

IN THE UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON ETHICS

REVIEW NUMBER 13-6070

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COMMITTEE ON ETHICS

IN THE MATTER OF REPRESENTATIVE STEVE STOCKMAN

Chairman K. Michael Conaway
Ranking Member Linda T. Sanchez
Committee on Ethics
U.S. House of Representatives
1015 Longworth House Office Building
Washington, DC 20515-6328

11 April 2014

Dear Chairman Conaway and Ranking Member Sanchez:

I offer this correspondence on behalf of Congressman Steve Stockman in response to Mr. Tom Rust's invitation for the Congressman to weigh in on the referral of the Office of Congressional Ethics ("OCE" hereinafter) regarding the Congressman (specifically Review No. 13-6070).

In the materials that follow we offer our observations regarding both the substantive and procedural matters that have arisen in this review, and include our recommendations for Committee action thereon.

These observations and recommendations reflect our initial response to the OCE "Report" and "Findings of Fact and Citations to Law" in this matter (for ease of reference, hereinafter cited together as "Report"), and we respectfully reserve the right to supplement our communications with your Committee as circumstances warrant and permit. We look forward to working with the Ethics Committee in resolving this review, and stand ready as always to cooperate fully with you and your staff.

By way of organization, we offer our response here in five sections. The first sets forth the allegations made by the OCE Report as we understand them to be. The second offers our response to the non-commensurate pay allegation.

The third section is an honest account of the truth or lack thereof behind each of the allegations having to do with the campaign contributions made to Congressman Stockman's campaign committee in February 2013. Where we have made mistakes,

we do not hesitate to admit them, but upon reading that section you will find much that puts the lie to most of the suggestions of misconduct contained in the OCE Report at issue. You will also find a rich trove of information that was not fairly and justly provided to the OCE Board by its alleged "investigators" before the Board voted to make this referral to you.

The fourth section of our response addresses the many serious procedural and substantive violations of House Rules and OCE Rules and other relevant law committed by the OCE staff in the conduct of this review.

We would *like* to be able to report to you that the "investigation" that led up to the OCE Report at issue was conducted in a fair, thorough, professional, unbiased, and honorable manner: we would *like* to, but, sadly, we are unable to do so. The truth is decidedly to the contrary; and the experience of previous targets of OCE probes suggests that this is not the first instance where a lack of objectivity and competence has infected an OCE review.

In the case at hand, the violations of relevant law and standards of fundamental fairness are myriad and significant. At an absolute minimum, the misconduct of OCE staff in this matter has profoundly compromised the credibility of the Board's referral. Irrespective of what becomes of Congressman Stockman's issues, the OCE staff misconduct in this matter must be squarely addressed by the Ethics Committee, and if necessary by curative reform legislation. Enough is enough.

The final section of our response herein is a conclusion that sums up our position on the various issues, and sets forth our recommendations as to appropriate Committee action. We certainly invite and welcome your questions and follow-up as to anything you may read herein.

SECTION I. ALLEGATIONS

The OCE Report identifies four areas of suspected misconduct by Congressman Stockman. Three of them are related to each other, and connected to contributions made to his campaign committee in February of 2013. The fourth is a completely unrelated allegation that the compensation of two staffers was not commensurate with their performance of official duties.

With respect to the latter, the OCE claims there is "substantial reason" to suspect that Rep. Stockman should have reduced the pay of Tom Dodd and Jason Posey when they were working in the 36th Congressional District of Texas rather than Washington, DC. The allegations are vague with respect to the time period said to be involved, but there is a claim that this over-remuneration activity occurred "at some point during or shortly after the summer of 2013."

Since both men were separated from employment by Rep. Stockman's office on 15 October 2013, this amounts to a claim that the two men worked fewer than 120 hours

per month for roughly one month, or perhaps several, and were paid at a rate that overcompensated them for this work.

The three other charges (related to each other, but not to the one referenced above) essentially claim that Congressman Stockman conspired to (and did) have two of his staffers (Posey and Dodd) commit felonies by making donations to his campaign committee while they were still on his congressional staff, then compounded the misconduct by knowingly filing a false quarterly report with the Federal Election Commission (hereinafter "FEC"), and telling the House Office of Payroll and Benefits that the two staffers had resigned prior to making their contributions.

Based on reasoning that is comically flawed (as we demonstrate below) and driven more by OCE staff speculation and bias than anything that could properly be called evidence, the OCE "investigators" essentially took the position that Posey, Dodd, and Stockman are all liars and therefore felons, that there was indeed a conspiracy of the type alleged, and that anything presented to prove otherwise was just simply all made up, and should be ignored.

Regrettably, it appears this has become a pattern for the OCE. As the Ethics Committee explained in one of its decisions dismissing a similarly faulty referral, see House Comm. on Standards of Official Conduct, *In the Matter of Representative Fortney 'Pete' Stark*, H.R. Rep. No. 111-409 (2010) ("Stark Report" hereinafter): "These [exculpatory] facts were available to OCE, and in many instances, were known to OCE or in its possession. The Standards Committee concludes that *OCE conducted an inadequate review, the result of which was to subject Rep. Stark to unfounded criminal allegations.*" (emphasis supplied)

SECTION II. REP. STOCKMAN'S RESPONSE TO THE CHARGE THAT HE RETAINED ON HIS PAYROLL TWO EMPLOYEES WHO DID NOT PERFORM OFFICIAL DUTIES COMMENSURATE WITH THEIR COMPENSATION

A. Tom Dodd and Jason Posey were remunerated at a rate consistent with standards set forth in the appropriations statute, House Rules, Members' Handbook, and the Ethics Committee Manual. Claims to the contrary are spurious and utterly without merit or support in the record.

At the outset of any conversation about whether a given employee has been overcompensated (and according to whose standard), it is critical that all interested parties be educated about what exactly a Congressman has been given the latitude to do vis-a-vis those whom he appoints to federal service for his Congressional office. It is apparent from the allegations styled in the OCE Report that the OCE "investigators" involved were simply fundamental unaware of the structure and protocol of House employee work assignments and pay.

Federal law (at 2 U.S.C. §92) authorizes each Congressman to "employ 18 permanent employees" plus "4 additional employees" appointed to any one of five non-permanent categories, one of which is "part-time." Through the Members' Handbook, the

Committee on House Administration ("CHA" hereinafter) defines "part-time employee" as "an individual . . . who typically works [fewer than 120 hours] per month."

As the federal courts have made clear, to "state the obvious: it was within a congressman's discretion to define the parameters of an employee's responsibilities so long as those responsibilities are related to the congressman's 'official and representative duties.'" *U.S. v. Diggs*, 613 F.2d 988 (D.C. Cir. 1980). According to the CHA, Rep. Stockman "is the employing authority" who "determines the terms and conditions of employment and service for [his] staff."

In order to permit House employees to telecommute and thereby increase their efficiency and convenience, Rep. Stockman joined the majority of his colleagues in voting to repeal the statute that once required personal office employees to work in either Washington, DC or the state or district a Member represents. (See Pub. L. 104-186, Title II, Sec. 204(43), 110 Stat. 1718, 1736 (Aug. 20, 1996). The Members' Handbook provides that his employees' utilization of "telecommuting is entirely at [Rep. Stockman's] discretion."

In short, the OCE investigators have clearly relied on the fundamentally flawed premise that Posey and Dodd were required to perform all of their official duties in the Pasadena, Texas office, or not at all. They further erroneously assume that unless the physical bodies of Posey and Dodd were present in the Pasadena office, they were not performing official duties in any way.

It is clear that none of the "investigators" assigned to this matter has ever worked in a Congressional office, because the absurdity of that assumption is evident on its face to anyone with experience on a Congressional staff.

Although government-issued lap top computers and security fobs and smart phones and tablets and iPads were once perhaps merely de rigueur on the Hill, they are now ubiquitous pieces of critical equipment for every office, through which much of the official business is conducted by staffers whose physical locations lie far and wide. No Congressional office in this country could function if the only work that transpired were such as was accomplished by employees parked at some desk at some government facility. The premise is utterly laughable.

As for the specific allegations against Posey and Dodd, the OCE asserts that there is "substantial reason to believe" they failed to perform duties commensurate with their compensation for roughly a month or more in the late summer of 2013. Although it defies credulity, the truth is that OCE makes this assertion *without ever having asked Posey, Dodd, or Congressman Stockman for their respective positions on the question, and indeed, without ever having informed any of the three that the matter was under investigation.*

This, despite the fact that all three gentlemen furnished written responses to the OCE as to all matters known by them to be under investigation as to which any had personal knowledge. Had they been asked to address this concern, they would have done so, and would have immediately cleared it up.

Because they chose not to ask Congressman Stockman or Posey or Dodd for the truth, the OCE made its assertion without even so much as the benefit of a baseline notion of what hours either man was working in Washington, D.C., prior to the relocation of each (at different times, and for different reasons) to the Houston area.

Similarly, the OCE staff had no idea what duties each man was performing while assigned to the Washington, DC duty station, nor whether Congressman Stockman had permitted them to perform these duties by telecommuting, or by requiring them to appear regularly in the Washington office so as to earn the relatively modest pay each was then receiving (60G per annum as to Posey, 50.6G per annum as to Dodd).

The OCE charge boils down to an assertion that "we don't know what they were doing in D.C., where they were doing it, or how many hours they had agreed to spend each week doing it, but we find 'substantial reason' to believe that whatever it was, they weren't doing enough of it in the Pasadena, Texas district office after the relocation, and we're so sure we're right that we're not even going to ask them for their position on the issue." [our paraphrase]

The reality is that the OCE staff was operating from a position of stunning ignorance, and did not seem to care. The only "evidence" cited by the OCE Report and Findings on this issue is that when OCE staff were questioning more than half a dozen District Office employees on a wide variety of subjects, two of the female employees offered their hearsay impression that Posey and Dodd were not coming into the Pasadena district office very often, perhaps only on Mondays and Fridays. One such employee speculated that the two might have been working part time for the campaign, and part time for the office.

Neither of the two female employees had any basis for the speculation extracted from them by OCE staff. Neither woman served in a supervisory capacity for either Posey or Dodd, and neither woman had any idea what portfolio assignments Posey and Dodd had while their duty station was Washington *or* Houston.

OCE staff "investigators" knew that Dodd reported to Legislative Director John Velleco in Washington (and not to anyone in any one of the three district offices), and that Posey reported directly to Rep. Stockman (and not to anyone in any district office), because they had already been specifically told this by Stockman Chief of Staff Kirk Clinkenbeard during his interview by them.

Inexplicably, there is no indication that the OCE investigators shared this critical information with the Board when it made ready to vote on this question.

Neither of the two women cited by the OCE on this issue played any role in the decision to relocate Posey and later Dodd to the Houston area, or in the assignment to the two men of their duties there, and neither gave OCE staff reason to believe anything to the contrary. Although their speculation and office gossip as co-workers was perhaps

honest and understandable under the circumstances, it could not in any way form the basis for an assertion that there is "substantial reason" to believe Posey and Dodd weren't earning their keep.

Had OCE staff been honorable and offered Congressman Stockman and the two gentlemen involved the opportunity to respond to the allegations, the Board would have learned that Posey and Dodd were asked by Rep. Stockman to relocate at different times, and for different reasons. In point of fact, neither man became a part time employee when the two of them relocated, several months apart, to the district.

In order to classify either man as a "part time" employee, under current House rules the men would have had to average working fewer than 120 hours per month, or 27.5 hours each week. As we show below, for Congressman Stockman to have made such a representation as to either man — that he was only part time and was working fewer than 27.5 hours per week — would have been utterly false.

In the spring of 2013, Congressman Stockman had received reports of questionable constituent service in the three district offices, and dispatched Jason Posey to help clear the problems up, while at the same time charging him to keep up with the same portfolio of special projects he had been handling and working on while in Washington.

The then District Director had permission from Congressman Stockman to telecommute from home when asked to perform work on Fridays, Saturdays, Sundays, or Mondays, and thus appeared personally in the office only on Tuesdays, Wednesdays, and Thursdays. Some question arose as to whether this lack of a senior level staff member being present on Mondays and Fridays might have been giving rise to some of the complaints the Congressman had been getting about constituent service — an entirely reasonable concern.

Because Congressman Stockman thought it a good idea to strengthen the physical presence in the Pasadena office on those days when the District Director was at home (some distance away), he asked Posey to work out of the Pasadena office on Mondays and Fridays, and to make such visits to the Cleveland and Orange offices as he saw fit, *while continuing to perform essentially all other significant duties he had previously performed in the Washington office.*

Posey was explicitly authorized by Congressman Stockman to do as much of this work as he chose from a suitable location, subject only to the suggestion that he make an appearance in the Pasadena office on those days when the District Director would not be expected to be present (Mondays and Fridays).

Indeed, in order to reduce the possibility of friction and potential turf wars between Posey and the District Director, there was a tacit assumption that it might be best for Posey NOT to be present in the district office except during those times when the District Director was absent.

For this and other reasons, much of Posey's work was in fact done from locations other than the Pasadena district office, whether that be his home, his car, a local coffee shop, a hotel, an airport, or the Orange and Cleveland offices, to which he also made periodic visits.

In this regard, Mr. Posey is no different from thousands of other staffers who also perform parts of their jobs in impromptu locations that do not include their office desks. When the boss calls, you answer the phone, no matter where you are or what time it is. Those who decline to take the boss' call because it's 5:01 p.m., or because they aren't sitting behind their office desk will not last long in the service of any Member. It is simply the nature of the beast.

