

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
2001 K STREET, NW
TELEPHONE (202) 223-7300

WASHINGTON, DC 20006-1047

1285 AVENUE OF THE AMERICAS
NEW YORK, NY 10019-6064
TELEPHONE (212) 373-3000
FACSIMILE (212) 757-3990

UNIT 3601, FORTUNE PLAZA OFFICE TOWER A
NO. 7 DONG SANHUAN ZHONGLU
CHAO YANG DISTRICT
BEIJING 100020
PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 5828-6300

12TH FLOOR, HONG KONG CLUB BUILDING
3A CHATER ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2846-0300

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, U.K.
TELEPHONE (44 20) 7367 1600

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3597-8101

500 DELAWARE AVENUE, SUITE 200
POST OFFICE BOX 32
WILMINGTON, DE 19899-0032
TELEPHONE (302) 655-4410

BETH A. WILKINSON

TELEPHONE (202) 223-7340
FACSIMILE (202) 204-7395
E-MAIL: bwilkinson@paulweiss.com

July 31, 2014

By Email & Messenger Mail

Thomas A. Rust, Esq.
Chief Counsel and Staff Director
Committee on Ethics, U.S. House of Representatives
1015 Longworth House Office Building
Washington, DC 20515-6328

Re: Response to Office of Congressional Ethics Referral of Matter No. 14-2940

Dear Mr. Rust:

I write on behalf of my client, Representative W. Edward Whitfield. I appreciate the opportunity to respond to the report and findings of the Office of Congressional Ethics ("OCE") in regard to Matter No. 14-2940. The initial complaint against the Congressman for his work on animal welfare issues, which was filed by persons with a financial interest in opposing pending legislation that has drawn overwhelming bipartisan support in both the House of Representatives and the Senate, should be viewed with great skepticism. OCE failed to rigorously investigate that complaint and challenge its assertions. For the reasons explained in more detail below, the OCE report also fails to establish any ethical violation by Representative Whitfield. The House Committee on Ethics ("the Committee") should therefore dismiss this matter.

EXECUTIVE SUMMARY

Representative W. Edward Whitfield has been a longstanding and passionate supporter of animal welfare legislation since his first days in the U.S. House of Representatives. Since his first term in Congress in 1995-1996, he has sponsored or co-sponsored dozens of bills designed to protect horses, dogs, and other animals. He and his staff have also worked tirelessly to advocate for animal welfare legislation.

None of the animal welfare bills that Representative Whitfield has sponsored during his almost two decades in Congress stands to benefit him financially in any way. Nor does the legislation carry significant political benefit. The animals affected by the laws obviously cannot vote, and the animal welfare groups that support the laws are often under-funded and even unpopular among Representative Whitfield's party. Yet the Congressman continues to support such legislation as a matter of his own personal conscience, so long as it aligns with his constituents' views.

For years, one of Representative Whitfield's key legislative priorities has been the Prevent All Soring Tactics Act ("PAST Act"). That bill, which the Congressman and his staff drafted and which he personally sponsored, aims to eradicate the cruel and inhumane practice of horse soring. Soring involves inflicting excruciating pain on horses in order to achieve the "Big Lick" gait that is prized in certain circles of the Tennessee Walking Horse community. As with all of his other work relating to animals, Representative Whitfield derives no financial benefit from his support of the PAST Act. His advocacy of the bill stems from his own strongly-held beliefs, the interests of his constituents—the vast majority of whom oppose horse soring—and his desire to protect the health and safety of the abused horses.

As a result of the concerted efforts of Representative Whitfield and his staff, the PAST Act has garnered nearly unprecedented support in both houses of Congress. As of the date of this letter, the bill has 304 co-sponsors in the House of Representatives—approximately 70% percent of all Members. It also has another 57 co-sponsors in the Senate. And even more unusual in today's political climate, the bill draws support from a broad bipartisan coalition of lawmakers. Indeed, over one-third of the bill's current co-sponsors are Republicans.

Representative Whitfield's wife, Connie Harriman-Whitfield, is a dedicated animal welfare advocate in her own right. But first and foremost, she is a trusted confidant of her husband and one of his most important personal and political advisers. In her role as his spouse, Ms. Harriman-Whitfield frequently provides her husband with guidance and administrative assistance, and counsels him on how to serve his constituents and manage his office. For both the Congressman and his wife, the interests of Representative Whitfield's constituents are the paramount concern. Indeed, when necessary, Ms. Harriman-Whitfield's advice to her husband includes recommendations that conflict with her employer's priorities.

In addition to being her husband's trusted confidant, Ms. Harriman-Whitfield also works for the Humane Society of the United States ("Humane Society"). Since 2011, she has been a registered lobbyist for the Humane Society Legislative Fund ("HSLF"). In that capacity, Ms. Harriman-Whitfield has met with various Members of Congress about numerous animal welfare bills that the Humane Society supports, including the PAST Act. She has also communicated with Representative Whitfield and his staff regarding strategies for pursuing their shared interest in the PAST legislation. These communications involved standard efforts at coalition-building in support of a bill that Representative Whitfield had already drafted and sponsored.

In late 2013, after the PAST Act had already drawn significant support in Congress, several members of the Performance Show Horse Association ("PSHA") filed a letter of complaint against Representative Whitfield. The members of that organization have a vested financial interest in opposing passage of the PAST Act. Indeed, the signatories to the PSHA letter have personally been found responsible for numerous violations of the Horse Protection Act ("HPA"), including brutal forms of horse soring. The PSHA complaint was referred to OCE, which conducted a preliminary and second-phase investigation. OCE then issued a report stating that Representative Whitfield may have permitted his wife to have improper lobbying contacts with him and his staff, and may have granted special favors to Ms. Harriman-Whitfield and her employer.

These allegations are unfounded, and the Committee should promptly dismiss this matter. Representative Whitfield's legislative record demonstrates that he has been a staunch supporter of animal welfare bills, including the PAST Act, since well before Ms. Harriman-Whitfield became a lobbyist for HSLF. Representative Whitfield discharges his duties independently of HSLF and all similar lobbying organizations. He sponsors, advocates, and votes only for those bills that serve his legislative agenda and the interests of his constituents—even when that brings him into opposition with the positions of the Humane Society or its lobbyists. And when he works with the Humane Society, he does so to advance his own legislative interests, not to provide any special favors to the organization or Ms. Harriman-Whitfield.

None of Ms. Harriman-Whitfield's communications with Representative Whitfield or his staff amounted to improper lobbying contacts. The relevant ethical rules and standards do not forbid all communications between a lobbyist spouse and a Member of Congress or his staff. Rather, they prohibit contacts that are designed to produce a change in legislative position. But in the vast majority of communications identified by OCE—including with regard to the PAST Act—Ms. Harriman-Whitfield and Representative Whitfield's staff discussed ways to implement the Congressman's own longstanding positions. These communications were not designed to, nor did they, persuade Representative Whitfield or his staff to formulate new policy positions or alter their conduct or beliefs. On other occasions, Ms. Harriman-Whitfield acted as a personal confidant and messenger for Representative Whitfield, providing trusted advice to the Congressman and delivering information to his staff when he was too busy to do so

himself. Such communications are the ordinary conduct of a Congressman's spouse, not improper lobbying contacts.

OCE's report and findings to the contrary rest on an incomplete view of the record and cherry-picked communications that have been lifted out of context. Throughout its report, OCE fails to acknowledge Representative Whitfield's longstanding history of support for animal welfare legislation. Moreover, many of the communications identified by OCE as examples of Ms. Harriman-Whitfield "lobbying" on behalf of HSLF were in fact the exact opposite. For example, the OCE report cites an email from Ms. Harriman-Whitfield concerning a bill to regulate cage size for egg-laying hens. The Humane Society supports this so-called "Egg Bill," but Ms. Harriman-Whitfield advised her husband *not* to sign onto it because it was unpopular among key constituents in his District. Such communications could not be further from improper "lobbying contacts" on behalf of HSLF.

