON
JUDY BIGGERT, ILLINOIS
KENNY C. HULSHOF, MISSOURI
STEVEN C. LATOURETTE, OHIO
JOHN E. VARGO,
CHIEF COUNSEL/STAFF DIRECTOR
PAUL M. LEWIS,
COUNSEL TO THE CHAIRMAN
COLLEEN McCARTY,
ASSISTANT TO THE RANKING
MINORITY MEMBER

ONE HUNDRED EIGHTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515–6328

ALAN B. MOLLOHAN, WEST VIRGINIA
RANKING MINORITY MEMBER
STEPHANIE TUBBS JONES, OHIO
GENE GREEN, TEXAS
LUCILLE ROYBAL-ALLARD, CALIFORNIA
MICHAEL F. DOYLE, PENNSYLVANIA

SUITE HT-2, THE CAPITOL
(202) 225-7103

July 8, 2004

CONFIDENTIAL

The Honorable Tommy G. Thompson
Secretary of Health and Human Services
The Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug Improvement and Modernization Act of 2003

Dear Secretary Thompson:

As you already may be aware, an Investigative Subcommittee of the Committee on Standards of Official Conduct (the "Committee") is conducting a formal inquiry regarding the above-captioned matter. As set forth in the enclosed resolution adopted by the Committee on March 17, 2004, the inquiry pertains to public statements made by Representative Nick Smith that he received communications linking support for the congressional candidacy of his son with Representative Smith's vote on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (hereafter the "Medicare Prescription Drug Act").[1]

We understand that you were present on the House floor during the nearly three hour vote on the above-referenced legislation. According to various press accounts, you spent a portion of your time on the House floor either in the vicinity of, or in direct communication with, Representative Nick Smith. Because of your reported proximity to Representative Nick Smith during events relevant to our inquiry, by this letter we are seeking a written statement from you setting forth your recollections of events that may have occurred during the vote on the Medicare Prescription Drug Act.

Specifically, we request that you submit a written response to the attached list of questions. In addition to providing answers to the attached questions, we would welcome any other information you possess relevant to the above-described public statements made by Representative Smith. We request that your submission to the Investigative Subcommittee be made under oath.

[1] A copy of the Rules of the Committee on Standards of Official Conduct for the 108th Congress is also enclosed with this letter.

We note for your attention the provision in the Committee's resolution that provides that "the Committee intends that all witnesses who provide testimony before the Investigative Subcommittee should be sequestered and should not communicate with any other witnesses regarding any aspect of their testimony unless the Investigative Subcommittee permits otherwise." Accordingly, we request that you maintain the confidentiality of this communication and of your response to the Investigative Subcommittee and not discuss this matter with anyone other than your legal counsel.

Your cooperation in this matter is appreciated. We request the submission of your response by July 28, 2004. If you have any questions, please contact Counsel to the Investigative Subcommittee Kenneth E. Kellner or Bernadette C. Sargeant at (202) 225-7103.

Sincerely,

Kenny C. Hulshof
Chairman
Investigative Subcommittee

Michael F. Doyle
Ranking Minority Member
Investigative Subcommittee

Enclosures

Before the Investigative Subcommittee of the Committee on Standards of Official Conduct U.S. House of Representatives

Questions to the Honorable Tommy G. Thompson

1. To the best of your ability, please describe how you came to be present on the House floor during the vote on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (hereafter the "Medicare Prescription Drug Act") on November 22, 2003. Please include in your response a description of the purpose of your presence on the House floor during the vote.

2. Please identify any aides or officials from the Department of Health and Human Services and from the White House that accompanied you to the House of Representatives on November 22, 2004, and/or were present on the House floor during the vote on the Medicare Prescription Drug Act. Please provide the full name, title, employing office, address, and telephone number for each individual you identify in your response.

3. Please explain the circumstances under which you came to speak with Representative Nick Smith during the vote on the Medicare Prescription Drug Act on November 22, 2004.

4. Please describe in as much detail as possible your conversations with Representative Nick Smith during the vote on Medicare Prescription Drug Act, including, to the best of your recollection, a description of the statements made by you to Representative Smith, and statements made by Representative Smith to you. Please also identify any other persons who participated in your conversations with Representative Nick Smith, and summarize any statements made by those persons.

5. Please describe any communications you had with officials of the Federal Bureau of Investigation or the Department of Justice regarding any matter related to allegations made by Representative Nick Smith.

6. Please describe your understanding of Representative Nick Smith's position on the Medicare Prescription Drug Act both before and after you spoke with him on the floor of the House of Representatives on November 22, 2003.

7. As you may be aware, on November 23, 2003, the day after the vote on the Medicare bill, Rep. Smith issued a press statement in which he said the Medicare vote was held open "as bribes and special deals were offered to convince members to vote yes." Please state whether you have any knowledge as to what Representative Smith was referring to when he uses the terms "bribes" and "special deals."

8. Please state whether in any conversation with you, Representative Nick Smith referenced any pressure placed on him to vote in favor of the Medicare Prescription Drug Act.

9. Please state whether you have any knowledge of any person suggesting or mentioning offers of support for Brad Smith's congressional campaign if Representative Nick Smith voted in favor of the Medicare Prescription Drug Act.

10. Please provide any information you have about a possible endorsement of Brad Smith by the National Republican Congressional Committee if Representative Nick Smith voted in favor of the Medicare Prescription Drug Act.

11. Please state whether in any conversation with you, Representative Nick Smith referenced any dollar amount that he had been offered by anyone for his son's campaign.

