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February 21, 2014

VIA EMAIL, FAX and US MAIL

Mr. Omar S. Ashmawy
Chief Counsel
Office of Congressional Ethics
425 3rd Street, SW
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Washington, DC 20024

Re: Review No. 14-2940 - RESPONSE TO INITIATION OF PRELIMINARY
REVIEW AND REQUEST FOR INFORMATION

Dear Mr. Ashmawy:

This correspondence issues in response to your letters of January 29, 2014 and January 31, 2014 regarding the decision by the Board of the Office of Congressional Ethics ("OCE") to initiate a preliminary review (Review No. 14-2940) into the conduct of Representative Ed Whitfield. As indicated in your January 29th communication, OCE's review is focused on the purported joint "lobbying efforts" of Representative Whitfield and his spouse, Ms. Connie Harriman-Whitfield, in support of animal-welfare legislation, including legislation introduced by the Congressman between 2011 and the present. According to the formal statement of the nature of the review, OCE is investigating whether the actions of Representative Whitfield and his spouse constituted a violation of the Rules of the U.S. House of Representatives or an impermissible grant of special favors or privileges to Ms. Harriman-Whitfield's employer, the Humane Society Legislative Fund ("HSLF"), in contravention of the Code of Ethics for Government Service.

In conjunction with its decision to initiate a preliminary review of Representative Whitfield's conduct, your office also issued the Congressman a formal Request for Information ("RFI") in accordance with the OCE's Rules for the Conduct of Investigations ("OCE Rules"). The specific information and materials sought through this RFI were laid out in seven itemized inquiries within your January 31st correspondence. As required by OCE Rules 7(D) and 7(E), you have subsequently asked that the Congressman respond to each of those questions and deliver relevant documents to OCE so that it may complete its preliminary report within the administratively imposed 30-day window.

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Despite Representative Whitfield's disappointment in the decision to originate a preliminary review in the present matter, the Congressman nevertheless expresses his desire to cooperate with the OCE and its staff. As such, please accept the present correspondence as an initial response to the OCE's January 29th notice of preliminary review initiation and as a formal answer to your office's January 31st RFI. Representative Whitfield's specific response to each of the seven inquiries contained in the RFI are included below in the second half of this letter. Corresponding documents associated with the Congressman's answers to those questions are also attached hereto as numbered addenda. To the extent certain information regarding Representative Whitfield's response is not available or still being gathered from archived e-mail servers, specific notes concerning those details have been made in the answer sections of this response. As requested and as required by OCE Rule 4(A)(2), Representative Whitfield has agreed to provide a signed certification statement to your office in conjunction with his RFI response. This certification will be forwarded to OCE within the next few days.

Upon review of the present correspondence and the attached files, documents, e-mails, and other materials, it should be readily apparent to OCE that it should affirmatively vote to terminate review of the present matter and not proceed to a Second-Phase Review of Representative Whitfield's conduct.¹ None of the alleged actions taken by the Congressman, his staff, or his wife rise to the level of a violation of House Rules, the Code of Ethics for Government Service, or any other applicable ethical rule. In fact, there is simply no reasonable evidence to support any accusation to the contrary. Representative Whitfield's actions on behalf of animal-welfare legislation constitute the standard public policy activities of an elected Member of the House of Representatives. The Congressman has a long history of legislative engagement and work on behalf of animal-welfare issues during his nine terms in the House, and took no actions with regard to such matters that improperly favored or benefitted his spouse, the HSLF, the Humane Society of the United States ("HSUS"), the Fund for Animals ("FFA"), or any other individuals or entities.

INITIAL RESPONSE TO OCE'S NOTICE OF PRELIMINARY REVIEW INITIATION

Although the primary purpose of the present letter is to offer a formal response to the RFI correspondence sent to Representative Whitfield on January 31st, it is also an opportunity for the Congressman to address the nature of the preliminary allegations lodged against him by OCE and refute any contention that his conduct with regard to animal-welfare legislation or public policy issues has somehow been ethically improper. As discussed in greater detail throughout the contents of this letter and as established by the documents provided in conjunction with this letter addenda,

¹ The contents of this correspondence and the provided attachments represent only a preliminary response to the initial allegations contained in the present OCE notice and RFI. As such, Representative Whitfield hereby reserves the right to further respond to these claims and any additional ethical accusations raised by the OCE during its preliminary review. The Congressman also preserves the right to offer supplemental argument, factual support, and documentary and testimonial evidence in his defense during the course of OCE's investigation of the present matter.

there is absolutely no basis to believe that Representative Whitfield has committed any cognizable ethical violation.

At all times since his election to Congress, Representative Whitfield's conduct on behalf of animal-welfare matters has reflected creditably on the House and has adhered to the spirit and letter of the Rules of the House and its duly constituted committees. Likewise, all of Representative Whitfield's legislative activities concerning animal-welfare issues have been open, honest and motivated by the legitimate concern that he and his constituents share for the proper treatment of animals. At no time has the Congressman or his staff discriminated unfairly or dispensed special favors or privileges to anyone associated with animal-welfare matters, nor has he or his staff received any favors or benefits that might reasonably be construed as influencing the performance of governmental duties. Moreover, at no time during the course of the past three years has Representative Whitfield permitted his wife to lobby his office (or himself) for the purpose of influencing the Congressman's adoption, formulation, or modification of federal legislation.

In light of these facts, there is no compelling reason for the OCE to initiate a Second-Phase Review in the present matter. The preliminary review allegations, which are detailed below, are not supported by any evidence or legal precedent, and therefore do not merit further consideration. As such, the OCE should refrain from any further consideration of the announced claims and immediately vote to dismiss Review No. 14-2940.

The Scope of the Initial Review and the Nature of Representative Whitfield's Legislative and Public Policy Engagement on Behalf of Animal-Welfare Matters

The precise scope of the preliminary inquiry launched by OCE against Representative Whitfield was described in the following terms in your January 29th correspondence:

"Representative Ed Whitfield reportedly engaged in lobbying efforts jointly with his spouse, a registered lobbyist for the Humane Society Legislative Fund, in support of animal-welfare legislation, including legislation introduced by Representative Whitfield. Their lobbying efforts allegedly included joint lobbying sessions in which Representative Whitfield and his spouse met with lawmakers and congressional staff to promote legislation.

If Representative Whitfield granted special favors or privileges to the Humane Society Legislative Fund because of his spouse's position, then he may have violated the Code of Ethics for Government Service.

If Representative Whitfield permitted his spouse to lobby him or his congressional staff, then he may have violated House rules."

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Based upon this factual description, it appears that OCE's initial review is primarily focused on the nature of the alleged joint "lobbying efforts" conducted by the Congressman and his wife in support of various pieces of animal-welfare legislation introduced in the House between 2011 and the present. Specifically, OCE appears concerned that by engaging in joint lobbying with his spouse (who is publicly disclosed as a registered lobbyist for HSLF) on behalf of such bills, Representative Whitfield may have improperly granted special favors or privileges to the HSLF or other Humane Society Entities. In reality, nothing could be further from the truth.

None of the actions undertaken by Representative Whitfield or his staff in the present matter with regard to animal-welfare legislation come remotely close to qualifying as the dispensation of special favors or privileges to HSLF, HSUS or any other Humane Society Entity. The Congressman's support for public policy initiatives and legislative proposals involving animal-welfare matters has been motivated purely by his personal desire (and the interests of his constituents) to ensure the safety and proper treatment of animals in Kentucky and across the United States. This interest in animal-welfare issues is long-standing and readily apparent upon examination of Representative Whitfield's legislative record over the course of his nearly two decades in Congress.

Most significantly to this inquiry, the Congressman's support for these issues long predates his wife's lobbying activities for any Humane Society Entity. Under no circumstances can Representative Whitfield's motivations or actions with regard to these issues be in any way ascribed to a desire to provide special favors to HSLF because of his wife's position.

