

ADOPTED BY THE COMMITTEE ON ETHICS ON JULY 12, 2016

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

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

JULY 14, 2016

CWD

Mr. DENT from the Committee on Ethics submitted the following

REPORT

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ONE HUNDRED FOURTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

July 14, 2016

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The Honorable Karen L. Haas
Clerk, U.S. House of Representatives
Washington, DC 20515

Dear Ms. Haas:

Pursuant to clauses 3(a)(2) and 3(b) of Rule XI of the Rules of the House of Representatives, we herewith transmit the attached Report, "In the Matter of Allegations Related to Representative Ed Whitfield."

Sincerely,

Charles W. Dent
Chairman

Linda T. Sánchez
Ranking Member

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REPORT

In accordance with House Rule XI, clauses 3(a)(2) and 3(b), the Committee on Ethics (Committee) hereby submits the following Report to the House of Representatives:

I. INTRODUCTION

On July 12, 2016, the Committee considered the Report adopted by the Investigative Subcommittee (ISC) in this matter. This Report memorializes the Committee's conclusions based on the ISC Report.

The Committee agrees with the findings and conclusions the ISC reached following its thorough thirteen-month investigation.¹ Specifically, the Committee finds that Representative Ed Whitfield failed to prohibit lobbying contacts between his staff and his wife, Constance Harriman, and dispensed special privileges to Ms. Harriman, but that he did not violate the rule against improperly using his position for his own interest. The Committee also found, as the ISC did, that Representative Whitfield did not intend to violate the House Rules or other standards of conduct, or to benefit himself or his spouse by doing so. However, the Committee agreed with the ISC's conclusion that Representative Whitfield did not take sufficient care to familiarize himself with the applicable rules and other standards of conduct, or to ensure that his office complied with them, and that the resulting violations were significant and numerous enough to warrant a reproof by the Committee.

Accordingly, the Committee hereby adopts the ISC's Report, which will serve as a reproof to Representative Whitfield. The ISC's Report is transmitted as an appendix to this Report.

¹ The Committee thanks the Members of the ISC for their efforts and attention to this matter.

II. PROCEDURAL BACKGROUND

On June 10, 2014, the Office of Congressional Ethics (OCE) transmitted a Report and Findings (Referral) relating to Representative Whitfield to the Committee. OCE's Referral recommended that the Committee further review allegations that Representative Whitfield 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 of the United States (HSUS), or its lobbying arm, the Humane Society Legislative Fund (HSLF).²

The Committee agreed with OCE's recommendation and did further review the allegations in its Referral. On November 10, 2014, the Committee published OCE's Referral and a response from Representative Whitfield, and publicly announced that the Committee would investigate the matter under Committee Rule 18(a). Shortly after the commencement of the 114th Congress, on March 25, 2015, the Committee unanimously voted to establish an ISC to continue the Committee's investigation of 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. In addition, the ISC reviewed Representative Whitfield's written submissions regarding the allegations in this matter.

On April 20, 2016, the ISC voted to adopt its Report, finding that Representative Whitfield had violated the House Rule concerning lobbying contacts between a Member's spouse and his staff, as well as rules regarding the dispensation of special privileges. The ISC did not believe that a sanction requiring floor action by the House of Representatives was warranted in this case. However, the ISC did recommend that the Committee reprove Representative Whitfield, a sanction which the Committee is authorized by House Rules to issue on its own authority.³ As the Committee has noted previously, reproof by the Committee is "intended to be a clear public statement of rebuke of a Member's conduct issued by a body of that Member's peers acting . . . on behalf of the House of Representatives."⁴

Pursuant to House Rule XI, clause 3(a)(2), which provides that the Committee may report to the House its findings and conclusions for final disposition of investigative matters after "notice and hearing," the Committee provided Representative Whitfield with a copy of the ISC Report on April 29, 2016, and offered him the opportunity to be heard by the full Committee.

² A referral from the OCE to the Committee may include a recommendation that the Committee further review an allegation or dismiss it and provide the Committee with certain types of information regarding the allegation, but not the names of any cooperative witnesses or any conclusions regarding the validity of the allegations or the guilt or innocence of the individual who is the subject of the review. *See* H. Res. 895 § 1(c)(2)(C).

