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The Honorable Theodore E. Deutch, Chairman
The Honorable Jackie Walorski, Ranking Member
Committee on Ethics
1015 Longworth House Office Building
Washington, D.C. 20515

Re: OCE Review No. 21-3052

Dear Chairman Deutch and Ranking Member Walorski:

On behalf of Representative Marie Newman, I write in response to the referral that the Office of Congressional Ethics ("OCE") transmitted to the Committee on Ethics in her matter. Representative Newman respectfully asks the Committee to dismiss the referral and take no further action.

INTRODUCTION

The story of OCE's review in this matter will be very familiar to close observers of the ethics process. Spurred by the charges of an adverse third party, and prodded by an ideologically hostile group, the OCE opens a review of a newly elected Congresswoman. The Congresswoman cooperates completely with the review. She produces hundreds of pages of contemporaneous documents undercutting the charges. She also produces careful analyses showing that the factual and legal allegations were fatally defective. The Congresswoman offers to make herself available to the OCE for an in-person interview as soon as possible—which, after repeated delays, OCE finally conducts via Zoom.

However, OCE has prejudged the matter from the beginning. Despite the Congresswoman's complete cooperation, the facts and law rebutting the allegation, and the OCE's failure to obtain any other relevant evidence, OCE refers her anyway. To hide the referral's fatal defects, OCE completely ignores the exculpatory evidence the Congresswoman provided, withholds them from the findings, and consigns the legal defects to a footnote. Over the course of the matter, it fails to provide timely notice of the review and misstates the timing in the findings. It violates House rules by including a prohibited legal conclusion in the findings, in bold-faced type.

Unprecedented, though, is the audacity of the recommendation OCE now makes to the Committee. For the first time in its history, OCE asks the Committee to investigate conduct that occurred not just before a Member of Congress was sworn in, but before she was even a candidate. While the ethics process struggles with a swelling docket, and a sharp increase in ideologically and partisan

motivated complaints, OCE would open the door to even more complaints, involving matters preceding even a Member's candidacy or campaign, all to the detriment of the process's integrity.

The Committee should reject this referral. Representative Newman's complete cooperation with the OCE provides the Committee with a full record on which it can quickly close the matter. The sole legal issue—involving a rarely enforced statute that does not even apply here—can be readily dismissed. The record allows the Committee immediately to conclude that literally every element of the allegation OCE transmitted to the Committee is false: that Representative Newman did not promise federal employment during her campaign, that she did not offer it in exchange for political support, that the individual in question was not a primary opponent, and that she violated no law, rule, or standard of conduct.

LEGAL ANALYSIS

I. OCE Withheld from the Findings Clear and Convincing Evidence that Representative Newman Did Not Offer a Job in Exchange for Political Support

At the heart of this matter is the agreement into which Representative Newman and Iymen Chehade entered into on December 26, 2018—before she became a candidate for Congress in 2020—by which she would hire him as a House employee if she ran and was elected.[1] Mr. Chehade was an expert in the Israeli-Palestinian dispute, which was an important issue in Representative Newman's district, and under the agreement he would have served as a chief foreign policy advisor in the House.[2] OCE contends that the agreement represented a prohibited promise of federal employment in exchange for political support.

OCE disregards — and the findings nowhere acknowledge — the extensive evidence in OCE's possession that roundly supports Representative Newman's compliance:

First, OCE withheld a wide range of facts showing clearly that Mr. Chehade was never running for Congress, regardless of the agreement with Representative Newman. OCE knew that Mr. Chehade did not live in the district—not even in a neighboring district—and never made any filings with the Federal Election Commission.[3] The findings present no contemporaneous public statement in which he ever described himself as a potential candidate for Congress. He told Representative Newman in May 2018 that, while he had thought about running, he wanted to help her instead, which made her understand that he would not become a candidate for Congress.[4] Later,

[1] *See* OCE Exh. 1, 21-3052_0004-07 (agreement with Mr. Chehade).
[2] *See* OCE Findings ¶¶ 23, 24.
[3] *See* Fed. Election Comm'n, *Search Results for "Chehade"*, https://www.fec.gov/search/?type=candidates&type=committees&type=site&query=chehade.
[4] *See* OCE Exh. 3, 21-3052_0063 (interview with Rep. Newman).