12. Please state whether anyone suggested to you the possibility of using Brad Smith's campaign to persuade Representative Nick Smith to vote in favor of the Medicare bill

13. Please provide any other information that you have that you think might be relevant to the Investigative Subcommittee's inquiry. Please include in your response the names of any individuals who you might think would have information relevant to this inquiry.

Exhibit 17

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

The General Counsel
Washington, D.C. 20201

The Honorable Kenny C. Hulshof
Chairman, Investigative Subcommittee
Committee on Standards of Official Conduct
U.S. Houses of Representatives
Washington, D.C. 20515

The Honorable Michael F. Doyle
Ranking Member, Investigative Subcommittee
Committee on Standards of Official Conduct
U.S. House of Representatives
Washington, D.C. 20515

Re: Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug Improvement and Modernization Act of 2003

Dear Mr. Chairman and Ranking Member Doyle:

By letter dated July 8, 2004, the Investigative Subcommittee of the U.S. House of Representatives' Committee on Standards of Official Conduct, issued certain questions to Secretary Tommy G. Thompson regarding the above-referenced investigation. Pursuant to my conversation with Kenneth E. Kellner, Counsel to the Investigative Subcommittee, the Subcommittee extended the date by which it requested a response by one week, to August 4, 2004.

Please find enclosed Secretary Thompson's written responses to the Subcommittee's questions, executed under oath, pursuant to the Subcommittee's request that the submission be made under oath.

Sincerely,

Alex M. Azar II

Enclosure

WRITTEN RESPONSE OF THE HONORABLE TOMMY G. THOMPSON, SECRETARY OF HEALTH & HUMAN SERVICES

I, Tommy G. Thompson, make the following responses, under penalty of perjury, to the questions propounded to me by letter dated July 8, 2004 from the Investigative Subcommittee of the Committee on Standards of Official Conduct of the United States House of Representatives in the Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug Improvement and Modernization Act of 2003.

I understand that the resolution adopted by the Committee states that "the Committee intends that all witnesses who provide testimony before the Investigative Subcommittee should be sequestered and should not communicate with any other witnesses regarding any aspect of their testimony unless the Investigative Committee permits otherwise." Although this request by the Committee is not binding, I have endeavored to accommodate the Committee's request. Therefore, I have not discussed the substance of my responses to the Subcommittee's questions with my senior staff (except for the members of the Office of the General Counsel who have assisted in the preparation of this written response), as I normally would, to refresh my recollections, set forth below, of the events that took place on the night of November 21, 2003 and early morning of November 22, 2003. The Subcommittee's questions deal with a very discrete and short interaction that occurred late at night or early in the morning over six months ago and that was but a very small part of a very active and lengthy process related to the passage of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (the Medicare Modernization Act). Accordingly, my memory of these events is somewhat vague, and I will do my best to provide information to the Subcommittee, within the confines that the Committee has requested regarding discussions with other individuals.

1. To the best of your ability, please describe how you came to be present on the House

floor during the vote on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (hereafter the "Medicare Prescription Drug Act") on November 22, 2003. Please include in your response a description of the purpose of your presence on the House floor during the vote.

I cannot remember all the details of how I came to be present on the House floor during the vote on the Medicare Modernization Act. My present recollection is that I was in the Capitol Building from approximately 10:00 p.m. on the evening of November 21, 2003 until about 6:30 a.m. the following day. At first, I was in the office that was serving as the headquarters for the vote; this may have been an office of Majority Leader DeLay, but I cannot be sure of that fact. As it got closer to voting, I was escorted to the House cloakroom, and was asked to talk to Members to provide them with any information they might need regarding the proposed legislation as they decided how to vote on the Medicare Modernization Act. I believe White House staff and departmental staff were with me in the cloakroom and were asking me to speak with particular Members. At various points in time, Members would also ask me to come with them onto the floor of the House to speak with other Members to see if they would vote for the legislation and to answer their questions. My purpose for being at the Capitol Building and on the floor of the House during the vote was to assist in securing passage of the Medicare Modernization Act and to answer any questions Members might have with regard to the proposed legislation.

2. **Please identify any aides or officials from the Department of Health and Human Services and from the White House that accompanied you to the House of Representatives on November 22, 2004 [sic], and/or were present on the House floor during the vote on the Medicare Prescription Drug Act. Please provide the full name, title, employing office, address, and telephone number for each individual you identify in your response.**

As I previously mentioned, I was in the Capitol Building for a considerable period of time, and therefore cannot remember every individual who was there from the White House or the

Department. Staff from the Department and the White House were coming and going all night. I do not recall staff from either entity being on the floor of the House, but cannot be certain of that fact. To the best of my recollection, the following individuals from the Department or the White House were with me at one point or another that evening:

- Jennifer Young, Assistant Secretary for Legislation
  Office of the Assistant Secretary for Legislation
  Department of Health and Human Services
  200 Independence Avenue, S.W.
  Washington, D.C. 20201
  (202) 690-7627

- I do not currently recall who from the Centers for Medicare and Medicaid Services (CMS) was there, but I would assume that individuals from CMS were there. I believe Thomas A. Scully was coming and going all night. He is currently Senior Counsel, Alston & Bird LLP, 601 Pennsylvania Avenue, N.W., Washington, D.C. 20004, (202) 756-3459.

