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July 7, 2017

Via Email Only

Hon. Susan W. Brooks, Chairwoman
Hon. Theodore E. Deutch, Ranking Member
House Committee on Ethics
1015 Longworth House Office Building
Washington, D. C. 20515- 6328

Dear Chairwoman Brooks and Ranking Member Deutch:

We write in response to the May 12, 2017 letter from the Committee on Ethics (“Committee”) to Mr. Michael Collins referencing a referral from the Office of Congressional Ethics (“OCE”).¹ Mr. Collins is Representative Lewis’ Chief of Staff, and like many chiefs of staff, is also employed by Rep. Lewis’ re-election campaigns. The OCE’s report mischaracterizes Mr. Collins’ role on Rep. Lewis’ campaigns, and following its recommendations would not further the Committee’s goal of ensuring ethical behavior from members and staff. The OCE issued a Report and Findings (“Report”), which first alleges that Mr. Collins was paid excess compensation from the John Lewis for Congress campaign committee (the “Campaign Committee”). This issue is moot. In February of this year, Mr. Collins repaid the \$295 that he received over the outside income limit. Mr. Collins takes full responsibility for the overpayment, which is unlikely to recur because the Campaign Committee is establishing safeguards to more closely track payments to Mr. Collins.

The Report goes on to allege that Mr. Collins improperly served as a compensated treasurer to the Campaign Committee during the 2016 election cycle, and that he had previously served as *de facto* treasurer for the campaign. These allegations fail as a matter of fact and law. Mr. Collins served as a voluntary treasurer, as have all previous treasurers for the Campaign Committee. And Mr. Collins has never served as, nor is it possible to serve as, the *de facto* treasurer for the Campaign Committee. Rep. Lewis’

¹ The Committee’s letter advises Mr. Collins that the Committee received a referral from the OCE on May 11, 2017, and provides Mr. Collins with an opportunity to respond to the OCE Report and Findings. We represent Mr. Collins in this matter and this letter and attachments constitute the requested written response. We have attached, as requested, each letter received from OCE and counsel’s response to that letter, as Exhibit A.

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declaration dispels these allegations and establishes that Mr. Collins' volunteer service as treasurer was entirely proper.

Background and Facts

A. Mr. Collins Has Served on Rep. Lewis' Staff for Nearly Twenty Years and Served as Interim Volunteer Treasurer During One Election Cycle

Michael Collins has worked closely with Rep. Lewis for nearly twenty years. He began his career as Rep. Lewis' floor assistant in 1999. Less than a year later Mr. Collins was promoted to Chief of Staff for the Congressman and has served as Chief of Staff for the past 17 years. Beginning in 2005, Mr. Collins also began working as a paid campaign strategist on Rep. Lewis' re-election campaigns. As a consulting campaign strategist, he worked closely with the Congressman in raising funds, orchestrating events, transmitting Rep. Lewis' approval of major expenditures, and selecting campaign aides with Rep. Lewis. Outside of his regular full-time position as Chief of Staff, Mr. Collins typically spends significant time on campaign-related activities. For the past six years he has received the maximum or near maximum amount of outside income allowable under House Rules. In short, his work for Rep. Lewis, both as the Chief of Staff and campaign strategist, is all consuming and leaves Mr. Collins with little free time.

Until the 2016 election cycle, Mr. Collins had never served as treasurer for Rep. Lewis' campaign committee. For fifteen years, Mrs. Lillian Lewis, Rep. Lewis' wife, served as treasurer of the Campaign Committee, and received no compensation in this role. Mrs. Lewis resigned her position as treasurer on December 3, 2007, due to health-related issues. On that date, George Darden, a former Congressman from Georgia, volunteered to act as the campaign's treasurer. Like Mrs. Lewis, Mr. Darden served as treasurer without compensation. Mr. Darden served as treasurer until March 2015, when he abruptly resigned. Since campaigns cannot legally function without a designated treasurer, Rep. Lewis asked Mr. Collins to serve, without compensation, as an interim treasurer until a permanent treasurer was selected. It was understood that Mr. Collins' work as the campaign's strategist would continue to the same extent as before he assumed the interim treasurer role. Without diminution of his duties as campaign strategist, Mr. Collins served as interim treasurer from March 18, 2015, through the end of the 2015-16 election cycle. After the conclusion of that cycle, on January 30, 2017, Ms. Vickie Winpisinger was named treasurer after having served for many years as the campaign's assistant treasurer.

