

111TH CONGRESS }
1st Session

HOUSE OF REPRESENTATIVES

{ REVIEW NO.
09-9064

**OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF
REPRESENTATIVES**

Report and Findings

Transmitted to the
Committee on Standards of Official Conduct
on December 2, 2009
and released publicly pursuant to H. Res. 895 of the
110th Congress as amended



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CONGRESSIONAL ETHICS
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REPORT

Review No. 09-9064

The Board of the Office of Congressional Ethics (hereafter the "Board"), by a vote of no less than four members, on November 20, 2009, adopted the following report and ordered it to be transmitted to the Committee on Standards of Official Conduct of the United States House of Representatives.

SUBJECT: Representative Marcy Kaptur

NATURE OF THE ALLEGED VIOLATION: Representative Marcy Kaptur authored several fiscal year 2009 earmarks for clients of PMA Group, Inc. (hereafter "PMA"). During campaign cycles 2008 and 2010, Representative Kaptur received contributions to her campaign committee from PMA's PAC, PMA employees, the PACs of PMA clients for whom she authored earmarks, and the employees of those clients.

If Representative Kaptur solicited or accepted contributions or other items of value in exchange for or because of an official act, or solicited or accepted contributions or other items of value in a manner which gave the appearance that the contributions were linked to an official act, then Representative Kaptur may have violated 18 U.S.C. § 201(b) (Bribery), 18 U.S.C. § 201(c) (Illegal Gratuities), 5 U.S.C. § 7353 (Gifts), and House Rules and Standards of Conduct.

RECOMMENDATION: The Board of the Office of Congressional Ethics recommends that the Committee on Standards of Official Conduct dismiss the above allegations.

VOTES IN THE AFFIRMATIVE: 6

VOTES IN THE NEGATIVE: 0

MEMBER OF THE BOARD OR STAFF DESIGNATED TO PRESENT THIS REPORT TO THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT: Leo Wise, Staff Director & Chief Counsel.

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FINDINGS OF FACT AND CITATIONS TO LAW

Review No. 09–9064

On November 20, 2009, the Board of the Office of Congressional Ethics (hereafter the “Board”) adopted the following findings of fact and accompanying citations to law, regulations, rules and standards of conduct (in italics). The Board notes that these findings do not constitute a determination of whether or not a violation actually occurred.

I. INTRODUCTION

A. SUMMARY OF ALLEGATIONS

1. There is not substantial reason to believe that Representative Kaptur solicited or accepted contributions or other items of value in exchange for or because of an official act, or solicited or accepted contributions or other items of value in a manner which gave the appearance that the contributions were linked to an official act.¹

B. JURISDICTIONAL STATEMENT

2. The allegations that are the subject of this review concern Representative Kaptur, a Member of the United States House of Representatives from the 9th District of Ohio. The Resolution the United States House of Representatives adopted creating the Office of Congressional Ethics (hereafter the “OCE”) directs that, “[n]o review shall be undertaken . . . by the board of any alleged violation that occurred before the date of adoption of this resolution.” The House adopted this Resolution on March 11, 2008. Because the conduct under review occurred after March 11, 2008, review by the Board is in accordance with the Resolution.

C. PROCEDURAL HISTORY

3. The OCE received a written request for a preliminary review in this matter signed by at least two members of the Board on July 6, 2009. The preliminary review commenced on that date.² The preliminary review was scheduled to end on August 5, 2009.

4. At least three members of the Board voted to initiate a second phase review in this matter on August 5, 2009. The second phase

¹Rule 9 of the Office of Congressional Ethics. Rules for the Conduct of Investigations 11 (2009) provides that “[t]he Board shall refer a matter to the Standards Committee for further review if it determines there is a substantial reason to believe the allegation based on all the information then known to the Board.”

²A preliminary review is “requested” in writing by members of the Board of the OCE. The request for a preliminary review is “received” by the OCE on a date certain. According to H. Res. 895 of the 110th Congress (hereafter “the Resolution”), the timeframe for conducting a preliminary review is 30 days from the date of receipt of the Board’s request.

review commenced on August 6, 2009.³ The second-phase review was scheduled to end on September 20, 2009.

5. The Board voted to extend the 45-day second-phase review by an additional 14 days on September 17, 2009, as provided for under H. Res 895. The extension was scheduled to end on October 5, 2009.⁴

6. The Board voted to refer the matter to the Committee on Standards of Official Conduct for further review and adopted these findings on November 20, 2009.

7. This report and findings in this matter were transmitted to the Committee on Standards of Official Conduct on December 2, 2009.

D. SUMMARY OF INVESTIGATIVE ACTIVITY

8. Due to the nature of the allegations in this review, the OCE's investigation required the collection of information from a number of sources.

9. The OCE reviewed publically available records of campaign contributions to the campaign committees of Members of the House Appropriations Subcommittee on Defense (hereafter "Defense Subcommittee") from recipients of earmarks during the 2008 and 2010 campaign cycles. The review included campaign contributions to the leadership political action committees (hereafter "PACs"), if any, of these Members.

10. Specifically, the OCE reviewed campaign contributions to these Members from donors that were affiliated with the lobbying firm of PMA Group, Inc. (hereafter "PMA"), *i.e.*, contributions from the PMA PAC, PMA employees, the PACs of corporate clients of PMA (hereafter "PMA clients") and employees of PMA clients.

11. The OCE also reviewed campaign contributions to Members of the Defense Subcommittee from PACs of non-PMA clients, and employees of non-PMA clients.

12. Beyond Members of the Defense Subcommittee, the investigation included a review of campaign contributions from PMA clients and non-PMA clients to Representatives who are not on the Defense Subcommittee, but authored defense earmarks PMA clients and non-PMA clients.

13. The OCE requested information from forty PMA clients that received earmarks from Members of the Defense Subcommittee for fiscal years 2008 to 2010.

