

**UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT**

**Citizens for Responsibility and Ethics in Washington  
Complainant**

**Hon. Sam Johnson, M.C.  
Respondent**

**COMPLAINT**

**Parties**

1. Citizens for Responsibility and Ethics in Washington is a non-partisan, nonprofit watchdog organization dedicated to identifying, challenging and deterring unethical conduct on the part of government officials.

2. Sam Johnson is a duly elected member of the 109<sup>th</sup> Congress from the 3rd District of Texas.

**Jurisdiction**

3. This complaint is brought pursuant to House Rule X, cl. 1(p), which assigns to the House Committee on Standards of Official Conduct (“Ethics Committee”) jurisdiction over all matters pertaining to the House *Code of Official Conduct*, which is codified at House Rule XXIII. In addition, House Rule XI, cl. 3(b)(2)(A) provides that the Ethics Committee may “undertake an investigation relating to the official conduct of an individual Member . . . or employee of the House only . . . upon receipt of information offered as a complaint in writing and under oath, from a Member . . .”

**Facts**

4. On February 27, 2006, *The Washington Post* reported that the Internal Revenue Service (“IRS”) had recently completed an audit of Texans for Public Justice (“TPJ”) and an

affiliated foundation, after receiving a complaint against TPJ from Representative Sam Johnson (R-TX) (article attached as Exhibit A). R. Jeffrey Smith, Texas Nonprofit Is Cleared After GOP-Prompted Audit: Group Says Probe Was ‘Political Retaliation’ by DeLay Allies, *The Washington Post*, February 27, 2006. Rep. Johnson is a member of the House Ways and Means Committee, the committee that oversees the IRS. The article reports that Rep. Johnson made his complaint in response to concerns expressed by Barnaby W. Zall, a Washington lawyer close to former Majority Leader Tom DeLay (R-TX). Id.

5. On August 3, 2004, Rep. Johnson sent a letter to IRS Commissioner Mark W. Everson, claiming that “as a member of the oversight committee,” he had “uncovered some disturbing information” about TPJ. Letter from Rep. Sam Johnson to Mark Everson, August 3, 2004 (attached as Exhibit B). He also stated that “coincidentally,” he had “received a letter from an attorney experienced in tax-exempt law raising significant questions about exemptions and activities of these organizations.” Id. Rep. Johnson asked that the IRS “follow up . . . on the potential violations” and report back directly to him.<sup>1</sup> Id.

6. Rep. Johnson sent the complaint against TPJ to the IRS after Mr. Zall sent him a letter complaining about TPJ’s activities and noting that Rep. Johnson’s subcommittee had “jurisdiction to review the Internal Revenue Service’s supervision of tax-exempt organizations.” Letter from Barnaby W. Zall to Rep. Sam Johnson, July 19, 2004 (attached as Exhibit D). Mr. Zall’s letter to Rep. Johnson claimed that Travis County District Attorney Ronnie Earle was

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<sup>1</sup> In response to *The Washington Post*’s article, Rep. Johnson released a statement categorically denying that he asked the IRS to audit TPJ. Statement of Rep. Sam Johnson, Feb. 27, 2006 (attached as Exhibit C). Rep. Johnson’s statement is belied, however, by the language of his letter which clearly states . . . “the IRS should investigate these organizations and take appropriate actions.”

“attempting to use his local office as part of a calculated scheme to remove a federal elected official from a position of authority in Congress. In other words, the concern is that Ronnie Earle is part of an effort by Texas Democrats to force Tom DeLay to step down as Majority Leader.” *Id.* He further stated that Earle was “not acting alone” but with the assistance of TPJ.<sup>2</sup> As a result, Mr. Zall argued that the IRS should investigate TPJ for “engaging in an apparent attempt to influence national politics.” *Id.* The letter further alleged an improper link between TPJ and the Texas Democratic Party. *Id.*

7. From 1990 to 1998, Mr. Zall was of counsel to the firm of Williams & Jensen, which has long represented Mr. DeLay’s leadership political action committee, Americans for a Republican Majority (“ARMPAC”). Barbara Bonfiglio, a principal at the firm, was subpoenaed in January 2004 by District Attorney Ronnie Earle as part of his inquiry into Rep. DeLay’s activities. Smith, *The Washington Post*, Feb. 27, 2006.

8. When contacted by *The Washington Post*, Mr. Zall said that he might have written the letter to Rep. Johnson because “maybe somebody said something to me.” *Id.* He also admitted that Ms. Bonfiglio is a long-time friend and when asked if she had requested his assistance with the matter stated, “anything is possible.” *Id.*

9. Two weeks after sending his August 3<sup>rd</sup> letter to the IRS, a tax policy advisor on Rep. Johnson’s personal staff, Kathleen Black, sent a follow-up letter to Floyd Williams, the

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<sup>2</sup> The IRS complaint appears to be part of a concerted effort to attack those involved in exposing and investigating Rep. DeLay. Several months before the IRS complaint was filed, in an effort to punish District Attorney Earle and derail the investigation of Rep. DeLay, Texas GOP leaders passed a resolution calling on the Texas legislature to defund The Travis County District Attorney’s Public Integrity Unit. *See Statement of Republican Party of Texas*, March 24, 2004 (attached as Exhibit E).

head of the IRS Office of Legislative Affairs. Fax Cover Sheet from Kathleen Black to Floyd Williams, August 16, 2004 (attached as Exhibit F)<sup>3</sup>.

