

ADOPTED BY THE COMMITTEE ON ETHICS ON DECEMBER 10, 2014

**113TH CONGRESS, 2ND SESSION
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ETHICS**

**IN THE MATTER OF ALLEGATIONS RELATING TO
REPRESENTATIVE PHIL GINGREY**

DECEMBER 11, 2014



Mr. CONAWAY from the Committee on Ethics submitted the following

REPORT

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ONE HUNDRED THIRTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

December 11, 2014

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

Dear Ms. Haas:

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

Sincerely,


K. Michael Conaway
Chairman


Linda T. Sánchez
Ranking Member

C O N T E N T S

I.	INTRODUCTION	1
II	HOUSE RULES, LAWS, REGULATIONS, AND OTHER STANDARDS OF CONDUCT	2
III.	BACKGROUND	2
IV.	FINDINGS.....	4
	A. EFFORTS TO ASSIST COMMUNITY BANKS	4
	B. FINANCIAL INTEREST IN BANK OF ELLIJAY.....	11
	C. HOUSE RULE XXIII, CLAUSE 3.....	11
	D. THE CODE OF ETHICS.....	13
	1. SECTION 5, CLAUSE 1	13
	2. SECTION 5, CLAUSE 2	18
	E. HOUSE RULE XXIII, CLAUSES 1 AND 2.....	21
	F. REPRESENTATIVE GINGREY’S LEGAL ARGUMENTS	22
V.	CONCLUSION.....	25
VI.	STATEMENT UNDER HOUSE RULE XIII, CLAUSE 3(C)	25
	APPENDIX A: LETTER OF REPROVAL.....	26

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R E P O R T

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

I. INTRODUCTION

In November 2011, press reports alleged that Representative Gingrey received stock warrants from two Georgia community banks—Bank of Ellijay and Westside Bank—as compensation for serving on their boards of directors, and that he advocated legislation that would benefit the banks. In the Spring of 2012, the Chairman and Ranking Member of the Committee for the 112th Congress authorized Committee staff to investigate these and related allegations pursuant to Committee Rule 18(a). Separately, the Office of Congressional Ethics (OCE) initiated a review of the compensation-related allegation, and ultimately recommended that it be dismissed. On August 2, 2012, the Committee voted unanimously to close its review of the compensation allegation, while continuing its review of allegations related to Representative Gingrey’s advocacy on behalf of the banks.

In the course of its review, the Committee determined that Representative Gingrey invested \$250,000 in Bank of Ellijay, and subsequently took official actions to assist the bank. The Committee found no evidence that Representative Gingrey’s actions resulted in any financial benefit to him, or were taken with that intent. However, the Committee concluded that Representative Gingrey’s efforts to assist Bank of Ellijay violated two provisions of the Code of Ethics for Government Service (Code of Ethics), which prohibit dispensing special favors to anyone, “whether for remuneration or not,” and the acceptance of benefits that could be seen as influencing a Member’s official duties. Representative Gingrey’s actions also did not reflect creditably on the House or comport with the spirit of the House Rules regarding conflicts of interest.

For his violations of House Rules, law, regulations, or other standards of conduct, the Committee has issued a public letter of reproof to Representative Gingrey.

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

The Code of Ethics, section 5, provides that any person in government service should “never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.” The *House Ethics Manual* notes that the Committee “has cautioned all Members ‘to avoid situations in which even an inference might be drawn suggesting improper action.’”¹

House Rule XXIII, clause 3, states that a Member “may not receive compensation and may not permit compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress.”

Federal law provides that “appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.”² The Committee and the Committee on House Administration have noted that funds appropriated for the Members’ Representational Allowance, which are used for staff salaries, among other things, are meant “to support the conduct of the official and representational duties of a Member . . . **with respect to the district from which the Member is elected.**”³

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

III. BACKGROUND

The Committee opened its investigation regarding Representative Gingrey in the Spring of 2012. Separately, OCE initiated a review of the allegation that the bank stock warrants Representative Gingrey obtained were impermissible compensation for his service as a board member and referred that allegation to the Committee with a recommendation that it be dismissed. Following its independent review of the matter, the Committee did dismiss that allegation, but continued its investigation of other issues. The Committee’s investigation took an

¹ Code of Ethics for Government Service ¶ 5; *House Ethics Manual* at 27 (2008) (hereinafter *Ethics Manual*).

² 2 U.S.C. § 1301(a).

³ *Ethics Manual* at 310 (citing 2 U.S.C. § 57b and quoting Comm. on House Admin., U.S. House of Representatives, *Members’ Congressional Handbook*, Regulations Governing the Members’ Representational Allowance (2001) (emphasis in original)).

extended amount of time, in part because Representative Gingrey's factual explanations changed substantially during the course of the investigation, requiring the Committee to obtain clarifications and further information from Representative Gingrey and other witnesses.

On June 8, 2012, the then-Chairman and Ranking Member of the Committee sent a Request for Information (RFI) to Representative Gingrey. Representative Gingrey responded to the RFI, through counsel, on July 6, 2012, and provided both a narrative submission and relevant documents (July 6, 2012 Submission). The submission, which Representative Gingrey signed and attested to, referenced two official actions by Representative Gingrey that related to community banks, neither of which had been mentioned in press reports at the time. First, on November 14, 2008, Representative Gingrey co-signed a letter to then-Treasury Secretary Henry Paulson urging him to provide community banks with access to funds from the Troubled Asset Relief Program (TARP).⁴ Second, Representative Gingrey set up "an office meeting with Treasury Department officials . . . for two of his constituents in January 2009."⁵ The submission stated that "[t]his meeting allowed these constituents and the Congressman to once again alert Treasury officials to the need for equal TARP access for both large and small financial institutions."⁶ On February 6, 2013, the Committee requested a clarification of this portion of Representative Gingrey's submission. Representative Gingrey's counsel provided a response, with additional documents, on February 20, 2013 (February 20, 2013 Submission).⁷

After reviewing Representative Gingrey's submissions and documents, Committee staff conducted eleven interviews, including interviews of Representative Gingrey, his Chief of Staff, and persons who arranged and attended the Treasury Department meeting.⁸ Committee staff also received and reviewed documents from the Treasury Department regarding the meeting.

On January 14, 2014, the Committee asked Representative Gingrey's counsel for a legal analysis of Representative Gingrey's actions with respect to setting up the Bank of Ellijay meetings. Representative Gingrey's counsel provided that analysis on February 12, 2014 (February 12, 2014 Submission).⁹ On February 20, 2014, the Committee asked Representative Gingrey's counsel to clarify a statement in the February 12 submission related to the constituent status of Bank of Ellijay and its officers. Representative Gingrey's counsel provided a response on March 5, 2014 (March 5, 2014 Submission).¹⁰

Before the Committee decided how to resolve this matter, Representative Gingrey was invited to address the full Committee, and did so. The Committee carefully considered all of Representative Gingrey's written submissions and oral remarks in resolving the matter.

⁴ Letter from S. Passantino to D. Schwager, July 6, 2012, at 15.

⁵ *Id.*

⁶ *Id.*

⁷ Letter from S. Passantino to P. McMullen, Feb. 20, 2013.

⁸ The Chairman and Ranking Member participated in the interview with Representative Gingrey.

⁹ Letter from S. Passantino to P. McMullen, Feb. 12, 2014.

¹⁰ Letter from S. Passantino to P. McMullen, Mar. 5, 2014.

IV. FINDINGS

A. EFFORTS TO ASSIST COMMUNITY BANKS

In or around 2006, a bank holding company was established, with the goal of opening five community banks in Georgia. Two organizers of the holding company, who lived in Representative Gingrey's district, asked him to join the board of directors of one of the banks. Representative Gingrey told the Committee that he had hoped to be selected for the board of Bank of Canton, which was near his congressional district. Instead, he was asked to join the board of Bank of Ellijay, which was located further from his district than Canton, in an area where he "knew a few people" but "didn't know nearly as many people."¹¹ At the same time that Representative Gingrey joined the bank's board, he was allowed to purchase \$250,000 in warrants of the bank's stock, which entitled him to purchase stock in Bank of Ellijay at a defined strike price.¹² Representative Gingrey borrowed \$200,000 from another Georgia bank in order to make this investment.

Bank of Ellijay made substantial loans to real estate developers in Georgia, and as the housing market declined in 2007 and 2008, the bank's financial condition deteriorated.¹³ In mid or late 2008, Bank of Ellijay submitted an application with the Federal Deposit Insurance Corporation (FDIC) for TARP funding. Former officers of Bank of Ellijay told Committee staff that FDIC forwarded the bank's TARP application to the Treasury Department.¹⁴

On November 14, 2008, Representative Gingrey and two other Members of Congress signed a letter to then-Secretary of the Treasury Paulson.¹⁵ The letter generally advocated for the disbursement of TARP funds to all banks on equal terms, rather than limiting such funds to large financial institutions.¹⁶ The letter thus asserted that "[c]ommunity financial institutions, including those that are privately held . . . should have the same level of access to the [TARP] program as larger institutions . . ."¹⁷ Representative Gingrey's Chief of Staff told Committee

¹¹ 18(a) Interview of Representative Gingrey.

