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COMMITTEE ON ETHICS



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July 8, 2013

Daniel A. Schwager, Esq.  
Staff Director and Chief Counsel  
Committee on Ethics  
U.S. House of Representatives  
1015 Longworth House Office Building  
Washington, DC 20515

Dear Mr. Schwager:

I write on behalf of my client, Representative Tim Bishop, in response to the report and findings that the Office of Congressional Ethics (“OCE”) sent to the Committee on Ethics (“the Committee”) on June 13. We appreciate the Committee’s decision to provide us with the findings and the opportunity to respond to them.

#### INTRODUCTION

The testimony and documents presented by OCE demonstrate conclusively that Representative Bishop complied with the law and all relevant standards of conduct. They show that he and his staff performed casework for a constituent, Eric Semler, in the ordinary course of business and on the merits, and that neither he nor his House staff ever discussed potential political contributions with Mr. Semler. In his interview, Mr. Semler stated unequivocally that Representative Bishop never discussed contributions with him, that no one ever told him that he was “expected” to contribute, and that he never felt pressured to do so. The evidence further shows that Mr. Semler made his contribution long after the casework was completed.

Moreover, the evidence assembled by OCE undermines entirely the premise of the news account that led to this matter. The news account focused on emails between Mr. Semler and Fireworks by Grucci, the vendor he had hired to obtain approvals for and put on a fireworks display at his son’s bar mitzvah celebration. The evidence shows:

- (1) Mr. Semler could not find in his own records the email that was at the heart of the news account and could not be sure that he wrote it.

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- (2) Mr. Semler candidly admitted that, in the emails he did write, he made statements about his contribution to Representative Bishop's campaign that were not true, including the claim that he had contributed \$10,000 when, at the time, he had made no contribution at all. He admitted further that he made the statements because he thought they would help him obtain a refund from Grucci.
- (3) A Grucci representative leadingly suggested to Mr. Semler the notion that he "had to pay" Representative Bishop for his help, which Mr. Semler would later consistently deny.
- (4) That same Grucci representative – the brother-in-law of Representative Bishop's opponent in his first congressional campaign – provided Mr. Semler's emails to the campaign manager of Representative Bishop's then-opponent, who then gave them to the media.

Any fair-minded observer can see from the new facts developed by OCE that the emails between Mr. Semler and Grucci fail to support the claims against Representative Bishop. Yet OCE chose instead to rely on these same emails, ignoring major problems in the evidence that undercut its preconceived notion of the case.

Unable to substantiate the allegation on which the referral was based, OCE inexplicably veered entirely off course to include a new allegation about the campaign finance laws, which was never disclosed to Representative Bishop. But OCE's discussion of this new allegation betrays the lack of even a basic understanding of these same laws. It begins by quoting the wrong section of the Federal Election Campaign Act ("FECA"), and then blunders into a series of further errors. It ignores Federal Election Commission ("FEC") advisory opinions that give campaigns a safe harbor when receiving credit card contributions over the Internet. It claims that the campaign should have disclosed the constituent's wholly-owned LLC as the source of the contribution, but ignores FEC guidance saying the opposite. It claims that Representative Bishop failed to "take reasonable steps" to ensure his campaign's compliance with FECA reporting requirements, but ignores his campaign's use of staff and an outside specialist to prepare and file its reports.

The testimony and documents before the Committee provide all the information needed to close the matter. Representative Bishop cooperated fully with OCE's review, producing documents and making himself, his House staff and his campaign's finance director available for interviews. The facts warrant a Committee determination that he neither solicited nor received a contribution in connection with an official act, and show that there is no basis for these careless allegations against him.

