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Joan Claybrook, President

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Two memos written in May 2002 by a Westar Energy executive suggest that several members of Congress, including Representatives Tom DeLay (R-TX), Joe Barton (R-TX), Billy Tauzin (R-LA) and Sam Graves (R-MO) and Senator Richard Shelby (R-AL) agreed to provide favorable treatment to the company in exchange for more than $60,000 in campaign contributions to Republican Congressional candidates. In exchange for this financial support, Joe Barton, with the support of Tom DeLay, Billy Tauzin, Sam Graves and Richard Shelby, inserted language during House-Senate energy bill negotiations that would have specifically provided Westar with an exemption from an important investor protection. Barton withdrew the Westar language in October 2002 only after Westar's legal problems (unrelated to campaign finance issues) became public. Westar is under investigation by the Justice Department and the Securities and Exchange Commission for employment and securities law violations.

Public Citizen today requests that the Public Integrity Section of the Criminal Division of the U.S. Department of Justice and the Federal Election Commission each investigate these allegations of violation of federal anti-bribery statutes (18 U.S.C. § 201) and potential breach of campaign finance laws. In addition, Public Citizen requests that Tom DeLay's Texans for a Republican Majority return $25,000 it received in soft money from Westar to the company's shareholders.

The memos were first released to the public in May 2003 by a Special Committee of Westar's board of directors as part of an internal investigation of the company's fraudulent practices. The memos, written by Westar's Vice President for Public Affairs, state that Senator Shelby "made a substantial request of us for supporting [Tom] Young's campaign." Young was Shelby's former chief-of-staff who eventually lost a June 2002 runoff in the Republican primary for Alabama's first Congressional district. The memo outlines a "first round" strategy in which DeLay, Barton and Tauzin asked that contributions be made to Rep. Sam Graves, Rep. John Shimkus (R-IL), Rep. Anne Northup (R-KY) and Rep. Shelley Moore Capito (R-WV) in exchange for providing Westar "a seat at the table". Public Citizen has documented a smaller, "second round" of contributions (implied but not explicitly stated in the memos) benefitting Rep. Tom Latham (R-IA), Rep. Rob Simmons (R-CT), Rep. Robin Hayes (R-NC), Rep. Walter Jones (R-NC), Rep. Michael Oxley (R-OH) and Sen. John Sununu (R-NH).

Public Citizen research documents that a broader, more expensive plan than was described in the memos was actually carried out. Westar, 13 of its executives and 3 of its DC-area lobbyists provided at least $63,200 over two rounds of coordinated contributions. The lion's share—$49,050 to eight candidates—was generated during a "first round" of contributions. This first round of contributions was described in detail in the memos. Public Citizen database searches confirm that a second round of contributions was executed, totaling $14,150 to an additional six candidates and the National Republican Congressional Committee.

Three executives with Governmental Strategies, Inc—one of two DC-area lobbying firms hired by Westar to promote its exemption from the Investment Company Act—contributed $5,000 on the same day (May 31) as seven Westar executives to the same candidate: former Shelby chief-of-staff Tom Young. When Westar's $25,000 soft money contribution in May 2002 to DeLay's Texans for a Republican Majority is included along with the $5,000 from Governmental Strategies, this first round netted $49,050—the lion's share of the scheme's total contribution of $63,200.

Recipients of Westar/GSI Contributions

Rep. Tom DeLay (R-TX)	$27,400
Tom Young (fmr Sen. Shelby aide)	15,000
Rep. Joe Barton (R-TX)	4,000
Sen. John Sununu (R-NH)	3,000
Rep. Billy Tauzin (R-LA)	2,800
Rep. Michael Oxley (R-OH)	2,000
Nat'l Republican Congressional Cmte	1,150
Rep. Shelley Moore Capito (R-WV)	1,000
Rep. Sam Graves (R-MO)	1,000
Rep. Robin Hayes (R-NC)	1,000
Rep. Walter Jones (R-NC)	1,000
Rep. Tom Latham (R-IA)	1,000
Rep. Rob Simmons (R-CT)	1,000
Rep. John Shimkus (R-IL)	1,000
Rep. Anne Northup (R-KY)	850
Total	**$63,200**

SOURCE: Compiled by Public Citizen from Center for Responsive Politics data www.opensecrets.org.

