



**CREW'S MOST CORRUPT**

CREW's Most Corrupt Members of Congress 2013

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and ethics in washington

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## EXECUTIVE SUMMARY

CREW's ninth report on congressional corruption names 17 members of Congress—13 members who engaged in serious misconduct and four members whose transgressions brought them a dishonorable mention. Seven members are on the list for the first time this year, and 10 are returning. In fact, six—Reps. Vern Buchanan (R-FL), Michael Grimm (R-NY), Gregory Meeks (D-NY), Hal Rogers (R-KY), Don Young (R-AK), and Sen. Mitch McConnell (R-KY)—are on the list for at least the third time.

Why are we still talking about these six? If the Department of Justice (DOJ), the House and Senate ethics committees, and the Federal Election Commission (FEC) were doing their jobs, we wouldn't be. The glacial pace of investigations into misconduct means many cases have dragged on for years and some have been dropped entirely with no explanation, despite strong evidence. At least 11 separate individuals and companies associated with Rep. Buchanan, for example, have been fined for their involvement in making conduit contributions to his campaigns. Key witnesses have sworn Rep. Buchanan directed them to reimburse people for contributions, but the congressman implausibly has denied all knowledge and, incredibly, the FEC and DOJ have refused to act.

As for Rep. Young, the House Ethics Committee last March finally formed an investigative subcommittee to look into, among other things, his rampant personal use of campaign money—*more than two and a half years* after DOJ first referred his case to the committee. The delay is unconscionable, especially given the strength of the case against Rep. Young. Documents CREW received under the Freedom of Information Act provide evidence of the congressman's criminal conduct, yet DOJ dropped the case and the ethics committee continues to sit on it.

In December 2012, the House Ethics Committee inexplicably decided to believe Rep. Meeks left a \$40,000 loan off of his financial disclosure for three years because he didn't know he had to disclose liabilities. The committee also accepted Rep. Meeks' story of misplacing the loan documentation, even though the person who "loaned" the congressman the money said such paperwork never existed. Apparently, if members are caught illegally pocketing cash, they need only claim to have made an honest mistake and the House Ethics Committee will take them at their word. The committee found the credibility of the lender, Edul Ahmad, insufficient against the word of Rep. Meeks because Mr. Ahmad had pled guilty to fraud charges in an unrelated case.

Apparently, the standards of witness credibility the House Ethics Committee laid down in the case of Rep. Meeks did not apply to the case of Rep. John Tierney (D-MA), which the committee dismissed outright last week. In that matter, the committee took into account the version of events offered by Rep. Tierney's brother-in-law, who was indicted on 442 counts in 2010 and is currently living in Antigua as a fugitive from justice. The committee noted this convicted felon's version of events corroborated that of the congressman and accepted the explanation.

The committee's review of three other matters—involving Reps. Michele Bachmann (R-MN), Tim Bishop (D-NY), and Peter Roskam (R-IL)—were extended indefinitely, though the committee stopped short of forming an investigative subcommittee, raising questions about how actively it is investigating. This ambiguous status leaves members of Congress in a prolonged limbo, under investigation but with no timetable for resolution. The public, meanwhile, is left with no answers and with clouds hanging over the heads of their members of Congress. Everyone deserves better.

In addition to the members who have been on the list before, the report documents offenses by seven members appearing for the first time. The chaotic presidential campaign of Rep. Bachmann, for example, led to wide-ranging allegations of illegal conduct against her and so far appears to have prompted investigations by five separate state and federal agencies. Rep. David Valadao (R-CA) appears to have sponsored legislation to benefit his and his family's financial interests. Sen. Robert Menendez (D-NJ) is on the list for accepting improper gifts and taking official action to benefit donors.

A December 2012 Rasmussen poll found 60 percent of likely U.S. voters already believed most members of Congress are willing to sell their votes for either cash or a campaign contribution, and 57 percent thought it likely that their representative had already done so.<sup>1</sup> Unfortunately, as this year's report shows, some of them are correct. Congress must take steps to restore the public trust. The independent Office of Congressional Ethics (OCE) has brought new attention to ethics infractions in the House, but must be reauthorized with every new Congress. It should be put on a more permanent footing and allowed to issue subpoenas, and an equivalent office should be created to monitor the Senate.

The public has seen too many members of Congress get away with breaking the law. Now it's up to the public to stand with CREW and demand accountability.

## **METHODOLOGY**

To create this report, CREW reviewed media articles, OCE and House Ethics Committee reports, Federal Election Commission 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.

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<sup>1</sup> [http://www.rasmussenreports.com/public\\_content/politics/general\\_politics/december\\_2012/60\\_think\\_most\\_members\\_of\\_congress\\_are\\_willing\\_to\\_sell\\_their\\_vote](http://www.rasmussenreports.com/public_content/politics/general_politics/december_2012/60_think_most_members_of_congress_are_willing_to_sell_their_vote).

# **MEMBERS OF THE HOUSE**

## REPRESENTATIVE ROB ANDREWS

Representative Rob Andrews (D-NJ) is a thirteen-term member of Congress, representing New Jersey's 1st congressional district. His ethics issues stem from using campaign money for personal expenses and earmarking to his wife's employer. He was included in CREW's 2012 report on congressional corruption for related matters.<sup>1</sup>

### Using Campaign Money for Personal Expenses

In 2009, the Federal Election Commission (FEC) found Rep. Andrews had violated the law when he used campaign contributions to pay for clothing.<sup>2</sup> Rep. Andrews repaid \$952 to his campaign committee, and the FEC ordered him to take steps to avoid any other such violations.<sup>3</sup> Despite that, he has repeatedly spent campaign money on personal expenses.

#### *Scotland Wedding*

In June 2011, Rep. Andrews and his family flew to Scotland, allegedly to attend a donor's wedding, one part of a larger family vacation.<sup>4</sup> Rep. Andrews, his wife, and their two daughters spent three nights at the five-star Balmoral Hotel in Edinburgh, Scotland, at a cost of \$7,725.<sup>5</sup> The hotel bill included charges for gratuities, the in-room bar, flowers, and ground transportation.<sup>6</sup> The costs also included \$2,062 on fees for flight changes and travel agent costs (not counting the flights themselves), and \$592 for meals, transportation, and newspapers.<sup>7</sup> In addition, Rep. Andrews took \$2,610 in petty cash.<sup>8</sup> The Andrews family gave the couple a set of fine china as a wedding gift, at a cost of \$463.<sup>9</sup> In total, Rep. Andrews charged his campaign committee, Andrews for Congress,<sup>10</sup> more than \$13,000 for expenses associated with the trip.<sup>11</sup>

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<sup>1</sup> For more information, see CREW's Most Corrupt 2012, available at <http://www.crewsmostcorrupt.org/most-corrupt/entry/most-corrupt-members-of-congress-report-2012>.

<sup>2</sup> Federal Election Commission, Notification with Factual and Legal Analysis to The Honorable Robert E. Andrews: MUR No. 6140, July 14, 2009.

<sup>3</sup> *Id.*

<sup>4</sup> Matt Friedman, South Jersey Congressman Spent \$9,000 from Campaign Funds on Donor's Wedding, *Star-Ledger (New Jersey)*, November 19, 2011.

<sup>5</sup> *Id.*; Andrews for Congress, FEC Form 3, 2011 October Quarterly Report, October 14, 2011; Andrews for Congress, FEC Form 3, 2011 Year-End Report, Amended, April 13, 2012.

<sup>6</sup> Office of Congressional Ethics, 112th Congress, *Report*, Review No. 11-3260, March 23, 2012 (OCE Report), at 18.

<sup>7</sup> *Id.*; Andrews for Congress, FEC Form 3, 2011 October Quarterly Report, October 14, 2011.

<sup>8</sup> Andrews for Congress, FEC Form 3, 2011 July Quarterly Report, July 14, 2011; Andrews for Congress, FEC Form 3, 2011 Year-End Report, Amended, April 13, 2012. Rep. Andrews later said most of the petty cash was returned, but did not specify how much. The balance was apparently used for tips, transportation, and some food. OCE Report, at 17.

<sup>9</sup> *Id.*; Friedman, *Star-Ledger (New Jersey)*, Nov. 19, 2011.

<sup>10</sup> Andrews for Congress, FEC Form 1, Statement of Organization, Amended, March 27, 2012.

<sup>11</sup> Andrews for Congress, FEC Form 3, 2011 July Quarterly Report, July 14, 2011; Andrews for Congress, FEC Form 3, 2011 Year-End Report, Amended, April 13, 2012.

On November 19, 2011, the New Jersey *Star-Ledger* detailed Rep. Andrews' use of campaign funds for the Scotland trip and other seemingly personal expenses.<sup>12</sup> In response, Rep. Andrews said the trip costs were legitimate campaign expenses because the wedding was for a campaign donor and adviser, whom he declined to identify.<sup>13</sup> His staff said the Andrews family spent more than \$25,000 paying for personal aspects of the trip, and his chief of staff, Fran Tagmire, specifically noted that, "Andrews for Congress Campaign Committee did not pay for the airfare" – implying that the Andrews family had paid for their own plane tickets.<sup>14</sup>

Rep. Andrews did, in fact, originally use a personal credit card to pay for the airfare, but the Office of Congressional Ethics (OCE) found Rep. Andrews' wife, Camille Andrews, and Mr. Tagmire subsequently told the travel agency to refund the \$16,574.88 charge.<sup>15</sup> Ms. Andrews and Mr. Tagmire then arranged to have money wired from Rep. Andrews' leadership political action committee (PAC) to the travel agent to pay for the tickets.<sup>16</sup>

Within three days of the *Star-Ledger* article, Rep. Andrews said he would repay the money spent on the trip.<sup>17</sup> On November 30, 2011, Rep. Andrews refunded \$13,453 to Andrews for Congress, covering the costs for the Balmoral hotel, petty cash, meals, transportation, travel fees, and other trip expenses.<sup>18</sup> In addition, Rep. Andrews reimbursed his leadership PAC \$16,574 for airfare and insurance for himself, his wife, and his daughters.<sup>19</sup>

Although newspapers had originally reported Rep. Andrews had charged his campaign "more than \$9,000" to attend the Scotland wedding, in fact, it appears his campaign committee and PAC paid more than triple that amount: at least \$30,000.<sup>20</sup>

OCE investigators looking into Rep. Andrews' use of campaign money interviewed Scott Street, the groom from the Scotland wedding, regarding his relationship with Rep. Andrews.<sup>21</sup> Mr. Street, a lawyer and former political researcher, said he gave Rep. Andrews informal advice on a few occasions in 2004 and 2008, but was never a member of Rep. Andrews' paid campaign

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<sup>12</sup> Friedman, *Star-Ledger (New Jersey)*, Nov. 19, 2011; Andrews for Congress, FEC Form 3, 2011 October Quarterly Report, October 14, 2011; Andrews for Congress, FEC Form 3, 2011 Year-End Report, Amended, April 13, 2012.

<sup>13</sup> Friedman, *Star-Ledger (New Jersey)*, Nov. 19, 2011.

<sup>14</sup> Why George Norcross Won't Back Christie for Governor: 'I'm a Democrat', *Star-Ledger (New Jersey)*, May 20, 2012.

<sup>15</sup> OCE Report, at 14.

<sup>16</sup> *Id.*

<sup>17</sup> John Barna, Andrews: To Return Campaign Fund Money Originally Used to Attend Wedding in Scotland, *Gloucester County Times*, November 22, 2011.

<sup>18</sup> Andrews for Congress, FEC Form 3, 2011 Year-End Report, Amended, April 13, 2012.

<sup>19</sup> *Star-Ledger (New Jersey)*, May 20, 2012; Committee to Strengthen America, FEC Form 3X, 2011 Year-End Report, Amended, May 28, 2012.

<sup>20</sup> Friedman, *Star-Ledger (New Jersey)*, Nov. 19, 2011; Andrews for Congress, FEC Form 3, 2011 Year-End Report, Amended, April 13, 2012; Committee to Strengthen America, FEC Form 3X, 2011 Year-End Report, Amended, May 28, 2012.

<sup>21</sup> OCE Report, Exhibit 3, Memorandum of Interview, Witness 1, March 5, 2012. OCE refers to Mr. Street only as Witness 1, but during his interview with OCE, Rep. Andrews refers to Mr. Street, who is identified by both OCE and Rep. Andrews as the groom in the Scotland wedding. OCE Report, Exhibit 1, Transcript of Interview of Congressman Rob Andrews, March 6, 2012.

staff.<sup>22</sup> Mr. Street made only one contribution to Rep. Andrews' campaign: \$250 in 2010.<sup>23</sup> Rep. Andrews, meanwhile, told investigators he went to the wedding with the goal of "enriching and broadening" his relationship with Mr. Street, in hopes Mr. Street would be willing to provide campaign services when needed.<sup>24</sup>

### *Graduation Party*

In June 2011, Andrews for Congress spent \$10,000 on a party Rep. Andrews hosted at his New Jersey home.<sup>25</sup> The event was described as "from elegant to carnival fun."<sup>26</sup> Party guests included both political and personal acquaintances, who received different invitations to the event.<sup>27</sup> One invitation, sent from Andrews for Congress, described the party as a joint celebration of Rep. Andrews' 20 years in Congress and of his daughter Jacqueline's high school graduation.<sup>28</sup> A second invitation described the party only as a graduation celebration for Jacqueline Andrews.<sup>29</sup>

Rep. Andrews told OCE that his daughter's guests made up a small fraction of the party's attendees, and said the family paid far more than their share of expenses in an "abundance of caution."<sup>30</sup> In addition, Ms. Andrews told OCE that her daughter received gifts at the event from attendees, including some checks, though Ms. Andrews said she shredded all the checks without cashing them, offering no explanation for why she did so.<sup>31</sup> Rep. Andrews said he did not know whether his daughter received graduation gifts at the event.<sup>32</sup>

### *Hollywood Travel*

Over the past six years, Andrews for Congress has spent at least \$100,000 on California travel expenses, ostensibly so the congressman could attend fundraising events and political meetings.<sup>33</sup> The expenses include \$35,721 since 2007 for lodging and expenses at the Beverly Hills Plaza Hotel, more than \$35,000 for the use of a limo and transportation service during those trips, and thousands of dollars more on airline tickets, meals, and other expenses.<sup>34</sup>

Rep. Andrews made at least six trips to Los Angeles in 2011, and one of his two daughters accompanied him on each of the trips.<sup>35</sup> One daughter, Josie Andrews, is pursuing a

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<sup>22</sup> OCE Report, Exhibit 3.

<sup>23</sup> OCE Report, at 10.

<sup>24</sup> *Id.* at 10-11.

<sup>25</sup> Friedman, *Star-Ledger (New Jersey)*, Nov. 19, 2011.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*; OCE Report, at 24.

<sup>29</sup> Friedman, *Star-Ledger (New Jersey)*, Nov. 19, 2011.

<sup>30</sup> OCE Report, at 26.

<sup>31</sup> *Id.* at 27.

<sup>32</sup> *Id.*

<sup>33</sup> Rob Andrews U.S. House Committee, FEC Form 3, 2008-2011 Reports; Andrews for Congress, FEC Form 3, 2011-2013 Reports.

<sup>34</sup> *Id.*; Rob Andrews U.S. House Committee, FEC Form 3, 2008-2011 Reports.

<sup>35</sup> OCE Report, at 28.

career in show business.<sup>36</sup> Rep. Andrews has acknowledged using campaign funds to pay for Josie Andrews' airfare and lodging on multiple occasions, and said she helped out with campaign fundraising and other work.<sup>37</sup> Nonetheless, he was unable to produce any notes or copies of work done by either of his daughters.<sup>38</sup> Notably, one of those trips, which took place in mid-November, coincided with a recording session Josie Andrews had with her Los Angeles production company.<sup>39</sup> In addition, Mr. Street told OCE he had breakfast with Rep. Andrews and his daughter in Los Angeles on one occasion, and Josie Andrews told him she was in Los Angeles to record music.<sup>40</sup> More recently, on May 31, 2013, Josie Andrews tweeted she had a "Lunch meeting at Bouchon! #beverlyhills #la #cali #bouchon #friday."<sup>41</sup> Rep. Andrews charged his campaign \$121 for meal expenses at Bouchon Bistro on that date.<sup>42</sup>

### *Theater Donations*

Rep. Andrews has repeatedly donated to, or spent thousands of dollars at, theater companies where Josie Andrews performs. His donations and expenses often overlap with her performances. For example, from 2007 until 2011, Andrews for Congress donated more than \$100,000 to Philadelphia's Walnut Street Theatre, where Josie Andrews has performed repeatedly since 2003.<sup>43</sup> In 2007, Josie Andrews performed in the musical *Carousel*, which ran from May until July 2007.<sup>44</sup> During the show's run, Andrews for Congress reported spending \$1,856 at the Walnut Street Theatre on gifts for donors and food expenses.<sup>45</sup> Most recently, she was a featured performer in the theater's May 2011 gala.<sup>46</sup> Andrews for Congress has donated to the galas over the years, including a \$12,500 donation in February 2011 specifically for the 2011 gala.<sup>47</sup> In addition, Rep. Andrews expensed \$15 for parking at the theater to his campaign committee in May 2011, presumably when he attended the gala.<sup>48</sup>

In November 2008, during a Prince Music Theater production of the musical *West Side Story* in which Josie Andrews played the lead role of Maria, Rep. Andrews' campaign spent \$1,401 holding events at the theater.<sup>49</sup> A month earlier, his campaign reported making a \$5,000

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<sup>36</sup> <http://www.imdb.com/name/nm2573409/resume>.

<sup>37</sup> OCE Report, at 29; Friedman, *Star-Ledger (New Jersey)*, Nov. 19, 2011.

<sup>38</sup> *Id.*; OCE Report, at 29.

<sup>39</sup> Joelle Farrell, *U.S. Rep. Andrews' Travels Under Scrutiny Again*, *Philadelphia Inquirer*, February 11, 2012; Jim Walsh, *More Andrews Trips in Question*, *Cherry Hill Courier Post*, February 9, 2012; Geoff Mulvihill, *Watchdog Wants Spending by US Rep. Andrews Audited*, *New Jersey Herald*, February 7, 2012.

<sup>40</sup> OCE Report, at 29.

<sup>41</sup> <https://twitter.com/JosieAOfficial>, May 31, 2013.

<sup>42</sup> Andrews for Congress, *FEC Form 3, 2013 July Quarterly Report*, April 15, 2013.

<sup>43</sup> Andrews for Congress, *FEC Form 3, 2007-2011 Reports*; <http://www.imdb.com/name/nm2573409/resume>.

<sup>44</sup> <http://www.imdb.com/name/nm2573409/resume>; <http://www.walnutstreettheatre.org/season/carousel.php>.

<sup>45</sup> Rob Andrews U.S. House Committee, *FEC Form 3, 2007 July Quarterly, Amended*, April 12, 2008; Rob Andrews U.S. House Committee, *FEC Form 3, 2007 October Quarterly Report, Amended*, August 13, 2008.

<sup>46</sup> <http://www.imdb.com/name/nm2573409/resume>.

<sup>47</sup> Andrews for Congress, *FEC Form 3, 2011 April Quarterly Report, Amended*, November 15, 2011.

<sup>48</sup> Rob Andrews U.S. House Committee, *FEC Form 3, 2011 July Quarterly Report*, July 14, 2012.

<sup>49</sup> <http://www.stageagent.com/JosieAndrews/Resume>; <http://www.imdb.com/name/nm2573409/resume>; Rob Andrews U.S. House Committee, *FEC Form 3, 2009 Post General Report, Amended*, January 29, 2009.

charitable donation directly benefiting the “West Side Story project.”<sup>50</sup> His campaign made two other donations to the Prince Music Theater between 2007 and 2009, totaling \$2,750.<sup>51</sup>

Josie Andrews has also performed with the Broadway Theatre of Pitman.<sup>52</sup> Andrews for Congress paid \$4,136 to the Broadway Theatre of Pitman between 2007 through 2011 for gifts for donors, donations, tickets, and events.<sup>53</sup> During 2007 runs of *Oliver* and *Home for the Holidays*, both of which featured Josie Andrews, Andrews for Congress spent \$962 at the theater for events, gifts for donors, and contributions.<sup>54</sup> During January and February 2008 performances of *Hello Dolly*, another production including Josie Andrews, Andrews for Congress spent \$661 at the theater for gifts for donors.<sup>55</sup> Andrews for Congress spent another \$1,297 at the theater between March 2008 and January 2011.<sup>56</sup>

In November and December 2007, the Grand Opera House of Delaware hosted performances of *Home for the Holidays* in which Josie Andrews performed.<sup>57</sup> Andrews for Congress paid \$3,952 to the Grand Opera House in November and December 2007 for event expenses and gifts for donors.<sup>58</sup> The campaign paid an additional \$2,754 to the Grand Opera House in 2008,<sup>59</sup> although it is unclear whether Josie Andrews participated in any performances there that year.

In addition, in 2009 Rep. Andrews charged his campaign committee \$119 for meals at Six Flags/Great Adventure in Jackson, New Jersey on the same day Josie Andrews performed there as an opening act for singer-actress Raven-Symoné.<sup>60</sup>

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<sup>50</sup> *Id.*

<sup>51</sup> Rob Andrews U.S. House Committee, FEC Form 3, 2007 July Quarterly, Amended, April 12, 2008; Rob Andrews U.S. House Committee, FEC Form 3, 2009 April Quarterly Report, Amended, June 30, 2009.

<sup>52</sup> <http://www.imdb.com/name/nm2573409/resume>.

<sup>53</sup> Andrews for Congress, FEC Form 3, 2007-2011 Reports.

<sup>54</sup> <http://www.thebroadwaytheatre.org/?go=ealendar>, October 2007-December 2007; Rob Andrews U.S. House Committee, FEC Form 3, 2007 Year-End Report, Amended, August 13, 2008.

<sup>55</sup> <http://www.thebroadwaytheatre.org/?go=ealendar>, January 2008-February 2008; Rob Andrews U.S. House Committee, FEC Form 3, 2008 April Quarterly Report, Amended, August 13, 2008.

<sup>56</sup> Josie performed in *Grease* in June 2008 and *Annie Get Your Gun* in January-February 2009.

<http://www.stageagent.com/JosieAndrews/Resume>; <http://www.imdb.com/name/nm2573409/resume>;

<http://www.thebroadwaytheatre.org/?go=ealendar>, June 2008 and January-February 2009; Andrews for Congress, FEC Form 3, 2007-2011 Reports.

<sup>57</sup> [http://eventful.com/wilmington\\_de/events/home-holidays-/E0-001-006757154-6@2007122219](http://eventful.com/wilmington_de/events/home-holidays-/E0-001-006757154-6@2007122219);

<http://www.stageagent.com/JosieAndrews/Resume>; <http://www.imdb.com/name/nm2573409/resume>. *Home for the Holidays* appears to have been performed at both the Broadway Theatre and the Grand Opera House during winter 2007.

<sup>58</sup> Rob Andrews U.S. House Committee, FEC Form 3, 2007 Year-End Report, Amended, August 13, 2008.

<sup>59</sup> Rob Andrews U.S. House Committee, FEC Form 3, 2009 Post General Report, Amended, January 29, 2009; Rob Andrews U.S. House Committee, FEC Form 3, 2009 Year-End Report, January 30, 2009; Rob Andrews U.S. House Committee, FEC Form 3, 2009 April Quarterly Report, Amended, June 30, 2009.

<sup>60</sup> <http://thejerseygirlblog.blogspot.com/2009/07/raven-symone-at-six-flags.html>; Rob Andrews U.S. House Committee, FEC Form 3, 2009 October Quarterly, October 14, 2009.

## **Earmarking to His Wife's Employer**

Rep. Andrews' wife is the associate dean of enrollment and projects at Rutgers University School of Law, which has received more than \$1.5 million in earmarks from Rep. Andrews.<sup>61</sup> The School of Law earmarks comprise more than 90 percent of Rep. Andrews' total earmarks to Rutgers, the state university of New Jersey.<sup>62</sup>

In fiscal year 2008, Rep. Andrews earmarked \$613,000 to Rutgers University School of Law for student scholarships and loan repayment, internships, and public interest programming.<sup>63</sup> In fiscal year 2009, Rep. Andrews earmarked \$428,000 to Rutgers University School of Law for financial assistance to students participating in the pro bono community service program.<sup>64</sup> In fiscal year 2010, Rep. Andrews earmarked \$500,000 to Rutgers University School of Law for its public interest legal program.<sup>65</sup>

## **Status of Investigations**

In November 2011, CREW filed a complaint with the FEC against Rep. Andrews.<sup>66</sup> The status of the investigation is pending. In addition, Tom Booth, the chairman of the Camden County (NJ) Republican Party, asked the House Ethics Committee to investigate Rep. Andrews' personal use of campaign funds.<sup>67</sup>

The Office of Congressional Ethics investigated Rep. Andrews and, on April 2, 2012, referred his case to the House Ethics Committee.<sup>68</sup> OCE found there was substantial reason to believe Rep. Andrews improperly used congressional campaign and leadership PAC funds for personal use to pay expenses related to his family's Scotland trip, his daughter's graduation party, and the trips to Los Angeles, as well as other possible misspending.<sup>69</sup> On March 19, 2013, the House Ethics Committee announced it was establishing an investigative subcommittee to investigate whether Rep. Andrews improperly used campaign or PAC funds for personal expenses, misused official resources, or made false statements to federal officials.<sup>70</sup>

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<sup>61</sup> <http://andrews.house.gov/about-me/full-biography>;

[http://www.legistorm.com/member\\_family/107/Rob\\_Andrews.html](http://www.legistorm.com/member_family/107/Rob_Andrews.html).

<sup>62</sup> [http://www.legistorm.com/member\\_family/107/Rob\\_Andrews.html](http://www.legistorm.com/member_family/107/Rob_Andrews.html).

<sup>63</sup> <http://www.legistorm.com/earmark/9901.html>. Sen. Frank Lautenberg (D-NJ) co-sponsored this earmark.

<sup>64</sup> <http://www.legistorm.com/earmark/26619.html>.

<sup>65</sup> <http://www.legistorm.com/earmark/50839.html>.

<sup>66</sup> FEC Complaint filed by Citizens for Responsibility and Ethics in Washington, filed November 30, 2011, available at [http://crew.3cdn.net/975109344b38afe290\\_ffm6bdqoa.pdf](http://crew.3cdn.net/975109344b38afe290_ffm6bdqoa.pdf); supplementary complaint filed February 16, 2012, available at [http://crew.3cdn.net/7a225c64933a3c2136\\_s2m6bc125.pdf](http://crew.3cdn.net/7a225c64933a3c2136_s2m6bc125.pdf).

<sup>67</sup> Joelle Farrell, *U.S. Rep. Andrews Says he Will Repay Campaign for his Trip to Scotland and Direct the Funds to Homeless Vets*, *Philadelphia Inquirer*, November 23, 2011; Eileen Stillwell, *Rep. Andrews to Repay Trip Costs Exceeding 9K for Family's Scotland Trip*, *Asbury Park Press*, November 23, 2011.

<sup>68</sup> Press Release, House Committee on Ethics, 112th Congress, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Robert Andrews, July 17, 2012.

<sup>69</sup> OCE Report, at 1.

<sup>70</sup> Press Release, House Committee on Ethics, 113th Congress, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Robert Andrews, March 19, 2013.

## **Legal Fees**

Rep. Andrews' campaign committee hired Brand Law Group most recently in December 2011 and has paid the firm \$170,480 in legal fees since then.<sup>71</sup> The committee previously hired Brand Law Group in 2007, and again in 2009.<sup>72</sup> In May 2013, the campaign paid \$1,280 in attorney's fees to Cooper Levenson April Niedelman & Wagenheim, P.A.<sup>73</sup>

## **Potential Violations**

### **Conversion of Campaign Funds to Personal Use – Statute**

The Federal Election Campaign Act (FECA) prohibits a candidate for federal office from using campaign funds to pay the personal obligations of the candidate. The Act states that “a contribution or donation . . . shall not be converted by any person to personal use.”<sup>74</sup> The Act further specifies that “a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office, including . . . a vacation or other noncampaign-related trip . . . [or] admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign.”<sup>75</sup>

By using campaign funds to pay for his family's trip to Scotland, for a graduation party for his daughter, Jacqueline Andrews, and to subsidize the fledgling acting and singing career of his daughter, Josie Andrews, Rep. Andrews likely violated 2 U.S.C. §§ 439a(b)(2)(E) and (H) and 11 C.F.R. §§ 113.1(g)(1)(i)(F) and (J). Further, if Rep. Andrews' conduct was knowing and willful, he likely violated criminal law.<sup>76</sup>

### **Conversion of Campaign Funds to Personal Use – House Rule**

House Rule 23 provides that a member of Congress “may not convert campaign funds to personal use in excess of an amount representing reimbursement for legitimate and verifiable campaign expenditures.”<sup>77</sup> Further, Rule 23, clause 6(a) requires each member to “keep his campaign funds separate from his personal funds.”<sup>78</sup> The rule also provides that all campaign funds must be used for “bona fide campaign or political purposes.”<sup>79</sup> The committee has warned members to keep in mind that each campaign outlay must not only be “legitimate,” but also

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<sup>71</sup> Andrews for Congress, [FEC Form 3, 2011 Year-End Report, Amended](#), April 13, 2012; Andrews for Congress, [FEC Form 3, 2012 April Quarterly Report](#), April 15, 2012; Andrews for Congress, [FEC Form 3, 2012 July Quarterly](#), July 15, 2012.

<sup>72</sup> Andrews for Congress Committee, [FEC Form 3, 2007 April Quarterly Report, Amended](#), July 13, 2007; Rob Andrews U.S. House Committee, [FEC Form 3, 2009 October Quarterly](#), October 14, 2009.

<sup>73</sup> Andrews for Congress, [FEC Form 3, 2013 July Quarterly Report](#), July 17, 2013.

<sup>74</sup> 2 U.S.C. § 439a(b)(1).

<sup>75</sup> 2 U.S.C. §§ 439a(b)(2)(E) and (H); *see also* 11 C.F.R. §§ 113.1(g)(1)(i)(F) and (J).

<sup>76</sup> 2 U.S.C. § 437g(d)(1)(A)(i).

<sup>77</sup> Rule 23, cl. 6(b); House Comm. on Standards of Official Conduct, [House Ethics Manual](#), at 163 (110th Cong., 2d Sess., 2008 ed.).

<sup>78</sup> *Id.*

<sup>79</sup> Rule 23, cl. 6(c); [House Ethics Manual](#), at 152, 163.

“verifiable,” as such.<sup>80</sup> This requirement “**is separate from, and in addition to, whatever recordkeeping requirements are imposed by the Federal Election Commission . . .**”<sup>81</sup>

The Committee has held that in the case of travel expenses, when the primary purpose of a trip is personal in nature, the airfare “may not be paid with campaign funds and must be paid with personal funds.”<sup>82</sup> While members have the responsibility to determine what the “primary purpose” of a trip is, “that determination must be made in a **reasonable** manner, taking into account all of the activities” in which the member engages during the trip.<sup>83</sup> As an example of a trip that may not be financed with campaign funds, the House Ethics Manual offers:

A Member is taking a one-week trip that has a recreational purpose, except that during the trip, she will attend a party fund-raising dinner. Campaign funds may not be used to pay the airfare for the trip, and may be used solely to pay the additional meal or lodging expenses (if any) that the Member necessarily incurs in attending that dinner.<sup>84</sup>

The Ethics Manual also notes that the use of campaign funds to pay for any meal when the only individuals present are a member and his or her friends or family, “inherently raises concerns of conversion of campaign funds to personal use.”<sup>85</sup> To verify that such meals are, in fact, legitimate campaign expenses, the Committee has stated that “the maintenance of specific, written records is essential” and when “frequent or extensive” the maintenance of such records is “paramount.”<sup>86</sup>

Members are also prohibited from using their campaign funds for anyone else’s personal purposes. Therefore, members may not use campaign funds to benefit a business owned or controlled by a member’s relative.<sup>87</sup> If an expense is both campaign-related and benefits someone personally, the campaign may only underwrite its pro rata share.<sup>88</sup>

By using his campaign funds for his family’s trip to Scotland, for Jacqueline Andrews’ graduation party, for his and Josie Andrews’ travel to Los Angeles in support of her show business career, and to support theaters where Josie Andrews performed, Rep. Andrews likely violated House Rule 23.

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<sup>80</sup> *Id.* at 163.

<sup>81</sup> *Id.* at 165 (emphasis in original).

<sup>82</sup> *Id.* at 168.

<sup>83</sup> House Ethics Manual, at 168 (emphasis in original).

<sup>84</sup> *Id.* at 169.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> House Ethics Manual, at 166.

<sup>88</sup> *Id.*

## **Excessive Contributions**

The FECA limits the amount of contributions a leadership PAC may donate to a candidate, and the amount a candidate can accept from a leadership PAC.<sup>89</sup> Under the rules, when leadership PAC funds pay “costs that could and should otherwise be paid for by a candidate’s authorized committee,” they are in-kind contributions subject to this limit.<sup>90</sup> The contribution limit for Rep. Andrews’ leadership PAC in 2011 was \$2,500 per election, and any contribution over those limits was an illegal excessive contribution.<sup>91</sup> Even if the expenses of Rep. Andrews’ family’s trip to Scotland actually were campaign-related, his leadership PAC made an excessive contribution to his campaign committee by paying for them.

## **Gift Rule Violation**

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.” Members may accept gifts on the basis of personal friendship, unless the member has reason to believe the gift was provided because of his or her position.<sup>92</sup> The rules further provide that a “gift to a family member of a Member . . . shall be considered a gift to the Member” if the member knows about the gift and has reason to believe it was given because of the member’s official position.<sup>93</sup> The House Ethics Manual makes clear that when a member receives a gift that cannot be accepted under the rules, the member must either return the gift to the donor or pay the market value of the gift.<sup>94</sup> Only when the gift cannot be returned because it is perishable may the member destroy it.<sup>95</sup> “When a Member . . . receives a nonperishable gift that cannot be accepted under the gift rule, he or she has no choice but the return the item to the donor promptly.”<sup>96</sup>

Any gifts, including checks, given to Jacqueline Andrews at the graduation party because of Rep. Andrews’ position could not be accepted, and Rep. Andrews appears to have violated the gift rules by failing to return the gifts promptly and shredding the checks.

## **Official Action for Personal Gain**

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”<sup>97</sup> House members are directed to adhere to 5

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<sup>89</sup> 2 U.S.C. §§ 441a(a)(1)(A), 441a(f).

<sup>90</sup> Federal Election Commission, Explanation and Justification for final rule regarding Leadership PACs, 68 Fed. Reg. 67013, 67017 (December 1, 2003).

<sup>91</sup> Federal Election Commission, Contribution Limits 2011-12, available at <http://www.fec.gov/pages/brochures/contriblimits.shtml>.

<sup>92</sup> Rule 25, cl. 5(a)(3)(D).

<sup>93</sup> Rule 25, cl. 5(a)(2)(B)(i).

<sup>94</sup> House Ethics Manual, at 73.

<sup>95</sup> Rule 25, cl. 5(a)(6).

<sup>96</sup> House Ethics Manual, at 75.

<sup>97</sup> 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 funneling federal funds to Rutgers University School of Law, where his wife serves as associate dean of enrollment and projects, Rep. Andrews may have used his position for his wife's personal gain.

### **Unfairly Discriminating By Dispensing Special Favors**

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.<sup>98</sup>

By funneling federal funds to Rutgers University School of Law, where his wife serves as associate dean of enrollment and projects, Rep. Andrews may have dispensed special privileges to his wife's employers in violation of 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."<sup>99</sup> This ethics standard is considered to be "the most comprehensive provision" of the code.<sup>100</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct noted it was included within the Code to deal with "flagrant" violations of the law that reflect on "Congress as a whole," which might otherwise go unpunished.<sup>101</sup> 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,<sup>102</sup>

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<sup>98</sup> 72 Stat., Part 2, B12, H. Con. Res. 175, 85th Cong. (adopted July 11, 1958); House Ethics Manual, at 20.

<sup>99</sup> Rule 23, cl. 1.

<sup>100</sup> House Ethics Manual, at 12.

<sup>101</sup> 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).

<sup>102</sup> 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).

making false statements to the committee,<sup>103</sup> criminal convictions for bribery,<sup>104</sup> accepting illegal gratuities,<sup>105</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>106</sup>

By converting campaign funds to the personal use of himself and his family and by funneling federal funds to his wife's employer, Rep. Andrews may have engaged in conduct that does not reflect creditably on the House.

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<sup>103</sup> 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).

<sup>104</sup> 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)).

<sup>105</sup> 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).

<sup>106</sup> 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 MICHELE BACHMANN

Representative Michele Bachmann (R-MN) is a four-term member of Congress, representing Minnesota's 6th district. Rep. Bachmann was a candidate for the Republican nomination for president in 2011 and 2012, and her ethics issues stem from: (1) misusing presidential campaign resources to support her book tour; (2) improperly paying presidential campaign staffers through her leadership political action committee; (3) her campaign's improper use of a stolen e-mail list; (4) refusing to pay campaign staffers unless they sign a confidentiality agreement; and (5) her presidential campaign's improper coordination with, and solicitation of contributions for, a super PAC.

### Use of Campaign Resources to Promote Her Memoir

On June 27, 2011, Rep. Bachmann announced her candidacy for president in Waterloo, Iowa.<sup>1</sup> Her memoir, *Core of Conviction*, was published on November 21, 2011.<sup>2</sup> Days later, with her campaign for president still ongoing, Rep. Bachmann began a 10-day promotional book tour.<sup>3</sup> The tour started in Minnesota and included nine cities in Iowa and six cities in South Carolina.<sup>4</sup>

Top Bachmann for President staff members were deeply engaged in planning the book tour and coordinated with Rep. Bachmann's publisher, Penguin imprint Sentinel.<sup>5</sup> Allison McLean, the director of publicity for the publisher, told the Office of Congressional Ethics (OCE) that Rep. Bachmann's staff sought to make the book tour a "collaborative effort" with her presidential campaign.<sup>6</sup> Keith Nahigian, Bachmann for President's campaign manager, was the campaign's liaison to Penguin.<sup>7</sup> Eric Woolson, who was Bachmann for President's Iowa campaign manager, said Mr. Nahigian asked him to map out places to be visited during the book tour.<sup>8</sup> The request raised a red flag for Mr. Woolson, who said he worked on the book tour from his consulting firm office rather than campaign headquarters because he was concerned about whether the work was appropriate, and was not sure who to invoice for the work because he did not think it was part of his duties as campaign manager.<sup>9</sup>

An e-mail with notes from a planning call between Mr. Nahigian and a Penguin employee shows Bachmann for President proposed cities in Iowa and South Carolina for the book tour to visit and wanted to "be in the lead for IA radio and media," but would "collaborate

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<sup>1</sup> Jeff Zeleny, Bachmann Opens Campaign as Expectations Grow, *New York Times*, June 27, 2011.

<sup>2</sup> <http://www.amazon.com/exec/obidos/ASIN/1595230904>.

<sup>3</sup> Katie Humphrey, Bachmann Opens Book Tour at MOA, *Star Tribune*, November 25, 2011; Kevin Diaz, Michele Bachmann Book Tour Faces New Questions, *Star Tribune*, April 17, 2013.

<sup>4</sup> *Id.*; Jason Noble, Michele Bachmann Will Take Book Tour Across Iowa Next Weekend, *Des Moines Register*, November 19, 2011; Mark Zdechlik, Bachmann Plans Weekend South Carolina Book Signing Barnstorm, *Minnesota Public Radio*, November 29, 2011.

<sup>5</sup> Office of Congressional Ethics, 113th Congress, *Report*, Review No. 13-1274, May 31, 2013 (OCE Report), at 32, 37.

<sup>6</sup> *Id.*, Exhibit 43, Memorandum of Interview, Director of Publicity, Sentinel Publishing, April 24, 2013.

<sup>7</sup> *Id.*; *Id.*, Exhibit 17, Memorandum of Interview, Keith Nahigian, April 22, 2013.

<sup>8</sup> OCE Report, Exhibit 22, Memorandum of Interview, Former Iowa Campaign Manager Bachmann for President, March 29, 2013.

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

on SC radio.”<sup>10</sup> The e-mail says that South Carolina “is a priority for MB” while Iowa is “not a priority for Team MB,” but a visit to Sioux City, Iowa was nonetheless considered “v. important” to the presidential campaign.<sup>11</sup> The political objectives behind the planned book tour stops in early primary states are underscored by a quote in the e-mail saying, “If we win IA and win SC, we’ll win the whole thing,” which investigators for OCE said had likely been said by a Bachmann for President staff member.<sup>12</sup>

Several top campaign staffers accompanied Rep. Bachmann to book tour appearances and promotional interviews, including Mr. Nahigian, press secretary Alice Stewart, and Tera Dahl, Rep. Bachmann’s personal assistant, according to campaign schedules.<sup>13</sup> Mr. Nahigian told OCE he traveled with Rep. Bachmann during the book tour because “the campaign never stops” and he needed to handle media questions about the campaign while continuing to advise Rep. Bachmann.<sup>14</sup> He said Ms. Stewart traveled with Rep. Bachmann during the book tour to ensure media inquiries at book events were handled appropriately.<sup>15</sup> Brett O’Donnell, a campaign adviser who also accompanied Rep. Bachmann at different points during the book tour, said he assisted with campaign-related media during the book tour, and though presidential campaign staff did not have formal responsibilities at book events, they would “pitch in” occasionally.<sup>16</sup>

Campaign e-mails suggest campaign staffers were involved in promoting the book tour as well as performing campaign functions at book signings. On November 21, 2011, Mr. Woolson sent an e-mail to Bachmann for President Iowa staff members with details about Iowa book events, encouraging them to share the information.<sup>17</sup> “We’d love to have tons of people turn out for MB’s events on Friday, Saturday and Sunday,” Mr. Woolson wrote.<sup>18</sup> In another e-mail, Mr. Woolson described one of the book tour events as a “disaster,” adding, “WE NEED BODIES AT THESE EVENTS TODAY AND TOMORROW!”<sup>19</sup> In response to Mr. Woolson’s e-mail, Guy Short, Bachmann for President’s national political director, proposed using the campaign’s e-mail list of Iowa supporters to increase attendance at a book event, asking “can we push people to these events through IA emails?”<sup>20</sup> Campaign consultant Rebecca Donatelli later replied that she had sent an e-mail to the campaign’s entire Iowa list.<sup>21</sup> After much of the Iowa section of Rep. Bachmann’s book tour was completed, Bachmann for President advance staff member Craig Handzlik sent an e-mail to Mr. Woolson and other staff members, thanking them “for helping out with the book tour events.”<sup>22</sup> “I know there was some question about how much we

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<sup>10</sup> *Id.*, Exhibit 57, E-mail from Tiffany Liao to Sentinel Publicity Director Allison McLean, September 28, 2011.

<sup>11</sup> *Id.*

<sup>12</sup> OCE Report, Exhibit 57; *Id.* at 38.

<sup>13</sup> *Id.* at 34; *Id.*, Exhibit 44, Schedule for Congresswoman Michele Bachmann for President, Friday, November 25th, 2011.

<sup>14</sup> OCE Report, at 34-35.

<sup>15</sup> *Id.* at 35.

<sup>16</sup> *Id.*; *Id.*, Exhibit 18, Memorandum of Interview, Brett O’Donnell, April 19, 2013.

<sup>17</sup> OCE Report, at 35; *Id.*, Exhibit 50, E-mail from Eric Woolson to Bachmann for Iowa Staff, November 21, 2011.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 35; OCE Report, Exhibit 51, E-mail from Eric Woolson to Bachmann for Iowa Staff, November 25, 2011.

<sup>20</sup> *Id.* at 36; Lynn Bartels, Coloradan Guy Short Serves as Michele Bachmann’s National Director, *Denver Post*, November 3, 2011; OCE Report, Exhibit 56, E-mail from Guy Short to Rebecca Donatelli, November 25, 2011.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 37; *Id.*, Exhibit 51, E-mail from Craig Handzlik to Eric Woolson, November 27, 2011.

were all allowed to actively promote the events. However, the second the IA campaign staff began helping out with these stops, the events were markedly improved,” Mr. Handzlik wrote.<sup>23</sup>

Barb Heki, Bachmann for President’s home school coalition director, attended two book signing events, bringing a Bachmann for President intern with her to one.<sup>24</sup> When Ms. Heki sent an e-mail to Mr. Woolson inquiring about what help would be needed at a book signing event, Mr. Woolson replied, “[h]anding out literature and signing up people.”<sup>25</sup> Ms. Heki, who brought Bachmann for President campaign materials to the book signings, told OCE she had “definitely” attended the events in her role as a Bachmann for President staff member.<sup>26</sup> Ms. Heki also told OCE that Bachmann for President reimbursed her for mileage to attend the events, as well as for a meal for her and her husband.<sup>27</sup>

Some witnesses told OCE Rep. Bachmann appeared to expect the book events to also promote her campaign. Ms. McLean told OCE that Will Weisser, an associate publisher and marketing director at Penguin who traveled to some of the book events with Rep. Bachmann, told her campaign activity was occurring at book signing events.<sup>28</sup> According to Ms. McLean, Mr. Weisser said Rep. Bachmann would start book tour events by saying, “I’m Michelle [sic] Bachmann and I’m running for President.”<sup>29</sup> In an e-mail after a book event, Ms. Heki wrote that “in the middle of the book signing” Rep. Bachmann “motioned” to her “to ask if we were doing signup sheets,” adding that “Michele definitely was asking if we were getting people signed up.”<sup>30</sup> Ms. Heki told OCE that Rep. Bachmann was happy to learn they had been signing people up as volunteers for Bachmann for President.<sup>31</sup> Rep. Bachmann, however, told OCE she had no knowledge of campaign staff signing up volunteers or distributing campaign literature at her book tour events and that she did not remember speaking to Ms. Heki about signup sheets.<sup>32</sup> Photographs from the book signing in West Des Moines, however, show Rep. Bachmann as well as Bachmann for President staff and volunteers handing out campaign signs and literature.<sup>33</sup> Rep. Bachmann was shown these photos during an interview with OCE, and said she did not recall the events depicted in the photos.<sup>34</sup>

Rep. Bachmann told OCE that she and her staff asked the House Ethics Committee for guidance regarding the book tour “every step of the way.”<sup>35</sup> Patton Boggs lawyer William McGinley, who represents the Bachmann presidential campaign, said Rep. Bachmann’s publisher covered all expenses related to the book tour.<sup>36</sup> “Records show that the campaign was

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<sup>23</sup> OCE Report, Exhibit 51.

<sup>24</sup> *Id.* at 35; *Id.*, Exhibit 52, Memorandum of Interview, Former Home School Coalition Director, Bachmann for President, April 19, 2013.

<sup>25</sup> *Id.*, Exhibit 58, E-mail from Eric Woolson to Barb Heki, November 25, 2011.

