

CREW'S MOST CORRUPT



HAL KY

GREG MEERKS

SCHMIDT

S. FINCHER

NICK RAHALL

D. RIVERA

"NYC" GRIMM

VERN BUCHANAN

CHARLIE BASS

LUCRA LBC

JOE WALSH

MAXINE WATERS

FRANK GUINTA NY

DAVID ROBERTS

CREW

citizens for responsibility
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EXECUTIVE SUMMARY

CREW's seventh report on congressional corruption names 19 members of Congress – 14 members whose actions violated the law or who otherwise engaged in serious misconduct, and five others whose lack of regard for the rules earned them a dishonorable mention. The 2010 midterm elections swept in a large freshman class, but certainly didn't produce more ethical conduct. A startling 14 of the 19 members on CREW's list are new to it this year, and six of those members are also new to Congress: Reps. Jeff Denham (R-CA), Stephen Fincher (R-TN), Michael Grimm (R-NY), Frank Guinta (R-NH), David Rivera (R-FL) and Joe Walsh (R-IL).

CREW's definition of corruption goes beyond assessing whether someone technically violated a criminal law. It encompasses public officials who fail to act responsibly and ethically, and who instead place personal or special interests before those of the public. As always, members on this year's list have abused their positions to benefit themselves, their families, and other associates. Ten violated campaign finance or personal financial disclosure rules, failing to reveal gifts, income, campaign contributions or debts. At least nine members are or have been under investigation either by the House or Senate ethics committees, the Federal Election Commission (FEC) or law enforcement agencies.

One member, Rep. Rivera, is under investigation by at least five different law enforcement agencies for a range of violations, apparently including income tax evasion. Another, Rep. Gregory Meeks (D-NY), got a loan on very sweet terms and failed to disclose or repay it until the FBI started asking questions. In the latest revelation in Rep. Vern Buchanan's (R-FL) ongoing scandal, he attempted to bribe a witness to sign a false affidavit. The conduct exhibited by each of the members on the list has contributed to the eroding public trust in government.

The report, of course, doesn't reflect the misdeeds of those who have left Congress. Sen. John Ensign (R-NV), a Most Corrupt alumnus, resigned hastily this year. He left just before a special counsel to the Senate Select Committee on Ethics issued a scathing report concluding the evidence against him in connection with his attempted cover-up of an affair with a staffer "would have been substantial and sufficient to warrant the consideration of the sanction of expulsion." Reps. Christopher Lee (R-NY), Anthony Weiner (D-NY), and David Wu (D-OR), meanwhile, were quickly pushed out of Congress by House leadership after news broke of their salacious conduct. There seems to be no particular standard, however, regarding the sort of misconduct that induces party leaders to move decisively against unethical members given the relatively more egregious actions of some members who have been permitted to retain their seats.

Some Most Corrupt veterans are missing this year either because no new action was taken by any law enforcement agency or the House and Senate ethics committees, or because CREW discovered no new information. These members include: Reps. Ken Calvert (R-CA), Jesse Jackson Jr. (D-IL), Jerry Lewis (R-CA), Charles Rangel (D-NY), Pete Visclosky (D-IN), and Don Young (R-AK) and Sen. Mitch McConnell (R-KY). Five members are making return appearances: Reps. Buchanan, Laura Richardson (D-CA), Hal Rogers (R-KY), and Maxine Waters (D-CA) and Sen. David Vitter (R-LA). Sen. Vitter and Rep. Richardson are included for conduct unrelated to that which led to their inclusion in previous years.

Despite the number of high-profile scandals, there continues to be scant enforcement of ethics rules. The Department of Justice (DOJ) has repeatedly refused to press charges against crooked politicians, declining to pursue the case against Sen. Ensign, among others. The feckless FEC boasts commissioners who openly declare their intent to ignore the law rather than enforce it, emboldening candidates and members to cross the legal line without fear of repercussions.

The House and Senate ethics committees are rarely stirred to action and even when they are – as in the case of Sen. Ensign – investigations drag out for years. In addition, Rep. Waters' case shows how ineffective Congress is at policing itself. The Waters investigation has been so tainted by allegations of staff and member misconduct and evidence withheld that the committee was forced to hire an outside counsel to investigate its own conduct as well as the Waters matter.

The public deserves better than this. The lack of enforcement of ethics laws and rules fuels cynicism about government at a time when it is already rampant. An August 2011 poll of likely voters by Rasmussen Reports found 43% of voters view most members of Congress as corrupt – and that was the good news.¹ The number was down slightly from the previous month's high of 46%.² Congress and the president both bear responsibility for this sorry state of affairs. Members of Congress should stop offering pious speeches about the importance of ethics while failing to reform the toothless ethics process and rein in the influence of special interests. The president should take the long-overdue step of naming new FEC commissioners to replace those whose terms have expired and who should no longer be serving. Join CREW in calling for change and together, we'll build a better Washington.

METHODOLOGY

To create this report, CREW reviewed media articles, Federal Election Commission³ reports, court documents and members' personal financial and travel disclosure forms. We then analyzed that information in light of federal laws and regulations as well as congressional ethics rules.

¹ http://www.rasmussenreports.com/public_content/politics/mood_of_america/congressional_performance.

² *Id.*

³ References to companies making campaign contributions are shorthand for campaign contributions by those companies' political action committees and employees and, in some cases, their immediate families. We are not insinuating that any company named in the report has made contributions in violation of federal campaign finance laws.

MEMBERS OF THE HOUSE

REPRESENTATIVE CHARLES BASS

Representative Charles “Charlie” Bass (R-NH) is a seven-term member of Congress, representing New Hampshire’s 2nd congressional district. Rep. Bass represented the district from 1995 to 2007, and was elected again in 2010. Rep. Bass’s ethics issues stem from misusing his position to benefit himself and a company owned by a relative.

New England Wood Pellet

Rep. Bass’s nephew by marriage, Steven Walker, is president of New England Wood Pellet (NEWP), a New Hampshire-based company that produces wood pellet fuel for use in heating systems.¹ Mr. Walker is also one of several investors with an ownership stake in NEWP.² In 2005, Rep. Bass sponsored NEWP-supported legislation to provide incentives for renewable energy systems, including wood pellet systems.³ The Pellet Fuels Institute, an industry trade group, described Rep. Bass as a “key supporter in Congress” and said his bill was “ideally suited to help promote pellet fuel systems.”⁴ Rep. Bass’ spokesman said the wood pellet rebates were a small part of his bill and the legislation was not designed to benefit his family.⁵ Mr. Walker, however, later said Rep. Bass lobbied for the provision at his urging.⁶ The bill passed, but Congress didn’t appropriate money to pay for it and the Department of Energy didn’t request funding as part of its FY 2007 budget.⁷

In February 2006, then-Secretary of Energy Samuel Bodman visited New Hampshire, had a one-on-one meeting with Mr. Walker, and discussed the rebate program with him.⁸ The Pellet Fuels Institute’s newsletter reported the meeting had been arranged by Rep. Bass.⁹ According to Secretary Bodman, Rep. Bass also discussed the rebate program with him during the visit.¹⁰ The following month Rep. Bass brought up the rebate program with Secretary Bodman again, this time during a congressional hearing.¹¹ Shortly afterwards Rep. Bass e-mailed his constituents, saying he urged Secretary Bodman to support the biomass industry “for the second time in a month.”¹²

¹ <http://www.pelletheat.com/about-newp/team.html>.

² <http://www.pelletheat.com/about-newp/about-us.html>; Karen Langley, Bass Denies Energy Bill Was Conflict, *Concord Monitor*, October 15, 2010.

³ Charlie Neibling, Pellet Fuel Industry Meets with Energy Secretary Bodman, *Pellet Fuels Institute Newsletter*, January-March 2006.

⁴ *Id.*

⁵ John DiStaso, GRANITE STATUS: Bracing for the Worst, Hoping for the Best, *Manchester Union Leader*, May 12, 2005.

⁶ Kenneth J. Stier, Small Business: In an Oil Squeeze, Attention to the Alternatives, *New York Times*, September 22, 2005.

⁷ Langley, *Concord Monitor*, Oct. 15, 2010; Transcript, Federal News Service, Hearing of the House Energy and Commerce Committee, Subject: Fiscal Year 2007 Budget Request for the Department of Energy, March 9, 2006; Neibling, *Pellet Fuels Institute Newsletter*, Jan.-Mar. 2006.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Neibling, *Pellet Fuels Institute Newsletter*, Jan.-Mar. 2006; Transcript, Federal News Service, Mar. 9, 2006.

¹² Kevin Landrigan, Dem Leaders: Bass Wrong on Meeting, *Nashua Telegraph*, October 19, 2010.

In March 2007, after leaving Congress, Rep. Bass filed his 2006 personal financial disclosure forms, which for the first time showed Rep. Bass had acquired a \$500,000 to \$1 million share in NEWP.¹³ Unusually, Rep. Bass listed two dates, January 2006 and November 2006 as the dates of purchase.¹⁴ In addition, Rep. Bass joined NEWP's board two weeks after leaving Congress in 2007, and remained a member until after the 2010 election.¹⁵ Between 2007 and 2010, Rep. Bass earned between \$1,201 and \$3,500 in dividends from the company.¹⁶

Rep. Bass's interest in NEWP drew little notice until the 2010 campaign, when he ran to reclaim his old congressional seat and reporters raised questions about the conflict of interest. Rep. Bass then denied setting up the 2006 meeting between Secretary Bodman and Mr. Walker.¹⁷ He also claimed he had never spoken with Secretary Bodman about the biomass industry – a statement contradicted by Secretary Bodman's 2006 congressional testimony.¹⁸ Further, he said his 2006 financial disclosure forms were incorrect; he had not purchased the NEWP stock until January 2007.¹⁹ As proof, Rep. Bass said he had stock certificates that carried the January 2007 transaction date.²⁰ In November 2010, Rep. Bass amended his 2006 financial disclosure form, removing the two NEWP stock transactions.²¹

In June 2011, *Roll Call* obtained a 2006 letter from Rep. Bass inviting Secretary Bodman to New Hampshire.²² The letter also promoted an itinerary for Secretary Bodman that would “highlight the contributions” of alternative energy companies in New Hampshire.²³ A spokesman for Rep. Bass said the letter showed Rep. Bass's attempts to promote the industry as a whole, not NEWP in particular.²⁴ Rep. Bass' most recent personal financial disclosure form, meanwhile, shows he continues to own between \$500,000 and \$1 million worth of stock in NEWP.²⁵

¹³ Rep. Charles F. Bass, Personal Financial Disclosure Statement for Calendar Year 2006 / Termination, Effective 1-4-07, filed March 9, 2007.

¹⁴ *Id.*

¹⁵ http://bass.house.gov/index.php?option=com_content&view=article&id=2917&Itemid=400156; Kevin Landrigan, Bass Stock-Buy Confusion May Lead to Inquiry, *Nashua Telegraph*, October 15, 2010.

¹⁶ Rep. Charles F. Bass, Candidate Personal Financial Disclosure Statement for 2008, filed November 23, 2009; Rep. Charles F. Bass, Candidate Personal Financial Disclosure Statement for 2010 (Amended), filed August 13, 2010; Rep. Charles F. Bass, Personal Financial Disclosure Statement for Calendar Year 2010, filed May 16, 2011.

¹⁷ Langley, *Concord Monitor*, Oct. 15, 2010; Eliza Newlin Carney, Rep. Bass Faces New Energy Questions, *Roll Call*, June 22, 2011.

¹⁸ Kevin Landrigan, House Candidate Admits Mistake on Financial Forms, *Nashua Telegraph*, October 14, 2010; Karen Langley, Bass Did Ask for Funding, *Concord Monitor*, October 19, 2010.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Rep. Charles F. Bass, Personal Financial Disclosure Statement for Calendar Year 2006 / Termination (Amended), November 18, 2010.

²² Carney, *Roll Call*, June 22, 2011; *see also* Letter from Rep. Charles F. Bass to Hon. Samuel Bodman, February 7, 2006 available at <http://www.scribd.com/doc/63518872/CREW-Most-Corrupt-Sources-Bass-Letter-2006>.

²³ *Id.*

²⁴ *Id.*

²⁵ Rep. Charles F. Bass, Personal Financial Disclosure Statement for Calendar Year 2010, filed May 16, 2011.

In July 2011, Rep. Bass founded the Congressional Biomass Caucus with Rep. Peter Welch (D-VT) and the two launched a membership drive.²⁶ The Biomass Thermal Energy Council, a group founded by NEWP and other companies, is lobbying other members of Congress to join.²⁷ On September 8, 2011, Rep. Bass was expected to give the keynote speech at the North American Biomass Pellet Export Conference.²⁸

Potential Violations

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”²⁹ House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

By sponsoring legislation beneficial to the wood pellet industry, in which at least a family member and perhaps the congressman himself had a financial interest, Rep. Bass may have violated 5 C.F.R. § 2635.702(a). Further, arranging a meeting between Secretary Bodman and Mr. Walker, and discussing the legislation with the secretary both in New Hampshire and during a congressional hearing – all without disclosing that financial interest – also appears to violate the conflicts provision.

Code of Ethics for Government Service, Clause 5

The Code of Ethics for Government Service provides that government officials should

Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as

²⁶ Kevin Landrigan, Pension Issues Move Forward In the Courts, *Nashua Telegraph*, July 17, 2011; Press Release, Biomass Thermal Energy Council, Biomass Thermal Energy Council Praises Congressional Biomass Caucus Formation, Calls for Additional House Members, July 14, 2011.

²⁷ Press Release, Biomass Thermal Energy Council, July 14, 2011; <http://www.biomassthermal.org/about/foundingMembers.asp>.

²⁸ <http://www.exportingpellets.com/agenda.html>.

²⁹ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

influencing the performance of his official duties.³⁰

By sponsoring legislation, by helping arrange a meeting between Secretary Bodman and his family member, Mr. Walker, and by lobbying the secretary for legislation benefitting Mr. Walker's company and perhaps the congressman's own financial interest, Rep. Bass may have violated the Code of Ethics for Government Service.

False Statement on Personal Financial Disclosure Forms

The Ethics in Government Act of 1967 requires all members of Congress to file financial disclosure reports.³¹ Under the statute, the attorney general may seek a civil penalty of up to \$11,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.³² House Rule 26 incorporates the financial disclosure provisions of the Ethics in Government Act.³³

Federal law further prohibits members of Congress from making "any materially false, fictitious, or fraudulent statement or representation"³⁴ on "a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch."³⁵

It is unclear when Rep. Bass acquired his interest in NEWP, but if Rep. Bass amended his 2006 personal financial disclosure forms to incorrectly report the date of his acquisition of an interest in NEWP, he likely made a false statement.

Conduct Not Reflecting Creditably on the House

House Rule 23 requires all members of the House to conduct themselves "at all times in a manner that reflects creditably on the House."³⁶ This ethics standard is considered to be "the most comprehensive provision" of the code.³⁷ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with "flagrant" violations of the law that reflect on "Congress as a whole," and that might otherwise go unpunished.³⁸ This rule has been relied on by the committee in numerous prior cases in which the committee found unethical conduct including: the failure to report campaign contributions,³⁹ making false statements to the committee,⁴⁰ criminal

³⁰ 72 Stat., Part 2, B12, H. Res. 175, 85th Cong. (adopted July 11, 1958); House Comm. on Standards of Official Conduct, House Ethics Manual, p. 20 (110th Cong., 2d Sess., 2008 ed.).

³¹ Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

³² 5 U.S.C. app. 4, § 104.

³³ House Ethics Manual, p. 248.

³⁴ 18 U.S.C. § 1001(a)(2).

³⁵ 18 U.S.C. § 1001(c)(2).

³⁶ Rule 23, cl. 1.

³⁷ House Ethics Manual, p. 12.

³⁸ House Comm. on Standards of Official Conduct, *Report Under the Authority of H. Res. 418*, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

³⁹ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

convictions for bribery,⁴¹ or accepting illegal gratuities,⁴² and accepting gifts from persons with interest in legislation in violation of the gift rule.⁴³

By failing to properly disclose his assets, by failing to disclose his family's interest – and perhaps his own – in NEWP while using his position to benefit the company, and by repeatedly using his position for at least his family's, if not his own, financial benefit, Rep. Bass engaged in conduct that does not reflect creditably on the House.

⁴⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

⁴¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁴² House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (member resigned while expulsion resolution was pending).

⁴³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

REPRESENTATIVE VERN BUCHANAN

Representative Vern Buchanan (R-FL) is a three-term member of Congress, representing Florida's 13th district. His ethics issues stem from (1) pressuring partners and employees to make contributions to his campaign committee; (2) reimbursing them from his corporate funds; (3) trying to coerce a partner into signing a false affidavit; (4) improper use of corporate resources for campaign purposes. Rep. Buchanan was included in CREW's 2008 and 2009 congressional corruption reports for related matters.

Conduit Contributions

Rep. Buchanan owned several car dealerships in Florida when he began his congressional campaign in 2005, including Venice Nissan Dodge, Sarasota Ford, and Hyundai of North Jacksonville (HNJ).¹ Rep. Buchanan's former partner in HNJ, Sam Kazran, as well as several other former employees of Rep. Buchanan's dealerships, have since alleged Rep. Buchanan and dealership managers pressured them to make contributions to his campaign committee that were later reimbursed with corporate funds. Mr. Kazran claimed Rep. Buchanan personally instructed him to engage in the reimbursement scheme at HNJ and another dealership.²

In a sworn deposition to the Federal Election Commission (FEC), Mr. Kazran explained that in July 2005 - around the time Rep. Buchanan launched his campaign for Congress - Rep. Buchanan asked him to contribute to the Buchanan campaign,³ and he contributed the maximum permitted by law.⁴ Subsequently, Rep. Buchanan pressured Mr. Kazran to raise more money for the campaign.⁵ When Mr. Kazran said he did not have the money to do so, Rep. Buchanan responded: "Well, don't you have somebody at the dealership you can trust? Just run it through the corporation."⁶ Mr. Kazran believed Rep. Buchanan was instructing him "to have someone write the check personally and then give them back the money through the corporation."⁷ Mr. Kazran noted another HNJ executive, Josh Farid, was with him when Rep. Buchanan discussed this reimbursement scheme.⁸ Mr. Farid has confirmed Mr. Kazran's account, recounting that Rep. Buchanan was "talking to [Mr. Kazran] about raising money and the campaign

¹ Republican Seeks Seat, *Bradenton Herald*, June 29, 2005; Rep. Vernon G. Buchanan, Personal Financial Disclosure Statement for January 1, 2004-April 30, 2006, filed May 12, 2006.

² Federal Election Commission, Confidential Investigative Deposition of Sam Kazran, November 6, 2009 (Kazran Deposition).

³ *Id.*, pp. 7-8.

⁴ *Id.*, pp. 11-12; *see also* Vern Buchanan for Congress, FEC Form 3, October Quarterly Report, October 14, 2005.

⁵ Kazran Deposition, p. 13.

⁶ *Id.* Mr. Kazran recounted Rep. Buchanan's instructions to find people he could trust and run their reimbursements through the corporation several times in his deposition. *See id.*, p. 21 ("I instructed [employees] to write a check and reimburse themselves for [it] - because Mr. Buchanan had asked me to get money. And he specifically told me get someone you trust and run it through the corporation."); *id.*, p. 32 ("And he said to me, he says, Get somebody you trust and get the money out of the corporation."); *id.* ("He had asked me to get money, I told him, I said, I thought you said I'm maxed out? I've already given you that money. And he said, Well, just get somebody you trust and run it through the corporation."); *id.*, p. 36 ("And when I told him that I don't have it, he says, Well, get somebody you trust and run it through the corporation."); *id.*, p. 37 ("And I said, You already told me I can't give any money. He says, Don't you have somebody, like your brother or someone you trust that you can get to write a check for me? . . . Run it through the corporation.").

⁷ Kazran Deposition, p. 14. *See also id.*, p. 37.

⁸ *Id.*, pp. 13, 32.

contributions,” and told him ““You can get that money reimbursed through the dealership.””⁹ Another HNJ employee similarly asserted Rep. Buchanan knew about the contribution reimbursements.¹⁰

Mr. Kazran testified further he was “very confident” Rep. Buchanan also told his other partners to engage in reimbursement schemes, and personally observed one conversation in which Rep. Buchanan did so.¹¹ According to Mr. Kazran, at one partnership meeting Rep. Buchanan approached his company’s chief operating officer, Dennis Slater, and told him “I haven’t gotten your check yet.”¹² When Mr. Slater responded he was “hoping to take a pass,” Rep. Buchanan said, “Don’t worry. You know you’re going to get it back.”¹³

According to the sworn affidavits of two former Venice Nissan Dodge employees, employees of Rep. Buchanan’s Automobile Holdings, Inc. (BAH), including employees of Venice Nissan Dodge and Sarasota Ford, were either reimbursed with corporate funds for making \$1,000 contributions to Rep. Buchanan’s 2006 congressional campaign, or were coerced into making contributions.¹⁴ Carlo A. Bell, Venice Nissan Dodge’s former finance director, said that on September 15, 2005, the dealership’s general manager, Don Caldwell, called him into a meeting with Jack Prater, the Dodge sales manager, and Jason Martin, the Dodge finance manager and Mr. Caldwell’s nephew.¹⁵ According to Mr. Bell,

Mr. Caldwell shut the door to the office and told the three of us that we needed to contribute to the campaign of Vern Buchanan, who was then running for Congress in Florida’s 13th congressional district. Mr. Caldwell was holding cash in his hand at the time and said that the company would reimburse us for our contributions. He explained that the company would give us \$1,000 cash in exchange for our writing \$1,000 checks to the campaign.¹⁶

Mr. Bell asked Mr. Caldwell if this was legal, but rather than answering, Mr. Caldwell instead asked if Mr. Bell was on the team or not.¹⁷ Afraid he might lose his job, Mr. Bell replied yes, he was a part of the team and agreed to write the check.¹⁸ Mr. Caldwell then handed \$1,000 to Mr. Bell, Mr. Prater, and Mr. Martin.¹⁹ Mr. Bell later discussed the meeting with Mr.

⁹ Virginia Chamlee, More Former Buchanan Employees Speak Out About Pressure To Donate, Reimbursement Scheme, *Florida Independent*, August 5, 2011.

¹⁰ *Id.*

¹¹ Kazran Deposition, p. 14.

¹² *Id.*, pp. 14-15.

¹³ *Id.*, p. 15. *See also id.*, p. 31.

¹⁴ FEC Complaint filed by Citizens for Responsibility and Ethics in Washington, Carlo Bell and David Padilla, Affidavit of Carlo A. Bell, filed August 19, 2008 (Bell Affidavit); FEC Complaint filed by Citizens for Responsibility and Ethics in Washington, Carlo Bell and David Padilla, Affidavit of David Padilla, filed August 19, 2008 (Padilla Affidavit).

¹⁵ Bell Affidavit.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Bell Affidavit.

Prater and Mr. Martin and all agreed it seemed wrong to accept cash to write checks to the Buchanan campaign, but they were “afraid that refusing to do so might endanger [their] employment with Venice Nissan Dodge.”²⁰ Mr. Bell subsequently learned two other Venice Nissan Dodge employees, Marvin White and William Mullins, also received \$1,000 cash reimbursements when they agreed to write checks to the Buchanan campaign.²¹

On September 16, 2005, the day after he was given the \$1,000 by Mr. Caldwell, Mr. Bell deposited \$960 in cash to his bank account, keeping the remaining \$40 for spending money.²² On September 16, 2005, Mr. Bell wrote a check to the Buchanan campaign for \$1,000.²³

Mr. Bell’s account of the reimbursement scheme was confirmed by David J. Padilla, a finance manager at Venice Nissan Dodge in 2005.²⁴ In September 2005, Mr. Padilla was approached by Brad Combs, another finance manager at Venice Nissan Dodge, who told him “Mr. Buchanan needed campaign contributions and that anyone who made a contribution would get his money back plus additional compensation.”²⁵ When Mr. Padilla refused to participate in the reimbursement scheme, Mr. Combs told him “that all of the managers were being asked to contribute and that many were planning to accept reimbursements in exchange for contributions.”²⁶ Mr. Padilla later discovered several other Venice Nissan Dodge employees, including Mr. Bell, Mr. Prater, and Mr. Martin, had been reimbursed for making contributions to Mr. Buchanan’s congressional campaign.²⁷

Separately, Joseph Kezer, the former finance director of Sarasota Ford, described the reimbursement scheme at that dealership. Mr. Kezer said he personally observed campaign finance violations before Rep. Buchanan’s 2006 general election and that some of the \$8 million spent by the Buchanan campaign in 2006 was “laundered corporate cash funneled through higher-ups at Buchanan’s numerous dealerships.”²⁸ Mr. Kezer “fielded phone calls from other dealership executives wanting to know whether company reimbursement checks they had cashed put them in legal peril.”²⁹ He said, “After it happened, a couple of [managers] contacted me because they were concerned . . . I didn’t know at the time . . . whether it was a good thing or a bad thing.”³⁰

Mr. Kezer also alleged he was pressured to make a contribution and that as a further reward, Rep. Buchanan offered him the use of his vacation house in Vail, Colorado.³¹ Although Mr. Kezer did not want to donate, Mr. Kezer made a contribution of \$2,000 to Rep. Buchanan’s

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Bell Affidavit; FEC Complaint filed by Citizens for Responsibility and Ethics in Washington, Carlo Bell and David Padilla, Cancelled Check and Deposit Slip, filed August 19, 2008.

²⁴ Padilla Affidavit.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Matthew Murray, Buchanan Faces Another Lawsuit, *Roll Call*, June 2, 2008.

²⁹ *Id.*

³⁰ *Id.*

³¹ Jeremy Wallace and Carol E. Lee, Official Denies Donation Pressure, *Herald Tribune*, July 29, 2008.

campaign committee because he feared for his job.³² Neither Mr. Kezer nor Mr. Bell ever donated to a political campaign before or after donating to Rep. Buchanan.³³

In 2009, another allegation of a conduit contribution to Rep. Buchanan's campaign committee surfaced.³⁴ Terry Keith Howell, a registered Democrat, claimed he had been reimbursed for donations he had made unwillingly to Rep. Buchanan's campaign.³⁵ According to a deposition he gave in a lawsuit, Mr. Howell claimed the \$8,800 contribution he made to Rep. Buchanan and the \$10,000 he gave to the Republican Party of Florida were paid by his business partners, including Timothy Mobley, a Tampa developer and major contributor to Rep. Buchanan.³⁶ Mr. Mobley was Mr. Howell's business partner in a trucking company. Mr. Howell said, "Tim Mobley told me that Vern Buchanan is somebody good to have on your side, because he was going to be in charge of overseeing the DOT transportation stuff, so the amount of favors he could do for us was enormous."³⁷ Notably, Mr. Howell was in bankruptcy at the time he made the contributions.³⁸

On October 17, 2010, Rep. Buchanan's campaign refunded \$5,000 in contributions that had been made by five former employees, including \$1,000 from Mr. Bell.³⁹ The refunds were made to the Treasury Department rather than to the donors themselves, the usual protocol for refunding illegal donations.⁴⁰ The campaign committee publicly disclosed the refunds in a March 2011 FEC filing.⁴¹

Pressure to Sign False Affidavit

Mr. Kazran testified he had a "great relationship" with Rep. Buchanan until June 2008, when he discovered Rep. Buchanan "had taken some \$800-or-so thousand out of the company without my consent."⁴² In September 2008, this and related disputes resulted in litigation between Rep. Buchanan, Mr. Kazran, and their companies.⁴³ According to Mr. Kazran, during the course of this dispute Rep. Buchanan agreed to pay Mr. Kazran \$2.9 million for the damage to the company caused by the alleged embezzlement and to buy out Mr. Kazran's share of a Kia dealership they were in the process of buying.⁴⁴ Rep. Buchanan sent Mr. Kazran a "Confidential Settlement Communication," signed by Rep. Buchanan and his company's chief executive officer, John Tosch, laying out the terms of the settlement.⁴⁵ The exact date Rep. Buchanan sent

³² *Id.*; Vern Buchanan for Congress, FEC Form 3, October Quarterly Report 2005, October 14, 2005.

³³ CQ MoneyLine, Donor Lookup, Carlo Bell, 1979-Present; CQ MoneyLine, Donor Lookup, Joseph Kezer, 1979-Present.

³⁴ Susan Taylor Martin, Hard Times, Large Checks, *St. Petersburg Times*, June 20, 2009.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Martin, *St. Petersburg Times*, June 20, 2009.

³⁹ Matthew Doig and Jeremy Wallace, Buchanan Returns Questioned Donations, *Sarasota Herald Tribune*, June 3, 2011.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Kazran Deposition, p. 34.

⁴³ Rep. Buchanan Sues Ex-Partner, *Sarasota Herald-Tribune*, September 26, 2008.

⁴⁴ Kazran Deposition, p. 55.

⁴⁵ *Id.*, pp. 55-56.

the settlement communication to Mr. Kazran is unclear, but an exhibit attached to it was dated October 2008.⁴⁶

One term of the agreement was that Mr. Kazran would execute an attached affidavit attesting – under penalty of perjury – that Rep. Buchanan had no involvement in or knowledge of the contribution scheme.⁴⁷ The affidavit provides that during “somewhat hostile” negotiations between Mr. Kazran and Rep. Buchanan’s representatives, Mr. Kazran told one of Rep. Buchanan’s representatives one or more of the dealerships of which Mr. Kazran had operational control reimbursed individuals for contributions to the Buchanan campaign.⁴⁸ The affidavit states:

5. Before September, 2008 neither I, nor to my knowledge, any other person who had ever advised Buchanan or any of his representatives had any information that one or both of the dealerships [of which Mr. Kazran was the person in charge] reimbursed certain individuals for contributions made to the Vernon G. Buchanan for Congress campaign.
6. Since my relationship with Buchanan first commenced, I attended various meetings of other general managers or “partners” of Buchanan who were involved in other dealerships in which Buchanan, or companies controlled by him, had a direct or indirect ownership interest. At no time was there any statement or any form of encouragement to make a campaign contribution based upon a threat of job discrimination, financial reprisal, or other detriment for failure to make a contribution discussed, disseminated or suggested by Buchanan, a Buchanan representative or anyone under his or their direction. Furthermore, there never was a discussion, statement or other action which would have implied that a person who made a contribution to the Vernon G. Buchanan for Congress campaign would be reimbursed by someone or would receive a special benefit.
7. No one has advised me that Buchanan or any representative of his knew of any intention, plan or arrangement by anyone to make a reimbursement, directly or indirectly, to a person in exchange for making a contribution to the Buchanan for Congress campaign.⁴⁹

⁴⁶ *FEC v. 11-2001 LLC and Sam Kazran*, No. 3:10-CV-1155-G-99 TGC-JRK, Affidavit of Sam Kazran a/k/a Sam Khazrwan, attached as Exhibit 2 to Defendants Response to Plaintiffs Complaint and Request for Leave to Join the Proper Parties in this Action (M.D. Fla. 2010) (Unsigned Kazran Affidavit).

⁴⁷ *Id.*; Kazran Deposition, p. 59.

⁴⁸ Unsigned Kazran Affidavit ¶ 4.

⁴⁹ *Id.* ¶¶ 5-7.

Finally, the affidavit provides that Mr. Kazran “consent[s] to Buchanan filing this Affidavit with the Federal Election Commission and using information contained herein in connection with campaign for re-election matters.”⁵⁰

In his sworn deposition testimony, Mr. Kazran said the affidavit was “absolutely incorrect” in stating Rep. Buchanan “had no idea about [the campaign contributions] and that I’m the one who did all of it.”⁵¹ Mr. Kazran explained that paragraph 5, asserting none of Rep. Buchanan’s advisors or representatives had any knowledge of the reimbursement scheme before September 2008, was “an absolute lie.”⁵² Mr. Kazran added he was surprised Rep. Buchanan included this statement in the affidavit because Mr. Farid and another HNJ employee heard Rep. Buchanan discuss the scheme with Mr. Kazran, and “[a]ll these partners know.”⁵³ Reminded that he was under oath, Mr. Kazran confirmed Rep. Buchanan was aware of the reimbursed contributions.⁵⁴

Mr. Kazran testified further that after he received the settlement communication, Rep. Buchanan asked him to come to Sarasota, Florida for a meeting.⁵⁵ Rep. Buchanan told Mr. Kazran in the meeting he wanted Mr. Kazran to sign the affidavit, and said it was a condition of the agreement.⁵⁶ Mr. Kazran refused, telling Rep. Buchanan he “couldn’t be lying.”⁵⁷ According to Mr. Kazran, Rep. Buchanan initially said “okay, no problem,” but then asserted Mr. Kazran did not want Rep. Buchanan to be against him because he was going to be governor.⁵⁸ In addition, Mr. Tosch called Mr. Kazran the following day and told Mr. Kazran he had “five minutes to sign this document or the deal is off.”⁵⁹ Mr. Kazran said he was “desperate” to sign the agreement because he was “very, very much in the need of the money” and it “would have saved my company.”⁶⁰ Nevertheless, unwilling to lie, Mr. Kazran refused to sign the affidavit.⁶¹

Misuse of Dealership Resources

Another former employee, Richard Thomas, who was the director of fixed operations for one of Rep. Buchanan’s dealerships, alleged Rep. Buchanan repeatedly used dealership cars for campaign purposes.⁶² Mr. Thomas alleged vehicles were taken out of inventory for use by the campaign and, when returned, would frequently contain campaign materials such as literature

⁵⁰ *Id.* ¶ 8.

⁵¹ Kazran Deposition, p. 60. *See also id.*, p. 67 (“And he tried to make it sound like he had nothing to do with this. This is far from the truth.”).

⁵² *Id.*, p. 70.

⁵³ *Id.*

⁵⁴ *Id.*, p. 71.

⁵⁵ Kazran Deposition, pp. 60, 62.

⁵⁶ *Id.*

⁵⁷ *Id.*, p. 62.

⁵⁸ *Id.*; *see also id.*, p. 65 (“He doesn’t come out and say, I’m going to get you, but he makes comments, Look I’m going to be governor some day, You want me to be on your side.”).

⁵⁹ Kazran Deposition, pp. 60, 62.

⁶⁰ *Id.*, pp. 57, 60.

⁶¹ *Id.*, pp. 60-62.

⁶² *Thomas v. Sarasota 500*, 2008 CA 013014 NC, Complaint (12th Cir. Fla.), ¶¶ 141, 142.

and posters.⁶³ These materials were cleaned out, and the cars were detailed by dealership staff before they were made available to customers.⁶⁴ The dealership may not have been paid fair market value for the use of the vehicles.⁶⁵ Rep. Buchanan also stored campaign materials at the dealership.⁶⁶

Status of Investigation

On February 7, 2011, the FEC sent a letter to Rep. Buchanan disclosing that on April 16, 2010 the commission found reason to believe he knowingly received conduit contributions and excessive contributions in connection with the contributions reimbursed by Mr. Kazran.⁶⁷ Despite the evidence Rep. Buchanan was involved directly in the scheme, the letter further notified Rep. Buchanan it had decided on February 1, 2011 to take no further action in the case against him.⁶⁸ The letter did not explain the FEC's decision, and noted the matter was still open with respect to others.⁶⁹ On March 1, 2011, the FEC sent a second letter to Rep. Buchanan, adding that the decision to take no further action also applies to "those allegations in the complaint about which the Commission made no findings as to him."⁷⁰ Rep. Buchanan's campaign claimed this letter related to the allegations of illegal reimbursements by Mr. Bell and Mr. Padilla, but FEC officials would not confirm or deny that.⁷¹ The FEC has not explained the reasons for its decisions. However, the FEC sued Mr. Kazran on December 17, 2010 for his role in the reimbursement scheme.⁷²

Business Holdings and Lawsuits

Rep. Buchanan has been a party to at least 13 different lawsuits since 2008. Most are about his business dealings, though some yielded allegations of pressuring employees for campaign donations.⁷³ In November 2008, Rep. Buchanan announced he planned to sell more of his business holdings to "reduce [his] exposure" to lawsuits and uncomfortable political situations.⁷⁴ He now owns three car dealerships, far fewer than the almost two dozen he owned at one point.⁷⁵ Since then, most of the suits have either been dismissed or have gone to arbitration.⁷⁶

⁶³ *Id.*, ¶¶ 142-143.

⁶⁴ *Id.*

⁶⁵ The FEC reports filed by Vern Buchanan for Congress in the 2006 election cycle show one payment made to Sarasota Ford in the amount of \$600 for "transportation." Vern Buchanan for Congress, FEC Form 3, October Quarterly Report 2005, October 14, 2005.

⁶⁶ *Thomas v. Sarasota 500*, Complaint, ¶ 144.

⁶⁷ Federal Election Commission, MUR No. 6054, Letter from FEC to Christopher DeLacy, February 7, 2011.

⁶⁸ *Id.*; Becky Bowers, Rep. Vern Buchanan 'Exonerated' by FEC, his Spokeswoman Says, *St. Petersburg Times*, June 24, 2011.

⁶⁹ Federal Election Commission, MUR No. 6054, Letter from FEC to Christopher DeLacy, February 7, 2011.

⁷⁰ Federal Election Commission, MUR No. 6054, Letter from FEC to Christopher DeLacy, March 1, 2011; Bowers, *St. Petersburg Times*, June 24, 2011.

⁷¹ Jeremy Wallace, Rep. Buchanan was Target of Federal Investigation, *Sarasota Herald-Tribune*, June 13, 2011.

⁷² *Federal Election Commission v. Kazran*, No. 3:10-cv-1155-J-RBD-JRK (M.D. Fla.).

⁷³ Jeremy Wallace, Buchanan's Path Gets Smoother by the Day, *Sarasota Herald-Tribune*, July 7, 2010.

⁷⁴ Jeremy Wallace, Less Business, More Politics for Buchanan, *Sarasota Herald-Tribune*, November 19, 2008.

⁷⁵ Jeremy Wallace, Buchanan Has 3 Car Dealerships, *Sarasota Herald-Tribune*, July 3, 2010.

⁷⁶ Wallace, *Sarasota Herald-Tribune*, July 7, 2010.

Legal Fees

Since May 2010, Rep. Buchanan's campaign committee has spent more than \$80,000 in legal fees to resolve compliance issues with the FEC.⁷⁷ Campaign records show the committee hired Patton Boggs and paid the firm \$50,000 in legal fees in January 2011 and another \$21,000 in April 2011.⁷⁸ In 2010, the campaign committee paid \$9,024 to Ignited Discovery and Applied Discovery, companies that specialize in litigation discovery.⁷⁹ In December 2010, the committee paid \$492 to Esquire Deposition Solutions.⁸⁰

Potential Violations

Coercing Contributions

The Federal Election Campaign Act (FECA) and FEC regulations specifically prohibit corporations from using job discrimination, financial reprisals, or the threat of job discrimination or financial reprisals to force employees to make political contributions.⁸¹ Corporations are also prohibited from facilitating the making of contributions to federal candidates.⁸² FEC regulations specifically cite as an example of illegal corporate facilitation “[u]sing coercion, such as the threat of a detrimental job action, the threat of any other financial reprisal, or the threat of force, to urge any individual to make a contribution or engage in fundraising activities on behalf of a candidate or political committee.”⁸³

Despite the FEC's decision to take no action in the complaint against him, by using coercion, including the implied threat of detrimental job action, to force employees of the Buchanan automobile dealerships to make contributions to his 2006 campaign, Rep. Buchanan appears to have violated 2 U.S.C. § 441b(b)(3)(A) and 11 C.F.R. § 114.2. BAH, Venice Nissan Dodge, Sarasota Ford, Don Caldwell and Brad Combs, also appear to have violated 2 U.S.C. § 441b(b)(3)(A) and 11 C.F.R. § 114.2.

Conduit Contributions

FECA and FEC regulations both prohibit the making of a contribution in the name of a person other than the true source of the contribution.⁸⁴ Despite the FEC's decision to take no action in the complaint against him, by reimbursing employees for contributions made to his

⁷⁷ Buchanan for Congress, FEC Form 3, April Quarterly Report 2011, filed June 20, 2011; Buchanan for Congress, FEC Form 3, Year End Report 2010, filed February 25, 2011; Buchanan for Congress, FEC Form 3, Pre-General Year 2010, filed October 21, 2010; Buchanan for Congress, FEC Form 3, July Quarterly Report 2010, filed August 11, 2010; Jeremy Wallace, *Sarasota Herald-Tribune*, June 13, 2011.

⁷⁸ Buchanan for Congress, FEC Form 3, April Quarterly Report 2011, filed June 20, 2011; Buchanan for Congress, FEC Form 3, July Quarterly Report 2011, filed July 15, 2011.

⁷⁹ Buchanan for Congress, FEC Form 3, Year End Report 2010, filed February 25, 2011.

⁸⁰ Buchanan for Congress, FEC Form 3, Year End Report 2010, filed February 25, 2011.

⁸¹ 2 U.S.C. § 441b(b)(3)(A); 11 C.F.R. § 114.5(a)(1).

⁸² 11 C.F.R. § 114.2(f)(1).

⁸³ 11 C.F.R. § 114.2(f)(2)(iv).

⁸⁴ 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b)(1)(I).

2006 and 2008 campaigns, Rep. Buchanan appears to have violated 2 U.S.C. § 441f and 11 C.F.R. § 110.4(b)(1)(I). BAH, Venice Nissan Dodge, Sarasota Ford, Don Caldwell, Brad Combs, and Rep. Buchanan’s contributor Timothy Mobley also appear to have violated 2 U.S.C. § 441f and 11 C.F.R. § 110.4(b)(1)(I).

Corporate Contributions

FECA and FEC regulations both prohibit corporations from making contributions in connection with any federal election, including elections for the House of Representatives.⁸⁵ Despite the FEC’s decision to take no action in the complaint against him, by reimbursing employees with corporate funds for contributions made to his 2006 campaign, Rep. Buchanan appears to have violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(a). BAH, Venice Nissan Dodge, Sarasota Ford, Don Caldwell, Brad Combs, and Timothy Mobley also appear to have violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(a).

