

CONFIDENTIAL MEMORANDUM

23 APRIL 2002

TO: Doug Lawrence
Western Resources

Federal Elections Participation

Below are our recommendations for beginning to develop a significant and positive profile for the Company's federal presence. A couple of observations:

First this is not a random wish list that simply matches titles with solicitations. We have thought this through, and we're happy to explain it in more detail.

Secondly, this will strike you as very big – and, of course, on one level it really is (at least nominally) quite expensive. But that's largely because of the rapidity and reach of the Company's move to enlarge its traditional single-state delegation-based approach to Washington. The Company now seeks a committee and leadership-based approach to Capitol Hill – and we do well to recognize that there are high "up-front" costs for a long-term presence.

Issues come and go, and we know you agree that the "switch" cannot be turned on and off according to the issue *de jure*. There's significant value in securing your "place at the table" for a much longer period ahead. With this in mind, here's our stab at it.

HARD MONEY

Rep. Billy Tauzin (R-LA)

Rep. Tauzin (pronounced TOE-zan) is chairman of the full House Energy and Commerce Committee. His priority right now is using his position to help secure the re-election of some of his key allies and friends. In fact, he and Rep. Joe Barton (R-TX), who chairs the full committee's Energy and Air Quality Subcommittee, are hosting and cooking for a series of eight "Tex-Cajun Cookouts" over the next couple of months.

We strongly recommend participation in all eight at the solicited \$1,000 level:

1. ✓ Rep. John Shimkus (R-IL), an Energy and Commerce Committee member.
Volunteers For Shimkus - \$1,000
April 23 event
2. Rep. Sam Graves (R-MO)
✓ **Graves For Congress - \$1,000**
April 24 event
3. Rep. Anne Northup (R-KY), an Appropriations Committee member.
✓ **Northup For Congress - \$1,000**
May 14 event
4. ✓ Shelley Moore Capito (R-WV), a Financial Services Committee member.

WE 0112383

✓ Shelley Moore Capitol For Congress - \$1,000
May 15 event

⑤ Rep. Felix Grucci (R-NY), a Financial Services Committee member.
Grucci For US Congress - \$1,000
June 4 event

⑥ Rep. Bob Simmons (R-CT)
Simmons For Congress - \$1,000
June 5 event

⑦ Rep. Tom Latham (R-IA), an Appropriations Committee member.
Latham For Congress - \$1,000
July 9 event

⑧ Rep. Robin Hayes (R-NC)
Hayes For Congress - \$1,000
July 10 event

2,000

⑧

Lastly with regard to Chairman Tauzin, we need to mention his own personal "big one." His leadership PAC - "Bayou Leader PAC" - holds an annual summer event in New Orleans. The cost is \$5,000 for the intimate June 14-16 gathering. ~~5,000~~ IFRMS

5,000

5,000

Rep. Joe Barton (R-TX)

As noted above, Rep. Barton chairs the "utility" subcommittee of the full Energy and Commerce Committee: the Subcommittee on Energy and Air Quality. He has a personal campaign kitty and his own leadership PAC. We recommend supporting each at the \$2,000 level.

Congressman Joe Barton Committee - \$2,000
Texas Freedom Fund - \$2,000

4,000

Rep. Mike Oxley (R-OH)

Rep. Oxley chairs the full House Financial Services Committee - a jurisdiction with which you are familiar. Mike has a personal campaign committee and a leadership PAC, and we recommend supporting each at the \$1,000 level.

Oxley For Congress Committee - \$1,000
Leadership 2002 - \$1,000

2,000

Rep. Richard Burr (R-NC)

Rep. Burr is Vice Chairman of the full Energy and Commerce Committee. We recommend a \$2,000 contribution.

Burr For Congress - \$2,000

2,000

Senator Richard Shelby (R-AL)

Senator Shelby is a member of both the Senate Energy Committee and the Banking Committee. Within the latter, he is a member (and former chairman) of the PUHCA-jurisdictional Securities and Investment Subcommittee. In fact, Richard is the lead senate Republican on all PUHCA-related matters.

Richard's high personal priority right now, is – like Rep. Tauzin's (above) – the election of *other people*:

✓ Tom Young For Congress - \$5,000

Until a couple of weeks ago, Tom had been Richard's chief of staff for 12 years. He's seeking the Republican nomination for the open Alabama house seat created by the retirement of Rep. Sonny Callahan (R). Although a safely Republican seat, Tom does have one significant opponent in his June primary: Rep. Callahan's chief of staff.

Rep. John Sununu (R-NH) Team Sununu - \$3,000

This is a key national race in which incumbent Rep. Sununu seeks to unseat incumbent Senator Bob Smith (R). You'll recall the latter's having briefly left the party for a short and quixotic campaign for president. Though Smith returned, every poll has him losing to Sununu in the September primary. Sununu is also then favored to defeat incumbent Governor Jeanne Shaheen (D) for the senate seat.

Senator Tim Johnson (D-SD)

We offer this to the list for staunch Company Democrats. Freshman Senator Johnson's tight race, against Rep. John Thune (R-At Large), is viewed by the media as a proxy battle between the White House (backing Thune) and Senate Majority Leader Tom Daschle, who's fighting for the re-election of his fellow South Dakota Democrat.

Tim Johnson For South Dakota - \$2,500

SOFT MONEY

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

We have been looking for an effective, but relatively inexpensive way to do this because the conventional route is near-prohibitive in cost.

For example, Mr. Delay has two leadership PACs – the reportable "Americans for a Republican Majority (ARM)", and the non-reportable "Texans for a Republican Majority (TRM)". But, as near as we can tell, checks in the range of \$50-\$100K seem to be the norm here.

We know of three companies in our industry that have gone the \$100K route: Reliant, El Paso Energy and Ohio-based First Energy.

How does one play for a more reasonable dollar amount?

We may have an opportunity, later this summer, for an energy industry "roundtable" golf match at the Homestead for a "mere" \$25,000. We have spoken to the former Delay staffer who's putting this together, and his preference – for the time being – is to admit generation-only type companies. These are more entrepreneurial, more naturally Republican, in some views of the world.

Nonetheless, we think we can get by with that if we beg. We're not suggesting you do it now since the ability to use a corporate check would allow quick turn-around – should you decide to do it.

The point is that this is out there, and you should be aware of it.