B. Mr. Collins Has Remedied Past Minor Discrepancies in His Filings, Demonstrating Good Faith Compliance with the House Ethics Rules

In 2011, Mr. Collins acknowledged to this Committee that he inadvertently had failed to report on his annual Financial Disclosure Form his income from the Campaign Committee for

the period 2005 through 2009, and failed to report his 2009 income from the campaign on his tax returns. That income exceeded the limit set for senior House staff by \$450. Since that incident, Mr. Collins has faithfully reported his campaign income on both his annual Financial Disclosure Forms and tax returns, although he made two *de minimis* arithmetic errors on his 2013 and 2015 Disclosure Forms. In 2013, he inadvertently over-reported his campaign income by \$455 and in 2015, he under-reported his campaign income by \$55. As a result, Mr. Collins is in the process of identifying and retaining the services of a Certified Public Accountants to file his next due Financial Disclosure Form to ensure arithmetic errors do not recur.

C. The OCE Conducted an Investigation Based on an External Complaint, Despite Mr. Collins Remediating the Minor Excess Compensation Before the Investigation

As we understand, at or about the time of the presidential inaugural, Rep. Lewis made statements that were highly critical of the new administration. Shortly thereafter, on January 30, 2017, Mr. Matthew G. Whitaker, Executive Director for the politically-partisan Foundation for Accountability and Civic Trust, filed a complaint with OCE with following allegations: (1) in 2015, Mr. Collins received payment from the Campaign Committee that was more than permitted under the House Rules,² and (2) Mr. Collins served as treasurer for the Campaign Committee. *See* Letter to Office of Congressional Ethics from Mr. Whitaker (Jan. 30, 2017). That letter was based on information that appeared in a January 18, 2017 posting in the Washington Free Beacon. On February 3, 2017, before he was aware of any OCE action, Mr. Collins self-disclosed via telephone to Committee staff that he had been inadvertently overpaid by the Campaign Committee and followed it up with a letter which was e-mailed to the Committee on February 6, 2017.³ On February 6, 2017, OCE advised Mr. Collins that it had initiated a preliminary review of Mr. Whitaker's two allegations.

Summary of Argument

Mr. Collins self-reported his excess compensation of \$295 in 2015 and repaid that amount in February 2017. The OCE's Report acknowledges the repayment; the Report does not, however, acknowledge that Mr. Collins self-reported this issue to this Committee via telephone before receiving the OCE's letter on February 6, 2017. Mr. Collins has accepted responsibility for the error and rectified it. The Committee has recently determined that after repayment of the

² Mr. Collins repaid that amount on February 1, 2017, but soon realized that the complainant and later counsel for Mr. Collins had miscalculated the overpayment which was actually \$295. The additional \$70 was remitted to the campaign committee by Mr. Collins shortly after detecting the error. *See* Report Exhibits 5 & 6.

³ The letter to the Committee was dated February 7, 2017, but emailed on February 6.

excess amount, no further action is necessary. *See* H.R. Rep. No. 112-194, at 6 (2011). Thus, this issue is moot.

The Report goes on to incorrectly assert that Mr. Collins improperly served as a compensated treasurer to the Campaign Committee during the 2016 election cycle, and at other times served as *de facto* treasurer for the campaign. This is wrong both as a matter of law and fact. Based solely on the facts presented in the OCE Report and information in the attached Exhibits, including the Declarations of Rep. Lewis and Senator Hutchinson, Mr. Collins did not violate the House Rule that bars Members and employees from holding outside office for compensation or practicing a profession involving a fiduciary duty. A senior employee may serve as a treasurer of a campaign if he or she does so without compensation. The *House Ethics Manual* provides as an example, “[a] staff person whose pay is above the senior staff rate works on a Member’s campaign on her own time and outside of congressional space. The staff person may be paid for her campaign work, subject to the outside earned income cap, as long as she is not paid as the campaign’s treasurer or any other officer for the campaign.” *House Ethics Manual* at 223, U.S. House of Representatives (2008) (emphasis added). In addition, the *House Ethics Manual* specifically permits congressional staff to serve in volunteer officer roles. *See House Ethics Manual* at 222. Here, the uncontroverted evidence, including the Declaration of Rep. Lewis, shows that Mr. Collins was not compensated for serving as treasurer, that Mr. Collins’ payment from the campaign did not increase when he became treasurer, and further, his two predecessors as treasurers also did so on a voluntary basis without compensation. Thus, Mr. Collins did not receive any compensation for serving as the *de jure* treasurer from March 2015 to January 2017.

