STATE OF ILLINOIS

HOUSE JOURNAL

HOUSE OF REPRESENTATIVES

NINETY-SEVENTH GENERAL ASSEMBLY

150TH LEGISLATIVE DAY

PERFUNCTORY SESSION

TUESDAY, AUGUST 14, 2012

9:31 O'CLOCK A.M.

NO. 150

HOUSE OF REPRESENTATIVES
Daily Journal Index
150th Legislative Day

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NOTE: Full text of Amendments will not be included in House Journals from the 97th GA forward; they can be viewed on the Illinois General Assembly website (www.ilga.gov). For inquiries regarding this, please contact the House Clerk's office.

The House of Representatives met in Perfunctory Session pursuant to notice from the Speaker.

RESIGNATIONS AND APPOINTMENTS

July 6, 2012

Honorable Michael Madigan
Speaker
Illinois House of Representatives
Room 300 State Capitol
Springfield, Illinois 62706

Dear Speaker Madigan:

For personal reasons, effective, Tuesday, July 9, 2012, I resign my seat as a Member of the Illinois House of Representatives.

It would be appreciated if you would convey this information to all appropriate parties.

Thank you,

s/Constance A. "Connie" Howard
State Representative – 34th District

CERTIFICATE OF ORGANIZATION

Democratic Representative Committee for the
34th Representative District, State of Illinois

This is to certify that, in accordance with Section 8-5 of the Illinois Election Code, the Democratic Representative Committee of the 34th Representative District of the State of Illinois met on the 3rd day of August, 2012, in the municipality of Chicago of the State of Illinois, and organized by electing the following officers:

Roderick J. Sawyer
CHAIRMAN

463 ½ East 83rd St. Chicago, IL 60619
ADDRESS

Alderman Sandi Jackson
SECRETARY

7123 S. Yates Blvd
ADDRESS

Signed: s/Roderick J. Sawyer
CHAIRMAN

Signed: s/Sandi Jackson
SECRETARY

CERTIFICATE OF APPOINTMENT TO FILL VACANCY IN THE

OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY

WHEREAS, a vacancy currently exists in the office of Representative in the General Assembly from the 34th Representative District of the State of Illinois, due to the July 9, 2012 resignation of Constance A. "Connie" Howard; and

WHEREAS, the Democratic Representative Committee of the 34th Representative District has declared the existence of a vacancy in said office and has voted to fill the vacancy in accordance with Section 25-6 of the Election Code; and

WHEREAS, at a meeting of the Democratic Representative Committee of the 34th Representative District on August 3, 2012, Elgie R. Sims, Jr., who resides at 8142 A S. Prairie Park Place, Chicago, Illinois 60619 in the 34th Representative District of the State of Illinois, received the required number of votes for appointment to fill the vacancy in office, pursuant to Section 25-6 of the Election Code; therefore

BE IT RESOLVED, on this 3rd day of August, 2012, that the Democratic Representative Committee of the 34th Representative District of the State of Illinois hereby appoints Elgie R. Sims, Jr., who resides at 8142 A S. Prairie Park Place, Chicago, Illinois 60619 in the 34th Representative District of the State of Illinois, who is eligible to serve as a member of the General Assembly, and who is a member of the Democratic Party, as the Representative in the General Assembly from the 34th Representative District of the State of Illinois for the remainder of the term.

s/Roderick J. Sawyer
Committeeman, Democratic Representative
Committee for the 34th Representative District

s/Sandi Jackson
Committeeman, Democratic Representative
Committee for the 34th Representative District

s/Michelle A. Harris, by Marcus Evans
Committeeman, Democratic Representative
Committee for the 34th Representative District

s/John A. Pope, by s/Hanah Jubeh
Committeeman, Democratic Representative
Committee for the 34th Representative District

s/Anthony Beale, by s/Nicholas Smith
Committeeman, Democratic Representative
Committee for the 34th Representative District

State of Illinois)
)
County of Cook)

s/Charles E. Freeman
Justice

OATH OF OFFICE

State of Illinois)
)
County of Cook)

I, Elgie R. Sims, Jr., do solemnly swear and affirm that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and I will faithfully discharge the duties of the office of Representative in the General Assembly for the 34th Representative District of the State of Illinois to the best of my ability.

Signed: s/Elgie R. Sims, Jr.

Date: 8/3/12

Subscribed and Sworn to before me on this 3rd day of August, 2012.

s/Charles E. Freeman
Justice

July 31, 2012

Mr. Tim Mapes
Clerk of the House
Room 300, State House
Springfield, Illinois 62706

Dear Clerk Mapes,

It is with a heavy heart that I announce my resignation effective at 11:59 p.m. on 7/31/2012 from the Illinois House of Representatives, after eighteen years of service. I have enjoyed my tenure in the General Assembly, and have been honored to work with so many good friends.

This summer I became discouraged by the failure of this General Assembly to substantively address pension reform for all the five state systems, an issue which can no longer be pushed off to the 'next year'. Eighteen years ago I followed the advice of my party's leadership, perhaps naively, and supported a pension reform plan that was ultimately based of substantially delaying pension investments through 'the ramp'. After a change in Illinois' political leadership in 2002, several additional pension mistakes were made by the Blagojevich administration and the Democrat-controlled House and Senate. I fought those battles vociferously, but lost, and as a result we now find our state budget consumed by essential pension investments, eating up all new revenue growth, and causing untold damage to all other areas of state and local government.

