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COMMITTEE ON ETHICS

2550 M Street, NW
Washington, DC 20037-1350
202-457-6000

Facsimile 202-457-6315
www.pattonboggs.com

March 16, 2012

William J. McGinley
202-457-6561
wmcginley@pattonboggs.com

VIA MESSENGER

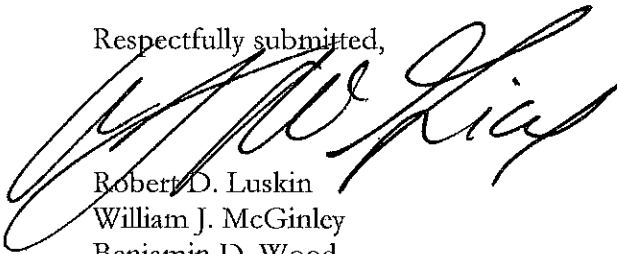
The Honorable Jo Bonner
Chairman
The Honorable Linda T. Sánchez
Ranking Minority Member
Committee on Ethics
United States House of Representatives
1015 Longworth House Office Building
Washington, DC 20515

Re: The Honorable Vern Buchanan's Response to
The Office of Congressional Ethics Referral in Review Number 11-7565

Dear Chairman Bonner and Ranking Member Sánchez:

On behalf of our client, the Honorable Vern Buchanan, we hereby respond to the February 14, 2012 letter from the Chief Counsel to the Committee on Ethics ("Committee") notifying Representative Buchanan that the Committee received a referral for further review from the Office of Congressional Ethics ("OCE") in the above-referenced matter. For Representative Buchanan's written response, we respectfully submit – and hereby incorporate by reference – the attached letter, dated March 8, 2012, to the OCE concerning that referral. *See Exhibit A.* We also submit Representative Buchanan's attached declaration in accordance with Committee rules. *See Exhibit B.*

Respectfully submitted,



Robert D. Luskin
William J. McGinley
Benjamin D. Wood

Attachments

EXHIBIT A

PATTON BOGGS LLP

RECEIVED
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CONGRESSIONAL ETHICS

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2550 M Street, NW
Washington, DC 20037-1350
202-457-6000

Facsimile 202-457-6315
www.pattonboggs.com

March 8, 2012

Robert D. Luskin
202-457-6190
rluskin@pattonboggs.com

The Honorable Porter Goss
Chairman
The Honorable David Skaggs
Co-Chairman
Office of Congressional Ethics
United States House of Representatives
425 3rd Street, SW
Suite 1110
Washington, DC 20024

Re: The Honorable Vern Buchanan
Review No.: 11-7565

Dear Chairman Goss and Co-Chairman Skaggs:

We write to express, in the strongest possible terms, our disappointment and disagreement with the OCE report concerning the Honorable Vern Buchanan. The report's central conclusion is that Congressman Buchanan corruptly sought to procure a false affidavit from Sam Kazran, whose credibility the FEC directly questioned in rejecting allegations that Congressman Buchanan encouraged businesses in which he had an interest to reimburse personal contributions to his campaigns.

From start to finish, the report's conclusions are fundamentally flawed. It misstates the evidence on which it is based, conceals exculpatory evidence, conceals the fact that the FEC found substantial grounds to doubt Kazran's credibility, and relies upon interpretation of documents that are at odds with their plain meaning, the conduct of all the parties, and the sworn statements of witnesses on which the report purports to rely. Just as disturbing, the documents attached to the report reveal that the OCE turned its back on its basic obligation under Rule 4(F) to disclose exculpatory evidence to Congressman Buchanan. The report is a disgrace. The Committee should reject its conclusions and hold accountable those individuals responsible for deliberately misleading the Committee and ignoring their obligations.

