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April 9, 2024

Attn: Mr. Tom Rust
Chief Counsel and Staff Director
U.S. House of Representatives
Committee on Ethics
1015 Longworth House Office Building
Washington, DC 20515

Re: Office of Congressional Ethics Referral; Congressman Wesley Hunt

Dear Chairman Guest, Ranking Member Wild, and Members of the Committee,

On behalf of our client Congressman Wesley Hunt (the "Congressman"), we write in response to the referral from the Office of Congressional Ethics ("OCE") alleging that the Congressman converted campaign funds to "personal use." A sworn declaration signed by the Congressman averring the accuracy and truthfulness of this response and the factual assertions contained herein is attached.

This matter centers around two payments that Hunt for Congress, the Congressman's campaign committee, made in 2022 and 2023 for membership in the Post Oak Club (the "Club"). Club membership gives members and their guests access to the Oak Room at the Post Oak Hotel (the "Hotel"), which is located in the Congressman's congressional district.

OCE readily concedes the Oak Room "is frequently used by its members to conduct business meetings."¹ Nonetheless, OCE referred this matter to the House Committee on Ethics based on OCE's unsupported premise that "no amount of campaign usage of the Oak Room could overcome the per se prohibition against [using campaign funds for]

¹ OCE Confidential Report, Review No. 23-9812 (*hereinafter*, "OCE Report") ¶ 23.

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membership payments to maintain unlimited access to such a facility.”² It appears that OCE takes this position based on its characterization of the Oak Room as a “social club.”³

The Federal Election Commission (“FEC”), which has primary responsibility for administering and enforcing the “personal use” prohibition at issue here, has *never* taken the position that OCE takes in this matter. In fact, the FEC has taken *the opposite* position. Accordingly, the Committee on Ethics should dismiss this matter forthwith.

DISCUSSION

1. The Post Oak Hotel, the Post Oak Club, and Congressman Hunt’s use thereof

The Hotel is located in the Congressman’s congressional district. The Post Oak Club is a Hotel program that gives members access to a private penthouse space in the Hotel, known as the Oak Room, for themselves and their guests. Based on OCE’s review of the Hotel’s website and an interview with the Hotel’s Deputy General Counsel, OCE acknowledges the Oak Room is advertised as “an elegant and intimate space for social gatherings and business colleagues alike” and a venue “for high-class mingling and business meetings.”⁴

The Hotel also advertises the Oak Room as a “social club,” and members may have access to certain other perks, such as “discounts for rooms at the hotel . . . and invitations to the Oak Room’s social events with celebrities—which may include product launches or private concerts.”⁵ We shall return to these points further below.

Consistent with the Oak Room’s advertised purpose, the Congressman has used Post Oak Club membership exclusively for meetings in the Oak Room with campaign donors, supporters, consultants, and vendors. We provided OCE with numerous emails, text messages, and calendar entries demonstrating the Congressman’s use of the Oak Room and the Hotel’s other facilities for such purposes.⁶

The Congressman did not have a Post Oak Club membership before he became a candidate for office. And he has never used the Post Oak Club membership paid for by

² *Id.* ¶ 31.

³ *Id.* ¶¶ 17, 22.

⁴ *Id.* ¶¶ 20, 23.

⁵ *Id.* ¶¶ 22, 23.

⁶ We are enclosing those documents with this response, along with all of our other correspondence with OCE, per the request in the March 25, 2024 letter from Mr. Rust.

Hunt for Congress for any personal purposes. His wife Emily has been in the Oak Room no more than a handful of times while Hunt for Congress has paid the membership fee, and those occasions always involved her meeting with campaign donors, supporters, consultants, and/or vendors. The Congressman's children have never been in the Oak Room.

The Congressman does not maintain a campaign office. Faced with the choice between renting a campaign office in Houston versus an annual cost of \$2,706.25 for Post Oak Club membership, the Congressman believed the latter would be a more prudent use of campaign funds. For example, Regus charges a minimum of \$305 per month, or a minimum of \$3,660 annually, to use an office space at one of its Houston facilities near the Hotel.⁷ Moreover, the Oak Room provides a much more conducive atmosphere for meetings with campaign donors than a standard office does.