I was encouraged this year by the focus on pension reform by leaders of both parties and by Governor Quinn. I had high hopes that we would achieve an affordable, sustainable long-term solution fair to both taxpayers and state retirees. That effort failed at the end of session in May, and the lack of progress at additional meetings since then have made it clear to me that no substantial reform affecting all retirement systems will pass before the election of a new General Assembly. As a signal of my frustration, and as a possible spur to move pension reform forward, I am resigning my seat in the House of Representatives. I also call upon all sides to negotiate in good faith, realizing that they will not be able to get all they want, and will have to achieve compromise. Substantial reform must be passed this year, to save Illinois from the worst financial disaster this state government has faced since it went bankrupt in the 1840's.

I am grateful to my constituents for the trust and confidence they have placed in me since 1995. It has been my honor to serve them, and to serve with you.

Sincerely,

s/Dave Winters
Dave Winters, State Representative 68th District

CERTIFICATION OF REPRESENTATIVE COMMITTEE ORGANIZATION

68th Representative District)

STATE OF ILLINOIS)
COUNTY OF Winnebago)

This is to certify that, in accordance with 10 ILCS 5/8-5, the Republican Representative Committee of the Sixty Eighth Representative District convened on the 9th day of August, 2012 in the City of Rockford located in the County of Winnebago, and organized by electing the following officers in conformity with the election laws of this state.

Chairman: Lowell Ingram
(Name)

322 Eagle Point, Machesney Park, Illinois
(Address)

Secretary: Lawrence Bauer
(Name)

11506 Tanawingo Trail, Roscoe, IL
(Address)

SIGNED: s/Lowell Ingram
Chairman

ATTEST: s/Lawrence M. Bauer
Secretary

CERTIFICATE OF APPOINTMENT TO FILL VACANCY
IN THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY
IN THE SIXTY EIGHTH REPRESENTATIVE DISTRICT

Republican Representative Committee)
of the 68th Representative District)
)
STATE OF ILLINOIS)
COUNTY OF Winnebago)

WHEREAS, a vacancy has occurred in the office of Representative in the General Assembly in the 68th Representative District of the State of Illinois as a result of the resignation on July 31, 2012 of Dave Winters, a duly elected member of the Republican Party from the 68th Representative District of the State of Illinois for the 97th General Assembly; and

WHEREAS, the Republican Representative Committee of the Republican Party of the 68th Representative District has met and voted to fill the vacancy in said office, as required by 10 ILCS 5/25-6;

NOW, THEREFORE, BE IT RESOLVED that the Republican Representative Committee of the 68th Representative District hereby appoints John M. Cabello of 324 N. Pier Dr., Machesney Park, Illinois, a member of the Republican Party, to the office of Representative in the General Assembly in the 68th Representative District for the 97th General Assembly, effective August 10, 2012.

AND BE IT FURTHER RESOLVED, that such appointment shall be effective upon the Appointee taking the oath of office.

s/Lowell Ingram Chairman	Yes Vote Cast
s/Lawrence Bauer County Central Committee Member	Yes Vote Cast
s/John Elkberg County Central Committee Member	Yes Vote Cast

Dated: 8/9/12
Subscribed and Sworn to before me on this 9th day of August, 2012.

s/DP Shriver
Notary Public

OATH OF OFFICE

State of Illinois)
)
County of Winnebago)

I, John M. Cabello, do solemnly swear and affirm that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and I will faithfully discharge the duties of the office of Representative in the General Assembly for the 68th Representative District of the State of Illinois to the best of my ability.

Signed: s/John Cabello

Date: 8/10/12

Subscribed and Sworn to before me on this 10th day of August 2012.

s/Joseph G. McGraw
Judge

REPORTS

The Clerk of the House acknowledges receipt of the following correspondence:

Lake Michigan Offshore Wind Energy Report, submitted by the Illinois Department of Natural Resources on June 26, 2012.

Diesel Emissions Annual Report, submitted by the Illinois Department of Transportation on June 28, 2012.

Report of the Veterans' Memorial Commission, submitted by the Department of Veterans' Affairs on June 29, 2012.

2011 Annual Report for Economic Development for a Growing Economy (EDGE) Tax Credit Program, submitted by the Illinois Department of Commerce & Economic Opportunity on June 29, 2012.

Progress Report of the Comprehensive Strategic Plan for Elementary and Secondary Education, submitted by the Illinois State Board of Education on June 29, 2012.

FY 2011 Statistical Report - Bilingual Education Programs and English Language Learners (ELL) in Illinois, submitted by the Illinois State Board of Education on June 29, 2012.

FY 2010 and FY 2011 Biennial Report - Illinois Early Childhood Prevention Initiative Program, submitted by the Illinois State Board of Education on June 29, 2012.

Classrooms First Commission - A Guide to P-12 Efficiency and Opportunity, submitted by Lieutenant Governor Shelia Simon on June 29, 2012.

Annual update for implementation and modernization of Technology systems for the Department of Human Services, Department of Healthcare and Family Services, Department of Insurance, Illinois Health Information Exchange, and the Governor's Office, submitted by the Office of the Governor on June 29, 2012.