As we set forth more fully below, the report's conclusion that Congressman Buchanan sought to procure a false affidavit rests upon an interpretation of the affidavit that is nothing

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short of bizarre. The inferences drawn by the Board are at odds with the plain language of the affidavit, its context, the contemporaneous conduct of the parties, and their sworn testimony. The report, however, is replete with additional instances of dishonesty. For example:

- OCE embraces Kazran's accusations, but fails even to note that the FEC concluded he was not credible based on his conflicting testimony, a court's holding Kazran in contempt for concealing assets through fraudulent transfers, Kazran's efforts to extort a business settlement from Congressman Buchanan by threatening to publicize his false FEC allegations days before an election, and other serious misconduct.
- OCE relies on Kazran's interview statements implicating Congressman Buchanan in Kazran's contribution reimbursement scheme, but omits from its report that those statements contradict sworn testimony from Kazran's FEC deposition.
- OCE falsely claims that a witness corroborated Kazran's accusations, but omits from its report that Kazran told OCE investigators that witness "is lying" about the very statement upon which OCE relied. OCE cites another witness as corroborating Kazran when, as even the FEC acknowledged, she did not implicate Congressman Buchanan or corroborate Kazran at all.
- The OCE report distorts the evidence by systematically mischaracterizing, concealing, and selectively quoting witnesses and documents. As but one example, the report twice selectively quotes portions of a voicemail message attributed to Congressman Buchanan to support the inference that Congressman Buchanan sought to reimburse donors through corporate funds, but omits the most pertinent statement from the very same message in which he emphasized that Kazran cannot reimburse donors and they must contribute voluntarily.

The OCE's deliberate concealment of exculpatory evidence, in violation of Rule 4(F), has prevented us from having a meaningful opportunity to address the allegations. We fully expect the Board to hold accountable those individuals responsible for these violations. *See* OCE Rule 3(C). Having finally now seen the report we take this opportunity to set the record straight and to inform the Board of the extent of its staff's deception.

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I. The OCE Report Rests on a Grotesque Misinterpretation of the Affidavit.

At its epicenter, the report alleges that, in the course of settlement negotiations to dissolve their business relationship, Congressman Buchanan sought to procure a false affidavit from Sam Kazran, a former business associate who was the sole individual to allege that Congressman Buchanan had conceived a scheme to improperly use assets from his car dealerships to reimburse employees who contributed to his congressional campaigns. In particular, the report focuses on paragraph 5 of the affidavit, which it interprets to aver that prior to September 2008, Kazran was unaware of the illegal scheme. The report further suggests, falsely, that Congressman Buchanan's offer of \$2.9 million as part of the settlement was an inducement to Kazran to agree to this allegedly false statement.

The report's interpretation of paragraph 5, upon which the allegation that Congressman Buchanan sought to procure a false statement wholly relies, is nothing short of bizarre. It is at odds with the plain meaning of the provision, its context, the contemporaneous conduct of the parties, and the meaning attributed to that provision by Kazran, the FEC, and Congressman Buchanan's accusers from CREW. It makes literally no sense whatsoever except as part of an effort to accuse Congressman Buchanan of procuring a false statement.

Of course Sam Kazran was always aware that he had used funds from the dealership to reimburse contributions; that was the whole point of the affidavit. The essence of the affidavit – obvious to all but the OCE – was that Kazran had not advised Congressman Buchanan, directly or indirectly, that he reimbursed contributions until he revealed it for the first time in his September 2008 email.

That the OCE had to resort to such a twisted misinterpretation to devise a theory under which the affidavit might be deemed "false" is alone compelling proof that, in fact, it was not false; it was entirely true and accurate.

A. OCE's Incoherent Interpretation of Paragraph 5 Is Irreconcilable With the Remainder of the Affidavit and With Its Context.

Paragraph 5 must be read in conjunction with the language of the affidavit as a whole.¹ In the preceding paragraph 4, the affidavit states that in the course of negotiations over

¹ Paragraph 5 reads, in full: "Before September, 2008 neither I, nor to my knowledge, any other person who had ever advised Buchanan or any of his representatives had any information that one or both of the dealerships referred to in 1 above reimbursed certain individuals for contributions made to the Vernon G. Buchanan for Congress campaign."

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disputed finances, Kazran advised one of Congressman Buchanan's representatives that Kazran's dealership had reimbursed certain individuals who had contributed to the campaign. As the OCE Report acknowledges, the communication referenced in paragraph 4 was Kazran's September 8, 2008 email to John Tosch. *See* Rpt. ¶¶ 53-57. Accordingly, paragraph 5 of the affidavit clarifies that "[b]efore September, 2008," neither Kazran, nor anyone else to his knowledge, had advised Congressman Buchanan or any of his representatives that Kazran's dealership had reimbursed campaign contributions. Read together, paragraphs 4 and 5 confirm that: (1) Kazran advised Tosch in his September 8, 2008 email that Kazran had reimbursed campaign contributions through the dealership he operated; and (2) Kazran had never advised Buchanan or his representatives of that information before that September 8, 2008 email. Although paragraph 5 is admittedly inartful and contains typos, its meaning is plain and unambiguous. Read in conjunction with paragraph 4, paragraph 5 cannot reasonably be interpreted as stating that Kazran was unaware of his *own* conduct.