SUMMARY

Basic Hard Money Package Includes All Above (minus Tauzin New Orleans)	\$26,500
Premium Hard Money Package Basic plus \$5,000 for Bayou Leader PAC/New Orleans Trip	\$31,500
Platinum Package Premium plus \$25,000 (soft) for House Leadership	\$56,500

Let us discuss all of this further at your convenience. There really is a reason for everything.



Rick Bornemann
<rick_bornemann@govstrat.com>

04/26/2002 10:55
AM

To: Doug Lawrence <doug_lawrence@wr.com>
cc:
Subject: FW: DeLay event - NEW DATE

Hi Doug:

I hope you'll forgive the presumption, but I did go ahead and commit us to this. It was the least expensive DeLay option.

Rick

From: "Drew Maloney" <dmaloney@federalistgroup.com>
Date: Fri, 26 Apr 2002 11:05:00 -0400
To: <Rick_Bornemann@govstrat.com>
Subject: FW: DeLay event - NEW DATE

Call me if you have questions. I will need contacts for Dani to follow-up with. I don't do details

Please keep confidential, this group will be limited.

Where: The Homestead
Hot Springs, VA
When: June 2 - 3
Itinerary: Sunday, June 2 (tentative)
5:00-6:00p Briefing
6:00-7:30p Cocktails
7:30 Dinner

Monday, June 3
7:30 - 8:15 Breakfast
8:30 - 1:00p Golf on Cascades Course (Top 50 in
US)
1:00 - 2:00p Lunch
Departure

Each company is allowed to send 2 company individuals (spouses are welcome).

Deadline: We need commitments by May 1st. Once confirmed, Dani DeLay Ferro will follow-up with the necessary details.

Thanks

Drew Maloney
Federalist Group, LLC
202-842-5077
fax 202-842-5010
<mailto:dmaloney@federalistgroup.com> dmaloney@federalistgroup.com

WE 0107089



Rick Bornemann
 <rick_bornemann@govstrat.com>

To: Doug Lawrence <doug_lawrence@wr.com>
 cc: Timothy Smith <tim_smith@govstrat.com>
 Subject: Dollar Summation

05/07/2002 01:46 PM

Hi Doug:

Good to talk to you again - and congrats on advancing the battle stateside.

Believe it or not, I absolutely detest asking you for money. We all prefer to think that our powerful personalities and strategic brilliance transcend such grubbiness.

Anyway, let's sum up the needs discussed in our conversation today. They keep to the boundaries of the "platinum" budget as approved - given the "offset" we discussed.

Hard Money

Volunteers For Shimkus	\$1,000 (Budgeted - see memo)
Graves For Congress	\$1,000 (Budgeted - see memo)
Northup For Congress	\$1,000 (Budgeted - see memo)
Tom Delay Congressional Committee	\$2,500 (<u>Not</u> Budgeted - recall budget "offset")

Soft Money

Texans For A Republican Majority	\$25,000 (Budgeted - see memo)
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Doug, we'd like to suggest that these commitments be met with all due speed - consistent with the appropriate tone we discussed. After all, participation in the political process is voluntary.

Take care, and continued good luck.

Rick



use Bornemann's address!

999-Misc



Rick Bornemann
<rick_bornemann@go
vstrat.com>

To: Drew Maloney <dmaloney@federalistgroup.com>
cc: Doug Lawrence <doug_lawrence@wr.com>
Subject: Rick's Client Contact For Homestead

05/09/2002 10:51
AM

Drew:

This is my contact at Topeka-based Western Resources:

Mr. Doug Lawrence
Vice President
Western Resources
818 Kansas Avenue
Topeka, KS 66612
(785) 575-8411
doug_lawrence@wr.com

I really do appreciate your concern about events such as these becoming consultant-fests - principals are always better, no question.

But this is a case where the principals are far away, and have no Washington presence apart from their consulting firm. Anyway, just food for thought.

I'm sure Doug will be glad to hear from you.

Rick

Please call Doug Lake

WE 0110202

Memo

To: Dani
From: Drew
Date: May 8, 2002
Re: Homestead

Confirmed

Reliant Energy \$50,000
Bud Albright
202-783-7220

Williams Energy \$25,000
Gretchen Emling
202-833-8994

Mirant Energy \$25,000
Yvonne McIntire
202-585-3800

Western Resources \$25,000
Doug Lawrence
785-575-8411

El Paso comped
Lori Laudien
202-637-3506

Considering

Dynegy
Marian Davenport
713-767-8534

TXU (She is a NO)
Kerrill Scrivener
202-628-2747

Duke
Beverly Marshall
202-331-8090

Panda Energy
Harold Green

972-980-7159

Cal Pine
John Shelk
202-589-0909

Chris Perkins

From: Drew Maloney [DrewMaloney@2way.net]
Sent: Thursday, May 30, 2002 2:14 PM
To: Chris Perkins

U may want to reformat.

Attendees (add names)

El paso
El paso annoucned on tuesday that it is cutting half of its trading operation (100-400 jobs in houston) and lowering earnings estimates for this year. The stock has gone down nearly 30 percent this week.

El. Paso's interested in pipeline safety and insuring that congress doe. s not overregulate an industry dependent on capital.

Reliant

Reliant has also been affected by Enron fallout. FERC is currently investigating wash trades and other activities by Reliant, w Williams, Mirant and others.

Reliant's primary goal for theconference is to make sure theprogress that has been made to deregulate the wholesale electricity markets are not rolled back.

Mirant

Mirant Energy is a spin off of Southern Company. Mirant is the competitive side of electricity and strongly supports open markets. Mirant is based out of Atlanta.

Mirant has same goals as reliant in support of competitive markets.

Williams

Williams is based out of Oklahoma. Williams is big pipeline, natural gas and energy trader. The company has been getting hit for loaning its energy money to its telecom division. Williams is also involved in many of the California energy disputes.

Williams should have same goals as El Paso and Reliant.

Western Resources

The company is based out of Kansas. It is a more traditional utility. It has one big concern that does not conflict with the others -- it wants to repeal the Public Utility Holding Company Act. The company has a unique problem that was addressed in the House bill.