Representative Whitfield's legislative support for animal-welfare matters dates back to his first term in the House during the 104th Congress (1995-1996), when the Congressman co-authored a letter to the Secretary of Agriculture concerning the regulation of "puppy mills". In the terms that followed, the Congressman's interest and dedication to animal-welfare issues became even more pronounced. During the 106th Congress (1999-2000), Representative Whitfield supported at least six different pieces of animal-related legislation and spoke about animal-welfare matters on the floor of the House.² During the 107th Congress (2001-2002), the Congressman supported five additional pieces of animal-related legislation.³ Similarly, during the 108th (2003-2004), 109th (2005-2006), 110th (2007-2008), and 111th (2009-2010) Congresses, Representative Whitfield supported or co-

² Examples of the animal-welfare legislation supported by Representative Whitfield during the 106th Congress include H.R. 2166 (regarding bear protection issues); H.R. 1275 (regarding cockfighting issues); H.R. 1887 (regarding animal crush videos); Amendments to H.R. 2466 (involving animal leg-hold trap issues); the 1999 Predator Control Amendment to H.R. 1906; and the 2000 Predator Control Amendment to H.R. 4461.

³ Examples of the animal-welfare legislation supported by Representative Whitfield during the 107th Congress include H.R. 3058 (regarding puppy mill issues); H.R. 1155 (regarding cockfighting issues); H.R. 397 (regarding bear issues); animal safety appropriations legislation for 2001; and animal safety appropriations legislation for 2002.

sponsored at least seven⁴, eight⁵, nine⁶, and eleven⁷ animal-related bills respectively. Additionally, the Congressman spoke about animal-welfare issues several times on the floor of the House during those enumerated Congresses, engaged on animal issues during various House committee and subcommittee hearings, and likewise authored several pieces of formal correspondence concerning animal-safety and protection matters. All of this legislative engagement by the Congressman on animal-welfare issues took place prior to his wife's assumption of a lobbyist position for HSLF in 2011. In fact, much of it predates any relationship Ms. Harriman-Whitfield had with HSLF, HSUS, or any other Humane Society Entity.

Since 2011, Representative Whitfield has maintained the same consistent level of support for animal-welfare legislation and passion for engagement on animal-welfare issues that he displayed between 1994 and 2010. For example, as noted in the language of RFI Request No. 4, the Congressman has either supported or co-sponsored a wide range of animal-welfare bills during both the 112th and 113th Congresses. In addition to those listed in your correspondence of January 31st, Representative Whitfield has also lent legislative support to a number of other pieces of legislation, including: H.R. 2112 (regarding lethal predator control issues); H.R. 2584 (regarding endangered species issues); and H.R. 2012 (regarding horse racing integrity and safety). In addition to these direct legislation efforts, the Congressman also authored a letter to the USDA concerning issues related to the Horse Protection Act, and spoke on a wide variety of animal-related issues in various House committee and subcommittee hearings.

⁴ During the 108th Congress, Representative Whitfield supported or co-sponsored several pieces of animal-welfare legislation, including: H.R. 1532 (regarding the criminalization of animal fighting activities); H.R. 1563 (regarding antifreeze safety and its impact on animals); H.R. 857 (regarding horse slaughter issues); H.R. 4568 (regarding bison matters); H.R. 2691 (regarding bear baiting issues); H.R. 2673 (regarding funding for the prosecution of animal fighting matters); H.R. 1006 (regarding lion and tiger matters).

⁵ During the 109th Congress, Representative Whitfield supported or co-sponsored several pieces of animal-welfare legislation, including the following H.R. 2744 (regarding horse slaughter issues); H.R. 2361 (regarding wild horse issues); H.R. 2669 (regarding dog issues); H.R. 817 (regarding animal fighting); H.R. 503 (regarding horse slaughter issues); various amendments regarding horse slaughter and wild horse issues); and H.R. 3858 (regarding pet evacuation and transportation issues).

⁶ During the 110th Congress, Representative Whitfield supported or co-sponsored several pieces of animal-welfare legislation, including: H.R. 503 (regarding horse slaughter issues); H.R. 249 (regarding wild horse issues); H.R. 891 (regarding fur labeling); H.R. 137 (regarding animal fighting); H.R. 2643 (regarding polar bear issues); H.R. 1464 (regarding dog and cat issues); H.R. 1771 (regarding crane conservation issues); H.R. 2419 (regarding animal and farm issues); and H.R. 2964 (regarding primate issues).

⁷ During the 111th Congress, Representative Whitfield supported or co-sponsored several pieces of animal welfare legislation, including: H.R. 503 (regarding horse slaughter issues); H.R. 2480 regarding fur labeling issues); H.R. 1326 (regarding primate research); H.R. 80 (regarding primate issues); H.R. 388 (regarding crane conversation issues); H.R. 411 (regarding dog and cat issues); H.R. 1018 (regarding wild horse issues); H.R. 509 (regarding marine turtle issues); H.R. 5566 (regarding animal crush video issues); H.R. 3885 (regarding service dogs); and H.R. 5434 (regarding puppy mills).

In sum, throughout his nearly two decades in Congress, Representative Whitfield has developed a clear and established record of taking keen interest in animal-welfare issues and animal-related legislation. Since the beginning of his first term in the House in 1995, the Congressman and his congressional staff have engaged in all aspects of the legislative process with regard to animal-welfare matters. This includes, but is not limited to: drafting bills and amendments on animal-rights and safety matters; communicating with fellow Members regarding various pieces of animal-welfare legislation and animal-welfare amendments; engendering support from fellow Members concerning various animal-welfare bills and animal-welfare amendments; participating in and helping to organize hearings on animal-related issues; engaging constituents and lobbyists on a wide range of animal-welfare issues; and expressing public support for animal-welfare issues in both an official and non-official capacity. All of these activities predate Ms. Harriman-Whitfield's registration as a federal lobbyist for HSLF and any other non-lobbying association she had with the Humane Society Entities prior to 2011.

In light of this long and established record of engagement on animal-welfare issues, it should be abundantly clear to the OCE that the Congressman and his staff have always taken an active legislative role in such matters. Dating back to 1995, Representative Whitfield and his staff have energetically engaged constituents, outside interest groups, and other Members on a wide range of animal-related public policy matters. This includes taking meetings with various individuals and groups invested in animal welfare matters (including lobbyists for a wide range of animal organizations), working to formulate sensible legislative policies regarding key animal issues, and engaging other Members and their staff on legislative formulation and adoption. All of these activities were motivated by Representative Whitfield's high level of personal concern for public policy matters involving animal welfare and his constituents' equally-high interest in the subject matter. None of this engagement derived from a desire by the Congressman or his staff to dispense special favors or privileges to animal-welfare organizations or the individuals associated with them. In particular, none of his conduct with regard to animal-welfare issues was at all motivated by a personal desire to benefit his wife or her employer, HSLF.

As demanded by House Rules and the Code of Ethics, all of Representative Whitfield's legislative engagement on animal-welfare issues (dating back to 1995) has been even-handed and driven by a general desire to improve the public welfare in the Congressman's district and across the country. In turn, the Congressman and his staff have never discriminated for or against any group or individual seeking to meet or engage with his office on animal-welfare matters or legislation. Likewise, Representative Whitfield and his staff have never shied away from offering appropriate congressional aid and support to individuals or groups interested in animal-welfare matters. As a result, the Congressman and his staff have met with, communicated with, been educated by, discussed public policy priorities, and engaged in the legislative process with a plethora of animal-related groups and individuals. Included among these engaged organizations and individuals are groups such as the National Thoroughbred Racing Association, the American Veterinary Medical Association, the American Horse Council, the American Association of Equine Practitioners, the American Society for the Prevention of Cruelty to Animals, the American Farm Bureau, the

Thoroughbred Owners and Breeders Association, the Jockey Club, the National Medication Testing Consortium, and the Jockeys Guild, as well as a wide range of small farmers and other individuals personally invested in animal-welfare issues. The Humane Society Entities, at issue in this matter, are yet another example of the type of organization that Representative Whitfield and his staff have engaged in this fashion.