In addition, by lending the Buchanan congressional committee vehicles for use in connection with the campaign, and by allowing the campaign committee to store campaign materials at the dealership, Rep. Buchanan’s dealership appears to have made illegal in-kind corporate contributions in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(a).

Witness Tampering

Federal law prohibits tampering with a witness in any official proceeding. The statute prohibits attempting to intimidate, threaten, or corruptly persuade another person with the intent of influencing their testimony in an official proceeding,⁸⁶ as well as attempting to corruptly obstruct, influence, or impede an official proceeding.⁸⁷ An “official proceeding” includes a proceeding before a federal government agency that is authorized by law, such as the FEC.⁸⁸

By trying to use the leverage of the prospective \$2.9 million settlement and future retaliation with the intent of persuading Mr. Kazran to sign a false affidavit that would be used in the FEC investigation, Rep. Buchanan appears to have illegally tampered with a witness.

Obstruction of Agency Proceedings

A separate federal law, 18 U.S.C. § 1505, prohibits obstruction of agency proceedings. Anyone who “corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States,” violates this statute.⁸⁹ “Corruptly” under this statute means, among other things, “acting with an improper purpose, personally or by influencing

⁸⁵ 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(a).

⁸⁶ 18 U.S.C. § 1512(b)(1).

⁸⁷ 18 U.S.C. § 1512(c)(2).

⁸⁸ 18 U.S.C. § 1515(a)(1)(C).

⁸⁹ 18 U.S.C. § 1505.

another.”⁹⁰ Endeavoring to suborn perjury or tamper with a witness is an obstruction under the statute.⁹¹

By making the \$2.9 million settlement contingent on Mr. Kazran signing a false affidavit under penalty of perjury that would have been used in the pending FEC proceeding, Rep. Buchanan appears to have obstructed an agency proceeding.

Bribery of a Witness

Federal law also prohibits anyone from directly or indirectly corruptly giving, offering, or promising anything of value to any witness at any proceeding before an agency or commission with the intent to influence the witness’s testimony.⁹²

By making the \$2.9 million settlement contingent on Mr. Kazran signing the affidavit with the intent of influencing his sworn testimony in the FEC proceeding, Rep. Buchanan appears to have attempted to bribe a witness.

⁹⁰ 18 U.S.C. § 1515(b).

⁹¹ *United States v. Atlantic States Cast Iron Pipe Co.*, 2007 U.S. Dist. LEXIS 56562, at **251-292 (D.N.J. Aug. 2, 2007).

⁹² 18 U.S.C. § 201(b)(3).

REPRESENTATIVE STEPHEN FINCHER

Representative Stephen Fincher (R-TN) is a first-term member of Congress, representing Tennessee's 8th congressional district. Rep. Fincher's ethics issues stem from concealing the source of a campaign loan and his failure to accurately disclose his income, assets, and liabilities on his personal financial disclosure forms.

Concealing Source of Campaign Loan

On October 29, 2009, Rep. Fincher, then a candidate for Congress, filed a required personal financial disclosure statement with the House Ethics Committee covering the period from January 1, 2009 to September 29, 2009.¹ On the form, Rep. Fincher reported his 2008 earned income from his family farm as \$59,245.² He also estimated his total earned income for 2009 would be \$60,000.³ Rep. Fincher reported no liabilities and only one asset – his farm, though he did not include a value for the property.⁴ Notably, he reported no other assets such as savings accounts, money market accounts, stocks, or bonds.⁵ Rep. Fincher filed another required personal financial disclosure statement on May 17, 2010, covering the period from January 1, 2009 to May 15, 2010.⁶ This time, he listed his 2009 earned income as \$124,016 – more than double his earlier estimate.⁷ Again, he reported the farm as his only asset.⁸

On July 8, 2010, Rep. Fincher's campaign committee, Steve Fincher for Congress, reported receiving a \$250,000 loan from Rep. Fincher.⁹ The committee told the Federal Election Commission (FEC) the loan from the candidate was unsecured, and carried no interest.¹⁰ Given that Rep. Fincher's financial disclosure forms reported few assets, reporters and Rep. Fincher's political opponents began questioning the source of the money.¹¹ Rep. Fincher, through a spokesman, insisted he had filled out all required forms honestly, and accused his opponent, Democratic state Sen. Roy Herron, of trying to "gin up a sideshow."¹²

On August 27, 2010, Warren Nunn, chairman of Gates Banking and Trust Company, said the bank, not Rep. Fincher, was the actual source of the loan money.¹³ Mr. Nunn would not

¹ Rep. Stephen Fincher, Personal Financial Disclosure Statement for Calendar Year 2009, filed October 29, 2009; FEC Complaint filed by Sandler, Reiff & Young against Steve Fincher for Congress, filed September 29, 2010.

² Rep. Stephen Fincher, Personal Financial Disclosure Statement for Calendar Year 2009, filed October 29, 2009.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Rep. Stephen Fincher, Personal Financial Disclosure Statement for January 1, 2009 to May 15, 2010, filed May 17, 2010.

⁷ *Id.*

⁸ *Id.*

⁹ Stephen Fincher for Congress, FEC Form 3, Pre-Primary Report, July 23, 2010.

¹⁰ *Id.*

¹¹ Chas Sisk, Fincher Slammed Over Finance Disclosures, *The Tennessean*, October 20, 2010; Tom Humphrey, Democratic Lawyer: Republican Fincher's Disclosures Don't Add Up, *Knoxville News Sentinel*, August 27, 2010.

¹² Erik Schelzig and Ben Evans, Dem Lawyer Questions Fincher's Disclosure to House, *Associated Press*, August 27, 2010.

¹³ *Id.*

disclose any more details about the transaction, including the loan's terms or collateral.¹⁴ Notably, Jackie Fincher, Rep. Fincher's father, is a member of the bank's board of directors.¹⁵ In addition, Mr. Nunn donated \$4,800 to Rep. Fincher's campaign during the 2010 election cycle.¹⁶ In October 2010, shortly before the election, Mr. Nunn wrote to the editor of *The Commercial Appeal* newspaper, defending the loan and asserting Mr. Fincher had not received preferential treatment, though he added "we have done business with the Fincher family for over 30 years, and they have always done exactly what they said they would do."¹⁷

On August 24, 2010, J. Houston Gordon, a prominent Tennessee Democrat and lawyer, sent a letter to the U.S. Attorney's Office in Memphis asking federal prosecutors to investigate whether Rep. Fincher's campaign had omitted debts and assets on his personal financial disclosure forms.¹⁸ On September 29, 2010, Sen. Herron filed a complaint with the FEC, asserting Rep. Fincher's campaign committee had violated the Federal Election Campaign Act of 1971 by failing to report the bank loan.¹⁹ The complaint noted Rep. Fincher's failure to accurately disclose the source of the loan.²⁰ Despite the outstanding complaint, the October 2010 quarterly report filed by Rep. Fincher's campaign committee did not provide additional information about the source of the loan, prompting Sen. Herron to file a supplemental complaint on October 18, 2010.²¹ Sen. Herron argued that because the original complaint had provided Rep. Fincher's campaign committee with notice of the problem, the failure to provide correct information about the loan in the October 2010 report represented a "knowing and willful violation" of campaign finance law.²²

Despite questions about the source of the loan, Rep. Fincher was elected to Congress on November 2, 2010.²³ On December 6, 2010, 34 days later, Rep. Fincher's campaign finally submitted new information about the loan to the FEC, reporting for the first time that Rep. Fincher had borrowed the money from Gates Banking and Trust on July 7, 2010.²⁴ The new filing also reported the original loan's interest rate, 6.5%, with a due date of November 30, 2010.²⁵ Rep. Fincher secured the loan with collateral of \$600,000 in crops, his home, and a non-interest-bearing deposit account of undisclosed value.²⁶ Supplemental information filed with the FEC characterized the loan as a "business expense," though the money seems to have been used

¹⁴ *Id.*

¹⁵ Alex Isenstadt, Fincher Under Fire for Campaign Loan, *Politico*, October 21, 2010; Richard Locker, Stephen Fincher Received State Farm Grant in Addition to Federal Farm Subsidies, *The Commercial Appeal (Memphis, Tenn.)*, October 14, 2010.

¹⁶ <http://www.opensecrets.org/indivs/search.php?name=Nunn%2C+Warren&state=&zip=&employ=&cand=Fincher&c2010=Y&sort=N&capcode=hyybp&submit=Submit>.

¹⁷ Warren Nunn, Letter: You Can Bank on Fincher, *The Commercial Appeal (Memphis, Tenn.)*, October 23, 2010.

¹⁸ Schelzig and Evans, *Associated Press*, Aug. 27, 2010; Humphrey, *Knoxville News Sentinel*, Aug. 27, 2010.

¹⁹ FEC Complaint filed by Sandler, Reiff & Young against Steve Fincher for Congress, filed September 29, 2010.

²⁰ *Id.*

²¹ Federal Election Commission, MUR No. 6386, First General Counsel's Report, March 9, 2011.

²² *Id.*

²³ Bartholomew Sullivan, Tennessee 8th Congressional: Fincher Rides GOP Juggernaut to Win, *The Commercial Appeal (Memphis, Tenn.)*, November 2, 2010.

²⁴ <http://query.nictusa.com/pdf/525/10030510525/10030510525.pdf#navpanes=0>.

²⁵ *Id.*

²⁶ *Id.*

exclusively for Rep. Fincher's campaign.²⁷ Rep. Fincher's campaign also amended an earlier report to reflect the new information about the loan, and reported having paid back the bank on November 30, 2010.²⁸ Rep. Fincher's lawyer, Elliot Berke, described the errors in the filing as "honest technical reporting errors," and said the lag time in amending the filings was due to the need for an internal review.²⁹

Incomplete Personal Financial Disclosures

On May 16, 2011, Rep. Fincher filed a personal financial disclosure with the House Ethics Committee revealing assets and liabilities substantially different from those reported on his previous disclosures.³⁰ For instance, Rep. Fincher for the first time reported a value for his farm: between \$500,001 and \$1,000,000.³¹

Additionally, Rep. Fincher reported liabilities that had not been included on his previous disclosures: nine loans taken out in 2008, 2009, and 2010, worth altogether between \$1.64 million and \$6.47 million.³² The money was used to purchase trucks and farm equipment.³³ Candidates and members of Congress do not have to report loans taken out by their businesses, but personal loans such as these must be reported.³⁴ Mr. Berke called the omissions from the 2009 report an "honest misunderstanding."³⁵

Status of Investigation

In July 2011, the FEC's acting deputy associate general counsel for enforcement, Susan L. Lebeaux, sent a letter to Mr. Berke, stating the commission would not take further action against Rep. Fincher.³⁶ The letter indicated the six-member bipartisan commission, equally divided between Republicans and Democrats, needed a majority to vote to take action on the matter, but the vote was tied.³⁷ Subsequent documents released by the FEC showed all six commissioners had found reason to believe the misreporting of campaign information to the FEC by Rep. Fincher's campaign committee had violated the law, but they split over whether to assess a civil penalty,³⁸ preventing the FEC from taking further action.³⁹

²⁷ *Id.*

²⁸ Bartholomew Sullivan, Fincher's Disputed Loan Detailed, *The Commercial Appeal (Memphis, Tenn.)*, January 13, 2011.

²⁹ Bill Theobald, Fincher Files Explanation of Controversial Loan, *Gannett News Service*, January 11, 2011.

³⁰ Rep. Stephen Fincher, Personal Financial Disclosure Statement for Calendar Year 2010, filed May 16, 2011.

³¹ Rep. Stephen Fincher, Personal Financial Disclosure Statement for Calendar Year 2009, filed October 29, 2009; Rep. Stephen Fincher, Personal Financial Disclosure Statement for January 1, 2009 to May 15, 2010, filed May 17, 2010; Rep. Stephen Fincher, Personal Financial Disclosure Statement for Calendar Year 2010, filed May 16, 2011.

³² *Id.*

³³ *Id.*

³⁴ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 258 (110th Cong., 2d Sess., 2008 ed.); Tennessee Department of State, UCC Debtor Lookup, Fincher, available at http://state.tn.us/sos/bus_svc/UccSearch.htm.

³⁵ Elizabeth Bewley, Fincher Clarifies Assets, Debts, *The Tennessean*, June 22, 2011.

³⁶ Bartholomew Sullivan, Federal Election Commission Ends Investigation into Rep. Stephen Fincher's Campaign Loan, *The Commercial Appeal (Memphis, Tenn.)*, July 7, 2011.

³⁷ Elizabeth Bewley, Herron Criticizes FEC's Decision on Fincher Loan, *The Tennessean*, July 10, 2011.

³⁸ Federal Election Commission, MUR No. 6386, Statement of Reasons: Chair Cynthia L. Bauerly and Commissioners Steven T. Walther and Ellen L. Weintraub, July 21, 2011.

Legal Fees

The April 2011 quarterly report for Rep. Fincher's campaign committee showed the committee paid \$5,519 in legal fees to the Law Offices of Elliot S. Berke, PLLC and \$2,000 to McGuire Woods, LLP.⁴⁰ The committee also reported paying \$10,873 to Mr. Berke's office for legal fees in 2010.⁴¹

Potential Violations

Campaign Finance Law Violations

The Federal Election Campaign Act and FEC regulations require candidates for Congress to disclose information about loans to their campaigns.⁴² A candidate's campaign committee must report the identity of any endorser or guarantor of a loan, the date of the loan, and its amount.⁴³ When a candidate obtains a bank loan for use in connection with his or her campaign, the campaign committee must disclose the loan, its date, amount, and interest rate, the name and address of the lending institution, and the types and value of collateral or other sources of repayment that secure the loan.⁴⁴

As all the members of the FEC concluded, by twice filing campaign finance disclosure reports concealing the true source of the loan to his campaign, Rep. Fincher violated 2 U.S.C. § 434(b)(3)(E) and 11 C.F.R. § 104.3(d)(4).

False Statements on Personal Financial Disclosure Forms

The Ethics in Government Act of 1967 requires all members of Congress and candidates for Congress to file financial disclosure reports.⁴⁵ Under the statute, the attorney general may seek a civil penalty of up to \$11,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.⁴⁶

Federal law further prohibits anyone from making "any materially false, fictitious, or fraudulent statement or representation"⁴⁷ on "a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch."⁴⁸

³⁹ 2 U.S.C. § 437c(c). In August 2011, Sen. Herron's campaign committee sued the FEC for failing to enforce the law against Rep. Fincher. The suit is pending. See *Herron for Congress v. Federal Election Commission*, 1:11-cv-01466 (D.D.C. 2011).

⁴⁰ Stephen Fincher for Congress, FEC Form 3, April Quarterly Report, April 15, 2011.

⁴¹ Stephen Fincher for Congress, FEC Form 3, Year End Report, January 31, 2011.

⁴² 2 U.S.C. § 434(b)(3)(E); 11 C.F.R. § 104.3(d).

⁴³ 2 U.S.C. § 434(b)(3)(E).

⁴⁴ 11 C.F.R. § 104.3(d)(4).

⁴⁵ Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

⁴⁶ 5 U.S.C. app. 4, § 104.

⁴⁷ 18 U.S.C. § 1001(a)(2).

⁴⁸ 18 U.S.C. § 1001(c)(1).

By submitting financial disclosure forms that misreported the value of his assets and failed to disclose numerous personal loans, Rep. Fincher may have violated the Ethics in Government Act and 18 U.S.C. § 1001.

Conduct Not Reflecting Creditably on the House

House Rule 23 requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”⁴⁹ This ethics standard is considered to be “the most comprehensive provision” of the code.⁵⁰ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.⁵¹ This rule has been relied on by the committee in numerous prior cases in which the committee found unethical conduct including: the failure to report campaign contributions,⁵² making false statements to the committee,⁵³ criminal convictions for bribery,⁵⁴ or accepting illegal gratuities,⁵⁵ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁵⁶

By filing campaign finance disclosure reports concealing the true source of the loan to his campaign, and submitting financial disclosure forms that misreported the value of his assets and failed to disclose numerous personal loans, Rep. Fincher acted in a manner that brings discredit to the House.

⁴⁹ Rule 23, cl. 1.

⁵⁰ House Ethics Manual, p. 12.

⁵¹ House Comm. on Standards of Official Conduct, *Report Under the Authority of H. Res. 418*, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁵² House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

⁵³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

⁵⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁵⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (member resigned while expulsion resolution was pending).

⁵⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

REPRESENTATIVE MICHAEL GRIMM

Representative Michael Grimm (R-NY) is a first-term member of Congress, representing New York's 13th congressional district. Rep. Grimm's ethics issues stem from his improper use of U.S. Marine Corps and Federal Bureau of Investigation (FBI) insignia and imagery in campaign materials and his improper endorsement of a private security firm.

Improper Use of Insignia and Imagery

In May 2010, Rep. Grimm, an ex-Marine and former FBI agent, was a candidate in the Republican primary for the House of Representatives.¹ Rep. Grimm's campaign used the FBI's seal and the Marines' official eagle, globe and anchor emblem on an invitation to a campaign fundraiser featuring former New York Mayor Rudolph Giuliani.² Both the Marines and the FBI objected, and said Rep. Grimm had not obtained proper permission to use either image.³ Susan Del Percio, Rep. Grimm's campaign spokeswoman, described the use of the insignia as "an unfortunate mistake."⁴ "Clearly, this will not happen again," Ms. Del Percio said.⁵

Despite Ms. Del Percio's promise, Rep. Grimm's campaign used imagery linked to both the Marines and the FBI in campaign advertisements during the general election. In August 2010, Rep. Grimm aired television ads that showed him displaying his FBI badge.⁶ A spokesman for the FBI said the agency "would definitely consider that an inappropriate use."⁷ The Marines, meanwhile, objected to a web advertisement showing Rep. Grimm dressed in Marine camouflage and carrying the text "Send a conservative warrior to Congress."⁸ Rep. Grimm's campaign said viewers clicking on the ad would be taken to a page carrying a disclaimer explicitly saying the Marines had not endorsed Rep. Grimm.⁹ Marine Corps Captain Brian Block said the disclaimer must be included on the ad itself.¹⁰

Improper Endorsement of Private Company

Sometime after his election to Congress, Rep. Grimm recorded a one minute and forty-three second testimonial for MG Security Services LLC, a New York City-based private security company.¹¹ The video endorsement was posted on the company's website as recently as August

¹ Richard Sisk and Michael McAuliff, That's a Big No-No: Pol Uses Marines, FBI Logos, *New York Daily News*, May 19, 2010.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Tom Wroblewski, GOP Hopeful to McMahan: Refuse the WFP Line, *Staten Island (New York) Advance*, May 20, 2010.

⁶ Michael McAuliff, Marines, FBI Take Aim at Ads, *New York Daily News*, August 7, 2010.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ McAuliff, *New York Daily News*, Aug. 7, 2010.

¹¹ <http://www.youtube.com/watch?v=5coX9kH2AY>; MG Security Services LLC, Entity Information, Department of State: Albany, New York, filed November 12, 2008; <http://www.mgsecurityservices.com/about.asp>.

22, 2011 (though it has since been removed) and on video-sharing sites such as YouTube.¹² In it, Rep. Grimm spoke about his close relationship with MG Services founder Manny Gomez, formed, he said, when the two men worked as FBI agents together.¹³ Rep. Grimm also endorsed Mr. Gomez's services.¹⁴ "I would call him for advice or for help and I have and would continue to do so," he declared.¹⁵ Twice during the video, the words "Congressman Michael Grimm" together with "13th District of New York City" appear on the screen for several seconds.¹⁶ Rep. Grimm did not list income from MG Security Services on his personal financial disclosure forms for 2009 or 2010.¹⁷

Potential Violations

Ban Against Using Official Insignia

Under federal law, it is a crime to use any official agency or department insignia without authorization.¹⁸ Further, absent the written permission of the FBI director, it is also a crime to use the words "Federal Bureau of Investigation," or the initials "F.B.I." in connection with any advertisement, broadcast, or telecast in a manner reasonably calculated to convey the impression of an FBI endorsement.¹⁹ While Rep. Grimm may have made an unintentional mistake the first time he used the FBI's seal and the Marine's emblem during his congressional campaign, continuing to do so after he was warned against it indicates a knowing and willful violation of the law.

Code of Ethics for Government Service, Clause 5

The Code of Ethics for Government Service provides that government officials should

Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his official duties.²⁰

Based on this rule, members "should undertake for one individual or business no more than they would be willing to do for others similarly situated."²¹ The Ethics Manual advises

¹² <http://www.scribd.com/doc/64159186/CREW-Most-Corrupt-Sources-Mg-Security-Srvcs>; <http://www.youtube.com/watch?v=5coX9kH2AY>.

¹³ <http://www.youtube.com/watch?v=5coX9kH2AY>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Rep. Michael Grimm, Personal Financial Disclosure Statement for January 1, 2009 through April 30, 2010, filed May 12, 2010; Rep. Michael Grimm, Personal Financial Disclosure Statement for Calendar Year 2010, filed May 16, 2011.

¹⁸ 18 U.S.C. § 701.

¹⁹ 18 U.S.C. § 709.

²⁰ 72 Stat., Part 2, B12, H. Res. 175, 85th Cong. (adopted July 11, 1958); House Comm. on Standards of Official Conduct, House Ethics Manual, p. 20 (110th Cong., 2d Sess., 2008 ed.).

²¹ House Ethics Manual, p. 350.

members to avoid becoming “too closely affiliated with any commercial entity in order to avoid any appearance that they are accruing benefits by virtue of improper influence exerted from their position in Congress, or are dispensing special favors.”²²

By recording a nearly two minute video entitled “Client Testimonial for MG Services,” endorsing MG Security Services and its founder Manny Gomez, which was featured on the company’s website and YouTube, Rep. Grimm clearly violated the ban on dispensing special favors.

Conduct Not Reflecting Creditably on the House

House Rule 23 requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”²³ This ethics standard is considered to be “the most comprehensive provision” of the code.²⁴ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.²⁵ This rule has been relied on by the committee in numerous prior cases in which the committee found unethical conduct including: the failure to report campaign contributions,²⁶ making false statements to the committee,²⁷ criminal convictions for bribery,²⁸ or accepting illegal gratuities,²⁹ and accepting gifts from persons with interest in legislation in violation of the gift rule.³⁰

By using the FBI’s seal and Marine Corps’ emblem in the first place, but particularly for continuing to do so after having been warned that such use was prohibited by law, Rep. Grimm acted in a manner that does not reflect creditably on the House.

²² *Id.*

²³ Rule 23, cl. 1.

²⁴ House Ethics Manual, p. 12.

²⁵ House Comm. on Standards of Official Conduct, *Report Under the Authority of H. Res. 418*, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

²⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

²⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

²⁸ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); *see* 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

²⁹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (member resigned while expulsion resolution was pending).

³⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); *see* 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

Further, by appearing in a promotional video, endorsing a private security firm, Rep. Grimm acted in a manner that does not reflect creditably on the House.

REPRESENTATIVE FRANK GUINTA

Representative Frank Guinta (R-NH) is a first-term member of Congress, representing New Hampshire's 1st congressional district. Rep. Guinta's ethics issues stem from his failure to accurately disclose assets on his personal financial disclosure forms and possibly accepting improper gifts or loans.

Failure to Disclose Bank Account

On June 30, 2009, Rep. Guinta's campaign committee, Friends of Frank Guinta, reported receiving a \$20,000 loan from Rep. Guinta, then a candidate for Congress.¹ The committee told the Federal Election Commission (FEC) that the loan was from Rep. Guinta's personal funds, carried no interest or collateral, and repayment was due September 7, 2010.² The campaign committee reported a second loan from Rep. Guinta on March 28, 2010, this time for \$100,000, and a third loan on June 27, 2010, for \$125,000.³ All three loans – together totaling \$245,000 – carried nearly identical terms, with slight differences in the due dates.⁴

On May 15, 2010, Rep. Guinta filed a required personal financial disclosure statement with the House Ethics Committee covering his finances for calendar year 2009.⁵ He reported the \$72,000-a-year salary he earned as mayor of Manchester, N.H., and an undisclosed amount his wife earned from the University of New Hampshire and Catholic Medical Center.⁶ He listed several stocks and bonds worth between \$89,012 and \$335,000, as well as two properties owned with his wife in Manchester.⁷ One of those properties had a mortgage of between \$250,001 and \$500,000.⁸ Rep. Guinta also reported having three bank accounts collectively worth between \$17,003 and \$80,000.⁹ One of those was a Bank of America account with a reported value of \$15,001 to \$50,000.¹⁰ He did not report liquidating any assets.

In July 2010, the *Nashua Telegraph* ran a story questioning how Rep. Guinta, given his disclosed assets, had been able to loan such large sums of money to his campaign.¹¹ Rep. Guinta's campaign manager, Michael Biundo, said Rep. Guinta had liquidated his stock market and mutual fund assets to amass the cash and those transactions would be detailed on a future disclosure report.¹² On July 23, 2010, however, Rep. Guinta filed an amended personal financial

¹ Friends of Frank Guinta, FEC Form 3, July Quarterly Report 2009, July 15, 2009.

² *Id.*

³ Friends of Frank Guinta, FEC Form 3, April Quarterly Report 2010, April 15, 2010; Friends of Frank Guinta, FEC Form 3, July Quarterly Report 2010, July 15, 2010.

⁴ Friends of Frank Guinta, FEC Form 3, July Quarterly Report 2009, July 15, 2009; Friends of Frank Guinta, FEC Form 3, April Quarterly Report 2010, April 15, 2010; Friends of Frank Guinta, FEC Form 3, July Quarterly Report 2010, July 15, 2010.

⁵ Rep. Frank Guinta, Personal Financial Disclosure Statement for Calendar Year 2009, filed May 15, 2010.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Rep. Frank Guinta, Personal Financial Disclosure Statement for Calendar Year 2009, filed May 15, 2010.

¹⁰ *Id.*

¹¹ Kevin Landrigan, Hopeful's Support of Gun Ownership is Targeted, *Nashua Telegraph*, July 11, 2010.

¹² *Id.*

disclosure form, reporting for the first time a second Bank of America account valued at between \$250,001 and \$500,000.¹³

The Republican primary was crowded – seven candidates eventually competed for the nomination – and other candidates and their supporters quickly raised questions about how Rep. Guinta could have neglected to disclose such a significant amount of cash, and where it had come from.¹⁴ “How you forget something like that is just pretty hard to explain. The average person wouldn’t forget,” former Rep. Jeb Bradley (R-NH) said, adding, “if you were Warren Buffett, possibly.”¹⁵

In August 2010, Republican Christopher Wolfe, who supported one of Rep. Guinta’s primary opponents, filed a complaint with the FEC, seeking an investigation.¹⁶ Mr. Wolfe argued Rep. Guinta’s disclosed income and assets made it unlikely he could have saved so much money and he must have received the cash from someone else and failed to properly disclose the source.¹⁷ Others called on Rep. Guinta to provide detailed bank statements and document the source of the money, but Rep. Guinta refused to do so.¹⁸

Rep. Guinta said he had saved the money by living frugally and saving proceeds from successful investing and real estate transactions.¹⁹ He described forgetting to list the account on his financial disclosure forms as “an inadvertent oversight.”²⁰ Asked to explain Mr. Biundo’s earlier assertion – that the money had come from liquidated assets – Rep. Guinta said Mr. Biundo had been mistaken, and Rep. Guinta himself had been out of town on vacation at the time and unavailable to provide the correct explanation.²¹ He also said he had chosen to keep the money in a bank account rather than investing it or paying down mortgage debt because he was more comfortable holding it as cash.²² His campaign said in a statement that the money for the loans “came from a series of accounts Guinta has had since March of 1996. Amending disclosure forms is a common occurrence.”²³

Rep. Guinta loaned his campaign another \$60,000 on September 3, 2010 and \$50,000 on September 10, 2010, bringing the total loan amount to \$355,000.²⁴ Despite the outstanding questions about the loans, Rep. Guinta won the Republican primary in September 2010.²⁵ Later that month, the New Hampshire Democratic Party (NHDP) filed complaints with the FEC and

¹³ Rep. Frank Guinta, Amended Personal Financial Disclosure Statement for Calendar Year 2009, filed July 23, 2010.

¹⁴ Marc Fortier, Republican Guinta Wins 1st District Congressional Primary, *The Eagle-Tribune (North Andover, Mass.)*, September 15, 2010; Kasie Hunt, Bradley: Guinta Should Drop Out, *Politico*, August 13, 2010.

¹⁵ *Id.*

¹⁶ Fergus Cullen, Commentary: Questions Raised About Guinta’s Financial Disclosure, *The Union Leader (Manchester, N.H.)*, August 13, 2010.

¹⁷ *Id.*

¹⁸ Kevin Landrigan, Do As He Says, Not As He Does, *Nashua Telegraph*, August 24, 2010.

¹⁹ *Id.*; Cullen, *The Union Leader (Manchester, N.H.)*, Aug. 13, 2010.

²⁰ Hunt, *Politico*, Aug. 13, 2010.

²¹ Landrigan, *Nashua Telegraph*, Aug. 24, 2010.

²² Cullen, *The Union Leader (Manchester, N.H.)*, Aug. 13, 2010.

²³ Hunt, *Politico*, Aug. 13, 2010.

²⁴ Friends of Frank Guinta, FEC Form 3, October Quarterly Report 2010, October 15, 2010.

²⁵ Fortier, *The Eagle-Tribune (North Andover, Mass.)*, Sept. 15, 2010.

the Clerk of the U.S. House of Representatives requesting investigations into Rep. Guinta's finances.²⁶ On October 28, 2010, the NHDP wrote to the U.S. Attorney's office in New Hampshire, requesting a criminal investigation into the matter.²⁷ Rep. Guinta's general election opponent, then-Rep. Carol Shea-Porter (D-NH), also pressed him to reveal the source of the loan money.²⁸

On October 12, 2010, a detailed analysis of Rep. Guinta's finances by New Hampshire Public Radio found the Guintas' real estate transactions would likely have yielded roughly \$95,000, and his prior jobs in the insurance industry did not seem likely to have produced enough income to allow him to save hundreds of thousands of dollars.²⁹ The report noted Rep. Guinta's parents had sold a second home on the New Jersey shore for \$820,000 before he announced his candidacy.³⁰ Rep. Guinta initially refused to address whether his parents were the source of the money, but later that week said they were not.³¹ "My wife and I have been in the workforce for nearly 20 years," he said.³² "I have been in the private sector. I've been fortunate to make money also in the markets. Over years of time, we have been able to put this money together."³³ Rep. Guinta won the general election on November 2, 2010.³⁴ Rep. Guinta's campaign committee has so far paid back \$19,500 of the outstanding \$335,500 in loans.³⁵

Status of Investigation

In December 2010, the FEC informed NHDP director Michael Brunelle that it had assigned a case number to the party's complaint against Rep. Guinta.³⁶ The current status of the case is unknown. In December 2010, the House Ethics Committee informed Rep. Guinta that the committee had reviewed his candidate financial disclosure reports and amendments and "determined that they are in substantial compliance."³⁷ The email Rep. Guinta received, however, was not in response to the NHDP's complaint, but was the result of a standard review the committee does of all members.³⁸ In May 2011, Rep. Guinta told attendees of a town hall meeting that the ethics committee "cleared it up, they reviewed my reports and gave them a clear

²⁶ James Pindell, Dems File FEC, Congressional Complaints Against Guinta, *WMUR-TV*, September 30, 2010; John DiStaso, Democrats Seek Probe of Guinta's Finances, *The Union Leader (Manchester, N.H.)*, October 6, 2010; Letter from NHDP Executive Director Michael Brunelle to FEC Acting General Counsel Christopher Hughey, September 30, 2010; Letter from NHDP Executive Director Michael Brunelle to Clerk of the House of Representatives Lorraine C. Miller, September 30, 2010.

²⁷ Holly Ramer, Criminal Probe Into Guinta's Money Sought, *Associated Press*, October 29, 2010.

²⁸ John DiStaso, Questions About Money Continue, *The Union Leader (Manchester, N.H.)*, October 20, 2010.

²⁹ <http://www.nhpr.org/assessing-frank-guintas-finances>.

³⁰ *Id.*; Richard and Virginia Guinta, Deed Transfer, Clerk of Ocean County, New Jersey, filed December 5, 2010.

³¹ <http://www.nhpr.org/assessing-frank-guintas-finances>; John DiStaso, Guinta Denies He Got Big Money From His Parents, *The Union Leader (Manchester, N.H.)*, Oct. 14, 2010.

³² *Id.*

³³ *Id.*

³⁴ Doug Ireland, Guinta Beats Shea-Porter Handily, *The Eagle-Tribune (North Andover, Mass.)*, November 3, 2010.

³⁵ Friends of Frank Guinta, FEC Form 3, July Quarterly Report 2011, July 15, 2011.

³⁶ Holly Ramer, FEC Takes First Step in NH Rep.-Elect's Case, *Associated Press*, December 16, 2010.

³⁷ John DiStaso, GRANITE STATUS: Guinta Financial Disclosure Issue Resurfaces, *The Union Leader (Manchester, N.H.)*, December 16, 2010.

³⁸ *Id.*

bill of health.”³⁹ The U.S. Attorney’s office has not commented on any investigation into Rep. Guinta.

Legal Fees

Rep. Guinta’s campaign committee reported paying \$6,722.62 to Foley & Lardner LLP for “legal consulting.”⁴⁰

Potential Violations

False Statements on Personal Financial Disclosure Forms

The Ethics in Government Act of 1967 requires all members of Congress and candidates for Congress to file financial disclosure reports.⁴¹ Under the statute, the attorney general may seek a civil penalty of up to \$11,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.⁴²

Federal law further prohibits anyone from making “any materially false, fictitious, or fraudulent statement or representation”⁴³ on “a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch.”⁴⁴

By submitting a financial disclosure form that failed to disclose the second Bank of America account, Rep. Guinta appears to have violated the Ethics in Government Act and 18 U.S.C. § 1001. Similarly, if Rep. Guinta had any other assets from which he was able to derive \$355,000 to loan his campaign, the failure to include these assets on his financial disclosure forms violates these provisions. Finally, if Rep. Guinta accepted as gifts money he later loaned to his campaign, the failure to include such gifts on his financial disclosure forms would violate the Ethics in Government Act and 18 U.S.C. § 1001.

Conduit Contributions

The Federal Election Campaign Act (FECA) and FEC regulations allow candidates for Congress to spend an unlimited amount of personal funds on their campaigns, including funds received as gifts during the election cycle that had been customarily received by the candidate prior to the beginning of the election cycle.⁴⁵ A contribution is defined to include any gift given for the purpose of influencing a federal election,⁴⁶ and the law prohibits making a contribution in the name of a person other than the true source of the contribution.⁴⁷

³⁹ Daymond Steer, Entitlements and War Are Top Concerns at Guinta Town Hall Meeting, *Conway Daily Sun* (Conway, N.H.), May 23, 2011.

⁴⁰ Friends of Frank Guinta, FEC Form 3, Amended July Quarterly Report 2011, July 15, 2011.

⁴¹ Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

⁴² 5 U.S.C. app. 4, § 104.

⁴³ 18 U.S.C. § 1001(a)(2).

⁴⁴ 18 U.S.C. § 1001(c)(1).

⁴⁵ 11 C.F.R. § 110.10.

⁴⁶ 2 U.S.C. § 434(8)(A)(i); 11 C.F.R. § 100.52(a).

⁴⁷ 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b)(1)(i).

If Rep. Guinta received a contribution or gift intended to aid his campaign – from his parents or anyone else – then used those funds to loan money to his campaign, he may have violated campaign finance law. Further, if Rep. Guinta knowingly and willfully accepted a conduit contribution, he likely violated criminal law.⁴⁸

Excessive Contribution

The FECA limits the amount of contributions a candidate can accept from an individual.⁴⁹ The contribution limits in 2010 were \$2,400 per election.⁵⁰ Any contribution over that limit is an illegal excessive contribution.⁵¹ If someone or several people gave Rep. Guinta sums greater than that so that he could loan those funds to his campaign, he violated campaign finance law by receiving an excessive campaign contribution. A knowing and willful violation would be subject to criminal penalties.⁵²

Campaign Finance Disclosures

The FECA and FEC regulations also require congressional candidates to disclose all campaign contributions they receive.⁵³ If Rep. Guinta received a gift or gifts intended to aid his campaign, but did not disclose such gifts as campaign contributions, he violated campaign finance law. Further, a knowing and willful failure to disclose such contributions is a criminal offense.⁵⁴

⁴⁸ 2 U.S.C. § 437g(d)(1)(A)(i).

⁴⁹ 2 U.S.C. §§ 441a(a)(1)(A), 441a(f).

⁵⁰ Contribution Limitation Increases for Individuals, Nonmulticandidate Committees and for Certain Political Party Committees Giving to U.S. Senate Candidates for 2009-2010 Election Cycle, 74 Fed. Reg. 7437 (Feb. 17, 2009).

⁵¹ 2 U.S.C. § 441a(f).

⁵² 2 U.S.C. § 437g(d)(1)(A)(i).

⁵³ 2 U.S.C. §§ 434(a)(2), (b); 11 C.F.R. §§ 104.3.

⁵⁴ 2 U.S.C. § 437g(d)(1)(A)(i).

REPRESENTATIVE GREGORY MEEKS

Representative Gregory Meeks (D-NY) is a seven-term member of Congress, representing New York's 6th congressional district. Rep. Meeks' ethics issues stem from (1) accepting improper gifts and loans; (2) failing to report income and loans on his personal financial disclosure forms; (3) his involvement with charities under federal investigation; and (4) his actions on behalf of indicted banker and campaign donor R. Allen Stanford.

Improper Gifts and Loans

In 2006, Rep. Meeks paid \$830,000 for a two-story house in the St. Albans neighborhood of Queens, New York.¹ In January 2007, only a few months after the purchase, the city assessed the market value of the house as \$1,239,000.² The home was built by Robert Gaskin, a campaign contributor to the congressman, who has also worked on projects for which Rep. Meeks has obtained federal funds.³ It was built on land owned by another Meeks contributor, real estate developer Richard Dennis.⁴ Both Mr. Dennis and Rep. Meeks claimed Rep. Meeks had not received a sweetheart deal on the house, but an independent appraisal done for *The New York Times* found the value of the house to be more than \$1 million at the time Rep. Meeks bought it.⁵ "At \$830,000, anyway you slice it, it was substantially below market," the appraiser said.⁶ "He appears to have gotten a very, very good deal."⁷

In addition, on June 18, 2010, Rep. Meeks admitted that over three years he had obtained two loans totaling \$55,000 but had failed to report them on his personal financial disclosure forms.⁸ Rep. Meeks said he obtained a \$40,000 loan in 2007 that he had since repaid, and he received a \$15,000 loan in 2008 that he was still repaying.⁹ Notably, Rep. Meeks failed to include information about any loans on his 2007 and 2008 personal financial disclosure reports, but called the lapse an "oversight."¹⁰

According to his 2009 personal financial disclosure forms, in 2008 Rep. Meeks took a loan for \$15,000 from the Congressional Federal Credit Union.¹¹ On the same form, Rep. Meeks also revealed a personal loan of \$50,000 to \$100,000 from Queens businessman Edul Ahmad,

¹ Complaint filed with the House Committee on Standards of Official Conduct by the National Legal and Policy Center, March 19, 2010 (National Legal and Policy Center Complaint); Eric Lipton and Raymond Hernandez, Congressman Cries Poor, But He Lives the Good Life, *New York Times*, March 20, 2010.

² National Legal and Policy Center Complaint.

³ *Id.*

⁴ Lipton and Hernandez, *New York Times*, Mar. 20, 2010.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Benjamin Lesser and Greg B. Smith, Congressman Meeks Failed to Disclose Hidden Loans; Queens Pol Borrowed More than \$50 G, *New York Daily News*, June 20, 2010.

⁹ *Id.*

¹⁰ Greg B. Smith, Queens Congressman Gregory Meeks: \$55G in Undisclosed Loans An 'Oversight', *New York Daily News*, June 21, 2010.

¹¹ Rep. Gregory Meeks, Calendar Year 2009 Financial Disclosure Statement, filed June 16, 2010; Rep. Gregory Meeks, Multi-Year Personal Financial Disclosure Amendment, filed November 17, 2010.

evidently the first disclosure of the 2007 \$40,000 loan.¹² Rep. Meeks admitted he had not sought permission from the House Ethics Committee (then known as the Committee on Standards of Official Conduct) before accepting the loan from Mr. Ahmad.¹³

Apparently, Rep. Meeks received a check for \$40,000 from Mr. Ahmad in January 2007 to help with costs associated with his new \$830,000 home.¹⁴ Rep. Meeks received the money without any discussion of interest rates, due dates, or collateral requirements for the loan.¹⁵ Further, Rep. Meeks made no payments on the loan until June 2010, after the FBI questioned Mr. Ahmad about the money.¹⁶ At that point, Rep. Meeks apparently took out a home equity loan for \$59,650.¹⁷ He then sent Mr. Ahmad a check for \$59,684, representing the \$40,000 plus interest at an annual rate of 12.5%.¹⁸ In a July 2010 statement regarding the omission of the loans from his personal financial disclosure forms, Rep. Meeks said that when he borrowed the money from Mr. Ahmad in 2007, “interest rates were as high as they have been in nearly a decade. Today, interest rates are as low as they have been since the 1950s. When I saw this, there was no question that it made financial sense to pay back the loan from Ed Ahmad and replace it with a lower interest rate secured by my home, which is exactly what I did during the same week that I filed my current and amended financial disclosure statement.”¹⁹

Rep. Meeks admitted he had no documents to back up the loan from Mr. Ahmad, but said it was due within 10 years.²⁰ Rep. Meeks described the loan as necessary “for my family obligations, etc. I was in a new house. It’s taking care of things for my family needs in the house (*sic*).” Rep. Meeks continued, “You need to make sure the house is furnished. You need things.”²¹

The \$59,650 home equity loan Rep. Meeks took out to repay the \$40,000 was borrowed from Four Investments LLC, an investment firm owned by Dennis Mehiel, another New York businessman and a longtime Democratic donor.²² Although Mr. Mehiel has not commented publicly on the loan, in February 2010 he said, “I’m a longtime personal friend or acquaintance of virtually every Democratic member of Congress from New York.”²³ Mr. Mehiel and his wife,

¹² Rep. Gregory Meeks, Calendar Year 2009 Financial Disclosure Statement, filed June 16, 2010; Greg B. Smith, FBI Looks Into Secret \$40,000 Personal Loan to Queens Pol Gregory Meeks, *New York Daily News*, July 8, 2010.

