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# House Calendar No. 126

111TH CONGRESS
*1st Session*

HOUSE OF REPRESENTATIVES

REPORT
111–320

## IN THE MATTER OF REPRESENTATIVE SAM GRAVES

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## R E P O R T

OF THE

## COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT



OCTOBER 29, 2009.—Referred to the House Calendar and ordered to be printed

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## LETTER OF TRANSMITTAL

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HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
*Washington, DC, October 29, 2009.*

Hon. LORRAINE C. MILLER,
*Clerk, House of Representatives,*
*Washington, DC.*

DEAR MS. MILLER: Pursuant to clauses 3(a)(2) and (b) of rule XI of the Rules of the House of Representatives, we herewith transmit the attached Report, "In the Matter of Representative Sam Graves."

Sincerely,

ZOE LOFGREN,
*Chair.*
JO BONNER,
*Ranking Republican Member.*

## EXECUTIVE SUMMARY

After a three-month review, the Committee on Standards of Official Conduct (Standards Committee) has concluded that Representative Sam Graves did not violate any U.S. House of Representatives rule or standard of conduct for his role in inviting a witness, Brooks Hurst, to testify before the Committee on Small Business on March 4, 2009.

The Standards Committee considers the matter against Representative Graves closed, and no further inquiry is warranted. The question of whether Representative Graves violated any House rule or standard of conduct was referred to the Standards Committee by the Office of Congressional Ethics (OCE) on August 6, 2009.

At issue was a financial connection between Mr. Hurst, who is a friend of Representative Graves, and Representative Graves' wife. Both are investors in two renewable fuel cooperatives, Golden Triangle Energy Cooperative (Golden Triangle) and Biofuels LLC (Biofuels). Representative Graves approved of Mr. Hurst as a witness. At the hearing, Mr. Hurst, representing the Missouri Soybean Association, advocated on behalf of the members of the association, and not for either of the entities in which Representative Graves' wife owns an interest.

OCE's report and findings did not assert that Representative Graves violated any House rule or standard of conduct, but suggested that his actions created an "appearance of a conflict of interest."

The Standards Committee found that no relevant House rule or other standard of conduct prohibits the creation of an appearance of a conflict of interest when selecting witnesses for a committee hearing. In addition, neither the Standards Committee nor OCE identified any evidence that the March 4, 2009, hearing or Mr. Hurst's testimony resulted in any action that could benefit Representative Graves, Mrs. Graves, or Mr. Hurst.

But the appearance question highlights the importance of financial disclosure statements. Representative Graves' financial disclosure statements fully and accurately reflect his financial interests, including his wife's 0.18% interest in Golden Triangle and 0.125% interest in Biofuels. Separately, Mr. Hurst fully complied with all disclosure requirements for witnesses. The Standards Committee learned that Mr. Hurst had a 0.5% interest in Golden Triangle and a 0.33% in Biofuels.

Members are required to disclose assets on the principle that conflicts of interest are best resolved by the political process. Timely filing of accurate financial disclosure statements is fundamental to the House ethics system. Any financial connection between Representative Graves and Mr. Hurst appears tenuous, but in this case, the public has the information to make such judgments.

The process for inviting Mr. Hurst to testify—and the criteria used to select him as a witness—followed normal procedure of the Committee on Small Business.

Representative Graves was appointed the ranking member of the Committee on Small Business at the beginning of the 111th Congress. The Committee on Small Business's majority staff notified the minority staff, approximately one week before the hearing, that the committee would hold a hearing on March 4, 2009.

The hearing involved no legislation that would ultimately come to the House floor, and was held solely as a fact-gathering hearing about the impact of the current economic crisis on the renewable fuels industry. The minority staff established reasonable and objective criteria for choosing a potential witness, that he or she should be: (1) from Representative Graves' congressional district; (2) familiar with the renewable fuels industry; and (3) not employed by a company in which Representative Graves or his wife was invested.

The decision regarding inviting witnesses was largely staff-driven. During the minority staffs deliberations, Paul Sass, Representative Graves' then-deputy chief of staff, sent an email to Representative Graves seeking input as to possible witnesses, and suggested Brooks Hurst among several possibilities. Representative Graves approved of Mr. Hurst as a possible witness. Mr. Hurst met each of the requirements for a witness. Although he held investments in the two cooperatives in which Representative Graves' wife was invested, he was not employed by either company.

After further deliberations, the staff selected Mr. Hurst to testify at the hearing, and Mr. Hurst was one of five witnesses. The other four witnesses were selected by the majority on the Committee on Small Business. The Missouri Soybean Association prepared Mr. Hurst's written testimony and provided him with talking points for his oral testimony.

The Graves investigation is one of the first matters to be referred by OCE and resolved by the Standards Committee. The Standards Committee regrets that it finds deficiencies in OCE's handling of this case, including procedural problems that are outlined in detail in this report.

OCE's assertion that "there is substantial reason to believe that an appearance of conflict of interest was created" by Representative Graves was not supported by the facts in this case or the law.

The Standards Committee reviewed Representative Graves' conduct under the House rules and standards identified by OCE and other House rules and standards of conduct. OCE reviewed Representative Graves' conduct pursuant to House Rule 3, clause 1, House Rule 23, clause 2, and what it identified as "House precedent regarding conflict of interest."

Based on the facts presented in OCE's report and findings, as well as the facts gathered by the Standards Committee's independent investigation, the Standards Committee concluded that none of the House rules or standards of conduct identified by OCE applied to Representative Graves' conduct.

The Standards Committee determined that Representative Graves' conduct should more appropriately be analyzed under House Rule 23, clause 3, and Section 5 of the Code of Ethics for Government Service. Under those provisions, the Standards Com-

mittee concluded that Representative Graves' involvement with the witness selection process for the March 4 hearing did not violate any applicable House rule or standard of conduct. The Standards Committee also concluded that Mr. Hurst met all of the reasonable and objective requirements the Committee on Small Business minority staff established for a witness.

Moreover, given Mr. Hurst's qualifications, the Standards Committee further concluded that even if Representative Graves had greater involvement in the selection process than he did have, he still would not have violated any applicable House rule or standard of conduct.

## OVERVIEW

This Report addresses the findings and conclusions of the Standards Committee with regard to the conduct of Representative Graves and OCE's review in this matter.

Part I briefly summarizes the Standards Committee's findings and conclusions in this matter.

Part II (summarized in Subpart A) contains the Standards Committee's factual findings, including a discussion of the Committee on Small Business's jurisdiction (Subpart B), the process by which Mr. Hurst was selected as a witness for the Committee on Small Business hearing (Subparts C, D, and E), the financial interest putatively shared by Mr. Hurst and Representative Graves (Subpart F), and the substance and results of Mr. Hurst's testimony before the Committee on Small Business (Subparts G and H).

Part III contains the Standards Committee's statement of jurisdiction in this matter.

Part IV contains the Standards Committee's legal analysis with regard to Representative Graves' conduct. The Standards Committee analyzed Representative Graves' conduct under the House rules and standards identified by OCE (Subpart A) and under additional House rules and standards identified by the Standards Committee (Subpart B).

Part V contains the Standards Committee's conclusions and recommendation with respect to the conduct of Representative Graves.

Part VI (summarized in Subpart A) addresses OCE's review, as well as the Standards Committee's investigation in this matter. Part VI summarizes pertinent sections of OCE's authorizing resolution and rules (Subpart B), and discusses the procedural history of OCE's review (Subpart C) and the nature of OCE's Report and Findings (Subpart D). In addition, Part VI summarizes both the Standards Committee's investigation in this matter (Subpart E.1) and a response to OCE's Report and Findings that Representative Graves submitted to the Standards Committee (Subpart E.2). Finally, Part VI provides the Standards Committee's findings with regard to certain regrettable deficiencies in OCE's review (Subpart F).

Part VII of this Report contains the Standards Committee's statement under House Rule 13, clause 3(c).

# CONTENTS


| | Page |
|---|---|
| I. Introduction | 1 |
| II. Factual Findings | 1 |
| A. Summary of Factual Findings | 1 |
| B. The Jurisdiction of the Small Business Committee | 3 |
| C. Notification of the March 4, 2009, Small Business Committee Hearing | 3 |
| D. Criteria for Selecting a Witness for the March 4, 2009, Small Business Committee Hearing | 4 |
| E. Selection of Mr. Hurst for the March 4, 2009, Small Business Committee Hearing | 5 |
| F. Financial Interest Putatively Shared by Brooks Hurst and Representative Graves | 9 |
| G. Brooks Hurst and the March 4, 2009, Small Business Committee Hearing | 10 |
| H. Actions Taken Following the Small Business Committee Hearing | 11 |
| III. Jurisdiction of the Standards Committee | 12 |
| IV. Legal Analysis | 13 |
| A. Analysis Based on Rules Identified by OCE | 13 |
| B. Analysis Based on Relevant Rules and Statutes | 18 |
| V. Conclusions and Recommendations | 20 |
| VI. OCE's Review | 21 |
| A. Summary of OCE's Review | 21 |
| B. OCE's Authorizing Resolution and Rules | 23 |
| C. Procedural History of OCE's Review | 25 |
| D. OCE's Report and Findings | 26 |
| E. The Standards Committee's Investigation | 28 |
| F. Findings and Conclusions Regarding Deficiencies in OCE's Review | 31 |
| VII. Statement Under Rule 13, Clause 3(c) of the Rules of the House of Representatives | 37 |

## I. INTRODUCTION

Following a unanimous vote, the Committee on Standards of Official Conduct (Standards Committee) submits this Report pursuant to House Rule 11, clause 3(a)(2), which authorizes the Standards Committee to investigate any alleged violation by a Member, officer, or employee of the House of Representatives, of the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee; and pursuant to House Rule 11, clause 3(b)(8)(A), which authorizes the Standards Committee to report on matters referred to the Standards Committee by the Office of Congressional Ethics (OCE).

On August 6, 2009, OCE forwarded to the Standards Committee a report and findings (Report and Findings) recommending further review of allegations involving Representative Sam Graves. OCE's Report and Findings asserted that "there is substantial reason to believe that an appearance of conflict of interest was created" when Representative Graves invited a friend, Brooks Hurst, who held investments in the same renewable fuel cooperatives as Representative Graves' wife, to testify before a hearing of the House of Representatives Committee on Small Business (Small Business Committee) on issues facing the renewable fuels industry. OCE's Report and Findings did not assert that Representative Graves violated any current rule or standard of conduct.

No relevant House Rule or other standard of conduct prohibits creation of an appearance of conflict of interest when selecting witnesses for a committee hearing. Thus, OCE did not find that Representative Graves violated any current House Rule or other standard of conduct.

The Standards Committee's independent investigation also failed to conclude that Representative Graves violated any current House Rule or other standard of conduct. For this reason, the Standards Committee decided and reports that no further action should be taken with regard to OCE's review of Representative Graves' alleged conduct, and the Standards Committee considers the matter closed and no further inquiry is warranted.

The Standards Committee's findings and conclusions are set forth in this Report.

## II. FACTUAL FINDINGS

### A. Summary of Factual Findings

Representative Graves was appointed the Ranking Member of the Small Business Committee at the beginning of the 111th Congress. Approximately one week in advance, the Small Business Committee's majority staff notified the minority staff that the committee would hold a hearing on March 4, 2009, regarding the renewable fuels industry, and that the minority staff would be per-

mitted to invite one witness to testify at the hearing.[1] The hearing involved no legislation that would ultimately come to the House floor for Representative Graves and other Members upon which to vote, and was held solely as a fact-gathering hearing about the impact of the current economic crisis on the renewable fuels industry.[2] Prior to selecting a witness for the hearing, the minority staff established criteria for a potential witness.[3] The criteria that the staff established sought a witness who was: from Representative Graves' congressional district; familiar with the renewable fuels industry; and not employed by a company in which Representative Graves or his wife had invested financially.[4]

As was the normal procedure for the Small Business Committee, Representative Graves had limited involvement in selecting a witness for the hearing.[5] The final decision as to which individual was invited was left up to and actually was made by the minority staff.[6] However, during the staff's deliberations, Paul Sass, Representative Graves' then-Deputy Chief of Staff, sent an email to Representative Graves seeking his input as to possible witnesses once the field had been narrowed by the minority staff to a few candidates by staff.[7] In his email, Mr. Sass suggested several possible witnesses to Representative Graves, including Brooks Hurst. Mr. Hurst met each of the previously identified requirements for a witness.[8] Although Mr. Hurst had investments in two renewable energy cooperatives in which Representative Graves' wife was invested, he was not employed by either company.

After their deliberations, the staff selected Mr. Hurst to testify at the hearing.[9] Mr. Hurst testified on behalf of the Missouri Soybean Association (MSA) and was one of five witnesses at the March 4, 2009, hearing.[10] The MSA prepared Mr. Hurst's written testimony and provided him with talking points for his oral testimony. Mr. Hurst's written and oral testimony advocated on behalf of the members of the MSA generally, and not for any specific business.[11]

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[1] COS 00065. The documents designated with "COS" numbers constitute the documents collected by the Standards Committee in the course of its investigation. Pertinent portions of the documents collected by the Standards Committee can be found at Appendix A. The Standards Committee notes that certain personal information, such as personal email addresses, direct-dial phone numbers, individual's signatures, and personal cell phone numbers have been redacted from the documents collected by the Standards Committee. The Standards Committee has redacted this information based on privacy considerations, and because the information is irrelevant to any question at issue in this Report.

[2] *Id.*

[3] COS 00065; COS 00067; COS 00069; COS 00071; COS 00073; COS 00082; COS 00084; Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009, ¶¶ 4, 11; Interview of Paul Sass by Standards Committee staff, September 16, 2009. Pertinent portions of the OCE's memoranda of interview can be found at Appendix D.

[4] *Id.*

[5] Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009, ¶ 3, 4; Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009, ¶ 57.

[6] Interview of Paul Sass by Standards Committee staff, September 16, 2009; Memorandum of Interview of Thomas Brown by OCE staff, June 16, 2009, ¶ 12; Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009, ¶ 16.

[7] COS 00072

[8] COS 00065; COS 00067; COS 00069; COS 00071; COS 00073; COS 00082; COS 00084; Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009, ¶¶ 4, 11; Interview of Paul Sass by Standards Committee staff, September 16, 2009; Interview of Brooks Hurst by Standards Committee staff, September 18, 2009; Memorandum of Interview of Rep. Graves by OCE staff, June 16, 2009, ¶ 13; Memorandum of Interview of Brooks Hurst by OCE staff, July 13, 2009, ¶ 9.

[9] Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009, ¶ 5; Interview of Paul Sass by Standards Committee staff, September 16, 2009.

[10] COS 00123. The other four witnesses were selected by the majority staff and testified on behalf of the majority.

[11] COS 00192–COS 195.

The purpose of the March 4, 2009, hearing was informational in nature, and was not directed at the passage of any specific legislation. Neither the Standards Committee nor OCE identified any evidence that the March 4, 2009, hearing resulted in specific action benefitting Representative Graves, Mrs. Graves, Mr. Hurst, or any other person or entity.

### B. The Jurisdiction of the Small Business Committee

The Small Business Committee's legislative jurisdiction includes:

> (1) Assistance to and protection of small business, including financial aid, regulatory flexibility, and paperwork reduction; and
>
> (2) Participation of small-business enterprises in Federal procurement and Government contracts.[12]

Through its referrals of legislation to the Small Business Committee, the Office of the Parliamentarian has interpreted the Small Business Committee's jurisdiction to include the Small Business Act, 15 U.S.C. §§ 631–57f; the Small Business Investment Act, 15 U.S.C. §§ 661–97g; Pub. L. No. 94–305 (the statute that created the Office of Chief Counsel for Advocacy at the United States Small Business Administration); the Regulatory Flexibility Act, 5 U.S.C. 601–12; and the Paperwork Reduction Act, 44 U.S.C. §§ 3501–49.[13]

The Small Business Committee, as a standing House committee, has general oversight responsibility to determine whether the laws and programs within its jurisdiction "are being implemented and carried out in accordance with the intent of Congress and whether they should be continued, curtailed, or eliminated[.]" [14] In addition, the Small Business Committee has a special oversight function to "study and investigate on a continuing basis the problems of all types of small business." [15]

### C. Notification of the March 4, 2009, Small Business Committee Hearing

Representative Graves became a Member of the Small Business Committee at the beginning of the 107th Congress. At the beginning of the 111th Congress, he was named Ranking Member of the Small Business Committee. On February 24, 2009, the Small Business Committee's majority staff informally notified the committee's minority staff that the full committee would hold a hearing regarding alternative fuels on March 4, 2009.[16] On February 25, 2009, the Small Business Committee officially announced that the title of the March 4, 2009, hearing would be "The State of the Renewable Fuels Industry in the Current Economy." [17]

The Small Business Committee's rules state:

> Whenever any hearing is conducted by the committee or any subcommittee upon any measure or matter, the minority party members on the committee shall be entitled, upon request to the Chairwoman by a majority of those

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[12] House Rule X, clause 1(p).
[13] COS 00151–COS 00156.
[14] House Rule X, clause 2(b).
[15] House Rule X, clause 3(l).
[16] COS 00065.
[17] COS 00019.

> minority members, to call a witness or witnesses selected by the minority to testify with respect to that measure or matter. The minority shall be entitled to a ratio of one-third of the witnesses testifying.[18]

Upon receiving the February 24, 2009, hearing notification, a member of the minority staff of the Small Business Committee sent an email to Mr. Sass. That email contained the following text: "Chances that we'll find someone and be able to get them here by next week is slim, but thought I'd ask. The majority needs to do a better job on letting us know what the schedule is." [19]

### D. Criteria for Selecting a Witness for the March 4, 2009, Small Business Committee Hearing

After receiving the February 24, 2009, notification, Representative Graves' staff and the minority staff for the Small Business Committee exchanged emails regarding possible witnesses to invite to testify at the hearing. On February 24, 2009, a member of the minority staff on the Small Business Committee sent an email at 1:47 p.m. to Mr. Sass. That email contained the following text:

> The majority just let us know (about 15 minutes ago) that next week there will be a hearing on renewable fuels. I know nothing other than that. I have made the calls to the majority to find out. Don't know what the angle is, but is there anybody back in the district who has come to the office to talk alternative fuels that might be a good witness? [20]

Both in discussions and in emails, the staff developed a series of criteria for potential witnesses. One such criterion was that the witness should have knowledge of the issues facing the renewable energy industry. On February 24, 2009, Mr. Sass sent an email at 1:53 p.m. to several staff members. That email contained the following text: "Please see the email below and let me know if you have any suggestions on who can testify next week on renewable energy." [21] The next day, a staff member sent an email at 10:50 a.m. in response to Mr. Sass' inquiries. That email contained the following text: "Also might be good to get an actual grain farmer to come in if it fits." [22]

Another staff criterion for a potential witness was that the witness should be from the congressional district represented by Representative Graves.[23] A member of the minority staff on the Small Business Committee sent an email on February 24, 2009, at 1:56 p.m. to Mr. Sass. That email contained the following text: "I don't want to pass this along to you but with no notice at all, it makes it tough for me to go through channels here in DC to find someone

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[18] Small Business Committee Rules and Procedures, Rule 6(B).

[19] COS 00065. Pursuant to the Small Business Committee's rules, the majority staff on the Small Business Committee is required to announce hearing topics at least one week in advance. Small Business Committee Rules and Procedures, Rule 4. Mr. Sass told the Standards Committee that on some occasions the majority staff notified the minority staff as much as two weeks in advance of a hearing. Interview of Paul Sass by Standards Committee staff, September 16, 2009.

[20] COS 00065.

[21] COS 00071.

[22] COS 00084.

[23] Representative Graves represents the Sixth Congressional District of Missouri.

from MO–6."[24] Mr. Sass sent an email to two members of the minority staff on the Small Business Committee on February 24, 2009, at 4:05 p.m. That email contained the following text: "We should not have any problem finding a person from the 6th to testify at this hearing, We have extensive Ag contacts in the district."[25]

According to OCE's interview memorandum, Mr. Sass told OCE that "[h]is boss was new to the Ranking Member position and wanted the witness to come from the 6th district and to be competent." The interview memorandum further states that Mr. Sass "started looking for witnesses from the district and then branched out from there to other parts of the state."[26]

Mr. Sass told the Standards Committee that the process for selecting a witness for Small Business Committee hearings had evolved over time.[27] He stated that the staff usually started their search for a witness by looking for witnesses within the Sixth District of Missouri.[28] He further stated that, depending on the topic, the staff sometimes looked for witnesses from the districts of other minority Members on the Small Business Committee.[29] He explained that because the March 4, 2009, hearing dealt with agriculture and renewable fuels, he believed that the staff would have no difficulty finding a witness from the Sixth District of Missouri.[30]

A third staff criterion for a potential witness was that the witness should not be an officer or employee of a renewable energy company in which Representative Graves had a direct financial interest.[31] Representative Graves' Communications Director sent an email to Mr. Sass on February 24, 2009, at 2:56 p.m. That email contained the following text: "Lets [sic] make sure that we do not get a renewable company that [Representative Graves] or his wife is invested in."[32] Mr. Sass told OCE that, "he did not want a witness from any companies that Representative Graves was invested in—someone with their name on a business card."[33] Mr. Sass explained to the Standards Committee that the staff was concerned with selecting a witness, such as a president or CEO, who was actually employed by a company in which Representative Graves or his wife was invested.[34] Mr. Sass also told the Standards Committee that the staff usually looked for a witness that was involved with an association of some kind, because the association would usually pay for the trip to Washington, D.C.[35]

## E. Selection of Mr. Hurst for the March 4, 2009, Small Business Committee Hearing

### *1. The Staff Considered Several Potential Witnesses*

The Small Business Committee staff and Representative Graves' personal staff considered a number of potential witnesses based on

[24] COS 00082.
[25] COS 00073.
[26] Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009, ¶ 4.
[27] Interview of Paul Sass by Standards Committee staff, September 16, 2009.
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] COS 00069 and COS 00073.
[32] COS 00067.
[33] Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009, ¶ 11.
[34] Interview of Paul Sass by Standards Committee staff, September 16, 2009.
[35] *Id.*

the criteria they developed. On February 25, 2009, at 10:50 a.m., a member of Representative Graves' personal staff sent an email to Mr. Sass, suggesting possible witnesses. That email contained the following text: "Anyone at Golden Triangle in Craig. Bill Becker at Lifeline would be good." [36] The staff also considered Steve Flick, President of the Board of Show Me Energy, a biomass cooperative located in Centerview, Missouri.[37] One member of the staff sent an email to Mr. Sass on February 24, 2009, at 4:36 p.m., stating: "Only folks that come to mind are the heads of the soybean and ethanol groups . . . Dale Ludwig, etc." [38] Another member of the staff wrote an email to Mr. Sass on February 25, 2009, at 10:04 a.m., noting that members of the Missouri Corn Growers Association would be in Washington, D.C., during the week of the hearing.[39]

The staff excluded certain of the potential witnesses for failure to meet one or more of the criteria they had established. For example, the staff dismissed one potential witness because he was not from Representative Graves' congressional district.[40]

*2. The Staff Solicited Suggestions From Representative Graves*

In addition to their own deliberations, the staff also asked Representative Graves if he had suggestions as to possible witnesses; however, the evidence indicates that, consistent with the standard practice for the minority on the Small Business Committee, Representative Graves had limited involvement in the selection of a witness to testify at the March 4, 2009, hearing. On February 24, 2009, at 4:44 p.m., Mr. Sass sent an email to Representative Graves. That email contained the following text:

> The Small Business Committee is doing a hearing on renewable fuels next week. Do you have anybody off the top of your head who we should invite? Last time we had a hearing on the topic you invited Brooks and Charlie Hurst. Any one you want me to call? Steve Flick? [41]

This message appears to be the first written communication to Representative Graves regarding the hearing. Notably the staff solicited suggestions from Representative Graves after they developed their criteria for selecting a witness.

Representative Graves told OCE that "[h]e was not aware of the process for finding witnesses for hearings, staff handles finding witnesses." [42] The interview memorandum further states "Many times, [Representative Graves] does not know who the witness will be until the hearing." [43] Mr. Sass told OCE that "Representative

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[36] COS 00084.
[37] COS 00066.
[38] COS 00071.
[39] COS 00088.
[40] *See* Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009, ¶ 15. ("He threw out the idea of inviting Steve Flick because he wasn't from the 6th district. He did not believe that he worked for any of the companies but he resided outside the district."); *see also* COS 00069 (noting that Show Me Energy is "just south of the district").
[41] COS 00072. Mr. Sass told the Standards Committee that sometimes, including in this case, when he referred to Representative Graves as taking some action he meant Representative Graves' office took the action, and not necessarily Representative Graves personally. Interview of Paul Sass by Standards Committee staff, September 16, 2009.
[42] Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009, ¶ 113.
[43] *Id.*, at ¶ 4.

Graves doesn't get involved in the weeds, everything is staff driven. Decisions can be made better that way."[44]

One of the potential witnesses discussed by Representative Graves and Mr. Sass was Mr. Hurst.[45] Mr. Hurst is a farmer who resides in Representative Graves' congressional district[46] and who is a member of the Board of Directors of a majority-farmer-owned biodiesel production facility located in Missouri.[47] Mr. Hurst is currently on the board of Paseo-Cargill.[48] Mr. Hurst told the Standards Committee that he was previously involved in various agricultural cooperatives, and that he had served on the boards of several cooperatives.[49]

Mr. Hurst currently serves on the Board of the MSA and was President of the MSA for three terms from 2000 through 2002.[50] Mr. Hurst told the Standards Committee that while he was President of the MSA, he spoke several times a year to different groups regarding renewable fuel issues and that he was interviewed on various agriculture radio programs at least once a month.[51] He further stated that since 2002, he has spoken to various groups on renewable fuel issues approximately once every two years.[52] Representative Graves told OCE that Mr. Hurst "is the President of the Missouri Soybean Association, he is involved with the corn growers, and he testifies throughout the country on renewable fuels."[53]

Mr. Hurst has previously testified at Congressional hearings on issues related to renewable fuels. Mr. Hurst told OCE that:

> [h]e had been invited to testify before the Committee on Small Business on two previous occasions. He recalled being invited for the first time by then-Representative Jim Talent. He could recall that it was Representative Talent because it was his first time testifying before Congress.[54]

Mr. Hurst told the Standards Committee that he recalled being invited to testify at Congressional hearings on at least four occasions.[55] Each time he was invited to testify on behalf of the MSA.[56] In addition to being invited to testify before the Small Business Committee twice by Representative Graves and once by former-

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[44] Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009, ¶ 57.

[45] Interview of Paul Sass by Standards Committee staff, September 16, 2009. The Standards Committee notes that Representative Graves told OCE that in response to a request for a recommendation, he "threw out Brooks Hurst's name for consideration." Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009, ¶ 6. However, Representative Graves' recollection is not supported by any other witness testimony, nor by the documentary record. *See e.g.,* COS 00072; Interview of Paul Sass by Standards Committee staff, September 16, 2009.

[46] COS 00192–COS 195.

[47] *Id.*

[48] Interview of Brooks Hurst by Standards Committee staff, September 18, 2009.

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] Memorandum of Interview of Rep. Graves by OCE staff, June 16, 2009, ¶ 13.

[54] Memorandum of Interview of Brooks Hurst by OCE staf, July 13, 2009, ¶ 9.

[55] Interview of Brooks Hurst by Standards Committee staff, September 18, 2009. The Standards Committee was able to confirm independently that, in addition to his testimony during the hearing at issue, Mr. Hurst testified at a hearing before the Small Business Committee on March 15, 2000, entitled "Helping Agricultural Producers 'Re-Grow' Rural America: Providing the Tools" and a February 23, 2004, hearing before the Small Business Subcommittee on Rural Enterprises, Agriculture, and Technology, entitled "The Endangered Species Act's Impact on Small Businesses and Farmers, Field Hearing, St. Joseph, MO."

[56] *Id.*

Representative Talent,[57] Mr. Hurst said that he recalled being invited to testify in front of the Committee on Ways and Means by former-Representative Kenny Hulshof.[58]

Mr. Hurst told OCE "he was the first person that Representative Graves thought of because he was the President of the MSA and he had worked on biodiesel issues in the past and because the hearing was scheduled with such [short] notice."[59] Representative Graves also told OCE that, among other reasons for selecting Mr. Hurst, he "was the easiest witness to find for the hearing that was held in March given the short time frame for locating witnesses and he was one of the most knowledgeable persons available."[60]

*3. Brooks Hurst Was Selected To Testify at the Hearing*

Mr. Sass told the Standards Committee that the Small Business Committee's minority staff eventually identified two witnesses who satisfied their initial requirements, one of whom was Mr. Hurst.[61] The other potential witness was already scheduled to be in Washington, D.C. on the day of the hearing.[62] Representative Graves told OCE that he did not want the other witness to testify at the hearing because he believed that the Small Business Committee may have assisted the other witness's company with grants.[63] OCE's interview memorandum of Representative Graves states, "[w]hen asked about the members of the corn growers being in town at the time of the meeting, Representative Graves stated that "'if he remembered correctly' the Committee already had an 'ethanol guy' and they were looking for a 'biodiesel guy' to balance out the witness list as much as possible."[64]

Representative Graves told OCE that he "was not sure who chose Brooks Hurst to testify at the hearing; he believed that it might have been Paul Sass."[65] Mr. Sass told OCE that he believed that he suggested Mr. Hurst to Representative Graves.[66] Representative Graves' Chief of Staff and Mr. Sass told OCE that they believed that Representative Graves did not choose Mr. Hurst to be a witness and that Representative Graves did not get involved in the process of selecting witnesses for Small Business Committee hearings.[67] Mr. Sass told the Standards Committee that he made the ultimate decision to invite Mr. Hurst.[68]

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[57] Representative Talent served as a Member of Congress from Missouri's Second Congressional District from 1993 to 2000.

[58] *Id*. Representative Hulshof served as a Member of Congress from Missouri's Ninth Congressional District from 1997 to 2009.

[59] Memorandum of Interview of Brooks Hurst by OCE staff, July 13, 2009, ¶ 5.

[60] Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009, ¶ 2.

[61] Interview of Paul Sass by Standards Committee staff, September 16, 2009.

[62] *Id*.

[63] Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009, ¶ 22.

[64] *Id*., at ¶ 29.

[65] *Id*., ¶ 5.

[66] Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009, ¶¶ 23, 29.

[67] Memorandum of Interview of Thomas Brown by OCE staff, June 16, 2009, ¶ 12; Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009, ¶ 16.

[68] Interview of Paul Sass by Standards Committee staff, September 16, 2009. On February 25, 2009, Mr. Sass sent an email at 9:53 a.m. to two other staff members. That email contained the following text: "Back in 2004 SG had a friend . . . who is a member of the MO Soybean Assn testify on a similar topic and he wants to extend an invitation to him. I am calling him today to gauge his interest." COS 00089. Mr. Sass told the Standards Committee that his word choice in this email could be misread. Interview of Paul Sass by Standards Committee staff, September 16, 2009. Mr. Sass explained that often times, including in this case, when he referred to Representative Graves as wanting something, he meant Representative Graves' personal office, as opposed to the Small Business Committee minority staff. *Id*.

Mr. Sass told the Standards Committee that he placed telephone calls and sent emails to Mr. Hurst to invite him to the hearing, but Mr. Hurst did not immediately return his calls or reply to his emails.[69] It appears that instead of replying to Mr. Sass, Mr. Hurst called Representative Graves directly to confirm his availability. On February 26, 2009, Mr. Sass sent an email at 5:09 p.m. to three staff members. That email contained the following text: "Ok, I just spoke with Sam and apparently Brooks Hurst is back on board. It will get nailed down tomorrow. I got Sam to agree to allowing [the other witness] to testify if Brooks doesn't work out." [70]

### F. Financial Interest Putatively Shared by Brooks Hurst and Representative Graves

At the time of the hearing, Representative Graves' wife had investments in two Missouri non-profit cooperative marketing associations specializing in renewable fuels: Golden Triangle Energy Cooperative (Golden Triangle) and Biofuels LLC (Biofuels).[71] Mrs. Graves' investment in Golden Triangle represents a 0.18% interest in the cooperative and is valued between $1,000 and $15,000.[72] Mrs. Graves' investment in Biofuels represents a 0.125% interest and is valued between $15,000 and $50,000.[73] Mrs. Graves' investments in Golden Triangle and Biofuels were disclosed on Representative Graves' Financial Disclosure Statements.[74] Mr. Hurst also has investments in both Golden Triangle and Biofuels.[75] Mr. Hurst's investment in Golden Triangle represents a 0.50% interest in the cooperative.[76] Mr. Hurst's investment in Biofuels represents an interest of less than 0.33%.[77]

Representative Graves told OCE that "[i]nvestments are not something that he talks about with Brooks Hurst. He could not say what Brooks Hurst was invested in; he goes in and out of investments so he wouldn't know what he was invested in." [78] Similarly, Mr. Hurst told OCE that he was not aware of any of Representative Graves' investments.[79] Representative Graves' staff also stated that they did not know of any shared investments between Representative Graves and Mr. Hurst. Mr. Sass told OCE that "[h]e does not have discussions of witnesses' personal financial records." [80] Representative Graves' staff was aware that Mr. Hurst was a friend of Representative Graves. However, the staff did not view that as problematic. OCE's interview memorandum of Mr. Sass states, "When asked if the Congressman's friendship with Brooks Hurst was an issue, he stated that it was not because Brooks Hurst was a credible witness, he is involved with all the associations so it was not a concern." [81]

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[69] Interview of Paul Sass by Standards Committee staff, September 16, 2009.
[70] COS 00092.
[71] COS 00061; COS 00063.
[72] COS 00061; Rep. Graves' 2008 Financial Disclosure Statement.
[73] COS 00063; Rep. Graves' 2008 Financial Disclosure Statement. Mrs. Graves is one of 400 investors in Biofuels. COS 00063.
[74] Rep. Graves' 2008 Financial Disclosure Statement.
[75] COS 00114; COS 00115.
[76] *Id.*
[77] COS 00115.
[78] Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009, ¶ 39.
[79] Memorandum of Interview of Brooks Hurst by OCE staff, July 13, 2009, ¶¶ 14 and 18.
[80] Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009, ¶ 11.
[81] *Id.*, at if ¶ 45.

OCE asserts that Representative Graves may have been aware at one time of Mr. Hurst's investments in Golden Triangle and Biofuels several years prior to Mr. Hurst's testimony at the hearing. Media reports of a 2004 hearing of the Small Business Subcommittee on Rural Enterprises, Agriculture, and Technology, at which Mr. Hurst testified, referenced Mrs. Graves' and Mr. Hurst's shared investments.[82] One such article stated: "Graves told *The Kansas City Star* . . . that his failure to disclose his connection to Golden Triangle at the hearing was a mistake. 'Looking back on it, I probably should have,' the Tarkio Republican said."[83] However, Representative Graves told OCE that this quotation was incomplete and that his full statement was that he probably should have disclosed his connection to Golden Triangle "if he had known what his ([Brooks Hurst]'s) investments were."[84] Even if Representative Graves was aware at any time of Mr. Hurst's investments, this knowledge would not have been a violation of House Rules in either 2004 or in the present case.

### G. Brooks Hurst and the March 4, 2009, Small Business Committee Hearing

Pursuant to House Rules, when a non-governmental witness is selected to testify at a hearing, the witness must submit a written copy of the statement that will be made part of the hearing record, a *curriculum vitae*, and:

> a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness.[85]

Under House Rules, this is the only information that a committee must receive regarding the background of a witness.[86] Mr. Hurst complied with these rules.[87]

Mr. Hurst was one of five witnesses at the March 4, 2009, Small Business Committee hearing.[88] The other witnesses included a representative of an ethanol plant, a representative of a biofuels plant equipment manufacturer, a representative from the National Biodiesel Board, and a representative from the National Corn Growers Association.[89] Mr. Hurst represented the MSA at the hearing.[90]

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[82] *See, e.g.*, "Biofuels, Flights Benefit Graves," Paul Singer, *Roll Call*, November 7, 2007.

[83] *See* "Family ties to ethanol plant draw questions for Rep. Sam Graves," Steve Kraske, *The Kansas City Star*, December 6, 2007.

[84] Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009, ¶ 53.

[85] House Rule XI, clause 2(g)(4).

[86] *Id.*

[87] COS 00013.

[88] A member of Representative Graves' personal staff coordinated Mr. Hurst's travel to Washington, D.C. The electronic confirmation for Mr. Hurst's travel to and from Washington, D.C., indicates that Mr. Hurst departed Kansas City for Washington, D.C. on March 3, 2009, at 9:00 a.m., and departed Washington, D.C., for Kansas City on March 4, 2009, at 6:35 p.m. COS 00099. The cost of the airplane ticket appears to be $165.20, and Mr. Hurst paid for his travel to and from Washington, D.C. COS 00125.

[89] COS 00183–00186; COS 00175–00182; COS 00187–00191; COS 00170–00174.

[90] On March 2, 2009, at 3:10 p.m., Mr. Hurst sent an email to a member of the minority staff on the Small Business Committee replying to a prior email that inquired as to what Mr. Hurst "would like [his] affiliation to be for the hearing." Mr. Hurst's email contained the following text: "Go ahead and use my title as member of the board of directors of the Paseo-Cargill Biofuels plant and Missouri Soybean Association." COS 00123.

The MSA both prepared Mr. Hurst's written testimony and provided him with talking points for his oral testimony.[91] Mr. Hurst told OCE, "He works with the Missouri Soybean Association. The Missouri Soybean Association provided him with written testimony and prepped him for the March hearing, as they have done on other occasions when he testified on behalf of the association."[92] Mr. Hurst told the Standards Committee that the MSA assisted to varying degrees with the drafting of all of his Congressional testimony.[93] Mr. Hurst further stated that the MSA provided more assistance for the March 4, 2009, hearing than in the past because the week leading up to Mr. Hurst's testimony was in the middle of the planting season for Mr. Hurst's farm.[94]

During his testimony, Mr. Hurst recommended an extension of the Biodiesel Blender's Credit program, inclusion of glycerin in the Bio-based Fuel Blender's Credit program, and implementation of the Renewable Fuels Standard.[95] Mr. Hurst's written and oral testimony made anecdotal references to specific renewable fuel plants.[96] The testimony, however, advocated on behalf of the members of the MSA generally, and not for either of the entities in which Representative Graves' wife owned an interest or any other specific business.[97] There was, moreover, significant overlap between the positions taken by Mr. Hurst and those taken by the representative of the National Biodiesel Board, a witness who was called to testify at the hearing by the Small Business Committee majority.[98]

## H. Actions Taken Following the Small Business Committee Hearing

OCE's Report and Findings do not contain evidence that the March 4, 2009, Small Business Committee hearing resulted in action benefitting anyone, including Representative Graves, Mrs. Graves, or Mr. Hurst. The Standards Committee has also uncovered no direct evidence that the hearing resulted in action benefitting Representative Graves, Mrs. Graves, Mr. Hurst, or any other person or entity.

Neither Mr. Hurst nor Mr. Sass was aware of any action on any of the issues discussed in his testimony.[99] The Staff Director for the majority on the Small Business Committee also was not aware of any action on any of the issues discussed in Mr. Hurst's testimony.[100]

As noted previously, the Small Business Committee has limited legislative jurisdiction. Representative Graves told OCE that the Small Business Committee:

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[91] COS 00103; COS 00116; COS 00117.
[92] Memorandum of Interview of Brooks Hurst by OCE staff, July 13, 2009, ¶ 10; *see also* COS 00103 (email from the MSA sending Mr. Hurst's written testimony to Mr. Hurst with a copy to Representative Graves' Staff Assistant/Assistant Scheduler).
[93] Interview of Brooks Hurst by Standards Committee staff, September 18, 2009.
[94] *Id.*
[95] COS 00192–00195.
[96] *Id.*
[97] *Id.*
[98] *See* COS 00192–00195; COS 00187–00191.
[99] Interview of Paul Sass by Standards Committee staff, September 16, 2009; Interview of Brooks Hurst by Standards Committee staff, September 18, 2009.
[100] Interview of Michael Day by Standards Committee staff, September 25, 2009.

> is an oversight committee; it does not do legislation except the authorization of the Small Business Association. The hearings are "feel good hearings." . . . The committee can look at venture capital, healthcare, animal pharmaceuticals, anything. The committee doesn't have a real agenda other than the Small Business Association so they look at all types of industries.[101]

Mr. Sass told OCE that the Small Business Committee "has limited jurisdiction so they can talk about anything at hearings. The 'take-away' is to try and get press. Other than getting press on an issue, the Committee can't really do anything." [102]

According to OCE's interview memorandum of Representative Graves: "[w]hen asked if he talked to Brooks Hurst about the hearing, Representative Graves stated that he had not, 'other than this issue and how ridiculous it is.'" [103] OCE's interview memorandum of Representative Graves further states:

> When asked why it is a ridiculous issue, Representative Graves stated that it was simply a lot of money and time that was being used to look into the matter and there was not anything there; he thought the OCE "must not have anything better to do." [104]

## III. JURISDICTION OF THE STANDARDS COMMITTEE

The Standards Committee has jurisdiction over the matters addressed in this Report pursuant to House Rule 11, clause 3(a)(2), which authorizes the Standards Committee to investigate any alleged violation by a Member, officer, or employee of the House of Representatives, of the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee.

The Standards Committee conducted its investigation in this matter pursuant to Standards Committee Rule 18(a), which authorizes the Committee to consider any information in its possession indicating that a Member, officer, or employee may have committed a violation of the Code of Official Conduct or any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of the duties or the discharge of the responsibilities of such individual. Standards Committee Rule 18(a) further authorizes the Chair and Ranking Minority Member to jointly gather additional information concerning such an alleged violation by a Member, officer, or employee unless and until an investigative subcommittee has been established.

The Standards Committee has authority to issue this Report pursuant to House Rule 11, clause 3(a)(2), under which the Standards Committee shall report to the House its findings of fact and recommendations, if any, for the final disposition of any investigation and action as the committee may consider appropriate under the circumstances; and House Rule 11, clause 3(b)(8)(A), which authorizes the Standards Committee to report on matters forwarded to

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[101] Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009, ¶ 62.
[102] Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009, ¶ 5.
[103] Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009, ¶ 72.
[104] Id., at ¶ 73.

the Standards Committee by the Office of Congressional Ethics (OCE).

## IV. LEGAL ANALYSIS

OCE reviewed Representative Graves' conduct pursuant to House Rule 3, clause 1; House Rule 23, clause 2; and what OCE identified as "House precedent on conflicts of interest." For this reason, the Standards Committee also reviewed Representative Graves' conduct pursuant to these rules and standards of conduct. Based on the facts presented in OCE's Report and Findings, as well as the facts gathered by the Standards Committee's independent inquiry, the Standards Committee concluded that Representative Graves' conduct did not implicate any of the rules or standards of conduct identified by OCE. Thus, the Standards Committee further determined that OCE analyzed Representative Graves' conduct pursuant to the incorrect rules.

Instead, the Standards Committee determined that Representative Graves' conduct should more properly have been analyzed under House Rule 23, clause 3; and section 5 of the Code of Ethics for Government Service (Code of Ethics). After reviewing Representative Graves' conduct pursuant to House Rule 23, clause 3, and section 5 of the Code of Ethics, the Standards Committee concluded that Representative Graves' involvement with the witness selection process for the March 4, 2009, Small Business Committee hearing did not violate any applicable rule or standard of conduct.

### A. Analysis Based on Rules Identified by OCE

#### *1. Voting on Matters Affecting a Direct Personal Interest (House Rule 3, Clause 1)*

OCE analyzed Representative Graves' conduct pursuant to House Rule 3, clause 1;[105] and House Rule 23, clause 2.[106] The Standards Committee determined that Representative Graves' conduct did not implicate these rules.

House Rule 3, clause 1 provides:

> Every Member . . . shall vote on each question put, unless having a direct personal or pecuniary interest in the event of such question.[107]

House Rule 23, clause 2 provides:

> A Member . . . shall adhere to the spirit and the letter of the Rules of the House. . . .[108]

OCE initially alleged that Representative Graves' conduct may have implicated House Rule 3, clause 1, and House Rule 23, clause 2, because his involvement in selecting Mr. Hurst to appear before

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[105] House Rule III, clause 1.
[106] House Rule XXIII, clause 2.
[107] House Rule III, clause 1. The Standards Committee notes that OCE's references to House Rule 3 are only found in OCE's Findings, and not OCE's Report. Further, OCE's notifications to the Standards Committee and Representative Graves also did not mention that OCE was analyzing Representative Graves' conduct under House Rule 3. Because OCE did not provide Representative Graves with a copy of its Findings, Representative Graves was not made aware that his conduct was being analyzed under House Rule 3 until the Standards Committee forwarded a copy of OCE's Findings to Representative Graves on September 16, 2009.
[108] House Rule XXIII, clause 2.

the Small Business Committee may have violated "the spirit of House Rule 3."[109] However, OCE ultimately concluded:

> any disqualifying interest that Representative Graves had in this matter would likely have affected Representative Graves only as a member of a class; therefore, there is not substantial reason to believe that Representative Graves' invitation to [Mr. Hurst] violated the spirit of House Rule 3.[110]

The Standards Committee agrees with OCE's conclusion that Representative Graves did not violate the letter or spirit of House Rule 3. However, the Standards Committee feels compelled to note that the underlying premise of OCE's analysis was flawed because the Standards Committee finds that Representative Graves' conduct did not implicate House Rule 3.

House Rule 3 applies in one situation only—when a Member is voting on the House floor.[111] Representative Graves was not voting, to the contrary, the March 4, 2009, hearing involved no legislation that would ultimately come to the House floor for Representative Graves and other Members upon which to vote. Therefore, House Rule 3 was inapplicable to Representative Graves' conduct. Moreover, because House Rule 3 was inapplicable to Representatives Graves' conduct, the "spirit" of House Rule 3 was equally inapplicable. For these reasons, OCE's analysis was flawed because OCE analyzed Representative Graves' activities with respect to witness selection under the rule applicable to voting.

*2. House "Precedent" on Conflict of Interest*

OCE alleged Representative Graves' conduct may have violated what OCE identified as House "precedent" on conflict of interest.[112] OCE ultimately concluded:

> the Board finds there is substantial reason to believe that the guidance in the *House Ethics Manual*—advising Members to employ "added circumspection" when participating in actions that may affect their personal financial interest and to guard against taking any action that would give the appearance of any impropriety or conflict of interest—would compel Representative Graves to disclose the financial interests he shared with [Mr. Hurst] at the time of the Committee hearing or refrain from extending [Mr. Hurst] an invitation to appear. . . .
>
> [T]here is substantial reason to believe that Representative Graves' invitation to [Mr. Hurst] created an *appearance* of a conflict of interest[.][113]

Notably, OCE did not cite any House Rule or other standard of conduct in reaching this conclusion. The *House Ethics Manual* provides guidance to assist Members, officers, and staff in complying with the Code of Official Conduct or any law, rule, regulation, or other standard applicable to their conduct in the performance of

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[109] OCE Review No. 09–7000, Findings of Fact and Citations of Law (OCE Findings), ¶ 82.
[110] *Id.*
[111] *House Ethics Manual*, Committee on Standards of Official Conduct, 110th Congress, 2nd Sess. (2008 ed.) (*House Ethics Manual*) at 237.
[112] OCE Report. A copy of the report can be at Appendix E.
[113] OCE Findings, ¶¶ 81, 82 (emphasis added).

their duties or the discharge of their responsibilities.[114] The *House Ethics Manual* does not create independent duties outside of the rules and other standards discussed therein. The Standards Committee is particularly concerned that OCE's analysis in this matter may create confusion regarding Standards Committee precedent with respect to conflicts of interest.[115]

The pertinent section of the *House Ethics Manual* cited by OCE states:

> [A]ctions that Members may normally take on particular matters in connection with their official duties, such as sponsoring legislation, advocating or participating in an action by a House committee, or contacting an executive branch agency . . . entail a degree of advocacy above and beyond that involved in voting, and thus a Member's decision on whether to take any such action on a matter that may affect his or her personal financial interests requires added circumspection.[116]

However, no relevant House Rule or other standard of conduct prohibits creation of an *appearance* of a conflict of interest when selecting witnesses for a committee hearing.[117] In fact, the *House Ethics Manual* recognizes that some actual conflicts of interests are inevitable: "[s]ome conflicts of interest are inherent in the representative system of government, and are not in themselves necessarily improper or unethical." [118] Instead, Members are required to disclose assets based on the principle that conflicts of interest are best resolved by the political process.[119] "The objectives of financial disclosure are to inform the public about the financial interests of government officials in order to increase public confidence in the integrity of government and to deter potential conflicts of interest." [120]

"The House has required public financial disclosure by rule since 1968, and by statute since 1978." [121] Public disclosure of assets, financial interests, and investments is intended to regulate possible conflicts of interest to "provide the information necessary to allow Members' constituencies to judge their official conduct in light of possible financial conflicts with private holdings." [122]

Thus, the timely filing of complete and accurate Financial Disclosure Statements is essential to the political process and is fundamental to the House ethics system.

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[114] *House Ethics Manual*, Preface; House Rule XI, clause 3(a).

[115] The Standards Committee notes that it has exclusive jurisdiction over the interpretation, administration, and enforcement of the Code of Official Conduct. *See* House Rule 1(q); Standards Committee Rule 17A(a).

[116] *House Ethics Manual* at 237.

[117] Under the facts in this matter, the Standards Committee determined that Representative Graves' conduct did not create a conflict of interest. In addition, even assuming *arguendo* that there was a rule prohibiting creating the appearance of a conflict of interest, Representative Graves' conduct would not have created such an appearance.

[118] *House Ethics Manual* at 250 (*quoting* House Bipartisan Task Force on Ethics, *Report on H.R. 3360*, 101st Cong., 1st Sess. 22 (Comm. Print, Comm. On Rules 1989), *reprinted in* 135 *Cong. Rec.* H9253, H9259 (daily ed. Nov. 21, 1989)).

[119] *House Ethics Manual* at 251 ("Review of a Member's financial conduct occurs in the context of the political process").

[120] *Id.* (*quoting* House Comm'n on Admin. Review, *Financial Ethics*, H. Doc. 95–73, 95th Cong. 1st Sess., at 9 (1977) (hereinafter *"Financial Ethics"*) ("[p]otential conflicts of interest are best deterred through disclosure and the discipline of the electoral process.")

[121] *House Ethics Manual* at 251.

[122] *Id.*

"No federal statute, regulation or rule of the House absolutely prohibits a Member or House employee from holding assets that might conflict with or influence the performance of official duties." [123] A conflict of interest becomes problematic when a Member uses his position to enhance his personal financial interests or his personal financial interests impair his judgment in conducting his public duties. To prevent a Member's personal interest from interfering with his official duties, a member is required to make public disclosure of assets, financial interests, and investments.[124]

"Public disclosure is intended to provide the information necessary to allow Members' constituencies to judge their official conduct in light of possible financial conflicts with private holdings." [125] In recommending broader public disclosure as the preferred method of regulating possible conflicts of interest in lieu of other restrictions on investment income, the House Commission on Administrative Review of the 95th Congress noted:

> [P]otential conflicts of interest are best deterred through disclosure and the discipline of the electoral process. Other approaches are flawed both in terms of their reasonableness and practicality, and threaten to impair, rather than to protect, the relationship between the representative and the represented.[126]

As noted in the *House Ethics Manual*:

> A Member may often have a community of interests with the Member's constituency, and may arguably have been elected because of and to serve these common interests, and thus would be ineffective in representing the real interests of the constituents if the Member was disqualified from voting on issues touching those matters of mutual concern.[127]

Here, there is no evidence that Representative Graves failed to comply with any disclosure requirement applicable to him at the time of the hearing. In fact, Representative Graves' Financial Disclosure Statements fully and accurately reflects his financial interests, including his wife's 0.18% interest in Golden Triangle and 0.125% interest in Biofuels.[128] The evidence further shows that Mr. Hurst fully complied with all disclosure requirements for witnesses appearing at House committee hearings.[129] Moreover, the evidence shows that the House disclosure rules were effective, because this issue was immediately covered by the press.[130]

The Standards Committee concludes that Representative Graves' involvement with the witness selection process for the March 4, 2009, Small Business Committee hearing did not create a conflict of interest for the following reasons:

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[123] *House Ethics Manual* at 248.
[124] House Rule XXVI; Title I of the Ethics in Government Act of 1978 (5 U.S.C. App. ¶¶ 101–111).
[125] *House Ethics Manual* at 251.
[126] *Id.* (quoting *Financial Ethics* at 9).
[127] *House Ethics Manual* at 250.
[128] Rep. Graves' 2008 Financial Disclosure Statement.
[129] COS 00013. The Standards Committee notes that OCE was made aware of Mr. Hurst's full compliance, but omitted that fact from its Report and Findings.
[130] "Graves' Friend Gets a Soapbox," Paul Singer, *Roll Call*, March 9, 2009; *see generally* "Family ties to ethanol plant draw questions for Rep. Sam Graves," Steve Kraske, *The Kansas City Star*, December 6, 2007.

First, neither Representative Graves nor Mrs. Graves could derive a financial benefit from Mr. Hurst's testimony.[131] Mr. Hurst was invited to testify before the Small Business Committee at a hearing that was held solely as a fact-gathering hearing about the impact of the current economic crisis on the renewable fuels industry.[132] The Small Business Committee's jurisdiction does not extend to any legislative function over the renewable fuels industry.[133] Also, Mr. Hurst did not use his testimony as an opportunity to request any particular action from the Small Business Committee.[134]

Second, there is no indication Representative Graves actually received a financial benefit from Mr. Hurst's testimony. During his testimony, Mr. Hurst recommended an extension of the Biodiesel Blender's Credit program, inclusion of glycerin in the Biobased Fuel Blender's Credit program, and implementation of the Renewable Fuels Standard.[135] Mr. Hurst's recommendations applied generally to the biofuels industry as a whole and not to any particular company.[136] Neither the facts contained in OCE's Report and Findings nor the Committee's independent investigation revealed that the Small Business Committee took any action in relation to Mr. Hurst's recommendations. As stated previously, the Small Business Committee did not have the ability to take any action on Mr. Hurst's recommendation because such action was outside of the Small Business Committee's jurisdiction.[137]

Third, assuming *arguendo* that Representative Graves or his wife benefited financially from Mr. Hurst's testimony, Mr. Hurst met all of the reasonable and objective requirements the staff established for a witness, for the March 4, 2009, Small Business Committee hearing.[138] Moreover, Representative Graves' putative interest was not an interest unique to him but was instead an interest that he held as part of a large class of investors. Mr. Hurst's testimony addressed issues of concern to the members of the MSA generally, and not to any particular entity.[139] In fact, the testimony presented by Mr. Hurst significantly overlapped with the positions taken by the representative of the National Biodiesel Board, another witness who spoke at the hearing.[140] Thus, even if Representative Graves or his wife had derived a financial benefit from Mr. Hurst's testimony, such benefit would only have been as a member of a class of investors in renewable fuel companies. Moreover, Mrs. Graves' investments in both companies in which Mr. Hurst held stock were

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[131] *See generally* House Rule X, clause 1(p); *see also* Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009, ¶ 62; Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009, ¶ 5; Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009, ¶¶ 72, 73.

[132] COS 00019; COS 00065; *see also*, Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009, ¶ 62; Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009, ¶ 5; Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009, in ¶¶ 72, 73.

[133] House Rule X, clauses 1(p), 2(b); and 3(l).

[134] COS 00192–COS 195.

[135] *Id.*

[136] *Id.*

[137] *Id.;* House Rule X, clause 1(p).

[138] COS 00065; COS 00067; COS 00069; COS 00071; COS 00073; COS 00082; COS 00084; Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009, ¶¶ 4, 11; Interview of Paul Sass by Standards Committee staff, September 16, 2009; Interview of Brooks Hurst by Standards Committee staff, September 18, 2009; Memorandum of Interview of Rep. Graves by OCE staff, June 16, 2009, ¶ 13; Memorandum of Interview of Brooks Hurst by OCE staff, July 13, 2009, ¶ 9.

[139] COS 00192–COS 195.

[140] *See id.*; COS 00187–00191.

minimal. She owned a 0.18% interest in Golden Triangle and a 0.125% interest in Biofuels.[141] As such, even if Mr. Hurst's testimony benefited only the two companies in which Mrs. Graves was invested, Representative Graves' or Mrs. Graves' personal financial interest in either investment would have been affected as members of a class of investors and not as individuals.

For all the reasons stated herein, after reviewing the evidence gathered by OCE and conducting its own independent investigation, the Standards Committee finds that Representative Graves did not violate any law, rule, regulation, or other standard of conduct applicable to him in connection with the invitation of Mr. Hurst to testify before the Small Business Committee.

B. Analysis Based on Relevant Rules and Statutes

Based on the facts presented by OCE's Report and Findings as well as the facts gathered by the Standards Committee's independent investigation, the Standards Committee determined that Representative Graves' conduct was more properly analyzed under House Rule 23, clause 3,[142] and section 5 of the Code of Ethics.[143] However, the Standards Committee ultimately determined that Representative Graves' conduct did not violate House Rule 23, clause 3, or section 5 of the Code of Ethics.

*1. Improper Use of Official Position (House Rule 23, clause 3)*

House Rule 23, clause 3, provides:

> A Member . . . of the House 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.[144]

To establish a violation under House Rule 23, clause 3, in connection with inviting a witness to testify before a committee hearing, it must be shown that a Member improperly used his or her official position by inviting the witness to appear before the committee and that the Member received a direct pecuniary benefit that resulted from the witness' testimony. After reviewing the evidence collected by OCE and conducting its own independent investigation, the Standards Committee concluded that Representative Graves did not improperly use his official position in connection with Mr. Hurst's invitation to testify before the Small Business Committee.

After the minority staff of the Small Business Committee received notification from the majority staff that a hearing entitled "The State of Renewable Fuels Industry in the Current Economy" was scheduled to be held on March 4, 2009, and before selecting a witness, the minority staff established criteria for selecting poten-

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[141] COS 00061; COS 00063. Mrs. Graves was one of 400 investors in Biofuels LLC. *See* COS 00063.

[142] House Rule XXIII, clause 3.

[143] Code of Ethics for Government Service, section 5. Pertinent portions of the Code of Ethics for Government Service can be found at Appendix C.

[144] House Rule XXIII, clause 3.

tial witnesses.[145] The criteria that the staff established for potential witnesses sought a witness who was: from Representative Graves' congressional district; familiar with the renewable fuels industry; and not employed by a company in which Representative Graves was invested.[146] Mr. Hurst, who Mr. Sass originally suggested, met each of the requirements. Although Mr. Hurst held investments in two renewable energy cooperatives in which Mr. Graves was invested, he was not an officer or employee of either company. In addition, Representative Graves gave limited input as to who the minority staff should select to testify before the Small Business Committee. The final decision as to which individual was invited was left up to, and actually made by, the minority staff.[147] Thus, the Standards Committee concluded that because Mr. Hurst met all of the reasonable and objective criteria to testify at the hearing, Representative Graves' involvement with selection of Mr. Hurst was not improper.

Because the Standards Committee concluded that Representative Graves' involvement with the selection of the witness was not impermissible, the Standards Committee did not need to reach the issue of whether Representative Graves received any benefit in connection with Mr. Hurst's testimony. However, the Standards Committee notes that neither OCE nor the Committee's independent investigation identified any evidence that Representative Graves received any benefit in connection with Mr. Hurst's testimony.[148] Thus, even if Representative Graves' involvement with the selection of the witness had been improper, it would not have violated House Rule 23, clause 3.[149]

*2. Dispensing Personal Favors (Section 5 of the Code of Ethics for Government Service)*

Section 5 of the Code of Ethics, provides:

> Any person in Government Service should: * * *
> V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for [one]self or [one's] family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of [one's] governmental duties.[150]

To establish a violation under section 5 of the Code of Ethics in connection with inviting a witness to testify before a committee hearing requires a showing that a Member improperly used his or

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[145] COS 00065; COS 00067; COS 00069; COS 00071; COS 00073; COS 00082; COS 00084; Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009, ¶¶ 4, 11; Interview of Paul Sass by Standards Committee staff, September 16, 2009.

[146] *Id.* The Standards Committee finds that the criteria developed by the Small Business Committee's minority staff were reasonable and objective.

[147] Interview of Paul Sass by Standards Committee staff, September 16, 2009; Memorandum of Interview of Thomas Brown by OCE staff, June 16, 2009, ¶ 12; Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009, ¶ 16. However, the Standards Committee notes that, even if Representative Graves had greater involvement in the selection of Mr. Hurst to testify at the hearing, this would not have been improper.

[148] The Standards Committee notes that there is no evidence that anyone or any entity received any financial benefit as a result of Mr. Hurst's testimony before the Small Business Committee on March 4, 2009.

[149] House Rule XXIII, clause 3.

[150] Code of Ethics for Government Service, section 5.

her official position by making that invitation.[151] It is not necessary for a Member to receive a benefit from a witness's testimony to violate section 5 of the Code of Ethics.[152] After reviewing the evidence collected by OCE and conducting its own independent investigation, the Standards Committee determined that Representative Graves did not improperly use his official position by inviting Mr. Hurst to testify before the Small Business Committee.

As noted above, Mr. Hurst met all of the reasonable and objective requirements the staff established for a witness for the March 4, 2009, Small Business Committee hearing.[153] As was customary for the minority on the Small Business Committee, Representative Graves had limited involvement with the witness selection process,[154] and the ultimate decision to invite Mr. Hurst was made by the minority staff, not Representative Graves.[155] Thus, because Mr. Hurst met all of the reasonable and objective requirements the staff established for a witness for the March 4, 2009, Small Business Committee hearing, Representative Graves' involvement in the witness selection process did not discriminate unfairly against other potential witnesses by dispensing a special favor to Mr. Hurst.

Accordingly, the Standards Committee concluded that Representative Graves' involvement in the witness selection process was not improper where Mr. Hurst, an individual who held investments in two companies in which Representative Graves' wife also held investments, was selected based on Mr. Hurst's qualifications, as measured by objective and reasonable witness selection criteria. As a result, Representative Graves did not violate Section 5 of the Code of Ethics.

## V. CONCLUSIONS AND RECOMMENDATIONS

OCE reviewed Representative Graves' conduct pursuant to House Rule 3, clause 1; House Rule 23, clause 2; and what OCE identified as "House precedent on conflicts of interest." For this reason, the Standards Committee also reviewed Representative Graves' conduct pursuant to these rules and standards of conduct. Based on the facts presented in OCE's Report and Findings, as well as the facts gathered by the Standards Committee's independent investigation, the Standards Committee concluded that Representative Graves' conduct did not implicate any of the rules or standards of conduct identified by OCE. Thus, the Standards Committee further determined that OCE analyzed Representative Graves' conduct pursuant to the incorrect rules.

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[151] *Id.*

[152] *Id.*

[153] COS 00065; COS 00067; COS 00069; COS 00071; COS 00073; COS 00082; COS 00084; Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009, ¶¶ 4, 11; Interview of Paul Sass by Standards Committee staff, September 16, 2009; Interview of Brooks Hurst by Standards Committee staff, September 18, 2009; Memorandum of Interview of Rep. Graves by OCE staff, June 16, 2009, ¶ 13; Memorandum of Interview of Brooks Hurst by OCE staff, July 13, 2009, ¶ 9.

[154] Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009, ¶¶ 3, 4; Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009, ¶ 57.

[155] Interview of Paul Sass by Standards Committee staff, September 16, 2009; Memorandum of Interview of Thomas Brown by OCE staff, June 16, 2009, ¶ 12; Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009, ¶ 16. However, the Standards Committee notes that, even if Representative Graves had greater involvement in the selection of Mr. Hurst to testify at the hearing, this would not have been improper.

Instead, the Standards Committee determined that Representative Graves' conduct should more properly have been analyzed under House Rule 23, clause 3; and section 5 of the Code of Ethics for Government Service (Code of Ethics). After reviewing Representative Graves' conduct pursuant to House Rule 23, clause 3, and section 5 of the Code of Ethics, the Standards Committee concluded that Representative Graves' involvement with the witness selection process for the March 4, 2009, Small Business Committee hearing did not violate any applicable rule or standard of conduct.

In the view of the Standards Committee's findings and conclusions, no further action is recommended, and the Committee considers the matter closed.

## VI. OCE's REVIEW

While reviewing the materials forwarded to it by OCE, the Standards Committee was deeply disappointed to identify several procedural and substantive deficiencies in OCE's review, some of which would appear to have been fatal to OCE's ability to continue its review. Regretfully, the Standards Committee believes that it is necessary for the proper administration of the House ethics process and the due process rights of any current or future subject of an OCE investigation to identify these unfortunate deficiencies in this report. In so doing, the Standards Committee intends only to identify the issues it identified in the course of its review and does not, in any way, intend to ascribe to OCE any intent, motive or bad faith with respect to the deficiencies identified below.

### A. Summary of OCE's Review

On March 26, 2009, OCE initiated its preliminary review into allegations regarding the conduct of Representative Graves.[156] During the preliminary review period, the OCE Board timely voted to initiate a second-phase review.[157] Unfortunately, during the course of OCE's second-phase review, OCE repeatedly failed to comply with deadlines mandated by OCE's authorizing resolution and its own rules.[158] OCE's disregard for these deadlines resulted in OCE failing to terminate the matter as required by rule and conducting key phases of its investigatory work outside of the jurisdiction granted to OCE by its authorizing resolution.[159]

On August 6, 2009, OCE forwarded to the Standards Committee its Report and Findings recommending further review of allegations involving Representative Graves.[160] OCE's "report" consisted

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[156] OCE Review No. 09–7000, Findings of Fact and Citations of Law (OCE Findings), ¶ 9. OCE Findings can be found at Appendix E.

[157] OCE Findings, ¶ 10; House Resolution 895, 110th Cong., 2nd Sess. (H. Res. 895), section 1(c)(1)(B) and (C) (110th Cong., March 11, 2008); Rules of the Office of Congressional Ethics, 7(C) and (D) (hereinafter OCE Rules). Copies of H. Res. 895 and the OCE Rules can be found at Appendix C.

[158] *See, e.g.*, OCE Findings, ¶¶ 10 and 11; H. Res. 895, section 1(c)(1)(C) and section 1(c)(2)(A); OCE Rule 8(C).

[159] OCE Rule 8(C) and H. Res. 895, section I, clause (c)(1)(C); *see e.g.*, Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009; Memorandum of Interview of Brooks Hurst by OCE staff, July 13, 2009; Memorandum of Interview of Thomas Brown by OCE staff, June 16, 2009; Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009; and Memorandum of Interview of Jason Klindt by OCE staff, June 16, 2009. Pertinent portions of the OCE's memoranda of interview can be found at Appendix D.

[160] Letter from David E. Skaggs and Porter J. Goss to Zoe Lofgren and Jo Bonner, August 6, 2009. A copy of the letter can be found at Appendix E.

of a one-page statement of the nature of Representative Graves' alleged violation. OCE's "findings" consisted of a more detailed summary of OCE's review. At the same time that OCE forwarded its Report and Findings to the Standards Committee, OCE also sent a copy of its one-page Report to Representative Graves. However, OCE did not provide Representative Graves with a copy of its Findings.

After reviewing OCE's Report and Findings, the Standards Committee provided Representative Graves with a copy of OCE's Report and Findings and gave Representative Graves an opportunity to submit a response to OCE's Report and Findings. Representative Graves submitted a response, in which he: presented additional facts that were not included in OCE's Findings; raised procedural concerns with OCE's review; took issue with certain of OCE's factual and legal conclusions; and requested that the Standards Committee not make public OCE's Report and Findings in the interests of justice, fundamental fairness, and due process.[161]

The Standards Committee reviewed the matter discussed in OCE's Report and Findings without prejudice or presumptions as to the merits of the allegations.[162] As such, the Standards Committee's findings and conclusions with regard to Representative Graves were informed by, but made independent of, OCE's Report and Findings. After reviewing OCE's Report and Findings and conducting its own independent investigation, the Standards Committee was disappointed to find that OCE's review was fundamentally flawed.

First, as noted above, OCE repeatedly violated deadlines found in OCE's authorizing resolution.[163] Second, OCE's findings unfortunately revealed the names and other identifying information of several cooperating witnesses in contravention of OCE's authorizing resolution.[164] Third, OCE forwarded the matter to the Standards Committee for further review without finding a "substantial reason to believe" that there was a violation of any relevant, substantive rule or other standard of conduct applicable to Representative Graves.[165] Fourth, OCE's Findings improperly made conclusions regarding the truth of statements made by cooperating witnesses, including Representative Graves.[166] Fifth, OCE ignored relevant evidence provided by Representative Graves to OCE. Finally, the Standards Committee discovered materials within OCE's Report and Findings that were potentially favorable or exculpatory to Representative Graves, but which OCE did not provide to Representative Graves.[167]

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[161] COS 00126–COS 00149.

[162] Standards Committee Rule 17A(a). The Standards Committee Rules can be found at Appendix C.

[163] *See* OCE Findings, 9–13; *See* Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009; Memorandum of Interview of Brooks Hurst by OCE staff, July 13, 2009; Memorandum of Interview of Thomas Brown by OCE staff, June 16, 2009; Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009; and Memorandum of Interview of Jason Klindt by OCE staff, June 16, 2009; H. Res. Section 1, clause (c)(1) and (c)(2).

[164] H. Res. 895, section 1, clause (c)(1)(A); *see also* Special Task Force on Ethics Enforcement, *Report of the Democratic Members of the Special Task Force on Ethics Enforcement,* 110th Cong., 1st Sess., at 16 (2007) (hereinafter Capuano Report). The Special Task Force on Ethics Enforcement was the task force instructed to study creation of an independent ethics enforcement entity within the House. A copy of the Capuano Report can be found at Appendix C.

[165] OCE Rule 9(A); OCE Findings, ¶¶ 80–82.

[166] H. Res. 895, section 1, clause (c)(2)(C)(i)(II)(dd).

[167] Interview of Rep. Graves' Counsel by Standards Committee staff, September 17, 2009.

Because of the unfortunate flaws in OCE's Report and Findings, the Standards Committee was confronted with a potential conflict between the requirement that the Standards Committee make OCE's Report and Findings publicly available,[168] and the due process and privacy protections afforded to Representative Graves and OCE's cooperating witnesses by the Standards Committee Rules,[169] OCE's authorizing resolution,[170] and OCE's rules.[171] The Standards Committee was concerned that publication of OCE's Report and Findings would further compound OCE's unfortunate failure to follow its authorizing resolution. However, the Standards Committee concluded that, on balance, the public interest was served by publication of OCE's Report and Findings in this case, and thus the Standards Committee declined to withhold publication of OCE's Report and Findings.

## B. OCE's Authorizing Resolution and Rules

OCE's jurisdiction to review a matter is given only by virtue of OCE's authorizing resolution.[172] If OCE acts in contravention of its authorizing resolution, OCE loses jurisdiction over a matter.[173]

OCE's authorizing resolution limits OCE's reviewing authority to "any alleged violation by a Member . . . of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member . . . in the performance of his duties or the discharge of his responsibilities[.]"[174] In accord with this resolution, OCE's rules state that:

> The Board shall refer a matter to the Standards Committee for further review if it determines there is a *substantial reason* to believe the allegations based on all the information then known to the Board. However, in the event the Office is unable to reach that determination, but the Board does determine there is *probable cause* to believe the allegations, the Board may refer the matter to the Standards Committee for further review.[175]

OCE's preliminary review must be completed within 30 days of receipt of a request to commence a preliminary review.[176] If OCE's Board does not vote to initiate a second-phase review by the end of the preliminary review period, the matter is terminated.[177] OCE's second-phase review commences the day after the prelimi-

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[168] Standards Committee Rule 17A(c).
[169] Standards Committee Rule 17A and 25.
[170] H. Res. 895, section 1, clause (c)(2)(C).
[171] OCE Rules 1, 4, 8, 9, and 11.
[172] *See generally U.S. v. Watkins,* 354 U.S. 178, 201 (1957) (holding that with respect to "investigating committees" Congress is "require[d] . . . to . . . spell out that group's jurisdiction and purpose" and that those "instructions are embodied in the authorizing resolution").
[173] *See generally U.S. v. Rumely,* 345 U.S. 41, 44 (1953) (upholding reversal of conviction for refusal to answer questions of select committee of Congress because questions were outside of the scope of the select committee's authorizing resolution, which was the "controlling charter of the committee's powers" and thus "[i]ts right to exact testimony and to call for the production of documents must be found" in the resolution).
[174] H. Res. 895, section 1, clause (c)(2)(C)(i)(II)(dd).
[175] OCE Rule 9(A) (emphasis in original).
[176] H. Res. 895, section 1(c)(1)(B); OCE Rule 7(D). OCE must initiate a preliminary review within seven days of the request to commence the review. H. Res. 895, section 1(c)(1)(A); OCE Rule 7(C).
[177] H. Res. 895, section 1(c)(1)(C).

nary review period expires.[178] OCE's second-phase review terminates in 45 days,[179] unless OCE votes to extend the second-phase review for an additional 14 days.[180] The vote to extend must occur before the second-phase terminates.[181] Once OCE's second-phase review concludes, OCE's legal authority to conduct further interviews or investigation is suspect.[182]

Upon completion of a second-phase review, OCE is "authorized and directed to" transmit a written report to the Standards Committee. This written report must be:

> composed solely of—
>
> (aa) a recommendation that the committee should dismiss the matter that was the subject of such review;
>
> (bb) a statement that the matter requires further review; or
>
> (cc) a statement that the matter is unresolved because of a tie vote; and
>
> the number of members voting in the affirmative and in the negative and a statement of the nature of the review and the individual who is subject of the review[.] [183]

Along with its report, OCE is also "authorized and directed to" transmit its findings, if any, to the Standards Committee. OCE's findings must be:

> composed solely of—
>
> (aa) any findings of fact;
>
> (bb) a description of any relevant information that it was unable to obtain or witnesses who it was unable to interview, and the reasons therefor;
>
> (cc) a recommendation for the issuance of subpoenas where appropriate, if any; and
>
> (dd) a citation of any relevant law, rule, regulation, or standard of conduct;
>
> but not the names of any cooperative witnesses or any conclusions regarding the validity of the allegations upon which it is based or the guilt or innocence of the individual who is the subject of the review[.] [184]

The restriction on including the names of cooperative witnesses in OCE's Findings is further explained in the Capuano Report, which states:

> Cooperative witnesses, who will not be named by the board within the Findings in order to preserve confidentiality, should be listed within the supporting documents for the Standards Committee's information. These materials shall not be published unless the Standards Committee deems it necessary and appropriate.[185]

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[178] H. Res. 895, section 1(c)(1)(C); OCE Rule 8(C). Upon receiving OCE's Report and Findings, the Standards Committee discovered that the Standards Committee and OCE had differing interpretations as to when OCE's second-phase review commenced. Accordingly, the Standards Committee's staff and OCE's staff met with the House Parliamentarians to ascertain the correct interpretation. In the meeting the House Parliamentarian determined that if OCE's Board votes to initiate a second-phase review, the second-phase review of that matter begins immediately following the end of OCE's 30-day preliminary review period.

[179] OCE Rule 8(C) and H. Res. 895, section 1, clause (c)(1)(C).

[180] Rule 8(C) and H. Res. 895, section 1, clause (c)(2)(A)(ii).

[181] *Id.*

[182] *Id.; see generally Rumely,* 345 U.S. at 44.

[183] H. Res. 895, section 1(c)(2)(C)(i)(I).

[184] H. Res. 895, section 1(c)(2)(C)(i)(II).

[185] *See* Capuano Report at 16.

Along with its Report and Findings, OCE is also "authorized and directed to" transmit "any supporting documentation" to the Standards Committee.[186] OCE is also required to "promptly provide to a subject any exculpatory information received."[187] Unfortunately, to date, the Committee has not been provided with any supporting documentation related to this matter.[188]

## C. Procedural History of OCE's Review

On March 26, 2009, two members of the OCE Board made a request to commence a preliminary review into allegations regarding the conduct of Representative Graves.[189] OCE initiated its preliminary review in this matter on April 2, 2009.[190] Pursuant to OCE's authorizing resolution, OCE's preliminary review concluded on April 25, 2009. On April 24, 2009, at least three members of the OCE Board voted to initiate a second-phase review in this matter.[191]

Pursuant to OCE's authorizing resolution and OCE's policies as stated to the Committee, OCE's second-phase review should have begun on April 26, 2009, and the second-phase review should have concluded on June 9, 2009. On April 27, 2009, OCE sent a letter to the Standards Committee noting that it had voted to initiate a second-phase review in the matter concerning Representative Graves. Unfortunately, OCE's letter stated that the second-phase review would not "commence" until May 2, 2009.[192] On June 12, 2009 three days after the second-phase review period ended, the OCE Board voted to extend the second-phase review for two additional weeks.[193] Unfortunately, OCE interviewed a witness on June 15, 2009,[194] six days after the second-phase review period ended. OCE also interviewed three more witnesses on June 16, 2009,[195]

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[186] H. Res. 895, section 1(c)(2)(C)(i)(III).

[187] OCE Rule 4(F).

[188] The Standards Committee previously asked OCE for supporting documentation. OCE staff informed the Standards Committee that OCE does not possess any "supporting documents." Subsequently, OCE has also stated that they do not possess any supporting documents that are in their view, "germane."

[189] OCE Findings, ¶ 9.

[190] OCE Findings, ¶ 9. The Committee notes this date is inconsistent with the Letter from David E. Skaggs and Porter J. Goss to Zoe Lofgren and Jo Bonner dated March 30, 2009, which indicated OCE had already initiated a preliminary review.

[191] OCE Findings, ¶ 10. These dates are taken directly from the "Procedural History" section of OCE's Findings.

[192] Letter from David E. Skaggs and Porter J. Goss to Zoe Lofgren and Jo Bonner, April 27, 2009. Neither OCE's rules nor its policies permit OCE to delay the start of OCE's second-phase review period beyond the end of the preliminary review period. *See United States ex rel. Accardi v. Shaughnessy,* 347 U.S. 260, 268 (1954) (holding that having stated the manner in which it is to exercise its discretion, an agency cannot refuse to follow its own rules); *Wilson v. Commissioner of Social Sec.,* 378 F.3d 541, 545 (6th Cir. 2004) (holding that agencies are bound to follow their own regulations and that an agency's failure to follow its own regulations, even when those regulations are more generous than necessary, tends to cause unjust discrimination and deny adequate notice); *Sameena Inc. v. United States Air Force,* 147 F.3d 1148, 1153 (9th Cir. 1998) ("[t]he Supreme Court has long recognized that a federal agency is obliged to abide by the regulations it promulgates. An agency's failure to follow its own regulations 'tends to cause unjust discrimination and deny adequate notice' and consequently may result in a violation of an individual's constitutional right to due process. Where a prescribed procedure is intended to protect the interests of a party before the agency, 'even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.'") (internal citations and quotations omitted)).

[193] OCE Findings, ¶ 10.

[194] *See* Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009.

[195] *See* Memorandum of Interview of Thomas Brown by OCE staff, June 16, 2009; Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009; and Memorandum of Interview of Jason Klindt by OCE staff, June 16, 2009; and Memorandum of Interview of Brooks Hurst by OCE staff, July 13, 2009.

seven days after the second-phase review period should have ended.

On June 30, 2009, eighteen days after OCE voted to extend the second-phase review period for fourteen days, OCE completed its second-phase review.[196] However, OCE interviewed a witness on July 13, 2009.[197] This interview occurred thirteen days after its second-phase review ended according to OCE, and thirty-four days after the second-phase review period should have ended by rule. As such, it was untimely, and thus conducted outside of OCE's legal authority, even by OCE's own incorrect calculation of the applicable dates. On July 24, 2009, 120 days after two members of the OCE Board made a request to commence a preliminary review, OCE's Board adopted a Report and Findings and ordered the Report and Findings to be transmitted to the Standards Committee.[198]

## D. OCE's Report and Findings

On August 6, 2009, OCE forwarded to the Standards Committee a Report and Findings recommending further review of allegations involving Representative Graves.[199] OCE's Report and Findings relating to Representative Graves consisted of approximately 169 pages. Only one page of the 169 pages is the "report." Pages 5 through 22 consist of OCE's narrative summary of the "findings," while the remaining 145 pages consist of documents cited in the narrative summary, including emails collected by OCE during its review, memoranda of interviews of cooperating witnesses (that have never been shown to or adopted by the witnesses interviewed),[200] newspaper articles, and other miscellaneous materials. Unfortunately, OCE did not forward any "supporting documents" to the Standards Committee.[201] OCE only provided Representative Graves with the one-page report, but did not provide him with the Findings or any other documents.[202]

### *1. OCE's Report*

OCE's one-page report—the only document forwarded to Representative Graves—identified the subject of OCE's review as Representative Graves and the "nature of the alleged violation" as:

> Representative Sam Graves, Ranking Member of the Committee on Small Business, invited Witness A to testify at a Committee hearing on "The State of Renewable Fuels

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[196] OCE Findings, ¶ 11.

[197] *See* Memorandum of Interview of Brooks Hurst by OCE staff, July 13, 2009. OCE's unfortunate disregard for the deadlines mandated by its authorizing resolution raises the question of whether OCE was required, under the OCE Rule requiring OCE to disclose exculpatory materials to subject members (OCE Rule 4(F)), to disclose to Representative Graves that OCE missed strict deadlines and conducted portions of its investigation outside of the time permitted.

[198] OCE Report. The Standards Committee notes that the Capuano Report stated that "Members of the Task Force believe that the timeline requirements instituted by the new process are critical: matters will spend at most three months under consideration by the board of the OCE before being referred to the Standards Committee for resolution." Capuano Report at 14.

[199] Letter from David E. Skaggs and Porter J. Goss to Zoe Lofgren and Jo Bonner, August 6, 2009.

[200] The Standards Committee notes that OCE's witness interviews are neither transcribed nor videotaped. Instead, the only record of OCE's witness interviews is found in memoranda of interviews reflecting OCE's staff's impressions of the interview.

[201] As noted previously, the Standards Committee asked OCE for its supporting documentation, but OCE staff informed the Standards Committee that OCE does not possess any "supporting documents" and later that OCE does not possess any "supporting documents" that are "germane."

[202] Interview of Rep. Graves' Counsel by Standards Committee staff, September 17, 2009.

> Industry in the Current Economy." The hearing was held on March 4, 2009. Witness A and Representative Graves' wife, Lesley Graves, both hold financial interests in the same renewable fuels plants in Missouri. Representative Graves' conduct may have violated House Rule 23 and House precedent regarding conflict of interest.[203]

OCE's Report did not provide any additional statement regarding the substantive allegations underlying OCE's review,[204] such as which provision of House Rule 23 was allegedly implicated by Representative Graves' conduct.[205] OCE's Report recommended "that the Committee on Standards of Official Conduct further review the above described allegations concerning Representative Graves."[206]

*2. OCE's Findings*

OCE's Findings, which were not forwarded to Representative Graves, stated that the "Code of Official Conduct" relevant to Representative Graves" conduct included:

> Under House Rule 23, clause 2, Members "shall adhere to the spirit and the letter of the Rules of the House . . ."
>
> Under House Rule 3, clause 1, "Every Member . . . shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question."
>
> The House Ethics Manual advises "sponsoring legislation, advocating or participating in an action by a House Committee, or contacting an executive branch agency . . . entails a degree of advocacy above and beyond that involved in voting, and thus a Member's decision on whether to take any such action on a matter that may affect his or her personal financial interests requires added circumspection."
>
> The House Ethics Manual further advises that Members should guard against even the appearance of any impropriety or conflict of interest because such actions may adversely affect public perceptions and confidence.[207]

OCE's Findings conclude that:

> there is substantial reason to believe that an appearance of conflict of interest was created when Representative Graves invited . . . a friend of the Representative's who was invested in the same ethanol and biodiesel cooperatives as his wife, to testify before the Committee on Small Business.[208]

OCE's Findings further concluded that "the guidance in the *House Ethics Manual* . . . would compel Representative Graves to disclose the financial interests he shared with [Mr. Hurst] at the

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[203] OCE Report.
[204] *Id.*
[205] The Standards Committee notes that House Rule 23 contains eighteen distinct provisions by which a Member shall abide.
[206] OCE Report.
[207] OCE Findings, ¶ 17 (italics in original) (*quoting* House Rule 23, clause 2; House Rule 3, clause 1; *House Ethics Manual,* at 237).
[208] Findings, ¶ 2.

time of the Committee hearing or refrain from extending [Mr. Hurst] an invitation to appear."[209]

However, OCE's Findings also state that:

> any disqualifying interest that Representative Graves had in this matter would likely have affected Representative Graves only as a member of a class; therefore, there is not substantial reason to believe that Representative Graves' invitation to [Mr. Hurst] violated the spirit of House Rule 3.[210]

## E. The Standards Committee's Investigation

### *1. Standards Committee's Activities*

In addition to reviewing OCE's Report and Findings, the Standards Committee conducted its own independent investigation. During the course of its investigation, the Standards Committee sought and received pertinent documents from relevant witnesses on a voluntary basis. The Standards Committee also conducted three voluntary interviews of relevant witnesses.[211]

If OCE properly refers a report and findings recommending further review to the Standards Committee, within 45 days the Standards Committee may either vote to empanel an investigative subcommittee or vote to withhold the Report and Findings for an additional 45 days.[212] If the Standards Committee does not take either of those actions within 45 days, the Standards Committee must make OCE's properly referred report and findings public.[213] Any release of OCE's report and findings may be accompanied by a report by the Standards Committee regarding the matter discussed in OCE's report and findings.[214]

On September 15, 2009, the Standards Committee unanimously voted to withhold OCE's Report and Findings for an additional 45 days.[215] In its press statement, released the same day, the Standards Committee explained that it had two reasons for voting to extend the matter.[216] The Standards Committee's first reason was that:

> the Office of Congressional Ethics did not find a "substantial reason to believe" that there was a substantive violation of any provision of the Code of Official Conduct or any law, rule, regulation, or other standard of conduct applicable to Representative Graves' conduct in the performance

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[209] OCE Findings, ¶ 81.

[210] OCE Findings, ¶ 82.

[211] Interview of Paul Sass by Standards Committee staff, September 16, 2009; Interview of Brooks Hurst by Standards Committee staff, September 18, 2009; Interview of Michael Day by Standards Committee staff, September 25, 2009.

[212] House Rule XI, clause 3(b)(8)(A); Standards Committee Rule 17A(c)(1). Pertinent portions of the House Rules can be found at Appendix C.

[213] House Rule XI, clause 3(b)(8)(A); Standards Committee Rule 17A(c)(1). If the Standards Committee votes to withhold the report and findings for an additional 45 days and does not empanel an investigative subcommittee within the additional 45-day time period, the Standards Committee must then make OCE's report and findings public. House Rule XI, clause 3(b)(8)(A); Standards Committee Rule 17A(c)(1).

[214] House Rule XI, clause 3(b)(8)(A). Any public release of OCE's findings must be made by the Standards Committee. OCE has no authority to publicly release its report and findings, nor does OCE have any authority to publicly comment on its report and findings or the matters contained therein at any time.

[215] Statement of the Chair and Ranking Republican Member of the Committee on Standards of Official Conduct Regarding Representative Sam Graves, September 16, 2009.

[216] *Id.*

of his duties or the discharge of his responsibilities. Nevertheless, it referred the matter to the Committee for further review.[217]

The Standards Committee's second reason was that it had "identified materials in the Office of Congressional Ethics' report and findings that may contain exculpatory evidence, which OCE never provided to Representative Graves."[218] The Standards Committee unanimously voted to extend the matter "to provide Representative Graves with potentially favorable or exculpatory materials, which the Committee understands, in the interests of justice, should have been provided to Representative Graves pursuant to Office of Congressional Ethics Rule 4(F)."[219] The Standards Committee further noted that "Committee Rule 25 requires us to disclose these materials to Representative Graves."[220]

On September 16, 2009, the Standards Committee forwarded OCE's Report and Findings to Representative Graves and offered Representative Graves the opportunity to respond to OCE's Report and Findings within 15 days.[221] Before the expiration of the 15-day response period, Representative Graves sought an extension of one business day, which the Standards Committee granted. Representative Graves' counsel submitted a response to OCE's Report and Findings on October 5, 2009.[222]

*2. Representative Graves' Submission*

The Standards Committee was disappointed to find that Representative Graves' submission presented facts that were not included in OCE's Findings, raised procedural concerns with OCE's review, and took issue with certain of OCE's factual and legal conclusions. Representative Graves' submission also requested that the Standards Committee not make public OCE's Report and Findings in the interests of justice, fundamental fairness, and due process.[223]

The Standards Committee gave careful consideration to Representative Graves' request. The Standards Committee was concerned that many of the regrettable flaws in OCE's Report and Findings created an unfortunate conflict between the publication requirement in the Standards Committee's Rules[224] and the due process and privacy protections afforded to Representative Graves and OCE's cooperating witnesses by OCE's authorizing resolution,[225] OCE's Rules,[226] and the Standards Committee Rules.[227] Given these regrettable flaws, the Standards Committee was concerned that publication of OCE's Report and Findings would further compound OCE's apparent violations of its authorizing resolution. However, despite the strong arguments against release of

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[217] *Id.*
[218] *Id*
[219] *Id.*
[220] *Id.*
[221] Letter from Blake Chisam, Chief Counsel and Staff Director, to Rep. Graves, September 16, 2009.
[222] COS 00126–COS 00169. At the request of the Standards Committee, Representative Graves adopted his counsel's submission by oath or affirmation. *See* Affirmation of Rep. Graves (October 6, 2009).
[223] COS 00130.
[224] Standards Committee Rule 17A(c).
[225] H. Res. 895, section 1, clause (c)(2)(C).
[226] OCE Rules 1, 4, 8, 9, and 11.
[227] Standards Committee Rule 17A and 25.

OCE's Report and Findings, the Standards Committee declined to withhold publication of OCE's Report and Findings. Instead, the Standards Committee concluded that its concerns with the conflict created by releasing a fundamentally flawed Report and Findings were outweighed by the interests to the House, and the public, in ensuring accountability and transparency with regard to OCE and OCE's practices. The Standards Committee notes that its publication of this Report and Findings should not be viewed as determinative of whether this matter was legally referred to the Standards Committee such that it triggered the Standards Committee's duty under House Rule 11, clause 3(b)(8)(A) to publicly disclose OCE's Report and Findings.

a. New facts presented by Representative Graves:

i. Before OCE's second-phase review period expired, Representative Graves gave to OCE a memorandum describing the rules pertaining to disclosure by witnesses testifying before the Small Business Committee and explaining that Mr. Hurst complied with all such rules.[228]

ii. The Small Business Committee has never inquired into potential witnesses' financial investments or financial dealings that the witness may have in common with a member of the committee or a member's spouse.[229]

iii. Mr. Hurst told OCE that he never discussed specific investments with Representative Graves and that he was not aware of what investments Representative Graves or his wife had.[230]

b. Procedural arguments made by Representative Graves:

i. OCE only disclosed to Representative Graves that it was reviewing his conduct with respect to House Rule 23 generally. It did not cite to any specific provision of House Rule 23, nor to House Rule 3. Thus, OCE failed to accurately advise Representative Graves of the rules or standards of conduct that he was alleged to have violated.[231]

ii. OCE violated OCE Rules 4(F) and 5 by failing to provide exculpatory information to Representative Graves.[232]

iii. OCE conducted its investigation outside of its jurisdictional time limitations.[233]

iv. OCE's review was outside of its jurisdiction because Representative Graves' alleged conduct did not violate any "law, rule, regulation, or other standard of conduct . . . applicable to [him] in the performance of his . . . duties or the discharge of his . . . responsibilities."[234]

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[228] COS 00133. Representative Graves provided the memorandum, which was prepared in the context of the investigation, to the Standards Committee. The Standards Committee notes that OCE did not discuss this memorandum in its Findings. The Standards Committee also notes that OCE never provided the memorandum, nor any "supporting documents" to the Standards Committee. The Standards Committee is puzzled by the fact that OCE did not incorporate this information into its Findings for public disclosure. The Standards Committee is also troubled by the transparency concerns inherent in OCE potentially withholding relevant information from the Standards Committee.

[229] COS 00134.

[230] COS 00137.

[231] COS 00127–COS 00129.

[232] COS 00139–COS 00141.

[233] COS 00141–COS 00144.

[234] COS 00145; COS 00146.

v. OCE's Report and Findings violated Standards Committee Rule 15(a)(4) because it contained "innuendo, speculative assertions, and conclusory statements."[235]

vi. OCE failed to disclose to Representative Graves that the information he provided to OCE might be publicly disclosed "whether it was germane to the investigation or not."[236]

vii. OCE's Report and Findings improperly reveal the names of cooperative witnesses and personal information from individuals referenced in the Report and Findings, including identities, email addresses, and phone numbers.[237]

c. Factual and legal conclusions with which Representative Graves took issue:

i. Representative Graves reasoned that because the Small Business Committee has no financial oversight authority, Representative Graves could have no financial interest in Mr. Hurst's testimony before the Small Business Committee.[238]

ii. Representative Graves argued that OCE's theory regarding disclosure of financial interests "would create an absurdity because it would require all Members of the [Small Business Committee] to cross-check their investments and their spouse's investments with each potential witnesses' investments every time a witness is invited by the [committee] to testify."[239]

iii. Representative Graves asserted that his then-Deputy Chief of Staff, his Chief of Staff, and Representative Graves all agree that Representative Graves did not choose Mr. Hurst to be a witness and was rarely involved in the process of selecting witnesses.[240]

iv. Representative Graves stated that he and Mr. Hurst dispute OCE's inference that Representative Graves was aware of Mr. Hurst's invesments.[241]

v. Representative Graves argued that Mr. Hurst's background and history of congressional testimony refute OCE's inference that Mr. Hurst was not qualified to testify at the hearing.[242]

## F. Findings and Conclusions Regarding Deficiencies in OCE's Review

The Standards Committee reviews any findings transmitted by OCE without prejudice or presumptions as to the merits of the allegations.[243] As such, the Standards Committee's findings and conclusions with regard to Representative Graves were informed by, but made independent of, OCE's Report and Findings. However, after reviewing OCE's Report and Findings regarding the conduct of Representative Graves and conducting its own independent investigation, the Standards Committee was deeply disappointed to discover that OCE's review was fundamentally flawed because it

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[235] COS 00146–COS 00147.
[236] COS 00148.
[237] *Id.*
[238] COS 00132.
[239] COS 00135.
[240] COS 00135.
[241] COS 00136; COS 00137.
[242] COS 00138; COS 00139
[243] Standards Committee Rule 17A(a). The Standards Committee Rules can be found at Appendix C.

routinely failed to adhere to the requirements of OCE's authorizing resolution, some of which were fatal to OCE's ability to continue its review.

First, OCE failed to meet certain deadlines mandated by OCE's authorizing resolution and OCE's rules. OCE's jurisdiction to review a matter stems solely from OCE's authorizing resolution.[244] Failure by OCE to abide by the strict timeframes established by its authorizing resolution effectively strips OCE of its jurisdiction over a matter.[245] For example, in order for OCE to commence a second-phase review, three members of the Board must vote to commence a second-phase review *before* the end of the preliminary review. "If no such vote to commence a second-phase review has succeeded by the end of the applicable time period, the matter is terminated."[246]

OCE's preliminary review began at the request of two members of OCE's Board on March 26, 2009,[247] and was completed within 30 days on April 25, 2009.[248] On April 24, 2009, at least three members of the OCE Board voted to initiate a second-phase review in this matter.[249] By rule, OCE's second-phase review commenced when the preliminary review period expired.[250] OCE's second-phase review ends in 45 days,[251] which in this case was June 9, 2009, and OCE could only have extended that period once by 14 days.[252] Unfortunately, OCE voted to extend its review of the matter on June 12, 2009.[253] This vote occurred three days after the second-phase review terminated, and OCE's authorizing resolution requires that a vote to extend must occur before the termination of the second-phase review.[254] Thus, by law, OCE's second-phase review ended on June 9, 2009, because OCE did not timely vote to extend the review.[255]

In its Findings, OCE claimed that the second-phase review terminated on June 30, 2009.[256] Unfortunately, this was an incorrect calculation of the applicable time period regardless of which date OCE used. If the correct date of June 9, 2009, was used, OCE's 14-day extension would have ended on June 23, 2009. Even calculating from June 12, 2009, the date on which OCE voted to extend, the 14 days would have ended on June 26, 2009.

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[244] *See generally, Watkins*, 354 U.S. at 201.
[245] *See* Capuano Report at 11, 14.
[246] H. Res. 895, (c)(1)(C). This practice is consistent with other legal frameworks, in which investigative bodies are bound to strict deadlines to protect the fundamental due process rights of the subject of the investigation.
[247] OCE Review No. 09–7000, Findings of Fact and Citations of Law (OCE Findings), ¶ 9.
[248] H. Res. 895, section 1(c)(1)(B); OCE Rule 7(D).
[249] OCE Findings, ¶ 10.
[250] H. Res. 895, section 1(c)(1)(C); OCE Rule 8(C). As noted previously, this interpretation of when OCE's second-phase review commences was provided to both the Standards Committee's staff and OCE's staff by the House Parliamentarian's Office, who stated that, if OCE's Board votes to initiate a second-phase review, that second-phase review begins immediately following the end of OCE's 30-day preliminary review period. Thus, the first day of OCE's second-phase review was April 26, 2009. The Standards Committee notes that OCE stated in a letter that its second-phase review would not "commence" until May 2, 2009. Letter from David E. Skaggs and Porter J. Goss to Zoe Lofgren and Jo Bonner, April 27, 2009. OCE unfortunately did not provide any explanation for how it could delay commencing the second-phase review for five days. OCE has explained to the Standards Committee that its policy is to commence second-phase reviews on the day after the preliminary phase review ends.
[251] OCE Rule 8(C) and H. Res. 895, section 1, clause (c)(2)(A)(i).
[252] OCE Rule 8(C) and H. Res. 895, section 1, clause (c)(2)(A)(ii).
[253] OCE Findings, ¶ 10.
[254] H. Res. 895, section 1, clause (c)(2)(A)(ii).
[255] OCE Rule 8(C) and H. Res. 895, section 1, clause (c)(2)(A)(i).
[256] OCE Findings, ¶ 11.

Because the Board did not vote on or before June 9, 2009, OCE's review involving Representative Graves legally terminated on June 9, 2009.

Since the matter terminated by rule, OCE staff should not have conducted further interviews or investigation. However, OCE conducted all of its interviews after June 9, 2009.[257]

Further, even assuming *arguendo* that the second-phase review concluded on June 30, 2009, as OCE claims, OCE continued to gather evidence in violation of its authorizing resolution. OCE staff interviewed a main and key witness in this matter on July 13, 2009,[258] 13 days after OCE claimed the second-phase review concluded, and 34 days after the matter terminated by rule. Unfortunately, OCE appears to have lacked legal authority to conduct this interview.[259]

Second, OCE's findings erroneously revealed the names and other identifying information of several cooperating witnesses in contravention of OCE's authorizing resolution.[260] As the Capuano Report states, "[c]ooperative witnesses, who will not be named by the board within the Findings in order to preserve confidentiality, should be listed within the supporting documents for the Standards Committee's information. These materials shall not be published unless the Standards Committee deems it necessary and appropriate."[261] Recognizing important confidentiality concerns, OCE's authorizing resolution contemplated that OCE would issue limited public "findings" and that the bulk of information pertaining to a subject under investigation would be contained in non-public "supporting documentation" unless its disclosure was directly relevant and necessary for inclusion in the "findings."[262] Unfortunately, throughout OCE's "findings," the names and other identifying information—such as emails, addresses, telephone numbers, and titles—of cooperating witnesses are disclosed openly without any attempt to redact the names or other identifying information.[263] Be-

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[257] The dates of these interviews are documented in OCE's memoranda of interview. *See* Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009; Memorandum of Interview of Brooks Hurst by OCE staff, July 13, 2009; Memorandum of Interview of Thomas Brown by OCE staff, June 16, 2009; Memorandum of Interview of Paul Sass by OCE staff, June 16, 2009; and Memorandum of Interview of Jason Klindt by OCE staff, June 16, 2009.

[258] The date of this interview is documented in OCE's memorandum of interview, and was independently confirmed by the Standards Committee. Memorandum of Interview of Brooks Hurst by OCE staff, July 13, 2009.

[259] *See* OCE Rule 8(C) and H. Res. 895, section 1, clause (c)(2)(A)(i); OCE Findings, ¶ 11; Memorandum of Interview of Brooks Hurst by OCE staff, July 13, 2009; *see generally Rumely*, 345 U.S. 41; *see also* Capuano Report stated that "Members of the Task Force believe that the timeline requirements instituted by the new process are critical: matters will spend at most three months under consideration by the board of the OCE before being referred to the Standards Committee for resolution." Capuano Report at 14.

[260] H. Res. 895, section 1, clause (c)(1)(A). The Standards Committee notes that OCE gave the Standards Committee a revised version of its Findings on October 28, 2009, at 5:00 p.m. In this revised version, OCE redacted the last four digits of business direct-dial telephone numbers, the user-names of non-House email addresses, and all digits of private telephone numbers. The redactions, while helpful, do not resolve one of the fundamental problems with OCE's Findings—that it names cooperating witnesses in direct violation of its authorizing resolution and its rules.

[261] *See* Capuano Report at 16.

[262] *See* H. Res. 895, section 1, clause (c)(2)(C)(i)(II)(dd) and (c)(2)(C)(i)(III).

[263] Not only did OCE deem unredacted documents, which identify cooperating witnesses, to be part of its Findings, OCE also incorporated and pasted into various sections of the narratives summary of its Findings images of emails and other documents provided by cooperating witnesses. Unfortunately, these images contain the identities of witnesses that voluntarily provided documents or testimony to OCE. The Standards Committee was particularly concerned that OCE's disclosure of the names of cooperating witnesses does not preserve the confidentiality of those witnesses.

cause OCE made these materials part of its Findings, they are potentially subject to mandatory public disclosure.[264]

Third, OCE referred the matter to the Standards Committee for further review without finding a "substantial reason to believe" that there was a substantive violation of any provision of the Code of Official Conduct or any law, rule, regulation, or other standard of conduct applicable to Representative Graves' conduct in the performance of his duties or the discharge of his responsibilities. OCE's authorizing resolution limits OCE's review authority to "any alleged violation by a Member . . . of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member . . . in the performance of his duties or the discharge of his responsibilities[.]" [265] In accord with this resolution, OCE's rules state that OCE's jurisdiction is limited to reviewing whether a Member has violated a "law, rule or regulation, or other standard of conduct in effect at the time the conduct occurred . . ." [266] OCE's rules further state that:

> The Board shall refer a matter to the Standards Committee for further review if it determines there is a *substantial reason* to believe the allegations based on all the information then known to the Board. However, in the event the Office is unable to reach that determination, but the Board does determine there is *probable cause* to believe the allegations, the Board may refer the matter to the Standards Committee for further review.[267]

OCE found a substantial reason to believe that Representative Graves' conduct was inconsistent with the advice in the Standards Committee's *House Ethics Manual* that Members should avoid the "appearance" of a conflict of interest, but did not find that Representative Graves violated House Rule 3 (pertaining to voting) or House Rule 23, clause 2 (*i.e.,* failure to abide by the spirit of the rules).[268] There is no relevant rule or standard of conduct that absolutely prohibits the "appearance" of a conflict of interest or that compels disclosure of every potential conflict.[269] It is with great regret that the Standards Committee determines that it can only conclude that OCE violated both its authorizing resolution and its own rules when it forwarded this matter to the Standards Committee for further consideration without finding a "substantial reason to believe" that there was a substantive violation of any relevant rule or standard of conduct.[270]

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[264] Given the interplay between the various publication requirements of OCE's report and findings, and the clear directive to protect the privacy of cooperating witnesses, the Standards Committee is particularly concerned with the inclusion of identifying information—such as email addresses, direct-dial extensions, and personal cellular telephones—in OCE's Report and Findings. However, given these publication requirements, the Standards Committee is also more generally concerned with the presence of significant quantities of extraneous and irrelevant information included as part of OCE's Report and Findings in this case.