Such conduct in connection with these organizations and individuals was and is wholly consistent with the Congressman's constitutional role as an elected representative in Congress and is likewise extremely common among Members. Additionally, such conduct by Representative Whitfield and other Members is not unique to organizations or individuals interested solely in animal-welfare matters. As an energetic representative of the people of Kentucky's First Congressional District, Representative Whitfield has consistently had similar contact and engagement with organizations and individuals interested in a wide range of other public policy issues, including tax and economic matters, health care and entitlement reform, energy issues, and foreign policy and trade matters. In turn, the treatment of HSLF and the Humane Society Entities by the Congressman and his staff was not unique to those organizations or the public policy matters at issue. It was simply an example of Representative Whitfield performing his job to the utmost of his ability.

In light of these facts, it is wholly improper to characterize the conduct of Representative Whitfield's office with regard to the Humane Society Entities as anything other than normal interactions between interest groups and a Member of Congress. Representative Whitfield and his staff did not afford HSLF or any of the other Humane Society Entities special access to their office as a result of Ms. Harriman-Whitfield's position as a registered lobbyist for HSLF, nor did they engage in any interactions that had any bearing on the adoption, formulation, or modification of legislation by the Congressman.⁸ As permitted by House Rules and the Code of Ethics, the vast majority of contacts, communications and interactions between Representative Whitfield's office and the Humane Society Entities involved either the exchange of educational information regarding animal-welfare issues, or, in instances where there was alignment of public policy priorities, the discussion of how best to grow grass roots and political support for particular legislative initiatives concerning animal welfare. In a limited number of instances, however, the interactions between Representative Whitfield's office and the Humane Society Entities involved setting up meetings between HSLF representatives (typically Ms. Harriman-Whitfield) and federal administrative or legislative offices.

The nature of such meetings varied widely, but typically they involved the sharing of educational information regarding animal welfare issues by HSLF. In some instances, however, they

⁸ This is indicative of the fact that Ms. Harriman-Whitfield did not engage in any lobbying contacts with her husband or his staff in an attempt to influence his policy positions on animal-welfare or any other type of federal legislation.

may have involved more substantive matters, such as the sharing of HSLF's public policy priorities. As is characteristic of these types of administrative meetings (which are commonly setup by Members for various constituents and policy groups), HSLF representatives were often accompanied to their appointments by a member of the Congressman's staff. In some rare occurrences (typically those involving a meeting with another Member or Senator), Representative Whitfield would also accompany the HSLF representative(s). This action is also a common one for Members of Congress, who typically attend face-to-face meetings that their staff set up with other elected officials.

In light of the above factual scenarios, there is no reasonable basis for OCE to believe that a violation of House Rules or the Code of Ethics have occurred in the present matter. Communicating and engaging with an interest group represented by one's lobbyist spouse does not trigger an ethics violation for a Member of Congress unless such communications and engagement represent the dispensation of special privileges or benefits or involve direct lobbying contacts designed to influence the legislative positions of that Member. Such conduct did not occur in the present matter. Through communications with HSLF, Representative Whitfield and his staff were merely exchanging educational and political engagement information with an interest group of importance to his constituents. Likewise, through the actions of his office to arrange meetings for HSLF with other legislative and executive branch officials, he fulfilled the typical constitutional role common to all Members of Congress – serving as a representative "go between" for individuals and policy groups seeking to have the federal government address their public policy goals and grievances. None of this conduct, in the abstract or in relation to the activities in this matter, constitutes a violation of the ethical rules applicable to Representative Whitfield and his staff.

In weighing the permissibility of the above actions taken by Representative Whitfield and his staff with regard to animal-welfare legislation, HSLF and the Humane Society entities, it is also important to take note of the fact that the Congressman affirmatively sought to comply with his ethical obligations under the House Rules and Code of Ethics. To this end, following Ms. Harriman-Whitfield's registration as a federal lobbyist for HSLF in 2011, the Congressman and his wife sought informal advice from the House Committee on Ethics regarding the implications of her status as a lobbyist on his day-to-day representative responsibilities. In this regard, the Congressman, Ms. Harriman-Whitfield, and the Congressman's staff all consulted the House Ethics Manual to seek advice on the limits of permissible interaction between Representative Whitfield and HSLF. Furthermore, Ms. Harriman-Whitfield independently sought informal phone guidance from HEC counsel on the ethical framework at play in this scenario.

Based upon these actions, it was determined that nothing in the House Rules or the Code of Ethics specifically prohibited Representative Whitfield and his staff from engaging in the types of activities discussed above as it relates to Ms. Harriman-Whitfield and HSLF. It was discovered, however, that as the spouse of a Member, Ms. Harriman-Whitfield was not allowed to engage in lobbying contacts directly with her husband or his staff. In light of this prohibition, it was made clear to the Congressman's staff members that they could not have any contacts with Ms. Harriman-Whitfield designed to influence Representative Whitfield's adoption, formulation or modification of

legislation. Similarly, the Congressman refrained from any such communications. On information and belief, that edict has been followed by both Representative Whitfield and his staff over the course of the past three years.

Potential Ethical Provisions at Issue in the Present Preliminary Review

Although it is unclear at present whether or not OCE believes there is a reasonable basis to suspect that any specific House Rules or Code of Ethics provisions have been contravened by the actions of Representative Whitfield regarding animal-welfare legislation, the scope of the preliminary review discussed in your January 29th correspondence indicates that OCE is potentially weighing whether the Congressman's conduct ran afoul of three general ethical frameworks – Section 5 of the Code of Ethics for Government Service; Clauses 1 and 2 of House Rule XXIII; and Clause 7 of House Rule XXV. In this initial response to OCE's notice of preliminary review and at this early stage of your office's investigation, we will not attempt to marshal a full legal analysis of these provisions. We would, however, like to offer a basic overview of these ethical standards to illustrate why there is absolutely no basis to believe that Representative Whitfield's actions on behalf of animal-welfare legislation constitute impermissible behavior by a Member of Congress.

Section 5 of the Code of Ethics for Government Service

As the OCE knows well, the Rules of the U.S. House of Representatives and other associated standards of conduct generally prohibit Members from using, or appearing to use, their official position for personal gain or benefit. One of the key ethical provisions implementing this proscription is Section 5 of the Code of Ethics for Government Service, 72 Stat., Part 2, B12 (1958), H. Con. Res. 175, 85th Cong. The language of Section 5 requires any person in Government service, including Members and their staff, to:

Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his government duties.

As such, Members and their staff may not take any actions that might be construed by reasonable persons to be either a special dispensation on behalf of a third party or to be conduct improperly influenced by favors or benefits given to them by such a third party.

Unfair Discrimination and the Dispensation of Special Favors or Privileges

When assessing the first prong of Section 5 and seeking to determine whether a Member or staffer has unfairly discriminated through the dispensation of special favors or privileges, the House Ethics Committee ("HEC") typically looks to see if the accused individual has unethically used his or her office or position to favor the interests of a third party. In most Section 5 cases, the alleged unethical behavior under investigation by the HEC involves conduct by a Member or staff that aids

the interests of a third party through the influence of independent agencies and executive or legislative branch officials and employees. The HEC has made clear in these matters, however, including in the very first advisory opinion issued by the HEC, that standard administrative contacts for or on behalf of constituents and other similarly-situated third parties are by no means contrary to the language or spirit of Section 5.

