

LAW OFFICES  
WEBSTER, CHAMBERLAIN & BEAN, LLP  
1747 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, DC 20006

ARTHUR L. HEROLD  
ALAN P. DYE  
JOHN W. HAZARD, JR.  
HUGH K. WEBSTER  
DAVID P. GOCH  
JAMES S. WILSON, JR.  
HEIDI K. ABEGG  
SARAH E. MOONEY  
CHARLES M. WATKINS  
DAVID M. ABRAHAMS  
JOHN R. STROUT  
ANDREW C. DYE  
DAVID S. LIEBERMAN

(202) 785-9500  
FAX: (202) 835-0243

J. COLEMAN BEAN (1928-2017)  
GEORGE D. WEBSTER (1921-1996)  
CHARLES E. CHAMBERLAIN (1917-2002)

OF COUNSEL

KENT MASTERSON BROWN  
DAVID M. MASON

February 12, 2018

**VIA EMAIL ONLY**

The Honorable Susan W. Brooks, Chairwoman  
The Honorable Theodore E. Deutch, Ranking Member  
Committee on Ethics  
U.S. House of Representatives  
1015 Longworth House Office Building  
Washington, DC 20515

**Re: The Honorable John J. Duncan Jr.'s Response to the Office of  
Congressional Ethics Referral in Review No. 17-2646**

Dear Chairwoman Brooks and Ranking Member Deutch:

This letter constitutes Representative John J. Duncan Jr.'s response to the referral by the Office of Congressional Ethics ("OCE") regarding further review in the above-referenced matter. Representative Duncan's declaration is attached to this letter in accordance with the rules of the Committee on Ethics ("Committee"). The OCE's Report and Findings include a number of prohibited conclusions and speculative inferences, demonstrating that they are not a credible basis upon which to conduct further proceedings. Further, the OCE violated its own rules, and for these reasons and those discussed below, the Committee on Ethics should dismiss this matter. Finally, the supporting evidence and testimony overwhelmingly demonstrates that the alleged expenses were for bona fide campaign or political purposes which would have existed irrespective of the campaign, and therefore, there is no substantial reason to believe that the alleged expenses are prohibited personal use.

**The OCE Review**

OCE's jurisdiction to review a matter is given only by virtue of its authorizing resolution.<sup>1</sup> OCE loses jurisdiction over a matter if it acts in contravention of its authorizing resolution.<sup>2</sup> These rules are

---

<sup>1</sup> *In the Matter of Representative Sam Graves*, Report of the Committee on Standards of Official Conduct, at 23 (Oct. 29, 2009) ("Graves Report") (citation omitted); *see U.S. v. Watkins*, 354 U.S. 178, 201 (1957) (holding that the jurisdiction and purpose of congressional investigating committees are embodied in the authorizing resolution).

<sup>2</sup> *Id.* (citation omitted).

important because they provide Members with the opportunity to confront charges made against them by anonymous sources, which, as in this case, are politically motivated. The rules also ensure that a Member's guilt or innocence is not adjudicated by the OCE prior to being referred to the Committee. When these rules are not followed, there is a lack of due process and the Member is prejudiced.<sup>3</sup>

In violation of OCE Rule 4(F), the OCE failed to provide all materials which were potentially favorable or exculpatory to Representative Duncan, thus denying Representative Duncan the opportunity to address these items prior to the OCE's Report and Findings. These materials will be addressed below under the relevant section.

The OCE Report fails to record the good faith and cooperation on the part of Representative Duncan. Representative Duncan, his campaign committee and leadership PAC, and staff members cooperated with the OCE review, provided the voluminous information requested by the OCE, and made themselves available for interview.<sup>4</sup> After reviewing the thousands of expenditures occurring between 2008 and 2017, the OCE found very few which appeared to be not in compliance with House Ethics rules and the Federal Election Campaign Act. As the evidence indicates, except for a de minimis number of expenses, which have been reimbursed or cannot be corrected, the expenses were lawful and made for campaign or political purposes.

#### **OCE Violated Its Own Rules When It Investigated and Referred an Allegation Outside Its Jurisdiction**

As is plainly clear, H. Res. 895 provides OCE with the authority to review only the activities of a Member that he or she performed as a Member of the House.<sup>5</sup> It therefore follows that because a review can be commenced only for "any alleged violation by a Member," the alleged conduct must involve the conduct of the Member himself. Furthermore, this conduct cannot involve any activity which involves only the Member's campaign committee or leadership PAC because the OCE's jurisdiction is limited to reviewing whether a Member has violated a law, rule or regulation or other standard of conduct. The OCE Resolution and OCE rules also prohibit an investigation into any alleged violation that occurred before March 11, 2008.<sup>6</sup> OCE's review and Findings raise all three jurisdictional issues.

First, the OCE did not allege any personal misconduct of Representative Duncan regarding his leadership PAC. The OCE cited to no evidence of Representative Duncan's personal misconduct or even involvement in the variances. There is no evidence that Representative Duncan was involved whatsoever in the creation of the alleged variance or unreported disbursements and receipts. In fact, Representative

---

<sup>3</sup> See *Wilson v. Commissioner of Social Security*, 378 F.3d 541, 545 (6th Cir. 2004) (holding that agencies are bound to follow their own regulations and that an agency's failure to follow its own regulations, even when they are more generous than necessary, tends to cause unjust discrimination and deny adequate notice); *Sameema Inc. v. United States Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) (Where a prescribed procedure is intended to protect the interests of a party before the agency, that procedure must be scrupulously observed.) (internal citations and quotations omitted).

<sup>4</sup> Consistent with its practice, the OCE recorded witness interviews. It is unknown whether the transcriber has appropriate training in interview transcription. The interview transcripts are riddled with mistakes, which witnesses attempted to fix, but due to their number, did not catch all of them. Where errors appear, they will be designated with [sic]. The accuracy of the transcriptions is in doubt, particularly after receipt of an email on December 13, 2017 from OCE's investigative counsel which said, "After reviewing the transcripts, we found a typographical error on Page 34, line 28 of the copy of [Son A's] transcript we provided you on November 17. When we reviewed the interview recording, we found that the line should read "Yeah. I mean, they get along and are friends...I don't think they've known each".

<sup>5</sup> H.Res. 895, 110<sup>th</sup> Cong. § 1, clause (c)(2)(C)(i)(II)(dd) (2008).

<sup>6</sup> H. Res. 895, 110<sup>th</sup> Cong. § 1(e) (2008).

Duncan testified that he didn't "have knowledge of any of this, of any kind of bookkeeping errors."<sup>7</sup> Representative Duncan also told the OCE that his interview was the first time he had heard that the leadership PAC account may not have accounted for disbursements and deposits.<sup>8</sup> There is a lack of evidence demonstrating any involvement by Representative Duncan in the creation of the variance, any alleged failure to report disbursements or receipts, any personal use of leadership PAC funds by Representative Duncan, and OCE does not allege any such involvement by Representative Duncan.<sup>9</sup> As such, the OCE lacked legal basis to refer it to the Committee.<sup>10</sup>

Second, there is no jurisdiction over alleged reporting variances. The OCE spends most of its time discussing the leadership PAC's variance and various unreported or misreported disbursements and receipts. The House Ethics Committee has unequivocally stated:

Alleged violations of campaign finance laws have never been the sole basis for the Committee initiating a Preliminary Inquiry. Such matters have only been considered as an adjunct to other issues. In view of the statutory authority of the FEC, it is appropriate for the Committee to continue this practice. This is not to suggest that the Committee has adopted or should adopt a policy to defer its investigative activities to Federal agencies given parallel jurisdiction by law. Rather, such matters should continue to be pursued once the Committee has initiated a Preliminary Inquiry.<sup>11</sup>

The Federal Election Campaign Act (FECA) confers on the Federal Election Commission ("FEC") "exclusive jurisdiction with respect to the civil enforcement of [campaign finance laws.]"<sup>12</sup> The House Ethics Manual recognizes the FEC's authority over civil enforcement of FECA.<sup>13</sup> Further, in the absence of any allegations concerning the personal conduct of Representative Duncan, the treasurer, in his or her official capacity, is responsible for allegations involving campaign finance violations by the campaign or leadership PAC.<sup>14</sup>

Candidates are not liable for their committee's alleged campaign finance violations because "[I]iability, instead, filters through the candidate to his amorphous campaign committee, or, more precisely, to the committee's treasurer, who is legally responsible for any violations of the Act."<sup>15</sup> To hold a Member responsible for campaign finance violations which do not involve his personal conduct

---

<sup>7</sup> OCE Report, Exhibit 7, at 17-2646\_0177.

<sup>8</sup> OCE Report, at 51 (¶200) (citing Exhibit 7 at 17-2646\_0177).

<sup>9</sup> "Based on the foregoing information, the Board finds that there is substantial reason to believe that Rep. Duncan's campaign committee and leadership PAC expended funds that were not attributable to bona fide campaign or political purposes." OCE Report, at 53 (¶211).

<sup>10</sup> The OCE also lacked jurisdiction to review the matter because H. Res. 895 demonstrates that the House intended OCE to review only the activities of a Member that he has performed as a Member of the House. A review can be commenced only for "any alleged violation by a Member." That is, the alleged conduct must involve the conduct of the Member himself. After interviewing Representative Duncan it was clear that he had no involvement whatsoever in the variance, yet the OCE proceeded with the investigation and a referral.

<sup>11</sup> *Statement of the Committee on Standards of Official Conduct Regarding Complaints Against Representative Newt Gingrich*, House Committee on Ethics, at 53-54 (March 8, 1990).

<sup>12</sup> 52 U.S.C. § 30106(b)(1). See *Stockman v. FEC*, 138 F.3d 144, 152 (5th Cir. 1998) ("The statute provides a strong basis for scrupulously respecting the grant by Congress of 'exclusive jurisdiction' to the FEC: the FEC is entrusted with the exclusive power to investigate violations of the Act, and the Act creates a detailed administrative process that the FEC must follow in its investigations.").

<sup>13</sup> House Ethics Manual at 122 (2008).

<sup>14</sup> See *Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings*, 70 Fed. Reg. 3 (2005).

<sup>15</sup> *FEC v. Savage for Congress*, 606 F. Supp. 541, 546-47 (N.D. Ill. 1985).

would result in Members, rather than treasurers, being held responsible for any violations by their campaign committee.

The leadership PAC explained to the OCE that it had self-reported the variance to the FEC and that the mass reporting of the variance was requested.<sup>16</sup> Apparently not content with the FEC's handling of a matter within its exclusive jurisdiction, the OCE tries to create jurisdiction by converting a pure reporting matter into an ethics issue with nothing more than speculation of personal use (and without any indication of who is alleged to have converted the funds to personal use).

Representative Duncan, and both of his sons, testified that they did not have any knowledge of misuse of leadership PAC funds for personal gain.<sup>17</sup> The outside auditors found nothing to suggest that the PAC incurred expenses, disbursed funds, or received contributions that were not in accordance with FEC regulations.<sup>18</sup> Despite this uncontroverted testimony, in violation of Standards Committee Rule 15(a)(4), the OCE relies solely upon speculation that unidentified transactions of \$7,729.12, of which \$5,654.62 occurred prior to March 11, 2008, might have amounted to personal use. There is no basis whatsoever to assert that payments of less than \$10,000, some of which occurred over seventeen years ago, should arouse suspicion merely because the OCE cannot identify how they were spent. Indeed, poor recordkeeping was the impetus for the self-reporting variance to the FEC.

Third, the OCE compounds these jurisdictional infirmities by relying upon conduct which occurred prior to March 11, 2008 to support its claim of possible personal use. The OCE alleges, without any supporting citation, that the variance "raises questions about whether any of the missing transactions amounted to personal use of leadership PAC funds."<sup>19</sup> The OCE claims there were 150 unreported transactions which gave rise to the variance, which "raises questions about whether any of the missing transactions amounted to personal use."<sup>20</sup> The OCE next lists a number of unreported disbursements and claims it could not identify how this \$7,729.12 was spent.<sup>21</sup> By doing so, the OCE cites to \$5,738.42 of transactions occurring prior to March 11, 2008.<sup>22</sup> The OCE also fails to note that of the cumulative variance of \$37,722.93, \$25,961.58 of it had occurred by 2008.<sup>23</sup> While the OCE claims that the information is described to provide a "complete explanation," the findings and referral both rely, and are dependent, upon this information.<sup>24</sup>

As such, there is no substantial reason to believe that Representative Duncan himself violated any rules or standards of the House and the Committee should not accept the OCE's recommendations. Representative Duncan cannot be held responsible under the House Ethics Rules for alleged violations committed by his leadership PAC without his involvement or knowledge.<sup>25</sup>

---

<sup>16</sup> OCE Report, at 50 (¶196).

<sup>17</sup> OCE Report, Exhibit 7 at 17-2646\_0177; OCE Report, Exhibit 9 at 17-2646\_0276; OCE Report, Exhibit 34 at 17-2646\_0516-0517.

<sup>18</sup> OCE Report, at 49 (¶192) (citing Road to Victory PAC, Miscellaneous Test Report (FEC Form 99), filed June 19, 2015).

<sup>19</sup> OCE Report, at 53 (¶207).

<sup>20</sup> OCE Report, at 53 (¶¶207-208, footnote 414).

<sup>21</sup> OCE Report, at 53 (¶208). Contradicting its claim that it couldn't determine how these funds were spent, OCE notes that \$2,074.50 was for a check to Best Buy which did not clear. *Id.*

<sup>22</sup> OCE Report, at 53 (¶208, footnote 414).

<sup>23</sup> OCE Report at 51 (¶199).

<sup>24</sup> OCE Report at 49 (¶188, footnote 369).

<sup>25</sup> Holding a Member liable is also inconsistent with the FECA and its implementing regulations and caselaw. *See, e.g., FEC v. Savage for Congress*, 606 F. Supp. 541, 546-47 (N.D. Ill. 1985) ("Liability, instead, filters through the candidate to his amorphous campaign committee, or, more precisely, to the committee's treasurer, who is legally responsible for any violations of the Act.").

### OCE Reached Prohibited Conclusions Regarding the Validity of the Allegations

OCE's Findings may not contain "any conclusions regarding the validity of the allegations upon which it is based or the guilt or innocence of the individual who is the subject of the review . . . ."<sup>26</sup> This matter is not the first time OCE has violated its rules in this fashion.<sup>27</sup> Seven years after the Committee identified "these unfortunate deficiencies" of the OCE to ensure the "proper administration of the House ethics process and the due process rights of any current or future subject of an OCE investigation", the OCE continues to violate its rules, resulting in lack of due process.<sup>28</sup> OCE reached prohibited conclusions no fewer than six times:

¶3: "Based on these records, the OCE identified multiple instances in which the campaign committee expended funds for the personal benefit of Rep. Duncan's family and friends."

¶23: "The OCE identified campaign committee expenditures for, among other categories, . . . that were not attributable to bona fide campaign or political purposes."

¶24: "These records reveal a pattern of personal use of campaign committee funds for the benefit of Rep. Duncan's family and friends."

¶46: "The OCE found that the trip primarily was recreational in nature, and that the campaign committee's payments for lodging and a host of resort amenities lacked a nexus to bona fide political or campaign purpose."

¶169: "However, it is likely that some of the campaign funded gift purchases went to personal friends of the family."

¶209: "The OCE reviewed credit card, travel, and other purchase records and found multiple instances in which the campaign committee expended funds for the personal benefit of Rep. Duncan's family and friends."

These conclusions, if released, are prejudicial to Representative Duncan because they will be cited by political opponents and the media, without any contemporaneous statement that no conclusion about the allegations has been reached by this Committee. As a result, the Committee should withhold the public release of the Report and Findings altogether, and dismiss these conclusions as not properly before the Committee.

### The OCE Did Not Disclose New Allegations to Representative Duncan and Therefore, He Had no Chance to Respond

The OCE is authorized to investigate "allegations" that a Member "has violated a law, rule, regulation, or other standard of conduct in effect at the time the conduct occurred and applicable to the subject in the performance of his or her duties or the discharge of his or her responsibilities."<sup>29</sup> OCE is

---

<sup>26</sup> H. Res. 895, 110th Cong. § 1(c)(2)(C)(ii)(II) (2008).

<sup>27</sup> Graves Report, at 35; *In the Matter of Representative Gregory W. Meeks*, Response of Counsel to Rep. Meeks at 5 (June 3, 2011); *In the Matter of Representative Bill Owens*, Response of Counsel to Rep. Owens at 11 (Sept. 18, 2012).

<sup>28</sup> Graves Report, at 21.

<sup>29</sup> OCE Rule 1.

required to notify the Member of the allegation that it is investigating and it may not refer an allegation to the Committee unless it has first initiated a preliminary review of the allegation and notified the Member.

The OCE provided Representative Duncan with a broad notification that it was reviewing whether his campaign committee and leadership PAC converted campaign funds to personal use or expended funds that were not attributable to bona fide campaign or political purposes. OCE requested nine categories of documents. Until receipt of the Reporting and Findings, Representative Duncan did not know that the OCE had investigated additional allegations.

Specifically, the OCE failed to inform Representative Duncan that it was investigating travel to New York for the NRCC event, a 2010 trip to Montana, a trip to Washington DC for the White House Christmas Party, travel to DC for a political conference, campaign payments for meals, cell phone, and special occasion gifts, in violation of OCE Rules 7 and 11(A). Representative Duncan does not dispute that the OCE has the authority to address other violations within its jurisdiction and discovered in the course of a review, but OCE was required to disclose to Representative Duncan these new allegations and allow him an opportunity to respond.