[265] H. Res. 895, section 1, clause (c)(2)(C)(i)(II)(dd).

[266] OCE Rule 1(3).

[267] OCE Rule 9(A) (emphasis in original).

[268] OCE Findings, ¶¶ 80–82.

[269] In light of this, the Standards Committee was surprised to note the resources expended to conduct this investigation. For example, OCE sent two attorneys to Kansas City, who stayed overnight, to interview witnesses. S*ee, e.g.,* Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009. The Standards Committee also conducted its own independent investigation. The Standards Committee notes that Representative Graves hired counsel to represent him during both OCE's review and the Standards Committee's investigation.

[270] The Standards Committee is particularly concerned with improper referrals of this nature because of the publication requirements of referrals to the Standards Committee that rec-

Fourth, OCE's Findings improperly make conclusions regarding the truth of statements made by cooperating witnesses, including Representative Graves. OCE's authorizing resolution states that OCE's findings shall not include "any conclusions regarding the validity of the allegations upon which it is based" or "guilt or innocence of the individual who is the subject of the review."[271] Regrettably, in direct violation of this provision, OCE's Findings conclude that Representative Graves demonstrated a "lack of candor" in his responses to OCE.[272] OCE then compounds this error by extrapolating that alleged "lack of candor" into a tacit admission of guilt on the part of Representative Graves.[273] Pursuant to OCE's authorizing resolution, OCE's Board has the authority to make findings, not OCE's staff.[274] However, no member of OCE's Board was present at the interview of Representative Graves[275] and accordingly no Board member was in a position to evaluate his credibility.[276] Thus, even if this credibility determination were considered a "finding of fact" rather than a comment on culpability, there is no authority for such a determination to be delegated to or made by OCE's staff.[277]

Fifth, while the Committee does not intend to suggest that OCE acted maliciously or in bad faith, it is a fact that OCE ignored and failed to disclose relevant information Representative Graves pro-

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ommend further review. If OCE properly refers a report and findings recommending further review to the Standards Committee, within 45 days the Standards Committee may either vote to empanel an investigative subcommittee or vote to withhold the report and findings for an additional 45 days. House Rule XI, clause 3(b)(8)(A); Standards Committee Rule 17A(c)(1). If the Standards Committee does not take either of those actions within 45 days, the Standards Committee must make OCE's properly referred report and findings public. House Rule XI, clause 3(b)(8)(A); Standards Committee Rule 17A(c)(1). If the Standards Committee votes to withhold the report and fmdings for an additional 45 days and does not empanel an investigative subcommittee within the additional 45-day time period, the Standards Committee must then make OCE's properly referred report and findings public. House Rule XI, clause 3(b)(8)(A); Standards Committee Rule 17A(c)(1). In contrast, if OCE properly refers a report and findings recommending dismissal, and the Standards Committee then dismisses that referral, OCE's report and findings need not be published. House Rule XI, clause 3(b)(8)(B)(i); Standards Committee Rule 17A(e).

[271] H. Res. 895, section 1, clause (c)(2)(C)(i)(II)(dd).

[272] OCE Findings, ¶ 76. OCE's findings also improperly make conclusions regarding the validity of other allegations that are directly contrary to statements made by cooperating witnesses. *See e.g.,* OCE Findings ¶ 75 (concluding that "Representative Graves had knowledge of [Mr. Hurst]'s investment in Golden Triangle and had reason to believe that [Mr. Hurst] was also invested in Biofuels") and OCE Findings, Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009, ¶ 39 (noting that Representative Graves stated that "Investments are not something that he talks about with Brooks Hurst. He could not say what Brooks Hurst was invested in; he goes in and out of investments so he wouldn't know what he was invested in.").

[273] *Id.*

[274] H. Res. 895, section 1, clause (c)(2)(C)(i)(II)(aa).

[275] *See* Memorandum of Interview of Rep. Graves by OCE staff, June 15, 2009.

[276] The Standards Committee notes that OCE's witness interviews are neither transcribed nor video-taped. Instead, the only record of OCE's witness interviews is found in memoranda of interviews reflecting OCE's staff's impressions of the interview.

[277] *See Morgan v. US.,* 298 U.S. 468, 481 (1936) ("For the weight ascribed by the law to the findings . . . rests upon the assumption that the officer who makes the findings has addressed himself to the evidence, and upon that evidence has conscientiously reached the conclusions which he deems it to justify. That duty cannot be performed by one who has not considered evidence or argument. It is not an impersonal obligation. It is a duty akin to that of a judge. The one who decides must hear."); *U.S. v. Raddatz,* 447 U.S. 667, 697 (1980) (Justice Marshall, dissenting) ("In this respect, the requirement that a finder of facts must hear the testimony offered by those whose liberty is at stake derives from deep-seated notions of fairness and human dignity."); *United States v. Oregon State Medical Society,* 343 U.S. 326, 339 (1952) ("'Face to face with living witnesses, the original trier of the facts holds a position of advantage from which appellate judges are excluded. In doubtful cases, the exercise of his power of observation often proves the most accurate method of ascertaining the truth.'"); *U.S. v. Diapulse Corporation of America,* 457 F.2d 25, 30 (2nd Cir. 1972) ("It is [the trial court's] duty to appraise the testimony and demeanor of the witnesses."); *In re Pearson Bros. Co.,* 787 F.2d 1157, 1162 (7th Cir. 1986) ("The question of credibility of witnesses is peculiarly for the trier of fact and an appellate court will not redetermine the credibility of witnesses where the trial court had the opportunity to observe their demeanor and form a conclusion.").

vided to it. Along with its report and findings, OCE is "authorized and directed to" transmit "any supporting documentation" to the Standards Committee.[278] During the course of OCE's review, Representative Graves provided a memorandum to OCE.[279] The memorandum was from Barry Pineles, Chief Counsel to the Republican staff of the Small Business Committee,[280] and was directly relevant to several central issues in this matter. For example, the memorandum provided OCE with information about the jurisdiction of the Small Business Committee, the typical procedures for announcing hearing topics for the Small Business Committee, the typical procedures for identifying witnesses for Small Business Committee hearings, and the witness disclosure requirements for witnesses at Small Business Committee hearings.[281] The Standards Committee is generally concerned that OCE's Report and Findings do not mention this memorandum or address the contents of the memorandum. However, the Standards Committee is particularly disappointed that OCE did not forward the memorandum to the Standards Committee. As previously noted, OCE did not provide the Standards Committee with any "supporting documentation" in this matter. Unfortunately, such selective presentation of evidence to the Standards Committee raises significant concerns with the transparency of OCE's process.

Finally, after reviewing OCE's Report and Findings, the Standards Committee discovered materials within OCE's Report and Findings that were potentially favorable or exculpatory to Representative Graves. For example:

a. Mr. Hurst told OCE in both a letter and during his interview with OCE that he does not have any business relationship with Representative Graves or Mrs. Graves.[282] This statement is inconsistent with OCE's allegation that an appearance of conflict of interest was created because "Representative Graves could expect [Mr. Hurst] to testify at the hearing in a manner consistent with Witness A's and his own financial interest."[283]

b. Documents OCE collected from Mr. Hurst show that Mr. Hurst's interest in Biofuels, LLC, is less than ⅓ of 1% and his interest in Golden Triangle Energy Cooperative, Inc. is just 0.50%.[284] The relatively small amount of these holdings is inconsistent with OCE's allegation that Mr. Hurst's and Representative Graves' "shared financial interest" was such that "Representative Graves could expect [Mr. Hurst] to testify at the hearing in a manner consistent with [Mr. Hurst]'s and his own financial interest."[285]

c. Mr. Hurst stated in an interview to OCE that he was the President of the Missouri Soybean Association and had testified at Congressional hearings on prior occasions. Mr. Hurst further stated that the first time he testified at a Congressional hearing, he was invited to testify by then-Representative

[278] H. Res. 895, section 1(c)(2)(C)(i)(III).
[279] COS 00133.
[280] COS 00151–COS 00156.
[281] *Id.*
[282] *See* COS 00113; Memorandum of Interview of Brooks Hurst by OCE staff, July 13, 2009, ¶ 23.
[283] OCE Findings, ¶ 3; *see also* OCE Findings, ¶ 75.
[284] *See* COS 00114; COS 00115.
[285] OCE Findings, ¶ 3; *see also* OCE Findings ¶ 75.

Jim Talent.[286] This statement is inconsistent with OCE's implication that Mr. Hurst was not selected because of his qualification but only because of his "shared financial interest" with Representative Graves.[287]

The Standards Committee was disappointed when Representative Graves' counsel informed the Standards Committee that Representative Graves was not provided a copy of OCE's Findings nor any other materials, including the potentially favorable or exculpatory materials identified by the Standards Committee.[288] The Standards Committee's view was that, in the interests of justice, these potentially favorable or exculpatory materials should have been provided to Representative Graves,[289] and that Standards Committee Rule 25[290] required the Standards Committee to disclose these materials to Representative Graves. For this reason the Standards Committee provided Representative Graves with a copy of OCE's Report and Findings and directed Representative Graves to the existence of potentially favorable information in OCE's Findings.[291]

## VII. STATEMENT UNDER RULE 13, CLAUSE 3(c) OF THE RULES OF THE HOUSE OF REPRESENTATIVES

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

[286] *See* Memorandum of Interview of Brooks Hurst by OCE staff, July 13, 2009, ¶ 9.
[287] *See* OCE Findings, ¶¶ 3, 40, 41, 75.
[288] Interview of Rep. Graves' Counsel by Standards Committee staff, September 17, 2009.
[289] OCE Rule 4(F).
[290] Standards Committee Rule 25.
[291] Letter from Blake Chisam, Chief Counsel and Staff Director, to Rep. Graves, September 16, 2009.

# Appendix A
# Selected Documents Collected by the Standards Committee

HOUSE COMMITTEE ON SMALL BUSINESS
Witness Disclosure Statement
Required by House Rule XI, Clause 2(g)

Your Name: T. Brooks Huffst

| | | |
|---|---|---|
| 1. Are you testifying on behalf of a Federal, State, or Local Government entity? | YES | NO X |
| 2. Are you testifying on behalf of an entity other than a Government entity? | YES X | NO |

3. Other than yourself, please list what entity or entities you are representing:
Missouri Soybean Association
Poseo Cargill Biofuels

4. Please list any offices or elected positions held or briefly describe your representational capacity with the entities disclosed in question 3.
Member Board of Directors Poseo Cargill
Member Board of Directors Missouri Soybean Assoc

*(For those testifying on behalf of a Government entity, ignore these questions below)*

5. a) Please list any Federal grants or contracts (including subgrants or subcontracts), including the amount and source (agency) which you have received and/or been approved for since October 1, 2006:

N/A

b) If you are testifying on behalf of a non-governmental entity, please list any federal grants or contracts (including subgrants or subcontracts) and the amount and source (agency) received by the entities listed under question 3 since October 1, 2006, which exceeded 10% of the entities' revenues in the year received:

None

| | | |
|---|---|---|
| 6. If you are testifying on behalf of a non-governmental entity, does it have a parent organization or an affiliate who you specifically do not represent? If so, list below: | YES | NO X |

Signature: [redacted] Date: 3/4/09

NYDIA M. VELAZQUEZ, NEW YORK
Chairwoman

SAM GRAVES, MISSOURI
Ranking Member

# Congress of the United States

U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6315

February 25, 2009

## NOTICE

**TO:** Members of the House Committee on Small Business
**FROM:** Chairwoman Velázquez
**DATE:** March 4, 2009
**TIME:** 1:00PM
**LOCATION:** 2360 Rayburn HOB
**RE:** Full Committee Hearing entitled: *"The State of the Renewable Fuels Industry in the Current Economy."*

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The House Committee on Small Business will hold a hearing entitled, *"The State of the Renewable Fuels Industry in the Current Economy."* The Committee will examine the state of the renewable fuels industry and the challenges in light of current economic factors. The Committee will hear from farmers, producers, and other industry representatives. The hearing will take place on Wednesday, March 4, 2009, at 1:00 p.m. in 2360 of the Rayburn House Office Building.

The hearing will focus on access to capital issues, the effect of volatile energy prices, and how the overall economic downturn is affecting the renewable fuels industry. Please note that there will be a preparatory staff briefing on Monday, March 2, 2008 at 2:00 p.m. in room 2360 RHOB. If you or your staff has any questions concerning the hearing, please contact Mark Palmer, Agriculture Counsel of the Committee at ext. 5-4038.

April 8, 2009

Matt Hubbard
[redacted]

Re: Lesley Graves Percentage of Ownership

To Whom it May Concern:

Lesley Graves is a member of Golden Triangle Energy Cooperative, Inc. a Missouri nonprofit cooperative marketing association ("GTEC"). As a member, she has the right and obligation to provide 5683 bushels of corn each year. Her Interest as related to those bushels and as a percent of the Cooperative would be approximately .18% (or .0018).

If you have any questions please feel free to call me.

Sincerely,
[redacted]

Sheri Sharp, Controller
Golden Triangle Energy, LLC
[redacted]

15053 Highway 111 • Craig, MO 64437 • Phone: (660) 683-5646 • Fax: (660) 683-5537 • goldentriangleenergy.com

FORMED UNDER THE LAWS OF THE STATE OF MISSOURI

*Certificate No. 49* *1 share = 50 Units*

# *Biofuels, LLC*

*This Certifies that Lasley Groves is the owner(s) of 50 units of the above named Missouri Nonprofit Cooperative Marketing Association transferable only on the books of the Cooperative by the holder(s) hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed. The transfer of this Cooperative interest is subject to restrictions set forth in the Cooperative's Bylaws, and the transfer of the related membership rights may be effected only upon compliance with any procedure provided in the Bylaws.*

*IN WITNESS WHEREOF, the said Cooperative has caused this Certificate to be executed on its behalf by its duly authorized officers this 29th day of March, 2005.*

[redacted]
*Warren Stemme*
*Chairman*

[redacted]
*Dale R. Ludwig*
*Secretary/Treasurer*

****Biofuels, LLC, is comprised of 400 farmer/investors owning a total of 800 shares.****

**Sass, Paul**

---

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 1:54 PM
**To:** Hartz, Joe
**Subject:** RE: Renewable fuels

I'll put out the feelers. We should be able to find someone for this hearing. Let me know when you learn the angle.

Thanks Joe.

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**From:** Hartz, Joe
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Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
[redacted]

**Sass, Paul**

**From:** Shupe, Brooke
**Sent:** Tuesday, February 24, 2009 1:57 PM
**To:** Sass, Paul
**Subject:** Re: Renewable fuels hearing

It would be nice if we had more info on the topic! Oh well....what about Steve Flick or an investor at Golden Triangle....Sam might have a good suggestion there.

Sent from my BBerry Wireless Device

---

**From:** Sass, Paul
**To:** Endicott, Alicia; Higdon, Chad; Klindt, Jason; Kraus, Tommy; Kreps, Angela; Loch, Brittney; Roe, Melissa; Searcy, Shawna; Shupe, Brooke; Smith, Buffy; Swendson, Jaime; Woodward, Sarah
**Cc:** Brown, Tom
**Sent:** Tue Feb 24 13:53:16 2009
**Subject:** Renewable fuels hearing

Please see the email below and let me know if you have any suggestions on who can testify next week on renewable energy. All I need are the names and I can follow up with them and provide more information.

Thanks everyone.

Paul

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Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
[redacted]

**Sass, Paul**

**From:** Klindt Jason
**Sent:** Tuesday, February 24, 2009 2:56 PM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels hearing

Lets make sure that we do not get a renewable company that SG or his wife is invested in.

---

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 1:53 PM
**To:** Endicott, Alicia; Higdon, Chad; Klindt, Jason; Kraus, Tommy; Kreps, Angela; Loch, Brittney; Roe, Melissa; Searcy, Shawna; Shupe, Brooke; Smith, Buffy; Swendson, Jaime; Woodward, Sarah
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Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
[redacted]

**Sass, Paul**

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 4:17 PM
**To:** Klindt, Jason
**Subject:** RE: Renewable fuels hearing

Thanks Jason,

There is something up in St. Joe, but we might go we Steve Flick from Show me Energy, which is just south of the district. Last time we did this we have Brooks Hurst come out on behalf of the MO Soybean Assn.

---

**From:** Klindt, Jason
**Sent:** Tuesday, February 24, 2009 4:15 PM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels hearing

Golden Triangle (Craig), BioFuels LLC (Mexico, Mo) and Show Me Ethanol (Carrollton)

Isn't there a renewable energy plant/thing in St. Joseph?

---

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 4:08 PM
**To:** Klindt, Jason
**Subject:** RE: Renewable fuels hearing

Which ones are they again?

---

**From:** Klindt, Jason
**Sent:** Tuesday, February 24, 2009 2:56 PM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels hearing

Lets make sure that we do not get a renewable company that SG or his wife is invested in.

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Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
[redacted]

4/8/2009

**Sass, Paul**

**From:** Roe, Melissa
**Sent:** Tuesday, February 24, 2009 4:36 PM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels hearing

Only folks that come to mind are the heads of the soybean and ethanol groups...Dale Ludwig, etc.

---

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 1:53 PM
**To:** Endicott, Alicia; Higdon, Chad; Klindt, Jason; Kraus, Tommy; Kreps, Angela; Loch, Brittney; Roe, Melissa; Searcy, Shawna; Shupe, Brooke; Smith, Buffy; Swendson, Jaime; Woodward, Sarah
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**Subject:** Renewable fuels hearing

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Thanks everyone.

Paul

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Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
[redacted]

**Sass, Paul**

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 4:44 PM
**To:** SamG
**Subject:** hearing on renewable fuels

The small business committee is doing a hearing on renewable fuels next week. Do you have anybody off the top of your head who we should invite? Last time we had a hearing on the topic you invited Brooks and Charlie Hurst. Any one you want me to call? Steve Flick?

Paul J. Sass
Deputy Chief of Staff
Congressman Sam Graves (MO-6)
[redacted]

4/8/2009

Hartz, Joe

From: Sass, Paul
Sent: Tuesday, February 24, 2009 4:46 PM
To: Hartz, Joe
Subject: RE: Renewable fuels

Can I just get it to you tomorrow at the hearing?

---

**From:** Hartz, Joe
**Sent:** Tuesday, February 24, 2009 4:11 PM
**To:** Sass, Paul; Haas, Karen
**Subject:** RE: Renewable fuels

That clears it up then. I'd love to see the copy of the briefing (book)? Do you have an intern who can run it over or just bring it to the hearing tomorrow?

---

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 4:05 PM
**To:** Haas, Karen; Hartz, Joe
**Subject:** RE: Renewable fuels

Sorry for the delay, I have been away from my desk for a little while.

We should not have any problem finding a person from the 6th to testify at this hearing. We have extensive Ag contacts in the district.

Given SG's agricultural background and the crops he grows (beans and corn) SG is a huge supporter of the renewable fuels standard (RFS). SG would NOT invite a witness who is irritated with the RFS because of the impact it has made on feed prices and such. Trust me, plenty of folks, mainly the cattle industry, have come to us about the increased in feed prices due to the RFS, but SG still remains supportive.

In his mind, commodities are volatile by nature. Some times beef prices are up and corn down, sometimes corn is up and beef is down, but his point is somebody is going to be complaining, its just a matter or weathering the storm.

In 2004 SG held a hearing on "the Benefits of tax incentives for Producers of Renewable Fuels and its Impact on Small Business and Farmers." We invited former Rep. Hulshof, MO Soybean Assn, National Corn Growers Assn, Renewable Fuels Assn, the National Biodiesel Board, the National Ethanol Vehicle Coalition, and the Environmental and Energy Study Institute. Joe, I can give you a copy of the briefing for your reference.

Let me get some names together and I will follow up with Joe with what I get.

---

**From:** Haas, Karen
**Sent:** Tuesday, February 24, 2009 3:38 PM
**To:** Hartz, Joe; Sass, Paul
**Subject:** RE: Renewable fuels

This seems like a little bit of a reach for a hearing topic. I am curious to hear from Paul about Mr. Graves's position from an agricultural perspective. Jay Cranford in the Leader's office and Rep Shimkus office could also be good resources for potential witnesses on this issue.

4/8/2009

Karen

**From:** Hartz, Joe
**Sent:** Tuesday, February 24, 2009 2:34 PM
**To:** Sass, Paul
**Cc:** Haas, Karen
**Subject:** RE: Renewable fuels

Theme is ethanol/biodiesel/cellulosic ethanol (derived from renewable biomass feedstocks such as corn stover, switchgrass, wood chips, etc). Basic state of the industry stuff---especially what they are encountering with the economy the way it is. They are envisioning as witnesses producers from the ethanol, biodiesel, and cellulosic ethanol industries. Then maybe an academic and possibly a farmer who produces crops for fuel. 1 panel.

I was thinking that we can go one of two ways—we can look for a producer from the district and go with the flow, or we can find a pissed off farmer who's paying more for supplies or has had his world turned upside down because of the volatility of the ethanol markets (imagine a dairy farmer who watched their feed prices soar during the corn-based ethanol boom). Now that demand for ethanol is down a bit, we see what the impact was on that dairy farmer and how he's dealt with it. Draw the distinction that the federal push for ethanol, while laudable, has had some side effects that are hurting small business as well.

Thoughts? And what can I do to help the search.

---

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 2:21 PM
**To:** Hartz, Joe
**Subject:** RE: Renewable fuels

Don't ever feel like you are passing it on, I usually know someone, which makes things easier for everyone.

---

**From:** Hartz, Joe
**Sent:** Tuesday, February 24, 2009 1:56 PM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels

I don't want to pass this along to you, but with no notice at all, it makes it tough for me to go through channels here in DC to find someone from MO-6.

---

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Thanks Joe.

4/8/2009

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Chances that we'll find someone and be able to get them here by next week is slim, but thought I'd ask. The majority needs to do a better job on letting us know what the schedule is.

Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
[redacted]

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Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
[redacted]

**Sass, Paul**

**From:** Higdon, Chad
**Sent:** Wednesday, February 25, 2009 10:50 AM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels hearing

Anyone at Golden Triangle in Craig

Bill Becker at Lifeline would be good.

There is also a new biodiesel plant going in St. Joe, about 95% done but are dealing with some overrun costs right now. I could find you a contact there.

Also might be good to get an actual grain farmer to come in if it fits

---

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 1:53 PM
**To:** Endicott, Alicia; Higdon, Chad; Klindt, Jason; Kraus, Tommy; Kreps, Angela; Loch, Brittney; Roe, Melissa; Searcy, Shawna; Shupe, Brooke; Smith, Buffy; Swendson, Jaime; Woodward, Sarah
**Cc:** Brown, Tom
**Subject:** Renewable fuels hearing

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Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
[redacted]

4/8/2009

**Sass, Paul**

**From:** Shupe, Brooke
**Sent:** Wednesday, February 25, 2009 10:04 AM
**To:** Sass, Paul
**Subject:** FW: S.B hearing

Paul,

Jessica's e-mail is below. Dennis Alt is from Carrollton and Bill Becker is from St. Joe. They will already be in town so if Brooks can't come, one of these guys might work and they would be happy to do it. Thanks.

Brooke

---

**From:** Jessica Bennett [redacted]
**Sent:** Wednesday, February 25, 2009 9:42 AM
**To:** Shupe, Brooke
**Subject:** S.B hearing

Hi Brooke,

Per our conversation, we will have some folks in DC next week from the MO Corn Growers. We would welcome the opportunity to testify at Wednesday's hearing in the Small Business Committee if you are looking for someone. I have listed below some of the individuals who will be in town.

Dennis Alt - Interim CEO Show Me Ethanol

Bill Becker - CEO Lifeline Foods & Ethanol
Gary Clark - Senior Director of Market Development

Please let me know if there's anything else I can do to help.

Thanks!

Jessica

Hartz, Joe

From: Sass, Paul
Sent: Wednesday, February 25, 2009 9:53 AM
To: Hartz, Joe; Haas, Karen
Cc: Shupe, Brooks
Subject: RE: Renewable fuels

Back in 2004 SG had a friend (Brooks Hurst) who is a member of the MO Soybean Assn testify on a similar topic and he wants me to extend an invitation to him. I am calling him today to gauge his interest.

Joe let me know if you have any more details on the hearing so I can pass them along.

Also, a contingent of MO Corn Growers will be in town next week with several folks from the 6th tagging along. If Mr. Hurst can't make it to town than the MO Corn Growers will be our plan B.

---

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4/8/2009

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4/8/2009

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Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
[redacted]

4/8/2009

**Smith, Buffy**

**From:** Sass, Paul
**Sent:** Thursday, February 26, 2009 5:13 PM
**To:** Smith, Buffy
**Subject:** RE: small biz hearing

Ok, he is calling me tomorrow morning to figure it out, I will follow up with you afterwards.

---

**From:** Smith, Buffy
**Sent:** Thursday, February 26, 2009 5:11 PM
**To:** Sass, Paul
**Subject:** RE: small biz hearing

Let me know the details when you have them. I can handle Brooks' flight and hotel, but want to know what he is doing before I call him.

---

**From:** Sass, Paul
**Sent:** Thursday, February 26, 2009 5:09 PM
**To:** Smith, Buffy; Brown, Tom; Klindt, Jason
**Subject:** RE: small biz hearing

Ok, I just spoke with Sam and apparently Brooks Hurst is back on board. It will get nailed down tomorrow. I got Sam to agree to allowing Bill Becker to testify if Brooks doesn't work out.

---

**From:** Smith, Buffy
**Sent:** Thursday, February 26, 2009 5:06 PM
**To:** Sass, Paul; Brown, Tom; Klindt, Jason
**Subject:** RE: small biz hearing

I have heard of him, but don't know anything about him.

---

**From:** Sass, Paul
**Sent:** Thursday, February 26, 2009 5:01 PM
**To:** Brown, Tom; Klindt, Jason; Smith, Buffy
**Subject:** small biz hearing

You guys have any thoughts on Bill Becker? When I mentioned him to SG he didn't want to have him do it, but I'm not sure why. At this point its our only options other then a Show Me Ethanol person.

---

**From:** Shupe, Brooke
**Sent:** Wednesday, February 25, 2009 10:04 AM
**To:** Sass, Paul
**Subject:** FW: S.B hearing

Paul,

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Bill Becker - CEO Lifeline Foods & Ethanol
Gary Clark - Senior Director of Market Development

Please let me know if there's anything else I can do to help.

Thanks!

Jessica

**Smith, Buffy**

From: Southwest Airlines [SouthwestAirlines@mail.southwest.com]
Sent: Friday, February 27, 2009 6:29 PM
To: Smith, Buffy
Subject: Ticketless Confirmation - HURST/THOMAS - J247C4







Receipt and itinerary as of 02/27/09 5:25 PM

**Confirmation Number**
**J247C4**




Confirmation Date: 02/27/09
Received: THOMAS H

**Passenger Information**

| Passenger Name | Account Number | Ticket# | Expiration[1] |
|---|---|---|---|
| HURST/THOMAS | [redacted] | 526-8773567158-1 | 02/27/10 |

[1] All travel involving funds from this Confirmation Number must be completed by the expiration date.

**Itinerary**

| Date | Flight | Routing Details |
|---|---|---|
| Tue Mar 03 | 280 | Depart KANSAS CITY INTL (MCI) at 9:00 AM<br>Arrive in BALTIMORE-WASHNTN (BWI) at 12:25 PM |
| Wed Mar 04 | 1643 | Depart BALTIMORE-WASHNTN (BWI) at 6:35 PM<br>Arrive in KANSAS CITY INTL (MCI) at 8:35 PM |

**Cost and Payment Summary**

| | |
|---|---|
| Air | $ 133.96 |
| Tax | $ 17.24 |
| PFC Fee | $ 9.00 |
| Security Fee | $ 5.00 |

**Total Payment: $165.20**

Current payment(s)
02/27/09 MASTERCARD [redacted] $165.20

**Fare Rule(s)**
Valid only on Southwest Airlines. NON REFUNDABLE/ STANDBY REQ UPGRADE TO Y. All travel involving funds from this Confirmation Number must be completed by the expiration date. Any change to this itinerary may result in a fare increase.

Fare Calculation:

ADT- 1 MCIWNBWI TZCNR 72.00 BWIWNMCI TZCNR 72.00 $144.00 ZPMCI BWI XFMCI4.50

4/8/2009

BWN4.50 AYMCI2.50 BWI2.50 $165.20

**Important Checkin Requirement**
Passengers who do not obtain a boarding pass and are not present and available for boarding in the departure gate area at least ten minutes prior to scheduled departure time may have their reserved space cancelled and will not be eligible for denied boarding compensation.

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4/8/2009

Hartz, Joe

From: Loch, Brittney
Sent: Tuesday, March 03, 2009 6:00 PM
To: Hartz, Joe
Subject: FW:
Attachments: Written Testimony Brooks Hurst 3-4-09 House Small Business.doc

Brooks Hurst's testimony for tomorrow

From: JP Dunn [redacted]
Sent: Tuesday, March 03, 2009 5:57 PM
To: [redacted]
Cc: Loch, Brittney
Subject:

J.P. Dunn
Manager of Field Services
Missouri Soybean Association
Missouri Soybean Merchandising Council
[redacted] or [redacted] (cell)

4/8/2009

Brooks Hurst
[redacted]

April 29, 2009

Mr. Leo Wise,
Staff Director & Chief Counsel,
1017 Longworth House Office Building
Fax (202) 226-0997
Phone (202) 225-9739

Re: Request for Information

Dear Mr. Wise:

I received a letter from you dated April 15, 2009, that asked me for information and documents regarding my participation at a small business committee hearing on "The State of the Renewable Fuels Industry in the Current Economy", my financial interests in three companies, and my relationship with Sam and Lesley Graves.

The staff members for Congressman Graves that I remember assisting me with my participation at the hearing are Buffy Smith, who helped coordinate my travel, and Paul Sass. Joe Hartz who is with the House Committee on Small Business also assisted me. The only correspondence or documents I have concerning the hearing are a few e-mails that I've attached.

Regarding my financial interests, I do not have any financial interest in Show Me Ethanol, LLC. I do own three shares of stock in Biofuels LLC, or a .326797 percent interest, and I own 15,634 bushels of corn each year in Golden Triangle Energy Cooperative, or a .005 percent interest.

I don't have any business relationship with Sam or Leslie Graves. Sam Graves and I are constructing a small plane and are using parts from some other inoperable planes that we also own.

You mentioned you may want to interview me. Please let me know when that might be so I can plan ahead.

Sincerely,

Brooks Hurst




P.O. Box 104778 3337 Emerald Lane Jefferson City, MO 65110
Phone 573-635-3819 800-MO-BEAN-1 Fax 573-635-5122
www.mosoy.org

April 24, 2009

To Whom It May Concern,

Mr. Thomas Brooks Hurst, farmer-investor, in Biofuels, LLC currently owns 3 shares of stock valued at $45,000. Mr. Hurst's ownership investment percentage in Biofuels, LLC is 0.326797.

Please don't hesitate to contact us if you need additional information.

Regards,

[redacted]

JP Dunn
Director of Field Services




Golden Triangle Energy, LLC
15053 Highway 111
Craig, MO 64437

April 27, 2009

Brooks Hurst
[redacted]

Re: Brooks Hurst Percentage of Ownership

To Whom it May Concern:

Brooks Hurst is a member of Golden Triangle Energy Cooperative, Inc. a Missouri nonprofit cooperative marketing association ("GTEC"). As a member, he has the right and obligation to provide 15,634 bushels of corn each year. His Interest as related to those bushels and as a percent of the Cooperative would be approximately .50% (or .005).

If you have any questions please feel free to call me.

Sincerely,

[redacted]
Sheri Sharp, Controller
Golden Triangle Energy, LLC
[redacted]

-----Original Message-----
**From:** Adam Buckallew [mailto:[redacted]]
**Sent:** Tuesday, March 03, 2009 1:43 AM
**To:** [redacted]
**Subject:** FW: Biodiesel Talking Points

Brooks,

JP had previously written this set of talking points for Missouri biodiesel production. He was supposed to send me a few things he wanted to add to this list this evening and then I was going to look it over for him and pass it on to you. I hadn't heard anything from JP tonight, but I wanted to make sure you had something to take with you to the Capitol. We may end up sending an email to Congressman Graves' office that has additional information for you.

Sorry about the delay,

Adam

Biodiesel receives a $1 per gallon blender's tax credit from the federal government. B99 (99% biodiesel + 1% petro diesel) usually has had the credit applied, while B100 (100%) biodiesel has not. B99 sold over the summer for more than $4.30 per gallon while it is currently below $2 per gallon.

Glycerin can be utilized in many environmentally friendly industrial products. However, Glycerin itself can serve as a fuel and/or fuel conditioner with #4 fuel-oil.

Missouri has focused on drawing production to the state and encouraging majority farmer owned partnerships. This means transportation jobs, construction jobs, and returning earnings to rural communities. Besides that, biodiesel plants have created additional demand for soybean oil. That means additional demand for beans and additional meal to be fed to livestock (further adding value to a Missouri product).

Crush capacity has and continues to expand in Missouri. That requires construction of new facilities which means soybean demand will remain strong for Missouri farmers and meal supplies will be abundant for those feeding hogs, poultry, cattle, etc. This is especially evident along the I-29 corridor. For the first time, to my knowledge, the basis for soybeans may be higher on the western side of the state than along the Mississippi. The basis will be lower for soybean meal which will push protein/feed prices downward. That means additional profits for soybean farmers and livestock producers. Profits that they reinvest in their local communities.

Not only are construction jobs, transportation jobs, and earnings for rural communities created, but biofuels add to the fuel supply. Farmer-owned biodiesel and ethanol production facilities across the midwest have the capacity to provide 5% of our nation's liquid fuel requirements. Building these facilities is the same as adding 5% to our nation's refining capacity. The difference is that we have reduced our dependence on foreign petroleum and that these facilities are unaffected by a single weather event (like when a hurricane hits Houston).

SOYBEANS PROVIDE FOOD, FEED, AND FUEL
Whole soybeans are rarely fed to animals or eaten whole by people. The beans get processed (crushed), the protein and hulls go to make feed/food, and we've been working on uses for the oil since the soybean checkoff's inception.

2/3 of a bushel of soybeans yields approx. 7.5 lbs (1 gallon) of oil, 30 lbs of meal, and 3 lbs hulls.

1 gallon of soybean oil = 1 gallon of biodiesel. You put in 10% methanol and take out 10% glycerin (by volume). (glycerin weighs approx. 10 lbs per gallon)

4/29/2009

So, for every gallon of biodiesel, you have 30lbs of meal, 3 lbs of hulls, and 1lb of glycerin.

95% of that meal, hulls, and glycerin is fed to animals.

Hulls have virtually the same feed value as corn.

Glycerin is an energy component in feed for all livestock and can be refined to a pharmaceutical grade that is used in foods.

Meal is predominantly fed to hogs and poultry, but can be fed as protein supplement to beef cattle and dairy cattle as well.

For every gallon of biodiesel you sell, you have to sell 4 gallons of feed.

We are doubling our soybean crush (processing) capacity in Missouri because of the biodiesel industry.

Out of the average 200 million bushels Missouri produces annually, 70 million bushels has been processed here in the past, while we exported the remaining 130 million to other states or foreign countries.

MO will now be adding value to 140 million bushels here in the state and still shipping out 60 million bushels or more as yields increase.

We are processing those beans for their oil which is in demand because of biodiesel. The price for vegetable oil may be inflated due to speculators investing in commodities, but the additional crush capacity is being built to provide feedstocks for biodiesel plants.

That means that there is going to be twice as much soy hulls and 100% more soybean meal and 175% more glycerin entering in to an already matured livestock feed market.

That would suggest that feed prices will be pressured downward.

We are already over 150 million gallons of biodiesel production in Missouri annually.

If all the soybean meal we are producing was going to feed one type of animal; we'd need 1 hog to eat the meal from every 4 gallons of biodiesel produced, or 1 dairy cow for every 17 gallons, or 2 turkeys for every gallon, or 10 chickens for every gallon of biodiesel produced.

Soy oil is shouldering the value of a bushel of beans.

Soybean oil is being utilized less and less for cooking, because of trans fats. The only low linolenic soybeans that are currently available are grown along the I-80 corridor. Requirements for biodiesel feedstocks has reversed the trend for Missouri's soybean oil demand.

Soybeans provide feed AND fuel.

Biodiesel is extending the diesel fuel supply and diesel prices have a larger effect on food prices than commodity prices do. Transportation, processing and delivery makes up a much larger percentage of food costs than the grains they are made.

Diesel fuel prices have a great effect on all consumer goods because of manufacturing and transport.

So, biodiesel is good for all consumers (even those that don't drive a diesel vehicle) because it helps extend the fuel supply and lower high fuel prices for the transportation industry.

PURPOSED B5 BILL
A 5% biodiesel fuel inclusion standard might not sound like it would have an impact on consumers, but imagine how much fuel prices would go up if we lost 5% of our petroleum diesel supply when demand for fuel is so tight.

A 5% biodiesel fuel inclusion standard means a 5% reduction in diesel emissions or a reduction of 15.4 million lbs of particulate emissions and a 168 million lb reduction in carbon monoxide emissions annually.

Missouri's B5 bill is necessary to allow biodiesel to extend the state's fuel supply and reduce costs for consumers. Most fuel distributors are contractually bound to a petroleum company and they can only sell that company's product. Those petroleum companies have been unwilling to offer biodiesel at bulk loading and blending facilities or allow the sale of biodiesel "under their

canopy". The B5 Bill would break-up petroleum's current fossil fuel diesel mandate and allow the free market to work.

PRODUCTION
The following facilities make up most of Missouri's biodiesel production volume:
Mid America Biofuels - Mexico, MO - 30 million gallon capacity
Prairie Pride - Deerfield, MO - 30 million gallon capacity
Paseo Cargill Energy - Kansas City, MO - 40 million gallon capacity
Northwest Biodiesel - St. Joseph, MO - 15 million gallon capacity
AGP - St. Joseph, MO - 30 million gallon capacity
Global Fuels - Dexter, MO - 3-5 million gallon capacity
Natural Biodiesel - Steele, MO - 3-5 million gallon capacity
High Hill Biodiesel - High Hill, MO - 3-5 million gallon capacity
Producer's Choice Soy Energy - Moberly, MO - under construction - 15 million gallon capacity
Terra - St. Joseph, MO - under construction - 30 million gallon capacity
American Energy Producers - Carrollton, MO - under construction - 50 million gallon capacity
Great River - Lilbourn, MO - for sale - 3-5 million gallon capacity

-----Original Message-----
**From:** Hartz, Joe [mailto:[redacted]]
**Sent:** Monday, March 02, 2009 3:03 PM
**To:** [redacted]
**Subject:** RE: Wednesday's hearing

Thank you.

---

**From:** [redacted] [mailto:[redacted]]
**Sent:** Monday, March 02, 2009 3:10 PM
**To:** Hartz, Joe
**Subject:** Re: Wednesday's hearing

Mr. Hartz,

Go ahead and use my title as member of the board of directors for both Pasco-Cargill Biofuels plant and Missouri Soybean Association.

Thanks,
Brooks

Sent via BlackBerry by AT&T

---

**From:** "Hartz, Joe"
**Date:** Mon, 2 Mar 2009 14:56:36 -0500
**To:** [redacted]
**Subject:** Wednesday's hearing
Hello Mr. Hurst—

I just wanted to check in to see how you would like your affiliation to be for the hearing on Wednesday. Again, you can be affiliated with any (or all) of the hats you wear. We just want to make sure we are publicizing the event properly and you are represented as you would like to be. Please just let me know as soon as you can. Thanks—Joe

Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
[redacted]

To sign up to be on our media list please go to: http://republicans.smbiz.house.gov/press/asp_sign_up_for_email_press_release.asp

-----Original Message-----
**From:** Hartz, Joe [mailto:[redacted]]
**Sent:** Monday, March 02, 2009 1:57 PM
**To:** [redacted]
**Subject:** Wednesday's hearing

Hello Mr. Hurst—

I just wanted to check in to see how you would like your affiliation to be for the hearing on Wednesday. Again, you can be affiliated with any (or all) of the hats you wear. We just want to make sure we are publicizing the event properly and you are represented as you would like to be. Please just let me know as soon as you can. Thanks--Joe

Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
[redacted]

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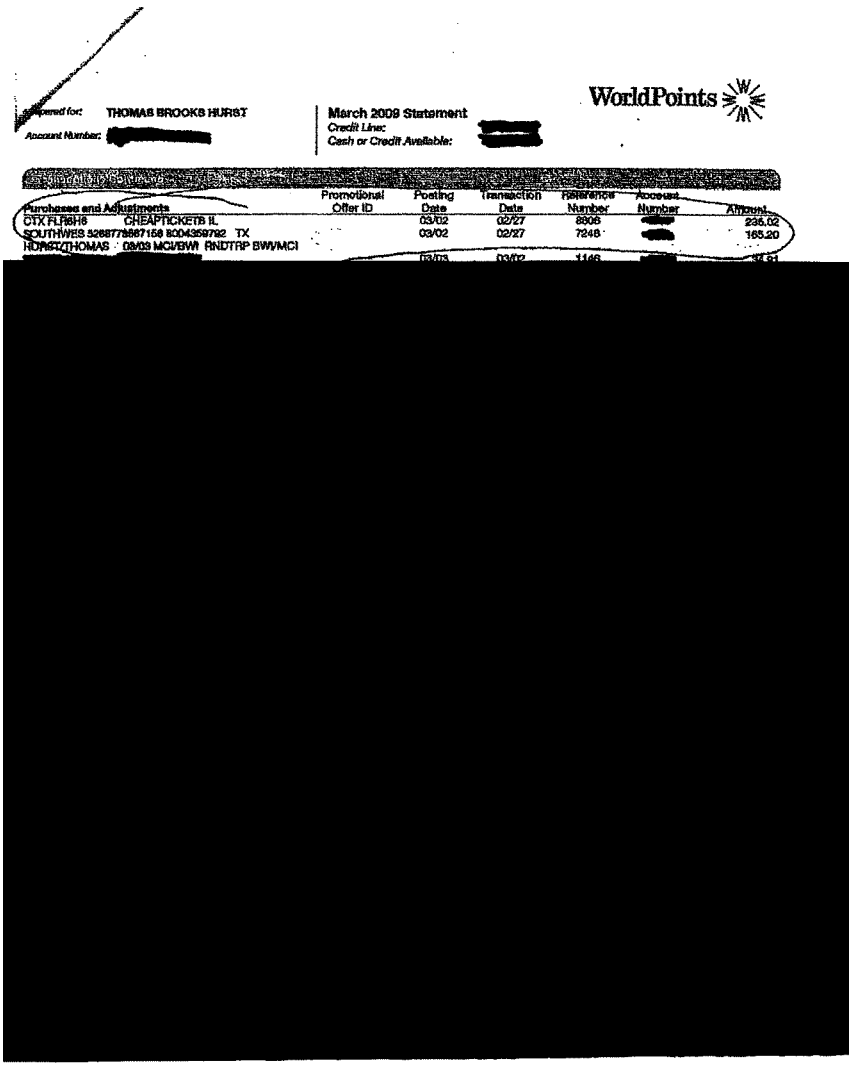
WorldPoints



Prepared for: THOMAS BROOKS HURST

Account Number: [redacted]

March 2009 Statement

Credit Line: [redacted]

Cash or Credit Available: [redacted]

| Purchases and Adjustments | Promotional Offer ID | Posting Date | Transaction Date | Reference Number | Account Number | Amount |
|---|---|---|---|---|---|---|
| CTX FLR6H6 CHEAPTICKETS IL | | 03/02 | 02/27 | 8806 | [redacted] | 235.02 |
| SOUTHWES 5268778867158 8004359792 TX | | 03/02 | 02/27 | 7248 | [redacted] | 165.20 |
| HURST/THOMAS 03/03 MCI/BWI RNDTRP BWI/MCI | | | | | | |
| [redacted] | | 03/03 | 03/02 | 1146 | [redacted] | [illegible] |

[redacted]

LAW OFFICE OF ELLIOT S. BERKE PLLC

www.berkelawdc.com

October 5, 2009

The Honorable Zoe Lofgren
Chairwoman
The Honorable Jo Bonner
Ranking Republican Member
Committee on Standards of Official Conduct
HT-2, The Capitol
Washington, DC 20515

Dear Chairwoman Lofgren and Ranking Member Bonner:

The Office of Congressional Ethics ("**OCE**") was established by the United States House of Representatives as an independent, non-partisan entity charged with reviewing allegations of misconduct against Members and, *when appropriate*, referring matters to the Committee on Standards of Official Conduct ("**Ethics Committee**"). The "*Rules for the Conduct of Investigations*" authorizing the OCE to conduct its investigations of Members for alleged House Rule(s) violations, and which govern the OCE's conduct during the course of such investigations ("**OCE Rules**"), were adopted under authority granted by H. Res. 895 of the 110th Congress Section 1.(c)(F).

The OCE has investigated Representative Sam Graves ("**Rep. Graves**") for an alleged violation(s) of House Rules. The OCE's investigation commenced after an anonymous Complaint was filed. A copy of the Complaint has not been provided to Rep. Graves, nor has the OCE confirmed to Rep. Graves the specific fact allegations contained in the Complaint.

At the beginning of the OCE's investigation, the OCE described the nature of the alleged violation(s), as follows:

> **Representative Sam Graves, Ranking Member of the Committee on Small Business, invited Mr. Brooks Hurst to testify at a Committee hearing on 'The State of the Renewable Fuels Industry in the Current Economy.' The hearing was held on March 4, 2009. It appears that Mr. Hurst is a friend of Rep. Graves and his wife, Lesley Graves, and that Mr. Hurst and Mrs. Graves both hold a financial interest in the same renewable fuels plants in Missouri. Neither Rep. Graves nor Mr. Hurst disclosed the financial connection between Mr. Hurst and Mrs. Graves to the Committee during the hearing. Rep. Graves' conduct may have violated House Rule 23.**

*See OCE Corresp. to Rep. Graves,* dated April 1, 2009, *"INITIATION OF PRELIMINARY REVIEW."* The OCE never fully explained the nature of the alleged violation(s) to Rep. Graves. The OCE did not provide Rep. Graves with specific citation(s) to the section(s) of House Rule 23 or precedent that the OCE was analyzing to make a determination of whether Rep. Graves may have violated any rule(s). *Id.* After Rep. Graves received the OCE's April 1, 2009 correspondence, Rep. Graves' counsel contacted the OCE and specifically asked the OCE's counsel to disclose the subsection(s) of House Rule 23 and any other precedent that the OCE believed Rep. Graves may have violated. The OCE did not explain the alleged violation(s) other than they generally pertained to House Rule 23.

As the Ethics Committee is aware, House Rule 23 is a dense rule that is comprised of numerous subsections. Thus, it was virtually impossible for Rep. Graves to know, with any degree of certainty, which section(s) of House Rule 23 the OCE was considering during its investigation. The OCE's refusal to inform Rep. Graves of this information was unfair and arguably prejudicial to Rep. Graves, as he responded to the OCE's investigative inquiries and requests for materials regarding alleged ethics violation(s).

In retrospect, the fact that the OCE would not elaborate or direct Rep. Graves to any specific section of House Rule 23 suggests that the OCE did not have reason to believe that an alleged violation of House Rule 23 may have occurred. Rhetorically speaking, if there was a potential violation of

House Rule 23, what prevented the OCE from informing Rep. Graves of the subsection or language of the rule that was at issue?

Notwithstanding the OCE's unwillingness to provide a specific citation to the section of the rule at issue, the OCE's investigation concerned Mr. Brooks Hurst who testified as a witness on March 4, 2009, at a Committee on Small Business hearing entitled, "*The State of the Renewable Fuels Industry in the Current Economy*" (**"Hearing"**). The OCE transmitted its Report and Findings to the Ethics Committee on August 6, 2009 (**"OCE Report"**). The OCE's *theory* is that Mr. Hurst and Rep. Graves' wife, Lesley Graves, hold investments in Golden Triangle Energy Cooperative and Biofuels LLC, and Rep. Graves should have disclosed this information (somehow) prior to Mr. Hurst's testimony at the Hearing. Moreover, that "Representative Graves could expect Witness A [Mr. Hurst] to testify at the hearing in a manner consistent with Witness A's and his [Rep. Graves] own financial interest." *See OCE Report*, at p. 5-6, ¶ 3.

It is now known to Rep. Graves - after receiving a copy of the OCE Report - that the OCE was applying its *theory* to the requirements of House Rule 3, clause 1, House Rule 23, clause 2, and provisions of the House Ethics Manual. The relevant excerpts from the rules and the provisions of the House Ethics Manual that the OCE was evaluating in connection with this matter are:

> **Under House Rule 23 clause 2, Members "shall adhere to the spirit and the letter of the Rules of the House...".**
>
> **Under House Rule 3, clause 1, "Every Member...shall vote on each question put, unless he has a direct personal or pecuniary inters tint he event of such question."**
>
> **The House Ethics Manual advises "sponsoring legislation, advocating or participating in an action by a House committee, or contacting an executive branch agency...entails a degree of advocacy above and beyond that involved in voting, and thus a Member's decision on whether to take any such action on a matter that may affect**

> **his or her personal financial interests requires added circumspection."**
>
> **The House Ethics Manual further advises that Members should guard against even the appearance of any impropriety or conflict of interest because such action may adversely affect public perceptions and confidence.**

*See OCE Report*, at p. 7. It should be noted that the only section of House Rule 23 that the OCE was evaluating is clause 2, which generally states that Members should follow the House Rules. Thus, the OCE's statements to Rep. Graves at the onset of its preliminary review of this matter - that an alleged violation of House Rule 23 may have occurred - were not helpful to Rep. Graves' understanding of the purported violation(s). In reality, the OCE was not focusing on House Rule 23. The OCE was focusing on (1) provisions of the House Ethics Manual, providing that "*Members should guard against even the appearance of any impropriety or conflict of interest*," and (2) House Rule 3, clause 1, which states Members "*shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question.*" *See OCE Report*, at p. 7.

The OCE Report concludes that "[w]hile the Board finds that there is substantial reason to believe that Representative Graves' invitation to Witness A [Mr. Hurst] created an appearance of a conflict of interest, the Board notes that any disqualifying interest that Representative Graves had in this matter would likely have affected Representative Graves only as a member of a class; therefore, **there is not substantial reason to believe that Representative Graves' invitation to Witness A [Mr. Hurst] violated the spirit of House Rule 3.** *See OCE Report*, at ¶ 81.[1]

The Committee on Small Business didn't vote at the Hearing, so there could be no violation of House Rule 3, clause 1. Further, the Committee on Small

[1] The OCE Report further states that "[t]he House Ethics Manual, on page 234, advises Members that, in the context of voting, Members should 'withdraw when a question concerning himself arises; but ...the disqualifying interest must be such as affects the Member directly, and not as one of a class.'". *See OCE Report*, at ¶ 81, *fn.* 101.

Business has no financial oversight and held the Hearing for purposes of gathering information on the state of the renewable fuels industry, so there could be no "*appearance of a conflict of interest*," and therefore, no violation of the House Ethics Manual or House Rule 23, clause 2. The OCE's investigation should have ended here based upon these undisputable facts. Notwithstanding that Rep. Graves' informed the OCE of these truths, the OCE chose to continue its investigation taking a trip to Kansas City, Missouri for two days and interviewing Rep. Graves and three individuals from his staff, all of which was a waste of the taxpayers' dollars.

We hereby respectfully request that the Ethics Committee not make public the OCE Report. While we respect the need for transparency and accountability in the ethics process, we believe that the interests of justice, fundamental fairness, and due process are of paramount concerns in this instance.

The Ethics Committee adopted rules ("**Ethics Committee Rules**") to provide a fair procedural framework for the conduct of the its activities and to help ensure that the Ethics Committee serves well the people of the United States, the House of Representatives, and the Members, officers, and employees of the House of Representatives. *See Forward to Ethics Committee Rules*, p. 1. Ethics Committee Rule 1 acknowledges that "when the interests of justice so require, the Ethics Committee, by a majority vote of its members, may adopt any special procedures, not inconsistent with these rules, deemed necessary to resolve a particular matter before it." *See* Ethics Committee Rule 1(c), p. 1. As detailed below, the specific procedural flaws and inaccuracies within the OCE Report make it incumbent on the Ethics Committee to weigh whether or not the public release of the report and findings will serve the interests of justice or, in actuality, serve to potentially denigrate them.

While Ethics Committee Rule 1 provides the Committee with specific latitude and discretion in just such a case, the Ethics Committee may not need to exercise it. The Ethics Committee has publicly acknowledged that it has extended this matter for an additional 45-day period pursuant to Rule 17A(b)(1)(B) and 17A(c). *See Statement of the Chair and Ranking Republican Member of the Committee on Standards of Official Conduct*

*Regarding Representative Sam Graves, September 15, 2009.* According to Ethics Committee Rule 17A(e):

> **If the Committee votes to dismiss a matter referred from the Board, the Committee is not required to make public the written report and findings of the Board pursuant to paragraph (c) unless the Committee's vote is inconsistent with the recommendation of the Board.**

*See Forward, Rules of the Committee on Standards of Official Conduct, 111th Congress (Adopted February 10, 2009 Amended June 9, 2009)* at 25. Both of the criteria for the Ethics Committee to exercise its discretion under this rule are met in this instance: First, the Ethics Committee voted to dismiss the matter referred to it from the Board; and second, the Ethics Committee's vote was not inconsistent with the recommendation of the Board, which simply read as follows:

> **RECOMMENDATION: The Board of the Office of Congressional Ethics recommends that the Committee on Standards of Official Conduct further review the above described allegations concerning Representative Graves.**

*See OCE Report,* at *(1).* Because the Ethics Committee further reviewed the matter referred to it by the OCE, its vote is consistent with the OCE's recommendation. Therefore, the Ethics Committee is not required to make public the written report and findings of the Board and indeed should not make public said OCE Report.

As the Ethics Committee has also publicly acknowledged, it identified materials in the OCE Report that contained exculpatory evidence that the OCE failed to provide to Representative Graves. *See Statement of the Chair and Ranking Republican Member of the Committee on Standards of Official Conduct Regarding Representative Sam Graves, September 15, 2009.* For this and other extenuating circumstances, as described below, the Ethics Committee should not publicly release the OCE Report.

## I. THE OCE'S FINDINGS OF FACT ARE OFTEN ARGUMENTATIVE AND INNACURATE & THE OCE

**REPORT OMITS DISPOSITIVE FACTS AND INFORMATION IN REP. GRAVES' FAVOR**

On July 24, 2009, the Board adopted findings of fact and citations to law that were submitted by the OCE staff counsel who conducted the investigation of this matter. *See OCE Report*, at p. 5.

Rep. Graves' counsel was present during each interview of Rep. Graves and his staff. Rep. Graves' counsel does not agree with many of the purported "findings of fact" that have been submitted to the Ethics Committee. The "findings of fact" are often inaccurate and biased, as set forth more fully herein. Moreover, the OCE omitted important facts from its Report, some of which are instrumental in making a determination of whether a violation(s) of any House Rules may have occurred.

**a. The Committee on Small Business Has No Financial Oversight**

The OCE Report omits one of the most important and telling facts of this entire matter, which is that the Hearing was held solely for the purpose of gathering information on the state of the renewable fuels industry.[2] *See OCE Report*, Ex. 9 at ¶ 5.

The Committee on Small Business ("CSB") has no financial oversight whatsoever and it can take no legislative action to financially affect renewable or bio fuel companies or that industry in general. The OCE's *theory* in this matter is that "Representative Graves could expect Witness A [Mr. Hurst] to testify at the hearing in a manner consistent with Witness A's and his own financial interest." *See OCE Report*, at p. 5-6, ¶ 3. The OCE's theory dies on the undisputable fact that CSB has no financial oversight, and

[2] Exhibit 9 to the OCE's Report is a memorandum of OCE's interview of the former Deputy Chief of Staff (Paul Sass), who is currently Deputy Staff Director for the CSB. *See* OCE Report Ex. 9, "Summary" p. 1. The OCE's memorandum states that a member of Rep. Graves' staff informed OCE that "[t]he Committee has limited jurisdiction so they can talk about anything at hearings." *See* OCE Report Ex. 9, at ¶ 5. This is the only reference in the entire OCE Report that addresses the fact that the CSB has no financial oversight and that the hearing was held for the sole purpose of gathering information on the topic of the state of the renewable fuels industry. Needless to say, this information is not contained in the body of the OCE's Report and gets lost in one of seventeen exhibits attached thereto.

therefore, the Hearing could not affect Rep. Graves' or Mr. Hurst's financial interests.

**b. The Committee on Small Business Witness Disclosure Requirements**

The OCE Report also omits the fact that Mr. Hurst complied with all rules pertaining to disclosures by witnesses testifying before the CSB, a fact that is substantially relevant to this exercise.

During the investigation, Rep. Graves provided the OCE with a detailed memorandum prepared by Mr. Barry Pineles ("**Pineles Memo**"). *See* Ex. A, *Pineles Memo*. Mr. Pineles is Chief Counsel for the Republican Staff of the CSB, a position he has held since April 2006. Prior to that, Mr. Pineles was Regulatory Counsel of the CSB. Mr. Pineles also has extensive experience with Committee hearings, including the identification of witnesses and the disclosure requirements for witnesses. The Pineles Memo describes the witness disclosure procedures and requirements for witnesses testifying before the CSB. The Pineles Memo is not even mentioned in the OCE Report.

Of particular relevance to the present matter is that portion of the Pineles Memo pertaining to CSB's witness disclosure requirements, in which Mr. Pineles states:

> **Once non-governmental witnesses have been identified, they must submit a number of items to the Committee [CSB]. First, they must provide a written copy of the statement that will be made a part of the hearing record. Rule XI, cl. 2(g)(4). Second, they must include a curriculum vitae. *Id.* Finally, they are required by the same clause of Rule XI to file "a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness." *Id.* Under the House and Committee [CSB] Rules, the information set forth in Rule XI, cl. 2(g)(4) is the only**

> **information that the Committee [CSB] will receive concerning the background of the witness.**
>
> **Even a brief scan of the attached Adobe document[3] will show that no financial interest, other than grants and contracts, of a witness is to be disclosed pursuant to the House Rules prior to a hearing. Taking an extreme hypothetical, nothing in Rule XI, cl. 2(g)(4) would require that a witness that co-owned a restaurant with a Committee [CSB] member would have to disclose that information. A perusal of the attached form shows that there is no place on the witness disclosure form for any financial information other than that required by Rule XI, cl.2(g)(4). Given the fact that financial interests and dealings of the Member is disclosed pursuant to § 101 of the Ethics in Government Act of 1978, 5 U.S.C. App., a committee staff seeking a witness for a hearing would not even seek to inquire about any financial dealings that the witness might have with a Member of Congress.**

*See Pineles Memo.*, at p. 4. In the present matter, Mr. Hurst provided a curriculum vitae and a copy of his written statement to the CSB, which became a part of the Hearing record. Mr. Hurst further submitted all of the information he is required to disclose in the witness disclosure form ("form"), which was submitted to CSB in a timely fashion. Mr. Hurst complied with all disclosure requirements for witnesses testifying before the CSB.

Rep. Graves and all Members inviting witnesses to CSB hearings do not, and have never inquired into a potential witnesses' financial investments or financial dealings that the witness may have in common with a Member of the CSB or their spouse.[4] Therefore, notwithstanding the fact that Rep. Graves did *not* know which companies Mr. Hurst was invested, there is no possibility that Rep. Graves should have disclosed (at the Hearing or otherwise) that Mr. Hurst is invested in two companies that Lesley Graves is

[3] See Ex. B, *Mr. Hurst's Witness Disclosure Form.*

[4] *See* Ex. C, Manzullo Memo.

invested. The OCE's *theory*, if applied to the CSB hearings, would create an absurdity because it would require all Members of the CSB to cross-check their investments and their spouse's investments with each potential witnesses' investments every time a witness is invited by the CSB to testify.

**c. Witness Selection Process**

The OCE Report erroneously states that Rep. Graves chose Mr. Hurst to testify at the Hearing. *See OCE Report*, at ¶¶ 31, 77. The OCE's findings are not supported by the information that is attached to its report.

Rep. Graves' then Deputy Chief of Staff (Paul Sass) stated in OCE's interview that he believed that *he* suggested Mr. Hurst to Rep. Graves. *See OCE Report*, Ex. 9 at ¶¶ 23, 29. Rep. Graves' Chief of Staff (Tom Brown) and Paul Sass stated during the OCE interviews that they believed Rep. Graves did *not* choose Mr. Hurst to be a witness, and that Rep. Graves *rarely* gets involved in the process of selecting a witness for Small Business Committee hearings. *See OCE Report*, Ex. 8 at ¶ 12; Ex. 9 ¶ 16. Rep. Graves informed the OCE that "[h]e was *not* sure who chose Brooks Hurst to testify at the hearing; he believed that it might have been Paul Sass." *See OCE Report*, Ex. 4 at ¶ 5. Rep. Graves further informed the OCE that "[h]e did *not* decide to invite Brooks Hurst to testify but he threw out Brooks Hurst's name for consideration." *Id.* at ¶ 6. Rep. Graves also informed the OCE that "[h]e did not know who chose the witness [Mr. Hurst]; he doesn't normally make those decisions." *Id.* at ¶ 7. Rep. Graves further informed the OCE that "Paul Sass was involved with the decision to invite Brooks Hurst; that was his job." *Id.* at ¶ 10. There are also numerous e-mails that are attached to the OCE Report that establish that Rep. Graves did not chose Mr. Hurst and was only tangentially involved in discussing a potential witness for the Hearing. *See OCE Report*, Ex. 7. Moreover, these e-mails establish that Rep. Graves' staff was making the determination of who to invite to testify at the Hearing, not Rep. Graves. *Id.*

The OCE Report also states that Rep. Graves dismissed a potential witness under consideration for the hearing because the witness was not from the district. *See OCE Report*, at ¶ 29. From this alleged fact, which is false, the OCE erroneously concludes that Rep. Graves must have also chosen Mr. Hurst to testify at the hearing (*e.g.*, if Rep. Graves dismisses a potential

witness that the staff was considering, then Rep. Graves must have also chose the witness who was invited to the hearing). The OCE's logic summarily rules out that Rep. Graves' alleged decision to dismiss a potential witness had absolutely nothing to do with the staff's decision to choose a witness. The e-mails attached as an exhibit to the OCE Report also contradict the OCE's findings. *See OCE Report,* Ex. 7. The e-mails actually establish that Rep. Graves' staff and the minority staff on the CSB developed the criteria used to select a potential hearing witness before informing Rep. Graves of the upcoming hearing. *See OCE Report,* Ex. 7; Ex. 9 at ¶ 11. Moreover, Paul Sass specifically told the OCE that he, and *not* Rep. Graves, rejected the potential witness because the witness was not from the district. *See OCE Report,* Ex. 9 at ¶ 15.

**d. Conflicts of Interest**

The OCE Report states that Rep. Graves' staff *appeared* to be aware of potential conflicts of interest with the witness selection process because they did not want a witness who was from a company in which Rep. Graves or Mrs. Graves had invested. *See OCE Report,* Heading D at ¶ 60. Again, the facts do not support the OCE's findings.

As Paul Sass explained to the OCE, he simply did not want a witness from any companies that Rep. Graves was invested in, *e.g.*, "someone with their name on a business card." *See OCE Report,* Ex. 9 at ¶ 11. In other words, Rep. Graves' staff did not want a witness who was an officer or employee (*e.g.*, President or C.E.O.) of a company that Rep. Graves was invested in. Mr. Hurst did not fall into the category of witness that Mr. Sass was trying to avoid. Mr. Hurst was not an officer or employee of Golden Triangle and Biofuels. Mr. Hurst was only an investor in those companies.[5]

**e. Rep. Graves Had No Knowledge of Mr. Hurst's Investments**

The OCE Report states that "[i]t appears that Representative Graves had knowledge of Witness A's [Mr. Hurst] investment in Golden Triangle Energy Cooperative ("Golden Triangle") and had reason to believe that

[5] The OCE Report implicitly draws a negative inference from the fact that Rep. Graves' staff was trying to prudently select a witness for the Hearing, when in fact Rep. Graves' staff should be respected for their efforts in this regard.

Witness A [Mr. Hurst] was invested in Biofuels LLC ("Biofuels"), two companies which Representative Graves' wife, Lesley Graves, was also invested...". *See OCE Report*, at ¶ 3.

The OCE provides no citation to any materials or exhibits to support its purported finding. There is none. The existing information and materials that the OCE accumulated in its investigation actually support Rep. Graves' statement that he did *not* know whether Mr. Hurst was invested in Golden Triangle or Biofuels.

The OCE is drawing its inferences from statements it obtained during the interview process in an attempt to support its inaccurate conclusion, *e.g.*, that Rep. Graves knew of Mr. Hurst's investments in Golden Triangle and Biofuels. For example, the OCE states that "Witness A [Mr. Hurst] acknowledged that he had discussed Golden Triangle Energy with Representative Graves and that he had discussed Biofuels with him." *See OCE Report*, at ¶ 5. First, Mr. Hurst confirmed with Rep. Graves' counsel that he said no such thing, and that he informed the OCE during his interview that "he *may have* discussed Golden Triangle Energy and Biofuels with Representative Graves *at some point*." A rather important piece of Mr. Hurst's interview statement that is omitted from paragraph 5 of its Report and its memorandum of interview of Mr. Hurst. Mr. Hurst also informed Rep. Graves' counsel that he specifically informed the OCE during his interview that "he is sure we [he and Rep. Graves] *never* specifically discussed what investments he had made." Mr. Hurst also informed the OCE that "[h]e was *not* aware that Representative Graves was invested in Golden Triangle; he could have guessed but he wasn't sure." *See OCE Report*, Ex. 5 at ¶ 14. Mr. Hurst further informed the OCE that "[h]e *didn't* check with him [Rep. Graves] to see if he had invested in the venture [Biofuels]" and that "[h]e felt it was rude to ask people about their money." *See OCE Report*, Ex. 5 at ¶ 18.

Rep. Graves' statements to the OCE during its investigation also clearly establish that Rep. Graves did not know of Mr. Hurst's investments in Golden Triangle or Biofuels. Rep. Graves informed the OCE during its interview that "[i]nvestments are *not* something he talks about with Brooks Hurst." *See OCE Report*, Ex. 4 at ¶ 39. Rep. Graves could *not* say what Brooks Hurst was invested in; he [Mr. Hurst] goes in and out of investments

so he wouldn't know what he was invested in." *Id.* Rep. Graves also informed the OCE that "[p]ersonal investments are *not* something that comes up in conversations that he has with Brooks Hurst, he talks to Brooks Hurst mostly about 'flying stuff'." *See OCE Report,* Ex. 4 at ¶ 42. They [Rep. Graves and Mr. Hurst] *don't* sit down and go over investments." *Id.* Rep. Graves further informed the OCE that "he did *not* recall Mr. Hurst asking him to invest in Golden Triangle." *Id.*

These facts obtained by the OCE during its investigation do not support its inaccurate conclusion that Rep. Graves *knew* of Mr. Hurst's investments in Golden Triangle and Biofuels.

**f. Brooks Hurst's Qualifications to Testify on Renewable Fuels**

The OCE's findings erroneously insinuate that Mr. Hurst was not qualified to testify by stating (1) Mr. Hurst was introduced at the hearing as a farmer and investor in a small ethanol plant, and (2) Rep. Graves could expect Mr. Hurst to testify in a manner beneficial to both Mr. Hurst and Rep. Graves' own financial interests. *See OCE Report,* at ¶¶ 3, 40-42, 75. The OCE's insinuations are contradicted by the facts and information the OCE obtained during its investigation.

Rep. Graves informed the OCE that Mr. Hurst was selected because "he [Mr. Hurst] was one of the most knowledgeable persons available." *See OCE Report,* Ex. 4 at ¶ 2. Rep. Graves informed the OCE of Mr. Hurst's extensive knowledge of renewable fuels, and that Mr. Hurst is President of the Missouri Soybean Association. *See OCE Report,* Ex. 4 at ¶¶ 12, 13. Rep. Graves further informed the OCE that Mr. Hurst has testified extensively regarding the renewable fuels industry throughout the country. *See OCE Report,* Ex. 4 at ¶ 13.

Mr. Hurst informed the OCE that he had testified at Congressional hearings on prior occasions. *See OCE Report,* Ex. 5 at ¶ 9. Mr. Hurst further informed the OCE that the first time he testified at a Congressional hearing, he was invited to testify by then Rep. Jim Talent. *Id.* Mr. Hurst also informed the OCE that the Missouri Soybean Association prepared his written testimony and provided talking points for his oral testimony for the

Hearing. *See OCE Report*, Ex. 5 at ¶ 10.[6] Mr. Hurst also informed the OCE that he thought he was asked to testify at the Hearing because (1) he is involved with the Missouri Soybean Association, (2) he had worked on biodiesel issues in the past, and (3) the hearing was scheduled on such short notice. *See OCE Report*, Ex. 7 at ¶ 5.

The record clearly establishes that Mr. Hurst was qualified to testify at the Hearing.

## II. THE OCE DID NOT FOLLOW RULES 4(F) AND 5 BY FAILING TO PROVIDE EXCULPATORY INFORMATION TO REP. GRAVES

Pursuant to Rule 4(F) of the OCE Rules, "**[s]taff shall promptly provide to a subject any exculpatory information received.**"

The OCE is therefore required to disclose exculpatory information to a Member it is investigating. The OCE did not follow Rule 4(F) when, during the course of the OCE's investigation, the OCE failed to provide exculpatory information to Rep. Graves.

The OCE interviewed Mr. Hurst during the course of its investigation of the Complaint allegations.[7] The OCE took notes during its interview of Mr. Hurst and created a memorandum. *Id.* The OCE further requested that Mr. Hurst provide the OCE with documentation that showed his investment interests in Golden Triangle and Biofuels. The OCE further served Mr. Hurst with a written request for information and materials regarding the alleged rule violation(s).

Mr. Hurst orally answered the OCE's questions during the OCE's interview. Mr. Hurst further provided the OCE with documentation of his investment interests in Golden Triangle and Biofules. Mr. Hurst also provided the OCE

[6] The e-mails attached to the OCE Report further demonstrate that the Missouri Soybean Association prepared Mr. Hurst's written testimony for the hearing and provided talking points for his oral testimony. *See OCE Report*, Ex. 7, bates numbered e-mails: 097000000084 through 0970000000086, 097000000018 through 0970000000020.

[7] *See OCE Report*, Ex. 5, Memo. of Interview of Witness A (Mr. Brooks Hurst).

with a written response to the OCE's request for information and materials regarding the alleged rule violation(s). The information and materials that Mr. Hurst provided to the OCE is exculpatory information that establishes Rep. Graves did not commit any violation(s) of the House Rules.

The OCE did not follow Rule 4(F) of the OCE Rules ("**Rule 4(F)**"), as follows. The OCE did not provide Rep. Graves with any information or notes regarding the OCE's interview of Mr. Hurst. The OCE did not provide Rep. Graves with the documentation Mr. Hurst provided to the OCE regarding his investment interests in Golden Triangle and Biofuels. The OCE also did not provide Rep. Graves with Mr. Hurst's written response to the OCE's request for information and materials regarding the alleged rule violation(s). Such conduct is also not in accord with Rule 5, which states that "Office staff shall be impartial and unbiased in the conduct of investigation and shall collect all evidence related to the allegations, whether such evidence tends to prove or disprove the allegations." *See OCE Rules,* at p. 9.

The OCE has denied publicly that it did anything wrong by failing to provide Rep. Graves with the Hurst information and materials. The OCE contends it did nothing wrong because Rep. Graves' counsel had the Hurst information and materials in its possession. The OCE's proffered explanation for its failure to disclose is not encouraging.

The presumption of the OCE's explanation is that the OCE knew (during the OCE's investigation) that Rep. Graves possessed the Hurst information and materials. However, throughout the course of the OCE's investigation no one informed the OCE that Mr. Hurst provided Rep. Graves with a copy of what he sent to the OCE. Thus, the OCE didn't know whether or not Rep. Graves' counsel possessed the Hurst information and materials during the course of the OCE's investigation. The OCE's counsel cannot absolve themselves from their responsibility (after the fact) in failing to provide exculpatory information to Rep. Graves by simply stating that Rep. Graves' counsel possessed the exculpatory information. In summary, the failure to provide Rep. Graves with exculpatory information and materials cannot be excused or justified by virtue of the factual circumstances that it learned of after submitting its report.

The Ethics Committee has the authority to dismiss the OCE's referral of this matter involving Rep. Graves for alleged House Rule violation(s). The Ethics Committee also has the authority to not disclose the OCE Report to the public. Many factors weigh heavily in favor of dismissal of the OCE's referral and in not publicizing the OCE Report. *See Infra Section IV.* The OCE counsel did not adhere to Rule 4(F) or Rule 5, which states that "Office staff shall be impartial and unbiased in the conduct of investigation..." *See OCE Rules*, at p. 9. Just as when a prosecutor or civil litigation attorney fails to turn over exculpatory evidence in their respective cases, this matter involving Rep. Graves should be dismissed, and the OCE Report should not be made public.

## III. THE OCE CONDUCTED THIS INVESTIGATION OUTSIDE OF THE JURISDICTIONAL TIME LIMITATIONS ESTABLISHED BY OCE RULES

The OCE must comply with all time limitations pertaining to its review of alleged violations, as set forth in the "*Rules for the Conduct of Investigations*." If the OCE conducts an investigation outside of the governing time limitations, it loses jurisdiction over the matter it is investigating and the matter must be summarily dismissed.

> **The Office shall complete all preliminary reviews within 30 calendar days (hereafter referred to as the "preliminary review time period).** *See Rule 7(D).*
>
> **Before the preliminary review time period expires, the Staff shall submit a preliminary review report to the Board. The report shall recommend either that the Board take no action or that the Board initiate a second-phase review.** *See Rule 7(E).*
>
> **The Board shall authorize a second-phase review of an allegation if it finds *probable cause* to believe the alleged violation occurred based on all the information then known to the Board.** *See Rule 8(A).*
>
> **The Office shall complete a second-phase review within 45 calendar days after the Board commences such review**

> **(hereinafter referred to as 'second-phase review time period'). The Board may extend the second-phase review time period by an additional 14 calendar days upon an affirmative vote of a majority of its members.** *See Rule 8(C).*
>
> **At the conclusion of the second-phase review time period, the Staff shall submit to the Board a second-phase report recommending that the Board forward the matter to the Standards Committee either for further action or for dismissal."** *See Rule 8(D).*

*See OCE Rules*, at 7(D.)-(E.), 8(C.)-(D.). The OCE Report summarizes the procedural history of this matter, as follows.[10]

- On April 2, 2009, the OCE commenced its preliminary review of Rep. Graves.
- On May 2, 2009, the OCE commenced its second-phase review of Rep. Graves.
- The second-phase review was extended by 14 calendar days and ended on June 30, 2009.

However, the OCE's summary of the procedural history is not supported by the record. The OCE provided correspondence to Rep. Graves dated April 1, 2009, that informed Rep. Graves of the OCE's preliminary review of the alleged House Rules violation(s). *See* Ex. E. Moreover, in separate correspondence to Rep. Graves dated April 1, 2009, concerning the OCE's "*Request for Information*," the OCE states that "[t]his Request for Information is pursuant to a Preliminary Review authorized by the Board of the Office of Congressional Ethics (OCE) on March 26, 2009. *See* Ex. E. Thus, according to the OCE's correspondence to Rep. Graves, the OCE's preliminary review of this matter began on March 26, 2009. As such, the OCE's procedural history is inaccurate. The commencement of the preliminary review occurred on March 26, 2009, and therefore, the following deadlines pertaining to the OCE's time limitations for its preliminary phase and secondary phase review process are as follows.

[10] *See OCE Report*, at p. 6, ¶¶ 9-13

- On March 26, 2009, the OCE commenced its preliminary review of Rep. Graves.
- On April 25, 2009, the second-phase review of Rep. Graves should have commenced.
- On June 9, 2009, the second-phase review of Rep. Graves should have concluded.
- The Board could have extended the second-phase review by 14 calendar days to June 23, 2009.

Comparing the OCE's purported procedural history to the accurate deadlines note above, establishes that the OCE did not comply with each of the mandatory time limitations and deadlines for the preliminary-phase and secondary-phase review periods.

**a. The OCE Lost Jurisdiction of this Matter when it Did Not Follow the Time Limitations for the Preliminary-Phase Review**

Pursuant to *OCE Rules* 7(D.) and 7(E.), "[t]The Office shall complete all preliminary reviews within (30) calendar days (*see id.* Rule 7(D)), and "[b]efore the preliminary review time period expires, the Staff shall submit a preliminary review report to the Board." *See Id.* Rule 7(E). A reasonable construction of these rules establishes that the OCE must begin its second-phase review immediately following the conclusion of the OCE's (30) day preliminary-phase review, *e.g.*, the time periods are linear and without pause. To interpret these rules otherwise would create an absurd result. For example, if the time periods are not construed as linear, then the OCE could theoretically conduct a preliminary-phase review and then wait two years before commencing its second-phase review. Thus, the OCE should have commenced its second-phase review on April 26, 2009, *e.g.*, the day following the conclusion of its preliminary-phase review that commenced on March 26, 2009 and concluded on April 25, 2009.[11] The OCE did not commence its secondary-phase review until May 2, 2009. *See* Ex. F. Therefore, the OCE did not follow the *Rules for the Conduct of Investigations* when it investigated this matter outside the mandatory time limitations for its preliminary-phase review.

[11] There are 31 calendar days in the month of March.

**b. The OCE Lost Jurisdiction of this Matter when it Did Not Follow the Time Limitations for the Second-Phase Review**

Pursuant to *OCE Rules* 8(C.) and 8(D.), "[t]he Office shall complete a second-phase review within (45) calendar days after the Board commences such review," and "[t]he Board may extend the second-phase review time period by an additional 14 calendar days upon an affirmative vote of a majority of its members." *See Id.* Rules 8(C.) and 8(D.) establish that the OCE must complete its second-phase review within (45) calendar days, which can be extended by (14) calendar days. The OCE's second-phase review should have commenced on April 26, 2009. *See Supra* at III.(a.). Therefore, the OCE's second phase review (assuming it is extended by 14 days) should have concluded on June 23, 2009. On July 13, 2009, the OCE was still conducting its second-phase review and interviewing Mr. Brooks Hurst.[12] Therefore, the OCE did not follow the *Rules for the Conduct of Investigations* when it investigated this matter outside the mandatory time limitations for its second-phase review.

Even under the OCE's inaccurate procedural history of this matter, the OCE was still conducting its investigation of this matter after the second-phase ended. The second-phase review (according to the OCE), should have concluded on June 30, 2009. However, on July 13, 2009, the OCE was still conducting its second-phase review and interviewing Mr. Brooks Hurst.[13]

The OCE commenced its preliminary-phase and second-phase reviews out of time. As such, the OCE did not follow the prescribed time limitations and lost jurisdiction of this matter. Therefore, any purported resolution(s) or vote(s) by the Board in this matter are null and void and must have no affect. Rep. Graves respectfully requests that the Ethics Committee dismiss this matter and that the OCE Report not be made public.

## IV. THE OCE REPORT AND THE FLAWS MANIFESTED WITHIN THE PROCESS IN WHICH IT WAS REFERRED TO THE ETHICS COMMITTEE WEIGH AGAINST PUBLIC RELEASE

[12] *See* OCE Report, Ex. 5, Memo. of Interview of Witness A [Mr. Brooks Hurst].
[13] *Id.*

**a. The Inaccurate Conclusions and Unsound Recommendation Reached in the OCE Report Were Inconsistent with the Rules Governing Referrals to the Ethics Committee**

According to Rule 9 of the OCE Rules, the Board shall refer a matter to the Ethics Committee for further review if it determines there is a substantial reason to believe the allegations based on all the information then known to the Board. Despite the fact that the OCE determined that the opposite was true – that there was *no* substantial reason to believe that a violation of any rule occurred, it strangely – and in an act that was inconsistent with its own rules – voted to refer the matter to the Ethics Committee for further review. In the conclusion section of the OCE Report, the OCE made the following observations:

- The *House Ethics Manual* does not provide precise guidance for conflicts of interest where a Member has a personal financial interest in Committee actions as Congressman Graves has in this matter;

- The *House Ethics Manual* does not expressly prohibit a Member from participating in Committee actions, including selecting a witness for a hearing where the Member and witness share a financial interest that may be affected by the hearing; and

- There was not substantial reason to believe that Rep. Graves' invitation to Witness A violated the spirit of House Rule 3.

*See OCE Report*, at p. 21. While we do not necessarily adopt the factual predicates behind the OCE's conclusions above, we nevertheless agree with these underling conclusions. Yet, in spite of these conclusions, the OCE made additional, inaccurate conclusory remarks that Rep. Graves' conduct could have created an "appearance of a conflict of interest" and that his responses to the Board demonstrated a "lack of candor." *See OCE Report*, at p. 21-22.[14]

[14] The "lack of candor" observation was made despite the fact that the Board did not find Representative Graves in violation of 18 U.S.C. §1001.

According to Rule 1 of the its rules, the OCE has jurisdiction to investigate allegations that a Member, officer or employee of the House "has violated a law, rule, regulation, or other standard of conduct in effect at the time the conduct occurred and applicable to the subject in the performance of his or her duties or the discharge of his or her responsibilities." *See OCE Rule 1*, at p. 4. To date, neither an "appearance of a conflict of interest" nor a "lack of candor" would constitute an actionable violation of any law, rule, regulation, or other standard of conduct binding on any Member, officer or employee of the House. The phrase "appearance of a conflict of interest" appears in the *House Ethics Manual* only in the context of negotiating for future employment, *see House Ethics Manual* at 211, 238, and in the section dealing with unofficial representational accounts. *See House Ethics Manual* at 352. The phrase "appearance of impropriety and potential for conflict of interest" appears in the *House Ethics Manual* only as it relates to a Members' engagement in professional activities. *See House Ethics Manual* at 215. The phrase "lack of candor" does not appear in the *House Ethics Manual*. Therefore, the OCE's decision to refer the matter to the Ethics Committee in spite of the fact it found no substantial reason to believe that Rep. Graves violated any actual law, rule, regulation, or other standard of conduct appears to be inconsistent with its own rules.

**b. The OCE Report Contains Inaccurate Findings of Fact Incompatible with Ethics Committee Rules**

Despite the facial exoneration of Rep. Graves, the OCE referral to the Ethics Committee consists of nearly 200 pages of narrative and exhibits. Portions of said narrative and exhibits may create erroneous impressions for the reader. For instance, many of the exhibits to the OCE Report are listed as "Memorandum of Interview" that are essentially witness summaries prepared by the OCE staff. These memoranda do not reflect the full transcripts of interviews, but are rather summaries of the interviews as prepared by the OCE staff. Placing such summaries into the public domain would not respect the full and complete testimonies of the witnesses, nor the context in which such testimonies were given.

The inaccurate findings of fact, as discussed above, also amount to innuendo, speculative assertions, and factually erroneous conclusory

statements that the Ethics Committee has long recognized the dangers of including in the investigative process. *See Supra* at I. According to Ethics Committee Rule 15(a)(4), which governs complaints received by the Ethics Committee, "[t]he complaint shall not contain innuendo, speculative assertions, and conclusory statements." Further, Ethics Committee has also held that frivolous complaints should be dismissed from further consideration. Ethics Committee Rule 27 states:

> **If a complaint or information offered as a complaint is deemed frivolous by an affirmative vote of a majority of the members of the Committee, the Committee may take such action as it, by an affirmative vote of a majority deems appropriate in the circumstances.**

*See Ethics Committee Rules*, at p. 48. The public release of the OCE Report would therefore be inconsistent with policies long respected by the Ethics Committee.

**c. No Redress Exists As Exists in Parallel Proceedings**

The non-public release of the OCE Report is even more important to the interests of justice given that no clear procedural avenue exists to address the OCE's inaccurate findings and conclusions. Under the federal civil and criminal justice system, a defendant may at least seek attorney's fees from the government under certain circumstances. In criminal matters, a prevailing party may seek such funds "where the court finds that the position of the United States was vexatious, frivolous, or in bad faith."[15] This provision was derived in large part from its civil counterpart, the Equal Access to Justice Act (EAJA), 28 U.S.C. §2412 and 18 U.S.C. §924(d)(2)(D). No such parallel avenue exists for a prevailing party in an OCE investigation. Deciding against public release of the OCE Report would serve to mitigate the inequitable nature of this matter.

[15] 18 U.S.C. §3006A. This provision is colloquially known as the "Hyde Amendment."

**d. Rep. Graves Was Not Told by the OCE about the Potential for Public Disclosure of All Information Provided, Including Non-Germane Material**

With respect to the OCE's investigation, Rep. Graves cooperated in good faith and in full candor. He complied with every request the OCE made of him throughout the process, which we believed was nothing more than a pro forma inquiry. Neither Rep. Graves nor his counsel was ever told by the OCE that there would be a public disclosure of any information provided to the OCE, whether it was germane to its investigation or not.

In seeking to provide information to the OCE in full candor, Rep. Graves may have made comments that were irrelevant to the OCE's investigation. Making public Rep. Graves personal comments that he may have made about staff is not relevant to the investigation and only would serve to unnecessarily embarrass his office.

**e. Need for Confidentiality and Underlying Fairness to Cooperating Witnesses**

Historically, the Ethics Committee has recognized the need to respect the confidentiality of certain witnesses, and has made certain to do so when issuing its reports.[16] There is no clear authority that allows the Ethics Committee to redact portions of the OCE reports. Therefore, in the present matter, the Ethics Committee is not able to make necessary redactions to the OCE Report to protect personal information of individuals referenced therein, including email addresses and phone numbers, and to protect the identities of cooperating and confidential witnesses.[17]

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[16] *See, e.g., Report on Investigation of Allegations Related to Improper Conduct Involving Members and Current or Former House Pages*, Committee on Standards of Official Conduct, December 8, 2006 (109th Congress, 2nd Session).

[17] The release of the OCE Report could also raise concerns under Rule 7 of the OCE Code of Conduct regarding the prohibition of public disclosure, and under the Speech or Debate Clause of the Constitution. *See U.S. Const., art. I, sect. 6, cl. 1.*

## V. CONCLUSION

We appreciate your consideration of this matter and the requests we make herein regarding the OCE's investigation and its report. We request that this letter be included in the official record and that it be made public with the OCE Report should the Ethics Committee decide to publicly release it.

Sincerely,

[redacted]

Elliot S. Berke
**Law Office of Elliot S. Berke PLLC**

Terry Brady
Matthew Hubbard
**Lathrop & Gage LLP**

Enclosures

To: Office of Congressional Ethics
United States House of Representatives
From: Barry Pineles
Chief Counsel – Republican Staff
Committee on Small Business
United States House of Representatives
Re: Witness Disclosure Procedures of the Committee on Small Business
Date: June 1, 2009

This memorandum is being written to describe the procedures that the Committee on Small Business uses to obtain information on the witnesses testifying at hearings before the Committee.

**Committee Experience**

I am currently Chief Counsel for the Republican Staff of the Committee on Small Business, a position I have held since April 2006. Prior to that, I was Regulatory Counsel of the Committee on Small Business. My service to the Committee commenced on July 25, 1999. As a result, I have extensive experience with Committee hearings, including the identification of witnesses and the disclosure requirements for witnesses.

**Committee Jurisdiction**

The Committee on Small Business is one of 19 full standing[1] committees in Congress. As a result, the Committee, pursuant to the Rules of the House, has legislative functions to amend and report out any bills that falls within its legislative jurisdiction. Its legislative jurisdiction is defined by Rule X, cl. 1(p) of the Rules of the House[2] which provides as follows:

[1] Standing committees are distinguished from select committees. Select committees have oversight authority but have no legislative jurisdiction. In the House of Representatives, there is only one select committee – the Select Committee on Energy Independence and Global Warming. Although styled as a select committee, the Committee on Intelligence has legislative jurisdiction.
[2] The Rules of the House are available at http://www.rules.house.gov/rulepree/111th.pdf.

(1) Assistance to and protection of small business, including financial aid, regulatory flexibility, and paperwork reduction.
(2) Participation of small business enterprises in Federal procurement and Government contracts.

The Office of the Parliamentarian[3] has interpreted this seemingly broad statement of jurisdiction in a very narrow manner. The Committee only has jurisdiction over the Small Business Act, 15 U.S.C. §§ 631-57f, the Small Business Investment Act, 15 U.S.C. §§ 661-97g, Pub. L. No. 94-305 (the statute that created the Office of the Chief Counsel for Advocacy at the United States Small Business Administration), the Regulatory Flexibility Act, 5 U.S.C. §§ 601-12,[4] and the Paperwork Reduction Act, 44 U.S.C. §§ 3501-49.[5] Legislation that affects small businesses but does not specifically amend or conflict with the aforementioned peroration of statutes will not be referred to the Committee on Small Business.[6]

In addition to its legislative jurisdiction, the Committee also has an oversight function. All standing committees, including the Committee on Small Business, pursuant to Rule X, cl. 2 (b), have general oversight responsibilities to determine whether the laws and programs within the Committee's jurisdiction are being implemented properly and correctly. The Rules of the House also provide the Small Business with special oversight function to "study and investigate on a continuing basis the problems of all types of small business." Rule X, cl. 3(l). It is this latter oversight responsibility that grants the Committee on Small Business the power to hold hearings on any matter that may affect small business from the effect of papal encyclicals on small businesses to the impact of climate change on small energy producers. It is important to reiterate that the Committee's broad oversight jurisdiction has no impact on the ability of the Committee to obtain legislative jurisdiction over a bill introduced by a member of Congress.

---

[3] The Speaker of the House assigns legislation introduced to the Committee or Committees that have jurisdiction over the subject matter of the bill. Rule XII, cl. 2(a). The Speaker is required to rely on the precedents of the House for making such determinations. *Id.* at cl. 2(b). The Office of the Parliamentarian is charged with maintaining these precedents, 2 U.S.C. § 28(a) and, as a result, is the official that provides authoritative interpretations of each Committee's legislative jurisdiction.

[4] The Committee on the Judiciary also has jurisdiction over the Regulatory Flexibility Act.

[5] The Committee on Oversight and Government Reform also has jurisdiction over the Paperwork Reduction Act.

[6] For example, the Committee on Small Business attempted to obtain a referral on H.R. 2101, the Weapons Acquisition System Reform Through Enhancing Technical Knowledge and Oversight Act of 2009. The Committee argued that the bill (referred to the Committee on Armed Services) would affect participation of small businesses in federal procurement. The Committee's request was rejected because the bill did not amend any of the legislation over which the Committee on Small Business has jurisdiction conflict with any such legislation.

**Committee Hearings**

Under the Committee's oversight jurisdiction, the majority (the Democrats in the 110th and the current Congress and the Republicans going back to 1995) selects the topics for hearings.[7] A public announcement of the hearing is made at least one week before the commencement of the hearing. Rule XI, cl. 2(g)(3). The practice of the Chairwoman in the 110th and 111th Congresses has been to publicly announce no earlier than the week before the hearing is set. Under the rules of the Committee on Small Business, the announcement is to be accompanied by a memorandum on the hearing and a tentative witness list to the extent practicable. Committee on Small Business, Rule 4.[8] As a general matter, the memorandum and witness lists are usually not available to the minority when the announcement of the hearing is made.

**Witness Identification Procedures**

Pursuant to Rule 6(B) of the Committee's rules, the minority (whether it is a full committee hearing or a subcommittee hearing) is entitled to, but need not utilize, one-third of the witnesses, exclusive of government officials.[9] This typically means that the minority staff[10] must identify one or two witnesses to appear at the hearing. The process for identification has been the same under Mr. Graves as it was under Mr. Chabot in the 110th Congress. In fact, the procedures were pretty much the same for identification of appropriate witnesses when Republicans controlled the Committee on Small Business and had the opportunity to identify the majority of witnesses for hearings.

The first place a committee staffer will look for witnesses is to identify potentially relevant individuals from the Member's district. For example, when then Chairman Talent (R-MO) in 1999 and 2000 held hearings on value-added agriculture in the Committee on Small Business, Mr. Talent's staff first identified witnesses from Missouri.[11] Similarly, when then Chairman Manzullo held hearings on manufacturing or problems facing health-care providers as a result of regulation by the Centers for Medicare and Medicaid Services, witnesses were first identified from Rockford, IL (the largest city in his district). Given the position that the Member of Congress has within the community, it is not surprising that the Member might have more than a passing

---

[7] A list of hearings is available at http://republicans.smbiz.house.gov/hearings/databaseDrivenHearingsSystem/displayHearings.asp?congress=111

[8] A copy of the Committee's Rules are on file with the Chief Counsel for the Republican staff. The Committee's Rule complies with the requirements of House Rule XI, cl. 2(j) authorizing the minority to call their own witnesses to hearings.

[9] For example, the Committee held a hearing on the federal government contracting and small business earlier this year. The first panel of witnesses consisted solely of federal government officials. None of the first panel of witnesses counted for calculating the ratio of witnesses that the minority is entitled to have at the hearing.

[10] The Ranking Member, Mr. Graves, controls the hiring of staff to advise him and other Republican members of the Committee pursuant to Rule X, cl. 9 of the Rules of the House.

[11] Given the suburban nature of Mr. Talent's district, it was difficult to identify witnesses involved in value-added agriculture from his district.

familiarity with a significant leader in the business community that would testify at Committee hearing on a matter of import to that business.

The identification of witnesses from a member's district was not changed with the advent of the Democrats regaining control in the 110th Congress in 2007. Hearings will typically have at least one witness from the district of the Chair (this is particularly true of subcommittee hearings). For example, in a recent hearing in 111th Congress on the implementation of the Consumer Product Safety Improvement Act (CPSIA), Mr. Altmire (D-PA) (the chair of the subcommittee that held the hearing) invited a member from his district. The ranking member of that subcommittee, Miss Fallin (R-OK), invited a business from her district to testify about the impact of the CPSIA on small business. While this is only an example, there are many more such examples going all the way back to the 106th Congress when I first took a position with the Committee on Small Business.

**Witness Disclosure Requirements**

Once non-governmental witnesses have been identified, they must submit a number of items to the Committee. First, they must provide a written copy of the statement that will be made a part of the hearing record. Rule XI, cl. 2(g)(4). Second, they must include a curriculum vitae. *Id.* Finally, they are required by the same clause of Rule XI to file "a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness." *Id.* Under the House and Committee Rules, the information set forth in Rule XI, cl. 2(g)(4) is the only information that the Committee will receive concerning the background of the witness.[12]

Even a brief scan of the attached Adobe document will show that no financial interest, other than grants and contracts, of a witness is to be disclosed pursuant to the House Rules prior to a hearing. Taking an extreme hypothetical, nothing in Rule XI, cl. 2(g)(4) would require that a witness that co-owned a restaurant with a Committee member would have to disclose that information. A perusal of the attached form shows that there is no place on the witness disclosure form for any financial information other than that required by Rule XI, cl.2(g)(4). Given the fact that financial interests and dealings of the Member is disclosed pursuant to § 101 of the Ethics in Government Act of 1978, 5 U.S.C. App., a committee staff seeking a witness for a hearing would not even seek to inquire about any financial dealings that the witness might have with a Member of Congress.

[12] I have attached an Adobe Acrobat file containing the witness disclosure document used by the Committee in the 108th Congress. It is not significantly different from the form currently used by the majority.

**Committee on SMALL BUSINESS**
**Witness Disclosure Requirement - "Truth in Testimony"**
**Required by House Rule XI, Clause 2(g)**

| | | |
|---|---|---|
| Your Name: | | |
| 1. Are you testifying on behalf of a Federal, State, or Local Government entity? | Yes | No |
| 2. Are you testifying on behalf of an entity other than a Government entity? | Yes | No |
| 3. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 2001: | | |
| 4. Other than yourself, please list what entity or entities you are representing: | | |
| 5. If your answer to question number 2 is yes, please list any offices or elected positions held or briefly describe your representational capacity with the entities disclosed in question number 4: | | |
| 6. If your answer to question number 2 is yes, do any of the entities disclosed in question number 4 have parent organizations, subsidiaries, or partnerships to the entities for whom you are not representing? | Yes | No |
| 7. If the answer to question number 2 is yes, please list any federal grants or contracts (including subgrants or subcontracts) which were received by the entities listed under question 4 since October 1, 2001, which exceed 10% of the entities revenue in the year received, including the source and amount of each grant or contract to be listed: | | |

**Signature:**_____ **Date:**_____

COS 00155

**Hubbard, Matthew**

**From:** Pineles, Barry[redacted]
**Sent:** Monday, June 01, 2009 12:24 PM
**To:** Hubbard, Matthew
**Subject:** memorandum on witness disclosure

Matt,

Enclosed please find two documents: a word version of a memorandum discussing the hearing process and witness identification and disclosure. I also have attached an Adobe Acrobat pdf file of the witness disclosure form discussed in footnote 12. If you need me to modify the memorandum or provide additional detail, please do not hesitate to contact me.

Barry Pineles
Chief Counsel – Republican Staff
Committee on Small Business
United States House of Representatives
B-363 Rayburn House Office Building
Washington, DC 20515
[redacted]
email: [redacted]

P.S. Say hi to Rosalee McNamara (we were classmate at U of I College of Law back in the day).

**HOUSE COMMITTEE ON SMALL BUSINESS**
**Witness Disclosure Statement**
**Required by House Rule XI, Clause 2(g)**

| | | |
|---|---|---|
| **Your Name:** T. Brooks Hurst | | |
| **1. Are you testifying on behalf of a Federal, State, or Local Government entity?** | **YES** | **NO** X |
| **2. Are you testifying on behalf of an entity other than a Government entity?** | **YES** X | **NO** |
| **3. Other than yourself, please list what entity or entities you are representing:** Missouri Soybean Association<br>Paseo Cargill Biofuels | | |
| **4. Please list any offices or elected positions held or briefly describe your representational capacity with the entities disclosed in question 3:**<br>Member Board of Directors Paseo Cargill '11<br>Member Board of Directors Missouri Soybean Assoc. | | |
| ***(For those testifying on behalf of a Government entity, ignore these questions below)*** | | |
| **5. a) Please list any Federal grants or contracts (including subgrants or subcontracts), including the amount and source (agency) which you have received and/or been approved for since October 1, 2006:** N/A<br>**b) If you are testifying on behalf of a non-governmental entity, please list any federal grants or contracts (including subgrants or subcontracts) and the amount and source (agency) received by the entities listed under question 3 since October 1, 2006, which exceeded 10% of the entities' revenues in the year received:** None | | |
| **6. If you are testifying on behalf of a non-governmental entity, does it have a parent organization or an affiliate who you specifically do not represent? If so, list below:** | **YES** | **NO** X |
| | | |

**Signature:** [redacted] **Date:** 3/4/09

DONALD A. MANZULLO
16TH DISTRICT, ILLINOIS

COMMITTEE ON FOREIGN AFFAIRS

SENIOR REPUBLICAN
SUBCOMMITTEE ON ASIA, THE PACIFIC, AND THE GLOBAL ENVIRONMENT

SUBCOMMITTEE ON TERRORISM, NONPROLIFERATION, AND TRADE

Congress of the United States
House of Representatives
Washington, DC 20515-1316

COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE, AND GOVERNMENT SPONSORED ENTERPRISES

SUBCOMMITTEE ON INTERNATIONAL MONETARY POLICY AND TRADE

HOUSE MANUFACTURING CAUCUS
FOUNDER AND CO-CHAIRMAN

# Memorandum

**To:** Whom It May Concern

**From:** U.S. Congressman Donald A. Manzullo

**Date:** 5/21/2009

**Re:** House Committee on Small Business Witness Disclosure Statement

---

The Rules of the House were amended in 1997 to require, as part of a statement of a witness testifying before a House committee in a non-governmental capacity, the inclusion as part of their written submission "a curriculum vitae and a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years." This "truth in testimony" rule was retained by the new Democratic majority in 2007 and is still in effect today (House Rule XI, Clause 2(g)(4)).

I served first as a Chairman of the Tax, Finance, and Exports Subcommittee of the House Small Business Committee from 1997 until 2001, and then as Chairman of the full Small Business Committee from 2001 until 2007. Throughout those 10 years, I never requested disclosure of more information than what the House Rules required. My staff developed the attached form to send to each witness along with their invitation letter based on a template suggested to them by the House Rules Committee. At no point in the form has there ever been a requirement to disclose the financial investments of a Member of Congress or their spouse in the business venture of the witness. This was the only form that every witness was required to fill out prior to testifying before my Small Business panel.

[redacted]

Donald A. Manzullo
Member of Congress

WASHINGTON, DC OFFICE:
2228 RAYBURN BUILDING, WASHINGTON, DC 20515 • 202/225-5676 • FAX: 202/225-5284
http://manzullo.house.gov

DISTRICT OFFICES:
□ 415 SOUTH MULFORD ROAD, ROCKFORD, IL 61108 • 815/394-1231 • FAX: 815/394-3629
□ 101 NORTH VIRGINIA, SUITE 170, CRYSTAL LAKE, IL 60014 • 815/356-0800 • FAX: 815/356-0803

PRINTED ON RECYCLED PAPER

**HOUSE COMMITTEE ON SMALL BUSINESS**
**Witness Disclosure Statement**
**Required by House Rule XI, Clause 2(g)**

| | | |
|---|---|---|
| **Your Name:** | | |
| **1. Are you testifying on behalf of a Federal, State, or Local Government entity?** | **YES** | **NO** |
| **2. Are you testifying on behalf of an entity other than a Government entity?** | **YES** | **NO** |
| **3. Other than yourself, please list what entity or entities you are representing:** | | |
| **4. Please list any offices or elected positions held or briefly describe your representational capacity with the entities disclosed in question 3.** | | |
| ***(For those testifying on behalf of a Government entity, ignore these questions below)***<br><br>**5. a) Please list any Federal grants or contracts (including subgrants or subcontracts), including the amount and source (agency) which you have received and/or been approved for since October 1, 2006:**<br><br>**b) If you are testifying on behalf of a non-governmental entity, please list any federal grants or contracts (including subgrants or subcontracts) and the amount and source (agency) received by the entities listed under question 3 since October 1, 2006, which exceeded 10% of the entities' revenues in the year received:** | | |
| **6. If you are testifying on behalf of a non-governmental entity, does it have a parent organization or an affiliate who you specifically do not represent? If so, list below:** | **YES** | **NO** |
| | | |

**Signature:** _____ **Date:** _____

Board
David Skaggs, Chair
Yvonne Burke
Karan English
Allison Hayward
Porter Goss, Co-Chair
Jay Eagen
William Frenzel
Abner Mikva

Leo J. Wise, Staff Director & Chief Counsel
1017 Longworth House Office Building
(202) 225-9739
(202) 226-0927 fax
email address: oce@mail.house.gov
website address: oce.house.gov

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

April 1, 2009

Honorable Sam Graves
1415 Longworth HOB
Washington, DC 20515

Re: INITIATION OF A PRELIMINARY REVIEW
Review No. 09-7000

Dear Congressman Graves:

The Board of the Office of Congressional Ethics (OCE) has initiated a preliminary review into allegations concerning you pursuant to H. Res. 895, Section 1, clause (c)(1)(A) of the 110th Congress, as amended by H. Res. 5 of the 111th Congress, and Rule 7 of the OCE's Rules for the Conduct of Investigations. Below is a statement of the nature of the review:

> Representative Sam Graves, Ranking Member of the Small Business Committee, invited Mr. Brooks Hurst to testify at a Committee hearing on "The State of the Renewable Fuels Industry in the Current Economy." The hearing was held on March 4, 2009. It appears that Mr. Hurst is a friend of Representative Graves and his wife, Lesley Graves, and that Mr. Hurst and Mrs. Graves both hold financial interests in the same renewable fuels plants in Missouri. Neither Representative Graves nor Mr. Hurst disclosed the financial connection between Mr. Hurst and Mrs. Graves to the Committee during the hearing.
>
> Representative Graves' conduct may have violated House Rule 23.