in multiple text messages, he indicated an interest in running for Illinois state senate: "I'm really intrigued by the possible state senate run."[5] He also discussed with her the possibility that he might provide consulting services to other candidates.[6] Representative Newman produced copies of all of these documents voluntarily to the OCE when she cooperated fully with the review. But OCE mentions none of them in the findings and omits them all from the exhibits. Out of 838 pages of responsive documents that Representative Newman produced in full cooperation with OCE's review, the OCE included fourteen pages in its findings.[7]

Second, OCE omits the fact that the agreement into which Representative Newman entered with Mr. Chehade made no mention of any candidacy and instead contained language that eliminated the possibility of any exchange of employment for political support, saying that it "supersedes all other previous agreements and understandings between the parties with respect to the subject matter . . . ."[8] When Mr. Chehade emailed her a proposal two months earlier on October 27, 2018, saying that he would agree not to run in exchange for being hired, she regarded that proposal as "outrageous" and told him she would enter into no such arrangement.[9] Accordingly, when Representative Newman and Mr. Chehade entered the agreement, they acknowledged that they were not induced to do so "by any representation or statements, oral or written, not expressly contained herein or expressly incorporated by reference."[10] That the agreement contained this language is entirely consistent with Representative Newman's testimony, which is that Mr. Chehade told her in May 2018 that he would not run; that she did not believe he was going to run; that, when he introduced the question of candidacy in his October 27 email, she reacted negatively and said there could be no agreement on that point; and that the agreement was written to exclude the possibility of any agreement on candidacy or any other subject.

Third, OCE fails to mention that Representative Newman tried in good faith to ensure compliance with the law when she entered into the agreement, which was drafted by Mr. Chehade's lawyer. (Representative Newman then had no lawyer of her own.) Representative

[5] *See* RN3052_000774 (produced to OCE); *see also* RN3052_000776-77, RN3052_000821-22 (produced to OCE).
[6] RN3052_000775 (produced to OCE).
[7] OCE also claims that "the evidence gathered during the OCE's review strongly contradicts Rep. Newman's testimony that she did not have any knowledge of Mr. Chehade's intent to run for congressional office." Findings ¶ 27. But OCE mischaracterizes Representative Newman's testimony. She, in fact, testified: "He did mention it in that May meeting that he had thought about it, but he said, if I was going to run that he wanted to help me and then he immediately turned to Palestine and being helpful around Palestine." OCE Exh. 3, 21-3052_0063 (testimony of Rep. Newman). OCE also fails to acknowledge that Representative Newman herself produced "the evidence gathered during the OCE's review." OCE Findings ¶ 27.
[8] *See* OCE Exh. 1, 21-3052_0006-07 (agreement with Mr. Chehade).
[9] *See* OCE Exh. 3, 21-3052_0068.
[10] *Id.* at 21-3052_0007.

Newman sought multiple changes to ensure compliance, even though she had no working knowledge of House rules and nowhere besides Mr. Chehade's lawyer to turn for expertise.

Representative Newman sought edits "to accommodate the standard average MOC staffing budget," to "stay on congressional staffing budget regulations," to account for the question of whether "travel[] costs are covered in the government budget," to confirm expense reimbursements to House procedures, and to confirm the carryover of vacation time to House rules.[11] Here again, she voluntarily produced the documents in which she sought these changes, but OCE failed to acknowledge them in the findings or include them among the exhibits. OCE never explains why she would enter into an illegal agreement in writing—with the involvement of Mr. Chehade's lawyer—while still seeking changes to ensure legal compliance. OCE simply ignores and excludes all of the evidence of Representative Newman's good-faith desire to comply with the law.

Fourth, OCE downplays the legitimate reasons why Representative Newman was willing to enter into an agreement with a potential House staffer before deciding to run. OCE acknowledges that "[p]art of the appeal of hiring Mr. Chehade" was his expertise in foreign policy.[12] But OCE fails to mention that Representative Newman came from a business background in startups, where it was common to seek employees for positions that did not yet exist, with organizations that did not yet exist and may not exist for even two years.[13]

Fifth, OCE leaves out contemporaneous evidence—created almost two years before Mr. Chehade sued Representative Newman over her decision not to hire him—that undercuts the claim of a quid pro quo. By April 2019, the professional relationship between Representative Newman and Mr. Chehade was breaking down. He supported a one-state solution and the Boycott, Divestment, Sanctions (BDS) movement, but she did not support them, and they clashed repeatedly over a draft statement he prepared, which would have taken more aggressive positions against Israel on these matters than she was willing to take. In an April 21, 2019 email, she made clear that she was willing to do without Mr. Chehade's help. Representative Newman told him and another person that "I also understand if both of you . . . cannot support me," saying that "I deeply hope you will be able to support me, but I cannot be bullied in any way by any group . . . ."[14]