<sup>26</sup> OCE Report, Exhibit 52.

<sup>27</sup> *Id.*; *Id.*, Exhibit 54.

<sup>28</sup> *Id.*, Exhibit 43.

<sup>29</sup> OCE Report, Exhibit 43.

<sup>30</sup> *Id.*, Exhibit 60, E-mail from Barb Heki to Drew Klein, November 26, 2011.

<sup>31</sup> *Id.*, Exhibit 52.

<sup>32</sup> *Id.*, Exhibit 1, Memorandum of Interview, Representative Michele Bachmann, April 24, 2013.

<sup>33</sup> OCE Report, at 40.

<sup>34</sup> *Id.*, Exhibit 1.

<sup>35</sup> *Id.*

<sup>36</sup> Diaz, *Star Tribune*, Apr. 17, 2013; <http://www.pattonboggs.com/professional/william-mcginley>.

very careful to ensure that protocols were in place to keep the book tour and presidential campaign completely separate and distinct,” Mr. McGinley said, adding the campaign had “followed the FEC [Federal Election Commission] advisory opinions and acted appropriately.”<sup>37</sup> Mr. Nahigian told OCE he worked with Penguin in an effort to divide the expenses for the book tour in a “clean and easy” manner.<sup>38</sup> In a November 18, 2011 e-mail, Ms. McLean wrote, “[w]e’re splitting the expenses with the campaign since so many of them are crossover.”<sup>39</sup> In December 2011, a presidential campaign consultant invoiced Sentinel for \$5,798.97, apparently for two “email deployments” sent in November 2011.<sup>40</sup> The invoice is marked as paid.<sup>41</sup> In addition, the publisher arranged and paid for a bus, separate from the bus used by Rep. Bachmann’s presidential campaign, that was used to transport Rep. Bachmann during her book tour in Iowa and South Carolina.<sup>42</sup> Johnny Williams, the owner of an Alabama bus company who provided buses to Rep. Bachmann for both the campaign and the book tour, told the *Star Tribune* two separate buses were chartered and the campaign was careful about separating costs.<sup>43</sup>

### **Leadership PAC Payments to Presidential Campaign Staff**

On January 14, 2013, Peter Waldron, who was the national field coordinator of Rep. Bachmann’s presidential campaign, filed a complaint with the FEC, alleging, among other things, that money from Rep. Bachmann’s leadership political action committee (PAC) had been improperly used to pay some campaign staff members for work on the congresswoman’s presidential campaign.<sup>44</sup> Mr. Waldron also filed a complaint with OCE in February 2013.<sup>45</sup>

#### *Guy Short*

Mr. Waldron’s complaints allege Mr. Short, the Bachmann for President campaign, and Rep. Bachmann’s leadership PAC, called Many Individual Conservatives Helping Elect Leaders Everywhere PAC (MichelePAC), engaged in a scheme to use MichelePAC funds to pay Mr. Short for his work for the Bachmann for President campaign. This activity began in June 2011 and escalated during November and December 2011, when the Bachmann for President campaign was short of money.

In July 2010, Mr. Short established MichelePAC, began directing its operations, and later had MichelePAC retain his political consulting firm, C&M Strategies.<sup>46</sup> In June 2011, when

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<sup>37</sup> Diaz, *Star Tribune*, Apr. 17, 2013.

<sup>38</sup> OCE Report, Exhibit 17.

<sup>39</sup> *Id.* at 33; *Id.*, Exhibit 46, E-mail from Allison McLean to Jaclyn Levin, November 18, 2011.

<sup>40</sup> *Id.* at 34; OCE Report, Exhibit 49.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 33.

<sup>43</sup> Diaz, *Star Tribune*, Apr. 17, 2013.

<sup>44</sup> Complaint filed with the Federal Election Commission by Peter Waldron, January 14, 2013 (Waldron FEC Complaint); Kevin Diaz, Ex-Bachmann Aide Alleges Campaign Finance Violations, *Star Tribune*, January 16, 2013.

<sup>45</sup> Ben Jacobs, Michele Bachmann Investigation Gets House Ethics Committee Extension, *Daily Beast*, September 12, 2013.

<sup>46</sup> Bartels, *Denver Post*, Nov. 3, 2011; Many Individual Conservatives Helping Elect Leaders Everywhere (MichelePAC), FEC Form 1, Statement of Organization, July 28, 2010; C&M Strategies, Inc., Articles of Incorporation for a Profit Corporation, Colorado Secretary of State, filed June 3, 2010; OCE Report, at 11, 14.

Rep. Bachmann officially announced her candidacy for president, Bachmann for President entered into a fundraising contract with C&M Strategies covering the period of June 13 to December 31, 2011.<sup>47</sup>

Bachmann for President Deputy Campaign Manager David Polyansky, who negotiated the C&M Strategies contract, said he thought Mr. Short's firm should be paid between \$12,000 and \$15,000 per month.<sup>48</sup> Mr. Short, however, wanted \$20,000, according to Andy Parrish, Rep. Bachmann's then-congressional chief of staff.<sup>49</sup> Although Mr. Short eventually agreed to a monthly \$15,000 payment from Bachmann for President, Mr. Parrish said he believes Mr. Short obtained the \$20,000 per month he wanted by going directly to Rep. Bachmann, who agreed to have MichelePAC make up the difference by paying him the extra \$5,000 per month for his work on the presidential campaign.<sup>50</sup>

Separately, as discussed in detail below, Rep. Bachmann's campaign allegedly paid \$7,500 per month to its Iowa state chairman, Iowa State Senator Kent Sorenson.<sup>51</sup> In an apparent effort to hide those payments, they also were made through C&M Strategies.<sup>52</sup> As a result, the C&M Strategies contract with Bachmann for President provided for a \$22,500 monthly payment—\$15,000 for Mr. Short, and \$7,500 for Sen. Sorenson.<sup>53</sup> With MichelePAC paying C&M Strategies the additional \$5,000 per month Mr. Short wanted, C&M Strategies was to receive a total of \$27,500 each month.

Between June and October 2011, C&M Strategies invoiced Bachmann for President the \$22,500 per month agreed to in the contract, and invoiced MichelePAC \$5,000 per month.<sup>54</sup> The invoices and payments changed after October 2011, when Bachmann for President began to run short of money.<sup>55</sup> C&M Strategies apparently did not send any invoices to Bachmann for President for either November 2011 or December 2011, and Mr. Short claimed he was working for the campaign as a volunteer during this period.<sup>56</sup> Mr. Short's firm, however, did send three invoices to MichelePAC in December 2011, totaling \$40,000—far more than the \$5,000 per

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<sup>47</sup> *Id.* at 12; Zeleny, *New York Times*, June 27, 2011.

<sup>48</sup> OCE Report, at 13.

<sup>49</sup> *Id.*; Legistorm, Summary, Andy Parrish. In June 2011, Mr. Parrish took a full-time job with the Bachmann for President campaign. See Trip Gabriel, More Bachmann Staff Members Depart, *New York Times*, October 3, 2011.

<sup>50</sup> OCE Report, at 13. Mr. Parrish said he never spoke to either Rep. Bachmann or Mr. Short about the retainer, but said only Rep. Bachmann could have approved the arrangement. *Id.* at 13-14.

<sup>51</sup> *Id.* at 14.

<sup>52</sup> *Id.* at 27.

<sup>53</sup> OCE Report, at 14.

<sup>54</sup> *Id.* at 15. Bachmann for President and MichelePAC paid the invoices. See Bachmann for President, FEC Form 3, 2011, October Quarterly Report, Amended, October, 1, 2012; Bachmann for President, FEC Form 3, 2011 Year-End Report, January 31, 2012; Many Individual Conservatives Helping Elect Leaders Everywhere (MichelePAC), FEC Form 3X, 2011 August Monthly Report, Amended, April 20, 2012; Many Individual Conservatives Helping Elect Leaders Everywhere (MichelePAC), FEC Form 3X, 2011 September Monthly Report, Amended, April 20, 2012; Many Individual Conservatives Helping Elect Leaders Everywhere (MichelePAC), FEC Form 3X, 2011 October Monthly Report, Amended, April 20, 2012; Many Individual Conservatives Helping Elect Leaders Everywhere (MichelePAC), FEC Form 3X, 2011 November Monthly Report, Amended, April 20, 2012; Many Individual Conservatives Helping Elect Leaders Everywhere (MichelePAC), FEC Form 3X, 2011 December Monthly Report, Amended, April 20, 2012.

<sup>55</sup> OCE Report, at 17.

<sup>56</sup> *Id.* at 17-18.

month it had previously billed the leadership PAC—and MichelePAC paid them.<sup>57</sup> After Rep. Bachmann dropped out of the presidential race on January 4, 2012, MichelePAC did not pay C&M Strategies again until July 2012, when it reported a \$3,750 payment.<sup>58</sup>

While Mr. Short was being paid by MichelePAC between June and December 2011, it is unclear how much—if any—work he did for the leadership PAC. Mr. Parrish, who was employed by MichelePAC from October 2011 to February 2012, said he was not aware of any work Mr. Short or C&M Strategies performed for MichelePAC between June 2011 and December 2011.<sup>59</sup> Mr. Short became Bachmann for President’s national political director in October 2011 and, according to several campaign staff members, was working full time for Rep. Bachmann’s presidential campaign in December 2011.<sup>60</sup> For example, Bachmann for President’s Iowa campaign manager, Mr. Woolson, said Mr. Short supervised campaign operations full time in December 2011 and the beginning of January 2012, often working 7 a.m. to 10 p.m.<sup>61</sup> In addition, MichelePAC raised less than \$5,000 during that time period.<sup>62</sup> OCE could not determine what services Mr. Short provided MichelePAC between June 2011 and December 2011 to justify his \$5,000 a month retainer because he did not cooperate with the investigation.<sup>63</sup>

Lawyers for both Bachmann for President and Mr. Short said the MichelePAC payments were for work unrelated to Rep. Bachmann’s presidential campaign.<sup>64</sup> Mr. Short’s attorney said his client’s work for the PAC and the campaign were “completely separate,”<sup>65</sup> and sent a statement to OCE claiming, “[d]uring December 2011 and January 2012, Mr. Short was paid by MichelePAC for a fundraising and research project, which was unrelated to his work for BFP.”<sup>66</sup> Rep. Bachmann told OCE she could not recall if there was a fundraising project for MichelePAC planned in December 2011 and did not remember approving any fundraising letters for the leadership PAC that month.<sup>67</sup> In addition, Mr. Nahigian said Mr. Short had approached him in December 2011 about turning his attention to MichelePAC because he had “nothing to do” on

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<sup>57</sup> *Id.* at 18.

<sup>58</sup> Rachel Weiner, Bachmann to Drop Out of Presidential Race: 'No Regrets,' *Washington Post*, January 4, 2012; Many Individual Conservatives Helping Elect Leaders Everywhere (MichelePAC), FEC Form 3X, 2012 August Monthly Report, August 20, 2012.

<sup>59</sup> OCE Report, at 19.

<sup>60</sup> *Id.* at 17, 20.

<sup>61</sup> *Id.*

<sup>62</sup> Many Individual Conservatives Helping Elect Leaders Everywhere (MichelePAC), FEC Form 3X, 2011 August Monthly Report, Amended, April 20, 2012; Many Individual Conservatives Helping Elect Leaders Everywhere (MichelePAC), FEC Form 3X, 2011 September Monthly Report, Amended, April 20, 2012; Many Individual Conservatives Helping Elect Leaders Everywhere (MichelePAC), FEC Form 3X, 2011 October Monthly Report, Amended, April 20, 2012; Many Individual Conservatives Helping Elect Leaders Everywhere (MichelePAC), FEC Form 3X, 2011 November Monthly Report, Amended, April 20, 2012; Many Individual Conservatives Helping Elect Leaders Everywhere (MichelePAC), FEC Form 3X, 2011 December Monthly Report, Amended, April 20, 2012.

<sup>63</sup> OCE Report, at 15.

<sup>64</sup> Kevin Diaz, Iowa Senator Is at Core of Michele Bachmann’s Legal Dilemma, *Star Tribune*, April 30, 2013; Ex-Bachmann Aide Alleges Improper Payments in Iowa, *Associated Press*, January 18, 2013.

<sup>65</sup> Kevin Diaz, Bachmann’s Troubles Rooted In Campaign Divisions, *Star Tribune*, April 22, 2013.

<sup>66</sup> OCE Report, Exhibit 21, Letter from Christopher DeLacy of Holland & Knight to Office of Congressional Ethics Staff Director and Chief Counsel Omar Ashmawy, April 24, 2013.

<sup>67</sup> *Id.* at 19.

the presidential campaign, which Mr. Nahigian thought would be “great.”<sup>68</sup> Mr. Short sent Mr. Nahigian an e-mail on December 3, 2011 seeking approval for the text of a proposed fundraising solicitation for MichelePAC.<sup>69</sup> Mr. Nahigian, however, believes he ignored the e-mail and cannot recall Mr. Short sharing any other work on behalf of MichelePAC with him.<sup>70</sup> In March 2012, Mr. Short told Bachmann for President’s national finance chairman, James Pollack, that a “major fundraising initiative” aimed at raising money for candidate contributions in 2012 had been planned for MichelePAC in December 2011, but the project had been postponed until after Rep. Bachmann’s presidential campaign ended.<sup>71</sup>

According to Mr. Pollack, Rep. Bachmann was “surprised” and unhappy when she learned of the MichelePAC payments to Mr. Short, and she told him to handle it as he saw most fit.<sup>72</sup> After learning of the allegedly deferred fundraising project, Mr. Pollack said it was decided MichelePAC’s previous payments to Mr. Short would be applied toward compensating him for his 2012 work for the leadership PAC.<sup>73</sup>

It is also unclear how involved Rep. Bachmann was in the arrangements. Mr. Parrish said Rep. Bachmann “had a high level of involvement in the PAC’s affairs” and described her as a “micromanager” with regard to Bachmann for President’s operations, although Mr. Short “was responsible for approving the payment of invoices submitted to MICHELE PAC, including invoices submitted by his own firm.”<sup>74</sup> Mr. Parrish also said he spoke to Rep. Bachmann “multiple times” about the need to segregate the funds of her political committees, adding she was “very aware” of the rules governing the use of different committee funds.<sup>75</sup> As noted, Mr. Parrish believes Rep. Bachmann authorized MichelePAC to pay Mr. Short \$5,000 a month for his work on the presidential campaign. According to Rep. Bachmann, Mr. Short supervised his own work on the PAC and made decisions about his own compensation.<sup>76</sup> Rep. Bachmann, who said her only involvement with the running of the PAC was approving the text of fundraising letters and approving contributions to other candidates, also said she assumed Mr. Short approved all other disbursements made from the PAC.<sup>77</sup> After the OCE report was made public in September 2013, Mr. Short’s lawyer said Mr. Short “never had check-signing authority or operational control of MICHELE PAC or Bachmann for President” and Mr. Short always “sought and received appropriate approvals for his activities including for invoices he submitted.”<sup>78</sup>

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 20.

<sup>70</sup> OCE Report, at 20.

<sup>71</sup> *Id.* at 22.

<sup>72</sup> *Id.* at 22-23.

<sup>73</sup> *Id.* at 23.

<sup>74</sup> OCE Report, Exhibit 5, Memorandum of Interview, Former Chief of Staff, March 28, 2013.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 11.

<sup>77</sup> *Id.*

<sup>78</sup> Donovan Slack, [Ethics Panel Report: ‘Substantial Reason to Believe’ Bachmann Campaign Violated Law](#), *St. Cloud Times*, September 11, 2013.

*Sen. Kent Sorenson*

MichelePAC also allegedly paid Sen. Sorenson for some of his work on the presidential campaign. The payments allegedly were made through C&M Strategies in an attempt to avoid Iowa Senate ethics rules barring state senators from accepting payments from PACs, which, according to the secretary of the Iowa Senate, historically have been interpreted to include payments by political campaigns other than a senator's own campaign.<sup>79</sup>

According to an affidavit signed by Mr. Parrish, when he recruited Sen. Sorenson to support Rep. Bachmann's presidential campaign in early 2011, Sen. Sorenson indicated he would like to be paid for his efforts.<sup>80</sup> Mr. Parrish then discussed with Mr. Short Sen. Sorenson's desire to be paid, and ways to hire and pay him.<sup>81</sup> On March 8, 2011, for example, Mr. Short wrote to Mr. Parrish about Sen. Sorenson, saying "if we need to pay him from MPAC we can. He can be a consultant and give us strategic advice."<sup>82</sup> After Sen. Sorenson told Mr. Parrish he could not be paid directly by Bachmann for President, they worked out an arrangement in which Sen. Sorenson was paid \$7,500 per month by C&M Strategies, Mr. Parrish asserted.<sup>83</sup>

Like Sen. Sorenson, the Bachmann campaign was aware of the Iowa Senate rules barring payments to state senators. In an October 2011 press release announcing its Iowa staff, the campaign described Sen. Sorenson as its "state chairman" and noted, "Sorenson is serving in a full-time role but state Senate rules preclude lawmakers from being paid by the campaign."<sup>84</sup>

It is unclear whether Rep. Bachmann knew of the alleged payments to Sen. Sorenson. Mr. Parrish said he discussed the payment arrangement with Rep. Bachmann in mid-to-late April or early May 2011, and she told him to go ahead, as long as the plan was legal.<sup>85</sup> Mr. Waldron said he informed Rep. Bachmann and her husband, Marcus Bachmann, of his discomfort with some of the campaign's "under-the-table payments" on December 18, 2011.<sup>86</sup> Rep. Bachmann, however, told OCE she did not know about any arrangement to pay Mr. Sorenson through C&M Strategies and did not recall anyone telling her Mr. Sorenson wanted to be paid for working on the campaign.<sup>87</sup> She said she was not involved in making decisions about anyone's

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<sup>79</sup> Waldron FEC Complaint; Diaz, *Star Tribune*, Apr. 30, 2013; OCE Report, at 25, 27-28; Iowa Senate Code of Ethics, Rule 6; Jennifer Jacobs, Differing Interpretations: The Sorenson Ethics Case, *Des Moines Register*, July 21, 2013.

<sup>80</sup> OCE Report, at 26; *In re: Matter of Senator Kent Sorenson*, Affidavit of Andy Parrish, April 22, 2013 (Parrish Affidavit), available at <http://stmedia.startribune.com/documents/137361779-Parrish-Affidavit.pdf>.

<sup>81</sup> OCE Report, at 26.

<sup>82</sup> Parrish Affidavit, Exhibit A.

<sup>83</sup> OCE Report, at 27. Mr. Polyansky added that the Bachmann campaign's lawyer signed off on the arrangement to pay Sen. Sorenson through C&M Strategies. *Id.* at 28; *Id.*, Exhibit 5.

<sup>84</sup> Press Release, Bachmann for President, Team Bachmann Appoints Woolson State Campaign Manager; Announces Iowa Campaign Staff, October 27, 2011.

<sup>85</sup> OCE Report, Exhibit 5.

<sup>86</sup> Cyndy Brucato, Peter Waldron, Bachmann Whistleblower, Describes a Campaign and Candidate in Distress, *MinnPost*, May 20, 2013.

<sup>87</sup> OCE Report, Exhibit 1.

compensation, but added that to her knowledge, Sen. Sorenson was not compensated for his work for Bachmann for President.<sup>88</sup>

Sen. Sorenson declined to cooperate with the OCE investigation but has repeatedly publicly denied the allegations in Mr. Waldron's Iowa Senate ethics complaint, saying, "Even if I had been employed by C&M Strategies (which I was not) it would not have constituted a violation" of Iowa Senate ethics rules.<sup>89</sup> In May 2013, Sen. Sorenson sent a statement to the Iowa Senate Ethics Committee asserting he "was never paid directly or indirectly by Michelle PAC [sic] or the Bachmann Campaign."<sup>90</sup> Sen. Sorenson also sent the committee an affidavit from his lawyer, Cherie Johnson, claiming she had reviewed bank records provided to her by Sen. Sorenson covering the period from December 8, 2010 to December 7, 2011, and she did not find any deposits in Sen. Sorenson's account from Mr. Short or C&M Strategies.<sup>91</sup> OCE investigators, however, discovered Iowa corporate filings showing Sen. Sorenson had established Grassroots Strategy Inc. in 2010, listing himself as the company's sole incorporator and director.<sup>92</sup> Mr. Short's lawyer wrote to OCE, "As part of the services provided to Congresswoman Bachmann and her political committees in 2011, Mr. Short, through C&M, retained the consulting services of Mr. Sorenson, through Grassroots."<sup>93</sup>

Sen. Sorenson's denials were undermined further by the disclosure of e-mails and audio recordings related to his late December 2011 decision to switch his support to the presidential campaign of Rep. Ron Paul (R-TX).<sup>94</sup> At the time, Rep. Bachmann issued a statement saying Sen. Sorenson "personally told [her] he was offered a large sum of money to go to work for the Paul campaign."<sup>95</sup> Sen. Sorenson denied Rep. Bachmann's allegation, saying he "was never offered a nickel from the Ron Paul campaign."<sup>96</sup> E-mails and audio recordings released by The Iowa Republican blog and the Center for Responsive Politics, however, strongly suggest Sen. Sorenson accepted payments from Rep. Bachmann's campaign and was offered money to join Rep. Paul's campaign.<sup>97</sup> A memo attached to an e-mail sent to Paul campaign manager John Tate by Aaron Dorr, the brother of Sen. Sorenson's legislative clerk, said Sen. Sorenson would

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<sup>88</sup> *Id.*

<sup>89</sup> William Petroski, Sorenson Calls Ethics Charges Stemming From Michele Bachman Campaign 'False,' 'Absurd', *Des Moines Register*, February 11, 2013; OCE Report, at 8.

<sup>90</sup> Letter from Iowa State Sen. Kent Sorenson to Secretary of the Senate Mike Marshall, May 1, 2013, *available at* <http://cdn.okhenderson.com/wp-content/uploads/2013/05/ResponsetoAllegations5-1-13.pdf>; <http://okhenderson.com/2013/05/01/sorenson-releases-response-decries-ethics-witch-hunt/>.

<sup>91</sup> Affidavit of Cherie L. Johnson, April 30, 2013, *available at* <http://cdn.okhenderson.com/wp-content/uploads/2013/05/Affidavit4.pdf>.

<sup>92</sup> OCE Report, Exhibit 40, Grassroots Strategy Inc. Corporate Filing, December 29, 2010.

<sup>93</sup> *Id.*, Exhibit 21.

<sup>94</sup> Jon Ward and Elise Foley, Michele Bachmann's Iowa Chairman Kent Sorenson Abandons Her for Ron Paul, *Huffington Post*, December 28, 2012; Craig Robinson, The Payoff – Details Revealed on Sorenson's Deal with Ron Paul, *The Iowa Republican*, August 6, 2013; Craig Robinson, In His Own Words Sorenson Confirms Payment for Ron Paul Endorsement, *The Iowa Republican*, August 7, 2013.

<sup>95</sup> Ward and Foley, *Huffington Post*, Dec. 28, 2012.

<sup>96</sup> Catalina Camia and Martha T. Moore, Polls Confirm Santorum's Rise as Bachmann Loses Another Aide, *USA Today*, December 29, 2011.

<sup>97</sup> Robinson, *The Iowa Republican*, Aug. 6, 2013; Robinson, *The Iowa Republican*, Aug. 7, 2013; Russ Choma, Ron Paul Campaign Accused of Trying to Buy Iowa Endorsements, *Center for Responsive Politics' OpenSecrets Blog*, August 7, 2013.

need “to match his current salary of \$8,000 a month” if he joined the Paul campaign.<sup>98</sup> After the e-mails were released in August 2013, Sen. Sorenson said he was not “part of this conversation” and that he “didn’t give anyone authority to have this discussion” about financial compensation for joining the Paul campaign.<sup>99</sup>

Sen. Sorenson’s credibility also was undercut by the disclosure of an audio recording of a conversation that took place sometime between December 28, 2011 and January 3, 2012 with conservative activist Dennis Fusaro, in which Sen. Sorenson acknowledged Demetri Kesari, the Paul campaign’s deputy national campaign manager, gave his wife a check at a dinner meeting while Sen. Sorenson was in the bathroom.<sup>100</sup> Sen. Sorenson’s lawyer confirmed Mr. Kesari gave a check to Sen. Sorenson’s wife, but said the check had never been cashed and was still in Sen. Sorenson’s possession.<sup>101</sup> Sen. Sorenson said he misspoke when he denied being offered money, claiming it was because he was nervous while being interviewed on national TV.<sup>102</sup>

### **Theft of E-Mail List**

On July 30, 2012, Ms. Heki, the home school coalition director for Rep. Bachmann’s Iowa campaign, filed a lawsuit against Rep. Bachmann, the congresswoman’s presidential campaign, and several campaign staffers, including Sen. Sorenson, Mr. Nahigian, and Mr. Short.<sup>103</sup> Ms. Heki and her husband alleged the Bachmann campaign, specifically Sen. Sorenson, stole an e-mail database belonging to the Network of Iowa Christian Home Educators (NICHE) from Ms. Heki’s private computer, and subsequently sent two messages to the e-mail list around November 10, 2011.<sup>104</sup> Mr. and Ms. Heki were NICHE board members at the time.<sup>105</sup> After the e-mails were sent, Ms. Heki was publicly identified as a potential source of the e-mail list for the Bachmann campaign.<sup>106</sup> The lawsuit said the Hekis lost their positions on the NICHE board as a result of the perception that Ms. Heki had improperly given Bachmann for President access to the e-mail list.<sup>107</sup> The Hekis also claimed they had been cut off from “their professional, social, political, and spiritual lives” as a result of the e-mail list episode.<sup>108</sup>

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<sup>98</sup> *Id.*; Robinson, *The Iowa Republican*, Aug. 6, 2013; Jennifer Jacobs, Emails Show Discussion About Ron Paul Campaign Paying Kent Sorenson, *Des Moines Register*, August 6, 2013.

<sup>99</sup> Jacobs, *Des Moines Register*, Aug. 6, 2013.

<sup>100</sup> *Id.*; Robinson, *The Iowa Republican*, Aug. 7, 2013; <http://www.youtube.com/watch?v=JLjQukwNG3M>.

<sup>101</sup> Jennifer Jacobs, Kent Sorenson to Face 2nd Ethics Complaint; Lawyer Calls It ‘Gibberish’, *Des Moines Register*, August 28, 2013.

<sup>102</sup> *Id.*

<sup>103</sup> Thomas Beaumont, Former Bachmann Aide Sues Campaign, Alleging Theft, *Associated Press*, July 30, 2012; *Barbara and Richard Heki v. Michele Bachmann, et al.*, No. 05771 LACL125753, Petition and Jury Demand (Iowa Dist. Ct. Polk County 2012), available at [http://images.politico.com/global/2012/07/120730\\_bachmann\\_files.pdf](http://images.politico.com/global/2012/07/120730_bachmann_files.pdf).

<sup>104</sup> *Id.* at 4.

<sup>105</sup> *Id.* at 3.

<sup>106</sup> Jason Noble, Updated: Michele Bachmann Misappropriated Home-School Group’s E-mail List, *Des Moines Register*, December 1, 2011; Kevin Hall, Kevin’s Korner: Cain Endorsement, Bachmann Loses Her NICHE, & the Hawkeye Stench, *The Iowa Republican*, December 4, 2011; Russell Goldman, Bachmann Campaign Under Fire for Breach of Iowans’ Email Addresses, *ABC News*, December 1, 2011.

<sup>107</sup> *Barbara and Richard Heki v. Michele Bachmann, et al.*, Petition and Jury Demand, at 5.

<sup>108</sup> *Id.*

In September 2012, Ms. Heki also filed a theft report regarding the e-mail list with the Urbandale Police Department.<sup>109</sup> A state senator matching Sen. Sorenson's description was listed as a suspect in an Urbandale police report filed on September 11, 2012.<sup>110</sup> Sen. Sorenson's attorney denied any wrongdoing by Sen. Sorenson and said he and his client were unaware of the criminal complaint.<sup>111</sup>

After the e-mails were sent to the home-schooling list, NICHE billed the Bachmann campaign for the "reasonable rental value" of the list in order to avoid violating federal laws restricting donations to political campaigns by section 501(c)(3) nonprofit organizations such as NICHE.<sup>112</sup> Mr. Nahigian of the Bachmann campaign said the e-mails had been "mistakenly sent" and the campaign would "pay the fair-market value of the use of the list."<sup>113</sup> Bachmann for President reported paying NICHE \$2,000 for "list rental" on December 7, 2011.<sup>114</sup>

Ms. Heki claimed Rep. Bachmann privately acknowledged that Sen. Sorenson took the e-mail database, but because neither Rep. Bachmann nor other members of the presidential campaign publicly exonerated her, she filed her lawsuit.<sup>115</sup> Mr. Woolson said in a sworn affidavit that Sen. Sorenson told him, "[w]e took" the homeschool list.<sup>116</sup> A memo outlining Sen. Sorenson's terms for defecting to the Paul campaign, leaked in August 2013, appeared to offer the NICHE list as a benefit Sen. Sorenson could offer the Paul campaign, stating, "[W]e are in possession of the list of the main Iowa home-school group here in Iowa [sic] allowing for targeted home-school mail."<sup>117</sup>

On June 28 2013, lawyers for Ms. Heki filed legal papers to dismiss the case after settling with Rep. Bachmann.<sup>118</sup> The settlement terms were not made public.<sup>119</sup> An attorney for Sen. Sorenson said the settlement did not include any admission of wrongdoing by the state senator.<sup>120</sup>

### **Attempt to Silence Staffers**

In January 2013, Mr. Waldron claimed Bachmann for President had refused to pay him the remainder of the money owed to him unless he signed a confidentiality agreement, which he claimed would prevent him from discussing "unethical, illegal, or immoral activity" on the

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<sup>109</sup> Todd Richissin, Update: Former Bachmann Campaign Aide Files Police Report Accusing Ron Paul Backer, a State Senator, of Theft, *St. Michael Patch*, September 21, 2012.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> Noble, *Des Moines Register*, Dec. 1, 2011.

<sup>113</sup> *Id.*

<sup>114</sup> Bachmann for President, FEC Form 3, 2011 Year-End Report, January 31, 2012.

<sup>115</sup> Diaz, *Star Tribune*, Apr. 22, 2013.

<sup>116</sup> Waldron Iowa Senate Ethics Complaint, Exhibit 1, Affidavit of Eric Woolson, September 4, 2012.

<sup>117</sup> Choma, *Center for Responsive Politics' OpenSecrets blog*, Aug. 7, 2013.

<sup>118</sup> Kevin Diaz, Rep. Michele Bachmann Settles Suit Over Iowa E-mail List, *Star Tribune*, June 28, 2013.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

campaign.<sup>121</sup> According to Mr. Waldron, he and other staffers whom the campaign still owed money were told they could not speak about the campaign “without first speaking with Michele Bachmann’s attorneys.”<sup>122</sup> In an e-book published in August 2013, Mr. Waldron asserted the non-disclosure agreements given to Iowa staffers seeking back pay “came well after the work was performed, were never an original term or condition of employment and the signing of them [was] the only fast and ready way to be paid.”<sup>123</sup>

Two former Bachmann aides, however, told the *Star Tribune* that what Mr. Waldron and other staffers had been asked to sign was a standard campaign release agreement, which does not specifically mention illegal or unethical behavior.<sup>124</sup> One clause provides, however, that if compelled as a matter of law to disclose information considered confidential by the agreement, the signee must give the Bachmann campaign an opportunity to object to the disclosure.<sup>125</sup> Mr. Waldron said he believed it was wrong to ask a person actively involved in ongoing lawsuits and investigations to sign a nondisclosure agreement that would require him to “tell the Bachmann attorneys everything that I tell the lawyers in the lawsuit.”<sup>126</sup>

In August 2013, Mr. Waldron said Bachmann for President had paid the staff members the salary they were owed.<sup>127</sup>

### **Coordination with a Super PAC**

In his FEC complaint, Mr. Waldron alleged Bachmann for President coordinated advertising purchases and placements with the National Fiscal Conservative PAC (NFC PAC), a super PAC.<sup>128</sup> The president of NFC PAC, Bill Hemrick, was also the Tennessee finance director for Bachmann for President.<sup>129</sup> Mr. Waldron claimed he witnessed a conversation between Mr. O’Donnell, of Bachmann for President, and Mr. Hemrick in which “Mr. Hemrick sought Mr. O’Donnell’s advice with regard to media buys in the Des Moines market.”<sup>130</sup> Mr. O’Donnell allegedly “advised Mr. Hemrick of which radio and TV stations to buy time.”<sup>131</sup>

According to Mr. Waldron, the conversation took place at the end of Rep. Bachmann’s 99-county bus tour, which ended on December 28, 2011.<sup>132</sup> NFC PAC reported making two payments on January 3, 2012, totaling \$11,740 to Clear Channel, a media company that owns

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<sup>121</sup> Kevin Diaz, Bachmann Aide Alleges Campaign Wants Him Silent, *Star Tribune*, January 12, 2013; Press Release, Peter Waldron, Michele Bachmann Refuses to Pay Iowa Presidential Staffers After 375 Days, January 10, 2013.

<sup>122</sup> Diaz, *Star Tribune*, Jan. 12, 2013.

<sup>123</sup> Peter Waldron and John Gilmore, Bachmannistan: Behind The Lines, Boat to Forever Productions (2013).

<sup>124</sup> Diaz, *Star Tribune*, Jan. 12, 2013.

<sup>125</sup> Waldron Iowa Senate Ethics Complaint, Exhibit 9, Release Agreement given to Peter Waldron, at 2.

<sup>126</sup> Brucato, *MinnPost*, May 20, 2013.

<sup>127</sup> Ben Jacobs, ‘Bachmannistan’ Writer: Bachmann’s Supporters Deserved an Explanation, *The Daily Beast*, August 28, 2013.

<sup>128</sup> Waldron FEC Complaint.

<sup>129</sup> Team Bachmann Announces Tennessee Finance Chairman, *Chattanooga*, July 21, 2011.

<sup>130</sup> Waldron FEC Complaint.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*; Press Release, Bachmann for President, Bachmann Kicks Off 99 County Tour in Iowa on Friday, Dec. 16, December 15, 2011; Bachmann Plans Push Through Iowa’s 99 Counties, *Associated Press*, December 12, 2011.

hundreds of radio stations.<sup>133</sup> On January 6, 2012, NFC PAC reported making two additional payments, totaling \$2,210, to Clear Channel.<sup>134</sup> According to Democracy in Action, a website that documents presidential elections, a radio ad supporting Rep. Bachmann and paid for by NFC PAC ran on AM 1040 WHO in Des Moines, Iowa on January 2 and 3, 2012.<sup>135</sup> Clear Channel owns AM 1040 WHO.<sup>136</sup>

Mr. Waldron also described coordination between Bachmann for President and an unnamed super PAC in his August 2013 e-book, writing Mr. Bachmann “was asked to call August Busch, a wealthy Republican donor, for a substantial contribution to a super PAC.”<sup>137</sup> In an e-mail allegedly sent by Mr. Bachmann to Mr. Waldron, Mr. Bachmann described a phone call he made to a donor requesting a \$7,000 donation, which the donor agreed to make “thru the NFC super pac.”<sup>138</sup> The funds were meant to support a pro-Bachmann mailing to evangelicals.<sup>139</sup> On December 28, 2011, August Busch III donated \$7,000 to NFC PAC.<sup>140</sup> Mr. Hemrick told the *New York Times* Mr. Waldron had contacted him asking for money for Bachmann for President, and in response, he advised Mr. Bachmann to call Mr. Busch about making a contribution.<sup>141</sup>

Mr. Bachmann played a significant role in Rep. Bachmann’s presidential campaign. According to an e-mail attached to Mr. Parrish’s affidavit, only Rep. Bachmann, Mr. Bachmann, and their eldest son, Lucas Bachmann, could approve staff choices for the campaign’s national headquarters.<sup>142</sup> When describing his role in Rep. Bachmann’s political career, Mr. Bachmann referred to himself as “her strategist.”<sup>143</sup>

### **Status of Investigations**

After conducting an investigation into several of the allegations against Rep. Bachmann, OCE found substantial reason to believe Rep. Bachmann violated federal campaign finance laws and House rules by using her PAC to support her presidential campaign, using campaign resources to promote her book, and improperly accepting an in-kind contribution from the book’s publisher.<sup>144</sup> OCE referred Rep. Bachmann’s case to the House Ethics Committee on June 13,

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<sup>133</sup> National Fiscal Conservative PAC, FEC Form 3X, 2012 April Quarterly Report, Amended, March 12, 2013.

<sup>134</sup> *Id.*

<sup>135</sup> <http://p2012.org/igads/igadsprimary.html>. Democracy In Action lists the ads as running in January 2011, which appears to be a typo since Rep. Bachmann did not enter the presidential race until June 2011. NFC PAC did not report the ad to the FEC.

<sup>136</sup> <http://www.whoradio.com/main.html>.

<sup>137</sup> Waldron and Gilmore, Bachmannistan: Behind The Lines.

<sup>138</sup> Trip Gabriel, New Inquiry for Bachmann on Her Presidential Race, *New York Times*, September 5, 2013; Kevin Diaz, Justice Department Subpoenas Records in Bachmann Investigation, *Star Tribune*, September 6, 2013.

<sup>139</sup> *Id.*

<sup>140</sup> National Fiscal Conservative PAC, FEC Form 3X, 2011 Year-End Report, Amended, March 11, 2013.

<sup>141</sup> Gabriel, *New York Times*, Sept. 5, 2013.

<sup>142</sup> Parrish Affidavit, Exhibit C. The e-mail says “[o]nly MB, MB, and LB can approve,” which presumably refers to Michele Bachmann, Marcus Bachmann and Lucas Bachmann. See also Kevin Diaz, Brand Bachmann, *Star Tribune*, March 23, 2011.

<sup>143</sup> Diaz, *Star Tribune*, Mar. 23, 2011.

<sup>144</sup> OCE Report, at 2.

2013.<sup>145</sup> OCE recommended the House Ethics Committee dismiss the allegation that Rep. Bachmann failed to accurately disclose payments to Sen. Sorenson for serving as the Iowa chairman of her presidential campaign, instead voting to refer that matter to the FEC.<sup>146</sup> On September 11, 2013, the House Ethics Committee announced it was extending its review of the matters involving Rep. Bachmann.<sup>147</sup> There is no date by which the committee must act.

The FBI's public integrity section reportedly is investigating allegations of campaign finance violations by the Bachmann campaign.<sup>148</sup> The FBI is also said to be examining the Bachmann campaign's demand that former employees seeking withheld compensation sign nondisclosure agreements before being paid.<sup>149</sup> Several former Bachmann campaign staffers, including Mr. Parrish, have been interviewed by the FBI.<sup>150</sup> Mr. Waldron said the FBI agent he spoke to wanted to know "about the vendors for the Bachmann for President campaign, their financial arrangements, and who would know about them and sign off on them."<sup>151</sup> Lawyers for both Mr. Short and the Bachmann presidential campaign said in May 2013 they had not been contacted by the FBI.<sup>152</sup> The FEC also is investigating Mr. Waldron's complaint.<sup>153</sup>

In May 2013, the Iowa Senate Ethics Committee asked the Iowa Supreme Court to appoint a special investigator to examine the allegations against Sen. Sorenson.<sup>154</sup> On May 10, 2013, Iowa Supreme Court Chief Justice Mark Cady appointed attorney Mark Weinhardt to the position.<sup>155</sup> Mr. Weinhardt does not have a deadline to complete his investigation, but the secretary of the Iowa Senate has said any necessary hearings would have to be held before the end of October.<sup>156</sup> The Urbandale police investigation is ongoing.<sup>157</sup>

On August 27, 2013, the Department of Justice subpoenaed NFC PAC requesting all financial transactions and communications records involving MichelePAC, Bachmann for President, Mr. O'Donnell, Mr. Waldron, Mr. McGinley, Mr. Bachmann, Mr. Busch, and Bob Heckman, who was a senior adviser to Rep. Bachmann's presidential campaign.<sup>158</sup> The

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<sup>145</sup> Press Release, House Committee on Ethics, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Michele Bachmann, July 26, 2013.

<sup>146</sup> OCE Report, at 2.

<sup>147</sup> Press Release, House Committee on Ethics, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Michele Bachmann, September 11, 2013.

<sup>148</sup> Kevin Diaz, Bachmann Campaign Allegations Attract Attention of FBI, *Star Tribune*, May 19, 2013.

<sup>149</sup> Cyndy Brucato, FBI Joins Probe of Bachmann's Presidential Campaign, *MinnPost*, May 17, 2013.

<sup>150</sup> Diaz, *Star Tribune*, May 19, 2013.

<sup>151</sup> Waldron and Gilmore, Bachmannistan: Behind The Lines.

<sup>152</sup> Diaz, *Star Tribune*, May 19, 2013.

<sup>153</sup> *Id.*

<sup>154</sup> William Petroski, Iowa Senate Ethics Panel Asks Iowa Supreme Court to Appoint Investigator in Sorenson Case, *Des Moines Register*, May 1, 2013.

<sup>155</sup> William Petroski, Des Moines Lawyer Weinhardt Appointed to Investigate Sen. Sorenson Ethics Case, *Des Moines Register*, May 10, 2013.

<sup>156</sup> Jacobs, *Des Moines Register*, Aug. 28, 2013.

<sup>157</sup> Kevin Diaz, Whistleblower's Insider Tale From 'Bachmannistan' Revives the Feud, *Star Tribune*, August 28, 2013.

<sup>158</sup> Subpoena to Testify Before a Grand Jury to National Fiscal Conservative PAC, August 27, 2013, *available at* <http://www.scribd.com/doc/165881551/Bachmann-Campaign-Grand-Jury-Subpoena>; Jennifer Jacobs, 9 Reasons the Bachmann Campaign Fizzled, *Des Moines Register*, January 13, 2012.

subpoena also requested any communications records involving Rep. Bachmann.<sup>159</sup> According to the *New York Times*, the grand jury is investigating whether Bachmann for President staff members coordinated strategy with the super PAC.<sup>160</sup>

## **Legal Fees**

Since July 30, 2012, when Ms. Heki filed her lawsuit against Rep. Bachmann and her presidential campaign, Bachmann for President, Bachmann for Congress, and MichelePAC have reported spending \$312,739 on legal fees and services.<sup>161</sup> Bachmann for President reported paying \$95,000 to Patton Boggs LLP, including \$45,587 in debt repayment, and \$15,509 to Goodman & O'Brien PC, a Des Moines, Iowa law firm.<sup>162</sup> Bachmann for Congress reported paying \$141,001 to Patton Boggs and \$2,271 to Lester Cooper of Charlottesville, VA.<sup>163</sup> MichelePAC reported paying \$45,730 to Holland & Knight, \$731 to Patton Boggs, and \$12,500 to the Arrington Law Firm run by Barry Arrington, who also serves as the treasurer of MichelePAC.<sup>164</sup>

## **Potential Violations**

### **Conversion of Campaign Funds to Personal Use – Statute**

The Federal Election Campaign Act (FECA) prohibits a candidate for federal office from using campaign funds to pay the personal obligations of the candidate. The Act states that “a contribution or donation . . . shall not be converted by any person to personal use.”<sup>165</sup> The Act further specifies that “a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office.”<sup>166</sup>

By using campaign funds to pay for her campaign staff members to organize and work on her book tour, Rep. Bachmann appears to have violated 2 U.S.C. § 439a(b) and 11 C.F.R. §

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<sup>159</sup> Subpoena to Testify Before a Grand Jury to National Fiscal Conservative PAC, August 27, 2013.

<sup>160</sup> Trip Gabriel, New Inquiry for Bachmann on Her Presidential Race, *New York Times*, September 5, 2013.

<sup>161</sup> Bachmann for President, FEC Form 3, 2012 October Quarterly–2013 July Quarterly Reports; Bachmann for Congress, FEC Form 3, 2012 October Quarterly–2013 July Quarterly Reports; Many Individual Conservatives Helping Elect Leaders Everywhere (MichelePAC), FEC Form 3X, 2012 August Monthly–2013 July Monthly Reports.

<sup>162</sup> Bachmann for President, FEC Form 3, 2012 October Quarterly–2013 July Quarterly Reports; <http://goodmanobrienlaw.com/>.

<sup>163</sup> Bachmann for Congress, FEC Form 3, 2012 October Quarterly–2013 July Quarterly Reports.

<sup>164</sup> Many Individual Conservatives Helping Elect Leaders Everywhere (MichelePAC), FEC Form 3X, 2012 August Monthly–2013 July Monthly Reports; Many Individual Conservatives Helping Elect Leaders Everywhere (MichelePAC), FEC Form 1 Statement of Organization, February 3, 2011; <http://www.arringtonpc.com/deux.jsp?content=502&decider=barrington>.

<sup>165</sup> 2 U.S.C. § 439a(b)(1).

<sup>166</sup> 2 U.S.C. § 439a(b); *see also* 11 C.F.R. § 113.1(g)(1).

113.1(g)(1). Further, if Rep. Bachmann’s conduct was knowing and willful, she may have violated criminal law.<sup>167</sup>

### **Conversion of Campaign Funds to Personal Use – House Rule**

House Rule 23 provides that a member of Congress “may not convert campaign funds to personal use in excess of an amount representing reimbursement for legitimate and verifiable campaign expenditures.”<sup>168</sup> Further, Rule 23, clause 6(a) requires each member to “keep his campaign funds separate from his personal funds.”<sup>169</sup> The rule also provides that all campaign funds must be used for “bona fide campaign or political purposes.”<sup>170</sup> The committee has warned members to keep in mind that each campaign outlay must not only be “legitimate,” but also “verifiable,” as such.<sup>171</sup> This requirement “**is separate from, and in addition to, whatever recordkeeping requirements are imposed by the Federal Election Commission . . .**”<sup>172</sup> The rules “generally preclude” personal use of “the services of paid campaign staff.”<sup>173</sup>

By using campaign funds to pay for her campaign staff members to organize and work on her book tour, Rep. Bachmann appears to have violated House Rule 23.

### **Corporate Contributions**

The FECA and FEC regulations both prohibit candidates from knowingly accepting contributions from corporations in connection with any federal election.<sup>174</sup> The FEC has held that a candidate could not hold a dual purpose event for fundraising and the promotion of a candidate’s book because the publisher’s payment of the cost of the event would constitute a prohibited corporate contribution by the publisher to the candidate.<sup>175</sup> Rep. Bachmann’s publisher, Penguin, apparently paid for her book tour, but the promotional events largely took place in two early primary states, Iowa and South Carolina, and Rep. Bachmann’s presidential campaign staff members helped organize the book tour and accompanied her on it. By using the book tour paid for by Penguin to promote her candidacy, Rep. Bachmann appears to have violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(d).

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<sup>167</sup> 2 U.S.C. § 437g(d)(1)(A)(i).