Chris Perkins

From: Drew Maloney [DrewMaloney@2way.net]
Sent: Thursday, May 30, 2002 2:20 PM
To: Chris Perkins

Put this on separate sheet

ARMPAC and TRMPAC event

Reliant. \$50,000

Mirant. \$25,000 new participant

Williams. \$25,000. New particiapnt

Western resources \$25,000 new

Not attending, but helping

CalPine Energy \$10,000 new

Duke energy \$15,000, plus \$2,500 hard

Total of \$152,500

To: Officers
Re: Campaign Contributions

June 25, 2002

I want to thank each of you for your participation in the past round of campaign contributions. As I mentioned in the previous memo there will be several rounds of contributions on the federal level. We have reach round two.

First, I want to explain why we are involved in the federal issues and who the latest round of recipients are ... and why they are important.

1. The House and Senate conference committee on the Energy Bill has been appointed. This legislation has several key elements, but most importantly for the company, it includes the repeal of PUHCA. While most of the electric utility industry is happy with the concept of this repeal, this action has the potential of harming our financial restructuring efforts. Without PUHCA we will need some relief from a regulatory regime, which could make the restructuring impossible. The good news is that we were successful in getting language providing the appropriate relief in the House version of the bill. Now we are working to get the Senate to adopt a modified version of the House bill. Our effort is focused on getting the House members of the committee to strongly defend our provision, and finding a few Senate conferees who can support it.
2. In this second round of contributions we are targeting only one House Member. Representative Billy Tauzin of Louisiana is the Chairman of the House Energy and Commerce committee. Right now, we have made significant progress with House Majority Whip Tom Delay, and Energy Subcommittee chairman Joe Barton. The contributions made in the first round were successful in opening the appropriate dialogue. Now, as the conference committee begins meeting, Representative Tauzin will play a key role. Beyond serving on the conference committee, Representative Tauzin as chairman of the full committee, is extremely influential in the decision to maintain the House position on our provision.

The total contribution we have identified for Representative Tauzin is \$5,000 for a fundraiser in New Orleans which will be attended by our lobbyist in Washington DC.

WE 0107093

Using the same formula for suggested contributions for this amount, as used in the previous round here are the proposed contributions:

David Wittig	\$ 1,500.00
Doug Lake ✓	\$ 1,000.00
Doug Sterbenz ✓	\$ 500.00
Paul Geist ✓	\$ 425.00
Dick Dixon ✓	\$ 300.00
Jo Hunt ✓	\$ 225.00
Doug Lawrence ✓	\$ 150.00
Lee Wages ✓	\$ 150.00
Bruce Akin	\$ 150.00
Larry Irick ✓	\$ 150.00
Peggy Loyd ✓	\$ 150.00
Caroline Williams ✓	\$ 150.00
Kelly Harrison ✓	\$ 150.00

We have a short deadline for response because of an FEC deadline. Please forward your checks to my office as soon as possible. We need to have this effort funded by Friday. If you have any questions, please don't hesitate to call me at 575-8411.

Thank You.
Doug Lawrence

WE 0107094

34
STENOGRAPHIC MINUTES
Unrevised and Unedited
Not for Quotation or
Duplication

ORIGINAL

HOUSE-SENATE JOINT CONFERENCE ON H.R. 4,
SECURING AMERICA'S FUTURE ENERGY ACT
OF 2001, SUBTITLE A-FEDERAL POWER ACT
AMENDMENTS, ELECTRICITY PROVISIONS
THURSDAY, SEPTEMBER 19, 2002

House of Representatives

Committee on Energy and Commerce

Washington, D.C.

and

United States Senate

Committee on Energy and Natural Resources

Washington, D.C.

Committee Hearings

of the

U.S. HOUSE OF REPRESENTATIVES



OFFICE OF THE CLERK
Office of Official Reporters

334

ORIGINAL

1 RPTS JURA

2 DCMN NORMAN

3

4

5 HOUSE/SENATE CONFERENCE ON H.R. 4,

6 SECURING AMERICA'S FUTURE ENERGY ACT OF 2001

7 THURSDAY, SEPTEMBER 12, 2002

8 House of Representatives,

9 Committee on Energy and Commerce,

10 Washington, D.C.

11 and

12 United States Senate,

13 Committee on Energy and Commerce

14 Washington, D.C.

15

16 The joint conference met, pursuant to call, at 9:40 a.m.,

17 in Room 2123, Rayburn House Office Building, Hon. W.J. (Billy)

18 Tauzin [chairman of the committee] presiding.

19 Present: Representatives Tauzin, Bilirakis, Barton,

20 Upton, Stearns, Gillmor, Burr, Dingell, Waxman, Markey,

21 Boucher, Gordon, Gutknecht, Norwood, Hansen, Cubin, Rahall,

22 Boehlert, Bartlett, Costello, Young of Alaska, Oberstar, and

23 DeFazio.

24 Senators Bingaman, Breaux, Reid, Jeffords, Murkowski,

25 Domenici, Craig, Campbell, and Thomas.

2574 Mr. BOUCHER. Aye.

2575 The CLERK. Mr. Boucher votes aye. Mr. Gordon.

2576 Mr. DINGELL. Aye, by proxy.

2577 The CLERK. Mr. Gordon votes aye. Mr. Rush.

2578 Mr. BARTON. Aye, by proxy.

2579 The CLERK. Mr. Rush votes aye. Mr. DeLay.

2580 Mr. BARTON. No, by proxy.

2581 The CLERK. Mr. DeLay votes aye--no.

2582 Mr. BARTON. No, no, by proxy. The clerk will report the

2583 tally.

2584 The CLERK. Mr. Chairman, on that, there were six ayes and

2585 eight nays.

2586 Mr. BARTON. The amendment of Mr. Dingell fails. Are there

2587 other amendments to the proposal? Mr. Markey seeks

2588 recognition.

2589 Mr. MARKEY. Thank you, Mr. Chairman. I have 143.

2590 Mr. BARTON. That is an amendment? Mr. Markey is

2591 recognized for five minutes in support of Markey Amendment

2592 143. The clerk will pass out the amendment.

2593 Mr. MARKEY. Excuse me, Investment Company Act, yes.

2594 The CLERK. "Amendment to the proposed House offer on

2595 H.R. 4 offered by Mr. Markey."

2596 Mr. BARTON. The gentleman is recognized in support of his

2597 amendment.