To circumvent the factual inconvenience that Mr. Collins received no funds for acting as treasurer from March 2015 to January 2017, OCE developed a novel legal theory that Mr. Collins was at all relevant times starting before 2009, the *de facto* treasurer and the payments that he received as a campaign consultant were really payments to act as the *de facto* treasurer. However, as the leading court in the nation on corporations held, “the *de facto* officer argument lacks merit, both legally and factually.” *In re Walt Disney Co. Derivative Litig.*, 906 A.2d 27 (Del. Super. Ct. 2006). The Supreme Court has also put to rest the *de facto* officer doctrine. *See Ryder v. United States*, 515 U.S. 177 (1995).

If there were a problem with Mr. Collins’ actions in 2011, then OCE or this Committee would have and should have alerted Mr. Collins to that fact in 2011 when he was interviewed by OCE. Much of the evidence presented to support OCE’s *de facto* treasurer theory is based on an interview with Mr. Collins during its 2011 investigation. *See* OCE Mem. of Interview of Michael Collins (Mar. 9, 2011) (Ex. 1 to OCE Report).

OCE based its flawed recommendation on erroneous information. OCE claimed that “[t]he OCE did not identify any evidence that Mr. Collins served as Treasurer on a volunteer basis, and Mr. Collins and the campaign committee did not provide any materials to substantiate

this claim.” Report ¶ 32. This is incorrect and belies a misunderstanding of the term “evidence.” More significantly, though, the activities that OCE highlights as supporting its theory of the *de facto* treasurer are not activities that as matter of law would be carried out by the treasurer. Correspondingly, the duties to be carried out by a treasurer are not those duties carried out by Mr. Collins. See Fed. Election Comm’n (“FEC”), *Campaign Guide: Congressional Candidates and Committees* at 6 (2014) (identifying the treasurer’s duties on a campaign).

Finally, adopting OCE’s position that one can become a *de facto* treasurer would undermine the bright line drawn by the House Rules, would make it difficult for anyone to act as campaign strategist without fearing that they would inadvertently become a *de facto* treasurer, and would act as a trap for the unwary.

Argument

I. Mr. Collins Complied With House Rule XXV, Clause 2 While Serving as a Political Consultant and Voluntary Treasurer to the Campaign Committee

The *House Ethics Manual* specifically permits congressional staff to serve in volunteer officer roles, such as treasurer. *House Ethics Manual* at 222-23. But the OCE incorrectly concluded that it had “substantial reason to believe that Mr. Collins received compensation for practicing a profession that involved a fiduciary relationship with the campaign committee and for serving as an officer to the campaign committee, in violation of House rules and federal law.” Report ¶ 58. This appears to blend two House Rules which prohibit employees and Members from:

- (c) receiv[ing] compensation for practicing a profession that involves a fiduciary relationship except for the practice of medicine; [or]
- (d) serv[ing] for compensation as an officer or member of the board of an association, corporation, or other entity[.]

Rules of the House of Representatives, R. XXV, cl. 2 (2014) (emphases added).

Mr. Collins neither received compensation for practicing a profession that involves a fiduciary relationship nor served as a compensated officer to the campaign. Instead, Mr. Collins was paid as a campaign strategist for many years, and served as a volunteer interim treasurer during one election cycle without compensation.

A. House Rule XXV, Clause 2(c) Permits Congressional Staff to Serve as Political Consultants

Mr. Collins served as a strategist on the campaign, which is expressly permitted by House Rules. See *Restrictions on Outside Employment Applicable to Members and Senior Staff*, House

Ethics Comm., http://ethics.house.gov/outside-employment-income/restrictions-outside-employment#emp_covered_professions (last visited July 6, 2017). Mr. Collins' work as a strategist did not involve the practice of a profession involving a fiduciary relationship.

To establish a violation of Rule XXV, Clause 2(c), OCE must provide some evidence that Mr. Collins was practicing a profession that involves a fiduciary relationship. While acting as treasurer of a campaign could arguably satisfy the fiduciary relationship prong that is not sufficient. The term "fiduciary relationship" delimits a class of professions—such as an accountant or an attorney—and not activities. Thus, a fiduciary relationship by itself is not sufficient to trigger the prohibition. One must practice a profession that involves a fiduciary relationship. OCE did not identify any profession practiced by Mr. Collins that would fall within Clause 2(c).

While this Committee has identified various such professions, including "consulting," it has specifically stated that "the political consulting services for which the senior staff person is compensated may not be in a professional field such as law or accounting." *Restrictions on Outside Employment Applicable to Members and Senior Staff*. Mr. Collins is neither an accountant nor an attorney, and he consulted on the campaign based on his decades of experience in politics—just like many other chiefs of staff. Thus, Mr. Collins' political consulting did not violate Rule XXV, Clause 2(c).

