

APPENDIX A1

**114TH CONGRESS, 2D SESSION
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ETHICS**

**IN THE MATTER OF ALLEGATIONS RELATING TO
REPRESENTATIVE ED WHITFIELD**

JULY 6, 2016

REPORT OF THE INVESTIGATIVE SUBCOMMITTEE

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I. INTRODUCTION

On March 25, 2015, the Committee on Ethics (Committee) unanimously voted to empanel an investigative subcommittee (ISC) to investigate allegations related to Representative Ed Whitfield. Those allegations were the subject of a referral from the Office of Congressional Ethics (OCE), which the Committee published on November 10, 2014, in accordance with House and Committee Rules. OCE's referral recommended further review of allegations that Representative Whitfield had failed to prohibit lobbying contacts between his staff and his wife (who was at the time a registered lobbyist), and that he dispensed special favors or privileges to either his wife, or her employers, the Humane Society Legislative Fund (HSLF) and the Humane Society of the United States (HSUS). The ISC was also authorized to investigate whether these same allegations also constituted the impermissible use of Representative Whitfield's official position for the beneficial interest of himself or his wife. The ISC has concluded its investigation into these allegations, and summarizes its conclusions in this Report. The ISC found that Representative Whitfield did impermissibly fail to prohibit lobbying contacts between his staff and his wife, and did dispense special privileges to his wife, but that he did not violate the rule against improperly using his position for his own interest. The ISC found that Representative Whitfield's violations were unintentional, and not motivated by any corrupt intent or interest in benefitting himself or his spouse. However, the ISC concluded that the violations were significant and repeated, and the ISC thus recommends that this Report serve as a reproof of Representative Whitfield for the violations described herein.

Representative Whitfield has a long record of commitment to the cause of animal welfare. His wife, Ms. Harriman, has a similar record. In the past, Ms. Harriman volunteered her services as an organizer and advocate to Representative Whitfield's legislative causes. In January 2011, Ms. Harriman went from being a volunteer on these issues to being a registered lobbyist for HSLF. This inflection point changed her status under House Rules, and should have resulted in a shift in how Representative Whitfield's staff interacted with her. It did not. Ms. Harriman continued to enjoy the access and influence that she had as a spouse volunteering with

the office, but now could and did use that access and influence as a part of her professional duties. House Rule XXV, clause 7, requires Members to prohibit lobbying contacts between their staff and their spouse when the spouse is a registered lobbyist. The Code of Ethics for Government Service bars Members from dispensing special privileges to anyone, whether for financial gain or not. The conduct in this case amounted to a violation of both standards of conduct, as discussed fully below.

II. PROCEDURAL HISTORY

On June 10, 2014, OCE transmitted a Report and Findings recommending further review of the allegations against Representative Whitfield. The Committee released OCE's Report and Findings on November 10, 2014. Shortly after the commencement of the 114th Congress, on March 25, 2015, the Committee voted to establish this ISC, to investigate the allegations in OCE's referral.

The ISC issued requests for information to Representative Whitfield, HSUS, and HSLF. In response to those requests, the ISC obtained and reviewed over 140,000 pages of documents. The ISC interviewed eleven witnesses, including current and former House staff, employees of HSUS and HSLF, a Member who was a witness to the allegations, Ms. Harriman, and Representative Whitfield.

III. HOUSE RULES, LAWS, REGULATIONS, AND OTHER STANDARDS OF CONDUCT

House Rule XXV, clause 7, states, in relevant part, "a Member...shall prohibit all staff employed by that Member...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 lobbyist under the Lobbying Disclosure Act of 1995...." A "lobbying contact," as defined by the Lobbying Disclosure Act of 1995 (LDA), is "any oral or written communication (including an electronic communication) to a...covered legislative branch official that is made on behalf of a client with regard to...the formulation, modification, or adoption of Federal legislation (including legislative proposals)...."¹

House Rule XXIII, clause 3, states that a Member "may not receive compensation and may not permit compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress."

The Code of Ethics, section 5, provides that any person in government service should "never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not...."² The *House Ethics Manual* notes that the Committee "has cautioned

¹ See 2 U.S.C. § 1602(8).

² Code of Ethics for Government Service ¶ 5.

all Members ‘to avoid situations in which even an inference might be drawn suggesting improper action.’”³

Finally, House Rule XXIII, clauses 1 and 2, provide that a Member “shall behave at all times in a manner that shall reflect creditably on the House,” and “shall adhere to the spirit and the letter of the Rules of the House....”

IV. FACTS

Representative Ed Whitfield is the Representative for the First District of Kentucky. He has held that position since 1995. He serves on the Energy and Commerce Committee. He married Ms. Harriman in 1990. Ms. Harriman has held a variety of positions in government and policymaking, from Assistant Secretary of the Interior, Director of the United States Export-Import Bank, Vice Chair of the Kentucky Horse Racing Authority, and Chair of the Kentucky Equine Drug Research Council. She started working for HSUS in 2007; in January 2011, she registered as a lobbyist for HSLF and, in October 2011, she transferred to the HSLF payroll. Ms. Harriman terminated her status as a lobbyist in 2015.

A. The Whitfields’ Historical Work on Animal Protection

Representative Whitfield has a longstanding record of support for policies intended to promote the welfare of animals. From his election through the middle of the 113th Congress, he has sponsored or cosponsored over 70 different bills pertaining to animal welfare,⁴ with subject matters ranging from bans on animal fighting as a spectator sport⁵ to the regulation of doping in horse racing.⁶

Ms. Harriman has also worked on these issues throughout her career. While working for the Department of the Interior, she was involved in the creation of a worldwide ban on trading elephant ivory.⁷ In her positions overseeing equine matters in Kentucky, she also worked on issues related to doping of racehorses.⁸ In fact, this love of animals is, according to both Representative Whitfield and Ms. Harriman, a commonality that affects not only their professional lives, but their marriage – they have rescued dogs and horses throughout the years and brought them into their home.⁹

Given their shared interest in animal welfare, it is not surprising that the two began to coordinate efforts on these issues. Ms. Harriman served as a volunteer organizer on a variety of legislative actions, and coordinated her efforts alongside Representative Whitfield and his staff.

³ *House Ethics Manual* (2008) at 27 (hereinafter *Ethics Manual*).

⁴ Representative Whitfield Submission (July 31, 2014) at Appendix 1 (hereinafter “July 31, 2014 Submission”).

⁵ Animal Fighting Prohibition Enforcement Act of 2003, H.R. 1532 (2003).

⁶ Act to Amend the Interstate Horseracing Act of 1978, H.R. 6158 (2006).

⁷ ISC Interview of Ms. Harriman.

⁸ *Id.*

⁹ *Id.*; see also ISC Interview of Representative Whitfield.

Most notably, Ms. Harriman put a great deal of effort into advocacy regarding the Horse Slaughter Prevention Act in 2006. While this bill was under consideration by the House, Ms. Harriman spent “countless hours organizing and attending meetings with other advocates of the legislation and Members to educate them about the bill and garner their support.”¹⁰ Press articles noted that Ms. Harriman’s volunteer efforts were “instrumental” in steering the Horse Slaughter Prevention Act to the House floor.¹¹ As discussed more fully below, both Representative Whitfield and Ms. Harriman carried the positive lessons of their efforts on the Horse Slaughter Prevention Act into future legislative endeavors.

When it came both to animal protection matters and issues outside that realm, staffers interviewed by the ISC described Ms. Harriman as actively involved in the day-to-day matters of the office: a former Scheduler testified that Ms. Harriman “calls a lot,” and that “she expected a lot . . . you always kind of said ‘yes’ to her because she’s the Congressman’s wife.”¹²

B. Ms. Harriman Becomes a Lobbyist

Ms. Harriman came to work for HSUS in 2007. She held a variety of roles in that organization, from assisting with fundraising to serving on the executive team. On January 1, 2011, Ms. Harriman first appeared on a lobbying registration form for HSLF, which listed her as an “individual who has acted or is expected to act as a lobbyist for the client [HSLF].” The LDA defines a “lobbyist” as “any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact.” However, Ms. Harriman did not move to HSLF until October 24, 2011, when HSLF needed an experienced government affairs professional, and Ms. Harriman took the position.¹³ Ms. Harriman’s supervisor at HSLF told OCE that Ms. Harriman did not lobby for that organization until October 2011,¹⁴ which is the first time she is listed on a report of lobbying activities for HSLF. Ms. Harriman herself told the ISC that, between January 1, 2011, and October 24, 2011, she “didn’t operate as a lobbyist” and “that wasn’t really my job.”¹⁵ However, she qualified those statements, adding that she “could have” performed lobbying functions for HSUS, and “might have spoken to a Member about one of our issues.”¹⁶

¹⁰ Representative Whitfield Submission (February 24, 2016) at 6-7 (hereinafter “February 24, 2016 Submission”).

¹¹ Catharine Richert, *Political Horse-Trading Leads to House Vote on Horse Protection Measure*, CQ Today (September 18, 2006); Catharine Richert, *Opponents of Horse Slaughter Measure Plan Numerous “Poison Pill” Amendments*, CQ Today (September 6, 2006).

¹² ISC Interview of Staffer A. When asked if Representative Whitfield’s office had any policy in place for dealing with requests from Ms. Harriman, the witness stated “Not set in stone. It was more or less you didn’t ever really say ‘no’ to her. You would, you know, if she needed things, then you would try and do that for her.” *Id.*

¹³ ISC Interview of HSLF Official.

¹⁴ See OCE Findings at 6, n.5.

¹⁵ ISC Interview of Ms. Harriman.

¹⁶ *Id.* The LDA’s lobbying registration requirement may shed some light on this issue. The statute provides: “No later than 45 days after a lobbyist first makes a lobbying contact or is employed or retained to make a lobbying contact, whichever is earlier, or on the first business day after such 45th day if the 45th day is not a business day, such lobbyist (or, as provided under paragraph (2), the organization employing such lobbyist), shall register with the Secretary of the Senate and the Clerk of the House of Representatives.” 2 U.S.C. § 1603(a)(1).

HSLF understood that Ms. Harriman’s connection to the Republican Party, a constituency not traditionally aligned with the Humane Society, was an advantage it intended to use to its benefit. Ms. Harriman’s supervisor at HSLF listed on Ms. Harriman’s performance review one of Ms. Harriman’s job responsibilities as “Design strategies to educate and engage new Republican Members and senior Republican Members,” and graded Ms. Harriman as having exceeded expectations on that front.¹⁷ When questioned about this part of the performance evaluation, the HSLF official stated, “[Ms. Harriman] being a Republican, those decades of contacts and relationships that she had built up on the basis of her time in Washington would certainly afford her an opportunity for outreach to folks she felt comfortable reaching out to....”¹⁸

Ms. Harriman agreed with the idea that she could, and should, leverage her connections to the Republican Party, for the benefit of HSLF. On February 17, 2012, Ms. Harriman sent an email to her HSLF and HSUS colleagues, noting that she would be attending an event hosted by the National Republican Congressional Committee (NRCC) and listing the Members who would also be present, asking for suggestions on topics to discuss.¹⁹ Similarly, when Ms. Harriman’s supervisor at HSLF asked her about getting quotes from Representative Whitfield regarding horse racing for a story on pending legislation that HSUS would subsequently publish in one of its magazines, Ms. Harriman responded, “I do not need to tell YOU that going through a spouse is usually more efficient than going through the office! . . . I will get a couple of quotes from him.”²⁰ Ms. Harriman’s supervisor responded 90 minutes later: “Oh, I know you’re the one to ask! I just think we ask A LOT! And, thank you, I already heard from [Representative Whitfield’s press secretary]—you work fast!”²¹ HSLF and HSUS employees regularly followed this practice, using Ms. Harriman as a go-between to obtain prompt action from Representative Whitfield on a variety of requests.²²

Employees on Representative Whitfield’s staff told the ISC that they were not initially aware that Ms. Harriman had registered as a lobbyist:

CHIEF OF STAFF: So [Ms. Harriman] didn’t tell us whenever she switched from Humane Society of the United States to Humane Society Legislative Fund. So, you know, we learned about it

¹⁷ Exhibit 1.