- Amy Jensen-Cuniffe, Special Assistant to the President for Legislative Affairs
  Office of Legislative Affairs, House Liaison Office
  The White House
  1600 Pennsylvania Avenue, N.W.
  Washington, D.C. 20500
  (202) 456-6620

- Possibly Eric Pelletier, Deputy Assistant to the President for Legislative Affairs
  Office of Legislative Affairs
  The White House
  1600 Pennsylvania Avenue, N.W.
  Washington, D.C. 20500
  (202) 456-2230

- Doug Badger, Special Assistant to the President for Economic Policy
  National Economic Council
  Eisenhower Executive Office Building
  1650 Pennsylvania Avenue, N.W.
  Washington, D.C. 20501
  (202) 456-2800

- David W. Hobbs, Assistant to the President for Legislative Affairs
  Office of Legislative Affairs
  The White House

1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500
(202) 456-2230

3. Please explain the circumstances under which you came to speak with Representative Nick Smith during the vote on the Medicare Prescription Drug Act on November 22, 2004 [sic].

Someone asked me to talk to Representative Smith because he or she thought that Representative Smith could be convinced to change his mind and vote in favor of the Medicare Modernization Act. I do not remember who it was who asked me to speak to Representative Smith; it is possible that it may have been a Member from Michigan, but I am not sure.

4. Please describe in as much detail as possible your conversations with Representative Nick Smith during the vote on Medicare Prescription Drug Act, including, to the best of your recollection, a description of the statements made by you to Representative Smith, and statements made by Representative Smith to you. Please also identify any other persons who participated in your conversations with Representative Nick Smith, and summarize any statements made by those persons.

My conversation with Representative Nick Smith was brief. I remember asking Representative Smith if he had any questions on the bill that I could answer, or if there was any information that I could provide to him. He said no. I also asked him if there was any chance that he would vote for the bill. He said no. At some point, I remember Speaker Hastert coming over while I was in the presence of Representative Smith. I recall the Speaker saying, entirely in a joking manner, that if Representative Smith did not vote for the bill, he would wrestle him or sit on him. Another Member also spoke with Representative Smith at the time. Other Members were around Representative Smith and me at the time of our discussion, but I do not recall who they were. I believe the Member who had asked me to speak with Representative Smith was present during our discussion. While I was present, one Member – I do not recall who – told Representative Smith that, since Representative Smith was not running for re-election,

Representative Smith should vote for the bill because it is a good piece of legislation. I believe this was the first time that I learned that Representative Smith was not running for reelection. This discussion took place on the floor, and then some Member – I do not recall who – asked me to talk to someone else about the bill. There were Members all around during my conversation with Representative Smith. At some point, either during my conversation with Representative Smith, or shortly thereafter, I learned that Representative Smith had a son who was running for Representative Smith's seat in the House of Representatives. To the best of my recollection, no White House or Department staff were present during my conversation with Representative Smith.

5. Please describe any communication you had with officials of the Federal Bureau of Investigation or the Department of Justice regarding any matter related to allegations made by Representative Nick Smith.

I have not had any communications with officials of the Federal Bureau of Investigation or the Department of Justice regarding any matter related to the allegations made by Representative Smith.

6. Please describe your understanding of Representative Nick Smith's position on the Medicare Prescription Drug Act both before and after you spoke with him on the floor of the House of Representatives on November 22, 2003.

Prior to speaking with Representative Smith on the floor of the House on November 21/22, 2003, it was my understanding that Representative Smith was opposed to the Medicare Modernization Act. I believe I learned this from the Member who asked me to speak to him. Nothing in my conversation with Representative Smith caused me to think that he would change his mind.

7. As you may be aware, on November 23, 2003, the day after the vote on the Medicare bill, Rep. Smith issued a press statement in which he said the Medicare vote was held open "as bribes and special deals were offered to convince members to vote yes." Please state whether you have any knowledge as to what Representative Smith was referring to when he uses the terms "bribes" and "special deals."

It would not be appropriate for me to speculate as to what Representative Smith meant in that statement.

8. Please state whether in any conversation with you, Representative Nick Smith referenced any pressure placed on him to vote in favor of the Medicare Prescription Drug Act.

In my conversation with Representative Smith, he made no reference to any pressure being placed on him to vote in favor of the Medicare Modernization Act. Representative Smith seemed very resolute to me in his opposition to the bill.

9. Please state whether you have any knowledge of any person suggesting or mentioning offers of support for Brad Smith's congressional campaign if Representative Smith voted in favor of the Medicare Prescription Drug Act.

Apart from what I have read in the press subsequently, I have no knowledge of any person suggesting or mentioning offers of support for Brad Smith's congressional campaign if Representative Smith voted in favor of the Medicare Modernization Act. As I mentioned previously, I believe that night was the first time that I learned that Representative Smith was not running for re-election, and either during my conversation with Representative Smith, or shortly thereafter, I learned that his son was running for Representative Smith's seat in the House of Representatives.

10. Please provide any information you have about a possible endorsement of Brad Smith by the National Republican Congressional Committee if Representative Nick Smith voted in favor of the Medicare Prescription Drug Act.

I have no such knowledge.

11. Please state whether in any conversation with you, Representative Nick Smith referenced any dollar amount that he had been offered by anyone for his son's campaign.

During my conversation with him, Representative Smith made no such reference.

12. Please state whether anyone suggested to you the possibility of using Brad Smith's campaign to persuade Representative Nick Smith to vote in favor of the Medicare bill.

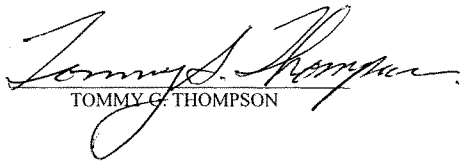
No one made any such suggestion to me.