Respectfully yours,

[redacted]
Leo Wise
Staff Director and Chief Counsel

Attachment

PRINTED ON RECYCLED PAPER

Board
David Skaggs, Chair
Yvonne Burke
Karen English
Allison Hayward
Porter Goss, Co Chair
Jay Eagen
William Frenzel
Abner Mikva



Leo J. Wise, Staff Director & Chief Counsel
1017 Longworth House Office Building
(202) 225-7103
(202) 226-0997 fax
email address: oce@mail.house.gov
website address: oce.house.gov

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

April 1, 2009

Honorable Sam Graves
1415 Longworth HOB
Washington, DC 20515

REQUEST FOR INFORMATION
Re: Review No. 09-7000

Dear Congressman Graves:

This Request for Information is pursuant to a Preliminary Review authorized by the Board of the Office of Congressional Ethics (OCE) on March 26, 2009.

In accordance with Rule 7(D) and 7(E) of the Office of Congressional Ethics' Rules for the Conduct of Investigations ("OCE Rules"), a preliminary report must be completed and delivered to the Board within 30 days of the initiation of a Review. That report will be prepared for the Board and it will evaluate the matter based on the information available at the end of that 30 days. Your timely cooperation is appreciated and will assist the Board in reaching an informed and accurate decision.

Please provide the following information:

(1) The names and contact information of any member of your staff that arranged or assisted in arranging for Mr. Brooks Hurst's participation at the March 4, 2009, Small Business Committee hearing on "The State of the Renewable Fuels Industry in the Current Economy." OCE requests that you make these persons available for interview at a mutually convenient time.

(2) The names and contact information of any member of your staff responsible for staffing you at the March 4, 2009, Small Business Committee hearing; OCE also requests that you make these persons available for interview at a mutually convenient time.

(3) All files, correspondence, emails, notes, and any other documents related to arranging Mr. Hurst's participation at the March 4, 2009, Small Business Committee hearing.

(4) All files, correspondence, emails, notes, and any other documents relating to actions taken by you or the Small Business Committee as a result of the March 4, 2009, hearing.

(5) Financial documents detailing Mrs. Lesley Graves' financial interests in the Golden Triangle Energy Cooperative, Biofuels LLC, and Show Me Ethanol LLC.

(6) Financial documents detailing all other business relationships between Mrs. Graves and Mr. Hurst and yourself and Mr. Hurst.

(7) OCE requests the opportunity to interview you at a mutually convenient time.

OCE may make additional information requests, as warranted by the facts and circumstances of this Review. In addition, we will review any additional information you feel is relevant that we have not requested.

Please note that under House Resolution 895 of the 110th Congress, as amended by House Resolution 5 of the 111th Congress, and OCE Rule 7, the Board may draw a negative inference from any refusal to cooperate and may include a statement to that effect in any referral to the Committee on Standards of Official Conduct.

If you have any questions regarding this request or require any assistance in the production of the information requested, please do not hesitate to contact Elizabeth Horton, Investigative Counsel, at [redacted]

Very respectfully,

[redacted]

Leo Wise
Staff Director and Chief Counsel

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

**REQUEST FOR INFORMATION – ACKNOWLEDGEMENT OF RECEIPT**

Please sign the following and return to the OCE by facsimile at (202) 226-0997.

I hereby acknowledge receipt of a Request for Information in Review No. 7000. By so signing, I merely acknowledge receipt of this document.

Member or Designee's Signature: _____

Member or Designee's Name: _____

Date: _____

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

*David Skaggs, Chair* *Porter Goss, Co-Chair*
*Yvonne Burke* *Jay Eagen*
*Karan English* *William Frenzel*
*Allison Hayward* *Abner Mikva*

*Leo J. Wise, Staff Director & Chief Counsel*
*1017 Longworth House Office Building*
*(202) 225-9739*
*(202) 226-0997 fax*

April 29, 2009

Honorable Sam Graves
1415 Longworth HOB
Washington, DC 20515

INITIATION OF A SECOND-PHASE REVIEW
Re: Review No. 09-7000

Dear Congressman Graves:

The Board of the Office of Congressional Ethics (OCE) has initiated a Second-Phase Review into allegations concerning you in the above numbered matter pursuant to H. Res. 895, Section 1, clause (c)(1)(C) of the 110th Congress, as amended by H. Res. 5 of the 111th Congress, and Rule 7 of the OCE's Rules for the Conduct of Investigations. The Review will commence on May 2, 2009 and, unless extended by the Board in accordance with our rules, terminate on June 15, 2009.

The Board reserves the authority to address any additional, related potential violations within its jurisdiction that may be discovered in the course of this Review.

Very respectfully,

[redacted]

Leo Wise
Staff Director and Chief Counsel

**Small Business Committee**
**United States House of Representatives**

**Hearing on**
**The State of the Renewable Fuels Industry in the Current Economy**

**Testimony of**

**Ron Litterer**
**Chairman, National Corn Growers Association**

**March 4, 2009**

Madame Chair and distinguished members of the Committee, thank you for the opportunity to testify today on behalf of the National Corn Growers Association (NCGA), regarding the state of the renewable fuels industry in the current economy.

My name is Ron Litterer. I farm corn and soybeans near Greene, Iowa, where I also have a hog finishing operation and I appear before you today as the Chairman of the NCGA.

**Background**

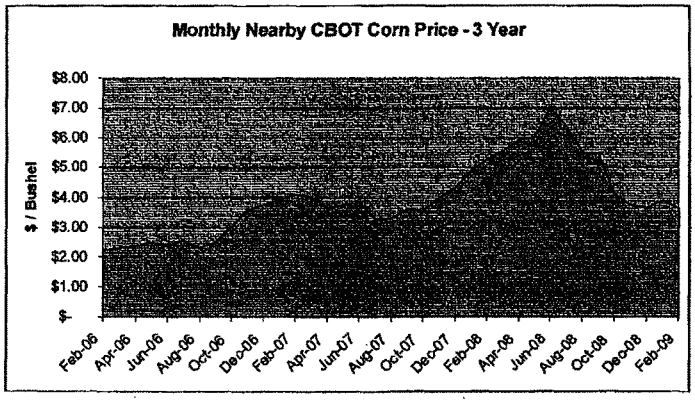
The National Corn Growers Association represents more than 32,000 corn farmers from 48 states as well as more than 300,000 farmers who contribute to corn check off programs and 26 affiliated state corn organizations across the country. The mission of NCGA is to create and increase opportunities for corn growers and to enhance corn's profitability and use.

For more than 20 years, NCGA has worked side by side with farmers, industry and government to build the ethanol industry from the ground up. Through our efforts, corn growers across the country and the ethanol industry have helped America move closer to energy independence. Our industry has been, and is currently a major force in the revitalization of rural America by creating green jobs and by stimulating economic activity in our communities. However, the corn ethanol industry, along with many others, is feeling pressure from the current economic downturn in the U.S. and world economies. It is imperative that, at a time when our country is facing a worsening economic crisis, we recognize the significant role the existing grain-based ethanol industry has in promoting, not only energy independence, but a more stable and prosperous U.S. economy.

The expansion of the U.S. ethanol industry has created significant economic activity across rural America. A recently released study by LECG found that in 2008, the ethanol

industry added $65.6 billion to the nation's Gross Domestic Product, and created nearly 494,000 new jobs in all sectors of the economy. [1]

During these uncertain economic times, corn growers and other agriculture producers continue to face a number of serious challenges. We, along with many industries, continue to face a very volatile marketplace. Over the past three years, the price of corn has seen a dramatic fluctuation. Nearby Chicago Board of Trade (CBOT) prices increased over 213 percent from February 2006 to June of 2008, a space of less than two and a half years. Thus in just 29 months, the cost of corn which accounts for the majority of production costs for a grain-based ethanol plant increased on the average of 7.4 percent per month. This included a period from October, 2007 to June of 2008, where corn prices increased $3.41, or more than 95 percent in 8 months. Unfortunately, the decrease from record highs has been almost as dramatic, with prices falling by $3.37 per bu., or more than 48 percent over the past 8 months.




Another factor that is often overlooked in this debate is the soaring cost of inputs for farmers, including energy for fertilizer, irrigation, powering farm equipment, drying grain and producing ethanol. Though our efficient use of these inputs is constantly improving, the price of energy inputs continues on an upward trend.

Corn input costs are established as much as a year before cash sales take place. At today's market prices, we are well below our production costs.

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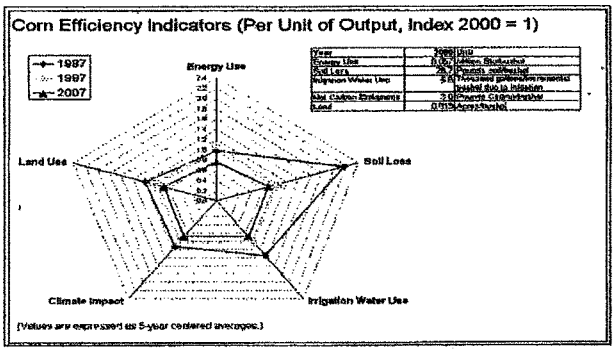
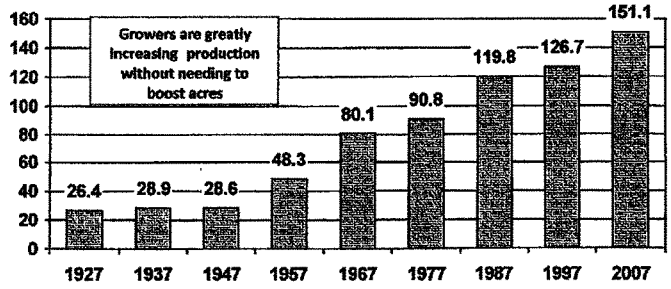
[1] *Contribution of the Ethanol Industry to the Economy of the United States*, Dr. John Urbanchuk, Director, LECG, LLC, February 23, 2009.




Despite tough economic times, corn production is becoming increasingly more efficient. Today biotechnology enables farmers to apply fewer inputs to produce larger crops on the same land. Currently it takes about 40 percent less land to grow a bushel of corn than in 1987, and energy used to produce a bushel of corn has fallen by an average of 50 percent. According to Keystone Center "Field to Market" Report released in January 2009, the production of corn in the U.S. has made significant measurable improvements in reducing energy, water, land use and carbon emissions. In order to maintain our sustainability improvements at the production level it is imperative that the corn ethanol industry continue to grow and prosper.



**Current Economic Condition**

Since passage of the expanded Renewable Fuels Standard (RFS) in the Energy Independence and Security Act of 2007, the economic situation for many corn growers and ethanol producers has deteriorated as a result of the current economic crisis. Fewer miles driven, decreased oil prices, and expanding ethanol production are all putting significant pressure on corn and ethanol prices.

Recently, the U.S. renewable fuels industry has been devastated by the scarcity of both short-term credit to finance operations and long-term capital to finance expansion and new construction. With a near complete lockup of the financial markets, existing and future biofuels producers are often unable to secure necessary financing to maintain operations at existing facilities. This tight capital environment has pushed the industry to the brink, with many ethanol plants being forced to shut down, layoff staff and restructure their debt. Many banks which had previously extended credit to these companies are being forced to re-categorize the debt as non-performing and have become reluctant to extend additional credit to keep these businesses operating.

There is no doubt that Rural America, along with the rest of the country, is undergoing a time of tremendous economic challenge. It is for this reason we would like to highlight the important impact that farmer-owned, homegrown fuel production has in bringing opportunity to the Main Streets of rural America. The role of the American farmers is changing, growing to encompass providing food, fiber, feed, and fuel for our country. With the help of the U.S. biofuels industry, our nation's rural economy is providing more opportunities for farmers through homegrown renewable energy development. However, the well-being of our industry is threatened today by the declining state of our nation's economy.

In a November 2008 report by Dr. Cole R. Gustafson entitled "*Financing Growth of Cellulosic Ethanol*," Dr. Gustafson noted that, "Now when the industry is experiencing marginal profitability but requires significant capital to adopt new technology, firms have only modest equity to form a new borrowing base." The continued economic vitality of the U.S. renewable fuels industry is crucial for attracting the investment in research and development of second generation renewable feedstocks and the capital necessary to build the production capacity and infrastructure necessary to meet the 36 billion gallons of renewable fuels by 2022 proscribed by the Energy Independence and Security Act of 2007. For that reason, it is imperative that the existing grain-based ethanol industry and the accompanying infrastructure that has been built around that industry continue to prosper and remain viable in order to serve as the bridge for the next generation of biofuels.

**The Future of the Industry**

With the expansion of the ethanol industry, we are quickly approaching the maximum amount of ethanol that can be blended into conventional vehicles (commonly referred to as the "blend wall"). To date there is currently more than 12 billion gallons of ethanol production capacity online, with an additional 2 billion gallons under construction. Given the downturn in the economy, ethanol production capacity is quickly reaching the 10 percent (artificial) blend wall. For the first time in years, Americans are driving less than the previous year. U.S. gasoline consumption in 2009 and 2010 is projected to be 6 percent below 2007 levels. This decrease in gasoline consumption will accelerate the coming of the blend wall. It is critical that all public and private stakeholders work together to quickly solve this issue. Moving to higher blends of ethanol is critical to the sustained health and expansion of corn and cellulosic ethanol production in the U.S.

The U.S. currently uses roughly 138 billion gallons of gasoline each year. Given the 10 percent blend wall, this means that it will take approximately 13.8 billion gallons of ethanol to saturate the existing E10 market. In the near term, efforts are underway to increase the amount of ethanol that can be used in conventional automobiles. In the longer term, efforts are being made to rapidly expand to the number of flexible fuel vehicles (FFVs) and higher blends infrastructure to ensure sufficient demand in the United States automobile fleet.

NCGA fully understands and appreciates that with sound science and a transparent process, the U.S. Environmental Protection Agency, together with the U.S. Department of Energy and the U.S. Department of Agriculture, will work with stakeholders in the renewable fuels industry to move toward higher blends of ethanol in our nation's gasoline supply.

In conclusion, NCGA sees the grain based ethanol industry as a critical part of domestic energy security. Its inclusion as part of the nation's energy policy has strengthened and further diversified our nation's fuel supply in a time of global volatility and increasing demand for energy. Finally, despite these trying times corn growers will continue to meet the growing demands of food, feed and fuel in an economical and environmentally responsible manner.

I thank the committee for its time and look forward to any questions you may have.

**Statement of Mr. John B. Howe**
**Vice President, Public Affairs, Verenium Corporation**
**Before the Committee on Small Business**
**United States House of Representatives**
**March 4, 2009**

Madame Chairman and members of the Committee, good afternoon. My name is John B. Howe, Vice President, Public Affairs for Verenium Corporation. We are a leading developer of advanced biofuels process technology and commercial projects, headquartered in Cambridge, Massachusetts. I greatly appreciate the opportunity to speak with you in this hearing on challenges facing the renewable fuels industry. This is a truly critical topic and a most critical time for this discussion.

Among America's biggest challenges is the need to expand domestic energy resources and curb our appetite for imported fuels. Over the past few years, we have all seen how our dependence on foreign supplies has drastically weakened our nation's economy. And we must recognize that, just as US oil production peaked forty years ago, we are year by year moving toward a global peak or plateau in conventional oil production. Finally, we are coming to grips with the need for dramatic action to curb carbon emissions and forestall climate change. Advanced biofuels, which are low-carbon, renewable and domestically available, can help us to address all of these major challenges. In recent years they have become not simply a nice-to-have option, but truly a must-have solution. The temporary, drastic fall in world oil prices brought on by the economic downturn does not alter our longer-term predicament. Major changes to our capital-intensive liquid fuels infrastructure will take years to implement. If we expect advanced biofuels to be a scalable, truly impactful part of the energy solution within the next decade, there is literally no time to lose.

The Small Business Committee has a special stake in this issue because a domestic US advanced biofuels industry will be a major driver for growing small businesses nationwide. Such an industry will rely on small-scale, geographically dispersed production. It will use a variety of agricultural feedstocks and innovative, regionally-adapted technological processes. It will generate a wealth of high-quality, non-exportable jobs in small businesses throughout the nation. This is shown clearly by a map appended to my statement with the locations of currently active advanced biofuels projects nationwide.

The good news is that the emerging advanced biofuels industry is making strong technical progress, belying the cynic's barb that advanced biofuels are "always a decade away." Last month, Verenium successfully commissioned one of the nation's first true demonstration-scale cellulose-to-ethanol plants, a privately-financed, $80 million, 1.4 million gallon facility in Jennings, LA that generated 300 construction jobs and has 70 permanent employees. In January, we announced our plans to participate in a 36 million gallon commercial-scale facility, to be built in south central Florida, that will generate 400 construction jobs, 140 permanent jobs and a host of spinoff jobs in the local community. The expanded RFS targets established by Congress in 2007 may appear ambitious. But our nation can reach these targets if we stand by this commitment, and work together to develop a strong, clear, comprehensive and consistent policy framework that supports it. Given the effects we saw last year from skyrocketing costs for energy imports, I believe it could be much costlier in the long run not to stand by this commitment. Truly, this is a case where destiny is in our own hands.

There are, however, several obstacles to the successful development of a domestic advanced biofuels industry. Most crucial are financing challenges even more severe than those in the economy at large. At present, large, well-established companies selling standard products are facing tight credit. But even in the best of times, private lenders are unwilling to take technology risk on energy projects using new technologies. So finding private capital to commercialize new biofuels technology is virtually impossible

under present conditions. The result is a financing logjam. The nation will need first-of-a-kind, commercial-scale projects. This is the only way to establish a track record for new technologies. Once these first steps are taken, private capital will be able to step and fund the buildout of the industry. To take this first step and break this logjam, there is essentially no other place to go today except for government loans, grants and loan guarantees.

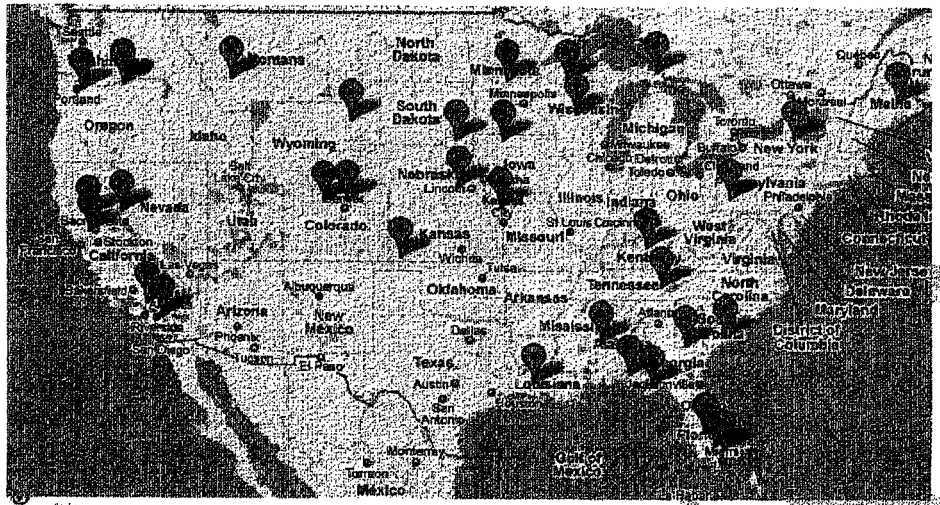
These financing challenges, and the challenges inherent in developing new technologies, are only part of the story. Advanced biofuels developers are also hard at work with partners in the agricultural sector, establishing new and fairly complex supply chains for the planting, production, harvest and collection of new feedstocks. Downstream in offtake markets are other risks. Policymakers have yet to clarify how the rapidly expanded production of biofuels mandated by the RFS will be absorbed in a market in which EPA regulations act as a quota, limiting the blending of ethanol in gasoline to 10%. Finally, the global fuels market itself is famously subject to the influence of strategic behavior by large and powerful actors. Several statements from the leadership of the OPEC cartel in recent years suggest a goal to prevent biofuels from becoming established as an alternative fuel source. We have our work cut out for us!

Despite all of these obstacles, the important thing to remember is that the advanced biofuels industry holds tremendous long-term potential for our nation – to help renew our economy, to create jobs, to restore natural balance in our fragile environment, and to enhance domestic energy security. A recent report prepared for GM by Sandia National Laboratory supports this perspective. Sandia found that a large-scale cellulosic ethanol industry, capable of meeting one-third to one-half of America's liquid fuel needs from within a comparatively modest physical footprint, is both feasible and affordable. Appended to my statement is a summary and list of recommendations from this report. The key to success, Sandia found, is a sustained, consistent policy commitment. A half-hearted approach will not do. We simply do not have the option not to pursue advanced biofuels. Instead, we need to focus on how to do it right, through careful attention to the right feedstocks and processes.

Let me close by observing that today's economic crisis arose from many complex forces. But there is strong evidence that the surge in world oil prices, combined with our excessive dependence on oil imports, was the precipitating event. We all want to know when the nation will emerge from today's economic weakness. Given the realities of the 21st century, if our nation is to achieve a truly sustainable, long-term recovery, we simply must have commercially viable, scalable and environmentally sustainable technologies for the domestic production of liquid fuels. Granted, the challenges we face in meeting this goal are severe. But failure is not an option.

This concludes my testimony. Thank you very much for the invitation to participate in today's hearing.

# Existing and Planned U.S. Cellulosic Biofuel Biorefineries

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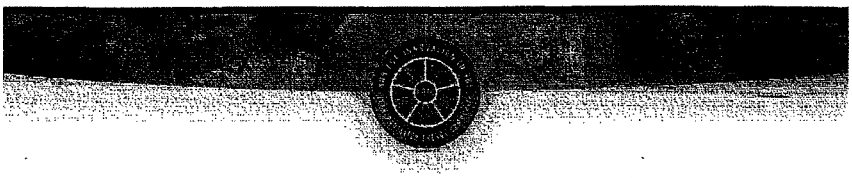

# 90-Billion Gallon Biofuel Deployment Study

## *Executive Summary*

Sandia National Laboratories and General Motors' R&D Center conducted a joint biofuels systems analysis project from March to November 2008. Known as the "*90-Billion Gallon Biofuel Deployment Study*," the purpose of the project was to assess the feasibility, implications, limitations, and enablers of large-scale production of biofuels in the United States.

Ninety billion gallons of ethanol (the energy equivalent of approximately 60 billion gallons of gasoline) per year by 2030 was chosen as the book-end target to understand the requirements of an aggressive biofuels deployment schedule. Since previous studies have addressed the biomass supply potential, but not the supply chain rollout needed to achieve large biofuels production targets, the focus of this study was to develop a comprehensive systems understanding of the evolution of the complete biofuels supply chain and key interdependencies over time.

The biofuels supply chain components examined in this study included direct agricultural land use changes, production of biomass feedstocks, storage and transportation of these feedstocks, construction of conversion plants, conversion of feedstocks to ethanol at these plants, transportation of ethanol and blending with gasoline, and distribution to retail outlets. To support this analysis, a 'Seed to Station' system dynamics model (Biofuels Deployment Model – BDM) was developed to explore the feasibility of meeting specified ethanol production targets. System dynamics was chosen as the primary modeling approach because it is well suited to dynamic, non-linear problems involving time-varying inputs and feedback – two central features of the biofuels enterprise.

Potential biofuels supply chain barriers examined in this study included impact on land availability and use; impact on water consumption; the transportation and distribution infrastructure challenges and bottlenecks; costs for feedstock, capital, and energy; the reluctance to make long-term investments due to risk; the pace of technological innovation; and the greenhouse gas footprint. Sensitivity analyses were conducted to determine key parameters affecting production volumes, cost, and greenhouse gas savings. The effectiveness and costs of selected policy options to mitigate potential barriers were also examined.

***Study Conclusions***

This study concludes that 90 billion gallons per year of biomass-derived ethanol can be produced and distributed with enduring government commitment and continued technological progress. Specifically, the model projects that 90 billion gallons of ethanol can be produced per year in the U.S.: 15 billion gallons per year from corn ethanol, with the balance from cellulosic ethanol.

In the study we also evaluated a scenario with 15 billion gallons of corn-derived ethanol and 21 billion gallons of cellulosic ethanol by 2022, an amount that meets the Energy Independence and Security Act advanced biofuels mandate. In this scenario, cellulosic ethanol continues to ramp up to 45 billion gallons per year by 2030, for a total ethanol production of 60 billion gallons per year. This scenario is the basis for the conclusions summarized below.

Producing 45 billion gallons per year cellulosic ethanol by 2030 requires 480 million tons of biomass, of which 215 million tons comes from dedicated energy crops. Allowing for storage, loss, and immature perennial crops, these energy crops utilize 48 million acres of planted cropland from what is now idle, pasture, or non-grazed forest. The simulations assume technological progress in the conversion technologies, which results in average biomass conversion yields of over 95 gallons of ethanol per dry ton of biomass by 2030.

Biofuels capital expenditures necessary to achieve 60 billion gallons per year of installed production capacity are on the order of $250 billion. Though large, these expenditures are actually of similar magnitude to petroleum-related investments required to establish and maintain 40 billion gallons per year of domestic oil production. However, large capital investments are challenging considering the present volatility of the oil and capital markets and the amount of regulatory risk.

This study demonstrates that cellulosic biofuels can compete with oil at $90/bbl based on the following assumptions:

1) Average conversion yield of 95 gallons per dry ton of biomass
2) Average conversion plant capital expenditure of $3.50 per installed gallon of nameplate capacity
3) Average farm-gate feedstock cost of $40 per dry ton

Sensitivity analyses varying these assumptions individually gave potential cost-competitiveness with oil priced at $70/bbl to $120/bbl.

The cost competitiveness of ethanol is directly dependent on the price of oil and the realization of technological improvements. In particular, ethanol 'seed-to-station' floor cost is approximately $1.50/gal-ethanol without taxes, and gasoline will undercut this if priced below $2.25/gal-gasoline without taxes (about $2.65 at the pump). Government policy incentives such as carbon taxes, excise tax credits, and loan guarantees for cellulosic biofuels have the ability to mitigate the risk of oil market volatility, thus reducing the risk and increasing the attractiveness of cellulosic biofuels investments. However, these policy incentives would have to protect cellulosic biofuels against low priced petroleum-based competitors for an extended period to attract significant capital investment.

Continued support of R&D and initial commercialization is also critical, because sustained technological progress and commercial validation are required to affordably produce the large volumes of ethanol considered in this study. Infrastructure investment is important to ensure that the rail network in the U.S. can support biofuels distribution; however, this is a small component of projected total rail demands resulting from future expanded economic activity.

Significant R&D effort is required for conversion plants to increase their yields to drive down the cost of biofuel production. Additionally, continued R&D efforts are required to achieve commercial cultivation of high-yield energy crops – key to producing significant volumes of sustainable biofuels without drawing upon land currently used for food and feed. Additionally, expanding feedstock production must target lands requiring little or no irrigation to keep water demands manageable.

Transportation $CO_2$ savings were 250 million tons $CO_2$ equivalent per year for 60 billion gallons of ethanol (excluding greenhouse gas emissions from land use change – a current topic of intense research). The energy in cellulosic ethanol is about 3.8 times the energy content of fossil fuels used for the entire supply chain (production and distribution; numbers based, in part, on assumptions in GREET). This is about 4 times the net energy ratio for gasoline (0.8).

***Biofuels Commercialization Enablers***

This study found no fundamental barriers to producing biofuels at large scale (e.g., supply chain or water constraints). However, multiple actions could be taken to enhance the successful build-out of the cellulosic biofuels industry.

Possible actions include:

- A multi-decade energy policy that values stable fuel prices that are high enough to enable energy diversity in light of oil price volatility and periodic economic dislocations
  - Options include greenhouse gas taxes and market incentives (e.g., $50/ton $CO_2$ tax significantly reduces required incentives)
- Supportive policies to enable biofuel market success, including well-planned market incentives and carbon pricing, that could minimize investment risks
- Enhancement of biofuels' competitiveness with aggressive R&D- and commercialization-associated funding, despite current declining/low oil prices (Department of Energy, VCs, etc.)
  - Conversion investments to increase conversion efficiency and decrease capital cost
  - Improved energy crop technology to reduce cost, land use, and water use
  - Decreased timeframe for technologies to reach maturity (lowers investment risk)

February 2009

**Small Business Committee**
**United States House of Representatives**

**Hearing on**
**The State of the Renewable Fuels Industry in the Current Economy**

**Testimony of**

**Nathan Kimpel**
**President & COO, New Energy Corp.**

**March 4, 2009**

Good morning Chairwoman Velazquez, Ranking Member Graves and Members of the Committee. My name is Nathan Kimpel and I am president and chief operating officer of New Energy Corp. New Energy is located in South Bend, Indiana and became operational in 1984. We were the first large-scale, greenfield ethanol plant built in the United States. We have been in continuous operation and are in line to produce our 2 billionth gallon of ethanol this year. In 2008, New Energy purchased over $180 million of corn from local farmers, farmer owned cooperative elevators and commercial grain companies.

This is an important and timely hearing, and I am pleased to be here to discuss the unique challenges and economic difficulty currently facing New Energy Corp. and the U.S. renewable fuels industry.

**Background**

Today's renewable fuels industry consists of 170 biorefineries located in 26 different states with the capacity to produce 13 billion gallons of high octane, clean burning motor fuel that can be used right now. An additional 20 biorefineries are under construction. In 2008, the U.S. renewable fuels industry's operating capacity increased by 2.7 billion gallons, a 34 percent increase over 2007. This growth in production capacity was fueled by the completion, start-up, and operation of 31 new ethanol plants that will ensure that the industry is capable of filling the Federal requirements for ethanol use outlined in the Renewable Fuels Standard (RFS). The U.S. renewable fuels industry is a dynamic and growing industry that is revitalizing rural America, reducing emissions in our nation's cities, and lowering our dependence on imported petroleum.

Ethanol has become an essential component of the U.S. motor fuel market. Today, ethanol is blended in more than 70 percent of the nation's fuel, and is sold virtually from coast to coast and border to border. Last year, the U.S. renewable fuels industry produced and sold a record 9 billion gallons, contributing significantly to the nation's economic, environmental and energy security.

The U.S. ethanol industry continues to have a positive impact on our nation's economy. U.S. ethanol producers have long been on the cutting edge of the green economy. According to a report completed just last week for the Renewable Fuels Association[1], spending by the U.S. ethanol industry in 2008:

- Contributed $65.6 billion to the nation's Gross Domestic Product (GDP);
- Supported more than 494,000 jobs in all sectors of the economy; and,
- Generated an estimated $11.9 billion in tax revenue for the federal government and nearly $9 billion of additional tax revenue for state and local governments.

Further, the report notes that the net benefit to the Federal government, after ethanol related tax credits, was more than $7 billion in 2008, providing a return on every dollar invested of 2.5 to 1.

Under the RFS in 2022, 35 of the 36 billion gallons of renewable fuels will be ethanol. Producing 35 billion gallons of ethanol will, according to the report:

- Add nearly $1.23 trillion (2000$) to real GDP by 2022;
- Support as many as 1.18 million jobs in all sectors of the economy;
- Displace the equivalent of nearly 11 billion barrels of crude oil between 2009 and 2022; and,
- Increase federal tax revenues by nearly $223 billion (2000$) between 2009 and 2022 while state and local tax revenues will increase $167.2 billion (2000$).

**Current Economic Climate**

The renewable fuels industry has taken significant steps forward in reaching the vision of 36 billion gallons of renewable fuel usage by 2022. From 6.5 billion gallons produced in 2007, the U.S. renewable fuels industry has invested more than $10 billion to expand to 12.5 billion gallons of production capacity to reach the RFS of 12 billion gallons by 2010. The economic crisis is significantly impacting sustained, continued growth and development of the industry. Recently, the U.S. renewable fuels industry has been devastated by the scarcity of both short-term credit to finance ongoing operations and long-term capital to finance expansion and new construction.

The renewable fuels industry along with all of our small business supplier partners, the American corn farmer, has fallen victim to many of the same problems that have affected other industries, including high raw material costs, and collapsing oil and gasoline prices. Ethanol prices are partly driven by gasoline prices which are in turn driven by crude oil. Many input costs for producing corn are as well driven by crude oil prices. Both gasoline and crude oil reached record

[1] *Contribution of the Ethanol Industry to the Economy of the United States*, Dr. John Urbanchuk, Director, LECG, LLC, February 23, 2009.

levels in 2008. Crude oil prices skyrocketed to $147 per barrel before sinking to below $40. According to the Energy Information Administration, gasoline use fell an estimated 3.3 percent in 2008 – the sharpest decline since 1992 -- as prices hit record levels. Oil led the 2008 commodity boom, and corn prices followed. Oil prices have fallen due in large part to weak demand from a slowing world economy. Falling gasoline prices have pulled ethanol down as well, putting pressure on revenue.

However, gasoline and ethanol prices have fallen much more than corn prices over the last year. We look at a concept called the Commodity Price Spread. This is essentially the difference between the Daily Market Replacement Prices of ethanol and corn expressed on a $ per gallon basis. In January 2008, the Commodity Price Spread was enough to cover all production and debt service costs plus make a reasonable contribution on investment. By July, the Commodity Price Spread had narrowed to the point where an average or model plant was covering perhaps all Variable Costs and making a contribution to Semi-Variable, but likely not covering the Fixed Costs of Operations much less any Debt Service. Since July, the Commodity Price Spread has vacillated between not even covering Variable Costs to making a contribution to Fixed Costs but rarely if ever making any contribution to Debt Service. Our projections for the balance of the year based solely on the Futures Markets for corn and ethanol show little to no improvement.

Corn input costs are established as much as a year before cash sales take place. Our suppliers tell us that at today's market prices they are well below their production costs. Unless agriculture production costs drop substantially this year, the price squeeze between corn and ethanol may well continue into next crop year. The RFS for 2009, which effectively is 9.5 billion gallons after imports and prior year carry over credits, is now not only the floor but also the ceiling for demand.

Today, more than 25 ethanol plants have closed nationwide, idling nearly 2 billion gallons of capacity.

The outlook for New Energy Corp. and the U.S. ethanol industry will depend on several factors, including economic growth (consumer spending and gasoline demand), credit availability, and oil and gasoline (and ethanol) prices. We need to assure the continued viability of the industry as it stands today, as well as provide for future evolution and innovation while stimulating thousands of green jobs. To do this, access to immediate necessary operating capital is critically important to help weather the current economic conditions facing the industry.

U.S. ethanol producers have answered the challenge put forth in the RFS and are producing enough ethanol to fill the requirements. In doing so, the industry has recognized new opportunities to expand the use of ethanol and ensure the continued success of the RFS. The market for ethanol and other biofuels must expand to ensure that America's ethanol industry continues to grow and evolve. It is critical that the Federal government revisit the arbitrary limit on ethanol blending – today capped at 10 percent of each gallon of gasoline – and allow gasoline blenders and refiners to take full advantage of the benefits of ethanol blending. Increasing ethanol content in gasoline will ensure a market will exist for the next generation of ethanol produced from cellulose and other biomass materials like municipal solid waste. We look forward to continuing to work with Congress as well as with the U.S. Environmental Protection Agency, the U.S. Department of Energy and U.S. Department of Agriculture on this issue.

**Conclusion**

The Energy Independence and Security Act of 2007, the 2008 Farm Bill and several other policies enacted by the 110th Congress clearly put our nation on a new path toward greater energy diversity and national security. By continuing the strong foundation the U.S. renewable fuels industry has built for new, green American jobs, we can begin the hard work necessary to mitigate the impact of global climate change, reduce our dependence on foreign oil, and provide a tremendous economic stimulus to small business across rural America. The challenges faced by our industry today will make it stronger and more successful in the future.

Thank you.



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**Testimony of Manning Feraci**
**Vice President of Federal Affairs, National Biodiesel Board**
**Before the U.S. House Committee on Small Business**
**March 4, 2008**

**Summary of Testimony:** Biodiesel is a commercially viable, low-carbon renewable fuel that is widely accepted in the marketplace. There are significant economic, environmental and energy security benefits associated with the domestic production and use of biodiesel. Though there has been a significant increase in U.S. biodiesel production since 2004, the U.S. biodiesel industry is today in the midst of an economic crisis that threatens the industry's viability and the nation's ability to meet the use requirements for advanced biofuels established by the Energy Independence and Security Act (EISA). A stable federal policy framework that provides a multi-year extension of the biodiesel tax incentive and a workable Renewable Fuels Standard will allow the U.S. biodiesel industry to remain viable and play a constructive role in the nation's overall energy strategy.

**********

Chairwoman Velazquez, Ranking Member Graves and Members of the Committee, I thank you for the opportunity to testify today on behalf of the National Biodiesel Board (NBB) about the current economic status of the U.S. biodiesel industry.

**About NBB:** NBB is the national trade association representing the biodiesel industry as the coordinating body for research and development in the United States. It was founded in 1992 by state soybean commodity groups who were funding biodiesel research and development programs. Since that time, the NBB has developed into a comprehensive industry association which coordinates and interacts with a broad range of cooperators including industry, government and academia. NBB's membership is comprised of biodiesel producers; state, national and international feedstock and feedstock processor organizations; fuel marketers and distributors; and technology providers.

**Background and Industry Overview:** Biodiesel is a diesel replacement fuel made from agricultural oils, fats and waste greases that meets a specific commercial fuel definition and specification. The fuel is produced by reacting feedstock with an alcohol to remove the glycerin and meet the D6751 fuel specifications set forth by the American Society for Testing and Materials (ASTM International). Biodiesel is one of the best-tested alternative fuels in the country and the only alternative fuel to meet all of the testing requirements of the 1990 amendments to the Clean Air Act.

Biodiesel is primarily marketed as a 5% blending component with conventional diesel fuel, but can be used in concentrations up to 20%. It is distributed utilizing the existing fuel distribution infrastructure with blending occurring both at fuel terminals and "below the rack" by fuel jobbers. Biodiesel is beginning to be distributed through the petroleum terminal system. To

date, biodiesel is available in over 40 fuel distribution terminals. In the past year, two major pipeline companies have successfully tested B5 blends in pipelines, and the biodiesel industry has committed funds to continue to study the technical needs required for moving biodiesel through U.S. pipelines. Already, biodiesel is moved through pipelines in Europe and extending that capability in the U.S. would significantly increase biodiesel penetration in the U.S. diesel fuel market.

**Biodiesel Public Policy Benefits:** There are compelling public policy benefits associated with the enhanced production and use of biodiesel in the U.S.

*Biodiesel Reduces our Dependence on Foreign Oil:* Biodiesel can play a major role in expanding domestic refining capacity and reducing our reliance on foreign oil. The 690 million gallons of biodiesel produced in the U.S. in 2008 displaced 38.1 million barrels of petroleum, and increased production and use of biodiesel will further displace foreign oil. In addition, biodiesel is an extremely efficient fuel that creates 3.2 units of energy for every unit of fuel that is required to produce the fuel.

*Biodiesel is Good for the Environment:* Biodiesel is an environmentally safe fuel, and is the most viable transportation fuel when measuring its carbon footprint, life cycle and energy balance. The U.S. Department of Agriculture (USDA)/Department of Energy (DoE) lifecycle study shows a 78% reduction in direct lifecycle CO2 emissions for B100. 1 billion gallons of biodiesel will reduce current life cycle greenhouse gas emissions by 16.12 billion pounds, the equivalent of removing 1.4 million passenger vehicles from U.S. roads. In 2008 alone, biodiesel's contribution to reducing greenhouse gas emissions was equal to removing 980,000 passenger vehicles from America's roadways.

Biodiesel's emissions significantly outperform petroleum-based diesel. Research conducted in the U.S. shows biodiesel emissions have decreased levels of all target polycyclic aromatic hydrocarbons (PAH) and nitrited PAH compounds, as compared to petroleum diesel exhaust. These compounds have been identified as potential cancer causing compounds.

Biodiesel is the only alternative fuel to voluntarily perform Environmental Protection Agency (EPA) Tier I and Tier II testing to quantify emission characteristics and health effects. That study found that B20 (20% biodiesel blended with 80% conventional diesel fuel) provided significant reductions in total hydrocarbons; carbon monoxide; and total particulate matter. Research also documents the fact that the ozone forming potential of the hydrocarbon emissions of pure biodiesel is nearly 50% less than that of petroleum fuel. Pure biodiesel typically does not contain sulfur and therefore reduces sulfur dioxide exhaust from diesel engines to virtually zero.

*The Biodiesel Industry is Creating Green Jobs and Making a Positive Contribution to the Economy:* In 2008 alone, the U.S. biodiesel industry supported 51,893 jobs in all sectors of the economy. This added $4.287 billion to the nation's Gross Domestic Product (GDP) and generated $866.2 million in tax revenue for federal, state and local governments.

By conservative estimates, there is domestic feedstock available to support 1.77 billion gallons of annual biodiesel production in the U.S. The domestic industry has the capacity to support this level of production. The production of 1.77 billion gallons of fuel would support 78,619 jobs; add $6.660 billion to the GDP; displace 97.8 million barrels of petroleum; generate $1.345 billion in revenue for federal, state and local governments; and reduce greenhouse gas emissions by 27.4 billion pounds - the equivalent of removing 2.38 million passenger vehicles from U.S. roads.

*The Biodiesel Industry Stimulates Development of New Low-Carbon Feedstocks:* The feedstock used to produce U.S. biodiesel has increasingly diversified, with waste products such as animal fat and used restaurant grease (yellow grease) making up a larger portion of the feedstock used to produce fuel. Biodiesel production is currently the most efficient way to convert lipids into low-carbon diesel replacement fuel, and as a result, industry demand for less expensive, reliable sources of fats and oils is stimulating promising public, private and non-profit sector research on second generation feedstocks such as algae.

Algae's potential as a source of low carbon fuel has been well documented, and a stable, growing biodiesel industry is necessary if the U.S. is to eventually benefit from the commercial scale production of algal-based biofuels. The NBB estimates that for every 100 million gallons of biodiesel that is produced from algae, 16,455 jobs will be created and $1.461 billion will be added to the GDP.

**U.S. Biodiesel Industry is Facing Severe Economic Hardship:** Despite recent growth, the industry is in the midst of an economic crisis. Plants are having difficulty accessing operating capital. Volatility in commodity markets and reduced demand for biodiesel in both domestic and global markets are making it difficult for producers to sell fuel. Lastly, uncertainty relating to federal policy that is vital to the industry's survival is sending inconsistent signals to the marketplace and undermining investor confidence in the industry.

If prolonged, this downturn will lead to a severe retraction in U.S. biodiesel production capacity. Due to current market conditions, less than one-third of the industry's facilities are currently producing fuel. NBB estimates that absent any change in federal policy, U.S. biodiesel production will likely fall to 300 million gallons in 2009, which would cost the U.S. economy more than 29,000 jobs. The ability to meet the advanced biofuels goals established in the 2007 Energy Bill could be threatened if today's economic crisis is not addressed.

**A Reliable Policy Framework is Needed for U.S. Biodiesel Industry:** The U.S. biodiesel industry is not seeking the creation of new programs. Instead, common-sense improvements and thoughtful implementation of existing initiatives will help the industry survive in this difficult economic climate. Specifically, a multi-year extension of the biodiesel tax incentive and successful implementation of a workable RFS-2 are needed if the nation is to reap the future economic, environmental, and energy security benefits associated with the production and use of biodiesel.

Extension of the Biodiesel Tax Incentive is Vital to the U.S. Biodiesel Industry: The biodiesel tax incentive is a $1 per gallon blenders excise tax credit that can be claimed on biodiesel produced from vegetable oils, animal fats and used restaurant grease (yellow grease). The incentive can also be claimed in the form of a general business income tax credit. To qualify for the tax incentive, the biodiesel must by statute meet both the ASTM D6751 fuel specification and the EPA registration requirements under Section 211 of the Clean Air Act. The incentive was enacted in 2004 as part of the American Jobs Creation Act (P.L. 108-357). The incentive was subsequently extended through December 31, 2008 as part of the Energy Policy Act of 2005 (P.L. 109-190). H.R. 1424, the Emergency Economic Stabilization Act of 2008 (P.L. 110-343) extended the incentive for another year through December 31, 2009.

The biodiesel excise tax credit is claimed at the point where biodiesel is blended with conventional diesel fuel. Blenders are required to register with the Internal Revenue Service (IRS) to claim the incentive. The excise tax credit can be used to offset a blender's fuel excise

tax liability. To the degree that the incentive exceeds excise tax liability, eligible taxpayers may claim a refund from the IRS. This structure accomplishes the incentive's policy objective of helping to make biodiesel price competitive with conventional diesel fuel.

If the tax incentive is allowed to expire at the end of the year, the price of biodiesel will be significantly higher than petroleum diesel, thus further reducing demand and making it nearly impossible for biodiesel plants to produce fuel at a profit. Thus, it is safe to assume that if the biodiesel tax incentive lapses, biodiesel production in the U.S. will halt or at a minimum be severely curtailed, and the energy security, environmental, and job creation benefits that the nation realizes from biodiesel production will be lost.

Further, the short-term nature of the incentive under current law inadvertently sends the signal to the marketplace that the federal commitment to biodiesel is tenuous. At a time when market conditions are less than ideal and investor confidence is strained, the temporary nature of the incentive undermines overall confidence in the stability of the industry. A multi-year extension of a reformed tax incentive that is structured in a manner to promote a stable, viable domestic industry would address this situation and allow the U.S. to reap the multiple long-term benefits associated with the enhanced production and use of biodiesel.

A Workable RFS-2 will Stimulate Domestic Demand for Biodiesel and Help Industry Survive Economic Downturn: The Energy Independence and Security Act (P.L. 110-140) significantly expanded and improved the Renewable Fuels Standard (RFS-2). For the first time, RFS-2 specifically requires a renewable component in U.S. diesel fuel as part of the program's Advanced Biofuels Schedule. Specifically, RFS-2 requires the use of 500 million gallons of Biomass-based Diesel in 2009; 650 million gallons in 2010; 800 million gallons in 2011; and 1 billion gallons in 2012. Between 2012 and 2022, a minimum of 1 billion gallons must be used, and the Administrator of the EPA has the authority to set the use requirement at a higher level. Fuel must reduce greenhouse gas (ghg) emissions by 50% compared to conventional diesel fuel to qualify for the program. The statutory Biomass-based Diesel requirement is the first component of the Advanced Biofuels Schedule to be implemented.

The NBB supports timely implementation of the RFS-2 schedule established in P.L. 110-140. EPA has crafted a Notice of Proposed Rulemaking (NOPR), and this proposed rule has been forwarded to the Office of Management and Budget (OMB) for review.

Although NBB has not yet had the opportunity to formally review a draft of the RFS-2 NOPR, EPA personnel through stakeholder meetings have provided us with information indicating that the NOPR as currently drafted disqualifies Biomass-based Diesel derived from vegetable oil, including domestically-produced soybean and canola oil, from the Biomass-based Diesel schedule. Vegetable oils account for more than sixty percent of the feedstock that is available to meet the RFS-2 Biomass-based Diesel targets, and the use requirements established by this component of the Advanced Biofuels Schedule simply cannot be met if these feedstocks are disqualified from the program. We are hard pressed to believe this potential outcome is consistent with the will of Congress or sound environmental policy that values the displacement of petroleum diesel with low-carbon renewable fuels.

As mentioned previously, fuel must reduce ghg emissions by 50% compared to conventional diesel fuel to qualify for the Biomass-based Diesel program. By statute, significant indirect emissions are to be considered as part of the ghg emission calculation. EPA has opted to account for Indirect Land Use Change (ILUC) in its ghg calculations as part of the rulemaking process. The result is that the EPA inaccurately attributes significant deforestation in South America to

the cultivation of oilseeds such as soybeans and canola produced in the U.S. Thus, under the EPA's forthcoming proposed rule for RFS-2, these feedstocks could be disqualified from the Biomass-based diesel program.

The science pertaining to *direct* emissions is well established. The USDA/DoE lifecycle was initially published in 1998, and has been continually refined and updated since this time. According to this model, biodiesel reduces ghg emissions by 78%.

However, the science surrounding ILUC is at this point unreliable, incomplete and inexact. Premature publication and use of specific ghg emissions calculations based on faulty ILUC assumptions will be harmful to the U.S. biodiesel industry, as it will undermine investor confidence and further deprive the industry of the investment capital it will need to meet the Biomass-based Diesel schedule required in RFS-2. The methodology ultimately used by EPA in the RFS-2 rulemaking will have a significant impact on the overall success of the program, and the science and methodology employed by EPA should be subject to thorough public and academic review before numerical values are assigned to specific renewable fuels. Accordingly, specific ghg reduction calculations attributed to ILUC should not be published at this time until the methodology EPA plans to employ to make these calculations are subject to a through public review.

Again, Chairwoman Velazquez, Ranking Member Graves and Members of the Committee, I sincerely appreciate the opportunity to testify before you today, and would be more than happy to answer any questions you may have.

**Written Testimony of Brooks Hurst, Tarkio, MO, 3/4/2009**

My name is Brooks Hurst I farm in northwest Missouri (Tarkio, MO). In addition to serving on the board of a majority farmer-owned biodiesel production facility located in Kansas City, Mo., I am also invested in several other new-generation cooperatives and limited liability companies. I was asked to testify about the impact the economic downturn has had on the biofuels industry.

Because I am more involved with the biodiesel industry than I am ethanol, I will focus on biodiesel. However, I do believe that I can accurately answer any questions the Small Business Committee might have about liquid biofuels and/or direct the members to helpful resources.

For clarification: biodiesel is made from vegetable oil and most of this oil comes from soybeans, although any fatty acid can be utilized. Biodiesel is blended with petroleum-based diesel fuel and can power any vehicle or piece of machinery that has a diesel engine. Ethanol is alcohol that is distilled from a sugar or starch-based mash. Corn is currently the most economically feasible feedstock for ethanol production. Ethanol is blended with gasoline for use in cars and light-duty trucks that have gasoline engines.

These two fuels represent real technology that we are able to produce now. Biofuels are reducing our dependence on foreign oil, adding to our fuel supply and creating jobs by encouraging the proliferation of "bio-refineries" in the rural areas of this nation. And the displacement of fossil fuels with these renewable fuels is good for our environment. For every unit of energy that is used for drilling, transporting and refining gasoline, only 0.9 of a unit is gained. With tillage, fertilizer, processing, etc., figured-in, ethanol yields 1.2 units of energy for every unit of input. Biodiesel's return on energy investment is even more impressive. From field to fuel tank, biodiesel gives 3.5 units for every unit of energy while reducing the carbon footprint for every gallon by 70 percent.

While I'm dispelling misinformation, I will also mention that there is no food vs. fuel issue when it comes to biodiesel. The following figures can also aid in demonstrating the impact that commodity prices have on the biodiesel industry.

Whole soybeans are rarely fed to animals or eaten by people. The beans are processed (crushed) to separate the oil (20 percent of the soybean itself), meal (75 percent), and hulls (5 percent). More than 95 percent of all domestically-produced soybean meal is fed to livestock, but it can also be made into soymilk, tofu, etc. The hulls are fed to animals and have the same market value as corn. Only the soybean oil is used to make biodiesel. In other words, for every unit of biodiesel produced, there are more than three times as many units of feed and/or food produced. What about cooking oil? Used cooking oil is also utilized to make biodiesel. So, foods can be fried in oil, and then the oil can be made into biodiesel. The more soybeans we grow for vegetable oil to be processed into biodiesel, the more feed and food is produced. The biodiesel industry provides food, feed, AND fuel.

Every 60-pound bushel of soybeans yields approximately 1.5 gallons of soybean oil which subsequently yields 1.5 gallons of biodiesel. The formula for biodiesel is simple: 90 percent fatty acid + 10 percent alcohol + catalyst = 90 percent biodiesel and 10 percent glycerin. I will expand on the role glycerin plays near the conclusion of this testimony. Soybean oil weighs approximately 7.5 pounds per gallon. If you multiply 7.5 by the Chicago Board of Trade price for soybean oil, which gives you a rough idea of the break-even price for biodiesel.

It is understandable that commodity prices, along with fuel prices, have the greatest impact on the feasibility of the biofuels industry. I don't know how direct the relationship is between the economy and fuel prices, but the dipping petroleum market has affected our bottom line as much as high feedstock prices did over the summer.

The situation in the world of finance has affected many biofuels operations also. At a time when a great deal of operating capital is/was required to pay for margin calls or to simply keep the operation afloat, lenders tightened the purse strings. Even though interest rates are low, financial institutions are not willing to loan the money. I know of an example where a loan on a biodiesel plant was purchased by a large firm who put a stop to the farmer-owned plant borrowing money from a local bank. However, the new financer would not extend operating capital to the plant. The biodiesel cooperative is now trying to squeeze more money from its original investors. They have no other option!

I also know of a large scale, farmer-owned biodiesel production facility for which 40 percent of the capital requirement for construction was met by farmer-investors. Three years ago, when the shares were sold to farmers, diesel prices at the pump were around $3 per gallon and soybean oil prices were around $0.28 per pound. With the Dollar Blenders Credit from the Federal Government, the future looked bright for biodiesel investors and financers were knocking on doors wanting the business of these co-ops and LLCs. We all knew things would tighten-up, but we didn't know how dramatically. This particular group had three different lenders willing to put up 60 percent of the capital. Their equity drive closed and construction started at about the same time that commodity prices began to climb. Those lenders all raised their required interest rates which prolonged negotiations and before an agreement was reached with one of the firms. Soybean oil prices were over $0.70 per pound and projected margins were thin. New lenders were courted, but then the financial world collapsed. The plant is now partially built, but the capital raised has been depleted and the construction crews have been sent home until further capital is raised or a lender steps forward.

I have been fortunate to be involved in business models with a better position in the industry. But, things are still tough. Nationally, biodiesel's production capacity is near 2.55 billion gallons per year; however, actual production was approximately 700 million gallons in 2008. Still, biodiesel was able to displace more than 20 million barrels of petroleum in 2008. These numbers help to show that there is great potential to increase the level of U.S. biodiesel production and reduce dependency on foreign oil when

operating capital is available and/or the markets are not as volatile as they are today. For ethanol, approximately 9.5 billion gallons were produced in 2008, which displaced more than 300 million gallons of foreign oil.

One 30-40 million gallon biodiesel plant that is integrated with a soybean crush facility will employ over 50 individuals with a payroll of over $2 million annually. The construction of that plant provided jobs and transportation jobs have been created as a result of the transfer of goods in and out. The demand for soybeans is higher and the feed for animals is cheaper because the plant was built. Those additional profits combined with the earnings from the farmer-owned facility are reinvested in rural communities, creating retail and service jobs. That exemplifies why it is critical to keep the biofuels ball rolling.

I suppose the government has done everything possible to encourage lenders to extend operating capital to existing biodiesel and ethanol production facilities. If not, those avenues need to be explored to maintain the industry we have created and which has truly had a positive impact on Rural America and our nation as a whole. There is no need to throw money at "pie-in-the-sky programs" when we have part of the answer to our future energy needs at hand.

Aside from the requirements for capital and financing, three recommendations for the committee and the federal government come to mind: extension of the federal Biodiesel Blender's Credit, inclusion of glycerin in the federal Bio-based Fuel Blender's Credit and implementation of the Renewable Fuels Standard. I believe that biofuels producers who make it through this volatile shake-out period will be successful long term. Extending and properly implementing the programs already in place can aid this fledgling industry.

One of the biodiesel plants I am involved in is finding it difficult to book business forward because of the uncertainty of the continuance of the Biodiesel Blender's Credit program. If extended for three more years, operations could minimize their risks by contracting forward. It would also assure lenders that projections relying on the credit were accurate and that possible market implications were not a nearby concern.

Likewise, if the Department of Revenue would decide that glycerin is eligible for the fifty-cent Bio-based Fuel Blending Credit, it would establish a floor for the price of the co-product coming out of biodiesel plants. There are many uses for glycerin, but its pricing has fluctuated as greatly as the petroleum and commodity markets. Glycerin is being successfully utilized as a fuel conditioner in #4 fuel oil. It works as a fuel when blended at 20 percent in burners that fire asphalt plants. It is bio-based and there is no reason why it should not be eligible for that tax credit program. Inclusion in the tax credit program would also help the Environmental Protection Agency move their classification of glycerin from a waste product to a fuel.

Finally, implementing the Renewable Fuel Standard that Congress passed in the latest Energy Bill would help to provide additional support for the nation's biofuels producers. The specifics for the enforcement of the RFS are still to be determined, but we need it to

be enacted as soon as possible. Even when biofuels have been less expensive than petroleum based fuels, we have seen petroleum companies resist making biodiesel or ethanol available to consumers. The RFS is necessary to help the free market because petroleum companies have a monopoly on the distribution infrastructure.

Making biofuels available to the public and increasing domestic demand is more important than ever. All exports of biodiesel to Europe have been stopped as of the first of the year pending determinations on trade conflicts between U.S. biodiesel producers and the European Union.

I believe that we, as a nation, stand at a crossroads. The decisions that are made today will impact this country for years to come. It is my hope that my testimony will help demonstrate the importance of the biofuels industry and that the Small Business Committee will consider my recommendations. It is crucial that we work together to ensure that the U.S. biofuels industry continues to play an important role in rural development and growing our fuel supply.

# Appendix B

# Representative Graves' Submission to the Standards Committee

LAW OFFICE OF ELLIOT S. BERKE PLLC

www.berkelawdc.com

October 5, 2009

The Honorable Zoe Lofgren
Chairwoman
The Honorable Jo Bonner
Ranking Republican Member
Committee on Standards of Official Conduct
HT-2, The Capitol
Washington, DC 20515

Dear Chairwoman Lofgren and Ranking Member Bonner:

The Office of Congressional Ethics ("**OCE**") was established by the United States House of Representatives as an independent, non-partisan entity charged with reviewing allegations of misconduct against Members and, *when appropriate*, referring matters to the Committee on Standards of Official Conduct ("**Ethics Committee**"). The "*Rules for the Conduct of Investigations*" authorizing the OCE to conduct its investigations of Members for alleged House Rule(s) violations, and which govern the OCE's conduct during the course of such investigations ("**OCE Rules**"), were adopted under authority granted by H. Res. 895 of the 110th Congress Section 1.(c)(F).

The OCE has investigated Representative Sam Graves ("**Rep. Graves**") for an alleged violation(s) of House Rules. The OCE's investigation commenced after an anonymous Complaint was filed. A copy of the Complaint has not been provided to Rep. Graves, nor has the OCE confirmed to Rep. Graves the specific fact allegations contained in the Complaint.

At the beginning of the OCE's investigation, the OCE described the nature of the alleged violation(s), as follows:

> **Representative Sam Graves, Ranking Member of the Committee on Small Business, invited Mr. Brooks Hurst to testify at a Committee hearing on 'The State of the Renewable Fuels Industry in the Current Economy.' The hearing was held on March 4, 2009. It appears that Mr. Hurst is a friend of Rep. Graves and his wife, Lesley Graves, and that Mr. Hurst and Mrs. Graves both hold a financial interest in the same renewable fuels plants in Missouri. Neither Rep. Graves nor Mr. Hurst disclosed the financial connection between Mr. Hurst and Mrs. Graves to the Committee during the hearing. Rep. Graves' conduct may have violated House Rule 23.**

*See OCE Corresp. to Rep. Graves,* dated April 1, 2009, "*INITIATION OF PRELIMINARY REVIEW.*" The OCE never fully explained the nature of the alleged violation(s) to Rep. Graves. The OCE did not provide Rep. Graves with specific citation(s) to the section(s) of House Rule 23 or precedent that the OCE was analyzing to make a determination of whether Rep. Graves may have violated any rule(s). *Id.* After Rep. Graves received the OCE's April 1, 2009 correspondence, Rep. Graves' counsel contacted the OCE and specifically asked the OCE's counsel to disclose the subsection(s) of House Rule 23 and any other precedent that the OCE believed Rep. Graves may have violated. The OCE did not explain the alleged violation(s) other than they generally pertained to House Rule 23.

As the Ethics Committee is aware, House Rule 23 is a dense rule that is comprised of numerous subsections. Thus, it was virtually impossible for Rep. Graves to know, with any degree of certainty, which section(s) of House Rule 23 the OCE was considering during its investigation. The OCE's refusal to inform Rep. Graves of this information was unfair and arguably prejudicial to Rep. Graves, as he responded to the OCE's investigative inquiries and requests for materials regarding alleged ethics violation(s).

In retrospect, the fact that the OCE would not elaborate or direct Rep. Graves to any specific section of House Rule 23 suggests that the OCE did not have reason to believe that an alleged violation of House Rule 23 may have occurred. Rhetorically speaking, if there was a potential violation of

House Rule 23, what prevented the OCE from informing Rep. Graves of the subsection or language of the rule that was at issue?

Notwithstanding the OCE's unwillingness to provide a specific citation to the section of the rule at issue, the OCE's investigation concerned Mr. Brooks Hurst who testified as a witness on March 4, 2009, at a Committee on Small Business hearing entitled, "*The State of the Renewable Fuels Industry in the Current Economy*" ("**Hearing**"). The OCE transmitted its Report and Findings to the Ethics Committee on August 6, 2009 ("**OCE Report**"). The OCE's *theory* is that Mr. Hurst and Rep. Graves' wife, Lesley Graves, hold investments in Golden Triangle Energy Cooperative and Biofuels LLC, and Rep. Graves should have disclosed this information (somehow) prior to Mr. Hurst's testimony at the Hearing. Moreover, that "Representative Graves could expect Witness A [Mr. Hurst] to testify at the hearing in a manner consistent with Witness A's and his [Rep. Graves] own financial interest." *See OCE Report*, at p. 5-6, ¶ 3.

It is now known to Rep. Graves - after receiving a copy of the OCE Report - that the OCE was applying its *theory* to the requirements of House Rule 3, clause 1, House Rule 23, clause 2, and provisions of the House Ethics Manual. The relevant excerpts from the rules and the provisions of the House Ethics Manual that the OCE was evaluating in connection with this matter are:

> **Under House Rule 23 clause 2, Members "shall adhere to the spirit and the letter of the Rules of the House...".**
>
> **Under House Rule 3, clause 1, "Every Member...shall vote on each question put, unless he has a direct personal or pecuniary inters tint he event of such question."**
>
> **The House Ethics Manual advises "sponsoring legislation, advocating or participating in an action by a House committee, or contacting an executive branch agency...entails a degree of advocacy above and beyond that involved in voting, and thus a Member's decision on whether to take any such action on a matter that may affect**

> **his or her personal financial interests requires added circumspection."**
>
> **The House Ethics Manual further advises that Members should guard against even the appearance of any impropriety or conflict of interest because such action may adversely affect public perceptions and confidence.**

*See OCE Report*, at p. 7. It should be noted that the only section of House Rule 23 that the OCE was evaluating is clause 2, which generally states that Members should follow the House Rules. Thus, the OCE's statements to Rep. Graves at the onset of its preliminary review of this matter - that an alleged violation of House Rule 23 may have occurred - were not helpful to Rep. Graves' understanding of the purported violation(s). In reality, the OCE was not focusing on House Rule 23. The OCE was focusing on (1) provisions of the House Ethics Manual, providing that "*Members should guard against even the appearance of any impropriety or conflict of interest*," and (2) House Rule 3, clause 1, which states Members "*shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question.*" *See OCE Report*, at p. 7.

The OCE Report concludes that "[w]hile the Board finds that there is substantial reason to believe that Representative Graves' invitation to Witness A [Mr. Hurst] created an appearance of a conflict of interest, the Board notes that any disqualifying interest that Representative Graves had in this matter would likely have affected Representative Graves only as a member of a class; therefore, **there is not substantial reason to believe that Representative Graves' invitation to Witness A [Mr. Hurst] violated the spirit of House Rule 3**. *See OCE Report*, at ¶ 81.[1]

The Committee on Small Business didn't vote at the Hearing, so there could be no violation of House Rule 3, clause 1. Further, the Committee on Small

[1] The OCE Report further states that "[t]he House Ethics Manual, on page 234, advises Members that, in the context of voting, Members should 'withdraw when a question concerning himself arises; but ...the disqualifying interest must be such as affects the Member directly, and not as one of a class.'". *See OCE Report*, at ¶ 81, *fn.* 101.

Business has no financial oversight and held the Hearing for purposes of gathering information on the state of the renewable fuels industry, so there could be no "*appearance of a conflict of interest*," and therefore, no violation of the House Ethics Manual or House Rule 23, clause 2. The OCE's investigation should have ended here based upon these undisputable facts. Notwithstanding that Rep. Graves' informed the OCE of these truths, the OCE chose to continue its investigation taking a trip to Kansas City, Missouri for two days and interviewing Rep. Graves and three individuals from his staff, all of which was a waste of the taxpayers' dollars.

We hereby respectfully request that the Ethics Committee not make public the OCE Report. While we respect the need for transparency and accountability in the ethics process, we believe that the interests of justice, fundamental fairness, and due process are of paramount concerns in this instance.

The Ethics Committee adopted rules ("**Ethics Committee Rules**") to provide a fair procedural framework for the conduct of the its activities and to help ensure that the Ethics Committee serves well the people of the United States, the House of Representatives, and the Members, officers, and employees of the House of Representatives. *See Forward to Ethics Committee Rules*, p. 1. Ethics Committee Rule 1 acknowledges that "when the interests of justice so require, the Ethics Committee, by a majority vote of its members, may adopt any special procedures, not inconsistent with these rules, deemed necessary to resolve a particular matter before it." *See* Ethics Committee Rule 1(c), p. 1. As detailed below, the specific procedural flaws and inaccuracies within the OCE Report make it incumbent on the Ethics Committee to weigh whether or not the public release of the report and findings will serve the interests of justice or, in actuality, serve to potentially denigrate them.

While Ethics Committee Rule 1 provides the Committee with specific latitude and discretion in just such a case, the Ethics Committee may not need to exercise it. The Ethics Committee has publicly acknowledged that it has extended this matter for an additional 45-day period pursuant to Rule 17A(b)(1)(B) and 17A(c). *See Statement of the Chair and Ranking Republican Member of the Committee on Standards of Official Conduct*

*Regarding Representative Sam Graves, September 15, 2009.* According to Ethics Committee Rule 17A(e):

> **If the Committee votes to dismiss a matter referred from the Board, the Committee is not required to make public the written report and findings of the Board pursuant to paragraph (c) unless the Committee's vote is inconsistent with the recommendation of the Board.**

*See Forward, Rules of the Committee on Standards of Official Conduct, 111th Congress (Adopted February 10, 2009 Amended June 9, 2009)* at 25. Both of the criteria for the Ethics Committee to exercise its discretion under this rule are met in this instance: First, the Ethics Committee voted to dismiss the matter referred to it from the Board; and second, the Ethics Committee's vote was not inconsistent with the recommendation of the Board, which simply read as follows:

> **RECOMMENDATION: The Board of the Office of Congressional Ethics recommends that the Committee on Standards of Official Conduct further review the above described allegations concerning Representative Graves.**

*See OCE Report,* at *(1).* Because the Ethics Committee further reviewed the matter referred to it by the OCE, its vote is consistent with the OCE's recommendation. Therefore, the Ethics Committee is not required to make public the written report and findings of the Board and indeed should not make public said OCE Report.

As the Ethics Committee has also publicly acknowledged, it identified materials in the OCE Report that contained exculpatory evidence that the OCE failed to provide to Representative Graves. *See Statement of the Chair and Ranking Republican Member of the Committee on Standards of Official Conduct Regarding Representative Sam Graves, September 15, 2009.* For this and other extenuating circumstances, as described below, the Ethics Committee should not publicly release the OCE Report.

## I. THE OCE'S FINDINGS OF FACT ARE OFTEN ARGUMENTATIVE AND INNACURATE & THE OCE

**REPORT OMITS DISPOSITIVE FACTS AND INFORMATION IN REP. GRAVES' FAVOR**

On July 24, 2009, the Board adopted findings of fact and citations to law that were submitted by the OCE staff counsel who conducted the investigation of this matter. *See OCE Report*, at p. 5.

Rep. Graves' counsel was present during each interview of Rep. Graves and his staff. Rep. Graves' counsel does not agree with many of the purported "findings of fact" that have been submitted to the Ethics Committee. The "findings of fact" are often inaccurate and biased, as set forth more fully herein. Moreover, the OCE omitted important facts from its Report, some of which are instrumental in making a determination of whether a violation(s) of any House Rules may have occurred.

**a. The Committee on Small Business Has No Financial Oversight**

The OCE Report omits one of the most important and telling facts of this entire matter, which is that the Hearing was held solely for the purpose of gathering information on the state of the renewable fuels industry.[2] *See OCE Report*, Ex. 9 at ¶ 5.

The Committee on Small Business (**"CSB"**) has no financial oversight whatsoever and it can take no legislative action to financially affect renewable or bio fuel companies or that industry in general. The OCE's *theory* in this matter is that "Representative Graves could expect Witness A [Mr. Hurst] to testify at the hearing in a manner consistent with Witness A's and his own financial interest." *See OCE Report*, at p. 5-6, ¶ 3. The OCE's theory dies on the undisputable fact that CSB has no financial oversight, and

[2] Exhibit 9 to the OCE's Report is a memorandum of OCE's interview of the former Deputy Chief of Staff (Paul Sass), who is currently Deputy Staff Director for the CSB. *See* OCE Report Ex. 9, "Summary" p. 1. The OCE's memorandum states that a member of Rep. Graves' staff informed OCE that "[t]he Committee has limited jurisdiction so they can talk about anything at hearings." *See* OCE Report Ex. 9, at ¶ 5. This is the only reference in the entire OCE Report that addresses the fact that the CSB has no financial oversight and that the hearing was held for the sole purpose of gathering information on the topic of the state of the renewable fuels industry. Needless to say, this information is not contained in the body of the OCE's Report and gets lost in one of seventeen exhibits attached thereto.

therefore, the Hearing could not affect Rep. Graves' or Mr. Hurst's financial interests.

**b. The Committee on Small Business Witness Disclosure Requirements**

The OCE Report also omits the fact that Mr. Hurst complied with all rules pertaining to disclosures by witnesses testifying before the CSB, a fact that is substantially relevant to this exercise.

During the investigation, Rep. Graves provided the OCE with a detailed memorandum prepared by Mr. Barry Pineles (**"Pineles Memo"**). *See* Ex. A, *Pineles Memo*. Mr. Pineles is Chief Counsel for the Republican Staff of the CSB, a position he has held since April 2006. Prior to that, Mr. Pineles was Regulatory Counsel of the CSB. Mr. Pineles also has extensive experience with Committee hearings, including the identification of witnesses and the disclosure requirements for witnesses. The Pineles Memo describes the witness disclosure procedures and requirements for witnesses testifying before the CSB. The Pineles Memo is not even mentioned in the OCE Report.

Of particular relevance to the present matter is that portion of the Pineles Memo pertaining to CSB's witness disclosure requirements, in which Mr. Pineles states:

> **Once non-governmental witnesses have been identified, they must submit a number of items to the Committee [CSB]. First, they must provide a written copy of the statement that will be made a part of the hearing record. Rule XI, cl. 2(g)(4). Second, they must include a curriculum vitae. *Id.* Finally, they are required by the same clause of Rule XI to file "a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness." *Id.* Under the House and Committee [CSB] Rules, the information set forth in Rule XI, cl. 2(g)(4) is the only**

> **information that the Committee [CSB] will receive concerning the background of the witness.**
>
> **Even a brief scan of the attached Adobe document[3] will show that no financial interest, other than grants and contracts, of a witness is to be disclosed pursuant to the House Rules prior to a hearing. Taking an extreme hypothetical, nothing in Rule XI, cl. 2(g)(4) would require that a witness that co-owned a restaurant with a Committee [CSB] member would have to disclose that information. A perusal of the attached form shows that there is no place on the witness disclosure form for any financial information other than that required by Rule XI, cl.2(g)(4). Given the fact that financial interests and dealings of the Member is disclosed pursuant to § 101 of the Ethics in Government Act of 1978, 5 U.S.C. App., a committee staff seeking a witness for a hearing would not even seek to inquire about any financial dealings that the witness might have with a Member of Congress.**

*See Pineles Memo.*, at p. 4. In the present matter, Mr. Hurst provided a curriculum vitae and a copy of his written statement to the CSB, which became a part of the Hearing record. Mr. Hurst further submitted all of the information he is required to disclose in the witness disclosure form ("form"), which was submitted to CSB in a timely fashion. Mr. Hurst complied with all disclosure requirements for witnesses testifying before the CSB.

Rep. Graves and all Members inviting witnesses to CSB hearings do not, and have never inquired into a potential witnesses' financial investments or financial dealings that the witness may have in common with a Member of the CSB or their spouse.[4] Therefore, notwithstanding the fact that Rep. Graves did *not* know which companies Mr. Hurst was invested, there is no possibility that Rep. Graves should have disclosed (at the Hearing or otherwise) that Mr. Hurst is invested in two companies that Lesley Graves is

[3] See Ex. B, *Mr. Hurst's Witness Disclosure Form.*

[4] *See* Ex. C, Manzullo Memo.

invested. The OCE's *theory*, if applied to the CSB hearings, would create an absurdity because it would require all Members of the CSB to cross-check their investments and their spouse's investments with each potential witnesses' investments every time a witness is invited by the CSB to testify.

**c. Witness Selection Process**

The OCE Report erroneously states that Rep. Graves chose Mr. Hurst to testify at the Hearing. *See OCE Report*, at ¶¶ 31, 77. The OCE's findings are not supported by the information that is attached to its report.

Rep. Graves' then Deputy Chief of Staff (Paul Sass) stated in OCE's interview that he believed that *he* suggested Mr. Hurst to Rep. Graves. *See OCE Report*, Ex. 9 at ¶¶ 23, 29. Rep. Graves' Chief of Staff (Tom Brown) and Paul Sass stated during the OCE interviews that they believed Rep. Graves did *not* choose Mr. Hurst to be a witness, and that Rep. Graves *rarely* gets involved in the process of selecting a witness for Small Business Committee hearings. *See OCE Report*, Ex. 8 at ¶ 12; Ex. 9 ¶ 16. Rep. Graves informed the OCE that "[h]e was *not* sure who chose Brooks Hurst to testify at the hearing; he believed that it might have been Paul Sass." *See OCE Report*, Ex. 4 at ¶ 5. Rep. Graves further informed the OCE that "[h]e did *not* decide to invite Brooks Hurst to testify but he threw out Brooks Hurst's name for consideration." *Id.* at ¶ 6. Rep. Graves also informed the OCE that "[h]e did not know who chose the witness [Mr. Hurst]; he doesn't normally make those decisions." *Id.* at ¶ 7. Rep. Graves further informed the OCE that "Paul Sass was involved with the decision to invite Brooks Hurst; that was his job." *Id.* at ¶ 10. There are also numerous e-mails that are attached to the OCE Report that establish that Rep. Graves did not chose Mr. Hurst and was only tangentially involved in discussing a potential witness for the Hearing. *See OCE Report*, Ex. 7. Moreover, these e-mails establish that Rep. Graves' staff was making the determination of who to invite to testify at the Hearing, not Rep. Graves. *Id.*

The OCE Report also states that Rep. Graves dismissed a potential witness under consideration for the hearing because the witness was not from the district. *See OCE Report*, at ¶ 29. From this alleged fact, which is false, the OCE erroneously concludes that Rep. Graves must have also chosen Mr. Hurst to testify at the hearing (*e.g.*, if Rep. Graves dismisses a potential

witness that the staff was considering, then Rep. Graves must have also chose the witness who was invited to the hearing). The OCE's logic summarily rules out that Rep. Graves' alleged decision to dismiss a potential witness had absolutely nothing to do with the staff's decision to choose a witness. The e-mails attached as an exhibit to the OCE Report also contradict the OCE's findings. *See OCE Report*, Ex. 7. The e-mails actually establish that Rep. Graves' staff and the minority staff on the CSB developed the criteria used to select a potential hearing witness before informing Rep. Graves of the upcoming hearing. *See OCE Report*, Ex. 7; Ex. 9 at ¶ 11. Moreover, Paul Sass specifically told the OCE that he, and *not* Rep. Graves, rejected the potential witness because the witness was not from the district. *See OCE Report*, Ex. 9 at ¶ 15.

**d. Conflicts of Interest**

The OCE Report states that Rep. Graves' staff *appeared* to be aware of potential conflicts of interest with the witness selection process because they did not want a witness who was from a company in which Rep. Graves or Mrs. Graves had invested. *See OCE Report*, Heading D at ¶ 60. Again, the facts do not support the OCE's findings.

As Paul Sass explained to the OCE, he simply did not want a witness from any companies that Rep. Graves was invested in, *e.g.*, "someone with their name on a business card." *See OCE Report*, Ex. 9 at ¶ 11. In other words, Rep. Graves' staff did not want a witness who was an officer or employee (*e.g.*, President or C.E.O.) of a company that Rep. Graves was invested in. Mr. Hurst did not fall into the category of witness that Mr. Sass was trying to avoid. Mr. Hurst was not an officer or employee of Golden Triangle and Biofuels. Mr. Hurst was only an investor in those companies.[5]

**e. Rep. Graves Had No Knowledge of Mr. Hurst's Investments**

The OCE Report states that "[i]t appears that Representative Graves had knowledge of Witness A's [Mr. Hurst] investment in Golden Triangle Energy Cooperative ("Golden Triangle") and had reason to believe that

[5] The OCE Report implicitly draws a negative inference from the fact that Rep. Graves' staff was trying to prudently select a witness for the Hearing, when in fact Rep. Graves' staff should be respected for their efforts in this regard.

Witness A [Mr. Hurst] was invested in Biofuels LLC ("Biofuels"), two companies which Representative Graves' wife, Lesley Graves, was also invested...". *See OCE Report*, at ¶ 3.

The OCE provides no citation to any materials or exhibits to support its purported finding. There is none. The existing information and materials that the OCE accumulated in its investigation actually support Rep. Graves' statement that he did *not* know whether Mr. Hurst was invested in Golden Triangle or Biofuels.

The OCE is drawing its inferences from statements it obtained during the interview process in an attempt to support its inaccurate conclusion, *e.g.*, that Rep. Graves knew of Mr. Hurst's investments in Golden Triangle and Biofuels. For example, the OCE states that "Witness A [Mr. Hurst] acknowledged that he had discussed Golden Triangle Energy with Representative Graves and that he had discussed Biofuels with him." *See OCE Report*, at ¶ 5. First, Mr. Hurst confirmed with Rep. Graves' counsel that he said no such thing, and that he informed the OCE during his interview that "he *may have* discussed Golden Triangle Energy and Biofuels with Representative Graves *at some point*." A rather important piece of Mr. Hurst's interview statement that is omitted from paragraph 5 of its Report and its memorandum of interview of Mr. Hurst. Mr. Hurst also informed Rep. Graves' counsel that he specifically informed the OCE during his interview that "he is sure we [he and Rep. Graves] *never* specifically discussed what investments he had made." Mr. Hurst also informed the OCE that "[h]e was *not* aware that Representative Graves was invested in Golden Triangle; he could have guessed but he wasn't sure." *See OCE Report*, Ex. 5 at ¶ 14. Mr. Hurst further informed the OCE that "[h]e *didn't* check with him [Rep. Graves] to see if he had invested in the venture [Biofuels]" and that "[h]e felt it was rude to ask people about their money." *See OCE Report*, Ex. 5 at ¶ 18.

Rep. Graves' statements to the OCE during its investigation also clearly establish that Rep. Graves did not know of Mr. Hurst's investments in Golden Triangle or Biofuels. Rep. Graves informed the OCE during its interview that "[i]nvestments are *not* something he talks about with Brooks Hurst." *See OCE Report*, Ex. 4 at ¶ 39. Rep. Graves could *not* say what Brooks Hurst was invested in; he [Mr. Hurst] goes in and out of investments

so he wouldn't know what he was invested in." *Id.* Rep. Graves also informed the OCE that "[p]ersonal investments are *not* something that comes up in conversations that he has with Brooks Hurst, he talks to Brooks Hurst mostly about 'flying stuff'." *See OCE Report,* Ex. 4 at ¶ 42. They [Rep. Graves and Mr. Hurst] *don't* sit down and go over investments." *Id.* Rep. Graves further informed the OCE that "he did *not* recall Mr. Hurst asking him to invest in Golden Triangle." *Id.*

These facts obtained by the OCE during its investigation do not support its inaccurate conclusion that Rep. Graves *knew* of Mr. Hurst's investments in Golden Triangle and Biofuels.

**f. Brooks Hurst's Qualifications to Testify on Renewable Fuels**

The OCE's findings erroneously insinuate that Mr. Hurst was not qualified to testify by stating (1) Mr. Hurst was introduced at the hearing as a farmer and investor in a small ethanol plant, and (2) Rep. Graves could expect Mr. Hurst to testify in a manner beneficial to both Mr. Hurst and Rep. Graves' own financial interests. *See OCE Report,* at ¶¶ 3, 40-42, 75. The OCE's insinuations are contradicted by the facts and information the OCE obtained during its investigation.

Rep. Graves informed the OCE that Mr. Hurst was selected because "he [Mr. Hurst] was one of the most knowledgeable persons available." *See OCE Report,* Ex. 4 at ¶ 2. Rep. Graves informed the OCE of Mr. Hurst's extensive knowledge of renewable fuels, and that Mr. Hurst is President of the Missouri Soybean Association. *See OCE Report,* Ex. 4 at ¶¶ 12, 13. Rep. Graves further informed the OCE that Mr. Hurst has testified extensively regarding the renewable fuels industry throughout the country. *See OCE Report,* Ex. 4 at ¶ 13.

Mr. Hurst informed the OCE that he had testified at Congressional hearings on prior occasions. *See OCE Report,* Ex. 5 at ¶ 9. Mr. Hurst further informed the OCE that the first time he testified at a Congressional hearing, he was invited to testify by then Rep. Jim Talent. *Id.* Mr. Hurst also informed the OCE that the Missouri Soybean Association prepared his written testimony and provided talking points for his oral testimony for the

Hearing. *See OCE Report*, Ex. 5 at ¶ 10.[6] Mr. Hurst also informed the OCE that he thought he was asked to testify at the Hearing because (1) he is involved with the Missouri Soybean Association, (2) he had worked on biodiesel issues in the past, and (3) the hearing was scheduled on such short notice. *See OCE Report*, Ex. 7 at ¶ 5.

The record clearly establishes that Mr. Hurst was qualified to testify at the Hearing.

## II. THE OCE DID NOT FOLLOW RULES 4(F) AND 5 BY FAILING TO PROVIDE EXCULPATORY INFORMATION TO REP. GRAVES

Pursuant to Rule 4(F) of the OCE Rules, **"[s]taff shall promptly provide to a subject any exculpatory information received."**

The OCE is therefore required to disclose exculpatory information to a Member it is investigating. The OCE did not follow Rule 4(F) when, during the course of the OCE's investigation, the OCE failed to provide exculpatory information to Rep. Graves.

The OCE interviewed Mr. Hurst during the course of its investigation of the Complaint allegations.[7] The OCE took notes during its interview of Mr. Hurst and created a memorandum. *Id.* The OCE further requested that Mr. Hurst provide the OCE with documentation that showed his investment interests in Golden Triangle and Biofuels. The OCE further served Mr. Hurst with a written request for information and materials regarding the alleged rule violation(s).

Mr. Hurst orally answered the OCE's questions during the OCE's interview. Mr. Hurst further provided the OCE with documentation of his investment interests in Golden Triangle and Biofules. Mr. Hurst also provided the OCE

[6] The e-mails attached to the OCE Report further demonstrate that the Missouri Soybean Association prepared Mr. Hurst's written testimony for the hearing and provided talking points for his oral testimony. *See OCE Report*, Ex. 7, bates numbered e-mails: 097000000084 through 0970000000086, 097000000018 through 0970000000020.

[7] *See OCE Report*, Ex. 5, Memo. of Interview of Witness A (Mr. Brooks Hurst).

with a written response to the OCE's request for information and materials regarding the alleged rule violation(s). The information and materials that Mr. Hurst provided to the OCE is exculpatory information that establishes Rep. Graves did not commit any violation(s) of the House Rules.

The OCE did not follow Rule 4(F) of the OCE Rules ("**Rule 4(F)**"), as follows. The OCE did not provide Rep. Graves with any information or notes regarding the OCE's interview of Mr. Hurst. The OCE did not provide Rep. Graves with the documentation Mr. Hurst provided to the OCE regarding his investment interests in Golden Triangle and Biofuels. The OCE also did not provide Rep. Graves with Mr. Hurst's written response to the OCE's request for information and materials regarding the alleged rule violation(s). Such conduct is also not in accord with Rule 5, which states that "Office staff shall be impartial and unbiased in the conduct of investigation and shall collect all evidence related to the allegations, whether such evidence tends to prove or disprove the allegations." *See OCE Rules*, at p. 9.

The OCE has denied publicly that it did anything wrong by failing to provide Rep. Graves with the Hurst information and materials. The OCE contends it did nothing wrong because Rep. Graves' counsel had the Hurst information and materials in its possession. The OCE's proffered explanation for its failure to disclose is not encouraging.

The presumption of the OCE's explanation is that the OCE knew (during the OCE's investigation) that Rep. Graves possessed the Hurst information and materials. However, throughout the course of the OCE's investigation no one informed the OCE that Mr. Hurst provided Rep. Graves with a copy of what he sent to the OCE. Thus, the OCE didn't know whether or not Rep. Graves' counsel possessed the Hurst information and materials during the course of the OCE's investigation. The OCE's counsel cannot absolve themselves from their responsibility (after the fact) in failing to provide exculpatory information to Rep. Graves by simply stating that Rep. Graves' counsel possessed the exculpatory information. In summary, the failure to provide Rep. Graves with exculpatory information and materials cannot be excused or justified by virtue of the factual circumstances that it learned of after submitting its report.

The Ethics Committee has the authority to dismiss the OCE's referral of this matter involving Rep. Graves for alleged House Rule violation(s). The Ethics Committee also has the authority to not disclose the OCE Report to the public. Many factors weigh heavily in favor of dismissal of the OCE's referral and in not publicizing the OCE Report. *See Infra Section IV.* The OCE counsel did not adhere to Rule 4(F) or Rule 5, which states that "Office staff shall be impartial and unbiased in the conduct of investigation..." *See OCE Rules*, at p. 9. Just as when a prosecutor or civil litigation attorney fails to turn over exculpatory evidence in their respective cases, this matter involving Rep. Graves should be dismissed, and the OCE Report should not be made public.

## III. THE OCE CONDUCTED THIS INVESTIGATION OUTSIDE OF THE JURISDICTIONAL TIME LIMITATIONS ESTABLISHED BY OCE RULES

The OCE must comply with all time limitations pertaining to its review of alleged violations, as set forth in the "*Rules for the Conduct of Investigations*." If the OCE conducts an investigation outside of the governing time limitations, it loses jurisdiction over the matter it is investigating and the matter must be summarily dismissed.

> **The Office shall complete all preliminary reviews within 30 calendar days (hereafter referred to as the "preliminary review time period).** *See Rule 7(D).*
>
> **Before the preliminary review time period expires, the Staff shall submit a preliminary review report to the Board. The report shall recommend either that the Board take no action or that the Board initiate a second-phase review.** *See Rule 7(E).*
>
> **The Board shall authorize a second-phase review of an allegation if it finds *probable cause* to believe the alleged violation occurred based on all the information then known to the Board.** *See Rule 8(A).*
>
> **The Office shall complete a second-phase review within 45 calendar days after the Board commences such review**

> **(hereinafter referred to as 'second-phase review time period'). The Board may extend the second-phase review time period by an additional 14 calendar days upon an affirmative vote of a majority of its members.** *See Rule 8(C).*
>
> **At the conclusion of the second-phase review time period, the Staff shall submit to the Board a second-phase report recommending that the Board forward the matter to the Standards Committee either for further action or for dismissal."** *See Rule 8(D).*

*See OCE Rules*, at 7(D.)-(E.), 8(C.)-(D.). The OCE Report summarizes the procedural history of this matter, as follows.[10]

- On April 2, 2009, the OCE commenced its preliminary review of Rep. Graves.
- On May 2, 2009, the OCE commenced its second-phase review of Rep. Graves.
- The second-phase review was extended by 14 calendar days and ended on June 30, 2009.

However, the OCE's summary of the procedural history is not supported by the record. The OCE provided correspondence to Rep. Graves dated April 1, 2009, that informed Rep. Graves of the OCE's preliminary review of the alleged House Rules violation(s). *See* Ex. E. Moreover, in separate correspondence to Rep. Graves dated April 1, 2009, concerning the OCE's "*Request for Information*," the OCE states that "[t]his Request for Information is pursuant to a Preliminary Review authorized by the Board of the Office of Congressional Ethics (OCE) on March 26, 2009. *See* Ex. E. Thus, according to the OCE's correspondence to Rep. Graves, the OCE's preliminary review of this matter began on March 26, 2009. As such, the OCE's procedural history is inaccurate. The commencement of the preliminary review occurred on March 26, 2009, and therefore, the following deadlines pertaining to the OCE's time limitations for its preliminary phase and secondary phase review process are as follows.

[10] *See OCE Report*, at p. 6, ¶¶ 9-13

- On March 26, 2009, the OCE commenced its preliminary review of Rep. Graves.
- On April 25, 2009, the second-phase review of Rep. Graves should have commenced.
- On June 9, 2009, the second-phase review of Rep. Graves should have concluded.
- The Board could have extended the second-phase review by 14 calendar days to June 23, 2009.

Comparing the OCE's purported procedural history to the accurate deadlines note above, establishes that the OCE did not comply with each of the mandatory time limitations and deadlines for the preliminary-phase and secondary-phase review periods.

**a. The OCE Lost Jurisdiction of this Matter when it Did Not Follow the Time Limitations for the Preliminary-Phase Review**

Pursuant to *OCE Rules* 7(D.) and 7(E.), "[t]The Office shall complete all preliminary reviews within (30) calendar days (*see id.* Rule 7(D)), and "[b]efore the preliminary review time period expires, the Staff shall submit a preliminary review report to the Board." *See Id.* Rule 7(E). A reasonable construction of these rules establishes that the OCE must begin its second-phase review immediately following the conclusion of the OCE's (30) day preliminary-phase review, *e.g.*, the time periods are linear and without pause. To interpret these rules otherwise would create an absurd result. For example, if the time periods are not construed as linear, then the OCE could theoretically conduct a preliminary-phase review and then wait two years before commencing its second-phase review. Thus, the OCE should have commenced its second-phase review on April 26, 2009, *e.g.*, the day following the conclusion of its preliminary-phase review that commenced on March 26, 2009 and concluded on April 25, 2009.[11] The OCE did not commence its secondary-phase review until May 2, 2009. *See* Ex. F. Therefore, the OCE did not follow the *Rules for the Conduct of Investigations* when it investigated this matter outside the mandatory time limitations for its preliminary-phase review.

[11] There are 31 calendar days in the month of March.

**b. The OCE Lost Jurisdiction of this Matter when it Did Not Follow the Time Limitations for the Second-Phase Review**

Pursuant to *OCE Rules* 8(C.) and 8(D.), "[t]he Office shall complete a second-phase review within (45) calendar days after the Board commences such review," and "[t]he Board may extend the second-phase review time period by an additional 14 calendar days upon an affirmative vote of a majority of its members." *See Id.* Rules 8(C.) and 8(D.) establish that the OCE must complete its second-phase review within (45) calendar days, which can be extended by (14) calendar days. The OCE's second-phase review should have commenced on April 26, 2009. *See Supra* at III.(a.). Therefore, the OCE's second phase review (assuming it is extended by 14 days) should have concluded on June 23, 2009. On July 13, 2009, the OCE was still conducting its second-phase review and interviewing Mr. Brooks Hurst.[12] Therefore, the OCE did not follow the *Rules for the Conduct of Investigations* when it investigated this matter outside the mandatory time limitations for its second-phase review.

Even under the OCE's inaccurate procedural history of this matter, the OCE was still conducting its investigation of this matter after the second-phase ended. The second-phase review (according to the OCE), should have concluded on June 30, 2009. However, on July 13, 2009, the OCE was still conducting its second-phase review and interviewing Mr. Brooks Hurst.[13]

The OCE commenced its preliminary-phase and second-phase reviews out of time. As such, the OCE did not follow the prescribed time limitations and lost jurisdiction of this matter. Therefore, any purported resolution(s) or vote(s) by the Board in this matter are null and void and must have no affect. Rep. Graves respectfully requests that the Ethics Committee dismiss this matter and that the OCE Report not be made public.

## IV. THE OCE REPORT AND THE FLAWS MANIFESTED WITHIN THE PROCESS IN WHICH IT WAS REFERRED TO THE ETHICS COMMITTEE WEIGH AGAINST PUBLIC RELEASE

[12] *See* OCE Report, Ex. 5, Memo. of Interview of Witness A [Mr. Brooks Hurst].
[13] *Id.*

**a. The Inaccurate Conclusions and Unsound Recommendation Reached in the OCE Report Were Inconsistent with the Rules Governing Referrals to the Ethics Committee**

According to Rule 9 of the OCE Rules, the Board shall refer a matter to the Ethics Committee for further review if it determines there is a substantial reason to believe the allegations based on all the information then known to the Board. Despite the fact that the OCE determined that the opposite was true – that there was *no* substantial reason to believe that a violation of any rule occurred, it strangely – and in an act that was inconsistent with its own rules – voted to refer the matter to the Ethics Committee for further review. In the conclusion section of the OCE Report, the OCE made the following observations:

- The *House Ethics Manual* does not provide precise guidance for conflicts of interest where a Member has a personal financial interest in Committee actions as Congressman Graves has in this matter;

- The *House Ethics Manual* does not expressly prohibit a Member from participating in Committee actions, including selecting a witness for a hearing where the Member and witness share a financial interest that may be affected by the hearing; and

- There was not substantial reason to believe that Rep. Graves' invitation to Witness A violated the spirit of House Rule 3.

*See OCE Report*, at p. 21. While we do not necessarily adopt the factual predicates behind the OCE's conclusions above, we nevertheless agree with these underling conclusions. Yet, in spite of these conclusions, the OCE made additional, inaccurate conclusory remarks that Rep. Graves' conduct could have created an "appearance of a conflict of interest" and that his responses to the Board demonstrated a "lack of candor." *See OCE Report,* at p. 21-22.[14]

[14] The "lack of candor" observation was made despite the fact that the Board did not find Representative Graves in violation of 18 U.S.C. §1001.

According to Rule 1 of the its rules, the OCE has jurisdiction to investigate allegations that a Member, officer or employee of the House "has violated a law, rule, regulation, or other standard of conduct in effect at the time the conduct occurred and applicable to the subject in the performance of his or her duties or the discharge of his or her responsibilities." *See OCE Rule 1*, at p. 4. To date, neither an "appearance of a conflict of interest" nor a "lack of candor" would constitute an actionable violation of any law, rule, regulation, or other standard of conduct binding on any Member, officer or employee of the House. The phrase "appearance of a conflict of interest" appears in the *House Ethics Manual* only in the context of negotiating for future employment, *see House Ethics Manual* at 211, 238, and in the section dealing with unofficial representational accounts. *See House Ethics Manual* at 352. The phrase "appearance of impropriety and potential for conflict of interest" appears in the *House Ethics Manual* only as it relates to a Members' engagement in professional activities. *See House Ethics Manual* at 215. The phrase "lack of candor" does not appear in the *House Ethics Manual*. Therefore, the OCE's decision to refer the matter to the Ethics Committee in spite of the fact it found no substantial reason to believe that Rep. Graves violated any actual law, rule, regulation, or other standard of conduct appears to be inconsistent with its own rules.

**b. The OCE Report Contains Inaccurate Findings of Fact Incompatible with Ethics Committee Rules**

Despite the facial exoneration of Rep. Graves, the OCE referral to the Ethics Committee consists of nearly 200 pages of narrative and exhibits. Portions of said narrative and exhibits may create erroneous impressions for the reader. For instance, many of the exhibits to the OCE Report are listed as "Memorandum of Interview" that are essentially witness summaries prepared by the OCE staff. These memoranda do not reflect the full transcripts of interviews, but are rather summaries of the interviews as prepared by the OCE staff. Placing such summaries into the public domain would not respect the full and complete testimonies of the witnesses, nor the context in which such testimonies were given.

The inaccurate findings of fact, as discussed above, also amount to innuendo, speculative assertions, and factually erroneous conclusory

statements that the Ethics Committee has long recognized the dangers of including in the investigative process. *See Supra* at I. According to Ethics Committee Rule 15(a)(4), which governs complaints received by the Ethics Committee, "[t]he complaint shall not contain innuendo, speculative assertions, and conclusory statements." Further, Ethics Committee has also held that frivolous complaints should be dismissed from further consideration. Ethics Committee Rule 27 states:

> **If a complaint or information offered as a complaint is deemed frivolous by an affirmative vote of a majority of the members of the Committee, the Committee may take such action as it, by an affirmative vote of a majority deems appropriate in the circumstances.**

*See Ethics Committee Rules*, at p. 48. The public release of the OCE Report would therefore be inconsistent with policies long respected by the Ethics Committee.

**c. No Redress Exists As Exists in Parallel Proceedings**

The non-public release of the OCE Report is even more important to the interests of justice given that no clear procedural avenue exists to address the OCE's inaccurate findings and conclusions. Under the federal civil and criminal justice system, a defendant may at least seek attorney's fees from the government under certain circumstances. In criminal matters, a prevailing party may seek such funds "where the court finds that the position of the United States was vexatious, frivolous, or in bad faith."[15] This provision was derived in large part from its civil counterpart, the Equal Access to Justice Act (EAJA), 28 U.S.C. §2412 and 18 U.S.C. §924(d)(2)(D). No such parallel avenue exists for a prevailing party in an OCE investigation. Deciding against public release of the OCE Report would serve to mitigate the inequitable nature of this matter.

[15] 18 U.S.C. §3006A. This provision is colloquially known as the "Hyde Amendment."

**d. Rep. Graves Was Not Told by the OCE about the Potential for Public Disclosure of All Information Provided, Including Non-Germane Material**

With respect to the OCE's investigation, Rep. Graves cooperated in good faith and in full candor. He complied with every request the OCE made of him throughout the process, which we believed was nothing more than a pro forma inquiry. Neither Rep. Graves nor his counsel was ever told by the OCE that there would be a public disclosure of any information provided to the OCE, whether it was germane to its investigation or not.

In seeking to provide information to the OCE in full candor, Rep. Graves may have made comments that were irrelevant to the OCE's investigation. Making public Rep. Graves personal comments that he may have made about staff is not relevant to the investigation and only would serve to unnecessarily embarrass his office.

**e. Need for Confidentiality and Underlying Fairness to Cooperating Witnesses**

Historically, the Ethics Committee has recognized the need to respect the confidentiality of certain witnesses, and has made certain to do so when issuing its reports.[16] There is no clear authority that allows the Ethics Committee to redact portions of the OCE reports. Therefore, in the present matter, the Ethics Committee is not able to make necessary redactions to the OCE Report to protect personal information of individuals referenced therein, including email addresses and phone numbers, and to protect the identities of cooperating and confidential witnesses.[17]

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[16] *See, e.g., Report on Investigation of Allegations Related to Improper Conduct Involving Members and Current or Former House Pages*, Committee on Standards of Official Conduct, December 8, 2006 (109th Congress, 2nd Session).

[17] The release of the OCE Report could also raise concerns under Rule 7 of the OCE Code of Conduct regarding the prohibition of public disclosure, and under the Speech or Debate Clause of the Constitution. *See U.S. Const., art. I, sect. 6, cl. 1.*

## V. CONCLUSION

We appreciate your consideration of this matter and the requests we make herein regarding the OCE's investigation and its report. We request that this letter be included in the official record and that it be made public with the OCE Report should the Ethics Committee decide to publicly release it.

Sincerely,

[redacted]

Elliot S. Berke
**Law Office of Elliot S. Berke PLLC**

Terry Brady
Matthew Hubbard
**Lathrop & Gage LLP**

Enclosures -

# Exhibit A

To: Office of Congressional Ethics
United States House of Representatives
From: Barry Pineles
Chief Counsel – Republican Staff
Committee on Small Business
United States House of Representatives
Re: Witness Disclosure Procedures of the Committee on Small Business
Date: June 1, 2009

This memorandum is being written to describe the procedures that the Committee on Small Business uses to obtain information on the witnesses testifying at hearings before the Committee.

**Committee Experience**

I am currently Chief Counsel for the Republican Staff of the Committee on Small Business, a position I have held since April 2006. Prior to that, I was Regulatory Counsel of the Committee on Small Business. My service to the Committee commenced on July 25, 1999. As a result, I have extensive experience with Committee hearings, including the identification of witnesses and the disclosure requirements for witnesses.

**Committee Jurisdiction**

The Committee on Small Business is one of 19 full standing[1] committees in Congress. As a result, the Committee, pursuant to the Rules of the House, has legislative functions to amend and report out any bills that falls within its legislative jurisdiction. Its legislative jurisdiction is defined by Rule X, cl. 1(p) of the Rules of the House[2] which provides as follows:

[1] Standing committees are distinguished from select committees. Select committees have oversight authority but have no legislative jurisdiction. In the House of Representatives, there is only one select committee – the Select Committee on Energy Independence and Global Warming. Although styled as a select committee, the Committee on Intelligence has legislative jurisdiction.
[2] The Rules of the House are available at http://www.rules.house.gov/ruleprec/111th.pdf.

(1) Assistance to and protection of small business, including financial aid, regulatory flexibility, and paperwork reduction.
(2) Participation of small business enterprises in Federal procurement and Government contracts.