To address the specific concerns OCE raised in its report, the Congressman avers that:

- Neither he nor any of his family members have ever attended any of the Post Oak Club's events featuring celebrities, product launches, or private concerts using the Post Oak Club membership;⁸ and
- Neither he nor any of his family members have availed themselves of discounts for hotel rooms using the Post Oak Club membership.⁹

2. The "personal use" rule

The Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act") and House ethics rules prohibit the use of campaign funds for "personal use."¹⁰ As a general matter, under the FECA and FEC rules, an expense is "personal use" if it "would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office."¹¹

⁷ See Regus, Two Post Oak Central, <https://www.regus.com/en-us/united-states/texas/houston/two-post-oak-central-5130?ws=office-space> (last visited March 28, 2024).

⁸ See OCE Report at 8 n.22 and ¶ 23.

⁹ See *id.* ¶¶ 23, 30, 32.

¹⁰ 52 U.S.C. § 30114(b); House Rule XXIII, cl. 6(b).

¹¹ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

The Congressman would not have paid for a Post Oak Club membership irrespective of his candidacy and status as an officeholder. As noted above, he was not a member prior to his candidacy, nor did he use it for any activity that he would have undertaken irrespective of that candidacy.

Furthermore, the FEC has maintained “the long-standing opinion that candidates have wide discretion over the use of campaign funds.”¹² If a candidate “can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the [FEC] will not consider the use to be personal use.”¹³

Certain expenses are *per se* personal use. These include, in relevant part:

Dues, fees or gratuities at a country club, health club, recreational facility or other nonpolitical organization, unless they are part of the costs of a specific fundraising event that takes place on the organization’s premises.¹⁴

Expenses that are not *per se* personal use (such as the ones at issue here) are evaluated “on a case-by-case basis.”¹⁵

While the payments at issue here are characterized as “membership” fees, they do not fall within the *per se* personal use prohibitions. The Hotel’s Oak Room is not a “country club, health club, [or] recreational facility.” Nor is it any “other [type of] nonpolitical organization” akin to a “country club, health club, [or] recreational facility.”¹⁶ It is a hotel venue that is used for “business meetings,” per the Hotel’s own website.

¹² FEC, Explanation and Justification for Final Rules on Personal Use of Campaign Funds (*hereinafter*, “Personal Use E&J”), 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995) (emphasis added).

¹³ *Id.* (emphasis added).

¹⁴ 11 C.F.R. § 113.1(g)(1)(i)(G).

¹⁵ 11 C.F.R. § 113.1(g)(1)(ii).

¹⁶ “Under the rule of *eiusdem generis*, where general words follow an enumeration of specific items, the general words are read as applying only to other items akin to those specifically enumerated.” *Harrison v. PPG Industries, Inc.*, 446 U.S. 578, 588 (1980). Relatedly, “[t]he traditional canon of construction, *noscitur a sociis*, dictates that words grouped in a list should be given related meaning.” *Dole v. United Steelworkers of America*, 494 U.S. 26, 36 (1990) (internal citations and quotation marks omitted).

Indeed, the FEC’s rule is meant to cover expenses such as “greens fees” at a golf club or “court fees” at a racquet club. Personal Use E&J at 7866.

Moreover, there is no indication that the Hotel's Oak Room is a "nonpolitical organization" akin to a "country club, health club, [or] recreational facility." And even if the Oak Room could be considered a "nonpolitical organization," this restriction is not as categorical as the FEC's rule text may suggest. As the FEC explained in its rulemaking, and as OCE concedes:¹⁷

The rule also allows a candidate or officeholder to use campaign funds to pay membership dues in an organization that may have political interests. This would include community or civic organizations that a 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.¹⁸

Hunt for Congress has paid Post Oak Club membership fees to use the Oak Room precisely because the Congressman has "political interests" in "maintain[ing] political contacts" with donors, including many in "the business community," as the FEC's rule permits. In short, and contrary to OCE's unsupported position, the FEC rules certainly do not treat Post Oak Club membership dues as "per se prohibit[ed]" campaign expenses.¹⁹

3. OCE's unsupported position

OCE concedes the Oak Room is advertised and used as a venue for holding business meetings.²⁰ However, it maintains that "no amount of campaign usage of the Oak Room could overcome the per se prohibition against [using campaign funds for] membership payments to maintain unlimited access to *such a facility*."²¹

The OCE report is notably vague over what it means by "*such a facility*." Elsewhere, the report refers repeatedly to the Post Oak Club as a "social club."²² This suggests that OCE believes payments for a "social club" membership are a per se personal use of

¹⁷ OCE Report at 5 n.6.

