

# CREW'S MOST CORRUPT



# CREW

citizens for responsibility  
and ethics in washington

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## EXECUTIVE SUMMARY

CREW's eighth report on congressional corruption names 20 members of Congress – 12 members who engaged in serious misconduct and 8 members whose misdeeds earned them a dishonorable mention. Most members on CREW's list violated the law and all flagrantly ignored the rules. For the majority, there have been few consequences.

There was no shortage of candidates for CREW's list this year, and 11 of the 20 members are joining it for the first time. In addition, one member, Rep. David Rivera (R-FL), has been under investigation by no fewer than six separate authorities – quite the rap sheet for a freshman. Others, including Reps. Michael Grimm (R-NY), Greg Meeks (D-NY), and Vern Buchanan (R-FL), are also fending off inquiries on multiple fronts. Nine members violated campaign finance or personal financial disclosure rules. At least 14 members apparently are or have been under investigation either by the Office of Congressional Ethics (OCE), the House or Senate ethics committees, the Federal Election Commission (FEC), or law enforcement agencies. Members on the list have steered campaign donations and taxpayer money to themselves and their families, concealed the source of campaign funds, traded campaign contributions for official action, and abused their positions.

The 2012 list arrives as Americans' contempt for Congress appears to be reaching all-time highs. A July 2012 Gallup poll found reducing corruption in the federal government was the second-highest priority for the next president to address.<sup>1</sup> It followed only creating good jobs, and ranked higher than other significant concerns such as reducing the deficit and dealing with terrorism.<sup>2</sup> Meanwhile, the lack of ethics enforcement is fueling a loss of confidence as voters grow weary of seemingly endless scandals. By highlighting congressional misdeeds, CREW hopes to bring about change and help rebuild the public trust.

Despite public concern, the Senate Ethics Committee has effectively sleepwalked through the past year. The Department of Justice's Public Integrity Section misspent its resources on a fruitless case against former Sen. John Edwards (D-NC), ignoring more pressing targets. The FEC is hopelessly deadlocked, with half of the six-member commission openly refusing to enforce election law and five of the six commissioners serving despite expired terms. The OCE has continued to aggressively investigate possible wrongdoing by members of the House of Representatives, but it lacks enforcement power and the House Ethics Committee does little to follow up on its work. The committee is deeply backlogged, and its investigations of Most Corrupt standouts such as Reps. Meeks and Buchanan appear to be stuck in limbo with no clear timeline for resolution.

The House Ethics Committee did, finally, take action against Rep. Laura Richardson (D-CA) in August for forcing her staff to volunteer on her campaign, misappropriating public resources, and, outrageously, attempting to obstruct the ethics investigation into her misdeeds. The House publicly reprimanded her and levied a \$10,000 fine. Nevertheless, the rebuke came only after the committee's plodding investigation dragged on for nearly two years, leaving no recourse for beleaguered members of her staff who came to the committee seeking protection. Rep. Richardson's misconduct continued *even after* the committee notified her she was under

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<sup>1</sup> <http://www.gallup.com/poll/156347/americans-next-president-prioritize-jobs-corruption.aspx>.

<sup>2</sup> *Id.*

investigation, demonstrating how little she felt she had to fear from it. The investigative subcommittee assigned to Rep. Richardson's case tacitly acknowledged a failure to act in her case would shred what little remained of the committee's battered credibility, writing:

If the Committee fails to exact a steep price for such conduct, the message is one of a set of rules with a toothless enforcement mechanism . . . The integrity of any regulatory system, but particularly ones like the House that rely on peers to discipline peers, cannot abide evasive and obstructive conduct by targets of investigation . . . Investigative bodies must exact pressure on individuals like Representative Richardson who fail to act with complete candor towards them.<sup>3</sup>

The committee was stirred to action in her case but has otherwise sunk into an inexplicable torpor. It has bungled its most high-profile current case, that of Rep. Maxine Waters (D-CA), so badly it was forced to appoint an outside counsel to both investigate itself and review the evidence against Rep. Waters, a process still underway. Because of the chaos, CREW decided against including Rep. Waters on its list this year.

Even when the ethics committees agree action is needed, a series of loopholes allow lawmakers to escape consequences. Earlier this year, the OCE dropped an investigation into Rep. Grimm, apparently because his alleged fundraising violations took place before he was sworn in, depriving the office of jurisdiction. Similarly, Sen. David Vitter (R-LA) evaded an investigation into his solicitation of prostitutes in 2007 because he was a member of the House at the time of misconduct but joined the Senate before it was revealed, creating a lack of jurisdiction. The House Ethics Committee, meanwhile, has empaneled an investigative subcommittee to look into whether Rep. Shelley Berkley (D-NV) used her position to support her husband's financial and personal interests, but if her Senate bid this year is successful, that inquiry would fall victim to the same problem. If Rep. Berkley loses, she'll leave Congress – and the committee's jurisdiction – entirely. The House Ethics Committee also ordered one of last year's Most Corrupt members, Rep. Jean Schmidt (R-OH), to repay more than half a million dollars in legal fees she improperly accepted. Rep. Schmidt started a legal defense fund, but she lost her primary in March. Once she leaves office, the committee has no mechanism in place to force her to comply with its repayment order. Congress must close these loopholes.

These problems are not new, but they are urgent. The Supreme Court's *Citizens United* decision has unleashed an unprecedented flood of money into politics, providing new opportunities for corruption, and the investigative bodies responsible for making sure government acts in the best interests of the public must do a better job. The president needs to nominate new commissioners to the FEC and make sure they're willing to enforce the law. Further, the House should retain the OCE and Congress must reform its ethics process, rendering it more transparent and accountable to the people. Until then, CREW will continue to hold members of Congress accountable – and call for change.

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<sup>3</sup> House Committee on Ethics, 112th Congress, *In the Matter of Allegations Relating to Representative Laura Richardson*, Appendix A, *Report of the Investigative Subcommittee in the Matter of Allegations Relating to Representative Laura Richardson*, August 1, 2012, pp. 59-60.

## METHODOLOGY

To create this report, CREW reviewed media articles, Federal Election Commission reports,<sup>1</sup> 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> References to companies making campaign contributions are shorthand for campaign contributions by those companies' political action committees and employees and, in some cases, their immediate families. We are not insinuating that any company named in the report has made contributions in violation of federal campaign finance laws.

## **MEMBERS OF THE HOUSE**

## REPRESENTATIVE ROB ANDREWS

Representative Rob Andrews (D-NJ) is a twelve-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.

### 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>1</sup> Rep. Andrews repaid \$952 to his campaign committee, and the FEC ordered him to take steps to avoid any other such violations.<sup>2</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>3</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>4</sup> The hotel bill included charges for gratuities, the in-room bar, flowers, and ground transportation.<sup>5</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>6</sup> In addition, Rep. Andrews took \$2,610 in petty cash.<sup>7</sup> The Andrews family gave the couple a set of fine china as a wedding gift, at a cost of \$463.<sup>8</sup> In total, Rep. Andrews charged his campaign committee, Andrews for Congress,<sup>9</sup> more than \$13,000 for expenses associated with the trip.<sup>10</sup>

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>11</sup> In response, Rep. Andrews said the trip costs were legitimate campaign expenses because the wedding was for a

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<sup>1</sup> Federal Election Commission, Notification with Factual and Legal Analysis to The Honorable Robert E. Andrews: MUR No. 6140, July 14, 2009.

<sup>2</sup> *Id.*

<sup>3</sup> Matt Friedman, South Jersey Congressman Spent \$9,000 from Campaign Funds on Donor's Wedding, *Star-Ledger (New Jersey)*, November 19, 2011.

<sup>4</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>5</sup> Office of Congressional Ethics, 112th Congress, *Report*, Review No. 11-3260, March 23, 2012 (OCE Report), p.18.

<sup>6</sup> *Id.*; Andrews for Congress, FEC Form 3, 2011 October Quarterly Report, October 14, 2011.

<sup>7</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, p. 17.

<sup>8</sup> *Id.*; Friedman, *Star-Ledger (New Jersey)*, Nov. 19, 2011.

<sup>9</sup> Andrews for Congress, FEC Form 1, Statement of Organization, Amended, March 27, 2012.

<sup>10</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.

<sup>11</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.



campaign donor and adviser, whom he declined to identify.<sup>12</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>13</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>14</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>15</sup>

Within three days of the *Star-Ledger* article, Rep. Andrews said he would repay the money spent on the trip.<sup>16</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>17</sup> In addition, Rep. Andrews reimbursed his leadership PAC \$16,574 for airfare and insurance for himself, his wife, and his daughters.<sup>18</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>19</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>20</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 staff.<sup>21</sup> Mr. Street made only one contribution to Rep. Andrews’ campaign: \$250 in 2010.<sup>22</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>23</sup>

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<sup>12</sup> Friedman, *Star-Ledger (New Jersey)*, Nov. 19, 2011.

<sup>13</sup> Why George Norcross Won’t Back Christie for Governor: ‘I’m a Democrat’, *Star-Ledger (New Jersey)*, May 20, 2012.

<sup>14</sup> OCE Report, p. 14.

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

<sup>16</sup> John Barna, Andrews: To Return Campaign Fund Money Originally Used to Attend Wedding in Scotland, *Gloucester County Times*, November 22, 2011.

<sup>17</sup> Andrews for Congress, FEC Form 3, 2011 Year-End Report, Amended, April 13, 2012.

<sup>18</sup> *Star-Ledger (New Jersey)*, May 20, 2012; Committee to Strengthen America, FEC Form 3X, 2011 Year-End Report, Amended, May 28, 2012.

<sup>19</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>20</sup> OCE Report, Exhibit 3, Memorandum of Interview, Witness 1, March 5, 2012. The 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.

<sup>21</sup> OCE Report, Exhibit 3.

<sup>22</sup> OCE Report, p. 10.

<sup>23</sup> OCE Report, pp. 10-11.

## *Graduation Party*

In June 2011, Andrews for Congress spent \$10,000 on a party Rep. Andrews hosted at his New Jersey home.<sup>24</sup> The event was described as “from elegant to carnival fun.”<sup>25</sup> Party guests included both political and personal acquaintances, who received different invitations to the event.<sup>26</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>27</sup> A second invitation described the party only as a graduation celebration for Jacqueline Andrews.<sup>28</sup>

Rep. Andrews told the 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>29</sup> In addition, Ms. Andrews told the 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>30</sup> Rep. Andrews said he did not know whether his daughter received graduation gifts at the event.<sup>31</sup>

## *Hollywood Travel*

Over the past five years, Andrews for Congress has spent at least \$97,000 on California travel expenses, ostensibly so the congressman could attend fundraising events and political meetings.<sup>32</sup> The expenses include \$32,000 since 2007 for lodging and expenses at the Beverly Hills Plaza Hotel, more than \$27,000 for the use of a limo service during those trips, and thousands of dollars more on airline tickets, meals, and other expenses.<sup>33</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>34</sup> One daughter, Josie Andrews, is pursuing a

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<sup>24</sup> Friedman, *Star-Ledger (New Jersey)*, Nov. 19, 2011.

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

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

<sup>27</sup> Friedman, *Star-Ledger (New Jersey)*, Nov. 19, 2011; OCE Report, p. 24.

<sup>28</sup> Friedman, *Star-Ledger (New Jersey)*, Nov. 19, 2011.

<sup>29</sup> OCE Report, p. 26.

<sup>30</sup> *Id.*, p. 27.

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

<sup>32</sup> Geoff Mulvihill, *NJ Rep Used Campaign Funds on 18 Calif. Trips*, *Associated Press*, March 28, 2012.

<sup>33</sup> Rob Andrews U.S. House Committee, [FEC Form 3, 2007 October Quarterly Report, Amended](#), August 13, 2008; Andrews for Congress Committee, [FEC Form 3, 2007 April Quarterly Report, Amended](#), July 13, 2007; Rob Andrews U.S. House Committee, [FEC Form 3, 2008 April Quarterly Report, Amended](#), August 13, 2008; 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 July Quarterly Report, Amended](#), February 24, 2011; Rob Andrews U.S. House Committee, [FEC Form 3, 2010 October Quarterly Report, Amended](#), February 24, 2011; Rob Andrews U.S. House Committee, [FEC Form 3, 2010 Pre-Primary Report, Amended](#), October 13, 2010; Andrews for Congress, [FEC Form 3, 2011 Year-End Report, Amended](#), April 13, 2012; Andrews for Congress, [FEC Form 3, 2011 October Quarterly Report](#), October 14, 2012; Rob Andrews U.S. House Committee, [FEC Form 3, 2011 July Quarterly Report](#), July 14, 2012.

<sup>34</sup> OCE Report, p. 28.

career in show business.<sup>35</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>36</sup> Nonetheless, he was unable to produce any notes or copies of work done by either of his daughters.<sup>37</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>38</sup> In addition, Mr. Street told the 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>39</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>40</sup> In 2007, Josie Andrews performed in the musical *Carousel*, which ran from May until July 2007.<sup>41</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>42</sup> Most recently, she was a featured performer in the theater's May 2011 gala.<sup>43</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>44</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>45</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>46</sup> A month earlier, his campaign reported making a \$5,000 charitable donation directly benefiting the "West Side Story project."<sup>47</sup> His campaign made two other donations to the Prince Music Theater between 2007 and 2009, totaling \$2,750.<sup>48</sup>

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<sup>35</sup> <http://www.imdb.com/name/nm2573409/resume>.

<sup>36</sup> OCE Report, p. 29; Friedman, *Star-Ledger (New Jersey)*, Nov. 19, 2011.

<sup>37</sup> *Id.*; OCE Report, p. 29.

<sup>38</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>39</sup> OCE Report, p. 29.

<sup>40</sup> Andrews for Congress, *FEC Form 3, 2007-2011 Reports*; <http://www.imdb.com/name/nm2573409/resume>.

<sup>41</sup> <http://www.imdb.com/name/nm2573409/resume>; <http://www.walnutstreettheatre.org/season/carousel.php>.

<sup>42</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>43</sup> <http://www.imdb.com/name/nm2573409/resume>.

<sup>44</sup> Andrews for Congress, *FEC Form 3, 2011 April Quarterly Report, Amended*, November 15, 2011.

<sup>45</sup> Rob Andrews U.S. House Committee, *FEC Form 3, 2011 July Quarterly Report*, July 14, 2012.

<sup>46</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.

<sup>47</sup> *Id.*

<sup>48</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.

Josie Andrews has also performed with the Broadway Theatre of Pitman.<sup>49</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>50</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>51</sup> During January and February 2008 performances of *Hello Dolly*, another production including Josie Andrews, Andrews for Congress spent \$661 for gifts for donors.<sup>52</sup> Andrews for Congress spent another \$1,297 at the theater between March 2008 and January 2011.<sup>53</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>54</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>55</sup> The campaign paid an additional \$2,754 to the Grand Opera House in 2008,<sup>56</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>57</sup>

### **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>58</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>59</sup>

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<sup>49</sup> <http://www.imdb.com/name/nm2573409/resume>.

<sup>50</sup> Andrews for Congress, [FEC Form 3, 2007-2011 Reports](#).

<sup>51</sup> <http://www.thebroadwaytheatre.org/?go=ecalendar>, October 2007-December 2007; Rob Andrews U.S. House Committee, [FEC Form 3, 2007 Year-End Report, Amended](#), August 13, 2008.

<sup>52</sup> <http://www.thebroadwaytheatre.org/?go=ecalendar>, January 2008-February 2008; Rob Andrews U.S. House Committee, [FEC Form 3, April Quarterly Report, Amended](#), August 13, 2008.

<sup>53</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=ecalendar>, June 2008 and January-February 2009; Andrews for Congress, [FEC Form 3, 2007-2011 Reports](#).

<sup>54</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>55</sup> Rob Andrews U.S. House Committee, [FEC Form 3, 2007 Year-End Report, Amended](#), August 13, 2008.

<sup>56</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>57</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.

<sup>58</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>59</sup> [http://www.legistorm.com/member\\_family/107/Rob\\_Andrews.html](http://www.legistorm.com/member_family/107/Rob_Andrews.html).

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>60</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>61</sup> In fiscal year 2010, Rep. Andrews earmarked \$500,000 to Rutgers University School of Law for its public interest legal program.<sup>62</sup>

### **Status of Investigations**

In November 2011, CREW filed a complaint with the FEC against Rep. Andrews.<sup>63</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>64</sup>

The Office of Congressional Ethics investigated Rep. Andrews and, on April 2, 2012, referred his case to the House Ethics Committee.<sup>65</sup> The 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>66</sup> On August 31, 2012, the House Ethics Committee said it would extend its review and continue to gather information in the case.<sup>67</sup>

### **Legal Fees**

Rep. Andrews' campaign committee hired Brand Law Group most recently in December 2011 and has paid the firm \$110,242 in legal fees since then.<sup>68</sup> The committee previously hired Brand Law Group in 2007, and again in 2009.<sup>69</sup>

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<sup>60</sup> <http://www.legistorm.com/earmark/9901.html>. Sen. Frank Lautenberg (D-NJ) co-sponsored this earmark.

<sup>61</sup> <http://www.legistorm.com/earmark/26619.html>.

<sup>62</sup> <http://www.legistorm.com/earmark/50839.html>.

<sup>63</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>64</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>65</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>66</sup> OCE Report, p. 1.

<sup>67</sup> Press Release, House Committee on Ethics, 112th Congress, Statement of the Chairman and Ranking Republican of the Committee on Ethics Regarding Representative Robert Andrews, August 31, 2012.

<sup>68</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>69</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.

## 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>70</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>71</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>72</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>73</sup> Further, Rule 23, clause 6(a) requires each member to “keep his campaign funds separate from his personal funds.”<sup>74</sup> The rule also provides that all campaign funds must be used for “bona fide campaign or political purposes.”<sup>75</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>76</sup> This requirement is “**separate from, and in addition to, whatever recordkeeping requirements are imposed by the Federal Election Commission . . .**”<sup>77</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>78</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

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<sup>70</sup> 2 U.S.C. § 439a(b)(1).

<sup>71</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>72</sup> 2 U.S.C. § 437g(d)(1)(A)(i).

<sup>73</sup> Rule 23, cl. 6(b); House Comm. on Standards of Official Conduct, House Ethics Manual, p. 163 (110th Cong., 2d Sess., 2008 ed.).

<sup>74</sup> *Id.*

<sup>75</sup> Rule 23, cl. 6(c); House Ethics Manual, pp. 152, 163.

<sup>76</sup> *Id.*, p. 163.

<sup>77</sup> *Id.*, p. 165 (emphasis in original).

<sup>78</sup> *Id.*, p. 168.

account all of the activities” in which the member engages during the trip.<sup>79</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>80</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>81</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>82</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>83</sup> If an expense is both campaign-related and benefits someone personally, the campaign may only underwrite its pro rata share.<sup>84</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.

### **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>85</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>86</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>87</sup> Even if the expenses of

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<sup>79</sup> House Ethics Manual, p. 168 (emphasis in original).

<sup>80</sup> *Id.*, p. 169.

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

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

<sup>83</sup> House Ethics Manual, p. 166.

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

<sup>85</sup> 2 U.S.C. §§ 441a(a)(1)(A), 441a(f).

<sup>86</sup> Federal Election Commission, Explanation and Justification for final rule regarding Leadership PACs, 68 Fed. Reg. 67013, 67017 (December 1, 2003).

<sup>87</sup> Federal Election Commission, Contribution Limits 2011-12, available at <http://www.fec.gov/pages/brochures/contriblimits.shtml>.

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>88</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>89</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>90</sup> Only when the gift cannot be returned because it is perishable may the member destroy it.<sup>91</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>92</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>93</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.

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.

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<sup>88</sup> Rule 25, cl. 5(a)(3)(D).

<sup>89</sup> Rule 25, cl. 5(a)(2)(B)(i).

<sup>90</sup> House Ethics Manual, p. 73.

<sup>91</sup> Rule 25, cl. 5(a)(6).

<sup>92</sup> House Ethics Manual, p. 75.

<sup>93</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>94</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>95</sup> This ethics standard is considered to be "the most comprehensive provision" of the code.<sup>96</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with "flagrant" violations of the law that reflect on "Congress as a whole," and that might otherwise go unpunished.<sup>97</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>98</sup> making false statements to the committee,<sup>99</sup> criminal

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<sup>94</sup> 72 Stat., Part 2, B12, H. Con. Res. 175, 85th Cong. (adopted July 11, 1958); House Ethics Manual, p. 20.

<sup>95</sup> Rule 23, cl. 1.

<sup>96</sup> House Ethics Manual, p. 12.

<sup>97</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>98</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>99</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).

convictions for bribery,<sup>100</sup> or accepting illegal gratuities,<sup>101</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>102</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>100</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>101</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>102</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 five-term member of Congress, representing New York's 1st congressional district. His ethics issues stem from soliciting campaign contributions in connection with official actions.

### Soliciting Campaign Contributions Tied to Official Actions

In May 2012, hedge fund investor Eric Semler began planning a fireworks display at his Southampton, New York home as part of his son's bar mitzvah celebration.<sup>1</sup> Mr. Semler's home is located near an environmentally sensitive area, so he needed permits from local, state, and federal agencies for the fireworks display.<sup>2</sup> Mr. Semler hired Fireworks by Grucci to stage the display and acquire the permits, but by May 21, 2012 – five days before the party – Grucci had yet to receive the necessary approvals.<sup>3</sup> Mr. Semler contacted Rep. Bishop's office and asked the congressman to help.<sup>4</sup> Rep. Bishop agreed, and he and his staff began lobbying the Coast Guard, Army Corps of Engineers, U.S. Fish and Wildlife Service, New York State Department of Environmental Conservation, and local Southampton officials.<sup>5</sup>

On May 23, while the permits were still pending, Molly Bishop, Rep. Bishop's daughter and campaign fundraiser, emailed 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>6</sup> Ms. Bishop went on to note the Semlers could donate up to \$10,000 if they made the contribution before June 26.<sup>7</sup> Mr. Semler has since said Rep. Bishop's campaign staff first suggested he make a donation.<sup>8</sup> Rep. Bishop said Mr. Semler volunteered to make a donation, and his campaign followed up.<sup>9</sup>

With Rep. Bishop's assistance Mr. Semler eventually received the necessary permits, though he had to modify his original plan and stage the fireworks display from his roof rather than from an offshore barge.<sup>10</sup> The fireworks damaged a neighbor's Bentley, forcing Mr. Semler to pay for repairs.<sup>11</sup> Mr. Semler emailed Grucci employees and complained about the trouble and expense the display had brought, adding that Rep. Bishop "didn't hesitate to solicit me in the heat of battle," something he described as "really gross."<sup>12</sup> Mr. Semler later praised the

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<sup>1</sup> John Bresnahan, Tim Bishop's Bar Mitzvah Episode Could Spell Trouble, *Politico*, August 15, 2012.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* 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. Bresnahan, *Politico*, Aug. 15, 2012; <http://www.grucci.com/indexhotel.html>.

<sup>4</sup> Bresnahan, *Politico*, Aug. 15, 2012.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Bresnahan, *Politico*, Aug. 15, 2012.

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

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

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

<sup>12</sup> Bresnahan, *Politico*, Aug. 15, 2012.

congressman's work and said he was happy to have made a campaign contribution.<sup>13</sup> On June 26, Mr. Semler and his wife, Tracy Semler, contributed a combined \$5,000 to Rep. Bishop's campaign committee.<sup>14</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, though he reiterated that the congressman's staff had solicited the contribution.<sup>15</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>16</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>17</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>18</sup> Mr. Semler said he was attempting "to recite the expenses that I've incurred."<sup>19</sup> Rep. Bishop has since donated the \$5,000 in contributions to Long Island veterans' charities.<sup>20</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>21</sup> The status of the investigation is unknown.

### **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>22</sup> In considering

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<sup>13</sup> *Id.*

<sup>14</sup> Tim Bishop for Congress, FEC Form 3, 2012 July Quarterly, July 15, 2012.

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

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

<sup>17</sup> Bresnahan, *Politico*, Aug. 15, 2012.

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

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

<sup>20</sup> Joseph Pinciaro and Brendan J. O'Reilly, Updated: Bishop Defends Campaign Finance Practices, *Southampton Patch*, August 15, 2012.

<sup>21</sup> Brendan J. O'Reilly and Peter Verry, Smithtown Councilman, Former Top Cop Seeks Bishop Ethics Probe, *Commack Patch*, August 28, 2012.

<sup>22</sup> 18 U.S.C. § 201(c)(1)(B).

this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.<sup>23</sup>

If Mr. and Ms. Semlers' campaign contributions were solicited and/or made in direct response to Rep. Bishop using his position to assist the Semlers 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>24</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>25</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 that Mr. and Ms. 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.

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

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."<sup>26</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. 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.

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<sup>23</sup> *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398 (1999).

<sup>24</sup> House Comm. on Standards of Official Conduct, House Ethics Manual, p. 150 (110th Cong., 2d Sess., 2008 ed.).

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

<sup>26</sup> 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.

## **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>27</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. 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).

## **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>28</sup>

If 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.

## **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>29</sup> This ethics standard is considered to be “the most comprehensive provision” of the code.<sup>30</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and

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<sup>27</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>28</sup> 72 Stat., Part 2, B12, H. Con. Res. 175, 85th Cong. (adopted July 11, 1958); House Ethics Manual, p. 20.

<sup>29</sup> Rule 23, cl. 1.

<sup>30</sup> House Ethics Manual, p. 12.

that might otherwise go unpunished.<sup>31</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>32</sup> making false statements to the committee,<sup>33</sup> criminal convictions for bribery,<sup>34</sup> or accepting illegal gratuities,<sup>35</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>36</sup>

By soliciting and/or accepting a campaign contribution linked to using his congressional position to obtain approval of a fireworks permit, Rep. Bishop engaged in conduct that does not reflect creditably on the House.

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<sup>31</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>32</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>33</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>34</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>35</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>36</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 three-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.

### **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>1</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>2</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>3</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>4</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>5</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>6</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>7</sup> These payments did not appear to follow any 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>8</sup>

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<sup>1</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.

<sup>2</sup> *Id.*; 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>3</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>4</sup> Paul Broun Committee, FEC Form 3, 2007-2011 Reports.

<sup>5</sup> 11 C.F.R. §§ 104.3(d)(1), (4); Federal Election Commission, Instructions for Form 3 and Related Schedules, February 2009.

<sup>6</sup> Paul Broun Committee, FEC Form 3, 2007-2011 Reports.

<sup>7</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 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>8</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.



In March 2012, CREW released its *Family Affair* report, which questioned the interest payments to Rep. Broun.<sup>9</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>10</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>11</sup>

In response to the complaint, Rep. Broun's former campaign treasurer, Tim Echols, said he had outsourced the FEC filings and couldn't remember where the loan originally came from.<sup>12</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>13</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>14</sup> She also promised the congressman was "taking the necessary steps to file amendments and correct the whole oversight."<sup>15</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>16</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>17</sup>

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>18</sup> The amendments, however, asserted the actual source of the funds was a home equity line of credit from Athens Bank & Trust to Rep.

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<sup>9</sup> For more information, see *Family Affair*, available at <http://www.citizensforethics.org/familyaffair>.

<sup>10</sup> Blake Aued, Report: Broun Gained Personally from Campaign Contributions, *Athens Banner-Herald*, March 22, 2012.

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

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

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

<sup>14</sup> Blake Aued, Broun Spokeswoman: Ethics Complaint Was Result of an Oversight, *Athens Banner-Herald*, April 13, 2012.

<sup>15</sup> *Associated Press*, Apr. 13, 2012.

<sup>16</sup> Blake Aued, Broun Challenger Promises Action, Not Words, *Athens Banner-Herald*, June 23, 2012.

<sup>17</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.

<sup>18</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.

Broun with an interest rate of 5.99 percent.<sup>19</sup> According to the amendments, Rep. Broun then lent the money to his campaign with no interest owed.<sup>20</sup> The amended reports also showed a previously undisclosed \$65,000 loan from Rep. Broun to his campaign on June 4, 2007.<sup>21</sup> Like the other loans, this one was funded by the Athens Bank & Trust home equity line of credit at a 5.99 percent interest rate.<sup>22</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>23</sup> In the same filing, the committee reported a loan for almost the same amount to Rep. Broun from Athens 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>24</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.

### **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>25</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>26</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>27</sup>

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<sup>19</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>20</sup> *Id.*

<sup>21</sup> Paul Broun Committee, FEC Form 3, 2007 July Quarterly Report, Amended, June 26, 2012.

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

<sup>23</sup> Paul Broun Committee, FEC Form 3, 2010 Pre-Primary Election Report, Amended, June 27, 2012.

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

<sup>25</sup> 2 U.S.C. § 434(b)(3)(E); 11 C.F.R. § 104.3(d).

<sup>26</sup> 11 C.F.R. § 104.3(d)(4); Federal Election Commission, Instructions for Form 3 and Related Schedules, February 2009.

<sup>27</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.

By failing to disclose the existence of any of his four loans from Athens Bank & Trust based on the home equity line of credit that were used in connection with his campaign, Rep. Broun likely 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 likely 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. Brown appears to have violated 2 U.S.C. § 434(b)(3)(E) and 11 C.F.R. § 104.3(d).

## REPRESENTATIVE VERN BUCHANAN

Representative Vern Buchanan (R-FL) is a three-term member of Congress, representing Florida's 13th district. His ethics issues stem from: (1) pressuring partners and employees to make contributions to his campaign committee; (2) reimbursing them from his corporate funds; (3) trying to coerce a partner into signing a false affidavit; (4) 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, and 2011 congressional corruption reports for related matters.<sup>1</sup>

### Conduit Contributions

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 the corporation.”<sup>7</sup> Mr. Kazran believed Rep. Buchanan was instructing him “to have someone

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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>, CREW's Most Corrupt Report 2009, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-2009>, and CREW's Most Corrupt Report 2008, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-2008>.

<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.*, pp. 7-8.

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

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

<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.*, p. 21 (“I instructed [employees] to write a check and reimburse themselves for [it] – because Mr. Buchanan had asked me to get money. And he specifically told me get someone you trust and run it through the corporation.”); *id.*, p. 32 (“And he said to me, he says, Get somebody you trust and get the money out of the corporation.”); *id.* (“He had asked me to get money, I told him, I said, I thought you said I'm maxed out? I've already given you that money. And he said, Well, just get somebody you trust and run it through the corporation.”); *id.*, p. 36 (“And when I told him that I don't have it, he says, Well, get somebody you trust and run it through the corporation.”); *id.*, p. 37 (“And I said, You already told me I can't give any money.

write the check personally and then give them back the money through the corporation.”<sup>8</sup> Corroborating Mr. Kazran’s story, another HNJ executive, Josh Farid, 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 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

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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.*, p. 72 (“He said get somebody you trust, run it through the corporation.”). Mr. Kazran made the same allegations to the Office of Congressional Ethics. Office of Congressional Ethics, 112th Congress, *Report*, Review No. 11-7565, January 12, 2012 (OCE Report), p. 18.

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

<sup>9</sup> General Counsel’s Brief, pp. 17-18; *see also* OCE Report, p. 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 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, pp. 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, p. 8, January 25, 2011 (General Counsel’s Report #9).

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

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

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

<sup>13</sup> *Id.*, p. 14.

<sup>14</sup> *Id.*, pp. 14-15.

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

<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).

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>

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

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<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, p. 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, p. 5.

<sup>27</sup> Padilla Affidavit.

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

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>

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 Rep. Buchanan’s companies, was reimbursed with company funds for a political contribution.<sup>38</sup> Mr. Rosa, who had previously been the treasurer of a political committee, informed Rep. Buchanan that this would be illegal.<sup>39</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>40</sup>

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<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, p. 64.

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

<sup>36</sup> *Id.*, pp. 1-2.

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

<sup>38</sup> General Counsel’s Brief, p. 8.

<sup>39</sup> *Id.*

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

In 2009, another allegation of a conduit contribution to Rep. Buchanan's campaign committee surfaced.<sup>41</sup> Terry Keith Howell, a registered Democrat, claimed he had been reimbursed for donations he had made unwillingly to Rep. Buchanan's campaign.<sup>42</sup> According to a deposition he gave in a lawsuit, Mr. Howell claimed the \$8,800 contribution he made to Rep. Buchanan and the \$10,000 he gave to the Republican Party of Florida were actually paid by his business partners, including Timothy Mobley, a Tampa developer and major contributor to Rep. Buchanan.<sup>43</sup> Mr. Mobley was Mr. Howell's business partner in a trucking company.<sup>44</sup> Mr. Howell said, "Tim Mobley told me that Vern Buchanan is somebody good to have on your side, because he was going to be in charge of overseeing the DOT transportation stuff, so the amount of favors he could do for us was enormous."<sup>45</sup> Notably, Mr. Howell was in bankruptcy at the time he made the contributions.<sup>46</sup>

On October 7, 2010, Rep. Buchanan's campaign refunded \$5,000 in contributions that had been made by five former Venice Nissan Dodge employees, including \$1,000 from Mr. Bell, to the Treasury Department.<sup>47</sup> Similarly, on April 5, 2012, Rep. Buchanan's campaign refunded to the Treasury Department the \$67,900 in contributions made by HNJ employees.<sup>48</sup> In 2007, Rep. Buchanan's campaign refunded the \$18,400 in contributions from Suncoast Ford employees after a company auditor noticed them.<sup>49</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>50</sup> In September 2008, this and related disputes resulted in litigation between Rep. Buchanan, Mr. Kazran, and their companies.<sup>51</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>52</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>53</sup>

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<sup>41</sup> Susan Taylor Martin, Hard Times, Large Checks, *St. Petersburg Times*, June 20, 2009.

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

<sup>43</sup> *Id.*

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

<sup>45</sup> Martin, *St. Petersburg Times*, June 20, 2009.

<sup>46</sup> *Id.*

<sup>47</sup> Matthew Doig and Jeremy Wallace, Buchanan Returns Questioned Donations, *Sarasota Herald-Tribune*, June 3, 2011.

<sup>48</sup> Vern Buchanan for Congress, FEC Form 3, 2012 July Quarterly Report, July 15, 2012.

<sup>49</sup> General Counsel's Report, p. 16.

<sup>50</sup> Kazran Deposition, p. 34.

<sup>51</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>52</sup> Kazran Deposition, p. 55.

<sup>53</sup> *Id.*, pp. 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, p. 30.



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>54</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>55</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 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>56</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>57</sup>

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<sup>54</sup> Kazran Deposition, p. 59; Unsigned Kazran Affidavit; General Counsel’s Brief, p. 30.

<sup>55</sup> Unsigned Kazran Affidavit ¶ 4.

<sup>56</sup> *Id.* ¶¶ 5-7.

<sup>57</sup> *Id.* ¶ 8.

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>58</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>59</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>60</sup>

Mr. Kazran testified further that after he received the settlement communication, Rep. Buchanan asked him to come to Sarasota, Florida for a meeting.<sup>61</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>62</sup> Mr. Kazran refused, telling Rep. Buchanan he “couldn’t be lying.”<sup>63</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>64</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>65</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>66</sup> Nevertheless, unwilling to lie, Mr. Kazran refused to sign the affidavit.<sup>67</sup>

Rep. Buchanan testified he had almost nothing to do with the affidavit and remembered little about it.<sup>68</sup> He claimed he is was not his idea to have Mr. Kazran sign the affidavit, did not know who had prepared it, and had never even seen the affidavit before his sworn deposition.<sup>69</sup> The FEC concluded Rep. Buchanan’s lack of recall about the affidavit and the events surrounding it did not seem credible.<sup>70</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>71</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

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<sup>58</sup> Kazran Deposition, p. 60. *See also id.*, p. 67 (“And he tried to make it sound like he had nothing to do with this. This is far from the truth.”).

<sup>59</sup> *Id.*, p. 70.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*, pp. 60, 62.

<sup>62</sup> Kazran Deposition, pp. 60, 62.

<sup>63</sup> *Id.*, p. 62.

<sup>64</sup> *Id.*; *see also id.*, p. 65 (“He doesn’t come out and say, I’m going to get you, but he makes comments, Look I’m going to be governor some day, You want me to be on your side.”).

<sup>65</sup> *Id.*, pp. 60, 62.

<sup>66</sup> Kazran Deposition, pp. 57, 60.

<sup>67</sup> *Id.*, pp. 60-62.

<sup>68</sup> General Counsel’s Brief, p. 46.

<sup>69</sup> *Id.*, pp. 46-47.

<sup>70</sup> General Counsel’s Report #9, p. 19, General Counsel’s Brief, p. 47.

<sup>71</sup> *Thomas v. Sarasota 500*, Case No. 2008 CA 013014 NC, Complaint (12th Cir. Fla.), ¶¶ 141, 142.

and posters.<sup>72</sup> These materials were cleaned out, and the cars were detailed by dealership staff before they were made available to customers.<sup>73</sup> The dealership may not have been paid fair market value for the use of the vehicles.<sup>74</sup> Rep. Buchanan also stored campaign materials at the dealership.<sup>75</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, reported to the Internal Revenue Service (IRS) that Rep. Buchanan violated federal tax laws by committing tax evasion, fraud, and conspiracy to commit tax evasion.<sup>76</sup> According to Mr. Rosa's sworn deposition, "there was a fraud and crime that predated my employment and went on through virtually the entire period of my employment."<sup>77</sup>

Mr. Rosa's deposition did not include details of the alleged scheme, but he did say Rep. Buchanan "violated the integrity of the S corp structure."<sup>78</sup> In addition, Mr. Rosa alleged Rep. Buchanan created new business entities and used false spreadsheet records regarding income tax deductions to get favorable tax treatment on the use of his private plane.<sup>79</sup>

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

Rep. Buchanan filed required personal financial disclosure forms in 2007, 2008, 2009, and 2010.<sup>80</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>81</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>82</sup> Rep. Buchanan also told the OCE he did not know how he could have received income from one of the positions, could not explain discrepancies between his personal

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<sup>72</sup> *Id.*, ¶¶ 142-143.

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

<sup>74</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, p. 161.

<sup>75</sup> *Thomas v. Sarasota 500*, Complaint, ¶ 144.

<sup>76</sup> *Brooks v. Ornstein*, 2008 CA 034205 0 (9th Cir. Fla.), Deposition of Salvatore Rosa, pp. 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>77</sup> Rosa Deposition, p. 9.

<sup>78</sup> Rosa Deposition, p. 34.

<sup>79</sup> Virginia Chamlee, In Deposition, Ex-Employee Charges Florida Congressman with Wide Variety of Misdeeds, *Florida Independent*, April 5, 2012.

<sup>80</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>81</sup> Office of Congressional Ethics, 112th Congress, *Report*, Review No. 11-9366, pp. 9-19, October 28, 2011.

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

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>83</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>84</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>85</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>86</sup> The FEC’s initial general counsel’s brief concluded there was probable cause to believe Rep. Buchanan committed these violations.<sup>87</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>88</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 that many aspects of Rep. Buchanan’s testimony were not credible.<sup>89</sup> The FEC accepted the general counsel’s recommendation not to take further action against Rep. Buchanan on February 1, 2011.<sup>90</sup>

On June 29, 2010, the FEC found there was probable cause to believe Venice Nissan Dodge and Don Caldwell knowingly made conduit contributions and excessive contributions to Rep. Buchanan’s campaign.<sup>91</sup> The dealership and Mr. Caldwell settled with the FEC in August 2010, and agreed to pay an \$11,000 fine.<sup>92</sup> Similarly, on June 28, 2011, the FEC found there was probable cause to believe Suncoast Ford and Gary Scarbrough knowingly made conduit contributions and excessive contributions to Rep. Buchanan’s campaign.<sup>93</sup> This dealership and Mr. Scarbrough settled with the FEC in December 2011, paying \$7,000 and \$8,500 in fines.<sup>94</sup>

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<sup>83</sup> *Id.*, pp. 10, 16, 18, 19.