14. All of the PMA clients that the OCE contacted cooperated with the investigation, except for two.

15. Aeroflex and Kimball and Associates are the only PMA clients that refused to cooperate with the investigation.

16. Thirty-eight PMA clients and Representatives' offices produced documents totaling approximately 200,000 pages. These PMA clients also made witnesses available for interviews upon request of the OCE.

³According to the Resolution, the Board must vote on whether to conduct a second-phase review in a matter before the expiration of the 30-day preliminary review. If the Board votes for a second-phase, the second-phase begins when the preliminary review ends. The second-phase review does not begin on the date of the Board vote.

⁴*Id.* at § 1(c)(2)(A)(ii) (2008).

17. Based on the information discovered during the review of the produced documents, the OCE interviewed twenty-six individual PMA client witnesses.

18. In addition, the OCE interviewed six witnesses who were formerly employed as lobbyists with PMA during the 2008 and 2010 campaign cycles.

19. In sum, the OCE requested and received documentary, and in some cases testimonial, information from the following sources:

- (1) 21st Century Systems, Inc.;
- (2) AAR Composites;
- (3) Advanced Acoustic Concepts;
- (4) Advanced Concepts & Technologies Intl.;
- (5) Aircraft Interior Products;
- (6) Applied Global Technologies;
- (7) Argon ST;
- (8) Boeing Corporation;
- (9) Carnegie Mellon University;
- (10) Coda Octopus Group;
- (11) Concurrent Technologies Corporation;
- (12) Conemaugh Health Systems;
- (13) Cryptek;
- (14) DDL OMNI Engineering;
- (15) DRS Technologies;
- (16) EM Solutions;
- (17) General Atomics;
- (18) General Dynamics;
- (19) Goodrich Corporation;
- (20) Innovative Concepts, Inc.;
- (21) ITT Corporation;
- (22) Lockheed Martin Corporation;
- (23) MobilVox;
- (24) NuVant Systems, Inc.;
- (25) Optimal Solutions & Technologies;
- (26) Parametric Technology Corporation;
- (27) Planning Systems Inc.;
- (28) Profile Systems;
- (29) Prologic, Inc.;
- (30) QTL Biosystems;
- (31) RaySat Antenna Systems;
- (32) Rockwell Collins;
- (33) Samueli Institute;
- (34) Sierra Nevada Corporation;
- (35) Teledyne Continental Motors, Inc.;
- (36) Teledyne Controls;
- (37) Windber Research Institute;
- (38) Xunlight Corporation;
- (39) Vice President, 21st Century Systems, Inc.;
- (40) Chief Administrative Officer, 21st Century Systems, Inc.;
- (41) Vice President for Communications, 21st Century Systems, Inc.;
- (42) PAC Treasurer, 21st Century Systems, Inc.;
- (43) General Manager, AAR Composites;
- (44) Chief Operating Officer, AAR Composites;

- (45) Chief Executive Officer, Applied Global Technologies;
- (46) Vice President, Applied Global Technologies;
- (47) PAC Treasurer, DRS Technologies;
- (48) President, DRS Technologies;
- (49) Chief Operating Officers, Optimal Solutions & Technologies;
- (50) Chief Executive Officer, Optimal Solutions & Technologies;
- (51) Director, Optimal Solutions & Technologies;
- (52) CEO, Samueli Institute;
- (53) Vice President, Sierra Nevada Corporation;
- (54) Congressional Affairs Director, Sierra Nevada Corporation;
- (55) Assistant to Business Development Director, Teledyne Continental Motors, Inc.;
- (56) Business Development Director, Teledyne Continental Motors, Inc.;
- (57) PAC Treasurer, Teledyne Controls;
- (58) General Manager, Teledyne Controls;
- (59) Vice President, Teledyne Controls;
- (60) Director of Contracts, Teledyne Controls;
- (61) Contract Administrator, Teledyne Controls;
- (62) Legislative Affairs Director, Teledyne Controls;
- (63) Associate General Counsel, Teledyne Controls;
- (64) President, Teledyne Controls;
- (65) PMA Lobbyist 1;
- (66) PMA Lobbyist 2;
- (67) PMA Lobbyist 3;
- (68) PMA Lobbyist 4;
- (69) PMA Lobbyist 5;
- (70) PMA Lobbyist 6;
- (71) Representative Kaptur;
- (72) Representative Kaptur's Chief of Staff; and
- (73) Representative Kaptur's Deputy Chief of Staff.

II. THE OCE UNCOVERED NO EVIDENCE THAT REPRESENTATIVE KAPTUR REQUESTED EARMARKS FOR PMA CLIENTS IN CONNECTION WITH CAMPAIGN CONTRIBUTIONS THAT SHE RECEIVED

A. APPLICABLE LAW, RULES, AND STANDARDS OF CONDUCT

- 20. *18 U.S.C. §201(b)—Bribery of public officials and witnesses*
“(b) Whoever—
(2) being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for:
(A) being influenced in the performance of any official act. . . .”
- 21. *18 U.S.C. §201(c)—Illegal Gratuities*
“(c) Whoever—
(1) otherwise than as provided by law for the proper discharge of official duty—

(B) being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or person. . . .”

22. *“An illegal gratuity . . . may constitute merely a reward for some future act that the public official will take (and may have already determined to take), or for a past act that he has already taken.”*⁵

23. *House Rules and Standards of Conduct*

*“[T]he scope of the House standards of conduct in this area is broader than that of the criminal bribery statute . . . the House standards of conduct generally preclude any link between the solicitation or receipt of a contribution and a specific official action.”*⁶

*“Put another way, there are fundraising activities that do not violate any criminal statute but well may violate House standards of conduct.”*⁷

*“[T]here are certain proffered campaign contributions that must be declined, and certain fundraising opportunities that must be forgone, solely because they create an appearance of improper conduct.”*⁸

*“[N]o solicitation of a campaign or political contribution may be linked to an action taken or to be taken by a Member or employee in his or her official capacity.⁹ In addition, a Member may not accept any contribution that is linked with any specific official action taken or to be taken by that Member.”*¹⁰

*“It is probably not wrong for the campaign managers of a legislator to request contributions from those for whom the legislator has done appreciable favors, but this should never be presented as a payment for the services rendered. Moreover, the possibility of such a contribution should never be suggested by the legislator or his staff as the time the favor is done. Furthermore, a decent interval of time should be allowed to lapse so that neither party will feel that there is a close connection between the two acts. The Standards Committee has long advised Members and staff that they should always exercise caution to avoid even the appearance that solicitations of campaign contributions are connected in any way with an action taken or to be taken in their official capacity.”*¹¹

⁵House Ethics Manual (2008) at 79. See also *United States v. Sun-Diamond Growers*, 526 U.S. 398, 404 (1999).

