

## Charitable Chicanery

By Eliza Newlin Carney

06/23/06

*National Journal*

What do scandal-plagued politicians Duke Cunningham, Tom DeLay, and Alan Mollohan, along with disgraced lobbyist Jack Abramoff, all have in common? If you answered bribery, corruption, or influence-peddling probes, you'd be half right. But the high-profile controversies surrounding the four men also have another key common denominator: the alleged abuse of so-called "charities" for political gain.

Take the bribery conviction that unseated Rep. Randy "Duke" Cunningham, R-Calif. A little-noticed aspect of that scandal was Cunningham's relationship with a fly-by-night charity called the Sure Foundation. The charity's treasurer was Mitchell Wade, the defense contractor accused of bribing Cunningham, and its advisory board included Cunningham's wife and his daughter. And like Wade's defense firm, the foundation had a knack for winning federal grants.

As for former Rep. Tom DeLay, R-Texas, persistent controversies over his multimillion-dollar charities, including the DeLay Foundation for Kids, helped erode his support and push him out of both his majority leader's post and his House seat.

Nonprofits are also at the heart of the furor over Rep. Alan Mollohan, D-W.Va., who recently gave up his seat on the House Standards of Official Conduct (Ethics) Committee. The FBI is investigating Mollohan's unusual links to five West Virginia charities that managed funds he had earmarked for state projects and that may have helped enrich him personally.

And then there is Abramoff's Capital Athletic Foundation, which collected millions of dollars from lobbying clients and used the bulk of the money for noncharitable purposes -- including his now-notorious Scottish golf junket with Rep. Bob Ney, R-Ohio.

Yet another nonprofit linked with Abramoff and DeLay, the U.S. Family Network, has been accused of collecting money from and lining the pockets of well-connected lobbyists. One of the beneficiaries was DeLay's wife, Christine, whose \$3,200-to-\$3,400 monthly salary (at a firm associated with the nonprofit) reportedly paid for a curious project: determining the favorite charity of every member of Congress.

"What is so surprising and disturbing is that there is a charity, or there are several charities, in seemingly every one of the scandals that have [generated] major headlines," said Frances Hill, a University of Miami law professor who also directs the tax program at the nonpartisan Campaign Legal Center. The unifying theme of recent lobbying and ethics uproars, Hill said, is "betrayal of the public trust by lawmakers and the abuse of exempt entities for political purposes."

Nor are these particularly isolated incidents. A six-month investigation of the Abramoff affair by the Senate Finance Committee has turned up several examples of nonprofits that operated in a similar fashion. The committee found "tax-exempt organizations across the political spectrum with fact patterns akin to those associated with Mr. Abramoff," Chairman Charles Grassley, R-Iowa, said in a letter this month to Internal Revenue Service officials. He urged the IRS to step up its enforcement of nonprofits "that may be used for political purposes."

IRS Commissioner Mark Everson contends that the agency is already moving in that direction. Alarmed by evidence of charities' growing political activity, the IRS has launched a "Political Activities Compliance Initiative," built around aggressive enforcement and stepped-up efforts to educate nonprofits about the law.

"This is the front end of a potentially very significant problem," Everson said in an interview with National Journal. "We feel we [should] step in now, set the right standard, so that it doesn't grow and get out of control."

Several factors, Everson said, are pushing political money into charities: The sheer growth in political spending, which has ballooned since 2000; a booming charitable sector; and the inevitable appeal to political players of moving money into the one venue where it's least regulated and least visible. Tax-exempt groups face nominal disclosure requirements, and no limit on the size or source of contributions.

Indeed, many campaign finance and legal experts see politically active charities as the next big scandal waiting to happen. While controversy has swirled around so-called "527" groups -- the political organizations that enjoy tax-free status under Section 527 of the Internal Revenue Code -- political abuses by other types of nonprofits, particularly 501(c)(3) charitable groups, have gone largely unnoticed.