## DISCUSSION

### A. The Testimony and Documents Agree That Representative Bishop Sought No Contributions in Connection With an Official Act

The raw facts developed by OCE and transmitted to the Committee show that Representative Bishop did not solicit a contribution in connection with an official act. The testimony and documents all agree on three critical points:

*First*, they show that Representative Bishop and his staff handled the constituent's casework on the merits, and without regard to the campaign. Asked whether "the request from Representative Bishop was typical," his communications director, who also handles inter-governmental issues, said that, "to the extent that this was an environmental request, it was standard" and "was not atypical in the substance of the request."<sup>1</sup> Representative Bishop's legislative director "would not characterize Bishop's follow-up as more or less than in similar cases."<sup>2</sup> Asked whether a call from Representative Bishop's staff on behalf of the constituent was "unusual," the regional director of the New York Department of Environmental Conservation said that it "was not out of order" and that "his office gets approximately twelve inquiries a year about various matters."<sup>3</sup> The Southampton Town Trustee whom Representative Bishop contacted said bluntly: "I am not a baby. I know when I'm getting push politically and I do not think I was here."<sup>4</sup>

Neither of the House employees who helped the constituent on his case work had reason to think their work pertained in any way to the campaign. The communications director said that he "knew nothing about any interactions between Mr. Sillerman and Mr. Semler or between Ms. Bishop and Mr. Semler" before emails pertaining to the constituent were provided to *Politico*.<sup>5</sup>

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<sup>1</sup> OCE Exh. 13 ¶ 18, at 13-3308\_0058.

<sup>2</sup> OCE Exh. 14 ¶ 24, at 13-3308\_0065.

<sup>3</sup> OCE Exh. 21 ¶ 12, at 13-3308\_0089.

<sup>4</sup> OCE Exh. 17 ¶ 34, at 13-3308\_0074. The findings' discussion of the Town Trustee's interview is an example of how lack of fidelity to the OCE Resolution can needlessly harm third parties. The Town Trustee agreed voluntarily to be interviewed and signed a written acknowledgement of OCE's 18 U.S.C. § 1001 warning. *See id.* ¶ 1, at 13-3308\_0072. OCE interviewed him under a provision of its governing resolution that is supposed to protect his anonymity: it prohibits the findings from containing "the names of any cooperative witnesses ..." H. Res. 895, 110th Cong. § 1(c)(2)(C)(i)(II). But the discussion of the Town Trustee incorporates an image of an email that refers to him by name, thus allowing him to be identified. *See* OCE Findings ¶ 41. OCE then impugns the Town Trustee by calling him "less than forthright in answering questions," even while offering no reason why he would not have testified truthfully. *Id.* ¶ 38 n. 41. *Cf.* OCE Exh. 7 ¶¶ 22-31, at 13-3308\_0038 (in which Representative Bishop freely admits to contacting him). This cavalier treatment of a cooperating witness in a document intended for public release is scandalous.

<sup>5</sup> OCE Exh. 13 ¶ 45, at 13-3308\_0060-61.

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The legislative director was “not aware of any other relationship between Representative Bishop and Semler beyond being a constituent.”<sup>6</sup>

The OCE exhibits show that Mr. Semler’s problem was considered solved when Representative Bishop asked Mr. Sillerman whether Mr. Sillerman would be willing to ask Mr. Semler, his business associate,<sup>7</sup> if he would contribute to the campaign. Mr. Semler said that, when he received the email from Mr. Sillerman about contributing, he “thought they were all set to have the display from the pond. They had not yet found out about the height limitations.”<sup>8</sup> He said also that “there was a request for a contribution” only after “Rep. Bishop told him that everything was ok. That’s when there was a request for a contribution.”<sup>9</sup>

The documents confirm the testimony. At 11:13 a.m. on May 22nd, Mr. Semler emailed Phillip Butler at Fireworks by Grucci and told him that “everyone is on board” with the display.<sup>10</sup> Not until late in the evening of the next day – only after Representative Bishop had emailed Mr. Sillerman about the possibility of a contribution, and only after Molly Bishop had emailed Mr. Semler on Mr. Sillerman’s suggestion – did Mr. Semler email again with a new problem involving the fireworks display.<sup>11</sup>

*Second*, the testimony and documents confirm that Representative Bishop never discussed political contributions with Mr. Semler, and that neither he nor his campaign placed any pressure whatsoever on Mr. Semler to give. The memorandum of Mr. Semler’s interview says flatly: “Rep. Bishop never spoke to the witness at all about a contribution.”<sup>12</sup> While Mr. Semler

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<sup>6</sup> OCE Exh. 14 ¶ 12, at 13-3308\_0064.

<sup>7</sup> OCE Exh. 2 ¶ 3, at 13-3308\_0004.