2598 [The Amendment offered by Edward Markey follows:]

2599

***** INSERT *****

2600 Mr. MARKEY. Thank you, Mr. Chairman, very much. Mr.
2601 Chairman, Section 136 provides that any company that was as
2602 of December 31, 2001 an affiliate of a holding company, as
2603 defined in PUHCA, and held investment securities, as defined
2604 under the Investment Company Act of 1940, of one or more
2605 companies engaged directly or indirectly in the electric or
2606 gas utility business or other permitted business activities
2607 shall be exempt from regulation as an investment company.
2608 Now, under this provision, any such company could operate as
2609 a mutual fund. Can you believe we are talking about that in
2610 the energy market? These companies want to transform
2611 themselves into mutual funds. Can you believe that, Peter? Or
2612 other type of investment company--what? Yes, I agree, let us
2613 invest in that company. Invest in Wall Street with the rest
2614 of the energy industry. And be totally exempted from SEC
2615 oversight and regulation.

2616 Back in January, Mr. Dingell and I wrote the Securities
2617 and Exchange Commission to ask about the impact of a similar
2618 proposal, and they reported that there may be hundreds of
2619 unregulated investment companies that would result from
2620 enactment of this language and that it would be impossible to
2621 determine the exact number of unregulated investment
2622 companies it could potentially create. The SEC provided me
2623 with five boxes of documents containing information about the
2624 potentially hundreds of companies that could exploit this

2625 | loophole.

2626 | Now, we are told that this is only a special interest
2627 | provision that is aimed at benefitting a single company, a
2628 | Kansas-based company known as WestStar Energy, a utility
2629 | holding company, formally known as Western Resources, that
2630 | decided several years ago to diversify into the burglar alarm
2631 | business. Now this company reportedly claims that they need
2632 | an exemption from the Investment Company Act because of their
2633 | holdings, but I see no reason why we should give it to them.
2634 | If this company has a legitimate case to make as to why they
2635 | are only incidentally or temporarily an investment company or
2636 | why they should be exempted from the act, why aren't they
2637 | successfully making that case today at the Securities and
2638 | Exchange Commission? The SEC actually has the authority to
2639 | address any legitimate issue this company may have, either by
2640 | finding that WestStar Energy does not meet the definition of
2641 | an investment company under Section 3 of the 1940 act or by
2642 | using its exemptive authority under Section 6 of the 1940 act
2643 | to exempt them from the act's application. If the company has
2644 | a legitimate case to be made, they should make it to Harvey
2645 | Pitt and the Securities and Exchange Commission staff. They
2646 | should not be wasting our time with a legislative fix.

2647 | The fact that they are doing so raises some alarm bells
2648 | for me as to what their real motivations might be. It is not
2649 | exactly this incredible watchdog over at the Securities and

2650 Exchange Commission that we are talking about. I mean I think
2651 they are willing to be very open minded. That is what Harvey
2652 Pitt said when he took over. So if they can't get past the
2653 Harvey Pitt standard as per a waiver, what are we doing on
2654 this committee, which has been trying our best to put some
2655 lead in the pencil of that agency over the last year to make
2656 sure that it in fact does stand up to those who want to
2657 engage in acts of nefarious misbehavior as malefactors of
2658 financial fraud upon ordinary, unsuspecting investors across
2659 our country?

2660 I would like to remind my colleagues that we went down
2661 this path before of considering legislative exemptions from
2662 the 1940 act and pressuring the Securities and Exchange
2663 Commission to grant administrative exemptions in 1996. Enron
2664 came to Congress when we were working on the National
2665 Securities Markets Improvement Act, and they sought an
2666 exemption from the Investment Company Act, the same act.
2667 Now, Mr. Dingell and I resisted this provision, and it was
2668 not added to the final bill, although the majority insisted
2669 on report language encouraging the Securities and Exchange
2670 Commission to favorably consider Enron's request. The
2671 following year, in 1997, Enron sought and obtained an
2672 exemption from the Securities and Exchange Commission from
2673 the Investment Company Act of 1940 which it exploited to
2674 engage in activities that would have been prohibited if it

2675 had been regulated as an investment company. The proposed
2676 1940 act exemption and Section 136 of this bill is
2677 significantly broader than that exemption granted Enron back
2678 in 1997, and literally hundreds of unregulated investment
2679 companies could be created across our country if that
2680 provision, which is in this bill, becomes law.

2681 Why should we permit it to happen? Have my colleagues and
2682 I learned nothing from our hearings this year? I don't
2683 believe we are going to allow that to happen again. Let us
2684 not let the mistakes of the past be repeated again in this
2685 committee. Please support the Markey amendment to block this
2686 attempt at circumventing the legitimate oversight
2687 responsibilities of the Securities and Exchange Commission.

2688 Mr. BARTON. Is there discussion of the pending Markey
2689 amendment? I would be happy to speak. The Chair would
2690 recognize himself in mild opposition to the Markey amendment.
2691 We have been round and round on this. I think the gentleman
2692 is--the gentleman from Massachusetts certainly has good
2693 reasons to offer his amendment. There really is a policy
2694 decision here that the committee--the Conference Committee
2695 needs to make. This particular provision benefits one
2696 company. That company is Case Western Resources based on
2697 Topeka, Kansas. The provision has been in the draft that was
2698 circulated at the subcommittee that I Chair, it has been in
2699 the discussion drafts, it is in the pending proposal at my

2700 request.

2701 The reason that I put it in is because this company is in
2702 a unique situation that it has got a subsidiary that has a
2703 natural gas affiliate that its primary business is in
2704 electronic security, and because of the problems that have
2705 occurred in the stock market, the affiliate that it is trying
2706 to sell puts it in this unique position that it finds itself.