⁶Memorandum of the Chairman and Ranking Minority Member, Recommendations for disposition of the complaint filed against Representative DeLay. Accessed online on June 24, 2009 at <http://ethics.house.gov/Investigations/Default.aspx?Section=18>.

⁷*Id.*

⁸*Id.*

⁹House Ethics Manual (2008) at 147.

¹⁰Memorandum of the Chairman and Ranking Minority Member, Recommendations for disposition of the complaint filed against Representative DeLay. Accessed online on June 24, 2009 at <http://ethics.house.gov/Investigations/Default.aspx?Section=18>.

¹¹House Ethics Manual (2008) at 147.

*“[A] Member should not sponsor or participate in any solicitation that offers donors any special access to the Member in the Member’s official capacity.”*¹²

*“[G]overnment officials should ‘never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not.’”*¹³

*“[P]ublic office is a public trust,’ and the public has a right to expect House Members and staff to exercise impartial judgment in performing their duties.”*¹⁴

24. 5 U.S.C. § 7353—Gifts to Federal Employees

“(a) Except as permitted by subsection (b), no Member of Congress . . . shall solicit or accept anything of value from a person—

(1) seeking official action from, doing business with . . . the individuals employing entity; or

(2) whose interests may be substantially affected by the performance or nonperformance of the individuals official duties.

(b)(1) Each supervising ethics office is authorized to issue rules or regulations implementing the provisions of this section and providing reasonable exceptions as may be appropriate.

(2)(A) Subject to subparagraph (B), a Member, officer, or employee may accept a gift pursuant to rules and regulations established by such individuals supervising ethics office pursuant to paragraph (1)

(B) No gift may be accepted pursuant to subparagraph (A) in return for being influenced in the performance of an official act.”

25. House Ethics Manual—Soliciting Campaign and Political Contributions

While the federal gift statute (5 U.S.C. § 7353) broadly restricts the ability of

House Members and staff to solicit things of value from virtually anyone, even when no personal benefit to the solicitor is involved, legislative materials concerning the statute state that it does not apply to the solicitation of political contributions. Consistent with those materials, the Standards Committee has long taken the position that the restrictions on solicitation set forth in that statute do not apply to political solicitations. However, in soliciting campaign or political contributions, Members and staff are subject to a number of other restrictions, as follows.

A Contribution linked to an Official Action May Not Be Accepted

. . . no solicitation of a campaign or political contribution may be linked to any action taken or to be taken by a Member or employee in his or her official capacity.

In a similar vein, a Member or employee may not accept any contribution that the donor links to any official action that the Member or employee has taken, or is being asked to take. In this respect, a campaign or political contribution is treated like any other gift, and acceptance of a contribution in these cir-

¹²*Id.*

¹³*Id.* at 151 (citing Code of Ethics for Government Service, ¶ 5).

¹⁴*Id.* at 151 (citing Code of Ethics for Government Service, ¶ 10).

cumstances may implicate a provision of the federal gift statute (5 U.S.C. § 7353) or the criminal statutes on bribery and illegal gratuities.

B. REPRESENTATIVE KAPTUR'S EVALUATION OF EARMARK REQUESTS

26. Representative Kaptur is a Member of the House Appropriations Subcommittee on Defense (hereafter the "Defense Subcommittee"). She has developed an informal process for evaluating the various requests that she receives for earmarks.¹⁵

27. Representative Kaptur explained to the OCE that her support for earmark requests is based on her legislative priorities, which were developed in 2006. These priorities include economic security (*e.g.*, jobs in her district); national security (*e.g.*, U.S. energy independence), and environmental legacy.¹⁶

28. Representative Kaptur's Deputy Chief of Staff manages the requests that the office receives for earmarks.¹⁷

29. The office usually begins receiving earmark requests annually in January.¹⁸

30. The initial evaluations of the earmark requests are done by Representative Kaptur's staff based on certain criteria, including the nature of the project, the organizational capabilities of the requesting entity, and the relevance of the project to the Defense Subcommittee.¹⁹

31. A significant factor in the evaluation process is whether the proposed project contributes to economic development and jobs.²⁰

32. Representative Kaptur is specifically supportive of earmark requests that involve alternative energy sources and urban redevelopment.²¹

33. In contrast, Representative Kaptur is not supportive of earmark requests for projects that are not in her district and projects without a connection to Ohio.²²

34. In addition to evaluating earmarks requests that are brought to the office, the office also self-initiates earmark requests if the Representative or staff notices certain needs in the district.²³ For example, if there are issues with infrastructure, such as dilapidated bridges, Representative Kaptur may direct her staff to research any funding assistance that may be available.²⁴

35. After the staff has evaluated the earmark requests, the Deputy Chief of Staff meets with Representative Kaptur to discuss the staff recommendations. Representative Kaptur typically makes changes to the suggestions and may add more requests.²⁵

36. The staff revises their suggestions based on Representative Kaptur's changes, and then the suggestions are sent to her at least

¹⁵Memorandum of Interview of Representative Marcy Kaptur, October 25, 2009 ("Kaptur MOI") (Exhibit 1 at 09-9064__2).