The Office of the Parliamentarian[3] has interpreted this seemingly broad statement of jurisdiction in a very narrow manner. The Committee only has jurisdiction over the Small Business Act, 15 U.S.C. §§ 631-57f, the Small Business Investment Act, 15 U.S.C. §§ 661-97g, Pub. L. No. 94-305 (the statute that created the Office of the Chief Counsel for Advocacy at the United States Small Business Administration), the Regulatory Flexibility Act, 5 U.S.C. §§ 601-12,[4] and the Paperwork Reduction Act, 44 U.S.C. §§ 3501-49.[5] Legislation that affects small businesses but does not specifically amend or conflict with the aforementioned peroration of statutes will not be referred to the Committee on Small Business.[6]

In addition to its legislative jurisdiction, the Committee also has an oversight function. All standing committees, including the Committee on Small Business, pursuant to Rule X, cl. 2 (b), have general oversight responsibilities to determine whether the laws and programs within the Committee's jurisdiction are being implemented properly and correctly. The Rules of the House also provide the Small Business with special oversight function to "study and investigate on a continuing basis the problems of all types of small business." Rule X, cl. 3(l). It is this latter oversight responsibility that grants the Committee on Small Business the power to hold hearings on any matter that may affect small business from the effect of papal encyclicals on small businesses to the impact of climate change on small energy producers. It is important to reiterate that the Committee's broad oversight jurisdiction has no impact on the ability of the Committee to obtain legislative jurisdiction over a bill introduced by a member of Congress.

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[3] The Speaker of the House assigns legislation introduced to the Committee or Committees that have jurisdiction over the subject matter of the bill. Rule XII, cl. 2(a). The Speaker is required to rely on the precedents of the House for making such determinations. *Id.* at cl. 2(b). The Office of the Parliamentarian is charged with maintaining these precedents, 2 U.S.C. § 28(a) and, as a result, is the official that provides authoritative interpretations of each Committee's legislative jurisdiction.

[4] The Committee on the Judiciary also has jurisdiction over the Regulatory Flexibility Act.

[5] The Committee on Oversight and Government Reform also has jurisdiction over the Paperwork Reduction Act.

[6] For example, the Committee on Small Business attempted to obtain a referral on H.R. 2101, the Weapons Acquisition System Reform Through Enhancing Technical Knowledge and Oversight Act of 2009. The Committee argued that the bill (referred to the Committee on Armed Services) would affect participation of small businesses in federal procurement. The Committee's request was rejected because the bill did not amend any of the legislation over which the Committee on Small Business has jurisdiction conflict with any such legislation.

**Committee Hearings**

Under the Committee's oversight jurisdiction, the majority (the Democrats in the 110th and the current Congress and the Republicans going back to 1995) selects the topics for hearings.[7] A public announcement of the hearing is made at least one week before the commencement of the hearing. Rule XI, cl. 2(g)(3). The practice of the Chairwoman in the 110th and 111th Congresses has been to publicly announce no earlier than the week before the hearing is set. Under the rules of the Committee on Small Business, the announcement is to be accompanied by a memorandum on the hearing and a tentative witness list to the extent practicable. Committee on Small Business, Rule 4.[8] As a general matter, the memorandum and witness lists are usually not available to the minority when the announcement of the hearing is made.

**Witness Identification Procedures**

Pursuant to Rule 6(B) of the Committee's rules, the minority (whether it is a full committee hearing or a subcommittee hearing) is entitled to, but need not utilize, one-third of the witnesses, exclusive of government officials.[9] This typically means that the minority staff[10] must identify one or two witnesses to appear at the hearing. The process for identification has been the same under Mr. Graves as it was under Mr. Chabot in the 110th Congress. In fact, the procedures were pretty much the same for identification of appropriate witnesses when Republicans controlled the Committee on Small Business and had the opportunity to identify the majority of witnesses for hearings.

The first place a committee staffer will look for witnesses is to identify potentially relevant individuals from the Member's district. For example, when then Chairman Talent (R-MO) in 1999 and 2000 held hearings on value-added agriculture in the Committee on Small Business, Mr. Talent's staff first identified witnesses from Missouri.[11] Similarly, when then Chairman Manzullo held hearings on manufacturing or problems facing health-care providers as a result of regulation by the Centers for Medicare and Medicaid Services, witnesses were first identified from Rockford, IL (the largest city in his district). Given the position that the Member of Congress has within the community, it is not surprising that the Member might have more than a passing

---

[7] A list of hearings is available at http://republicans.smbiz.house.gov/hearings/databaseDrivenHearingsSystem/displayHearings.asp?congress=111

[8] A copy of the Committee's Rules are on file with the Chief Counsel for the Republican staff. The Committee's Rule complies with the requirements of House Rule XI, cl. 2(j) authorizing the minority to call their own witnesses to hearings.

[9] For example, the Committee held a hearing on the federal government contracting and small business earlier this year. The first panel of witnesses consisted solely of federal government officials. None of the first panel of witnesses counted for calculating the ratio of witnesses that the minority is entitled to have at the hearing.

[10] The Ranking Member, Mr. Graves, controls the hiring of staff to advise him and other Republican members of the Committee pursuant to Rule X, cl. 9 of the Rules of the House.

[11] Given the suburban nature of Mr. Talent's district, it was difficult to identify witnesses involved in value-added agriculture from his district.

familiarity with a significant leader in the business community that would testify at Committee hearing on a matter of import to that business.

The identification of witnesses from a member's district was not changed with the advent of the Democrats regaining control in the 110th Congress in 2007. Hearings will typically have at least one witness from the district of the Chair (this is particularly true of subcommittee hearings). For example, in a recent hearing in 111th Congress on the implementation of the Consumer Product Safety Improvement Act (CPSIA), Mr. Altmire (D-PA) (the chair of the subcommittee that held the hearing) invited a member from his district. The ranking member of that subcommittee, Miss Fallin (R-OK), invited a business from her district to testify about the impact of the CPSIA on small business. While this is only an example, there are many more such examples going all the way back to the 106th Congress when I first took a position with the Committee on Small Business.

**Witness Disclosure Requirements**

Once non-governmental witnesses have been identified, they must submit a number of items to the Committee. First, they must provide a written copy of the statement that will be made a part of the hearing record. Rule XI, cl. 2(g)(4). Second, they must include a curriculum vitae. *Id.* Finally, they are required by the same clause of Rule XI to file "a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness." *Id.* Under the House and Committee Rules, the information set forth in Rule XI, cl. 2(g)(4) is the only information that the Committee will receive concerning the background of the witness.[12]

Even a brief scan of the attached Adobe document will show that no financial interest, other than grants and contracts, of a witness is to be disclosed pursuant to the House Rules prior to a hearing. Taking an extreme hypothetical, nothing in Rule XI, cl. 2(g)(4) would require that a witness that co-owned a restaurant with a Committee member would have to disclose that information. A perusal of the attached form shows that there is no place on the witness disclosure form for any financial information other than that required by Rule XI, cl.2(g)(4). Given the fact that financial interests and dealings of the Member is disclosed pursuant to § 101 of the Ethics in Government Act of 1978, 5 U.S.C. App., a committee staff seeking a witness for a hearing would not even seek to inquire about any financial dealings that the witness might have with a Member of Congress.

[12] I have attached an Adobe Acrobat file containing the witness disclosure document used by the Committee in the 108th Congress. It is not significantly different from the form currently used by the majority.

**Committee on SMALL BUSINESS**
**Witness Disclosure Requirement - "Truth in Testimony"**
**Required by House Rule XI, Clause 2(g)**

| | | |
|---|---|---|
| Your Name: | | |
| 1. Are you testifying on behalf of a Federal, State, or Local Government entity? | Yes | No |
| 2. Are you testifying on behalf of an entity other than a Government entity? | Yes | No |
| 3. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 2001: | | |
| 4. Other than yourself, please list what entity or entities you are representing: | | |
| 5. If your answer to question number 2 is yes, please list any offices or elected positions held or briefly describe your representational capacity with the entities disclosed in question number 4: | | |
| 6. If your answer to question number 2 is yes, do any of the entities disclosed in question number 4 have parent organizations, subsidiaries, or partnerships to the entities for whom you are not representing? | Yes | No |
| 7. If the answer to question number 2 is yes, please list any federal grants or contracts (including subgrants or subcontracts) which were received by the entities listed under question 4 since October 1, 2001, which exceed 10% of the entities revenue in the year received, including the source and amount of each grant or contract to be listed: | | |

**Signature:**_____ **Date:**_____

**Hubbard, Matthew**

**From:** Pineles, Barry [redacted]
**Sent:** Monday, June 01, 2009 12:24 PM
**To:** Hubbard, Matthew
**Subject:** memorandum on witness disclosure

Matt,

Enclosed please find two documents: a word version of a memorandum discussing the hearing process and witness identification and disclosure. I also have attached an Adobe Acrobat pdf file of the witness disclosure form discussed in footnote 12. If you need me to modify the memorandum or provide additional detail, please do not hesitate to contact me.

Barry Pineles
Chief Counsel – Republican Staff
Committee on Small Business
United States House of Representatives
B-363 Rayburn House Office Building
Washington, DC 20515
tel: 2[redacted]
email: [redacted]

P.S. Say hi to Rosalee McNamara (we were classmate at U of I College of Law back in the day).

# Exhibit B

**HOUSE COMMITTEE ON SMALL BUSINESS**
**Witness Disclosure Statement**
**Required by House Rule XI, Clause 2(g)**

| | | |
|---|---|---|
| **Your Name:** T. Brooks Hurst | | |
| **1. Are you testifying on behalf of a Federal, State, or Local Government entity?** | **YES** | **NO** X |
| **2. Are you testifying on behalf of an entity other than a Government entity?** | **YES** X | **NO** |
| **3. Other than yourself, please list what entity or entities you are representing:** Missouri Soybean Association<br>Poseo Cargill BioFuels | | |
| **4. Please list any offices or elected positions held or briefly describe your representational capacity with the entities disclosed in question 3.** Member Board of Directors Poseo Cargill<br>Member Board of Directors Missouri Soybean Assoc | | |
| ***(For those testifying on behalf of a Government entity, ignore these questions below)*** | | |
| **5. a) Please list any Federal grants or contracts (including subgrants or subcontracts), including the amount and source (agency) which you have received and/or been approved for since October 1, 2006:** NA<br>**b) If you are testifying on behalf of a non-governmental entity, please list any federal grants or contracts (including subgrants or subcontracts) and the amount and source (agency) received by the entities listed under question 3 since October 1, 2006, which exceeded 10% of the entities' revenues in the year received:** None | | |
| **6. If you are testifying on behalf of a non-governmental entity, does it have a parent organization or an affiliate who you specifically do not represent? If so, list below:** | **YES** | **NO** X |

**Signature:** [redacted] **Date:** 3/4/09

# Exhibit C

DONALD A. MANZULLO
16TH DISTRICT, ILLINOIS

COMMITTEE ON FOREIGN AFFAIRS

SENIOR REPUBLICAN
SUBCOMMITTEE ON ASIA, THE PACIFIC, AND THE GLOBAL ENVIRONMENT

SUBCOMMITTEE ON TERRORISM, NONPROLIFERATION, AND TRADE

Congress of the United States
House of Representatives
Washington, DC 20515-1316

COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE, AND GOVERNMENT SPONSORED ENTERPRISES

SUBCOMMITTEE ON INTERNATIONAL MONETARY POLICY AND TRADE

HOUSE MANUFACTURING CAUCAUS
FOUNDER AND CO-CHAIRMAN

# Memorandum

**To:** Whom It May Concern

**From:** U.S. Congressman Donald A. Manzullo

**Date:** 5/21/2009

**Re:** House Committee on Small Business Witness Disclosure Statement

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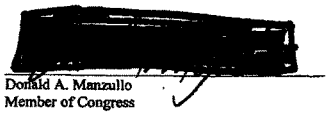
The Rules of the House were amended in 1997 to require, as part of a statement of a witness testifying before a House committee in a non-governmental capacity, the inclusion as part of their written submission "a curriculum vitae and a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years." This "truth in testimony" rule was retained by the new Democratic majority in 2007 and is still in effect today (House Rule XI, Clause 2(g)(4)).

I served first as a Chairman of the Tax, Finance, and Exports Subcommittee of the House Small Business Committee from 1997 until 2001, and then as Chairman of the full Small Business Committee from 2001 until 2007. Throughout those 10 years, I never requested disclosure of more information than what the House Rules required. My staff developed the attached form to send to each witness along with their invitation letter based on a template suggested to them by the House Rules Committee. At no point in the form has there ever been a requirement to disclose the financial investments of a Member of Congress or their spouse in the business venture of the witness. This was the only form that every witness was required to fill out prior to testifying before my Small Business panel.



Donald A. Manzullo
Member of Congress

WASHINGTON, DC OFFICE:
2228 RAYBURN BUILDING, WASHINGTON, DC 20515 • 202/225-5676 • FAX: 202/225-5284
http://manzullo.house.gov

DISTRICT OFFICES:
□ 415 SOUTH MULFORD ROAD, ROCKFORD, IL 61108 • 815/394-1231 • FAX: 815/394-3630
□ 101 NORTH VIRGINIA, SUITE 170, CRYSTAL LAKE, IL 60014 • 815/356-9800 • FAX: 815/356-9809

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**HOUSE COMMITTEE ON SMALL BUSINESS**
**Witness Disclosure Statement**
**Required by House Rule XI, Clause 2(g)**

| | | |
|---|---|---|
| **Your Name:** | | |
| **1. Are you testifying on behalf of a Federal, State, or Local Government entity?** | **YES** | **NO** |
| **2. Are you testifying on behalf of an entity other than a Government entity?** | **YES** | **NO** |
| **3. Other than yourself, please list what entity or entities you are representing:** | | |
| **4. Please list any offices or elected positions held or briefly describe your representational capacity with the entities disclosed in question 3.** | | |
| ***(For those testifying on behalf of a Government entity, ignore these questions below)***<br><br>**5. a) Please list any Federal grants or contracts (including subgrants or subcontracts), including the amount and source (agency) which you have received and/or been approved for since October 1, 2006:**<br><br>**b) If you are testifying on behalf of a non-governmental entity, please list any federal grants or contracts (including subgrants or subcontracts) and the amount and source (agency) received by the entities listed under question 3 since October 1, 2006, which exceeded 10% of the entities' revenues in the year received:** | | |
| **6. If you are testifying on behalf of a non-governmental entity, does it have a parent organization or an affiliate who you specifically do not represent? If so, list below:** | **YES** | **NO** |
| | | |

**Signature:** _____ **Date:** _____

# Exhibit D

Board
David Skaggs, Chair — Porter Goss, Co-Chair
Yvonne Burke — Jay Eagen
Karan English — William Frenzel
Allison Hayward — Abner Mikva

Leo J. Wise, Staff Director & Chief Counsel
1017 Longworth House Office Building
(202) 225-9739
(202) 226-0997 fax
email address: oce@mail.house.gov
website address: oce.house.gov

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

April 1, 2009

Honorable Sam Graves
1415 Longworth HOB
Washington, DC 20515

INITIATION OF A PRELIMINARY REVIEW
Re: Review No. 09-7000

Dear Congressman Graves:

The Board of the Office of Congressional Ethics (OCE) has initiated a preliminary review into allegations concerning you pursuant to H. Res. 895, Section 1, clause (c)(1)(A) of the 110th Congress, as amended by H. Res. 5 of the 111th Congress, and Rule 7 of the OCE's Rules for the Conduct of Investigations. Below is a statement of the nature of the review:

> Representative Sam Graves, Ranking Member of the Small Business Committee, invited Mr. Brooks Hurst to testify at a Committee hearing on "The State of the Renewable Fuels Industry in the Current Economy." The hearing was held on March 4, 2009. It appears that Mr. Hurst is a friend of Representative Graves and his wife, Lesley Graves, and that Mr. Hurst and Mrs. Graves both hold financial interests in the same renewable fuels plants in Missouri. Neither Representative Graves nor Mr. Hurst disclosed the financial connection between Mr. Hurst and Mrs. Graves to the Committee during the hearing.
>
> Representative Graves' conduct may have violated House Rule 23.

Respectfully yours,

[redacted]
Leo Wise
Staff Director and Chief Counsel

Attachment

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# Exhibit E

Board
David Skaggs, Chair
Yvonne Burke
Karan English
Allison Hayward
Porter Goss, Co Chair
Jay Eagen
William Frenzel
Abner Mikva

Leo J. Wise, Staff Director & Chief Counsel
1017 Longworth House Office Building
(202) 225-9739
(202) 226-0997 fax
email address: oce@mail.house.gov
website address: oce.house.gov

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

April 1, 2009

Honorable Sam Graves
1415 Longworth HOB
Washington, DC 20515

REQUEST FOR INFORMATION
Re: Review No. 09-7000

Dear Congressman Graves:

This Request for Information is pursuant to a Preliminary Review authorized by the Board of the Office of Congressional Ethics (OCE) on March 26, 2009.

In accordance with Rule 7(D) and 7(E) of the Office of Congressional Ethics' Rules for the Conduct of Investigations ("OCE Rules"), a preliminary report must be completed and delivered to the Board within 30 days of the initiation of a Review. That report will be prepared for the Board and it will evaluate the matter based on the information available at the end of that 30 days. Your timely cooperation is appreciated and will assist the Board in reaching an informed and accurate decision.

Please provide the following information:

(1) The names and contact information of any member of your staff that arranged or assisted in arranging for Mr. Brooks Hurst's participation at the March 4, 2009, Small Business Committee hearing on "The State of the Renewable Fuels Industry in the Current Economy." OCE requests that you make these persons available for interview at a mutually convenient time.

(2) The names and contact information of any member of your staff responsible for staffing you at the March 4, 2009, Small Business Committee hearing; OCE also requests that you make these persons available for interview at a mutually convenient time.

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(3) All files, correspondence, emails, notes, and any other documents related to arranging Mr. Hurst's participation at the March 4, 2009, Small Business Committee hearing.

(4) All files, correspondence, emails, notes, and any other documents relating to actions taken by you or the Small Business Committee as a result of the March 4, 2009, hearing.

(5) Financial documents detailing Mrs. Lesley Graves' financial interests in the Golden Triangle Energy Cooperative, Biofuels LLC, and Show Me Ethanol LLC.

(6) Financial documents detailing all other business relationships between Mrs. Graves and Mr. Hurst and yourself and Mr. Hurst.

(7) OCE requests the opportunity to interview you at a mutually convenient time.

OCE may make additional information requests, as warranted by the facts and circumstances of this Review. In addition, we will review any additional information you feel is relevant that we have not requested.

Please note that under House Resolution 895 of the 110th Congress, as amended by House Resolution 5 of the 111th Congress, and OCE Rule 7, the Board may draw a negative inference from any refusal to cooperate and may include a statement to that effect in any referral to the Committee on Standards of Official Conduct.

If you have any questions regarding this request or require any assistance in the production of the information requested, please do not hesitate to contact Elizabeth Horton, Investigative Counsel, at [redacted].

Very respectfully,

[redacted]
Leo Wise
Staff Director and Chief Counsel

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

**REQUEST FOR INFORMATION – ACKNOWLEDGEMENT OF RECEIPT**

Please sign the following and return to the OCE by facsimile at (202) 226-0997.

I hereby acknowledge receipt of a Request for Information in Review No. 7000. By so signing, I merely acknowledge receipt of this document.

Member or Designee's Signature: _____

Member or Designee's Name: _____

Date: _____

# Exhibit F

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

*David Skaggs, Chair*
*Yvonne Burke*
*Karan English*
*Allison Hayward*
*Porter Goss, Co-Chair*
*Jay Eagen*
*William Frenzel*
*Abner Mikva*

*Leo J. Wise, Staff Director & Chief Counsel*
*1017 Longworth House Office Building*
*(202) 225-9739*
*(202) 226-0997 fax*

April 29, 2009

Honorable Sam Graves
1415 Longworth HOB
Washington, DC 20515

INITIATION OF A SECOND-PHASE REVIEW
Re: Review No. 09-7000

Dear Congressman Graves:

The Board of the Office of Congressional Ethics (OCE) has initiated a Second-Phase Review into allegations concerning you in the above numbered matter pursuant to H. Res. 895, Section 1, clause (c)(1)(C) of the 110th Congress, as amended by H. Res. 5 of the 111th Congress, and Rule 7 of the OCE's Rules for the Conduct of Investigations. The Review will commence on May 2, 2009 and, unless extended by the Board in accordance with our rules, terminate on June 15, 2009.

The Board reserves the authority to address any additional, related potential violations within its jurisdiction that may be discovered in the course of this Review.

Very respectfully,

[redacted]

Leo Wise
Staff Director and Chief Counsel

# Appendix C

## Rules and Standards of Conduct Cited in Report

182

# RULES

*of the*

# HOUSE OF REPRESENTATIVES

---

ONE HUNDRED ELEVENTH CONGRESS

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PREPARED BY

Lorraine C. Miller

Clerk of the House of Representatives

JANUARY 28, 2009

(Rev. 1-28-09)

Sergeant-at-Arms. Each report shall include financial statements and a description or explanation of current operations, the implementation of new policies and procedures, and future plans for each function.

(f) The Sergeant-at-Arms shall fully cooperate with the appropriate offices and persons in the performance of reviews and audits of financial records and administrative operations.

***Chief Administrative Officer***

4. (a) The Chief Administrative Officer shall have operational and financial responsibility for functions as assigned by the Committee on House Administration and shall be subject to the oversight of the Committee on House Administration.

(b) In addition to any other reports required by the Committee on House Administration, the Chief Administrative Officer shall report to the Committee on House Administration not later than 45 days following the close of each semiannual period ending on June 30 or December 31 on the financial and operational status of each function under the jurisdiction of the Chief Administrative Officer. Each report shall include financial statements and a description or explanation of current operations, the implementation of new policies and procedures, and future plans for each function.

(c) The Chief Administrative Officer shall fully cooperate with the appropriate offices and persons in the performance of reviews and audits of financial records and administrative operations.

***Chaplain***

5. The Chaplain shall offer a prayer at the commencement of each day's sitting of the House.

***Office of Inspector General***

6. (a) There is established an Office of Inspector General.

(b) The Inspector General shall be appointed for a Congress by the Speaker, the Majority Leader, and the Minority Leader, acting jointly.

(c) Subject to the policy direction and oversight of the Committee on House Administration, the Inspector General shall only—

(1) provide audit, investigative, and advisory services to the House and joint entities in a manner consistent with government-wide standards;

(2) inform the officers or other officials who are the subject of an audit of the results of that audit and suggesting appropriate curative actions;

(3) simultaneously notify the Speaker, the Majority Leader, the Minority Leader, and the chair and ranking minority member of the Committee on House Administration in the case of any financial irregularity discovered in the course of carrying out responsibilities under this clause;

(4) simultaneously submit to the Speaker, the Majority Leader, the Minority Leader, and the chair and ranking minority member of the Committee on House Administration a report of each audit conducted under this clause; and

(5) report to the Committee on Standards of Official Conduct information involving possible violations by a Member, Delegate, Resident Commissioner, officer, or employee of the House of any rule of the House or of any law applicable to the performance of official duties or the discharge of official responsibilities that may require referral to the appropriate Federal or State authorities under clause 3(a)(3) of rule XI.

***Office of the Historian***

7. There is established an Office of the Historian of the House of Representatives. The Speaker shall appoint and set the annual rate of pay for employees of the Office of the Historian.

***Office of General Counsel***

8. There is established an Office of General Counsel for the purpose of providing legal assistance and representation to the House. Legal assistance and representation shall be provided without regard to political affiliation. The Office of General Counsel shall function pursuant to the direction of the Speaker, who shall consult with a Bipartisan Legal Advisory Group, which shall include the majority and minority leaderships. The Speaker shall appoint and set the annual rate of pay for employees of the Office of General Counsel.

## RULE III

### THE MEMBERS, DELEGATES, AND RESIDENT COMMISSIONER OF PUERTO RICO

***Voting***

1. Every Member shall be present within the Hall of the House during its sittings, unless excused or necessarily prevented, and shall vote on each question put, unless having a direct personal or pecuniary interest in the event of such question.

2. (a) A Member may not authorize any other person to cast the vote of such Member or record the presence of such Member in the House or the Committee of the Whole House on the state of the Union.

(b) No other person may cast a Member's vote or record a Member's presence in the House or the Committee of the Whole House on the state of the Union.

***Delegates and the Resident Commissioner***

3. (a) In a Committee of the Whole House on the state of the Union, each Delegate and the Resident Commissioner shall possess the same powers and privileges as Members of the House. Each Delegate and the Resident Commissioner shall be elected to serve on standing committees in the same manner as Members of the House and shall possess in such committees the same powers and privileges as the other members of the committee.

(b) The Delegates and the Resident Commissioner may be appointed to any select committee and to any conference committee.

## RULE IV

### THE HALL OF THE HOUSE

***Use and admittance***

1. The Hall of the House shall be used only for the legislative business of the House and for caucus and conference meetings of its Members, except when the House agrees to take part in any ceremonies to be observed therein. The Speaker may not entertain a motion for the suspension of this clause.

2. (a) Only the following persons shall be admitted to the Hall of the House or rooms leading thereto:

(1) Members of Congress, Members-elect, and contestants in election cases during the pendency of their cases on the floor.

(2) The Delegates and the Resident Commissioner.

(3) The President and Vice President of the United States and their private secretaries.

(4) Justices of the Supreme Court.

(5) Elected officers and minority employees nominated as elected officers of the House.

(6) The Parliamentarian.

(7) Staff of committees when business from their committee is under consideration, and staff of the respective party leaderships when so assigned with the approval of the Speaker.

(8) Not more than one person from the staff of a Member, Delegate, or Resident Commissioner when that Member, Delegate, or Resident Commissioner has an amendment under consideration (subject to clause 5).

(9) The Architect of the Capitol.

(10) The Librarian of Congress and the assistant in charge of the Law Library.

(11) The Secretary and Sergeant-at-Arms of the Senate.

(12) Heads of departments.

(13) Foreign ministers.

(14) Governors of States.

(15) Former Members, Delegates, and Resident Commissioners; former Parliamentarians of the House; and former elected officers and minority employees nominated as elected officers of the House (subject to clause 4).

(16) One attorney to accompany a Member, Delegate, or Resident Commissioner who is the respondent in an investigation undertaken by the Committee on Standards of Official Conduct when a recommendation of that committee is under consideration in the House.

(17) Such persons as have, by name, received the thanks of Congress.

(b) The Speaker may not entertain a unanimous consent request or a motion to suspend this clause.

3. (a) Except as provided in paragraph (b), all persons not entitled to the

and second, those affecting the rights, reputation, and conduct of Members, Delegates, or the Resident Commissioner, individually, in their representative capacity only.

2. (a)(1) A resolution reported as a question of the privileges of the House, or offered from the floor by the Majority Leader or the Minority Leader as a question of the privileges of the House, or offered as privileged under clause 1, section 7, article I of the Constitution, shall have precedence of all other questions except motions to adjourn. A resolution offered from the floor by a Member, Delegate, or Resident Commissioner other than the Majority Leader or the Minority Leader as a question of the privileges of the House shall have precedence of all other questions except motions to adjourn only at a time or place, designated by the Speaker, in the legislative schedule within two legislative days after the day on which the proponent announces to the House an intention to offer the resolution and the form of the resolution. Oral announcement of the form of the resolution may be dispensed with by unanimous consent.

(2) The time allotted for debate on a resolution offered from the floor as a question of the privileges of the House shall be equally divided between (A) the proponent of the resolution, and (B) the Majority Leader, the Minority Leader, or a designee, as determined by the Speaker.

(b) A question of personal privilege shall have precedence of all other questions except motions to adjourn.

## RULE X

### ORGANIZATION OF COMMITTEES

***Committees and their legislative jurisdictions***

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned by this clause and clauses 2, 3, and 4. All bills, resolutions, and other matters relating to subjects within the jurisdiction of the standing committees listed in this clause shall be referred to those committees, in accordance with clause 2 of rule XII, as follows:

(a) **Committee on Agriculture.**

(1) Adulteration of seeds, insect pests, and protection of birds and animals in forest reserves.

(2) Agriculture generally.

(3) Agricultural and industrial chemistry.

(4) Agricultural colleges and experiment stations.

(5) Agricultural economics and research.

(6) Agricultural education extension services.

(7) Agricultural production and marketing and stabilization of prices of agricultural products, and commodities (not including distribution outside of the United States).

(8) Animal industry and diseases of animals.

(9) Commodity exchanges.

(10) Crop insurance and soil conservation.

(11) Dairy industry.

(12) Entomology and plant quarantine.

(13) Extension of farm credit and farm security.

(14) Inspection of livestock, poultry, meat products, and seafood and seafood products.

(15) Forestry in general and forest reserves other than those created from the public domain.

(16) Human nutrition and home economics.

(17) Plant industry, soils, and agricultural engineering.

(18) Rural electrification.

(19) Rural development.

(20) Water conservation related to activities of the Department of Agriculture.

(b) **Committee on Appropriations.**

(1) Appropriation of the revenue for the support of the Government.

(2) Rescissions of appropriations contained in appropriation Acts.

(3) Transfers of unexpended balances.

(4) Bills and joint resolutions reported by other committees that provide new entitlement authority as defined in section 3(9) of the Congressional Budget Act of 1974 and referred to the committee under clause 4(a)(2).

(c) **Committee on Armed Services.**

(1) Ammunition depots; forts; arsenals; and Army, Navy, and Air Force reservations and establishments.

(2) Common defense generally.

(3) Conservation, development, and use of naval petroleum and oil shale reserves.

(4) The Department of Defense generally, including the Departments of the Army, Navy, and Air Force, generally.

(5) Interoceanic canals generally, including measures relating to the maintenance, operation, and administration of interoceanic canals.

(6) Merchant Marine Academy and State Maritime Academies.

(7) Military applications of nuclear energy.

(8) Tactical intelligence and intelligence-related activities of the Department of Defense.

(9) National security aspects of merchant marine, including financial assistance for the construction and operation of vessels, maintenance of the U.S. shipbuilding and ship repair industrial base, cabotage, cargo preference, and merchant marine officers and seamen as these matters relate to the national security.

(10) Pay, promotion, retirement, and other benefits and privileges of members of the armed forces.

(11) Scientific research and development in support of the armed services.

(12) Selective service.

(13) Size and composition of the Army, Navy, Marine Corps, and Air Force.

(14) Soldiers' and sailors' homes.

(15) Strategic and critical materials necessary for the common defense.

(d) **Committee on the Budget.**

(1) Concurrent resolutions on the budget (as defined in section 3(4) of the Congressional Budget Act of 1974), other matters required to be referred to the committee under titles III and IV of that Act, and other measures setting forth appropriate levels of budget totals for the United States Government.

(2) Budget process generally.

(3) Establishment, extension, and enforcement of special controls over the Federal budget, including the budgetary treatment of off-budget Federal agencies and measures providing exemption from reduction under any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

(e) **Committee on Education and Labor.**

(1) Child labor.

(2) Gallaudet University and Howard University and Hospital.

(3) Convict labor and the entry of goods made by convicts into interstate commerce.

(4) Food programs for children in schools.

(5) Labor standards and statistics.

(6) Education or labor generally.

(7) Mediation and arbitration of labor disputes.

(8) Regulation or prevention of importation of foreign laborers under contract.

(9) Workers' compensation.

(10) Vocational rehabilitation.

(11) Wages and hours of labor.

(12) Welfare of miners.

(13) Work incentive programs.

(f) **Committee on Energy and Commerce.**

(1) Biomedical research and development.

(2) Consumer affairs and consumer protection.

(3) Health and health facilities (except health care supported by payroll deductions).

(4) Interstate energy compacts.

(5) Interstate and foreign commerce generally.

(6) Exploration, production, storage, supply, marketing, pricing, and regulation of energy resources, including all fossil fuels, solar en-

(17) Revision and codification of the Statutes of the United States.

(18) State and territorial boundary lines.

(19) Subversive activities affecting the internal security of the United States.

(l) **Committee on Natural Resources.**

(1) Fisheries and wildlife, including research, restoration, refuges, and conservation.

(2) Forest reserves and national parks created from the public domain.

(3) Forfeiture of land grants and alien ownership, including alien ownership of mineral lands.

(4) Geological Survey.

(5) International fishing agreements.

(6) Interstate compacts relating to apportionment of waters for irrigation purposes.

(7) Irrigation and reclamation, including water supply for reclamation projects and easements of public lands for irrigation projects; and acquisition of private lands when necessary to complete irrigation projects.

(8) Native Americans generally, including the care and allotment of Native American lands and general and special measures relating to claims that are paid out of Native American funds.

(9) Insular possessions of the United States generally (except those affecting the revenue and appropriations).

(10) Military parks and battlefields, national cemeteries administered by the Secretary of the Interior, parks within the District of Columbia, and the erection of monuments to the memory of individuals.

(11) Mineral land laws and claims and entries thereunder.

(12) Mineral resources of public lands.

(13) Mining interests generally.

(14) Mining schools and experimental stations.

(15) Marine affairs, including coastal zone management (except for measures relating to oil and other pollution of navigable waters).

(16) Oceanography.

(17) Petroleum conservation on public lands and conservation of the radium supply in the United States.

(18) Preservation of prehistoric ruins and objects of interest on the public domain.

(19) Public lands generally, including entry, easements, and grazing thereon.

(20) Relations of the United States with Native Americans and Native American tribes.

(21) Trans-Alaska Oil Pipeline (except ratemaking).

(m) **Committee on Oversight and Government Reform.**

(1) Federal civil service, including intergovernmental personnel; and the status of officers and employees of the United States, including their compensation, classification, and retirement.

(2) Municipal affairs of the District of Columbia in general (other than appropriations).

(3) Federal paperwork reduction.

(4) Government management and accounting measures generally.

(5) Holidays and celebrations.

(6) Overall economy, efficiency, and management of government operations and activities, including Federal procurement.

(7) National archives.

(8) Population and demography generally, including the Census.

(9) Postal service generally, including transportation of the mails.

(10) Public information and records.

(11) Relationship of the Federal Government to the States and municipalities generally.

(12) Reorganizations in the executive branch of the Government.

(n) **Committee on Rules.**

(1) Rules and joint rules (other than those relating to the Code of Official Conduct) and the order of business of the House.

(2) Recesses and final adjournments of Congress.

(o) **Committee on Science and Technology.**

(1) All energy research, development, and demonstration, and projects therefor, and all federally owned or operated nonmilitary energy laboratories.

(2) Astronautical research and development, including resources, personnel, equipment, and facilities.

(3) Civil aviation research and development.

(4) Environmental research and development.

(5) Marine research.

(6) Commercial application of energy technology.

(7) National Institute of Standards and Technology, standardization of weights and measures, and the metric system.

(8) National Aeronautics and Space Administration.

(9) National Space Council.

(10) National Science Foundation.

(11) National Weather Service.

(12) Outer space, including exploration and control thereof.

(13) Science scholarships.

(14) Scientific research, development, and demonstration, and projects therefor.

(p) **Committee on Small Business.**

(1) Assistance to and protection of small business, including financial aid, regulatory flexibility, and paperwork reduction.

(2) Participation of small-business enterprises in Federal procurement and Government contracts.

(q) **Committee on Standards of Official Conduct.**

The Code of Official Conduct.

(r) **Committee on Transportation and Infrastructure.**

(1) Coast Guard, including lifesaving service, lighthouses, lightships, ocean derelicts, and the Coast Guard Academy.

(2) Federal management of emergencies and natural disasters.

(3) Flood control and improvement of rivers and harbors.

(4) Inland waterways.

(5) Inspection of merchant marine vessels, lights and signals, lifesaving equipment, and fire protection on such vessels.

(6) Navigation and laws relating thereto, including pilotage.

(7) Registering and licensing of vessels and small boats.

(8) Rules and international arrangements to prevent collisions at sea.

(9) The Capitol Building and the Senate and House Office Buildings.

(10) Construction or maintenance of roads and post roads (other than appropriations therefor).

(11) Construction or reconstruction, maintenance, and care of buildings and grounds of the Botanic Garden, the Library of Congress, and the Smithsonian Institution.

(12) Merchant marine (except for national security aspects thereof).

(13) Purchase of sites and construction of post offices, customhouses, Federal courthouses, and Government buildings within the District of Columbia.

(14) Oil and other pollution of navigable waters, including inland, coastal, and ocean waters.

(15) Marine affairs, including coastal zone management, as they relate to oil and other pollution of navigable waters.

(16) Public buildings and occupied or improved grounds of the United States generally.

(17) Public works for the benefit of navigation, including bridges and dams (other than international bridges and dams).

(18) Related transportation regulatory agencies (except the Transportation Security Administration).

(19) Roads and the safety thereof.

(20) Transportation, including civil aviation, railroads, water transportation, transportation safety (except automobile safety and transportation security functions of the Department of Homeland Security), transportation infrastructure, transportation labor, and railroad retirement and unem-

ployment (except revenue measures related thereto).

(21) Water power.

**(s) Committee on Veterans' Affairs.**

(1) Veterans' measures generally.

(2) Cemeteries of the United States in which veterans of any war or conflict are or may be buried, whether in the United States or abroad (except cemeteries administered by the Secretary of the Interior).

(3) Compensation, vocational rehabilitation, and education of veterans.

(4) Life insurance issued by the Government on account of service in the Armed Forces.

(5) Pensions of all the wars of the United States, general and special.

(6) Readjustment of servicemembers to civil life.

(7) Servicemembers' civil relief.

(8) Veterans' hospitals, medical care, and treatment of veterans.

**(t) Committee on Ways and Means.**

(1) Customs revenue, collection districts, and ports of entry and delivery.

(2) Reciprocal trade agreements.

(3) Revenue measures generally.

(4) Revenue measures relating to insular possessions.

(5) Bonded debt of the United States, subject to the last sentence of clause 4(f).

(6) Deposit of public monies.

(7) Transportation of dutiable goods.

(8) Tax exempt foundations and charitable trusts.

(9) National social security (except health care and facilities programs that are supported from general revenues as opposed to payroll deductions and except work incentive programs).

***General oversight responsibilities***

2. (a) The various standing committees shall have general oversight responsibilities as provided in paragraph (b) in order to assist the House in—

(1) its analysis, appraisal, and evaluation of—

(A) the application, administration, execution, and effectiveness of Federal laws; and

(B) conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation; and

(2) its formulation, consideration, and enactment of changes in Federal laws, and of such additional legislation as may be necessary or appropriate.

(b)(1) In order to determine whether laws and programs addressing subjects within the jurisdiction of a committee are being implemented and carried out in accordance with the intent of Congress and whether they should be continued, curtailed, or eliminated, each standing committee (other than the Committee on Appropriations) shall review and study on a continuing basis—

(A) the application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction;

(B) the organization and operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within its jurisdiction;

(C) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction (whether or not a bill or resolution has been introduced with respect thereto); and

(D) future research and forecasting on subjects within its jurisdiction.

(2) Each committee to which subparagraph (1) applies having more than 20 members shall establish an oversight subcommittee, or require its subcommittees to conduct oversight in their respective jurisdictions, to assist in carrying out its responsibilities under this clause. The establishment of an oversight subcommittee does not limit the responsibility of a subcommittee with legislative jurisdiction in carrying out its oversight responsibilities.

(c) Each standing committee shall review and study on a continuing basis the impact or probable impact of tax policies affecting subjects within its jurisdiction as described in clauses 1 and 3.

(d)(1) Not later than February 15 of the first session of a Congress, each standing committee shall, in a meeting that is open to the public and with a quorum present, adopt its oversight plan for that Congress. Such plan shall be submitted simultaneously to the Committee on Oversight and Government Reform and to the Committee on House Administration. In developing its plan each committee shall, to the maximum extent feasible—

(A) consult with other committees that have jurisdiction over the same or related laws, programs, or agencies within its jurisdiction with the objective of ensuring maximum coordination and cooperation among committees when conducting reviews of such laws, programs, or agencies and include in its plan an explanation of steps that have been or will be taken to ensure such coordination and cooperation;

(B) review specific problems with Federal rules, regulations, statutes, and court decisions that are ambiguous, arbitrary, or nonsensical, or that impose severe financial burdens on individuals;

(C) give priority consideration to including in its plan the review of those laws, programs, or agencies operating under permanent budget authority or permanent statutory authority;

(D) have a view toward ensuring that all significant laws, programs, or agencies within its jurisdiction are subject to review every 10 years; and

(E) have a view toward insuring against duplication of Federal programs.

(2) Not later than March 31 in the first session of a Congress, after consultation with the Speaker, the Majority Leader, and the Minority Leader, the Committee on Oversight and Government Reform shall report to the House the oversight plans submitted by committees together with any recommendations that it, or the House leadership group described above, may make to ensure the most effective coordination of oversight plans and otherwise to achieve the objectives of this clause.

(e) The Speaker, with the approval of the House, may appoint special ad hoc oversight committees for the purpose of reviewing specific matters within the jurisdiction of two or more standing committees.

***Special oversight functions***

3. (a) The Committee on Appropriations shall conduct such studies and examinations of the organization and operation of executive departments and other executive agencies (including an agency the majority of the stock of which is owned by the United States) as it considers necessary to assist it in the determination of matters within its jurisdiction.

(b) The Committee on Armed Services shall review and study on a continuing basis laws, programs, and Government activities relating to international arms control and disarmament and the education of military dependents in schools.

(c) The Committee on the Budget shall study on a continuing basis the effect on budget outlays of relevant existing and proposed legislation and report the results of such studies to the House on a recurring basis.

(d) The Committee on Education and Labor shall review, study, and coordinate on a continuing basis laws, programs, and Government activities relating to domestic educational programs and institutions and programs of student assistance within the jurisdiction of other committees.

(e) The Committee on Energy and Commerce shall review and study on a continuing basis laws, programs, and Government activities relating to nuclear and other energy and nonmilitary nuclear energy research and development including the disposal of nuclear waste.

(f) The Committee on Foreign Affairs shall review and study on a continuing basis laws, programs, and Government activities relating to customs administration, intelligence activities relating to foreign policy, international financial and monetary organizations, and international fishing agreements.

(g)(1) The Committee on Homeland Security shall review and study on a continuing basis all Government activities relating to homeland security,

including the interaction of all departments and agencies with the Department of Homeland Security.

(2) In addition, the Committee shall review and study on a primary and continuing basis all Government activities, programs and organizations related to homeland security that fall within its primary legislative jurisdiction.

(h) The Committee on Natural Resources shall review and study on a continuing basis laws, programs, and Government activities relating to Native Americans.

(i) The Committee on Oversight and Government Reform shall review and study on a continuing basis the operation of Government activities at all levels with a view to determining their economy and efficiency.

(j) The Committee on Rules shall review and study on a continuing basis the congressional budget process, and the committee shall report its findings and recommendations to the House from time to time.

(k) The Committee on Science and Technology shall review and study on a continuing basis laws, programs, and Government activities relating to nonmilitary research and development.

(l) The Committee on Small Business shall study and investigate on a continuing basis the problems of all types of small business.

(m) The Permanent Select Committee on Intelligence shall review and study on a continuing basis laws, programs, and activities of the intelligence community and shall review and study on an exclusive basis the sources and methods of entities described in clause 11(b)(1)(A).

***Additional functions of committees***

4. (a)(1)(A) The Committee on Appropriations shall, within 30 days after the transmittal of the Budget to Congress each year, hold hearings on the Budget as a whole with particular reference to—

(i) the basic recommendations and budgetary policies of the President in the presentation of the Budget; and

(ii) the fiscal, financial, and economic assumptions used as bases in arriving at total estimated expenditures and receipts.

(B) In holding hearings under subdivision (A), the committee shall receive testimony from the Secretary of the Treasury, the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, and such other persons as the committee may desire.

(C) A hearing under subdivision (A), or any part thereof, shall be held in open session, except when the committee, in open session and with a quorum present, determines by record vote that the testimony to be taken at that hearing on that day may be related to a matter of national security. The committee may by the same procedure close one subsequent day of hearing. A transcript of all such hearings shall be printed and a copy thereof furnished to each Member, Delegate, and the Resident Commissioner.

(D) A hearing under subdivision (A), or any part thereof, may be held before a joint meeting of the committee and the Committee on Appropriations of the Senate in accordance with such procedures as the two committees jointly may determine.

(2) Pursuant to section 401(b)(2) of the Congressional Budget Act of 1974, when a committee reports a bill or joint resolution that provides new entitlement authority as defined in section 3(9) of that Act, and enactment of the bill or joint resolution, as reported, would cause a breach of the committee's pertinent allocation of new bud get authority under section 302(a) of that Act, the bill or joint resolution may be referred to the Committee on Appropriations with instructions to report it with recommendations (which may include an amendment limiting the total amount of new entitlement authority provided in the bill or joint resolution). If the Committee on Appropriations fails to report a bill or joint resolution so referred within 15 calendar days (not counting any day on which the House is not in session), the committee automatically shall be discharged from consideration of the bill or joint resolution, and the bill or joint resolution shall be placed on the appropriate calendar.

(3) In addition, the Committee on Appropriations shall study on a continuing basis those provisions of law that (on the first day of the first fiscal year for which the congressional budget process is effective) provide spending authority or permanent budget authority and shall report to the House from time to time its recommendations for terminating or modifying such provisions.

(4) In the manner provided by section 302 of the Congressional Budget Act of 1974, the Committee on Appropriations (after consulting with the Committee on Appropriations of the Senate) shall subdivide any allocations made to it in the joint explanatory statement accompanying the conference report on such concurrent resolution, and promptly report the subdivisions to the House as soon as practicable after a concurrent resolution on the budget for a fiscal year is agreed to.

(5)(A) There is established a Select Intelligence Oversight Panel of the Committee on Appropriations (hereinafter in this paragraph referred to as the "select panel"). The select panel shall be composed of not more than 13 Members, Delegates, or the Resident Commissioner appointed by the Speaker, of whom not more than eight may be from the same political party. The select panel shall include the chair and ranking minority member of the Committee on Appropriations, the chair and ranking minority member of its Subcommittee on Defense, six additional members of the Committee on Appropriations, and three members of the Permanent Select Committee on Intelligence.

(B) The Speaker shall designate one member of the select panel as its chair and one member as its ranking minority member.

(C) Each member on the select panel shall be treated as though a member of the Committee on Appropriations for purposes of the select panel.

(D) The select panel shall review and study on a continuing basis budget requests for and execution of intelligence activities; make recommendations to relevant subcommittees of the Committee on Appropriations; and, on an annual basis, prepare a report to the Defense Subcommittee of the Committee on Appropriations containing budgetary and oversight observations and recommendations for use by such subcommittee in preparation of the classified annex to the bill making appropriations for the Department of Defense.

(E) Rule XI shall apply to the select panel in the same manner as a subcommittee (except for clause 2(m)(1)(B) of that rule).

(F) A subpoena of the Committee on Appropriations or its Subcommittee on Defense may specify terms of return to the select panel.

(b) The Committee on the Budget shall—

(1) review on a continuing basis the conduct by the Congressional Budget Office of its functions and duties;

(2) hold hearings and receive testimony from Members, Senators, Delegates, the Resident Commissioner, and such appropriate representatives of Federal departments and agencies, the general public, and national organizations as it considers desirable in developing concurrent resolutions on the budget for each fiscal year;

(3) make all reports required of it by the Congressional Budget Act of 1974;

(4) study on a continuing basis those provisions of law that exempt Federal agencies or any of their activities or outlays from inclusion in the Budget of the United States Government, and report to the House from time to time its recommendations for terminating or modifying such provisions;

(5) study on a continuing basis proposals designed to improve and facilitate the congressional budget process, and report to the House from time to time the results of such studies, together with its recommendations; and

(6) request and evaluate continuing studies of tax expenditures, devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays, and report the results of such studies to the House on a recurring basis.

(c)(1) The Committee on Oversight and Government Reform shall—

(A) receive and examine reports of the Comptroller General of the United States and submit to the

or which Member, Delegate, or Resident Commissioner received the information. A Member, Delegate, or Resident Commissioner who, and a committee that, receives information under this subdivision may not disclose the information except in a closed session of the House.

(4) The Committee on Standards of Official Conduct shall investigate any unauthorized disclosure of intelligence or intelligence-related information by a Member, Delegate, Resident Commissioner, officer, or employee of the House in violation of subparagraph (3) and report to the House concerning any allegation that it finds to be substantiated.

(5) Upon the request of a person who is subject to an investigation described in subparagraph (4), the Committee on Standards of Official Conduct shall release to such person at the conclusion of its investigation a summary of its investigation, together with its findings. If, at the conclusion of its investigation, the Committee on Standards of Official Conduct determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, Delegate, Resident Commissioner, officer, or employee of the House, it shall report its findings to the House and recommend appropriate action. Recommendations may include censure, removal from committee membership, or expulsion from the House, in the case of a Member, or removal from office or employment or punishment for contempt, in the case of an officer or employee.

(h) The select committee may permit a personal representative of the President, designated by the President to serve as a liaison to the select committee, to attend any closed meeting of the select committee.

(i) Subject to the Rules of the House, funds may not be appropriated for a fiscal year, with the exception of a bill or joint resolution continuing appropriations, or an amendment thereto, or a conference report thereon, to, or for use of, a department or agency of the United States to carry out any of the following activities, unless the funds shall previously have been authorized by a bill or joint resolution passed by the House during the same or preceding fiscal year to carry out such activity for such fiscal year:

(1) The activities of the Director of National Intelligence and the Office of the Director of National Intelligence.

(2) The activities of the Central Intelligence Agency.

(3) The activities of the Defense Intelligence Agency.

(4) The activities of the National Security Agency.

(5) The intelligence and intelligence-related activities of other agencies and subdivisions of the Department of Defense.

(6) The intelligence and intelligence-related activities of the Department of State.

(7) The intelligence and intelligence-related activities of the Federal Bureau of Investigation.

(8) The intelligence and intelligence-related activities of all other departments and agencies of the executive branch.

(j)(1) In this clause the term "intelligence and intelligence-related activities" includes—

(A) the collection, analysis, production, dissemination, or use of information that relates to a foreign country, or a government, political group, party, military force, movement, or other association in a foreign country, and that relates to the defense, foreign policy, national security, or related policies of the United States and other activity in support of the collection, analysis, production, dissemination, or use of such information;

(B) activities taken to counter similar activities directed against the United States;

(C) covert or clandestine activities affecting the relations of the United States with a foreign government, political group, party, military force, movement, or other association;

(D) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad whose political and related activities pose, or may be considered by a department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States; and

(E) covert or clandestine activities directed against persons described in subdivision (D).

(2) In this clause the term "department or agency" includes any organization, committee, council, establishment, or office within the Federal Government.

(3) For purposes of this clause, reference to a department, agency, bureau, or subdivision shall include a reference to any successor department, agency, bureau, or subdivision to the extent that a successor engages in intelligence or intelligence-related activities now conducted by the department, agency, bureau, or subdivision referred to in this clause.

(k) Clause 12(a) of rule XXII does not apply to meetings of a conference committee respecting legislation (or any part thereof) reported by the Permanent Select Committee on Intelligence.

## RULE XI

### PROCEDURES OF COMMITTEES AND UNFINISHED BUSINESS

***In general***

1. (a)(1)(A) The Rules of the House are the rules of its committees and subcommittees so far as applicable.

(B) Each subcommittee is a part of its committee and is subject to the authority and direction of that committee and to its rules, so far as applicable.

(2)(A) In a committee or subcommittee—

(i) a motion to recess from day to day, or to recess subject to the call of the Chair (within 24 hours), shall be privileged; and

(ii) a motion to dispense with the first reading (in full) of a bill or resolution shall be privileged if printed copies are available.

(B) A motion accorded privilege under this subparagraph shall be decided without debate.

(b)(1) Each committee may conduct at any time such investigations and studies as it considers necessary or appropriate in the exercise of its responsibilities under rule X. Subject to the adoption of expense resolutions as required by clause 6 of rule X, each committee may incur expenses, including travel expenses, in connection with such investigations and studies.

(2) A proposed investigative or oversight report shall be considered as read in committee if it has been available to the members for at least 24 hours (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day).

(3) A report of an investigation or study conducted jointly by more than one committee may be filed jointly, provided that each of the committees complies independently with all requirements for approval and filing of the report.

(4) After an adjournment sine die of the last regular session of a Congress, an investigative or oversight report may be filed with the Clerk at any time, provided that a member who gives timely notice of intention to file supplemental, minority, or additional views shall be entitled to not less than seven calendar days in which to submit such views for inclusion in the report.

(c) Each committee may have printed and bound such testimony and other data as may be presented at hearings held by the committee or its subcommittees. All costs of stenographic services and transcripts in connection with a meeting or hearing of a committee shall be paid from the applicable accounts of the House described in clause 1(j)(1) of rule X.

(d)(1) Each committee shall submit to the House not later than January 2 of each odd-numbered year a report on the activities of that committee under this rule and rule X during the Congress ending at noon on January 3 of such year.

(2) Such report shall include separate sections summarizing the legislative and oversight activities of that committee during that Congress.

(3) The oversight section of such report shall include a summary of the oversight plans submitted by the committee under clause 2(d) of rule X, a summary of the actions taken and recommendations made with respect to each such plan, a summary of any additional oversight activities undertaken

by that committee, and any recommendations made or actions taken thereon. That section shall also delineate any hearings held pursuant to clauses 2(n), (o), or (p) of this rule.

(4) After an adjournment sine die of the last regular session of a Congress, the chair of a committee may file an activities report under subparagraph (1) with the Clerk at any time and without approval of the committee, provided that—

(A) a copy of the report has been available to each member of the committee for at least seven calendar days; and

(B) the report includes any supplemental, minority, or additional views submitted by a member of the committee.

***Adoption of written rules***

2. (a)(1) Each standing committee shall adopt written rules governing its procedure. Such rules—

(A) shall be adopted in a meeting that is open to the public unless the committee, in open session and with a quorum present, determines by record vote that all or part of the meeting on that day shall be closed to the public;

(B) may not be inconsistent with the Rules of the House or with those provisions of law having the force and effect of Rules of the House; and

(C) shall in any event incorporate all of the succeeding provisions of this clause to the extent applicable.

(2) Each committee shall submit its rules for publication in the Congressional Record not later than 30 days after the committee is elected in each odd-numbered year.

(3) A committee may adopt a rule providing that the chair be directed to offer a motion under clause 1 of rule XXII whenever the chair considers it appropriate.

***Regular meeting days***

(b) Each standing committee shall establish regular meeting days for the conduct of its business, which shall be not less frequent than monthly. Each such committee shall meet for the consideration of a bill or resolution pending before the committee or the transaction of other committee business on all regular meeting days fixed by the committee unless otherwise provided by written rule adopted by the committee.

***Additional and special meetings***

(c)(1) The chair of each standing committee may call and convene, as the chair considers necessary, additional and special meetings of the committee for the consideration of a bill or resolution pending before the committee or for the conduct of other committee business, subject to such rules as the committee may adopt. The committee shall meet for such purpose under that call of the chair.

(2) Three or more members of a standing committee may file in the offices of the committee a written request that the chair call a special meeting of the committee. Such request shall specify the measure or matter to be considered. Immediately upon the filing of the request, the clerk of the committee shall notify the chair of the filing of the request. If the chair does not call the requested special meeting within three calendar days after the filing of the request (to be held within seven calendar days after the filing of the request) a majority of the members of the committee may file in the offices of the committee their written notice that a special meeting of the committee will be held. The written notice shall specify the date and hour of the special meeting and the measure or matter to be considered. The committee shall meet on that date and hour. Immediately upon the filing of the notice, the clerk of the committee shall notify all members of the committee that such special meeting will be held and inform them of its date and hour and the measure or matter to be considered. Only the measure or matter specified in that notice may be considered at that special meeting.

***Temporary absence of chair***

(d) A member of the majority party on each standing committee or subcommittee thereof shall be designated by the chair of the full committee as the vice chair of the committee or subcommittee, as the case may be, and shall preside during the absence of the chair from any meeting. If the chair and vice chair of a committee or subcommittee are not present at any meeting of the committee or subcommittee, the ranking majority member who is present shall preside at that meeting.

***Committee records***

(e)(1)(A) Each committee shall keep a complete record of all committee action which shall include—

(i) in the case of a meeting or hearing transcript, a substantially verbatim account of remarks actually made during the proceedings, subject only to technical, grammatical, and typographical corrections authorized by the person making the remarks involved; and

(ii) a record of the votes on any question on which a record vote is demanded.

(B)(i) Except as provided in subdivision (B)(ii) and subject to paragraph (k)(7), the result of each such record vote shall be made available by the committee for inspection by the public at reasonable times in its offices. Information so available for public inspection shall include a description of the amendment, motion, order, or other proposition, the name of each member voting for and each member voting against such amendment, motion, order, or proposition, and the names of those members of the committee present but not voting.

(ii) The result of any record vote taken in executive session in the Committee on Standards of Official Conduct may not be made available for inspection by the public without an affirmative vote of a majority of the members of the committee.

(2)(A) Except as provided in subdivision (B), all committee hearings, records, data, charts, and files shall be kept separate and distinct from the congressional office records of the member serving as its chair. Such records shall be the property of the House, and each Member, Delegate, and the Resident Commissioner shall have access thereto.

(B) A Member, Delegate, or Resident Commissioner, other than members of the Committee on Standards of Official Conduct, may not have access to the records of that committee respecting the conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House without the specific prior permission of that committee.

(3) Each committee shall include in its rules standards for availability of records of the committee delivered to the Archivist of the United States under rule VII. Such standards shall specify procedures for orders of the committee under clause 3(b)(3) and clause 4(b) of rule VII, including a requirement that nonavailability of a record for a period longer than the period otherwise applicable under that rule shall be approved by vote of the committee.

(4) Each committee shall make its publications available in electronic form to the maximum extent feasible.

***Prohibition against proxy voting***

(f) A vote by a member of a committee or subcommittee with respect to any measure or matter may not be cast by proxy.

***Open meetings and hearings***

(g)(1) Each meeting for the transaction of business, including the markup of legislation, by a standing committee or subcommittee thereof (other than the Committee on Standards of Official Conduct or its subcommittees) shall be open to the public, including to radio, television, and still photography coverage, except when the committee or subcommittee, in open session and with a majority present, determines by record vote that all or part of the remainder of the meeting on that day shall be in executive session because disclosure of matters to be considered would endanger national security, would compromise sensitive law enforcement information, would tend to defame, degrade, or incriminate any person, or otherwise would violate a law or rule of the House. Persons, other than members of the committee and such noncommittee Members, Delegates, Resident Commissioner, congressional staff, or departmental representatives as the committee may authorize, may not be present at a business or markup session that is held in executive session. This subparagraph does not apply to open committee hearings,

which are governed by clause 4(a)(1) of rule X or by subparagraph (2).

(2)(A) Each hearing conducted by a committee or subcommittee (other than the Committee on Standards of Official Conduct or its subcommittees) shall be open to the public, including to radio, television, and still photography coverage, except when the committee or subcommittee, in open session and with a majority present, determines by record vote that all or part of the remainder of that hearing on that day shall be closed to the public because disclosure of testimony, evidence, or other matters to be considered would endanger national security, would compromise sensitive law enforcement information, or would violate a law or rule of the House.

(B) Notwithstanding the requirements of subdivision (A), in the presence of the number of members required under the rules of the committee for the purpose of taking testimony, a majority of those present may—

(i) agree to close the hearing for the sole purpose of discussing whether testimony or evidence to be received would endanger national security, would compromise sensitive law enforcement information, or would violate clause 2(k)(5); or

(ii) agree to close the hearing as provided in clause 2(k)(5).

(C) A Member, Delegate, or Resident Commissioner may not be excluded from nonparticipatory attendance at a hearing of a committee or subcommittee (other than the Committee on Standards of Official Conduct or its subcommittees) unless the House by majority vote authorizes a particular committee or subcommittee, for purposes of a particular series of hearings on a particular article of legislation or on a particular subject of investigation, to close its hearings to Members, Delegates, and the Resident Commissioner by the same procedures specified in this subparagraph for closing hearings to the public.

(D) The committee or subcommittee may vote by the same procedure described in this subparagraph to close one subsequent day of hearing, except that the Committee on Appropriations, the Committee on Armed Services, and the Permanent Select Committee on Intelligence, and the subcommittees thereof, may vote by the same procedure to close up to five additional, consecutive days of hearings.

(3) The chair of each committee (other than the Committee on Rules) shall make public announcement of the date, place, and subject matter of a committee hearing at least one week before the commencement of the hearing. If the chair of the committee, with the concurrence of the ranking minority member, determines that there is good cause to begin a hearing sooner, or if the committee so determines by majority vote in the presence of the number of members required under the rules of the committee for the transaction of business, the chair shall make the announcement at the earliest possible date. An announcement made under this subparagraph shall be published promptly in the Daily Digest and made available in electronic form.

(4) Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof. In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness.

(5)(A) Except as provided in subdivision (B), a point of order does not lie with respect to a measure reported by a committee on the ground that hearings on such measure were not conducted in accordance with this clause.

(B) A point of order on the ground described in subdivision (A) may be made by a member of the committee that reported the measure if such point of order was timely made and improperly disposed of in the committee.

(6) This paragraph does not apply to hearings of the Committee on Appropriations under clause 4(a)(1) of rule X.

***Quorum requirements***

(h)(1) A measure or recommendation may not be reported by a committee unless a majority of the committee is actually present.

(2) Each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which may not be less than two.

(3) Each committee (other than the Committee on Appropriations, the Committee on the Budget, and the Committee on Ways and Means) may fix the number of its members to constitute a quorum for taking any action other than one for which the presence of a majority of the committee is otherwise required, which may not be less than one-third of the members.

(4)(A) Each committee may adopt a rule authorizing the chair of a committee or subcommittee—

(i) to postpone further proceedings when a record vote is ordered on the question of approving a measure or matter or on adopting an amendment; and

(ii) to resume proceedings on a postponed question at any time after reasonable notice.

(B) A rule adopted pursuant to this subparagraph shall provide that when proceedings resume on a postponed question, notwithstanding any intervening order for the previous question, an underlying proposition shall remain subject to further debate or amendment to the same extent as when the question was postponed.

***Limitation on committee sittings***

(i) A committee may not sit during a joint session of the House and Senate or during a recess when a joint meeting of the House and Senate is in progress.

***Calling and questioning of witnesses***

(j)(1) Whenever a hearing is conducted by a committee on a measure or matter, the minority members of the committee shall be entitled, upon request to the chair by a majority of them before the completion of the hearing, to call witnesses selected by the minority to testify with respect to that measure or matter during at least one day of hearing thereon.

(2)(A) Subject to subdivisions (B) and (C), each committee shall apply the five-minute rule during the questioning of witnesses in a hearing until such time as each member of the committee who so desires has had an opportunity to question each witness.

(B) A committee may adopt a rule or motion permitting a specified number of its members to question a witness for longer than five minutes. The time for extended questioning of a witness under this subdivision shall be equal for the majority party and the minority party and may not exceed one hour in the aggregate.

(C) A committee may adopt a rule or motion permitting committee staff for its majority and minority party members to question a witness for equal specified periods. The time for extended questioning of a witness under this subdivision shall be equal for the majority party and the minority party and may not exceed one hour in the aggregate.

***Hearing procedures***

(k)(1) The chair at a hearing shall announce in an opening statement the subject of the hearing.

(2) A copy of the committee rules and of this clause shall be made available to each witness on request.

(3) Witnesses at hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(4) The chair may punish breaches of order and decorum, and of professional ethics on the part of counsel, by censure and exclusion from the hearings; and the committee may cite the offender to the House for contempt.

(5) Whenever it is asserted by a member of the committee that the evidence or testimony at a hearing may tend to defame, degrade, or incriminate any person, or it is asserted by a witness that the evidence or testimony that the witness would give at a hearing may tend to defame, degrade, or incriminate the witness—

(A) notwithstanding paragraph (g)(2), such testimony or evidence shall be presented in executive session if, in the presence of the number

of members required under the rules of the committee for the purpose of taking testimony, the committee determines by vote of a majority of those present that such evidence or testimony may tend to defame, degrade, or incriminate any person; and

(B) the committee shall proceed to receive such testimony in open session only if the committee, a majority being present, determines that such evidence or testimony will not tend to defame, degrade, or incriminate any person.

In either case the committee shall afford such person an opportunity voluntarily to appear as a witness, and receive and dispose of requests from such person to subpoena additional witnesses.

(6) Except as provided in subparagraph (5), the chair shall receive and the committee shall dispose of requests to subpoena additional witnesses.

(7) Evidence or testimony taken in executive session, and proceedings conducted in executive session, may be released or used in public sessions only when authorized by the committee, a majority being present.

(8) In the discretion of the committee, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The committee is the sole judge of the pertinence of testimony and evidence adduced at its hearing.

(9) A witness may obtain a transcript copy of the testimony of such witness given at a public session or, if given at an executive session, when authorized by the committee.

***Supplemental, minority, or additional views***

(l) If at the time of approval of a measure or matter by a committee (other than the Committee on Rules) a member of the committee gives notice of intention to file supplemental, minority, or additional views for inclusion in the report to the House thereon, that member shall be entitled to not less than two additional calendar days after the day of such notice (excluding Saturdays, Sundays, and legal holidays except when the House is in session on such a day) to file such views, in writing and signed by that member, with the clerk of the committee.

***Power to sit and act; subpoena power***

(m)(1) For the purpose of carrying out any of its functions and duties under this rule and rule X (including any matters referred to it under clause 2 of rule XII), a committee or subcommittee is authorized (subject to subparagraph (3)(A))—

(A) to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, and to hold such hearings as it considers necessary; and

(B) to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary.

(2) The chair of the committee, or a member designated by the chair, may administer oaths to witnesses.

(3)(A)(i) Except as provided in subdivision (A)(ii), a subpoena may be authorized and issued by a committee or subcommittee under subparagraph (1)(B) in the conduct of an investigation or series of investigations or activities only when authorized by the committee or subcommittee, a majority being present. The power to authorize and issue subpoenas under subparagraph (1)(B) may be delegated to the chair of the committee under such rules and under such limitations as the committee may prescribe. Authorized subpoenas shall be signed by the chair of the committee or by a member designated by the committee.

(ii) In the case of a subcommittee of the Committee on Standards of Official Conduct, a subpoena may be authorized and issued only by an affirmative vote of a majority of its members.

(B) A subpoena duces tecum may specify terms of return other than at a meeting or hearing of the committee or subcommittee authorizing the subpoena.

(C) Compliance with a subpoena issued by a committee or subcommittee under subparagraph (1)(B) may be enforced only as authorized or directed by the House.

(n)(1) Each standing committee, or a subcommittee thereof, shall hold at least one hearing during each 120-day period following the establishment of the committee on the topic of waste, fraud, abuse, or mismanagement in Government programs which that committee may authorize.

(2) A hearing described in subparagraph (1) shall include a focus on the most egregious instances of waste, fraud, abuse, or mismanagement as documented by any report the committee has received from a Federal Office of the Inspector General or the Comptroller General of the United States.

(o) Each committee, or a subcommittee thereof, shall hold at least one hearing in any session in which the committee has received disclaimers of agency financial statements from auditors of any Federal agency that the committee may authorize to hear testimony on such disclaimers from representatives of any such agency.

(p) Each standing committee, or a subcommittee thereof, shall hold at least one hearing on issues raised by reports issued by the Comptroller General of the United States indicating that Federal programs or operations that the committee may authorize are at high risk for waste, fraud, and mismanagement, known as the "high-risk list" or the "high-risk series."

***Committee on Standards of Official Conduct***

3. (a) The Committee on Standards of Official Conduct has the following functions:

(1) The committee may recommend to the House from time to time such administrative actions as it may consider appropriate to establish or enforce standards of official conduct for Members, Delegates, the Resident Commissioner, officers, and employees of the House. A letter of reproval or other administrative action of the committee pursuant to an investigation under subparagraph (2) shall only be issued or implemented as a part of a report required by such subparagraph.

(2) The committee may investigate, subject to paragraph (b), an alleged violation by a Member, Delegate, Resident Commissioner, officer, or employee of the House of the Code of Official Conduct or of a law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, Delegate, Resident Commissioner, officer, or employee in the performance of the duties or the discharge of the responsibilities of such individual. After notice and hearing (unless the right to a hearing is waived by the Member, Delegate, Resident Commissioner, officer, or employee), the committee shall report to the House its findings of fact and recommendations, if any, for the final disposition of any such investigation and such action as the committee may consider appropriate in the circumstances.

(3) The committee may report to the appropriate Federal or State authorities, either with the approval of the House or by an affirmative vote of two-thirds of the members of the committee, any substantial evidence of a violation by a Member, Delegate, Resident Commissioner, officer, or employee of the House, of a law applicable to the performance of the duties or the discharge of the responsibilities of such individual that may have been disclosed in a committee investigation.

(4) The committee may consider the request of a Member, Delegate, Resident Commissioner, officer, or employee of the House for an advisory opinion with respect to the general propriety of any current or proposed conduct of such Member, Delegate, Resident Commissioner, officer, or employee. With appropriate deletions to ensure the privacy of the person concerned, the committee may publish such opinion for the guidance of other Members, Delegates, the Resident Commissioner, officers, and employees of the House.

(5) The committee may consider the request of a Member, Delegate, Resident Commissioner, officer, or employee of the House for a written waiver in exceptional circumstances with respect to clause 4 of rule XXIII.

(6)(A) The committee shall offer annual ethics training to each Member, Delegate, Resident Commissioner, officer, and employee of the House. Such training shall—

(i) involve the classes of employees for whom the committee determines such training to be appropriate; and

(ii) include such knowledge of the Code of Official Conduct and related House rules as may be determined appropriate by the committee.

(B)(i) A new officer or employee of the House shall receive training under this paragraph not later than 60 days after beginning service to the House.

(ii) Not later than January 31 of each year, each officer and employee of the House shall file a certification with the committee that the officer or employee attended ethics training in the last year as established by this subparagraph.

(b)(1)(A) Unless approved by an affirmative vote of a majority of its members, the Committee on Standards of Official Conduct may not report a resolution, report, recommendation, or advisory opinion relating to the official conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House, or, except as provided in subparagraph (2), undertake an investigation of such conduct.

(B)(i) Upon the receipt of information offered as a complaint that is in compliance with this rule and the rules of the committee, the chair and ranking minority member jointly may appoint members to serve as an investigative subcommittee.

(ii) The chair and ranking minority member of the committee jointly may gather additional information concerning alleged conduct that is the basis of a complaint or of information offered as a complaint until they have established an investigative subcommittee or either of them has placed on the agenda of the committee the issue of whether to establish an investigative subcommittee.

(2) Except in the case of an investigation undertaken by the committee on its own initiative, the committee may undertake an investigation relating to the official conduct of an individual Member, Delegate, Resident Commissioner, officer, or employee of the House only—

(A) upon receipt of information offered as a complaint, in writing and under oath, from a Member, Delegate, or Resident Commissioner and transmitted to the committee by such Member, Delegate, or Resident Commissioner;

(B) upon receipt of information offered as a complaint, in writing and under oath, from a person not a Member, Delegate, or Resident Commissioner provided that a Member, Delegate, or Resident Commissioner certifies in writing to the committee that such Member, Delegate, or Resident Commissioner believes the information is submitted in good faith and warrants the review and consideration of the committee; or

(C) upon receipt of a report regarding a referral from the board of the Office of Congressional Ethics.

If a complaint is not disposed of within the applicable periods set forth in the rules of the Committee on Standards of Official Conduct, the chair and ranking minority member shall establish jointly an investigative subcommittee and forward the complaint, or any portion thereof, to that subcommittee for its consideration. However, if at any time during those periods either the chair or ranking minority member places on the agenda the issue of whether to establish an investigative subcommittee, then an investigative subcommittee may be established only by an affirmative vote of a majority of the members of the committee.

(3) The committee may not undertake an investigation of an alleged violation of a law, rule, regulation, or standard of conduct that was not in effect at the time of the alleged violation. The committee may not undertake an investigation of such an alleged violation that occurred before the third previous Congress unless the committee determines that the alleged violation is directly related to an alleged violation that occurred in a more recent Congress.

(4) A member of the committee shall be ineligible to participate as a member of the committee in a committee proceeding relating to the member's official conduct. Whenever a member of the committee is ineligible to act as a member of the committee under the preceding sentence, the Speaker shall designate a Member, Delegate, or Resident Commissioner from the same political party as the ineligible member to act in any proceeding of the committee relating to that conduct.

(5) A member of the committee may seek disqualification from participating in an investigation of the conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House upon the submission in writing and under oath of an affidavit of disqualification stating that the member cannot render an impartial and unbiased decision in the case in which the member seeks to be disqualified. If the committee approves and accepts such affidavit of disqualification, the chair shall so notify the Speaker and request the Speaker to designate a Member, Delegate, or Resident Commissioner from the same political party as the disqualifying member to act in any proceeding of the committee relating to that case.

(6) Information or testimony received, or the contents of a complaint or the fact of its filing, may not be publicly disclosed by any committee or staff member unless specifically authorized in each instance by a vote of the full committee.

(7) The committee shall have the functions designated in titles I and V of the Ethics in Government Act of 1978, in sections 7342, 7351, and 7353 of title 5, United States Code, and in clause 11(g)(4) of rule X.

(8)(A) Except as provided by subdivisions (B), (C), and (D), not later than 45 calendar days or 5 legislative days, whichever is later, after receipt of a written report and any findings and supporting documentation regarding a referral from the board of the Office of Congressional Ethics or of a referral of the matter from the board pursuant to a request under paragraph (r), the chair of the Committee on Standards of Official Conduct shall make public the written report and findings of the board unless the chair and ranking member, acting jointly, decide or the committee votes to withhold such information for not more than one additional period of the same duration, in which case the chair shall—

(i) upon the termination of such additional period, make public the written report and findings; and

(ii) upon the day of such decision or vote, make a public statement that the committee has voted to extend the matter relating to the referral made by the board of the Office of Congressional Ethics regarding the Member, officer, or employee of the House who is the subject of the applicable referral.

At least one calendar day before the committee makes public any written report and findings of the board, the chair shall notify such board and the applicable Member, officer, or employee of that fact and transmit to such individual a copy of the statement on the committee's disposition of, and any committee report on, the matter.

(B)(i) Notwithstanding subdivision (A)(i), if the committee votes to dismiss a matter which is the subject of a referral from the board of the Office of Congressional Ethics, the committee is not required to make public the written report and findings described in such subdivision unless the committee's vote is inconsistent with the recommendation of the board. For purposes of the previous sentence, a vote by the committee to dismiss a matter is not inconsistent with a report from the board respecting the matter as unresolved due to a tie vote.

(ii) Notwithstanding subdivision (A)(ii), if the board transmits a report respecting any matter with a recommendation to dismiss or as unresolved due to a tie vote, and the committee votes to extend the matter for an additional period as provided in subdivision (A), the committee is not required to make a public statement that the committee has voted to extend the matter.

(iii) Except as provided by subdivision (E), if the committee establishes an investigative subcommittee respecting any such matter, then the report and findings of the board shall not be made public until the conclusion of the

investigative subcommittee process and the committee shall issue a public statement of the establishment of an investigative subcommittee, which statement shall include the name of the applicable Member, officer, or employee, and shall set forth the alleged violation. If any such investigative subcommittee does not conclude its review within one year after the board transmits a report respecting any matter, then the committee shall make public the report and upon the expiration of the Congress in which the report is made public, the committee shall make public any findings.

(C)(i) If, after receipt of a written report and any findings and supporting documentation regarding a referral from the board of the Office of Congressional Ethics or of a referral of the matter from the board pursuant to a request under paragraph (r), the committee agrees to a request from an appropriate law enforcement or regulatory authority to defer taking action on the matter—

(I) notwithstanding subdivision (A)(i), the committee is not required to make public the written report and findings described in such subdivision, except that if the recommendation of the board with respect to the report is that the matter requires further review, the committee shall make public the written report but not the findings; and

(II) before the end of the first day (excluding Saturdays, Sundays, and public holidays) after the day that the committee agrees to the request, the committee shall make a public statement that it is deferring taking action on the matter at the request of such authority.

(ii) If, upon the expiration of the one-year period that begins on the date the committee makes the public statement described in item (i)(II), the committee has not acted on the matter, the committee shall make a new public statement that it is still deferring taking action on the matter, and shall make a new statement upon the expiration of each succeeding one-year period during which the committee has not acted on the matter.

(D) The committee may not receive any referral from the board of the Office of Congressional Ethics within 60 days before a Federal, State, or local election in which the subject of the referral is a candidate. The committee may delay any reporting requirement under this subparagraph that falls within that 60-day period until the end of such period and in that case, for purposes of subdivision (A), days within the 60-day period shall not be counted.

(E) If, at the close of any applicable period for a reporting requirement under this subparagraph with respect to a referral from the board of the Office of Congressional Ethics, the vote of the committee is a tie or the committee fails to act, the report and the findings of the board shall be made public by the committee, along with a public statement by the chair explaining the status of the matter.

(c)(1) Notwithstanding clause 2(g)(1) of rule XI, each meeting of the Committee on Standards of Official Conduct or a subcommittee thereof shall occur in executive session unless the committee or subcommittee, by an affirmative vote of a majority of its members, opens the meeting to the public.

(2) Notwithstanding clause 2(g)(2) of rule XI, each hearing of an adjudicatory subcommittee or sanction hearing of the Committee on Standards of Official Conduct shall be held in open session unless the committee or subcommittee, in open session by an affirmative vote of a majority of its members, closes all or part of the remainder of the hearing on that day to the public.

(d) Before a member, officer, or employee of the Committee on Standards of Official Conduct, including members of a subcommittee of the committee selected under clause 5(a)(4) of rule X and shared staff, may have access to information that is confidential under the rules of the committee, the following oath (or affirmation) shall be executed:

"I do solemnly swear (or affirm) that I will not disclose, to any person or entity outside the Committee on Standards of Official Conduct, any information received in the course of my service with the committee, except as authorized by the committee or in accordance with its rules."

Copies of the executed oath shall be retained by the Clerk as part of the records of the House. This paragraph establishes a standard of conduct within the meaning of paragraph (a)(2). Breaches of confidentiality shall be investigated by the Committee on Standards of Official Conduct and appropriate action shall be taken.

(e)(1) If a complaint or information offered as a complaint is deemed frivolous by an affirmative vote of a majority of the members of the Committee on Standards of Official Conduct, the committee may take such action as it, by an affirmative vote of a majority of its members, considers appropriate in the circumstances.

(2) Complaints filed before the One Hundred Fifth Congress may not be deemed frivolous by the Committee on Standards of Official Conduct.

***Committee agendas***

(f) The committee shall adopt rules providing that the chair shall establish the agenda for meetings of the committee, but shall not preclude the ranking minority member from placing any item on the agenda.

***Committee staff***

(g)(1) The committee shall adopt rules providing that—

(A) the staff be assembled and retained as a professional, nonpartisan staff;

(B) each member of the staff shall be professional and demonstrably qualified for the position for which hired;

(C) the staff as a whole and each member of the staff shall perform all official duties in a nonpartisan manner;

(D) no member of the staff shall engage in any partisan political activity directly affecting any congressional or presidential election;

(E) no member of the staff or outside counsel may accept public speaking engagements or write for publication on any subject that is in any way related to the employment or duties with the committee of such individual without specific prior approval from the chair and ranking minority member; and

(F) no member of the staff or outside counsel may make public, unless approved by an affirmative vote of a majority of the members of the committee, any information, document, or other material that is confidential, derived from executive session, or classified and that is obtained during the course of employment with the committee.

(2) Only subdivisions (C), (E), and (F) of subparagraph (1) shall apply to shared staff.

(3)(A) All staff members shall be appointed by an affirmative vote of a majority of the members of the committee. Such vote shall occur at the first meeting of the membership of the committee during each Congress and as necessary during the Congress.

(B) Subject to the approval of the Committee on House Administration, the committee may retain counsel not employed by the House of Representatives whenever the committee determines, by an affirmative vote of a majority of the members of the committee, that the retention of outside counsel is necessary and appropriate.

(C) If the committee determines that it is necessary to retain staff members for the purpose of a particular investigation or other proceeding, then such staff shall be retained only for the duration of that particular investigation or proceeding.

(D) Outside counsel may be dismissed before the end of a contract between the committee and such counsel only by an affirmative vote of a majority of the members of the committee.

(4) In addition to any other staff provided for by law, rule, or other authority, with respect to the committee, the chair and ranking minority member each may appoint one individual as a shared staff member from the respective personal staff of the chair or ranking minority member to perform service for the committee. Such shared staff may assist the chair or ranking minority member on any subcommittee on which the chair or ranking minority member serves.

***Meetings and hearings***

(h)(1) The committee shall adopt rules providing that—

the House, the pending question shall be whether the House shall insist further on the House amendment.

(3) After the House has adopted one or more motions to reject nongermane matter contained in a motion that the House recede and concur in a Senate amendment, with or without amendment, the following motions shall be privileged and shall have precedence in the order stated:

(A) A motion that the House recede and concur in the Senate amendment with an amendment in writing then available on the floor.

(B) A motion that the House insist on its disagreement to the Senate amendment and request a further conference with the Senate.

(C) A motion that the House insist on its disagreement to the Senate amendment.

(e) If, on a division of the question on a motion described in paragraph (a)(1)(B) or (C), the House agrees to recede, then a Member, Delegate, or Resident Commissioner may raise a point of order against nongermane matter, as specified in paragraph (a)(2), before the commencement of debate on concurring in the Senate amendment, with or without amendment. A point of order under this paragraph shall be disposed of according to the preceding provisions of this clause in the same manner as a point of order under paragraph (a).

11. It shall not be in order to consider a conference report to accompany a bill or joint resolution that proposes to amend the Internal Revenue Code of 1986 unless—

(a) the joint explanatory statement of the managers includes a tax complexity analysis prepared by the Joint Committee on Internal Revenue Taxation in accordance with section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998; or

(b) the of the Committee on Ways and Means causes such a tax complexity analysis to be printed in the Congressional Record before consideration of the conference report.

12. (a)(1) Subject to subparagraph (2), a meeting of each conference committee shall be open to the public.

(2) In open session of the House, a motion that managers on the part of the House be permitted to close to the public a meeting or meetings of their conference committee shall be privileged, shall be decided without debate, and shall be decided by the yeas and nays.

(3) In conducting conferences with the Senate, managers on the part of the House should endeavor to ensure—

(A) that meetings for the resolution of differences between the two Houses occur only under circumstances in which every manager on the part of the House has notice of the meeting and a reasonable opportunity to attend;

(B) that all provisions on which the two Houses disagree are considered as open to discussion at any meeting of a conference committee; and

(C) that papers reflecting a conference agreement are held inviolate to change without renewal of the opportunity of all managers on the part of the House to reconsider their decisions to sign or not to sign the agreement.

(4) Managers on the part of the House shall be provided a unitary time and place with access to at least one complete copy of the final conference agreement for the purpose of recording their approval (or not) of the final conference agreement by placing their signatures (or not) on the sheets prepared to accompany the conference report and joint explanatory statement of the managers.

(b) A point of order that a conference committee failed to comply with paragraph (a) may be raised immediately after the conference report is read or considered as read. If such a point of order is sustained, the conference report shall be considered as rejected, the House shall be considered to have insisted on its amendments or on disagreement to the Senate amendments, as the case may be, and to have requested a further conference with the Senate, and the Speaker may appoint new conferees without intervening motion.

13. It shall not be in order to consider a conference report the text of which differs in any way, other than clerical, from the text that reflects the action of the conferees on all of the differences between the two Houses, as recorded by their placement of their signatures (or not) on the sheets prepared to accompany the conference report and joint explanatory statement of the managers.

## RULE XXIII

### CODE OF OFFICIAL CONDUCT

There is hereby established by and for the House the following code of conduct, to be known as the "Code of Official Conduct":

1. A Member, Delegate, Resident Commissioner, officer, or employee of the House shall behave at all times in a manner that shall reflect creditably on the House.

2. A Member, Delegate, Resident Commissioner, officer, or employee of the House shall adhere to the spirit and the letter of the Rules of the House and to the rules of duly constituted committees thereof.

3. A Member, Delegate, Resident Commissioner, officer, or employee of the House 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.

4. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept gifts except as provided by clause 5 of rule XXV.

5. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept an honorarium for a speech, a writing for publication, or other similar activity, except as otherwise provided under rule XXV.

6. A Member, Delegate, or Resident Commissioner—

(a) shall keep the campaign funds of such individual separate from the personal funds of such individual;

(b) may not convert campaign funds to personal use in excess of an amount representing reimbursement for legitimate and verifiable campaign expenditures; and

(c) except as provided in clause 1(b) of rule XXIV, may not expend funds from a campaign accounts of such individual that are not attributable to bona fide campaign or political purposes.

7. A Member, Delegate, or Resident Commissioner shall treat as campaign contributions all proceeds from testimonial dinners or other fundraising events.

8. (a) A Member, Delegate, Resident Commissioner, or officer of the House may not retain an employee who does not perform duties for the offices of the employing authority commensurate with the compensation such employee receives.

(b) In the case of a committee employee who works under the direct supervision of a member of the committee other than a chair, the chair may require that such member affirm in writing that the employee has complied with clause 8(a) (subject to clause 9 of rule X) as evidence of compliance by the chair with this clause and with clause 9 of rule X.

(c)(1) Except as specified in subparagraph (2)—

(A) a Member, Delegate, or Resident Commissioner may not retain the spouse of such individual in a paid position; and

(B) an employee of the House may not accept compensation for work for a committee on which the spouse of such employee serves as a member.

(2) Subparagraph (1) shall not apply in the case of a spouse whose pertinent employment predates the One Hundred Seventh Congress.

9. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not discharge and may not refuse to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of the race, color, religion, sex (including marital or parental status), disability, age, or national origin of such individual, but may take into consideration the domicile or political affiliation of such individual.

10. A Member, Delegate, or Resident Commissioner who has been convicted by a court of record for the commission of a crime for which a sentence of two or more years' imprisonment may be imposed should refrain from participation in the business of each committee of which such individual is a member, and a Member should refrain from voting on any question at a meeting of the House or of the Committee of the Whole House on the state of the Union, unless or until judicial or executive proceedings result in reinstatement of the presumption of the innocence of such Member or until the Member is reelected to the House after the date of such conviction.

11. A Member, Delegate, or Resident Commissioner may not authorize or otherwise allow an individual, group, or organization not under the direction and control of the House to use the words "Congress of the United States," "House of Represen tatives," or "Official Business," or any combination of words thereof, on any letterhead or envelope.

12. (a) Except as provided in paragraph (b), an employee of the House who is required to file a report under rule XXVI may not participate personally and substantially as an employee of the House in a contact with an agency of the executive or judicial branches of Government with respect to nonlegislative matters affecting any nongovernmental person in which the employee has a significant financial interest.

(b) Paragraph (a) does not apply if an employee first advises the employing authority of such employee of a significant financial interest described in paragraph (a) and obtains from such employing authority a written waiver stating that the participation of the employee in the activity described in paragraph (a) is necessary. A copy of each such waiver shall be filed with the Committee on Standards of Official Conduct.

13. Before a Member, Delegate, Resident Commissioner, officer, or employee of the House may have access to classified information, the following oath (or affirmation) shall be executed:

"I do solemnly swear (or affirm) that I will not disclose any classified information received in the course of my service with the House of Representatives, except as authorized by the House of Representatives or in accordance with its Rules."

Copies of the executed oath (or affirmation) shall be retained by the Clerk as part of the records of the House. The Clerk shall make signatures a matter of public record, causing the names of each Member, Delegate, or Resident Commissioner who has signed the oath during a week (if any) to be published in a portion of the Congressional Record designated for that purpose on the last legislative day of the week and making cumulative lists of such names available each day for public inspection in an appropriate office of the House.

14. A Member, Delegate, or Resident Commissioner may not, with the intent to influence on the basis of partisan political affiliation an employment decision or employment practice of any private entity—

(a) take or withhold, or offer or threaten to take or withhold, an official act; or

(b) influence, or offer or threaten to influence, the official act of another.

15. (a) Except as provided in paragraph (b), a Member, Delegate, or Resident Commissioner may not use personal funds, official funds, or campaign funds for a flight on an aircraft.

(b) Paragraph (a) does not apply if—

(1) the aircraft is operated by an air carrier or commercial operator certificated by the Federal Aviation Administration and the flight is required to be conducted under air carrier safety rules, or, in the case of travel which is abroad, by an air carrier or commercial operator certificated by an appropriate foreign civil aviation authority and the flight is required to be conducted under air carrier safety rules;

(2) the aircraft is owned or leased by a Member, Delegate, Resident Commissioner or a family member of a Member, Delegate, or Resident Commissioner (including an aircraft owned by an entity that is not a public corporation in which the Member, Delegate, Resident Commissioner or a family member of a Member, Delegate, or Resident Commissioner has an ownership interest, provided that such Member, Delegate, or Resident Commissioner does not use the aircraft any more than the Member, Delegate, Resident Commissioner, or family member's proportionate share of ownership allows);

(3) the flight consists of the personal use of an aircraft by a Member, Delegate, or Resident Commissioner that is supplied by an individual on the basis of personal friendship; or

(4) the aircraft is operated by an entity of the Federal government or an entity of the government of any State.

(c) In this clause—

(1) the term "campaign funds" includes funds of any political committee under the Federal Election Campaign Act of 1971, without regard to whether the committee is an authorized committee of the Member, Delegate, or Resident Commissioner involved under such Act;

(2) the term "family member" means an individual who is related to the Member, Delegate, or Resident Commissioner, as father, mother, son, daughter, brother, sister, husband, wife, father-in-law, or mother-in-law; and

(3) the term "on the basis of personal friendship" has the same meaning as in clause 5 of rule XXV and shall be determined as under clause 5(a)(3)(D)(ii) of rule XXV.

16. A Member, Delegate, or Resident Commissioner may not condition the inclusion of language to provide funding for a congressional earmark, a limited tax benefit, or a limited tariff benefit in any bill or joint resolution (or an accompanying report) or in any conference report on a bill or joint resolution (including an accompanying joint explanatory statement of managers) on any vote cast by another Member, Delegate, or Resident Commissioner. For purposes of this clause and clause 17, the terms "congressional earmark," "limited tax benefit," and "limited tariff benefit" shall have the meanings given them in clause 9 of rule XXI.

17. (a) A Member, Delegate, or Resident Commissioner who requests a congressional earmark, a limited tax benefit, or a limited tariff benefit in any bill or joint resolution (or an accompanying report) or in any conference report on a bill or joint resolution (or an accompanying joint statement of managers) shall provide a written statement to the chair and ranking minority member of the committee of jurisdiction, including—

(1) the name of the Member, Delegate, or Resident Commissioner;

(2) in the case of a congressional earmark, the name and address of the intended recipient or, if there is no specifically intended recipient, the intended location of the activity;

(3) in the case of a limited tax or tariff benefit, identification of the individual or entities reasonably anticipated to benefit, to the extent known to the Member, Delegate, or Resident Commissioner;

(4) the purpose of such congressional earmark or limited tax or tariff benefit; and

(5) a certification that the Member, Delegate, or Resident Commissioner or spouse has no financial interest in such congressional earmark or limited tax or tariff benefit.

(b) Each committee shall maintain the information transmitted under paragraph (a), and the written disclosures for any congressional earmarks, limited tax benefits, or limited tariff benefits included in any measure reported by the committee or conference report filed by the chair of the committee or any subcommittee thereof shall be open for public inspection.

13. (a) In this Code of Official Conduct, the term "officer or employee of the House" means an individual whose compensation is disbursed by the Chief Administrative Officer.

(b) An individual whose services are compensated by the House pursuant to a consultant contract shall be considered an employee of the House for purposes of clauses 1, 2, 3, 4, 8, 9, and 13 of this rule. An individual whose services are compensated by the House pursuant to a consultant contract may not lobby the contracting committee or the members or staff of the contracting committee on any matter. Such an individual may lobby other Members, Delegates, or the Resident Commissioner or staff of the House on matters outside the jurisdiction of the contracting committee. In the case of such an individual who is a member or employee of a firm, partnership, or other business organization, the other members and employees of the firm, partnership, or other business organization shall be subject to the same restrictions on lobbying that apply to the individual under this paragraph.

## RULE XXIV

### LIMITATIONS ON USE OF OFFICIAL FUNDS

***Limitations on use of official and unofficial accounts***

1. (a) Except as provided in paragraph (b), a Member, Delegate, or Resident Commissioner may not maintain, or have maintained for the use of such individual, an unofficial office account. Funds may not be paid into an unofficial office account.

(b)(1) Except as provided in subparagraph (2), a Member, Delegate, or Resident Commissioner may defray official expenses with funds of the principal campaign committee of such individual under the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.).

(2) The funds specified in subparagraph (1) may not be used to defray official expenses for mail or other communications, compensation for services, office space, office furniture, office equipment, or any associated information technology services (excluding handheld communications devices).

2. Notwithstanding any other provision of this rule, if an amount from the Official Expenses Allowance of a Member, Delegate, or Resident Commissioner is paid into the House Recording Studio revolving fund for telecommunications satellite services, the Member, Delegate, or Resident Commissioner may accept reimbursement from nonpolitical entities in that amount for transmission to the Clerk for credit to the Official Expenses Allowance.

3. In this rule the term "unofficial office account" means an account or repository in which funds are received for the purpose of defraying otherwise unreimbursed expenses allowable under section 162(a) of the Internal Revenue Code of 1986 as ordinary and necessary in the operation of a congressional office, and includes a newsletter fund referred to in section 527(g) of the Internal Revenue Code of 1986.

***Limitations on use of the frank***

4. A Member, Delegate, or Resident Commissioner shall mail franked mail under section 3210(d) of title 39, United States Code at the most economical rate of postage practicable.

5. Before making a mass mailing, a Member, Delegate, or Resident Commissioner shall submit a sample or description of the mail matter involved to the House Commission on Congressional Mailing Standards for an advisory opinion as to whether the proposed mailing is in compliance with applicable provisions of law, rule, or regulation.

6. A mass mailing that is otherwise frankable by a Member, Delegate, or Resident Commissioner under the provisions of section 3210(e) of title 39, United States Code, is not frankable unless the cost of preparing and printing it is defrayed exclusively from funds made available in an appropriation Act.

7. A Member, Delegate, or Resident Commissioner may not send a mass mailing outside the congressional district from which elected.

8. In the case of a Member, Delegate, or Resident Commissioner, a mass mailing is not frankable under section 3210 of title 39, United States Code, when it is postmarked less than 90 days before the date of a primary or general election (whether regular, special, or runoff) in which such individual is a candidate for public office. If the mail matter is of a type that is not customarily postmarked, the date on which it would have been postmarked, if it were of a type customarily postmarked, applies.

9. In this rule the term "mass mailing" means, with respect to a session of Congress, a mailing of newsletters or other pieces of mail with substantially identical content (whether such pieces of mail are deposited singly or in bulk, or at the same time or different times), totaling more than 500 pieces of mail in that session, except that such term does not include a mailing—

(a) of matter in direct response to a communication from a person to whom the matter is mailed;

(b) from a Member, Delegate, or Resident Commissioner to other Members, Delegates, the Resident Commissioner, or Senators, or to Federal, State, or local government officials; or

(c) of a news release to the communications media.

***Prohibition on use of funds by Members not elected to succeeding Congress***

10. Funds from the applicable accounts described in clause 1(j)(1) of rule X, including funds from committee expense resolutions, and funds in any local currencies owned by the United States may not be made available for travel by a Member, Delegate, Resident Commissioner, or Senator after the date of a general election in which such individual was not elected to the succeeding Congress or, in the case of a Member, Delegate, or Resident Commissioner who is not a candidate in a general election, after the earlier of the date of such general election or the adjournment sine die of the last regular session of the Congress.

## RULE XXV

### LIMITATIONS ON OUTSIDE EARNED INCOME AND ACCEPTANCE OF GIFTS

***Outside earned income; honoraria***

1. (a) Except as provided by paragraph (b), a Member, Delegate, Resident Commissioner, officer, or employee of the House may not—

(1) have outside earned income attributable to a calendar year that exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of that calendar year; or

(2) receive any honorarium, except that an officer or employee of the House who is paid at a rate less than 120 percent of the minimum rate of basic pay for GS–15 of the General Schedule may receive an honorarium unless the subject matter is directly related to the official duties of the individual, the payment is made because of the status of the individual with the House, or the person offering the honorarium has interests that may be substantially affected by the performance or nonperformance of the official duties of the individual.

(b) In the case of an individual who becomes a Member, Delegate, Resident Commissioner, officer, or employee of the House, such individual may not have outside earned income attributable to the portion of a calendar year that occurs after such individual becomes a Member, Delegate, Resident Commissioner, officer, or employee that exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of that calendar year multiplied by a fraction, the numerator of which is the number of days the individual is a Member, Delegate, Resident Commissioner, officer, or employee during that calendar year and the denominator of which is 365.

(c) A payment in lieu of an honorarium that is made to a charitable organization on behalf of a Member, Delegate, Resident Commissioner, officer, or employee of the House may not be received by that Member, Delegate, Resident Commissioner, officer, or employee. Such a payment may not exceed $2,000 or be made to a charitable organization from which the Member, Delegate, Resident Commissioner, officer, or employee or a parent, sibling, spouse, child, or dependent relative of the Member, Delegate, Resident Commissioner, officer, or employee, derives a financial benefit.

***Claims against the Government***

6. A person may not be an officer or employee of the House, or continue in its employment, if acting as an agent for the prosecution of a claim against the Government or if interested in such claim, except as an original claimant or in the proper discharge of official duties.

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

8. During the dates on which the national political party to which a Member (including a Delegate or Resident Commissioner) belongs holds its convention to nominate a candidate for the office of President or Vice President, the Member may not participate in an event honoring that Member, other than in the capacity as a candidate for such office, if such event is directly paid for by a registered lobbyist under the Lobbying Disclosure Act of 1995 or a private entity that retains or employs such a registered lobbyist.

## RULE XXVI

### FINANCIAL DISCLOSURE

1. The Clerk shall send a copy of each report filed with the Clerk under title I of the Ethics in Government Act of 1978 within the seven-day period beginning on the date on which the report is filed to the Committee on Standards of Official Conduct. By August 1 of each year, the Clerk shall compile all such reports sent to the Clerk by Members within the period beginning on January 1 and ending on June 15 of each year and have them printed as a House document, which shall be made available to the public.

2. For the purposes of this rule, the provisions of title I of the Ethics in Government Act of 1978 shall be considered Rules of the House as they pertain to Members, Delegates, the Resident Commissioner, officers, and employees of the House.

3. Members of the board of the Office of Congressional Ethics shall file annual financial disclosure reports with the Clerk of the House on or before May 15 of each calendar year after any year in which they perform the duties of that position. Such reports shall be on a form prepared by the Clerk that is substantially similar to form 450 of the Office of Government Ethics. The Clerk shall send a copy of each such report filed with the Clerk within the seven-day period beginning on the date on which the report is filed to the Committee on Standards of Official Conduct and shall have them printed as a House document and made available to the public pursuant to clause 1.

**[Pertinent provisions of Title I of the Ethics in Government Act of 1978 (5 U.S.C. App. §§ 101–111) follow:]**

TITLE I—FINANCIAL DISCLOSURE REQUIREMENTS OF FEDERAL PERSONNEL

**Persons Required to File**

SEC. 101. (a) Within thirty days of assuming the position of an officer or employee described in subsection (f), an individual shall file a report containing the information described in section 102(b) unless the individual has left another position described in subsection (f) within thirty days prior to assuming such new position or has already filed a report under this title with respect to nomination for the new position or as a candidate for the position. * * *

(c) Within thirty days of becoming a candidate as defined in section 301 of the Federal Campaign Act of 1971, in a calendar year for nomination or election to the office of President, Vice President, or Member of Congress, or on or before May 15 of that calendar year, whichever is later, but in no event later than 30 days before the election, and on or before May 15 of each successive year an individual continues to be a candidate, an individual other than an incumbent President, Vice President, or Member of Congress shall file a report containing the information described in section 102(b). Notwithstanding the preceding sentence, in any calendar year in which an individual continues to be a candidate for any office but all elections for such office relating to such candidacy were held in prior calendar years, such individual need not file a report unless he becomes a candidate for another vacancy in that office or another office during that year.

(d) Any individual who is an officer or employee described in subsection (f) during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 102(a).

(e) Any individual who occupies a position described in subsection (f) shall, on or before the thirtieth day after termination of employment in such position, file a report containing the information described in section 102(a) covering the preceding calendar year if the report required by subsection (d) has not been filed and covering the portion of the calendar year in which such termination occurs up to the date the individual left such office or position, unless such individual has accepted employment in another position described in subsection (f).

(f) The officers and employees referred to in subsections (a), (d), and (e) are— * * *

(9) a Member of Congress as defined under section 109(12);

(10) an officer or employee of the Congress as defined under section 109(13); * * *

(g)(1) Reasonable extensions of time for filing any report may be granted under procedures prescribed by the supervising ethics office for each branch, but the total of such extensions shall not exceed ninety days. * * *

(h) The provisions of subsections (a), (b), and (e) shall not apply to an individual who, as determined by the designated agency ethics official or Secretary concerned (or in the case of a Presidential appointee under subsection (b), the Director of the Office of Government Ethics), the congressional ethics committees, or the Judicial Conference, is not reasonably expected to perform the duties of his office or position for more than sixty days in a calendar year, except that if such individual performs the duties of his office or position for more than sixty days in a calendar year—

(1) the report required by subsections (a) and (b) shall be filed within fifteen days of the sixtieth day, and

(2) the report required by subsection (e) shall be filed as provided in such subsection.

(i) The supervising ethics office for each branch may grant a publicly available request for a waiver of any reporting requirement under this section for an individual who is expected to perform or has performed the duties of his office or position less than one hundred and thirty days in a calendar year, but only if the supervising ethics office determines that—

(1) such individual is not a full-time employee of the Government,

(2) such individual is able to provide services specially needed by the Government,

(3) it is unlikely that the individual's outside employment or financial interests will create a conflict of interest, and

(4) public financial disclosure by such individual is not necessary in the circumstances.

**Contents of Reports**

SEC. 102. (a) Each report filed pursuant to section 101 (d) and (e) shall include a full and complete statement with respect to the following:

(1)(A) The source, type, and amount or value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United States Government), and the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating $200 or more in value and, effective January 1, 1991, the source, date, and amount of payments made to charitable organizations in lieu of honoraria, and the reporting individual shall simultaneously file with the applicable supervising ethics office, on a confidential basis, a corresponding list of recipients of all such pay-

ments, together with the dates and amounts of such payments.

(B) The source and type of income which consists of dividends, rents, interest, and capital gains, received during the preceding calendar year which exceeds $200 in amount or value, and an indication of which of the following categories the amount or value of such item of income is within:

(i) not more than $1,000,

(ii) greater than $1,000 but not more than $2,500,

(iii) greater than $2,500 but not more than $5,000,

(iv) greater than $5,000 but not more than $15,000,

(v) greater than $15,000 but not more than $50,000,

(vi) greater than $50,000 but not more than $100,000,

(vii) greater than $100,000 but not more than $1,000,000,

(viii) greater than $1,000,000 but not more than $5,000,000, or

(ix) greater than $5,000,000.

(2)(A) The identity of the source, a brief description, and the value of all gifts aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or $250, whichever is greater, received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of an individual need not be reported, and any gift with a fair market value of $100 or less, as adjusted at the same time and by the same percentage as the minimal value is adjusted, need not be aggregated for purposes of this subparagraph.

(B) The identity of the source and a brief description (including a travel itinerary, dates, and nature of expenses provided) of reimbursements received from any source aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or $250, whichever is greater, and received during the preceding calendar year.

