

**AFV**



## American Family Voices

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Sept. 12, 2011

The Honorable Porter J. Goss, Chairman  
The Honorable David Skaggs, Co-Chairman  
Office of Congressional Ethics  
425 3rd St. S.W., Suite 1110  
Washington, D.C. 20024

Dear Mr. Goss and Mr. Skaggs:

Under Rule 3(A) of the Office of Congressional Ethics, we ask OCE to review the conduct of Representative Darrell Issa.

In fact and in appearance, Representative Issa has repeatedly — and impermissibly — used his public position to promote his private financial interests. The symbiotic relationship he has established between his business interests and public responsibilities presents, on a continuing basis, the starkest example of conflict of interest. As disturbing as this would be in the case of any Member of Congress, the conflict on display here is especially troubling because it involves the Chair of the Committee on Oversight and Government Reform — a Committee charged with “proactively investigating and exposing” waste, fraud, and abuse. Surely this is a matter that warrants immediate OCE attention.

### FACTUAL DISCUSSION

Representative Issa was elected to Congress in 2000. He recently ascended to the chairmanship of the powerful Oversight and Government Reform Committee; he had been its Ranking Member. He also is one of Congress’s very richest Members. His 2010 Personal Financial Disclosure Report disclosed assets totaling between \$240 and \$500 million.<sup>1</sup>

Representative Issa has “a reputation as a forceful Congressional advocate for business.”<sup>2</sup> But often, the business in question seems to be his own. Representative Issa’s public actions show a clear pattern of taking extraordinary legislative action to further his own financial interests.

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<sup>1</sup> See [http://money.cnn.com/galleries/2011/news/1106/gallery.congress\\_members\\_wealth/7.html](http://money.cnn.com/galleries/2011/news/1106/gallery.congress_members_wealth/7.html).

<sup>2</sup> Eric Lichtblau, *A Businessman in Congress Helps His District and Himself*, N.Y. TIMES, Aug. 14, 2011.

## A. Goldman Sachs

Representative Issa has repeatedly used his power on the Oversight Committee to serve the interests of Goldman Sachs:

- In April 2010, after the Securities and Exchange Commission sued Goldman Sachs over allegations that it defrauded investors in the run-up to the financial crisis, Issa tried to pressure the agency into inaction. He first sent a letter to its chairwoman demanding to know whether it had coordinated the investigation with others. He then asked the SEC's inspector general to investigate the investigation.<sup>3</sup>

In July 2011, Representative Issa sent a letter to federal regulators, attacking rules they had proposed to impose new margin requirements on financial firms — including Goldman Sachs — which dealt in derivatives.<sup>4</sup>

Yet at the same time, Representative Issa held millions of dollars in assets held by Goldman Sachs. As the *New York Times* reported: “A few weeks before opening his inquiry into the Goldman lawsuit, in fact, he bought another large batch of shares in one of the firm's high-yield mutual funds ... By the end of the year, his stake in Goldman's fund was worth as much as \$25 million.”<sup>5</sup>

Moreover, in a bizarre turn of events, Representative Issa hired a former Goldman employee to execute his defense of the company, under a changed name that obscured the staffer's former employment by Goldman. The staff contact on Representative Issa's July 2011 letter on the new margin requirements was Peter Simonyi — who, under the name Peter Haller, was a vice president of Goldman's commodity compliance group.<sup>6</sup>

## B. Merrill Lynch

Representative Issa's extraordinary interventions on behalf of Goldman Sachs was not the first time he came to the rescue of a company in which he has a significant financial interest. At hearings in 2009, he accused Treasury Department officials and Federal Reserve Chairman Ben Bernanke of misconduct when Bank of America bought Merrill Lynch during the financial crisis.

Representative Issa is a major Merrill Lynch customer. His transactions with the firm totaled more than a billion dollars over the past decade. He bought and sold more than \$200 million in Merrill Lynch mutual funds in the days after the Bank of America acquisition. And, during 2010, Merrill Lynch gave him two personal notes for lines of credit worth \$75 million.<sup>7</sup>

## C. DEI Holdings

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<sup>3</sup> See <http://thinkprogress.org/economy/2011/06/29/256563/darell-issa-goldman-sachs/>.

<sup>4</sup> <http://thinkprogress.org/politics/2011/08/18/298485/exclusive-goldman-sachs-vp-changed-his-name-now-advances-goldman-lobbying-interests-as-a-top-staffer-to-darrell-issa/>

<sup>5</sup> Lichtblau, *A Businessman in Congress Helps His District and Himself*, *supra* note 2.

<sup>6</sup> See *supra* note 4.

<sup>7</sup> Lichtblau, *A Businessman in Congress Helps His District and Himself*, *supra* note 2.

Representative Issa made his fortune in part through DEI Holdings, a company that sells auto electronics and car alarms. (“DEI” stands for “Darrell E. Issa,” and Representative Issa provided the voice for the famous Viper car alarm: “Step away from the car.”) The Representative sold his controlling interest in DEI after election to Congress. But he is still a board member, and his family trust holds a half-million shares in the company.