The OCE's misinterpretation is even starker in context. When Kazran first revealed his misconduct in his September 2008 email, the Vern Buchanan for Congress campaign committee promptly and voluntarily self-reported to the FEC that Kazran had reimbursed contributions at Hyundai North Jacksonville ("HNJ"). In fact, that *sua sponte* submission, filed with the FEC on October 6, 2008, specifically states that Buchanan's representatives were first informed in September 2008, during commercial litigation negotiations between Buchanan and Kazran, that HNJ had reimbursed contributions from its employees and their family members, just as paragraph 5 of the draft affidavit correctly states. *See Sua Sponte* FEC Submission at 1.

OCE's contrary interpretation ignores this context and assumes – although it fails even to note the report to the FEC – that, within a matter of weeks, the Buchanan campaign made a report to the FEC that is at odds with the draft affidavit.² The entire point of the affidavit was to demand that Kazran tell the FEC the truth: that he reimbursed contributions without Congressman Buchanan's knowledge and that he had first revealed this fact in a September 2008 email less than thirty days before the campaign filed its voluntary self-reporting submission. This context is inconsistent with OCE's interpretation of paragraph 5.

² In its self-reporting submission, the campaign advised the FEC that the individuals responsible, *i.e.* Kazran and his conduits, should not benefit from their actions and thus requested guidance on how to disgorge the funds.

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B. All Parties – Including Kazran, the FEC, and Even CREW – Rejected OCE’s Interpretation of Paragraph 5.

Up to now, everyone who has seen or considered the affidavit has correctly understood the meaning of the language in paragraph 5; their shared understanding is at odds with OCE’s tortured interpretation. Most relevant, Sam Kazran testified repeatedly that, rather than claiming he had no knowledge of the reimbursements, the affidavit laid the full responsibility on Kazran alone. In his FEC deposition, Kazran testified about the affidavit: “But this affidavit basically wanted me to say that Vern had no idea about this **and that I’m the one who did all of it**, which is absolutely incorrect. . . . He wanted me to say that Vern had nothing to do with campaign contributions.” Kazran Tr. at 60 (emphasis added); *see also* Kazran Tr. at 63 (there would be no agreement “if I did not sign the affidavit **to blame everything on me**”) (emphasis added). OCE not only ignores Kazran’s FEC deposition testimony, despite attaching the transcript to its report, but also ignores Kazran’s similar characterization of the affidavit in his OCE interview with Omar Ashmawy and Kedric Payne, in which he testified that the affidavit “not only claimed Representative Buchanan did not know about the reimbursements, but **made the witness [Kazran] the ‘fall guy.’**” Kazran MOI ¶ 31 (emphasis added). OCE does not acknowledge, let alone try to reconcile, the contradiction between Kazran’s interpretation of the affidavit as making him the “fall guy,” saying “I’m the one who did all of it,” “blam[ing] everything on me,” and OCE’s misinterpretation that paragraph 5 was meant to deny Kazran even knew about the reimbursements. OCE’s interpretation of that language would have been exculpatory for Kazran, the exact opposite of his own understanding that the affidavit blamed everything on him as solely responsible.

Kazran was not alone in correctly understanding paragraph 5. Every other party involved in the discussion or subsequent investigation interpreted it similarly. Throughout its investigation, the FEC attorneys demonstrated in their written arguments and through their deposition questioning that they understood the affidavit to say that Kazran knew about the reimbursements but Congressman Buchanan did not know. The FEC Office of General Counsel consistently described the affidavit as “stating that Buchanan was unaware of the reimbursed contributions at HNJ.” FEC General Counsel’s Report #2 at 2, 20; General Counsel’s Probable Cause Brief at 4, 49.³ Even CREW, the presumptive complainant in this OCE review, described the affidavit accurately in its complaint as attesting “that Rep.

³ The General Counsel alluded to OCE’s incorrect interpretation of Paragraph 5 for the first and only time in dicta in its Report #9, after the Commission had rejected its initial probable cause recommendation and it was forced to concede there was no probable cause.

