ADOPTED BY THE COMMITTEE ON ETHICS ON JULY 27, 2017

115TH CONGRESS, 1ST SESSION
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ETHICS

IN THE MATTER OF ALLEGATIONS RELATING TO REPRESENTATIVE ROGER WILLIAMS

AUGUST 1, 2017

Ms. BROOKS from the Committee on Ethics submitted the following

REPORT

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ONE HUNDRED FIFTEENTH CONGRESS

U.S. House of Representatives

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August 1, 2017

The Honorable Karen L. Haas
Clerk, House of Representatives
Washington, DC 20515

Dear Ms. Haas:

Pursuant to clauses 3(a)(2) and 3(b) of Rule XI of the Rules of the House of Representatives, we herewith transmit the attached report, "In the Matter of Allegations Relating to Representative Roger Williams."

Sincerely,

Susan W. Brooks
Chairwoman

Theodore E. Deutch
Ranking Member

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REPORT

In accordance with House Rule XI, clauses 3(a)(2) and 3(b), the Committee on Ethics (Committee) hereby submits the following Report to the House of Representatives:

I. INTRODUCTION

On May 13, 2016, the Office of Congressional Ethics (OCE) transmitted to the Committee a Report and Findings (OCE's Referral) regarding Representative Williams. OCE reviewed allegations that Representative Williams may have improperly taken official action on a matter in which he had a personal financial interest when he offered an amendment to surface transportation legislation known as the FAST Act during the 114th Congress. Representative Williams, who owns a Texas automobile dealership, introduced his amendment (the Williams Amendment) that sought to exempt dealerships from a provision in the FAST Act that prohibited the renting or loaning of vehicles subject to safety recalls.

OCE found that there was substantial reason to believe that Representative Williams' personal financial interest in his auto dealership may have – or could be perceived to have – influenced his performance of official duties, in violation of federal law and House rules.[1] For that reason, OCE recommended that the Committee further review these allegations.

The Committee did further review the allegations. Following its review, the Committee concluded that the evidence is insufficient to warrant further action against Representative Williams. While the Committee concluded that the Williams Amendment could have affected Representative Williams' personal financial interests, the totality of the circumstances surrounding Representative Williams' actions did not create a reasonable inference of improper

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[1] *See* Report and Findings of the Office of Congressional Ethics (Review No. 15-1202) (Appendix 1).

conduct in this matter. However, the Committee would like to emphasize its longstanding guidance that a Member who is considering introducing legislation or taking other official actions, beyond voting, that could affect the Member's personal financial interests should contact the Committee before doing so. In this case, while the Committee would have advised Representative Williams that he was not prohibited from introducing the Williams Amendment, it might have made Representative Williams aware of several potential issues, including the possibility that members of the public, the press, and others could raise questions about Representative Williams' actions. In fact, that is precisely what happened.[2] Consulting the Committee might have had an additional benefit of interest to all Members, and to the House as a whole: the avoidance of multiple, ultimately unnecessary, ethics investigations.

The Committee's general recommendation to consult it aside, the Committee found no violation of any law, rule, regulation, or other standard of conduct in this case. Accordingly, the Committee unanimously voted to dismiss this matter, publish this Report, and take no further action. Upon publication of this Report, the Committee considers the matter closed.

II. PROCEDURAL BACKGROUND

OCE undertook a preliminary review of this matter on January 5, 2016. On February 4, 2016, OCE initiated a second-phase review. On April 22, 2016, the OCE Board unanimously voted to adopt the Findings and refer the matter to the Committee with a recommendation for further review. The Committee received OCE's referral on May 13, 2016.

The Committee reviewed materials provided by OCE. In addition, the Committee issued voluntary requests for information to Representative Williams and the Roger Williams Auto Mall. Both voluntarily provided documents and other information to the Committee. In total, the Committee reviewed over 1,000 pages of materials. The Committee also interviewed six witnesses, including Representative Williams, who fully cooperated with the Committee's investigation.

On July 27, 2017, the Committee unanimously voted to release this Report and take no further action with respect to Representative Williams.

III. HOUSE RULES, LAWS, REGULATIONS, AND OTHER STANDARDS OF CONDUCT

General ethics principles prohibit a Member from using his or her congressional position for personal gain.[3] House Rule III, clause 1, which specifically governs a Member's

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[2] *See* Exhibit 1 (November 18, 2015 report published by the Center for Public Integrity and Texas Tribune) (Appendix 3); Letter from Campaign Legal Center to OCE, November 23, 2015, *available at* http://www.campaignlegalcenter.org/document/us-house-letter-clc-urging-house-ethics-committee-and-office-congressional-ethics-review (last accessed July 27, 2017).

[3] *See generally House Ethics Manual* (2008) (hereinafter *Ethics Manual*) at 186-88.

performance of legislative duties, states that Members may not vote on matters in which they have "a direct personal or pecuniary interest."[4]

Two other rules govern a Member's official activity more generally. First, House Rule XXIII, clause 3, states that "a Member . . . may not receive compensation and may not permit compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress." As prior Committee guidance on this rule explains, "[i]f a Member seeks to act on a matter where he might benefit as a Member of a large class, such action does not require recusal. . . . By contrast, where a Member's action would serve his own narrow financial interests, the Member should refrain from acting."[5]

Second, Section 5 of the Code of Ethics for Government Service (Code of Ethics) states that "[a]ny person in Government services should . . . 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 governmental duties." Section 5 of the Code of Ethics also prohibits a government official from "discriminat[ing] unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not[.]" As the Committee has advised, a *quid pro quo* is not necessary to establish a violation of Section 5: "the Committee has consistently prohibited acting on matters in which a Member has a financial interest precisely because the public would construe such action as self-dealing, whether the Member engaged in the action for that reason or not."[6] Thus, "[t]he only question is whether 'reasonable persons' 'might construe' [a Member's interest] as influencing the performance of his government duties" or whether "the public might, and reasonably could, view [the official action] as motivated by his substantial [financial interest]."[7]