2012 Minority Outreach Report, submitted by the Illinois Power Agency on July 2, 2012.

Discharged Service member Task Force FY 12 Report, submitted by the Department of Veterans' Affairs on July 2, 2012.

Annual Report on Cable and Video Service Deployment by providers granted State-issued cable and video service authorization, submitted by the Illinois Commerce Commission on July 2, 2012.

Fiscal Year 2012 Public Act 90-0599 Prostate and Testicular Cancer Program; Public Act 91-0109 Prostate Cancer Screening Program, submitted by the Illinois Department of Public Health Division of Chronic Disease prevention Control on July 3, 2012.

Medicaid Accountability through Transparency, submitted by Healthcare and Family Services on July 5, 2012.

2012 Annual Report on Office of Retail market Development, submitted by the Illinois Commerce Commission on July 6, 2012.

Energy Efficiency Trust Fund Program Report for January 2011 through December 2011, submitted by the Illinois Department of Commerce and Economic Opportunity on July 6, 2012.

July 2011 Report on Qualified Energy Conservation Bonds, submitted by the Illinois Finance Authority on July 9, 2012.

2012 Annual Report - Workers' Compensation Fraud Unity, submitted by the Department of Insurance on July 9, 2012.

Quarterly Report for the period from 4/1/12 through 6/30/12, submitted by the Office of the Legislative Inspector General on July 9, 2012.

Independent Auditor's Reports' on the Schedule of Expenditures of Federal Awards, submitted by the Office of Auditor General on July 10, 2012.

Supplemental Report of Federal Expenditures Agency/Program/Fund, submitted by the Office of the Auditor General on July 10, 2012.

Upper Illinois River Valley Development Authority Special Limited Scope Compliance Examination for the Two Years Ended June 30, 2011, submitted by the Office of the Auditor General on July 10, 2012.

State of Illinois Jackson and Perry Counties Regional Office of Education #30 Financial Audit For the year ended June 30, 2011, submitted by the Office of Special Assistant Auditors for the Auditor General on July 10, 2012.

State of Illinois Kane County Regional Office of Education No. 31 Financial Audit (In Accordance with the Single Audit Act and OMB Circular A-133) For the Year Ended June 30, 2011, submitted by Special Assistant Auditors For the Auditor General on July 10, 2012.

State of Illinois Lake County Regional Office of Education No. 34 Financial Audit (In Accordance with the Single Audit Act and OMB Circular A-133) For the Year Ended June 30, 2011, submitted by Special Assistant Auditors for the Office of the Auditor General on July 10, 2012.

State of Illinois Brown, Cass, Morgan and Scott Counties Regional Office of Education No. 46 Financial Audit For the Year Ended June 30, 2011, submitted by Special Assistant Auditors for the Office of the Auditor General on July 10, 2012.

Illiana Expressway Monthly Status Report, submitted by the Illinois Department of Transportation on July 12, 2012.

Report #16 Pursuant to the Taxpayers Accountability and Budget Stabilization Act (P.A. 96-1496), submitted by the Office of the Auditor General on July 12, 2012.

Service Organization control Report, Department of Central Management Services Bureau of Communications & Computer Services, submitted by the Office of the Auditor General on July 13, 2012.

Illinois State Employees' Deferred Compensation Plan/Financial Audits for the Fiscal Years Ended December 31, 2011 and 2010, submitted by Special Assistant Auditors for the Auditor General, State of Illinois on July 13, 2012.

Quarterly Report April 1, 2012, submitted by the Illinois Department of Corrections on July 16, 2012.

Qualified Energy Conservation Bonds ("QECB"), submitted by the Illinois Finance Authority on July 16, 2012.

Report #1-13 Pursuant to the Taxpayers Accountability and Budget Stabilization Act (P.A. 96-1496), submitted by the Office of the Auditory General on July 17, 2012.

Excellence in Academic Medicine Payments for Fiscal Year 2012, submitted by the Department of Healthcare and Family Services on July 18, 2012.

Office of General Counsel filed 4 Proofs of Claims with the U.S. Bankruptcy Court for Northern District of Illinois, submitted by Northern Illinois University on July 19, 2012.

2011 Stephenson County Economic Development Project Area Property Tax Allocation Act, submitted by the Northwest Illinois Development Alliance on July 19, 2012.

Compliance Examination and Department-Wide Financial Audit for the Two Years Ended June 30, 2011, submitted by Special Assistant Auditors for the Auditor General on July 20, 2012.

Mid-Illinois Medical District Commission Compliance Examination for the Two Years Ended June 30, 2011, submitted by the Office of the Auditor General on July 20, 2012.

Supplemental Digest July 2012, submitted by the Office of the Auditor General on July 20, 2012.

DeKalb County Regional Office of Education No. 16 Financial Audit Year Ended June 30, 2011, submitted by Special Assistant Auditors For the Office of the Auditor General on June 30, 2011.

Tazewell County Regional Office of Education #53 Financial Audit For the year ended June 30, 2011, submitted by Special Assistant Auditors for the Auditor General on July 20, 2012.

Illinois Personal Information Protection Act, submitted by Northern Illinois University on July 23, 2012.