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Buchanan had no involvement in or knowledge of the contribution scheme,” and described paragraph 5 specifically as “asserting none of Rep. Buchanan’s advisors or representatives had any knowledge of the reimbursement scheme before September 2008.” CREW Complaint at 6-7. No other party misinterpreted paragraph 5 as OCE has.

As recognized by everyone but OCE, the affidavit provided to Sam Kazran’s attorney simply does not say that Kazran had no information about his own reimbursements, and it cannot reasonably be judged false on that basis.

II. The OCE Report Relies on Sam Kazran While Ignoring His Well-Established Credibility Problems and Contradictory Testimony.

Sam Kazran’s claim that Congressman Buchanan conditioned a proposed litigation settlement on Kazran’s executing the “false affidavit” for submission to the FEC is the sole alleged violation in this review. Nevertheless, the OCE explicitly adopts Kazran’s allegations that Congressman Buchanan directed him to use funds from the dealership to reimburse individual employees’ contributions to his campaign. In hitching its wagon to Kazran, the OCE ignores the FEC’s well-publicized conclusion that Kazran was not credible, and omits from its report the many ways in which Kazran’s OCE interview testimony directly contradicts his prior sworn testimony to the FEC.

A. The FEC Previously Found Kazran Not Credible, and for Good Reason.

OCE mischaracterizes the FEC’s unanimous 5-0 decision to reject Kazran’s allegations and to take no action against Congressman Buchanan or his campaign as simply having been “[d]ue to a lack of corroborating evidence.” Rpt. ¶ 84. With the validity of the OCE Report resting on Kazran, its authors omit mention of the FEC’s firm conclusion that he was not credible. Despite attaching it as an exhibit, OCE does not disclose the FEC attorneys’ grave concerns about Kazran’s credibility expressed throughout General Counsel’s Report #9 (“GC #9”). See GC #9 at 2, 27 (“new information raises significant concerns about the credibility of Kazran”); *id.* at 2 (new “evidence that bears directly on Kazran’s credibility”); *id.* at 4 (“new information relating to Kazran’s credibility”); *id.* at 10 (“our recent concerns with his credibility”).

The FEC had good reason to conclude Kazran was not credible. During proceedings before the Commission, counsel for Congressman Buchanan and his campaign identified several important facts undermining Kazran’s credibility that the FEC attorneys had overlooked in their investigation. For example, finding himself in dire financial and legal straits as a defendant in numerous litigations and bankruptcies, in November 2008 Kazran

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was held in contempt and jailed in a Georgia bankruptcy proceeding for concealing assets by transferring funds in violation of a court order.⁴ That illegal and deceptive conduct – strikingly similar to Kazran’s using his employees and family members as conduits to conceal his reimbursement of contributions from his dealership – bears directly on Kazran’s credibility, and the FEC agreed “that a court’s contempt order for transferring funds in violation of an order of receivership is a serious matter because it relates to Kazran’s honesty and respect for the law.” GC #9 at 3. However, OCE left this evidence entirely unaddressed.

Similarly, Congressman Buchanan’s counsel informed the FEC that, from the very beginning, Kazran had attempted to leverage the FEC investigation – specifically including Kazran’s admission that he reimbursed contributions at HNJ – to force a settlement of his ongoing business disputes with Congressman Buchanan. Those attempts at extortion culminated in Kazran’s threatening to file a bogus lawsuit for the purpose of publicizing the then-confidential FEC investigation just days before the 2010 election if Congressman Buchanan did not agree to settle their business dispute immediately. The FEC attorneys ultimately agreed “that Kazran’s actions were ill-advised and raise credibility concerns, especially as Kazran’s actions occurred in the two weeks before the 2010 elections.” GC #9 at 3-4. Again, however, OCE inexplicably concealed this evidence.

B. The OCE Ignored New Evidence Undermining Kazran’s Credibility.

In addition to burying the FEC’s finding that Kazran lacked credibility, the OCE report’s authors also disregard testimony and evidence from their own investigation that demonstrate Kazran is not being truthful. For example, OCE ignored the significance of Kazran’s telling Mssrs. Ashmawy and Payne that “June 2006 was the first time that Representative Buchanan explicitly told him to reimburse campaign contributions.” Rpt. ¶ 78. Kazran’s statement to OCE contradicts his earlier sworn testimony in his FEC deposition that Congressman Buchanan gave such an instruction in November 2005 when Kazran first reimbursed HNJ employees’ contributions. *See* Kazran Tr. at 21:1-22:4. Those two directly contradictory statements are irreconcilable; Kazran either lied to the FEC, OCE, or both. But OCE never even acknowledges this contradiction.