13. Please provide any other information that you have that you think might be relevant to the Investigative Subcommittee's inquiry. Please include in your response the names of any individuals who you might think would have information relevant to this inquiry.

Beyond what I have related above, I do not believe that I have any further information that might be relevant to the Investigative Subcommittee's inquiry.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that, to the best of my recollection, the foregoing is true and correct.

Executed on August 4, 2004, in Washington, District of Columbia.



TOMMY G. THOMPSON

Exhibit 18

Subpoena Duces Tecum

By Authority of the House of Representatives of
The Congress of the United States of America

To: The Honorable Nick Smith, 2305 Rayburn House Office Building, Washington, D.C. 20515

You are hereby commanded to produce before the Investigative Subcommittee of the Committee on Standards of Official Conduct of the House of Representatives of the United States, of which the Honorable Kenny C. Hulshof is chairman, in Suite HT-2 of the Capitol, in the city of Washington, by no later than 12:00 p.m. on June 22, 2004, the things identified in the attachment to this subpoena concerning matters of inquiry committed to said Subcommittee, pursuant to the instructions specified in the attachment.

Witness my hand and the seal of the House of Representatives
of the United States, at the city of Washington, this
21st day of June 2004.

The Honorable Joel Hefley
Chairman
Committee on Standards of Official Conduct

The Honorable Alan B. Mollohan
Ranking Minority Member
Committee on Standards of Official Conduct

Attest:

Jeff Trandahl
Clerk of the House

Subpoena for Representative Nick Smith to produce the things identified in the attachment to this subpoena before the Investigative Subcommittee of the Committee on Standards of Official Conduct chaired by the Hon. Kenny C. Hulshof.

Served .....

.....

.....

.....

.....

.....

.....House of Representatives

ATTACHMENT TO SUBPOENA

The Honorable Nick Smith

A. Documents to be Produced

The original, complete, and unredacted journals or diaries of Representative Nick Smith for the calendar years 2003 and 2004.

B. Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

5. As used herein, "referring" or "relating" means and includes "constituting, "pertaining," "evidencing," "reflecting," "describing," or "having anything to do with," and in each instance, directly or indirectly. These terms mean, without limitation, any reference or relationship which either (a) provides information with respect to the subject of the inquiry, or (b) might lead to individuals who, or documents which, might possess or contain information with respect to the subject of the inquiry.

C. Instructions

1. This subpoena is addressed to you in both your official and personal capacities and includes, but is not limited to, documents from, or in the possession of, your campaign or your congressional offices, or any other responsive documents in your possession, custody, or control.

2. In complying with this Subpoena, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You are also required to produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. No records, documents, data or information called for by this request shall be destroyed, modified, removed, transferred or otherwise made inaccessible to the Investigative Subcommittee.

3. In the event that any entity, organization or individual denoted in this subpoena has been, or is also known by any other name than that herein denoted, the subpoena shall be read also to include them under that alternative identification.

4. Each document produced shall be produced in a form that renders the document capable of being copied.

5. Documents produced in response to this subpoena shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when this subpoena was served. Also identify to which paragraph from the subpoena such documents are responsive.

6. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same document.

7. If any of the subpoenaed information is available in machine-readable form (such as punch cards, paper or magnetic tapes, drums, disks, or core storage), state the form in which it is available and provide sufficient detail to allow the information to be copied to a readable format. If the information requested is stored in a computer, indicate whether you have an existing program that will print the records in a readable form.

8. If compliance with the subpoena cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.

9. In the event that a document is withheld, in whole or in part, based on a claim of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter of the document; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

10. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.

11. If a date or other descriptive detail set forth in this subpoena referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

12. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.

13. Send all responsive documents and records to:

Kenneth E. Kellner
Bernadette C. Sargeant
Counsel to the Investigative Subcommittee
Committee on Standards of Official Conduct
U.S. House of Representatives
Suite HT-2, the Capitol
Washington, DC 20515

Exhibit 19

november 17
november 23

17 monday

Ed took me to Det AP
good catch up in DC
started reading gossip
on Drug Bill - (no ? to check?
called Tom Saving of lex
A&M - Hunter, Am Enterprise I
$8-12 T extra cost

18 tuesday

Worked out w/ Jim Rea
3rd degree Tae-kwond Wed -
Meeting on Congressional
Gold medal for Business Math
Sci Science Efforts - Going well
- wrote Bill requiring OMB
to include "unfunded liabilities"
in annual budget report -

19 wednesday wk out at 6:30

Most of Day on Medicare -
prescription drug - spoke
at Republican Conference
on Increase of unfunded
liabilities of Drug bill -
$7-12 Trillion on top of existing
$14 T - Mary Christ gave
3 wk notice (bad news)

20 thursday wk out at 6:30

met w IR - Secret
briefing w/ Wolfowitz
and Gen Myers (Chf of Staff)
Reported in Policy Committee
and later in Rep. Study Comm
increased cost of Med-care-drug
bill - Q why is leadership saying
it will slow down cost of Medicare

21 friday

Didn't wk out - Started
getting lobbied on Drug Bill -
Jason Roe called at 5:30 & said
Business would contribute "heavy" to
Brooks company - IF - 6:30 Also -
NRCC would endorse Brad if
I would vote yes -
Said no -

22 saturday

More Pressure - 1:30 AM
T.D. said he would
personally endorse Brad (I teared up)
Sec T. Thompson
and Speaker D. Hastert
sat next to me and took "personal"
Lavon - Pres Bush called me -
Candice M. said she would work against
B. if I voted no