¹⁶*Id.*; Email from Representative Kaptur to Staff, dated March 8, 2006 (Exhibit 2 at 09-9064__5-6).

¹⁷Memorandum of Interview of Representative Kaptur's Deputy Chief of Staff, October 15, 2009 ("Deputy COS MOI") (Exhibit 3 at 09-9064__8).

¹⁸*Id.*

¹⁹*Id.* at 09-9064__9.

²⁰*Id.*

²¹*Id.*

²²*Id.*

²³*Id.* at 09-9064__8.

²⁴*Id.*

²⁵*Id.* at 09-9064__9.

one more time for any additional changes.²⁶ Following any additional changes, the requests for earmarks are finalized and submitted to the House Appropriations Defense Subcommittee.

37. Representative Kaptur's Deputy Chief of Staff is not involved in soliciting campaign contributions for Representative Kaptur's campaign. He told the OCE that the process for evaluating earmark requests does not include any consideration of campaign contributions from the requesting entities.²⁷

38. With respect to specific earmark requests that Representative Kaptur submitted on behalf of PMA clients, Representative Kaptur explained her rationale for supporting the decisions during her interview. She explained in detail the origin of the projects and their benefit to her district as well as the relationship to her legislative priorities (*e.g.*, alternative energy initiatives).²⁸

39. For example, Representative Kaptur explained that Xunlight Corporation existed many years before the PMA firm was founded and that she interacts directly with the management of the company, not PMA. She supports earmarks for the company because it creates new technology related to solar power. In addition, the company collaborates with the local university in her district. The university's investment in the company creates local jobs and helps to keep the company in the district.²⁹

40. Similarly, she requested earmarks for Imaging System Technology because the company creates jobs in her district related to the manufacture of high tech computer screens. Representative Kaptur is concerned about the fact that no televisions are manufactured in the United States and she believes that her support of the company may result in it becoming a television manufacturer.³⁰

41. Representative Kaptur also told the OCE that she has established relationships with the principals of the companies for whom she requests earmarks and in many cases was not aware that the companies were represented by PMA.³¹

C. REPRESENTATIVE KAPTUR'S CAMPAIGN FUNDRAISING

42. During campaign cycles 2008 and 2010, Representative Kaptur accepted approximately \$56,000 in campaign contributions from PMA's PAC and employees and from the PAC and employees of PMA clients.³²

43. Representative Kaptur does not have any full time campaign staff.³³

44. Her staff person who was most involved with the campaign passed away in early 2009.

45. Representative Kaptur's Chief of Staff is responsible for the hiring of part-time campaign staff during election years.³⁴

²⁶ *Id.*

²⁷ *Id.* at 09-9064_10.

²⁸ Kaptur MOI (Exhibit 1 at 09-9064_3).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Contribution amounts are derived from reports filed with the Federal Election Commission by Kaptur for Congress.

³³ Memorandum of Interview of Representative Kaptur's Chief of Staff, October 15, 2009 (Exhibit 4 at 09-9064_12).

³⁴ *Id.*

46. He explained to the OCE that approximately 95 percent of the fundraising is done through “blast” faxes that the Democratic Congressional Campaign Committee sends out at the request of Representative Kaptur’s campaign.³⁵

47. The remaining 5 percent of fundraisers are done by various hosts who request to hold fundraisers for the Congresswoman.

48. According to Representative Kaptur’s Chief of Staff, campaign contribution solicitations do not target entities requesting earmarks from Representative Kaptur. Solicitations are sent to various people who give the office business cards throughout the year. These business cards are collected in a box and used to make a mailing list. As a result, some of those business cards may include entities that have requested earmarks.³⁶

49. The campaign typically hosts fundraising events in the spring and the fall. The reason for the timing of such events is because this is when the Representative is in Washington, D.C.

D. REPRESENTATIVE KAPTUR’S RELATIONSHIP WITH PMA

50. During the time period of the 2008 and 2010 campaign cycles, six corporate clients of PMA were awarded earmarks requested by Representative Kaptur.

51. The PMA clients for which Representative Kaptur requested earmarks during this period are:

- (a) Imaging System Technology, Inc. (\$8,400,000);
- (b) Advanced Concepts & Technologies Intl. (\$5,900,000);
- (c) Parametric Technology Corporation (\$1,200,000);
- (d) Teledyne Continental Motors, Inc./Teledyne Technologies (\$3,200,000); and
- (e) Xunlight Corporation (\$2,800,000).³⁷

52. Representative Kaptur explained to the OCE that she did not know that any of the six were clients of PMA. According to Representative Kaptur, her interaction with the companies, if any, is directly with management of the companies.³⁸

53. Representative Kaptur’s contact with PMA lobbyists was limited to approximately once per year, when she saw lobbyists at fundraising events.

54. The staff person who was the primary contact with PMA was Representative Kaptur’s Deputy Chief of Staff.

55. Representative Kaptur’s Deputy Chief of Staff interacted with PMA lobbyists during the appropriations season, which began in January. He met with the lobbyists to discuss earmark request for their clients.³⁹

56. During the meetings, the PMA lobbyists did not discuss campaign contributions with him. He does not have a role with Representative Kaptur’s campaign and he does not solicit contributions.⁴⁰

57. Representative Kaptur’s Deputy Chief of Staff, who manages the evaluation process of the earmark requests, told the OCE that

³⁵ *Id.*

³⁶ *Id.*

³⁷ H.R. 3222, Pub. L. 110–116 (2008); H.R. 2638, Pub. L. 110–329 (2009); and H.R. 3326, 111 Cong. (2009).

³⁸ Kaptur MOI (Exhibit 1 at 09–9064_3).

³⁹ Deputy COS MOI (Exhibit 3 at 09–9064_8).

⁴⁰ *Id.* at 09–9064_9.

two (*i.e.*, Teledyne Continental Motors, Inc. and Teledyne Controls) of the six companies contacted requested the earmark directly and PMA did not represent them before their office.⁴¹ Therefore, he did not consider these two companies to be PMA clients.