B. House Rule XXV, Clause 2(d) Permits Congressional Staff to Serve as Voluntary Treasurers on Campaign Committees

During the 2016 election cycle, Mr. Collins was paid for his political consulting, not for his interim role as treasurer. Mr. Collins first served as a paid campaign consultant to the Campaign Committee in 2005. After the abrupt departure of the Campaign Committee's treasurer in March of 2015, Mr. Collins also took on the role of treasurer for the remainder of the election cycle. His compensation from the Campaign Committee since 2009, demonstrates that his compensation was for his continued role as a political consultant rather than treasurer.

Mr. Collins earned relatively similar compensation from the Campaign Committee from 2012 to 2016, and those amounts remained at a similar level even when he volunteered to serve as interim treasurer. For example, he received \$26,500 in 2013; he was not the campaign's treasurer in that year. He received \$26,500 in 2014; he was not the campaign's treasurer in that year either. In 2015, he received \$27,550 and the following year \$27,255. In both of those years, he was the treasurer. Mr. Collins' income from the Campaign Committee by year is set out in the table below:⁴

⁴ The Non-CPI adjusted payments to Mr. Collins in the Table were taken (i) from 1099 Forms for the years 2009-2010 and 2013-2016, and (ii) from campaign finance reports filed by the campaign with the FEC for years 2011 and 2012.

Calendar Year	Non-CPI Adjusted Payment from Campaign	CPI-Adjusted		Status
		Dec. Each Year in Dec. 2016 Dollars		
2009	\$27,000	\$30,186.13		Not Treasurer
2010	\$15,000	\$16,522.93		Not Treasurer
2011	\$20,000	\$21,396.72		Not Treasurer
2012	\$26,955	\$28,343.95		Not Treasurer
2013	\$26,500	\$27,453.23		Not Treasurer
2014	\$26,500	\$27,247.11		Not Treasurer
2015	\$27,550	\$28,121.56		Treasurer
2016	\$27,224	\$27,224.00		Treasurer
Average	2012-2014		\$27,681.43	Not Treasurer
Average	2015-2016		\$27,672.78	Treasurer

OCE asserted that “when Mr. Collins took on the role of Treasurer, his rate of pay from the campaign committee increased a small degree, potentially reflecting this change in title.” Report ¶ 55. In fact, the opposite is the case. When adjusted for inflation, Mr. Collins’ average payment from the campaign for the three-year period 2012-2014 when he was not the treasurer was \$27,681.43 and his average payment from the campaign for the two-year period when he was the treasurer was \$27,672.78, also adjusted for inflation. In short, he earned slightly less when he was treasurer than when he was not. OCE asserts that “[a]s further explained below and contrary to Mr. Collins’ counsel’s claims, the OCE found that Mr. Collins received compensation directly for his services as Treasurer between March 2015 and January 2017.” Report ¶ 33. We could find no such explanation in the Report and no evidence to support OCE’s assertion, as none exists.

Equally absurd is the claim that “OCE did not identify any evidence that Mr. Collins served as Treasurer on a volunteer basis, and Mr. Collins and the campaign did not provide any materials to substantiate this claim.” *Id.* ¶ 32. OCE misunderstands the concept of evidence. Simply stated, evidence is “any matter, verbal or physical, that can be used to support the existence of a factual proposition.” Graham C. Lilly, *An Introduction to the Law of Evidence* § 2 (1978); see also *Forshey v. Principi*, 284 F.3d 1335, 1358 (Fed. Cir. 2002) (“[a]ll the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved.”) (quoting *Black’s Law Dictionary* 555 (6th ed.1990)). The data showing virtually no difference between payments to Mr. Collins while he was serving as treasurer and while he was not, are evidence that he served in that capacity as a volunteer. Rep. Lewis has confirmed that the treasurer position on the Campaign Committee is a volunteer position. See Decl. of Rep. Lewis ¶ 4. The testimony of the prior treasurer, Mr. George Darden, that he too received no compensation for serving as treasurer, is also evidence that the position was a volunteer position.

This is all evidence, under any definition, that Mr. Collins served as a voluntary treasurer to the Campaign Committee.

Finally, the implication that Mr. Collins is obligated to prove a negative, i.e., that he did not receive compensation for serving as treasurer, places the burden on the incorrect party: the burden is on OCE to provide evidence and this they have failed to do. *See Dir. OWCP v. Greenwich Collieries*, 512 U.S. 267, 269 (1994) (proponent of a rule or order has the burden of proof).

