Holtzman Vogel

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

September 21, 2021

Chair Shana M. Broussard
Vice Chair Allen Dickerson
Commissioner Sean J. Cooksey
Commissioner James E. "Trey" Trainor III
Commissioner Steven T. Walther
Commissioner Ellen L. Weintraub

Re: MUR 7923

Dear Commissioners,

This Response is submitted by the undersigned counsel in connection with MUR 7923 in response to the Commission's Factual and Legal Analysis ("FLA")

I. Overview

This matter began with a *sua sponte* submission filed by Friends of David Schweikert (the "Committee") on June 28, 2018, which reflected the results of an internal investigation undertaken at the time. The Committee worked with the Office of General Counsel ("OGC") for years, during which time the review of overlapping matters by the Committee on Ethics of the U.S. House of Representatives (the "Ethics Committee") significantly delayed a final resolution. Between June 2018 and October 2019, the Committee provided OGC with all materials requested and a total of three supplemental submissions.

After the Ethics Committee issued its final report (the "Ethics Committee Report") in July 2020, OGC expanded the scope of this matter to include the findings of the Ethics Committee, continued to seek additional materials and explanations, and continued to request additional tolling. The Committee agreed to toll proceedings before the Commission without

objection while the Ethics Committee matter was pending and hoped for a quick resolution thereafter. (The Committee even agreed to an additional tolling agreement on August 18, 2021, after OGC indicated its report and recommendations were pending with the Commission.)

Frustrated by the lack of progress in this matter, in late March 2021, counsel for the Committee spoke with the OGC attorneys handling this matter. Counsel attempted to clarify that the Committee did not seek a universal resolution of every conceivable issue that OGC could extract from the Ethics Committee Report and wished for the *sua sponte* matter to be concluded. While the Ethics Committee Report was a matter of public record, it had not been part of the Committee's *sua sponte* submission, and we believed OGC had all the information needed to submit its report in response to the Committee's *sua sponte* submission. OGC's response to this conversation was to treat the Ethics Committee Report as a *de facto* complaint, albeit without any further communication with us. This entire sequence is misleadingly characterized in the FLA as follows: "Following the issuance of the Ethics Committee's Report and its several findings that Respondent had violated the Act, Respondent declined to amend its submissions."[1] The Committee accepts that the Ethics Committee Report has become intertwined with its *sua sponte* submission, but wishes to express its dissatisfaction with the unilateral manner in which OGC incorporated that material into its report and recommendations to the Commission, effectively transforming a *sua sponte* submission into an ordinary enforcement matter. This treatment was not consistent with our understanding of the Commission's *sua sponte* policy.

Unsurprisingly, the FLA's knowing and willful findings are based *entirely* on material derived from the Ethics Committee Report which counsel for the Committee *never* discussed

[1] Factual and Legal Analysis at 7.

with OGC attorneys. The Committee *never* submitted a response of any sort to the Commission regarding the Ethics Committee Report. Based upon characterizations contained in the FLA, it appears that the Commission was not made aware that the Ethics Committee Report was largely undefended, as Representative Schweikert waived numerous rights for the purpose of facilitating an expedited resolution to the matter. (Among other things, the Respondent waived his right to file an answer with the Investigative Subcommittee and waived his right to an adjudicatory hearing.) For the sake of completeness, we include Representative Schweikert's written statement of June 27, 2020, regarding the Ethics Committee Report. (This statement appeared in the Ethics Committee Report at Appendix E but is not referenced in the FLA despite its clear relevance to the FLA's reliance on the uncorroborated testimony of Oliver Schwab.)

II. The Committee Has Cooperated Fully and Extensively with the Commission

At pages 3-4 of the FLA, the Commission appears to fault the Respondent for not filing amended reports yet, but acknowledges that Respondent "has expressed a willingness to do so in connection with resolving this matter." In the initial *sua sponte* submission, the Committee made clear that "[f]ollowing discussion with the Office of General Counsel, the Committee intends to file amendments as necessary to report these modified transactions."[2] The Committee hoped to receive the Commission's guidance on these amendments as part of a final resolution of this matter; to date, that has not happened. As evidenced by the FLA, however, this hope was

[2] *Sua Sponte* Submission (June 28, 2018) at 3.

obviously misplaced as OGC appears to have presented the Respondent's position as an aggravating factor that supposedly demonstrates a lack of cooperation.