As noted above, the Members' Handbook explicitly authorizes the Member to make telecommuting arrangements with his staff. It is not apparent that this fact was known to the OCE staff at the time the OCE made its findings.

Congressman Stockman is not profligate in setting staff salaries; nay, he is notoriously conservative in this regard. For example, the most recent quarterly payroll report would clearly show that during that period Congressman Stockman employed at least 10 people who were aged 40 or older, at least five of whom are aged 50 or older. We are unaware of any other Congressman of whom that could be said. Nevertheless, and notwithstanding the unique level of maturity and seniority with which the Congressman's staff is stacked, that same payroll report would show that ***not a single employee in his office is remunerated at or above the senior staff level as that figure has been set by the Ethics Committee (at just under \$121,000.00 per annum).***

Each of those facts (the incredible seniority and the modesty of remuneration) is remarkable in its own right. The combination of the two in the same office is nothing short of extraordinary, and very likely without precedent on the Hill in the modern era. For the entire duration of the 113th Congress to date, Rep. Stockman has paid no staffer above the junior staff level: this includes his 56 year-old Chief of Staff, his 56 year-old Legislative Director, a 49 year-old Administrative Assistant, and two attorneys on his staff who passed their respective bar exams 15 and 26 years ago.

By contrast, each of the three attorneys OCE used as "investigators" in this matter (Omar Ashmawy, Scott Gast, and Bryson Morgan) was being paid more than Rep. Stockman's highest paid staffer during the time of the investigation, *and even the least highly-paid OCE staffer earned more than Tom Dodd and Jason Posey combined.*

Ashmawy was being paid the statutory maximum, which is almost as much as a Congressman is paid, and nearly three times the salary Rep. Stockman paid Jason Posey, notwithstanding the fact that Posey is older than all three of the twenty-something or thirty-something OCE investigators.

The salary and benefits package given to these three young OCE staffers exceeds a half-million dollars per annum in the aggregate. We cite this not to suggest that they are

being compensated at a level that is not commensurate with the work they perform, although that is perhaps an open question. What we do note is the profound irony of a handsomely paid OCE employee casting aspersions about the salary level of a man who is older than he is, but earns only a third of what the OCE staffer is paid. Further, one wonders which of the two is more likely to be fielding assignments, phone calls, texts, and emails on weekends, holidays, and at three o'clock in the morning: Posey from a sitting Congressman, or Ashmawy from his part-time Board members?

Notwithstanding Rep. Stockman's conservative salary awards, he is nevertheless a caring and thoughtful boss, and has long ago learned the chief lesson understood by all good supervisors: happy employees are good employees. Courtesies extended to staff will repay themselves many times over in increased professionalism and efficiencies at the office. Accordingly, Rep. Stockman has made telecommuting and flex-time arrangements with Posey, Dodd, and several other staffers, including the former employee in the Pasadena office whose speculative comments are cited by the OCE as evidence against Posey and Dodd.

For example, Rep. Stockman allows the mother of a newborn baby to work from her home on occasion (especially on recess days when he would be communicating with her via telephone and email in any event because he's not then in Washington). In accordance with the accommodation requirements of both the Americans with Disabilities Act and the Family & Medical Leave Act, Rep. Stockman allows a father of three young children to work from home as necessary because he is the caregiver for a disabled spouse.

There is not the slightest hint of anything unethical about Rep. Stockman's decisions in this regard. Moreover, the result of these arrangements has been, in the main, a staff that is both more contented and more productive.

Tom Dodd was relocated to the district several months after Posey was, and for different reasons. Dodd's duties included handling legislative matters for the Congressman in a number of subjects, including Foreign Policy (for a Member on the Foreign Affairs Committee), Energy (for a Member from the Houston area whose district includes more refineries than any other), Second Amendment concerns, Human Trafficking, the Sudan Caucus, and matters involving the Middle East.

Dodd was also responsible for coordinating visits to and from officials in the diplomatic ranks, for coalition outreach, and for meeting directly with state and local government officials, civic and community organizations, oil and gas corporate interests, hunting groups, stakeholders, and such other groups as might from time to time desire personal contact with a member of Congressman Stockman's staff.

It goes without saying that with these duties Tom Dodd was almost compelled to spend the vast majority of his time outside of Washington D.C. in the vicinity of the home district — and even then, not sitting at a desk in a district office crammed in the corner of San Jacinto Community College (the location of the Pasadena office). Such a

location is wholly unsuited for most meetings of the type Dodd conducted for the Congressman.

Congressman Stockman did encourage Dodd to make periodic appearances at a district office, but fully understood that most of Dodd's meetings were in Houston proper, some miles away, and had no expectation that Dodd would be making regular appearances behind a desk in Pasadena.

Again, nothing in federal employment law, House Rules, or the Members' Handbook forbids or eschews this type of activity. For the OCE to find anything nefarious or lazy or unethical about it is to be straining at the gnat.

In truth, while located in the Houston area both men were really on the clock 24 hours a day, seven days a week, accessible to and frequently consulted by the Congressman and others on staff at all hours of the day and night on a variety of matters. Legislative Director John Velleco in particular used Mr. Dodd as a constant resource for policy questions, and when preparing to handle meetings in the Washington office that spoke to areas within Dodd's expertise (which was often).

Ironically, there is no question that had Congressman Stockman deemed the work being done by Posey and Dodd to be worth an annual salary of 60G for even two days' work per week in the district office, he would have been well within his rights under all relevant standards to pay them at that rate: *for two days' work per week*.

As noted above, Members are given nearly unfettered discretion in setting annual salaries, and are permitted to pay significant salaries for even those who work less than full time, or occupy one of the four authorized non-permanent positions. No amount of second guessing by the OCE can turn such a decision, left to the sound discretion of the individual Members, into some kind of ethical lapse.

Here, we need not even fret about whether such remuneration is warranted for "part time work," because both Posey (aged 42) and Dodd (aged 35) worked permanent employee hours for what is, by traditional House standards and practices, relatively modest annual pay for two staffers of their age and experience.

No discussion of this allegation would be complete without confronting head on the fact that this spurious allegation would not have made it past the OCE Board had the OCE staff obeyed H.Res. 895 and OCE Rules. Under the resolution authorizing the OCE process, the House mandates that OCE provide the subject of the review/inquiry with the opportunity for him to address the Board prior to its vote on any accusation. (See H.Res. 895, at Section I(f)(C)(3))

Here, there was never an opportunity for Congressman Stockman (or Posey or Dodd) to address this issue, because (1) Rep. Stockman was never sent any notice that the OCE intended to widen the scope of its investigation into completely unconnected matters (no Notice of Preliminary Review or anything was sent); (2) he was never sent any

supplemental Request For Information indicating that this was an area of inquiry; and, (3) he was never informed of the date of the Board's impending vote on the matter so that he could appear and make a proffer of justification or defense.

This last fact is all the more troubling in that in order to make certain he would be granted this opportunity guaranteed to him by H.Res. 895, Rep. Stockman had previously sent his office counsel, Mr. Jack Daly, personally to the offices of the OCE to make clear that the Congressman wanted to exercise his right to have his time before the Board.

Notwithstanding this in person request/demand made on his behalf, and his underlying right even without such request, OCE staff refused to notify Rep. Stockman of the date of the hearing. The first the Congressman learned of these allegations having to do with the pay of Posey and Dodd was by reading of the referral the OCE had made to the House Ethics Committee.

The OCE staff cannot claim they did not have time to send out a supplemental RFI to Congressman Stockman calling these "pay" issues to his attention and seeking comment. The universe of evidence they cite in support of their allegations (the alleged "substantial reason") was the two witness interviews of the female employees in Congressman Stockman's Pasadena district office.

Those two women were interviewed on 9 January 2014, nearly two weeks prior to the end of the investigatory period. At that time the OCE staff possessed all of the information it was ever going to have in support of its allegations against Rep. Stockman in this regard: information it later characterized as "substantial reason." At that point there was plenty of time for the OCE staff to have apprised Congressman Stockman of their interest in this additional area of inquiry.

Why they chose not to do so only they can say, but lack of time is certainly not a legitimate defense. The OCE staff did in fact send out additional RFIs after 9 January 2014; they just didn't send any to the subject of the inquiry to let him know they were chasing new white rabbits.

On 15 January 2014, for instance, the OCE staff sent an RFI to Rabih Zeidan, a campaign volunteer who prepared the FEC reports at issue with respect to the other allegations in OCE Report and Findings. The following day, 16 January 2014, they generated and forwarded an RFI to new Stockman staffer Jack Daly.

In short, the OCE found the time to seek additional information regarding these allegations, but not to share the fact of the investigation with the Congressman who was its subject. Nor did they permit him his legal right to address these allegations before the OCE Board prior to its vote on this matter.

The OCE was thus doubly wrong on this issue. It was wrong for finding the hearsay speculation of two uniformed and disinterested coworkers to be "substantial reason,"

and for refusing to observe even the most minimal measures of due process so as to allow Rep. Stockman an opportunity to be heard prior to a vote. Their recommendation that the Ethics Committee review this matter further ought to be rejected, and the matter dismissed.

SECTION III. REP. STOCKMAN'S RESPONSE TO THE ALLEGATIONS INVOLVING THE CONTRIBUTIONS MADE TO HIS CAMPAIGN COMMITTEE IN FEBRUARY 2013

A. Rep. Stockman's Statement to the OCE Makes Clear that Posey and Dodd Were Not House Employees at the Time They Made Their Unsolicited Contributions.

Rep. Stockman made a thorough and honest statement to the OCE about the events surrounding the subject contributions. In drawing its conclusions, the OCE chose to ignore certain aspects of that response letter (including the resignation letter of Tom Dodd attached to it), and to distort and selectively excerpt certain other aspects of it to twist its evidentiary value and work a perversion of its meaning.

Because it stands as the most comprehensive and authoritative statement of what happened regarding the subject contributions, and what role Congressman Stockman played in the matters at issue in this review, it is set forth here in its entirety. The resignation letter of Tom Dodd, referenced therein, is attached as Attachment A.

2 January 2014

Mr. Omar S. Ashmawy
Staff Director and Chief Counsel
Office of Congressional Ethics (OCE)
425 3rd Street, SW
Washington, DC 20024

Dear Mr. Ashmawy:

I regret that myriad demands on my time (e.g., I am a U.S. Senate candidate in a 4 March 2014 primary election) did not allow me to complete this response before the Christmas recess. According to the statement of the nature of review (Review No. 13-6070 dated 28 October 2013), your office inquires whether former House employees Jason Posey and Thomas Dodd (1) made contributions to my campaign while employed by my congressional staff and (2) whether they used third parties as conduits through which to pass contributions to my campaign. I have now reviewed this matter and confirmed that the answer to both questions is NO.

With respect to the first question, both Mr. Posey and Mr. Dodd did in fact make contributions to my campaign. They did so in fulfillment of informal pledges they had made to each other before the general election in 2012. On 11 February 2013 they each wrote out (but did not immediately

deliver) three personal checks to my campaign from their own funds in the amount of \$2,500 each, totaling \$7,500. Neither man consulted me in advance regarding these contributions, nor did I request them. I am including copies of those checks for use by you in your inquiry.

Because of their understanding that it would be improper to effectuate campaign contributions by delivery while they were employees of my congressional office, both men approached me on 12 February 2013 and announced that they were resigning from their federal appointments. In the case of Mr. Dodd, the resignation was quite formal and in writing, which he physically delivered to me on 12 February. I am including a copy of that document for your use in this inquiry. In the case of Mr. Posey, the resignation was oral, but delivered in that same moment.

Both gentlemen then announced to me with some measure of pride that they intended to make contributions to my campaign. I understand that at some time thereafter on 12 February they made official their contributions to the campaign (through delivery and receipt) and those funds were put into the campaign's banking account within ten days. At the time these contributions were made, neither Mr. Posey nor Mr. Dodd was then a duly appointed employee of my congressional office (or any branch or agency of the federal government for that matter). Attorneys with expertise in federal public employment law tell me that no measure of "acceptance" or paperwork is required or necessary to effectuate a resignation from an appointment in the civil service because it becomes effective the moment it is delivered, whether orally or in writing, to the appointing authority.

At first blush I was pleased with their actions, as it reflected a level of dedication one does not often see in political supporters. I assumed that they presumed I would assist them in locating other employment, or find a spot for them as employees of my campaign. I certainly felt favorably disposed to both of them and would likely have assisted them in finding such other employment. But as I began thinking about the situation later that day, 12 February, I became what I would describe as mildly annoyed that they had presumed to take these significant actions of resigning without consulting me first to determine whether I would welcome the resignations.

Upon reflection, however, I came to the understanding that their decision not to consult me in advance was designed to protect me from any subsequent insinuation by political enemies that I had procured or otherwise brought about the contributions from them to my campaign by means of pressure or intimidation. Indeed, it would be hard for me to pressure employees for donations that even I did not know were coming. Moreover, had I shared their apparent perception that my campaign was not raising enough money, I would simply have made fundraising for my own campaign a higher priority (last winter and spring) than raising \$55,000 for the NRCC.

After thinking about the matter and sleeping on it, on 13 February I asked both men to meet with me personally. I thanked them for their contributions and their dedication, but told both that it would be my preference that they agree to return to federal service in my congressional office. I pointed out that since both had made the contributions at a time when they were not employees, the contributions were completely lawful and within their constitutional rights. I further argued that their having made such contributions could not render them ineligible for subsequent federal service – a conclusion I regard as unassailable. I asked both to return to employment in my office, and both agreed. I then appointed both men to their positions at their previous salaries.