The OCE also failed to inform Representative Duncan that it had expanded the time period of its investigation. The OCE requested documents from January 1, 2009, yet the Report states that the OCE's investigation focus began with September 2008.<sup>30</sup> As a result, Representative Duncan had no chance to respond and was first made aware of its inclusion in the investigation when he received the Report and Findings from the Committee. Representative Duncan has also been prejudiced by the OCE's violation as it has necessitated additional time and expense in researching and preparing his response to these previously-unknown allegations on a short time table.<sup>31</sup>

OCE's failure to inform Representative Duncan prevented him from confronting these charges against him before the OCE, and resulted in one-sided fact-finding. For example, the OCE's Findings includes a dinner at Le Conte on December 13, 2008.<sup>32</sup> Not only was the event outside of the time period encompassed by the OCE's document requests, the OCE did not ask any witness (to counsel's knowledge) about this event. In several instances, the OCE did not ask the witness questions relevant to the investigation, instead choosing to rely upon its conclusory allegations, in violation of Rule 5 which requires the OCE to "collect all evidence related to the allegations, whether such evidence tends to prove or disprove the allegations." In alleging that meal expenses were for personal use, the OCE includes \$5,962.61 for meals at Aubrey's restaurant; however, the OCE did not ask Son A any questions about these charges.<sup>33</sup> Not once did the OCE ask any witness whether the expenditures in question would have been made irrespective of Representative Duncan's campaign. Instead, the OCE tries to base its referral solely on testimony that Duncan family members were "friends" with various people who were associated with the expenditures. The OCE did not ask whether any of the expenses at issue would have been made irrespective of the campaign. Given that the irrespective test is a required element to prove personal use, the OCE should have collected this evidence.

---

<sup>30</sup> OCE Report, at 13 (¶28).

<sup>31</sup> Representative Duncan appreciates the extension of time granted by the Committee to enable him to address these new allegations.

<sup>32</sup> OCE Report, at 32 (¶108).

<sup>33</sup> OCE Report, at 40 (¶152); OCE Report, Exhibit 9 at 17-2546\_0259 (Son A testifying that he goes to Aubrey's restaurant a lot).

### **OCE's Findings Contain Unnecessary Facts, Citations to Irrelevant But Sensitive Documents, and Unredacted Personal Information**

The OCE included findings – not within the body of the Report itself, but within a footnote – without any apparent link to a corresponding recommendation to the Committee. Is this an attempt to include irrelevant and sensitive information, or does the OCE lack a substantial reason to believe a violation occurred but included it to prejudice the Committee's view? The OCE mentions the purchase of a \$50 membership in the Knoxville Symphony League, which raises money for different charities in the area.<sup>34</sup> Representative Duncan's spouse testified that her husband that it would be good for her to get to know some new people.<sup>35</sup> Representative Duncan testified that it is "one of the most prominent groups, and very successful people, and very important influential people who I would hope would be supportive of me in my campaigns."<sup>36</sup> It is clear the OCE has no evidence of conversion to personal use and made no recommendation to the Committee, yet the OCE includes this lengthy, but irrelevant, footnote.

Particularly when an OCE review is triggered by an anonymous complaint (but believed to have been politically motivated), a heightened sense of fairness and due process is required. Rep. Duncan and those interviewed on behalf of his campaign committee and leadership PAC, cooperated fully by testifying as to private business matters and producing all documents requested, including those containing sensitive material.

In conducting its investigation, the OCE requested documents from the Greenbrier regarding *personal* trips which the Duncan family took using personal funds.<sup>37</sup> These personal trips are not relevant, yet OCE included unredacted details of them (including names of individuals not connected to this matter in any way) in the Exhibits.<sup>38</sup>

Salacious articles appeared in Tennessee newspapers regarding Rep. Duncan's campaign's lease. While the OCE correctly did not refer the unfounded allegations regarding the campaign committee's lease arrangement to the Committee, it did cite to both leases in the Exhibits, thus ensuring that these irrelevant, but sensitive, documents, would be made public.<sup>39</sup>

Finally, OCE failed to redact personal information, such as birthdate and wedding anniversary.<sup>40</sup>

OCE's authorizing resolution recognized these important confidentiality concerns and contemplated that OCE would issue limited public findings and that the bulk of information would be contained in non-public supporting documents unless its disclosure was directly relevant and necessary for inclusion in the findings.<sup>41</sup> While the amount of extraneous and irrelevant information contained in the OCE's Report and Findings in the *Graves* matter was more than in this case, the same concern about disclosure applies here.<sup>42</sup>

### **Background**

---

<sup>34</sup> OCE Report, at 35 footnote 241.

<sup>35</sup> OCE Report, Exhibit 33 at 17-2646\_0484.

<sup>36</sup> OCE Report, Exhibit 7 at 17-2646\_0169.

<sup>37</sup> Exhibit 27 at 17-2646\_0410 -0411, 17-2646\_0413.

<sup>38</sup> *Id.*

<sup>39</sup> OCE Report, Exhibits 13 and 14 at 17-2646\_0290-0311.

<sup>40</sup> OCE Report, Exhibit 54 at 17-2646\_0413.

<sup>41</sup> Graves Report, at 33 (citing H. Res. 895, section I, clause (c)(2)(C)(i)(II)(dd) and (c)(2)(C)(i)(III)).

<sup>42</sup> Graves Report, at 34, footnote 264.

A brief history about the Duncan family, how Representative Duncan has campaigned over the years, and the nature of his district, are important to understanding why there is no substantial reason to believe the allegations of personal use, required for a referral to this Committee.

Congressman Duncan was first elected to Congress in 1988. Since that time, his intent has been to do the right thing – to report everything that should be reported, and to comply fully with House Rules. Every cycle, journalists write stories about how Members of Congress spend their campaign funds, often making judgment calls about the necessity of these expenses, particularly when a Member is not in a competitive district. Journalists and opponents are quick to point out expenses *they* deem unnecessary, pointing out the relative ease of reelection, second-guessing the need for expenses, often without mentioning that these expenses are completely legal. Unsupported conclusions are also made about payments to relatives, as these journalists have no information about the services performed, or the cost of similar services in the marketplace. As is the case here, outsiders do not always have the full story, leading to inaccurate conclusions about campaign expenses. Assuming compliance with the Federal Election Campaign Act and House rules, a Member is free to spend money on, for example, constituent meals rather than a splashy campaign website.

Congressman Duncan's campaign spending is reflective of the way Congressman Duncan campaigns – one-on-one – which is similar to approaches taken by others, particularly in historically non-competitive districts. To keep a district noncompetitive, money needs to be spent, relations with constituents need to be maintained, goodwill needs to be nurtured.

Representative Duncan's father, John J. Duncan Sr, was the mayor in Knoxville, Tennessee from 1959 to 1964, and was the assistant attorney general of Knox County for 8 years before running for Congress. John Duncan Sr. represented Tennessee's Second Congressional District from 1965 until his death in 1988. Representative Duncan's uncle, Judge Joe Duncan, and his sister, Becky Duncan Massey, a former Tennessee state representative who now serves as a state senator, have continued the Duncan family's public service. As a result, the Duncan name and family are instantly recognized throughout Knoxville and the Second Congressional District. In fact, Representative Duncan's spouse testified that upon arriving at the interview site, she had "three of the cleanup men speak to me as I walked in the door."<sup>43</sup> The Duncan name has become synonymous with the 2<sup>nd</sup> District for over 50 years; nearly 60 if Representative Duncan's father's service as the Mayor of Knoxville is included.

With this name recognition comes both advantages and challenges. Campaigning as a family is a Duncan tradition.<sup>44</sup> "We typically attend major events as a family."<sup>45</sup> The family also plans campaign events together.<sup>46</sup> Representative Duncan's spouse did his speaking engagements at the professional clubs during the week while her husband was in DC.<sup>47</sup> She said she did all the speaking and went to "all these little things at night. And sometimes, I'd drive a 100 miles to speak to ten people."<sup>48</sup> Representative Duncan's children worked in his campaigns throughout his entire career.<sup>49</sup> Representative

---

<sup>43</sup> OCE Report, Exhibit 33 at 17-2646\_0465.

<sup>44</sup> OCE Report, Exhibit 33 at 17-2646\_0460 (Representative Duncan's spouse explaining that after winning by such great margins, people stop volunteering and the "whole family has had to step up.").

<sup>45</sup> OCE Report, Exhibit 34 at 17-2646\_0527.

<sup>46</sup> See attached document produced by Moxley Carmichael, but not provided to Representative Duncan pursuant to OCE Rule 4(F). This document refers to the Duncan golf tournament meeting at which both sons were scheduled to attend.

<sup>47</sup> OCE Report, Exhibit 33 at 17-2646\_0460.

<sup>48</sup> OCE Report, Exhibit 33 at 17-2646\_0465.

<sup>49</sup> OCE Report, Exhibit 7 at 17-2646\_0145-0146; OCE Report, Exhibit 33 at 17-2646\_0485 ("[B]oth my boys have always worked all campaigns. Zane was two when Jimmy went to Congress and we'd always have a case of diapers



Duncan explained that his son and his wife have been involved in all of his campaigns since they reached adulthood and help him in numerous ways, including helping him get along better with other Members.<sup>50</sup> His family members have held both formal and informal roles with the campaign. On occasion, his other son would go speak for him when both he and Son A were out of town or unavailable, and both sons and his son-in-law would put up yard signs and bigger signs around town.<sup>51</sup> One of his daughters and her children have spent countless hours at one of the largest precincts in his district and have been active in this particular area of his district. Son A's wife has attended many events with her husband, and has helped out at the campaign headquarters, the Duncan Family barbeque, and has coordinated activities with her husband. His daughter-in-law testified that she attends events such as women's Republican lunches and dinners.<sup>52</sup> His son-in-law serves as campaign treasurer.<sup>53</sup> One of his sons served as treasurer of his leadership PAC and his daughter-in-law now serves as treasurer.<sup>54</sup> Even when his children are not out campaigning for him, their conduct reflects favorably upon him.<sup>55</sup> As Representative Duncan noted, "My family has meant, not only meant everything to me personally but they've meant everything to me politically, frankly."<sup>56</sup>

The Duncan name allows Representative Duncan to be in more than one place at one time. His family members are able to act as surrogates and are important politically. As Representative Duncan explained, "I've eased off a bit in the last four or five years and sent John to do some of these things."<sup>57</sup> "He's gone to represent me at all kinds of receptions and dinners and breakfasts. He has gone to numerous funeral homes for me, many. When I was in Washington, he would go to the funeral home, or whatever."<sup>58</sup> Representative Duncan testified that he relies upon his son John and his other children to help with the younger crowd.<sup>59</sup> "Well, John has the same name as me. He's well known in the community. Every time he goes out in public, he is representing me, and he represents me well. . . ."<sup>60</sup> "His biggest value to me was he went around and he gave speeches for me. He worked with the local Republican committees on some of the campaigns, and like I said, going to these funerals."<sup>61</sup> Representative Duncan's spouse explained that her son John writes speeches, does research, and does all of the things which she cannot do as her husband's surrogate, including speaking all the time to different civic groups.<sup>62</sup> She explained that her son John took over what she had been doing for 27 years.<sup>63</sup>

The downside of the Duncan family name is that the Duncans, like many well-known political families, are always "on" when in Tennessee. As Representative Duncan's spouse testified, "My husband is known for his constituent service. And like I say, everybody in this town knows us. He's lived here 70 years and they just expect us to go and be at everything. In fact, I've got three events to do tonight. So

---

in the back of the car."); OCE Report, Exhibit 34 at 17-2646\_0527 (Representative Duncan's son testifying that he and his sisters have been participating in events and different campaign things their whole lives.).

<sup>50</sup> OCE Report, Exhibit 7 at 17-2646\_0165.

<sup>51</sup> OCE Report, Exhibit 7 at 17-2646\_0146.

<sup>52</sup> OCE Report, Exhibit 35 at 17-2646\_0537.

<sup>53</sup> OCE Report, Exhibit 7 at 17-2646\_0144.

<sup>54</sup> OCE Report, Exhibit 7 at 17-2646\_0145.

<sup>55</sup> OCE Report, Exhibit 7 at 17-2646\_0146 (Representative Duncan describing two instances where constituents told him he should be proud of his daughters, which one example occurring just minutes before the interview.).

<sup>56</sup> OCE Report, Exhibit 7 at 17-2646\_0146.

<sup>57</sup> OCE Report, Exhibit 7 at 17-2646\_0152.

<sup>58</sup> OCE Report, Exhibit 7 at 17-2646\_0143.

<sup>59</sup> OCE Report, Exhibit 7 at 17-2646\_0153.

<sup>60</sup> OCE Report, Exhibit 7 at 17-2646\_0157.

<sup>61</sup> OCE Report, Exhibit 7 at 17-2646\_0147.

<sup>62</sup> OCE Report, Exhibit 33 at 17-2646\_0463.

<sup>63</sup> OCE Report, Exhibit 33 at 17-2646\_0460.

this never ends.”<sup>64</sup> “But Jimmy is known for his constituent service, and everybody wants a piece of him. And, you know the minute he lands at the airport. You know somebodies[sic] always there. Can you do this? You know can you do that?”<sup>65</sup> Representative Duncan described it similarly, “Every place I go, people want to come up to me and express opinions or ask for help, or both. I mean, every place. They do the same to John. People come and say, ‘Tell your dad this or that.’”<sup>66</sup> His son carries Representative Duncan’s father’s name forward and, as his chief surrogate in the District, is similarly recognized and sought out under all matter of circumstance. For some, meeting Representative Duncan’s son was almost like meeting him. Representative Duncan’s constituents want to see his family members.

Representative Duncan’s approach to campaigning relied less on print advertising or costly TV/radio spots, but instead can be summed up by one word: accessibility. He made himself personally assessable to the constituents of the 2<sup>nd</sup> District. There was no event too small, too insignificant, too inconvenient in location or time that he would not make the effort to attend. A fellow Member once poked fun at him for how many Eagle Scout meetings he attended each weekend.

This “personal” approach to campaigning extended well beyond planned events. Representative Duncan willingly allowed it to consume virtually every aspect of his time in the District. From a mundane trip to the grocery store, attending a University of Tennessee football or basketball game, to attempted private nights out dining with his wife or family; there existed a strong likelihood that such desired private time would evolve into a public appearance, or an impromptu town hall, as people, individually or even in groups, would approach him to express views, opinions, and ask questions. He is known for his constituent service, and constituents also expect the Congressman and his family to be everywhere all the time. Representative Duncan understands this and accepts it gladly as a part of his responsibilities as a public servant.

Representative Duncan is not in any way suggesting that the “chance” of merely being recognized or someone saying “hi” justifies any adjacent expense as a campaign expense. However, the Committee should understand (something which the OCE appears to have ignored) that Representative Duncan’s way of campaigning relies heavily on being assessable and having himself, family members, and key campaign staff in the District, visible, approachable, and prepared to speak about issues. His campaign’s spending is reflective of the personal, one-on-one approach to his campaigning. He would rather eat with his constituents in small settings than spend thousands of dollars on TV ads for name recognition which he does not need. Representative Duncan has always felt it was much better politically for him and his surrogates (family members) to attend lunches, dinners, receptions, and events, rather than spend the money running ads to which no one pays attention. Representative Duncan realizes that some who have never run for office, especially in this impersonal high tech age, might not really understand or believe how personal his campaigns were.

Representative Duncan’s method of campaigning and constituent service is what some might call “old school” and was copied from his father:

But one thing, Jimmy’s father started was going to the funeral home for people. And, they expect it. Well, when Jimmy’s in D.C. during the week of course he can’t go. So, John does you know all of that for him. Eagle Scout ceremonies.<sup>67</sup>

\*\*\*

---

<sup>64</sup> OCE Report, Exhibit 33 at 17-2646\_0473.

<sup>65</sup> OCE Report, Exhibit 33 at 17-2646\_0465.

<sup>66</sup> OCE Report, Exhibit 7 at 17-2646\_0157-0158.

<sup>67</sup> OCE Report, Exhibit 33 at 17-2646\_0463.

Another, thing he does other than going to the funeral home almost every night of the week because we know so many people. He does Eagle Scout ceremonies, which are very important to Jimmy because he was a scout leader and founded a troop. And so usually, every Sunday there are four or five of those. To go, there's just no way you can fit, one person can physically you know cover all that. So, he does a lot of that. Yesterday he spoke to a group of doctors out at UT hospital. And they were honoring veterans. The night before that, he went to the Mission of Hope, which it's a nonprofit for the Appalachian region. This is a very poor area. And, I personally support them, it's a good cause. So, he went to that.<sup>68</sup>

Representative Duncan also testified that because people came up to him everywhere he went, he did a lot of campaigning by going to various restaurants and seeing people out in public.<sup>69</sup> Going to events is one of the ways he campaigned:

But I used to go to every, for almost 25 years I went to everything you could get into. And I was just working nights, and weekends, and holidays. But that Lamar Alexander and I flew in one time. And there was a new restaurant being opened in Knoxville Airport and we talked to all the people and walking out of there, he said he told them that Jimmy had come home and was going to go to five evening Scout ceremonies, four 50th wedding anniversaries, and three churches, and then he said I'm going up to Townsend and contemplating legislation. That's the difference between the six year term, and a two year term.<sup>70</sup>

Representative Duncan's spouse highlighted the uniqueness of her husband's campaigning style:

And you'd kind of have to know this area. This is probably different from most congressional things. But, Jimmy's name recognition is tremendous here. And, he's so loved. And everybody thinks they know us, although we may not know them. So they kind of. We're invited to everything going on in this city.<sup>71</sup>

"[E]verybody thinks they know us."<sup>72</sup> Representative Duncan also testified that he surprised a lot of other Members because he never made a phone call to ask for a contribution – not one.<sup>73</sup> Rather, Representative Duncan would have a fundraising luncheon and would speak to the group, answer their questions, and thank them for contributing.<sup>74</sup>

Representative Duncan relies heavily on personal contact and interaction, and most of his campaigning revolves around events which foster that. For example, the Duncan Family Barbeque, started by Representative Duncan's father in 1968, is a free event held every two years.<sup>75</sup> It was started as a way to interact with constituents and to show them appreciation for the privilege of representing them. It is also a way the Duncans, first Representative Duncan Sr., and then Representative Duncan Jr., say thank you to the people who have helped them over the years and who have been good to the Duncan

---

<sup>68</sup> OCE Report, Exhibit 33 at 17-2646\_0464.