The memo clearly states that in exchange for the contributions, Westar expected a "seat at the table" during negotiations between the House and Senate energy conference committee after the Senate passed its version of an energy bill in April 2002 (the House had passed its version in August 2001). Specifically, Westar sought a grandfather exemption from the Investment Company Act, a critical investor protection statute, for the company's "financial restructuring plan." The exemption was part of a larger plan by Congress to repeal a related law, the Public Utility Holding Company Act, the nation's most important electricity consumer protection. The exemption would allow the utility to avoid not only regulation under PUHCA, if repealed, but also under the Investment Company Act.

Joe Barton, with the support of Tom DeLay, Sam Graves, Billy Tauzin and Richard Shelby, inserted language sometime after May 2002 during conference committee negotiations that would specifically grandfather Westar Energy from the Investment Company Act.

Had Westar been ultimately successful in obtaining the grandfather exemption, the company would have been able to split its operations into several companies, leaving its non-utility debts with its utility company. If this happened, electricity consumers of the company's Kansas utility would have been forced to pay for the company's debts.

That's why the Kansas Corporation Commission, the regulatory agency charged with overseeing Westar's state utility, warned Barton that granting the "exemption has serious implications for the commission's effective regulation of Westar and protection for ratepayers in Kansas."[1] Since Westar had millions of dollars in debts, a $63,000 campaign investment could translate into a multi-million dollar payoff.

Joe Barton, chair of the Subcommittee on Energy and Air Quality for the House Committee on Energy and Commerce, initially included an exemption for *all* companies subject to regulation under the Investment Company Act in H.R. 3406, the electricity deregulation bill Barton introduced in December 2001. This blanket exemption drew wide opposition. Paul F. Roye, director of the Securities and Exchange Commission's Investment Management division, wrote in a February 13, 2002 letter to Barton that the exemption could result in "hundreds of unregulated investment companies." The Investment Company Institute, a mutual fund trade organization, also objected to the exemption in a February 12, 2002 letter to Barton's committee when it wrote that the exemption "would create a gaping loophole in the federal securities laws by permitting the creation of a new class of unregistered investment companies"—a troubling premise considering that news of Enron's abuses was front page news at the time.[2]

As a result of the controversy, Barton's electricity deregulation bill never made it out of his own subcommittee. But Barton quietly re-inserted a narrowly-tailored exemption that only applied to Westar in the House-Senate energy conference committee, beginning in May 2002, that was hashing out the differences between H.R. 4 and S.517. Although many Democrats, such as Reps. Dennis Moore (KS) and Edward Markey (MA), continued to criticize the exemption, Barton was unrelenting in his advocacy.

But on September 27, 2002, Westar Energy publically announced for the first time that the company was in serious trouble when it acknowledged that it had been served with a federal grand jury subpoena by the U.S. Attorney's Office in Kansas for various counts of fraud.[3] **It was only after widespread media reports detailing the company's Enron-esque tales of fraud did Barton withdraw the Westar exemption in October 2002.** Sam Graves—who was specifically mentioned in the Westar lobbyist memos and received at least $1,000 from the scheme—wrote a letter to Billy Tauzin (who was chairing the House-Senate energy conference committee hearings) on September 30, 2002 stating that "Westar's management practices have been questioned, so until there is resolution, I am withdrawing my request for this provision." Westar tried to spin the events as best they could. Doug Lawrence,

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[1] "Westar Loses Effort for Exemption from SEC Oversight of Restructuring," *Electric Utility Week*, October 7, 2002.

[2] Michael Schroeder, "House Power Bill Allows for Host of Exemptions," *The Wall Street Journal*, February 15, 2002.

[3] Westar Energy 8-k filing with the SEC, www.sec.gov/edgar/searchedgar/companysearch.html

author of the memos, said of the controversy, "We thought it was a very small issue, and frankly, we still think it's a very small issue, but it certainly has become larger than life in D.C. right now."[4]

It is important to note the difference between Barton's original blanket exemption in his December 2001 legislation and the eventual exemption tailored to fit Westar introduced during the House-Senate energy conference committee. Sen. Shelby and others have defended their support for Westar by claiming they supported repeal of PUHCA and less government regulation, so their support for the Westar-only exemption was consistent. But the Westar exemption inserted by Barton in May 2002 amounted to special treatment that must be examined more thoroughly in light of these recently released Westar memos.