A complete review of the record also reveals that Representative Whitfield and his staff did not grant any special favors or privileges to Ms. Harriman-Whitfield or the Humane Society. All actions taken by the Congressman and his staff in furtherance of the PAST Act were attributable to his status as a chief sponsor of the bill, not his wife's employment by HSLF. The relevant meetings were often organized on behalf of individuals and organizations other than Ms. Harriman-Whitfield and the Humane Society. Indeed, Representative Whitfield and his staff members frequently prioritized the interests of other advocacy groups—including other animal welfare groups—above those of the Humane Society. And in any event, setting up meetings between interested organizations and other Members of Congress is not a "special favor." Instead, it is the routine work of a Representative seeking to serve his constituents and advance his legislative agenda.

Finally, Representative Whitfield's staff and Ms. Harriman-Whitfield each sought out and adhered to advice from Congressional Ethics Counsel. Far from revealing attempts to skirt ethical boundaries, the record thus demonstrates a good faith effort on behalf of all involved to comply with House Rules and other ethical standards.

Representative Whitfield remains committed to assisting the Committee in resolving this matter. However, because the OCE report does not establish any ethical violation, the Congressman respectfully requests that this matter be dismissed.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Representative W. Edward Whitfield has been a Member of the U.S. House of Representatives since January 1995. In that time (and in many cases, long before his wife became a lobbyist for the Humane Society), he has been a sponsor or co-sponsor of dozens of bills related to the protection of animals, including horses.¹

¹ A list of the animal welfare bills that Representative Whitfield has sponsored or co-sponsored is attached as Appendix 1 ("App. 1_Whitfield Animal-Welfare Bills").

Among other official actions related to horse welfare, Representative Whitfield has proposed legislation to combat the practice of horse soring, a brutal process used to achieve the “Big Lick” gait in Tennessee Walking Horses. Horse soring involves applying caustic chemicals to a horse’s front legs or hooves, using chains or other physical devices on its forelegs, or tightly affixing horseshoes to its hooves in such a way that walking causes the horse excruciating pain.² Horse soring has been illegal since the passage of the Horse Protection Act in 1970,³ but the practice continues today due to poor enforcement.

In late 2010, Representative Whitfield urged the U.S. Department of Agriculture (“USDA”) to complete a report on horse soring. When the USDA failed to implement its report’s recommendations, Representative Whitfield drafted and introduced the PAST Act to increase investigations of and penalties for horse soring.⁴

Representative Whitfield married Connie Harriman-Whitfield in 1990.⁵ Ms. Harriman-Whitfield served as Assistant Secretary for Fish and Wildlife and Parks in the Department of the Interior in the administration of President George H.W. Bush.⁶ In that role, she was instrumental in the enactment of a world-wide ban on the trade of elephant ivory. Ms. Harriman-Whitfield also formerly served as vice-chair of the Kentucky Horse Racing Authority and chair of the Kentucky Equine Drug Research Council, where she worked to strengthen laws concerning the administration of drugs to racehorses.⁷

Ms. Harriman-Whitfield began work at the Humane Society in 2007. In 2011, she transitioned to the Humane Society Legislative Fund as a senior policy adviser. In the latter role, she registered as a lobbyist in January 2011, and she began lobbying on behalf of HSLF in October 2011.⁸ Representative Whitfield’s opposition to horse soring and his advocacy of anti-soring measures thus pre-dates his wife’s employment as an HSLF lobbyist.

² For more information on the abusive practice of horse soring, see American Veterinary Medical Association, *Soring in Horses*, Feb. 15, 2012, available at <https://www.avma.org/KB/Resources/FAQs/Pages/Soring-in-Horses.aspx>.

³ See Horse Protection Act, Pub. L. 91-540, § 2, 84 Stat. 1404 (1970); Horse Protection Act Amendments of 1976, Pub. L. 94-360, §3, 90 Stat. 915 (1976) (codified as amended at 15 U.S.C. §§ 1821-1831).

⁴ Representative Whitfield originally introduced the PAST Act in 2012 (during the 112th Congress) as H.R. 6388 – “To amend the Horse Protection Act to designate additional unlawful acts under the Act, strengthen penalties for violations of the Act, improve Department of Agriculture enforcement of the Act, and for other purposes.”

⁵ Constance Harriman Wed to W. Edward Whitfield, N.Y. TIMES, Sept. 23, 1990, available at <http://www.nytimes.com/1990/09/23/style/constance-harriman-wed-to-w-edward-whitfield.html>.

⁶ Connie Harriman-Whitfield, *Senior Policy Adviser*, Humane Society Legislative Fund, available at <http://www.hslf.org/about-hslf/meet-hslf/leadership-and-staff/connie-whitfield.html>.

⁷ *Id.*

⁸ HSLF LDA Lobbying Registration Statement (Exhibit 1 at 14-2940_0001-04). Unless otherwise noted, all citations to exhibits throughout this letter are to the exhibits appended to OCE’s report and findings.

Due to Representative Whitfield's longstanding interest in horse welfare, the PAST Act quickly became one of the biggest legislative priorities for Representative Whitfield and his staff.⁹ The Congressman and his staff members have devoted significant time and attention to the bill since it was first introduced in the House. Their work has included meeting with other Members of Congress and with the numerous animal welfare groups that support passage of the PAST legislation. As a result of Representative Whitfield's efforts, the PAST Act has drawn widespread support in Congress. Over 300 Members of the House have already co-sponsored the bill, including 114 Republicans.¹⁰ Together, these Members represent approximately 70% of the total membership in the House. Fifty-seven Senators have also sponsored or co-sponsored the bill.¹¹ And hundreds of veterinary and animal welfare organizations, law enforcement groups, horse organizations, and horse industry professionals have endorsed the PAST Act and advocated for its passage.¹²

As a lobbyist for one of those groups, the Humane Society of the United States, Ms. Harriman-Whitfield has been active in meeting and educating other Members of Congress about the PAST Act and the practice of horse soring. In the course of her work for the HSLF, she emailed and called members of Representative Whitfield's staff. In those communications, she engaged in the common practice of coalition-building for a bill that Representative Whitfield already strongly supported.¹³ She did not contribute in any way to drafting the PAST Act, and she was not responsible for Representative Whitfield's initial decision to sponsor it.¹⁴

At other times, Ms. Harriman-Whitfield provided assistance to Representative Whitfield in her role as his spouse. She often helped him and his staff manage his calendar and correspondence.¹⁵ She also advised him on certain political decisions and on how to best serve his constituents—even when that advice conflicted with the Humane Society's priorities. For example, although the Humane Society supported the so-called "Egg Bill," she advised Representative Whitfield against signing onto it.¹⁶

⁹ Tr. of Interview of Representative Whitfield's Chief of Staff, Apr. 24, 2014 (Exhibit 7 at 14-2940_0138).

¹⁰ See Bill Summary & Status 113th Congress (2013-2014) H.R. 1518 "PAST Act," available at <http://thomas.loc.gov/cgi-bin/bdquery/D?d113:1:/temp/~bdpjr4://home/LegislativeData.php> (listing 304 current co-sponsors of the bill, in addition to Representative Whitfield himself, who is listed as the lead sponsor).

¹¹ See Bill Summary & Status 113th Congress (2013-2014) S. 1406 "PAST Act," available at <http://thomas.loc.gov/cgi-bin/bdquery/D?d113:2:/temp/~bdpjr4://home/LegislativeData.php>.

¹² A complete list of all of the organizations and individuals who have endorsed the PAST Act as of July 8, 2014 is attached as Appendix 4 ("App. 4_Endorsements for the Prevent All Soring Tactics (PAST) Act").

¹³ Tr. of Interview of Representative Whitfield's Wife, Apr. 25, 2014 (Exhibit 38 at 14-2940_0378-79, 0395).

¹⁴ *Id.* at 14-2940_0355-56.

¹⁵ *Id.* at 14-2940_0360, 0379-81, 0406-09.

¹⁶ Exhibit 12 at 14-2940_0181.

Similarly, although officers of the Humane Society wanted to testify in support of the PAST Act, she worked to prevent that in order to avoid jeopardizing the bill's chances of passage.¹⁷

In December 2013, several members of the Performance Show Horse Association, which is based in Tennessee, sent a letter of complaint to the U.S. House Committee on Ethics.¹⁸ Between them, the signatories to that letter are responsible for approximately fifty violations of the HPA, including numerous brutal examples of horse soring.¹⁹ These individuals use soring tactics to obtain a competitive advantage at Tennessee Walking Horse shows. Their use of abusive soring practices produces an unnaturally high-stepping gait in their horses, and that gait is often rewarded by victories at horse shows that include large cash prizes.²⁰ The PSHA members who signed the letter of complaint thus have a vested financial interest in preventing passage of the PAST Act.