<sup>8</sup> OCE Exh. 2 ¶ 37, at 13-3308\_0007.

<sup>9</sup> OCE Exh. 2 ¶ 76, at 13-3308\_0010. *See also id.* ¶ 80 (saying “that he had sought additional help from Rep. Bishop after the first contribution request”). OCE claims in its findings that “Representative Bishop continued to assist the Constituent and his Finance Director continued to request campaign contributions.” OCE Findings ¶ 110. But the documents show otherwise. They show that Mr. Sillerman and Molly Bishop first emailed Mr. Semler when his matter was thought to be concluded, and that Molly Bishop would not email Mr. Semler again until after the bar mitzvah took place – nearly a month later. *See* OCE Exh. 26, at 13-3308\_0105.

<sup>10</sup> OCE Exh. 18, at 13-3308\_0077.

<sup>11</sup> OCE Exh. 20, at 13-3308\_0086. OCE fails to mention that Representative Bishop and his campaign actually took steps to avoid an errant contribution. OCE notes that Mr. Semler sent Representative Bishop an email intended for Molly Bishop that appeared to reply to the information she previously sent about how to give. OCE Findings ¶ 67-69. It notes further that both Representative Bishop and Molly Bishop said that the Representative was ‘uncomfortable’ with the email. *Id.* ¶ 69. But, in the written findings, OCE never mentions that *Representative Bishop told Molly Bishop not to respond to the email.* *See* OCE Exh. 7 ¶¶ 54-55, at 13-3308\_0040 (interview with Rep. Bishop); OCE Exh. 11 ¶ 29, at 13-3308\_0051 (interview with Molly Bishop). Molly Bishop told OCE that she complied with the instruction. *See id.* ¶ 32, at 13-3308\_0051. And the documents show that she did comply: they show no communication from Molly Bishop to Mr. Semler until June 19, almost a month later. *See* OCE Exh. 26, at 13-3308\_0105.

<sup>12</sup> OCE Exh. 2 ¶ 39, at 13-3308\_0007.

described Mr. Sillerman's May 22nd email seeking a contribution as 'abrupt,' he explained that Mr. Sillerman was "a kind of 'flip guy'" and a 'course [*sic*] guy.'<sup>13</sup> "No one told the witness that they expected him to make a contribution."<sup>14</sup> "He stated that he did not feel any pressure" to contribute.<sup>15</sup> He said that the reason he "made the contribution is because Rep. Bishop is a 'stellar politician.'"<sup>16</sup>

Again, the documents support the testimony. The emails from Molly Bishop that provided Mr. Semler with information on how to contribute did not refer at all to his casework, and placed absolutely no pressure on him to contribute.<sup>17</sup> Moreover, the last two emails confirm Molly Bishop's testimony that they were not crafted specifically for Mr. Semler, but rather were sent to large numbers of people.<sup>18</sup>

#### **B. The OCE Findings Undermine the Media Report That Gave Rise to This Matter**

This matter began with a news article published by *Politico* on August 15, 2012. That article centered on emails between Mr. Semler and Fireworks by Grucci. It specifically quoted a May 29, 2012 email from Mr. Semler to Grucci employees:

As for Semler, a few days after the party he complained in an email to employees of Grucci Firework [*sic*] that Bishop "didn't hesitate to solicit me in the heat of battle" and called the request, for up to \$10,000, "really gross."<sup>19</sup>

The OCE referral reveals this email was provided by Phillip Butler – the brother-in-law of Representative Bishop's opponent in his first congressional campaign – to the campaign manager

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<sup>13</sup> *Id.* ¶ 36, at 13-3308\_0007.

<sup>14</sup> *Id.* ¶ 57, at 13-3308\_0008.

<sup>15</sup> *Id.* ¶ 59, at 13-3308\_0009.

<sup>16</sup> *Id.* ¶ 84, at 13-3308\_0010.

<sup>17</sup> OCE Exh. 19, at 13-3308\_0084; OCE Exh. 26, at 13-3308\_0105-06.