The Memos

In an email dated the morning of May 20, 2002, Doug Lawrence (Vice President for Public Affairs) wrote an email to Douglas T. Lake, Executive Vice President and Chief Strategic Officer (Lake was placed on unpaid leave on December 6, 2002). Lawrence's email said in part:

"Right now, we are working on getting our grandfather provision on PUHCA repeal into the senate version of the energy bill. It requires working with the Conference committee to achieve. ***We have a plan for participation to get a seat at the table, which as been approved by David [Wittig, Westar CEO]*** *[sic] the total of the package will be $31,500 in hard money (individual), and $25,000 in soft money (corporate). Right now, we have $11,500 in immediate needs for a group of candidates associated with Tom Delay [sic], Billy Tauzin, Joe Barton and Senator Richard Shelby. Delay [sic] is the House Majority Leader. His agreement is necessary before the House Conferees can push the language we have in place in the House bill. Shimkus is a close associate of Billy Tauzin and Joe Barton, who are key House Conferees on our legislation.* ***They have made this request in lieu of contributions made to their own campaigns.*** *Tom Young is Senator Shelby's Chief of staff who is running for the House in Alabama. Shelby is a member of the Senate Energy Committee and the Banking Committee…and is the lead republican on all Senate PUHCA related matters. He is our anchor on the Senate side.* ***He's made a substantial request of us for supporting Young's campaign.*** *These seem disconnected, but ultimately the plan is directed at getting a strong position at the table on both the Senate and House Side [sic]."* [emphasis added]

The above memo was a follow up to another note written by Doug Lawrence on May 17, 2002 that provided directions to Westar's executives concerning how much they needed to contribute to different campaigns:

"Attached are three sheets of information regarding campaign contributions. The estimated needs (first page) summarizes the total budget for our Washington efforts regarding the Federal Energy Bill and its impact on our financial restructuring plan."

These memos were written at a time when corporate scandals were front page news. For example, On May 17, 2002, the Wall Street Journal, on its front page "What's News" roundup, mentioned that "Reliant and CMS announced management shake-ups, following admissions that they had engaged in

[4] Libby Quaid, "Opposition Mounts to Special Westar Exemption," *Associated Press,* October 1, 2002.

		Westar/GSI Contributions, Sorted by Date	Total	# of contributions on that date
First Round	May 2002	Texans for a Republican Majority (DeLay)	$25,000	1
	5/31/02	Tom Young	15,000	10
	6/6/02	Rep. Tom DeLay (R-TX)	2,400	6
	6/10/02	Rep. Anne Northup (R-KY)	850	2
	6/20/02	Rep. John Shimkus (R-IL)	1,000	1
	6/28/02	Rep. Sam Graves (R-MO)	1,000	1
	6/30/02	Rep. Shelley Moore Capito	1,000	2
	7/31/02	Bayou Leader PAC (Tauzin)	2,800	4
Second Round	10/18/02	Next Century Fund (NC Rep. Jones)	1,000	1
	10/23/02	Nat'l Republican Congressional Cmte	1,150	3
	10/25/02	Rep. Rob Simmons (R-CT)	500	1
	10/28/02	Rep. Michael Oxley (R-OH)	1,000	1
	10/28/02	Texas Freedom Fund (Barton)	1,000	2
	10/28/02	Rep. Robin Hayes (R-NC)	500	1
	10/29/02	Leadership PAC 2002 (Oxley)	1,000	2
	10/29/02	Rep. Robin Hayes (R-NC)	500	1
	10/29/02	Rep. Tom Latham (R-IA)	1,000	2
	10/30/02	Rep. Rob Simmons (R-CT)	500	1
	10/30/02	Sen. John Sununu (R-NH)	1,000	1
	10/31/02	Rep. Joe Barton (R-TX)	1,000	1
	11/3/02	Sen. John Sununu (R-NH)	1,000	1
	11/4/02	Sen. John Sununu (R-NH)	1,000	1
	11/5/02	Rep. Joe Barton (R-TX)	1,000	1
	12/19/02	Texas Freedom Fund (Barton)	1,000	1
		Total	**$63,200**	**48**

SOURCE: Compiled by Public Citizen from Center for Responsive Politics data.

bogus power deals." On May 20, 2002, the Journal's front page "What's News" roundup noted, "Energy companies are likely to disclose inflated natural-gas trading practices similar to those in electricity transactions; SEC Chairman Harvey Pitt faces new questions about conversations he had with Xerox and KPMG executives while the agency was probing the firms; Federal prosecutors probing Adelphia are focusing on questionable related- party transactions and possible accounting problems involving the company's founding Rigas family."

