BILLY TAUZIN:

Case Study in Corruption

How Industry Money and Personal Interest Shaped Part D

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By Eric Lotke and Roger Hickey *May 2006*

Executive Summary

Former Representative William J. "Billy" Tauzin (R-LA) symbolizes the Republican culture of corruption that has come to dominate the U.S. Congress. As architect of the Part D prescription drug addition to Medicare, he helped create an administrative nightmare that troubles seniors and pharmacists while bringing financial windfalls to drug manufacturers and insurance companies. Tauzin is the poster child for the need to reform a corrupt system and the test case for any reform measure.

Tauzin left Congress to become CEO of the Pharmaceutical Research and Manufacturers of America (PhRMA), the political PAC of the pharmaceutical industry. His new job reportedly pays $2 million a year in salary, perks and benefits. The closeness of the connection has raised doubts about his interests while he was still in Congress, and whether he was working for his constituency or his future employer.

This report documents the role of Billy Tauzin in creating Part D, the close connection between money and politics, and need for real reform in the nation's capitol.

- Drug companies gave $87 million in federal campaign contributions between 1998 and 2005
- 69% of drug company contributions went to Republicans. 31% went to Democrats.
- Tauzin received $218,000 in drug industry contributions between 1989 and his departure.
- Tauzin now receives $2 million annually in salary, perks and benefits as CEO of PhRMA.
- The former administrator of Medicare, Thomas Scully, received an "ethics waiver" from the Bush administration that allowed him to negotiate his job as a drug industry lobbyist while still developing the text of the bill in Congress.
- "Front groups" such as the United Seniors of America and Sixty Plus received $41 million in drug industry money to bombard Congress with messages purportedly coming from grassroots.

These industry connections – especially those offering lucrative post-government jobs for Thomas Scully and Billy Tauzin – shaped Part D in favor of the industry. Part D actually contains a provision that forbids Medicare to use its bulk-buying power to negotiate lower drug prices. Part D also requires seniors to use private, for-profit insurance companies and denies seniors the option of a prescription drug benefit directly from Medicare.

- Part D is estimated to cost the federal government $534 billion over ten years. 61% of that money is estimated to stay with drug manufacturers as added profits.

The solution for Medicare is to fix Part D. The solution for Congress is lobbying reform that fixes the Tauzin problem, and greater distance between private money and public policy.

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Representative William J. "Billy" Tauzin (R-LA) could have left office a hero. He was the "architect" and "principal author" of the Part D Medicare benefit that could provide prescription drug coverage to millions of senior citizens.[1] Instead Tauzin left under a cloud of scandal and shame, a symbol of Republican special interest favoritism and corporate cronyism. He has become the poster child of the need for reform, and the test case for any reform measure.

Tauzin was chair of the House committee on Medicare when prescription drug coverage reached center stage. Yet it is unclear where his priorities lay while working on the bill, since it was soon revealed he was negotiating for his new job with the pharmaceutical industry. Tauzin now reportedly brings home $2 million a year in salary, perks and benefits as CEO of the Pharmaceutical Research and Manufacturers of America (PhRMA), the political PAC of the pharmaceutical industry.[2]

While Tauzin enjoys his new paycheck, Part D is creating multiple problems, working better for insurance companies and pharmaceutical manufacturers than pharmacists and patients. Part D adds $5 billion in annual costs due to needless administrative complexity and $70 billion in annual costs because it prohibits Medicare from using its bulk-buying power to negotiate lower prices.[3] It saddles patients with high-stakes deadlines and gives them less power to change plans than insurance companies have to change coverage.

"We think that it stinks," Mary Boyle of Common Cause told the Associated Press. "Whose interests did he have at heart, those of the American people or his future employer?"[4]

President Bush signed Part D into law on December 8, 2003. Tauzin has publicly admitted to being in negotiation for his new job as early as January 15, 2004. "I have never seen anything close to the public courting of Tauzin by lobbying groups in Washington," said Thomas Mann, a senior fellow at the Brookings Institution and a Beltway veteran.[5] At $2 million a year, some say that Tauzin could be the highest paid lobbyist in D.C.[6]

Awash in Drug Money

The pharmaceutical and health products lobbying operation is the biggest in the country.[7] Drug manufacturers spent $239 million on direct lobbying in 2003 and 2004 alone, the years surrounding the passage of Part D. In 2003, when Part D was being considered, drug companies hired 824 lobbyists – more than one for each of the 535 members of Congress.[8]

Capitol Hill is awash in drug money. The pharmaceutical industry contributed $87 million to federal campaigns between 1998 and 2005, including $1.5 million to George Bush. Fully 69% of the drug money went to Republicans. Just 31% went to Democrats, the party that said Medicare should use its bulk-buying power to negotiate lower prices.[9]

