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EXHIBIT 12

GOP's Pressing Question on Medicare Vote

Did Some Go Too Far To Change a No to a Yes?

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About 20 Republican congressmen -- all fiscal conservatives -- gathered nervously in a back room at the Hunan Dynasty restaurant on Capitol Hill on Nov. 21, trying to shore up their resolve to defy President Bush. It was the night of the big vote on the Bush administration's Medicare prescription drug bill, which they had concluded was too costly, and they began swapping tales about the intense lobbying bearing down on them.

Over egg rolls and pu-pu platters, one complained that a home-state politician had insinuated that he would run against him in the next primary unless the lawmaker voted for the bill. Another said House leaders had warned that if the bill was defeated because of his no vote, he might lose his subcommittee chairmanship. Several recalled being telephoned by insistent lobbyists from the health care industry.

But the most dramatic account was given by Rep. Nick Smith (Mich.), who is to retire next year and hopes his son will succeed him. According to two other congressmen who were present, Smith told the gathering that House Republican leaders had promised substantial financial and political support for his son's campaign if Smith voted yes. Smith added that his son, in a telephone call, had urged him to vote his conscience, and with the support of dissident colleagues, Smith stuck to his no vote.

The matter might have ended there had Smith not written his account in a Michigan newspaper column, adding an allegation involving threats of retaliation against his son's campaign if he voted no. Since then, he has declined to specify who might have pressured him, but his complaints have prompted outrage among Democrats and consternation among some Republican colleagues.

Lawmakers from both parties have complained about the tactics used on the night when the House leadership pushed the Medicare bill through by a vote of 220 to 215. The margin would have been even closer if some lawmakers had not changed no votes to yes when it became clear the bill would pass.

The Democratic National Committee and two independent groups that work on ethics issues have requested a Justice Department investigation into whether the pressure was not just routine Capitol Hill horse-trading but a violation of federal anti-bribery law.

The statute in question, Section 201 of U.S. Title 18, bars the offer or promise of anything of value for a decision or action on any "question, cause, suit, proceeding or controversy" pending before a public official. But the language leaves room for uncertainty about what the proper code of conduct is.

So far, the department says, no decision has been made on an investigation. "We are reviewing [the request] . . . to see what if any action would be taken," a spokeswoman said late last week, declining to comment further.

It was a little before dawn on Nov. 22 that the House passed the Medicare bill. And it was the next day that Smith wrote a column for the Lenawee Connection about the House leadership's use of what he called "bribes

and special deals" to eke out that margin of victory.

During the deliberations, Smith wrote, some "members and groups" had not only offered extensive financial support and endorsements for the campaign of his son, Bradley L. Smith, but also "made threats of working against Brad if I voted no."

In a subsequent interview with Michigan radio station WKZO, he spoke about being pressured by the "leadership" and said "they" had offered "$100,000-plus" before threatening that "some of us are going to work to make sure your son doesn't get to Congress" unless Smith relented.

Since then, Smith has declined to specify who allegedly offered the rewards and made the threats. A taciturn six-term lawmaker and part-time farmer who says he is withdrawing from Congress next year out of respect for the concept of term limits, Smith said he will cooperate with any official inquiry but does not want to point fingers publicly.

Smith has also qualified his initial criticisms in a way that has clouded identification of who may have made such offers or threats. In a Dec. 4 statement, he said that no member of Congress had directly offered money for his son's campaign. Instead, he said, he was "told that my vote could result in interested groups giving substantial and aggressive campaign 'support' and 'endorsements.' "

That wording left open the possibility that someone in the leadership had offered the prospect of substantial industry donations to his son's campaign. In his original statement to WKZO, Smith said "the first offer I got was from the pharmaceutical business groups that are pushing for this bill."

Smith made clear in his Dec. 4 statement that House Speaker J. Dennis Hastert (R-Ill.), who many witnesses saw in lengthy conversation with Smith the night of the vote, was not the lawmaker who dangled the prospect of such support. Smith's chief of staff, Kurt Schmautz, said it was not House Majority Leader Tom DeLay (R-Tex.), but he declined to comment on reports that Smith had told colleagues the offers were extended by members of the House leadership.

Smith also has said he misspoke when specifying that the offer was for about $100,000, but he has not clarified the issue.

Regarding the alleged threats, Smith said in a brief interview at his office that around 4 a.m. on Nov. 22, at least two members of Congress said they would do what they could to keep his son from being elected, a statement with less clear-cut legal implications. He said he interpreted that as a threat to finance his son's opponents in the Republican primary and to arrange for national endorsements of those opponents.