Pages 6-7 of the FLA include information about certain Committee loans that were not initially disclosed to the Commission. This information appears to be included for the purpose of demonstrating the Committee's lack of cooperation. The Committee did not include these loans in its *sua sponte* submission because the internal review that led to the *sua sponte* was limited to activity within the applicable statute of limitations. Additional information regarding loans made from 2010-2012 was discovered during the Ethics Committee investigation, which was not constrained by the Commission's statute of limitations. The Committee provided that additional information to the Commission based on OGC's request that it receive all FECA-related information provided to the Ethics Committee. OGC appears to take offense at this supposed "non-disclosure," but the Commission's jurisdiction is constrained by a statute of limitations and there was no reason to include time-barred material in the Committee's *sua sponte* submission.

Not disclosing information that is beyond the applicable statute of limitations does not demonstrate a lack of cooperation. Declining to continuously toll a matter to facilitate OGC's expanding the parameters of a *sua sponte* filing is similarly not evidence of a lack of cooperation. To the extent that the Ethics Committee expressed dissatisfaction with the respondent's cooperation, that has no bearing on the issue of the Committee's cooperation with the Commission in this matter. We urge the Commission to reevaluate its conclusions regarding the Committee's years of cooperation.

III. The Commission's Personal Use Findings Are Weakly Supported

The FLA asserts that "the only disbursements for which [the Ethics Committee] could identify an amount in violation was $1,476.90 for child care for Schweikert's daughter."[3] The Statement of Alleged Violations (Ethics Committee Report, Appendix A) does *not* indicate, however, that this full amount was for "child care." Rather, the Statement of Alleged Violations, upon with the FLA relies, refers to "$1,476.90 of *these personal expenses*," and explains "[t]hese expenditures *were for, among other things, food and babysitting expenses*."[4] (The total figure cited appears to be derived from adding two expenses described at page 56 of the Investigative Subcommittee Report.)

Other language in the FLA indicates that, on the basis of the Ethics Committee Report, the Commission has presumed that other, non-specified disbursements that constitute personal use were made.

However, a reason to believe finding cannot be based on presumption and speculation. The Ethics Committee was unable to document these disbursements, and without documentation, it cannot be known whether they exist, and if they do, whether they are time barred by the applicable statute of limitations. Accordingly, the Commission's personal use finding must be limited to disbursements that it can actually identify. Even within the $1,476.90 that the Ethics Committee report claims it identified, the composition of that figure is unclear.

[3] Factual and Legal Analysis at 17.

[4] Ethics Committee Report, Appendix A, ¶ 133 (emphasis added).

The Commission also does not know whether these disbursements were permissible campaign expenses, or impermissible personal use expenses. According to the FLA, "[t]here is no record evidence to suggest that the childcare at issue in this matter resulted from campaign activity."[5] There is also no record evidence to suggest that it did not. The referenced advisory opinions on child care expenses do not create a presumption that child care expenses are impermissible unless proven otherwise. In place of actual evidence, the Commission reversed the burden of proof, and speculates that because the associated reimbursements were misreported, they must have been deliberately concealed because someone knew they were impermissible, and further suggests that because the disbursements were made in a non-election year, they were presumably not for a campaign purpose. This presumption is not the sort of strong evidence needed to sustain a knowing and willful finding.

In sum, the Commission based its knowing and willful personal use violation on information found in the Ethics Committee Report, which was inaccurately described in the FLA (and presumably in the recommendations made to the Commission). The Ethics Committee did *not* find that $1,476.90 had been spent on "child care," as the FLA incorrectly asserts. Rather, that figure consisted of more than one category of expense, and the additional categories are not detailed. In addition, it is unclear whether the "child care" expenses that made up some

[5] Factual and Legal Analysis at 17.

unspecified part of the identified figure were campaign-related; the Commission simply assumes there were not, ignores the documentation issues, and improperly places the burden of proof on the respondent.