<sup>18</sup> See OCE Exh. 26, at 13-3308\_0105-06; see also OCE Exh. 11 ¶ 34, at 13-3308\_0052 (Molly Bishop testimony). The OCE findings make two significant errors in discussing Molly Bishop's testimony. First, they say that, when Representative Bishop first received Mr. Sillerman's email about Mr. Semler's problem on May 21, Molly Bishop "was sitting across from him at the time he received it, in his district office." OCE Findings ¶ 30. Neither Representative Bishop nor Molly Bishop said that they were in his *public* office. Representative Bishop said simply that he was "at the Long Island Office" OCE Exh. 7 ¶ 20, at 13-3308\_0037; his campaign maintains separate office space in Long Island near his Congressional office. Second, they imply that Molly Bishop would have recalled seeing Mr. Semler's name on the email the Representative forwarded her for printing, and thereby would have associated the casework with her solicitations. See OCE Findings ¶ 30 n. 24. However, they overlook the fact that Ms. Bishop, the campaign's finance director, was in a heavy fundraising period during the late spring of an extremely competitive election year. She had ample reason neither to notice nor recall the information she simply printed out for the Representative; she had many other things to do.

<sup>19</sup> See John Bresnahan, *Tim Bishop's bar mitzvah episode could spell trouble*, POLITICO, Aug. 15, 2012, available at <http://www.politico.com/news/stories/0812/79722.html> (quoting OCE Exh. 27, at 13-3308\_0108).

of Randy Altschuler, Representative Bishop's then-opponent, who gave it to the media.<sup>20</sup> And OCE could not establish its authenticity. When OCE asked Eric Semler, the putative sender, about it, he replied that "I couldn't find the [email]." He stated that he tried to track them down [*sic*], but could not find it." OCE then asked him repeatedly if he had written the email. He said first, "I may have." Asked again, he said, "I don't know the answer to that." Questioned yet again, he said, "I could have written it or texted it" and that he "probably" wrote it."<sup>21</sup>

OCE could have then resolved the issue easily by simply obtaining a copy of the email from its putative recipient, Mr. Butler. Yet it did not. Instead, OCE simply asked Mr. Butler about the copy of his email that it had gotten from Representative Bishop, who had obtained it from *Politico*. "The witness did not recall whether he received this in text or email form but recalled receiving the message from Mr. Semler." OCE evidently wondered whether the email was doctored: "The witness stated that he did not change or manipulate any of the language in this message."<sup>22</sup> But in contrast with its dealings with other witnesses, OCE took his word for it. The only copy of the email in OCE's exhibits is the copy that Representative Bishop produced to them, which his campaign received back in August 2012 from *Politico*.

Even if the May 29 email is authentic, the OCE findings prove that the statements ascribed to Mr. Semler in the emails were untrue. The May 29 email has Mr. Semler saying: "I forgot to mention also that I have to give \$10K to tim bishop's campaign for the help with the fireworks."<sup>23</sup> But Mr. Semler never gave \$10,000 to Tim Bishop for Congress. In another email dated June 21, 2012, prodded by Mr. Butler to say whether he had to "pay [Representative] Bishop for his help," Mr. Semler replied: "Yes-\$10K."<sup>24</sup> But Mr. Semler had made no contribution to the Bishop campaign at that time. At no point would he ever contribute \$10,000.

The testimony and documents show that Mr. Semler's anger at Grucci and desire to obtain a refund motivated him to make these claims. Interviewed by OCE, Mr. Semler "explained that there was a whole other component to this matter that related to ... trying to get a refund. The witness felt overcharged and was very frustrated trying to get them to give him a refund."<sup>25</sup> "He stated that after the bar mitzvah ended his anger towards Grucci built up and he felt they owed him a refund."<sup>26</sup> Asked specifically about the June 21 email, Mr. Semler stated that his mindset when he wrote this email was that at this point he had not 'paid.' He should not have said it, but he did 'maybe because I was planning to.' The witness then stated that if Mr. Butler 'was tallying up a refund, I wanted him to factor that in ...' The witness went on to state that there

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<sup>20</sup> See OCE Exh. 4 ¶ 24, at 13-3308\_0019.

<sup>21</sup> See OCE Exh. 2 ¶¶ 52-54, at 13-3308\_0008.

<sup>22</sup> See OCE Exh. 4 ¶ 19, at 13-3308\_0018.

<sup>23</sup> OCE Exh. 27, at 13-3308\_0108.

