

Union Calendar No. 145

112TH CONGRESS }
2d Session

HOUSE OF REPRESENTATIVES

{ REPORT
112-588

IN THE MATTER OF ALLEGATIONS
RELATING TO REPRESENTATIVE
VERNON G. BUCHANAN

R E P O R T

OF THE

COMMITTEE ON ETHICS



JULY 10, 2012.—Referred to the House Calendar and ordered to be
printed

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LETTER OF SUBMITTAL

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON ETHICS,
Washington, DC, July 10, 2012.

Hon. KAREN L. HAAS,
Clerk, U.S. House of Representatives,
Washington, DC.

DEAR MS. HAAS: Pursuant to clauses 3(a)(2) and 3(b) of Rule XI of the Rules of the House of Representatives, we herewith transmit the attached Report, "In the Matter of Allegations Relating to Representative Vernon G. Buchanan."

Sincerely,

JO BONNER,
Chairman.
LINDA T. SÁNCHEZ,
Ranking Member.

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IN THE MATTER OF ALLEGATIONS RELATING TO REPRESENTATIVE VERNON G. BUCHANAN

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Mr. BONNER, from the Committee on Ethics,
submitted the following

R E P O R T

I. INTRODUCTION

On November 8, 2011, the Office of Congressional Ethics (OCE) forwarded to the Committee on Ethics (Committee) a Report and Findings related to Representative Vernon G. Buchanan's alleged failure to properly list on his Financial Disclosure Statements for 2007 through 2010, certain positions with a number of entities, as well as certain income from those positions. Representative Buchanan amended his 2007 through 2010 Financial Disclosure Statements while OCE conducted its investigation.

OCE found "substantial reason to believe that Representative Buchanan failed to disclose reportable positions and unearned income" on his Financial Disclosure Statements, and recommended further review in order for the Committee "to apply its Policy Regarding Amendments to Financial Disclosure Statements and determine whether the amendments were filed with a presumption of good faith."

The Committee published OCE's Report and Findings on February 6, 2012.¹ The Committee conducted its own review of those allegations pursuant to Committee Rule 18(a).

This Report, adopted by the Committee on June 29, 2012, resolves the allegations forwarded by OCE on November 8, 2011. The Committee has unanimously determined that the evidence presently before the Committee supports a determination that Representative Buchanan did not report, in complete and accurate de-

¹ Because the Committee has already published OCE's Report and Findings, it has not done so again with its own Report. OCE's Report and Findings are available on the Committee's Web site, <http://www.ethics.house.gov>.

tail, all of the positions or ownership interests he held with several entities on his Financial Disclosure Statements for 2007, 2008, 2009, and 2010, and that he did not accurately report certain income received from those same entities in the same years.

However, the Committee also unanimously determined that these errors and omissions are not substantively different from the hundreds or thousands of errors and omissions corrected by amendment at the requirement of the Committee every year. Such errors and omissions occur frequently but rarely result in Committee action other than requests for amendments which will be publicly filed, and, in certain cases, late fees when the amendments are not timely filed after notification. Therefore, due only to the structure of House and Committee Rules requiring publication of material referred by OCE for further review, this Report is warranted to explain the Committee's actions and findings in this matter, and to provide greater context to the OCE's Report and Findings.

On September 15, 2011, after being notified by OCE of their inquiry, Representative Buchanan amended his annual Financial Disclosure Statements for calendar years 2007, 2008, 2009, and 2010, to reflect his positions with or ownership interests in certain entities, and income earned from these entities. As is done in many instances of incomplete or inaccurate Financial Disclosure Statements, Representative Buchanan has now remedied these errors and omissions by his subsequent amendments. Therefore, no further action by the Committee is warranted in this OCE matter.² The Committee notes that Representative Buchanan's amendments, like all amendments, are available for public review with the Clerk of the House and online.

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

House Rule XXVI, clause 2 provides that Title I of the Ethics in Government Act (EIGA) of 1978 "shall be considered Rules of the House as they pertain to Members, Delegates, the Resident Commissioner, officers, and employees of the House." The EIGA, codified at 5 U.S.C. app. 4 101 *et. seq.*, provides that Members, officers, and certain staff of the House are required to file an annual Financial Disclosure Statement. The EIGA also requires candidates for federal office to file a Financial Disclosure Statement while they are a candidate. The EIGA, at Section 102(a), describes the information that must be included in the Financial Disclosure Statement. Section 102(a)(6)(A) requires a filer to include: "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."

²This Report addresses only the matter referred to the Committee on November 8, 2011, regarding financial disclosure errors and omissions. It does not address any other matter referred by OCE regarding Representative Buchanan.

III. BACKGROUND

On November 8, 2011, OCE referred a matter involving Representative Buchanan to the Committee. In its referral, OCE recommended the Committee further review allegations that Representative Buchanan had failed to disclose reportable positions and unearned income on his Financial Disclosure Statements for the past four years.