In providing additional guidance regarding these standards, the *Ethics Manual* notes that Member actions such as sponsoring legislation "entail a degree of advocacy above and beyond that involved in voting."[8] Thus, a "Member's decision on whether to take any such action on a matter that may affect his or her personal financial interest requires added circumspection."[9] Members considering taking official action other than voting on a matter affecting their financial interests are advised to "first contact the [Ethics] Committee for guidance."[10]

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[4] *Id.* at 234.
[5] House Comm. on Ethics, *In the Matter of Allegations Relating to Representative Phil Gingrey*, 113th Cong., 2nd Sess. 11-12 (2014) (hereinafter *Gingrey*).
[6] *Id.* at 18 (citing House Comm. on Ethics, *In the Matter of Allegations Relating to Representative Shelley Berkley*, 112th Cong., 2nd Sess. 55 (2012) (hereinafter *Berkley*)).
[7] *Id.* at 20-21.
[8] *Ethics Manual* at 237.
[9] *Id.*
[10] *Id.*

Finally, House Rule XXIII, clauses 1 and 2, provide that a Member "shall behave at all times in a manner that shall reflect creditably on the House," and "shall adhere to the spirit and the letter of the Rules of the House."

IV. BACKGROUND

Representative Roger Williams is the Representative for Texas' 25th District. He has held that position since 2013. In the 114th Congress, he served on both the Financial Services and Transportation and Infrastructure Committees.

A. Representative Williams' Auto Dealership

Representative Williams is the lone shareholder of the JRW Corporation, a private firm which, through its holdings in various limited liability companies and partnerships, wholly owns the Roger Williams Chrysler Dodge Jeep dealership (also known as the Roger Williams Auto Mall, or "Auto Mall"), located in Weatherford, Texas. Before his election to Congress, Representative Williams served as CEO of the dealership, which his father originally founded in 1939. After Representative Williams was elected to Congress, he ceded operational control of the Auto Mall to family members, including his daughters, who earn commissions from the dealership, and his wife, who draws a salary for her work. Representative Williams occasionally leads sales meetings at the Auto Mall on weekends.[11]

Though Representative Williams is no longer involved in the Auto Mall's daily operations, he has retained all of his personal holdings in the business. According to information Representative Williams provided to the Committee, the Auto Mall generated approximately $63,000,000 in gross revenue in 2015. Representative Williams' November 2015 financial disclosure reported that the JRW Corporation – the Auto Mall's lone shareholder – was valued at between $25,000,001 and $50 million. Representative Williams' 2015 financial disclosure form indicates that, while he has other investments in the form of real estate holdings, individual stocks, and brokerage accounts, the JRW Corporation's assets account for at least half of his overall investment portfolio.

In addition to its sales, the Auto Mall services automobiles and provides customers with two options for replacing their vehicle while in service. First, the Auto Mall facilitates car rentals with third-party rental companies, which rent cars to Auto Mall customers at a reduced rate. Such rentals are provided at either the customer's own expense, or are fully covered by the auto manufacturer or an extended warranty company. Where customer rental fees are covered by the manufacturer or extended warranty company, the Auto Mall pays the rental bill on the customer's behalf, adds the cost to the customer's overall service bill, and later receives a reimbursement from the manufacturer or extended warranty company.

[11] 18(a) Interview of Representative Roger Williams.

Second, the Auto Mall uses eight vehicles as loaner vehicles offered to its customers.[12] In 2015, when Representative Williams offered the Williams Amendment, the Auto Mall's loaner fleet consisted of six Model Year 2015 Chrysler 200s and two Model Year 2014 Chrysler 300s.[13] Representative Williams told Committee staff that he believes that the loaner program encourages customers to have their vehicles serviced at the Auto Mall, though no analysis or accounting has been performed to quantify any benefits that inure to the dealership from the program.[14] Neither the Auto Mall nor any third party charges – or has ever charged – customers to use these vehicles. Though the Auto Mall occasionally receives *de minimis* reimbursements from the manufacturer for costs associated with maintenance of its loaner vehicles, the Auto Mall otherwise pays all vehicle costs, including interest expenses related to financing. According to the Auto Mall, the dealership generates no direct profit from its loaner program. In fact, the program operated at a net loss of $40,000 in 2015.[15]

B. Representative Williams' Involvement with the FAST Act and the Williams Amendment

In January 2015, Representative Williams co-sponsored – and the House passed – H.R. 22, a bill dealing with veterans issues.[16] As the bill was being considered in the Senate, various provisions relating to the reauthorization of federal surface transportation programs, including some tax measures, were incorporated. Those provisions were added to the existing House bill, rather than introduced as independent legislation, in order to comply with the constitutional requirement that revenue measures originate in the House.[17] The modified bill, which became known as the FAST Act, passed the Senate in July 2015 and then proceeded to the House for deliberation.

The Senate bill included a provision that prohibited any "rental company" from renting its customers any vehicle that was the subject of any open safety recall, and required that vehicle to be removed from service.[18] The legislation defined "rental company" as any entity that "(A) is engaged in the business of renting covered rental vehicles; and (B) uses for rental purposes a motor vehicle fleet of 5 or more covered rental vehicles."[19] A rental company that failed to ground a recalled vehicle would face a penalty of up to $21,000 for each individual motor vehicle safety violation, up to a maximum penalty of $105 million for a series of violations.