¹³ Smith, *New York Daily News*, July 8, 2010.

¹⁴ *Id.*

¹⁵ Benjamin Lesser and Robert Gearty, Queens Pol Gregory Meeks Taps Democratic Fundraiser to Help Pay Back \$40,000 Owed to Businessman, *New York Daily News*, July 9, 2010; Office of Congressional Ethics, 112th Congress, Report and Findings Related to Rep. Gregory Meeks, Review No. 11-1048, April 29, 2011 (OCE Report and Findings), Exhibit 11, Press Release from Representative Gregory Meeks, July 9, 2010.

¹⁶ *Id.* In July 2011, the FBI arrested Mr. Ahmad on apparently unrelated mortgage fraud charges. See *United States v. Edul Ahmad*, 1:11-mj-00755-jo (E.D.N.Y. 2011).

¹⁷ Complaint filed with the Office of Congressional Ethics by Citizens for Responsibility and Ethics in Washington, July 13, 2010, Exhibit F, Short Form Subordinated Third Mortgage, dated June 18, 2010, filed with the Office of the City Register of the City of New York, June 22, 2010; OCE Report and Findings.

¹⁸ Smith, *New York Daily News*, July 8, 2010; OCE Report and Findings.

¹⁹ OCE Report and Findings, Exhibit 11, Press Release from Representative Gregory Meeks, July 9, 2010.

²⁰ Smith, *New York Daily News*, July 8, 2010.

²¹ *Id.*

²² Lesser and Gearty, *New York Daily News*, July 9, 2010. Four Investments is also referred to in some documents as Four M Investments.

²³ *Id.*

Karen Mehiel, donated \$9,600 to Rep. Meeks during the 2010 election cycle, the maximum allowed.²⁴

During an interview with the Office of Congressional Ethics (OCE), Mr. Mehiel said Rep. Meeks had met with him in June 2010 and asked him for a loan in order to pay back an existing \$40,000 loan from another individual, whom Rep. Meeks did not identify.²⁵ Rep. Meeks also requested money to pay interest on the earlier loan.²⁶ Mr. Mehiel spoke with Rep. Meeks' lawyers regarding loan terms, and told the OCE Rep. Meeks' lawyers wanted to complete the loan within a day or two because a House financial disclosure form was due.²⁷ In addition, Mr. Mehiel reported Rep. Meeks' lawyers "felt compelled to pay the [original lender] a high interest rate so that Rep. Meeks would not be seen as getting a benefit."²⁸ Four Investments had never made any similar loans previously and Mr. Mehiel said the company would not make any in the future, but he made an exception for Rep. Meeks, whom he described as a friend.²⁹ Mr. Mehiel said he did not want to appear to be offering Rep. Meeks a special deal, so he required Rep. Meeks to provide collateral and set a 7.3% interest rate payable quarterly after seeing the rate listed in the newspaper as a standard rate for such loans.³⁰

Improper Reporting on Personal Financial Disclosure Forms

In addition to failing to report the gifts and loans on his financial disclosure forms, Rep. Meeks had several other notable omissions, including some of his wife's sources of income.³¹ State records show that Simone-Marie Meeks earned \$2,857 in 2008 as an adjunct professor at Queens College, but Rep. Meeks did not include this information on his 2008 financial disclosure forms.³² Neither did Rep. Meeks disclose his wife's role as a principal at Lipscomb Lord Group, which she created in 1999.³³ The firm specialized in public relations, event planning, and advocacy work.³⁴

Further, on November 17, 2010, Rep. Meeks admitted he had failed to disclose gambling winnings of approximately \$3,500 on his 2008 financial disclosure forms.³⁵ He told reporters he won the money playing blackjack.³⁶ He also acknowledged failing to disclose a Congressional

²⁴ <http://www.opensecrets.org/indivs/search.php?capcode=bqtgj&name=Mehiel&employ=&cand=&state=NY&zip=&all=N&old=N&c2008=N&c2006=N&c2010=Y&sort=N&page=&page=1>.

²⁵ OCE Report and Findings, Exhibit 3, Memorandum of Interview, Managing Member, 4M Investments, LLC, March 14, 2011. The OCE Report refers to Mr. Mehiel only as the "Chairman of U.S. Corrugated, Inc. and Managing Member of 4M Investments, LLC," and notes that the witness owns 80 percent of 4M Investments. Mr. Mehiel is the owner of 4M Investments, and is also the chairman of U.S. Corrugated, Inc.: <http://www.uscorr.com/about-us/leadership-team/dennis-mehiel/>.

²⁶ OCE Report and Findings.

²⁷ OCE Report and Findings, Exhibit 3.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Isabel Vincent and Melissa Klein, House Ethics Panel Probing Meeks' Money, *New York Post*, January 30, 2011.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Rep. Gregory Meeks, Multi-Year Personal Financial Disclosure Amendment, filed November 17, 2010.

³⁶ Benjamin Lesser, Rep. Reveals 3.5G Jackpot, *New York Daily News*, December 3, 2010.

Federal Credit Union savings account containing \$25,965.35 in December 2005.³⁷ He claimed the account had dwindled to \$8,926.20 by 2008.³⁸ He has not included the account on any subsequent personal financial disclosure forms.³⁹

Federal Probe into Dealings with Nonprofit Groups

Rep. Meeks and some of his closest political allies in New York, including Democratic state Sen. Malcolm Smith and former Rep. Floyd Flake (D-NY), his predecessor representing the 6th district, are the subject of a federal probe into their dealings with several nonprofit groups.⁴⁰ According to press reports, investigators are looking into whether Rep. Meeks and the others used the groups to benefit themselves, their families, and their friends.⁴¹

Hurricane Katrina Charity

In 2001, Rep. Meeks and Sen. Smith co-founded a New York nonprofit called New Direction Local Development Corp.⁴² From 2002 to 2008, New Direction's address was the office of Joan Flowers, a former campaign treasurer for both Rep. Meeks and Sen. Smith.⁴³ Ms. Flowers also worked as counsel to Sen. Smith, but was terminated in March 2010, as reports of the federal probe surfaced.⁴⁴ Sen. Smith helped direct state funding to the group, and Rep. Meeks helped it secure other contributions, including a \$250,000 contribution from International Airport Centers, the developer of a cargo center near JFK Airport.⁴⁵ New Direction prominently displayed a picture of Rep. Meeks on its website.⁴⁶

In 2005, in the wake of Hurricane Katrina, New Direction began collecting money for New Yorkers Organized to Assist Hurricane Families, a special fund for Hurricane Katrina victims.⁴⁷ The New Direction website said it planned to raise \$270,000 for hurricane evacuees, and directed donations to the offices of Rep. Meeks, Sen. Smith, and Democratic New York Assemblywoman Barbara Clark.⁴⁸ Rep. Meeks said all money raised for the fund would go to victims, and none would be used for administrative costs.⁴⁹ Rep. Meeks' congressional

³⁷ Rep. Gregory Meeks, Multi-Year Personal Financial Disclosure Amendment, filed November 17, 2010.

³⁸ *Id.*

³⁹ Rep. Gregory Meeks, Personal Financial Statement for Calendar Year 2008, filed May 15, 2009; Rep. Gregory Meeks, Personal Financial Statement for Calendar Year 2009, filed June 15, 2010; Rep. Gregory Meeks, Personal Financial Statement for Calendar Year 2010, filed June 17, 2011.

⁴⁰ Isabel Vincent and Melissa Klein, Feds' Probe of Meeks Taking Sidetrack to Jamaica Biz Group, *New York Post*, April 18, 2010; Isabel Vincent and Melissa Klein, Hide and Meeks – Shady Charities, Odd Financial Disclosures, Love of Junkets Dog Queens Congressman, *New York Post*, March 21, 2010.

⁴¹ Kenneth Lovett, Barbara Ross and Greg B. Smith, Federal Grand Jury Probes Real Estate and Nonprofit Deals for Malcolm Smith, Other Queens Pols, *New York Daily News*, April 2, 2010.

⁴² Ken Boehm, Rep. Gregory Meeks' Charity Looks More Like Slush Fund, National Legal and Policy Center, January 31, 2010.

⁴³ *Id.*

⁴⁴ Lovett, Ross and Smith, *New York Daily News*, Apr. 2, 2010.

⁴⁵ Boehm, National Legal and Policy Center, Jan. 31, 2010.

⁴⁶ Melissa Klein and Isabel Vincent, Queens Pols Stiffed Katrina Victims, *New York Post*, February 7, 2010.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Boehm, National Legal and Policy Center, Jan. 31, 2010; Congressman Defends Role in Hurricane Katrina Charity, *NYI News*, March 16, 2010.

campaign gave the fund \$10,000 in 2005, though \$5,000 appears to have been refunded to the campaign in 2006.⁵⁰ Additionally, Assemblywoman Clark said she helped set up a gospel concert that raised \$11,210, and that money was turned over to Rep. Meeks to benefit the fund.⁵¹

Nonetheless, according to New Direction's tax returns, the only money spent on Hurricane Katrina-related giving was \$1,392 paid out in 2006 for hurricane victim expenses.⁵² According to press reports, the charity has not accounted for the rest of the money.⁵³ The group's most recent tax filing, from 2008, reported assets of just \$55,254 remaining at the end of the year.⁵⁴ Rep. Meeks initially issued a statement saying "the funds were utilized to help sustain displaced evacuees," but did not provide details.⁵⁵ A month later, in February 2010, amid press reports of an investigation into the charity by the U.S. Attorney's office, Rep. Meeks said he was not responsible for day-to-day operations at the charity and did not know what had become of the money.⁵⁶

Greater Jamaica Development Corp.

According to *The New York Post*, federal investigators have subpoenaed Rep. Meeks' records for information about the Greater Jamaica Development Corp., a Queens nonprofit.⁵⁷ Rep. Meeks has secured millions of dollars in public money for the charity, including \$9.2 million from the Federal Transit Administration for rehabilitation of an underpass.⁵⁸ The project has been underway for almost a decade, but the work is roughly only 30 percent complete.⁵⁹ Former Rep. Flake is a member of Greater Jamaica's board.⁶⁰

Ties to Indicted Financier Allen Stanford

Between 2003 and 2007, Rep. Meeks, a member of the Caribbean caucus, took at least six trips to luxurious Caribbean resorts paid for by the Inter-American Economic Council, a nonprofit heavily backed by banker R. Allen Stanford.⁶¹ In 2006, in response to questions from the *New York Daily News* about the trips, Rep. Meeks said the trips were for business, though his wife traveled with him.⁶² "It helps my marriage," he said.⁶³ Additionally, Stanford Financial Group's political action committee and employees donated \$15,100 to Rep. Meeks during the

⁵⁰ Boehm, National Legal and Policy Center, Jan. 31, 2010.

⁵¹ Klein and Vincent, *New York Post*, Feb. 7, 2010.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ New Direction LDC, Inc., 2008 IRS Form 990-EZ, filed July 23, 2009.

⁵⁵ Klein and Vincent, *New York Post*, Feb. 7, 2010.

⁵⁶ Justin Elliott, U.S. Attorney Subpoenas NY Officials On Rep. Meeks' Non-Profit, *TPMMuckraker*, February 12, 2010.

⁵⁷ Vincent and Klein, *New York Post*, Apr. 18, 2010.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Rob Barry, Michael Sallah and Gerardo Reyes, Gregory Meeks' Trip to Venezuela On Behalf of Stanford's Bank Raises Ethics Questions, *Miami Herald*, December 27, 2009; Greg B. Smith, Meeks Not Shy About Gifts; Enjoyed 6 Caribbean Visits Thanks to An Accused Con Artist, *New York Daily News*, December 29, 2009.

⁶² Smith, *New York Daily News*, Dec. 29, 2009.

⁶³ *Id.*

2008 election cycle, making the firm Rep. Meeks' third largest contributor.⁶⁴ In 2009, Mr. Stanford was indicted for running a Ponzi scheme and federal investigators reportedly began examining his ties to lawmakers, including Rep. Meeks.⁶⁵ The current status of the investigation is unknown.

In March 2006, after the president of Mr. Stanford's bank in Venezuela, Gonzalo Tirado, filed a lawsuit and raised questions about whether Mr. Stanford was involved in fraud, Mr. Stanford called Rep. Meeks, a member of the House Committee on Foreign Affairs, and asked him to intervene by going directly to Venezuelan President Hugo Chavez and requesting a criminal investigation of Mr. Tirado.⁶⁶ Two former federal agents then working for Mr. Stanford were listening to the call, and said Rep. Meeks agreed to pursue the matter with President Chavez.⁶⁷

Rep. Meeks traveled to Venezuela in 2006 on a taxpayer-funded trip, described as a meeting to express gratitude for a program that provided heating oil to Americans.⁶⁸ In 2007, Mr. Tirado was indicted in Venezuela.⁶⁹ Rep. Meeks has declined to answer questions about the trip, about whether he intervened in the case of Mr. Tirado, and about his relationship with Mr. Stanford.⁷⁰

Status of Investigations

In April 2010, Rep. Meeks officially notified then-House Speaker Nancy Pelosi (D-CA) that he had been served with a subpoena for documents issued by the U.S. District Court for the Southern District of New York, and press reports said the subpoena was tied to the federal probe into Rep. Meeks and other Queens politicians.⁷¹ The current status of the investigation is unknown.

After conducting an investigation into Rep. Meeks' loans, the OCE referred his case to the House Ethics Committee on May 18, 2011.⁷² The OCE found substantial reason to believe Rep. Meeks "failed to properly disclose the \$40,000 as a gift on his 2007, 2008, and 2009 Financial Disclosure Statements in violation of House rules, standards of conduct and federal law."⁷³ The OCE noted that Rep. Meeks and Mr. Ahmad both declined to cooperate with the OCE's investigation of the loan, and it "appeared to lack the normal indicia, including a set interest rate or repayment terms, of a legitimate loan. Therefore, this \$40,000 transferred to

⁶⁴ <http://www.opensecrets.org/politicians/contrib.php?cycle=2008&type=I&cid=N00001171&newMem=N&recs=20>.

⁶⁵ Michael Sallah and Rob Barry, Feds Probe Banker Allen Stanford's Ties to Congress, *Miami Herald*, December 29, 2009.

⁶⁶ Barry, Sallah and Reyes, *Miami Herald*, Dec. 27, 2009.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Barry, Sallah and Reyes, *Miami Herald*, Dec. 27, 2009.

⁷¹ S.A. Miller and Murray Weiss, Subpoena Takes Meeks By Storm, *New York Post*, April 16, 2010.

⁷² Press Release, House Committee on Ethics, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Mr. Michael Collins, Mr. Greg Hill, Representative Gregory Meeks, and Representative Jean Schmidt, July 1, 2011.

⁷³ OCE Report and Findings.

Representative Meeks in 2007 appears to have been a gift.”⁷⁴ The OCE recommended the House Ethics Committee further review the matter and issue subpoenas to Rep. Meeks and Mr. Ahmad.⁷⁵

In contrast, the OCE found the loan from Four Investments contained an interest rate and repayment schedule, and was recorded in a written agreement that was executed and filed with the New York City Department of Finance.⁷⁶ The OCE recommended dismissal of allegations concerning the 2010 loan.⁷⁷ On August 5, 2011, the House Ethics Committee said it would dismiss the allegation that Rep. Meeks received an improper loan in 2010, but would continue to review the allegations concerning the 2007 payment.⁷⁸

Legal Fees

Rep. Meeks’ campaign committee reported paying law firms Dorsey & Whitney and Perkins Coie \$245,517 in 2010, and \$11,000 so far in 2011.⁷⁹

Potential Violations

False Statements on Personal Financial Disclosure Forms

The Ethics in Government Act of 1967 requires all members of Congress to file financial disclosure reports.⁸⁰ Under the statute, the attorney general may seek a civil penalty of up to \$11,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.⁸¹ House Rule 26 incorporates the financial disclosure provisions of the Ethics in Government Act.⁸²

Federal law further prohibits members of Congress from making “any materially false, fictitious, or fraudulent statement or representation”⁸³ on “a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch.”⁸⁴ Personal obligations aggregating over \$10,000 owed to one creditor at any time

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ OCE Report and Findings.

⁷⁸ Press Release, House Committee on Ethics, 112th Congress, Statement of the Chair and Ranking Member of the Committee on Ethics Regarding Representative Gregory W. Meeks, August 5, 2011.

⁷⁹ Friends for Gregory Meeks, [FEC Form 3, April Quarterly Report](#), April 15, 2010; Friends for Gregory Meeks, [FEC Form 3, July Quarterly Report](#), July 15, 2010; Friends for Gregory Meeks; [FEC Form 3, Pre-Primary Report](#), September 2, 2010; Friends for Gregory Meeks, [FEC Form 3, October Quarterly Report](#), October 15, 2010; Friends for Gregory Meeks, [FEC Form 3, Pre-General Report](#), October 21, 2010; Friends for Gregory Meeks, [FEC Form 3, Post-General Report](#), December 2, 2010; Friends for Gregory Meeks, [FEC Form 3, Year End Report](#), January 31, 2011; Friends for Gregory Meeks, [FEC Form 3, April Quarterly Report](#), April 15, 2011.

⁸⁰ Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

⁸¹ 5 U.S.C. app. 4, § 104.

⁸² House Comm. on Standards of Official Conduct, [House Ethics Manual](#), p. 248 (110th Cong., 2d Sess., 2008 ed.).

⁸³ 18 U.S.C. § 1001(a)(2).

⁸⁴ 18 U.S.C. § 1001(c)(2).

during the calendar year, regardless of repayment terms or interest rates, must be included on personal financial disclosure statements.⁸⁵

By deliberately leaving the \$40,000 gift/loan from Mr. Ahmad off of his 2007 and 2008 financial disclosure forms, Rep. Meeks made at least two prohibited false statements. In addition, by mischaracterizing the \$40,000 he received from Mr. Ahmad as a loan on his 2009 financial disclosure reports, when in fact the money was more likely a gift, Rep. Meeks appears to have made another false statement.

In addition, given that Rep. Meeks appears to have received a discount of at least \$170,000 on the price of his home, the \$170,000 constitutes a gift that should have been reported on his personal financial disclosure form. The failure to include this gift is a false statement.

Given that Rep. Meeks seems to have a demonstrated pattern of failing to include information on his personal financial disclosure reports, his failure to initially include his blackjack winnings, funds in his credit union account, and some of his wife's sources of income also may constitute false statements.

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.⁸⁶

It appears Rep. Meeks bought his house for at least \$170,000 less than it was worth. If the congressman took any official action in exchange for receiving that discount, he may have accepted a bribe. Similarly, if Rep. Meeks exchanged any official action for the \$40,000 he received from Mr. Ahmad, that payment also may constitute a bribe.

Finally, if Rep. Meeks used his position in Congress for the benefit of Mr. Stanford in exchange for campaign contributions or luxury trips, he may have accepted bribes.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.⁸⁷ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.⁸⁸

If Rep. Meeks took any official action in exchange for receiving the at least \$170,000 discount on his house, he may have violated the illegal gratuity statute. Similarly, if Rep. Meeks

⁸⁵ House Ethics Manual, p. 258 (citing 5 U.S.C. App. 4 § 102(a)(4)).

⁸⁶ 18 U.S.C. § 201(b)(2)(A).

⁸⁷ 18 U.S.C. § 201(c)(1)(B).

⁸⁸ *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398 (1999).

exchanged any official action for the \$40,000 he received from Mr. Ahmad, that payment also may constitute an illegal gratuity. If Rep. Meeks used his position in Congress for the benefit of Mr. Stanford in exchange for campaign contributions or luxury trips, he may have violated the illegal gratuity statute.

In addition, the House Ethics Committee has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of members, including expulsion.⁸⁹

5 U.S.C. § 7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including “anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties.”⁹⁰ House Rule 23, clause 3, similarly provides:

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

If Rep. Meeks took any official action in exchange for receiving at least a \$170,000 discount on his house, he may have violated 5 U.S.C. § 7353 and House Rule 23. Similarly, if Rep. Meeks exchanged any official action for the \$40,000 he received from Mr. Ahmad, he may have violated 5 U.S.C. § 7353 and House Rule 23. Similarly, if Rep. Meeks used his position in Congress for the benefit of Mr. Stanford in exchange for campaign contributions or luxury trips, he may have violated these provisions.

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”⁹¹ House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

⁸⁹ *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the member from the House); *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

⁹⁰ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

⁹¹ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

The Code of Ethics also provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not.”⁹²

If Rep. Meeks took any official action in exchange for receiving at least a \$170,000 discount on his house, he may have violated 5 C.F.R. § 2635.702(a). Similarly, if Rep. Meeks exchanged any official action for the \$40,000 he received from Mr. Ahmad, he may have violated 5 C.F.R. § 2635.702(a). Finally, if Rep. Meeks used his position in Congress for the benefit of Mr. Stanford in exchange for campaign contributions or luxury trips, he may have violated this provision.

Code of Ethics for Government Service, Clause 5

The Code of Ethics for Government Service provides that government officials should

Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his official duties.⁹³

If Rep. Meeks took any official action in exchange for receiving at least a \$170,000 discount on his house, he may have dispensed special favors in violation of the Code of Ethics for Government Service. Similarly, if Rep. Meeks exchanged any official action for the \$40,000 he received from Mr. Ahmad, he may have dispensed special favors in violation of the Code of Ethics. Finally, if Rep. Meeks used his position in Congress for the benefit of Mr. Stanford in exchange for campaign contributions or luxury trips, he may have violated this provision.

Gift Rule Violations

Rule 25, clause 5(a)(1)(A)(i) of the House rules states that “a Member, Delegate, Resident Commissioner, officer, or employee of the House may not knowingly accept a gift except as provided in this clause.” The rules define “gift” to mean “a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.”⁹⁴

While members and staff may accept gifts on the basis of personal friendship, no gifts valued at over \$250 may be accepted on this basis absent a written determination by the Ethics

⁹² *Id.*

⁹³ 72 Stat., Part 2, B12, H. Res. 175, 85th Cong. (adopted July 11, 1958); House Ethics Manual, p. 20.

⁹⁴ Rule 25, cl. 5(a)(2)(A).

Committee.⁹⁵ Further, the donor, description and value of any gifts aggregating over \$335 from a single source must be disclosed on a member's personal financial disclosure statement.⁹⁶

Rule 25, clause 5(a)(3)(R)(v) allows members, officers, and employees to accept opportunities and benefits that are available to a wide group, specifically providing that they may accept "loans from banks and other financial institutions on terms generally available to the public." The Ethics Committee has interpreted this rule

to allow the acceptance of loans from persons other than financial institutions, provided that they are on terms which satisfy the requirements which the Committee had previously utilized in evaluating loans: that is, the terms are commercially reasonable, including requirements for repayment and a reasonable rate of interest.⁹⁷

The Committee cautioned, however, that to ensure a loan is on commercially reasonable terms, before entering into any loan arrangement with someone other than a financial institution, members and staff "should contact the Committee for a review of the proposed terms, and a determination by the Committee on whether the loan is acceptable under the gift rule. Those who accept such a loan without Committee consideration run a risk of being found in violation of the gift rule, and possible other provisions of law as well."⁹⁸

Discounted House Price

It appears Rep. Meeks was permitted to purchase his house for a price one appraiser estimates at least \$170,000 less than the home's value. Because discounts constitute gifts, Rep. Meeks appears to have accepted an improper gift by paying less than the home's true value.

Gift of \$40,000

Given that Rep. Meeks failed to seek the Ethics Committee's approval of the alleged loan he received from Mr. Ahmad, and failed to repay any portion of the money until the FBI began investigating the matter, this so-called loan was more likely an impermissible gift.

Loan of \$40,000

Alternatively, although there is no indicia suggesting the \$40,000 was a loan from Mr. Ahmad – no loan agreement, no loan term, no payment schedule, and no cancelled checks – if the money was a loan rather than a gift, Rep. Meeks still violated federal law and House rules.

⁹⁵ Rule 25, cl. 5(a)(5).

⁹⁶ 5 U.S.C. app. 4 § 102(a)(2).

⁹⁷ House Comm. on Standards of Official Conduct, "Memorandum from Committee on Standards of Official Conduct," Gift Rule Provisions Applicable to Loans to Members, Officers, and Employees, May 23, 1997 (*found in House Ethics Manual*, pp. 381-384).

⁹⁸ *Id.*

First, House rules require members and staff who wish to accept a personal loan from someone other than a financial institution to seek permission from the Committee before accepting the loan. Rep. Meeks has admitted he never put the matter to the Committee. As a result, Rep. Meeks violated House rules by accepting the \$40,000 from Mr. Ahmad.

Second, the terms for loans accepted from anyone other than a financial institution must be commercially reasonable. Here, the absence of a loan term, payment schedule, and defined interest rate demonstrate the loan was not made on commercially reasonable terms. As a result, Rep. Meeks violated House rules by accepting the loan.

Third, as explained above, personal obligations aggregating over \$10,000 owed to one creditor at any time during the calendar year, regardless of repayment terms or interest rate, must be included on personal financial disclosure statements,⁹⁹ and failing to report them is a federal crime. Here, by deliberately failing to include the loan on his 2007 and 2008 financial disclosure forms, and by including it on his 2009 forms only after the FBI questioned the loan, Rep. Meeks appears to have violated federal criminal law.

Conduct Not Reflecting Creditably on the House

House Rule 23 requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”¹⁰⁰ This ethics standard is considered to be “the most comprehensive provision” of the code.¹⁰¹ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.¹⁰² This rule has been relied on by the committee in numerous prior cases in which the committee found unethical conduct including: the failure to report campaign contributions,¹⁰³ making false statements to the committee,¹⁰⁴ criminal

⁹⁹ House Ethics Manual, p. 258 (*citing* 5 U.S.C. App. 4 § 102(a)(4)).

¹⁰⁰ Rule 23, cl. 1.

¹⁰¹ House Ethics Manual, p. 12.

¹⁰² House Comm. on Standards of Official Conduct, *Report Under the Authority of H. Res. 418*, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

¹⁰³ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

¹⁰⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

convictions for bribery,¹⁰⁵ or accepting illegal gratuities,¹⁰⁶ and accepting gifts from persons with interest in legislation in violation of the gift rule.¹⁰⁷

By purchasing a house for at least \$170,000 less than its value, Rep. Meeks acted in a manner that brings discredit to the House.

By taking \$40,000 from a New York businessman without any kind of loan agreement or repayment schedule, and then – only after a newspaper discovered and questioned the transaction – describing the money as a loan and suddenly repaying it, Rep. Meeks acted in a manner that brings discredit to the House.

Finally, Rep. Meeks' relationships with the New York charities that have been unable to account for their funds, as well as the actions he took at Mr. Sanford's behest may violate various federal laws, but in any event, certainly do not reflect creditably upon the House.

¹⁰⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

¹⁰⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (member resigned while expulsion resolution was pending).

¹⁰⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

REPRESENTATIVE NICK RAHALL

Representative Nick Rahall (D-WV) is an eighteen-term member of Congress, representing West Virginia's 3rd congressional district. He is the ranking member of the House Transportation and Infrastructure Committee. Rep. Rahall's ethics issues stem from misusing his position to benefit family members.

Nick Joe Rahall III

On July 13, 2003, Rep. Rahall's son, Nick Joe Rahall III, broke into a Virginia home with another man, held the resident on the floor, and stole \$5,000.¹ Police later issued a warrant for his arrest on felony breaking and entering charges.² While the warrant was outstanding, Mr. Rahall was arrested in West Virginia on drunk driving charges.³ Once those charges were processed, he was sent to Virginia, arraigned in the robbery case, and released on \$15,000 bail.⁴ He was arrested again a month later in West Virginia on drug charges, and subsequently pleaded guilty to distribution of cocaine charges in that case.⁵ Following his plea to cocaine distribution, Mr. Rahall pleaded guilty to conspiracy to commit robbery in the Virginia case.⁶ A sentencing guideline report evaluating Mr. Rahall based on the Virginia crime and his criminal history placed him just under the cutoff for mandatory incarceration.⁷

In February 2005, with Mr. Rahall's sentencing in the Virginia case pending, Rep. Rahall wrote to Fairfax County Circuit Court Judge David Stitt on congressional stationery, asking Judge Stitt to be lenient.⁸ The judge gave Mr. Rahall a four-year suspended sentence.⁹

Rep. Rahall's letter was first reported by *Politico* in August 2010.¹⁰ Rep. Rahall acknowledged he should not have used congressional stationery for the letter.¹¹ He insisted, however, that it was different stationery from the paper he used for official or committee business.¹² Nonetheless, the paper included the congressional seal, the words "Congress of the United States of America," and referred to Rep. Rahall as "M.C., West Virginia."¹³ It also listed his committee assignments.¹⁴ In the wake of questions from *Politico*, Rep. Rahall said that he would repay the Treasury for the cost of the stationery.¹⁵

¹ John Bresnahan, Rahall Plea for Son Raises Questions, *Politico*, August 12, 2010.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Bresnahan, *Politico*, Aug. 12, 2010.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Bresnahan, *Politico*, Aug. 12, 2010.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Bresnahan, *Politico*, Aug. 12, 2010.

¹⁴ *Id.*

¹⁵ *Id.*

Tanya Rahall

Rep. Rahall's sister, Tanya Rahall, is a registered lobbyist.¹⁶ She has repeatedly cited her relationship with her brother as a key factor in her ability to serve lobbying clients. A spokesman for the congressman has said Rep. Rahall does not allow family members to lobby him directly. Ms. Rahall, however, has done so in the past, and court records show she continues to lobby Rep. Rahall's staff. Rep. Rahall has introduced legislation to benefit Ms. Rahall's clients in the past.

In 2003, disclosure records filed with the Department of Justice under the Foreign Agents Registration Act (FARA) showed Ms. Rahall contacted the congressman on behalf of the Embassy of Qatar.¹⁷ The FARA records report she spoke to him directly on seven separate occasions about Qatar.¹⁸ On March 6, 2003 and March 26, 2003, she approached him about traveling to Qatar for a conference.¹⁹ Rep. Rahall eventually accepted the invitation and traveled to Qatar from April 11, 2003 to April 16, 2003 for the "American Conference for Free Markets and Democracy."²⁰ FARA records also show Ms. Rahall met with Rep. Rahall on April 1, 2003 on behalf of the Qatari embassy, along with a representative of the Islamic Institute.²¹ In three calls that took place in late 2003, Ms. Rahall lobbied Rep. Rahall to take another trip to Qatar, though in February 2004, he told her he would not do so.²²

At his sister's urging, Rep. Rahall introduced specific legislation to benefit Qatar.²³ In April and May of 2003, Ms. Rahall lobbied for the House of Representatives to pass a resolution thanking Qatar for its support of the Iraq war and welcoming the Emir of Qatar to the United States.²⁴ Rep. Rahall has since supported other legislation friendly to Qatar, including a 2007 resolution congratulating Qatar for the occasion of "Qatari-American Friendship Day."²⁵

¹⁶ RTK Consulting Group LLC, Second Quarter 2011 Lobbying Disclosure Report on behalf of DaVinci Horani, Secretary of the Senate, Office of Public Records.

¹⁷ Rahall Consulting Group, Foreign Agents Registration Act Supplemental Form, Department of Justice, filed on June 17, 2003; Rahall Consulting Group, Foreign Agents Registration Act Supplemental Form, Department of Justice, filed on December 23, 2003.

¹⁸ *Id.*; Rahall Consulting Group, Foreign Agents Registration Act Supplemental Form, Department of Justice, filed on June 16, 2004.

¹⁹ Rahall Consulting Group, Foreign Agents Registration Act Supplemental Form, Department of Justice, filed on June 17, 2003.

²⁰ *Id.*

²¹ *Id.*

²² Rahall Consulting Group, Foreign Agents Registration Act Supplemental Form, Department of Justice, filed on December 23, 2003; Rahall Consulting Group, Foreign Agents Registration Act Supplemental Form, Department of Justice, filed on June 16, 2004.

²³ Rahall Consulting Group, Foreign Agents Registration Act Supplemental Form, Department of Justice, filed on June 17, 2003.

²⁴ *Id.*

²⁵ *Congratulating Qatar on the Occasion of Qatari-American Friendship Day*, H. Res. 396, 110th Congress, May 10, 2007.

RJI Government Strategies

In August 2009, RJI Government Strategies, the lobbying firm Ms. Rahall had worked for since 2008, fired her.²⁶ One of her clients, Mountaineer LLC, immediately terminated its contract with RJI and instead retained Ms. Rahall and her new business partner, Hilliard Zola.²⁷ In October 2009, RJI sued Ms. Rahall and Mr. Zola, accusing them of conspiring to steal Mountaineer's business and inappropriately taking confidential information from RJI.²⁸ The two deny the allegations, and have countersued.²⁹

Court documents filed as part of the lawsuit show Ms. Rahall referring to her relationship with her congressman brother to justify her value to the firm and its clients. In an email requesting higher compensation in exchange for bringing Mountaineer's business to RJI, she wrote "the typical pay to someone who has been in the business as long as I have been – someone who brings experience, skills, reputation for integrity, name recognition, the sister of a sitting Chairman, and a broad base of contacts is around \$200,000/year."³⁰ RJI was paying her \$70,000 per year.³¹ Ms. Rahall said in another email that she brought "the WV delegation, which is key."³² At the time, Rep. Rahall was the chairman of the House Natural Resources Committee, and Mountaineer was lobbying Congress for help in obtaining federal stimulus funds to build a coal cleaning plant in his West Virginia district.³³

An RJI principal testified in a sworn deposition that in 2008, Ms. Rahall said at one point that the "doors on Capitol Hill would be closed" to RJI unless she was granted a more prominent role on the lobbying team for a particular client.³⁴ The firm also said in court filings that Ms. Rahall and Mr. Zola sought to use Ms. Rahall's relationship with her brother "to intimidate and threaten RJI."³⁵ RJI also cited an email in which a former RJI employee, Bart Marcois, wrote to

²⁶ *RJI Government Strategies, Inc., et al. v. Rahall, et al.*, 2009 CA 007515 B (D.C. Sup. Ct.), Amended Complaint and Jury Demand; *RJI Government Strategies, Inc., et al. v. Rahall, et al.*, 2009 CA 007515 B (D.C. Sup. Ct.), Affidavit of Tanya Rahall, attached as Exhibit 1 to Defendants' Motion for Summary Judgment.

²⁷ *Id.*

²⁸ *RJI Government Strategies, Inc., et al. v. Rahall, et al.*, 2009 CA 007515 B (D.C. Sup. Ct.), Complaint and Jury Demand.

²⁹ John Bresnahan, Suit: Rahall Sis Made Payback Threat, *Politico*, October 7, 2010.

³⁰ *RJI Government Strategies, Inc., et al. v. Rahall, et al.*, 2009 CA 007515 B (D.C. Sup. Ct.), Email from Tanya Rahall to Cliff Madison, attached as Exhibit 21 to Memorandum of Points and Authorities in Support of Plaintiffs RJI Government Strategies, Inc. and RJI Capital Corporation's Motion for Summary Judgment.

³¹ *RJI Government Strategies, Inc., et al. v. Rahall, et al.*, 2009 CA 007515 B (D.C. Sup. Ct.), Amended Complaint and Jury Demand.

³² *RJI Government Strategies, Inc., et al. v. Rahall, et al.*, 2009 CA 007515 B (D.C. Sup. Ct.), Email from Tanya Rahall to Ron Wahid and Calvin Humphrey, attached as Exhibit 20 to Memorandum of Points and Authorities in Support of Plaintiffs RJI Government Strategies, Inc. and RJI Capital Corporation's Motion for Summary Judgment.

³³ <http://www.rahall.house.gov/index.cfm?sectionid=44§iontree=2,44>; *RJI Government Strategies, Inc., et al. v. Rahall, et al.*, 2009 CA 007515 B (D.C. Sup. Ct.), Emails from Tanya Rahall to Hilliard Zola, attached as Exhibit 28 to Memorandum of Points and Authorities in Support of Plaintiffs RJI Government Strategies, Inc. and RJI Capital Corporation's Motion for Summary Judgment; Bresnahan, *Politico*, Oct. 7, 2010.

³⁴ *RJI Government Strategies, Inc., et al. v. Rahall, et al.*, 2009 CA 007515 B (D.C. Sup. Ct.), Deposition of Calvin Humphrey, attached as Exhibit 23 to Memorandum of Points and Authorities in Support of Plaintiffs RJI Government Strategies, Inc. and RJI Capital Corporation's Motion for Summary Judgment; *RJI Government Strategies, Inc., et al. v. Rahall, et al.*, 2009 CA 007515 B (D.C. Sup. Ct.), Amended Complaint and Jury Demand.

³⁵ *Id.*; *RJI Government Strategies, Inc., et al. v. Rahall, et al.*, 2009 CA 007515 B (D.C. Sup. Ct.), Affidavit of Bart Marcois, attached as Exhibit 8 to Defendants' Motion for Summary Judgment.

Mr. Zola after hearing of Ms. Rahall's split with the firm, "too bad about tanya, but I think her brother will know how to make things difficult by making things hard on cal."³⁶ "Cal" is a reference to Calvin Humphrey, one of the principals of RJI.³⁷ Mr. Marcois later said in a deposition he had been joking.³⁸

Ms. Rahall denied using her relationship with her brother to threaten RJI, and accused the firm of dragging Rep. Rahall into the lawsuit and of "shamelessly" impugning him.³⁹ A spokeswoman for Rep. Rahall said, "Congressman Rahall's family does not lobby him. Congressman Rahall does not allow any member of his family to lobby him."⁴⁰ Nonetheless, Mr. Zola, Ms. Rahall's business partner, testified that while Ms. Rahall told him she would not approach her brother directly, "I think she spoke to the staff."⁴¹ Rep. Rahall's spokeswoman, Diane Luensmann, did not address whether or not Rep. Rahall allowed his sister to lobby his staff.⁴² In addition, *Politico* reported that Ms. Rahall has an inbox for mail at Rep. Rahall's congressional office.⁴³ When asked about the mailbox, Ms. Luensmann said she had "no information."⁴⁴

Rakhat Aliyev

While at RJI, Ms. Rahall lobbied for Rakhat Aliyev, a former son-in-law of Kazakhstan's president, Nursultan Nazarbayev.⁴⁵ Mr. Aliyev and his former father-in-law were publicly feuding, and Mr. Aliyev sought to gain leverage in the dispute by hiring Washington lobbyists to press his case.⁴⁶ The issue was a politically sensitive one involving a strategic ally, since Kazakhstan both supplies oil to the United States and offers a route for supplies to American troops in Afghanistan.⁴⁷ RJI and Ms. Rahall reported their lobbying work on Mr. Aliyev's behalf through reports filed under the Lobbying Disclosure Act, which requires less detail about lobbying contacts than reports filed under the FARA.⁴⁸

³⁶ *RJI Government Strategies, Inc., et al. v. Rahall, et al.*, 2009 CA 007515 B (D.C. Sup. Ct.), Email from Bart Marcois to Hilliard Zola, attached as Exhibit 7 to Defendants' Motion for Summary Judgment.

³⁷ *RJI Government Strategies, Inc., et al. v. Rahall, et al.*, 2009 CA 007515 B (D.C. Sup. Ct.), Affidavit of Bart Marcois, attached as Exhibit 8 to Defendants' Motion for Summary Judgment.

³⁸ *Id.*

³⁹ *RJI Government Strategies, Inc., et al. v. Rahall, et al.*, 2009 CA 007515 B (D.C. Sup. Ct.), Defendants' Motion for Summary Judgment; *RJI Government Strategies, Inc., et al. v. Rahall, et al.*, 2009 CA 007515 B (D.C. Sup. Ct.), Answer, Affirmative Defenses and Counterclaims of Defendant Tanya Rahall to Plaintiffs' Amended Complaint.

⁴⁰ Bresnahan, *Politico*, Oct. 7, 2010.

⁴¹ *RJI Government Strategies, Inc., et al. v. Rahall, et al.*, 2009 CA 007515 B (D.C. Sup. Ct.), Deposition of Hilliard Zola, attached as Exhibit 16 to Defendants Rahall and Zola's Response to Plaintiffs' Statement of Undisputed Material Facts and Identification of Material Facts as to which There are Genuine Issues of Dispute.

⁴² Bresnahan, *Politico*, Oct. 7, 2010.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *RJI Government Strategies, Inc., Second Quarter 2008 Lobbying Disclosure Report on behalf of Speedy Funk Film UND*, Secretary of the Senate, Office of Public Records; Eric Lipton, *Feud in Kazakh President's Family Spills Into U.S.*, *New York Times*, May 29, 2011.

⁴⁶ Lipton, *New York Times*, May 29, 2011.

⁴⁷ *Id.*

⁴⁸ *RJI Government Strategies, Inc., Second Quarter 2008 Lobbying Disclosure Report on behalf of Speedy Funk Film UND*, Secretary of the Senate, Office of Public Records.

Soon after Ms. Rahall signed on as a lobbyist for Mr. Aliyev, Rep. Rahall, along with Rep. Darrell Issa (R-CA), traveled to Kazakhstan to meet with the country's president.⁴⁹ RJI lobbyists asked Rep. Issa to take up the cause of one of Mr. Aliyev's relatives, according to a letter obtained by the *New York Times*.⁵⁰ According to the *Times*, Rep. Issa agreed to RJI's request.⁵¹ It is unknown whether RJI or Ms. Rahall directly lobbied Rep. Rahall to travel to Kazakhstan, or whether he advocated for Mr. Aliyev's interests while there.