According to HEC precedent and policy announcements, the simple act of arranging or conducting a meeting with an administrative agency or legislative official is (in most circumstances) an appropriate use of a Member's position or a staffer's authority.⁹ The HEC has long recognized that acting as a "go-between" or conduit between the public and administrative agencies of the federal government (or other legislative officials) is an important aspect of a Member's representative function and a staffer's employment responsibilities.¹⁰ Moreover, the HEC has accepted that the facilitation of administrative contact via elected officials and their staff is a logical extension of the Constitutional guarantee that all citizens have the right to petition the federal government for the redress of grievances.¹¹

Of course, when acting as a conduit between constituents or similarly-situated third parties and administrative or legislative personnel in the federal government, a Member's or staffer's conduct must be bound by certain statutory and judicial restrictions, as well as certain ethical principles. To this end, specific types of contacts by Members and staff are traditionally considered inappropriate by the HEC. Included among these improper actions are so-called *ex parte* communications directed at executive or independent agency officials *on the merits* of matters under their formal consideration.¹² This prohibition does not, however, proscribe "general background discussions about an entire industry that do not directly relate to specific agency adjudication involving a member of that industry, or to formal rulemaking involving the industry as a whole."¹³ Nor does the proscription against *ex parte* communications apply to congressional status requests, which are explicitly exempted by statute, or routine inquiries or referrals by Members or staff.¹⁴

In addition to these statutory and judicial restrictions on Members or staffers acting as a conduit between a Member's constituents and other federal government agencies or employees, Congress has adopted standards that recognize the legitimate role of a Member in assisting the

⁹ See Committee on Standards of Official Conduct, Advisory Opinion No. 1.

¹⁰ See 2008 House Ethics Manual, pg. 299.

¹¹ U.S. Const., Amen. 1.

¹² 5 U.S.C. § 557(d).

¹³ House Committee on Gov't Operations, *Government in the Sunshine Act*, H. Rep. 94-880, 94th Cong., 2d Sess., pt. 1, at 20 (1976).

¹⁴ See 5 U.S.C. § 551(14); H. Rep. 94-880, at 21-22.

public, while protecting both the due process rights of parties potentially affected by government action and the ability of agency officials to exercise their responsibilities.¹⁵ The most clear expression of these standards is in Committee Advisory Opinion No. 1, which was issued in 1970. In the language of this opinion, the HEC asserted that it is appropriate for a Member (and by extension, a staffer) to act as a conduit between a Member's constituents and federal government agencies in a variety of different settings, including: (1) requesting information or seeking a status report; (2) urging prompt consideration of a matter; (3) arranging for interviews or appointments with constituents; (4) expressing judgments; (5) calling for reconsideration of an administrative response which may not be supported by established law, regulation, or legislative intent; and (6) performing any other service of a similar nature generally compatible with ethical rules.¹⁶ In blessing each of these types of administrative contacts, however, the Advisory Opinion also made clear to Members and staffers that they are at all times required to recognize that the "overall public interest ... is primary to any individual matter and should be so considered."¹⁷

The contents of Advisory Opinion No. 1 also spell out specific, "self-evident" standards of conduct that a Member or staffer should follow when arranging a meeting between a constituent and a federal government agency or employee. Specifically, the Member or staffer should: (1) recognize that their responsibility in this setting is to all constituents equally and not solely to the party involved; (2) pursue actions on behalf of third parties with equal diligence irrespective of political or other considerations associated with the parties; (3) understand that direct or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency or employee contacted is unwarranted abuse of office or authority; and (4) make every effort to ensure that any representation made in such meetings conforms with general ethical principles and the instructions of the Member.

In applying these standards to various factual scenarios, the HEC has developed a series of guidelines for avoiding improper conduct that dovetail with the ethical standards set forth in Advisory Opinion No. 1. These guidelines fall mainly into two distinct categories – guidelines regarding the nature of proper communications between Members or staffers and federal government agencies or employees; and guidelines regarding the avoidance of unfair discrimination (or the appearance of unfair discrimination) by Members or staffers when serving as conduits between constituents and federal government agencies or employees.

In the first context, the HEC (through commentary in the House Ethics Manual and in various investigations) has made it clear that factual communications between Members or staffers and federal government agencies or employees must avoid any indicia of undue influence. While

¹⁵ See 2008 House Ethics Manual at 305.

¹⁶ See Committee Advisory Opinion No. 1.

¹⁷ *Id.*

what constitutes undue influence varies from factual setting to factual setting, the HEC has generally required that there be at least some “probative evidence” of a “reprisal or threat to . . . officials” in order to reach a determination that improper influence was applied by a Member or staffer.¹⁸ At the same time, the HEC has asserted that a finding of influence cannot be based purely on “inference”, “circumstance”, or on the “technique or personality” of the Member or staffer.¹⁹

Bearing these principles in mind, the HEC's general advice on avoiding the appearance of undue influence when communicating with government agencies and employees has been for Members and staffers to avoid endorsing factual matters they do not know to be true and to leave substantive assertions of fact to the individual constituents or third-parties involved in the meetings.²⁰ Additionally, the HEC has urged Members and staffers to refrain from allowing personal interest in or support for the issues or matters being discussed by constituents or third parties from becoming improper advocacy for their positions. The expression of general interest in or support for constituent issues and matters is, in and of itself, generally permissible for Members and staffers. Overzealous interest or unwarranted support, however, could be indicative of undue influence.

The second set of guidelines mentioned above relate to the avoidance of unfair discrimination (or the appearance of unfair discrimination) by Members or staffers when serving as conduits between constituents and federal government agencies or employees. Under these guidelines, it is imperative that Members and staffers approach their role of conduit equally for all constituents. Considerations such as political support, party affiliation, or campaign contributions should not affect either the Member's or staffer's decision to provide assistance to a given constituent or the quality of the aid given by the Member or staffer.²¹ While this means that a Member or staffer should not discriminate in favor of political supporters, it equally means that a Member or staffer should not discriminate against such supporters. To this point, the HEC has proclaimed that “the fact that a constituent is a campaign donor does not mean that a Member is precluded from providing any official assistance.”²² Provided there is no *quid pro quo* situation at play, a Member or staffer “is free to assist all persons equally.” In providing such assistance, however, Members and staffers should always be mindful to avoid the appearance of impropriety. According to the language of the

¹⁸ House Comm. on Standards of Official Conduct, *Statement in the Matter of James C. Wright, Jr.*, 101st Cong., 1st Sess. 84 (1989).

¹⁹ *Id.*

²⁰ 2008 House Ethics Manual at pg. 37.

²¹ *Advisory Opinion No. 1.*

²² House Comm. on Standards of Official Conduct, *Statement Regarding Complaints Against Representative Newt Gingrich*, 101st Cong., 2d Sess. 66 (1990).

House Ethics Manual, this means "taking care not to show favoritism" to political supporters and campaign donors over other constituents.²³

The Acceptance of Special Favors or Benefits

When assessing the second prong of Section 5 and seeking to determine whether a Member or staffer has taken official action for personal benefit, the Committee will take into consideration three different factors: (1) the nature of the benefit provided²⁴; (2) the people or entities that could benefit from the official action²⁵; and (3) the Member's or staffer's motive in taking the action²⁶. When determining a Member's or staffer's motive in taking official action, the HEC typically asks whether there is "direct evidence" that the congressman or staffer "had any such improper motive."²⁷ We will not delve any further into these standards at this time, but can provide additional precedential applications of Section 5's second prong should OCE believe that such issues arise in the present matter. We do not believe, however, that the Congressman's activities in the present dispute involve any reasonable concerns about the acceptance of such special favors or benefits.

Clauses 1 and 2 of House Rule XXIII

Although not specified in the preliminary review statement included in your office's January 29th correspondence, it is readily apparent that OCE's current investigation may involve an assessment of whether Representative Whitfield violated the ethical provisions contained within Clauses 1 and 2 of House Rule XXIII. These "catch all" ethical provisions apply equally to Members, officers, and employees of the House and are often the basis of OCE and HEC scrutiny. We will endeavor to address both briefly in turn below with an eye toward explaining why neither is applicable in the present matter.