(C) In an unusual case, a gift need not be aggregated under subparagraph (A) if a publicly available request for a waiver is granted.

(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds $1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a spouse, or by a parent, brother, sister, or child of the reporting individual or of the reporting individual's spouse, or any deposits aggregating $5,000 or less in a personal savings account. For purposes of this paragraph, a personal savings account shall include any certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

(4) The identity and category of value of the total liabilities owed to any creditor other than a spouse, or a parent, brother, sister, or child of the reporting individual or of the reporting individual's spouse which exceed $10,000 at any time during the preceding calendar year, excluding—

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; and

(B) any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it.

With respect to revolving charge accounts, only those with an outstanding liability which exceeds $10,000 as of the close of the preceding calendar year need be reported under this paragraph.

(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year exceeds $1,000—

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.

Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.

(6)(A) The identity of all positions held on or before the date of filing during the current calendar year (and, for the first report filed by an individual, during the two-year period preceding such calendar year) as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. This subparagraph shall not require the reporting of positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature.

(B) If any person, other than the United States Government, paid a nonelected reporting individual compensation in excess of $5,000 in any of the two calendar years prior to the calendar year during which the individual files his first report under this title, the individual shall include in the report—

(i) the identity of each source of such compensation; and

(ii) a brief description of the nature of the duties performed or services rendered by the reporting individual for each such source.

The preceding sentence shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

(7) A description of the date, parties to, and terms of any agreement or arrangement with respect to (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer.

(8) The category of the total cash value of any interest of the reporting individual in a qualified blind trust, unless the trust instrument was executed prior to July 24, 1995 and precludes the beneficiary from receiving information on the total cash value of any interest in the qualified blind trust.

(b)(1) Each report filed pursuant to subsections (a), (b), and (c) of section 101 shall include a full and complete statement with respect to the information required by—

(A) paragraph (1) of subsection (a) for the year of filing and the preceding calendar year,

(B) paragraphs (3) and (4) of subsection (a) as of the date specified in the report but which is less than thirty-one days before the filing date, and

(C) paragraphs (5) and (7) of subsection (a) as of the filing date but for periods described in such paragraphs.

(2)(A) In lieu of filling out one or more schedules of a financial disclosure form, an individual may supply the required information in an alternative format, pursuant to either rules adopted by the supervising ethics office for the branch in which such individual serves or pursuant to a specific written determination by such office for a reporting individual.

(B) In lieu of indicating the category of amount or value of any item contained in any report filed under this title, a reporting individual may indicate the exact dollar amount of such item.

(c) In the case of any individual described in section 101(e), any reference to the preceding calendar year shall be considered also to include that part of the calendar year of filing up to the date of the termination of employment.

(d)(1) The categories for reporting the amount or value of the items covered in paragraphs (3), (4), (5), and (8) of subsection (a) are as follows:

(A) not more than $15,000;

(B) greater than $15,000 but not more than $50,000;

(C) greater than $50,000 but not more than $100,000;

(D) greater than $100,000 but not more than $250,000;

(E) greater than $250,000 but not more than $500,000;

(F) greater than $500,000 but not more than $1,000,000;

(G) greater than $1,000,000 but not more than $5,000,000;

(H) greater than $5,000,000 but not more than $25,000,000;

(I) greater than $25,000,000 but not more than $50,000,000; and

(J) greater than $50,000,000.

(2) For the purposes of paragraph (3) of subsection (a) if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (A) the date of purchase and the purchase price of the interest in the real property, or (B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in his report a full and complete description of the method used to determine such assessed value, instead of specifying a category of value pursuant to paragraph (1) of this subsection. If the current value of any other item required to be reported under paragraph (3) of subsection (a) is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect to other holdings, any recognized indication of value, but such individual shall include in his report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining such assessed value shall be included in the report.

(e)(1) Except as provided in the last sentence of this paragraph, each report required by section 101 shall also contain information listed in paragraphs (1) through (5) of subsection (a) of this section respecting the spouse or dependent child of the reporting individual as follows:

(A) The source of items of earned income earned by a spouse from any person which exceed $1,000 and the source and amount of any honoraria received by a spouse, except that, with respect to earned income (other than honoraria), if the spouse is self-employed in business or a profession, only the nature of such business or profession need be reported.

(B) All information required to be reported in subsection (a)(1)(B) with respect to income derived by a spouse or dependent child from any asset held by the spouse or dependent child and reported pursuant to subsection (a)(3).

(C) In the case of any gifts received by a spouse or dependent child which are not received totally independent of the relationship of the spouse or dependent child to the reporting individual, the identity of the source and a brief description of gifts of transportation, lodging, food, or entertainment and a brief description and the value of other gifts.

(D) In the case of any reimbursements received by a spouse or dependent child which are not received totally independent of the relationship of the spouse or dependent child to the reporting individual, the identity of the source and a brief description of each such reimbursement.

(E) In the case of items described in paragraphs (3) through (5) of subsection (a), all information required to be reported under these paragraphs other than items (i) which the reporting individual certifies represent the spouse's or dependent child's sole financial interest or responsibility and which the reporting individual has no knowledge of, (ii) which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

(F) For purposes of this section, categories with amounts or values greater than $1,000,000 set forth in sections 102(a)(1)(B) and 102(d)(1) shall apply to the income, assets, or liabilities of spouses and dependent children only if the income, assets, or liabilities are held jointly with the reporting individual. All other income, assets, or liabilities of the spouse or dependent children required to be reported under this section in an amount or value greater than $1,000,000 shall be categorized only as an amount or value greater than $1,000,000.

Reports required by subsections (a), (b), and (c) of section 101 shall, with respect to the spouse and dependent child of the reporting individual, only contain information listed in paragraphs (1), (3), and (4) of subsection (a), as specified in this paragraph.

(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

(f)(1) Except as provided in paragraph (2), each reporting individual shall report the information required to be reported pursuant to subsections (a), (b), and (c) of this section with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any dependent child.

(2) A reporting individual need not report the holdings of or the source of income from any of the holdings of—

(A) any qualified blind trust (as defined in paragraph (3));

(B) a trust—

(i) which was not created directly by such individual, his spouse, or any dependent child, and

(ii) the holdings or sources of income of which such individual, his spouse, and any dependent child have no knowledge of; or

(C) an entity described under the provisions of paragraph (8), but such individual shall report the category of the amount of income received by him, his spouse, or any dependent child from the trust or other entity under subsection (a)(1)(B) of this section.

(3) For purpose of this subsection, the term "qualified blind trust" includes any trust in which a reporting individual, his spouse, or any minor or dependent child has a beneficial interest in the principal or income, and which meets the following requirements:

(A)(i) The trustee of the trust and any other entity designated in the trust instrument to perform fiduciary duties is a financial institution, an attorney, a certified public accountant, a broker, or an investment advisor who—

(I) is independent of and not associated with any interested party so that the trustee or other person cannot be controlled or influenced in the administration of the trust by any interested party;

(II) is not and has not been an employee of or affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party; and

(III) is not a relative of any interested party.

(ii) Any officer or employee of a trustee or other entity who is involved in the management or control of the trust—

(I) is independent of and not associated with any interested party so that such officer or employee cannot be controlled or influenced in the administration of the trust by any interested party;

(II) is not a partner of, or involved in any joint venture or other investment with, any interested party; and

(III) is not a relative of any interested party.

(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the supervising ethics office of the reporting individual.

(C) The trust instrument which establishes the trust provides that—

(i) except to the extent provided in subparagraph (B) of this paragraph, the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(iii) the trustee shall promptly notify the reporting individual and his supervising ethics office when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than $1,000;

(iv) the trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by subsection (a)(1) of this section, but such report shall not identify any asset or holding;

(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

(D) The proposed trust instrument and the proposed trustee is approved by the reporting individual's supervising ethics office.

(E) For purposes of this subsection, "interested party" means a reporting individual, his spouse, and any minor or dependent child; "broker" has the meaning set forth in section 3(a)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a)(4)); and "investment adviser" includes any investment adviser who, as determined under regulations prescribed by the supervising ethics office, is generally involved in his role as such an adviser in the management or control of trusts.

(F) Any trust qualified by a supervising ethics office before the effective date of title II of the Ethics Reform Act of 1989 shall continue to be governed by the law and regulations in effect immediately before such effective date.

(4)(A) An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purposes of any applicable conflict of interest statutes, regulations, or rules of the Federal Government (including section 208 of title 18, United States Code), until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than $1,000.

(B)(i) The provisions of subparagraph (A) shall not apply with respect to a trust created for the benefit of a reporting individual, or the spouse, dependent child, or minor child of such a person, if the supervising ethics office for such reporting individual finds that—

(I) the assets placed in the trust consist of a well-diversified portfolio of readily marketable securities;

(II) none of the assets consist of securities of entities having substantial activities in the area of the reporting individual's primary area of responsibility;

(III) the trust instrument prohibits the trustee, notwithstanding the provisions of paragraphs (3)(C) (iii) and (iv) of this subsection, from making public or informing any interested party of the sale of any securities;

(IV) the trustee is given power of attorney, notwithstanding the provisions of paragraph (3)(C)(v) of this subsection, to prepare on behalf of any interested party the personal income tax returns and similar returns which may contain information relating to the trust; and

(V) except as otherwise provided in this paragraph, the trust instrument provides (or in the case of a trust established prior to the effective date of this Act which by its terms does not permit amendment, the trustee, the reporting individual, and any other interested party agree in writing) that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A). * * *

(5)(A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of—

(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (d) of this section.

This subparagraph shall not apply with respect to a trust meeting the requirements for being considered a qualified blind trust under paragraph (7) of this subsection.

(B) The reporting individual shall, within thirty days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics office of the identity of each such asset and the category of value of each asset as determined under subsection (d) of this section.

(C) Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall—

(i) notify his supervising ethics office of such dissolution, and

(ii) file with such office a copy of a list of the assets of the trust at the time of such dissolution and the category of value under subsection (d) of this section of each such asset.

(D) Documents filed under subparagraphs (A), (B), and (C) of this paragraph and the lists provided by the trustee of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 105 and the provisions of that section shall apply with respect to such documents and lists.

(E) A copy of each written communication with respect to the trust under paragraph (3)(C)(vi) shall be filed by the person initiating the communication with the reporting individual's supervising ethics office within

five days of the date of the communication.

(6)(A) A trustee of a qualified blind trust shall not knowingly and willfully, or negligently, (i) disclose any information to an interested party with respect to such trust that may not be disclosed under paragraph (3) of this subsection; (ii) acquire any holding the ownership of which is prohibited by the trust instrument; (iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by paragraph (3) of this subsection or the trust agreement; or (iv) fail to file any document required by this subsection.

(B) A reporting individual shall not knowingly and willfully, or negligently, (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3)(C) of this subsection or (ii) fail to file any document required by this subsection.

(C)(i) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $10,000.

(ii) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

(7) Any trust may be considered to be a qualified blind trust if—

(A) the trust instrument is amended to comply with the requirements of paragraph (3) or, in the case of a trust instrument which does not by its terms permit amendment, the trustee, the reporting individual, and any other interested party agree in writing that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A); except that in the case of any interested party who is a dependent child, a parent or guardian of such child may execute the agreement referred to in this subparagraph;

(B) a copy of the trust instrument (except testamentary provisions) and a copy of the agreement referred to in subparagraph (A), and a list of the assets held by the trust at the time of approval by the supervising ethics office, including the category of value of each asset as determined under subsection (d) of this section, are filed with such office and made available to the public as provided under paragraph (5)(D) of this subsection; and

(C) the supervising ethics office determines that approval of the trust arrangement as a qualified blind trust is in the particular case appropriate to assure compliance with applicable laws and regulations.

(8) A reporting individual shall not be required to report the financial interests held by a widely held investment fund (whether such fund is a mutual fund, regulated investment company, pension or deferred compensation plan, or other investment fund), if—

(A)(i) the fund is publicly traded; or

(ii) the assets of the fund are widely diversified; and

(B) the reporting individual neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

(g) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed pursuant to this title.

(h) A report filed pursuant to subsection (a), (d), or (e) of section 101 need not contain the information described in subparagraphs (A), (B), and (C) of subsection (a)(2) with respect to gifts and reimbursements received in a period when the reporting individual was not an officer or employee of the Federal Government.

(i) A reporting individual shall not be required under this title to report—

(1) financial interests in or income derived from—

(A) any retirement system under title 5, United States Code (including the Thrift Savings Plan under subchapter III of chapter 84 of such title); or

(B) any other retirement system maintained by the United States for officers or employees of the United States, including the President, or for members of the uniformed services; or

(2) benefits received under the Social Security Act.

**Filing of Reports**

SEC. 103. (a) Except as otherwise provided in this section, the reports required under this title shall be filed by the reporting individual with the designated agency ethics official at the agency by which he is employed (or in the case of an individual described in section 101(e), was employed) or in which he will serve. The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such official. * * *

(g) Each supervising Ethics Office shall develop and make available forms for reporting the information required by this title.

(h)(1) The reports required under this title shall be filed by a reporting individual with—

(A)(i)(I) the Clerk of the House of Representatives, in the case of a Representative in Congress, a Delegate to Congress, the Resident Commissioner from Puerto Rico, an officer or employee of the Congress whose compensation is disbursed by the Clerk of the House of Representatives, an officer or employee of the Architect of the Capitol, United States Capitol Police, the United States Botanic Garden, the Congressional Budget Office, the Government Printing Office, the Library of Congress, or the Copyright Royalty Tribunal (including any individual terminating service, under section 101(e), in any office or position referred to in this subclause), or an individual described in section 101(c) who is a candidate for nomination or election as a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico; * * *

(ii) in the case of an officer or employee of the Congress as described under section 101(f)(10) who is employed by an agency or commission established in the legislative branch after the date of the enactment of the Ethics Reform Act of 1989—

(I) the Secretary of the Senate or the Clerk of the House of Representatives, as the case may be, as designated in the statute establishing such agency or commission; or

(II) if such statute does not designate such committee, the Secretary of the Senate for agencies and commissions established in even numbered calendar years, and the Clerk of the House of Representatives for agencies and commissions established in odd numbered calendar years; * * *

(2) The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such committee.

(i) A copy of each report filed under this title by a Member or an individual who is a candidate for the office of Member shall be sent by the Clerk of the House of Representatives or Secretary of the Senate, as the case may be, to the appropriate State officer designated under section 316(a) of the Federal Election Campaign Act of 1971 of the State represented by the Member or in which the individual is a candidate, as the case may be, within the 30-day period beginning on the day the report is filed with the Clerk or Secretary.

(j)(1) A copy of each report filed under this title with the Clerk of the House of Representatives shall be sent by the Clerk to the Committee on Standards of Official Conduct of the House of Representatives within the 7-day period beginning on the day the report is filed. * * *

(k) In carrying out their responsibilities under this title with respect to candidates for office, the Clerk of the House of Representatives and the Secretary of the Senate shall avail themselves of the assistance of the Federal Election Commission. The Commission shall make available to the Clerk and the Secretary on a regular basis a complete list of names and addresses of all candidates registered with the Com-

mission, and shall cooperate and coordinate its candidate information and notification program with the Clerk and the Secretary to the greatest extent possible.

**Failure to File or Filing False Reports**

SEC. 104. (a) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to section 102. The court in which such action is brought may assess against such individual a civil penalty in any amount, not to exceed $10,000.

(b) The head of each agency, each Secretary concerned, the Director of the Office of Government Ethics, each congressional ethics committee, or the Judicial Conference, as the case may be, shall refer to the Attorney General the name of any individual which such official or committee has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported.

(c) The President, the Vice President, the Secretary concerned, the head of each agency, the Office of Personnel Management, a congressional ethics committee, and the Judicial Conference of the United States, may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to report information required to be reported.

(d)(1) Any individual who files a report required to be filed under this title more than 30 days after the later of—

(A) the date such report is required to be filed pursuant to the provisions of this title and the rules and regulations promulgated thereunder; or

(B) if a filing extension is granted to such individual under section 101(g), the last day of the filing extension period, shall, at the direction of and pursuant to regulations issued by the supervising ethics office, pay a filing fee of $200. All such fees shall be deposited in the miscellaneous receipts of the Treasury. The authority under this paragraph to direct the payment of a filing fee may be delegated by the supervising ethics office in the executive branch to other agencies in the executive branch.

(2) The supervising ethics office may waive the filing fee under this subsection in extraordinary circumstances.

**Custody of and Public Access to Reports**

SEC. 105. (a) Each agency, each supervising ethics office in the executive or judicial branch, the Clerk of the House of Representatives, and the Secretary of the Senate shall make available to the public, in accordance with subsection (b), each report filed under this title with such agency or office or with the Clerk or the Secretary of the Senate. * * *

(b)(1) Except as provided in the second sentence of this subsection, each agency, each supervising ethics office in the executive or judicial branch, the Clerk of the House of Representatives, and the Secretary of the Senate shall, within thirty days after any report is received under this title by such agency or office or by the Clerk or the Secretary of the Senate, as the case may be, permit inspection of such report by or furnish a copy of such report to any person requesting such inspection or copy. With respect to any report required to be filed by May 15 of any year, such report shall be made available for public inspection within 30 calendar days after May 15 of such year or within 30 days of the date of filing of such a report for which an extension is granted pursuant to section 101(g). The agency, office, Clerk, or Secretary of the Senate, as the case may be may require a reasonable fee to be paid in any amount which is found necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest.

(2) Notwithstanding paragraph (1), a report may not be made available under this section to any person nor may any copy thereof be provided under this section to any person except upon a written application by such person stating—

(A) that person's name, occupation and address;

(B) the name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(C) that such person is aware of the prohibitions on the obtaining or use of the report.

Any such application shall be made available to the public throughout the period during which the report is made available to the public.

(3)(A) This section does not require the immediate and unconditional availability of reports filed by an individual described in section 109(8) or 109(10) of this Act if a finding is made by the Judicial Conference, in consultation with United States Marshall Service, that revealing personal and sensitive information could endanger that individual.

(B) A report may be redacted pursuant to this paragraph only—

(i) to the extent necessary to protect the individual who filed the report; and

(ii) for as long as the danger to such individual exists.

(C) The Administrative Office of the United States Courts shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate an annual report with respect to the operation of this paragraph, including—

(i) the total number of reports redacted pursuant to this paragraph;

(ii) the total number of individuals whose reports have been redacted pursuant to this paragraph; and

(iii) the types of threats against individuals whose reports are redacted, if appropriate.

(D) The Judicial Conference, in consultation with the Department of Justice, shall issue regulations setting forth the circumstances under which redaction is appropriate under this paragraph and the procedures for redaction.

(E) This paragraph shall expire on December 31, 2005, and apply to filings through calendar year 2005.

(c)(1) It shall be unlawful for any person to obtain or use a report—

(A) for any unlawful purpose;

(B) for any commercial purpose, other than by news and communications media for dissemination to the general public;

(C) for determining or establishing the credit rating of any individual; or

(D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1) of this subsection. The court in which such action is brought may assess against such person a penalty in any amount not to exceed $10,000. Such remedy shall be in addition to any other remedy available under statutory or common law.

(d) Any report filed with or transmitted to an agency or supervising ethics office or to the Clerk of the House of Representatives or the Secretary of the Senate pursuant to this title shall be retained by such agency or office or by the Clerk or the Secretary of the Senate, as the case may be. Such report shall be made available to the public for a period of six years after receipt of the report. After such six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 101(b) and was not subsequently confirmed by the Senate, or who filed the report pursuant to section 101(c) and was not subsequently elected, such reports shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President, Vice President, or as a Member of Congress, unless needed in an ongoing investigation.

**Review of Reports**

SEC. 106. (a)(1) Each designated agency ethics official or Secretary concerned shall make provisions to ensure that each report filed with him under this title is reviewed within sixty days after the date of such filing, except that the

Director of the Office of Government Ethics shall review only those reports required to be transmitted to him under this title within sixty days after the date of transmittal.

(2) Each congressional ethics committee and the Judicial Conference shall make provisions to ensure that each report filed under this title is reviewed within sixty days after the date of such filing.

(b)(1) If after reviewing any report under subsection (a), the Director of the Office of Government Ethics, the Secretary concerned, the designated agency ethics official, a person designated by the congressional ethics committee, or a person designated by the Judicial Conference, as the case may be, is of the opinion that on the basis of information contained in such report the individual submitting such report is in compliance with applicable laws and regulations, he shall state such opinion on the report, and shall sign such report.

(2) If the Director of the Office of Government Ethics, the Secretary concerned, the designated agency ethics official, a person designated by the congressional ethics committee, or a person designated by the Judicial Conference, after reviewing any report under subsection (a)—

(A) believes additional information is required to be submitted, he shall notify the individual submitting such report what additional information is required and the time by which it must be submitted, or

(B) is of the opinion, on the basis of information submitted, that the individual is not in compliance with applicable laws and regulations, he shall notify the individual, afford a reasonable opportunity for a written or oral response, and after consideration of such response, reach an opinion as to whether or not, on the basis of information submitted, the individual is in compliance with such laws and regulations.

(3) If the Director of the Office of Government Ethics, the Secretary concerned, the designated agency ethics official, a person designated by a congressional ethics committee, or a person designated by the Judicial Conference, reaches an opinion under paragraph (2)(B) that an individual is not in compliance with applicable laws and regulations, the official or committee shall notify the individual of that opinion and, after an opportunity for personal consultation (if practicable), determine and notify the individual of which steps, if any, would in the opinion of such official or committee be appropriate for assuring compliance with such laws and regulations and the date by which such steps should be taken. Such steps may include, as appropriate—

(A) divestiture,

(B) restitution,

(C) the establishment of a blind trust,

(D) request for an exemption under section 208(b) of title 18, United States Code, or

(E) voluntary request for transfer, reassignment, limitation of duties, or resignation.

The use of any such steps shall be in accordance with such rules or regulations as the supervising ethics office may prescribe.

(4) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by an individual in a position in the executive branch (other than in the Foreign Service or the uniformed services), appointment to which requires the advice and consent of the Senate, the matter shall be referred to the President for appropriate action.

(5) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by a member of the Foreign Service or the uniformed services, the Secretary concerned shall take appropriate action.

(6) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by any other officer or employee, the matter shall be referred to the head of the appropriate agency, the congressional ethics committee, or the Judicial Conference, for appropriate action; except that in the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken.

(7) Each supervising ethics office may render advisory opinions interpreting this title within its respective jurisdiction. Notwithstanding any other provision of law, the individual to whom a public advisory opinion is rendered in accordance with this paragraph, and any other individual covered by this title who is involved in a fact situation which is indistinguishable in all material aspects, and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of such act, be subject to any penalty or sanction provided by this title.

**Confidential Reports and Other Additional Requirements**

SEC. 107. (a)(1) Each supervising ethics office may require officers and employees under its jurisdiction (including special Government employees as defined in section 202 of title 18, United States Code) to file confidential financial disclosure reports, in such form as the supervising ethics office may prescribe. The information required to be reported under this subsection by the officers and employees of any department or agency shall be set forth in rules or regulations prescribed by the supervising ethics office, and may be less extensive than otherwise required by this title, or more extensive when determined by the supervising ethics office to be necessary and appropriate in light of sections 202 through 209 of title 18, United States Code, regulations promulgated thereunder, or the authorized activities of such officers or employees. Any individual required to file a report pursuant to section 101 shall not be required to file a confidential report pursuant to this subsection, except with respect to information which is more extensive than information otherwise required by this title. Subsections (a), (b), and (d) of section 105 shall not apply with respect to any such report.

(2) Any information required to be provided by an individual under this subsection shall be confidential and shall not be disclosed to the public.

(3) Nothing in this subsection exempts any individual otherwise covered by the requirement to file a public financial disclosure report under this title from such requirement.

(b) The provisions of this title requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation with respect to the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. Such provisions of this title shall not supersede the requirements of section 7342 of title 5, United States Code.

(c) Nothing in this Act requiring reporting of information shall be deemed to authorize the receipt of income, gifts, or reimbursements; the holding of assets, liabilities, or positions; or the participation in transactions that are prohibited by law, Executive order, rule, or regulation.

**Authority of Comptroller General**

SEC. 108. (a) The Comptroller General shall have access to financial disclosure reports filed under this title for the purposes of carrying out his statutory responsibilities.

(b) No later than December 31, 1992, and regularly thereafter, the Comptroller General shall conduct a study to determine whether the provisions of this title are being carried out effectively.

**Definitions**

SEC. 109. For the purposes of this title, the term—

(1) "congressional ethics committees" means the Select Committee on Ethics of the Senate and the Committee on Standards of Official Conduct of the House of Representatives;

(2) "dependent child" means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who—

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986;

(3) "designated agency ethics official" means an officer or employee who is designated to administer the provisions of this title within an agency; * * *

(5) "gift" means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include—

(A) bequest and other forms of inheritance;

(B) suitable mementos of a function honoring the reporting individual;

(C) food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(D) food and beverages which are not consumed in connection with a gift of overnight lodging;

(E) communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals; or

(F) consumable products provided by home-State businesses to the offices of a reporting individual who is an elected official, if those products are intended for consumption by persons other than such reporting individual;

(6) "honoraria" has the meaning given such term in section 505 of this Act;

(7) "income" means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust; * * *

(11) "legislative branch" includes—

(A) the Architect of the Capitol;

(B) the Botanic Gardens;

(C) the Congressional Budget Office;

(D) the Government Accountability Office;

(E) the Government Printing Office;

(F) the Library of Congress;

(G) the United States Capitol Police;

(H) the Office of Technology Assessment; and

(I) any other agency, entity, office, or commission established in the legislative branch;

(12) "Member of Congress" means a United States Senator, a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico;

(13) "officer or employee of the Congress" means—

(A) any individual described under subparagraph (B), other than a Member of Congress or the Vice President, whose compensation is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives;

(B)(i) each officer or employee of the legislative branch who, for at least 60 days, occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule; and

(ii) at least one principal assistant designated for purposes of this paragraph by each Member who does not have an employee who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule;

(14) "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

(15) "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(A) provided by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or

(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(16) "relative" means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual; * * *

(18) "supervising ethics office" means—

(A) the Senate Committee on Ethics of the Senate, for Senators, officers and employees of the Senate, and other officers or employees of the legislative branch required to file financial disclosure reports with the Secretary of the Senate pursuant to section 103(h) of this title;

(B) the Committee on Standards of Official Conduct of the House of Representatives, for Members, officers and employees of the House of Representatives and other officers or employees of the legislative branch required to file financial disclosure reports with the Clerk of the House of Representatives pursuant to section 103(h) of this title;

(C) the Judicial Conference for judicial officers and judicial employees; and

(D) the Office of Government Ethics for all executive branch officers and employees; and

(19) "value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual.

**Notice of Actions Taken to Comply with Ethics Agreements**

SEC. 110. (a) In any case in which an individual agrees with that individual's designated agency ethics official, the Office of Government Ethics, a Senate confirmation committee, a congressional ethics committee, or the Judicial Conference, to take any action to comply with this Act or any other law or regulation governing conflicts of interest of, or establishing standards of conduct applicable with respect to, officers or employees of the Government, that individual shall notify in writing the designated agency ethics official, the Office of Government Ethics, the appropriate committee of the Senate, the congressional ethics committee, or the Judicial Conference, as the case may be, of any action taken by the individual pursuant to that agreement. Such notification shall be made not later than the date specified in the agreement by which action by the individual must be taken, or not later than three months after the date of the agreement, if no date for action is so specified.

(b) If an agreement described in subsection (a) requires that the individual recuse himself or herself from particular categories of agency or other official action, the individual shall reduce to writing those subjects regarding which the recusal agreement will apply and the process by which it will be determined whether the individual must recuse himself or herself in a specific instance. An individual shall be considered to have complied with the requirements of subsection (a) with respect to such recusal agreement if such individual files a copy of the document setting forth the information described in the preceding sentence with such individual's designated agency ethics official or the appropriate supervising ethics office within the time prescribed in the last sentence of subsection (a).

**Administration of Provisions**

SEC. 111. The provisions of this title shall be administered by * * *

(2) the Select Committee on Ethics of the Senate and the Committee on Standards of Official Conduct of the House of Representatives, as appropriate, with regard to officers and employees described in paragraphs (9) and (10) of section 101(f). * * *

RULE XXVII

DISCLOSURE BY MEMBERS AND STAFF OF EMPLOYMENT NEGOTIATIONS

1. A Member, Delegate, or Resident Commissioner shall not directly negotiate or have any agreement of future employment or compensation unless such Member, Delegate, or Resident Commissioner, within 3 business days after the commencement of such negotiation or agreement of future employment or compensation, files with the Committee on Standards of Official Conduct a statement, which must be signed by the Member, Delegate, or Resident Commissioner, regarding such negotiations or agreement, including the name of the private entity or entities involved in such negotiations or agreement, and the date such negotiations or agreement commenced.

2. An officer or an employee of the House earning in excess of 75 percent of the salary paid to a Member shall notify the Committee on Standards of Official Conduct that such individual is negotiating or has any agreement of future employment or compensation.

3. The disclosure and notification under this rule shall be made within 3 business days after the commencement of such negotiation or agreement of future employment or compensation.

4. A Member, Delegate, or Resident Commissioner, and an officer or employee to whom this rule applies, shall recuse himself or herself from any matter in which there is a conflict of interest or an appearance of a conflict for that Member, Delegate, Resident Commissioner, officer, or employee under this rule and shall notify the Committee on Standards of Official Conduct of such recusal. A Member, Delegate, or Resident Commissioner making such recusal shall, upon such recusal, submit to the Clerk for public disclosure the statement of disclosure under clause 1 with respect to which the recusal was made.

RULE XXVIII

STATUTORY LIMIT ON PUBLIC DEBT

1. Upon adoption by Congress of a concurrent resolution on the budget under section 301 or 304 of the Congressional Budget Act of 1974 that sets forth, as the appropriate level of the public debt for the period to which the concurrent resolution relates, an amount that is different from the amount of the statutory limit on the public debt that otherwise would be in effect for that period, the Clerk shall prepare an engrossment of a joint resolution increasing or decreasing, as the case may be, the statutory limit on the public debt in the form prescribed in clause 2. Upon engrossment of the joint resolution, the vote by which the concurrent resolution on the budget was finally agreed to in the House shall also be considered as a vote on passage of the joint resolution in the House, and the joint resolution shall be considered as passed by the House and duly certified and examined. The engrossed copy shall be signed by the Clerk and transmitted to the Senate for further legislative action.

2. The matter after the resolving clause in a joint resolution described in clause 1 shall be as follows: "That subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof '$_____'.", with the blank being filled with a dollar limitation equal to the appropriate level of the public debt set forth pursuant to section 301(a)(5) of the Congressional Budget Act of 1974 in the relevant concurrent resolution described in clause 1. If an adopted concurrent resolution under clause 1 sets forth different appropriate levels of the public debt for separate periods, only one engrossed joint resolution shall be prepared under clause 1; and the blank referred to in the preceding sentence shall be filled with the limitation that is to apply for each period.

3. (a) The report of the Committee on the Budget on a concurrent resolution described in clause 1 and the joint explanatory statement of the managers on a conference report to accompany such a concurrent resolution each shall contain a clear statement of the effect the eventual enactment of a joint resolution engrossed under this rule would have on the statutory limit on the public debt.

(b) It shall not be in order for the House to consider a concurrent resolution described in clause 1, or a conference report thereon, unless the report of the Committee on the Budget or the joint explanatory statement of the managers complies with paragraph (a).

4. Nothing in this rule shall be construed as limiting or otherwise affecting—

(a) the power of the House or the Senate to consider and pass bills or joint resolutions, without regard to the procedures under clause 1, that would change the statutory limit on the public debt; or

(b) the rights of Members, Delegates, the Resident Commissioner, or committees with respect to the introduction, consideration, and reporting of such bills or joint resolutions.

5. In this rule the term "statutory limit on the public debt" means the maximum face amount of obligations issued under authority of chapter 31 of title 31, United States Code, and obligations guaranteed as to principal and interest by the United States (except such guaranteed obligations as may be held by the Secretary of the Treasury), as determined under section 3101(b) of such title after the application of section 3101(a) of such title, that may be outstanding at any one time.

RULE XXIX

GENERAL PROVISIONS

1. The provisions of law that constituted the Rules of the House at the end of the previous Congress shall govern the House in all cases to which they are applicable, and the rules of parliamentary practice comprised by Jefferson's Manual shall govern the House in all cases to which they are applicable and in which they are not inconsistent with the Rules and orders of the House.

2. In these rules words importing one gender include the other as well.

○

# *Rules and Procedures*

# *Adopted by the*

# *Committee on Small Business*

# *U.S. House of Representatives*

# *111th Congress, 2009-2010*

## 1. GENERAL PROVISIONS

The Rules of the House of Representatives, and in particular the committee rules enumerated in rule XI, are the rules of the Committee on Small Business to the extent applicable and by this reference are incorporated. Each subcommittee of the Committee on Small Business (hereinafter referred to as the "committee") is a part of the committee and is subject to the authority and direction of the committee, and to its rules to the extent applicable.

## 2. REFERRAL OF BILLS BY CHAIRWOMAN

Unless retained for consideration by the committee, all legislation and other matters referred to the committee shall be referred by the Chairwoman as she deems appropriate to the subcommittee of appropriate jurisdiction within 14 days. Where the subject matter of the referral involves the jurisdiction of more than one subcommittee or does not fall within any previously assigned jurisdictions, the Chairwoman shall refer the matter, as she may deem advisable.

In referring any measure or matter to a subcommittee, the Chairwoman may specify a date by which the subcommittee shall report thereon to the subcommittee. The Chairwoman may also discharge a subcommittee from consideration of any measure or matter referred to a subcommittee.

**3. DATE OF MEETING**

The regular meeting date of the committee shall be the second Thursday of every month when the House is in session. A regular meeting of the committee may be dispensed with if, in the judgment of the Chairwoman, there is no need for the meeting. Additional meetings may be called by the Chairwoman as she may deem necessary or at the request of a majority of the members of the committee in accordance with clause 2(c) of rule XI of the House.

At least 3 days notice of such an additional meeting shall be given unless the Chairwoman determines that there is good cause to call the meeting on less notice.

The determination of the business to be considered at each meeting shall be made by the Chairwoman subject to clause 2(c) of rule XI of the House.

A regularly scheduled meeting need not be held if there is no business to be considered or, upon at least 3 days notice, it may be set for a different date.

**4. ANNOUNCEMENT OF HEARINGS**

Unless the Chairwoman, with the concurrence of the Ranking Minority Member, or the committee by majority vote, determines that there is good cause to begin a hearing at an earlier date, public announcement shall be made of the date, place and subject matter of any hearing to be conducted by the committee at least 7 calendar days before the commencement of that hearing.

After announcement of a hearing, the committee shall make available as soon as practicable to all Members of the committee a tentative witness list and to the extent practicable a memorandum explaining the subject matter of the hearing (including relevant legislative reports and other necessary material). In addition, the Chairwoman shall make available as soon as practicable to the Members of the committee any official reports from departments and agencies on the subject matter as they are received.

All members of the committee shall be able to participate in any subcommittee hearing.

No member of the House may be excluded from non-participatory attendance at any hearing of the committee or any subcommittee, unless the House of Representatives shall by majority vote authorize the committee or subcommittee, for purposes of a particular series of hearings on a particular article of legislation or on a particular subject of investigation, to close its hearing to members by the same procedures designated for closing hearings to the public. Additionally, such members who would like to not only attend, but participate shall notify the Ranking Minority Member and submit a request in writing to the Chairwoman two days in advance of such hearing. Such requests shall be subject to approval of the Chairwoman and the Ranking Member.

**6. WITNESSES**

**(A) Statement of Witnesses**

Each witness who is to appear before the committee or subcommittee shall file with the committee at least two business days before the day of his or her appearance 75 copies of his or her written statement of proposed testimony. Each witness shall also submit to the committee a copy of his or her final prepared statement in an electronic format at that time.

At least one copy of the statement of each witness shall be furnished directly to the Ranking Minority Member. In addition, all witnesses shall be required to submit with their testimony a curriculum vitae or other statement describing their education, employment, professional affiliations and other background information pertinent to their testimony unless waived by the Chairwoman. Each witness will complete a disclosure form detailing any contracts or business that they currently have with the federal government.

The committee will provide public access to its printed materials, including the proposed testimony of witnesses, in electronic form.

**(B) Interrogation of Witnesses**

Whenever any hearing is conducted by the committee or any subcommittee upon any measure or matter, the minority party members on the committee shall be entitled, upon request to the Chairwoman by a majority of those minority members, to call a witness or witnesses selected by the minority to testify with respect to that measure or matter. The minority shall be entitled to a ratio of one-third of the witnesses testifying. For the purposes of determining this ratio, it shall not include testifying government officials. The witnesses requested by the minority shall be invited to testify by the Chairwoman and must furnish at least one copy of his or her statement and any supplementary materials directly to the

Chairwoman within two business days before the day of his or her appearance unless waived by the Chairwoman.

Except when the committee adopts a motion pursuant to subdivisions (B) and (C) of clause 2(j)(2) of rule XI of the rules of the House, committee members may question witnesses only when they have been recognized by the Chairwoman for that purpose, and only for a 5-minute period until all members present have had an opportunity to question a witness. The Chairwoman and the Ranking Member shall not be subject to the 5-minute period limitation. For all other Committee Members, the 5-minute period for questioning a witness by any one member can be extended only with the unanimous consent of all members present. The Chairwoman, followed by the Ranking Minority Member and all other members alternating between the majority and minority, shall initiate the questioning of witnesses in both the full and subcommittee hearings. The order for questioning by members of each party shall be determined by the time in which the member arrived at the hearing after the gavel has been struck, with the first arriving having priority over members of his or her party. If members arrive at the same time, then seniority on the committee shall dictate the order.

In recognizing members to question witnesses, the Chairwoman may take into consideration the ratio of majority and minority members present in such a manner as not to disadvantage the Members of either party. The Chairwoman, in consultation with the Ranking Minority Member, may decrease the 5-minute time period in order to accommodate the needs of all the Members present and the schedule of the witnesses.

**7. SUBPOENAS**

A subpoena may be authorized and issued by the committee in the conduct of any investigation or series of investigations or activities to require the attendance and testimony of such witness and the production of such books, records, correspondence, memoranda, papers and documents, as deemed necessary. Such a subpoena shall be authorized by a majority vote of the full committee. The requirement that the authorization of a subpoena require a majority vote may be waived by the Ranking Minority Member. The Chairwoman may issue a subpoena, in consultation with the Ranking Minority Member, when the House is out of session for a period of 3 days or longer.

**8. QUORUM**

No measure or recommendation shall be reported unless a majority of the committee was actually present. For purposes of taking testimony or receiving evidence, there shall be one member from the majority and one member from the minority for the purposes of a quorum. Such requirement may be waived for field hearings by the Chairwoman. For all other purposes, one-third of the members (or 11 Members) shall constitute a quorum.

# RULES

## COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

Adopted February 10, 2009
Amended June 9, 2009
**111th Congress**

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

(d) The respondent shall be notified in writing regarding the Committee's decision either to dismiss the complaint or to create an investigative subcommittee.

***Rule 17A. Referrals from the Board of the Office of Congressional Ethics***

(a) The Committee has exclusive jurisdiction over the interpretation, administration, and enforcement of the Code of Official Conduct pursuant to clause 1(q) of House Rule X. Receipt of referrals from the Board under this rule does not limit the Committee's discretion to address referrals in any way through the appropriate procedures authorized by Committee Rules. The Committee shall review the report and findings transmitted by the Board without prejudice or presumptions as to the merit of the allegations.

(b)(1) Whenever the Committee receives either (A) a referral containing a written report and any findings and supporting documentation from the Board; or (B) a referral from the Board pursuant to a request under Rule 17A(k), the Chair shall have 45 calendar days or 5 legislative days after the date the referral is received, whichever is later, to make public the report and findings of the Board unless the Chair and Ranking Minority Member jointly decide, or the Committee votes, to withhold such information for not more than one additional 45-day period.

(2) At least one calendar day before the Committee makes public any report and findings of the Board the Chair shall notify in writing the Board and the Member, officer, or employee who is the subject of the referral of the impending public release of these documents. At the same time, Chair shall transmit a copy of any public statement on the Committee's disposition of the matter and any accompanying Committee report to the individual who is the subject of the referral.

(3) All public statements and reports and findings of the Board that are required to be made public under this Rule shall be posted on the Committee's website.

(c) If the OCE report and findings are withheld for an additional 45-day period pursuant to paragraph (b)(1), Chair shall—

(1) make a public statement that the Committee has decided or voted to extend the matter referred from the Board on the day of such decision or vote; and

(2) make public the written report and findings pursuant to paragraph (b) upon the termination of such additional period.

(d) If the Board transmits a report with a recommendation to dismiss or noting a matter as unresolved due to a tie vote, and the Committee votes to extend the matter for an additional period as provided in paragraph (b), the Committee is not required to make a public statement that the Committee has voted to extend the matter pursuant to paragraph (b)(1).

(e) If the Committee votes to dismiss a matter referred from the Board, the Committee is not required to make public the written report and findings of the Board pursuant to paragraph (c) unless the Committee's vote is inconsistent with the recommendation of the Board. A vote by the Committee to dismiss a matter is not considered inconsistent with a report from the Board that the matter is unresolved by the Board due to a tie vote.

(f) Except as provided by paragraph (g):

(1) If the Committee establishes an investigative subcommittee respecting any matter referred by the Board, then the report and findings of the Board shall not be made public until the conclusion of the investigative subcommittee process pursuant to Rule 19. The

Committee shall issue a public statement noting the establishment of an investigative subcommittee, which shall include the name of the Member, officer, or employee who is the subject of the inquiry, and shall set forth the alleged violation.

(2) If any such investigative subcommittee does not conclude its review within one year after the Board's referral, then the Committee shall make public the report of the Board no later than one year after the referral. If the investigative subcommittee does not conclude its review before the end of the Congress in which the report of the Board is made public, the Committee shall make public any findings of the Board on the last day of that Congress.

(g) If the vote of the Committee is a tie or the Committee fails to act by the close of any applicable period(s) under this rule, the report and the findings of the Board shall be made public by the Committee, along with a public statement by the Chair explaining the status of the matter.

(h)(1) If the Committee agrees to a request from an appropriate law enforcement or regulatory authority to defer taking action on a matter referred by the Board under paragraph (b) –

(A) The Committee is not required to make public the written report and findings of the Board pursuant to paragraph (c), except that if the recommendation of the Board is that the matter requires further review, the Committee shall make public the written report of the Board but not the findings; and

(B) The Committee shall make a public statement that it is deferring taking action on the matter at the request of such law enforcement or regulatory authority within one day (excluding weekends and public holidays) of the day that the Committee agrees to the request.

(2) If the Committee has not acted on the matter within one year of the date the public statement described in paragraph (h)(1)(B) is released, the Committee shall make a public statement that it continues to defer taking action on the matter. The Committee shall make a new statement upon the expiration of each succeeding one-year period during which the Committee has not acted on the matter.

(i) The Committee shall not accept, and shall return to the Board, any referral from the Board within 60 days before a Federal, State, or local election in which the subject of the referral is a candidate.

(j) The Committee may postpone any reporting requirement under this rule that falls within that 60-day period until after the date of the election in which the subject of the referral is a candidate. For purposes of calculating any applicable period under this Rule, any days within the 60-day period before such an election shall not be counted.

(k)(1) At any time after the Committee receives written notification from the Board of the Office of Congressional Ethics that the Board is undertaking a review of alleged conduct of any Member, officer, or employee of the House at a time when the Committee is investigating, or has completed an investigation of the same matter, the Committee may so notify the Board in writing and request that the Board cease its review and refer the matter to the Committee for its consideration immediately. The Committee shall also notify the Board in writing if the Committee has not reached a final resolution of the matter or has not referred the matter to the appropriate Federal or State authorities by the end of any applicable time period specified in Rule 17A (including any permissible extension).

(2) The Committee may not request a second referral of the matter from the Board if the Committee has notified the Board that it is unable to resolve the matter previously

requested pursuant to this section. The Board may subsequently send a referral regarding a matter previously requested and returned by the Committee after the conclusion of the Board's review process.

***Rule 18. Committee-Initiated Inquiry or Investigation***

(a) Notwithstanding the absence of a filed complaint, the Committee may consider any information in its possession indicating that a Member, officer, or employee may have committed a violation of the Code of Official Conduct or any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of the duties or the discharge of the responsibilities of such individual. The Chair and Ranking Minority Member may jointly gather additional information concerning such an alleged violation by a Member, officer, or employee unless and until an investigative subcommittee has been established. The Chair and Ranking Minority Member may also jointly take appropriate action consistent with Committee Rules to resolve the matter.

(b) If the Committee votes to establish an investigative subcommittee, the Committee shall proceed in accordance with Rule 19.

(c) Any written request by a Member, officer, or employee of the House of Representatives that the Committee conduct an investigation into such person's own conduct shall be considered in accordance with subsection (a) of this Rule.

(d) An inquiry shall not be undertaken regarding any alleged violation that occurred before the third previous Congress unless a majority of the Committee determines that the alleged violation is directly related to an alleged violation that occurred in a more recent Congress.

(e)(1) An inquiry shall be undertaken by an investigative subcommittee with regard to any felony conviction of a Member, officer, or employee of the House of Representatives in a Federal, State, or local court who has been sentenced. Notwithstanding this provision, the Committee has the discretion to initiate an inquiry upon an affirmative vote of a majority of the members of the Committee at any time prior to conviction or sentencing.

(2) Not later than 30 days after a Member, officer or employee of the House is indicted or otherwise formally charged with criminal conduct in any Federal, State or local court, the Committee shall either initiate an inquiry upon a majority vote of the members of the Committee or submit a report to the House describing its reasons for not initiating an inquiry and describing the actions, if any, that the Committee has taken in response to the allegations.

***Rule 19. Investigative Subcommittee***

(a)(1) Upon the establishment of an investigative subcommittee, the Chair and Ranking Minority Member of the Committee shall designate four members (with equal representation from the majority and minority parties) to serve as an investigative subcommittee to undertake an inquiry. Members of the Committee and Members of the House selected pursuant to clause 5(a)(4)(A) of Rule X of the House of Representatives are eligible for appointment to an investigative subcommittee, as determined by the Chair and Ranking Minority Member of the Committee. At the time of appointment, the Chair shall designate one member of the subcommittee to serve as the Chair and the Ranking Minority Member shall designate one member of the subcommittee to serve as the ranking minority member of the investigative subcommittee. The Chair and Ranking Minority Member of the

(g) With respect to the sanctions that the Committee may recommend, reprimand is appropriate for serious violations, censure is appropriate for more serious violations, and expulsion of a Member or dismissal of an officer or employee is appropriate for the most serious violations. A recommendation of a fine is appropriate in a case in which it is likely that the violation was committed to secure a personal financial benefit; and a recommendation of a denial or limitation of a right, power, privilege, or immunity of a Member is appropriate when the violation bears upon the exercise or holding of such right, power, privilege, or immunity. This clause sets forth general guidelines and does not limit the authority of the Committee to recommend other sanctions.

(h) The Committee report shall contain an appropriate statement of the evidence supporting the Committee's findings and a statement of the Committee's reasons for the recommended sanction.

***Rule 25. Disclosure of Exculpatory Information to Respondent***

If the Committee, or any investigative or adjudicatory subcommittee at any time receives any exculpatory information respecting a Complaint or Statement of Alleged Violation concerning a Member, officer, or employee of the House of Representatives, it shall make such information known and available to the Member, officer, or employee as soon as practicable, but in no event later than the transmittal of evidence supporting a proposed Statement of Alleged Violation pursuant to Rule 26(c). If an investigative subcommittee does not adopt a Statement of Alleged Violation, it shall identify any exculpatory information in its possession at the conclusion of its inquiry and shall include such information, if any, in the subcommittee's final report to the Committee regarding its inquiry. For purposes of this rule, exculpatory evidence shall be any evidence or information

that is substantially favorable to the respondent with respect to the allegations or charges before an investigative or adjudicatory subcommittee.

***Rule 26. Rights of Respondents and Witnesses***

(a) A respondent shall be informed of the right to be represented by counsel, to be provided at the respondent's own expense.

(b) A respondent may seek to waive any procedural rights or steps in the disciplinary process. A request for waiver must be in writing, signed by the respondent, and must detail what procedural steps the respondent seeks to waive. Any such request shall be subject to the acceptance of the Committee or subcommittee, as appropriate.

(c) Not less than 10 calendar days before a scheduled vote by an investigative subcommittee on a Statement of Alleged Violation, the subcommittee shall provide the respondent with a copy of the Statement of Alleged Violation it intends to adopt together with all evidence it intends to use to prove those charges which it intends to adopt, including documentary evidence, witness testimony, memoranda of witness interviews, and physical evidence, unless the subcommittee by an affirmative vote of a majority of its members decides to withhold certain evidence in order to protect a witness, but if such evidence is withheld, the subcommittee shall inform the respondent that evidence is being withheld and of the count to which such evidence relates.

(d) Neither the respondent nor respondent's counsel shall, directly or indirectly, contact the subcommittee or any member thereof during the period of time set forth in paragraph (c) except for the sole purpose of settlement discussions where counsels for the respondent and the subcommittee are present.

# HOUSE ETHICS MANUAL

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

110TH Congress, 2d Session




2008 Edition
(Supersedes All Prior Editions)

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PREFACE

This is the first complete revision of the House Ethics Manual since 1992. Since that time, the Committee on Standards of Official Conduct has issued revised versions of the former Chapter 2 (Gifts and Travel) and the former Chapter 8 (Campaign Activity), as well as numerous advisory memoranda regarding changes to the applicable rules and standards of conduct.

This Manual supersedes (and incorporates where appropriate) all such prior guidance. The Committee will continue to issue advisory memoranda and other formal and informal guidance when necessary and helpful, and readers of this Manual should go to the Committee's website at www.house.gov/ethics to ensure they have the most current information regarding ethical rules and standards of conduct.

This version of the Manual has been reorganized from the 1992 version. The chapters have been reorganized and renumbered, and, among other changes, the former Chapter 2 on Gifts and Travel has been separated into two chapters.

Our primary intent in writing this revision is to ensure that the Committee's written guidance is current, and that Members, officers and staff of the House of Representatives have an educational resource to assist them in conforming their conduct to the high ethical standards they must meet. The Manual also describes the operation and role of the Committee in administering and enforcing the applicable laws, rules and standards. The Committee will continue to provide written guidance to Members, officers, and staff who submit a written request for guidance, and Members, officers, and staff are also encouraged to contact the Committee at (202) 225-7103 with any questions they may have.

Stephanie Tubbs Jones
Chairwoman

Doc Hastings
Ranking Republican Member

disqualify him from voting on" an appropriations bill authorizing funds for a project for which the corporation was under contract with the government to perform.[104]

In addition, House precedents favor "the idea that there is no authority in the House to deprive a Member of the right to vote."[105] Given the size of today's districts, when a Member refrains from voting, well over half a million people are denied a voice on the pending legislation.

However, while the Standards Committee has endorsed the principle that "each individual Member has the responsibility of deciding for himself whether his personal interest in pending legislation requires that he abstain from voting,"[106] it did so after investigating allegations (among others) that a Member had violated the rule by not refraining from voting in a particular instance. The Committee cleared the Member of this charge, but it has occasionally advised Members, in private advisory opinions, that it would be inappropriate for them to vote or to introduce legislation directly affecting significant and uniquely held financial interests. At times a question arises as to whether the "class" to which a Member belongs with regard to a piece of legislation – such as, for example, the class of owners of a particular area of land that would be acquired by the government under the legislation – is sufficiently large to warrant the Member voting under the authorities set out above.

The provisions of House Rule 3, clause 1, as discussed in this section, apply only to Member voting on the House floor. They do not apply to other actions that Members may normally take on particular matters in connection with their official duties, such as sponsoring legislation, advocating or participating in an action by a House committee, or contacting an executive branch agency. Such actions entail a degree of advocacy above and beyond that involved in voting, and thus a Member's decision on whether to take any such action on a matter that may affect his or her personal financial interests requires added circumspection. Moreover, such actions may implicate the rules and standards, discussed above, that prohibit the use of one's official position for personal gain. Whenever a Member is considering taking any such action on a matter that may affect his or her personal financial interests, the Member should first contact the Standards Committee for guidance. A Member should also exercise caution before accepting a position on the board of an organization that is subject to the oversight of a committee on which the Member sits.

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[104] *Id.* at 14-16.

[105] *House Rules and Manual, supra* note 31, § 672, at 374; *see also* 5 *Hinds, supra* note 94, § 5956, at 506.

[106] H. Rep. 94-1364, *supra* note 2, at 15-16; *see also* 121 *Cong. Rec.* 38135 (Dec. 2, 1975).

and covered new House employees. Copies of the current instruction booklets are available from the Standards Committee or the Legislative Resource Center.

## Statutes and Rules Governing Disclosure of Financial Interests

No federal statute, regulation, or rule of the House absolutely prohibits a Member or House employee from holding assets that might conflict with or influence the performance of official duties. However, acting partly to address the issues identified by the Bar Commission, Congress passed the Ethics in Government Act of 1978 ("EIGA"),[2] which mandated annual financial disclosure by all senior federal personnel, including all Members and some employees of the House. The Ethics in Government Act, as amended, provides the statutory basis for the disclosure currently required of House Members, candidates, and senior House employees.[3]

House Rule 26 adopts Title I of EIGA as a rule of the House.[4] House Rule 26, clause 1 requires the Clerk of the House to publish a report each August 1 compiling all Member Financial Disclosure Statements filed by June 15 of that year.

In addition, statutes and House rules restrict income from outside financial interests or govern aspects of the business dealings or investments of House Members and employees, as follows:

- Members and employees of Congress may not use their official positions for personal gain;[5]
- Members may not enter into or enjoy benefits under contracts or agreements with the United States;[6]
- Members and employees should not engage in any business with the federal government, either directly or indirectly, that is inconsistent with the conscientious performance of their congressional duties;[7]
- Members and employees may not receive any compensation or allow any compensation to accrue to their beneficial interests from any source if its

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[2] Pub. L. 95-521, 92 Stat. 1824 (Oct. 26, 1978). Legislative branch disclosure requirements were then codified at 2 U.S.C. § 701 *et seq.*

[3] *See* Ethics in Government Act of 1978, as amended, 5 U.S.C. app. 4 § 101 *et seq.*

[4] House Rule 26(2).

[5] *See* House Rule 23, cl. 3; Code of Ethics for Government Service ¶ 5, H. Con. Res. 175, 72 Stat., Part 2, B12 (1958).

[6] 18 U.S.C. § 431.

[7] Code of Ethics for Government Service, *supra* note 5, at ¶ 7.

receipt would occur by virtue of influence improperly exerted from a position in the Congress;[8]

- Members and employees of the House may not accept benefits under circumstances that might be construed by reasonable persons as influencing the performance of their governmental duties;[9] and
- Members and employees should never use any information received confidentially in the performance of governmental duties as a means for making private profit.[10]

In its very first case, in the 94th Congress, the Standards Committee found that a Member had violated the prohibition on the use of one's official position for personal gain when he sought benefits from an organization after he had actively promoted the establishment of that organization in his official capacity. The Committee found that the Member had worked, through his congressional office, to help establish a bank on a military base. During the time he was actively assisting in that effort, he approached organizers of the bank and inquired about the possibility of buying stock in it.[11] He subsequently purchased 2,500 shares of the bank's privately held stock. The Committee noted that "[i]f an opinion had been requested of this Committee in advance about the propriety of the investment, it would have been disapproved."[12] The Member was also found to have used public office for private gain in that he had sponsored legislation to remove a reversionary interest and restrictions on land in which he had a personal financial interest.[13] The Member was reprimanded by the House.[14]

## Policies Underlying Disclosure

Members, officers, and certain employees must annually disclose personal financial interests, including investments, income, and liabilities.[15] Financial disclosure provisions were enacted to monitor and to deter possible conflicts of interest due to outside financial holdings. Proposals for divestiture of potentially conflicting assets and mandatory disqualification of Members from voting were

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[8] House Rule 23, cl. 3.

[9] Code of Ethics for Government Service, *supra* note 5, at ¶ 5.

[10] *Id.* at ¶ 8.

[11] *See* House Comm. on Standards of Official Conduct, *In the Matter of a Complaint against Representative Robert L.F. Sikes*, H. Rep. 94-1364, 94th Cong., 2d Sess. 3 (1976).

[12] *Id.* at 4.

[13] *Id.* at 3-4.

[14] 122 *Cong. Rec.* 24379-83 (July 29, 1976).

[15] Title I of the Ethics in Government Act of 1978, as amended, 5 U.S.C. app. 4 §§ 101-111.

rejected as impractical or unreasonable.[16] Such disqualification could result in the disenfranchisement of a Member's entire constituency on particular issues.[17] A Member may often have a community of interests with the Member's constituency, and may arguably have been elected because of and to serve these common interests, and thus would be ineffective in representing the real interests of the constituents if the Member was disqualified from voting on issues touching those matters of mutual concern. In rare instances, the House rule on abstaining from voting may apply where a direct personal interest in a matter exists.[18]

Members of Congress enter public service owning assets and having private investment interests like other citizens. Members should not "be expected to fully strip themselves of worldly goods."[19] Even a selective divestiture of potentially conflicting assets could raise problems for a legislator. Unlike many officials in the executive branch, who are concerned with administration and regulation in a narrow area, a Member of Congress must exercise judgment concerning legislation across the entire spectrum of business and economic endeavors. Requiring divestiture may also insulate legislators from the personal and economic interests held by their constituencies, or society in general, in governmental decisions and policy.

As noted by the Bipartisan Task Force on Ethics:

> The problem of conflicts of interest involves complex and difficult issues, especially with respect to the legislative branch. A conflict of interest is generally defined as a situation in which an official's private financial interests conflict or appear to conflict with the public interest. Some conflicts of interest are inherent in a representative system of government, and are not in themselves necessarily improper or unethical. Members of Congress frequently maintain economic interests that merge or correspond with the interests of their constituents. This community of interests is in the nature of representative government, and is therefore inevitable and unavoidable.
>
> At the other extreme, a conflict of interest becomes corruption when an official uses his position of influence to enhance his personal financial interests. Between these extremes are those ambiguous circumstances which may create a real or potential conflict of interest. The problem is identifying those instances in which an official allows

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[16] *See* House Comm'n on Admin. Review, *Financial Ethics*, H. Doc. 95-73, 95th Cong., 1st Sess. 9-10 (1977) (hereinafter "*Financial Ethics*").

[17] *Congress and the Public Trust*, *supra* note 1, at 40.

[18] House Rule 8, cl. 1; see Chapter 5 of this Manual for further discussion of this provision.

[19] *Congress and the Public Trust*, *supra* note 1, at 47.

> his personal economic interests to impair his independence of judgment in the conduct of his public duties.[20]

Each situation must be reviewed on a case-by-case basis to determine if an actual conflict of interest exists. The Standards Committee has admonished all Members "to avoid situations in which even an inference might be drawn suggesting improper action."[21]

Thus, public disclosure of assets, financial interests, and investments has been required as the preferred method of regulating possible conflicts of interest of Members of the House and certain congressional staff. Public disclosure is intended to provide the information necessary to allow Members' constituencies to judge their official conduct in light of possible financial conflicts with private holdings. Review of a Member's financial conduct occurs in the context of the political process. As stated by the House Commission on Administrative Review of the 95th Congress in recommending broader financial disclosure in lieu of other restrictions on investment income:

> In the case of investment income, then, the Commission's belief is that potential conflicts of interest are best deterred through disclosure and the discipline of the electoral process. Other approaches are flawed both in terms of their reasonableness and practicality, and threaten to impair, rather than to protect, the relationship between the representative and the represented.[22]

The House has required public financial disclosure by rule since 1968, and by statute since 1978. The Commission on Administrative Review noted: "The objectives of financial disclosure are to inform the public about the financial interests of government officials in order to increase public confidence in the integrity of government and to deter potential conflicts of interest."[23] The Bipartisan Task Force on Ethics cited two further goals underlying statutory disclosure requirements: (1) Requiring disclosure of only those items that are relevant to potential conflicts of interest; and (2) developing reporting requirements that avoid unnecessary invasions of privacy or excessively burdensome recordkeeping. In short, the financial disclosure requirements must effectively

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[20] House Bipartisan Task Force on Ethics, *Report on H.R. 3660,* 101st Cong., 1st Sess. 22 (Comm. Print, Comm. on Rules 1989), *reprinted in* 135 *Cong. Rec.* H9253, H9259 (daily ed. Nov. 21, 1989) (hereinafter "*Bipartisan Task Force Report*").

[21] 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. Rep. 100-46, 100th Cong., 1st Sess. 3, 9, 43 (1987).

[22] *Financial Ethics,* H. Doc. 95-73, *supra* note 16, at 9.

[23] *Id.* at 4.

balance the privacy rights of the reporting individual with the governmental interests in informing the public and deterring conflicts of interest.[24]

## Specific Disclosure Requirements

EIGA mandated annual financial disclosure by all senior federal personnel, including all Members and some employees of the House.[25] The Ethics Reform Act of 1989[26] substantially revised these provisions and condensed what had been different requirements for each branch into one uniform title covering the entire federal government. As such, Financial Disclosure Statements **must** disclose outside compensation, holdings, and business transactions, generally for the calendar year preceding the filing date. In all instances, filers may disclose additional information or explanation at their discretion.

The Standards Committee develops forms and instructions for financial disclosure and reviews the completed statements of House Members, officers, employees, candidates, and certain other legislative branch personnel for compliance with applicable laws. The Clerk of the House is responsible for making the forms available for public inspection. The discussion that follows focuses primarily on those requirements that apply to Members, officers, and employees of the House. The instruction booklets issued by the Standards Committee should be consulted for specific guidance when completing a Financial Disclosure Statement.

### *Who Must File*

All Members of the House and those House employees earning "above GS-15," that is, at least 120% of the federal GS-15 base level salary, for at least 60 days during the calendar year must file a Financial Disclosure Statement by May 15 of each year. For 2008, the triggering salary, referred to as the "senior staff rate," is $114,468. Employees who are paid at this rate are termed "senior" or "covered" employees. Each Member's office must also have at least one employee who files (this individual is referred to as the "principal assistant"). Thus, if a Member has no employee on his or her personal staff who is paid at the senior staff rate, the Member must designate at least one member of his or her staff as a principal assistant to file. As the Committee first stated in its 1969 financial disclosure instructions, this person will usually be an employee whose relationship with the Member permits the person, under some circumstances, to act in the Member's name or with the Member's authority.

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[24] *Bipartisan Task Force Report, supra* note 20, at 22; 135 *Cong. Rec.* H9259.

[25] Pub. L. 95-521, 92 Stat. 1824 (Oct. 26, 1978). Legislative branch disclosure requirements were then codified at 2 U.S.C. § 701 *et seq.*

[26] Pub. L. 101-194, 103 Stat. 1716 (Nov. 30, 1989), *amended by* Pub. L. 101-280, 104 Stat. 149 (May 4, 1990), and Pub. L. 102-90, 105 Stat. 447 (Aug. 14, 1991).

# APPENDICES

## Code of Ethics for Government Service

72 Stat., Part 2, B12 (1958), H. Con. Res. 175, 85th Cong.

*Resolved by the House of Representatives (the Senate concurring),* That it is the sense of the Congress that the following Code of Ethics should be adhered to by all Government employees, including officeholders:

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government service should:

1. Put loyalty to the highest moral principals and to country above loyalty to Government persons, party, or department.
2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.
3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.
4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.
6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.
7. Engage in no business with the Government, either directly or indirectly which is inconsistent with the conscientious performance of his governmental duties.
8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.
9. Expose corruption wherever discovered.
10. Uphold these principles, ever conscious that public office is a public trust.

(Passed July 11, 1958.)

HRES 895 EH

**H. Res. 895**

***In the House of Representatives, U.S.,***

*March 11, 2008.*

*Resolved,*

## SECTION 1. ESTABLISHMENT OF THE OFFICE OF CONGRESSIONAL ETHICS.

(a) Establishment- For the purpose of assisting the House in carrying out its responsibilities under article I, section 5, clause 2 of the Constitution (commonly referred to as the `Discipline Clause'), there is established in the House an independent office to be known as the Office of Congressional Ethics (hereinafter in this section referred to as the `Office').

(b) Board- (1) The Office shall be governed by a board consisting of six individuals of whom three shall be nominated by the Speaker subject to the concurrence of the minority leader and three shall be nominated by the minority leader subject to the concurrence of the Speaker. The Speaker shall nominate at least one alternate board member subject to the concurrence of the minority leader and the minority leader shall nominate at least one alternate board member subject to the concurrence of the Speaker. If any vacancy occurs in the board, then the most senior alternate board member nominated by the same individual who nominated the member who left the board shall serve on the board until a permanent replacement is selected. If a permanent appointment is not made within 90 days, the alternate member shall be deemed to have been appointed for the remainder of the term of the member who left the board and the Speaker or the minority leader, as applicable, shall nominate a new alternate subject to the concurrence of the other leader.

(2) The Speaker and the minority leader each shall appoint individuals of exceptional public standing who are specifically qualified to serve on the board by virtue of their education, training, or experience in one or more of the following fields: legislative, judicial, regulatory, professional ethics, business, legal, and academic.

(3) The Speaker shall designate one member of the board as chairman. The minority leader shall designate one member of the board as cochairman. The cochairman shall act as chairman in the absence of the chairman.

(4)(A) Selection and appointment of members of the board shall be without regard to political affiliation and solely on the basis of fitness to perform their duties.

(B)(i) No individual shall be eligible for appointment to, or service on, the board who--

(I) is a lobbyist registered under the Lobbying Disclosure Act of 1995;

(II) has been so registered at any time during the year before the date of appointment;

(III) engages in, or is otherwise employed in, lobbying of the Congress;

(IV) is an agent of a foreign principal registered under the Foreign Agents Registration Act;

(V) is a Member; or

(VI) is an officer or employee of the Federal Government.

(ii) No individual who has been a Member, officer, or employee of the House may be appointed to the board sooner than one year after ceasing to be a Member, officer, or employee of the House.

(5) A vacancy on the board shall be filled for the unexpired portion of the term, utilizing the process set forth in paragraph (1).

(6)(A) Except as provided by subparagraph (B), terms on the board shall be for two Congresses. A member of the board may not serve during more than four consecutive Congresses.

(B) Of the individuals appointed in the 110th Congress to serve on the board, 4 shall be designated at the time of appointment to serve only for the remainder of that Congress. Any such individual may be reappointed for an additional term of two Congresses.

(C) Any member of the board may be removed from office for cause by the Speaker and the minority leader, acting jointly, but not by either, acting alone.

(7) A member of the board shall not be considered to be an officer or employee of the House, but shall receive a per diem equal to the daily equivalent of the minimum rate of basic pay payable for GS-15 of the General Schedule for each day (including travel time) during which such member is engaged in the performance of the duties of the board.

(8) A majority of the members of the board shall constitute a quorum.

(9) The board shall meet at the call of the chairman or a majority of its members pursuant to its rules.

(c) Powers- The board is authorized and directed to:

(1)(A) Within 7 calendar days (excluding Saturdays, Sundays, and public holidays) after receipt of a joint written request from 2 members of the board (one of whom was nominated by the Speaker and one by the minority leader) to all board members to undertake a preliminary review of any alleged violation by a Member, officer, or employee of the House of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his

responsibilities, along with a brief description of the specific matter, initiate a preliminary review and notify in writing--

(i) the Committee on Standards of Official Conduct of that preliminary review and provide a statement of the nature of the review; and

(ii) any individual who is the subject of the preliminary review and provide such individual with a statement of the nature of the review.

(B) Within 30 calendar days or 5 legislative days, whichever is later, after receipt of a request under subparagraph (A), complete a preliminary review.

(C) Before the end of the applicable time period, vote on whether to commence a second-phase review of the matter under consideration. An affirmative vote of at least 3 members of the board is required to commence a second-phase review. If no such vote to commence a second-phase review has succeeded by the end of the applicable time period, the matter is terminated. At any point before the end of the applicable time period, the board may vote to terminate a preliminary review by the affirmative vote of not less than 4 members. The board shall notify, in writing, the individual who was the subject of the preliminary review and the Committee on Standards of Official Conduct of its decision to either terminate the preliminary review or commence a second-phase review of the matter. If the board votes to terminate the preliminary review, then it may send a report and any findings to such committee.

(2)(A)(i) Except as provided by item (ii), complete a second-phase review within 45 calendar days or 5 legislative days, whichever is later, after the board commences such review.

(ii) Extend the period described in subparagraph (A) for one additional period of 14 calendar days upon the affirmative vote of a majority of its members, a quorum being present.

(B) Transmit to the Committee on Standards of Official Conduct a recommendation that a matter requires further review only upon the affirmative vote of not less than 4 members of the board.

(C) Upon the completion of any second-phase review undertaken--

(i) transmit to the Committee on Standards of Official Conduct the following--

(I) a written report composed solely of--

(aa) a recommendation that the committee should dismiss the matter that was the subject of such review;

(bb) a statement that the matter requires further review; or

(cc) a statement that the matter is unresolved because of a tie

vote; and

the number of members voting in the affirmative and in the negative and a statement of the nature of the review and the individual who is the subject of the review;

(II) its findings, if any, composed solely of--

(aa) any findings of fact;

(bb) a description of any relevant information that it was unable to obtain or witnesses whom it was unable to interview, and the reasons therefor;

(cc) a recommendation for the issuance of subpoenas where appropriate, if any; and

(dd) a citation of any relevant law, rule, regulation, or standard of conduct;

but not the names of any cooperative witnesses or any conclusions regarding the validity of the allegations upon which it is based or the guilt or innocence of the individual who is the subject of the review; and

(III) any supporting documentation; and

(ii) transmit to the individual who is the subject of the second-phase review the written report of the board described in clause (i).

(D) Hold such hearings as are necessary and sit and act only in executive session at such times and places and solicit such testimony and receive such relevant evidence as may be necessary to carry out its duties.

(E) Pay witnesses appearing before the Office in the same manner as prescribed by clause 5 of rule XI of the Rules of the House of Representatives.

(F) Adopt rules to carry out its duties, which shall include each of the following:

(i) A rule providing that--

(I) the board may vote to terminate a preliminary review on any ground, including that the matter under review is de minimis in nature; and

(II) the board may vote to recommend to the Committee on Standards of Official Conduct that the committee should dismiss a matter that was the subject of a second-phase review on any ground, including that the matter under review is de minimis in nature.

(ii) A rule requiring that all witnesses sign a statement acknowledging their understanding that the text of section 1001 of title 18, United States Code

(popularly known as the False Statements Act) applies to their testimony and to any documents they provide.

(iii) A rule requiring that there be no ex parte communications between any member of the board or staff of the Office and any individual who is the subject of any review by the board or between any member and any interested party, and that no Member, officer, or employee of the House may communicate with any member of the board or staff of the Office regarding any matter under review by the board except as authorized by the board.

(iv) A rule that establishes a code of conduct to govern the behavior of its members and staff, which shall include the avoidance of conflicts of interest.

(d) Requests From Committee on Standards of Official Conduct- (1) Notwithstanding any other provision of this section, upon receipt of a written request from the Committee on Standards of Official Conduct that the board cease its review of any matter and refer such matter to the committee because of the ongoing investigation of such matter by the committee, the board shall refer such matter to the committee and cease its preliminary or second-phase review, as applicable, of that matter and so notify any individual who is the subject of the review. In any such case, the board shall send a written report to the committee containing a statement that, upon the request of that committee, the matter is referred to it for its consideration, but not any findings.

(2) If the Committee on Standards of Official Conduct notifies the board in writing that it is unable to resolve any matter described in paragraph (1), the board shall immediately begin or continue, as the case may be, a second-phase review of the matter.

(e) Limitations on Review- No review shall be undertaken by the board of any alleged violation of law, rule, regulation or standard of conduct not in effect at the time of the alleged violation; nor shall any review be undertaken by the board of any alleged violation that occurred before the date of adoption of this resolution.

(f) Prohibition on Public Disclosure- (1)(A) When an individual becomes a member of the board or staff of the Office, that individual shall execute the following oath or affirmation in writing: `I do solemnly swear (or affirm) that I will not disclose to any person or entity outside of the Office any information received in the course of my service with the Office, except as authorized by the board as necessary to conduct official business or pursuant to its rules.'. Copies of the executed oath shall be provided to the Clerk of the House as part of the records of the House.

(B) No testimony received or any other information obtained as a member of the board or staff of the Office shall be publicly disclosed by any such individual to any person or entity outside the Office. Any communication to any person or entity outside the Office may occur only as authorized by the board as necessary to conduct official business or pursuant to its rules.

(C) The Office shall establish procedures necessary to prevent the unauthorized

disclosure of any information received by the Office. Any breaches of confidentiality shall be investigated by the board and appropriate action shall be taken.

(2) Paragraph (1) shall not preclude presenting its report or findings or testifying before the Committee on Standards of Official Conduct by any member of the board or staff of the Office if requested by such committee pursuant to its rules.

(3) Before the board votes on a recommendation or statement to be transmitted to the Committee on Standards of Official Conduct relating to official conduct of any Member, officer, or employee of the House, it shall provide that individual the opportunity to present, orally or in writing (at the discretion of the board), a statement to the board.

(g) Presentation of Reports to Committee on Standards of Official Conduct- Whenever the board transmits any report to the Committee on Standards of Official Conduct relating to official conduct of any Member, officer, or employee of the House, it shall designate a member of the board or staff to present the report to such committee if requested by such committee.

(h) Compensation of Staff- Upon the affirmative vote of at least 4 of its members, the board may appoint and fix the compensation of such professional, nonpartisan staff as it considers necessary to perform its duties.

(i) Termination of Staff- Members of the staff may be terminated during a Congress solely by the affirmative vote of at least 4 members of the board.

(j) Reimbursements- The board may reimburse its members and staff for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties in the same manner as is permissible for such expenses of other employees of the House.

(k) Agreements; Retention of Documents by the Clerk- (1) Before any individual who is appointed to serve on the board (including an individual who is an alternate) or before any individual is hired to be a staff member of the Office may do so, the individual shall execute a signed document containing the following statement: `I agree not to be a candidate for the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress for purposes of the Federal Election Campaign Act of 1971 until at least 3 years after I am no longer a member of the board or staff of the Office of Congressional Ethics.'.

(2) Copies of the signed and executed document shall be retained by the Clerk as part of the records of the House. The Clerk shall make the signatures a matter of public record, causing the names of each individual who has signed the document to be published in a portion of the Congressional Record designed for that purpose, and make cumulative lists of such names available on the web site of the Clerk.

(3) The following rules shall be applicable to the staff of the Office:

(A) The staff is to be assembled and retained as a professional, nonpartisan staff.

(B) Each member of the staff shall be professional and demonstrably qualified for the position for which he is hired.

(C) The staff as a whole and each member of the staff shall perform all official duties in a nonpartisan manner.

(D) No member of the staff shall engage in any partisan political activity directly affecting any congressional or presidential election.

(E) No member of the staff may accept public speaking engagements or write for publication on any subject that is in any way related to his or her employment or duties with the Office without specific prior approval from the chairman and cochairman.

(l) Funding- There shall be paid out of the applicable accounts of the House such sums as may be necessary for the expenses of the Office. Such payments shall be made on vouchers signed by the chairman of the board and approved in the manner directed by the Committee on House Administration. Amounts made available under this section shall be expended in accordance with regulations prescribed by the Committee on House Administration.

(m) Definition- As used in this section, the term `Member' means any Representative in, or Delegate or Resident Commissioner to, the Congress.

## SEC. 2. FINANCIAL DISCLOSURE REPORTS.

Rule XXVI of the Rules of the House of Representatives is amended by adding at the end the following new clause:

`3. Members of the board of the Office of Congressional Ethics shall file annual financial disclosure reports with the Clerk of the House on or before May 15 of each calendar year after any year in which they perform the duties of that position. Such reports shall be on a form prepared by the Clerk that is substantially similar to form 450 of the Office of Government Ethics. The Clerk shall send a copy of each such report filed with the Clerk within the seven-day period beginning on the date on which the report is filed to the Committee on Standards of Official Conduct and shall have them printed as a House document and made available to the public pursuant to clause 1. '.

## SEC. 3. CONFORMING AMENDMENTS TO THE RULES OF THE HOUSE.

Clause 3 of rule XI of the Rules of the House of Representatives is amended as follows:

(1) In paragraph (b)(2), strike `or' at the end of subparagraph (A), strike the period and insert `; or' at the end of subparagraph (B), and add at the end the following new subparagraph:

`(C) upon receipt of a report regarding a referral from the board of the Office of

Congressional Ethics.'.

(2) At the end of paragraph (b), add the following new subparagraph:

`(8)(A) Except as provided by subdivisions (B), (C), and (D), not later than 45 calendar days or 5 legislative days, whichever is later, after receipt of a written report and any findings and supporting documentation regarding a referral from the board of the Office of Congressional Ethics or of a referral of the matter from the board pursuant to a request under paragraph (r), the chairman of the Committee on Standards of Official Conduct shall make public the written report and findings of the board unless the chairman and ranking member, acting jointly, decide or the committee votes to withhold such information for not more than one additional period of the same duration, in which case the chairman shall--

`(i) upon the termination of such additional period, make public the written report and findings; and

`(ii) upon the day of such decision or vote, make a public statement that the committee has voted to extend the matter relating to the referral made by the board of the Office of Congressional Ethics regarding the Member, officer, or employee of the House who is the subject of the applicable referral.

At least one calendar day before the committee makes public any written report and findings of the board, the chairman shall notify such board and the applicable Member, officer, or employee of that fact and transmit to such individual a copy of the statement on the committee's disposition of, and any committee report on, the matter.

`(B)(i) Notwithstanding subdivision (A)(i), if the committee votes to dismiss a matter which is the subject of a referral from the board of the Office of Congressional Ethics, the committee is not required to make public the written report and findings described in such subdivision unless the committee's vote is inconsistent with the recommendation of the board. For purposes of the previous sentence, a vote by the committee to dismiss a matter is not inconsistent with a report from the board respecting the matter as unresolved due to a tie vote.

`(ii) Notwithstanding subdivision (A)(ii), if the board transmits a report respecting any matter with a recommendation to dismiss or as unresolved due to a tie vote, and the committee votes to extend the matter for an additional period as provided in subdivision (A), the committee is not required to make a public statement that the committee has voted to extend the matter.

`(iii) Except as provided by subdivision (E), if the committee establishes an investigative subcommittee respecting any such matter, then the report and findings of the board shall not be made public until the conclusion of the investigative subcommittee process and the committee shall issue a public statement of the establishment of an investigative subcommittee, which statement shall include the name of the applicable Member, officer, or employee, and shall set forth the alleged violation. If any such investigative subcommittee does not conclude its review within one year after the board transmits a report respecting any matter, then the committee shall make public the report and upon the expiration of the Congress in

which the report is made public, the committee shall make public any findings.

`(C)(i) If, after receipt of a written report and any findings and supporting documentation regarding a referral from the board of the Office of Congressional Ethics or of a referral of the matter from the board pursuant to a request under paragraph (r), the committee agrees to a request from an appropriate law enforcement or regulatory authority to defer taking action on the matter--

> `(I) notwithstanding subdivision (A)(i), the committee is not required to make public the written report and findings described in such subdivision, except that if the recommendation of the board with respect to the report is that the matter requires further review, the committee shall make public the written report but not the findings; and
>
> `(II) before the end of the first day (excluding Saturdays, Sundays, and public holidays) after the day that the committee agrees to the request, the committee shall make a public statement that it is deferring taking action on the matter at the request of such authority.

`(ii) If, upon the expiration of the one-year period that begins on the date the committee makes the public statement described in item (i)(II), the committee has not acted on the matter, the committee shall make a new public statement that it is still deferring taking action on the matter, and shall make a new statement upon the expiration of each succeeding one-year period during which the committee has not acted on the matter.

`(D) The committee may not receive any referral from the board of the Office of Congressional Ethics within 60 days before a Federal, State, or local election in which the subject of the referral is a candidate. The committee may delay any reporting requirement under this subparagraph that falls within that 60-day period until the end of such period and in that case, for purposes of subdivision (A), days within the 60-day period shall not be counted.

`(E) If, at the close of any applicable period for a reporting requirement under this subparagraph with respect to a referral from the board of the Office of Congressional Ethics, the vote of the committee is a tie or the committee fails to act, the report and the findings of the board shall be made public by the committee, along with a public statement by the chairman explaining the status of the matter.'.

(3) At the end, add the following new paragraph:

`(r) Upon receipt of any written notification from the board of the Office of Congressional Ethics that the board is undertaking a review of any alleged conduct of any Member, officer, or employee of the House and if the committee is investigating such matter, the committee may at any time so notify the board and request that the board cease its review and refer the matter to the committee for its consideration. If at the end of the applicable time period (including any permissible extension) the committee has not reached a final resolution of the matter or has not referred the matter to the appropriate Federal or State authorities, the committee shall so notify the board of the Office of Congressional Ethics in writing. The committee may not request the same matter from the board more than one time.'.

**SEC. 4. EFFECTIVE DATE.**

This resolution and the amendments made by it shall take effect on the date of its adoption, except that the Office of Congressional Ethics shall not undertake any review of any alleged violation by a Member, officer, or employee of the House of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities before 120 days after the date of adoption of this resolution.

Attest:

Clerk.

*END*

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**OFFICE OF CONGRESSIONAL ETHICS**

**RULES FOR THE CONDUCT OF INVESTIGATIONS**

## INTRODUCTION

The Office of Congressional Ethics, established by the United States House of Representatives, is an independent, non-partisan entity charged with reviewing allegations of misconduct against Members, officers and staff of the House and, when appropriate, referring matters to the Committee on Standards of Official Conduct (commonly referred to as the Ethics Committee). These rules are adopted under the authority granted by H. Res. 895 of the 110th Congress Section 1.(c)(F).

**RULE 1. JURISDICTION**

The Office has jurisdiction to investigate allegations that:

(1) a Member, officer or employee of the House

(2) on or after March 11, 2008

(3) has violated a law, rule, regulation, or other standard of conduct in effect at the time the conduct occurred and applicable to the subject in the performance of his or her duties or the discharge of his or her responsibilities.

Resolution Section 1.(c)(1)(A) and (e).

The Board shall only review information related to allegations within the Office's jurisdiction.

When such information is obtained by the Office, the Staff shall determine whether the alleged conduct falls within the jurisdiction of the Board.

**Commentary**: In order to determine if jurisdiction exists, the Staff shall assume the facts alleged are true. This is the only time when the Staff shall make that assumption. The following is a list of some, but not all, of the substantive topics within the jurisdiction of the Office:

(1) conduct related to the Code of Official Conduct adopted under House Rule XXIV

(2) gifts

(3) travel

(4) financial disclosure

(5) outside employment and income

In the event a Member or officer leaves office, or a staff person ends their employment relationship with the House, then the Board's jurisdiction shall cease. At that time, the Board

shall terminate any review and, depending on the stage, make appropriate reports to the Standards Committee.

**RULE 2. BOARD MEETINGS**

The Board shall meet at the call of the Chairman or two Board members. Resolution Section 1.(b)(9). The Board shall set a regular monthly meeting day. A regularly scheduled meeting need not be held when the Chairman determines there is no business to be considered. Notice for any Board meeting shall be provided at least seven days in advance. The Chairman may waive such period for good cause.

Four members of the Board, excluding alternates, shall constitute a quorum. The Chairman shall establish the agenda for the meetings of the Board. Any member of the Board may place additional items on the agenda. The Chairman shall preside at all meetings of the Board. In the absence of the Chairman, the Co-Chairman shall preside. Resolution Section 1. (b)(8).

Alternates shall participate in all board meetings and conferences but may not vote. An alternate fills a voting Board member's seat if: (1) a vacancy occurs, (2) a Board member disqualifies him or herself because of a financial conflict of interest; (3) a Board member recues him or herself because of a lack of impartiality in a particular matter; or (4) if a voting Board member is otherwise unable to participate in Board business for good cause, as determined by the Chairman.

**RULE 4. EVIDENCE**

The Office may solicit testimony from witnesses and collect relevant evidence as may be necessary to carry out its duties. Resolution Section1.(c)(2)(D).

**(A) FALSE STATEMENTS WARNING**

All witnesses that provide information must sign a statement acknowledging their understanding that section 1001 of title 18 United States Code (popularly known as the False Statements Act) applies to their testimony and to any documents they provide. Resolution Section1.(c)(F)(ii).

**(B) WITNESSES**

The Office may pay witnesses appearing before the Office in the same manner as prescribed by clause 5 of rule XI of the Rules of the House of Representatives.

**(C) IMPROPERLY OBTAINED EVIDENCE**

The Office shall not review any document, recording or physical evidence that was obtained in violation of any law, rule or regulation. When an individual submits evidence to the Office, s/he shall be asked to affirm to the best of their ability that the evidence was not obtained in violation of any law, rule or regulation.

**(D) INTERROGATORIES**

The Office may submit written interrogatories to a witness or subject and ask that they be answered within a reasonable amount of time.

**(E) PRIVILEGES**

The Office shall not consider evidence that is privileged under the precedents of the House of Representatives unless there is effective waiver.

(F) EXCULPATORY INFORMATION

Staff shall promptly provide to a subject any exculpatory information received.

**RULE 5. INVESTIGATOR IS IMPARTIAL**

Office staff shall be impartial and unbiased in the conduct of an investigation and shall collect all evidence related to the allegations, whether such evidence tends to prove or disprove the allegations. In the event that a staff person has a personal or professional relationship with a subject, a subject's opponent in any election or a witness involved in an investigation, staff shall disclose that fact to the Staff Director who shall disclose it to the Board. Office staff shall notify the Staff Director and shall immediately discontinue working on an investigation in the event s/he feels s/he cannot be impartial and unbiased. If the Board believes that a staff person cannot be unbiased and impartial, the Board shall terminate that person's involvement in the matter.

**RULE 6. COOPERATION WITH THE OFFICE**

The Office may request information from any source. In the event that the Office requests cooperation and it is not forthcoming, the Board may, but need not, draw a negative inference from any refusal to cooperate and may include a statement to that effect in any referral to the Standards Committee. Resolution Section1.(c)(2)(C)(i)(II)(bb).

**RULE 7. PRELIMINARY REVIEW**

**(A) STANDARD OF PROOF**

The Board shall authorize a preliminary review of an allegation when it determines there is a *reasonable basis* to believe the allegation based on all the information then known to the Board. Resolution Section1.(c)(2)(F).

**Commentary:** A *reasonable basis* to believe an allegation exists when there is a reasonable and articulable basis for believing the allegation. Such a determination does not constitute a finding that a violation has actually occurred.

**(B) INITIAL STAFF REVIEW**

The Staff shall advise the Board when it has done reasonable initial investigation, with the authorization of the Chair and Co-Chair, either after receiving a submission or on its own initiative and then recommend that the Board either authorize a preliminary review or take no action. Resolution Section1.(c)(2)(F). The Board may direct Staff to do additional investigation prior to reaching a decision as to whether to initiate a preliminary review.

**(C) INITIATION**

A preliminary review shall commence within seven calendar days of a written request of two members of the Board, one of whom was appointed by the Speaker and one by the Minority Leader, stating the specific matter that is to be the subject of the preliminary review. Prior to submitting a request, Board members should notify the Chairman and Co-Chairman of their intention to do so. Notwithstanding the minimum requirement for two concurring Board members, whenever possible the full Board shall in conference consider the Board members' request to initiate a preliminary review and attempt to reach consensus on the matter. The Staff

shall record the date of any request for purposes of calculating applicable deadlines. Resolution Section1.(c)(1)(A) and (2)(F).

**Commentary**: As a preliminary review may be triggered by a *written request* of two members of the Board, such action does not require a vote by the Board and therefore, a quorum need not be present.

**(D) DURATION**

The Office shall complete all preliminary reviews within 30 calendar days (hereafter referred to as the "preliminary review time period").

**(E) PRELIMINARY REVIEW REPORT**

Before the preliminary review time period expires, the Staff shall submit a preliminary review report to the Board. The report shall recommend either that the Board take no action or that the Board initiate a second-phase review.

**(F) TERMINATION**

Four members of the Board may vote to terminate a preliminary review at any time before the end of the preliminary review time period. Resolution Section1.(c)(1)(C). The Board may do so for any reason, including that the matter under review is de minimis in nature. Resolution Section1.(c)(2)(F)(i)(I). If the Board takes no further action on a matter by the end of the preliminary review time period, the preliminary review terminates. Resolution Section1.(c)(1)(C). In that event, the Board may send a report and any findings to the Standards Committee.

**RULE 8. SECOND-PHASE REVIEW**

**(A) STANDARD OF PROOF**

The Board shall authorize a second-phase review of an allegation if it finds *probable cause* to believe the alleged violation occurred based on all the information then known to the Board.

**Commentary**: *Probable cause* exists if the evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a Member, officer or employee committed a violation. A finding of probable cause does not constitute a finding that a violation has actually occurred.

**(B) INITIATION**

Three members of the Board convened with a quorum may vote to initiate a second-phase review. Resolution Section1.(c)(1)(C).

**(C) DURATION**

The Office shall complete a second-phase review within 45 calendar days after the Board commences such review (hereafter referred to as "second-phase review time period"). Resolution Section1.(c)(2)(A)(i). The Board may extend the second-phase review by an additional 14 calendar days upon an affirmative vote of a majority of its members. Resolution Section1.(c)(2)(A)(ii).

**(D) SECOND-PHASE REVIEW REPORT**

At the conclusion of the second-phase review time period, the Staff shall submit to the Board a second-phase report recommending that the Board forward the matter to the Standards Committee either for further action or for dismissal.

**(E) TERMINATION**

At any time prior to the end of a second-phase review, four members of the Board may vote to terminate the review. When that occurs, the Board shall follow the referral procedure outlined in Rule 9 and shall make the appropriate report to the Standards Committee.

## RULE 9. REFERRALS TO THE STANDARDS COMMITTEE

**(A) STANDARD OF PROOF**

The Board shall refer a matter to the Standard Committee for further review if it determines there is a *substantial reason* to believe the allegations based on all the information then known to the Board. However, in the event the Office is unable to obtain information necessary to reach that determination, but the Board does determine there is *probable cause* to believe the allegations, the Board may refer the matter to the Standards Committee for further review.

**Commentary.** A *substantial reason* to believe exists where there is such relevant evidence a reasonable mind might accept as adequate to support a conclusion. A finding that there is a substantial reason to believe the allegations does not constitute a finding that a violation has actually occurred.

**(B) STATEMENT FROM SUBJECT**

Before the Board votes on a recommendation or statement to be transmitted to the Standards Committee at the end of a second-phase review, it shall provide the subject the opportunity to present a statement to the Board. Resolution Section1.(f)(3).

**(C) SECOND-PHASE REVIEW REPORT**

At the end of a second-phase review, the Board shall adopt, by a vote of no less than four members, a report to the Standards Committee recommending either that the Standards Committee give the matter further review of that it dismiss the matter. In the event that four Board members do not support either further review or dismissal, the Board shall report to the Standards Committee that the matter is unresolved. The report shall state the votes in the affirmative and in the negative and the nature of the alleged violation and the individual who is the subject. The report may also include findings and supporting documentation as described below. Resolution Section1.(c)(2)(C)(i)(I).

**Commentary**: the Board's vote and adoption of a report shall occur, as soon as practicable, after the end of the second-phase review period.

**(D) FINDINGS**

The Board's report may include findings composed solely of the following:

(1) Any findings of fact;

(2) A description of any relevant information that it was unable to obtain or witnesses whom it was unable to interview, and the reasons therefor;

(3) A recommendation for issuance of subpoenas where appropriate; and

(4) A citation of any relevant law, rule, regulation, or standard of conduct.

Resolution Section.1(c)(2)(C)(i)(I).

**(E) SUPPORTING DOCUMENTATION**

The Board may submit to the Standards Committee any supporting documentation. Resolution Section1.(c)(2)(C)(i)(II).

**(F) PRESENTATION OF REPORTS TO STANDARDS COMMITTEE**

In transmitting any report to the Standards Committee, the Board shall designate a member of the Board or staff to present the report if the Standards Committee requests.

**RULE 10. PERIOD OF SUSPENSION OF REFERRALS**

The Board shall not transmit any referrals to the Standards Committee within 60 days before a Federal, State, or local election in which the subject of the referral is a candidate. If the end of the second-phase review occurs within this suspension period, the Board shall complete its work on the referral and transmit it to the Standards Committee on the first business day following the election. Clause 3(b)(8)(D) of Rule XI of the Rules of the House.

**RULE 11. NOTICE**

**(A) INITIATION OF A PRELIMINARY REVIEW**

The Office shall notify the Standards Committee and the subject of any preliminary review initiated by the Board and shall provide the subject with a statement of the nature of the review. Resolution Section1.(c)(1)(A)(i)-(ii).

**(B) TERMINATION OF A PRELIMINARY REVIEW**

The Office shall notify the Standards Committee and the subject of any decision by the Board to terminate a preliminary review or if a review terminates because the Board takes no further action. Resolution Section1.(c)(1)(C).

**(C) INITIATION OF A SECOND-PHASE REVIEW**

The Office shall notify the Standards Committee and the subject of any second-phase review initiated by the Board. Resolution Section1.(c)(1)(C).

**(D) REFERRAL TO THE STANDARDS COMMITTEE**

The Office shall provide to the subject a copy of the report it transmits to the Standards Committee recommending further review, dismissal or reporting that the matter is unresolved. Resolution Section1.(c)(2)(C)(ii).

## RULE 12. REQUESTS FROM THE STANDARDS COMMITTEE

**(A) REQUESTS FROM STANDARDS COMMITTEE**

Upon receipt of a written request from the Standards Committee that the Board cease its review and refer the matter to the Committee because of an ongoing investigation of such matter by an investigatory subcommittee of the Standards Committee, the Board shall refer such matter to the Committee and cease its preliminary or second-phase review, as applicable and so notify the subject. The Board shall send a written report to the Committee containing a statement that, upon the request of the Committee, the matter is referred for its consideration, but shall not include any findings. Resolution Section1.(d)(1).

**(B) MATTERS UNRESOLVED BY THE STANDARDS COMMITTEE**

If the Standards Committee notifies the Board in writing that it is unable to resolve any matter it had previously asked the Board to stop reviewing, the Board shall immediately begin or continue, as the case may be, a second-phase review of the matter. Resolution Section1.(d)(2).

**(C) BOARD DUE DILIGENCE**

In a case when the Standards Committee asks the Board to cease review of a matter under this Rule, the Board shall inquire at regular intervals to determine if the Standards Committee has been [un]able to resolve the matter.

110TH CONGRESS
*1st Session*

**COMMITTEE PRINT**

110–1

# REPORT OF THE DEMOCRATIC MEMBERS OF THE SPECIAL TASK FORCE ON ETHICS ENFORCEMENT

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ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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## SPECIAL TASK FORCE ON ETHICS ENFORCEMENT

Rep. MICHAEL E. CAPUANO (D–MA), *Chair*
Rep. LAMAR S. SMITH (R–TX), *Ranking Member*

| | |
|---|---|
| Rep. DAVID E. PRICE (D–NC)* | Rep. DAVID L. CAMP (R–MI) |
| Rep. ROBERT C. "BOBBY" SCOTT (D–VA) | Rep. DAVID L. HOBSON (R–OH) |
| Rep. BETTY L. McCOLLUM (D–MN) | Rep. TODD TIAHRT (R–KS) |

*Rep. Price was appointed to the Task Force in July 2007 to replace Rep. Martin T. Meehan, who resigned from Congress July 1, 2007.

# Congress of the United States
## Washington, DC 20515

December 19, 2007

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John A. Boehner
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Speaker Pelosi and Mr. Boehner,

The Special Task Force on Ethics Enforcement has completed its work. The Task Force has held numerous meetings over the past year to study, as instructed, the creation of an independent ethics enforcement entity within the House of Representatives.

Several Members of the Task Force have decided to withhold comment on the report at this time. On behalf of Mr. Price, Mr. Scott, and Ms. McCollum, I submit to you our proposal and accompanying recommendations. It is my understanding that the other Members of the Task Force will be submitting their report at a later time. When they do, we will incorporate it at the end of this report.

Thank you for entrusting me with this opportunity to serve the House of the Representatives.

Sincerely,

Michael E. Capuano
Chairman
Special Task Force of Ethics Enforcement

## FORMATION

The Special Task Force on Ethics Enforcement was established on January 31, 2007. Speaker of the House Nancy Pelosi and House Republican Leader John Boehner appointed Representatives Michael E. Capuano and Lamar S. Smith as Chair and Ranking Member, respectively. Speaker Pelosi also appointed the following Democratic Members of Congress to serve on the Task Force: Martin T. Meehan, Robert C. "Bobby" Scott, and Betty L. McCollum. Republican Leader Boehner appointed the following Republican Members of Congress to serve on the Task Force: David L. Camp, David L. Hobson, and Todd Tiahrt. Rep. Meehan resigned from Congress in July 2007, and Rep. David E. Price was appointed to fill the vacancy on the Task Force. None currently serve on the House Committee on Standards of Official Conduct (commonly known as the "Ethics Committee"), though some have served on this committee in the past.

A number of staff members greatly assisted the work of the Task Force in the course of its duration: Christina Tsafoulias, Legislative Assistant to Rep. Capuano; Paul Taylor, Chief Republican Counsel to the House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties; Bernard Raimo, Counsel to the Speaker; Ed Cassidy, Senior Advisor & Floor Assistant to the Republican Leader; and Robert F. Weinhagen, Jr., Senior Counsel in the Office of Legislative Counsel. In addition, the following staff aided Members of the Task Force: Jean Louise Beard, Chief of Staff, and Kate Roetzer, Legislative Assistant to Rep. Price; Allison Havourd and Rob Guido, Legislative Assistants to Rep. Camp; Christopher Hickling, Legislative Director to Rep. Meehan; Ben Taylor, Legislative Assistant to Rep. Hobson; Carla Murrell-Hargrove, Staff Assistant, and Rashage Green, Legislative Assistant to Rep. Scott; Jeff Kahrs, Chief of Staff to Rep. Tiahrt; and Emily Lawrence, Legislative Director to Rep. McCollum. The Task Force would also like to thank the offices of the Parliamentarian and General Counsel, the Committee on Standards of Official Conduct, and the Congressional Research Service for their assistance.

## EXECUTIVE SUMMARY

Over the past eleven months, the Task Force has considered the questions of whether to create an independent ethics enforcement entity within the House of Representatives and how best to increase transparency and accountability within the ethics process.

As a result of months of study and discussion among Task Force members and stakeholders, the Task Force proposes the creation of an Office of Congressional Ethics as an independent office within the House. The office will be composed of six board members, jointly appointed by the Speaker and Minority Leader, and a staff. It will be the responsibility of the board to review information on alle-

gations of misconduct by Members, officers, and employees of the House and make recommendations to the Committee on Standards of Official Conduct for the Committee's official consideration and action.

Two board members may initiate a review by notifying all other board members in writing. The board will then have 30 calendar days to consider the matter in a preliminary phase and may vote to either terminate the review or progress to a second-phase review. Once in the second phase, the board has 45 calendar days (with a possible one-time extension of 14 days) to complete consideration of the matter and refer it to the Standards Committee with a recommendation for dismissal, further review, or as unresolved due to a tie vote. The board's referral may not contain any conclusions regarding the validity of the allegations upon which it is based or the guilt or innocence of the individual who is the subject of the review. All matters that enter into a second-phase review must be referred to the Standards Committee.

Once the Standards Committee receives a matter through this process, it will have 45 calendar days (with one possible extension of the same duration) to deliberate and decide on a course of action. All final authority and responsibility to either dismiss a case or empanel an investigative subcommittee continues to lie with the Standards Committee. In most cases, the Committee will publicly announce its disposition on the matter at the end of the applicable time period, along with a report and findings from the board. However, no public announcements are required when neither the board nor the Ethics Committee has found substantial wrongdoing.

Through the implementation of these recommendations, the Task Force expects to significantly increase transparency in the process through greater reporting on a timely basis and to provide for an independent element of consideration by individuals who are not current Members of the House of Representatives.

## PURPOSE

During the 109th Congress, several Members were involved in controversies ranging from improper use of their office to inappropriate contact with participants in the House Page Program. In response to these well-documented incidents, one of the first actions of the 110th Congress was to pass changes to the U.S. House of Representatives Code of Official Conduct and other Rules of the House. In follow up to strengthening the rules governing the conduct of Members, Speaker Pelosi and Republican Leader Boehner announced that they would establish a Task Force to study enforcement of ethics rules. The Special Task Force on Ethics Enforcement was charged with determining whether the House should establish an independent ethics entity to serve as part of the ethics enforcement process. Currently, the Standards Committee is the sole ethics entity within the House, overseeing the receipt of all complaints, inquiries, investigations, and adjudication.

Many Members of Congress and constitutional scholars have expressed concerns regarding the constitutionality of establishing an independent entity to supplement the existing House ethics process. The two commonly cited passages are as follows:

• Article I, section 5, clause 2 of the United States Constitution: "Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member."

• Article I, section 6, clause 1 of the United States Constitution: "Senators and Representatives . . . for any Speech or Debate in either House, . . . shall not be questioned in any other place."

Task Force members were cognizant of these issues as they considered policy recommendations, and were careful to ensure that any proposal strictly adhere to constitutional precepts.

## BACKGROUND

Ethics reform in the House has been an ongoing process since the creation of the Committee on Standards of Official Conduct in 1967. On average, the House has adopted significant ethics reforms, usually at the recommendation of a special task force, once a decade. Such reforms occurred after significant study of the ethics process, generally coupled with heightened public concern due to contemporaneous scandal.

In 1977, the House adopted changes to the ethics process as proposed by the House Commission on Administrative Review. This Commission was led by Representatives David R. Obey (D–WI) and William E. Frenzel (R–MN), and charged with reviewing the administrative structure of the House. A number of reforms were implemented as a result of this initiative, including increased financial disclosure obligations for Members, limits on Members' outside earned income, and the abolition of "unofficial" office accounts which Members often used to supplement official monies.[1]

In 1989, the House Bipartisan Leadership Task Force on Ethics convened, co-chaired by Representatives Vic Fazio (D–CA) and Lynn Martin (R–IL). This Task Force's work culminated in the passage of the Ethics Reform Act of 1989, which banned honoraria, instituted a one-year post-employment waiting period before lobbying, tightened gift rules, established the Office of Advice and Education, and provided for bifurcation between the investigative and adjudicatory duties of the Standards Committee.[2]

Finally, in 1997, the House established the Ethics Reform Task Force. This group was co-chaired by Representatives Robert L. Livingston (R–LA) and Benjamin L. Cardin (D–MD). A number of recommendations were implemented, including the first creation of a supplemental pool of Members from which to draw for investigative subcommittees, restrictions on the filing of complaints, limits to Members' service on the Standards Committee, and the adoption of a rule providing for professional, nonpartisan Committee staff.[3]

In light of the fact that Congress worked for 178 years without formal rules on ethics or ethics procedures, the Task Force believes that Congress has come a long way in the 40 years since the establishment of the Standards Committee in 1967. Members of the Task Force also recognize that such matters are constantly in need of review and updating.

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[1] Financial Ethics (H. Doc. No. 95–73).