¹⁸ ISC Interview of HSLF Official.

¹⁹ Exhibit 2. Her colleagues urged her to discuss the so-called “Egg Bill,” and noted that they would “love to get more Republicans on board as cosponsors.” *Id.* As 2012 continued, Ms. Whitfield continued efforts on the Egg Bill, some of which included interactions with Representative Whitfield’s office. *See infra* Part IV.B.2.

²⁰ Exhibit 3.

²¹ *Id.*

²² *See, e.g.,* Exhibit 4 (HSUS employee asked Ms. Harriman to discuss the possibility of amending the farm bill); Exhibit 5 (HSUS employee asked Ms. Harriman to have Representative Whitfield contact senior officials at USDA to discuss regulations on horse soring); Exhibit 6 (HSUS employee asked Ms. Harriman to have Representative Whitfield call a state district attorney to advocate for criminal charges against a horse sorer).

whenever the lobbying disclosure forms showed up on the internet.²³

.....

SCHEDULER: I don't know if I knew for sure that she was an actual lobbyist for several months.²⁴

And even Representative Whitfield admitted that he was not precisely aware of the change as it happened. In fact, he stated that he did not focus on Ms. Harriman's lobbying registration until October of 2013, when another Member's staff raised questions about Ms. Harriman's status:

ISC STAFF: When Ms. Harriman registered as a lobbyist in January of 2011, did you discuss the change in her status with her?

REPRESENTATIVE WHITFIELD: No, I didn't really. I honestly didn't even focus on it. She had been with the Humane Society I guess for 4 or 5 years. And when she changed to becoming, quote, a registered lobbyist, I never even – we never discussed it really.

...

ISC STAFF: Do you remember when you first learned that she had been registered as a lobbyist?

REPRESENTATIVE WHITFIELD: I don't know that I ever focused on it whatsoever until one day, [my Chief of Staff], because of these meetings being set up, made some comment that, oh, [another Member's] staffer raised an issue about why are you setting up these meetings. And he said he called House Ethics or House Admin or somebody, but he forgot to tell them that she was a registered lobbyist. *I think that was the very first time that I really focused on it.*

ISC STAFF: So that would have been when these meetings were getting set up in 2013.

REPRESENTATIVE WHITFIELD: Right.²⁵

.....

Representative Whitfield also acknowledged that “the first time you became aware of and read [the House Rule regarding lobbying contacts] was when the OCE investigation began,” around

²³ ISC Interview of Staffer B.

²⁴ ISC Interview of Staffer A.

²⁵ ISC Interview of Representative Whitfield.

January 2014.²⁶ He further explained that, at the time Ms. Harriman registered as a lobbyist in January 2011, “I am not sure that I was aware there was a specific rule” regarding lobbying contacts between a Member’s spouse and their House staff.²⁷

This lack of awareness of Ms. Harriman’s status and of House Rule XXV, clause 7, naturally, meant that there was no change in office policy or procedure when it came to interactions between the staff and Ms. Harriman after her registration. Not a single witness interviewed by the ISC could recall any change in Ms. Harriman’s interactions with the office in the period immediately following her registration, and Representative Whitfield admitted that “[w]hen efforts to pass the PAST Act ramped up in 2013,” he “simply continued to use [Ms. Harriman] *the same way he always had* – as a tremendously effective organizer and promoter of his animal-welfare legislative agenda;” he thus “integrated her into his office’s effort” on the bill.²⁸ In his testimony before the ISC, Representative Whitfield stated that his office never instituted any policy or practice governing how staff communicates with Ms. Harriman.²⁹ Representative Whitfield acknowledged that Ms. Harriman was an employee of HSLF, but explained:

I viewed her more as a member of my staff than I did an employee of the Humane Society simply because historically, as I said, we have had three other major legislative endeavors [prior to her employment with the Humane Society] in which she played the same role. So from my perspective, I just didn’t – I wasn’t perceiving her as being an agent for the Humane Society.³⁰

Without any policy in place, Ms. Harriman was free to contact Representative Whitfield’s staff regarding a variety of matters that concerned the formulation, modification, and adoption of federal legislation in which HSLF had an interest. In fact, at least one staffer noted that contacts on substantive legislative issues were “still ongoing” at the time of her interview in August 2015, and believed that, without any limits on these sorts of contacts, “sometimes there are a bit of grey areas that some of the other staff get confused on....”³¹ This lack of a clear policy regarding contacts between Ms. Harriman and Representative Whitfield’s staff also contributed to a dynamic where Ms. Harriman had a unique level of access to the office as a spouse, relative to

²⁶ *Id.*

²⁷ *Id.*

²⁸ February 24, 2016 Submission at 7 (emphasis added); *see also* ISC Interview of Representative Whitfield (“Q. So before the PAST Act – I am going to try to focus on that time back in 2011 when this change [Ms. Harriman’s lobbying registration] actually occurred. That wasn’t something you were focused on back then? A. No. Q. And so was there ever a change at that time in the office’s policy for how it would interact with Ms. Harriman? A. No, there wasn’t any change. I mean, from our perspective, I mean, I don’t think she has ever lobbied me everything before and after [Ms. Harriman’s lobbying registration] was basically the same, as far as interaction with the office.”)

²⁹ ISC Interview of Representative Whitfield.

³⁰ *Id.*

³¹ ISC Interview of Staffer C.

other lobbyists, including other lobbyists at HSLF.³² This Report attempts to discuss examples of these contacts and this dynamic, by focusing on a number of discrete legislative efforts when such contacts took place.³³

1. The Veterans Dog Training Therapy Act

On January 6, 2011, Representative Michael Grimm introduced H.R. 198, the Veterans Dog Training Therapy Act (VDTTA).³⁴ The VDTTA created a pilot program for evaluating whether veterans with PTSD could be helped therapeutically by training service dogs for other veterans with disabilities.³⁵ Representative Whitfield co-sponsored the VDTTA.³⁶ HSLF's January 1, 2011 Lobbying Registration – which first identified Ms. Harriman as a lobbyist for HSLF – also listed the VDTTA as a lobbying issue for its registrants.³⁷ In Ms. Harriman's 2011 performance evaluation, her supervisor wrote, "your work to lobby for House floor passage of the vets/dogs bill is a success story."³⁸

One section of the VDTTA directed the administrators of the proposed pilot program to "ensure that in selecting assistance dogs for use in the program, dogs residing in animal shelters or foster homes are looked at as an option, if appropriate..."³⁹ When staff interviewed Ms. Harriman, she explained that this provision was a matter of some controversy:

[T]he Humane Society wanted to have shelter dogs used. And [Representative] Grimm did not really. He was doubtful about it. ... So the Humane Society was adamant about shelter dogs. They didn't care about – I told them, I said, you know, I personally am in favor of no shelter dogs, and they were – they were not happy with that.⁴⁰

The day after the VDTTA was introduced, Ms. Harriman wrote Representative Whitfield's then-Legislative Director, and the then-Chief of Staff, forwarding them HSUS' press release in support of the VDTTA.⁴¹ The then-Legislative Director responded, noting that Representative Whitfield's office was working with Representative Grimm's staff on the bill.

³² See, e.g., ISC Interview of HSLF Official (Q: "So even if you didn't need [Ms. Harriman] to have access to Representative Whitfield's staff, did you understand that if [Ms. Harriman] directly sent a request to a member of Representative Whitfield's staff that that request might get more attention, a better response, a quicker response than if you, for instance, had sent that request?" A: "In principle, yes.").

³³ These examples are intended to be illustrative, rather than exhaustive. A search of the materials produced to the Committee revealed hundreds of contacts between Ms. Harriman and Representative Whitfield's staff on a variety of issues.

³⁴ 157 Cong. Rec. H102 (daily ed. Jan. 6, 2011).

³⁵ See VDTTA, H.R. 198, 112th Cong. § 2(a) (2011).

³⁶ July 31, 2014 Submission at Appendix 1.

³⁷ Exhibit 7 at COE.WHITFIELDISC.146917.

³⁸ Exhibit 1.

³⁹ VDTTA § 2(d)(4).

⁴⁰ ISC Interview of Ms. Harriman.

⁴¹ Exhibit 8.

Ms. Harriman responded by asking the then-Legislative Director if he could “have [Representative Grimm’s staff] *delete the two words ‘if appropriate’* after the mention of shelter dogs as an option?” She explained: “I understand why [Representative Grimm] removed ‘preferred’ before ‘option’ but the added two words create too big of an out.”⁴² The then-Legislative Director explained that such a change would need to occur at a committee markup. Ms. Harriman replied, “Yes, I was assuming the changes would be made in markup.”⁴³

2. *The Egg Products Inspection Act Amendments of 2012 and 2013*

On January 23, 2012, Representative Kurt Schrader introduced H.R. 3798, the Egg Products Inspection Act Amendments of 2012. The following Congress, on April 25, 2013, Representative Schrader reintroduced substantially the same bill as the Egg Products Inspection Act Amendments of 2013 (collectively, the “Egg Bill”).⁴⁴ The Egg Bill set new national standards for the housing and treatment of egg-laying hens.⁴⁵ HSLF’s 2012 and 2013 Lobbying Reports list the Egg Bill as a lobbying issue for its registrants, including Ms. Harriman.⁴⁶

Ms. Harriman, in her interview with the ISC, explained that this bill was a reaction to successful measures at the state level seeking to ensure hens would be kept in larger crates:

This is a bill that was the result of a very famous proposition that passed in California. It was called Prop 2 And what the Humane Society wanted to do was require all hens to be – allowed to be in cages that were much, much larger than the ones they’re typically in where they can’t turn around . . . [T]he Humane Society then proceeded to try to get a bill that would be a Federal bill that would essentially make – have the same requirements.⁴⁷

An HSUS FAQ on the Egg Bill reiterated this motivation for the bill, saying “[t]he egg industry should have the same right to uniform federal standards as other agriculture sectors.”⁴⁸ A number of Humane Society emails indicated that the Egg Bill was a “very high priority,” perhaps even the “top legislative priority,” for HSUS.⁴⁹

But constituents in Representative Whitfield’s district explained to him that, even if they agreed with the standards for hens, they were concerned about setting a precedent that could be

⁴² *Id.* (emphasis added).

⁴³ *Id.* At the time Ms. Harriman sent these emails, she was a registered lobbyist for HSLF, but HSLF did not list her as a lobbyist on the VDTTA specifically. Ms. Harriman was first listed as a lobbyist for HSLF *on the VDTTA* in March 2012. Exhibit 7 at COE.WHITFIELDISC.146940-6. Nonetheless, it does appear that Ms. Harriman, who did not personally support the legislative change she requested, communicated with Representative Whitfield’s staff about the formulation or modification of the VDTTA, on behalf of HSLF.

⁴⁴ 158 Cong. Rec. H113 (daily ed. January 23, 2012).

⁴⁵ See 2012 Egg Bill, H.R. 3798, 112th Cong. § 2(b); 2013 Egg Bill, H.R. 1731, 113th Cong. § 2(b).

⁴⁶ Exhibit 7 at COE.WHITFIELDISC.146949, 146974.

⁴⁷ ISC Interview of Ms. Harriman.

⁴⁸ Exhibit 9 at 1.