The ministerial recordation of their resignations and re-appointments was not reflected in the files of the Chief Administrative Officer until December because House administrative employees discouraged my staff from submitting payroll authorization forms to the Office of Payroll & Benefits. The HR people noted that the end result of processing all of that personnel paperwork would be a net zero because a salaried House employee who works any portion of any day is paid for the entire day. Thus, notwithstanding their resignations, both Posey and Dodd were entitled to full pay for the entire month of February. In order to have lost any entitlement to pay, it would have been necessary for them to have been out the remainder of the 12th following their resignations, the entire day on the 13th, and to have delayed their reentry onto duty until the 14th. This is how it was explained to me.

In sum, my office was essentially told, "There's absolutely no point in bothering with all of this paperwork and red tape, because it ain't gonna make any difference anyway; you're just making busy work for the House financial accounting folks." In deference to this attitude, we simply acquiesced until the false appearances created by the incomplete administrative record compelled us to set the record straight. I am including copies of the personnel paperwork for use by you in your inquiry. Again, lawyers tell me that under federal civil service laws the lawfulness of resignations is determined by when they actually occurred, not by whether or when they are subsequently recorded. Thus, there is no question that the resignations were effective as of 12 February 2013, before the campaign contributions were effectuated.

With respect to the second question, neither Mr. Posey nor Mr. Dodd passed money on to third persons for the purpose of having such third parties make contributions, nor were any such "conduit" contributions ever made. Each man wrote the subject checks in his own name, on his own account, from his own funds. Unfortunately, I have discovered that a combination of ignorance and poor judgment on the part of one or more campaign volunteers has resulted in contrary public perception and misleading media reports, and I will try to explain to the best of my knowledge how that occurred.

A volunteer for my campaign, Rabih Zeidan, Ph.D., C.P.A., played no role in taking the subject contributions, but became aware of them as he began to assist in the preparation of the quarterly FEC report some weeks later. The accountant expressed his opinion to Posey and Dodd that the disclosure of their names on the report might encourage persons who do not share my political philosophy to imply that I had used some measure of intimidation or pressure to extract the funds from them. In short, he felt the names of staffers would give political enemies the motivation to cast aspersions about me, and he – quite on his own – set about devising a means by which to avoid giving them this encouragement.

Through some miscomprehension of the FEC's "retribution rule" that he has yet to explain to my satisfaction, the accountant concluded that it was appropriate and lawful for him to report to the FEC that contributions given by person A were actually given by person B, so long as the two were immediate family members. I should note that English is a second language for Dr. Zeidan, and this circumstance has been something of an impediment to my understanding his reasoning. Nevertheless, completely convinced that this action was permissible under the FEC retribution rule, the accountant asked Posey and Dodd to supply him with names of immediate

family members to whom he might ascribe their contributions, and in reliance on his insistence that this was a permissible reporting practice, they complied. Posey supplied the name of his father and Dodd supplied the name of his mother. The accountant then filled out the relevant FEC quarterly report reattributing Posey's contributions to his father, and Dodd's to his mother.

At no time did I approve of this move, nor was I even aware of it until media reports surfaced months later calling attention to apparent contributions from the parents of two of my employees. Needless to say, had I been made aware of it, I would not have permitted the erroneous reattribution to be reported. Indeed, as soon as I discovered it, I caused an amended report to be filed with the FEC, correctly identifying Posey and Dodd as the contributors of the subject funds, promptly separated both from federal service, and refunded their contributions. I am including a copy of those checks for use in your review. I respect both men and hold no grudges, but I felt then and feel now that to continue them as public servants might not foster public confidence in my congressional office. These men, Posey and Dodd, are not unscrupulous, but could fairly be said to be culpably gullible, nor am I pleased that each permitted this to happen without making sure it had been approved by me.

I am disappointed that the procedures I had in place at that time failed to detect and correct this reporting error before a quarterly report was filed with the FEC, and have put further safeguards and protocols in place to ensure such a snafu occurs never again. Namely, I retained the professional services of an attorney who specializes in FEC compliance and directed my campaign staff to undertake and complete additional FEC training. Please allow me to thank you in advance for your office's role in setting the record straight concerning this matter.

Sincerely,

Steve Stockman

B. Tom Dodd's Statement to the OCE Makes Clear He Was Not a House Employee at the Time the Subject Contributions Were Made.

The OCE Report and Findings falsely states that Tom Dodd offered no response to the OCE RFI. In fact, Mr. Dodd prepared and sent a very thoughtful letter addressing all matters known by him to be a subject of the OCE's concern. Dodd even went to the trouble of having the letter notarized on his own initiative.

Dodd mailed his letter via the USPS, priority mail, to the Post Office Box address for the OCE listed on its web site, and the document was returned to him by the USPS nearly five weeks later indicating that it could not be delivered as addressed. (Again, the letter was in fact actually addressed as it should have been, as the original envelope makes clear.)

Mr. Dodd then re-mailed his letter in its original envelope (to prove that he had properly addressed it the first time) to a second address for the OCE, its actual street address.

That letter was rerouted by persons unknown from the OCE address to the House Ethics Committee address, where it was sent through the various House security measures, which effectively destroyed its physical integrity through overheating it and irradiating it. At some point thereafter it was marked "Return to Sender" and in fact returned to him in a severely compromised condition.

It is not clear whether the mistakes that resulted in his letter being rerouted are the fault of the OCE staff or the USPS. The only thing that is clear is that they were certainly not the fault of Mr. Dodd. Moreover, because the OCE staff told the Board that Dodd had not responded to its RFI and was therefore a non-cooperating witness, the staff encouraged the Board to draw and it did in fact draw negative inferences from this false allegation as to Mr. Dodd. Owing to the proximity of Dodd to the heart of these allegations, that fact is most unfortunate.

Copies of the Dodd letter proving that it did in fact undergo the ordeal described above are attached as Attachment B.

Mr. Dodd's letter comprises a personal statement by one of only three people who really know what went on with respect to the subject contributions. It makes clear that Rep. Stockman was in fact telling the truth as to the Dodd resignation. Further, if the Dodd resignation letter is in fact legitimate and not a manufactured post hoc artifice, then every suspicion identified by the OCE staff suddenly evaporates.

The text of the Dodd letter is set forth here in its entirety.

January 6, 2014

Office of Congressional Ethics
Post Office Box 895
Washington, DC 20515

To Whom It May Concern:

I recently received correspondence from your office indicating that donations I made to Congressman Steve Stockman's campaign nearly a year ago are now the subject of a preliminary investigation. Your office requested that I respond on or before January 8, 2014. I voluntarily share the following information and believe you will find it helpful.

I graduated from college 13 years ago, have worked with Congressman Stockman on various projects and causes for about five years, and went to work on his congressional staff on January 3, 2014. When my roommate Jason Posey and I together volunteered on Steve's campaign back in 2012, our enthusiasm for

his candidacy grew and we made a pact to do everything we could to support his campaign.

When the campaign's need for financial support became apparent to us last February, we decided to make matching contributions. We made out our contribution checks on Monday, February 11th and delivered them to the campaign on Tuesday, February 12th. I made my contributions in my own name using my own funds (i.e., my checks were drawn on my personal banking account that bears my name).

When I completed my Ethics training a week or two earlier, I learned that House employees are not supposed to make contributions to the Congressmen for whom they work. With the benefit of that admonition in mind, I took care to resign before making my contributions. At that point I had no expectation of continuing to work for Steve in any capacity and had already begun to think about lining up new clients to enable me to resume my consulting business on a full-time basis. But on Wednesday February 13th, Steve insisted he wanted to rehire me and I was persuaded to come back to work for him on his congressional staff.

Sometime in March, the campaign accountant told Jason it would be unseemly for the quarterly FEC report to show donations from staffers. He told us there was a reattribution rule that allowed him to report our donations in the name of a spouse, parent, or child. I should have been skeptical and asked whether the accountant's interpretation and application of FEC rules was correct. When the accountant asked me to come up with the name of a family member to reattribute my contributions to, I offered my mother's name.

But for the happenstance that I had a joint bank account with my father when I lived in England and once made a charitable donation to my employer (the Delaware United Way) in my mother's name, I think the dubious propriety of the accountant's advice might have been obvious to me. As for my mother, she had no idea that the campaign accountant had listed her name on the FEC report until an employee of something called the Sunlight Foundation called her in October.

When that Sunlight Foundation reporter called me and began asking questions, we had a very brief conversation in which I recall saying "I didn't make that contribution as a staffer" before telling him I would not comment further. The Sunlight Foundation's publication of a misleading partial quotation

(i.e., "[I] did not make the contribution") attributed to me in its story appears to be the result of the reporter and I being on a different wavelength. I was focused on correcting the erroneous assumption that I was a House employee at the time I made my contributions. The reporter was focused on the appearance of a so-called "straw man," a term I had never heard before then and a concept I was unfamiliar with until recently.

Since my termination last October, I have resumed my career as a consultant and wish to move on with my life. This episode has already been somewhat embarrassing to me and it has caused my disabled mother to be hassled by harassing calls to her home telephone number. I don't want to be involved in any political controversy, much less some sort of litigation, and hope this additional information helps clear up any confusion.

Sincerely,

Thomas R. Dodd

Mr. Dodd has been made aware of the aspersions cast in his direction by the OCE, and has related to Congressman Stockman's office that he takes deep umbrage therefrom. He has related that when he was only 24 years of age he was already earning a salary of 130G per annum, and that this is a fact that is recorded in public records that were available to OCE's investigators had they desired to look it up.

Dodd further advised that he has a personal net worth that approaches one million dollars on days when the stock market smiles on his portfolio.

Finally, he advises that upon leaving his \$35,000/yr. job at the United Way of Delaware some years ago, he left his employer with a donation from him in the amount of ten thousand dollars. He bristles at the implication contained in the OCE Report that he was unable or unwilling to make a donation in a lesser amount to the campaign committee of a public servant in whom he had great confidence, and for whom he had tremendous respect.

Dodd has prepared a letter to the Ethics Committee which he has asked Congressman Stockman to forward with this Response. Accordingly, the said letter from Mr. Dodd is attached as Attachment C.

C. The Posey Response to the OCE Makes Clear He Was Not a House Employee at the Time He Made His Contributions.

Like Congressman Stockman and Tom Dodd, Jason Posey also prepared and submitted to the OCE a thorough, honest, and candid statement of his involvement in the contribution controversy. We are informed that it was also notarized. His statement was completely consistent with that of Tom Dodd and Rep. Stockman, and the text of it is set forth below in its entirety.

January 6, 2014

Mr. Paul Solis
Investigative Counsel
Office of Congressional Ethics
425 Third St. SW
Washington, DC 20024

Dear Mr. Solis:

I write to you today because I am informed you are seeking more information concerning contributions to the campaign of Congressman Steve Stockman, whom I have known since 1995, made by me and Tom Dodd, my former roommate and colleague.

In my recent capacities as a House employee, treasurer of the Friends of Congressman Steve Stockman committee, and campaign donor, I do feel I am in a unique position to shed some light on this matter. I became a House staffer on January 3, 2013 and became the new campaign treasurer several weeks later on January 30.

In early February, Tom Dodd and I came to the conclusion that the campaign's funds were minimal and its debts substantial. We jointly determined that that was an appropriate time for us to fulfill our pledge (of financial support for the Congressman's campaign) that we made to each other in the fall of 2012.

After Tom and I resigned from our respective positions in the Congressman's personal office on February 12, each of us made three donations in the amount of \$2,500. Weeks later, I transcribed those six donations into a contribution spreadsheet that I sent to the campaign accountant – a volunteer named Dr. Rabih Zeidan – for him to put into the software he used to generate the Q1 FEC Report.

Dr. Zeidan told Tom and me that he thought our donations might look unseemly to some because we had ultimately returned to federal service not long after we made our contributions. He (Zeidan) advised us that the FEC reattribution rule would authorize him to reattribute the contribution to a close family member rather than to us,

the actual donors. He didn't get into it much farther than that, and frankly I had been the treasurer for only a few weeks and did not consider myself an expert on the point (and for good reason).

I of course now understand the reattribution rule, and know that it had no application in our circumstance, and yes, I do feel somewhat foolish for not having challenged him or consulted an attorney.

In my defense, let me point out that Dr. Zeidan is a CPA and a PhD, and I knew he had been doing some FEC reporting work off and on since the 1990s. Quite frankly I thought he knew what he was doing, and we just more or less did what he asked – which was to give him the name of a close family member so he could do a reattribution.

As far as I am aware, Congressman Stockman was never in the loop on any of this. I can say with certainty that I do not recall any conversation or communications of any type that I had with the Congressman about a potential reattribution at the time Dr. Zeidan was preparing the FEC report.

Actually, judging from the Congressman's reaction when he found out about all of this in the media three months ago, it was apparent to me that this came as a complete shock to him. He was not happy with us to say the least. Had we consulted him in advance I have no doubt this FEC reporting error would never have gotten by him.

Please note that the earlier filed Q1 FEC reports showed the subject campaign contributions as having been made on February 21, 2013. That is because that was the date on which the funds were actually put into the campaign account rather than the date the checks were delivered to and received by the campaign. Usually the precise date on which a contribution is officially "received" by a campaign is a matter of great informality and of negligible consequence.

But because this is an unusual circumstance in which the date the contribution is officially might make a true legal difference, in November the campaign filed an amendment that reflects the actual, legal date on which the six subject contributions were made: February 12, 2013. I am including a copy of that amended FEC report in case it is helpful.