<sup>84</sup> *Id.*, p. 20.

<sup>85</sup> *Id.*, p. 20.

<sup>86</sup> Federal Election Commission, MUR No. 6054, Certification, March 17, 2010.

<sup>87</sup> General Counsel’s Brief, p. 51.

<sup>88</sup> General Counsel’s Report # 9, pp. 27-28.

<sup>89</sup> *Id.*, pp. 19-22, 27.

<sup>90</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>91</sup> Federal Election Commission, MUR No. 6054, Certification, June 29, 2010.

<sup>92</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>93</sup> Federal Election Commission, MUR No. 6054, Certification, June 28, 2011.

<sup>94</sup> Federal Election Commission, MUR No. 6054, Conciliation Agreement, December 20, 2011; Federal Election Commission, MUR No. 6054, Certification, December 16, 2011.

In addition, on September 21, 2010, the FEC found there was probable cause to believe HNJ and Sam Kazran knowingly made conduit contributions and excessive contributions to Rep. Buchanan's campaign,<sup>95</sup> and sued them on December 17, 2010.<sup>96</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>97</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>98</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>99</sup> The status of the DOJ investigation is unknown, though on September 11, 2012, Rep. Buchanan's lawyer claimed the head of the department's Public Integrity Section had informed him the inquiry was over, and Rep. Buchanan would not be charged.<sup>100</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>101</sup> On May 9, 2012, the House Ethics Committee indefinitely extended its investigation in the matter.<sup>102</sup> In addition, *CNN* reported the Federal Bureau of Investigation (FBI) also was investigating the matter.<sup>103</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>104</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>105</sup>

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<sup>95</sup> Federal Election Commission, MUR No. 6054, Certification, September 21, 2010.

<sup>96</sup> *Federal Election Commission v. Kazran*, No. 3:10-cv-1155-J-RBD-JRK (M.D. Fla.), Complaint.

<sup>97</sup> *Federal Election Commission v. Kazran*, No. 3:10-cv-1155-J-RBD-JRK (M.D. Fla. Oct. 13, 2011).

<sup>98</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>99</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>100</sup> Jeremy Wallace, Buchanan Attorneys Say Justice Ends Investigation; No Charges, *Sarasota Herald-Tribune*, September 11, 2012.

<sup>101</sup> Office of Congressional Ethics, 112th Congress, *Report*, Review No. 11-7565, January 12, 2012.

<sup>102</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>103</sup> Scott Bronstein and Drew Griffin, Powerful Congressman Accused of Campaign Finance Violations, *CNN*, June 23, 2012.

<sup>104</sup> House Ethics Committee, 112th Congress, *In the Matter of Allegations Relating to Representative Vern Buchanan*, July 10, 2012.

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

## **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>106</sup> In November 2008, Rep. Buchanan announced plans to sell more of his business holdings to “reduce [his] exposure” to lawsuits and uncomfortable political situations.<sup>107</sup> As of 2011, he owned three car dealerships.<sup>108</sup> Since then, most of the suits have either been dismissed or have gone to arbitration.<sup>109</sup>

In 2008, Mr. Kazran sued Rep. Buchanan over a business deal regarding a company, Gwinnett, which they both co-owned.<sup>110</sup> The case was dismissed in part, which led Mr. Kazran to file a second complaint in March 2012.<sup>111</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>112</sup> Mr. Kazran claims Rep. Buchanan’s actions caused him to lose \$40 million.<sup>113</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>114</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>115</sup>

Rep. Buchanan countersued Mr. Kazran and his wife, alleging breach of contract, and initially won a judgment in the case.<sup>116</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>117</sup> Rep. Buchanan is now scheduled to be deposed on October 3 and October 4, 2012.<sup>118</sup>

## **Legal Fees**

Since May 2010, Rep. Buchanan’s campaign committee has reported spending more than \$155,000 in fees to resolve his legal issues.<sup>119</sup> In addition, on Rep. Buchanan’s 2012 personal

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<sup>106</sup> Jeremy Wallace, Buchanan’s Path Gets Smoother by the Day, *Sarasota Herald-Tribune*, July 7, 2010.

<sup>107</sup> Jeremy Wallace, Less Business, More Politics for Buchanan, *Sarasota Herald-Tribune*, November 19, 2008.

<sup>108</sup> Jeremy Wallace, Buchanan Has 3 Car Dealerships, *Sarasota Herald-Tribune*, July 3, 2011.

<sup>109</sup> Wallace, *Sarasota Herald-Tribune*, July 7, 2010.

<sup>110</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>111</sup> *Kazran v. Buchanan*, Case No. 2008 CA 15448 NC (12th Cir. Fla.), Second Amended Complaint, p. 1.

<sup>112</sup> *Id.*, pp. 2, 3, 12, 13.

<sup>113</sup> *Id.*, p. 3.

<sup>114</sup> Jeremy Wallace, Buchanan Withdraws Motion to Silence Former Business Partner, *Sarasota Herald-Tribune*, June 25, 2012.

<sup>115</sup> Sara Kennedy, Attorney Seeks Contempt Of Court Order Against U.S. Rep. Vern Buchanan, *Bradenton Herald*, August 4, 2012.

<sup>116</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>117</sup> *Id.*

<sup>118</sup> Buchanan Deposition Could Come a Month Before Election, *Sarasota Herald-Tribune*, August 21, 2012.

<sup>119</sup> Buchanan for Congress, FEC Form 3, 2011 April Quarterly Report, filed June 20, 2011; Buchanan for Congress, FEC Form 3, 2010 Year End Report, filed February 25, 2011; Buchanan for Congress, FEC Form 3, 2010 Pre-

financial disclosures, he lists a liability between \$50,001 and \$100,000 owed to Holland & Knight.<sup>120</sup>

The campaign also reported paying Holland & Knight \$24,672 in May 2012.<sup>121</sup> In addition, the campaign reported paying Patton Boggs \$50,000 in legal fees in January 2011, \$21,000 in April 2011, and \$50,000 in April 2012.<sup>122</sup> In 2010, the campaign committee reported paying \$9,024 to Ignited Discovery and Applied Discovery, companies that specialize in litigation discovery.<sup>123</sup> In December 2010, the committee reported paying \$492 to Esquire Deposition Solutions.<sup>124</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>125</sup> Corporations are also prohibited from facilitating the making of contributions to federal candidates.<sup>126</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>127</sup>

Despite the FEC’s decision to take no action in the complaint against him, by using coercion, including the implied threat of detrimental job action, to force employees of the Buchanan automobile dealerships to make contributions to his 2006 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>128</sup> Despite the FEC’s decision to take no action in the complaint 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

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General Year, filed October 21, 2010; Buchanan for Congress, FEC Form 3, 2010 July Quarterly Report, filed August 11, 2010; Wallace, *Sarasota Herald-Tribune*, June 13, 2011.

<sup>120</sup> Rep. Vern Buchanan, Personal Financial Disclosure Statement for Calendar Year 2011, filed June 14, 2012.

<sup>121</sup> Buchanan for Congress, FEC Form 3, 2012 July Quarterly Report, filed July 15, 2012.

<sup>122</sup> Buchanan for Congress, FEC Form 3, 2011 April Quarterly Report, filed June 20, 2011; Buchanan for Congress, FEC Form 3, 2011 July Quarterly Report, filed July 15, 2011; Buchanan for Congress, FEC Form 3, 2012 July Quarterly Report, filed July 15, 2012.

<sup>123</sup> Buchanan for Congress, FEC Form 3, 2010 Year End Report, filed February 25, 2011.

<sup>124</sup> *Id.*

<sup>125</sup> 2 U.S.C. § 441b(b)(3)(A); 11 C.F.R. § 114.5(a)(1).

<sup>126</sup> 11 C.F.R. § 114.2(f)(1).

<sup>127</sup> 11 C.F.R. § 114.2(f)(2)(iv).

<sup>128</sup> 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b)(1)(I).

C.F.R. § 110.4(b)(1)(I). Venice Nissan Dodge, Don Caldwell, Suncoast Ford, and Gary Scarbrough made conduit contributions to Rep. Buchanan and were fined by the FEC, and Sarasota Ford and Rep. Buchanan's contributor Timothy Mobley also appear to have violated 2 U.S.C. § 441f and 11 C.F.R. § 110.4(b)(1)(I).

### **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>129</sup> The contribution limit in 2006 was \$2,100 per election and in 2008 was \$2,300 per election.<sup>130</sup> Any contribution over those limits was an illegal excessive contribution. Despite the FEC's decision to take no action in the complaint 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>131</sup> Despite the FEC's decision to take no action in the complaint against him, by reimbursing employees with corporate funds for contributions made to his 2006 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).

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>132</sup> as well as attempting to corruptly obstruct, influence, or impede an official proceeding.<sup>133</sup> An "official proceeding" includes a proceeding before a federal government agency that is authorized by law, such as the FEC.<sup>134</sup>

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<sup>129</sup> 2 U.S.C. §§ 441a(a)(1)(A), 441a(f).

<sup>130</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>131</sup> 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(a).

<sup>132</sup> 18 U.S.C. § 1512(b)(1).

<sup>133</sup> 18 U.S.C. § 1512(c)(2).

<sup>134</sup> 18 U.S.C. § 1515(a)(1)(C).



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 department or agency of the United States,” violates this statute.<sup>135</sup> “Corruptly” under this statute means, among other things, “acting with an improper purpose, personally or by influencing another.”<sup>136</sup> Endeavoring to suborn perjury or tamper with a witness is an obstruction under the statute.<sup>137</sup>

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>138</sup>

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 1967 requires all members of Congress to file financial disclosure reports.<sup>139</sup> Under the statute, the attorney general may seek a civil penalty of up to \$11,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.<sup>140</sup> House Rule 26 incorporates the financial disclosure provisions of the Ethics in Government Act.<sup>141</sup>

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<sup>135</sup> 18 U.S.C. § 1505.

<sup>136</sup> 18 U.S.C. § 1515(b).

<sup>137</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>138</sup> 18 U.S.C. § 201(b)(3).

<sup>139</sup> Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

<sup>140</sup> 5 U.S.C. app. 4, § 104.

<sup>141</sup> House Comm. on Standards of Official Conduct, House Ethics Manual, p. 248 (110th Cong., 2d Sess., 2008 ed.).

Federal law prohibits members of Congress from making “any materially false, fictitious, or fraudulent statement or representation”<sup>142</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>143</sup>

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

### **Tax Evasion**

Rep. Buchanan’s former chief financial officer, Mr. Rosa, did not publicly provide details of the allegations of tax evasion, fraud, and conspiracy to commit tax evasion he reported to the IRS beyond saying Rep. Buchanan violated the integrity of the S corporation structure. S corporations are entities that pass corporate income through to their shareholders for federal tax purposes.<sup>144</sup> The tax code and IRS regulations contain detailed provisions regarding S corporations.<sup>145</sup> Rep. Buchanan may have violated these provisions in his use of S corporations.

### **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>146</sup> This ethics standard is considered to be “the most comprehensive provision” of the code.<sup>147</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.<sup>148</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>149</sup> making false statements to the committee,<sup>150</sup> criminal convictions for bribery,<sup>151</sup> or accepting illegal gratuities,<sup>152</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>153</sup>

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<sup>142</sup> 18 U.S.C. § 1001(a)(2).

<sup>143</sup> 18 U.S.C. § 1001(c)(2).

<sup>144</sup> Internal Revenue Service, S Corporations, May 10, 2012.

<sup>145</sup> 26 U.S.C. §§ 1361-1379; 26 C.F.R. §§ 1.1361-1, *et seq.*

<sup>146</sup> Rule 23, cl. 1.

<sup>147</sup> House Comm. on Standards of Official Conduct, House Ethics Manual, p. 12.

<sup>148</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>149</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>150</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>151</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

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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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>152</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>153</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 first-term member of Congress, representing New York's 13th congressional district. His ethics issues stem from orchestrating and accepting illegal campaign contributions and from improperly including a link to footage of a House floor speech in campaign materials. He was included in CREW's 2011 congressional corruption report for unrelated matters.<sup>1</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>2</sup> Rabbi Pinto leads a large and high-profile congregation in New York.<sup>3</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>4</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>5</sup> The contributors included several businessmen involved in the pornography industry.<sup>6</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, in addition, lived outside of Rep. Grimm's district.<sup>7</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>8</sup> According to one follower, Rep. Grimm requested a \$20,000 contribution during the summer of 2010, and directed him to meet Rep. Grimm near the Federal Bureau of Investigation (FBI) building in Lower Manhattan.<sup>9</sup> As instructed, the follower met Rep. Grimm and gave him \$5,000 cash in an envelope.<sup>10</sup> A week later, the same person gave Rep. Grimm another \$5,000 from a friend.<sup>11</sup> After receiving the second payment, the congregant said Rep. Grimm repeatedly called him demanding an additional \$10,000 donation.<sup>12</sup> "Every day, he used to call me, over and over," the follower told the *Times*.<sup>13</sup> He added that he ignored the requests.<sup>14</sup>

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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> Alison Leigh Cowan and William K. Rashbaum, Rabbi's Followers Cast Doubts on Congressman's Fund-Raising, *New York Times*, January 27, 2012.

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

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

<sup>5</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, A Marine Fires Back, *Staten Island (New York) Advance*, February 19, 2012.

<sup>6</sup> David B. Caruso, NY Pol's Reliance on Rabbi Comes Back to Haunt Him, *Associated Press*, September 4, 2012.

<sup>7</sup> Cowan and Rashbaum, *New York Times*, Jan. 27, 2012.

<sup>8</sup> *Id.*

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

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

<sup>11</sup> Cowan and Rashbaum, *New York Times*, Jan. 27, 2012.

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

<sup>13</sup> *Id.*

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

Another Rabbi Pinto congregant said when Rep. Grimm came to his office to pick up a legal contribution, he mentioned there were ways to circumvent campaign finance laws and described a scheme involving straw donors.<sup>15</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>16</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>17</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>18</sup> The congregant said he did so and gave the checks to Mr. Biton, who passed them on to Rep. Grimm.<sup>19</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>20</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>21</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>22</sup>

Rep. Grimm also denied accepting illegal cash contributions, conspiring to funnel money to his campaign, or orchestrating any illegal contributions.<sup>23</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>24</sup>

Mr. Biton is under investigation by the FBI and federal prosecutors for allegedly embezzling millions of dollars from Rabbi Pinto's congregation, charges that Mr. Biton has denied.<sup>25</sup> In addition, Mr. Biton’s attorney claimed his client never helped Rep. Grimm raise money.<sup>26</sup> In August 2012, Mr. Biton was arrested and charged with violating immigration law.<sup>27</sup>

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<sup>15</sup> Cowan and Rashbaum, *New York Times*, Jan. 27, 2012.

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

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

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

<sup>19</sup> Cowan and Rashbaum, *New York Times*, Jan. 27, 2012.

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

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

<sup>22</sup> Wroblewski and Randall, *Staten Island (New York) Advance*, Feb. 19, 2012.

<sup>23</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>24</sup> Alison Gendar and Celeste Katz, Weiner: I Dined Grimm, *New York Daily News*, March 3, 2012.

<sup>25</sup> Cowan and Rashbaum, *New York Times*, Jan. 27, 2012.

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

<sup>27</sup> *United States v. Ofer Biton*, 1:12-mj-00755-SMG (E.D.N.Y. 2012)

## **Improper Use of House Video Footage**

On May 24, 2012, Rep. Grimm sent a campaign email to supporters claiming, “D.C. bureaucrats . . . have 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>28</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>29</sup> The email, sent from GrimmforCongress.com, then stated, “You can catch my floor speech on the absurd plan to eliminate this crucial unit here.”<sup>30</sup> The email links to a YouTube video of Rep. Grimm’s May 17, 2012 House floor speech.<sup>31</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>32</sup> Notably, the email also included a link allowing viewers to donate to Rep. Grimm’s campaign committee.<sup>33</sup>

The next day, Rep. Grimm said the link to the House video had been accidentally included in the campaign e-mail.<sup>34</sup> “It wasn’t done on purpose,” he said. “Accidents will happen.”<sup>35</sup> Rep. Grimm promised to “tighten up” his operations and avoid repeating the mistake.<sup>36</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>37</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>38</sup> Both the Marines and the FBI objected, and said Rep. Grimm had not obtained proper permission to use either image.<sup>39</sup> Susan Del Percio, Rep. Grimm’s campaign spokeswoman, described the use of the insignia as “an unfortunate mistake.”<sup>40</sup> “Clearly, this will not happen again,” Ms. Del Percio said.<sup>41</sup>

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<sup>28</sup> Email from Michael Grimm to Supporters with subject line “Not on My Watch,” May 24, 2012, *available at* [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>29</sup> *Id.*

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

<sup>31</sup> *Id.*; <http://www.youtube.com/watch?v=Bp8BCzLedj8>.

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

<sup>33</sup> Email from Michael Grimm to Supporters with subject line “Not on My Watch,” May 24, 2012.

<sup>34</sup> Tom Wroblewski, [Staten Island Rep. Michael Grimm Admits Campaign Email Violation](#), *Staten Island (New York) Advance*, May 25, 2012.

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

<sup>36</sup> *Id.*

<sup>37</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>38</sup> *Id.*

<sup>39</sup> *Id.*

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

<sup>41</sup> Tom Wroblewski, [GOP Hopeful to McMahan: Refuse the WFP Line](#), *Staten Island (New York) Advance*, May 20, 2010.

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>42</sup> A spokesman for the FBI said the agency "would definitely consider that an inappropriate use."<sup>43</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>44</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>45</sup> Marine Corps Captain Brian Block said the disclaimer must be included on the ad itself.<sup>46</sup>

### **Status of Investigations**

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>47</sup> The status of the FEC investigation is unknown. 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>48</sup> On July 17, 2012, *Politico* reported the OCE had ended its probe, which covered only potential fundraising violations committed by Rep. Grimm after he became a member of the House, without taking action.<sup>49</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>50</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>51</sup>

On May 29, 2012, CREW filed a complaint with OCE requesting an investigation into Rep. Grimm's use of a broadcast of a floor speech in a fundraising e-mail.<sup>52</sup> The status of the OCE investigation is unknown.

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<sup>42</sup> Michael McAuliff, Marines, FBI Take Aim at Ads, *New York Daily News*, August 7, 2010.

<sup>43</sup> *Id.*

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

<sup>45</sup> *Id.*

<sup>46</sup> McAuliff, *New York Daily News*, Aug. 7, 2010.

<sup>47</sup> Tom Wroblewski, Dem Asks FEC to Probe Allegations vs. Grimm, *Staten Island (New York) Advance*, February 1, 2012.

<sup>48</sup> Complaint filed with the Office of Congressional Ethics by Citizens for Responsibility and Ethics in Washington, February 9, 2012.

<sup>49</sup> John Bresnahan, Michael Grimm Cleared by Ethics Watchdog, *Politico*, July 17, 2012.

<sup>50</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>51</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>52</sup> Complaint filed with the Office of Congressional Ethics by Citizens for Responsibility and Ethics in Washington, May 29, 2012.

## **Legal Fees**

During the 2012 election cycle, Rep. Grimm's campaign committee reported paying \$4,000 to Barry Zepowitz & Associates for legal consulting.<sup>53</sup> The campaign committee also reported \$321,209 in debt to Patton Boggs.<sup>54</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>55</sup> In addition, campaigns may not accept contributions in excess of the statutory limit, which was \$2,400 per election in 2010.<sup>56</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>57</sup> It is also illegal for a federal campaign to solicit, accept, or receive a contribution from a foreign national.<sup>58</sup> Therefore, if as one 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>59</sup> If Rep. Grimm promised that upon election he would use his government position to assist Mr. Biton's attempt to obtain a green card in return for Mr. Biton's 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

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<sup>53</sup> Michael Grimm for Congress, FEC Form 3, 2012 Pre-Primary Report, June 14, 2012.

<sup>54</sup> Michael Grimm for Congress, FEC Form 3, 2012 July Quarterly Report, July 14, 2012.

<sup>55</sup> 2 U.S.C. § 441g; 11 C.F.R. § 110.4(c).

<sup>56</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>57</sup> 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b).

<sup>58</sup> 2 U.S.C. § 441e(a)(2).

<sup>59</sup> 18 U.S.C. § 201(b)(2)(A).



personally for or because of any official act performed or to be performed by such official.<sup>60</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>61</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>62</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>63</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>64</sup> Rather, “**all** requests for casework assistance are to be handled according to their merits.”<sup>65</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 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>66</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

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<sup>60</sup> 18 U.S.C. § 201(c)(1)(B).

<sup>61</sup> *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398, 404, 414 (1999).

<sup>62</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>63</sup> House Comm. on Standards of Official Conduct, House Ethics Manual, pp. 150-51 (110th Cong., 2d Sess., 2008 ed.).

<sup>64</sup> *Id.*, p. 151.

<sup>65</sup> *Id.* (emphasis in original).

<sup>66</sup> 72 Stat., Part 2, B12, H. Con. Res. 175, 85th Cong. (adopted July 11, 1958); House Ethics Manual, p. 20.

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>67</sup>

Rep. Grimm’s May 24, 2012 email, 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>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 of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.<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

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<sup>67</sup> See also House Ethics Manual, p. 128.

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

<sup>69</sup> House Ethics Manual, p. 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).

convictions for bribery,<sup>73</sup> or accepting illegal gratuities,<sup>74</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>75</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 email, 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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<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 GREGORY MEEKS

Representative Gregory Meeks (D-NY) is an eight-term member of Congress, representing New York's 6th 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 congressional corruption report 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 built by Richard Dennis and 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>.

<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 (NLPC), 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 that 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> 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 house [*sic*].” Rep. Meeks continued, “You need to make sure the house is furnished. You need things.”<sup>22</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>23</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

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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> 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. The case is still pending. 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*, Review No. 11-1048, April 29, 2011 (OCE Report), p. 11.

<sup>20</sup> OCE Report, 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> *Id.*

<sup>23</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.

every Democratic member of Congress from New York.”<sup>24</sup> Mr. Mehiel and his wife, Karen Mehiel, donated \$9,600 to Rep. Meeks during the 2010 election cycle, the maximum allowable.<sup>25</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>26</sup> Rep. Meeks also requested money to pay interest on the earlier loan.<sup>27</sup> Mr. Mehiel spoke with Rep. Meeks’ lawyers regarding loan terms, and told the OCE Rep. Meeks’ lawyers wanted to complete the loan within a day or two because a House financial disclosure form was due.<sup>28</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>29</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>30</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>31</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 representing the 6th district, are the subject of a federal probe into their dealings with several nonprofit groups.<sup>32</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>33</sup>

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<sup>24</sup> *Id.*; Raymond Hernandez, Enviably Access Given Top 10 Donors to New York Lawmakers, *New York Times*, February 11, 2010.

<sup>25</sup> Lesser and Gearty, *New York Daily News*, July 9, 2010; Open Secrets, Donor Lookup, Mehiel, 2009-2010.

<sup>26</sup> OCE Report, 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>27</sup> OCE Report, p. 8.

<sup>28</sup> *Id.*, Exhibit 3.

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

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

<sup>31</sup> OCE Report, pp. 9-10.

<sup>32</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, 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>33</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.

## *Hurricane Katrina Charity*

In 2001, Rep. Meeks and state Sen. Smith co-founded a New York nonprofit called New Direction Local Development Corp.<sup>34</sup> From 2002 to 2008, New Direction's address was the office of Joan Flowers, a former campaign treasurer for both Rep. Meeks and Sen. Smith.<sup>35</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>36</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>37</sup> New Direction prominently displayed a picture of Rep. Meeks on its website.<sup>38</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>39</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>40</sup> Rep. Meeks said all money raised for the fund would go to victims, and none would be used for administrative costs.<sup>41</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>42</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>43</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>44</sup> According to press reports, the charity has not accounted for the rest of the money.<sup>45</sup> Rep. Meeks initially issued a statement saying "the funds were utilized to help sustain displaced evacuees," but did not provide details.<sup>46</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>47</sup>

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<sup>34</sup> Ken Boehm, Rep. Gregory Meeks' Charity Looks More Like Slush Fund, National Legal and Policy Center, January 31, 2010.

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

<sup>36</sup> Lovett, Ross and Smith, *New York Daily News*, Apr. 2, 2010.

<sup>37</sup> Boehm, National Legal and Policy Center, Jan. 31, 2010; Editorial, Floyd Flake's Friends, *New York Post*, February 2, 2010.

<sup>38</sup> Melissa Klein and Isabel Vincent, Queens Pals Stuffed Katrina Victims, *New York Post*, February 7, 2010.

<sup>39</sup> *Id.*

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

<sup>41</sup> Boehm, National Legal and Policy Center, Jan. 31, 2010

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

<sup>43</sup> Klein and Vincent, *New York Post*, Feb. 7, 2010.

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

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</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.

## *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>48</sup> In addition, investigators have subpoenaed the group itself for information about federal funding obtained by Rep. Meeks.<sup>49</sup> Rep. Meeks has secured millions of dollars in public money for the charity, including \$9.2 million from the Federal Transit Administration for rehabilitation of an underpass.<sup>50</sup> Former Rep. Flake is a member of Greater Jamaica's board.<sup>51</sup>

### **Ties to Indicted 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>52</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>53</sup> "It helps my marriage," he said.<sup>54</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>55</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>56</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>57</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>58</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>59</sup> In 2007, Mr. Tirado was

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<sup>48</sup> Vincent and Klein, *New York Post*, Apr. 18, 2010.

<sup>49</sup> Isabel Vincent and Melissa Klein, Feds Question Meeks Over Millions Steered to Qns. Nonprofit, *New York Post*, July 28, 2012.

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

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

<sup>52</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>53</sup> Smith, *New York Daily News*, Dec. 29, 2009.

<sup>54</sup> *Id.*

<sup>55</sup> Complaint filed with the Federal Election Commission by the National Legal and Policy Center, October 28, 2011.

<sup>56</sup> <http://www.opensecrets.org/politicians/contrib.php?cycle=2008&type=I&cid=N00001171&newMem=N&recs=20>.

<sup>57</sup> Barry, Sallah and Reyes, *Miami Herald*, Dec. 27, 2009.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*



indicted in Venezuela.<sup>60</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>61</sup>

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>62</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, New York politicians.<sup>63</sup> In July 2012, the *New York Post* reported a subpoena had been issued to the Greater Jamaica Development Corp., and investigators were pursuing information about federal money Rep. Meeks had obtained for the group.<sup>64</sup> Rep. Meeks has denied being under investigation, saying “I’ve never been under investigation. I have never been questioned by the Feds. I’ve just been doing my job.”<sup>65</sup> The current status of the investigation is unknown.

After conducting an investigation into Rep. Meeks’ loans, the OCE referred his case to the House Ethics Committee on May 18, 2011.<sup>66</sup> The OCE found substantial reason to believe Rep. Meeks “failed to properly disclose the \$40,000 as a gift on his 2007, 2008, and 2009 Financial Disclosure Statements in violation of House rules, standards of conduct and federal law.”<sup>67</sup> The OCE noted that both Rep. Meeks and Mr. Ahmad had declined to cooperate with the OCE’s investigation of the loan, and it “appeared to lack the normal indicia, including a set interest rate or repayment terms, of a legitimate loan. Therefore, this \$40,000 transferred to Representative Meeks in 2007 appears to have been a gift.”<sup>68</sup> The OCE recommended the House Ethics Committee further review the matter and issue subpoenas to Rep. Meeks and Mr. Ahmad.<sup>69</sup>

In contrast, the 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

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<sup>60</sup> *Id.*

<sup>61</sup> Barry, Sallah and Reyes, *Miami Herald*, Dec. 27, 2009.

<sup>62</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. Clifford Krauss, Stanford Sentenced to 110-Year Term in \$7 Billion Ponzi Case, *New York Times*, June 14, 2012.

<sup>63</sup> S.A. Miller and Murray Weiss, Subpoena Takes Meeks By Storm, *New York Post*, April 16, 2010.

<sup>64</sup> Vincent and Klein, *New York Post*, July 28, 2012.

<sup>65</sup> <http://www.myfoxny.com/story/19154371/rep-gregory-meeks#ixzz22IcU4I5t>.

<sup>66</sup> Press Release, House Committee on Ethics, 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>67</sup> OCE Report, p. 20.

<sup>68</sup> *Id.*, pp., 1, 4, 6.

<sup>69</sup> *Id.*, pp., 1, 4, 20.

filed with the New York City Department of Finance.<sup>70</sup> As a result, the OCE recommended dismissal of allegations concerning that loan.<sup>71</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>72</sup> There is no deadline by which the House Ethics Committee must act.<sup>73</sup>

## **Legal Fees**

Rep. Meeks' campaign committee and political action committee, Build America PAC, reported paying law firms Dorsey & Whitney LLP and Perkins Coie LLP \$255,422 in 2010.<sup>74</sup> In 2011, the campaign and PAC reported paying the law firms, Dorsey & Whitney LLP, Perkins Coie LLP, Arent Fox LLP, and Wiltshire & Grannis LLP a total of \$81,862.<sup>75</sup> So far in the 2012, the campaign and PAC have reported paying Baldassare & Mara, LLC, Dorsey & Whitney LLP, Perkins Coie LLP, Arent Fox LLP, Wiltshire & Grannis LLP, and Steptoe & Johnson LLP a total of \$38,006.<sup>76</sup>

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<sup>70</sup> *Id.*, pp. 5, 10, 19.

<sup>71</sup> OCE Report, pp. 2, 5, 19.

<sup>72</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>73</sup> Amanda Becker, *Ethics Delays Decisions*, *Roll Call*, March 15, 2012.

<sup>74</sup> Friends for Gregory Meeks, FEC Form 3, 2010 April Quarterly Report, April 15, 2010; Friends for Gregory Meeks, FEC Form 3, 2010 July Quarterly Report, July 15, 2010; Friends for Gregory Meeks, FEC Form 3, 2010 Pre-Primary Report, September 2, 2010; Friends for Gregory Meeks, FEC Form 3, 2010 October Quarterly Report, October 15, 2010; Friends for Gregory Meeks, FEC Form 3, 2010 Pre-General Report, October 21, 2010; Friends for Gregory Meeks, FEC Form 3, 2010 Post-General Report, December 2, 2010; Friends for Gregory Meeks, FEC Form 3, 2010 Year-End Report, January 31, 2011; Build America PAC, FEC Form 3X, 2010 April Quarterly Report, April 15, 2010; Build America PAC, FEC Form 3X, 2010 April Quarterly Report, Amended, January 30, 2012; Build America PAC, FEC Form 3X, 2010 Pre-Primary Report, May 25, 2010; Build America PAC, FEC Form 3X, 2010 Pre-Primary Report, Amended, January 30, 2012; Build America PAC, FEC Form 3X, 2010 July Quarterly Report, July 14, 2010; Build America PAC, FEC Form 3X, 2010 July Quarterly Report, Amended, January 30, 2012; Build America PAC, FEC Form 3X, 2010 October Quarterly Report, October 15, 2010; Build America PAC, FEC Form 3X, 2010 October Quarterly Report, Amended, January 30, 2012; Build America PAC, FEC Form 3X, 2010 Post-General Report, December 2, 2010; Build America PAC, FEC Form 3X, 2010 Post-General Report, Amended, January 30, 2012; Build America PAC, FEC Form 3X, 2010 Year-End Report, January 31, 2011; Build America PAC, FEC Form 3X, 2010 Year-End Report, Amended, January 30, 2012.

<sup>75</sup> Friends for Gregory Meeks, FEC Form 3, 2011 April Quarterly Report, April 15, 2011; Friends for Gregory Meeks, FEC Form 3, 2011 July Quarterly Report, July 15, 2011; Friends for Gregory Meeks, FEC Form 3, 2011 October Quarterly Report, October 15, 2011; Friends for Gregory Meeks, FEC Form 3, 2011 Year-End Report, January 31, 2012; Build America PAC, FEC Form 3X, 2011 Post-Special Report, June 23, 2011; Friends for Gregory Meeks, FEC Form 3, 2011 Post-Special Report, Amended, January 31, 2012; Friends for Gregory Meeks, FEC Form 3, 2011 Mid-Year Report, July 29, 2011; Friends for Gregory Meeks, FEC Form 3, 2011 Mid-Year Report, Amended, January 31, 2012; Friends for Gregory Meeks, FEC Form 3, 2011 Year-End Report, January 31, 2012.

<sup>76</sup> Friends for Gregory Meeks, FEC Form 3, 2012 April Quarterly Report, April 15, 2012; Friends for Gregory Meeks, FEC Form 3, 2012 Pre-Primary Report, June 14, 2012; Friends for Gregory Meeks, FEC Form 3, 2012 July Quarterly Report, July 15, 2012; Build America PAC, FEC Form 3X, 2012 April Quarterly Report, April 15, 2012; Build America PAC, FEC Form 3X, 2012 July Quarterly Report, July 14, 2012.

## Potential Violations

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

The Ethics in Government Act of 1967 requires all members of Congress to file financial disclosure reports.<sup>77</sup> Under the statute, the attorney general may seek a civil penalty of up to \$11,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.<sup>78</sup> House Rule 26 incorporates the financial disclosure provisions of the Ethics in Government Act.<sup>79</sup>

Federal law prohibits members of Congress from making “any materially false, fictitious, or fraudulent statement or representation”<sup>80</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>81</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>82</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.

### **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>83</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.

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<sup>77</sup> Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

<sup>78</sup> 5 U.S.C. app. 4, § 104.

<sup>79</sup> House Comm. on Standards of Official Conduct, House Ethics Manual, p. 248 (110th Cong., 2d Sess., 2008 ed.).

<sup>80</sup> 18 U.S.C. § 1001(a)(2).

<sup>81</sup> 18 U.S.C. § 1001(c)(2).

<sup>82</sup> House Comm. on Standards of Official Conduct, House Ethics Manual, p. 258 (citing 5 U.S.C. app. 4 § 102(a)(4)).

<sup>83</sup> 18 U.S.C. § 201(b)(2)(A).

Finally, if Rep. Meeks used his position in Congress for the benefit of Mr. Stanford in exchange for campaign contributions or luxury trips, he may have 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>84</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>85</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. 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>86</sup>

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

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including “anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties.”<sup>87</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

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<sup>84</sup> 18 U.S.C. § 201(c)(1)(B).

<sup>85</sup> *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398 (1999).

<sup>86</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>87</sup> 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.

have violated 5 U.S.C. § 7353 and House Rule 23. 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 these provisions.

### **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>88</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). Finally, if Rep. Meeks used his position in Congress for the benefit of Mr. Stanford in exchange for campaign contributions or luxury trips, he may have violated this provision.

### **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>89</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 5 C.F.R. § 2635.702(a). Similarly, if Rep. Meeks exchanged any official action for the \$40,000 he received from Mr. Ahmad, may have dispensed special favors in violation of 5 C.F.R. § 2635.702(a). Finally, if Rep. Meeks used his position in Congress for the benefit of Mr. Stanford in exchange for campaign contributions or luxury trips, he may have violated this provision.

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<sup>88</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>89</sup> 72 Stat., Part 2, B12, H. Con. Res. 175, 85th Cong. (adopted July 11, 1958); House Ethics Manual, p. 20.

## **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>90</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>91</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>92</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, including requirements for repayment and a reasonable rate of interest.<sup>93</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>94</sup>

### *Discounted House Price*

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

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<sup>90</sup> Rule 25, cl. 5(a)(2)(A).

<sup>91</sup> Rule 25, cl. 5(a)(5); House Ethics Manual, p. 40. These determinations are not public. *Id.*

<sup>92</sup> 5 U.S.C. app. 4 § 102(a)(2); House Ethics Manual, pp. 84, 258-59.

<sup>93</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*, pp. 381-384).

<sup>94</sup> *Id.*

### *Gift of \$40,000*

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

### *Loan of \$40,000*

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

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 crime.<sup>95</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>96</sup> This ethics standard is considered to be “the most comprehensive provision” of the code.<sup>97</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.<sup>98</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>99</sup> making false statements to the committee,<sup>100</sup> criminal

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<sup>95</sup> House Ethics Manual, p. 258 (citing 5 U.S.C. App. 4 § 102(a)(4)).

<sup>96</sup> Rule 23, cl. 1.

<sup>97</sup> House Ethics Manual, p. 12.

<sup>98</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>99</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).

convictions for bribery,<sup>101</sup> or accepting illegal gratuities,<sup>102</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>103</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>100</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>101</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>102</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>103</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 LAURA RICHARDSON

Representative Laura Richardson (D-CA) is a three-term member of Congress, representing California's 37th congressional district. Her ethics issues stem from: (1) misusing official resources for political activity; (2) misusing official resources for personal benefit; and (3) obstructing the ethics investigation into her actions. She was included in CREW's 2008 and 2009 congressional corruption reports for unrelated matters and in CREW's 2011 report for related matters.<sup>1</sup>

### **Misusing Congressional Staff and Resources for Political Activity**

In 2010, Rep. Richardson needed to defeat two opponents in a contested primary and an opponent in the general election to win re-election to her House seat.<sup>2</sup> In October 2010, the House Ethics Committee opened an inquiry into Rep. Richardson after staff members complained she had forced them to work on her campaign.<sup>3</sup> On November 3, 2011, the committee authorized an investigative subcommittee to investigate the Richardson matter.<sup>4</sup> The investigative subcommittee found that Rep. Richardson repeatedly forced her congressional staff to perform political work, which eventually added up to hundreds of hours, and penalized them if they fell short of her expectations.<sup>5</sup> In addition, Rep. Richardson repeatedly misappropriated a wide range of official resources for political purposes, including: taking reams of paper from her congressional office, using House email accounts for campaign-related messages, and spending money from an allowance given to members to pay for expenses tied to their official duties.<sup>6</sup>

#### *Mandatory Campaign Work During the 2010 Campaign*

Rep. Richardson forced congressional staff members in both her district office in Long Beach, California and her Washington, D.C. office to perform campaign work, but Long Beach employees appear to have been subject to especially arduous requirements. For two months leading up to the primary and general elections, several staff members in the Long Beach office said they were expected to close the congressional office at 6 p.m. and report promptly to the campaign office.<sup>7</sup> They were expected to arrive there by 6:10 p.m., and work until 9 p.m., except on Fridays, when they were permitted to leave at 8 p.m.<sup>8</sup> Staff members were not allowed to

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<sup>1</sup> Rep. Richardson's 2008 and 2009 ethics issues stemmed from accepting favorable loans, and failing to properly report a loan on her financial disclosure statements. For more information, see CREW's Most Corrupt: The 15 Most Corrupt Members of Congress 2009, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-2009> and CREW's Most Corrupt 2011, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/laura-richardson>.

<sup>2</sup> House Committee on Ethics, 112th Congress, *In the Matter of Allegations Relating to Representative Laura Richardson*, Appendix A, Statement of Alleged Violation, August 1, 2012 (Statement of Alleged Violation), p. 1.