OGC's decision to include these alleged personal use violations based solely on information derived from the Ethics Committee Report, which is far from conclusive, and which OGC never once discussed with counsel for Respondent,

is excessive.

IV. Knowing and Willful Findings in General

The FLA concludes that "the Statement of Alleged Violations, to which Schweikert admitted as part of the resolution with the Ethics Committee, provides ample support for knowing and willful findings."[6] The Committee strongly disagrees with this conclusion. Beyond the bald assertion that "ample support" exists, the FLA provides little in the way of detail about anyone's knowledge or intentions and fails to mention Representative Schweikert's written statement altogether. The Statement of Alleged Violations does *not* include knowing and willful findings, and to the very limited extent the Statement of Alleged Violations describes the intentions or state of mind of participants, it does so in language that does not support the Commission's knowing and willful findings.

[6] Factual and Legal Analysis at 19.

With respect to reporting violations under the Act, what the Ethics Committee found were errors of omission, not knowing and willful conduct. Specifically, the Ethics Committee found that "Representative Schweikert failed to take reasonable steps to ensure his campaign committee operated in compliance with applicable laws and standards of conduct, including Federal Election Commission Act (FECA) reporting requirements."[7] This finding suggests negligence, but in no way justifies a knowing and willful finding. The Act's legislative history indicates that the "knowing and willful" standard was intended to be limited to matters where "the acts were committed with a knowledge of all the relevant facts and a recognition that the action is prohibited by law."[8] In short, the FLA misstates the Ethics Committee's findings with respect to the Act. The Ethics Committee's findings relating to House Rules are within the sole jurisdiction of the House and are immaterial to the present matter.

The FLA relies on MUR 6724 (Bachmann for President) in support of its findings regarding disclosure of "ultimate payees," and notes that "[t]he Commission has made reason to believe findings in ultimate payee matters where it had information that a committee undertook efforts to actively conceal the ultimate payee."[9] However, the Commission did not make "knowing and willful" findings in MUR 6724.[10] In this matter, however, the same alleged "efforts to actively conceal the ultimate payee" are used to support knowing and willful findings. The difference in treatment between these two matters is not explained.

[7] Ethics Committee Report at 3.

[8] H.R. Rep. No. 94-917 at 4 (1976).

[9] Factual and Legal Analysis at 14.

[10] *See* MUR 6724 (Bachmann for President), Factual and Legal Analysis.

Insisting on knowing and willful admissions from *sua sponte* filers, especially in instances in which the record is not nearly as clear and straightforward as OGC represents, is the surest way to guarantee the Commission stops receiving *sua sponte* submissions. We urge the Commission to consider whether making knowing and willful findings in response to *sua sponte* submissions is consistent with the Commission's policy of "encourag[ing] the self-reporting of violations,"[13] and whether using such findings from *sua sponte* filers is a proper implementation of the Commission's 2007 policy. That policy provides that "[a]s a general proposition, self-reported matters … will be resolved more quickly and on more favorable terms than identical matters arising by other means."[14] In fact, the 2007 policy states that in response to a *sua sponte* submission, one action the Commission may take is to "**[r]efrain from making a formal finding that a violation was knowing and willful, even where the available information would otherwise support such a finding.**"[15]

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[12] *See* MUR 7221 (Mepco Holdings, LLC), Factual and Legal Analysis at 10-12.

[13] At times, the Commission has been especially attentive to this issue. For example, in a Statement of Reasons issued by four Commissioners on September 27, 2007, those Commissioners (all of whom were involved in developing and approving the Commission's *sua sponte* policy) warned that "admonishing the corporation under this circumstance may be counterproductive in that it may discourage other corporations in similar circumstances from self-reporting." MUR 5919 (Rhode Islanders for Jobs and Tax Relief, Inc.), Statement of Reasons of Chairman Robert D. Lenhard, Vice Chairman David M. Mason and Commissioners Hans A. von Spakovsky and Steven T. Walther.

[14] Policy Regarding Self-Reporting of Campaign Finance Violations (Sua Sponte Submissions), 72 Fed. Reg. 16,695, 16,696 (April 5, 2007).

[15] *Id.*

In this matter, the Respondent has not received the "more favorable terms" promised in the Commission's 2007 policy. The Commission's knowing and willful findings rest on a highly selective and questionable reading of the Ethics Committee Report, and the personal use findings are actually harsher than anything we have seen before.