<sup>69</sup> OCE Report, Exhibit 7 at 17-2646\_0159.

<sup>70</sup> OCE Report, Exhibit 7 at 17-2646\_0152 and 17-2646\_0169.

<sup>71</sup> OCE Report, Exhibit 33 at 17-2646\_0463.

<sup>72</sup> OCE Report, Exhibit 33 at 17-2646\_0468.

<sup>73</sup> OCE Report, Exhibit 7 at 17-2646\_0150; OCE Report, Exhibit 33 at 17-2646\_0461 (Representative Duncan's spouse stated that her husband has never asked one person for a contribution).

<sup>74</sup> OCE Report, Exhibit 7 at 17-2646\_0151.

<sup>75</sup> Matt Lakin, *An old-time tradition: Duncan Family Barbeque Continues*, Knoxville News Sentinel, October 24, 2012 <http://archive.knoxnews.com/news/local/an-old-time-tradition-duncan-family-barbecue-continues-ep-359791727-356530641.html/> (last visited Feb. 12, 2018).

family. Other politicians come to the Barbeque, such as President Bush, but it is not designed for that.<sup>76</sup> “It’s just a thank you from the Duncan family for all the support that they’ve given. People expect it and love it. . . .”<sup>77</sup> In recent years, over 10,000 people attend the free event (at which no fundraising occurs). Representative Duncan got a lot of suggestions and comments from constituents at this event, while other elected officials have said they come to the event to build relationships.<sup>78</sup>

Representative Duncan’s campaigning style, modeled after his father’s, is old fashioned and some might say quaint. As did his father, Representative Duncan gives out lucky pennies to constituents. For over 30 years, Representative Duncan has continued a tradition begun by his father at the Tennessee Valley A&I Fair, which draws a couple hundred thousand people. Representative Duncan has a very large booth giving away free ice water. Tim Russert, who had come to Knoxville to speak, had gone to the fair and noticed the water booth. He later told Representative Duncan that he saw the big booth at the fair that said “Free ice water compliments of your congressman.” Tim Russert said, “I’ve got to hand it to you. Anybody who could gain political capital by giving away water, that’s about the best political gimmick I’ve ever heard of.”<sup>79</sup>

Representative Duncan stated the obvious, but worth repeating axiom that in his job, “almost everything is political.”<sup>80</sup> His wife echoed this, “[e]verything is political when you get right down to it. Especially in this town [Knoxville].”<sup>81</sup> It is through this lens that the allegations below must be viewed.

The events and trips described in the OCE’s Report were done solely to further the campaign and constituent relationships. These are not glamorous, glittering events and parties. These are additional time commitments on an already-crowded calendar designed to help Representative Duncan and his family surrogates meet constituents and build goodwill, conduct outreach, and hear concerns. As the evidence demonstrates, there is no lavish lifestyle, or glitzy club memberships. “But I really went times when I was tired and didn’t really want to go, but I thought it was good politically.”<sup>82</sup> These expenses all had a political purpose. Further, it is not Representative Duncan’s character to spend campaign funds freely, especially on things which have no connection to his election.<sup>83</sup>

This style of campaigning was clearly successful for Representative Duncan, but also very different from other Republican candidates in Tennessee who outspent him in some cases two to one.<sup>84</sup>

---

<sup>76</sup> OCE Report, Exhibit 33 at 17-2646\_0463.

<sup>77</sup> OCE Report, Exhibit 33 at 17-2646\_0463.

<sup>78</sup> Matt Lakin, *An old-time tradition: Duncan Family Barbeque Continues*, Knoxville News Sentinel, October 24, 2012 <http://archive.knoxnews.com/news/local/an-old-time-tradition-duncan-family-barbecue-continues-ep-359791727-356530641.html/> (last visited Feb. 12, 2018).

<sup>79</sup> 154 CONG. REC. 15027 (2008) (statement of Rep. Duncan (TN) regarding “Timothy J. Russert Highway”).

<sup>80</sup> OCE Report, Exhibit 7 at 17-2646\_0145.

<sup>81</sup> OCE Report, Exhibit 7 at 17-2646\_0465.

<sup>82</sup> OCE Report, Exhibit 7 at 17-2646\_0174.

<sup>83</sup> OCE Report, Exhibit 7 at 17-2646\_0149 (“I’m very tight with money and so.”); OCE Report, Exhibit 33 at 17-2646\_0489 (Mrs. Duncan explaining that her husband is a “tight, tight, person. He always wants us to look for the best deal.”); *id.* at 17-2646\_0491 (Mrs. Duncan explaining that Representative Duncan no longer goes to the NRCC convention in New York City “because he says it’s too expensive.”); *id.* at 17-2646\_0492 (“Jimmy likes to go there because you can get in and out and it’s cheap.”); OCE Report, Exhibit 6 at 17-2646\_0130 (“there’s a special rate at The Greenbrier, and he’s very frugal on things.”); OCE Report, Exhibit 7 at 17-2646\_0163 (“So we found a, what we thought was the cheapest place that they could stay in the course of the inauguration.”).

<sup>84</sup> Except for 2014, Duncan for Congress spent around half a million dollars each election year between 2010 and 2016. By comparison, Marsha Blackburn, Chuck Fleischmann, Stephen Fischer, David Kustoff, Scott Desjarlais and Diane Black spent (with limited exception) over a million dollars, and in some cases, over two million dollars. See Federal Election Commission Disclosure Data Catalog; <http://www.fec.gov/data/>

Representative Duncan won his elections by some of the highest percentages in the country.<sup>85</sup> In the very beginning, the Duncans had to turn people because they had so many volunteers.<sup>86</sup> As the years went by, the number of volunteers dwindled because they knew he would win and didn't think he needed any help.<sup>87</sup> It was difficult to get people, other than family, to work on the campaign, so the Duncans were very appreciative of those supporters who put in both time and resources.<sup>88</sup>

As demonstrated above, the Duncans are instantly recognized in the Second Congressional District and combined with all of the events, ceremonies, funerals and the like which they attend, they cherish their time off. They are not traveling to political events, throwing parties or purchasing club memberships to enrich themselves or live a more lavish life. Rather, these numerous events – while a privilege and honor to attend – intrude upon their very limited “off” time. The Duncans attend and organize these events when politically necessary, but also turn down invitations and trips in order to stay home.<sup>89</sup> Representative Duncan's wife testified that she didn't travel on behalf of the campaign “unless I had to.”<sup>90</sup> “I'd rather be at the beach than in DC at a boring something.”<sup>91</sup> Representative Duncan confessed that as to some events, he “went times when [he] was tired and didn't really want to go, but I thought it was good politically.”<sup>92</sup>

In an attempt to convert a political expense into personal use, the OCE has mischaracterized Representative Duncan's relationships with various people. As Representative Duncan and his wife testified, everything is political. Many people in the Second District feel as if they know the Duncans. As Representative Duncan's spouse explained, “we are invited to everything. And last,[sic] year we got 54 high school graduation invitations.”<sup>93</sup> “[E]verybody thinks they know us.”<sup>94</sup>

As discussed, because Representative Duncan had won by such large margins, it became increasingly difficult to get people excited about his campaign and he had to rely upon family.<sup>95</sup> While Representative Duncan was always appreciative of his supporters, he was particularly thankful for the small number who worked tirelessly for his reelection, especially during the Tea Party wave.<sup>96</sup> The OCE questioned Duncan family members about the nature of the relationship with these dedicated supporters. Not surprisingly, most of them responded that they or the Duncan family were “friends” with these individuals.<sup>97</sup> While these individuals may be “friends” (and it would be odd for a candidate to say otherwise about individuals who contribute thousands of dollars and work long hours without pay on the

---

<sup>85</sup> OCE Report, Exhibit 33 at 17-2646\_0493.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> OCE Report, Exhibit 33 at 17-2646\_0491 (Representative Duncan's spouse explaining that she did not go to the Republican Convention in Tampa, but preferred instead to stay at their home. She also explained that they stopped going to the NRCC conference in New York City every year because it was “too expensive.”); *see also* OCE Report, Exhibit 33 at 17-2646\_0483 (Representative Duncan's spouse explaining that she does not see Representative Duncan's biggest supporter because she spends most of her time at the lake.”).

<sup>90</sup> OCE Report, Exhibit 33 at 17-2646\_0487.

<sup>91</sup> *Id.*

<sup>92</sup> OCE Report, Exhibit 7 at 17-2646\_0174.

<sup>93</sup> OCE Report, Exhibit 33 at 17-2646\_0466.

<sup>94</sup> OCE Report, Exhibit 33 at 17-2646\_0468.

<sup>95</sup> OCE Report, Exhibit 7 at 17-2646\_0144 (“I can tell you that I had hundreds of people working my first campaign in 1988. But as I came along and I kept winning these elections with big margins, you get to a point where you can't get people very excited about a campaign like mine. So I think you end up having, or at least I end up relying more on family. I'm very blessed and we've always had a very close family.”).

<sup>96</sup> OCE Report, Exhibit 7 at 17-2646\_0144.

<sup>97</sup> *See, e.g.*, OCE Report, Exhibit 33 at 17-2646\_0471 (“We're friends with their whole family.”).

campaign), they are also campaign supporters, campaign workers, interns, employees of other Members of Congress, influential people in the community, people who did robo calls or put up yard signs, did a commercial, hosted fundraisers and receptions, raised money, addressed invitations, and endorsed from the pulpit.<sup>98</sup> The fact that the Duncans occasionally have lunch with individuals who are supporters or interact with them at public events,<sup>99</sup> does not ipso facto change a political expenditure into personal use. Showing human compassion or being “friendly” does not convert a political expenditure into personal use.<sup>100</sup> In a town where everything is political, socializing with individuals who are involved in politics or who are community leaders is not enough to turn a subsequent political expenditure into personal use. As will be demonstrated, campaign funds were expended to achieve a political benefit and would not have been spent were Representative Duncan not a candidate. The fact that some individuals were “friends” or had been in social situations with the Duncan family does not change this, nor remove the incredible amount of work, support, and financial assistance they provided.<sup>101</sup>

Part and parcel of Representative Duncan’s approach to campaigning is the personal touch. It is through this lens that all of the OCE’s allegations of personal use should be viewed. His campaign has thrown events at Club LeConte to honor low income school kids, hosted showers for campaign workers and supporters there, joined the Knoxville Quarterback Club in order to meet and honor local high school athletes, and hosted an event at the Greenbrier to thank campaign supporters and strategize for the next tough election. These events advanced his campaign and complimented the personal approach which the Congressman believes has enabled him to represent the 2nd District for over 30 years.

### **Applicable Law, Regulations and Standard of Conduct**

The OCE sets out the applicable law, regulations and standards of conduct, but makes a critical omission in its recitation, and therefore, a more complete summary and explanation is warranted here.

---

<sup>98</sup> OCE Report, Exhibit 33 at 17-2646\_0470 (“served as an intern for Jimmy”, “she’s worked not on a full-time and not for any pay, but at different things here”, “Her brother works for Jeff Sessions in Washington. They’re very political.” “contributed every election to us”); *id.* at 17-2646\_0471 (“Workers. Just dog work that nobody else wanted to do.”); *id.* at 17-2646\_0473 (“their son Travis also worked as an intern”, “But we both are involved in the same activities in town and we’re just very involved, so we see each other all the time.”); *id.* at 17-2646\_0477 (“did a bunch of robo calls for us. They worked in the campaign. They put up signs. They did everything. . . .”); *id.* at 17-2646\_0478 (Coach Fulmer did robo calls for my husband. He put up yard signs for my husband. They had a big sign in their yard. They were some of our biggest supporters and did everything for nothing.”); *id.* at 17-2646\_0481 (“Anything I needed done, she would be there. She helped me address invitations to a reception one time. She took a bunch of yard signs, and physically herself, you know put them up. She always[sic] willing and eager to help.”); *id.* at 17-2646\_0483 (“She is Jimmy’s biggest supporter in the whole world. And she tells everybody. She hasn’t done it lightly[sic] but, she will call you at least 20 times a day.”); *id.* at 17-2646\_0490 (“He is one of our great supporters. He does all of Garth Brooks’ events.”); *id.* at 17-2646\_0493 (“They worked, most of them daily. In our offices. . . .They put up signs, host receptions, just all kinds of things.” “He did a commercial for Jimmy and endorsed him from the pulpit.” “She worked doing spreadsheets and making calls and trying to get the vote out and all that for weeks and weeks and weeks.” “hosted a fundraiser, raised money” “he had 30 signs in front of his whole company”).

<sup>99</sup> OCE Report, Exhibit 33 at 17-2646\_0481 (“Yeah I still see, in fact I spoke to her yesterday, because we are going to an event Thursday night at Cherokee Country Club with 800 other people to honor Pete Debusk, who was the chairman of the board of LMU, also owns DeRoyal Industries, he is a billionaire and he owns the world’s largest medical supplies.”).

<sup>100</sup> OCE Report at 33 at 17-2646\_0483-0484 (“But sometimes I’d feel sorry for her because she never had children and I would take her to the doctor. . . you know things that she needed. I just tried to be helpful.”).

<sup>101</sup> Such a finding it at odds with campaigns with names such as “Friends of Candidate X.”

“It is well established that candidates have wide latitude when it comes to spending campaign funds.”<sup>102</sup> Section 30114 of the FECA *expressly permits* the use of campaign funds for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or for any other lawful purpose unless prohibited by the personal use section.<sup>103</sup> In its recitation of the applicable law, rules, and standard of conduct, the OCE glaringly omits the first part of the FECA, which sets out the permitted uses of campaign funds and instead jumps to what is prohibited.<sup>104</sup> It is misleading to omit that a contribution accepted by a candidate may be used by the candidate “for otherwise authorized expenditures in connection with the campaign for Federal office” or “for any other lawful purpose *unless* prohibited by subsection (b) of this section” (the personal use section).<sup>105</sup> If the alleged expenditures are otherwise lawful (the OCE has not argued otherwise), then they are permissible *unless* it can be demonstrated that they are prohibited under the personal use subsection.

A contribution is converted to personal use if the contribution is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office.<sup>106</sup>

The FEC’s regulations define the personal use of campaign funds as:

Any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligations or expense of any person that would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.<sup>107</sup>

Both the FECA and the regulations set forth categories of *per se* personal use, while the regulations provide categories where personal use is determined on a case-by-case basis.<sup>108</sup> Certain expenses in connection with official duties are not considered personal use.<sup>109</sup> The FEC has stated that “[i]f the candidate can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.”<sup>110</sup>

The House Ethics Rules provide that a Member “may not convert campaign funds to personal use in excess of an amount representing reimbursement for legitimate and verifiable campaign expenditures.”<sup>111</sup>

In several instances, the OCE implies that an expense does not have a political nexus because no fundraising occurred. In other instances, the OCE displays its naïveté and lack of understanding about campaigns, making judgment calls about the campaign or political purpose while ignoring both testimony and common practice. As will be demonstrated below, the OCE has not presented substantial reason to

<sup>102</sup> Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioner Caroline C. Hunter, MUR 6672, *In the Matter of Bilirakis for Congress, et al*, at 1 (citations omitted).

<sup>103</sup> 52 U.S.C. § 30114(a)(1) and (6) and (b)(1).

<sup>104</sup> OCE Report, at 7 (¶¶17-18).

<sup>105</sup> 52 U.S.C. § 30114(a)(1) and (6) (emphasis added).

<sup>106</sup> 52 U.S.C. §30114(b)(2). Congress expressly adopted the FEC’s irrespective definition of personal use and added it to the FECA in 2002 but it did not codify or otherwise mention the case-by-case consideration of permissible disbursements, and therefore, that language in the regulation remains unchanged since its adoption.

<sup>107</sup> 11 CFR § 113.1(g).

<sup>108</sup> 52 U.S.C. § 30114(b)(2)(A)-(I); 11 CFR § 113.1(g) and (g)(1)(ii).

<sup>109</sup> 11 CFR § 113.1(g)(5).

<sup>110</sup> *Final Rule and Explanation and Justification, Personal Use of Campaign Funds*, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995) (Explanation and Justification).

<sup>111</sup> Rules of the House of Representatives, 114th Congress, Rule XXIII, clause 6(b).

believe that the alleged expenditures are prohibited under the personal use subsection, but rather relies on a combination of speculation, an undefined and unsupported “misuse” standard, and ignores evidence and testimony to support its referral.

### **Representative Duncan’s Use of Campaign Funds for Travel Was For Campaign and Political Purposes**

FEC regulations define personal use as any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder.<sup>112</sup> The FEC does not treat all travel as per se personal, but uses a case-by-case basis.<sup>113</sup> Family travel, including adult children, to participate in campaign activities is not per se personal as is family vacation travel.<sup>114</sup> Representative Duncan occasionally asked his family members to travel with him to help him politically as they had both official and unofficial roles in the campaign and with the leadership PAC.<sup>115</sup> As will be shown in each case below, all of the travel had a campaign nexus. Travel expenses, including subsistence expenses incurred during travel are permissible on a case by case basis, but if a committee uses campaign funds to pay expenses associated with travel that involves both personal activities and campaign or officeholder-related activities, the incremental expenses that result from the personal activities are personal use.<sup>116</sup> As will be demonstrated below, with one exception (which was an inadvertent mistake), all of the trips had a political nexus and would not have been taken irrespective of the campaign or Representative Duncan’s duties as an officeholder.

In several instances, the OCE appears to be taking a narrow view of campaign-related, inquiring whether any campaign fundraising occurred.<sup>117</sup> FEC regulations and House Ethics rules do not take such a narrow view of campaign-related, but are interpreted broadly to include traditional politically-related activities, such as spending time with constituents.<sup>118</sup> A trip or an event does not have to contain fundraising to have a campaign nexus.