<sup>3</sup> House Committee on Ethics, 112th Congress, *In the Matter of Allegations Relating to Representative Laura Richardson*, August 1, 2012 (Ethics Committee Report), p. 2.

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

<sup>5</sup> Statement of Alleged Violation, pp. 2-4, 5-8; House Committee on Ethics, 112th Congress, *In the Matter of Allegations Relating to Representative Laura Richardson*, Appendix A, *Report of the Investigative Subcommittee in the Matter of Allegations Relating to Representative Laura Richardson*, August 1, 2012 (Investigative Subcommittee Report), p. 21.

<sup>6</sup> Statement of Alleged Violation, pp. 4-6.

<sup>7</sup> *Id.*, p. 2.

<sup>8</sup> Investigative Subcommittee Report, pp. 5-6.

stop for dinner or to run personal errands between the end of the official workday and reporting to the campaign office, and the hours appear to have been strictly enforced.<sup>9</sup> Maria Angel Macias, Rep. Richardson's former scheduler, told the investigative subcommittee looking into Rep. Richardson's actions that "if we were there at 6:40, or 7:00 or 7:30 [Representative Richardson] would be upset . . . she would just be like, well, what took you guys so long, or just make comments like that."<sup>10</sup> Another staff member, Ken Miller, said that when he tried to leave at 8 p.m. one night, Rep. Richardson told him to sit down and make some more phone calls.<sup>11</sup>

In addition, the subcommittee found many instances of Rep. Richardson insisting staff members attend campaign events on weekends and requiring them to bring campaign literature to churches.<sup>12</sup> For example, in May 2010, Rep. Richardson used her official email account to send District Director Eric Boyd and Deputy District Director Daysha Austin a flier for a meeting of the New Wave Democratic Club that announced the group would be voting on endorsements at an upcoming meeting.<sup>13</sup> Rep. Richardson instructed the two staff members to read the flier and prepare to attend the meeting.<sup>14</sup> In August 2010, again using her official email account, she said she wanted a staff member to attend a fundraising dinner to be held by the Los Angeles County Democratic Party.<sup>15</sup> Chief of Staff Shirley Cooks sent an email to staff asking for a volunteer willing to go.<sup>16</sup> Rep. Richardson then sent another email to Ms. Cooks making it clear she viewed attending such events as within the scope of staff members' duties, saying:

Its [*sic*] not volunteering or doing me a favor. Its [*sic*] events on the schedule that are not properly assigned or covered, again. I just don't understand why am I the only one reading the schedule, thinking ahead and understanding the dynamics of this time in the year. Frustrating.<sup>17</sup>

When interviewed by the investigative subcommittee, Rep. Richardson denied forcing her staff to work in her campaign office and argued the events she had required them to attend were not always clearly political.<sup>18</sup> Nonetheless, subcommittee members found the events were obviously inappropriate, and her staff had testified clearly and consistently about her practices.<sup>19</sup> The investigative subcommittee concluded the forced work was "an explicit practice of Representative Richardson."<sup>20</sup>

In one example, two staff members said Rep. Richardson instructed them to conduct opposition research into her general election opponent, Star Parker.<sup>21</sup> In fact, Mr. Miller told

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<sup>9</sup> *Id.*; Statement of Alleged Violation, p. 2.

<sup>10</sup> Investigative Subcommittee Report, p. 6.

<sup>11</sup> *Id.*; Statement of Alleged Violation, p. 3.

<sup>12</sup> Investigative Subcommittee Report, p. 11.

<sup>13</sup> *Id.*

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

<sup>15</sup> *Id.*, p. 12; Statement of Alleged Violation, p. 4.

<sup>16</sup> *Id.*; Investigative Subcommittee Report, p. 12.

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

<sup>18</sup> *Id.*, pp. 7, 13.

<sup>19</sup> *Id.*, pp. 8, 13.

<sup>20</sup> Investigative Subcommittee Report, p. 8.

<sup>21</sup> *Id.*, p. 3; Statement of Alleged Violation, pp. 3, 8.

investigators Rep. Richardson ordered him to use a false name and volunteer for Ms. Parker's campaign in order to obtain information.<sup>22</sup> "She told me directly herself that she wanted me to do that, and she asked that I not mention that to [the district director] or anyone else," he said.<sup>23</sup> Mr. Miller said he did as ordered, even knocking on doors for Ms. Parker, and reported back to Rep. Richardson.<sup>24</sup> Meanwhile, Jeffrey Billington, Rep. Richardson's communications director in Washington, said he was ordered to collect articles about Ms. Parker and "surreptitiously" visit the offices of a Washington nonprofit affiliated with her.<sup>25</sup> Rep. Richardson said both Mr. Miller and Mr. Billington had volunteered, but the subcommittee believed them when they said they had not.<sup>26</sup>

Aides reported being required to work on campaign issues because they were related to their official duties. In one of several examples, Lucinda Woodward, an aide in the Washington office who worked on health care issues, was told to attend a fundraising breakfast because officials from the health care industry were scheduled to attend.<sup>27</sup> In addition, Rep. Richardson asked Ms. Woodward to review a spreadsheet from a campaign fundraiser that listed individuals and entities related to health care.<sup>28</sup> Ms. Woodward was asked to compare it to her official contacts, fill it out, and add any associations she had met with in her official capacity.<sup>29</sup> Ms. Woodward objected, and said she told Rep. Richardson she was not permitted to do campaign work at the official office, using House resources.<sup>30</sup> Rep. Richardson then told Ms. Woodward to work on the spreadsheet from home, though it was still during the work day, and pass her official work to another aide.<sup>31</sup> Ms. Woodward did so.<sup>32</sup>

Rep. Richardson told the investigative subcommittee that "as a Member I have the right to contacts of people that I meet in my office."<sup>33</sup> She also said the spreadsheet was not necessarily a campaign document, even though it came from the campaign office.<sup>34</sup>

Ms. Austin, especially, spent considerable official time on campaign matters. The investigative subcommittee found Rep. Richardson directed Ms. Austin to perform campaign work during official hours in March, April, May, June, August, September, October, and November 2010.<sup>35</sup> Starting around September 1, 2010 and continuing through the election, Ms. Austin spent less than half her day in the district office, instead doing campaign work.<sup>36</sup>

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<sup>22</sup> *Id.*, p. 3; Investigative Subcommittee Report, pp. 6-7.

<sup>23</sup> Investigative Subcommittee Report, p. 7.

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

<sup>25</sup> *Id.*, p. 36; Statement of Alleged Violation, p. 8.

<sup>26</sup> Investigative Subcommittee Report, pp. 7, 36.

<sup>27</sup> *Id.*, p. 34; Statement of Alleged Violation, p. 7.

<sup>28</sup> *Id.*, p. 8; Investigative Subcommittee Report, pp. 34-35.

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

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

<sup>31</sup> *Id.*, p. 35; Statement of Alleged Violation, p. 8.

<sup>32</sup> Investigative Subcommittee Report, p. 35.

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

<sup>34</sup> *Id.*

<sup>35</sup> Statement of Alleged Violation, p. 4; Investigative Subcommittee Report, p. 22.

<sup>36</sup> *Id.*; Statement of Alleged Violation, pp. 4-5.

### *Misappropriation of Office Supplies for Campaign Work*

Rep. Richardson used her official member allowance to buy boxes of paper and office supplies for the district office, and staff members told ethics investigators they later saw the supplies in the campaign office.<sup>37</sup> In addition, Ms. Macias and Ms. Austin said Rep. Richardson instructed them to print precinct walk sheets on the district office's printer, a task that consumed several boxes of paper.<sup>38</sup> Rep. Richardson told ethics investigators she had not "intentionally or continually" used official resources improperly.<sup>39</sup>

### *Fear of Retribution*

Investigators found Rep. Richardson often directed Ms. Cooks and Ms. Austin, and occasionally Ms. Macias, to enforce campaign work requirements among the staff, who feared the consequences if they failed to meet Rep. Richardson's expectations.<sup>40</sup> Ms. Austin, who was viewed by other staff members as especially close to Rep. Richardson, recalled Rep. Richardson telling her, in essence, "I am the Member, and I can't tell staff that they need to be here, but you can."<sup>41</sup>

In early 2010, Ms. Cooks went to Long Beach and held a staff meeting to make clear that every staff member would volunteer for the campaign.<sup>42</sup> She did so after having multiple conversations with Rep. Richardson about the requirement.<sup>43</sup> When Mr. Miller, then a relatively new employee, asked Ms. Cooks what would happen if he did not volunteer, Ms. Cooks told him, in essence, that his job would be at risk.<sup>44</sup> Eric Boyd, the district director at the time, said he believed the threat was "coming not from Shirley," but from Rep. Richardson.<sup>45</sup>

In contrast to Rep. Richardson's repeated assertions that she never forced staff members to do campaign work they did not want to do, the investigative subcommittee found there were instances where she punished staff members who did not perform what, in her view, was enough campaign work.<sup>46</sup> In addition, in a memo she sent Ms. Cooks about outstanding staff issues, Rep. Richardson wrote that some staffers were "negative about weekend, evening and volunteering," suggesting she took such work into account when evaluating them.<sup>47</sup>

Ms. Macias, Rep. Richardson's scheduler, said Ms. Austin and Rep. Richardson had instructed her to assign a staffer to extra official work, which she believed to be punishment for his failure to do sufficient campaign work.<sup>48</sup> "We are all at the campaign office, he is here, so

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<sup>37</sup> *Id.*, p. 4; Investigative Subcommittee Report, p. 24.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*, p. 24.

<sup>40</sup> Statement of Alleged Violation, p. 3; Investigative Subcommittee Report, pp. 17-18, 20, 55.

<sup>41</sup> *Id.*, pp. 9, 20, 55.

<sup>42</sup> *Id.*, pp. 4-5, 10; Statement of Alleged Violation, p. 2.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*, p. 2; Investigative Subcommittee Report, p. 4.

<sup>45</sup> Investigative Subcommittee Report, pp. 4-5.

<sup>46</sup> *Id.*, pp. 17-21; Statement of Alleged Violation, p. 3.

<sup>47</sup> Investigative Subcommittee Report, p. 16.

<sup>48</sup> *Id.*, p. 17; Statement of Alleged Violation, p. 3.

put him on that,” Ms. Macias said she was told, adding, “He was running from one event to the next event to the next event.”<sup>49</sup>

In addition, Ms. Austin, Mr. Boyd, and Ms. Macias all recalled an incident involving caseworker Henry Rogers, who did not perform campaign work on a particular weekend because of a personal trip.<sup>50</sup> Ms. Austin said Rep. Richardson told her she would “work his [expletive deleted]” as punishment.<sup>51</sup> Mr. Boyd said “she just lit into me for letting him go . . . And she wanted him disciplined also when he got back.”<sup>52</sup> Ms. Macias said she relayed information about Mr. Rogers’ whereabouts to Rep. Richardson, who became upset.<sup>53</sup> In contrast to her staff’s recollections, Rep. Richardson told investigators Mr. Rogers had lied, saying he was sick when he was actually traveling, and because his fellow staff members had taken on work in his absence, she asked that he be assigned some of their work out of fairness.<sup>54</sup>

When Mr. Boyd said he would not participate in a weekend outing to put campaign literature on car windshields during church services because, he told Rep. Richardson, he wanted to attend church himself, Ms. Austin said Rep. Richardson told her, “that was [expletive deleted], [Mr. Boyd] missed church other times, he just didn’t want to do the work.”<sup>55</sup> In retaliation, Rep. Richardson told Mr. Boyd to work the night before, putting together the schedule.<sup>56</sup> He apparently did so, since investigators found emails from Mr. Boyd saying he had stayed up until 2 a.m. working on the task.<sup>57</sup>

### *Democratic Idol Fundraiser*

On September 29, 2010, Rep. Richardson held a fundraiser in Washington, D.C. called “Democratic Idol.”<sup>58</sup> Beginning in July 2010, she used a host of official resources, including staff time, congressional email accounts and computers, and money from her official member allowance, to plan the event.

Rep. Richardson and her Washington, D.C. scheduler, Jakki Dennis, traded multiple emails via their official email accounts regarding the fundraiser.<sup>59</sup> For instance, Rep. Richardson asked Ms. Dennis to confirm the attendance of then-Rep. John Hall (D-NY).<sup>60</sup> In addition, she directed Ms. Dennis to visit and photograph prospective sites for the fundraiser “to email to me

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<sup>49</sup> *Id.*; Investigative Subcommittee Report, p. 17.

<sup>50</sup> *Id.*, pp. 18-20.

<sup>51</sup> *Id.*, p. 18.

<sup>52</sup> *Id.*, p. 20.

<sup>53</sup> Investigative Subcommittee Report, p. 20.

<sup>54</sup> *Id.*, p. 19.

<sup>55</sup> *Id.*, p. 18.

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

<sup>57</sup> Investigative Subcommittee Report, p. 18.

<sup>58</sup> Statement of Alleged Violation, p. 5; Letter from CREW Executive Director Melanie Sloan to FBI Assistant Director in Charge James W. McJunkin, June 28, 2011 (CREW Letter), Exhibit E, Flyer for “Congresswoman Laura Richardson’s (D-CA 37th) 1st Ever Democratic Idol Fundraiser” at the Old Jones Day Building – Rooftop Meeting Room, September 29, 2010.

<sup>59</sup> Investigative Subcommittee Report, p. 24.

<sup>60</sup> *Id.*

TODAY.”<sup>61</sup> Ms. Dennis went to the venues during her workday and expensed her parking and mileage for the task to Rep. Richardson’s official member allowance.<sup>62</sup> Rep. Richardson said Ms. Dennis had volunteered to perform the task – Ms. Dennis agreed that she had volunteered – but said she thought Ms. Dennis would do so on her lunch break.<sup>63</sup> Rep. Richardson also used her official email account to email former Rep. David Wu (D-OR) about his attendance at the fundraiser.<sup>64</sup>

Ms. Austin’s role was particularly noteworthy. While on official time and using official resources, such as office computers, she created fliers, made logistical arrangements, and assigned other staffers tasks related to the fundraiser.<sup>65</sup> Rep. Richardson told ethics investigators first that she did not know what Ms. Austin’s role was in planning the event and later that Ms. Austin had a “very minor role,” but in fact, both Ms. Austin and Ms. Cooks confirmed Ms. Austin’s role was substantial.<sup>66</sup>

Ms. Austin traveled from Long Beach to Washington, D.C. from September 28 to 30, 2010, primarily to coordinate the fundraiser.<sup>67</sup> As a pretext for using official funds to pay for Ms. Austin’s travel, Ms. Austin and Rep. Richardson said Ms. Austin was also coming to work with Ms. Dennis on scheduling matters.<sup>68</sup> Ms. Austin said she actually spent the majority of her time in Washington – including time in the congressional office – working on issues related to the fundraiser, only spending “a couple of hours” with Ms. Dennis.<sup>69</sup> If it were not for the fundraiser, investigators concluded, Ms. Austin would not have made the trip.<sup>70</sup>

On September 27, 2010, Rep. Richardson emailed Ms. Cooks and told her to pass on to the Washington office staff that “we will need EVERYONE’S help” during the fundraiser.<sup>71</sup> Ms. Cooks and Rep. Richardson then spoke by phone, and Rep. Richardson reiterated her emailed instructions to Ms. Cooks: require everyone to be present at the Democratic Idol event, including interns.<sup>72</sup>

Six minutes after Rep. Richardson sent her email, Ms. Cooks sent an email to the entire staff, stating, “All staff are required to attend Ms. Richardson’s event. Bring spouses and tell interns they have to be there as well. Thanks.”<sup>73</sup> Ms. Dennis responded, asking Ms. Cooks whether interns could be required to attend the event.<sup>74</sup> “Interns will enjoy the event,” Ms. Cooks replied, adding, “are you the intern police?”<sup>75</sup>

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<sup>61</sup> *Id.*; Statement of Alleged Violation, p. 5.

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

<sup>63</sup> Investigative Subcommittee Report, p. 25.

<sup>64</sup> *Id.*

<sup>65</sup> Statement of Alleged Violation, pp. 5-6; Investigative Subcommittee Report, pp. 25-27.

<sup>66</sup> *Id.*, p. 26.

<sup>67</sup> *Id.*, pp. 26-27; Statement of Alleged Violation, p. 6.

<sup>68</sup> Investigative Subcommittee Report, pp. 26-27.

<sup>69</sup> *Id.*, p. 27.

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

<sup>71</sup> Statement of Alleged Violation, p. 6; Investigative Subcommittee Report, p. 28.

<sup>72</sup> *Id.*

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

<sup>74</sup> *Id.*

<sup>75</sup> Statement of Alleged Violation, p. 6; Investigative Subcommittee Report, Exhibit 28, Email from Shirley Cooks

At least some staff members did not want to attend the event, but understood Ms. Cooks' email meant they had no choice. Lucinda Woodward, Rep. Richardson's former legislative assistant, told investigators she felt she had to go, and "I also felt that I was risking it by not making my spouse go. But I didn't feel it was appropriate to tell me that I had to bring my spouse. So I didn't bring him."<sup>76</sup>

Meanwhile, Ms. Austin had created a lengthy list of event-related tasks to be assigned to aides, including decorations and set-up, greeting guests, passing out name tags, serving food, and photography.<sup>77</sup> She and Rep. Richardson instructed Mr. Billington to use official computers on official time in order to create a PowerPoint presentation for the event, as well as to send information to party officials and prepare remarks for the event.<sup>78</sup> Mr. Billington also had a lengthy email exchange with Ms. Cooks leading up to the event in which he explained he was not available to attend because he needed to care for someone who had just had a medical procedure.<sup>79</sup> Ms. Cooks emailed back that per Rep. Richardson, "you can leave at 7:00."<sup>80</sup> Mr. Billington objected, responding, "I am not being force[d] to do a campaign event when I have pressing personal issues going on. She can fire me and I will blast her [expletive deleted] so over everything she won't be able to be elected dog catcher, I am not kidding. I will not be doing that. I will be heading home at 6."<sup>81</sup> The next day, in the wake of a conversation with Ms. Austin, Mr. Billington sent the following email to Ms. Cooks:

Daysha just told me I'll be taking photos at the event tonight. I explained to her I would be leaving early and she ignored me. If this is not somehow rectified I am prepared to render my resignation effective immediately. I am completely serious about this. In addition, for your information, I will be taking action against this office through House leadership if I am forced to go this route.<sup>82</sup>

Soon thereafter, Ms. Cooks responded, "Calm down. Who do you know up there who could substitute? Someone in another office maybe who would do it as a favor?"<sup>83</sup> Mr. Billington replied, "I don't know of anyone who would do it as a favor, only those that do it for money, especially at this late of notice."<sup>84</sup> Ms. Cooks agreed the campaign would pay.<sup>85</sup>

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to Jakki Dennis, Subject: Re: Wednesday at 5:00 pm, September 27, 2010.

<sup>76</sup> Investigative Subcommittee Report, p. 29.

<sup>77</sup> Statement of Alleged Violation, p. 7; Investigative Subcommittee Report, pp. 30-31.

<sup>78</sup> *Id.*, pp. 31-32; Statement of Alleged Violation, pp. 6-7.

<sup>79</sup> *Id.*, p. 6; Investigative Subcommittee Report, p. 32; Investigative Subcommittee Report, Exhibit 33, Email chain between Shirley Cooks and Jeffrey Billington.

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

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

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

<sup>83</sup> Statement of Alleged Violation, p. 6; Investigative Subcommittee Report, p. 32; Investigative Subcommittee Report, Exhibit 33, Email chain between Shirley Cooks and Jeffrey Billington.

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

<sup>85</sup> Investigative Subcommittee Report, p. 33.

Mr. Billington said the day after the event, Rep. Richardson brought up his reluctance to attend.<sup>86</sup> When he explained he had personal reasons for not being there, he said she told him, “Well, what if media had showed up? That is why you had to be there.”<sup>87</sup> Rep. Richardson told ethics investigators she found out about the emails between Ms. Cooks and Mr. Billington after the fact, and she had told Ms. Cooks it was “no problem” for Mr. Billington to leave the event early.<sup>88</sup>

### *Mandatory Campaign Work During the 2012 Campaign*

Rep. Richardson is again a candidate for re-election in 2012.<sup>89</sup> She received the second-largest number of votes in a primary on June 5, 2012, which means that under California rules, she will be one of the two candidates for her current seat on November’s ballot.<sup>90</sup> Investigators have concluded that even though Rep. Richardson knew she was under investigation by the House Ethics Committee, she continued to require her staff to perform campaign work during the 2012 campaign cycle.<sup>91</sup>

Makeda Scott, Rep. Richardson’s communications director, said Rep. Richardson told her to travel to Long Beach in February 2012 for meetings.<sup>92</sup> When she arrived, she found that at least some of the meetings were campaign events.<sup>93</sup> In addition, Ms. Scott said Rep. Richardson pressured her to participate in campaign events in Washington, and told Ms. Scott her failure to volunteer for campaign work made it uncomfortable to work with her.<sup>94</sup> Another staffer said the district office director, Samuel J. “Joey” Hill, was often out of the office working on campaign issues, and when he was present, he did campaign work at the office.<sup>95</sup> Another communications staff member, Ray Zaccaro, said he had to write a press release announcing the Teamsters’ endorsement of Rep. Richardson.<sup>96</sup>

In March 2012, Brenda Cruz, a veterans’ caseworker in Rep. Richardson’s congressional office, submitted a letter of resignation stating she had been instructed “to illegally work on your campaign by assisting with packets to influence the California Redistricting Commission.”<sup>97</sup> Ms. Cruz had been placed in Rep. Richardson’s office by a two-year fellowship program for disabled veterans known as the Wounded Warrior Program.<sup>98</sup> While working for Rep. Richardson, Ms. Cruz became pregnant.<sup>99</sup> In her resignation letter, Ms. Cruz said Rep. Richardson began to question her productivity “on the first day after I returned from maternity leave,” even though

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

<sup>87</sup> *Id.*, pp. 33-34.

<sup>88</sup> *Id.*, p. 33.

<sup>89</sup> Statement of Alleged Violation, p. 10; Investigative Subcommittee Report, p. 46.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Statement of Alleged Violation, p. 10; Investigative Subcommittee Report, p. 46.

<sup>94</sup> *Id.*

<sup>95</sup> Statement of Alleged Violation, p. 10; Investigative Subcommittee Report, p. 47.

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

<sup>97</sup> Statement of Alleged Violation, p. 10; Jonathan Allen and John Bresnahan, [Ex-Richardson Aide: Rather be at War](http://www.legistorm.com/person/bio/172268/Brenda_I_Cruz.html), *Politico*, March 25, 2012; [http://www.legistorm.com/person/bio/172268/Brenda\\_I\\_Cruz.html](http://www.legistorm.com/person/bio/172268/Brenda_I_Cruz.html).

<sup>98</sup> *Id.*

<sup>99</sup> Allen and Bresnahan, *Politico*, Mar. 25, 2012.



her evaluations had previously “shown consistently high satisfaction.”<sup>100</sup> Ms. Cruz said Rep. Richardson’s mistreatment and wrongdoing forced her to resign without finishing her two-year fellowship.<sup>101</sup>

“[Y]our constant harassment, bullying and abuse toward me . . . has become more than I can take,” Ms. Cruz wrote, adding, “As a service-connected disabled veteran it is sad to say that I [would] rather be at war in Afghanistan than work under people that are morally corrupt.”<sup>102</sup>

### **Misappropriating Official Resources for Personal Use**

In addition to using official House resources to benefit her campaign, Rep. Richardson also redirected resources for her personal benefit. Ms. Macias, her scheduler, said Rep. Richardson directed her to perform personal tasks while at work, including “research, making telephone calls, and attending a meeting regarding Representative Richardson’s prospective adoption of a child.”<sup>103</sup> On February 25, 2011, Ms. Macias sent Ms. Austin a memo saying she felt uncomfortable working on Rep. Richardson’s personal matters, and did not “appreciate being sent harassing emails for stuff that is not related to my job.”<sup>104</sup>

Ms. Richardson also leased a car for official use.<sup>105</sup> The lease payments were billed to her official congressional account.<sup>106</sup> Rep. Richardson kept the car at her personal residence in California and used it to commute to the district office.<sup>107</sup> In addition, she used the car to travel to and from fundraising and other campaign events, sometimes requiring district office staff to drive her in the car to and from campaign events, including during official hours.<sup>108</sup>

### **Obstructing the Ethics Investigation**

In October 2010, the House Ethics Committee received complaints from several members of Rep. Richardson’s staff in both the Washington and Long Beach offices regarding the work they were being required to perform on her campaign.<sup>109</sup> On October 15, 2010, the committee notified Rep. Richardson of the inquiry and asked her to cooperate by making her staff available and turning over any requested documents.<sup>110</sup>

On October 16, 2010, Rep. Richardson contacted her budget manager, Michelle Donches, to inquire about changing Ms. Austin’s employment status to half-time, and asked if the change could be made retroactively to September 28, 2010 – the day before the Democratic Idol fundraiser.<sup>111</sup> Ms. Donches said the change could only be made retroactively to October 1, 2010,

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<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

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

<sup>103</sup> Investigative Subcommittee Report, p. 22.

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

<sup>105</sup> Statement of Alleged Violation, p. 5; Investigative Subcommittee Report, p. 23.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

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

<sup>109</sup> Ethics Committee Report, p. 2.

<sup>110</sup> *Id.*; Statement of Alleged Violation, p. 8; Investigative Subcommittee Report, p. 37.

<sup>111</sup> Statement of Alleged Violation, p. 8; Investigative Subcommittee Report, p. 37.

and Rep. Richardson told her to proceed.<sup>112</sup> Ms. Donches also told Rep. Richardson the change would cost Ms. Austin \$1,867.24 in October pay.<sup>113</sup> Ms. Austin told investigators that approximately four days later, she received \$1,900 from Rep. Richardson’s campaign as pay for work done in October.<sup>114</sup> Ms. Austin also told investigators that even though the change to her employment status was imposed retroactively to October 1, she first heard of the plan in mid-October.<sup>115</sup>

After Rep. Richardson emailed Ms. Donches regarding the change to Ms. Austin’s employment status, Ms. Austin asked Ms. Macias to retroactively alter the office’s official calendar to record Ms. Austin’s October status as “half day leave without pay.”<sup>116</sup> Ms. Austin eventually used Ms. Macias’ computer to make the change herself.<sup>117</sup> Rep. Richardson then provided versions of the revised calendar to ethics investigators, implying that Ms. Austin’s employment status had been changed before Rep. Richardson learned of the investigation.<sup>118</sup> Earlier versions of the calendar provided to ethics investigators, “suggested the opposite.”<sup>119</sup> Despite Rep. Richardson’s denials, ethics investigators concluded the changes were “deliberate, performed with the intent to obscure the fact that Ms. Austin had been receiving full-time pay for less than a full day’s work for Representative Richardson’s constituents.”<sup>120</sup>

Rep. Richardson also said she could not be sure she had received and opened the committee’s letter notifying her of the investigation before she emailed Ms. Donches.<sup>121</sup> However, at least two staff members apparently testified that Rep. Richardson had indeed received the letter on October 15, the day before she contacted Ms. Donches.<sup>122</sup>

On October 17, 2010, Rep. Richardson met with district staff in the Long Beach office, teleconferencing the Washington office to include Ms. Cooks and at least some Washington-based staff members.<sup>123</sup> Rep. Richardson informed her staff of the House Ethics Committee investigation, and told them they might be asked to testify.<sup>124</sup> Multiple staff members said Rep. Richardson then “began a mock dialogue with herself,” giving questions the committee might ask and providing sample answers.<sup>125</sup> Staff members said Rep. Richardson seemed to be asking them to give answers that would absolve her, even if the answers were not true.<sup>126</sup> Rep. Richardson denied trying to suggest answers to her staff, but the investigative subcommittee reported staffers consistently described the meeting, “and all of them contradicted Representative

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<sup>112</sup> *Id.*

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

<sup>114</sup> *Id.*

<sup>115</sup> Investigative Subcommittee Report, p. 37.

<sup>116</sup> Statement of Alleged Violation, p. 9; Investigative Subcommittee Report, pp. 37-38.

<sup>117</sup> *Id.*

<sup>118</sup> Investigative Subcommittee Report, pp. 38-44.

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

<sup>120</sup> *Id.*, p. 44.

<sup>121</sup> *Id.*

<sup>122</sup> Investigative Subcommittee Report, p. 44.

<sup>123</sup> *Id.*, p. 45; Statement of Alleged Violation, p. 9.

<sup>124</sup> *Id.*; Investigative Subcommittee Report, p. 45.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*; Statement of Alleged Violation, p. 9.

Richardson.”<sup>127</sup> The subcommittee eventually concluded she had indeed tried to influence her staff’s testimony.<sup>128</sup>

In November 2011, the investigative subcommittee sent Rep. Richardson a request for documents.<sup>129</sup> She failed to respond for months, forcing the subcommittee to threaten her with a subpoena.<sup>130</sup> Eventually Rep. Richardson began to produce some documents, but the pace was so slow, the subcommittee served the subpoena.<sup>131</sup>

Ultimately, Rep. Richardson failed to comply with the subpoena.<sup>132</sup> Members of the congresswoman’s staff, however, turned over responsive documents that Rep. Richardson herself withheld.<sup>133</sup>

### **Status of Investigation**

On August 1, 2012, the House Ethics Committee announced Rep. Richardson had agreed to admit to a seven-count Statement of Alleged Violation and waive her procedural rights.<sup>134</sup> The House Ethics Committee recommended that the adoption of its report by the House serve as a reprimand of Rep. Richardson.<sup>135</sup> It also recommended the imposition of a \$10,000 fine, to be paid no later than December 1, 2012.<sup>136</sup> In addition, the committee “unanimously agreed to strongly discourage Representative Richardson from permitting any of her official staff to perform work on her campaign (either on a paid or volunteer basis).”<sup>137</sup> If any staff members nonetheless chose to perform campaign work, the committee said they would have to sign waivers asserting the work was performed voluntarily rather than compelled by Rep. Richardson.<sup>138</sup> The House adopted the report on August 2, 2012.<sup>139</sup>

The committee also issued letters of reproof to Ms. Cooks and Ms. Austin, citing them both for using House resources to perform campaign work, performing campaign work on official time, and compelling staff members to perform campaign work.<sup>140</sup>

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<sup>127</sup> Investigative Subcommittee Report, pp. 45-46.

<sup>128</sup> *Id.*, p. 45; Statement of Alleged Violation, p. 9.

<sup>129</sup> Ethics Committee Report, p. 4.

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

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

<sup>132</sup> *Id.*; Investigative Subcommittee Report, p. 46.

<sup>133</sup> *Id.*

<sup>134</sup> Press Release, House Committee on Ethics, 112th Congress, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Allegations Relating to Representative Laura Richardson, August 1, 2012.

<sup>135</sup> *Id.*

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

<sup>137</sup> *Id.*

<sup>138</sup> Press Release, House Committee on Ethics, Aug. 1, 2012.

<sup>139</sup> *In the Matter of Representative Laura Richardson*, H.Res.755, 112th Congress, August 2, 2012.

<sup>140</sup> Letter from House Ethics Committee Chairman Jo Bonner and Ranking Member Linda Sanchez to Ms. Shirley Cooks, August 1, 2012; Letter from House Ethics Committee Chairman Jo Bonner and Ranking Member Linda Sanchez to Ms. Daysha Austin, August 1, 2012.

## **Legal Fees**

So far in 2012, Rep. Richardson's campaign committee has reported paying \$13,834.17 in legal fees to eight law firms: Kaufman Legal Group, O'Melveny & Myers, Perkins Coie, Price Benowitz LLP, Reich Adell & Cvitan, Sandler Reiff Young & Lamb, Lancaster Law Group, and Nossaman LLP.<sup>141</sup> In addition, her campaign committee reported owing a total of \$129,701.29 to Kaufman Legal Group, Perkins Coie, Reich Adell & Cvitan, and the Sutton Law Group.<sup>142</sup>

## **Potential Violations**

### **Intimidation to Secure Political Contributions**

Federal law prohibits members of Congress from threatening to fire, demote, or in any way change the official rank or compensation of their staff members for withholding or neglecting to make a political contribution.<sup>143</sup> This law "protect[s] all federal officials . . . from being forced by job-related threats or reprisals to donate to political candidates or causes," and should be used "whenever a federal employee is actively threatened with an adverse change to his or her conditions of employment to induce a political contribution."<sup>144</sup> Coerced donations of anything of value, including services, are prohibited by this section.<sup>145</sup>

House ethics rules also make clear "in no event may a Member or office compel a House employee to do campaign work."<sup>146</sup> This broad prohibition forbids members of Congress "from not only threatening or attempting to intimidate employees regarding doing campaign work, but also from directing or otherwise pressuring them to do such work."<sup>147</sup>

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

### **Solicitation on Federal Property**

Federal law prohibits any person, including members of Congress, from soliciting political donations, including money "or other thing of value," from anyone in a federal building.<sup>148</sup> Violations of this statute "may arise from solicitations that can be characterized as 'shakedowns' of federal personnel. . . . [including] shakedowns of congressional employees."<sup>149</sup>

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<sup>141</sup> Richardson for Congress, FEC Form 3, 2012 April Quarterly Report, Amended, April 18, 2012; Richardson for Congress, FEC Form 3, 2012 Pre-Primary Report, Amended, July 15, 2012; Richardson for Congress, FEC Form 3, 2012 July Quarterly Report, July 15, 2012.

<sup>142</sup> Richardson for Congress, FEC Form 3, 2012 July Quarterly Report, July 15, 2012.

<sup>143</sup> 18 U.S.C. § 606.

<sup>144</sup> United States Department of Justice, Federal Prosecution of Election Offenses, p. 112 (7th ed. 2007).

<sup>145</sup> *Id.*

<sup>146</sup> House Comm. on Standards of Official Conduct, House Ethics Manual, pp. 135-36 (110th Cong., 2d Sess., 2008 ed.).

<sup>147</sup> *Id.*, p. 136.

<sup>148</sup> 18 U.S.C. § 607.

<sup>149</sup> United States Department of Justice, Federal Prosecution of Election Offenses, pp. 114-15.

The House Ethics Committee concluded Rep. Richardson “compelled hundreds of hours of non-voluntary campaign work from her district office staff.”<sup>150</sup> To the extent Rep. Richardson was on federal property while conducting any coerced solicitation of “volunteer” service from her staff members, Rep. Richardson likely violated 18 U.S.C. § 607.

### **Improper Use of Appropriated Funds**

Pursuant to 31 U.S.C. § 1301(a), “[a]ppropriations shall be applied only to the objects for which the appropriations were made.” Corresponding regulations of the Committee on House Administration provide that “[e]mployees may not be compensated from public funds to perform non-official, personal, political, or campaign activities on behalf of the Member, the employee, or anyone else.”<sup>151</sup>

House ethics rules also make clear that “[e]mployees of the House are paid from funds of the United States Treasury to perform public duties” that expressly “do not include performing nonofficial, personal, or campaign duties.”<sup>152</sup>

According to the Campaign Booklet published by the House Ethics Committee, there is a “basic principle that government funds should not be spent to help incumbents gain re-election.”<sup>153</sup> The official allowance of House offices, and the goods and services acquired with those allowances, are to be used for House business and are not to be used for campaign or political purposes.<sup>154</sup> The Campaign Booklet clearly states that House offices, including district offices, are supported with official funds and, therefore, are considered official resources.<sup>155</sup> As a result, they may not be used to conduct campaign or political activities.<sup>156</sup>

The Campaign Booklet provides two cases, one in which a member was criminally prosecuted and another in which a staffer was criminally prosecuted, for misusing official resources. In 1993, a former House employee pleaded guilty to a charge of theft of government property after he was found doing campaign work at a time that he claimed he was conducting official business.<sup>157</sup> In 1979, a former member pleaded guilty to charges of mail fraud and income tax evasion in a case centering on claims that individuals on the congressional payroll were paid not for the performance of official duties, but instead for staffing and operating various campaign headquarters in the member’s re-election campaign.<sup>158</sup>

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<sup>150</sup> Investigative Subcommittee Report, p. 21.

<sup>151</sup> Committee on House Administration, Members’ Handbook, Staff.

<sup>152</sup> House Ethics Manual, pp. 267-268, citing *United States v. Rostenkowski*, 59 F.3d 1291, 1307-11 (D.C. Cir. 1995), *reh’g denied*, 68 F.3d 489 (D.C. Cir. 1995); *United States v. Diggs*, 613 F.2d 988, 994-997, 1002 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 982 (1980).

<sup>153</sup> House Comm. on Standards of Official Conduct, *General Prohibition Against Using Official Resources for Campaign or Political Purposes*, Campaign Booklet (citing *Common Cause v. Bolger*, 574 F. Supp. 672, 683 (D.D.C. 1982), *aff’d*, 461 U.S. 911 (1983)).

<sup>154</sup> Campaign Booklet.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> Campaign Booklet (citing *United States v. Bresnahan*, Criminal No. 93-0409 (D.D.C. 1993)).

<sup>158</sup> Campaign Booklet (citing *United States v. Clark*, Criminal No. 78-207 (W.D. Pa. 1978)).

As the House Ethics Committee concluded in its Statement of Alleged Violation, and Rep. Richardson admitted, Rep. Richardson used official House resources to perform campaign, political, personal, and non-official tasks.<sup>159</sup> That use of official resources included “the use of staff time, use of House mail, computing, and other information technology resources, use of House office supplies, reimbursement of travel and other expenses, and the use of a leased vehicle.”<sup>160</sup> As a result, Rep. Richardson violated 31 U.S.C. § 1301(a), House ethics rules, and the regulations of the Committee on House Administration.

### **Improperly Retaining Staff Not Performing Duties Commensurate with Compensation**

House Rule 23, clause 8 states that a member of Congress may not “retain an employee who does not perform duties for the offices of the employing authority commensurate with the compensation such employee receives.” When a House employee assumes significant campaign duties, that employee’s official salary may be reduced. Further, bonuses and lump sum payments are only for official duties and may not be made in compensation for campaign work.<sup>161</sup>

As the House Ethics Committee concluded in its Statement of Alleged Violation, and as Rep. Richardson admitted, by retaining Ms. Austin as a full-time employee while having her perform campaign duties during more than half of her official hours, but failing to reduce her House salary, Rep. Richardson violated House Rule 23, clause 8.<sup>162</sup>

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

The Ethics in Government Act of 1967 requires all members of Congress to file financial disclosure reports.<sup>163</sup> Under the statute, the attorney general may seek a civil penalty of up to \$11,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.<sup>164</sup> House Rule 26 incorporates the financial disclosure provisions of the Ethics in Government Act.<sup>165</sup>

Federal law prohibits members of Congress from making “any materially false, fictitious, or fraudulent statement or representation”<sup>166</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>167</sup> If Rep. Richardson certified on payroll forms she spent official funds only for official expenses despite frequently requiring her congressional staff to perform campaign and personal work, she likely violated 18 U.S.C. § 1001.

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<sup>159</sup> Statement of Alleged Violation, p. 11.

<sup>160</sup> *Id.*

<sup>161</sup> House Ethics Manual, p. 140; Statement of Alleged Violation, p. 12.

<sup>162</sup> *Id.*

<sup>163</sup> Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

<sup>164</sup> 5 U.S.C. app. 4, § 104.

<sup>165</sup> House Ethics Manual, p. 248.

<sup>166</sup> 18 U.S.C. § 1001(a)(2).