³ House Rule XI, clause 3(a)(2).

⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative E.G. "Bud" Shuster*, H. Rep. 106-979, 106th Cong., 2d Sess. (Oct. 16, 2000) at 113.

Representative Whitfield responded to the ISC's Report through an extensive written submission and by appearing before the Committee.

Following Representative Whitfield's appearance before the Committee, the ISC met again to discuss Representative Whitfield's remarks and submission. After further consideration of those views and materials, the ISC unanimously agreed to make minor revisions to its Report, and transmitted the Report to the Committee. As described further below, the ISC still concluded that the violations were significant and numerous enough to warrant a reproof by the Committee, and the full Committee unanimously agreed with that recommendation.

III. FINDINGS AND CONCLUSIONS

On July 12, 2016, the Committee voted unanimously to release this public Report finding that Representative Whitfield violated House Rules and other standards of conduct. Specifically, beginning in January 2011 and continuing until at least 2015, Representative Whitfield permitted Ms. Harriman, who was at that time registered as a lobbyist for HSLF, to contact his staff regarding federal legislation in which HSLF had an interest. This contact took many forms, from Ms. Harriman's participation in the planning and strategy of arranging meetings between other Members and outside advocates for the Prevent All Soring Tactics Act (PAST Act), a bill that Representative Whitfield sponsored and HSLF supported, to discussing communications and parliamentary strategy for the PAST Act and other animal welfare bills, to directly advocating that Representative Whitfield vote for certain animal welfare bills or amendments, or that his staff alter the language of such bills. These contacts, the ISC concluded, illustrated Ms. Harriman's unique level of access to, and influence on, Representative Whitfield's staff.

With respect to the conduct described above, Representative Whitfield violated House Rule XXV, clause 7, which requires that Members "prohibit all staff employed by that Member . . . from making any lobbying contact . . . with that individual's spouse, if that spouse is a lobbyist . . ." Representative Whitfield also violated the Code of Ethics for Government Service, Section 5, which states that Members shall "never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not . . ." Finally, this conduct also violated Clauses 1 and 2 of House Rule XXIII, which 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 . . ."

The ISC noted that these violations were not caused by any corrupt or willful intent to violate House Rules or other standards of conduct.⁵ However, the ISC recognized that Representative Whitfield failed to establish clear guidelines and limits for his staff, which resulted in numerous lobbying contacts between his staff and Ms. Harriman over an extended period of time.⁶ The ISC further found that Ms. Harriman's unique access to and influence on Representative Whitfield's staff constituted a special privilege to her, which other lobbyists were not and would not have been granted.⁷ The ISC concluded that these violations did not require a

⁵ ISC Report at 32-33.

⁶ *Id.*

⁷ *Id.* at 30.

House sanction, such as a reprimand or censure, largely because they were due to Representative Whitfield's negligence, rather than any intent to violate the applicable rules and other standards of conduct.⁸ However, the ISC observed that, consistent with the Committee's prior precedents, even unintentional violations, if significant and sustained over time, can merit a reproof by the Committee.⁹ Based on the totality of the circumstances, the ISC concluded that a public reproof was appropriate in this case.

After reviewing the ISC's Report, Representative Whitfield acknowledged that his "oversights led to unintentional violations" of the House Rule regarding lobbying contacts between a Member's staff and a lobbyist spouse.¹⁰ However, Representative Whitfield asserts that his spouse did not have special access to his staff, and that there was thus no violation of the rule against providing a "special privilege" to any person. Representative Whitfield also contends that his actions did not fail to "reflect creditably on the House," and that a reproof is not appropriate, given his lack of intent to violate the rules and other circumstances.