58. The Deputy Chief of Staff attends Representative Kaptur's fundraisers and he has interacted with PMA lobbyists during these events. His discussion with the lobbyists may have involved the schedule for mark-ups on earmarks, but the conversations did not involve suggestions that their earmarks should be supported because of campaign contributions.⁴²

E. PERCEPTION OF CORPORATE DONORS

59. There is evidence that the commercial entities seeking earmarks from Members of Congress believe that a political donation to the Member has an impact on the Member's decision to author an earmark for that donor.⁴³

60. Representative Kaptur and her staff credibly articulated a process that separates her legislative activities and her campaign fundraising activities. She achieves this separation by reducing or eliminating her and her legislative staff's exposure to information from the campaign's fundraising operation. Similarly, Representative Kaptur's campaign staff is isolated from her legislative agenda. As a result, neither the campaign nor the legislative staff is aware of what the other is doing. In each case, both legislative staff and campaign staff corroborated the Representative Kaptur's account.

61. Representative Kaptur and her staff's descriptions of how she operates her campaign and Congressional office establish that she attempts to prevent even the appearance that the legislative acts are influenced by contributions to the campaign. One risk associated with this type of operation is the possibility of an appearance of a conflict of interest if, out of ignorance, her campaign accepts a contribution near in time to a legislative act that impacts the individual or entity making the contribution. This potential for an appearance of a conflict may explain why companies requesting an earmark appear to think that a contribution to the respective campaign or PAC affects the ultimate receipt of the earmark. The House Ethics Manual is unclear as to what obligations, if any, are placed on a Member to discourage or disabuse a company of that impression.

F. CONTRIBUTIONS LINKED TO OFFICIAL ACTS BY OUTSIDE ENTITIES

62. In several instances, the OCE uncovered evidence that commercial entities seeking earmarks from Members of Congress appear to have linked contributions to Members' campaigns and/or PACs to specific legislative acts. These documents were internal to the companies and there is no evidence they were shared with Members.⁴⁴

63. The federal gift statute, 5 U.S.C. § 7353, prohibits the solicitation or acceptance of anything of value from a person seeking official action from or doing business with the House, or from some-

⁴¹ *Id.*

⁴² *Id.* at 09-9064_10.

⁴³ Memorandum of Interview of Legislative Affairs Director, Teledyne Controls, October 6, 2009 (Exhibit 6 at 09-9064_19).

⁴⁴ Teledyne PAC Contribution Request (Exhibit 5 at 09-9064_16).

one whose interests may be substantially affected by the performance or nonperformance of a Member's, Officer's or staff member's official duties. The statute also provides that the Committee on Standards of Official Conduct may enact reasonable exceptions to the prohibition. According to the Ethics Manual, the Standards Committee has long taken the position that the restrictions on solicitation set forth in the statute do not apply to political solicitations. However, Members and staff are subject to a number of other restrictions regarding the solicitation of campaign or political contributions under the rules of the House.

64. Under House rules, a Member or employee may not accept any contribution that the donor links to any official action that the Member or employee has taken, or is being asked to take. If a donor's contribution is linked to any official action, it is treated like any other gift and may be subject as such to the federal gift statute and the criminal statutes on bribery and illegal gratuities.

65. The Board notes that the examples provided in the Ethics Manual of instances where a Member may be in violation of the House's rule against accepting a contribution linked to an official action are all instances in which the Member has some degree of knowledge of the link. As a result, it stands to reason that it is unlikely a violation of the rule could occur unless and until a Member is aware of the link and does nothing to remedy the situation.

66. The Board finds nothing in the factual record to indicate the Member was aware that the donor linked the contribution to an official act. As such, the Board concludes there is not a substantial reason to believe that a violation of either 5 U.S.C. §7353, or the applicable House rules occurred. However once the Member becomes aware of the link, if the matter is not remedied either by the Member or by formal advice from the Standards Committee declaring the contribution acceptable, then a violation may occur.

III. CONCLUSION

67. Representative Kaptur and her staff explained to the OCE in detail why she requested earmarks for PMA clients for fiscal years 2008 to 2010.

68. Representative Kaptur's support for the earmarks complied with her general policy of requesting earmarks that are consistent with her legislative priorities and constituent concerns.

69. Based on the information that the OCE collected during this review, the operation of Representative Kaptur's campaign is separate from her earmark evaluation process and the campaign does not influence her decisions on earmarks.

70. As a result, there is not substantial reason to believe that Representative Kaptur solicited or accepted campaign contributions for the earmark requests on behalf of PMA clients.

71. For these reasons, the Board recommends that the Standards Committee dismiss the above described allegations concerning Representative Kaptur.

IV. INFORMATION THE OCE WAS UNABLE TO OBTAIN AND RECOMMENDATIONS FOR THE ISSUANCE OF SUBPOENAS

72. In every instance the OCE asked the recipient of an OCE request for information to identify any information they withheld and the reason for doing so. However, absent the authority to subpoena the evidence in possession of the witness, it is impossible for the OCE to verify if information was withheld, but not documented.

73. In some instances documents were redacted or specific information was not provided. For instance, DRS Technologies provided evidence responsive to the OCE's Request for Information but indicated they would not provide any information regarding their Legislative Strategy.

74. In at least one instance, the OCE had reason to believe that a witness withheld information requested, but did not comply with the OCE's request that they identify what was being withheld. Specifically, Boeing Corporation represented that they had fully cooperated. However, Boeing Corporation indicated that they had no electronic mail responsive to the OCE's Request for Information. The OCE then received, from another source, electronic mail to and from Boeing Corporation that were in fact responsive to the OCE's request.

75. The Board also notes that while the OCE was able to interview six former employees of PMA that provided general information on PMA and its business practices, many remaining former employees refused to consent to interviews. In addition, the OCE was unable to obtain any evidence within PMA's possession.