¹⁸ Personal Use E&J at 7866 (emphasis added).

¹⁹ See OCE Report ¶ 31.

²⁰ *Id.* ¶¶ 20, 23.

²¹ *Id.* ¶ 31 (emphasis added).

²² *Id.* ¶¶ 17, 20, 22.

campaign funds. Nonetheless, OCE never sets forth this legal position point blank in its report.

OCE's coyness over its theory of the case underscores its central weakness. OCE does not explicitly say that campaign payments for a "social club" membership are per se personal use because it *cannot* say so. OCE's tacit position is contrary to law and contrary to the very practices of the Members currently serving on the Committee on Ethics.

3.1. The FEC has permitted campaign funds to pay for "social club" dues

Contrary to OCE's implicit position, the FEC has permitted the use of campaign funds to pay for "social club" membership and dues. In Matter Under Review ("MUR") 7292 (Stearns), the FEC stated in no uncertain terms that "the use of campaign funds by candidates and Federal officeholders for membership in an organization that would have political interests (like the Capitol Hill Club) is not personal use."²³ In two subsequent enforcement matters, the FEC characterized the Capitol Hill Club as a "social club" and reaffirmed the permissibility of using campaign funds to pay for club dues, "provided[] those payments were in connection to [an individual's] Federal officeholder duties and for Campaign-related fundraising purposes."²⁴

It is also worth noting that:

- The FEC is not alone in characterizing the Capitol Hill Club as a "social club." As a matter of law, both the Capitol Hill Club and its counterpart, the National Democratic Club, are classified with the IRS as Section 501(c)(7) "social clubs."²⁵

²³ FEC MUR 7292 (Stearns), Factual and Legal Analysis at 10.

²⁴ FEC MUR 7578 (FAIRPAC), Factual and Legal Analysis at 6 (referencing and citing the Stearns Factual and Legal Analysis); FEC MUR 7293 (Zinke for Congress), Factual and Legal Analysis at 15 n.63. In MUR 7578 (FAIRPAC), the FEC described MUR 7292 (Stearns) as standing for the proposition that "a former congressman, who was neither a candidate nor a current officeholder at the time of the challenged disbursements, violated the personal use provision in connection with social club membership dues and fees." *Id.* (emphasis added). Congressman Hunt was either a candidate or a current officeholder when the campaign paid for the Post Oak Club membership, and therefore the expenses were permissible.

²⁵ See, e.g., 2019 IRS Form 990, National Republican Club of Capitol Hill, https://apps.irs.gov/pub/epostcard/cor/530200565_201912_990O_2021060818290473.pdf; 2021 IRS Form 990, National Democratic Club, https://apps.irs.gov/pub/epostcard/cor/530233594_202112_990O_2023050821167776.pdf; see also IRS, Social Clubs, <https://www.irs.gov/charities-non-profits/other-non-profits/social-clubs>; 52 U.S.C. §

- OCE cites an FEC advisory opinion that purports to support OGC's theory.²⁶ However, the cited advisory opinion actually addressed campaign payments for a "health club" membership,²⁷ which is specifically prohibited under the FEC's rules as a per se prohibited personal use.²⁸ The FEC authority did *not* address "social clubs," which is what OCE seems to find objectionable. Moreover, regardless of how OCE chooses to characterize the Post Oak Club, it is clearly not a "health club."

3.2. Many Members of Congress use campaign funds to pay for "social club" dues

Consistent with the FEC precedents, our review of FEC reports turned up thousands of payments from House Members' campaign committees for National Republican Club of Capitol Hill (a.k.a. "Capitol Hill Club") and National Democratic Club dues, including Members currently serving on the Committee on Ethics.²⁹

The Congressman's use of campaign funds to pay for Post Oak Club membership to use the Oak Room for campaign-related business is no different from all of the other Members of Congress who have used campaign funds to pay for Capitol Hill Club and National Democratic Club membership dues. The fact that these are all "social clubs" does not negate the permissibility of these payments, as OCE erroneously suggests.

3.3. The aspects of the Post Oak Club to which OCE objects are also aspects of the Capitol Hill Club and National Democratic Club

The following chart illustrates all the aspects of the Post Oak Club that OCE cites as objectionable, and which the FEC and Members of the Committee on Ethics (by their own practice) have deemed to be non-issues when it comes to paying membership dues using campaign funds:

501(c)(7) (addressing "Clubs organized for pleasure, recreation, and other non-profitable purposes, substantially all of the activities of which are for such purposes").