2707 I am sure when we go to the Senate, if this stays in the
2708 bill, that the Senate will discuss it. I would love for the
2709 SEC to act on this thing. They have no substantive reason not
2710 to. They will say that off the record, but for some reason
2711 they refuse to exercise their regulatory authority on the
2712 record. Perhaps this debate might encourage them to. So,
2713 again, at the appropriate time, I think that this would be a
2714 subject that we could work together on with our colleagues in
2715 the Senate. Today I am going to oppose the amendment but only
2716 in a very mild way. Does the gentleman from Michigan wish--

2717 Mr. DINGELL. Mr. Chairman.

2718 Mr. BARTON. The gentleman is recognized for five minutes.

2719 Mr. DINGELL. I rise in support of the amendment offered
2720 by the gentleman from Massachusetts. I was intrigued by the
2721 exemption from the Investment Company Act of 1940. This is a
2722 statute which has been protecting investors, including the
2723 savings and investments of a lot of us here today, for well
2724 over half a century. Without government subsidies or taxpayer

2725 credit, investment companies, including the ever popular
2726 mutual funds, have operated with remarkable safety and
2727 soundness and have provided capital to meet the needs of a
2728 growing economy. Why? Because the Investment Company Act
2729 provides investors with specific protections against
2730 self-dealing, against conflict of interest, against
2731 misappropriation of funds, against overreaching with respect
2732 to fees, expenses and undisclosed risks of many types. The
2733 SEC has the important job of policing these and other
2734 requirements, and it has done so both responsibly and
2735 successfully.

2736 I found that there was an exemption in the offer which is
2737 now before us, which--and I started hunting around to see who
2738 it was that was going to benefit from this. There is only
2739 one company, Western Resources, but it is interesting to note
2740 that any company which could structure itself to be roughly
2741 the same as Western Resources could come in under that
2742 loophole and then could function not just as a manager of
2743 natural resources but in fact as a mutual fund and could do
2744 everything that any mutual fund can do, open or closed end
2745 and would be able then to do so totally without any scrutiny,
2746 totally without any protection for the investors or anything
2747 being done by the SEC to prevent the kind of abuses that the
2748 Investment Company Act was put in place to prevent.

2749 The director of SEC's Division of Investment Management

2750 | informed us in a February 13 memo that there may be hundreds
2751 | of unregulated investment companies that would result from
2752 | this exemption. In other words, it isn't just Western
2753 | Resources that is going to be able to do any kind of
2754 | rascality they want, totally exempt from the Holding Company
2755 | Act, but a lot of people are going to be able to come in and
2756 | do the same kind of mischief, disregarding the needs and the
2757 | concerns of investors. Now, I would remind everyone here
2758 | present that the situation in the economy is not good, and
2759 | one of the reasons is nobody has any confidence in the
2760 | marketplace. Because of Enron, because of Global Crossing,
2761 | because of WorldCom and a lot of other people, including the
2762 | good folks at Tyco who so diligently took advantage of the
2763 | opportunities to enrich themselves and disregard the
2764 | well-being of investors, have now shaken the trust of
2765 | investment public.

2766 | I have warned the industry time after time, everybody
2767 | thinks it runs on money. It doesn't. It runs on public
2768 | confidence. And if there is public confidence, then there
2769 | will be lots of money made by everybody. The Investment
2770 | Company Institute very wisely sent us a communication on this
2771 | in which the head of that institution, Mr. Matt Fink,
2772 | observed this: The provision would permit this company and
2773 | perhaps others to operate as a mutual fund, but to be
2774 | completely free from SEC regulation under the Investment

2775 Company Act. Thus, we are warned. We are not setting up an
2776 exemption only for Western Resources who may be as virtuous
2777 as the papacy.

2778 [Laughter.]

2779 Mr. BARTON. Let us hope more virtuous than that.

2780 Mr. DINGELL. But--or a nunnery.

2781 Mr. MARKEY. The Pope is Polish, remember that.

2782 Mr. DINGELL. But even if that is so, we have no
2783 assurances that this splendid loophole is not going to be
2784 available to any number of smart rascals, MBAs and others on
2785 Wall Street and elsewhere so that they can skin the American
2786 investors in the most scandalous and outrageous ways. The
2787 amendment gives us firm assurance that we are preventing a
2788 rich plethora of scandal which will come back to haunt us if
2789 we don't adopt the amendment. I yield back the balance of my
2790 time.

2791 Mr. BARTON. Thank the gentleman. I will make one more
2792 observation, and then we will call the vote. The letter that
2793 the gentleman referenced from the SEC was based on an earlier
2794 version of language. The SEC today would tell you in a
2795 similar letter that this language in the pending proposal
2796 does in fact deal with just one company. That may be onerous
2797 but it does just deal with one company. It does not deal
2798 with potentially hundreds of companies, as that letter
2799 indicated.

2800 | Is there any other discussion of the pending Markey
2801 | amendment? The gentleman from Massachusetts.

2802 | Mr. MARKEY. Thank you, Mr. Chairman. First of all, let
2803 | me insert in the record a letter from the Investment Company
2804 | Institute--

2805 | Mr. BARTON. Without objection, so ordered.

2806 | Mr. MARKEY. --from the 18th opposing this exemption.

2807 | [The Investment Company Institute letter follows:]

2808 | ***** COMMITTEE INSERT *****

2809 Mr. MARKEY. And obviously every other mutual fund company
2810 in the United States would oppose it, because this one
2811 company, and everyone else that would slip in under this
2812 exception because it wouldn't just be one company, would be
2813 exempt from all of the other requirements that legitimate
2814 mutual fund companies have to abide by.

2815 Now, you are wondering where are they getting an
2816 exemption from? So I am about to list for our audience some
2817 of the legal niceties that they seek to escape by having this
2818 exemption. They escape oversight by independent directors,
2819 don't have to do that in that company; bans on affiliated
2820 transactions; making daily marking to market of assets, won't
2821 have to do that; no limits on leveraging and no special full
2822 disclosure requirements, which the other mutual fund
2823 companies will be required to do. So we start right now, a
2824 nice set of juicy exemptions that basically--that turn the
2825 transparency dial down to zero in terms of the world can know
2826 about what is going on inside of this company.

2827 Moreover, listen to this, the special grandfathered
2828 investment companies that we are turning this one into that
2829 could be established pursuant to this would not be subject to
2830 the restrictions applicable to other investment vehicles,
2831 such as hedge funds, that currently rely on specific
2832 exemptions from registration under the 1940 act. They could,
2833 therefore, engage in some of the risky and speculative

2834 investment strategies pursued by hedge funds with no
2835 assurance that they would limited in size, pursuant to
2836 statutory limits on the number of hedge fund investors or
2837 restrictions limiting such funds to sophisticated investors.
2838 All in all, a really, really nice exemption from the laws,
2839 which you would think somebody would be requesting in 1928,
2840 you know, right before the 1929 crash, not in the year 2002
2841 after we have just had the worst crash since that period of
2842 time in terms of its impact upon investors, especially in the
2843 areas that this company specifically, and I am sure other
2844 companies that would follow its lead, seem to have a special
2845 interest in.