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[12] July 22, 2016 Joint Response from Representative Roger Williams and Williams Chrysler, Ltd. d/b/a Roger Williams Auto Mall (hereinafter "July 22, 2016 Joint Response") at 4 (Appendix 2).
[13] *Id.* at Appendix F to July 22, 2016 Joint Response.
[14] 18(a) Interview of Representative Roger Williams.
[15] July 22, 2016 Joint Response at 4 (Appendix 2). This figure would not include any "loss leader" benefits to the dealership, such as attracting or retaining customers for repair and maintenance services.
[16] https://www.congress.gov/bill/114th-congress/house-bill/22/cosponsors?q=%7B%22search%22%3A%5B%22HR+22%22%5D%7D&r=2&overview=closed#tabs (last accessed July 27, 2017).
[17] U.S. CONST., Art. I, Section 7, cl. 1.
[18] Exhibit 2 at 2 (Appendix 3).
[19] *Id.*

The National Automobile Dealers Association (NADA), an advocacy group for franchised automobile and truck dealerships, opposed the FAST Act. Even though the legislation lacked any explicit reference to auto dealers or their loaner fleets, NADA feared that the bill's definition of a "rental company" might be read to include dealerships with loaner car programs, which would in turn subject dealers to the "provision that says that rental cars that are on a recall list must be grounded (not driven or rented)."[20] This concern was magnified by the lack of any limit on the scope or nature of a recall required to trigger compliance with the Act; thus, according to the NADA, dealers might be required to ground vehicles for minor defects that posed no immediate safety concern, such as a missing airbag warning sticker or an incorrect phone number in the car owner's manual.[21] Moreover, NADA feared that dealers might face additional liability beyond the direct penalties imposed by the FAST Act, as any violations of that (federal) law could give rise to independent causes of action under state unfair deceptive practices statutes.[22]

NADA's Vice President for Legislative Affairs (NADA Official) explained to Committee staff his personal basis for believing that the FAST Act might apply to dealership loaner fleets, despite the lack of explicit language to that effect in the bill. He stated that dealerships typically require customers who borrow loaner vehicles to sign a "rental agreement," even where no money is paid for the vehicle's use.[23] Based on the title of that standard form, the NADA Official believed that, in litigation, a court could conclude that a loaner vehicle was "part of a rental fleet," and thus *any* vehicle subject to *any* recall could be grounded.[24] However, the NADA Official told Committee staff that it was nonetheless "unclear to [him] if loaner vehicles are actually within the scope of the legislation," given that "loaner vehicles" were, by definition, loaned out and not rented.[25]

After a failed attempt to introduce an amendment to the bill in the Senate, NADA began seeking sponsors for a House amendment to expressly limit the FAST Act's application to automobile dealers. Representative Williams immediately emerged as a likely candidate. NADA had previously worked with Representative Williams on various financial services bills relating to dealer-assisted financing, and the NADA Official told Committee staff that he would "periodically" contact Representative Williams' office on legislation before the Financial Services Committee.[26] However, such contact was sporadic; the NADA Official stated that he "could go 6 months without talking to his office."[27] To the NADA Official, Representative Williams was a logical spokesperson to support a FAST Act amendment: as a car dealer who "knows the business of automotive retailing," he would be able to immediately discern the bill's

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[20] Exhibit 3 at 1 (Appendix 3).
[21] Exhibit 4 (Appendix 3); 18(a) Interview of NADA Official.
[22] 18(a) Interview of NADA Official.
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*

negative impact on dealers.[28] The NADA Official also described Representative Williams as a "very hard worker" who would be able to manage the potential time constraints that would follow from amendment sponsorship.[29]

On October 29, 2015, the NADA Official emailed Representative Williams' Legislative Director, explaining that auto dealers "potentially have a major problem" with the FAST Act and asking whether the Congressman would consider sponsoring a legislative fix.[30] Representative Williams' Legislative Director promptly emailed his Deputy Chief of Staff and asked him to contact the NADA Official to discuss a potential amendment. The NADA Official briefed Representative Williams' Deputy Chief of Staff soon thereafter, explaining how dealerships could be affected by the FAST Act and how the amendment would exclude dealers and loaner fleets from the regulation.[31]

Before these communications between the NADA Official and Representative Williams' staff, Representative Williams had not contemplated introducing any amendments to the FAST Act.[32] Nor was Representative Williams or anyone on his staff aware that the FAST Act might be construed to apply to loaner vehicles offered by automobile dealerships to their customers.[33]

Later in the afternoon of October 29, the Deputy Chief of Staff met with Representative Williams to discuss both the amendment and his earlier conversation with the NADA Official. The Deputy Chief of Staff told Representative Williams that NADA wanted his help on the amendment because he was "familiar with automobile dealerships."[34] Representative Williams agreed to sponsor the amendment, telling his Deputy Chief of Staff that it "[s]ounds like a no-brainer."[35] The Deputy Chief of Staff stated that, in the FAST Act, Representative Williams saw a potential "customer service issue" in dealers being forced to ground vehicles over recall issues that did not pose immediate safety threats, and thus thought an amendment was important so that "dealers weren't hurt [and] that small businesses weren't hurt by this regulation."[36]

At around the same time, the NADA Official sent the Deputy Chief of Staff proposed amendment language.[37] The one-word amendment sought to modify the FAST Act's definition of a covered "rental company," by inserting the word "primarily" before the phrase "engaged in the business of renting covered rental vehicles."[38] The amendment's stated effect was to exempt

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[28] *Id.*
[29] *Id.*
[30] Exhibit 5 (Appendix 3).
[31] 18(a) Interview of Staffer A.
[32] 18(a) Interview of Staffer B ("[I]t was [Representative Williams'] first amendment that he had offered.").
[33] *See, e.g.,* 18(a) Interview of Staffer A (NADA Official first explained to staffer that FAST Act might have applied to vehicles that car dealers loaned to customers; staffer did no independent research into legislation before that time).
[34] 18(a) Interview of Staffer A.
[35] *Id.*
[36] *Id.*
[37] Exhibit 6 at 1 (Appendix 3).
[38] *Id.*

auto dealers, whose primary business is not to rent vehicles, from the recall provision contained in the FAST Act.[39] When Committee staff asked the Deputy Chief of Staff whether he conducted any independent analysis at that time to determine whether the FAST Act applied to dealerships or to loaner vehicles, he explained that he "just read the [bill] language and the language seemed pretty clear."[40] He also stated that he did not consider whether the exchange of payment for a loaned or rented vehicle would have impacted whether the FAST Act applied.[41]

Representative Williams' Deputy Chief of Staff sent the amendment language as drafted by the NADA Official to the House Office of the Legislative Counsel, which reviewed the text to ensure that it conformed to the technical requirements needed for the amendment to be accepted by the Rules Committee and made in order.[42] Neither Representative Williams' staff nor the Office of the Legislative Counsel made any substantive changes to the amendment language.