No other information that seems relevant to your inquiry comes to mind, but you are welcome to contact me if I can be of further assistance.

Sincerely,

Jason T. Posey

The absence of relevant legal analysis in the OCE Report and Findings suggests the OCE staff is unaware of applicable Federal employment law concerning the validity and/or effective date of an oral resignation. In several of its publications, the CHA reiterates the following axiom of Federal employment law: "[T]he employee has the right to resign from the position at any time."

Every Federal employee enjoys the unilateral right to resign at any time, to resign orally or in writing, and to make his resignation effective immediately. The subsequent act of filling out HR paperwork is merely ministerial.

For example, the Guide to Processing Personnel Actions (GPPA) published by the U.S. Office of Personnel Management (OPM) for use by executive branch agencies states: "Each person who resigns should be asked to do so in writing. Part E of the Standard Form 52 is one option for submitting a written resignation. When the employee resigns orally, try to obtain written confirmation. If this is not possible, ask the person who received the oral resignation to document it in a memorandum for the record."

Pursuant to well-settled law in this regard, the resignation of Posey thus became effective the time and date upon which it was expressed to Rep. Stockman — on 12 February 2013. All available evidence proves that this occurred prior to Mr. Posey relinquishing legal possession of the subject donations. He thus clearly made the donations at a time when he was not employed by the United States House of Representatives, and was free to do so.

D. There is no evidence whatsoever suggesting that Congressman Stockman conspired to accept donations from members of his Congressional staff

Notwithstanding the OCE Board's stated conclusion that there is "substantial reason" to believe Rep. Stockman conspired to accept contributions from staff employees, *the Report cites no such evidence*. One who scours the OCE Report in search of any such evidence will look in vain. The complete universe of evidence that suggests such a thing occurred exists only in the speculating and creative minds of the OCE staff and Board.

Rep. Stockman furnished the OCE with an unambiguous statement making clear that he did not ask Posey, Dodd, or anyone else on his staff for a contribution, and had no knowledge of the contributions until approached by Posey and Dodd on 12 February 2013. Posey and Dodd have both furnished statements affirming that same account, and particularly any claim of advance notice by Rep. Stockman.

Every witness interviewed by the OCE staff who was asked has flatly denied having ever been asked by Rep. Stockman to make such a contribution. Nevertheless, the Board found "substantial reason" to believe it occurred. The Ethics Committee should not.

Whatever one thinks of what happened after the contributions were made, there is no evidence of any conspiracy to solicit or accept any such contribution.

E. Posey and Dodd were not employed by Congressman Stockman at the time their contributions were made.

Other than campaign CPA Rabih Zeidan, the only three individuals in the universe with personal knowledge of the events at issue are Posey, Dodd, and Stockman, and their accounts are all internally consistent and supported by contemporaneous documentation in the form of the resignation letter. Not a single individual has come forward to cast doubt on their account, nor will one, as that account is the truth.

Posey and Dodd had resigned before their contributions were made, just as the Dodd, Posey, and Stockman statements all indicate. The two men are not felons.

Even the indefatigable zeal of the OCE investigators has produced nothing but a string of witnesses who say they know nothing about the subject contributions, but know that they themselves were never asked by Congressman Stockman to give to his campaign committee, or that the only thing he told them about speaking to the OCE was to tell the truth.

Notwithstanding their failure to find a single witness able to cast doubt on the participants' account of events, the OCE concluded that it did not find that account credible. In essence, it said Congressman Stockman and Messrs. Posey and Dodd are liars.

The OCE Report offers four circumstances that it contends suggest the Posey/Dodd/Stockman accounts are not credible. As we show below, none of those bases holds water.

The report further argues that these accounts should be deemed not credible due to what it calls "the lack of cooperation by key individuals." By this it undoubtedly means the claimed refusal of Dodd to furnish a response, and the alleged refusal of Dr. Zeidan to cooperate.

F. The Claimed Refusal of "Key Individuals" to Cooperate With the OCE Review is a Gross Misstatement, and Does Not Furnish Support for a Claim that Rep. Stockman's Statements are Not Credible.

If in fact two of the four persons personally involved in the events at issue had attempted to stonewall or obfuscate, or failed to provide any information that might shed light on the events at issue, perhaps the OCE would have a point worth making. The truth, however, is that both Dodd and Zeidan did in fact cooperate, and although the OCE may have been truly ignorant of Dodd's two attempts to deliver his statement to them, the OCE staff knew that the statements they made to the OCE Board about Dr. Zeidan were false.

Dr. Zeidan is a Lebanese person for whom English is a second language. Moreover, while this investigation was in process he was forced to undergo surgery to his throat and vocal cords, and was under a doctor's orders to limit his audible speech until further notice. This was especially important because in addition to being a CPA, Dr. Zeidan is an instructor at a college in Corpus Christie, Texas.

Dr. Zeidan was contacted very late in the review process. He received an RFI on 15 January 2014 (day 82 of what became an 89 day review process), whereupon he immediately called the OCE investigators and expressed a desire to supply all information available to him.

The response from the OCE staff was to send him a document informing him that OCE staff members were coming to Texas to interview him personally on the third business day following the notice, on a day that also corresponded to the day before the start of classes at the institution where Dr. Zeidan was an instructor (this after first asking Dr. Zeidan to meet with them on a national and state holiday).

Dr. Zeidan contacted the OCE again, this time by email, to explain the extreme inconvenience to him of that step by OCE staff. He again reiterated his orders from his doctor not to undertake any speech except that which was absolutely necessary. He explained that the day before the start of classes is a very busy and critical time in the life of the institution, and one that he could not spend undergoing interrogation at the hand of Washington lawyers.

He invited the staff to send him in writing any questions to which they needed or wanted answers from him, as is authorized by the OCE Rules, and pledged his full cooperation in responding to those questions at his earliest possibility. Indeed, the very nature of the email and the stilted language contained therein makes clear that for him, English is a second language, and questions in writing would be more readily understood by him anyway.

In response, OCE staff insulted, threatened, and bullied him, and lied to him about the use of interrogatories, falsely claiming that they were not at liberty to use them. They attempted to cajole him into permitting the rush interview by sending him a letter threatening to identify him as a non-cooperative witness, notwithstanding his repeated expressions of a desire to cooperate and assist in the review.

In the end, having lied to Dr. Zeidan, the OCE staff then lied to the OCE Board, falsely claiming that they had received no response from Dr. Zeidan, and identifying him as a non-cooperative witness. Compounding the malevolence of that labeling, the OCE staff then asked the OCE Board to draw negative inferences against Congressman Stockman, Tom Dodd, and Jason Posey based upon Dr. Zeidan's and Tom Dodd's alleged refusal to cooperate, and the Board did so (see para. 85 of the OCE Report).

Consider that in context. Dodd prepared a notarized response and sent it in a timely fashion TWICE to the OCE. On very short notice, Dr. Zeidan, with imperfect English and a surgically compromised throat, repeatedly responded to the OCE staff with near constant communication pledging his cooperation and offering to respond in writing to

any question they might wish to submit to him. The OCE response was to conclude that Congressman Stockman and Jason Posey are liars because of "the lack of cooperation of key individuals in the review." (Report, at para. 85)

The move represents bootstrapping of the highest order, and is designed not to produce the truth at the Board hearing of this matter, but the pound of flesh OCE staff demand for witnesses they have been unable to bully into complete submission. The correspondence between Dr. Zeidan and OCE staff reads less like a search for the truth than like a power trip for OCE staff. The fact that the Board ended up holding that against Congressman Stockman violates any sense of fairness known to the western world.

G. Tom Dodd's October 2013 Conversation With a Blogger Furnishes No Support for the Assertion that Rep. Stockman's Statement is Not Credible.

Beyond the wanton and capricious labeling of witnesses as non-cooperative, the OCE Report identifies four circumstances that it contends cause it to conclude Congressman Stockman and Jason Posey are supposedly liars.

The first involves a blog entry by someone outside of government who claims, in an entry in an internet blog, that when he spoke to Tom Dodd about the contribution that was at one point erroneously attributed to his mother, Dodd told him he did not make the contribution. (Report, at para. 81)

In the first instance, it is the height of absurdity for the Board to base any conclusion about the veracity of a Congressman and his staff on the completely unsupported, unsworn statement of some internet blogger with an axe to grind, and an incentive to stir the pot in order to bring money to his crusade. That OCE staff were able to convince the Board to do so (especially without speaking to either of the two individuals who supposedly took part in that exchange) reflects the imperfection and recklessness of the OCE deliberations as much as anything else contained in the Report.

Dodd's letter, twice sent to the OCE and twice rejected (by some strange combination of fate, the OCE staff, or the USPS) makes clear that the blogger's statement was not true, but was in fact only a piece of his response, which at the time the blogger either willfully distorted for his own purposes or, more likely, simply misunderstood. Either way, the statement (itself triple hearsay) is false. Dodd did not deny making the contribution: he denied making the contribution while employed "as a [Congressional] staffer." (See para. seven of Dodd's letter, above).

Thus, contrary to the OCE assertion, the statement made to that blogger by Dodd way back in October of 2013 – and before the OCE initiated this review -- was completely consistent with the statements made months later by Jason Posey, Tom Dodd, and Congressman Stockman: Dodd was not employed as a Congressional staffer at the time he made the contribution.

Moreover, even if the blogger's statement were true, and Dodd had instinctively denied having made the contribution when initially caught off guard by the blogger's phone call, such would hardly have been compelling proof that the subsequent formal statements of everyone involved were false.

Common sense dictates the more likely conclusion that if Dodd denied having made the contribution when faced with the blogger's ambush interview, it is simply evidence of an off-the-cuff reaction of a staffer who in the heat of the moment felt the need to make a denial that was at that time consistent with the state of the FEC record.

Furthermore, is it difficult to see how Dodd's claimed fib to the blogger is somehow "[c]ontradictory" to the subsequent statements of Congressman Stockman and Jason Posey as the OCE Report argues (Report, at 19). To the contrary, if Dodd did indeed initially deny making the contribution previously misattributed to his mother, it is now beyond obvious that that statement would have been false.

A statement presently acknowledged by all to be false is simply not capable of "contradicting" anything. It is illogical and foolhardy for the Board to base its conclusion that Congressman Stockman's formal statement is somehow "not credible" on the possibility that a former staffer *may have* fudged while on the phone with a blogger.

H. The FEC Reports of October 2013 Furnish No Evidence to Support the OCE's Claim that Rep. Stockman's Statements are Not Credible, as Posey Did Not Prepare Them.

At paragraph 82 of its Report, the OCE puts forward an argument that Rep. Stockman's account of events is not credible in part because of notations made on the amended FEC reports filed in October 2013 following the refund to Posey and Dodd of their contributions. Specifically, there is a notation on the subject amendments that says, "the corrections may have made them not permissible."

The OCE argues, quite reasonably, that whoever made this notation seems to have had some sense back in October of 2013 that there was at least a question whether the donations were permissible. According to OCE reasoning, this notation was presumably made by Posey, "who signed the FEC report as treasurer." Therefore, reasons the OCE, Posey probably hadn't really resigned back in February, or he would never have questioned the legality of the contributions eight months later in a notation on an FEC report amendment.

The error in the OCE's argument here lies in its assumption that the notation was written by Posey, since he was then the treasurer of the Stockman campaign committee. That assumption by the OCE was reasonable and understandable, but false.

In point of fact, Posey did not at any time prepare or sign any Stockman campaign committee finance reports, notwithstanding his titular position as treasurer. In fact, no one actually signed any of the reports, as they were all submitted electronically. All

such reports were in fact prepared and filed by Dr. Rabih Zeidan, who simply affixed Jason Posey's name.

Moreover, these amendments were actually made and submitted by Dr. Zeidan without Jason Posey even reviewing them: unfortunately a standard practice for the two. Posey merely trusted that Dr. Zeidan would understand his instructions and execute them without error or fail.

Such assumptions are part of the reason Jason Posey is no longer treasurer for any campaign committee. To have a volunteer, no matter how qualified he may appear to be, submitting reports over the signature of the treasurer without any supervision until after the fact of the submission is a process fraught with danger, and one that has been addressed in this case by the appointment of a treasurer with legal training.

Thus the cryptic notation that appeared on the FEC amendment was prepared not by the man who resigned, but by a campaign volunteer outside the inner circle of individuals knowledgeable about the February 2013 resignations. The odd notation was simply the mind of Dr. Zeidan struggling to make some accountant's sense of why the checks had been refunded, and choosing to make what he believed to be a reasonable notation that was "in the ballpark" of what was going on.

Dr. Zeidan's confusion was understandable, as there was in fact no legal requirement that the contributions be refunded, and there was not at that time a close communication between Rep. Stockman and the CPA regarding decisions about the contributions. It is completely understandable that Dr. Zeidan may have been uncertain why the *political* decision to refund the contributions had been made. Indeed, there was not even a legal requirement that Zeidan furnish the FEC with any reason for the refunds: he simply took a whack at it, and missed.

Be that as it may, what is clear is that the notation was NOT made by Posey, nor was it approved by him, and it cannot serve as the basis for an impeachment of the credibility of either Posey or Rep. Stockman. As with the hearsay conversation Dodd had with the blogger referenced above, it simply furnishes no support for the claim that Rep. Stockman's account is not credible.