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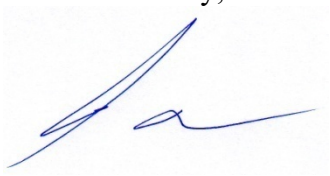
Sincerely,



Jason Torchinsky
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Enclosures

APPENDIX E

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COMMITTEE ON
WAYS AND MEANS

JOINT ECONOMIC
COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515–0306

June 27, 2020

The Honorable Theodore E. Deutch, Chairman
The Honorable Kenny Marchant, Ranking Member
Committee on Ethics
U.S. House of Representatives
1015 Longworth House Office Building
Washington, DC 20515-6328

Re: In the Matter of Allegations Relating to Representative David Schweikert

Dear Chairman Deutch and Ranking Member Marchant:

I write in response to the draft Investigative Subcommittee ("ISC") Report regarding the allegations referred to the Committee on Ethics ("Committee") in April and September 2018 by the Office of Congressional Ethics ("OCE"). I appreciate this opportunity to directly address the Committee about the ISC's Report, but I would first like to thank the members of the ISC for the time and attention they have devoted to this matter over the past two years. Regardless of any disagreements we may have about the details of this particular matter, I have great respect and support for the role that the Committee plays in protecting the integrity of the House of Representatives and for the hard work and dedication required from the Committee members. My intent from the outset of this matter was to be as cooperative as possible, and I particularly appreciate that the ISC recognized in its Report that I made "substantial efforts to cooperate" with the investigation.[1] As you are aware, I have already implemented a number of significant corrective and remedial measures to ensure that I, and my Congressional and campaign offices, comply with the letter and spirit of the laws, rules, and regulations governing our conduct.

Turning to the substance of the Report, the ISC has correctly concluded that no violation occurred with respect to a number of the allegations raised in the referrals (including one of the primary allegations that initiated this matter), or that no further action is required.[2] In addition, to resolve other allegations, the ISC and I have agreed to a settlement that will bring this matter to a close without a lengthy and expensive adjudicatory process.

[1] *See* Draft Report of the Investigative Subcommittee in the Matter of Allegations Relating to Representative David Schweikert ("Report") at 96.

[2] *See, e.g.*, Report at 40 (allegation regarding direct campaign contributions by Congressional staff); 58 (allegation regarding gifts from staff); 87 (allegations regarding MRA misuse); 90 (allegation regarding improper severance payments).

Notwithstanding my decision to settle this matter, I believe there are a number of assertions, findings, and unfounded speculative statements in the Report and its accompanying Statement of Alleged Violations ("SAV") that would be proven false or misleading if subjected to the scrutiny of a full adjudicatory process.[3] I have resolved to seek a settlement, in lieu of pursuing a protracted adjudicatory process, for a variety of reasons. Significantly, the investigative process, which lasted over two years and involved activity reaching back as far as 10 years, was time-consuming and extremely costly. Further, because the allegations and subsequent investigation revealed actions by a trusted long-time senior advisor and close family friend that amounted to a devastating breach of my professional and personal trust, this process has been extremely difficult for me and my family. Although the adjudicatory process would provide me an opportunity to challenge aspects of the Report and SAV I believe to be misleading, inaccurate, or unfair, it would require financial resources that I do not have and would significantly delay closure for me and my family.[4]

Critically, I agree with the ISC's statement that I bear ultimate responsibility for ensuring that my congressional office and my campaign adhere to both the letter and spirit of the wide array of laws, rules, and regulations that govern our important work. While I may not agree with many of the details contained in the Report and SAV, I accept the ISC's conclusion that I fell short in fulfilling my own responsibilities by not adequately supervising my staff and others working on my behalf. This is particularly true with respect to Oliver Schwab, who ran my Congressional office and had significant roles in my campaign for much of the time covered in this investigation. As the Report acknowledges, I placed a great of trust in Mr. Schwab to run daily operations and he did so with a great deal of autonomy. Since the start of this investigation I have learned a great deal about Mr. Schwab's character and actions that I regretfully did not know at the time, but I appreciate that I should have taken a greater role in overseeing his activities, and the activities of other staff, whether I was aware of that information or not. As a result, with this settlement, I am prepared to take responsibility and admit to the violations contained in the SAV that resulted from these shortcomings and I respectfully ask that the full Committee bring closure to this matter by approving the settlement agreement negotiated with the ISC.