The OCE received a written request for a preliminary review in this matter signed by at least two members of the OCE Board on January 28, 2014.²¹ OCE conducted a preliminary and second-phase investigation that spanned January to April 2014.²² During the OCE investigation, McKenna Long & Aldridge LLP represented Representative Whitfield. The Congressman's prior counsel submitted a letter to OCE on his behalf, which is part of the record in this ongoing investigation.²³

The OCE Board referred the matter to the Committee on Ethics on June 10, 2014, and the Committee sent a letter to Representative Whitfield on June 11.²⁴ Representative Whitfield then retained Paul, Weiss, Rifkind, Wharton & Garrison LLP to

¹⁷ Exhibit 19 at 14-2940_0201-02.

¹⁸ Letter from Performance Show Horse Association to Representative K. Michael Conaway and Representative Linda T. Sanchez, Dec. 27, 2013.

¹⁹ See, e.g., USDA Citation to Gayle Holcomb, Mar. 30, 2013; available at http://www.aphis.usda.gov/foia/enforcement_actions/2014/January/HPA/7060s/MS140001-AC_7060_GHolcomb_final_102313.pdf (describing an APHIS Veterinary Medical Officer finding that a horse that Ms. Holcomb rode to a third-place finish in a 2013 horse show was scarred and sore); USDA Citation to Mickey McCormick, Aug. 27, 2011, available at http://www.aphis.usda.gov/foia/enforcement_actions/2013/April/HPA/7060s/TN130308-AC_MMcCormick1_7060_finapp_04242013_Redacted.pdf (finding that Mr. McCormick entered a horse in a show whose legs tested positive for acetic acid and other substances used in horse soring). Appendix 5 to this letter lists the HPA violations by the signatories to the PSHA letter ("App. 5_HPA Violations by Signatories to PSHA Letter").

²⁰ See American Veterinary Medical Association, *Soring in Horses*, Feb. 15, 2012, available at <https://www.avma.org/KB/Resources/FAQs/Pages/Soring-in-Horses.aspx> ("Many judges continue to use judging criteria that encourage soring practices. . . . Events that feature 'natural' horses have much lower monetary rewards than events that . . . feature[] sored horses.").

²¹ OCE Report 14-2940, ¶ 9.

²² *Id.* ¶¶ 10-11.

²³ Letter from Stefan C. Passantino to Omar S. Ashmawy, Feb. 21, 2014.

²⁴ OCE Report ¶ 14; Letter from House Committee on Ethics to Representative W. Edward Whitfield, June 11, 2014.

represent him before the Committee. This letter constitutes Representative Whitfield's response to the OCE report and findings.

RULES AND STANDARDS AT ISSUE

OCE alleges that Representative Whitfield: (A) may have permitted Ms. Harriman-Whitfield to have lobbying contacts with him and his staff; and (B) may have granted special favors to Ms. Harriman-Whitfield and her employer.²⁵ OCE further alleges that Representative Whitfield's actions may have violated House Rules, the Code of Ethics for Government Service, the Lobbying Disclosure Act of 1995, and the House Ethics Manual.²⁶

To adopt or recommend a sanction to the House of Representatives for a violation of any of the applicable ethical rules or standards, the Committee must find facts supporting that violation by clear and convincing evidence.²⁷

I. Lobbying Contacts

A. Relevant Rules and Standards

1. House Rule 25, clause 7: "A Member . . . shall prohibit all staff employed by that Member . . . (including staff in personal, committee, and leadership offices) from making any lobbying contact (as defined in section 3 of the Lobbying Disclosure Act of 1995) with that individual's spouse if that spouse is a lobbyist under the Lobbying Disclosure Act of 1995 or is employed or retained by such a lobbyist for the purpose of influencing legislation."²⁸

2. House Rule 23, clause 2: "A Member . . . shall adhere to the spirit and the letter of the Rules of the House and to the rules of duly constituted committees thereof."²⁹

3. House Ethics Manual: "Special caution must be exercised when the spouse of a Member or staff person, or any other immediate family member, is a lobbyist. At a minimum, such an official should not permit the spouse to lobby either him- or herself or any of his or her subordinates. . . . Furthermore, a recently enacted provision of the House rules (House Rule 25, clause 7) requires that the Member prohibit his or her staff

²⁵ OCE Report 14-2940, ¶¶ 4-7, 100-04.

²⁶ *Id.* ¶¶ 18-21, 70-71.

²⁷ House Ethics Manual (2008 ed.), at 11.

²⁸ Rules of the House of Representatives, 113th Congress (2013), Rule XXV, Clause 7.

²⁹ *Id.*, Rule XXIII, Clause 2.

from having any lobbying contacts with that spouse if such individual is a registered lobbyist or is employed or retained by a registered lobbyist to influence legislation.”³⁰

4. The Lobbying Disclosure Act of 1995 (“LDA”): A lobbying contact is “any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to . . . the formulation, modification, or adoption of Federal legislation (including legislative proposals)”³¹ However, “[t]he term ‘lobbying contact’ does not include a communication that is . . . a request for a meeting, a request for the status of an action, or any similar administrative request, if the request does not include an attempt to influence a covered . . . legislative branch official.”³²

B. Analysis

The restriction in House Rule 25, clause 7—along with the cross-referenced definition of a “lobbying contact” in the LDA—is narrow and well-defined. It specifically prohibits a lobbyist spouse from attempting to influence a Member of Congress or his or her staff member with respect to the formulation, modification, or adoption of legislation. The clause does not forbid a lobbyist spouse from engaging in any communications whatsoever with the Member or his congressional staff. Indeed, the LDA exempts from the definition of “lobbying contacts” certain administrative communications, such as requests for meetings, that do not aim to influence a legislative official’s views. Read in context and as a whole, therefore, the LDA and House Rule 25, clause 7 are concerned with contacts that intend to alter or change a legislator’s position on legislation.

House Rule 23, clause 2 indicates that no Member should knowingly skirt the line of compliance by means of a hyper-technical interpretation of a Rule. The language serves as a reminder to adhere to both the letter and the spirit of the Rules. However, the Rules themselves still govern, and nothing in House Rule 23, clause 2 evinces an intent to expand the substantive prohibitions contained within those Rules. Instead, the Committee typically interprets House Rule 23, clause 2 simply to mean that “Members, officers, and employees may not do indirectly what they would be barred from doing directly.”³³

³⁰ House Ethics Manual at 245.

³¹ Lobbying Disclosure Act of 1995, Pub. L. 104-65, § 3, 109 Stat. 691 (1995) (codified as amended at 2 U.S.C. § 1602(8)(A)(i)).

³² 2 U.S.C. § 1602(8)(B)(v).

³³ House Ethics Manual at 17.

II. Special Favors

A. Relevant Rules and Standards

1. Code of Ethics for Government Service, Section 5: “Any person in Government service should . . . [n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not”³⁴

2. House Ethics Manual: “The prohibition against doing any special favors for anyone in one’s official capacity is a fundamental standard of conduct, and it applies to an official’s conduct with regard to not only his or her spouse or other family members, but more broadly to any person.”³⁵

B. Analysis

Section 5 of the Code of Ethics for Government Service forbids the granting of special privileges and favors, but does not prohibit standard contacts with other federal officials on behalf of constituents or similarly-situated third parties.³⁶ A Member and his staff are well within their rights to arrange meetings for constituents and other interested persons who wish to petition Congress or the government.³⁷ In determining whether a Member has granted special favors or privileges, the House Committee on Ethics looks to see if the Member has unethically used his office or position to favor the interests of a specific third party.³⁸

The House Ethics Manual’s prohibition of special favors stands for the broad principle that a Member of Congress must use the power of his office to help every person—whether spouse, family member, or constituent—in the same manner. Thus, by definition, any action taken on behalf of an individual or organization cannot be a “special favor” if the Member takes the same or similar actions on behalf of other similarly-situated groups.