This distinction is hardly trivial. Although the OCE overlooks its significance, it is undisputed that, by June 2006, Kazran had *already* reimbursed \$32,700 of contributions. Quite simply, it is impossible to reconcile Kazran’s undisputed conduct with his dogged insistence that he acted only at the request of Congressman Buchanan.

⁴ In 2010, Kazran also was arrested and charged for theft at a Florida Wal-Mart.

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Similarly, OCE relies on Kazran's claim that he heard Congressman Buchanan tell David Long "don't you know you're going to get it back," referring to a campaign contribution, to support the implication that Congressman Buchanan encouraged the reimbursement of employees. Rpt. ¶ 78. But OCE conceals Long's own testimony to the FEC that Buchanan did *not* offer to reimburse his campaign contribution, *see* Long Tr. at 72, and the FEC General Counsel's admission that, other than Kazran, "no other Buchanan partner who we contacted stated that he heard Buchanan authorize reimbursed contributions." GC #9 at 12. Likewise, OCE fails to note that Dennis Slater, who Kazran alleges was present during this conversation, insisted that Kazran's testimony is "false" and that Slater was unaware of "*anyone*" being reimbursed. *See* Slater MOI ¶¶ 23-24 (emphasis added). Indeed, although it relied on Kazran's false account of this purported statement to Long, OCE did not even bother to contact Mr. Long himself. *See* Rpt. ¶¶ 11-15.

III. OCE Mischaracterizes Evidence as Corroborating Sam Kazran's Allegations.

Incredibly, OCE claims that "several other witnesses" corroborated Kazran's claim that Congressman Buchanan intended to have contributions reimbursed. Rpt. ¶ 75. In fact, "several" turns out to be only two: OCE cites only the testimony of HNJ employees Josh Farid and Gayle Lephart. Rpt. ¶ 75 n. 65.⁵ Even this is far less than it appears. Lephart's testimony to both OCE and the FEC does *not* implicate Congressman Buchanan, and Kazran testified to OCE that Farid "is lying" about ever having heard Congressman Buchanan mention reimbursement. The suggestion that "several" witnesses corroborate Kazran is nothing short of false and deliberately misleading.

A. Kazran Admitted to OCE That Josh Farid "Is Lying" About Overhearing Congressman Buchanan on the Telephone.

In support of its claim that "other witnesses" alleged Congressman Buchanan intended to have individual contributors reimbursed, OCE cites "HNJ CFO" Josh Farid. Rpt. ¶ 75 n. 65. Mr. Farid testified that, on two occasions before the June 2006 partners meeting, Kazran put his telephone to Farid's ear and he heard Congressman Buchanan suggest having the dealership reimburse managers' campaign contributions. Farid MOI ¶¶ 11-14; Rpt. ¶ 82. Although OCE claims that Farid's testimony corroborates Kazran's allegation that Congressman Buchanan directed reimbursements, Kazran actually "told the OCE that he

⁵ With respect to OCE's propensity for semantic exaggeration, two employees simply do not qualify as "several" witnesses, irrespective of OCE's far more serious mischaracterization of the substance of their testimony. *See Merriam-Webster* ("several" means "more than two but fewer than many").

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allowed HNJ CFO to listen to certain calls when Representative Buchanan asked for campaign contributions but that Buchanan did not explicitly discuss reimbursing campaign contributions during these calls.” Rpt. ¶ 83. What OCE does *not* reveal in its report, however, is that Sam Kazran went so far as to tell Mssrs. Ashmawy and Payne in his OCE interview that “there was *no* instance when [Kazran] allowed someone to overhear a phone call with Representative Buchanan when reimbursements were discussed. **Anyone who said that is lying.**” Kazran MOI ¶ 25 (emphasis added). The failure to mention that Kazran repudiates Farid’s allegation is improper and irreparably impugns the report’s veracity and impartiality. The Board should investigate its staff’s deception. *See* OCE Rule 3(C). Moreover, OCE’s failure to disclose this exculpatory evidence, as required by Rule 4(F), violated Congressman Buchanan’s due process rights.