⁴⁹ Exhibits 10 and 11.

applied to other agricultural sectors. Due to this concern, Representative Whitfield vacillated on supporting the Egg Bill, at first agreeing to sign on as a co-sponsor of the bill, and later deciding against it.⁵⁰ Ms. Harriman testified that, despite her own support for the Egg Bill, and despite HSLF's advocacy for it, she counseled her husband not to support the Egg Bill: "and so [Representative Whitfield] talked to some of his farmers, and they were opposed to it. And so when I heard about that, I said, 'don't go with this bill. Do not do it.' . . . He said, 'I'm going to sign on to it.' And I said, 'you shouldn't.'"⁵¹

And in fact, Ms. Harriman sent an email to Representative Whitfield's then-Legislative Director on September 12, 2012, saying, "[Representative Whitfield] just decided to sign on to the Egg Bill. I advised against it. . ."⁵² But at almost the same time, she sent an email to her supervisor at HSLF, as well as other HSLF and HSUS employees, stating, "[Representative Whitfield] would like to be added to the Egg Bill. Talk about 11th hour!!!"⁵³ Her co-workers responded in a way that suggested she had been instrumental in securing Representative Whitfield's support, with one responding by saying, "I told you you were a rock star," and another concurring: "That is really FABULOUS news, Connie!!! Thank you so much!!!"⁵⁴

The fact that Ms. Harriman's Humane Society colleagues credited her with helping to get Representative Whitfield on board as a co-sponsor is not surprising, given that HSLF's lobbying disclosure report for this time frame listed Ms. Harriman as someone who "acted as a lobbyist" for HSLF in the general area of animal issues, and that report identified the Egg Bill as one of HSLF's "[s]pecific lobbying issues" in that area.⁵⁵ Nor did Ms. Harriman correct her supervisor's impression that she played a part in Representative Whitfield's decision, or deflect any credit for doing so. Ultimately, however, Representative Whitfield did not co-sponsor the Egg Bill in 2012 or 2013.

3. *The King Amendment*

In May 2013, in response to the Egg Bill's professed concern over a patchwork of state standards, Representative Steve King introduced an amendment to the farm bill, which would prevent states from applying their own standards for any agricultural product to those made in other states.⁵⁶ The amendment was added to the farm bill by a voice vote in the Agriculture Committee, and its practical effect would have been not only to undercut the case for the Egg Bill, but also to prevent states like California, which had enacted minimum cage size standards on the state level, from applying their own standards to eggs imported from other states.

⁵⁰ ISC Interview of Representative Whitfield; ISC Interview of Staffer B.

⁵¹ ISC Interview of Ms. Harriman.

⁵² Exhibit 12.

⁵³ Exhibit 13.

⁵⁴ *Id.*

⁵⁵ Exhibit 7 at COE.WHITFIELDISC.146916, 146949, 146966, 146974.

⁵⁶ Nicole Greenstein, *King Farm Bill Amendment Angers Animal Advocates*, Time (Aug. 17, 2013), available at <http://swampland.time.com/2013/08/17/king-farm-bill-amendment-angers-animal-advocates/>.

Given that HSUS and HSLF favored the Egg Bill, it is understandable that they would oppose the Agriculture Committee's addition of the King amendment to the farm bill. HSUS' president wrote in an email to Ms. Harriman, "[Representative King's] amendment is an assault on the historic power of states to protect health and welfare of their own citizens Historically, when Congress preempts state laws it is in order to replace them with a uniform national standard. This is the idea behind the [Egg Bill]."⁵⁷ With his email to Ms. Harriman, the HSUS president attached an HSUS press release and an internal memorandum asserting that the King Amendment would cause various legal and regulatory problems.

On May 14, 2013, Ms. Harriman forwarded the HSUS president's email, with the attachments, to Representative Whitfield's Chief of Staff and a legislative aide, instructing them to fax the documents to the House Parliamentarian, and to "say the issue for consideration is whether the Energy & Commerce Committee," which Representative Whitfield sat on, "has exclusive OR concurrent jurisdiction over the proposed King amendment to the proposed Farm Bill."⁵⁸ Ms. Harriman forwarded this instruction to Representative Whitfield's staff back to the HSUS president, who responded, "excellent."⁵⁹ Ms. Harriman then forwarded her original email to Representative Whitfield's Scheduler, and asked her to "Call me with any questions!!!"

4. *The Peters and Holt Amendments*

On February 27, 2012, Representative Jeff Miller introduced H.R. 4089, the Sportsmen's Heritage Act of 2012.⁶⁰ The Sportsmen's Heritage Act was a large, multipurpose bill that addressed a variety of issues related to hunting, fishing, shooting sports, and conservation.⁶¹ When the Sportsmen's Heritage Act went to the House floor for a vote, the House considered a number of amendments to the bill, including an amendment proposed by Representative Gary Peters to strike a provision that would allow the importation of polar bear trophies,⁶² and an amendment proposed by Representative Rush Holt to ban hunting in areas of the National Park System not already open for hunting.⁶³ While HSLF did not include the Sportsmen's Heritage Act in its lobbying disclosure filings for 2012, it did score lawmakers based on their votes on the main bill and the Peters and Holt Amendments.⁶⁴ Members received points on the HSLF scorecard for voting for the Peters and Holt Amendments.

Shortly before the recorded vote on the House floor, Ms. Harriman emailed Representative Whitfield's then-Legislative Director, stating, "please be sure Ed votes FOR the

⁵⁷ Exhibit 14.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ 158 Cong. Rec. H965 (daily ed. Feb. 27, 2012).

⁶¹ See Sportsmen's Heritage Act of 2012, H.R. 4089.

⁶² H. Amdt. 1008, 112th Cong. (Apr. 17, 2012).

⁶³ H. Amdt. 1006, 112th Cong. (Apr. 17, 2012).

⁶⁴ See Exhibit 15 at 30.

Peters amendment today (banning polar bear imports and hunting in Natl Parks.) Ed voted this way last time.”⁶⁵ The Legislative Director responded, “OK.”⁶⁶

As it turned out, however, Representative Whitfield’s position on these amendments was complicated, and he ended up voting against both of them. As he explained in his interview with the ISC:

I am not proud of the vote that I made on the Peters amendment or the other one either, Holt. But I tell you, I capitulated to the pressure I was receiving from the sportsmen’s groups and the NRA in my district . . . So that is why I voted against it.⁶⁷

Representative Whitfield’s votes against the Peters and Holt Amendments were reflected in HSLF’s 2012 scorecard, which downgraded him from a score of 100 in 2011 to a 54 in 2012.⁶⁸ When the HSLF scorecard was generated in 2012, one of Ms. Harriman’s coworkers confirmed Representative Whitfield’s score, and sent her the roll call for the Peters and Holt Amendments. Ms. Harriman forwarded this information to the then-Legislative Director, and said, “[Representative Whitfield] voted the wrong way on the first two!!!”⁶⁹

When asked about this series of emails, Ms. Harriman stated that she “cannot imagine [Representative Whitfield] vot[ed] against the Peters amendment” and suggested that he may have done so by mistake.⁷⁰ However, Representative Whitfield confirmed that he intentionally voted against the amendments. Representative Whitfield’s then-Legislative Director acknowledged that it appeared that Ms. Harriman was urging him to have Representative Whitfield vote one way, when Representative Whitfield intended to vote the opposite way. As the then-Legislative Director stated, “I know this looks bad.”⁷¹ For his part, Representative Whitfield explained that he may have led Ms. Harriman to believe that he would vote for the Peters and Holt amendments, but ultimately did not. Like his former Legislative Director, Representative Whitfield acknowledged the appearance issue:

Q. But can you understand how, looking at it from the public’s perspective or an outsider’s –

⁶⁵ Exhibit 16. Note that, while Ms. Harriman names only the Peters amendment, the subject matter she describes – both polar bear imports and hunting in national parks – appears to indicate that she is referring to both the Peters and Holt amendments.

⁶⁶ *Id.*

⁶⁷ ISC Interview of Representative Whitfield.

⁶⁸ Compare Exhibit 15 at 15 with Exhibit 15 at 33. Representative Whitfield’s submissions to the ISC place a great emphasis on his decreased score from HSLF in 2012, asserting that it suggests a level of independence from Ms. Harriman’s lobbying efforts. See July 31, 2014 Submission at 13. It is worth noting, however, that the only items that changed from 2011 to 2012 that negatively affected his score were the votes related to the Sportsmen’s Heritage Act and its amendments, which were precisely the votes for which Ms. Harriman chose to contact his staff and encourage him to adopt HSLF’s position. See Exhibit 16.

⁶⁹ Exhibit 17.

⁷⁰ ISC Interview of Ms. Harriman.

⁷¹ ISC Interview of Staffer B.

A. No, yeah, I can.

Q. – perspective, that this looks like she is lobbying your staff, if not you?

A. Let me just say to you, I can understand it very well. They [OCE] have 4 years of emails over there, and they have – this is the only one that I have seen that really looks like something.⁷²

Representative Whitfield subsequently stated, regarding Ms. Harriman’s email on the Peters and Holt amendments, “In retrospect, your point on perception is a real point. I understand that. Reading this, you could say, yeah, she is definitely doing this [lobbying the office]. But knowing her personality, knowing our past history on these issues, in our mind, we certainly were not doing it.”⁷³

5. *The Puppy Uniform Protection and Safety Act*

On February 28, 2011, Representative Jim Gerlach introduced the PUPS Act, also known as the “Puppy Mill Bill,” which would strengthen regulations of certain dog breeders under the Animal Welfare Act. Representative Whitfield was a co-sponsor of the bill in prior Congresses, but due to an “oversight” by the then-Legislative Director, as of early December 2011, Representative Whitfield had not signed on to co-sponsor the bill in the 112th Congress.⁷⁴ On December 2, 2011, the then-Legislative Director emailed Representative Whitfield’s Chief of Staff at the time: “Connie wants us on the Puppy Mill Bill. NRA won’t like it, but I think it is fine. We’ve been on it every year.”⁷⁵ Based on the record, it appears that Representative Whitfield would have signed on as a co-sponsor of the bill when it was introduced, had his staff realized he had not already done so. Nonetheless, it seems clear that it was Ms. Harriman’s contact with the then-Legislative Director that prompted Representative Whitfield to sign on to the bill less than two weeks later, on December 14, 2011.⁷⁶ At the time Ms. Harriman made this request, she was listed as a lobbyist for HSLF on the PUPS Act.

6. *The PAST Act*

On April 11, 2013, Representative Whitfield introduced H.R. 1518, the Prevent All Soring Tactics Act of 2013 (PAST Act).⁷⁷ The PAST Act enhanced the existing system of inspections and criminal penalties designed to deter the unlawful practice of “soring” horses,⁷⁸ which is defined as a “practice used to accentuate a horse’s gait” that is “accomplished by irritating or blistering a horse’s forelegs with chemical irritants . . . or mechanical devices.”⁷⁹

⁷² ISC Interview of Representative Whitfield.

⁷³ *Id.*

⁷⁴ See OCE Report and Findings, Exhibit 20 at 14-2940_0142.

⁷⁵ See *id.*; Exhibit 18.

⁷⁶ See Exhibit 19.

⁷⁷ 159 Cong. Rec. H1958 (daily ed. April 11, 2013).

⁷⁸ See PAST Act, H.R. 1518, 113th Cong. § 2 (2013).

⁷⁹ https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa_hpa/ct_hpa_program_information.