¹² Representative Gingrey also joined the board of directors of Westside Bank, and invested \$250,000 in that bank. However, Westside Bank never submitted an application for TARP funding, and the evidence did not reveal any official actions by Representative Gingrey that could have benefitted Westside Bank. Accordingly, the Committee did not find that Representative Gingrey acted improperly with respect to Westside Bank.

¹³ Bank of Ellijay ultimately failed in September 2010, and was placed into receivership. As a result, Representative Gingrey lost his entire investment in the bank.

¹⁴ Treasury Department staff have stated that they could not locate Bank of Ellijay's TARP application.

¹⁵ Representative Gingrey provided the Committee with a letter from Representatives Gingrey, Greg Walden, John Shimkus, and Joe Wilson, to then-Secretary of the Treasury Henry Paulson, dated November 14, 2008. However, the Treasury Department provided the Committee with a version of the letter that is identical in substance but is signed only by Representatives Gingrey, Walden, and Shimkus. Treasury Department documents indicate that the letter was faxed from Representative Gingrey's office, and Representative Gingrey's signature appears first on the letter.

¹⁶ The letter argued against any approach that "places smaller companies at a competitive disadvantage for taxpayer funds originally intended to address the systemic lack of available credit." *Id.*

¹⁷ *Id.*

staff that he drafted the letter at Representative Gingrey's request, but he did not know what motivated Representative Gingrey to send it. Representative Gingrey stated that he could not recall whether his staff drafted the letter, or why it was sent. The Chief Financial Officer (CFO) of Bank of Ellijay told Committee staff that he told Representative Gingrey, during a Bank of Ellijay board meeting in October or November 2008, that the TARP program was not helping community banks.

On Friday, January 9, 2009, Bank of Ellijay's CFO sent Representative Gingrey an email, copying Representative Gingrey's office manager, saying that the bank's Chairman asked the CFO to request "a meeting with members of Congress regarding Community Banks and the TARP program." He stated:

As a non-publicly traded Community Bank, we are at a disadvantage with the publicly traded institutions that have received the TARP Capital Purchase Program funds. Our correspondent banks are making it difficult for us to continue to conduct day-to-day business. If the non-publicly traded Community Banks were given the TARP Capital Purchase Program funds, you would see the credit begin to flow. As it currently stands, the larger institutions are hoarding the capital and not allowing it to flow through the system. The Community Banks are the ones that will help solve the mortgage crisis by working with the borrowers. Let me know when you would like to discuss this further. I urge Congress to listen to the Community Bankers, not lobbyists, which have to deal with the legislation, regulation, and customers on a daily basis. Anyone that feels that we are unregulated or have had our regulatory burden eased during the last administration has not worked in a Bank.¹⁸

The CFO and Chairman both told Committee staff that they never lived in Representative Gingrey's congressional district.¹⁹ Despite the fact that neither the CFO, Chairman, or the bank

¹⁸ The language of the CFO's request is notably similar to the text of Representative Gingrey's letter to then-Treasury Secretary Paulson. Further, while the CFO's email discusses community banks generally, the reference to the ability to "continue day-to-day business" appears to relate specifically to Bank of Ellijay, as the CFO was not associated with any other community bank at the time. The Chairman of Bank of Ellijay, in his second (but not first) interview with Committee staff, did recall discussing the need for TARP funding for community banks generally with the head of a Georgia community banking association around the time of the Treasury Department meeting. However, he recalled that only Bank of Ellijay's TARP application was discussed in the congressional and Treasury Department meetings.

¹⁹ The three Bank of Ellijay representatives who attended the congressional and Treasury Department meetings—the Chairman, CFO, and Chief Executive Officer (CEO)—provided their current and past home addresses to Committee staff. The Chairman and CFO of Bank of Ellijay do not currently live in Representative Gingrey's district and have never lived in the district. In a submission to the Committee, Representative Gingrey's counsel stated that the CEO of Bank of Ellijay "is believed by the Congressman to be living in Canton but to have previously lived in his Eleventh Congressional District (Marietta, Georgia). The Congressman is not certain whether he moved prior to, or after, participating in relevant board discussions with Congressman Gingrey." Mar. 5 Submission at 2. However, based on the testimony of the CEO and Representative Gingrey, it is clear the CEO became a resident of Representative Gingrey's district after the 2009 Treasury Department meeting, as a result of redistricting.

itself were constituents of Representative Gingrey, Representative Gingrey's office manager replied to the CFO's email, copying the Chief of Staff, on Monday, January 12, 2009. The office manager informed the CFO that "we are working on this request" and asked when Bank of Ellijay representatives could come to Washington, D.C.

Representative Gingrey and his Chief of Staff provided different accounts of their communications after the CFO's email was received. The Chief of Staff stated that he discussed the CFO's request with Representative Gingrey soon after the request was made. The Chief of Staff stated that Representative Gingrey directed him to schedule meetings for the Bank of Ellijay representatives with House Members and staff, and told him "I want you to set up what you can, but I don't want you to do anything above and beyond what you would do for a normal constituent, you know."²⁰ According to the Chief of Staff, during this conversation, the Chief of Staff suggested asking Anna Cabral, who was then the Treasurer of the United States and was also the Chief of Staff's mother-in-law, to set up a meeting for the Bank of Ellijay representatives with officials from the Treasury Department. In his interview with the Committee, Representative Gingrey was asked "Do you recall having any discussion with [your Chief of Staff] between—in that short window of time [between the CFO's email to Representative Gingrey and the Chief of Staff's email to Ms. Cabral] about the request from [the CFO]?" He replied "No, no, I don't."²¹ However, later in his interview, Representative Gingrey did recall calling the Chief of Staff after he received the CFO's email, and telling him that the Bank of Ellijay representatives "would like to come and inquire about the status of their [TARP] application."²² Representative Gingrey did not recall the Chief of Staff mentioning the Treasury Department meeting during their phone call. In fact, Representative Gingrey stated that he did not find out about the Treasury Department meeting until after it had occurred.²³

While it is impossible, on the current factual record, to prove that Representative Gingrey was aware of the Treasury Department meeting before it occurred, the evidence supports the conclusion that he was. To start, Representative Gingrey's July 6, 2012, submission stated that the Treasury Department meeting was "set up by Congressman Gingrey for two of his constituents in January 2009."²⁴ Attached to the letter was a signed declaration from Representative Gingrey that, "under penalty of perjury . . . the response and factual assertions contained in the attached letter . . . are true and accurate." Further, each of the three Bank of Ellijay representatives stated that they visited Representative Gingrey's office before the congressional and Treasury Department meetings. The bank's Chairman said that he spoke with Representative Gingrey for ten or fifteen minutes, and that they discussed the scheduled meeting

²⁰ 18(a) Interview of Representative Gingrey's Chief of Staff.

²¹ 18(a) Interview of Representative Gingrey.

²² *Id.*

²³ Representative Gingrey stated: "That [Treasury Department] meeting was set up by my chief of staff, and I was—I was not aware of that at the time, and I don't know any other details about it. I don't know if they specifically asked him to set up a meeting both with the Financial Services Committee and the Department of Treasury. But I was not aware of that meeting at all until after the fact." *Id.*

²⁴ July 6, 2012, Submission at 15.

with the Treasury Department.²⁵ The bank's CEO also recalled meeting with Representative Gingrey before the other meetings, and said that "there were conversations about the banking environment in general and what our schedule might be that day." It seems likely that the Treasury Department meeting would be part of any discussion of the day's schedule. Finally, it seems unlikely that the Chief of Staff, who was promoted to that position shortly before the CFO's request, would arrange a meeting with high-ranking Treasury Department officials, on Representative Gingrey's behalf and using his name, without notifying Representative Gingrey. Representative Gingrey stated that it was "not unusual" for his Chief of Staff to arrange meetings for constituents on his own initiative, without informing Representative Gingrey, but also not "frequent."²⁶ In this case, given Representative Gingrey's initial assertion that he set up the Treasury Department meeting, his difficulty in recalling other salient facts regarding other meetings arranged for the Bank of Ellijay representatives, and the Chief of Staff's clear recollection of discussing the Treasury Department meeting with Representative Gingrey, it is likely that Representative Gingrey was aware of the scheduled Treasury Department meeting prior to its occurrence, as well as his staff's general efforts to arrange the meeting.²⁷

Putting aside the question of Representative Gingrey's knowledge of the Treasury Department meeting, the process of requesting and scheduling the meeting was well documented. Less than an hour after Bank of Ellijay's CFO emailed Representative Gingrey, the Chief of Staff, who was not copied on the email from the CFO to Representative Gingrey, sent an email to Ms. Cabral stating, in part:

²⁵ Bank of Ellijay's Chairman stated this in October 2012. Committee staff interviewed him a second time in January 2014, at which time he said he could not recall whether he ever discussed the Treasury Department meeting with Representative Gingrey. He did recall discussing the meeting at Bank of Ellijay board meetings, both before and after the trip to Washington, D.C. Thus, if Representative Gingrey attended those board meetings, he would have learned of the Treasury Department meeting. However, neither Representative Gingrey nor the Bank of Ellijay representatives interviewed in this matter could provide the Committee with copies of the bank's board minutes.