[2] Ethics Reform Act of 1989 (Public Law No. 101–194).

[3] H. Res. 168—To implement the recommendations of the bipartisan House Ethics Reform Task Force (105th Congress).

4

## PROCESS

The Special Task Force on Ethics Enforcement met with current and former Members of Congress, advocacy and reform groups, scholars, current and former Standards Committee staff, and other stakeholders. The purpose of the exchanges was to familiarize Task Force members with varying viewpoints on the ethics process in the House of Representatives, as well as with proposals for reform of the current system. Throughout this process, the Task Force focused solely on the central question of whether to create an independent ethics enforcement entity. Numerous preliminary meetings took place in executive session in order to facilitate frank discussion among Task Force members and those asked to share their views.

Members met in executive session on February 9, 2007 and March 1, 2007 to discuss matters relating to process, scheduling, and research.

Members met in executive session on March 6, 2007, with Ken Kellner, Senior Counsel to the House Committee on Standards of Official Conduct.

Members met in executive session on March 8, 2007, with Thomas Mann, Senior Fellow at the Brookings Institution and Norman Ornstein, Resident Scholar at the American Enterprise Institute.

Members met in executive session on March 13, 2007, with Meredith McGehee, Policy Director for the Campaign Legal Center and Fred Wertheimer, President and CEO of Democracy 21. Both represent a larger coalition that supports the establishment of an Office of Public Integrity.

Members met in executive session on March 15, 2007, with former Representatives Robert Livingston, who served as co-chair of the 1997 House Ethics Task Force, and Louis Stokes, a former Chairman of the Committee on Standards of Official Conduct.

Members met in executive session on March 20, 2007 with Tom Fitton, President of Judicial Watch and Melanie Sloan, Executive Director of Citizens for Responsibility and Ethics in Washington (CREW).

Members met in executive session on March 22, 2007, with Senator Ben Cardin, Co-Chair of the 1997 House Ethics Task Force, and Don Wolfensberger, Director of the Congress Project at the Woodrow Wilson International Center for Scholars.

Members met in executive session on March 27, 2007, with Sarah Dufendach, Chief of Legislative Affairs for Common Cause, Gary Kalman, Democracy Advocate for U.S. PIRG, and Lloyd Leonard, Senior Director of Advocacy for the League of Women Voters.

Members met in executive session on March 29, 2007 with Patricia Harned, President of the Ethics Resource Center, Bradley Smith, former Federal Elections Commission Chairman, and Judge Anthony Wilhoit, Executive Director of the Kentucky Legislative Ethics Commission.

Members met in executive session on April 17, 2007 with Rob Walker, Chief Counsel and Staff Director of the Senate Select Committee on Ethics and former Chief Counsel and Staff Director of the House Committee on Standards of Official Conduct.

The Special Task Force on Ethics Enforcement held a public hearing on Thursday, April 19, 2007. The following individuals appeared as witnesses to offer testimony: Tom Fitton, President of Judicial Watch; Meredith McGehee, Policy Director for the Campaign Legal Center; Fred Wertheimer, President and CEO of Democracy 21; and Don Wolfensberger, Director of the Congress Project at the Woodrow Wilson International Center for Scholars. Mr. Fitton, Ms. McGehee, and Mr. Wertheimer all testified in support of the general concept of an independent ethics enforcement entity though some proposal details differed. Mr. Wolfensberger offered his perspective on this process based on years of service as an employee of the U.S. House of Representatives, and stated his opposition to the creation of an independent entity. Task Force members had the opportunity to pose follow-up questions to witnesses at the conclusion of their testimony. The Task Force hearing was open to all interested parties and a full transcript of the hearing was produced. The transcript is available on Rep. Capuano's website at http://www.house.gov/capuano/.

Members met again in executive session on April 24, 2007, to begin substantive discussion of Task Force proposals and recommendations.

Members continued to meet in executive session to expand on those internal discussions and deliberate matters further on the following dates: April 26, 2007; May 1, 2007; May 2, 2007; May 3, 2007; May 10, 2007; May 22, 2007; June 6, 2007; June 7, 2007; September 27, 2007; October 4, 2007; October 10, 2007; October 30, 2007; November 1, 2007; November 8, 2007; November 14, 2007; November 15, 2007; December 4, 2007; and December 19, 2007.

In addition, the Chair and Ranking Member of the Task Force held six meetings early in the process with many of those named above, as well as with Craig Holman, Legislative Representative for Public Citizen; Jack Maskell, Legislative Attorney for the Congressional Research Service; and R. Eric Petersen, Analyst in American National Government for the Congressional Research Service.

In June 2007, the Task Force developed a proposal for an independent entity that would accept submissions from the general public regarding alleged ethics violations and, after an initial inquiry, refer them (with recommendations) to the Committee on Standards of Official Conduct for final action. This proposal was crafted based on a number of discussions of historical concerns with the ethics process in the House, and incorporated many suggestions given to the Task Force over the course of its meetings. Two main elements of the initial plan became problematic due to opposing concerns of some Members of Congress and ethics reform groups: the acceptance of "outside" submissions from the general public, and the requirement that any group filing a submission (or significantly aiding in the filing of a submission) disclose financial donors over a certain threshold. In deference to the concerns of both Members and various ethics reform groups, the Task Force decided to withhold its proposal at that time and to develop a new proposal. Regardless, the Task Force has always maintained its focus on accountability and transparency in the ethics process.

## 6

### RECOMMENDATIONS

The following section contains the Special Task Force on Ethics Enforcement's recommendations based on months of study, meetings, and discussion among members. The entity described below is created within the House of Representatives, to be established through a House resolution. The proposed resolution is included as Attachment A in this report. The Task Force recommends that an Office of Congressional Ethics (OCE) supplement the House ethics process by providing an independent review of alleged violations of standards of conduct by Members, officers, and employees—thereby reassuring Members of Congress and the general public that a clear ethics system is in place and will respond to possible ethics violations. Among the goals the Task Force hopes to accomplish are to introduce an independent review element by non-Members and significantly increase transparency of the process. The formation, procedure, and ancillary details of the OCE are described below.

*General overview*

The Task Force recommends that an entity named the Office of Congressional Ethics be established as an independent office within the House of Representatives to provide a review of alleged ethics violations. The OCE will be composed of six board members. The board will then appoint a staff to carry out the daily work of the office.

The new Office of Congressional Ethics will act as an origination point for independent review of possible violations of standards of conduct, but will not prevent the Standards Committee from accepting complaints filed by Members. Any two OCE board members will be able to initiate a preliminary review of any matter by the board in order to better assess its validity. The board will then vote to either terminate the preliminary review or proceed to a second-phase review of the matter. By the end of a mandated time period, the OCE must refer all matters under second-phase review to the House Committee on Standards of Official Conduct—with a recommendation for dismissal, for further inquiry, or as unresolved due to a tie vote—for official Committee action. The Standards Committee will then consider the referral according to current Committee rules, but, for the first time in history, will be required to make a public announcement of its disposition for most referrals within a specified time period. The Standards Committee may dismiss or further investigate a matter as it sees fit once it has received the referral from the OCE.

This new, independent office will open up the ethics process by allowing the OCE to self-initiate reviews of alleged violations, providing an avenue for both preliminary and second-phase reviews, and triggering a procedure by which official public comment is required within a specified time frame.

*Entity*

The Office of Congressional Ethics is to be established by resolution as an independent office of the House of Representatives consisting of board members and a staff. Board members are to be appointed jointly by the Speaker and Minority Leader to ensure bi-

partisan balance. Vacancies on the board will be filled for the remainder of the unexpired term by the process delineated below. Once established, the board shall appoint a nonpartisan, professional staff to carry out the daily duties of the OCE. The staff members are to be employees of the House of Representatives and subject to all applicable rules and standards for such employees.

During Task Force meetings, some ethics reform groups suggested that the Task Force create an "outside" entity which would be separate from the House. Its staff would not be considered House employees, nor would its director (or board members) or rules operate under House control. Some proposals included provisions to allow this outside entity to receive complaints, dismiss complaints as appropriate, conduct its own investigations, and recommend sanctions of Members. The Task Force recognized that the establishment of this type of entity would require a vote of both the House and Senate, and the signature of the President, and could also run afoul of constitutional responsibilities. Many outside groups and scholars with whom the Task Force consulted agreed with this assessment and proposed models for an entity within the House that would act as an independent office much like the Office of the Inspector General or the Office of the Chief Administrative Officer. The Task Force approved of such an approach for an office within the Legislative Branch as the most feasible.

The OCE will be established by a resolution which must be readopted at the start of each new Congress to remain in effect. Given that the Rules of the House, which the resolution in part amends, are traditionally carried over from one Congress to the next, the Task Force anticipates that the continued existence and effectiveness of the OCE will be given due respect and consideration.

*Board*

The board members of the OCE will be charged with initiating reviews, assessing all matters under review, and referring second-phase reviews to the Standards Committee for action. They must make a decision whether to recommend (in the case of a second-phase review) that the Committee dismiss a matter or that the matter requires further inquiry. The board will be able to independently initiate ethics reviews and, for this reason, must be comprised of individuals of distinction and high qualification. As the OCE is to be an independent entity within the House, it is clear that no current Members of Congress may serve on its board. Rather, OCE board members shall be private citizens with extensive experience with one or more of the following fields: legislative, judicial, regulatory, professional ethics, business, legal, and academic. This list is not exhaustive and is meant to provide examples of the background and qualities the Speaker of the House and Minority Leader may take into account when considering individuals to appoint to the board. In addition, Task Force members believe it would be appropriate to consider former Members of Congress, former Congressional staff, former state legislators, former judges, etc. No current registered lobbyists may serve on the board. Former Members of Congress to be considered for the board must be out of office for at least one year prior to their appointment.

It is the intention of the Task Force that the OCE should run as smoothly as possible following its establishment within the House. Board members will each serve presumptive four year terms and may be reappointed for one additional term. The Speaker and Minority Leader will jointly appoint board members to ensure bipartisanship in the operation of the OCE. If, after 90 days, a board position has not been filled by joint appointment, then the position will be filled by either the Speaker or Minority Leader, as appropriate, acting alone. The Task Force encourages the two leaders to work cooperatively to appoint a full board; however, in the event that they are unable to agree on a full complement, the Task Force believes it is essential that the OCE proceed to conduct its business in a timely manner and should therefore have a system in place to account for such a possibility. In a practical sense, the Speaker and Minority Leader will most likely appoint two board members at a time, to guarantee that any slots remaining open after the 90-day period (mentioned above) exist in even numbers for potential partition along majority-minority lines.

To ensure continuity of OCE functions, the terms will be staggered so that the Speaker and Minority Leader will appoint or reappoint at least two board members at the start of a new Congress. At the establishment of the OCE, the Speaker and Minority Leader will appoint four board members to serve through the remainder of the 110th Congress and two board members presumed to serve through the 111th Congress. Accordingly, at the start of the 111th Congress, the leaders must make four new board appointments through the duration of the 112th Congress.

OCE board members shall be paid for their service on a per diem basis at a rate equal to the daily equivalent of the minimum rate of basic pay payable for GS–15 of the General Schedule. As of December 26, 2006, this rate equaled $93,063 per year. Board members shall also be reimbursed for reasonable and customary expenses associated with travel, lodging, and meals necessary to carry out their official duties. To provide for full participation, however, the Task Force anticipates that the board may, when necessary and appropriate, and pursuant to its rules, conduct meetings via telephone conference call. The board will draw up a code of conduct to which its members must adhere that addresses conflict of interest and other concerns. The Task Force expects that board members will be professional and responsible men and women who, though working part-time on a per diem basis, will account for their duties in a conscientious manner. Board members shall only be paid for days in which substantive OCE work is done. At no time shall board members engage in ex parte communications with any Member, officer, or employee of the House who is the subject of a review by the OCE, or any other interested party.

In order to ensure that the OCE is as protected as possible from politics and political campaigns, no board members shall be allowed to seek federal office and each must agree not to do so within three years of service. The Task Force looks unfavorably on any individual who would capitalize on a position with the OCE for personal political gain.

Removal of board members for cause at any point prior to the completion of their appointment will require the agreement of both

the Speaker and Minority Leader to ensure that such action is rare and taken only when necessary.

The Task Force would like to address one point that discussion with ethics reform groups yielded relative to the OCE board: the suggestion that a new ethics entity be created with its own professional staff and be overseen by one director rather than a board. It was argued that such an arrangement would provide for greater accountability within the entity and of the entity to the House.

This concept proved dubious for a number of reasons. The primary concern is the amount of power vested in one individual to oversee the process. While such a Director would no doubt be vetted by both parties and, by necessity, approved by both parties' leadership, the distinct potential exists for an individual in this position to overreach his or her authority. The Task Force encountered instances in the history of the ethics process where, for example, special counsel was hired, either by the Standards Committee or some other Congressional entity, who was widely seen as having overstepped the appropriate extent of his or her authority. Concerns were raised about investigations that stray from the original allegations of misconduct, and about individuals who use such unique positions of power to lay the foundation for their own future careers. The Task Force does not approve of the use of the ethics process for partisan or personal gain and believes the amount of power given to a sole director of the entity would pose significant potential for abuse.

In addition, a board composed of an equal number of members appointed jointly encourages bipartisan cooperation and reduces concerns of partisan prosecution or protection. Each party must take seriously its responsibility to act conscientiously with respect to the appointment and comity of board members.

*Staff*

The staff of the OCE will be hired and overseen by OCE board members, and will be full-time employees of the House of Representatives.

Staff members shall be hired by the board for the duration of a Congress and may be retained by a vote of the OCE board. A majority of the board (i.e. four members) must vote affirmatively to hire staff and, in such a case where it becomes necessary, to terminate staff prior to the end of a Congress.

It is essential that the Office of Congressional Ethics remain nonpartisan in design and function. All staff must be professional and conduct themselves in a strictly nonpartisan manner. Consequently, the Task Force recommends that restrictions similar to those placed on the political and outside activities of Standards Committee staff be implemented for OCE staff as well. These include requiring that no staff "engage in any partisan political activity directly affecting any congressional or presidential election" and that no staff "accept public speaking engagements or write for publication on any subject that is in any way related to his or her employment or duties."[4]

[4] See Standards Committee Rule 6(d) and (e).

*Prospective consideration*

Reviews undertaken by the OCE may only pertain to acts alleged to have occurred on or after the date of adoption of the resolution. The Task Force wishes to allow for a smooth establishment of the OCE in which it will not be overburdened by a backlog of matters from previous Congresses. The OCE is intended to supplement and open up the ethics process in the House by moving forward. The customary Standards Committee process will remain available to accept complaints—according to its existing rules as adopted on February 16th, 2007—for any conduct taking place in any of the three preceding Congresses. The Standards Committee shall retain such authority as granted under House rule XI.

In order to allow adequate time for appointments, hiring of staff, office placement, and other such matters, the OCE is given 120 days from the date of adoption of the resolution before it is expected to commence any review.

*Authority and duties of the OCE*

As the OCE is designed to enhance and supplement the House ethics process by allowing for independent initial consideration of possible ethics violations, it will exist to initiate and conduct reviews, gather information, and advise the Standards Committee as to board members' recommendations regarding alleged violations. Any final action to dismiss or establish an investigative subcommittee to further examine alleged violations must be taken by the Standards Committee itself, pursuant to its Committee rules.

The staff and board of the OCE are empowered to gather information regarding potential violations, as stated above. The purpose of this review of each allegation is to help board members decide which matters to refer, and how best to refer them, to the Standards Committee. Through fact-gathering, the board and staff should be able to establish which allegations lack merit or are de minimis and thus do not necessitate second-phase review by the OCE or referral to the Committee for consideration. The Task Force envisions certain circumstances under which the board may seek to interview individuals believed to have further information regarding an alleged violation and ask to see documents presumed to be connected to the case. However, should the board feel it has not been able to gather accurate information due to lack of cooperation with its initial inquiry or unavailability of requested information, it shall state so in its referral of a given matter to the Standards Committee. The Committee is encouraged to take such factors into consideration during deliberations.

At no time shall any board member or staff member of the OCE comment publicly on any matter within its jurisdiction, unless requested to do so by the Standards Committee in order to participate in a public proceeding of that Committee. To ensure confidentiality and responsibility in the opening steps of the ethics process, the OCE will conduct all its proceedings and deliberations in executive session.

The Task Force also recommends that the OCE produce a yearly statistical report detailing, without name or subject attribution, the work of the office. The report should give the public an understanding as to how many matters were reviewed both in the pre-

liminary and second-phase stages, along with the number of meetings of the board and other related activities.

The above section describes the authority and duties delegated to the OCE at this time. Current rules require Members and certain House staff to file financial disclosure forms and travel reports with the Office of the Clerk. The Clerk also receives Lobbying Disclosure Act filings. In the discourse of ethics reform, it was suggested to the Task Force that the independent entity be responsible for overseeing and receiving such filings as part of its mandate. It is, however, the desire of the Task Force that the entity be initially charged only with the responsibilities outlined in its recommendations. The creation of a new element within the system will require certain adjustments and a period of time to become fully operational. The entity should not be overloaded at its implementation. This speaks to one reason why the Task Force later recommends a continuing review of the ethics process while such changes are realized.

*Review process*

The Task Force feels strongly that part of any reform to the ethics process must include a more transparent system that contains recognizable and predictable timeframes, along with an independent review of alleged ethics violations by individuals who are not Members of Congress. The process detailed below adheres to strict timelines and guarantees public comment by the Standards Committee in most cases once a second-phase review is initiated. The public, as well as Members of Congress, have a right to know that the process is working and that pressing matters are being reviewed by the OCE and Standards Committee. It is with this goal in mind that the Task Force lays out the following review process for the OCE.

Once two board members of the OCE jointly initiate a preliminary review by notifying all other board members in writing, board members shall have 30 calendar days or 5 legislative days, whichever is later, to conduct the preliminary review. This phase is intended to provide an opportunity to explore any alleged ethics violations in order to establish whether further review is merited. Within 7 business days of the start of a preliminary review, the OCE must transmit notification to both the subject of the review and the Standards Committee, along with a statement of the nature of the review. The names of the board members initiating the preliminary review shall never be made public.

By the close of the preliminary review phase, the board must vote on whether to terminate the review or commence a second-phase review of the matter, though such a vote may occur at any point in the preliminary phase. The OCE must notify both the subject of the review and the Standards Committee of the vote's result, but not the names of board members indicating which member voted a particular way. A preliminary review may only be terminated by an affirmative vote of four or more board members. If the review is terminated, all OCE inquiries into the matter shall cease and it is considered closed. The OCE is not required to transmit any further information regarding a terminated matter to the

Standards Committee; however, the board may vote at its discretion to transmit any information it sees fit.

If the board does not terminate a preliminary review, then the OCE will proceed to a second-phase review of the matter. During the second phase, the board will have 45 calendar days or 5 legislative days, whichever is later, to gather information, obtain witness testimony, examine documents, and generally probe the alleged violation. The board may vote to grant a one-time extension of 14 calendar days in the second-phase review. At the close of the second-phase review process, the board of the OCE must refer the matter to the Standards Committee with its report and findings.

Any Member, officer, or employee of the House who is the subject of an OCE review has the right to present to the board, verbally or in writing (at the board's discretion), a statement responding to allegations prior to the board's referral and recommendations to the Standards Committee.

During the review (preliminary or second-phase) of a given matter, the OCE may collect relevant documents and interview individuals who may have knowledge of the alleged violation. In the course of such inquiries and interviews, the OCE shall make any individuals providing information verbally or in writing aware of federal criminal statutes concerning false statements made to Congress,[5] the penalty for violation of which carries a fine and/or imprisonment. Those individuals will be asked to sign a statement attesting that they understand the law and will comply with it. The OCE will be directed to develop its own set of rules to govern Office functions beyond what is set forth in the accompanying resolution. Among those rules will be one stating that all witnesses must sign the above statement. The Task Force expects the OCE, in addition, to develop guidelines for OCE action if a witness refuses to sign the statement, which should include, but not be limited to, incorporating information to that effect within the board's findings of fact.

If OCE staff and board members have reason to believe that statements made in the course of its reviews are false, or that requested information or documents have been withheld, the board may take this into consideration during its deliberations and note this among materials submitted as "backup documents" to the Standards Committee for its consideration. The Committee is expected and encouraged to make note of such information and take it into consideration during its deliberations.

The end product of the second-phase OCE process is to be the referral of a matter from the OCE to the Standards Committee. Each matter under second-phase review by the OCE must be referred to the Committee for a final decision by Standards Committee Members. Matters may be referred with a recommendation to dismiss (as de minimis, insignificantly substantiated, or for some other reason), a recommendation for further review, or as unresolved due to a tie vote. Board members, based on the information gathered by themselves and staff, shall issue materials to accompany each referral. These materials will include:

[5] 18 U.S.C. § 1001.

1. Report: A short written Report stating only that the board recommends the matter be dismissed, recommends that the matter requires further review, or refers the matter as unresolved; delineating the vote of board members (e.g. 6–0, 4–2, etc.), but no board member names; and including a statement of the nature of the review and the name of the individual who is the subject of the review.

2. Findings: Preliminary factual Findings based on the information available to the board at the time of its inquiry, if any. Such findings shall not contain any conclusory statements regarding the validity of the allegations upon which the review is based or the guilt or innocence of the individual who is the subject of the review. The findings may contain statements as to what necessary information was unavailable at the time, including, but not limited to, a list of potential witnesses the OCE was unable to interview or of requested documents it was unable to obtain. In addition, the board may include recommendations for the issuance of subpoenas where members feel it is appropriate. Finally, the Findings shall contain citations of any relevant laws, rules, regulations, or standards of conduct.

3. Other materials forwarded to the Committee may consist of "backup" or supporting documents such as records, testimony, research, staff notes, and commentary detailing either why a dismissal is recommended or why a matter is referred for further inquiry. Cooperative witnesses, who will not be named by the board within the Findings in order to preserve confidentiality, should be listed within the supporting documents for the Committee's information. These materials shall not be published unless the Standards Committee deems it necessary and appropriate.

Nothing in these recommendations shall preclude a second review by the board of the OCE of any given matter. The Task Force foresees certain uncommon circumstances in which the board may have terminated a preliminary review of a specific matter, or recommended dismissal of a matter to the Standards Committee, only to come across new evidence in the future which suggests the allegations merit another review. There will be no "double jeopardy" considerations preventing subsequent reviews.

Complaints offered by Members of Congress shall continue to be submitted directly to the Standards Committee for consideration under the existing process.

*Subpoena Power*

During the course of discussions amongst Members of the Task Force and with stakeholders outside Congress, it was suggested that the OCE be given either direct or "indirect" subpoena power ("indirect" meaning access through requests to the Standards Committee that subpoenas be issued returnable to the OCE). Task Force members discussed these options vigorously and debated their feasibility. The final decision to exclude subpoena power was based on a number of factors.

The professional opinions of the House Parliamentarian, General Counsel, and Congressional Research Service were sought so that the Task Force could better assess the legality of delegating such an authority through simple resolution. The overall consensus indi-

cated that while it might be possible to do so, a subpoena issued by such a method would almost certainly be subject to a court challenge unless it was backed by some statutory authority. Consequently, as a statute would require both passage by the Senate and the signature of the President, Task Force members decided against attempting to pass a bill that was likely to be held up in the legislative process. It is the hope of the Task Force that its recommendations be implemented through a swift legislative process and that the establishment of the OCE take place equally quickly, so as to commence the improvement of the ethics process as soon as possible.

Members of the Task Force believe that the timeline requirements instituted by the new process are critical: matters will spend at most three months under consideration by the board of the OCE before being referred to the Standards Committee for resolution. Due to the fast-paced nature of any OCE review, the Task Force feels subpoenas issued during that stage would not constitute successful leverage, as any court challenge to a subpoena would almost certainly carry on past the OCE deadline for referral to the Committee. In practice, subpoenas would not be able to be utilized effectively by the board and may unnecessarily complicate and delay the ethics process at that juncture.

Most importantly, the Task Force proposal envisions significant communication of information from the OCE to the Standards Committee, including explicit wording recommending the Committee issue a specific subpoena in its review of a matter referred by the OCE. The Task Force believes that this inclusion within the findings transmitted by the OCE to the Committee strikes at the heart of the issue of compelling testimony or documents—the threat of a subpoena is likely to compel a witness to cooperate almost as much as the subpoena itself. When this fact is considered in light of the long period of time it takes to issue and enforce a subpoena, and the desire to move the process along at a reasonable pace, the Task Force believes it becomes clear why there is no true value added by issuing subpoenas at this stage in the process. The Task Force encourages the OCE to make witnesses providing testimony or those asked to produce documents aware that the board may recommend a subpoena be issued by the Standards Committee later in the process.

The degree to which witnesses cooperate with the OCE in its reviews will play an important role in the decision of the board whether to recommend the Standards Committee issue a subpoena. Should the board feel that any witness asked to provide testimony or documents during the process has not been cooperative, it may reasonably determine that the Committee should obtain sworn testimony from that individual and recommend use of a subpoena to compel the sharing of pertinent information. The Committee is also expected to properly note such situations during its deliberations.

*Referral to the Committee on Standards of Official Conduct*

After completion of the OCE's second-phase review, and at or before the time limit specified above, the OCE will refer all matters to the Standards Committee for official disposition. The Committee must treat all matters referred by the OCE as properly received

and must, upon receipt, commence consideration according to Standards Committee rule 16, subsections (b), (c), (d), and (e). Under such provisions, the Committee shall determine what action is warranted, including, but not limited to: agreement with any recommendations transmitted from the OCE, dismissal of the matter, further investigation through the request for one extension of the time period for consideration, or establishment of an investigative subcommittee. Any referral received from the OCE will automatically bypass the provision outlined in Committee rule 16(a), which allows the Committee's Chairman and Ranking Member 14 calendar days or 5 legislative days to jointly determine whether information offered as a complaint constitutes a complaint according to Committee requirements.

In the case of referrals made by the OCE to the Standards Committee within the 60 days before an applicable election, the Committee may not accept referrals of matters in which the subject of the review is a candidate for election. The process will halt temporarily and proceed the day after the election. In addition, any reporting requirements placed on the Committee by this proposal that would occur within the 60-day blackout period shall be deferred unless the Committee votes otherwise. The Task Force expects that, in most cases, the Committee will choose not to disclose any information within the blackout period; however, should the Committee feel an announcement of any sort would be in the best interest of the institution and the public, it may publicize any information it wishes. Pursuant to its current rules, the Committee may publicize any information it sees fit within this window, though it has typically chosen to not to communicate with the public in the two months prior to an election.

The Standards Committee may request that a board or staff member of the OCE "present" a matter that has been referred to the Committee. In such circumstances, one member of the OCE shall be designated to present in person the report and findings of the board to the Committee and be available to answer any questions Committee members may have relative to the matter under consideration. No presentation of the board's disposition and findings may take place without a request from the Standards Committee.

Under existing Standards Committee rules, the Committee has a 45 calendar day or 5 legislative day period, whichever is later, in which to determine necessary action as outlined above. At the end of that period, or upon making a determination, whichever occurs first, the Committee must issue its own public statement regarding its action on the matter referred by the OCE and delineating the vote of the Standards Committee, and a copy of the OCE board's report and findings.

The exception to the above is a case where the board recommends dismissal of a matter and the Committee concurs, or where the board refers a matter as unresolved due to a tie vote and the Committee dismisses it. Under such circumstances, the Committee is not obligated to release the OCE report and findings, though it may vote to do so at its discretion.

The Committee may, either by joint decision of the Chair and Ranking Member or by vote of the Committee, extend the initial

period of consideration by one additional period of 45 calendar days or 5 legislative days. If the Committee so extends a matter referred by the board with a recommendation for further review, it must, on the day of such decision, make a public statement announcing the extension of the given matter. If the Committee extends a matter referred by the board with a recommendation to dismiss or as unresolved due to a tie board vote, the Committee is not required to publicly announce the extension.

If the Committee deadlocks on a matter, the Committee must publicly release the board's report and findings but may otherwise adhere to its existing rules. This action will allow the public some cognizance of the facts of the matter even if the Committee is unable to resolve it officially.

Should the Committee empanel an investigative subcommittee regarding a matter referred by the board, it must publicly announce that fact upon creation of the subcommittee, but otherwise shall not make public the report and findings of the board until the completion of the subcommittee process. If that process is not completed after one year from the date of referral, the Committee shall publicly release the report of the board. And if, at the close of the Congress in which the report was released, the investigative subcommittee has not completed its process, then the Committee shall publicly release the findings of the board.

The Standards Committee maintains its current ability to resolve matters with private or public letters as it so chooses. Any sanction it may currently impose according to Committee rules will not be precluded by the Task Force's recommended proposal. In fact, members of the Task Force anticipate matters that may be best dismissed by the Committee as a de minimis technical violation but may also necessitate a private letter to a Member outlining obligatory future compliance with rules. Such situations are certain to arise and should be dealt with in a manner appropriate to their scope and significance.

The Standards Committee, according to its current rules,[6] may defer action on a complaint when requested by appropriate law enforcement or regulatory authorities. The Committee may continue this practice with respect to matters referred by the OCE as well. If the Committee does defer action on a matter at the request of such authorities, it shall make a public statement to that effect within one day of agreeing to the deferral. In the case of a matter referred by the OCE for further review, the Committee must also release the report of the board. If, one year after the deferral to law enforcement or regulatory authorities, the Committee has not acted on the matter, the Committee must make a new public statement announcing that it is still deferring taking action on the matter and must renew this statement each year as applicable.

The Task Force recognizes that this addition to the ethics process may increase the workload of the Standards Committee beyond the capacity of its current staff. Task Force members encourage and expect the House to respond as necessary and appropriate to provide sufficient staff to allow the Committee to meet its new obligations under this resolution.

[6] See Standards Committee rule 15(f).

The process outlined above guarantees a public statement on nearly every matter that is reviewed in the second phase by the OCE. While a few matters will necessitate further, more expansive investigation by an investigative subcommittee of the Standards Committee, it is the goal of the Task Force to ensure that the public is made aware of information concerning each significant alleged violation in a timely fashion. As such, Members of Congress and the general public can be assured that the OCE and Standards Committee are aware of certain allegations and that the process for consideration of those matters has been triggered.

The Task Force has included an attachment to this report which delineates the various steps associated with the OCE process and the possible outcomes (Attachment B).

*Cooperation with the Committee on Standards of Official Conduct*

The Task Force intends the OCE and the Standards Committee to work cooperatively to ensure that allegations of misconduct are dealt with properly. The Standards Committee will be notified early in the process of all matters under review by the OCE and will be kept abreast of the status at each subsequent step.

After receiving notification that the OCE is reviewing a given matter, the Standards Committee may, if it is already investigating that matter, request that the OCE cease its investigation and refer the matter directly to the Committee. The Task Force envisions certain cases where a matter may already be the subject of an undisclosed Standards Committee investigation in which the OCE may wish to avoid interference. In addition, it is possible that the Standards Committee may possess more complete information than the OCE regarding an alleged violation and may be better equipped to handle the matter.

The board of the OCE must cooperate with such requests from the Standards Committee at any point in the process. Along with the early referral of the matter at hand, the board must transmit a Report stating simply that the matter is referred to the Standards Committee at the request of that Committee. The board will not transmit any findings, as board members will not yet have reached that stage in the process regarding the relevant matter. Such a referral shall be treated as any other from the OCE to the Standards Committee and will commence the 45 calendar day or 5 legislative day period in which the Committee may consider the matter before releasing a statement on the committee's disposition, along with the board's report. The Committee must follow all reporting requirements in such cases, including a release of the board's report at the end of the applicable time period, even if the matter is dismissed or remains unresolved.

If the Committee has not reached a final resolution, or properly deferred its review at the request of an appropriate law enforcement entity, by the end of the applicable time period (either after the Committee's initial 45 calendar day or 5 legislative day period or after an extension), then the Committee must so notify the board of the OCE, which will then commence an automatic second-phase review of the matter (or recommence its suspended second-phase review, as applicable). For the purposes of this provision, final resolution shall include dismissal of the matter the Com-

mittee requested early from the OCE, establishment of an investigative subcommittee regarding the matter, or a conclusion or action which clearly indicates that the matter will no longer be considered by the Committee. In circumstances where the Committee notifies the board of the OCE that it has not reached a final resolution in such a matter, the OCE will follow its regular procedure from the second-phase review forward—by collecting evidence, interviewing witnesses, establishing a set of findings, and referring the matter to the Committee for its disposition. Once a matter that had been requested early by the Committee is returned to the OCE for an automatic second-phase review as detailed above, the Committee may not request another early referral. The matter must proceed through the regular process from that point forward.

Nothing in this proposal shall prohibit general communication between OCE board members and the Standards Committee not relating to specific matters under review by either entity. The Task Force believes that board members should be able to convey certain ideas and advice to the Committee regarding, for example, recommendations as to which policies it might be helpful to outline for Members in "pink sheets" or guidance memoranda. Such communication would be both acceptable and useful to the process.

The Task Force has been informed and believes that the accompanying resolution is joint and severable. Should any provision be found in the normal course of events to be invalid or unconstitutional, the remainder of the resolution will stand.

## OBSERVATIONS AND COMMENTS

This section details a number of issues that, while not directly within the purview of the Task Force, were discussed at multiple points in Task Force sessions and were consistently considered to be relevant to the work at hand. Task Force members formulated thoughts based on their observations of the Standards Committee process, and would like to offer the following informal commentary in addition to the formal recommendations detailed above.

### *General transparency of Standards Committee work*

During the course of Task Force meetings, it became clear that members, none of whom currently serve on the Standards Committee, did not feel they had sufficient quantitative information on the day-to-day work of that Committee. Members frequently commented that they did not know whether the Committee was investigating certain cases presently being highlighted in news reports. This lack of transparency, discernable even to current Members of Congress, presents barriers to comprehension of, and trust in, the Committee's execution of its duties.

The Task Force recognizes that the rules governing Standards Committee confidentiality and reporting were first created along with the establishment of the Committee in 1967, and have been refined by subsequent ethics reform efforts. As a consequence, many of the confidentiality provisions were put in place to protect Members' reputations from false claims in an age when such reputations could be protected. The media and public interest groups operated under a different set of standards than they do now, and information was not as readily available to the public as it is now

with the advent of weblogs (or "blogs"), which often operate with few or no standards. Constant allegations and press conferences announcing alleged unethical behavior were not de rigueur. Presently, however, it is common for allegations to appear in the media before an ethics investigation has concluded and often before it is known whether, in fact, a matter is being investigated. While the Committee may not comment publicly on any complaints it has accepted, the public is made aware of ethics allegations through other sources and can reasonably expect that the Standards Committee should consider or investigate those cases.

In addition, both Members of Congress and the general public should be presented with information evidencing the work of the Standards Committee, even if that work is confidential, so that they may know the ethics process has not broken down. The Task Force believes that increased transparency in the statements and reporting of the Standards Committee will not be unduly burdensome, and will instead serve to inform interested parties of successful application of the ethics process.

*Coordination with law enforcement and regulatory authorities*

Standards Committee rules provide for the ability to "defer action on a complaint . . . when . . . the Committee has reason to believe [it] is being reviewed by appropriate law enforcement or regulatory authorities. . . ."[7] This situation most commonly arises when an ethics complaint corresponds to alleged criminal conduct on the part of a Member, officer, or employee of the House. Frequently, authorities such as the U.S. Department of Justice will request that the Committee defer its review or investigation so as not to interfere with an ongoing criminal (or regulatory) investigation. The Committee usually abides by such requests to avoid jeopardizing the authorities' work.

The Task Force is comfortable allowing the Committee to decide whether to defer to other authorities when asked. However, Task Force members have observed general displeasure with the lack of transparency at this step in the ethics process. It is often unclear to Members and the public if the Committee has undertaken a review of well-known ethics charges when no public statement is made by the Committee.

Therefore, the Task Force believes that the Standards Committee should publicly state, as standard procedure, that a matter before the Committee is deferred at the request of law enforcement or regulatory authorities. This proposal recommends many actions to increase transparency. Nonetheless, the Task Force encourages the Standards Committee to review its own procedure and rules, regardless of the suggestions in this proposal, to shed as much light on their process and workings as possible in order to increase respect for its work and faith in Congressional processes in general.

*Reporting of Standards Committee activities*

After the close of each Congress, the Standards Committee publishes a "Summary of Activities" which provides information on Committee work from that Congress. Included in the report are

[7] Ibid.

lists of Committee publications, briefings offered, advisory opinion letters, markups of legislation, hearings, and some investigations. The material offered regarding investigations is only that which has been made public and pertains to a select number of cases. The committee does not include confidential information on investigations, nor does it include more general statistics on its work.

Task Force members, during the course of their meetings, expressed interest in obtaining further statistical information from the Standards Committee. For example, members asked to see reporting regarding the number of instances where information was offered as a complaint (from Members and non-Members), the number of accepted complaints, the number of complaints dismissed as frivolous or de minimis, the number of investigative subcommittees empanelled, and the number of complaints resulting in sanctions. The Task Force understands that much of the substance of the Standards Committee's proceedings is, by necessity, confidential. However, statistical reporting—furnished without identifying characteristics which would tie it to specific Members—would help to assure Members and the public of the continued diligence of the Committee in overseeing the ethics process.

The Task Force suggests that the Standards Committee work to increase the transparency of its work through greater disclosure of statistical information in its annual report.

*Transparency in the Standards Committee's investigative process*

The Task Force was not charged with studying and proposing changes to the Standards Committee's process, only with considering the creation of an independent enforcement entity to supplement the process. While Task Force members understand that such study of Committee process is not strictly within their purview, they did observe that some cases appear to linger for prolonged periods of time. Given that the duration of any investigation is difficult to predict at its outset, Committee rules do not specify a timeframe in which certain actions must be taken, benchmarks achieved, or reports be issued. During these prolonged periods, the House and general public may be left with the belief that nothing is happening and that the process has broken down. This situation feeds further public distrust in the House ethics process.

The Task Force suggests that issues of reporting, transparency, and finalization in the Standards Committee's process be considered during future ethics process deliberations.

*Attorneys' fees*

The Task Force discussed the issue of reimbursement for attorneys' fees for those individuals who are the subject of an OCE review that is ultimately dismissed by the Standards Committee. Members agree that in those instances where the matter is dismissed, the Member, officer or employee of the House named in the review should not be penalized for seeking legal counsel. It would be useful to have, within reason, a certain recourse through which reimbursement could be obtained. However, the Task Force decided against the inclusion of the concept in this proposal so as not to overload the OCE and the process from the outset.

The notion of granting reimbursement for attorneys' fees deserves further study to consider whether such an approach is feasible and capable of being implemented. Such a power would most likely require statutory authority and would perhaps best be vested in the Standards Committee. The Task Force finds that the concept has merit and believes that it should be considered in depth to supplement the ethics process in the future.

*Continuing review of ethics process*

The Task Force recommends that the House establish a panel of Members to conduct an ongoing review of the ethics process during the 110th Congress and perhaps beyond.

Since the start of the 110th Congress, significant changes to the Rules of the House were approved which aim to clarify acceptable conduct for Members in the exercise of official duties. These new provisions include a ban on gifts from lobbyists, a ban on travel provided for by entities that employ lobbyists, increased disclosure requirements, and strict prohibitions on Members' partisan influence in the employment decisions of private entities. These modifications were agreed to in broad, bipartisan fashion in order to ensure a more ethical Congress. However, it is both understandable and clear that implementation of those reforms leads to procedural difficulties. If the recommendations from this Task Force are adopted, it is certainly reasonable to expect that unforeseen adjustments will have to be made for the same reason. Furthermore, it is possible that the House may seek to expand the role of the OCE in the future to encompass duties such as overseeing Members' and staff's financial disclosure reports, travel forms, and lobbying disclosure forms.

In addition, as stated above, there are Standards Committee rules and processes that, while they may warrant improvement, were not within the scope of the Task Force. Standards Committee rules with respect to timelines for action and decision-making merit further study and possible revision, with the goal of ensuring a timely consideration and resolution of matters before the Committee. Such further consideration would benefit the process by allowing for discussion of outstanding issues the Task Force was not able to address.

It is for these reasons that the Task Force believes a continued presence in the review of ethics processes is desirable. Task Force members understand that they cannot foresee every potential scenario, and that they cannot account for every question that may be asked regarding the implementation of the above recommendations. In light of the evolving nature of the ethics process this historic session, it would be prudent to oversee implementation of all new rules and procedures with the goal of making further recommendations, if necessary, to ensure that the reforms intended are, in fact, achieved.

## CONCLUSION

The Special Task Force on Ethics Enforcement understands that continuous review and improvement of the House ethics process is necessary to ensure a high standard of ethical behavior for Members of Congress and its employees, and to guarantee a practical

and functional enforcement of that standard. Congress must constantly work to maintain public trust in the institution through oversight of the ethics process. The proposals outlined above will likely serve as the basis for improvements that the Task Force hopes will be ongoing, as Members learn to navigate an enhanced system that allows for increased transparency and accountability. The Task Force does not intend its recommendations to be punitive or unduly cumbersome. Modifications enumerated within this report endeavor to benefit both Members and the public by allowing for increased confidence in the process and measurable timeframes under which discernable action shall occur. The continued cooperation of all Members, regardless of party affiliation or partisanship, is essential in order to guarantee a successful and effective ethics process within the U.S. House of Representatives.

110TH CONGRESS
1ST SESSION

# H. RES. 895

Establishing within the House of Representatives an Office of Congressional Ethics, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

DECEMBER 19, 2007

Mr. CAPUANO submitted the following resolution; which was referred to the Committee on House Administration, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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# RESOLUTION

Establishing within the House of Representatives an Office of Congressional Ethics, and for other purposes.

*Resolved,*

**SECTION 1. ESTABLISHMENT OF THE OFFICE OF CONGRESSIONAL ETHICS.**

(a) ESTABLISHMENT.—For the purpose of assisting the House in carrying out its responsibilities under article I, section 5, clause 2 of the Constitution (commonly referred to as the "Discipline Clause"), there is established in the House an independent office to be known as the

Office of Congressional Ethics (hereinafter in this section referred to as the "Office").

(b) BOARD.—(1) The Office shall be governed by a board consisting of six individuals of whom three shall be designated as appointees of the Speaker and three as appointees of the minority leader. Each position shall be appointed jointly by the Speaker and the minority leader within 90 days after the date of adoption of this resolution or within 90 days after the expiration of their terms, as applicable, except as otherwise provided herein. If any positions on the board remain vacant at the end of such time period, then the appointments shall be made by the Speaker or minority leader, as applicable.

(2) The Speaker and the minority leader each shall appoint individuals of exceptional public standing who are specifically qualified to serve on the board by virtue of their education, training, or experience in one or more of the following fields: legislative, judicial, regulatory, professional ethics, business, legal, and academic.

(3) The Speaker shall designate one member of the board as chairman. The minority leader shall designate one member of the board as cochairman. The cochairman shall act as chairman in the absence of the chairman.

(4)(A) Selection and appointment of members of the board shall be without regard to political affiliation and solely on the basis of fitness to perform their duties.

(B)(i) No individual shall be eligible for appointment to, or service on, the board who—

(I) is a lobbyist registered under the Lobbying Disclosure Act of 1995;

(II) has been so registered at any time during the year before the date of appointment;

(III) engages in, or is otherwise employed in, lobbying of the Congress;

(IV) is an agent of a foreign principal registered under the Foreign Agents Registration Act;

(V) is a Member; or

(VI) is an officer or employee of the Federal Government.

(ii) No individual who has been a Member, officer, or employee of the House may be appointed to the board sooner than one year after ceasing to be a Member, officer, or employee of the House.

(5) A vacancy on the board shall be filled for the unexpired portion of the term, utilizing the process set forth in paragraph (1).

(6)(A) Except as provided by subparagraph (B), terms on the board shall be for two Congresses. A member

of the board may not serve during more than four consecutive Congresses.

(B) Of the individuals appointed in the 110th Congress to serve on the board, 4 shall be designated at the time of appointment to serve only for the remainder of that Congress. Any such individual may be reappointed for an additional term of two Congresses.

(C) Any member of the board may be removed from office for cause by the Speaker and the minority leader, acting jointly, but not by either, acting alone.

(7) A member of the board shall not be considered to be an officer or employee of the House, but shall receive a per diem equal to the daily equivalent of the minimum rate of basic pay payable for GS–15 of the General Schedule for each day (including travel time) during which such member is engaged in the performance of the duties of the board.

(8) A majority of the members of the board shall constitute a quorum.

(9) The board shall meet at the call of the chairman or a majority of its members pursuant to its rules.

(c) POWERS.—The board is authorized and directed to:

(1)(A) Within 7 calendar days (excluding Saturdays, Sundays, and public holidays) after receipt

of a joint written request from any 2 members of the board to all board members to undertake a preliminary review of any alleged violation by a Member, officer, or employee of the House of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities, along with a brief description of the specific matter, notify in writing—

(i) the Committee on Standards of Official Conduct of that preliminary review and provide a statement of the nature of the review; and

(ii) any individual who is the subject of the preliminary review and provide such individual with a statement of the nature of the review.

(B) Within 30 calendar days or 5 legislative days, whichever is later, after receipt of a request under subparagraph (A), complete a preliminary review.

(C) Before the end of the applicable time period, vote on whether to terminate the preliminary review of the matter under consideration. If the board does not vote affirmatively to terminate the preliminary review before the end of the applicable time period (with not less than 4 members voting to

terminate), the board shall commence a second-phase review of the matter under consideration. The board shall notify, in writing, the individual who was the subject of the preliminary review and the Committee on Standards of Official Conduct of its decision to either terminate the preliminary review or commence a second-phase review of the matter. If the board votes to terminate the preliminary review, then it may send a report and any findings to such committee.

(2)(A)(i) Except as provided by item (ii), complete a second-phase review within 45 calendar days or 5 legislative days, whichever is later, after the board commences such review.

(ii) Extend the period described in subparagraph (A) for one additional period of 14 calendar days upon the affirmative vote of a majority of its members, a quorum being present.

(B) Transmit to the Committee on Standards of Official Conduct a recommendation that a matter requires further review only upon the affirmative vote of not less than 4 members of the board.

(C) Upon the completion of any second-phase review undertaken—

(i) transmit to the Committee on Standards of Official Conduct the following—

(I) a written report composed solely of—

(aa) a recommendation that the committee should dismiss the matter that was the subject of such review;

(bb) a statement that the matter requires further review; or

(cc) a statement that the matter is unresolved because of a tie vote; and

the number of members voting in the affirmative and in the negative and a statement of the nature of the review and the individual who is the subject of the review;

(II) its findings, if any, composed solely of—

(aa) any findings of fact;

(bb) a description of any relevant information that it was unable to obtain or witnesses whom it was unable to interview, and the reasons therefor;

(cc) a recommendation for the issuance of subpoenas where appropriate, if any; and

(dd) a citation of any relevant law, rule, regulation, or standard of conduct;

but not the names of any cooperative witnesses or any conclusions regarding the validity of the allegations upon which it is based or the guilt or innocence of the individual who is the subject of the review; and

(III) any supporting documentation; and

(ii) transmit to the individual who is the subject of the second-phase review the written report of the board described in clause (i).

(D) Hold such hearings as are necessary and sit and act only in executive session at such times and places and solicit such testimony and receive such relevant evidence as may be necessary to carry out its duties.

(E) Pay witnesses appearing before the Office in the same manner as prescribed by clause 5 of rule XI of the Rules of the House of Representatives.

(F) Adopt rules to carry out its duties, which shall include each of the following:

(i) A rule requiring each member of the board and of the staff of the Office, before undertaking any work on behalf of the Office, to execute the following oath (or affirmation) in writing: "I do solemnly swear (or affirm) that I will not disclose to any person or entity outside the Office of Congressional Ethics any information received in the course of my service with the Office except as authorized by the Office or in accordance with its rules." Copies of the executed oath shall be provided to the Clerk as part of the records of the House.

(ii) A rule providing that—

(I) the board may vote to terminate a preliminary review on any ground, including that the matter under review is de minimis in nature; and

(II) the board may vote to recommend to the Committee on Standards of Official Conduct that the committee should dismiss a matter that was the subject of a second-phase review on any ground, including that

the matter under review is de minimis in nature.

(iii) A rule requiring that all witnesses sign a statement acknowledging their understanding that the text of section 1001 of title 18, United States Code (popularly known as the False Statements Act) applies to their testimony and to any documents they provide.

(iv) A rule requiring that there be no ex parte communications between any member of the board and any individual who is the subject of any review by the board or between any member and any interested party.

(v) A rule that establishes a code of conduct to govern the behavior of its members and staff, which shall include the avoidance of conflicts of interest.

(d) REQUESTS FROM COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT.—(1) Notwithstanding any other provision of this section, upon receipt of a written request from the Committee on Standards of Official Conduct that the board cease its review of any matter and refer such matter to the committee because of the ongoing investigation of such matter by the committee, the board shall refer such matter to the committee and cease its preliminary

or second-phase review, as applicable, of that matter and so notify any individual who is the subject of the review. In any such case, the board shall send a written report to the committee containing a statement that, upon the request of that committee, the matter is referred to it for its consideration, but not any findings.

(2) If the Committee on Standards of Official Conduct notifies the board in writing that it is unable to resolve any matter described in paragraph (1), the board shall immediately begin or continue, as the case may be, a second-phase review of the matter.

(e) LIMITATIONS ON REVIEW.—No review shall be undertaken by the board of any alleged violation of law, rule, regulation or standard of conduct not in effect at the time of the alleged violation; nor shall any review be undertaken by the board of any alleged violation that occurred before the date of adoption of this resolution.

(f) PROHIBITION ON PUBLIC DISCLOSURE.—(1) No information or testimony received shall be publicly disclosed by any member of the board or staff of the Office. Any breaches of confidentiality shall be investigated by the Office and appropriate action shall be taken.

(2) Paragraph (1) shall not preclude presenting its report or findings or testifying before the Committee on Standards of Official Conduct by any member of the board

or staff of the Office if requested by such committee pursuant to its rules.

(3) Before the board transmits any report to the Committee on Standards of Official Conduct relating to official conduct of any Member, officer, or employee of the House, it shall provide that individual the opportunity to present, orally or in writing (at the discretion of the board), a statement to the board.

(g) PRESENTATION OF REPORTS TO COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT.—Whenever the board transmits any report to the Committee on Standards of Official Conduct relating to official conduct of any Member, officer, or employee of the House, it shall designate a member of the board or staff to present the report to such committee if requested by such committee.

(h) COMPENSATION OF STAFF.—Upon the affirmative vote of at least 4 of its members, the board may appoint and fix the compensation of such professional, nonpartisan staff as it considers necessary to perform its duties.

(i) TERMINATION OF STAFF.—Members of the staff may be terminated during a Congress solely by the affirmative vote of at least 4 members of the board.

(j) REIMBURSEMENTS.—The board may reimburse its members and staff for travel, subsistence, and other

necessary expenses incurred by them in the performance of their duties in the same manner as is permissible for such expenses of other employees of the House.

(k) AGREEMENTS; RETENTION OF DOCUMENTS BY THE CLERK.—(1) Before any individual who is appointed to serve on the board may do so, the individual shall execute a signed document containing the following statement: "I agree not to seek any Federal public office until at least 3 years after I am no longer a member of the board of the Office of Congressional Ethics."

(2) Copies of the signed and executed document shall be retained by the Clerk as part of the records of the House. The Clerk shall make the signatures a matter of public record, causing the names of each individual who has signed the document to be published in a portion of the Congressional Record designed for that purpose, and make cumulative lists of such names available on the web site of the Clerk.

(l) FUNDING.—There shall be paid out of the applicable accounts of the House such sums as may be necessary for the expenses of the Office. Such payments shall be made on vouchers signed by the chairman of the board and approved in the manner directed by the Committee on House Administration. Amounts made available under this section shall be expended in accordance with regula-

tions prescribed by the Committee on House Administration.

(m) DEFINITION.—As used in this section, the term "Member" means any Representative in, or Delegate or Resident Commissioner to, the Congress.

**SEC. 2. FINANCIAL DISCLOSURE REPORTS.**

Rule XXVI of the Rules of the House of Representatives is amended by adding at the end the following new clause:

"3. Members of the board of the Office of Congressional Ethics shall file annual financial disclosure reports with the Clerk of the House on or before May 15 of each calendar year after any year in which they perform the duties of that position. Such reports shall be on a form prepared by the Clerk that is substantially similar to form 450 of the Office of Government Ethics. The Clerk shall send a copy of each such report filed with the Clerk within the seven-day period beginning on the date on which the report is filed to the Committee on Standards of Official Conduct and shall have them printed as a House document and made available to the public pursuant to clause 1.".

**SEC. 3. CONFORMING AMENDMENTS TO THE RULES OF THE HOUSE.**

Clause 3 of rule XI of the Rules of the House of Representatives is amended as follows:

(1) In paragraph (b)(2), strike "or" at the end of subparagraph (A), strike the period and insert "; or" at the end of subparagraph (B), and add at the end the following new subparagraph:

"(C) upon receipt of a report regarding a referral from the board of the Office of Congressional Ethics."

(2) At the end of paragraph (b), add the following new subparagraph:

"(8)(A) Except as provided by subdivisions (B), (C), and (D), not later than 45 calendar days or 5 legislative days, whichever is later, after receipt of a written report and any findings and supporting documentation regarding a referral from the board of the Office of Congressional Ethics or of a referral of the matter from the board pursuant to a request under paragraph (r), the chairman of the Committee on Standards of Official Conduct shall make public the written report and findings of the board unless the chairman and ranking member, acting jointly, decide or the committee votes to withhold such information for not more than one additional period of the same duration, in which case the chairman shall—

"(i) upon the termination of such additional period, make public the written report and findings; and

"(ii) upon the day of such decision or vote, make a public statement that the committee has voted to extend the matter relating to the referral made by the board of the Office of Congressional Ethics regarding the Member, officer, or employee of the House who is the subject of the applicable referral.

At least one calendar day before the committee makes public any written report and findings of the board, the chairman shall notify such board and the applicable Member, officer, or employee of that fact and transmit to such individual a copy of the statement on the committee's disposition of, and any committee report on, the matter.

"(B)(i) Notwithstanding subdivision (A)(i), if the committee votes to dismiss a matter which is the subject of a referral from the board of the Office of Congressional Ethics, the committee is not required to make public the written report and findings described in such subdivision unless the committee's vote is inconsistent with the recommendation of the board. For purposes of the previous sentence, a vote by the committee to dismiss a matter is

not inconsistent with a report from the board respecting the matter as unresolved due to a tie vote.

"(ii) Notwithstanding subdivision (A)(ii), if the board transmits a report respecting any matter with a recommendation to dismiss or as unresolved due to a tie vote, and the committee votes to extend the matter for an additional period as provided in subdivision (A), the committee is not required to make a public statement that the committee has voted to extend the matter.

"(iii) Except as provided by subdivision (E), if the committee establishes an investigative subcommittee respecting any such matter, then the report and findings of the board shall not be made public until the conclusion of the investigative subcommittee process and the committee shall issue a public statement of the establishment of an investigative subcommittee, which statement shall include the name of the applicable Member, officer, or employee, and shall set forth the alleged violation. If any such investigative subcommittee does not conclude its review within one year after the board transmits a report respecting any matter, then the committee shall make public the report and upon the expiration of the Congress in which the report is made public, the committee shall make public any findings.

"(C)(i) If, after receipt of a written report and any findings and supporting documentation regarding a referral from the board of the Office of Congressional Ethics or of a referral of the matter from the board pursuant to a request under paragraph (r), the committee agrees to a request from an appropriate law enforcement or regulatory authority to defer taking action on the matter—

"(I) notwithstanding subdivision (A)(i), the committee is not required to make public the written report and findings described in such subdivision, except that if the recommendation of the board with respect to the report is that the matter requires further review, the committee shall make public the written report but not the findings; and

"(II) before the end of the first day (excluding Saturdays, Sundays, and public holidays) after the day that the committee agrees to the request, the committee shall make a public statement that it is deferring taking action on the matter at the request of such authority.

"(ii) If, upon the expiration of the one-year period that begins on the date the committee makes the public statement described in item (i)(II), the committee has not acted on the matter, the committee shall make a new public statement that it is still deferring taking action on the

matter, and shall make a new statement upon the expiration of each succeeding one-year period during which the committee has not acted on the matter.

"(D) The committee may not receive any referral from the board of the Office of Congressional Ethics within 60 days before an election in which the subject of the referral is a candidate. The committee may delay any reporting requirement under this subparagraph that falls within that 60-day period until the end of such period and in that case, for purposes of subdivision (A), days within the 60-day period shall not be counted.

"(E) If, at the close of any applicable period for a reporting requirement under this subparagraph with respect to a referral from the board of the Office of Congressional Ethics, the vote of the committee is a tie or the committee fails to act, the report and the findings of the board shall be made public by the committee, along with a public statement by the chairman explaining the status of the matter.".

(3) At the end, add the following new paragraph:

"(r) Upon receipt of any written notification from the board of the Office of Congressional Ethics that the board is undertaking a review of any alleged conduct of any Member, officer, or employee of the House and if the com-

mittee is investigating such matter, the committee may at any time so notify the board and request that the board cease its review and refer the matter to the committee for its consideration. If at the end of the applicable time period (including any permissible extension) the committee has not reached a final resolution of the matter or has not referred the matter to the appropriate Federal or State authorities, the committee shall so notify the board of the Office of Congressional Ethics in writing. The committee may not request the same matter from the board more than one time.".

**SEC. 4. EFFECTIVE DATE.**

This resolution and the amendments made by it shall take effect on the date of its adoption, except that the Office of Congressional Ethics shall not undertake any review of any alleged violation by a Member, officer, or employee of the House of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities before 120 days after the date of adoption of this resolution.

○

The chart included below is intended to aid in comprehension of the OCE process as envisioned by the Task Force. The steps enumerate the many possible actions to be taken by both the OCE and the Standards Committee according to the Task Force's proposal and illustrate the associated outcomes at the end of the process.

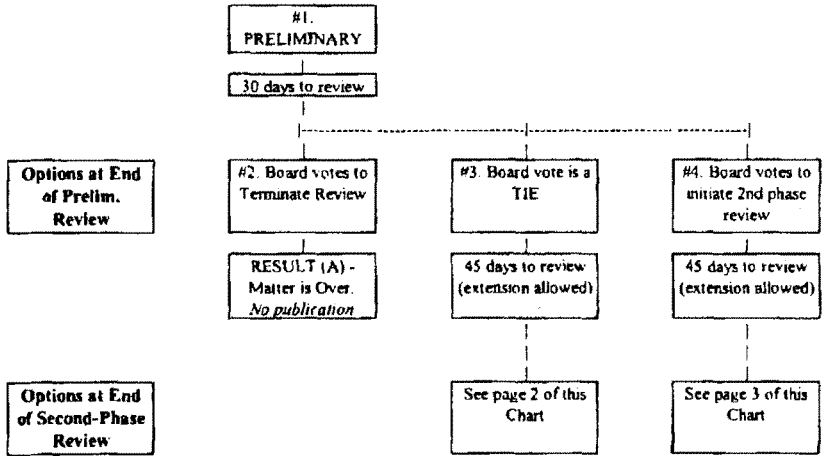
# ATTACHMENT B

## Office of Congressional Ethics

**Page 1**

**Options at conclusion of Preliminary Review by Board**
**and**
**Result of Board voting to Terminate their Review**

#s are merely to make it easier to follow the tree.
Results are labeled A - D merely to make comparison easier



Office of Congressional Ethics
Page 2
Results of Board voting at end of Preliminary Review being a Tie vote
As are mostly to make it easier to follow the tree
Results are labeled A - D merely to make comparison easier.
#1. PRELIMINARY
30 days to review
Options at End of Prelim. Review
#2. Board vote as a TIE
45 days to review (extension allowed)
Options at End of Second-Phase Review
#3. Board votes to Recommend that Ethics Dismiss
ETHICS has 45 days to review (extension allowed)
Options after Ethics
#4. Ethics Votes to Dismiss (1)
Trans-parency
RESULT (B) - NO publication is required. However, Ethics may publicize as they deem appropriate.
#7. Ethics Resolves the matter an another way or takes no action (1)
RESULT (C) - Report and Findings of Board publicized. Ethics free to comment.
#8. Ethics forms an Investigative Subcommittee
RESULT (D) - When Ethics completes their consideration - the Report and Findings of Board are published. Ethics is free to comment. (2)
#9. Board vote as a TIE again
ETHICS has 45 days to review (extension allowed)
#10. Ethics Votes to Dismiss (1)
RESULT (B) - NO publication is required. However, Ethics may publicize as they deem appropriate
#11. Ethics Resolves the matter an another way or takes no action (1)
RESULT (C) - Report and Findings of Board publicized. Ethics free to comment
#12. Ethics forms an Investigative Subcommittee
RESULT (D) - When Ethics completes their consideration - the Report and Findings of Board are published. Ethics is free to comment. (2)
#13. Board votes to recommend Further Review by Ethics
ETHICS has 45 days to review (extension allowed)
#14. Ethics Votes to Dismiss (1)
RESULT (C) - Report and Findings of Board publicized. Ethics free to comment.
#15. Ethics Resolves the matter in another way or takes no action (1)
RESULT (C) - Report and Findings of Board publicized. Ethics free to comment
#16. Ethics forms an Investigative Subcommittee
RESULT (D) - When Ethics completes their consideration - the Report and Findings of Board are published. Ethics is free to comment. (2)
(1) - The Ethics Committee can still issue private or public letters or take any other action it deems appropriate
(2) - If the Ethics Committee has not completed its consideration of a matter one year from the date of referral to Ethics, the Report of the Board is published
- If the Ethics Committee has not completed its consideration of a matter by the end of the Congress during which the one year period has run, the Findings of the Board are published

Office of Congressional Ethics
Page 3
Results of Board voting at end of Preliminary Review to initiate 2nd Phase Review
#s are merely to make it easier to follow the tree.
Results are labeled A - D merely to make comparison easier.
#1 PRELIMINARY
30 days to review
Options at End of Prelim. Review
#4 Board votes to initiate 2nd phase review
45 days to review (extension allowed)
Options at End of Second-Phase Review
#17 Board votes to Recommend that Ethics Dismiss
ETHICS has 45 days to review (extension allowed)
#21. Board vote is a TIE
ETHICS has 45 days to review (extension allowed)
#25. Board votes to recommend Further Review by Ethics
ETHICS has 45 days to review (extension allowed)
Options after Ethics
Trans-parency
#18. Ethics Votes to Dismiss (1)
RESULT (B) - NO publication is required. However, Ethics may publicize as they deem appropriate
#19. Ethics Resolves the matter in another way or takes no action (1)
RESULT (C) - Report and Findings of Board publicized. Ethics free to comment.
#20 Ethics forms an Investigative Subcommittee
RESULT (D) - When Ethics completes their consideration - the Report and Findings of Board are published. Ethics is free to comment. (2)
#22. Ethics Votes to Dismiss (1)
RESULT (B) - NO publication is required. However, Ethics may publicize as they deem appropriate.
#23. Ethics Resolves the matter in another way or takes no action (1)
RESULT (C) - Report and Findings of Board publicized. Ethics free to comment.
#24. Ethics forms an Investigative Subcommittee
RESULT (D) - When Ethics completes their consideration - the Report and Findings of Board are published. Ethics is free to comment. (2)
#26. Ethics Votes to Dismiss (1)
RESULT (C) - Report and Findings of Board publicized. Ethics free to comment.
#27. Ethics Resolves the matter in another way or takes no action (1)
RESULT (C) - Report and Findings of Board publicized. Ethics free to comment.
#28. Ethics forms an Investigative Subcommittee
RESULT (D) - When Ethics completes their consideration - the Report and Findings of Board are published. Ethics is free to comment. (2)
(1) - The Ethics Committee can still issue private or public letters or take any other action it deems appropriate
(2) - If the Ethics Committee has not completed its consideration of a matter one year from the date
of referral to Ethics, the Report of the Board is published.
- If the Ethics Committee has not completed its consideration of a matter by the end of the Congress during which
the one year period has run, the Findings of the Board are published

## ATTACHMENT C—ADDENDUM TO THE REPORT OF THE SPECIAL TASK FORCE ON ETHICS ENFORCEMENT

H. Res. 895 was introduced in the House of Representatives on December 19, 2007 in order to give Members an opportunity to review the Task Force proposal and offer feedback. The Task Force Report was issued the same day. In February 2008, the proposal was scheduled for consideration in the House Committee on Rules, with consideration on the floor of the House expected to follow. By that point, many Members had raised concerns about certain aspects of the Task Force's recommendations that they felt could jeopardize the intended bipartisan nature of the proposal.

Specifically, Members called attention to: the concern that the make up of the OCE board might encourage partisanship, the provision that would allow two OCE board members appointed by the same party leader to initiate a review in a potentially partisan manner, and the process by which only an affirmative vote of four OCE board members could terminate a preliminary review once begun. In addition, Members asked that provisions prohibiting disclosure of confidential information and requiring a strictly non-partisan OCE staff be strengthened. Task Force members wished to be responsive to the thoughtful concerns of their colleagues, and they thus amended the proposal to reflect a stronger call for bipartisanship and a professional process.

*Joint appointments*

As originally proposed, H. Res. 895 provided for OCE board appointments to be made jointly by the Speaker and Minority Leader for up to 90 days. If a full complement of board members was not appointed within that timeframe, the proposal then called for the Speaker and Minority leader to separately appoint board members to fill the remaining vacancies.

Members of Congress expressed concern that such an appointment process could lead to an unwanted element of partisanship on the OCE board. If any board members were appointed separately by either party leader, there could, in a worst case scenario, be an incentive to place those with partisan motivations on the board. The consensus among Members was that it would be preferable and result in a better functioning ethics process if board members were only appointed jointly by the Speaker and Minority Leader.

H. Res. 895 was therefore altered to reflect this change. All appointments to the OCE board must be made jointly with no time limit. The Speaker shall nominate three board members, subject to the concurrence of the Minority Leader. Likewise, the Minority Leader shall nominate three board members subject to the concurrence of the Speaker. This process will encourage both leaders to nominate responsible, professional, and judicious individuals who will readily be approved on the basis of strong professional credentials.

The Task Force recognizes that excessive partisanship could result in no joint appointments if one or both party leaders refuse to take their responsibilities seriously. Nonetheless, we also believe that such recalcitrance will be so obvious that the leader responsible for excessive partisanship will be known to the general public

and his/her party will be subjected to public scorn. If public pressure is not sufficient, then no power on earth can restore public confidence in our process. If this is the fate of this endeavor, it should be known early in the process.

In addition, the Speaker and Minority Leader shall each nominate at least one alternate member of the OCE board subject to the concurrence of the other leader. Alternate members are intended to ensure that the board functions smoothly during periods of transition. Any vacancy that occurs on the board shall be temporarily filled by the most senior alternate board member nominated by the same leader who nominated the person vacating the position. The alternate shall serve until a permanent replacement is selected. If no permanent appointment is made within 90 days, the alternate shall be deemed to have been appointed for the remainder of the term, and the appropriate leader shall nominate a new alternate subject to the concurrence of the other leader.

*Initiation of preliminary reviews*

H. Res. 895, as introduced, called for the initiation of preliminary reviews in the OCE at the written request of any two board members. This provision would have presented the possibility that two board members could initiate a review based on partisan motivations, targeting a Member or staff of the other party. Members of Congress considered that scenario harmful to the governance of the institution, and asked that it be changed to ensure that no partisan "witch hunts" could be undertaken by the OCE board.

The proposal was amended to require that any preliminary review be initiated only by a bipartisan request from two board members—one requesting member nominated by the Speaker, the other nominated by the Minority Leader. This change codifies the bipartisan working relationship that members of the board must adhere to in order to effectively execute their duties to the OCE. It also directly responds to concerns that partisan attacks could be launched within the OCE by blocking any potential for such action.

*Advancement from preliminary to second-phase review*

In addition, OCE procedures regarding the advancement of a review from the preliminary stage to the second-phase came under scrutiny. In the original proposal, a preliminary review could only be terminated by the affirmative vote of at least 4 board members. In effect, this meant that preliminary reviews, once initiated, could only be stopped from progressing to the second phase by a substantial effort of board members. All other reviews (not terminated) were to move forward automatically to the second-phase review, at which point their referral to the Standards Committee is compulsory.

In order to ensure that a certain threshold of credibility is met in each review, the proposal was altered to require 3 board members to vote affirmatively in favor of advancing a preliminary review to the second-phase. Essentially, the original two, jointly-appointed, bipartisan members must convince at least one more jointly-appointed member that more information is needed to in order to make a thoughtful decision on an allegation. This change effectively enforces that threshold while also making it impossible to

use partisan stonewalling to thwart a reasonable review once it has begun.

*Other amendments*

The Task Force wished to properly respond to a number of other general concerns that were raised regarding confidentiality of information and communications, as well as professionalism of OCE staff members. Language on these provisions was strengthened to reflect a commitment to the integrity and competence of the OCE and its processes.

H. Res. 895 was amended to clarify the following aspects:

- House Members and staff are prohibited from inappropriately communicating with OCE board members or staff about a case that may be before the OCE.
- The ban on ex parte communications applies to OCE staff as well as board members.
- Board members and staff of the OCE will be required to sign the same pledge of confidentiality as currently required for Standards Committee staff.
- Board members and staff of the OCE will be clearly prohibited from leaking information pursuant to the same limitations that apply to Standards Committee Members and staff.
- OCE staff, as well as OCE board members, are subject to the three-year pledge not to seek federal elective office.
- OCE staff are subject to the same restrictions as Ethics Committee staff relative to non-partisanship, prohibition on political activity, etc.

*Conclusion*

The redrafted version of H. Res. 895 is included in this report as Attachment D. It was adopted by the House on March 11, 2008, by a vote of 229–182 (see Roll Call 122 of 2008).

ATTACHMENT D—H. RES. 895 ADOPTED

# H. Res. 895

***In the House of Representatives, U. S.,***

*March 11, 2008.*

*Resolved,*

**SECTION 1. ESTABLISHMENT OF THE OFFICE OF CONGRESSIONAL ETHICS.**

(a) ESTABLISHMENT.—For the purpose of assisting the House in carrying out its responsibilities under article I, section 5, clause 2 of the Constitution (commonly referred to as the "Discipline Clause"), there is established in the House an independent office to be known as the Office of Congressional Ethics (hereinafter in this section referred to as the "Office").

(b) BOARD.—(1) The Office shall be governed by a board consisting of six individuals of whom three shall be nominated by the Speaker subject to the concurrence of the minority leader and three shall be nominated by the minority leader subject to the concurrence of the Speaker. The Speaker shall nominate at least one alternate board member subject to the concurrence of the minority leader and the minority leader shall nominate at least one alternate board member

subject to the concurrence of the Speaker. If any vacancy occurs in the board, then the most senior alternate board member nominated by the same individual who nominated the member who left the board shall serve on the board until a permanent replacement is selected. If a permanent appointment is not made within 90 days, the alternate member shall be deemed to have been appointed for the remainder of the term of the member who left the board and the Speaker or the minority leader, as applicable, shall nominate a new alternate subject to the concurrence of the other leader.

(2) The Speaker and the minority leader each shall appoint individuals of exceptional public standing who are specifically qualified to serve on the board by virtue of their education, training, or experience in one or more of the following fields: legislative, judicial, regulatory, professional ethics, business, legal, and academic.

(3) The Speaker shall designate one member of the board as chairman. The minority leader shall designate one member of the board as cochairman. The cochairman shall act as chairman in the absence of the chairman.

(4)(A) Selection and appointment of members of the board shall be without regard to political affiliation and solely on the basis of fitness to perform their duties.

(B)(i) No individual shall be eligible for appointment to, or service on, the board who—

(I) is a lobbyist registered under the Lobbying Disclosure Act of 1995;

(II) has been so registered at any time during the year before the date of appointment;

(III) engages in, or is otherwise employed in, lobbying of the Congress;

(IV) is an agent of a foreign principal registered under the Foreign Agents Registration Act;

(V) is a Member; or

(VI) is an officer or employee of the Federal Government.

(ii) No individual who has been a Member, officer, or employee of the House may be appointed to the board sooner than one year after ceasing to be a Member, officer, or employee of the House.

(5) A vacancy on the board shall be filled for the unexpired portion of the term, utilizing the process set forth in paragraph (1).

(6)(A) Except as provided by subparagraph (B), terms on the board shall be for two Congresses. A member of the board may not serve during more than four consecutive Congresses.

(B) Of the individuals appointed in the 110th Congress to serve on the board, 4 shall be designated at the time of appointment to serve only for the remainder of that Con-

gress. Any such individual may be reappointed for an additional term of two Congresses.

(C) Any member of the board may be removed from office for cause by the Speaker and the minority leader, acting jointly, but not by either, acting alone.

(7) A member of the board shall not be considered to be an officer or employee of the House, but shall receive a per diem equal to the daily equivalent of the minimum rate of basic pay payable for GS–15 of the General Schedule for each day (including travel time) during which such member is engaged in the performance of the duties of the board.

(8) A majority of the members of the board shall constitute a quorum.

(9) The board shall meet at the call of the chairman or a majority of its members pursuant to its rules.

(c) POWERS.—The board is authorized and directed to:

(1)(A) Within 7 calendar days (excluding Saturdays, Sundays, and public holidays) after receipt of a joint written request from 2 members of the board (one of whom was nominated by the Speaker and one by the minority leader) to all board members to undertake a preliminary review of any alleged violation by a Member, officer, or employee of the House of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the per-

formance of his duties or the discharge of his responsibilities, along with a brief description of the specific matter, initiate a preliminary review and notify in writing—

(i) the Committee on Standards of Official Conduct of that preliminary review and provide a statement of the nature of the review; and

(ii) any individual who is the subject of the preliminary review and provide such individual with a statement of the nature of the review.

(B) Within 30 calendar days or 5 legislative days, whichever is later, after receipt of a request under subparagraph (A), complete a preliminary review.

(C) Before the end of the applicable time period, vote on whether to commence a second-phase review of the matter under consideration. An affirmative vote of at least 3 members of the board is required to commence a second-phase review. If no such vote to commence a second-phase review has succeeded by the end of the applicable time period, the matter is terminated. At any point before the end of the applicable time period, the board may vote to terminate a preliminary review by the affirmative vote of not less than 4 members. The board shall notify, in writing, the individual who was the subject of the preliminary review and the Committee on

Standards of Official Conduct of its decision to either terminate the preliminary review or commence a second-phase review of the matter. If the board votes to terminate the preliminary review, then it may send a report and any findings to such committee.

(2)(A)(i) Except as provided by item (ii), complete a second-phase review within 45 calendar days or 5 legislative days, whichever is later, after the board commences such review.

(ii) Extend the period described in subparagraph (A) for one additional period of 14 calendar days upon the affirmative vote of a majority of its members, a quorum being present.

(B) Transmit to the Committee on Standards of Official Conduct a recommendation that a matter requires further review only upon the affirmative vote of not less than 4 members of the board.

(C) Upon the completion of any second-phase review undertaken—

(i) transmit to the Committee on Standards of Official Conduct the following—

(I) a written report composed solely of—

(aa) a recommendation that the committee should dismiss the matter that was the subject of such review;

(bb) a statement that the matter requires further review; or

(cc) a statement that the matter is unresolved because of a tie vote; and

the number of members voting in the affirmative and in the negative and a statement of the nature of the review and the individual who is the subject of the review;

(II) its findings, if any, composed solely of—

(aa) any findings of fact;

(bb) a description of any relevant information that it was unable to obtain or witnesses whom it was unable to interview, and the reasons therefor;

(cc) a recommendation for the issuance of subpoenas where appropriate, if any; and

(dd) a citation of any relevant law, rule, regulation, or standard of conduct;

but not the names of any cooperative witnesses or any conclusions regarding the validity of the allegations upon which it is based or the guilt or innocence of the individual who is the subject of the review; and

(III) any supporting documentation; and

(ii) transmit to the individual who is the subject of the second-phase review the written report of the board described in clause (i).

(D) Hold such hearings as are necessary and sit and act only in executive session at such times and places and solicit such testimony and receive such relevant evidence as may be necessary to carry out its duties.

(E) Pay witnesses appearing before the Office in the same manner as prescribed by clause 5 of rule XI of the Rules of the House of Representatives.

(F) Adopt rules to carry out its duties, which shall include each of the following:

(i) A rule providing that—

(I) the board may vote to terminate a preliminary review on any ground, including that the matter under review is de minimis in nature; and

(II) the board may vote to recommend to the Committee on Standards of Official Conduct that the committee should dismiss a matter that was the subject of a second-phase review on any ground, including that the matter under review is de minimis in nature.

(ii) A rule requiring that all witnesses sign a statement acknowledging their understanding that the text of section 1001 of title 18, United States Code (popularly known as the False Statements Act) applies to their testimony and to any documents they provide.

(iii) A rule requiring that there be no ex parte communications between any member of the board or staff of the Office and any individual who is the subject of any review by the board or between any member and any interested party, and that no Member, officer, or employee of the House may communicate with any member of the board or staff of the Office regarding any matter under review by the board except as authorized by the board.

(iv) A rule that establishes a code of conduct to govern the behavior of its members and staff, which shall include the avoidance of conflicts of interest.

(d) REQUESTS FROM COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT.—(1) Notwithstanding any other provision of this section, upon receipt of a written request from the Committee on Standards of Official Conduct that the board cease its review of any matter and refer such matter to the committee because of the ongoing investigation of such

matter by the committee, the board shall refer such matter to the committee and cease its preliminary or second-phase review, as applicable, of that matter and so notify any individual who is the subject of the review. In any such case, the board shall send a written report to the committee containing a statement that, upon the request of that committee, the matter is referred to it for its consideration, but not any findings.

(2) If the Committee on Standards of Official Conduct notifies the board in writing that it is unable to resolve any matter described in paragraph (1), the board shall immediately begin or continue, as the case may be, a second-phase review of the matter.

(e) LIMITATIONS ON REVIEW.—No review shall be undertaken by the board of any alleged violation of law, rule, regulation or standard of conduct not in effect at the time of the alleged violation; nor shall any review be undertaken by the board of any alleged violation that occurred before the date of adoption of this resolution.

(f) PROHIBITION ON PUBLIC DISCLOSURE.—(1)(A) When an individual becomes a member of the board or staff of the Office, that individual shall execute the following oath or affirmation in writing: "I do solemnly swear (or affirm) that I will not disclose to any person or entity outside of the Office any information received in the course of my service

with the Office, except as authorized by the board as necessary to conduct official business or pursuant to its rules.". Copies of the executed oath shall be provided to the Clerk of the House as part of the records of the House.

(B) No testimony received or any other information obtained as a member of the board or staff of the Office shall be publicly disclosed by any such individual to any person or entity outside the Office. Any communication to any person or entity outside the Office may occur only as authorized by the board as necessary to conduct official business or pursuant to its rules.

(C) The Office shall establish procedures necessary to prevent the unauthorized disclosure of any information received by the Office. Any breaches of confidentiality shall be investigated by the board and appropriate action shall be taken.

(2) Paragraph (1) shall not preclude presenting its report or findings or testifying before the Committee on Standards of Official Conduct by any member of the board or staff of the Office if requested by such committee pursuant to its rules.

(3) Before the board votes on a recommendation or statement to be transmitted to the Committee on Standards of Official Conduct relating to official conduct of any Member, officer, or employee of the House, it shall provide that

individual the opportunity to present, orally or in writing (at the discretion of the board), a statement to the board.

(g) PRESENTATION OF REPORTS TO COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT.—Whenever the board transmits any report to the Committee on Standards of Official Conduct relating to official conduct of any Member, officer, or employee of the House, it shall designate a member of the board or staff to present the report to such committee if requested by such committee.

(h) COMPENSATION OF STAFF.—Upon the affirmative vote of at least 4 of its members, the board may appoint and fix the compensation of such professional, nonpartisan staff as it considers necessary to perform its duties.

(i) TERMINATION OF STAFF.—Members of the staff may be terminated during a Congress solely by the affirmative vote of at least 4 members of the board.

(j) REIMBURSEMENTS.—The board may reimburse its members and staff for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties in the same manner as is permissible for such expenses of other employees of the House.

(k) AGREEMENTS; RETENTION OF DOCUMENTS BY THE CLERK.—(1) Before any individual who is appointed to serve on the board (including an individual who is an alternate) or before any individual is hired to be a staff member of the Of-

fice may do so, the individual shall execute a signed document containing the following statement: "I agree not to be a candidate for the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress for purposes of the Federal Election Campaign Act of 1971 until at least 3 years after I am no longer a member of the board or staff of the Office of Congressional Ethics.".

(2) Copies of the signed and executed document shall be retained by the Clerk as part of the records of the House. The Clerk shall make the signatures a matter of public record, causing the names of each individual who has signed the document to be published in a portion of the Congressional Record designed for that purpose, and make cumulative lists of such names available on the web site of the Clerk.

(3) The following rules shall be applicable to the staff of the Office:

(A) The staff is to be assembled and retained as a professional, nonpartisan staff.

(B) Each member of the staff shall be professional and demonstrably qualified for the position for which he is hired.

(C) The staff as a whole and each member of the staff shall perform all official duties in a nonpartisan manner.

(D) No member of the staff shall engage in any partisan political activity directly affecting any congressional or presidential election.

(E) No member of the staff may accept public speaking engagements or write for publication on any subject that is in any way related to his or her employment or duties with the Office without specific prior approval from the chairman and cochairman.

(l) FUNDING.—There shall be paid out of the applicable accounts of the House such sums as may be necessary for the expenses of the Office. Such payments shall be made on vouchers signed by the chairman of the board and approved in the manner directed by the Committee on House Administration. Amounts made available under this section shall be expended in accordance with regulations prescribed by the Committee on House Administration.

(m) DEFINITION.—As used in this section, the term "Member" means any Representative in, or Delegate or Resident Commissioner to, the Congress.

**SEC. 2. FINANCIAL DISCLOSURE REPORTS.**

Rule XXVI of the Rules of the House of Representatives is amended by adding at the end the following new clause:

"3. Members of the board of the Office of Congressional Ethics shall file annual financial disclosure reports with the Clerk of the House on or before May 15 of each calendar

year after any year in which they perform the duties of that position. Such reports shall be on a form prepared by the Clerk that is substantially similar to form 450 of the Office of Government Ethics. The Clerk shall send a copy of each such report filed with the Clerk within the seven-day period beginning on the date on which the report is filed to the Committee on Standards of Official Conduct and shall have them printed as a House document and made available to the public pursuant to clause 1.".

**SEC. 3. CONFORMING AMENDMENTS TO THE RULES OF THE HOUSE.**

Clause 3 of rule XI of the Rules of the House of Representatives is amended as follows:

(1) In paragraph (b)(2), strike "or" at the end of subparagraph (A), strike the period and insert "; or" at the end of subparagraph (B), and add at the end the following new subparagraph:

"(C) upon receipt of a report regarding a referral from the board of the Office of Congressional Ethics.".

(2) At the end of paragraph (b), add the following new subparagraph:

"(8)(A) Except as provided by subdivisions (B), (C), and (D), not later than 45 calendar days or 5 legislative days, whichever is later, after receipt of a written report and any findings and supporting documentation regarding a referral

from the board of the Office of Congressional Ethics or of a referral of the matter from the board pursuant to a request under paragraph (r), the chairman of the Committee on Standards of Official Conduct shall make public the written report and findings of the board unless the chairman and ranking member, acting jointly, decide or the committee votes to withhold such information for not more than one additional period of the same duration, in which case the chairman shall—

"(i) upon the termination of such additional period, make public the written report and findings; and

"(ii) upon the day of such decision or vote, make a public statement that the committee has voted to extend the matter relating to the referral made by the board of the Office of Congressional Ethics regarding the Member, officer, or employee of the House who is the subject of the applicable referral.

At least one calendar day before the committee makes public any written report and findings of the board, the chairman shall notify such board and the applicable Member, officer, or employee of that fact and transmit to such individual a copy of the statement on the committee's disposition of, and any committee report on, the matter.

"(B)(i) Notwithstanding subdivision (A)(i), if the committee votes to dismiss a matter which is the subject of a re-

ferral from the board of the Office of Congressional Ethics, the committee is not required to make public the written report and findings described in such subdivision unless the committee's vote is inconsistent with the recommendation of the board. For purposes of the previous sentence, a vote by the committee to dismiss a matter is not inconsistent with a report from the board respecting the matter as unresolved due to a tie vote.

"(ii) Notwithstanding subdivision (A)(ii), if the board transmits a report respecting any matter with a recommendation to dismiss or as unresolved due to a tie vote, and the committee votes to extend the matter for an additional period as provided in subdivision (A), the committee is not required to make a public statement that the committee has voted to extend the matter.

"(iii) Except as provided by subdivision (E), if the committee establishes an investigative subcommittee respecting any such matter, then the report and findings of the board shall not be made public until the conclusion of the investigative subcommittee process and the committee shall issue a public statement of the establishment of an investigative subcommittee, which statement shall include the name of the applicable Member, officer, or employee, and shall set forth the alleged violation. If any such investigative subcommittee does not conclude its review within one year after the board trans-

mits a report respecting any matter, then the committee shall make public the report and upon the expiration of the Congress in which the report is made public, the committee shall make public any findings.

"(C)(i) If, after receipt of a written report and any findings and supporting documentation regarding a referral from the board of the Office of Congressional Ethics or of a referral of the matter from the board pursuant to a request under paragraph (r), the committee agrees to a request from an appropriate law enforcement or regulatory authority to defer taking action on the matter—

"(I) notwithstanding subdivision (A)(i), the committee is not required to make public the written report and findings described in such subdivision, except that if the recommendation of the board with respect to the report is that the matter requires further review, the committee shall make public the written report but not the findings; and

"(II) before the end of the first day (excluding Saturdays, Sundays, and public holidays) after the day that the committee agrees to the request, the committee shall make a public statement that it is deferring taking action on the matter at the request of such authority.

"(ii) If, upon the expiration of the one-year period that begins on the date the committee makes the public statement

described in item (i)(II), the committee has not acted on the matter, the committee shall make a new public statement that it is still deferring taking action on the matter, and shall make a new statement upon the expiration of each succeeding one-year period during which the committee has not acted on the matter.

"(D) The committee may not receive any referral from the board of the Office of Congressional Ethics within 60 days before a Federal, State, or local election in which the subject of the referral is a candidate. The committee may delay any reporting requirement under this subparagraph that falls within that 60-day period until the end of such period and in that case, for purposes of subdivision (A), days within the 60-day period shall not be counted.

"(E) If, at the close of any applicable period for a reporting requirement under this subparagraph with respect to a referral from the board of the Office of Congressional Ethics, the vote of the committee is a tie or the committee fails to act, the report and the findings of the board shall be made public by the committee, along with a public statement by the chairman explaining the status of the matter.".

(3) At the end, add the following new paragraph:

"(r) Upon receipt of any written notification from the board of the Office of Congressional Ethics that the board is undertaking a review of any alleged conduct of any Member,

officer, or employee of the House and if the committee is investigating such matter, the committee may at any time so notify the board and request that the board cease its review and refer the matter to the committee for its consideration. If at the end of the applicable time period (including any permissible extension) the committee has not reached a final resolution of the matter or has not referred the matter to the appropriate Federal or State authorities, the committee shall so notify the board of the Office of Congressional Ethics in writing. The committee may not request the same matter from the board more than one time.".

**SEC. 4. EFFECTIVE DATE.**

This resolution and the amendments made by it shall take effect on the date of its adoption, except that the Office of Congressional Ethics shall not undertake any review of any alleged violation by a Member, officer, or employee of the House of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities before 120 days after the date of adoption of this resolution.

Attest:

*Clerk.*

# Appendix D

# Excerpts from OCE's Memoranda of Interview

CONFIDENTIAL

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

Memorandum of Interview

| | |
|---|---|
| In Re: | Representative Sam Graves |
| Review #: | 09-7000 |
| Date: | June 15, 2009 |
| Location: | Law Offices of Lathrop & Gage, Kansas City, MO |
| Time: | 4:30 pm |
| Participants: | Leo Wise |
| | Elizabeth Horton |
| | Terry Brady |
| | Matt Hubbard |

Summary: Representative Sam Graves is a Member of the United States House of Representatives and represents the sixth district of Missouri. He was interviewed pursuant to Review 09-7000. We requested an interview with Representative Graves and he consented to an interview. Representative Graves made the following statements in response to our questioning:

1. Representative Graves was given a copy of 18 U.S.C. § 1001, the False Statements Act, before he was interviewed and he signed a written acknowledgement of its receipt.
2. Brooks Hurst was the easiest witness to find for the hearing that was held in March given the short time frame for locating witnesses and he was one of the most knowledgeable persons available.
3. He was not aware of the process for finding witnesses for the hearings, staff handles finding witnesses.
4. Many times, he does not know who the witness will be until the hearing.
5. He was not sure who chose Brooks Hurst to testify at the hearing; he believed that it might have been Paul Sass.

6. He did not decide to invite Brooks Hurst to testify but he threw out Brooks Hurst name for consideration.

7. He did not know who chose the witness; he doesn't normally make those decisions.

8. The Committee on Small Business ("the Committee") has a hearing a week; so, he is not sure who chooses witnesses.

9. He is not sure who on the Committee staff makes witness decisions. It might be Paul Sass or Karen Haas.

10. Paul Sass was involved with the decision to invite Brooks Hurst; that was his job.

11. There was a time frame issue with finding a witness; they needed to find someone who knew renewable fuels. Brooks Hurst is the foremost person with such knowledge.

12. When asked why he was the foremost person, Representative Graves answered "because he knows it."

13. Brooks Hurst is the President of the Missouri Soybean Association, he is involved with the corn growers, and he testifies throughout the country on renewable fuels.

14. The email address in the February 24 email from Paul Sass is his regular email account. (Attachment 1)

15. When a hearing is scheduled the minority receives notice a few days before the hearing is to be held. The minority is allotted a certain number of witnesses depending on the hearing.

16. The Committee has hearings every week. The Small Business Committee is an oversight committee. They do not handle legislation. Hearings do not stand out unless the topic is something that is grabbing and the Committee just doesn't have that many grabbing issues.

17. The Committee held a hearing last week and he could not remember the topic.

18. Brooks Hurst is a personal friend.

19. The Committee always has hearings. The Women's Chamber always testifies on Chamber of Commerce hearings. Representative Graves stated that he knows all of the

individuals who repeatedly testify personally. Some of the relationships he developed with individuals who testify repeatedly before the Committee occurred in DC.

20. Brooks Hurst is a close, close friend. He grew up with Brooks Hurst; so, he may not know other witnesses as well as he knows Brooks Hurst, but he knows other witnesses who testify and have testified well.

21. With respect to the email from Jason Klindt to Paul Sass that questioned his financial holdings, Rep. Graves stated that he did not know why the issue would have come up. Neither Jason Klindt nor Paul Sass raised the issue with him. He didn't know why it would have come up.

22. He did not remember why he did not want Bill Becker to testify but he remembered that the Committee had done some things for Lifeline on grants and they may have been in the middle of doing something for the company at that time, possibly working on a waiver for a grant.

23. He did not remember why Brooks Hurst was off the witness list and then back on.

24. He did not recall why Bill Becker was an alternate witness; those types of issues are handled in passing.

25. He was not sure if Brooks Hurst was off then on because of a conflict with planting.

26. He was surprised that there were as many emails on the matter as there were and he was surprised that it was so hard to find a witness for the hearing.

27. Paul Sass asked who they could get for a witness and he suggested calling Brooks Hurst.

28. Paul Sass knows the process better than anyone.

29. When asked about the members of the corn growers being in town at the time of the meeting, Representative Graves stated that "if he remembered correctly" the Committee already had an "ethanol guy" and they were looking for a "biodiesel guy" to balance out the witness list as much as possible.

30. He did not talk to anyone about the corn growers; he did not even know Jessica Bennett.

31. He has run into situations where someone was supposed to testify and then that person was unable to get a flight. He did not know the process.

32. He always introduces the witness.

33. He always has a typed introduction that he reads.

34. The introductions are normally a half page.

35. After the opening statement, there is a half page introduction about where the witness is from, if they are a family farmer, how many acres they farm, how long they have been in business, etc.

36. The opening statement is different from the introduction; it sometimes comes off of the witness list.

37. He generally goes through the witness list and makes a general introduction from the information on the list. "It's like sitting down and eating supper, it's very routine."

38. In introductions, he only identifies who the individual is testifying on behalf of, no other entities that the witness may be associated with are noted.

39. Investments are not something he talks about with Brooks Hurst. He could not say what Brooks Hurst was invested in; he goes in and out of investments so he wouldn't know what he was invested in.

40. When asked if Brooks Hurst stated that he recruited the Graves to invest in Golden Triangle, Rep. Graves stated that Brooks Hurst easily could have made such a statement, but he didn't know if he had. "People say things to show how closely related they are to a Member."

41. He did not recall Brooks Hurst asking him to invest in Golden Triangle.

42. Personal investments are not something that comes up in conversations that he has with Brooks Hurst, he talks to Brooks Hurst mostly about "flying stuff." "They don't sit down and go over investments."

43. His wife's father advises his wife on financial matters. He is an "environmental guy." His father-in-law does not know Brooks Hurst.

44. He and his wife laugh about their investments; the only one that has done well is Golden Triangle.

45. The organization started early and had good management. The management firm was kicked out. They were one of the first plants but they are a small company. "It's not where you want to be today but they paid down all of their debt."

46. He spoke at the company's meetings when he was in the State Senate.

47. The conversation between him and his wife about investing was a long time ago. She invested in the company when he was in the State Senate.

48. Terry Brady, his attorney, prepares his financial disclosure. He reviews the report along with his wife's financial disclosure report, she files for her position with the state university.

49. When asked if he remembered Brooks Hurst's testimony, Representative Graves stated that he did not recall the hearings, and that he usually works on other issues using his blackberry during the hearings.

50. There is only one ethanol plant in Craig, MO. It is Golden Triangle

51. Brooks Hurst last spoke before the committee when Representative Graves was chair of a subcommittee.

52. When asked if he recalled the *Roll Call* article regarding Brooks Hurst's prior testimony, Representative Graves stated that he saw the article after this issue came up and that opponents "bring this type of thing that feed these types of articles."

53. When asked about his quote from the article that "looking back" he should have disclosed his connection with Brooks Hurst, Representative Graves stated that the author did not publish his full statement. He stated that he actually said that looking back he probably should have disclosed "if he had known what his (Brooks Hurst) investments were." He also stated that the article was frustrating but typical; he further stated that the issue would not make a story but misquoting his statements would.

54. When asked if he was aware of Brooks Hurst's investments in 2004, he stated that Brooks Hurst testified with Golden Triangle but that he didn't know what Brooks Hurst was personally invested in.

55. He stated that he did not recall the 2007 *Roll Call* article but that Brooks Hurst was not testifying on ethanol at the March hearing.

56. Brooks wasn't testifying on Golden Triangle or ethanol; he was testifying on biodiesel at the March hearing.

57. When asked if he recalled the 2007 article, Representative Graves stated that he never really thought about it. The Committee had to find someone to testify that knew what they were talking about and Brooks Hurst knew the issue.

58. Lifeline is an ethanol company; he did not believe they produced biodiesel fuel.

59. When asked if he recalled Brooks Hurst's prior testimony, Representative Graves stated that he did not because it was "a zillion hearings ago."

60. With respect to finding a witness for the March hearing, he stated that you want someone who knows the subject matter. "In a confrontational hearing, which isn't the case now, but when it is, the majority is trying to discredit the minority and vice versa." "So you always want there to be no embarrassing comments – someone throwing out facts that are then attacked." "The DNC/RNC will make some political issue out of comments. To avert that, you get best witness possible."

61. He stated that the Committee doesn't have that type of adversarial relationship but that other entities can also attack the hearing, like oil companies, so you have to be prepared.

62. With respect to the purpose of the hearings, the committee is an oversight Committee; it does not do legislation except the authorization of the Small Business Association. The hearings are "feel good hearings." "The chair is from NY and I think she is being nice to me in holding the hearing because I am a farmer." The Committee can look at venture capital, healthcare, animal pharmaceuticals, anything. The committee doesn't have a real agenda other than the Small Business Association so they look at all types of industries. "When I was head of the subcommittee I held aviation hearings."

63. With respect to the recommendation made by Brooks Hurst for the Blender Fuel Credit, Representative Graves stated that the Blender Fuel Credit was the big issue and that it was an "agricultural issue, probably the hottest issue in the industry."

64. He did not remember Brooks Hurst advocating for the Blenders Fuel Credit at the hearing but he would not be surprised if he had. He (Representative Graves) did not know anything about glycerin. It would also not surprise him if Brooks Hurst supported the Renewable Fuels Standard. He was sure the corn growers supported the Renewable Fuels Standard, it is their biggest issue.

65. He also would not be surprised if the Renewable Fuels Standard would help Brooks Hurst. He knew the corn growers would have recommended the Renewable Fuels Standard.

66. He did not recall any recommendations at the hearing but it would not surprise him if recommendations were made. He stated that he had been doing this for ten years and "it's the same thing every year – again and again and again."

67. With respect to Brooks Hurst's testimony regarding the plant that he was having difficultly with "booking business forward," Representative Graves stated that he did not know which plant Brooks Hurst was referring to nor did he know how many plants Brooks Hurst was invested in. He stated, "if it's glycerin then it would be Biofuels" but he was not sure. He further stated that he did not understand the glycerin deal.

68. He does not review hearing testimony, everyone submits their oral comments and sometimes the comments are twenty pages in length. He further stated that some hearings have twenty witnesses. He does not read opening statements until the Chair is reading her statement.

69. His wife's father is her financial advisor.

70. His wife is employed as a school teacher.

71. Their investments are not very good. They spend very little time investing; they have not done well since 2000. The only time the issue of investments comes up in conversations with his wife is when his wife "spends Golden Triangle money, which is her money." He did not know how long the company would be profitable because it is a very small company.

72. When asked if he talked to Brooks Hurst about the hearing, Representative Graves stated that he had not, "other than this issue and how ridiculous it is."

73. When asked why it is a ridiculous issue, Representative Graves stated that it was simply a lot of money and time that was being used to look into the matter and there was not anything there; he thought the OCE "must not have anything better to do." He further stated that Paul Singer (the author of the 2007 and 2009 *Roll Call* articles) did not like him because he was forced to do a retraction of bad information published in a previous article and that he acted like a jerk to him.

74. He has not talked to anyone else regarding this matter. He stated that the Committee held hearings every week and the matter was just not an issue.

75. He stated that "when you bring a witness in, you want them to feel important but in many cases their testimony is meaningless because the Committee has no jurisdiction." "You don't tell people that, that their testimony won't have an impact." He further stated that "every Speaker has tried to eliminate the Small Business Committee." He explained that the legislation goes through the Commerce Committee and that the Small Business Committee holds "feel good hearings." He stated that the Chair holds hearings that interest her and that he has been involved with venture capital hearings. Several hearings are held on venture capital which relates to the Small Business Administration, which the Committee has jurisdiction over. He believes the Chair is "throwing him a bone" on agriculture issues. But he wishes she would ask for input because he would pick a different topic.

76. The Committee does not have work after the legislation affecting the Small Business Administration is completed but hearings bring publicity. The minority will use hearings to attack policies on small business. The hearings generate a lot of press at home; the hearings show that they are taking care of small business.

77. It breaks down to subcommittees. They don't hold many hearings; the object is to generate press, trying to show you're doing your job.

78. The Committee holds a hearing every week at 2:00 pm on Wednesday. The Committee does not have any office space and Committee staff is in three different buildings. There are no anti-chambers, no money, and no jurisdiction.

79. He only interacts with staff at the hearings. The staff doesn't think he engages enough but he may have listened to the same testimony for the past 10 years. Staff is frustrated over his lack of interaction with the staff.

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OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

Memorandum of Interview

| | |
|---|---|
| In Re: | Witness A |
| Review #: | 09-7000 |
| Date: | July 13, 2009 |
| Location: | Telephone Interview |
| Time: | 12:00pm |
| Participants: | Leo Wise |
| | Elizabeth Horton |

Summary: Witness A was interviewed pursuant to Review 09-7000. We requested an interview with Witness A and he consented to an interview. Witness A made the following statements in response to our questioning:

1. Witness A was sent a copy of 18 U.S.C. § 1001, the False Statements Act, before he was interviewed and he signed a written acknowledgement of its receipt.
2. He was invited to testify at the March 4, 2009, hearing by Representative Graves. The hearing was scheduled on short notice and Representative Graves called him to see if he could get away to come to D.C. to testify.
3. He did not recall when he received the phone call but he recalled that it was a "rush deal."
4. He spoke with Buffy Smith (staff member) about his plane tickets not more than a week before the hearing.
5. He stated that he was the first person that Representative Graves thought of because he was the President of the Missouri Soybean Association and he had worked on biodiesel issues in the past and because the hearing was scheduled with such notice.
6. He was not involved with planting at the time of the hearing so he was able to testify.

7. He may have initially said that he could not testify and then changed his mind but he could not recall whether he had said no initially or not.

8. He did not recall the dates of the hearing.

9. He had been invited to testify before the Committee on Small Business on two previous occasions. He recalled being invited for the first time by Representative Jim Talent. He could recall that it was Representative Talent because it was his first time testifying before Congress.

10. He works with the Missouri Soybean Association. The association provided him with written testimony and prepped him for the March hearing, as they have done on other occasions when he testified on behalf of the association.

11. He did not recall the press article about his testimony before the Committee in 2004.

12. He had seen articles about Representative Graves in campaign years but he didn't pay attention to them because he felt they were a campaign tactic.

13. He was sure he would have spoken to Representative Graves at the time of the article, he and Representative Graves grew up together, but he wasn't concerned about the article because "neither of us owned enough stock to make a difference."

14. He was not aware that Representative Graves was invested in Golden Triangle; he could have guessed but he wasn't sure.

15. He did not recall the statements he made at the March hearing including the statement about the plant that had trouble booking business forward. But he was sure the plant was Biofuels or Paseo Cargill.

16. He stated that it always helps to use examples to connect the prepared testimony to yourself when testifying on an issue.

17. Biofuels is located in Mexico, MO. The Missouri Soybean Association helped get the business started.

18. He recruited investors for the plant. He gave Representative Graves a prospectus for the plant but he didn't check with him afterward to see if he had invested in the venture. He stated that he felt it was rude to ask people about their money.

19. He stated that he probably tried to recruit Representative Graves' brother Danny more than he tried to recruit Representative Graves.

20. Representative Graves' brother is a farmer as well.

21. He stated that he would have talked about Golden Triangle to Representative Graves at some point because it was doing great at one time. But he probably would have talked to him more about soybean planting, Biofuels, and Paseo Cargill.

22. The article about his prior testimony did not make an impression on him because "there was nothing there."

23. He stated that he and Representative Graves were stockholders; they were not in business together.

24. He gave out hundreds of prospectus on Biofuels and Paseo Cargill about five years ago. He spent a lot of time marketing the businesses.

25. He never thought there was a conflict with his testimony; he thought the articles were a joke and a waste of time.

26. The previous articles did not come up in conversations he had with Representative Graves or his staff prior to his testimony in March.

27. He did not think of the articles until the phone call with OCE staff. He did not think they were an issue; he believed that they were campaign rhetoric and so they didn't affect him.