<sup>168</sup> Rule 23, cl. 6(b); House Comm. on Standards of Official Conduct, House Ethics Manual, at 163 (110th Cong., 2d Sess., 2008 ed.).

<sup>169</sup> *Id.*

<sup>170</sup> Rule 23, cl. 6(c); House Ethics Manual, at 163.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.* at 165 (emphasis in original).

<sup>173</sup> *Id.* at 153.

<sup>174</sup> 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(d).

<sup>175</sup> Federal Election Commission, Advisory Opinion 1982-16 (April 5, 1982); *but see* Federal Election Commission, Advisory Opinion 2011-02 (February 17, 2011) (failing to approve a response as to whether a candidate could collect e-mail address of people attending the candidate’s book signing and promotional events for the purpose of soliciting contributions in the future).

## **Excessive Contributions**

The FECA limits the amount of contributions a leadership PAC may donate to a candidate, and the amount a candidate can accept from a leadership PAC.<sup>176</sup> Under the rules, when leadership PAC funds are used for “costs that could and should otherwise be paid for by a candidate’s authorized committee,” they are in-kind contributions subject to this limit.<sup>177</sup> The contribution limit for Rep. Bachmann’s leadership PAC in 2011 and 2012 was \$2,500 per election, and any contribution over those limits was an illegal excessive contribution.<sup>178</sup> If, as it appears, she used her leadership PAC funds to pay Mr. Short and Sen. Sorenson for their activities on behalf of her presidential campaign, Rep. Bachmann likely both made and accepted excessive contributions.

The FECA and FEC regulations also treat communications coordinated between a candidate and a political committee, including a super PAC, as in-kind contributions to the candidate.<sup>179</sup> Under the regulations, a communication is coordinated if: (1) it is paid for by a person other than the candidate; (2) it satisfies one of the regulation’s content standards, including if it is a public communication that refers to a presidential candidate within 120 days of a caucus; and (3) it satisfies one of the regulation’s conduct standards, including if the candidate or her campaign committee is materially involved in decisions regarding the specific media outlet used for the communication.<sup>180</sup> If, as it appears, NFL PAC paid for radio ads in Des Moines that mentioned Rep. Bachmann by name just before the Iowa Republican presidential caucuses, and Mr. O’Donnell told Mr. Hemrick of NFL PAC on which Des Moines radio station to buy ad time, NFL PAC made an in-kind contribution to the campaign.<sup>181</sup> As NFL PAC paid \$13,950 to Clear Channel for the air time, it appears Rep. Bachmann accepted an excessive contribution from NFL PAC.

## **Improper Solicitation for a Super PAC**

The FECA and FEC regulations limit the amount of money a candidate, a federal officeholder, or the agent of a candidate or federal officeholder may solicit on behalf of a super PAC. Those individuals may not solicit funds in connection with a federal election “unless the funds are subject to the limitations, prohibitions, and reporting requirements” of the FECA.<sup>182</sup> Even though super PACs can accept unlimited contributions, because the FECA limits contributions to political committees to \$5,000, the FEC has ruled this provision means the individuals covered by the solicitation restrictions may not solicit contributions of more than \$5,000 for a super PAC.<sup>183</sup> By allowing Mr. Bachmann, an agent of her presidential campaign,

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<sup>176</sup> 2 U.S.C. §§ 441a(a)(1)(A), 441a(f).

<sup>177</sup> Federal Election Commission, Explanation and Justification for final rule regarding Leadership PACs, 68 Fed. Reg. 67013, 67017 (December 1, 2003).

<sup>178</sup> Federal Election Commission, Contribution Limits 2011-12, available at <http://www.fec.gov/pages/brochures/contriblimits.shtml>.

<sup>179</sup> 2 U.S.C. § 441a(a); 11 C.F.R. § 109.21(b).

<sup>180</sup> 11 C.F.R. §§ 109.21(a), (c)(4)(ii), (d)(2)(iv).

<sup>181</sup> The communication also satisfied several other content and conduct standards.

<sup>182</sup> 2 U.S.C. § 441i(e)(1)(A); 11 C.F.R. § 300.61.

<sup>183</sup> Federal Election Commission, AO 2011-12 (June 30, 2011).

to solicit a \$7,000 contribution for NFL PAC, Rep. Bachmann appears to have violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 300.61.

### **Conversion**

Under Iowa law, conversion is “the wrongful control or dominion over another’s property contrary to that person’s possessory right to the property.”<sup>184</sup> Sen. Sorenson may have been acting within the scope of his duties as the Iowa chairman of Rep. Bachmann’s presidential campaign when he took Ms. Heki’s NICHE e-mail list from her computer, allowing the campaign to make use of the list. By taking and using Ms. Heki’s e-mail list, Rep. Bachmann may have committed conversion.

### **Misappropriation of Trade Secrets**

Under Iowa law, it is a misappropriation of trade secrets to acquire a trade secret as a result of a confidential relationship, and use the trade secret without authorization.<sup>185</sup> Sen. Sorenson may have been acting within the scope of his duties as the Iowa chairman of Rep. Bachmann’s presidential campaign when he took Ms. Heki’s NICHE e-mail list from her computer, allowing the campaign to make use of the list. By taking and using Ms. Heki’s e-mail list without authorization, Rep. Bachmann may have misappropriated trade secrets.

### **Extortion**

Under Iowa law, extortion is committed when a person “[t]hreatens to wrongfully injury the property of another” “with the purpose of obtaining for oneself or another anything of value, tangible or intangible.”<sup>186</sup> By refusing to pay Mr. Waldron the remainder of the money owed to him unless he agreed to sign a confidentiality agreement—something clearly of value to her campaign—Rep. Bachmann may have committed extortion.

### **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.”<sup>187</sup> This ethics standard is considered to be “the most comprehensive provision” of the code.<sup>188</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” which might otherwise go unpunished.<sup>189</sup> This rule has been relied on by the committee in numerous prior cases in which

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<sup>184</sup> *Blackford v. Prairie Meadows Racetrack & Casino, Inc.*, 778 N.W.2d 184, 188 (Iowa 2010).

<sup>185</sup> *Kendall/Hunt Pub. Co. v. Rowe*, 424 N.W.2d 235, 245 (Iowa 1988).

<sup>186</sup> Iowa Code § 711.4(7).

<sup>187</sup> Rule 23, cl. 1.

<sup>188</sup> *House Ethics Manual*, at 12.

<sup>189</sup> 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).

the committee found unethical conduct including: the failure to report campaign contributions,<sup>190</sup> making false statements to the committee,<sup>191</sup> criminal convictions for bribery,<sup>192</sup> accepting illegal gratuities,<sup>193</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>194</sup>

By using presidential campaign funds to pay for her campaign staff to organize and work on her book tour, using the book tour paid for by her publisher to promote her candidacy, paying Mr. Short and Sen. Sorenson with leadership PAC funds for their work on her presidential campaign, accepting excessive contributions from NFL PAC, allowing Mr. Bachmann to improperly solicit contributions for NFL PAC, taking and using Ms. Heki's email list without permission, and refusing to pay Mr. Waldron the remainder of the money owed to him unless he signed a confidentiality agreement, Rep. Bachmann engaged in conduct that does not reflect creditably on the House.

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<sup>190</sup> 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).

<sup>191</sup> 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).

<sup>192</sup> 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)).

<sup>193</sup> 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).

<sup>194</sup> 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 TIM BISHOP

Representative Tim Bishop (D-NY) is a six-term member of Congress, representing New York's 1st congressional district. His ethics issues stem from soliciting campaign contributions in connection with official actions and falsely reporting the date of those contributions. He was included in CREW's 2012 report on congressional corruption for related matters.<sup>1</sup>

### Soliciting Campaign Contributions Tied to Official Actions

In May 2012, hedge fund investor Eric Semler began planning a fireworks display offshore near his Sagaponack, New York home as part of his son's bar mitzvah celebration.<sup>2</sup> Mr. Semler needed U.S. Coast Guard approval for the fireworks display.<sup>3</sup> Mr. Semler hired Fireworks by Grucci to stage the display and acquire the necessary permission, but the company missed a deadline, forcing Mr. Semler and Grucci to begin looking at other possible sites where they could stage the fireworks display, including a pond next to Mr. Semler's house.<sup>4</sup>

On May 21, 2012—five days before the party—a Grucci employee e-mailed Mr. Semler that Southampton Town Trustee Fred Havermayer was the key official when it came to winning approval from the trustees.<sup>5</sup> Mr. Semler then contacted a business associate, Bob Sillerman, who was also a friend of Rep. Bishop's and the finance chair for his campaign, asking for assistance.<sup>6</sup> Mr. Sillerman quickly forwarded an e-mail from Mr. Semler to the congressman, saying he would "appreciate anything you could do,"<sup>7</sup> and Rep. Bishop promptly responded, saying he had a "very good relationship" with Mr. Havermayer and believed he could help.<sup>8</sup> Later that day, Rep. Bishop and Mr. Semler spoke on the telephone and Rep. Bishop assured Mr. Semler he could get the necessary permits.<sup>9</sup> Rep. Bishop asked two members of his congressional staff to begin working on the matter.<sup>10</sup>

The next morning, Rep. Bishop called Mr. Havermayer briefly to discuss Mr. Semler's issue.<sup>11</sup> Mr. Semler subsequently spoke to both the congressman and Mr. Havermayer, and on

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<sup>1</sup> For more information, see CREW's Most Corrupt 2012, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-members-of-congress-report-2012>.

<sup>2</sup> John Bresnahan, Tim Bishop's Bar Mitzvah Episode Could Spell Trouble, *Politico*, August 15, 2012; Office of Congressional Ethics, 113th Congress, *Report*, Review No. 13-3308, May 31, 2013 (OCE Report), at 7.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 8; Former Rep. Frank Grucci (R-NY), whom Rep. Bishop defeated in 2002, is the executive vice president and chief financial officer of Fireworks by Grucci. See Bresnahan, *Politico*, Aug. 15, 2012; <http://www.grucci.com/indexhotel.html>.

<sup>5</sup> *Id.*; OCE Report, Exhibit 6, E-mail from Eric Semler to Grucci Employee, May 21, 2012.

<sup>6</sup> OCE Report, at 8; Rep. Bishop told OCE that Mr. Sillerman still holds the title of finance chair with his campaign but has been "inactive" since 2006, though he continues to hold fundraisers and suggest people for Rep. Bishop to solicit for campaign contributions. See *Id.*, Exhibit 7, Representative Tim Bishop Memorandum of Interview, April 18, 2013.

<sup>7</sup> *Id.* at 8-9; *Id.*, Exhibit 9, E-mail from Robert Sillerman to Rep. Timothy Bishop, May 21, 2012.

<sup>8</sup> OCE Report, at 9.

<sup>9</sup> *Id.* at 10.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*, at 10-11. Mr. Havermayer at one point told OCE he did not speak with Rep. Bishop, but rather, spoke with someone from Rep. Bishop's office regarding the matter. He later told OCE that he had not been contacted by either

May 22, 2012, e-mailed a contact at Grucci to say Mr. Havermayer spoke to local officials and “everyone is on board.”<sup>12</sup>

At that point, Rep. Bishop appeared to believe Mr. Semler’s issue was resolved. That same afternoon, Rep. Bishop e-mailed Mr. Sillerman:

Ok, so just call me the friggin mailman-we are all set with Eric Semler. Hey, would you be willing to reach out to him to ask for a contribution? If he donates before June 26, he and his wife can each do 5 large-if it is after June 26, they can do a max of 2500.<sup>13</sup>

Five minutes later, Mr. Sillerman e-mailed Mr. Semler, saying “so I guess you and your wife really want to donate \$5K each to Tim Bishop, right?”<sup>14</sup> Mr. Semler immediately replied, “absolutely! how do we do it?”<sup>15</sup> Six minutes after that, Mr. Sillerman wrote back to Rep. Bishop, assuring him that Mr. Semler and his wife would each donate \$5,000.<sup>16</sup> The next day, Molly Bishop, Rep. Bishop’s daughter and campaign fundraiser, e-mailed Mr. Semler, writing, “Our Finance Chair, Bob Sillerman suggested to my dad that you were interested in contribution [sic] to his campaign and that I should be in touch directly with you. We are going to be in a tough, expensive campaign and so we are very grateful for your willingness to be of help.”<sup>17</sup> Ms. Bishop pointed out the Semlers could donate up to \$10,000 if they made the contribution before June 26, the deadline to contribute to the primary.<sup>18</sup> Mr. Semler did not immediately make a contribution, and told OCE that although he was impressed by Rep. Bishop’s work on his behalf, he found the solicitation abrupt.<sup>19</sup>

The same day, Mr. Semler e-mailed Rep. Bishop and said issues raised by the New York State Department of Environmental Conservation (DEC) and U.S. Fish and Wildlife Service were threatening his plans for the fireworks display.<sup>20</sup> Rep. Bishop responded on May 24, 2012 to say he would try to help, and his staff continued to reach out to agencies on Mr. Semler’s behalf.<sup>21</sup> On May 25, 2012, Rep. Bishop e-mailed Mr. Semler to say the fireworks display was “good to go.”<sup>22</sup> Mr. Semler responded later that day to thank Rep. Bishop.<sup>23</sup> A minute later, he e-mailed Rep. Bishop again, presumably in error while attempting to write to Ms. Bishop, writing, “molly—we would be happy to. Your dad is the first effective politician that I have met. very refreshing.”<sup>24</sup> Rep. Bishop said he forwarded the e-mail to Ms. Bishop.<sup>25</sup>

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the congressman or his staff. In addition, OCE said Mr. Havermayer “was less than forthright in answering questions.” See OCE Report, at 11, n. 41.

<sup>12</sup> *Id.* at 11.

<sup>13</sup> *Id.* at 12; *Id.*, Exhibit 19, E-mail from Rep. Tim Bishop to Robert Sillerman, May 22, 2012

<sup>14</sup> OCE Report, at 13.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> OCE Report, at 13.

<sup>19</sup> *Id.* at 14.

<sup>20</sup> OCE Report, at 14

<sup>21</sup> *Id.* at 14-16.

<sup>22</sup> *Id.* at 16.

<sup>23</sup> *Id.*

<sup>24</sup> OCE Report, at 16.

After the fireworks display had taken place, Mr. Semler e-mailed Grucci employees and complained about the trouble and expense the display had brought.<sup>26</sup> “[I] forgot to mention also that i have to give \$10k to tim bishop’s campaign for his help with the fireworks...Really gross – they didn’t hesitate to solicit me in the heat of the battle.”<sup>27</sup> He followed up with Grucci again in June, e-mailing that “your mistake as you know forced me to spend an exorbitant (*sic*) time dealing with coast guard and elected officials, one of whom is expecting a \$10,000 donation to his political campaign.”<sup>28</sup> The Grucci employee responded by asking whether Mr. Semler had to “pay Representative Bishop for his help,” and Mr. Semler said that he did.<sup>29</sup> Mr. Semler later told OCE that “expecting” was the wrong word, and what he meant was that he expected himself to make the contribution because “guys like that should stay in office.”<sup>30</sup> Because Mr. Semler was requesting a refund from Grucci, he said he wanted the company to consider the expense of the campaign contribution he expected to make.<sup>31</sup>

According to a report Rep. Bishop’s campaign committee filed with the Federal Election Commission (FEC) on July 15, Mr. Semler and his wife, Tracy Semler, each contributed \$2,500 for Rep. Bishop’s primary campaign on June 26, the day of the primary.<sup>32</sup> Individuals were allowed to contribute up to \$2,500 per election in 2012, and by contributing the money to Rep. Bishop’s primary campaign before the primary election took place, Mr. Semler and his wife were eligible to contribute another \$2,500 each to his general election campaign.<sup>33</sup> Rep. Bishop and Ms. Bishop were aware of the relevance of this date.<sup>34</sup> Mr. Semler, however, said he made the contribution two weeks later, on July 9.<sup>35</sup> Mr. Semler emailed his company’s chief financial officer on that date and asked him to make a \$5,000 donation to Rep. Bishop’s campaign, and the company’s credit card lists a \$5,000 payment to the campaign on July 9.<sup>36</sup>

In August 2012, a reporter from *Politico* contacted Rep. Bishop’s office inquiring about the matter, citing the e-mails Mr. Semler had sent to Grucci.<sup>37</sup> In response to questions from *Politico* about the matter, Mr. Semler said neither Rep. Bishop nor his staff had said he needed to make a donation in order to secure the congressman’s help.<sup>38</sup> Mr. Semler said Rep. Bishop’s

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<sup>25</sup> *Id.* at 16-17.

<sup>26</sup> *Id.* at 18.

<sup>27</sup> *Id.* at 18. Mr. Semler later told OCE he could not find the e-mail. When asked if he had written it, Mr. Semler said he did not know the answer. *See* OCE Report, at 18.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> OCE Report, at 18-19.

<sup>32</sup> Tim Bishop for Congress, FEC Form 3, 2012 July Quarterly, July 15, 2012; Federal Election Commission, 2012 Congressional Primary Dates and Candidate Filing Deadlines for Ballot Access, available at <http://www.fec.gov/pubrec/fe2012/2012pdates.pdf>.

<sup>33</sup> 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(b); Federal Election Commission, Contribution Limits for 2011-2012, available at <http://www.fec.gov/info/contriblimits1112.pdf>. *See also* OCE Report, at 12.

<sup>34</sup> *Id.* at 12-13.

<sup>35</sup> *Id.* at 22.

<sup>36</sup> *Id.* at 22-23

<sup>37</sup> OCE Report, at 19.

<sup>38</sup> Bresnahan, *Politico*, Aug. 15, 2012; Frank Eltman, NY Lawmaker Embroiled in Campaign Solicitation Row, *Associated Press*, August 16, 2012.

campaign staff first suggested he make a donation.<sup>39</sup> Rep. Bishop said Mr. Semler volunteered to make a donation, and his campaign followed up.<sup>40</sup>

When asked about Mr. Semler's donation, Rep. Bishop said he had done nothing wrong and Mr. Semler had voluntarily contributed as a show of thanks.<sup>41</sup> Rep. Bishop explained,

When we get a medal for a veteran and two months later he sends me \$10, is that coerced, is that a quid pro quo? When we fast-track a passport request, and when people get back from Europe and send me \$100 in gratitude, is that coercion? No.<sup>42</sup>

Rep. Bishop also said Mr. Semler had sent Fireworks by Grucci an e-mail with exaggerated complaints because he wanted to play up the costs he had incurred in hopes of receiving a refund from the company.<sup>43</sup> Mr. Semler said he was attempting "to recite the expenses that I've incurred."<sup>44</sup> Rep. Bishop has since donated the \$5,000 in contributions to Long Island veterans' charities.<sup>45</sup>

### **Status of Investigation**

On August 24, 2012, Smithtown Town Councilman Robert Creighton sent a letter to the Office of Congressional Ethics requesting an investigation into Rep. Bishop's actions.<sup>46</sup> After conducting an investigation, OCE referred Rep. Bishop's case to the House Ethics Committee on June 13, 2013, recommending further review.<sup>47</sup> On September 11, 2013, the House Ethics Committee announced it would continue to review the matter.<sup>48</sup> There is no deadline by which the committee must act.

In early 2013, the U.S. Attorney's Office for the Eastern District of New York requested information about the matter from Rep. Bishop's office.<sup>49</sup> The Federal Bureau of Investigation has also looked into the matter, and spoke with Mr. Havermayer in January or February 2013.<sup>50</sup> The status of both investigations is unknown.<sup>51</sup>

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<sup>39</sup> Bresnahan, *Politico*, Aug. 15, 2012.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Bresnahan, *Politico*, Aug. 15, 2012.

<sup>44</sup> *Id.*

<sup>45</sup> Joseph Pinciario and Brendan J. O'Reilly, Updated: Bishop Defends Campaign Finance Practices, *Southampton Patch*, August 15, 2012.

<sup>46</sup> Brendan J. O'Reilly and Peter Verry, Smithtown Councilman, Former Top Cop Seeks Bishop Ethics Probe, *Commack Patch*, August 29, 2012.

<sup>47</sup> Press Release, House Ethics Committee, 113th Congress, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Tim Bishop, July 26, 2013.

<sup>48</sup> Press Release, House Ethics Committee, 113th Congress, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Tim Bishop, September 11, 2013.

<sup>49</sup> Dan Friedman, Bishop Cites DOJ Probe into Bar Mitzvah Fireworks Matter, *New York Daily News*, September 11, 2013.

<sup>50</sup> Tom Brune, Rep. Tim Bishop: FBI Investigated Claims in Ethics Case, *Newsday*, September 12, 2013.

<sup>51</sup> Rick Murphy, FBI, Investigating Bishop, Came to Southampton, *The Independent*, September 11, 2013; Friedman, *New York Daily News*, Sept. 11, 2013.

## **Legal Fees**

Since August 24, 2012, Tim Bishop for Congress has reported paying Dechert \$25,338 and Perkins Coie \$9,837 in legal fees.<sup>52</sup>

## **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.<sup>53</sup> 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.<sup>54</sup>

If, as it appears, the Semlers' campaign contributions were solicited and/or made in direct response to Rep. Bishop using his position to assist Mr. and Mrs. Semler in obtaining a government permit to set off the fireworks, he may have accepted an illegal gratuity.

### **Solicitation and Acceptance of Political Contribution Linked to Official Action**

Under House rules, no solicitation of a campaign contribution may be linked to any official action taken or to be taken by a member of Congress.<sup>55</sup> Similarly, members may not accept any contribution that a donor links to an official action a member has taken or is being asked to take.<sup>56</sup>

Rep. Bishop's statements suggest he incorrectly believes his campaign may solicit and accept contributions to thank him for official actions as long as those contributions are not coerced and the Semlers' contributions were in gratitude of his assistance. Whether solicited or merely accepted, however, the contributions made by the Semlers to thank Rep. Bishop for his assistance in securing the permits appear to violate House rules.

### **Compensation for Representational Services**

Federal law prohibits members of Congress from seeking or accepting compensation for providing representational services related to matters in which the federal government is a party or has a substantial interest.<sup>57</sup> The House Ethics Manual similarly provides that "[n]o funds or things of value, other than one's official salary, may be accepted for dealing with an administrative agency on behalf of a constituent," and warns that "[c]autious should always be exercised to avoid the appearance that solicitations of campaign contributions from constituents

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<sup>52</sup> Tim Bishop for Congress Committee, FEC Form 3, 2012-2013 Reports.

<sup>53</sup> 18 U.S.C. § 201(c)(1)(B).

<sup>54</sup> *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398 (1999).

<sup>55</sup> House Comm. on Standards of Official Conduct, House Ethics Manual, at 150 (110th Cong., 2d Sess., 2008 ed.).

<sup>56</sup> *Id.*

<sup>57</sup> 18 U.S.C. § 203(a).

are connected in any way with a legislator's official advocacy."<sup>58</sup> If, as it appears, Rep. Bishop accepted campaign contributions in return for providing the Semlers representational services with the U.S. Fish and Wildlife Service, he may have violated 18 U.S.C. § 203 and House rules.

### **Receiving Compensation For Exerting Improper Influence**

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits federal employees, including members of Congress and staff, from soliciting or accepting anything of value from anyone who seeks official action from the employee's agency, does business with that agency, or has interests which may be substantially affected by the performance of the employee's official duties.<sup>59</sup> 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, as it appears, Rep. Bishop accepted campaign contributions in return for using his position to assist the Semlers in obtaining a government permit to set off the fireworks, he may have violated 5 U.S.C. § 7353 and House Rule 23.

### **Official Action for Personal Gain**

Members of the House are prohibited from "taking any official actions for the prospect of personal gain for themselves or anyone else."<sup>60</sup> 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, as it appears, Rep. Bishop accepted campaign contributions in return for using his position to assist the Semlers in obtaining a government permit to set off the fireworks, he may have taken official action for personal gain in violation of 5 C.F.R. § 2635.702(a).

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<sup>58</sup> House Ethics Manual, at 315.

<sup>59</sup> The House Ethics Committee interprets this provision to apply to accepting campaign contributions, but not soliciting them. 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; House Ethics Manual, at 143-44, 150.

<sup>60</sup> 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.

## **Unfairly Discriminating By Dispensing Special Favors**

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.<sup>61</sup>

If, as it appears, Rep. Bishop accepted campaign contributions in return for using his position to assist the Semlers in obtaining a government permit to set off the fireworks, he may have dispensed special favors in violation of the Code of Ethics for Government Service.

## **Campaign Finance Disclosures**

The Federal Election Campaign Act and FEC regulations require candidates for Congress to disclose information about all campaign contributions, including the date it is received.<sup>62</sup> The regulations further provide that contributions are made when the contributor relinquishes control of the contribution.<sup>63</sup> For credit card transactions, this is the date on which the campaign receives authorization to charge the contributor's credit card.<sup>64</sup> By backdating the Semlers' July 9 contributions to June 26, a date that would have allowed both of the Semlers to contribute another \$2,500, Rep. Bishop appears to have violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 104.1(a)(4)(i) by reporting the wrong date on which his campaign committee received the contribution. Further, if Rep. Bishop's conduct was knowing and willful, he may have violated criminal law.<sup>65</sup>

## **False Statements**

Federal law also prohibits anyone from making "any materially false, fictitious, or fraudulent statement or representation" in any matter "within the jurisdiction of the executive, legislative, or judicial branch"<sup>66</sup> or on "a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch."<sup>67</sup> By backdating the Semlers' July 9 contributions to June 26, a date that would have allowed both of the Semlers to contribute another \$2,500, Rep. Bishop may have violated 18 U.S.C. § 1001.

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<sup>61</sup> 72 Stat., Part 2, B12, H. Con. Res. 175, 85th Cong. (adopted July 11, 1958); House Ethics Manual, at 20.

<sup>62</sup> 2 U.S.C. § 434(b)(3)(A); 11 C.F.R. § 104.1(a)(4)(i).

<sup>63</sup> 11 C.F.R. § 110.1(b)(6).

<sup>64</sup> Federal Election Commission, AO 1990-4 (May 4, 1990).

<sup>65</sup> 2 U.S.C. § 437g(d)(1)(A)(i).

<sup>66</sup> 18 U.S.C. § 1001(a)(2).

<sup>67</sup> 18 U.S.C. § 1001(c)(1).

## **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.”<sup>68</sup> This ethics standard is considered to be “the most comprehensive provision” of the code.<sup>69</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” which might otherwise go unpunished.<sup>70</sup> 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,<sup>71</sup> making false statements to the committee,<sup>72</sup> criminal convictions for bribery,<sup>73</sup> accepting illegal gratuities,<sup>74</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>75</sup>

By soliciting and/or accepting campaign contributions linked to using his congressional position to obtain approval of a fireworks permit, and by backdating the Semlers’ contributions to a date that would allow the Semlers to donate more money, Rep. Bishop engaged in conduct that does not reflect creditably on the House.

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<sup>68</sup> Rule 23, cl. 1.

<sup>69</sup> House Ethics Manual, at 12.

<sup>70</sup> 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).

<sup>71</sup> 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).

<sup>72</sup> 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).

<sup>73</sup> 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)).

<sup>74</sup> 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).

<sup>75</sup> 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 PAUL BROUN

Representative Paul Broun (R-GA) is a four-term member of Congress, representing Georgia's 10th congressional district. His ethics issues stem from his failure to disclose the true source and terms of his campaign loans. He was included in CREW's 2012 report on congressional corruption for related matters.<sup>1</sup>

### **Failure to Disclose Source of Campaign Loans**

In 2007, while running as a candidate in a special election to represent Georgia's 10th congressional district, Rep. Broun began making loans to his campaign committee, the Paul Broun Committee.<sup>2</sup> In reports filed with the Federal Election Commission (FEC) in 2007 and 2008, Rep. Broun's committee said it received six separate loans totaling \$309,000 over more than a year.<sup>3</sup> The campaign told the FEC the source of these loans was Rep. Broun's own personal funds, and said the loans carried no interest.<sup>4</sup> In these FEC reports, Rep. Broun's campaign did not file any Schedule C-1 forms, which provide information about the source and terms of campaign loans.<sup>5</sup> These forms must be filed if the source of the loan was a lending institution, or if a candidate obtains a bank loan or a loan based on the candidate's credit and those funds are used in connection with the candidate's campaign.<sup>6</sup>

The campaign reported paying down the outstanding loan balances over the next four years, ultimately paying the last of them off on February 25, 2011.<sup>7</sup> However, in February 2010, despite continuing to tell the FEC that the loans carried no interest, the campaign curiously began making what its FEC filings described as "loan interest" payments to Rep. Broun. Between February 1, 2010 and April 8, 2011, the campaign reported making eight such "loan interest" payments to Rep. Broun, totaling \$30,201.46.<sup>8</sup> These payments did not appear to follow any

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<sup>1</sup> For more information, see *CREW's Most Corrupt 2012*, available at <http://www.crewsmostcorrupt.org/most-corrupt/entry/most-corrupt-members-of-congress-report-2012>.

<sup>2</sup> [http://www.washingtonpost.com/politics/paul-broun-r-ga/gIQAvnbPAP\\_topic.html](http://www.washingtonpost.com/politics/paul-broun-r-ga/gIQAvnbPAP_topic.html); Paul Broun Committee, *FEC Form 3 2007, April Quarterly Report, Amended*, November 9, 2007. In February 2013, Rep. Broun announced he was running for Senate, and in April 2013, he officially converted the Paul Broun Committee into his Senate campaign committee. See Ashley Killough, *Georgia Rep. Paul Broun to Run for Senate*, *CNN*, February 6, 2013; Paul Broun Committee, *Statement of Organization, Amended*, April 22, 2013.

<sup>3</sup> Paul Broun Committee, *FEC Form 3 2007, April Quarterly Report, Amended*, November 9, 2007; Paul Broun Committee, *FEC Form 3, Pre-Special Election Report, Amended*, November 9, 2007; Paul Broun Committee, *FEC Form 3, July Quarterly Report, Amended*, November 9, 2007; Paul Broun Committee, *FEC Form 3, Post Runoff Election Report, Amended*, November 9, 2007; Paul Broun Committee, *FEC Form 3, 12 Day Pre-Primary Election Report*, July 3, 2008.

<sup>4</sup> Paul Broun Committee, *FEC Form 3, October Quarterly Report*, October 15, 2008; Paul Broun Committee, *FEC Form 3, 12 Day Pre-Primary Election Report*, July 3, 2008; Paul Broun Committee, *FEC Form 10, 24-Hour Notice Of Expenditure From Candidate's Personal Funds*, July 12, 2007; Paul Broun Committee, *FEC Form 10, 24-Hour Notice Of Expenditure From Candidate's Personal Funds*, June 8, 2007.

<sup>5</sup> Paul Broun Committee, *FEC Form 3, 2007-2011 Reports*.

<sup>6</sup> 11 C.F.R. §§ 104.3(d)(1), (4); Federal Election Commission, *Instructions for Form 3 and Related Schedules*, February 2009.

<sup>7</sup> Paul Broun Committee, *FEC Form 3, 2007-2011 Reports*.

<sup>8</sup> Paul Broun Committee, *FEC Form 3, 2009 Year-End Report*, January 29, 2010; Paul Broun Committee, *FEC Form 3, April 2010 Quarterly Report*, April 14, 2010; Paul Broun Committee, *FEC Form 3, 12 Day Pre-Primary Election Report*, July 8, 2010; Paul Broun Committee, *FEC Form 3, October 2010 Quarterly Report*, October 13, 2010; Paul

regular payment schedule, and were of varying amounts. In addition, the campaign reported making its final interest payment to Rep. Broun more than a month after it reported paying off the last loan.<sup>9</sup>

In March 2012, CREW released its *Family Affair* report, which questioned the interest payments to Rep. Broun.<sup>10</sup> Directly contradicting what his campaign had reported to the FEC about the source of the loans, Rep. Broun told the *Athens Banner-Herald* the interest his campaign paid on the loans went to a bank that had loaned him the money.<sup>11</sup> Rep. Broun did not disclose any additional information about the bank loan or its terms. On April 11, 2012, CREW filed an FEC complaint against Rep. Broun, his campaign committee, and his campaign treasurer, seeking an investigation into their failure to disclose the true source of the loans.<sup>12</sup>

In response to the complaint, Rep. Broun's former campaign treasurer, Tim Echols, said he had outsourced the FEC filings and could not remember where the loan originally came from.<sup>13</sup> In addition, Rep. Broun's spokeswoman, Meredith Griffanti, said the inaccurate filing was due to "an inexperienced staffer who made a simple error when it came to providing details about the loan."<sup>14</sup> Ms. Griffanti said the loan was a home mortgage from Athens First Bank & Trust, with interest charged at "the standard market rate at the time," though she did not give the rate.<sup>15</sup> She also promised the congressman was "taking the necessary steps to file amendments and correct the whole oversight."<sup>16</sup> Rep. Broun himself later claimed he and his committee made a "simple mistake" in filing and they were "taking steps to resolve it."<sup>17</sup>

On June 26 and June 27, 2012, more than five years after it began receiving the loans, Rep. Broun's campaign committee filed amendments to six campaign finance reports. The amendments reported new information about two of the previously reported loans and disclosed for the first time the existence of two more loans, but did not clear up all the questions.<sup>18</sup>

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Broun Committee, FEC Form 3, 2010 Year End Report, January 31, 2011; Paul Broun Committee, FEC Form 3, 2011 July Quarterly Report, July 15, 2011.

<sup>9</sup> Paul Broun Committee, FEC Form 3, 2011 April Quarterly Report, April 15, 2011; Paul Broun Committee, FEC Form 3, 2011 July Quarterly Report, July 15, 2011.

<sup>10</sup> For more information, see Family Affair, available at <http://www.citizensforethics.org/familyaffair>.

<sup>11</sup> Blake Aued, Report: Broun Gained Personally from Campaign Contributions, *Athens Banner-Herald*, March 22, 2012.

<sup>12</sup> Complaint filed with the Federal Election Commission by Citizens for Responsibility and Ethics in Washington, April 11, 2012.

<sup>13</sup> Blake Aued, Broun Accused of Breaking Campaign Finance Laws, *Athens Banner-Herald*, April 12, 2012.

<sup>14</sup> Group Accuses Broun of Campaign Finance Violations, *Associated Press*, April 13, 2012.

<sup>15</sup> Blake Aued, Broun Spokeswoman: Ethics Complaint Was Result of an Oversight, *Athens Banner-Herald*, April 13, 2012.

<sup>16</sup> *Associated Press*, Apr. 13, 2012.

<sup>17</sup> Blake Aued, Broun Challenger Promises Action, Not Words, *Athens Banner-Herald*, June 23, 2012.

<sup>18</sup> Paul Broun Committee, FEC Form 3, 2007 July Quarterly Report, Amended, June 26, 2012; Paul Broun Committee, FEC Form 3, 2007 Post-Runoff Election Report, Amended, June 26, 2012; Paul Broun Committee, FEC Form 3, 2007 October Quarterly Report, Amended, June 26, 2012; Paul Broun Committee, FEC Form 3, 2007 Year End Report, Amended, June 26, 2012; Paul Broun Committee, FEC Form 3, 2008 April Quarterly Report, Amended, June 26, 2012; Paul Broun Committee, FEC Form 3, 2010 Pre-Primary Election Report, Amended, June 27, 2012.

Rep. Broun's committee had previously reported receiving a \$34,000 loan from Rep. Broun on June 6, 2007 and another \$80,000 loan from Rep. Broun on July 10, 2007, and claimed the loans were from Rep. Broun's personal funds.<sup>19</sup> The amendments, however, asserted the actual source of the funds was a home equity line of credit from Athens First Bank & Trust to Rep. Broun with an interest rate of 5.99 percent.<sup>20</sup> According to the amendments, Rep. Broun then lent the money to his campaign with no interest owed.<sup>21</sup> The amended reports also showed a previously undisclosed \$65,000 loan from Rep. Broun to his campaign on June 4, 2007.<sup>22</sup> Like the other loans, this one was funded by the Athens First Bank & Trust home equity line of credit at a 5.99 percent interest rate.<sup>23</sup>

Rep. Broun's committee also amended a July 2010 FEC filing, disclosing for the first time a \$142,766 loan from Rep. Broun to the committee.<sup>24</sup> In the same filing, the committee reported a loan for almost the same amount to Rep. Broun from Athens First Bank & Trust based on the home equity line of credit at a 6 percent interest rate, and said it was a restructuring of this line of credit.<sup>25</sup> The filing, however, did not explain how this loan is related to the other loans based on the home equity line of credit. Rep. Broun's other FEC reports provide no additional information about this loan. Although candidate committees must disclose outstanding loans in all filings, none of Rep. Broun's other FEC reports, including the amendments, mention this loan.

### **Status of Investigation**

The status of the FEC's investigation is pending. In November 2012, the Paul Broun Committee responded to a verbal request from the FEC's Reports Analysis Division to list the Schedule Cs it filed related to the three loans covered by the amendments filed in June 2012.<sup>26</sup> It is unknown if this request was related to the FEC's investigation.

### **Legal Fees**

Since the FEC complaint was filed in March 2012, the Paul Broun Committee has paid Patton Boggs \$68,369 in legal fees.<sup>27</sup>

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<sup>19</sup> See, e.g., Paul Broun Committee, FEC Form 3, October Quarterly Report, October 15, 2008; Paul Broun Committee, FEC Form 3, Post Runoff Election Report, Amended, November 9, 2007.

<sup>20</sup> Paul Broun Committee, FEC Form 3, 2007 July Quarterly Report, Amended, June 26, 2012; Paul Broun Committee, FEC Form 3, 2007 Post-Runoff Election Report, Amended, June 26, 2012.

<sup>21</sup> *Id.*

<sup>22</sup> Paul Broun Committee, FEC Form 3, 2007 July Quarterly Report, Amended, June 26, 2012.

<sup>23</sup> *Id.*

<sup>24</sup> Paul Broun Committee, FEC Form 3, 2010 Pre-Primary Election Report, Amended, June 27, 2012.

<sup>25</sup> *Id.*

<sup>26</sup> Paul Broun Committee, FEC Form 99, Miscellaneous Text, November 16, 2012,

<sup>27</sup> Paul Broun Committee, FEC Form 3, 2012-2013 Reports.

## Potential Violations

### **Campaign Finance Disclosures**

The Federal Election Campaign Act and FEC regulations require candidates for Congress to disclose information about loans to their campaigns.<sup>28</sup> FEC regulations specifically require that when a candidate obtains a loan derived from a home equity line of credit for use in connection with his or her campaign, the campaign committee must file a Schedule C-1 form disclosing 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.<sup>29</sup> A campaign committee also must disclose all outstanding loans, including the identity of any endorser or guarantor of a loan, the date of the loan, and its amount, on periodic reports filed with the FEC.<sup>30</sup>

By failing to disclose the existence of any of his four loans from Athens First Bank & Trust based on the home equity line of credit that were used in connection with his campaign, Rep. Broun violated 2 U.S.C. § 434(b)(3)(E) and 11 C.F.R. §§ 104.3(d), (d)(4). By mischaracterizing the \$34,000 loan and the \$80,000 loan to his campaign as coming from his own personal funds, Rep. Broun also violated 2 U.S.C. § 434(b)(3)(E) and 11 C.F.R. § 104.3(d). In addition, by failing to disclose his \$142,766 loan to the committee on any of the reports other than the one filed in July 2010, Rep. Broun appears to have violated 2 U.S.C. § 434(b)(3)(E) and 11 C.F.R. § 104.3(d).

### **Conduct Not Reflecting Creditably on the House**

Rule 23 requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”<sup>31</sup> This ethics standard is considered to be “the most comprehensive provision” of the code.<sup>32</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” which might otherwise go unpunished.<sup>33</sup> 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,<sup>34</sup> making false statements to the committee,<sup>35</sup> criminal convictions for bribery,<sup>36</sup> accepting illegal

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<sup>28</sup> 2 U.S.C. § 434(b)(3)(E); 11 C.F.R. § 104.3(d).

<sup>29</sup> 11 C.F.R. § 104.3(d)(4); Federal Election Commission, Instructions for Form 3 and Related Schedules, February 2009.

<sup>30</sup> 2 U.S.C. § 434(b)(3)(E); 11 C.F.R. § 104.3(d); Federal Election Commission, Instructions for Form 3 and Related Schedules, February 2009.

<sup>31</sup> Rule 23, cl. 1.

<sup>32</sup> House Ethics Manual, at 12.

<sup>33</sup> 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).

<sup>34</sup> 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).

<sup>35</sup> 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).

gratuities,<sup>37</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>38</sup>

By failing to disclose the existence of any of his four loans from Athens First Bank & Trust based on the home equity line of credit that were used in connection with his campaign, mischaracterizing the \$34,000 loan and the \$80,000 loan to his campaign as coming from his own personal funds, and failing to disclose his \$142,766 loan to the committee on any of the reports other than the one filed in July 2012, Rep. Broun acted in a manner that does not reflect creditably on the House.

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<sup>36</sup> 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)).

<sup>37</sup> 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).

<sup>38</sup> 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 four-term member of Congress, representing Florida's 16th congressional 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) improperly using corporate resources for campaign purposes; (5) tax evasion; and (6) lying on his financial disclosure forms. He was included in CREW's 2008, 2009, 2011, and 2012 reports on congressional corruption for related matters.<sup>1</sup>

### Conduit Contributions

Since 2010, at least 11 individuals and companies associated with Rep. Buchanan have been fined for their involvement in making conduit contributions to Rep. Buchanan's campaign. Rep. Buchanan has denied involvement and knowledge of any illegal conduit contributions.

### Car dealerships

Rep. Buchanan was the majority owner of several car dealerships in Florida when he began his congressional campaign in 2005, including Venice Nissan Dodge, Sarasota Ford, Suncoast Ford, and Hyundai of North Jacksonville (HNJ).<sup>2</sup> 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.<sup>3</sup>

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,<sup>4</sup> and he contributed the maximum permitted by law.<sup>5</sup> Subsequently, Rep. Buchanan pressured Mr. Kazran to raise more money for the campaign.<sup>6</sup> 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

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<sup>1</sup> For more information, see *CREW's Most Corrupt Members of Congress: The 20 Most Corrupt Members of Congress (and four to watch)*, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-2008>, *CREW's Most Corrupt 2009: The 15 Most Corrupt Members of Congress 2009*, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-2009>, *CREW's Most Corrupt 2011*, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-report-2011>, and *CREW's Most Corrupt 2012*, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-members-of-congress-report-2012>.

<sup>2</sup> *Republican Seeks Seat*, *Bradenton Herald*, June 29, 2005; Vernon G. Buchanan, *Personal Financial Disclosure Statement for January 1, 2004-April 30, 2006*, filed May 12, 2006; Federal Election Commission, *MUR No. 6054*, General Counsel's Brief, October 21, 2010 (General Counsel's Brief).

<sup>3</sup> Federal Election Commission, Confidential Investigative Deposition of Sam Kazran, November 6, 2009 (Kazran Deposition).

<sup>4</sup> *Id.* at 7-8.

<sup>5</sup> *Id.* at 11-12; see also Vern Buchanan for Congress, *FEC Form 3, 2005 October Quarterly Report*, October 14, 2005.

<sup>6</sup> Kazran Deposition, at 13.

the corporation.”<sup>7</sup> 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.”<sup>8</sup> Corroborating Mr. Kazran’s story, Josh Farid, another HNJ executive and Mr. Kazran’s brother-in-law, testified he overheard a telephone conversation in which Rep. Buchanan told Mr. Kazran to have his employees contribute to the campaign and reimburse them for their contributions with dealership funds.<sup>9</sup> In addition, HNJ’s controller said Mr. Kazran told her to make a contribution to Rep. Buchanan and reimburse herself for it from HNJ funds immediately after Mr. Kazran told Rep. Buchanan on the phone, “Vern, I’ll handle it now.”<sup>10</sup> Mr. Kazran said he told her HNJ would be getting the money back from Rep. Buchanan.<sup>11</sup> In all, HNJ reimbursed its employees for \$67,900 in contributions to Rep. Buchanan’s campaign.<sup>12</sup>

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.<sup>13</sup> 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.”<sup>14</sup> 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.”<sup>15</sup>

Employees at other dealerships owned by Rep. Buchanan were reimbursed for their contributions to Rep. Buchanan’s campaign. According to the sworn affidavits of two former Venice Nissan Dodge employees, dealership employees were reimbursed with corporate funds for making \$1,000 contributions to Rep. Buchanan’s 2006 congressional campaign or were

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<sup>7</sup> *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.* at 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 though the corporation.”); *id.* at 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.* at 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.* at 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.”); *id.* at 72 (“He said get somebody you trust, run it through the corporation.”). Mr. Kazran made the same allegations to the Office of Congressional Ethics. *See* Office of Congressional Ethics, 112th Congress, *Report*, Review No. 11-7565, January 12, 2012, at 18 (OCE Report).

<sup>8</sup> Kazran Deposition, at 14; *see also id.* at 37.

<sup>9</sup> General Counsel’s Brief, at 17-18; *see also* OCE Report, at 19; Virginia Chamlee, More Former Buchanan Employees Speak Out About Pressure To Donate, Reimbursement Scheme, *Florida Independent*, August 5, 2011. Mr. Farid also told the *Florida Independent* he was present when Rep. Buchanan was “talking to [Mr. Kazran] about raising money and the campaign contributions,” and told him “[y]ou can get that money reimbursed through the dealership.” *Id.* Mr. Kazran also said Mr. Farid was with him when Rep. Buchanan discussed this reimbursement scheme, Kazran Deposition, at 13, 32, but Mr. Farid told the FEC his understanding about it came from subsequent conversations he had with Mr. Kazran, Federal Election Commission, MUR No. 6054, General Counsel’s Report #9, at 7-8, January 25, 2011 (General Counsel’s Report #9).

<sup>10</sup> General Counsel’s Brief, at 18.

<sup>11</sup> Kazran Deposition, at 22.

<sup>12</sup> General Counsel’s Brief, at 23.

<sup>13</sup> Kazran Deposition, at 14.

<sup>14</sup> *Id.* at 14-15.

<sup>15</sup> *Id.* at 15; *see also id.* at 31.

coerced into making contributions.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup> Afraid he might lose his job, Mr. Bell replied yes, he was a part of the team and agreed to write the check.<sup>20</sup> Mr. Caldwell then handed \$1,000 to Mr. Bell, Mr. Prater, and Mr. Martin.<sup>21</sup> Mr. Bell later discussed the meeting with Mr. 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."<sup>22</sup> Two other Venice Nissan Dodge managers, Marvin White and William Mullins, also received \$1,000 cash reimbursements when they agreed to write checks to the Buchanan campaign.<sup>23</sup>

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.<sup>24</sup> On the same day, Mr. Bell wrote a check to the Buchanan campaign for \$1,000.<sup>25</sup> Similarly, the four other Venice Nissan Dodge managers who received the reimbursements from Mr. Caldwell also contributed \$1,000 each to Rep. Buchanan's campaign on September 16, 2005.<sup>26</sup>

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<sup>16</sup> FEC Complaint filed by Citizens for Responsibility and Ethics in Washington, Carlo Bell and David Padilla, Affidavit of Carlo A. Bell, 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, August 19, 2008 (Padilla Affidavit).