76. The Board makes the recommendation contained in this referral based on the factual record before it. Given its recommendation to dismiss, the Board does not recommend the issuance of subpoenas.

EXHIBIT 1

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Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

MEMORANDUM OF INTERVIEW

IN RE: Representative Marcy Kaptur
REVIEW No.: 09-9064
DATE: October 15, 2009
LOCATION: Office of Representative Kaptur
2186 Rayburn HOB
TIME: 12:45 p.m. to 2 p.m. (approximately)
PARTICIPANTS: Kedric L. Payne
Paul Solis
Nathan Facey
Steve Katich

SUMMARY: Representative Marcy Kaptur is a Member of the United States House of Representatives and represents the 9th District of Ohio. She was interviewed pursuant to Review No. 09-9064. The OCE requested an interview with Representative Kaptur on July 10, 2009, and she consented to an interview. Representative Kaptur made the following statements in response to our questioning:

1. Representative Kaptur was given an 18 U.S.C. § 1001 warning and consented to an interview. She signed a written acknowledgement of the warning, which will be placed in the case file in this review.
2. Representative Kaptur describes her support for certain appropriations requests as "legislative priorities" and not "earmarks".
3. Her ideas on legislative priorities come from her constituents and she incorporates these ideas into legislation.
4. She also takes local ideas and incorporates them into national projects.
5. The factors she considers when evaluating earmarks are her legislative priorities, which are listed in a document that her office created in 2006.
6. Alternative energy technology is one of her priorities. She is also concerned with tangible goods, such as industry and agriculture.
7. If a proposed project does not fit her priorities, she does not support it with an earmark.

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8. The office receives hundreds of requests for earmarks.
9. Representative Kaptur is not looking for major business to support. Instead, she is interested in supporting ideas. She also focuses on helping undeveloped industry sectors.
10. She is familiar with the corporate clients of the PMA Group, Inc. (hereafter "PMA") for which she requested earmarks. However, she did not personally recall that they were represented by PMA because she interacted with management of the companies directly.
11. Representative Kaptur did not know that Imaging System Technology was a client of PMA. She supported an earmark for the company because they created technology for plasma screens. She is concerned that televisions are no longer manufactured in the United States and her hope is that the technology could increase the country's presence in the industry.
12. Teledyne Controls is a company that collaborates with the university in her district and she meets with the company approximately once per year. She interacts with management of Teledyne Controls directly and not through PMA. She supported the company because it is a local project.
13. Parametric Technology Corporation was a company that requested an earmark in conjunction with the Ohio National Guard. Representative Kaptur remembers the company as being affiliated with the Ohio National Guard and not PMA.
14. Xunlight Corporation is a company that Representative Kaptur recalls as existing well before PMA. She supports the company because it works in conjunction with the local university to create solar power technology. The company also keeps jobs in her district.
15. Representative Kaptur did not interact with PMA concerning earmarks that she requested for PMA clients.

This memorandum was prepared on November 18, 2009, based on the notes that the OCE staff prepared during the interview with Representative Kaptur on October 15, 2009. I certify that this memorandum contains all pertinent matter discussed with Representative Kaptur on October 15, 2009.

Kedric L. Payne
Investigative Counsel

EXHIBIT 2

From: Katich, Steve
Sent: Wednesday, October 28, 2009 11:58 AM
To: Payne, Kedric
Subject: Agenda - Themes/Priorities...to be incorporated into all press, letters, op ends, floor statements, leg initiatives, project announcements etc

Hello Kedric,

Looking over my notes from last week and realized I had intended to send the attached document we discussed. As you can see, it is a member driven outline of priorities that we assign to initiatives in which the office will become involved. Our measuring stick, if you will.

Please advise what else may be required.

Thanks, Kedric.

From: Kaptur, Marcy
Sent: Wednesday, March 08, 2006 1:17 PM
To: Kaptur - All Staff
Subject: FW: 2006 Agenda - Themes/Priorities...to be incorporated into all press, letters, op ends, floor statements, leg initiatives, project announcements etc

From: Kaptur, Marcy
Sent: Thursday, February 16, 2006 8:38 PM
To: Kaptur, Marcy
Cc: Katich, Steve; Szemraj, Roger
Subject: Agenda - Themes/Priorities...to be incorporated into all press, letters, op ends, floor statements, leg initiatives, project announcements etc

Restoring America's Promise....Restoring America's Independence

Economic Security

- o Create and Retain Good Jobs through Economic Development
 - Invest in Jobs and Firms in America/District
 - Balance the Budget
 - Make Pensions and Health benefits secure
 - Reform Unfair Trade Agreements
 - Modernize Transportation Systems (Seaway, Airports, Roadways, Rail)
 - Support Local, Value-Added Agriculture and Rural Life
 - Empower Small Business
 - Encourage Self-Help or Faith-Based Community Orgs. to Sponsor Human Development/ Housing Projects
 - Upgrade Historic and Downtown Neighborhoods

National Security

- o Defend America and Protect the Homeland
 - Modernize defense systems, including Guard and Reserve
 - Provide finest training and equipment to Armed Forces, and our local first responders police/fire
 - Meet our obligations to veterans' health care and benefits
- o Restore America's Energy Independence
 - Make our coastal region the first "green community" in the United States
 - Spur projects that restore energy independence
 - Convert local public transit and public fleets to renewable energy to spur an industry
 - Brand our region as "America's New Age Auto Center" ;invent new prototype vehicles/power systems

Environmental Legacy

- o Champion Conservation/Stewardship of Nat'l Resources (water, land, air, fish, wildlife and nat'l systems)
 - Enhance environmental assets/Coastal Ohio/Lake Erie Islands as Midwest's Hilton Head/Cape Cod
 - Improve Maumee River to Ft. Wayne Heritage Corridor
 - Protect our region's fresh water through watershed inventory and reservoir enhancements