Illinois Estate Taxes Testament, submitted by the Commission on Government Forecasting & Accountability on July 24, 2012.

Annual Report Provision of the Illinois Personal Information Protection Act, submitted by Northern Illinois University on July 25, 2012.

Report on Unauthorized Use of Medical Assistance, submitted by the Office of the Inspector General, Healthcare and Family Services on July 26, 2012.

Report for the Office of the Illinois Attorney General for the period of July 1, 2011 through June 30, 2012/Attorney General Sole Source Procurement FY 12, submitted by the Office of the Attorney General on July 30, 2012.

Funding Policy Projections for Labor and Retirement Board Employees' (LABF), submitted by Laborers' and Retirement Board Employees' Annuity and Benefit Fund of Chicago on July 30, 2012.

Illinois Certification Testing System (ICTS). Pass Rate Summary: Initial & Cumulative Program Years: September 2008-August 2010, submitted by the Illinois State Board of Education on July 31, 2012.

Report on Radon Test Results in Illinois Public Schools, submitted by the Illinois State Board of Education on July 31, 2012.

Rural Illinois: Building the Foundation for a Robust Rural Development Policy, submitted by the Governor's Rural Affairs Council Lieutenant Govern Sheila Simon, Chair and Illinois Institute for Rural Affairs Western Illinois University on August 1, 2012.

Disclosure Filing for MPEA 2012ABC Expansion, submitted by Project Bonds, the Metropolitan Pier and Exposition Authority on August 10, 2012.

Report #17 (FY12) Pursuant to the Taxpayer Accountability and Stabilization Act (P.S. 96-1496), submitted by the Office of the Auditor General on August 13, 2012.

Financial Statement, submitted by the Illinois Thoroughbred Breeders and Owners Foundation on August 13, 2012.

Sole Source Procurements Report Fiscal Year 2012, submitted by the State of Illinois Chief Procurement Office on August 6, 2012.

Illiana Expressway Monthly Status Report August 1, 2012, submitted by the Illinois Department of Transportation on August 8, 2012.

Report #17 (FY12) Pursuant to the Taxpayer Accountability and Budget Stabilization Act (P.A. 96-1496), submitted by the Office of the Auditor General on August 9, 2012.

Compliance Examination For the Two Years Ended June 30, 2011, submitted by the Office of the Auditor General on August 10, 2012.

Limited Scope compliance Examination For The Year Ended June 30, 2011, submitted by the Office of the Auditor General on August 10, 2012.

Report #2-13 Pursuant to the Taxpayer Accountability and Budget Stabilization Act (P.A. 96-1496), submitted by the Office of the Auditor General on August 13, 2012.

LETTERS OF TRANSMITTAL

MICHAEL J. MADIGAN
SPEAKER
HOUSE OF REPRESENTATIVES

ROOM 300
STATE HOUSE
SPRINGFIELD, ILLINOIS, 62706

Memorandum July 20, 2012

To: All House Members
(District Office, Springfield Office & E-Mail Address)

Re: **House Session**

The House will convene on **Friday, August 17, 2012** at **11 a.m.** The members should plan to convene and adjourn on Friday, August 17.

If you have any questions, please contact Tim Mapes, 217.782.6360, mapes@hds.ilga.gov.

August 14, 2012

Tim Mapes
Chief Clerk of the House
300 State House
Springfield, IL 62706

Dear Clerk Mapes:

Pursuant to House Rule 9(a), by this letter I am establishing that the House of Representatives will be in **Perfunctory Session** on **Tuesday, August 14, Wednesday, August 15, and Thursday, August 16, 2012.**

With kindest personal regards, I remain.

Sincerely yours,

s/Michael J. Madigan
Speaker of the House

TEMPORARY COMMITTEE ASSIGNMENTS

Representative Durkin replaced Representative Leitch in the Committee on Rules on July 10, 2012.

TEMPORARY COMMITTEE ASSIGNMENTS FOR COMMITTEES NOT REPORTING

Representative Kay replaced Representative Hammond in the Committee on Human Services on July 31, 2012.

Representative Paul Evans replaced Representative Osmond in the Committee on Human Services on July 31, 2012.

REPORT FROM THE COMMITTEE ON RULES

Representative Currie, Chairperson, from the Committee on Rules to which the following were referred, action taken on July 10, 2012, reported the same back with the following recommendations:

LEGISLATIVE MEASURES ASSIGNED TO COMMITTEE:

Public Utilities: HOUSE AMENDMENT No. 1 to HOUSE RESOLUTION 1157.

The committee roll call vote on the foregoing Legislative Measure is as follows:
4, Yeas; 0, Nays; 0, Answering Present.

Y Currie(D), Chairperson
Y Lang(D)
Y Mautino(D)
A Schmitz(R), Republican Spokesperson
Y Durkin(R) (replacing Leitch)

REPORTS FROM SELECT COMMITTEE ON DISCIPLINE

Representative Currie, Chairperson, from the Select Committee on Discipline reported the following action on July 19, 2012:
That the respondent is guilty of the charge and specifications.

The committee roll call vote on the question is as follows:
12, Yeas; 0, Nays; 0, Answering Present.