<sup>167</sup> 18 U.S.C. § 1001(c)(2).

## 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>168</sup> This ethics standard is considered to be “the most comprehensive provision” of the code.<sup>169</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.<sup>170</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>171</sup> making false statements to the committee,<sup>172</sup> criminal convictions for bribery,<sup>173</sup> or accepting illegal gratuities,<sup>174</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>175</sup>

As the House Ethics Committee concluded in its Statement of Alleged Violation, and as Rep. Richardson admitted, by using House resources for campaign, political, personal, and other non-official purposes, retaining Ms. Austin at her full official salary while having her spend at least half her time on campaign matters, and continuing this conduct even after apprised of the committee’s investigation, Rep. Richardson acted in a manner that brings discredit to the House.<sup>176</sup>

Similarly, by coercing her employees to do campaign work, and “threatening, attempting to intimidate, directing, or otherwise pressuring them to do such work,” even after receiving notice of the committee’s investigation into her conduct, Rep. Richardson acted in a manner that brings discredit to the House.<sup>177</sup>

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<sup>168</sup> Rule 23, cl. 1.

<sup>169</sup> House Ethics Manual, p. 12.

<sup>170</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>171</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>172</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>173</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>174</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>175</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).

<sup>176</sup> Statement of Alleged Violation, p. 13.

<sup>177</sup> *Id.*, pp. 14-15.

In addition, as the House Ethics Committee concluded in its Statement of Alleged Violation, and as Rep. Richardson admitted, by obstructing, or endeavoring to obstruct the committee's investigation by directing her staff members to testify untruthfully and by altering or destroying evidence, Rep. Richardson acted in a manner that brings discredit to the House.<sup>178</sup>

### **Failing to Uphold the Law**

Clause 2 of the Code of Ethics for Government Service provides that any person in government service should: "Uphold the Constitution, laws, and legal regulations of the United States and all governments therein and never be a party to their evasion."<sup>179</sup>

As the House Ethics Committee concluded in its Statement of Alleged Violation, and as Rep. Richardson admitted, by using House resources for campaign, political, personal and non-official purposes, by retaining Ms. Austin at a full-time salary while she performed campaign work, by coercing, intimidating, pressuring and compelling her staff to perform campaign work, and by obstructing the committee's investigation, Rep. Richardson violated the Code of Ethics for Government Service.<sup>180</sup>

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<sup>178</sup> *Id.*, p. 15.

<sup>179</sup> 72 Stat., Part 2, B12, H. Con. Res. 175, 85th Cong. (adopted July 11, 1958).

<sup>180</sup> Statement of Alleged Violation, p. 16.



## REPRESENTATIVE DAVID RIVERA

Representative David Rivera (R-FL) is a first-term member of Congress, representing Florida's 25th congressional district. He was a Florida state representative from 2002 until his election to Congress in 2010. His ethics issues stem from what appear to be multiple money laundering and tax evasion schemes involving: (1) his role in a pro-slots campaign; (2) repeatedly misreporting his income and liabilities on personal financial disclosure forms; (3) using campaign funds for personal expenses and to steer money to family and friends; (4) his personal and professional ties to an ex-lobbyist and her consulting company; and (5) his apparent intervention in the Democratic primary to select his opponent. He was included in CREW's 2011 congressional corruption report for related matters.<sup>1</sup>

### Millennium Marketing

Millennium Marketing, Inc. is a consulting firm that sits at the center of state and federal investigations into Rep. Rivera's personal and campaign finances. The company was founded as Millennium Marketing Strategies, Inc. in 2000 by Rep. Rivera's mother, Daisy Magarino, but according to state incorporation records it dissolved the following year.<sup>2</sup> In 2006, Rep. Rivera's godmother, Ileana Medina, re-established the company as Millennium Marketing, Inc.<sup>3</sup> Ms. Magarino has been listed on state records as a company vice president since 2008.<sup>4</sup>

The Federal Bureau of Investigation (FBI) and the Internal Revenue Service (IRS) are looking into Rep. Rivera's transactions with Millennium Marketing.<sup>5</sup> It appears the IRS is considering whether Rep. Rivera engaged in income tax evasion by failing to report income from Millennium Marketing.<sup>6</sup> In addition, Florida officials have investigated Rep. Rivera's failure to disclose income from Millennium Marketing on his financial disclosure forms, as well as whether he received unlawful compensation from the company.<sup>7</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>.

<sup>2</sup> Millennium Marketing Strategies, Inc., Articles of Incorporation, Secretary of State: Tallahassee, Florida, filed October 31, 2000, available at [www.sunbiz.org](http://www.sunbiz.org); Millennium Marketing Strategies, Inc., Detail By Entity Name, Secretary of State: Tallahassee, Florida, filed September 21, 2001, available at [www.sunbiz.org](http://www.sunbiz.org); Scott Hiaasen and Marc Caputo, Feds Investigate Congressman David Rivera on Casino Contract, *Miami Herald*, July 21, 2011.

<sup>3</sup> Millennium Marketing Inc., Articles of Incorporation, Secretary of State: Tallahassee, Florida, filed September 25, 2006, available at [www.sunbiz.org](http://www.sunbiz.org); Scott Hiaasen and Patricia Mazzei, A \$500,000 Question Over Track's Payments, *Miami Herald*, December 16, 2010.

<sup>4</sup> Millennium Marketing Inc., Annual Report for Calendar Years 2008-2012, Secretary of State: Tallahassee, Florida, filed April 4, 2008 through March 29, 2012, available at [www.sunbiz.org](http://www.sunbiz.org).

<sup>5</sup> Hiaasen and Caputo, *Miami Herald*, July 21, 2011.

<sup>6</sup> *Id.*

<sup>7</sup> Florida Department of Law Enforcement, Investigative Summary: David Rivera Allegations of Official Misconduct, Unlawful Compensation, Fraud & Theft, July 29, 2011 (FDLE Investigative Summary), available at <http://www.scribd.com/doc/93501676/Responsive-Documents-Request-for-Records-in-Investigation-of-Rep-David-Rivera-5-14-2012-Rivera-ES>.

## *Flagler Dog Track Deal*

According to state investigators, Rep. Rivera urged Ms. Medina and Ms. Magarino to reinstitute Millennium Marketing so the company could handle administrative work connected to a pro-slot machine campaign Rep. Rivera planned to lead on behalf of Flagler Dog Track, now known as Magic City Casino.<sup>8</sup> In October 2006, one month after Millennium Marketing was reincorporated, the firm struck a \$1 million consulting deal with the dog track to run the campaign, aimed at winning approval for Las Vegas-style slot machines at certain existing race tracks in Miami-Dade County via a voter referendum.<sup>9</sup> Despite controversy in Florida over slot machines, county voters approved the measure in January 2008.<sup>10</sup>

Flagler paid Millennium Marketing an initial \$50,000 retainer, and another \$460,363 in March 2008 after the pro-slots initiative was approved.<sup>11</sup> The contract also provided for a \$500,000 “success fee” if the referendum passed, which Millennium requested on May 21, 2011.<sup>12</sup> The dog track paid \$200,000 of the success fee, but withheld the remaining \$300,000 to pay for any expenses it might incur during the state and federal investigations.<sup>13</sup> In all, Millennium Marketing collected \$710,363 from Flagler.<sup>14</sup>

Rep. Rivera initially denied working for the dog track at all.<sup>15</sup> Later, he acknowledged he had been “designated by Millennium” to work on the campaign, but said he had never received any money from the dog track or Millennium.<sup>16</sup>

A lawyer for the dog track, however, said it was Rep. Rivera who had first approached the track and asked to manage the campaign, and had requested any payments be made through Millennium Marketing instead of directly to him.<sup>17</sup> Furthermore, the contract between Ms. Medina and Flagler said Rep. Rivera would be the “key person to act as the primary provider” of all services done by Millennium Marketing.<sup>18</sup> In an interview with state investigators, Ms. Magarino said Millennium Marketing’s purpose was to handle the administrative work of the slots campaign, and Rep. Rivera was to be in charge of everything else.<sup>19</sup>

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<sup>8</sup> Florida Department of Law Enforcement, Investigative Report: David Rivera (FDLE Investigative Report), No. 34, p. 1, *available at* <http://www.scribd.com/doc/100349784/Responsive-Documents-CREW-FDLE-Request-for-Records-in-Investigation-of-Rep-David-Rivera-5-14-2012-FDLE-Report-Combined>; Hiaasen and Mazzei, *Miami Herald*, Dec. 16, 2010.

<sup>9</sup> Hiaasen and Caputo, *Miami Herald*, July 21, 2011; Hiaasen and Mazzei, *Miami Herald*, Dec. 16, 2010.

<sup>10</sup> *Id.*; Hiaasen and Caputo, *Miami Herald*, July 21, 2011.

<sup>11</sup> FDLE Investigative Summary, p. 3; Florida Department of Law Enforcement, Investigative Report, Millennium Marketing and Flagler Dog Track Consulting Agreement (Consulting Agreement), p. 4, *available at*: <http://www.scribd.com/doc/97552288/Responsive-Documents-CREW-FDLE-Request-for-Records-in-Investigation-of-Rep-David-Rivera-6-19-2012-RELATED-ITEM-10-MILLENNIUM-MARKETING-CONT>.

<sup>12</sup> *Id.*, Amy Driscoll, *New Miami Dade Slots Still Months Away*, *Miami Herald*, February 10, 2008.

<sup>13</sup> FDLE Investigative Summary, p. 4.

<sup>14</sup> *Id.*, pp. 3-4.

<sup>15</sup> Hiaasen and Mazzei, *Miami Herald*, Dec. 16, 2010.

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

<sup>17</sup> *Id.*; Hiaasen and Caputo, *Miami Herald*, July 21, 2011.

<sup>18</sup> Consulting Agreement, pp. 1-2.

<sup>19</sup> FDLE Investigative Report No. 34, p. 1.

### *Millennium Marketing Transactions With Rep. Rivera*

In January 2007, after receiving the \$50,000 retainer, Millennium Marketing deposited \$25,000 into Rep. Rivera's personal bank account, and deposited another \$10,000 into his bank account on February 21, 2007.<sup>20</sup> Between July 2008 and August 2010, Millennium Marketing made eight additional deposits to Rep. Rivera's bank account, bringing the total to \$132,000.<sup>21</sup>

Rep. Rivera, however, failed to disclose the \$132,000 from Millennium Marketing on state and federal financial disclosure forms.<sup>22</sup> When questioned, Rep. Rivera claimed the \$132,000 constituted four loans he had received from Millennium Marketing totaling that amount.<sup>23</sup> Rep. Rivera later amended his disclosure forms to report the \$132,000 as loans.<sup>24</sup>

Rep. Rivera's mother, Ms. Magarino, told state investigators the loans came about because her son wanted to help her and Ms. Medina financially.<sup>25</sup> To that end, Rep. Rivera verbally agreed Ms. Magarino and Ms. Medina would take the first \$500,000 collected from the Flagler Dog Track contract, and he would receive the final \$500,000.<sup>26</sup> According to Ms. Magarino, Rep. Rivera requested a series of loans from the first half million dollars Millennium Marketing received from Flagler.<sup>27</sup> Ms. Magarino added she never knew what the loans were for or why Rep. Rivera needed the money.<sup>28</sup>

To support his claim that the money he received from Millennium Marketing was loans, Rep. Rivera said he paid back the loans with interest on November 1, 2010 by transferring ownership of a condo he owned to Millennium Marketing and by paying \$41,605.48.<sup>29</sup> This transaction raised further questions because the money he used to repay the purported loans was provided by Ms. Medina. On October 29, 2010, when Rep. Rivera had only \$6,418.94 in his bank account, Ms. Medina deposited \$49,000 into the account.<sup>30</sup> Therefore, without Ms. Medina's deposit, Rep. Rivera would have had insufficient funds to cover the check.<sup>31</sup>

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<sup>20</sup> FDLE Investigative Report No. 10, p. 2; Consulting Agreement, pp. 3-4. State investigators subpoenaed bank records and reviewed financial transactions between Millennium Marketing's corporate accounts, the personal bank accounts of the company's principals, and Rep. Rivera's personal bank account. FDLE Investigative Report No. 10, p. 1; FDLE Investigative Summary, p. 3.

<sup>21</sup> *Id.*, p. 2.

<sup>22</sup> State Rep. David Rivera, Full and Public Disclosure of Financial Interests for Calendar Years 2006-2010, filed August 20, 2007 – March 25, 2011; Rep. David Rivera, Personal Financial Disclosure Statement for Calendar Year 2010, filed June 3, 2011.

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

<sup>24</sup> FDLE Investigative Summary, p. 3; Anderson, *Associated Press*, Jan. 4, 2011.

<sup>25</sup> FDLE Investigative Report No. 34, p. 1.

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

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

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

<sup>29</sup> FDLE Investigative Report No. 27, p. 3; FDLE Investigative Summary, p. 3.

<sup>30</sup> FDLE Investigative Report No. 10, p. 3.

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

The Florida Department of Law Enforcement (FDLE) believed the transactions were part of a concerted effort by Rep. Rivera to hide his relationship with, and the payments from, Flagler Dog Track.<sup>32</sup> FDLE said it appeared Rep. Rivera used Millennium Marketing as a “pass-through” for compensation for his work on the slots initiative, and claimed the payments were loans in an attempt to disguise his compensation from the pari-mutuel industry.<sup>33</sup>

Among other things, investigators noted Rep. Rivera had money in his bank account and made no significant withdrawals after he received several of the alleged loans, raising questions about why he would have needed the loans.<sup>34</sup>

In addition, the apparent destruction of documents related to the loans raised questions as to whether they were created only after the investigation began. According to Ms. Magarino, she prepared a master copy of a promissory note on a computer, then made copies, filling one out each time Rep. Rivera requested a loan.<sup>35</sup> When Rep. Rivera repaid the loans, he received the original promissory notes.<sup>36</sup> Investigators obtained paper copies of the promissory notes,<sup>37</sup> but to verify Ms. Magarino’s explanation, investigators wanted to execute a search warrant for both the signed original promissory notes and the computer on which the original promissory note had been created.<sup>38</sup> Ms. Magarino, however, told investigators the original signed promissory notes had been lost and the computer had stopped working and been discarded, depriving investigators of probable cause to execute the search warrant.<sup>39</sup> Prosecutors concluded they had no way to determine whether the promissory notes were fraudulently created after the investigation began.<sup>40</sup>

### *Payments to Millennium Marketing*

Around the same time Millennium Marketing deposited money in Rep. Rivera’s personal account, Rep. Rivera’s campaign made payments to Millennium Marketing, raising further questions about their relationship and the transactions between them. On February 7, 2007, for example, Millennium Marketing cashed a \$15,000 check from Rep. Rivera’s campaign.<sup>41</sup> In addition, after Rep. Rivera won re-election in 2006, his campaign paid Millennium Marketing another \$15,000 for coordinating a “thank you” campaign.<sup>42</sup>

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<sup>32</sup> FDLE Investigative Summary, p. 3.

<sup>33</sup> *Id.*, p. 2.

<sup>34</sup> FDLE Investigative Report No. 10, p. 2; FDLE Investigative Summary, p. 4.

<sup>35</sup> FDLE Investigative Report No. 34, p. 2.

<sup>36</sup> *Id.*

<sup>37</sup> Close-Out Memorandum from Chief Assistant State Attorney Jose J. Arrojo and Assistant State Attorney Division Chief Howard R. Rosen to State Attorney Katherine Fernandez Rundle, April 17, 2012 (State Attorney’s Memo), p. 4, available at <http://www.scribd.com/doc/100349803/Responsive-Documents-CREW-FDLE-Request-for-Records-in-Investigation-of-Rep-David-Rivera-5-14-2012-State-s-Attorney-Memo>.

<sup>38</sup> *Id.*, p. 5.

<sup>39</sup> *Id.*; FDLE Investigative Report No. 34, pp. 1-2.

<sup>40</sup> State Attorney’s Memo, p. 5.

<sup>41</sup> FDLE Investigative Report No. 12, pp. 3-4.

<sup>42</sup> Florida Department of State Division of Elections, Candidate Search: David Rivera, List of Expenditures, 2006 General Election, available at <http://doe.dos.state.fl.us/campaign-finance/pend.asp>.

## **Outside Income on Personal Financial Disclosure Forms**

During his tenure as a state representative, Rep. Rivera listed multiple sources of secondary income on his state personal financial disclosure forms.

Rep. Rivera repeatedly claimed his main source of income outside his work for the legislature came from consulting for the U.S. Agency for International Development (USAID).<sup>43</sup> Rep. Rivera said on the disclosure forms he had worked for USAID through his Puerto Rican-based consulting firm, InterAmerican Government Relations (IGR).<sup>44</sup> State investigators, however, contacted USAID and discovered the agency had no record of Rep. Rivera or IGR ever working for the agency.<sup>45</sup> Rep. Rivera then claimed he worked as a subcontractor, something not generally tracked by USAID,<sup>46</sup> but declined to provide details about his work for the agency.<sup>47</sup>

In an attempt to bolster his claim, Rep. Rivera provided the *Miami Herald* with records of three trips during which he said he did development work in Mexico and Chile in 2005 and 2008.<sup>48</sup> The *Herald* found that in fact, Rep. Rivera had traveled to Mexico and Chile as a guest of the U.S. State Department under its International Information Program, which sends American politicians and academics overseas to give speeches and attend conferences.<sup>49</sup> A State Department spokesperson said Rep. Rivera had traveled as a private citizen, not as a contractor or consultant to the U.S. government.<sup>50</sup> Confronted with this evidence, Rep. Rivera's spokesperson claimed the travel records illustrated the type of work he had performed, not proof of his work on behalf of USAID.<sup>51</sup> Soon thereafter, Rep. Rivera amended his state financial disclosure forms to remove any references to income other than his state legislative salary.<sup>52</sup>

State law also required Rep. Rivera to include payments he received from outside employers on his personal financial disclosure forms, but until he amended his disclosure forms Rep. Rivera routinely listed USAID as a source of income without revealing how much money he had been paid.<sup>53</sup>

State investigators also questioned other sources of secondary income Rep. Rivera reported on his state financial disclosure forms. Although Rep. Rivera did not report any income from Millennium Marketing in 2006 through 2008, he did report it as a source of income from

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<sup>43</sup> State Rep. David Rivera, Full and Public Disclosure of Financial Interests for Calendar Years 2003-2009, filed July 12, 2004 – June 18, 2010.

<sup>44</sup> State Rep. David Rivera, Full and Public Disclosure of Financial Interests for Calendar Years 2006-2008, filed August 20, 2007 – July 8, 2009; FDLE Investigative Report No. 4, p. 1.

<sup>45</sup> FDLE Investigative Report No. 9, p. 1.

<sup>46</sup> *Id.*; Scott Hiaasen and Patricia Mazzei, Agency Disappears from David Rivera's Forms, *Miami Herald*, October 19, 2010.

<sup>47</sup> Laura Wides-Munoz, Republican Candidate David Rivera Questioned Over Income, *Associated Press*, October 27, 2010.

<sup>48</sup> Scott Hiaasen and Patricia Mazzei, Source of Rivera's Income Unclear, *Miami Herald*, October 13, 2010.

<sup>49</sup> *Id.*

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

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

<sup>52</sup> State Rep. David Rivera, Amendments to Full and Public Disclosure of Financial Interests for Calendar Years 2003-2009, filed October 15, 2010.

<sup>53</sup> Hiaasen and Mazzei, *Miami Herald*, Oct. 19, 2010.

2002 until 2005.<sup>54</sup> State corporation records, however, show the company was inactive as of 2001,<sup>55</sup> and the most recent iteration of Millennium Marketing was not incorporated until 2006.<sup>56</sup> Therefore, it does not appear Millennium Marketing was operating during the period Rep. Rivera claimed the company as a source of income.

In addition, Rep. Rivera reported working for Object Video through Millennium Marketing between 2003 and 2005.<sup>57</sup> State investigators contacted Object Video, which had no record of having compensated Rep. Rivera or Millennium Marketing and instead described Rep. Rivera as an investor who had given the company \$5,876.<sup>58</sup>

### **Campaign Spending and Reimbursements**

State investigators found Rep. Rivera's campaign accounts opaque and murky. The records are difficult to decipher, but it appears Rep. Rivera used campaign funds for personal expenses, steered campaign funds to friends and family, backdated expenses paid by his campaign, used funds from one campaign account for other campaigns, and double billed his campaign and the state for some expenses.

#### *Campaign Money for Personal Expenses*

FDLE and the Miami Dade State Attorney's office investigators found Rep. Rivera used campaign funds to pay \$65,000 in non-campaign related expenses rung up on his credit cards.<sup>59</sup> Expenses included dry cleaning, pet services, and dental care.<sup>60</sup> Credit card and bank statements revealed that as soon as Rep. Rivera received a campaign reimbursement check, he immediately paid one of his credit card bills.<sup>61</sup> Rep. Rivera and his lawyers told prosecutors the campaign reimbursement checks did not, in fact, correspond to Rep. Rivera's credit card bills.<sup>62</sup> Instead, he said, he kept a running tab of out-of-pocket campaign expenses, and the campaign reimbursed him for those expenses.<sup>63</sup> "Your account system is a mystery," prosecutor Joe Centorino responded.<sup>64</sup>

Rep. Rivera also used his campaign funds to pay expenses for his girlfriends. In an interview with investigators, one of Rep. Rivera's girlfriends, Apryl Marie Fogel, confirmed Rep. Rivera paid for a trip the couple took to Washington, D.C. on April 25, 2010.<sup>65</sup> She said

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<sup>54</sup> FDLE Investigative Report No. 3, p. 1-4.

<sup>55</sup> FDLE Investigative Summary, p. 1-2.

<sup>56</sup> *Id.*, p. 2; FDLE Investigative Report No. 34, p. 2.

<sup>57</sup> FDLE Investigative Report No. 1, p. 1; FDLE Investigative Summary, p. 2.

<sup>58</sup> FDLE Investigative Report No. 5, p. 1.

<sup>59</sup> FDLE Investigative Summary, p. 4; State Attorney's Memo, pp. 6-7.

<sup>60</sup> FDLE Investigative Summary, p. 4.

<sup>61</sup> FDLE Investigative Report No. 23, p. 2.

<sup>62</sup> Scott Hiaasen and Patricia Mazzei, Prosecutors Were Ready to File Charges Against Miami Congressman Before Case Fell Apart, *Miami Herald*, July 16, 2012.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> FDLE Investigative Report No. 32, p. 1.

they took the trip during her birthday week and it was both personal and political in nature.<sup>66</sup> The trip's costs were paid by one of Rep. Rivera's campaigns.<sup>67</sup>

Similarly, another girlfriend, Michelle Arrondo, accompanied Rep. Rivera on multiple trips outside of Florida during his time as a state legislator.<sup>68</sup> The trips, including entertainment and clothes for Ms. Arrondo, were paid for with campaign funds.<sup>69</sup> Further, Rep. Rivera's campaign paid travel expenses for Esther Nuhfer, his fundraising consultant and "close friend," to out-of-state fundraisers for his U.S. congressional campaign.<sup>70</sup> Investigators found, however, that Rep. Rivera's state campaign rather than his congressional campaign had reimbursed him for those expenses.<sup>71</sup>

### *Backdating Expenses*

State investigators found Rep. Rivera routinely reported incorrect dates for campaign checks he had written. For instance, Rep. Rivera's campaign for state representative reported paying Millennium Marketing \$15,000 for campaign consulting on September 27, 2006.<sup>72</sup> State investigators found, however, the records had been backdated, and the check was in fact written on February 6, 2007 – one day after the financial end date of the 2006 campaign.<sup>73</sup> The backdating effectively placed the expense in the 2006 campaign cycle, rather than the 2008 one.

Rep. Rivera also backdated \$200,000 in expenditures to Communication Solutions, the company run by Ms. Nuhfer.<sup>74</sup> Rep. Rivera's campaign finance reports said his state Senate campaign began on January 1, 2009 and ended September 16, 2010.<sup>75</sup> However, on February 25, 2010, Rep. Rivera announced his candidacy for Congress, effectively ending his state Senate campaign.<sup>76</sup> The \$200,000 in checks to Communication Solutions actually were written in June through August 2010, but Rep. Rivera filed campaign finance reports saying the expenses were incurred between December 2009 and February 2010.<sup>77</sup>

### *Steering Campaign Funds to Friends and Family*

In addition to the backdated payments to Millennium Marketing and Communication Solutions – companies run by his family and friends – Rep. Rivera also steered campaign funds to a company run by the daughter of one of his long-time aides. In July and August 2010, Rep.

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

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

<sup>68</sup> FDLE Investigative Report No. 21, p. 1.

<sup>69</sup> *Id.*, pp. 1-2.

<sup>70</sup> FDLE Investigative Report No. 31, p. 2; Scott Hiaasen, Patricia Mazzei and Scott Caputo, Rep. Rivera's Fundraising Consultant Collected \$817,000 in Fees Since 2006, *Miami Herald*, February 19, 2011.

<sup>71</sup> FDLE Investigative Report No. 22, pp. 20-21.

<sup>72</sup> Florida Department of State Division of Elections, Candidate Search: "Rivera, David," List of Expenditures, 2006 General Election, *available at* <http://doe.dos.state.fl.us/campaign-finance/pend.asp>; Hiaasen and Mazzei, *Miami Herald*, Dec. 16, 2010.

<sup>73</sup> FDLE Investigative Report No. 10, p. 3; FDLE Investigative Report No. 12, p. 1.

<sup>74</sup> FDLE Investigative Report No. 14, p. 5.

<sup>75</sup> *Id.*, p. 1.

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

<sup>77</sup> *Id.*, pp. 5-6.

Rivera's state Senate campaign paid a consulting company called ACH Fundraising Strategies, Inc., \$75,000 for conducting a supposed "thank you" campaign.<sup>78</sup> ACH, which dissolved a few months later, was owned by Alyn Cruz Higgins, the daughter of Alina Garcia, one of Rep. Rivera's congressional aides and a former state legislative aide.<sup>79</sup>

Ms. Higgins told investigators she was supposed to provide consulting services to one of Rep. Rivera's campaigns.<sup>80</sup> Investigators, however, found Ms. Higgins never ended up doing any work for Rep. Rivera, in part because she was never given any direction as to the services she was to provide.<sup>81</sup> Ms. Higgins told investigators she was instructed by Ms. Nuhfer and Rep. Rivera to write a \$50,000 check to Communication Solutions and a \$10,000 check to IGB Enterprises, a firm owned by Ms. Higgins' roommate, Ileana Garcia, who had done accounting work for Rep. Rivera in the past.<sup>82</sup> Ms. Higgins was directed to spend the remaining \$15,000 on stamps and campaign related materials.<sup>83</sup> Ms. Higgins claimed not to know if the money was used for a "thank you" campaign, and said she never discussed the payments further with her roommate or Ms. Nuhfer.<sup>84</sup>

As noted above, Rep. Rivera's campaign also paid Millennium Marketing \$15,000 for coordinating a "thank you" campaign in 2006.<sup>85</sup>

### *Double Billing*

State investigators found several examples where Rep. Rivera double-billed his campaign and the state of Florida or his district office account for expense reimbursements, and calculated the double billing totaled roughly \$29,500 between 2006 and 2010.<sup>86</sup>

### **Relationship with Esther Nuhfer and Communication Solutions**

State investigators looked into Rep. Rivera's relationship with Ms. Nuhfer, a former Tallahassee lobbyist,<sup>87</sup> whom Rep. Rivera has described as a fundraising consultant and a "close friend."<sup>88</sup> Ms. Nuhfer lobbied the state House of Representatives while Rep. Rivera was a member, and according to newspaper reports, frequently worked from Rep. Rivera's

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<sup>78</sup> FDLE Investigative Report No. 17, p. 1.

<sup>79</sup> ACH Fundraising Strategies Inc., Articles of Incorporation, Secretary of State: Tallahassee, Florida, filed July 17, 2010, available at [www.sunbiz.org](http://www.sunbiz.org); ACH Fundraising Strategies Inc., Voluntary Dissolution, Secretary of State: Tallahassee, Florida, filed January 18, 2011, available at [www.sunbiz.org](http://www.sunbiz.org); FDLE Investigative Report No. 17, pp. 1-2; [http://www.legistorm.com/person/Alina\\_Garcia/168537.html](http://www.legistorm.com/person/Alina_Garcia/168537.html).

<sup>80</sup> FDLE Investigative Report No. 17, p. 1.

<sup>81</sup> *Id.*, p. 2.

<sup>82</sup> *Id.*; FDLE Investigative Report No. 25, pp. 1-2.

<sup>83</sup> FDLE Investigative Report No. 17, p. 2.

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

<sup>85</sup> Florida Department of State Division of Elections, Candidate Search: David Rivera, List of Expenditures, 2006 General Election, available at <http://doe.dos.state.fl.us/campaign-finance/pend.asp>.

<sup>86</sup> FDLE Investigative Summary, p. 5.

<sup>87</sup> Scott Hiaasen and Patricia Mazzei, Miami-Dade Republican Party Can't Show What It Got for \$150,000 Paid to David Rivera's Close Ally, *Miami Herald*, February 5, 2011; FDLE Investigative Report No. 31, p. 1.

<sup>88</sup> Hiaasen, Mazzei and Caputo, *Miami Herald*, Feb. 19, 2011.



office.<sup>89</sup> Ms. Nuhfer is no longer a registered lobbyist in Florida and has been seen in Rep. Rivera's Washington office.<sup>90</sup>

Political campaigns and committees tied to Rep. Rivera have paid Ms. Nuhfer's consulting firm, Communication Solutions, at least \$817,000 since 2006.<sup>91</sup> The total includes \$196,483 in payments from Rep. Rivera's 2010 congressional campaign and a \$150,000 bonus for work on his abandoned state Senate campaign.<sup>92</sup>

Rep. Rivera chaired the Miami-Dade GOP from December 2008 to December 2010.<sup>93</sup> In October and November 2010, the Miami-Dade GOP paid Ms. Nuhfer's firm \$150,000, for radio advertising and get-out-the-vote efforts.<sup>94</sup> Though Rep. Rivera was chairman when the payments were made, his campaign claimed he had recused himself from day-to-day business and decision making after winning the Republican primary for his House seat in August 2010 and that the party's board chose Communication Solutions after his recusal.<sup>95</sup> In reality, board minutes reveal Rep. Rivera did not recuse himself until September 4, 2010, and that the board agreed to select vendors before that at its August 21, 2010 meeting, without selecting a specific firm.<sup>96</sup> Therefore, it appears Rep. Rivera was involved in the decision, but exactly how Ms. Nuhfer's firm was chosen remains unknown.

It is clear, however, that the Miami-Dade GOP paid Communication Solutions more than any other consultant in at least six years and the party was unable to account for how much of the money was spent.<sup>97</sup> The party had no written contract with Communication Solutions and officials said they did not receive detailed invoices or records from the firm.<sup>98</sup>

State investigators found that in May 2009, Ms. Nuhfer paid Rep. Rivera's credit card bill of \$4,635.83.<sup>99</sup> During an interview with FDLE and the Miami Dade State Attorney's office, Ms. Nuhfer told investigators she had reimbursed Rep. Rivera for expenses he incurred while at a *Miami Herald* conference she had arranged.<sup>100</sup> Ms. Nuhfer claimed she was more comfortable paying off Rep. Rivera's credit cards than reimbursing Rep. Rivera directly.<sup>101</sup>

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<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> Hiaasen, Mazzei and Caputo, *Miami Herald*, Feb. 19, 2011; <http://www.opensecrets.org/politicians/expenddetail.php?cid=N00031887&cycle=2010&name=Communication%20Solutions>.

<sup>93</sup> Patricia Mazzei, *Dade GOP to Select New Leader*, *Miami Herald*, December 16, 2010.

<sup>94</sup> Hiaasen and Mazzei, *Miami Herald*, Feb. 5, 2011.

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

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

<sup>97</sup> *Id.*

<sup>98</sup> Hiaasen and Mazzei, *Miami Herald*, Feb. 5, 2011.

<sup>99</sup> FDLE Investigative Report No. 24, p. 2. There is some discrepancy in state documents as to the amount Ms. Nuhfer paid. See FDLE Investigative Report No. 31, p. 3, which says Ms. Nuhfer "first addressed the purpose of why she paid \$4,800 to Mr. Rivera's personal credit card in May of 2009."

<sup>100</sup> FDLE Investigative Report No. 31, p. 3.

<sup>101</sup> *Id.*

The FBI also interviewed Ms. Nuhfer as part of its probe into the Flagler Dog Track contract.<sup>102</sup>

### **Intervention in Democratic Primary to Select His Opponent**

In June 2012, political newcomer Justin Lamar Sternad qualified for the Democratic primary ballot, along with three other candidates vying for the chance to run against Rep. Rivera.<sup>103</sup> During the primary, Mr. Sternad's Democratic opponents began raising questions about whether Mr. Sternad was secretly backed by Rep. Rivera.<sup>104</sup> They cited comments by Mr. Sternad that were similar to things Rep. Rivera had previously said.<sup>105</sup> In addition, the campaign strategist Mr. Sternad said was overseeing his bid, Ana Alliegro, is a Republican and a friend of Rep. Rivera who has posted pictures of herself with Rep. Rivera on social networking sites.<sup>106</sup>

Mr. Sternad placed third in the four-way Democratic primary on August 14, 2012.<sup>107</sup> Since the primary, more questions have been raised regarding Rep. Rivera's links to Mr. Sternad's campaign, particularly about eleven mailers Mr. Sternad sent out to voters.

After the primary, campaign vendors who worked on Mr. Sternad's mailers told the *Miami Herald* Rep. Rivera was directly involved in commissioning and paying for them.<sup>108</sup> Hugh Cochran, president of Campaign Data, the firm that created the lists of voters to be targeted by Mr. Sternad's mailers, told the newspaper "David hired me to run the data" for them.<sup>109</sup> Mr. Cochran said he emailed Rep. Rivera and John Borrero, the owner of Rapid Mail & Computer Services, a mail-services firm, regarding the targeting data.<sup>110</sup> Rep. Rivera acknowledged receiving the email, but said it was sent to him by mistake.<sup>111</sup> Nevertheless, Rep. Rivera allegedly spoke multiple times with Mr. Cochran and called Rapid Mail repeatedly regarding Mr. Sternad's mailers.<sup>112</sup>

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<sup>102</sup> Hiasen and Caputo, *Miami Herald*, July 21, 2011.

<sup>103</sup> John Desantis, 4 Vie for Democratic Nomination, *Key West Citizen*, June 10, 2012.

<sup>104</sup> Marc Caputo and Manny Garcia, Suspected Rivera-Ringer Might Have Broken Campaign Laws, *Miami Herald*, August 15, 2012; Manny Garcia and Marc Caputo, Campaign Vendors Say Republican Congressman David Rivera Funded Democrat's Failed Primary Bid, *Miami Herald*, August 21, 2012.

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

<sup>106</sup> *Id.*; Garcia and Caputo, *Miami Herald*, Aug. 21, 2012; Kyle Munzenrieder, Rep. David Rivera's Connections to Suspected Ringer Candidate Justin Lamar Sternad Deepen, *Miami New Times*, August 22, 2012; Marc Caputo and Manny Garcia, Campaign Finances of Dem Candidate With Alleged Ties to Rep. David Rivera Remain Unclear and Focus of Federal Law Enforcement Authorities, *Miami Herald*, August 29, 2012; <https://www.facebook.com/ana.alliegro/photos>; <http://www.facebook.com/photo.php?fbid=3858789197542&set=t.1512772655&type=3&theater>; <http://instagram.com/p/K0gNbBQ8BW/>.

<sup>107</sup> Caputo and Garcia, *Miami Herald*, Aug. 15, 2012.

<sup>108</sup> Garcia and Caputo, *Miami Herald*, Aug. 21, 2012.

<sup>109</sup> *Id.*

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

<sup>111</sup> *Id.*; Marc Caputo and Manny Garcia, FBI, Miami-Dade Police Target Democratic Primary Candidate with Possible Ties to Congressman David Rivera, *Miami Herald*, August 22, 2012.

<sup>112</sup> Garcia and Caputo, *Miami Herald*, Aug. 21, 2012.

Campaign Data, Rapid Mail, and a third vendor involved with the mailers, Expert Printing, all have ties to Rep. Rivera.<sup>113</sup> Campaign Data and Rapid Mail both performed work for Rep. Rivera's campaign in 2010.<sup>114</sup> Expert Printing's dealings with Rep. Rivera were especially lucrative: the company handled \$226,000 worth of business from him over the past 10 years.<sup>115</sup>

It is unclear exactly how much the mailings cost. In his initial Federal Election Commission (FEC) filing covering the period when the mailings were sent, Mr. Sternad did not report any payments to Campaign Data, Rapid Mail, or Expert Printing.<sup>116</sup> After questions were raised about the mailers, Mr. Sternad amended his reports to list \$46,973 in disbursements to Rapid Mail and \$6,000 to Expert Printing, though he continued to report no payments to Campaign Data.<sup>117</sup> Notably, the \$6,000 payment to Expert Printing is far less than the \$33,000 to \$50,000 the *Herald* reported the mailings should have cost.<sup>118</sup> Adding to the confusion, Expert Printing allegedly sent Rapid Mail a check for \$9,000 to pay for some of the work for Mr. Sternad – more than Mr. Sternad reported paying Expert Printing.<sup>119</sup> The campaign also did not report any payments to Ms. Alliegro.<sup>120</sup>

Other than the check from Expert Printing, Rapid Mail apparently was paid in cash for its services, a highly unusual step that drew the attention of the FBI.<sup>121</sup> Mr. Borrero said Mr. Sternad paid in cash, personally bringing in the payments, and the *Herald* reported Ms. Alliegro brought envelopes “containing crisp \$100 bills,” though she denied this.<sup>122</sup> Further, according to the *Herald*, during one of Rep. Rivera's frequent calls to Rapid Mail, he told an employee to walk outside and check the office mailbox for an envelope containing payment for one mailer.<sup>123</sup> The envelope contained \$7,800 in cash.<sup>124</sup> Nevertheless, Rep. Rivera's campaign filing for the period when the mailers were sent did not include any payments to Rapid Mail, nor any of the other vendors.<sup>125</sup>

Regardless of the exact price of the mailings, the cost was much higher than Mr. Sternad or his campaign could have afforded.<sup>126</sup> Mr. Sternad's campaign raised a total of \$505.<sup>127</sup>

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<sup>113</sup> Caputo and Garcia, *Miami Herald*, Aug. 22, 2012; Marc Caputo and Manny Garcia, Facing FBI Scrutiny, Former Democratic Candidate Files Amended Campaign Finance Report, *Miami Herald*, August 23, 2012.

<sup>114</sup> *Id.*

<sup>115</sup> Caputo and Garcia, *Miami Herald*, Aug. 22, 2012.

<sup>116</sup> *Id.*; Lamar Sternad for Congress, FEC Form 3, 2012 April Quarterly Report, April 17, 2012; Lamar Sternad for Congress, FEC Form 3, 2012 July Quarterly Report, July 17, 2012; Lamar Sternad for Congress, FEC Form 3, 2012 Pre-Primary Report, August 2, 2012.

<sup>117</sup> Caputo and Garcia, *Miami Herald*, Aug. 23, 2012; Lamar Sternad for Congress, FEC Form 3, 2012 Pre-Primary Report, Amended, August 21, 2012.