³⁴ Code of Ethics for Government Service § 5.

³⁵ House Ethics Manual at 245.

³⁶ See Committee on Standards of Official Conduct, *Advisory Opinion No. 1* (Jan. 26, 1970) (“The Committee is of the opinion that a member of the House of Representatives, either on his own initiative or at the request of a petitioner, may properly . . . arrange for interviews or appointments; express judgments; . . . [and] perform any other service of a similar nature in this area.”).

³⁷ House Ethics Manual at 299-300 (“Pursuant to long-standing guidance, it is generally permissible for Members (and staff acting on their behalf) to . . . [a]rrange appointments . . .”).

³⁸ See Committee on Standards of Official Conduct, *Advisory Opinion No. 1*. (“A Member’s responsibility in this area is to all his constituents equally and should be pursued with diligence irrespective of political or other considerations.”).

DISCUSSION

I. Ms. Harriman-Whitfield's communications with Representative Whitfield and his staff were not lobbying contacts because she sought to advance his own longstanding interests and never attempted to change his positions on legislation.

A. Representative Whitfield's commitment to animal welfare legislation long pre-dates his wife's employment by the Humane Society.

Representative Whitfield has been an unapologetic supporter of various animal welfare laws from his very first days as a Congressman. First elected in November 1994, Representative Whitfield has been either a sponsor or a co-sponsor of multiple animal welfare bills in each and every Congress of which he has been a Member.³⁹ As detailed in a prior submission to OCE, in most Congresses, Representative Whitfield has sponsored more than half a dozen such bills.⁴⁰ In his very first term in the House, he co-authored a letter to the Secretary of Agriculture concerning the regulation of “puppy mills.”⁴¹ He then sponsored the “Puppy Protection Act” several years later, as a Member of the 107th Congress.⁴² Other animal welfare legislation that Representative Whitfield has supported during his nearly two decades in Congress include bills designed to: end the use of steel-jaw leghold traps on animals; protect wild horses and prohibit the shipment and sale of horses to be slaughtered for human consumption; encourage the use of dogs by certain members of the Armed Forces and veterans; prohibit the importation of products made with dog and cat fur; make it a felony to bring a minor child to a dogfight or cockfight; and provide protections for a wide variety of other animals, including elephants, bears, and great apes.⁴³

None of these bills stands to benefit Representative Whitfield financially in any way. And in many cases, the legislation carries little political up-side. The affected animals, after all, obviously cannot speak or vote, and the animal welfare groups that support the laws are often under-funded and even unpopular among Representative Whitfield's party. Yet the Congressman supports such legislation as a matter of his own personal conscience. And crucially, he did so for six terms—or twelve years—*prior* to the beginning of his wife's employment with the Humane Society in 2007.

³⁹ See Appendix 1 (“App. 1_Whitfield Animal-Welfare Bills”) for a list of animal welfare bills that Representative Whitfield has personally sponsored or co-sponsored during his time in Congress. See also Letter from Stefan C. Passantino to Omar S. Ashmawy, Feb. 21, 2014, at 4-5 & nn.2-7 (collecting animal welfare legislation that Representative Whitfield has voted for or otherwise supported from the 104th through 113th Congresses).

⁴⁰ Letter from Stefan C. Passantino to Omar S. Ashmawy, Feb. 21, 2014, at 4-5.

⁴¹ *Id.* at 4.

⁴² H.R. 3058 – “Puppy Protection Act of 2001.”

⁴³ See App. 1_Whitfield Animal-Welfare Bills (collecting such proposed legislation).

In a February 2014 letter to OCE, Representative Whitfield's prior counsel chronicled the Congressman's impressive record on animal welfare issues, including the bills that he supported before 2007.⁴⁴ But OCE failed to mention these bills anywhere in its report. To focus solely on the Congressman's record since 2007—as OCE has—is both incomplete and misleading. OCE's narrow focus overlooks the fact that Representative Whitfield supports legislation like the PAST Act due to his own longstanding commitments and beliefs, not outside influences from his spouse or any other third party. Had OCE reviewed the record more thoroughly, the only appropriate conclusion to draw would be that the Congressman's support of the PAST Act and other animal welfare legislation was independent of his wife's employment.

B. Representative Whitfield only advocates for bills that align with his interests and serve his constituents, independent of his wife's or the HSLF's positions.

The percentage of Representative Whitfield's legislative activity devoted to animal welfare legislation has remained consistent to a statistically significant degree throughout his time in Congress—both before and after his wife's employment by the Humane Society. Appendix 2 to this letter depicts the number of animal welfare bills that Representative Whitfield has sponsored or co-sponsored as a percentage of his total legislative activity. The differences in means from 1995 to 2006—before Ms. Harriman-Whitfield started at the Humane Society—and from 2007 to 2014—after she began work there—are negative 1.3% for sponsorships and positive 1.3% for co-sponsorships. This means that, on average, Representative Whitfield sponsored 1.3% fewer animal welfare bills after his wife began working for the Humane Society, but co-sponsored 1.3% more. In each case, the difference is *not* statistically significant.⁴⁵ In other words, Ms. Harriman-Whitfield's employment by the Humane Society had no impact on the number of animal welfare bills to which Representative Whitfield affixed his name.

Indeed, Representative Whitfield's biennial Humane Society “score” has actually gone down since his wife took a position with the organization.⁴⁶ And despite being the chief sponsor of the PAST Act, the Congressman's scores have sunk by more than twenty percentage points since Ms. Harriman-Whitfield became a registered lobbyist for HSLF.⁴⁷ These low scores are attributable to Representative Whitfield's failure to

⁴⁴ Letter from Stefan C. Passantino to Omar S. Ashmawy, Feb. 21, 2014, at 4-5.

⁴⁵ See App. 2_Representative Whitfield Legislative Activity. Statistical significance was measured by running a two-sample, two-tailed t-test with unequal variances. The Stata output demonstrates that the sponsor and co-sponsor t-scores were 0.76 and 0.15, respectively (rounded to two digits). Each of these values is well below 1.96, the widely accepted standard for statistical significance corresponding to a p-value of less than 0.05.

⁴⁶ As is the case with many advocacy organizations, the Humane Society Legislative Fund publishes an annual “scorecard” that lists how often lawmakers vote for or against a slate of bills in which the organization is interested. The HSLF scorecards dating back to the 109th Congress are available at <http://www.hslf.org/our-work/humane-scorecard.html>. The scorecards for the 104th through 108th Congresses are attached at Appendix 3 (“App. 3_HSLF Scorecards”).

⁴⁷ A list of Representative Whitfield's HSLF scores can be found at Appendix 3.

support certain animal-related bills that would be unpopular with constituents in his District. For example, in the HSLF scorecard for the 112th Congress (during which Ms. Harriman-Whitfield first began lobbying for HSLF), Representative Whitfield received a score of 54—the second-lowest numerical score he has *ever* received. That low score was due to his refusal to support caps on agricultural subsidies or to take anti-hunting positions in votes on the Sportsmen’s Heritage Act.⁴⁸

The simple facts that Representative Whitfield’s HSLF scores *declined* after his wife became a Humane Society lobbyist and that his legislative priorities remained independent of the HSLF’s positions should be sufficient to refute any allegations of improper lobbying. In fact, the Congressman’s legislative record reveals that he has consistently refused to support Humane Society legislation that is at odds with his or his constituents’ views. For example, the Humane Society supports federal legislation that would regulate cage size for egg-laying hens.⁴⁹ Representative Whitfield and his staff, however, knew that the so-called “Egg Bill” was unpopular in his District and did not make economic sense for his constituents, many of whom make their living in the farming industry.⁵⁰ As a result—and consistent with Ms. Harriman-Whitfield’s own advice—the Congressman has never signed on to the Humane Society-supported Egg Bill.⁵¹

Ms. Harriman-Whitfield also understands that the Congressman cannot support certain Humane Society policies because of conflicting priorities in his District; as such, she typically does not even speak to him about them.⁵² For example, she has not discussed the Humane Society’s objection to the use of antibiotics in cattle because of his constituents’ strongly stated opposition to the Humane Society’s position on that subject.⁵³

By contrast, anti-soring legislation is a priority for Representative Whitfield and his staff for reasons unrelated to the Humane Society’s views: namely, the legislation aligns with the Congressman’s own long-held interests, and his constituents do not oppose it. A December 2012 poll demonstrated that a majority of Kentucky citizens—including a majority of Kentucky Republicans—support legislation that would increase penalties for

⁴⁸ See Humane Society Scorecard, 112th Congress (2012), at 9-10, 13, *available at* <http://www.hslf.org/assets/pdfs/humane-scorecard/humane-scorecard-2012.pdf>.