Tauzin received plenty of personal time and attention. Drug companies and their families contributed more than $218,000 to Tauzin's reelection efforts since 1989.[10] In 2003, the year Part D was being written, PhRMA flew Tauzin and his wife to Orlando, Florida, to speak at their annual convention.[11]

In addition to direct lobbying, the pharmaceutical industry spent millions more to create and fund "front groups" to speak on its behalf.[12] The United Seniors of America, the 60 Plus Association and others pretended to represent grassroots senior citizens. They broadcast television ads and sent direct mail to people in competitive Congressional districts, taking positions that favored the drug industry at the expense of American seniors.

Pharmaceutical manufacturers channeled roughly $41 million to these front groups in 2002 alone, apparently organized by PhRMA. The United Seniors of America received 79% of its total revenue for the year from a single gift of $20 million. The 60 Plus Association received 91% of its total $12 million revenue stream in a single gift. That is not the budget of a grassroots coalition; that's the budget of the industry speaking through a different mouthpiece.

It makes sense that the industry should spend its money this way. Part D has been estimated to be worth $534 billion over ten years, with 61% of those funds remaining with drug makers as added profits.[13] The earnings are artificially high because of Part D's prohibition on negotiating lower prices. The industry has reason to be happy with the bill Tauzin shepherded through Congress.

Democrats Locked Out

In the beginning, the drafting process was bipartisan. Everyone agreed that Medicare needed to provide a prescription drug benefit. Democratic Senator Edward Kennedy offered crucial support for early versions of the bill, reluctantly trading expanded coverage for sponsorship by private insurers and other modifications he considered disagreeable. Yet he made those compromises to move central ideas forward. This bipartisan input and spirit gave crucial early momentum to the reform effort.

Once the legislation passed those hurdles and went into conference, Democratic senators were literally locked out of the room. They were not present as discussions were held and draft versions circulated. Billy Tauzin and the Republican party were in charge, and PhRMA and other commercial interests were warmly invited in. Tauzin and industry representatives worked privately together in conference rooms, where they radically changed the bill, pushing it into forms that would never have been agreed to earlier.

When Senator Kennedy and others finally saw the finished product, all they could do was vote against it. Medicare reform had been hijacked by special interests.

> "They had who they wanted in the room and locked us out. We were told we were not allowed in. It was bizarre."
>
> Senator Tom Daschle, the highest ranking Democrat at the time.[14]
>
> "This was a corrupt process handled in back rooms."
>
> Representative Henry Waxman, senior Democrat on the House Government Reform Committee.[15]

Midnight Vote

The procedures got stranger and stranger, reaching the most extreme levels on the night of the vote. The action started around midnight.

At 11:28 p.m. on November 21, 2003, Republican Representative Deborah Pryce (OH-15) passed a resolution over Democratic objection that "waiv[ed] all points of order against the conference report and against its consideration."[16] In plain English, that meant no rules applied to the voting process. The lawmaking was done literally lawlessly.

Voting started around three in the morning on November 22, 2003. It should have ended fifteen minutes later, with the roll call showing insufficient votes to pass. By tradition and rule, votes close roughly fifteen minutes after they begin, so representatives cannot see how each other voted and apply pressure to change. Seventeen minutes after the vote opened, Billy Tauzin and his Republican caucus were behind in the count. Rather than closing the vote as scheduled, they held it open nearly three hours, until 5:53 a.m.,[17] the longest roll call in Congressional history.

During that time, party leadership walked the floor, delivering threats, twisting arms and passing out favors. Former Representative Nick Smith (R-MI), who was retiring but whose son was running for his seat, was promised a $100,000 contribution and national support for his son's race. He withstood the pressure and voted no to a bill he considered fundamentally flawed. After the bill passed, former Representative Randy "Duke" Cunningham (R-CA) and other Republicans taunted him that his son was "dead meat." Although this action was unethical, illegal and widely reported, nobody was ever charged with a crime.[18]

Nick Smith's son was defeated. Part D passed.

Representative Steny Hoyer (D-MD), after the Speaker of the House had denied his party's right to object:

"Mr. Speaker, reserving the right to object … I will remind you that you said we had 17 minutes to vote. You made it very clear. You sent us a notice, and you said come with 15 minutes; we will give you 2 more minutes.

This vote has now been held open longer than any vote that I can remember. I have been here 23 years. Perhaps some of you have been here longer…. Democracy is about voting. But just as you cannot say on Tuesday of Election Day, we will keep the polls open for 15 more hours until we get the result we want, you ought not to be able to do it here, Mr. Speaker. We have prevailed on this vote. Arms have been twisted and votes changed. And I will continue to reserve."