<sup>17</sup> Bell Affidavit.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Bell Affidavit.

<sup>22</sup> *Id.*

<sup>23</sup> Federal Election Commission, MUR No. 6054, General Counsel's Brief, at 5, April 14, 2010 (General Counsel's Brief – Venice Nissan Dodge); Bell Affidavit.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*; 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.

<sup>26</sup> General Counsel's Brief – Venice Nissan Dodge, at 5.

Mr. Bell's account of the reimbursement scheme was confirmed by David J. Padilla, a finance manager at Venice Nissan Dodge in 2005.<sup>27</sup> 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."<sup>28</sup> 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."<sup>29</sup>

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."<sup>30</sup> Mr. Kezer "fielded phone calls from other dealership executives wanting to know whether company reimbursement checks they had cashed put them in legal peril."<sup>31</sup> 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."<sup>32</sup>

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.<sup>33</sup> Although Mr. Kezer did not want to donate, he contributed \$2,000 to Rep. Buchanan's campaign committee because he feared for his job.<sup>34</sup>

Another of Rep. Buchanan's dealerships, Suncoast Ford, admitted it broke the law by reimbursing employees for contributions to Rep. Buchanan's campaign committee.<sup>35</sup> Rep. Buchanan's partner at Suncoast Ford, Gary Scarbrough, admitted to the FEC he instructed the dealership's controller to reimburse employees for \$18,400 in contributions.<sup>36</sup> Mr. Scarbrough testified he did not remember whose idea it was to reimburse the employees or if anyone asked him to have the contributions reimbursed.<sup>37</sup>

On October 7, 2010, Rep. Buchanan's campaign disgorged \$5,000 in contributions made by five former Venice Nissan Dodge employees, including \$1,000 from Mr. Bell, to the U.S. Treasury.<sup>38</sup> Similarly, on April 5, 2012, Rep. Buchanan's campaign disgorged \$67,900 in

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<sup>27</sup> Padilla Affidavit.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Matthew Murray, Buchanan Faces Another Lawsuit, *Roll Call*, June 2, 2008.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Jeremy Wallace and Carol E. Lee, Official Denies Donation Pressure, *Sarasota Herald-Tribune*, July 29, 2008.

<sup>34</sup> *Id.*; Vern Buchanan for Congress, FEC Form 3, 2005 October Quarterly Report, October 14, 2005.

<sup>35</sup> Federal Election Commission, MUR No. 6054, Memorandum Re: Pre-Probable Cause Conciliation, December 15, 2011.

<sup>36</sup> *Id.* at 1-2.

<sup>37</sup> Federal Election Commission, MUR No. 6054, General Counsel's Report #10, at 4, April 29, 2011.

<sup>38</sup> Matthew Doig and Jeremy Wallace, Buchanan Returns Questioned Donations, *Sarasota Herald-Tribune*, June 3, 2011.

contributions made by HNJ employees to the U.S. Treasury.<sup>39</sup> Earlier, in 2007, Rep. Buchanan's campaign refunded \$18,400 in contributions from Suncoast Ford employees after a company auditor questioned them.<sup>40</sup>

### Timothy Mobley

Rep. Buchanan and Timothy Mobley have been close personal friends and business partners for 20 years.<sup>41</sup> Rep. Buchanan and Mr. Mobley ride bicycles together almost every Sunday, and their families have vacationed together.<sup>42</sup> Rep. Buchanan and Mr. Mobley, a Tampa home developer, also have been business partners in real estate developments and in Suncoast Ford.<sup>43</sup> According to Terry Keith Howell, Mr. Mobley's partner in a trucking company, Express Freight of Florida, Rep. Buchanan planned to invest \$4 million in a Mobley Homes development and wanted to invest \$500,000 in another business with Mr. Mobley.<sup>44</sup>

Between 2006 and 2008, Mr. Mobley used personal and corporate funds to reimburse at least 11 of his employees and their family members \$84,300 for contributions they made to Rep. Buchanan's campaign committee, and another \$10,000 for contributions to the Republican Party of Florida,<sup>45</sup> including \$8,800 Mr. Howell contributed to Rep. Buchanan.<sup>46</sup> At the time he made the contribution to Rep. Buchanan, Mr. Howell, a registered Democrat who had never donated to a campaign before, was in bankruptcy and did not have enough money to cover the contribution.<sup>47</sup> Mr. Mobley and his accountant, Timothy Hohl, wrote a check from Express Freight of Florida to Mr. Howell to repay him for the contribution.<sup>48</sup> Then Mr. Mobley authorized a company he owned, MTampa Financing Company, to pay the \$8,800 to Express Freight of Florida.<sup>49</sup> According to Mr. Howell, Mr. Mobley asked him to use company funds to make contributions to Rep. Buchanan because Mr. Mobley believed Rep. Buchanan could do them favors.<sup>50</sup> "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," Mr. Howell said.<sup>51</sup> Mr. Mobley admitted he engaged in the conduit contribution scheme "knowingly and willingly."<sup>52</sup>

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<sup>39</sup> Vern Buchanan for Congress, FEC Form 3, 2012 July Quarterly Report, July 15, 2012.

<sup>40</sup> General Counsel's Brief, at 16.

<sup>41</sup> *United States v. Timothy F. Mobley*, No. 3:12-cr-00150-MMH-JBT, Sentencing Memorandum of Timothy F. Mobley, at 6 (M.D. Fla. 2012).

<sup>42</sup> *Id.*

<sup>43</sup> Federal Election Commission, MUR No. 6516, Conciliation Agreement, April 5, 2013, at 1 (Conciliation Agreement).

<sup>44</sup> Federal Election Commission, MUR No. 6054, General Counsel's Report #3, March 9, 2010, at 2-4 (General Counsel's Report #3).

<sup>45</sup> *United States v. Timothy F. Mobley*, Plea Agreement, Factual Basis for Plea, at 4-5; *United States v. Timothy F. Mobley*, United States' Sentencing Memorandum, at 5.

<sup>46</sup> General Counsel's Report #3, at 3.

<sup>47</sup> *Id.* at 5, 8; Susan Taylor Martin, Hard Times, Large Checks, *St. Petersburg Times*, June 20, 2009.

<sup>48</sup> Conciliation Agreement, at 3-4. Mr. Hohl signed this check. *Id.* at 3.

<sup>49</sup> *Id.* at 3-4.

<sup>50</sup> General Counsel's Report #3, at 4

<sup>51</sup> *Id.*; Martin, *St. Petersburg Times*, June 20, 2009.

<sup>52</sup> *United States v. Timothy F. Mobley*, Plea Agreement, Factual Basis for Plea, at 5.

On October 9, 2012, Rep. Buchanan’s campaign disgorged the \$84,300 in contributions that Mr. Mobley had reimbursed, including the \$8,800 from Mr. Howell, to the U.S. Treasury.<sup>53</sup>

Rep. Buchanan’s attempts to reimburse political donations made by his partners and employees appear to have started years before he ran for Congress himself. According to Sal Rosa, who was the chief financial officer and treasurer for several of Rep. Buchanan’s businesses from 1998 to 2003, in the early 2000s Rep. Buchanan instructed Mr. Rosa to ensure Don Jenkins, the president of one of Rep. Buchanan’s companies, was reimbursed with company funds for a political contribution.<sup>54</sup> Mr. Rosa, who had previously been the treasurer of a political committee, informed Rep. Buchanan that this would be illegal.<sup>55</sup> In response, Rep. Buchanan said, “finesse it,” and ended the conversation, which Mr. Rosa took to mean that he had to reimburse Mr. Jenkins and mask it in the dealership records.<sup>56</sup>

### **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.”<sup>57</sup> In September 2008, this and related disputes resulted in litigation between Rep. Buchanan, Mr. Kazran, and their companies.<sup>58</sup> 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.<sup>59</sup> On October 2, 2008, 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.<sup>60</sup>

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.<sup>61</sup> The affidavit provides that during “somewhat hostile” negotiations between Mr. Kazran and Rep. Buchanan’s representatives, Mr. Kazran told Rep. Buchanan’s representatives that one or more of the dealerships under Mr. Kazran’s control had reimbursed individuals for contributions to the Buchanan campaign.<sup>62</sup> The affidavit states:

5. Before September, 2008 neither I, nor to my knowledge, any other person who had ever advised Buchanan or any of

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<sup>53</sup> Vern Buchanan for Congress, FEC Form 3, 2012 Pre-Election Report, October 25, 2012.

<sup>54</sup> General Counsel’s Brief, at 8.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> Kazran Deposition, at 34.

<sup>58</sup> Rep. Buchanan Sues Ex-Partner, *Sarasota Herald-Tribune*, September 26, 2008; *Kazran v. Buchanan*, Case No. 2008 CA 15448 NC (12th Cir. Fla.).

<sup>59</sup> Kazran Deposition, at 55.

<sup>60</sup> *Id.* at 55-56; *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); General Counsel’s Brief, at 30.

<sup>61</sup> Kazran Deposition, at 59; Unsigned Kazran Affidavit; General Counsel’s Brief, at 30.

<sup>62</sup> Unsigned Kazran Affidavit ¶ 4.

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.<sup>63</sup>

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.”<sup>64</sup>

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.”<sup>65</sup> 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.”<sup>66</sup> 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.”<sup>67</sup>

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<sup>63</sup> *Id.* ¶¶ 5-7.

<sup>64</sup> *Id.* ¶ 8.

<sup>65</sup> Kazran Deposition, at 60. *See also id.* at 67 (“And he tried to make it sound like he had nothing to do with this. This is far from the truth.”).

<sup>66</sup> *Id.* at 70.

<sup>67</sup> *Id.*

Mr. Kazran testified further that after he received the settlement communication, Rep. Buchanan asked him to come to Sarasota, Florida for a meeting.<sup>68</sup> 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.<sup>69</sup> Mr. Kazran refused, telling Rep. Buchanan he “couldn’t be lying.”<sup>70</sup> 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.<sup>71</sup> 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.”<sup>72</sup> 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.”<sup>73</sup> Nevertheless, unwilling to lie, Mr. Kazran refused to sign the affidavit.<sup>74</sup>

Rep. Buchanan testified he had almost nothing to do with the affidavit and remembered little about it.<sup>75</sup> He claimed it was not his idea to have Mr. Kazran sign the affidavit, he did not know who had prepared it, and he had never even seen the affidavit before his sworn deposition.<sup>76</sup> The FEC concluded Rep. Buchanan’s lack of recall about the affidavit and the events surrounding it did not seem credible.<sup>77</sup>

Separately, Mr. Howell also reported he was pressured into signing a statement saying he alone was responsible for contributions to Rep. Buchanan. In a sworn deposition, Mr. Howell said Mr. Mobley and Mr. Hohl wanted him to sign an agreement ending their business relationship, stating:

I made a campaign contribution in the amount of \$8,800 to Vernon Buchanan for congress [sic]. I withdrew these funds from Express Freight of Florida, a company that I own 50% of and deposited them into my personal account. I then wrote the campaign check. It was my intention to do this lawfully and willingly.<sup>78</sup>

Mr. Howell said he initially refused to sign the agreement because it was false.<sup>79</sup> At around the same time, Mr. Howell said he “began receiving threats, his trucks were vandalized, a brick was thrown through his house window, and he suffered other acts of intimidation.”<sup>80</sup> Mr. Howell added he believed the intimidation was related to his contributions to Rep. Buchanan.<sup>81</sup>

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<sup>68</sup> *Id.* at 60, 62.

<sup>69</sup> Kazran Deposition, at 60, 62.

<sup>70</sup> *Id.* at 62.

<sup>71</sup> *Id.*; *see also id.* at 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.”).

<sup>72</sup> *Id.* at 60, 62.

<sup>73</sup> Kazran Deposition, at 57, 60.

<sup>74</sup> *Id.* at 60-62.

<sup>75</sup> General Counsel’s Brief, at 46.

<sup>76</sup> *Id.* at 46-47.

<sup>77</sup> General Counsel’s Report #9, at 19; General Counsel’s Brief, at 47.

<sup>78</sup> General Counsel’s Report #3, at 13.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 14.

Eventually, Mr. Howell signed the agreement, under which he was paid \$10,000 of what he called “shut up money” and an additional \$3,000 per month as a consulting fee.<sup>82</sup>

### **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.<sup>83</sup> 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 and posters.<sup>84</sup> These materials were cleaned out, and the cars were detailed by dealership staff before they were made available to customers.<sup>85</sup> The dealership may not have been paid fair market value for the use of the vehicles.<sup>86</sup> Rep. Buchanan also stored campaign materials at the dealership.<sup>87</sup>

### **Tax Evasion**

In July 2008, Salvatore Rosa, who was the chief financial officer and treasurer for several of Rep. Buchanan’s businesses from 1998 to 2003, filed a complaint with the Internal Revenue Service (IRS) alleging Rep. Buchanan violated federal tax laws by committing tax evasion, fraud, and conspiracy to commit tax evasion.<sup>88</sup> According to one of Mr. Rosa’s sworn depositions, “there was a fraud and crime that predated my employment and went on through virtually the entire period of my employment.”<sup>89</sup> Mr. Rosa made a wide range of tax-related allegations, including that Rep. Buchanan avoided paying taxes he owed on his yacht, committed fraud by counting the same capital multiple times on loan applications, created new business entities and used false spreadsheet records to get favorable tax treatment on the use of his private plane, and “violat[ed] the integrity of the S corp structure.”<sup>90</sup>

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<sup>82</sup> General Counsel’s Report #3, at 14-15.

<sup>83</sup> *Thomas v. Sarasota 500*, Case No. 2008 CA 013014 NC, Complaint (12th Cir. Fla.), ¶¶ 141-42.

<sup>84</sup> *Id.*, ¶¶ 142-43.

<sup>85</sup> *Id.*

<sup>86</sup> 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, 2005 October Quarterly Report, October 14, 2005.

<sup>87</sup> *Thomas v. Sarasota 500*, Complaint, ¶ 144.

<sup>88</sup> *Brooks v. Ornstein*, 2008 CA 034205 0 (9th Cir. Fla.), Deposition of Salvatore Rosa, at 9-10, 18, 127, January 9, 2012 (Rosa Deposition), available at <http://floridaindependent.com/68730/vern-buchanan-irs-investigation>; Deirdre Walsh and Scott Bronstein, House Ethics Committee Clears Powerful GOP Congressman, *CNN*, July 10, 2012; Eric Lichtblau, G.O.P. Fundraiser Faces Inquiries Into His Races, *New York Times*, February 23, 2012.

<sup>89</sup> Rosa Deposition, at 9.

<sup>90</sup> Congressman’s Former CFO Testifies Vern Buchanan Guilty of Tax Fraud, *WTSP*, February 18, 2013; Virginia Chamlee, In Deposition, Ex-Employee Charges Florida Congressman with Wide Variety of Misdeeds, *Florida Independent*, April 5, 2012; Rosa Deposition, at 34.

## **Lying on Personal Financial Disclosure Forms**

Rep. Buchanan filed required personal financial disclosure forms in 2007, 2008, 2009, and 2010.<sup>91</sup> In those reports, the congressman failed to disclose positions he held with five private companies and his family's non-profit foundation, as well as \$14,315 in income earned from several of those positions, prompting an investigation by the Office of Congressional Ethics (OCE).<sup>92</sup> In an interview with OCE, in which he was warned that making any materially false statement would violate federal law, Rep. Buchanan said these omissions were the result of repeated oversights.<sup>93</sup> Rep. Buchanan also told OCE he did not know how he could have received income from one of the positions, could not explain discrepancies between his personal financial disclosure form and his tax return, and said he failed to disclose that he served as president of the Vernon G. and Sandra J.C. Buchanan Family Foundation, Inc. from 2007 to 2010 because "our people missed it."<sup>94</sup>

After Rep. Buchanan was interviewed by OCE, he amended his personal financial disclosure forms for 2007 to 2010 to include the omitted positions and the missing interest income.<sup>95</sup> Nevertheless, OCE concluded there was substantial reason to believe Rep. Buchanan had violated the Ethics in Government Act, and on November 8, 2011 recommended the House Ethics Committee further review the allegations.<sup>96</sup>

## **Status of Investigations**

On March 17, 2010, the FEC found reason to believe Rep. Buchanan knowingly received conduit contributions and excessive contributions in connection with the contributions his campaign received from HNJ employees and began a full investigation.<sup>97</sup> The FEC's initial general counsel's brief concluded there was probable cause to believe Rep. Buchanan committed these violations.<sup>98</sup> Despite the evidence of Rep. Buchanan's direct involvement in the scheme, three months later the general counsel recommended that, due to questions about Mr. Kazran's credibility raised by Rep. Buchanan's attorneys, no further action should be taken against him.<sup>99</sup> Nevertheless, the general counsel said "the evidence in this case comes close to supporting a finding that it is more likely than not" that Rep. Buchanan violated federal election laws, and concluded many aspects of Rep. Buchanan's testimony were not credible.<sup>100</sup> The FEC accepted

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<sup>91</sup> Rep. Vern Buchanan, Personal Financial Disclosure Statement for Calendar Year 2007, filed May 2007; Rep. Vern Buchanan, Personal Financial Disclosure Statement for Calendar Year 2008, filed May 2009; Rep. Vern Buchanan, Personal Financial Disclosure Statement for Calendar Year 2009, filed May 17, 2010; Rep. Vern Buchanan, Personal Financial Disclosure Statement for Calendar Year 2010, filed May 13, 2011.

<sup>92</sup> Office of Congressional Ethics, 112th Congress, *Report*, Review No. 11-9366, at 9-19, October 28, 2011.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 10, 16, 18, 19.

<sup>95</sup> *Id.* at 20.

<sup>96</sup> *Id.*

<sup>97</sup> Federal Election Commission, MUR No. 6054, Certification, March 17, 2010.

<sup>98</sup> General Counsel's Brief, at 51.

<sup>99</sup> General Counsel's Report # 9, at 27-28.

<sup>100</sup> *Id.* at 19-22, 27.

the general counsel's recommendation not to take further action against Rep. Buchanan on February 1, 2011.<sup>101</sup>

On June 29, 2010, the FEC found there was probable cause to believe Venice Nissan Dodge and Mr. Caldwell knowingly made conduit contributions and excessive contributions to Rep. Buchanan's campaign.<sup>102</sup> The dealership and Mr. Caldwell settled with the FEC in August 2010, and agreed to pay an \$11,000 fine.<sup>103</sup> Similarly, on June 28, 2011, the FEC found there was probable cause to believe Suncoast Ford and Mr. Scarbrough knowingly made conduit contributions and excessive contributions to Rep. Buchanan's campaign.<sup>104</sup> This dealership and Mr. Scarbrough settled with the FEC in December 2011, paying \$7,000 and \$8,500 in fines.<sup>105</sup>

In addition, on September 21, 2010, the FEC found there was probable cause to believe HNJ and Mr. Kazran knowingly made conduit contributions and excessive contributions to Rep. Buchanan's campaign,<sup>106</sup> and sued them on December 17, 2010.<sup>107</sup> The court entered a default judgment against HNJ for \$67,900 on October 13, 2011 after HNJ failed to respond to the complaint.<sup>108</sup> The FEC settled the case against Mr. Kazran for \$5,500 on February 29, 2012, with the parties agreeing to describe Mr. Kazran's reimbursements to employees who donated to Rep. Buchanan's campaigns as "non-knowing and non-willful."<sup>109</sup>

In October 2011, Rep. Buchanan's lawyers acknowledged the Department of Justice (DOJ) was investigating him for receiving illegal conduit contributions, and the *New York Times* reported in February 2012 that a grand jury in Tampa, Florida was hearing testimony in the case.<sup>110</sup> On September 11, 2012, Rep. Buchanan's lawyer said the head of the department's Public Integrity Section had informed him DOJ's inquiry into all the allegations was over, and Rep. Buchanan would not be charged.<sup>111</sup>

On January 27, 2012, OCE determined that "there is substantial reason to believe that Rep. Buchanan attempted to influence the testimony of a witness" regarding the Kazran affidavit, and referred the investigation to the House Ethics Committee.<sup>112</sup> On May 9, 2012, the

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<sup>101</sup> Federal Election Commission, MUR No. 6054, Certification, February 1, 2011; Becky Bowers, Rep. Vern Buchanan 'Exonerated' by FEC, his Spokeswoman Says, *St. Petersburg Times*, June 24, 2011.

<sup>102</sup> Federal Election Commission, MUR No. 6054, Certification, June 29, 2010.

<sup>103</sup> Federal Election Commission, MUR No. 6054, Conciliation Agreement, August 27, 2010; Federal Election Commission, MUR No. 6054, Certification, August 24, 2010. The FEC decided to take no further action against Brad Combs. *Id.*

<sup>104</sup> Federal Election Commission, MUR No. 6054, Certification, June 28, 2011.

<sup>105</sup> Federal Election Commission, MUR No. 6054, Conciliation Agreement, December 20, 2011; Federal Election Commission, MUR No. 6054, Certification, December 16, 2011.

<sup>106</sup> Federal Election Commission, MUR No. 6054, Certification, September 21, 2010.

<sup>107</sup> *Federal Election Commission v. Kazran*, No. 3:10-cv-1155-J-RBD-JRK (M.D. Fla.), Complaint.

<sup>108</sup> *Federal Election Commission v. Kazran*, No. 3:10-cv-1155-J-RBD-JRK (M.D. Fla. Oct. 13, 2011).

<sup>109</sup> *Federal Election Commission v. Kazran*, No. 3:10-cv-1155-J-RBD-JRK (M.D. Fla. Feb. 29, 2012); Jeremy Wallace, Former Buchanan Partner Sam Kazran Settles with FEC, *Sarasota Herald-Tribune*, February 21, 2011.

<sup>110</sup> Marc R. Masferrer, Feds Open Campaign Finance Investigation of Rep. Vern Buchanan, *Bradenton Herald*, October 18, 2011; Lichtblau, *New York Times*, Feb. 23, 2012.

<sup>111</sup> Jeremy Wallace, Buchanan Inquiry Closed, Lawyers Say, *Sarasota Herald-Tribune*, September 12, 2012; John Bresnahan, DOJ Drops Case Against Buchanan, *Politico*, September 11, 2012.

<sup>112</sup> Office of Congressional Ethics, 112th Congress, *Report*, Review No. 11-7565, January 12, 2012.

House Ethics Committee indefinitely extended its investigation in the matter.<sup>113</sup> In addition, *CNN* reported the Federal Bureau of Investigation (FBI) also was investigating the matter.<sup>114</sup> The status of the FBI investigation is unknown.

On July 10, 2012, the House Ethics Committee released a report finding Rep. Buchanan had inaccurately reported his positions and ownership interests on his personal financial disclosure forms.<sup>115</sup> Nonetheless, the committee said it would not take further action because it concluded Rep. Buchanan had not knowingly or willfully made the errors on his forms and such errors are not uncommon.<sup>116</sup>

On September 27, 2012, Mr. Mobley pleaded guilty to making illegal conduit contributions and illegal corporate contributions, and Mr. Hohl pleaded guilty to making illegal conduit contributions.<sup>117</sup> Mr. Mobley was sentenced to three years of probation and a \$200,000 fine in March 2013, and Mr. Hohl was sentenced to one year of probation and a \$15,000 fine for his involvement in the conduit contribution scheme.<sup>118</sup> Separately, on May 25, 2010, the FEC found reason to believe Mr. Mobley, Mr. Hohl, Mr. Howell, Express Freight of Florida, and MTampa Financing Company made conduit contributions to Rep. Buchanan's campaign.<sup>119</sup> Mr. Howell settled with the FEC in February 2013, agreeing to pay a \$1,000 fine.<sup>120</sup> In April 2013, Mr. Mobley and Mr. Hohl settled with the FEC, with Mr. Mobley and the companies agreeing to pay a \$10,000 fine, and Mr. Hohl agreeing to pay a \$5,000 fine.<sup>121</sup>

The status of any IRS investigation is unknown, but Mr. Rosa claimed in February 2013 it was ongoing.<sup>122</sup>

### **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.<sup>123</sup> In November 2008, Rep. Buchanan announced plans to sell more of his business holdings to “reduce [his] exposure” to lawsuits and uncomfortable political

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<sup>113</sup> Press Release, House Committee on Ethics, 112th Congress, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Vernon G. Buchanan, May 9, 2012.

<sup>114</sup> Scott Bronstein and Drew Griffin, Powerful Congressman Accused of Campaign Finance Violations, *CNN*, June 23, 2012.

<sup>115</sup> House Ethics Committee, 112th Congress, *In the Matter of Allegations Relating to Representative Vern Buchanan*, July 10, 2012.

<sup>116</sup> *Id.*

<sup>117</sup> *United States v. Timothy F. Mobley*, Plea Agreement; *United States v. Timothy M. Hohl*, No. 3:12-cr-00149-TJC-JBT, Plea Agreement (M.D. Fla. 2012).

<sup>118</sup> Jeremy Wallace, Buchanan Ally Fined For Illegal Donations, *Sarasota Herald-Tribune*, March 26, 2013.

<sup>119</sup> Federal Election Commission, MUR No. 6516, Certification, May 25, 2010.

<sup>120</sup> Federal Election Commission, MUR No. 6516, Conciliation Agreement, February 20, 2013.

<sup>121</sup> Federal Election Commission, MUR No. 6516, Conciliation Agreement, April 9, 2013; Federal Election Commission, MUR No. 6516, Conciliation Agreement, April 9, 2013

<sup>122</sup> Congressman's Former CFO Testifies Vern Buchanan Guilty of Tax Fraud, *WTSP*, February 18, 2013.

<sup>123</sup> Jeremy Wallace, Buchanan's Path Gets Smoother by the Day, *Sarasota Herald-Tribune*, July 7, 2010.

situations.<sup>124</sup> As of 2011, he owned three car dealerships.<sup>125</sup> Since then, most of the suits have either been dismissed or have gone to arbitration.<sup>126</sup>

In 2008, Mr. Kazran sued Rep. Buchanan over a business deal regarding a company, Gwinnett, which they both co-owned.<sup>127</sup> The case was dismissed in part, which led Mr. Kazran to file a second complaint in March 2012.<sup>128</sup> Mr. Kazran claims Rep. Buchanan defrauded him by failing to properly capitalize a car dealership, owned by Gwinnett, which Mr. Kazran was trying to acquire, by lying on the original contract, and by using the dealership to reimburse employees for campaign donations.<sup>129</sup> Mr. Kazran claims Rep. Buchanan's actions caused him to lose \$40 million.<sup>130</sup> Rep. Buchanan's lawyers tried to halt the case and force Mr. Kazran to accept arbitration, but a judge denied the motion on June 19, 2012.<sup>131</sup> Rep. Buchanan was scheduled to give a deposition in the case in July 2012, but did not appear on the scheduled date, saying his attorney was ill.<sup>132</sup> He eventually gave the deposition in November 2012, after the election.<sup>133</sup> In July 2013, the judge in the case set July 14, 2014 as a potential trial date.<sup>134</sup>

Rep. Buchanan countersued Mr. Kazran and his wife, alleging breach of contract, and initially won a judgment in the case.<sup>135</sup> In June 2012, however, a Florida judge tossed out the decision and reopened the case after Mr. Kazran and his wife said a key document in the case had been forged.<sup>136</sup> Discovery remains ongoing.<sup>137</sup>

## **Legal Fees**

Since May 2010, Rep. Buchanan's campaign committee has reported more than \$620,000 in fees to resolve his legal issues.<sup>138</sup> The campaign reported paying Patton Boggs \$471,000 in legal fees during the 2012 election cycle, and \$85,212 to Holland & Knight.<sup>139</sup> In January 2013, the campaign reported paying another \$54,997 to Holland & Knight.<sup>140</sup> In 2010, the campaign

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<sup>124</sup> Jeremy Wallace, Less Business, More Politics for Buchanan, *Sarasota Herald-Tribune*, November 19, 2008.

<sup>125</sup> Jeremy Wallace, Buchanan Has 3 Car Dealerships, *Sarasota Herald-Tribune*, July 3, 2011.

<sup>126</sup> Wallace, *Sarasota Herald-Tribune*, July 7, 2010.

<sup>127</sup> *Kazran v. Buchanan*, Case No. 2008 CA 15448 NC (12th Cir. Fla.); Jeremy Wallace, Buchanan Lawsuits May Linger into 2010, *Sarasota Herald-Tribune*, July 15, 2009.

<sup>128</sup> *Kazran v. Buchanan*, Case No. 2008 CA 15448 NC (12th Cir. Fla.), Second Amended Complaint, at 1.

<sup>129</sup> *Id.* at 2, 3, 12, 13.

<sup>130</sup> *Id.* at 3.

<sup>131</sup> Jeremy Wallace, Buchanan Withdraws Motion to Silence Former Business Partner, *Sarasota Herald-Tribune*, June 25, 2012.

<sup>132</sup> Sara Kennedy, Attorney Seeks Contempt Of Court Order Against U.S. Rep. Vern Buchanan, *Bradenton Herald*, August 4, 2012.

<sup>133</sup> *Kazran v. Buchanan*, Case No. 2008 CA 15448 NC (12th Cir. Fla.), Docket, Entries for December 14, 2012 and December 26, 2012.

<sup>134</sup> Jeremy Wallace, Buchanan On a Fundraising Binge, *Sarasota Herald-Tribune*, July 21, 2013.

<sup>135</sup> *1099 Mgmt Co LLC v. Kazran*, Case No. 2009 CA 018162 (13th Cir. Fla.); Jeremy Wallace, Vern Buchanan's Lawsuit Against Ex-partner Kazran Reopened, *Sarasota Herald-Tribune*, June 29, 2012.

<sup>136</sup> *Id.*

<sup>137</sup> *1099 Mgmt Co LLC v. Kazran*, Case No. 2009 CA 018162 (13th Cir. Fla), Docket, Entry for May 22, 2013.

<sup>138</sup> Buchanan for Congress, FEC Form 3, 2010-2013 Reports.

<sup>139</sup> Buchanan for Congress, FEC Form 3, 2011-2012 Reports.

<sup>140</sup> Buchanan for Congress, FEC Form 3, 2013 April Quarterly Report, April 15, 2013.

committee reported paying \$9,024 to Ignited Discovery and Applied Discovery, companies that specialize in litigation discovery, and \$492 to Esquire Deposition Solutions.<sup>141</sup>

### 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.<sup>142</sup> Corporations are also prohibited from facilitating the making of contributions to federal candidates.<sup>143</sup> 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.”<sup>144</sup>

Despite the FEC’s and DOJ’s decisions to take no action 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 and 2008 campaigns, Rep. Buchanan and his companies, BAH, Venice Nissan Dodge, and Sarasota Ford, appear to have violated 2 U.S.C. § 441b(b)(3)(A) and 11 C.F.R. § 114.2.

#### **Conduit Contributions**

The 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.<sup>145</sup> Despite the FEC’s and DOJ’s decisions to take no action against him, by reimbursing employees for contributions made to his 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). Venice Nissan Dodge, Don Caldwell, Suncoast Ford, Gary Scarbrough, Timothy Mobley, Timothy Hohl, Terry Keith Howell, Express Freight of Florida, and MTampa Financing Company made conduit contributions to Rep. Buchanan and were fined by the FEC, and Sarasota Ford also appears to have violated 2 U.S.C. § 441f and 11 C.F.R. § 110.4(b)(1)(I).

#### **Excessive Contributions**

The FECA limits the amount of contributions an individual may donate to a candidate, and the amount a candidate can accept from an individual.<sup>146</sup> The contribution limit in 2006 was

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<sup>141</sup> Buchanan for Congress, FEC Form 3, 2010 July Quarterly Report, August 11, 2010; Buchanan for Congress, FEC Form 3, 2010 Pre-General Year, October 21, 2010; Buchanan for Congress, FEC Form 3, 2010 Year End Report, February 25, 2011.

<sup>142</sup> 2 U.S.C. § 441b(b)(3)(A); 11 C.F.R. § 114.5(a)(1).

<sup>143</sup> 11 C.F.R. § 114.2(f)(1).

<sup>144</sup> 11 C.F.R. § 114.2(f)(2)(iv).

<sup>145</sup> 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b)(1)(I).

<sup>146</sup> 2 U.S.C. §§ 441a(a)(1)(A), 441a(f).

\$2,100 per election and in 2008 was \$2,300 per election.<sup>147</sup> Any contribution over those limits was an illegal excessive contribution. Despite the FEC's and DOJ's decisions to take no action against him, Rep. Buchanan appears to have violated 2 U.S.C. § 441a(f) by accepting excessive contributions. Venice Nissan Dodge and Suncoast Ford made excessive contributions to Rep. Buchanan and were fined by the FEC.

### **Corporate Contributions**

The FECA and FEC regulations both prohibit corporations from making contributions in connection with any federal election, including elections for the House of Representatives.<sup>148</sup> Despite the FEC's and DOJ's decisions to take no action against him, by reimbursing employees with corporate funds for contributions made to his 2006 and 2008 campaigns, Rep. Buchanan appears to have violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(a). BAH, Venice Nissan Dodge, Suncoast Ford, and Sarasota Ford also appear to have violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(a), and MTampa Financing Company was fined for violating these provisions.

In addition, by lending Rep. Buchanan's 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,<sup>149</sup> as well as attempting to corruptly obstruct, influence, or impede an official proceeding.<sup>150</sup> An "official proceeding" includes a proceeding before a federal government agency that is authorized by law, such as the FEC.<sup>151</sup>

Despite DOJ's decision to take no action against him, by trying to leverage a prospective \$2.9 million settlement and threats of future retaliation to persuade 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 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

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<sup>147</sup> Press Release, Federal Election Commission, New Federal Contribution Limits Announced, February 3, 2005; Press Release, Federal Election Commission, FEC Announces Updated Contribution Limits, January 23, 2007.

<sup>148</sup> 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(a).

<sup>149</sup> 18 U.S.C. § 1512(b)(1).

<sup>150</sup> 18 U.S.C. § 1512(c)(2).

<sup>151</sup> 18 U.S.C. § 1515(a)(1)(C).

department or agency of the United States,” violates this statute.<sup>152</sup> “Corruptly” under this statute means, among other things, “acting with an improper purpose, personally or by influencing another.”<sup>153</sup> Endeavoring to suborn perjury or tamper with a witness is an obstruction under the statute.<sup>154</sup>

Despite DOJ’s decision to take no action against him, 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.<sup>155</sup>

Despite DOJ’s decision to take no action against him, 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.

### **False Statements on Personal Financial Disclosure Forms**

The Ethics in Government Act of 1978 requires all members of Congress to file financial disclosure reports.<sup>156</sup> Under the statute, the attorney general may seek a civil penalty of up to \$50,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.<sup>157</sup> House Rule 26 incorporates the financial disclosure provisions of the Ethics in Government Act.<sup>158</sup> In addition, Federal law prohibits anyone from making “any materially false, fictitious, or fraudulent statement or representation”<sup>159</sup> on “a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch.”<sup>160</sup>

Despite the House Ethics Committee’s decision to take no further action against him, by failing to report six positions and \$14,315 in income he earned from those positions on his personal financial disclosure forms, Rep. Buchanan appears to have violated the Ethics in Government Act and 18 U.S.C. § 1001.

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<sup>152</sup> 18 U.S.C. § 1505.

<sup>153</sup> 18 U.S.C. § 1515(b).

<sup>154</sup> *United States v. Atlantic States Cast Iron Pipe Co.*, 2007 U.S. Dist. LEXIS 56562, at \*\*251-292 (D.N.J. Aug. 2, 2007).

<sup>155</sup> 18 U.S.C. § 201(b)(3).

<sup>156</sup> Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

<sup>157</sup> 5 U.S.C. app. 4, § 104.

<sup>158</sup> House Comm. on Standards of Official Conduct, House Ethics Manual, at 248 (110th Cong., 2d Sess., 2008 ed.).

<sup>159</sup> 18 U.S.C. § 1001(a)(2).

<sup>160</sup> 18 U.S.C. § 1001(c)(1).

## **Tax Evasion**

Mr. Rosa's complaint to the IRS alleged Rep. Buchanan engaged in tax evasion, fraud, and conspiracy to commit tax evasion. If Rep. Buchanan engaged in this conduct, he may have violated multiple provisions of the tax code, including provisions concerning tax evasion and fraud.

## **Conduct Not Reflecting Creditably on the House**

Rule 23 requires all members of the House to conduct themselves "at all times in a manner that reflects creditably on the House."<sup>161</sup> This ethics standard is considered to be "the most comprehensive provision" of the code.<sup>162</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct noted it was included within the Code to deal with "flagrant" violations of the law that reflect on "Congress as a whole," which might otherwise go unpunished.<sup>163</sup> 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,<sup>164</sup> making false statements to the committee,<sup>165</sup> criminal convictions for bribery,<sup>166</sup> accepting illegal gratuities,<sup>167</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>168</sup>

By reimbursing employees for contributions made to his campaigns, accepting excessive contributions, attempting to intimidate Mr. Kazran into signing a false affidavit, and providing false information on his personal financial disclosure forms, Rep. Buchanan appears to have acted in a manner that does not reflect creditably on the House.

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<sup>161</sup> Rule 23, cl. 1.

<sup>162</sup> House Comm. on Standards of Official Conduct, House Ethics Manual, at 12.

<sup>163</sup> 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).

<sup>164</sup> 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).

<sup>165</sup> 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).

<sup>166</sup> 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)).

<sup>167</sup> 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).

<sup>168</sup> 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 SCOTT DESJARLAIS

Representative Scott DesJarlais (R-TN) is a two-term member of Congress, representing Tennessee's 4th congressional district. Rep. DesJarlais also is a licensed physician, and his ethics issues stem from two affairs he conducted with patients and his later efforts to cover up his misconduct.

### Unlawful Affairs with Patients

Rep. DesJarlais has been a licensed physician in Tennessee since 1993.<sup>1</sup> In and around 2000, while married to Susan DesJarlais, Rep. DesJarlais engaged in a sexual relationship with a patient.<sup>2</sup> The initial news reports revealing Rep. DesJarlais' relationship with the patient quoted extensively from a transcript of a telephone call, which Rep. DesJarlais recorded, between Rep. DesJarlais and the woman.<sup>3</sup> During the call, Rep. DesJarlais and the patient discussed her apparent pregnancy, and Rep. DesJarlais urged her to get an abortion.<sup>4</sup>

Rep. DesJarlais responded to the news reports less than a month before he stood for re-election in 2012.<sup>5</sup> In an open letter posted on his campaign's Facebook page, Rep. DesJarlais asserted he had not recorded the telephone conversation with his patient, claiming: "The media wrongly reported that I recorded the conversation myself. I was recorded unknowingly and without my consent."<sup>6</sup> This claim is directly contradicted, however, by Rep. DesJarlais' sworn testimony in his 2001 divorce.<sup>7</sup> During that proceeding, Rep. DesJarlais testified under oath that he and his wife recorded the phone conversation "to find out whether the girl was telling the truth or not."<sup>8</sup>

Rep. DesJarlais also engaged in an inappropriate sexual relationship with another patient, prescribed pain-killers for her during the course of their sexual relationship, maintained sexual relationships with at least three co-workers and a pharmaceutical sales representative, and urged his then-wife to have two abortions.<sup>9</sup> The second patient with whom Rep. DesJarlais had a relationship reported she met him when she was his patient in the mid-1990s and began dating him about five years later.<sup>10</sup> She explained she "recalled feeling strange about a general

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<sup>1</sup> Tennessee Department of Health: Licensure Verification, Licensee Lookup, Scott DesJarlais, available at <http://health.state.tn.us/licensure/default.aspx>.

<sup>2</sup> Chas Sisk, Rep. Scott DesJarlais Urged Woman to Have an Abortion, Transcript Says, *Tennessean*, October 11, 2012; Chris Carroll and Kate Harrison, Scott DesJarlais Supported Ex-Wife's Abortions, Slept with Patients, Divorce Transcript Shows, *Chattanooga Times Free Press*, November 15, 2012.

<sup>3</sup> Michael McAuliff, Scott DesJarlais, Pro-Life Republican Congressman and Doctor, Pressured Mistress Patient to Get Abortion, *Huffington Post*, October 10, 2012.

<sup>4</sup> *Id.*; Sisk, *Tennessean*, Oct. 11, 2012.

<sup>5</sup> Andy Sher, 'No Pregnancy and No Abortion,' Scott DesJarlais Says, *Chattanooga Times Free Press*, October 12, 2012.

<sup>6</sup> Scott DesJarlais, Open Letter to My Supporters, October 12, 2012.

<sup>7</sup> Carroll and Harrison, *Chattanooga Times Free Press*, Nov. 15, 2012.

<sup>8</sup> *Id.*; Erik Schelzig, Tenn. GOP Congressman's Ex-Wife Had 2 Abortions, *Associated Press*, November 16, 2012; James Harrison, Rep. Scott DesJarlais Quiet as Records Contradict Recent Comments, *Nooga.com*, November 16, 2012.

<sup>9</sup> Schelzig, *Associated Press*, Nov. 16, 2012; Carroll and Harrison, *Chattanooga Times Free Press*, Nov. 15, 2012.

<sup>10</sup> Chris Carroll, 2nd Scott DesJarlais Girlfriend Talks, *Chattanooga Times Free Press*, October 28, 2012.

practitioner who encouraged her to call him at home. Eventually he phoned her and invited her over.”<sup>11</sup> Further, the woman said Rep. DesJarlais had prescribed pain medication for her on dates at his home.<sup>12</sup> Although she retained Rep. DesJarlais as her doctor for some time after the affair ended, she eventually found another doctor because he persistently tried to rekindle their relationship.<sup>13</sup>

It was not until after the 2012 election that Rep. DesJarlais’ sworn testimony in which he admitted recording the call with the first patient was made public.<sup>14</sup> Rep. DesJarlais then retreated from his earlier statements that he had not participated in recording the conversation, claiming he had made a mistake and had commented to the press before he had the opportunity to go back and read the transcript of his testimony.<sup>15</sup> Rep. DesJarlais also claimed – and continues to claim – the woman recorded on the call was never pregnant and did not have an abortion. In the open letter posted on Facebook and in comments to the media, Rep. DesJarlais claimed “there was never any pregnancy and there was no abortion.”<sup>16</sup> This is contradicted by the woman’s testimony in the divorce case where she asserted under oath that, indeed, she had been pregnant.<sup>17</sup> The patient refused to answer questions about the outcome of the pregnancy, but said she didn’t have a child by Rep. DesJarlais even though she was “pretty much sure he was the father.”<sup>18</sup> Despite this sworn testimony, Rep. DesJarlais continued to insist he had not impregnated the woman.<sup>19</sup> “She was not pregnant by me,” he said in November 2012.<sup>20</sup> “I don’t think she was pregnant period.”<sup>21</sup>

### **Status of Investigation**

In October 2012, CREW filed two complaints with the Tennessee Board of Medical Examiners against Rep. DesJarlais regarding his misconduct.<sup>22</sup> On May 23, 2013, the Board approved a consent order reached with Rep. DesJarlais.<sup>23</sup> The order stipulates that while a licensed physician, Rep. DesJarlais had sexual relationships with two female patients in the first six months of 2000.<sup>24</sup> The Board therefore found Rep. DesJarlais had engaged in unprofessional conduct in violation of section 63-6-214(b)(1) of the Tennessee Code.<sup>25</sup> Rep. DesJarlais was

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Schelzig, *Associated Press*, Nov. 16, 2012.

<sup>15</sup> Michael Collins, *DesJarlais: Regret Past Actions, No Plans to Resign*, *Knoxville News*, November 22, 2012.

<sup>16</sup> DesJarlais, *Open Letter to My Supporters*, Oct. 12, 2010; Erik Schelzig and Lucas L. Johnson II, *Congressman: Mistress Wasn’t Pregnant, No Abortion*, *Associated Press*, October 12, 2012.

<sup>17</sup> Carroll and Harrison, *Chattanooga Times Free Press*, Nov. 15, 2012.

<sup>18</sup> *Id.*; Harrison, *Nooga.com*, Nov. 16, 2012.

<sup>19</sup> Collins, *Knoxville News*, Nov. 22, 2012.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Tennessee Board of Medical Examiners Complaint filed by CREW, October 12, 2012, available at [http://www.citizensforethics.org/page/-/PDFs/Legal/Investigation/10\\_15\\_12\\_DesJarlais\\_Complaint.pdf?nocdn=1](http://www.citizensforethics.org/page/-/PDFs/Legal/Investigation/10_15_12_DesJarlais_Complaint.pdf?nocdn=1); Tennessee Board of Medical Examiners Complaint filed by CREW, October 31, 2012, available at [http://www.citizensforethics.org/page/-/PDFs/Legal/Letters/10-31-12\\_DesJarlais-Second-Complaint.pdf?nocdn=1](http://www.citizensforethics.org/page/-/PDFs/Legal/Letters/10-31-12_DesJarlais-Second-Complaint.pdf?nocdn=1).

<sup>23</sup> *In the Matter of Scott DesJarlais, M.D.*, Board of Medical Examiners, State of Tennessee, Case Nos. 2012022411, 2012020671, 2012026471 (May 23, 2013).

<sup>24</sup> *Id.* at 2.

<sup>25</sup> *Id.* at 3.

reprimanded and agreed to pay a fine of \$250 for each patient as well as a maximum of \$1,000 in costs.<sup>26</sup>

### Potential Violations

#### **Violations of the Tennessee Medical Practice Act**

According to the Tennessee State Board of Medical Examiners' Sexual Misconduct Statement and Policy, "[i]t is the physician's responsibility to maintain the boundaries of the professional relationship by avoiding and refraining from sexual contact with patients."<sup>27</sup> Therefore, "sexual contact with a patient is misconduct and is considered to be a violation of T.C.A. Section 63-6-214(b)(1)."<sup>28</sup> Whether Rep. DesJarlais or his patient initiated the sexual contact is immaterial as "a patient's consent to, initiation of or participation in sexual behavior or involvement with a physician does not change the nature of the conduct nor lift the statutory prohibition."<sup>29</sup> Upon a finding that a physician has committed unprofessional conduct by engaging in sexual misconduct, the Board of Medical Examiners "will impose such discipline as the Board deems necessary to protect the public."<sup>30</sup> As the consent order he signed stipulates, Rep. DesJarlais had sexual relationships with two female patients in early 2000, and he was reprimanded by the Board and agreed to pay a fine and costs.

#### **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."<sup>31</sup> This ethics standard is considered to be "the most comprehensive provision" of the code.<sup>32</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct noted it was included within the Code to deal with "flagrant" violations of the law that reflect on "Congress as a whole," which might otherwise go unpunished.<sup>33</sup> 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,<sup>34</sup> making false statements to the committee,<sup>35</sup> criminal convictions for bribery,<sup>36</sup> accepting illegal

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<sup>26</sup> *Id.* at 3-4.