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[3] The presentation of facts in the SAV is *slightly* more objective – it contains some limited additional contextual information that, in some instances, provides a fuller and more accurate portrayal of the facts; it also forgoes some of the subjective negative characterizations and speculative commentary contained in the Report.

[4] As you know, the ISC concluded its investigation earlier this year and provided me with the SAV and the investigative record for the first time just last month. The record provided was extremely voluminous, including thousands of pages of documents and lengthy transcripts of interviews with almost two dozen witnesses. This was the first time in the two-year span of the ISC's investigation that I was able to examine the information that the ISC gathered from third-parties. When the ISC finally provided me with the investigative file, I was immediately faced with two options. I could seek a settlement that would conclude the matter but foreclose my ability to fully defend myself against the SAV, or I could proceed with a trial-like adjudicatory process that would provide ample opportunity to respond, but would require an exorbitant amount of money and time, and prolong the emotional strain on me and my family. In short, I effectively had no choice.

However, notwithstanding my admissions, I would like to briefly address three aspects of the Report that I believe warrant discussion with the full Committee.[5] I raise these points respectfully and not with the intent to undermine or undo my admissions to the violations in the SAV in any way.

First, I would like to express my concern about the extent to which the ISC relied on the testimony of my former Chief of Staff, Oliver Schwab, at times even crediting his statements over my own. As the Report acknowledges, the actions of Mr. Schwab are the common thread tying together most of the issues investigated in this matter. The Report relies heavily on Mr. Schwab's testimony as a basis for its analysis and findings and the ISC concedes that it "generally credited" Mr. Schwab's testimony even though it had significant reasons to doubt his overall truthfulness. For instance, the Report notes that each member of the ISC was present for at least portions of Mr. Schwab's testimony and acknowledges that Mr. Schwab sometimes appeared to exaggerate or embellish certain facts.[6] Moreover, the ISC readily acknowledges that Mr. Schwab admitted to engaging in acts of dishonesty including falsifying campaign records, creating false invoices, and depositing a check that was issued to a campaign vendor into his own personal account. In addition, multiple staffers who worked closely with Mr. Schwab testified that they questioned his character and truthfulness.[7] The record on Mr. Schwab's truthfulness speaks for itself.

The Report attempts to explain the ISC's credibility determination regarding Mr. Schwab by asserting that it did not pursue potential violations raised by his testimony unless there was corroborating information from other sources. The Report, however, highlights several self-serving statements by Mr. Schwab that seek to implicate my personal involvement in activities where there is no corroborating information, or where the only corroboration is testimony from individuals whose only source is Mr. Schwab himself. The SAV is replete with instances where it concedes that it had no documentation showing my involvement in activities that Mr. Schwab claimed to have undertaken at my behest or with my knowledge. And though I appreciate the ISC's conclusion that I was likely unaware of Mr. Schwab's illicit activities, that does not alleviate the inherent defect of an analysis that relies so heavily on a witness whose credibility is so lacking.

Second, I am gratified that the Report concludes that there were no violations with respect to direct spending of my MRA funds, and I have taken to heart the ISC's observation that I need to personally provide more oversight of my office's MRA funds. As the Report acknowledges, since the inception of this matter, my congressional office has implemented a number of important

[5] Given my decision to settle this matter, and waive certain procedural rights including the right to file an detailed answer to each count of the SAV, as well as the short five-day response period and the magnitude of resources that would be required, I do not intend to use this submission as a mechanism to respond to each specific statement that I believe contains inaccurate factual assertions, unsupported inferences, and purely speculative allegations. The short five-day response period and my limited resources wouldn't allow for such an exercise in any event. However, while I am taking full responsibility for the violations that resulted from the underlying activities, it should not be assumed that I agree with or admit to each of the specific facts and findings presented in the Report and SAV.