The Deputy Chief of Staff was the "point person" on Representative Williams' staff for the amendment. The NADA Official provided him and another staffer with background materials, including draft talking points, a list of "minor" safety recalls that would potentially result in vehicles being grounded under the unamended FAST Act, and a draft floor speech for the Congressman to deliver in support of the amendment.

On November 4, 2015, the Williams Amendment proceeded to the House floor for consideration. During deliberations on the amendment, Representative Williams delivered the floor speech; neither Representative Williams nor his staff appear to have made any substantive changes to its NADA-drafted language. Representative Williams began the speech by identifying himself as a "second-generation auto dealer" who had been in the dealership industry much of his life and knew it well.[43] The speech also made clear that the Williams Amendment sought to exclude car dealerships from the FAST Act's ambit, stating: "[t]he definition in the underlying bill . . . is so broad that it sweeps up dealers who offer loaner vehicles or rentals as a convenience for their customers."[44] Representative Williams noted that the bill "could make it impractical for small-business dealers to provide loaner or rental cars to their customers because it mandates vehicles be grounded for minor compliance matters with a minimal impact on safety, and that is not what Congress' intent is or should be."[45] He also highlighted potential costs that the FAST Act, if unamended, would impose on dealerships, including new government inspections, additional record-keeping requirements, and penalties.[46]

No co-sponsors signed onto the Williams Amendment. However, Representative Mike Kelly of Pennsylvania spoke briefly in the amendment's favor. Representative Kelly, who

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[39] *Id.*
[40] 18(a) Interview of Staffer A.
[41] *Id.*
[42] 18(a) Interview of NADA Official; 18(a) Interview of Staffer A.
[43] Exhibit 7 at 1 (Appendix 3).
[44] *Id.*
[45] *Id.*
[46] *Id.*

shared his own perspective as the owner of "a third-generation automobile business" that "sold thousands of cars," stated that the FAST Act would disproportionately harm auto dealers.[47] He also suggested that the Act could pose a relative benefit to rental car companies, who might capitalize on a dealer's loaner vehicles being grounded by renting non-recalled vehicles to that dealer's customers.[48]

Representative Jan Schakowsky and former Representative Lois Capps spoke in opposition to the Williams Amendment, with the latter apparently sharing in the belief that the FAST Act would have applied to loaner vehicles offered by dealerships. Representative Capps stated that the Williams amendment would "needlessly exempt auto dealers from critical vehicle safety requirements," and she urged the House to oppose the amendment "to ensure all consumers can be confident that their rental car or their loaner car is safe to drive, regardless of whether they get it from a rental company or a dealership."[49]

The Williams Amendment passed the House by voice vote on November 4, 2015. The amendment, though it was included in the legislation sent to conference committee, was ultimately struck in conference. In its place, the enacted legislation contained different language that had a similar effect of exempting any "rental company" with fewer than 35 vehicles from the recall-related requirements.[50]

There is no evidence that, prior to Representative Williams' introduction of the Williams Amendment, Representative Williams or his staff ever discussed, with each other or anyone else, whether the FAST Act or the Williams Amendment would have any impact on the Auto Mall or Representative Williams' financial interest in it. Indeed, Representative Williams told Committee staff that it never occurred to him that his sponsorship of the Amendment might benefit him or his dealership, or otherwise create a conflict of interest.[51] According to Representative Williams, the subject of his financial interest in the Auto Mall did not arise until a reporter from the Fort Worth Star-Telegram emailed Representative Williams' Communications Director on November 18, 2015 about a story on the Williams Amendment that previously appeared in the Texas Tribune. Specifically, the reporter asked whether Representative Williams "agree[d] that the ethics manual calls on him to contact the Ethics Committee before taking an action such as introducing his transportation bill amendment affecting car dealers who loan or rent vehicles subject to recall notices."[52] The reporter also asked whether Representative Williams consulted the Committee about the Williams Amendment.

On November 24, 2015, Representative Williams' office issued a press release in response to the reporter's inquiry. The press release described the Williams Amendment as a

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[47] Exhibit 7 at 2 (Appendix 3).
[48] *Id.* ("And what will [rental companies] do with us when we take a car off the road? They will say: 'Send your customers to us and we will rent them a car.'").
[49] *Id.* at 1.
[50] Pub. L. No. 114-94, § 24109(b) (Dec. 4, 2015).
[51] 18(a) Interview of Representative Roger Williams.
[52] Exhibit 8 at 2 (Appendix 3).