"I told them, not very politely, to get away from me," Smith said. "Threatening your kids is beyond the pale. It caught me by surprise. It made me mad."

Smith, 69, a veteran of the Michigan legislature, was elected to Congress in 1992 from Addison, Mich. (population 630). He has mostly kept a low profile in Washington, but he has a reputation for independence and for bridling at improprieties in public life.

He proudly directed a probe into the Michigan horse-racing industry that led to death threats against his family, and later pronounced himself "appalled" by the prevalence of check-writing in exchange for votes at the Michigan statehouse.

Smith, who farms soybeans and corn on 2,000 acres, has the seniority to be an Agriculture subcommittee chairman. According to three colleagues, he was denied the post last year in retaliation for his long-standing efforts to cap federal subsidies to large farmers.

Smith's colleagues say that in any event he would be an unlikely target for the financial reward he was allegedly offered. They note that when he first ran for the House, he vowed to refuse contributions from political action committees; since then, he has had some of the cheapest winning campaigns in the House.

"I thought it was easier to sell a cow or two than to feel any obligation for depending on somebody or owing them because I took PAC contributions," Smith said in the interview. "We're in a rural district . . . [with] strong values and convictions" about avoiding debts of any sort, he said.

In his radio interview, Smith described the arm-twisting he got during the Medicare vote as the strongest he has seen in 27 years in politics.

Once a vote is started, he told the radio station, "the prestige of leadership is partially at stake if the vote doesn't succeed for the majority. And that's what happened in this case. They didn't have the votes. . . . They started out by offering the carrot, and they know what's important to every member, and what's important to me is my family and my kids."

No other House Republicans have reported being offered campaign funds or being threatened during the vote. Since the Democrats lodged their ethics complaint, members of the House Republican leadership have issued statements saying they had no involvement in or knowledge of any untoward pressures.

Hastert spokesman Peter M. Jeffries described Smith's allegations as being without "foundation." House Majority Whip Roy Blunt (R-Mo.) said he offered no deals to Smith. Like other Republican leaders, he called attention to Smith's clarification of his initial remarks, saying, "Nick has learned that words do matter, and they need to be both thoughtful and accurate."

House Ways and Means Committee Chairman Bill Thomas (R-Calif.), whose political action committee donated $360,000 to Republican candidates in 2002, has said through a spokesman that he "did not offer campaign support" to Smith's son that night. Rep. Nancy L. Johnson (R-Conn.), who chairs the Ways and Means subcommittee on health, said her discussions that night "were focused solely and exclusively on the merits of the bill."

Only Rep. Randy "Duke" Cunningham (R-Calif.) has acknowledged speaking directly with Smith about his son. He said if Smith's son would vote the way Smith did, "he would not support the son's candidacy," spokeswoman Jessica Boulanger said. But Cunningham "did not threaten him," she added.

On the other hand, at least eight members of the Republican Study Committee -- a group of fiscally conservative House lawmakers, including many who opposed the Medicare bill -- said in interviews that they believe Smith told the truth about the pressure he received.

Rep. Gil Gutknecht (R-Minn.), who was present at the dinner, recalled Smith saying it was "people from leadership" who had offered the money. He said Smith did not say who it was, but he assumed it was someone who controlled a "large leadership PAC, who can raise a hundred thousand dollars by hosting a few fundraisers."

"I think something happened," Gutknecht said. "If it happened, then somebody in the leadership is guilty of at least gross stupidity. . . . Whoever made that comment should resign."

Rep. Tom Tancredo (R-Colo.), who was also at the dinner, recalls Smith telling the group that "someone had said his son . . . would be the beneficiary if he would vote for the bill, up to the tune of about $100,000. . . . If Nick Smith said it happened, it happened."

Rep. Jeff Flake (R-Ariz.) recalls Smith telling the group that his son was promised an endorsement and funds

from the National Republican Congressional Committee. Carl Forti, a spokesman for NRCC Chairman Thomas M. Reynolds (R-N.Y.), said Reynolds "did not make any sort of offers to Mr. Smith."

"It's all going to be just as Nick said," said Rep. Roscoe G. Bartlett (R-Md.). "When you see people making more than a million dollars a year on K Street, there is just too much money in the process."

Researchers Karl Evanzz and Margaret Smith contributed to this report.

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