<sup>27</sup> Tennessee State Board of Medical Examiners, Sexual Misconduct Statement and Policy.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Rule 23, cl. 1.

<sup>32</sup> House Ethics Manual, at 12.

<sup>33</sup> 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).

<sup>34</sup> 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).

<sup>35</sup> 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).

<sup>36</sup> 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

gratuities,<sup>37</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>38</sup>

The inappropriate relationships in which Rep. DesJarlais engaged with patients took place several years before he was elected to Congress and, therefore, were not within the jurisdiction of the House. During his re-election campaign, however, while serving as a member of Congress, Rep. DesJarlais made numerous untrue statements about this past conduct. By lying to the public about his role in taping a telephone conversation with a patient with whom he had a sexual relationship, Rep. DesJarlais acted in manner that does not reflect creditably on the House. Additionally, if, as it appears, Rep. DesJarlais falsely claimed one of the patients with whom he was involved was never pregnant and did not have an abortion, his conduct does not reflect creditably on the House.

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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)).

<sup>37</sup> 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).

<sup>38</sup> 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 two-term member of Congress, representing New York's 11th congressional district. His ethics issues stem from orchestrating and accepting illegal campaign contributions and improperly including a link to footage of a House floor speech in campaign materials. He was included in CREW's 2011 report on congressional corruption for unrelated matters,<sup>1</sup> and in CREW's 2012 report on congressional corruption for related matters.<sup>2</sup>

### **Acceptance of Illegal Campaign Contributions**

During the 2010 election cycle, Rep. Grimm was frequently seen with Ofer Biton, an Israeli citizen and close aide to Rabbi Yoshiyahu Yosef Pinto.<sup>3</sup> Rabbi Pinto leads a large and high-profile congregation in New York.<sup>4</sup> Rep. Grimm and Mr. Biton traveled around the New York region together, and Mr. Biton helped Rep. Grimm raise money from Rabbi Pinto's followers.<sup>5</sup> A *New York Times* analysis of Rep. Grimm's campaign contributions found he raised more than \$500,000 from members of Rabbi Pinto's congregation, which made up more than half the contributions Rep. Grimm received from individuals during that cycle.<sup>6</sup> The contributors included several businessmen involved in the pornography industry.<sup>7</sup> Notably, the *Times* found the vast majority of Rabbi Pinto's followers who donated to Rep. Grimm had never before given to a federal candidate and lived outside of Rep. Grimm's district.<sup>8</sup>

Several of Rabbi Pinto's followers, speaking on the condition of anonymity, said Rep. Grimm told donors there were ways to evade campaign finance laws.<sup>9</sup> One person alleged Rep. Grimm had requested a \$20,000 contribution during the summer of 2010, and set a meeting near the Federal Bureau of Investigation (FBI) building in Lower Manhattan.<sup>10</sup> As instructed, the follower met Rep. Grimm and gave him \$5,000 cash in an envelope.<sup>11</sup> A week later, the same person gave Rep. Grimm another \$5,000 from a friend.<sup>12</sup> After receiving the second payment, the congregant said Rep. Grimm repeatedly called him demanding an additional \$10,000

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<sup>1</sup> Rep. Grimm's 2011 ethics issues stemmed from improper use of U.S. Marine Corps and FBI insignia and imagery in campaign materials and his improper endorsement of a private security firm. For more information, see CREW's Most Corrupt 2011, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/Michael-Grimm-report>.

<sup>2</sup> For more information, see CREW's Most Corrupt 2012, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-members-of-congress-report-2012>.

<sup>3</sup> Alison Leigh Cowan and William K. Rashbaum, Rabbi's Followers Cast Doubts on Congressman's Fund-Raising, *New York Times*, January 27, 2012.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* Rep. Grimm has disputed the \$500,000 figure, instead saying he raised between \$250,000 and \$300,000 from members of Rabbi Pinto's congregation. See Tom Wroblewski and Judy L. Randall, Under Attack, Rep. Michael Grimm Fires Back, *Staten Island (New York) Advance*, February 19, 2012.

<sup>7</sup> David B. Caruso, NY Pol's Reliance on Rabbi Comes Back to Haunt Him, *Associated Press*, September 4, 2012.

<sup>8</sup> Cowan and Rashbaum, *New York Times*, Jan. 27, 2012

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

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Cowan and Rashbaum, *New York Times*, Jan. 27, 2012.

donation.<sup>13</sup> “Every day, he used to call me, over and over,” the follower told the *Times*.<sup>14</sup> He added that he ignored the requests.<sup>15</sup>

Another Rabbi Pinto congregant said when Rep. Grimm came to his office to pick up a legal contribution, Rep. Grimm mentioned there were ways to circumvent campaign finance laws and described a scheme involving straw donors.<sup>16</sup> According to the congregant, Rep. Grimm “wanted you to supply the money, and if someone wants to give and cannot give, you have to find a friend to give it through.”<sup>17</sup> He added, “Let’s say someone is not legal to give because he’s not American. Grimm wants this guy, Joe A, to give the money to Joe B so Joe B can make the contribution to the campaign.”<sup>18</sup>

A third follower of Rabbi Pinto said Mr. Biton asked him to pick up \$25,000 from an Israeli citizen for Rep. Grimm’s campaign.<sup>19</sup> The congregant said he did so and gave the checks to Mr. Biton, who passed them on to Rep. Grimm.<sup>20</sup> The follower said the money was then listed falsely in Rep. Grimm’s campaign disclosure filings as having been contributed by at least five other individuals.<sup>21</sup>

Rabbi Pinto’s followers said that Mr. Biton gathered the campaign contributions for Rep. Grimm because Mr. Biton hoped that if Rep. Grimm won, he would help Mr. Biton obtain a green card.<sup>22</sup> It is not known whether Rep. Grimm took any action to assist Mr. Biton. Rep. Grimm has said he did not intervene on Mr. Biton’s behalf with the Department of Homeland Security.<sup>23</sup>

Rep. Grimm also denied accepting illegal cash contributions, conspiring to funnel money to his campaign, or orchestrating any illegal contributions.<sup>24</sup> Nonetheless, former Rep. Anthony Weiner (D-NY), who had a relationship with Rabbi Pinto and received donations from members of the congregation while in office, said he went to the FBI in 2010 after Rabbi Pinto confided that he felt coerced into encouraging his congregation to donate to Rep. Grimm’s campaign.<sup>25</sup>

Rep. Grimm has other connections to Mr. Biton. In 2006, Rep. Grimm opened a restaurant in New York called Healthalicious with businessman Bennett Orfaly,<sup>26</sup> who is also

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Cowan and Rashbaum, *New York Times*, Jan. 27, 2012.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Cowan and Rashbaum, *New York Times*, Jan. 27, 2012.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Wroblewski and Randall, *Staten Island (New York) Advance*, Feb. 19, 2012.

<sup>24</sup> Cowan and Rashbaum, *New York Times*, Jan. 27, 2012; Tom Wroblewski, [Defiant Staten Island Rep. Michael Grimm Predicts Voters Will Return Him to Office](#), *Staten Island (New York) Advance*, February 2, 2012.

<sup>25</sup> Alison Gendar and Celeste Katz, [Weiner: I Dined Grimm](#), *New York Daily News*, March 3, 2012.

<sup>26</sup> Alison Leigh Cowan, [U.S. Ties Legislator’s Ex-Associate to Mob](#), *New York Times*, October 8, 2012.

Mr. Biton's partner in several restaurants.<sup>27</sup> Before Rep. Grimm took office, he and Mr. Orfaly apparently sold key assets of the business to Mr. Biton, including the right to use the name Healthalicious.<sup>28</sup> Federal prosecutors have asserted Mr. Orfaly has ties to a member of the Gambino crime family, regularly visiting him in prison and talking with him on the phone.<sup>29</sup> Rep. Grimm's attorney said Rep. Grimm has no knowledge of Mr. Orfaly's associates.<sup>30</sup>

Mr. Biton was under investigation by the FBI and federal prosecutors for allegedly embezzling millions of dollars from Rabbi Pinto's congregation, charges that Mr. Biton denied.<sup>31</sup> Mr. Biton's attorney also claimed his client never helped Rep. Grimm raise money.<sup>32</sup> In August 2012, Mr. Biton was arrested and charged with conspiring to defraud the United States by making false statements on a visa application, and the prosecutor said he expected to charge Mr. Biton with additional counts of extortion and money laundering.<sup>33</sup> Mr. Biton's attorney claimed the case was "politically motivated" because "they say he has ties to" the congressman,<sup>34</sup> but said Mr. Biton was "not cooperating" with prosecutors.<sup>35</sup> In August 2013, Mr. Biton pled guilty to making a false statement on a visa application.<sup>36</sup>

### **Improper Use of House Video Footage**

On May 24, 2012, Rep. Grimm sent a campaign e-mail to supporters claiming, "D.C. bureaucrats . . . attempted to weaken our defenses in the face of potential terrorist acts" by planning to eliminate Brooklyn's 24th National Guard Weapons of Mass Destruction Civil Support Team.<sup>37</sup> Rep. Grimm proclaimed this would not happen on his watch and explained he had proposed an amendment to the 2013 National Defense Authorization Act to save the team.<sup>38</sup> The e-mail, sent from GrimmforCongress.com, then stated, "You can catch my floor speech on the absurd plan to eliminate this crucial unit here."<sup>39</sup> The e-mail links to a YouTube video of Rep. Grimm's May 17, 2012 House floor speech.<sup>40</sup> The YouTube video is a C-SPAN broadcast of U.S. House deliberations on the 2013 National Defense Authorization Act in which Rep. Grimm claimed the proposed elimination of the civil support teams posed "tremendous risk."<sup>41</sup>

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<sup>27</sup> *United States v. Ofer Biton*, 1:12-cr-00580-RRM, Letter to Judge Roslynn R. Mauskopf, May 30, 2013 (E.D.N.Y. 2012).

<sup>28</sup> *Id.*, Letter to Judge Roslynn R. Mauskopf, May 23, 2013.

<sup>29</sup> Cowan, *New York Times*, Oct. 8, 2012.

<sup>30</sup> *Id.*

<sup>31</sup> Cowan and Rashbaum, *New York Times*, Jan. 27, 2012.

<sup>32</sup> *Id.*

<sup>33</sup> *United States v. Ofer Biton*, Complaint, August 13, 2012; Alison Leigh Cowan, [Lawyer Says Man's Link to Legislator Led to Arrest](#), *New York Times*, September 8, 2012.

<sup>34</sup> *Id.*; Michael Sedon, [Grimm: Why Would Biton Protect Me?](#), *Staten Island (New York) Advance*, September 9, 2012.

<sup>35</sup> John Marzulli, [Feds Squeeze Rep. Grimm Pal](#), *New York Daily News*, September 8, 2012.

<sup>36</sup> *United States v. Ofer Biton*, Criminal Cause for Guilty Plea, August 16, 2013.

<sup>37</sup> E-mail from Michael Grimm to Supporters with subject line "Not on My Watch," May 24, 2012, [http://www.citizensforethics.org/page/-/PDFs/Legal/Investigation/5-29-12\\_Grimm\\_OCE\\_Complaint\\_and\\_Exhibits.pdf?nocdn=1](http://www.citizensforethics.org/page/-/PDFs/Legal/Investigation/5-29-12_Grimm_OCE_Complaint_and_Exhibits.pdf?nocdn=1).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*; <http://www.youtube.com/watch?v=Bp8BCzLedj8>.

<sup>41</sup> *Id.*

Notably, the e-mail also included a link allowing viewers to donate to Rep. Grimm’s campaign committee.<sup>42</sup>

The next day, Rep. Grimm said the link to the House video had been accidentally included in the campaign e-mail.<sup>43</sup> “It wasn’t done on purpose,” he said. “Accidents will happen.”<sup>44</sup> Rep. Grimm promised to “tighten up” his operations and avoid repeating the mistake.<sup>45</sup>

This is not the first time Rep. Grimm has said he inadvertently violated rules prohibiting the use of government resources and materials to promote his candidacy. In May 2010, Rep. Grimm, an ex-Marine and former FBI agent, was a candidate in the Republican primary for the House of Representatives.<sup>46</sup> 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.<sup>47</sup> Both the Marines and the FBI objected, and said Rep. Grimm had not obtained proper permission to use either image.<sup>48</sup> Susan Del Percio, Rep. Grimm’s campaign spokeswoman, described the use of the insignia as “an unfortunate mistake.”<sup>49</sup> “Clearly, this will not happen again,” Ms. Del Percio said.<sup>50</sup>

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.<sup>51</sup> A spokesman for the FBI said the agency “would definitely consider that an inappropriate use.”<sup>52</sup> 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.”<sup>53</sup> 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.<sup>54</sup> Marine Corps Captain Brian Block said the disclaimer must be included on the ad itself.<sup>55</sup>

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<sup>42</sup> E-mail from Michael Grimm to Supporters with subject line “Not on My Watch,” May 24, 2012.

<sup>43</sup> Tom Wroblewski, Staten Island Rep. Michael Grimm Admits Campaign Email Violation, *Staten Island (New York) Advance*, May 25, 2012.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Richard Sisk and Michael McAuliff, That’s a Big No-No: Pol Uses Marines, FBI Logos, *New York Daily News*, May 19, 2010.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Tom Wroblewski, GOP Hopeful to McMahan: Refuse the WFP Line, *Staten Island (New York) Advance*, May 20, 2010.

<sup>51</sup> Michael McAuliff, Marines, FBI Take Aim at Ads, *New York Daily News*, August 7, 2010.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> McAuliff, *New York Daily News*, Aug. 7, 2010.

## **Status of Investigations**

There are multiple ongoing investigations into the allegations against Rep. Grimm. On January 31, 2012, Staten Island Democrats filed a complaint with the Federal Election Commission (FEC), asking for an investigation into the fundraising allegations.<sup>56</sup> The status of the FEC investigation is pending.

On February 9, 2012, CREW filed a complaint with the Office of Congressional Ethics (OCE) against Rep. Grimm, requesting an investigation into the fundraising allegations.<sup>57</sup> On June 29, 2012, the House Ethics Committee received a referral from OCE regarding whether Rep. Grimm violated federal campaign finance laws by soliciting and accepting prohibited campaign contributions, causing false information to be included in campaign finance reports, and improperly seeking assistance from a foreign national in soliciting campaign contributions in exchange for offering to use his official position to help that individual obtain a green card.<sup>58</sup> The referral recommended dismissal because OCE could not establish with sufficient certainty that any violations took place after Rep. Grimm became a member of Congress.<sup>59</sup> The committee, however, unanimously agreed on November 15, 2012 to assert jurisdiction over actions that took place during Rep. Grimm's initial campaign for the House.<sup>60</sup> The committee authorized an investigation into Rep. Grimm's conduct, but deferred it due to an ongoing Department of Justice investigation.<sup>61</sup>

On June 20, 2012, multiple newspapers reported that at least four of Rep. Grimm's 2010 campaign workers had been interviewed by the FBI and asked about potential fundraising violations and off-the-books campaign expenditures.<sup>62</sup> On July 19, 2012, the *New York Daily News* reported a Brooklyn federal grand jury had launched a probe into Rep. Grimm's fundraising activities.<sup>63</sup> Rep. Grimm's attorney acknowledged the FBI investigation in September 2012, saying his campaign had turned over documents but that there is no evidence of wrongdoing by Rep. Grimm.<sup>64</sup> According to the *Washington Post*, investigators also are examining whether Rep. Grimm went into business with a restaurateur – presumably Mr. Orfaly – with connections to organized crime.<sup>65</sup> The exact allegations under investigation are unclear.

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<sup>56</sup> Tom Wroblewski, Dem Asks FEC to Probe Allegations vs. Grimm, *Staten Island (New York) Advance*, February 1, 2012.

<sup>57</sup> Complaint filed with the Office of Congressional Ethics by Citizens for Responsibility and Ethics in Washington, February 9, 2012.

<sup>58</sup> Press Release, House Committee on Ethics, 112th Congress, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Michael Grimm, November 26, 2012.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Celeste Katz, FBI Questions Four (or More) in Rep. Grimm Campaign Investigation, *New York Daily News*, June 20, 2012; Tom Wroblewski, FBI Interviews 2010 Campaign Staffers for Staten Island Rep. Grimm, *Staten Island (New York) Advance*, June 20, 2012.

<sup>63</sup> Alison Gendar, Brooklyn Federal Grand Jury Probes Campaign Fundraising in Staten Island Rep. Michael Grimm's 2010 Campaign, *New York Daily News*, July 19, 2012.

<sup>64</sup> Caruso, *Associated Press*, Sept. 4, 2012; Larry Margasak, Ethics Panel Investigating New York Republican, *Associated Press*, November 26, 2012.

<sup>65</sup> Paul Kane, House Ethics Committee Opens Probe of Grimm, *Washington Post*, November 27, 2012; Mitchel Maddux and Dan Mangan, SI Pol's Partner Is Capo's Good Pal, Grimm Has 'Foodfella' Link to Jailed Gambino, *New York Post*, October 8, 2012; Cowan, *New York Times*, Oct. 8, 2012.

On May 29, 2012, CREW filed a complaint with OCE requesting an investigation into Rep. Grimm's improper use of a broadcast of a floor speech in a fundraising e-mail.<sup>66</sup> The status of the OCE investigation is unknown.

### **Legal Fees**

Since 2012, Rep. Grimm's campaign committee has incurred \$569,251.67 in legal fees to Patton Boggs.<sup>67</sup>

### **Potential Violations**

#### **Campaign Finance Violations**

Under the Federal Election Campaign Act (FECA) and federal campaign finance regulations, it is illegal to make a cash contribution of more than \$100, and any campaign receiving a cash contribution in excess of \$100 must immediately return the excess amount.<sup>68</sup> In addition, campaigns may not accept contributions in excess of the statutory limit, which was \$2,400 per election in 2010.<sup>69</sup> If Rep. Grimm received two cash contributions of \$5,000 each, he accepted illegal excessive cash campaign contributions.

The FECA and federal campaign finance regulations also prohibit accepting campaign contributions in the name of another or assisting anyone in making contributions in someone else's name.<sup>70</sup> It is also illegal for a federal campaign to solicit, accept, or receive a contribution from a foreign national.<sup>71</sup> Therefore, if as one of Rabbi Pinto's followers asserted, Rep. Grimm suggested and then accepted campaign contributions made in someone else's name, including contributions made by foreign nationals, he violated campaign finance law.

#### **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.<sup>72</sup> If Rep. Grimm promised he would use his government position to assist Mr. Biton's attempt to obtain a green card in return for Mr. Biton's

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<sup>66</sup> Complaint filed with the Office of Congressional Ethics by Citizens for Responsibility and Ethics in Washington, May 29, 2012.

<sup>67</sup> Michael Grimm for Congress, FEC Form 3, 2012 Post-General Election Report, December 8, 2012; Michael Grimm for Congress, FEC Form 3, 2013 April Quarterly Report, Amended, July 12, 2013; Michael Grimm for Congress, FEC Form 3, 2013 July Quarterly Report, July 15, 2013.

<sup>68</sup> 2 U.S.C. § 441g; 11 C.F.R. § 110.4(c).

<sup>69</sup> 2 U.S.C. §§ 441a(a)(1)(A), 441a(f); 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).

<sup>70</sup> 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b).

<sup>71</sup> 2 U.S.C. § 441e(a)(2).

<sup>72</sup> 18 U.S.C. § 201(b)(2)(A).

raising hundreds of thousands of dollars for Rep. Grimm’s congressional campaign, Rep. Grimm likely accepted a bribe.

### **Illegal Gratuity**

The federal illegal gratuity statute similarly 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.<sup>73</sup> In considering this statute, the Supreme Court has held that an illegal gratuity “may constitute merely a reward for some future act that the public official will take (and may already have determined to take),” and that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.<sup>74</sup> If Rep. Grimm took any official action to assist Mr. Biton as a reward for Mr. Biton’s raising hundreds of thousands of dollars in contributions for Rep. Grimm’s campaign, he likely accepted an illegal gratuity.

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.<sup>75</sup>

### **Taking Official Action on the Basis of Campaign Support**

The House Ethics Manual provides that “Members and staff are not to take or withhold any official action on the basis of the campaign contributions or support of the involved individuals, or their partisan affiliation.”<sup>76</sup> The House Ethics Manual also makes clear that members and staff “are not to give preferential treatment to casework requests made by the Member’s supporters or contributors.”<sup>77</sup> Rather, “**all** requests for casework assistance are to be handled according to their merits.”<sup>78</sup>

If Rep. Grimm took any official action to assist Mr. Biton’s attempt to obtain a green card because Mr. Biton helped him raise hundreds of thousands of dollars for his congressional campaign, he likely violated these provisions of the House Ethics Manual.

### **Unfairly Discriminating By Dispensing Special Favors**

The Code of Ethics for Governmental 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

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<sup>73</sup> 18 U.S.C. § 201(c)(1)(B).

<sup>74</sup> *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398, 404, 414 (1999).

<sup>75</sup> *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).

<sup>76</sup> House Comm. on Standards of Official Conduct, House Ethics Manual, at 150-51 (110th Cong., 2d Sess., 2008 ed.).

<sup>77</sup> *Id.* at 151.

<sup>78</sup> *Id.* (emphasis in original).

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.<sup>79</sup>

If Rep. Grimm took any official action to assist Mr. Biton's attempt to obtain a green card because Mr. Biton helped him raise hundreds of thousands of dollars for his congressional campaign, he likely dispensed special favors in violation of the Code of Ethics for Governmental Service.

### **Using Video of House Proceedings for Political Purpose**

House Rule 5, clause 2(c)(1) states, "Broadcast coverage and recordings of House floor proceedings may not be used for any political purpose." In addition, House Rule 11, clause 4(b) provides, "radio and television tapes and film of any coverage of House committee proceedings may not be used, or made available for use, as partisan political campaign material to promote or oppose the candidacy of any person for public office."<sup>80</sup>

Rep. Grimm's May 24, 2012 e-mail, sent from GrimmforCongress.com and including links to both a House floor speech and to donate to his campaign committee, clearly uses floor proceedings to promote his candidacy for Congress in violation of House 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."<sup>81</sup> This ethics standard is considered to be "the most comprehensive provision" of the code.<sup>82</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct noted it was included within the Code to deal with "flagrant" violations of the law that reflect on "Congress as a whole," which might otherwise go unpunished.<sup>83</sup> 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,<sup>84</sup> making false statements to the committee,<sup>85</sup> criminal convictions for bribery,<sup>86</sup> accepting illegal

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<sup>79</sup> 72 Stat., Part 2, B12, H. Con. Res. 175, 85th Cong. (adopted July 11, 1958); House Ethics Manual, at 20.

<sup>80</sup> See also House Ethics Manual, at 128.

<sup>81</sup> Rule 23, cl. 1.

<sup>82</sup> House Ethics Manual, at 12.

<sup>83</sup> 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).

<sup>84</sup> 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).

<sup>85</sup> 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).

<sup>86</sup> 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

gratuities,<sup>87</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>88</sup>

If Rep. Grimm took any official action to assist Mr. Biton's attempt to obtain a green card because Mr. Biton helped him raise hundreds of thousands of dollars for his congressional campaign, he likely engaged in conduct that does not reflect creditably on the House.

In addition, Rep. Grimm's May 24, 2012 e-mail, following on the heels of his inappropriate use of FBI and Marine Corps insignia in his last congressional campaign, demonstrate a disturbing pattern of violating House rules and federal law for personal, partisan political gain. By using a House floor speech for political purposes in violation of House rules, and by repeatedly using the FBI's seal and Marine Corps' emblem despite warnings such use was prohibited, Rep. Grimm acted in a manner that does not reflect creditably on the House.

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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)).

<sup>87</sup> 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).

<sup>88</sup> 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 GREGORY MEEKS

Representative Gregory Meeks (D-NY) is a nine-term member of Congress, representing New York's 5th congressional district. His ethics issues stem from: (1) accepting improper gifts and loans; (2) his involvement with charities under federal investigation; and (3) his actions on behalf of convicted banker and campaign donor R. Allen Stanford. He was included in CREW's 2011 and 2012 reports on congressional corruption for related matters.<sup>1</sup>

### 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.<sup>2</sup> In January 2007, only a few months after the purchase, the city listed the market value of the house as \$1,239,000.<sup>3</sup> The home was designed by Robert Gaskin, a campaign contributor to the congressman who has also worked on projects for which Rep. Meeks has obtained federal funds.<sup>4</sup> It was built on land owned by another Meeks contributor, real estate developer Richard Dennis.<sup>5</sup> Both Mr. Dennis and Rep. Meeks claimed Rep. Meeks had not received a sweetheart deal on the house, but an independent appraiser hired by the *New York Times* found the value of the house to be more than \$1 million at the time Rep. Meeks bought it.<sup>6</sup> "At \$830,000, anyway you slice it, it was substantially below market," the appraiser said.<sup>7</sup> "He appears to have gotten a very, very good deal."<sup>8</sup>

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.<sup>9</sup> Rep. Meeks said he obtained a \$40,000 loan in 2007, which he had since repaid, and that he received a \$15,000 loan in 2008, which he was still repaying.<sup>10</sup> Notably, Rep. Meeks failed to include information about any loans on his 2007 and 2008 personal financial disclosure reports, but called the lapses an "oversight."<sup>11</sup>

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<sup>1</sup> For more information, see CREW's Most Corrupt 2011, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-report-2011>, and CREW's Most Corrupt 2012, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-members-of-congress-report-2012>.

<sup>2</sup> 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 Lifestyle May Disagree, *New York Times*, March 20, 2010. The National Legal and Policy Center, a watchdog group, also raised questions about the sale of Rep. Meeks' former home in Far Rockaway, Queens. The NLPC alleges that Rep. Meeks sold that home at an inflated price to unqualified buyers represented by Alexander Kaplan, a Brooklyn real estate attorney who was subsequently convicted of a multi-million-dollar mortgage fraud scheme. For more information, see <http://nlpc.org/stories/2012/01/10/nlpc-asks-feds-investigate-meeks-house-sale>.

<sup>3</sup> National Legal and Policy Center Complaint.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Lipton and Hernandez, *New York Times*, Mar. 20, 2010.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 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.

<sup>10</sup> *Id.*

<sup>11</sup> Greg B. Smith, Queens Congressman Gregory Meeks: \$55G in Undisclosed Loans An 'Oversight', *New York Daily News*, June 21, 2010.

According to his 2009 personal financial disclosures, in 2008 Rep. Meeks took a loan for \$15,000 from the Congressional Federal Credit Union.<sup>12</sup> On the same form, Rep. Meeks also revealed a debt of \$50,000 to \$100,000 owed to Queens businessman Edul Ahmad, evidently the first disclosure of the 2007 loan and accrued interest.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup> Rep. Meeks received the money without any discussion of interest rates, due dates, or collateral requirements for the loan.<sup>16</sup> Further, Rep. Meeks made no payments on the loan until June 2010, after the FBI questioned Mr. Ahmad about the money.<sup>17</sup> At that point, Rep. Meeks apparently took out a home equity loan for \$59,650.<sup>18</sup> He then sent Mr. Ahmad a check for \$59,684, representing the \$40,000 plus an annual interest rate of 12.5 percent.<sup>19</sup> 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 loan secured by my home, which is exactly what I did during the same week that I filed my current and amended financial disclosure statement.”<sup>20</sup>

Rep. Meeks admitted he had no documents to back up the loan from Mr. Ahmad, but said it was due within 10 years.<sup>21</sup> He later told the House Ethics Committee the loan interest rate and repayment schedule was put in writing, but he misplaced the documents.<sup>22</sup> Mr. Ahmad’s lawyer, however, told the House Ethics Committee that the loan had no fixed interest rate, and Rep. Meeks did not sign any loan documents.<sup>23</sup> Rep. Meeks described the loan as “for my family obligations, etc. I was in a new house. It’s taking care of things for my family needs in the

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<sup>12</sup> 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.

<sup>13</sup> *Id.*; 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.

<sup>14</sup> Smith, *New York Daily News*, July 8, 2010.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*; In July 2011, the FBI arrested Mr. Ahmad on apparently unrelated mortgage fraud charges and, in October 2012, Mr. Ahmad pled guilty to one count of conspiracy to commit bank and wire fraud. His sentencing has not yet been scheduled. See *United States v. Edul Ahmad*, 1:11-mj-00755-jo (E.D.N.Y. 2011).

<sup>18</sup> 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.

<sup>19</sup> Smith, *New York Daily News*, July 8, 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).

<sup>20</sup> OCE Report and Findings, Exhibit 11, Press Release from Representative Gregory Meeks, July 9, 2010.

<sup>21</sup> Smith, *New York Daily News*, July 8, 2010.

<sup>22</sup> House Committee on Ethics, 112th Congress, *Report: In the Matter of Allegations Relating to Representative Gregory Meeks*, December 20, 2012, at 4.

<sup>23</sup> *Id.* at 5.

house [sic].”<sup>24</sup> Rep. Meeks continued, “You need to make sure the house is furnished. You need things.”<sup>25</sup>

The \$59,650 home equity loan Rep. Meeks took out to repay the \$40,000 was borrowed from Four Investments, an investment firm owned by Dennis Mehiel, another New York businessman and a longtime Democratic donor.<sup>26</sup> Although Mr. Mehiel has not commented 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.”<sup>27</sup> Mr. Mehiel and his wife, Karen Mehiel, donated a combined \$9,600 to Rep. Meeks during the 2010 election cycle, the maximum allowable.<sup>28</sup>

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.<sup>29</sup> Rep. Meeks also requested money to pay interest on the earlier loan.<sup>30</sup> Mr. Mehiel spoke with Rep. Meeks’ lawyers regarding loan terms, and told OCE Rep. Meeks’ lawyers wanted to complete the loan immediately because a House financial disclosure form was due.<sup>31</sup> In addition, Mr. Mehiel reported Rep. Meeks’ lawyers “felt compelled to pay the [original lender] a high interest rate so the [sic] Rep. Meeks would not be seen as getting a benefit.”<sup>32</sup> 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.<sup>33</sup> 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 percent interest rate payable quarterly after seeing the rate listed in the newspaper as a standard rate for such loans.<sup>34</sup>

### **Discounted Office Rent**

From 2002 until 2004, Rep. Meeks maintained a district office in the Richmond Hill neighborhood of Queens.<sup>35</sup> His office was in a building owned by Albert Baldeo, a Queens

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<sup>24</sup> Smith, *New York Daily News*, July 8, 2010.

<sup>25</sup> *Id.*

<sup>26</sup> 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.

<sup>27</sup> *Id.*; Raymond Hernandez, Enviably Access Given Top 10 Donors to New York Lawmakers, *New York Times*, February 11, 2010.

<sup>28</sup> Lesser and Gearty, *New York Daily News*, July 9, 2010; Center for Responsive Politics, Donor Lookup: Mehiel, 2009-2010.

<sup>29</sup> OCE Report and Findings, Exhibit 3, Memorandum of Interview, Managing Member, 4M Investments, LLC, March 14, 2011. The OCE report did not identify Mr. Mehiel by name, instead referring to the “Chairman of U.S. Corrugated, Inc. and Managing Member of 4M Investments, LLC.” Mr. Mehiel, however, is the owner of 4M Investments, and is also the chairman of U.S. Corrugated, Inc. See <http://www.uscorr.com/about-us/leadership-team/dennis-mehiel/>.

<sup>30</sup> OCE Report and Findings, at 8.

<sup>31</sup> *Id.*, Exhibit 3.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> OCE Report and Findings, at 8.

<sup>35</sup> Isabel Vincent and Melissa Klein, Pol’s ‘Crooked’ Pals, *New York Post*, January 20, 2013.

immigration lawyer.<sup>36</sup> In January 2013, Mr. Baldeo told the *New York Post* he had offered the congressman discounted rent during this period because he wanted Rep. Meeks to establish an office in Richmond Hill.<sup>37</sup>

House disbursement records show Rep. Meeks paid \$1,450 per month in rent for the Richmond Hill office from January 1, 2002 until September 2003, when the rent rose to \$2,220 per month.<sup>38</sup> In addition, Rep. Meeks' office reported a one-time \$6,000 rent payment to Mr. Baldeo on August 31, 2003.<sup>39</sup> Mr. Baldeo later said Rep. Meeks had increased the size of his office, requiring him to charge additional rent, and the \$6,000 was a retroactive payment of the difference.<sup>40</sup>

### **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 in Congress, are the subject of a federal probe into their dealings with several nonprofit groups.<sup>41</sup> 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.”<sup>42</sup> In April 2013, Sen. Smith was charged with wire fraud and bribery for attempting to bribe state Republican party officials in exchange for a spot on the party's mayoral ballot.<sup>43</sup> Sen. Smith pled not guilty.<sup>44</sup>

#### *Hurricane Katrina Charity*

In 2001, Rep. Meeks and state Sen. Smith co-founded a New York nonprofit called New Direction Local Development Corp.<sup>45</sup> From 2002 to 2008, New Direction's address was the

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<sup>36</sup> *Id.* In October 2012, Mr. Baldeo was arrested in connection with a straw donor scheme tied to his unsuccessful 2010 bid for New York City Council. The case is pending. See *United States v. Albert Baldeo*, 1:13-cr-00125-PAC (S.D.N.Y. 2012).

<sup>37</sup> Vincent and Klein, *New York Post*, Jan. 20, 2013.

<sup>38</sup> Committee on House Administration, 107th Congress, *Statement of Disbursements of the House from January 1, 2002 to March 31, 2002*, Document No. 107-201, Vol. 2, at 1822-23, April 18, 2002; Committee on House Administration, 108th Congress, *Statement of Disbursements of the House from July 1, 2003 to September 30, 2003*, Document No. 108-132, Vol. 2, at 1729-30, October 1, 2003.

<sup>39</sup> *Id.* at 1730.

<sup>40</sup> Vincent and Klein, *New York Post*, Jan. 20, 2013.

<sup>41</sup> 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; Isabel Vincent and Melissa Klein, Pols Pushed \$\$ Into Their Do-Nothing Qns. Charity, *New York Post*, February 2, 2010; <http://www.nysenate.gov/senator/malcolm-smith>; [http://www.legistorm.com/person/bio/127679/Floyd\\_Harold\\_Flake.html](http://www.legistorm.com/person/bio/127679/Floyd_Harold_Flake.html)

<sup>42</sup> 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.

<sup>43</sup> *United States v. Smith et al.*, 7:13-cr-00297-KMK (S.D.N.Y. 2013), Michael Wilson and William K. Rashbaum, Lawmakers in New York Tied to Bribery Plot in Mayor Race, *New York Times*, April 2, 2013; Colin Moynihan, Lawmakers Plead Not Guilty to Charges in Bribery Scheme, *New York Times*, April 23, 2013.

<sup>44</sup> *Id.*

<sup>45</sup> Ken Boehm, Rep. Gregory Meeks' Charity Looks More Like Slush Fund, National Legal and Policy Center, January 31, 2010.

office of Joan Flowers, a former campaign treasurer for both Rep. Meeks and Sen. Smith.<sup>46</sup> Ms. Flowers also worked as counsel to Sen. Smith, but was asked to resign in March 2010, as reports of the federal probe surfaced.<sup>47</sup> 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.<sup>48</sup> New Direction displayed a picture of Rep. Meeks on its website.<sup>49</sup>

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.<sup>50</sup> 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.<sup>51</sup> Rep. Meeks said all money raised for the fund would go to victims, and none would be used for administrative costs.<sup>52</sup> Rep. Meeks' congressional campaign contributed \$10,000 to the fund in 2005, though \$5,000 appears to have been refunded to the campaign in 2006.<sup>53</sup> 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.<sup>54</sup>

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.<sup>55</sup> According to press reports, the charity has not accounted for the rest of the money.<sup>56</sup> Rep. Meeks initially issued a statement saying "the funds were utilized to help sustain displaced evacuees," but did not provide details.<sup>57</sup> A few days 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.<sup>58</sup>

#### *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.<sup>59</sup> Rep. Meeks has secured millions of dollars in public money for the charity, including \$9.2

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<sup>46</sup> *Id.*

<sup>47</sup> Lovett, Ross, and Smith, *New York Daily News*, Apr. 2, 2010.

<sup>48</sup> Boehm, National Legal and Policy Center, Jan. 31, 2010; Editorial, Floyd Flake's Friends, *New York Post*, February 2, 2010.

<sup>49</sup> Melissa Klein and Isabel Vincent, Queens Pols Stuffed Katrina Victims, *New York Post*, February 7, 2010.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Boehm, National Legal and Policy Center, Jan. 31, 2010

<sup>53</sup> *Id.*

<sup>54</sup> Klein and Vincent, *New York Post*, Feb. 7, 2010.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Justin Elliott, U.S. Attorney Subpoenas NY Officials On Rep. Meeks' Non-Profit, *TPMMuckraker*, February 12, 2010; Jennifer Fermino, Meeks Passes the Bucks on Scandal, *New York Post*, March 16, 2010.

<sup>59</sup> Vincent and Klein, *New York Post*, Apr. 18, 2010.

million from the Federal Transit Administration for rehabilitation of an underpass.<sup>60</sup> Former Rep. Flake is a member of Greater Jamaica's board.<sup>61</sup>

### **Ties to Convicted Financier Allen Stanford**

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, between 2003 and 2007.<sup>62</sup> In 2006, in response to questions from the *New York Daily News* about the trips, Rep. Meeks claimed the trips were for business, though his wife traveled with him.<sup>63</sup> "It helps my marriage," he said.<sup>64</sup> Stanford Financial Group also hosted a fundraiser for Rep. Meeks on the island of St. Croix in the Virgin Islands on July 18, 2008.<sup>65</sup> Additionally, Stanford Financial Group's political action committee and employees donated \$15,100 to Rep. Meeks during the 2008 election cycle, making the firm the third largest contributor to Rep. Meeks' campaign committee.<sup>66</sup> Rep. Meeks also reportedly tried to set up a meeting between Mr. Ahmad and Mr. Stanford after receiving the \$40,000 loan from Mr. Ahmad.<sup>67</sup>

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.<sup>68</sup> 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.<sup>69</sup>

Rep. Meeks traveled to Venezuela in 2006 on a trip described as a meeting to express gratitude for a program that provided heating oil to Americans.<sup>70</sup> In 2007, Mr. Tirado was indicted in Venezuela.<sup>71</sup> 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.<sup>72</sup>

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> 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.

<sup>63</sup> Smith, *New York Daily News*, Dec. 29, 2009.

<sup>64</sup> *Id.*

<sup>65</sup> Complaint filed with the Federal Election Commission by the National Legal and Policy Center, October 28, 2011 available at <http://nlpc.org/stories/2011/11/03/watchdog-files-fec-complaint-against-rep-meeks-stanford-fundraiser>.

<sup>66</sup> <http://www.opensecrets.org/politicians/contrib.php?cycle=2008&type=I&cid=N00001171&newMem=N&recs=20>.

<sup>67</sup> Editorial, Greg Meeks' Felonious Friends, *New York Post*, October 12, 2012.

<sup>68</sup> Barry, Sallah, and Reyes, *Miami Herald*, Dec. 27, 2009.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Barry, Sallah, and Reyes, *Miami Herald*, Dec. 27, 2009.

In 2009, Mr. Stanford was indicted for running a Ponzi scheme and federal investigators reportedly began examining his ties to lawmakers, including Rep. Meeks.<sup>73</sup> The current status of the investigation is unknown.

### **Status of Investigations**

In April 2010, Rep. Meeks officially notified then-House Speaker Nancy Pelosi (D-CA) he had been served with a subpoena for documents issued by the U.S. District Court for the Southern District of New York; press reports said the subpoena was tied to the federal corruption probe into the nonprofits tied to Rep. Meeks and other Queens politicians.<sup>74</sup> In May 2013, federal authorities arrested former New York Senate Majority Leader John Sampson (D) on bribery charges related to the probe.<sup>75</sup> Mr. Ahmad reportedly helped prosecutors gather information used to bring those charges.<sup>76</sup> The current status of the federal investigation into Rep. Meeks is unknown, but recent news reports suggest it is ongoing.<sup>77</sup> For example, in June 2013, former state Sen. Shirley Huntley (D-NY), who cooperated with federal agents and taped other New York politicians suspected of corruption, said she agreed to a plan to invite suspects to her home so they could be taped, but when federal agents suggested inviting Rep. Meeks, she told them he only “meets in parks” and would be unlikely to come.<sup>78</sup>

After conducting an investigation into Rep. Meeks’ loans, OCE referred his case to the House Ethics Committee on May 18, 2011.<sup>79</sup> 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.”<sup>80</sup> OCE noted that both Rep. Meeks and Mr. Ahmad had declined to cooperate with 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 Representative Meeks in 2007 appears to have been a gift.”<sup>81</sup> OCE recommended the House Ethics Committee further review the matter and issue subpoenas to Rep. Meeks and Mr. Ahmad.<sup>82</sup>

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<sup>73</sup> Michael Sallah and Rob Barry, Feds Probe Banker Allen Stanford’s Ties to Congress, *Miami Herald*, December 29, 2009. On March 6, 2012, Mr. Stanford was found guilty on 13 of 14 counts of operating a Ponzi scheme, including charges of fraud, conspiracy and obstructing an investigation by the SEC. On June 14, 2012, he was sentenced to 110 years in prison. Press Release, Department of Justice, Allen Stanford Sentenced To 110 Years In Prison For Orchestrating \$7 Billion Investment Fraud Scheme, June 14, 2012.

<sup>74</sup> S.A. Miller and Murray Weiss, Subpoena Takes Meeks By Storm, *New York Post*, April 16, 2010.

<sup>75</sup> Mitchel Maddux and Dan Mangan, State Sen. John Sampson Indicted on Embezzlement Charges, Faces 120 Years, *New York Post*, May 7, 2013.

<sup>76</sup> *Id.*

<sup>77</sup> Irving DeJohn and Kenneth Lovett, Smith Was ‘Willing To Sell His Soul To Be The Man Again’, *New York Daily News*, April 4, 2013; Maddux and Mangan, *New York Post*, May 7, 2013; John Marzulli, Water Gate Shirley’s Espionage Drama; Spy Pol Tells All About Her 007 Trickery, *New York Daily News*, June 10, 2013.

<sup>78</sup> *Id.*

<sup>79</sup> Press Release, House Committee on Ethics, 112th Congress, Statement of the Chairman and Ranking Member Regarding Mr. Michael Collins, Mr. Greg Hill, Representative Gregory Meeks, and Representative Jean Schmidt, July 1, 2011.

<sup>80</sup> OCE Report and Findings, at 1.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 20.

In contrast, OCE found the 2010 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.<sup>83</sup> As a result, OCE recommended dismissal of allegations concerning that loan.<sup>84</sup> 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 2007 payment.<sup>85</sup>

On December 20, 2012, the House Ethics Committee found Rep. Meeks failed to disclose the loan on his personal financial disclosure forms, but concluded there was no evidence his failure was in bad faith or was knowing or willful and decided to take no further action against him.<sup>86</sup> The committee also said it could not conclude Mr. Ahmad's loan to Rep. Meeks constituted an improper gift.<sup>87</sup> Rep. Meeks told the committee he had lost the loan agreement, and thus could not produce evidence of the terms of the loan.<sup>88</sup> The committee, however, was unable to interview Mr. Ahmad, whose lawyer said Mr. Ahmad would invoke the Fifth Amendment if the committee subpoenaed him, unless he was given immunity from prosecution.<sup>89</sup> Mr. Ahmad's lawyer did tell committee staff that Rep. Meeks had not signed any loan documents and the loan carried no fixed interest rate, contradicting Rep. Meeks' version of events.<sup>90</sup> The committee, however, said Mr. Ahmad's "highly compromised credibility" meant it could not reasonably conclude Rep. Meeks had been untruthful without documentary evidence showing the money was not a loan.<sup>91</sup>

## **Legal Fees**

Since 2010, Rep. Meeks' campaign committee and political action committee have reported paying more than \$400,000 in legal fees to seven firms: \$211,000 to Dorsey & Whitney, \$146,627 to Perkins Coie, \$31,832 to Arent Fox, \$4,740 to Wiltshire & Grannis, \$4,205 to Thomas V. Kenney, Jr., Esq., \$10,031 to Baldassare & Mara, and \$2,000 to Steptoe & Johnson.<sup>92</sup>

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<sup>83</sup> *Id.* at 5.

<sup>84</sup> *Id.*

<sup>85</sup> Press Release, House Committee on Ethics, 112th Congress, Statement of the Chairman and Ranking Member Regarding Representative Gregory W. Meeks, August 5, 2011.

<sup>86</sup> *In the Matter of Allegations Relating to Representative Gregory Meeks*, H. Rep. No. 112-709, 112th Cong., 2d Sess. 5-6 (Dec. 20, 2012).

<sup>87</sup> *Id.* at 6.

<sup>88</sup> *Id.* at 4.

<sup>89</sup> *Id.* at 5.

<sup>90</sup> *In the Matter of Allegations Relating to Representative Gregory Meeks*, H. Rep. No. 112-709, 112th Cong., 2d Sess. 6.

<sup>91</sup> *Id.*; Press Release, House Committee on Ethics, 112th Congress, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Gregory W. Meeks, December 20, 2012.

<sup>92</sup> Friends for Gregory Meeks, FEC Form 3, 2010-2013 Reports; Build America PAC, FEC Form 3X, 2010-2013 Reports.

## Potential Violations

### **False Statements on Personal Financial Disclosure Forms**

The Ethics in Government Act of 1978 requires all members of Congress to file financial disclosure reports.<sup>93</sup> Under the statute, the attorney general may seek a civil penalty of up to \$50,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.<sup>94</sup> House Rule 26 incorporates the financial disclosure provisions of the Ethics in Government Act.<sup>95</sup>

Federal law prohibits anyone from making “any materially false, fictitious, or fraudulent statement or representation”<sup>96</sup> on “a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch.”<sup>97</sup> Further, personal obligations aggregating over \$10,000 owed to one creditor at any time during the calendar year, regardless of repayment terms or interest rates, must be included on personal financial disclosure statements.<sup>98</sup>

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.

### **False Statement to the House Ethics Committee**

Federal law also prohibits anyone from making “any materially false, fictitious, or fraudulent statement or representation”<sup>99</sup> to “any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.”<sup>100</sup>

If Rep. Meeks’ claims to the House Ethics Committee that the \$40,000 he received from Mr. Ahmad was a loan, the loan had a repayment schedule and was to be repaid with interest, the terms were put in writing, and Rep. Meeks lost the loan agreement – all statements contradicted by Mr. Ahmad’s lawyer – were false, he may have made additional false statements in violation of 18 U.S.C. § 1001.

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<sup>93</sup> Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

<sup>94</sup> 5 U.S.C. app. 4, § 104.

<sup>95</sup> House Comm. on Standards of Official Conduct, House Ethics Manual, at 248 (110th Cong., 2d Sess., 2008 ed.).