²⁶ OCE Report ¶ 6 (citing and characterizing FEC Adv. Op. No. 1995-26 (Murkowski)).

²⁷ FEC Adv. Op. No. 1995-26 (Murkowski) at 1 ("This refers to your letters dated June 26, and July 14, 1995, requesting an advisory opinion concerning . . . the use of campaign funds for certain expenses relating to the use of *health club* facilities.") (emphasis added).

²⁸ 11 C.F.R. § 113.1(g)(1)(i)(G).

²⁹ See attached [Exhibit A](#).

Post Oak Club	Capitol Hill Club	National Democratic Club
Website describes it as a “social club” ³⁰	Website describes it as a “social club” ³¹	Website describes it as a “membership organization dedicated to advancing the party principles in a social atmosphere” ³²
“[P]rospective members must be invited to join” ³³	“Membership in the Capitol Hill Club is by invitation only” ³⁴	
“[B]enefits of Oak Room membership include discounts for rooms at the hotel, free valet parking at the hotel, and invitations to the Oak Room’s social events with celebrities—which may include product launches or private concerts” ³⁵	“Invitations to special events including epicurean adventures, winemaker dinners, fundraisers, theme parties and concerts”; “Access to Member Only events and offers” ³⁶	“As a Member, you are invited to participate in a variety of Club events from the monthly Music Night, Karaoke Night, Annual Golf Tournament, the NDC's new monthly Wine of the Month Club, and various cultural and holiday events throughout the year.” ³⁷

OCE also seems to take issue specifically with the fact that “celebrities occasionally use the [Oak Room] to launch their new alcohol product, and that Oak Room members might have been invited to attend such events.”³⁸ Again, the Congressman did not attend such events using the Post Oak Club membership. Moreover, whether a particular campaign expenditure might place a candidate or officeholder in proximity to “celebrities”

³⁰ OCE Report ¶ 22

³¹ <https://www.capitolhillclub.org/Home>

³² https://www.natdemclub.org/About_Us

³³ OCE Report ¶ 24.

³⁴

https://www.capitolhillclub.org/Membership_Info#:~:text=Membership%20in%20the%20Capitol%20Hill,voting%20member%20of%20the%20Club

³⁵ OCE Report ¶ 23.

³⁶ https://www.capitolhillclub.org/Membership_Info/General_Information

³⁷ See note 33, *supra*.

³⁸ OCE Report at 8 n.22.

is irrelevant to whether that expenditure is personal use—to conclude otherwise would call into question expenditures as routine as campaign events featuring celebrities and dining out with celebrity donors.³⁹

Moreover, the fact that such events might be available to Post Oak Club members does not make membership payments per se personal use, as OCE seems to suggest. As the chart above illustrates, both the Capitol Hill Club and National Democratic Club also host alcohol-themed events for members. Additionally, the FEC dismissed an enforcement complaint alleging personal use where former Senator Cory Gardner used campaign funds to attend an event “intended to promote brand awareness of Krug Champagne in the United States.”⁴⁰ The FEC credited Gardner’s explanation that his “attendance was for the purpose of continuing campaign discussions” with a donor.⁴¹

3.4. The election night party was a legitimate campaign expense

Lastly, putting aside the Post Oak Club membership payments, OCE takes issue with Hunt for Congress’ “large payment of \$43,626.52 to the Post Oak Hotel on November 4, 2022 for ‘Facility Rental/Catering’” and “another disbursement to the Post Oak Hotel for \$4,132.44, reportedly to cover similar expenses related to ‘Catering’ on November 7, 2022. Because Rep. Hunt declined to cooperate with this review, the OCE could not verify whether the expenditures were for legitimate campaign purposes.”⁴²

OCE’s position on these expenditures shows a casual disregard for common sense, context, and the documents that the Congressman provided. Included in the documents provided on January 31, 2024, was a 282-page e-mail chain (starting on page 29 of the production) that the OCE staff could not have possibly overlooked. The very first page of that e-mail chain clearly indicated that Hunt for Congress would be hosting an “Election Night Party” at the Hotel on November 7, 2022. The costs that OCE singled out were obviously for the Congressman’s victory party.