<sup>118</sup> Caputo and Garcia, *Miami Herald*, Aug. 29, 2012.

<sup>119</sup> Caputo and Garcia, *Miami Herald*, Aug. 22, 2012.

<sup>120</sup> *Id.*; Garcia and Caputo, *Miami Herald*, Aug. 21, 2012; Lamar Sternad for Congress, FEC Form 3, 2012 Pre-Primary Report, Amended, August 21, 2012.

<sup>121</sup> Caputo and Garcia, *Miami Herald*, Aug. 23, 2012.

<sup>122</sup> Caputo and Garcia, *Miami Herald*, Aug. 15, 2012; Caputo and Garcia, *Miami Herald*, Aug. 21, 2012; Caputo and Garcia, *Miami Herald*, Aug. 23, 2012.

<sup>123</sup> Garcia and Caputo, *Miami Herald*, Aug. 21, 2012.

<sup>124</sup> *Id.*

<sup>125</sup> David Rivera for Congress, FEC Form 3, 2012 July Quarterly Report, July 15, 2012.

<sup>126</sup> Caputo and Garcia, *Miami Herald*, Aug. 21, 2012; Caputo and Garcia, *Miami Herald*, Aug. 29, 2012.

Further, Mr. Sternad is a hotel worker with five children, and his financial disclosure report shows he earned less than \$30,000 in 2011.<sup>128</sup> He listed as his only asset a one-third share of a trust fund worth between \$50,001 and \$100,000.<sup>129</sup> To pay his campaign expenses, Mr. Sternad made several loans purportedly from his personal funds to the campaign. Mr. Sternad first reported loaning his campaign nearly \$11,000 in June 2012.<sup>130</sup> Mr. Sternad reported no other loans until questions were raised about the mailers, at which time he filed an amended report listing another \$52,973 loan to the campaign from his personal funds.<sup>131</sup>

Both Mr. Sternad and Rep. Rivera have denied any involvement by Rep. Rivera in Mr. Sternad's campaign. Rep. Rivera claimed he had never met or spoken with Mr. Sternad and said Mr. Borrero had lied.<sup>132</sup> When *Herald* reporters emailed Mr. Sternad to ask where the money for the mailings came from, Mr. Sternad replied, "Kiss my 'lily-white' ass."<sup>133</sup> Rep. Rivera, however, told a blogger he knew Ms. Alliegro was working for Mr. Sternad.<sup>134</sup> He also admitted he called Mr. Cochran, but claimed he did so only to notify Mr. Cochran that Ms. Alliegro was going to call.<sup>135</sup> In addition, Rep. Rivera obtained Mr. Sternad's amended FEC report listing the payment to Rapid Mail before it was publicly available, but repeatedly declined to say where or how he obtained it.<sup>136</sup>

### **Status of Investigations**

Rep. Rivera is under criminal investigation by the FBI and the IRS regarding his transactions with Millennium Marketing.<sup>137</sup> The status of the investigations is unknown.<sup>138</sup> The FDLE and the Miami State Attorney's Office also investigated Rep. Rivera, but said they were prevented from filing charges by the state's lax campaign finance laws and short statute of limitations for certain offenses, as well as Rep. Rivera's commingling of funds between accounts, sloppy accounting practices, muddled credit card repayments, and the claimed destruction of records concerning his purported loans from Millennium Marketing.<sup>139</sup>

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<sup>127</sup> Lamar Sternad for Congress, FEC Form 3, 2012 Pre-Primary Report, Amended, August 21, 2012.

<sup>128</sup> Garcia and Caputo, *Miami Herald*, Aug. 21, 2012; Justin Lamar Sternad, Personal Financial Disclosure Statement for January 1, 2011-June 7, 2012, filed July 6, 2012, available at <http://media.miamiherald.com/smedia/2012/08/15/21/09/1qOnZX.So.56.pdf>.

<sup>129</sup> *Id.*

<sup>130</sup> Lamar Sternad for Congress, FEC Form 3, 2012 July Quarterly Report, Amended, August 3, 2012; Garcia and Caputo, *Miami Herald*, Aug. 21, 2012.

<sup>131</sup> Lamar Sternad for Congress, FEC Form 3, 2012 Pre-Primary Report, Amended, August 21, 2012. In a letter attached to the amended filing, Mr. Sternad, who serves as his campaign's treasurer, wrote that "I did not previously report this loan because I was unaware of the final monetary obligation incurred by my campaign. I have now received invoices for the expenditures and this amendment represents satisfaction of those invoices." *Id.* The new report also carries a note saying that Rapid Mail "refused to provide invoices until 8/17/12. Invoice provided dated 8/8/12. Vendor did not provide detailed postage information." *Id.*

<sup>132</sup> Garcia and Caputo, *Miami Herald*, Aug. 21, 2012; Caputo and Garcia, *Miami Herald*, Aug. 22, 2012.

<sup>133</sup> Caputo and Garcia, *Miami Herald*, Aug. 15, 2012.

<sup>134</sup> Caputo and Garcia, *Miami Herald*, Aug. 29, 2012.

<sup>135</sup> *Id.*

<sup>136</sup> Caputo and Garcia, *Miami Herald*, Aug. 22, 2012; Caputo and Garcia, *Miami Herald*, Aug. 23, 2012.

<sup>137</sup> Scott Hiaasen and Patricia Mazzei, U.S. Rep. David Rivera Won't Face Criminal Charges in State Investigation, Sources Tell Miami Herald, *Miami Herald*, April 17, 2012.

<sup>138</sup> *Id.*

<sup>139</sup> State Attorney's Memo, pp. 7-8, 13.

The FBI and Miami-Dade police have launched separate investigations into Rep. Rivera's involvement in Mr. Sternad's campaign.<sup>140</sup> The FBI started gathering documents and interviewing witnesses soon after Rep. Rivera's involvement was reported, and the case was before a federal grand jury as of August 29, 2012.<sup>141</sup> Mr. Borrero confirmed that he and his employees have met with investigators looking into the matter and had turned documents over to law enforcement.<sup>142</sup>

### **Legal Fees**

Since May 2010 Rep. Rivera's campaign committee has reported paying more than \$58,000 in legal fees, paying Patton Boggs \$18,104 during the 2010 election cycle and \$36,140 so far in the 2012 election cycle.<sup>143</sup> Rep. Rivera's campaign committee has also reported paying \$3,830 in legal fees to Coates Law Firm.<sup>144</sup>

### **Potential Violations**

### **Money Laundering and Tax Evasion**

Federal law prohibits anyone from engaging in financial transactions that involve the proceeds of unlawful activity with the intent to avoid paying taxes, to conceal or disguise the nature, source or location of those proceeds, or to avoid a federal or state transaction reporting requirement.<sup>145</sup> Similarly, it is a crime to attempt to avoid or defeat paying taxes.<sup>146</sup>

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

In addition, if Rep. Rivera received any of the \$196,482 his federal campaign committee paid to Communication Solutions or any of the money his state campaign committees paid the firm, but failed to include those payments on his tax return, he may have violated 26 U.S.C. § 7201.

### **Conversion of Campaign Funds to Personal Use - Statutes**

Florida law specifically prohibits a candidate from using campaign funds "to defray normal living expenses for the candidate or the candidate's family, other than expenses actually incurred for transportation, meals, and lodging by the candidate or a family member during travel

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<sup>140</sup> Caputo and Garcia, *Miami Herald*, Aug. 22, 2012.

<sup>141</sup> *Id.*; Caputo and Garcia, *Miami Herald*, Aug. 29, 2012.

<sup>142</sup> Caputo and Garcia, *Miami Herald*, Aug. 22, 2012; Caputo and Garcia, *Miami Herald*, Aug. 23, 2012.

<sup>143</sup> David Rivera for Congress, FEC Form 3, 2010 -2012 Reports.

<sup>144</sup> *Id.*

<sup>145</sup> 18 U.S.C. § 1956(a)(1).

<sup>146</sup> 26 U.S.C. § 7201.

in the course of the campaign.”<sup>147</sup> While Florida officials were prevented from prosecuting Rep. Rivera, if he used campaign funds for his normal living expenses or the expenses of his girlfriends, he may have violated this statute.

The Federal Election Campaign Act (FECA) also specifically 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>148</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>149</sup> If Rep. Rivera received any of the \$196,483 his campaign committee paid to Ms. Nuhfer’s consulting firm, Communication Solutions, and used it for personal expenses, he may have illegally converted his campaign funds to his personal use.

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

The Ethics in Government Act of 1967 requires all members of Congress and candidates for Congress to file personal financial disclosure reports.<sup>150</sup> Under the statute, the attorney general may seek a civil penalty of up to \$11,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.<sup>151</sup> Federal law further prohibits anyone from making “any materially false, fictitious, or fraudulent statement or representation”<sup>152</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>153</sup>

If Rep. Rivera failed to disclose or misrepresented his income or the true value of his personal assets on his federal financial disclosure forms, he may have violated the Ethics in Government Act and 18 U.S.C. § 1001. In addition, if Rep. Rivera received any of the \$196,482 his campaign committee paid to Communication Solutions, he may have violated these provisions by failing to include that income on his personal financial disclosure forms.

Similarly, Florida law requires all members of the state legislature to file financial disclosure reports.<sup>154</sup> Florida law further prohibits a public official from falsifying any official record or official document.<sup>155</sup> While Florida officials were prevented from prosecuting Rep. Rivera, if he failed to disclose or misrepresented his income on his state financial disclosure forms, including income from Millennium Marketing he claimed were loans, he may have violated these provisions. In addition, if Rep. Rivera misrepresented his income or positions with USAID and Object Video, he may have violated Florida law.

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<sup>147</sup> Fla. Stat. § 106.1405.

<sup>148</sup> 2 U.S.C. § 439a(b)(1).

<sup>149</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>150</sup> Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

<sup>151</sup> 5 U.S.C. app. 4, § 104.

<sup>152</sup> 18 U.S.C. § 1001(a)(2).

<sup>153</sup> 18 U.S.C. § 1001(c)(1).

<sup>154</sup> Fla. Stat. § 112.3145.

<sup>155</sup> Fla. Stat. § 838.022.

## **False Statements on Campaign Finance Reports**

Under Florida law, a candidate or the candidate's treasurer must certify the correctness of each campaign finance report.<sup>156</sup> Certifying a report as correct while knowing it is incorrect, false, or incomplete is a first degree misdemeanor.<sup>157</sup> Rep. Rivera served as the treasurer of his own state campaign committee and signed his campaign finance reports.

Candidates for state offices in Florida must report all expenditures made by their campaigns, including the date of the expenditure.<sup>158</sup> In his reports, Rep. Rivera backdated expenditures to Millennium Marketing and Communication Solutions. If he certified the correctness of reports he knew to be false, Rep. Rivera appears to have violated this provision.

Candidates also must list the full name and address of each person to whom an expenditure was made for personal services, salary, or reimbursed authorized expenses, along with the amount, date, and clear purpose of the expenditure.<sup>159</sup> Rep. Rivera's campaign's check to Millennium Marketing for \$15,000 and its two checks to ACH Fundraising totaling \$75,000, categorized as "thank you" expenses, do not appear to clearly state the purposes of those expenditures. If he certified the correctness of reports he knew to be incomplete, Rep. Rivera may have violated this provision.

The FECA also requires campaign committees to disclose all expenditures, including contributions to other candidates.<sup>160</sup> If Rep. Rivera's campaign made contributions to Mr. Sternad's campaign, paid any of Mr. Sternad's campaign's vendors for services provided related to the mailers, or paid Ms. Alliegro, Rep. Rivera likely violated this provision by failing to disclose the expenditures on his campaign finance reports.

## **Excessive Contributions**

The FECA limits the amount of contributions an individual, campaign committee, or other entity may donate to a candidate.<sup>161</sup> The limits for contributions to a candidate in 2012 are \$2,500 per election for an individual and \$2,000 per election for a campaign committee.<sup>162</sup> Any contribution over those limits is an illegal excessive contribution. If contributions from Rep. Rivera, his campaign, or any entity controlled by him or serving as his agent to Mr. Sternad's campaign, including payments to Mr. Sternad's campaign's vendors related to the mailers and to Ms. Alliegro, totaled more than these limits, Rep. Rivera likely violated § 441a(a)(1)(A).

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<sup>156</sup> Fla. Stat. § 106.07(5).

<sup>157</sup> *Id.*

<sup>158</sup> Fla. Stat. § 106(4)(a)(6).

<sup>159</sup> *Id.*

<sup>160</sup> 2 U.S.C. § 434(b)(4)(G).

<sup>161</sup> 2 U.S.C. § 441a(a)(1)(A).

<sup>162</sup> Federal Election Commission, Contribution Limits for 2011-2012, *available at* <http://www.fec.gov/info/contriblimits1112.pdf>; 11 C.F.R. § 102.12(c)(2).

### **Paying To Further Another Candidate**

Under Florida election law, it is illegal for any candidate, in order to aid or promote his or her own election, to “directly or indirectly . . . [g]ive, pay, expend, or contribute any money or thing of value for the furtherance of the candidacy of any other candidate.”<sup>163</sup> A candidate also may not “give his or her own personal or business funds to another candidate” if the contribution is given “in exchange for a promise or expectation that the recipient will directly or indirectly do anything to aid or promote the candidacy of the contributor which the recipient would not have otherwise done.”<sup>164</sup> Any violation of these provisions is a felony punishable by up to five years in prison and a \$5,000 fine, and anyone convicted of a violation “shall be disqualified to hold office.”<sup>165</sup>

If, in order to aid or promote Rep. Rivera’s re-election, Rep. Rivera, his campaign, or any entity controlled by him or serving as his agent paid Mr. Sternad, made contributions to Mr. Sternad’s campaign, paid any of Mr. Sternad’s campaign’s vendors for services provided related to the mailers, or paid Ms. Alliegro, Rep. Rivera likely violated Florida law.

### **Aiding and Abetting, Conspiracy**

Under Florida law, any person who knowingly aids, abets, or advises violations of the state’s election law “shall be punished in like manner as the principal offender.”<sup>166</sup> Similarly, any person who conspires with another person to violate Florida election law, or knows of a felony violation and gives aid to the offender with the intent that the offender avoid or escape detection or punishment, “shall be punished as if he or she had committed the violation.”<sup>167</sup> If Rep. Rivera aided, abetted, or conspired with Mr. Sternad or anyone else to violate any provision of Florida election law, or knew of a violation and aided the offender, he likely violated Florida law.

In addition, federal law prohibits conspiring to violate the FECA, or conspiring to defraud the FEC by obstructing or interfering with the FEC’s duty to enforce the Act.<sup>168</sup> If Rep. Rivera conspired with Mr. Sternad or anyone else to violate the FECA, or to obstruct or interfere with the FEC’s duty to enforce federal election law, he likely 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>169</sup> This ethics standard is considered to be “the

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<sup>163</sup> Fla. Stat. § 104.071(1)(c); Florida Division of Elections, *Contribution From Candidate to Another Candidate*, DE-76-12 (Aug. 4, 1976).

<sup>164</sup> Fla. Stat. § 104.071(2).

<sup>165</sup> Fla. Stat. § 104.071(3).

<sup>166</sup> Fla. Stat. § 104.091(1).

<sup>167</sup> Fla. Stat. §§ 104.091(2)-(3).

<sup>168</sup> 18 U.S.C. § 371; *United States v. Hopkins*, 916 F.2d 207, 212-14 (5th Cir. 1990); United States Department of Justice, Federal Prosecution of Election Offenses, pp. 187-88 (7th ed. 2007).

<sup>169</sup> Rule 23, cl. 1.



most comprehensive provision” of the code.<sup>170</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.<sup>171</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>172</sup> making false statements to the committee,<sup>173</sup> criminal convictions for bribery,<sup>174</sup> or accepting illegal gratuities,<sup>175</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>176</sup>

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

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<sup>170</sup> House Ethics Manual, p. 12.

<sup>171</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>172</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>173</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>174</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>175</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>176</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 HAROLD ROGERS

Representative Harold “Hal” Rogers (R-KY) is a sixteen-term member of Congress, representing Kentucky’s 5th congressional district. Rep. Rogers chairs the House Appropriations Committee. His ethics issues stem from misusing his position to steer 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, and 2011 reports on congressional corruption for related issues.<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>

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

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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>.

<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.).

<sup>7</sup> Lichtblau, *New York Times*, May 18, 2012.

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 has retained the lobbying firm Martin, Fisher, Thompson & Associates since 2004, and employees of that firm have contributed \$17,000 to Rep. Rogers' campaign and PAC since 2002.<sup>14</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>15</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>16</sup>

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<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, First Quarter 2012 Lobbying Disclosure 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> 18 U.S.C. § 201(c)(1)(B).

<sup>16</sup> *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398 (1999).

If a link is established between Rep. Rogers' earmarking funds or obtaining federal contracts or loans for Phoenix Product 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 members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."<sup>17</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>18</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. 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).

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<sup>17</sup> 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.

<sup>18</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>19</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.

## **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 of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.<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,<sup>24</sup> criminal convictions for bribery,<sup>25</sup> or accepting illegal gratuities,<sup>26</sup> and accepting gifts from persons with

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<sup>19</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, p. 20 (110th Cong., 2d Sess., 2008 ed.).

<sup>20</sup> Rule 23, cl. 1.

<sup>21</sup> House Ethics Manual, p. 12.

<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 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>25</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>26</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).

interest in legislation in violation of the gift rule.<sup>27</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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<sup>27</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 CLIFF STEARNS

Representative Cliff Stearns (R-FL) is a twelve-term member of Congress, representing Florida's 6th congressional district. His ethics issues stem from (1) directing public money to benefit his wife; (2) misusing official resources for campaign activity; and (3) improperly using broadcast footage of official House proceedings in campaign materials.

### College of Central Florida

The College of Central Florida (CCF), in Ocala, Florida is in Rep. Stearns' district.<sup>1</sup> In 1997, CCF hired Rep. Stearns' wife, Joan Stearns, to be the college's school-to-work coordinator at a salary of \$27,924.<sup>2</sup> She held that position for three years, sometimes receiving additional wages for supplemental tasks.<sup>3</sup> In June 2000, a month after Rep. Stearns "began working on obtaining" his first earmark for the college, Ms. Stearns started handling major gifts for the college.<sup>4</sup> In December 2000, two days before President Bill Clinton signed legislation containing Rep. Stearns' earmark for CCF into law, the college announced Ms. Stearns' position would become full time and her salary was increased to \$52,000.<sup>5</sup> Ms. Stearns has since been promoted repeatedly and is now the vice president for institutional advancement and the chief executive officer of the College of Central Florida Foundation (CF Foundation), the college's fundraising arm.<sup>6</sup> Her current salary is \$110,226.<sup>7</sup>

Ms. Stearns is in charge of all of the college's fundraising activities and is the college's primary liaison to Rep. Stearns' office.<sup>8</sup> The college's former president, Charles Dassance, confirmed Ms. Stearns dealt directly with Rep. Stearns' office in order to obtain federal funding, and described her knowledge of Washington as "a valuable asset."<sup>9</sup> The former president of the CF Foundation, Casius "Cash" Pealer, said he was a "spectator" watching Ms. Stearns obtain federal funds.<sup>10</sup>

Since 2001, Rep. Stearns has secured 14 earmarks totaling \$5,005,000 for CCF,<sup>11</sup> four of which were made in the 110th Congress or later.<sup>12</sup> The earmarks paid for a variety of expenses,

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<sup>1</sup> <http://www.cf.edu/index.htm>; <http://stearns.house.gov/6th-district/>.

<sup>2</sup> Bill Thompson, Oelrich Questions Stearns on CF Earmarks as Wife Rose at School, *Ocala Star Banner*, June 16, 2012.

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

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

<sup>5</sup> *Id.*

<sup>6</sup> Thompson, *Ocala Star Banner*, June 16, 2012; <http://www.cf.edu/departments/admin/hr/staff.htm>; <http://www.cf.edu/foundation/about/about/?panel=1>.

<sup>7</sup> Thompson, *Ocala Star Banner*, June 16, 2012.

<sup>8</sup> *Id.*

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

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

<sup>11</sup> Thompson, *Ocala Star Banner*, June 16, 2012; Citizens Against Government Waste, Congressional Pig Book, 2001-2006; <http://www.opensecrets.org/politicians/earmarks.php?cid=N00002782&cycle=2010>; <http://www.opensecrets.org/politicians/earmarks.php?fy=FY09&cid=N00002782&cycle=2010>; <http://www.opensecrets.org/politicians/earmarks.php?fy=FY08&cid=N00002782&cycle=2008>.

<sup>12</sup> See [http://www.legistorm.com/earmarks/search/member/Stearns/member\\_state/9/location/Florida/year/all/commit/Search/page/3.html](http://www.legistorm.com/earmarks/search/member/Stearns/member_state/9/location/Florida/year/all/commit/Search/page/3.html).

from building and retrofitting college facilities to nursing and teacher training programs.<sup>13</sup> In contrast, Rep. Stearns earmarked only \$1.46 million for the only other community college in his district, the Santa Fe College in Gainesville, Florida.<sup>14</sup>

On June 16, 2012, the *Ocala Star Banner* published a detailed account of the earmarks and Ms. Stearns' employment history, raising questions about whether her promotions were related to her ability to secure earmarks from her husband.<sup>15</sup> Rep. Stearns' campaign posted a response on its website, saying the paper "published an erroneous timeline that failed to show the enormous increase in responsibilities that Mrs. Stearns was given with her increase in salary."<sup>16</sup>

The college's current president, Dr. James D. Henningsen, said the earmarks actually were awarded through competitive grant processes and some had been jointly awarded to CCF, Santa Fe College, and the University of Florida.<sup>17</sup> According to *Citizens Against Government Waste's* Congressional Pig Book and other earmark databases, however, the money earmarked by Rep. Stearns was specifically for CCF.<sup>18</sup> Dr. Henningsen also said Ms. Stearns' promotions were based on merit.<sup>19</sup>

### **Misuse of Congressional Staff for Campaign Activity**

Paul Flusche is Rep. Stearns' press secretary, and has worked for Rep. Stearns' congressional office since 1996.<sup>20</sup> His current annual salary is \$77,000.<sup>21</sup> There is no record of Mr. Flusche working for Rep. Stearns' campaign, and he has not been paid by Rep. Stearns' campaign committee or political action committee.<sup>22</sup>

Mr. Flusche has repeatedly acted as a campaign spokesperson since James Jett, the Clay County Clerk of Court, ran against Rep. Stearns in the Republican primary and accused the congressman of trying to bribe him to get out of the race. Ironically, Mr. Flusche, while paid by taxpayer dollars, criticized Mr. Jett for allegedly using public resources for campaign activity.<sup>23</sup>

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<sup>13</sup> *Id.*

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

<sup>15</sup> Thompson, *Ocala Star Banner*, June 16, 2012.

<sup>16</sup> <http://cliffstearns.net/oelrich-enlists-liberal-newspapers-in-baseless-attack-on-stearns-family/>.

<sup>17</sup> Jim D. Henningsen, Jim. D. Henningsen: Federal Awards Played No Role in Stearns' Advancement, *Ocala Star Banner*, June 20, 2012.

<sup>18</sup> Citizens Against Government Waste, Congressional Pig Book, 2001-2006; <http://www.opensecrets.org/politicians/earmarks.php?cid=N00002782&cycle=2010>; <http://www.opensecrets.org/politicians/earmarks.php?fy=FY09&cid=N00002782&cycle=2010>; <http://www.opensecrets.org/politicians/earmarks.php?fy=FY08&cid=N00002782&cycle=2008>; [http://www.legistorm.com/earmarks/details/organization/1538/College\\_of\\_Central\\_Florida/page/1/sort/amount/type/desc.html](http://www.legistorm.com/earmarks/details/organization/1538/College_of_Central_Florida/page/1/sort/amount/type/desc.html); <http://www.legistorm.com/earmark/58726.html>.

<sup>19</sup> Henningsen, *Ocala Star Banner*, June 20, 2012.

<sup>20</sup> <http://stearns.house.gov/contact/>; [http://www.legistorm.com/person/Paul\\_J\\_Flusche/20732.html](http://www.legistorm.com/person/Paul_J_Flusche/20732.html);

<http://www.linkedin.com/pub/paul-flusche/33/692/23a>.

<sup>21</sup> [http://www.legistorm.com/person/Paul\\_J\\_Flusche/20732.html](http://www.legistorm.com/person/Paul_J_Flusche/20732.html).

<sup>22</sup> Friends of Cliff Stearns, FEC Form 3, 2011-2012 Reports; The Spirit Fund, FEC Form 3X, 2011-2012 Reports.

<sup>23</sup> John McArdle, One Stearns Foe Raises Money Off Bribery Allegations While Another Amplifies Accusations, *Environment and Energy Daily*, March 13, 2012; John Bresnahan, Cliff Stearns Denies Deal to Get Rid of Opponent, *Politico*, March 7, 2012; Adam Kealoha Causey, Clay Clerk Accuses U.S. Rep. Cliff Stearns Of Trying To Buy Him Out of Race, *Florida Times-Union*, March 7, 2012; Shane Goldmacher, Primary Opponent of Rep.



For example, on March 7, 2012, Mr. Flusche issued a statement to several newspapers, decrying Mr. Jett's bribery allegations and arguing Mr. Jett's charges were self-serving, unfounded and vindictive.<sup>24</sup> He also charged that by having phone conversations regarding the alleged bribe in his county office in front of county employees, Mr. Jett had violated the law.<sup>25</sup>

On March 13, 2012, Mr. Flusche emailed a statement to the *Florida Times-Union* and released a statement to *Environment and Energy Daily*, stating, "While Rep. Cliff Stearns plans to campaign on his conservative record and his many accomplishments, his opponents, who can't match Stearns' record or his accomplishments, are running negative campaigns based upon false allegations."<sup>26</sup>

On June 28, 2012, Mr. Flusche also issued a statement to the *Florida Times-Union* for an article about negative campaign ads.<sup>27</sup> "This campaign has been running positive TV and radio ads for weeks on Rep. Stearns' rock-solid conservative record and will continue to do so," he said.<sup>28</sup> He went on to defend Rep. Stearns' campaign literature, saying "Pointing out that someone has a liberal voting record and holds liberal positions is not negative, just as pointing out Stearns' conservative record is not negative."<sup>29</sup>

### **Improper Use of Broadcast Footage from the House of Representatives**

Rep. Stearns' campaign maintains a website at <http://cliffstearns.net/>, where it publishes Rep. Stearns' campaign videos.<sup>30</sup> The campaign website has posted seven different videos of Rep. Stearns speaking on the floor of the House of Representatives.<sup>31</sup> Six of the seven videos contain links to Rep. Stearns' congressional website and to his official Twitter and Facebook accounts.<sup>32</sup>

The campaign also maintains a YouTube Channel called "Friends of Cliff Stearns" that was set up by a user named "StearnsforCongress."<sup>33</sup> Between February 13, 2012, and July 20,

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Stearns Alleges Bribe, *National Journal*, March 7, 2012; Bill Thompson, Stearns Opponent Accuses Congressman of Bribery, *Gainesville Sun*, March 7, 2012.

<sup>24</sup> Bresnahan, *Politico*, Mar. 7, 2012; Kealoha Causey, *Florida Times-Union*, Mar. 7, 2012; Goldmacher, *National Journal*, Mar. 7, 2012; Thompson, *Gainesville Sun*, Mar. 7, 2012.

<sup>25</sup> Goldmacher, *National Journal*, Mar. 7, 2012; Thompson, *Gainesville Sun*, Mar. 7, 2012.

<sup>26</sup> Matt Dixon, Political Foefocuses on Stearns Allegations; Oelrich, of Cross Creek, Raises Issue in Fundraising Email, *Florida Times-Union*, March 13, 2012; McArdle, *Environment and Energy Daily*, Mar. 13, 2012.

<sup>27</sup> Matt Dixon, Oelrich, Stearns Running Negative Race in 3rd Congressional District? They Say No, *Florida Times-Union*, June 28, 2012.

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

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

<sup>30</sup> <http://cliffstearns.net/category/videos/>.

<sup>31</sup> *Id.*; <http://www.youtube.com/v/mKPwC562IoQ>; <http://www.youtube.com/v/wd6tcP94V5w>; <http://www.youtube.com/v/CegQ4Pf-w5Y>; <http://www.youtube.com/v/zsNjCfBD-XY>; [http://www.youtube.com/v/kPbtIV46\\_2M](http://www.youtube.com/v/kPbtIV46_2M); <http://www.youtube.com/watch?v=MbEPvp--szE>.

<sup>32</sup> <http://www.youtube.com/v/mKPwC562IoQ>; <http://www.youtube.com/v/wd6tcP94V5w>; <http://www.youtube.com/v/CegQ4Pf-w5Y>; <http://www.youtube.com/v/zsNjCfBD-XY>; [http://www.youtube.com/v/kPbtIV46\\_2M](http://www.youtube.com/v/kPbtIV46_2M); <http://www.youtube.com/v/Ono2jTs68So>.

<sup>33</sup> <http://www.youtube.com/user/StearnsforCongress?feature=plcp>.

2012, the campaign's YouTube account posted six clips of Rep. Stearns speaking on the floor of the House of Representatives.<sup>34</sup>

In addition to House floor proceedings, Rep. Stearns' campaign website posted videos of Rep. Stearns speaking at House committee hearings.<sup>35</sup> Both videos contain links to Rep. Stearns' congressional website and to his Twitter and Facebook accounts.<sup>36</sup>

Finally, on December 12, 2011, the campaign's YouTube channel posted a video of Rep. Stearns chairing a hearing about Medicare fraud and waste.<sup>37</sup>

### **Alleged FBI Investigation**

On March 7, 2012, Rep. Stearns' opponent in the Republican primary, James Jett, said the Federal Bureau of Investigation (FBI) is investigating Rep. Stearns for attempting to bribe Mr. Jett to drop out of the race.<sup>38</sup> Mr. Jett said that the FBI had recorded his phone conversations with two of the intermediaries involved and had wiretapped his phone.<sup>39</sup> In June 2012, Mr. Jett said the investigation was ongoing.<sup>40</sup> Mr. Jett said the FBI has "enough evidence to arrest two Stearns associates named in the sworn statement but that the investigation" would continue beyond the August primary.<sup>41</sup>

### **Potential Violations**

### **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>42</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,

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<sup>34</sup> <http://www.youtube.com/user/StearnsforCongress>.

<sup>35</sup> <http://cliffstearns.net/category/videos/>; <http://www.youtube.com/v/LzpliPogSaA>;  
<http://www.youtube.com/v/pLwTmSMyt50>.

<sup>36</sup> <http://www.youtube.com/v/LzpliPogSaA>; <http://www.youtube.com/v/pLwTmSMyt50>.

<sup>37</sup> <http://www.youtube.com/watch?v=YrD7MMX2INI&feature=plcp>.

<sup>38</sup> Kealoha Causey, *Florida Times-Union*, Mar. 7, 2012; Ryan J. Reilly, FBI Investigating Cliff Stearns For Bribery, Claims Republican Opponent, *TPMMuckraker*, March 7, 2012.

<sup>39</sup> *Id.*

<sup>40</sup> John McArdle, Campaign 2012: Integrity Questioned By Challenger, Rep. Stearns Launches First TV Ad in New Fla. District, *Greenwire*, June 12, 2012.

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

<sup>42</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.

relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

By using his position as a member of Congress to award earmarks to his wife's employer, Rep. Stearns appears to 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>43</sup>

By funneling federal funds to his wife's employer, the College of Central Florida, Rep. Stearns may have dispensed special privileges in violation of the Code of Ethics for Government Service.

### **Failure to Disclose Financial Interest in Earmark**

At the beginning of the 110th Congress, the House included a new provision in the Code of Official Conduct requiring members of Congress who request earmarks or limited tax benefits to provide certain information regarding the request and its purpose to the committee of jurisdiction, including a certification that neither the member nor the member's spouse has a financial interest in the provision.<sup>44</sup> A financial interest exists in an earmark "when it would be reasonable to conclude that the provision would have a direct and foreseeable effect on the pecuniary interests of the Member or the Member's spouse."<sup>45</sup> A financial interest may also derive from a "salary," "job offer," or "similar interest."<sup>46</sup>

Rep. Stearns submitted four earmark requests for the College of Central Florida after the rules change that prohibited members from making requests for earmarks in which they have a financial interest.<sup>47</sup> As Ms. Stearns' responsibilities include raising money for the college and she is the primary liaison to Rep. Stearns' office, her CCF salary constitutes a financial interest in the CCF earmarks. Therefore, any certifications Rep. Stearns submitted declaring neither he nor his spouse had a financial interest in the CCF earmarks likely would have been false and violated House rules.

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<sup>43</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, p. 20 (110th Cong., 2d Sess., 2008 ed.).

<sup>44</sup> Rule 23, cl. 17; House Comm. on Standards of Official Conduct, Financial Interests Under the New Earmark Rules, March 27, 2007.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> See [http://www.legistorm.com/earmarks/search/member/Stearns/member\\_state/9/location/Florida/year/all/commit/Search/page/3.html](http://www.legistorm.com/earmarks/search/member/Stearns/member_state/9/location/Florida/year/all/commit/Search/page/3.html).

## **False Statements**

Federal law prohibits anyone from making “any materially false, fictitious, or fraudulent statement or representation”<sup>48</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>49</sup> If, as it appears, Rep. Stearns certified to House Appropriations Committee that neither he nor his wife had a financial interest in the earmarks he sought for CCF at a time his wife was receiving a salary from CCF, he likely made false statements in violation of federal law.

## **Improper Use of Appropriated Funds**

Pursuant to 31 U.S.C. § 1301(a), “[a]ppropriations shall be applied only to the objects for which the appropriations were made.” Corresponding regulations of the Committee on House Administration provide that “[e]mployees may not be compensated from public funds to perform non-official, personal, political, or campaign activities on behalf of the Member, the employee, or anyone else.”<sup>50</sup>

House ethics rules also make clear that “[e]mployees of the House are paid from funds of the United States Treasury to perform public duties” that expressly “do not include performing nonofficial, personal, or campaign duties.”<sup>51</sup> In addition, Rule 23, clause 8 provides:

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

According to the Campaign Booklet published by the House Ethics Committee, there is a “basic principle that government funds should not be spent to help incumbents gain re-election.”<sup>52</sup> The official allowance of House offices, and the goods and services acquired with those allowances, are to be used for House business and are not to be used for campaign or political purposes.<sup>53</sup> The Campaign Booklet clearly states that House offices, including district offices, are supported with official funds and, therefore, are considered official resources.<sup>54</sup> As a result, they may not be used to conduct campaign or political activities.<sup>55</sup>

House ethics rules specifically prohibit a member’s press secretary from initiating any communication that is campaign related or providing an interview that is “substantially devoted”

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<sup>48</sup> 18 U.S.C. § 1001(a)(2).

<sup>49</sup> 18 U.S.C. § 1001(c)(1).

<sup>50</sup> Committee on House Administration, Members’ Handbook, Staff.

<sup>51</sup> House Ethics Manual, pp. 267-268, citing *United States v. Rostenkowski*, 59 F.3d 1291, 1307-11 (D.C. Cir. 1995), *reh’g denied*, 68 F.3d 489 (D.C. Cir. 1995); *United States v. Diggs*, 613 F.2d 988, 994-997, 1002 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 982 (1980).

<sup>52</sup> House Comm. on Standards of Official Conduct, *General Prohibition Against Using Official Resources for Campaign or Political Purposes*, Campaign Booklet (citing *Common Cause v. Bolger*, 574 F. Supp. 672, 683 (D.D.C. 1982), *aff’d*, 461 U.S. 911 (1983)).

<sup>53</sup> Campaign Booklet.

<sup>54</sup> *Id.*

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

to the campaign.<sup>56</sup> While a press secretary may answer “occasional questions about political matters” and may respond to questions that are “merely incidental” to an interview focused on a member’s official activities, more substantial contacts about political matters must take place outside of the congressional office and on the press secretary’s own time.<sup>57</sup>

The Campaign Booklet provides two cases, one in which a member was criminally prosecuted and another in which a staffer was criminally prosecuted, for misusing official resources. In 1993, a former House employee pleaded guilty to a charge of theft of government property after he was found doing campaign work at a time that he claimed he was conducting official business.<sup>58</sup> In 1979, a former member pleaded guilty to charges of mail fraud and income tax evasion in a case centering on claims that individuals on the congressional payroll were paid not for the performance of official duties, but instead for staffing and operating various campaign headquarters in the member’s re-election campaign.<sup>59</sup>

If Rep. Stearns allowed Mr. Flusche to engage in campaign business during regular business hours, including sending emails to or calling reporters, Rep. Stearns likely violated 31 U.S.C. § 1301(a), House ethics rules, and the regulations of the Committee on House Administration.

### **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>60</sup>

By repeatedly using video of his statements both during committee hearings and on the House floor to promote his candidacy for Congress, Rep. Stearns violated 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>61</sup> This ethics standard is considered to be “the most comprehensive provision” of the code.<sup>62</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.<sup>63</sup> This rule has been relied on by the committee in

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<sup>56</sup> House Ethics Manual, p. 133.

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

<sup>58</sup> Campaign Booklet (citing *United States v. Bresnahan*, Criminal No. 93-0409 (D.D.C. 1993)).

<sup>59</sup> Campaign Booklet (citing *United States v. Clark*, Criminal No. 78-207 (W.D. Pa. 1978)).

<sup>60</sup> House Ethics Manual, p. 128.

<sup>61</sup> Rule 23, cl. 1.

<sup>62</sup> House Ethics Manual, p. 12.

<sup>63</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).

numerous prior cases in which the committee found unethical conduct including: the failure to report campaign contributions,<sup>64</sup> making false statements to the committee,<sup>65</sup> criminal convictions for bribery,<sup>66</sup> or accepting illegal gratuities,<sup>67</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>68</sup>

If Rep. Stearns used his legislative position for his wife's financial benefit, certified that his spouse had no financial interest in an earmark when, in fact, she had such an interest, used appropriated funds for campaign purposes, and/or improperly used video of House committee or floor proceedings for campaign purposes, he may have acted in a manner that does not reflect creditably on the House.

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<sup>64</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>65</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>66</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>67</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>68</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-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, and 2009 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 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.citizensforethics.org/page/-/PDFs/Reports/Most%20Corrupt%20Reports/Most%20Corrupt%20Report%202007%20-%20Beyond%20DeLay%20Report.pdf?nocdn=1>, CREW's Most Corrupt Members of Congress: The 20 Most Corrupt Members of Congress (and four to watch), available at <http://www.citizensforethics.org/page/-/PDFs/Reports/Most%20Corrupt%20Reports/Most%20Corrupt%20Report%202008.pdf?nocdn=1>, and 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 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" it 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 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, p. 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/departement-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, p. 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, pp. 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, p. 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, pp. 193-94).

<sup>22</sup> *Id.*, (Young FBI Documents, p. 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, p. 193).

<sup>27</sup> *Id.* (Young FBI Documents, p. 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, p. 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, p. 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, p. 196).

<sup>36</sup> See <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, p. 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, pp. 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, p. 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, p. 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, p. 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, pp. 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, p. 198); Federal Bureau of Investigation, Memorandum Re: Corruption – Federal Public Official – Legislative Branch, July 25, 2007 (Young FBI Documents, p. 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, p. 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, pp. 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, p. 173).

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

The 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> There is, however, no evidence the House Ethics Committee has continued to investigate either matter.