Potential Violations

Unauthorized Use of Congressional Stationary

Official stationary, like other official resources, may be used only for official purposes.⁵² While members of Congress may use congressional stationary for letters of recommendation in certain circumstances, such as on behalf of applicant's seeking admission to a military academy or to a prospective employer on behalf of a current or former employee who has worked for that member in an official capacity, in most other instances, letters of recommendation must be prepared on a member's personal stationary.⁵³ Under these guidelines, a letter to a judge requesting leniency may not be written on official congressional stationary.

Moreover, although Rep. Rahall has claimed he did not use his official stationary to write the letter to the judge requesting leniency for his son, the stationary included a facsimile of the congressional seal as well as the words "Congress of the United States." The federal criminal code prohibits the use of the congressional seal on stationary for conveying "a false impression of sponsorship or approval" by the U.S. government, including Congress.⁵⁴

By using a facsimile of official stationary, if not official stationary, Rep. Rahall engaged in the unauthorized use of congressional stationary.

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from "taking any official actions for the prospect of personal gain for themselves or anyone else."⁵⁵ House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to

⁴⁹ Lipton, *New York Times*, May 29, 2011.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² House Comm. on Standards of Official Conduct, House Ethics Manual, p. 320 (110th Cong. 2d Sess., 2008 ed.).

⁵³ *Id.*, pp. 320-321.

⁵⁴ 18 U.S.C. § 713; *see also* House Ethics Manual, p. 180.

⁵⁵ House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

By allowing his sister, Tanya Rahall, to lobby him, by introducing legislation at his sister's urging to benefit one of her clients, by allowing her to trade on his position for her own business purposes, and by allowing Ms. Rahall to maintain a mailbox in his congressional office, Rep. Rahall likely has used his position for his sister's personal gain.

Code of Ethics for Government Service, Clause 5

The Code of Ethics for Government Service provides that government officials should

Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his official duties.⁵⁶

By assisting his sister Ms. Rahall on behalf of her lobbying clients, and by allowing her to maintain a mailbox in his congressional office, Rep. Rahall likely has violated the Code of Ethics for Government Service.

Conduct Not Reflecting Creditably on the House

House Rule 23 requires all members of the House to conduct themselves "at all times in a manner that reflects creditably on the House."⁵⁷ This ethics standard is considered to be "the most comprehensive provision" of the code.⁵⁸ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with "flagrant" violations of the law that reflect on "Congress as a whole," and that might otherwise go unpunished.⁵⁹ This rule has been relied on by the committee in numerous prior cases in which the committee found unethical conduct including: the failure to report campaign contributions,⁶⁰ making false statements to the committee,⁶¹ criminal convictions for bribery,⁶² or accepting illegal gratuities,⁶³ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁶⁴

⁵⁶ 72 Stat., Part 2, B12, H. Res. 175, 85th Cong. (adopted July 11, 1958); House Ethics Manual, p. 20.

⁵⁷ Rule 23, cl. 1.

⁵⁸ House Ethics Manual, p. 12.

⁵⁹ House Comm. on Standards of Official Conduct, *Report Under the Authority of H. Res. 418*, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁶⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

⁶¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

⁶² House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4

By using congressional letterhead to ask a judge for leniency for his son, and by allowing his sister to lobby him and trade on his official position for her personal financial benefit and the benefit of her clients, Rep. Rahall has engaged in conduct that does not reflect creditably on the House.

(1980) (member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁶³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (member resigned while expulsion resolution was pending).

⁶⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

REPRESENTATIVE LAURA RICHARDSON

Representative Laura Richardson (D-CA) is a three-term member of Congress, representing California's 37th congressional district. Rep. Richardson's ethics issues stem from misusing official resources for campaign activity and personal benefit. Rep. Richardson was included in CREW's 2008 and 2009 congressional corruption reports for unrelated matters.¹

Misuse of Congressional Staff and Resources for Campaign Activity

In a press interview published in March 2011, Maria Angel Macias, Rep. Richardson's former district scheduler, alleged that Rep. Richardson had required members of her staff to volunteer time on her 2010 re-election campaign.² Ms. Macias said she often scheduled campaign events "while on the taxpayer dime," and that Rep. Richardson regularly directed her to call staff members outside of office hours "to make them work at campaign events."³ According to Ms. Macias, Rep. Richardson frequently "would just ask me to call [staff members] and tell them to come to the campaign office. She would ask me to schedule people (staff members and drivers to accompany Richardson) for campaign fundraisers for other elected officials."⁴ Ms. Macias also said Rep. Richardson's staff members often had little time for their families because they "had to attend campaign functions."⁵ In her resignation letter, Ms. Macias added that "on more than one occasion [she] was asked to do a task or coordinate an event that was on the ethical borderline and not in [her] job description."⁶

Although Rep. Richardson claimed she has never forced employees to volunteer, Ms. Macias' allegations match statements made by members of Rep. Richardson's congressional staff in other news reports.⁷ According to a press report published in April 2010, Rep. Richardson's former employees and other elected officials complained that "she forces her staff to work on her political campaigns under threat of dismissal."⁸ Some of her staff further reported that prior to the 2010 election, the congresswoman forced them "under threat of termination" to work on her re-election campaign each weekday evening from 6:00 to 9:00 p.m. and on weekends from 9:00 a.m. to 8:00 p.m.⁹ For example, Rep. Richardson reportedly forced her staff to act as servers at a campaign event, which allegedly led the staffers to complain to the House Committee on Ethics.¹⁰

¹ Rep. Richardson's 2008 and 2009 ethics issues stemmed from accepting favorable loans, and failing to properly report a loan on her financial disclosure statements. For more information, see CREW's Most Corrupt: The 15 Most Corrupt Members of Congress 2009, available at http://www.crewsmostcorrupt.org/files/laura_richardson_most_corrupt.pdf.

² Paul Eakins, Former Staffer: Interviewed by Feds While Working for Rep. Richardson, *Contra Costa Times*, March 14, 2011.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Letter from CREW Executive Director Melanie Sloan to FBI Assistant Director in Charge James W. McJunkin, June 28, 2011 (CREW Letter), Exhibit B, Letter from Maria Angel Macias to Congresswoman Laura Richardson, March 3, 2011.

⁷ Eakins, *Contra Costa Times*, Mar. 14, 2011.

⁸ Betty Pleasant, The Soulvine: Calling All Cars, *Los Angeles Wave*, April 7, 2010.

⁹ Betty Pleasant, The Soulvine: Harsh Taskmistress?, *Los Angeles Wave*, November 10, 2010.

¹⁰ *Id.*

On September 29, 2010, Rep. Richardson held a fundraiser called “Democratic Idol.”¹¹ On September 27, 2010, using her official House email account, Rep. Richardson’s chief of staff, Shirley Cooks, sent a message stating, “All staff are required to attend Ms. Richardson’s event. Bring spouses and tell interns they have to be there as well. Thanks.”¹²

The next day, another of Rep. Richardson’s staff members, Daysha Austin, used a personal email address to send an email to the House email accounts of a number of other Rep. Richardson staffers stating, “The Congresswoman is asking all staff that has one to wear their staff shirt to tomorrow’s event so we can be visible and easily identified.”¹³ Notably, the “staff shirts” employees were required to wear are white button-down shirts embroidered with the words “37th Congressional District.”¹⁴

Also on September 28, Ms. Cooks, again using her official email account, sent an email at 11:30 p.m. to the House account of a House staff member asking if he was “available tomorrow at 5:30 to 7:30ish to cover an event at Jones Day that includes Pelosi, Clyburn and ten more members in a talent show.”¹⁵ The next morning (and day of the event), the staff member explained he was not available, which led another staff member to send the following email to Ms. Cooks:

Daysha just told me I’ll be taking photos at the event tonight. I explained to her I would be leaving early and she ignored me. If this is not somehow rectified I am prepared to render my resignation effective immediately. I am completely serious about this. In addition, for your information, I will be taking action against this office through House leadership if I am forced to go this route.¹⁶

Soon thereafter, Ms. Cooks responded, “Calm down. Who do you know up there who could substitute? Someone in another office maybe who would do it as a favor?”¹⁷ The staff member replied, “I don’t know of anyone who would do it as a favor, only those that do it for money, especially at this late of notice.”¹⁸ Ms. Cooks agreed, “Ok. The campaign will pay. Rush to get someone please.”¹⁹

In addition to requiring staff members to participate in the “Democratic Idol” event, Rep. Richardson also used employees to prepare materials for other campaign-related events. Using

¹¹ CREW Letter, Exhibit E, Flyer for “Congresswoman Laura Richardson’s (D-CA 37th) 1st Ever Democratic Idol Fundraiser” at the Old Jones Day Building - Rooftop Meeting Room, September 29, 2010.

¹² CREW Letter, Exhibit F, Email from official House account of Shirley Cooks to CA37-dc, Subject: Wednesday at 5:00 pm, September 27, 2010. The CA37-dc is a group list of all staff members of Rep. Richardson’s Capitol Hill office.

¹³ CREW Letter, Exhibit G, Email from Yahoo account of Daysha Austin to Shirley Cooks, et al., Subject: Rep. Richardson’s Democratic Idol, September 28, 2010.

¹⁴ CREW Letter, Exhibit H, Photograph of staff shirt.

¹⁵ CREW Letter, Exhibit I, Email chain beginning with email from Shirley Cooks to Richardson staff member, Subject: Question, September 28, 2010.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ CREW Letter, Exhibit I.

official office accounts, a legislative assistant sent an email to two other staff members stating Rep. Richardson asked staff to prepare a binder for her for an endorsement event.²⁰ The staff member wrote that Rep. Richardson “needs a lot of the same information that she needed for her last endorsement event,” implying Rep. Richardson previously had used staff members to prepare campaign material.²¹

Rep. Richardson also attempted to dictate whether and for which political campaigns her congressional staff were permitted to volunteer. Following a staff meeting in which Rep. Richardson apparently encouraged staff to volunteer on campaigns through the Democratic Congressional Campaign Committee (DCCC), Ms. Cooks forwarded a staff member’s request to volunteer for a race in Tennessee.²² In response, Rep. Richardson angrily wrote:

I am disturbed by this. I never authorized any staff to communicate to the dccc. I certainly never authorized staff to consider a specific seat. Those are my decisions. The direction was if someone was interested to see me NOT to go and do what he has done.²³

Using Staff for Personal Errands

Rep. Richardson also appears to routinely have sent staff on personal errands. A typical email, sent by Ms. Cooks to the entire office on September 30, 2009, reads “On an errand for CLR. Will arrive shortly.”²⁴ In eight emails dated September 24, 2009 through December 1, 2009, staff members reported leaving the office to go to the dry cleaner for Rep. Richardson.²⁵ In 13 additional emails dated October 20, 2009 through April 29, 2010, Staff Assistant Seng Peng indicated she would be out of the office on errands for the congresswoman.²⁶

House Ethics Investigation

Rep. Richardson repeatedly has denied reports that an ethics investigation into her misuse of staff for campaign activity is underway, though she acknowledges that ethics investigators have interviewed her staff.²⁷ Nonetheless, several of the congresswoman’s staff members received an email from the ethics committee captioned “Investigation of Certain Allegations Related to Campaign Activities.”²⁸ The email further states “Pursuant to rule 18(a), the committee has authorized counsel to conduct interviews, collect records and other documentation.”²⁹ In addition, Ms. Macias stated in her resignation letter she was “deposed by

²⁰ CREW Letter, Exhibit J, Email from Lucinda Richard to Henry Rogers and Eric Boyd, Subject: CA State Democratic Party Endorsement on 3/20, March 17, 2010.

²¹ *Id.*

²² CREW Letter, Exhibit K, Email from Shirley Cooks to Laura Richardson, Subject: FW: Memo: Campaign Leave Request, October 1, 2010.

²³ *Id.*

²⁴ CREW Letter, Exhibit L, Email from Shirley Cook to CA37-dc, September 30, 2009.

²⁵ CREW Letter, Exhibit M, Eight emails from Staff Assistant Seng H. Peng and Legislative Correspondent Lucinda Richard to CA37-dc, with dry cleaner included in subject line.

²⁶ CREW Letter, Exhibit N, Emails from Seng H. Peng to CA37-dc, with errand included in the subject line.

²⁷ Eakins, *Contra Costa Times*, Mar. 14, 2011; Pleasant, *Los Angeles Wave*, Nov. 10, 2010.

²⁸ *Id.*

²⁹ *Id.*

an ethics investigator with a lawyer present.”³⁰ According to press reports, Ms. Macias said the investigation seemed to center on whether Ms. Austin “was being paid from her government job while doing campaign stuff.”³¹

Legal Fees

Rep. Richardson’s campaign committee’s April 2011 quarterly report showed the committee owed \$129,280.38 in legal fees to three firms: Perkins Coie, Reich Adell and Cvitan, and Kaufman Legal Group.³²

Potential Violations

Intimidation to Secure Political Contributions

Federal law prohibits members of Congress from threatening to fire, demote, or in any way change the official rank or compensation of their staff members for withholding or neglecting to make a political contribution.³³ This law “protect[s] all federal officials . . . from being forced by job-related threats or reprisals to donate to political candidates or causes,” and should be used “whenever a federal employee is actively threatened with an adverse change to his or her conditions of employment to induce a political contribution.”³⁴ Coerced donations of anything of value, including services, are prohibited by this section.³⁵

House ethics rules also make clear “in no event may a Member or office compel a House employee to do campaign work.”³⁶ This broad prohibition forbids members of Congress “from not only threatening or attempting to intimidate employees regarding doing campaign work, but also from directing or otherwise pressuring them to do such work.”³⁷

By forcing her employees to work on her re-election campaign on weeknights and weekends under threat of termination or other job-related reprisals, Rep. Richardson likely violated 18 U.S.C. § 606 and House ethics rules.

In addition, by implicitly threatening reprisals for staff members who sought to volunteer on campaigns without her permission, Rep. Richardson likely violated 18 U.S.C. § 606 and House ethics rules.

³⁰ CREW Letter, Exhibit B.

³¹ Eakins, *Contra Costa Times*, Mar. 14, 2011.

³² Richardson for Congress Committee, FEC Form 3, April Quarterly Report 2011, April 15, 2011.

³³ 18 U.S.C. § 606.

³⁴ United States Department of Justice, Federal Prosecution of Election Offenses, p. 112 (7th ed. 2007).

³⁵ *Id.*

³⁶ House Comm. on Standards of Official Conduct, House Ethics Manual, pp. 135-36 (110th Cong., 2d Sess., 2008 ed.).

³⁷ *Id.*, p. 136.

Solicitation on Federal Property

Federal law prohibits any person, including members of Congress, from soliciting political donations, including money “or other thing of value,” from anyone in a federal building.³⁸ Violations of this statute “may arise from solicitations that can be characterized as ‘shakedowns’ of federal personnel. . . . [including] shakedowns of congressional employees.”³⁹

To the extent Rep. Richardson was on federal property while conducting any coerced solicitation of “volunteer” service from her staff members, Rep. Richardson likely violated 18 U.S.C. § 607.

Improper Use of Appropriated Funds

Pursuant to 31 U.S.C. § 1301(a), “[a]ppropriations shall be applied only to the objects for which the appropriations were made.” Corresponding regulations of the Committee on House Administration provide that “[e]mployees may not be compensated from public funds to perform non-official, personal, political, or campaign activities on behalf of the Member, the employee, or anyone else.”⁴⁰

House ethics rules also make clear that “[e]mployees of the House are paid from funds of the United States Treasury to perform public duties” that expressly “do not include performing nonofficial, personal, or campaign duties.”⁴¹ In addition, Rule 23, clause 8 provides:

A Member, Delegate, Resident Commissioner, or officer of the House may not retain an employee who does not perform duties for the offices of the employing authority commensurate with the compensation he receives.

According to the Campaign Booklet published by the House Ethics Committee, there is a “basic principle that government funds should not be spent to help incumbents gain re-election.”⁴² The official allowance of House offices, and the goods and services acquired with those allowances, are to be used for House business and are not to be used for campaign or political purposes.⁴³ The Campaign Booklet clearly states that House offices, including district offices, are supported with official funds and, therefore, are considered official resources.⁴⁴ As a result, they may not be used to conduct campaign or political activities.⁴⁵

³⁸ 18 U.S.C. § 607.

³⁹ United States Department of Justice, Federal Prosecution of Election Offenses, pp. 114-15.

⁴⁰ Committee on House Administration, Members’ Handbook, Staff.

⁴¹ House Ethics Manual, pp. 267-268 (citing *United States v. Rostenkowski*, 59 F.3d 1291, 1307-11 (D.C. Cir. 1995), *reh’g denied*, 68 F.3d 489 (D.C. Cir. 1995); *United States v. Diggs*, 613 F.2d 988, 994-997, 1002 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 982 (1980)).

⁴² House Comm. on Standards of Official Conduct, *General Prohibition Against Using Official Resources for Campaign or Political Purposes*, Campaign Booklet (citing *Common Cause v. Bolger*, 574 F. Supp. 672, 683 (D.D.C. 1982), *aff’d*, 461 U.S. 911 (1983)).

⁴³ Campaign Booklet.

⁴⁴ *Id.*

⁴⁵ *Id.*

The Campaign Booklet provides two cases, one in which a member was criminally prosecuted and another in which a staffer was criminally prosecuted, for misusing official resources. In 1993, a former House employee pleaded guilty to a charge of theft of government property after he was found doing campaign work at a time that he claimed he was conducting official business.⁴⁶ In 1979, a former member pleaded guilty to charges of mail fraud and income tax evasion in a case centering on claims that individuals on the congressional payroll were paid not for the performance of official duties, but instead for staffing and operating various campaign headquarters in the member's re-election campaign.⁴⁷

By using her congressional staff members to conduct campaign business during regular business hours, including preparing binders for campaign events, coordinating a photographer for the "Democratic Idol" fundraiser, and directing her district scheduler to schedule staff members for campaign activity, Rep. Richardson likely violated 31 U.S.C. § 1301(a), House ethics rules, and the regulations of the Committee on House Administration.

In addition, by repeatedly using her congressional employees to run personal errands for her, Rep. Richardson likely violated 31 U.S.C. § 1301(a), House ethics rules, and the regulations of the Committee on House Administration.

False Statements to Congress

Federal law prohibits members of Congress from making "any materially false, fictitious, or fraudulent statement or representation"⁴⁸ on "a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch."⁴⁹ If Rep. Richardson certified on payroll forms she spent official funds only for official expenses despite frequently requiring her congressional staff to perform campaign and personal work, she likely violated 18 U.S.C. § 1001.

Conduct Not Reflecting Creditably on the House

House Rule 23 requires all members of the House to conduct themselves "at all times in a manner that reflects creditably on the House."⁵⁰ This ethics standard is considered to be "the most comprehensive provision" of the code.⁵¹ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with "flagrant" violations of the law that reflect on "Congress as a whole," and that might otherwise go unpunished.⁵² This rule has been relied on by the committee in numerous prior cases in which the committee found unethical conduct including: the failure to report campaign contributions,⁵³ making false statements to the committee,⁵⁴ criminal

⁴⁶ Campaign Booklet (citing *United States v. Bresnahan*, Criminal No. 93-0409 (D.D.C. 1993)).

⁴⁷ Campaign Booklet (citing *United States v. Clark*, Criminal No. 78-207 (W.D. Pa. 1978)).

⁴⁸ 18 U.S.C. § 1001(a)(2).

⁴⁹ 18 U.S.C. § 1001(c)(2).

⁵⁰ Rule 23, cl. 1.

⁵¹ House Ethics Manual, p. 12.

⁵² House Comm. on Standards of Official Conduct, *Report Under the Authority of H. Res. 418*, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁵³ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-

convictions for bribery,⁵⁵ or accepting illegal gratuities,⁵⁶ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁵⁷

By forcing her employees to work on her re-election campaign on weeknights and weekends under threat of termination or other job-related reprisals, threatening reprisals for staff members who sought to volunteer on campaigns without her permission, soliciting donations on federal property, and using her congressional staff members to conduct campaign business during regular business hours and run personal errands for her, Rep. Richardson acted in a manner that brings discredit to the House.

1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

⁵⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

⁵⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁵⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (member resigned while expulsion resolution was pending).

⁵⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

REPRESENTATIVE DAVID RIVERA

Representative David Rivera (R-FL) is a first term member of Congress, representing Florida's 25th congressional district. He was a Florida state representative from 2002 until his election to Congress in 2010. His ethics issues stem from what appear to be multiple money laundering and tax evasion schemes involving: (1) his role in a pro-slots campaign; (2) repeatedly misreporting his income and liabilities on personal financial disclosure forms; (3) using campaign funds for personal benefit and to steer money to family and friends; and (4) his personal and professional ties to an ex-lobbyist and her consulting company.

Rep. Rivera is under criminal investigation by the Federal Bureau of Investigation (FBI), the Internal Revenue Service (IRS), the Florida Department of Law Enforcement, the Miami-Dade Police public corruption unit, and the Miami-Dade State Attorney's office.¹ It is unclear which entity has jurisdiction over specific pieces of the larger criminal probe, and the status of each investigation is unknown.²

Millennium Marketing

Millennium Marketing, Inc. is a consulting firm that sits at the center of the investigations into Rep. Rivera's personal and campaign finances. The company was founded as Millennium Marketing Strategies, Inc. in 2000 by Rep. Rivera's mother, Daisy Magarino, but according to state incorporation records it dissolved the following year.³ Nevertheless, Rep. Rivera included income from Millennium Marketing on his state financial disclosure forms between 2002 and 2005.⁴ In 2006, records show Rep. Rivera's godmother, Ileana Medina, created Millennium Marketing, Inc. and Ms. Magarino has been listed on state records as a company vice president since 2008.⁵

Flagler Dog Track Deal and Payments

Both state and federal officials are investigating more than \$500,000 in payments made by the Flagler Dog Track, now known as Magic City Casino, to Millennium Marketing.⁶ In

¹ Michael Putney, Murky Finances Limit Rivera's Effectiveness, *Miami Herald*, May 3, 2011; Scott Hiaasen and Marc Caputo, Feds Investigate Congressman David Rivera on Casino Contract, *Miami Herald*, July 21, 2011.

² *Id.*

³ Millennium Marketing Strategies, Inc., Articles of Incorporation, Secretary of State: Tallahassee, Florida, filed October 31, 2000, available at www.sunbiz.org; Scott Hiaasen and Patricia Mazzei, A \$500,000 Question Over Track's Payments, *Miami Herald*, December 16, 2010; Millennium Marketing Strategies, Inc., Detail By Entity Name, Secretary of State: Tallahassee, Florida, filed September 21, 2001, available at www.sunbiz.org.

⁴ State Rep. David Rivera, Full and Public Disclosure of Financial Interests for Calendar Year 2002, filed September 4, 2002; State Rep. David Rivera, Full and Public Disclosure of Financial Interests for Calendar Year 2003, filed July 12, 2004; State Rep. David Rivera, Full and Public Disclosure of Financial Interests for Calendar Year 2004, filed July 1, 2005; State Rep. David Rivera, Full and Public Disclosure of Financial Interests for Calendar Year 2005, filed July 17, 2006.

⁵ Millennium Marketing Inc., Articles of Incorporation, Secretary of State: Tallahassee, Florida, filed September 25, 2006, available at www.sunbiz.org; Millennium Marketing Inc., Annual Report for Calendar Year 2008, Secretary of State: Tallahassee, Florida, filed April 4, 2008, available at www.sunbiz.org; Hiaasen and Mazzei, *Miami Herald*, Dec. 16, 2010.

⁶ Hiaasen and Caputo, *Miami Herald*, July 21, 2011.

addition, the FBI and the IRS are looking into a previously undisclosed \$1 million consulting deal between the track and Millennium Marketing.⁷ It appears the IRS is considering whether Rep. Rivera has engaged in income tax evasion.⁸

In October 2006, one month after Millennium Marketing was reincorporated, the firm was hired by Flagler Dog Track to run a campaign aimed at winning approval for Las Vegas style slot machines via a voter referendum.⁹ At the time, slot machines were a delicate political issue.¹⁰ Outgoing Gov. Jeb Bush (R) and then-state House Speaker Marco Rubio (R), who went on to win a U.S. Senate seat in 2010, both opposed allowing slot machines.¹¹ Nevertheless, voters approved the measure in January 2008.¹²

Rep. Rivera initially denied working for the dog track, but later released a statement acknowledging his role.¹³ A lawyer for the dog track said it was Rep. Rivera who had first approached the track and asked to manage the campaign.¹⁴ Rep. Rivera also requested any payments be made through Millennium Marketing instead of directly to him.¹⁵

According to a contract signed by both Ms. Medina and Rep. Rivera, Rep. Rivera was the “strategic director” of the pro-slots campaign and its “Top Leader of Chain of Command of All Campaign Consultants and Campaign Activities,” despite not being listed as an officer with Millennium Marketing.¹⁶ He promised to spend 75% of his time managing the campaign.¹⁷ Rep. Rivera’s duties included not only garnering support for the bill with unions and city leaders, but also “identification and neutralization of opposition,” including animal rights groups, competing gambling operations, and the Latino community.¹⁸

Flagler Dog Track initially paid Millennium Marketing \$50,000 in 2006, and then another \$460,000 after the initiative passed in January 2008.¹⁹ Millennium Marketing’s contract also called for a \$500,000 “success fee,” which the firm reportedly has requested.²⁰ Rep. Rivera did not report any income from the campaign on his state financial disclosure forms.²¹

⁷ *Id.*

⁸ *Id.*

⁹ Hiaasen and Mazzei, *Miami Herald*, Dec. 16, 2010; Millennium Marketing Inc., Articles of Incorporation, Secretary of State: Tallahassee, Florida, filed September 25, 2006, available at www.sunbiz.org.

¹⁰ *Id.*

¹¹ *Id.*

¹² Hiaasen and Caputo, *Miami Herald*, July 21, 2011.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Hiaasen and Mazzei, *Miami Herald*, Dec. 16, 2010.

¹⁶ *Id.*; Millennium Marketing Inc., Articles of Incorporation, Secretary of State: Tallahassee, Florida, filed September 25, 2006, available at www.sunbiz.org.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Hiaasen and Mazzei, *Miami Herald*, Dec. 16, 2010; Amy Driscoll, New Miami-Dade Slots Still Months Away, *Miami Herald*, February 10, 2008.

²⁰ Hiaasen and Caputo, *Miami Herald*, July 21, 2011.

²¹ State Rep. David Rivera, Full and Public Disclosure of Financial Interests for Calendar Year 2006, filed August 20, 2007; State Rep. David Rivera, Full and Public Disclosure of Financial Interests for Calendar Year 2007, filed June 17, 2008; State Rep. David Rivera, Full and Public Disclosure of Financial Interests for Calendar Year 2008, filed July 8, 2009.

Millennium Marketing Loans

Rep. Rivera failed to disclose \$132,000 in loans from Millennium Marketing on state and federal financial disclosure forms covering the period from 2007 to 2010,²² although he admitted to the *Associated Press* he had received four loan payments totaling that amount.²³ Following press reports, Rep. Rivera amended his federal and state financial disclosure forms to reflect the loans.²⁴ The amended forms indicate the loans were made during the period Rep. Rivera worked on the pro-slots campaign.²⁵

U.S. Agency for International Development Consulting and Income

During his tenure as a state representative, Rep. Rivera repeatedly claimed his main source of income outside his work for the legislature came from consulting for the U.S. Agency for International Development (USAID).²⁶ Although required by state law to include payments he received from outside employers on his personal financial disclosure forms, Rep. Rivera routinely listed the agency as a source of income without revealing how much money he had been paid.²⁷ Checking with USAID, the *Miami Herald* discovered the agency had no record of Rep. Rivera or his consulting company, InterAmerican Government Relations, ever working for

²² State Rep. David Rivera, Full and Public Disclosure of Financial Interests for Calendar Year 2007, filed June 17, 2008; State Rep. David Rivera, Amendment to Full and Public Disclosure of Financial Interests for Calendar Year 2007, filed January 4, 2011; State Rep. David Rivera, Full and Public Disclosure of Financial Interests for Calendar Year 2008, filed July 8, 2009; State Rep. David Rivera, Amendment to Full and Public Disclosure of Financial Interests for Calendar Year 2008, filed January 4, 2011; State Rep. David Rivera, Full and Public Disclosure of Financial Interests for Calendar Year 2009, filed June 18, 2010; State Rep. David Rivera, Amendment to Full and Public Disclosure of Financial Interests for Calendar Year 2009, filed January 4, 2011; State Rep. David Rivera, Full and Public Disclosure of Financial Interests for Calendar Year 2010, filed March 25, 2011.

²³ Scott Hiaasen, U.S. Rep.-elect David Rivera Discloses \$137,000 Loan He Received From Mother's Company, *Miami Herald*, January 3, 2011. While it was originally reported that Rep. Rivera had failed to disclose \$137,000 in loans, Rep. Rivera later corrected the figure, without explanation, to \$132,000. See Curt Anderson, New Fla. Congressman Quietly Reported Loans in Dec., *Associated Press*, January 4, 2011.

²⁴ Anderson, *Associated Press*, Jan. 4, 2011; Rep. David Rivera, Amendment to Candidate Personal Financial Disclosure Statement for 2009-2010, filed December 16, 2010; State Rep. David Rivera, Amendment to Personal Financial Disclosure Statement for Calendar Year 2009, filed January 4, 2011; State Rep. David Rivera, Amendment to Full and Public Disclosure of Financial Interests for Calendar Year 2008, filed January 4, 2011; State Rep. David Rivera, Amendment to Full and Public Disclosure of Financial Interests for Calendar Year 2007, filed January 4, 2011.

²⁵ Hiaasen, *Miami Herald*, Jan. 3, 2011.

²⁶ Scott Hiaasen and Patricia Mazzei, Source of Rivera's Income Unclear, *Miami Herald*, October 13, 2010.

²⁷ Scott Hiaasen and Patricia Mazzei, Agency Disappears from David Rivera's Forms, *Miami Herald*, October 19, 2010; State Rep. David Rivera, Full and Public Disclosure of Financial Interests for Calendar Year 2007, filed June 17, 2008; State Rep. David Rivera, Full and Public Disclosure of Financial Interests for Calendar Year 2008, filed July 8, 2009; State Rep. David Rivera, Full and Public Disclosure of Financial Interests for Calendar Year 2009, filed June 18, 2010; State Rep. David Rivera, Full and Public Disclosure of Financial Interests for Calendar Year 2006, filed August 20, 2007; State Rep. David Rivera, Full and Public Disclosure of Financial Interests for Calendar Year 2005, filed July 17, 2006; State Rep. David Rivera, Full and Public Disclosure of Financial Interests for Calendar Year 2004, filed July 1, 2005; State Rep. David Rivera, Full and Public Disclosure of Financial Interests for Calendar Year 2003, filed July 12, 2004.

the agency.²⁸ Rep. Rivera then claimed he worked as a subcontractor, something not generally tracked by USAID,²⁹ but declined to provide details about his work for the agency.³⁰

Nevertheless, Rep. Rivera provided the *Herald* with records of three trips during which he claimed he did development work in Mexico and Chile in 2005 and 2008.³¹ The *Herald* found that in fact, Rep. Rivera had traveled to Mexico and Chile as a guest of the U.S. State Department under its International Information Program, which sends American politicians and academics overseas to give speeches and attend conferences.³² A State Department spokesperson said Rep. Rivera had traveled as a private citizen, not as a contractor or consultant to the U.S. government.³³ Confronted with this evidence, Rep. Rivera's spokesperson claimed the travel records illustrated the type of work he had performed, not proof of his work on behalf of USAID.³⁴ Soon thereafter, Rep. Rivera amended his state financial disclosure forms to remove any references to income other than his state legislative salary.³⁵

Campaign Spending and Reimbursements

Investigators are also looking into Rep. Rivera's campaigns' payments to Millennium Marketing and ACH Fundraising Strategies, as well as payments the campaigns made to reimburse the candidate.³⁶

On September 27, 2006, two days after the company was reincorporated, Rep. Rivera's campaign for state representative paid Millennium Marketing \$15,000 for campaign consulting.³⁷ Once Rep. Rivera won re-election, his campaign paid Millennium Marketing an additional \$15,000 for coordinating a "thank you campaign."³⁸

²⁸ Laura Wides-Munoz, Republican Candidate David Rivera Questioned Over Income, *Associated Press*, October 27, 2010; Hiaasen and Mazzei, *Miami Herald*, Oct. 13, 2010.

²⁹ Hiaasen and Mazzei, *Miami Herald*, Oct. 19, 2010.

³⁰ Wides-Munoz, *Associated Press*, Oct. 27, 2010.

³¹ Hiaasen and Mazzei, *Miami Herald*, Oct. 13, 2010.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Hiaasen and Mazzei, *Miami Herald*, Oct. 13, 2010; State Rep. David Rivera, Amendment to Full and Public Disclosure of Financial Interests for Calendar Year 2003, filed October 15, 2010; State Rep. David Rivera, Amendment to Full and Public Disclosure of Financial Interests for Calendar Year 2004, filed October 15, 2010; State Rep. David Rivera, Amendment to Full and Public Disclosure of Financial Interests for Calendar Year 2005, filed October 15, 2010; State Rep. David Rivera, Amendment to Full and Public Disclosure of Financial Interests for Calendar Year 2006, filed October 15, 2010; State Rep. David Rivera, Amendment to Full and Public Disclosure of Financial Interests for Calendar Year 2007, filed October 15, 2010; State Rep. David Rivera, Amendment to Full and Public Disclosure of Financial Interests for Calendar Year 2008, filed October 15, 2010; State Rep. David Rivera, Amendment to Full and Public Disclosure of Financial Interests for Calendar Year 2009, filed October 15, 2010.

³⁶ Hiaasen and Mazzei, *Miami Herald*, Dec. 16, 2010; Scott Hiaasen and Patricia Mazzei, Investigators Look into Rep. Rivera's 'Thank You' Spending, *Miami Herald*, January 15, 2011; Kyle Munzenrieder, Rep. David Rivera Paid Himself \$60,000 in Unexplained Campaign Reimbursements, *Miami New Times*, January 28, 2011.

³⁷ Florida Department of State Division of Elections, Candidate Search: "Rivera, David," List of Expenditures, 2006 General Election, available at <http://doe.dos.state.fl.us/campaign-finance/pend.asp>; Hiaasen and Mazzei, *Miami Herald*, Dec. 16, 2010.

³⁸ Florida Department of State Division of Elections, Candidate Search: "Rivera, David," List of Expenditures, 2006 General Election, available at <http://doe.dos.state.fl.us/campaign-finance/pend.asp>.

Furthermore, a few months after dropping out of a state Senate race in early 2010, but once he had started his congressional campaign, Rep. Rivera's state campaign paid the now defunct ACH Fundraising Strategies \$75,000 categorized as "thank you" expenses: \$50,000 on July 15, 2010, a day before the company was officially incorporated, and \$25,000 on August 30, 2010.³⁹ ACH, which dissolved a few months later, on December 23, 2010, was owned by Alyn Cruz Higgins, the daughter of Rep. Rivera's congressional aide and former state legislative aide, Alina Garcia.⁴⁰ Ms. Higgins' lawyer said her company had provided consulting services to Rep. Rivera's campaign.⁴¹

The *Associated Press* reported that over the eight years Rep. Rivera was a state legislator, acting as his own campaign treasurer, he reimbursed himself over \$160,000 – more than any other Florida representative.⁴² Furthermore, he failed to provide explanations, as required by state law, for about \$60,000 of those payments.⁴³

Relationship with Esther Nuhfer and Communication Solutions

State investigators are looking into a potential kickback scheme Rep. Rivera may have had with former Tallahassee lobbyist Esther Nuhfer,⁴⁴ whom Rep. Rivera has described as a fundraising consultant and a close friend.⁴⁵ Ms. Nuhfer lobbied the state House of Representatives while Rep. Rivera was a member, and according to newspaper reports, she frequently worked from Rep. Rivera's office.⁴⁶ Ms. Nuhfer is no longer a registered lobbyist in Florida and has been seen in Rep. Rivera's Washington office.⁴⁷

Political campaigns and committees tied to Rep. Rivera have paid Ms. Nuhfer's consulting firm, Communication Solutions, at least \$817,000 since 2006.⁴⁸ The total includes \$196,483 in payments from Rep. Rivera's 2010 congressional campaign and a \$150,000 bonus for work on his abandoned state Senate campaign.⁴⁹

Rep. Rivera chaired the Miami-Dade GOP from December 2008 to December 2010.⁵⁰ In October and November 2010, the Miami-Dade GOP paid Ms. Nuhfer's firm \$150,000, for radio

³⁹ Hiaasen and Mazzei, *Miami Herald*, Jan. 15, 2011.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Munzenrieder, *Miami New Times*, Jan. 28, 2011.

⁴³ *Id.*

⁴⁴ Scott Hiaasen and Patricia Mazzei, [Miami-Dade Republican Party Can't Show What it got for \\$150,000 Paid to David Rivera's Close Ally](#), *Miami Herald*, February 5, 2011.

⁴⁵ Scott Hiaasen, Patricia Mazzei and Scott Caputo, [Rep. Rivera's Fundraising Consultant Collected \\$817,000 in Fees Since 2006](#), *Miami Herald*, February 19, 2011.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Hiaasen and Mazzei, *Miami Herald*, Feb. 19, 2011; <http://www.opensecrets.org/politicians/expenddetail.php?cid=N00031887&cycle=2010&name=Communication%20Solutions>.

⁵⁰ Patricia Mazzei, [Dade GOP to Select New Leader](#), *Miami Herald*, December 16, 2010.

advertising and get-out-the-vote efforts.⁵¹ Though Rep. Rivera was chairman when the payments were made, his campaign claimed he had recused himself from day-to-day business and decision making after winning the Republican primary for his House seat in August 2010 and that the party's board chose Communication Solutions after his recusal.⁵² In reality, board minutes reveal Rep. Rivera did not recuse himself until September 4, 2010, and that the board agreed to select vendors before that at its August 21, 2010 meeting, without selecting a specific firm.⁵³ Therefore, it appears Rep. Rivera was involved in the decision, but exactly how Ms. Nuhfer's firm was chosen remains unknown.

The Communication Solutions payments were the Miami-Dade GOP's largest expense to a consultant in at least six years.⁵⁴ The party was unable to account for how much of the money was spent.⁵⁵ The Miami-Dade GOP did not have a written contract with Communication Solutions, and officials said they did not receive detailed invoices or records from the firm.⁵⁶

In addition, the FBI has interviewed Ms. Nuhfer as part of its probe into the Flagler Dog Track contract.⁵⁷

Potential Violations

Money Laundering and Tax Evasion

Federal law prohibits anyone from engaging in financial transactions that involve the proceeds of unlawful activity with the intent to avoid paying taxes, to conceal or disguise the nature, source or location of those proceeds, or to avoid a federal or state transaction reporting requirement.⁵⁸ Similarly, it is a crime to attempt to avoid or defeat paying taxes.⁵⁹

If Rep. Rivera engaged in any financial transactions involving the Flagler Dog Track or Millennium Marketing with the goal of concealing money he received illegally, or if he concealed payments he received in an effort to avoid paying taxes, he may have engaged in money laundering and tax evasion.

False Statements on Personal Financial Disclosure Forms

The Ethics in Government Act of 1967 requires all members of Congress to file financial disclosure reports.⁶⁰ Under the statute, the attorney general may seek a civil penalty of up to \$11,000 against any individual who knowingly and willfully falsifies or fails to file or report any

⁵¹ Hiaasen and Mazzei, *Miami Herald*, Feb. 5, 2011.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Hiaasen and Mazzei, *Miami Herald*, Feb. 5, 2011.

⁵⁶ *Id.*

⁵⁷ Hiaasen and Caputo, *Miami Herald*, July 21, 2011.

⁵⁸ 18 U.S.C. § 1956(a)(1).

⁵⁹ 26 U.S.C. § 7201.

⁶⁰ Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

information required by the Act.⁶¹ House Rule 26 incorporates the financial disclosure provisions of the Ethics in Government Act.⁶²

Federal law further prohibits members of Congress from making “any materially false, fictitious, or fraudulent statement or representation”⁶³ on “a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch.”⁶⁴

If Rep. Rivera failed to disclose or misrepresented his income or the true value of his personal assets on his federal financial disclosure forms, he may have violated the Ethics in Government Act and 18 U.S.C. § 1001.

Similarly, if Rep. Rivera failed to disclose or misrepresented his income on his state financial disclosure forms while he was a member of the Florida legislature, he may be subject to public censure, reprimand, and civil penalties.⁶⁵

Misuse of Campaign Funds

State and federal authorities appear to be investigating whether Rep. Rivera converted state and federal campaign contributions to his personal use.

Under Florida law, reimbursements to a candidate or any other individual for expenses incurred in connection with the campaign by a check drawn upon the campaign account must be reported.⁶⁶ The full name and address of each person to whom the candidate or other individual made payment for which reimbursement was made by check drawn upon the campaign account must be reported, together with the purpose of such payment.⁶⁷

As the treasurer of his own state campaign committee, Rep. Rivera signed his campaign finance reports, which failed to include explanations for \$60,000 in reimbursements. By willfully certifying the correctness of reports he knew to be incorrect, false, or incomplete, Rep. Rivera appears to have violated Florida criminal law.⁶⁸

Campaign Expenditures

Under Florida law, campaign reports must list the full name and address of each person to whom an expenditure for personal services, salary or reimbursed authorized expenses was made along with the amount, date, and clear purpose of the expenditure.⁶⁹

⁶¹ 5 U.S.C. app. 4, § 104.

⁶² House Comm. on Standards of Official Conduct, House Ethics Manual, p. 248 (110th Cong., 2d Sess., 2008 ed.).

⁶³ 18 U.S.C. § 1001(a)(2).

⁶⁴ 18 U.S.C. § 1001(c)(2).

⁶⁵ Fla. Stat. § 112.317 (2011).

⁶⁶ Fla. Stat. § 106.07(4) (2011).