But lawmakers, federal officials, and watchdog groups are starting to pay attention. Amid the debate over lobbying and ethics legislation, some on Capitol Hill are pushing for tougher disclosure requirements for nonprofits that engage in grassroots lobbying or that have links to federal officials. Both the IRS and the Justice Department are investigating aggressively. Next month, the nonpartisan Campaign Finance Institute will bring together government, legal, and political experts for a major Washington conference on political activity by nonprofits.

"Sober-minded, serious-minded people are looking at this in a way they have not heretofore done," Hill noted.

Advocates who represent the nonprofit sector have fought back angrily. Defenders of tax-exempt groups argue that the vast majority scrupulously follow the rules and that abuses are rare. They cast recent warnings from the IRS and Capitol Hill as overblown and partisan. Many nonprofit leaders regard the IRS as overzealous and politically motivated. A controversial IRS audit of the NAACP, in particular, has alarmed nonprofits across the board.

"Congress should look at its own campaign and fundraising activities, rather than focus on nonprofit organizations," said Nan Aron, president of the Alliance for Justice, an association of liberal advocacy groups that has championed nonprofit political involvement. "It wasn't the nonprofits who were at fault [in the recent scandals]. It was a handful of politicians working with lobbyists."

To be sure, no one argues that political abuses are the rule among the more than 1 million nonprofit groups toiling nationally to do good works, ranging from protecting the environment to fighting disease to helping low-income families.

Still, even some advocates within the nonprofit sector warn that politically manipulated nonprofits -- especially those run by members of Congress -- are giving the charitable sector a

black eye. As Everson likes to put it: "Politics, money, and charities make for a bad cocktail."

### Danger Zones

Political activity by nonprofits is nothing new, and much of it is perfectly legal. Social-welfare organizations, known as 501(c)(4) groups, are free to lobby and even engage in partisan political activity as long as it's not their primary purpose. (The Sierra Club and NARAL Pro-Choice America, for example, are 501(c)(4) groups, although both have affiliated foundations.) Similar rules apply to 501(c)(5) labor unions and 501(c)(6) trade associations. As political organizations, 527 groups have even more leeway, but they must report their receipts and expenditures to the IRS.

Complaints abound over 527 groups -- such as MoveOn.org and the now-defunct Media Fund -- which shoveled millions of unregulated dollars into the 2004 presidential election. And controversies have also flared over social-welfare, labor, and trade groups. But these days, the real focus of the IRS, and of many lawmakers and campaign finance experts, is 501(c)(3) groups, which are typically defined as charities, philanthropies, or religious organizations operating in the public interest.

The 501(c)(3) groups constitute the largest and fastest-growing segment of the nonprofit sector. There are some 823,000 of them nationally -- close to 60 percent of all nonprofits -- ranging from the mammoth American Red Cross to smaller groups like the Baroque Choral Guild. Donations to such charities are tax-deductible.

These charities face the strictest rules against politicking but enjoy the least regulation. The organizations cannot engage in partisan political activity and are permitted to participate in only insubstantial lobbying. Nonpartisan "get-out-the-vote" or advocacy activities are permitted, however, and this is where some 501(c)(3) groups get into trouble. Three big danger zones exist for charities that flex their muscles politically:

\* One is voter-registration and -mobilization activities, which have exploded in recent years. A host of 501(c)(3) groups on the left and the right, from environmental and abortion-rights groups to conservative churches, registered a record number of new voters in 2004. The trick for activists running massive voter-mobilization drives is to keep them strictly nonpartisan. A group

that buses voters from one party, but not the other, to the polls would cross the line, for example.

\* Another risky area for 501(c) (3) groups is grassroots advocacy. Although nonpartisan advocacy centered on issues is permitted, ads or education campaigns that target only certain battleground regions at election time could be called into question. The challenge for both charitable groups and regulators is that the lines that distinguish nonpartisan advocacy from election activity are not always bright. Church-distributed voter guides and even sermons can go too far.

\* The third and biggest hazard is the use and abuse of 501(c)(3) groups by members of Congress. Lawmaker-affiliated charities are growing in both number and brazenness. As many as four dozen members of Congress operate or have close ties to charitable groups, according to PoliticalMoneyLine, a nonpartisan Web service that tracks campaign finance.