10. On September 16, 2004, Commissioner Everson sent a response to Rep. Johnson stating that he had sent the complaint to the IRS office in Dallas, the standard procedure when the IRS received “referrals for information from third parties.” Letter from Mark Everson to Rep. Sam Johnson, September 16, 2004 (attached as Exhibit G). Mr. Everson explained that he could not provide results directly to Rep. Johnson, but that the results could be requested by the Chairman of the House Ways and Means Committee. Id.

11. As a result of Rep. Johnson’s letter, on December 28, 2004, the IRS’s Austin office informed TPJ that it had received an allegation that the organization might have “jeopardized [its] tax-exempt status” by “intervening in a political campaign.” Letter from R.C. Johnson, Director EO Examinations to Public Justice Foundation of Texas, December 28, 2004 (attached as Exhibit H). IRS examiners from Austin and Oklahoma poured over TPJ’s minutes, correspondence, contracts, donor records and other documents before concluding, in a letter dated February 3, 2006, that the groups continued to qualify for tax-exempt status. Smith, *The Washington Post*, Feb. 27, 2006; Letters from Marsha A. Ramirez, Director EO Examinations to Texans for Public Justice and to Public Justice Foundation of Texas, February 3, 2006 (attached as Exhibit I).

### **Texans for Public Justice**

12. On March 31, 2003, TPJ filed a complaint with Travis County District Attorney

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<sup>3</sup>Although the cover sheet indicates that Ms. Black attached 10 additional pages of information, the IRS failed to provide those pages claiming that they fell within an exemption to the Freedom of Information Act.

Ronald Earle alleging that Texans for a Republican Majority (“TRMPAC”) violated Chapter 253 of the Texas Election Code by failing to report political contributions and expenditures incurred by the PAC. Letter from Craig McDonald, Director, Texans for Public Justice to Honorable Ronald Earle, March 31, 2003 (attached as Exhibit J).

13. Rep. DeLay had formed TRMPAC in September 2001 for the purpose of seeking Republican majority control of the Texas Legislature. TRMPAC was a companion to another of Rep. DeLay’s PACs, the federally registered ARMPAC. Rep. DeLay appointed one of his top aides, Jim Ellis, as director of TRMPAC and the PAC’s treasurer was Bill Ceverha, another former Republican lobbyist with close ties to Rep. DeLay.

14. According to TPJ, a review of public disclosure records filed by TRMPAC with the Texas Ethics Commission and the Internal Revenue Service revealed that the PAC raised a total of \$1,547,963 in funds from a combination of individuals, political action committees and corporations, and expended a total of \$1,410,766 between September 5, 2001 and November 23, 2002. Id. At a minimum, \$602,300 of those funds appeared to have been contributed by corporations which, under the Texas Election Code, are prohibited from contributing to TRMPAC to fund any state election activities. Id. Contributions from corporations may only be used to pay for “the establishment or administration of a general purpose political committee.” V.T.C.A, Election Code §253.100.

15. After receiving TPJ’s complaint, the Travis County District Attorney’s Office engaged in a two-and-a-half year investigation that resulted in Rep. DeLay’s indictment on September 28, 2005. Rep. DeLay is currently awaiting trial in Texas for his role in TRMPAC’s illegal activities.

## The Violation

16. The standards of conduct applicable to Members require that their contact with government agencies, whether it be in the cause of constituent casework, legitimate oversight or inquiries into official action, not be for “political... considerations.” See Advisory Opinion No. 1 of the House Committee on Standards of Official Conduct, reprinted in 116 Cong. Rec., pp. 1077-78 (Jan. 29, 1970). The use of executive branch resources for partisan political purposes implicates several provisions of law. Such activity may violate 31 U.S.C. §1301(a), which provides that official funds are to be used only for the purposes for which appropriated. The Department of Justice has stated, “If . . . there is no reasonable connection between the expense incurred and the official purposes to be served by an appropriation – as, generally speaking there would not be when an expense is incurred purely for partisan political purposes – official funds may not be used to pay the expense.” Memorandum from Chairman Joel Hefley and Ranking Minority Member Alan B. Mollohan, Recommendations for disposition of the complaint filed against Representative DeLay (108<sup>th</sup> Cong. Oct. 7, 2004) [*hereinafter* “DeLay Memorandum”] quoting 6 U.S. Op. Off. Legal Counsel 214, 216 (1982).