Mr. Chehade's angry response that next day—omitted by OCE from the findings—disclaimed any sort of agreement between him and Representative Newman over his political support: "I spent my own share of hours trying to get this statement together. I've taken hours away from my work

[11] RN3052_000023-26 (produced to OCE).
[12] OCE Findings ¶ 24.
[13] OCE Exh. 3, 21-3052_0059 (interview with Rep. Newman).
[14] RN3052_000580-81 (produced to OCE).

and my grieving family to help you ***and I have never asked you for anything in return.***"[15] When Mr. Chehade and Representative Newman stopped communicating virtually altogether around July 2019,[16] there was more than enough time for Mr. Chehade to become a candidate under Illinois law—indeed, the time period to collect nominating petitions had not even begun—and yet he did not run.[17] At this point, Mr. Chehade had almost a year to run in the primary election, had that really been his desire or intention.

Sixth, OCE fails to mention that Mr. Chehade advanced his claim of a quid pro quo only when he pursued litigation against Representative Newman. While OCE includes a September 23, 2020 demand letter from Mr. Chehade's lawyer among the exhibits, it fails to say—as Representative Newman pointed out to OCE—that the letter does not refer to any supposed Chehade candidacy, nor to any supposed agreement that he would abandon a candidacy in exchange for a congressional job.[18] Only later, when the lawsuit became more imminent, was the subject of his supposed candidacy raised. The facts show strongly that Mr. Chehade did not previously raise the subject of his candidacy, because he was not in fact a candidate.

Thus, OCE offers an incomplete, incredible, and unfair presentation of the facts about Representative Newman's agreement with Mr. Chehade. The findings draw selectively from the evidence to justify four months of fruitless review. Taken fairly and as a whole, the evidence strongly contradicts the allegation of promised employment in exchange for not running. OCE developed no new evidence whatsoever to support the claim of an improper agreement. Having prejudged the matter from the start, OCE referred the Congresswoman anyway, consistently omitting the evidence that supports her case, and selectively including the fragments that purport to back up the referral. OCE's purposeful, selective treatment of the evidence is grossly inconsistent with basic norms of diligence and fundamental fairness. The findings were negligent, malicious, and wrong, and cannot be allowed to stand.

II. Representative Newman Violated No Law, Rule, or Standard of Conduct

The sole allegation in this review borrows the language of a rarely enforced federal statute, 18 U.S.C. § 599:

> Whoever, being a candidate, directly or indirectly promises or pledges the appointment, or the use of his influence or support for the appointment of any person to any public or private position or employment, for the purpose of procuring support in his candidacy

[15] RN3052_000585 (produced to OCE) (emphasis added).
[16] *See* OCE Exh. 3, 21-3062_0077 (interview with Rep. Newman).
[17] *See* Illinois State Board of Elections, 2020 Candidate's Guide 4, https://www.elections.il.gov/Downloads/ElectionOperations/PDF/2020CanGuide.pdf.
[18] *See* OCE Exh. 7.

> shall be fined under this title or imprisoned not more than one year, or both; and if the violation was willful, shall be fined under this title or imprisoned not more than two years, or both.[19]

As discussed above, the evidence overwhelmingly demonstrated that Representative Newman did not promise federal employment to Mr. Chehade for the purpose of procuring support in her candidacy. He lived outside the district, never filed anything with the FEC, disclaimed any interest in running for Congress, talked about seeking other offices, and entered into an agreement that never mentioned candidacy and expressly disclaimed the existence of any other agreements. Mr. Chehade told Representative Newman in an email that "I have never asked you for anything in return," and did not run against her even when their relationship broke down, before the time to collect petitions had even begun.

However, the allegation was not just factually defective, but legally defective as well. When Representative Newman signed the agreement with Iymen Chehade on December 26, 2018—almost a month before she filed with the FEC, and almost four months before she announced she was running—she was not a "candidate" under 18 U.S.C. § 599. When Representative Newman alerted OCE to this clear legal defect in the allegation, OCE overlooked the defect and proceeded anyway, charging a Member of Congress with a purported violation she could not have legally committed.