The Committee reviewed the allegations forwarded by OCE in its referral. Committee staff reviewed Representative Buchanan's original Financial Disclosure Statements and the amendments he filed for public disclosure with the Clerk of the House in September 2011, after he was notified of OCE's inquiry.

OCE's Report and Findings describe a number of alleged errors in Representative Buchanan's Financial Disclosure Statements from 2007 to 2010. In summary, OCE alleges that Representative Buchanan failed to report positions with six companies: Boca Creek Development Company, LLC; Bowling Green Dealership, LLC; Country Club Shores LLC and its companion entity Country Club Shores II, LLC; Regent Court Association, Inc.; and Vernon G. and Sandra J.C. Buchanan Family Foundation, Inc. OCE also alleged that Representative Buchanan failed to disclose up to \$14,315 in interest income imputable to these six entities over the four-year time period it investigated. The total amount of interest income was the subject of some dispute between OCE and Representative Buchanan. For example, OCE noted that according to his federal income tax returns, Representative Buchanan had received interest income from Bowling Green Dealership, LLC of \$2,373 in 2007 and \$2,992 in 2008, but that he had listed the amount of interest income on his original Financial Disclosure Statements for those years as "zero." In his amended Financial Disclosure Statements for those years, Representative Buchanan stated that he had received "zero" interest income from Bowling Green Dealership during those years, but noted that "Bowling Green, LLC produced interest income during the period, but when applied against net loss, the net total was still a loss." OCE, in a footnote to its Report and Findings, alleged that this methodology for calculating income was at odds with the Committee's instructions for completing Financial Disclosure Statements, in which the Committee states the general rule that income and assets must be reported on a gross basis, as opposed to a net basis.

Representative Buchanan, in an interview with OCE, stated that the omission of these positions and income was inadvertent. He explained that he relies on his staff and several accountants to prepare his Financial Disclosure Statements and that, while he reviews the draft "a little bit," he relies on others to "handle all of the details." On September 15, 2011, after having been notified of OCE's inquiry, Representative Buchanan filed amended Financial Disclosure Statements for the years in question. The amendments added the disclosure of all reportable positions discovered by OCE, as well as additional positions not initially disclosed and not identified by OCE.

In his response to the Committee's request for information, Representative Buchanan described his process for reviewing and amending his Financial Disclosure Statements. Once he learned of

OCE's investigation, Representative Buchanan instructed his accountant to investigate. The accountant, Ms. Toni Poor, obtained all relevant records from the Florida Department of State, Division of Corporations regarding any and all entities in which Representative Buchanan was listed as an officer or manager. These files were cross-referenced against Representative Buchanan's own files. With respect to errors and omissions in reporting unearned income, Ms. Poor reviewed historical tax returns for the entities OCE identified, and compared them with the ranges submitted on Representative Buchanan's Financial Disclosure Statements.

With respect to the controversy about his methodology for reporting income, Representative Buchanan responded that he reported the income based on the Committee's instructions for reporting a partner's share of business income as reported on his IRS Schedule K-1. That guidance instructs that such income should be calculated as the sum of the income reflected on specific lines of the IRS Schedule K-1 issued to partners. When Representative Buchanan performed that calculation with respect to Bowling Green Dealership, LLC, the result was a "significant loss for both 2007 and 2008." Representative Buchanan reported that he had contacted Committee staff in September 2011 while preparing the revisions to his Financial Disclosure Statement and received confirmation of his interpretation of the policy.

Representative Buchanan also noted that many of the additional changes resulted from recharacterization of positions from officer to "managing member" with the Division of Corporations; other changes resulted from inadvertent omission of previously sold or inactive businesses which had not been formally dissolved; and, in a few cases, the reportable positions had simply been omitted through oversight. Staff has reviewed these additional revisions and determined that the explanation is consistent with the nature of those revisions—most of the revisions simply change the title of a position previously disclosed (e.g., from "Partner" to "Managing Member" or from "President" to "President, Partner, Director") or provide additional information about the nature of the entity (e.g., to describe whether it is owned by a parent company also controlled by Representative Buchanan, or whether it is to be dissolved in the near future).

On December 14, 2011, Representative Buchanan, through counsel, sent a letter to the Committee responding to OCE's Report and Findings. In that letter, Representative Buchanan explained that the unreported income, totaling just under \$15,000 over four Financial Disclosure Statements, amounts to somewhere between 0.0000434% and 0.0000962% of the total assets he disclosed on those statements. Representative Buchanan stated that such a small error relative to the size of his Financial Disclosure Statements demonstrates that he attempted to comply with the EIGA requirements. Representative Buchanan also explained that the unreported positions were inadvertently omitted and not positions from which Representative Buchanan drew a large profit or in which he had been intimately involved. Finally, Representative Buchanan stated that the process he follows to complete and submit his Financial Disclosure Statements, which involves a number of financial professionals and significant communication with Com-

mittee staff prior to filing, demonstrates his good faith efforts to comply with EIGA.