23 sunday

notes

addresses

resources

november 24
november 30

october 2003						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

november 2003						
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9	10	11	12	13	14	15
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23	24	25	26	27	28	29
30						

december 2003						
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14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

PlanAhead

24 monday

– At home – D.C. called and sent David Broder fax – (A-1 News in Wash Post) to Nick Smith will stand at K
6 other press calls –
My statement – Br heard called "I don't want to get to Congress that way" – "Do what's right"

25 tuesday

Good article

Maybe 10 more press calls. Twice my staff said that I said offers of financial campaign help or rather than substantial support

26 wednesday

Don't know how much this is good or bad for Brads campaign

27 thursday — thanksgiving day

Yates called off for Dec 1 and I rescheduled Dec 6 or 7th (Monday)

Great Smith Thanksgiving Dinner at Church and evening at our house. Stacia & Paul came on 7

28 friday

Breakfast at B & Dianne
Nice visit w Stacia & Paul

29 saturday

Lowered 3/4
Bad in Back
Bad Run –
Bought small presents and took to Stacia for B's birthday
Jim Cron dinner
W/ Stacia & Paul

30 sunday

Resting – didn't go to church.

HNS 0022

december 1
december 7

november 2003						
S	M	T	W	T	F	S
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december 2003						
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28	29	30	31			

january 2004						
S	M	T	W	T	F	S
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18	19	20	21	22	23	24
25	26	27	28	29	30	31

PlanAhead

1 monday
7 AM called S to work
happy Birthday

Medicare heating up on
my use of BRIBES to
get yes vote on Medicare
bill — I wrote financial
support in my column

2 tuesday
Called Ben ____ (NRCC
Bayner) he suggested
put out written statement
that no member actually
offered me money for Brad &
I voted yes — I sent it
out but included I was
offered before and after vote

3 wednesday
started aggressive and
substantial support for Brad's
campaign & I voted yes
and opposition to his
election & I voted NO
Press just used the part of
me backing off charge —
of "BRIBERY"

4 thursday
Up North to JB
Meeting spoke at breakfast
Ben ____ said put out written stm of Bill
talked to Dee Ann Gordon
A.C. — said No member offered
money specifically — just thing
like this would guarantee Brad
election — Coothing Sat. 76

5 friday
~~Sat~~ This could be serious
big time support for Brad
Bonnie suggests I get
out talking to Press
Too late — Maybe since
I wasn't mentioned it is not
technically bribery — but Sing
is hitting below the belt to get a vote

6 saturday
Went to Jackson COP
EV comm meeting
Brad there — good
thing I went —
I think

7 sunday

HNS 0024

notes addresses

december 8
december 14

november 2003						
S	M	T	W	T	F	S
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23	24	25	26	27	28	29
30						

december 2003						
S	M	T	W	T	F	S
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7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

january 2004						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

PlanAhead™

8 monday

Back to washington for approp vote — Brad & George came —

9 tuesday

George had good time on House floor w/ Nick — members congenial, 5 points Christmas party crowded — Brad had good time there & at White House

10 wednesday

Took George to White House & garden for full military reception for Chinese Premier — Good pictures — George had good experience

11 thursday

Dryer is running $4700 for Dave the Electrician and already paid Consumers $3,300 — for 400 Amp Service

12 friday

13 saturday

Breakfast at Bruce's

Shopping w Elaine & Nancy

14 sunday

Christmas play at Church Emily did outstanding job — Best ever!

notes

HNS 0025

Exhibit 20

FINAL VOTE RESULTS FOR ROLL CALL 656

H R 1904 YEA-AND-NAY 21-Nov-2003 3:09 PM
QUESTION: On Agreeing to the Conference Report
BILL TITLE: Healthy Forests Restoration Act

	YEAS	NAYS	PRES	NV
REPUBLICAN	216	9		3
DEMOCRATIC	70	130		5
INDEPENDENT		1		
TOTALS	**286**	**140**		**8**

FINAL VOTE RESULTS FOR ROLL CALL 657

H RES 453 2/3 YEA-AND-NAY 21-Nov-2003 3:20 PM
QUESTION: On Motion to Suspend the Rules and Agree, as Amended
BILL TITLE: Condemning the terrorist attacks in Istanbul, Turkey, on November 15, 2003, expressing condolences to the families of the individuals murdered and expressing sympathies to the individuals injured in the terrorist attacks, and standing in solidarity with Turkey in the fight against terrorism.

	YEAS	NAYS	PRES	NV
REPUBLICAN	225			3
DEMOCRATIC	200			5
INDEPENDENT	1			
TOTALS	**426**			**8**

FINAL VOTE RESULTS FOR ROLL CALL 658

S 1156 2/3 YEA-AND-NAY 21-Nov-2003 3:29 PM
QUESTION: On Motion to Suspend the Rules and Pass
BILL TITLE: Veterans Health Care, Capital Asset, and Business Improvement Act

	YEAS	NAYS	PRES	NV
REPUBLICAN	223	2		3
DEMOCRATIC	199			6
INDEPENDENT	1			
TOTALS	**423**	**2**		**9**

FINAL VOTE RESULTS FOR ROLL CALL 659

H RES 459 YEA-AND-NAY 21-Nov-2003 7:09 PM
QUESTION: On Ordering the Previous Question
BILL TITLE: Waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules (Relating to Medicare)

	YEAS	NAYS	PRES	NV
REPUBLICAN	225			3
DEMOCRATIC		201		4
INDEPENDENT		1		
TOTALS	**225**	**202**		**7**

FINAL VOTE RESULTS FOR ROLL CALL 660

H RES 459 YEA-AND-NAY 21-Nov-2003 7:19 PM
QUESTION: On Agreeing to the Resolution
BILL TITLE: Waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules (Relating to Medicare)

	YEAS	NAYS	PRES	NV
REPUBLICAN	225			3
DEMOCRATIC	3	199		3
INDEPENDENT		1		
TOTALS	**228**	**200**		**6**

FINAL VOTE RESULTS FOR ROLL CALL 661

H RES 458 YEA-AND-NAY 21-Nov-2003 7:27 PM
QUESTION: On Ordering the Previous Question
BILL TITLE: Waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules (Regarding certain appropriations bills.)