Inasmuch as there was virtually no difference in Mr. Collins' campaign compensation in the years he was treasurer versus the years that he was not the treasurer, there is no evidence, notwithstanding OCE's protestations to the contrary, that he received any compensation for serving as treasurer. This is in keeping with the two prior treasurers—Mr. Darden and Mrs. Lewis—neither of whom received any compensation for serving as treasurer. This fact was conveniently omitted in the OCE report. Mr. Darden testified to OCE staff that he received no compensation for serving as treasurer for the Campaign Committee from December 2007 through January 2015. Transcript of Interview of Mr. George Darden (Mar. 29, 2017) (Ex. 3 to OCE Report) at 17-5018_0015 – 0016. The only logical inference is that Mr. Collins, like his predecessors, received no compensation for serving as treasurer. There is no evidence to the contrary.

II. Mr. Collins Could Not and Did Not Serve As *De Facto* Treasurer to the Campaign Committee

To side-step these factual inconveniences, OCE has concocted a legal theory that at all times, including 2009, Mr. Collins was the "*de facto*" treasurer and therefore, any funds that he received from 2009 on were in violation of the House Rule XXV, section 2. No law is cited for this novel proposition, as none exists. OCE's position is legally and factually incorrect: there is no such thing, in this setting, as a *de facto* officer nor is there evidence to suggest that Mr. Collins acted as treasurer during any period other than the period in which he served as the *de jure* treasurer, as denoted on the Campaign Committee's Federal Election Commission Form 1.

A. There Is No Such Thing As a "*De Facto*" Officer

The House Rule requires that one be an officer of an entity; there is no such thing, in this setting, as a *de facto* officer. As the leading Court in the nation on corporations held, "the *de facto* officer argument lacks merit, both legally and factually." *In re Walt Disney Co. Derivative Litig.*, 906 A.2d 27. The same is true under the Federal Election Campaign Act of 1971, as amended. *See Fed. Election Comm'n v. Toledano*, 317 F.3d 939, 945 (9th Cir. 2002), amended (2003) ("Toledano's '*de facto* treasurer' argument fares no better. The statute makes no provision for agents who lack proper delegation of authority, even if the treasurer goes

AWOL.”). To serve as a treasurer of a campaign, an individual must be expressly delegated that authority and must be listed as the treasurer on the Campaign Committee’s FEC 1.

There is a *de facto* officer doctrine, but it has nothing to do with OCE’s theory and in light of a recent Supreme Court decision, is no longer viable. The doctrine “confers validity upon acts performed by a person acting under the color of official title even though it is later discovered that the legality of that person’s appointment or election to office is deficient.” *Ryder* 515 U.S. at 180.⁵ In *Ryder*, the government urged the Supreme Court to apply the *de facto* officer doctrine to vindicate the actions of the Court of Military Appeals, two members of whom had been appointed in contravention of the Appointments Clause. See U.S. Const., art. II, § 2, cl. 2. The Supreme Court ultimately refused to apply the doctrine, essentially holding that prior cases which had recognized the doctrine are limited to their facts. OCE did not discuss or even reference *Ryder* or *In Re Walt Disney*.

B. OCE’s Theory of *De Facto* Treasurer Is Intellectually Dishonest Having Learned of Mr. Collins’ Actions in 2011 and Never Mentioning that He Was the *De Facto* Treasurer

In 2011, OCE investigated whether Mr. Collins had received more in payment from the John Lewis for Congress campaign than permitted in 2009 by House Rules and whether he properly disclosed outside income from campaign on his annual Financial Disclosure Forms. In the course of that investigation, Mr. Collins described to OCE the activities that he undertook for the Campaign Committee. Those activities, as revealed to OCE in 2011, now appear to anchor OCE’s claim that Collins was the campaign’s *de facto* treasurer during the period 2009 through 2014. See e.g., Report ¶¶ 44-45. However, if OCE learned about this in 2011 and the *de facto* treasurer theory had any legal currency, then Collins ought to have been advised about OCE’s concerns in 2011. In addition, the Committee, which had a role in this investigation after the referral from OCE, did not raise any concerns about Mr. Collins’ role on the campaign. No such concerns were voiced in 2011 because the concept of a *de facto* treasurer is a fictional construct lacking any legal foundation and here, it is being used to fill an evidentiary void. “Legal epiphanies” make bad policy and worse law. Order at 5, *Mills v. The Prudential Ins. Co. of Am.*, No. 11-cv-02127 (D. Colo. July 5, 2012), ECF No. 54.