<sup>96</sup> 18 U.S.C. § 1001(a)(2).

<sup>97</sup> 18 U.S.C. § 1001(c)(1).

<sup>98</sup> House Ethics Manual, at 258 (citing 5 U.S.C. app. 4 § 102(a)(4)).

<sup>99</sup> 18 U.S.C. § 1001(a)(2).

<sup>100</sup> 18 U.S.C. § 1001(c)(2).

## **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.<sup>101</sup>

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. If Rep. Meeks used his position to benefit Mr. Baldeo in exchange for discounted rent, he may have accepted bribes.

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.<sup>102</sup> 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.<sup>103</sup>

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 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 to benefit Mr. Baldeo in exchange for discounted rent, he may have violated the illegal gratuity statute. 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 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.<sup>104</sup>

## **Receiving Compensation For Exerting Improper Influence**

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits federal employees, including members of Congress and staff, from soliciting or accepting anything of value from anyone who seeks official action from the employee's agency, does business with

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<sup>101</sup> 18 U.S.C. § 201(b)(2)(A).

<sup>102</sup> 18 U.S.C. § 201(c)(1)(B).

<sup>103</sup> *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398 (1999).

<sup>104</sup> *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).

that agency, or has interests which may be substantially affected by the performance of the employee's official duties.<sup>105</sup> 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. If Rep. Meeks used his position to benefit Mr. Baldeo in exchange for discounted rent, he may have violated these provisions. 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 5 U.S.C. § 7353 and House Rule 23.

### **Official Action for Personal Gain**

Members of the House are prohibited from "taking any official actions for the prospect of personal gain for themselves or anyone else."<sup>106</sup> 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. 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). If Rep. Meeks used his position to benefit Mr. Baldeo in exchange for discounted rent, he may have violated this provision. 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 5 C.F.R. § 2635.702(a).

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<sup>105</sup> The House Ethics Committee interprets this provision to apply to accepting campaign contributions, but not soliciting them. 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; House Ethics Manual, at 143-44, 150.

<sup>106</sup> 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.

## **Unfairly Discriminating By Dispensing Special Favors**

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.<sup>107</sup>

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 for Government Service. If Rep. Meeks used his position to benefit Mr. Baldeo in exchange for discounted rent, he may have violated this provision. 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 dispensed special favors in violation of the Code of Ethics for Government Service.

## **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.”<sup>108</sup>

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 House Ethics Committee.<sup>109</sup> 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.<sup>110</sup>

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 House 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,

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<sup>107</sup> 72 Stat., Part 2, B12, H. Con. Res. 175, 85th Cong. (adopted July 11, 1958); House Ethics Manual, at 20.

<sup>108</sup> Rule 25, cl. 5(a)(2)(A).

<sup>109</sup> Rule 25, cl. 5(a)(5); House Ethics Manual, at 40. These determinations are not public. *Id.*

<sup>110</sup> 5 U.S.C. app. 4 § 102(a)(2); House Ethics Manual, at 84, 258-59. This amount has since been increased to \$350.

including requirements for repayment and a reasonable rate of interest.<sup>111</sup>

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.”<sup>112</sup>

#### *Discounted House Price*

It appears Rep. Meeks was permitted to purchase his house for a price one appraiser estimated was 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*

Even though the House Ethics Committee said it could not conclude Mr. Ahmad’s \$40,000 alleged loan was a gift, given that Rep. Meeks failed to seek the committee’s approval of it, 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.

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, and failing to report them is a federal

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<sup>111</sup> 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*, at 381-384).

<sup>112</sup> *Id.*

crime.<sup>113</sup> 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 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.”<sup>114</sup> This ethics standard is considered to be “the most comprehensive provision” of the code.<sup>115</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” which might otherwise go unpunished.<sup>116</sup> 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,<sup>117</sup> making false statements to the committee,<sup>118</sup> criminal convictions for bribery,<sup>119</sup> accepting illegal gratuities,<sup>120</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>121</sup>

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. Similarly, 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.

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<sup>113</sup> House Ethics Manual, at 258 (citing 5 U.S.C. App. 4 § 102(a)(4)).

<sup>114</sup> Rule 23, cl. 1.

<sup>115</sup> House Ethics Manual, at 12.

<sup>116</sup> 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).

<sup>117</sup> 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).

<sup>118</sup> 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).

<sup>119</sup> 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)).

<sup>120</sup> 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).

<sup>121</sup> 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 HAL ROGERS

Representative Harold “Hal” Rogers (R-KY) is a seventeen-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 millions of dollars in earmarks to a manufacturing company in exchange for contributions to his campaign committee and political action committee (PAC). He was included in CREW’s 2007, 2008, 2011, and 2012 reports on congressional corruption for related matters.<sup>1</sup>

### **Phoenix Products, Inc.**

Phoenix Products is an engineering and manufacturing company based in McKee, Kentucky.<sup>2</sup> Since 2006, the Army has entered into contracts totaling more than \$17.6 million with Phoenix Products to procure hundreds of leakproof transmission fluid drip pans for UH-60 Black Hawk helicopters.<sup>3</sup> During that period, Rep. Rogers repeatedly issued press releases proclaiming he had “secured” more than \$17 million in public funding for the Phoenix Products-produced drip pans.<sup>4</sup> A list of requested earmarks for FY 2010 Rep. Rogers posted on his website includes \$16 million in requests for Phoenix Products to produce the drip pans for the Army and the Army National Guard, and databases of earmarks list Phoenix Products as having received at least \$12.1 million in earmarks for the drip pans from Rep. Rogers.<sup>5</sup> In addition, the conference reports for appropriations bills for 2005 and 2008-2010 include line items for millions of dollars for leakproof transmission drip pans, and three of the bills specifically note they were requested by Rep. Rogers.<sup>6</sup>

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<sup>1</sup> For more information, *see Beyond DeLay: The 22 Most Corrupt Members of Congress (and two to watch)*, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-report-2007>, *CREW’s Most Corrupt Members of Congress: The 20 Most Corrupt Members of Congress (and four to watch)*, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-2008>, *CREW’s Most Corrupt 2011*, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-report-2011>, and *CREW’s Most Corrupt 2012*, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-members-of-congress-report-2012>.

<sup>2</sup> <http://www.acstuff.com/aboutus.htm>; <http://www.acstuff.com/contactus.htm>.

<sup>3</sup> Office of Congressional Ethics Complaint filed by Citizens for Responsibility and Ethics in Washington (CREW OCE Complaint), Exhibit A, Federal Procurement Data System Purchase and Delivery Orders, filed June 11, 2012, available at [http://www.citizensforethics.org/page/-/PDFs/Legal/Investigation/OCE\\_Rogers\\_Combined\\_Exhibits.pdf?nocdn=1](http://www.citizensforethics.org/page/-/PDFs/Legal/Investigation/OCE_Rogers_Combined_Exhibits.pdf?nocdn=1).

<sup>4</sup> Press Release, Representative Harold Rogers, Jackson County Business Wins \$7 Million Army Contract, September 26, 2007; Press Release, Representative Harold Rogers, Congress Approves \$3.6 Million for Military Equipment Made in Jackson County, November 12, 2007; Press Release, Representative Harold Rogers, McKee Made Army Helicopter Drip Pans Receives Congressional Approval, September 25, 2008; Press Release, Representative Harold Rogers, Rep. Rogers Secures Funding for McKee Made Army Helicopter Drip Pans, August 28, 2009; Press Release, Representative Harold Rogers, Rogers Secures \$4.5 Million for McKee Made Army Drip Pans, December 17, 2009.

<sup>5</sup> <http://www.opensecrets.org/politicians/earmarks.php?fy=FY10&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.legistorm.com/earmarks/details/organization/1225/Phoenix\\_Products\\_Inc\\_/page/1/sort/amount/type/desc/year/all.html](http://www.legistorm.com/earmarks/details/organization/1225/Phoenix_Products_Inc_/page/1/sort/amount/type/desc/year/all.html); H.R. Rep. 108-622, at 102 (2004) (Conf. Rep.); Eric Lichtblau, *Earmark Puts \$17,000 Pans On Army Craft*, *New York Times*, May 18, 2012.

<sup>6</sup> H.R. Rep. 108-622, at 102 (2004) (Conf. Rep.); H.R. Rep. 110-434, at 382, 386 (2007) (Conf. Rep.); H.R. Rep. 111-230, at 393, 395 (2009) (Conf. Rep.); <http://www.opensecrets.org/politicians/earmarks.php?fy=FY09&cid=N00003473&cycle=2010>.

According to an Army spokesman, as of October 2011 the Army had purchased 374 of the drip pans at an average cost of \$17,000.<sup>7</sup> The number may actually be higher. One contract obtained by CREW through the Freedom of Information Act indicates the maximum number of drip pans the Army could order under the contract was 471, and the total number ordered as of March 2009 was 407.<sup>8</sup> Meanwhile, a competitor who produces drip pans for other military helicopters said his company charges about \$2,500 for a similar part – about one-eighth the price charged by Phoenix Products.<sup>9</sup>

After the competitor began questioning the price, reporters asked Rep. Rogers about the earmarks. Rep. Rogers' spokeswoman told *Bloomberg* that Phoenix Products had been awarded the contracts through a competitive bidding process.<sup>10</sup> One of Rep. Rogers' congressional aides, however, told the *New York Times* the congressman "inserted the earmark," and an Army spokesman told the *Times* the Army was simply following a budget directive from Congress and the work had been awarded without competitive bids.<sup>11</sup> Buttrressing that, many of the purchase and delivery orders for the drip pans in the Federal Procurement Data System assert there was no competition for them as "authorized by statute."<sup>12</sup>

The owners of Phoenix Products, Peggy and Thomas Wilson, have contributed \$20,400 to Rep. Rogers' campaign committee and PAC since 2004.<sup>13</sup> Phoenix Products retained the lobbying firm Martin, Fisher, Thompson & Associates from 2004 to 2012, and employees of that firm contributed \$17,000 to Rep. Rogers' campaign and PAC between 2002 and 2012.<sup>14</sup>

### **Status of Investigation**

On June 11, 2012, CREW asked the U.S. Army's Office of the Inspector General to investigate why the Army paid so much for the drip pans.<sup>15</sup> The office was investigating as of December 2012, but the current status of the investigation is unclear.<sup>16</sup>

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<sup>7</sup> Lichtblau, *New York Times*, May 18, 2012.

<sup>8</sup> CREW OCE Complaint, Exhibit D, Solicitation/Contract/Order for Commercial Items, Contract No. W58RGZ-07-D-0267, August 7, 2007, at 2; CREW OCE Complaint, Exhibit D, Solicitation/Contract/Order for Commercial Items, Contract No. W58RGZ-07-D-0267, Order No. 0005, March 9, 2009, at 2.

<sup>9</sup> Lichtblau, *New York Times*, May 18, 2012.

<sup>10</sup> Stephanie Armour, Army Purchases Of \$17,000 Pans Tied To Kentucky Lawmaker, *Bloomberg*, May 19, 2012.

<sup>11</sup> Lichtblau, *New York Times*, May 18, 2012.

<sup>12</sup> CREW OCE Complaint, Exhibit A, Federal Procurement Data System Purchase and Delivery Orders.

<sup>13</sup> Political MoneyLine, Employer Search, Phoenix Products, 2001-Present; Political MoneyLine, Donor Lookup, Thomas Wilson, 2001-Present; Political MoneyLine, Donor Lookup, Peggy Wilson, 2001-Present.

<sup>14</sup> Martin, Fisher, Thompson & Associates, Lobbying Registration October 1, 2004, on behalf of Phoenix Products, Inc., Secretary of the Senate, Office of Public Records; Martin, Fisher, Thompson & Associates, Second Quarter 2012 Lobbying Disclosure Termination Report on behalf of Phoenix Products, Inc., Secretary of the Senate, Office of Public Records; Political MoneyLine, Employer Search, Martin, Fisher, Thompson & Associates, 2001-Present; Political MoneyLine, Donor Lookup, Steven Thompson, 2001-Present; Political MoneyLine, Donor Lookup, J. Paris Fisher, 2001-Present; Political MoneyLine, Donor Lookup, David Martin, 2001-Present.

<sup>15</sup> Request for Investigation filed by Citizens for Responsibility and Ethics in Washington, filed June 11, 2012, available at <http://www.citizensforethics.org/legal-filings/entry/army-office-of-congressional-ethics-investigate-hal-rogers-kentucky-earmark>.

<sup>16</sup> Phillip Swarts, Another Overpriced Hammer? The \$17,000 Army Drip Pan, *Washington Guardian*, December 14, 2012.

## 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.<sup>17</sup> 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.<sup>18</sup>

If a link is established between Rep. Rogers' earmarking funds or obtaining federal contracts or loans for Phoenix Products and the campaign donations he received from executives and employees of either the company or its lobbyists, he may have accepted an illegal gratuity.

### **Receiving Compensation For Exerting Improper Influence**

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits federal employees, including members of Congress and staff, from soliciting or accepting anything of value from anyone who seeks official action from the employee's agency, does business with that agency, or has interests which may be substantially affected by the performance of the employee's official duties.<sup>19</sup> 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 earmarking federal funds for Phoenix Products, he may have violated 5 U.S.C. § 7353 and House Rule 23.

### **Official Action for Personal Gain**

Members of the House are prohibited from "taking any official actions for the prospect of personal gain for themselves or anyone else."<sup>20</sup> 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:

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<sup>17</sup> 18 U.S.C. § 201(c)(1)(B).

<sup>18</sup> *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398 (1999).

<sup>19</sup> The House Ethics Committee interprets this provision to apply to accepting campaign contributions, but not soliciting them. 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; House Ethics Manual, at 143-44, 150.

<sup>20</sup> 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.

If Rep. Rogers accepted campaign contributions in return for funneling earmarks and federal contracts to Phoenix Products, he may have taken official action for personal gain in violation of 5 C.F.R. § 2635.702(a).

### **Unfairly Discriminating By Dispensing Special Favors**

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.<sup>21</sup>

If Rep. Rogers accepted campaign contributions in return for funneling earmarks and federal contracts to Phoenix Products, he may have dispensed special favors in violation of 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.”<sup>22</sup> This ethics standard is considered to be “the most comprehensive provision” of the code.<sup>23</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” which might otherwise go unpunished.<sup>24</sup> 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,<sup>25</sup> making false statements to the committee,<sup>26</sup> criminal convictions for bribery,<sup>27</sup> accepting illegal

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<sup>21</sup> 72 Stat., Part 2, B12, H. Con. Res. 175, 85th Cong. (adopted July 11, 1958); House Comm. on Standards of Official Conduct, House Ethics Manual, at 20 (110th Cong., 2d Sess., 2008 ed.).

<sup>22</sup> Rule 23, cl. 1.

<sup>23</sup> House Ethics Manual, at 12.

<sup>24</sup> 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).

<sup>25</sup> 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).

<sup>26</sup> 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).

<sup>27</sup> 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

gratuities,<sup>28</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>29</sup>

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.

In addition, wasteful earmarks have been the subject of significant controversy for many years and led to the current moratorium on earmarks. Rep. Rogers, once known for his generous use of earmarks, decried the practice to obtain the chairmanship of the House Appropriations Committee. Confronted by negative media attention for the drip pan earmark, it appears Rep. Rogers may have lied by having a spokeswoman claim he did not, in fact, insert the earmark despite evidence indicating that he did. Lying to cover up wasteful government spending on behalf of a campaign donor does not reflect creditably upon the House.

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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)).

<sup>28</sup> 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).

<sup>29</sup> 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 VALADAO

Representative David Valadao (R-CA) is a first-term member of Congress, representing California's 21st congressional district. His ethics issues stem from abusing his position on the House Appropriations Committee to benefit his and his family's financial interests.

### **Sponsoring Legislation Benefiting His and His Family's Financial Interests**

In 2008, California voters approved a plan for a high-speed rail system between Los Angeles and San Francisco.<sup>1</sup> The first segment of the rail line is to be built in the San Joaquin Valley, using a combination of federal and state money.<sup>2</sup> About 400 parcels of land are needed to begin construction on a 29-mile stretch from Madera to Fresno, California.<sup>3</sup>

Rep. Valadao and his family operate the Valadao Dairy in Kings County, California — part of the San Joaquin Valley.<sup>4</sup> The dairy owns three parcels of land, collectively more than 500 acres, with an assessed value of more than \$1.8 million, directly along one of the proposed routes of the high-speed rail line.<sup>5</sup> The largest parcel of the Valadao property, which is more than 402 acres and has an assessed value of \$1.14 million, would be affected by a new road overpass associated with a railway bypass.<sup>6</sup> In addition to the three parcels directly affected by the project, the dairy owns six other parcels of land, totaling about 209 acres with an assessed value of nearly \$1.38 million, which sit within one mile of the two prospective track options.<sup>7</sup> Also within a mile of one or both potential routes are an additional 455 acres, assessed at nearly \$6.2 million and owned by either Rep. Valadao's parents or his uncle.<sup>8</sup>

The rail project has been controversial and some of those who own property along the proposed rail route have opposed it on the grounds it will have a negative impact on the value of their land.<sup>9</sup> According to his spokesperson, Rep. Valadao has been a vocal opponent of the project since before he was elected to Congress.<sup>10</sup>

In June 2013, Rep. Valadao successfully offered an amendment to the House Transportation, Housing and Urban Development, and Related Agencies Appropriations Bill for 2014, which would bar the federal Surface Transportation Board from approving any individual construction segments of the project, instead allowing the board to consider the project only on a

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<sup>1</sup> Ralph Vartabedian, California Still Hasn't Bought Land for Bullet Train Route, *Los Angeles Times*, January 27, 2013.

<sup>2</sup> Michael Doyle, Bumpy Path Ahead for High-Speed Rail, *Merced Sun-Star*, July 2, 2013.

<sup>3</sup> Vartabedian, *Los Angeles Times*, Jan. 27, 2013.

<sup>4</sup> David Valadao, Personal Financial Disclosure Statement for Calendar Year 2012, filed May, 15 2013; Tim Sheehan, Rep. David Valadao Owns Land on High-Speed Rail Routes, *Fresno Bee*, July 13, 2013.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Sheehan, *Fresno Bee*, July 13, 2013.

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

<sup>10</sup> *Id.*

statewide basis.<sup>11</sup> The amendment could effectively stall, if not end, the prospect of building additional segments of the rail line.<sup>12</sup> Dan Richard, chairman of the California High-Speed Rail Authority, said “there was no legitimate policy reason for [Rep. Valadao’s] amendment,” which “could be interpreted to stop the project completely.”<sup>13</sup>

When Rep. Valadao offered his amendment to the appropriations bill, he twice advocated its adoption, but on neither occasion did he inform his colleagues of his personal financial interest in it.<sup>14</sup> Several other California representatives who rose in opposition to the amendment referred to the fact that landowners and farm owners in Rep. Valadao’s district oppose the high-speed rail, concerned about its effect on their property values.<sup>15</sup> None of these members, however, appeared aware that Rep. Valadao himself is among that group of landowners.<sup>16</sup> In closing the debate prior to the vote on the amendment, Rep. Valadao responded to his colleagues’ critiques, still failing to reveal his and his family’s financial interest.<sup>17</sup>

### Potential Violations

### **Official Action Affecting Personal Financial Interests**

House rules and precedents largely favor allowing members to vote on the floor on legislation that may impact their personal economic interests out of concern over disenfranchising their constituents.<sup>18</sup> Members may not, however, take other official action, such as sponsoring legislation, advocating or participating in a committee proceeding, or contacting an executive branch agency, when their financial interests are at issue.<sup>19</sup> As the House Ethics Manual notes, “such actions entail a degree of advocacy above and beyond that involved in voting,” meaning a member’s “decision on whether to take any such action on a matter that may affect his or her personal financial interests may implicate the rules and standards . . . that prohibit the use of one’s official position for personal gain.”<sup>20</sup> Even when no specific rule applies, members are advised to avoid situations “in which even an inference might be drawn suggesting improper conduct.”<sup>21</sup> Moreover, while House precedent on conflicts indicates disclosure “is the preferred method of regulating possible conflicts of interest,” particularly when a member’s interests and that of his constituents intersect, “such disclosure must be full and

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<sup>11</sup> Amendments Adopted to the Transportation/HUD Appropriations Bill for FY 2014, Full Committee Markup, House Appropriations Committee, June 27, 2013, #6, Amendment to Transportation and HUD Appropriations Bill Offered by Mr. Valadao of California; Sheehan, *Fresno Bee*, July 13, 2013.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Video, Full Committee Markup – FY 2014 Transportation, Housing and Urban Development Appropriations Committee Hearing, Part I, 2:10:15-2:23:11, available at <http://appropriations.house.gov/calendararchive/%20eventsingle.aspx?EventID=340457>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Rule 3, cl. 1; House Comm. on Standards of Official Conduct, House Ethics Manual, at 237 (110th Cong., 2d Sess., 2008 ed.).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 186; Rule 23, cl. 2.

complete, and even if complete, does not always alleviate a conflict or permit a [m]ember to act.”<sup>22</sup>

By introducing an amendment that would benefit his and his family members’ personal financial interest, advocating for the amendment in an effort to persuade his colleagues to support it, voting in the House Appropriations Committee for adoption of the amendment, and failing to disclose that his and his family members’ personal finances are likely to be impacted significantly by the construction of the high-speed rail line, Rep. Valadao appears to have violated House rules governing conflicts of interest.

### **Official Action for Personal Gain**

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”<sup>23</sup> 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.

As a House Ethics Committee investigative subcommittee recently noted, conflicts of interest may pose the greatest threat to the public faith in elected officials “because self-dealing is such a simple and well-understood breach of that public trust. The term ‘public servant’ cannot survive if the servants serve themselves.”<sup>24</sup>

By introducing an amendment that would benefit his and his family members’ personal financial interest, advocating for the amendment in an effort to persuade his colleagues to support it, and voting in the House Appropriations Committee for adoption of the amendment, Rep. Valadao appears to have used his position for his and his family’s personal gain in violation of 5 C.F.R. § 2635.702(a).

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<sup>22</sup> House Comm. on Ethics, *In the Matter of Allegations Relating to Representative Shelley Berkley*, H. Rep. No. 112-716, 112th Cong., 2nd Sess. (Dec. 13, 2012), Appendix A, Report of the Investigative Subcommittee, at 46, *citing House Ethics Manual*, at 251.

<sup>23</sup> 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.

<sup>24</sup> House Comm. on Ethics, *In the Matter of Allegations Relating to Representative Shelley Berkley*, Appendix A, Report of the Investigative Subcommittee, at 50.

## 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.”<sup>25</sup> This ethics standard is considered to be “the most comprehensive provision” of the code.<sup>26</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” which might otherwise go unpunished.<sup>27</sup> 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,<sup>28</sup> making false statements to the committee,<sup>29</sup> criminal convictions for bribery,<sup>30</sup> accepting illegal gratuities,<sup>31</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>32</sup>

By introducing an amendment that would benefit his and his family members’ personal financial interest, advocating for the amendment in an effort to persuade his colleagues to support it, voting in the House Appropriations Committee for adoption of the amendment, and failing to disclose that his and his family members’ personal finances are likely to be impacted significantly by the construction of the high-speed rail line, Rep. Valadao appears to have engaged in conduct that does not reflect creditably on the House.

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<sup>25</sup> Rule 23, cl. 1.

<sup>26</sup> House Ethics Manual, at 12.

<sup>27</sup> 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).

<sup>28</sup> 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).

<sup>29</sup> 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).

<sup>30</sup> 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)).

<sup>31</sup> 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).

<sup>32</sup> 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 DON YOUNG

Representative Don Young (R-AK) is a twenty-one-term member of Congress, representing Alaska at-large. His ethics issues stem from: (1) earmarking transportation funds to a campaign donor; (2) using campaign funds for personal expenses; and (3) failing to disclose gifts and trips from lobbyists. He was included in CREW's 2007, 2008, 2009, and 2012 reports on congressional corruption for related matters.<sup>1</sup>

### **Earmarking Funds to Benefit Campaign Donor**

In February 2005, while serving as the chairman of the House Transportation and Infrastructure Committee, Rep. Young traveled to Florida's Gulf Coast to discuss transportation projects, including a \$10 million interchange with Interstate 75 that would have connected the highway to Coconut Road.<sup>2</sup> During his stay, Rep. Young attended a fundraiser in his honor, organized by land developer Daniel Aronoff.<sup>3</sup> Mr. Aronoff, who owned 4,000 acres of land along Coconut Road and stood to gain financially from the project, helped Rep. Young raise \$40,000 from Florida developers and builders.<sup>4</sup> Mr. Aronoff personally donated \$500 to Rep. Young's campaign committee and later gave an additional \$2,500 to his political action committee, Midnight Sun Political Action Committee (MSPAC).<sup>5</sup>

A few weeks later, the House passed a transportation bill authored by Rep. Young, and the version that emerged from a conference committee in July 2005 included a \$10 million earmark for widening and improvements to I-75 in south Florida.<sup>6</sup> In July or August 2005, however, after the House and Senate approved the legislation but before the president signed it into law, the original language was deleted and the phrase "Coconut Rd. interchange I-75/Lee County" was inserted.<sup>7</sup> Rep. Young's spokeswoman later claimed then-Rep. Connie Mack (R-FL), who represents the district where the interchange was to be built, sponsored the earmark, but Rep. Mack denied making the request.<sup>8</sup>

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<sup>1</sup> For more information, see Beyond DeLay: The 22 Most Corrupt Members of Congress (and two to watch), available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-report-2007>, CREW's Most Corrupt Members of Congress: The 20 Most Corrupt Members of Congress (and four to watch), available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-2008>, CREW's Most Corrupt 2009: The 15 Most Corrupt Members of Congress 2009, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-2009>, and CREW's Most Corrupt 2012, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-members-of-congress-report-2012>.

<sup>2</sup> David Kirkpatrick, Campaign Funds for Alaskan; Road Aid to Florida, *New York Times*, June 7, 2007.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*; Alaskans For Don Young, Inc., FEC Form 3, 2005 April Quarterly Report, April 12, 2005; Midnight Sun Political Action Committee, FEC Form 3X, 2005 Year-End Report, Amended, July 30, 2007.

<sup>6</sup> Julio Ochoa, Report Shows Someone Edited Federal Transportation Bill, *Naples Daily News*, August 8, 2007; Paul Kane, Congress May Seek Criminal Probe of Altered Earmark, *Washington Post*, April 17, 2008; *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users*, H.R. 3, 109th Congress, Conference Report of the Committee of Conference, July 28, 2005.

<sup>7</sup> Kane, *Washington Post*, Apr. 17, 2008; Kirkpatrick, *New York Times*, June 7, 2007.

<sup>8</sup> *Id.*

In June 2007, the Federal Bureau of Investigation (FBI) and U.S. Attorney's offices launched a preliminary public corruption investigation into Rep. Young for "systemic abuse" of his position of trust.<sup>9</sup> Amid the increasing public scrutiny, Rep. Young admitted he sponsored the earmark and that his staff "corrected" the bill before it went to the president, specifying it was always his intent to include the earmark, which he considered a worthy project.<sup>10</sup> Rep. Young's office denied the fundraiser held by Mr. Aronoff was his reason for sponsoring the earmark and claimed officials at nearby Florida Gulf Coast University and local developers successfully made the case for the interchange.<sup>11</sup> Congress passed legislation in April 2008 asking the Department of Justice (DOJ) to investigate.<sup>12</sup>

In August 2010, Rep. Young's office announced that DOJ's Public Integrity Division had notified him it had closed the investigation.<sup>13</sup> CREW filed a Freedom of Information Act (FOIA) request with DOJ and the FBI in January 2011, seeking documents related to the investigation to determine why Rep. Young was not charged.<sup>14</sup> After DOJ and the FBI refused to comply with the request, CREW sued, and the court ordered the government to process CREW's request.<sup>15</sup> In response, the FBI released hundreds of documents, including reports on FBI interviews with numerous witnesses whose names and identities were redacted.<sup>16</sup>

The documents revealed the FBI, with assistance from U.S. Attorney's offices, had interviewed dozens of witnesses and amassed a "vast amount of evidence" regarding Rep. Young's role in the Coconut Road earmark.<sup>17</sup> In addition to confirming many of the facts in the news reports, the documents revealed an unidentified individual paid for the majority of the expenses related to the fundraiser.<sup>18</sup> Rep. Young's campaign did not pay the individual back until June 2007, after the first news reports surfaced, and even then the amount repaid was "significantly less than the costs" of the fundraiser.<sup>19</sup> The FBI believed Rep. Young's reimbursement "was precipitated because of the press attention on the I-75 Coconut Road

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<sup>9</sup> In response to a Freedom of Information Act request filed by CREW and a subsequent lawsuit, the FBI released to CREW several hundred pages of documents related to the investigation. These documents are available at <http://www.scribd.com/collections/2980138/CREW-Regarding-Rep-Don-Young-Investigations> (hereinafter Young FBI Documents). Federal Bureau of Investigation, Case ID # 58C-TP-70141, Corruption of Federal Public Officials, Donald Edwin Young, et al., Memorandum Re: To Open Preliminary Public Corruption Matter, June 18, 2007 (Young FBI Documents, at 2).

<sup>10</sup> Kane, *Washington Post*, Apr. 17, 2008.

<sup>11</sup> *Id.*

<sup>12</sup> Jim Abrams, Highway Bill Seeks Justice Department Investigation, *Associated Press*, April 30, 2008.

<sup>13</sup> Richard Mauer, Federal Prosecutors Drop Young Case, *Anchorage Daily News*, August 5, 2010.

<sup>14</sup> <http://www.citizensforethics.org/legal-filings/entry/crew-files-foia-requests-regarding-investigation-of-rep.-young>.

<sup>15</sup> <http://www.citizensforethics.org/legal-filings/entry/crew-court-victory-don-young-doj-corruption-inquiry>.

<sup>16</sup> <http://www.citizensforethics.org/press/entry/department-of-justice-doj-congress-don-young-under-investigation>.

<sup>17</sup> Federal Bureau of Investigation, Case ID # 58C-TP-70141, Corruption of Federal Public Officials, Donald Edwin Young, et al., December 1, 2008 Email Re: Young Status – Conference Call (Young FBI Documents, at 337); Letter from Jack Smith, Chief, Public Integrity Section to Blake Chisam, Chief Counsel, House Committee on Standards of Official Conduct, August 17, 2010 (Young FBI Documents, at 166-67).

<sup>18</sup> Federal Bureau of Investigation, Case ID # 58C-TP-70141, Corruption of Federal Public Officials, Donald Edwin Young, et al., Case Summary, attached to December 8, 2008 Email Re: Young Status – Conference Call (Young FBI Documents, at 341).

<sup>19</sup> *Id.*

Project,” and was only done to “avoid the appearance of impropriety” and to conceal the fact that the fundraiser was initially paid for by the unidentified individual and not reimbursed.<sup>20</sup>

### **Personal Use of Campaign Funds**

The FBI documents also revealed Rep. Young and his late wife, Lu Young, repeatedly used campaign funds for personal expenses, including personal travel to Alaska and hunting lodges, restaurant meals unrelated to campaign activities, and even laundry and dry cleaning.

One witness told the FBI “the Youngs don’t think they should have to pay for anything when they are in Alaska,” and claimed Rep. Young treated all travel to Alaska as campaign related, regardless of its purpose.<sup>21</sup> The Youngs routinely obtained \$300 cash advances from the campaign for their trips to Alaska to cover tips and incidental expenses.<sup>22</sup> In some cases, the cash would be left for Rep. Young in his hotel room or condominium.<sup>23</sup> The per diem payments stopped in 2007 or 2008, on the advice of Rep. Young’s lawyers after the investigations began.<sup>24</sup>

Before her death in 2009, Ms. Young was said to have been a constant presence in Rep. Young’s congressional office in Washington, D.C.<sup>25</sup> According to one witness, Ms. Young saw herself as “the elected official,” but also served as the office’s gatekeeper, screening people who came in.<sup>26</sup> One witness described her as having “a sense of entitlement about most things” and said she submitted many of her personal expenses for reimbursement from campaign funds.<sup>27</sup> For example, the campaign often reimbursed Ms. Young for meals with families and friends at restaurants in Alaska and Washington, D.C., whether they were campaign related or not, and routinely reimbursed her for dry cleaning and laundry services.<sup>28</sup>

Rep. Young also kept a sport utility vehicle parked in the congressional garage and routinely sought monthly reimbursements from the campaign for mileage, even though the vehicle reportedly never left the garage.<sup>29</sup> The campaign stopped reimbursing Rep. Young for mileage after the investigations began.<sup>30</sup>

Travel to the Youngs’ home in Fort Yukon, Alaska was covered in large part by the campaign. Typically, the campaign paid half the cost of a charter flight to Fort Yukon and the

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<sup>20</sup> *Id.*

<sup>21</sup> Federal Bureau of Investigation, Case ID # 58C-TP-70141, Corruption of Federal Public Officials, Donald Edwin Young, et al., Witness Interview Report, April 7, 2008 (Young FBI Documents, at 193-94).

<sup>22</sup> *Id.* (Young FBI Documents, at 195).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Elizabeth Bluemink, Lu Young, Wife of Rep. Don Young, Dies, *Anchorage Daily News*, August 2, 2009.

<sup>26</sup> Federal Bureau of Investigation, Case ID # 58C-TP-70141, Corruption of Federal Public Officials, Donald Edwin Young, et al., Witness Interview Report, April 7, 2008 (Young FBI Documents, at 193).

<sup>27</sup> *Id.* at 194.

<sup>28</sup> *Id.*

<sup>29</sup> Federal Bureau of Investigation, Case ID # 58C-TP-70141, Corruption of Federal Public Officials, Donald Edwin Young, et al., Witness Interview Report, April 7, 2008 (Young FBI Documents, at 195).

<sup>30</sup> *Id.*

congressional office would pay for the rest of it.<sup>31</sup> In some cases, the campaign would pay for the entire cost of the flight.<sup>32</sup> In addition, on several occasions in August 2007, the Youngs used these flights to transport building supplies for construction of a second home in Fort Yukon.<sup>33</sup> Even though the flights were paid for with campaign funds, no campaign events were ever held in Fort Yukon.<sup>34</sup> “The Youngs were simply traveling to their home,” the witness said.<sup>35</sup>

Rep. Young also frequently used campaign funds for trips to hunting resorts that appeared to be of a purely personal nature. In October 2005, Rep. Young, Ms. Young, and other unidentified parties used campaign funds to spend five days at The Lodge at Chama, a hunting lodge in Chama, New Mexico.<sup>36</sup> No fundraising event, however, was held at the lodge or in New Mexico.<sup>37</sup> The report said the trip “appear[ed] to be entirely recreational” and noted Rep. Young’s fondness for “hunting and fishing at first class resorts.”<sup>38</sup>

Rep. Young also took hunting trips to New York, Montana, Texas, and Arizona that were paid for with campaign funds.<sup>39</sup> One trip to the Savannah Dhu hunting lodge in upstate New York was expected to raise \$24,000 for Rep. Young but only brought in \$4,000.<sup>40</sup> In some cases, the trips coincided with campaign trips, but the hunting trips themselves were not campaign events.<sup>41</sup> In one instance, a planned fundraising event was never held but the hunting trip still occurred.<sup>42</sup>

### **Failure to Disclose Gifts**

The FBI documents also revealed that Rep. Young failed to disclose gifts he received on his personal financial disclosure forms.

According to the documents, the expenses for the March 2005 fundraiser for Rep. Young, including the costs of the reception and Rep. Young’s lodging and limousine, were paid for by an

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<sup>31</sup> Federal Bureau of Investigation, Case ID # 58C-TP-70141, Corruption of Federal Public Officials, Donald Edwin Young, et al., Witness Interview Report, April 7, 2008 (Young FBI Documents, at 196).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Federal Bureau of Investigation, Case ID # 58C-TP-70141, Corruption of Federal Public Officials, Donald Edwin Young, et al., Witness Interview Report, April 7, 2008 (Young FBI Documents, at 196).

<sup>36</sup> <http://www.lodgeatchama.com/>; Federal Bureau of Investigation, Case ID # 58C-TP-70141, Corruption of Federal Public Officials, Donald Edwin Young, et al., Witness Interview Report, April 25, 2008 (Young FBI Documents, at 237).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Federal Bureau of Investigation, Case ID # 58C-TP-70141, Corruption of Federal Public Officials, Donald Edwin Young, et al., Witness Interview Report, October 1, 2008 (Young FBI Documents, at 138-39); Federal Bureau of Investigation, Case ID # 58C-TP-70141, Corruption of Federal Public Officials, Donald Edwin Young, et al., Witness Interview Report, April 7, 2008 (Young FBI Documents, at 197).

<sup>40</sup> *Id.*; <http://www.savannahdhu.com/home/index.php>.

<sup>41</sup> Federal Bureau of Investigation, Case ID # 58C-TP-70141, Corruption of Federal Public Officials, Donald Edwin Young, et al., Witness Interview Report, April 7, 2008 (Young FBI Documents, at 197).

<sup>42</sup> *Id.* The witness did not provide specific details regarding the date or location of the event.

unidentified individual who was not reimbursed by his campaign for more than two years.<sup>43</sup> Rep. Young never reported this as a gift on his personal financial disclosures.<sup>44</sup>

Rep. Young also failed to disclose travel expenses for hunting trips. On August 17, 2010, DOJ's Public Integrity Section referred to the House Committee on Standards of Official Conduct (now the House Ethics Committee) information about Rep. Young's failure to disclose hunting trips between 2001 and 2007 as potential violations of the Ethics in Government Act.<sup>45</sup> It is unclear if these hunting trips are the same as the trips paid for by Rep. Young's campaign.

One witness told the FBI Ms. Young "received countless bracelets and ivory while in the DC office" as well as diamond earrings during a trip to Las Vegas, and another witness described the Youngs as recipients of lavish gifts.<sup>46</sup> Witnesses also told the FBI an unnamed individual took Ms. Young out to lunch on a regular basis and another unnamed person "would buy things for Lu Young and take her out shopping," but the FBI said it was difficult to corroborate the gifts and meals without emails or witness testimony.<sup>47</sup>

### **Status of Investigations**

Based on the evidence gathered by the FBI and the U.S. Attorney's Offices, an indictment was drafted that would have charged Rep. Young with honest services fraud for accepting things of value from lobbyists in exchange for official actions regarding the Coconut Road interchange, and with making false statements on his personal financial disclosure forms by failing to report gifts and trips he and Lu Young received from lobbyists.<sup>48</sup>

DOJ's Public Integrity Section, however, determined there was "not evidence beyond a reasonable doubt to ultimately convict Congressman Young," and declined to prosecute him.<sup>49</sup> Instead, the Public Integrity Section said the FBI had forwarded a letter to the House Ethics Committee outlining some of Rep. Young's actions – apparently regarding his failure to report the hunting trips on his personal financial disclosure forms – and would "leave punishment to the discretion" of the committee.<sup>50</sup>

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<sup>43</sup> Federal Bureau of Investigation, Case ID # 58C-TP-70141, Corruption of Federal Public Officials, Donald Edwin Young, et al., Case Summary, attached to December 8, 2008 Email Re: Young Status – Conference Call (Young FBI Documents, at 341).

<sup>44</sup> Rep. Donald Edwin Young, Personal Financial Disclosure Statements for Calendar Years 2003 to 2008, filed April 30, 2004 through May 14, 2009.

<sup>45</sup> Letter from Jack Smith, Chief, Public Integrity Section to Blake Chisam, Chief Counsel, House Committee on Standards of Official Conduct, August 17, 2010 (Young FBI Documents, at 166-67).

<sup>46</sup> Federal Bureau of Investigation, Case ID # 58C-TP-70141, Corruption of Federal Public Officials, Donald Edwin Young, et al., Witness Interview Report, April 7, 2008 (Young FBI Documents, at 198); Federal Bureau of Investigation, Memorandum Re: Corruption – Federal Public Official – Legislative Branch, July 25, 2007 (Young FBI Documents, at 250).

<sup>47</sup> Federal Bureau of Investigation, Case ID # 58C-TP-70141, Corruption of Federal Public Officials, Donald Edwin Young, et al., Case Summary, attached to December 8, 2008 Email Re: Young Status – Conference Call (Young FBI Documents, at 341).

<sup>48</sup> Federal Bureau of Investigation, Case ID # 58C-TP-70141, Corruption of Federal Public Officials, Donald Edwin Young, et al., Draft Indictment (Young FBI Documents, at 355-57).

<sup>49</sup> Federal Bureau of Investigation, Case ID # 58C-TP-70141, Corruption of Federal Public Officials, Donald Edwin Young, et al., Memorandum Re: To close case, August 30, 2010 (Young FBI Documents, at 173).

<sup>50</sup> *Id.*

The August 2010 letter from the FBI to the House Ethics Committee referenced the fact that Rep. Young, through counsel, had previously provided documentation regarding the hunting trips to the committee, indicating it had already commenced its own investigation.<sup>51</sup> In addition, the House Ethics Committee at one point sought information from Rep. Mack regarding the Coconut Road earmark.<sup>52</sup>

For more than two years following the referral, there was no evidence the committee continued to investigate either matter. Information about the FBI investigation and the referral came to light in April 2012 when CREW made public the records disclosed as a result of its FOIA request. In March 2013, the committee announced it was forming an investigative subcommittee to determine whether Rep. Young violated any laws or rules “with respect to allegations that he, or persons acting on his behalf, improperly obtained, received, or accepted gifts, improperly used official resources or campaign funds for personal purposes, failed to report certain gifts on his annual Financial Disclosure Statements, and made false statements to federal officials.”<sup>53</sup> The committee claimed it had obtained evidence regarding Rep. Young during the two previous Congresses, and said that during its investigation it received a referral from DOJ regarding Rep. Young’s expenses and travel costs.<sup>54</sup>

### **Legal Fees**

Since 2009, Rep. Young’s campaign committee and PAC, Midnight Sun PAC, have reported paying \$233,985 in legal fees.<sup>55</sup> The campaign committee paid \$90,458 to Tobin O’Connor Ewing & Richard, \$10,000 to Akin Gump Strauss Hauer & Feld, \$10,000 to Sidderius, Lonergan & Martin, and \$4,965 to Holmes Weddle & Barcott.<sup>56</sup>

Midnight Sun PAC paid \$70,000 in legal fees to John Dowd, \$12,300 to Bill Canfield, and \$7,000 to Linda Harrigan.<sup>57</sup> The campaign committee and PAC paid a combined \$29,262 to Michael Martin for legal services.

Rep. Young created a legal defense fund in 2008 to help pay for his legal bills.<sup>58</sup> Since 2009, it has raised \$204,000.<sup>59</sup> Since it was created, the fund has paid \$163,414 to Akin Gump Strauss Hauer & Feld LLP.<sup>60</sup>

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<sup>51</sup> Letter from Jack Smith, Chief, Public Integrity Section to Blake Chisam, Chief Counsel, House Committee on Standards of Official Conduct, August 17, 2010 (Young FBI Documents, at 166).

<sup>52</sup> Perry Bacon, Ethics Committee Inquired About Earmark in Rep. Mack’s District, *Washington Post*, October 30, 2009.

<sup>53</sup> Press Release, House Committee on Ethics, 113th Congress, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Don Young, March 19, 2013.

<sup>54</sup> *Id.*

<sup>55</sup> Alaskans for Don Young, Inc., FEC Form 3 Reports, 2009-2013; Midnight Sun PAC, FEC Form 3X Reports, 2009-2013.

<sup>56</sup> Alaskans for Don Young, Inc., FEC Form 3 Reports, 2009-2013.

<sup>57</sup> Midnight Sun PAC, FEC Form 3X Reports, 2009-2013.

<sup>58</sup> Erika Bolstad, Young Still Raising Money for His Legal Defense Fund, *Anchorage Daily News*, May 3, 2011.

<sup>59</sup> Rep. Donald Edwin Young, Personal Financial Disclosure Statements for Calendar Years 2008 to 2011, filed May 14, 2009 through May 15, 2012; Rep. Don Young, The Congressman Don Young Legal Expense Trust Disclosures, filed with the Clerk of the House of Representatives from January 14, 2008 to July 24, 2013.

<sup>60</sup> *Id.*

## Potential Violations

### **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.<sup>61</sup>

Despite DOJ's decision not to prosecute him, most likely due to protections provided by the Speech or Debate Clause of the Constitution, if Rep. Young accepted donations to his campaign and PAC in exchange for earmarking federal funds for the Coconut Road interchange project, 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.<sup>62</sup> 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.<sup>63</sup>

If a link is established between Rep. Young's earmarking funds for the Coconut Road interchange project and donations to his campaign and PAC, he may have accepted an illegal gratuity.

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.<sup>64</sup>

### **Receiving Compensation For Exerting Improper Influence**

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits federal employees, including members of Congress and staff, from soliciting or accepting anything of value from anyone who seeks official action from the employee's agency, does business with that agency, or has interests which may be substantially affected by the performance of the employee's official duties.<sup>65</sup> House Rule 23, clause 3, similarly provides:

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<sup>61</sup> 18 U.S.C. § 201(b)(2)(A).

<sup>62</sup> 18 U.S.C. § 201(c)(1)(B).

<sup>63</sup> *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398 (1999).

<sup>64</sup> *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).

<sup>65</sup> The House Ethics Committee interprets this provision to apply to accepting campaign contributions, but not soliciting them. 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; House Ethics Manual, at 143-44, 150.

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. Young accepted campaign contributions in exchange for legislative assistance by earmarking federal funds for the Coconut Road interchange project, he may have violated 5 U.S.C. § 7353 and House Rule 23.

### **Official Action for Personal Gain**

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”<sup>66</sup> 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. Young accepted campaign contributions in return for earmarking federal funds for the Coconut Road interchange project, he may have violated 5 C.F.R. § 2635.702(a).

### **Unfairly Discriminating By Dispensing Special Favors**

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.<sup>67</sup>

If Rep. Young accepted campaign contributions in return for earmarking federal funds for the Coconut Road interchange project, he may have dispensed special favors in violation of the Code of Ethics for Government Service.

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<sup>66</sup> 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.

<sup>67</sup> 72 Stat., Part 2, B12, H. Con. Res. 175, 85th Cong. (adopted July 11, 1958); House Comm. on Standards of Official Conduct, House Ethics Manual, at 20 (110th Cong., 2d Sess., 2008 ed.).