²⁶ 18(a) Interview of Representative Gingrey.

²⁷ Even if Representative Gingrey was not aware of his staff's efforts to arrange the Treasury Department meeting, using his name, the Committee's precedents support holding him responsible for his staff's actions. *See, e.g.,* House Comm. on Standards of Official Conduct, *In the Matter of Rep. E.G. "Bud" Shuster*, H. Rep. 106-979, 106th Cong., Sess. 31 (2000) at 64 (Committee found Member misused official resources for campaign purposes, despite finding "no direct evidence that [the Member] was aware that this [campaign-related] activity was taking place."). The Committee has not applied this standard in certain instances, such as where the Member took appropriate steps to ensure that their staff was acting properly, and in a manner consistent with the House Rules. *See, e.g.,* Comm. on Ethics, *In the Matter of Representative Maxine Waters*, H. Rept. 112-690, 112th Cong. 2d Sess. 7-8 (2012) (hereinafter *Waters*) (finding Member was not responsible for her Chief of Staff's violation of conflict of interest rules because she told her Chief of Staff not to work on certain matters). Here, Representative Gingrey stated that he was aware that his Chief of Staff sometimes arranged meetings with executive agencies without informing him of the details of those requests. Thus, Representative Gingrey should be held accountable for his staff's actions in setting up the Bank of Ellijay's meeting with the Treasury Department. *See* Comm. on Standards of Official Conduct, *Investigation Into Officially Connected Travel of House Members to Attend the Carib News Foundation Multi-National Business Conferences in 2007 and 2008*, H. Rept. 111-422, 111th Cong. Sess. 2d 192-93 (2010) ("[B]ased upon the Standards Committee's longstanding precedent . . . the Subcommittee finds that it would not well serve the House as an institution to allow its Members to escape responsibility by delegating authority to their staff to take actions and hide behind their lack of knowledge of the facts surrounding those actions.")

My boss is concerned about the priority being given to community banks in the TARP process and if the next tranche of TARP funds will be steered to community banks. Some good constituent community bankers have asked us to help them speak in person with some Treasury officials next week – and my boss wants to make sure we make this happen. Is this possible and do you know who we could contact on this?

Ms. Cabral immediately forwarded the Chief of Staff's email to a number of Treasury Department officials in the Legislative Affairs and Policy offices, and asked that officials responsible for administering the TARP program meet with the Bank of Ellijay representatives. While the Chief of Staff's email did not mention the bank's TARP application, a Treasury Department official subsequently asked Representative Gingrey's staff if the bank had applied for TARP funding, and was told that it had.

In a submission to the Committee, Representative Gingrey stated that the Treasury Department meeting "was arranged for his constituents out of a desire to aid in their search for additional information regarding the TARP application process due to the fact that Treasury had not responded to their repeated inquiries."²⁸ Representative Gingrey went on to state that the meeting was not "designed to encourage federal financial support for the Bank, or to advocate for policies that would unfairly advantage community banks over other financial institutions."²⁹ With the exception of one witness, persons who attended the Treasury Department meeting agreed that the central purpose of the meeting was to determine the status of Bank of Ellijay's TARP application and to assess whether the bank could qualify for TARP funds at all.³⁰ Other evidence, including "talking points" which the CFO said he discussed in the Treasury Department meeting, indicates that the bank's representatives also advocated for disbursing TARP funds to community banks generally, and used Bank of Ellijay as an example of the problems community banks were encountering because they could not access TARP funds.³¹

The Bank of Ellijay representatives also met with a Counsel to Representative Barney Frank, who was at that time the Chairman of the House Financial Services Committee (Financial Services Committee). The Counsel's portfolio included work on that committee's issues. The Bank of Ellijay representatives met separately with the then-Ranking Member of the Financial Services Committee, Representative Spencer Bachus. Representative Gingrey stated that he personally approached Representative Bachus and discussed the CFO's meeting request with

²⁸ Feb. 20, 2013 Submission at 2.

²⁹ *Id.*

³⁰ The CFO stated that he did not believe Bank of Ellijay's TARP application was discussed during the Treasury Department meeting. However, he also stated that there were multiple conversations overlapping at certain points, and that due to his position at the table, he could not hear everything said during the meeting.

³¹ The talking points stated that Bank of Ellijay "had 2 customers close accounts since we did not have TARP CPP [Capital Purchase Program] funds." The CFO stated that these two accounts were substantial, and would have held at least \$250,000 each. Representative Gingrey's first submission to the Committee stated that the Treasury Department meeting "allowed [Bank of Ellijay representatives] to once again alert Treasury officials to the need for equal TARP access for both large and small financial institutions." July 6, 2012, Submission at 15.

him. According to Representative Gingrey, Representative Bachus suggested that the Bank of Ellijay representatives meet with him and with someone from Representative Frank's office. Representative Gingrey stated that he did not recall whether he informed Representative Bachus of his financial interest in Bank of Ellijay, but said he thought that was something Representative Bachus would want to know. Representative Gingrey's February 20, 2013, submission to the Committee stated that he attended the meeting with Representative Bachus but not the meeting with the Counsel to Representative Frank.³² However, in his Committee interview, Representative Gingrey recalled the opposite.

Representative Gingrey's submission asserted that the congressional meetings were "organized for purely informational purposes and [were] in no way designed to pressure . . . personal or committee staff with regard to the Bank's TARP application."³³ When asked during his interview whether the congressional meetings were set up to allow the bank's representatives to "talk about their TARP application" or advocate for TARP funding for community banks generally, Representative Gingrey said "I think both."³⁴ The bank representatives also told the Committee that the congressional meetings focused on the need to disperse TARP funds to Georgia community banks generally. Consistent with this testimony, Representative Gingrey's Chief of Staff told the Committee that the bank representatives' discussion with Representative Bachus "centered around" "a philosophical question about or discussion about, well, should community banks get this [TARP funding] or should it only go to institutions that are too big to fail."³⁵

Representative Gingrey's counsel has asserted that Representative Gingrey would not have arranged for Bank of Ellijay's representatives to meet with Members of the Financial Services Committee and their staff in order to advocate for directing TARP funds to community banks because "*it was well known that the House Financial Services Committee had no jurisdiction or authority to grant [that] request!*"³⁶ While it may be true that the Financial Services Committee did not administer TARP directly, that committee drafted the legislation establishing TARP and had oversight responsibilities for the Executive agencies implementing the program. To cite one example, on December 10, 2008—one month before the CFO's meeting request—the Financial Services Committee held a hearing on TARP accountability, at which the Treasury official responsible for implementing the TARP program appeared and testified.

Further, any assertion that the Financial Services Committee had no influence in the disbursement of TARP funds generally is belied by the sequence of events here. The CFO and Chairman of Bank of Ellijay specifically requested meetings with Members of Congress in order to advocate for disbursement of TARP funds to community banks, and Representative Gingrey

³² See Feb. 20, 2013 Submission at 3, 5.

³³ *Id.*

³⁴ 18(a) Interview of Representative Gingrey.

³⁵ 18(a) Interview of Representative Gingrey's Chief of Staff.