Additionally, Farid’s testimony that he overheard Congressman Buchanan suggest reimbursement in telephone conversations in 2005 is completely at odds with other crucial aspects of both Farid and Kazran’s prior FEC testimony – although one would never appreciate this from reviewing the OCE report. First, Farid’s claim that he overheard a conversation with Congressman Buchanan in 2005 directly contradicts Kazran’s OCE testimony that Congressman Buchanan never suggested reimbursing contributions before June 2006. *Compare* Farid MOI ¶¶ 11-13 with Kazran MOI ¶¶ 12, 15.⁶ Second, although Kazran testified in his FEC deposition that Farid was physically present during the June 2006 conversation, Farid admitted he had no first-hand knowledge and that his only understanding of what Congressman Buchanan said to Kazran at that meeting came from “subsequent conversations” with Kazran. *Compare* Kazran Tr. at 32:1-6, 72:12-14 with Farid Aff. ¶ 5; *see also* GC #9 at 8 (“So while Farid’s affidavit provides evidence that is consistent with some details to which Kazran also testified, it lacks first-hand testimony on the most important point: whether Buchanan told Kazran to reimburse contributions at HNJ in 2006.”). In other words, Farid testified he heard Congressman Buchanan on the telephone in 2005 and not in person in 2006, while Kazran testified Farid heard Mr. Buchanan in person in 2006 but *never* on the telephone. While the FEC attorneys recognized these obvious contradictions and cited them in support of their conclusion that Kazran and Farid were not credible, the OCE ignores the contradictions and persists in falsely citing Farid as a witness corroborating Kazran’s accusation.⁷

⁶ In fact, in his sworn FEC affidavit, Farid testified that he overheard only a single telephone conversation “in 2005.” Farid Aff. ¶ 4; *see also* FEC General Counsel’s Report #2 at 10.

⁷ The OCE report also omits that Josh Farid is Sam Kazran’s brother in law. *See* Farid MOI ¶ 3.

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B. Gayle Lephart's Testimony Does Not Corroborate Kazran's Allegations.

OCE's mischaracterization of Gayle Lephart's testimony is equally dishonest. Although OCE cites Lephart as one of the "several other witnesses" corroborating Kazran's testimony, Ms. Lephart actually claims only to have heard Sam Kazran say into his telephone, "Vern, I'll handle it right now," a neutral statement entirely consistent with a discussion of lawful fundraising. *Compare* Rpt. ¶ 75, with Lephart MOI ¶ 14, Lephart Aff. at 1. Contrary to OCE's implication, Lephart did not say anything to OCE, or to the FEC, indicating that Congressman Buchanan suggested or intended for campaign contributions to be reimbursed. The FEC recognized and specifically called attention to this crucial distinction. *See* GC #9 at 7 ("Lephart does not swear that she heard Buchanan direct Kazran to reimburse contributions, indeed she did not hear anything Buchanan said during the phone call in question. Further, Lephart did not corroborate Kazran's testimony that he told her that Buchanan would repay HNJ for the reimbursements.")⁸ OCE simply misstates it.

IV. The OCE Report Omits, Mischaracterizes, Misquotes, or Selectively Quotes Witness Statements and Documents in Ways That Distort the Evidence.

The OCE report's authors distort the evidence by mischaracterizing, omitting, and selectively quoting witness statements and documents. Several instances of those tactics are discussed above (*e.g.*, omitting Kazran's admission that Farid "is lying"), but additional examples abound, including:

- On more than one occasion, OCE quotes from a voicemail message allegedly left by Congressman Buchanan to support the inference that Congressman Buchanan encouraged the practice of reimbursing the contributions of employees. Rpt. ¶¶ 32, 65. It supports that inference only by omitting the statement that immediately follows the quoted passage: "All I've told you, and I've always made it clear, is that you can't reimburse people. They've got to give it on their own free will. You've known that." That omission – and the false implication that the OCE report encourages – is disgraceful and misleading.
- OCE mischaracterizes Josh Farid's August 27, 2008 email as "concerning the money taken out of HNJ's operating fund for the reimbursed contributions." Rpt.

⁸ Kazran told OCE that Congressman Buchanan never mentioned reimbursing contributions before June 2006, at least six months *after* Lephart overheard Kazran's "I'll handle it now" telephone comment. Kazran MOI ¶ 12. Thus, Kazran's own testimony contradicts the inference OCE attempts to draw from that ambiguous comment.