17. In addition, ¶ 2 of the Code of Ethics for Government Service requires that a House Member, like any other person in Government service, “uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.” *DeLay Memorandum*. According the House Committee on Standards of Official Conduct, this provision may “be implicated if a House Member were to request that an executive branch employee engage in an activity having an impermissible political purpose . . . Such conduct by a Member may also implicate the fundamental requirement of the House Code of

Official Conduct that a Member, officer, or employee ‘shall conduct himself at all times in a manner that shall reflect creditably on the House.’” *Id.*; House Rule 23, cl. 1.

18. Moreover, “where the primary purpose of an action taken by a Member in his or her official capacity is politically related, and the action is taken on behalf of a political ally or supporter, that action practically by definition constitutes an impermissible special favor under ¶ 5 of the Code of Ethics for Government Service.” *DeLay Memorandum*.

19. Coincidentally, the House Committee on Standards of Official Conduct was most recently faced with the question of whether a Member used executive branch resources for improper partisan purposes when members of Rep. DeLay’s staff were alleged to have used the Federal Aviation Administration (“FAA”) to track down an airplane carrying Texas state legislators. *DeLay Memorandum*. In that case, the Committee accepted the recommendation of Chairman Hefley and Ranking Member Mollohan that Rep. DeLay be admonished for using government resources for a political undertaking. Letter from Chairman Hefley and Ranking Member Mollohan to Rep. DeLay, October 6, 2004.

20. Rep. DeLay was admonished for his conduct after the Committee concluded that the contacts with the FAA were made at the request of the Texas House Speaker, the request was made in connection with a partisan conflict, and the information Rep. DeLay’s office obtained was relayed to the Texas House Speaker. *Id.*

21. Rep. Johnson’s request for an IRS investigation into an organization that had not only been critical of Rep. DeLay, but had been responsible for bringing DeLay’s potentially criminal conduct to the attention of the local prosecutor, raises similar issues. Here, Rep. Johnson was asked by a partisan political lawyer to request an IRS investigation and the request

for an IRS investigation was made in connection with a conflict largely viewed as partisan by Republican leaders and by Rep. Johnson, himself. The fact that Rep. Johnson refers to Mr. Zall's letter as support for his own letter buttresses the political nature of the IRS complaint.

22. First, the letter from Mr. Zall to Rep. Johnson repeatedly disparages District Attorney Earle's criminal investigation and claims, without substantiation, that the investigation and TPJ's role in sparking it were motivated by partisan politics. Letter from Barnaby Zell to Rep. Sam Johnson. Second, the political undertone of the letter is highlighted by Mr. Zall's statement that Rep. Johnson is "the only Republican from Texas who is a member of the Oversight Subcommittee of the House Ways & Means Committee." Id. This is compounded by the suggestion that Rep. Johnson is "in a position, either directly or perhaps with Mr. Sandlin [a Democrat from Texas] (who might be interested in demonstrating that there is, in fact, no problem), to ask the Internal Revenue Service . . ." whether TPJ is complying with the tax laws. Id. If Mr. Zall's request for an IRS audit was based solely on the facts and law and not on political exigencies, Rep. Johnson's political affiliation and state representation would be irrelevant.

23. In addition, Rep. Johnson has articulated his position that Rep. DeLay is an innocent man whom Democrats are conspiring to bring down. In January 2005, Rep. Johnson voted in favor of a rules package that would have allowed Rep. DeLay to maintain his position as Majority Leader even if indicted. Then, following Rep. DeLay's indictment in September 2005, Rep. Johnson stated: "Majority Leader Tom DeLay is a tremendous leader of the Republican party. His only interest is a better America. Ronnie Earle and his Democrat cronies set out three years ago to bring Tom down at all costs. The bogus charge today is nothing more

than a Democrat partisan plan to ruin Tom DeLay . . .” GOP Caucus: Do These Sound Like Folks Pining for DeLay’s Return?, *The Hotline*, September 30, 2005.

24. The evidence suggests that Rep. Johnson used his position as a Member of the House Ways and Means Committee to request executive branch action – an IRS investigation – on behalf of a political ally, Rep. DeLay, at the behest of another political ally, Barnaby Zall. Moreover, Rep. Johnson appears to have taken this action to punish an organization viewed as a political enemy of Rep. DeLay. Such conduct clearly violates federal laws and House rules.

### **Conclusion**

The United States Constitution gives the House of Representatives – and only the House of Representatives – the power to create its own rules and the power to police its Members. As a result, it is incumbent upon Members of the House of Representatives to protect the integrity of the House. In fact, the Committee on Standards of Official Conduct was created for this purpose.

This complaint offers the House of Representatives, acting through the Committee on Standards of Official Conduct, the opportunity to uphold the integrity of the House by initiating an immediate, thorough and non-partisan investigation of Rep. Johnson’s conduct.

Respectfully submitted,

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Citizens for Responsibility and Ethics in  
Washington