⁴⁹ See Humane Society of the United States, *Federal Bill Introduced to Improve Housing for Egg-Laying Hens and Provide Stable Future for Egg Farmers: Egg Industry and Animal Welfare Groups Enthusiastically Support Legislation*, Jan. 23, 2012, *available at* http://www.humanesociety.org/news/press_releases/2012/01/federal_bill_introduced_01232012.html.

⁵⁰ Exhibit 12 at 14-2940_0181; *see also* Exhibit 7 at 14-2940_0156.

⁵¹ Exhibit 12 at 14-2940_0181; *see also* Bill Summary & Status 113th Congress (2013-2014) H.R. 1731 “Egg Products Inspection Act Amendments of 2013,” Cosponsors, *available at* <http://thomas.loc.gov/cgi-bin/bdquery/D?d113:3:./temp/~bdw7r3:./home/LegislativeData.php?n=BSS;c=113>; Bill Summary & Status, 112th Congress (2011-2012) H.R. 3798 Cosponsors, *available at* <http://thomas.loc.gov/cgi-bin/bdquery/D?d112:4:./temp/~bdwEEv:@@@P/home/LegislativeData.php?n=BSS;c=112>.

⁵² Exhibit 38 at 14-2940_0408.

⁵³ *Id.* at 14-2940_0408-09.

violations of the HPA.⁵⁴ A small but vocal minority—largely comprised of individuals and organizations with a financial stake in horse soring—opposes the legislation. Yet Representative Whitfield has long made it a priority in his office as a matter of his own personal conscience.⁵⁵ And he has taken the lead in advocating for the bill’s passage because he understands that the interests and knowledge available in his office render him well positioned to do so.

Ms. Harriman-Whitfield’s work on the PAST Act was thus not designed to “lobby” Representative Whitfield to change or even develop his legislative positions in any way. Instead, it was in line with the Congressman’s own longstanding views as well as those of a significant majority of the constituents whom he serves.

C. Representative Whitfield has passionately supported anti-soring policies since at least 2004, and his staff worked in accordance with his beliefs, not those of Ms. Harriman-Whitfield.

Since at least 2004, Representative Whitfield and his staff have tried to combat the abusive practice of horse soring.⁵⁶ The Congressman first urged the USDA Office of Inspector General to complete a report on horse soring.⁵⁷ When the USDA finally published its blistering findings,⁵⁸ Representative Whitfield—upon the recommendation of former Senator Tydings⁵⁹—co-authored a letter to Secretary Vilsack urging him to implement the report’s recommendations and conduct further rulemaking.⁶⁰ These actions, the Congressman hoped, would address the HPA’s enforcement problems without the need for further legislation. Unfortunately, the USDA did not act. Representative Whitfield decided that additional legislation was needed, and his Chief of Staff personally drafted the PAST Act in early 2012.⁶¹

Representative Whitfield’s positions on animal welfare generally and the PAST Act specifically were well known to his staff. The Congressman’s Chief of Staff,

⁵⁴ Humane Society of the United States, *New Poll Shows Voters in Tennessee and Kentucky Overwhelmingly Support Bill to Strengthen the Horse Protection Act: Legislation would address the widespread abuse in Tennessee walking horse industry*, Dec. 12, 2012, available at http://www.humanesociety.org/news/press_releases/2012/12/horse-protection-act-poll-support-121212.html.

⁵⁵ Exhibit 7 at 14-2940_0138, 0145.

⁵⁶ *Id.* at 14-2940_107-08.

⁵⁷ *Id.* at 14-2940_107.

⁵⁸ See U.S. Department of Agriculture, Office of Inspector General, *Animal and Plant Health Inspection Service Administration of the Horse Protection Program and the Slaughter Horse Transport Program*, Sept. 2010, available at <http://www.usda.gov/oig/webdocs/33601-02-KC.pdf>.

⁵⁹ Exhibit 7 at 14-2940_0116.

⁶⁰ Letter from Representative Ed Whitfield to Secretary Tom Vilsack, Dec. 17, 2010.

⁶¹ Exhibit 7 at 14-2940_0106-07, 0114-15.

Cory Hicks, has described Representative Whitfield as “passionately believ[ing] in the humane treatment of animals.”⁶² In his interview with OCE, Mr. Hicks described support for animal welfare legislation as “a long-standing position in our office”⁶³ and the PAST Act as “one of [Representative Whitfield’s] biggest priorities.”⁶⁴ Mr. Hicks therefore understood that his work on the PAST Act was performed at the behest of and for the benefit of Representative Whitfield—not Ms. Harriman-Whitfield or HSLF.

The Congressman’s scheduler—one of his most junior staff members—likewise understood that her extra work on the PAST Act stemmed from the Representative’s passion on the issue, not the Humane Society or its lobbyists.⁶⁵

In fact, Representative Whitfield specifically hired one staff member who had demonstrated an extraordinary commitment to the PAST legislation. In autumn 2013, Marty Irby came to Washington, D.C. for more than a month to speak to lawmakers about the ongoing practice of horse soring within the Tennessee Walking Horse community.⁶⁶ Mr. Irby’s family had been “deeply entrenched” in the soring culture, and his public opposition to the practice cost him his marriage, his business, and contact with much of his family, including his father.⁶⁷ After demonstrating his devotion to the issue, Representative Whitfield hired Mr. Irby to fill a vacancy on his staff and to help steer the PAST Act through Congress.⁶⁸

All of the work of the Congressman’s staff relating to the PAST Act—with the exception of some legislative drafting—occurred *before* Ms. Harriman-Whitfield started to actively lobby for HSLF.⁶⁹ And in drafting the bill, Mr. Hicks consulted numerous organizations aside from the Humane Society—including the American Horse Council, the American Veterinary Medical Association, and the American Association of Equine Practitioners—to discuss the bill’s language.⁷⁰ Ms. Harriman-Whitfield herself did

⁶² *Id.* at 14-2940_0145.

⁶³ *Id.*

⁶⁴ *Id.* at 14-2940_0138.

⁶⁵ Tr. of Interview of Scheduler, Apr. 24, 2014 (Exhibit 30 at 14-2940_0300, 0316).

⁶⁶ Tr. of Interview of Congressional Aide, Apr. 24, 2014 (Exhibit 22 at 14-2940_0211-16).

⁶⁷ *Id.* at 14-2940_0217-18; *see also* Christina Wilkie, *This Man Refuses To Be Intimidated By Threat After Testifying on Horse Abuse*, The Huffington Post (Nov. 19, 2013), http://www.huffingtonpost.com/2013/11/19/tennessee-walking-horse_n_4299886.html. The media covered the personal costs associated with Mr. Irby’s public support of the PAST act.

⁶⁸ Exhibit 22 at 14-2940_0220.

⁶⁹ The effective date of Ms. Harriman-Whitfield lobbying registration is January 1, 2011, but even OCE recognizes that she did not begin lobbying until October 2011, when she transferred to the Humane Society Legislative Fund payroll. *See* OCE Report 14-2940, p. 6 n. 5.

⁷⁰ Exhibit 7 at 14-2940_0109.

not contribute to drafting the Act, and she had no influence on Representative Whitfield's initial decision to support the legislation.⁷¹

Thus, Ms. Harriman-Whitfield's communications with the Congressman's staff regarding the PAST Act did not constitute improper "lobbying contacts." As explained above, House Rule 25, clause 7 and the LDA prohibit communications which are intended to change the position of a lawmaker or Congressional staff member.⁷² But with regard to the PAST Act, each staff member was acting in accordance with Representative Whitfield's long-held principles and advancing a policy that the Congressman had himself been promoting since at least 2004. One Whitfield aide had already lost his family and his profession as a result of his opposition to horse soring. To suggest—as OCE does—that Ms. Harriman-Whitfield's emails or other communications changed the position of this or any other staff member—let alone Representative Whitfield himself—with regard to anti-soring legislation is entirely unfounded.