DEI partnered with Sirius Satellite Radio to distribute electronics. When Sirius sought to merge with XM in 2008, Issa touted the merger at a House hearing. But when a competitor accused Sirius and DEI of anti-competitive practices, and when Representative Issa’s role in the merger was questioned, he apparently sought advice from the House Ethics Committee, and later abstained from voting on the issue — which calls into question his earlier conduct at the hearing.<sup>8</sup> And since he remains active in DEI in his role as a board member, the abstention does not answer the question of other actions he may have taken as a Member of Congress to affect the merger.

#### **D. Earmarks**

According to the *New York Times*, Representative Issa “has secured millions of dollars in Congressional earmarks for road work and public works project that promise improved traffic and other benefits to the many commercial properties he owns ... north of San Diego.”<sup>9</sup> These suspect earmarks include:

- Two earmarks obtained to widen West Vista Way in Vista, California. The first earmark was sought before an LLC linked to Representative Issa bought a medical complex on that same stretch of road as a “long-term investment;” the second was sought afterwards. Representative Issa requested even more funds for the project than were ultimately received, even though he had once said that “an earmark is tantamount to a bribe.”<sup>10</sup>
- An earmark to expand State Route 76, near which Representative Issa owns a number of commercial properties.<sup>11</sup>

### **LEGAL DISCUSSION**

House Rule 23, clause 3, provides:

A Member . . . of the House may not receive compensation and may not permit compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress.

Similarly, section 5 of the Code of Ethics for Government Service provides that a Member may:

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<sup>8</sup> *Id.* Representative Issa is a defendant in a lawsuit brought by DEI shareholders over the company’s recent acquisition by Charlesbank Capital; the shareholders claim that the deal was structured to give him and other directors a special windfall. *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See <http://thinkprogress.org/politics/2011/03/30/151097/issa-earmark-property/>

<sup>11</sup> Lichtblau, *A Businessman in Congress Helps His District and Himself*, *supra* note 2.

Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for [one]self or [one's] family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of [one's] governmental duties.

A Member violates House Rule 23 when he improperly uses his official position and receives a direct pecuniary benefit as a result. A Member violates section 5 of the Code of Ethics for Government Service occurs when he improperly uses his official position, whether a pecuniary benefit results or not.<sup>12</sup> When a Member considers advocating Committee action, seeking earmarks, or other actions that “entail a degree of advocacy above and beyond that involved in voting,” the rules require “added circumspection.” In such cases, the Member is urged to contact the Standards Committee for guidance.<sup>13</sup>

And the House has made clear time and again that the standard here implicates untoward appearances, which go to the heart of public confidence in the institution. A pattern of conduct such as Representative Issa's reflects discredit on the institution in contravention of House Rule 23, clause 1. And it certainly contravenes the requirements of Rule 43, Clause 2, which requires Members to avoid actions that violate the spirit as well as the letter of the House rules. In this time of economic challenges, it cannot be tolerable under House standards for one of the institution's richest members to maintain active business interests while allowing them to repeatedly intersect, and benefit from, his official responsibilities. As noted, the offenses are all the greater when the Member in question is the leading member of the House majority charged with overseeing “fraud, waste and abuse” in the operation of government.

Here, the facts strongly suggest that Representative Issa has repeatedly used his official position for personal financial gain — in fact and in appearance.

In the case of Goldman Sachs, Representative Issa invested as much \$25 million in the company. And yet he intervened to thwart an FEC suit against Goldman — mere weeks after buying a large number of shares in a Goldman fund. He challenged government regulators to halt rules that would have affected the company — even hiring a former Goldman employee to spearhead the effort. As to Merrill Lynch, his assault on the Treasury Department and the Federal Reserve Board for helping broker that company's acquisition cannot but have been affected by his many millions of dollars in transactions with that firm.

Representative Issa's intervention in support of the Sirius/XM merger presents especially clear violations of House Rule 23 and the Code of Ethics for Government Service. According to the *New York Times*, he received advice from the Ethics Committee that apparently led him to avoid voting on the issue. Yet he had already used his committee role to promote the merger — under separate and less permissive standards of conduct — and what specifically other than voting (and later abstaining) he may have done to promote the merger is unknown.

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<sup>12</sup> *In the Matter of Representative Sam Graves*, H. Rep. 111-320, at 18, 19-20 (2009).

<sup>13</sup> House Ethics Manual at 237.

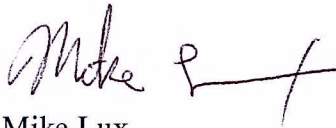
Finally, the earmarks sought by Representative Issa have had a direct effect on his own property holdings. As *ThinkProgress* reported: “Already, a firm representing Issa’s real estate company is advertising the Vista Medical Building and its ‘Excellent Access with Freeway Visibility.’”<sup>14</sup>

### CONCLUSION

There is ample reason to believe that Representative Issa has violated House rules. A review by the Office of Congressional Ethics is urgently needed.

We understand that 18 U.S.C. § 1001 applies to the information we are providing.

Sincerely,

A handwritten signature in black ink that reads "Mike Lux". The signature is written in a cursive, slightly stylized font.

Mike Lux  
President  
American Family Voices

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<sup>14</sup> *Supra* note 10.