2846 I think it is a terrible, terrible thing for us to be
2847 doing. We should rely upon the Securities and Exchange
2848 Commission. If they want to give an exemption because it
2849 doesn't fit under the historical test as a mutual fund, they
2850 can do it. But if it does, and my view is that is why they
2851 are coming to us, but they want to engage in those very same
2852 activities but without any regulation which is essentially
2853 what this provision will allow them to do, then it is wrong
2854 for us to be acting in that special interest way. And so once
2855 again, I urge support for the Markey amendment.

2856 Mr. BARTON. Clerk will call the roll. All those in favor
2857 of the Markey amendment will vote aye. All those opposed will
2858 vote no.

2859 The CLERK. Mr. Tauzin.
2860 Mr. BARTON. No, by proxy.
2861 The CLERK. Mr. Tauzin votes no. Mr. Bilirakis.
2862 Mr. BARTON. No, by proxy.
2863 The CLERK. Mr. Bilirakis votes no. Mr. Barton.
2864 Mr. BARTON. No.
2865 The CLERK. Mr. Barton votes no. Mr. Upton.
2866 Mr. BARTON. No, by proxy.
2867 The CLERK. Mr. Upton votes no. Mr. Stearns.
2868 Mr. BARTON. No, by proxy.
2869 The CLERK. Mr. Stearns votes no. Mr. Gillmor.
2870 Mr. BARTON. No, by proxy.
2871 The CLERK. Mr. Gillmor votes no. Mr. Burr.
2872 Mr. BARTON. No, by proxy.
2873 The CLERK. Mr. Burr votes no. Mr. Dingell.
2874 Mr. BOUCHER. Mr. Dingell votes aye by proxy.
2875 The CLERK. Mr. Dingell votes aye. Mr. Waxman.
2876 Mr. BOUCHER. Aye, by proxy.
2877 The CLERK. Mr. Waxman votes aye. Mr. Markey.
2878 Mr. MARKEY. Aye.
2879 The CLERK. Mr. Markey votes aye. Mr. Boucher.
2880 Mr. BOUCHER. Aye.
2881 The CLERK. Mr. Boucher votes aye. Mr. Gordon.
2882 Mr. BOUCHER. Aye, by proxy.
2883 The CLERK. Mr. Gordon votes aye. Mr. Rush.

2884 Mr. BOUCHER. Aye, by proxy.

2885 The CLERK. Mr. Rush votes aye. Mr. DeLay.

2886 Mr. BARTON. No, by proxy.

2887 The CLERK. Mr. DeLay votes aye--no.

2888 Mr. BARTON. Clerk will report the tally.

2889 The CLERK. Mr. Chairman, on that vote, there were six

2890 ayes and eight nays.

2891 Mr. BARTON. Are there other amendments to the proposal?

2892 Mr. BOUCHER. Mr. Chairman?

2893 Mr. BARTON. Gentleman from Virginia.

2894 Mr. BOUCHER. Mr. Chairman, I have an amendment at the

2895 desk.

2896 Mr. BARTON. Speak into the microphone a little bit more.

2897 Mr. BOUCHER. I have an amendment at the desk. It is

2898 related to FERC merger review authority and the repeal of

2899 that authority by your offer.

2900 Mr. BARTON. The Chair would ask unanimous consent that

2901 the amendment be considered as read, and the clerk will

2902 circulate the amendment, and the gentleman from Virginia is

2903 recognized in support of the amendment for five minutes.

2904 [The Amendment offered by Rick Boucher follows:]

2905 ***** INSERT *****



Doug Lawrence
09/30/2002 03:55 PM

To: Kelly B Harrison/WRI@WRI
cc:
Subject: Washington DC

----- Forwarded by Doug Lawrence/WRI on 09/30/2002 02:54 PM -----



Doug Lawrence
09/30/2002 02:45 PM

To: guybeau@imcingular.com
cc:
Subject: Washington DC

Things are grim in DC. The Delay staff has asked us to release people from their commitment to support our provision. The Wine letter has killed us, it has been circulated along with last week's 8K. We only had a one vote margin to hold this, even if we tell them to hold tight will will certainly lose two. At this point my recommendation is to release them, with a request to assist on the SEC effort. (they'll be happy to help there). I also want to deliver a message to Moline that we are pulling the amendment, but insist that the commission understand that it is expected to help us get the exemption that John Wine screwed up. (Time is precious ... I need to talk to our DC lobbyist in the next 30 minutes as to our decision.) If you have questions, call me on the cell. Lawrence

WE 0113628

October 6, 2004

The Honorable Tom DeLay
Majority Leader
U.S. House of Representatives
Suite H-107, The Capitol
Washington, D.C. 20515

Dear Colleague:

As you are aware, the Committee has made a number of decisions regarding the allegations made in the complaint that was filed against you by Representative Bell on June 15, 2004. This letter implements determinations made by the Committee that you be admonished for your conduct in two respects:

- your participation in and facilitation of an energy company golf fundraiser at The Homestead resort for your leadership PACs on June 2-3, 2002. Those actions were objectionable under House standards of conduct because, at a minimum, they created an appearance that donors were being provided special access to you regarding the then-pending energy legislation.
- your intervention in a partisan conflict in the Texas House of Representatives using the resources of a Federal agency, the Federal Aviation Administration. This action raises serious concerns under House standards of conduct that preclude use of governmental resources for a political undertaking.

The bases of these Committee determinations are as follows.

Your actions regarding the energy company golf fundraiser at The Homestead resort on June 2-3, 2002. With regard to the solicitation and receipt of campaign contributions, the Committee has clearly stated that a Member may not make any solicitation that may create even an appearance that, because of a contribution, a contributor will receive or is entitled to either special treatment or special access to the Member in his or her official capacity. This point is made on p. 34 of the *Campaign Activity* booklet that the Committee issued in December 2001.^{1[1]} In the same vein, a Member should not participate in a fundraising event that gives

^{1[1]} More generally, under House standards of conduct as set out in Committee publications, a Member may not make any solicitation for campaign or political contributions that is linked with any specific official action taken or to be taken by that Member. 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.

even an appearance that donors will receive or are entitled to either special treatment or special access.