³⁶ Letter from S. Passantino to D. Mayer and P. McMullen, Oct. 8, 2014, at 8 (emphasis in original).

responded by arranging for the bank’s representatives to meet with Representative Frank’s Counsel and Representative Bachus. Indeed, Representative Gingrey himself stated that, after receiving the meeting request, he asked his staff “to find out who would be the right people to talk to,” and that inquiry resulted in the Financial Services Committee meetings.³⁷ Representative Gingrey further explained that he asked Representative Bachus “how do we go about this?”³⁸ According to Representative Gingrey:

[H]e said, well, let me look into it. And I’m pretty sure it was his recommendation, I don’t think directly to me, but maybe he had his chief call my chief or something to that effect and said, well, such and such general counsel for the majority will be glad to meet with them. And that is subsequently what happened.³⁹

Likewise, Representative Gingrey’s Chief of Staff told the Committee staff:

I think when they, Phil and [Representative Gingrey’s office manager] got that email asking to be able to meet with Members of Congress that intuitively—I don’t know whose call that was, but the people they would meet with were on the Financial Services Committee.⁴⁰

Presumably, Representative Gingrey would not have arranged for the Bank of Ellijay representatives to meet with Financial Services Committee representatives if he believed that committee had no responsibility or authority with respect to the result Bank of Ellijay sought—disbursement of TARP funds to community banks. Thus, even if Representative Gingrey’s counsel is correct that the Financial Services Committee could not influence the Treasury Department’s decisions regarding disbursement of TARP funds to community banks—which is questionable, given that committee’s legislative and oversight roles—it is clear that Representative Gingrey believed, at the time he arranged the Financial Services Committee meetings, that that committee had some say in such decisions.

Although Representative Gingrey’s submissions asserted that he did not violate any law, rule, or other standard of conduct by arranging meetings for the Bank of Ellijay representatives, he stated that he and his Chief of Staff “generally were aware of a conflict of interest” with respect to the bank’s request, and of the need to be “very, very careful, above board,” in responding to the request.⁴¹ Representative Gingrey explained that he knew “we could not advocate on behalf or specifically request that something be granted to the Bank of Ellijay,” but rather that “this had to be a generic meeting, an information-gathering meeting, and to find out specifically about the application that they could not seem to get information on.”⁴²

³⁷ 18(a) Interview of Representative Gingrey.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ 18(a) testimony of Representative Gingrey’s Chief of Staff.

⁴¹ 18(a) Interview of Representative Gingrey.

⁴² *Id.*

Ultimately, the FDIC advised Bank of Ellijay to withdraw its TARP application, and the bank never received any funding from TARP. Bank of Ellijay subsequently failed. It was closed by the Georgia Department of Banking & Finance in September 2010, and the Federal Deposit Insurance Corporation was named Receiver.

B. FINANCIAL INTEREST IN BANK OF ELLIJAY

There is no question that Representative Gingrey had a financial interest in Bank of Ellijay's receipt of TARP funds. As the *Ethics Manual* notes in the context of a Member's advocacy for appropriations earmarks, "a financial interest would exist in an earmark when it would be reasonable to conclude that the provision would have a direct and foreseeable effect on the pecuniary interests of the Member."⁴³ The *Ethics Manual* further explains that "a Member's direct ownership of stock, even a small number of shares in a widely held company, likely would constitute a financial interest under Rule 23."⁴⁴ Here, Representative Gingrey invested \$250,000 in Bank of Ellijay. Bank of Ellijay representatives told Committee staff that by the time of the Washington, D.C., meetings, the bank's financial condition was deteriorating. When the bank ultimately failed due to lack of funding, Representative Gingrey lost the entire value of his investment. It is reasonable to conclude that TARP funding would have strengthened the bank's financial position, and thus Representative Gingrey had a financial interest in facilitating the bank's request for such funds.⁴⁵

Given this interest, the Committee considered whether it was permissible for Representative Gingrey to send a letter to the then-Secretary of the Treasury advocating for allocation of TARP funds to community banks, and to arrange meetings between Bank of Ellijay representatives and congressional offices and Treasury Department officials.

C. HOUSE RULE XXIII, CLAUSE 3

House Rule XXIII, clause 3 states that "a Member . . . may not receive compensation and may not permit compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress."

The nature of Members as proxies for their constituents in the federal government makes it impossible to require recusal on every issue in which a Member has a financial interest. The Committee, therefore, views conflicts of interest differently based on the nature of the personal financial interest relative to the scope of the action. If a Member seeks to act on a matter where he might benefit as a member of a large class, such action does not require recusal. Thus,

⁴³ *Ethics Manual* at 239.

⁴⁴ *Id.*

⁴⁵ The CFO described the receipt of TARP funding as "critical to the survival of the bank." 18(a) Interview of Bank of Ellijay CFO.

“Members who happen to be farmers may nonetheless represent their constituents in communicating views on farm policy to the Department of Agriculture.”⁴⁶ By contrast, where a Member’s actions would serve his own narrow financial interests, the Member should refrain from acting.⁴⁷ The Committee’s guidance on this point advises Members to engage in “added circumspection” any time a Member is deciding whether to take official action “on a matter that may affect his or her personal financial interests.”⁴⁸

In *The Matter of Representative Maxine Waters*, the Committee reiterated the commonly understood guidance that Members “cannot take official actions that would assist a single entity in which the Member has a significant interest, particularly when that interest would clearly be affected by the assistance sought.”⁴⁹ In that case, while the Committee believed that the Member had properly recused herself from issues related directly to a single bank in which she had a financial interest, and had provided clear instruction to her staff to refrain from working on those issues, her Chief of Staff nevertheless persisted in official activity on that bank’s behalf. Based on his actions, the Committee issued the Chief of Staff a public letter of reproof.

Likewise in *The Matter of Representative Shelley Berkley*, the Committee considered the Member’s inquiries to the Veterans Administration (VA), through her staff, regarding the agency’s non-payment of medical claims submitted by Representative Berkley’s husband’s medical practice, and found the casework “troublingly intertwined with her financial interest,” in violation of House Rule XXIII, clause 3.⁵⁰

The facts here bear some relation to *Waters* and *Berkley*, yet are also distinguishable in important ways. On their face, Representative Gingrey’s actions are contrary to the guidance in *Waters* that Members are “prohibited from providing official assistance to entities in which the Member has a significant financial interest.” However, in *Waters* and *Berkley*, the Member or their staff took specific steps to advocate for financial assistance or payments to an entity the Member had a financial interest in. There is no evidence that Representative Gingrey advocated for Bank of Ellijay in this way.⁵¹ On the other hand, Bank of Ellijay was not a constituent of

⁴⁶ *Ethics Manual* at 314.

⁴⁷ *Id.*

⁴⁸ *Id.* at 237.

⁴⁹ *Waters* at 11.

⁵⁰ See Comm. on Ethics, *In the Matter of Allegations Relating to Representative Shelley Berkley*, H. Rept. 112-716 2d Sess. 49 (2012) (hereinafter *Berkley*).

⁵¹ In *The Matter of Representative William H. Boner*, Representative Boner arranged for a constituent to meet with VA officials about a contract bid the constituent had submitted, and inquired with the VA about the status of the bid decision. The Committee itself did not reach any final conclusions regarding Representative Boner’s conduct, as Representative Boner resigned from the House before the Committee’s investigation was complete. However, in light of the unique circumstances of that matter, the Committee voted to release as a Committee print a staff report which addressed a number of allegations under review. The staff report concluded that there was likely no violation of House Rule XXIII, clause 3, because arranging meetings for constituents is a basic function of representing one’s district, and because in making a “status check” on the bid process, “Representative Boner did not attempt to influence the VA’s decision.” See Comm. on Standards of Official Conduct, *Staff Report in the Matter of Representative William H. Boner*, H. Rept. 78-177, 100th Cong. 2d Sess. 28 (1987) (hereinafter *Boner*).

Representative Gingrey, unlike the entities in *Waters* and *Berkley*. Further, to the extent Representative Gingrey advocated for the interests of community banks generally, he acted as a member of a large class of community bank customers and investors, and thus did not violate House Rule XXIII, clause 3.

D. THE CODE OF ETHICS

The Code of Ethics was adopted by the House to assist federal employees, including officeholders, “in guiding and correcting any tendency toward cynicism of the high trust associated with public service.”⁵² It thus reaffirmed standards of conduct “to which all federal employees unquestionably should adhere.”⁵³ In this spirit, Section 5 includes two prohibitions that are applicable to House Members: (1) “never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not;” and (2) “never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.” It bears emphasis that, unlike House Rule XXIII, clause 3, where finding a violation requires proof of a connection between an official action and compensation to the acting Member, neither clause of Section 5 requires proof of such a connection.

While all Members are expected to know and “unquestionably . . . adhere” to these provisions, Representative Gingrey had particular reason to be aware of them: the Committee discussed them in a letter to him in March 2007.⁵⁴ The Committee’s March 2007 guidance, though in a different factual context, provided Representative Gingrey with notice regarding the requirements of the Code of Ethics and House Rule XXIII, clauses 1 and 2. However, the record here suggests that Representative Gingrey did not abide by those standards of conduct.

1. *Section 5, clause 1*

Official actions of the kind Representative Gingrey took on behalf of Bank of Ellijay would typically be described as “casework” or “constituent service,” and would be perfectly permissible, when done on behalf of most constituents. Indeed, this Committee recognizes that “a[n] important aspect of a House Member’s representative function is to act as a ‘go-between’ or conduit between the Member’s constituents and administrative agencies of the federal government.”⁵⁵ However, “[i]n taking any such action, a Member or staff person must observe

⁵² Comm. on Post Office and Civil Service, *Code of Ethics for Government Service*, H. Rept. 1208, 85th Cong. 1st Sess. 1 (1957).