The practice, made illegal by the Horse Protection Act of 1970,⁸⁰ persists despite that prohibition as a way to enhance the “big lick” gait of Tennessee Walking Horses, which provides a competitive edge during horse shows.⁸¹

OCE’s referral alleged that, as a part of the lobbying effort in support of the PAST Act, Representative Whitfield and his staff arranged “many meetings [with other congressional offices] . . . at the request of HSUS.”⁸² The ISC did not agree with this characterization of the meetings in question. Representative Whitfield, Ms. Harriman, and the staffers in Representative Whitfield’s office responsible for setting up the PAST Act meetings all agreed that it was Representative Whitfield’s decision to set up meetings between horse protection advocates and Member offices, and that Representative Whitfield’s staff did so based on this general direction.⁸³

Representative Whitfield appears to have settled on this strategy in part based on his understanding that House leadership would bring the PAST Act to the floor for a vote only if a majority of the House conference members signed on as co-sponsors.⁸⁴ In response to this, Representative Whitfield turned to a strategy that had served him well years ago when he sought passage of a bill to prevent horse slaughter—in-person meetings between Members who might become co-sponsors and outside experts on the issue. He, therefore, identified grassroots advocates who would meet with other Members to educate them on the practice of soring and attempt to persuade them to co-sponsor the bill. These advocates had significant involvement in the Tennessee Walking Horse community, and one of the advocates, Grassroots Advocate A (who eventually joined Representative Whitfield’s staff as Congressional Aide), decided to oppose the practice after a lifetime of observing it first-hand.⁸⁵ Grassroots Advocate A met with Representative Whitfield in August of 2013 and impressed Representative Whitfield with his story and command of the issue.⁸⁶ Representative Whitfield, therefore, decided that these advocates should be the linchpin of his co-sponsorship strategy, and the meetings were set at his request. His Scheduler and Legislative Director at that time confirmed this, stating that their efforts on these meetings were an attempt to satisfy instructions from Representative Whitfield and not from anyone else.⁸⁷

However, even if the meetings were not set up for HSUS and HSLF, officials from both entities were involved in the execution of the strategy. The meeting between Grassroots Advocate A and Representative Whitfield in August 2013 appears to have been encouraged by

⁸⁰ See 15 U.S.C. § 1821.

⁸¹ See <https://www.americanfarriers.com/articles/416-for-the-first-time-in-20-years-the-crime-of-soring-is-being-prosecuted-in-the-us-court-system>.

⁸² OCE Report and Findings ¶ 75.

⁸³ ISC Interview of Representative Whitfield; ISC Interview of Ms. Harriman; ISC Interview of Staffer B; ISC Interview of Staffer A.

⁸⁴ ISC Interview of Representative Whitfield.

⁸⁵ ISC Interview of Grassroots Advocate A/Congressional Aide.

⁸⁶ ISC Interview of Grassroots Advocate A/Congressional Aide; ISC Interview of Representative Whitfield.

⁸⁷ ISC Interview of Staffer A; ISC Interview of Staffer B.

HSUS and HSLF officials.⁸⁸ HSUS employees wrote to Representative Whitfield’s Scheduler to request that meetings be set up for specific Members.⁸⁹ They received updates on the meetings that had already been scheduled,⁹⁰ and were kept in the loop on scheduling conflicts as they arose.⁹¹ In testimony before the ISC, an HSLF employee stated that she attended some of the meetings alongside the grassroots advocates.⁹² Accordingly, while the overarching edict to Representative Whitfield’s staff to arrange these meetings came from Representative Whitfield and not the Humane Society, the details of those meetings were largely left to the rest of the “coalition,” including HSUS and HSLF.

Ms. Harriman assumed a major role in this “coalition,” as she had when Representative Whitfield deployed a similar strategy in support of a horse slaughter bill that he co-sponsored in 2006.⁹³ The change in her status between the two bills, from volunteer advocate for the horse slaughter bill to paid lobbyist for the PAST Act, initially made no difference in her approach. For example, the Scheduler drafted a list of Republican Members on the Energy and Commerce Committee that “we have not yet met with,” and asked Ms. Harriman to “[p]lease let me know if you would like me to reach out to them about a meeting.”⁹⁴ This message, like many of the communications between Representative Whitfield’s staff and Ms. Harriman, was sent only to Ms. Harriman, using her Humane Society email address. Likewise, the Chief of Staff kept Ms. Harriman engaged on scheduling meetings with a Senator.⁹⁵ Ms. Harriman instructed the Scheduler to attempt to find housing for the grassroots advocates in Washington.⁹⁶ She also instructed the Scheduler to keep a list of Members who refused to take meetings regarding the PAST Act.⁹⁷ Upon seeing the list, Ms. Harriman complained to the Chief of Staff that “three [Members who had refused] are on the [Energy and Commerce Committee], and [one other Member] was on [Representative Whitfield’s] subcommittee.”⁹⁸ She asked, “How is [Scheduler] pitching these meetings?”⁹⁹ The Chief of Staff responded that the staff of those Members had refused the meetings when he spoke with them personally, and Ms. Harriman asked him if he had spoken directly to the Members, ostensibly to ensure that the meetings were receiving the appropriate amount of urgency.¹⁰⁰ On a number of occasions, the Scheduler would set up a meeting for the grassroots advocates, and, after it was confirmed, let the other Members’ staffs

⁸⁸ Exhibit 20.

⁸⁹ Exhibit 21 at 2.

⁹⁰ Exhibit 22.

⁹¹ Exhibit 23.

⁹² ISC Interview of HSLF Official.

⁹³ February 24, 2016 Submission at 6-7.

⁹⁴ Exhibit 24.

⁹⁵ Exhibit 23.

⁹⁶ Exhibit 25. Ms. Harriman appears to have wielded this level of authority over the Scheduler on a variety of matters long before the PAST Act process began. On July 14, 2011, she asked the then-Scheduler by email, “any luck with any of *my* appointments?” Exhibit 26 (emphasis added). The Scheduler responded with a list of three meetings scheduled with Members on July 20, 2011. *Id.*

⁹⁷ Exhibit 25.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

know that Ms. Harriman would be attending as well.¹⁰¹ Ms. Harriman testified that she attended “maybe 15” of these meetings.¹⁰²

In addition to her involvement in the planning and logistics related to the PAST Act meetings, Ms. Harriman gave input to Representative Whitfield’s staff on a variety of other issues related to the PAST Act. For example, on September 26, 2013, Ms. Harriman wrote to the Chief of Staff, requesting that the office put out a statement clarifying the PAST Act in a way that accorded with previous public statements from HSUS, “the sooner the better.”¹⁰³ And on October 31, 2013, Ms. Whitfield wrote to the Chief of Staff asking him whether he had discussed with staff for the Energy and Commerce Committee the possibility that the PAST Act might be considered in a committee hearing alongside another bill related to horse soring that did not have the support of the Humane Society or Representative Whitfield. Supporters of the PAST Act preferred a hearing solely focused on their bill.¹⁰⁴ Ms. Harriman urged the Chief of Staff to “PLEASE stand firm” against the proposal for one hearing for both bills.¹⁰⁵

On October 21, 2013, Representative Whitfield’s Chief of Staff received a telephone call from Representative Renee Ellmers’ Legislative Director. This staffer told the Chief of Staff that her office was “concerned with the optics of [Representative Whitfield’s] office setting up [] meetings for [the grassroots advocates].”¹⁰⁶ The Chief of Staff then called the staff of the Ethics Committee to seek advice on the practice of these meetings. According to the Chief of Staff, Committee staff initially indicated that there was no problem with Representative Whitfield’s office “setting up meetings on a bill that [he] sponsored,” or “requesting meetings [for] registered lobbyists.”¹⁰⁷ However, this advice was based on incomplete information; as the Chief of Staff explained in an email to Representative Whitfield, “I did not inform [Committee staff] that [Ms. Harriman] was attending these meetings as I suspected they would have expressed concerns since she’s married to you and a registered lobbyist.”¹⁰⁸ It appears that, within half an hour, the Chief of Staff talked with Committee staff again, and it became clear that Ms. Harriman was attending some of the meetings on the PAST Act set up by Representative Whitfield’s staff. At this point, the Chief of Staff told Ms. Harriman that Committee staff “advised against you[] attending because we are setting them up and you are a registered

¹⁰¹ See, e.g., Exhibits 27 and 28.

¹⁰² ISC Interview of Ms. Harriman.

¹⁰³ Exhibit 29.

¹⁰⁴ See ISC Interview of Staffer B.

¹⁰⁵ Exhibit 30. For his part, Representative Whitfield told the ISC that “It didn’t really make any difference to me” whether the bills were considered jointly, and “it didn’t really bother me if it was together or not together.” ISC Interview of Representative Whitfield. However, the Chief of Staff stated: “The Congressman wanted the – you know, we wanted our own hearing.” Regardless of whether Ms. Harriman influenced the office’s position on this issue, her request to the Chief of Staff could reasonably be viewed as a lobbying contact, because it appeared to be made on behalf of HSLF, and regarded “adoption of Federal legislation.” See *id.*; 2 U.S.C. § 1602(8).

¹⁰⁶ Exhibit 31 at 2.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* While this was the first contact between Representative Whitfield’s staff and the Ethics Committee regarding Ms. Harriman’s dual role as a congressional spouse and registered lobbyist, it was not the first time that Representative Whitfield or Ms. Harriman became aware of concerns regarding those roles. As discussed further in Section V.B., the media raised this issue repeatedly, starting in late 2012.

lobbyist.”¹⁰⁹ The next morning, Committee staff reached out to the Chief of Staff again, and “advised us that we cannot set up these meetings all together for [the grassroots advocates].”¹¹⁰

After the Chief of Staff described his conversation with Committee staff, Ms. Harriman immediately and actively inserted herself into the process of seeking advice from the Committee, saying, “I am happy to talk to the Ethics Committee myself...what is the name of the ethics person with whom you spoke? I would like to talk to the same person.”¹¹¹ Ms. Harriman spoke to the same Committee staffer as the Chief of Staff, and reported that the staffer “failed to tell you that he asked me to call House Administration for a final ‘ruling.’ So the issue is NOT yet resolved.”¹¹² Ms. Harriman told the ISC that when she contacted CHA staff, they approved the process of setting up the meetings.¹¹³ But the CHA staffer Ms. Harriman spoke to told the ISC that he advised her to also consult with the Committee.¹¹⁴

It appears that the initial contacts between Representative Whitfield’s staff, Ms. Harriman, and Committee staff focused on whether the use of Representative Whitfield’s staff to set up meetings on the PAST Act, which Ms. Harriman planned to attend, was an improper use of official resources for an unofficial purpose (assisting the Humane Society). This issue fell within the jurisdiction of both the Committee and CHA, and thus Committee staff recommended that Representative Whitfield also seek guidance from CHA. However, as CHA staff recognized, the official resources issue was not the only concern with Ms. Harriman’s involvement in setting up meetings on the PAST Act. This is why the CHA staff told Representative Whitfield and Ms. Harriman, separately, that they should consult with the Committee.

Eventually, Ms. Harriman, not Representative Whitfield, spoke with the Committee’s then-Chief Counsel and Staff Director. This occurred in a phone call on or about October 23, 2013. According to the Committee’s records of that discussion, the Chief Counsel informed Ms. Harriman that having Representative Whitfield’s staff set up meetings that Ms. Harriman, a spouse and registered lobbyist, would attend raised complicated issues, and that it was not clear that the practice conformed with the rules.¹¹⁵ Specifically, the Chief Counsel discussed House Rule XXV, clause 7, regarding lobbying contacts between a Member’s staff and a spouse, and other relevant rules. The Chief Counsel impressed upon Ms. Harriman the need to avoid lobbying contacts with Representative Whitfield’s staff, and explained that a more specific answer would both require more work, and would need to be delivered to the office directly, as opposed to through Ms. Harriman.¹¹⁶ It appears this was the first time anyone from CHA or the

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Exhibit 31 at 1.

¹¹² *Id.*

¹¹³ ISC Interview of Ms. Harriman. This position was repeated by Representative Whitfield and his Chief of Staff, who also spoke with the CHA staffer. *See* ISC Interview of Representative Whitfield; ISC Interview of Staffer B.

¹¹⁴ ISC Interview of CHA Staffer.