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¶¶ 60-61. The actual email says only that “when Mr. Buchanan asked Sam for contribution to his political campaign this dealership supported Mr. Buchanan’s political campaign to a tune of \$80K, something that I was opposed to.” The reference to “support” is consistent with lawful fundraising and the email does not say or suggest that the dealership reimbursed the employees’ contributions. Again, the FEC plainly understood the implication of this statement. *See* GC #9 at 17 (“The language in the emails is vague on these points, and none of them state that Buchanan was aware that Kazran was reimbursing contributions or that Buchanan ordered him to do so.”). And, again, the OCE report misstates it.

- OCE did not divulge that Kazran initially submitted written interrogatory responses to the FEC stating unequivocally that he alone authorized the reimbursements and that only Kazran, his brother Eric, Josh Farid, and Gayle Lephart knew about the reimbursements. Similarly, OCE omitted Kazran’s February 13, 2009 letter to FEC attorney Jack Gould, in which Kazran admitted “I instructed the employees to make these contributions,” again with no mention of Congressman Buchanan.
- The report falsely suggests that the offer of settlement that accompanied the draft affidavit was intended solely to induce Kazran to sign a false affidavit, Rpt. ¶¶ 21-23, but OCE omits the key term: the \$2.9 million was for Congressman Buchanan’s purchase of Kazran’s two Kia dealerships and retirement of the Premier Dodge obligations. *See* Revised Binding Settlement Agreement ¶¶ 1-5 (Rpt. at Ex. 1). Indeed, on October 5, 2008, the parties exchanged a Second Revised Binding Settlement Term Sheet in which the \$2.9 million purchase price remained the same, but the affidavit requirement was removed entirely, proving *no* payment was offered for the affidavit.

These pervasive mischaracterizations, omissions, and selective quotations further distort the evidence and ultimately presented a false analysis to the Board and the Committee on Ethics.

V. OCE Withheld Exculpatory Evidence in Violation of OCE Rule 4(F).

OCE Rule 4(F) requires the OCE staff to promptly disclose to a subject any exculpatory information received during the course of its review. This rule explicitly provides that the OCE staff’s disclosure obligations apply regardless of whether the subject requests the exculpatory information received by the OCE staff and regardless of whether a subject responds to a Request for Information or submits to an interview.

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In our October 21, 2011 letter, we requested that the OCE staff promptly disclose any exculpatory information in its possession pursuant to OCE Rule 4(F). Having received no response, on December 19, 2011 we sent another letter reiterating our request that OCE satisfy its obligation under Rule 4(F). In response, we received a one-page letter from Mr. Ashmawy containing a one-paragraph summary of Dennis Slater's testimony in which he stated that Sam Kazran's allegations against Congressman Buchanan are false. That single paragraph is the full extent of OCE's Rule 4(F) disclosures in this matter.

The exhibits to the OCE Report and Findings reveal that OCE staff withheld significant exculpatory evidence in violation of OCE Rule 4(F). This violation was prejudicial. It denied Congressman Buchanan information essential to determining the appropriate response and defense to the OCE inquiry before the Board's vote. Much of this exculpatory information has been discussed above, but clear violations of Rule 4(F) include:

- Sam Kazran admitted to OCE staff that there was no instance when someone else overheard any phone calls with Representative Buchanan when the issue of reimbursements was discussed and that "anyone who said that is *lying*." Kazran MOI ¶ 25 (emphasis added). This testimony directly contradicts Mr. Farid's testimony to both the FEC and OCE and directly refutes the OCE's own conclusion.
- Kazran directly contradicted his sworn FEC deposition testimony concerning the timing of Congressman Buchanan's alleged instruction to reimburse campaign contributions. Kazran told the FEC under oath that Congressman Buchanan told him in 2005 to reimburse contributions. *See* Kazran Tr. at 21:1-22:4. However, Kazran told the OCE that the first time Representative Buchanan told him to reimburse campaign contributions "was sometime in June 2006." Kazran MOI ¶ 12. The two statements directly contradict one another, but went undisclosed.
- Kazran also provided testimony to the OCE directly contradicting the OCE's erroneous interpretation of the affidavit. Kazran told OCE the affidavit stated that Congressman Buchanan did not know about the reimbursements and that it made Kazran "the fall guy." Kazran MOI ¶ 31. Under OCE's misinterpretation, the affidavit would have cleared Kazran, the exact opposite of making him the "fall guy."
- OCE's one-paragraph Rule 4(F) disclosure consisted solely of the testimony summarized in paragraph 23 of Dennis Slater's Memorandum of Interview. However, the full MOI, included as an exhibit to the OCE report, reveals additional exculpatory