⁵³ *Id.* at 2.

⁵⁴ Letter from then-Chair Stephanie Tubbs Jones and then-Ranking Member Doc Hastings to Representative Gingrey, Mar. 21, 2007, at 2. Representative Gingrey sought guidance on whether his campaign could hire his daughter as a fundraising consultant. The Committee informed Representative Gingrey that he could do so, subject to the constraints of House Rule XXIII, clause 3, Section 5 of the Code of Ethics, and House Rule XXIII, clauses 1 and 2, and noted that “the Committee has cautioned all Members ‘to avoid situations in which even an inference might be drawn suggesting improper action.’”

⁵⁵ *Ethics Manual* at 299.

certain ethical principles,”⁵⁶ including the prohibition in Section 5, clause 1, on “discriminat[ing] unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not.”

The Committee has applied these principles in two matters. In *Berkley*, the Committee found that Representative Berkley did not dispense special favors to her husband by assisting him in obtaining payments from the VA—even though he “enjoyed an unusually close relationship with her office”—because “she treated her husband as any other constituent,” and did not “engage in favoritism when performing casework” for him.⁵⁷ Likewise, *In the Matter of Representative Newt Gingrich*, the Committee found that Representative Gingrich did not violate Section 5, clause 1, when he intervened with federal agencies to assist a constituent campaign donor because it found no evidence “that Representative Gingrich dispensed special favors to [the donor] that were withheld from others.”⁵⁸ In both of these matters, the Member had a financial interest in assisting a particular constituent, but the Committee found no violation of Section 5, clause 1, because the constituent was treated like all others.

Here, unlike in *Berkley* and *Gingrich*, there is substantial evidence that Representative Gingrey treated Bank of Ellijay and its representatives differently than other non-constituents based on his financial investment in the bank and position on the board of directors. Specifically, the evidence indicates that Representative Gingrey provided special treatment to Bank of Ellijay and its representatives by (1) arranging meetings between the representatives and Representative Frank’s Counsel, Representative Bachus, and high-ranking Treasury Department officials; and (2) attending the meeting between the Bank of Ellijay representatives and either Representative Frank’s Counsel or Representative Bachus.

In reaching this conclusion, it is significant that neither Bank of Ellijay nor any of the bank’s representatives who requested or attended the meetings were residents of Representative Gingrey’s district, and therefore were not his “constituents.”⁵⁹ Representative Gingrey has not denied this fact, but his counsel has suggested other individuals—including two persons who recruited him to serve on the bank’s board in 2006 and other members of the bank’s board of directors—were his constituents.⁶⁰ With respect to the constituents who asked Representative Gingrey to serve on the bank’s board, there is no connection between their request that Representative Gingrey sit on the board of Bank of Ellijay and Representative Gingrey’s efforts,

⁵⁶ *Id.* at 300.

⁵⁷ *Berkley* at 54-55.

⁵⁸ See *Statement of the Comm. on Standard of Official Conduct Regarding Complaints Against Representative Newt Gingrich*, Mar. 8, 1990, at 66 (hereinafter *Gingrich*).

⁵⁹ See *Ethics Manual* at 310 (referring to “non-constituents” as “individuals who live outside the [Member’s] district”).

⁶⁰ Representative Gingrey’s counsel has stated that the board of directors for the Bank of Ellijay asked, during a board meeting that Representative Gingrey attended, “whether community banks were going to be eligible to apply for TARP funding and what financial metrics were going to be applied in making that determination.” Counsel also noted that “several of those board members were current constituents of Congressman Gingrey’s at the time of that inquiry.” Mar. 5, 2014 Submission at 2.

three years later, to arrange meetings for the bank's representatives. Likewise, there is no evidence that the bank's board as a whole—which did include constituents—asked Representative Gingrey to facilitate the Washington, D.C., meetings.⁶¹ Indeed, Representative Gingrey himself stated that he did not recall any discussions before he received the CFO's email requesting meetings with Members of Congress about the possibility Bank of Ellijay representatives would come to Washington.⁶² Further, the fact that three of the board's twelve members were Representative Gingrey's constituents⁶³ does not make the bank a constituent, and is irrelevant given that none of the constituent board members asked Representative Gingrey to arrange meetings for the bank in Washington, D.C.⁶⁴

Thus, despite Representative Gingrey's conflicting explanations, all of the evidence indicates that the Washington, D.C. meetings were requested by non-constituents, and there is no evidence that any of Representative Gingrey's constituents, including the Bank of Ellijay's board of directors, asked for those meetings. As the *Ethics Manual* explains:

The statute that establishes the Members' Representational Allowance provides that the purpose of the allowance is “to support the conduct of the official and representational duties of a Member of the House of Representatives **with respect to the district from which the Member is elected.**”⁶⁵

The *Ethics Manual* includes limited exceptions to this rule—such as where the non-constituent's matter is “similar to those facing constituents,” or the Member “serve[s] on a House committee that has the expertise and ability to provide the requested help,” or “has personal knowledge regarding a matter” and “communicate[s] that knowledge to agency officials.” Outside of those

⁶¹ According to Representative Gingrey's counsel, the board's request related to whether community banks would be eligible for TARP funding. *See id.* However, the bank's CFO and Chairman requested the meetings with Members of Congress to persuade them to make TARP funds available to community banks—which would include Bank of Ellijay. Thus, the nature and purpose of the CFO and Chairman's meeting request was qualitatively different than the board of director's questions to Representative Gingrey concerning the TARP program.

⁶² 18(a) Interview of Representative Gingrey.

⁶³ The board of directors of Bank of Ellijay had thirteen members, including Representative Gingrey, but Representative Gingrey cannot consider himself the “constituent” who requested the Washington, D.C. meetings.

⁶⁴ Representative Gingrey stated that a former President and CEO of Bank of Ellijay may have asked him to arrange the meetings, during a meeting with the CFO and Chairman, and Representative Gingrey's counsel has suggested that the former President and CEO was a resident of Representative Gingrey's district. *See* Feb. 12, 2014 Submission at 6 & n.21. However, Representative Gingrey's testimony about a conversation that included the former President and CEO contradicts his statement that he did not recall any such conversations before receiving the CFO's emailed request. Further, Representative Gingrey's testimony suggested that he was merely speculating that a conversation with the former President and CEO, the CFO, and the Chairman prompted the CFO's email request. Representative Gingrey was asked: “Do you know if that happened or is that what you think might have happened?” He replied: “That's what I think might have happened.” Finally, even if the former President and CEO did live in Representative Gingrey's district, the evidence indicates that he left Bank of Ellijay by mid-2008, and it is thus unlikely that he asked Representative Gingrey to arrange meetings for the bank in January 2009.

⁶⁵ *Ethics Manual* at 310 (emphasis in original).

exceptions, “a Member should not devote official resources to casework for individuals who live outside the district.”⁶⁶

None of the specific exceptions to this rule appears applicable here: Representative Gingrey did not serve on any banking-related committees, and he has not asserted that banks in his district applied for TARP funds, or explained how any such applications would relate to Bank of Ellijay’s application. Further, to the extent Representative Gingrey had any knowledge of Bank of Ellijay’s TARP application, he has never asserted that he communicated that knowledge to the Member, staff, or Treasury Department officials the bank’s representatives met with.⁶⁷

Representative Gingrey’s counsel has noted that in *Waters*, the Committee found no violation of Section 5, even though Representative Waters arranged for a non-constituent entity to meet with officials of the Treasury Department. However, *Waters* is distinguishable in at least three respects. First, the Committee found that Representative Waters believed the meeting was for the National Bankers Association, a national trade association of minority and women owned banks.⁶⁸ The Committee further adopted the report of the outside counsel in *Waters*, which noted that “the evidence demonstrates that [minority banks], including OneUnited, serve Representative Waters’ district,” and “[t]hus, her constituents have an interest in [minority banks].”⁶⁹ Thus, even if the Treasury Department meeting ultimately focused on a single bank that Representative Waters had a financial interest in—OneUnited Bank—Representative Waters did not know that would be the case when she arranged the meeting. Moreover, as noted above, when Representative Waters later determined OneUnited was pursuing action that would affect it uniquely, she properly recused herself from issues that would affect a single bank in which she had a financial interest, and provided clear instruction to her staff to refrain from working on those issues. Here, Representative Gingrey knew that the only attendees to the meetings he arranged would be from a single bank that he had a financial interest in, and that those attendees would be representing their bank. Second, contrary to the suggestion of Representative Gingrey’s counsel, OneUnited Bank was a constituent entity of Representative Waters. Although it was headquartered in Massachusetts, the bank had a branch in Representative Waters’ district.⁷⁰ In contrast, Representative Gingrey stated that Bank of Ellijay never had a branch in his district. Finally, Representative Waters was “the most senior African-American Member of the Financial Services Committee and . . . the Ranking Member of the Subcommittee on Capital Markets and Government Sponsored Enterprises.”⁷¹ The Treasury Department meeting she arranged focused on the impact of the devaluation of shares of two Government

⁶⁶ *Id.* This guidance was included in the 1992 version of the *House Ethics Manual* and appears verbatim in the current 2008 version.