	YEAS	NAYS	PRES	NV
REPUBLICAN	225			3
DEMOCRATIC		201		4
INDEPENDENT		1		
TOTALS	**225**	**202**		**7**

FINAL VOTE RESULTS FOR ROLL CALL 662

H RES 458 RECORDED VOTE 21-Nov-2003 7:35 PM
QUESTION: On Agreeing to the Resolution
BILL TITLE: Waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules (Regarding certain appropriations bills.)

	AYES	NOES	PRES	NV
REPUBLICAN	224			4
DEMOCRATIC		202		3
INDEPENDENT		1		
TOTALS	**224**	**203**		**7**

FINAL VOTE RESULTS FOR ROLL CALL 663

H CON RES 206 2/3 YEA-AND-NAY 21-Nov-2003 7:44 PM
QUESTION: On Motion to Suspend the Rules and Agree
BILL TITLE: Supporting the Bone Marrow Donor Program

	YEAS	NAYS	PRES	NV
REPUBLICAN	223			5
DEMOCRATIC	199	2		4
INDEPENDENT	1			
TOTALS	**423**	**2**		**9**

FINAL VOTE RESULTS FOR ROLL CALL 664

H J RES 79 YEA-AND-NAY 21-Nov-2003 9:37 PM
QUESTION: On Passage
BILL TITLE: Making further continuing appropriations for the fiscal year 2004, and for other purposes

	YEAS	NAYS	PRES	NV
REPUBLICAN	222			6
DEMOCRATIC	184	16		5
INDEPENDENT	1			
TOTALS	**407**	**16**		**11**

FINAL VOTE RESULTS FOR ROLL CALL 665

H RES 463 YEA-AND-NAY 21-Nov-2003 11:19 PM
QUESTION: On Ordering the Previous Question
BILL TITLE: Waiving points or order against the conference report to accompany H.R. 1; Medicare Prescription Drug, Improvement, and Modernization Act

	YEAS	NAYS	PRES	NV
REPUBLICAN	228			
DEMOCRATIC		203		2
INDEPENDENT		1		
TOTALS	**228**	**204**		**2**

FINAL VOTE RESULTS FOR ROLL CALL 666

H RES 463 RECORDED VOTE 21-Nov-2003 11:28 PM
QUESTION: On Agreeing to the Resolution
BILL TITLE: Waiving points of order against the conference report to accompany H.R. 1; Medicare Prescription Drug, Improvement, and Modernization Act

	AYES	NOES	PRES	NV
REPUBLICAN	225	1		2
DEMOCRATIC		203		2
INDEPENDENT		1		
TOTALS	**225**	**205**		**4**

FINAL VOTE RESULTS FOR ROLL CALL 667

H R 2622 2/3 YEA-AND-NAY 21-Nov-2003 11:37 PM
QUESTION: Suspend the Rules and Agree to the Conference Report
BILL TITLE: Fair and Accurate Credit Transactions Act

	YEAS	NAYS	PRES	NV
REPUBLICAN	224	3		1
DEMOCRATIC	155	45	1	4
INDEPENDENT		1		
TOTALS	**379**	**49**	**1**	**5**

Exhibit 21

Voice message for Rep. Nick Smith
8:49 p.m. Friday, November 21, 2003

"Hi Dad. It's Brad calling... about 10 to 8. I'm sorry I missed your call. I left you a message on your cell. Ah, it's about 10 to 9, rather. I was at a fundraiser. I really hope that you pick this up.. and that you don't sway from your convictions and support the Medicare bill. Who cares what they say about me. This is our country we're talking about ...and your grandchildren's future. So, please stick to your guns. Thanks, bye."