OCE's contrary conclusion depends on a misreading of the relevant ethical rules. The OCE report concludes that Representative Whitfield's wife may have improperly lobbied him because she communicated with him and his staff "about drafting bills, selecting potential bill co-sponsors, and scheduling meetings with congressional offices."⁷³ Yet with respect to the PAST Act, the OCE report fails to acknowledge the undisputed testimony that Ms. Harriman-Whitfield did *not* contribute to drafting the bill's language.⁷⁴ And the other two categories of conduct—identifying potential co-sponsors for an already-drafted bill and scheduling meetings to gather additional support for that bill—do not meet the definition of prohibited lobbying contacts. To the contrary, such communications are examples of the ordinary coalition-building process that is part and parcel of any effort to get legislation passed.

Because Ms. Harriman-Whitfield worked alongside Representative Whitfield and his staff to advance a bill that he already strongly supported, her communications cannot qualify as improper "lobbying" of the Congressman or his office.

D. Communications regarding other legislation were consistent with Representative Whitfield's past positions, and the Congressman and his staff made decisions independent of the Humane Society and its lobbyists.

As indicated in the OCE report, Ms. Harriman-Whitfield also communicated with various staff members about animal welfare bills other than the PAST Act. However, the OCE report fails to cite to (or even acknowledge) multiple sources—all contained within the record it compiled—that demonstrate that those were bills that Representative Whitfield had supported in previous Congresses.

⁷¹ Exhibit 38 at 14-2940_0355-56.

⁷² See *supra* at pp. 8-9.

⁷³ OCE Report 14-2940, ¶¶ 101, 103.

⁷⁴ Exhibit 38 at 14-2940_0355-56.

For example, the OCE report cites an email from Ms. Harriman-Whitfield to Mr. Hicks asking him to add the Congressman as a co-sponsor of the Puppy Mill Bill.⁷⁵ But during his interview with OCE, Mr. Hicks explained that Representative Whitfield had been an original sponsor of that legislation in 2001, more than ten years prior to Ms. Harriman-Whitfield's email.⁷⁶ Accordingly, Ms. Harriman-Whitfield's communication was not a "lobbying contact" designed to alter his legislative position. The same is true for the Horse Slaughter Bill, the Animal Fighting Spectator Prohibition Act, the Veterans Dog Training Therapy Act of 2013, and the Polar Bear Amendment.⁷⁷

Moreover, in making political and legislative decisions, Representative Whitfield and his staff deliberated on his official positions independently of HSLF influence. For example, Ms. Harriman-Whitfield asked the staff to help implement the Congressman's desire to sign onto the Animal Welfare Enforcement Funding Letter in 2012.⁷⁸ The Congressman had signed the letter in the past, but the letter presented new challenges in an environment where Republican lawmakers were wary of advocating for any government spending.⁷⁹ Representative Whitfield and Mr. Hicks decided— independently of the Humane Society's views—that it was important for the Congressman to continue to support funding to enforce animal welfare laws.⁸⁰ Once again, this decision was made in accordance with Representative Whitfield's own legislative priorities, free from any undue influence by the Humane Society.

E. Other communications amounted to Ms. Harriman-Whitfield acting as a confidant and messenger assisting the Congressman in his work.

Ms. Harriman-Whitfield herself also sometimes provided trusted political advice and guidance to Representative Whitfield in her capacity as his spouse. This advice often included recommendations that ran contrary to the Humane Society's interests. For example, as explained above, the Humane Society supports the "Egg Bill," which would impose a federal standard regulating the size of cages for egg-laying hens.⁸¹ But Ms. Harriman-Whitfield advised Representative Whitfield *against* signing on to that legislation because she recognized that many of his key constituents—particularly farmers—were opposed to it.⁸² Incredibly, the OCE report cites this exchange as an example of a

⁷⁵ OCE Report 14-2940, ¶ 38 (citing Exhibit 20 at 14-2940_0205).

⁷⁶ Exhibit 7 at 14-2940_0141-42; *see also* Bill Summary & Status 107th Congress (2001-2002) H.R. 3058 "Puppy Protection Act," *available at* <http://thomas.loc.gov/cgi-bin/bdquery/D?d107:1:./temp/~bdVbUN::/home/LegislativeData.php?n=BSS;c=107>.

⁷⁷ *See* Exhibit 7 at 14-2940_0146-49, 0151-52; *see also* App. 1_Whitfield Animal-Welfare Bills.

⁷⁸ Exhibit 21 at 14-2940_0207.

⁷⁹ Exhibit 7 at 14-2940_0143-44.

⁸⁰ *See id.* at 14-2940_0144-45; Exhibit 21 at 14-2940_0207.

⁸¹ *See supra* at note 49.

⁸² Exhibit 12 at 14-2940_0181.

“lobbying contact” on behalf of the Humane Society.⁸³ In reality, it is exactly the opposite. Ms. Harriman-Whitfield was looking out for Representative Whitfield and his constituents in a manner that was consistent with being the Congressman’s wife, *not* a lobbyist.

Similarly, the OCE report cites a series of emails between Ms. Harriman-Whitfield and Representative Whitfield’s Chief of Staff concerning a potential hearing in support of the PAST Act.⁸⁴ But the report completely misses the fact that those emails reflect the Humane Society’s strong desire to “testify . . . [at] the soring hearing.”⁸⁵ Yet Ms. Harriman-Whitfield communicated with Representative Whitfield’s staff about *preventing* such testimony because the unpopularity of the Humane Society with certain Members of Congress would “stop any chances of moving the bill further.”⁸⁶

These communications are a far cry from improper “lobbying contacts” on behalf of HSLF. Rather, they are routine communications by a Congressional spouse whose primary interest was in serving as a sounding-board for her husband and providing him with valuable political guidance—even if that guidance ran counter to her employer’s priorities. The Committee would create a dangerous precedent if it were to find that such common communications between a husband and wife involve improper “lobbying.”

Finally, in certain other instances, Representative Whitfield also utilized his wife as a messenger between him and his staff. The OCE report assumes—without any supporting evidence—that these were communications from Ms. Harriman-Whitfield in her professional capacity. But the record reveals that they were instead examples of a busy subcommittee Chairman—and someone who admittedly has difficulties keeping up with email⁸⁷—asking his wife to help manage his schedule.⁸⁸ Significantly, this is how Representative Whitfield’s staff understood these communications: as notes from a spouse, not as directives from a lobbyist.⁸⁹

Indeed, the communications identified in the OCE report are only a small fraction of the messages that Ms. Harriman-Whitfield relayed on her husband’s behalf. OCE has cherry-picked the emails dealing with animal welfare legislation in an effort to make it appear as though Ms. Harriman-Whitfield lobbied for HSLF. But as the documents attached in Appendix 6 to this letter reflect, Ms. Harriman-Whitfield also frequently communicated with the Congressman’s staff about a wide range of topics having nothing to

⁸³ OCE Report 14-2940, ¶ 37 & n.23.

⁸⁴ *Id.* ¶ 37 & n.30.

⁸⁵ Exhibit 19 at 14-2940_0202.

⁸⁶ *Id.* at 14-2940_0201.

⁸⁷ Exhibit 38 at 14-2940_0407.

⁸⁸ *Id.* at 14-2940_0379-80, 0406-08.

⁸⁹ *See* Exhibit 7 at 14-2940_0119.

do with animals.⁹⁰ For example, she helped keep track of the schedule for votes on legislation of all kinds, including bills in which the Humane Society had no interest.⁹¹ She was also involved in discussions concerning how to manage Representative Whitfield's public image (including his social media presence),⁹² helped to maintain the Congressman's positive personal relationships with his constituents and with other Members and their staffers,⁹³ assisted in planning events for Representative Whitfield's staff,⁹⁴ and organized the Congressman's calendar and his travel schedules.⁹⁵

In each of these instances, Ms. Harriman-Whitfield acted in her role as Representative Whitfield's spouse, *not* as a lobbyist. And taken in context, these communications demonstrate that Ms. Harriman-Whitfield's goal was always to help her husband discharge his duties and serve his constituents, not to lobby him on behalf of the Humane Society.