### **Greenbrier Trip with Campaign Supporters, Workers, Donors and Constituents**<sup>119</sup>

As previously noted, a contribution is converted to personal use only if the commitment or obligation giving rise to the expense would exist irrespective of the candidate’s election campaign. If campaign funds are used for a financial obligation that is caused by campaign activity, that is not personal

---

<sup>112</sup> 11 CFR § 113.1(g).

<sup>113</sup> 11 CFR § 113.1(g)(1)(ii)(C).

<sup>114</sup> See FEC Advisory Opinion 1996-19 (June 10, 1996) (finding that campaign funds could be used to pay for the candidate’s spouse to travel to a national political party convention because the spouse expected to “engage in activities . . . in furtherance of” the candidate’s election, including “attempt[ing] to maintain contacts and goodwill with persons who will support your campaign through fundraising assistance and contributions,” and communicating “with constituents with respect to your campaign.”). If a family member other than a spouse is performing the same activities, there is no reasoning for limiting payment of the travel expenses only to a spouse.

<sup>115</sup> OCE Report, Exhibit 34 at 17-2646\_0519 (Son explaining that he’s been involved in politics since he was born and he’s been asked to travel and work at the events).

<sup>116</sup> 11 CFR § 113.1(g)(1)(ii)(C).

<sup>117</sup> OCE Report, Exhibit 33 at 17-2646\_0488).

<sup>118</sup> House Select Comm. on Ethics, *Final Report*, H. Rep. 95-1837, 95th Cong., 2d Sess. 16 (1979).

<sup>119</sup> The OCE disregards the fact that the attendees were chosen because they were campaign supporters, workers, donors and constituents. The OCE instead calls them “friends.”



use.<sup>120</sup> The FECA and FEC regulations grant campaigns wide discretion to use campaign funds to influence the candidate's election, including expenses for travel.<sup>121</sup>

It is Representative Duncan's wide discretion to decide to host campaign supporters, workers, donors, and constituents at the Greenbrier in 2014. Many other Members of Congress have made the same decision that it is politically beneficial to hold fundraisers and events for supporters at resorts all over the country. Members of Congress run for reelection every two years. It is hardly unusual for Members to thank supporters and volunteers who put large amounts of time and energy into the campaigns. Members who have not faced serious reelection challenges routinely express their appreciation to their supporters, workers, and volunteers.

Congressman Duncan took Jane and Tommy Lowe, Allison Burchett and Michael Strickland to the Greenbrier, all of whom are contributors. Ms. Lowe and Ms. Burchett had spent countless hours working at campaign headquarters and helping at the big event at the Coliseum.<sup>122</sup>

Brian DeBusk, his wife, and his father Pete DeBusk, helped host a reception for Speaker Boehner, were large contributors to Congressman Duncan's campaign, and supported the Duncan campaign by putting up large campaign signs on their properties.<sup>123</sup> Pete DeBusk is the chairman of Lincoln Memorial University and chairman of DeRoyal Industries. The DeBusk family is one of the campaign's largest contributors.<sup>124</sup> Brian DeBusk and his wife came to the Greenbrier.

Rev. Clarence Sexton and his wife also came to the Greenbrier. Rev. Sexton is the minister at one of Knoxville's largest churches and is President of Crown College, a large Christian college. Rev. Sexton is not Congressman Duncan's minister, but has had Congressman Duncan speak in his church and at patriotic programs downtown many times. His 200 member college choir sings at the Duncan family barbeque. His congregation has about 3,000 members each Sunday and he's "real active politically."<sup>125</sup> He has helped Representative Duncan for many years and could help anyone politically; he is a key person in the community.<sup>126</sup>

Three of Congressman Duncan's adult children were also at the Greenbrier. All three had worked long and hard in all of Congressman Duncan's campaigns, but especially the campaigns over the last 10 years, and two of his children and one of his daughters-in-law held official roles with the campaign committee and/or leadership PAC.

Documents produced by Moxley Carmichael support the campaign nexus although these documents were not provided to Representative Duncan pursuant to OCE Rule 4(F) and are attached to

---

<sup>120</sup> *Final Rule and Explanation and Justification, Personal Use of Campaign Funds*, 60 Fed. Reg. 7862, 7864 (Feb. 9, 1995).

<sup>121</sup> The OCE tries to create an issue by stating that none of the witnesses provided a clear explanation for the charges at the casino bar. OCE Report, at 20 (¶60). If the OCE is implying that campaign funds were used to purchase casino chips, that was categorically denied by the witnesses. OCE Report, Exhibit 34 at 17-2646\_0429; OCE Report, Exhibit 6 at 17-2646\_0134; OCE Report, Exhibit 34 at 17-2646\_0529. The witnesses testified that these charges may have been for a meal at the casino restaurant. OCE Exhibit 9 at 17-2646\_0274.

<sup>122</sup> OCE Report, Exhibit 6 at 17-2646\_0131.

<sup>123</sup> OCE Report, Exhibit 6 at 17-2646\_0131.

<sup>124</sup> OCE Report, Exhibit 6 at 17-2646\_0131.

<sup>125</sup> OCE Report, Exhibit 6 at 17-2646\_0130-0131.

<sup>126</sup> OCE Report, Exhibit 6 at 17-2646\_0131.

this Response.<sup>127</sup> In addition to these documents which set forth these individuals' generous involvement in the campaign, members of the Duncan family testified about their substantial contributions.

Representative Duncan explained that the trip was his idea because he had heard of other members who had gone to resorts to hold events, including some which he personally attended, and when he saw that the Greenbrier Resort had cheap rates, he thought it would be a good way to say thank you to people who had done so much in his 2014 campaign, which had been very difficult due to the Tea Party involvement.<sup>128</sup> He also did it not only to thank them for what they'd done for him, but because his father told him that you can tell in a congressional race what kind of campaign you're going to have two years from now on election night.<sup>129</sup> On election night in 2014, he was very disappointed with the vote that he got in the 2014 primary and started worrying that he was going to have a tougher campaign in 2016 than he'd had in 2014.<sup>130</sup> Representative Duncan had hoped that the people whom he took to the Greenbrier would also help him again in 2016.<sup>131</sup> It was paid for with campaign funds because "it was a campaign event."<sup>132</sup> There were dinners and other meals during the stay at which they discussed campaign matters.<sup>133</sup> They had meetings with the attendees, thanking them for all they did and talking about "how we could improve next time."<sup>134</sup>

Mrs. Duncan provided additional context about the campaign nexus of the trip:

Jimmy won every election, one of the highest percentages in the whole country and that year all these Tea Party people just went wild. That's when people were getting defeated. Like I said earlier, in the very beginning, we had. . . we just had to turn people away because we had so many volunteers. But the longer he stayed in, they[sic] "Oh you're going to win. You don't need any help."

It was hard to get people to come work. So, we took the people that are, I guess, on your list. They worked, most of them daily. In our offices. One girl was not the only one there. They put up signs, host receptions, just all kinds of things. We took those people there because they wouldn't take any pay for what they were doing during the course of the campaign. It was like, awful, awful campaign.<sup>135</sup>

Mrs. Duncan said they invited those who had helped most in the campaign and that she would have voiced her opinion if her husband wanted to invite someone whom she knew didn't do any work.<sup>136</sup>

The Chief of Staff testified that Representative Duncan

---

<sup>127</sup> Email from Charley Sexton to Bob Griffiths and Son A of a draft invitation listing the following individuals as members of the host committee: Mr. and Mrs. Pete DeBusk, Randy and Jan Greaves, Phillip and Vicky Fulmer, Allison Burchett and Michael Strickland. Mr. and Mrs. Pete DeBusk hosted the event at their guest lodge; Email from Charley Sexton to John Duncan dated July 23, 2014 discussing a radio ad which closes with Clarence Sexton; Moxley Carmichael Invoice for May 2014 – August 2014, listing services for coordinating surrogate endorsement and robocall of Phillip Fulmer.

<sup>128</sup> OCE Report, Exhibit 7 at 17-2646\_0160.

<sup>129</sup> OCE Report, Exhibit 7 at 17-2646\_0160 and Errata Sheet.

<sup>130</sup> OCE Report, Exhibit 7 at 17-2646\_0160.

<sup>131</sup> OCE Report, Exhibit 7 at 17-2646\_0160.

<sup>132</sup> OCE Report, Exhibit 7 at 17-2646\_0162.

<sup>133</sup> OCE Report, Exhibit 7 at 17-2646\_0162.

<sup>134</sup> OCE Report, Exhibit 33 at 17-2646\_0494.

<sup>135</sup> OCE Report, Exhibit 33 at 17-2646\_0493.

<sup>136</sup> OCE Report, Exhibit 33 at 17-2646\_0493.

had mentioned to me that he'd like to do something special for some of his very best supporters, people who had gone beyond the call in the campaign and one of his top contributors, as well. I think I recall he said something like that there's a special rate at The Greenbrier, and he's very frugal on things. He said, "I think that would be a good thing to do for the campaign."<sup>137</sup>

The trip to the Greenbrier would not have occurred irrespective of the campaign. Although Representative Duncan has varying degrees of friendships with these individuals, they were chosen and the trip was taken solely to thank them, line up support for 2016 and strategize. Representative Duncan's adult children attended because they have active roles, both official and unofficial, with his campaign and leadership PAC. The Committee has not disqualified payments by virtue of a personal relationship, but instead found personal use "where campaign moneys were expended for personal enjoyment, entertainment, or economic well-being of an individual *without any clear nexus that the funds so expended achieved any political benefit.*"<sup>138</sup> Representative Duncan would not have taken this group of people to the Greenbrier had he not anticipated a difficult campaign in 2016. The record does not support the OCE's inference that Representative Duncan would have incurred the trip expenses absent the campaign.<sup>139</sup>

### Inauguration

During the 2017 Inauguration in D.C., Representative Duncan hosted an open house at the Rayburn House Office Building from 8:30 am until 3:00 pm for constituents in DC.<sup>140</sup> Official House funds may not be used to pay food or beverage expenses related to receptions held by Members in connection with their swearing-in, or on Inauguration Day. However, Members may use their campaign funds to pay the costs of such events, but may not engage in political fundraising.<sup>141</sup>

It was permissible for the campaign to pay for the travel of Representative Duncan's sons, the campaign manager and the former treasurer of the leadership PAC, to DC to assist him with the breakfast before the swearing-in and the constituent reception afterwards, and attend dinners with constituents.<sup>142</sup> Mrs. Duncan testified that they had about 1200 requests for the 126 or so Inauguration tickets, so they knew that a lot of constituents were coming to DC for the Inauguration and he said to her that he needed her "to go up and work."<sup>143</sup> Representative Duncan explained that because several hundred constituents were coming to DC for the Inauguration, he wanted his family members to help entertain them.<sup>144</sup>

Mrs. Duncan explained the benefits of having her husband's surrogates in attendance:

---

<sup>137</sup> OCE Report, Exhibit 6 at 17-2646\_0130.

<sup>138</sup> House Comm. of Standards of Official Conduct, *Investigation of Financial Transactions of Representative James Weaver with His Campaign Organization*, H. Rep. 99-933, 99th Cong. 2d Sess. at 13 (1986) (emphasis added).

<sup>139</sup> Representative Duncan has reimbursed his campaign for all non-lodging charges, with the exception of the large meals. While his daughter has been active in his campaigns, particularly in an important area of his district, Representative Duncan has reimbursed the campaign for the amount of her lodging. Representative Duncan does not concede that any of these expenses were for personal use, but wishes to avoid any appearance of impropriety.

<sup>140</sup> OCE Report at 65 (¶65).

<sup>141</sup> House Ethics Manual, 110<sup>th</sup> Cong., 2d Session, at 160 (2008); *but see* OCE Report, Exhibit 33 at 17-2646\_0488-0489 (inquiring about whether any fundraising events occurred).

<sup>142</sup> OCE Report, Exhibit 7 at 17-2646\_0164-0165; OCE Report, Exhibit 9 at 17-2646\_0268 (Stating his father hosted an open house and a breakfast before and after the Inauguration and he wanted to have the family members there to greet everybody from the district who was coming.); OCE Report, Exhibit 34 at 17-2646\_0523 (entertaining constituents during the Inauguration).

<sup>143</sup> OCE Report, Exhibit 33 at 17-2646\_0488.

<sup>144</sup> OCE Report, Exhibit 7 at 17-2646\_0163.

So, all of them came before the actual swearing in and all of that stuff and we just visited with him[sic]. In fact, night before last, I saw this man who said, "Oh, my daughter loved talking to you at the Inauguration event." And said, "Oh, by the way, she got into law school. Once again, that is campaign, and that is everybody thinks they know us. And that is the way we can interact one-on-one. But there's just no way, with that many people, in that short of time we could do it. And, everybody drove the thousand miles, and then stayed at the Best Western, which was the cheapest."<sup>145</sup>

The Chief of Staff explained that the reception was attended by a lot of people, and the organizing and hosting of it was done by the Congressman's family and some of the staff.<sup>146</sup> Representative Duncan also testified that the family attended a dinner hosted by Dr. Hashemian, a contributor who is a nuclear scientist.<sup>147</sup>

The travel expenses thus had a political nexus and existed irrespective of Representative Duncan's campaign. As a result, the OCE's finding regarding Inauguration travel is unupportable.<sup>148</sup>

### NRCC New York

The OCE correctly notes that campaign funds could permissibly be used to pay for Representative Duncan and his wife to travel to the National Republican Congressional Committee ("NRCC") event in December 2009-2011 held in New York City.<sup>149</sup> However, the OCE takes issue with the payment of travel for Representative Duncan's adult children and their spouses, citing the rule permitting travel to be paid for minor children.<sup>150</sup> While the rule may permit minor children to travel on behalf of the campaign, it does not *prohibit* travel by adult children on behalf of the campaign. The OCE has no support for its allegations, but only claims that campaign payments for the travel expenses of family members "heighten" the personal use concerns.<sup>151</sup> "Heightened" concerns are not enough to support a referral to this Committee, nor are the concerns borne out. Further, as flimsy support, the OCE cites to hearsay and innuendo in a Roll Call article containing criticism of the NRCC fundraising event.<sup>152</sup> The cost of the NRCC fundraising event and the structure of the NRCC's event are not sufficient by themselves to turn a *political party* fundraising event into personal use of the attendees.

The OCE fails to note that these adult children held both official and unofficial roles with the campaign committee and/or the leadership PAC. Representative Duncan testified that the NRCC meeting is attended by a lot of lobbyists and attendance helps solidify relationships with various heads of associations and PACs which you hope will contribute to you later on.<sup>153</sup> Representative Duncan

<sup>145</sup> OCE Report, Exhibit 33 at 17-2646\_0488.

<sup>146</sup> OCE Report, Exhibit 6 at 17-2646\_0128.

<sup>147</sup> OCE Report, Exhibit 7 at 17-2646\_0164-0165.

<sup>148</sup> While all of the attendees (including Mr. Rhodes) for whom rooms were paid assisted with the reception, solely to avoid any appearance of impropriety, Representative Duncan has reimbursed the campaign for the cost of Mr. Rhodes' hotel room. Representative Duncan has also reimbursed his campaign for the Prime Rib dinner attended by constituents and those who worked at the reception to remove any allegation of impropriety.

<sup>149</sup> OCE Report at 25 (¶86). Representative Duncan stopped attending the NRCC event after 2011 because it was too expensive. OCE Report, Exhibit 33 at 17-2646\_0491. Although Representative Duncan has determined that it is too expensive for the campaign to pay for travel to the NRCC event in New York City, the Duncans continue trips to New York City using personal funds. *Id.* at 17-2646\_0492.

<sup>150</sup> *Id.*

<sup>151</sup> OCE Report at 25 (¶86).

<sup>152</sup> OCE Report at 23 (¶74).

<sup>153</sup> OCE Report, Exhibit 7 at 17-2646\_0165.

explained that having his son and his wife<sup>154</sup> attend helped him with other Members of Congress and they had been involved in his campaigns since adulthood.<sup>155</sup> His son explained that at these events, he's a representative of his father and he will talk with other Members because his father can't talk to everyone at one time.<sup>156</sup> Finally, Representative Duncan explained that almost every other member has family at the event, from small children on, because it's a family type trip.<sup>157</sup>

Representative Duncan personally paid for some family members to attend the NRCC meeting in 2010, while the campaign paid for the travel of one son.<sup>158</sup> The son's whose travel was paid for out of campaign funds, was named treasurer of the leadership PAC a few months after the trip. He also testified that he attended NRCC events during this 2010 trip and has traveled with his father to other political events.<sup>159</sup> This is consistent with Representative Duncan's campaigning style whereby members of the family have active roles in his campaign, both official and unofficial, and assist him both within and outside of the District.

The OCE cites the testimony of Representative Duncan's daughter-in-law, who stated that she did not attend any events related to the conference as support for its personal use allegation.<sup>160</sup> However, the OCE fails to note that in 2010, Representative Duncan personally paid for her travel; therefore, she was not required to attend any of the NRCC events.<sup>161</sup>

The OCE notes Son B's testimony that he didn't recall campaign committee fundraising events, although he thought there were conversations about fundraising and relationship building which would lead to future fundraising.<sup>162</sup> The regulations do not require "explicit solicitation of contributions" since this would be a significant intrusion into how candidates conduct campaign business.<sup>163</sup>

The OCE report notes two charges to Sak's Fifth Avenue as being reported to the FEC as a "gift expense."<sup>164</sup> These minor charges were for the restaurant and were misclassified.<sup>165</sup> As such, any misclassification is properly within the jurisdiction of the FEC. Finally, the OCE notes low dollar expenditures appeared on the credit card statements in December for 2009 – 2011.<sup>166</sup> The OCE lacks any evidentiary support for its speculation that such low dollar expenditures might be for the personal benefit of Representative Duncan's family, and it failed to meet its burden of proof to support a referral of this claim.