Most of these are noncontroversial, including family foundations that exist largely to steward the fortunes of wealthy lawmakers, according to Rick Cohen, executive director of the National Committee for Responsive Philanthropy. But a string of scandals involving charities linked to lawmakers has underscored the potential for misuse. From Mollohan and DeLay to Senate Majority Leader Bill Frist , R-Tenn., and even reform-minded Sen. John McCain , R-Ariz., a long list of members has operated charities in creative -- and, critics would argue, questionable -- ways.

The pattern that raises red flags tends to go like this: A lawmaker starts a charity to help people with disabilities, foster children, or low-income families. The charity's staff is stacked with the lawmaker's campaign aides, fundraisers, or family members. The charity hosts fundraising dinners, golf tournaments, or junkets that give lobbyists access to the lawmaker. The money rolls in from deep-pocketed donors who have business before the lawmaker's committee. And none of it gets reported. Most significantly, the identities of donors and how much they contributed is undisclosed.

Last month, Sen. Max Baucus, D-Mont., introduced legislation that would require charities controlled by senators or their families to disclose donations of more than \$200. The bill would also bar senators from personally profiting from their charities.

"Two dangers come with a member-related charity," Baucus, the ranking member on the Senate Finance Committee, told National Journal. "One is the perception that the charity might be an avenue for currying favor with a public official. The other is that the public official might improperly use a charity to pressure donors to give to a charity that also benefits the member, or people close to the member."

### Lawmaker-Affiliated Charities

Mollohan, for his part, had cozy ties with no fewer than five West Virginia nonprofits, which benefited from his perch on the House Appropriations Committee. More than half of the \$480 million in federal dollars that Mollohan appears to have earmarked for his congressional district between fiscal 1995 and fiscal 2004 went to those nonprofits, according to an analysis by Citizens Against Government Waste, a budget watchdog group.

In that same period, donors associated with the five nonprofits made close to \$400,000 in campaign contributions to Mollohan, according to an investigation by the National Legal and Policy Center, a conservative watchdog organization. Mollohan's personal worth, as reported in his House financial disclosure statements, spiked into the millions. That was thanks in part to lucrative real estate deals made with his business partner and former congressional aide, Laura Kurtz Kuhns. She is the president and CEO of the Vandalia Heritage Foundation, a 501(c)(3) ostensibly focused on economic revitalization and historic preservation that pulled in more than \$18.7 million in grants and donations from 2000 to 2003, according to tax records.

"It lends itself to abuse when members of Congress are earmarking funds to groups that fatten [their] campaign" treasuries, said Ken Boehm, chairman of the National Legal and Policy Center.

Responding to questions via e-mail, Vandalia officials stated that the foundation "has never engaged in political and/or partisan activities." But Federal Election Commission records show that Vandalia board member Jeffrey Burum, a California-based real estate developer, has contributed more than \$45,000 since 2002 to political candidates, including \$1,000 to Mollohan in 2002 and 2004.

Another Mollohan-affiliated family foundation spends most of its budget on an annual golf

tournament that last September brought in \$450,000, Boehm said. Organizers did not disclose the names of attendees, but "almost everybody who participated was either a lobbyist, a federal grantee, or a federal contractor," according to Boehm. In February, Boehm's group turned over its findings to law enforcement officials, prompting the FBI to investigate.

Mollohan recently released a detailed real estate and personal-financial analysis that he argues debunks the charges leveled by the right-leaning center. "The documents prove that the National Legal and Policy Center has wildly exaggerated the inadvertent errors on my past financial disclosure statements," Mollohan said in a statement. He added that the group "also has ignored that we received a sizable inheritance, took on considerable financial risks, and had the good fortune to be investing in a rising real estate market." It was those factors alone that increased his family's assets, he stated.

Mollohan reiterated his position that the NLPC is a "right-wing, politically motivated" group linked to "national political operatives." Boehm countered that his organization has investigated Republicans as well as Democrats.