House Rule XXIII, Clause 1

The language of House Rule XXIII, Clause 1 is one of the broadest ethical provisions applicable to Members and their staff. Specifically, its language mandates that "a Member, Delegate, Resident Commissioner, officer, or employee of the House ... conduct himself at all times in a manner that shall reflect creditably on the House." As written, this phrasing sheds little light on the proper application of Clause 1 to various factual settings. Legislative history and historical

²³ 2008 House Ethics Manual at pg. 309.

²⁴ See, e.g., House Comm. on Standards of Official Conduct, Investigation of Financial Transactions Participated in and Gifts Accepted by Representative Fernand J. St. Germain, H. Rep. 100-46, 100th Cong., 1st Sess. 43 (1987).

²⁵ See Graves at 19; Sikes, at 28.

²⁶ St. Germain, at 43.

²⁷ Id.

precedent, however, clarify that Clause 1 is typically invoked only in those situations involving "flagrant" official or personal conduct, or behavior that constitutes an abuse of one's official position.²⁸ As mandated by House Resolution 451 passed during the 110th Congress, this includes alleged criminal conduct associated with Members and their staff.

With this interpretive framework in mind, the HEC and full House have chosen to invoke Rule XXIII, Clause 1 in investigating or disciplining members only in those settings where there is clear evidence of egregious conduct unbecoming of the public trust. This includes scenarios involving the following forms of flagrant behavior by Members and staff: (1) failure to report campaign contributions; (2) making false statements to the HEC; (3) criminal convictions for bribery, conspiracy, racketeering, and obstruction of justice; (4) accepting illegal gratuities; (5) filing false federal income tax returns; (6) inflating the salaries of congressional employees to enable them to pay for the personal, political and congressional expenses of Members; (7) accepting gifts from persons in violation of the House gift rules; (8) engaging in inappropriate sexual relationships or making improper sexual advances; (9) improperly influencing the activities of police officers or judges; (10) engaging in a pattern of behavior involving the improper conversion of campaign funds to personal use; (11) performing campaign work in an official congressional office on official time; (12) making statements that impugn the reputation of the House; (13) failing to cooperate with HEC fact-finding activities; (14) personally threatening a Member or staffer; and (14) offering political endorsements in exchange for legislative support.²⁹ Conduct that does not rise to the level of ethical flagrancy demonstrated by these anecdotal behaviors does not traditionally meet the standards of a Clause 1 violation under House Rule XXIII.

House Rule XXIII, Clause 2

Like Clause 1 discussed above, Clause 2 of House Rule XXIII is one of the broader ethical standards applicable to Members and their staff. Specifically, the language of Clause 2 mandates that "a Member, Delegate, Resident Commissioner, officer or employee of the House shall adhere to the spirit and letter of the Rules of the house and to the rules of duly constituted committees thereof." Its purpose, according to the pertinent legislative history at the time of its adoption, is to emphasize the importance of decorum in congressional dealings and to provide the House with a means of dealing with troubling conduct that does not necessarily fit within the boundaries of existing ethical rules.

Regardless of the intended purpose of the rule, Clause 2's practical effect has been to broaden the enforceability of already-existing provisions within the House Rules and the Code of Ethics for

²⁸ In interpreting Clause 1 of the Rule XXIII when first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that this standard was included within the Code to deal with "flagrant" violations of the law that reflect on Congress as a whole, and that might otherwise go unpunished.

²⁹ House Ethics Manual, pgs. 26-27.

Government Service. This phenomenon is a direct result of the HEC's traditional approach to applying the provision. Explicitly, the HEC has customarily interpreted Clause 2 to mean that "Members, officers, and employees may not do indirectly what they would be barred from doing directly."³⁰ This understanding of the clause prevents individuals from knowingly circumventing the spirit of a given ethics provision by engaging in behavior that skirts the line of compliance with the letter of the law. Likewise, this interpretation of Clause 2 prevents individuals from enabling ethical violations through ancillary activity on behalf of others. This broadening effect does not, however, operate in a manner that proscribes behavior otherwise deemed permissible under House Rules or the Code of Ethics.

Clause 7 of House Rule XXV

Although not specified in the preliminary review statement included in your office's January 29th correspondence, it is readily apparent that OCE's current investigation may also involve an assessment of whether Representative Whitfield violated the ethical standards set forth in House Rule XXV, Clause 7. This recently-enacted provision of the House Rules requires that a Member prohibit his or her staff from having any lobbying contacts with the Member's spouse if he or she is a federally-registered lobbyist. Specifically, the language of Clause 7 reads as follows:

"A Member, Delegate, or Resident Commissioner shall prohibit all staff employed by that Member, Delegate, or Resident Commissioner (including staff in personal, committee, and leadership offices) from making any lobbying contact (as defined in section 3 of the Lobbying Disclosure Act of 1995) with that individual's spouse if that spouse is a lobbying under the Lobbying Disclosure Act of 1995 or is employed or retained by such a lobbyist for the purpose of influencing legislation."

Under this general prohibition, Members with spouses who are registered federal lobbyists under the Lobbying Disclosure Act of 1995 (LDA) are obligated to prohibit their staffers from engaging in any formal "lobbying contacts" with such spouses. Effectively, this proscription prevents the staff of a Member covered under Clause 7 from engaging in any oral, written or electronic communications with the Member's lobbyist spouse when such communications involve formal attempts to influence the Member's formulation, modification or adoption of federal legislation (including draft legislative proposals). The prohibition does not, however, stretch any farther.

Clause 7 does NOT limit the ability of a Member's staff to engage in communications with the Member's lobbyist spouse when such interactions involve matters other than the Member's formulation, modification or adoption of legislation. For example, Clause 7 does NOT operationally restrict communications between a Member's lobbyist spouse and the Member's staff when such

³⁰ *Id.*

interactions involve public policy matters wholly unrelated to existing or potential legislation. Likewise, Clause 7 does NOT constrain the ability of a Member's staff to communicate with the Member's lobbyist spouse when such interactions involve discussions regarding political or public policy engagement with other government officials (including other Members of Congress). Finally, Clause 7 does not prohibit the staff of a Member from engaging in communications with the Member's lobbyist spouse if such interactions involve conduct specifically exempted from the definition of "lobbying contacts" under Section 3(B) of the LDA.³¹

In sum, the prohibition set forth in House Rule XXV, Clause 7 is fairly narrow and well-defined. The provision is not designed to be an outright prohibition on policy communication between a Member's lobbyist spouse and a covered Member's staff. Rather, it is intended to be a targeted safeguard against the exercise of undue influence over a Member's legislative decision-making by his or her lobbyist spouse.

Representative Whitfield's Legislative Engagement on Animal-Welfare Matters Does Not Constitute a Violation of Applicable Ethical Provisions

Looking at the precise language of the Code of Ethics for Government Service, House Rule XXIII, and House Rule XXV, as well as the above-described commentary on their proper legal application, it should be relatively clear to OCE that the actions of Representative Whitfield and his staff in this matter fall well short of any congressional ethics violations. There is simply no evidence to suggest that any of the conduct at issue in this matter reasonably rises to the level of a violation of Section 5 of the Code of Ethics, Clauses 1 and 2 of House Rule XXIII, or Clause 7 of House Rule XXV. In turn, OCE should vote to dismiss the present investigative matter prior to the initiation of a Second-Phase Review.