"one word, technical amendment that would affect thousands of auto dealers industry-wide," which Representative Williams offered because "dealers should not be forced to ground vehicles for a misprint or a peeled sticker." The press release also acknowledged Representative Williams' industry knowledge, and posed a rhetorical question: "Should . . . Members excuse themselves from engaging in debate that affects the industries or sectors they know best? In my opinion, absolutely not."[53]

Representative Williams told the Committee that neither he nor any member of his staff contacted the Committee prior to his introduction of, or vote on, the Williams Amendment, because "[h]e had no indication that what he was doing could have possibly been perceived as unethical."[54]

V. FINDINGS

As previously noted, House Rule III, clause 1, states that Members are expected to vote on all legislation pending before the House, except where the Member has "a direct personal or pecuniary interest" that would be affected by the legislation. The Committee has historically interpreted this limitation to apply only where the legislation affects a specific company or asset in which the Member holds a financial interest.[55] While the Committee has advised Members "that it would be inappropriate for them to vote or to introduce legislation directly affecting significant and uniquely held financial interests,"[56] a Member is not restricted from voting on legislation that affects a broad class of companies or assets, where the Member merely holds an interest in one of those.[57] Both the FAST Act and the Williams Amendment would have affected the broad class of approximately 16,000 auto dealers nationwide, and not merely the automobile dealership owned by Representative Williams. Thus, Representative Williams' ownership stake in the Auto Mall did not preclude him from *voting* on either the Act or his Amendment.

Sponsorship of legislation raises different issues, and Members are held to a different standard with respect to such activity. Where sponsorship of a bill or amendment would affect a Member's own financial interests, the "class" analysis still applies. However, the Committee has advised that Members should exercise "added circumspection" and contact the Committee for guidance in such circumstances.[58]

In submissions to the Committee through his counsel, Representative Williams argues that he could not have had a personal or pecuniary interest in sponsoring the Williams Amendment, because the Auto Mall only offers loaner vehicles to its customers, and "the

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[53] Exhibit 9 at 1 (Appendix 3).
[54] July 22, 2016 Joint Response at 11 (Appendix 2).
[55] *Ethics Manual* at 235.
[56] *Id.* at 237.
[57] *Id.* at 235-37.
[58] *Id.* at 237.

language of [the Williams Amendment] applies only to 'rental vehicles'."[59] This argument, however, contradicts Representative Williams' apparent understanding of the FAST Act and his amendment when it was adopted by the House: he stated in his own remarks on the House floor that loaner vehicles would have been regulated by the FAST Act, and that the amendment sought to exclude dealership loaner fleets from that regulation.[60] Another Member's speech in opposition to the Williams Amendment,[61] as well as the NADA Official's statements to Committee staff and materials he provided to Representative Williams staff before the amendment was adopted,[62] reflect a similar contemporaneous understanding that the bill and amendment would likely have resulted in regulation of dealership loaner vehicles. The NADA Official also explained that the "rental agreement" forms commonly used by dealerships in their loaner programs might lead a court, in litigation, to conclude that loaner vehicles were "part of a rental fleet" and potentially subject to the FAST Act.[63] The Auto Mall used such forms when providing loaner services to its customers.

Moreover, at the time the Williams Amendment was introduced, at least 11 million Fiat Chrysler cars and trucks – including Chrysler, Dodge, Jeep, and Ram vehicles – were on a recall list following a 2015 NHTSA enforcement action.[64] The eight vehicles that comprised the Auto Mall's loaner fleet were all subject to that recall, and may have been required to be grounded under the FAST Act, if loaner vehicles were indeed within the Act's scope. Representative Williams told Committee staff that, while he knew generally that the Auto Mall's loaner fleet was comprised of Chrysler vehicles, he was unaware of which specific vehicles were offered to customers as part of that service.[65] Representative Williams also told Committee staff that he was unaware of the 2015 recalls when he introduced the Williams Amendment.[66]

The Committee found no evidence that Representative Williams or anyone on his staff ever contacted the Committee or asked whether House rules permitted his sponsorship of the amendment. Indeed, Representative Williams admitted that neither he nor any member of his staff contacted the Committee prior to his introduction of, or vote on, the Williams Amendment, but stated that they did not do so because "[h]e had no indication that what he was doing could have possibly been perceived as unethical."[67] Representative Williams has explained that it did not occur to him that he might have a conflict of interest, or that he had any need to contact to the Committee for guidance, because he did not consider whether his amendment would have had any impact on his business or financial interests.

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[59] July 22, 2016 Joint Response at 7 (Appendix 2).
[60] Exhibit 7 (Appendix 3).
[61] *Id.*
[62] *See, e.g.,* 18(a) Interview of NADA Official.
[63] *Id.*
[64] https://www.nhtsa.gov/press-releases/us-dot-announces-fiat-chrysler-enforcement-action (last accessed July 27, 2017).
[65] 18(a) Interview of Representative Roger Williams.
[66] *Id.*
[67] July 22, 2016 Joint Response at 11 (Appendix 2).

As the Committee's guidance recognizes, sponsorship of bills and amendments is an official action that goes a step beyond voting, one that "may implicate the rules and standards . . . that prohibit the use of one's official position for personal gain,"[68] including House Rule XXIII, clause 3, and Section 5 of the Code of Ethics. Importantly, those rules distinguish between *actual* conflicts of interest – when a Member is actually motivated by personal financial gain instead of his duty to his constituents – and *apparent* conflicts of interest, or situations in which a reasonable person might conclude that a Member has abused the public trust for personal gain.

The Committee's determination as to whether Representative Williams violated any rule, law, regulation, or other applicable standard of conduct by sponsoring the Williams Amendment turned on the answers to two questions. First, did Representative Williams have an actual conflict of interest, *i.e.*, did he introduce the Williams Amendment to financially benefit himself? Second, did Representative Williams have an apparent conflict of interest, *i.e.*, might a reasonable person have concluded that Representative Williams took an official action to enrich himself?