---

<sup>154</sup> At the time his son's wife attended the NRCC meeting in 2010, she was not yet married to him. In 2010, Representative Duncan reimbursed his campaign for her travel. OCE Report at 24 (¶77).

<sup>155</sup> OCE Report, Exhibit 7 at 17-2646\_0165.

<sup>156</sup> OCE Report, Exhibit 34 at 17-2646\_0520.

<sup>157</sup> OCE Report, Exhibit 7 at 17-2646\_0165.

<sup>158</sup> OCE Report at 24 (¶77).

<sup>159</sup> OCE Report, Exhibit 34 at 17-2646\_0519-0520.

<sup>160</sup> OCE Report at 25 (¶82).

<sup>161</sup> OCE Report at 24 (¶77).

<sup>162</sup> OCE Report at 25 (¶83).

<sup>163</sup> *Final Rule and Explanation and Justification, Personal Use of Campaign Funds*, 60 Fed. Reg. 7862, 7866 (Feb. 9, 1995).

<sup>164</sup> OCE Report at 25-26 (¶87).

<sup>165</sup> While Representative Duncan continues to believe these are proper campaign meals, he has reimbursed his campaign in the amount of \$329.95 to remove any allegations of impropriety.

<sup>166</sup> OCE Report at 26 (¶88).

As demonstrated, the travel expenses for the trips to the NRCC event in 2009, 2010, and 2011 contained a political nexus. What OCE can't prove with evidence, it tries to do so with hearsay and innuendo. This is not enough and the Committee should take no further action with respect to this claim.

### Montana Trip

The OCE presented evidence of a trip to Montana in 2010 by Representative Duncan's son and his former wife and related expenses of \$220.00 for six different US Airways flight charges.<sup>167</sup> Both Representative Duncan and his son said that they thought frequent flyer miles had been used, and Representative Duncan further testified that he did not know about the trip until shortly before his interview.<sup>168</sup>

Representative Duncan has reimbursed his campaign for \$220.00 for this simple mistake. Due to the fact that the amount is small, has been reimbursed, and Representative Duncan had no knowledge of these unintentional charges, no additional action by the Committee is merited.

### White House Christmas Party and CPAC

The OCE takes issue with the campaign's payment of a mileage reimbursement for Son A (and his wife) to drive to DC to attend the White House Christmas party with Representative Duncan. Taking a ridiculous and overly narrow view, the OCE claims that it "could not identify a campaign or political purpose" for attending the White House Christmas party.<sup>169</sup> Son A testified that Representative Duncan wanted him to attend and "meet all the people that are there."<sup>170</sup> The chief of staff to first lady Laura Bush described these parties as "populated with political supporters, state party chairmen."<sup>171</sup>

"The Ethics Committee has long advised that each Member has wide discretion to determine whether any particular expenditure would serve such purposes, provided that the Member does not convert campaign funds to personal or official uses."<sup>172</sup> It appears that OCE is interpreting the rule "to limit the use of campaign funds strictly to a Member's reelection campaign," rather than interpreting it "broadly to encompass the traditional politically-related activities of Members of Congress."<sup>173</sup> Clearly, attendance at the White House Christmas party is encompassed within traditional politically-related activities of Members of Congress and thus it was permissible to pay the mileage reimbursement for the campaign manager to attend.

The OCE notes payment of travel for Son A's wife to attend the Conservative Political Action Conference in order to make political connections.<sup>174</sup> The campaign manager testified that his wife also attended to talk to different campaign vendors and hear the speeches on policies from people who were running for higher offices.<sup>175</sup> His wife has attended CPAC two times.<sup>176</sup>

---

<sup>167</sup> OCE Report at 26 (¶89).

<sup>168</sup> *Id.* at ¶90.

<sup>169</sup> OCE Report at 27 (¶91).

<sup>170</sup> OCE Report, Exhibit 9 at 17-2646\_0267.

<sup>171</sup> Jordyn Phelps and Megan Hughes, *Trump Goes Big With White House Christmas, But Who Pays?* (Dec. 20, 2017) <http://abcnews.go.com/Politics/trump-big-white-house-christmas-pays/story?id=51893455> (last visited Feb. 8, 2018).

<sup>172</sup> House Ethics Manual at 154 (2008).

<sup>173</sup> House Select Comm. on Ethics, *Final Report*, H. Rep. 95-1837, 95th Cong., 2d Sess. 16 (1979).

<sup>174</sup> OCE Report at 27 (¶92).

<sup>175</sup> OCE Report, Exhibit 9 at 17-2646\_0265.

<sup>176</sup> *Id.*

Son A explained that his wife plays a role in the campaign as she does a lot of different things and is involved in a lot of campaign activities.<sup>177</sup> Despite this, the OCE takes issue with the payment of the flight expense because “she has never held a formal role with the campaign committee.”<sup>178</sup> The OCE is reading a requirement into the FEC’s regulations that does not exist. There is no requirement that before an individual may have travel paid for, they must have an official role. Such a requirement flies in the wide discretion which candidates are given to expend funds to further their campaigns. In this case, the travel was to participate in campaign activities, and therefore it is permissible regardless of the fact that his wife had no “official” role with the campaign.

Given CPAC’s obvious political nexus, this matter does not warrant further inquiry by the Committee.

### Club Memberships

FEC regulations list categories of *per se* personal use, one of which includes dues payments.<sup>179</sup> However, only dues or fees at a country club, health club, recreational facility are prohibited, unless they are part of the costs of a specific fundraising event that takes place on the organization’s premises.<sup>180</sup> In the Explanation and Justification accompanying the personal use regulation, the Commission made clear that organizations for which campaign funds can be used to pay for membership dues “need only have an indirect nexus to the campaign:

‘The rule allows a candidate or officeholder to use campaign funds to pay membership dues to an organization that may have political interests. This would include community or civic organizations that candidate or officeholder joins in his or her district in order to maintain political contacts with constituents or the business community. Even though these organizations are not considered political organizations under 26 U.S.C. § 527, they will be considered to have political aspects for the purposes of this rule.’<sup>181</sup>

The FECA does not declare dues “to other nonpolitical organizations” to be *per se* personal use.<sup>182</sup> As explained in the Statement of Reasons in MUR 6672, this language appears only in the Commission’s regulations, and should not be read too narrowly.<sup>183</sup> The Statement of Reasons goes on to explain that the regulation is not intended to include traditional campaign activity, such as attendance at organizational conventions or other community or civic organizations.<sup>184</sup> Concerned with the FEC’s General Counsel’s broad reading (much like the OCE’s approach in this matter), the Vice Chairman explained the “limited reach of the regulation:

---

<sup>177</sup> *Id.* at 17-2646\_0266.

<sup>178</sup> OCE Report at 27 (¶93).

<sup>179</sup> 11 CFR 113.1(g)(1)(i)(G).

<sup>180</sup> *Id.*

<sup>181</sup> Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioner Caroline C. Hunter, *In the Matter of Bilirakis for Congress, et al.*, Matter Under Review 6672 at 3 (quoting *Final Rule and Explanation and Justification, Personal Use of Campaign Funds*, 60 Fed. Reg. 7862, 7866 (Feb. 9, 1995)).

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* at 3-4, footnote 8.

<sup>184</sup> *Id.* at 4 (quoting Explanation & Justification, 60 Fed. Reg. 7866 (Feb. 9, 1995)).

‘[T]he rule does not require an explicit solicitation of contributions or make distinctions based on who participates in the activity, since this would be a significant intrusion into how candidates and officeholders conduct campaign business.’<sup>185</sup>

Therefore, the regulation clearly distinguishes non-political organizations, such as country clubs and recreational entities, from community and civic organizations, “the interaction with which are deemed to be sufficiently political for purposes of the personal use rule.”<sup>186</sup> FEC regulations “specifically permit a candidate or officeholder to use campaign funds to pay membership dues for civic or community organizations if he or she believes there is a political benefit and to use campaign funds to participate in events sponsored by such organizations.”<sup>187</sup> For purposes of the regulations, “a group is sufficiently politically interested if a candidate or officeholder joins it ‘in order to maintain political contacts with constituents or the business community.’”<sup>188</sup>

The OCE relies on glossy, marketing descriptions designed to attract potential members to turn the use of campaign funds from political to nonpolitical, while ignoring the testimony of the Duncans, the Chief of Staff, and the Manager of one of the clubs regarding the true nature and purpose of these clubs. Further, Representative Duncan is a member of a country club, paid for out of personal funds, which he uses every chance he gets.<sup>189</sup> He does not need Club LeConte for social purposes and does not use it for any of the purposes noted by the OCE.

#### Club LeConte Dues<sup>190</sup>

Club LeConte is located on the 27th floor of an office building, and in addition to dining space, has private meeting and event space.<sup>191</sup> The OCE goes to great lengths describing all of the benefits of Club LeConte, including the wine tasting events, steak and lobster dinners, Santa Brunch, access to private concierge service, discounts and access at affiliated hotels and restaurants, and complimentary access to over 300 affiliated properties.<sup>192</sup> The OCE is trying to turn the business and political nature of the Club into a country club or recreational center for which dues may not be paid for out of campaign funds. Yet the OCE does not cite to the Manager’s testimony that Representative Duncan did not have access to those benefits.<sup>193</sup> Congressman Duncan “declined to add those benefits in. The traveling benefits. So, in this membership, when the Congressman first joined, he just had local benefits, which was basically, access to our club, and access to our programs.”<sup>194</sup> The Manager further explained that Congressman Duncan was not taking advantage of upgrading his membership to include more than the basic benefits.<sup>195</sup>

---

<sup>185</sup> *Id.* at 4 (quoting Explanation & Justification, 60 Fed. Reg. 7866 (Feb. 9, 1995)).

<sup>186</sup> *Id.*

<sup>187</sup> *Id.* at 4-5.

<sup>188</sup> *Id.* at 3-4, footnote 8 (quoting Explanation & Justification, 60 Fed. Reg. 7866 (Feb. 9, 1995)).

<sup>189</sup> OCE Report, Exhibit 7 at 17-2646\_0170; OCE Report, Exhibit 33 at 17-2646\_0495.

<sup>190</sup> The interview of Club LeConte’s Manager contains numerous statements of exculpatory evidence which should have been provided by the OCE under OCE Rule 4(F), yet Representative Duncan was not given the transcript of this interview until this Committee transmitted the Findings to counsel. This violation was prejudicial because it denied Representative Duncan the opportunity to include this information in his response and defense before the Board’s vote. To the extent the OCE did not provide this testimony because it believed it not to be relevant, this reveals the OCE’s fundamental misunderstanding of the law and regulation which applies in this case.

<sup>191</sup> OCE Report, Exhibit 33 at 17-2646\_0475; OCE Report, Exhibit 52 at 17-2646\_0716-0717.

<sup>192</sup> OCE Report at 27-29 (¶¶97-103).

<sup>193</sup> OCE Report, Exhibit 52, at 17-2646\_0722.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.* at 17-2646\_0723.



The OCE highlights the possible benefits and social aspects of the Club, without presenting any evidence that the Duncans used the Club for social purposes. In doing so, the OCE fails to cite testimony from Representative Duncan, his wife, and the Manager, all of whom stated that the Duncans rarely eat at Club LeConte. Representative Duncan said that he might go to Club LeConte to eat once a year.<sup>196</sup> He usually goes to the Club to give a speech to a civic club.<sup>197</sup> Representative Duncan's spouse testified that she and her husband have a meal at the Club maybe once a year, which is stretching it.<sup>198</sup> In fact, she said that rather than eat at the Club, she rather go to a little drive-through restaurant where they serve you in your car and she could get a hot dog.<sup>199</sup>

The Manager corroborated the Duncans' testimony and said that they eat at the Club "[r]elatively infrequently."<sup>200</sup> The Manager said that he looks at the members' reservations every day but that over the ten years he's been at the Club, he's seen the Duncans "maybe three or four times, it's not that often."<sup>201</sup> He said that he's never seen Mrs. Duncan using the Club on her own for dining purposes.<sup>202</sup>

Representative Duncan's membership application supports the political nexus and his lack of use of the Club for social purposes. The application uses the campaign address and the email address of his Chief of Staff and checked the box directing that statements be sent to his business address.<sup>203</sup> The application lists basic membership, and Representative Duncan affirmatively checks the box declining interest in participating in upgraded Club benefits.<sup>204</sup>

The Manager explained that while Congressman Duncan was one of the few "politicos" who is a member of the Club, the mayor who is now the Governor was a member, and the current mayor who's running for governor was sponsored by a member.<sup>205</sup> The Manager concluded his interview by telling the OCE that the Club is "all about business leaders and business people making connections. Pretty good contingent from the University, not as strong as we'd like."<sup>206</sup> While Representative Duncan testified that he rarely eats at the Club, he usually goes to the Club to give a speech to a civic club, and recalled specifically speaking to a group of bankers.<sup>207</sup> This is precisely the type of connections which make the group "political" for purposes of the regulation. In Matter Under Review 6672, two of the FEC's commissioners made clear that while a group, such as the Royal Order of Jesters at issue in that matter, may be a social, fraternal organization, it is the contacts, and not the overall purpose of the group, which makes the group "political" for purposes of the rule.<sup>208</sup>

As will be further demonstrated below in the discussion about events held at the Club, the Club had political interests and was used by Representative Duncan for campaign and political purposes. The absence of personal use supports this conclusion. Further, Representative Duncan maintains a personal

---

<sup>196</sup> OCE Report, Exhibit 7 at 17-2646\_0167.

<sup>197</sup> *Id.* at 17-2646\_0168.

<sup>198</sup> OCE Report, Exhibit 33 at 17-2646\_0476.

<sup>199</sup> *Id.*

<sup>200</sup> OCE Report, Exhibit 52 at 17-2646\_0726.

<sup>201</sup> OCE Report, Exhibit 52 at 17-2646\_0726.

<sup>202</sup> *Id.* at 17-2646\_0727.

<sup>203</sup> *Id.* at 17-2646\_0850 - 0851.

<sup>204</sup> *Id.* at 17-2646\_0851.

<sup>205</sup> OCE Report, Exhibit 52 at 17-2646\_0736.

<sup>206</sup> *Id.*

<sup>207</sup> OCE Report, Exhibit 7 at 17-2646\_-0168.

<sup>208</sup> Matter Under Review 6672, *In the Matter of Bilirakis for Congress, et al.*, Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioner Caroline C. Hunter at 5.

membership at a country club; he does not need, nor need, Club LeConte for personal purposes.<sup>209</sup> The FEC's rule permits campaign funds to pay membership dues in an organizational with political interests, including community or civic organizations in the candidate's district in order to maintain political contacts with constituents or the business community.<sup>210</sup> The campaign funds used for Club LeConte dues were permissible and therefore, no further action is warranted by the Committee.

### Knoxville Quarterback Club

The OCE discusses the relatively small amount the campaign spent for expenses for the Knoxville Quarterback Club between 2008 and 2012 but makes no recommendation regarding this expenditure.<sup>211</sup> Further, the OCE ignores testimony and evidence that demonstrates the political nexus of this expense. It is precisely this sort of group the Commission had in mind when explaining the limited reach of its personal use regulations (see above). The Knoxville Quarterback Club is a non-profit civic or community organization, and membership in such an organization provides a political benefit to Representative Duncan.

The FEC's personal use regulations specifically permit a candidate or officeholder to use campaign funds to pay membership dues in an organization that may have political interests, including community or civic organizations that a candidate or officeholder joins in his district in order to maintain political contacts with constituents or the business community.<sup>212</sup> The Knoxville Quarterback Club holds events each Monday during football season at a local restaurant to hear from college football celebrities.<sup>213</sup> Representative Duncan described their meetings as a big event where they bring in big outside speakers and have 200 very prominent and successful people attend.<sup>214</sup> The OCE ignored Representative Duncan's testimony that "Tennessee football is the biggest thing in my district and that the colors orange and white are almost more patriotic than red, white, and blue where I'm from. It very much helped me in my campaigns to go to that club when I could."<sup>215</sup> The club's business aspect is reinforced by the fact that it meets on Mondays for lunch, as opposed to evenings when social clubs are more likely to meet. As a result, Representative Duncan could not always attend as Congress was sometimes in session on Monday when the club held its meetings.<sup>216</sup>

The Chief of Staff also described the business and political nexus of the club: "they have a guest speaker, then they honor local athletes, like the athlete of the week or something. . . High school athletes. They honor all of those, they honor a former University of Tennessee player."<sup>217</sup> The Chief of Staff further explained that "it was one of the best things we could go to politically. I mean, the people who come to that Quarterback Club, they're all very active in the community and in fact, anytime we've been down there, people are talking to him about, you know, bills in the Congress. . . Or running . . . You know, it's some of the most political people in Knoxville are members of this club."<sup>218</sup> These politically

---

<sup>209</sup> OCE Report, Exhibit 7 at 17-2646\_0170.

<sup>210</sup> *Final Rule and Explanation and Justification, Personal Use of Campaign Funds*, 60 Fed. Reg. 7862, 7866 (Feb. 9, 1995).

<sup>211</sup> OCE Report, at 34 – 35 (¶¶118-121).

<sup>212</sup> *Contribution and Expenditure Limitations and Prohibitions: Personal Use of Campaign Funds*, 60 Fed. Reg. 7861, 7866 (Feb. 9, 1995).

<sup>213</sup> OCE Report, at 34 (¶118).

<sup>214</sup> OCE Report, Exhibit 7 at 17-2646\_0169.

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> OCE Report, Exhibit 6 at 17-2646\_0119.