28. He did not recall hearing about the 2009 *Roll Call* article but he hated to answer with an "absolute no" because Representative Graves probably told him about it.

29. He asked OCE staff if the same person had written both articles and then stated that he assumed that the writer was bringing up the "same stuff as before" but he didn't pay any attention to the matter.

30. He did not approach Representative Graves about investing in Golden Triangle. He wasn't involved in selling shares in Golden Triangle.

31. He stated that Golden Triangle had done well for three years. It had not done well the first two years and it was not doing so well now. When corn went up, Golden Triangle

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OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

Memorandum of Interview

| | |
|---|---|
| In Re: | Representative Graves' Chief of Staff |
| Review #: | 09-7000 |
| Date: | June 16, 2009 |
| Location: | Law Offices of Lathrop & Gage, Kansas City, MO |
| Time: | 10:00 am |
| Participants: | Leo Wise |
| | Elizabeth Horton |
| | Terry Brady |
| | Matt Hubbard |

Summary: Representative Graves' Chief of Staff was interviewed pursuant to Review 09-7000. We requested an interview with Representative Graves' Chief of Staff and he consented to an interview. Representative Graves' Chief of Staff made the following statements in response to our questioning:

1. Representative Graves' Chief of Staff was given a copy of 18 U.S.C. § 1001, the False Statements Act, before he was interviewed and he signed a written acknowledgement of its receipt.
2. He has been Chief of Staff for Representative Graves for over three years.
3. He hired Karen Haas as the Staff Director (for the minority) for the Small Business Committee ("the Committee"). He also recommended hiring Mr. Sass and a couple of other people for the Committee.
4. He visits the Committee staff once a week to see how they are doing.
5. He has been to only one Committee meeting and he only stayed at that meeting for twenty minutes. He only went because Representative Graves was losing his temper. The topic of the hearing must have been aviation.

6. He has never been involved in a briefing for a hearing.

7. He might have gone to one other hearing. He does watch the hearings on CSPAN.

8. He did not recall the email he received from Mr. Sass regarding the witness selection for the hearing. Mr. Sass sits next to him. Mr. Sass probably mentioned the hearing to him and he then suggested one of the Flicks. He had been impressed by the Flicks on another occasion.

9. He gave Mr. Sass Mr. Flick's name and Mr. Sass then went in to talk with Representative Graves and Representative Graves suggested Brooks Hurst.

10. With respect to the hearing process, he stated that the democrats will call Karen Haas to notify the minority about a hearing. There are slots for minority witnesses but he was not sure how the witnesses were chosen.

11. He did not know who made the decision as to who would be chosen as a witness. He thought that it might be Karen Haas or that the majority had to approve witnesses.

12. To his knowledge, Representative Graves does not choose the witness. If he did, he did not know of it.

13. He did not know Bill Becker; he had no idea who he was.

14. He has no knowledge of Show Me Ethanol (Representative Graves' Chief of Staff asked if Bill Becker was from Show Me Ethanol).

15. He does not review testimony for the Committee. He only listens to the hearings on CSPAN. Karen Haas is very good, the Committee is very fortunate to have her. Just as someone runs the district office when he is in DC, Karen Haas runs the Committee staff. He has good people to runs things while he is not there.

16. He was really impressed with Brooks Hurst's testimony, he watched it on television.

17. He did not remember the 2007 *Roll Call* article. He stated that something like that didn't happen without comment but he felt that the reporter was way off.

18. He did not recall talking to Mr. Sass about the hearing. He probably spoke with the Congressman but he did not recall the conversation.

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OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

Memorandum of Interview

| | |
|---|---|
| In Re: | Representative Graves' Then Deputy Chief of Staff |
| Review #: | 09-7000 |
| Date: | June 16, 2009 |
| Location: | Law Offices of Lathrop & Gage, Kansas City, MO |
| Time: | 9:00 am |
| Participants: | Leo Wise |
| | Elizabeth Horton |
| | Terry Brady |
| | Matt Hubbard |

Summary: Representative Graves' then Deputy Chief of Staff is currently Deputy Staff Director for the House Committee on Small Business. He was interviewed pursuant to Review 09-7000. We requested an interview with Representative Graves' then Deputy Chief of Staff and he consented to an interview. Representative Graves' then Deputy Chief of Staff made the following statements in response to our questioning:

1. Representative Graves' then Deputy Chief of Staff was given a copy of 18 U.S.C. § 1001, the False Statements Act, before he was interviewed and he signed a written acknowledgement of its receipt.

2. At the time of the March hearing, he was a shared employee between the personal office of Representative Graves and the Small Business Committee ("the Committee"). Representative Graves had just obtained the Ranking Member position on the Committee and his duties required him to help identify witnesses for hearings and prepare the opening statements and introductions of witnesses.

3. He is now a full time employee of the Committee. His duties include working on roundtables, conducting hearings, and staffing the Congressman. He also provides guidance to staff on witness messaging for hearings.

4. His boss was new to the Ranking Member position and wanted the witness to come from the 6th district and to be competent. He started looking for witnesses from the district and then branched out from there to other parts of the state.

5. The Committee has limited jurisdiction so they can talk about anything at hearings. The "take-away" is to try and get press. Other than getting press on an issue, the Committee can't really do anything.

6. The Committee tries to hold hearings on timely issues; they have held hearings on the automobile industry and on cap and trade issues.

7. When asked about the email that was sent to him from Jason Klindt (at Attachment 1) regarding finding a witness who did not share Representative Graves' financial holdings, he stated that the email from Jason Klindt was sent in reference to an older article which related to an issue in the Governor's race. During the race there was an issue regarding the renewable fuel standard. He could not recall specific facts but remembered that it was a topic of conversation during the race.

8. Jason Klindt was a campaign manager during that time.

9. With respect to the article that appeared in *Roll Call* in 2009 regarding Brooks Hurst's previous testimony before the Committee, he recalled that the article was about Representative Graves' relationship with Brooks Hurst and disclosure. He stated that the article was "out of sight" and he didn't tie the March hearing with the article. He knew Brooks Hurst was a friend of Representative Graves but he thought he would be a good witness.

10. When asked if there were other emails between staff and/or the Congressman, he stated that there could be but he thought that he had "got them all."

11. With respect to the hearing, he did not want a witness from any companies that Representative Graves was invested in – someone with their name on a business card. He does not have discussions of witnesses' personal financial records.

12. Tom Brown (Representative Graves Chief of Staff) mentioned the name Steve Flick to him.

13. When asked if he talked to Tom Brown about the hearing, he stated that he could have "verbally" talked about the hearing with him.

14. When asked if he talked to Tom Brown about Jason Klindt's email, he stated that he had and Tom Brown had suggested Steve Flick.

15. He threw out the idea of inviting Steve Flick because he wasn't from the 6th district. He did not believe that he worked for any of the companies but he resided outside the district.

16. When asked if he had a conversation with the Congressman, he stated that "Sam doesn't get involved in the process" and that he "ran it by him" (in an email) for input since it was an agricultural issue. He could not recall if the Congressman replied to the email. He may have, he liked the idea of Brooks Hurst. However, Brooks Hurst was away on vacation with his family.

17. Representative Graves rarely gets involved with the process, he got involved in this hearing because it was an agricultural issue.

18. When asked why Representative Graves liked Brooks Hurst as a witness, he stated that it was because he didn't like the other options staff had come up with. He probably talked to Representative Graves about Brooks Hurst's email (which provided a list of potential witnesses).

19. Dennis Alt from Show me Ethanol was out because it was one of the companies listed in Jason Klindt's email. Bill Becker didn't get along with Representative Graves. And an ethanol witness may not have been good because the majority identified with ethanol. He was not sure why Gary Clark was not good, he may not have been from the district.

20. The decision as to who will be selected as a witness is a group decision. The staff brainstorms and whittles down the list. There is no ultimate sign-off.

21. No one raised a flag on Brooks Hurst so they went with him. It was a group decision.

22. Joe Hartz and Karen Haas were not involved in the approval, he and Jason Klindt and Tom Brown decided on the witness.

23. He thinks that he suggested Brooks Hurst to Representative Graves. He definitely thought that it was his idea.

24. He had also suggested Brooks Hurst (to Representative Graves) to be a witness years ago when Representative Graves was on the subcommittee.

25. The invitation to be a witness technically comes from the Chairwoman of the Committee but he actually invited Brooks Hurst.

26. He left Brooks Hurst several emails but Brooks Hurst had not responded so he pushed using Bill Becker.

27. Bill Becker was already in DC.

28. He might have popped in Representative Graves' office to let him know that he couldn't get in touch with Brooks Hurst and to ask if they could go with Bill Becker instead.

29. When he gave Representative Graves all the witness options, Representative Graves may have played more of a roll but he was definitely leading the Congressman to go with Brooks Hurst.

30. When asked if his conversation with the Congressman included a discussion of the 2007 *Roll Call* article, he stated that they just didn't want a representative from one of the companies.

31. He thought Brooks Hurst was the best fit.

32. He did not believe that he was involved in discussions regarding the 2007 *Roll Call* article; he did not play a role in prepping Representative Graves for the interview.

33. Witnesses must disclose if they have contracts with the government, the Committee staff is not obligated to ask for witnesses' personal financial information.

34. As for other options, some individuals lived outside the district and they try to get someone within the district to testify. They wanted someone with strong ties to people in the district so they didn't use their contacts with any association in DC.

48. There was no discussion on factual questions of the shared investment. Representative Graves may have stated that he didn't know Brooks Hurst's investments.

49. Any conversation about the article lasted only a quick moment. Representative Graves poked his head in his office and ranted form a minute about the article. It would have been a brief conversation; Representative Graves can't sit down with anyone.

50. He and Representative Graves did not talk about the 2007 *Roll Call* article.

51. The Congressman had the same reaction to the 2007 article as to the 2009 article.

52. He was aware of the 2007 article but he did not think it was a big deal.

53. He does not play a role in preparing the Congressman's financial disclosure other than to walk the document down to get it stamped.

54. He does not review the Congressman's financial disclosure because he feels that it would be disrespectful.

55. When asked about Joe Hartz's email regarding the introduction for the hearing, he stated that the Chair can give the Ranking Member the opportunity to introduce witnesses. Joe Hartz asked him if he needed to write an introduction and he told Joe Hartz that he did not because the Congressman and Brooks Hurst were friends, but Representative Graves later wanted an introduction for the hearing. He had thought that Representative Graves would do the introduction off-the-cuff but he was wrong; so, Joe Hartz wrote the introduction at the hearing.

56. Brooks Hurst had not responded to his emails because he was skiing in Colorado. Brooks Hurst called on Friday morning to confirm that he could come. Once Brooks Hurst was on board he turned things over to Joe Hartz.

57. Representative Graves doesn't get involved in the weeds, everything is staff driven. Decisions can be made better that way. He may talk with Representative Graves once a week.

58. Representative Graves doesn't interact with staff; he talks more now but rarely.

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OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

Memorandum of Interview

| | |
|---|---|
| In Re: | Representative Graves' Communications Director |
| Review #: | 09-7000 |
| Date: | June 16, 2009 |
| Location: | Law Offices of Lathrop & Gage, Kansas City, MO |
| Time: | 11:00 am |
| Participants: | Leo Wise |
| | Elizabeth Horton |
| | Terry Brady |
| | Matt Hubbard |

Summary: Representative Graves' Communications Director was interviewed pursuant to Review 09-7000. We requested an interview with him and he consented to an interview. He was provided a copy of 18 U.S.C. 101 Representative Graves' Communications Director made the following statements in response to our questioning:

1. Representative Graves' Communications Director was given a copy of 18 U.S.C. § 1001, the False Statements Act, before he was interviewed and he signed a written acknowledgement of its receipt.

2. He has been Representative Graves' Communications Director since 2003, with breaks for work on various campaigns. He was Representative Graves' campaign manager for the 2008 and 2004 elections.

3. He received a mass email about the hearing, which he responded to, but he did not participate in any other email conversations. He may have been copied on other emails but he stated that he would not have responded to any other emails.

# Appendix E

# OCE's Report and Findings

111TH CONGRESS
*1st Session*

HOUSE OF REPRESENTATIVES

REVIEW NO.
09–7000

# OFFICE OF CONGRESSIONAL ETHICS UNITED STATES HOUSE OF REPRESENTATIVES

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## Report and Findings

Transmitted to the
Committee on Standards of Official Conduct
on August 6, 2009
and released publicly pursuant to H. Res. 895 of the
110th Congress as amended



August 2009

111TH CONGRESS
*1st Session*

HOUSE OF REPRESENTATIVES

REVIEW NO.
09–7000

# OFFICE OF CONGRESSIONAL ETHICS UNITED STATES HOUSE OF REPRESENTATIVES

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## Report and Findings

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August 2009

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# CONGRESSIONAL ETHICS

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Elizabeth Horton, *Investigative Counsel*

# REPORT

## Review No. 09–7000

The Board of the Office of Congressional Ethics, by a vote of no less than four members, on July 24, 2009, adopted the following report and ordered it to be transmitted to the Committee on Standards of Official Conduct of the U.S. House of Representatives.

SUBJECT: Representative Sam Graves

NATURE OF THE ALLEGED VIOLATION: Representative Sam Graves, Ranking Member of the Committee on Small Business, invited Witness A to testify at a Committee hearing on "The State of the Renewable Fuels Industry in the Current Economy." The hearing was held on March 4, 2009. Witness A and Representative Graves' wife, Lesley Graves, both hold financial interests in the same renewable fuels plants in Missouri. Representative Graves conduct may have violated House Rule 23 and House precedent regarding conflict of interest.

RECOMMENDATION: The Board of the Office of Congressional Ethics recommends that the Committee on Standards of Official Conduct further review the above described allegations concerning Representative Graves.

VOTES IN THE AFFIRMATIVE: 6

VOTES IN THE NEGATIVE: 0

MEMBER OF THE BOARD OR STAFF DESIGNATED TO PRESENT THIS REPORT TO THE STANDARDS COMMITTEE: Leo Wise, Staff Director & Chief Counsel.

# TABLE OF CONTENTS


I. INTRODUCTON ..... 5
A. Summary of Allegations ..... 5
B. Jurisdictional Statement ..... 6
C. Procedural History ..... 6
D. Summary of Investigative Activity ..... 7
II. REPRESENTATIVE GRAVES' WITNESS SELECTION FOR COMMITTEE ON SMALL BUSINESS HEARING ..... 7
A. Applicable Laws, Rules and Standards of Conduct ..... 7
B. Representative Graves' Wife, Lesley Graves, and Witness A Both Have Financial Interests in Renewable Fuels Plants Located in Craig and Mexico, Missouri. ..... 7
C. Representative Graves Invited Witness A to Testify Before the Committee on Small Business on the Renewable Fuels Industry. ..... 8
D. Representative Graves Appeared to be Aware of Potential Conflicts of Interest with Witness Selection Prior to the March 4, 2009 Committee Hearing. ..... 15
E. Representative Graves' Staff Appeared to be Aware of Potential Conflicts of Interest with Witness Selection Prior to the March 4, 2009 Committee Hearing. ..... 18
III. CONCLUSION ..... 21

# FINDINGS OF FACT AND CITATIONS TO LAW

## REVIEW NO. 09–7000

On July 24, 2009, the Board adopted the following findings of fact and accompanying citations to law, regulations, rules and standards of conduct (in italics). The Board notes that these findings do not constitute a determination that a violation actually occurred.

## I. INTRODUCTON

1. The House Ethics Manual ("the Manual") discusses the precedents guiding Members' actions on matters of personal financial interests. In voting matters, Members are required to abstain from voting on a matter in which they have a personal financial interest if the legislation affects the Member directly and not as one of a class. The Manual advises that other actions such as "sponsoring legislation, advocating or **participating in an action by a House committee**, or contacting an executive branch agency entail "a degree of advocacy above and beyond that involved in voting."[1] As such, a "Member's decision on whether to take any such action on a matter that may affect his or her personal financial interests requires added circumspection." A Member who considers advocating on a matter that may affect his personal financial interests is advised to first contact the Standards Committee for guidance."[2] The Manual further advises that Members should guard against even the appearance of any impropriety or conflict of interest because such actions may adversely affect public perceptions and confidence.[3]

### A. SUMMARY OF ALLEGATIONS

2. Based on the information before the OCE, there is substantial reason to believe that an appearance of a conflict of interest was created when Representative Graves invited Witness A, a friend of the Representative's who was invested in the same ethanol and biodiesel cooperatives as his wife, to testify before the Committee on Small Business.[4]

3. It appears that Representative Graves had knowledge of Witness A's investment in Golden Triangle Energy Cooperative ("Golden Triangle") and had reason to believe that Witness A was invested in Biofuels LLC ("Biofuels"), two companies in which Rep-

[1] COMM. ON STANDARDS OF OFFICIAL CONDUCT, 110TH CONG., HOUSE ETHICS MANUAL 237 (2008).

[2] *Id.*

[3] See COMM. ON STANDARDS OF OFFICIAL CONDUCT, 110TH CONG., HOUSE ETHICS MANUAL 24, 71, 88, 188, 200, 209, 211, 213, 215, 238, 290, 309, 321, 327, 352 (2008).

[4] As per Rule 9 of the OFFICE OF CONGRESSIONAL ETHICS, RULES FOR THE CONDUCT OF INVESTIGATION 11 (2009), the Board shall refer a matter to the Standards Committee if it determines there is a substantial reason to believe the allegation.

resentative Graves' wife, Lesley Graves, was also invested. As such, it follows that Representative Graves could expect Witness A to testify at the hearing in a manner consistent with Witness A's and his own financial interest.

4. Witness A informed OCE staff that while he was President of the Missouri Soybean Association he had approached Representative Graves about investing in Biofuels. In addition, Witness A's connection to Golden Triangle was previously acknowledged in the press, specifically in an article which included a quote from Representative Graves in which he stated that he "probably should have" disclosed his own interest in Golden Triangle during a previous hearing at which Witness A had testified.

5. Witness A also acknowledged that he had discussed Golden Triangle Energy with Representative Graves and that he had discussed Biofuels with him.

6. Based on emails and testimony, Representative Graves' wife's investments, as they related to witness selection, were raised as a potential conflicts issue when staff were considering witnesses for the March hearing.

7. Representative Graves' Chief of Staff informed OCE staff that it was his practice to contact the Standards Committee when questions concerning conflicts of interest arose but that he did not review Representative Graves' financial disclosure statement.

### B. JURISDICTIONAL STATEMENT

8. The allegations that are the subject of this review concern Representative Sam Graves, a Member of the United States House of Representatives from the 6th District of Missouri. The Resolution the United States House of Representatives adopted creating the Office of Congressional Ethics directs that, "[n]o review shall be undertaken" . . . by the board of any alleged violation that occurred before the date of adoption of this resolution."[5] The House adopted this Resolution on March 11, 2008. Because the conduct under review occurred or relates to actions taken after March 11, 2008, review by the Office of Congressional Ethics is in accordance with the Resolution.

### C. PROCEDURAL HISTORY

9. A preliminary review in this matter commenced on April 2, 2009, following a written request by at least two members of the OCE Board made on March 26, 2009.

10. At least three members of the Board voted to initiate a second-phase review in this matter on April 24, 2009. The Board voted to extend the 45-day second-phase review by an additional 14 days, as provided for under the Resolution, on June 12, 2009.

11. The second-phase review ended on June 30, 2009.

12. The Board voted to refer the matter to the Committee on Standards of Official Conduct for further review and adopted these findings on July 24, 2009.

13. This report and findings were transmitted to the Committee on Standards of Official Conduct on August 6, 2009.

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[5] H. Res 895, 110th Cong. § 1(e) (2008) (as amended).

D. SUMMARY OF INVESTIGATIVE ACTIVITY

14. Over the course of its Review, the Office requested and/or gathered testimonial and documentary evidence from a number of sources.

15. The Office interviewed:

(1) Representative Sam Graves;
(2) Representative Graves' then Deputy Chief of Staff;
(3) Representative Graves' Chief of Staff;
(4) Representative Graves' Communication Director; and
(5) Witness A.

16. In addition, the office requested and received documents from:

(1) Representative Sam Graves and
(2) Witness A

## II. REPRESENTATIVE GRAVES' WITNESS SELECTION FOR COMMITTEE ON SMALL BUSINESS HEARING

A. APPLICABLE, LAWS, RULES AND STANDARDS OF CONDUCT

17. Code of Official Conduct:

***Under House Rule 23 clause 2, Members "shall adhere to the spirit and the letter of the Rules of the House . . ."***

*Under House Rule 3 clause 1, "Every Member . . . shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question."*

*The House Ethics Manual advises "sponsoring legislation, advocating or participating in an action by a House committee, or contacting an executive branch agency . . . entails a degree of advocacy above and beyond that involved in voting, and thus a Member's decision on whether to take any such action on a matter that may affect his or her personal financial interests requires added circumspection."*

*The House Ethics Manual further advises that Members should guard against even the appearance of any impropriety or conflict of interest because such actions may adversely affect public perceptions and confidence.*[6]

B. REPRESENTATIVE GRAVES' WIFE, LESLEY GRAVES, AND WITNESS A BOTH HAVE FINANCIAL INTERESTS IN RENEWABLE FUELS PLANTS LOCATED IN CRAIG AND MEXICO, MISSOURI.

18. Representative Graves' wife, Lesley Graves, is invested in two Missouri nonprofit cooperative marketing associations, Golden Triangle Energy Cooperative ("Golden Triangle") located in Craig, Missouri and Biofuels LLC ("Biofuels") located in Mexico, Missouri.[7] Mrs. Graves' shares in Golden Triangle represent approximately a 0.18% interest in the cooperative which is valued between

[6] COMM. ON STANDARDS OF OFFICIAL CONDUCT, 110TH CONG., HOUSE ETHICS MANUAL 24, 71, 88, 188, 200, 209, 211, 213, 215, 238, 290, 309, 321, 327, 352 (2008).

[7] Statement for Golden Triangle, Biofuels LLC, and Show Me Ethanol (Exhibit 1 at 09–7000—000002–000004).

$1,000 and $15,000.[8] Mrs. Graves owns 50 units in the Biofuels cooperative which are valued between $15,000 and $50,000.[9]

19. Representative Graves disclosed both of Mrs. Graves' holdings on his 2008 financial disclosure report. A third company, Show Me Ethanol, is also disclosed on the 2008 report.[10] However, Mrs. Graves sold her interest in Show Me Ethanol on October 3, 2008.[11]

20. In a letter to the OCE staff, Witness A confirmed that he was invested in both Golden Triangle and Biofuels and stated that he was not invested in Show Me Ethanol.[12] Witness A's shares in Golden Triangle represent approximately a 0.50% interest in the cooperative.[13] Witness A owns three shares of stock (1/3 of 1 percent) in Biofuels, valued at $45,000.[14]

21. When interviewed by OCE staff, Representative Graves stated that investments were not something he talks about with Witness A. He could not say what Witness A was invested in because Witness A "goes in and out of investments."[15]

22. The Board notes, however, that Witness A informed OCE staff that he may have spoken with Representative Graves about Golden Triangle at some point in time and that he would have talked with him about Biofuels.[16]

23. In addition, the Board notes that Witness A informed OCE staff that he approached Representative Graves about investing in Biofuels.[17] Witness A stated that he was responsible for recruiting investors for Biofuels and Paseo Cargill. He further stated that he handed out numerous prospectuses to individuals for both entities and that he was responsible for marketing the businesses. He recalled that he gave Representative Graves a prospectus but he did not check with him to see if he had invested in the plant.[18] As stated above, Representative Graves did, in fact, invest in Biofuels.

C. REPRESENTATIVE GRAVES INVITED WITNESS A TO TESTIFY BEFORE THE COMMITTEE ON SMALL BUSINESS ON THE RENEWABLE FUELS INDUSTRY.

24. On February 24, 2009, the Chairwoman of the Committee on Small Business notified Committee staff that a full Committee Hearing entitled "The State of the Renewable Fuels Industry in the Current Economy" was to be held on March 4, 2009.[19]

25. After receiving notice of the meeting, Joe Hartz (a member of the professional staff in the Republican Office of the Committee

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[8] Statement for Golden Triangle (Exhibit 1 at 09–7000—000002).
[9] Statement for Biofuels LLC (Exhibit 1 at 09–7000—000003).
[10] Representative Graves' 2008 Financial Disclosure Statement (Exhibit 2 at 09–7000—000009).
[11] Statement for Show Me Ethanol (Exhibit 1 at 09–7000—000004).
[12] Letter to Leo Wise, Staff Director and Chief Counsel, Office of Congressional Ethics from Witness A, Apr. 29, 2009 (Exhibit 3 at 09–7000—000015).
[13] Letter from Sheri Sharp, Controller, Golden Triangle Energy, LLC, to Witness A, Apr. 27, 2009 (Exhibit 3 at 09–7000—000017).
[14] Letter from JP Dunn, Director of Field Services, Biofuels, LLC, Apr. 24, 2009 (Exhibit 3 at 09–7000—000016).
[15] Memorandum of Interview of Representative Sam Graves, June 15, 2009 (Exhibit 4 at 09–7000—000031).
[16] Memorandum of Interview of Witness A, July 13, 2009 (Exhibit 5 at 09–7000—000042).
[17] Memorandum of Interview of Witness A, July 13, 2009 (Exhibit 5 at 09–7000—000041).
[18] *Id.*
[19] Memorandum to Members of the House Small Business Committee, Mar. 4, 2009 (Exhibit 6 at 09–7000—000045).

on Small Business) notified Representative Graves' then Deputy Chief of Staff of the hearing.[20]

26. Representative Graves' then Deputy Chief of Staff immediately forwarded Mr. Hartz's email to members of Representative Graves' staff asking for suggestions for a witness to testify at the hearing.[21]

**From:** Sass, Paul
**To:** Endicott, Alicia; Higdon, Chad; Klindt, Jason; Kraus, Tommy; Kreps, Angela; Loch, Brittney; Roe, Melissa; Searcy, Shawna; Shupe, Brooke; Smith, Buffy; Swendson, Jaime; Woodward, Sarah
**Cc:** Brown, Tom
**Sent:** Tue Feb 24 13:53:16 2009
**Subject:** Renewable fuels hearing

Please see the email below and let me know if you have any suggestions on who can testify next week on renewable energy. All I need are the names and I can follow up with them and provide more information.

Thanks everyone.

Paul

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**From:** Hartz, Joe
**Sent:** Tuesday, February 24, 2009 1:47 PM
**To:** Sass, Paul
**Subject:** Renewable fuels

The majority just let us know (about 15 minutes ago) that next week there will be a hearing on renewable fuels. I know nothing other than that. I have made the calls to the majority to find out. Don't know what the angle is, but is there anybody back in the district who has come to the office to talk alternative fuels that might be a good witness?

Chances that we'll find someone and be able to get them here by next week is slim, but thought I'd ask. The majority needs to do a better job on letting us know what the schedule is.

Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

27. Several members of Representative Graves' staff responded the same day with numerous suggestions for witnesses:

(a) "Steve Flick or an investor at Golden Triangle . . ."[22]

**From:** Shupe, Brooke
**Sent:** Tuesday, February 24, 2009 1:57 PM
**To:** Sass, Paul
**Subject:** Re: Renewable fuels hearing

It would be nice if we had more info on the topic! Oh well....what about Steve Flick or an investor at Golden Triangle....Sam might have a good suggestion there.

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Sent from my BBerry Wireless Device

[20] Emails provided by Representative Sam Graves (Exhibit 7 at 09–7000—000047).
[21] *Id.* at 09–7000—000048.
[22] *Id.*

(b) "Dave Flicks brother" (presumably another reference for Steve Flick):[23]

**From:** Brown, Tom
**Sent:** Tuesday, February 24, 2009 3:15 PM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels hearing

Paul – See me about this. David Flicks brother??

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(c) "Dale Ludwig: [24]

**From:** Roe, Melissa
**Sent:** Tuesday, February 24, 2009 4:36 PM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels hearing

Only folks that come to mind are the heads of the soybean and ethanol groups...Dale Ludwig, etc.

28. Representative Graves' Chief of Staff informed OCE staff that he had been impressed by the Flicks on another occasion.[25]

29. According to Representative Graves' then Deputy Chief of Staff, Representative Graves dismissed the idea of inviting Mr. Flick to testify because Mr. Flick lived outside Representative Graves' district and Representative Graves wanted a witness from the 6th district to testify at the hearing.[26]

30. Representative Graves' then Deputy Chief of Staff emailed Representative Graves separately to notify him of the hearing and to ask who he would like to appear as a witness.[27]

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 4:44 PM
**To:** SamG
**Subject:** hearing on renewable fuels

The small business committee is doing a hearing on renewable fuels next week. Do you have anybody off the top of your head who we should invite? Last time we had a hearing on the topic you invited Brooks and Charlie Hurst. Any one you want me to call? Steve Flick?

Paul J. Sass
Deputy Chief of Staff
Congressman Sam Graves (MO-6)
(202) 225-[redacted]

31. When interviewed by OCE staff, Representative Graves stated that he suggested Witness A's name for consideration but that it was not his decision to choose Witness A. He further stated that he does not choose witnesses for hearings and that he did not know who on his staff was responsible for making those decisions. He believed his then Deputy Chief of Staff or Karen Haas may have made the decision to invite Witness A.[28]

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[23] *Id.* at 09–7000—000050.
[24] *Id.* at 09–7000—000053.
[25] Memorandum of Interview of Representative Graves' Chief of Staff, June 16, 2009 (Exhibit 8 at 09–7000—000095).
[26] Memorandum of Interview of Representative Graves' then Deputy Chief of Staff, June 16, 2009 (Exhibit 9 at 09–7000—000107).
[27] Emails provided by Representative Sam Graves (Exhibit 7 at 09–7000—000054).
[28] Memorandum of Interview of Representative Sam Graves, June 15, 2009 (Exhibit 4 at 09–7000—000028–000029).

32. In an email dated February 25, 2009, Representative Graves' then Deputy Chief of Staff notified Mr. Hartz and Karen Haas that Representative Graves wanted him to extend an invitation to Witness A.[29] This email, specifically the statement "he wants me to extend an invitation to him" contradicts Representative Graves' statement that he did not choose the witness for the March hearing and that he did not know who had made the decision to invite Witness A.

**From:** Sass, Paul
**To:** Hartz, Joe; Haas, Karen
**Cc:** Shupe, Brooke
**Sent:** Wed Feb 25 09:52:41 2009
**Subject:** RE: Renewable fuels
Back in 2004 SG had a friend (Brooks Hurst) who is a member of the MO Soybean Assn testify on a similar topic and he wants me to extend an invitation to him. I am calling him today to gauge his interest.

Joe let me know if you have any more details on the hearing so I can pass them along.

Also, a contingent of MO Corn Growers will be in town next week with several folks from the 6th tagging along. If Mr. Hurst can't make it to town than the MO Corn Growers will be our plan B.

33. In his interview with OCE staff, Witness A stated that it was Representative Graves that contacted him to ask if he was available to testify at the hearing.[30] Representative Graves did not tell OCE that he had, in fact, contacted Witness A and asked him to testify.

34. Based on later email responses from other staff members, it appears that other individuals in addition to those initially suggested by staff were available to testify at the March 4 hearing. Chad Higdon suggested Bill Becker on February 25, 2009:[31]

**From:** Higdon, Chad
**Sent:** Wednesday, February 25, 2009 10:50 AM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels hearing

Anyone at Golden Triangle in Craig

Bill Becker at Lifeline would be good.

There is also a new biodiesel plant going in St. Joe, about 95% done but are dealing with some overrun costs right now. I could find you a contact there.

Also might be good to get an actual grain farmer to come in if it fits

[29] Emails provided by Representative Sam Graves (Exhibit 7 at 09–7000—000070).
[30] Memorandum of Interview of Witness A, July 13, 2009 (Exhibit 5 at 09–7000—000040).
[31] Emails provided by Representative Sam Graves (Exhibit 7 at 09–7000—000065).

35. On February 25, 2009, Brooke Shupe forwarded an email with additional names of individuals that were already scheduled to be in Washington on the day of the hearing.[32]

**From:** Shupe, Brooke
**Sent:** Wednesday, February 25, 2009 10:04 AM
**To:** Sass, Paul
**Subject:** FW: S.B hearing

Paul,

Jessica's e-mail is below. Dennis Alt is from Carrollton and Bill Becker is from St. Joe. They will already be in town so if Brooks can't come, one of these guys might work and they would be happy to do it. Thanks.

Brooke

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**From:** Jessica Bennett [mailto:[redacted]@dc.ncga.com]
**Sent:** Wednesday, February 25, 2009 9:42 AM
**To:** Shupe, Brooke
**Subject:** S.B hearing

Hi Brooke,

Per our conversation, we will have some folks in DC next week from the MO Corn Growers. We would welcome the opportunity to testify at Wednesday's hearing in the Small Business Committee if you are looking for someone. I have listed below some of the individuals who will be in town.

Dennis Alt - Interim CEO Show Me Ethanol

Bill Becker - CEO Lifeline Foods & Ethanol
Gary Clark - Senior Director of Market Development

Please let me know if there's anything else I can do to help.

Thanks!

Jessica

[32] *Id.* at 09–7000—000069.

36. Representative Graves' then Deputy Chief of Staff forwarded Ms. Shupe's email to staff asking for thoughts on Mr. Becker. He stated in the email that Representative Graves did not want Mr. Becker to testify but had agreed for him to do so if Witness A could not. Representative Graves' then Deputy Chief of Staff later followed up with an email to staff stating that Representative Graves had spoken with Witness A and that he was able to testify.[33] The Board notes this email also contradicts Witness Representative Graves' statement that he did not know who had invited Witness A to testify.

**From:** Sass, Paul
**Sent:** Thursday, February 26, 2009 5:09 PM
**To:** Smith, Buffy; Brown, Tom; Klindt, Jason
**Subject:** RE: small biz hearing

Ok, I just spoke with Sam and apparently Brooks Hurst is back on board. It will get nailed down tomorrow. I got Sam to agree to allowing Bill Becker to testify if Brooks doesn't work out.

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**From:** Smith, Buffy
**Sent:** Thursday, February 26, 2009 5:06 PM
**To:** Sass, Paul; Brown, Tom; Klindt, Jason
**Subject:** RE: small biz hearing

I have heard of him, but don't know anything about him.

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**From:** Sass, Paul
**Sent:** Thursday, February 26, 2009 5:01 PM
**To:** Brown, Tom; Klindt, Jason; Smith, Buffy
**Subject:** small biz hearing

You guys have any thoughts on Bill Becker? When I mentioned him to SG he didn't want to have him do it, but I'm not sure why. At this point its our only options other then a Show Me Ethanol person.

37. When interviewed by OCE staff, Representative Graves stated that he did not recall why he did not want Mr. Becker to testify or why he was considered as an alternate; he stated that he thought that the office may have worked on a grant issue for Lifeline, the company at which Mr. Becker was CEO, and for that reason excluded him from consideration.[34]

[33] *Id.* at 09–7000–000073.
[34] Memorandum of Interview of Representative Sam Graves, June 15, 2009 (Exhibit 4 at 09–7000—000030).

38. Representative Graves' then Deputy Chief of Staff emailed staff on February 26, 2009, to confirm that Witness A was to testify and to notify staff that Witness A was one of Representative Graves' best friends.[35]

**From:** Sass, Paul
**Sent:** Friday, February 27, 2009 1:59 PM
**To:** Hartz, Joe
**Cc:** Haas, Karen
**Subject:** renewable fuels witness

Joe,

I received confirmation from Brooks Hurst that he is willing and able to testify next week. I told him that you will follow up with him shortly with the details. In order to get his flight paid for I believe he wants to testify on behalf of the Soybean Association, but I told him to go over all that with you. His cell number is [redacted] and his email is [redacted]@embarqmail.com and he is expecting to hear from you.

Thanks Joe and let me know if you need anything else,

Paul

FYI-This is one of SG's best friends. They live in the same town etc. Very tight.

Paul J. Sass
Deputy Chief of Staff
Congressman Sam Graves (MO-6)
(202) 225-[redacted]

39. Witness A testified before the Committee on Small Business on March 4, 2009.[36]

40. When asked why Witness A was chosen as a witness, Representative Graves stated that there was a "time frame issue" with finding a witness for the hearing and that they needed to find someone who knew renewable fuels. Representative Graves described Witness A as "the foremost person" with knowledge on renewable fuels.[37]

41. When asked why Witness A was the "foremost person", Representative Graves stated that Witness A was the President of the Missouri Soybean Association, was involved with the corn growers, and that he testified throughout the country on renewable fuels.[38]

42. Witness A was introduced at the hearing by Representative Graves as a farmer from northwest Missouri whose family was very active in biodiesel and ethanol production. In his testimony, Witness A also described himself as being an investor in a small ethanol plant in the town of Craig, Missouri.[39]

43. Neither Representative Graves nor Witness A disclosed that Representative Graves' shared financial interests with Witness A during the Committee hearing.

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[35] Emails provided by Representative Sam Graves (Exhibit 7 at 09–7000—000079).

[36] Witness List for House Committee on Small Business, Mar. 4, 2009 (Exhibit 11 at 09–7000—000119).

[37] Memorandum of Interview of Representative Sam Graves, June 15, 2009 (Exhibit 4 at 09–7000—000029).

[38] *Id.*

[39] Testimony of Witness A before the House of Representatives Small Business Committee, Mar. 4, 2009, available at, *http://www.youtube.com/view—play—list?p=A5AA7A25C5CF0401* (Renewable Fuels in the Current Economy—7).

D. REPRESENTATIVE GRAVES APPEARED TO BE AWARE OF POTENTIAL CONFLICTS OF INTEREST WITH WITNESS SELECTION PRIOR TO THE MARCH 4, 2009 COMMITTEE HEARING.

44. On November 7, 2007, Roll Call reported that Representative Graves joined several other Midwestern lawmakers in sponsoring legislation to create a national mandate for the use of increasing quantities of biodiesel as a replacement for regular diesel fuel.[40] The article noted that the bill would potentially benefit Representative Graves wife, Lesley, who in 2005 invested $15,000 in a new biodiesel plant (Biofuels) that had become the largest biodiesel facility in the state.[41] The article also noted that in May of 2004, when Representative Graves was Chairman of the Subcommittee on Rural Enterprises, Agriculture and Technology, (a subcommittee of the full Committee on Small Business) the panel held a hearing on renewable fuels and tax incentives for ethanol and biodiesel.[42] One of the witnesses for the hearing was the treasurer of Golden Triangle, a cooperative in which Representative Graves' wife was and continues to be invested.[43] A second witness, Witness A in the current matter, spoke on behalf of the Missouri Soybean Association about the importance of a tax incentive for the use of biodiesel in blends with regular diesel fuel.[44] The 2007 Roll Call article further noted that a year after the 2004 hearing, Witness A, along with other Missouri farmers, established a new company to build a biodiesel plant in Missouri.[45] Witness A is quoted in the Roll Call article as stating that he recruited Representative Graves' family to invest in the new company. Mrs. Graves is reported as having invested $15,000 in the new venture.[46]

45. Witness A informed OCE staff that he had recruited Representative Graves to invest in Biofules.[47] Representative Graves' disclosed his wife's interest in Biofuels on his 2008 Financial Disclosure Statement.[48]

46. A second article was published on December 6, 2007, in the Kansas City Star. The article noted that Witness A and his father were invited to testify before the Small Business Subcommittee to promote federal subsidies for the renewable fuels industry in 2004.[49] It further noted that Witness A and his father were identified at the hearing as members of Golden Triangle but that Representative Graves' financial connection to the cooperative was not disclosed at the hearing. Representative Graves is quoted in the article as saying that failing to disclose his connection to Golden Tri-

[40] The legislation co-sponsored by Representative Graves' in October of 2007 was H. Con. Res. 25 (Exhibit 13 at 09–7000—000129).

[41] Paul Singer, Biofuels, Flights Benefit Graves, ROLL CALL, Nov. 7, 2007 (Exhibit 14 at 09–7000—000131).

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] Memorandum of Interview of Witness A, July 13, 2009 (Exhibit 5 at 09–7000—000041).

[48] Representative Graves' 2008 Financial Disclosure Statement (Exhibit 2 at 09–7000—000009).

[49] Steve Kraske, Family ties to ethanol plant draw questions for Rep. Graves, KAN. CITY STAR, Dec. 6, 2007 at B1 (Exhibit 15 at 09–7000—000135).

angle at the hearing was a mistake and that "[l]ooking back on it, I probably should have."[50]

47. As noted above, Witness A was invited again by Representative Graves to testify before the Committee on Small Business on March 4, 2009.[51]

48. Witness A informed the Committee that he volunteered with the Missouri Soybean Association and that he normally testified on behalf of the association. He also stated that the association prepared his testimony and prepped him for the 2009 hearing.[52]

49. During his oral testimony and in his written testimony, Witness A recommended that Congress "extend the federal Biodiesel Blender's Credit, include glycerin in the federal Bio-based Fuel Blender's Credit, and implement the Renewable Fuels Standard."[53] Witness A is further quoted as saying that the blending credit would help one of the biodiesel plants he was involved in by minimizing the risk in "booking business forward."[54]

50. When asked by OCE staff if he was aware of Witness A's investments in 2004, Representative Graves stated that he was not aware of Witness A's investments.[55]

51. Representative Graves further stated that Witness A was not testifying on behalf of Golden Triangle or ethanol at the 2009 hearing, he was testifying on biodiesel issues.[56] He further stated that he never really thought about the 2007 articles before the 2009 hearing, he only thought about the fact that they had to find someone to testify at the hearing who knew what they were talking about and that Witness A knew the issue.[57]

52. When asked by OCE staff about Witness A's recommendation to extend the Blender Fuel Credit ("BFC"), Representative Graves stated that the BFC was the "big issue" but that it was an agricultural issue, "probably the hottest issue in the industry."[58]

53. Representative Graves stated that he did not remember Witness A's recommendation for the BFC but that he would not be surprised if he had made the recommendation.[59] He further stated that it would also not surprise him if Witness A supported the Renewable Fuels Standard ("RFS").[60] He was sure the corn growers supported the RFS, as it was their biggest issue.[61]

54. With respect to Witness A's testimony regarding the plant that he was having difficulties "booking business forward", Representative Graves stated that he did not know which plant Witness A was referring to nor did he know how many businesses Witness A was invested in.[62] He further stated that if it was a glycerin

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[50] *Id.*
[51] Memorandum of Interview of Witness A, July 13, 2009 (Exhibit 5 at 09–7000—000040).
[52] *Id.* at 09–7000—000041.
[53] Written Testimony of Witness A, Mar. 4, 2009 (Exhibit 12 at 09–7000—000126).
[54] *Id.*
[55] Memorandum of Interview of Representative Sam Graves, June 15, 2009 (Exhibit 4 at 09–7000—000032).
[56] *Id.* at 09–7000—000033.
[57] *Id.*
[58] *Id.*
[59] *Id.* at 09–7000—000034.
[60] *Id.*
[61] *Id.*
[62] *Id.*

plant, then it would have been Biofuels but he was not sure ("he did not understand the glycerin deal.")[63]

55. When asked by OCE staff if he recalled the 2007 Roll Call and Kansas City Star articles, Representative Graves stated that he saw the articles after this issue came up with OCE but he felt that opponents "bring this type of thing that feed these types of articles."[64]

56. While Representative Graves stated that he did not recall the 2007 Kansas City Star article, when asked by OCE staff about a quote he made that appeared in the article, he stated that the quote was inaccurate.[65] He informed OCE staff that he actually said that looking back he probably should have disclosed the investments he shared with Witness A "if he had known what [Witness A] investments were."[66] The Board notes that while Representative Graves stated that he did not recall the article, he claimed to remember the precise quote he had given to the reporter.

57. In his interview with OCE, Witness A stated that he did not recall the 2007 Roll Call or Kansas City Star article but that he had seen articles about Representative Graves during campaign years and he did not pay attention to them because he felt they were a campaign tactic.[67] He further stated that he was sure that he would have spoken to Representative Graves about the articles at the time they were published but that he did not think much of the issue because "neither of us owned enough stock to make a difference."[68]

58. Witness A stated that he did not recall the statement he made during the March hearing about the biodiesel plant that was having trouble booking future business but he was sure the plant he was referring to must have been Biofuels or Paseo Cargill.[69] He further stated that he tries to use personal examples in prepared testimony to make a more personal connection to the subject matter.[70]

59. Witness A stated that the articles on his prior testimony did not come up in conversations when he was asked to testify at the March 2009 hearing.[71] He further stated that he had forgotten about the articles until now.[72]

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[63] *Id.*
[64] *Id.* at 09–7000—000032
[65] *Id.*
[66] *Id.*
[67] Memorandum of Interview of Witness A, July 13, 2009 (Exhibit 5 at 09–7000—000041).
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] *Id.* at 09–7000—000042.
[72] *Id.*

E. REPRESENTATIVE GRAVES' STAFF APPEARED TO BE AWARE OF POTENTIAL CONFLICTS OF INTEREST WITH WITNESS SELECTION PRIOR TO THE MARCH 4, 2009 COMMITTEE HEARING.

60. On the afternoon of February 24, 2009, Representative Graves' Communications Director responded to Representative Graves' then Deputy Chief of Staff's email, which asked for suggestions for a witness for the hearing, stating, "[l]ets make sure that we do not get a renewable company that SG or his wife is invested in."[73]

**From:** Klindt, Jason
**Sent:** Tuesday, February 24, 2009 2:56 PM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels hearing

*Lets make sure that we do not get a renewable company that SG or his wife is invested in.*

61. Representative Graves' then Deputy Chief of Staff replied to Mr. Hartz later that afternoon and asked which companies Representative Graves was invested in.[74]

[73] Emails provided by Representative Sam Graves (Exhibit 7 at 09–7000—000051).
[74] *Id.*

62. Mr. Hartz replied providing Representative Graves' then Deputy Chief of Staff with the names of three companies—Golden Triangle, Biofuels LLC, and Show Me Ethanol.[75]

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 4:17 PM
**To:** Klindt, Jason
**Subject:** RE: Renewable fuels hearing

Thanks Jason,

There is something up in St. Joe, but we might go we Steve Flick from Show me Energy, which is just south of the district. Last time we did this we have Brooks Hurst come out on behalf of the MO Soybean Assn.

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**From:** Klindt, Jason
**Sent:** Tuesday, February 24, 2009 4:15 PM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels hearing

Golden Triangle (Craig), BioFuels LLC (Mexico, Mo) and Show Me Ethanol (Carrollton)

Isn't there a renewable energy plant/thing in St. Joseph?

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**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 4:08 PM
**To:** Klindt, Jason
**Subject:** RE: Renewable fuels hearing

Which ones are they again?

63. When interviewed by OCE staff, Representative Graves' Communications Director stated that after he received the mass email about the hearing, articles in the press about Show Me Ethanol came to his mind.[76] Several articles had been published about a funding issue related to Show Me Ethanol during the campaign in 2008.[77] He stated that he emailed Representative Graves' then Deputy Chief of Staff about Representative Graves' holdings because he was trying to avoid bad press.[78] According to Representative Graves' Communications Director, the articles were not about Representative Graves or his wife; instead they dealt with an issue between the state's Governor and the state's Treasurer.[79] The state's Treasurer was denying funding for Show Me Ethanol because the Governor's brother and a state representative were invested in the company.[80] Mrs. Graves was mentioned in the articles because she was also an investor.[81] Representative Graves' Communications Director stated that Mrs. Graves sold her interest in Show Me Ethanol because she did not want to be an impediment for Show Me Ethanol to get state funding.[82]

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[75] *Id.*
[76] Memorandum of Interview of Representative Graves' Communications Director, June 16, 2009 (Exhibit 16 at 09–7000—000140).
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] *Id.*

64. One of the articles mentioned by Representative Graves' Communications Director, "Conflicts of interest stop ethanol plant from getting state aid" was published on January 21, 2008.[83]

65. Representative Graves' Communications Director further stated that he called Representative Graves' then Deputy Chief of Staff the Friday before the hearing to see if the office had found a witness and he was told that Witness A was going to testify.[84] He informed OCE staff that the only thing that came to his mind regarding Witness A was the Congressman's and Witness A's shared interest in aviation.[85]

66. Representative Graves' Communications Director also stated that he did not know what Witness A did, if anything, on behalf of Golden Triangle. He thought that he was just an investor.[86]

67. When asked by OCE staff whether Representative Graves' Communications Director's email raised any concerns with respect to Witness A, Representative Graves' then Deputy Chief of Staff stated that he did not want to use a witness from any of the three companies named in the email—"someone with their name on a business card."[87] He stated that he did not have discussions of witnesses' personal financial records.[88] He further stated that witnesses must disclose if they have contracts with the government but they are not obligated to provide personal financial information.[89]

68. When asked if the Congressman's friendship with Witness A was an issue, Representative Graves' then Deputy Chief of Staff stated that it was not because Witness A was a credible witness and that he was involved with "all the associations."[90]

69. When interviewed by OCE staff, Representative Graves' Chief of Staff stated that he did not recall the 2007 Roll Call article.[91] He vaguely recalled the Kansas City Star article when it was shown to him by OCE staff. He further stated that something like the Roll Call article did not happen without comment (in other words he would have discussed it with Representative Graves), but he felt that the reporter was way off.[92] He felt the article was for headlines for their opponent.[93] He thought both articles were merely political.[94]

70. Representative Graves' Chief of Staff informed OCE staff that he called the Standards Committee about conflict of interest issues and that there was also a lawyer in the office at that time that would consult Standards on issues that arose.[95] He stated that if he thought there was any issue with the hearing, he would have

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[83] Steve Kraske, Conflicts of interest stop ethanol plant from getting state aid, KAN. CITY STAR, Jan. 21, 2008 (Exhibit 17 at 09–7000—000144).

[84] Memorandum of Interview of Representative Graves' Communications Director, June 16, 2009 (Exhibit 16 at 09–7000—000140).

[85] *Id.*

[86] *Id.* at 09–7000—000141.

[87] Memorandum of Interview of Representative Graves' then Deputy Chief of Staff, June 16, 2009 (Exhibit 9 at 09–7000—000106).

[88] *Id.*

[89] *Id.* at 09–7000—000108.

[90] *Id.* at 09–7000—000109.

[91] Memorandum of Interview of Representative Graves' Chief of Staff, June 16, 2009 (Exhibit 8 at 09–7000—000096).

[92] *Id.* at 09–7000—000095.

[93] *Id.* at 09–7000—000096.

[94] *Id.*

[95] *Id.*

contacted Standards.[96] However, he further stated that he had never reviewed Representative Graves' financial disclosure statement.

71. When interviewed by OCE staff, Representative Graves stated that he did not know why the conflict of interest issue would come up.[97] He further stated that neither his Communications Director nor his then Deputy Chief of Staff raised the issue with him.[98]

## III. CONCLUSION

72. The House Ethics Manual states that "advocating or participating in an action by a House committee . . . entails a degree of advocacy above and beyond that involved in voting and thus a Member's decision on whether to take any such action on a matter that may affect his or her own personal financial interests requires added circumspection." Further, such actions may implicate the standards of House Rule 3 Clause 1.[99]

73. The Board notes that the House Ethics Manual does not provide precise guidance for conflicts of interest where a Member has a personal financial interest in Committee actions as Congressman Graves has in this matter. However, the House Ethics Manual advises in numerous instances that Members should guard against even the appearance of any impropriety or conflict of interest because such actions may adversely affect public perceptions and confidence.[100]

74. To be clear, the Board is aware that the House Ethics Manual does not expressly prohibit a Member from participating in Committee actions, including selecting a witness for a hearing where the Member and witness share a financial interest that may be affected by the hearing. However, based on the information before the OCE, there is substantial reason to believe that Representative Graves' invitation to Witness A to testify before the Committee on Small Business on a matter that related to both Witness A's and his own financial interests created an appearance of a conflict of interest.

75. It appears that Representative Graves had knowledge of Witness A's investment in Golden Triangle and had reason to believe that Witness A was also invested in Biofuels. As such, it follows that Representative Graves could expect Witness A to testify at the hearing in a manner beneficial to both Witness A and his own financial interests.

76. The Board notes that Representative Graves' lack of candor in his responses to OCE staff denotes a level of knowledge that his invitation to Witness A to testify before the Committee on Small Business was problematic.

77. Representative Graves informed OCE staff that he did not choose Witness A to testify before the Committee on Small Busi-

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[96] *Id.*

[97] Memorandum of Interview of Representative Sam Graves, June 15, 2009 (Exhibit 4 at 09–7000—000030).

[98] *Id.*

[99] COMM. ON STANDARDS OF OFFICIAL CONDUCT, 110TH CONG., HOUSE ETHICS MANUAL 237 (2008).

[100] See COMM. ON STANDARDS OF OFFICIAL CONDUCT, 110TH CONG., HOUSE ETHICS MANUAL 24, 71, 88, 188, 200, 209, 211, 213, 215, 238, 290, 309, 321, 327, 352 (2008).

ness nor did he know who did. However, statements made to OCE staff by Representative Graves' staff and emails submitted to the OCE by Representative Graves show otherwise.

78. On the afternoon of February 24, 2009, Representative Graves' then Deputy Chief of Staff asked Representative Graves in an email who he wanted to invite to testify at the March hearing; the following morning Representative Graves' then Deputy Chief of Staff sent an email to Committee staff members Joe Hartz and Karen Haas that stated Representative Graves wanted him to extend an invitation to Witness A. Witness A also informed OCE staff that it was Representative Graves that called him to ask him to testify at the hearing.

79. Representative Graves also told OCE staff that he was not aware of Witness A's investments. However, Witness A informed OCE staff that he had spoken with Representative Graves about Golden Triangle and that he had recruited the Congressman's family to invest in Biofuels. Witness A further stated that he had spoken with Representative Graves about Biofuels.

80. It further appears that Representative Graves knew of and disregarded the probability that inviting Witness A to testify, without disclosing the financial interests he shared with Witness A, would create an appearance of a conflict of interest. In 2007, Representative Graves himself acknowledged in the Kansas City Star article that his failure to disclose his connection to Golden Triangle at a 2004 subcommittee hearing was a mistake and that he probably should have disclosed his interest in Golden Triangle at the hearing.

81. For the reasons stated above, the Board finds there is substantial reason to believe that the guidance in the House Ethics Manual—advising Members to employ "added circumspection" when participating in actions that may affect their personal financial interest and to guard against taking any action that would give the appearance of any impropriety or conflict of interest—would compel Representative Graves to disclose the financial interests he shared with Witness A at the time of the Committee hearing or refrain from extending Witness A an invitation to appear.

82. While the Board finds that there is substantial reason to believe that Representative Graves' invitation to Witness A created an appearance of a conflict of interest, the Board notes that any disqualifying interest that Representative Graves had in this matter would likely have affected Representative Graves only as a member of a class; therefore, there is not substantial reason to believe that Representative Graves' invitation to Witness A violated the spirit of House Rule 3.[101]

[101] The House Ethics Manual, on page 234, advises Members that, in the context of voting, Members should "withdraw when a question concerning himself arises; but . . . the disqualifying interest must be such as affects the Member directly, and not as one of a class."

# EXHIBIT 1

April 8, 2009

Matt Hubbard
[redacted]@lathropgage.com

Re: Lesley Graves Percentage of Ownership

To Whom it May Concern:

Lesley Graves is a member of Golden Triangle Energy Cooperative, Inc. a Missouri nonprofit cooperative marketing association ("GTEC"). As a member, she has the right and obligation to provide 5683 bushels of corn each year. Her Interest as related to those bushels and as a percent of the Cooperative would be approximately .18% (or .0018).

If you have any questions please feel free to call me.

Sincerely,

Sheri Sharp

Sheri Sharp, Controller
Golden Triangle Energy, LLC
660-683-5646 ext [redacted]
660-683-5537 fax

FORMED UNDER THE LAWS OF THE STATE OF MISSOURI

*Certificate No. 49* *1 share = 50 Units*

# *Biofuels, LLC*

***This Certifies that Lesley Graves** is the owner(s) of 50 units of the above named Missouri Nonprofit Cooperative Marketing Association transferable only on the books of the Cooperative by the holder(s) hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed. The transfer of this Cooperative interest is subject to restrictions set forth in the Cooperative's Bylaws, and the transfer of the related membership rights may be effected only upon compliance with any procedure provided in the Bylaws.*

***IN WITNESS WHEREOF**, the said Cooperative has caused this Certificate to be executed on its behalf by its duly authorized officers this 29th day of March, 2005.*

*Warren Stemme*
*Chairman*

*Dale R. Ludwig*
*Secretary/Treasurer*

****Biofuels, LLC, is comprised of 400 farmer/investors owning a total of 800 shares.****

Show Me Ethanol LLC

*Missouri Owned & American Grown*

26530 Highway 24 East
P.O. Box 9
Carrollton, MO 64633

Phone: 660-542-6493
Fax: 660-542-6392
www.ShowMeEthanolLLC.com

April 9, 2009

Lesley Graves
110 S. 10th St
Tarkio, MO 64491

Dear Ms. Graves;

According to our files, Lesley's 1/3rd interest in 2 units of Show Me Ethanol, LLC were transferred on the books and records of the Company as of October 3, 2008. There were a total of 2,133 units outstanding to investors of Show Me Ethanol, LLC at the time Ms. Graves's interest was transferred.

Sincerely,

Dennis Alt
General Manager

# EXHIBIT 2

UNITED STATES HOUSE OF REPRESENTATIVES
FINANCIAL DISCLOSURE STATEMENT FOR CALENDAR YEAR 2007

FORM A
For use by Members, officers, and employees

Page 1 of 8

HAND DELIVERED

HOUSE HUMAN RESOURCES OFFICE

2008 MAY 13 AM 11: 19

(Office Use Only)

Samuel B. "Sam" Graves, Jr.
(Full Name)

(202) 225-7041
(Daytime Telephone)

Filer Status: ☑ Member of the U.S. House of Representative — State: MO — District: 6th — ☐ Officer Or Employee — Employing Office:

Report Type: ☑ Annual (May 15) ☐ Amendment ☐ Termination — Termination Date:

**A $200 penalty shall be assessed against anyone who files more than 30 days late.**

## PRELIMINARY INFORMATION -- ANSWER EACH OF THESE QUESTIONS

I. Did you or your spouse have "earned" income (e.g., salaries or fees) of $200 or more from any source in the reporting period? Yes ☑ No ☐
If yes, complete and attach Schedule I.

II. Did any individual or organization make a donation to charity in lieu of paying you for a speech, appearance, or article in the reporting period? Yes ☐ No ☑
If yes, complete and attach Schedule II.

III. Did you, your spouse, or a dependent child receive "unearned" income of more than $200 in the reporting period or hold any reportable asset worth more than $1,000 at the end of the period? Yes ☑ No ☐
If yes, complete and attach Schedule III.

IV. Did you, your spouse, or dependent child purchase, sell, or exchange any reportable asset in a transaction exceeding $1,000 during the reporting period? Yes ☑ No ☐
If yes, complete and attach Schedule IV.

V. Did you, your spouse, or a dependent child have any reportable liability (more than $10,000) during the reporting period? Yes ☑ No ☐
If yes, complete and attach Schedule V.

VI. Did you, your spouse, or a dependent child receive any reportable gift in the reporting period (i.e., aggregating more than $305 and not otherwise exempt)? Yes ☐ No ☑
If yes, complete and attach Schedule VI.

VII. Did you, your spouse, or a dependent child receive any reportable travel or reimbursements for travel in the reporting period (worth more than $305 from one source)? Yes ☐ No ☑
If yes, complete and attach Schedule VII.

VIII. Did you hold any reportable positions on or before the date of filing in the current calendar year? Yes ☑ No ☐
If yes, complete and attach Schedule VIII.

IX. Did you have any reportable agreement or arrangement with an outside entity? Yes ☑ No ☐
If yes, complete and attach Schedule IX.

**Each question in this part must be answered and the appropriate schedule attached for each "Yes" response.**

## EXCLUSION OF SPOUSE, DEPENDENT, OR TRUST INFORMATION -- ANSWER EACH OF THESE QUESTIONS

**Trusts-** Details regarding "Qualified Blind Trusts" approved by the Committee on Standards of Official Conduct and certain other "excepted trusts" need not be disclosed. Have you excluded from this report details of such a trust benefiting you, your spouse, or dependent child? Yes ☐ No ☑

**Exemptions--** Have you excluded from this report any other assets, "unearned" income, transactions, or liabilities of a spouse or dependent child because they meet all three tests for exemption? Yes ☐ No ☑

## SCHEDULE I - EARNED INCOME

Name Samuel B. "Sam" Graves, Jr. 

List the source, type, and amount of earned income from any source (other than the filer's current employment by the U.S. Government) totaling $200 or more during the preceding calendar year. For a spouse, list the source and amount of any honoraria; list only the source for other spouse earned income exceeding $1,000.

| Source | Type | Amount |
|---|---|---|
| Tarkio, Missouri R-1 School District | Teachers Salary of spouse, Lesley, J. Graves | Not Applicable |

## SCHEDULE III - ASSETS AND "UNEARNED" INCOME

Name Samuel B. "Sam" Graves, Jr. Page 3 of 8

| | BLOCK A<br>**Asset and/or Income Source**<br>Identify (a) each asset held for investment or production of income with a fair market value exceeding $1,000 at the end of the reporting period, and (b) any other assets or sources of income which generated more than $200 in "unearned" income during the year. For rental property or land, provide a complete address. Provide full names of stocks and mutual funds (do not use ticker symbols). For all IRAs and other retirement plans (such as 401(k) plans) that are self directed (i.e., plans in which you have the power, even if not exercised, to select the specific investments), provide the value and income information on each asset in the account that exceeds the reporting threshold. For retirement plans that are not self-directed, name the institution holding the account and its value at the end of the reporting period. For an active business that is not publicly traded, state the name of the business, the nature of its activities, and its geographic location in Block A. For additional information, see the instruction booklet.<br><br>Exclude: Your personal residence(s) (unless there is rental income); any debt owed to you by your spouse, or by your or your spouse's child, parent or sibling; any deposits totaling $5,000 or less in personal savings accounts; any financial interest in or income derived from U.S. Government retirement programs.<br><br>If you so choose, you may indicate that an asset or income source is that of your spouse (SP) or dependent child (DC) or is jointly held (JT), in the optional column on the far left. | BLOCK B<br>**Year-End Value of Asset**<br>at close of reporting year. If you use a valuation method other than fair market value, please specify the method used. If an asset was sold and is included only because it is generated income, the value should be "None." | BLOCK C<br>**Type of Income**<br>Check all columns that apply. Check "None" if asset did not generate any income during the calendar year. If other than one of the listed categories, specify the type of income by writing a brief description in this block. (For example: Partnership Income or Farm Income) | BLOCK D<br>**Amount of Income**<br>For retirement plans or accounts that do not allow you to choose specific investments, you may write "NA" for income. For all other assets, indicate the category of income by checking the appropriate box below. Dividends, even if reinvested, should be listed as income. Check "None" if no income was earned. | BLOCK E<br>**Transaction**<br>Indicate if asset had purchases (P), sales (S), or exchanges (E) exceeding $1,000 in reporting year. |
|---|---|---|---|---|---|
| JT | Sam Graves Farms: Clark Township & Tarkio Township, Atchison County, MO | $500,001 - $1,000,000 | Farm Income | $15,001 - $50,000 | |
| JT | Rydex Mutual Funds/OTC Index Fund | $1,001 - $15,000 | None | NONE | |
| JT | Janus Research Fund | $1,001 - $15,000 | None | NONE | |
| JT | Oracle Corporation | $1 - $1,000 | None | NONE | |
| JT | Cisco Corporation | $1 - $1,000 | DIVIDENDS | $1 - $200 | |
| JT | E-Trade Checking Account | $15,001 - $50,000 | INTEREST | $201 - $1,000 | |

**SCHEDULE III - ASSETS AND "UNEARNED" INCOME**

Name Samuel B. "Sam" Graves, Jr. Page 4 of 8

| | | | | | |
|---|---|---|---|---|---|
| SP | Golden Triangle Energy Cooperative (Craig, MO) | $1,001 - $15,000 | DIVIDENDS | $5,001 - $15,000 | |
| JT | Farm Equipment & Machinery | $15,001 - $50,000 | None | NONE | |
| JT | US Bank (2 Checking Accounts) | $15,001 - $50,000 | INTEREST | $1 - $200 | |
| JT | State of Missouri Retirement System | None | None | NONE | |
| JT | Home Depot | None | DIVIDENDS | $1 - $200 | S |
| SP | Show Me Ethanol LLC (Ethanol Plant in Carroll County, Missouri) | $1,001 - $15,000 | None | NONE | |
| JT | Nokia Corporation | None | DIVIDENDS | $1 - $200 | S |
| JT | Time Warner, Inc. | $1,001 - $15,000 | DIVIDENDS | $1 - $200 | |
| JT | Janus Contrarian Fund | $1,001 - $15,000 | DIVIDENDS/ CAPITAL GAINS | $201 - $1,000 | |
| JT | Janus Midcap Value Fund | $1,001 - $15,000 | DIVIDENDS/ CAPITAL GAINS | $201 - $1,000 | |
| SP | Biofuels LLC (Biodiesel Plant in Mexico, MO) | $15,001 - $50,000 | None | $1,001 - $2,500 | |
| JT | Congressional Federal Credit Union | $1,001 - $15,000 | INTEREST | $1 - $200 | |
| JT | Qualcomm | $1 - $1,000 | INTEREST | $1 - $200 | |

SCHEDULE IV - TRANSACTIONS

Name Samuel B. "Sam" Graves, Jr.



Report any purchase, sale or exchange by you, your spouse, or dependent child during the reporting year of any real property, stocks, bonds, commodities futures, or other securities when the amount of the transaction or series of transactions exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction between you, your spouse, or your dependent child, or the purchase or sale of your personal residence, unless it is rented out. Provide a brief

| SP, DC, JT | Asset | Type of Transaction | Date | Amount of Transaction |
|---|---|---|---|---|
| JT | Home Depot | S | 11-9-07 | $1,001 - $15,000 |
| JT | Nokia Corporation | S | 11-9-07 | $1,001 - $15,000 |

SCHEDULE V - LIABILITIES

Name Samuel B. "Sam" Graves, Jr. Page 6 of 8

**Report liabilities of over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent child. Mark the highest amount owed during the year. Exclude: Any mortgage on your personal residence (unless all or part of it is rented out); loans secured by automobiles, household furniture, or appliances; and liabilities owed to a spouse, or the child, parent, or sibling of you or your spouse. Report "revolving charge accounts" (i.e., credit cards) only if the balance at the close of the preceding calendar year exceeded $10,000.**

| SP, DC, JT | Creditor | Type of Liability | Amount of Liability |
|---|---|---|---|
| JT | Farmers State Bank, Tarkio, MO | Mortgage on Farm 1 (115 acres) | $15,001 - $50,000 |
| JT | Farmers State Bank, Tarkio, MO | Mortgage on Farm 2 (240 acres) | $50,001 - $100,000 |
| JT | Farmers State Bank, Tarkio, MO | Mortgage on Farm | $15,001 - $50,000 |

SCHEDULE VIII - POSITIONS

Name Samuel B. "Sam" Graves, Jr.



Report all positions, compensated or uncompensated, held during the current calendar year as an officer, director, trustee of an organization, partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or any business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. Exclude: Positions held in any religious, social, fraternal, or political entities; positions solely of an honorary nature; and positions listed on Schedule I.

| Position | Name of Organization |
|---|---|
| Owner | Sam Graves Farms |

SCHEDULE IX - AGREEMENTS

Name Samuel B. "Sam" Graves, Jr. Page 8 of 8

Identify the date, parties to, and general terms of any agreement or arrangement with respect to: future employment; a leave of absence during the period of government service; continuation or deferral of payments by a former or current employer other than the U.S. Government; or continuing participation in an employee welfare or benefit plan maintained by a former employer.

| Date | Parties To | Terms of Agreement |
|---|---|---|
| 2000 | State of Missouri Employment Retirement System | State of Missouri Employee Retirement Program as a member of the Missouri General Assembly |

# EXHIBIT 3

Brooks Hurst
18541 State Highway O
Tarkio, MO 64491

April 29, 2009

Mr. Leo Wise,
Staff Director & Chief Counsel,
1017 Longworth House Office Building
Fax (202) 226-0997
Phone (202) 225-9739

Re: Request for Information

Dear Mr. Wise:

I received a letter from you dated April 15, 2009, that asked me for information and documents regarding my participation at a small business committee hearing on "The State of the Renewable Fuels Industry in the Current Economy", my financial interests in three companies, and my relationship with Sam and Lesley Graves.

The staff members for Congressman Graves that I remember assisting me with my participation at the hearing are Buffy Smith, who helped coordinate my travel, and Paul Sass. Joe Hartz who is with the House Committee on Small Business also assisted me. The only correspondence or documents I have concerning the hearing are a few e-mails that I've attached.

Regarding my financial interests, I do not have any financial interest in Show Me Ethanol, LLC. I do own three shares of stock in Biofuels LLC, and my ownership investment is less than 1/3 of 1 percent. I also own 15,634 bushels of corn each year in Golden Triangle Energy Cooperative, and my ownership investment is 1/2 of 1 percent.

I don't have any business relationship with Sam or Leslie Graves. Sam Graves and I are constructing a small plane and are using parts from some other inoperable planes that we also own.

You mentioned you may want to interview me. Please let me know when that might be so I can plan ahead.

Sincerely,

Brooks Hurst

Biofuels LLC

P.O. Box 104778 · 3337 Emerald Lane · Jefferson City, MO 65110
Phone 573-635-3819 · 800-MO-BEAN-1 · Fax 573-635-5122
www.mosoy.org

April 24, 2009

To Whom It May Concern,

Mr. Thomas Brooks Hurst, farmer-investor, in Biofuels, LLC, currently owns 3 shares of stock valued at $45,000. Mr. Hurst's ownership investment is less than 1/3 of 1 percent, or 0.326797.

Please don't hesitate to contact us if you need additional information.

Regards,

JP Dunn
Director of Field Services

Golden Triangle Energy, LLC
15053 Highway 111
Craig, MO 64437

April 27, 2009

Brooks Hurst
[redacted]@embarqmail.com

Re: Brooks Hurst Percentage of Ownership

To Whom it May Concern:

Brooks Hurst is a member of Golden Triangle Energy Cooperative, Inc. a Missouri nonprofit cooperative marketing association ("GTEC"). As a member, he has the right and obligation to provide 15,634 bushels of corn each year. His interest as related to those bushels and as a percent of the Cooperative would be approximately .50% (or .005).

If you have any questions please feel free to call me.

Sincerely,

Sheri Sharp

Sheri Sharp, Controller
Golden Triangle Energy, LLC
660-683-5646 ext [redacted]
660-683-5537 fax

-----Original Message-----
From: Adam Buckallew [mailto:[redacted]@mosoy.org]
Sent: Tuesday, March 03, 2009 1:43 AM
To: [redacted]@embarqmail.com
Subject: FW: Biodiesel Talking Points

Brooks,

JP had previously written this set of talking points for Missouri biodiesel production. He was supposed to send me a few things he wanted to add to this list this evening and then I was going to look it over for him and pass it on to you. I hadn't heard anything from JP tonight, but I wanted to make sure you had something to take with you to the Capitol. We may end up sending an email to Congressman Graves' office that has additional information for you.

Sorry about the delay,

Adam

Biodiesel receives a $1 per gallon blender's tax credit from the federal government. B99 (99% biodiesel + 1% petro diesel) usually has had the credit applied, while B100 (100%) biodiesel has not. B99 sold over the summer for more then $4.30 per gallon while it is currently below $2 per gallon.

Glycerin can be utilized in many environmentally friendly industrial products. However, Glycerin itself can serve as a fuel and/or fuel conditioner with #4 fuel-oil.

Missouri has focused on drawing production to the state and encouraging majority farmer owned partnerships. This means transportation jobs, construction jobs, and returning earnings to rural communities. Besides that, biodiesel plants have created additional demand for soybean oil. That means additional demand for beans and additional meal to be fed to livestock (further adding value to a Missouri product).

Crush capacity has and continues to expand in Missouri. That requires construction of new facilities which means soybean demand will remain strong for Missouri farmers and meal supplies will be abundant for those feeding hogs, poultry, cattle, etc. This is especially evident along the I-29 corridor. For the first time, to my knowledge, the basis for soybeans may be higher on the western side of the state than along the Mississippi. The basis will be lower for soybean meal which will push protein/feed prices downward. That means additional profits for soybean farmers and livestock producers. Profits that they reinvest in their local communities.

Not only are construction jobs, transportation jobs, and earnings for rural communities created, but biofuels add to the fuel supply. Farmer-owned biodiesel and ethanol production facilities across the midwest have the capacity to provide 5% of our nation's liquid fuel requirements. Building these facilities is the same as adding 5% to our nation's refining capacity. The difference is that we have reduced our dependence on foreign petroleum and that these facilities are unaffected by a single weather event (like when a hurricane hits Houston).

SOYBEANS PROVIDE FOOD, FEED, AND FUEL
Whole soybeans are rarely fed to animals or eaten whole by people. The beans get processed (crushed), the protein and hulls go to make feed/food, and we've been working on uses for the oil since the soybean checkoff's inception.

2/3 of a bushel of soybeans yields approx. 7.5 lbs (1 gallon) of oil, 30 lbs of meal, and 3 lbs hulls.

1 gallon of soybean oil = 1 gallon of biodiesel. You put in 10% methanol and take out 10% glycerin (by volume). (glycerin weighs approx. 10 lbs per gallon)

4/29/2009

So, for every gallon of biodiesel, you have 30lbs of meal, 3 lbs of hulls, and 1lb of glycerin.

% of that meal, hulls, and glycerin is fed to animals.

Hulls have virtually the same feed value as corn.

Glycerin is an energy component in feed for all livestock and can be refined to a pharmaceutical grade that is used in foods.

Meal is predominantly fed to hogs and poultry, but can be fed as protein supplement to beef cattle and dairy cattle as well.

For every gallon of biodiesel you sell, you have to sell 4 gallons of feed.

We are doubling our soybean crush (processing) capacity in Missouri because of the biodiesel industry.

Out of the average 200 million bushels Missouri produces annually, 70 million bushels has been processed here in the past, while we exported the remaining 130 million to other states or foreign countries.

MO will now be adding value to 140 million bushels here in the state and still shipping out 60 million bushels or more as yields increase.

We are processing those beans for their oil which is in demand because of biodiesel. The price for vegetable oil may be inflated due to speculators investing in commodities, but the additional crush capacity is being built to provide feedstocks for biodiesel plants.

That means that there is going to be twice as much soy hulls and 100% more soybean meal and 175% more glycerin entering in to an already matured livestock feed market.

That would suggest that feed prices will be pressured downward.

's are already over 150 million gallons of biodiesel production in Missouri annually.

If all the soybean meal we are producing was going to feed one type of animal; we'd need 1 hog to eat the meal from every 4 gallons of biodiesel produced, or 1 dairy cow for every 17 gallons, or 2 turkeys for every gallon, or 10 chickens for every gallon of biodiesel produced.

Soy oil is shouldering the value of a bushel of beans.

Soybean oil is being utilized less and less for cooking, because of trans fats. The only low linolenic soybeans that are currently available are grown along the I-80 corridor. Requirements for biodiesel feedstocks has reversed the trend for Missouri's soybean oil demand.

Soybeans provide feed AND fuel.

Biodiesel is extending the diesel fuel supply and diesel prices have a larger effect on food prices than commodity prices do. Transportation, processing and delivery makes up a much larger percentage of food costs than the grains they are made.

Diesel fuel prices have a great effect on all consumer goods because of manufacturing and transport.

So, biodiesel is good for all consumers (even those that don't drive a diesel vehicle) because it helps extend the fuel supply and lower high fuel prices for the transportation industry.

PURPOSED B5 BILL
A 5% biodiesel fuel inclusion standard might not sound like it would have an impact on consumers, but imagine how much fuel prices would go up if we lost 5% of our petroleum diesel supply when demand for fuel is so tight.

A 5% biodiesel fuel inclusion standard means a 5% reduction in diesel emissions or a reduction of 15.4 million lbs of particulate emissions and a 168 million lb reduction in carbon monoxide emissions annually.

..ssouri's B5 bill is necessary to allow biodiesel to extend the state's fuel supply and reduce costs for consumers. Most fuel distributors are contractually bound to a petroleum company and they can only sell that company's product. Those petroleum companies have been unwilling to offer biodiesel at bulk loading and blending facilities or allow the sale of biodiesel "under their

canopy". The B6 Bill would break-up petroleum's current fossil fuel diesel mandate and allow the free market to work.

PRODUCTION
The following facilities make up most of Missouri's biodiesel production volume:
'ld America Biofuels - Mexico, MO - 30 million gallon capacity
.mirle Pride - Deerfield, MO - 30 million gallon capacity
Peseo Cargill Energy - Kansas City, MO - 40 million gallon capacity
Northwest Biodiesel - St. Joseph, MO - 15 million gallon capacity
AGP - St. Joseph, MO - 30 million gallon capacity
Global Fuels - Dexter, MO - 3-5 million gallon capacity
Natural Biodiesel - Steele, MO - 3-5 million gallon capacity
High Hill Biodiesel - High Hill, MO - 3-5 million gallon capacity
Producer's Choice Soy Energy - Moberly, MO - under construction - 15 million gallon capacity
Terra - St. Joseph, MO - under construction - 30 million gallon capacity
American Energy Producers - Carrollton, MO - under construction - 50 million gallon capacity
Great River - Lilbourn, MO - for sale - 3-5 million gallon capacity

-----Original Message-----
**From:** Hartz, Joe [mailto:Joe.Hartz@mail.house.gov]
**Sent:** Monday, March 02, 2009 3:03 PM
**To:** [redacted]@embarqmail.com
**Subject:** RE: Wednesday's hearing

Thank you.

---

**From:** [redacted]@embarqmail.com [mailto:[redacted]@embarqmail.com]
**Sent:** Monday, March 02, 2009 3:10 PM
**To:** Hartz, Joe
**Subject:** Re: Wednesday's hearing

Mr. Hartz,

Go ahead and use my title as member of the board of directors for both Paseo-Cargill Biofuels plant and Missouri Soybean Association.

Thanks,
Brooks

Sent via BlackBerry by AT&T

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**From:** "Hartz, Joe"
**Date:** Mon, 2 Mar 2009 14:56:36 -0500
**To:** <[redacted]@embarqmail.com>
**Subject:** Wednesday's hearing
Hello Mr. Hurst—

I just wanted to check in to see how you would like your affiliation to be for the hearing on Wednesday. Again, you can be affiliated with any (or all) of the hats you wear. We just want to make sure we are publicizing the event properly and you are represented as you would like to be. Please just let me know as soon as you can. Thanks--Joe

Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

To sign up to be on our media list please go to: http://republicans.smbiz.house.gov/press/asp_sign_up_for_email_press_release.asp

-----Original Message-----
**From:** Hartz, Joe [mailto:Joe.Hartz@mail.house.gov]
**Sent:** Monday, March 02, 2009 1:57 PM
**To:** [redacted]embarqmail.com
**Subject:** Wednesday's hearing

Hello Mr. Hurst—

I just wanted to check in to see how you would like your affiliation to be for the hearing on Wednesday. Again, you can be affiliated with any (or all) of the hats you wear. We just want to make sure we are publicizing the event properly and you are represented as you would like to be. Please just let me know as soon as you can. Thanks—Joe

Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

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http://republicans.smbiz.house.gov/press/asp_sign_up_for_email_press_release.asp

-----Original Message-----
**From:** Smith, Buffy [mailto:Buffy.Smith@mail.house.gov]
**Sent:** Wednesday, March 04, 2009 3:48 PM
**To:** [redacted]@embarqmail.com
**Subject:** FW: Hurst Testifies to Congress

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**From:** Klindt, Jason
**Sent:** Wednesday, March 04, 2009 3:26 PM
**To:** Klindt, Jason
**Subject:** Hurst Testifies to Congress

FOR IMMEDIATE RELEASE PHONE: 816 792-3976

Wednesday, March 4, 2009 CONTACT: Jason Klindt

# Hurst Testifies to Congress

*Graves, Small Business Committee Hear Views of Local Man*

(Washington D.C.) Brooks Hurst of Tarkio testified today to the Small Business Committee in Washington. Local Congressman Sam Graves is the ranking member on the panel. The Hearing was entitled, ***"The State of the Renewable Fuels Industry in the Current Economy."***

Hurst, a member of the board of directors for the Paseo-Cargill Biofuels plant, testified on behalf of the Missouri Soybean Association. His testimony was given as a part of a panel of experts on renewable fuels.

"Brooks did a great job representing the Sixth District and Missouri," said Graves. "Renewable fuels are an important part of moving our country off of its addiction to foreign oil. We also know that it can create jobs right here in Missouri."

Excerpts of Hurst's testimony are below.

"Nationally, biodiesel's production capacity is near 2.55 billion gallons per year; however, actual production was approximately 700 million gallons in 2008. Still, biodiesel was able to displace more than 20 million barrels of petroleum in 2008. These numbers help to show that there is great potential to increase the level of U.S. biodiesel production and reduce dependency on foreign oil when operating capital is available and/or the markets are not as volatile as they are today. For ethanol, approximately 9.5 billion gallons were produced in 2008, which displaced more than 300 million gallons of foreign oil."

"One 30-40 million gallon biodiesel plant that is integrated with a soybean crush facility will employ over 50 individuals with a payroll of over $2 million annually. The construction of that plant provided jobs and transportation jobs have been created as a result of the transfer of goods in and out."

"Aside from the requirements for capital and financing, three recommendations for the committee and the federal government come to mind: extension of the federal Biodiesel Blender's Credit, inclusion of glycerin in the federal Bio-based Fuel Blender's Credit and implementation of the Renewable Fuels Standard. I believe that biofuels producers who make it through this volatile shake-out period will be successful long term. Extending

and properly implementing the programs already in place can aid this fledgling industry."

"I believe that we, as a nation, stand at a crossroads. The decisions that are made today will impact this country for years to come. It is my hope that my testimony will help demonstrate the importance of the biofuels industry and that the Small Business Committee will consider my recommendations. It is crucial that we work together to ensure that the U.S. biofuels industry continues to play an important role in rural development and growing our fuel supply."

###

-----Original Message-----
From: Smith, Buffy [mailto:Buffy.Smith@mail.house.gov]
Sent: Wednesday, March 04, 2009 3:47 PM
To: [redacted]@embarqmail.com
Subject: FW: "I'D RATHER DEPEND ON U.S. FARMERS FOR ENERGY THAN SAUDI ARABIA"

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From: Landers, Angela
Sent: Wednesday, March 04, 2009 4:45 PM
To: Landers, Angela
Subject: "I'D RATHER DEPEND ON U.S. FARMERS FOR ENERGY THAN SAUDI ARABIA"




## "I'D RATHER DEPEND ON U.S. FARMERS FOR ENERGY THAN SAUDI ARABIA"

*WASHINGTON, DC* - The House Small Business Committee held a hearing today to hear from small businesses and trade associations in the renewable fuels industry about how current economic conditions and federal policies are affecting them. The hearing titled, ***"The State of the Renewable Fuels Industry in the Current Economy,"*** began with an underlying consensus from the witness panel and Committee Members that we must work fast to provide the U.S. with energy independence. Currently, sixty-percent of the petroleum the U.S. needs is imported. Ranking Member Graves highlighted this agreement by saying, "I'd rather depend on U.S. farmers for energy than Saudi Arabia."

According to the National Biodiesel Board, the biodiesel industry in 2008 consisted of 176 plants with 2.6 billion gallons in production capacity and supported 51,893 jobs. The biodiesel industry added $4.287 billion to the nation's Gross Domestic Product (GDP) and generated $866.2 million in tax revenue for federal, state and local governments.

Several witnesses from the renewable fuels industry told the Committee that the biggest obstacle they are facing, as many small businesses dually claim, is access to capital to help keep their business operating. The failing economy and gasoline prices were the next concern and the fading ability to provide jobs to the surrounding area of fuel production plants was also mentioned. The Energy Independence and Security Act of 2007 expanded the Renewable Fuels Standard (RFS), which determines the volume of renewable fuel required to be blended into gasoline, from 9 billion gallons in 2008 to 36 billions gallons by 2022. Mr. Brooks Hurst, member of the Board of Directors of the Paseo-Cargill Biofuels Plant recommended that the Congress urge the Obama Administration to move to implement the RFS provision to provide additional support for

the nation's biofuels producers.

In his testimony, Mr. Hurst of Tarkio, MO, closed by saying, "It is crucial that we work together to ensure that the U.S. biofuels industry continues to play an important role in rural development and growing our fuel supply."

###

Angela Landers
Communications Director
Small Business Committee Republicans
(202) 226-[redacted]
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http://republicans.smbiz.house.gov/press/sso_sign_up_for_email_press_release.asp

# EXHIBIT 4

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OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

Memorandum of Interview

| | |
|---|---|
| In Re: | Representative Sam Graves |
| Review #: | 09-7000 |
| Date: | June 15, 2009 |
| Location: | Law Offices of Lathrop & Gage, Kansas City, MO |
| Time: | 4:30 pm |
| Participants: | Leo Wise |
| | Elizabeth Horton |
| | Terry Brady |
| | Matt Hubbard |

Summary: Representative Sam Graves is a Member of the United States House of Representatives and represents the sixth district of Missouri. He was interviewed pursuant to Review 09-7000. We requested an interview with Representative Graves and he consented to an interview. Representative Graves made the following statements in response to our questioning:

1. Representative Graves was given a copy of 18 U.S.C. § 1001, the False Statements Act, before he was interviewed and he signed a written acknowledgement of its receipt.
2. Brooks Hurst was the easiest witness to find for the hearing that was held in March given the short time frame for locating witnesses and he was one of the most knowledgeable persons available.
3. He was not aware of the process for finding witnesses for the hearings, staff handles finding witnesses.
4. Many times, he does not know who the witness will be until the hearing.
5. He was not sure who chose Brooks Hurst to testify at the hearing; he believed that it might have been Paul Sass.

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6. He did not decide to invite Brooks Hurst to testify but he threw out Brooks Hurst name for consideration.

7. He did not know who chose the witness; he doesn't normally make those decisions.

8. The Committee on Small Business ("the Committee") has a hearing a week; so, he is not sure who chooses witnesses.

9. He is not sure who on the Committee staff makes witness decisions. It might be Paul Sass or Karen Haas.

10. Paul Sass was involved with the decision to invite Brooks Hurst; that was his job.

11. There was a time frame issue with finding a witness; they needed to find someone who knew renewable fuels. Brooks Hurst is the foremost person with such knowledge.

12. When asked why he was the foremost person, Representative Graves answered "because he knows it."

13. Brooks Hurst is the President of the Missouri Soybean Association, he is involved with the corn growers, and he testifies throughout the country on renewable fuels.

14. The email address in the February 24 email from Paul Sass is his regular email account. (Attachment 1)

15. When a hearing is scheduled the minority receives notice a few days before the hearing is to be held. The minority is allotted a certain number of witnesses depending on the hearing.

16. The Committee has hearings every week. The Small Business Committee is an oversight committee. They do not handle legislation. Hearings do not stand out unless the topic is something that is grabbing and the Committee just doesn't have that many grabbing issues.

17. The Committee held a hearing last week and he could not remember the topic.

18. Brooks Hurst is a personal friend.

19. The Committee always has hearings. The Women's Chamber always testifies on Chamber of Commerce hearings. Representative Graves stated that he knows all of the

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individuals who repeatedly testify personally. Some of the relationships he developed with individuals who testify repeatedly before the Committee occurred in DC.

20. Brooks Hurst is a close, close friend. He grew up with Brooks Hurst; so, he may not know other witnesses as well as he knows Brooks Hurst, but he knows other witnesses who testify and have testified well.

21. With respect to the email from Jason Klindt to Paul Sass that questioned his financial holdings, Rep. Graves stated that he did not know why the issue would have come up. Neither Jason Klindt nor Paul Sass raised the issue with him. He didn't know why it would have come up.

22. He did not remember why he did not want Bill Becker to testify but he remembered that the Committee had done some things for Lifeline on grants and they may have been in the middle of doing something for the company at that time, possibly working on a waiver for a grant.

23. He did not remember why Brooks Hurst was off the witness list and then back on.

24. He did not recall why Bill Becker was an alternate witness; those types of issues are handled in passing.

25. He was not sure if Brooks Hurst was off then on because of a conflict with planting.

26. He was surprised that there were as many emails on the matter as there were and he was surprised that it was so hard to find a witness for the hearing.

27. Paul Sass asked who they could get for a witness and he suggested calling Brooks Hurst.

28. Paul Sass knows the process better than anyone.

29. When asked about the members of the corn growers being in town at the time of the meeting, Representative Graves stated that "if he remembered correctly" the Committee already had an "ethanol guy" and they were looking for a "biodiesel guy" to balance out the witness list as much as possible.

30. He did not talk to anyone about the corn growers; he did not even know Jessica Bennett.

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31. He has run into situations where someone was supposed to testify and then that person was unable to get a flight. He did not know the process.

32. He always introduces the witness.

33. He always has a typed introduction that he reads.

34. The introductions are normally a half page.

35. After the opening statement, there is a half page introduction about where the witness is from, if they are a family farmer, how many acres they farm, how long they have been in business, etc.

36. The opening statement is different from the introduction; it sometimes comes off of the witness list.

37. He generally goes through the witness list and makes a general introduction from the information on the list. "It's like sitting down and eating supper, it's very routine."

38. In introductions, he only identifies who the individual is testifying on behalf of, no other entities that the witness may be associated with are noted.

39. Investments are not something he talks about with Brooks Hurst. He could not say what Brooks Hurst was invested in; he goes in and out of investments so he wouldn't know what he was invested in.

40. When asked if Brooks Hurst stated that he recruited the Graves to invest in Golden Triangle, Rep. Graves stated that Brooks Hurst easily could have made such a statement, but he didn't know if he had. "People say things to show how closely related they are to a Member."

41. He did not recall Brooks Hurst asking him to invest in Golden Triangle.

42. Personal investments are not something that comes up in conversations that he has with Brooks Hurst, he talks to Brooks Hurst mostly about "flying stuff." "They don't sit down and go over investments."

43. His wife's father advises his wife on financial matters. He is an "environmental guy." His father-in-law does not know Brooks Hurst.

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44. He and his wife laugh about their investments; the only one that has done well is Golden Triangle.

45. The organization started early and had good management. The management firm was kicked out. They were one of the first plants but they are a small company. "It's not where you want to be today but they paid down all of their debt."

46. He spoke at the company's meetings when he was in the State Senate.

47. The conversation between him and his wife about investing was a long time ago. She invested in the company when he was in the State Senate.

48. Terry Brady, his attorney, prepares his financial disclosure. He reviews the report along with his wife's financial disclosure report, she files for her position with the state university.

49. When asked if he remembered Brooks Hurst's testimony, Representative Graves stated that he did not recall the hearings, and that he usually works on other issues using his blackberry during the hearings.

50. There is only one ethanol plant in Craig, MO. It is Golden Triangle

51. Brooks Hurst last spoke before the committee when Representative Graves was chair of a subcommittee.

52. When asked if he recalled the *Roll Call* article regarding Brooks Hurst's prior testimony, Representative Graves stated that he saw the article after this issue came up and that opponents "bring this type of thing that feed these types of articles."

53. When asked about his quote from the article that "looking back" he should have disclosed his connection with Brooks Hurst, Representative Graves stated that the author did not publish his full statement. He stated that he actually said that looking back he probably should have disclosed "if he had known what his (Brooks Hurst) investments were." He also stated that the article was frustrating but typical; he further stated that the issue would not make a story but misquoting his statements would.

54. When asked if he was aware of Brooks Hurst's investments in 2004, he stated that Brooks Hurst testified with Golden Triangle but that he didn't know what Brooks Hurst was personally invested in.

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55. He stated that he did not recall the 2007 *Roll Call* article but that Brooks Hurst was not testifying on ethanol at the March hearing.

56. Brooks wasn't testifying on Golden Triangle or ethanol; he was testifying on biodiesel at the March hearing.

57. When asked if he recalled the 2007 article, Representative Graves stated that he never really thought about it. The Committee had to find someone to testify that knew what they were talking about and Brooks Hurst knew the issue.

58. Lifeline is an ethanol company; he did not believe they produced biodiesel fuel.

59. When asked if he recalled Brooks Hurst's prior testimony, Representative Graves stated that he did not because it was "a zillion hearings ago."

60. With respect to finding a witness for the March hearing, he stated that you want someone who knows the subject matter. "In a confrontational hearing, which isn't the case now, but when it is, the majority is trying to discredit the minority and vice versa." "So you always want there to be no embarrassing comments – someone throwing out facts that are then attacked." "The DNC/RNC will make some political issue out of comments. To avert that, you get best witness possible."

61. He stated that the Committee doesn't have that type of adversarial relationship but that other entities can also attack the hearing, like oil companies, so you have to be prepared.

62. With respect to the purpose of the hearings, the committee is an oversight Committee; it does not do legislation except the authorization of the Small Business Association. The hearings are "feel good hearings." "The chair is from NY and I think she is being nice to me in holding the hearing because I am a farmer." The Committee can look at venture capital, healthcare, animal pharmaceuticals, anything. The committee doesn't have a real agenda other than the Small Business Association so they look at all types of industries. "When I was head of the subcommittee I held aviation hearings."

63. With respect to the recommendation made by Brooks Hurst for the Blender Fuel Credit, Representative Graves stated that the Blender Fuel Credit was the big issue and that it was an "agricultural issue, probably the hottest issue in the industry."

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64. He did not remember Brooks Hurst advocating for the Blenders Fuel Credit at the hearing but he would not be surprised if he had. He (Representative Graves) did not know anything about glycerin. It would also not surprise him if Brooks Hurst supported the Renewable Fuels Standard. He was sure the corn growers supported the Renewable Fuels Standard, it is their biggest issue.

65. He also would not be surprised if the Renewable Fuels Standard would help Brooks Hurst. He knew the corn growers would have recommended the Renewable Fuels Standard.

66. He did not recall any recommendations at the hearing but it would not surprise him if recommendations were made. He stated that he had been doing this for ten years and "it's the same thing every year – again and again and again."

67. With respect to Brooks Hurst's testimony regarding the plant that he was having difficultly with "booking business forward," Representative Graves stated that he did not know which plant Brooks Hurst was referring to nor did he know how many plants Brooks Hurst was invested in. He stated, "if it's glycerin then it would be Biofuels" but he was not sure. He further stated that he did not understand the glycerin deal.

68. He does not review hearing testimony, everyone submits their oral comments and sometimes the comments are twenty pages in length. He further stated that some hearings have twenty witnesses. He does not read opening statements until the Chair is reading her statement.

69. His wife's father is her financial advisor.

70. His wife is employed as a school teacher.

71. Their investments are not very good. They spend very little time investing; they have not done well since 2000. The only time the issue of investments comes up in conversations with his wife is when his wife "spends Golden Triangle money, which is her money." He did not know how long the company would be profitable because it is a very small company.

72. When asked if he talked to Brooks Hurst about the hearing, Representative Graves stated that he had not, "other than this issue and how ridiculous it is."

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73. When asked why it is a ridiculous issue, Representative Graves stated that it was simply a lot of money and time that was being used to look into the matter and there was not anything there; he thought the OCE "must not have anything better to do." He further stated that Paul Singer (the author of the 2007 and 2009 *Roll Call* articles) did not like him because he was forced to do a retraction of bad information published in a previous article and that he acted like a jerk to him.

74. He has not talked to anyone else regarding this matter. He stated that the Committee held hearings every week and the matter was just not an issue.

75. He stated that "when you bring a witness in, you want them to feel important but in many cases their testimony is meaningless because the Committee has no jurisdiction." "You don't tell people that, that their testimony won't have an impact." He further stated that "every Speaker has tried to eliminate the Small Business Committee." He explained that the legislation goes through the Commerce Committee and that the Small Business Committee holds "feel good hearings." He stated that the Chair holds hearings that interest her and that he has been involved with venture capital hearings. Several hearings are held on venture capital which relates to the Small Business Administration, which the Committee has jurisdiction over. He believes the Chair is "throwing him a bone" on agriculture issues. But he wishes she would ask for input because he would pick a different topic.

76. The Committee does not have work after the legislation affecting the Small Business Administration is completed but hearings bring publicity. The minority will use hearings to attack policies on small business. The hearings generate a lot of press at home; the hearings show that they are taking care of small business.

77. It breaks down to subcommittees. They don't hold many hearings; the object is to generate press, trying to show you're doing your job.

78. The Committee holds a hearing every week at 2:00 pm on Wednesday. The Committee does not have any office space and Committee staff is in three different buildings. There are no anti-chambers, no money, and no jurisdiction.

79. He only interacts with staff at the hearings. The staff doesn't think he engages enough but he may have listened to the same testimony for the past 10 years. Staff is frustrated over his lack of interaction with the staff.

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80. One staff member (Paul Sass) has a new girlfriend and he wants to get off at 5:00pm so he moved from the personal office staff to the committee so he wouldn't have to work until 10:00pm. He (Paul Sass) doesn't think I know but I do.

Elizabeth Horton
Investigative Counsel

# ATTACHMENT 1

**Sass, Paul**

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 4:44 PM
**To:** SamG
**Subject:** hearing on renewable fuels

The small business committee is doing a hearing on renewable fuels next week. Do you have anybody off the top of your head who we should invite? Last time we had a hearing on the topic you invited Brooks and Charlie Hurst. Any one you want me to call? Steve Flick?

Paul J. Sass
Deputy Chief of Staff
Congressman Sam Graves (MO-6)
(202) 225-[redacted]

# EXHIBIT 5

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Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

Memorandum of Interview

| | |
|---|---|
| In Re: | Witness A |
| Review #: | 09-7000 |
| Date: | July 13, 2009 |
| Location: | Telephone Interview |
| Time: | 12:00pm |
| Participants: | Leo Wise |
| | Elizabeth Horton |

Summary: Witness A was interviewed pursuant to Review 09-7000. We requested an interview with Witness A and he consented to an interview. Witness A made the following statements in response to our questioning:

1. Witness A was sent a copy of 18 U.S.C. § 1001, the False Statements Act, before he was interviewed and he signed a written acknowledgement of its receipt.
2. He was invited to testify at the March 4, 2009, hearing by Representative Graves. The hearing was scheduled on short notice and Representative Graves called him to see if he could get away to come to D.C. to testify.
3. He did not recall when he received the phone call but he recalled that it was a "rush deal."
4. He spoke with Buffy Smith (staff member) about his plane tickets not more than a week before the hearing.
5. He stated that he was the first person that Representative Graves thought of because he was the President of the Missouri Soybean Association and he had worked on biodiesel issues in the past and because the hearing was scheduled with such notice.
6. He was not involved with planting at the time of the hearing so he was able to testify.

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7. He may have initially said that he could not testify and then changed his mind but he could not recall whether he had said no initially or not.

8. He did not recall the dates of the hearing.

9. He had been invited to testify before the Committee on Small Business on two previous occasions. He recalled being invited for the first time by Representative Jim Talent. He could recall that it was Representative Talent because it was his first time testifying before Congress.

10. He works with the Missouri Soybean Association. The association provided him with written testimony and prepped him for the March hearing, as they have done on other occasions when he testified on behalf of the association.

11. He did not recall the press article about his testimony before the Committee in 2004.

12. He had seen articles about Representative Graves in campaign years but he didn't pay attention to them because he felt they were a campaign tactic.

13. He was sure he would have spoken to Representative Graves at the time of the article, he and Representative Graves grew up together, but he wasn't concerned about the article because "neither of us owned enough stock to make a difference."

14. He was not aware that Representative Graves was invested in Golden Triangle; he could have guessed but he wasn't sure.

15. He did not recall the statements he made at the March hearing including the statement about the plant that had trouble booking business forward. But he was sure the plant was Biofuels or Paseo Cargill.

16. He stated that it always helps to use examples to connect the prepared testimony to yourself when testifying on an issue.

17. Biofuels is located in Mexico, MO. The Missouri Soybean Association helped get the business started.

18. He recruited investors for the plant. He gave Representative Graves a prospectus for the plant but he didn't check with him afterward to see if he had invested in the venture. He stated that he felt it was rude to ask people about their money.

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Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

19. He stated that he probably tried to recruit Representative Graves' brother Danny more than he tried to recruit Representative Graves.

20. Representative Graves' brother is a farmer as well.

21. He stated that he would have talked about Golden Triangle to Representative Graves at some point because it was doing great at one time. But he probably would have talked to him more about soybean planting, Biofuels, and Paseo Cargill.

22. The article about his prior testimony did not make an impression on him because "there was nothing there."

23. He stated that he and Representative Graves were stockholders; they were not in business together.

24. He gave out hundreds of prospectus on Biofuels and Paseo Cargill about five years ago. He spent a lot of time marketing the businesses.

25. He never thought there was a conflict with his testimony; he thought the articles were a joke and a waste of time.

26. The previous articles did not come up in conversations he had with Representative Graves or his staff prior to his testimony in March.

27. He did not think of the articles until the phone call with OCE staff. He did not think they were an issue; he believed that they were campaign rhetoric and so they didn't affect him.

28. He did not recall hearing about the 2009 *Roll Call* article but he hated to answer with an "absolute no" because Representative Graves probably told him about it.

29. He asked OCE staff if the same person had written both articles and then stated that he assumed that the writer was bringing up the "same stuff as before" but he didn't pay any attention to the matter.

30. He did not approach Representative Graves about investing in Golden Triangle. He wasn't involved in selling shares in Golden Triangle.

31. He stated that Golden Triangle had done well for three years. It had not done well the first two years and it was not doing so well now. When corn went up, Golden Triangle

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quit doing well. If the price of corn goes up and the price of oil goes down, the ethanol won't do well.

32. He stated that no one was making money on biodiesel now.

33. He did not know the purpose of the March hearing; he just knew that Representative Graves needed someone to testify and that he had testified on the subject before.

34. He did not recall talking to Representative Graves about the hearing prior to testifying. He recalled discussing meeting his cousin for dinner with Representative Graves prior to the hearing.

35. He sees Representative Graves every weekend when he comes home.

36. He worked with Buffy Smith to make his travel arrangements.

37. Paul Sass contacted him to ask if he needed anything for the hearing and referred him to Joe Hartz.

38. Joe Hartz emailed him what he needed for the hearing.

39. He has met Representative Graves' wife's father because he is family friends with the Graves. But Mrs. Graves' father is not someone that he normally talked with.

40. He has not talked to Mrs. Graves' father about any investment.

41. He may have talked with Mrs. Graves about investments because she is also a friend.

42. He could not recall if he ever talked with Representative Graves about Golden Triangle doing well but he thought it could have been mentioned when it was doing well.

43. He thought it was a topic that could have come up because he spoke to a lot of his friends about ethanol doing well when it was doing well. Ethanol had not been doing well in the past year to year and a half.