⁶⁷ *Id.*

⁶⁸ Fla. Stat. §§ 106.07(5), 106.19 (2011).

⁶⁹ Fla. Stat. § 106.07 (2011).

Rep. Rivera's campaign's check to Millennium Marketing for \$15,000 and two checks to ACH Fundraising totaling \$75,000, categorized as "thank you" expenses do not appear to clearly state the purposes of those expenditures. By willfully certifying the correctness of reports he knew to be incomplete, Rep. Rivera appears to have violated Florida criminal law.⁷⁰

Conversion, False Statements on Financial Disclosure Forms, and Tax Evasion

Federal law prohibits federal candidates from using campaign funds for personal use.⁷¹ If Rep. Rivera received any of the \$196,483 his campaign committee paid to Ms. Nuhfer's consulting firm, Communication Solutions, he may have illegally converted his campaign funds to his personal use.

If Rep. Rivera received any of the \$196,483 his federal campaign committee paid to Communication Solutions, because he failed to include that income on his personal financial disclosure forms, he may have violated 18 U.S.C. § 1001.

Finally, if Rep. Rivera received any of the \$196,483 his federal campaign committee paid to Communication Solutions, or if he received any of the money his state campaign committees paid the firm, but failed to include those payments on his U.S. Individual Tax Return, Form 1040s, he may have violated 26 U.S.C. § 7201.

Conduct Not Reflecting Creditably on the House

House Rule 23 requires all members of the House to conduct themselves "at all times in a manner that reflects creditably on the House."⁷² This ethics standard is considered to be "the most comprehensive provision" of the code.⁷³ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with "flagrant" violations of the law that reflect on "Congress as a whole," and that might otherwise go unpunished.⁷⁴ This rule has been relied on by the committee in numerous prior cases in which the committee found unethical conduct including: the failure to report campaign contributions,⁷⁵ making false statements to the committee,⁷⁶ criminal convictions for bribery,⁷⁷ or accepting illegal gratuities,⁷⁸ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁷⁹

⁷⁰ Fla. Stat. §§ 106.07(5), 106.19 (2011).

⁷¹ 2 U.S.C. §§ 439a(b), 437g(d)(1)(A)(i).

⁷² Rule 23, cl. 1.

⁷³ House Ethics Manual, p. 12.

⁷⁴ House Comm. on Standards of Official Conduct, *Report Under the Authority of H. Res. 418*, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁷⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

⁷⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

⁷⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong.,

If Rep. Rivera converted campaign funds to his personal use, committed tax evasion, or lied on his personal financial disclosure forms, he acted in a manner that brings discredit to the House.

1st Sess. 4, 16-17 (1981) (member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁷⁸ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (member resigned while expulsion resolution was pending).

⁷⁹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

REPRESENTATIVE HAROLD ROGERS

Representative Harold “Hal” Rogers (R-KY) is a sixteen-term member of Congress, representing Kentucky’s 5th congressional district. Rep. Rogers chairs the House Appropriations Committee. His ethics issues stem from misusing his position to steer hundreds of millions of taxpayer dollars to a network of pet recipients, including former staffers, campaign contributors, business associates, and a company that employed his son. Rep. Rogers was included in CREW’s 2007 and 2008 reports on congressional corruption for directing millions of federal dollars to campaign contributors.

Rep. Rogers’ Empire

Rep. Rogers sits at the center of an interconnected web that includes several Kentucky nonprofit groups, a bank he partially owns, and several companies he has supported with federal money.¹ These entities have strong ties to Rep. Rogers and to each other, and work together to extend his influence.

Private companies in this network received \$227 million in federal loans, grants, earmarks, and contracts since 2000.² During the same period, Rep. Rogers helped steer more than \$236 million in taxpayer funds to seven nonprofits he helped create, including \$174 million in earmarks.³ The remaining \$63 million resulted from federal grants, at least some of which Rep. Rogers personally sought from federal agencies.⁴

The money has flowed through the network of entities in opaque ways, making it hard to trace, but it has frequently landed in the hands of Rep. Rogers’ family members, business associates, and campaign contributors.

¹ Rep. Hal Rogers, Personal Financial Disclosure for Calendar Year 2009, filed May 14, 2010; Deborah Yetter, Rogers’ Role in Tourism Contract Draws Scrutiny, *The Courier-Journal*, October 20, 2006; Scott Higham and Robert O’Harrow Jr., The Quest for Hometown Security, *Washington Post*, December 25, 2005; R.G. Dunlop, Bringing Home Dollars Wins Praise, Jeers, *The Courier-Journal*, December 15, 2007; <http://www.opensecrets.org/politicians/earmarks.php?cid=N00003473&cycle=2010>.

² <http://www.opensecrets.org/politicians/earmarks.php?cid=N00003473&cycle=2010>; <http://www.opensecrets.org/politicians/earmarks.php?fy=FY09&cid=N00003473&cycle=2010>; <http://www.opensecrets.org/politicians/earmarks.php?fy=FY08&cid=N00003473&cycle=2008>; USA Spending, Recipient Lookup, Outdoor Venture Corp., 2000-2010; USA Spending, Recipient Lookup, Phoenix Products, 2000-2010; USA Spending, Recipient Lookup, Senture, LLC, 2000-2010; USA Spending, Recipient Lookup, Boneal, Inc., 2000-2010; USA Spending, Recipient Lookup, Lee’s Ford Dock, Inc., 2000-2010.

³ <http://halrogers.house.gov/Initiatives/>; [https://app.sos.ky.gov/ftshow/\(S\(m3ee3x20fjtad2addz0iy145\)\)/default.aspx?path=ftsearch&id=0213127&ct=09&cs=99998](https://app.sos.ky.gov/ftshow/(S(m3ee3x20fjtad2addz0iy145))/default.aspx?path=ftsearch&id=0213127&ct=09&cs=99998); USA Spending, Recipient Lookup, Center for Rural Development, 2000-2010; USA Spending, Recipient Lookup, Eastern Kentucky PRIDE, 2000-2010; USA Spending, Recipient Lookup, Forward in the Fifth, 2000-2010; USA Spending, Recipient Lookup, Operation UNITE, 2000-2010; USA Spending, Recipient Lookup, National Institute for Hometown Security, 2000-2010; USA Spending, Recipient Lookup, Southern and Eastern Kentucky Tourism, 2000-2010; USA Spending, Recipient Lookup, Southeast Kentucky Economic Development Corp., 2000-2010;

<http://www.opensecrets.org/politicians/earmarks.php?cid=N00003473&cycle=2010>;
<http://www.opensecrets.org/politicians/earmarks.php?fy=FY09&cid=N00003473&cycle=2010>;
<http://www.opensecrets.org/politicians/earmarks.php?fy=FY08&cid=N00003473&cycle=2008>.

⁴ *Id.*; Higham and O’Harrow Jr., *Washington Post*, Dec. 25, 2005; Yetter, *The Courier-Journal*, Oct. 20, 2006; Dunlop, *The Courier-Journal*, Dec. 15, 2007.

Outdoor Venture Corporation (OVC)

OVC is a Stearns, Kentucky-based tent manufacturer.⁵ Since 1991, OVC's president, J.C. Egnew, and his wife, Azalie, have contributed nearly \$25,000 to Rep. Rogers' campaigns.⁶ Rep. Rogers earmarked \$21.4 million to OVC from 2008 to 2010, a period when Mr. Egnew served as board chair of one of the nonprofits, the National Institute for Hometown Security, Inc. (NIHS), and as a county representative for another, the Center for Rural Development, Inc. (CRD).⁷ OVC also has received \$149 million worth of federal contracts since 2000.⁸

Mid-South Electronics

Rep. Rogers helped Mid-South Electronics obtain a federal contract shortly after the company began heavily donating to his congressional campaigns. Before 2004, none of Mid-South's employees had donated to Rep. Rogers.⁹ Between September 30, 2004, and March 18, 2005, however, Mid-South employees donated \$11,000 to Rep. Rogers' campaign and PAC.¹⁰ In April 2005, Rep. Rogers helped the company land a \$15 million federal contract to assemble baggage screening systems for airports.¹¹

Lee's Ford Dock, Inc.

Lee's Ford Dock is a Nancy, Kentucky marina and resort that Rep. Rogers repeatedly has helped to obtain federal funds.¹² Between 2004 and 2005, the marina's owner and president, J.D. Hamilton, donated \$5,200 to Rep. Rogers' campaign.¹³

⁵ <http://www.outdoorventure.com/>.

⁶ CQ MoneyLine, [Donor Lookup, J.C. Egnew, 1991-2010](#); CQ MoneyLine, [Donor Lookup, Azalie Egnew, 1991-2010](#); John Cheves, [Kentucky Congressman Hal Rogers Delivers for his District](#), *Lexington Herald Leader*, February 6, 2005.

⁷ <http://www.opensecrets.org/politicians/earmarks.php?cid=N00003473&cycle=2010>;
<http://www.opensecrets.org/politicians/earmarks.php?fy=FY09&cid=N00003473&cycle=2010>;
<http://www.opensecrets.org/politicians/earmarks.php?fy=FY08&cid=N00003473&cycle=2008>;
http://www.outdoorventure.com/about_leadership_team.php;
[https://app.sos.ky.gov/ftshow/\(S\(sflmy355sdffoz55kypdy445\)\)/default.aspx?path=ftsearch&id=0585139&ct=09&cs=99999](https://app.sos.ky.gov/ftshow/(S(sflmy355sdffoz55kypdy445))/default.aspx?path=ftsearch&id=0585139&ct=09&cs=99999); <http://www.thenihs.org/about/board>; <http://centertech.com/about/board-of-directors/>.

⁸ USA Spending, [Recipient Lookup, Outdoor Venture Corp., 2000-2010](#);
<http://www.opensecrets.org/politicians/earmarks.php?cid=N00003473&cycle=2010>;
<http://www.opensecrets.org/politicians/earmarks.php?fy=FY09&cid=N00003473&cycle=2010>;
<http://www.opensecrets.org/politicians/earmarks.php?fy=FY08&cid=N00003473&cycle=2008>.

⁹ CQ MoneyLine, [Employer Search, Mid-South Electronics, 1979-2010](#); CQ MoneyLine, [Employer Search, Mid-South Industries, 1979-2010](#).

¹⁰ *Id.*

¹¹ John Stamper and Bill Estep, [First Fire, Now Global Pressure; Annville's Mid-South Electronics to Send Most of 540 Jobs to Mexico](#), *Lexington Herald Leader*, February 18, 2006.

¹² <http://www.leesfordmarina.com/>; [https://app.sos.ky.gov/ftshow/\(S\(fjqszces4yu3zc55o3mox55\)\)/default.aspx?path=ftsearch&id=0030515&ct=09&cs=99998](https://app.sos.ky.gov/ftshow/(S(fjqszces4yu3zc55o3mox55))/default.aspx?path=ftsearch&id=0030515&ct=09&cs=99998).

¹³ [https://app.sos.ky.gov/ftshow/\(S\(fjqszces4yu3zc55o3mox55\)\)/default.aspx?path=ftsearch&id=0030515&ct=09&cs=99998](https://app.sos.ky.gov/ftshow/(S(fjqszces4yu3zc55o3mox55))/default.aspx?path=ftsearch&id=0030515&ct=09&cs=99998); [https://app.sos.ky.gov/ftshow/\(S\(mox0df45qenz5t55av342f55\)\)/default.aspx?path=ftsearch&id=0542958&ct=06&cs=99999](https://app.sos.ky.gov/ftshow/(S(mox0df45qenz5t55av342f55))/default.aspx?path=ftsearch&id=0542958&ct=06&cs=99999); John Cheves, [Hal Rogers Helps Backer to Pay For a Parking Lot](#), *Lexington Herald Leader*, January 19, 2005;

On July 13, 2010, Rep. Rogers wrote to the Small Business Administration (SBA) in an effort to help Lee's Ford Dock win an increase in its SBA disaster loan after the agency had twice denied the increase.¹⁴ The SBA reversed course and granted the increase after an agency official attended a meeting with Mr. Hamilton in the congressman's office.¹⁵ The congressman also earmarked \$500,000 in the fiscal year 2005 budget for an expansion of Lee's Ford Dock's parking lot.¹⁶

Unlawful Narcotics Investigations, Treatment and Education, Inc. (UNITE)

UNITE is an anti-drug nonprofit Rep. Rogers helped create in 2003.¹⁷ Bob Mitchell, Rep. Rogers' district administrator, was UNITE's incorporator and still sits on the board.¹⁸ Karen Kelly, a former staffer for Rep. Rogers, is now UNITE's president and chief executive officer, and makes \$110,250 a year running the organization.¹⁹ Rep. Rogers has earmarked nearly \$34 million for UNITE since 2000, and the federal government has given UNITE nearly \$15 million in grants.²⁰

Kentucky Highlands Investment Corp. (KHIC)

KHIC is a nonprofit venture capital firm based in London, Kentucky.²¹ Between 1998 and 2000, KHIC received \$2.5 million in earmarks, almost certainly thanks to support from Rep. Rogers.²² Since 2000, KHIC has received \$16.9 million in contracts and \$500,000 in earmarks from the federal government with the support of Rep. Rogers.²³ L. Ray Moncrief, KHIC's vice president, donated \$8,000 to Rep. Rogers' congressional campaigns during the 2008 and 2010 election cycles.²⁴

KHIC has connections to almost every other entity in Rep. Rogers' web,²⁵ including private companies that have received earmarks and contracts through Rep. Rogers and the

<http://www.opensecrets.org/indivs/search.php?name=hamilton&state=KY&zip=&employ=&cand=Rogers%2C+Hal&c2012=Y&all=Y&sort=N&capcode=8y5yh&submit=Submit>.

¹⁴ <http://www.scribd.com/doc/51750174/CREW-SBA-Regarding-Rogers-Related-Non-Profits-3-15-11-SBA-Hal-Rogers-Disbursement>.

¹⁵ *Id.*

¹⁶ Cheves, *Lexington Herald Leader*, Jan. 19, 2005.

¹⁷ <http://operationunite.org/about/overview/>.

¹⁸ *Id.*; http://www.legistorm.com/person/Robert_Luster_Mitchell/16711.html;

[https://app.sos.ky.gov/ftshow/\(S\(crhef055einue055knjmxoae\)\)/default.aspx?id=0559186&ct=09&cs=99999](https://app.sos.ky.gov/ftshow/(S(crhef055einue055knjmxoae))/default.aspx?id=0559186&ct=09&cs=99999).

¹⁹ Ms. Kelly was previously known as Karen Engle; <http://www.scribd.com/doc/62094550/CREW-Most-Corrupt-Sources-Karen-Engle-Bio-PRIDE>; <http://operationunite.org/contact/>; Unlawful Narcotics Investigations, Treatment and Education, Inc., 2009 IRS Form 990, Response to Part VII, Section A, February 15, 2011; Eastern Kentucky PRIDE, Inc., 2008 IRS Form 990, Response to Part VII, Section A, May 3, 2010.

²⁰ USA Spending, Recipient Lookup, Operation UNITE, 2000-2010.

²¹ <http://www.khic.org/>; <http://www.khic.org/biographies.html?catID=1>.

²² Citizens Against Government Waste, Congressional Pig Book, 1998; Citizens Against Government Waste, Congressional Pig Book, 2000.

²³ USA Spending, Recipient Lookup, Kentucky Highlands Investment, 2000-2010; Press Release, Representative Hal Rogers, Kentucky Highlands Awarded \$1 million to Continue Investment in Appalachia, October 5, 2009.

²⁴ CQ MoneyLine, Donor Lookup, Ray Moncrief, 2007-2010.

²⁵ <http://www.khic.org/>; <http://www.khic.org/biographies.html?catID=1>.

nonprofits he helped establish. For example, KHIC provided the startup money for OVC in 1972,²⁶ and has continued to provide the company support, including a \$3.15 million line of credit in 1993 and several other loans.²⁷ Mr. Moncrief is a member of OVC's board, and was the company's chief financial officer from 1978 to 1983.²⁸ KHIC also invested in the telecommunications company Sensure, which employed Rep. Rogers' son and has received federal contracts.²⁹ KHIC's president, Jerry Rickett, has sat on the boards of at least three of the nonprofits, and three of KHIC's other employees have sat on the boards of other Rep. Rogers nonprofits.³⁰ In 2008, Mr. Rickett set up a for-profit real estate holding company for CRD worth more than \$400,000, and in 2003 KHIC lent \$250,000 to another of the nonprofits, Southern & Eastern Kentucky Tourism Development Association, Inc. (TOUR SEKY).³¹

Sensure, LLC

Sensure is a telecommunications company that employed Rep. Rogers' son, John, from 2004 until at least 2006.³² Sensure's main lobbyist is Jeffrey Speaks, a former aide to Rep. Rogers who later worked as the executive director of Eastern Kentucky Personal Responsibility in a Desirable Environment, Inc. (PRIDE), Rep. Rogers' environmental nonprofit.³³ Mr. Speaks now earns tens of thousands of dollars a year lobbying for Sensure as the president of lobbying firm JBS Communications, LLC.³⁴ Sensure officials have donated \$4,200 to Rep. Rogers' campaigns since 2000.³⁵

²⁶ Thomas P. Murphy, *The Right Way To Do It?*, *Forbes*, March 20, 1978; [https://app.sos.ky.gov/ftshow/\(S\(wjgqv155vortkgucddsm1z45\)\)/default.aspx?path=ftsearch&id=0039094&ct=09&cs=99999](https://app.sos.ky.gov/ftshow/(S(wjgqv155vortkgucddsm1z45))/default.aspx?path=ftsearch&id=0039094&ct=09&cs=99999).

²⁷ Kentucky Highlands Investment Corp., 2007 IRS Form 990, Statement C, pp. 31, 41, 47, February 13, 2009.

²⁸ http://www.outdoorventure.com/about_leadership_team.php; Mariam Williams, *Others' Success Is the Payoff*, *The Lane Report*, February 2011.

²⁹ Nita Johnson, *Kentucky Highlands Funds Will Help Appalachian Businesses*, *Sentinel Echo*, October 7, 2010.

³⁰ <http://www.khic.org/biographies/5/>;

[https://app.sos.ky.gov/ftshow/\(S\(k34t3cauvt00rierubkeobqg\)\)/default.aspx?path=ftsearch&id=0585139&ct=09&cs=99999](https://app.sos.ky.gov/ftshow/(S(k34t3cauvt00rierubkeobqg))/default.aspx?path=ftsearch&id=0585139&ct=09&cs=99999); <https://app.sos.ky.gov/corpscans/89/0346689-09-99998-20070226-ARP-2344876-PU.pdf>;

<https://app.sos.ky.gov/corpscans/43/0235243-09-99999-19950701-ARP-3659880-PU.pdf>;

<http://www.khic.org/biographies.html?catID=1>; <http://www.khic.org/biographies.html?catID=2>;

<https://app.sos.ky.gov/corpscans/43/0235243-09-99998-20100624-ARP-4435571-PU.pdf>;

[https://app.sos.ky.gov/ftshow/\(S\(yxfk5r45gd00j2qjthazf445\)\)/default.aspx?path=ftsearch&id=0213127&ct=09&cs=99998](https://app.sos.ky.gov/ftshow/(S(yxfk5r45gd00j2qjthazf445))/default.aspx?path=ftsearch&id=0213127&ct=09&cs=99998).

³¹ Kentucky Highlands Investment Corp., 2004 IRS Form 990, Statement C, p. 37, February 8, 2006; The Center for Rural Development, 2007 IRS Form 990, Statement 7, Part IX, June 10, 2010;

[https://app.sos.ky.gov/ftshow/\(S\(xw31op55x5iwbxfa2ko2ri45\)\)/default.aspx?path=ftsearch&id=0668422&ct=06&cs=99999](https://app.sos.ky.gov/ftshow/(S(xw31op55x5iwbxfa2ko2ri45))/default.aspx?path=ftsearch&id=0668422&ct=06&cs=99999); The Center for Rural Development, 2007 IRS Form 990, Statement 7, Response to Part IX, June 22, 2010.

³² Eric Lipton, *In Kentucky Hills, a Homeland Security Bonanza*, *New York Times*, May 14, 2006.

³³ JBS Communications, LLC, *Fourth Quarter 2010 Lobbying Disclosure Report on behalf of Sensure LLC*,

Secretary of the Senate, Office of Public Records; Jack O'Dwyer, *Jack O'Dwyer's Newsletter*, November 26, 1997; Kimberly Hefling, *Kentucky Seeks to Clean Up Image – and Trash – With Tough Campaign*, *Chicago Tribune*,

April 30, 2000.

³⁴ JBS Communications, LLC, *Fourth Quarter 2010 Lobbying Disclosure Report on behalf of Sensure LLC*,

Secretary of the Senate, Office of Public Records; JBS Communications, LLC, *Third Quarter 2010 Lobbying*

Disclosure Report on behalf of Sensure LLC, Secretary of the Senate, Office of Public Records; JBS

Communications, LLC, *Second Quarter 2010 Lobbying Disclosure Report on behalf of Sensure LLC*, Secretary of

the Senate, Office of Public Records; JBS Communications, LLC, *First Quarter 2010 Lobbying Disclosure*

Report on behalf of Sensure LLC, Secretary of the Senate, Office of Public Records.

³⁵ CQ MoneyLine, *Employer Search, Sensure*, 2001-2010.

Rep. Rogers repeatedly has helped Senture obtain federal contracts.³⁶ In 2007 and 2008, for example, Senture announced receiving contracts supporting the implementation and testing of the Transportation Worker Identification Credential program.³⁷ In 2010, Senture announced upcoming federal contracts with the Veterans Administration, the Department of Education and the Transportation Administration.³⁸ In addition, TOUR SEKY was Senture's first client,³⁹ and reported paying Senture to operate its tourism information hotline for at least seven years, including a payment of more than \$1 million in 2008.⁴⁰

Citizens National Bank

The nonprofits started by Rep. Rogers have collectively kept millions of dollars at Citizens National Bank, a Kentucky bank partially owned by Rep. Rogers.⁴¹ In addition, three of the bank's board members either helped incorporate or served as board members at the nonprofits: Clay Parker Davis currently chairs the board of CRD, Robert Harris previously was on the CRD board, and Cy Waddle helped incorporate SKED.⁴²

Potential Violations

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.⁴³ In considering

³⁶ Lipton, *New York Times*, May 14, 2005; Yetter, *The Courier-Journal*, Oct. 20, 2006.

³⁷ Press Release, Senture, LLC, Senture Awarded Subcontract to Support TWIC Implementation, *Business Wire*, November 26, 2007; Press Release, Senture, LLC, Senture Awarded Subcontract to Support Transportation Worker Identification Credential (TWIC) Card Reader Field Test, *Business Wire*, April 29, 2008.

³⁸ Melodie Phelps, *Senture Announces 222 Jobs*, *The Wayne County Outlook (Monticello, Ky.)*, September 14, 2010.

³⁹ <http://www.senture.com/pub/senturepressrelease.pdf>.

⁴⁰ Southern and Eastern Kentucky Tourism Development Association, Inc., 2008 IRS Form 990, Response to Part VII, Section B, October 30, 2009; Southern and Eastern Kentucky Tourism Development Association, Inc., 2007 IRS Form 990, Response to Part VII, Section B, October 8, 2008; Southern and Eastern Kentucky Tourism Development Association, Inc., 2006 IRS Form 990, Response to Part VII, Section B, July 6, 2007; Southern and Eastern Kentucky Tourism Development Association, Inc., 2005 IRS Form 990, Response to Part VII, Section B, August 18, 2006; Southern and Eastern Kentucky Tourism Development Association, Inc., 2004 IRS Form 990, Response to Part VII, Section B, November 23, 2005; Southern and Eastern Kentucky Tourism Development Association, Inc., 2003 IRS Form 990, Response to Part VII, Section B, August 23, 2004; Southern and Eastern Kentucky Tourism Development Association, Inc., 2002 IRS Form 990, Response to Part VII, Section B, November 26, 2003.

⁴¹ Rep. Hal Rogers, Personal Financial Disclosure for Calendar Year 2009, filed May 14, 2010; Higham and O'Harrow Jr., *Washington Post*, Dec. 25, 2005.

⁴² <http://centertech.com/about/board-of-directors/>; <http://www.cnbsomersset.com/board-of-directors/>; Higham and O'Harrow Jr., *Washington Post*, Dec. 25, 2005; The Center for Rural Development, Inc., 2008 IRS Form 990, Response to Part VII, February 22, 2010; [https://app.sos.ky.gov/ftshow/\(S\(noxwmcrlqoowuh45yue5mpqy\)\)/default.aspx?path=ftsearch&id=0213127&ct=09&cs=99998](https://app.sos.ky.gov/ftshow/(S(noxwmcrlqoowuh45yue5mpqy))/default.aspx?path=ftsearch&id=0213127&ct=09&cs=99998).

⁴³ 18 U.S.C. § 201(c)(1)(B).

this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.⁴⁴

If a link is established between Rep. Rogers' earmarking funds or obtaining federal contracts or loans for OVC, KHIC, Mid-South Electronics, Lee's Ford Dock, or Senture and the campaign donations he received from executives and employees of these companies, he may be in violation of the illegal gratuity statute.

In addition, the House Ethics Committee has used the acceptance of gratuities under this statute as a basis for disciplinary proceedings and punishment of members, including expulsion.⁴⁵

5 U.S.C. § 7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."⁴⁶ House Rule 23, clause 3, similarly provides:

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

If Rep. Rogers accepted campaign contributions in return for legislative assistance by way of earmarking federal funds or obtaining federal contracts or loans, he may have violated 5 U.S.C. § 7353 and House Rule 23.

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from "taking any official actions for the prospect of personal gain for themselves or anyone else."⁴⁷ House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

⁴⁴ *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398 (1999).

⁴⁵ *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the member from the House); *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

⁴⁶ House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

⁴⁷ House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

The Code of Ethics for Government Service also provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not.”⁴⁸

If Rep. Rogers accepted campaign contributions in return for funneling earmarks and federal contracts to OVC, KHIC, Mid-South Electronics, Lee’s Ford Dock, or Senture, he may have dispensed special favors in violation of 5 C.F.R. § 2635.702(a) and the Code of Ethics. In addition, Rep. Rogers may have violated these provisions by earmarking funds or obtaining federal contracts for Senture, which employed his son and former congressional aide, or UNITE, at which his former aide is president and on whose board his former district director serves. Rep. Rogers also may have benefitted himself improperly by steering earmarks and federal contracts to nonprofits that kept millions of dollars at Citizens National Bank, the bank he partially owns.

Conduct Not Reflecting Creditably on the House

House Rule 23 requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”⁴⁹ This ethics standard is considered to be “the most comprehensive provision” of the code.⁵⁰ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.⁵¹ This rule has been relied on by the committee in numerous prior cases in which the committee found unethical conduct including: the failure to report campaign contributions,⁵² making false statements to the committee,⁵³ criminal convictions for bribery,⁵⁴ or accepting illegal gratuities,⁵⁵ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁵⁶

⁴⁸ 72 Stat., Part 2, B12, H. Res. 175, 85th Cong. (adopted July 11, 1958); House Comm. on Standards of Official Conduct, House Ethics Manual, p. 20 (110th Cong., 2d Sess., 2008 ed.).

⁴⁹ Rule 23, cl. 1.

⁵⁰ House Ethics Manual, p. 12.

⁵¹ House Comm. on Standards of Official Conduct, *Report Under the Authority of H. Res. 418*, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁵² House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

⁵³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

⁵⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (member resigned after Committee recommended expulsion). In another case, the

If Rep. Rogers accepted campaign contributions in return for legislative favors that benefitted campaign contributors, he acted in a manner that brings discredit to the House.

Similarly, if Rep. Rogers used his legislative position to ultimately benefit his son, his former congressional aides, or himself, he acted in a manner that brings discredit to the House.

Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁵⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (member resigned while expulsion resolution was pending).

⁵⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

REPRESENTATIVE JEAN SCHMIDT

Representative Jean Schmidt (R-OH) is a four-term member of Congress, representing Ohio's 2nd congressional district. Rep. Schmidt's ethics issues stem from improperly accepting free legal services and failing to report them as gifts on her personal financial disclosure statements.

Improper Acceptance of Free Legal Services

During Rep. Schmidt's 2008 re-election campaign, her position opposing a nonbinding resolution to officially describe the killing of more than a million Armenians by Turks at the end of World War I as "genocide" became an issue.¹ Rep. Schmidt is a member of the Congressional Caucus on U.S. Turkish Relations and Turkish Americans and has been closely associated with the Turkish-American community, though there are few voters of Turkish descent in her district.² The Turkish government has lobbied heavily for years against similar resolutions, which repeatedly have been proposed but not passed.³

Rep. Schmidt's position became an issue when one of her opponents, independent candidate David Krikorian, distributed fliers accusing Rep. Schmidt of taking "blood money" to deny the genocide.⁴ Mr. Krikorian, who is Armenian-American and whose grandparents survived the killings, described Rep. Schmidt as a puppet of the Turkish government and claimed she received approximately \$30,000 in campaign contributions from Turkish groups and interests, which she said accused her of accepting a bribe.⁵

Legal Representation by the Turkish American Legal Defense Fund

Rep. Schmidt was re-elected on November 4, 2008.⁶ Soon after the election, she was contacted by Bruce Fein and David Saltzman, who said they were lawyers with the Turkish American Legal Defense Fund (TALDF).⁷ TALDF, which was established to protect the legal

¹ Malia Rulon, Turkish-American Residents Find a Friend in Schmidt, *Cincinnati Enquirer*, September 20, 2008; Alex Isenstadt, Flier Fuels Fierce Debate in Ohio, *Politico*, July 16, 2009.

² *Id.*; Malia Rulon, Complaint Claims Illegal Free Help, *Cincinnati Enquirer*, August 1, 2010;

<http://www.turkishcoalition.org/in-congress/caucus.htm>;

<http://cha.house.gov/images/stories/links/cmocso/112cmo.pdf>.

³ Isenstadt, *Politico*, July 16, 2009; Kevin Bogardus, Despite Pact, Lobbying Battle Over Genocide Resolution to Go On, *The Hill*, October 10, 2009; *Affirmation of the United States Record on the Armenian Genocide Resolution*, H. Res. 304, 112th Congress, June 14, 2011; *Affirmation of the United States Record on the Armenian Genocide Resolution*, H. Res. 252, 111th Congress, March 17, 2009; *Affirmation of the United States Record on the Armenian Genocide Resolution*, H. Res. 106, 110th Congress, January 30, 2007; *Affirmation of the United States Record on the Armenian Genocide Resolution*, H. Res. 316, 109th Congress, June 14, 2005.

⁴ *Schmidt v. Krikorian*, Case No. 2009E-003, Complaint (Ohio Elections Commission); Jon Craig, State Hears Blood Money Case, *Cincinnati Enquirer*, September 4, 2009; Isenstadt, *Politico*, July 16, 2009.

⁵ *Schmidt v. Krikorian*, 2010 CVC 01217, Complaint (Ohio Ct. Common Pleas, Clermont Co.); House Committee on Ethics, 112th Congress, *Report in the Matter of Allegations Relating to Representative Jean Schmidt*, August 5, 2011 (House Ethics Committee Report), pp. 4, 258; Craig, *Cincinnati Enquirer*, Sept. 4, 2009; Isenstadt, *Politico*, July 16, 2009;

⁶ <http://www.sos.state.oh.us/SOS/Text.aspx?page=10422&AspxAutoDetectCookieSupport=1>.

⁷ House Ethics Committee Report, p. 4.

rights of Turkish Americans,⁸ is part of the non-profit group the Turkish Coalition of America (TCA).⁹ The lawyers offered to represent Rep. Schmidt and file a lawsuit over Mr. Krikorian's claims.¹⁰ Mr. Fein apparently suggested a contingency fee arrangement, in which they would not charge Rep. Schmidt for their services, but she would split the proceeds of any damages awarded.¹¹ No final fee arrangement was reached, however.¹²

In April 2009, Mr. Fein and Mr. Saltzman filed a complaint with the Ohio Elections Commission against Mr. Krikorian on behalf of Rep. Schmidt, saying he had made false and damaging statements about her.¹³ In October 2009, the Ohio Elections Commission ruled in Rep. Schmidt's favor and issued a written reprimand to Mr. Krikorian.¹⁴ An Ohio state court denied Mr. Krikorian's appeal.¹⁵

In January 2010, Mr. Krikorian sued the Ohio Elections Commission in federal court, challenging the constitutionality of the Ohio law authorizing the reprimand.¹⁶ Rep. Schmidt was not a party to the case, but Mr. Fein and Mr. Saltzman filed an amicus brief on her behalf supporting the law.¹⁷

In June 2010, Rep. Schmidt, again using the services of Mr. Fein and Mr. Saltzman, filed a civil defamation suit against Mr. Krikorian in Ohio, which remains pending.¹⁸ Rep. Schmidt's suit alleged Mr. Krikorian had repeated his accusations against her in media interviews, and sought \$6.8 million in compensatory and punitive damages.¹⁹

Payment of Rep. Schmidt's Lawyers by the Turkish Coalition of America

From the beginning of Mr. Fein and Mr. Saltzman's representation of Rep. Schmidt after the 2008 election through at least April 2011, TCA paid all of their legal fees, as well as the legal fees of a third lawyer, Donald Brey.²⁰ Mr. Fein and Mr. Saltzman are in private practice and are not employees of TCA or TALDF.²¹ According to Mr. Fein, their standard arrangement when representing clients in TALDF-related matters is to send monthly bills to TCA, which TCA then

⁸ Office of Congressional Ethics, 112th Congress, *Report and Findings Related to Rep. Jean Schmidt*, Review No. 11-6574, April 29, 2011 (OCE Report and Findings), p. 7.

⁹ House Ethics Committee Report, p. 10.

¹⁰ *Id.*, p. 4.

¹¹ *Id.*

¹² *Id.*

¹³ *Schmidt v. Krikorian*, Case No. 2009E-003, Complaint (Ohio Elections Commission); House Ethics Committee Report, p. 4.

¹⁴ *Id.*, p. 5; Malia Rulon and Howard Wilkinson, *Schmidt Subject of Ethics Probe*, *Cincinnati Enquirer*, February 16, 2011

¹⁵ *Id.*

¹⁶ House Ethics Committee Report, p. 6.

¹⁷ *Id.*

¹⁸ *Schmidt v. Krikorian*, 2010 CVC 01217, Complaint (Ohio Ct. Common Pleas, Clermont Co.); House Ethics Committee Report, p. 7; http://www.clermontclerk.org/pa/gdpa.urd/pamw2000.docket_lst?7225750.

¹⁹ *Schmidt v. Krikorian*, 2010 CVC 01217, Complaint (Ohio Ct. Common Pleas, Clermont Co.); Rulon and Wilkinson, *Cincinnati Enquirer*, Feb. 16, 2011.

²⁰ OCE Report and Findings, pp. 10-13; House Ethics Committee Report, pp. 3, 18.

²¹ *Id.*, p. 10.

pays.²² None of the lawyers associated with TALDF had submitted any bills to Rep. Schmidt as of August 2011.²³ From 2008 through the end of December 2010, TCA had paid \$498,587 in legal fees for the representation of Rep. Schmidt.²⁴

Inconsistent Statements Regarding the Payment Arrangement

Rep. Schmidt maintains she never knew TCA was paying her legal bills and claimed she always intended to pay for the legal services but was waiting on guidance and permission from the House Ethics Committee regarding establishment of a legal expense fund.²⁵ This, however, may not be true. Additionally, she did not request permission to set up a legal expense fund until July 2010, nearly two years after the representation began.²⁶

Mr. Fein suggested using a contingency fee arrangement in which the TALDF-associated lawyers would not charge Rep. Schmidt for legal services, and she would split the proceeds of any damages awarded with TALDF as a result of their representation.²⁷ Mr. Fein also claimed Rep. Schmidt told him any representation would have to be consistent with House ethics rules.²⁸ Despite these initial discussions, Mr. Fein and the others began working on the congresswoman's behalf before she sought official guidance from the ethics committee on how properly to pay their fees, and no final fee arrangement ever was agreed upon.²⁹

On August 31, 2009, both Mr. Fein and Rep. Schmidt's then-chief of staff, Barry Bennett, testified in depositions taken by the Ohio Elections Commission that TALDF was paying the congresswoman's legal fees.³⁰ Under oath, Mr. Fein claimed TALDF would not charge Rep. Schmidt's campaign for legal services, stating, "We stated that we would do this and we would not charge them legal fees."³¹ Asked if it raised any ethics issues for TALDF to pay Rep. Schmidt's legal bills, Mr. Bennett responded: "No, not that I'm aware of."³²

In September 2009, shortly after being deposed, Mr. Bennett finally called the ethics committee to request guidance regarding payment of Rep. Schmidt's legal fees and raised the possibility of using a contingency fee arrangement.³³ When the Office of Congressional Ethics (OCE) later asked Rep. Schmidt why she had waited until September 2009 to formally request guidance, she said "it just felt like the right time to do it."³⁴ A counsel for the ethics committee

²² *Id.*, pp. 10, 18; OCE Report and Findings, p. 28.

²³ House Ethics Committee Report, pp. 4, 9.

²⁴ OCE Report and Findings, p. 17.

²⁵ Malia Rulon, [Rep. Jean Schmidt Did Not 'Knowingly' Break Law, Ethics Committee Says](#), *Cincinnati Enquirer*, August 6, 2011; House Ethics Committee Report, Appendix B, Letter from Rep. Jean Schmidt to House Ethics Committee, May 27, 2011.

²⁶ House Ethics Committee Report, pp. 4, 7.

²⁷ *Id.*, p. 4.

²⁸ *Id.*

²⁹ *Id.*, pp. 4, 9; OCE Report and Findings, p. 13.

³⁰ House Ethics Committee Report, p. 5.

³¹ *Id.*

³² House Ethics Committee Report, p. 5.

³³ *Id.*

³⁴ OCE Report and Findings, Exhibit 13, Memorandum of Interview with Representative Jean Schmidt, March 31, 2011.

asked Mr. Bennett if Rep. Schmidt had considered setting up a legal expense fund and suggested she submit a letter to the committee requesting formal guidance.³⁵ On September 17, 2009, the congresswoman's office requested the guidance, and forwarded additional information to the committee in October, including a letter from Mr. Fein and Mr. Saltzman saying they had agreed to represent Rep. Schmidt on a contingency basis.³⁶ According to the ethics committee's report, Mr. Bennett was aware it was unlikely a contingency fee arrangement would be approved as the committee had not previously approved any such arrangements.³⁷ As a result, Rep. Schmidt amended her request to delete the request for approval of a contingency fee arrangement.³⁸

Therefore, it appears that in October 2009, Rep. Schmidt was aware that she could not accept free legal services from TALDF and that any sort of contingency fee agreement would be impermissible. Nevertheless, on January 29, 2010, without any new fee arrangement, Rep. Schmidt permitted Mr. Fein and Mr. Saltzman to file an amicus brief on her behalf in the federal court action Mr. Krikorian had brought against the Ohio Elections Commission.³⁹

On February 26, 2010, the ethics committee informed Rep. Schmidt she could use campaign funds or a legal defense fund to pay her legal bills, but stopped short of approving the establishment of a legal defense fund because no formal request to create one had been made.⁴⁰ The letter also acknowledged Mr. Krikorian's suit against the Ohio Elections Commission, but it is clear Rep. Schmidt failed to inform the committee she had once again availed herself of legal services at TCA's expense.⁴¹ The committee wrote Rep. Schmidt was "not a named party to this federal court case and [did] not anticipate any involvement in that separate litigation."⁴² It does not appear Rep. Schmidt took any action to correct the committee's misunderstanding.

On July 13, 2010, Mr. Krikorian filed a complaint against Rep. Schmidt with the OCE, alleging she was receiving free legal services from TALDF.⁴³ Mr. Krikorian cited Mr. Fein's August 2009 deposition testimony, in which he said TALDF would not charge Rep. Schmidt's campaign for any legal services.⁴⁴ Mr. Krikorian also pointed out Rep. Schmidt had not reported paying any legal fees through her campaign committee and had not reported accepting gifts or in-kind donations of legal services on her personal financial disclosure forms.⁴⁵

Less than a week later, on July 19, 2010, Rep. Schmidt sought the ethics committee's approval to set up a legal expense fund.⁴⁶ She later told the OCE the delay in officially requesting approval stemmed from selecting a trustee to administer the fund.⁴⁷ Rep. Schmidt

³⁵ House Ethics Committee Report, p. 5.

³⁶ *Id.*, pp. 5-6.

³⁷ *Id.*, p. 6.

³⁸ *Id.*

³⁹ House Ethics Committee Report, p. 6.

⁴⁰ OCE Report and Findings, Exhibit 22, Letter from the Committee on Standards of Official Conduct to Rep. Schmidt, February 26, 2010.

⁴¹ *Id.*

⁴² House Ethics Committee Report, p. 6.

⁴³ *Id.*, p. 7.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ House Ethics Committee Report, p. 7.

⁴⁷ OCE Report and Findings, Exhibit 13.

wrote subsequent letters in August saying she would use the fund to pay for expenses related to the Ohio Elections Commission matter and the federal case, and requested approval of a contingency fee arrangement for the defamation suit.⁴⁸

In contrast with Rep. Schmidt's representations to the House Ethics Committee, Mr. Fein admitted TCA was paying the costs of Rep. Schmidt's legal representation in the defamation case against Mr. Krikorian.