I. The OCE's Finding that No Documentation Supportive of Rep. Stockman's Account Predates the OCE Review is False, as Both the Resignation Letter of Tom Dodd and the FEC Amendments Proving He Was Not a House Employee at the Time of the Contributions Predate the OCE's Review.

It is clear from even a cursory reading of the OCE Report that one of the circumstances the OCE staff and Board found most troubling was their (erroneous) observation that the only documentation in support of the Stockman/Dodd/Posey account was prepared after the OCE review began. That assertion by the OCE is simply not accurate.

The document that most puts the lie to that assertion is the resignation letter of Tom Dodd itself, dated on the very day of the resignations, and taken directly from the

Congressman's files. That letter is contemporaneous proof positive that at a minimum Tom Dodd resigned when he said he did — and the 13th Amendment to the United States Constitution makes that resignation immediately effective.

How does the OCE treat this piece of contemporaneous proof that the Posey/Dodd/Stockman account is true? By pretending it does not even exist.

In the voluminous OCE Report, *the Dodd resignation letter gets a single mention, in a single, tiny, three-line paragraph.* It is thereafter summarily and completely ignored.

Worse still, the OCE makes *repeated false claims* that no such contemporaneous documentation exists, choosing to allege instead that Rep. Stockman's account "relies on actions taken only after the OCE initiated its review." (See Report at para. 84) That assertion (which became a finding of the OCE Board) *is demonstrably false*, and was known by the OCE staff to be false at the time of its utterance.

The OCE has taken no steps whatsoever to impeach the credibility of the Dodd resignation letter. Choosing to ignore a document because one finds it an inconvenient truth is NOT legitimate impeachment. The Dodd resignation letter stands today as unimpeached, contemporaneous, documentary *proof* that the account given by Messrs. Posey and Dodd and Rep. Stockman is in fact the truth.

To be sure, the Dodd letter is not proof of a contemporaneous Posey resignation, but that fact in itself augurs in favor of a finding of credibility for the document: if the letter were simply something cooked up in retrospect to attempt to fake a resignation, why would there be only one? A conspiracy bent on post hoc documentation of phantom events would not fake documentation for only some of the participants involved. Such an act would simply make no sense.

Everything about the Dodd resignation letter screams legitimacy: which is almost certainly why the OCE chose to ignore it, and pretend (indeed, to allege falsely in writing in its report) that such a letter does not even exist.

Nor is the Dodd resignation letter the only document that predates the OCE inquiry. On 16 October 2013, before the commencement of the OCE review, Dr. Zeidan prepared and filed an amended FEC report correctly identifying Tom Dodd's employer at the time of the contributions as being "Dodd and Associates."

This FEC report was in the hands of the OCE staff, and was known to them, as they have made reference to it in other respects. Nevertheless, since it was exculpatory as to Congressman Stockman, they make no mention of it, and falsely assert no such documentation exists.

Were the OCE staff merely attorneys representing a single side in court, their conduct would be understandable. But here they are not supposed to be crusading for a given viewpoint, but rather trying to bring all relevant information to the attention of the OCE Board prior to its vote.

Moreover, they are *obligated by law* to identify exculpatory material and even to forward it to the subject of the review. It is difficult to see how they could fulfill this obligation when they are claiming the exculpatory material does not even exist, despite it being in their possession, and despite their citing it elsewhere in the Report for another point.

In this context, the false statements made by the OCE staff are simply reprehensible. They not only failed to bring this aspect of the FEC reports to the attention of the OCE Board, but they effectively hid the documentation from the Board by writing falsely that it does not exist.

Thus, the fact is that at least two documents that predate the OCE review (Dodd resignation letter and the FEC amendments listing Dodd's employer as "Dodd and Associates") do in fact confirm and corroborate the accounts given by Rep. Stockman, Tom Dodd, and Jason Posey. The OCE finding to the contrary is clearly in error, and this fact is not subject to debate.

As with the Dodd blogger conversation and the gratuitous Zeidan notations on the FEC amendments addressed above, the OCE's erroneous finding that these two documents simply do not exist furnishes no basis upon which to conclude, as the OCE purported to, that Rep. Stockman's account is not credible.

J. The Velleco Email of 21 November 2013 Furnishes no Basis for Finding Rep. Stockman's Account Not Credible.

The OCE Report also makes much of certain language in an email sent by then Legislative Director John Velleco to Paul Solis of the OCE. The OCE Report mischaracterizes the email as a "comprehensive response" to the OCE's review prepared by Congressman Stockman.

In fact, the email was neither from Rep. Stockman, nor was it a comprehensive response to the general inquiry, as OCE staff member Scott Gast subsequently conceded in an email to Velleco (see below).

Rather, the email of only 330 words, sent with a subject heading of "RE: contact info", was an informal communication sent by Velleco during the *preliminary* stage of the investigation. To mischaracterize the brief email in the OCE Report as a "comprehensive response" is a comic and overt distortion of which the OCE should be ashamed.

The reason the email was prepared at all was that the end of the preliminary review period was three days away, and Congressman Stockman and Mr. Velleco felt that such period should not come and go without Rep. Stockman making some kind of representation to the OCE to indicate that they were indeed looking into the matter and intended eventually to get to the bottom of it and create some type of comprehensive response.

As such, the email was not the product of lengthy, reasoned discussion in the Stockman camp, but rather the somewhat quick and dirty product of Mr. Velleco himself (authorized by Rep. Stockman, but sent without his prior review) wishing to simply make the point that the matter was under review, and that eventually a more thorough response would be provided.

Mr. Scott Gast of the OCE readily conceded this point by email to Mr. Velleco nearly a month later, when he wrote to Velleco on 19 December 2013, "As I understand from your November 21, 2013 email to Paul, you and Rep. Stockman have been looking into this matter to develop a comprehensive response to the Request for Information." Clearly, at that point Mr. Gast did not regard the subject 330 word email to be such a "comprehensive response." Two months later, the OCE Board somehow inexplicably did.

The major focus of the Velleco email as far as explaining the controversy was to confess to the OCE the involvement and bad advice of CPA volunteer Dr. Rabih Zeidan. The reason the OCE believes the email to be "contradictory" of Rep. Stockman's position is the second sentence of the communication: "In February of 2013, two employees of Steve Stockman's congressional staff, Thomas Dodd and Jason Posey, each made three separate contributions to his campaign." (Report, at Exhibit 4)

Standing alone and out of context, it is not irrational to suggest that the statement is inconsistent with Rep. Stockman's subsequent, more studied position. Understood in context, however, that language from the email in no way suggests that Rep. Stockman was positing through Velleco a position that he later abandoned.

The reality is that Velleco's email was simply a lazily worded effort to send something across the transom, focused not on the question whether the two staffers had resigned at the moment they made their contributions, but rather on why the contributions had been misattributed to the Dodd and Posey parents, and improperly reported in the REC records. This is obvious on a fair reading of the entire email.

The imprecision of the language is regrettable, but even parsing the casual language used does not produce a vigorous contradiction to the Stockman position. Indeed, the sentence makes reference to the entire month of February rather than to a specific day therein, and both Posey and Dodd were in fact employees during the month of February, and they did in fact make contributions to his campaign during that month. To that extent, it is not a completely inaccurate statement. They simply did so on one of the two days in February during which they were not active appointees.

But one need not resort to a tortured dissection of the casual email in order to know that Velleco did not mean for it to be interpreted as it has been by the OCE. Even though Velleco played no role personally in the Posey and Dodd resignations, he was well aware by that point of those resignations.

In fact, *three days before sending the subject email to Paul Solis* Velleco had secured by email from Lori O. Murphy in the Office of Payroll & Benefits, the specific template for the letter required by Payroll & Benefits in order to process the Payroll Action Form that

he later used to correct the record to note the resignations of Dodd and Posey in February of 2013. (Because the corrective "paperwork" action was more than 60 days after the personnel action in question, it was necessary to use a form letter of a particular type requesting the tardy processing.)

Thus, it is rather obvious, if not incontrovertible, that Velleco knew the two had resigned, intended to correct the administrative record to reflect that fact, and certainly did not intend for his casual email to Paul Solis to be interpreted as a definitive statement that Dodd and Poesy never resigned, and that such was then his true belief. If that had been true, there would have been no reason for him to have previously secured from Payroll and Benefits the very document template required for him to correct the administrative record to note the two brief resignations. It would have made no sense whatsoever.

Seen properly in context, the alleged "contradiction" between statements made in Velleco's casual email and in Rep. Stockman's formal response evaporate into mere nothingness. The alleged contradiction is simply immaterial, and of no evidentiary value whatsoever. It cannot serve as the basis for a finding that the Stockman position is "not credible."

Again, it is critical to note that these four circumstances (discussed in sub-parts G-J, above) are the SOLE bases for the OCE's impeachment of the account rendered by Congressman Stockman. Absolutely nothing else has been brought forward in support of the OCE theory. These four circumstances comprise the universe of alleged evidence that the Congressman's account is not credible. As a serious examination of each proves, however, none of them furnishes the slightest probative argument against the account given by all of the knowledgeable witnesses and the relevant and available documentation: that Posey and Dodd were not House employees at the time they made their contributions.

Nor does the probative value of these circumstances differ whether they are considered separately or together: zero plus zero equals zero. Rather, they are more demonstrative of how flimsy the case against Rep. Stockman is, and how unfairly he has been treated by the OCE staff and Board in this process.

SECTION IV. O.C.E. VIOLATIONS OF DEADLINES, DUE PROCESS RIGHTS, AND GENERAL ABUSE OF PROCESS

Sadly, the OCE investigation that led to the Board's findings in this review was thoroughly infected by repeated due process violations, and permeated with persistent missteps, blunders, and misdeeds by OCE staff. Indeed, the bungling and misconduct of the OCE staff in this review are of greater concern than the several donations that gave rise to the review itself.

As with many things, here, the whole may be greater than the sum of the parts; when considered in the aggregate, the sheer volume of knuckle-headed behavior by OCE staff generates a stunning indictment of the entire process in a way that no single step, considered by itself, might do.

The many procedural violations or factual or legal misstatements include the following:

- The OCE failed to send Rep. Stockman a Notice of Right to Appear at the OCE Board meeting at which his matter would be considered, and did not apprise him or any member of his staff of the date of the meeting. He was deprived of this right even though he had previously sent staff member Jack Daly in person to the OCE offices to preserve such right (to no avail). This deprived him of the right guaranteed him by H.Res 895 to address the Board directly as opposed to filtering his comments through staff level investigators: a right the Ethics Committee has repeatedly said is critical in terms of both fairness to the subject, as well as to the capacity of the Board to resolve questions of credibility. It bears repeating that the Board based its conclusions in this review on a finding that Rep. Stockman's account was supposedly not credible: it would be difficult to imagine a case wherein the right to appear before the finder of fact could be more central to a fair hearing, to the Board making appropriate judgments about credibility, and to generating a just conclusion.
- The OCE failed to refer the Stockman matter to the House Committee on Ethics within the time allotted by law so to do. Violating its own rule and acting outside the authorized action periods is ultra vires, null, void, and of no effect under controlling United States Supreme Court precedent (see numerous cases cited infra, at 35-38). By law, the Board had only until the day following his primary election to make any referral it intended to do. In this case, the Board referred the matter eight days outside of that deadline — action that is of no legal effect.
- OCE staff violated privileges guaranteed to Rep. Stockman by the Speech or Debate clause of the United States Constitution by making inquiry of his staff into protected matters without notice to him. These inquiries demanded intimate details of staff assignments on specific legislation, and intrusive questions regarding the drafting of legislation and meetings with citizens in connection therewith. The privilege belongs to the Representative himself, and not to the members of his staff, none of whom is at liberty to waive said privilege. Moreover, OCE staff continued to violate this provision while interviewing witnesses even after being directed by counsel for Rep. Stockman *in person* to cease and desist.
- The OCE staff completely failed in its obligation to identify and transmit all relevant exculpatory material to the Representative. In fact, the OCE identified NO material whatsoever as exculpatory, despite the fact that such material was to be found in the OCE staff notes of witness interview that were included in the overall Report (and undoubtedly in the notes of witness interviews that were not included at all). This fact, as much as anything else, reflects the clear bias of the investigative staff. Even without the known examples of exculpatory material to be found in the Report itself, it is inconceivable that there would be ANY case under review in which the staff would identify NO exculpatory material whatsoever.
- OCE staff and the Board made deliberate distortions of facts and written material by mischaracterizing it, excerpting it in clearly deceptive fashion, and by taking liberties

with content out of context. One example is where the Board mischaracterized the 21 November 2013 Velleco email of 330 words and of a subject "RE: contact info" as a "comprehensive response" to the OCE inquiry, when it was clear that OCE investigator Scott Gast understood the email to be merely a preliminary pass a month later. Another is to be found where the Report quotes from Rep. Stockman's Response to imply that he fired Posey and Dodd *for having made the contributions*, rather than for their having participated, however innocently, in the Zeidan plan to misattribute the donations to their parents. (See Report, at para. 71) A third example is to be found where the Board asserted the Posey and Dodd resignations lasted "only several hours" when in fact they knew that the resignations lasted between 20 and 30 hours, overnight, and thus over the course of two days. (See Report, at para. 90) The standard definition of "several" is "more than two, but not many." In common parlance it is far more likely to mean three or four, perhaps half a dozen, and would never — fairly — be used to account for a number of between twenty and thirty. This is particular true when the word is preceded by the diminutive "only," which serves to imply quite strongly the lower end of what might be called "several." Here the OCE used "only several hours" to characterize a period of time greater than a full day. The OCE did so to create, quite intentionally, a false implication of ruse; when in fact the facts were to the contrary. This type of deliberate distortion is the tactic of something other than an unbiased, dispassionate investigator determined to produce a balanced account of the evidence.