As for the first question, Representative Williams maintains that "[h]e did not offer the amendment in order to benefit the Dealership,"[69] and the Committee found no evidence to contradict this assertion. As Representative Williams' staff and the NADA Official explained, Representative Williams did not conceive of or draft the Williams Amendment: rather, the idea was suggested – and the amendment authored – by an individual who advocated on behalf of automobile dealers nationwide. Nor did Representative Williams or anyone on his staff discuss any personal or financial interest in the Auto Mall in connection with the decision to sponsor the Williams Amendment. Moreover, when Representative Williams introduced and spoke on his amendment on the House floor, he openly disclosed his status as a car dealer, as well as auto dealers' broad interest in excluding the FAST Act from applying to their loaner fleets. Representative Williams also reported his investment in the Auto Mall (via the JRW Corporation) on his 2015 financial disclosure form. The Committee has noted that while public disclosure of a potential conflict does not completely insulate a Member from possible violations of the conflict of interest rules, it is the "preferred method of regulating possible conflicts of interest."[70]

Though the Committee found no evidence that the Williams Amendment would have allowed the Auto Mall to generate a profit from its loaner program, the unamended FAST Act could have had a negative financial impact on the business, for example, by increasing the dealership's liability and disrupting its loaner program. That disruption was more than a theoretical possibility: at the time the Williams Amendment was introduced, at least 11 million Fiat Chrysler cars and trucks – including Chrysler, Dodge, Jeep, and Ram vehicles – were on a recall list following a 2015 NHTSA enforcement action.[71] The eight vehicles that comprised the

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[68] *Ethics Manual* at 237.
[69] July 22, 2016 Joint Response at 11 (Appendix 2).
[70] *Berkley* at 51 (citing *Ethics Manual* at 251).
[71] https://www.nhtsa.gov/press-releases/us-dot-announces-fiat-chrysler-enforcement-action (last accessed July 27, 2017).

Auto Mall's loaner fleet were all subject to that recall, and may have been required to be grounded under the pre-amendment FAST Act, if loaner vehicles were indeed within the Act's scope. Yet any resulting financial impact on the Auto Mall would appear to be minimal, and not enough to establish an actual motive to self-deal, particularly in light of other circumstances surrounding Representative Williams' sponsorship of the amendment—notably, NADA having drafted the amendment text and asking Representative Williams to introduce it on behalf of car dealers nationwide. Moreover, any benefit resulting to automobile dealers as a result of the amendment would have similarly applied to any dealerships that offer loaner vehicles to their customers. Thus, Representative Williams' own explanations, his staff's explanations, and the totality of the circumstances all indicate that he did not sponsor the Williams Amendment to benefit himself, and thus there was no actual conflict of interest.

As for the second question, the Committee has long cautioned Members to "avoid situations in which even an inference might be drawn" that a Member took an official action to benefit their own financial interests.[72] With respect to Section 5 of the Code of Ethics, "the Committee has consistently prohibited acting on matters in which a Member has a financial interest precisely because the public would construe such action as self-dealing, *whether the Member engaged in the action for that reason or not*" (emphasis added). Under this standard, "[t]he only question is whether 'reasonable persons' 'might construe' [a Member's interest] as influencing the performance of his government duties" or whether "the public might, and reasonably could, view [the official action] as motivated by his substantial [financial interest]."[73]

In determining whether a reasonable person might conclude that a Member took an official action for personal financial gain, the Committee has typically considered the totality of the circumstances in each case. As explained in further detail below, the Committee analyzed the totality of the circumstances in this case, and determined that a reasonable person would not conclude that Representative Williams introduced the Williams Amendment to enrich himself or the Auto Mall. In doing so, the Committee considered Representative Williams' particular financial interest that could have been affected by the Williams Amendment, as well as the effect that the amendment could have on that interest. On that basis, the Committee concluded that Representative Williams took an official action, beyond voting on legislation, which could have affected his personal financial interests. Thus, he should have contacted the Committee for guidance before taking the action. However, in considering the totality of the circumstances, the Committee concluded that Representative Williams' sponsorship of the Williams Amendment did not create a reasonable inference that Representative Williams used his official position for personal gain.

In reaching this conclusion, the Committee considered several factors:

(1) What is the nature of Representative Williams' financial interest in the Auto Mall? The Committee's historical guidance on this question highlights several factors relevant to

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[72] *See Ethics Manual* at 27.
[73] *Gingrey* at 20-21 (citing *Berkley* at 55).

evaluating the nature of Representative Williams' financial interest in the Auto Mall. This is not an exhaustive list of relevant factors, nor is any individual factor is dispositive.

- *What is the dollar value of Representative Williams' financial interest in the Auto Mall*? Representative Williams' November 2015 financial disclosure reported that the JRW Corporation – the Auto Mall's lone shareholder – was valued at between $25,000,001 and $50 million.

- *What is the relative value of the investment compared to the value of the Member's entire investment portfolio*? While Representative Williams has other investments in the form of real estate holdings, individual stocks, and brokerage accounts, information listed on Representative Williams' 2015 financial disclosure form indicates that the JRW Corporation's assets appear to account for at least half of his overall asset portfolio.

- *Was the investment public or private*? The investment is private. Representative Williams is the lone shareholder of the JRW Corporation, which, through its holdings in various limited liability companies and partnerships, wholly owns the Auto Mall.

- *Is the interest direct or imputed*? Members may have direct, personal financial stakes in an investment, entity or business outcome. In this case, Representative Williams, as the Auto Mall's lone shareholder, has a direct business interest in the Auto Mall.

  Representative Williams also appears to have imputed interests in the Auto Mall. Representative Williams told Committee staff that his wife earns a monthly salary from the Auto Mall of about $5,000. Income received by a spouse usually accrues, albeit indirectly, to a Member's interest. Certain House rules and statutory provisions impute to the Member certain benefits that are received by a spouse, and questions may arise as to whether a Member is improperly benefiting as a result of the spouse's activities.[74] House Rule XXIII, clause 3, prohibits a Member from receiving any compensation, or allowing any compensation to accrue to the Member's beneficial interest, from any source as a result of an improper exercise of official influence. Additionally, Section 5 of the Code of Ethics admonishes officials never to accept benefits for themselves or their families "under circumstances which might be construed by reasonable persons as influencing the performance" of official duties. Nonetheless, neither of these provisions is triggered by a spouse's activities unless the Member has improperly exerted influence or performed official acts either in order to obtain compensation for, or as a result of compensation to, the spouse.