On September 27, 2010, Mr. Fein filed a motion asking the Ohio Court of Common Pleas' permission to appear *pro hac vice* in the defamation case.⁴⁹ Mr. Krikorian filed an opposition, claiming, in part, Mr. Fein potentially had perjured himself in his deposition before the Ohio Elections Commission because he had testified under oath that TALDF was paying Rep. Schmidt's legal fees.⁵⁰

The reply brief claimed "Mr. Fein has testified under oath that he never provided free legal services to plaintiff."⁵¹ The brief explained "[t]he Turkish Coalition of America . . . has consistently funded Fein's representation of Jean Schmidt as senior counsel at the Turkish American Legal Defense Fund . . . for the duration of her several legal actions against Defendant Krikorian."⁵²

Ultimately, the Ohio Court of Common Pleas denied Mr. Fein's motion finding Mr. Krikorian had "raised a material issue as to *who[m]* is paying for the legal fees for Plaintiff Schmidt during the pendency of the Ohio Elections Commission [sic]. In an earlier deposition, Attorney Bruce Fein said . . . [TALDF] was paying for Schmidt's legal fees, and Plaintiff Schmidt denied that same statement."⁵³

Based on Mr. Krikorian's complaint, OCE and the House Ethics Committee subsequently investigated the payment of Rep. Schmidt's lawyers. Rep. Schmidt and Mr. Bennett told the ethics committee the congresswoman had never been made aware that TCA was paying her lawyers' fees.⁵⁴ Mr. Fein similarly told the committee he never discussed a fee arrangement with the congresswoman.⁵⁵ Rep. Schmidt also told OCE that TALDF had not offered to provide the legal services for free,⁵⁶ but OCE found that "not consistent with the statements of the TALDF lawyers and TCA President about payments for the legal services."⁵⁷ Mr. Bennett further told the ethics committee Rep. Schmidt expected to receive a single bill at the end of Ohio Elections

⁴⁸ House Ethics Committee Report, p. 7.

⁴⁹ *Id.*

⁵⁰ *Id.* (citing Memorandum in Opposition to Motion for Admission Pro Hac Vice for Bruce Fein of Bruce E. Fein & Associates, Inc., *Schmidt v. Krikorian, et al.*, 2010 cvc-1217 (October 22, 2010)).

⁵¹ *Id.*, p. 8 (citing Reply Memorandum of Plaintiff Jean Schmidt in Support of Motion for Admission Pro Hac Vice for Bruce Fein, *Schmidt v. Krikorian, et al.*, 2010 cvc-1217 (November 11, 2010) at 13).

⁵² House Ethics Committee Report, p. 8.

⁵³ *Id.*, p. 8 (quoting Order, Decision and Entry Denying Plaintiff's Motion to Admit Pro Hac Vice Bruce Fein, Esq., *Schmidt v. Krikorian, et al.*, 2010 cvc-1217 (April 4, 2011)).

⁵⁴ *Id.*, pp. 3, 11, 18.

⁵⁵ *Id.*, p. 11.

⁵⁶ OCE Report and Findings, Exhibit 13.

⁵⁷ *Id.*, p. 17.

Commission case, which she planned to pay.⁵⁸ The ethics committee found this was inconsistent with Mr. Bennett's Ohio Elections Commission deposition testimony, but noted Mr. Bennett had claimed he never meant to imply Rep. Schmidt was not planning to pay the lawyers' fees.⁵⁹

Lack of Written Representation Agreement

The lack of any written representation agreement including a fee arrangement is all the more suspect given that Mr. Fein is a member of the D.C. Bar⁶⁰ and D.C. Rules of Professional Conduct specifically require a lawyer who has not regularly represented a particular client to provide the basis or rate of the fee, the scope of the lawyer's representation, and the expenses for which the client will be responsible, **in writing**, before or within a reasonable time after commencing the representation.⁶¹

Further, while contingency arrangements may be permissible, D.C. Rules of Professional Conduct explicitly require contingency fee agreements to be **in writing** and state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal.⁶² The written agreement must also provide what expenses will be deducted from the recovery, whether those deductions will be made before or after the contingent fee is calculated, and whether the client will be liable for expenses regardless of the outcome.⁶³

While the ethics committee strongly encourages all members to enter into written agreements with lawyers representing them, in this instance D.C. Rules of Professional Conduct mandated a representation agreement. As a result, it appears Mr. Fein may have violated the Rules of Professional Conduct by failing to provide Rep. Schmidt with such an agreement.

Financial Disclosure

Rep. Schmidt did not disclose any of the legal fees as gifts on her 2008, 2009, or 2010 financial disclosure forms.⁶⁴

Status of Investigation

After conducting an investigation into Mr. Krikorian's ethics complaint, OCE found substantial reason to believe Rep. Schmidt had violated House ethics rules by accepting free legal services and by failing to report the services as gifts on her financial disclosure forms.⁶⁵

⁵⁸ House Ethics Committee Report, pp. 11-12.

⁵⁹ *Id.*, p. 12.

⁶⁰ See D.C. Bar, Member Lookup: Bruce Fein, available at http://www.dcbbar.org/find_a_member/results.cfm.

⁶¹ D.C. Rules of Professional Conduct R. 1.5(b) (2007).

⁶² *Id.*, R. 1.5(c).

⁶³ *Id.*

⁶⁴ OCE Report and Findings, pp. 19-20; House Ethics Committee Report, p. 22; Rep. Jean Schmidt, Personal Financial Disclosure for Calendar Year 2010, filed June 14, 2011; Rep. Jean Schmidt, Amended Personal Financial Disclosure Statement for Calendar Year 2009, filed July 15, 2010; Rep. Jean Schmidt, Personal Financial Disclosure Statement for Calendar Year 2008, filed May 13, 2009.

⁶⁵ OCE Report and Findings, pp. 1, 5.

OCE referred the matter to the House Ethics Committee on May 18, 2011, recommending further review.⁶⁶ On August 1, 2011, after conducting an independent investigation, the ethics committee found Rep. Schmidt had received an impermissible gift of legal services from TCA.⁶⁷ The committee concluded every payment by TCA of the fees of her TALDF-associated lawyers was an impermissible gift.⁶⁸

Nevertheless, the committee found Rep. Schmidt “did not knowingly violate any provision of the Code of Official Conduct or any law, rule, regulation or other standard of conduct.”⁶⁹ Finding Rep. Schmidt’s lawyers failed to inform her of their payment arrangement with TCA and made false and misleading statements to her about their relationship with TCA and TALDF, the committee chose not to sanction her.⁷⁰ The committee decided no further fact-finding was necessary and declined to empanel an investigative subcommittee.⁷¹ The committee also said Rep. Schmidt had been working with the committee in good faith since 2009 to ascertain the appropriate means to pay her lawyers.⁷²

Finally, although the committee concluded Rep. Schmidt had failed to disclose the legal services provided by TCA as gifts on her financial disclosure forms, it stated this was “not surprising” given its view Rep. Schmidt was not aware of the gifts.⁷³

While the committee decided not to sanction Rep. Schmidt, it instructed her to: (1) ensure TCA does not pay for any further legal services, (2) pay the lawyers for all legal services provided to date, (3) amend her 2009 and 2010 financial disclosure forms to reflect the gifts from TCA, and (4) disclose any unpaid legal fees as liabilities on future financial disclosure statements until the lawyers have been repaid in full.⁷⁴ The ethics committee also granted Rep. Schmidt permission to set up a legal expense fund.⁷⁵

Potential Violations

Gift Rule Violations

Rule 25, clause 5(a)(1)(A)(i) of the House rules states that “a Member, Delegate, Resident Commissioner, officer, or employee of the House may not knowingly accept a gift except as provided in this clause.” The rules define “gift” to include “gifts of services, training,

⁶⁶ House Ethics Committee Report, pp. 2, 9.

⁶⁷ *Id.*, pp. 2-3, 18-19.

⁶⁸ *Id.*, p. 19.

⁶⁹ Press Release, House Committee on Ethics, 112th Congress, Statement of the Chair and Ranking Member of the Committee on Ethics Regarding Representative Jean Schmidt, August 5, 2011; House Ethics Committee Report, pp. 3, 18-19.

⁷⁰ Press Release, House Committee on Ethics, 112th Congress, Statement of the Chair and Ranking Member of the Committee on Ethics Regarding Representative Jean Schmidt, August 5, 2011.

⁷¹ House Ethics Committee Report, p. 3.

⁷² *Id.*

⁷³ *Id.*, p. 22.

⁷⁴ House Ethics Committee Report, pp. 3, 21-22.

⁷⁵ *Id.*, pp. 2, 12-16.

transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.”⁷⁶

By accepting approximately \$500,000 worth of legal services paid by TCA to her lawyers, Rep. Schmidt violated House gift rules.

False Statements on Personal Financial Disclosure Forms

The Ethics in Government Act of 1967 requires all members of Congress to file financial disclosure reports.⁷⁷ Under the statute, the attorney general may seek a civil penalty of up to \$11,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.⁷⁸

Federal law further prohibits members of Congress from making “any materially false, fictitious, or fraudulent statement or representation”⁷⁹ on “a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch.”⁸⁰

As the House Ethics Committee concluded, by failing to report as gifts the approximately \$500,000 worth of legal services paid by TCA to her lawyers, Rep. Schmidt violated the Ethics in Government Act and 18 U.S.C. § 1001.

Conduct Not Reflecting Creditably on the House

House Rule 23 requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”⁸¹ This ethics standard is considered to be “the most comprehensive provision” of the code.⁸² When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.⁸³ This rule has been relied on by the committee in numerous prior cases in which the committee found unethical conduct including: the failure to report campaign contributions,⁸⁴ making false statements to the committee,⁸⁵ criminal

⁷⁶ Rule 25, cl. 5(a)(2)(A).

⁷⁷ Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978); House Comm. on Standards of Official Conduct, House Ethics Manual, p. 20 (110th Cong., 2d Sess., 2008 ed.).

⁷⁸ 5 U.S.C. app. 4, § 104.

⁷⁹ 18 U.S.C. § 1001(a)(2).

⁸⁰ 18 U.S.C. § 1001(c)(2).

⁸¹ Rule 23, cl. 1.

⁸² House Ethics Manual, p. 12.

⁸³ House Comm. on Standards of Official Conduct, *Report Under the Authority of H. Res. 418*, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁸⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

⁸⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

convictions for bribery,⁸⁶ or accepting illegal gratuities,⁸⁷ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁸⁸

By accepting approximately \$500,000 worth of legal services paid by TCA to her lawyers, and by failing to report the payments as gifts on her financial disclosure forms, Rep. Schmidt engaged in conduct that does not reflect creditably on the House.

⁸⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁸⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (member resigned while expulsion resolution was pending).

⁸⁸ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

REPRESENTATIVE JOE WALSH

Representative Joe Walsh (R-IL) is a first-term member of Congress, representing Illinois' 8th congressional district. His ethics issues stem from his failure to pay child support and accurately disclose income and liabilities on his personal financial disclosure forms, and his campaign committee's inaccurate reporting of interest payments on his loans to his campaign.

Child Support Debt and Disclosure of Liabilities and Income

Rep. Walsh and his ex-wife, Laura Walsh, divorced in 2004.¹ According to a December 2010 court filing by Ms. Walsh, the court entered a judgment ordering Rep. Walsh to pay Ms. Walsh \$2,134 a month for child support, beginning in November 2005.² Ms. Walsh repeatedly has sought judicial assistance in collecting the money.³ In a court filing, Ms. Walsh claimed Rep. Walsh made only partial payments between November 2005 and March 2008, and made no child support payments at all between April 2008 and December 1, 2010.⁴ Accordingly, Rep. Walsh now owes her a total of \$117,437.25 in back child support, including interest.⁵ Ms. Walsh further alleged her former husband failed to pay his share of other child-related expenses.⁶ Responding to the allegations, Rep. Walsh's lawyer, R. Steven Polachek, said he believes his client owes far less.⁷ In any event, Rep. Walsh has failed to declare any debt related to child support on his personal financial disclosure forms.⁸

Despite Rep. Walsh's failure to pay child support for years, in 2009 and 2010 he was able to lend his campaign tens of thousands of dollars and live in an expensive home. According to Rep. Walsh's campaign finance reports, Rep. Walsh personally loaned his campaign \$35,500 between November 19, 2009 and August 11, 2010 – a period when Ms. Walsh alleges he failed to make any child support payments at all.⁹ Rep. Walsh later said the loans represented “literally every cent we had.”¹⁰ The campaign has paid back \$23,600 so far.¹¹ In 2009, again a time Ms.

¹ *Walsh v. Walsh*, Case No. 02 D2 30912, Verified Petition to Show Cause, To Modify Child Support, For Temporary Restraining Order, and Preliminary Injunction or Other Relief (Cir. Ct. Cook Co. Dec. 7, 2010) (Verified Petition).

² *Id.*

³ Abdon M. Pallasch, Rep. Sued for Child Support, *Chicago Sun-Times*, July 28, 2011.

⁴ *Walsh v. Walsh*, Verified Petition (Dec. 7, 2010); Pallasch, *Chicago Sun-Times*, July 28, 2011.

⁵ *Id.*

⁶ *Id.*

⁷ Pallasch, *Chicago Sun-Times*, July 28, 2011.

⁸ Rep. Joe Walsh, Personal Financial Disclosure Statement for January 1, 2008 through October 31, 2009, filed April 29, 2010; Rep. Joe Walsh, Personal Financial Disclosure Statement for Calendar Year 2010, filed May 16, 2011.

⁹ Joe Walsh for Congress Committee, Inc., FEC Form 3, July Quarterly Report 2011, filed July 15, 2011; Joe Walsh for Congress Committee, Inc., Amended FEC Form 3, Year-End Report 2010, filed April 12, 2011; Joe Walsh for Congress Committee, Inc., FEC Form 3, October Quarterly Report 2010, filed October 15, 2010; Joe Walsh for Congress Committee, Inc., Amended FEC Form 3, July Quarterly Report 2010, filed October 13, 2010; *Walsh v. Walsh*, Case No. 02 D2 30912, Verified Petition to Show Cause, To Modify Child Support, For Temporary Restraining Order, and Preliminary Injunction or Other Relief (Cir. Ct. Cook Co.), filed December 7, 2010; Jeff Goldblatt, GOP Congressional Candidate Joe Walsh Fails To File Personal Financial Disclosure Form, *Fox Chicago News*, April 26, 2010.

¹⁰ Goldblatt, *Fox Chicago News*, Apr. 26, 2010.

Walsh alleges Rep. Walsh paid no child support, Rep. Walsh and his current wife moved to a house in Winnetka, Illinois they rented for \$3,300 per month.¹² In May 2010, the couple moved to McHenry, Ill.¹³

Rep. Walsh also has made inconsistent statements about his income. In her court filing, Ms. Walsh said Rep. Walsh told her he had no income during at least part of the period from April 2008 through December 2010 when he failed to make any child support payments, though he failed to produce tax returns or other documentation to back up his claim.¹⁴

In March 2010, Rep. Walsh told the *Chicago Daily Herald* his income in 2009 was between \$30,000 and \$40,000.¹⁵ The following month, while answering questions from a reporter about his failure to file a required personal financial disclosure form on time, Rep. Walsh said he had averaged \$40,000 in income the previous two years.¹⁶

When he finally filed the required personal financial disclosure form at the end of April 2010, Rep. Walsh reported earning \$22,543.91 in 2008 and \$21,000 through October 31, 2009.¹⁷ In addition, for both 2008 and 2009, he declared unearned income between \$15,001 and \$50,000 from an economic interest in an entity called Everbury Partners, Ltd.¹⁸ A Walsh campaign spokeswoman later described Everbury Partners as real estate in which his current wife holds a passive economic interest.¹⁹ For 2008, Rep. Walsh also declared between \$5,001 and \$15,000 in rental income from an Evanston condo that later went into foreclosure and dividends between \$1,001 and \$2,500 for an account held by his current wife.²⁰ He also declared between \$1 and \$200 in interest earned from four separate accounts in 2009, and the same amount for three accounts in 2008.²¹ The fourth account earned between \$201 and \$1,000 in interest in 2009.²²

¹¹ Joe Walsh for Congress Committee, Inc., Amended FEC Form 3, April Quarterly Report 2011, filed July 15, 2011; Joe Walsh for Congress Committee, Inc., Amended FEC Form 3, Post-General Report 2010, filed April 12, 2011; Joe Walsh for Congress Committee, Inc., FEC Form 3, October Quarterly Report 2010, filed October 15, 2010; Joe Walsh for Congress Committee, Inc., Amended FEC Form 3, July Quarterly Report 2010, filed October 13, 2010.

¹² *Walsh v. Walsh*, Verified Petition (Dec. 7, 2010); Russell Lissau, 'I Overextended Myself', *Chicago Daily Herald*, March 18, 2010.

¹³ Russell Lissau, Walsh Moves Into District He Hopes To Represent, *Chicago Daily Herald*, May 12, 2010.

¹⁴ *Walsh v. Walsh*, Case No. 02 D2 30912, Verified Petition (Dec. 7, 2010).

¹⁵ Lissau, *Chicago Daily Herald*, Mar. 18, 2010.

¹⁶ Goldblatt, *Fox Chicago News*, Apr. 26, 2010.

¹⁷ Rep. Joe Walsh, Personal Financial Disclosure Statement for January 1, 2008 through October 31, 2009, filed April 29, 2010. Rep. Walsh indicated that his wife, Helene Miller-Walsh, does not work full-time and earned an unspecified salary in 2008 and 2009, though not in 2010. See Lissau, *Chicago Daily Herald*, Mar. 18, 2010.

¹⁸ Rep. Joe Walsh, Personal Financial Disclosure Statement for January 1, 2008 through October 31, 2009, filed April 29, 2010.

¹⁹ Russell Lissau, Walsh Releases Tax Info, Calls for Bean To Do Same, *Chicago Daily Herald*, May 20, 2010.

²⁰ Rep. Joe Walsh, Personal Financial Disclosure Statement for January 1, 2008 through October 31, 2009, filed April 29, 2010; Lissau, *Chicago Daily Herald*, Mar. 18, 2010.

²¹ Rep. Joe Walsh, Personal Financial Disclosure Statement for January 1, 2008 through October 31, 2009, filed April 29, 2010.

²² *Id.*

In May 2010, Rep. Walsh released his 2009 federal and state tax returns.²³ These documents showed that Rep. Walsh and his current wife earned \$65,227 in 2009, with an adjusted gross income of \$41,763.²⁴ In a court filing in February 2011, however, Rep. Walsh gave his total 2009 income as just \$29,000.²⁵ In a statement, his campaign said his adjusted gross income for 2008 was \$25,524.²⁶

On Rep. Walsh's most recent financial disclosure form, he said his income in 2010 was \$76,000 in commissions from Target Foods, as well as between \$5,001 and \$15,000 in unearned income from Everbury Partners and between \$1 and \$200 in interest on four accounts.²⁷ Rep. Walsh also told reporters he has borrowed money from relatives, though he has not declared any such debt on his personal financial disclosure forms.²⁸

Rep. Walsh has a long history of financial problems, including tax liens, lawsuits alleging his failure to pay debts, and the foreclosure on his Evanston condominium.²⁹

Interest on Campaign Loans

Rep. Walsh made nine personal loans to his campaign during the 2010 election cycle, totaling \$35,500.³⁰ In reports to the Federal Election Commission (FEC) signed by Helene Miller-Walsh, Rep. Walsh's campaign treasurer and current wife, the campaign reported the interest rate for each loan as ".0000 APR" – in other words, Rep. Walsh was charging his campaign no interest.³¹ Nonetheless, on December 30, 2010, the campaign committee inexplicably paid Rep. Walsh \$451.50 reported to the FEC as "Interest payment for loans paid back during the year."³²

²³ Lissau, *Chicago Daily Herald*, May 20, 2010.

²⁴ *Id.*

²⁵ *Walsh v. Walsh*, Case No. 02 D2 30912, Response to Verified Petition to Show Cause, To Modify Child Support, For Temporary Restraining Order, and Preliminary Injunction or Other Relief (Cir. Ct. Cook Co.), filed February 18, 2011.

²⁶ Press Release, Joe Walsh for Congress, Walsh Releases 2009 Tax Returns, Calls on Melissa Bean to Do The Same, April 30, 2010, available at <http://mchenrycountyblog.com/2010/05/06/8th-district-watch-walsh-releases-income-tax-returns-waiting-for-bean/>.

²⁷ Rep. Joe Walsh, Personal Financial Disclosure Statement for Calendar Year 2010, filed May 16, 2011.

²⁸ Lissau, *Chicago Daily Herald*, Mar. 18, 2010; Rep. Joe Walsh, Personal Financial Disclosure Statement for January 1, 2008 through October 31, 2009, filed April 29, 2010; Rep. Joe Walsh, Personal Financial Disclosure Statement for Calendar Year 2010, filed May 16, 2011.

²⁹ Pallasch, *Chicago Sun-Times*, July 28, 2011; Lissau, *Chicago Daily Herald*, Mar. 18, 2010.

³⁰ Joe Walsh for Congress Committee, Inc., FEC Form 3, July Quarterly Report 2011, filed July 15, 2011; Joe Walsh for Congress Committee, Inc., Amended FEC Form 3, Year-End Report 2010, filed April 12, 2011; Joe Walsh for Congress Committee, Inc., FEC Form 3, October Quarterly Report 2010, filed October 15, 2010; Joe Walsh for Congress Committee, Inc., Amended FEC Form 3, July Quarterly Report 2010, filed October 13, 2010.

³¹ Joe Walsh for Congress Committee, Inc., FEC Form 3, July Quarterly Report 2011, filed July 15, 2011; Joe Walsh for Congress Committee, Inc., Amended FEC Form 3, Year-End Report 2010, filed April 12, 2011; Joe Walsh for Congress Committee, Inc., FEC Form 3, October Quarterly Report 2010, filed October 15, 2010; Joe Walsh for Congress Committee, Inc., Amended FEC Form 3, July Quarterly Report 2010, filed October 13, 2010; Katherine Skiba and Steve Schmadeke, *Illinois' Unlikely Lawmaker*, *Chicago Tribune*, August 17, 2011.

³² Joe Walsh for Congress Committee, Inc., Amendment FEC Form 3, Year-End Report 2010, filed April 12, 2011.

Potential Violations

Failure to Pay Child Support

Under Illinois law, the failure to pay child support is treated as contempt of court and can be punished by up to six months in prison, probation, wage garnishment, and suspension of the delinquent parent's driver's license.³³ Further, willfully failing to pay court-ordered child support for more than a year, or being in arrears for more than \$20,000 in child support, when the person has the ability to provide the support, is a felony and can be punished by one to three years in prison and a fine up to \$25,000.³⁴

By owing Ms. Walsh \$117,435.25 in child support, Rep. Walsh violated Illinois child support payment laws and may be subject to felony charges.

False Statements on Personal Financial Disclosure Forms

The Ethics in Government Act of 1967 requires all members of Congress and candidates for Congress to file financial disclosure reports.³⁵ Under the statute, the attorney general may seek a civil penalty of up to \$11,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.³⁶ House Rule 26 incorporates the financial disclosure provisions of the Ethics in Government Act.³⁷ Financial disclosure forms must list all liabilities aggregating more than \$10,000 to any single creditor.³⁸

Federal law further prohibits anyone from making "any materially false, fictitious, or fraudulent statement or representation"³⁹ on "a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch."⁴⁰

By submitting financial disclosure reports that failed to report the \$117,435.25 in child support he owes to his former wife as a liability, Rep. Walsh appears to have violated House rules and federal law.

In addition, Rep. Walsh has made wildly disparate claims regarding his income. For example, he told a reporter his 2009 income was between \$30,000-\$40,000, he reported income of approximately \$65,000 on his taxes, and he reported income of just \$21,000 on his personal financial disclosure forms up to October 31, 2009, though he noted an additional \$20,000-\$60,000 in other income. All the while, he told his ex-wife he had absolutely no income for at

³³ 750 Ill. Comp. Stat. § 5/505(b) (2011).

³⁴ 750 Ill. Comp. Stat. §§ 16/15(b), (d) (2011); 730 Ill. Comp. Stat. § 5/5-8-1(a)(7) (2011); *In re Marriage of Miller*, 227 Ill. 2d 185, 204 (Ill. 2007).

³⁵ Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

³⁶ 5 U.S.C. app. 4, § 104.

³⁷ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 248 (110th Cong., 2d Sess., 2008 ed.).

³⁸ *Id.*, p. 258. Liabilities owed to certain relatives, including a spouse or child, do not need to be reported on financial disclosure forms. *Id.* Rep. Walsh's child support payments, however, were liabilities to his former wife, not his spouse or children.

³⁹ 18 U.S.C. § 1001(a)(2).

⁴⁰ 18 U.S.C. § 1001(c)(2).

least part of that time, in an effort to justify his failure to make any child support payments. In his most recent court filing he reported just \$29,000 in income for the year.

During that same period, Rep. Walsh apparently paid \$3,300 per month in rent, which would total almost \$40,000 for the year, leaving him virtually penniless. Nevertheless, he somehow managed to loan his campaign \$35,500.

Based on Rep. Walsh's representations alone it is abundantly clear he is not truthfully reporting his assets. If his financial disclosure reports are false, that is one crime, and if he lied in court filings, he also may have committed perjury, obstruction of justice, and/or contempt.

Campaign Finance Disclosures

The Federal Election Campaign Act (FECA) and FEC regulations require congressional candidates to disclose all loans they receive.⁴¹ The FEC has interpreted these provisions to require candidates to disclose on every disclosure report the interest rate of each outstanding loan.⁴² Even though his campaign has always reported a zero interest rate on Rep. Walsh's personal loans, he received interest income from those loans in December 2010, suggesting he changed the rate without notifying the FEC. If Rep. Walsh did so, he likely violated campaign finance law.

Conduct Not Reflecting Creditably on the House

House Rule 23 requires all members of the House to conduct themselves "at all times in a manner that reflects creditably on the House."⁴³ This ethics standard is considered to be "the most comprehensive provision" of the code.⁴⁴ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with "flagrant" violations of the law that reflect on "Congress as a whole," and that might otherwise go unpunished.⁴⁵ This rule has been relied on by the committee in numerous prior cases in which the committee found unethical conduct including: the failure to report campaign contributions,⁴⁶ making false statements to the committee,⁴⁷ criminal convictions for bribery,⁴⁸ or accepting illegal gratuities,⁴⁹ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁵⁰

⁴¹ 2 U.S.C. § 434(b)(3); 11 C.F.R. §§ 100.52, 104.3(d).

⁴² Federal Election Commission, Advisory Opinion 1986-45 (Feb. 6, 1987).

⁴³ Rule 23, cl. 1.

⁴⁴ House Ethics Manual, p. 12.

⁴⁵ House Comm. on Standards of Official Conduct, *Report Under the Authority of H. Res. 418*, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁴⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

⁴⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

⁴⁸ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong.,

By failing to pay child support, by failing to pay that support while loaning his campaign more than \$35,000 and living in an expensive house, by failing to report his child support obligations on his financial disclosure forms, by inaccurately reporting his income to the court handling his child support case, and by failing to report to the FEC changes to his personal loans to his campaign, Rep. Walsh acted in a manner that does not reflect creditably on the House.

1st Sess. 4, 16-17 (1981) (member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁴⁹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (member resigned while expulsion resolution was pending).

⁵⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); *see* 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

REPRESENTATIVE MAXINE WATERS

Representative Maxine Waters (D-CA) is an eleven-term member of Congress, representing California's 35th congressional district. She is a senior member of the House Financial Services Committee. Rep. Waters' ethics issues stem from a meeting she arranged between officials at the Department of Treasury and OneUnited Bank, a bank with which she has financial ties.

In August 2010, an investigative subcommittee of the House Ethics Committee issued a Statement of Alleged Violation charging Rep. Waters with three counts of violating House rules and ethics regulations in connection with her actions regarding OneUnited. Later that year, however, the committee indefinitely postponed a scheduled ethics trial, citing the discovery of new evidence.¹ In addition, news reports raised other questions about the conduct of the committee and its investigators during the Waters investigation, prompting an internal investigation that is still ongoing.² Rep. Waters was included in CREW's 2005 and 2006 congressional corruption reports for unrelated matters, and in CREW's 2009 congressional corruption report for her actions regarding OneUnited.³

Intervention Between OneUnited and Treasury Officials

Rep. Waters has close financial ties to OneUnited Bank, one of the largest black-owned banks in the country.⁴ In March 2004, she and her husband, Sidney Williams, each separately bought OneUnited stock worth between \$250,001 and \$500,000.⁵ Additionally, Mr. Williams maintained separate holdings at OneUnited worth between \$250,001 and \$500,000. In September 2004, Rep. Waters sold her stock in OneUnited, and her husband sold a portion of his valued between \$250,001 and \$500,000.⁶ That same year, Mr. Williams joined the bank's board, a position he retained until April 21, 2008.⁷ In addition, Mr. Williams owned 3,500 shares of OneUnited preferred stock and 476 shares of the bank's common stock, the value of which was

¹ Due to serious questions about the actions of House Ethics Committee staff members involved in the Waters investigation, CREW in July 2011 called for an investigation of the House Ethics Committee and said there can be no confidence in the committee's August 2010 Statement of Alleged Violation. CREW has not used the Statement of Alleged Violation as a source for information about Rep. Waters' actions because of the questions about its validity.

² Jeffrey Smith and Carol D. Leonnig, Infighting Cited in Breakdown of Waters Ethics Probe, *Washington Post*, December 17, 2010; Paul Kane and Carol D. Leonnig, House Ethics Panel in Turmoil As Top Lawyer Resigns, *Washington Post*, December 16, 2010; Press Release, House Committee on Ethics, 112th Congress, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding the Matter of Representative Maxine Waters, July 20, 2011.

³ Rep. Waters' previous ethics issues stemmed from using her power to financially benefit her daughter, husband, and son. For more information, see Beyond DeLay: The 20 Most Corrupt Members of Congress (and Five to Watch), available at <http://www.crewsmostcorrupt.org/files/BD2006Report.pdf>.

⁴ Eric Lipton and Jim Rutenberg, Congresswoman, Tied to Bank, Helped Seek Funds, *New York Times*, March 13, 2009; Susan Schmidt, Waters Helped Bank Whose Stock She Once Owned, *Wall Street Journal*, March 12, 2009.

⁵ Rep. Maxine Waters, Personal Financial Disclosure Statement for Calendar Year 2004, filed May 13, 2005.

⁶ *Id.*

⁷ Schmidt, *Wall Street Journal*, Mar. 12, 2009.

approximately \$350,000 in June 2008.⁸ If OneUnited failed, the stock would have been worthless.⁹

On or about September 8, 2008, Rep. Waters asked then-Secretary of the Treasury Henry Paulson to hold a meeting with minority-owned banks to discuss losses they suffered after the government placed Fannie Mae and Freddie Mac into conservatorship.¹⁰ The subsequent September 9th meeting included several senior Treasury officials, but representatives of just a single bank – OneUnited.¹¹ One attendee, OneUnited’s senior counsel Robert Cooper, was then also the incoming chair of the National Bankers Association (NBA), a trade association representing minority-owned banks.¹² Rep. Waters’ chief of staff and grandson, Mikael Moore, also attended.¹³

Kevin Cohee, chief executive officer of OneUnited, and Mr. Cooper used the meeting as an opportunity to request bailout funds.¹⁴ In a subsequent email, Mr. Cooper specifically requested more than \$40 million from Treasury to compensate the bank for losses.¹⁵ At the time, the department lacked the legislative authority to bail out the bank.¹⁶ Former Bush White House officials said they were surprised when OneUnited officials asked for bailout funds because they understood the meeting had been arranged to discuss the losses minority-owned banks endured when the federal government took over Fannie Mae and Freddie Mac.¹⁷

In December 2008, Rep. Waters intervened again, asking Treasury to host another meeting to ensure minority-owned banks received part of the \$700 billion allocated under the Troubled Asset Relief Program (TARP).¹⁸ The second meeting focused on minority-owned banks in general, though a OneUnited official was present.¹⁹ On December 19, 2008, OneUnited secured \$12.1 million in bailout funds.²⁰

Rep. Waters did not disclose her financial ties to OneUnited to Treasury officials when she requested meetings between regulators and bank officials.²¹ A former Bush administration official who helped set up the initial meeting stated, “[Learning of the connection] was upsetting to me. This is something that was potentially politically explosive and embarrassing to the

⁸ *Id.*

⁹ *Id.*

¹⁰ Office of Congressional Ethics, 111th Congress, *Report and Findings, Maxine Waters*, Review No. 09-2121, August 6, 2009 (OCE Report and Findings); Lipton and Rutenberg, *New York Times*, Mar. 13, 2009.

¹¹ OCE Report and Findings.

¹² *Id.*; Bennett Roth, Waters Denies Improperly Aiding Bank Where Husband Was Board Member, *CQ*, March 13, 2009.

¹³ OCE Report and Findings; Lisa Mascaro, Working for Grandma Waters on Capitol Hill, *Los Angeles Times*, August 12, 2010.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*; Schmidt, *Wall Street Journal*, Mar. 12, 2009.

¹⁷ Roth, *CQ*, Mar. 13, 2009.

¹⁸ Lipton and Rutenberg, *New York Times*, Mar. 13, 2009.

¹⁹ *Id.*

²⁰ Binyamin Appelbaum, Lawmaker Tried to Aid Bank Partly Owned by Husband, *Washington Post*, March 14, 2009.

²¹ Lipton and Rutenberg, *New York Times*, Mar. 13, 2009.

administration. They should have at least let us know.”²² Treasury officials claimed that although OneUnited also requested a meeting with regulators regarding Fannie Mae and Freddie Mac losses, it was not until the congresswoman intervened that the Treasury Department approved the initial meeting.²³

Further, sometime in early September 2008, around the same time Rep. Waters asked the Treasury Department to hold the initial meeting, Rep. Waters spoke to Rep. Barney Frank (D-MA) about OneUnited and the fact that Mr. Williams previously had served on the board.²⁴ Rep. Frank advised her to stay out of matters related to OneUnited because of her husband’s ties to the bank.²⁵ Nevertheless, despite Rep. Frank’s advice, Mr. Moore continued to actively assist OneUnited representatives in their quest to receive bailout funds, and worked to craft legislation authorizing Treasury to grant OneUnited’s request.²⁶

Rep. Waters defended her actions, claiming the NBA had asked her to request the initial meeting with Treasury, and she released a letter from Mr. Cooper.²⁷ Neither the former chairman nor the president of the NBA, however, had been aware of Mr. Cooper’s letter, and the organization began an internal investigation.²⁸ Michael A. Grant, the NBA’s president at the time, said it was “absolutely inappropriate” for the letter to go out without the knowledge of the president and the current chairman.²⁹ In March 2009, the NBA board passed a motion affirming that Mr. Cooper acted within his authority, but also created a new policy requiring that all future meetings with government agencies be authorized by the NBA’s president.³⁰

This was not the first time Rep. Waters used her position to advance the interests of the bank.³¹ Mr. Williams became a shareholder in OneUnited in 2001, when it was known as the Boston Bank of Commerce.³² In 2002, Boston Bank of Commerce tried to purchase Family Savings, a minority-owned bank in Los Angeles.³³ Instead, Family Savings turned to a bank in Illinois, FBOP Corp.³⁴ Rep. Waters tried to block the merger by contacting regulators at the Federal Deposit Insurance Corporation (FDIC).³⁵ She publicly stated she did not want a white bank to acquire a minority-owned bank.³⁶ When her efforts with the FDIC proved fruitless, Rep. Waters began a public pressure campaign with other community leaders.³⁷ Ultimately, when

²² *Id.*

²³ *Id.*

²⁴ OCE Report and Findings. The Office of Congressional Ethics report refers repeatedly to “Representative A,” identified as the chair of the House Financial Services Committee. At the time of the events described, Rep. Frank chaired the committee.

²⁵ *Id.*

²⁶ OCE Report and Findings.

²⁷ Eric Lipton and Jim Rutenberg, *Congresswoman Lashes Out at Critics of a Bank Meeting*, *New York Times*, March 14, 2009.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *National Bankers Association Addresses Waters Issue*, *Right Vision News*, September 2, 2010.

³¹ Appelbaum, *Washington Post*, Mar. 14, 2009.

³² *Id.*; Rep. Maxine Waters, *Personal Financial Disclosure Statement for Calendar Year 2001*, filed May 15, 2002.

³³ Appelbaum, *Washington Post*, Mar. 14, 2009.

³⁴ *Id.*; Karen Robinson-Jacobs, *Four Submit Offers for Family Savings*, *Los Angeles Times*, February 25, 2002.

³⁵ Appelbaum, *Washington Post*, Mar. 14, 2009.

³⁶ *Id.*

³⁷ *Id.*

Family Savings changed direction and allowed Boston Bank of Commerce to submit a winning bid, Rep. Waters received credit for the merger.³⁸ The combined banks were renamed OneUnited.³⁹

Status of Ethics Investigation

In August 2009, having conducted an investigation following news reports about Rep. Waters' apparent conflict of interest, the Office of Congressional Ethics referred the allegations against Rep. Waters to the House Ethics Committee for further review.⁴⁰ The ethics committee then established an investigatory subcommittee, eventually charging Rep. Waters with three counts of violating House rules and federal ethics regulations.⁴¹

The House Ethics Committee scheduled Rep. Waters' ethics trial for November 29, 2010, but on November 19, 2010, the committee announced it would postpone proceedings indefinitely following the discovery of new evidence.⁴² On the same day, the committee placed two attorneys, who had worked on Rep. Waters' case on indefinite administrative leave.⁴³ One of the attorneys had served as deputy chief counsel and lead attorney on the case.⁴⁴ News reports painted a picture of a committee in near chaos, with staff arguing over which documents should be subpoenaed, intimations that then-chairwoman Rep. Zoe Lofgren (D-CA) had undermined staff efforts to prepare a fair and thorough case, and allegations the committee had failed to obtain and review clearly relevant documents from Rep. Frank and the staff of the House Financial Services Committee.⁴⁵

In March 2011, the new House Ethics Committee chairman, Rep. Jo Bonner (R-AL), denounced what he called a "unilateral" decision by Rep. Lofgren to suspend the attorneys and reinstated both, though neither chose to return to the committee.⁴⁶ No new trial date has been announced.

In July 2011, *Politico* obtained House Ethics Committee memos alleging that staff members involved with the Waters investigation had breached confidentiality, failed to provide Rep. Waters' defense with all the material to which it was entitled, and engaged in partisan

³⁸ Lipton and Rutenberg, *New York Times*, Mar. 13, 2009.

³⁹ Appelbaum, *Washington Post*, Mar. 14, 2009.

⁴⁰ <http://oce.house.gov/2010/08/august-2-2010---oce-referral-regarding-rep-waters.html>.

⁴¹ Press Release, House Committee on Standards of Official Conduct, 111th Congress, Statement of the Chair and Ranking Republican Member of the Committee on Standards of Official Conduct, August 9, 2010; Committee on Standards of Official Conduct, 111th Congress, 2d Session, *Investigative Subcommittee in the Matter of Representative Maxine Waters, Statement of Alleged Violation*, Adopted June 15, 2010.

⁴² Press Release, House Committee on Standards of Official Conduct, 111th Congress, Statement of the Chair and Ranking Republican Member of the Committee on Standards of Official Conduct Regarding Representative Maxine Waters, November 19, 2010.

⁴³ John Bresnahan, *2 House Ethics Attorneys Suspended*, *Politico*, November 30, 2010.

⁴⁴ *Id.*; Larry Margasak, *Waters Ethics Trial in Jeopardy For This Year*, *Associated Press*, December 1, 2010.

⁴⁵ Smith and Leonnig, *Washington Post*, Dec. 17, 2010; Kane and Leonnig, *Washington Post*, Dec. 16, 2010.

⁴⁶ Jeffrey Smith, *House Ethics Chair Blasts Predecessor on Idling of Lawyers in Waters Probe*, *Washington Post*, March 14, 2011.

conduct.⁴⁷ On July 20, 2011, in response to the revelations, the House Ethics Committee hired Washington, D.C. attorney Billy Martin as outside counsel to first review the committee's conduct in the Waters matter and, if the committee decides to proceed with the case against Rep. Waters after hearing the outside counsel's report, to help the committee complete the Waters case as quickly as possible.⁴⁸

Late and Incomplete Travel Disclosure Filing

In May 2011, Legistorm reported Rep. Waters' office filed several travel disclosures nearly a year late.⁴⁹ Travel disclosures for trips funded by a private source must be filed within 15 days of returning from a trip,⁵⁰ although late filing is not uncommon.⁵¹ Rep. Waters' office has disclosed 14 trips taken by the congresswoman since 2007, all of which were filed late.⁵² Her office disclosed another six trips taken by her staff during that time, four of which were filed late.⁵³

In addition, Rep. Waters completely failed to report two trips she took in 2009.⁵⁴ Those trips were, however, included on her 2009 personal financial disclosure forms.⁵⁵

Legal Fees

Rep. Waters is represented in the ethics investigation by attorney Stan Brand, but her campaign committee has not reported any payments to his firm.⁵⁶

⁴⁷ John Bresnahan, Did Ethics Staff Taint Waters Probe?, *Politico*, July 18, 2011. In response, CREW sent a letter to House Speaker John Boehner (R-OH) and Minority Leader Nancy Pelosi (D-CA) requesting an immediate investigation of the House Ethics Committee. See Letter from CREW Executive Director Melanie Sloan to Speaker of the House John Boehner and Minority Leader Nancy Pelosi, July 18, 2011. CREW also called on the committee to discard its previous work in the Waters case, and, if it decides to go forward, start again from the date of the referral by the Office of Congressional Ethics. *Id.*

⁴⁸ Press Release, House Committee on Ethics, 112th Congress, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding the Matter of Representative Maxine Waters, July 20, 2011.

⁴⁹ Under Scrutiny, Rep. Waters Files Disclosures a Year Late, *Legistorm*, May 9, 2011.

⁵⁰ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 90 (110th Cong., 2d Sess., 2008 ed.).

⁵¹ <http://www.opensecrets.org/travel/index.php?type=D>.

⁵² http://clerk.house.gov/public_disc/giftTravel-search.aspx. Although 22 documents are listed on the clerk's website, two are duplicate filings or postings.

⁵³ http://clerk.house.gov/public_disc/giftTravel-search.aspx.

⁵⁴ Rep. Maxine Waters, Personal Financial Disclosure Statement for Calendar Year 2009, filed May 17, 2010.