Exhibit 22

November 19, 2003
Wednesday

All Day	V#11/22/03 1. 11/22/03 airfare from DCA to MI. $299. Etx: 0122195561265. 2. 11/17/03 airfare from MI to DCA. $210. Etx: 0122195496310. 3. 11/7/03 airfare from DC to MI $299. 0122195105272. 4. airport mileage $ 88.56 5. district mileage $342.36
All Day	NS in DC
7:45 AM - 8:00 AM	Radio: WTVB-Coldwater -- 517.279.1590-Ken Delaney every Wednesday
8:00 AM - 9:00 AM	*Conservative Opportunity Society - 121 Cannon -- Newt Gingrich; Terry Jeffrey, "Human Events" editor
9:00 AM - 10:00 AM	NS: GOP Conf Mtg -- 1100 LHOB
10:00 AM - 10:00 AM	*Grover Norquist Mtg -- 1920 L St, NW, Ste 200. 202.785.0266 Americans for Task Reform.
10:00 AM - 10:00 AM	HOUSE MEETS - V -- HR 2754 - Energy & Water - conf rpt
11:30 AM - 12:00 PM	GOP Press Conf - HC-5 -- Jobs-Economy House GOP Leadership, other members of the House GOP Conference, and small business owners who have benefited from tax relief at a rally to mark the recent gains in America's Economy! WHERE: HC-5, the U.S. Capitol. WHEN: Wednesday, November 19th 11:30 AM
12:00 PM - 12:00 PM	*Paul Weyrich Lunch -- 717 2nd St, NE - 202.546.3000 Free Congress Foundation. www.freecongress.org
12:30 PM - 12:30 PM	NS/David/Brian: National Corn Growers Mtg re: corn genome research -- 2305 RHOB Re: Corn Genome Research. *Staff, please note: Corn Growers specifically asked for Sci Research committee staff to participate in this mtg.* National Corn Growers Contact: 202.628.700, Betsy Croker. Attendees: Members of National Corn Growers Genome Research Committee: Gary Davis (Delaware, OH), Gayl Hopkins (Salix, IA), Kurt Jones (Sioux Rapids, IA); Sam Creed (Mo)
1:15 PM - 1:15 PM	NS/Kurt: RSC Mtg - H-236 -- room change! There will be an RSC Members meeting tomorrow (Wednesday, November 19) at 1:15 PM in HC-5.
1:30 PM - 1:30 PM	NS: Intl Terrorism Hrg - 2172 RHOB -- Afghanistan - democratizion and human rights OPEN joint hearing of the Subcommittee on the Middle East and Central Asia and the Subcommittee on International Terrorism, Nonproliferation and Human Rights to be held in Room 2172 Rayburn House Office Building: SUBJECT: Afghanistan: Democratization and Human Rights on the Eve of the Constitutional Loya Jirga WITNESSES: Panel I The Honorable Lorne W. Craner, Assistant Secretary- Bureau of Democracy, Human Rights and Labor, Department of State, Honorable John V. Hanford III, Ambassador-at-Large- Office of International Religious Freedom, Department of State. Panel II T. Kumar, Advocacy Director for Asia

November 19, 2003 Continued
Wednesday

and Pacific-Amnesty International, U.S.A.

2:30 PM - 2:30 PM	**NS/Brian: Rural Caucus Mtg - B308 -- Secy Thompson** The meeting with all CRC members and Sect. Thompson will be held in Room B-308 Rayburn tomorrow at 2:30
3:00 PM - 3:00 PM	**NS/Kurt Meet w/ Brian Rosa of GM -- 2305**

November 20, 2003
Thursday

All Day	V#11/22/03 Please See Above
All Day	NS in DC Please See Above
All Day	Dexter HS Journalism Class - cap tour -- Rod Satterthwaite, 734.424.4240 x7407 Home: 734 428.8800. 10950 M-52, Manchester, MI 48158. Group size: 21 (kids + chaperones). Request recd in DC 9/16/03, mec.
7:10 AM - 7:10 AM	NS: WAAM-Ann Arbor; Dave Pekrul -- 734.971.1607 re: Energy bill.
7:45 AM - 7:45 AM	Photo w/ Jhoon Rhee
8:35 AM - 8:50 AM	Radio Call WKHM-Jax -- 517.787.3397 (Greg O'Connor) Every Thursday
9:00 AM - 10:00 AM	NS: Special GOP Conf -- CHC- Pres Dining Room
10:00 AM - 10:00 AM	HOUSE MEETS - V -- HR 2754 - Energy and Water - conf rpt
11:00 AM - 11:00 AM	CANCELLED -- NS/Dave: Sci Mtg re Math/Sci Award -- 2305 RHOB Tom Lindsley (National Center for Educational Accountability), Susan Traymen (Business Roundtable)
11:45 AM - 11:45 AM	NS: Morgan Seitz, Chelsea HS -- 2305 RHOB
12:00 PM - 1:00 PM	POSTPONED -- Lunch w/ Nick -- Nick is assigned to Ford Bldg -- cannot ly for lunch Moved to Friday.
2:00 PM - 2:00 PM	NS: Tom Davis -- 2348 RHOB
3:00 PM - 3:30 PM	NS: MidEast Subc hrg - 2172 RHOB -- Saddam's Human Rights Violations Subcommittee on the Middle East and Central Asia <mecahear108.htm> 2:00 p.m., 2172 Rayburn House Office Building Hearing: Human Rights Violations Under Saddam Hussein: Victims Speak Out
4:45 PM - 4:45 PM	NS: Members Only Classified Briefing on Iraq -- 2118 RHOB Members-Only Classified Briefing on Iraq/War on Terror Thursday, November 20, 2003 4:45pm Armed Services Committee Hearing Room 2118 Rayburn HOB Administration Officials: Hon. Don Rumsfeld, Secretary of Defense Gen. Richard Myers, Chairman, Joint Chiefs of Staff