⁶⁷ Moreover, even if Representative Gingrey had “personal knowledge” related to the bank’s TARP application, it was likely based on his own position on the bank’s board of directors and his financial investment in the bank. If Representative Gingrey took official actions on the bank’s behalf because of his position and financial interest in the bank, that cannot be a defense to the charge of dispensing special favors to the bank.

⁶⁸ See *Waters* at 6-7.

⁶⁹ *Id.* at 228.

⁷⁰ *Id.* at 173.

⁷¹ *Id.* at 167-68.

Sponsored Enterprises (GSEs)—Fannie Mae and Freddie Mac—on minority banks that owned shares of the GSEs. OneUnited was one such bank. Thus, even if Representative Waters had arranged the Treasury Department meeting for a non-constituent bank, that would have been a circumstance where the Committee’s guidance expressly permitted non-constituent service, *i.e.*, where “the Member . . . serve[s] on a House committee that has the expertise and ability to provide the requested help.”⁷²

The inference that Representative Gingrey provided “special favors or privileges” by assisting non-constituents associated with Bank of Ellijay is further supported by Representative Gingrey’s own congressional Web site. The Web site—both at the time of the Bank of Ellijay meetings and currently—states “Regrettably, I am unable to reply to any email from constituents outside of the 11th District of Georgia.” This statement appropriately reflects the guidance from this Committee and the Committee on House Administration regarding the proper response to requests for assistance from non-constituents. It further reflects an apparent policy of Representative Gingrey’s office not to respond to non-constituents, at least on the official web site.

Representative Gingrey told the Committee that he has arranged meetings with Members for non-constituents on prior occasions. However, in both of the instances Representative Gingrey recalled, the non-constituent appeared to have some personal connection with Representative Gingrey. If a Member only assists non-constituents who are personal friends, that would seem to support, rather than rebut, the inference of special treatment.

Of course, the beneficiary of Representative Gingrey’s official actions here was not merely a non-constituent, it was a non-constituent bank in which Representative Gingrey had invested \$250,000. In light of this financial interest, Representative Gingrey’s response to the email from Bank of Ellijay’s CFO—a non-constituent—is particularly troubling. Representative Gingrey appears to have immediately discussed the CFO’s request with his Chief of Staff, who, using his personal relationship with the then-Treasurer of the United States, immediately forwarded the request to the Treasury Department. Further, Representative Gingrey personally spoke with Representative Bachus, who was at the time the Ranking Member of the House Financial Services Committee about the request, and then had his staff arrange meetings with both Representative Bachus and Representative Frank’s Counsel. Representative Gingrey attended one of these meetings in person. The House Financial Services Committee authored the bill establishing TARP and oversaw its implementation.

Thus, the totality of the evidence indicates that Representative Gingrey dispensed special favors or benefits to Bank of Ellijay and its representative, contrary to Section 5, clause 1 of the Code of Ethics. Further, even if Representative Gingrey complied with the letter of that clause—

⁷² *Ethics Manual* at 309-10. Of course, this “exception” applies only to the general question of whether Representative Waters could have properly assisted a non-constituent entity; it would not permit her to assist such an entity where she had a financial interest in the entity.

which the evidence does not support—his actions were contrary to the spirit of the “special favors” rule, and did not reflect creditably on the House of Representatives.

2. Section 5, clause 2

Section 5 of the Code of Ethics also prohibits a Member from “accept[ing] for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.” The Committee has addressed alleged violations of this provision on several occasions, and has found such violations, or evidence of them, even in the absence of a *quid pro quo* between a benefit to a Member and official actions that would establish a violation of House Rule XXIII, clause 3 (discussed above). Thus, *In the Matter of Representative Mario Biaggi*, the Committee found a violation of the “favors or benefits” clause of Section 5 even though it could not determine whether the Member would have taken the official actions at issue absent the benefits the Member received. As the Committee explained, “[w]hile the Committee does not argue, nor can it be determined, that Representative Biaggi would not have interceded [with federal officials] in the absence or because of [the] gratuities to the congressman, it is nevertheless clear that at a minimum, an appearance is raised that such was the case. Accordingly, the Committee concluded that such improper appearance supported a determination that Representative Biaggi violated Clause 5 of the Code of Ethics for Government Service.”⁷³

Likewise, in *Berkley*, the Investigative Subcommittee (Berkley ISC) credited Representative Berkley’s assertion that when her staff asked executive agencies for “status updates” regarding payment claims filed by her husband’s medical practice, and asked the agencies to speed up their evaluation of those claims, she was not motivated by her husband’s financial interests. However, the Berkley ISC explained that “the Committee has consistently prohibited acting on matters in which a Member has a financial interest precisely because the public would construe such action as self-dealing, whether the Member engaged in the action for that reason or not.”⁷⁴ As the Berkley ISC explained:

If Representative Berkley had simply and solely engaged in policymaking aimed at more efficient claims processing by the VA, even though it would have benefited her husband along with a number of other doctors, she would not have violated [Section 5]. If she had assisted any other medical practice in her district with the issue, that also would have been proper. But she was barred from doing so for her husband, in part because reasonable people would construe the benefit she received as her motivation, whether it was or not.⁷⁵

⁷³ Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rept. 100-506, 100th Cong. 2d. Sess. 9 (1988).

⁷⁴ *Berkley* at 55.

⁷⁵ *Id.* at 56.

In *Boner*, the Committee staff report concluded that Representative Boner's official actions on behalf of a constituent he had financial dealings with consisted solely of "arranging meetings and requesting status reports," and that "Representative Boner and his staff did not attempt to influence the outcome of the VA's decision" regarding the constituent's contract bid.⁷⁶ The staff thus concluded that there was "no impropriety" in Representative Boner's actions that would establish a violation of House Rule XXIII, clause 3.⁷⁷ However, the staff believed that, "by taking the official action of intervening with a government agency on behalf of someone with whom he was involved in numerous business ventures and by whom his wife was employed," Representative Boner's actions "raise a question of whether he violated [Section 5 of the Code of Ethics] by accepting a benefit under circumstances which might be construed by reasonable persons as having influenced the performance of his governmental duties."⁷⁸

Finally, in a matter involving Representative Robert Sikes, the Committee found that Representative Sikes did not violate House Rule XXIII, clause 3, by "purchasing 2,500 shares of [a] Bank's privately held stock following the active and continuing involvement on his part" in obtaining federal authorization for placing the bank at a Naval air station.⁷⁹ However, the Committee did conclude that Representative Sikes violated Section 5 of the Code of Ethics by accepting the "benefit" of the opportunity to purchase shares of the bank's stock while he was intervening with federal officials on the bank's behalf.⁸⁰

In this case, Representative Gingrey received a benefit from Bank of Ellijay: the opportunity to invest in the bank, an investment Representative Gingrey made based on advice that it was "a can't lose situation" and "almost a no-brainer."⁸¹ He subsequently took official actions to assist Bank of Ellijay, namely arranging for Bank of Ellijay representatives to meet with Representative Frank's Counsel, Representative Bachus, and high-level Treasury Department officials responsible for managing the TARP program. The bank's representatives used these meetings to advocate for TARP funding for community banks generally *and* to inquire about the status and prospects for the bank's *own* TARP application. As in the prior

⁷⁶ *Boner* at 28. As noted previously, the Committee itself did not reach any final conclusions regarding Representative Boner's conduct, as Representative Boner resigned from the House before the Committee's investigation was complete. However, in light of the unique circumstances of that matter, the Committee voted to release as a Committee print a staff report which addressed a number of allegations under review.

⁷⁷ *Id.*

⁷⁸ *Id.* at 29.

⁷⁹ Comm. on Standards of Official Conduct, *In the Matter of a Complaint Against Representative Robert L.F. Sikes*, H. Rept. 94-1364, 94th Cong. 2d. Sess. 21 (1976) (hereinafter *Sikes*).