- OCE staffers repeatedly made false statements pertaining to the type and amounts of materials submitted to it. For example, the OCE found that no person identified the actual date of deposit of the donation checks, despite the fact that Jason Posey's letter clearly states both the date of the deposits and the reason for the FEC amendments in that regard: this notwithstanding the fact that the date of deposit is of no legal consequence anyway. Whether through laziness or deliberate deception, the end result is the same: the OCE Board is presented with (and bases its conclusions on) a grossly distorted picture of the case. Further, OCE staff falsely informed the Board that neither Dr. Zeidan, John Velleco, nor Tom Dodd responded to the RFI each man received. As noted above, each man did in fact respond and furnish communication to the OCE staff. In the case of John Velleco, his 21 November 2013 communication is in fact quoted by the Board — in the same document in which the Board denies that he responded at all. Again, although it is possible that the staff were unaware of Tom Dodd's attempts to have the Postal Service deliver his response to the OCE, the statement that he did not offer any response is nevertheless false. Zeidan had numerous contacts with OCE staff, both by phone and email; the statements to the contrary in the OCE Report are inexplicable. This type of casual falsehood and bungling oversight appears throughout the report.
- OCE staff and the Board repeatedly ignored and even denied the existence of any exculpatory evidence that was not in keeping with their theory, as where their Report made no mention of the amended FEC report identifying Tom Dodd's employer as "Dodd and Associates" at the time of the contribution, and as where the Board simply notes in a three line paragraph that Dodd executed a resignation letter at the time he

resigned. On the contrary, as we pointed out above, the Board actually claimed in its report that *no such documents existed*. While reasonable minds may differ as to the credibility of certain evidence, the OCE's practice of simply ignoring and not forwarding to the House Ethics Committee all exculpatory material is not a practice designed to reach a full and fair hearing of the issue. Rather, it is a practice designed to manufacture the appearance of support for the Board's position, to the improper exclusion of all evidence to the contrary. The Kremlin always wins when it has the only candidate on the ballot.

- Separate and apart from the failure to inform Rep. Stockman of his right to appear at the Board hearing, the OCE failed to inform either Rep. Stockman, Mr. Posey, or Mr. Dodd that allegations were being investigated against them having to do with the amount of remuneration the latter two were receiving. There was no supplemental RFI to any of them, nor was any of them given Notice of Initiation of Investigation. The investigation was thus conducted in the secrecy of the Star Chamber; there is little wonder that the outcome was fatally flawed. As with the right to appear at the hearing, this is an instance where the OCE staff nonfeasance resulted in depriving the accused of the ability to offer exculpatory material, and at the same time depriving the Board of the full body of evidence from it must draw its findings.
- OCE staff interviewed multiple witnesses after the 89 day limit imposed by law on the OCE's investigatory activities. These witnesses included, at a minimum, Rep. Stockman's Legislative Director Art Harmon and Legislative Assistant Prentus LeBlanc (and note the dates of their interviews in the OCE Report). Moreover, OCE attempted to convince staff member Jack Daly to interview *eight days beyond the legal cut-off for OCE investigative activity*, though it eventually abandoned that unlawful attempt.
- Throughout the investigation OCE staffers used deceit and inexcusable bullying tactics in an attempt to extract submissions from those it identified (sometimes willy-nilly) as "witnesses" in the matter. The example of Dr. Zeidan alone is enough to provoke a sense of outrage at the tactics (as where he was falsely told [among other things] that the OCE could not use interrogatories to request information from him), but he was not alone the victim of OCE pressure tactics. Even those who provided lengthy statements to the OCE were found to be "non-cooperating witnesses," or threatened with such appellation in order to induce submission and acquiescence to OCE staff's unreasonable and inconvenient demands. The District Director whose speculation about Posey and Dodd's work assignments was cited in support of the OCE charge in that regard likened the two investigators who queried her as "sleazy used car salesmen." She has informed the Congressman's office that the interview notes attributed to her conveniently omit numerous areas of inquiry as to which she repeatedly informed the OCE staff that they were "barking up the wrong tree" in attempting to find dirt on Rep. Stockman, and that the Pasadena office was run strictly by the books. As disturbing as anything were the comments of OCE staffer Scott Gast when confronted by Rep. Stockman's counsel as to why the OCE refused to send interrogatories, even as to witnesses for whom English is a second language,

and whose vocal cords have been surgically altered by recent procedures. Gast informed counsel that he preferred the ambush interview because it produced more gotcha-type moments and kept witnesses from being thoughtful and deliberative in their responses.

Any single one of these examples is enough to cast serious doubt as to the impartiality of the OCE staff, the professionalism of their behavior, the reliability of the representations staff made to the Board at hearing, and the overall thoroughness of the investigation. When considered en masse, they present a devastating picture of a process run decidedly amuck.

Not all of the excesses, shortcuts, bullying tactics, sloppy fact checking, and lazy researching of controlling law ultimately resulted in prejudicial harm to Rep. Stockman. Indeed, the Board ultimately rejected all allegations against Rep. Stockman except those pertaining to improper remuneration as to Posey and Dodd, and the February 2013 donations by them. Some of these abusive tactics clearly did prejudice Rep. Stockman, however — such as neglecting even to apprise Rep. Stockman that his salary arrangements with Posey and Dodd were under attack.

Moreover, the complete refusal to grant Rep. Stockman his legal right to address the Board directly and personally prior to its deliberations on ANY question in and of itself undermines every conclusion the Board drew that was adverse to his interests, ***especially in a case in which the Board makes clear that its decision was based on determinations of credibility.***

The failure of the Board to act within the mandatory timelines specified in the enabling House Resolution worked prejudice to him *per se*, as a matter of law, and in fact deprived the Board's untimely referral of any legal consequence. The Ethics Committee should treat it as a nullity — a non-event of no legal effect whatsoever.

At any rate, even those sloppy and abusive actions taken by OCE staff that cannot be said to have had a directly prejudicial impact on Rep. Stockman's review nevertheless lead any truly objective observer to the inescapable conclusion that nothing connected to the Board's conclusions in this matter can be regarded with any measure of credibility at all. Garbage in, garbage out. If even half of Rep. Stockman's grievances against OCE misconduct are legitimate, the result is still the unmasking of a breathtaking level of arrogance, carelessness, and deceit that undermines the credibility and the probative value of anything asserted by OCE staff.

The only fair remedy for such conduct is the complete rejection of the Board's referral in this case as both (1) untimely and (2) so riddled with procedural irregularities and due process infirmities as to render the result insufficient as a matter of law to generate any follow-up by the Ethics Committee.

SECTION V. CONCLUSION AND RECOMMENDATIONS

As demonstrated above and summarized below, the objective facts known in this matter do not suggest even a breath of unethical action by Congressman Stockman as to any

matter at issue in this review. There is simply no competent evidence that would establish a sufficient basis upon which to justify the initiation of any further Ethics Committee action in this matter.

Before we consider the merits, however, the violations of law committed by the OCE and its staff in the conduct of this review (both procedural and substantive) absolutely cry out for redress. To whitewash these violations by the OCE or to pretend there is no appropriate sanction for them is to excuse, if not condone, the misconduct, and to encourage more of the same in future review investigations. Enough is enough. It is time for the Ethics Committee to draw a line in the sand and compel the OCE to respect its boundaries.

A. The Many Rules Violations and Procedural and Due Process Abuses Committed By the OCE in This Review Require That its Report Be Disregarded as Inherently Unreliable and That All Alleged Ethics Charges Be Dismissed as the Product of Rules Violations.

In this case the due process violations by the OCE are of three basic types. First is the attempt by the OCE to refer the matter to the Ethics Committee outside the period of time during which the OCE is empowered to act — a violation of law we contend is jurisdictional in nature, and not within the power of the Ethics Committee to overlook.

Second is the OCE's refusal to advise Rep. Stockman of the date and time for the Board hearing of his case so as to give him his legally mandated day in court, and to give the Board an opportunity to make an educated judgment as to credibility — notwithstanding a specific request by his counsel that he be permitted to do so. This violation strikes both at fundamental fairness to the respondent and to the overall reliability of the result of the Board's deliberations.

The remainder of the many procedural irregularities and due process violations comprises capricious, arrogant, and deceitful behavior on the part of OCE staff that, while not necessarily jurisdictional in nature, nevertheless is so persistent and ubiquitous as to call the results of the entire investigation into question.

The Ethics Committee can not rely upon any representation made by a staff that lies to and bullies witnesses, deliberately distorts material or otherwise takes it out of context, fails to provide fair notice of the scope of an inquiry, refuses to respect constitutional privileges contained in the Speech or Debate Clause, conceals exculpatory evidence from the subject, refuses to give the subject his legally mandated opportunity to address the Board, and that hypocritically insists that others follow the rules while repeatedly violating its own.

To the extent to which each of these types of violations undermines the probative value of the OCE Board's findings, the Ethics Committee can and should reject the Board's findings as inherently suspect and defective. This is not to be punitive to the OCE, or to confer a "get-out-of-jail-free" card to the subject "because the constable has blundered." Rather, it is simply a common sense recognition that the product of a grossly flawed

investigation is itself inherently and hopelessly unreliable, and cannot serve as the basis for further Ethics Committee action. Such is the case here, where the Board reached its findings behind the subject's back, in the complete absence of anything approaching due process, without reading Tom Dodd's submission, and without advising Rep. Stockman of the time of the hearing in order that he could appear. On this basis alone the Ethics Committee should dismiss all charges preferred against Rep. Stockman.

Moreover, with respect to the two most significant specific rules violated by the OCE (forwarding the referral outside of the authorized time, and denying Rep. Stockman his time at the Board hearing), voluminous federal constitutional precedent demands that the Board's actions be regarded as a nullity, and of no effect.

The OCE's deadline for transmitting to the Committee its Report and Findings in the Rep. Stockman matter was the first business day following the 4 March 2014 primary election in Texas. According to OCE Rule 10, Period of Suspension of Referrals, "The Board shall not transmit any referrals to the Ethics Committee within 60 days before a Federal, State, or local election in which the subject of the referral is a candidate. If the end of the second-phase review occurs within this suspension period, ***the Board shall complete its work on the referral and transmit it to the Ethics Committee on the first business day following the election.*** Clause 3(b)(8)(D) of Rule XI of the Rules of the House."

In flagrant contravention of binding and unambiguous law, the OCE failed to transmit any referral concerning Rep. Stockman on 5 March 2014. It remains to be seen why the OCE staff waited until 13 March, more than one week beyond the deadline, to transmit a Report that was allegedly approved at a Board meeting said to have occurred on 27 February. When Rep. Stockman's office contacted the OCE staff on 11 March to inquire whether, when, and how the Board had voted and ask why a Report was not transmitted on 5 March, Mr. Gast declined to explain why Rep. Stockman was not notified of the OCE Board meeting, said he was still finishing his work on the Findings, and forecast the referral would be transmitted to the Committee on 13 March.

Similarly, the OCE Board's Rules mandate that the subject be permitted to appear at the Board hearing of his review: "STATEMENT FROM SUBJECT. Before the Board votes on a recommendation or statement to be transmitted to the Ethics Committee at the end of a second-phase review, it shall provide the subject the opportunity to present a statement to the Board. Resolution Section 1(f)(3)." OCE Board Rule 9(B) As noted above, Rep. Stockman requested and was denied this opportunity.

Whether the rule be about the time within which a given action must take place, or about a subject's right to appear, the fact is that any entity that demands others obey the rules must do so itself. It is well settled that governmental agencies must obey their own rules, or their actions are of no legal effect. In perhaps the most well-known opinion on the subject in the past thirty years (an opinion that won the prestigious "Judge Henry Friendly Administrative Law Opinion of the Year" award) Judge Kenneth Starr parsed the concept thus:

A precept which lies at the foundation of the modern administrative state is that agencies must abide by their rules and regulations. We have frequently been called upon to apply that venerable principle of law and common sense, and the appeal before us today fits squarely into that long line of cases. We hold that the [agency] improperly breached this fundamental precept of administrative law ... [I]t is elementary that an agency must adhere to its own rules and regulations. *Ad hoc* departures from those rules, even to achieve laudable aims, cannot be sanctioned ... for therein lie the seeds of destruction of the orderliness and predictability which are the hallmarks of lawful administrative action. Simply stated, rules are rules, and fidelity to the rules ... consistent with applicable statutory requirements, is required of those to whom Congress has entrusted the regulatory missions of modern life. [J]udicial deference to agency interpretations is therefore quite beside the point. ... The agency has, in effect, said that ... the circumstances at hand warrant the Commission's walking away from the metes and bounds which otherwise constrain it. This we cannot sanction. The remaining arguments advanced on appeal need not detain us [for they demonstrate that the Commission is] succumbing wholesale to the temptation to indulge in the forbidden sin of *post hoc* rationalizations ... to justify what occurred here. It should have caused counsel some pause in this free-form flight of legal creativity that this bedrock principle never occurred to the Commission itself. We also note, by the by, that able counsel for [the defendant intervenor] has not been inspired by the [same unpersuasive] muse. Indeed, this appears not to have been some legal oversight by an overworked Commission, but rather a sadly misguided argument in the first instance. ... [The theory posited by the Commission] could only be met by an inadmissible exercise of bootstrapping To put it plainly, counsel's imaginative theory is decimated at the outset by the hard, cold fact [that] the horse left the barn on September 23, 1983, when the licenses were awarded [The defendant intervenor], wisely, does not indulge in such unorthodox legal gymnastics as its imaginative Commission comrades. ... [T]he Commission was not at liberty to depart from its rules in the first instance. But what is more, the vehicle employed ... was itself defective. ... [W]e conclude that the Commission acted beyond its lawful authority [and] are therefore obligated to reject the various arguments proffered to buttress the Commission's action in this case.