The Committee has accepted the ISC's findings regarding the lack of any intent by Representative Whitfield to violate the rules. However, the Committee found that Representative Whitfield failed to take the proper care to avoid violations of the applicable rules. In particular, the Committee was troubled by Representative Whitfield's assertions that he was unaware of both the lobbying contacts rule and his spouse's registration as a lobbyist until another Member's staff raised questions about Ms. Harriman in October 2013, nearly three years after Ms. Harriman registered as a lobbyist.¹¹ As the Committee has previously stated, "Members have both the duty and responsibility to be aware of relevant House Rules and to conform their actions accordingly."¹² The Committee has thus refused to accept claims of mitigation that "would effectively result in the condonation of improper action based upon a defense of ignorance of House Rules," stating that "[s]uch an approach is clearly untenable on its face."¹³

Likewise, and for the same reasons, the Committee believes that a Member bears some responsibility to be aware of significant changes in factual circumstances – such as a spouse's action to register as a lobbyist – that could implicate House Rules. The Committee also questioned Representative Whitfield's assertion that he "did not even know that his wife had become a registered lobbyist" until October 2013.¹⁴ In fact, Ms. Harriman sent a statement to Representative Whitfield's House BlackBerry device in December 2012, which referred to a Washington Post reporter's "inquiry regarding the lobbying work of Connie Harriman-Whitfield on behalf of the Humane Society Legislative Fund (HSLF)."¹⁵ The email to Representative

⁸ *Id.* at 32-33.

⁹ *Id.* at 33 & n.222.

¹⁰ Representative Whitfield Submission (May 31, 2016) (Appendix D) at 1.

¹¹ Representative Whitfield characterized his lack of knowledge of the rule and of Ms. Harriman's lobbying registration as mitigating circumstances, in response to the ISC Report.

¹² See House Comm. on Standards of Official Conduct, *In the Matter of Representative Richard H. Stallings*, H. Rept. 100-382, 100th Cong. 1st Sess. 6 (1987) (hereinafter *Stallings*).

¹³ *Id.*

¹⁴ Representative Whitfield Submission (May 31, 2016) (Appendix D) at 11.

¹⁵ ISC Report at 27 (citing Ex. 56).

Whitfield noted that Ms. Harriman was a registered lobbyist for HSLF, and was paid “for her lobbying work.”¹⁶ Further, several of Representative Whitfield’s staff, including his chief of staff, testified that they knew Ms. Harriman was a registered lobbyist for the Humane Society well before October 2013.¹⁷ This raises questions about how Representative Whitfield’s staff was aware of Ms. Harriman’s change in status around the time it occurred, yet Representative Whitfield remained unaware.

Despite Representative Whitfield’s claim that he was unaware of the lobbying contacts rule until late 2013, and his admission that he did, in fact, violate the rule, Representative Whitfield argues that there is more than one reasonable interpretation of the rule, and that his actions were consistent with one such interpretation. Representative Whitfield has made this point previously, in written submissions and in extensive testimony before the ISC. The ISC considered Representative Whitfield’s interpretation of the rule, along with his characterization of the contacts between his staff and Ms. Harriman regarding legislation that HSLF supported or lobbied on, and found them to be without merit.¹⁸ The Committee agreed with the ISC’s thoughtful and detailed analysis, and notes that the ISC took care to highlight and address both exculpatory and inculpatory evidence in its Report. Given the Committee’s confidence in the ISC’s Report, the Committee will not issue an extended response to Representative Whitfield’s most recent submission. However, a few of Representative Whitfield’s legal and factual arguments merit brief discussion.

On the proper interpretation of the lobbying contacts rule, Representative Whitfield admits that he violated the rule, but asserts that it would have been reasonable for him to believe that Ms. Harriman’s communications with his staff were only “lobbying contacts” if she intended to influence the staff or Representative Whitfield, and that there was no public guidance from the House or Committee that would have led him to view the rule differently.¹⁹ Putting aside Representative Whitfield’s admission that he did not have *any* interpretation of the lobbying contacts rule during the period at issue here – because he was unaware the rule existed – the Committee disagrees with Representative Whitfield’s contention.²⁰

¹⁶ *Id.*

¹⁷ *Id.* at 5-6.

¹⁸ *See, e.g., id.* at 23-27.