Despite the referral, some of the FBI documents suggest Rep. Young still may be the subject of an ongoing investigation, or was until recently. In the documents produced to CREW, the FBI made a number of redactions relying on the Freedom of Information Act's Exemption 7(A), which allows an agency to withhold information when disclosure could reasonably be expected to interfere with "enforcement proceedings."<sup>53</sup> The fact that some of the documents from which these redactions were made appear to pertain only to Rep. Young suggests he may be, or until recently may have been, the subject of an ongoing investigation.

### **Legal Fees**

Since 2009, Rep. Young's campaign committee and political action committee have reported paying a total of \$228,895 in legal fees to John Dowd, Bill Canfield, Mike Martin, Linda Harrigan, Holmes Weddle & Barcott, Akin Gump Strauss Hauer & Feld, Siderrius, Lonergan, & Martin, and Tobin O'Connor Ewing & Richard.<sup>54</sup>

Rep. Young created a legal defense fund in 2008 to help pay for his legal bills.<sup>55</sup> Since 2009, Rep. Young's legal defense fund has raised \$129,500.<sup>56</sup> According to the *Anchorage Daily News*, since it was created, the fund has paid \$98,415 to Akin Gump Strauss Hauer & Feld.<sup>57</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>58</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, p. 166).

<sup>52</sup> Perry Bacon, Ethics Committee Inquired About Earmark in Rep. Mack's District, *Washington Post*, October 30, 2009.

<sup>53</sup> 5 U.S.C. § 552(b)(7)(A).

<sup>54</sup> Alaskans for Don Young, Inc., FEC Form 3 Reports, 2009-2012; Midnight Sun PAC, FEC Form 3X Reports, 2009-2012.

<sup>55</sup> Erika Bolstad, Young Still Raising Money for His Legal Defense Fund, *Anchorage Daily News*, May 3, 2011.

<sup>56</sup> Rep. Donald Edwin Young, Personal Financial Disclosure Statements for Calendar Years 2008 to 2011, filed May 14, 2009 through May 15, 2012.

<sup>57</sup> Bolstad, *Anchorage Daily News*, May 3, 2011.

<sup>58</sup> 18 U.S.C. § 201(b)(2)(A).

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 political action committee 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>59</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>60</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 a link is established between Rep. Young's earmarking funds for the Coconut Road interchange project and donations to his campaign and political action committee, 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>61</sup>

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

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."<sup>62</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.

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 campaign contributions

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<sup>59</sup> 18 U.S.C. § 201(c)(1)(B).

<sup>60</sup> *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398 (1999).

<sup>61</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>62</sup> 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.

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>63</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.

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 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>64</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.

### **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

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<sup>63</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>64</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, p. 20 (110th Cong., 2d Sess., 2008 ed.).

contribution or donation . . . shall not be converted by any person to personal use.”<sup>65</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>66</sup>

Despite DOJ’s unexplained decision not to prosecute him, 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>67</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>68</sup> Further, Rule 23, clause 6(a) requires each member to “keep his campaign funds separate from his personal funds.”<sup>69</sup> The rule also provides that all campaign funds must be used for “bona fide campaign or political purposes.”<sup>70</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>71</sup> This requirement is **separate from, and in addition to, whatever recordkeeping requirements are imposed by the Federal Election Commission . . .**<sup>72</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>73</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>74</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

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<sup>65</sup> 2 U.S.C. § 439a(b)(1).

<sup>66</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>67</sup> 2 U.S.C. § 437g(d)(1)(A)(i).

<sup>68</sup> Rule 23, cl. 6(b); House Ethics Manual, p. 163.

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

<sup>70</sup> Rule 23, cl. 6(c); House Ethics Manual, pp. 152, 163.

<sup>71</sup> *Id.*, p. 163.

<sup>72</sup> *Id.*, p. 165 (emphasis in original).

<sup>73</sup> *Id.*, p. 168.

<sup>74</sup> House Ethics Manual, p. 168 (emphasis in original).

lodging expenses (if any) that the Member necessarily incurs in attending that dinner.<sup>75</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>76</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>77</sup>

If Rep. Young used his campaign funds 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 1967 requires all members of Congress to file financial disclosure reports.<sup>78</sup> Under the statute, the attorney general may seek a civil penalty of up to \$11,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.<sup>79</sup> House Rule 26 incorporates the financial disclosure provisions of the Ethics in Government Act.<sup>80</sup>

Federal law prohibits anyone from making “any materially false, fictitious, or fraudulent statement or representation”<sup>81</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>82</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>83</sup> This ethics standard is considered to be “the most comprehensive provision” of the code.<sup>84</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within

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<sup>75</sup> *Id.*, p. 169.

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

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

<sup>78</sup> Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

<sup>79</sup> 5 U.S.C. app. 4, § 104.

<sup>80</sup> House Ethics Manual, p. 248.

<sup>81</sup> 18 U.S.C. § 1001(a)(2).

<sup>82</sup> 18 U.S.C. § 1001(c)(1).

<sup>83</sup> Rule 23, cl. 1.

<sup>84</sup> House Ethics Manual, p. 12.



the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.<sup>85</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>86</sup> making false statements to the committee,<sup>87</sup> criminal convictions for bribery,<sup>88</sup> or accepting illegal gratuities,<sup>89</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>90</sup>

If Rep. Young accepted donations to his campaign and political action committee 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>85</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>86</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>87</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>88</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>89</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>90</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 DAVID VITTER

Senator David Vitter (R-LA) is a second-term senator from Louisiana. His ethics issues stem from his attempted bribery of the U.S. Secretary of the Interior and his pledge to continue engaging in improper activity. He was included in CREW's 2011 congressional corruption report for both related and unrelated matters, and in CREW's 2007 congressional corruption report for unrelated matters.<sup>1</sup>

### **Linking Interior Secretary Salary Increase to Official Action**

On May 23, 2011, Sen. Vitter sent a letter to Secretary of the Department of the Interior Ken Salazar stating he would block legislation granting the secretary's pay raise until the Department of Interior began issuing six permits for new deepwater exploratory wells each month.<sup>2</sup> Otherwise, Sen. Vitter vowed to block the secretary's pay raise. Sen. Vitter wrote:

Last Friday, I was asked to support legislation in the Senate to grant you a nearly \$20,000 salary increase. Given the completely unsatisfactory pace of your department's issuance of new deepwater exploratory permits in the Gulf, I cannot possibly give my assent . . .

[W]hen the rate of permits issued for new deepwater exploratory wells reaches pre-moratorium levels (so 6 per month), I will end my efforts to block your salary increase.<sup>3</sup>

Secretary Salazar responded with a letter to Senate Majority Leader Harry Reid (D-NV) and Senate Minority Leader Mitch McConnell (R-KY), stating the idea that a senator would take "the position, in writing, that his vote on the issue [of the salary increase] is dependent upon the outcomes of his attempted coercion of public acts here at the Department . . . is wrong, and it must be made perfectly clear that his attempt cannot and will not affect the execution of the solemn legal responsibilities that the Department undertakes on behalf of the American people."<sup>4</sup> Therefore, Secretary Salazar asked the Senate to "set aside any effort" to increase his salary.<sup>5</sup>

On March 29, 2012, the Senate Ethics Committee issued a letter stating that Sen. Vitter's actions were inappropriate.<sup>6</sup> Nevertheless, the committee decided against taking further action

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<sup>1</sup> Sen. Vitter's other ethics issues stemmed from misusing his official personnel and Senate office expense account allowances and soliciting prostitutes. For more information, see CREW's Most Corrupt 2011, available at <http://www.crewsmostcorrupt.org/mostcorrupt/entry/most-corrupt-report-2011> and 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>.

<sup>2</sup> Letter from Sen. David Vitter to Hon. Ken Salazar, May 23, 2011.

<sup>3</sup> *Id.* (emphasis in original).

<sup>4</sup> Letter from Hon. Ken Salazar to Senate Majority Leader Harry Reid and Senate Minority Leader Mitch McConnell, May 24, 2011.

<sup>5</sup> *Id.*

<sup>6</sup> Letter from Senate Select Committee on Ethics Chair Barbara Boxer and Vice Chair Johnny Isakson to Sen. David Vitter, March 29, 2012.

against him on the grounds that there was “no clear Senate guidance addressing such conduct.”<sup>7</sup> Simultaneously, the committee issued new guidance explicitly providing that “from and after the date of this letter, tying an existing Secretary’s personal salary to his or her performance of a specific official action will be viewed by the Committee as improper conduct reflecting discreditably on the Senate.”<sup>8</sup>

Nevertheless, on March 30, 2012, Sen. Vitter defiantly said he was proud of his efforts to block Secretary Salazar’s salary increase and would “absolutely place a hold on any raise for him in the future.”<sup>9</sup> As of August 30, 2012, the Senate has not moved to consider Secretary Salazar’s pay raise again.

### Potential Violations

#### **Bribery**

Federal law makes it a crime to “directly or indirectly, corruptly give[], offer[] or promise[] anything of value to any public official . . . with intent . . . to influence any official act.”<sup>10</sup> “Anything of value” is interpreted broadly,<sup>11</sup> and courts have recognized the promise of higher-paying employment as a “thing of value” for purposes of the statute.<sup>12</sup> In addition, the Senate Ethics Manual specifically provides that violating the bribery statute may lead to disciplinary action by the Senate,<sup>13</sup> and the Select Committee on Ethics previously recommended the expulsion of a senator for violating the bribery statute.<sup>14</sup>

In spite of the Senate Ethics Committee’s admonishment, Sen. Vitter vowed he would “absolutely place a hold on any raise for [Secretary Salazar] in the future.” If Sen. Vitter follows through on his promise to link a thing of value – a salary increase – to Secretary Salazar’s official acts, Sen. Vitter may violate the bribery statute.

#### **Senate Rule Prohibiting Improper Conduct**

The Senate Ethics Manual provides that “[c]ertain conduct has been deemed by the Senate in prior cases to be unethical and improper even though such conduct may not necessarily have violated any written law, or Senate rule or regulation. Such conduct has been characterized as ‘improper conduct which may reflect upon the Senate.’”<sup>15</sup> This rule is intended to protect the integrity and reputation of the Senate as a whole.<sup>16</sup> The Ethics Manual explains that “improper

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<sup>7</sup> *Id.*

<sup>8</sup> Letter from Senate Select Committee on Ethics Chair Barbara Boxer and Vice Chair Johnny Isakson to Senate Colleagues, March 29, 2012.

<sup>9</sup> Darren Goode, After Ethics Ruling, David Vitter Vows to Keep Blocking Ken Salazar’s Pay Raise, *Politico*, March 30, 2012.

<sup>10</sup> 18 U.S.C. § 201(b)(1).

<sup>11</sup> *United States v. Williams*, 705 F.2d 603, 623 (2d Cir. 1983).

<sup>12</sup> *United States v. Gorman*, 807 F.2d 1299, 1305 (6th Cir. 1986).

<sup>13</sup> Senate Select Comm. on Ethics, Senate Ethics Manual, p. 58 (108th Cong., 1st Sess., 2003 ed.).

<sup>14</sup> *Id.*, p. 59, n. 113 (citing *Investigation of Senator Harrison A. Williams, Jr.*, Report of the Select Committee on Ethics, United States Senate, to Accompany S. Res. 204, 97th Cong., 1st Sess. 7 (1981)).

<sup>15</sup> Senate Ethics Manual, Appendix E, p. 432 (citation omitted).

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

conduct” is given meaning by considering “generally accepted standards of conduct, the letter and spirit of laws and Rules . . .”<sup>17</sup> In addition, the aforementioned Senate Ethics Committee guidance letter explicitly provides that “tying an existing Secretary’s personal salary to his or her performance of a specific official action will be viewed by the Committee as improper conduct reflecting discredibly on the Senate.”<sup>18</sup>

Should Sen. Vitter follow through on his vow to “absolutely place a hold on any raise for [Secretary Salazar] in the future,” Sen. Vitter undoubtedly will be engaging in improper conduct reflecting upon the Senate.

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<sup>17</sup> *Id.*, p. 433.

<sup>18</sup> Letter from Senate Select Committee on Ethics Chair Barbara Boxer and Vice Chair Johnny Isakson to Senate Colleagues, March 29, 2012.

## **DISHONORABLE MENTIONS**

## REPRESENTATIVE SHELLEY BERKLEY

Representative Shelley Berkley (D-NV) is a seven-term member of Congress, representing Nevada's 1st congressional district. Her ethics issues stem from using her position to support her husband's financial and professional interests. She was included in CREW's 2011 congressional corruption report for related matters.<sup>1</sup>

### Advocating for Her Husband's Interests

Rep. Berkley's husband, Dr. Lawrence Lehrner, is a Nevada nephrologist and president of Kidney Specialists of Southern Nevada (KSSN).<sup>2</sup> His medical practice employs 21 doctors in seven offices around greater Las Vegas.<sup>3</sup> It also includes 11 dialysis centers, 10 of which are part of a joint venture with DaVita, a large corporation specializing in kidney care.<sup>4</sup> In 2007, the University Medical Center of Southern Nevada (UMC), a teaching hospital affiliated with the University of Nevada, hired KSSN to provide nephrology services, including services related to the hospital's kidney transplant program, the only such program in the state.<sup>5</sup> Dr. Lehrner has also been a board member of the Renal Physicians Association (RPA) and the Renal Physicians Association Political Action Committee (RPA PAC).<sup>6</sup> The RPA is a trade association of nephrology practitioners that advocates for the industry in Washington.<sup>7</sup>

### *University Medical Center*

In 2008, the kidney transplant program at UMC was in crisis. In March and August of 2008, Medicare surveys found the program failed to meet its conditions of funding because of an unusually high number of patient deaths, and the kidney transplants performed there failed at

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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>.

<sup>2</sup> Leah Hakimian, *How Larry Met Shelley: A Congressional Romance*, *New York Jewish Week*, January 3, 2011; Dr. Lehrner's practice is registered as a corporation with the state of Nevada under the name Bernstein, Pokroy & Lehrner, Ltd., but the address and personnel are the same as those of KSSN. Bernstein, Pokroy & Lehrner, Ltd., *Business Entity Information*, Secretary of State: Carson City, Nevada, filed April 28, 1976, available at <https://nvsos.gov/sosentitysearch/CorpDetails.aspx?lx8nvq=MAM8OEmOgPhIMdiEKFZSKg%253d%253d&nt7=0>; <http://www.ksosn.com/ksosn-care-team>; <http://www.ksosn.com/contact-us>.

<sup>3</sup> Eric Lipton, *A Congresswoman's Cause is Often Her Husband's Gain*, *New York Times*, September 5, 2011; <http://www.ksosn.com/contact-us/office-locations>.

<sup>4</sup> <http://www.davita.com/about>; <http://www.ksosn.com/ksosn-care-team>; <http://www.ksosn.com/contact-us/dialysis-locations>; Lipton, *New York Times*, Sept. 5, 2011.

<sup>5</sup> Lipton, *New York Times*, Sept. 5, 2011; <https://www.umcsn.com/Footer/Serving-the-Las-Vegas-Community-Since-1931.aspx?intMenuID=305&intPageID=309>; University Medical Center of Southern Nevada Board of Hospital Trustees, Agenda Item: Award of Contract Between University Medical Center of Southern Nevada (UMC) and Kidney Specialists of Southern Nevada, August 21, 2007, available at [http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906\\_BERKLEY.html#document/p20/a32113](http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906_BERKLEY.html#document/p20/a32113), pp. 20-25.

<sup>6</sup> <http://www.ksosn.com/ksosn-care-team/physicians/lawrence-lehrner-md>; RPA PAC Board, available at [http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906\\_BERKLEY.html#document/p20/a32113](http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906_BERKLEY.html#document/p20/a32113), p.

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<sup>7</sup> <http://www.renalmd.org/About-Us/>; Lipton, *New York Times*, Sept. 5, 2011.

unusually high rates.<sup>8</sup> Federal regulators also questioned the qualifications of a doctor who had been assigned by Dr. Lehrner's practice to screen transplant patients.<sup>9</sup> In August 2008, the Centers for Medicare and Medicaid Services (CMS) warned UMC the program did not meet federal requirements for Medicare-approved transplant programs.<sup>10</sup>

The hospital asked federal officials for leniency and said some of the outcome data presented a misleading picture.<sup>11</sup> Nonetheless, on October 23, 2008, federal officials informed the hospital the appeal had been rejected and reimbursements would cease December 3, 2008.<sup>12</sup> This would have effectively ended the kidney transplant program, a significant source of income for Dr. Lehrner's practice.<sup>13</sup> Rep. Berkley, together with Nevada's two other House members, immediately wrote to CMS Acting Administrator Kerry Weems to "express [their] strong disagreement" with the decision and ask CMS to reconsider.<sup>14</sup> The members' letter argued losing the transplant program would jeopardize constituents' health and possibly overwhelm transplant programs in neighboring states.<sup>15</sup> Rep. Berkley also told a reporter she spoke directly to the head of CMS about the matter.<sup>16</sup> By the end of the month, CMS had agreed to a compromise in order to save the program, though the agency required the hospital to take concrete steps to fix the problems.<sup>17</sup>

Rep. Berkley's campaign manager, Jessica Mackler, said Rep. Berkley signed the letter to CMS "at the request of UMC and her Republican colleague," former Rep. Jon Porter (R-NV), in order to "save the state's only kidney transplant program."<sup>18</sup> Ms. Mackler also stressed Rep. Berkley's longstanding interest in health care issues.<sup>19</sup>

Dr. Lehrner's practice benefited from the continuation of the program. UMC had promised to bring on more kidney specialists and asked Dr. Lehrner to recruit and hire two new transplant nephrologists.<sup>20</sup> When KSSN renewed their contract with the hospital in December

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<sup>8</sup> Marshall Allen, Focus Shifts to Fixing Kidney Program's Faults, *Las Vegas Sun*, November 4, 2008; Lipton, *New York Times*, Sept. 5, 2011.

<sup>9</sup> Lipton, *New York Times*, Sept. 5, 2011.

<sup>10</sup> *Id.*; Letter from CMS Western Consortium Operations Manager Deborah Romero to Karen Watnem, UMC-Southern Nevada Transplant Program, October 23, 2008, available at [http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906\\_BERKLEY.html#document/p20/a32113](http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906_BERKLEY.html#document/p20/a32113), pp. 26-27.

<sup>11</sup> Allen, *Las Vegas Sun*, Nov. 4, 2008.

<sup>12</sup> Lipton, *New York Times*, Sept. 5, 2011; Letter from CMS Western Consortium Operations Manager Deborah Romero to Karen Watnem, UMC-Southern Nevada Transplant Program, October 23, 2008, available at [http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906\\_BERKLEY.html#document/p20/a32113](http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906_BERKLEY.html#document/p20/a32113), pp. 26-27.

<sup>13</sup> Lipton, *New York Times*, Sept. 5, 2011.

<sup>14</sup> Letter from Reps. Shelley Berkley, Jon Porter, and Dean Heller to CMS Acting Administrator Kerry Weems, October 24, 2008, available at [http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906\\_BERKLEY.html#document/p20/a32113](http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906_BERKLEY.html#document/p20/a32113), p. 29.

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

<sup>16</sup> Edward Lawrence, Elected Officials Help to Save UMC Transplant Program, *KLAS CBS-8 Las Vegas*, October 31, 2008.

<sup>17</sup> Lawrence, *KLAS CBS-8 Las Vegas*, Oct. 31, 2008; Allen, *Las Vegas Sun*, Nov. 4, 2008.

<sup>18</sup> Questions and a Written Response, *New York Times*, September 5, 2011, available at <http://www.documentcloud.org/documents/241320-berkley-doc-viewer-part-ii-questions-and-a.html>.

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

<sup>20</sup> Lipton, *New York Times*, Sept. 5, 2011.



2010 (the practice was the sole bidder), the annual fees increased 25 percent.<sup>21</sup> The practice's contract is now worth \$738,000 a year.<sup>22</sup>

### *Supporting the Kidney Care Industry*

Rep. Berkley has also pushed for measures that benefit the nephrology industry while accepting tens of thousands of dollars in campaign contributions from it. Overall, kidney care doctors, companies, and lobbyists have donated at least \$140,000 to Rep. Berkley's campaigns.<sup>23</sup> Dr. Lehrner himself served on the board of the RPA for six years.<sup>24</sup> He was also chair of RPA PAC from 2006 to 2007, playing a significant role in building it up, and was its largest individual contributor.<sup>25</sup> He has given the RPA PAC \$11,500 since 2005.<sup>26</sup> Dr. Lehrner also traveled to Washington to meet with members of Congress on behalf of the group, though he is not a registered lobbyist.<sup>27</sup>

Rep. Berkley received more money in campaign contributions from the RPA PAC than any other federal candidate. Since its formation in 2005, the PAC has given Rep. Berkley's campaigns \$16,000.<sup>28</sup> Rep. Berkley has regularly appeared with Dr. Lehrner at RPA PAC-sponsored fundraisers and receptions, and pictures of her appearances feature prominently on RPA's website.<sup>29</sup> A 2006 RPA PAC letter from Dr. Lehrner pointed to the appointment of "Mrs. Larry Lehrner" to the House Ways and Means Committee.<sup>30</sup> Rep. Berkley is also a member of

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

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

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

<sup>24</sup> RPA PAC Board, available at [http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906\\_BERKLEY.html#document/p20/a32113](http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906_BERKLEY.html#document/p20/a32113), p. 7.

<sup>25</sup> <http://www.renalmd.org/RPA-PAC-Fundraiser-for-Senator-Harry-Reid/>; <http://www.renalmd.org/RPA-PAC---1st-Reception/>; <http://www.renalmd.org/PAC-2nd-Annual-Reception-/>; <http://www.renalmd.org/RPA-PAC-3rd-Annual-Reception.aspx>; Lipton, *New York Times*, Sept. 5, 2011.

<sup>26</sup> Renal Physicians Association PAC, [FEC Form 3X, 2005 July Mid-Year Report](#), July 19, 2005; Renal Physicians Association PAC, [FEC Form 3X, 2007 January Year End Report](#), January 30, 2007; Renal Physicians Association PAC, [FEC Form 3X, 2009 July Mid-Year Report](#), July 30, 2009; Renal Physicians Association PAC, [FEC Form 3X, 2010 April Quarterly Report](#), April 14, 2010; Renal Physicians Association PAC, [FEC Form 3X, 2011 April Quarterly Report](#), April 29, 2011; Renal Physicians Association PAC, [FEC Form 3X, 2012 April Quarterly Report](#), April 11, 2012.

<sup>27</sup> Lipton, *New York Times*, Sept. 5, 2011.

<sup>28</sup> *Id.*; Renal Physicians Association PAC, [Statement of Organization](#), February 9, 2005; Berkley for Congress, [FEC Form 3, 2008 April Quarterly Report](#), April 15, 2008; Berkley for Congress, [FEC Form 3, 2008 Year End Report](#), January 29, 2008; Berkley for Congress, [FEC Form 3, 2009 October Quarterly Report](#), October 13, 2009; Berkley for Congress, [FEC Form 3, 2010 April Quarterly Report](#), April 13, 2010; Berkley for Congress, [FEC Form 3, 2010 October Quarterly Report](#), October 12, 2010; Berkley for Senate, [FEC Form 3, 2011 April Quarterly Report](#), April 14, 2011; Berkley for Senate, [FEC Form 3, 2011 July Quarterly Report](#), July 15, 2011; Berkley for Senate, [FEC Form 3, 2011 October Quarterly Report](#), January 9, 2012; Berkley for Senate, [FEC Form 3, 2012 April Quarterly Report](#), April 13, 2012; Berkley for Senate, [FEC Form 3, 2012 July Quarterly Report, Amended](#), July 24, 2012.

<sup>29</sup> <http://www.renalmd.org/PAC-Home/>; <http://www.renalmd.org/RPA-PAC---1st-Reception/>; <http://www.renalmd.org/RPA-PAC-Fundraiser-for-Senator-Harry-Reid/>; <http://www.renalmd.org/RPA-PAC-3rd-Annual-Reception.aspx>.

<sup>30</sup> <http://www.renalmd.org/RPA-PAC-Fundraiser-for-Senator-Harry-Reid/>.

the Congressional Kidney Caucus and attended four straight World Kidney Day receptions on Capitol Hill by the National Kidney Foundation, in effect a lobbying day for the organization.<sup>31</sup>

Meanwhile, she has co-sponsored at least five pieces of legislation concerning kidney care since 2004.<sup>32</sup> She has also opposed changes that could lower rates for dialysis treatment.

In late 2007, the renal care industry opposed a proposal to change reimbursement rates for doctors and dialysis centers.<sup>33</sup> The change would have bundled payments into a single reimbursement rather than individual fees.<sup>34</sup> In February 2008, Rep. Berkley wrote to Rep. Pete Stark (D-CA), then chairman of the House Ways and Means Subcommittee on Health, warning him to carefully study the possible impact of the proposal before proceeding.<sup>35</sup> Shortly before sending the letter, she received \$6,000 in campaign contributions from major kidney care companies, including DaVita, her husband's partner in the joint venture that oversaw the Nevada dialysis centers.<sup>36</sup> DaVita has since been one of Rep. Berkley's top campaign contributors in both the 2010 and 2012 election cycles.<sup>37</sup> The day she sent the letter, the PACs for the RPA and the Kidney Care Council each gave her \$1,000 donations.<sup>38</sup> CMS went ahead with the bundling regulations, but with changes endorsed by dialysis and drug companies.<sup>39</sup>

In another instance in early 2011, CMS notified dialysis providers it intended to cut reimbursement rates by 3.1 percent.<sup>40</sup> The RPA joined an industry effort to oppose the cuts.<sup>41</sup> During the first quarter of 2011, the RPA lobbied the House, Senate, and Obama administration

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<sup>31</sup> [http://mcdermott.house.gov/index.php?option=com\\_content&view=article&id=292&Itemid=64](http://mcdermott.house.gov/index.php?option=com_content&view=article&id=292&Itemid=64);  
[http://www.kidney.org/email\\_templates/CapitalKidney/ckc9\\_4/index.html](http://www.kidney.org/email_templates/CapitalKidney/ckc9_4/index.html);  
[http://www.kidney.org/news/pubpol/pdf/ckc9\\_2.pdf](http://www.kidney.org/news/pubpol/pdf/ckc9_2.pdf);  
[http://www.kidney.org/email\\_templates/CapitalKidney/ckc10\\_2/index.html](http://www.kidney.org/email_templates/CapitalKidney/ckc10_2/index.html);  
<http://www2.kidneyfund.org/site/PageNavigator/AdvocacyNewsMay2011.html>.

<sup>32</sup> Cosponsors, *ESRD Modernization Act of 2004*, H.R. 4927, 108th Congress, available at <http://thomas.loc.gov>; Cosponsors, *Kidney Care Quality and Improvement Act of 2005*, H.R. 1298, 109th Congress, available at <http://thomas.loc.gov>; Cosponsors, *Kidney Care Quality and Education Act of 2007*, H.R. 1193, 110th Congress, available at <http://thomas.loc.gov>; Cosponsors, *Kidney Disease Educational Benefits Act of 2007*, H.R. 1245, 110th Congress, available at <http://thomas.loc.gov>; Cosponsors, *Comprehensive Immunosuppressive Drug Coverage for Kidney Transplant Patients Act of 2009*, H.R. 1458, 111th Congress, available at <http://thomas.loc.gov>.

<sup>33</sup> [http://www.rsnhope.org/programs/kidneytalkshows/Mike\\_Lazarus/index.php](http://www.rsnhope.org/programs/kidneytalkshows/Mike_Lazarus/index.php); David Phillips, *Dialysis Provider DaVita Loses Pricing Control*, *CBS BNET*, August 28, 2009.

<sup>34</sup> *Id.*

<sup>35</sup> Letter from Rep. Shelley Berkley to Rep. Pete Stark, February 28, 2008, available at [http://www.rsnhope.info/Downloads/weKAN\\_bundle\\_BerkleyToStark.pdf](http://www.rsnhope.info/Downloads/weKAN_bundle_BerkleyToStark.pdf).

<sup>36</sup> Lipton, *New York Times*, Sept. 5, 2011.

<sup>37</sup> <http://www.opensecrets.org/politicians/contrib.php?cycle=2010&type=I&cid=N00009818&newMem=N&recs=20>; <http://www.opensecrets.org/politicians/contrib.php?cycle=2012&type=I&cid=N00009818&new>.

<sup>38</sup> Renal Physicians Association PAC, *FEC Form 3X, April Quarterly Report*, March 31, 2008; Kidney Care Council Political Action Committee, *FEC Form 3X, April Quarterly Report*, April 15, 2008.

<sup>39</sup> Julian Pecquet, *Medicare to Bundle Dialysis Payments, Reward Facilities for Training Patients*, *The Hill*, July 26, 2010; Lipton, *New York Times*, Sept. 5, 2011.

<sup>40</sup> Lipton, *New York Times*, Sept. 5, 2011; *A Husband and Wife Team: A Detailed Look Through Berkley's Actions*, *New York Times*, Sept. 5, 2011 available at [http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906\\_BERKLEY.html?ref=us](http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906_BERKLEY.html?ref=us), p. 41.

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

about the reimbursement rates.<sup>42</sup> Meanwhile, Rep. Berkley fought hard against the reductions, convincing 73 other House members to sign a letter addressed to the Obama administration urging it to change its position.<sup>43</sup> On April 1, the proposal was dropped.<sup>44</sup> Following the decision, the Kidney Care Council, an industry trade group whose members include DaVita,<sup>45</sup> issued a release expressing gratitude for Rep. Berkley's efforts.<sup>46</sup>

### **Status of Investigation**

The Nevada Republican Party filed a complaint with the Office of Congressional Ethics (OCE) on September 20, 2011, alleging that Rep. Berkley had violated House rules and used her office to enrich herself.<sup>47</sup> On February 9, 2012, the OCE referred the case to the House Ethics Committee.<sup>48</sup> On March 23, 2012, the Ethics Committee announced it had launched an inquiry into Rep. Berkley.<sup>49</sup> On June 29, 2012, the committee unanimously voted to create an investigative subcommittee to look into Rep. Berkley's actions.<sup>50</sup> The investigation is still ongoing.

### **Legal Fees**

Since September 20, 2011, Berkley for Senate, Rep. Berkley's Senate campaign committee, has reported paying Perkins Coie LLP \$21,158 in legal fees.<sup>51</sup>

### **Potential Violations**

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

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or

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<sup>42</sup> Renal Physicians Association, First Quarter 2011 Lobbying Disclosure Report, Secretary of the Senate, Office of Public Records.

<sup>43</sup> Letter from Rep. Shelley Berkley and Rep. Charles Boustany, et.al. to Hon. Kathleen Sebelius and CMS Administrator Donald Berwick, March 18, 2011, *available at* [http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906\\_BERKLEY.html#document/p20/a32113](http://www.nytimes.com/interactive/2011/09/06/us/politics/20110906_BERKLEY.html#document/p20/a32113), p. 44.

<sup>44</sup> Keith Chartier, Transition Adjuster Fix Reflects Opt-In Reality, *Renal Business Today*, April 4, 2011.

<sup>45</sup> <http://www.kidneycarecouncil.org/introduction.html>.

<sup>46</sup> [http://www.kidneycarecouncil.org/files-public/Kidney\\_Care\\_Council\\_Statement\\_on\\_Transition\\_Interim\\_Final\\_Rule\\_4-5-11\\_final.pdf](http://www.kidneycarecouncil.org/files-public/Kidney_Care_Council_Statement_on_Transition_Interim_Final_Rule_4-5-11_final.pdf).

<sup>47</sup> [http://images.nevadagop.org/exps2012/OCE\\_Compliant.pdf](http://images.nevadagop.org/exps2012/OCE_Compliant.pdf); Eric Lipton, Lawmaker From Nevada Faces Inquiry on Ethics, *New York Times*, September 21, 2011.

<sup>48</sup> Karoun Demirjian, House Committee Conducting Ethics Probe of Rep. Shelley Berkley, *Las Vegas Sun*, March 23, 2012.

<sup>49</sup> *Id.*; Press Release, House Committee on Ethics, 112th Congress, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Shelley Berkley, March 23, 2012.

<sup>50</sup> Press Release, House Committee on Ethics, 112th Congress, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Shelley Berkley, July 9, 2012.

<sup>51</sup> Berkley for Senate, FEC Form 3, April 2012 Quarterly Report, April 13, 2012; Berkley for Senate, FEC Form 3, 12 Day Pre-Primary Election Report, May 31, 2012; Berkley for Senate, FEC Form 3, July 2012 Quarterly Report, Amended, July 24, 2012.

has interests which may be substantially affected by the performance of official duties.”<sup>52</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 Congress.

By exerting pressure on CMS to stop the revocation of UMC’s transplant program certification without disclosing her husband’s role in the program, thereby protecting her husband’s company’s contract with the hospital, Rep. Berkley may have violated 5 U.S.C. § 7353 and House Rule 23. In addition, by pressuring the Obama administration not to cut reimbursement rates to dialysis providers and by warning Rep. Stark not to change reimbursement rates for kidney doctors and centers, she may have protected her husband’s financial interests in violation of 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>53</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.

By using her position to induce CMS to stop the revocation of UMC’s transplant program certification, Rep. Berkley may have provided a financial benefit to her husband and therefore herself in violation of 5 C.F.R. § 2635.702(a). In addition, if Rep. Berkley took any other official action that financially benefitted her or her husband, including pressuring the Obama administration not to cut reimbursement rates to dialysis provider, and sending a letter to Rep. Stark warning him to move carefully on the proposal to bundle payments, she may have violated this provision.

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<sup>52</sup> 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.

<sup>53</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>54</sup>

By using her position to induce CMS to stop the revocation of UMC's transplant program certification, Rep. Berkley may have dispensed special favors to her husband in violation of the Code of Ethics for Government Service. In addition, if Rep. Berkley took any other official action that provided special favors to her husband, including pressuring the Obama administration not to cut reimbursement rates to dialysis providers, and sending a letter to Rep. Stark warning him to move carefully on the proposal to bundle payments, she may have violated this provision.

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

House conflict of interest rules are so narrowly drawn that the House Ethics Committee might not find Rep. Berkley was precluded from interceding on behalf of UMC because of her husband's role directing the kidney center. The committee could easily view the class of people who benefitted from the state's only kidney transplant center remaining open as so large – perhaps all the residents of Nevada – that Rep. Berkley and her husband would merely be members of the class of those who benefit.

House precedents hold that members may vote on questions when they are part of a class of those affected as opposed to affected individually.<sup>55</sup> “While a member should not vote on direct questions affecting himself, [members have] sometimes voted on incidental questions.”<sup>56</sup> Even where one corporation or entity might be primarily affected by legislation, a member's interest in that corporation or entity might not be a disqualifying interest.<sup>57</sup> In large part, House precedents favor allowing members to vote out of concern over disenfranchising a member's constituents.<sup>58</sup>

This analysis, however, applies only to floor votes. It does not apply to other official actions members might take such as sponsoring legislation, advocating or participating in a committee proceeding, or contacting an executive branch agency.<sup>59</sup> Such actions may be prohibited by the ban on using one's official position for personal gain. The House Ethics Committee advises members considering taking action on a matter that may affect his or her

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<sup>54</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, p. 20 (110th Cong., 2d Sess. 2008 ed.).

<sup>55</sup> House Ethics Manual, p. 234.

<sup>56</sup> *Id.*, p. 235.

<sup>57</sup> *Id.*, p. 236.

<sup>58</sup> *Id.*, p. 237.

<sup>59</sup> House Ethics Manual, p. 237.

personal financial interests to contact the committee for guidance.<sup>60</sup> Further, even when no specific rule applies, members are advised to avoid situations “in which even an inference might be drawn suggesting improper conduct.”<sup>61</sup>

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>62</sup> This ethics standard is considered to be “the most comprehensive provision” of the code.<sup>63</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.<sup>64</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>65</sup> making false statements to the committee,<sup>66</sup> criminal convictions for bribery,<sup>67</sup> or accepting illegal gratuities,<sup>68</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>69</sup>

Although Rep. Berkley did not vote on the House floor she did engage in a series of actions to benefit kidney care doctors without ever disclosing her husband’s role as a kidney care specialist with a financial interest in kidney related legislation and compensation. Therefore, by pressuring CMS to stop the revocation of UMC’s transplant program certification – without disclosing her husband’s interest – to the financial benefit of her husband’s company, Rep. Berkley acted in a manner that does not reflect creditably on the House. Similarly, Rep. Berkley acted in a manner that does not reflect creditably on the House when she took other official actions that could have benefitted her husband’s company – again without disclosing her husband’s interest – including pressuring the Obama administration not to cut reimbursement

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.*, p. 186; Rule 23, cl. 2.

<sup>62</sup> Rule 23, cl. 1.

<sup>63</sup> House Ethics Manual, p. 12.

<sup>64</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>65</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>66</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>67</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>68</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>69</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).

rates to dialysis providers and sending a letter to Rep. Stark warning him to move carefully on the proposal to bundle payments.

## REPRESENTATIVE NORM DICKS

Representative Norm Dicks (D-WA) is an eighteen-term member of Congress, representing Washington's 6th congressional district. Rep. Dicks is the ranking member of the House Appropriations Committee. His ethics issues stem from directing public money to benefit his son.

### Puget Sound Partnership

The Puget Sound Partnership is a Washington state environmental agency charged with cleaning up and protecting Puget Sound.<sup>1</sup> In 2007, Washington Gov. Christine Gregoire (D-WA) appointed Rep. Dicks' son, David Dicks, to be the partnership's executive director.<sup>2</sup> Mr. Dicks held the job until 2010, and his most recent salary was \$129,057 per year.<sup>3</sup> Mr. Dicks' initial appointment came seven months after Rep. Dicks assumed the chairmanship of the Interior, Environment and Related Agencies Subcommittee of the House Appropriations Committee, which controls federal funding for environmental projects.<sup>4</sup> While chairman of that panel, Rep. Dicks pushed to increase the federal government's annual contribution to the Puget Sound Partnership from \$20 million in 2008 to \$50 million in 2010.<sup>5</sup>

Rep. Dicks allocated the money to the Environmental Protection Agency (EPA) and said he instructed the agency to create a "competitive process" so the money would be spent fulfilling the "action agenda" for Puget Sound.<sup>6</sup> The Puget Sound Partnership, though, was the agency responsible for carrying out the "action agenda."<sup>7</sup> EPA records show the partnership actually received part of the money through noncompetitive agreements and grants for which they were the only applicant, not through competitive bidding.<sup>8</sup> In addition to the EPA funding, Rep. Dicks earmarked \$1.82 million directly to the partnership in fiscal year 2008.<sup>9</sup>

Watchdogs, meanwhile, raised questions about how the partnership spent public money during David Dicks' tenure. The Washington state auditor found that the organization "circumvented state contracting laws, exceeded its purchasing authority and made unallowable purchases with public funds," incurring "costs without clear public benefit."<sup>10</sup> The state auditor

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<sup>1</sup> [http://www.psp.wa.gov/pressreleases/partnership\\_release.php?id=961](http://www.psp.wa.gov/pressreleases/partnership_release.php?id=961).

<sup>2</sup> John Dodge, Rep. Dicks' Son to Head Puget Sound Group; Gregoire Taps Seattle Environmental Lawyer for Director Position, *The Olympian*, August 15, 2007.