Since there is no such thing as a *de facto* officer or treasurer, OCE’s recommendation ought to be rejected on its face. Even if one were to ignore the Supreme Court and the Delaware Court, Mr. Collins’ actions, during the period that he did not serve as the *de jure* treasurer, are not consistent with actions of a treasurer.

⁵ A *de facto* officer has been defined by the Supreme Court as “as one whose title is not good in law, but who is in fact in the unobstructed possession of an office and discharging its duties in full view of the public, in such manner and under such circumstances as not to present the appearance of being an intruder or usurper.” *Waite v. Santa Cruz*, 184 U.S. 302, 323 (1902).

C. Mr. Collins' Actions Prior to Being Appointed Treasurer Were Consistent With the Actions of a Campaign Consultant and Not With Those of a Treasurer

OCE concluded that there was reason to believe that Mr. Collins acted as *de facto* treasurer from 2007 to 2015 because only Mr. Collins “and Rep. Lewis were involved in approving campaign expenditures,” Report ¶ 45, that according to Mr. Darden, Mr. Collins “controls all the money” and “control[s] the whole show,” *id.* ¶ 43, that his duties include “overseeing all operations, hiring staff, paying bills, handling invoices and receipts and writing “payroll checks for campaign staff.” *Id.* ¶ 45. Mr. Collins also “reviewed FEC filings for errors and discrepancies.” *Id.* None of these responsibilities magically transforms Mr. Collins into a *de facto* treasurer, especially when the Campaign Committee already had a treasurer. Nor are these statements accurate. Rep. Lewis reviewed the campaign’s bank statements and authorized most expenditures and all significant campaign expenditures. *See* Decl. of Rep. John Lewis ¶ 6, attached at

OCE misunderstands the duties of a treasurer, which involve bookkeeping and compliance, not campaign strategy.⁶ The duties of a treasurer are specified by the FEC as follows:

- Filing complete and accurate reports and statements on time. 11 C.F.R. § 104.14(d).
- Signing all reports and statements. 11 C.F.R. §§ 102.2(a) and 104.14(a).
- Depositing receipts in the committee’s designated bank within 10 days of receipt. 11 C.F.R. § 103.3(a).

⁶ OCE also seems to infer some sinister motive to the difference in the way Mr. Collins’ activities for the campaign were described in the FEC filings for 2013 as compared to 2014-present. *See* Report ¶¶ 51-53. It should be noted that those filings were the legal responsibility of the treasurer, Mr. Darden. In 2014, according to OCE, Mr. Collins’ compensation was described as “finance consulting fee,” while in 2014-present it is described as “campaign consulting fee.” The descriptions of purpose in these FEC filings are intended to be “brief,” as the FEC instructions note. *See* Fed. Election Comm’n, *Instructions for FEC Form 3 and Related Schedules* at 10 (May 20, 2016) (instructing that “[t]he term ‘purpose’ means a brief statement or description of why the disbursement was made”). As even OCE noted, “finance consulting fee” could mean fundraising and in fact, that is what the term was meant to convey. Report ¶ 39. In fact, according to Rep. Lewis, Mr. Collins was acting as fundraising consultant during the period he received “finance consulting fee[s].” Decl. of Rep. Lewis ¶ 9.

- Authorizing expenditures or appointing an agent (either orally or in writing) to authorize expenditures. 11 C.F.R. § 102.7(c).
- Monitoring contributions to ensure compliance with the law's limits and prohibitions. 11 C.F.R. § 103.3(b).
- Keeping the required records of receipts and disbursements for three years from the filing date of the report to which they relate. 11 C.F.R. §§ 102.9(c) and 104.14(b).

See Campaign Guide: Congressional Candidates and Committees at 6 (identifying the treasurer's duties on a campaign).

Prior to March 18, 2015, when Mr. Collins became the actual treasurer, he did not file FEC reports, he did not sign FEC reports, he did not deposit receipts, he did not monitor compliance with FECA and he did not keep the records of receipts and disbursements. There is no evidence indicating otherwise. While Mr. Collins may have written checks during the period preceding March 18, that is not a delineated responsibility of the treasurer. Moreover, "running the show" and deciding when and how campaign dollars are to be spent is usually the job not of the treasurer but of the campaign strategist or consultant usually in consultation with the candidate. *See* Decl. of Sen. Hutchinson ¶ 4, attached as Exhibit C. Nor is it unusual for campaign strategists to hire and fire staff, to authorize payment or even to cut checks. Indeed, it is now the norm for campaign professionals to pay for events and the like, providing the receipts or other necessary information to the treasurer. *See id.* ¶ 5.