In the Section 5 context, there does not appear to be any reasonable basis for OCE to believe that Representative Whitfield violated either the first or second prong of the provision. Although Congressman Whitfield and his staff engaged in a variety of communications with representatives of HSLF regarding animal-welfare issues, helped HSLF arrange for administrative meetings with various administrative and legislative officials concerning such matters, and took some independent legislative action that aligned with the interests of HSLF, such conduct is wholly within the bounds of Section 5.

³¹ The Section 3(B) exemptions include a wide range of communications, including (but not limited to) the following: those made by a representative of a media organization if the purpose of the communication is gathering and disseminating news and information to the public; those made in a speech, article, publication or other material that is distributed and made available to the public; those involving a request for a meeting, a request for the status of an action, or any other similar administrative request; those involving information provided in writing in response to an oral or written request by a covered executive branch official or a covered legislative branch official; and other similar contacts.

The first prong of Section 5 prohibits a Member and his staff from engaging in conduct that represents the dispensation of special favors or privileges to third parties. The HEC, however, has made it clear that even-handed treatment of constituent groups and individuals sharing common public policy goals is NOT a Section 5 violation. Given that Representative Whitfield and his staff engaged in communications, meetings, and other administrative activities with HSLF in the same fashion as they have for other constituent groups and individuals, there is no Section 5 concern at play. The Congressman and his staff did not discriminate in favor of HSLF with regard to the office's activities on animal-welfare issues, nor did it endeavor to disadvantage HSLF due to its employment of his wife. Representative Whitfield and his staff simply offered HSLF the same level of access, engagement and diligence that they offer other similarly-situated groups or individuals. Such behavior is purely permissible under the Code of Ethics and not a valid grounds for pursuing additional investigation of Representative Whitfield.

Unlike the first prong of Section 5, the second prong of the provisions prohibits a Member or staffer from accepting benefits or privileges in a fashion that reasonably leads one to believe that there is an improper influence of governmental duties. In the present matter, there is absolutely no foundation to suspect that Representative Whitfield or any of his staffers received any benefits or favors in exchange for their activities on behalf of animal-welfare matters. As detailed at length above, Congressman Whitfield has long been concerned about animal-welfare issues and legislation associated with such issues. In light of this fact, there is absolutely no basis to presume that there was any other motive at play in any of the legislative or administrative actions taken by his office with regard to such matters. Without compelling evidence of an improper motive or financial interest, OCE has no reasonable grounds to pursue a Section 5, prong two allegation against Representative Whitfield or his staff.

In the Rule XXIII context, there does not appear to be any reasonable basis for OCE to believe that Representative Whitfield violated either Clause 1 or Clause 2 of the provision. Although Congressman Whitfield and his staff engaged in a variety of communications with representatives of HSLF regarding animal-welfare issues, helped HSLF arrange for administrative meetings with various administrative and legislative officials concerning such matters, and took some independent legislative action that aligned with the interests of HSLF, such conduct does not come close to rising to the level of a violation of House Rule XXIII.

As discussed previously in this response, the HEC has only found violations of Clause 1 in instances where Members or their staff engage in conduct that represents an egregious breach of the public trust, and has only found violations of Clause 2 in circumstances where Members or their staff engage in behavior that openly attempts to circumvent other ethical provisions through indirect action. None of the allegations at play in the present matter come close to running afoul of either clause. The range of activities under review in the present investigation simply do not involve the types of criminal behavior, misuse of office, and the other wholly unethical conduct reserved for Clause 1 cases. Likewise, there is simply no evidence to support any claim that Representative Whitfield or his staff sought to circumvent other provisions of the House Rules or the Code of Ethics

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through indirect action. In turn, there is no affirmative basis for the OCE to proceed in investigating a potential Clause 2 claim under House Rule XXIII.

Finally, in the Rule XXV context, there does not appear to be any reasonable basis for OCE to believe that Representative Whitfield or his staff violated Clause 7 of the provision. Although Congressman Whitfield and his staff engaged in a variety of communications with representatives of HSLF regarding animal-welfare issues, helped HSLF arrange for administrative meetings with various administrative and legislative officials concerning such matters, and took some independent legislative action that aligned with the interests of HSLF, such conduct does not implicate the lobbying limitations set forth in House Rule XXV, Clause 7.

As described in greater detail earlier in this response, the language of House Rule XXV, Clause 7 prevents the staff of a Member from engaging in any oral, written or electronic communications with the Member's lobbyist spouse when such communications involve formal attempts to influence the Member's formulation, modification or adoption of federal legislation (including draft legislative proposals). The prohibition does not, however, limit the ability of a Member's staff to engage in communications with the Member's lobbyist spouse when such interactions involve matters other than the Member's formulation, modification or adoption of legislation. Given the fact that none of the communications at issue in this matter between Ms. Harriman-Whitfield and her husband's office (including the Congressman himself) involved attempts to influence Representative Whitfield's legislative priorities or activities, there is no basis for OCE to investigate or proceed under a Clause 7 theory in this case. It is simply not a violation of the House Rules for a Member or his staff to communicate with the Member's lobbyist spouse about matters that do not qualify as direct lobbying contacts. Educational, strategic, and administrative communications involving animal-welfare public policy issues and basic outreach to other Members of Congress on animal-welfare subjects are not direct lobbying contacts designed to influence the legislative positions of Representative Whitfield or his staff. In turn, there is no need for OCE to proceed with the present investigation under a theory that Representative Whitfield may have run afoul of the provisions of Rule XXV, Clause 7.

Formal Response to OCE Request for Additional Information

Despite Representative Whitfield's rejection of the initial allegations raised by OCE in its notice of preliminary review, the Congressman stands fully committed to cooperating with your office and aiding in its initial investigative efforts. As such, and as requested in your January 31st correspondence, Representative Whitfield and his staff have undertaken all due efforts to provide thorough and complete responses to each of the seven initial inquiries contained in the formal RFI. In order to ease review, each response statement is presented in conjunction with the appropriate investigative request. The contents of these replies and the exhibits represent the Congressman's verified written responses to the OCE's current questions. For the sake of confirmation, however, Representative Whitfield will submit a signed certification statement to your office in due course.

Requests and Responses

1. *Please provide the name, title, and contact information for each current or former employee of your congressional office whose work duties concerned animal welfare and protection issues from 2011 to present.*

In accordance with the specifics of this Request, Representative Whitfield has compiled a list of all employees (current or former) whose work duties within the Congressman's office between 2011 and the present concerned animal welfare and protection issues. The name, title, and personal contact information for those individuals is set forth in the roster document attached hereto as **Addendum #1**.

2. *Please provide the name, title, and contact information of each individual retained or employed by the Humane Society Legislative Fund, the Humane Society of the United States, or the Fund for Animals (collectively, "Humane Society Entities") with whom you or your congressional staff communicated concerning legislative issues from 2011 to present.*

In accordance with the specifics of this Request, Representative Whitfield has compiled a list of all individuals retained or employed by any of the various Humane Society Entities who had contact with the Congressman or his staff regarding legislative issues between 2011 and the present. The name, title, and personal contact information for those persons is set forth in the roster document attached hereto as **Addendum #2**.

3. *Please provide all files, correspondence, emails (including official and personal email accounts), notes, and other documents related to any of the Humane Society Entities from 2011 to present. Such documents include, but are not limited to, all correspondence between you and your congressional staff with individuals employed or retained by one or more of the Humane Society Entities.*

Representative Whitfield and his staff are performing a thorough and complete search of all files, correspondence, emails, notes, and other documents in their possession, custody and control that fit the applicable timeframe (2011 to present) and can reasonably be classified as related to any of the Humane Society Entities. An initial round of documents deemed relevant to this Request are attached to this correspondence as **Addendum #3**. They have also been Bates labeled for OCE's reference moving forward.