<sup>3</sup> <http://data.spokesman.com/salaries/state/all-employees/?q=dicks>; Joel Connelly, David Dicks: Out at Puget Sound Partnership into UW Post, *Seattle Post-Intelligencer*, November 10, 2010.

<sup>4</sup> Appropriations: Byrd, Obey Name 'Cardinals' to Rule Spending Process, *Environment and Energy Daily*, January 5, 2007; Kimberly Kindy, Earmark Investigation: Rep. Norm Dicks and Puget Sound, *Washington Post*, February 7, 2012.

<sup>5</sup> [http://www.house.gov/list/speech/wa06\\_dicks/morenews1/pugetsoundincrease.shtml](http://www.house.gov/list/speech/wa06_dicks/morenews1/pugetsoundincrease.shtml); Kara Rowland, Exclusive: Rep. Dicks Boosts Funds For Son's Project, *Washington Times*, June 25, 2009; [http://www.house.gov/list/speech/wa06\\_dicks/morenews1/intconf.shtml](http://www.house.gov/list/speech/wa06_dicks/morenews1/intconf.shtml); Kindy, *Washington Post*, Feb. 7, 2012.

<sup>6</sup> Kindy, *Washington Post*, Feb. 7, 2012.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*; <http://www.washingtonpost.com/wp-srv/special/capitol-assets/public-projects-private-interests/>.

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

<sup>10</sup> Accountability Audit Report, Washington State Auditor's Office, Puget Sound Partnership, Report No. 1003598, May 12, 2010.



singled out a \$19,999 no-bid contract for legal services with the law firm K&L Gates.<sup>11</sup> Washington state law requires contracts for \$20,000 or more to be submitted for public bidding.<sup>12</sup> The state auditor told the *Washington Post* it seemed to him the Puget Sound Partnership was “looking for a way to direct that contract without opening it to competition.”<sup>13</sup> The partnership eventually paid K&L Gates \$51,498 after amending the contract several times.<sup>14</sup> During the 2008 and 2010 election cycles, employees of K&L Gates and the firm’s political action committee (PAC) donated \$23,750 to Rep. Dicks’ campaign committee.<sup>15</sup>

The state auditor’s findings prompted the EPA to review a random sample of two years’ worth of the Puget Sound Partnership’s contracts dating back to 2007.<sup>16</sup> The EPA found “a near total lack of certification” that the partnership had “actually received the goods and services it had paid for,” and said the shortcomings demonstrated a “fundamental systemic weakness” of the partnership’s internal controls.<sup>17</sup> The EPA required the partnership to return more than \$120,000 as a result of its review.<sup>18</sup>

### **University of Washington’s College of the Environment**

The College of the Environment at the University of Washington is the school’s center for environmental learning.<sup>19</sup> David Dicks has been the director of strategic partnerships and civic engagement at the college since 2010.<sup>20</sup> The position is part-time, and Mr. Dicks earns \$75,000 a year.<sup>21</sup> In fiscal year 2010, Rep. Dicks earmarked \$4 million to the Puget Sound Ecosystem Research Initiative at the University of Washington’s College of the Environment.<sup>22</sup>

### **Potential Violations**

### **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

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<sup>11</sup> *Id.*; Kindy, *Washington Post*, Feb. 7, 2012.

<sup>12</sup> Accountability Audit Report, Washington State Auditor’s Office, May 12, 2010.

<sup>13</sup> Kindy, *Washington Post*, Feb. 7, 2012.

<sup>14</sup> Accountability Audit Report, Washington State Auditor’s Office, May 12, 2010.

<sup>15</sup> <http://www.opensecrets.org/politicians/contrib.php?cycle=2010&type=C&cid=N00007918&newMem=N&recs=100>; <http://www.opensecrets.org/politicians/contrib.php?cycle=2008&type=C&cid=N00007918&newMem=N&recs=100>.

<sup>16</sup> John Ryan, *EPA Yanks Puget Sound Partnership Funds*, *KUOW*, October 21, 2011; Kindy, *Washington Post*, Feb. 7, 2012.

<sup>17</sup> Ryan, *KUOW*, Oct. 21, 2011.

<sup>18</sup> Kindy, *Washington Post*, Feb. 7, 2012.

<sup>19</sup> <http://coenv.washington.edu/about/mission.shtml>.

<sup>20</sup> Connelly, *Seattle Post-Intelligencer*, Nov. 10, 2010.

<sup>21</sup> *Id.*; Editorial, *A Needless Shadow Over Puget Sound Cleanup Efforts*, *Tacoma News Tribune*, February 12, 2012.

<sup>22</sup> <http://www.legistorm.com/earmark/56359.html>; <http://coenv.washington.edu/admingateway/communications/newsletter/2009/vol1no1.shtml>.

<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.

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 the state environmental agency at which his son served as executive director, and later to the university program at which his son was an official, Rep. Dicks may have used his position for his son'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>24</sup>

By funneling federal funds to the state environmental agency at which his son served as executive director, and later to the university program at which his son was an official, Rep. Dicks may have dispensed special privileges to his son'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>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 of the 90th Congress noted it was included within the Code to deal with "flagrant" violations of the law that reflect on "Congress as a whole," and that might otherwise go unpunished.<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

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<sup>24</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, p. 20 (110th Cong., 2d Sess., 2008 ed.).

<sup>25</sup> Rule 23, cl. 1.

<sup>26</sup> House Ethics Manual, p. 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).

report campaign contributions,<sup>28</sup> making false statements to the committee,<sup>29</sup> criminal convictions for bribery,<sup>30</sup> or 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 funneling federal funds to the state environmental agency at which his son served as executive director, and later to the university program at which his son was an official, Rep. Dicks may have engaged in conduct that does not reflect creditably on the House.

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<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 DARRELL ISSA

Representative Darrell Issa (R-CA) is a six-term member of Congress, representing California's 49th congressional district. Rep. Issa chairs the House Oversight and Government Reform Committee. His ethics issues stem from knowingly and purposefully making public the contents of a wiretap application under court seal.

### **Publicizing a Wiretap Application**

On June 28, 2012, during debate on the floor of the House of Representatives on a resolution recommending that Attorney General Eric Holder be found in contempt of Congress, Rep. Issa placed into the Congressional Record a May 24, 2012 letter he had sent as chairman of the House Oversight and Government Reform Committee to Ranking Member Elijah E. Cummings (D-MD) concerning the Department of Justice's Operation Fast and Furious.<sup>1</sup> The letter included specific and extensive details set forth in a wiretap application dated March 15, 2010, concerning operational tactics and individual targets and suspects of the operation.<sup>2</sup> Federal law requires applications for interception of wire, oral, or electronic communications be sealed by the judge, and allows their disclosure "only upon a showing of good cause before a judge of competent jurisdiction . . ."<sup>3</sup> Rep. Issa made this disclosure to buttress his argument that the House should hold Attorney General Holder in contempt of Congress because top Justice Department officials knew there was extensive "gunwalking" from the U.S. to Mexico.<sup>4</sup>

Reportedly, Rep. Issa obtained the sealed documents from "a mole with access to the documents."<sup>5</sup> Rep. Issa has refused to disclose the identity of his source.<sup>6</sup> On the day after Rep. Issa placed the contents of the sealed wiretap application into the Congressional Record, news articles surfaced about his actions and about the details set forth in the wiretap application and made public by Rep. Issa.<sup>7</sup>

### *Potential Violations*

### **Disclosure of Wiretap Application**

Federal law requires applications for interception of wire, oral, or electronic communications be sealed by the judge, and allows their disclosure "only upon a showing of good cause before a judge of competent jurisdiction . . ."<sup>8</sup> Violations are punishable "as contempt of the issuing or denying judge."<sup>9</sup>

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<sup>1</sup> 158 Cong. Rec. H4409 (daily ed. June 28, 2012).

<sup>2</sup> *Id.* at H4409-4411.

<sup>3</sup> 18 U.S.C. § 2518(8)(b).

<sup>4</sup> Sharyl Attkisson, Fast and Furious: GOP Says Wiretaps Revealed 'Gunwalking' Early On, *CBS News*, June 29, 2012.

<sup>5</sup> Jordy Yager, Issa Reveals Wiretap Docs From DOJ Mole, *The Hill*, June 29, 2012.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*; Jonathan Strong, Darrell Issa Puts Details of Secret Wiretap Applications in Congressional Record, *Roll Call*, June 29, 2012; Attkisson, *CBS News*, June 29, 2012.

<sup>8</sup> 18 U.S.C. § 2518(8)(b).

<sup>9</sup> 18 U.S.C. § 2518(8)(c).

In an analogous case, another member of Congress was found civilly liable for similar conduct. In 2007, the United States Court of Appeals for the District of Columbia Circuit, in an *en banc* opinion, found Rep. James McDermott (D-WA) liable for disclosing a tape recording of an illegally intercepted conversation in which Rep. John Boehner (R-OH) had participated.<sup>10</sup>

By disclosing the contents of a sealed wiretap application without securing leave of the issuing court based on a showing of good cause, Rep. Issa appears to have violated this statute.

### **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>11</sup> This ethics standard is considered to be “the most comprehensive provision” of the code.<sup>12</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.<sup>13</sup> This rule has been relied on by the Ethics Committee in numerous prior cases in which the committee found unethical conduct including making false statements to the committee.<sup>14</sup>

By disclosing without judicial authorization the contents of a sealed wiretap application, Rep. Issa engaged in conduct that does not reflect creditably on the House.

Further, Rep. Issa – well aware that disclosing the wiretap application publicly is an offense punishable by contempt of court – instead inserted information obtained from the application into the Congressional Record, allowing him to hide his disclosure behind the veil of the Speech or Debate Clause of the Constitution while still ensuring dissemination. As Rep. Issa had not previously inserted material related to the Fast and Furious investigation into the Congressional Record, there was no guarantee reporters would quickly find the material included in the warrant application. Therefore, Rep. Issa – or a staff member operating under his orders – likely specifically directed reporters to the Congressional Record to ensure the information contained in the warrant application was discovered and publicized. While inserting material into the Congressional Record is protected by the Speech or Debate Clause, republication, which Rep. Issa purposefully generated, is not.<sup>15</sup>

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<sup>10</sup> *Boehner v. McDermott*, 484 F.3d 573 (D.C. Cir.), *cert. denied*, 552 U.S. 1072 (2007).

<sup>11</sup> Rule 23, cl. 1.

<sup>12</sup> House Comm. on Standards of Official Conduct, *House Ethics Manual*, p. 12 (110th Cong., 2d Sess., 2008 ed.).

<sup>13</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>14</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); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978) (Counts 3-4).

<sup>15</sup> *Gravel v. United States*, 408 U.S. 606, 622 (1972) (senator’s arrangement with press to publish the Pentagon Papers was not protected speech or debate within the meaning of the clause).

By intentionally violating the law to disseminate confidential information and then invoking constitutional protections to avoid accountability, Rep. Issa engaged in conduct that does not reflect creditably upon the House.

## SENATOR MARK KIRK

Senator Mark Kirk (R-IL) is a first-term senator from Illinois. His ethics issues stem from (1) using his position to benefit his girlfriend's clients; (2) using campaign funds for personal benefit; (3) improperly accepting gifts; and (4) failing to disclose gifts on his personal financial disclosure forms.

### Using Position to Benefit Girlfriend's Clients

While serving in both the House and the Senate, Sen. Kirk sponsored and supported legislation that benefitted or would benefit the clients of his then-girlfriend, Dorothy (Dodie) McCracken.

Ms. McCracken first began working for Sen. Kirk during his first congressional campaign, a race for a House of Representatives seat in 2000.<sup>1</sup> After he won, Ms. McCracken became his district director and press secretary and remained on his House office staff until 2003.<sup>2</sup> It is unclear exactly when Ms. McCracken and Sen. Kirk became romantically involved, but Sen. Kirk's campaign manager acknowledged Sen. Kirk and Ms. McCracken were a couple after Sen. Kirk separated from his ex-wife, Kimberly Vertolli, in 2008, and said they lived together from June 2011 until January 2012.<sup>3</sup> Ms. Vertolli, however, told the Federal Election Commission (FEC) Ms. McCracken left her job with then-Rep. Kirk in 2003 "after their extra-marital sexual relationship was revealed," and the pair "began to cohabitate" after 2009.<sup>4</sup>

Ms. McCracken is the president and chief executive officer of the Washington area public relations firm Arcadian Partners.<sup>5</sup> The firm's clients have included three nonprofit organizations trying to pass legislation that would allow them to issue commemorative coins.<sup>6</sup> Congress is allowed to pass two bills annually authorizing the minting of commemorative gold and silver coins honoring people, groups, or events in American history.<sup>7</sup> The coins are sold with a surcharge that typically yields millions of dollars to the groups the legislation designates as beneficiaries.<sup>8</sup> Because only two commemorative coin bills are permitted per year and the

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<sup>1</sup> Kirk for Congress, FEC Form 3, 2000 Pre-Primary Election Report, March 10, 2000; Kirk for Congress, FEC Form 3, 2000 October Quarterly Report, October 17, 2000; Kirk for Congress, FEC Form 3, 2000 Pre-General Election Report, October 26, 2000; Kirk for Congress, FEC Form 3, 2000 Post-General Election Report, December 12, 2000; Kirk for Congress, FEC Form 3, 2000 Year End Report, February 3, 2001.

<sup>2</sup> [http://www.legistorm.com/person/bio/54776/Dorothy\\_L\\_McCracken.html](http://www.legistorm.com/person/bio/54776/Dorothy_L_McCracken.html).

<sup>3</sup> Katherine Skiba and Todd Lighty, Kirk's Ex-Wife Files FEC Complaint Questioning Campaign Payments, *Chicago Tribune*, May 29, 2012. Sen. Kirk and Ms. Vertolli separated in 2008 and divorced in 2009, and Ms. Vertolli blames Sen. Kirk's relationship with Ms. McCracken for their divorce. *Id.*; Carol Felsenthal, Mark Kirk's Ex-Wife: 'Svengali Figure' Influencing Candidate, *Chicago Magazine*, August 4, 2010.

<sup>4</sup> Federal Election Commission, MUR No. 6510, Affidavit of Kimberly Ann Vertolli, ¶¶ 11-12, November 10, 2011 (Vertolli Affidavit).

<sup>5</sup> Katherine Skiba and Todd Lighty, Kirk Co-Sponsored Bills Helping Ex-Girlfriend's Clients, *Chicago Tribune*, June 1, 2012; Felsenthal, *Chicago Magazine*, Aug. 4, 2010; <http://www.arcadianpartners.com/Government%20Communications.html>.

<sup>6</sup> Skiba and Lighty, *Chicago Tribune*, June 1, 2012.

<sup>7</sup> 51 U.S.C. § 3112(m).

<sup>8</sup> Skiba and Lighty, *Chicago Tribune*, June 1, 2012; Mark Peters, Douglas Belkin, and Brody Mullins, Sen. Kirk's Backing of Coin Bills Scrutinized, *Wall Street Journal*, June 1, 2012.

amount of money at stake is substantial, some groups lobby heavily for the privilege of issuing the coins.<sup>9</sup>

In February 2006, the Disabled Veterans LIFE Memorial Foundation (DVLMF) hired Arcadian to handle publicity for the group, and less than a year later then-Rep. Kirk was one of a small group of initial co-sponsors that introduced the American Veterans Disabled for Life Commemorative Coin Act.<sup>10</sup> Then-Rep. Kirk described himself as a key player with regard to the legislation, which he called the “Moore-Kirk bill” on the House floor.<sup>11</sup> The bill became law in July 2008 and yielded \$2.81 million for the organization.<sup>12</sup>

Touting their success with the DVLMF bid, Ms. McCracken and Arcadian approached the Congressional Medal of Honor Foundation (CMHF) around November 2008 and proposed they try to issue a commemorative coin as well.<sup>13</sup> The organization agreed and worked directly with Ms. McCracken in 2009 to win the passage of legislation authorizing the commemorative coin.<sup>14</sup> Then-Rep. Kirk played a key role in the bill’s passage, serving as an original co-sponsor of the Medal of Honor Commemorative Coin Act of 2009.<sup>15</sup> The bill became law in November 2009, and eventually yielded nearly \$2.5 million for the CMHF.<sup>16</sup> The foundation credited Arcadian with lining up original sponsors for the bill, including then-Rep. Kirk.<sup>17</sup>

In 2011, Arcadian began advocating for the March of Dimes to be selected for the commemorative coin program.<sup>18</sup> Ms. McCracken led the team that drafted the legislation and developed a legislative strategy.<sup>19</sup> Now a member of the Senate, Sen. Kirk was one of five initial co-sponsors of the March of Dimes Commemorative Coin Act of 2011, which could yield up to \$5 million in revenue for the organization.<sup>20</sup> Lobbying records show the March of Dimes paid

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<sup>9</sup> Skiba and Lighty, *Chicago Tribune*, June 1, 2012.

<sup>10</sup> Cosponsors, *American Veterans Disabled for Life Commemorative Coin Act*, H.R. 634, 110th Congress, available at <http://thomas.loc.gov>; Skiba and Lighty, *Chicago Tribune*, June 1, 2012.

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

<sup>12</sup> *Id.*; *American Veterans Disabled for Life Commemorative Coin Act*, Pub. L. No. 110-277, 122 Stat. 2599 (July 17, 2008).

<sup>13</sup> Skiba and Lighty, *Chicago Tribune*, June 1, 2012; Peters, Belkin, and Mullins, *Wall Street Journal*, June 1, 2012.

<sup>14</sup> *Id.*; Skiba and Lighty, *Chicago Tribune*, June 1, 2012.

<sup>15</sup> Cosponsors, *Medal of Honor Commemorative Coin Act of 2009*, H.R. 1209, 111th Congress, available at <http://thomas.loc.gov>.

<sup>16</sup> *Medal of Honor Commemorative Coin Act of 2009*, Pub. L. No. 111-91, 123 Stat. 2980 (Nov. 6, 2009); Skiba and Lighty, *Chicago Tribune*, June 1, 2012.

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

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

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

<sup>20</sup> Skiba and Lighty, *Chicago Tribune*, June 1, 2012; Cosponsors, *March of Dimes Commemorative Coin Act of 2011*, S. 1935, 112th Congress, available at <http://thomas.loc.gov>.



Arcadian \$54,000 to lobby on their behalf from July 2011 to March 2012.<sup>21</sup> The bill is still pending.<sup>22</sup>

### **Using Campaign Money for Personal Benefit**

During his 2010 campaign for a Senate seat, Sen. Kirk's campaign appears to have paid both Ms. McCracken and Ms. Vertolli, structuring the payments so their names did not appear in campaign finance filings. The payments raise questions about whether Sen. Kirk tried to obscure the actual recipients of campaign funds or used campaign funds for personal benefit.

#### *Payments to Dodie McCracken*

While Sen. Kirk and Ms. McCracken were romantically involved, Ms. McCracken worked on Sen. Kirk's 2010 campaign for an open Senate seat.<sup>23</sup> Accounts of her role have varied widely.

During the campaign, a *Chicago Sun-Times* columnist described Ms. McCracken as a "top Kirk consultant," adding that while the Kirk campaign wanted "to keep McCracken's involvement under the radar," the columnist's sources said "she is involved in day-to-day operational and strategic decision making."<sup>24</sup> Ms. Vertolli also said Ms. McCracken had a significant role in the campaign, describing Ms. McCracken as a "pernicious force" and "Svengali figure" who wielded a "disproportionate amount of negative influence" on Sen. Kirk.<sup>25</sup> Ms. McCracken, meanwhile, told *Chicago Magazine* she was a volunteer consultant to the campaign,<sup>26</sup> and the campaign confirmed Ms. McCracken was involved in "messaging."<sup>27</sup>

Sen. Kirk's campaign committee did not report paying Ms. McCracken for her work on the campaign.<sup>28</sup> Instead, Ms. McCracken apparently was paid indirectly as a subcontractor to one of the campaign's vendors. Sen. Kirk's campaign committee reported paying more than \$1.8 million to the Patterson Group, an Illinois-based advertising firm.<sup>29</sup> The firm is owned by Robert E. Vail Jr., who Ms. Vertolli alleged is a friend and business associate of Ms.

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<sup>21</sup> Arcadian Partners, Third Quarter 2011 Lobbying Disclosure Report on behalf of March of Dimes Foundation, Secretary of the Senate, Office of Public Records; Arcadian Partners, Fourth Quarter 2011 Lobbying Disclosure Report on behalf of March of Dimes Foundation, Secretary of the Senate, Office of Public Records; Arcadian Partners, First Quarter 2012 Lobbying Disclosure Termination Report on behalf of March of Dimes Foundation, Secretary of the Senate, Office of Public Records.

<sup>22</sup> All Congressional Actions, *March of Dimes Commemorative Coin Act of 2011*, S.1935, available at <http://thomas.loc.gov>.

<sup>23</sup> Skiba and Lighty, *Chicago Tribune*, May 29, 2012; Rick Pearson, Kirk Announces Republican Bid for Obama's Senate Seat, *Chicago Tribune*, July 20, 2009.

<sup>24</sup> Lynn Sweet, Mark Kirk's Ex-Wife to Advise Campaign; Ripped Kirk Consultant as "Svengali Figure In His Life", *Chicago Sun-Times*, August 17, 2010.

<sup>25</sup> Felsenthal, *Chicago Magazine*, Aug. 4, 2010.

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

<sup>27</sup> Sweet, *Chicago Sun-Times*, Aug. 17, 2010.

<sup>28</sup> Kirk for Senate, FEC Form 3, 2009-2010 Reports.

<sup>29</sup> *Id.*; Skiba and Lighty, *Chicago Tribune*, May 29, 2012.

McCracken.<sup>30</sup> The campaign made 18 payments to the firm between October 2009 and August 2010, reporting them as advertising expenses.<sup>31</sup>

In November 2011, Ms. Vertolli filed a complaint with the FEC regarding the campaign's payments to Ms. McCracken and Mr. Vail, which she said violated campaign finance law.<sup>32</sup> Ms. Vertolli said the campaign had intentionally paid Ms. McCracken through the Patterson Group in order to keep the payments private and avoid raising conflict-of-interest issues.<sup>33</sup>

According to documents Ms. Vertolli provided to the FEC, the Patterson Group employed Van Ness Communications, LLC as a subcontractor.<sup>34</sup> Ms. McCracken is the registered agent of Van Ness Communications.<sup>35</sup> Beginning in late 2009 and continuing through the election, the Patterson Group paid Van Ness Communications \$110,000 for consulting services and \$33,582 in expense reimbursements for work performed for the Kirk for Senate campaign.<sup>36</sup> The expenses included reimbursement for trips to California that coincided with Sen. Kirk's own fundraising trips.<sup>37</sup> Ms. Vertolli gave the FEC expense receipts belonging to Ms. McCracken for travel and other items, suggesting that Ms. McCracken billed Patterson and the campaign for a gym membership and personal training sessions, cosmetics, and dental work.<sup>38</sup> Ms. Vertolli said she received the receipts and other documents from an unknown source.<sup>39</sup>

In a response filed with the FEC and provided to the *Chicago Tribune*, Sen. Kirk's campaign said it is only required to disclose money paid to primary contractors.<sup>40</sup> In a separate response, Ms. McCracken, describing her work for Sen. Kirk's campaign, said she worked full-time on the campaign, performing a wide range of tasks and claiming to have worked "well in excess of a 40-hour workweek, many times seven days a week."<sup>41</sup> The portions of the responses published by the *Tribune* did not address Ms. McCracken's expenses.<sup>42</sup>

#### *Payments to Kimberly Vertolli*

Even as Sen. Kirk's campaign was paying Ms. McCracken, it also hired Ms. Vertolli, a lawyer and former naval intelligence officer, to conduct legal research.<sup>43</sup> On September 20, 2010, about a month after announcing she would advise Sen. Kirk's campaign, Ms. Vertolli

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<sup>30</sup> *Id.*; Vertolli Affidavit, ¶ 19.

<sup>31</sup> Kirk for Senate, FEC Form 3, 2009-2010 Reports.

<sup>32</sup> Vertolli Affidavit.

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

<sup>34</sup> *Id.*; Skiba and Lighty, *Chicago Tribune*, May 29, 2012.

<sup>35</sup> Van Ness Communications, Business Entity Details, State Corporation Commission: Richmond, VA, available at [https://cisiweb.scc.virginia.gov/z\\_container.aspx](https://cisiweb.scc.virginia.gov/z_container.aspx); Vertolli Affidavit, ¶10.

<sup>36</sup> Skiba and Lighty, *Chicago Tribune*, May 29, 2012.

<sup>37</sup> *Id.*; Vertolli Affidavit, ¶ 20, Exhibit D (expense receipts).

<sup>38</sup> *Id.*, ¶ 21 Exhibits C and D (expense receipts).

<sup>39</sup> Skiba and Lighty, *Chicago Tribune*, May 29, 2012.

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

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

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

<sup>43</sup> Felsenthal, *Chicago Magazine*, Aug. 4, 2010.

formed Athens & Sparta Counsel, LLC.<sup>44</sup> The company's offices were listed as her home in Alexandria, Virginia.<sup>45</sup>

On January 18, 2011, Sen. Kirk's campaign paid Athens & Sparta Counsel LLC \$15,000 as a retainer for legal research.<sup>46</sup> Two days later, the campaign paid the firm an additional \$25,000 for 83 hours of legal research.<sup>47</sup> Both Ms. Vertolli and Sen. Kirk's campaign manager said she performed the legal research work for the campaign in exchange for the payments, but Ms. Vertolli said she later came to believe the campaign put her on the payroll "to get me to be quiet about my misgivings about McCracken and get my energy focused on helping Mark win."<sup>48</sup>

### **Improperly Accepting and Failing to Disclose Gifts**

Between November 7 and 16, 2008, Sen. Kirk and Ms. McCracken travelled together to London, Athens, and the Greek island of Santorini.<sup>49</sup> With her complaint, Ms. Vertolli submitted several receipts to the FEC showing hotel and travel expenses ostensibly paid by Ms. McCracken for both herself and Sen. Kirk. Specifically, Ms. McCracken paid 288.96 Euros (approximately \$394) for Aegean Air plane tickets from Athens to Santorini for her and Sen. Kirk, and paid 840 Euros (approximately \$1,069) for four nights in the honeymoon suite of the IRA Hotel in Santorini.<sup>50</sup> In addition, Ms. McCracken appears to have paid 807.42 Euros (approximately \$1,025) to the Hotel Grande Bretagne, a five-star luxury hotel in Athens, and 272.73 British pounds (approximately \$426) to the London Green Park Hilton.<sup>51</sup> Sen. Kirk did not disclose any gifts from Ms. McCracken on his 2008 Personal Financial Disclosure report or to the Clerk of the House.<sup>52</sup>

### **Status of Investigation**

In November 2011, Ms. Vertolli filed a complaint with the FEC alleging Sen. Kirk's campaign committee's payments to Ms. McCracken violated campaign finance law.<sup>53</sup> The complaint is pending.

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<sup>44</sup> Skiba and Lighty, *Chicago Tribune*, May 29, 2012; Athens & Sparta Counsel, LLC, Business Entity Details, State Corporation Commission: Richmond, VA, available at [https://cisiweb.scc.virginia.gov/z\\_container.aspx](https://cisiweb.scc.virginia.gov/z_container.aspx).

<sup>45</sup> *Id.*

<sup>46</sup> Kirk for Senate, FEC Form 3, 2011 April Quarterly Report, Amended, September 21, 2011.

<sup>47</sup> *Id.*

<sup>48</sup> Skiba and Lighty, *Chicago Tribune*, May 29, 2012.

<sup>49</sup> Vertolli Affidavit, ¶11; Vertolli Affidavit, Exhibit K (travel receipts and records). The amounts paid were converted into dollars using the historical exchange rate on the day of the purchase, available at <http://www.oanda.com/currency/historical-rates/>.

<sup>50</sup> Vertolli Affidavit, Exhibit K.

<sup>51</sup> *Id.*; <http://www.fivestaralliance.com/luxury-hotels/athens/hotel-grande-bretagne>.

<sup>52</sup> Rep. Mark Kirk, Personal Financial Disclosure Statement for Calendar Year 2008, filed May 14, 2009; Clerk of the House of Representatives: Gift and Travel Filings Database, Member Lookup, Mark Kirk, 2007-2010, available at [http://clerk.house.gov/public\\_disc/giftTravel-search.aspx](http://clerk.house.gov/public_disc/giftTravel-search.aspx).

<sup>53</sup> Skiba and Lighty, *Chicago Tribune*, May 29, 2012; Vertolli Affidavit.

## **Legal Fees**

Sen. Kirk's campaign has paid more than \$50,000 to Patton Boggs since July 2011.<sup>54</sup>

## **Potential Violations**

### **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>55</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.

By sponsoring and working to pass commemorative coin legislation that benefitted Ms. McCracken's clients, then-Rep. Kirk may have provided a financial benefit to Ms. McCracken and her clients 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>56</sup>

By sponsoring and working to pass commemorative coin legislation that benefitted or would benefit Ms. McCracken's clients, Sen. Kirk may have dispensed special favors in violation of the Code of Ethics for Government Service.

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<sup>54</sup> Kirk for Senate, FEC Form 3, 2011 October Quarterly Report, October 18, 2011; Kirk for Senate, FEC Form 3, 2012 April Quarterly Report, April 17, 2012; Kirk for Senate, FEC Form 3, 2012 July Quarterly Report, July 13, 2012.

<sup>55</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>56</sup> 72 Stat., Part 2, B12, H. Res. 175, 85th Cong. (adopted July 11, 1958); House Comm. on Standards of Official Conduct, House Ethics Manual, p. 20 (110th Cong., 2d Sess. 2008 ed.); Senate Select Comm. on Ethics, Senate Ethics Manual, pp. 7-8, 14, 436 (108th Cong., 1st Sess., 2003 ed.).

## **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>57</sup> Further, Rule 23, clause 6(a) requires each member to “keep his campaign funds separate from his personal funds.”<sup>58</sup> The rule also provides that all campaign funds must be used for “bona fide campaign or political purposes.”<sup>59</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>60</sup> This requirement is “**separate from, and in addition to, whatever recordkeeping requirements are imposed by the Federal Election Commission . . .**”<sup>61</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>62</sup> If an expense is both campaign-related and benefits someone personally, the campaign may only underwrite its pro rata share.<sup>63</sup>

By using campaign funds to pay his girlfriend, Ms. McCracken, then-Rep. Kirk may have violated House Rule 23. In addition, then-Rep. Kirk may have violated the rule by using campaign funds to pay his ex-wife, Ms. Vertolli, for legal services.

## **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>64</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>65</sup>

By using campaign funds to pay his girlfriend, Ms. McCracken, Sen. Kirk may have violated 2 U.S.C. § 439a(b)(1) and 11 C.F.R. § 113.1(g). Similarly, if the expenses for which Ms. McCracken’s was reimbursed would have existed irrespective of Sen. Kirk’s campaign, he may have violated these provisions. Sen. Kirk also may have converted campaign funds to personal use by paying his ex-wife, Ms. Vertolli, for legal services.

In addition, under FEC regulations, paying the salary of a member of the candidate’s family, including a person who shares a residence with the candidate, is a personal use, unless

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<sup>57</sup> Rule 23, cl. 6(b); House Ethics Manual, p. 163.

<sup>58</sup> *Id.*

<sup>59</sup> Rule 23, cl. 6(c); House Ethics Manual, pp. 152, 163.

<sup>60</sup> *Id.*, p. 163.

<sup>61</sup> *Id.*, p. 165 (emphasis in original).

<sup>62</sup> *Id.*, p. 166.

<sup>63</sup> House Ethics Manual, p. 166.

<sup>64</sup> 2 U.S.C. § 439a(b)(1).

<sup>65</sup> 2 U.S.C. § 439a(b)(2); *see also* 11 C.F.R. § 113.1(g).

that person is providing “*bona fide* services to the campaign.”<sup>66</sup> Even if the person is providing *bona fide* services, any salary payment in excess of the fair market value of the services provided is a personal use.<sup>67</sup> This provision has been applied to payments to a campaign’s consultant.<sup>68</sup>

If during the time Ms. McCracken lived with Sen. Kirk she did not provide *bona fide* services to the campaign, or if the amount of the payments to her exceeded the fair market value of her services, Sen. Kirk may have violated 2 U.S.C. § 439a(b)(1) and 11 C.F.R. § 113.1(g).

### **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>69</sup>

While House 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>70</sup> These determinations are not public.<sup>71</sup>

If Ms. McCracken paid for then-Rep. Kirk’s travel expenses in London, Athens, and Santorini valued at more than \$250, and the House Ethics Committee did not approve the gift, then-Rep. Kirk likely accepted improper gifts.

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

The Ethics in Government Act of 1967 requires all members of Congress to file financial disclosure reports.<sup>72</sup> Under the statute, the attorney general may seek a civil penalty of up to \$11,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.<sup>73</sup> House Rule 26 incorporates the financial disclosure provisions of the Ethics in Government Act.<sup>74</sup>

Federal law prohibits members of Congress from making “any materially false, fictitious or fraudulent statement or representation” 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>75</sup>

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<sup>66</sup> 11 C.F.R. §§ 113.1(g)(1)(i)(H), 113.1(g)(7).

<sup>67</sup> 11 C.F.R. § 113.1(g)(1)(i)(H).

<sup>68</sup> Federal Election Commission, Advisory Opinion 2001-10 (July 17, 2001).

<sup>69</sup> Rule 25, cl. 5(a)(2)(A).

<sup>70</sup> Rule 25, cl. 5(a)(5); House Ethics Manual, p. 40.

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

<sup>72</sup> Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

<sup>73</sup> 5 U.S.C. app. 4, § 104.

<sup>74</sup> House Ethics Manual, p. 248.

<sup>75</sup> 18 U.S.C. § 1001.

While members may accept gifts on the basis of personal friendship, 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>76</sup>

If Ms. McCracken paid for then-Rep. Kirk's travel expenses in London, Athens, and Santorini valued at more than \$335, he likely made a false statement by failing to disclose the gifts on his financial disclosure reports.

### **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>77</sup> This ethics standard is considered to be "the most comprehensive provision" of the code.<sup>78</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with "flagrant" violations of the law that reflect on "Congress as a whole," and that might otherwise go unpunished.<sup>79</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>80</sup> making false statements to the committee,<sup>81</sup> criminal convictions for bribery,<sup>82</sup> or accepting illegal gratuities,<sup>83</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>84</sup>

By sponsoring commemorative coin legislation that benefitted Ms. McCracken's clients, accepting improper gifts and failing to report them on his financial disclosure forms, and violating campaign finance law, then-Rep. Kirk acted in a manner that brings discredit to the House.

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<sup>76</sup> 5 U.S.C. app. 4 § 102(a)(2); House Ethics Manual, pp. 84, 258-59.

<sup>77</sup> Rule 23, cl. 1.

<sup>78</sup> House Ethics Manual, p. 12.

<sup>79</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>80</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>81</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>82</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>83</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>84</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).

## **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>85</sup> This rule is intended to protect the integrity and reputation of the Senate as a whole.<sup>86</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>87</sup> Notably, the Senate may discipline a member for any misconduct, including conduct or activity that does not relate to official duties when that conduct unfavorably reflects upon the Senate as a whole.<sup>88</sup>

By sponsoring commemorative coin legislation that would benefit Ms. McCracken’s clients, Sen. Kirk engaged in improper conduct reflecting upon the Senate.

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<sup>85</sup> Senate Ethics Manual, Appendix E, p. 432 (citation omitted).

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

<sup>87</sup> *Id.*, p. 433.

<sup>88</sup> Senate Ethics Counsel, The Packwood Report, *Times Books*, p. 28 (1995) (*citing* S. Rep. 2508, 83d Cong., 2d Sess, 20, 22 (1954)).



## REPRESENTATIVE HOWARD “BUCK” McKEON

Representative Howard “Buck” McKeon (R-CA) is a ten-term member of Congress, representing California’s 25th congressional district. His ethics issues stem from accepting a favorable mortgage rate from Countrywide Financial and misusing official resources for political activity.

### Countrywide Loans

In October 1998, Rep. McKeon refinanced a mortgage on a property he owned with his wife in Stevenson Ranch, California.<sup>1</sup> At the time, a family-owned business in which Rep. McKeon owned a stake was going through a Chapter 11 bankruptcy, and his income had consequently declined.<sup>2</sup>

Between 1996 and 2008, Countrywide Financial used its VIP program to offer favorable loan terms and treatment to prominent borrowers, including government officials.<sup>3</sup> Mike Farrell, the chief lobbyist and legislative strategist for the Mortgage Bankers Association, referred Rep. McKeon to the Countrywide VIP program.<sup>4</sup>

Countrywide’s internal documents show the company knew they were providing the loan to a member of Congress, and Rep. McKeon received some preferential treatment.<sup>5</sup> According to one email, Countrywide CEO Angelo Mozilo ordered the VIP unit to deduct a point from Rep. McKeon’s loan, eliminate all so-called “garbage” fees, and waive borrower documentation requirements.<sup>6</sup>

Notes on an internal Countrywide document about Rep. McKeon’s loan make it clear the loan was to be processed without delay:

FOA [Friends of Angelo] referral, Please order appraisal ASAP.  
You may call the borrower at his Washington office [number redacted] and get the Sons phone number for the appraiser contact.  
The borrower would like to hear from the appraiser this week. The borrower is a bit difficult to deal with. He seems on the edgy side.<sup>7</sup>

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<sup>1</sup> House Oversight and Government Reform Committee, 112th Congress, *How Countrywide Used its VIP Loan Program To Influence Washington Policymakers*, July 5, 2012 (House Oversight Report), p. 60.

<sup>2</sup> Abby Sewell and Catherine Saillant, Details Emerge on Rep. Buck McKeon’s Countrywide Loan, *Los Angeles Times*, February 12, 2012.

<sup>3</sup> House Oversight Report, p. 4.

<sup>4</sup> *Id.*, p. 61.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> House Oversight Report, p. 62.

Rep. McKeon did receive the interest rate reduction in his final loan agreement, but it is unclear whether the fees were ultimately waived.<sup>8</sup> He received a \$315,000, 30-year fixed rate loan at an interest rate of 6.75 percent.<sup>9</sup>

In June 2008, news stories about Countrywide's VIP program reported that borrowers included then-Sen. Christopher Dodd (D-CT), Sen. Kent Conrad (D-ND), and other government officials.<sup>10</sup> Those reports led the House Oversight and Government Reform Committee to begin an investigation into the program.<sup>11</sup> On October 23, 2009, the committee issued a subpoena to Bank of America, which acquired Countrywide in 2008, requesting records related to the VIP program.<sup>12</sup> In response to that subpoena and subsequent requests and subpoenas from the committee, the bank turned over hundreds of thousands of pages about the VIP loans.<sup>13</sup>

Bank of America was required to turn over any documents to the House Ethics Committee containing "identifying information about current Members of the United States Congress, and their spouses."<sup>14</sup> Bank of America provided information about Rep. McKeon's loan to the House Ethics Committee in late 2010, though his participation in the program was not publicly known until the *Wall Street Journal* reported on January 14, 2012 that Rep. McKeon's loan had come through the VIP program.<sup>15</sup> Rep. McKeon's spokeswoman told the newspaper that he was "pretty shocked and angry" to learn he had been included in the VIP program.<sup>16</sup> "I didn't get a deal," Rep. McKeon subsequently told the *Los Angeles Times*.<sup>17</sup>

Documents uncovered by the House Oversight and Government Reform Committee, however, show Rep. McKeon's loan paperwork clearly states he received the loan through Countrywide's VIP program.<sup>18</sup> The first line of the cover letter for his "opening package" reads: "Thank you for allowing COUNTRYWIDE's VIP TEAM to assist you with your financing needs on the above referenced property."<sup>19</sup> The bottom of the letter is stamped "THE VIP TEAM."<sup>20</sup>

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<sup>8</sup> *Id.*, p. 61. Rep. McKeon has said he paid the so-called "garbage fees." Sewell and Saillant, *Los Angeles Times*, Feb. 12, 2012.