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evidence that was withheld. *See, e.g., Id.* ¶ 13 (Based on Slater's understanding of the loan agreement, Representative Buchanan's description of the facts is correct and Kazran's description is a "figment of his imagination"); *id.* ¶ 15 (Kazran is a highly emotional person who "manufactures things in his mind"); *id.* ¶ 24 (Slater is not aware of anyone receiving reimbursements for campaign contributions and he did not authorize anyone with the company to reimburse any campaign contributions); *id.* ¶ 28 (Kazran has never substantiated his allegations).

The prejudice Congressman Buchanan suffered from OCE's concealment of this evidence is manifest: It interfered both with his participation in the OCE process and with his ability to respond immediately to the OCE's unwarranted referral to the Committee on Ethics. It also prevented him from warning the OCE Board prior to the vote that it had been seriously misled by the presentation of such a flawed and deceptive report.

Conclusion

Sadly, OCE's conduct forms a pattern that has been well-documented. In the House Ethics Committee's report in the Matter of Representative Sam Graves, the Committee noted it "was deeply disappointed to discover that OCE's review was fundamentally flawed," found "it is a fact that OCE ignored and failed to disclose relevant information," and concluded "such selective presentation of evidence to the [Ethics] Committee raises significant concerns with the transparency of OCE's process." H.R. Rep. No. 111-320, at 31-37 (2009). As here, the Committee also discovered significant "potentially favorable or exculpatory" evidence within the OCE report and rebuked OCE for withholding it from Congressman Graves in violation of "the interests of justice." *Id.* at 36-37. In the Matter of Representative Fortney "Pete" Stark, the Ethics Committee similarly concluded "that OCE conducted an inadequate review, the result of which was to subject Representative Stark to unfounded criminal allegations." H.R. Rep. No. 111-409, at VI (2010). Specifically, the Committee found that OCE had ignored exculpatory facts that "were available to OCE, and in many instances, were known to OCE or in its possession," "failed to acknowledge" key points, "relied on an irrelevant document," "treated Representative Stark inconsistently with the way they treated four other Members of Congress with similar situations whose cases were properly dismissed," and "omitted favorable information from Representative Stark's report that it included in the four other similar cases without explanation." *Id.* at VI-VII, 11-15. The OCE staff obviously learned nothing from the Committee's admonitions. It has engaged in the very same misconduct here.

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Because we have no confidence in the OCE staff's willingness or ability to produce exculpatory information to us in satisfaction of their Rule 4(F) obligations, we respectfully request that OCE make available to us *all* materials from the entire case file so that we may defend against OCE's unfounded referral of this matter to the Ethics Committee.

We look forward to your prompt response.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Luskin", with a long horizontal flourish extending to the right.

Robert D. Luskin
William J. McGinley
Benjamin D. Wood

Counsel to Rep. Vern Buchanan

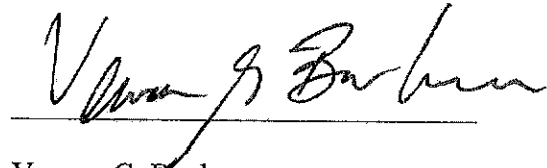
cc: The Honorable Jay Eagen
The Honorable Yvonne Burke
The Honorable William Frenzel
The Honorable Karan English
The Honorable Abner Mikva
The Honorable Allison Hayward
Omar S. Ashmawy, Esq.
Kedric L. Payne, Esq.

EXHIBIT B

Declaration

I, Representative Vernon G. Buchanan, declare under penalty of perjury that the response and factual assertions contained in the accompanying response letter, dated March 16, 2012, responding to the February 14, 2012 letter from the Committee on Ethics, are true and correct.

Signature:

A handwritten signature in cursive script, appearing to read "Vernon G. Buchanan", is written over a horizontal line.

Name:

Vernon G. Buchanan

Date:

March 15, 2012