Human Development

- o Advance human progress
 - Make education excellent and affordable to children and people of all ages and from all walks of life
 - Strengthen and Protect Social Security and Medicare
 - Completely revamp the confusing Rx Prescription Drug plan; allow for negotiated pricing as does Dept. VA
 - Make health insurance affordable for small business and the uninsured (our bill)
 - Expand research on serious Mental Illness as unexplored horizon of neuro-chemical and genetic interface
 - Emphasize prevention and intervention projects for at risk youth through Justice and Education systems

Clean Up Political Corruption

- o Reform Campaign Finance to severely cap spending
- o Require free time for candidates as a condition of FCC licensing
- o Ban high ranking government officials from working for foreign interests upon leaving public service, 5 years for lobbying Congress

World Peace

- o Build bridges internationally through people to people exchanges, development, and education
- o Emphasize foreign language and intercultural education for our students
- o Create an U.S. Institute for Democracy and Development dedicated to such international efforts (replace WESTNIS)

EXHIBIT 3

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Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

MEMORANDUM OF INTERVIEW

IN RE: Representative Kaptur's Deputy Chief of Staff
REVIEW #: 09-9064
DATE: October 15, 2009
LOCATION: Office of Representative Kaptur
2186 Rayburn HOB
TIME: 11 a.m. to 12 p.m. (approximately)
PARTICIPANTS: Kedric L. Payne
Paul Solis

SUMMARY: Representative Kaptur's Deputy Chief of Staff (hereafter the "witness") was interviewed pursuant to Review 09-9064. The OCE requested an interview with the witness on July 10, 2009, and he consented to an interview. The witness made the following statements in response to our questioning:

1. The witness was given an 18 U.S.C. § 1001 warning and consented to an interview. He signed a written acknowledgement of the warning, which will be placed in the case file for this review.
2. The witness is responsible for managing Representative Kaptur's earmark requests for the House Appropriations Committee.
3. The earmark request process occurs during the appropriations "season", which begins in January. The earmark requests are initiated in one of two ways. One way is that the project is self-initiated by the office if the staff or Member recognizes a specific need in the district.
4. For example, Representative Kaptur may see a road or bridge in the district in need of repair and she may request that her staff research any possible funding for repairing the problem. Also, Representative Kaptur's constituents may approach her informally in the district and suggest federal assistance for certain projects and Representative Kaptur may relay these ideas to her staff to research.
5. The other way that the earmark request process begins is that an entity or individual contacts the office with a formal request for a specific project.
6. All earmark requests are evaluated on certain criteria, which include the organizational capabilities of the requesting entity. The staff also considers the priorities of

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Representative Kaptur which are alternative energy initiatives and urban redevelopment. In addition, the project's impact on jobs is important. The earmark request also must be consistent with the requirements of the committee. For example, the request must fall under a category such as justice or educational. The overall goal is to support economic development and jobs.

7. If an earmark request is not from an entity located in Representative Kaptur's district and the project does not have any connection with the state, the staff does not recommend the project to Representative Kaptur.
8. The witness meets with those requesting entities in the office to discuss their projects. Such meetings included those with PMA Group, Inc. (hereafter "PMA") and its clients.
9. After researching the projects and meeting with the requesting entities, the witness and another staff person, Matt Kaplan, meet with Representative Kaptur to discuss staff recommendations for earmarks.
10. The meeting about the earmark requests is usually detailed and may extend for a few hours. Representative Kaptur adds her comments to the earmark requests and she may also include additional earmark requests.
11. The revised earmark requests are sent to staff for additional research and then the staff sends the revisions back to Representative Kaptur.
12. Once the requests are finalized, they are sent to the Appropriations Committee.
13. The witness did not know that a few of PMA's clients were represented by PMA because the companies had a history with Representative Kaptur's office and contacted staff directly. Specifically, Teledyne Controls, and Kimball & Associates worked directly with the office.
14. During his interaction with PMA about earmark requests for their clients, PMA employees did not mention campaign contributions or their prior support for Representative Kaptur.
15. The witness has no role in the campaign and does not solicit contributions for the campaign. He attended fundraisers for the Member and he spoke with PMA representatives at these fundraisers. The conversation was limited to exchanging information about the process and schedule for mark-ups.
16. PMA did not have any discussions about the witness suggesting that an earmark should be approved because of campaign contributions and Representative Kaptur would have been very angry if anything like that ever happened.

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This memorandum was prepared on November 19, 2009, based on the notes that the OCE staff prepared during the interview with the witness on October 15, 2009. I certify that this memorandum contains all pertinent matter discussed with the witness on October 15, 2009.

Kedric L. Payne
Investigative Counsel

EXHIBIT 4

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Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

MEMORANDUM OF INTERVIEW

IN RE: Representative Kaptur's Chief of Staff
REVIEW #: 09-9064
DATE: October 15, 2009
LOCATION: Office of Representative Kaptur
2186 Rayburn HOB
TIME: 10 a.m. to 11 a.m. (approximately)
PARTICIPANTS: Kedric L. Payne
Paul Solis

SUMMARY: Representative Kaptur's Chief of Staff (hereafter the "witness") was interviewed pursuant to Review No. 09-9064. The OCE requested an interview with the witness on July 10, 2009 and he consented to an interview. The witness made the following statements in response to our questioning:

1. The witness was given an 18 U.S.C. § 1001 warning and consented to an interview. He signed a written acknowledgement of the warning, which will be placed into the case file in this review.
2. The witness is based out of Representative Kaptur's district office. He is not greatly involved in earmark requests that are sent to Representative Kaptur. He is involved in fundraising for Representative Kaptur's campaign but there is no full time campaign staff. He is also responsible for hiring the part-time staff for the campaign.
3. The vast majority (*i.e.*, 95%) of the fundraising events held by the campaign are organized through "blast" faxes that the campaign has the Democratic Congressional Campaign Committee send to its donor lists. Solicitations are also sent to various visitors to the office who leave their business cards. The business cards are collected in a box and the information becomes part of the office's mailing list. The business cards may include entities that have requested earmarks.
4. The remaining fundraising events are hosted by donors who contact the campaign and ask to hold such fundraisers.