⁸⁰ *See id.*

⁸¹ Representative Gingrey explained: "I was a physician by profession, but, you know, and I sought advice about, you know, investing in a community bank, and all of the advice I got was it's a can't lose situation, you know. It's slow, but it's steady, and at the end of the day, if you're patient, you know, it's almost a no-brainer." *See* 18(a) Interview of Representative Gingrey. It bears emphasis that Representative Gingrey did not violate any law, rule, or other standard of conduct merely by making an investment in Bank of Ellijay. As noted above, in addition to the Committee's investigation, OCE reviewed whether his purchase of stock warrants was impermissible, and recommended that the Committee dismiss that allegation. Following its independent review of the matter, the Committee dismissed that specific allegation, but continued its investigation of other issues.

matters discussed above, it is not possible to establish that Representative Gingrey arranged the meetings for Bank of Ellijay *because of* his financial investment in the bank. However, Section 5 of the Code of Ethics does not require proof of a *quid pro quo*. The only question is whether “reasonable persons” “might construe” Representative Gingrey’s opportunity to invest in Bank of Ellijay “as influencing the performance of his governmental duties.” More generally, the Committee has cautioned that where an individual who has requested intercession with an executive agency “has contributed . . . [to] causes in which [the Member] has a financial . . . interest,” the Member “must be mindful of the appearance that may be created and take special care to try to prevent harm to the public’s trust . . .”⁸²

Thus, several factors suggest that Representative Gingrey’s actions violated the “favors or benefits” provision of Section 5. First and foremost, Representative Gingrey invested \$250,000 in Bank of Ellijay, and thus had a significant interest in the bank’s receipt of TARP funding. Second, at least with respect to Representative Frank’s Counsel and the Treasury Department, it does not appear that Representative Gingrey disclosed his financial stake in Bank of Ellijay prior to arranging meetings with them. While such disclosure would not have fully avoided any appearance of impropriety, the absence of such disclosure raises questions about why Representative Gingrey was not fully transparent in his actions on behalf of Bank of Ellijay, particularly given his professed belief in full transparency when dealing with casework requests.⁸³ Third, he has provided no explanation for why he assisted the bank and its representatives in this matter, even though they did not reside in his district. Fourth, while neither Representative Gingrey nor the Bank of Ellijay representatives specifically advocated for TARP funding for the bank in the congressional or Treasury Department meetings, they did assert the need to disburse TARP funds to community banks generally. That message, which was presented by representatives of a single bank and accompanied by specific questions about the status of the bank’s own TARP application, and the prospects for its approval, could reasonably be construed as advocacy for the bank’s receipt of TARP funds, even if the bank’s representatives did not intend to connect those issues. Finally, this was not a situation where Representative Gingrey stood “to derive some incidental benefit along with others in the same class,” as where a Member is a farmer but advocates for farmers nationwide.⁸⁴ Rather, Representative Gingrey’s actions were more akin to those that “would serve [the Member’s] own narrow, financial interests as distinct from those of their constituents.”⁸⁵

It is true that Representative Gingrey told his Chief of Staff to do no more for Bank of Ellijay than for any other constituent, and Representative Gingrey’s office appears to have merely arranged meetings for the bank. But those meetings were of obvious importance to the bank, and thus to Representative Gingrey. Further, as the Berkley ISC explained:

⁸² *Ethics Manual* at 309.

⁸³ When asked whether he thought Representative Bachus would have wanted to know that Representative Gingrey had invested in Bank of Ellijay, Representative Gingrey stated: “Any time I’m—people come to me, come to us, we Members every day lobbying on behalf of something, and you want to—you want to have full disclosure and transparency and understand[ing].” 18(a) Interview of Representative Gingrey.

⁸⁴ *Ethics Manual* at 314.

⁸⁵ *Id.*

In this case the ISC finds, based on the totality of the evidence, that Representative Berkley and her staff saw their intercessions as a natural form of constituent service to an important and beneficial constituent within their district. It does not matter that she treated her husband [Dr. Lehrner] as any other constituent. Relevant rules, Committee guidance and precedent require that Members refrain from acting in a manner which would benefit the Member's narrow financial interest, regardless as to whether the action is ordinary or extraordinary relative to the office's day-to-day activities. Accordingly, just because Dr. Lehrner was treated similarly to other providers, it is not necessarily the case that Representative Berkley should have treated him similarly, given clause 2 of Section 5.⁸⁶

Thus, with respect to the "favors or benefits" clause of Section 5, the issue is not that Representative Gingrey treated Bank of Ellijay's request for assistance differently than those of any other petitioner—although it appears he did so merely by responding to a non-constituent's request. Rather, the problem is that Representative Gingrey did not recognize that the public might, and reasonably could, view his response to the request as motivated by his substantial financial investment in the bank.

E. HOUSE RULE XXIII, CLAUSES 1 AND 2

Finally, even if Representative Gingrey did not violate the letter of either clause of Section 5 of the Code of Ethics, his actions implicated clauses 1 and 2 of Rule XXIII. Press reports have already raised questions regarding Representative Gingrey's advocacy on behalf of the two Georgia banks he invested in, and the appearance issues involved in having his Chief of Staff ask the Chief of Staff's mother-in-law to arrange a meeting with Treasury Department officials, without disclosing any conflict of interest, are plain. Further, although Members are generally permitted to contact an executive branch agency on a constituent's behalf, the Committee has cautioned Members to take extra care when doing so implicates their own financial interests. As the *Ethics Manual* explains:

[C]ontacting an executive branch agency . . . entail[s] a degree of advocacy above and beyond that involved in voting, and thus a Member's decision on whether to take any such action on a matter that may affect his or her personal financial interests requires added circumspection. . . . Whenever a Member is considering taking any such action on a matter that may affect his or her personal financial interests, the Member should first contact the Standards Committee for guidance.⁸⁷

⁸⁶ Berkley at 55.

⁸⁷ Ethics Manual at 237.

In addition, the Committee “has cautioned all Members to avoid situations in which even an inference might be drawn suggesting improper action.”⁸⁸ Here, Representative Gingrey did not contact the Committee before arranging the meetings for Bank of Ellijay, in contrast to a prior instance when he had questions about ethical rules,⁸⁹ even though he stated that he was aware of a conflict of interest with respect to the bank and the need to be “very, very careful.”⁹⁰ While a Member is not required to consult the Committee when considering taking actions the Member perceives as a “close call” with respect to the House Rules, the failure to do so may be a factor the Committee considers when such actions are found to violate the rules. In this case, Representative Gingrey did not take appropriate steps to avoid a situation which could easily be misconstrued. To the extent he ignored the Committee’s previous guidance, and his actions did not reflect creditably on the House, Representative Gingrey violated House Rule XXIII, clause 1. Further, even if Representative Gingrey followed the letter of Section 5 of the Code of Ethics—which does not appear to be the case—his actions were not consistent with the spirit of that provision, and thus were not consistent with House Rule XXIII, clause 2.

F. REPRESENTATIVE GINGREY’S LEGAL ARGUMENTS

Representative Gingrey has asserted that, under the Committee’s precedents, he did not violate the Code of Ethics by merely arranging meetings for representatives of Bank of Ellijay, where they could advocate for the disbursement of TARP funds to community banks generally and inquire about the status of the bank’s own TARP application. In the abstract, these actions raise a lesser appearance of impropriety than the actions at issue in matters such as *Sikes*, *Berkley*, or *Waters*. However, there are also troubling factors here that were not present in those other matters. Those include (1) the size of Representative Gingrey’s investment in Bank of Ellijay;⁹¹ (2) the fact that the beneficiaries of Representative Gingrey’s actions were not his constituents; (3) Representative Gingrey’s awareness of a conflict of interest and the risks involved in arranging the meetings; and (4) Representative Gingrey’s understanding that the bank’s representatives would be presenting a dual message, which included both an appeal for TARP funds for community banks generally and questions about the status of the bank’s own pending TARP application, including questions about whether the bank satisfied the criteria for obtaining TARP funds at all. Given these facts, and Representative Gingrey’s failure to request guidance from the Committee regarding Bank of Ellijay’s request, despite his recognition of a

⁸⁸ *Id.* at 27.

⁸⁹ See Section IV.D. & n.54.

⁹⁰ 18(a) Interview of Representative Gingrey.

⁹¹ Only in *Waters* did the size of the financial investment at issue compare to Representative Gingrey’s \$250,000 investment in Bank of Ellijay. Representative Waters’ husband owned stock in OneUnited Bank valued at \$350,000 at the time Representative Waters arranged for the National Bankers Association to meet with Treasury Department officials. However, the Committee found that Representative Waters did not know she was actually arranging a meeting for representatives of OneUnited Bank. When Representative Waters later determined OneUnited was pursuing legislative and/or executive branch actions that would affect it uniquely, she properly recused herself from issues that would affect a single bank in which she had a financial interest, and provided clear instruction to her staff to refrain from working on those issues. With respect to Representative Waters’ Chief of Staff, there was no evidence that he had any financial interest in OneUnited Bank.

conflict of interest,⁹² the Committee believes that Representative Gingrey did violate the Code of Ethics and House Rules, and that a public letter of reproof is appropriate.