## Conversion of Campaign Funds to Personal Use – Statute

The Federal Election Campaign Act (FECA) prohibits a candidate for federal office from using campaign funds to pay the personal obligations of the candidate. The Act states that “a contribution or donation . . . shall not be converted by any person to personal use.”<sup>68</sup> The Act further specifies that “a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office, including . . . a vacation or other noncampaign-related trip . . . [or] admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign.”<sup>69</sup>

If Rep. Young used campaign funds to pay for personal travel to Alaska and hunting lodges, meals at restaurants, and laundry and dry cleaning, he may have violated 2 U.S.C. §§ 439a(b)(2)(E) and (H) and 11 C.F.R. §§ 113.1(g)(1)(i)(F) and (J). Further, if Rep. Young’s conduct was knowing and willful, he may have violated criminal law.<sup>70</sup>

## Conversion of Campaign Funds to Personal Use – House Rule

House Rule 23 provides that a member of Congress “may not convert campaign funds to personal use in excess of an amount representing reimbursement for legitimate and verifiable campaign expenditures.”<sup>71</sup> Further, Rule 23, clause 6(a) requires each member to “keep his campaign funds separate from his personal funds.”<sup>72</sup> The rule also provides that all campaign funds must be used for “bona fide campaign or political purposes.”<sup>73</sup> The committee has warned members to keep in mind that each campaign outlay must not only be “legitimate,” but also “verifiable,” as such.<sup>74</sup> This requirement “**is separate from, and in addition to, whatever recordkeeping requirements are imposed by the Federal Election Commission . . .**”<sup>75</sup>

The Committee has held that in the case of travel expenses, when the primary purpose of a trip is personal in nature, the airfare “may not be paid with campaign funds and must be paid with personal funds.”<sup>76</sup> While members have the responsibility to determine what the “primary purpose” of a trip is, “that determination must be made in a **reasonable** manner, taking into account all of the activities” in which the member engages during the trip.<sup>77</sup> As an example of a trip that may not be financed with campaign funds, the House Ethics Manual offers:

A Member is taking a one-week trip that has a recreational purpose, except that during the trip, she will attend a party fund-

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<sup>68</sup> 2 U.S.C. § 439a(b)(1).

<sup>69</sup> 2 U.S.C. §§ 439a(b)(2)(E) and (H); *see also* 11 C.F.R. §§ 113.1(g)(1)(i)(F) and (J).

<sup>70</sup> 2 U.S.C. § 437g(d)(1)(A)(i).

<sup>71</sup> Rule 23, cl. 6(b); House Ethics Manual, at 163.

<sup>72</sup> *Id.*

<sup>73</sup> Rule 23, cl. 6(c); House Ethics Manual, at 152, 163.

<sup>74</sup> *Id.*, at 163.

<sup>75</sup> *Id.*, at 165 (emphasis in original).

<sup>76</sup> *Id.*, at 168.

<sup>77</sup> House Ethics Manual, at 168 (emphasis in original).

raising dinner. Campaign funds may not be used to pay the airfare for the trip, and may be used solely to pay the additional meal or lodging expenses (if any) that the Member necessarily incurs in attending that dinner.<sup>78</sup>

The Ethics Manual also notes that the use of campaign funds to pay for any meal when the only individuals present are a Member and his or her friends or family, “inherently raises concerns of conversion of campaign funds to personal use.”<sup>79</sup> To verify that such meals are, in fact, legitimate campaign expenses, the Committee has stated that “the maintenance of specific, written records is essential” and when “frequent or extensive” the maintenance of such records is “paramount.”<sup>80</sup>

If Rep. Young used his campaign funds to pay for personal travel to Alaska and hunting lodges, meals at restaurants, and laundry and dry cleaning, Rep. Young may have violated House Rule 23.

### **False Statements on Personal Financial Disclosure Forms**

The Ethics in Government Act of 1978 requires all members of Congress to file financial disclosure reports.<sup>81</sup> Under the statute, the attorney general may seek a civil penalty of up to \$50,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.<sup>82</sup> House Rule 26 incorporates the financial disclosure provisions of the Ethics in Government Act.<sup>83</sup> In addition, federal law prohibits anyone from making “any materially false, fictitious, or fraudulent statement or representation”<sup>84</sup> on a “document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch.”<sup>85</sup>

If Rep. Young submitted financial disclosure forms that failed to disclose hunting trips he took between 2001 and 2007, the expenses for the March 2005 fundraiser that were paid for by someone else, or other gifts he or Ms. Young received, he 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.”<sup>86</sup> This ethics standard is considered to be “the most comprehensive provision” of the code.<sup>87</sup> When this section was first adopted, the Select

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<sup>78</sup> *Id.*, at 169.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

<sup>82</sup> 5 U.S.C. app. 4, § 104.

<sup>83</sup> House Ethics Manual, at 248.

<sup>84</sup> 18 U.S.C. § 1001(a)(2).

<sup>85</sup> 18 U.S.C. § 1001(c)(1).

<sup>86</sup> Rule 23, cl. 1.

<sup>87</sup> House Ethics Manual, at 12.

Committee on Standards of Official Conduct noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” which might otherwise go unpunished.<sup>88</sup> 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,<sup>89</sup> making false statements to the committee,<sup>90</sup> criminal convictions for bribery,<sup>91</sup> accepting illegal gratuities,<sup>92</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>93</sup>

If Rep. Young accepted donations to his campaign and PAC in exchange for earmarking federal funds for the Coconut Road interchange project, used campaign funds to pay for personal expenses, and failed to disclose hunting trips, expenses for his fundraiser, and other gifts on his personal financial disclosure forms, he acted in a manner that brings discredit to the House.

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<sup>88</sup> 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).

<sup>89</sup> 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).

<sup>90</sup> 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).

<sup>91</sup> 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)).

<sup>92</sup> 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).

<sup>93</sup> 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 MITCH MCCONNELL

Senate Minority Leader Mitch McConnell (R-KY) is a five-term senator from Kentucky. His ethics issues stem from his possible use of Senate staff and resources to conduct opposition research for his campaign. He was included in CREW's 2007, 2008, and 2009 reports on congressional corruption for unrelated matters.<sup>1</sup>

### **Misusing Senate Staff and Resources for Political Activity**

On February 2, 2013, Sen. McConnell had a meeting with aides in his Kentucky campaign office during which they discussed research some of the aides had conducted about Sen. McConnell's potential campaign opponents, including actress Ashley Judd and Kentucky Secretary of State Alison Lundergan Grimes.<sup>2</sup> Apparently, one or two members of a group called Progress Kentucky surreptitiously recorded the conversation.<sup>3</sup> A copy of the recording was given to *Mother Jones*, which posted it on its website and published a transcript of it.<sup>4</sup>

According to the transcript, at the beginning of the meeting, an unnamed "presenter" thanked the individuals who conducted the research, saying:

So I'll just preface my comments that this reflects the work of a lot of folks: Josh, Jesse, Phil Maxson, a lot of LAs, thank them three times, so this is a compilation of work, all the way through.<sup>5</sup>

Later, in discussing a clip of Ms. Judd saying San Francisco "is my, my American city home," the presenter said: "So Phil Maxson found that."<sup>6</sup> Similarly, referring to an interview of Ms. Judd, the presenter asserted: "Phil Maxson found this, which sort of I think is a pretty revealing interview."<sup>7</sup> The presenter then credited "Josh" with putting together footage about Ms. Judd, saying: "And then Josh has sort of put this together. And this is, if you see a lot of footage of her, she definitely has a very sort of self-centered, sort of egotistical aspect. And

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<sup>1</sup> Sen. McConnell's ethics issues stemmed from inserting earmarks into legislation for clients of his former chief of staff in exchange for campaign contributions, and misusing his nonprofit at the University of Louisville. For more information, see Beyond DeLay: The 22 Most Corrupt Members of Congress (and Two to Watch) 2007, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-2007>, CREW's Most Corrupt Members of Congress: The 20 Most Corrupt Members of Congress (and four to watch), available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-2008>, CREW's Most Corrupt 2009: The 15 Most Corrupt Members of Congress 2009, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-2009>.

<sup>2</sup> David Corn, Secret Tape: McConnell and Aides Weighed Using Judd's Mental Health and Religion as Political Ammo, *Mother Jones*, April 9, 2013.

<sup>3</sup> Rachel Weiner, Democrat Links Liberal Group to McConnell Tape, *Washington Post*, April 12, 2013; Jason Riley and Joseph Gerth, Democrat Backtracks on Part of Tape Story, *Louisville Courier-Journal*, April 13, 2013. In May 2013, Curtis Morrison said he was responsible for making the secret recording and providing it to *Mother Jones*. The Federal Bureau of Investigation is investigating the circumstances surrounding the recording. See Curtis Morrison, Why I Secretly Recorded Mitch McConnell, *Salon.com*, May 31, 2013; Brett Barrouquere, US Attorney Recused from McConnell Taping Case, *Associated Press*, June 21, 2013.

<sup>4</sup> Full Transcript and Audio of Mitch McConnell Campaign's Meeting on Ashley Judd, *Mother Jones*, April 9, 2013.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

Josh, this is just one of many that we put together.”<sup>8</sup> Similarly, in discussing a clip of Ms. Judd talking about Obamacare, the presenter stated: “And Josh found this nugget.”<sup>9</sup> The presenter further credits “Jesse” for going through Ms. Judd’s autobiography and tracking down clips.<sup>10</sup>

Mr. Maxson appears to have been employed as a legislative aide in Sen. McConnell’s office since early 2011.<sup>11</sup> In addition, Sen. McConnell’s then-chief of staff, James Sherman Holmes, Jr., is nicknamed Josh.<sup>12</sup> The recording also refers to the assistance of “a lot of LAs,” but the presenter does not specifically name them.<sup>13</sup> “LA” is a common acronym for a legislative assistant or aide.<sup>14</sup> At the time, only “Jesse” appeared to be a campaign aide, as Sen. McConnell’s campaign manager is Jesse Benton.<sup>15</sup>

None of Sen. McConnell’s legislative aides or assistants, including Mr. Maxson or Mr. Holmes, were listed as paid employees of Sen. McConnell’s principal campaign committee or his leadership political action committee in recent Federal Election Commission reports.<sup>16</sup>

When first asked whether Sen. McConnell’s staff members were used to conduct opposition research, his aides refused to answer the questions.<sup>17</sup> Sen. McConnell’s aides later said the tape was transcribed incorrectly, and claimed the presenter did not say “thank them three times” about the staff members who conducted the campaign research, but rather said “in their free time.”<sup>18</sup> In addition, one news story said Sen. McConnell’s aides claimed all of the campaign research referenced at the meeting had been done on weekends and out of the office.<sup>19</sup>

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<sup>8</sup> Full Transcript and Audio of Mitch McConnell Campaign’s Meeting on Ashley Judd, *Mother Jones*, Apr. 9, 2013.

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

<sup>10</sup> *Id.*

<sup>11</sup> Legistorm, Philip B. Maxson (Phil). Sen. McConnell’s most recent statement of expenditures, which covers October 2012 through March 2013, lists Mr. Maxson as a legislative aide. *See Report of the Secretary of the Senate*, October 1, 2012 – March 31, 2013.

<sup>12</sup> *Id.*; Legistorm, James Sherman Holmes Jr. (Josh); *see also, e.g.*, David M. Drucker, Hands-On McConnell Helps Round Out NRSC, Roll Call, January 22, 2013 (referring to Sen. McConnell’s “Chief of Staff Josh Holmes”). Mr. Holmes later switched jobs, leaving Sen. McConnell’s congressional office and taking on a dual role as an advisor to both Sen. McConnell’s campaign and the National Republican Senatorial Committee. *See* Manu Raju, Mitch McConnell Chief of Staff Josh Holmes to NRSC, *Politico*, August 1, 2013.

<sup>13</sup> Full Transcript and Audio of Mitch McConnell Campaign’s Meeting on Ashley Judd, *Mother Jones*, Apr. 9, 2013.

<sup>14</sup> Shushannah Walshe, Was McConnell’s Senate Staff Digging Up Dirt on Ashley Judd?, *ABC News*, April 9, 2013.

<sup>15</sup> *Id.*

<sup>16</sup> McConnell Senate Committee ’14, FEC Form 3, 2011-July Quarterly 2013 Reports; Bluegrass Committee, FEC Form 3X, 2011-Post-Special 2013 Reports.

<sup>17</sup> Joseph Gerth, Sen. Mitch McConnell’s Campaign Continues to Attack Source of Anonymous Audio Recording, *Louisville Courier-Journal*, April 10, 2013; Walshe, *ABC News*, Apr. 9, 2013.

<sup>18</sup> Jack Brammer, Group Seeks FBI, Ethics Investigations of McConnell’s Campaign, *Lexington Herald-Leader*, April 11, 2013; Rick Klein, FBI Visits McConnell Campaign Headquarters in Ashley Judd Tape Investigation, *ABC News*, April 10, 2013.

<sup>19</sup> Trip Gabriel, McConnell Recording is Linked to a PAC, *New York Times*, April 12, 2013.

## 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 expounds upon this principle, providing:

This principle of federal appropriations law has been interpreted in Congress to mean that 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. . . .

Senate employees are compensated from funds of the Treasury for regular performance of official duties. They are not paid to do campaign work. In the words of the United States District Court for the District of Columbia: “It is clear from the record that Congress has recognized the basic principle that government funds should not be spent to help incumbents gain reelection.”<sup>20</sup>

Senate ethics rules, however, permit Senate employees to engage in campaign activities on their own time, “provided they do not do so in congressional offices or otherwise use official resources.”<sup>21</sup>

Using taxpayer dollars to pay congressional employees for time they spent working on campaign-related activities also constitutes theft of government property pursuant to 18 U.S.C. § 641. The statute provides that anyone who “embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof” may be punished by up to ten years in prison and fined.<sup>22</sup> 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.<sup>23</sup> In addition, paying congressional staff for campaign work may constitute mail fraud pursuant to 18 U.S.C. § 1341. In 1979, a former House member was prosecuted for mail fraud for putting campaign workers on his congressional payroll.<sup>24</sup>

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<sup>20</sup> Senate Select Committee on Ethics, Senate Ethics Manual, at 139-40 (108th Cong., 1st Sess., 2003 ed.) (quoting *Common Cause v. Bolger*, 574 F. Supp. 672 (D.D.C. 1982), *aff’d*, 461 U.S. 911 (1983)). See also *id.* at 150-51 (“Use of official resources to assist campaign organization—Senate space, equipment, staff time, and resources generally should not be used to assist campaign organizations.”).

<sup>21</sup> *Id.* at 140.

<sup>22</sup> If the combined value of the property is less than \$1,000, the punishment is up to one year in prison and a fine. 18 U.S.C. § 641.

<sup>23</sup> *United States v. Bresnahan*, Criminal No. 93-0409 (D.D.C. 1993). See also Senate Ethics Manual, at 157.

<sup>24</sup> *United States v. Clark*, Criminal No. 78-207 (W.D. Pa. 1978). See also Senate Ethics Manual, at 156-57.

Regardless of the claims by Sen. McConnell's aides that the tape was incorrectly transcribed, and that they conducted the opposition research on weekends and out of the office, if members of Sen. McConnell's congressional staff were engaged in campaign activities during office hours and using Senate resources, Sen. McConnell likely violated 31 U.S.C. § 1301(a), Senate ethics rules, and federal law.

### **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.’”<sup>25</sup> This rule is intended to protect the integrity and reputation of the Senate as a whole.<sup>26</sup> 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 . . .”<sup>27</sup> The Senate may discipline a member for any misconduct that reflects unfavorably upon the Senate as a whole.

If Sen. McConnell used Senate staff or resources to conduct opposition research against potential campaign opponents, he may have engaged in conduct reflecting unfavorably upon the Senate.

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<sup>25</sup> Senate Ethics Manual, Appendix E, at 432 (citation omitted).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 433.

## SENATOR ROBERT MENENDEZ

Senator Robert Menendez (D-NJ) is a third-term senator from New Jersey. His ethics issues stem from improperly accepting undisclosed gifts and using his position to benefit campaign donors.

### **Accepting and Failing to Disclose Trips to the Dominican Republic**

Sen. Menendez has long had a close personal relationship with Florida ophthalmologist Salomon Melgen, a wealthy campaign donor who maintains a home and interests in the Dominican Republic.<sup>1</sup> An aide for Sen. Menendez said the senator and Dr. Melgen have been personal friends for more than 20 years, and Dr. Melgen described the relationship as “like brothers, like friends.”<sup>2</sup>

Sen. Menendez has been a frequent guest at Dr. Melgen’s Dominican home.<sup>3</sup> In 2010, the senator flew to the Dominican Republic on Dr. Melgen’s private plane for personal trips on two occasions, once from Florida and once from Teterboro, New Jersey.<sup>4</sup> Sen. Menendez neither sought permission from the Senate Ethics Committee to accept the flights as a gift from a personal friend, disclosed the flights as gifts on his personal financial disclosure forms, nor paid Dr. Melgen for the cost of the trips.<sup>5</sup>

In 2013, after the trips became public and Middlesex County Republicans filed a complaint with the Senate Select Committee on Ethics requesting an investigation into, among other things, whether the senator violated Senate rules by failing to disclose gifts of travel and lodging from Dr. Melgen or seek permission to accept them, Sen. Menendez claimed he had made a “mistake” by failing to disclose or pay for the flights.<sup>6</sup> In January 2013, he reimbursed Dr. Melgen’s company \$58,500 for the cost of the two trips.<sup>7</sup>

### **Taking Official Action to Benefit Donors**

Dr. Melgen is a major campaign donor to Sen. Menendez and others.<sup>8</sup> The doctor, his wife, Flor Melgen, and his daughter, Melissa Melgen, have contributed \$30,000 to Sen.

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<sup>1</sup> Ted Sherman and Matt Friedman, Menendez and Melgen: An Inside Look at How the Money and Access Flowed, *Star-Ledger (New Jersey)*, February 11, 2013; David Voreacos, Donor Says He Sought Menendez on Medicare Regulations, *Bloomberg*, April 2, 2013; Raymond Hernandez and Frances Robles, Senator Has Long Ties to Donor Under Scrutiny, *New York Times*, January 31, 2013.

<sup>2</sup> Sherman and Friedman, *Star-Ledger (New Jersey)*, Feb. 11, 2013; Voreacos, *Bloomberg*, Apr. 2, 2013.

<sup>3</sup> Hernandez and Robles, *New York Times*, Jan. 31, 2013.

<sup>4</sup> *Id.*; Sherman and Friedman, *Star-Ledger (New Jersey)*, Feb. 11, 2013.

<sup>5</sup> Malia Rulon Herman, Menendez Reimbursed Donor for Flights—Two Years Later, *Asbury Park Press*, January 31, 2013; Carol D. Leonnig and Peter Wallsten, Grand Jury Investigating Sen. Robert Menendez (D-N.J.), People Familiar with Probe Say, *Washington Post*, March 14, 2013.

<sup>6</sup> *Id.*; Scott Wong, Report: Menendez Faces Ethics Complaint, *Politico*, November 12, 2012.

<sup>7</sup> Leonnig and Wallsten, *Washington Post*, Mar. 14, 2013.

<sup>8</sup> *Id.*

Menendez's campaign committee and leadership political action committee (PAC) since 2010.<sup>9</sup> Dr. Melgen and his wife together contributed \$40,000 to the senator's legal defense fund.<sup>10</sup> Dr. Melgen and his wife also contributed \$60,600 to the DSCC in 2009 while Sen. Menendez was its chairman, and Dr. Melgen's company, Vitreo Retinal Consultants Eye Center, contributed \$700,000 in 2012 to Majority PAC, a super PAC that spent \$582,500 that year supporting Sen. Menendez's re-election bid.<sup>11</sup> In addition, Dr. Melgen, through his company, contributed \$103,500 to local Democratic committees in several New Jersey counties shortly before the 2012 election.<sup>12</sup> Three county chairmen said they assumed the donations were made at Sen. Menendez's request.<sup>13</sup> Union County Democratic Chairwoman Charlotte DeFilippo said she told the senator the party needed more money.<sup>14</sup> "He said he'd see what he could do, and I received a check," she said.<sup>15</sup>

Sen. Menendez repeatedly has advocated for Dr. Melgen's business interests. Sen. Menendez's office approached federal health care officials regarding whether Dr. Melgen overbilled the U.S. government for care he provided patients in his Florida clinic.<sup>16</sup> The senator also attempted to pressure administration officials to help prod the Dominican government to honor a lucrative contract with Dr. Melgen's port security company.<sup>17</sup>

### *Health Care Billing*

Sen. Menendez has twice personally reached out to top federal health care officials regarding Dr. Melgen's billing practices.<sup>18</sup> Federal investigators repeatedly have raised questions about whether Dr. Melgen was overbilling the government for his treatment of patients and about the volume of procedures performed at his clinic.<sup>19</sup> In 2008, the Centers for Medicare and Medicaid Services (CMS) ruled Dr. Melgen had to repay \$8.9 million to the government.<sup>20</sup> Dr. Melgen's lawyer said the doctor returned the disputed money but is continuing to appeal.<sup>21</sup> Dr. Melgen has said he believes Medicare billing rules are unclear and CMS guidance is contradictory.<sup>22</sup>

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<sup>9</sup> Eliza Newlin Carney, Scope of Doctor's Money Ties to Menendez Exceeds \$1 Million, *Roll Call*, February 11, 2013; Menendez for Senate, FEC Form 3, 2010-2013 Reports; New Millennium PAC, FEC Form 3, 2010-2013 Reports.

<sup>10</sup> [http://www.opensecrets.org/527s/527cmtedetail\\_donors.php?ein=453456417&cycle=2012](http://www.opensecrets.org/527s/527cmtedetail_donors.php?ein=453456417&cycle=2012).

<sup>11</sup> Democratic Senatorial Campaign Committee, FEC Form 3X, 2009 Reports; Sam Stein, Sen. Menendez Named Head of DSCC, *Huffington Post*, December 26, 2008; Majority PAC, FEC Form 3X, 2012 July Quarterly Report, July 13, 2012; Majority PAC, FEC Form 3X, 2012 Pre-General Election Report, October 25, 2012; <http://www.opensecrets.org/races/index.php?cycle=2012&id=NJS1>.

<sup>12</sup> Sherman and Friedman, *Star-Ledger (New Jersey)*, Feb. 10, 2013.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Leonnig and Markon, *Washington Post*, Feb. 6, 2013.

<sup>17</sup> Hernandez and Robles, *New York Times*, Jan. 31, 2013.

<sup>18</sup> Carol D. Leonnig and Jerry Markon, Sen. Menendez Contacted Top Officials in Friend's Medicare Dispute, *Washington Post*, February 6, 2013.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*; Voreacos, *Bloomberg*, Apr. 2, 2013.

<sup>22</sup> *Id.*; Leonnig and Markon, *Washington Post*, Feb. 6, 2013.

In the wake of the CMS ruling, Dr. Melgen contacted the senator's office, complaining the ruling was unfair,<sup>23</sup> "I asked Senator Menendez for a clarification of the policy."<sup>24</sup> Someone on Sen. Menendez's staff then contacted CMS officials to find out more about both the billing rules in general and the details of Dr. Melgen's case, and in two instances, the senator himself spoke to agency officials.<sup>25</sup> In July 2009, the senator called then-CMS Medicare Director Jonathan Blum to express concerns about ambiguous Medicare guidelines, using Dr. Melgen's case as an example.<sup>26</sup> Sen. Menendez brought up Dr. Melgen's case again at a June 2012 meeting with the acting administrator of CMS regarding the implementation of the health care overhaul, questioning whether the agency had been fair.<sup>27</sup>

In addition, two former federal officials told the *Washington Post* that Dr. Melgen frequently raised Sen. Menendez's name during his interviews with federal investigators in the billing case.<sup>28</sup> One official told the newspaper that Dr. Melgen "used Menendez's name all the time. He would say, 'Menendez is a good friend of mine, and he knows I never did anything wrong.'"<sup>29</sup> Another official said Dr. Melgen appeared to be raising the senator's name "more as a character reference . . . he thought he was untouchable."<sup>30</sup>

In January 2013, the Federal Bureau of Investigation (FBI) raided the Florida offices of Dr. Melgen's clinic, the Vitreo Retinal Consultants Eye Center.<sup>31</sup> FBI agents were seen removing material from the clinic in West Palm Beach and spent nearly 24 hours searching the office.<sup>32</sup> Agents also searched locations in Delray Beach and Port St. Lucie.<sup>33</sup> Agents from the Office of the Inspector General of the U.S. Department of Health and Human Services also participated in the search.<sup>34</sup> The raid was reportedly connected to allegations of health care fraud by Dr. Melgen.<sup>35</sup> Sen. Menendez's office said the senator was not aware of any Medicare fraud investigation into Dr. Melgen or Vitreo Retinal Consultants until he learned of the raid, and had not tried to intervene.<sup>36</sup>

### *Port Security*

In 2010, Dr. Melgen bought an ownership interest in ICSSI, a company that years before had won a contract to screen cargo from ports in the Dominican Republic.<sup>37</sup> The Dominican government has refused to honor the contract, saying, among other things, that it was

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<sup>23</sup> *Id.*

<sup>24</sup> Voreacos, *Bloomberg*, Apr. 2, 2013.

<sup>25</sup> Leonnig and Markon, *Washington Post*, Feb. 6, 2013.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Leonnig and Markon, *Washington Post*, Feb. 6, 2013.

<sup>30</sup> *Id.*

<sup>31</sup> Carli Teproff, Marc Caputo and Jay Weaver, FBI Wraps Up Raid at West Palm Beach Office of Doctor Tied to U.S. Sen. Bob Menendez, *Miami Herald*, January 30, 2013.

<sup>32</sup> *Id.*; Leonnig and Markon, *Washington Post*, Feb. 6, 2013.

<sup>33</sup> Teproff, Caputo and Weaver, *Miami Herald*, Jan. 30, 2013.

<sup>34</sup> *Id.*

<sup>35</sup> Leonnig and Markon, *Washington Post*, Feb. 6, 2013.

<sup>36</sup> *Id.*

<sup>37</sup> Hernandez and Robles, *New York Times*, Jan. 31, 2013.

exorbitantly priced and awarded after a process lacking in transparency.<sup>38</sup> The value of the 20-year contract is unclear, but it may have been worth as much as \$50 million a year.<sup>39</sup>

Dr. Melgen approached Sen. Menendez for help with the port contract.<sup>40</sup> At the time, the senator chaired a subcommittee of the Senate Foreign Relations Committee responsible for the Dominican Republic.<sup>41</sup> At a July 2012 subcommittee hearing on doing business in Latin America, Sen. Menendez pressed administration officials on what they could do to compel the Dominican government to honor both the port security contract and an arbitration award involving a different company.<sup>42</sup> “[T]hey don’t want to live by that contract either,” the senator said about the ICSSI contract while questioning Francisco J. Sánchez, undersecretary for international trade with the Commerce Department, and Matthew Rooney, a deputy assistant secretary in the State Department’s Bureau of Western Hemisphere Affairs.<sup>43</sup> “You have some of the other countries that I have mentioned today with arbitration awards that have gone against them, and yet they don’t want to live by that. Well, what are we willing to do?” Sen. Menendez asked.<sup>44</sup> In addition to his questions at the hearing, the senator’s aides confirmed Sen. Menendez spoke to State Department officials about the contract.<sup>45</sup>

In January 2013, a member of Sen. Menendez’s staff e-mailed the U.S. Customs and Border Protection (CBP) in the Department of Homeland Security (DHS) in an apparent attempt to undermine the Dominican Republic’s efforts to screen the cargo itself instead of using Dr. Melgen’s company.<sup>46</sup> DHS donated an x-ray scanning device to the Dominican Republic in 2006, which led to the discovery of thousands of pounds of cocaine hidden in a shipping container.<sup>47</sup> In e-mails to CPB obtained by the *New York Times*, the staff member asked whether the U.S. planned to donate more port security equipment to the Dominican Republic.<sup>48</sup> Without mentioning the name of Dr. Melgen’s company, the Menendez aide suggested the Dominican government might be influenced by criminals to purposely limit its use of the equipment so drugs could continue passing through the ports.<sup>49</sup> Those pushing for the equipment donation want it “because they believe the government use of the equipment will be less effective than the outside contractor,” the aide wrote.<sup>50</sup> In response, a CBP official said the agency had no immediate plan to send such equipment to the Dominican Republic.<sup>51</sup> The concerns voiced by Sen. Menendez’s staff member regarding the equipment donation apparently echoed concerns

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*; Voreacos, *Bloomberg*, Apr. 2, 2013.

<sup>41</sup> *Id.*; Transcript, CQ Transcriptions, Sen. Robert Menendez Holds a Hearing on Doing Business in Latin America, July 31, 2012.

<sup>42</sup> *Id.*; Transcript, CQ Transcriptions, July 31, 2012.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Hernandez and Robles, *New York Times*, Jan. 31, 2013.

<sup>46</sup> Eric Lipton and William K. Rashbaum, Menendez Backed Donor on Port Security Plan, *New York Times*, February 10, 2013.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* The article does not include the name of the Menendez aide who wrote the e-mails.

<sup>49</sup> *Id.*

<sup>50</sup> Lipton and Rashbaum, *New York Times*, Feb. 10, 2013.

<sup>51</sup> *Id.*

raised by Dr. Melgen during an earlier meeting at the State Department about the contract.<sup>52</sup> Dr. Melgen's meeting had been set up by Pedro Pablo Kuczynski, a former national security adviser to Sen. Menendez who was also reportedly in line to become a top executive at Dr. Melgen's company.<sup>53</sup>

Sen. Menendez repeatedly has said his actions were appropriate and he has done nothing improper to advocate for Dr. Melgen or his business interests.<sup>54</sup>

### *Road-Building Contract*

At the same July 2012 subcommittee hearing on doing business in Latin America, Sen. Menendez raised questions regarding another disputed Dominican contract.<sup>55</sup> Spanish consortium Codacsa and the Dominican government brought their dispute to the International Court of Arbitration, and Codacsa won \$42.5 million in damages, but has not been able to collect the money.<sup>56</sup> Sen. Menendez brought up Codacsa's arbitration award immediately before mentioning the ICSSI contract and asking the administration officials "what are we willing to do?"<sup>57</sup>

A New Jersey company called Clearly Tropical held a \$130,000 stake in Codacsa as of 2012 and was the consortium's sole American investor, according to the *Star Ledger* newspaper.<sup>58</sup> The head of the company, Ruby Pacheco, and her husband, Joseph Bonanno, have donated \$15,600 to Sen. Menendez's campaign committee since 2006.<sup>59</sup> The senator's spokesman, Paul Brubaker, said Sen. Menendez heard about the Codacsa issue from a constituent Mr. Brubaker was unable to identify, though Mr. Brubaker also said Sen. Menendez was not acting on behalf of Mr. Bonanno or Ms. Pacheco.<sup>60</sup>

### **Status of Investigations**

In March 2013, the *Washington Post* reported a federal grand jury in Miami was examining Sen. Menendez's actions on behalf of Dr. Melgen, including his role in advocating for enforcement of the port security contract.<sup>61</sup> In April 2013, Sen. Menendez said he had not been interviewed by the grand jury or the FBI.<sup>62</sup> The status of the grand jury investigation is

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.*; Frances Robles, Port Deal Pushed by Menendez Could Benefit Former Aide, Not Just a Major Donor, *New York Times*, February 4, 2013.

<sup>54</sup> Leonnig and Wallsten, *Washington Post*, Mar. 14, 2013; Hernandez and Robles, *New York Times*, Jan. 31, 2012.

<sup>55</sup> Transcript, CQ Transcriptions, July 31, 2012; Salvador Rizzo, Menendez Stepped in for Donors a 2nd Time, *Star-Ledger (New Jersey)*, February 13, 2013.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*; Transcript, CQ Transcriptions, July 31, 2012.

<sup>58</sup> Rizzo, *Star-Ledger (New Jersey)*, Feb. 13, 2013.

<sup>59</sup> Menendez for Senate, FEC Form 3, 2006-2013 Reports.

<sup>60</sup> Rizzo, *Star-Ledger (New Jersey)*, Feb. 13, 2013.

<sup>61</sup> Leonnig and Wallsten, *Washington Post*, Mar. 14, 2013.

<sup>62</sup> Kevin Robillard, Menendez: Not Interviewed by FBI, *Politico*, April 10, 2013.

unknown. The Senate Ethics Committee is reviewing whether Sen. Menendez accepted inappropriate gifts.<sup>63</sup>

### **Legal Fees**

So far in 2013, Sen. Menendez's campaign committee has reported paying \$87,415 in legal fees: \$82,868 to McDermott Will & Emery and \$4,547 to Perkins Coie.<sup>64</sup> Sen. Menendez's leadership PAC reported paying \$10,745 to Perkins Coie in 2013.<sup>65</sup>

### **Potential Violations**

#### **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.<sup>66</sup>

If Sen. Menendez accepted campaign contributions to his campaign committee, leadership PAC, or legal defense fund, or sought contributions the DSCC, Majority PAC, or the local New Jersey Democratic committees, from Dr. Melgen and his family in exchange for intervening in Dr. Melgen's Medicare billing dispute with CMS or pressing federal officials to compel the Dominican government to honor the port security contract, Sen. Menendez may have accepted a bribe.

In addition, if Sen. Menendez accepted campaign contributions in exchange for pressing federal officials to intervene in Codacsa's dispute with the Dominican government over the road building contract, he may have accepted a bribe.

#### **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.<sup>67</sup> 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.<sup>68</sup>

If a link is established between Sen. Menendez intervening in Dr. Melgen's Medicare billing dispute with CMS or pressing federal officials to compel the Dominican government to honor the port security contract, and contributions to his campaign committee, leadership PAC,

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<sup>63</sup> Paul Kane, *Senate Ethics Panel Reviews Gift Accusations Against Menendez*, *Washington Post*, January 31, 2013.

<sup>64</sup> Menendez for Senate, *FEC Form 3, 2013 April Quarterly Report*, April 15, 2013; Menendez for Senate, *FEC Form 3, 2013 July Quarterly Report*, July 15, 2013.

<sup>65</sup> New Millennium PAC, *FEC Form 3X, 2013 Mid-Year Report*, July 31, 2013.

<sup>66</sup> 18 U.S.C. § 201(b)(2)(A).

<sup>67</sup> 18 U.S.C. § 201(c)(1)(B).

<sup>68</sup> *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398 (1999).

legal defense fund, the DSCC, Majority PAC, or the local New Jersey Democratic committees, Sen. Menendez may have violated the illegal gratuity statute.

In addition, if a link is established between Sen. Menendez pressing federal officials to intervene in Codacsa's dispute with the Dominican government over the road building contract and contributions to his campaign, he may have violated the illegal gratuity statute.

### **Official Action for Personal Gain**

5 C.F.R. § 2635.702, issued by the U.S. Office of Government Ethics for the Executive Branch, prohibits government employees, including members of the Senate, from using "his public office for his own private gain." Specifically, 5 C.F.R. § 2635.702(a) 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 Sen. Menendez accepted or sought campaign contributions in exchange for intervening in Dr. Melgen's Medicare billing dispute with CMS, or pressing federal officials to compel the Dominican government to honor the port security contract or to intervene in Codacsa's dispute with the Dominican government over the road building contract, he may have violated 5 C.F.R. § 2635.702(a).<sup>69</sup>

### **Unfairly Discriminating By Dispensing Special Favors**

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.<sup>70</sup>

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<sup>69</sup> A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits federal employees, including members of Congress and staff, from soliciting or accepting anything of value from anyone who seeks official action from the employee's agency, does business with that agency, or has interests which may be substantially affected by the performance of the employee's official duties. While this provision has been interpreted to apply to accepting – but not soliciting – campaign contributions by the House Ethics Committee, *see* House Comm. on Standards of Official Conduct, House Ethics Manual, at 150 (110th Cong., 2d Sess., 2008 ed.), the Senate Ethics Committee has held the provision is inapplicable to both accepting and soliciting campaign contributions, Senate Select Comm. on Ethics, Interpretive Ruling No. 438, July 16, 1990, *reprinted in* Senate Select Comm. on Ethics, Senate Ethics Manual, at 295 (108th Cong., 1st Sess., 2003 ed.).

<sup>70</sup> 72 Stat., Part 2, B12, H. Con. Res. 175, 85th Cong. (adopted July 11, 1958); Senate Ethics Manual, at 7-8.

If Sen. Menendez took any official action in return for the contributions he accepted or sought from Dr. Melgen, his family, Ms. Pacheco, or Mr. Bonanno, he may have dispensed special favors in violation of the Code of Ethics for Government Service.

### **Gift Rule Violations**

Rule 35, clause 1(a)(1) of the Senate rules states that “No Member, officer, or employee of the Senate may not knowingly accept a gift except as provided in this rule.” The rules define “gift” to mean “a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.”<sup>71</sup> 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 Senate Ethics Committee.<sup>72</sup>

By accepting flights to the Dominican Republic on Dr. Melgen’s private plane without permission from the Senate Ethics Committee, Sen. Menendez appears to have violated the Senate gift rule. The fact that Sen. Menendez paid Dr. Melgen for the flights after they were publicly revealed years later is not relevant.

### **False Statements on Personal Financial Disclosure Form**

The Ethics in Government Act of 1978 requires all members of Congress to file financial disclosure reports.<sup>73</sup> Under the statute, the attorney general may seek a civil penalty of up to \$50,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.<sup>74</sup> Senate Rule 34 incorporates the financial disclosure provisions of the Ethics in Government Act.<sup>75</sup> In addition, federal law prohibits anyone from making “any materially false, fictitious, or fraudulent statement or representation”<sup>76</sup> on “a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch.”<sup>77</sup>

By failing to disclose the two personal trips he took on Dr. Melgen’s plane to the Dominican Republic in 2010 on his personal financial disclosure form, he appears to have violated the Ethics in Government Act and 18 U.S.C. § 1001.

### **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.’”<sup>78</sup> This rule is intended to protect the

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<sup>71</sup> Rule 35, cl. 1(b)(1).

<sup>72</sup> Rule 35, cl. 1(c)(4)(A); Rule 35, cl. 1(e); Senate Ethics Manual, at 29.

<sup>73</sup> Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

<sup>74</sup> 5 U.S.C. app. 4, § 104.

<sup>75</sup> Senate Ethics Manual, at 127.

<sup>76</sup> 18 U.S.C. § 1001(a)(2).

<sup>77</sup> 18 U.S.C. § 1001(c)(1).

<sup>78</sup> Senate Ethics Manual, Appendix E, at 432 (citation omitted).

integrity and reputation of the Senate as a whole.<sup>79</sup> 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 . . .”<sup>80</sup> The Senate may discipline a member for any misconduct that reflects unfavorably upon the Senate as a whole.

If Sen. Menendez accepted or solicited campaign contributions in exchange for intervening in Dr. Melgen’s Medicare billing dispute with CMS, or pressing federal officials to compel the Dominican government to honor the port security contract and intervene in Codacsa’s dispute with the Dominican government, he may have engaged in conduct reflecting unfavorably upon the Senate. In addition, by accepting flights to the Dominican Republic on Dr. Melgen’s private plane without permission from the Senate Ethics Committee and by failing to disclose those trips on his personal financial disclosure forms, Sen. Menendez appears to have engaged in conduct reflecting unfavorably upon the Senate.

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<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 433.

## **DISHONORABLE MENTIONS**

## REPRESENTATIVE BILL OWENS

Representative William “Bill” Owens (D-NY) is a three-term member of Congress, representing New York’s 21st congressional district. His ethics issues stem from improperly accepting a trip to Taiwan organized by lobbyists and paid for by the Taiwanese government.

### Improper Travel

In December 2011, Rep. Owens filed a travel disclosure form with the House Ethics Committee identifying the Chinese Culture University (CCU) as the sole sponsor of a trip he and his wife were taking to Taiwan later that month.<sup>1</sup> Prior to the couple’s departure, the House Ethics Committee approved the Taiwan trip based on the information provided by the congressman.<sup>2</sup> Rep. Owens and his wife’s round-trip airfare cost more than \$19,000, the couple stayed at hotels costing an average of \$520 per night, and meal expenses cost \$1,440.<sup>3</sup> The Owens’ trip cost a total of \$22,132.<sup>4</sup>

Park Strategies LLC, a lobbying firm founded by former Sen. Al D’Amato (R-NY), is the registered foreign agent for the Taiwanese government and for the Taipei Economic and Cultural Representative Office (TECRO), Taiwan’s de facto embassy in Washington.<sup>5</sup> There is no mention of Park Strategies in Rep Owens’ travel disclosure.<sup>6</sup> In May 2012, however, *ProPublica* reported that Park Strategies’ filings under the Foreign Agents Registration Act (FARA) showed the firm’s lobbyists—specifically former Sen. D’Amato, Sean King, and John Zagame—suggested and helped organize Rep. Owens’ trip, contacted the congressman’s office more than 35 times about it, and provided Rep. Owens’ staff with draft itineraries.<sup>7</sup> The detailed records of communications between Park Strategies and members of Rep. Owens’ staff disclosed as part of the firm’s FARA filings show the trip was originally to be covered under the Mutual Educational and Cultural Exchange Act (MECEA), which allows members of Congress to take approved trips paid for by foreign governments.<sup>8</sup> By early November 2011, however, after consulting with the House Ethics Committee, Rep. Owens’ staff determined that because the

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<sup>1</sup> Justin Elliott, Timeline: How Lobbyists Arranged Rep. Bill Owens’ Trip to Taiwan, *ProPublica*, May 10, 2012; Rep. William Owens, Privately Sponsored Travel: Traveler Form, filed December 6, 2011, *available at* <http://www.documentcloud.org/documents/351877-bill-owens-taiwan-private-trip-disclosure.html>.

<sup>2</sup> Justin Elliott, Lobbyists Arranged N.Y. Congressman’s \$20,000 Trip to Taiwan, *ProPublica*, May 10, 2012; Letter from House Ethics Committee to Rep. William Owens, December 20, 2011; Rep. William Owens, Privately Sponsored Travel: Traveler Form, filed Dec. 6, 2011.

<sup>3</sup> Elliott, *ProPublica*, May 10, 2012; Rep. William Owens, Post-Travel Disclosure Form, filed January 13, 2012, *available at* <http://www.documentcloud.org/documents/351877-bill-owens-taiwan-private-trip-disclosure.html>.

<sup>4</sup> Elliott, *ProPublica*, May 10, 2012.

<sup>5</sup> *Id.*

<sup>6</sup> Rep. William Owens, Privately Sponsored Travel: Traveler Form, filed Dec. 6, 2011.

<sup>7</sup> Elliott, *ProPublica*, May 10, 2012; Park Strategies, LLC, Foreign Agents Registration Act Supplemental Statement for Six Month Period Ending January 31, 2012, filed March 1, 2012, *available at* <https://s3.amazonaws.com/s3.documentcloud.org/documents/352768/park-20120301-5908-supplemental-statement.pdf>.

<sup>8</sup> 22 U.S.C. § 2458a(a)(1); Elliott, *ProPublica*, May 10, 2012; E-mail from Sean King to Rep. Owens’ Senior Legislative Assistant Jon Boughtin, October 31, 2011, *available at* <https://www.documentcloud.org/documents/352465-oct-20-oct-31-park-strategies-emails.html#document/p1/a56348>.

congressman's wife would accompany him on the trip, it could not be covered under MECEA.<sup>9</sup> At that point, records show TECRO officials began to seek a private sponsor.<sup>10</sup>

In the intervening weeks, after it was determined the Taiwanese government could not legally pay for the trip and before CCU was identified as the private sponsor, Rep. Owens' staff continued to plan the trip's itinerary and make travel arrangements directly with TECRO officials.<sup>11</sup> By the end of November, the president of CCU officially invited Rep. Owens and his wife to Taiwan for a cultural exchange trip that would take place on the dates originally suggested by Rep. Owens' staff to Park Strategies.<sup>12</sup> The itinerary provided by CCU was in the exact format and contained a similar schedule as the one proposed by Park Strategies lobbyists a month earlier.<sup>13</sup> Further, after CCU signed on as the trip's private sponsor, Taiwanese government officials continued to prepare and finalize the detailed itinerary while maintaining regular contact with Rep. Owens' staff.<sup>14</sup> Rep. Owens' staff communicated with Taiwanese officials to obtain required information for CCU's private sponsor travel submission to the House Ethics Committee,<sup>15</sup> and CCU had no interaction with Rep. Owens or his staff prior to his meeting with CCU officials in Taiwan.<sup>16</sup>

A representative of the Taiwanese government met Rep. Owens and his wife at the airport and accompanied them for the entire trip.<sup>17</sup> In addition, information obtained by the Office of Congressional Ethics (OCE) from representatives and witnesses at the airline and hotel indicate the Taiwanese Ministry of Foreign Affairs paid for the couple's hotels and airfare.<sup>18</sup> The OCE report also provided evidence that Rep. Owens and his staff were aware the Taiwanese government was paying for the trip.<sup>19</sup> CCU hosted a dinner for the congressman and his wife

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<sup>9</sup> Office of Congressional Ethics, 112th Congress, *Report and Findings Related to Representative Bill Owens*, Review No. 12-8236, August 24, 2012 (OCE Report), at 9. In Park Strategies' response to the OCE investigation, Executive Vice President and Managing Director Christopher D'Amato said in a signed declaration that after Park Strategies learned Rep. Owens' wife would be joining the congressman, on November 21, 2011, the firm "had no further involvement in creating or setting the itinerary prepared by the Chinese Culture University." In an interview with OCE, however, Jon Boughtin, Rep. Owens' senior legislative assistant, said no one at Park Strategies had informed him the firm was no longer organizing the trip. In addition, Park Strategies' FARA reports clearly show the firm's lobbyist, Mr. King, continued to consult with Rep. Owens and his staff after November 21 to organize meetings for Rep. Owens in Taiwan. See OCE Report, at 18-20; OCE Report, Exhibit 25, Declaration of Christopher D'Amato; OCE Report, Exhibit 3, Memorandum of Interview, Senior Legislative Assistant Jon Boughtin; OCE Report, Exhibit 4, Park Strategies FARA Report.

<sup>10</sup> OCE Report, at 10; OCE Report, Exhibit 8, E-mail from TECRO official Li-Cheh Cheng to Rep. Owens' Senior Legislative Assistant Jon Boughtin, November 22, 2011.

<sup>11</sup> OCE Report, at 9-11.

<sup>12</sup> Elliott, *ProPublica*, May 10, 2012.

<sup>13</sup> *Id.*

<sup>14</sup> OCE Report, at 11-12; OCE Report, Exhibit 16, E-mail from TECRO official Li-Cheh Cheng to Rep. Owens' Senior Legislative Assistant Jon Boughtin, December 19, 2011 ("I did call MOFA [Ministry of Foreign Affairs] Taiwan last night and tell them to send me the schedules. My colleague said everything is set up, but my bosses are reviewing the whole itinerary-they value Congressman's visit very highly. I will call Taipei tonight again and see if they can expedite.").

<sup>15</sup> OCE Report, at 12-13; OCE Report, Exhibit 14, E-mail from Rep. Owens' Senior Legislative Assistant Jon Boughtin to TECRO official Li-Cheh Cheng, December 6, 2011; OCE Report, Exhibit 16, E-mail from Rep. Owens' Senior Legislative Assistant Jon Boughtin to TECRO official Li-Cheh Cheng, December 19, 2011.

<sup>16</sup> OCE Report, at 15.