On the basis of the information before the Committee, the Committee concluded that your participation in and facilitation of the energy company golf fundraiser at The Homestead resort on June 2-3, 2002 is objectionable in that those actions, at a minimum, created such an improper appearance. As a general matter, fundraisers directed to a particular industry or to others sharing a particular federal interest are permissible, and at such events Members are free to talk about their record and positions on issues of interest to the attendees. In addition, of course, a Member has no control over what the donors at a fundraising event spontaneously say to or ask of the Member with regard to their legislative interests. Nevertheless, there are a number of considerations regarding this particular fundraiser that make your participation in and facilitation of the fundraiser objectionable under the above-stated standards of conduct.

In particular, there was the timing of the fundraiser, *i.e.*, it took place just as the House-Senate conference on major energy legislation, H.R. 4, was about to get underway. Indeed, one of the communications between organizers of the fundraiser that you provided to us – an e-mail of May 30, 2002 from Mr. Maloney to Mr. Perkins that notes the legislative interests of each of the attendees – includes a specific reference to the conference. That legislation was of critical importance to the attendees. In addition, there was the fact that you were in a position to significantly influence the conference, both as a member of the House leadership and, by action taken about a week and a half after the fundraiser, your appointment as one of the conferees.

In view of these considerations, other aspects of the fundraiser that would have been unobjectionable otherwise had the effect, in these specific circumstances, of furthering the appearance that the contributors were receiving impermissible special treatment or access. One of these aspects was the presence at the fundraiser of two of your key staff members from your leadership office: Jack Victory, who handled energy issues, and your office counsel, Carl Thorsen. In addition, there were the limited number of attendees, and the fact that the fundraiser included several events at a resort over a two-day period, both of which facilitated direct contact with you and your congressional staff members.

We also note the description of the event that was provided to the Committee by counsel for the attendees of one of the contributors, Westar Energy, Inc. That description includes the following:

On Sunday, June 2, 2002 Douglas Sterbenz and Doug Lawrence [Westar executives] attended a reception and dinner with fifteen to twenty others at the Homestead. Representative Tom DeLay was present for the reception and dinner. Mr. DeLay asked the group to advise him of any interest we had in Federal Energy Legislation. Mr. Lawrence advised Mr. DeLay that Westar supported repeal of the P.U.C.H.A. [sic] provision in the Energy Bill, provided that Westar's restructuring wouldn't be harmed by the [r]epeal. Lawrence advised that Westar needed a grandfather clause to continue as a safe harbor if P.U.C.H.A. was to be repealed. The following day, Mr. Lawrence provided a staff aide to Rep. DeLay a bound briefing book that Westar had put together on this issue. [emphasis added]

On June 3rd, 2002, Mr. Lawrence attended a golf outing at the Homestead where he played golf with the attendees. Mr. Lawrence shared a cart with an aide to Congressman Delay and advised the aide he would give him the materials in the briefing book and later did. At lunch that day, Mr. Sterbenz, Mr. Lawrence and others participating in the golf outing had lunch. During the lunch Mr. Lawrence restated to Rep. DeLay Westar's position regarding the need for a grandfather clause if P.U.H.C.A. was to be repealed.

When we brought the above-quoted statement to your attention and requested your response to it, you stated that you gave a general briefing on energy issues at that event, but that you have no recollection of your specific remarks. You also stated that "it would not be typical" for you to have made such a statement at a fundraiser, and that this is not at all consistent with the manner in which you "normally would interact with attendees at such an event." In view of your response, the Committee's determination on this matter is not based on Mr. Lawrence's characterization of your remarks. Rather, the other circumstances of the event, as set forth above, are more than sufficient to support the Committee's determination.

In addition, while the views of any one donor are not dispositive on whether a fundraising activity creates an appearance of impropriety, the documents we obtained indicate that the individuals who were active on Westar's behalf were of the view that the company's participation in the fundraiser provided special access to you. In this regard, later in June 2002, when Mr. Lawrence was proposing that Westar executives make additional contributions, he stated that Westar had made "significant progress" with you and Representative Barton, and that, "The contributions made in the first round were successful in opening the appropriate dialogue." When we asked Mr. Lawrence about that statement, he said he was referring to the presentations he was able to make at the fundraiser earlier that month. In addition, the following month, when Westar's lobbyist, Mr. Richard Bornemann, sent a memorandum to your staff seeking an appointment with you for the company's CEO, he noted Westar's participation in The Homestead fundraiser.

Your use of governmental resources for a political undertaking. The Committee has long taken the position that House standards of conduct prohibit Members from taking (or withholding) any official action on the basis of the partisan affiliation (or the campaign support) of the individuals involved. This is the point made in an advisory memorandum that the Committee issued to House Members, officers and employees on May 11, 1999. In addition, a provision of the Code of Ethics for Government Service, which the Committee deems to be fully applicable to House Members and staff, requires that federal officials "[u]phold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion." These laws include, of course, those that generally prohibit the use of governmental resources for political purposes – particularly 31 U.S.C. § 1301, which provides that official funds are to be used only for the purposes for which appropriated, and, with regard to executive branch personnel, the Hatch Act, which prohibits those employees from engaging in political activity while on duty or in a government building.

Your intervention in a partisan conflict in the Texas House of Representatives using the resources of a Federal agency, the Federal Aviation Administration, raises serious concerns under these standards of conduct. Your contacts with the FAA were in connection with the dispute over congressional redistricting in the Texas House of Representatives that occurred in May 2003. The purpose of these contacts was to obtain information on the whereabouts of Democratic Members of the Texas House who had absented themselves from Austin for the purpose of denying the House a quorum. You have stated to us that you made these contacts at the request of the Speaker of the Texas House of Representatives, who was seeking information on the location of an airplane that was shuttling the absent legislators, and that you relayed the information you had obtained on the location of the airplane solely to the Texas House Speaker.

The submissions that you made to the Committee argue that those contacts with the FAA were proper, but those arguments are not persuasive.