The definition of "candidate" in 18 U.S.C. §599 is the same as that contained in the Federal Election Campaign Act of 1971, as amended ("FECA"), 52 U.S.C. § 30101(2):

- In 1925, Congress passed the statute that is now 18 U.S.C. § 599 as section 310 of the Federal Corrupt Practices Act ("FCPA").[20] The FCPA defined a "candidate" as "an individual whose name is presented at an election for election as Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States, whether or not such individual is elected."[21]

- The definition of "candidate" remained unchanged when Congress repealed and reenacted some sections of the FCPA to reorganize the Act's criminal provisions, moving the Statute to its current home at 18 U.S.C. § 599.[22] Congress carried over the FCPA's definition of

[19] 18 U.S.C. §599.
[20] *See* Federal Corrupt Practices Act, 1925, ch. 368, 43 Stat. 1070, 1073. The current text of 18 U.S.C. § 599 is a consolidation of former section 310 and section 314 of the Federal Corrupt Practices Act. When codified, changes in arrangement and phraseology were necessary to effect consolidation and the words "or both" were added to conform to the almost universal formula of the punishment provisions of title 18. *See* H.R. Rep. No. 80-304 (1947).
[21] Federal Corrupt Practices Act, 1925, ch. 368, 43 Stat. 1070.
[22] *See* Act of June 25, 1948, Pub. L. No. 80-772, 62 Stat. 683; H.R. Rep. No. 304, 80th Cong., 1st Sess. (1947).

"candidate" into a new definitions section at 18 U.S.C. § 591.[23] According to a Senate report, the change was "apparently meant by the revisers of title 18 to repeal section 302 of the Corrupt Practices Act since it restates [the] paragraphs . . . of that section and makes section 591 applicable to section[] . . . 599."[24]

- When Congress passed FECA in 1971, it replaced 18 U.S.C. § 591's definition of "candidate" with an entirely new definition.[25] Later, when Congress amended FECA in 1979, it repealed 18 U.S.C. § 591, and enacted in its place FECA's current definition of "candidate." The legislative history of the 1979 amendments made clear that "[i]t is the intent of the Committee [proposing the legislation] that the definitions of the Federal Election Campaign Act, as amended, be controlling ***whenever the provisions of Title 18 impact on federal elections and political activity.***"[26] Congress has not since amended FECA's definition of "candidate." Thus, FECA's definition of "candidate," now codified at 52 U.S.C. § 30101(2), controls 18 U.S.C. § 599's interpretation today.

An individual becomes a "candidate" under FECA, and thus under 18 U.S.C. § 599, when she (a) receives contributions in excess of $5,000 or makes expenditures of more than $5,000, or (b) gives consent to another person to receive contributions or make expenditures greater than $5,000 on her behalf.[27] This test is entirely objective—one cannot become a "candidate" under 18 U.S.C. §599 until crossing the $5,000 threshold.

When Representative Newman entered into the agreement with Iymen Chehade on December 26, 2018, she was not a "candidate" under 52 U.S.C. § 30101(2) and 18 U.S.C. § 599. Although she ran and narrowly lost in the March 2018 primary election, she had not yet become a candidate for the 2020 election. Her campaign's Federal Election Commission reports—which OCE's findings do not dispute—show that, after the 2018 primary, the campaign limited its activities to retiring debt and winding down. She had not raised or spent more than $5,000 for a 2020 candidacy and had not yet filed a Statement of Candidacy with the FEC. Representative Newman would not file a Statement of Candidacy with the FEC until January 25, 2019.[28]

Representative Newman's counsel presented this fatal defect in the allegation to OCE three times: in a July 8, 2021 letter accompanying her voluntary production of documents, in a July 21, 2021 video conference with OCE's counsel, and in a July 23, 2021 letter. OCE's response was to ignore the fatal defect. The findings avoid the clear legislative history and the statute's clear, objective,

[23] *See* Act of June 25, 1948, Pub. L. No. 80-772, 62 Stat. 683.
[24] S. Doc. No. 201 at 2, 80th Cong. 2d Sess. (1948).
[25] *See* Federal Election Campaign Act of 1971, Pub. L. No. 92-225, § 201(b), 86 Stat. 3, 8.
[26] H.R. Rep. No. 96-422 at 25, 1st Sess. (1979) (emphasis added).
[27] 52 U.S.C. § 30101(2).
[28] *FEC Form 2*, Fed. Elec. Comm'n., https://docquery.fec.gov/cgi-bin/forms/H8IL03102/1307170.