¹¹⁵ Exhibit 32.

¹¹⁶ *Id.*

Committee raised the prohibition on lobbying contacts as a potential problem in connection with Ms. Harriman's interactions with Representative Whitfield's staff.

At the end of the Chief Counsel's call with Ms. Harriman, he offered to speak to Representative Whitfield directly, and advised Ms. Harriman that the best way to obtain a formal opinion from the Committee would be for Representative Whitfield to request an Advisory Opinion.¹¹⁷ Representative Whitfield never made that request.

Ms. Harriman's own notes of the conversation largely accord with the Committee's records. Ms. Harriman wrote that lobbying contacts were defined as "oral, written, email comm[unications]...to influence...on behalf of a client."¹¹⁸ She wrote that, therefore, she should not "talk about any bill with [Representative Whitfield's] office that HSUS supports."¹¹⁹ She wrote down that a formal advisory opinion would cover prospective behavior and took down the contact information for the Committee.¹²⁰

Her own notes, however, go on, in separate pages, to describe a part of the conversation that is not detailed in the Committee's records. She wrote that the "safest way to attend [meetings is do not] tell [Representative Whitfield's] office what [she] is doing. Idea is it would elevate the matters in their eyes if they know I had a meeting."¹²¹ In a parenthetical, Ms. Harriman continued, "([Not applicable] here because they are already working hard on the bill and what I do [does not] matter to them)."¹²²

Based on the initial conversations between Representative Whitfield's Chief of Staff and Committee staff, Representative Whitfield's staff at least attempted to curb Ms. Harriman's involvement in the PAST Act meetings. There is conflicting testimony on whether staff did so at Representative Whitfield's direction,¹²³ but the change in policy is undisputed. On October 22, 2013, the Chief of Staff announced that he had asked the Scheduler to "stop setting up the meetings" entirely.¹²⁴ Later, this decision was softened to permit the Scheduler to continue to schedule meetings for the grassroots advocates, but simply not to involve Ms. Harriman.¹²⁵

¹¹⁷ *Id.*

¹¹⁸ Exhibit 33.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ The Scheduler told the ISC that even after Committee staff advised Representative Whitfield's staff that Ms. Harriman should not attend PAST Act meetings the staff set up, Representative Whitfield did not understand the concern, because the meetings were scheduled for Representative Whitfield, to advance his bill, not for Ms. Harriman or the Humane Society. But the Scheduler recalled the Chief of Staff saying that Representative Whitfield stated "well, Connie just can't be involved anymore after this. And [the Chief of Staff] agreed and let me know that." ISC Interview of Staffer A. However, Representative Whitfield told the ISC that his office policies regarding his staff's interactions with Ms. Harriman were never changed. ISC Interview of Representative Whitfield.

¹²⁴ Exhibit 31.

¹²⁵ *See, e.g.,* Exhibit 21 ("I cannot set up meetings for [Ms. Harriman]"). The Scheduler also explained that, based on the advice from Ethics Committee staff, by approximately October 29, 2013, the Chief of Staff and Scheduler had determined that Ms. Harriman should no longer be involved in setting up meetings for grassroots advocates in support of the PAST Act. *See* ISC Interview of Staffer A.

According to the Chief of Staff, Ms. Harriman objected to this plan, calling the Chief of Staff “stupid.”¹²⁶

However, it appears that at this time, Ms. Harriman made it clear to her coworkers and others that she intended to change her actions in response to the advice from the Committee. An employee of HSUS recalled a conversation in the late fall of 2013 involving Ms. Harriman, in which it was discussed that Ms. Harriman should no longer have contact with Representative Whitfield’s staff.¹²⁷ Similarly, Ms. Harriman’s supervisor at HSLF reported that Ms. Harriman told her that she would be scaling back her involvement with Representative Whitfield’s staff.¹²⁸ Consistent with this testimony, the supervisor wrote an email on December 11, 2013 indicating that Ms. Harriman had “backed off asks/communications with Whitfield’s staff and [HSLF and HSUS staff] took [a] more prominent role.”¹²⁹ When asked about this email, Ms. Harriman responded, “I don’t agree with what [the HSLF supervisor] said. I didn’t back off after communications with [Representative] Whitfield’s staff, which you can see with all your documents.”¹³⁰ When asked how her supervisor may have gotten that impression, Ms. Harriman stated, “[N]o idea.”¹³¹

On December 11, 2013, after Grassroots Advocate A had taken a job on Representative Whitfield’s staff as a Congressional Aide, Ms. Harriman wrote to him and to Representative Whitfield’s Scheduler, stating “I am not to contact you or [the Scheduler] directly in support of Ed’s bill.”¹³² Ms. Harriman told the ISC that she wrote this out of concern with the public perception of her contacts with Representative Whitfield’s staff, not because she believed any House rule prohibited such contacts.¹³³

Despite the concern about contacts between Ms. Harriman and Representative Whitfield’s staff, expressed by Ms. Harriman and others near the end of 2013, Ms. Harriman’s conduct does not appear to have substantially changed after her consultations with the Committee. For example, on October 31, 2013, Ms. Harriman emailed the Chief of Staff to ask him to “stand firm” on the PAST Act and another bill being considered together.¹³⁴ On November 6, 2013, Ms. Harriman emailed Representative Whitfield’s Scheduler, instructing her not to schedule meetings on the PAST Act with three Members.¹³⁵

While Ms. Harriman engaged in contacts such as these with a number of different members of Representative Whitfield’s staff, she was most engaged with Congressional Aide,

¹²⁶ ISC Interview of Staffer B.

¹²⁷ ISC Interview of HSUS Official.

¹²⁸ ISC Interview of HSLF Official.

¹²⁹ See Exhibit 34 (noting that, as of December 11, 2013, Ms. Harriman’s supervisor was under the impression that Ms. Harriman had “backed off asks/communications with Whitfield’s staff and [the supervisor and HSUS Vice President] took [a] more prominent role.”).

¹³⁰ ISC Interview of Ms. Harriman.

¹³¹ *Id.*

¹³² Exhibit 35. This email did instruct HSUS Vice President to pass along messages from Ms. Harriman. *Id.*

¹³³ ISC Interview of Ms. Harriman.

¹³⁴ See *supra* p. 16 and n.105.

¹³⁵ Exhibit 36.

who, prior to obtaining employment with Representative Whitfield, assisted the coalition as Grassroots Advocate A, attending the meetings in October 2013. After Grassroots Advocate A came to Washington to advocate for the PAST Act, he developed a personal friendship with the Whitfields, living in their home for a time and becoming close with both Representative Whitfield and Ms. Harriman.¹³⁶ In December 2013, Grassroots Advocate A was hired as Congressional Aide, and took on a portfolio that included the PAST Act.¹³⁷ Congressional Aide, both because of his prior advocacy on the bill and because of his close working and personal relationship with Ms. Harriman, discussed the PAST Act effort with Ms. Harriman on a near-constant basis throughout 2013 and 2014; Congressional Aide testified that during the period from December 2013 to August 2014, he and Ms. Harriman spoke about the PAST Act “probably on a daily basis . . . at least every few days.”¹³⁸ Congressional Aide stated that those contacts were about how Ms. Harriman could work with him to work with other offices to obtain their support for the PAST Act.¹³⁹ The conversations included Congressional Aide providing lists of potential co-sponsors to Ms. Harriman, and getting Ms. Harriman’s thoughts on “who [Congressional Aide] would be wasting your time with and who would [Congressional Aide] focus on.”¹⁴⁰ Another member of Representative Whitfield’s staff stated that Ms. Harriman and Congressional Aide continued to discuss animal protection matters on a frequent basis until at least late 2015.¹⁴¹ That witness stated that “[b]ack when we were really involved with the bill [the PAST Act], [Congressional Aide] would call her a lot and ask thoughts, et cetera, and I always found it a little concerning.”¹⁴² The witness stated that these calls occurred multiple times a day and multiple times a week.¹⁴³

In addition to testimony and other evidence of Ms. Harriman’s general interactions with Congressional Aide regarding the PAST Act, the ISC reviewed documents concerning specific subjects they discussed. On December 9, 2013, Ms. Harriman provided Congressional Aide with advice on which Members to contact regarding co-sponsorship, and advised him that having Representative Whitfield call a Member’s cell phone directly might be helpful.¹⁴⁴ On December 18, 2013, the Vice President of Equine Protection at the Humane Society emailed Congressional Aide, noting that Congressional Aide and Ms. Harriman were “strategizing regularly” on the PAST Act.¹⁴⁵ On December 17, 2013, Ms. Harriman asked her colleagues at HSUS and HSLF if it would be permissible to have Congressional Aide “stand in” for her on a strategy call regarding the PAST Act; she justified this request by stating, “[h]e and I communicate hourly on PAST and I was hoping to take Fri[day] off.”¹⁴⁶ On December 19, 2013, Ms. Harriman told

¹³⁶ ISC Interview of Grassroots Advocate A/Congressional Aide.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *See id.*

¹⁴⁰ *Id.*

¹⁴¹ ISC Interview of Staffer C.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Exhibit 37.

¹⁴⁵ Exhibit 38.

¹⁴⁶ Exhibit 39. When asked about this statement, Ms. Harriman stated that she thought it was a joke. *See* ISC Interview of Ms. Harriman (“This [email] is Connie trying to be funny a little bit. He was living with Ed and me....

Congressional Aide “don’t hold off” on convincing two Tennessee district attorneys to come to Washington and meet with Members in order to obtain their co-sponsorship of the PAST Act.¹⁴⁷ On January 1, 2014, Ms. Harriman wrote to her colleagues at HSUS and HSLF, and stated that she and Congressional Aide “met all day yesterday re strategy [regarding the PAST Act].”¹⁴⁸ On January 7, 2014, the President of Friends of Sound Horses (FOSH), an anti-soring organization, emailed Ms. Harriman and Congressional Aide to ask for advice on how to set up meetings with House and Senate Members regarding soring. Ms. Harriman then wrote to Congressional Aide, stating: “perhaps you (*as Whitfield office*) can let [a Senate and House office] know that FOSH is trying to contact them, the importance of FOSH etc. That way, [the FOSH President] is apt to receive the reception she deserves.”¹⁴⁹

On January 14, 2014, Ms. Harriman and Congressional Aide were both copied on a discussion between an HSUS employee and staffers for PAST Act sponsors in the Senate. The Senate staffers made clear that the cost of the PAST Act had raised questions, and those questions would need to be answered before the bill could move out of the Senate Committee considering it. In response to these concerns, Ms. Harriman asked Congressional Aide if Representative Whitfield could “back-channel a request to [the Congressional Budget Office]” to evaluate the cost of the PAST Act.¹⁵⁰

On January 24, 2014, Congressional Aide emailed Ms. Harriman’s supervisor at HSLF regarding efforts by Representative Whitfield’s office to set up meetings between two Tennessee district attorneys who supported the PAST Act and House Members. Congressional Aide wrote: “Have you had a chance to finalize the list of people we want the TN DA’s to meet with? I wanted to go ahead and try to get [Representative Whitfield’s Scheduler] started on scheduling.”¹⁵¹ Ms. Harriman, writing from her Humane Society email address, replied “I hope we are focusing on [Members who were] prosecutors and judges. [HSLF supervisor] and I made a list of them about a week ago.”¹⁵² Congressional Aide responded “I gave [Scheduler] the list and we are.”¹⁵³

Along similar lines, on January 28, 2014, Congressional Aide and HSUS Official had a heated discussion about whether or not PAST Act advocates should be accompanied by other interest group officials when meeting with House Members, or solely by those employed by

He and Ed and I talked about PAST a lot. That’s what our whole focus was on. So when I said he and I communicate hourly, I am exaggerating, but we talked about the PAST Act a lot around the house.”). However, three staffers interviewed by the ISC, including Congressional Aide himself, indicated that Ms. Harriman and Congressional Aide spoke frequently, up to “multiple times a day,” about legislative issues during this time period. See ISC Interview of Staffer B; ISC Interview of Staffer C.