<sup>218</sup> *Id.* at 17-2646\_0120.

active people arrive about 30 to 45 minutes before it starts and stand around afterwards.<sup>219</sup> Congressman Duncan would stay for the entire meeting, and would congratulate the high school students that had won the awards.<sup>220</sup> It is these sorts of contacts, “and not the overall purpose of the group, which make the group ‘political’ for purposes of the rule.”<sup>221</sup> Representative Duncan’s purpose in joining the group is, in the words of the regulation’s Explanation and Justification, to “maintain political contacts with constituents or the business community.” The group’s activities allows the type of associating – that one-on-one interaction so important to Representative Duncan – necessary to “maintain political contacts with constituents or the business community.”<sup>222</sup>

The business nature of the “club” and the political nexus is clear and the OCE has presented no clear and convincing evidence that the \$1,400 in dues payments over the course of five years and the \$420.00 in lunch expenses constitute personal use.

### **Events at Club LeConte**

A contribution may be used by the candidate for authorized expenditures *in connection with* the campaign, and such use is not a conversion of campaign funds unless it is used to fulfill any commitment, obligation, or expense that would exist irrespective of the candidate’s election or duties as a Federal officeholder.

The OCE alleges that out of at least \$33,663.70 in banquet charges at the Club, approximately \$11,996.48 were for events which “may not have been bona fide campaign or political expenses.”<sup>223</sup> The OCE appears to be arguing that these events were not bona fide campaign or political expenses because they were “for the personal benefit of his family and friends.”<sup>224</sup> The OCE’s argument does not address each required part of the standard. The OCE ignores testimony that the events were for a campaign purpose (in connection with the campaign), and then argues that there were “friends” present at the events without ever demonstrating that these events would have occurred irrespective of the candidate’s election.

The documents produced demonstrate that the events at issue were *in connection with* the campaign. The banquet orders list the contact person as the Chief of Staff or in some cases, the Congressman’s scheduler.<sup>225</sup> The invoices came to the campaign post office box.<sup>226</sup> The record is replete with testimony that these events were *in connection with* the campaign. The Chief of Staff testified that these events had a campaign purpose because they involved people who had contributed, longtime supporters, including those who were very active in political things.<sup>227</sup> Documents produced by Moxley

---

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> Matter Under Review 6672, *In the Matter of Bilirakis for Congress, et al.*, Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioner Caroline C. Hunter at 5 (finding that while the Royal Order of Jesters was a social, fraternal organization, it was the fraternal contacts, not the overall purpose of the group, which make the group “political” for purposes of the rule.).

<sup>222</sup> *Final Rule and Explanation and Justification, Personal Use of Campaign Funds*, 60 Fed. Reg. 7862, 7866 (Feb. 9, 1995).

<sup>223</sup> OCE Report, at 34 (¶117).

<sup>224</sup> OCE Report, at 27 (¶96).

<sup>225</sup> OCE Report, Exhibit 33 at 17-2646\_0482.

<sup>226</sup> OCE Report, Exhibit 6 at 17-2646\_-0116.

<sup>227</sup> OCE Report, Exhibit 6 at 17-2646\_0116-0118.

Carmichael support this campaign nexus; these documents were not provided to Representative Duncan pursuant to OCE Rule 4(F) and are attached to this Response.<sup>228</sup>

Representative Duncan explained the campaign purpose of the events which his wife organized at the Club, stating that these events were for “various women who had supported us in campaigns, which I always thought that was a good thing to do because just like I relied on my kids to help me with young people, I relied on my wife to help me with women.”<sup>229</sup> He further explained the campaign purpose of these events as “appreciation for people who had helped me in campaigns, and in part to help me get votes from women. I’m a man. I need help with women in campaigns.”<sup>230</sup> These events are consistent with Representative Duncan’s personal interaction style of campaigning, his need to thank supporters and contributors to keep them engaged when he was winning by easy margins, and his use of family members as surrogates.

Mrs. Duncan explained that the reason the campaign paid for these events was that they were “campaign related.”<sup>231</sup> Mrs. Duncan explained that the campaign nexus for the Greaves shower was that the parents of the honoree, who had interned for Representative Duncan, were two of his biggest supporters, had worked hard without pay on the campaign, contributed to the campaign, their son works for Attorney General Sessions, and they are very political.<sup>232</sup> These are important people in the community who have done much for others, such as helping to establish the bone marrow donor bank.<sup>233</sup> These are people who are involved in the same activities in town and are very involved, so the Duncans see them all the time.<sup>234</sup> Mrs. Duncan said that some of the other young girls who had worked for them were also in attendance.<sup>235</sup>

Mrs. Duncan also testified about the campaign purpose of the event held in honor of the daughter of University of Tennessee’s football coach. The Fulmer family, she explained, was coach of the football team, worked on the campaign, put up signs, and did robo calls for the campaign.<sup>236</sup> She explained it to the OCE a second time, “Coach Fulmer did robo calls for my husband. He put up yard signs for my husband. They had a big sign in their yard. They were some of our biggest supporters and did everything for nothing.”<sup>237</sup>

Regarding another event, Mrs. Duncan explained that the honoree was one of her husband’s biggest supporters who did anything that needed to be done on the campaign including addressing invitations to a reception, and physically putting up yard signs.<sup>238</sup> In response to the OCE asking about a

---

<sup>228</sup> Email from Charley Sexton to Bob Griffiths and the campaign manager of a draft invitation listing the following individuals as members of the host committee: Mr. and Mrs. Pete DeBusk, Randy and Jan Greaves, Phillip and Vicky Fulmer, Allison Burchett and Michael Strickland. Mr. and Mrs. Pete DeBusk hosted the event at their guest lodge; Email from Charley Sexton to John Duncan dated July 23, 2014 discussing a radio ad which closes with Clarence Sexton; Moxley Carmichael Invoice for May 2014 – August 2014, listing services for coordinating surrogate endorsement and robocall of Phillip Fulmer.

<sup>229</sup> OCE Report, Exhibit 7 at 17-2646\_-0167.

<sup>230</sup> OCE Report, Exhibit 7 at 17-2646\_0167.

<sup>231</sup> OCE Report, Exhibit 33 at 17-2646\_0478.

<sup>232</sup> OCE Report, Exhibit 33 at 17-2646\_0470.

<sup>233</sup> *Id.* at 17-2646\_0471.

<sup>234</sup> *Id.* at 17-2646\_0473.

<sup>235</sup> *Id.* at 17-2646\_0470.

<sup>236</sup> OCE Report, Exhibit 33 at 17-2646\_0476-0477; see attachment, produced by Moxley Carmichael, but not provided by the OCE pursuant to OCE Rule 4(F), which discusses the script for a robocall to be done for the campaign by Coach Fulmer.

<sup>237</sup> OCE Report, Exhibit 33 at 17-2646\_0478.

<sup>238</sup> OCE Report, Exhibit 33 at 17-2646\_0481.

personal relationship, Mrs. Duncan replied that she had spoken to her the day before because they were going to an event at the Cherokee Country Club with 800 other people to honor Pete DeBusk, who is chairman of the board of LMU and owns DeRoyal Industries.<sup>239</sup>

Mrs. Duncan testified described a surprise birthday party in 2013 as one thrown for Representative Duncan's "biggest supporter in the whole world. And she tells everybody. She hasn't done it lightly[sic] but, she will call you at least 20 times a day. And her husband, was head of the geology department at the University of Tennessee for over 50 years."<sup>240</sup> Mrs. Duncan said that she doesn't "ever see her now" but the supporter used to call her every day and sometimes Mrs. Duncan felt sorry for her because she never had children, so Mrs. Duncan tried to be helpful by taking her to the doctor.<sup>241</sup> The OCE alleges that this amounts to an acknowledgment of a "personal" relationship, when in reality, this is maintaining a constituent relationship and showing basic human compassion. The campaign would not have paid for a surprise birthday party irrespective of the campaign.

Bizarrely, the OCE completely ignores the testimony of Representative Duncan about one of these events and includes the event in its list of possible problematic events. Representative Duncan testified that the event on February 14, 2015 was a dinner with the president of one of the local banks and his wife, and Mrs. Duncan.<sup>242</sup> He explained that they were active politically, had been a contributor, and several of their children had been interns for Representative Duncan, and their son was the most recent state Republican chairman.<sup>243</sup> Representative Duncan also told the OCE that this couple had stood at the precinct of his opponent and worked the whole day for him, even though they went to church with his opponent.<sup>244</sup> It is hard to see how this dinner could be more campaign-related, but the OCE has overridden Representative Duncan's discretion and decided this dinner is likely not for a bona fide campaign purpose.

The OCE claims these 10 events, out of 30 events held between September 2008 and October 2017, a nine year span, constituted a "problematic pattern."<sup>245</sup> These events are entirely consistent with the other campaign or political uses of the Club by the campaign, which events the OCE fails to mention. For example, Congressman Duncan took some sixth graders from an African American school in Knoxville to lunch where they practiced etiquette they had learned in class.<sup>246</sup> Mrs. Duncan said that when they see those kids now, they never forget that.<sup>247</sup> Representative Duncan described taking the entire eighth grade from the poorest school in his district and took all of the kids to eat lunch in what is to them the fanciest restaurant in Knoxville.<sup>248</sup> The Chief of Staff also testified that Representative Duncan had taken kids from poor-income areas into Knoxville for lunch at the Club and then given them a tour of the federal building several times.<sup>249</sup> He has also taken reading contest winners to Club LeConte.<sup>250</sup>

---

<sup>239</sup> OCE Report, Exhibit 33 at 17-2646\_0481.

<sup>240</sup> OCE Report, Exhibit 33 at 17-2646\_0483.

<sup>241</sup> OCE Report, Exhibit 33 at 17-2646\_0483-0484.

<sup>242</sup> OCE Report, Exhibit 7 at 17-2646\_0168.

<sup>243</sup> OCE, Report, Exhibit 7 at 17-2646\_0168.

<sup>244</sup> OCE Report, Exhibit 7 at 17-2646\_0168.

<sup>245</sup> OCE Report, at 27 (¶96); OCE Report, at 30 (¶108).

<sup>246</sup> OCE Report, Exhibit 33 at 17-2646\_0475 and 17-2646\_0482; OCE Report, Exhibit 7 at 17-2646\_0166.

<sup>247</sup> OCE Report, Exhibit 33 at 17-2646\_0475.

<sup>248</sup> OCE Report, Exhibit 7 at 17-2646\_0166.

<sup>249</sup> OCE Report, Exhibit 6 at 17-2646\_0116-0117.

<sup>250</sup> OCE Report, Exhibit 33 at 17-2646\_0475; OCE Report, Exhibit 7 at 17-2646\_0166..

Finally, the campaign has held fundraising events at the Club.<sup>251</sup> When asked why his campaign pays for Club LeConte, Representative Duncan replied, “[s]o I can do those things that I just told you about.”<sup>252</sup>

### Cell Phone Expenses

The OCE claims that the campaign manager “may have misused the campaign funded credit card account to pay for personal meal and telephone expenditures.”<sup>253</sup> First, the campaign manager did not “misuse” the campaign credit card by purchasing a cell phone and hotspot to be used in performing campaign work. Second, “misuse” is not the standard for determining personal use. Third, whether or not Representative Duncan knew that his son had a campaign-funded phone which was used for campaign purposes is irrelevant.

FEC regulations permit campaign funds to be used for computers, cell phones, internet hotspots, and other equipment used in the performance of campaign duties. The OCE does not dispute that the campaign manager used the campaign-funded cell phone or hotspot for campaign purposes. Bizarrely, the OCE argues that the campaign manager’s *other* phone, which is used for most of his personal calls, somehow constitutes misuse of his campaign cell phone:<sup>254</sup>

Q: Is that the only cell phone you and your wife have?

Son A: No. I actually I have another phone that I can use for, I guess, other business related matter but. . .

Q: Is that a cell phone?

Son A: Yes.

Q: Okay. Is that other phone used for anything personal?

Son A: Yeah, from time to time. Most of the personal calls I get will be on this.

The evidence demonstrates that any mixed use of the campaign cell phone was not more than de minimis or occasional and the OCE does not allege otherwise.

Second, assuming arguendo misuse of the campaign cell phone, that is not the applicable standard under FEC regulations or House Rules, and therefore, this allegation should be ignored.

Third, the OCE has shown that Representative Duncan may have been aware that his son had a campaign-funded cell phone. Knowledge of a cell phone used for campaign purposes is not sufficient to prove that a Member knew or had reason to know of improper conduct.<sup>255</sup> In other matters, the Committee has declined to issue any sanction against the member for conduct undertaken by others of which he was unaware.<sup>256</sup> Representative Duncan has reimbursed his campaign for the cost of the second campaign-funded cell phone, not conceding any improper conduct, but merely to avoid any appearance of impropriety.

---

<sup>251</sup> See attached Moxley Carmichael invoice; OCE Report, Exhibit 6 at 17-2646\_0113.

<sup>252</sup> OCE Report, Exhibit 7 at 17-2646\_0167.

<sup>253</sup> OCE Report at 36 (¶122).

<sup>254</sup> OCE Report, Exhibit 9 at 17-2646\_0252.

<sup>255</sup> House Comm. On Ethic, *In the Matter of Allegations Relating to Representative Judy Chu*, H. Rept. 113-665, 113th Cong. 2nd Sess. (2014) at 6-7.

<sup>256</sup> *Id.*

### Meals

As has been amply demonstrated, Representative Duncan's campaigning style relies heavily on personal interaction, including taking constituents out for a meal.<sup>257</sup> He told his son to take people out for lunches.<sup>258</sup> Using campaign funds to pay for meals while conducting campaign work or to talk with constituents is very common. Various media outlets report frequently on lawmakers' meal expenses disclosed on FEC reports, and the campaign manager's meal expenses are no different from those of other campaigns.<sup>259</sup> Quinnipiac political science professor Scott McLean has noted that spending on meals and gifts (see next section) fosters goodwill, something which is invaluable in politics because it builds loyalty for the future and wards off potential future challengers.<sup>260</sup> Representative Duncan has long employed this strategy to great success.

The OCE references only one meal which it alleges may constitute personal use.<sup>261</sup> The OCE cites to \$5,962.61 for meals at Aubrey's but has no clear and convincing evidence that such meals amounted to personal use.<sup>262</sup> The OCE mentions a lack of receipts,<sup>263</sup> but a lack of receipts, by itself is insufficient to prove personal use.<sup>264</sup> Such speculation cannot support a finding of misconduct and does not warrant further inquiry by this Committee. Moreover, not as an admission of conversion but to remove any doubt of impropriety, Representative Duncan has voluntarily reimbursed the campaign for the cost of the \$179.03 meal and the cost of a \$47.49 meal referenced by the OCE.

---

<sup>257</sup> OCE Report, Exhibit 7 at 17-2646\_0159.

<sup>258</sup> OCE Report, Exhibit 7 at 17-2646\_0158.

<sup>259</sup> See, e.g., Brad Bumsted and Mike Wereschagin, *Campaign expenses: chocolate, meals, flowers, club dues*, Pittsburgh Tribune (Dec. 20, 2010) [http://triblive.com/x/pittsburghtrib/news/s\\_714510.html](http://triblive.com/x/pittsburghtrib/news/s_714510.html) (last visited Feb. 12, 2018) (noting that Rep. Bob Brady spent more than \$1,000 on meals at the Jersey shore); Jake Sherman and Anna Palmer, *Scarves, BMWs, Admirals Clubs: Congress' petty cash problem*, Politico (May 1, 2015) <https://www.politico.com/story/2015/05/congress-campaign-finance-ethics-slush-fund-117541> (last visited Feb. 7, 2018) (reporting that Rep. Grijalva spent more than \$1,000 at Tune Inn); Ana Radelat, *CT lawmakers spend millions fending off underfunded foes*, CT Mirror (Nov. 2, 2016) <https://ctmirror.org/2016/11/02/ct-lawmakers-spend-millions-fending-off-underfunded-foes/> (last visited Feb. 7, 2018) (noting that Rep. John Larson spent more than \$43,000 on restaurant meals and that his campaign treasurer invites "past and prospective campaign donors, campaign staff and volunteers, campaign consultants, colleagues, political contacts and supporters" to these meals); Kim Geiger, *Campaign accounts fund luxuries for some lawmakers*, Chicago Tribune (Dec. 19, 2013) <http://www.chicagotribune.com/news/ct-campaign-spending-met-2-20131219-story.html> (last visited Feb. 12, 2018) (reporting that the Illinois delegation spent about \$500,000 combined on meals over a five year period, with two Members accounting for about \$130,000 each); Shallagh Murray, *Lawmakers Holding Solid Seats Spend as if They Were Shaky Use of Campaign Treasuries Is Coming Under Scrutiny*, The Washington Post (March 19, 2006) [https://www.washingtonpost.com/archive/politics/2006/03/19/lawmakers-holding-solid-seats-spend-as-if-they-were-shaky-span-class=bankheaduse-of-campaign-treasuries-is-coming-under-scrutinyspan/7d26fa67-4558-4002-bc22-910aab6e8469/?utm\\_term=.632af34f68d2](https://www.washingtonpost.com/archive/politics/2006/03/19/lawmakers-holding-solid-seats-spend-as-if-they-were-shaky-span-class=bankheaduse-of-campaign-treasuries-is-coming-under-scrutinyspan/7d26fa67-4558-4002-bc22-910aab6e8469/?utm_term=.632af34f68d2) (last visited Feb. 7, 2018) (discussing then Rep. Mike Pence disbursements for 293 meals in 2005 for an amount of \$9,806, Rep. Ralph Hall's 100 meal receipts which included low-dollar charges, and Rep. Patrick Kennedy's Starbucks' charges.).

<sup>260</sup> Even Without Challengers, CT lawmakers spend lots of campaign cash, CT Mirror (Feb. 18, 2016) <https://ctmirror.org/2016/02/18/even-without-challengers-ct-lawmakers-spend-lots-of-campaign-cash/> (last visited Feb. 9, 2018).

<sup>261</sup> OCE Report, at 41 (¶154).