$5,000 test for becoming a "candidate," and resort instead to a flurry of nonresponsive arguments. While OCE consigned these arguments to a footnote in the findings, we address them here:

- *First,* OCE claims that Representative Newman's counsel in Mr. Chehade's lawsuit referred to her as a "candidate" in their motion to dismiss Mr. Chehade's complaint.[29] OCE fails to recognize that the motion was simply seeking to make clear that she was not a Member of Congress when she entered into the agreement and so could not have bound the House. OCE also fails to acknowledge that the interpretation of 18 U.S.C. § 599 was not an issue in that case. Finally, OCE fails to recognize that the characterization of Representative Newman in a court pleading is not relevant to the clear, objective, $5,000 test for becoming a "candidate" under FECA and 18 U.S.C. § 599.

- *Second,* OCE argues that Representative Newman "was actively recruiting staff and discussing her intent to run" in the fall of 2018, before she entered into the agreement with Mr. Chehade.[30] But this, too, ignores the objective $5,000 test. OCE also ignores the uncontroverted evidence that Representative Newman had made no final decision to run, did not file a Statement of Candidacy with the FEC until late January 2019, and did not announce her candidacy until April 2019.

- *Third,* OCE claims that, because Representative Newman did not "renege on her promise to employ Mr. Chehade prior to June 2020," the survival of the agreement after the onset of her candidacy somehow caused the agreement retroactively to violate the law.[31] OCE offers nothing to support this novel interpretation. OCE claims also that the contract violated the spirit of the law and the Code of Ethics for Government Service, but while overlooking that she was not even yet a Member, while offering no evidence that she sought to evade the law,[32] and while ignoring the evidence that she actually tried to comply with the law.

Besides ignoring the fact that the elements of 18 U.S.C. §599 are not met, OCE ignores two critical problems with its application to this case:

First, 18 U.S.C. §599 is rarely enforced—and for good reason, involving as it does the inevitable relationship between politics and the hiring decisions made by high-level legislative and executive branch officials. Even misdemeanor liability under the statute requires specific intent

[29] *See* OCE Findings ¶ 21 n.10. OCE even tried to confront Representative Newman—who is not a lawyer—with the motion to dismiss brief, displaying it on screen during her Zoom interview, and asking whether she agreed with her attorneys' statements. *See* OCE Exh. 3, 21-3062_0079 (interview with Rep. Newman).
[30] See OCE Findings ¶ 21 n.10.
[31] *Id.*
[32] *Id.*

to procure support in an election: the offer of employment must have been made for that purpose, and the evidence undercuts that element here. One need not contend that the statute violates the First Amendment to see the difficulties that untethered, indiscriminate enforcement can create.[33] If left undisturbed, OCE's referral threatens to invite serial complaints over a wide range of normal interactions between candidates and their campaign managers, and House Members and their future staff members, over the possibility of future employment.

Second, OCE ignores the question of precisely what Representative Newman, who was not yet a candidate or a Member of Congress, ought to have done instead. As the record shows, she came from a start-up background, where offering jobs long in advance of a project's beginning is a common practice.[34] There is no blanket ban on offering House employment before candidacy or election. However, being neither a candidate nor a Member of Congress, there was no office to which she could have turned for advice. To urge an investigation of Representative Newman for failing to comply with the spirit of the rules, when she was neither a candidate nor a Member, had no office from which to seek advice, and had received no official training, all while she tried in good faith to comply with the law, is grossly unfair.

The record is clear: OCE assumed that 18 U.S.C. § 599 covered the agreement, without knowing the law or the facts. When Representative Newman presented OCE with the facts and relevant authority, OCE ignored her, referred her anyway, and disposed of the issue in a footnote laden with unsupported, post-hoc justifications. The claim that the Congresswoman violated or tried to evade federal law is wrong, and unsupported by law or fact.