⁵⁵ *Id.*

⁵⁶ John Bresnahan, Maxine Waters's Attorneys to Ethics Panel: Back Off, *Politico*, August 26, 2010; Citizens for Waters, FEC Form 3, October Quarterly Report 2008, Amendment, April 15, 2009 through FEC Form 3, April Quarterly Report 2011, April 13, 2011.

Potential Violations

House Rule 23, Clause 3

House Rule 23, clause 3, provides:

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

By arranging a meeting between Treasury Department officials and OneUnited bank officers, after which the bank was awarded bailout funds it otherwise might not have received, Rep. Waters received a benefit through protecting her husband's holdings in the bank, and thereby may have violated House Rule 23.

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from "taking any official actions for the prospect of personal gain for themselves or anyone else."⁵⁷ House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

By using her position to induce Treasury Department officials to meet with OneUnited bank officers, after which the bank was awarded bailout funds it otherwise might not have received, Rep. Waters and her husband received a benefit through the protection of her husband's holdings in the banks, and thereby may have violated 5 C.F.R. § 2635.702(a).

Code of Ethics for Government Service, Clause 5

The Code of Ethics for Government Service provides that government officials should

Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under

⁵⁷ House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

circumstances which might be construed by reasonable persons as influencing the performance of his official duties.⁵⁸

By arranging a meeting between Treasury Department officials and OneUnited officers, Rep. Waters dispensed special privileges to a bank in which her husband has holdings, and thereby may have violated this provision. Rep. Waters also may have violated this provision by accepting the benefit of the protection of her husband's holdings in the bank, which reasonable persons might construe as influencing her in the performance of her official duties.

Travel Rules

For each trip taken by a member or employee that is funded by a private source, "a travel disclosure form must be completed, signed, and filed with the Clerk of the House within 15 days of returning from the trip."⁵⁹

By repeatedly filing travel disclosure documents more than 15 days after returning from trips, and by failing to file travel disclosure documents for two trips reported on her financial disclosure form, Rep. Waters likely violated House travel rules.

Conduct Not Reflecting Creditably on the House

House Rule 23 requires all members of the House to conduct themselves "at all times in a manner that reflects creditably on the House."⁶⁰ This ethics standard is considered to be "the most comprehensive provision" of the code.⁶¹ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with "flagrant" violations of the law that reflect on "Congress as a whole," and that might otherwise go unpunished.⁶² This rule has been relied on by the committee in numerous prior cases in which the committee found unethical conduct including: the failure to report campaign contributions,⁶³ making false statements to the committee,⁶⁴ criminal convictions for bribery,⁶⁵ or accepting illegal gratuities,⁶⁶ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁶⁷

⁵⁸ 72 Stat., Part 2, B12, H. Res. 175, 85th Cong. (adopted July 11, 1958); House Ethics Manual, p. 20.

⁵⁹ *Id.*, p. 90; House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," New Travel Rules for Officially-Connected Travel Paid for by a Private Source, March 14, 2007.

⁶⁰ Rule 23, cl. 1.

⁶¹ House Ethics Manual, p. 12.

⁶² House Comm. on Standards of Official Conduct, *Report Under the Authority of H. Res. 418*, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁶³ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

⁶⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

⁶⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (member resigned after Committee recommended expulsion). In another case, the

By arranging a meeting between Treasury Department officials and OneUnited bank officers under false pretenses, asking for federal financial assistance for a bank in which her husband has a financial interest, claiming the National Bankers Association had asked her to request the meeting when neither the chairman nor president of the association was aware of the request, and repeatedly filing travel disclosure forms late, Rep. Waters acted in a manner that does not reflect creditably on the House.

Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁶⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (member resigned while expulsion resolution was pending).

⁶⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); *see* 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

MEMBERS OF THE SENATE

SENATOR DAVID VITTER

Senator David Vitter (R-LA) is a two-term senator from Louisiana. Sen. Vitter's ethics issues stem from his misuse of his official Senate personnel and office expense account allowances, and attempted bribery. Sen. Vitter was included in CREW's 2007 congressional corruption report for unrelated matters.¹

Misuse of Official Senate Personnel and Office Expense Account Allowances

Sen. Vitter's legislative assistant, Brent Furer, began working in Sen. Vitter's office in January 2005 after serving as a key aide in Sen. Vitter's campaign.² Prior to joining Sen. Vitter's staff, Mr. Furer had a history of arrests for driving while intoxicated, possession of cocaine, and other offenses.³ One of those arrests occurred on December 28, 2004, when Mr. Furer was charged with driving while intoxicated, reckless driving, driving without a license, speeding, and resisting an officer.⁴ Mr. Furer was arraigned on February 28, 2005 and again on May 11, 2005, with trial dates repeatedly scheduled in 2005 and 2006.⁵

On October 12, 2007, while employed by Sen. Vitter, Mr. Furer flew from Washington, D.C. to New Orleans, returning on October 18.⁶ Senate records show the \$634.20 flight was paid for by Sen. Vitter's office expense account.⁷ Mr. Furer, however, spent most of his time in Louisiana on personal legal matters. On October 17, Mr. Furer pleaded guilty to the driving while intoxicated and reckless driving charges, and served on a litter detail on October 13 and 14.⁸

Sen. Vitter's office account also covered Mr. Furer's travel expenses from Washington, D.C. to New Orleans and back in August 2008, when he again dealt with personal legal matters. The round trip from D.C. to New Orleans departing August 5 and returning August 14 cost \$746.00, with an additional \$89.56 for his staff per diem, and \$15.00 for "incidentals."⁹ During this trip, Mr. Furer signed a probation agreement on August 7 attesting he would fulfill the conditions of his sentence.¹⁰

¹ Sen. Vitter's 2007 ethics issues stemmed from soliciting prostitutes. For more information, see Beyond DeLay: The 22 Most Corrupt Members of Congress (and Two to Watch) 2007, available at http://www.crewsmostcorrupt.org/files/david_vitter_most_corrupt.pdf.

² Matthew Mosk and Brian Ross, Vitter Aide Resigns After ABC News Disclosures About Past, *ABC News*, June 23, 2010; *Report of the Secretary of the Senate*, October 1, 2004 - March 31, 2005.

³ Gerard Shields, Vitter Aide Resigns Over Attack Report, *The Advocate (Baton Rouge, La.)*, June 24, 2010; Mosk and Ross, *ABC News*, June 23, 2010.

⁴ Complaint filed with the Senate Committee on Ethics by Citizens for Responsibility and Ethics in Washington, September 22, 2010 (CREW Complaint), Exhibit D, Baton Rouge City Court records.

⁵ *Id.*

⁶ CREW Complaint, Exhibit E, *Report of the Secretary of the Senate*, April 1, 2008 - September 30, 2008.

⁷ *Id.*

⁸ CREW Complaint, Exhibit D; Marsha Shuler, Records Link Aide's La. Trips, DWI Case, *The Advocate (Baton Rouge, La.)*, August 19, 2010.

⁹ CREW Complaint, Exhibit G, *Report of the Secretary of the Senate*, April 1, 2008 - September 30, 2008.

¹⁰ Shuler, *The Advocate (Baton Rouge, La.)*, Aug. 19, 2010.

Sen. Vitter claimed through a spokesman to have been unaware of Mr. Furer's driving while intoxicated charges until they were reported in the news media in June 2010.¹¹ During Mr. Furer's October 2007 trip to Louisiana, however, the Senate was in session and took up a controversial amendment introduced by Sen. Vitter related to immigration, an issue within Mr. Furer's legislative responsibilities.¹² On October 15, 2007, Sen. Vitter introduced an amendment to an appropriations bill that would have denied Community Oriented Policing Services funding to so-called "sanctuary" cities that prohibit local law enforcement personnel from cooperating with federal authorities on immigration enforcement.¹³ The Senate debated the amendment on October 15 and 16, and voted it down October 16.¹⁴ Presumably, Sen. Vitter would have expected his legislative assistant responsible for immigration issues to be present for this legislative activity.

Regarding Mr. Furer's travel, Sen. Vitter's spokesman said "it is standard for our Washington legislative staff to visit Louisiana periodically for meetings."¹⁵ Mr. Furer, however, made only six trips to Louisiana paid for by Sen. Vitter's office in his five years on staff, two of which coincided with his court dates.¹⁶ A third trip, to attend a staff retreat, also overlapped with a court date.¹⁷

Actions Related to Aide Charged With Attacking Former Girlfriend

Mr. Furer's travels came to the public's attention as a result of his conviction on charges related to an altercation in which he stabbed his ex-girlfriend, Nicolia Demopoulos.¹⁸ According to the initial police report and an affidavit in support of Mr. Furer's arrest warrant, on January 12, 2008, Mr. Furer and Ms. Demopoulos went to Mr. Furer's Capitol Hill apartment after drinking at a restaurant. Mr. Furer became angry with Ms. Demopoulos about phone numbers in her cellular phone and refused to let her leave for an hour and a half. When Ms. Demopoulos tried to walk out the door, Mr. Furer pushed her to the floor and, after she screamed, covered her mouth with his hand. Mr. Furer pushed Ms. Demopoulos onto a bed, held her down, and broke her phone when she tried to call the police. He then grabbed a utility knife and stabbed her in the hand. Holding an object underneath Ms. Demopoulos' neck, Mr. Furer asked her: "Do you want to die?" Mr. Furer eventually let Ms. Demopoulos leave on the promise that she would not call the police. Ms. Demopoulos was taken to the hospital, where she received eight stitches in her chin.

¹¹ *Id.*

¹² CREW Complaint, Exhibit H, *Congressional Yellow Book*, Spring 2008.

¹³ Plan to Crack Down on 'Sanctuary Cities' Killed in Senate, *Fox News*, October 17, 2007; 153 Cong. Rec. S12850-52 (October 15, 2007).

¹⁴ *Id.*; 153 Cong. Rec. S12910-13 (October 15, 2007).

¹⁵ Brian Beutler, Vitter Aide Made Few Official Trips to Louisiana That Didn't Coincide With Court Appearances, *TPMMuckraker*, August 20, 2010.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ CREW Complaint, Exhibit J, Incident-Based Event Report (filed January 12, 2008); Affidavit in Support of an Arrest Warrant (filed January 29, 2008); Information and Complaint (filed March 10, 2008); Judgment and Commitment/Probation Order, 08-DVM-602 (D.C. Super. Ct. April 3, 2008). This account is drawn from these and other police and court documents included in Exhibit J.

On March 10, 2008, Mr. Furer was charged with assault, attempted possession of a prohibited weapon, obstructing a request for assistance from the police, attempted threats, and destroying property.¹⁹ Mr. Furer pleaded guilty in April 2008 to three misdemeanor charges, with the assault and weapon charges dismissed. He was sentenced to 180 days confinement for each of the three counts, 40 hours of community service, treatment for drug and alcohol dependency, and two years of supervised probation with conditions, including that he have no contact with Ms. Demopoulos.²⁰

Mr. Furer's criminal defense lawyer was Thomas J. Kelly, Jr., a partner at the Venable LLP law firm.²¹ Mr. Kelly's biography describes him as a "seasoned white collar criminal defense and trial lawyer" who "has defended individuals in high profile criminal cases."²² Mr. Kelly refused to comment on how he was hired by Mr. Furer, saying he could not recall whether Sen. Vitter was involved in connecting Mr. Furer with Venable, but asserting he does not know Sen. Vitter or anyone in his office.²³ According to Mr. Kelly, Mr. Furer paid his attorneys' fees.²⁴ In 2008, the average partner billing rate at Venable was \$530 per hour.²⁵ From October 1, 2007 to September 30, 2008, Mr. Furer was paid \$47,999 by Sen. Vitter.²⁶ Thus, payment of Mr. Kelly's fees clearly would have been a significant financial burden for Mr. Furer.

Sen. Vitter's office claimed Mr. Furer was on leave during the pendency of the case. According to Sen. Vitter's spokesman, "[a]fter the January 2008 incident, [Mr. Furer] was told to leave the office pending the court's determination of what happened. In April, after the court issued its penalty..., and in consultation with the congressional employment legal office, further significant disciplinary action was taken and he was allowed to return to the office."²⁷ Despite allegedly being on leave for several months, Senate employment records indicate Mr. Furer was paid for all but five days in January 2008.²⁸

Despite Mr. Furer's altercation with his ex-girlfriend, and even after his guilty plea on three charges, he helped oversee women's issues for Sen. Vitter. Several directories of congressional staffers list "women's issues" among Mr. Furer's legislative responsibilities.²⁹ In addition, the executive director of the Louisiana Coalition Against Domestic Violence said she was personally informed in June 2010 that Mr. Furer was Sen. Vitter's "point man" on women's issues, and Sen. Vitter had assigned Mr. Furer to meet with her regarding domestic violence

¹⁹ *Id.*

²⁰ *Id.*

²¹ Mosk and Ross, *ABC News*, June 23, 2010.

²² CREW Complaint, Exhibit K, Biography of Thomas J. Kelly, Jr., Venable LLP.

²³ Justin Elliot, Attorney: Vitter Aide Paid His Own 'Minimal' Fees In Assault Case, *TPMMuckraker*, June 23, 2010; Mosk and Ross, *ABC News*, June 23, 2010.

²⁴ *Id.*

²⁵ A Nationwide Sampling of Law Firm Billing Rates, *National Law Journal*, December 8, 2008.

²⁶ *Report of the Secretary of the Senate*, October 1, 2007 - March 31, 2008; *Report of the Secretary of the Senate*, April 1, 2008 - September 30, 2008.

²⁷ Jonathan Tilove and Bruce Alpert, Vitter Aide Held Woman Captive, Stabbed Her, *Times-Picayune (New Orleans)*, June 24, 2010.

²⁸ *Report of the Secretary of the Senate*, April 1, 2008 - September 30, 2008.

²⁹ *Congressional Yellow Book*, Spring 2008; Shields, *The Advocate (Baton Rouge, La.)*, June 24, 2010 (citing KnowWho, a directory of congressional staffers); Brian Beutler, Vitter Claims Disgraced Staffer Didn't Work on Women's Issues: Records Say Otherwise, *TPMMuckraker*, July 7, 2010.

legislation.³⁰ Nevertheless, in one of his only comments about Mr. Furer, Sen. Vitter insisted Mr. Furer was not assigned to women's issues.³¹ Two other staff members, Sen. Vitter asserted, had always been assigned women's issues.³² Sen. Vitter later acknowledged Mr. Furer was responsible for abortion issues, but maintained he was not assigned "women's affairs."³³ In June 2010, after reports of his legal troubles surfaced publicly, Mr. Furer resigned from Sen. Vitter's office.³⁴

Linking Interior Secretary Salary Increase to Official Action

On May 23, 2011, Sen. Vitter sent a letter to Secretary of the Department of the Interior Ken Salazar stating he would block legislation granting the secretary's pay raise until the Department of Interior began issuing six permits for new deepwater exploratory wells each month.³⁵ Only if Interior began issuing the permits at that rate would Sen. Vitter support the secretary's pay raise. Sen Vitter wrote:

Last Friday, I was asked to support legislation in the Senate to grant you a nearly \$20,000 salary increase. Given the completely unsatisfactory pace of your department's issuance of new deepwater exploratory permits in the Gulf, I cannot possibly give my assent...

[W]hen the rate of permits issued for new deepwater exploratory wells reaches pre-moratorium levels (so 6 per month), I will end my efforts to block your salary increase.³⁶

Secretary Salazar responded with a letter to Senate Majority Leader Harry Reid (D-NV) and Senate Minority Leader Mitch McConnell (R-KY), stating the idea that a senator would take "the position, in writing, that his vote on the issue [of the salary increase] is dependent upon the outcomes of his attempted coercion of public acts here at the Department ... is wrong, and it must be made perfectly clear that his attempt cannot and will not affect the execution of the solemn legal responsibilities that the Department undertakes on behalf of the American people."³⁷

³⁰ Tahman Bradley and Matthew Mosk, Senator David Vitter Calls Case of Violent Aide Old News, *ABC News*, July 7, 2010.

³¹ *Id.*; Beutler, *TPMMuckraker*, July 7, 2010.

³² *Id.*

³³ Brian Beutler, Vitter: Furer Handled *Abortion*, Just Not 'Women's Affairs', *TPMMuckraker*, July 8, 2010.

³⁴ Mosk and Ross, *ABC News*, June 23, 2010.

³⁵ Letter from Sen. David Vitter to Hon. Ken Salazar, May 23, 2011.

³⁶ *Id.* (emphasis in original).

³⁷ Letter from Hon. Ken Salazar to Senate Majority Leader Harry Reid and Senate Minority Leader Mitch McConnell, May 24, 2011.

Potential Violations

Improper Use of Appropriated Funds

Pursuant to 31 U.S.C. § 1301(a), “[a]ppropriations shall be applied only to the objects for which the appropriations were made.” The Senate Ethics Manual concludes this statute means “congressional employees receive publicly funded salaries for performance of official duties and, therefore, campaign or other non-official activities should not take place on Senate time, using Senate equipment or facilities.”³⁸ Senate ethics rules also make clear that:

Funds are appropriated to compensate Senate employees for the performance of Senate duties. That is, Senate staff are compensated for the purpose of assisting Senators in their official legislative and representational duties, and not for the purpose of performing personal or other non-official activities for themselves or on behalf of others.³⁹

By twice using his office expense account to pay for Mr. Furer’s travel expenses to fly from Washington, D.C. to Louisiana and back to attend to his driving while intoxicated charges, Sen. Vitter may have violated 31 U.S.C. § 1301(a) and Senate rules. Sen. Vitter also may have violated 31 U.S.C. § 1301(a) and Senate rules by using office personnel funds to pay Mr. Furer’s salary while he was on leave pending resolution of the charges arising out of his altercation with Ms. Demopoulos.

Travel Rule Violations

The Senate Ethics Manual provides that official Senate funds may not be used for personal travel. “The primary purpose of a trip must of course be official in nature to justify the use of official funds for the airfare.”⁴⁰ Expenses for trips with multiple purposes may be pro-rated “to appropriately reflect the expenses associated with each segment of the trips,” but any division must be pro-rated “on a reasonable basis.”⁴¹

By twice using his office expense account to pay for Mr. Furer’s travel expenses to fly from Washington, D.C. to Louisiana and back to attend to his driving while intoxicated charges, Sen. Vitter may have violated Senate travel rules. Even if Mr. Furer engaged in some official business while in Louisiana on these trips, there is no indication he paid a pro-rated portion of the travel costs.

Bribery

Federal law makes it a crime to “directly or indirectly, corruptly give[], offer[] or promise[] anything of value to any public official . . . with intent . . . to influence any official

³⁸ Senate Select Comm. on Ethics, Senate Ethics Manual, p. 139 (108th Cong., 1st Sess., 2003 ed.).

³⁹ Senate Ethics Manual, p. 196.

⁴⁰ Senate Ethics Manual, p. 119.

⁴¹ *Id.* at 119-20.

act.”⁴² “Anything of value” is interpreted broadly,⁴³ and courts have recognized the promise of higher-paying employment, as was offered here, is a “thing of value” for purposes of the statute.⁴⁴ In addition, the Senate Ethics Manual specifically provides that violating the bribery statute may lead to disciplinary action by the Senate,⁴⁵ and the Select Committee on Ethics previously recommended the expulsion of a senator for violating the bribery statute.⁴⁶

Sen. Vitter offered Secretary Salazar something of substantial value – a \$19,600 salary increase – to induce him to issue six permits for new deepwater exploratory wells each month. By clearly linking a thing of value to a specific act for which it was offered, Sen. Vitter may have violated the bribery statute.

Senate Rule Prohibiting Improper Conduct

The Senate Ethics Manual provides that “[c]ertain conduct has been deemed by the Senate in prior cases to be unethical and improper even though such conduct may not necessarily have violated any written law, or Senate rule or regulation. Such conduct has been characterized as ‘improper conduct which may reflect upon the Senate.’”⁴⁷ This rule is intended to protect the integrity and reputation of the Senate as a whole.⁴⁸ The Ethics Manual explains that “improper conduct” is given meaning by considering “generally accepted standards of conduct, the letter and spirit of laws and Rules . . .”⁴⁹ Notably, the Senate may discipline a member for any misconduct, including conduct or activity that does not relate to official duties when that conduct unfavorably reflects upon the Senate as a whole.⁵⁰

The Senate has disciplined other members for violating this prohibition based on conduct including converting campaign funds to personal use,⁵¹ improper financial arrangements in connection with a condominium,⁵² and improperly linking fundraising and official activities.⁵³ The Senate Ethics Committee applied this standard to recommend the expulsion of Sen. Robert Packwood (R-OR) based on repeated sexual misconduct.⁵⁴

In 2008, the Senate Ethics Committee issued letters of admonition to two senators for violating this standard: Sen. Larry Craig (R-ID) for disorderly conduct in a public restroom, attempting to use his official position to influence the arresting officer, and attempting to

⁴² 18 U.S.C. § 201(b)(1).

⁴³ *United States v. Williams*, 705 F.2d 603, 623 (2d Cir. 1983).

⁴⁴ *United States v. Gorman*, 807 F.2d 1299, 1305 (6th Cir. 1986).

⁴⁵ Senate Ethics Manual, p. 58.

⁴⁶ *Id.*, p. 59, n. 113 (citing *Investigation of Senator Harrison A. Williams, Jr.*, Report of the Select Committee on Ethics, United States Senate, to Accompany S. Res. 204, 97th Cong., 1st Sess. 7 (1981)).

⁴⁷ Senate Ethics Manual, Appendix E, p. 432 (citation omitted).

⁴⁸ *Id.*

⁴⁹ *Id.*, p. 433.

⁵⁰ Senate Ethics Counsel, The Packwood Report, p. 28 (1995) (citing S. Rep. 2508, 83rd Cong., 2d Sess. 20, 22 (1954)).

⁵¹ Senate Ethics Manual, p. 434 (citing *Investigation of Thomas Dodd*, S. Rep. No. 193, 90th Cong., 1st Sess. (1967)).

⁵² *Id.* (citing *Investigation of Senator David Durenberger*, S. Rep. No. 382, 101st Cong., 2d Sess. 14 (1990)).

⁵³ *Id.*, pp. 434-35 (citing *Investigation of Senator Alan Cranston*, S. Rep. No. 223, 102d Cong., 1st Sess. 36 (1991)).

⁵⁴ *Id.*, p. 435 (citing *Investigation of Senator Robert Packwood*, S. Rep. No. 104-137, 104th Cong., 1st Sess. (1995)).

withdraw his guilty plea to evade the legal consequences of his actions;⁵⁵ and Sen. Pete Domenici for improperly contacting a prosecutor to influence a corruption investigation.⁵⁶

Most recently, the committee likely would have recommended the expulsion of Sen. John Ensign (R-NV) had he not first resigned after a special counsel hired by the committee found evidence the senator violated numerous criminal statutes and engaged in improper conduct reflecting upon the Senate.⁵⁷

On some occasions, the Committee has stopped short of finding alleged conduct was “improper conduct reflecting upon the Senate,” but has found “the conduct should not be condoned or should otherwise be criticized in a public statement by the Committee.”⁵⁸ For example, the Committee has found a senator’s “interven[tion] with regulators gave the appearance of being improper and was attended with insensitivity and poor judgment,” a senator “exercised poor judgment in intervening with regulators,” and another senator conducted office business “in an inappropriate manner . . .”⁵⁹ In addition, the Committee severely admonished Senator Robert Torricelli (D-NJ) for creating at least an appearance of impropriety by accepting gifts in violation of the gift rules.⁶⁰

By offering a bribe to Secretary Salazar, misusing Senate personnel and office account funds to pay for Mr. Furer’s flights to Louisiana to attend to his criminal charges, paying Mr. Furer while he was on leave, and falsely stating that Mr. Furer was not responsible for women’s issues, Sen. Vitter likely engaged in improper conduct reflecting upon the Senate. In addition, if Sen. Vitter assisted Mr. Furer defend against criminal charges for attacking a woman with a knife, either by connecting Mr. Furer with the Venable law firm or Mr. Kelly, or by helping Mr. Furer pay Mr. Kelly’s fees, he may have engaged in improper conduct reflecting upon the Senate.

⁵⁵ Letter from Senate Select Committee on Ethics to Senator Larry Craig, February 13, 2008.

⁵⁶ Letter from Senate Select Committee on Ethics to Senator Pete Domenici, April 24, 2008.

⁵⁷ Senate Ethics Special Counsel, *Report of the Preliminary Inquiry into the Matter of Senator John E. Ensign*, May 10, 2011, p. 68. *See also* Cong. Rec. S 2912 (daily ed. May 12, 2011) (statement of Sen. Boxer) (according to the Special Counsel “the evidence of Senator Ensign’s wrongdoing would have been substantial enough to warrant the consideration of expulsion . . . That is why when former Senator Ensign resigned, the vice chairman and I put out a statement, and we said that he had made ‘the appropriate decision.’”).

⁵⁸ Senate Ethics Manual, p. 435.

⁵⁹ *Id.*, n. 19 (*citing* Decisions of the Committee Concerning Sen. Dennis DeConcini, Sen. John Glenn, Sen. John McCain, Sen. Donald Riegle, and Sen. Al D’Amato).

⁶⁰ Letter from Senate Select Committee on Ethics to Senator Robert Torricelli, July 30, 2002.

DISHONORABLE MENTIONS

REPRESENTATIVE JOE BARTON

Representative Joe Barton (R-TX) is a fourteen-term member of Congress, representing Texas' 6th congressional district. He is a member and chairman emeritus of the House Committee on Energy and Commerce. Rep. Barton's ethics issues stem from misusing his position for personal financial benefit and failing to properly report a transaction on his financial disclosure forms.¹

Buying an Interest in Natural Gas Wells

In April 2008, Rep. Barton, then the ranking member of the House Committee on Energy and Commerce, bought an interest in natural gas wells.² The congressman paid between \$15,000 and \$50,000, and earned an estimated \$80,000 that year from the investment.³ Since 2009, Rep. Barton has earned between \$10,002 and \$30,000 in royalty payments from the wells.⁴

On his 2008 personal financial disclosure forms, Rep. Barton reported buying his interests in the wells from EOG Resources, Inc., a natural gas producer that oversaw operations of the wells and owned a majority share.⁵ In 2010, however, *The Dallas Morning News* found land records listing the actual seller as late businessman Walter Mize.⁶ Mr. Mize, who died in 2008, and his wife were longtime donors to Rep. Barton's campaigns, contributing more than \$35,000 to his campaign committee and political action committee since 1985.⁷ In addition, Mr. Mize had advised Rep. Barton on energy policy. Rep. Barton publicly acknowledged Mr. Mize's role in suggesting a \$500 million federally funded grant program for oil and gas research, legislation pushed by Rep. Barton while he served as chairman of the energy committee.⁸

Rep. Barton has not publicly addressed Mr. Mize's role in his purchase of the wells, or explained why he reported the seller incorrectly on his financial disclosure statement. Instead, he told a reporter he acquired his interest after he "read something about" opportunities in natural

¹ The Office of Congressional Ethics has also investigated Rep. Barton's role in donations made to his foundation, the Joe Barton Family Foundation. Corporations with business before the House Energy and Commerce Committee made donations to Rep. Barton's foundation and to third parties in the name of the foundation. While contributions to a lawmaker's foundation and contributions to other charities made in the name of a lawmaker must be reported, contributions made to charities in the name of a lawmaker's foundation need not be disclosed. On October 29, 2009, Rep. Barton said the OCE had cleared him of any wrongdoing in the matter.

² Dave Michaels, *U.S. Rep. Joe Barton's Gas Well Stake Raises Ethical Questions*, *Dallas Morning News*, February 3, 2010; Rep. Joe Linus Barton, Personal Financial Disclosure Statement for Calendar Year 2008, filed May 15, 2009.

³ Rep. Barton's 2008 financial disclosure form reports earnings between \$50,000 and \$100,000, but *The Dallas Morning News*, which reviewed land records and gas sales figures, estimated he earned at least \$80,000. See Rep. Joe Linus Barton, Personal Financial Disclosure Statement for Calendar Year 2008, filed May 15, 2009; Michaels, *Dallas Morning News*, February 3, 2010.

⁴ Rep. Joe Linus Barton, Personal Financial Disclosure Statement for Calendar Year 2009, filed May 14, 2010; Rep. Joe Linus Barton, Personal Financial Disclosure Statement for Calendar Year 2010, filed May 16, 2011.

⁵ Michaels, *Dallas Morning News*, Feb. 3, 2010; Rep. Joe Linus Barton, Personal Financial Disclosure Statement for Calendar Year 2008, filed May 15, 2009.

⁶ Michaels, *Dallas Morning News*, Feb. 3, 2010.

⁷ CQ Moneyline, Donor Lookup, Walter Mize and Mary A Mize, Cleburne, TX, 1979-Present.

⁸ Michaels, *Dallas Morning News*, Feb. 3, 2010; <http://www.opensecrets.org/politicians/summary.php?cycle=2006&type=I&cid=N00005656&newMem=N>.

gas wells.⁹ “I was aware of this one, and I decided to invest in this one as opposed to some others,” he said.¹⁰ Rep. Barton said he paid fair market value for his interest in the wells and assumed the same amount of risk as any other partner in the investment, which has proven lucrative.¹¹ Rep. Barton’s personal financial disclosure forms for the past three years show the wells have brought in more income than any of his other investments.¹² He credited “luck” that the investment has paid out, and said he had reported it in accordance with federal law and ethics rules.¹³ Rep. Barton has not, however, amended his financial disclosure form to correctly report Mr. Mize as the seller in the transaction.¹⁴

The natural gas interest meant Rep. Barton, the senior Republican on the House Energy and Commerce Committee, was positioned to benefit from increased production of domestic natural gas even as he co-sponsored legislation that would have increased demand.¹⁵ For instance, he supported government subsidies to convert vehicles to run on natural gas rather than gasoline or diesel fuel.¹⁶

Potential Violations

False Statements on Personal Financial Disclosure Forms

The Ethics in Government Act of 1967 requires all members of Congress to file financial disclosure reports.¹⁷ Under the statute, the attorney general may seek a civil penalty of up to \$11,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.¹⁸ House Rule 26 incorporates the financial disclosure provisions of the Ethics in Government Act.¹⁹

Federal law further prohibits members of Congress from making “any materially false, fictitious, or fraudulent statement or representation”²⁰ on “a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative

⁹ Michaels, *Dallas Morning News*, Feb. 3, 2010.

¹⁰ *Id.*

¹¹ *Id.*

¹² Rep. Joe Linus Barton, Personal Financial Disclosure Statement for Calendar Year 2008, filed May 15, 2009; Rep. Joe Linus Barton, Personal Financial Disclosure Statement for Calendar Year 2009, filed May 14, 2010; Rep. Joe Linus Barton, Personal Financial Disclosure Statement for Calendar Year 2010, filed May 16, 2011.

¹³ Michaels, *Dallas Morning News*, Feb. 3, 2010.

¹⁴ <http://www.opensecrets.org/pfds/candlook.php?txtName=barton>.

¹⁵ Michaels, *Dallas Morning News*, Feb. 3, 2010; Rep. Joe Linus Barton, Personal Financial Disclosure Statement for Calendar Year 2008, filed May 15, 2009.

¹⁶ Michaels, *Dallas Morning News*, Feb. 3, 2010; Cosponsors, *New Alternative Transportation to Give Americans Solutions Act of 2011*, H.R. 1380, 112th Congress, available at <http://thomas.loc.gov>; Cosponsors, *New Alternative Transportation to Give Americans Solutions Act of 2009*, H.R. 1835, 111th Congress, available at <http://thomas.loc.gov>.

¹⁷ Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

¹⁸ 5 U.S.C. app. 4, § 104.

¹⁹ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 248 (110th Cong., 2d Sess., 2008 ed.).

²⁰ 18 U.S.C. § 1001(a)(2).

branch.”²¹ On financial disclosure forms, members of Congress are required to provide “the complete name of the asset for which a reportable transaction has occurred.”²²

By affirmatively misrepresenting the seller of the interests in the natural gas wells, Rep. Barton likely made a false statement. Rep. Barton also failed to correct this false statement even after it became public that his campaign contributor, Mr. Mize, was the actual seller in the transaction.

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”²³ House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

If Rep. Barton took any official action, including supporting or sponsoring legislation, for the personal benefit of his natural gas interests, he may have violated this provision.

Conduct Not Reflecting Creditably on the House

House Rule 23 requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”²⁴ This ethics standard is considered to be “the most comprehensive provision” of the code.²⁵ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.²⁶ This rule has been relied on by the committee in numerous prior cases in which the committee found unethical conduct including: the failure to report campaign contributions,²⁷ making false statements to the committee,²⁸ criminal

²¹ 18 U.S.C. § 1001(c)(2).

²² House Comm. on Standards of Official Conduct, *Schedule IV, Transactions, Instruction Guide for Completing Calendar Year 2010 Financial Disclosure Statement*.

²³ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” *Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain*, May 11, 1999.

²⁴ Rule 23, cl. 1.

²⁵ *House Ethics Manual*, p. 12.

²⁶ House Comm. on Standards of Official Conduct, *Report Under the Authority of H. Res. 418*, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

²⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

convictions for bribery,²⁹ or accepting illegal gratuities,³⁰ and accepting gifts from persons with interest in legislation in violation of the gift rule.³¹

By affirmatively misrepresenting the seller of the interests in the natural gas wells and failing to correct this false statement, Rep. Barton acted in a manner that brings discredit to the House. In addition, if Rep. Barton took any official action to provide himself a personal benefit by appreciation of his natural gas interests, he acted in a manner that brings discredit to the House.

²⁸ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

²⁹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

³⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (member resigned while expulsion resolution was pending).

³¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

REPRESENTATIVE SHELLEY BERKLEY

Representative Shelley Berkley (D-NV) is a seven-term member of Congress, representing Nevada's 1st congressional district. Rep. Berkley's ethics issues stem from using her position to support her husband's financial and professional interests.

Advocating for Her Husband's Interests

Rep. Berkley's husband, Dr. Lawrence Lehrner, is a Nevada nephrologist and president of Kidney Specialists of Southern Nevada (KSSN).¹ His medical practice employs 21 doctors in seven offices around greater Las Vegas.² It also includes 11 dialysis centers, 10 of which are part of a joint venture with DaVita, a large corporation specializing in kidney care.³ In 2007, the University Medical Center of Southern Nevada (UMC), a teaching hospital affiliated with the University of Nevada, hired KSSN to provide nephrology services, including services related to the hospital's kidney transplant program, the only such program in the state.⁴ Dr. Lehrner has also been a board member of the Renal Physicians Association (RPA) and the Renal Physicians Association Political Action Committee (RPA PAC).⁵ The RPA is a trade association of nephrology practitioners that advocates for the industry in Washington.⁶

University Medical Center

In 2008, the kidney transplant program at UMC was in crisis. In March and August of 2008, Medicare surveys found the program failed to meet its conditions of funding because of an unusually high number of patient deaths, and the kidney transplants performed there failed at unusually high rates.⁷ Federal regulators also questioned the qualifications of a doctor who had been assigned by Dr. Lehrner's practice to screen transplant patients.⁸ In August 2008, the

¹ Leah Hakimian, How Larry Met Shelley: A Congressional Romance, *New York Jewish Week*, January 3, 2011; Dr. Lehrner's practice is registered as a corporation with the state of Nevada under the name Bernstein, Pokroy & Lehrner, Ltd., but the address and personnel are the same as those of KSSN. Bernstein, Pokroy & Lehrner, Ltd., Business Entity Information, Secretary of State: Carson City, Nevada, filed April 28, 1976 available at <https://nvsos.gov/sosentitysearch/CorpDetails.aspx?lx8nvq=MAM8OEmOgPhIMdiEKFZSKg%253d%253d&ntf=0>; <http://www.ksosn.com/ksosn-care-team>; <http://www.ksosn.com/contact-us>.

² Eric Lipton, A Congresswoman's Cause is Often Her Husband's Gain, *New York Times*, September 5, 2011.

³ <http://www.davita.com/about>; <http://www.ksosn.com/ksosn-care-team>; <http://www.ksosn.com/contact-us/dialysis-locations>; Lipton, *New York Times*, Sept. 5, 2011.

⁴ Lipton, *New York Times*, Sept. 5, 2011; <https://www.umcsn.com/Footer/Serving-the-Las-Vegas-Community-Since-1931.aspx?intMenuID=305&intPageID=309>; University Medical Center of Southern Nevada Board of Hospital Trustees, Agenda Item: Award of Contract Between University Medical Center of Southern Nevada (UMC) and Kidney Specialists of Southern Nevada, August 21, 2007, available at http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906_BERKLEY.html#document/p20/a32113, pp. 20-25.

⁵ <http://www.ksosn.com/ksosn-care-team/physicians/lawrence-lehrner-md>; RPA PAC Board, available at http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906_BERKLEY.html#document/p20/a32113, p.

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⁶ <http://www.renalmd.org/About-Us/>; Lipton, *New York Times*, Sept. 5, 2011.

⁷ Marshall Allen, Focus Shifts to Fixing Kidney Program's Faults, *Las Vegas Sun*, November 4, 2008; Lipton, *New York Times*, Sept. 5, 2011.

⁸ Lipton, *New York Times*, Sept. 5, 2011.

Centers for Medicare and Medicaid Services (CMS) warned UMC the program did not meet federal requirements for Medicare-approved transplant programs.⁹

The hospital asked federal officials for leniency and said some of the outcome data presented a misleading picture.¹⁰ Nonetheless, on October 23, 2008, federal officials informed the hospital the appeal had been rejected and reimbursements would cease December 3, 2008.¹¹ This would have effectively ended the kidney transplant program, a significant source of income for Dr. Lehrner's practice.¹² Rep. Berkley, together with Nevada's two other House members, immediately wrote to CMS Acting Administrator Kerry Weems to "express [their] strong disagreement" with the decision and ask CMS to reconsider.¹³ The members' letter argued losing the transplant program would jeopardize constituents' health and possibly overwhelm transplant programs in neighboring states.¹⁴ Rep. Berkley also told a reporter she spoke directly to the head of CMS about the matter.¹⁵ By the end of the month, CMS had agreed to a compromise in order to save the program, though the agency required the hospital to take concrete steps to fix the problems.¹⁶

Rep. Berkley's campaign manager, Jessica Mackler, said Rep. Berkley signed the letter to CMS "at the request of UMC and her Republican colleague," former Rep. Jon Porter (R-NV), in order to "save the state's only kidney transplant program."¹⁷ Ms. Mackler also stressed Rep. Berkley's longstanding interest in health care issues.¹⁸

Dr. Lehrner's practice benefited from the continuation of the program. UMC had promised to bring on more kidney specialists and asked Dr. Lehrner to recruit and hire two new transplant nephrologists.¹⁹ When KSSN renewed their contract with the hospital in December 2010 (the practice was the sole bidder), the annual fees increased 25%.²⁰ The practice's contract is now worth \$738,000 a year.²¹

⁹ *Id.*; Letter from CMS Western Consortium Operations Manager Deborah Romero to Karen Watnem, UMC-Southern Nevada Transplant Program, October 23, 2008, available at http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906_BERKLEY.html#document/p20/a32113, pp. 26-27.

¹⁰ Allen, *Las Vegas Sun*, Nov. 4, 2008.

¹¹ Lipton, *New York Times*, Sept. 5, 2011; Letter from CMS Western Consortium Operations Manager Deborah Romero to Karen Watnem, UMC-Southern Nevada Transplant Program, October 23, 2008, available at http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906_BERKLEY.html#document/p20/a32113, pp. 26-27.

¹² Lipton, *New York Times*, Sept. 5, 2011.

¹³ Letter from Reps. Shelley Berkley, Jon Porter and Dean Heller to CMS Acting Administrator Kerry Weems, October 24, 2008 available at http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906_BERKLEY.html#document/p20/a32113, p. 29.

¹⁴ *Id.*

¹⁵ Edward Lawrence, Elected Officials Help to Save UMC Transplant Program, *KLAS CBS-8 Las Vegas*, October 31, 2008.

¹⁶ Lawrence, *KLAS CBS-8 Las Vegas*, Oct. 31, 2008; Allen, *Las Vegas Sun*, Nov. 4, 2008.

¹⁷ Questions and a Written Response, *New York Times*, September 5, 2011 available at <http://www.documentcloud.org/documents/241320-berkeley-doc-viewer-part-ii-questions-and-a.html>.

¹⁸ *Id.*

¹⁹ Lipton, *New York Times*, Sept. 5, 2011.

²⁰ *Id.*

²¹ *Id.*

Supporting the Kidney Care Industry

Rep. Berkley has also pushed for measures that benefit the nephrology industry while accepting tens of thousands of dollars in campaign contributions from it. Overall, kidney care doctors, companies, and lobbyists have donated at least \$140,000 to Rep. Berkley's campaigns.²² Dr. Lehrner himself served on the board of the RPA for six years.²³ He was also chair of RPA PAC from 2006 to 2007, playing a significant role in building it up, and was its largest individual contributor.²⁴ He has given the RPA PAC \$10,000 since 2005.²⁵ Dr. Lehrner also traveled to Washington to meet with members of Congress on behalf of the group, though he is not a registered lobbyist.²⁶

Rep. Berkley received more money in campaign contributions from the RPA PAC than any other federal candidate. Since its formation in 2005, the PAC has given Rep. Berkley's campaigns \$11,000.²⁷ Rep. Berkley has regularly appeared with Dr. Lehrner at RPA PAC-sponsored fundraisers and receptions, and pictures of her appearances feature prominently on RPA's website.²⁸ A 2006 RPA PAC letter from Dr. Lehrner pointed to the appointment of "Mrs. Larry Lehrner" to the House Ways and Means Committee.²⁹ Rep. Berkley is also a member of the Congressional Kidney Caucus and has attended the last three World Kidney Day receptions by the National Kidney Foundation, in effect a lobbying day for the organization.³⁰

Meanwhile, she has cosponsored at least five pieces of legislation concerning kidney care since 2004.³¹ She has also opposed changes that could lower rates for dialysis treatment.

²² Lipton, *New York Times*, Sept. 5, 2011.