¹⁹ In October 2013, Ms. Harriman contacted Committee staff after another Member’s staff objected to Ms. Harriman’s participation in legislative meetings arranged by Representative Whitfield’s staff. Representative Whitfield asserts that Ms. Harriman received “unclear responses” from Committee staff, and that Committee staff acknowledged that the issue was “complicated.” *See* Representative Whitfield Submission (May 31, 2016) at 9-10 (Appendix D). The ISC considered these assertions, and found that, at a minimum, Committee staff informed Ms. Harriman that she should not “talk about any bill with [Representative Whitfield’s] office that HSUS supports,” as Ms. Harriman’s own notes of the call state. *See* ISC Report, Ex. 32. Yet Ms. Harriman continued to have those conversations long after speaking with Committee staff.

²⁰ Representative Whitfield’s written response to the ISC report asserts that he was “unaware of the lobbying contacts rule.” The prohibition in House Rule XXV, clause 7, was created in the 110th Congress by the Honest Leadership and Open Government Act of 2007 (“HLOGA”), Pub. L. 110-81, § 302, 121 Stat. 735, 121 Stat. 735, 752 (Sept. 14, 2007), which passed the House on a vote of 411-8. It has been included in House Rules in each of the four successive Congresses.

As the ISC explained, the definition of a “lobbying contact,” which is included in the Lobbying Disclosure Act of 1995 (LDA) contains no reference to, or requirement for, a lobbyist’s intent to influence anyone.²¹ As a matter of common sense and practice, lobbyists often work with Members and their staff on issues where the lobbyist and the Member or staff already agree; the point of those contacts is not to influence the Member or staff, but to work together to pass or modify legislation. These interactions fall squarely within the statutory definition of a lobbying contact. Further, as the ISC Report explained, the House has published guidance which makes clear that if a lobbyist’s client would view its lobbyist’s communication with a Member or staff as advancing the client’s interests in legislation, the communication is a lobbying contact.²² As the ISC detailed, Ms. Harriman’s client, HSLF, viewed her as acting on its behalf when she contacted Member offices – including Representative Whitfield’s office.²³ Thus, based on the publicly available guidance issued by the House, Ms. Harriman’s contacts with Representative Whitfield’s staff regarding legislation that she and her client, HSLF, were registered to lobby on would be “lobbying contacts.”

Representative Whitfield acknowledges that by at least October 2013, he knew that his wife was a registered lobbyist and knew of the rule regarding lobbying contacts by a Member’s spouse who is a registered lobbyist, but asserts that he lacked guidance from the Committee about how to interpret the rule.²⁴ Yet, as discussed at greater length in the ISC Report, the Committee’s Chief Counsel spoke to Ms. Harriman about the rule. In that conversation, the Chief Counsel 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 himself to request such an opinion. Representative Whitfield never made that request. Moreover, well after that time, Ms. Harriman continued to make similar contacts and requests to his office.

Representative Whitfield also attempts to characterize his spouse’s interactions with his staff regarding legislation that HSLF supported as mere “reminders” to take actions Representative Whitfield already intended to take, and suggests, as he did throughout the ISC’s investigation, that he and Ms. Harriman were completely aligned on all the issues that Ms. Harriman contacted his staff about. The ISC found that these claims were based on a mischaracterization or incomplete presentation of the facts,²⁵ and the Committee agreed.

²¹ ISC Report at 24-25.

²² *Id.* at 24 & n.166 (citing Office of the Clerk, *Lobbying Disclosure Act Guidance* (Dec. 15, 2014) (section titled “Is it Lobbying Contact/Lobbying Activity?”)).

²³ *Id.* at 24.

²⁴ As noted above, the rule regarding a spouse’s lobbying contacts was created by enactment of HLOGA in 2007. The *House Ethics Manual* issued in 2008 notes that, “Special caution must be exercised when the spouse of a Member or staff person, or any other immediate family member, is a lobbyist. At a minimum, such an official should not permit the spouse to lobby either him- or herself or any of his or her subordinates Furthermore, a recently enacted provision of the House rules (House Rule 25, clause 7) requires that the Member prohibit his or her staff from having any lobbying contacts with that spouse if such individual is a registered lobbyist or is employed or retained by a registered lobbyist to influence legislation.” *House Ethics Manual* (2008) at 245-46.

²⁵ *See, e.g.*, ISC Report at 25-26.