Elizabeth Horton
Investigative Counsel

# EXHIBIT 6

NYDIA M. VELAZQUEZ, New York
Chairwoman

SAM GRAVES, Missouri
Ranking Member

# Congress of the United States

U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6315

**February 25, 2009**

## NOTICE

**TO:** **Members of the House Committee on Small Business**
**FROM:** **Chairwoman Velázquez**
**DATE:** **March 4, 2009**
**TIME:** **1:00PM**
**LOCATION:** **2360 Rayburn HOB**
**RE:** **Full Committee Hearing entitled:** ***"The State of the Renewable Fuels Industry in the Current Economy."***

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The House Committee on Small Business will hold a hearing entitled, ***"The State of the Renewable Fuels Industry in the Current Economy."*** The Committee will examine the state of the renewable fuels industry and the challenges in light of current economic factors. The Committee will hear from farmers, producers, and other industry representatives. The hearing will take place on Wednesday, March 4, 2009, at 1:00 p.m. in 2360 of the Rayburn House Office Building.

The hearing will focus on access to capital issues, the effect of volatile energy prices, and how the overall economic downturn is affecting the renewable fuels industry. Please note that there will be a preparatory staff briefing on Monday, March 2, 2008 at 2:00 p.m. in room 2360 RHOB. If you or your staff has any questions concerning the hearing, please contact Mark Palmer, Agriculture Counsel of the Committee at ext. 5-4038.

# EXHIBIT 7

**Sass, Paul**

---

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 1:54 PM
**To:** Hartz, Joe
**Subject:** RE: Renewable fuels

I'll put out the feelers. We should be able to find someone for this hearing. Let me know when you learn the angle.

Thanks Joe.

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**From:** Hartz, Joe
**Sent:** Tuesday, February 24, 2009 1:47 PM
**To:** Sass, Paul
**Subject:** Renewable fuels

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Chances that we'll find someone and be able to get them here by next week is slim, but thought I'd ask. The majority needs to do a better job on letting us know what the schedule is.

Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

**Sass, Paul**

---

**From:** Shupe, Brooke
**Sent:** Tuesday, February 24, 2009 1:57 PM
**To:** Sass, Paul
**Subject:** Re: Renewable fuels hearing

It would be nice if we had more info on the topic! Oh well....what about Steve Flick or an investor at Golden Triangle....Sam might have a good suggestion there.

---

Sent from my BBerry Wireless Device

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**From:** Sass, Paul
**To:** Endicott, Alicia; Higdon, Chad; Klindt, Jason; Kraus, Tommy; Kreps, Angela; Loch, Brittney; Roe, Melissa; Searcy, Shawna; Shupe, Brooke; Smith, Buffy; Swendson, Jaime; Woodward, Sarah
**Cc:** Brown, Tom
**Sent:** Tue Feb 24 13:53:16 2009
**Subject:** Renewable fuels hearing

Please see the email below and let me know if you have any suggestions on who can testify next week on renewable energy. All I need are the names and I can follow up with them and provide more information.

Thanks everyone.

Paul

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Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

**Sass, Paul**

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**From:** Klindt, Jason
**Sent:** Tuesday, February 24, 2009 2:56 PM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels hearing

Lets make sure that we do not get a renewable company that SG or his wife is invested in.

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**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 1:53 PM
**To:** Endicott, Alicia; Higdon, Chad; Klindt, Jason; Kraus, Tommy; Kreps, Angela; Loch, Brittney; Roe, Melissa; Searcy, Shawna; Shupe, Brooke; Smith, Buffy; Swendson, Jaime; Woodward, Sarah
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Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

**Sass, Paul**

**From:** Brown, Tom
**Sent:** Tuesday, February 24, 2009 3:15 PM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels hearing

Paul – See me about this. David Flicks brother??

T

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**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 1:53 PM
**To:** Endicott, Alicia; Higdon, Chad; Klindt, Jason; Kraus, Tommy; Kreps, Angela; Loch, Brittney; Roe, Melissa; Searcy, Shawna; Shupe, Brooke; Smith, Buffy; Swendson, Jaime; Woodward, Sarah
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Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

**Sass, Paul**

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 4:17 PM
**To:** Klindt, Jason
**Subject:** RE: Renewable fuels hearing

Thanks Jason,

There is something up in St. Joe, but we might go we Steve Flick from Show me Energy, which is just south of the district. Last time we did this we have Brooks Hurst come out on behalf of the MO Soybean Assn.

---

**From:** Klindt, Jason
**Sent:** Tuesday, February 24, 2009 4:15 PM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels hearing

Golden Triangle (Craig), BioFuels LLC (Mexico, Mo) and Show Me Ethanol (Carrollton)

Isn't there a renewable energy plant/thing in St. Joseph?

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**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 4:08 PM
**To:** Klindt, Jason
**Subject:** RE: Renewable fuels hearing

Which ones are they again?

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**From:** Klindt, Jason
**Sent:** Tuesday, February 24, 2009 2:56 PM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels hearing

Lets make sure that we do not get a renewable company that SG or his wife is invested in.

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**Subject:** Renewable fuels

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Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

**Sass, Paul**

**From:** Roe, Melissa
**Sent:** Tuesday, February 24, 2009 4:36 PM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels hearing

Only folks that come to mind are the heads of the soybean and ethanol groups...Dale Ludwig, etc.

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**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 1:53 PM
**To:** Endicott, Alida; Higdon, Chad; Klindt, Jason; Kraus, Tommy; Kreps, Angela; Loch, Brittney; Roe, Melissa; Searcy, Shawna; Shupe, Brooke; Smith, Buffy; Swendson, Jaime; Woodward, Sarah
**Cc:** Brown, Tom
**Subject:** Renewable fuels hearing

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Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

**Sass, Paul**

---

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 4:44 PM
**To:** SamG
**Subject:** hearing on renewable fuels

The small business committee is doing a hearing on renewable fuels next week. Do you have anybody off the top of your head who we should invite? Last time we had a hearing on the topic you invited Brooks and Charlie Hurst. Any one you want me to call? Steve Flick?

Paul J. Sass
Deputy Chief of Staff
Congressman Sam Graves (MO-6)
(202) 225-[redacted]

**Hartz, Joe**

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 4:46 PM
**To:** Hartz, Joe
**Subject:** RE: Renewable fuels

Can I just get it to you tomorrow at the hearing?

---

**From:** Hartz, Joe
**Sent:** Tuesday, February 24, 2009 4:11 PM
**To:** Sass, Paul; Haas, Karen
**Subject:** RE: Renewable fuels

That clears it up then. I'd love to see the copy of the briefing (book)? Do you have an intern who can run it over or just bring it to the hearing tomorrow?

---

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 4:05 PM
**To:** Haas, Karen; Hartz, Joe
**Subject:** RE: Renewable fuels

Sorry for the delay, I have been away from my desk for a little while.

We should not have any problem finding a person from the 6th to testify at this hearing. We have extensive Ag contacts in the district.

Given SG's agricultural background and the crops he grows (beans and corn) SG is a huge supporter of the renewable fuels standard (RFS). SG would NOT invite a witness who is irritated with the RFS because of the impact it has made on feed prices and such. Trust me, plenty of folks, mainly the cattle industry, have come to us about the increased in feed prices due to the RFS, but SG still remains supportive.

In his mind, commodities are volatile by nature. Some times beef prices are up and corn down, sometimes corn is up and beef is down, but his point is somebody is going to be complaining, its just a matter or weathering the storm.

In 2004 SG held a hearing on "the Benefits of tax Incentives for Producers of Renewable Fuels and its impact on Small Business and Farmers." We invited former Rep. Hulshof, MO Soybean Assn, National Corn Growers Assn, Renewable Fuels Assn, the National Biodiesel Board, the National Ethanol Vehicle Coalition, and the Environmental and Energy Study Institute. Joe, I can give you a copy of the briefing for your reference.

Let me get some names together and I will follow up with Joe with what I get.

---

**From:** Haas, Karen
**Sent:** Tuesday, February 24, 2009 3:38 PM
**To:** Hartz, Joe; Sass, Paul
**Subject:** RE: Renewable fuels

This seems like a little bit of a reach for a hearing topic. I am curious to hear from Paul about Mr. Graves's position from an agricultural perspective. Jay Cranford in the Leader's office and Rep Shimkus office could also be good resources for potential witnesses on this issue.

Karen

---

**From:** Hartz, Joe
**Sent:** Tuesday, February 24, 2009 2:34 PM
**To:** Sass, Paul
**Cc:** Haas, Karen
**Subject:** RE: Renewable fuels

Theme is ethanol/biodiesel/cellulosic ethanol (derived from renewable biomass feedstocks such as corn stover, switchgrass, wood chips, etc). Basic state of the industry stuff---especially what they are encountering with the economy the way it is. They are envisioning as witnesses producers from the ethanol, biodiesel, and cellulosic ethanol industries. Then maybe an academic and possibly a farmer who produces crops for fuel. 1 panel.

I was thinking that we can go one of two ways---we can look for a producer from the district and go with the flow, or we can find a pissed off farmer who's paying more for supplies or has had his world turned upside down because of the volatility of the ethanol markets (imagine a dairy farmer who watched their feed prices sour during the corn-based ethanol boom). Now that demand for ethanol is down a bit, we see what the impact was on that dairy farmer and how he's dealt with it. Draw the distinction that the federal push for ethanol, while laudable, has had some side effects that are hurting small business as well.

Thoughts? And what can I do to help the search.

---

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 2:21 PM
**To:** Hartz, Joe
**Subject:** RE: Renewable fuels

Don't ever feel like you are passing it on, I usually know someone; which makes things easier for everyone.

---

**From:** Hartz, Joe
**Sent:** Tuesday, February 24, 2009 1:56 PM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels

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Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

**Hartz, Joe**

**From:** Haas, Karen
**Sent:** Tuesday, February 24, 2009 4:10 PM
**To:** Sass, Paul
**Cc:** Hartz, Joe
**Subject:** RE: Renewable fuels

That's all very helpful.

**From:** Sass, Paul
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**To:** Haas, Karen; Hartz, Joe
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Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

**Hartz, Joe**

**From:** Haas, Karen
**Sent:** Tuesday, February 24, 2009 3:55 PM
**To:** Hartz, Joe
**Subject:** RE: Renewable fuels

Got it

---

**From:** Hartz, Joe
**Sent:** Tuesday, February 24, 2009 3:52 PM
**To:** Haas, Karen; Sass, Paul
**Subject:** RE: Renewable fuels

Spot filler, according to Mark Palmer. This wasn't supposed to take place until later as the Majority had a few things on the burner that never materialized. This was a quick fix. Probably, one of the Democrats will be introducing an energy themed bill(s) that would benefit small renewable fuels producers.

---

**From:** Haas, Karen
**Sent:** Tuesday, February 24, 2009 3:50 PM
**To:** Hartz, Joe; Sass, Paul
**Subject:** RE: Renewable fuels

I get that but what is the "take away" from the hearing?

---

**From:** Hartz, Joe
**Sent:** Tuesday, February 24, 2009 3:40 PM
**To:** Haas, Karen; Sass, Paul
**Subject:** RE: Renewable fuels

This is probably the 4th or 5th one of these in two years. It's not *that* much of a stretch. Most of the ethanol plants are classified as small businesses. The farms that supply them as well.

---

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**To:** Hartz, Joe; Sass, Paul
**Subject:** RE: Renewable fuels

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**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 2:21 PM
**To:** Hartz, Joe
**Subject:** RE: Renewable fuels

Don't ever feel like you are passing it on, I usually know someone, which makes things easier for everyone.

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**From:** Hartz, Joe
**Sent:** Tuesday, February 24, 2009 1:56 PM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels

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Thanks Joe.

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**To:** Sass, Paul
**Subject:** Renewable fuels

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Chances that we'll find someone and be able to get them here by next week is slim, but thought I'd ask. The majority needs to do a better job on letting us know what the schedule is.

Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

**Hartz, Joe**

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Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

**Sass, Paul**

**From:** Higdon, Chad
**Sent:** Wednesday, February 25, 2009 10:50 AM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels hearing

Anyone at Golden Triangle in Craig

Bill Becker at Lifeline would be good.

There is also a new biodiesel plant going in St. Joe, about 95% done but are dealing with some overrun costs right now. I could find you a contact there.

Also might be good to get an actual grain farmer to come in if it fits

---

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 1:53 PM
**To:** Endicott, Alicia; Higdon, Chad; Klindt, Jason; Kraus, Tommy; Kreps, Angela; Loch, Brittney; Roe, Melissa; Searcy, Shawna; Shupe, Brooke; Smith, Buffy; Swendson, Jaime; Woodward, Sarah
**Cc:** Brown, Tom
**Subject:** Renewable fuels hearing

Please see the email below and let me know if you have any suggestions on who can testify next week on renewable energy. All I need are the names and I can follow up with them and provide more information.

Thanks everyone.

Paul

---

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Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

**Sass, Paul**

**From:** Hartz, Joe
**Sent:** Wednesday, February 25, 2009 10:38 AM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels

FYI—the hearing is scheduled for 1pm.

Also, SG's been on the Committee since he was elected in 2001, correct?

---

**From:** Sass, Paul
**Sent:** Wednesday, February 25, 2009 9:58 AM
**To:** Hartz, Joe
**Subject:** RE: Renewable fuels

Yea come on by.

---

**From:** Hartz, Joe
**Sent:** Wednesday, February 25, 2009 9:56 AM
**To:** Sass, Paul
**Subject:** Re: Renewable fuels

U in the office? I'm on campus and can stop by to get the book.

Sent using BlackBerry

---

**From:** Sass, Paul
**To:** Hartz, Joe; Haas, Karen
**Cc:** Shupe, Brooke
**Sent:** Wed Feb 25 09:52:41 2009
**Subject:** RE: Renewable fuels
Back in 2004 SG had a friend (Brooks Hurst) who is a member of the MO Soybean Assn testify on a similar topic and he wants me to extend an invitation to him. I am calling him today to gauge his interest.

Joe let me know if you have any more details on the hearing so I can pass them along.

Also, a contingent of MO Corn Growers will be in town next week with several folks from the 6th tagging along. If Mr. Hurst can't make it to town than the MO Corn Growers will be our plan B.

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**From:** Hartz, Joe
**Sent:** Tuesday, February 24, 2009 4:11 PM
**To:** Sass, Paul; Haas, Karen
**Subject:** RE: Renewable fuels

That clears it up then. I'd love to see the copy of the briefing (book)? Do you have an intern who can run it over or just bring it to the hearing tomorrow?

---

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 4:05 PM
**To:** Haas, Karen; Hartz, Joe
**Subject:** RE: Renewable fuels

Sorry for the delay, I have been away from my desk for a little while.

We should not have any problem finding a person from the 6th to testify at this hearing. We have extensive Ag contacts in the district.

Given SG's agricultural background and the crops he grows (beans and corn) SG is a huge supporter of the renewable fuels standard (RFS). SG would NOT invite a witness who is irritated with the RFS because of the impact it has made on feed prices and such. Trust me, plenty of folks, mainly the cattle industry, have come to us about the increased in feed prices due to the RFS, but SG still remains supportive.

In his mind, commodities are volatile by nature. Some times beef prices are up and corn down, sometimes corn is up and beef is down, but his point is somebody is going to be complaining, its just a matter or weathering the storm.

In 2004 SG held a hearing on "the Benefits of tax Incentives for Producers of Renewable Fuels and its impact on Small Business and Farmers." We invited former Rep. Hulshof, MO Soybean Assn, National Corn Growers Assn, Renewable Fuels Assn, the National Biodiesel Board, the National Ethanol Vehicle Coalition, and the Environmental and Energy Study Institute. Joe, I can give you a copy of the briefing for your reference.

Let me get some names together and I will follow up with Joe with what I get.

---

**From:** Haas, Karen
**Sent:** Tuesday, February 24, 2009 3:38 PM
**To:** Hartz, Joe; Sass, Paul
**Subject:** RE: Renewable fuels

This seems like a little bit of a reach for a hearing topic. I am curious to hear from Paul about Mr. Graves's position from an agricultural perspective. Jay Cranford in the Leader's office and Rep Shimkus office could also be good resources for potential witnesses on this issue.

Karen

---

**From:** Hartz, Joe
**Sent:** Tuesday, February 24, 2009 2:34 PM
**To:** Sass, Paul
**Cc:** Haas, Karen
**Subject:** RE: Renewable fuels

Theme is ethanol/biodiesel/cellulosic ethanol (derived from renewable biomass feedstocks such as corn stover, switchgrass, wood chips, etc). Basic state of the industry stuff—especially what they are encountering with the economy the way it is. They are envisioning as witnesses producers from the ethanol, biodiesel, and cellulosic ethanol industries. Then maybe an academic and possibly a farmer who produces crops for fuel. I panel.

I was thinking that we can go one of two ways—we can look for a producer from the district and go with the flow, or we can find a pissed off farmer who's paying more for supplies or has had his world turned upside down because of the volatility of the ethanol markets (imagine a dairy farmer who watched their feed prices soar during the corn-based ethanol boom). Now that demand for ethanol is down a bit, we see what the impact was on that dairy farmer and how he's dealt with it. Draw the

distinction that the federal push for ethanol, while laudable, has had some side effects that are hurting small business as well.

Thoughts? And what can I do to help the search.

---

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Joe Hartz
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House Committee on Small Business
(202) 225-[redacted]

**Sass, Paul**

**From:** Shupe, Brooke
**Sent:** Wednesday, February 25, 2009 10:04 AM
**To:** Sass, Paul
**Subject:** FW. S.B hearing

Paul,

Jessica's e-mail is below. Dennis Alt is from Carrollton and Bill Becker is from St. Joe. They will already be in town so if Brooks can't come, one of these guys might work and they would be happy to do it. Thanks.

Brooke

---

**From:** Jessica Bennett [mailto:[redacted]@dc.ncga.com]
**Sent:** Wednesday, February 25, 2009 9:42 AM
**To:** Shupe, Brooke
**Subject:** S.B hearing

Hi Brooke,

Per our conversation, we will have some folks in DC next week from the MO Corn Growers. We would welcome the opportunity to testify at Wednesday's hearing in the Small Business Committee if you are looking for someone. I have listed below some of the individuals who will be in town.

Dennis Alt - Interim CEO Show Me Ethanol

Bill Becker - CEO Lifeline Foods & Ethanol
Gary Clark - Senior Director of Market Development

Please let me know if there's anything else I can do to help.

Thanks!

Jessica

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Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

**Smith, Buffy**

---

**From:** Sass, Paul
**Sent:** Thursday, February 26, 2009 5:13 PM
**To:** Smith, Buffy
**Subject:** RE: small biz hearing

Ok, he is calling me tomorrow morning to figure it out, I will follow up with you afterwards.

---

**From:** Smith, Buffy
**Sent:** Thursday, February 26, 2009 5:11 PM
**To:** Sass, Paul
**Subject:** RE: small biz hearing

Let me know the details when you have them. I can handle Brooks' flight and hotel, but want to know what he is doing before I call him.

---

**From:** Sass, Paul
**Sent:** Thursday, February 26, 2009 5:09 PM
**To:** Smith, Buffy; Brown, Tom; Klindt, Jason
**Subject:** RE: small biz hearing

Ok, I just spoke with Sam and apparently Brooks Hurst is back on board. It will get nailed down tomorrow. I got Sam to agree to allowing Bill Becker to testify if Brooks doesn't work out.

---

**From:** Smith, Buffy
**Sent:** Thursday, February 26, 2009 5:06 PM
**To:** Sass, Paul; Brown, Tom; Klindt, Jason
**Subject:** RE: small biz hearing

I have heard of him, but don't know anything about him.

---

**From:** Sass, Paul
**Sent:** Thursday, February 26, 2009 5:01 PM
**To:** Brown, Tom; Klindt, Jason; Smith, Buffy
**Subject:** small biz hearing

You guys have any thoughts on Bill Becker? When I mentioned him to SG he didn't want to have him do it, but I'm not sure why. At this point its our only options other then a Show Me Ethanol person.

---

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**Sent:** Wednesday, February 25, 2009 10:04 AM
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**Subject:** FW: S.B hearing

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**Sass, Paul**

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**From:** Sass, Paul
**Sent:** Thursday, February 26, 2009 3:13 PM
**To:** Hartz, Joe
**Subject:** RE: Witness

We are good, its going to be a corn grower from the 6th who will happen to be in town with the National Corn Growers next week. Its between two candidates, which we should nail down here soon. Once we identify the person I will turn it over to you.

---

**From:** Hartz, Joe
**Sent:** Thursday, February 26, 2009 3:10 PM
**To:** Sass, Paul
**Subject:** Witness

How is it coming and what can I do to help?

Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

**Sass, Paul**

**From:** Sass, Paul
**Sent:** Thursday, February 26, 2009 5:11 PM
**To:** Hartz, Joe
**Subject:** RE: Witness

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---

**From:** Hartz, Joe
**Sent:** Thursday, February 26, 2009 3:24 PM
**To:** Sass, Paul
**Subject:** RE: Witness

word

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**To:** Hartz, Joe
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Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

**Smith, Buffy**

**From:** Sass, Paul
**Sent:** Friday, February 27, 2009 2:01 PM
**To:** Smith, Buffy
**Cc:** Klindt, Jason; Brown, Tom; Roe, Melissa; Higdon, Chad
**Subject:** renewable Fuels hearing witness

Buffy, just letting you know that we confirmed Brooks Hurst to testify at next weeks hearing. I told him to expect a call from you to help set up flights and a hotel. Also, Sam mentioned doing a dinner or something Wednesday or Tuesday night so try to keep some time open for that.

Thanks.

Paul J. Sass
Deputy Chief of Staff
Congressman Sam Graves (MO-6)
(202) 225-[redacted]

**Sass, Paul**

**From:** Hartz, Joe
**Sent:** Friday, February 27, 2009 2:08 PM
**To:** Sass, Paul
**Cc:** Haas, Karen
**Subject:** RE: renewable fuels witness

I'll give him a call right now. Thanks, Paul.

---

**From:** Sass, Paul
**Sent:** Friday, February 27, 2009 1:59 PM
**To:** Hartz, Joe
**Cc:** Haas, Karen
**Subject:** renewable fuels witness

Joe,

I received confirmation from Brooks Hurst that he is willing and able to testify next week. I told him that you will follow up with him shortly with the details. In order to get his flight paid for I believe he wants to testify on behalf of the Soybean Association, but I told him to go over all that with you. His cell number is [redacted] and his email is [redacted]@embarqmail.com and he is expecting to hear from you.

Thanks Joe and let me know if you need anything else,

Paul

FYI-This is one of SG's best friends. They live in the same town etc. Very tight.

Paul J. Sass
Deputy Chief of Staff
Congressman Sam Graves (MO-6)
(202) 225-[redacted]

**Smith, Buffy**

**From:** Southwest Airlines [SouthwestAirlines@mail.southwest.com]
**Sent:** Friday, February 27, 2009 8:29 PM
**To:** Smith, Buffy
**Subject:** Ticketless Confirmation - HURST/THOMAS - J247C4

SOUTHWEST.COM

LOW FARES. NO HIDDEN FEES. SAVE NOW

Receipt and Itinerary as of 02/27/09 5:28 PM

**Confirmation Number**
J247C4

Sit Where You Like

Confirmation Date: 02/27/09
Received: THOMAS H

**Passenger Information**

| Passenger Name | Account Number | Ticket# | Expiration[1] |
|---|---|---|---|
| HURST/THOMAS | [redacted] | 526-8773587156-1 | 02/27/10 |

[1] All travel involving funds from this Confirmation Number must be completed by the expiration date.

**Itinerary**

| Date | Flight | Routing Details |
|---|---|---|
| Tue Mar 03 | 280 | Depart KANSAS CITY INTL (MCI) at 9:00 AM<br>Arrive in BALTIMORE-WASHNTN (BWI) at 12:25 PM |
| Wed Mar 04 | 1843 | Depart BALTIMORE-WASHNTN (BWI) at 6:35 PM<br>Arrive in KANSAS CITY INTL (MCI) at 8:35 PM |

**Cost and Payment Summary**

| | |
|---|---|
| Air | $ 133.96 |
| Tax | $ 17.24 |
| PFC Fee | $ 9.00 |
| Security Fee | $ 5.00 |
| **Total Payment:** | **$165.20** |

Current payment(s)
02/27/09 MASTERCARD xxxxxxxxxxx4818 Ref 526-8773587156-1 $165.20

**Fare Rule(s)**
Valid only on Southwest Airlines. NON REFUNDABLE/ STANDBY REQ UPGRADE TO YL All travel involving funds from this Confirmation Number must be completed by the expiration date. Any change to this itinerary may result in a fare increase.

Fare Calculation:

ADT- 1 MCIWNBWI TZCNR 72.00 BWIWNMCI TZCNR 72.00 $144.00 ZPMCI BWI XFMCI4.50

BWI4.50 AYMCI2.50 BWI2.50 $165.20

**Important Checkin Requirement**
Passengers who do not obtain a boarding pass and are not present and available for boarding in the departure gate area at least ten minutes prior to scheduled departure time may have their reserved space cancelled and will not be eligible for denied boarding compensation.

**Southwest Airlines Co. Notice of Incorporated Terms**
Air transportation by Southwest Airlines is subject to Southwest Airlines' Passenger Contract of Carriage, the terms of which are incorporated by reference.

**Notice of Incorporated Terms**

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We can notify you of flight departure or arrival status via text messages on your cell phone, pager, personal digital assistant (PDA), or e-mail account. Or, use our automated phone service by calling 1-888-SWA-TRIP.

**Sass, Paul**

---

**From:** Sass, Paul
**Sent:** Tuesday, March 03, 2009 11:27 AM
**To:** Hartz, Joe
**Subject:** RE: Opening statement

Looks good Joe.

---

**From:** Hartz, Joe
**Sent:** Tuesday, March 03, 2009 10:41 AM
**To:** Sass, Paul
**Subject:** Opening statement

Hi Paul—

The opening statement has been through Karen and Angela already. You're the last person to see it. Please let me know if you have any edits you would like to make.—Joe

Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

To sign up to be on our media list please go to:
http://republicans.smbiz.house.gov/press/asp_sign_up_for_email_press_release.asp

**Sass, Paul**

---

**From:** Sass, Paul
**Sent:** Tuesday, March 03, 2009 7:45 PM
**To:** Hartz, Joe
**Cc:** Haas, Karen
**Subject:** Re: A few quick things

Thanks Joe, SG will handle the introduction of brooks, no prep needed.

Paul J. Sass
Deputy Chief of Staff
Congressman Sam Graves

---

**From:** Hartz, Joe
**To:** Sass, Paul
**Sent:** Tue Mar 03 18:39:00 2009
**Subject:** A few quick things

Last two testimonies came in tonight. They're attached. Will send the questions over later (possibly AM).

I left my notepad in one of the briefing books I dropped off. I don't need it, but please pull it out in case that's the one that goes to SG. I can pick it up tomorrow.

How do we approach the intro for Mr. Hurst? He didn't send a bio. I assume SG will wing it because of their relationship, but want to get something in front of him if he needs it /wants it.

Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

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**Hartz, Joe**

**From:** Loch, Brittney
**Sent:** Tuesday, March 03, 2009 6:00 PM
**To:** Hartz, Joe
**Subject:** FW:
**Attachments:** Written Testimony Brooks Hurst 3-4-09 House Small Business.doc

Brooks Hurst's testimony for tomorrow

---

**From:** JP Dunn [mailto:[redacted]@mosoy.org]
**Sent:** Tuesday, March 03, 2009 5:57 PM
**To:** blyd@att.blackberry.net
**Cc:** Loch, Brittney
**Subject:**

J.P. Dunn
Manager of Field Services
Missouri Soybean Association
Missouri Soybean Merchandising Council
3337 Emerald Lane, Jefferson City, MO 65110
573-635-[redacted] or [redacted] (cell)
[redacted]@mosoy.org

**Hartz, Joe**

**From:** [redacted]@embarqmail.com
**Sent:** Tuesday, March 03, 2009 4:40 PM
**To:** Hartz, Joe
**Subject:** Re: Wednesday's hearing

The soybean association is supposed to email it to sams office I will see where it is at
Thanks
Brooks

Sent via BlackBerry by AT&T

---

**From:** "Hartz, Joe"
**Date:** Tue, 3 Mar 2009 16:37:14 -0500
**To:** [redacted]@embarqmail.com>
**Subject:** RE: Wednesday's hearing

Hi Mr. Hurst—

I was just wondering when we can expect your testimony? Please just let me know, and thanks again.--Joe

---

**From:** [redacted]@embarqmail.com [mailto:[redacted]@embarqmail.com]
**Sent:** Monday, March 02, 2009 3:10 PM
**To:** Hartz, Joe
**Subject:** Re: Wednesday's hearing

Mr. Hartz,

Go ahead and use my title as member of the board of directors for both Paseo-Cargill Biofuels plant and Missouri Soybean Association.

Thanks,
Brooks

Sent via BlackBerry by AT&T

---

**From:** "Hartz, Joe"
**Date:** Mon, 2 Mar 2009 14:56:36 -0500
**To:** <BLYD@embarqmail.com>
**Subject:** Wednesday's hearing

Hello Mr. Hurst—

I just wanted to check in to see how you would like your affiliation to be for the hearing on Wednesday. Again, you can be affiliated with any (or all) of the hats you wear. We just want to make sure we are publicizing the event properly and you are represented as you would like to be. Please just let me know as soon as you can. Thanks--Joe

Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

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**Hartz, Joe**

**From:** Christian, Lisa
**Sent:** Tuesday, March 03, 2009 1:34 PM
**To:** Hartz, Joe
**Subject:** RE: witness info

Thanks.

---

**From:** Hartz, Joe
**Sent:** Tuesday, March 03, 2009 1:33 PM
**To:** Christian, Lisa
**Subject:** RE: witness info

Mr. Brooks Hurst
Board of Directors for both the Paseo-Cargill Biofuels Plant
and The Missouri Soybean Association
18541 State Highway O ----------as in Oscar
Tarkio MO 64491
(C) [redacted]
[redacted]@embarqmail.com

---

**From:** Christian, Lisa
**Sent:** Tuesday, March 03, 2009 1:31 PM
**To:** Hartz, Joe
**Subject:** witness info

Joe,

When you have a moment could you send me the contact info for our witness tomorrow?

Thanks,

Lisa Christian
Professional Staff
Republican Office
Committee on Small Business
B363 Rayburn House Office Building
Washington, DC 20515
202.225.[redacted]

**Hartz, Joe**

**From:** Sass, Paul
**Sent:** Tuesday, March 03, 2009 11:45 AM
**To:** Hartz, Joe
**Subject:** RE: Opening statement

I don't think I will be able to attend the staff briefing because of a scheduling conflict, so you might want to come by before to drop them off.

Also, no worries with the testimony, just email them to me when you get them.

---

**From:** Hartz, Joe
**Sent:** Tuesday, March 03, 2009 11:29 AM
**To:** Sass, Paul
**Subject:** RE: Opening statement

Are you going to be at the staff meeting today at 5? If so, I was going to give you the books then. If not, I'll stop in a little before and drop it off in the office.

Also, we may have a similar problem as last time. We only have one testimony in thus far. Hopefully, they'll all make their way to me before this afternoon, but I may have to e-mail the questions tomorrow morning if they don't get in in time.

---

**From:** Sass, Paul
**Sent:** Tuesday, March 03, 2009 11:27 AM
**To:** Hartz, Joe
**Subject:** RE: Opening statement

Looks good Joe.

---

**From:** Hartz, Joe
**Sent:** Tuesday, March 03, 2009 10:41 AM
**To:** Sass, Paul
**Subject:** Opening statement

Hi Paul—

The opening statement has been through Karen and Angela already. You're the last person to see it. Please let me know if you have any edits you would like to make.—Joe

Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

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**Hartz, Joe**

**From:** Sass, Paul
**Sent:** Wednesday, March 04, 2009 11:13 AM
**To:** Hartz, Joe
**Subject:** RE: we good

Good to go

---

**From:** Hartz, Joe
**Sent:** Wednesday, March 04, 2009 11:04 AM
**To:** Sass, Paul
**Subject:** we good

Or is there anything else I can do before 1pm?

Joe Hartz
Professional Staff/Republican Office
House Committee on Small Business
(202) 225-[redacted]

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**Smith, Buffy**

**From:** Loch, Brittney
**Sent:** Wednesday, March 11, 2009 2:05 PM
**To:** Smith, Buffy
**Subject:** RE: Pictures for SG to sign

In IQ the thank you letter in the system for constituents who testify before the House Small Business Committee. The letter has the Thank You affiliation code and is titled Thank you letter (small business committee). Let me know if you have problems finding it.

Brittney

---

**From:** Smith, Buffy
**Sent:** Wednesday, March 11, 2009 1:09 PM
**To:** Loch, Brittney
**Subject:** RE: Pictures for SG to sign

I have all of these ready or sent. Can you tell me where the letter is to send to Brooks?

---

Buffy Smith
Congressman Sam Graves (MO-06)
Scheduler
Office: (816) 792-3976
Cell: (202) 731-3116
Fax: (816) 792-0694
buffy.smith@mail.house.gov

---

**From:** Loch, Brittney
**Sent:** Friday, March 06, 2009 2:09 PM
**To:** Smith, Buffy
**Subject:** Pictures for SG to sign

We need these signed. I don't know if Sg wants to sign Brook's photo but Paul does want the thank you letter sent to him with the photo. I also have some more of him that Angela sent me if he wants the electronic version of them. If Sg doesn't want to sign it let me know and I will print one here and send it with the letter.

The group of Men:
Gary Clark and the Corngrowers Merchandising Council
3118 Emerald Lane
Jefferson City, MO 65109

Les Kerr and Cindy Curtis
400 East 9th Street, Floor 5
Kansas City, Mo 64106

Benjamin Jones (blue shirt dark tie)
Union Pacific Railroad

6455 E. Commerce Ave.,
Kansas City, MO 64120

Joe Kneib (red tie blue shirt)
Herzog
600 S Riverside Road
St. Joe, MO 64507

Thanks!
**Brittney Loch**
Staff Assistant/Assistant Scheduler
Congressman Sam Graves (MO-06)
1415 Longworth Building
Washington, DC 20515
Phone: 202-225-[redacted]
Fax: 202-225-8221
Brittney.Loch@mail.house.gov

**Sass, Paul**

**From:** Loch, Brittney
**Sent:** Monday, April 06, 2009 11:41 AM
**To:** Sass, Paul
**Subject:** letter sent on March 6th

Dear Brooks:

Thank you for making the trip to Washington D.C. to testify before the United States House Small Business Committee. Your participation was greatly appreciated.

As Ranking Member of the Committee, it is important to me to have an individual from the 6th Congressional District come and give us their perspective on the business climate. I strongly believe this input helps provide members of the Committee a well rounded understanding on how the things we do in Washington affect everyone else.

Again, I thank you for your participation and look forward to working with you in the future.

**Brittney Loch**
Staff Assistant/Assistant Scheduler
Congressman Sam Graves (MO-06)
1415 Longworth Building
Washington, DC 20515
Phone: 202-225-[redacted]
Fax: 202-225-8221
Brittney.Loch@mail.house.gov

# EXHIBIT 8

CONFIDENTIAL

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

Memorandum of Interview

| | |
|---|---|
| In Re: | Representative Graves' Chief of Staff |
| Review #: | 09-7000 |
| Date: | June 16, 2009 |
| Location: | Law Offices of Lathrop & Gage, Kansas City, MO |
| Time: | 10:00 am |
| Participants: | Leo Wise |
| | Elizabeth Horton |
| | Terry Brady |
| | Matt Hubbard |

Summary: Representative Graves' Chief of Staff was interviewed pursuant to Review 09-7000. We requested an interview with Representative Graves' Chief of Staff and he consented to an interview. Representative Graves' Chief of Staff made the following statements in response to our questioning:

1. Representative Graves' Chief of Staff was given a copy of 18 U.S.C. § 1001, the False Statements Act, before he was interviewed and he signed a written acknowledgement of its receipt.
2. He has been Chief of Staff for Representative Graves for over three years.
3. He hired Karen Haas as the Staff Director (for the minority) for the Small Business Committee ("the Committee"). He also recommended hiring Mr. Sass and a couple of other people for the Committee.
4. He visits the Committee staff once a week to see how they are doing.
5. He has been to only one Committee meeting and he only stayed at that meeting for twenty minutes. He only went because Representative Graves was losing his temper. The topic of the hearing must have been aviation.

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Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

6. He has never been involved in a briefing for a hearing.

7. He might have gone to one other hearing. He does watch the hearings on CSPAN.

8. He did not recall the email he received from Mr. Sass regarding the witness selection for the hearing. Mr. Sass sits next to him. Mr. Sass probably mentioned the hearing to him and he then suggested one of the Flicks. He had been impressed by the Flicks on another occasion.

9. He gave Mr. Sass Mr. Flick's name and Mr. Sass then went in to talk with Representative Graves and Representative Graves suggested Brooks Hurst.

10. With respect to the hearing process, he stated that the democrats will call Karen Haas to notify the minority about a hearing. There are slots for minority witnesses but he was not sure how the witnesses were chosen.

11. He did not know who made the decision as to who would be chosen as a witness. He thought that it might be Karen Haas or that the majority had to approve witnesses.

12. To his knowledge, Representative Graves does not choose the witness. If he did, he did not know of it.

13. He did not know Bill Becker; he had no idea who he was.

14. He has no knowledge of Show Me Ethanol (Representative Graves' Chief of Staff asked if Bill Becker was from Show Me Ethanol).

15. He does not review testimony for the Committee. He only listens to the hearings on CSPAN. Karen Haas is very good, the Committee is very fortunate to have her. Just as someone runs the district office when he is in DC, Karen Haas runs the Committee staff. He has good people to runs things while he is not there.

16. He was really impressed with Brooks Hurst's testimony, he watched it on television.

17. He did not remember the 2007 *Roll Call* article. He stated that something like that didn't happen without comment but he felt that the reporter was way off.

18. He did not recall talking to Mr. Sass about the hearing. He probably spoke with the Congressman but he did not recall the conversation.

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19. Mr. Sass sits next to him. When Mr. Sass got off the call about the hearing, he told him the topic of the hearing and said that they needed a witness. He suggested Steve Flick or his brother. Mr. Sass then went to talk to Representative Graves and Representative Graves mentioned Brooks Hurst.

20. He does not work on the Congressman's financial disclosure, he didn't know if he had ever seen it.

21. When asked if the office has any policy on dealing with conflicts of interest, he stated that he called the Standards Committee about issues. There is also a lawyer in the office that would also consult Standards on issues that arose. If he thought there was any issue with the hearing, he would have contacted Standards.

22. He did not know what Brooks Hurst does and he did not know what Representative Graves was invested in.

23. He did not recall the 2007 *Roll Call* article.

24. When shown the articles from the *Kansas City Star* and *Roll Call*, he stated that he kind of remembered the articles but only vaguely, they looked familiar. Attachment 1.

25. He did not recall discussing the article with Representative Graves in 2007 but he stated that it seemed like they would have discussed it.

26. He thought that a lot of things came out around that time in 2007, there were other articles that amounted to nothing. He thought the *Roll Call* article was for headlines for the opponent. He thought the articles were merely political.

27. He probably didn't read the 2009 *Roll Call* article word for word. He thought nothing would come from it since nothing came from the other article.

28. He is pretty sure that he did not have a conversation about the article with Representative Graves.

29. The attorney that had worked for the personal office, Melissa Burt, took a job in the White House. She probably left in January of 2008.

Elizabeth Horton
Investigative Counsel

# ATTACHMENT 1

PRINTER-FRIENDLY FORMAT
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ROLL CALL

# Biofuels, Flights Benefit Graves

Nov. 7, 2007
*By Paul Singer*
*Roll Call Staff*

09-7000_000098

At the beginning of October, Rep. Sam Graves (R-Mo.) joined several other Midwestern lawmakers in sponsoring legislation to create a national mandate for the use of increasing quantities of biodiesel as a replacement for regular diesel fuel.

Graves has long been an advocate of renewable fuels, and his spokesman argues that biodiesel is "good for the environment, good for the economy and good for the producers."

But the bill also would be good for Graves' wife, Lesley, a public school teacher who in 2005 invested $15,000 in a new biodiesel plant that has since become the largest biodiesel facility in the state.

The biodiesel plant is one of several questionable entries on Graves' financial disclosure forms, including his receipt of thousands of dollars worth of flights on the private plane of a personal friend who is also a contractor with significant financial interests before the committees on which Graves serves.

Graves spokesman Jason Klindt said the Congressman has long been a supporter of renewable fuels. "There is a wide and deep support in Missouri and the Midwest for biodiesel and renewable fuels," Klindt said, and Graves' "support of renewable fuels is well documented."

In May 2004, when Graves was chairman of the Small Business Subcommittee on Rural Enterprises, Agriculture and Technology, the panel held a hearing on the promise of renewable fuels and tax incentives for ethanol and biodiesel.

One of the witnesses was the treasurer of Golden Triangle Energy Cooperative, a small ethanol plant in northwest Missouri. At the time, Graves listed on his financial disclosure forms that he owned jointly with his wife stock in Golden Triangle worth between $1,000 and $15,000, which produced less than $1,000 in dividends.

In his most current disclosure report filed in May, the Golden Triangle stock is listed as belonging to his wife, and the dividend income is listed between $15,000 and $50,000.

Another witness at the May 2004 hearing was Brooks Hurst, a farmer from Graves' small hometown who spoke on behalf of the Missouri Soybean Association. Hurst discussed the importance of a tax incentive for the use of biodiesel in blends with regular diesel fuel. Congress passed the biodiesel tax credit in 2004; Hurst called it "the single most important legislative initiative in the history of the soybean industry."

The following year, Hurst and a dozen other Missouri farmers established a new company to build a biodiesel plant in the state. They put up their own money and then recruited friends and colleagues to make up the rest of the initial capital.

Hurst said in an interview this week that in 2005, "I got in touch with the Graves family and told them about the opportunity." Hurst said he has known the Graves family for years, and he and Graves are among the handful of users of an airstrip in Tarkio, Mo.

Lesley Graves invested $15,000 in the plant; Hurst said there are about 400 investors in the project, which is now

up and running with a production capacity of about 30 million gallons a year, according to statistics provided by the National Biodiesel Board. The plant is in Mexico, Mo., next door to an existing Archer Daniels Midland processing facility, Hurst said.

In 2005, national biodiesel capacity was 75 million gallons; with the federal incentives in place that number is likely to reach 300 million this year, according to the Biodiesel Board. The legislation Graves introduced with the other Midwestern members in October would set a national target of 1.25 billion gallons of biodiesel consumption annually by 2012.

Klindt said there is nothing untoward about Lesley Graves' renewable-fuels investments. "Most of [the fuels plants] in Missouri are small-town farm families that band together to support ethanol and biodiesel in order to revitalize small-town Missouri and break our dependence on foreign oil."

Klindt also argues that Graves and other Members regularly vote on issues that affect their own finances. "He votes on No Child Left Behind and his wife is a schoolteacher," Klindt said.

Ethics experts say Graves' investments are probably not in violation of any House rules, though they may create the appearance of a conflict of interest.

Several ethics lawyers consulted for this article -- none of whom would agree to speak on the record -- said the more troubling items on Graves' financial disclosure form are the regular recreational flights he accepts from Stanley Herzog, who owns a road and rail contracting company in Graves' district.

According to Graves' financial reports, the Congressman accepted trips to Florida on Herzog's corporate jet in 2006, twice in 2004 and once in 2003. In 2002, he reported accepting a flight to Arizona from Herzog and another to Florida from another friend. Most of the flights were to NASCAR races in Florida.

Graves' financial records vary on how the flights are characterized. The 2006 report values the one-way flight to the NASCAR race "in excess of $250"; the 2003 report values the round-trip flight to the same event at $1,004.90. In each case, Graves' reports say "Determination on personal friendship received from the Committee on Standards."

Under House ethics rules, Members of Congress and their staff can receive gifts of value from personal friends, though for any gift valued over $250 they need to get prior approval from the ethics committee.

The problem posed by the Herzog flights, ethics lawyers said, is if the airplane belongs not to Herzog but to his company, Herzog Contracting Corp. As one ethics lawyer said, "corporations don't have friends," so in order for the flights to be a "gift" from a "friend," Herzog would have had to reimburse the company for the cost of the flights, unless the cost of the airplane comes directly out of his pocket.

In addition, Herzog Contracting has significant issues pending in Congress, and Graves, as a member of the Transportation and Infrastructure Committee, may have input on those issues.

For example, Herzog's transit subsidiaries provide rail service in competition with Amtrak in several cities. In 2002, Graves' local newspaper, the St. Joseph News-Press, wrote that with Congress considering reform of Amtrak, "Mr. Herzog, executive vice president of Herzog Contracting Corp., said the St. Joseph company is ready to roll as a major competitor to Amtrak -- if Congress takes action. He's optimistic that, after years of lip service, Congress is on board with the idea of competition."

In 2005, Graves was named by then-Transportation Chairman Don Young (R-Alaska) to be a member of a special Amtrak working group to review Amtrak management and finances.

In a letter dated Nov. 29, 2006, the bipartisan leaders of the ethics committee wrote Graves saying he would be allowed to accept a flight from Herzog under the circumstances that Graves had described to them. The letter quoted Graves as saying Herzog "is in the construction business and has no official business before the House."

But between April 2001 and December 2006, Herzog's firm employed Ann Eppard Associates to lobby the House on railroad issues.

Graves also described the airplane as belonging to Herzog LLC, but the Federal Aviation Administration has no record of an airplane registered to an entity of that name.

Klindt said Graves "sought and received permission from the chairman and ranking member of the Committee on Standards of Official Conduct" after accepting the flight. "If there are any discrepancies, we will immediately work to resolve those issues," Klindt said.

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1 of 1 DOCUMENT

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THE KANSAS CITY STAR

Found on KansasCity • com
The **Kansas City Star**

December 6, 2007 Thursday

**SECTION:** B; Pg. 1

**LENGTH:** 1182 words

**HEADLINE: Family ties to ethanol** plant draw questions for Rep. Sam Graves

**BYLINE:** STEVE KRASKE, The **Kansas City Star**

**BODY:**

When Rep. Sam Graves looked across the hearing room that day in 2004, he saw a pair of old friends looking back - Charlie Hurst and his son, Brooks Hurst.

Both were from northwest Missouri and came to Washington at Graves' invitation as witnesses to promote federal subsidies for the renewable fuels industry. They were identified as members of a small ethanol plant cooperative in Craig, Mo., known as Golden Triangle Energy.

Left unsaid that morning was the Graves family's ties to Golden Triangle. In 1999, Graves' wife, Lesley, had invested $13,000 in the cooperative, and in 2006 she would invest $6,826 more.

Graves

Graves told ***The Kansas City Star*** on Wednesday that his failure to disclose his connection to Golden Triangle at the hearing was a mistake.

"Looking back on it, I probably should have," the Tarkio Republican said.

He also acknowledged several mistakes in his personal financial disclosure forms filed each May. One of those concerned the amount of his wife's investment in Golden Triangle.

"We're fixing that right now," Graves said. "We have an attorney helping us with the disclosures to get it right. Some numbers were not high enough. Some were too high. Why that was done, I have no idea."

Graves said he double-checked the disclosures, but didn't "double-check it closely enough."

Democrats, already engaged in a fierce race to unseat Graves in 2008, say the miscues add up to larger concerns about the congressman.

"Sadly, Congressman Graves seems to be making a habit of bending the rules in Washington so they work for him and not everyday families in northwest Missouri," said Kay Barnes, a Democrat and former Kansas City mayor seeking to unseat the four-term incumbent. "He's been caught playing fast and loose with the ethics rules."

The disclosures follow reporting by *Roll Call*, the Capitol Hill newspaper that has, among other things, raised questions about the opportunity the Graves family received to invest not only in Golden Triangle, but also a biodiesel plant in Mexico, Mo. Lesley Graves has invested $15,000 in the plant.

Graves told *The Star* that his wife has made no money in the investment and that involvement in such cooperatives is a way for farmers to seize control of their own financial fates and boost the burgeoning renewable fuels industry. Graves is a grain farmer, but leaves the operation to relatives.

The *Roll Call* stories are the result of a well-orchestrated Democratic attack and the highly charged partisan atmosphere in Washington, he said.

"It's a campaign," Graves said. "And campaigns are a dirty business."

The articles also spotlighted his acceptance of trips to Florida and other locales apparently on a corporate jet belonging to the Herzog Corp. of St. Joseph. Members of Congress can accept gifts from personal friends, although gifts valued at more than $250 need approval from the House ethics committee.

According to Graves' disclosure reports, he received that approval. But if the flights were on a plane owned by the Herzog Corp., as opposed to Vice President Stanley Herzog personally, that could require Herzog to reimburse his company for the cost of the flights. An aide to Graves said Wednesday the congressman's office was still checking the plane's ownership.

*Roll Call* also pointed out that Herzog, which runs construction, rail service and rail-testing businesses, has significant issues before Congress, and Graves, as a member of the Transportation Committee, is in a position to help. The newspaper said a November 2006 letter from the ethics committee quoted Graves as saying Herzog "has no official business before the House."

Graves acknowledged that Herzog, a friend of more than 20 years who could not be reached for comment, has hired lobbyists who work on his behalf in the nation's capital.

"Stan has never asked me to do anything," Graves said. "He's never asked me to propose a bill for him or propose legislation."

Graves spokesman Jason Klindt said if any discrepancies arise, "we will immediately work to resolve those issues."

One ethics expert, Steve Carpinelli of the Center for Public Integrity, said Graves should have acknowledged his ties to Golden Triangle in the subcommittee hearing of the House Small Business Committee. The only consequence for not doing so, he said, would be if another member of Congress files an ethics complaint, a practice common during election years.

As for Graves fixing mistakes in his personal financial disclosure statements, Carpinelli said amendments are fairly routine.

"It's not all that unusual for there to be a mistake when it comes to the wrong box being checked in disclosure reports," he said.

Graves said the Small Business Committee is an oversight panel that passes legislation only involving the Small Business Administration and its programs.

As a result, the hearing on renewable fuels was intended to be only informational.

"It doesn't bother me in the least to say that my family invests in this, and that I'm a huge supporter," Graves said. "This is the best thing that's happened to farmers."

Flying a 1943 biplane Rep. Sam Graves has accepted free flights in a Boeing "Super Stearman" airplane belonging to one of his biggest campaign contributors. And he's not disclosed them. That, says the Capitol Hill newspaper Roll Call, which detailed Graves' use of the plane in a story this week, could be a violation of House ethics rules. The plane is question, however, is not some sleek corporate jet. It is a 1943 open-cockpit biplane. Graves said he's done nothing wrong because he's the one providing the favor by flying it. "You disclose gifts," he said in an interview. "I fail to see how it's a gift." Graves, an avid flier, said he is one of only three people qualified to fly the vintage barnstorming aircraft registered to Herzog Contracting Corp., a transportation firm in St. Joseph whose employees have donated tens of thousands of dollars to Graves. None of those pilots works for Herzog. Stanley Herzog, an executive of the company, is a longtime friend. Another of his aircraft, a passenger jet, has ferried Graves to Florida. Those flights have been approved by the House ethics committee, although a question has been raised about proper reimbursement. When the Herzogs need the old biplane flown to an air show, Graves sometimes volunteers. "If I'm asked to fly it, sure, I'll fly it if I'm available," he said. Because it's an open-air plane, Graves said he can't wear a suit in the craft even if he wanted to use it on official congressional business. Roll Call said Graves flew it in July 2006 to a huge air show in Oshkosh, Wis., and in April piloted it to an event in Chillicothe, Mo., where he staged a brief air demonstration. Graves said he's logged fewer than 10 hours in the aircraft this year. The other two pilots can charge Herzog Corp. for flying the plane. Graves said he would, too, if congressional disclosure rules weren't so cumbersome. "You have to take it up once in a while," Graves said, "or the oil pools in the cylinders."

To reach Steve Kraske, call 816-234-4312 or send e-mail to skraske@kcstar.com | Steve Kraske

**LOAD-DATE:** December 6, 2007

# EXHIBIT 9

CONFIDENTIAL

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

Memorandum of Interview

| | |
|---|---|
| In Re: | Representative Graves' Then Deputy Chief of Staff |
| Review #: | 09-7000 |
| Date: | June 16, 2009 |
| Location: | Law Offices of Lathrop & Gage, Kansas City, MO |
| Time: | 9:00 am |
| Participants: | Leo Wise |
| | Elizabeth Horton |
| | Terry Brady |
| | Matt Hubbard |

Summary: Representative Graves' then Deputy Chief of Staff is currently Deputy Staff Director for the House Committee on Small Business. He was interviewed pursuant to Review 09-7000. We requested an interview with Representative Graves' then Deputy Chief of Staff and he consented to an interview. Representative Graves' then Deputy Chief of Staff made the following statements in response to our questioning:

1. Representative Graves' then Deputy Chief of Staff was given a copy of 18 U.S.C. § 1001, the False Statements Act, before he was interviewed and he signed a written acknowledgement of its receipt.

2. At the time of the March hearing, he was a shared employee between the personal office of Representative Graves and the Small Business Committee ("the Committee"). Representative Graves had just obtained the Ranking Member position on the Committee and his duties required him to help identify witnesses for hearings and prepare the opening statements and introductions of witnesses.

3. He is now a full time employee of the Committee. His duties include working on roundtables, conducting hearings, and staffing the Congressman. He also provides guidance to staff on witness messaging for hearings.

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4. His boss was new to the Ranking Member position and wanted the witness to come from the 6th district and to be competent. He started looking for witnesses from the district and then branched out from there to other parts of the state.

5. The Committee has limited jurisdiction so they can talk about anything at hearings. The "take-away" is to try and get press. Other than getting press on an issue, the Committee can't really do anything.

6. The Committee tries to hold hearings on timely issues; they have held hearings on the automobile industry and on cap and trade issues.

7. When asked about the email that was sent to him from Jason Klindt (at Attachment 1) regarding finding a witness who did not share Representative Graves' financial holdings, he stated that the email from Jason Klindt was sent in reference to an older article which related to an issue in the Governor's race. During the race there was an issue regarding the renewable fuel standard. He could not recall specific facts but remembered that it was a topic of conversation during the race.

8. Jason Klindt was a campaign manager during that time.

9. With respect to the article that appeared in *Roll Call* in 2009 regarding Brooks Hurst's previous testimony before the Committee, he recalled that the article was about Representative Graves' relationship with Brooks Hurst and disclosure. He stated that the article was "out of sight " and he didn't tie the March hearing with the article. He knew Brooks Hurst was a friend of Representative Graves but he thought he would be a good witness.

10. When asked if there were other emails between staff and/or the Congressman, he stated that there could be but he thought that he had "got them all."

11. With respect to the hearing, he did not want a witness from any companies that Representative Graves was invested in – someone with their name on a business card. He does not have discussions of witnesses' personal financial records.

12. Tom Brown (Representative Graves Chief of Staff) mentioned the name Steve Flick to him.

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13. When asked if he talked to Tom Brown about the hearing, he stated that he could have "verbally" talked about the hearing with him.

14. When asked if he talked to Tom Brown about Jason Klindt's email, he stated that he had and Tom Brown had suggested Steve Flick.

15. He threw out the idea of inviting Steve Flick because he wasn't from the 6th district. He did not believe that he worked for any of the companies but he resided outside the district.

16. When asked if he had a conversation with the Congressman, he stated that "Sam doesn't get involved in the process" and that he "ran it by him" (in an email) for input since it was an agricultural issue. He could not recall if the Congressman replied to the email. He may have, he liked the idea of Brooks Hurst. However, Brooks Hurst was away on vacation with his family.

17. Representative Graves rarely gets involved with the process, he got involved in this hearing because it was an agricultural issue.

18. When asked why Representative Graves liked Brooks Hurst as a witness, he stated that it was because he didn't like the other options staff had come up with. He probably talked to Representative Graves about Brooks Hurst's email (which provided a list of potential witnesses).

19. Dennis Alt from Show me Ethanol was out because it was one of the companies listed in Jason Klindt's email. Bill Becker didn't get along with Representative Graves. And an ethanol witness may not have been good because the majority identified with ethanol. He was not sure why Gary Clark was not good, he may not have been from the district.

20. The decision as to who will be selected as a witness is a group decision. The staff brainstorms and whittles down the list. There is no ultimate sign-off.

21. No one raised a flag on Brooks Hurst so they went with him. It was a group decision.

22. Joe Hartz and Karen Haas were not involved in the approval, he and Jason Klindt and Tom Brown decided on the witness.

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23. He thinks that he suggested Brooks Hurst to Representative Graves. He definitely thought that it was his idea.

24. He had also suggested Brooks Hurst (to Representative Graves) to be a witness years ago when Representative Graves was on the subcommittee.

25. The invitation to be a witness technically comes from the Chairwoman of the Committee but he actually invited Brooks Hurst.

26. He left Brooks Hurst several emails but Brooks Hurst had not responded so he pushed using Bill Becker.

27. Bill Becker was already in DC.

28. He might have popped in Representative Graves' office to let him know that he couldn't get in touch with Brooks Hurst and to ask if they could go with Bill Becker instead.

29. When he gave Representative Graves all the witness options, Representative Graves may have played more of a roll but he was definitely leading the Congressman to go with Brooks Hurst.

30. When asked if his conversation with the Congressman included a discussion of the 2007 *Roll Call* article, he stated that they just didn't want a representative from one of the companies.

31. He thought Brooks Hurst was the best fit.

32. He did not believe that he was involved in discussions regarding the 2007 *Roll Call* article; he did not play a role in prepping Representative Graves for the interview.

33. Witnesses must disclose if they have contracts with the government, the Committee staff is not obligated to ask for witnesses' personal financial information.

34. As for other options, some individuals lived outside the district and they try to get someone within the district to testify. They wanted someone with strong ties to people in the district so they didn't use their contacts with any association in DC.

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35. Joe Hartz is a professional staffer with the Committee. The Committee doesn't have experts like other committees. Joe Hartz was left over from the previous Congress. He may have handled hearings in the past.

36. Joe Hartz wrote the memo for the Committee opening statement and wrote questions for the hearing. He sat next to Representative Graves.

37. He spoke to Representative Graves before he spoke to Brooks Hurst, Representative Graves told him that Brooks Hurst would testify.

38. Karen Haas is the staff director for the Committee.

39. He did not review any testimony. Joe Hartz would have reviewed the testimony.

40. Bullet items are questions, the questions go to all Members. Anybody can ask a question; Representative Graves has the preference of going first.

41. He did not know about the plant that Brooks Hurst mentioned in his testimony and he did not have any discussions with anyone after the hearing.

42. They don't have an action item so they don't necessarily discuss the hearings. There is no follow-up other than a thank you.

43. He thought the hearing went smoothly.

44. Representative Graves was "fired up" over the article. He thinks the same reporter wrote both articles and holds a grudge.

45. When asked if the Congressman's friendship with Brooks Hurst was an issue, he stated that it was not because Brooks Hurst was a credible witness, he is involved with all the associations so it was not a concern.

46. Representative Graves mentioned to him that the investment concern was not an issue, and that the writer was digging for something that wasn't there.

47. He kept the article because Representative Graves likes to keep articles in which he is named.

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48. There was no discussion on factual questions of the shared investment. Representative Graves may have stated that he didn't know Brooks Hurst's investments.

49. Any conversation about the article lasted only a quick moment. Representative Graves poked his head in his office and ranted form a minute about the article. It would have been a brief conversation; Representative Graves can't sit down with anyone.

50. He and Representative Graves did not talk about the 2007 *Roll Call* article.

51. The Congressman had the same reaction to the 2007 article as to the 2009 article.

52. He was aware of the 2007 article but he did not think it was a big deal.

53. He does not play a role in preparing the Congressman's financial disclosure other than to walk the document down to get it stamped.

54. He does not review the Congressman's financial disclosure because he feels that it would be disrespectful.

55. When asked about Joe Hartz's email regarding the introduction for the hearing, he stated that the Chair can give the Ranking Member the opportunity to introduce witnesses. Joe Hartz asked him if he needed to write an introduction and he told Joe Hartz that he did not because the Congressman and Brooks Hurst were friends, but Representative Graves later wanted an introduction for the hearing. He had thought that Representative Graves would do the introduction off-the-cuff but he was wrong; so, Joe Hartz wrote the introduction at the hearing.

56. Brooks Hurst had not responded to his emails because he was skiing in Colorado. Brooks Hurst called on Friday morning to confirm that he could come. Once Brooks Hurst was on board he turned things over to Joe Hartz.

57. Representative Graves doesn't get involved in the weeds, everything is staff driven. Decisions can be made better that way. He may talk with Representative Graves once a week.

58. Representative Graves doesn't interact with staff; he talks more now but rarely.

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59. He worked with Committee staff in previous years. He probably talked to Jason Klindt and Tom Brown about the 2009 *Roll Call* story, generally talking about what happened and where they went wrong, wondering why Brooks Hurst didn't raise any flags. They missed the ball, he only saw company names and Brooks Hurst wasn't a representative of any of the groups.

60. They probably won't invite Brooks Hurst back again. The staff needs to pay more attention. They should have picked up on the issue; they can't let these things happen.

61. It was his plan to switch to the Committee staff from the personal office, for the leadership role and better standing. He had been with the personal office since 2002. He should have moved sooner.

Elizabeth Horton
Investigative Counsel

# ATTACHMENT 1

**Sass, Paul**

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 4:17 PM
**To:** Klindt, Jason
**Subject:** RE: Renewable fuels hearing

Thanks Jason,

There is something up in St. Joe, but we might go we Steve Flick from Show me Energy, which is just south of the district. Last time we did this we have Brooks Hurst come out on behalf of the MO Soybean Assn.

---

**From:** Klindt, Jason
**Sent:** Tuesday, February 24, 2009 4:15 PM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels hearing

Golden Triangle (Craig), BioFuels LLC (Mexico, Mo) and Show Me Ethanol (Carrollton)

Isn't there a renewable energy plant/thing in St. Joseph?

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**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 4:08 PM
**To:** Klindt, Jason
**Subject:** RE: Renewable fuels hearing

Which ones are they again?

---

**From:** Klindt, Jason
**Sent:** Tuesday, February 24, 2009 2:56 PM
**To:** Sass, Paul
**Subject:** RE: Renewable fuels hearing

Lets make sure that we do not get a renewable company that SG or his wife is invested in.

---

**From:** Sass, Paul
**Sent:** Tuesday, February 24, 2009 1:53 PM
**To:** Endicott, Alicia; Higdon, Chad; Klindt, Jason; Kraus, Tommy; Kreps, Angela; Loch, Brittney; Roe, Melissa; Searcy, Shawna; Shupe, Brooke; Smith, Buffy; Swendson, Jaime; Woodward, Sarah
**Cc:** Brown, Tom
**Subject:** Renewable fuels hearing

Please see the email below and let me know if you have any suggestions on who can testify next week on renewable energy. All I need are the names and I can follow up with them and provide more information.

Thanks everyone.

Paul

---

**From:** Hartz, Joe
**Sent:** Tuesday, February 24, 2009 1:47 PM

# EXHIBIT 10

LATHROP & GAGE LLP

TERRY J. BRADY
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April 9, 2009

***COPY TRANSMITTED VIA E-MAIL***
***& ORIGINAL BY HAND DELIVERY***

Mr. Leo J. Wise, *Staff Director & Chief Counsel*
Ms. Elizabeth A. Horton, *Investigative Counsel*
Office of Congressional Ethics
1017 Longworth Building,
Washington, DC 20515

Re: Initial Preliminary Review No.: 09-7000

Dear Mr. Wise & Ms. Horton,

On April 1, 2009, Congressman Graves received correspondence from you notifying him of an initial preliminary review No. 09-7000 ("Review"). The Review concerns a hearing that occurred on March 4, 2009, held by the House Small Business Committee. The hearing was entitled, *The State of the Renewable Fuels Industry in the Current Economy* ("Hearing"). In addition, Congressman Graves received a request for information ("RFI"). Enclosed with this correspondence are the materials and documents that you requested in the RFI and a brief summary of the matter.

On February 25, 2009, the Members of the House Committee on Small Business received a notice of the Hearing. (*See Tab 1*). As the Ranking Member, Congressman Graves was informed by the majority that he could call a witness to testify. However, Congressman Graves did not have much time to find a witness due to the short notice of the Hearing that was scheduled for March 4, 2009. Congressman Graves wanted to find someone from the 6th Missouri District to testify who was very knowledgeable on the subject matter of the Hearing. Thus, it was Congressman Graves' idea to ask Mr. Hurst to testify because he knew Mr. Hurst would be an excellent witness for subject matter of the Hearing and Mr. Hurst is also from the 6th Missouri District. Mr. Hurst is also a life long friend of Congressman Graves and he believed Mr. Hurst might come testify on such short notice. Congressman Graves' office contacted Mr. Hurst and was pleased to hear that Mr. Hurst could testify on such short notice. On February 27, 2009, at

Congressman Grave's recommendation, Chairwoman Nydia M. Velazquez invited Mr. Hurst to testify. (*See Tab 2*).

On March 4, 2009, The House Small Business Committee held the Hearing for informational purposes to see how the renewable fuel business community is affected by current economic conditions. Mr. Hurst submitted written testimony and orally testified at the hearing on behalf of the Missouri Soybean Association. We have enclosed the documents and memorandums Congressman Graves received regarding the Hearing, as well as Mr. Hurst's written testimony. (*See Tab 3*). Mr. Hurst's testimony at the Hearing clearly showed his qualifications to offer testimony on the subject matter.

The April 1, 2009, correspondence to Congressman Graves regarding Review No. 09-7000 states that Congressman "Graves' conduct may have violated House Rule 23," and, that "[n]either Representative Graves nor Mr. Hurst disclosed the financial connection between Mr. Hurst and Mrs. Graves to the Committee during the hearing."

It is not the practice of the members of the House Small Business Committee at these hearings to disclose the companies that both their spouses and witnesses are invested in. Moreover, it is unlikely that members will know this information about witnesses who testify at these hearings. Congressman Graves is unaware of any House Rule that addresses this issue. In addition, the House Small Business Committee has no legislative jurisdiction over the renewable fuel issue, which was the subject of the Hearing as it relates to current economic conditions. Therefore, there is no financial benefit to any bio fuel industry company coming from the Hearing.

Your RFI requests information and materials concerning Lesley Graves' financial interests in Show Me Ethanol, LLC, Golden Triangle Energy Cooperative, and Biofuels, LLC. Please be advised that Leslie Graves is no longer an individual investor in Show Me Ethanol, LLC ("Show Me"). Lesley sold her 1/3$^{rd}$ interest in 2 units of Show Me in October of 2008. (*See Tab 4*). There were a total of 2133 units outstanding to investors of Show Me at the time Lesley sold her interest. Lesley is a member of Golden Triangle Energy Cooperative, Inc. ("Golden Triangle"), a Missouri nonprofit cooperative marketing association. Lesley holds a .0018 interest in Golden Triangle. (*See Tab 5*). Lesley also owns a single share of Biofuels, LLC ("Biofuels"). Biofuels is Missouri nonprofit cooperative marketing association. There are a total of 800 shares outstanding that are issued to 400 farmers/investors in Biofuels, LLC. (*See Tab 6*). Please note that Lesley Graves has never been a member of the board or directors or an officer of any of these cooperatives. Also, please note that it is very common for farmers like the Graves to invest in bio fuel companies.

Your RFI further requests the names and contact information for people who assisted in arranging for Mr. Brooks Hurst's participation at the Hearing. The primary individuals that were involved were Paul Sass, *Deputy Chief of Staff*, Tom Brown, *Chief of Staff*, Congressman Graves, and Jason Klindt, *Communications Director*. Each of these individuals can be reached at the Office of Congressman Graves, 1415 Longworth

HOB, Washington, DC 20515, with the exception of Jason Klindt, who can be reached at the Office of Representative Sam Graves, 113 Blue Jay, Suite 100, Liberty, MO 64068. We have enclosed the documents that you requested (1) that concern the arranging for Mr. Hurst's participation at the Hearing, and (2) that were created after the Hearing. (*See Tab 7*). Your RFI also requests the person(s) who is responsible for staffing Congressman Graves at the Hearing. Joe Hartz is a Professional Staffer for Congressman Graves and was responsible for staffing Congressman Graves at the Hearing.

We believe we have provided you with all the information and documents that you requested in your RFI. After you have had an opportunity to review the documents and information, please let either me or Matt Hubbard of my office know if we can provide you with any additional information or documents. We welcome your call.

Sincerely,

LATHROP & GAGE LLP

By: Terry J. Brady
Terry J. Brady
Matt R. Hubbard

# EXHIBIT 11

House Committee on Small Business
**"The State of the Renewable Fuels Industry in the Current Economy"**
Wednesday, March 4, 2009, 1:00pm
2360 Raybum House Office Building

**Witness List**

Mr. Nathan Kimpel
President and Chief Operating Officer
New Energy Corp.
South Bend, IN

Mr. John Howe
Vice President of Public Affairs
Verenium Corporation
Cambridge, MA

Mr. Manning Feraci
Vice President of Federal Affairs
National Biodiesel Board

Mr. Ron Litterer
Chairman
National Corn Growers Association
Greene, IA

Mr. Brooks Hurst
Member of the Board of Directors
The Paseo-Cargill Biofuels Plant
Tarkio, MO
On Behalf of the Missouri Soybean Assn

**Nathan Kimpel—New Energy Corp**

- How many of these biofuel producing plants are small businesses?
- Can you explain a little more about corn input costs? Specifically, what are the costs, and how volatile have they been in recent months/years?
- Where do ethanol producers get the majority of their start-up funding?
- How many producers utilize the SBAs lending programs? What can we do to make this a more viable option?
- What are the major obstacles to raising the limit on ethanol blending with gasoline? In your opinion, where is the logjam?

**John Howe—Verenium Corporation**

- Due to the cutting edge technology involved with cellulosic biofuel production, does venture capital play a role in early start-ups? If so, how much?
- I am sure it varies from region to region, but what are the best crops to produce for cellulosic ethanol?
- Are colleges and universities offering degrees that are specifically designed for jobs in the biofuels industry? What types of degrees do the higher-end technical jobs at biofuel plants require?

**Manning Feraci—National Biodiesel Board**

- What are the complications of moving biodiesel through traditional petroleum pipelines and what needs to be done to overcome that?

- As you and others have mentioned, biodiesel is produced both from feedstocks and reclamation of waste oils. What is the approximate ratio of feedstock to reclamation of oils when the total biodiesel production is calculated? What can be done to boost reclamation efforts?

- What is on the horizon? What is the "next big thing" in the biodiesel industry?

- If every biodiesel plant was operating at full capacity, how much biodiesel would this country be able to produce?

- In regard to the difficulty in accessing credit to expand—the economic bailout legislation was intended to help fix this. A lot of industries have testified before this Committee to say that the legislation has done little, if anything to really free up the necessary capital. Do most people in your industry look to large commercial banks (where the majority of the bailout money has been filtered) or to smaller community banks (where it hasn't)?

**Ron Litterer—National Corn Growers Association**

- Could you explain why the price of corn has fluctuated so much in recent months/years? What is causing the volatility?

- Mr. Husrt mentioned in his testimony that there is no fuel versus food debate to be had here. Could you also comment on that?

- Could you go into further detail about the "blend wall" you mention in your written testimony and describe what needs to be done to address the issue?

- As we all know, American auto makers are having serious issues. Do you foresee a way that we could combine these two industries more closely that could benefit both?

**Brooks Hurst—Missouri Soybean Association**

- Is there an international market for U.S. produced biofuels? Are there obstacles that Congress could address that could open up markets abroad for our biofuels?

- Could you explain a little bit more on how critical these small biofuel plants are to local rural economies?

- What are state legislatures doing to foster the growth of the biofuels industry? Are there any particular efforts in one state that could be emulated by other states?

# EXHIBIT 12

**Written Testimony of Brooks Hurst, Tarkio, MO, 3/4/2009**

My name is Brooks Hurst I farm in northwest Missouri (Tarkio, MO). In addition to serving on the board of a majority farmer-owned biodiesel production facility located in Kansas City, Mo., I am also invested in several other new-generation cooperatives and limited liability companies. I was asked to testify about the impact the economic downturn has had on the biofuels industry.

Because I am more involved with the biodiesel industry than I am ethanol, I will focus on biodiesel. However, I do believe that I can accurately answer any questions the Small Business Committee might have about liquid biofuels and/or direct the members to helpful resources.

For clarification: biodiesel is made from vegetable oil and most of this oil comes from soybeans, although any fatty acid can be utilized. Biodiesel is blended with petroleum-based diesel fuel and can power any vehicle or piece of machinery that has a diesel engine. Ethanol is alcohol that is distilled from a sugar or starch-based mash. Corn is currently the most economically feasible feedstock for ethanol production. Ethanol is blended with gasoline for use in cars and light-duty trucks that have gasoline engines.

These two fuels represent real technology that we are able to produce now. Biofuels are reducing our dependence on foreign oil, adding to our fuel supply and creating jobs by encouraging the proliferation of "bio-refineries" in the rural areas of this nation. And the displacement of fossil fuels with these renewable fuels is good for our environment. For every unit of energy that is used for drilling, transporting and refining gasoline, only 0.9 of a unit is gained. With tillage, fertilizer, processing, etc., figured-in, ethanol yields 1.2 units of energy for every unit of input. Biodiesel's return on energy investment is even more impressive. From field to fuel tank, biodiesel gives 3.5 units for every unit of energy while reducing the carbon footprint for every gallon by 70 percent.

While I'm dispelling misinformation, I will also mention that there is no food vs. fuel issue when it comes to biodiesel. The following figures can also aid in demonstrating the impact that commodity prices have on the biodiesel industry.

Whole soybeans are rarely fed to animals or eaten by people. The beans are processed (crushed) to separate the oil (20 percent of the soybean itself), meal (75 percent), and hulls (5 percent). More than 95 percent of all domestically-produced soybean meal is fed to livestock, but it can also be made into soymilk, tofu, etc. The hulls are fed to animals and have the same market value as corn. Only the soybean oil is used to make biodiesel. In other words, for every unit of biodiesel produced, there are more than three times as many units of feed and/or food produced. What about cooking oil? Used cooking oil is also utilized to make biodiesel. So, foods can be fried in oil, and then the oil can be made into biodiesel. The more soybeans we grow for vegetable oil to be processed into biodiesel, the more feed and food is produced. The biodiesel industry provides food, feed, AND fuel.

Every 60-pound bushel of soybeans yields approximately 1.5 gallons of soybean oil which subsequently yields 1.5 gallons of biodiesel. The formula for biodiesel is simple: 90 percent fatty acid + 10 percent alcohol + catalyst = 90 percent biodiesel and 10 percent glycerin. I will expand on the role glycerin plays near the conclusion of this testimony. Soybean oil weighs approximately 7.5 pounds per gallon. If you multiply 7.5 by the Chicago Board of Trade price for soybean oil, which gives you a rough idea of the break-even price for biodiesel.

It is understandable that commodity prices, along with fuel prices, have the greatest impact on the feasibility of the biofuels industry. I don't know how direct the relationship is between the economy and fuel prices, but the dipping petroleum market has affected our bottom line as much as high feedstock prices did over the summer.

The situation in the world of finance has affected many biofuels operations also. At a time when a great deal of operating capital is/was required to pay for margin calls or to simply keep the operation afloat, lenders tightened the purse strings. Even though interest rates are low, financial institutions are not willing to loan the money. I know of an example where a loan on a biodiesel plant was purchased by a large firm who put a stop to the farmer-owned plant borrowing money from a local bank. However, the new financer would not extend operating capital to the plant. The biodiesel cooperative is now trying to squeeze more money from its original investors. They have no other option!

I also know of a large scale, farmer-owned biodiesel production facility for which 40 percent of the capital requirement for construction was met by farmer-investors. Three years ago, when the shares were sold to farmers, diesel prices at the pump were around $3 per gallon and soybean oil prices were around $0.28 per pound. With the Dollar Blenders Credit from the Federal Government, the future looked bright for biodiesel investors and financers were knocking on doors wanting the business of these co-ops and LLCs. We all knew things would tighten-up, but we didn't know how dramatically. This particular group had three different lenders willing to put up 60 percent of the capital. Their equity drive closed and construction started at about the same time that commodity prices began to climb. Those lenders all raised their required interest rates which prolonged negotiations and before an agreement was reached with one of the firms. Soybean oil prices were over $0.70 per pound and projected margins were thin. New lenders were courted, but then the financial world collapsed. The plant is now partially built, but the capital raised has been depleted and the construction crews have been sent home until further capital is raised or a lender steps forward.

I have been fortunate to be involved in business models with a better position in the industry. But, things are still tough. Nationally, biodiesel's production capacity is near 2.55 billion gallons per year; however, actual production was approximately 700 million gallons in 2008. Still, biodiesel was able to displace more than 20 million barrels of petroleum in 2008. These numbers help to show that there is great potential to increase the level of U.S. biodiesel production and reduce dependency on foreign oil when

operating capital is available and/or the markets are not as volatile as they are today. For ethanol, approximately 9.5 billion gallons were produced in 2008, which displaced more than 300 million gallons of foreign oil.

One 30-40 million gallon biodiesel plant that is integrated with a soybean crush facility will employ over 50 individuals with a payroll of over $2 million annually. The construction of that plant provided jobs and transportation jobs have been created as a result of the transfer of goods in and out. The demand for soybeans is higher and the feed for animals is cheaper because the plant was built. Those additional profits combined with the earnings from the farmer-owned facility are reinvested in rural communities, creating retail and service jobs. That exemplifies why it is critical to keep the biofuels ball rolling.

I suppose the government has done everything possible to encourage lenders to extend operating capital to existing biodiesel and ethanol production facilities. If not, those avenues need to be explored to maintain the industry we have created and which has truly had a positive impact on Rural America and our nation as a whole. There is no need to throw money at "pie-in-the-sky programs" when we have part of the answer to our future energy needs at hand.

Aside from the requirements for capital and financing, three recommendations for the committee and the federal government come to mind: extension of the federal Biodiesel Blender's Credit, inclusion of glycerin in the federal Bio-based Fuel Blender's Credit and implementation of the Renewable Fuels Standard. I believe that biofuels producers who make it through this volatile shake-out period will be successful long term. Extending and properly implementing the programs already in place can aid this fledgling industry.

One of the biodiesel plants I am involved in is finding it difficult to book business forward because of the uncertainty of the continuance of the Biodiesel Blender's Credit program. If extended for three more years, operations could minimize their risks by contracting forward. It would also assure lenders that projections relying on the credit were accurate and that possible market implications were not a nearby concern.

Likewise, if the Department of Revenue would decide that glycerin is eligible for the fifty-cent Bio-based Fuel Blending Credit, it would establish a floor for the price of the co-product coming out of biodiesel plants. There are many uses for glycerin, but its pricing has fluctuated as greatly as the petroleum and commodity markets. Glycerin is being successfully utilized as a fuel conditioner in #4 fuel oil. It works as a fuel when blended at 20 percent in burners that fire asphalt plants. It is bio-based and there is no reason why it should not be eligible for that tax credit program. Inclusion in the tax credit program would also help the Environmental Protection Agency move their classification of glycerin from a waste product to a fuel.

Finally, implementing the Renewable Fuel Standard that Congress passed in the latest Energy Bill would help to provide additional support for the nation's biofuels producers. The specifics for the enforcement of the RFS are still to be determined, but we need it to

be enacted as soon as possible. Even when biofuels have been less expensive than petroleum based fuels, we have seen petroleum companies resist making biodiesel or ethanol available to consumers. The RFS is necessary to help the free market because petroleum companies have a monopoly on the distribution infrastructure.

Making biofuels available to the public and increasing domestic demand is more important than ever. All exports of biodiesel to Europe have been stopped as of the first of the year pending determinations on trade conflicts between U.S. biodiesel producers and the European Union.

I believe that we, as a nation, stand at a crossroads. The decisions that are made today will impact this country for years to come. It is my hope that my testimony will help demonstrate the importance of the biofuels industry and that the Small Business Committee will consider my recommendations. It is crucial that we work together to ensure that the U.S. biofuels industry continues to play an important role in rural development and growing our fuel supply.

# EXHIBIT 13

**Item 1 of 199**

**PREVIOUS | NEXT**
**NEW SEARCH | HOME | HELP**

**H.CON.RES.25**
**Title:** Expressing the sense of Congress that it is the goal of the United States that, not later than January 1, 2025, the agricultural, forestry, and working land of the United States should provide from renewable resources not less than 25 percent of the total energy consumed in the United States and continue to produce safe, abundant, and affordable food, feed, and fiber.
**Sponsor:** Rep Peterson, Collin C. [MN-7] (introduced 1/10/2007) Cosponsors (72)
**Related Bills:** S.CON.RES.3
**Latest Major Action:** 10/16/2007 Referred to Senate committee. Status: Received in the Senate and referred to the Committee on Agriculture, Nutrition, and Forestry.
**House Reports:** 110-344 Part 1

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|---|---|---|---|
| All Information (except text) | Text of Legislation | CRS Summary | Major Congressional Actions |
| Titles | Cosponsors (72) | Committees | All Congressional Actions |
| Related Bills | Amendments | Related Committee Documents | All Congressional Actions with Amendments |
| CBO Cost Estimates | Subjects | | With links to *Congressional Record* pages, votes,reports |

# EXHIBIT 14

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ROLL CALL

## Biofuels, Flights Benefit Graves

Nov. 7, 2007
*By Paul Singer*
*Roll Call Staff*

09-7000_000131

At the beginning of October, Rep. Sam Graves (R-Mo.) joined several other Midwestern lawmakers in sponsoring legislation to create a national mandate for the use of increasing quantities of biodiesel as a replacement for regular diesel fuel.

Graves has long been an advocate of renewable fuels, and his spokesman argues that biodiesel is "good for the environment, good for the economy and good for the producers."

But the bill also would be good for Graves' wife, Lesley, a public school teacher who in 2005 invested $15,000 in a new biodiesel plant that has since become the largest biodiesel facility in the state.

The biodiesel plant is one of several questionable entries on Graves' financial disclosure forms, including his receipt of thousands of dollars worth of flights on the private plane of a personal friend who is also a contractor with significant financial interests before the committees on which Graves serves.

Graves spokesman Jason Klindt said the Congressman has long been a supporter of renewable fuels. "There is a wide and deep support in Missouri and the Midwest for biodiesel and renewable fuels," Klindt said, and Graves' "support of renewable fuels is well documented."

In May 2004, when Graves was chairman of the Small Business Subcommittee on Rural Enterprises, Agriculture and Technology, the panel held a hearing on the promise of renewable fuels and tax incentives for ethanol and biodiesel.

One of the witnesses was the treasurer of Golden Triangle Energy Cooperative, a small ethanol plant in northwest Missouri. At the time, Graves listed on his financial disclosure forms that he owned jointly with his wife stock in Golden Triangle worth between $1,000 and $15,000, which produced less than $1,000 in dividends.

In his most current disclosure report filed in May, the Golden Triangle stock is listed as belonging to his wife, and the dividend income is listed between $15,000 and $50,000.

Another witness at the May 2004 hearing was Brooks Hurst, a farmer from Graves' small hometown who spoke on behalf of the Missouri Soybean Association. Hurst discussed the importance of a tax incentive for the use of biodiesel in blends with regular diesel fuel. Congress passed the biodiesel tax credit in 2004; Hurst called it "the single most important legislative initiative in the history of the soybean industry."

The following year, Hurst and a dozen other Missouri farmers established a new company to build a biodiesel plant in the state. They put up their own money and then recruited friends and colleagues to make up the rest of the initial capital.

Hurst said in an interview this week that in 2005, "I got in touch with the Graves family and told them about the opportunity." Hurst said he has known the Graves family for years, and he and Graves are among the handful of users of an airstrip in Tarkio, Mo.

Lesley Graves invested $15,000 in the plant; Hurst said there are about 400 investors in the project, which is now

up and running with a production capacity of about 30 million gallons a year, according to statistics provided by the National Biodiesel Board. The plant is in Mexico, Mo., next door to an existing Archer Daniels Midland processing facility, Hurst said.

In 2005, national biodiesel capacity was 75 million gallons; with the federal incentives in place that number is likely to reach 300 million this year, according to the Biodiesel Board. The legislation Graves introduced with the other Midwestern members in October would set a national target of 1.25 billion gallons of biodiesel consumption annually by 2012.

Klindt said there is nothing untoward about Lesley Graves' renewable-fuels investments. "Most of [the fuels plants] in Missouri are small-town farm families that band together to support ethanol and biodiesel in order to revitalize small-town Missouri and break our dependence on foreign oil."

Klindt also argues that Graves and other Members regularly vote on issues that affect their own finances. "He votes on No Child Left Behind and his wife is a schoolteacher," Klindt said.

Ethics experts say Graves' investments are probably not in violation of any House rules, though they may create the appearance of a conflict of interest.

Several ethics lawyers consulted for this article — none of whom would agree to speak on the record — said the more troubling items on Graves' financial disclosure form are the regular recreational flights he accepts from Stanley Herzog, who owns a road and rail contracting company in Graves' district.

According to Graves' financial reports, the Congressman accepted trips to Florida on Herzog's corporate jet in 2006, twice in 2004 and once in 2003. In 2002, he reported accepting a flight to Arizona from Herzog and another to Florida from another friend. Most of the flights were to NASCAR races in Florida.

Graves' financial records vary on how the flights are characterized. The 2006 report values the one-way flight to the NASCAR race "in excess of $250"; the 2003 report values the round-trip flight to the same event at $1,004.90. In each case, Graves' reports say "Determination on personal friendship received from the Committee on Standards."

Under House ethics rules, Members of Congress and their staff can receive gifts of value from personal friends, though for any gift valued over $250 they need to get prior approval from the ethics committee.

The problem posed by the Herzog flights, ethics lawyers said, is if the airplane belongs not to Herzog but to his company, Herzog Contracting Corp. As one ethics lawyer said, "corporations don't have friends," so in order for the flights to be a "gift" from a "friend," Herzog would have had to reimburse the company for the cost of the flights, unless the cost of the airplane comes directly out of his pocket.

In addition, Herzog Contracting has significant issues pending in Congress, and Graves, as a member of the Transportation and Infrastructure Committee, may have input on those issues.

For example, Herzog's transit subsidiaries provide rail service in competition with Amtrak in several cities. In 2002, Graves' local newspaper, the St. Joseph News-Press, wrote that with Congress considering reform of Amtrak, "Mr. Herzog, executive vice president of Herzog Contracting Corp., said the St. Joseph company is ready to roll as a major competitor to Amtrak — if Congress takes action. He's optimistic that, after years of lip service, Congress is on board with the idea of competition."

In 2005, Graves was named by then-Transportation Chairman Don Young (R-Alaska) to be a member of a special Amtrak working group to review Amtrak management and finances.

In a letter dated Nov. 29, 2006, the bipartisan leaders of the ethics committee wrote Graves saying he would be allowed to accept a flight from Herzog under the circumstances that Graves had described to them. The letter quoted Graves as saying Herzog "is in the construction business and has no official business before the House."

But between April 2001 and December 2006, Herzog's firm employed Ann Eppard Associates to lobby the House on railroad issues.

Graves also described the airplane as belonging to Herzog LLC, but the Federal Aviation Administration has no record of an airplane registered to an entity of that name.

Klindt said Graves "sought and received permission from the chairman and ranking member of the Committee on Standards of Official Conduct" after accepting the flight. "If there are any discrepancies, we will immediately work to resolve those issues," Klindt said.

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# EXHIBIT 15

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1 of 1 DOCUMENT

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THE KANSAS CITY STAR

Found on KansasCity.com
The Kansas City Star

December 6, 2007 Thursday

SECTION: B; Pg. 1

LENGTH: 1182 words

HEADLINE: **Family ties to ethanol** plant draw questions for Rep. Sam Graves

BYLINE: STEVE KRASKE, The **Kansas City Star**

BODY:

When Rep. Sam Graves looked across the hearing room that day in 2004, he saw a pair of old friends looking back - Charlie Hurst and his son, Brooks Hurst.

Both were from northwest Missouri and came to Washington at Graves' invitation as witnesses to promote federal subsidies for the renewable fuels industry. They were identified as members of a small ethanol plant cooperative in Craig, Mo., known as Golden Triangle Energy.

Left unsaid that morning was the Graves family's ties to Golden Triangle. In 1999, Graves' wife, Lesley, had invested $13,000 in the cooperative, and in 2006 she would invest $6,826 more.

Graves

Graves told ***The Kansas City Star*** on Wednesday that his failure to disclose his connection to Golden Triangle at the hearing was a mistake.

"Looking back on it, I probably should have," the Tarkio Republican said.

He also acknowledged several mistakes in his personal financial disclosure forms filed each May. One of those concerned the amount of his wife's investment in Golden Triangle.

"We're fixing that right now," Graves said. "We have an attorney helping us with the disclosures to get it right. Some numbers were not high enough. Some were too high. Why that was done, I have no idea."

Graves said he double-checked the disclosures, but didn't "double-check it closely enough."

Democrats, already engaged in a fierce race to unseat Graves in 2008, say the miscues add up to larger concerns about the congressman.

"Sadly, Congressman Graves seems to be making a habit of bending the rules in Washington so they work for him and not everyday families in northwest Missouri," said Kay Barnes, a Democrat and former Kansas City mayor seeking to unseat the four-term incumbent. "He's been caught playing fast and loose with the ethics rules."

The disclosures follow reporting by *Roll Call*,the Capitol Hill newspaper that has, among other things, raised questions about the opportunity the Graves family received to invest not only in Golden Triangle, but also a biodiesel plant in Mexico, Mo. Lesley Graves has invested $15,000 in the plant.

Graves told *The Star* that his wife has made no money in the investment and that involvement in such cooperatives is a way for farmers to seize control of their own financial fates and boost the burgeoning renewable fuels industry. Graves is a grain farmer, but leaves the operation to relatives.

The *Roll Call*stories are the result of a well-orchestrated Democratic attack and the highly charged partisan atmosphere in Washington, he said.

"It's a campaign," Graves said. "And campaigns are a dirty business."

The articles also spotlighted his acceptance of trips to Florida and other locales apparently on a corporate jet belonging to the Herzog Corp. of St Joseph. Members of Congress can accept gifts from personal friends, although gifts valued at more than $250 need approval from the House ethics committee.

According to Graves' disclosure reports, he received that approval. But if the flights were on a plane owned by the Herzog Corp., as opposed to Vice President Stanley Herzog personally, that could require Herzog to reimburse his company for the cost of the flights. An aide to Graves said Wednesday the congressman's office was still checking the plane's ownership.

*Roll Call*also pointed out that Herzog, which runs construction, rail service and rail-testing businesses, has significant issues before Congress, and Graves, as a member of the Transportation Committee, is in a position to help. The newspaper said a November 2006 letter from the ethics committee quoted Graves as saying Herzog "has no official business before the House."

Graves acknowledged that Herzog, a friend of more than 20 years who could not be reached for comment, has hired lobbyists who work on his behalf in the nation's capital.

"Stan has never asked me to do anything," Graves said. "He's never asked me to propose a bill for him or propose legislation."

Graves spokesman Jason Klindt said if any discrepancies arise, "we will immediately work to resolve those issues."

One ethics expert, Steve Carpinelli of the Center for Public Integrity, said Graves should have acknowledged his ties to Golden Triangle in the subcommittee hearing of the House Small Business Committee. The only consequence for not doing so, he said, would be if another member of Congress files an ethics complaint, a practice common during election years.

As for Graves fixing mistakes in his personal financial disclosure statements, Carpinelli said amendments are fairly routine.

"It's not all that unusual for there to be a mistake when it comes to the wrong box being checked in disclosure reports," he said.

Graves said the Small Business Committee is an oversight panel that passes legislation only involving the Small Business Administration and its programs.

As a result, the hearing on renewable fuels was intended to be only informational.

"It doesn't bother me in the least to say that my family invests in this, and that I'm a huge supporter," Graves said. "This is the best thing that's happened to farmers."

Flying a 1943 biplane Rep. Sam Graves has accepted free flights in a Boeing "Super Stearman" airplane belonging to one of his biggest campaign contributors. And he's not disclosed them. That, says the Capitol Hill newspaper Roll Call, which detailed Graves' use of the plane in a story this week, could be a violation of House ethics rules. The plane is question, however, is not some sleek corporate jet. It is a 1943 open-cockpit biplane. Graves said he's done nothing wrong because he's the one providing the favor by flying it. "You disclose gifts," he said in an interview. "I fail to see how it's a gift." Graves, an avid flier, said he is one of only three people qualified to fly the vintage barnstorming aircraft registered to Herzog Contracting Corp., a transportation firm in St. Joseph whose employees have donated tens of thousands of dollars to Graves. None of those pilots works for Herzog. Stanley Herzog, an executive of the company, is a longtime friend. Another of his aircraft, a passenger jet, has ferried Graves to Florida. Those flights have been approved by the House ethics committee, although a question has been raised about proper reimbursement. When the Herzogs need the old biplane flown to an air show, Graves sometimes volunteers. "If I'm asked to fly it, sure, I'll fly it if I'm available," he said. Because it's an open-air plane, Graves said he can't wear a suit in the craft even if he wanted to use it on official congressional business. Roll Call said Graves flew it in July 2006 to a huge air show in Oshkosh, Wis., and in April piloted it to an event in Chillicothe, Mo., where he staged a brief air demonstration. Graves said he's logged fewer than 10 hours in the aircraft this year. The other two pilots can charge Herzog Corp. for flying the plane. Graves said he would, too, if congressional disclosure rules weren't so cumbersome. "You have to take it up once in a while," Graves said, "or the oil pools in the cylinders."

To reach Steve Kraske, call 816-234-4312 or send e-mail to skraske@kcstar.com | Steve Kraske

**LOAD-DATE:** December 6, 2007

# EXHIBIT 16

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Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

Memorandum of Interview

| | |
|---|---|
| In Re: | Representative Graves' Communications Director |
| Review #: | 09-7000 |
| Date: | June 16, 2009 |
| Location: | Law Offices of Lathrop & Gage, Kansas City, MO |
| Time: | 11:00 am |
| Participants: | Leo Wise |
| | Elizabeth Horton |
| | Terry Brady |
| | Matt Hubbard |

Summary: Representative Graves' Communications Director was interviewed pursuant to Review 09-7000. We requested an interview with him and he consented to an interview. He was provided a copy of 18 U.S.C. 101 Representative Graves' Communications Director made the following statements in response to our questioning:

1. Representative Graves' Communications Director was given a copy of 18 U.S.C. § 1001, the False Statements Act, before he was interviewed and he signed a written acknowledgement of its receipt.

2. He has been Representative Graves' Communications Director since 2003, with breaks for work on various campaigns. He was Representative Graves' campaign manager for the 2008 and 2004 elections.

3. He received a mass email about the hearing, which he responded to, but he did not participate in any other email conversations. He may have been copied on other emails but he stated that he would not have responded to any other emails.

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4. After he received the mass email about the hearing, he thought about ongoing articles about Show Me Ethanol. The articles were published during the campaign in 2008. He noted the investment issue in his email to Mr. Sass because he was trying to avoid bad press. The articles he recalled from 2008 weren't about Representative Graves or his wife; they dealt with an issue between the State's Governor and the State Treasurer.

5. The articles dealt with funding issues. The State Treasurer was denying funding for Show Me Ethanol because the Governor's brother and a state representative were invested in the company. Leslie Graves was mentioned in the articles because she was also an investor. The funding was a tax matter.

6. He knew that Representative Graves was invested in Show Me Ethanol and the two other companies because they were listed on the Congressman's disclosure statement.

7. Show Me Ethanol was the holding mentioned in the press.

8. The state issue was over a tax credit. He didn't pay much attention to the issue since it was a state issue. The matter involved a conflict of interest for state officials but the state was trying to interpret the matter more broadly to include federal officials.

9. Leslie Graves sold her interest in Show Me Ethanol because she didn't want to be an impediment for Show Me Ethanol to get the credit/funding.

10. He pulled Representative Graves' financial disclosure statement to see what the Congressman was invested in after Mr. Sass, in response to his email, asked which companies Representative Graves was invested in.

11. He called Mr. Sass to see if the office had found a witness and Mr. Sass told him that Brooks Hurst had agreed to testify.

12. The only issue that came to his mind when he heard that Brooks Hurst would testify was Representative Graves' and Brooks Hurst's mutual interest in aviation, which he stated was different than Show Me Ethanol.

13. He did not speak with Representative Graves about the hearing.

14. He has very little contact with Representative Graves since he works in Liberty.

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15. He does not talk with him on the phone, no one approves his work. He works with the Legislative Staff Director. He calls Mr. Sass when he needs to find out whom to talk with on an issue.

16. He remembered calling Mr. Sass on the Friday prior to the hearing.

17. With respect to the *Roll Call* article that appeared in 2009, he would have formulated the office response to the article but he was traveling that day. He spoke to Angela Landers and Karen Haas regarding the response. He called to see what the article would be about. The reporter brought up the article from 2007.

18. He would have to pull files to find the response to the 2007 article but to paraphrase he felt that Brooks Hurst was there on behalf of the industry and the majority agreed that he was a qualified witness.

19. He knew that Representative Graves was invested in Golden Triangle, he had fact checked the article after it came out.

20. His recollection of the 2007 article was that the reporter wanted a different slant for political piece. He thought the political expedient response to the article was for Representative Graves to say that he "probably should have" disclosed his financial interest in the matter even though it was incorrect grammar, he would have advised him to say "probably should have."

21. He did not recall the actual article from 2007. He was sure that there would have been a discussion about the article at the time but he did not recall any specific conversation.

22. He did not know what Brooks Hurst did, if anything, on behalf of Golden Triangle. He thought that he was just an investor.

23. The first thing that would have raised a conflict issue in his mind with respect to Brooks Hurst would have been airplanes.

24. He reviews the write-ups for hearings for Representative Graves' quotes. He makes sure any quotes sound like the Congressman.

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25. His only knowledge of the March 2009 hearing was from the initial email that he received from Mr. Sass about the need to find a witness for the hearing.

26. He remembers the press release for the hearing because it included a quote supposedly made by Representative Graves that referenced "Saudi Arabian farmers" in a comment. He knew the quote was incorrect because "Saudis don't farm." So, he had back and forth conversations with the Committee's Communication Director to correct the quote.

27. He would have drafted a press release, Angela Landers would have sent him Brooks Hurst's testimony and he would have pasted it in the release.

28. He was certain that Brooks Hurst supported Representative Graves' campaign.

29. He doesn't recall being at any campaign event with Brooks Hurst and he is unaware of whether he is a campaign contributor.

30. He was sure that Brooks Hurst voted for Representative Graves and, if asked, he was sure Brooks Hurst would say that he supported the Congressman.

31. He doesn't recall seeing any letter to the editor. It would have stuck in his mind if a letter was published in St. Joe.

32. He did not believe Brooks Hurst had ever hosted an event for Representative Graves; the campaign doesn't do any events in the home county. The Congressman does well in his home county. He lives there, the people know him.

Elizabeth Horton
Investigative Counsel

# EXHIBIT 17









LIVE MIKE



Columnist Mike Hendricks: Stop the spin – I want to get off.

CITY DISPATCH

Editorial writer Yael T. Abouhalkah on Midwest Voices

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Columnist Steve Penn: Taking aim at urban issues.

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## Conflicts of interest stop ethanol plant from getting state aid

JEFFERSON CITY, Mo. (AP) — A potential conflict of interest involving a congressman's wife, the governor's brother and a state legislator has kept a new $82 million ethanol plant from receiving a valuable state financing incentive.

If the politicians, or their relatives, don't sell their shares soon, the hundreds of other investors in Show Me Ethanol LLC could be forced to shoulder millions of dollars of additional interest to pay off the plant's loan.

Show Me Ethanol, which is on track to open this spring, received conditional approval 15 months ago from State Treasurer **Sarah Steelman** to benefit from a program in which banks offer below-market interest rates.

But that condition required Show Me Ethanol to comply with Steelman's strict conflict-of-interest policy for its investors. No incentives can be given if the company has even a single investor who is a lawmaker, statewide elected official, state department director or a parent, sibling, spouse or child of any of those officials.

So far, Show Me Ethanol has been unable to comply.

That's because its investors include state Rep. **John Quinn**, R-Chillicothe; his wife, **Mary**; and **Andy Blunt**, the brother of Republican Gov. **Matt Blunt**. Also invested in the plant is **Lesley Graves**, the wife of U.S. Rep. **Sam Graves**, R-Mo.

The treasurer's policy doesn't specifically list Missouri's federal lawmakers as prohibited investors, but Steelman has interpreted her policy so that it does.

The Graves family was unaware its investment could pose a potentially costly conflict for Show Me Ethanol until contacted last month by The Associated Press, said the congressman's spokesman, **Jason Klindt**. As a result, Lesley Graves now plans to sell her investment, Klindt said.

"She didn't want Show Me to be held to some sort of different standards just because she was an investor," Klindt said.




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MISSOURI

The Quinns and Andy Blunt are still holding on to their shares, though they told the AP they would consider selling if Steelman remains steadfast and the company needs them to do so.

Steelman insists no exceptions to her policy will be made.

"This is the taxpayers' money, and I don't think it's right for legislators or elected officials to be able to access that benefit, which helps them directly profit," said Steelman, a Republican.

The treasurer's BIG Missouri program deposits state money in Missouri banks at interest rates up to 3 percentage points lower than the typical deposit rate. That reduced rate then must be passed on to the entity receiving the loan. With Steelman's backing, legislators expanded the list of qualifying borrowers in 2005 to include ethanol plants and other value-added agriculture facilities.

So far, no ethanol plant has benefited. Show Me Ethanol is the only one to even apply.

Other companies have been scared away from the state program by Steelman's strict policy, said Gary Clark, the senior market development director for the Missouri Corn Growers Association, who works with groups seeking to open new ethanol plants.

If its politically connected investors sold their shares, Show Me Ethanol could save about $6 million in interest over 10 years by participating in the treasurer's program, said Dave Durham, a northern Missouri farmer who is chairman of Show Me Ethanol's board of directors.

But Durham is frustrated that Steelman has neither budged nor explicitly assured Show Me Ethanol it will get the cheap bank loan if the Quinns and Blunt sell their shares.

"The reality of the matter is there are not a lot of farmers," Durham said, "and a lot of legislators are farmers, and they're big supporters of (the ethanol) business and they want to be a part of it."

Quinn believes the treasurer's office should relax its policy, perhaps allowing up to 5 percent of investors to have political connections. Because Show Me Ethanol has more than 700 investors, Quinn would not have to sell his shares under such a standard.

"I think she has basically carried it to the extreme," Quinn said.

The treasurer's program is just one of several Missouri incentives for ethanol. The state also offers an income tax credit for farmers who invest in ethanol plants and provides the facilities up to $15.6 million in production-based subsidies over their first five years of operation.

The Department of Agriculture has no conflict-of-interest policy for the production subsidies. Its conflict-of-interest prohibition for the tax credits applies only if a lawmaker, statewide official, department director or an immediate family member owns more than 10 percent of the company.

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"We haven't even come close to anyone being at that 10 percent level," said **Tony Stafford**, executive director of the Missouri Agricultural and Small Business Development Authority, which administers the tax credits.

Farmers who invested in Show Me Ethanol received their individual tax credits last July, Stafford said.

The Corn Growers group contends there is no difference between legislator-farmers receiving ethanol incentives and legislator-doctors getting paid under the state's Medicaid program.

But Steelman believes the wrong message would be sent if even one public official were to benefit from her ethanol incentive program.

"We need to make it clear to the taxpayers of this state that their money is being invested wisely and we're not investing it in elected officials," Steelman said.

Submitted by Steve Kraske on January 22, 2008 - 4:42pm.
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