III. With No Precedent, OCE Asks the Committee to Investigate Conduct Occurring Not Just Before the Subject Was a Member, But Before She Was Even a Candidate

House rules allow OCE only to review an "alleged violation by a Member, officer, or employee of the House of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the furtherance of his duties or the discharge of his responsibilities[.]"[35] Earlier in its existence, OCE believed it lacked jurisdiction to investigate allegations pre-dating a Member's service; the Committee corrected OCE and reiterated that it "may investigate conduct that violated laws, regulations, or standards of conduct, which occurred

[33] *See U.S. v. Blagojevich*, 794 F.3d 729 (7th Cir. 2015) (raising, but not considering, the question of whether 18 U.S.C. §599 "is compatible with the First Amendment").
[34] OCE Exh. 3, 21-3052_0059 (interview with Rep. Newman).
[35] H. Res 895, 110th Cong. § 1(c)(1)(A) (2008) (emphasis added). *See also* Office of Congressional Ethics, Rules for the Conduct of Investigations, Rule 1(3) (permitting OCE to investigate alleged violations of standards "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.").

during an initial campaign for the House of Representatives."[36] OCE has since referred multiple allegations arising from first-year Members' previous campaigns.

What makes this matter unprecedented is that OCE seeks an investigation over conduct that occurred before a Member was even a candidate. OCE cites no case in which either it or the Committee has taken such a step. Nor is the possibility of a pre-candidacy investigation contemplated in House or OCE rules. The lone precedent OCE cites in support of jurisdiction is entirely different, involving allegations that a Member, during his campaign, made unwanted sexual advances to his campaign personnel, in a pattern that continued into his service in Congress.[37] But when Representative Newman entered into the agreement, she was not yet a candidate, did not yet have a campaign, and had not yet decided to run.

It is significant that this review followed on the heels of a complaint that an ideological group filed against Representative Newman.[38] If OCE's referral stands, there will be no limit on the nature or character of complaints that partisan groups can use to trigger the ethics process. Already overburdened with thousands of complaints, the process will see more complaints still, to the detriment of its integrity and efficient operation.[39]

IV. The OCE Failed to Respect Representative Newman's Rights in the Review

OCE's interactions with Representative Newman during the review must be addressed. Besides prejudging the matter, omitting relevant facts, misreading the law, and urging the Committee to open an unprecedented investigation, the OCE repeatedly treated Representative Newman cavalierly and disregarded her rights. For example:

- OCE did not inform Representative Newman of the allegation against her until the fifth day of the thirty-day preliminary review period. OCE staff tried to contact the Congresswoman's chief of staff on the first day of the review, but without providing detail about the matter. When OCE received no response, they tried again—when the

[36] See Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Michael Grimm (Nov. 26, 2012), https://ethics.house.gov/press-release/statement-chairman-and-ranking-member-committee-ethics-regarding-representative-2.
[37] *See In the Matter of Allegations Relating to Representative Ruben Kihuen*, Committee on Ethics, 115th Congress, 2d Session (2018).
[38] *See* Foundation for Accountability and Civic Trust, Complaint against Representative Marie Newman (May 26, 2021), https://freebeacon.com/wp-content/uploads/2021/05/Newman-Complaint.pdf.
[39] *See* OCE, Fourth Quarter 2020 Report at 2, https://oce.house.gov/sites/congressionalethics.house.gov/files/documents/OCE_Fourth%20Quarter_2020_Final.pdf (identifying 13,380 "citizen communications" to the OCE during the 115th Congress, and 6,136 during the COVID-19 pandemic and the 116th Congress).

review was already five days underway.[40] The 30-day period for preliminary review is critical to a Member who is a subject of that review, because, if the OCE can resolve the matter during that period, it transmits no report to the Ethics Committee.

In paragraph 5 of the findings, OCE says: "On June 17, 2021, the OCE notified Rep. Newman of the initiation of the preliminary review, provided her with a statement of the nature of the review, notified her of her right to be represented by counsel in this matter, and notified her that invoking her right to counsel would not be held negatively against her."[41] None of this is true. OCE did not speak with Representative Newman until four days later, on June 21, and did not provide her with any of those notifications until that that same day.[42]

- OCE did not inform Representative Newman that the matter had proceeded to second-phase review until her counsel reached out and asked—two days after the second-phase review began.[43]

- When Representative Newman's counsel provided letters on July 8 and July 23, laying out the factual and legal defects of the allegation, they asked the OCE staff to provide copies to the OCE Board. On August 9, Representative Newman's counsel sought confirmation that the staff had provided letters to the Board.[44] On August 10, the OCE staff said that "this information has not yet been presented," but that "the totality of the information gathered during the review will be presented to the OCE Board at the conclusion of the review."[45] The referral's failure to address the issues raised by the letters suggests that the Board indeed may never have seen them.