<sup>9</sup> Sewell and Saillant, *Los Angeles Times*, Feb. 12, 2012.

<sup>10</sup> Glenn R. Simpson and James R. Hagerty, Countrywide Friends Got Good Loans, *Wall Street Journal*, June 7, 2008; Daniel Golden, Countrywide's Many 'Friends', *Portfolio.com*, June 12, 2008.

<sup>11</sup> House Oversight Report, p. 7.

<sup>12</sup> *Id.*, p. 8.

<sup>13</sup> *Id.*, p. 12.

<sup>14</sup> Subpoena, House Committee on Oversight and Government Reform to Bank of America Corp., October 23, 2009.

<sup>15</sup> John R. Emshwiller, Lawmakers Tied to VIP Loan Program, *Wall Street Journal*, January 14, 2012.

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

<sup>17</sup> Sewell and Saillant, *Los Angeles Times*, Feb. 12, 2012.

<sup>18</sup> House Oversight Report, pp. 60-63.

<sup>19</sup> *Id.*, p. 63.

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

## **Misuse of Congressional Staff for Campaign Activity**

On January 6, 2012, Rep. McKeon's communications director, Alissa McCurley, sent a memo outlining how the office should publicly respond to the Countrywide revelations.<sup>21</sup> The memo, addressed to Rep. McKeon's chief of staff, Bob Cochran, his deputy chief of staff, Bob Haueter, and an outside political consultant named Tony Marsh, was titled, "Recap of current strategy," and included a list of "Possible Tough Questions" about Rep. McKeon's loan.<sup>22</sup>

At the time, Rep. McKeon's wife, Patricia McKeon, was running in a primary for a California State Assembly seat against Scott Wilk, Rep. McKeon's former district director, and two other candidates.<sup>23</sup>

Ms. McCurley wrote a series of bullet points, including one that read: "We need to conduct thorough background checks into the relationships between Wilk, [Jason Cable] Roe, [Mr. Wilk's political consultant] and their recent shady political connections."<sup>24</sup> The memo provides no explanation as to how Mr. Wilk was connected to the Countrywide issue.<sup>25</sup>

When *Roll Call* published an excerpt from the memo on February 6, 2012, Rep. McKeon's spokesman said, "What we have is a recap of a discussion that took place after a national news source obtained information about Mr. McKeon's Countrywide loan . . . So we were covering all our bases."<sup>26</sup> Ms. McCurley later told *Roll Call* the memo "was an internal staff memo that was never shared nor discussed with the Congressman, and therefore we won't be commenting any further on this matter."<sup>27</sup>

Ms. McCurley has worked for Rep. McKeon's congressional office since last September, and her current annual salary is \$50,000.<sup>28</sup> There is no record of Ms. McCurley working for Rep. McKeon's campaign, and she has not been paid by his campaign committee or political action committee.<sup>29</sup>

## **Status of Investigation**

In July 2012, the House Oversight and Government Reform Committee issued a report on Countrywide's VIP program that included a section about Rep. McKeon's loan.<sup>30</sup> The report

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<sup>21</sup> Memorandum to Bob Cochran, Bob Haueter, Tony Marsh Re: FOA, January 6, 2012 (McCurley Memorandum), available at <http://www.scribd.com/doc/80917182/BMcKeon-CampaignStrategy>; [http://www.legistorm.com/person/bio/158822/Alissa\\_L\\_McCurley.html](http://www.legistorm.com/person/bio/158822/Alissa_L_McCurley.html).

<sup>22</sup> McCurley Memorandum; Neda Semnani, *Covering the Bases*, *Roll Call*, February 6, 2012.

<sup>23</sup> *Id.* Ms. McKeon lost the primary on June 5, 2012. See California Secretary of State, June 5, 2012, Primary Election Results, available at <http://www.sos.ca.gov/elections/sov/2012-primary/pdf/102-state-assembly1-80formatted.pdf>.

<sup>24</sup> McCurley Memorandum; Semnani, *Roll Call*, Feb. 6, 2012.

<sup>25</sup> McCurley Memorandum.

<sup>26</sup> Semnani, *Roll Call*, Feb. 6, 2012.

<sup>27</sup> Neda Semnani, *Buck McKeon's Staff Hacks Away*, *Roll Call*, February 13, 2012.

<sup>28</sup> [http://www.legistorm.com/person/Alissa\\_L\\_McCurley/158822.html](http://www.legistorm.com/person/Alissa_L_McCurley/158822.html).

<sup>29</sup> Buck McKeon for Congress, *FEC Form 3, 2011-2012 Reports*; 21st Century PAC, *FEC Form 3X, 2011-2012 Reports*.

<sup>30</sup> House Oversight Report, pp. 60-63.

concluded Countrywide reduced Rep. McKeon's loan by one percentage point as a part of the VIP program, and noted that the matter had been referred to the House Ethics Committee.<sup>31</sup> The status of the House Ethics Committee investigation is unknown.

### **Legal Fees**

So far in 2012, Rep. McKeon's campaign committee has reported paying \$5,232.50 in legal fees to Eason & Tambornini.<sup>32</sup>

### **Potential Violations**

#### **Gift Rule Violation**

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." The Rules define "gift" to mean "a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value."<sup>33</sup> The term includes gifts of services, training, transportation, lodging and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred."<sup>34</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."

Moreover, the House Ethics Manual states:

The public has a right to expect Members, officers, and employees to exercise impartial judgment in performing their duties. The receipt of gifts or favors from certain persons or interests may interfere with this impartial judgment. The recipient of a gift will naturally feel grateful, and the giver may expect favorable treatment or consideration in return.<sup>35</sup>

Gifts create an appearance of impropriety that may undermine the public's faith in government.<sup>36</sup>

The receipt of unusually favorable loans creates exactly the sort of appearance of impropriety that the gift rule was designed to address. By accepting a loan from Countrywide

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<sup>31</sup> *Id.*, p. 61.

<sup>32</sup> Buck McKeon for Congress, FEC Form 3, 2012 Pre-Primary Report, July 26, 2012.

<sup>33</sup> Rule 25, cl. 5(a)(2)(A).

<sup>34</sup> *Id.*

<sup>35</sup> House Comm. on Standards of Official Conduct, House Ethics Manual, p. 23 (110th Cong., 2d Sess., 2008 ed.).

<sup>36</sup> *Id.*, p. 24.

with a reduced interest rate and possibly with “junk fees” waived – terms not generally available to the public – Rep. McKeon may have received an improper gift in violation of House Rules.

### **Improper Use of Appropriated Funds**

Pursuant to 31 U.S.C. § 1301(a), “[a]ppropriations shall be applied only to the objects for which the appropriations were made.” Corresponding regulations of the Committee on House Administration provide that “[e]mployees may not be compensated from public funds to perform non-official, personal, political, or campaign activities on behalf of the Member, the employee, or anyone else.”<sup>37</sup>

House ethics rules also make clear that “[e]mployees of the House are paid from funds of the United States Treasury to perform public duties” that expressly “do not include performing nonofficial, personal, or campaign duties.”<sup>38</sup> In addition, Rule 23, clause 8 provides:

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

According to the Campaign Booklet published by the House Ethics Committee, there is a “basic principle that government funds should not be spent to help incumbents gain re-election.”<sup>39</sup> The official allowance of House offices, and the goods and services acquired with those allowances, are to be used for House business and are not to be used for campaign or political purposes.<sup>40</sup> The Campaign Booklet clearly states that House offices are supported with official funds and, therefore, are considered official resources.<sup>41</sup> As a result, they may not be used to conduct campaign or political activities.<sup>42</sup>

The House Ethics Manual makes clear the prohibition on using official resources for campaign or political activity applies “to **any** campaign or political undertaking,” regardless of “whether the Member is a candidate or is merely seeking to support or assist (or oppose) a candidate in such a campaign.”<sup>43</sup>

The Campaign Booklet provides two cases, one in which a member was criminally prosecuted and another in which a staffer was criminally prosecuted, for misusing official resources. In 1993, a former House employee pleaded guilty to a charge of theft of government

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<sup>37</sup> Committee on House Administration, Members’ Handbook, Staff.

<sup>38</sup> House Ethics Manual, pp. 267-268, citing *United States v. Rostenkowski*, 59 F.3d 1291, 1307-11 (D.C. Cir. 1995), *reh’g denied*, 68 F.3d 489 (D.C. Cir. 1995); *United States v. Diggs*, 613 F.2d 988, 994-997, 1002 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 982 (1980).

<sup>39</sup> House Comm. on Standards of Official Conduct, *General Prohibition Against Using Official Resources for Campaign or Political Purposes*, Campaign Booklet (citing *Common Cause v. Bolger*, 574 F. Supp. 672, 683 (D.D.C. 1982), *aff’d*, 461 U.S. 911 (1983)).

<sup>40</sup> Campaign Booklet.

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

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

<sup>43</sup> House Ethics Manual, p. 124 (emphasis in original).

property after he was found doing campaign work at a time that he claimed he was conducting official business.<sup>44</sup> In 1979, a former member pleaded guilty to charges of mail fraud and income tax evasion in a case centering on claims that individuals on the congressional payroll were paid not for the performance of official duties, but instead for staffing and operating various campaign headquarters in the member's re-election campaign.<sup>45</sup>

If Rep. McKeon allowed Ms. McCurley to engage in campaign business during regular business hours, including drafting memoranda advocating background checks of the primary opponents of Rep. McKeon's wife, Rep. McKeon likely violated 31 U.S.C. § 1301(a), House ethics rules, and the regulations of the Committee on House Administration.

### **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>46</sup> This ethics standard is considered to be "the most comprehensive provision" of the code.<sup>47</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with "flagrant" violations of the law that reflect on "Congress as a whole," and that might otherwise go unpunished.<sup>48</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>49</sup> making false statements to the committee,<sup>50</sup> criminal convictions for bribery,<sup>51</sup> or accepting illegal gratuities,<sup>52</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>53</sup>

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<sup>44</sup> Campaign Booklet (citing *United States v. Bresnahan*, Criminal No. 93-0409 (D.D.C. 1993)).

<sup>45</sup> Campaign Booklet (citing *United States v. Clark*, Criminal No. 78-207 (W.D. Pa. 1978)).

<sup>46</sup> Rule 23, cl. 1.

<sup>47</sup> House Ethics Manual, p. 12.

<sup>48</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>49</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>50</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>51</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>52</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>53</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).

By accepting improper loans from Countrywide and using appropriated funds for campaign purposes, Rep. McKeon may have engaged in conduct that does not reflect creditably on the House.

## REPRESENTATIVE RON PAUL

Representative Ron Paul (R-TX) is a twelve-term member of Congress, representing Texas' 14th congressional district. His ethics issues stem from improperly seeking double reimbursements for travel expenses.

### Double Billing for Travel Expenses

In February 2012, an investigation by the Capitol Hill newspaper *Roll Call* found Rep. Paul had repeatedly paid for travel costs using his official member representational allowance while also receiving reimbursements for the same expenses from political and nonprofit organizations supporting his activities.<sup>1</sup>

For instance, on September 21, 2000, Rep. Paul used his American Express card to buy an American Airlines ticket for \$230.50.<sup>2</sup> House disbursement records show taxpayers paid for the ticket on October 13, 2000.<sup>3</sup> On October 26, 2000, however, Rep. Paul's campaign committee reported a \$230.50 disbursement to American Airlines, apparently to pay for the same ticket.<sup>4</sup>

Rep. Paul bought two airline tickets in January 2005, again using his American Express card.<sup>5</sup> He purchased one from United Airlines at a cost of \$1,076.78, and a second from Continental Airlines for \$403.70.<sup>6</sup> House disbursement records show he was reimbursed for both tickets on February 11, 2005.<sup>7</sup> Nonetheless, on February 21, 2005, the Liberty Committee, a nonprofit group supporting libertarian causes that had close ties to Rep. Paul, issued a \$1,480.48 check to American Express – an amount equal to the sum of the cost of the two tickets.<sup>8</sup>

*Roll Call* found many other instances between 1999 and 2009 where flight dates and costs listed in House disbursement records appear to match other reimbursements issued to Rep. Paul, though the public records did not always contain enough information to be certain.<sup>9</sup> In 2009, the House began reporting disbursements with far less detail, making it impossible to find precise information about travel expenses and compare them to other records.<sup>10</sup>

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<sup>1</sup> Jonathan Strong, Records Show Ron Paul Trips Paid Twice, *Roll Call*, February 6, 2012.

<sup>2</sup> American Express bill for Ronald E. Paul, closing date October 11, 2000, available at <http://www.rollcall.com/media/newspics/RonPaulAmericanExpress.pdf>, p. 30.

<sup>3</sup> Committee on House Administration, 107th Congress, *Statement of Disbursements of the House from October 1, 2000 to December 31, 2000*, House Document No. 107-40, Vol. 2, p. 1587, February 5, 2011.

<sup>4</sup> Committee to Re-elect Ron Paul, FEC Form 3. 30-Day Post-Election Report, February 13, 2001.

<sup>5</sup> American Express bill for Ronald E. Paul, closing date February 11, 2005, available at <http://www.rollcall.com/media/newspics/RonPaulAmericanExpress.pdf>, p. 2.

<sup>6</sup> *Id.*

<sup>7</sup> Committee on House Administration, 109th Congress, *Statement of Disbursements of the House from January 1, 2005 to March 31, 2005*, Document No. 109-19, Vol. 1, p. 2175, April 13, 2005.

<sup>8</sup> Liberty Committee Check to American Express in the amount of \$1,480.48, dated February 21, 2005, available at <http://www.rollcall.com/media/newspics/RonPaulChecks.pdf>.

<sup>9</sup> Strong, *Roll Call*, Feb. 6, 2012.

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



The Liberty Committee's checkbook for much of the period in question was under the control of Nora LeBlanc, the mother-in-law of one of Rep. Paul's daughters.<sup>11</sup> Rep. Paul's daughter, Lori Pyeatt, has long been the treasurer for Rep. Paul's campaign committees, as well as for the Liberty Political Action Committee and the Foundation for Rational Economics and Education (FREE), other groups that reimbursed Rep. Paul.<sup>12</sup>

David James, the head of the Liberty Committee, told *Roll Call* that in March 2005, he discovered what he believed to be a case of accidental double billing while looking for documentation for a flight.<sup>13</sup> Mr. James brought the matter to the attention of Rep. Paul's office.<sup>14</sup> Rep. Paul reimbursed the Liberty Committee \$403.70 for the flight, but the incident caused a rift.<sup>15</sup> Rep. Paul stopped submitting expenses to the Liberty Committee and eventually tried to take control of the group away from Mr. James, but failed.<sup>16</sup> Ms. LeBlanc turned the group's financial records and checkbook over to Mr. James in 2006.<sup>17</sup>

In February 2012, in the wake of the *Roll Call* stories, Mr. James sent a letter to Rep. Paul's private business office requesting a \$10,000 refund for nearly 20 flights he said had been paid for using Rep. Paul's official member funds yet also expensed to the Liberty Committee.<sup>18</sup> In April 2012, after conducting an audit, the Liberty Committee increased the amount it said it was owed to \$20,000.<sup>19</sup> Rep. Paul had expensed 63 flights to the group, and the Liberty Committee said two-thirds of those were also billed to his official House allowance.<sup>20</sup> In total, *Roll Call's* reporting and the Liberty Committee's audit found evidence of 52 double-billed flights.<sup>21</sup>

Rep. Paul's spokesman, Jesse Benton, initially said inadvertent errors could have caused "a handful of instances" of double billing, but "absolutely zero taxpayer funds were ever misused."<sup>22</sup> He later accused Mr. James of "pursuing a personal grudge" against the

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<sup>11</sup> Jonathan Strong, Associate Confronted Rep. Ron Paul About Flights, *Roll Call*, February 21, 2012.

<sup>12</sup> Strong, *Roll Call*, Feb. 6, 2012; Committee to Re-Elect Ron Paul, Statement of Organization, Amended, May 1, 1997; Committee to Re-Elect Ron Paul, FEC Form 3, 2001 Mid Year Report, July 28, 2001; Committee to Re-Elect Ron Paul, FEC Form 3, 2005 April Quarterly Report, April 14, 2005; Committee to Re-Elect Ron Paul, Statement of Organization, Amended, February 19, 2008; Committee to Re-Elect Ron Paul, FEC Form 3, 2012 July Quarterly Report, July 5, 2012; Liberty Political Action Committee, Statement of Organization, Amended, July 21, 1997; Liberty Political Action Committee, FEC Form 3X, 2001 Mid Year Report, July 27, 2001; Liberty Political Action Committee, FEC Form 3X, 2005 Mid Year Report, July 8, 2005; Liberty Political Action Committee, Statement of Organization, Amended, March 31, 2009; Liberty Political Action Committee, FEC Form 3X, 2012 July Quarterly Report, July 3, 2012; Ron Paul 2012 Presidential Exploratory Committee, Statement of Organization, April 27, 2011; Ron Paul 2012 Presidential Campaign Committee Inc., FEC Form 3P, 2012 July Monthly Report, July 18, 2012.

<sup>13</sup> Strong, *Roll Call*, Feb. 21, 2012.

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

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

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

<sup>17</sup> Strong, *Roll Call*, Feb. 21, 2012.

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

<sup>19</sup> Jonathan Strong, Nonprofit Prods Ron Paul for Repayment of Flights, *Roll Call*, May 15, 2012.

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

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

<sup>22</sup> Strong, *Roll Call*, Feb. 6, 2012.

congressman, though he said Rep. Paul would look into the matter.<sup>23</sup> In addition, Mr. Benton said Mr. James had failed to provide documentation of the group's claims, though both Mr. James and *Roll Call* forwarded a chart summarizing audit results and other documentation, including check numbers, to Rep. Paul.<sup>24</sup>

### Potential Violations

#### **Conversion of Federal Property**

Whoever embezzles, steals, purloins or knowingly converts to his use any "record, voucher, money, or thing of value of the United States or of any department or agency thereof" commits the crime of conversion.<sup>25</sup> By billing travel to his member representational allowance after the same travel already was reimbursed by the Liberty Committee, Rep. Paul may have committed the crime of conversion.

#### **False Statements**

Federal law prohibits members of Congress from making "any materially false, fictitious, or fraudulent statement or representation"<sup>26</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>27</sup> Committee on House Administration regulations require members to certify and document all expenses before funds may be dispersed from the member representational allowance.<sup>28</sup> Further, the Supreme Court has ruled that the False Statements Act applies to false statements, writings, or other representations made to a disbursing officer of the U.S. House of Representatives.<sup>29</sup> If Rep. Paul certified vouchers for expenses for which he was otherwise reimbursed, he may have made a false statement.

#### **False Claims**

Federal law prohibits anyone from knowingly presenting a false, fictitious or fraudulent claim to any person or officer in the civil, military, or naval service of the United States, or any department or agency thereof.<sup>30</sup> According to the House Ethics Manual, fraudulently submitting vouchers to be disbursed from the members' representational allowance may violate this statute.<sup>31</sup> If Rep. Paul knowingly presented a false claim to a disbursing officer for an expense for which he was otherwise reimbursed, he may have made a false claim against the United States.

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<sup>23</sup> Strong, *Roll Call*, May 15, 2012.

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

<sup>25</sup> 18 U.S.C. § 641.

<sup>26</sup> 18 U.S.C. § 1001(a)(2).

<sup>27</sup> 18 U.S.C. § 1001(c)(2).

<sup>28</sup> House Comm. on Standards of Official Conduct, House Ethics Manual, p. 332 (110th Cong., 2d Sess., 2008 ed.) (citing Committee on House Administration, Members' Handbook, Seeking Reimbursement: Vouchers).

<sup>29</sup> *Id.* (citing *United States v. Bramblett*, 348 U.S. 503 (1955)).

<sup>30</sup> 18 U.S.C. § 287.

<sup>31</sup> House Ethics Manual, pp. 331-32.

## 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>32</sup> This ethics standard is considered to be “the most comprehensive provision” of the code.<sup>33</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.<sup>34</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>35</sup> making false statements to the committee,<sup>36</sup> criminal convictions for bribery,<sup>37</sup> or accepting illegal gratuities,<sup>38</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>39</sup>

If Rep. Paul was reimbursed with taxpayer funds for expenses for which he already had been reimbursed by others, he engaged in conduct that does not reflect creditably on the House.

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<sup>32</sup> Rule 23, cl. 1.

<sup>33</sup> House Ethics Manual, p. 12.

<sup>34</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>35</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>36</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>37</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>38</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>39</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 two-term member of Congress, representing Illinois' 18th congressional district. His ethics issues stem from illegally soliciting excessive contributions and using campaign funds for personal expenses.

### **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>1</sup> The Campaign for Primary Accountability (CPA), a super PAC dedicated to removing incumbents from office, targeted Rep. Manzullo during the primary.<sup>2</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>3</sup>

Rep. Schock endorsed Rep. Kinzinger.<sup>4</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>5</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>6</sup> Rep. Cantor replied "Absolutely."<sup>7</sup> On March 16, 2012, Rep. Cantor's leadership PAC, Every Republican Is Crucial, contributed \$25,000 to the CPA.<sup>8</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>9</sup> On March 20, 2012, Rep. Kinzinger defeated Rep. Manzullo in the primary by 12 points.<sup>10</sup>

### **Personal Use of Campaign Funds**

During the 2008 and 2010 election cycles, Rep. Schock's campaign committee reimbursed him unusually high amounts for expenses. He received a total of \$154,466 over the two cycles, much of which paid for meals at high-end restaurants and lodging at five-star hotels.<sup>11</sup>

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<sup>1</sup> David Catanese, [Tea Party Backs Veteran Illinois Politician in House Race](#), *Politico*, March 20, 2012.

<sup>2</sup> Kim Geiger, III, [Primary: Freshman Congressman Knocks Off Veteran in GOP Battle](#), *Los Angeles Times*, March 21, 2012.

<sup>3</sup> Campaign for Primary Accountability Inc., [FEC Form 3X, 2012 April Monthly Report](#), April 20, 2012.

<sup>4</sup> David Catanese, [Schock for Kinzinger](#), *Politico*, February 27, 2012.

<sup>5</sup> John Stanton, [Eric Cantor Gave \\$25K to Anti-Incumbent PAC to Aid Adam Kinzinger](#), *Roll Call*, April 6, 2012.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Campaign for Primary Accountability Inc., [FEC Form 3X, 2012 April Monthly Report](#), April 20, 2012.

<sup>9</sup> John Stanton, [Aaron Schock's Office Insists Super PAC Solicitation Was Legal](#), *Roll Call*, April 11, 2012.

<sup>10</sup> Chris Cillizza, [Rep. Kinzinger Beats Rep. Manzullo in Illinois](#), *Washington Post*, March 21, 2012.

<sup>11</sup> Schock for Congress, [FEC Form 3, 2007-2008 Reports](#); Schock for Congress, [FEC Form 3, 2009-2010 Reports](#).

In 2010, Rep. Schock's campaign reimbursed him \$1,136 for a stay at the Hotel Grande Bretagne, a five-star luxury hotel in Athens, Greece.<sup>12</sup> Members of Congress are permitted to use campaign funds for fundraisers or official travel,<sup>13</sup> but congressional travel records do not reflect any official trips to Greece taken by Rep. Schock, and his campaign records reflect no contributions from donors with Greek addresses.<sup>14</sup> In March 2012, CREW released its *Family Affair* report, which questioned the expense.<sup>15</sup> In response, Rep. Schock's chief of staff acknowledged the hotel bill was in fact a personal expense and described the reimbursement as a "mistake."<sup>16</sup> "That receipt should not have been mixed in with his campaign receipts for that month," Mr. Shearer said.<sup>17</sup> Rep. Schock repaid the campaign for the hotel expense on March 22, 2012.<sup>18</sup>

In addition, Rep. Schock's campaign reported paying \$319 for a series of workout DVDs known as P90X, classifying the purchase as "health care."<sup>19</sup> The campaign committee subsequently amended its FEC reports to delete the P90X payment, replacing it with a previously undisclosed \$312 payment to the W Hotel in Chicago.<sup>20</sup> Oddly, the total credit card bill of \$6,732 did not change, despite the amended entries.<sup>21</sup> Campaign officials insisted the P90X expense had also been reported in error.<sup>22</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>23</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>24</sup>

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<sup>12</sup> Schock for Congress, FEC Form 3, 2010 Pre-Primary Report, January 21, 2010; <http://www.fivestearalliance.com/luxury-hotels/athens/hotel-grande-bretagne>.

<sup>13</sup> 11 CFR § 113.2(a)(1).

<sup>14</sup> Schock for Congress, FEC Form 3, 2007-2008 Reports; Schock for Congress, FEC Form 3, 2009-2010 Reports.

<sup>15</sup> For more information, see Family Affair, available at <http://www.citizensforethics.org/familyaffair>.

<sup>16</sup> Schock Campaign Spending Questioned in Report, *Associated Press*, March 24, 2012.

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

<sup>18</sup> Schock for Congress, FEC Form 3, 2012 April Quarterly Report, April 13, 2012.

<sup>19</sup> Schock for Congress, FEC Form 3, 2010 July Quarterly Report, July 15, 2010.

<sup>20</sup> Schock for Congress, FEC Form 3, 2010 July Quarterly Report, Amended, July 30, 2010; Schock for Congress, FEC Form 3, 2010 July Quarterly Report, Amended, January 18, 2011.

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

<sup>22</sup> *Associated Press*, Mar. 24, 2010.

<sup>23</sup> 2 U.S.C. § 441i(e)(1)(A); 11 CFR § 300.61.

<sup>24</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).

By soliciting a contribution of \$25,000 from House Majority Leader Cantor, Rep. Schock likely violated 2 U.S.C. §§ 441i(e)(1)(A) and 441a(a)(1)(C).

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

Federal law prohibits federal candidates from using campaign funds for personal use. The FECA states that “a contribution or donation . . . shall not be converted by any person to personal use.”<sup>25</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 noncampaign-related trip.”<sup>26</sup>

By using campaign funds for a personal stay at the Hotel Grande Bretagne and series of workout DVDs, Rep. Schock likely converted his campaign funds for personal use in violation of 2 U.S.C. § 439a(b)(1).

### **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>27</sup> Further, Rule 23, clause 6(a) requires each member to “keep his campaign funds separate from his personal funds.”<sup>28</sup> The rule also provides that all campaign funds must be used for “bona fide campaign or political purposes.”<sup>29</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>30</sup> This requirement is **separate from, and in addition to, whatever recordkeeping requirements are imposed by the Federal Election Commission . . .**<sup>31</sup>

By using campaign funds for a personal stay at the Hotel Grande Bretagne and series of workout DVDs, Rep. Schock likely violated House Rule 23.

### **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>32</sup> This ethics standard is considered to be “the most comprehensive provision” of the code.<sup>33</sup> When this section was first adopted, the Select

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<sup>25</sup> 2 U.S.C. § 439a(b)(1).

<sup>26</sup> 2 U.S.C. § 439a(b)(2)(E).

<sup>27</sup> Rule 23, cl. 6(b); House Comm. on Standards of Official Conduct, House Ethics Manual, p. 163 (110th Cong., 2d Sess., 2008 ed.).

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

<sup>29</sup> Rule 23, cl. 6(c); House Ethics Manual, pp. 152, 163.

<sup>30</sup> *Id.*, p. 163.

<sup>31</sup> *Id.*, p. 165 (emphasis in original).

<sup>32</sup> Rule 23, cl. 1.

<sup>33</sup> House Ethics Manual, p. 12.

Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.<sup>34</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>35</sup> making false statements to the committee, criminal convictions for bribery,<sup>36</sup> or accepting illegal gratuities,<sup>37</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>38</sup>

By illegally converting campaign funds to his personal use and 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>34</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>35</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>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 EDOLPHUS TOWNS

Representative Edolphus Towns (D-NY) is a fifteen-term member of Congress, representing New York's 10th congressional district. His ethics issues stem from using campaign funds to pay for his wife's car lease and accepting favorable mortgage rates from Countrywide Financial.

### Campaign Funds for Personal Use

On May 1, 2012, as part of an investigation into congressional car leases, *Inside Edition* reported observing Rep. Towns' wife, Gwendolyn Towns, driving an Infiniti car bearing congressional tags.<sup>1</sup> *Inside Edition* reported observing Ms. Towns "day after day – driving to the carwash, the dry cleaners and back and forth to work at a local hospital."<sup>2</sup> A subsequent *New York Daily News* article said Ms. Towns was observed attending "no obvious campaign events" with the car.<sup>3</sup> Nevertheless, Rep. Towns' campaign committee, the Committee to Re-Elect Ed Towns, pays \$602 a month for the Infiniti lease and has spent a total of \$38,004 on it since June 2007.<sup>4</sup>

According to *Inside Edition*, when asked whether his wife's use of the car was appropriate, Rep. Towns said, "I have no idea what you are talking about."<sup>5</sup> A Rep. Towns campaign spokesman "could not say" whether Ms. Towns had reimbursed the campaign for her use of the vehicle, though Federal Election Commission (FEC) records for Rep. Towns' campaign committee show no such reimbursements.<sup>6</sup> It is unclear how long Ms. Towns has been using the car.

### Countrywide Loans

In June 2008, news stories reported Countrywide Financial had a VIP program offering favorable terms on loans to prominent borrowers, including then-Sen. Christopher Dodd (D-CT), Sen. Kent Conrad (D-ND), and other government officials.<sup>7</sup> The news reports led the House Oversight and Government Reform Committee to begin an investigation into the Countrywide program.<sup>8</sup> In January 2009, while the investigation was still in its early stages, Rep. Towns assumed the chairmanship of the committee.<sup>9</sup> Rep. Darrell Issa (R-CA), then the committee's ranking member, urged Rep. Towns to subpoena mortgage records that would show who

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<sup>1</sup> [Inside Edition Investigates Congressional Cars](#), *Inside Edition*, May 1, 2012; Alison Gendar, [Congressman Ed Towns – and his Wife Gwen – Have a Ticket to Ride: Wife Tools Around Brooklyn in Car Paid by Hubby's Campaign](#), *New York Daily News*, May 2, 2012.

<sup>2</sup> *Inside Edition*, May 1, 2012.

<sup>3</sup> Gendar, *New York Daily News*, May 2, 2012.

<sup>4</sup> Committee to Re-Elect Ed Towns, [FEC Form 3, 2007-2012 Reports](#).

<sup>5</sup> *Inside Edition*, May 1, 2012.

<sup>6</sup> Gendar, *New York Daily News*, May 2, 2012; Committee to Re-Elect Ed Towns, [FEC Form 3, 2007-2012 Reports](#).

<sup>7</sup> Glenn R. Simpson and James R. Hagerty, [Countrywide Friends Got Good Loans](#), *Wall Street Journal*, June 7, 2008; Daniel Golden, [Countrywide's Many 'Friends'](#), *Portfolio.com*, June 12, 2008.

<sup>8</sup> House Oversight and Government Reform Committee, 112th Congress, *How Countrywide Used its VIP Loan Program To Influence Washington Policymakers*, July 5, 2012 (House Oversight Report), p. 7.

<sup>9</sup> *Id.*; [http://democrats.oversight.house.gov/index.php?option=com\\_content&task=view&id=3408&Itemid=49](http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=3408&Itemid=49).



received loans through the program, but Rep. Towns initially refused to do so, citing other ongoing investigations into Countrywide.<sup>10</sup>

Meanwhile, in August 2009 the *Wall Street Journal* reported that Rep. Towns had taken out two home loans from Countrywide that appeared to have been serviced through Countrywide's VIP unit.<sup>11</sup> Rep. Towns' spokesman said the congressman did not know his mortgages had come through the VIP program, and he did not believe he had received any special benefits.<sup>12</sup> On October 23, 2009, Rep. Towns issued a subpoena to Bank of America, which acquired Countrywide in 2008.<sup>13</sup> After the bank responded with a list of 18,000 files, Rep. Towns narrowed the list of documents to be turned over to the committee to roughly 300, eliminating borrowers listing the House of Representatives as an employer.<sup>14</sup> Eventually, after Rep. Issa assumed the chairmanship in 2011 and issued another subpoena, the bank turned over tens of thousands of documents about the VIP loans.<sup>15</sup>

In July 2012, the Oversight and Government Reform Committee issued a report that found an underwriter dismissed concerns about Rep. Towns' low credit score, saying "the credit shouldn't be a problem" and that because "this is a Congressman," the loan had to be processed on time.<sup>16</sup>

The report shows Rep. Towns received two loans from Countrywide in the summer of 2003.<sup>17</sup> In July, Rep. Towns applied for a loan on a second home in Florida.<sup>18</sup> Emails between Countrywide executives classified Rep. Towns' case as that of an "important customer."<sup>19</sup> Rep. Towns ended up receiving an \$182,972, 30-year mortgage with an adjustable rate starting at 4.5 percent.<sup>20</sup> Less than a month later, Rep. Towns refinanced his home in Brooklyn, again through Countrywide, and received a \$194,540, 30-year mortgage at an unspecified rate.<sup>21</sup> Records show that the word "Congressman" and "VIP" were written in big letters across one of the internal financial papers regarding his loan.<sup>22</sup> In addition, the report found VIP borrowers typically received documents showing their loans had been serviced by the VIP unit, though it did not specifically single out Rep. Towns as receiving such paperwork.<sup>23</sup>

The report said VIP loan recipients' rates were generally reduced by .5 percent, but did not specifically address the rates offered to Rep. Towns.<sup>24</sup> In addition, VIP borrowers typically had "junk fees" waived, usually saving around \$350-\$400.<sup>25</sup>

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<sup>10</sup> John R. Emshwiller, Key Lawmaker Received Countrywide Loans, *Wall Street Journal*, August 7, 2009.

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

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

<sup>13</sup> House Oversight Report, pp. 8, 48.

<sup>14</sup> Larry Margasak, House Members' VIP Loans Excluded From Subpoena, Associated Press, August 15, 2012.

<sup>15</sup> *Id.*; House Oversight Report, p. 12.

<sup>16</sup> *Id.*, p. 60.

<sup>17</sup> *Id.*, pp. 59-60.

<sup>18</sup> House Oversight Report, July 2012, pp. 59-60.

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

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

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

<sup>22</sup> House Oversight Report, pp. 59-60.

<sup>23</sup> *Id.*, p. 5.

<sup>24</sup> *Id.*, p. 6.

## **Status of Investigations**

On May 30, 2012, the Campaign Legal Center filed a complaint with the FEC requesting an investigation into Rep. Towns' campaign committee paying for his wife's car lease.<sup>26</sup> The status of the investigation is unknown. In addition, the House Oversight and Government Reform Committee referred information about Rep. Towns' Countrywide loans to the House Ethics Committee.<sup>27</sup> The status of the investigation is unknown.

## **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>28</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>29</sup>

Any “non-campaign related automobile expense” is explicitly defined as personal use.<sup>30</sup> If a campaign vehicle is used for personal activities beyond a *de minimis* amount, the campaign account must be reimbursed for such use within thirty days.<sup>31</sup>

As the car paid for by the campaign seems to have been used primarily by his wife for non-campaign related purposes, Rep. Towns appears to have violated 2 U.S.C. § 439a(b)(2)(C) and 11 C.F.R. § 113.1(g)(1)(ii)(D).

### **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>32</sup> Further, Rule 23, clause 6(a) requires each member to “keep his campaign funds separate from his personal funds.”<sup>33</sup> The rule also provides that all campaign

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

<sup>26</sup> Complaint filed with the Federal Election Commission by the Campaign Legal Center, May 30, 2012; Abby Phillip, Watchdog Group Wants Probe of Rep. Ed Towns' Car Use, *Politico*, May 30, 2012.

<sup>27</sup> House Oversight Report, p. 13.

<sup>28</sup> 2 U.S.C. § 439a(b)(1).

<sup>29</sup> 2 U.S.C. § 439a(b)(2); *see also* 11 C.F.R. § 113.1(g).

<sup>30</sup> 2 U.S.C. § 439a(b)(2)(C).

<sup>31</sup> 11 C.F.R. § 113.1(g)(1)(ii)(D).

<sup>32</sup> Rule 23, cl. 6(b); House Comm. on Standards of Official Conduct, House Ethics Manual, p. 163 (110th Cong., 2d Sess., 2008 ed.).

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

funds must be used for “bona fide campaign or political purposes.”<sup>34</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>35</sup> This requirement is “**separate from, and in addition to, whatever recordkeeping requirements are imposed by the Federal Election Commission . . .**”<sup>36</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 relative.<sup>37</sup> If an expense is both campaign-related and benefits someone personally, the campaign may only underwrite its pro rata share.<sup>38</sup>

By using campaign funds to pay for a car used primarily by his wife for non-campaign related purposes, Rep. Towns appears to have violated House Rule 23, clause 6.

### **Gift Rule Violations**

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.” The Rules define “gift” to mean “a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.”<sup>39</sup> The term includes gifts of services, training, transportation, lodging and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.”<sup>40</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.”

Moreover, the House Ethics Manual states:

The public has a right to expect Members, officers, and employees to exercise impartial judgment in performing their duties. The receipt of gifts or favors from certain persons or interests may interfere with this impartial judgment. The recipient of a gift will naturally feel grateful, and the giver may expect favorable treatment or consideration in return.<sup>41</sup>

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<sup>34</sup> Rule 23, cl. 6(c); House Ethics Manual, pp. 152, 163.

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

<sup>36</sup> *Id.*, p. 165 (emphasis in original).

<sup>37</sup> *Id.*, p. 166.

<sup>38</sup> House Ethics Manual, p. 166.

<sup>39</sup> Rule 25, cl. 5(a)(2)(A).

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

<sup>41</sup> House Comm. on Standards of Official Conduct, House Ethics Manual, p. 23 (110th Cong., 2d Sess., 2008 ed.).

Gifts create an appearance of impropriety that may undermine the public's faith in government.<sup>42</sup>

The receipt of unusually favorable loans creates exactly the sort of appearance of impropriety that the gift rule was designed to address. If Rep. Towns accepted loans from Countrywide with a reduced interest rate and with “junk fees” waived – terms not generally available to the public – he may have received improper gifts 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>43</sup> This ethics standard is considered to be “the most comprehensive provision” of the code.<sup>44</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.<sup>45</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>46</sup> making false statements to the committee,<sup>47</sup> criminal convictions for bribery,<sup>48</sup> or accepting illegal gratuities,<sup>49</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>50</sup>

By converting campaign funds to personal use and by accepting improper loans from Countrywide, Rep. Towns may have engaged in conduct that does not reflect creditably on the House.

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<sup>42</sup> *Id.*, p. 24.

<sup>43</sup> Rule 23, cl. 1.

<sup>44</sup> House Ethics Manual, p. 12.

<sup>45</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>46</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>47</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>48</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>49</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>50</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).