<sup>24</sup> *Id.* at 13-3308\_0110.

<sup>25</sup> OCE Exh. 2 ¶ 23, at 13-3308\_0006.

<sup>26</sup> OCE Exh. 2 ¶ 55, at 13-3308\_0008.

was a 'cause and effect factor here. If Grucci had not screwed up then I would never have met [Rep. Bishop] and I wanted them to factor what was paid out of my funds' He also stated, 'I'm just trying to make the best case I can for a refund' and that he felt compelled to play 'hardball' with Grucci."<sup>27</sup>

Later, Mr. Semler would candidly, consistently and appropriately deny that he was obliged or pressured to give. After *Politico* obtained the emails, he told Representative Bishop by text message on August 8, 2012: "Never asked me for a donation while you were trying to help me. I am sorry that you are being treated so unfairly."<sup>28</sup> To *Politico*, he said: "Tim never said anything to me about a donation ... There was never a discussion of a contribution while he was trying to help me ..."<sup>29</sup> To OCE, he said "that he thought it was taken out of context. He stated that after the bar mitzvah ended his anger toward Grucci built up and he felt they owed him a refund. They offered him an \$8,500 refund and he immediate [*sic*] responded explaining why it was not fair, listing many things to support why he deserved a larger refund."<sup>30</sup> After signing a false statement warning, he told OCE that no one told him that they expected him to make a contribution.<sup>31</sup>

Ignoring the actual evidence, OCE instead relies heavily on these questionable emails to make its referral against Representative Bishop: "The Constituent Made Three References Connecting His Campaign Contribution to Representative Bishop's Official Acts."<sup>32</sup> But for the first time, those emails can be now traced to Representative Bishop's political opponents. One of them could not be authenticated. The author has repudiated their claims, admitting that they were prompted by his anger at the fireworks company and his desire to seek a refund. Contradicted by the true facts, the emails provide no support for a claim of a prohibited solicitation.

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<sup>27</sup> OCE Exh. 2 ¶¶ 63-64, at 13-3308\_0009.

<sup>28</sup> OCE Exh. 30, at 13-3308\_0135.

<sup>29</sup> John Bresnahan, *Tim Bishop's bar mitzvah episode could spell trouble*, POLITICO, Aug. 15, 2012, available at <http://www.politico.com/news/stories/0812/79722.html>.

<sup>30</sup> OCE Exh. 2 ¶ 55, at 13-3308\_0008.

<sup>31</sup> OCE Exh. 2 ¶ 57, at 13-3308\_0008.

<sup>32</sup> OCE Findings at 18. OCE's characterization of the emails between Mr. Semler and the Grucci company is a classic example of a conclusion that is prohibited by its governing resolution "regarding the validity of the allegations ..." H. Res. 895, 110th Cong. § 1(c)(2)(C)(i)(II). OCE could have simply described the emails and allowed the Committee to evaluate their authenticity, credibility and relevance. Instead, OCE uses them to support an argument that the Representative sought political contributions in connection with an official act. In this particular instance, OCE's zeal to argue for Representative Bishop's guilt caused it to overlook clear deficiencies in the evidence.

**C. OCE's Findings Repeatedly Misstate Federal Campaign Finance Law and Show No Campaign Finance Violation**

In an allegation never disclosed to Representative Bishop in the course of this review, OCE claims that his campaign misreported Mr. Semler's contribution. It claims that the Representative is personally responsible for these "violations." It recommends an investigation of, among other things, whether the Representative knowingly accepted a contribution in the name of another, and whether he knowingly and willfully caused a false statement to be made to the government.<sup>33</sup>

The "analysis" of this allegation begins with the wrong statute. It quotes 2 U.S.C. § 434(b)(5), which addresses the reporting of political committee *disbursements*, not receipts.<sup>34</sup> A simple review of the Federal Election Commission rules governing Mr. Semler's contribution shows that this was not OCE's only mistake. It shows that OCE overlooked specific regulations and guidance supporting the Bishop campaign's treatment of the contribution, and that OCE's entire treatment of the campaign finance issue is deeply flawed.