November 21, 2003
Friday

All Day	V#11/22/03 1. 11/22/03 airfare from DCA to MI. $299. Etx: 0122195561265. 2. 11/17/03 airfare from MI to DCA. $210. Etx: 0122195496310. 3. 11/7/03 airfare from DC to MI $199. **0122195105272.** 4. airport mileage **$ 88.56** 5. district mileage **$342.36**
All Day	**NS in DC**
9:00 AM - 9:00 AM	**HOUSE MEETS - V**
9:00 AM - 9:00 AM	**NS: GOP Policy Mtg - H122 -- OMB Director Josh Bolten** HOUSE POLICY MEETING END-OF-SESSION SPENDING GAME PLAN: OMB Director Josh Bolten will meet with the House Policy Committee at 9 a.m., Thursday, November 20, 2003, in the Speaker's Dining Room, H-122, the Capitol. The agenda will include final FY04 spending legislation and the FY05 outlook. Breakfast will be available. RSVP to 5-6168 or lara.walton@mail.house.gov; this meeting is Members Only.
9:00 AM - 9:00 AM	**NS: Theme Team H-236 -- PAUL WOLFOWITZ**
10:30 AM - 11:00 AM	**NS: Dave Finger/Dan Byers - 2305 RHOB -- USFA bill**
11:00 AM - 11:00 AM	**NS: Tape "Washington Report" cable show - energy bill. -- House Recording Studio, B310** Topic: Energy Bill. Guest: Rep. Billy Tauzin, chairman of the Energy and Commerce Committee. Contacts: Becky Kuhn, Rep. Tauzin's scheduler, x54031. Recording studio: x53941.
12:00 PM - 1:00 PM	**BLOCK for Lunch w/Nick S.**
4:00 PM - 4:30 PM	***Annual Jackson Christmas Parade -- Michigan Ave** Downtown Development Authority: 788-4355
7:00 PM - 7:00 PM	**NS: GOP Conf mtg -- HC-5**
8:15 PM - 8:15 PM	**AntiPrescription Drug Dinner - Toomey -- Hunan Restaurant (Penn betw 2nd & 3rd)**

November 22, 2003
Saturday

12:00 AM - 12:00 AM	**V#11/22/03** **Please See Above**
12:00 AM - 12:00 AM	**NS in DC** **Please See Above**
All Day	***Battle Creek Holiday Parade - 5:20p**
9:35 AM - 9:35 AM	**NS: Lv DCA on NW Flight to Kalamazoo -- V#112203W** Rec Loc MYP872. ETx 0122195561265 $299.
12:30 PM - 12:33 PM	**NS had reservatiosn on NW# 263 -- Seat 3C. $120 govt** Rec Loc MYP872 **(but NS actually took 9:30 am flight)**
5:20 PM - 7:20 PM	**GREG/NS: B.C. X-Mas parade -- Dwntwn B.C.** Meet in MI Works parking lot, 135 Hamblin Ave. GOP has float.
5:30 PM - 6:00 PM	****Veteran's Appreciation Night -- Western High School** contact Western HS student: Ben Stafford @ 517-531-3502 Lasagna dinner @ 6PM with program @ 7PM Program: Speakers, Russ McLogan, WWII veteran & author of ***Boy Soldier*** & Lt. Col Jefferson, Tuskegee Airman Student vocal performances, special video tribute to veterans, student speeches, local dignitaries will attend General Admission for non-veterans is $2.00. Must be reserved by contacting Ben Stafford.

Exhibit 23

HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

NICK SMITH
SEVENTH DISTRICT
MICHIGAN

11/23

Dear Mr. Speaker,

It was so difficult to say no to someone I respect so much yesterday morning. I've been proud to stand with you on so many issues because I know we both work for what we think is best for the country.

On the drug entitlement, we both felt strongly about our positions. I look forward to working with you again in the future.

Nick

Exhibit 24

SCHEDULE B (FEC Form 3)
ITEMIZED DISBURSEMENTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one)
☐ 17 ☐ 18 ☐ 19a ☐ 19b
☐ 20a ☐ 20b ☐ 20c ☒ 21

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NAME OF COMMITTEE (In Full)
WALSH FOR CONGRESS COMMITTEE

A. Full Name (Last, First, Middle Initial): Brad Smith For Congress
Mailing Address: P. O. Box 128
City: Somerset Center | State: MI | Zip Code: 49282
Purpose of Disbursement: POLITICAL DONATION (PRIMA
Candidate Name: C00391193
Category/Type
Office Sought: X House / Senate / President
State: MI District: 7
Disbursement For: 2004 X Primary General / Other (specify)
Transaction ID: D05NvD1
Date of Disbursement: 12 / 11 / 2003
Amount of Each Disbursement this Period: 1000.00
Refund or Disposal of Excess Contributions Required Under 11 C.F.R. 400.53

B. Full Name (Last, First, Middle Initial): Brady Faith Center
Mailing Address: P. O. Box 993
City: Syracuse | State: NY | Zip Code: 13201
Purpose of Disbursement: DONATION- PATRON
Candidate Name
Category/Type
Office Sought: House / Senate / President
State: District
Disbursement For: 2004 Primary X General / Other (specify)
Transaction ID: D05H2D2
Date of Disbursement: 11 / 03 / 2003
Amount of Each Disbursement this Period: 100.00
Refund or Disposal of Excess Contributions Required Under 11 C.F.R. 400.53

C. Full Name (Last, First, Middle Initial): C. N. Y. Black Repub,
Mailing Address: P. O. Box 281
City: Syracuse | State: NY | Zip Code: 13214
Purpose of Disbursement: DONATION
Candidate Name
Category/Type
Office Sought: House / Senate / President
State: District
Disbursement For: 2004 Primary X General / Other (specify)
Transaction ID: D05No01
Date of Disbursement: 10 / 04 / 2003
Amount of Each Disbursement this Period: 200.00
Refund or Disposal of Excess Contributions Required Under 11 C.F.R. 400.53

SUBTOTAL of Disbursements This Page (optional) ▶ 1300.00

TOTAL This Period (last page this line number only) ▶

FEC Schedule B (Form 3) Rev. 02/2003

○