Congressional Record, Nov. 21, 2003, p. H12296.

Not Alone

Billy Tauzin is not alone in going through the revolving door between public service and private money. Immediately after the law passed, twenty former executive branch and congressional staffers made the move to lobbying for the pharmaceutical industry.[19] Tauzin reportedly brought with him to high positions in PhRMA his longtime Congressional aide, Ken Johnson, as well as his chief of staff, Mimi Simoneaux.[20] For lobbyists, Tauzin hired a lobbying firm staffed by his former Hill aid, Wallace Henderson.[21]

The danger of the revolving door is especially vivid in the case of the ethically challenged Thomas Scully. Before President Bush appointed him to be administrator of the Center for Medicare and Medicaid Services, Scully was CEO of the American Federation of Hospitals, representing more than 1,700 private hospitals. In April of 2003, as head of Medicare, he called it a “dumb system” and an “unbelievable disaster.”[22] In the fall of 2003, Scully was intimately involved in drafting Part D. He served as the White House’s lead negotiator on the bill.

While working on the bill, Scully is said to have deceived Congress about the cost of the Part D. Fiscal conservatives had drawn a line in the sand at $400 billion over ten years, and said they would not vote for Part D if the cost went higher. At the time, the administration said the cost was $395 billion, just below this mark. However, Medicare’s chief actuary, Richard Foster, had revised estimates showing that the full cost of part D was $534 billion over ten years – a third more than Congress said it was willing to spend.

President Bush and Thomas Scully did not reveal the higher estimate before the vote. *Scully is said to have told Foster that he would* ***fire him*** *if he told Congress – or anyone else – the higher revised estimate.* [23] Foster, a career civil servant, obeyed his boss. Congress passed Part D with the lower estimate, though it was known to be incorrect.

One month later the new estimate came out. By then, however, Scully couldn’t be held accountable for hiding the information. He had already left for a new job in the private sector. [24] He had received an ***“ethics waiver”*** that exempted him from the prohibition against seeking employment by parties with an interest in legislation while it was being written. [25] Scully joined Alston & Bird, a law firm with healthcare clients, and became a senior adviser with Welsh, Carson, Anderson & Stowe, a private equity firm that finances healthcare companies. He also registered as a lobbyist for drug companies.[26]

Solutions and Conclusions

Under Republican control, the American legislative process has been corrupted by private interests. Corporate money flows to campaign coffers and lucrative jobs go to well-placed public officials. This level of corruption eventually brought the American people Part D. The solution has two parts. First, it necessary to revise Part D consistent with the interests of the American people. Second, it is necessary to reform government to make it more open, accountable, and responsive to voters than wealthy special interests.

1. Fixing Part D

Part D is a costly, confusing, and corrupt growth on traditional Medicare. Part D prohibits Medicare from using its bulk-buying power to negotiate lower drug prices, and denies seniors the option of prescription drug benefit directly from Medicare. It creates a gap in coverage – often called the "donut hole" – that leaves people with no coverage whatsoever for prescription drug expenses above $2,250 until they reach $5,100. Congress can fix these problems by creating a benefit that is simple, affordable and guaranteed.

- Allow Medicare to offer its own prescription drug coverage.
- Require Medicare to negotiate the lowest possible price for prescription drugs.
- Close the "donut hole."
- Increase ability of patients to change or exit plans, especially upon material changes
- Extend the registration deadline until problems are solved

2. Cleaning up Government

American government needs to be restored to its roots. Votes should decide elections, not money. People in positions of public responsibility should be working for the public trust, not private gain. It will take years to clean the Republican culture of corruption, but the process can begin at any time.

- Close the revolving door between the Congress and lobbyists by increasing the cooling-off period during which former public officials are prohibited from lobbying their former colleagues.

- Expand the information lobbyists must disclose – including campaign contributions, gifts and client fees. Increase frequency of filing and make disclosures available to the public quickly and electronically. Make violations subject to criminal penalties.

- Disclose negotiation of public officials seeking private sector jobs.

- Stop the practice of waiving procedural rules before votes. Require that all conference committee meetings be open and that all conference reports be available to members at least 48 hours before being voted on.

- Make more public money available for election campaigns so candidates are beholden to the people, not to the private interests who get them elected. Increase speed, accessibility and completeness of disclosure of private campaign contributions.

The solution is to restrict the connection between private gain and public policy. One danger is pseudo-reform that pretends to solve the problem but makes only cosmetic modifications. Two questions must be asked as reform proposals arise: Would it have improved Part D? Would it have stopped Billy Tauzin?

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