[6] *See* Report at 7 (The ISC "found that [Mr. Schwab's] assertions regarding the conduct of Representative Schweikert and others were sometimes exaggerated, while he at times minimized his own misconduct.").

[7] In contrast, none of these staffers raised concerns about my own credibility.

policies and procedures to ensure the proper use of MRA funds, and I now provide general oversight of that process in collaboration with my Chief of Staff.

In addition, although I maintain that I was unaware of instances where my official staff (primarily Mr. Schwab) performed campaign tasks in my Congressional office, I accept the Report's finding that such instances did occur. As you know, Mr. Schwab held significant roles within my congressional office and my campaign. While this type of arrangement is common, and Mr. Schwab sought out and relished these roles, I acknowledge that I should have recognized the possibility that the combined demands of these dual roles could create an opportunity for the unacceptable blurring of lines between official and unofficial duties. Moreover, I sincerely regret that the demands placed upon Mr. Schwab may have caused him to ask other official staff to assist him with campaign work while on official duty, and I apologize to any staff member who was put in such a position. Although the record reflects that these instances were rare and relatively de minimis, I understand that no amount of campaign work in the official office is acceptable. That is why, as the ISC has noted, my congressional office implemented new mechanisms and training to maintain a bright line between official and unofficial duties.

Finally, because of my high regard for the Committee and its role in preserving the integrity of the House, I am deeply disappointed by the ISC's conclusions that my full cooperation did not meet its standards. Although the ISC recognized that it was my intent from the outset of this matter to fully cooperate with its investigation, and acknowledged my "substantial effort" to do so, it apparently remained dissatisfied with my efforts and the efforts of those working on my behalf. I agree that Members must be held to the highest standard with respect to the cooperation expected in Committee investigations, and I earnestly believed that I was responding to the ISC in a manner that met that high standard throughout the process. I am regretful and, candidly, somewhat confounded that the ISC concluded otherwise.

As the Committee is aware, this investigation involved two separate referrals, examined activity that spanned over a decade, and involved a variety of issues on both the official and unofficial sides. The extent of time, effort, and money that I and my lawyers collectively expended in our attempts to satisfy the ISC's extensive requests for information and documents is extraordinary. All while simultaneously taking significant remedial steps such as amending financial disclosure reports, amending campaign finance disclosure reports, filing a *sua sponte* with the Federal Election Commission ("FEC"), and instituting new policies, procedures, and training to prevent issues in the future. Rather than fully crediting our "substantial efforts" by recognizing the practical realities of an investigation of this size, it appears that the ISC chose to disproportionately magnify a handful of discrete instances where it was unhappy with the pace with which we provided certain discrete pieces of information. For example, the Report acknowledges that I produced over 16,003 pages of documents, but complains that it took over a year to produce them. Not mentioned, however, is that those documents were produced on a regular rolling basis over the course of that time, and responded to two separate requests made five months apart, with the final production occurring within approximately seven months of the

second request.[8] While the ISC may not hold the same view with respect to the timeliness of our efforts, it cannot fairly say that I failed to cooperate in its investigation. Under the circumstances, the ISC's conclusion seems unfairly harsh and fails to properly recognize that investigations of this size simply take time, as demonstrated by the fact that the ISC itself took seven months to complete its witness interviews from the time we made the final production in response to its two document requests.[9]

Similarly, the ISC's assessment of certain portions of my testimony appears to be the end result of a questioning strategy designed, not to gather a full record, but to elicit answers to questions posed to me in isolation without providing me with other relevant information that could have refreshed my recollection or cleared up confusion or discrepancies between sources. Given the ten-year time frame and wide-ranging scope of activities covered in this investigation, the questioning covered many specific day-to-day activities that were quite trivial or unremarkable, and others for which I played little or no role at the time they occurred. Therefore, as one would expect, there were events and details for which I had little or no recollection. As instructed by ISC counsel at the outset of my interview, I based my sworn testimony on my best recollection of those events. When I was questioned about things that I did not recall, I truthfully said so and the ISC has clearly used those instances to make negative inferences from my testimony and question my cooperativeness.