In recent months, bad press has prompted some lawmakers to sever ties with, or to restaff, their lucrative charities. Early this year, the Associated Press and the American Prospect magazine ran articles critical of Operation Good Neighbor, a charity founded and chaired by Senate Republican Conference Chairman Rick Santorum, R-Pa. The charity raised \$990,660 from big corporations from 2001 to 2003, the reports noted, but doled out only half of that -- about \$474,000 -- to actual community groups.

The charity's chairman at the time, Michael Crofton, is also the CEO of Philadelphia Trust, a private bank that gave \$10,000 to Santorum's re-election campaign and arranged a controversial refinancing of his Virginia home. Santorum fundraisers Maria Diesel and Robert Bickhart received generous salaries on the charity's payroll. The group's IRS Form 990 from 2004 lists Bickhart as executive director.

But a recent phone call to Operation Good Neighbor revealed that Bickhart left soon after the articles ran, as did all other staff members associated with Santorum's campaign. New Executive Director Laura Lebaudy, a Pennsylvania-based consultant and former press aide to Santorum, bristled at the suggestion of any conflict of interest. (Interestingly, Lebaudy's past consulting jobs include helping coordinate the grand opening of Signatures, Abramoff's notorious restaurant in Washington.)

Crofton is no longer the board chairman, she noted, although he still sits on the board. The new chairman, Charles Black Jr. , however, is no less influential. Black, a former campaign adviser to both Presidents Bush and a former spokesman at the Republican National Committee, is a major GOP political donor who now chairs the powerhouse Washington consulting firm BKHS & Associates.

Lebaudy emphasized that the board includes Democrats as well as Republicans and that Santorum "is not involved in any of our day-to-day operations." In explaining the charity's high overhead, she noted that "we're a young organization" and that fundraising is expensive. Indeed, the group's Form 990 also lists a 2004 golf outing that cost \$70,632.

"In the end, Operation Good Neighbor is helping organizations in the community to do good work," Lebaudy said. "We're helping families in need. We're helping AIDS patients. We're helping single mothers with babies." Santorum's staff referred requests for comment to Lebaudy.

Frist has taken something of a hiatus from his personal charity, World of Hope, after hard-hitting press reports late last year. The charity, whose main mission is to fight AIDS, raised most of its \$4.4 million from 18 sources, the Associated Press disclosed. The charity distributed \$3 million to charitable AIDS groups, but also paid more than \$450,000 in consulting fees to two firms run by Linus Catignani, a longtime Frist fundraiser.

A list of donors provided to National Journal by the Frist charity contains dozens of major companies with business before Congress, including BellSouth, Bristol-Myers Squibb, Goldman Sachs, Merck & Co., and Merrill Lynch.

Frist's office referred questions to the group's treasurer, Barry Banker, an at-risk youth coordinator based in Kentucky who has donated more than \$60,000 to GOP candidates since 2000. "The organization is dormant at this point in time," Banker said in an interview. Fundraising has been on hold since early this year, according to Banker, who cited Frist's busy schedule as majority leader.



Pressed for details, Banker said that the group was in "a quiet phase ... so that there would be no misconception whatsoever" about its mission. An old high school chum of Frist's, Banker stressed the group's positive impact and Frist's good intentions. "I just know that there would never be a conflict of interest," he assured.

McCain, meanwhile, cut all ties to his erstwhile charity, the Reform Institute, after similar less-than-flattering news reports. Last year, a rash of press accounts played up the many former McCain aides who were drawing six-figure salaries at the institute. These included then-President Richard Davis , who managed McCain's 2000 presidential campaign, and the group's finance director, Carla Eudy , who held the same title on McCain's campaign staff.

The institute's underwriters reportedly have included Cablevision, a cable company that made its six-figure contribution at a time when McCain chaired the Senate Commerce, Science, and Transportation Committee.

But McCain no longer sits on the group's advisory board, said Crystal Benton, the institute's communications director, who is a former McCain press aide. "He decided it would be most appropriate to resign from our board to avoid any appearance of corruption or wrongdoing in affiliation with the institute," Benton said. She noted that Davis has also left the institute, which was set up to promote campaign finance legislation and which now has a broader mission built around civic participation.