Reuters v. FCC, 781 F.2d 946 (D.C. Cir. 1986).

The concept has been explained a hundred different ways, but the meaning is always crystal clear: courts will not give legal effect to government action taken in violation of relevant rules: "Simply stated, rules are rules." Reuters Ltd. v. FCC, 781 F.2d 946 (D.C.Cir.1986)." Evans v. Perry, 944 F.Supp. 25, 29-30 (D.D.C.1996), *aff'd, without opinion*, 1997 WL 362499 (D.C.Cir.1997).... Form should be respected. Laws enacted

through formal processes clearly are binding. Thus the Constitution, statutes, and 'legislative rules' that have been promulgated ... are binding ... The Due Process Clause establishes that public officials are bound to follow the law. Agency regulations intended to be binding are law [and] have the force and effect of law as applied to the agency. Therefore, the Due Process Clause requires that agency officials follow their own rules, even those promulgated gratuitously. See Service, 354 U.S. at 388, 77 S.Ct. 1152. ... IMS, P.C. v. Alvarez, 129 F.3d 618, 621 (D.C.Cir.1997) (failure to follow regulations 'is fatal to the deviant action')." Wilkinson v. Legal Services Corp., 27 F.Supp.2d 32 (D.D.C.1998).

A government "agency must be rigorously held to the standards by which it professes its action to be judged." Vitarelli at 546 ... Thus, 'regulations validly prescribed by a government administrator are binding upon him as well as the citizen, ... even when the administrative action under review is discretionary in nature.' Service v. Dulles, at 372 (citing Accardi). Moreover, '[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures ...' Morton v. Ruiz, 415 U.S. 199, 235, 94 (1974) (citations omitted). 'Accordingly, if [agency action] is based on a defined procedure ... that procedure must be scrupulously observed.... This judicially evolved rule of administrative law is now firmly established. ... He that takes the procedural sword shall perish with that sword.' Vitarelli at 546-47 ... The teachings of Accardi and its progeny [allow] the ultimate remedy--to 'void agency action.'" Attebery v. U.S., 2003 WL 21748674, 25 ITRD 1929 (2003).

"[N]umerous courts have found that ... the failure by an [agency] to follow its own procedures may render [an action] void." Vanover v. Hantman, 77 F.Supp.2d 91 (D.D.C.1999).

"No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government from the highest to the lowest, are creatures of the law and are bound to obey it. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives. ... The evils supposed to grow out of the possible interference of judicial action with the exercise of powers of the government essential to some of its most important operations will be seen to be small indeed compared to this evil.' U.S. v. Lee, 106 U.S. 196, 220-222, 1 S.Ct. 240, 27 L.Ed. 171 (1882)." Wilkinson v. Legal Services Corp., 27 F.Supp.2d 32 (D.D.C.1998).

"[S]crupulous compliance with regulations is required to avoid any injustice." Mazaleski v. Treusdell, 562 F.2d 701, 717 (D.C.Cir.1977).

"[A]n agency's adjudicative decision could be set aside if it conflicted with the agency's own legislative rules. See Arizona Grocery Co. v. Atchison, T. & S.F. Ry. Co., 284 U.S. 370, 52 S.Ct. 183, 76 L.Ed. 348 (1932). The Court held that [an agency] 'may not in a subsequent proceeding, acting in its quasi judicial capacity, ignore its own

pronouncement promulgated in its quasi legislative capacity.....' *Id.* at 389, 52 S.Ct. 183. The Court reiterated that the agency was 'bound to recognize the validity of the rule of conduct prescribed by it.'" Wilkinson v. Legal Services Corp., 27 F.Supp.2d 32 (D.D.C.1998).

In Wilkinson v. Legal Services Corp., 27 F.Supp.2d 32 (D.D.C.1998), the court said:

The Supreme Court ... implicitly found that the individual raising the procedural non-compliance claim had been at least arguably harmed by the violation. [T]he doctrine functions to ensure equal treatment by governmental bodies, particularly where the agency has extended a procedural protection on a class of person. ... [S]trict compliance with the regulation was required. See Yellin, 374 U.S. at 124, 83 S.Ct. 1828 (committee need be 'equally meticulous in obeying its own rules'); Vitarelli, 359 U.S. at 540, 79 S.Ct. 968 ('scrupulous observance of departmental procedural safeguards is clearly of particular importance'); ... (Accardi doctrine is a 'judicially-evolved' rule ensuring fairness in administrative proceedings'); VanderMolen v. Stetson, 571 F.2d 617, 624 (D.C.Cir.1977) (Accardi doctrine as 'fundamental tenet of our legal system'). ... **[H]istory, precedent, and application of the doctrine to all branches of government demonstrate that it is the fundamental concept of due process expressed in the Fifth and Fourteenth Amendments that gives life to the Accardi doctrine.** ... Given the expansive powers delegated by Congress to the agencies, the term 'faithfully execute' would encompass an agency's obligation to conform even its informal, adjudicative decisions to the rules it had promulgated. See Arizona Grocery, 284 U.S. at 389, 52 S.Ct. 183. ... [In] Mazaleski, 562 F.2d at 709, ... the court concluded that plaintiff had been 'wronged' because he had been deprived of those 'procedural due process rights' created by the regulation. ... [R]egulations mandating binding procedures can also confer constitutional 'property' rights on those entitled to insist on an agency's compliance with those procedures. See also Gardner v. FCC, 530 F.2d 1086, 1089-90 (D.C.Cir.1976) (Commission's self-imposed ... requirement gave rise to 'expectation' that created 'legal burden' on agency). ... A second source of potential procedural due process review would be the 'right, possessed by every citizen, to require that the government be administered according to law ...' See Fairchild v. Hughes, 258 U.S. 126, 129-30, 42 S.Ct. 274, 66 L.Ed. 499 (1922). ... Our nation would have no need for a Constitution to secure individual liberty if the Government were free to disregard its mandates. It is because governmental actors are bound by the law that the Constitution serves to limit the power of government.

This body of law is too significant to be ignored by the Ethics Committee, and in fact the Committee has given voice to supporting and enforcing these very principles, as it did in the Rep. Graves matter: "The Standards Committee was deeply disappointed to discover that OCE's review was fundamentally flawed because it routinely failed to adhere to the requirements of OCE's authorizing resolution, some of which were fatal to OCE's ability to continue its review. First, OCE failed to meet certain deadlines mandated by OCE's authorizing resolution and OCE's rules. **OCE's jurisdiction to**

review a matter stems solely from OCE's authorizing resolution. Failure by OCE to abide by the strict timeframes established by its authorizing resolution effectively strips OCE of its jurisdiction over a matter."

As the Committee observed in the Rep. Graves matter, "[I]nvestigative bodies are bound to strict deadlines to protect the fundamental due process rights of the subject of the investigation" and "If OCE acts in contravention of its authorizing resolution, OCE loses jurisdiction over a matter. See generally *U.S. v. Rumely*, 345 U.S. 41, 44 (1953) (upholding reversal of conviction for refusal to answer questions of select committee of Congress because questions were outside of the scope of the select committee's authorizing resolution, which was the 'controlling charter of the committee's powers' and thus '[i]ts right to exact testimony and to call for the production of documents must be found' in the resolution)."

According to the "Capuano Report" that was issued alongside the introduction of H.Res. 895 on December 19, 2007, "Members of the Task Force believe that the timeline requirements instituted by the new process are critical: matters will spend at most three months under consideration by the board of the OCE before being referred to the Standards Committee for resolution. ... [An example of these critical timeline requirements includes] the OCE deadline for referral to the Committee. ... [A]t or before the time limit specified above, the OCE will refer all matters to the Standards Committee for official disposition."

Again from the Rep. Graves matter, the Committee stated: "Neither OCE's rules nor its policies permit OCE to delay See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (holding that having stated the manner in which it is to exercise its discretion, an agency cannot refuse to follow its own rules); *Wilson v. Commissioner of Social Sec.*, 378 U.S. F.3d 541, 545 (6th Cir. 2004) (holding that agencies are bound to follow their own regulations and that an agency's failure to follow its own regulations, even when those regulations are more generous than necessary, tends to cause unjust discrimination and deny adequate notice); *Sameena Inc. v. United States Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) '[t]he Supreme Court has long recognized that a federal agency is obliged to abide by the regulations it promulgates. An agency's failure to follow its own regulations 'tends to cause unjust discrimination and deny adequate notice' and consequently may result in a violation of an individual's constitutional right to due process. Where a proscribed procedure is intended to protect the interests of a party before the agency, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.' (internal citations and quotations omitted)."

The application of this precedent to our facts strongly urges a complete dismissal of this matter based on the flagrant and overt violations of law committed by OCE staff and Board in this matter. But of even greater interest under our facts, in the Rep. Graves matter the Ethics Committee also spoke to the question of compromised judgments as to credibility (which are presented most obviously here by the Board's refusal to permit Rep. Stockman's appearance at the Board hearing).

There the Committee reported: "OCE's Findings improperly made conclusions regarding the truth of statements made by cooperating witnesses, including Rep. Graves. OCE's authorizing resolution states that OCE's findings shall not include 'any conclusions regarding the validity of the allegations upon which it is based' or 'guilt or innocence of the individual who is the subject of the review.' [H.Res. 895, section 1, clause (c)(2)(C)(i)(II)(dd)] Regrettably, in direct violation of this provision, OCE's Findings conclude that Rep. Graves demonstrated a 'lack of candor' in his responses to OCE. OCE then compounds this error by extrapolating that alleged 'lack of candor' into a tacit admission of guilt on the part of Rep. Graves. Pursuant to OCE's authorizing resolution, OCE's Board has the authority to make findings, not OCE's staff. [H.Res. 895, section 1, clause (c)(2)(C)(i)(II)(aa)] However, no member of OCE's Board was present at the interview of Rep. Graves and accordingly no Board member was in a position to evaluate his credibility. [FN. The Standards Committee notes that OCE's witness interviews are neither transcribed nor video-taped. Instead, the only record of OCE's witness interviews is found in memoranda of interviews reflecting OCE staff's impressions of the interview.] Thus, even if this credibility determination were considered a 'finding of fact' rather than a comment on culpability, there is no authority for such a determination to be delegated to or made by OCE's staff." (see House Comm. on Standards of Official Conduct, *In the Matter of Representative Sam Graves*, H.R. Rep. No. 111-320, at 23 (2009)).

The significance and probative value of a personal appearance before the Board could not be more clearly expressed.

In its published response (see "Response to Criticism by [SOOC] Regarding the Investigation Conducted by the [OCE] in the Matter of Rep. Sam Graves" adopted by the OCE Board on November 20, 2009), the OCE Board wrote: "[A]s a finder of fact, the OCE must make appropriate findings as to credibility. Otherwise, the OCE will be providing incomplete and inaccurate information to the House and the public. Further, there is no authority for the SOOC to assert that only OCE Board members may assess credibility through its own in-person interview. That is not the case. Had the House intended the Board to conduct interviews, it would not have provided for a part-time Board comprised of individuals who live in various parts of the United States. ***The OCE Board invited Representative Graves to appear before the Board, prior to the Board voting on his matter, and he declined.***"

Unlike the case with Rep. Graves, in flagrant, and apparently unprecedented, contravention of both the OCE's organic resolution (see Section 1(f)(3)) and the internal rules promulgated by the OCE Board (see Rule 9(B)), Rep. Stockman was never invited to appear before the Board. He was never sent the required Notice of Right to Appear by the OCE staff in advance of the OCE Board's 27 February 2014 meeting. "See *Morgan v. U.S.*, 298 U.S. 468, 481 (1936) ('For the weight ascribed by the law to the findings ... rests upon the assumption that the officer who makes the findings has addressed himself to the evidence, and upon that evidence has conscientiously reached the conclusions which he deems it to justify. That duty cannot be performed by one who has not considered evidence or argument. It is not an impersonal obligation. It is a duty akin to that of a judge. The one who decides must hear.');

U.S. v. Raddatz, 447

U.S. 667, 697 (1980) (Justice Marshall, dissenting). ('In this respect, the requirement that a finder of facts must hear the testimony offered by those whose liberty is at stake derives from deep-seated notions of fairness and human dignity.');

United States v. Oregon State Medical Society, 343 U.S. 326, 339 (1952) ('Face to face with living witnesses, the original trier of facts holds a position of advantage from which appellate judges are excluded. In doubtful cases, the exercise of his power of observation often proves the most accurate method of ascertaining the truth.');

U.S. Diapulse Corporation of America, 457 F.2d 25, 30 (2nd Cir. 1972) ('It is [the trial court's] duty to appraise the testimony and demeanor of the witnesses.');

In re Pearson Bros. Co., 787 F.2d 1157, 1162 (7th Cir. 1986) ('The question of credibility of witnesses is peculiarly for the trier of fact and an appellate court will not redetermine the credibility of witnesses where the trial court had the opportunity to observe their demeanor and form a conclusion.')

(quoting the Committee's recitation of case law).