The findings assert that Eric Semler made a contribution using a credit card maintained by a limited liability company that is not taxed as a corporation, and in which he is the sole individual member.<sup>35</sup> Under the Bishop campaign's normal policies and procedures, Mr. Semler would have given through a website that asked for the contributor's identification and required him to verify his contribution:

I confirm that the following statements are true and accurate:

- I am not a foreign national who lacks permanent residence in the United States.
- I am not a Federal government contractor.
- This contribution is made from my own funds, and not those of another.
- This contribution is not made from the funds of a corporation or labor organization.
- This contribution is made on a personal credit card or debit card for which I have the legal obligation to pay, and is not made either on a corporate or business entity card or on the card of another person.

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<sup>33</sup> OCE Findings at 20-22.

<sup>34</sup> OCE apparently meant to cite and analyze 2 U.S.C. §434(b)(3), which requires identification of persons who make *contributions* to campaigns aggregating in excess of \$200 per election cycle.

<sup>35</sup> OCE Findings ¶ 101.

- I am at least eighteen years old.<sup>36</sup>

This language is taken directly from FEC advisory opinions that provide campaigns with a “safe harbor” for accepting lawful contributions over the Internet.<sup>37</sup> The purpose of this language was to help committees ensure that credit card contributions were being made from personal funds. Otherwise, a committee would have no ready way of knowing whether someone like Mr. Semler was making a permissible contribution. The Bishop campaign’s use of FEC-approved procedures to screen Mr. Semler’s contribution is at direct odds with OCE’s claim that Representative Bishop failed to take reasonable steps to ensure his campaign’s compliance with the law. OCE did not discuss the campaign’s use of these procedures. Lacking special expertise in the campaign finance laws, and having failed to disclose the allegation to Representative Bishop or seek his response, OCE may not have known about them.

In this particular case, it did not matter whether Mr. Semler gave from a company card. Because his company was a single-member LLC that was not taxed as a corporation, and because Mr. Semler was its sole member, the contribution would have been treated as made *by Mr. Semler*.<sup>38</sup> As the FEC explained when it wrote its regulations governing LLC contributions in 1999: “Because of the unity of the member and the LLC in this situation, it is appropriate for attribution of the contribution to pass through the LLC and attach to the single member under these circumstances.”<sup>39</sup> The FEC’s guidance is explicit: “If a single member LLC does not require corporate tax treatment, it may make contributions; *the contributions will be attributed to the single member, not the LLC.*”<sup>40</sup> This clear guidance contradicts OCE’s repeated claim that the Bishop campaign should have reported the contribution as received from the company. Again, OCE does not cite this guidance, and lacking any independent expertise in the federal campaign finance laws, may not have known about it.

Nor would Mr. Semler’s contribution with an LLC credit card have kept him necessarily from attributing some of that contribution to his spouse. If the funds with which he gave represented her personal funds, as well as his, then the contribution may have been attributable to her, as well.<sup>41</sup> “For purposes of reporting, a committee treats a joint contribution as though the

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<sup>36</sup> <http://bishopforcongress.com/contribute>.

<sup>37</sup> See FEC Advisory Opinion 1999-09. See also FEC Advisory Opinion 2007-30 (approving alternative verification procedures).

<sup>38</sup> See 11 C.F.R. § 110.1(g)(3) (2012).

<sup>39</sup> Treatment of Limited Liability Companies Under the Federal Election Campaign Act, 64 Fed. Reg. 37,397, 37,399 (1999).

<sup>40</sup> Federal Election Commission, *Campaign Guide for Candidates and Committees* 28 (August 2011) (emphasis added).

<sup>41</sup> See 11 C.F.R. § 110.1(i) (“The limitations on contributions of this section shall apply separately to contributions made by each spouse even if only one spouse has income”); § 110.1(k)(2) (“If a contribution made by more than one person does not indicate the amount to be attributed to each contributor, the contribution shall be attributed equally

individuals participating in the contribution had made their contributions separately, and itemizes them separately on Schedule A as required.”<sup>42</sup> FEC regulations give campaigns 60 days to obtain a written reattribution from a spouse, verifying that the contribution was jointly made.<sup>43</sup> The Bishop campaign still would have been within the 60-day window to obtain a reattribution from Mrs. Semler when it disgorged the contribution to charity on August 13.<sup>44</sup> OCE nowhere discusses or even acknowledges the FEC’s highly specific rules regarding spousal contributions.