<sup>262</sup> OCE Report, at 40 (¶152).

<sup>263</sup> OCE Report, at 36 (¶¶126-127).

<sup>264</sup> Matter Under Review 6666, *In re Joel C. Tyner, Joel for Congress, Misha Fredericks*, First General Counsel's Report at 13 (March 19, 2013).

### Special Occasion Gifts

The OCE cites a large number of special occasion gifts as “problematic” merely because they are part of an aggregate payment to American Express.<sup>265</sup> The OCE notes evidence of purchases with a nexus to constituent service and other permissible gifts but speculates, without any evidence, that some of the gifts “likely” went to personal friends of the family.<sup>266</sup> Such speculation cannot support a finding of misconduct and does not warrant further inquiry by this Committee. Furthermore, to the extent there is any issue because items are not itemized, that is a reporting question within the purview of the FEC, and not the Committee.

Although noting testimony from the Chief of Staff and Mrs. Duncan that she went to constituents, graduates in the district, community leaders, campaign supporters, interns and others, the OCE speculates that “it is likely that some of the campaign funded gift purchases went to personal friends of the family.”<sup>267</sup> Representative Duncan also testified that gifts would be given to the child of a firefighter or the head of the fire fighters’ union or something like that.<sup>268</sup>

As already discussed, many people in Representative Duncan’s district feel they know the Duncan family.<sup>269</sup> As a result, the campaign gets many invitations and announcements of milestone occasions.<sup>270</sup> The decision about whether to purchase a gift is based on whether “they’ve worked for free on our campaigns, or if they’ve done an open house for us”<sup>271</sup> or “helped in political campaigns over the years” or “been very active for us.”<sup>272</sup> These gifts serve a bona fide campaign or political purpose.

Further, the OCE takes issue with some of the gifts because the OCE could not determine whether gifts would have been purchased irrespective of Representative Duncan’s campaign or official duties.<sup>273</sup> In discussing one particular family, the OCE fails to provide complete testimony.<sup>274</sup> While one son testified that the Duncans are friends with the whole family, the OCE does not also mention that both the daughter and the son worked as interns for Congressman Duncan, the mother had been a judge, and that the son is a deputy for Attorney General Sessions.<sup>275</sup> As Mrs. Duncan noted, “They’re very political.”<sup>276</sup>

FEC regulations allow campaigns to use funds to benefit constituents or supporters on certain occasions as gestures of sympathy or goodwill. Aside from the requirement that an expenditure must not exist irrespective of the campaign, there is no rule that gifts to constituents or supporters with whom a candidate is “friends” or socializes with on occasion are prohibited. To read such a limitation into the rules would prohibit many expressions of goodwill and sympathy because many supporters will also be “friends” or people whom the candidate has known “for years.”

---

<sup>265</sup> OCE Report, at 42 (¶160, footnote 313).

<sup>266</sup> OCE Report, at 44 (¶¶169-170).

<sup>267</sup> OCE Report, at 43-44 (¶¶161-170).

<sup>268</sup> OCE Report, Exhibit 7 at 17-2646\_0171.

<sup>269</sup> OCE Report, Exhibit 33 at 17-2646\_0468 (“Because everybody thinks they know us.”).

<sup>270</sup> OCE Report, Exhibit 33 at 17-2646\_0474 (“So I never allowed my kids to[sic] that, but there’s not a day that goes by that we don’t get a request for something.”); *id.* at 17-2646\_-468 (“we had 54 high school graduation invitations”).

<sup>271</sup> OCE Report, Exhibit 33 at 17-2646\_0474.

<sup>272</sup> *Id.* at 17-2646\_0466; OCE Report, Exhibit 6 at 17-2646\_-0123.

<sup>273</sup> OCE Report, at 44 (¶169).

<sup>274</sup> OCE Report, at 44 (¶168).

<sup>275</sup> OCE Report, Exhibit 33 at 17-2646\_0471, 17-2646\_04733.

<sup>276</sup> OCE Report, Exhibit 33 at 17-2646\_0470.



Such an interpretation would impact the gift giving of many Members. A 2015 Politico article<sup>277</sup> discusses Rep. Anna Eshoo as using campaign funds to buy more than \$2,000 in gifts “for her good friend and fellow Californian, House Minority Leader Nancy Pelosi” and said that she tends to express her “appreciation with a token of thanks and to remember them on birthdays and holidays.”<sup>278</sup> Minority Leader Pelosi is described as Rep. Eshoo’s friend, and it should be noted that the Minority Leader is *not* her constituent. Another member takes about \$3,000 from his campaign account and gives each staffer \$200 as a holiday present.<sup>279</sup> The article also notes that one member spends \$10,000 every year at Capital Grille buying Christmas gifts for campaign aides.<sup>280</sup> The member’s chief of staff noted that “[s]ince members run for reelection every two years, it’s important to say ‘thank you’ to the men and women who volunteer so much of their time and energy to his campaigns,” adding that “[t]hese gifts were for political activists and ward leaders who are integral to Congressman Brady’s reelection efforts.”<sup>281</sup> House Majority Whip Steve Scalise spent \$12,295 at Vineyard Vines buying gifts for members of his vote-counting team.<sup>282</sup> Presumably, some of the recipients of these gifts are also “friends”, people they have known “for years” and with whom they may socialize occasionally.

This is not a case of a candidate using campaign funds to buy gifts for people for whom gifts would be purchased irrespective of the campaign. Mrs. Duncan testified that she has personally spent a hundred thousand dollars on gifts and doing other compassionate things for people, such as burying someone’s son when his parents didn’t have the money to do so.<sup>283</sup> Gifts purchased by the campaign, on the other hand, were in direct response to the hundreds of invitations received by the campaign or to express goodwill to constituents, campaign supporters and volunteers.

It should be noted that the OCE distracts from its failure to meet the standard for referral by including items which are completely irrelevant to the subject being discussed. When discussing the special occasion gifts, the OCE states that it identified other charges which may not have been bona fide campaign or political expenditures (although OCE gives no reason for this speculative statement) and then includes a lengthy footnote listing thirteen meal expenses and one non-meal expense.<sup>284</sup> If these meal expenses were a concern, why did the OCE include them with the gift analysis and not analyze them with the other meal expenses?

---

<sup>277</sup> One can find numerous articles discussing gifting by Members. See Shallagh Murray, *Lawmakers Holding Solid Seats Spend as if They Were Shaky Use of Campaign Treasuries Is Coming Under Scrutiny*, The Washington Post (March 19, 2006) [https://www.washingtonpost.com/archive/politics/2006/03/19/lawmakers-holding-solid-seats-spend-as-if-they-were-shaky-span-classbankheaduse-of-campaign-treasuries-is-coming-under-scrutinyspan/7d26fa67-4558-4002-bc22-910aab6e8469/?utm\\_term=.632af34f68d2](https://www.washingtonpost.com/archive/politics/2006/03/19/lawmakers-holding-solid-seats-spend-as-if-they-were-shaky-span-classbankheaduse-of-campaign-treasuries-is-coming-under-scrutinyspan/7d26fa67-4558-4002-bc22-910aab6e8469/?utm_term=.632af34f68d2) (last visited Feb. 7, 2018) (\$15,835 spent on condolence flowers for constituents); *Members of Congress Buy Xmas Gifts with Campaign Funds*, Rollcall (Dec. 27, 2013) <http://www.rollcall.com/moneyline/members-of-congress-buy-xmas-gifts-with-campaign-funds/> (last visited Feb. 7, 2018); Ana Radelat, *CT lawmakers spend millions fending off underfunded foes*, CT Mirror (Nov. 2, 2016) <https://ctmirror.org/2016/11/02/ct-lawmakers-spend-millions-fending-off-underfunded-foes/> (last visited Feb. 7, 2018) (\$10,000 spent on flowers for constituents).

<sup>278</sup> Jake Sherman and Anna Palmer, *Scarves, BMWs, Admirals Clubs: Congress’ petty cash problem*, Politico (May 1, 2015) <https://www.politico.com/story/2015/05/congress-campaign-finance-ethics-slush-fund-117541> (last visited Feb. 7, 2018).

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

<sup>283</sup> OCE Report, Exhibit 33 at 17-2646\_0474.

<sup>284</sup> OCE Report, at 42 (¶159).

Finally, the chart upon which the OCE relies contains errors, includes items clearly noted for constituents or supporters, and lists purchases merely because the gift purchases was not itemized on the campaign's FEC filings. To the extent the OCE is referring the matter based upon missing purposes or misclassification of gifts on the FEC report, that is properly within the jurisdiction of the FEC. A search of the FEC's database of committee filings, using the search feature for disbursements to various vendors (e.g., Babies R Us, Bloomingdales) will show that Duncan for Congress reports its gift disbursements similarly to most campaigns.<sup>285</sup> If the "disbursement details" search feature is used, one finds that most campaigns use "gift," "donor gift," "gifts for constituents," "gifts for supporters," "gifts and mementos." Curiously, the gift chart also includes expenses for meals and a contribution to a charitable organization, although the OCE states that it didn't include the meals in the total.<sup>286</sup> The chart includes the restaurant charge during the NRCC meeting and charges to the House Gift Shop which were part of aggregate payments to American Express.<sup>287</sup> The descriptions on the American Express statements and the handwritten notes from the campaign are consistent with the given FEC purpose. The Committee should disregard this chart as the OCE has presented no reason for completely disregarding the stated FEC purpose of these gift disbursements. The OCE's allegation is groundless and the Committee should dismiss this referral.

### Season Tickets

Duncan for Congress purchased tickets for various sporting events between 2009 and 2013. Candidates have wide latitude when it comes to spending their campaign funds. The Federal Election Campaign Act states that a contribution is converted to personal use if funds are used to fulfill any commitment, obligation or expense that would exist irrespective of the candidate's campaign, including, admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign.<sup>288</sup> The Explanation and Justification of the personal use regulation discusses expenses for purchase of tickets to a sporting event or concert or other form of entertainment in the context of attendance by the member at these events. The purchase of tickets must be part of a particular campaign event or officeholder activity and not a leisure outing at which the discussion occasionally focuses on the campaign or official functions.<sup>289</sup> At issue here is not whether there was a particular campaign event; these tickets were not used by the Congressman for particular campaign events but were distributed to various people.

The OCE gets hung up on the fact that some of the tickets were distributed to lobbyists and not constituents. As noted in the Explanation and Justification accompanying the personal use regulation, the rule does not "make distinctions based on who participates in the activity, since this would be a significant intrusion into how candidates and officeholders conduct campaign business."<sup>290</sup> The Deputy Chief of Staff noted that the lobbyists to whom some of the tickets all had attended campaign events or had made campaign contributions.<sup>291</sup> The Chief of Staff also said that the Washington Redskins tickets were given to constituents, lobbyists, campaign consultants or people who had contributed to his campaign.<sup>292</sup> The Chief of Staff said the same procedure was followed regarding the tickets the campaign

---

<sup>285</sup> FEC Campaign Finance Data, <https://www.fec.gov/data/disbursements/>

<sup>286</sup> OCE Report, Exhibit 1 at 17-2646\_0008 and 17-2646\_0023.

<sup>287</sup> OCE Report, Exhibit 1 at 17-2646\_0009 and 17-2646\_0012 and 17-2646\_0014.

<sup>288</sup> 52 U.S.C. § 30114(b)(2)(H).

<sup>289</sup> *Final Rule and Explanation and Justification, Personal Use of Campaign Funds*, 60 Fed. Reg. 7862, 7866 (Feb. 9, 1995).

<sup>290</sup> *Final Rule and Explanation and Justification, Personal Use of Campaign Funds*, 60 Fed. Reg. 7862, 7866 (Feb. 9, 1995).

<sup>291</sup> OCE Report, Exhibit 92 at 17-2646\_1052-1053; OCE Report, Exhibit 7 at 17-2646\_0172.

<sup>292</sup> OCE Report, Exhibit 6 at 17-2646\_0121.

gave away to the Knoxville Ice Bears and the University of Tennessee.<sup>293</sup> The Chief of Staff believes the amount paid to the Knoxville Symphony Orchestra was for a contribution.<sup>294</sup>

Almost five years ago, the campaign stopped purchasing and distributing tickets after hearing or receiving a communication from perhaps the NRCC or an Ethics pink sheet that the practice should be discontinued.<sup>295</sup>

Some of these tickets were donated to charity, and some were raffled off at campaign fundraisers, both of which are permissible uses of campaign funds under the FEC's regulations.<sup>296</sup> As such, the purchase of those tickets does not amount to personal use. Furthermore, to the extent that the FEC disbursement description of "Entertain Constituents" is misclassified (because the tickets were given away through auction or raffle or otherwise), that is solely a reporting issue within the jurisdiction of the FEC.

### **Golf**

The four expenditures for golf expenses for constituents totaling a de minimis \$812.24 occurred five to seven years ago. The campaign has produced all relevant records and no additional information can be located which can provide additional information about the specific campaign or officeholder activity associated with these charges.

The OCE states that Rep. Duncan attended the Greenbrier Resort on January 12, 2013, but the documentation provided suggests that it is not Rep. Duncan, but rather his son who was in attendance on that date.

In order to avoid any appearance of impropriety and not as an admission that these expenses are for personal use, Representative Duncan has reimbursed his campaign for \$812.24. Due to the passage of time, the fact that reimbursement has occurred, and the de minimis amounts involved, the Committee should not devote resources to this matter.

### **Road to Victory PAC**

As demonstrated above, the OCE's referral of the claim of personal use of leadership PAC funds cannot clear three jurisdictional hurdles. Moreover, Road to Victory raised the variance *sua sponte* with the FEC, noting in part that the outside certified public accounting firm found nothing that caused them to believe that the leadership PAC incurred expenses, disbursed funds, or received contributions that were not in accordance with FEC regulations. Additionally, the firm did not find any evidence which suggested that the variance was anything other than a result of non-reporting.<sup>297</sup>

The FEC did not refer the *sua sponte* matter to enforcement because the variance was not high enough and it did not involve significant amounts past 2010. Instead of referring the matter to enforcement, the FEC told the leadership PAC to work with its Reports Analysis Division ("RAD")

---

<sup>293</sup> OCE Report, Exhibit 6 at 17-2646\_0123.

<sup>294</sup> OCE Report, Exhibit 6 at 17-2646\_0123.

<sup>295</sup> OCE Report, Exhibit 7 at 17-2646\_0173; OCE Report, Exhibit 6 at 17-2646\_0121.

<sup>296</sup> OCE Report, Exhibit 92 at 17-2646\_1049-1051.

<sup>297</sup> OCE Report, Exhibit 9 at 17-2646\_-0276 (Son A testifying that he had no knowledge that any funds had been used for personal use.); OCE Report, Exhibit 34 at 17-2646\_-0516-0517 (former leadership PAC treasurer stating that it has his understanding that no funds had been misused.).

analyst. The leadership PAC worked with its analyst and reported the cash correction in accordance with the instructions given by its analyst at the FEC.

### **Staff Reimbursements Were Minimal, Sporadic, and Are Not Going to Reoccur**

The OCE Report addresses five instances where Rep. Duncan's campaign committee may have accepted contributions from his congressional employees.<sup>298</sup> These five reimbursements, occurred sporadically from 2010 to 2016, and total a de minimis amount of \$589.90. The reimbursements were reported on the campaign committee's FEC reports.

Representative Duncan has announced that he is not running for reelection. Given that, there is not much possibility of this conduct occurring again. Moreover, Representative Duncan was not aware of the reimbursements and nothing in the OCE's report contradicts this.<sup>299</sup>

In light of the above, additional action regarding these campaign reimbursements is not warranted. This approach is consistent with other matters in which the Committee declined to issue any sanction against the member for conduct undertaken by staff of which the member was unaware.<sup>300</sup> Furthermore, the Committee on Ethics should not devote its limited resources to reviewing a matter which is unlikely to reoccur and for which there is no remedial action.

### **Conclusion**

Representative Duncan is confident in asserting the principles he has governed himself by, both in public life as an elected official and in his private life, are of the highest standards. He did not knowingly act in a way that was illegal, inappropriate or questionable in the context of commonly understood ethical behavior. His campaign committee reported to the FEC all of the expenses at issue. Representative Duncan maintains that the expenses had a bona fide campaign purpose and would not have been made irrespective of the campaign, but to avoid any appearance of impropriety, has voluntarily reimbursed his campaign for the full cost of certain expenses.<sup>301</sup>

The Committee should dismiss the matter. Due to the various violations by the OCE of its rules, the Committee should withhold the public release of the prejudicial Report and Findings, or it should also release a statement which repudiates the OCE violations, especially the prohibited conclusions. In the event that the Committee determines that it is obligated to publicly disclose the OCE Report, we respectfully request that you publish a copy of this response as well.

---

<sup>298</sup> OCE Report, at 55 (¶¶216 – 218).

<sup>299</sup> See OCE Report, Exhibit 7 (Tr. Of Representative Duncan Interview), at 17-2646\_0174-0175. The OCE alleges, without any support whatsoever, that Representative Duncan may have requested a former Congressional staffer to purchase an item which was later reimbursed by the campaign committee. See OCE Report, at 56 (¶221). There is no support for this speculative statement, but even if true, it does not support a violation. In making such a request, Representative Duncan could have been directing the former Congressional staffer to purchase the permissible item using campaign funds.

<sup>300</sup> House Committee on Ethics, *In the Matter of Allegations Relating to Representative Judy Chu*, H. Rept. 113-665, 113th Cong. 2nd Sess. (2014) at 6-7.

<sup>301</sup> Representative Duncan has reimbursed his campaign \$11,369.93 to cover the costs of those expenses which were mistakenly paid (e.g., Montana trip), or for which there is no recollection (golf expenses, two meals totaling \$226.52), as well as other expenses which Representative Duncan continues to assert were bona fide campaign expenses existing irrespective of the campaign (second campaign cell phone, 2008 dinner, one hotel room during Inauguration, dinner during Inauguration, non-lodging expenses at the Greenbrier, and meals at Sak's Fifth Avenue during the NRCC meeting).