³⁹ In any event, the definition of “celebrity” is subjective, and may differ to some degree between Members of Congress (on the one hand) and the Houston Chronicle reporter whom OCE relies on for this characterization (on the other). OCE Report ¶ 22.

⁴⁰ FEC MUR 7755 (Cory Gardner for Senate), Factual and Legal Analysis at 4.

⁴¹ *Id.* at 10.

⁴² OCE Report ¶ 33.

Needless to say, the costs of an election night party are legitimate campaign expenses.⁴³ OCE's willful blindness to the evidence regarding these particular expenses is indicative of the undisciplined approach it has taken throughout this matter. A cynical observer might even view this treatment of the Congressman's victory party as an attempt to punish him—after months of good-faith cooperation were met with increasingly far-afield requests for information—⁴⁴ for declining to continue engaging with OCE's roving and unnecessarily prolonged investigation.

3.5. The Committee on Ethics should defer to the FEC's personal use precedents

As the U.S. Supreme Court has stated, "the [FEC] is precisely the type of agency to which deference should presumptively be afforded. Congress has vested the [FEC] with primary and substantial responsibility for administering and enforcing the Act, providing the agency with extensive rulemaking and adjudicative powers."⁴⁵

As discussed above, the FEC precedents on personal use specifically permit the use of campaign funds to pay for membership dues to what OCE characterizes here as a "social club." The Committee on Ethics should respect those precedents and not adopt a different interpretation of the FECA's personal use prohibition. Such a divergence would sow chaos for Members of Congress, including for those on the Committee on Ethics who have used campaign funds to pay for Capitol Hill Club and National Democratic Club dues in reliance on the FEC precedents.

While the OCE report suggests that the House ethics authorities on personal use exist independently of the FECA and FEC rules,⁴⁶ OCE nonetheless gives no reason for why the Committee on Ethics should diverge from the FEC's holdings in this particular instance.

⁴³ See, e.g., FEC MUR 7944/7945 (Kim Klacik for Congress), Factual and Legal Analysis at 11-12 (finding that a \$119,651.16 payment for the costs of a House candidate's election night party was not personal use).

⁴⁴ The Congressman and his staff expended not-insignificant resources cooperating in good faith with OCE staff's investigation. They conducted a diligent search for all responsive emails, text messages, and other documents, and provided everything that they located to OCE staff. In total, they produced 369 pages of materials, redacting only campaign donors' personally identifiable information. Yet OCE insisted that this was insufficient unless the Congressman and his wife would sit for an interview.

⁴⁵ *FEC v. DSCC*, 454 U.S. 27, 37 (1981) (quoting *Buckley v. Valeo*, 424 U.S. 1, 109 (1976) (cleaned up)).

⁴⁶ See OCE Report at 6-7

Indeed, the OCE report itself primarily relies on FEC authorities,⁴⁷ even though OCE misapplies those authorities.

CONCLUSION

All of the Hunt for Congress payments to the Post Oak Hotel, including for membership in the Post Oak Club, were exclusively for campaign-related purposes and not for any personal purposes. OCE's tacit position that campaign payments for "social club" membership dues are per se prohibited is so lacking in legal basis that OCE itself is not even willing to state this position clearly and explicitly.

The Committee on Ethics should dismiss this matter forthwith.

Please contact us should you need any additional information.

Sincerely,



Chris K. Gober
Eric Wang
Anna Mackin

Counsel to Congressman Wesley Hunt

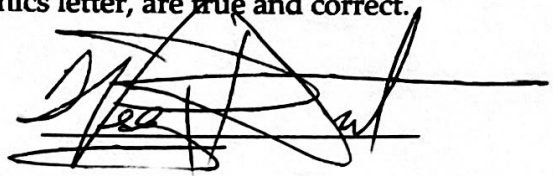
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⁴⁷ See *id.* ¶¶ 13 (citing the FEC rule and FEC rule explanation), 16 (citing "FEC regulations") & n.6 (citing the FEC rule explanation and FEC advisory opinion)

DECLARATION

I, Representative Wesley Hunt, declare under penalty of perjury that the response and factual assertions contained in the attached letter dated April 9, 2024, relating to my response to the March 25, 2024, Committee on Ethics letter, are true and correct.

Signature:

A handwritten signature in black ink, appearing to be 'Wesley Hunt', written over a horizontal line. The signature is somewhat stylized and scribbled.

Name:

Representative Wesley Hunt

Date:

4/9/2024