Y Currie(D), Chairperson
Y Acevedo(D)
Y du Buclet(D)
Y Kosel(R)
Y Mathias(R)
Y Riley(D)
Y Rose(R), Republican Spokesperson
Y Connelly(R)
Y Harris, Greg(D)
Y Lilly(D)
Y Nybo(R)
Y Sosnowski(R)

That the committee recommends the penalty of expulsion.

The committee roll call vote on the question is as follows:
11, Yeas; 1, Nays; 0, Answering Present.

Y Currie(D), Chairperson
Y Acevedo(D)
Y du Buclet(D)
Y Kosel(R)
Y Mathias(R)
N Riley(D)
Y Rose(R), Republican Spokesperson
Y Connelly(R)
Y Harris, Greg(D)
Y Lilly(D)
Y Nybo(R)
Y Sosnowski(R)

Representative Currie, Chairperson, from the Select Committee on Discipline reported the filing of the following report on August 6, 2012:

GENERAL ASSEMBLY
STATE OF ILLINOIS
HOUSE OF REPRESENTATIVES
SELECT COMMITTEE ON DISCIPLINE OF THE NINETY-SEVENTH GENERAL ASSEMBLY

Chair
Rep. Barbara Flynn Currie

Minority Spokesman
Rep. Chapin Rose

Members
Rep. Edward J. Acevedo
Rep. Michael G. Connelly
Rep. Kimberly du Buclet
Rep. Greg Harris
Rep. Renée Kosel
Rep. Camille Y. Lilly
Rep. Sidney H. Mathias
Rep. Chris Nybo
Rep. Al Riley
Rep. Joe Sosnowski

FINAL REPORT
OF THE
SELECT COMMITTEE ON DISCIPLINE

I. BACKGROUND

A. ARREST OF REPRESENTATIVE DERRICK SMITH

On March 13, 2012, Respondent, State Representative Derrick Smith ("Respondent"), was arrested by federal agents on the charge of violating 18 U.S.C. § 666(a)(1)(B), namely a charge that Respondent accepted a cash bribe in exchange for recommending a daycare center for an Early Childhood Construction Grant to the Illinois Capital Development Board. Attached to the application for arrest warrant were a Criminal Complaint and the Affidavit of Special Agent Bryan M. Butler of the Federal Bureau of Investigation (the "Butler Affidavit"). The Butler Affidavit contained numerous factual allegations supporting the ultimate charge that Rep. Smith violated 18 U.S. C. § 666(a)(1)(B). (A copy of the Criminal Complaint and Butler Affidavit was admitted into the Record for limited purposes as Select Committee Exhibit 7.)

B. THE HOUSE SPECIAL INVESTIGATING COMMITTEE

On March 21, 2012, pursuant to Rule 91 of the Rules of the Illinois House of Representatives for the 97th General Assembly, five members of the House filed a petition containing suggested charges against Respondent that outlined the allegations contained in the federal prosecution. Pursuant to House Rule 91, this petition triggered the creation of the House Special Investigating Committee (the "House SIC") to investigate the allegations and recommend whether reasonable grounds existed to bring a charge against Respondent. The House SIC held hearings on March 27, April 26, and May 10, 2012. (Transcripts from the House SIC hearings were entered into the Record, without objection, as Select Committee Group Exhibit 4.) In a Report filed on June 6, 2012, the House SIC unanimously voted to prefer a charge against Respondent, to wit:

> Representative Derrick Smith abused the power of his office by participating in a scheme to obtain a personal benefit in exchange for his official acts.

(A copy of the House SIC Report was entered into the Record as Select Committee Exhibit 1; *see* p. 6 of that Exhibit.) The House SIC also outlined the following Specifications supporting this Charge:

> 1. Representative Smith, in his official capacity as a State Representative, has an obligation to faithfully discharge his duties in the best interests of the people of the State of Illinois and not for his own personal benefit;

> 2. During the time period beginning on or about December, 2011 through March, 2012, Representative Smith agreed that, in exchange for a cash bribe, he would provide an official letter of support for a daycare's Early Childhood Construction Grant to the Illinois Capital Development Board;
>
> 3. On or about March 1, 2012, Representative Smith did, in fact, sign this official letter of support in his official capacity as a State Representative and planned or intended for that letter to be submitted to the Illinois Capital Development Board;
>
> 4. On or about March 10, 2012, Representative Smith did, in fact, receive a cash bribe in exchange for providing this official letter of support;
>
> 5. Accepting a cash bribe in exchange for an official act, or even plotting or attempting to do so, constitutes a breach of Representative Smith's obligation as a public official to faithfully discharge his duties in the best interests of the people of the State of Illinois and warrants disciplinary action by the House of Representatives.

(*Id.*)

Pursuant to Rule 93, the House SIC also appointed House Managers to prosecute the claims against Respondent at the next stage of the proceedings. These Managers were State Representatives James Durkin and Lou Lang (the "House Managers"). (*Id.*)

II. PRELIMINARY PROCEEDINGS BEFORE THE SELECT COMMITTEE ON DISCIPLINE

Following the suggestion of charges brought by the House SIC against Respondent, this Select Committee on Discipline (the "Committee") was created pursuant to House Rule 94. Consistent with that Rule, this Committee consists of twelve Members, six appointed by the Speaker of the House and six by the House Minority Leader. The Speaker appointed Representative Barbara Flynn Currie to be Chairperson of the Committee. The Minority Leader appointed State Representative Chapin Rose to be Minority Spokesman.