Finally, Representative Duncan, who has wide discretion of the use of his campaign funds, has shown that the expenses at issue resulted from campaign or officeholder activities and thus do not amount to personal use.<sup>302</sup> The OCE, with one exception, is basically telling this Committee that it has no evidence of violation, but nevertheless, the Committee should devote its resources into these baseless allegations because it thinks personal use may have occurred. This is not enough. Accordingly, we urge the Committee to reject the OCE's recommendation that it further review these allegations and close its investigation of this matter as the OCE has presented no compelling support for concluding that substantial reason exists for belief that a violation occurred. The facts, testimony, and law support a dismissal.

The evidence in the report relating to reimbursements demonstrates that any conduct of concern is incidental. Given the uncontroverted record that Representative Duncan did not know of, did not have reason to know, and did not participate in any of the reimbursements to staff, no further action is required. Moreover, given that Representative Duncan is retiring and the conduct giving rise to concern is not going to reoccur, the total amount of reimbursements is de minimis, with one reimbursement occurring more than seven years ago, we urge the Committee to conclude this matter without additional action.

We appreciate the Committee's attention to this matter, and are pleased to assist in a proper termination of it.

Sincerely,



David P. Goch  
*Counsel for Representative John J. Duncan Jr.*



Heidi K. Abegg  
*Counsel for Representative John J. Duncan Jr.*

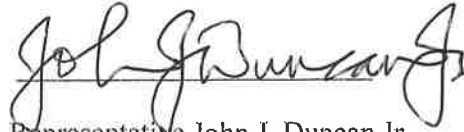
---

<sup>302</sup> *Final Rule and Explanation and Justification, Personal Use of Campaign Funds*, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995) ("The Commission, however, reaffirms its long-standing opinion that candidates have wide discretion over the use of campaign funds.").

**Declaration**

I, Representative John J. Duncan Jr., declare (certify, verify, or state) under penalty of perjury that the response and factual assertions contained in the attached letter dated Feb. 12, 2018, relating to my response to the January 4, 2018, Committee on Ethics letter, are true and correct.

Signature:



Name:

Representative John J. Duncan Jr.

Date:

FEB. 7, 2018

JOHN J. DUNCAN, JR.  
PH. [REDACTED]  
800 MARKET STREET SUITE 110  
KNOXVILLE, TN 37902

15-7434/2540

9006

DATE FEB. 12, 2018

PAY TO THE ORDER OF  
DUNCAN FOR CONGRESS \$11,369.93  
ELEVEN THOUSAND, THREE HUNDRED SIXTY NINE AND 93/100 DOLLARS

CONGRESSIONAL FEDERAL CREDIT UNION  
703.934.8300  
800.491.2328  
FOR REIMBURSEMENT

John J. Duncan, Jr. MP

[REDACTED]

**Jimmy Duncan**  
**Moxley Carmichael Services**  
**May 2014 – August 2014**

Partner Executive Hours

Cynthia Moxley-

- 07/09/2014 (0.25 hr.) Discussed billing issue with Sandra Clark and Shaun Fulco.

Alan Carmichael-

- 06/17/2014 (1.50 hrs.) Met with John Duncan III, Bob Griffiths and Bill Vaughan to plan campaign advertising and materials.
- 06/18/2014 (0.50 hr.) Met to make assignments on Duncan communication materials.
- 07/01/2014 (1.50 hrs.) Met with Congressman Duncan and team on campaign materials.
- 07/07/2014 (2.25 hrs.) Briefed TV commercial subjects on messaging prior to taping; met with Rep. Duncan and team to finalize letter, ads and other materials.
- 07/08/2014 (0.25 hr.) Reviewed Duncan print ad; recommended switching placement of voting dates and tag line.
- 07/09/2014 (1.25 hrs.) Met and reviewed final drafts of ads, push card, TV spots; discussed and reviewed robocall messages.
- 07/16/2014 (1.00 hr.) Met with campaign team.

**Total Partner Executive hours:**

**8.50**

Account Executive Hours

Hannah Parker-

- 06/18/2014 (0.50 hr.) Met with Alan Carmichael and creative team to discuss needs for Duncan campaign.
- 06/18/2014 (1.50 hrs.) Reviewed previous ads and copy for Duncan re-election pieces; drafted two radio scripts.
- 06/18/2014 (1.50 hrs.) Reviewed old ads and television scripts for re-election campaign; wrote two television scripts.
- 06/18/2014 (0.50 hr.) Met with Charley Sexton and Alan Carmichael to review four scripts for radio and television commercials.
- 06/19/2014 (3.00 hrs.) Wrote and revised radio and TV commercials for Duncan for Congress; met with Maria to review and edit; made changes and sent to Alan and Charley for review.
- 06/20/2014 (1.25 hrs.) Prepared print and television advertisements for campaign.
- 06/23/2014 (2.00 hrs.) Prepared print ad for Shopper News; communicated with staff from Congressman's office, revised ad.
- 06/23/2014 (1.00 hr.) Researched Duncan record and old newsletters for copy for upcoming TV and print ads.
- 06/27/2014 (1.00 hr.) Edited and re-wrote TV scripts, scheduled meeting to discuss; sent to Charley and Alan for review.
- 06/30/2014 (1.00 hr.) Prepared draft letter from Congressman Duncan to be distributed in district.
- 06/30/2014 (0.50 hr.) Met with Charley Sexton about status of various projects for Congressman Duncan; prepared for meeting tomorrow morning.
- 07/01/2014 (3.00 hrs.) Met with Congressman Duncan, Alan Carmichael, Charley Sexton and staff about upcoming campaign; scheduled radio tapings, etc.



- 07/02/2014 (2.50 hrs.) Scheduled radio taping with local station and Congressman Duncan's staff; discussed status of various campaign materials with Alan Carmichael and Charley Sexton; reviewed ad for Voter's Guide; prepared copy for mail piece and discussed upcoming television taping.
- 07/03/2014 (4.50 hrs.) Revised and edited TV scripts, worked on mailers; revised and edited radio scripts, corresponded with Bob Griffiths about status of various projects and sent completed scripts to Bob for review.
- 07/07/2014 (7.75 hrs.) Prepared final edits to radio scripts, met Congressman at station, provided guidance to producer and taped radio spots; prepared and delivered documents to Congressman and Bob at Willis Insurance and KNS; assisted in hosting guests for TV spots; coached and provided guidance for scripts; met with Congressman and team; drafted copy for several new print pieces including birthday invitation, etc.
- 07/08/2014 (6.00 hrs.) Reviewed copy for upcoming mailer; reviewed completed radio spots and forwarded to Charley Sexton; received request from campaign to conduct robocall; researched robocall logistics from a variety of vendors, selected vendor; drafted script and sent to Bob Griffiths and John Duncan III for review; communicated with staff about status of various projects.
- 07/09/2014 (4.00 hrs.) Reviewed and edited copy for upcoming ads, wrote script for automated call, and met with Alan Carmichael and Charley Sexton to discuss; communicated about status of various projects with John Duncan and Bob Griffiths; communicated via phone call and email with vendor for automated call, reviewed completed TV scripts, and other various projects.
- 07/10/2014 (1.75 hrs.) Updated copy for various projects, reviewed call list for automated call; corresponded via phone and email with Bob Griffiths and John Duncan III about status of various projects.
- 07/11/2014 (1.50 hrs.) Confirmed all details of automated IVR call with Bob Griffiths and John Duncan III, conducted phone call with vendor, prepared purchase order, coordinated with surrogate endorsement, Phillip Fulmer and assistant, Narda Cappucilli, to confirm all details of call.
- 07/14/2014 (1.25 hrs.) Confirmed logistics for phone call with Coach Fulmer's office and with vendor for automated call; drafted copy for second (tri-fold) mailer.
- 07/15/2014 (0.50 hr.) Communicated with vendor for automated phone call, discussed with staff, corresponded with vendor and campaign team about audio and timing of call.
- 07/16/2014 (2.25 hrs.) Met with Charley Sexton, Alan Carmichael and campaign team to discuss status of various projects; communicated with automated call vendor and Cumulus staff re: recent radio production.
- 07/17/2014 (3.50 hrs.) Purchased additional print, radio, and TV advertisements for campaign, created and updated spreadsheets, made phone calls, conducted phone call with Bob Griffiths, emailed campaign team with update on automated call, etc.
- 07/18/2014 (5.00 hrs.) Purchased and updated TV, print, and radio advertisements for campaign, corresponded with Bob Griffiths and John Duncan via email and phone calls.
- 07/21/2014 (3.75 hrs.) Purchased and updated radio and television ads for campaign; corresponded with various media outlets; corresponded with Bob Griffiths and John Duncan; drafted thank you letter for radio production team; internal communication about status of various campaign projects, etc.
- 07/22/2014 (3.50 hrs.) Updated spreadsheets of advertisements purchased; consolidated information from various ad buys; communicated with vendors about various ad buys; communicated with campaign staff via phone and email; coordinated pick up of payment; worked with vendors to obtain invoices, etc.

From: Charley Sexton [REDACTED]  
Subject: Re: Push cards  
Date: July 23, 2014 at 10:22 AM  
To: John Duncan [REDACTED]



Ok. Thanks!

On Jul 23, 2014, at 9:43 AM, "John Duncan" <johnjduncan3@gmail.com> wrote:

Thanks! It will actually be this afternoon before I can get there.

Sent from my iPhone

On Jul 23, 2014, at 8:54 AM, Charley Sexton <csexton@moxleycarmichael.com> wrote:

I'll leave the push cards and the post cards at the front in case I am out of the office.

I'll follow back up with the sales manager at WBIR and remind them to remove the 30-second spot we don't want to use.

Thanks!

Charley

On Jul 22, 2014, at 5:48 PM, John Duncan <johnjduncan3@gmail.com> wrote:

I will get them tomorrow morning.

Also, WBIR is still running the :30 that we wanted to cut. We only want to use the one that has four people talking and closes with Clarence Sexton.

Sent from my iPhone

On Jul 22, 2014, at 3:46 PM, John Duncan <johnjduncan3@gmail.com> wrote:

Do you know if the push cards are ready?

Sent from my iPhone

On Jul 21, 2014, at 7:44 PM, John Duncan <johnjduncan3@gmail.com> wrote:

This looks great to me. I'm fine with it unless Bob has any objections.

Sorry for the late response.

Sent from my iPhone

On Jul 21, 2014, at 1:33 PM, Charley Sexton <csexton@moxleycarmichael.com> wrote:

Hi Bob and John:

Attached is a revised PDF of Mailing #2 with the new photo choices.

Please review and let me know what you think. I am submitting the files to the printer now to make sure we hit our mailing deadline of Monday, July 28. But we can still make minor tweaks while it is being proofed at the printer.

Thanks!

Charley

<Duncan - Mailing 2.pdf>

From: Charley Sexton [REDACTED]  
Subject: Revised kickoff invitation  
Date: April 30, 2014 at 3:13 PM  
To: Bob Griffiths [REDACTED] John Duncan [REDACTED]



Hi Bob, John:

After reviewing the printers proof of the invitation we decided to move Boehner's portion up higher on the invitation. We moved it above the line about the hors d'oeuvres and attire. Boehner's more of a draw than the hors d'oeuvres.

And we changed the reference of Bo Carey to "Live bluegrass music by Bo Carey and friends".

Let me know what you think. PDF attached.

Thanks!

Charley

★ ★ ★ **HOST COMMITTEE** ★ ★ ★

Dwight Alden  
Sam & Jean Anderson  
Victor & Joan Aube  
Joe Bailey  
Richard & Lillian Bean  
Frank & Sandy Bertelkamp  
H.E. & Barbara Buzla  
Andy & Linda Black  
Sid & Jo Blalock  
Dr. Richard & Ellie Bowling  
Randy Boyd  
Dr. Leonard & Karen Brown  
Richard & Beita Bryan  
Jerry Burnett  
Tom Burnett  
Tommy Burnett  
Jim & Mary Bush  
Dr. Paul & Kristen Campbell  
Harold & Angie Cannon  
Jim & Jean Card  
Bo & Lucree Carey  
Cynthia Mashey & Alan Carmichael  
Ryan & Elaine Casana  
Dave Chesney  
Jim Clayton  
Bill & Donna Cobble  
Miles & Carol Connor  
Scott Daniel  
Lloyd Dougherty  
Brian & Patricia DuBank  
Pete & Cindy DeBank

Steve & Sabrina Dugg  
M. Jerry & Judy C. Duncan  
Randy & Vicky Edgemon  
Scott & Stephanie Frith  
Phillip & Vicky Fulmer  
Sam & Ann Furrow  
Margaret Galtsoe  
Pat & Beverly Gleason  
Tim Graham  
Randy & Jon Graves  
Wayne & Sue Grimes  
Ken & Nancy Gross  
Jeff Hagood  
Ray & Lucy Hand  
Dr. Hazel & Nancy Harbort  
Jim & Natalie Haslam  
Jimmy & Dee Haslam  
Ted & Carla Hatfield  
Dave & Jean Ann Haynes  
Ryan Haynes  
Rick & Joanne Huddleston  
Coe & Karen Humby  
Steve & Kim Humby  
Dr. Fred & Dena Hurst  
Dr. James & Minde Hurst  
Jim & Margie Iann  
Taja & Michelle Jubben  
Dale & Barbara Keating  
Bob & Beverly Kerr  
Anna Klebanow  
Bileen Klebanow

Ray & Alice Kruse  
Dr. John & Sylvia Lacey  
Fred & Faye Langley  
Fred & Sharon Lawson  
Elif Lewis  
Barry & Jacquie Litton  
Jim & Debra London  
Richard & Joni Maples  
Morton & Becky Massey  
Jimmy & Dean Mastlock  
Joe & Kathy May  
Tom & Ruby McBeide  
Wallace & Patsy McClure  
Johnny McCoy  
Miles & Melissa McCoy  
Allen & Phyllis Morgan  
Aida & Debra Morton  
Alein Nance  
Hugh & Angelia Nyström  
R.L. "Bunny" Oakes  
Dr. Marshall Parker  
Warren Payne  
George Phillips  
Howard & Barbara Phillips  
Ted & Arto Phillips  
Teddy & Christy Phillips  
Richard & Donna Powell  
Mika Prince  
WFB Pugh  
Rob & Jill Quillin  
Dr. Matt & Brandy Rappe

Bill Ragan  
Steve & Jill Redenour  
Turner Redenour  
Jimmy & Shelly Redifer  
Ted & Diana Russell  
Bill & Elizabeth Samsom  
Charita & Phyllis Sarverance  
David & Rosalind Sharp  
Earl & Libby Sharp  
Heath Shuler  
David & Renee Sprague  
Mar & Carol Strakup  
Bill & Kay Stokely  
Wes & Lisa Stowers  
Allison Burdett & Michael Strickland  
Don & Martha Stundquist  
A. Ray & Joanne Thompson  
Josh & Sarah Taylor  
Gerald Turner  
Gary Underwood  
Rick & Linda Vaughn  
Charles & Nancy Wagner  
E.O. & Rose Walker  
Harry & Jennifer Wampler  
Charles & Mary Beth West  
Steve & Ruth West  
Dong & Melissa White  
Susan Richardson Williams  
Clayton & Danielle Wood  
David & Donna Wright  
Eleanor Youkers

Please join

★ **U.S. REPRESENTATIVE JOHN J. DUNCAN JR.** ★  
and family

at a fundraiser and kickoff reception for his reelection to the U.S. House of Representatives

*(Contributions appreciated but not required)*

5 - 7 P.M. • SATURDAY, MAY 24, 2014

AT THE GUEST LODGE OF MR. & MRS. AUTRY O.V. "PETE" DRBUSK

— SPECIAL GUEST —  
SPEAKER OF THE HOUSE  
**JOHN BOHNER**

**Live bluegrass music by Bo Carey and friends**

**Hors d'oeuvres and refreshments • Business attire**


**Parking is available at the guest lodge. Overflow parking with shuttle service  
will be available at the Boys & Girls Club of Halla/Powell, 1819 Dry Gap Pike.**

**Many thanks to Pete and Cindi for hosting this event**

**Please RSVP to Muxley Carmichael by Friday, May 16, at (365) 544-0088 or [mvcp@muxleycarmichael.com](mailto:mvcp@muxleycarmichael.com).**

**PAID FOR BY DEMOCRAT FOR CONGRESS, JASON BROWN, TREASURER**

*Contributions to Demos for Congress are not tax deductible or charitable contributions for federal income tax purposes.*

From: Hannah Parker [REDACTED]   
Subject: Duncan - Message from Fulmer  
Date: July 9, 2014 at 10:20 AM  
To: John Duncan [REDACTED]  
Cc: Charley Sexton [REDACTED]



John and Bob:

Attached is the script for the automated (IVR) call for Coach Fulmer. Alan and Charley have both reviewed from our end and given their approval.

The length of this script is part of what determines the cost of the call, and that is the reason for the sense of urgency. As soon as I hear whether or not this has your approval, I will be able to give you a better picture of exactly what the call will cost.

Thank you both!

Hannah Parker  
*Account Executive*  
Moxley Carmichael  
445 S. Gay Street, Suite 305  
Knoxville, TN 37902



<http://www.moxleycarmichael.com>



Duncan -  
Messa...er.docx

**Subject:** Duncan Golf Tournament Meeting

**Location:** conferenceroomscheduling@moxleycarmichael.com

**Organizer:** [REDACTED]

**Start time:** Thursday, April 7, 2016 at 3:00 PM

**End time:** Thursday, April 7, 2016 at 4:00 PM

In attendance will be:

Bob Griffitts  
Bill Vaughan  
Larry Cox  
John Duncan  
Zane Duncan (Maybe)  
Joe Bailey  
Doyle Webb