OCE appears to misunderstand the nature of modern campaigning and the fact that the campaign treasurer usually has no role in formulating strategy, deciding when, where and how money is to be spent, or even in cutting checks. *See Campaign Guide: Congressional Candidates and Committees* at 6 (identifying the treasurer's duties on a campaign). The treasurer usually cedes any approval to those on the ground in the district who are actually orchestrating campaign events, purchasing media time, or operating telephone banks as part of a partisan GOTV drive.

D. Adopting OCE's Position that One Can Become a *De Facto* Treasurer Would Undermine the Bright Line Drawn by the House Rules and Would Act As a Trap for the Unwary

OCE's position is not only contrary to law and to OCE's rendition of the facts, but would set a dangerous and ominous precedent for anyone running for elective office or serving as a political strategist for a Member or candidate for Congress. The Federal Election Campaign Act of 1971, as amended, ("FECA"), 52 U.S.C. § 30101 *et seq.*, is designed to draw bright lines to provide clarity and avoid constitutional infirmities. The definitions of contribution and expenditure are necessarily crisp and detailed, as is the definition of independent expenditure. Following in this path, the delineation of a treasurer's duties and how one designates a treasurer

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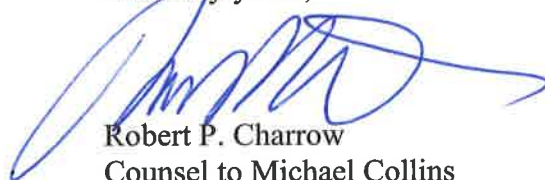
is equally crisp. The treasurer is the person identified on FEC Form 1 as the treasurer and is the person who is legally liable in event that the campaign violates FECA. Each campaign only has one treasurer.

OCE's concept of a *de facto* treasurer would create an environment where each campaign would have multiple treasurers—the actual treasurer and others who might perform other duties involving money. What campaign duties one could perform without taking on the mantle of *de facto* treasurer is not specified by OCE nor does OCE resolve the dilemma how a campaign can have multiple treasurers. Would all the treasurers be liable in the event of noncompliance? OCE's theory of corporate officers and the FECA makes no sense, ignores how campaigns actually operate, and potentially raises significant constitutional issues.

Conclusion

Michael Collins made a simple and minor arithmetic error by allowing the campaign to pay him \$295 more than is permitted under the House Rules. For this, he accepts responsibility and has remedied the overpayment. The allegation that an aliquot of his compensation was really designed to compensate him for his services either as the *de jure* treasurer from March 2015 to January 2017 or *de facto* treasurer before March 2015 is baseless. There is no evidence in the record to support that novel OCE theory and the Declarations of Rep. Lewis and Sen. Hutchinson should put that allegation to rest.

Sincerely yours,



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Counsel to Michael Collins

Hon. Susan W. Brooks, Chairwoman
Hon. Theodore E. Deutch, Ranking Member
July 7, 2017
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Attachments:

- Exhibit A: OCE-Counsel Correspondence
- Exhibit B: Decl. of Representative John Lewis
- Exhibit C: Decl. of Senator Tim Hutchinson (ret.)
- Exhibit D: Decl. of Michael Collins

EXHIBIT B

Declaration of Representative John Lewis

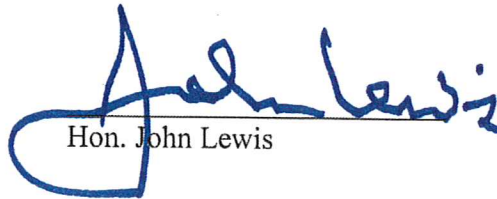
I, John Lewis, declare as follows:

1. I am the Democratic Representative from Georgia's Fifth Congressional District, currently serving my sixteenth term in the United States Congress.
2. The John Lewis for Congress campaign committee is my principal campaign committee.
3. I have reviewed the Office of Congressional Ethics ("OCE") Report and the attached interview with George Darden, who served as treasurer of my campaign committee from 2007-2015.
4. Mr. Darden served as treasurer as a volunteer without compensation; as did his predecessor, my late wife; and as did his successor, Michael Collins.
5. Certain statements that Mr. Darden made about me during his OCE interview are incorrect. For example, Mr. Darden stated that Michael "control[s] the whole show" and that I really wanted to be removed from the fiscal aspects of the campaign. Darden Interview Transcript at 7:34-35; *see id.* at 9:25-39. Mr. Darden thereby implied that I have little awareness of the campaign's finances. Such is not the case.
6. I review all bank statements from the campaign on a regular basis and personally approve most expenditures and all significant campaign expenditures. Michael acts as a campaign strategist by recommending to me various options. He also helps implement the selected strategy.
7. The OCE Report suggests that Michael was the "de facto treasurer" from 2009 to 2015. I do not know what a de facto treasurer is, but I do know that my campaign only had, and has, one treasurer at a time: the individual identified on the FEC Form 1 as the "treasurer."
8. From 2009-2015, the tasks that Michael performed were consistent with those performed by a campaign strategist and not a treasurer. Based on my decades of experience, I know that a treasurer's role is to ensure compliance with Federal Election Commission ("FEC") rules by, among other things, filing timely and accurate FEC reports. I do not view a treasurer as either a campaign strategist or fundraiser, nor do I believe that the FEC views a treasurer as such. In 2015, Michael volunteered to act as an interim treasurer until a permanent one could be located. He was not paid to act as the treasurer.
9. The OCE Report states that in 2013 my campaign committee's FEC filings indicated that Michael received a "finance consulting fee." OCE was not certain whether finance consulting referred to fundraising or acting as treasurer. In the context of my campaign, Michael helped raise contributions and thus, I viewed him as a campaign finance consultant for which he received a consulting fee. Again, he received no payment for acting as treasurer and was never a "de facto" treasurer.

10. Mr. Darden's law firm represented my campaign committee. At no time did I or my campaign committee authorize Mr. Darden to reveal confidences related to that legal representation.

I declare under penalty of perjury that the foregoing is true and correct.

July 5, 2016



Hon. John Lewis

EXHIBIT C

Declaration of Tim Hutchinson

I, Tim Hutchinson, declare as follows:

1. I served as a Republican Member of the United States Senate from 1997 to 2003 and as a Republican Member of the House of Representatives from 1993-1997. Prior to that, I served in the Arkansas House of Representatives from 1985 to 1993. Much of my immediate family holds or has held elective office, including, by way of example, two of my sons, a nephew, a brother-in-law, and my brother. As such, I am intimately familiar with how modern campaigns operate.
2. I have been asked to review the Office of Congressional Ethics Report (“OCE”) No. 17-5018 and comment on those aspects of the Report that relate to the operations of a typical modern campaign for federal office. This Report relates to allegations against Michael Collins that he was compensated for serving as a *de facto* treasurer of the John Lewis for Congress campaign committee from 2009 through March 2015. Although I am a lobbyist with Greenberg Traurig, LLP, the firm that represents Mr. Collins in this matter, my review and opinions are being provided without compensation to me.
3. I served with Cong. John Lewis briefly while I was in the House but do not know him well. Although we are considered to be at opposite ends of the political spectrum, Mr. Lewis is an icon of the House. I do not know and have never met or spoken with Michael Collins who, as I understand, serves as Cong. Lewis’ Chief of Staff.
4. The OCE Report appears to operate under the assumption that a campaign’s treasurer is in overall charge of campaign expenditures by and contributions to the campaign committee. In my experience, that is decidedly not the case. A campaign treasurer is the campaign’s bookkeeper and usually has nothing to do with deciding how and where to raise money, how and where to spend money or who to hire to staff the campaign. Those decisions are made by campaign professionals, usually consultants working in consultation with the candidate. OCE’s position is comparable to saying that a company’s outside CPA is the company’s *de facto* CEO. OCE’s position that someone can become a *de facto* treasurer would set a dangerous precedent and one that is likely not justified by the campaign finance laws.
5. Modern campaigns adjust to events and move quickly. As result, in my experience, campaign consultants and other staff must be in position to respond to changing circumstances to produce events and advertisements on short notice. To accommodate this need for rapid responses, campaign strategists frequently cut checks or otherwise pay for events and then report those expenditures to the treasurer or assistant treasurer, as the case may be. This is common practice in campaigns.

I declare under penalty of perjury that the foregoing is true and correct.

Date: June 27, 2017

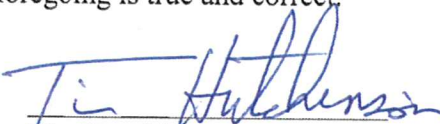

Tim Hutchinson

EXHIBIT D

Exhibit D
Declaration of Michael Collins

I, Mr. Michael Collins, declare under penalty of perjury that any factual assertions by me contained in the attached letter dated July 7, 2017, relating to my response to the May 12, 2017, Committee on Ethics letter, are true and correct.

July 7, 2017


Michael Collins