Following the first hearing of the Committee, the Chairperson filed Procedural Rules with the House Clerk, pursuant to her authority under House Rule 10(c). These Procedural Rules set forth the framework for the proceedings, including the procedures for the Final Hearing and the disclosures of evidence by both the Respondent and House Managers.[1]

A. PROCEDURAL RULE 9 AND THE FEDERAL PROTECTIVE ORDER

The original investigating committee in this matter, the House SIC, adopted a position that it would not seek or hear any evidence that, in the opinion of the U.S. Attorney for the Northern District of Illinois, would compromise the U.S. Attorney's ongoing federal investigation of Respondent or others. The House SIC then engaged in written correspondence with the U.S. Attorney, asking him whether he would disclose any relevant evidence in his possession and whether he would consider any independent inquiry by the House SIC to constitute an interference with his ongoing federal investigation. The U.S. Attorney responded that he would not disclose any evidence in his possession to the House SIC, and that he would consider any independent investigation by the House SIC to be an interference with his ongoing investigation of the Respondent and others.[2] As a result, the House SIC did not seek to subpoena any witnesses or compel any information from any external sources.

The House SIC's policy of deference to the U.S. Attorney's office while conducting a legislative investigation was nothing new. It was squarely in line with an identical policy undertaken by the House

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[1] An online link to the Procedural Rules, and to all other documents pertaining to this Committee, is located at http://www.ilga.gov/house/committees/Reports.asp?CommitteeID=1173&GA=97.

[2] This correspondence was contained in Exhibits 6 and 7 of the House SIC Record, which can be located at http://www.ilga.gov/house/committees/Reports.asp?CommitteeID=1169&GA=97.

committee that investigated Governor Rod Blagojevich in 2008-09.[3] Moreover, that identical policy was also adopted by the Illinois Senate during the Impeachment Trial of Governor Blagojevich in 2009.[4]

At its initial hearing on June 27, 2012, this Committee unanimously adopted the same policy, namely that it would not request or entertain any evidence if the United States Attorney for the Northern District of Illinois indicated that such evidence could compromise the U.S. Attorney's ongoing investigation of Respondent or any related investigation. This policy was also formally adopted in Rule 9 of the Procedural Rules for this Committee.

The wishes of the U.S. Attorney were not the only consideration stemming from the federal litigation; there was also the matter of a protective order entered by the federal judge hearing the criminal prosecution against Rep. Smith. On June 14, 2012, the United States District Court for the Northern District of Illinois, the Honorable Sharon Johnson Coleman presiding, entered a protective order (the "Federal Protective Order") that, among other things, barred Respondent from using the evidence disclosed by the United States for any purpose other than the defense of the criminal charge in federal court. (A copy of this Federal Protective Order has been entered into the Record as Select Committee Exhibit 2.) The Federal Protective Order was sought by the U.S. Attorney over the objection of the defendant, Representative Smith. The United States asserted several justifications for preserving the confidentiality of its evidence, most notably that public disclosure of the evidence would compromise the U.S. Attorney's ongoing investigation of Respondent and other individuals and could jeopardize the safety of confidential sources.[5]

B. THE SCHEDULING ORDER AND RESPONDENT'S MOTION FOR CONTINUANCE

On June 29, 2012, the Chairperson entered a Scheduling Order that set dates for the disclosure of evidence among the parties and a date of July 19, 2012 for the Final Hearing in this matter.[6] Pursuant to the Scheduling Order and in accordance with Procedural Rule 6, the parties were required to disclose a list of exhibits, the exhibits themselves, and a witness list no later than July 6, 2012. The parties then had until July 13, 2012 to object to each other's disclosures, with an opportunity for a response to any objections to be filed by July 16, 2012.

On July 6, 2012, in addition to disclosing certain evidence, Respondent moved for a continuance of the Final Hearing date to a date no earlier than thirty days after July 19, 2012. Respondent argued that he should have the opportunity to move Judge Coleman for a modification of the Federal Protective Order so that he could use certain evidence, currently covered by that protective order, in the Final Hearing before this Committee.[7]

In an Opinion and Order dated July 11, 2012, the Chairperson denied Respondent's Motion, given that the U.S. Attorney steadfastly maintained that any modification of the Federal Protective Order would jeopardize his ongoing investigation of Respondent and others. Thus, the Chairperson reasoned, in accordance with Procedural Rule 9, the Committee would not entertain any such evidence even if Respondent were to persuade Judge Coleman to release it. Accordingly, there was no sense in delaying the Final Hearing for litigation in federal court that, regardless of its outcome, would not change the Committee's view on the evidence Respondent wished to proffer.[8]

It is worth noting that Respondent sought a modification of the Federal Protective Order in advance of this Committee's Final Hearing, anyway. It is a matter of public record that, on July 18, 2012, Judge Coleman denied Respondent's request for certain evidence to be released from the Federal Protective Order for Respondent's use at the Final Hearing. (*See also* Transcript of Proceedings, Final Hearing, July

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[3] *See* Final Report of the Special Investigative Committee, 95th General Assembly, pp. 1-2, located at http://www.ilga.gov/house/committees/95Documents/Final%20Report%20of%20the%20Special%20Investigative%20Committee.pdf.