The files, correspondence, emails, notes, and other documents provided in **Addendum #3** represent the sum of all materials presently available for production to OCE in regards to Request #3. Due to breadth of the present request, however, Representative Whitfield and his staff require more time to examine e-mail correspondence and backdated files, and to produce such documents for OCE's review. The Congressman and his staff will proceed with this review and production in an

efficient a manner as possible, and pledge to provide OCE with additional relevant documents on a continuous, rolling basis. We apologize for any inconvenience caused by the delay associated with this process, but the message-by-message review required to respond to this request in a proper fashion mandates additional time reviewing backdated e-mails and files. Once this ongoing inspection is concluded, however, Representative Whitfield will provide immediate notice to OCE as to the completeness of its response.

4. *Please provide all files, correspondence, emails (including official and personal email accounts), notes, and other documents possesses by you or your congressional staff related to the following bills: Safeguard American Food Exports Act of 2013 (H.R. 1094); Veterans Dog Training Therapy Act of 2013 (H.R. 183); PAST Act of 2013 (H.R. 1518); Puppy Uniform Protection and Safety Act of 2013 (H.R. 847); Animal Fighting Spectator Prohibition Act of 2013 (H.R. 366); Animal Fighting Spectator Prohibition Act of 2011 (H.R. 2492); American Horse Slaughter Prevention Act of 2011 (H.R. 2966); Great Ape Protection and Cost Savings Act of 2011 (H.R. 1513); Interstate Horseracing Improvement Act of 2011 (H.R. 1733); Veterans Dog Training Therapy Act of 2011 (H.R. 198); Puppy Uniform Protection and Safety Act of 2011 (H.R. 835); and To Amend the Horse Protection Act of 2012 (H.R. 6388).*

Representative Whitfield and his staff are performing a thorough and complete search of all files, correspondence, emails, notes, and other documents in their possession, custody and control that fit the applicable timeframe (2011 to present) and can reasonably be classified as related to any of the listed pieces of legislation. An initial round of documents deemed relevant to this Request are attached to this correspondence as **Addendum #4**. They have also been Bates labeled for OCE's reference moving forward.

The files, correspondence, emails, notes, and other documents provided in **Addendum #4** represent the sum of all materials presently available for production to OCE in regards to Request #4. Due to breadth of the present request, however, Representative Whitfield and his staff require more time to examine e-mail correspondence and backdated files, and to produce such documents for OCE's review. The Congressman and his staff will proceed with this review and production in an efficient a manner as possible, and pledge to provide OCE with additional relevant documents on a continuous, rolling basis. We apologize for any inconvenience caused by the delay associated with this process, but the message-by-message review required to respond to this request in a proper fashion mandates additional time reviewing backdated e-mails and files. Once this ongoing inspection is concluded, however, Representative Whitfield will provide immediate notice to OCE as to the completeness of its response.

5. *Please provide a list of all meetings that you or your congressional staff arranged or attended with Ms. Harriman-Whitfield or any other person acting on behalf of one or more of the present Humane Society Entities with Members or staff of Congress from 2011 to present, including, but not limited to, meetings concerning the bills listed in Request No. 3. For each meeting, provide the date, location, attendees, and a brief description of the nature of the meeting.*

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In accordance with the specifics of this Request, Representative Whitfield has compiled a list of all meetings with Members or congressional office staff that the Congressman or his staffers arranged or attended between 2011 and the present with Ms. Harriman-Whitfield or any other representative of a Humane Society Entity. The date, location, attendees and a brief description of those meetings deemed responsive to this Request are set forth in the document attached hereto as **Addendum #5**.

The details provided in this list represent the most accurate and thorough information available to Representative Whitfield and his staff based upon relevant scheduling, meeting, and e-mail records informed by personal recollection. However, due to the incomplete nature of those records and the natural effect of time on personal recollection, the attendee and description information for certain meetings may be less detailed than for others. To the extent this phenomenon occurs in the attached listing, Representative Whitfield and his staff have attempted to identify the unconfirmed or ambiguous data for OCE's reference.

6. Please provide a list of all events you attended that one or more of the Humane Society Entities sponsored or hosted from 2011 to present. For each event, provide a description of the nature of the event, the date of the event, and the names of any of your congressional staff who attended the event. Such events include, but are not limited to, receptions, dinners, fundraisers, and award ceremonies.

In accordance with the specifics of this Request, Representative Whitfield has compiled a list of all events sponsored or hosted by any of the Humane Society Entities that the Congressman attended between 2011 and the present. The date, location, and a brief description of those events deemed responsive to this Request are set forth in the document attached hereto as **Addendum #6**. As requested, the entries for each event also contain the names of any Whitfield congressional staffers who attended the event in conjunction with the Congressman.

The details provided in this list represent the most accurate and thorough information available to Representative Whitfield and his staff based upon relevant scheduling, meeting, e-mail records, informed by personal recollection. However, due to the incomplete nature of those records and the natural effect of time on personal recollection, the attendee and description information for certain events may be less detailed than for others. To the extent this phenomenon occurs in the attached listing, Representative Whitfield and his staff have attempted to identify the unconfirmed or ambiguous data for OCE's reference.

7. The OCE requests the opportunity to interview you and the individuals listed in response to Request No. 1 at a mutually convenient time.

In conjunction with Representative Whitfield's desire to cooperate with the OCE's preliminary review activities, the Congressman will take all reasonable steps to make sure he and his

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current congressional staff are available for investigative interviews with your office. To the extent possible during this preliminary review period, Representative Whitfield will also undertake all due efforts to aid the OCE in arranging any necessary interviews with former congressional staffers listed on **Addendum #1**. However, given the Congressman's lack of employment authority over such individuals, he cannot guarantee either their timely availability or cooperation in the present matter.

Conclusion

In light of the arguments, analysis and evidentiary materials presented in this Response, we do hereby request that OCE vote to dismiss the present review because there is no reasonable basis to believe Representative Whitfield's violated House Rules, the Code of Ethics for Government Service, or any other relevant ethical provisions. As briefly described in the contents of this correspondence, it is readily apparent that the Congressman's legislative engagement on behalf of public policy matters involving animal-welfare issues is wholly permissible under federal ethics laws. Such activities are part and parcel of a Member's representative responsibilities in Congress, and do not run afoul of ethical standards without clear, probative evidence of undue influence, favoritism, discrimination, an improper tangible benefit, or a motivating conflict of interest. No such proof exists in the present matter because no such influence, favoritism or discrimination occurred, and no such benefit or motivating conflict was involved.

Should the OCE continue to have any additional questions or concerns regarding the subjects at issue in this letter, or any other topics associated with the current inquiry, please do not hesitate to contact me. It is my sincere hope, however, that OCE will review the evidence and legal analysis provided in this correspondence and gathered through your office's preliminary inquiry, and affirm that the Congressman engaged in no wrongdoing whatsoever.

Very truly yours,



Stefan C. Passantino
J. Randolph Evans

SCP

Addendum

1

Request #1 – Representative Ed Whitfield - Current and Former Staff Members
with Responsibility for Animal-Welfare Issues

Mr. Cory Hicks
Chief of Staff (former Legislative Director)
202-225-3115

Handled animal-welfare issues from 2011 through January 2013.

Mr. Taylor Booth
Legislative Director
202-225-3115

Handles animal-welfare issues solely related to the Great Ape Protection Act. Such responsibilities began in February 2010 and continue to the present.

Mr. Justin Fareed
Legislative Aide (no longer works for the office)
Personal cell: 805-705-██████

Handled animal-welfare issues from January 2013 through September 2013

Mr. Chris Pack
Press Secretary
202-225-3115

Handled animal-welfare issues from October 1, 2013 through December 2, 2013

Mr. Marty Irby
Congressional Aide
202-225-3115

Currently handles animal-welfare issues. Took over this responsibility on December 2, 2013.

Ms. Emma Heydlauff
Scheduler
202-225-3115

Began work with office in August 2012. Handled some meeting scheduling for animal-welfare issues.