After the Senate passed its version of the energy bill in April 2002, lobbyists knew that the resulting House-Senate conference committee could yield a grab bag of special interest goodies. Less than two weeks after the memos were written, Westar and Governmental Strategies had delivered $40,000 to Tom DeLay's Texans for a Republican Majority 527 group and to Tom Young. DeLay received a second installment of $2,400 on June 6; Rep. Northup received $850 on June 10, Rep. Shimkus collected $1,000 on June 20, Rep. Graves accepted $1,000 on June 28, Rep. Capito exacted $1,000 on June 30 and Rep. Tauzin's Bayou Leader PAC received $2,800 on July 31.

David C. Wittig, who resigned as Westar CEO on November 22, 2002 after being indicted on charges of falsifying documents in a $1.5 million bank loan, was the largest contributor, giving $10,000 from May through November 2002; Westar's Executive Vice-President and Chief Strategic Officer Douglas T. Lake, gave $7,300 (Lake was placed on unpaid leave on December 6, 2002); Senior Vice-President Doug Sterbenz and his wife Connie gave $4,200; memo author and Vice President for Public Affairs Douglas Lawrence gave $3,300; Vice President for Risk Management Anita Jo Hunt gave $1,700; Vice President Caroline Williams gave $1,100; Senior Vice President Richard A. Dixon gave $950; Vice President Kelly Harrison gave $925; General Counsel Larry D. Irick gave $850; Vice President of Corporate Compliance Peggy Loyd and her husband Herbert gave $850; Vice President of Business Services Bruce Akin and his wife Tami gave $800; Vice President and Controller Leroy Wages gave $800; and Chief Financial Officer Paul Geist, who resigned on February 7, 2003, gave $425.

In addition to these Westar executives, three employees affiliated with a DC-area lobbying firm hired by Westar also made contributions on the same date and to the same candidate as Westar executives. William D. Kenworthy, a partner with Government Strategies Inc. and one of three registered lobbyists for Westar Energy, contributed $1,000 to Tom Young on May 31, 2002 at the same time as seven Westar executives. Richard Bornemann and Michael S. Callahan, also employees of Government Strategies, contributed a total of $4,000 on May 31 to Tom Young.

Three of the Westar executives had their spouses do their dirty work for them. Doug Sterbenz had his wife Connie sign off on $2,700 in payoffs to DeLay, Young and the National Republican Congressional Committee. Doug signed only $1,500 in checks (to Sen. Sununu and Barton's Texas Freedom Fund). Bruce Akin had his wife Tami cut a $250 check to Rep. Latham (Bruce gave checks of $300 and $250 to DeLay and Latham, respectively). Peggy Loyd had her husband Herbert contribute $500 to Rep. Hayes (Peggy contributed only $350, to Rep. Capito).

Some of the races targeted by the Westar plan were hotly contested. Anne Northup, who outraised her Democratic opponent 2-to-1, won with only 52% of the vote. John Shimkus, who also outspent his opponent 2-to-1, won with only 55% of the vote. Senator Sununu won a nail-biter in New Hampshire, with only 51% of the vote (he was outspent by the Democrat). Robin Hayes won with only 54% of the vote after outspending the Democrat by nearly 250%. Rob Simmons also won with only 54% of the vote, and Tom Latham won with 55% of the vote.

But for other members whose seats were more secure, the Westar plan seems more to help leadership figures like Barton, Tauzin and DeLay cultivate strong ties with Reps. like Graves and Capito. The five leadership PACs receiving money for Westar are typically used to cultivate influence for the member by donating large sums of money to candidates in order to secure close ties and respect. Donations to politicians from Westar's $25,000 donation to DeLay's 527, Texans for a Republican Majority, are difficult to track. But the other four are listed below:

The Westar strategy provided Rep. Barton with $4,000—half for his own campaign, and $2,000 for his Texas Freedom Fund PAC. Barton's Texas Freedom fund, in turn, contributed nearly $30,000 to seven of the nine "support" candidates on the Westar list: $10,689 to Rep. Shimkus; $4,546 to Rep. Tom Latham; $3,689 each to both Reps. Sam Graves and Rob Simmons; $3,500 to Rep. Robin Hayes; $2,689 to Rep. Shelley Moore Capito; and $1,689 to Rep. Northup.[5]

The Westar strategy provided Rep. Tauzin's Bayou Leader PAC with $2,800 in four separate contributions—all made on July 31, 2002. Tauzin contributed more than $47,000 to seven of the nine "support" candidates: Rep. Latham received $10,000; Rep. Graves received $7,500; Rep. Shimkus received $6,824; Rep. Hayes received $6,766; Rep. Capito received $6,324; Rep. Simmons received $5,324; and Rep. Northup received $5,000.