[4] *See* Rule 15(f) of the Illinois Senate Impeachment Rules, 95th General Assembly, located at http://www.ilga.gov/legislation/96/SR/PDF/09600SR0006.pdf.

[5] The Reply of the United States in support of its Motion for Protective Order in *U.S.A. v. Smith* was made an exhibit to the Chair's Opinion and Order of July 11, 2012, denying Respondent's motion for a continuance. That Opinion and Order is contained online at the link referenced in footnote 1. The U.S. Attorney's full reasoning for seeking the Protective Order is contained in that Reply brief.

[6] A copy of the Scheduling Order can be located at the link referenced in footnote 1.

[7] A copy of Respondent's Motion to Extend Scheduling Order is located at the link referenced in footnote 1.

[8] A copy of this Opinion and Order can be located at the link referenced in footnote 1.

19, 2012 ("Tr.") at p. 22 (counsel for Respondent noted that Judge Coleman denied his request to modify the Federal Protective Order).)[9]

Accordingly, even had this Committee granted Respondent's continuance, Respondent would not have introduced any additional evidence. Judge Coleman's denial of Respondent's attempt to re-open the Federal Protective Order would have foreclosed the use of such evidence.

C. DISCLOSURES OF EVIDENCE AND OBJECTIONS THERETO

1. *The House Managers' Evidence*

The House Managers timely disclosed seventeen (17) exhibits for potential use at the Final Hearing. In his written response, Respondent did not object to sixteen of those exhibits. Respondent objected only to House Manager's Proposed Exhibit 15, a certified copy of the Criminal Complaint and the Butler Affidavit. Respondent objected to "[l]ack of foundation" for this document. The House Managers timely filed a written Response, and Respondent filed a Reply brief.[10]

Because House Rule 95(c) provides that, at the Final Hearing, "[t]he rules of evidence applicable to criminal proceedings shall apply except as may be waived by the managers or respondent, as may be appropriate," the Chairperson's consideration of the sole objection by Respondent was governed by the rules of evidence in Illinois.

The Chairperson issued an oral ruling prior to the commencement of the Final Hearing. The Chairperson sustained the objection in part and denied it in part. The Chairperson agreed with Respondent that neither the Criminal Complaint nor the Butler Affidavit could be considered for the truth of the matters asserted therein. (Tr. 5.) The Chairperson ruled, however, that this Exhibit could be considered solely in the context of the Committee taking official notice—the Committee's equivalent of judicial notice—that serious public charges had been leveled against Respondent, a sitting state legislator, before a federal magistrate judge in the U.S. District Court for the Northern District of Illinois, and only for that limited purpose. (Tr. 5-6.) This ruling was consistent with Illinois Rule of Evidence 201, concerning judicial notice.

The Chairperson also noted in her oral ruling, however, that lengthy portions of the Butler Affidavit were discussed during the May 10, 2012 hearing of the House SIC, the transcript of which the House Managers proposed to enter into evidence *without objection* by Respondent, and that such passages were not affected by the Chairperson's ruling on the objection to House Managers' Proposed Exhibit 15. (Tr. 6.) And even after the Chairperson specifically stated that her ruling did *not* affect the admissibility of those portions of the Butler Affidavit discussed at the May 10 House SIC hearing, Respondent's counsel continued to stipulate to the admissibility of that May 10 transcript, reiterating that he had "[n]o objection" to its admission into evidence as part of Select Committee Group Exhibit 4. (Tr. 24.)[11]

The rules of waiver before this Committee were made abundantly clear to the parties. First, House Rule 95(c) expressly provides that the application of the Illinois rules of evidence in the Final Hearing may be waived by the appropriate party. Second, the Committee's Procedural Rule 7 warned the parties that "[o]bjections not made in writing by the deadline set by the Chairperson [here, July 13] shall be deemed waived." Finally, in the Scheduling Order setting the date of July 13 for the raising of objections to the

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[9] A copy of the Transcript of Proceedings for the Final Hearing can be located at the link referenced in footnote 1. Throughout this Report, references to the Transcript of Proceedings will be denoted as "Tr." followed by the applicable page number of the transcript.

[10] The House Managers' proposed Exhibits, Respondent's Objections, and the briefing on this subject can be located at the link referenced in footnote 1.

[11] Respondent's counsel made it clear that he understood that the evidence presented and arguments made at the three House SIC hearings—which would include quoted portions of the Butler Affidavit—were "part of the record" before this Committee, given his stipulation to the House Managers' proffered evidence of the three transcripts in Group Exhibit 4. In fact, Respondent, the House Managers, and the Chairperson all agreed that due to this stipulation, in effect the entirety of the proceedings and evidence before the House SIC were incorporated into the Record before this Committee. (Tr. 37 (arguing that his proffer of an April 10, 2012 letter from the U.S. Attorney, though not disclosed in advance of the Final Hearing, could be referenced because it was introduced before the House SIC and was, therefore, "part of the record" in this proceeding); Tr. 37-38 (Chair ruled that, because the parties stipulated to the admission of the House SIC transcripts, the evidence presented therein was incorporated into the Select Committee's Record in total); Tr. 38 (House Manager Durkin withdrew objection to admission of April 10, 2012 letter once it was confirmed that the letter had been introduced before the House SIC).)

opposing parties' evidence, the Chairperson specifically reminded the parties to comply with Procedural Rule 7. (*See* Scheduling Order, ¶ 2.)