IV. ANALYSIS

It is clear from a review of Representative Buchanan's Financial Disclosure Statements and amendments that when he filed his annual Financial Disclosure Statements for 2007, 2008, 2009, and 2010, he did not report all of the positions he held with several entities in complete and accurate detail. He also failed to accurately report all income earned from those entities. On September 15, 2011, shortly after being notified by OCE that they were reviewing his Financial Disclosure Statements, Representative Buchanan submitted letters to the Clerk of the House to amend his original filings in order to properly report the positions he held and income he earned.

Members and other filers are, of course, required by law, and expected, to make full, complete, and accurate disclosures on their Financial Disclosure Statements. When the Committee, an outside group, the press, or some other entity discovers errors and omissions (as OCE did in this case), the inaccuracies may or may not be substantial or serious. Some examples of substantial or significant errors may include the failure to report significant amounts or whole categories of earned income, particularly when such income is also withheld from reporting on taxes, failing to disclose significant positions or transactions representing direct and obvious conflicts of interest, or a series of numerous errors and omissions over many years which reflect a substantial portion of all reportable items.

However, less substantial errors and omissions on Financial Disclosure Statements are not uncommon. In fact, between 30% and 50% of all Financial Disclosure Statements reviewed by the Committee each year contain errors or require a corrected statement. For over 95% of these inaccurate Financial Disclosure Statements, the filer appears to be unaware of the errors until they are notified by the Committee. Some filers also appear to become aware of errors after being notified by members of the media or outside groups who review the statements and other public records. Generally, unless there is some evidence that errors or omissions are knowing or willful, or appear to be significantly related to other potential violations, the Committee notifies the filer of the error and requires that he or she submit an amendment, which is then publicly filed. Once the amendment is properly submitted, the Committee takes no further action. Accordingly, errors and omissions in Financial Disclosure Statements are an ordinary part of the process for many filers, and in the normal course of review and amendment of Financial Disclosure Statements, the fact of errors and omissions are typically not the subject of an investigation or Report by the Committee, but rather are disclosed publicly by the filing of the amendment itself.

In this matter, Representative Buchanan was notified by OCE that his Financial Disclosure Statements were either inaccurate or were missing information that should have been reported. Very shortly after receiving this notification, Representative Buchanan submitted information to the Clerk of the House to publicly amend his Financial Disclosure Statements with corrected information.

Representative Buchanan has consistently stated that if his Financial Disclosure Statements require further review or amendment to correct inadvertent errors or omissions, he will conduct such review or submit such amendment.

There has been no evidence or allegation presented to the Committee that Representative Buchanan's failure to file correct and complete information was either knowing or willful. Accordingly, Representative Buchanan, by filing Financial Disclosure Statements containing inadvertent errors and omissions, found himself in a posture not uncommon among filers of Financial Disclosure Statements, and while many others in that position are able to exit it in a manner which is not the subject of a public investigation by the Committee, House and Committee Rules forced the Committee to publish OCE's Report and Findings in this matter and accordingly publicize Representative Buchanan's errors and omissions.³ Nevertheless, because there is no evidence that these errors were knowing or willful, the Committee has determined that a full and complete amendment correcting these errors is the appropriate resolution of the matter, as it is in most other instances requiring an amendment.

To be clear, however, Representative Buchanan, as well as other Members and employees of the House, should understand that accurate and complete reporting on Financial Disclosure Statements should be every filer's goal and is necessary to be in compliance with House Rules and federal law. All filers are encouraged to promptly file amendments whenever they learn of errors or omissions. Failure to do so may constitute a knowing or willful violation. Subjecting the routine amendment process, in every instance, to public investigation may serve to discourage voluntary disclosure of errors and omissions, undermining the goal of accurate and complete public disclosure.

Additionally, while filers are certainly welcome to seek professional assistance in preparing their Financial Disclosure Statements, they are reminded that each filer is responsible for compliance with EIGA requirements. As always, Committee staff is willing to assist all filers as they prepare their Financial Disclosure Statements.

V. CONCLUSION

Representative Buchanan's annual Financial Disclosure Statements filed as a Member for 2007, 2008, 2009, and 2010, contained certain errors and omissions. The amendments he submitted for those four years reflected a number of errors or omissions, some of which were identified by OCE and some of which Representative Buchanan himself discovered. The Committee's practice in such cases is to notify a Member or employee of errors on their Financial Disclosure Statements and require them to publicly amend their Statements. In this case, Representative Buchanan has already amended his Financial Disclosure Statements to provide corrected information with regard to all errors brought to his attention.

³To be clear, as noted above, while the Committee's notices and consultations regarding amendments are generally not public, all amendments themselves are made public by the Clerk of the House.

Therefore, the Committee concludes that no further action is necessary and considers the matter closed.

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

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