The Westar strategy provided $2,000 to Rep. Oxley, half for his Leadership PAC 2002. Oxley's PAC paid $65,000 to seven of the nine "support" candidates: $10,000 each to Capito, Hayes, Latham, Northup, Shimkus and Simmons; and $5,000 to Sen. Sununu.

Former Westar CEO David Wittig sent $1,000 to Rep. Walter Jones' Next Century Fund PAC. Jones, in turn, sent $16,500 to four of the nine "support candidates: $10,000 to Latham; $3,500 to Hayes; $2,000 to Sununu; and $1,000 to Shimkus.

The DC Lobbyists

Westar paid two DC-area lobbying firms more than $60,000 in 2002 alone to help push for the exemption from the Investment Company Act. On July 24, 2002, Marianne K. Smythe, a partner with the DC lobby shop Wilmer, Cutler & Pickering registered as a lobbyist for Westar Energy to lobby for an "exemption from Investment Company Act for Single Company".[6] At the time, Wilmer counted Qwest and Tyco—two companies with their own legal problems—among its clients. Smythe had formally worked for two and a half years at the Director of the Division of Investment Management of the Securities and Exchange Commission under the first Bush Administration. FEC records indicate Smythe did not make any contributions either to politicians mentioned in the memos or to candidates receiving contributions from Westar and Governmental Strategies executives.

In addition, Westar Energy paid the lobbying firm Governmental Strategies, Inc to lobby on electricity issues before Congress. Timothy E. Smith and William D. Kenworthy served as the lead lobbyists for the group representing Westar. Three Governmental Strategies employees, Kenworthy, Richard Bornemann and Michael S. Callahan, also contributed a total of $5,000 to the campaign of Tom Young—the same date that Westar executives David C. Wittig, Douglas T. Lake, Douglas Sterbenz, Douglas Lawrence, Anita Jo Hunt, Caroline Williams and Kelly B. Harrison also made contributions to

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[5] Center for Responsive Politics, www.opensecrets.org.

[6] Senate Office of Public Records, http://sopr.senate.gov.

Tom Young. In total, the three Governmental Strategies lobbyists and the seven Westar executives gave Tom Young's campaign $15,000 on May 31, 2002.

Conclusions and Recommendations

The memos describe a plan by Westar to obtain preferential treatment in Congress in exchange for making more than $60,000 to political campaigns. The fact that Public Citizen's research proves that the plan was carried out should be enough for the Public Integrity Section of the Criminal Division of the U.S. Department of Justice to initiate an investigation into whether or not Tom DeLay, Joe Barton, Billy Tauzin, Sam Graves and other members of Congress committed a felony by violating 18 U.S.C. § 201.

The specific section of the bribery code Public Citizen believes to be applicable is section 201(b)(2), which provides that whoever, "being a public official [including Members of Congress] 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" is guilty of a felony.

The memos, along with documentation that the plan described in the memos was actually carried out, appear to provide evidence that certain members of Congress directly or indirectly sought something of value (campaign contributions) either for themselves or for their colleagues in return for being influenced in the performance of an official act (namely, consideration of the PUHCA/Investment Company Act grandfather exemption).

In addition, language in the memos indicates Westar may have violated the Federal Election Campaign Act. FECA stipulates that a corporation cannot make a "contribution or expenditure in connection with a federal election."[7] FECA defines contributions as both "direct and indirect payment[s]…,or gift[s] of money, or any services, or anything of value."[8] This also means that a company like Westar cannot "facilitate" a contribution by its "restricted class"—the corporation's executives and their families.[9] The memos appear to describe a plan approved of and dictated by Westar CEO David Wittig. These facts should provide sound reasons for the Federal Election Commission to investigate the actions of Westar and Governmental Strategies.

Finally, Public Citizen demands that Rep. Tom DeLay return the $25,000 in soft money Westar Energy gave to his Texans for a Republican Majority fundraising group to Westar's shareholders. This $25,000 contribution is unique among the more than $60,000 tied to the scheme because it is the only money that can be definitively traced to the corporation—as opposed to contributions made by individual executives. Since Westar Energy posted a loss of $166 million in 2002 (and has seen its stock price fall

[7] 2 U.S.C. § 441b(a)

[8] 11 C.F.R. § 114.1(a)(1)

[9] 11 C.F.R. § 114.2(f)(4)(ii)

from a high of $25.75 in December 2000 to $16 today), the company's shareholders deserve to have their money back.