Addendum

2

Request #2 – Relevant Employees of Humane Society Entities Who
Communicated with Whitfield Staff from 2011 through the Present

Humane Society of the United States (HSUS) Employees

Mr. Wayne Pacelle
President and Chief Executive Officer (CEO)
[REDACTED]@humanesociety.org
202-285-[REDACTED]

Mr. Keith Dane
Vice President, Equine Protection
[REDACTED]@humanesociety.org
301-258-[REDACTED]

Ms. Jen Lonergan
Equine Protection Programs Coordinator
[REDACTED]@humanesociety.org
202-452-[REDACTED]

Ms. Valerie Pringle
Equine Protection Specialist
[REDACTED]@humanesociety.org
202-452-[REDACTED]

Ms. Stephanie Twining
Public Relations and Communications Director
[REDACTED]@humanesociety.org
202-452-[REDACTED]

Mr. Eric Swafford
Director, Rural Outreach
[REDACTED]@humanesociety.org
202-452-[REDACTED]

Ms. Holly Hazzard
Senior Vice President of Programs and Innovations
[REDACTED]@humanesociety.org
202-452-[REDACTED]

Ms. Cheryl Jacobsen
Deputy Director, Equine Protection
[REDACTED]@humanesociety.org
202-452-[REDACTED]

Ms. Cherle Beattle
Former Behavior Manager at the Kentucky Humane Society
[REDACTED]@[REDACTED].com
Phone number unknown

Ms. Mimi Brody
Director, Federal Affairs
[REDACTED]@humanesociety.org
202-955-[REDACTED]

Humane Society Legislative Fund (HSLF) Employees

Sara Amundson
Executive Director
[REDACTED]@hslf.org
202-676-[REDACTED]

Dane Waters
Political Director
202-676-[REDACTED]

Connie Harriman-Whitfield
Senior Policy Adviser
[REDACTED]@humanesociety.org
202-676-[REDACTED]

Jaquellne Tiaga
Office Coordinator
[REDACTED]@hslf.org
202-676-[REDACTED]

The Fund for Animals (TFAS) Employees

Mr. Ben Callison
Director of Cleveland Armory Black Beauty Ranch – A Division of The Fund for Animals
[REDACTED]@humanesociety.org
903-469-[REDACTED]

Addendum

3

See:

EW3

Attachment Provided

Addendum

4

See:

EW4

Attachment Provided

Addendum

5



Request #5 – Listing of Meetings Arranged or Attended by Representative Whitfield and/or his Staff with Ms. Harriman-Whitfield or Other Humane Society Entity Staff - 2011 to Present¹

Monday, March 14, 2011

Constituent Thank You Dinner

Agenda: No set agenda, but some discussion of horse racing drug issues occurred

Listed Attendees: Congressman Whitfield, Ms. Harriman-Whitfield, Cory Hicks, and Counsel to the House Subcommittee on Commerce, Manufacturing & Trade

Notes: This constituent dinner was not legislative in nature, but did involve some discussion of horse racing drug issues. Ms. Harriman-Whitfield attended in her capacity as Representative Whitfield's spouse and as Vice Chairman of the Kentucky Horse Racing Commission, and was not attending on behalf of the Humane Society Entities. Counsel to the House Subcommittee on Commerce, Manufacturing & Trade attended as a guest of another invitee and not for any legislative or public policy purposes.

Thursday, April 28, 2011

Meeting with Kevin Cummins – Legislative Staffer for Senator Tom Udall

Agenda: HR 1733 – Interstate Horse Racing Improvement Act

Listed Attendees: Ms. Harriman-Whitfield and possibly one representative from Congressman Whitfield's office. If a Whitfield staffer was in attendance at the meeting it was likely Cory Hicks, but it cannot be confirmed at present.

Notes: Ms. Harriman-Whitfield attended this meeting at the specific invitation and request of Mr. Cummins, who asked her to appear in her capacity as former Vice Chairman of the Kentucky Horse Racing Commission. Ms. Harriman-Whitfield did not attend on behalf of HSLF or the Humane Society Entities, and her appearance at the meeting was not directly "arranged" by Representative Whitfield or his staff.

Wednesday, June 8, 2011

Meeting with Senator Scott Brown

Agenda: Horse Slaughter Legislation

Listed Attendees: Congressman Whitfield and Ms. Harriman-Whitfield.

Notes: Ms. Harriman-Whitfield attended but did not speak during the meeting.

¹ Please note that the list provided in this addendum is based upon the electronic schedules available at present to Representative Whitfield and his staff. Should relevant, supplemental information become known at a later date, edits to this document may need to be made.

Thursday, May 24, 2012

Meeting with Senator Lamar Alexander

Agenda: Tennessee Walking Horse Legislation

Listed Attendees: Congressman Whitfield, Ms. Harriman-Whitfield, and Cory Hicks.

Notes: Ms. Harriman-Whitfield attended but did not speak during the meeting.

Wednesday, July 25, 2012

Meeting with Congressman Phil Roe

Agenda: Tennessee Walking Horse Issues

Listed Attendees: Ms. Harriman-Whitfield and Cory Hicks

Tuesday, November 12, 2013

Hearing Prep for House Commerce, Manufacturing and Trade (CMT) Subcommittee Hearing on Horse Soring and the PAST Act

Agenda: Witness Prep for House CMT Subcommittee Hearing on Horse Soring and the PAST Act

Listed Attendees: Ms. Harriman-Whitfield, Cory Hicks, and Justin Fareed

Notes: Ms. Harriman-Whitfield and Representatives from other organizations supporting the PAST Act, such as the American Society for the Prevention of Cruelty to Animals (ASPCA), American Veterinary Medical Association (AVMA), American Horse Council (AHC), American Association of Equine Practitioners (AAEP), and the Humane Society of the United States (HSUS), attended this prep session, but did not actively participate. Ms. Harriman-Whitfield, like the other attendees from outside organizations, simply observed the witness preparation, which was handled by House CMT Subcommittee staff.

Wednesday, November 13, 2013

House Commerce, Manufacturing and Trade (CMT) Subcommittee Hearing on Horse Soring and the PAST Act

Agenda: Horse Soaring and the PAST Act

Listed Attendees: Ms. Harriman-Whitfield, Cory Hicks and Chris Pack

Notes: Ms. Harriman-Whitfield and other representatives from organizations supporting the PAST Act, such as ASPCA, AVMA, AHC, AAEP, and HSUS, attended this public hearing. Ms. Harriman-Whitfield and the other outside organization representatives sat in the public gallery of the committee room and played no direct role in the hearing itself.

Tuesday, November 19, 2013

Meeting with Senator Thad Cochran

Agenda: PAST Act

Listed Attendees: Ms. Harriman-Whitfield, Cory Hicks and Chris Pack

Notes: This meeting was arranged by Former U.S. Senator Joe Tydings, the primary author of the original PAST Act. Senator Tydings invited Cory Hicks and Chris Pack to attend, and separately requested the same of Ms. Harriman-Whitfield. Representative Whitfield did not attend this meeting.

Addendum

6



**Request #6 – Relevant Humane Society Entity Events Attended by
Representative Whitfield – 2011 to Present¹**

Monday, December 5, 2011

Dinner for the Humane Society of the United States' National Advisory Council
The Sulgrave Club, Washington DC

Representative Whitfield attended this event as Ms. Harriman-Whitfield's spouse. The event, which was open to HSUS members, was a dinner honoring the good-will ambassador efforts of HSUS' National Advisory Council. Ms. Harriman-Whitfield facilitated access to the venue for the event, but neither the Congressman nor his wife played any official role in the dinner. No staff members in the Congressman's office attended this event.

¹ Please note that the list of events provided in this addendum is based upon the electronic schedules available at present to Representative Whitfield and his staff. Should relevant, supplemental information become known at a later date, edits to this document may need to be made.