Taking all of this relevant precedent into account (from both Article III courts and its own annals), the Ethics Committee in this case is left with but one obvious course of action: it must abandon any pretense of confidence in the job done by the OCE in this matter, and reject as a nullity any action purportedly taken by the OCE in violation of its own rules — to include a complete rejection of its referral as obtained in violation of the law, and referred outside the requisite legal timelines.

B. There is No Competent Evidence That Rep. Stockman Provided Excessive Remuneration to Tom Dodd or Jason Posey.

In both Washington and Texas, Tom Dodd and Jason Posey worked long and hard hours for modest pay in support of the work of Rep. Stockman for the people of Texas' 36th Congressional District. As he is authorized to do by law, Rep. Stockman permitted Posey and Dodd to perform some of their duties outside the official district office[s], and in fact the majority of their hours of service was performed elsewhere than the district offices. This type of arrangement is not uncommon in the modern era in the House, and there is no legitimate argument that it presents any ethical impropriety. Posey and Dodd earned what they were paid, and there is no competent evidence to the contrary.

The sole basis proffered by the OCE in support of its finding of "substantial reason" is the unsupported and baseless speculation provided by coworkers with no supervisory duties over Posey or Dodd, who had no actual knowledge of the duties assigned to and actually being performed by them in and near the home district.

There being no competent evidence in support of the OCE's baseless purported finding, the OCE's referral in this regard should be dismissed without further delay.

C. The February 2013 Contributions by Posey and Dodd Were Lawful.

Notwithstanding the OCE's stated skepticism for Rep. Stockman's account, all of the available evidence demonstrates that Posey and Dodd resigned their appointments before they made the controverted donations at issue in this review, and that the subject donations are therefore completely and unequivocally legal. Three men and only three men have personal knowledge of the relevant events, and the accounts of all three are grossly consistent, and admit of no ambiguity as to that point.

The OCE's attempt to impeach the account provided by the eyewitness participants is anemic, confused, and not the slightest bit convincing. Rather, the alleged inconsistencies between the eyewitness accounts and various other documents/statements simply fall apart upon inspection.

The first is based on triple hearsay by an internet blogger who was not interviewed, and whose account is flatly contradicted by Tom Dodd in his notarized response. The second is predicated upon the false assumption, blithely posited, that cryptic marginalia actually written by Dr. Zeidan were supposedly attributable to Jason Posey: OCE staff did not send either man a single interrogatory to make inquiry on this question, or it could easily have been cleared up.

The third proffer falsely identifies the John Velleco email of 12 November 2013 as a "comprehensive response" from Rep. Stockman, when in fact it was known by the OCE staff to be neither from Stockman nor comprehensive, but instead an informal communication of 330 words from Velleco, submitted during the preliminary portion of the review.

The fourth circumstance asserted by way of challenge to the eyewitness accounts is the patently false claim that no documents support the eyewitness accounts except such as were created after the OCE review began. In point of fact both the Dodd resignation letter (prepared and delivered to Rep. Stockman prior to the resignations) and the FEC amendments (identifying Dodd's employer as "Dodd and Associates" at the time of the donations) predate the OCE inquiry. The OCE's false statements to the contrary are just that: brazenly false.

All of the OCE's attempts at impeachment being thus so much smoke and mirrors, the Board's claim to find the eyewitness accounts not credible holds no more substance than the smoke on which it was based. This is doubly so in light of the fact that the OCE refused to grant Rep. Stockman his legal right to appear before it and have his credibility observed first-hand precisely as contemplated by the OCE Rules and the repeated admonitions of the Ethics Committee.

The Ethics Committee should recognize the unanimity of the evidence in support of the eyewitness accounts of Stockman, Dodd, and Posey, and immediately dismiss all allegations asserted by the OCE in this review.

D. Rep. Stockman Had No Personal Participation in Dr. Zeidan's FEC Reporting Errors, and Has Acted Ethically and Appropriately in Addressing and Correcting Them.

Stripped of the unsupported speculation about Posey and Dodd's work assignments in Texas, and the equally unsupported, inflammatory allegations by OCE of manufactured evidence, the only area in this entire review that speaks to a genuinely unlawful act has to do with the original misattribution of the Posey and Dodd contributions to their respective parents. The evidence is clear, however, that Rep. Stockman played no personal role in that original error, long since corrected in the FEC filings.

The uncontroverted evidence is this. Posey and Dodd made lawful contributions of their own volition at a time when they were not employed by the House of Representatives. Operating under a misapprehension of the FEC reattribution rule, campaign volunteer CPA Dr. Rabih Zeidan thereafter suggested that appearances might best be served if the contributions by Dodd and Posey were attributed to their parents instead, and the two donors obliged that misguided enterprise by supplying the names of one parent each. Dr. Zeidan then improperly reported the Posey and Dodd contributions as having come from the parent with whose name each donor had supplied him.

Congressman Stockman does not now nor did he ever make a claim that Dr. Zeidan's reattribution was proper or lawful. He is not, however, the guarantor of perfection as to his FEC reports, and the fact of an FEC reporting error does not of itself supply sufficient basis for the initiation of Ethics Committee proceedings. It never has. What is required of him is that he take reasonable steps to try to ensure that his FEC reports (which, like many Congressmen, he neither sees nor signs) are accurate and lawful. He did in fact meet that standard in this case.

The fact is that Congressman Stockman did not solicit the subject donations, did not know of or condone the reattribution by Dr. Zeidan, and within a matter of four days after learning of the error, he fired Posey and Dodd and ordered that the FEC filings be corrected. He also selected a new treasurer with legal training, and directed that Dr. Zeidan play no further role in the preparation or submission of FEC filings. In every way these are the actions of a prudent man, and Rep. Stockman should be lauded and not vilified for his actions with respect to this matter.

In retrospect, it must be acknowledged that Lebanese American Dr. Zeidan proved unsuitable for the role he played as volunteer preparer of the FEC reports, and as a newly-appointed treasurer, Jason Posey failed to educate himself thoroughly about FEC reporting rules, and to supervise Dr. Zeidan to the extent needed. A cursory perusal of Dr. Zeidan's many convoluted filings, botched amendments, and eccentric notations on reports more than establishes —after the fact — his unsuitability for the job.

These observations, however, are made in hindsight, and that is not the standard by which we judge a Congressman's actions. Jason Posey was a college graduate and long time associate, and Dr. Zeidan a CPA, college instructor, and personal friend. Nothing about either man would suggest they were incapable of undertaking or unwilling to undertake sufficient training to keep the reports accurate or, in this case, properly understand the reattribution rule. No Congressman would suspect that such a duo

would permit him to be dragged into a quagmire of this type. Like many Congressmen, Rep. Stockman relied upon educated, reasonably intelligent men whom he trusted, and became aware of their failures the same way most Congressmen do: when the mistakes are reported in the news media.

When the mistakes were uncovered, he ordered their immediate correction, and under the new personnel, no similar mistakes have occurred in the year since. That is all that can reasonably be demanded of any Representative, and it is a standard Rep. Stockman met here.

As unfortunate as the erroneous filings were, longstanding Ethics Committee precedents make clear that the OCE does not have jurisdiction to review a campaign committee's FEC reporting violation if it does not involve the personal conduct of the Member (unless it is ancillary to another matter that confers jurisdiction).

As the Ethics Committee unequivocally stated: "Alleged violations of campaign finance laws have never been the sole basis for the Committee initiating a Preliminary Inquiry. Such matters have only been considered as an adjunct to other issues. In view of the statutory authority of the FEC, it is appropriate for the Committee to continue this practice." Statement of the Committee on Standards of Official Conduct Regarding Complaints Against Rep. Newt Gingrich, House Committee on Ethics (March 8, 1990).

Part of the reasoning in support of such a practice derives from the respect accorded to the FEC in matters within its bailiwick. The Federal Election Campaign Act ("FECA") confers on the FEC "exclusive jurisdiction with respect to the civil enforcement of [campaign finance laws.]" 2 U.S.C. Sec. 437c(b)(1). See *Stockman v. FEC*, 138 F.3d 144, 152 (5th Cir. 1998) ("The statute provides a strong basis for scrupulously respecting the grant by Congress of 'exclusive jurisdiction' to the FEC; the FEC is entrusted with the exclusive power to investigate violations of the Act, and the Act creates a detailed administrative process that the FEC must follow in its investigation.").

To treat every allegation of misreporting to the FEC as a sufficient basis for the initiation of an Ethics charge is to open the floodgates to an enormous gaggle of claims never before deemed the proper basis of an Ethics charge.

Since the OCE was created in 2008, for example, the campaign committees of the following 35 Members have been FINED by the FEC for adjudicated violations of FEC rules or FECA itself: Senators Marco Rubio, Ron Johnson, Saxby Chambliss, Barack Obama, Al Franken, and Patty Murray, and Representatives Bill Cassidy, Buck McKeon, Jack Kingston, Todd Young, Robert Pittenger, Tim Huelskamp, Dan Benishek, David McKinley, Blaine Luetkemeyer, Quico Canseco, Charles DJou, Roscoe Bartlett, Bob Turner, Mark Amodei, Frank Kratovil, Jeb Bradley, Bobby Jindal, Jim Clyburn, Al Green, David Cicilline, Ann McLane Kuster, Joe Kennedy, Patrick Murphy, Solomon Ortiz, Ciro Rodriguez, Al Wynn, Kathy Castor, Hank Johnson, and Eddie Bernice Johnson.

We are unaware of any OCE review or Ethics charge having been brought to bear on any of these 35 elected officials for the errors committed by their campaign committees'

reporting arms — errors that, as to each of them, was deemed significant enough to result in an FEC fine.

In the case of Rep. Stockman, the errors have not even been the subject of an FEC Request For Additional Information, much less an FEC investigation or fine. In the context of FEC litigation, the erroneous reattribution attempted by Dr. Zeidan and immediately corrected by Rep. Stockman is, quite frankly, small potatoes. It is an honest mistake of law committed by a volunteer being supervised by a treasurer who had been on the job for less than one month — immediately confessed and corrected six months or so after its commission.

In this regard it is much less objectionable than, for example, the error committed by the campaign committee of House Speaker John Boehner, which in October of 2011 erroneously reported donations of multiple father and son duos. In the case of Speaker Boehner, the errors were not corrected until two years following their commission, and then only after the FEC flagged \$150,000 in excessive contributions for Speaker Boehner's lawyers and accountants to remedy through a litany of "reallocations, reattributions, redesignations, and refunds" (and, yes, each of these four terms actually appears in the Boehner committee's response to the FEC).

So far as we are aware, Speaker Boehner is not an OCE review subject or Ethics Committee respondent alleged to have failed to take reasonable steps to ensure that his campaign committee operated in compliance with applicable law.

Even the serial filing of deliberately false FEC reports over a period of years as an adjunct to embezzlement by a committee's treasurer or other agent has never triggered an Ethics Committee investigation into, much less a meritorious allegation against, the affected Senators (of whom there have been at least three) or Representatives (at least ten).

Rep. Frank LoBiondo's treasurer embezzled more than \$450,000. Then-Rep. Chris Shays' treasurer embezzled a quarter-million dollars. Then-Senator Joe Biden's assistant treasurer embezzled \$412,000. Then-Senator Elizabeth Dole's assistant treasurer stole \$156,000. Rep. John Boehner said "safeguards that should have prevented this were not in place" after learning his treasurer had stolen \$618,000 from his campaign.

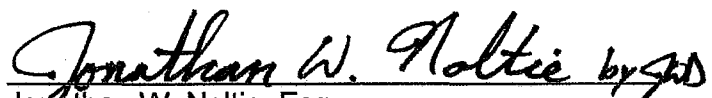
As Ranking Member Sanchez knows, campaign treasurer Kinde Durkee stole more than \$7 million from more than 50 victims and her clients included the committees of Senator Dianne Feinstein and Reps. Laura Richardson, Loretta Sanchez, Linda Sanchez, and Susan Davis. As Chairman Conaway is keenly aware, the National Republican Congressional Committee (NRCC) treasurer embezzled more than \$844,000 on the combined watch of Chairman Tom Reynolds, Chairman Tom Cole, and Audit Committee Chairman Greg Walden.

Again, so far as we are aware, none of these elected officials has had to face allegations that he or she committed an ethical violation by failing to take reasonable steps to prevent the subject thefts and false reports. Nor should he or she be.

Nor should Congressman Stockman. There is simply insufficient evidence of any personal misconduct on his part to turn Dr. Zeidan's error into an ethical lapse by Rep. Stockman. The Ethics Committee should dismiss the charges without delay or further proceedings of any type.

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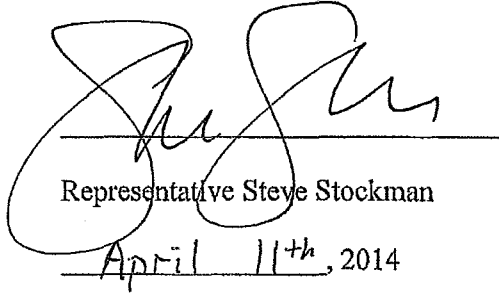
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Declaration

I, Representative Steve Stockman, declare (certify, verify, or state) under penalty of perjury that the response and factual assertions contained in the attached letter dated April 11th, 2014, relating to my response to the March 13, 2014, Committee on Ethics letter, are true and correct.

Signature:

A handwritten signature in black ink, appearing to read "S. Stockman", is written over a horizontal line. The signature is stylized and somewhat cursive.

Name:

Representative Steve Stockman

Date:

April 11th, 2014