First, your submissions assert that the Inspector General of the U.S Department of Transportation (DOT IG) found no wrongdoing in this matter. It is correct that the statement that the DOT IG submitted to the House Transportation and Infrastructure Committee states, "We did not find that actions [taken by the FAA official whom your office contacted] in this matter to have violated any rules or regulations." However, the assertion made in your submissions disregards a number of important considerations. To begin with, the DOT IG's statement raises specific concern about the FAA official's failure to inquire of your staff member as to why she was requesting information on the location of the particular airplane, "[W]e do not understand why he did not ask the staffer about the purpose of her request – particularly since he told us he thought it might involve a safety issue." In addition, there are the statements made by the FAA official to the DOT IG regarding his views of the requests of your office and his handling of them after he learned about the absent Texas legislators on May 13th:

I figured out why they were calling. . . I just felt like I had been used. . . I don't do anything for political purposes. . . and I just did not like. . . somebody calling me for political reasons. . . I would never use my office to help somebody politically, for any political reasons, period.

He also stated that in hindsight, "he would have handled the staffer's request differently, by coordinating with the FAA Chief Counsel's Office and senior agency officials, along with asking the requestor for background about the request." In short, without being apprised of the reason for the request, the FAA was denied the opportunity to make a prior, reasoned determination on whether collecting and providing the requested information would be both permissible and appropriate under the laws, rules and policies governing the FAA at the time.

Yet another pertinent point here is that on July 15, 2003, upon the recommendation of the DOT IG, the FAA issued an order setting out a specific policy regarding disclosure of aircraft and flight data from FAA information systems. That policy includes the following basic provision:

No request for Flight Track Data shall be granted unless it is first determined that the request is being made in the interest of aviation safety or efficiency, or for an

official purpose by a United States Government agency or law enforcement organization with respect to an ongoing investigation.

In sum, the statements made by the FAA official regarding his views of his actions after he had learned the purpose of the requests, and the FAA's later establishment of a restrictive policy on responding to such requests, indicate a larger concern about the propriety of the FAA's response to your requests for information, regardless of whether, in the specific circumstances, the actions of the FAA official did not violate the FAA rules or regulations that were in effect at the time.

Second, it is asserted that the House Committee on Transportation and Infrastructure found no wrongdoing in this matter. In this regard, the report that the Transportation Committee issued on this matter states with regard to the DOT IG's report, "[T]here were no findings that federal resources were misused or that agency personnel violated any departmental rules or regulations." Because the Transportation Committee report merely characterizes the findings of the DOT IG, the materials set out above regarding the DOT IG's report respond to this assertion as well. It should also be noted that it is the Committee on Standards of Official Conduct, and not the Transportation Committee, that has the jurisdiction to make determinations regarding the official conduct of House Members and staff.

Third, your submissions assert that the information that you sought and that was provided to you is publicly available over the Internet. Indeed, according to the statement of the DOT IG, "[C]omparable information – including near real-time aircraft locator data – is currently available to the general public through commercial databases accessible via the internet." However, the issues discussed here have arisen because you did not obtain the information on the location of the particular aircraft from one of the commercial databases, but instead you obtained it from FAA databases using the services of FAA personnel.

Finally, your submissions assert that these contacts were proper because they were made in the context of a "legitimate law enforcement issue." While acknowledging that this matter arose out of a political dispute, one of your submissions states that it "was a proper matter for the law enforcement authorities of Texas," citing certain letters of the Sergeant-at-Arms and the Texas Attorney General on the matter. However, review of those documents establishes that to the extent that there was any "enforcement" issue here, it was solely a matter of enforcement of rules of the Texas House of Representatives that govern its Members.

Indeed, this consideration highlights a separate basis on which the contacts with the FAA were objectionable, and that is that such use of federal executive branch resources to resolve an issue before a state legislative body raises serious concerns under the fundamental concepts of separation of powers and federalism. The enforcement of the rules of the Texas House – like enforcement of the rules of the U.S. House of Representatives or any other legislative body – is the responsibility of the Members, officers and employees of that body.

Insofar as enforcing the rules of the Texas House on Member attendance is concerned, the rules of that body provide that this is the responsibility of "the sergeant-at-arms or an officer appointed by the sergeant-at-arms." Whether it is permissible and appropriate for the Texas House Sergeant-at-Arms to appoint every official of the Texas Department of Public Safety as

such an officer, as occurred here, is a matter to be resolved by Texas authorities under Texas law. However, the invocation of Federal executive branch resources in a partisan dispute before a state legislative body is a different matter entirely, and such action raises the serious concerns that are set out here.

* * *

We note that your response to the Committee's decision of last week included the statement, "During my entire career I have worked to advance my party's legislative agenda." Your actions that are addressed in this letter, as well as those addressed in the Committee's decision of last week and in prior Committee actions, are all ones that, in a broad sense, were directed to the advancement of your legislative agenda. Those actions are also ones that your peers who sit on this Committee determined, after careful consideration, went beyond the bounds of acceptable conduct.

As you are aware, it does not suffice for any House Member to assert that his or her actions violated no law, or violated no specific prohibition or requirement of the House Rules. The House Code of Official Conduct broadly requires that every House Member, officer and employee "conduct himself at all times in a manner that shall reflect creditably on the House." It is particularly important that members of the House leadership, who are the most publicly visible Members, adhere to this requirement scrupulously. The fact that a violation results from the overaggressive pursuit of one's legislative agenda simply does not constitute a mitigating factor.

In addition, a state criminal investigation of the 2002 election activities of the Texans for a Republican Majority PAC, with which you were involved during the period in question, is underway. While Committee action on Count II of the complaint regarding those activities has been deferred pending further action in the state cases and investigation, the Committee will act on the underlying allegations at an appropriate time.

In view of the number of instances to date in which the Committee has found it necessary to comment on conduct in which you have engaged,^{2[2]} it is clearly necessary for you to temper your future actions to assure that you are in full compliance at all times with the applicable House Rules and standards of conduct. We remind you that the House Code of Official Conduct provides the Committee with authority "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."^{3[3]}

Sincerely,

^{2[2]} In addition to the two matters addressed in this letter and the conduct addressed in the Committee report of last week, there was the Committee letter to you of November 7, 1997 that concerned, in part, statements that may create the impression that official access or action are linked with campaign contributions, and a confidential Committee letter to you of May 7, 1999.

^{3[3]} *House Ethics Manual* at 12 (reprinting excerpt from the 1968 committee report on the House Code of Official Conduct (emphasis added)).

Joel Hefley
Chairman

Alan B. Mollohan
Ranking Minority Member