- Representative Newman offered to make herself available for an in-person interview as early as July 28, 2021. OCE would not agree to an in-person interview—even though the OCE Board would later meet in person to consider her matter—and insisted on conducting a remote interview instead, on September 2, 2021.

- OCE rules require the office to provide Representative Newman with exculpatory evidence "promptly."[46] Through counsel, on August 9, Representative Newman's

[40] *See* Email from Indhira Benitez to Brian G. Svoboda (June 22, 2021).
[41] OCE Findings ¶5.
[42] *See* Email from Indhira Benitez to Rep. Marie Newman (June 21, 2021); *see also* email from Indhira Benitez to Brian G. Svoboda (June 22, 2021).
[43] *See* Email from Indhira Benitez to Brian G. Svoboda (July 19, 2021).
[44] *See* Letter from Brian G. Svoboda to Omar S. Ashmawy (Aug. 9, 2021).
[45] *See* Letter from Omar S. Ashmawy to Brian G. Svoboda (Aug. 10, 2021).
[46] OCE R. 4(F).

counsel asked for any exculpatory evidence.[47] On August 10, OCE replied that, "to the extent we have any exculpatory evidence in our possession, the OCE staff will, as always, comply with its obligations under our rules."[48] On August 30, when Representative Newman's counsel repeated her request, OCE said that "we do not have any exculpatory evidence not already in your possession at this time."[49] OCE finally provided Representative Newman with exculpatory evidence on October 5—after the review was over.[50] OCE does not cite that evidence in the findings nor include it among the exhibits.

- The review ended on September 13—but the OCE Board did not take it up until October 15. Representative Newman wanted to appear before the Board in person, but the Board scheduled its meeting for a day in which the House was not in session and Members were out of Washington. Had Representative Newman insisted on an in-person appearance, the Board would have delayed consideration of her matter for yet another month.[51]

- House rules prohibit OCE's findings from including any conclusion regarding the validity of the allegations.[52] Page 6 of the findings contain, in bold type: "Rep. Newman Contracted with Iymen Chehade for a Government Position in Exchange for Political Support."

OCE's cavalier treatment of Representative Newman in these instances is consistent with its selective treatment of the facts, its indifference to the law, and its reckless approach to jurisdiction. These lapses provide only further reason to conclude that the review was conducted carelessly, in order to reach a conclusion that had been settled on from the very beginning.

CONCLUSION

OCE's referral fails to present grounds for investigation. The facts, which OCE consistently omitted whenever they favored Representative Newman, show that virtually every element of the allegation is false: that she did not offer employment in exchange for political support, but rather on the merits, to someone who was not a primary opponent, and in any case before she was a candidate.

[47] *See* Letter from Brian G. Svoboda to Omar Ashmawy and Indhira Benitez (Aug. 9, 2021).
[48] Letter from Omar S. Ashmawy to Brian G. Svoboda (Aug. 10, 2021).
[49] Email from Indhira Benitez to Brian G. Svoboda (Aug. 30, 2021).
[50] *See* Letter from Omar S. Ashmawy to the Honorable Marie Newman (Oct. 5, 2021).
[51] *See* Email from Omar S. Ashmawy to Brian G. Svoboda (Sep. 24, 2021).
[52] *See* H. Res. 895, 110th Cong. § 1(c)(2)(C)(i)(II).

The circumstances of OCE's review warrants close scrutiny. The referral represents a radical departure from past practice, asking the Committee to investigate conduct before a Member of Congress even became a candidate. Lapses in the review process showed a repeated indifference to Representative Newman's rights.

A swift, strong Committee dismissal of the referral is necessary and just. Representative Newman cooperated completely with OCE's review, at great burden, providing the facts and testimony needed to close the matter. If the Committee lets the allegation stand, , it will send a message to potential candidates that they can make complex decisions in good faith, but without access to the Ethics Committee's advice and education process or other House resources, , and then be hauled into the dock for those same decisions later. It will send a message to newly elected Members that they can expect to face ethics enforcement from the very moment they arrive in Washington, and can cooperate completely, but still be treated unfairly. The Committee need not do that. It can faithfully apply the facts and the law, close the matter and take no further action.

We appreciate your consideration of this response.

Very truly yours,

Brian G. Svoboda
Counsel for Representative Marie Newman