²³ RPA PAC Board, available at http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906_BERKLEY.html#document/p20/a32113, p. 7.

²⁴ <http://www.renalmd.org/RPA-PAC-Fundraiser-for-Senator-Harry-Reid/>; <http://www.renalmd.org/RPA-PAC---1st-Reception/>; <http://www.renalmd.org/PAC-2nd-Annual-Reception-/>; <http://www.renalmd.org/RPA-PAC-3rd-Annual-Reception.aspx>; Lipton, *New York Times*, Sept. 5, 2011.

²⁵ Renal Physicians Association PAC, [FEC Form 3X, July 31 Mid-Year Report](#), July 30, 2009; Renal Physicians Association PAC, [FEC Form 3X, July 31 Mid-Year Report](#), July 19, 2005; Renal Physicians Association PAC, [FEC Form 3X, January 31 Quarterly Report \(Year End\)](#), January 30, 2007; Renal Physicians Association PAC, [FEC Form 3X, April 15 Quarterly Report](#), April 29, 2011; Renal Physicians Association PAC, [FEC Form 3X, April 15 Quarterly Report](#), April 14, 2010.

²⁶ Lipton, *New York Times*, Sept. 5, 2011.

²⁷ Berkley for Congress, [FEC Form 3, April Quarterly Report](#), April 14, 2011; Berkley for Senate, [FEC Form 3, July Quarterly Report](#), July 15, 2011; Berkley for Congress, [FEC Form 3, April Quarterly Report](#), April 13, 2010; Berkley for Congress, [FEC Form 3, October 15 Quarterly Report](#), October 12, 2010; Berkley for Congress, [FEC Form 3, April Quarterly Report](#), April 15, 2008; Berkley for Congress, [FEC Form 3, October Quarterly Report](#), October 13, 2009; Berkley for Congress, [FEC Form 3, Year End Report](#), January 29, 2008; <http://images.nictusa.com/cgi-bin/fecimg/?F25038730631>; Lipton, *New York Times*, Sept. 5, 2011.

²⁸ <http://www.renalmd.org/PAC-Home/>; <http://www.renalmd.org/RPA-PAC---1st-Reception/>; <http://www.renalmd.org/RPA-PAC-Fundraiser-for-Senator-Harry-Reid/>; <http://www.renalmd.org/RPA-PAC-3rd-Annual-Reception.aspx>.

²⁹ <http://www.renalmd.org/RPA-PAC-Fundraiser-for-Senator-Harry-Reid/>.

³⁰ http://mcdermott.house.gov/index.php?option=com_content&view=article&id=292&Itemid=64; http://www.kidney.org/email_templates/CapitalKidney/ckc9_4/index.html; http://www.kidney.org/news/pubpol/pdf/ckc9_2.pdf; http://www.kidney.org/email_templates/CapitalKidney/ckc10_2/index.html.

³¹ Cosponsors, *ESRD Modernization Act of 2004*, H.R. 4927, 108th Congress, available at <http://thomas.loc.gov>; Cosponsors, *Kidney Care Quality and Improvement Act of 2005*, H.R. 1298, 109th Congress, available at

In late 2007, the renal care industry opposed a proposal to change reimbursement rates for doctors and dialysis centers.³² The change would have bundled payments into a single reimbursement rather than individual fees.³³ In February 2008, Rep. Berkley wrote to Rep. Pete Stark (D-CA), then chairman of the House Ways and Means Subcommittee on Health, warning him to carefully study the possible impact of the proposal before going proceeding.³⁴ Shortly before sending the letter, she received \$6,000 in campaign contributions from major kidney care companies, including DaVita, her husband's partner in the joint venture that oversaw the Nevada dialysis centers.³⁵ DaVita has since been one of Rep. Berkley's top campaign contributors in both the 2010 and 2012 election cycles.³⁶ The day she sent the letter, the PACs for the RPA and the Kidney Care Council, each gave her \$1,000 donations.³⁷ CMS went ahead with the bundling regulations, but with changes endorsed by dialysis and drug companies.³⁸

In another instance in early 2011, CMS notified dialysis providers it intended to cut reimbursement rates by 3.1%.³⁹ The RPA joined an industry effort to oppose the cuts.⁴⁰ During the first quarter of 2011, the RPA lobbied the House, Senate, and Obama administration about the reimbursement rates.⁴¹ Meanwhile, Rep. Berkley fought hard against the reductions, convincing 73 other House members to sign a letter addressed to the Obama administration urging it to change its position.⁴² On April 1, the proposal was dropped.⁴³ Following the decision, the Kidney Care Council, an industry trade group whose members include DaVita,⁴⁴ issued a release expressing gratitude for Rep. Berkley's efforts.⁴⁵

<http://thomas.loc.gov>; Cosponsors, *Kidney Care Quality and Education Act of 2007*, H.R. 1193, 110th Congress, available at <http://thomas.loc.gov>; Cosponsors, *Kidney Disease Educational Benefits Act of 2007*, H.R. 1245, 110th Congress, available at <http://thomas.loc.gov>; Cosponsors, *Comprehensive Immunosuppressive Drug Coverage for Kidney Transplant Patients Act of 2009*, H.R. 1458, 111th Congress, available at <http://thomas.loc.gov>.

³² http://www.rsnhope.org/programs/kidneytalkshows/Mike_Lazarus/index.php; David Phillips, Dialysis Provider DaVita Loses Pricing Control, *CBS BNET*, August 28, 2009.

³³ *Id.*

³⁴ Letter from Rep. Shelley Berkley to Rep. Pete Stark, February 28, 2008, available at http://www.rsnhope.info/Downloads/weKAN_bundle_BerkleyToStark.pdf.

³⁵ Lipton, *New York Times*, Sept. 5, 2011.

³⁶ <http://www.opensecrets.org/politicians/contrib.php?cycle=2010&type=I&cid=N00009818&newMem=N&recs=20>; <http://www.opensecrets.org/politicians/contrib.php?cycle=2012&type=I&cid=N00009818&new>.

³⁷ Renal Physicians Association PAC, FEC Form 3X, April Quarterly Report, March 31, 2008; Kidney Care Council Political Action Committee, FEC Form 3X, April Quarterly Report, April 15, 2008.

³⁸ Julian Pecquet, Medicare to Bundle Dialysis Payments, Reward Facilities for Training Patients, *The Hill*, July 26, 2010; Lipton, *New York Times*, Sept. 5, 2011.

³⁹ Lipton, *New York Times*, Sept. 5, 2011; A Husband and Wife Team: A Detailed Look Through Berkley's Actions, *New York Times*, Sept. 5, 2011 available at http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906_BERKLEY.html?ref=us, p. 41.

⁴⁰ *Id.*

⁴¹ Renal Physicians Association, First Quarter 2011 Lobbying Disclosure Report, Secretary of the Senate, Office of Public Records.

⁴² Letter from Rep. Shelly Berkley and Rep. Charles Boustany, et.al. to Hon. Kathleen Sebelius and CMS Administrator Donald Berwick, March 18, 2011, available at http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906_BERKLEY.html#document/p20/a32113, p. 44.

⁴³ Keith Chartier, Transition Adjuster Fix Reflects Opt-In Reality, *Renal Business Today*, April 4, 2011.

⁴⁴ <http://www.kidneycarecouncil.org/introduction.html>.

⁴⁵ http://www.kidneycarecouncil.org/files-public/Kidney_Care_Council_Statement_on_Transition_Interim_Final_Rule_4-5-11_final.pdf.

Potential Violations

House Rule 23, Clause 3

House Rule 23, clause 3, provides:

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

By exerting pressure on CMS to stop the revocation of UMC's transplant program certification without disclosing her husband's role in the program, but thereby protecting her husband's company's contract with the hospital, Rep. Berkley may have violated House Rule 23. In addition, by pressuring the Obama administration not to cut reimbursement rates to dialysis providers and by warning Rep. Stark not to change reimbursements rates for kidney doctors and centers, she may have protected her husband's financial interests in violation of House Rule 23, clause 3.

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from "taking any official actions for the prospect of personal gain for themselves or anyone else."⁴⁶ House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

By using her position to induce CMS to stop the revocation of UMC's transplant program certification, Rep. Berkley may have provided a financial benefit to her husband and therefore herself in violation of 5 C.F.R. § 2635.702(a). In addition, if Rep. Berkley took any other official action that financially benefitted her or her husband, including pressuring the Obama administration not to cut reimbursement rates to dialysis providers, and sending a letter to Rep. Stark warning him to move carefully on the proposal to bundle payments, she may have violated this provision.

⁴⁶ House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

Conduct Not Reflecting Creditably on the House

House conflict of interest rules are so narrowly drawn that the House Ethics Committee might not find Rep. Berkley was precluded from interceding on behalf of UMC because of her husband's role directing the kidney center. The committee could easily view the class of people who benefitted from the state's only kidney transplant center remaining open as so large – perhaps all the residents of Nevada – that Rep. Berkley and her husband would merely be members of the class of those who benefit.

House precedents hold that members may vote on questions when they are part of a class of those affected as opposed to affected individually.⁴⁷ “While a member should not vote on direct questions affecting himself, he has sometimes voted on incidental questions.”⁴⁸ Even where one corporation or entity is primarily affected by legislation, a member's interest in that corporation or entity might not be a disqualifying interest.⁴⁹ In large part, House precedents favor allowing members to vote out of concern over disenfranchising a member's constituents.⁵⁰

This analysis, however, applies only to floor votes. It does not apply to other official actions members might take such as sponsoring legislation, advocating or participating in a committee proceeding, or contacting an executive branch agency.⁵¹ Such actions may be prohibited by the ban on using one's official position for personal gain. The House Ethics Committee advises members considering taking action on a matter that may affect his or her personal financial interests to contact the committee for guidance.⁵² Further, even when no specific rule applies, members are advised to avoid situations “in which even an inference might be drawn suggesting improper conduct.”⁵³

House Rule 23 requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”⁵⁴ This ethics standard is considered to be “the most comprehensive provision” of the code.⁵⁵ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.⁵⁶ This rule has been relied on by the committee in numerous prior cases in which the committee found unethical conduct including: the failure to report campaign contributions,⁵⁷ making false statements to the committee,⁵⁸ criminal

⁴⁷ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 234 (110th Cong., 2d Sess., 2008 ed.).

⁴⁸ *Id.*, p. 235.

⁴⁹ *Id.*, p. 236.

⁵⁰ *Id.*, p. 237.

⁵¹ House Ethics Manual, p. 237.

⁵² *Id.*

⁵³ *Id.*, p. 186; House Rule 23, cl. 2.

⁵⁴ Rule 23, cl. 1.

⁵⁵ House Ethics Manual, p. 12.

⁵⁶ House Comm. on Standards of Official Conduct, *Report Under the Authority of H. Res. 418*, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁵⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

convictions for bribery,⁵⁹ or accepting illegal gratuities,⁶⁰ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁶¹

Although Rep. Berkley did not vote on the House floor she did engage in a series of actions to benefit kidney care doctors without ever disclosing her husband's role as a kidney care specialist with a financial interest in kidney related legislation and compensation. Therefore, by pressuring CMS to stop the revocation of UMC's transplant program certification – without disclosing her husband's interest – to the financial benefit of her husband's company, Rep. Berkley acted in a manner that does not reflect creditably on the House. Similarly, Rep. Berkley acted in a manner that does not reflect creditably on the House when she took other official actions that could have benefitted her husband's company – again without disclosing her husband's interest – including pressuring the Obama administration not to cut reimbursement rates to dialysis providers and sending a letter to Rep. Stark warning him to move carefully on the proposal to bundle payments.

⁵⁸ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

⁵⁹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁶⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (member resigned while expulsion resolution was pending).

⁶¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

REPRESENTATIVE SANFORD BISHOP

Representative Sanford Bishop (D-GA) is a ten-term member of Congress, representing Georgia's 2nd congressional district. Rep. Bishop's ethics issues stem from improperly awarding Congressional Black Caucus Foundation (CBCF) scholarships to family members and to employees' relatives.¹

Congressional Black Caucus Foundation Scholarships

The CBCF is a nonprofit charitable group that operates separately from the Congressional Black Caucus (CBC).² The foundation is financed by large corporate donors, and provides \$10,000 in scholarship funds annually for each CBC member to distribute to students in their district.³ The amount of the scholarships can vary, but generally falls between \$1,000 and \$2,000.⁴

Between 2001 and 2005, Rep. Bishop awarded at least eight scholarships to people with connections to him, his office, or his wife, Columbus Municipal Court Clerk Vivian Creighton Bishop. Rep. Bishop gave a scholarship to his stepdaughter, Aayesha Owens Reese, in 2003.⁵ He also awarded Emmaundia Whitaker, his wife's niece, scholarships in 2003 and 2005.⁶ In addition, Rep. Bishop gave several scholarships to his and his wife's employees' relatives. In 2001, he awarded a scholarship to Bonica Smith, the daughter of his wife's deputy.⁷ In 2003, Rep. Bishop granted a scholarship to Kelli Blair, the daughter of Columbus Municipal Court Deputy Clerk Shirley Blair.⁸ Rep. Bishop awarded one scholarship to Tiffany Tisdale, the niece of Rep. Bishop's field representative, Doris Gillispie, and another to Jonathan Alston, a former congressional intern, temporary employee in Rep. Bishop's office, and campaign volunteer, even though he didn't live in Rep. Bishop's district.⁹ Rep. Bishop also gave a scholarship to Sherletha Thomas, who once worked for Ms. Bishop and is now married to Rep. Bishop's district director, Kenneth Cutts.¹⁰

¹ Rep. Bishop has faced other questions about official actions benefitting family members. In 2009, a routine payroll audit found his stepdaughter and son-in-law were employed by the Muscogee County Junior Marshal's program at the same time Rep. Bishop earmarked nearly \$200,000 to the Muscogee County Marshal's Office. The Georgia Bureau of Investigation conducted an independent inquiry and found no wrongdoing, but Rep. Bishop acknowledged his stepdaughter should not have been paid from "congressionally directed funds."

² Ron Nixon, Scholarships Are Focus of Questions on Ethics, *New York Times*, August 31, 2010.

³ Eric Lipton and Eric Lichtblau, In Black Caucus, a Fund-Raising Powerhouse, *New York Times*, February 14, 2010; Nixon, *New York Times*, Aug. 31, 2010.

⁴ John Bresnahan, Bishop Steered Scholarships to Family, *Politico*, September 9, 2010.

⁵ Bresnahan, *Politico*, Sept. 9, 2010.

⁶ *Id.*

⁷ Ray Henry, Scholarships Went to People Tied to Ga. Lawmaker, *Associated Press*, September 24, 2010.

⁸ *Id.*

⁹ *Id.*; http://www.legistorm.com/person/Doris_Elaine_Gillispie/10662.html; http://www.legistorm.com/person/Jonathan_R_Alston/57851.html.

¹⁰ John Bresnahan, Bishop to Repay Scholarship Money, *Politico*, September 10, 2010; http://www.legistorm.com/person/Kenneth_J_Cutts/10660.html; Henry, *Associated Press*, Sept. 24, 2010.

According to foundation officials, lawmakers generally use selection committees to pick scholarship winners.¹¹ Rep. Bishop said he never used such a committee, but the process he did follow to choose the scholarship recipients is unclear.¹² Rep. Bishop told the *Associated Press* he had not known about the scholarships awarded to his stepdaughter and niece before news reports surfaced, and “was not involved in that at all.”¹³ He said that either officials at the foundation or a fundraising group of CBCF lawmakers’ spouses gave out the scholarships without his participation.¹⁴ Mrs. Bishop chaired the fundraising spouses group from 2003 to 2005, the time period coinciding with the majority of the questionable scholarship awards.¹⁵ Rep. Bishop confirmed Mrs. Bishop “had a role in the selection process,” though he did not provide details.¹⁶ Rep. Bishop also stressed that the CBCF’s rules at the time did not explicitly prohibit scholarships for family members.¹⁷

In contrast, CBCF attorney Amy Goldson said it was long understood that scholarships shouldn’t be directed to relatives, even before the CBCF added explicit restrictions against nepotism in 2008.¹⁸ Ms. Goldson said, “Would [CBC members] be happy to admit in public that we’re raising this money because we want to give this to our relatives? Nope, this is to help deserving young students who otherwise wouldn’t have the opportunity.”¹⁹

In August 2010, following news reports of CBC members awarding scholarships to relatives and other recipients with whom they had personal connections, the CBCF said it would conduct an internal audit of its scholarship program.²⁰ Results have not yet been made public. In September 2010, Rep. Bishop agreed to repay the CBCF \$6,350 to cover the cost of the scholarships awarded to his stepdaughter and niece.²¹ He does not appear to have repaid the costs of the other scholarships.²²

Potential Violations

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”²³ House members are directed to adhere to 5

¹¹ Henry, *Associated Press*, Sept. 24, 2010.

¹² Ray Henry, Sanford Bishop Denies Steering Scholarships to Family, Friends, *Associated Press*, October 7, 2010.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*; Henry, *Associated Press*, Sept. 24, 2010.

¹⁶ Henry, *Associated Press*, Oct. 7, 2010.

¹⁷ Bresnahan, *Politico*, Sept. 10, 2010.

¹⁸ Henry, *Associated Press*, Sept. 24, 2010.

¹⁹ *Id.*

²⁰ Press Release, Congressman Donald M. Payne, Chairman, Congressional Black Caucus Foundation, Statement on CBCF Scholarship Programs, August 31, 2010.

²¹ Henry, *Associated Press*, Sept. 24, 2010.

²² *Id.*

²³ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

By using his position as a member of the CBC to award scholarships to family members and relatives of his and his wife's employees, Rep. Bishop appears to have violated 5 C.F.R. § 2635.702(a).

Conduct Not Reflecting Creditably on the House

House Rule 23 requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”²⁴ This ethics standard is considered to be “the most comprehensive provision” of the code.²⁵ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.²⁶ This rule has been relied on by the committee in numerous prior cases in which the committee found unethical conduct including: the failure to report campaign contributions,²⁷ making false statements to the committee,²⁸ criminal convictions for bribery,²⁹ or accepting illegal gratuities,³⁰ and accepting gifts from persons with interest in legislation in violation of the gift rule.³¹

²⁴ Rule 23, cl. 1.

²⁵ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 12 (110th Cong., 2d Sess., 2008 ed.).

²⁶ House Comm. on Standards of Official Conduct, *Report Under the Authority of H. Res. 418*, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

²⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

²⁸ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

²⁹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

³⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (member resigned while expulsion resolution was pending).

³¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

By using his position as a member of the CBC to award scholarships to family members and relatives of his employees Rep. Bishop acted in a manner that brings discredit to the House.

REPRESENTATIVE JEFF DENHAM

Representative Jeff Denham (R-CA) is a first-term member of Congress, representing California's 19th congressional district. Rep. Denham's ethics issues stem from using his state political campaign account to bolster his congressional bid and illegal use of a corporate plane.

Remembering the Brave

Before running for Congress, Rep. Denham was a California state senator, and his state Senate campaign accepted corporate contributions.¹ On April 12, 2010, Rep. Denham, then running in the Republican primary for a seat in the U.S. House of Representatives, donated \$25,000 from his state Senate campaign account to Remembering the Brave, a Colorado-based charity dedicated to remembering fallen veterans.² Between April 19 and May 25, 2010, Rep. Denham made three loans from his state Senate campaign account, totaling \$200,000, to the same nonprofit.³ A campaign consultant to Rep. Denham said the money from Rep. Denham's state Senate campaign account was donated purely to benefit the charity and had nothing to do with his campaign.⁴

During May – mere weeks before the June 8, 2010 primary – Remembering the Brave ran radio and television ads featuring Rep. Denham promoting a May 28 benefit concert for the organization.⁵ The goal was to raise money for Project Gold Star, a program administered by the California Department of Veteran Affairs to raise private donations to pay for specialized license plates for the families of U.S. military personnel killed while serving on active duty.⁶ Remembering the Brave asked Rep. Denham to serve as a spokesman and appear in the ads.⁷ The concert took place at the Chukchansi Gold Resort and Casino, owned by the Chukchansi Indian tribe, located in the congressional district in which Rep. Denham was running.⁸ While the ads didn't directly promote Rep. Denham's candidacy, they were widely aired throughout the district and provided valuable exposure for the congressional candidate.⁹ Remembering the

¹ See, e.g., Jeff Denham for State Senate, California Form 460 Semi-Annual Statement 2006, Secretary of State: Sacramento, California, filed January 30, 2007 (listing corporate contributions, including from Anheuser-Busch Cos., Inc., General Electric, Paramount Pictures Group, and Pepsi-Cola Co.).

² Jeff Denham for State Senate, California Form 460 Pre-Election Statement 2010, Secretary of State: Sacramento, California, filed May 27, 2010; see also <http://cal-access.ss.ca.gov/Campaign/Committees/Detail.aspx?id=1251652&session=2009&view=expenditures>. Remembering the Brave is organized under section 501(c)(3) of the Internal Revenue Code. Remembering the Brave Inc., 2009 IRS Form 990-EZ, August 12, 2010.

³ Jeff Denham for State Senate, California Form 460 Semi-Annual Statement 2010, Secretary of State: Sacramento, California, filed July 29, 2010; see also <http://cal-access.ss.ca.gov/Campaign/Committees/Detail.aspx?id=1251652&session=2009&view=expenditures>.

⁴ E.J. Schultz, John Ellis and Michael Doyle, Denham Raises Eyebrows with \$175,000 to Charity, *Modesto Bee*, May 30, 2010; Alex Isenstadt, GOP Feud Sparks Funding Complaint, *Politico*, June 18, 2010.

⁵ Schultz, Ellis and Doyle, *Modesto Bee*, May 30, 2010; <http://www.youtube.com/user/RememberTheBrave>; Federal Election Commission, MUR No. 6362 (Denham for Congress and David Bauer), Factual and Legal Analysis.

⁶ Federal Election Commission, MUR Nos. 6289 and 6362, First General Counsel's Report, p. 7, April 13, 2011.

⁷ *Id.*

⁸ Schultz, Ellis and Doyle, *Modesto Bee*, May 30, 2010.

⁹ *Id.*; Isenstadt, *Politico*, June 18, 2010; Michael Doyle, Nunes Urges Investigation of Denham, *Fresno Bee*, June 10, 2010.

Brave apparently spent between \$100,000 and \$200,000 on the ads.¹⁰ Remembering the Brave raised \$105,442.24 for Project Gold Star.¹¹

A Chukchansi casino marketing department meeting agenda memo indicated the concert was intended to raise money for the campaigns of both Rep. Denham and that of a candidate for Madera County Supervisor: “On 5/28, the Charity Concert by Phil Vassar will be performing to raise funds for Jeff Denham and Joe Alberta campaigns.”¹² Chukchansi officials later said the memo was inaccurate and they were unsure whether it was authentic. Rep. Denham’s campaign consultant said the memo was “obviously a misprint.”¹³

Rep. Denham won the Republican primary by six points.¹⁴ Two weeks after he won the general election in November 2010, he forgave the \$200,000 in loans.¹⁵

Use of Corporate Jet

In March 2010, Rep. Denham and another Republican candidate for Congress, Andy Vidak, flew on a corporate jet owned by Harris Farms, a California agribusiness, accompanied by Karl Rove.¹⁶ The flight left Fresno and landed at the East Bay before continuing on to Harris Ranch near Coalinga.¹⁷ Mr. Vidak acknowledged that he had broken the law and said he had informed the Federal Election Commission (FEC) about the situation, but Rep. Denham did not.¹⁸ In April 2010, Rep. Denham reported owing Harris Farms \$150 for travel expenses, but local charter operators estimated the cost of a charter flight from Fresno to Coalinga to be at least \$750.¹⁹

Status of Investigation

The transfers to Remembering the Brave and the ads promoting the concert prompted Rep. Denham’s political opponents to file two FEC complaints alleging he had illegally used state political funds to promote a federal candidacy and improperly coordinated with Remembering the Brave and the Chukchansi tribe.²⁰ On August 2, 2011 the FEC dismissed the

¹⁰ Federal Election Commission, MUR No. 6362 (Denham for Congress and David Bauer), Factual and Legal Analysis, p. 6; Federal Election Commission, MUR No. 6362 (Remembering the Brave), Factual and Legal Analysis, p. 6.

¹¹ Federal Election Commission, MUR Nos. 6289 and 6362, First General Counsel’s Report, p.10, April 13, 2011.

¹² Schultz, Ellis and Doyle, *Modesto Bee*, May 30, 2010; *see also* <http://www.flashreport.org/files/2010052802565298.pdf>.

¹³ Schultz, Ellis and Doyle, *Modesto Bee*, May 30, 2010.

¹⁴ Greg Giroux, Denham Wins GOP Nod to Succeed Radanovich, *Roll Call*, June 9, 2010.

¹⁵ Jeff Denham for State Senate, California Form 460 Semi-annual Statement 2010, Secretary of State: Sacramento, California, filed January 27, 2011; *see also* <http://cal-access.ss.ca.gov/Campaign/Committees/Detail.aspx?id=1251652&session=2009&view=expenditures>.

¹⁶ John Ellis, Two GOP Hopefuls Probably Broke Law, *Fresno Bee*, May 6, 2010.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* Although Rep. Denham initially reported the \$150 travel expense in an FEC report, he later amended his report to exclude it altogether. *Cf.* Denham for Congress, FEC Form 3, April Quarterly Report 2010, May 13, 2010; Denham for Congress, Amended FEC Form 3, April Quarterly Report 2010, May 25, 2010.

²⁰ Isenstadt, *Politico*, June 18, 2010; Schultz and Ellis, *Fresno Bee*, June 7, 2010; Schultz, Ellis and Doyle, *Modesto Bee*, May 30, 2010; Federal Election Commission, MUR No. 6362 (Denham for Congress and David Bauer),

allegations that Rep. Denham received prohibited in-kind corporate contributions resulting from coordinated communications and, because the commission was equally divided, took no further action regarding the allegations Rep. Denham had illegally transferred funds from his state Senate campaign to finance electioneering communications.²¹ The FEC's First General Counsel's Report, released on September 9, 2011, revealed that the commission's general counsel found reason to believe the Denham state committee illegally transferred funds from his state Senate campaign to pay for electioneering communications featuring Rep. Denham.²²

Legal Fees

Rep. Denham's campaign committee has paid the law firm Bell, McAndrews & Hiltachk \$3,556 in legal fees since 2010.²³

Potential Violations

Transfer of State Campaign Funds

The Federal Election Campaign Act (FECA) prohibits a congressional candidate or any entity established, financed, maintained, or controlled by a candidate from soliciting, receiving, directing, transferring, or spending funds in connection with an election for federal office, unless the funds are subject to the limitations, prohibitions, and reporting requirements of the FECA.²⁴

Rep. Denham established and controlled his state Senate campaign fund, which accepted corporate contributions prohibited in federal elections.²⁵ The Denham state committee then contributed \$225,000 to Remembering the Brave, which immediately spent between \$100,000 and \$200,000 on ads that qualify as "electioneering communications" under the FECA and FEC regulations because they referred to a candidate for federal office and were broadcast within 30 days of a primary election.²⁶

Although the FEC commissioners split three-three, stymying further action, the FEC's general counsel found reason to believe Rep. Denham's state committee transferred non-federal funds to finance electioneering communications in connection with Rep. Denham's federal election.²⁷ A knowing and willful violation would violate criminal law.²⁸

Factual and Legal Analysis, p. 1.

²¹ *Id.*, pp. 1-2; John Ellis, [FEC Clears Denham On Allegations He Misused Campaign Funds](http://fresnobeehive.com/news/2011/08/fec_clears_denham_on_allegatio.html), *Fresno Bee*, August 12, 2011, available at http://fresnobeehive.com/news/2011/08/fec_clears_denham_on_allegatio.html.

²² Federal Election Commission, [MUR Nos. 6289 and 6362](#), First General Counsel's Report, p. 22, April 13, 2011.

²³ Denham for Congress, [FEC Form 3, April Quarterly Report 2011](#), April 15, 2011; Denham for Congress, [FEC Form 3, Year-End Report 2010](#), January 31, 2011; Denham for Congress, [FEC Form 3, October Quarterly Report 2010](#), July 5, 2010; Denham for Congress, [FEC Form 3, April Quarterly Report 2010](#), April 15, 2010.

²⁴ 2 U.S.C. § 441i(e)(1)(A).

²⁵ 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(d).

²⁶ 2 U.S.C. § 434(f)(3)(A); 11 C.F.R. § 100.29(a). While congressional candidates are permitted – despite these provisions – to solicit funds for charitable organizations, 2 U.S.C. § 441i(e)(4), they may not do so for a charitable organization they established, financed, maintained, or controlled. Federal Election Commission, [Advisory Opinion 2003-12](#) (July 29, 2003). By donating \$225,000 to Remembering the Brave, Rep. Denham financed it. 11 C.F.R. § 300.2(c).

²⁷ Federal Election Commission, [MUR Nos. 6289 and 6362](#), First General Counsel's Report, p. 25, April 13, 2011.

Campaign Finance Disclosures

While the FEC concluded the ads were exempt from the definition of coordinated communications under the safe harbor exception for candidate charitable solicitations that do not promote, attack, support or oppose a candidate, the general counsel found reason to believe Remembering the Brave violated 2 U.S.C. § 434(f) by failing to report electioneering communications.²⁹ Similarly, the general counsel found reason to believe Remembering the Brave violated 2 U.S.C. § 441d(a) by failing to include disclaimers with the radio and television ads noting who paid for the ads, that the ads were not paid for by the candidate or committee, and listing the address, telephone number or web address of the person who paid for the communications.³⁰ The general counsel noted the involvement of Denham campaign consultants in the purchase of the ads and the Denham state campaign account's role in funding the ads "militate[d] against a dismissal."³¹

Use of Corporate Jet

House candidates are prohibited from making expenditures to fly on non-commercial aircraft and from accepting non-commercial flights as in-kind contributions.³² By flying on the corporate jet owned by Harris Farms, Rep. Denham violated the law.

²⁸ 2 U.S.C. § 437g(d)(1)(A)(i).

²⁹ Federal Election Commission, MUR Nos. 6289 and 6362, First General Counsel's Report, p. 18, April 13, 2011.

³⁰ *Id.*, p. 19 (*citing* 11 C.F.R. § 110.11(b)(3)).

³¹ *Id.*, p. 20.

³² 2 U.S.C. § 439a(c)(2); 11 C.F.R. § 113.5(b).

REPRESENTATIVE EDDIE BERNICE JOHNSON

Representative Eddie Bernice Johnson (D-TX) is a ten-term member of Congress, representing Texas' 30th congressional district. Rep. Johnson's ethics issues stem from improperly awarding Congressional Black Caucus Foundation (CBCF) scholarships to family members and to employees' relatives.

Congressional Black Caucus Foundation Scholarships

The CBCF is a nonprofit charitable group that operates separately from the Congressional Black Caucus (CBC).¹ The foundation is financed by large corporate donors, and provides \$10,000 in scholarship funds annually for each CBC member to distribute to students in their district.² The amount of the scholarships can vary, but generally falls between \$1,000 and \$2,000.³ Rep. Johnson is a former CBCF board member and was a member of the board as recently as 2005.⁴

Between 2005 and 2009, Rep. Johnson awarded 59 scholarships to students.⁵ Of those, Rep. Johnson gave 24 scholarships, worth \$32,146, to seven people with connections to her, including grandchildren, grandnephews, the children of a close aide, and the daughter of an airport administrator who directly oversaw some of her business interests.⁶ All but one of those students were ineligible for the scholarships, both because of a CBCF rule prohibiting nepotism and because they did not live or study in the district of a CBC member, as required by the CBCF.⁷

Rep. Johnson gave her grandson, Kirk Johnson, a student at Sam Houston State University in Texas, annual scholarships from 2005 through 2008, and awarded him two in 2009.⁸ She also gave her grandson, David Johnson, a student at Texas State University, annual scholarships from 2006 through 2008, and awarded him two in 2009.⁹ Neither grandson lived or attended school in the district of a CBC member.¹⁰ In 2005 and 2006, Rep. Johnson awarded scholarships to two great-nephews who studied at Texas Christian University: Gregory Moore II

¹ Ron Nixon, Scholarships Are Focus of Questions on Ethics, *New York Times*, August 31, 2010.

² Eric Lipton and Eric Lichtblau, In Black Caucus, a Fund-Raising Powerhouse, *New York Times*, February 14, 2010; Nixon, *New York Times*, Aug. 31, 2010.

³ John Bresnahan, Bishop Steered Scholarships to Family, *Politico*, September 9, 2010.

⁴ Todd J. Gillman and Christy Hoppe, Rep. Eddie Bernice Johnson Violated Rules, Steered Scholarships to Relatives, *Dallas Morning News*, August 30, 2010.

⁵ *Id.*; Todd J. Gillman, Rep. Eddie Bernice Johnson Says She'll Repay Scholarship Funds By Week's End, *Dallas Morning News*, August 31, 2010.

⁶ Gillman, *Dallas Morning News*, Aug. 31, 2010; Gromer Jeffers Jr., Johnson: 'I Broke No Rules' On Scholarships, *Dallas Morning News*, September 28, 2010; Jon Nielsen, D/FW Executive Resigns Amid Scholarship Question, *Dallas Morning News*, January 13, 2011.

⁷ Gillman and Hoppe, *Dallas Morning News*, Aug. 30, 2010; Gillman, *Dallas Morning News*, Aug. 31, 2010.

⁸ *Id.*

⁹ *Id.*

¹⁰ Melanie Mason, Dallas Rep. Eddie Bernice Johnson Gave Scholarships To 5 Students Who Didn't Meet Residency Rule, *Dallas Morning News*, September 4, 2010; <http://maps.google.com/maps?saddr=Austin,+TX&daddr=Dallas,+TX&hl=en&sll=37.0625,-95.677068&sspn=27.838219,59.414063&geocode=FRHXzQEdK48s-ikvA8ygmBVehjF61WnUS0abXQ%3BFYU9AEdfWg7-iiLl0V79xIMhjGPZ0f2pJvsuQ&mra=ls&t=h&z=7>.

and Preston Moore.¹¹ Preston Moore also received a scholarship in 2007.¹² Like the congresswoman's grandsons, neither student lived in the district of a CBC member.¹³

Rep. Johnson also gave multiple scholarships to Julian and Mariyah Givens, the son and daughter of Roderick "Rod" Givens, her district director, although neither either resided or studied in a CBC members' district.¹⁴ Rep. Johnson awarded Julian Givens scholarships in 2007 and 2008, and two in 2009.¹⁵ She awarded Mariyah a 2008 scholarship and two in 2009.¹⁶ In addition, Rep. Johnson awarded \$1,000 to Danielle O'Bannon, a former intern who did live in her district, but whose father, Don O'Bannon, was the vice president in charge of minority contracting at Dallas/Fort Worth International Airport.¹⁷ Rep. Johnson owns a 25% interest in two Hudson News stores at the airport, and Mr. O'Bannon directly oversaw the stores' contracts.¹⁸ Ms. O'Bannon's mother said her former husband had nothing to do with the scholarship.¹⁹ Nevertheless, Mr. O'Bannon was placed on administrative leave while the airport investigated the matter.²⁰ In January 2011, Mr. O'Bannon resigned.²¹

According to foundation officials, lawmakers generally use selection committees to pick scholarship winners.²² When reporters began questioning Rep. Johnson's scholarship awards, the congresswoman first said aides had reviewed applications and forwarded all qualified applicants to her.²³ She later clarified her remarks to say the applications were sent to her chief of staff.²⁴ Rep. Johnson admitted she was aware her relatives received scholarships, saying she had "recognized the names" when she saw them on a list, but said, "I knew that they had a need just like any other kid that would apply for one."²⁵ She also said, "None of these people are my immediate family. Immediate family doesn't include grandchildren."²⁶

Nonetheless, while discussing the case of Rep. Sanford Bishop (D-GA), another CBC member accused of awarding scholarships to relatives, CBCF attorney Amy Goldson said it had long been understood that scholarships shouldn't be directed to relatives, even before the CBCF

¹¹ Gillman and Hoppe, *Dallas Morning News*, Aug. 30, 2010.

¹² *Id.*

¹³ Mason, *Dallas Morning News*, Sept. 4, 2010.

¹⁴ *Id.*; Gillman and Hoppe, *Dallas Morning News*, Aug. 30, 2010; http://www.legistorm.com/person/Roderick_Vincent_Givens/34347.html.

¹⁵ Mason, *Dallas Morning News*, Sept. 4, 2010; Gillman, *Dallas Morning News*, Aug. 31, 2010.

¹⁶ *Id.*

¹⁷ Todd J. Gillman and Rudolph Bush, D/FW Airport Official Whose Daughter Got Scholarship From Rep. Eddie Bernice Johnson is Put on Leave, *Dallas Morning News*, October 13, 2010; Nielsen, *Dallas Morning News*, Jan. 13, 2011; Todd J. Gillman, Scholarship Recipient's Mother Says D/FW Airport Executive Had Nothing to Do With Award, *Dallas Morning News*, October 13, 2010.

¹⁸ *Id.*

¹⁹ Gillman, *Dallas Morning News*, Oct. 13, 2010.

²⁰ Gillman and Bush, *Dallas Morning News*, Oct. 13, 2010.

²¹ Nielsen, *Dallas Morning News*, Jan. 13, 2011.

²² Ray Henry, Scholarships Went to People Tied to Ga. Lawmaker, *Associated Press*, September 24, 2010.

²³ Gillman and Hoppe, *Dallas Morning News*, Aug. 30, 2010.

²⁴ Todd J. Gillman, Eddie Bernice Johnson Says Chief of Staff Reviewed Scholarship Applications, *Dallas Morning News*, September 3, 2010.

²⁵ Todd J. Gillman and Christy Hoppe, Letters Bearing Eddie Bernice Johnson's Signature Ask That Scholarship Money Be Sent Directly To Her Grandsons, *Dallas Morning News*, September 8, 2010.

²⁶ Gillman and Hoppe, *Dallas Morning News*, Aug. 30, 2010.

added explicit restrictions against nepotism in 2008.²⁷ Ms. Goldson said, “Would [CBC members] be happy to admit in public that we’re raising this money because we want to give this to our relatives? Nope, this is to help deserving young students who otherwise wouldn’t have the opportunity.”²⁸

Rep. Johnson claimed there had been few applicants for the scholarships and all qualified applicants received one, adding that “if there had been very worthy applicants in my district, then I probably wouldn’t have given it” to relatives, “but, when you have enough money to give one additional scholarship and that person’s well-qualified, I have never considered it a violation of anything to give a little help.”²⁹ Rep. Johnson had done nothing, however, to publicize the scholarships in her district. The congresswoman’s website made no mention of the CBCF scholarships, and a resident who wrote Rep. Johnson’s office looking for help finding financial aid was not told about them.³⁰ While some high schools in Rep. Johnson’s district said they knew of the program, counselors at many other schools did not.³¹

There is also evidence Rep. Johnson was directly involved in directing scholarships to her relatives. She wrote two similar letters to the CBCF in 2006, for instance, on her congressional letterhead and bearing her signature and a fax stamp from her Dallas office.³² The letters said her grandsons’ and great-nephews’ scholarship checks were enclosed, and Rep. Johnson was requesting that they be made out to the students themselves, rather than their universities.³³ Rep. Johnson claimed she did not sign the letters personally.³⁴

In August 2010, following news reports of CBC members awarding scholarships to relatives and other recipients with personal connections to members, the CBCF said it would conduct an internal audit of its scholarship program.³⁵ Results have not yet been made public. Rep. Johnson agreed to repay the CBCF \$31,146 to cover the cost of the scholarships awarded to her grandchildren, great-nephews, and Mr. Givens’ children.³⁶ She also created a committee to evaluate scholarship applications.³⁷

²⁷ Henry, *Associated Press*, Sept. 24, 2010.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Gillman and Hoppe, *Dallas Morning News*, Aug. 30, 2010; Gillman, *Dallas Morning News*, Sept. 3, 2010.

³¹ Mason, *Dallas Morning News*, Sept. 4, 2010.

³² Gillman and Hoppe, *Dallas Morning News*, Sept. 8, 2010.

³³ *Id.*

³⁴ Jeffers, *Dallas Morning News*, Sept. 28, 2010.

³⁵ Press Release, Congressman Donald M. Payne, Chairman, Congressional Black Caucus Foundation, Statement on CBCF Scholarship Programs, August 31, 2010.

³⁶ Gillman, *Dallas Morning News*, Aug. 31, 2010; Jeffers Jr., *Dallas Morning News*, Sept. 28, 2010.

³⁷ Melanie Mason, Eddie Bernice Johnson Crates Panel To Screen Scholarship Applications, *Dallas Morning News*, September 10, 2010.

Potential Violations

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”³⁸ House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

By using her position as a member of the CBC to award scholarships to family members and the daughter of a business associate, and by writing letters to the CBCF requesting it make out scholarship checks to her relatives themselves, rather than their universities, Rep. Johnson appears to have violated 5 C.F.R. § 2635.702(a).

Conduct Not Reflecting Creditably on the House

House Rule 23 requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”³⁹ This ethics standard is considered to be “the most comprehensive provision” of the code.⁴⁰ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.⁴¹ This rule has been relied on by the committee in numerous prior cases in which the committee found unethical conduct including: the failure to report campaign contributions,⁴² making false statements to the committee,⁴³ criminal convictions for bribery,⁴⁴ or accepting illegal gratuities,⁴⁵ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁴⁶

³⁸ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

³⁹ Rule 23, cl. 1.

⁴⁰ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 12 (110th Cong., 2d Sess., 2008 ed.).

⁴¹ House Comm. on Standards of Official Conduct, *Report Under the Authority of H. Res. 418*, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁴² House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

⁴³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

⁴⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4

By using her position as a member of the CBC to award scholarships to family members and the daughter of a business associate, and by writing letters to the CBCF requesting it make out scholarship checks to her relatives themselves, rather than their universities, Rep. Johnson acted in a manner that brings discredit to the House.

(1980) (member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁴⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (member resigned while expulsion resolution was pending).

⁴⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).