In a number of instances (including those specifically mentioned in the Report) I was asked questions that, after examining the transcripts of other ISC interviews, I now understand were based on information provided by other witnesses. At the time, I answered those questions the only way I could—with my best recollections. However, where ISC counsel knew that my recollection differed from the testimony of others, they did not present me with the differing

[8] And as the ISC is aware, this time span also includes a period of time at the beginning of 2019 when there was a delay resulting from a shortage of funds needed to pay document review vendors. At that time, I had already expended hundreds of thousands of dollars on investigative costs and had simply depleted my available resources. While I regret this delay, it was certainly not the result of a lack of diligence. To the contrary, the situation arose as a direct result of my extensive efforts to that point. It is also worth noting that most of this time overlapped with the period during which there was no ISC because it had not yet been reconstituted for the current Congress. The May 2019 letter cited in the Report was immediately sent by the freshly reconstituted ISC and the document production was completed (outside of supplemental requests) within 90 days. The Report also makes much of the timing of the responses regarding a small handle of discrete reporting issues that involved transactions that occurred as early as 2010, and the inability to fully explain the mistakes or make efforts to fix the problems earlier. As explained to ISC counsel during the investigation, we faced practical difficulties finding any financial records for transactions dating back that far, as they fell well outside of the time period for any applicable FEC or bank document retention periods. A response was submitted to the ISC and the FEC only after it was determined that all the possible sources of documents and information about the transactions had been exhausted and there was no further information that could be found or provided to explain the disclosures. Further, the Report acknowledges that I made efforts as early as 2012 to correct any errors in the campaign's disclosure reports and that I put Mr. Schwab in charge of that effort. *See* Report at 28. Nothing in the record shows that I was aware that Mr. Schwab was unsuccessful in that mission, and though the Report asserts otherwise, the campaign treasurer had access to the committees' bank statements and/or accounts at the time. *See* SAV at ¶¶ 35, 38.

[9] We continued to provide information in response to the ISC's follow-up requests after this time.

information so that I had an opportunity to refresh my recollection, provide context, or offer an explanation that could explain the discrepancies. Instead, ISC counsel chose to withhold the information and use any discrepancies to make negative inferences about my truthfulness in the SAV and Report. In fact, there were a number of instances in my interview that I specifically invited ISC counsel to provide me with any additional information in its possession that could help jog my memory on events that occurred years ago. In each instance that I recall, ISC counsel declined, choosing instead to conceal information collected from third parties until after it had already drawn its conclusions and drafted the SAV. I am disappointed that I was not provided with an opportunity to specifically respond to the additional information before the ISC drew its conclusions.[10]

Clearly, my own assessment of the diligence and candor I brought to this investigation varies greatly from the ISC's. However, I fully accept that in this process it is within the sole discretion of the ISC and the full Committee to determine whether a Member's response to a particular investigation has met their expectations of diligence and candor. Accordingly, I respect and defer to the ISC's discretionary authority and have agreed to admit to the violation of House Rule XXIII, clause 1 in connection with my cooperation in the investigation.

In conclusion, I want to assure the Committee that I understand the seriousness of the allegations that arose in the course of this matter. As exhibited by the significant corrective and remedial steps that I have already taken, I am fully committed to ensuring that these types of issues do not arise in the future. Thank you again for the opportunity to present my views regarding the ISC's draft Report. I respectfully reiterate my request that the Committee approve the negotiated settlement agreement and close this matter.

Sincerely,

DAVID SCHWEIKERT
Member of Congress

[10] While I appreciate that this is a common investigative technique, given that this occurred in the context of an ethics investigation and that an accusation of lack of candor carries serious weight, I would have nonetheless appreciated the opportunity to respond to the evidence and testimony that the ISC felt was inconsistent with my own recollections. I had no reason to be anything other than truthful—I knew from ISC counsel that I was likely to be the final person interviewed and that the questions would be focused on information gathered from other sources. But rather than give me an opportunity to respond or take minor discrepancies in my testimony for what they are—simple differing recollections—the ISC instead chose to draw the worst possible conclusion. And in fact, in many, if not all, of the instances specifically noted in the Report, I believe the discrepancies could have easily been reconciled had I been provided with the information and given an opportunity to respond; in other instances, I would have been able to specifically address whether I deferred to others who had differing recollections.