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5. The campaign typically has fundraising events in the spring and the fall. According to the witness the timing of these events is based on the presence of Representative Kaptur in Washington unlike other times of the year.
6. The office receives approximately 100 earmark requests per year.
7. The witness does not handle any evaluation of the earmark requests. Instead, he sends requests that are received in the district office to the appropriate legislative assistant that handles the particular request.
8. The facts that are considered when evaluating earmark requests are the capacity of the company to perform the project and the relevancy of the project with Representative Kaptur's legislative priorities.

This memorandum was prepared on November 18, 2009, based on the notes that the OCE staff prepared during the interview with the witness on October 15, 2009. I certify that this memorandum contains all pertinent matter discussed with the witness on October 15, 2009.

Kedric L. Payne
Investigative Counsel

EXHIBIT 5

Request for TDY-PAC Contribution

Requestor: John Braun, VP, Washington Operations

Company: Teledyne Brown Engineering

For contributions from the TDY PAC, the following should be provided:

1. **Candidate Name:** Marcy Kaptur
 2. **Political Party:** Democrat
 3. **Current Office Held:** 9th District; U.S. Representative (OH)
 4. **Candidate Address:** P.O. Box 899
Toledo, OH 43697
 5. **Purpose of Disbursement(*):** Request from member
 6. **Office Sought:** Relection
 7. **Indicate if for Primary, General or Other (describe):** General
 8. **Indicate date of election:** November 2008
 9. **Date of Disbursement:** Immediate
 10. **Check Payable to:** Kaptur for Congress
 11. **Amount of Disbursement:** \$1,000.00
 12. **Provide an ID or FEC # for the Candidate:** C00154625
 13. **Telephone Number of Candidate:** 419-693-0078
 14. **Indicate who should receive the signed check and by what date:**
John Braun, as soon as possible.
 15. **Indicate if a late contribution report is necessary:** No
If necessary, provide the appropriate form to report the contribution.
- Provide any and all literature or fund-raising request information from the candidate

Request for TDY-PAC Contribution

Candidate Name: Marcy Kaptur

Indicate why supporting the candidate is consistent with the mission of TDY-PAC

In what capacity does the candidate serve in their political role (as a committee member/appropriations function etc?)?

Committee on Appropriations: Subcommittee on Defense; Subcommittee on Transportation, Housing and Urban Development and Related Agencies; Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies.

How important is the candidate's sponsorship any programs we are involved in?

Represents the district where Teledyne Turbine Engines is located, and is a member of the subcommittee allocating Defense funding.

How big are the programs, if any, the candidate supports?

N/A

Who is the competition for the programs?

N/A

What dollar revenue does the program bring to Teledyne Technologies?

Upward of \$100 million.

Is the candidate in a position to lawfully influence the funding or the ultimate awardee/recipient of the government?

Absolutely.

Has TDY interacted with the candidate in the past?

Yes.

Any other information that is relevant.

EXHIBIT 6

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Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

MEMORANDUM OF INTERVIEW

IN RE: Legislative Affairs Director for Teledyne Controls
REVIEW #s: 09-1583; 09-4486; 09-9063; 09-9064; 09-9075; 09-9099
DATE: October 6, 2009
LOCATION: Teledyne Controls
501 Continental Boulevard
El Segundo, CA 90245
TIME: 2 p.m. to 3 p.m. (approximately)
PARTICIPANTS: Kedric L. Payne
Omar Ashmawy
Melanie Cibik
David Berardinelli

SUMMARY: The Legislative Affairs Director for Teledyne Controls (hereafter the "witness") was interviewed pursuant to the above referenced Review Numbers. The OCE requested an interview with the witness on July 22, 2009, and he consented to an interview. The witness made the following statements in response to our questioning:

1. The witness was given an 18 U.S.C. § 1001 warning and consented to an interview. He signed a written acknowledgement of the warning, which will be placed in the case file in this review.
2. The witness has been employed with Teledyne Controls since 1996. He is responsible for researching potential projects where the company can compete for business.
3. He is involved with the company's political action committee (hereafter "PAC"), which he helped to create in 2001. He promotes the PAC within the company and is responsible for arranging the payroll deductions for the PAC.
4. The reason for establishing the PAC was to support the Members of Congress who supported the company's business objectives. The PAC is for business development and access to Members.
5. PMA advised the company with setting up the PAC and the idea was that the PAC would assist with putting the company on the radar of Members who could assist the company with federal funding, specifically defense appropriations.

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6. By contributing, the company's representatives attended fundraisers and could see the members of Congress and discuss the path of potential legislation.
7. PMA's advice on how the PAC should contribute was based on the past support the Representative provided to the company and the committee on which they served.
8. The specific amount that PMA recommended for the contributions was based on the amount of money that the Member was trying to raise.
9. For example, the witness attended a fundraiser for Representative Murtha and he was able to speak to the Member and he believes that he influenced him in a "good way".
10. PMA did not suggest that Members were pressuring companies to make contributions. However, he could deduce that the level of contributions had an impact on obtaining earmarks from PMA's perspective. PMA did not specifically say that you must contribute to get an earmark.
11. When making contributions, the witness says that it does go through your mind whether you are buying influence.
12. PMA advised the company's PAC on one occasion not to contribute because there would be no face time with the Member.
13. The witness recalls attending the fundraiser for Representative Tiahrt. The witness told Representative Tiahrt about the specifics of the company's project. The witness also attended a fundraiser at a hockey game for Representative Tiahrt. Representative Tiahrt's Military Legislative Assistant attended all of the fundraisers.

This memorandum was prepared on November 19, 2009, based on the notes that the OCE staff prepared during the interview with the witness on October 6, 2009. I certify that this memorandum contains all pertinent matter discussed with the witness on October 6, 2009.

Kedric L. Payne
Investigative Counsel