* * *

In sum, because none of the communications identified by OCE involved Ms. Harriman-Whitfield attempting to influence or change the Congressman's positions on legislation, they did not constitute prohibited "lobbying contacts" under the House Rules.

II. Neither Representative Whitfield nor his staff performed any special favors for Ms. Harriman-Whitfield or the Humane Society.

A. All actions in furtherance of the PAST Act were taken because Representative Whitfield was the chief sponsor of the bill and did not relate to Ms. Harriman-Whitfield's position with the Humane Society.

The bulk of the allegations that Representative Whitfield and his staff performed "special favors" for the Humane Society involve the scheduling of meetings with Members of Congress regarding the PAST Act.⁹⁶ But once again, these meetings were ordinary coalition-building efforts in connection with a bill that Representative Whitfield himself had already drafted and sponsored. And the record demonstrates that Representative Whitfield's staff worked to push the bill forward because of the

⁹⁰ See App. 6_Connie Harriman-Whitfield Emails. Note that Appendix 6 includes only a representative sample of the hundreds or thousands of emails and other communications that Ms. Harriman-Whitfield has exchanged with Representative Whitfield's staff during his time in Congress.

⁹¹ *Id.* at App. 6_000001-05 (showing Ms. Harriman-Whitfield asking whether Representative Whitfield will support the Customs Trade Facilitation and Enforcement Act and tracking the schedule for votes on a variety of other non-animal welfare bills).

⁹² *Id.* at App. 6_000006-11.

⁹³ *Id.* at App.6_0000012-15.

⁹⁴ *Id.* at App. 6_0000016-17 (discussing logistics for a Christmas party for the staff).

⁹⁵ *Id.* at App. 6_0000018-30.

⁹⁶ See OCE Report 14-2940, ¶¶ 72-81.

Congressman's own passion for the issue, not out of a desire to confer any special privileges on HSLF or its lobbyists.⁹⁷

The requests to set up meetings relating to the PAST Act frequently came straight from the Congressman himself.⁹⁸ Moreover, the staff viewed most of the meetings as being set up for two citizen advocates from Tennessee who had particular expertise on the subject of horse soring, *not* for the Humane Society or HSLF.⁹⁹ Indeed, Representative Whitfield's scheduler also set up meetings for several other pro-PAST organizations, such as the American Horse Council and the American Veterinary Medical Association.¹⁰⁰ These other stakeholders were often more involved in the process than the Humane Society,¹⁰¹ and in each instance, the staff also informed them of the advocacy meetings they had scheduled with other Members of Congress.¹⁰²

The involvement of these other stakeholders demonstrates that Representative Whitfield was not conferring any "special privileges" on the Humane Society. He and his staff were working with a broad coalition of interested groups to advocate for the passage of a bill that serves Tennessee Walking Horses generally, not any animal welfare group in particular.¹⁰³ In the course of their work to support the PAST Act, the Congressman and his staff treated the Humane Society just like all of the other animal welfare organizations that were helping to promote the PAST legislation. And because they were all working together to achieve "one of [the Congressman's] biggest priorities,"¹⁰⁴ Representative Whitfield and his staff would have taken the exact same steps even if Ms. Harriman-Whitfield had not been employed by HSLF.

The OCE report also details instances where Ms. Harriman-Whitfield met jointly with Representative Whitfield and another Member of Congress.¹⁰⁵ But none of these other meetings amounted to the provision of a "special favor" for Ms. Harriman-Whitfield or her employer. In some instances, Ms. Harriman-Whitfield joined the meetings

⁹⁷ See, e.g., Exhibit 30 at 14-2940_0300; Exhibit 7 at 14-2940_0138.

⁹⁸ Exhibit 7 at 14-2940_0138-39.

⁹⁹ *Id.* at 14-2940_0137-38; Tr. of Interview of Representative Whitfield's Former Staffer (Exhibit 47 at 14-2940_0464-65).

¹⁰⁰ Exhibit 7 at 14-2940_0109, 0136-37.

¹⁰¹ See *id.* at 14-2940_0113.

¹⁰² *Id.* at 14-2940_0138.

¹⁰³ Indeed, Representative Whitfield and his staff were attempting to assemble as broad a coalition as possible. As of July 8, 2014, more than 200 horse organizations, veterinary and animal health organizations, law enforcement groups, and individuals have pledged their support for the PAST Act. A list of those endorsements is attached as Appendix 4 ("App. 4_Endorsements for the Prevent All Soring Tactics (PAST) Act").

¹⁰⁴ Exhibit 7 at 14-2940_0138.

¹⁰⁵ See OCE Report 14-2940, ¶¶ 82-94.

because she had a personal friendship with the Member involved.¹⁰⁶ In most instances, she never disclosed her affiliation with the Humane Society or even spoke about the PAST Act, and the Members viewed her as attending only in her capacity as Representative Whitfield's spouse.¹⁰⁷ But even when she did speak about the issue, she did so as part of a joint coalition-building effort to support a bill that was already a top legislative priority for the Congressman. In each instance, Ms. Harriman-Whitfield was in the room either in her personal capacity as the Congressman's wife or her professional capacity as one of the most knowledgeable advocates on the issue. Neither circumstance constitutes the granting of an unusual or "special" favor.

Finally, Ms. Harriman-Whitfield's salary—which accrues to her independently of her husband and is not tied to the outcome of any particular piece of legislation¹⁰⁸—had no influence on Representative Whitfield's or his staff's decisions. The OCE report cites no evidence to the contrary and provides no reason to believe that passage of the PAST Act would result in any financial benefit for either the Congressman or his wife. Indeed, the chain of causation that would lead to any such benefit is highly speculative and attenuated at best. And most importantly, any allegation that Representative Whitfield granted "special favors" with his wife's salary in mind is flatly contradicted by the facts that: (a) he supported animal welfare legislation and the PAST Act long before his wife's employment by HSLF; (b) the Humane Society scored him lower once his wife became a lobbyist for HSLF; and (c) he and his staff took the same actions on behalf of numerous other animal welfare groups.

B. Representative Whitfield takes similar actions on other legislation and arranges similar meetings for advocacy groups in connection with other bills.

The Humane Society of course served as one of many supporters of the PAST Act, and Ms. Harriman-Whitfield was one of HSLF's chief advocates. As such, the Congressman's staff had to work hand-in-hand with her and her organization in an effort to shepherd the bill through Congress. But this is not indicative of any sort of "special favor." Rather, it is an example of the typical coalition-building process by which legislation progresses through our system of government. As a representative of the House Administration Committee stated in a call to Mr. Hicks, if Representative Whitfield could not freely coordinate a legislative campaign—including setting up meetings for interested organizations—there would be no reason for him to be in Congress.¹⁰⁹

Indeed, Representative Whitfield frequently engages in similar coalition-building efforts with other advocacy groups, including setting up meetings for those groups in connection with non-animal welfare bills that he supports. For example, Representative Whitfield introduced a bill in the 113th Congress known as the Caring for Coal Miners Act,

¹⁰⁶ See Exhibit 38 at 14-2940_0383.

¹⁰⁷ *Id.* at 14-2940_0383-84; Tr. of Interview of Former Senator (Exhibit 56 at 14-2940_0528-29).

¹⁰⁸ Exhibit 38 at 14-2940_0418.

¹⁰⁹ Exhibit 7 at 14-2940_0125.

which ensures continued health care coverage for miners in danger of losing their benefits as a result of the bankruptcy of Patriot Coal Company.¹¹⁰ In the course of their work to pass that bill, Representative Whitfield and his staff exchanged hundreds of emails with interested organizations, such as the United Mine Workers of America, the affected coal companies, and several lobbyists.¹¹¹ The Congressman's staff coordinated numerous meetings on behalf of those groups, including meetings with other Members of Congress.¹¹² The staff members also participated in strategy discussions regarding the bill and developed plans to convince others to support it.¹¹³

In other words, the actions that Representative Whitfield and his staff took with regard to the PAST Act were typical of the efforts that they make in connection with any legislation the Congressman sponsors. And although the volume of meetings and communications concerning the PAST Act was high, that simply reflects the fact that Representative Whitfield considers the PAST Act extremely important.¹¹⁴ In addition, the PAST Act requires extra effort and attention because as an animal welfare bill, it does not draw support from any well-financed industry group that could independently advocate for its passage. To the contrary, the bill has encountered strong opposition from those in the Tennessee Walking Horse industry who have a financial interest in horse soring, such as the signatories to the PSHA letter. As a result, Representative Whitfield and his staff had to take the laboring oar in working to get the PAST Act passed. But as the record reveals, they did so because of the Act's significance to Representative Whitfield's constituents and his legislative agenda, not out of a desire to provide the Humane Society with any "special favors."