- *Is the interest aligned with the interests of constituents*? A Member's financial interest may signify a personal investment in the district's financial well-being. However,

[74] With respect to the activities and interests of children who are not dependents, the Committee has advised that any resulting benefits do not typically impute to the Member.

entities in which a Member is invested may also have their own priorities, which can diverge from those of constituents, especially if the district is also home to competitors. The Committee has advised that the best way to address any such divergence is to serve all constituents equally. Representative Williams told Committee staff that the Auto Mall, which does not operate in his congressional district, probably does not employ any constituents. However, the Williams Amendment would have operated similarly on all of the automobile dealerships in Representative Williams' district and excluded their loaner programs from the provisions of the FAST Act. Thus, Representative Williams' interests were at least aligned with those of constituents who owned or worked at other dealerships in his district.

(2) What is the nature of the Member's official action? The following factors guided the Committee's evaluation of the nature of Representative Williams' official action.

- *Was the Member's official action consistent with treatment of others who requested legislative assistance*? The idea for the Williams Amendment originated squarely with NADA: Representative Williams' staff explained that they were approached by NADA and told that the underlying bill could pose problems for auto dealers. Representative Williams wanted to be helpful and, based on his perspective as an auto dealer, put forth what he understood to be a basic, common sense legislative fix. The NADA Official explained that he has previously worked with the Congressman on other legislative issues and that he meets with Representative Williams' office staff "periodically," though he "could go 6 months without talking to his office."[75] Though the Committee could not precisely quantify how NADA's access compared to that of other groups, Representative Williams told Committee staff that, outside of the Williams Amendment, he could not recall ever introducing a bill or amendment based on a request from a lobbying group or trade association.[76]

- *Did other Members of Congress participate*? Representative Williams was the Williams' Amendment's lone sponsor. One other Member, Representative Kelly, spoke in favor of the amendment on the floor. The House unanimously adopted the Williams Amendment by voice vote, although two Members did speak in opposition to it.

- *What public oversight was applied*? The official action was public. The Williams Amendment was introduced in the House on November 4, 2015, debated publicly, and approved by a voice vote by full House. During his floor speech on the amendment, Representative Williams disclosed that he was a car dealer, as well as his belief that, without his proposal, it would be impractical for auto dealers like himself to offer loaner

[75] 18(a) Interview of NADA Official.

[76] 18(a) Interview of Representative Roger Williams ("Q: [NADA] asked you to introduce that amendment and you agreed . . . Have you ever followed that process with any other piece of legislation where a lobbying group or a trade association has asked you to introduce a bill and you've done that, or an amendment? A: Not that I can recall.").

programs. Representative Williams' investment in the Auto Mall was also reported on his financial disclosure forms, and was thus a matter of public knowledge.

- *What is the potential effect the proposed activity would have on the official's financial interest?* It is not clear what the direct effect of the Williams Amendment would have been on the Auto Mall. However, the amendment may have had some ancillary impact on Representative Williams' business. Representative Williams told Committee staff that he believes that the loaner program encourages customers to have their vehicles serviced at the Auto Mall.[77] It is unclear what effect the FAST Act, if unamended, might have had on the Auto Mall's own loaner fleet. Representative Williams testified that the Auto Mall already grounds loaner cars that are subject to a recall, depending on the severity of the safety issue implicated.[78] Yet it is conceivable that, without the Williams Amendment, the FAST Act would have forced more loaner vehicles to be grounded: Representative Williams said in his floor speech that the bill might have required cars to be grounded for "such minor compliance matters as an airbag warning sticker that might peel off."[79] In that same speech, Representative Williams also said the FAST Act would have made it "impractical" for dealers to maintain a loaner program.[80]

  Further, the FAST Act could have exposed the Auto Mall to additional legal liability. Under general tort law, a dealership could be sued if a customer driving a recalled loaner vehicle became injured due to a safety issue relating to the recall. However, the NADA Official explained that under the unamended FAST Act, dealers might have faced additional lawsuits under state unfair deceptive practices statutes, because a violation of federal law would permit a cause of action under those statutes, and the FAST Act would have penalized dealers for renting or loaning recalled cars as a matter of federal law—even if the vehicle did not experience any mechanical problems and the driver did not suffer any personal injury. The Auto Mall would have potentially borne this risk, particularly since all eight of the loaner vehicles that the Auto Mall offered to customers in 2015 would have been covered by an open safety recall, and the Williams Amendment would have directly excluded dealerships from any such additional liability imposed by the FAST Act.

  It is unclear what costs would have resulted to the Auto Mall from grounding any loaner vehicles subject to recall, since the auto manufacturer would have covered all repair or remediation costs associated with the recall. However, Representative Williams told Committee staff that, if the Auto Mall's loaner program were shut down and had no

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[77] *Id.*

[78] *Id.* ("[I]t depends on the issue. I mean, if it's a serious issue where it could cause death of injury, we're not going to let that car out, you know. But if it's a situation where the serial number is wrong on something or maybe the radio doesn't work or whatever, we would loan that car out.").

[79] Exhibit 7 at 1 (Appendix 3).