Other controversial charities that have grabbed headlines in recent years include the DeLay Foundation for Kids, a \$2 million organization that has reportedly collected hundreds of thousands of dollars from corporate contributors. The group, set up to help foster children, has raised some \$7 million since 1999 from its annual golf tournament. The charity has provided a vehicle for politically generous business leaders to schmooze on the links with DeLay and other GOP leaders. Its donors have included ExxonMobil and the Southern Co.; its board has included DeLay lawyer Ed Bethune and top lobbyists for Fannie Mae and Freddie Mac, according to investigative reports that have connected the dots between DeLay's political and charitable operations.

Christine DeLay's dual role as charity board member and lobbying firm employee is particularly intriguing. While serving on the board of the DeLay Foundation for Kids, she drew a \$115,000 salary over three years from the notorious (and now defunct) lobbying firm the Alexander Strategy Group. Another DeLay-linked nonprofit, the U.S. Family Network, generously

subsidized the lobbying firm. The Family Network is a 501(c)(4) social-welfare organization, which appears to have gotten most of its money from Abramoff's top lobbying clients.

Christine DeLay's job at the Alexander Strategy Group entailed contacting members of Congress to find out their favorite charities, DeLay lawyer Richard Cullen told The Washington Post earlier this year. Cullen, however, did not return calls seeking comment.

Another DeLay charity, Celebrations for Children, drew protests from watchdog groups when it announced plans to wine and dine donors at the 2004 Republican National Convention in New York City. The controversy ultimately forced DeLay to drop the affair.

But convention-time charity parties remain popular with members of Congress. Santorum, perhaps not coincidentally, started Operation Good Neighbor at the 2000 Republican National Convention in Philadelphia. The political conventions themselves invite charitable abuse, critics say, because nonprofit host committees collect millions in unregulated, undisclosed donations from corporate interests.

Lawmaker-affiliated nonprofits do have their defenders. Some proponents note that politicians have a long history in the philanthropic sector, including President Franklin Roosevelt, who supported the National Foundation for Infantile Paralysis, now known as the March of Dimes. Members of Congress have the power to do great good through charitable groups, some philanthropic leaders argue.

"We want our elected officials to be part of our community; we want them to be part of society," said former Rep. Steve Gunderson, R-Wis., now president and CEO of the Council on Foundations. "There are good foundations as well as bad foundations. There are good politicians as well as bad politicians, and one accusation does not fit all."

Gunderson acknowledged, however, that it's up to 501(c)(3) organizations to agree on and adhere to strict ethical standards -- something his group is working to promote. "If a few corrupt cases of bad public charities or bad foundations define who we are, we will all pay for that," he noted.

In the case of charities run by members of Congress, a few abuses can wreak a disproportionate amount of damage, warned Cohen of the National Committee for Responsive Philanthropy. "The last thing that the public needs is to imagine that the people in charge of coming up with the laws and regulations for nonprofit accountability are themselves potential abusers of nonprofits," Cohen said. "In terms of credibility, their damage is disproportional to the amount of money they involve."

### Lobbyist Involvement

Charities associated with lobbyists have also stirred up trouble lately. Cohen has faulted the IRS for not anticipating Abramoff's spectacular abuse of the Capital Athletic Foundation. The lobbyist set up the foundation ostensibly to support sports-related programs for young people. But the charity really served as a nerve center for the lobbying activities that led Abramoff to plead guilty to conspiracy, fraud, and tax evasion in January, Cohen said.

Abramoff-style abuses may be more common than some would care to admit. "The charities connected to Abramoff aren't the only examples," Grassley told National Journal. In his recent letter to the IRS, Grassley warned that a growing number of charities are being used "in the best interests of lobbyists, not of the public."

Controversial lobbyist-affiliated 501(c)(3) charities include the Americans for Tax Reform Foundation, run by conservative activist Grover Norquist, and a cluster of nonprofits headed by Washington lobbyist Richard Berman. Berman has operated several tax-exempt "front" groups on behalf of the food, tobacco, and beverage industries, according to Citizens for Responsibility and Ethics in Washington, a watchdog group.