C. Far from giving the Humane Society "special favors," Representative Whitfield frequently refuses their requests and does not allow the organization to be the lead advocate for his animal welfare bills.

Moreover, even with respect to animal welfare legislation, Representative Whitfield often required the Humane Society to take a backseat in terms of access and attention to other groups that he thought would be better advocates for his bills. Mr. Irby—who took over as the lead staffer on the PAST Act in December 2013—estimated that of all of the advocates he spoke to about that bill, Ms. Harriman-Whitfield ranked eighth or ninth on the list of his most frequent contacts.¹¹⁵ He also indicated that at least half of the

¹¹⁰ H.R. 2627 – "Caring for Coal Miners Act" (2013); see Congressman Ed Whitfield, *Whitfield Introduces Bill to Protect Coal Miners' Health Care Benefits*, July 8, 2013, available at <http://whitfield.house.gov/press-release/whitfield-introduces-bill-protect-coal-miners-health-care-benefits>.

¹¹¹ See, e.g., App. 7_Caring for Coal Miners Act Coalition-Building Communications at App. 7_000001-38. As with Appendix 6, Appendix 7 includes only a representative sample of the relevant communications.

¹¹² *Id.* at App. 7_0000039-75.

¹¹³ *Id.* at App. 7_0000076-100.

¹¹⁴ See Exhibit 7 at 14-2940_0138.

¹¹⁵ Exhibit 22 at 14-2940_0243-44.

meetings that Representative Whitfield's office set up in October and November 2013 regarding the PAST Act were for organizations other than the Humane Society or HSLF.¹¹⁶

In fact, on several occasions, Representative Whitfield and his staff refused requests made by Humane Society employees. For example, Michael Markarian, the Chief Program and Policy Officer at the Humane Society and President of HSLF, expressed a desire for someone from the Humane Society to testify at a hearing about the PAST Act.¹¹⁷ But instead of agreeing to the request, as he presumably would have if he were trying to do "special favors" for the group, the Congressman's Chief of Staff took steps to prevent such testimony. He told another Member of Congress that the Humane Society's involvement "will stop any chances of moving the bill further," and encouraged Representative Whitfield to relay that same message in his own communications.¹¹⁸ Thus, far from giving the Humane Society any special access or privileges, the Congressman's staff often kept the group at arms-length.

And that arrangement makes perfect sense in light of the political realities of the situation. After all, Representative Whitfield is a Republican lawmaker trying to persuade other Republicans to join an animal welfare bill. Many of those other Republicans are not supporters of the Humane Society, and having a Humane Society spokesperson or officer at the table is likely to do more harm than good for the Congressman's agenda.¹¹⁹ As a result, there is absolutely no incentive for Representative Whitfield or his staff to confer any special privileges on the Humane Society above and beyond what any other similarly-situated group would receive.

III. Representative Whitfield's staff and Ms. Harriman-Whitfield acted in accordance with advice from Congressional Ethics Counsel.

Finally, Representative Whitfield's staff was cognizant of possible ethical concerns and took active measures to prevent ethics infractions. Mr. Hicks, the Congressman's Chief of Staff, understood that Ms. Harriman-Whitfield's profession could pose a problem for the Congressman. Accordingly, he implemented an office-wide policy under which any potentially problematic communications from Ms. Harriman-Whitfield had to be run by Mr. Hicks, and then passed along to the Congressman for a final decision if necessary.¹²⁰ This policy ensured that any professional communication from Ms. Harriman-Whitfield would receive an "extra layer of scrutiny."¹²¹

¹¹⁶ *Id.*

¹¹⁷ Exhibit 19 at 14-2940_0201-02.

¹¹⁸ *Id.* at 14-2940_0201.

¹¹⁹ *See* Exhibit 4 at 14-2940_0093.

¹²⁰ Exhibit 7 at 14-2940_0133.

¹²¹ *Id.* at 14-2940_0154.

If Mr. Hicks was ever unsure about a specific communication or request, he would call the House Ethics Committee to request legal advice. In fact, Mr. Hicks regularly consulted with the House Ethics and House Administration committees to ensure that the Congressman's office was "walking as far away from the line as possible."¹²² He recalled having one conversation with House Ethics Counsel specifically about the PAST Act,¹²³ but he would also call about other potential issues regarding Ms. Harriman-Whitfield's role as a lobbyist, including trips and events.¹²⁴ As a result of advice he received during those calls, Mr. Hicks understood that Ms. Harriman-Whitfield was within her rights to meet with other Members and to advocate on behalf of bills, so long as she did not improperly lobby Representative Whitfield or his staff.¹²⁵ The actions taken by Representative Whitfield and his staff were thus directly in line with legal advice from House Ethics Counsel.

Ms. Harriman-Whitfield was similarly cautious; as Representative Whitfield's spouse, she is concerned, first and foremost, with protecting her husband. She understood that she was not to attempt to lobby or influence Representative Whitfield or his staff. And, just as the Congressman's staff did, she consulted House Ethics Counsel whenever she had a question or concern. Ms. Harriman-Whitfield spoke with both Mr. Schwager from the House Ethics Committee and Mr. Sensenbrenner from the Committee on House Administration.¹²⁶ She spoke with them at length until she was confident that all of her practices complied with House Rules.¹²⁷

In its report, OCE never disputes that Representative Whitfield's staff and Ms. Harriman-Whitfield sought advice on how to comply with House Ethics Rules. They each consulted with the Committee's counsel and then complied with the advice and recommendations they received. As such, Representative Whitfield, his staff, and Ms. Harriman-Whitfield should all be granted deference with regard to their actions taken pursuant to that advice.

Representative Whitfield and his staff remain committed to complying with the letter and spirit of all relevant ethical rules. If the Committee now views any of the previously approved conduct as transgressing those ethical boundaries, the Congressman will take immediate steps to comply with the Committee's guidance and prevent any future violations. But because Representative Whitfield and his staff members acted in accordance with legal advice and their own good faith understanding of House rules, no ethical violation should be found at this time.

¹²² *Id.* at 14-2940_0124-25, 0129-30.

¹²³ *Id.* at 14-2940_0131.

¹²⁴ *Id.* at 14-2940_0131-32.

¹²⁵ *Id.* at 14-2940_0129.

¹²⁶ Exhibit 38 at 14-2940_0387-92.

¹²⁷ *See id.*

CONCLUSION

The record compiled by OCE reflects no basis for finding an ethical violation by Representative Whitfield. Ms. Harriman-Whitfield's communications with Representative Whitfield and his staff were in furtherance of a shared interest in animal welfare legislation generally and the PAST Act in particular. The Congressman has a longstanding history of supporting such legislation, and his staff acted in accordance with his policies and directives, not those of his spouse or her employer. The relevant communications were not designed to change Representative Whitfield's views in any way and thus were not prohibited "lobbying contacts." Likewise, the Humane Society and HSLF received no "special favors" or privileges as a result of Ms. Harriman-Whitfield's employment. To the contrary, the Congressman and his staff treated both of those groups just as they would any other similarly-situated organization engaged in similar coalition-building efforts.

It is unfortunate that those with a financial stake in continuing the horrific abuse of Tennessee Walking Horses have resorted to baseless ethical complaints like this one as a political tool. It is particularly unfortunate that they have sought to use the House Ethics Committee as part of a strategy to prevent passage of an Act that enjoys overwhelming bipartisan support in Congress. Representative Whitfield nonetheless stands ready to assist the Committee in any way as it completes its work on this matter. But because the record falls far short of establishing an ethical violation, the Congressman respectfully requests that this matter be dismissed.

Sincerely,



Beth A. Wilkinson