Finally, while the findings allege a discrepancy between the Bishop campaign’s records and the Semlers’ records regarding the date of his contribution, they show also that the Bishop campaign took reasonable steps to report it correctly:

- *First*, the findings show that Representative Bishop’s campaign, in addition to receiving credit card contributions through a processing method approved by FEC advisory opinions, employed an FEC compliance professional to help prepare and file its reports.<sup>45</sup>
- *Second*, while the OCE Board noted that Representative Bishop “closely monitored his campaigns [*sic*] fundraising activity during the end of the primary cycle,”<sup>46</sup> it overlooks the sheer volume of that activity. The report that included Mr. Semler’s contribution was 114 pages long and showed nearly \$200,000 in receipts over a 23-day period.<sup>47</sup>
- *Third*, OCE’s unsupported claim that Representative Bishop “knowingly or willfully assisted his congressional campaign committee in misrepresenting the date or source of a contribution”<sup>48</sup> cannot be reconciled with its simultaneous conclusion that he received a prohibited contribution in connection with an official act. If anything, a person receiving such a contribution would want it reported later, not sooner, to diminish the appearance of a prohibited connection with the official act.

Thus, every single element of OCE’s campaign finance allegation is flawed. The allegation is not even properly before the Committee to begin with. OCE never disclosed to Representative Bishop any allegation regarding the federal campaign finance laws. He had no opportunity to correct OCE’s egregious misreading of these laws before it was memorialized in written findings intended for public release. OCE claims that it can “address any additional potential violations

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to each contributor.”) In his interview, Mr. Semler acknowledged that the contribution may have been jointly made: “I don’t know. Maybe that happened.” OCE Exh. 2 ¶ 72, at 13-3308\_0010.

<sup>42</sup> See Federal Election Commission, *Campaign Guide for Candidates and Committees* 92 (August 2011).

<sup>43</sup> See 11 C.F.R. § 110.1(k).

<sup>44</sup> See OCE Exh. 35.

<sup>45</sup> OCE Exh. 11 ¶ 3, at 13-3308\_0049. See also OCE Findings ¶ 94.

<sup>46</sup> OCE Findings ¶ 105.

<sup>47</sup> See <http://images.nictusa.com/pdf/235/12952469235/12952469235.pdf>.

<sup>48</sup> OCE Findings ¶ 106.

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within its jurisdiction that are discovered in the course of a review ...”<sup>49</sup> But its governing resolution does not allow it to blind-side a Member with frivolous, unsupported allegations in findings prepared for public release.<sup>50</sup>

### CONCLUSION

OCE’s written findings are deeply flawed and provide no basis for further review. But the testimony and documents provide the Committee with all of the information it needs to close this matter. They show that Representative Bishop solicited no contribution in connection with an official act, and that the allegations that triggered this matter were politically motivated and untrue. OCE’s further, undisclosed allegation of a campaign finance violation misstates and ignores controlling law. Representative Bishop respectfully requests the Committee to dismiss OCE’s referral and take no further action.

Very truly yours,



Brian G. Svoboda  
Counsel to Representative Tim Bishop

Enclosure

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<sup>49</sup> OCE R. 3(E).

<sup>50</sup> OCE’s review is marred by other procedural defects. It took nearly five months to conduct a process that was supposed to take “at most three months ...” Report of the Members of the Special Task Force on Ethics Enforcement at 17 (Dec. 2007). The Board met to consider Representative Bishop’s matter a month after the review had ostensibly ended, while the House was in a district work period and he was engaged in official activities in the district, effectively depriving him of the ability to appear before the Board, as the OCE Resolution guarantees. *See* H. Res. 895, 110th Cong. § 1(f)(3).

Declaration

I, Representative Tim Bishop, declare under penalty of perjury that the response and factual assertions contained in the attached letter dated July 8, 2013, relating to my response to the June 14, 2013, Committee on Ethics letter, are true and correct.

Signature:

A handwritten signature in black ink, appearing to read "Tim Bishop", written over a horizontal line.

Name:

Representative Tim Bishop

Date:

July 8, 2013