As a threshold matter, the legal analysis submitted by Representative Gingrey's counsel never acknowledged or incorporated the fact of Representative Gingrey's \$250,000 investment in Bank of Ellijay. Further, the analysis appeared to be premised on the assumption that Representative Gingrey was responding to a request from a constituent when he set up the meetings for Bank of Ellijay, an assumption the facts do not support.⁹³ The February 12, 2014, Submission also repeatedly asserted that "Representative Gingrey had no financial interest in the outcome of [the] meetings." Yet this is not the proper question.⁹⁴ The first clause of Section 5 prohibits dispensing special favors "for remuneration or not," meaning a financial interest in the effect or recipient of the favor is not required. And the second clause of Section 5 applies where a Member has received a benefit—here the opportunity to make an investment in Bank of Ellijay that the Member was told was a "can't miss" opportunity⁹⁵—that "might be construed by reasonable persons" as influencing their official actions. Thus, with respect to the second clause of Section 5, the question is not whether Representative Gingrey could have benefitted financially from the meetings he arranged, but whether a reasonable person might believe that he arranged the meetings because he had a \$250,000 investment in Bank of Ellijay. Given Representative Gingrey's admission that he and his Chief of Staff "generally were aware of a conflict of interest" with respect to the bank's request, a reasonable person might also infer the same conflict.⁹⁶

⁹² See Comm. on Standards of Official Conduct, *In the Matter of Representative Newt Gingrich*, H. Rep. 105-1, 105th Cong., 1st Sess. 92 (1997) (where the Committee concluded a Member "was reckless in not taking care that, as a Member of Congress, he made sure that his conduct conformed with the law *in an area where he had ample warning* that his intended course of conduct was fraught with legal peril," that conduct "was improper, did not reflect creditably on the House, and was deserving of sanction.") (Emphasis added).

⁹³ For example, the February 12, 2014, Submission compared the present matter to the *Berkley* matter, and states "[i]f individualized casework activities on behalf of a single medical practice and a single university medical program do not rise to the level of special favors or privileges under Section 5, then the Committee cannot possibly believe that the organization of three information-gathering meetings for a group of constituents somehow violates Section 5's ethical tenets." Feb. 12, 2014 Submission at 18. As previously discussed, the purported "group of constituents" provided their current and past home addresses during the investigation. None are, or have ever been, residents of Representative Gingrey's district.

⁹⁴ See, e.g., *Graves* at 19-20 ("To establish a violation under section 5 of the Code of Ethics in connection with inviting a witness to testify before a committee hearing requires a showing that a Member improperly used his or her official position by making that invitation. It is not necessary for a Member to receive a benefit from a witness's testimony to violate section 5 of the Code of Ethics.")

⁹⁵ 18(a) Interview of Representative Gingrey.

⁹⁶ See *id.* Representative Gingrey's counsel stated that "the Committee tends to find Section 5 violations only in those matters where there is probative evidence of a tangible or financial benefit received by the Member or staffer, or where there is proof of a cognizable conflict of interest (either personal or financial) motivating the actions of the Member or staffer." Feb. 12, 2014 Submission at 21. Again, these "requirements" do not square with the language of Section 5. It is also notable that in *Sikes*, the Committee defined the relevant "benefit" accepted as the opportunity to purchase stock in a bank, not the opportunity to later sell it at a profit. See *Sikes* at 21.

Nonetheless, the Committee has considered each of the precedents cited by Representative Gingrey's counsel. With respect to the Code of Ethics' prohibition on "dispensing of special favors or privileges to anyone," Representative Gingrey's counsel first asserted that the Committee "has made clear . . . that standard administrative contacts for or on behalf of constituents and other similarly-situated third parties are by no means contrary to the language or spirit of Section 5."⁹⁷ However, the Committee has never approved of such contacts where the Member has a substantial financial interest in the subject matter, and the Committee has expressly distinguished between a Member's appropriate role as a "go-between" for constituents seeking Executive agency actions and such official actions for non-constituents.

Regarding the second clause of Section 5 of the Code of Ethics, Representative Gingrey's counsel made a number of overly broad assertions regarding the Committee's precedents. First, counsel asserted that the Committee always considers three factors in analyzing Section 5, clause 2 allegations: "(1) the nature of the benefit provided; (2) the people or entities that could benefit from the official action; and (3) the Member's or staffer's motive in taking the action."⁹⁸ With respect to motive, counsel stated that the Committee "typically asks whether there is 'direct evidence' [of] . . . 'improper motive'."⁹⁹ However, counsel merely identified some of the factors the Committee has considered in discrete cases; the Committee has never indicated that all of these factors must be established to find a violation of Section 5, clause 2 of the Code of Ethics.¹⁰⁰ Further, it would be illogical to require direct evidence of an improper motive with respect to a standard of conduct that turns on whether actions "might be construed by reasonable persons" as improper.¹⁰¹ The question in such instances is what reasonable persons might infer, not what they can definitively prove.

Representative Gingrey's counsel has also asserted that the House Rules regarding conflicts of interest are too unclear to support the Committee's findings and actions in this matter. Certainly, the Committee agrees, and acknowledged in *Berkley*, that the House Rules regarding conflicts of interest could be clearer. To that end, in keeping with the recommendation of the *Berkley* ISC, the Committee has formed a working group to consider the conflict of interest rules, and that working group will report to the Committee when it has concluded its work. However, it bears emphasis that the *Berkley* ISC recommended, and the Committee voted, to publicly reprove Representative Berkley for violations of the House conflict of interest rules, as they were, rather than finding that the rules were too unclear to support finding such

⁹⁷ See Feb. 12, 2014 Submission at 2.

⁹⁸ *Id.* at 5.

⁹⁹ *Id.*

¹⁰⁰ Even with respect to the individual matters in which these factors have been considered, counsel overstated their importance. For example, counsel cited the Committee's report regarding Representative St. Germain for the proposition that the Committee can only find a violation of the "favors or benefits" clause of Section 5 where there is "direct evidence" of improper motive, yet the Committee's report in that matter focused on an alleged violation of the Code of Official Conduct—House Rule XXIII, clause 3—not Section 5 of the Code of Ethics. See Comm. on Standards of Official Conduct, *Investigation of Financial Transactions Participated in and Gifts of Transportation Accepted By Representative Fernand J. St. Germain*, H. Rept. 100-46, 100th Cong. 1st Sess. 2, 42-43 (1987).

¹⁰¹ See *supra* at 18 & nn. 74, 75 (discussing lack of evidence of improper motive in *Berkley*).

violations. The same is true here. The Committee's precedents and public guidance during the relevant period here (2009) made clear that a Member could not take actions on behalf of non-constituents where the Member had a financial interest in the issue the actions related to, even if those actions, if taken in different circumstances, might be permissible. Representative Gingrey himself acknowledged that he knew he was in a potentially difficult area, yet he did not ask the Committee for advice or assistance. Thus, the conflict of interest rules were not unclear or ambiguous with respect to Representative Gingrey's conduct in 2009.

Thus, the Committee determined that its prior precedents support a finding that Representative Gingrey violated the Code of Ethics and House Rules, and that he should be publicly reprovved.

V. CONCLUSION

Having considered the totality of the circumstances surrounding Representative Gingrey's official actions to arrange meetings for Bank of Ellijay representatives with House Members, staff, and Treasury Department officials, as well as the Committee's precedents and guidance regarding such official actions, the Committee found that Representative Gingrey violated Section 5 of the Code of Ethics and that his actions did not reflect creditably on the House or comport with the spirit of the House Rules. In reaching this conclusion, the Committee acknowledged that Representative Gingrey took some care to limit the scope of his official actions on behalf of Bank of Ellijay. Further, the Committee credited Representative Gingrey's assertion that he believed his actions were consistent with House Rules. However, given Representative Gingrey's substantial financial investment in Bank of Ellijay, and his significant interest in the bank's application for TARP funding, he should have taken additional steps to ensure that his conduct was consistent with House Rules, including seeking guidance from the Committee, before taking official actions that he recognized could, and which actually did, create improper appearances.¹⁰²

For Representative Gingrey's violations of House Rules, law, regulations, or other standards of conduct, the Committee has determined to publicly reprove him. Upon the issuance of the Letter of Repeval and publication of this Report, the Committee will consider this matter closed.

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

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

¹⁰² See *Berkley* at 10 ("The ISC found that Representative Berkley mistakenly believed the rules governing what assistance her office could provide to her husband's practice required only that they treat him in the same manner by which they treated any other constituent. This is incorrect.")