¹⁴⁷ Exhibit 40.

¹⁴⁸ Exhibit 41.

¹⁴⁹ Exhibit 42 (emphasis added).

¹⁵⁰ Exhibit 43.

¹⁵¹ Exhibit 44.

¹⁵² *Id.*

¹⁵³ *Id.*

HSUS and HSLF. Ms. Harriman, responding to this disagreement, advised Congressional Aide to set up meetings for a PAST Act advocate “without [third] parties in attendance.”¹⁵⁴

Even where Representative Whitfield’s staff attempted to avoid Ms. Harriman’s influence, her connection with Congressional Aide led to her continued involvement with the process of arranging meetings. On January 28, 2014, the Scheduler wrote to the Congressional Aide, and explained that, despite her willingness to schedule meetings for him in October 2013 when he was Grassroots Advocate A, her work schedule had made the continued effort of scheduling meetings for the PAST Act effort untenable, and so she would be unable to set up meetings for the Tennessee district attorneys.¹⁵⁵ Congressional Aide wrote to the Chief of Staff asking for his advice; the Chief of Staff demurred, and asked if the district attorneys could set up their own meetings.¹⁵⁶ The Congressional Aide offered to schedule the meetings himself, but noted that the Scheduler was much more effective at setting up meetings than he had been.¹⁵⁷ The Chief of Staff responded that the practice of scheduling meetings for third parties was “out of the ordinary,” and offered to chat with the Congressional Aide.¹⁵⁸ The Congressional Aide then forwarded this exchange to Ms. Harriman, who responded, “you need to tell [Chief of Staff] that these DAs have NOT been to DC before and that we are talking about passing [Representative Whitfield’s] bill not [Scheduler’s] feelings of effectiveness...You shouldn’t have immediately offered to [schedule the meetings]. That gave [Chief of Staff] an easy out.”¹⁵⁹

V. ANALYSIS

A. House Rule XXV, clause 7

House Rule XXV, clause 7, requires Members who are married to a registered lobbyist to prohibit lobbying contacts between their spouse and their staff. The rule is a relatively new one, enacted in 2007 as a part of the Honest Leadership and Open Government Act.¹⁶⁰ As a result, the Committee has not publicly investigated allegations of violations of the rule. The Committee has, however, provided public guidance regarding the rule and its application. Upon reviewing the evidence in the record in light of this guidance, the ISC found that Representative Whitfield violated House Rule XXV, clause 7, by failing to establish clear guidelines and limits for his staff, which resulted in lobbying contacts between the staff and Ms. Harriman.

It is not in dispute that Ms. Harriman contacted Representative Whitfield’s staff frequently, during the period for which she was registered as a lobbyist for HSLF. The only outstanding question, therefore, is whether any of those contacts constituted lobbying contacts

¹⁵⁴ Exhibit 45.

¹⁵⁵ Exhibit 46 at 2. The Scheduler noted during her interview that the bulk of the work to schedule the October 2013 meetings occurred during the government shutdown, which greatly reduced the amount of other work. ISC Interview of Staffer A.

¹⁵⁶ Exhibit 46.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Pub. L. 110-81, 121 Stat. 735 (Sept. 14, 2007).

under the LDA. As stated previously, a lobbying contact is any communication that is (1) made on behalf of a client; and (2) made with regard to the formulation, modification, or adoption of federal legislation.¹⁶¹

As discussed above, the ISC discovered significant contacts made regarding animal protection legislation that was on HSLF's agenda, and for which Ms. Harriman had been retained to lobby. There were, of course, other contacts between Ms. Harriman and Representative Whitfield's staff that had nothing to do with animal protection legislation: schedulers reported that Ms. Whitfield often called to ask about Representative Whitfield's schedule, or to work with staff on official travel matters.¹⁶² Those contacts would not violate House Rule XXV, clause 7, because they did not involve legislation, and were not made on behalf of a client. But many or all of the contacts discussed in Part III, above, fit squarely within the definition of "lobbying contacts" for purposes of the rule.

Ms. Harriman, in her testimony before the ISC, maintained that she had not made any contact with Representative Whitfield's staff regarding animal protection legislation *on behalf of* her employer HSLF, and contended instead that all of those contacts were made on her *own* behalf, motivated by her own personal support for the bills at issue.¹⁶³ Representative Whitfield argued, in a similar vein, that Ms. Harriman always had his own priorities at heart as opposed to those of HSLF, noting that she occasionally advised him to take positions contrary to those urged by her employer.¹⁶⁴ However, when Representative Whitfield was asked whether Ms. Harriman's practice of sending his staff emails from her Humane Society email account "might create a problem of an appearance that she was acting on behalf of her employer instead of on her own view," Representative Whitfield stated "You know, looking back on it, yeah, I think you are right. I think it does create that perception."¹⁶⁵

The ISC understands how the Whitfields might be confused about where Ms. Harriman's personal role ended and her role as a lobbyist began, especially given her years of volunteer work on just these issues prior to being employed by HSLF. But that distinction – between a volunteer and a paid, registered lobbyist – is the precise distinction that the rule makes, and that Representative Whitfield should have made and enforced. There is no exception in the rule for lobbying contacts made by lobbyists who truly believe the righteousness of their cause, as

¹⁶¹ See 2 U.S.C. § 1602(8).

¹⁶² See, e.g., ISC Interview of Staffer A; ISC Interview of Staffer C.

¹⁶³ See, e.g., ISC Interview of Ms. Harriman. As a factual matter, it was not always the case that Ms. Harriman only advocated for legislative actions that she supported personally. For example, Ms. Harriman told the ISC that she did not support the use of dogs from animal shelters as companion animals for military veterans, but that she asked Representative Whitfield's Chief of Staff to have a member of Representative Grimm's staff change language in Representative Grimm's veterans' dogs bill, in a way that would increase the use of shelter dogs, because HSLF supported that change. Further, as a legal matter, it cannot be correct that if a client pays a lobbyist to lobby Congress, and the lobbyist communicates with a Member or their staff regarding actions in the client's interests, that those communications are not "lobbying contacts" merely because the lobbyist and the Member or staffer share an interest or view. That standard would be completely unworkable, and would significantly undermine the Lobbying Disclosure Act and House Rule XXV, clause 7.

¹⁶⁴ February 24, 2016 Submission at 4-5.

¹⁶⁵ ISC Interview of Representative Whitfield.

opposed to “hired guns” who are simply contracted to achieve a result. On the contrary, the relevant factor for whether or not a contact is made on behalf of a client is the perspective of the *client*, not the lobbyist.¹⁶⁶ And the circumstances of these contacts indicate that HSLF expected Ms. Whitfield’s contact with Representative Whitfield’s staff to be work she performed on behalf of HSLF, as opposed to her own private pursuits. Ms. Harriman routinely contacted Representative Whitfield’s staff from her HSLF email account and copied HSLF employees on her contact with the staff.¹⁶⁷ HSLF employees routinely asked for her assistance in contacting Representative Whitfield or his staff.¹⁶⁸ Ms. Harriman was paid over \$88,000 annually to lobby for HSLF,¹⁶⁹ and received plaudits in her performance evaluations for “lobbying on the complete legislative agenda,”¹⁷⁰ which included bills she contacted Representative Whitfield’s staff about. It is unlikely that the client in this case, HSLF, viewed Ms. Harriman’s contact with Representative Whitfield’s staff as distinct in any way from her other work on Capitol Hill. And, while some evidence does indicate that Ms. Harriman took positions contrary to those of HSLF where Representative Whitfield’s own constituents saw a matter differently,¹⁷¹ that does not change the nature of *other* contacts made in *support* of HSLF’s positions, which were numerous. Accordingly, the ISC found that where Ms. Harriman’s contacts concerned animal protection matters and were consistent priorities of, or directly aligned with, the legislative priorities of her employer, there was substantial reason to believe that such contacts were made on behalf of HSLF, and therefore were lobbying contacts. Such contacts must be evaluated on a case-by-case basis. Thus, the fact that Ms. Harriman on some occasions supported decisions by Representative Whitfield that were contrary to her employer’s interests does not mean that her contacts with Representative Whitfield’s staff, in other instances and regarding other legislation or actions related to the same legislation, were not “lobbying contacts.”

Representative Whitfield also argues that Ms. Harriman could not lobby him on bills he supported, such as the PAST Act, because his position, Ms. Harriman’s position, and the position of the HSLF were all “completely aligned.”¹⁷² This argument fails for two reasons.

First, it is beside the point whether and to what extent the parties in this case had aligned or unaligned positions. There is no exception to the definition of lobbying contact for contacts

¹⁶⁶ Cf. Office of the Clerk, *Lobbying Disclosure Act Guidance* (Dec. 15, 2014) (“Example 1: Lobbyist ‘A’, a former chief of staff in a congressional office, is now a partner in the law firm retained to lobby for Client ‘B.’ After waiting one year to comply with post-employment restrictions on lobbying, Lobbyist ‘A’ telephones the Member on whose staff she served. She asks about the status of legislation affecting Client ‘B’s’ interests. *Presumably ‘B’ will expect the call to have been part of an effort to influence the Member*, even though only routine matters were raised at that particular time.”) (emphasis added).

¹⁶⁷ See, e.g., Exhibits 5, 23, 45, 47.

¹⁶⁸ See, e.g., Exhibit 4 (HSUS employee asked Ms. Harriman to discuss the possibility of amending the farm bill); Exhibit 5 (HSUS employee asked Ms. Harriman to have Representative Whitfield contact senior officials at USDA to discuss regulations on horse soring); Exhibit 6 (HSUS employee asked Ms. Harriman to have Representative Whitfield call a state district attorney to advocate for criminal charges against a horse sorer).

¹⁶⁹ Exhibit 48.

¹⁷⁰ Exhibit 49.

¹⁷¹ *But see* Exhibit 1 at 5 (Ms. Harriman’s HSLF self-evaluation indicated, as a strength, an “unusual willingness to sacrifice political capital and my husband’s political fortunes for the sake of the HSLF and the HSUS.”).

¹⁷² February 24, 2016 Submission at 3.

with an office that has a sympathetic ear. All that is required is that the contact be made on behalf of a client, and that it relate to the formulation, modification, or adoption of federal legislation. Indeed, lobbyists frequently work with Member offices already dedicated to their client's cause, as opposed to simply attempting to persuade only those Members opposed to that point of view.

It is true that the LDA contains an exception to the definition of lobbying contacts when the contact involves “a request for a meeting, a request for the status of an action, or any other similar administrative request, if the request does not include an attempt to influence a covered executive branch official or a covered legislative branch official”¹⁷³ If Ms. Harriman's contacts were limited to the mundane and ministerial acts described by this exception, then perhaps the question of whether those contacts included an attempt to influence might be a relevant question. But, as discussed above, a significant number of Ms. Harriman's contacts with Representative Whitfield's office went far beyond simply requesting a meeting; instead, they ranged from discussion of parliamentary procedure,¹⁷⁴ to advice on communications strategies,¹⁷⁵ to involving herself in determining the division of labor within the staff on work related to passage of a bill that HSLF supported.¹⁷⁶ And even the meetings Ms. Harriman helped to coordinate were intended to influence the Members with whom the advocates met, so even if those contacts were not attempts to influence Representative Whitfield or his staff, they certainly would violate the spirit of the rule insofar as they included an attempt to influence other Members.¹⁷⁷

Second, even if House Rule XXV, clause 7 permitted lobbying contacts between a Member's staff and his lobbyist spouse where the Member's opinion aligned with that of his spouse and her client, the record indicates that Representative Whitfield, Ms. Harriman, and HSLF were not always “completely aligned” when she contacted the office about a given issue. Most prominently, Ms. Harriman urged the Legislative Director to have Representative Whitfield vote for two animal protection amendments supported by HSLF, both of which he eventually voted against due to pressure from constituents and other interest groups.¹⁷⁸ Ms. Harriman, upon learning of Representative Whitfield's votes, emailed the Legislative Director again, stating that Representative Whitfield voted “the wrong way.”¹⁷⁹ In addition to this incident, there were numerous occasions on which Ms. Harriman influenced Representative Whitfield's staff in more subtle ways. She asked the then-Legislative Director to work with another Member's staff in order to remove two words from the VDTTA, in accordance with

¹⁷³ 2 U.S.C. § 1602(8)(B)(v).