<sup>17</sup> *Id.* at 13.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 14.

and one CCU dean attended another dinner hosted by the Taiwanese Ministry of Foreign Affairs.<sup>20</sup> Prior to his departure, a TECRO official sent a memorandum to Rep. Owens emphasizing: “Please remember to **keep your boarding passes for** all domestic and international flights and return them to **TECRO**. We need to have those passes for accounting purpose and truly appreciate your cooperation.”<sup>21</sup> A representative from China Airlines also emailed a Rep. Owens staffer, copying TECRO official Li-Cheh Cheng, informing him that TECRO would be billed for the price of the airline tickets: “The price that we will send invoice to TECRO is approximately USD\$8655 + tax \$357.30 = USD\$9011.80.”<sup>22</sup>

CCU, in a letter to OCE, acknowledged TECRO and the Ministry of Foreign Affairs helped coordinate Rep. Owens’ travel, explaining it had no staff in the United States.<sup>23</sup> A lawyer for TECRO told OCE that CCU reimbursed the Taiwanese Ministry of Foreign Affairs for the cost of the trip.<sup>24</sup> Both TECRO and CCU, however, declined to cooperate with OCE’s investigation and provided no additional information.<sup>25</sup> Consequently, OCE investigators were unable to determine whether CCU actually reimbursed the Taiwanese Ministry of Foreign Affairs.<sup>26</sup> Rep. Owens told OCE that he only learned the Taiwanese government initially paid for his travel expenses after meeting with TECRO officials in the wake of the May 2012 *ProPublica* story.<sup>27</sup>

*ProPublica*’s story raised questions about whether the trip violated congressional ethics rules barring members from participating in lobbyist-arranged travel.<sup>28</sup> The day after the story was published, Rep. Owens said he believed the trip broke no rules, but nonetheless, he reimbursed CCU \$22,132.<sup>29</sup>

### **Status of Investigations**

After conducting an investigation into Rep. Owens’ trip, OCE found substantial reason to believe Rep. Owens violated House rules and federal law by taking a trip paid for by the government of Taiwan and organized by Park Strategies lobbyists.<sup>30</sup> OCE referred the matter to the House Ethics Committee on August 30, 2012, recommending further review.<sup>31</sup> OCE also recommended subpoenaing former Sen. D’Amato, Mr. King, and Mr. Zagame, all of whom refused to cooperate with the investigation.<sup>32</sup> On February 6, 2013, the House Ethics Committee

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<sup>20</sup> OCE Report, at 15.

<sup>21</sup> OCE Report, Exhibit 19, Memo: The visit of Rep. and Mrs. Bill Owens to the Republic of China (Taiwan) (emphasis in original).

<sup>22</sup> OCE Report, Exhibit 13, E-mail from China Airlines Representative Ken Chong to Rep. Owens’ Senior Legislative Assistant Jon Boughtin, with copy to Li-Cheh Cheng, December 5, 2011.

<sup>23</sup> OCE Report, at 15.

<sup>24</sup> *Id.* at 14.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 7-8, n. 13.

<sup>27</sup> OCE Report, at 15.

<sup>28</sup> Elliott, *ProPublica*, May 10, 2012.

<sup>29</sup> Justin Elliott, Bill Owens Pays Back \$22K for Taiwan Trip, *ProPublica*, May 11, 2012.

<sup>30</sup> OCE Report, at 1-4.

<sup>31</sup> Press Release, House Committee on Ethics, 112th Congress, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Bill Owens, December 14, 2012.

<sup>32</sup> OCE Report, at 22.

announced it would continue to review the matter.<sup>33</sup> There is no deadline by which the committee must act.

### **Legal Fees**

Since May 12, 2012, Rep. Owens' campaign committee has reported paying a total of \$50,725 in legal fees to Perkins Coie and \$2,552 to Featherstonhaugh, Wiley & Clyne.<sup>34</sup> In its most recent filing, Rep. Owens' campaign committee reported \$2,995 in outstanding debt owed to Perkins Coie.<sup>35</sup>

### **Potential Violations**

#### **Travel Rule Violation – Accepting Travel From Impermissible Source**

Rule 25, clause 5(a)(1)(A)(i) of the House rules states “a Member, Delegate, Resident Commissioner, officer, or employee of the House may not knowingly accept a gift except as provided in this clause.” Travel expenses paid for by outside entities are treated as gifts, and may be accepted only where permitted by House rules or federal law.<sup>36</sup>

MECEA allows members of Congress to accept payment from a foreign government for travel expenses to facilitate participation in a cultural exchange between the leaders of the United States and other countries, but prohibits payments for travel of spouses or other family members.<sup>37</sup> The government of Taiwan could not pay for Rep. Owens' travel under MECEA because Rep. Owens' wife traveled with him.

Separately, Rule 25, clause 5(b)(1)(A) of the House rules allows members to accept payment from a private source to pay for travel by members of Congress to a meeting or on a fact-finding trip in connection with the member's official duties. House rules require the private entity “that pays for officially-connected travel will organize and conduct the trip, rather than merely pay for a trip that is in fact organized and conducted by another entity.”<sup>38</sup>

In addition, in the context of travel rule violations, the House Ethics Committee has made clear members may be held responsible for the knowledge of their staff, explaining: “[I]t would not well serve the House as an institution to allow its Members to escape responsibility by delegating authority to their staff to take actions and hide behind their lack of knowledge of the

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<sup>33</sup> Press Release, House Committee on Ethics, 113th Congress, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Bill Owens, February 6, 2013.

<sup>34</sup> Bill Owens for Congress, FEC Form 3 Reports, 2012-2013.

<sup>35</sup> Bill Owens for Congress, FEC Form 3, 2013 July Quarterly Report, July 15, 2013.

<sup>36</sup> House Comm. on Standards of Official Conduct, House Ethics Manual, at 87, 108 (110th Cong., 2d Sess., 2008 ed.).

<sup>37</sup> 22 U.S.C. §§ 2452(a)(2)(i), 2458a(a)(1); House Ethics Manual, at 110.

<sup>38</sup> *Id.* at 98; House Comm. on Standard of Official Conduct, “Memorandum to All Members, Officers, and Employees,” Travel Guidelines and Regulations, February 20, 2007 (Travel Guidelines), at 3 (“Expenses may only be accepted from an entity or entities that have a significant role in organizing and conducting a trip . . . [and] may not be accepted from a source that has merely donated monetary or in-kind support to the trip but does not have a significant role in organizing or conducting the trip.”)

facts surrounding those actions. . . . Many times Members act through the actions of their staff and, therefore, should be held liable for those actions in certain circumstances.”<sup>39</sup>

The government of Taiwan, not CCU, organized, conducted, and at least initially paid for the trip. As a result, CCU was not the actual sponsor of Rep. Owens’ travel. By accepting payment from CCU for his and his wife’s trip to Taiwan, Rep. Owens appears to have accepted an impermissible gift, violating House travel and gift rules and/or MECEA. In addition, Rep. Owens knew or should have known CCU was not the trip’s actual sponsor because neither he nor his staff had any contact with CCU while planning the trip, and instead worked closely with TECRO officials and their representatives.

### **Travel Rule Violation - Travel Organized or Arranged By Foreign Agent**

Rule 25, clause 5(c)(3) prohibits House members from accepting payment for travel expenses “if such trip is in any part planned, organized, requested, or arranged by a registered lobbyist or agent of a foreign principal.”<sup>40</sup> By accepting payment from CCU for a trip planned and organized in part by Park Strategies, Rep. Owens appears to have violated House travel rules. In addition, as a result of his and his staff’s contacts with Park Strategies regarding the trip, Rep. Owens knew or should have known Park Strategies was involved in planning and organizing it.

### **False Statements**

Rule 25, clause 5(b)(2) requires House members to sign and submit an advance authorization to accept payment for private-sponsored travel which names the entity paying for the travel.<sup>41</sup> Members must sign a Traveler Form asserting the information on the form is “true, complete, and correct to the best of my knowledge.”<sup>42</sup> Federal law prohibits anyone from making “any materially false, fictitious, or fraudulent statement or representation”<sup>43</sup> on “a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch.”<sup>44</sup> If Rep. Owens signed the Traveler Form knowing CCU was not the actual sponsor of the trip to Taiwan, he may have 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.”<sup>45</sup> This ethics standard is considered to be “the

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<sup>39</sup> *Id.* at 192-93.

<sup>40</sup> House Ethics Manual, at 96. Lobbyists may be involved in travel sponsored by “an institution of higher education within the meaning of section 101 of the Higher Education Act of 1965,” Travel Guidelines, at 4, but foreign institutions do not qualify, 20 U.S.C. § 1001(a).

<sup>41</sup> House Ethics Manual, at 103-04.

<sup>42</sup> Rep. William Owens, Privately Sponsored Travel: Traveler Form, filed Dec. 6, 2011, *available at* <http://www.documentcloud.org/documents/351877-bill-owens-taiwan-private-trip-disclosure.html>.

<sup>43</sup> 18 U.S.C. § 1001(a)(2).

<sup>44</sup> 18 U.S.C. § 1001(c)(1).

<sup>45</sup> Rule 23, cl. 1.

most comprehensive provision” of the code.<sup>46</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct noted it was included to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” which might otherwise go unpunished.<sup>47</sup> 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,<sup>48</sup> making false statements to the committee,<sup>49</sup> criminal convictions for bribery,<sup>50</sup> accepting illegal gratuities,<sup>51</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>52</sup>

By accepting payment for his and his wife’s trip to Taiwan from an impermissible source, accepting payment for the trip even though it was organized and planned in part by the agent of a foreign principal, and by stating on a travel authorization form that the trip was sponsored by CCU, Rep. Owens engaged in conduct that does not reflect creditably on the House.

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<sup>46</sup> House Ethics Manual, at 12.

<sup>47</sup> 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).

<sup>48</sup> 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).

<sup>49</sup> 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).

<sup>50</sup> 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)).

<sup>51</sup> 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).

<sup>52</sup> 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 PETER ROSKAM

Representative Peter Roskam (R-IL) is a four-term member of Congress, representing Illinois' 6th congressional district. His ethics issues stem from improperly accepting a trip to Taiwan organized and paid for by the Taiwanese government.

### Improper Travel

In September 2011, Rep. Roskam filed a travel disclosure with the House Ethics Committee identifying the Chinese Culture University (CCU) as the sole sponsor of an eight-day trip he and his wife were taking to Taiwan the following month.<sup>1</sup> Prior to the couple's departure, the House Ethics Committee approved the Taiwan trip based on the information provided by the congressman.<sup>2</sup> The Roskams' airfare cost more than \$22,000, the couple stayed at hotels costing \$1,080, and meal expenses were \$2,100.<sup>3</sup> The trip cost a total of \$25,653.<sup>4</sup>

The Taipei Economic and Cultural Representative Office (TECRO), Taiwan's de facto embassy in Washington, contacted Rep. Roskam's executive assistant in May 2011 inviting the congressman to visit Taiwan as part of a congressional delegation.<sup>5</sup> The trip was originally to be covered under the Mutual Educational and Cultural Exchange Act (MECEA), which allows members of Congress to take approved trips paid for by foreign governments.<sup>6</sup> After receiving TECRO's invitation to travel to Taiwan, however, a TECRO official and Rep. Roskam's executive assistant, Mike Dankler, determined that because the congressman's wife would accompany him on the trip, it could not be covered under MECEA.<sup>7</sup> At that point, Mr. Dankler and the TECRO official decided a private sponsor was required.<sup>8</sup> On June 7, 2011, Rep. Roskam accepted TECRO's invitation to travel to Taiwan.<sup>9</sup> That same day, Rep. Roskam received a tentative itinerary from TECRO that included a parenthetical reference to CCU as the "[h]ost of the trip."<sup>10</sup> This was the only indication that TECRO secured CCU as the trip's private sponsor.<sup>11</sup> Neither the congressman nor his staff had any conversations with TECRO about CCU.<sup>12</sup> A TECRO official hand-delivered CCU's formal invitation and private sponsor certification form to Rep. Roskam's office.<sup>13</sup>

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<sup>1</sup> Rep. Peter Roskam, Privately Sponsored Travel: Traveler Form, filed September 12, 2011.

<sup>2</sup> Letter from House Ethics Committee to Rep. Peter Roskam, September 30, 2011.

<sup>3</sup> Rep. Peter Roskam, Post-Travel Disclosure Form, filed November 1, 2011.

<sup>4</sup> *Id.*

<sup>5</sup> Office of Congressional Ethics, 113th Congress, *Report and Findings Related to Representative Peter Roskam*, Review No. 13-9784, May 31, 2013 (OCE Report), at 7; OCE Report, Exhibit 4, E-mail from Gordon Yang to Mike Dankler, May 13, 2011.

<sup>6</sup> 22 U.S.C. § 2458a(a)(1); OCE Report, at 8-9.

<sup>7</sup> *Id.* at 8.

<sup>8</sup> *Id.*

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

<sup>10</sup> OCE Report, at 10; OCE Report, Exhibit 5, Tentative Program for the Visit of U.S. Congressional Members Delegation to the Republic of China (Taiwan).

<sup>11</sup> OCE Report, at 10.

<sup>12</sup> *Id.* at 9-10.

<sup>13</sup> *Id.* at 10.

Even after CCU was identified as the private sponsor, Rep. Roskam's office continued to plan and organize the congressman's travel arrangements and itinerary exclusively with TECRO.<sup>14</sup> The congressman's office had no interaction with CCU prior to a single meeting between Rep. Roskam and the president of CCU at its campus in Taiwan.<sup>15</sup> In addition to coordinating the details of the couple's travel arrangements, TECRO officials met the congressman and his wife at the airport and accompanied them for at least part of the trip.<sup>16</sup> After the couple returned, Mr. Dankler contacted TECRO, rather than CCU, to obtain information required for the congressman's post-travel disclosure forms,<sup>17</sup> including the amount the trip's sponsor paid in travel expenses.<sup>18</sup>

According to information obtained by the Office of Congressional Ethics (OCE), after Rep. Roskam submitted his pre-travel disclosure forms identifying CCU as the trip's private sponsor and before the House Ethics Committee approved the trip, a House Ethics Committee staff member, Karena Dees, contacted Mr. Dankler regarding a "problem" with the trip's schedule.<sup>19</sup> Mr. Dankler told OCE he did not recall the problem that prompted the inquiry, but in response, he provided contact information for a TECRO official and said he was working with the TECRO official to plan the trip.<sup>20</sup>

### **Status of Investigations**

After conducting an investigation into Rep. Roskam's trip, OCE found substantial reason to believe the congressman violated House rules and federal law by taking a trip paid for by the government of Taiwan.<sup>21</sup> During the investigation, Rep. Roskam authorized the House Ethics Committee to provide OCE with information on why it approved the Taiwan trip, but the committee did not cooperate.<sup>22</sup> CCU, in a letter to OCE, acknowledged TECRO and the Taiwan Ministry of Foreign Affairs helped coordinate Rep. Roskam's travel, explaining it had no staff in the United States.<sup>23</sup> Like the ethics committee, TECRO and CCU declined to cooperate with OCE's investigation.<sup>24</sup> OCE referred the matter to the House Ethics Committee on June 13, 2013, recommending further review.<sup>25</sup> On September 11, 2013, the House Ethics Committee

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<sup>14</sup> *Id.* at 11-13. These travel arrangements included accommodating Rep. Roskam's requests to see his daughter, who lived in Taiwan at the time of the trip. *See* OCE Report, at 12-13. A TECRO official suggested in an email that "[t]he host may be able to cover her cost," but Mr. Dankler explained he had consulted with the House Ethics Committee and determined the congressman would have to cover the costs of his daughter's travel. *See* OCE Report, at 13; OCE Report Exhibit 18, E-mail from Gordon Yang to Mike Dankler, September 27, 2011.

<sup>15</sup> OCE Report, at 13-14.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 14 ("[W]hen do you think you all will have the final ethics forms done?") *quoting* (OCE Report, Exhibit 20, E-mail from Mike Dankler to Gordon Yang, October 25, 2011).

<sup>18</sup> OCE Report, at 15.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 15-16; OCE Report, Exhibit 22, E-mail from Mike Dankler to Karena Dees, September 27, 2011.

<sup>21</sup> OCE Report, at 1.

<sup>22</sup> *Id.* at 17.

<sup>23</sup> *Id.* at 15.

<sup>24</sup> *Id.*

<sup>25</sup> OCE Report, at 1; Press Release, House Committee on Ethics, 113th Congress, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Peter Roskam, September 11, 2013.

announced it would continue to review the matter.<sup>26</sup> There is no deadline by which the committee must act.

In response to OCE's referral, Rep. Roskam's attorney claimed the congressman was permitted to rely on the House Ethics Committee's pre-approval of the trip because TECRO's involvement in planning the trip had been fully disclosed, emphasizing the email in which Mr. Dankler identified a TECRO official as the contact person for questions regarding the trip.<sup>27</sup> The congressman's lawyer also maintained Rep. Roskam consistently and properly identified CCU as the trip's sponsor and cited OCE's lack of evidence that the Taiwanese government paid for the trip.<sup>28</sup>

### **Legal Fees**

Since January 2013, Rep. Roskam's campaign committee has reported paying a total of \$56,306 in legal fees to Patton Boggs.<sup>29</sup>

### **Potential Violations**

#### **Travel Rule Violation – Accepting Travel From Impermissible Source**

Rule 25, clause 5(a)(1)(A)(i) of the House rules states “a Member, Delegate, Resident Commissioner, officer, or employee of the House may not knowingly accept a gift except as provided in this clause.” Travel expenses paid for by outside entities are treated as gifts, and may be accepted only where permitted by House rules or federal law.<sup>30</sup>

MECEA allows members of Congress to accept payment from a foreign government for travel expenses to facilitate participation in a cultural exchange between the leaders of the United States and other countries, but prohibits payments for travel of spouses or other family members.<sup>31</sup> The government of Taiwan could not pay for Rep. Roskam's travel under MECEA because Rep. Roskam's wife traveled with him.

Separately, Rule 25, clause 5(b)(1)(A) of the House rules allows members to accept payment from a private source to pay for travel by members of Congress to a meeting or on a fact-finding trip in connection with the member's official duties. House rules require the private

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<sup>26</sup> *Id.*

<sup>27</sup> Letter from William McGinley to Chairman K. Michael Conaway and Ranking Member Linda T. Sánchez, House Committee on Ethics, June 28, 2013, at 4-6.

<sup>28</sup> *Id.* at 6-9. In August 2012, OCE referred a similar matter regarding Rep. Bill Owens (D-NY) to the House Ethics Committee. In its investigation into Rep. Owens' Taiwan trip, OCE found evidence that the Taiwanese government, not CCU, paid for the trip. See Office of Congressional Ethics, 112th Congress, *Report and Findings Related to Representative Bill Owens*, Review No. 12-8236, August 24, 2012.

<sup>29</sup> Roskam for Congress Committee, FEC Form 3, 2013 April Quarterly Reports, April 15, 2013; Roskam for Congress Committee, FEC Form 3, 2013 July Quarterly Reports, July 15, 2013.

<sup>30</sup> House Comm. on Standards of Official Conduct, House Ethics Manual, at 87, 108 (110th Cong., 2d Sess., 2008 ed.).

<sup>31</sup> 22 U.S.C. §§ 2452(a)(2)(i), 2458a(a)(1); House Ethics Manual, at 110.

entity “that pays for officially-connected travel will organize and conduct the trip, rather than merely pay for a trip that is in fact organized and conducted by another entity.”<sup>32</sup>

In addition, in the context of travel rule violations, the House Ethics Committee has made clear members may be held responsible for the knowledge of their staff, explaining: “[I]t would not well serve the House as an institution to allow its Members to escape responsibility by delegating authority to their staff to take actions and hide behind their lack of knowledge of the facts surrounding those actions. . . . Many times Members act through the actions of their staff and, therefore, should be held liable for those actions in certain circumstances.”<sup>33</sup>

The government of Taiwan, not CCU, organized and conducted the trip, and may have paid for it. As a result, CCU was not the actual sponsor of Rep. Roskam’s travel. By accepting payment from CCU for his and his wife’s trip to Taiwan, Rep. Roskam appears to have accepted an impermissible gift, violating House travel and gift rules and/or MECEA. In addition, Rep. Roskam knew or should have known CCU was not the trip’s actual sponsor because neither he nor his staff had any contact with CCU while planning the trip, and instead worked closely with TECRO officials.

### **False Statements**

Rule 25, clause 5(b)(2) requires House members to sign and submit an advance authorization to accept payment for private-sponsored travel which names the entity paying for the travel.<sup>34</sup> Members must sign a Traveler Form asserting the information on the form is “true, complete, and correct to the best of my knowledge.”<sup>35</sup> Federal law prohibits anyone from making “any materially false, fictitious, or fraudulent statement or representation”<sup>36</sup> on “a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch.”<sup>37</sup> If Rep. Roskam signed the Traveler Form knowing CCU was not the actual sponsor of the trip to Taiwan, he may have 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.”<sup>38</sup> This ethics standard is considered to be “the most comprehensive provision” of the code.<sup>39</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct noted it was included to deal with “flagrant”

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<sup>32</sup> *Id.* at 98; House Comm. on Standards of Official Conduct, “Memorandum to All Members, Officers, and Employees,” Travel Guidelines and Regulations, February 20, 2007 (Travel Guidelines), at 3 (“Expenses may only be accepted from an entity or entities that have a significant role in organizing and conducting a trip . . . [and] may not be accepted from a source that has merely donated monetary or in-kind support to the trip but does not have a significant role in organizing or conducting the trip.”)

<sup>33</sup> House Ethics Manual at 192-93.

<sup>34</sup> *Id.* at 103-04.

<sup>35</sup> Rep. Peter Roskam, Privately Sponsored Travel: Traveler Form, filed September 12, 2011.

<sup>36</sup> 18 U.S.C. § 1001(a)(2).

<sup>37</sup> 18 U.S.C. § 1001(c)(1).

<sup>38</sup> Rule 23, cl. 1.

<sup>39</sup> House Ethics Manual, at 12.

violations of the law that reflect on “Congress as a whole,” which might otherwise go unpunished.<sup>40</sup> 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,<sup>41</sup> making false statements to the committee,<sup>42</sup> criminal convictions for bribery,<sup>43</sup> accepting illegal gratuities,<sup>44</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>45</sup>

By accepting payment for his and his wife’s trip to Taiwan from an impermissible source, and stating on a travel authorization form that the trip was sponsored by CCU, Rep. Roskam engaged in conduct that does not reflect creditably on the House.

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<sup>40</sup> 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).

<sup>41</sup> 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).

<sup>42</sup> 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).

<sup>43</sup> 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)).

<sup>44</sup> 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).

<sup>45</sup> 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 AARON SCHOCK

Representative Aaron Schock (R-IL) is a three-term member of Congress, representing Illinois' 18th congressional district. His ethics issues stem from illegally soliciting excessive contributions. He was included in CREW's 2012 report on congressional corruption for related matters.<sup>1</sup>

### **Improper Solicitation of Funds**

In 2012, in the wake of redistricting, incumbent Reps. Adam Kinzinger (R-IL) and Don Manzullo (R-IL) competed in a hotly contested primary to represent Illinois' 16th District.<sup>2</sup> The Campaign for Primary Accountability (CPA), a super PAC dedicated to removing incumbents from office, targeted Rep. Manzullo during the primary.<sup>3</sup> According to the Federal Election Commission (FEC), the CPA spent a total of \$224,532 on mailings, online advertising, and TV and radio ads opposing Rep. Manzullo.<sup>4</sup>

Rep. Schock endorsed Rep. Kinzinger.<sup>5</sup> On March 15, 2012, Rep. Schock asked House Majority Leader Eric Cantor (R-VA), who had also publicly endorsed Rep. Kinzinger, if he would contribute to an organization supporting Rep. Kinzinger's bid.<sup>6</sup> According to Rep. Cantor's campaign spokesperson, Rep. Schock said he planned to give \$25,000 to the CPA to be used to benefit Rep. Kinzinger, and asked Rep. Cantor, "Can you match that?"<sup>7</sup> Rep. Cantor replied "Absolutely."<sup>8</sup> On March 16, 2012, Rep. Cantor's leadership PAC, Every Republican Is Crucial, contributed \$25,000 to the CPA.<sup>9</sup>

In an email to *Roll Call*, a spokesman for Rep. Schock said he had "vetted the question through an attorney specializing in FEC compliance beforehand" and was told the solicitation would be legal.<sup>10</sup> On March 20, 2012, Rep. Kinzinger defeated Rep. Manzullo in the primary by 12 points.<sup>11</sup>

### **Status of Investigations**

After conducting an investigation into whether Rep. Schock illegally solicited excessive contributions, the Office of Congressional Ethics (OCE) found reason to believe Rep. Schock's

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<sup>1</sup> For more information, see CREW's Most Corrupt 2012, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-members-of-congress-report-2012>.

<sup>2</sup> David Catanese, Tea Party Backs Veteran Illinois Politician in House Race, *Politico*, March 20, 2012.

<sup>3</sup> Kim Geiger, Ill. Primary: Freshman Congressman Knocks Off Veteran in GOP Battle, *Los Angeles Times*, March 21, 2012.

<sup>4</sup> Campaign for Primary Accountability Inc., FEC Form 3X, 2012 April Monthly Report, April 20, 2012.

<sup>5</sup> David Catanese, Schock for Kinzinger, *Politico*, February 27, 2012.

<sup>6</sup> John Stanton, Eric Cantor Gave \$25K to Anti-Incumbent PAC to Aid Adam Kinzinger, *Roll Call*, April 6, 2012.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Campaign for Primary Accountability Inc., FEC Form 3X, 2012 April Monthly Report, April 20, 2012.

<sup>10</sup> John Stanton, Aaron Schock's Office Insists Super PAC Solicitation Was Legal, *Roll Call*, April 11, 2012.

<sup>11</sup> Chris Cillizza, Rep. Kinzinger Beats Rep. Manzullo in Illinois, *Washington Post*, March 21, 2012.

campaign committee solicited Rep. Cantor for the \$25,000 donation to the CPA.<sup>12</sup> OCE referred Rep. Schock's case to the House Ethics Committee on August 30, 2012.<sup>13</sup> On February 6, 2013, the House Ethics Committee announced it had extended its review of the matter involving Rep. Schock.<sup>14</sup> The current state of the investigation is unknown and there is no date by which the committee must act.

### **Legal Fees**

Since May 2012, Rep. Schock's campaign committee has spent \$154,186 on legal fees and services. In 2012, the campaign committee paid \$2,323 to Patton Boggs and \$100,883 to Covington and Burling.<sup>15</sup> So far in 2013, Rep. Schock's campaign committee has spent \$50,980 on legal fees, \$49,765 which was paid to Covington and Burling.<sup>16</sup> The campaign committee also paid \$1,215 to the law office of John Fogarty in March 2013.<sup>17</sup>

### **Potential Violations**

### **Improper Solicitation of Campaign Contributions**

Federal law prohibits any "individual holding Federal office" from "solicit[ing] . . . funds in connection with an election for Federal office . . . unless the funds are subject to the limitations, prohibitions, and reporting requirements" of the Federal Election Campaign Act (FECA).<sup>18</sup> The FEC made explicitly clear in Advisory Opinion 2011-12 that, under 2 U.S.C. §§ 441a(a)(1)(C) and 441i(e)(1)(A), a federal officeholder "may only solicit contributions of up to \$5,000 from individuals . . . and Federal political action committees" for an independent expenditure-only political committee such as CPA.<sup>19</sup>

By soliciting a contribution of \$25,000 from House Majority Leader Cantor, Rep. Schock likely violated 2 U.S.C. § 441i(e)(1)(A).

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<sup>12</sup> Office of Congressional Ethics, 112th Congress, *Report*, Review No. 12-9525, August 24, 2012 (OCE Report), at 21. The OCE Report's findings did not identify Rep. Cantor by name, instead referring to "Representative 1," but other documents in the report make clear that Rep. Cantor is "Representative 1." *See, e.g.*, OCE Report, at 4, 11.

<sup>13</sup> Press Release, House Committee on Ethics, 113th Congress, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Aaron Schock, December 14, 2012.

<sup>14</sup> Press Release, House Committee on Ethics, 113th Congress, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Aaron Schock, February 6, 2013.

<sup>15</sup> Schock for Congress, FEC Form 3, July 2012 Quarterly Report, July 13, 2012; Schock for Congress, FEC Form 3, October 2012 Quarterly Report, October 15, 2012; Schock for Congress, FEC Form 3, 2012 Pre-General Report, October 25, 2012; Schock for Congress, FEC Form 3, 2012 Post-General Report, December 6, 2012; Schock for Congress, FEC Form 3, 2012 Year End Report, January 30, 2013.

<sup>16</sup> Schock for Congress, FEC Form 3, April Quarterly 2013 Report, April 15, 2013; Schock for Congress, FEC Form 3, July Quarterly 2013, Amended, July 24, 2013.

<sup>17</sup> *Id.*

<sup>18</sup> 2 U.S.C. § 441i(e)(1)(A); 11 CFR § 300.61.

<sup>19</sup> Federal Election Commission, Advisory Opinion 2011-12, June 30, 2011; *see also* FEC Complaint filed by Campaign Legal Center, April 30, 2012, *available at* [http://www.campaignlegalcenter.org/attachments/Press\\_Releases/CLC\\_-\\_Dem\\_21\\_v\\_Schock\\_Complaint\\_-\\_4-30-12.pdf](http://www.campaignlegalcenter.org/attachments/Press_Releases/CLC_-_Dem_21_v_Schock_Complaint_-_4-30-12.pdf).

## **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.”<sup>20</sup> This ethics standard is considered to be “the most comprehensive provision” of the code.<sup>21</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” which might otherwise go unpunished.<sup>22</sup> 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,<sup>23</sup> making false statements to the committee, criminal convictions for bribery,<sup>24</sup> accepting illegal gratuities,<sup>25</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>26</sup>

By improperly soliciting \$25,000 from House Majority Leader Cantor, Rep. Schock acted in a manner that does not reflect creditably upon the House.

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<sup>20</sup> Rule 23, cl. 1.

<sup>21</sup> House Comm. on Standards of Official Conduct, House Ethics Manual, at 12 (110th Cong., 2d Sess., 2008 ed.).

<sup>22</sup> 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).

<sup>23</sup> 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).

<sup>24</sup> 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)).

<sup>25</sup> 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).

<sup>26</sup> 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 JOHN TIERNEY

Representative John Tierney (D-MA) is a nine-term member of Congress, representing Massachusetts' 6th congressional district. His ethics issues stem from his failure to report his wife's income and assets on his personal financial disclosure forms and income tax returns.

### Failure to Report Income

Rep. Tierney's brother-in-law, Robert Eremian, for decades ran a multimillion-dollar illegal gambling business.<sup>1</sup> Mr. Eremian was convicted of tax evasion and money laundering in 2002, but nonetheless received permission from probation officials to move to Antigua in 2003, ostensibly to work as a computer consultant for the gaming industry.<sup>2</sup> From approximately 2003 through 2009, Patrice Tierney, Mr. Eremian's sister and Rep. Tierney's wife, was responsible for Mr. Eremian's affairs in Massachusetts.<sup>3</sup> Among other things, she oversaw his bank account, paid bills for their mother and Mr. Eremian's family, and provided information to the accountant responsible for preparing Mr. Eremian's tax returns.<sup>4</sup>

In 2010, prosecutors alleged Mr. Eremian was continuing to operate his illegal gambling operation from Antigua and charged him and his brother, Daniel Eremian, with racketeering, money laundering, operating an illegal gambling business, and filing false tax returns.<sup>5</sup> Prosecutors also charged Ms. Tierney with aiding and abetting the filing of false tax returns for Robert Eremian.<sup>6</sup> At the time, both Rep. and Ms. Tierney said they believed Robert Eremian was working as a software consultant in Antigua.<sup>7</sup> Prosecutors, however, said more than \$7 million passed through the account while Ms. Tierney was managing it and she had been willfully blind to her brother's illegal behavior.<sup>8</sup> She pled guilty to four counts of aiding and abetting the filing of false tax returns in October 2010,<sup>9</sup> and was sentenced to a month in prison followed by five months of house arrest and two years of probation.<sup>10</sup>

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<sup>1</sup> Stephanie Ebbert, Tierney's Wife Tells Judge She is Guilty, *Boston Globe*, October 7, 2010.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*; Stephanie Ebbert, Rep. Tierney's Wife Gets 30-Day Sentence, *Boston Globe*, January 14, 2011; House Ethics Committee, 113th Congress, *In the Matter of Allegations Relating to Representative John Tierney*, September 11, 2013 (House Ethics Committee Report), at 2; Office of Congressional Ethics, 113th Congress, *Report*, Review No. 13-1064, May 31, 2013 (OCE Report), at 3. It is unclear exactly when Ms. Tierney's management of Robert Eremian's financial affairs began and ended. See House Ethics Committee Report, at 2 (Ms. Tierney's involvement began "around 2002" and continued "through 2009"); OCE Report, at 7 (Ms. Tierney managed Mr. Eremian's financial affairs "from approximately 2003 to 2010"); OCE Report, Exhibit 1, *United States v. Patrice Tierney*, Information, October 4, 2010, at 13-1064\_0011 (the period at issue was "from approximately 2003 through 2009").

<sup>4</sup> House Ethics Committee Report, at 2-3; OCE Report, at 7.

<sup>5</sup> Ebbert, *Boston Globe*, Oct. 7, 2010. Robert Eremian was indicted in 2010 on 442 counts of racketeering, illegal gambling, and money laundering. See Noah Bierman and Glen Johnson, Tierney Denies In-Laws' Claims, *Boston Globe*, July 4, 2012.

<sup>6</sup> Ebbert, *Boston Globe*, Oct. 7, 2010.

<sup>7</sup> Brian MacQuarrie, Tierney's Spouse Testifies in Case, *Boston Globe*, November 22, 2011; Bierman and Johnson, *Boston Globe*, July 4, 2012.

<sup>8</sup> Ebbert, *Boston Globe*, Oct. 7, 2010.

<sup>9</sup> *Id.*; OCE Report, at 7; House Ethics Committee Report, at 3.

<sup>10</sup> Ebbert, *Boston Globe*, Jan. 14, 2011.

Prosecutors alleged Ms. Tierney received roughly \$223,000 from her brother between 2004 and 2010, mainly in the form of checks she wrote to herself or to her mother, who then turned the money back over to Ms. Tierney.<sup>11</sup> A large portion of the money came via monthly \$1,000 checks Ms. Tierney wrote to herself.<sup>12</sup> Mr. Eremian also made monthly \$250 payments on Ms. Tierney's car lease and paid for a family cell phone plan that she shared with her nieces and nephews.<sup>13</sup>

Ms. Tierney, Rep. Tierney, and Robert Eremian have all described the money given to Ms. Tierney as gifts, not salary, though Ms. Tierney and her brother have at times referred to the payments as compensation. Ms. Tierney maintained records of transactions made from her brother's account and provided them to his tax lawyer for use in preparing Robert Eremian's tax returns.<sup>14</sup> The records included a line item for "Gifts for Patrice."<sup>15</sup> While testifying at Daniel Eremian's trial, Ms. Tierney described the money she received as gifts meant to show gratitude.<sup>16</sup> Ms. Tierney also testified that her mother endorsed the checks to her as "a way to compensate me for all that I did for her."<sup>17</sup> When asked if she had been earning a living by managing Robert Eremian's account, Ms. Tierney replied, "I was being appreciated" and "I received gifts from my brother for helping him."<sup>18</sup> "It's a lot of money, correct?" the prosecutor asked her.<sup>19</sup> "Yes, I did a lot of work," she responded.<sup>20</sup>

Ms. Tierney's lawyer publicly disputed the \$223,000 figure and Rep. Tierney described it as "very much inflated."<sup>21</sup> Rep. Tierney said much of the money his wife received from the account was meant to reimburse her for expenses, though his office declined to describe the expenses or explain why Ms. Tierney did not pay them directly through the account she supervised.<sup>22</sup> Rep. Tierney also said he knew his wife received gifts from her brother, but believed they were meant to thank her for what she was doing to help Robert Eremian's family.<sup>23</sup> The congressman said he "didn't get any money" from the account personally and insisted the account Ms. Tierney managed belonged only to Robert Eremian and his wife had merely been given the authority to sign checks.<sup>24</sup> During her testimony, however, Ms. Tierney confirmed the account was a joint one in both her name and her brother's name.<sup>25</sup>

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<sup>11</sup> MacQuarrie, *Boston Globe*, Nov. 22, 2011; House Ethics Committee Report, at 3; OCE Report, at 10.

<sup>12</sup> *Id.*; House Ethics Committee Report, at 3; Michael Rezendes, Groups Question Tierney Statement, *Boston Globe*, August 4, 2012.

<sup>13</sup> Jenna Russell, Family Ties Prove Thorny for Tierney, *Boston Globe*, November 28, 2011; Michael Rezendes and Noah Bierman, Troubles in Paradise Tierney Somehow Missed, *Boston Globe*, July 22, 2012; OCE Report, Exhibit 4, Disposition, at 13-1064\_0185.

<sup>14</sup> OCE Report, at 8.

<sup>15</sup> *Id.* at 14.

<sup>16</sup> Rezendes and Bierman, *Boston Globe*, July 22, 2012; OCE Report, at 13; House Ethics Committee Report, at 3.

<sup>17</sup> *Id.*; OCE Report, at 12.

<sup>18</sup> *Id.* at 12-13; Rezendes and Bierman, *Boston Globe*, July 22, 2012.

<sup>19</sup> *Id.*; OCE Report, at 12.

<sup>20</sup> *Id.*

<sup>21</sup> Bierman and Johnson, *Boston Globe*, July 4, 2012; Ebbert, *Boston Globe*, Jan. 14, 2011.

<sup>22</sup> Rezendes, *Boston Globe*, Aug. 4, 2012.

<sup>23</sup> Rezendes and Bierman, *Boston Globe*, July 22, 2012.

<sup>24</sup> Rezendes, *Boston Globe*, Aug. 4, 2012.

<sup>25</sup> *Id.*

Rep. Tierney told the House Ethics Committee Ms. Tierney voluntarily helped her mother and her brother and his family, and he was not aware of any intent on any of their parts for the payments to Ms. Tierney to be treated as earned income.<sup>26</sup> In addition, Robert Eremian told the House Ethics Committee, by telephone from Antigua, where he is a fugitive from justice, that the payments to Ms. Tierney were intended to “compensate” his sister for her assistance at a difficult time, but were not intended to be treated as a salary in exchange for her services.<sup>27</sup>

Tax experts and watchdog groups consulted by the *Boston Globe* raised questions about the Tierneys’ description of the money as gifts. They questioned whether the money should have been treated as income for disclosure and tax purposes, citing Ms. Tierney’s direct control of the account, her testimony that the money was tied to work she had performed, and the fact that she wrote herself monthly checks of a consistent amount resembling salary payments.<sup>28</sup>

Rep. Tierney did not disclose the account overseen by Ms. Tierney or any of the money Ms. Tierney received from her brother on his personal financial disclosure forms.<sup>29</sup> Members of Congress are not required to disclose gifts from relatives, or most gifts to their spouses.<sup>30</sup> They must, however, normally disclose the source of a spouse’s income, though not the amount.<sup>31</sup> A spokeswoman for the congressman said he had contacted the House Ethics Committee for guidance on the issue after his wife’s 2010 guilty plea, though she would not give details about Rep. Tierney’s request or the committee’s response.<sup>32</sup> The spokeswoman said she did not believe the congressman received a written opinion from the committee.<sup>33</sup>

In 2012, Rep. Tierney released six years’ worth of tax returns to news organizations, none of which reflected the money received by Ms. Tierney, which the congressman said was excluded because it was a gift from a relative and not subject to tax or reporting requirements.<sup>34</sup> Daniel K. Stern, Ms. Tierney’s lawyer, said the Internal Revenue Service (IRS) reviewed the matter during the criminal investigation into Ms. Tierney and determined the money was not considered income.<sup>35</sup>

### **Status of Investigations**

After conducting an investigation, the Office of Congressional Ethics found substantial reason to believe Rep. Tierney’s wife earned income from a source that was not disclosed in his

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<sup>26</sup> House Ethics Committee Report, at 5.

<sup>27</sup> *Id.* at 5. The House Ethics Committee report notes that Robert Eremian “emphasized that he was unsure that the term ‘compensate’ was properly applied in this scenario, and that the most important thing to him was to assure that Mrs. Tierney did not suffer any losses as a result of her assistance to him.” *See id.*

<sup>28</sup> *Id.*; Michael Rezendes, Tax Questions Loom for Tierney, Tisei, *Boston Globe*, September 26, 2012.

<sup>29</sup> Rezendes, *Boston Globe*, Aug. 4, 2012; Rep. John F. Tierney, Personal Financial Disclosure Statements for 2004-2012; OCE Report, at 15; House Ethics Committee Report, at 3.

<sup>30</sup> House Comm. on Standards of Official Conduct, House Ethics Manual, at 33-34, 258-59 (110th Cong., 2d Sess., 2008 ed.).

<sup>31</sup> *Id.* at 253-55.

<sup>32</sup> Rezendes, *Boston Globe*, Aug. 4, 2012.

<sup>33</sup> *Id.*

<sup>34</sup> Rezendes, *Boston Globe*, Sept. 26, 2012; Brian C. Mooney and Michael Rezendes, Tierney, Wife Release Tax Returns, *Boston Globe*, September 27, 2012.

<sup>35</sup> *Id.*

financial disclosure statements and that he did not include in their joint federal income tax returns.<sup>36</sup> OCE referred Rep. Tierney’s case to the House Ethics Committee on June 13, 2013, recommending further review.<sup>37</sup> On September 11, 2013, the House Ethics Committee said it had unanimously concluded the evidence was inconclusive as to whether the payments to Ms. Tierney were income or gifts, and voted to end its review of the matter without further action.<sup>38</sup>

## **Legal Fees**

Since 2012, Rep. Tierney’s campaign has paid nearly \$30,000 in legal fees to five firms: \$9,388 to Perkins Coie, \$1,000 to lawyer Dennis Newman, \$15,920 to the McMahon Law Office, \$1,500 to lawyer Howard Cooper, and \$660 to Todd & Weld.<sup>39</sup>

## **Potential Violations**

## **Tax Law Violations**

The amount of federal tax owed by an individual or a married couple is based on taxable income, which normally is gross income minus allowable deductions.<sup>40</sup> Gross income includes “all income from whatever source derived.”<sup>41</sup> Excluded from gross income, however, is “the value of property acquired by gift, bequest, devise, or inheritance.”<sup>42</sup> The Supreme Court held the difference between gifts and transfers that constitute gross income is that transfers made “from a ‘detached and disinterested generosity,’ . . . ‘out of affection, respect, admiration, charity or like impulses,’” are gifts, while payments proceeding from “‘the incentive of anticipated benefit’ of an economic nature” are not.<sup>43</sup>

Although the House Ethics Committee recognized these principles, it claimed transfers within families are presumed to be gifts, relying largely on a legal treatise.<sup>44</sup> The committee, however, conceded Ms. Tierney’s monthly payments and the “two-step” transfers through her mother suggested the payments were income under the Supreme Court’s doctrine, and acknowledged some intrafamily transfers have been treated as income.<sup>45</sup> In addition, Ms. Tierney and Robert Eremian described the payments as compensation, and Ms. Tierney said she received the money for “helping” her brother and “did a lot of work” for it.

Despite the House Ethics Committee’s conclusion that the law is unclear and the evidence is inconclusive, the Supreme Court’s precedent and the evidence before the committee

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<sup>36</sup> OCE Report, at 1.

<sup>37</sup> Press Release, House Committee on Ethics, 113th Congress, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative John Tierney, September 11, 2013.

<sup>38</sup> House Ethics Committee Report, at 1.

<sup>39</sup> John Tierney for Congress, FEC Form 3, 2012 October Quarterly – 2013 July Quarterly Reports.

<sup>40</sup> 26 U.S.C. §§ 1, 61, 63.

<sup>41</sup> 26 U.S.C. § 61.

<sup>42</sup> 26 U.S.C. § 102(a).

<sup>43</sup> *Commissioner of Internal Revenue v. Duberstein*, 363 U.S. 278, 285 (1960).

<sup>44</sup> House Ethics Committee Report, at 6-9.

<sup>45</sup> *Id.* at 8-9.

appear to show the money Ms. Tierney received was, in fact, income. Therefore, Rep. Tierney appears to have violated federal tax law by failing to report it.

### **False Statements on Personal Financial Disclosure Forms**

The Ethics in Government Act of 1978 requires all members of Congress to file financial disclosure reports.<sup>46</sup> Under the statute, the attorney general may seek a civil penalty of up to \$50,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.<sup>47</sup> House Rule 26 incorporates the financial disclosure provisions of the Ethics in Government Act.<sup>48</sup> In addition, federal law prohibits anyone from making “any materially false, fictitious, or fraudulent statement or representation”<sup>49</sup> on “a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch.”<sup>50</sup>

Despite the House Ethics Committee’s conclusion that the law is unclear and the evidence inconclusive, the Supreme Court’s precedent and the evidence before the committee appear to show the money Ms. Tierney received from her brother was income. Therefore, Rep. Tierney appears to have violated the Ethics in Government Act and 18 U.S.C. § 1001 by failing to disclose it on his personal financial disclosure forms. Similarly, if his wife’s account was interest-bearing, Rep. Tierney appears to have violated the Ethics in Government Act and 18 U.S.C. § 1001 by failing to disclose it on his personal financial disclosure forms.

### **Conduct Not Reflecting Creditably on the House**

Rule 23 requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”<sup>51</sup> This ethics standard is considered to be “the most comprehensive provision” of the code.<sup>52</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” which might otherwise go unpunished.<sup>53</sup> 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,<sup>54</sup> making false statements to the committee,<sup>55</sup> criminal convictions for bribery,<sup>56</sup> accepting illegal

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<sup>46</sup> Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

<sup>47</sup> 5 U.S.C. app. 4, § 104.

<sup>48</sup> House Ethics Manual, at 248.

<sup>49</sup> 18 U.S.C. § 1001(a)(2).

<sup>50</sup> 18 U.S.C. § 1001(c)(1).

<sup>51</sup> Rule 23, cl. 1.

<sup>52</sup> House Ethics Manual, at 12.

<sup>53</sup> 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).

<sup>54</sup> 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).

<sup>55</sup> 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).

<sup>56</sup> 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

gratuities,<sup>57</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>58</sup>

Despite the House Ethics Committee's conclusion that the law is unclear and the evidence inconclusive, the Supreme Court's precedent and the evidence before the committee appear to show the money Ms. Tierney received from her brother was income. By failing to report that income on his joint tax returns and failing to disclose that income and his wife's bank account on his personal financial disclosure forms, Rep. Tierney engaged in conduct that does not reflect creditably on the House.

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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)).

<sup>57</sup> 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).

<sup>58</sup> 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).