With respect to the ISC’s finding that Representative Whitfield granted Ms. Harriman a special privilege of access to his staff, Representative Whitfield argues that Ms. Harriman’s access to, and influence on, his staff did not change when Ms. Harriman registered as a lobbyist. This is precisely the point. Representative Whitfield’s staff granted Ms. Harriman unique access to the office, and treated her in a deferential matter, because she was the Member’s spouse.²⁶ When she registered to lobby for HSLF, and later joined HSLF as a paid lobbyist, her access to Representative Whitfield’s staff, and the staff’s treatment of her, should have changed accordingly. But by all accounts, nothing changed. To cite just one example, in May 2011, five months after Ms. Harriman registered as a lobbyist for HSLF, Ms. Harriman’s supervisor at HSLF told Ms. Harriman that an HSUS publication wanted quotes from Representative Whitfield, supporting a horse racing bill that HSUS wanted Congress to pass.²⁷ The HSLF supervisor asked “Do you want me to just go through the office?,” to which 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.”²⁸ 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!”²⁹ As the ISC’s Report detailed, 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.³⁰ Based on these and other interactions between Ms. Harriman and Representative Whitfield’s office, the ISC found, and the Committee agreed, that Representative Whitfield granted Ms. Harriman a “special privilege” that was not available to other lobbyists – not through any decision he made, but due to a failure to alter the office’s policies as the House Rules required.

Finally, Representative Whitfield contends that his violations were not severe enough to implicate House Rule XXIII, clause 1, which provides that a Member “shall behave at all times in a manner that shall reflect creditably on the House.” But Representative Whitfield has acknowledged that his staff’s interactions with Ms. Harriman raised improper appearances, and that he would handle the change in Ms. Harriman’s status differently today, knowing what he does now.³¹ In the Committee’s view, given the number, duration, and significance of the violations the ISC found, Representative Whitfield’s actions were not consistent with House Rule XXIII, clause 1. The Committee also found that, although Representative Whitfield offered technical defenses to the allegations in this matter, his actions did not comport with the spirit of the lobbying contacts and “special privileges” rules.³²

²⁶ As the ISC explained, it is neither unusual nor inappropriate for a Member’s spouse to have a particularly close relationship with the Member’s staff. *See* ISC Report at 33. However, the appropriateness of this relationship changes where the spouse is a registered lobbyist, and is communicating with the Member’s staff concerning legislation the lobbyist is registered to lobby on. That was the circumstance here, and explains why the ISC and Committee did not view Ms. Harriman’s status as a Member’s spouse to be a mitigating factor.

²⁷ ISC Report, Ex. 3.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *See* ISC Report at 5 & n.22.

³¹ *Id.* at 32.

³² *See* House Rule XXIII, clause 2.

Based on these findings, the Committee found that Representative Whitfield violated House Rule XXV, clause 7, the Code of Conduct, section 5, and House Rule XXIII, clauses 1 and 2. While the Committee agreed with the ISC’s assessment that these violations were not intentional, they only occurred because Representative Whitfield “failed to comprehend the importance of setting boundaries and limits on the interactions between Ms. Harriman and his staff,”³³ and thus did not take the proper precautions to avoid either improper interactions or the appearance of impropriety. Therefore, consistent with prior precedent, the Committee has adopted the ISC’s Report in this matter, which shall serve as a reproof of Representative Whitfield. This recommendation is consistent with the Committee’s treatment of prior matters, in which the Committee issued a reproof even where a Member’s violations were unintentional.³⁴ Following the publication of this Report, the Committee will take no further action in this matter, and considers it closed.

IV. STATEMENT UNDER RULE XIII, CLAUSE 3(c) OF THE RULES OF THE HOUSE OF REPRESENTATIVES

The Committee made no special oversight findings in this report. No budget statement is submitted. No funding is authorized by any measure in this report.

³³ ISC Report at 29.

³⁴ See *Gingrey* at 25 (finding violations of House Rules, and issuing a reproof, even though “the Committee credited Representative Gingrey’s assertion that he believed his actions were consistent with House Rules.”); *Berkley* at 10 (reproof was appropriate even though “[t]he 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.”); see also *Stallings* at 5-6 (Committee recommended a reprimand where the Member was unaware of the applicable House Rule and did not intend to violate it).