¹⁷⁴ See, e.g., Exhibits 14, 30, and 43.

¹⁷⁵ See, e.g., Exhibits 50 and 51.

¹⁷⁶ See, e.g., Exhibits 13 and 27.

¹⁷⁷ Representative Whitfield's Chief of Staff appears to have misunderstood this basic principle. According to Congressional Aide, the Chief of Staff told him, when he joined Representative Whitfield's staff in December 2013, “Connie can't lobby you to get on a bill, introduce a bill, change a bill, cosponsor a bill, but you guys can work together to help get other people to support the bill.” ISC Interview of Grassroots Advocate A/Congressional Aide.

¹⁷⁸ Exhibit 16; ISC Interview of Representative Whitfield.

¹⁷⁹ Exhibit 17.

HSLF's preferences for the bill.¹⁸⁰ She also asked Representative Whitfield's staff to contact particular Members and keep track of particular responses as a part of the strategy to gain cosponsors for the PAST Act.¹⁸¹ In fact, the subtle inducement that Ms. Harriman routinely performed upon Representative Whitfield's staff proves how unworkable Representative Whitfield's test of "alignment" would be. It is impossible to know, in retrospect, what positions and actions an office might have taken in any event, had they not been contacted by a lobbyist about those positions and actions.

This problem with Representative Whitfield's reading of the rule is illustrated by instances where contacts from Ms. Harriman prompted Representative Whitfield's staff to take an action that, though consistent with Representative Whitfield's views, the office might not have taken otherwise. One example, discussed previously, is Ms. Harriman's prompting the staff to add Representative Whitfield as a co-sponsor of the PUPS Act in December 2011. It appears that Representative Whitfield, Ms. Harriman, and HSLF (which listed Ms. Harriman as a lobbyist on the bill) were of the same mind regarding the bill, yet due to an oversight by Representative Whitfield's staff, he did not sign on to the bill until Ms. Harriman raised the issue. In another instance, in March 2012, Ms. Harriman suggested that Representative Whitfield's Press Secretary draft a statement in support of the Interstate Horseracing Improvement Act, a bill Representative Whitfield had introduced. The then-Legislative Director replied that a Senator who had released a statement "is in a different position" than Representative Whitfield, and concluded, "I don't think it makes as much sense for EW to do one, but I can ask our Press Secretary to work on one?"¹⁸² Ms. Harriman then listed several reasons for Representative Whitfield to issue a statement, and the then-Legislative Director replied, "OK, I'll talk to [Press Secretary] and [Chief of Staff]."¹⁸³ This exchange occurred on March 27, 2012. It appears that Representative Whitfield made a statement on the Interstate Horseracing Improvement Act the next day, March 28th.¹⁸⁴ The President of HSUS then quoted the statement in a Humane Society blog post in support of the Act.¹⁸⁵ During this period, the HSLF lobbying reports listed Ms. Harriman as a lobbyist on the Interstate Horseracing Improvement Act. In both of these instances, Ms. Harriman appears to have prompted Representative Whitfield's staff to take actions that, while consistent with Representative Whitfield's views, they might not have taken without Ms. Harriman's intervention. Given that Ms. Harriman was a registered lobbyist on these bills, it is difficult to see how these contacts, which resulted in official actions favorable to her client, did not meet the definition of "lobbying contacts."

The ISC accepts Representative Whitfield's assertion that, when it came to the effort to support the PAST Act, he "simply continued to use his wife the same way he always had – as a

¹⁸⁰ Exhibit 8.

¹⁸¹ See e.g., Exhibits 23-25 and 46.

¹⁸² Exhibit 52.

¹⁸³ *Id.*

¹⁸⁴ Exhibit 53.

¹⁸⁵ Exhibit 54.

tremendously effective organizer and promoter of his animal-welfare legislative agenda.”¹⁸⁶ In many ways, that is precisely the problem. Once Ms. Harriman’s skills as an “effective organizer” and “promoter of [the] animal-welfare legislative agenda” landed her a job and a paycheck as a registered lobbyist, Representative Whitfield could no longer employ this same strategy without violating House Rule XXV, clause 7. His failure to change course, and institute boundaries and limits for Ms. Harriman that conformed to the edict of the rule, resulted in impermissible lobbying contacts between Ms. Harriman and his staff.

B. Code of Ethics § 5

The Code of Ethics was adopted by the House to assist federal employees, including officeholders, “in guiding and correcting any tendency toward cynicism of the high trust associated with public service.”¹⁸⁷ It thus reaffirmed standards of conduct “to which all federal employees unquestionably should adhere.”¹⁸⁸ In this spirit, Section 5 includes two prohibitions that are applicable to House Members: (1) “never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not;” and (2) “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 governmental duties.” It bears emphasis that, unlike House Rule XXIII, clause 3, where finding a violation requires proof of a connection between an official action and compensation to the acting Member, neither clause of Section 5 requires proof of such a connection.

While all Members are expected to know and “unquestionably . . . adhere” to these provisions, Representative Whitfield had particular reason to be aware of them: questions were raised about Ms. Harriman’s lobbying work and relationship to Representative Whitfield well before Representative Whitfield introduced the PAST Act. On November 21, 2012, Ms. Harriman received press inquiries from the *Washington Post* regarding “lawmakers who have family members that are registered to lobby Congress....”¹⁸⁹ And on December 17, 2012, Ms. Harriman forwarded to Representative Whitfield an email between an HSUS employee and a *Washington Post* reporter, responding to questions about Ms. Harriman’s lobbying activities, and their overlap with Representative Whitfield’s legislative agenda.¹⁹⁰ A reporter from Politico raised similar questions in December 2013.¹⁹¹

These questions should have alerted Representative Whitfield of the need to educate himself and his staff regarding the House Rules that could be implicated by Ms. Harriman’s interactions with his staff. Had he done so, he would have learned that the Committee has cautioned Members that they must “avoid situations in which even an inference might be drawn

¹⁸⁶ February 24, 2016 Submission at 7.

¹⁸⁷ Comm. on Post Office and Civil Service, *Code of Ethics for Government Service*, H. Rept. 1208, 85th Cong. 1st Sess. 1 (1957).

¹⁸⁸ *Id.* at 2.

¹⁸⁹ Exhibit 55.

¹⁹⁰ Exhibit 56.

¹⁹¹ Exhibit 57.

suggesting improper action.”¹⁹² In this case, the ISC determined that Representative Whitfield did extend special privileges to Ms. Harriman, in that she had an unusual level of access to and influence over his staff, relative to other registered lobbyists, and that this unusual level of access created, if not impropriety itself, at least an appearance of impropriety.

In a recent case, the Committee found that Representative Phil Gingrey violated Section 5 of the Code of Ethics where he treated a single bank differently from other similarly situated entities, by arranging meetings between that bank’s officers, the Chair of the House Financial Services Committee, and high-ranking Treasury Department officials, and by attending some of those meetings himself.¹⁹³ And in another case, the Committee found that Representative Shelley Berkley created the appearance that her duties were influenced by her husband’s financial interest, despite the fact that the Committee credited her testimony that she was not actually influenced.¹⁹⁴

In this case, the Committee found no evidence that any other similarly situated lobbyist received the same level of access to Representative Whitfield’s staff as Ms. Harriman. Representative Whitfield, through his counsel, asserted that other lobbyists and parties did have similar access to his staff, and pointed to the staff’s work related to a coal miner protection bill in 2012. In that instance, Representative Whitfield wanted to introduce legislation that would preserve the health benefits for Kentucky coal miners who lost their jobs as part of a corporate bankruptcy. In the course of drafting that bill and attempting to build support for it, Representative Whitfield’s staff interacted with interested parties and their lobbyists in a variety of ways, including posing questions about, and seeking reactions to, proposed legislative language as part of the process of drafting the bill, and acting on requests to reach out to a Senator to encourage his support of the bill. As a result of these interactions, Representative Whitfield’s staff ultimately incorporated language into the bill that outside parties suggested. Representative Whitfield has asserted that his staff did no more than this for Ms. Harriman or her employer, HSLF, and that he therefore did not grant either of them special access to his office.

The ISC found some merit in this argument, but concluded that Ms. Harriman had a greater level of access to Representative Whitfield’s staff than other parties involved in the office’s legislative efforts, including the coal miner bill. Indeed, both HSLF and Ms. Harriman herself acknowledged that Ms. Harriman’s ability to obtain information and action from Representative Whitfield’s staff was superior to what a lobbyist who was not a spouse could achieve. Other HSLF lobbyists acknowledged that, while their pre-existing relationship with Representative Whitfield was good, Ms. Harriman’s was clearly superior.¹⁹⁵ Due to this

¹⁹² See House Comm. on Standards of Official Conduct, *Investigation of Financial Transactions Participated In and Gifts of Transportation Accepted by Representative Fernand J. St Germain*, H. Rept. 100-46, 100th Cong. 1st Sess. 3, 9, 43 (1987).

¹⁹³ Comm. on Ethics, *In the Matter of Allegations Related to Representative Phil Gingrey*, H. Rept. 113-664, 113th Cong. 2d Sess. 14 (2014) (hereinafter *Gingrey*).

¹⁹⁴ Comm. on Ethics, *In the Matter of Allegations Relating to Representative Shelley Berkley*, H. Rept. 112-716, 112th Cong. 2d Sess. 49 (2012) (hereinafter *Berkley*).

¹⁹⁵ Exhibit 3; ISC Interview of HSLF Official.

relationship, Ms. Harriman's supervisor at HSLF understood that requests from Ms. Harriman would receive a "better response, a quicker response" than another HSLF lobbyist might obtain.¹⁹⁶ And Ms. Harriman herself, in an email to her supervisor at HSLF, stated that when deciding who at HSLF should make an "ask" to Representative Whitfield's staff, "I do not need to tell YOU that going through a spouse is usually more efficient than going through the office!"¹⁹⁷

In addition, it was clear that Representative Whitfield's staff viewed and responded to Ms. Harriman in a different manner than they interacted with the parties interested in the coal miner bill. With respect to that bill, the staff was generally asking for assistance and information, and appeared to be leading that process. Further, Representative Whitfield's staff noted that they were aware that the opinions they were soliciting and receiving were biased, and based on the parties' self-interest,¹⁹⁸ and they firmly rejected a request to expand the scope of Representative Whitfield's bill.¹⁹⁹ In contrast, Representative Whitfield's staff testified that they tried to always say "yes" to Ms. Harriman's requests because she was their boss's spouse.²⁰⁰ Likewise, when the Chief of Staff was asked whether there was a "different expectation for Mrs. Whitfield because she was married to the Congressman, in terms of how much you would listen or how you would take her statements," he explained that he "was in a very difficult situation being in between [Representative Whitfield] and his wife. And so I tried to make the best of a very difficult situation."²⁰¹ He further explained that "I felt the need to respond. I couldn't just ignore her, but that didn't mean that she always got what she wanted either."²⁰²

Representative Whitfield argues that his staff's efforts to set up the PAST Act meetings, in particular, were not a special favor to the HSUS or HSLF. The ISC agrees. The ISC credited Representative Whitfield's testimony that those meetings were arranged based on his understanding of House Leadership's requirements for bringing the bill to the floor, and his own strategy for obtaining the requisite number of co-sponsors. However, just because the meetings themselves were not a special *favor* to HSUS or HSLF, that does not mean that the level of access and influence more generally provided to Ms. Harriman, on issues other than the meeting requests, was not a special *privilege* to her, or to her employer. The ISC does not believe that any other lobbyist could tell a junior staffer to object to his Chief of Staff's decision regarding which member of Representative Whitfield's staff should be scheduling meetings on a bill the lobbyist was lobbying on.²⁰³ Nor does the ISC believe that a lobbyist who was not a spouse would present the same "very difficult" situation for Representative Whitfield's staff, who were expected to be responsive to Ms. Harriman's requests and generally say "yes" to her if they

¹⁹⁶ ISC Interview of HSLF Official.