[80] *Id.*

loaner cars to offer to customers, it would likely pay for its customers to rent a vehicle from an outside rental car company.[81]

Given all of this, Representative Williams may have had some financial interest in excluding his own dealership from the FAST Act, and should have recognized that possibility. However, considering the totality of the circumstances, any such interest was not sufficient to establish an impermissible conflict of interest in this case. The Auto Mall does not earn a direct profit from offering loaner vehicles or facilitating rentals to its customers. Though the Auto Mall receives occasional reimbursements from manufacturers in connection with its loaner vehicles, the direct, tangible costs to the dealership for providing that service appear to exceed any revenues generated from such service. And while the loaner program may have resulted in ancillary, indirect benefits to the Auto Mall in the form of customer retention and goodwill, Representative Williams told Committee staff that the Auto Mall has not performed any analysis or accounting to quantify any possible benefits obtained from the loaner program.[82] Moreover, the Committee found no evidence that the Williams Amendment would have materially increased the Auto Mall's revenues or profits, or made Representative Williams' investment in the Auto Mall more valuable. Thus, the Committee found the amendment's potential impact on Representative Williams' financial interest in the Auto Mall to be minimal.

- *Does the proposed official action affect a sector or other large class of entities or narrowly affect a single or smaller group of entities in which the Member retains a financial interest*? As previously noted, class analysis applies to both voting on and sponsoring legislation and amendments, such as the Williams Amendment.[83] That amendment affected a large class of individuals – all auto dealers nationwide – and did not singularly affect the Auto Mall to a different degree than any other dealership. Moreover, NADA, which represents all automobile dealers, drafted the amendment and proposed to Representative Williams that he sponsor it.

Thus, reviewing the totality of the circumstances, the Committee found that Representative Williams' actions in sponsoring the Williams Amendment did not create a *reasonable inference* of improper conduct. While Representative Williams may have had some personal financial interest in the adoption of his amendment, the nature of any such interest was

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[81] 18(a) Interview of Representative Roger Williams.

[82] *Id.*

[83] *See Ethics Manual* at 237 ("The Committee . . . has occasionally advised Members, in private advisory opinions, that it would be inappropriate for them to vote or to introduce legislation directly affecting significant and uniquely held financial interests. At times a question arises as to whether the class to which a Member belongs with regard to a piece of legislation – such as, for example, the class of owners of a particular area of land that would be acquired by the government under the legislation – is sufficiently large to warrant the Member voting under the authorities set out above."); *see also Gingrey* at 11 (As prior Committee guidance on Rule XXIII explains, "[i]f a Member seeks to act on a matter where he might benefit as a Member of large class, such action does not require recusal. . . . By contrast, where a Member's action would serve his own narrow financial interests, the Member should refrain from acting.").

speculative and hypothetical, because both the overall business benefit of the loaner program and the impact of the FAST Act on that program are unclear, if not impossible to quantify. Representative Williams neither conceived of nor drafted the amendment, which is further evidence that he did not introduce the Williams Amendment to benefit himself or any personal financial interest in the Auto Mall. Representative Williams also openly disclosed his status as an auto dealer when speaking about the amendment on the House floor. Furthermore, the Williams Amendment did not uniquely benefit the Auto Mall: to the extent Representative Williams or the Auto Mall may have benefited from the amendment, they did so as a member of a class of auto dealers. Indeed, to the extent that the amendment benefitted the Auto Mall, it also would have benefitted any competitors who also offered loaner programs. Finally, while the amendment did impact a business in which Representative Williams has a substantial financial interest, the Auto Mall does not earn a direct profit from offering loaner vehicles or facilitating rentals to its customers. Thus, the legislation would not have resulted in a material monetary gain to Representative Williams, and a reasonable person would not conclude that Representative Williams sponsored the Williams Amendment to benefit himself.

VI. CONCLUSION

Although Representative Williams' sponsorship of the Williams Amendment did not violate any law or House Rule, the Committee cautions all Members that this is an area where mistakes can be made. The Committee accepts Representative Williams' statement that he never thought that his sponsorship of the Williams Amendment posed a conflict of interest. Yet as Representative Williams stated in his own floor speech on the amendment, the unamended FAST Act would have negatively impacted, or even rendered impractical, auto dealers' loaner programs—a service that the Auto Mall offered and resulted in a modest, albeit intangible, business benefit. In light of these circumstances, Representative Williams should have contacted the Committee for guidance, and to identify in advance any potential limitations on his ability to offer and support the Williams Amendment, in order to avoid *any* inference of improper action. Had he done so, the Committee would have told him that, based on the totality of the circumstances, he was not barred from sponsoring the Williams Amendment. However, the Committee would have also cautioned Representative Williams that some members of the public might, on first impression and without the benefit of the full picture the Committee's investigation ultimately developed, question whether his actions could be conflicted, and that he should take care to avoid creating any impression that he was sponsoring the amendment to benefit himself or his business.

The recommendation that Members contact the Committee in these circumstances is not new, and all Members should be aware of it: the *Ethics Manual* has long stated that whenever a Member is considering taking any action on a matter that could impact the Member's own financial interest, and involves a degree of advocacy above and beyond that involved in voting, that Member should first ask the Committee for guidance.[84] The Committee encourages all Members who are considering sponsoring legislation or an amendment to contact the Committee

[84] *Ethics Manual* at 237.

if the legislation may personally impact them, and to exercise caution to avoid any actual or apparent conflict of interest.

While Representative Williams was not required to contact the Committee before sponsoring the Williams Amendment, this matter illustrates why the *Ethics Manual* states that Members "should" do so: Representative Williams could have benefitted from the Committee's perspective, and may have avoided any appearance of a conflict of interest, as well as separate investigations by OCE and the Committee. Nonetheless, the Committee ultimately found that Representative Williams' actions did not violate the law or House Rules regarding conflicts of interest and use of one's official position for personal financial gain.[85] Accordingly, the Committee has determined to take no further action in this matter, and upon publication of this Report, considers the matter closed.

VII. STATEMENT UNDER HOUSE RULE XIII, CLAUSE 3(C)

The Committee made no special oversight findings in this Report. No budget statement is submitted. No funding is authorized by any measure in this Report.

[85] For the same reasons, the Committee did not find that Representative Williams violated House Rule XXIII, clauses 1 or 2.