CREW's latest complaint to the Senate Finance Committee involves a Berman-run nonprofit called the Center for Union Facts, which has sponsored ads critical of labor unions. The watchdog group's running beef against Berman is that he's abusing the tax-exempt status of his charitable groups, both to promote the political interests of for-profit industries and to rake in receipts for his public-relations firm, Berman & Co.

"They're wrong on the facts, and they're wrong on the law," Berman responded, in an interview, about the CREW complaint. He noted that he has faced IRS inquiries in the past and has

always come out with "a clean bill of health."

CREW has asked the IRS to investigate Norquist's Americans for Tax Reform Foundation. The watchdog group alleges that both the ATR foundation and its affiliated 501(c)(4), Americans for Tax Reform, raised money from Abramoff's Indian casino clients and skimmed off a fee before passing the money on to Christian activist Ralph Reed .

ATR has fought back with its own complaint, calling for the IRS to revoke CREW's nonprofit status. ATR "cheerfully complies" with all IRS rules, the group stated in response to CREW's March complaint. Norquist's group accused CREW of partisanship, saying it has filed only one complaint against a Democrat since 2003. CREW officials denied that they go easy on Democrats.

The spat underscores the murky and highly charged nature of tax disputes involving charities. Historically, the courts have protected the right of charitable groups, in particular, to operate free from burdensome disclosure requirements. And until recently, the IRS has largely turned a blind eye to complaints of political activity by charities. Stepped-up scrutiny at the agency and on Capitol Hill has brought howls of protest from the nonprofit sector.

Many heads of charities regard a landmark IRS report released in February with suspicion. The report, which detailed the results of an agency investigation into political activity by nonprofits, cited growth in the "number and variety" of charity-related complaints. Nearly three-quarters of the 110 501(c)(3) organizations the IRS examined engaged in illegal political activities, the report found.

Only a handful had their tax-exempt status revoked. But IRS warnings and audits, which are part of a deliberate campaign by the agency to put the charitable sector on notice, have some activists up in arms. A notice of examination sent to the NAACP, a 501(c)(3) charity, in October 2004 has convinced some that IRS enforcement is highly partisan. At issue is whether a 2004 speech by NAACP chief Julian Bond that was critical of President Bush amounted to electioneering.

The audit's timing was suspect, contend NAACP lawyers, because it came before the end of the tax year. The organization and its allies accuse the IRS of attempting to intimidate the

civil-rights group right before the election, as a means to blunt the effect of the NAACP's highly successful get-out-the-vote drive. In general, leaders in the charitable sector have rallied to defend their role in building democratic involvement, and their right to free speech and political advocacy.

"It's something that nonprofits are watching carefully," Angela Ciccolo, the NAACP's deputy general counsel, said of the IRS dispute. "Everyone wants to be compliant. But I don't think any nonprofit wants to be unfairly targeted based on politically motivated activity."

Everson declined to comment on the NAACP audit, noting that the IRS is bound by law to protect taxpayer confidentiality. He stressed that the agency's investigations are conducted by career professionals, however. "We are not picking sides on this," he said. "The inquiries are nonpartisan. They hit both sides of the aisle."

The agency also appreciates the constitutional concerns at hand, he maintained. "We're not in any way attempting to limit either religious liberty or free speech," Everson said. "Hardly. We think those are fundamental elements of our society."

But ultimately, the ones hurt most by illegal political activity will be the charities themselves, Everson warned. "If you have abuses with charities, over time that will tarnish the image of charities. And Americans who support a very robust charitable sector will diminish or reduce that support," he said.

Everson cautioned, moreover, that the popularity of nonprofits as political tools is likely to increase. Legal experts tend to agree. As Gregory Colvin, a San Francisco tax lawyer, put it: "There are lots of people out there who'd like to plow money into the tax-exempt sector and gain an advantage, either ideologically or tactically, in each next election that comes up."

Copyright 2006 *National Journal*