¹⁹⁷ See Exhibit 3; see also *supra*, p. 5.

¹⁹⁸ Exhibits 58 and 59.

¹⁹⁹ Exhibit 60.

²⁰⁰ See *supra*, n.12 and p. 4.

²⁰¹ ISC Interview of Staffer B.

²⁰² *Id.*

²⁰³ Exhibit 46.

could, while also complying with the House rules regarding lobbying contacts and special privileges.

Ultimately, the ISC concluded that Ms. Harriman, during the time she was a registered lobbyist for HSLF, did have a special level of access to, and influence over, Representative Whitfield's staff. But even if she did not, the ISC found it clear that the public could reasonably perceive that Ms. Harriman, as a lobbyist for HSLF, received special privileges with respect to Representative Whitfield's staff. Indeed, even Representative Whitfield, in a submission to the ISC, acknowledged that "to observers unfamiliar with the history of their partnership," – as most members of the public would be – "it could appear that Ms. Harriman, as an employee of HSLF, had an outsized role and exceptional access to Representative Whitfield and his staff."²⁰⁴ This is precisely the inference against which the Committee's guidance is designed to guard. As noted above, the Committee has long cautioned Members that when taking official actions, they must "avoid situations in which even an inference might be drawn suggesting improper action."²⁰⁵ Even in cases where the Committee has credited testimony that a Member did not act out of self-interest, the Committee has nevertheless found a violation where an individual or entity is singled out for special treatment, and such special treatment creates an appearance of favoritism.²⁰⁶ Accordingly, even though Representative Whitfield did not, as he says, "leverage[] [Ms. Harriman's] experience and relationships and integrate[] her into his office's [legislative] effort" as a favor to the Humane Society,²⁰⁷ a member of the public could reasonably infer that such leverage and integration constituted a special privilege, which other lobbyists would not be granted. Accordingly, the ISC found that Representative Whitfield violated Section 5 of the Code of Ethics.

C. House Rule XXIII, clause 3

House Rule XXIII, clause 3 states that "a Member...may not receive compensation and may not permit compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress."

The nature of Members as proxies for their constituents in the federal government makes it impossible to require recusal on every issue in which a Member has a financial interest. The Committee, therefore, views conflicts of interest differently based on the nature of the personal financial interest relative to the scope of the action. If a Member seeks to act on a matter where he might benefit as a member of a large class, such action does not require recusal. Thus, "Members who happen to be farmers may nonetheless represent their constituents in

²⁰⁴ February 24, 2016 Submission at 7.

²⁰⁵ See House Comm. on Standards of Official Conduct, *Investigation of Financial Transactions Participated In and Gifts of Transportation Accepted by Representative Fernand J. St Germain*, H. Rept. 100-46, 100th Cong. 1st Sess. 3, 9, 43 (1987).

²⁰⁶ See *Gingrey* at 25 (noting that the Member "took some care to limit the scope of his official actions"); *Berkley* at 55-56 (noting that "reasonable people would construe the benefit [the Member] received as her motivation, whether it was or not.").

²⁰⁷ February 24, 2016 Submission at 7.

communicating views on farm policy to the Department of Agriculture.”²⁰⁸ By contrast, where a Member’s actions would serve his own narrow financial interest, the Member should refrain from acting.²⁰⁹ The Committee’s guidance on this point advises Members to engage in “added circumspection” any time a Member is deciding whether to take official action “on a matter that may affect his or her personal financial interests.”²¹⁰

In previous cases, the Committee has considered whether a Member took an action that was so narrowly tailored to a single entity in which she had a financial interest that the action was “troublingly intertwined” with that interest,²¹¹ and whether the Member’s financial interest would “clearly be affected by the assistance sought.”²¹² The Committee recently found that no conflict of interest existed where the Member and his staff did not take any specific steps “to advocate for financial assistance or payments to an entity the Member had a financial interest in.”²¹³

The ISC found no violation of clause 3 in this case. Representative Whitfield took no action to direct federal monies or payments to HSLF or HSUS. Any actions he took on animal protection matters were not narrowly tailored to affect any financial interest, and did not clearly affect any such interest: Ms. Harriman is an accomplished government affairs professional with a background in policy and lobbying, and all evidence suggests that she earned her position by her own merit. Her compensation does not appear to have depended on her ability to obtain favorable actions from Representative Whitfield. Accordingly, Representative Whitfield did not take official actions to benefit his own financial interest in this matter.

D. House Rule XXIII, clauses 1 and 2

As stated in previous reports, the Committee observes two basic principles when applying the first two clauses of the Code of Conduct. First, Members must at all times act in a manner that reflects creditably upon the House. Second, the Committee has noted that the Code of Conduct and other standards of conduct governing the ethical behavior of the House community are not criminal statutes to be construed strictly, but rather – under clause 2 of House Rule XXIII – must be read to prohibit violations not only of the letter of the rules, but of the spirit of the rules. Ethical rules governing the conduct of Members were created to assure the public of “the importance of the precedents of decorum and consideration that have evolved in the House over the years.”²¹⁴ The standard “provide[s] the House with the means to deal with infractions that rise to trouble it without burdening it with defining specific charges that would

²⁰⁸ *Ethics Manual* at 314.

²⁰⁹ *See id.*

²¹⁰ *Id.* at 237.

²¹¹ *Berkley* at 49.

²¹² Comm. on Ethics, *In the Matter of Representative Maxine Waters*, H. Rept. 112-690, 112th Cong. 2d Sess. 11 (2012) (hereinafter *Waters*).

²¹³ *Gingrey* at 12.

²¹⁴ House Comm. on Standards of Official Conduct, *Report under the Authority of H. Res. 418*, H. Rept. 90-1176, 90th Cong. 2d Sess. 17 (1968).

be difficult to state with precision.”²¹⁵ The practical effect of Clause 2 is to allow the Committee to construe ethical rules broadly, and prohibit Members from doing indirectly what they would be barred from doing directly. The Ethics Manual states that “a narrow technical reading of a House Rule should not overcome its ‘spirit’ and the intent of the House in adopting that and other rules of conduct.”²¹⁶

Accordingly, the ISC analyzed the conduct at issue in this matter under these standards. Having considered the foregoing record and applied the relevant standards of conduct, the ISC found that Representative Whitfield violated House Rule XXV, clause 7, Section 5 of the Code of Ethics for Government Service, and Clauses 1 and 2 of the Code of Conduct, by not establishing clear boundaries and limits for the interaction of his staff with his spouse, Ms. Harriman, when she was registered as a lobbyist. Representative Whitfield himself, in testimony to the ISC, recognized the heart of the issue:

I would say this: that if I had the opportunity to go back and do this all over again, yeah, I would have made some changes, because she was a lobbyist with the Humane Society. And although I don’t think I did anything wrong – and I still don’t – I think from appearances and so forth, yeah, maybe I should have said, okay, now we have to be a little bit more distinct here.

The ISC credits Representative Whitfield’s testimony that this failure was not occasioned out of a corrupt or willful intent to violate House Rules. Instead, the ISC believes that the violations arose because Representative Whitfield did not take the requisite care when Ms. Harriman’s status changed. As a result, the ISC is not recommending that the Committee adopt a Statement of Alleged Violation.²¹⁷ However, in previous cases, such oversights have, when they result in substantial, non-technical violations such as these, resulted in the issuance of a reproof from the Committee to the subject Member.²¹⁸ In accordance with that precedent, the ISC recommends that the Committee issue this Report as a reproof in this case as well.

VI. CONCLUSION

Congressional spouses occupy a rarefied position in many personal offices, and with good reason. Members and staff work long and unpredictable hours in small and tight-knit groups, and balancing that workload with family commitments requires a significant amount of

²¹⁵ 114 Cong. Rec. 8778 (Apr. 3, 1968) (Statement of Representative Price).

²¹⁶ *Ethics Manual* at 17 (citing House Select Comm. on Ethics, *Advisory Opinion No. 4*, H. Rept. 95-1837, 95th Cong. 2d Sess. app. 61 (1979)).

²¹⁷ The ISC would be required to adopt a Statement of Alleged Violation if it concluded that a censure, reprimand, or other sanction imposed by the full House would be appropriate in this matter.

²¹⁸ See, e.g., *Gingrey* at 25; Comm. on Ethics, *In the Matter of Allegations Relating to Representative Don Young*, H. Rept. 113-487, 113th Cong. 2d Sess. (2014); *Waters* at 2. Additionally, the ISC notes that the issuance of a letter of reproof, where warranted by the evidence, may have the additional effect of “plac[ing] other Members on notice...with the clear possibility that more severe action will be pursued [in the future].” Comm. on Standards of Official Conduct, *In the Matter of Representative Jim Bates*, H. Rept. 101-293, 101st Cong. 1st Sess. (1989).

coordination and support. The House enacted House Rule XXV, clause 7, because it was concerned that this symbiotic relationship might appear inappropriate when a spouse takes on the interest of an outside client as a registered lobbyist. The rule is a narrow caveat to the general understanding that a Member's spouse will often need to interact with the Member's staff to coordinate the Member's official and personal obligations. But it is a strict and clear restriction as well. Representative Whitfield took no action to bring his office into compliance with that restriction when his wife, Ms. Harriman, became a lobbyist. It is true that her client largely shared Representative Whitfield's own views about an issue that both he and his wife had long cared about. But the plain text of the rule takes no account of such considerations.

Moreover, the public might well wonder, upon reading the facts of this case, whether congressional spouses who are also lobbyists offer an "inside track" to any client who can hire them. Even if such an "inside track" turned out to be, on many occasions, irrelevant to the actions Representative Whitfield and his staff ultimately took, the level of insider access provided to Ms. Harriman while she was a lobbyist raised inferences of impropriety and suggested a special privilege.

The ISC notes that none of its findings should be read to indicate any degree of knowing, willful, or corrupt violation of the rules. Representative Whitfield and Ms. Harriman have stated that they never believed that Ms. Harriman's contacts with Representative Whitfield's staff were contrary to any House rule. Although the ISC accepted these sentiments as genuine, a Member's mistaken belief in their compliance with the rules does not excuse a violation of those rules.²¹⁹ The ISC found that Representative Whitfield failed to comprehend the importance of setting boundaries and limits on the interactions between Ms. Harriman and his staff. This failure was significant, if unintentional, and thus the ISC recommends that the Committee publish this Report, and that the Report serve as a reproof of Representative Whitfield.

²¹⁹ See *Gingrey* at 25 (finding violations of House Rules even though "the Committee credited Representative Gingrey's assertion that he believed his actions were consistent with House Rules."); *Berkley* at 10 ("The ISC found that Representative Berkley mistakenly believed the rules governing what assistance her office could provide to her husband's practice required only that they treat him in the same manner by which they treated any other constituent. This is incorrect.").