In both his written response to the House Managers' evidence he filed on July 13, 2012, and in his oral comments at the Final Hearing, Respondent's counsel did not object to the admissibility of lengthy portions of the Butler Affidavit discussed at the May 10, 2012 hearing of the House SIC. Thus, Respondent waived any objection to the admissibility of those portions of the Butler Affidavit that were discussed at that May 10 hearing. Accordingly, those portions of the Butler Affidavit were admissible for any purpose, including the truth of the matters asserted therein.

2. *Respondent's Evidence*

In his July 6, 2012 filing, Respondent proffered two witnesses and generally identified categories of evidence he wished to present. First, Respondent identified as potential witnesses (i) FBI Special Agent Bryan Butler and (ii) the cooperating source in the criminal investigation, whose identity is not publicly known but who is identified in the Butler Affidavit as "CS-1." Respondent also requested that the Committee issue subpoenas to these two individuals.[12]

The Chairperson denied the request for subpoenas for two reasons. First, this Committee is not an "investigative" committee and was not delegated subpoena power by the House of Representatives. (*Compare* House Rule 23 (granting subpoena power to standing and special committees and committees of the whole).) Second and more to the point, even if subpoena power had existed, the Chairperson would not compel the testimony of either of these witnesses pursuant to Procedural Rule 9—because, in the opinion of the U.S. Attorney prosecuting Respondent in federal court, the testimony of these individuals would interfere with his ongoing investigation of Respondent and others. (Tr. 7 (statement of committee counsel on behalf of the Chairperson).) To reiterate, at its initial hearing, this Committee had unanimously adopted the policy that it would not seek or hear any evidence over the objection of the U.S. Attorney, a policy embodied in Procedural Rule 9.

Respondent's counsel argued that it was premature to assume that the U.S. Attorney would object to these subpoenas at the time of the hearing (July 19) simply because he had previously raised an objection. (*Id.*) But in Exhibit A to the Chairperson's Opinion and Order of July 11, 2012, the U.S. Attorney had reiterated to the Committee, in an email dated July 9, that he would oppose any attempt to modify the Federal Protective Order, primarily on the grounds of "witness safety" and protecting his ongoing investigation of Respondent and others. And if there were any reason to believe that the U.S. Attorney might have changed his position over the next ten days, one need only consider that on July 18, 2012—the day before the Final Hearing—the U.S. Attorney's office was in court objecting to Respondent's attempt to modify the Federal Protective Order for the purpose of releasing the full criminal background of the cooperating source, CS-1, as well his history of cooperating with the FBI. (Tr. 22.)

If the U.S. Attorney, just one day earlier, was not willing to agree to a modification of the Federal Protective Order simply for these limited purposes concerning the personal history of CS-1, it is unfathomable that he would suddenly reverse course and agree to allow CS-1 to appear in person to submit to full direct and cross-examination—particularly when one of his reasons for keeping this witness confidential was the witness's safety. It is equally unlikely that the U.S. Attorney would change his longstanding position and agree to submit the principal case agent, Special Agent Butler, for full direct and cross-examination before this Committee.

For all of these reasons, even if this Committee had possessed subpoena power, the Chairperson would not have issued the subpoenas Respondent requested.

Beyond the request for witnesses, on July 6, 2012, Respondent also identified general categories of evidence that he might use during the Final Hearing. These included:

"1. Reports Provided by CS-1;
2. Affidavit Executed by Bryan M. Butler on or around March 12, 2012;
3. Information Relating to the Employment History of CS-1 by the FBI;
4. The Criminal Background of CS-1."

Respondent did not enclose copies of any exhibits relating to these categories, though he was required to do so under Procedural Rule 6(a) ("[t]he Exhibits themselves shall be provided simultaneously with the written disclosure …."). In response to a question raised by the Committee's counsel by email, Respondent's counsel later explained that the evidence referenced in his points number 1, 3, and 4 above

[12] Respondent's proposed witnesses and exhibits, and the House Managers' response thereto, can be located at the link referenced in footnote 1.

were covered by the Federal Protective Order and would not be disclosed unless he was granted permission to disclose it by Judge Coleman.[13] As has been discussed, Judge Coleman subsequently denied Respondent's request to publicly disclose these details concerning CS-1.

At the Final Hearing, Respondent attempted to introduce into evidence a letter dated April 10, 2012, in which the U.S. Attorney's office admitted that the criminal background of CS-1 had been misrepresented in the Butler Affidavit and that, in fact, CS-1 had a more extensive criminal background. Respondent had not previously identified this exhibit specifically, notwithstanding the clear dictates of Procedural Rule 6(c) that he do so, including turning over a copy of that exhibit in advance. However, Respondent correctly observed that, in light of Respondent's stipulation to the admission of the three House SIC transcripts as Group Exhibit 4, the entirety of the proceedings and evidence before the House SIC had become "part of the record" before this Committee. (Tr. 37.) The Chairperson agreed, and the House Manager, once confirming that the April 10 letter from the U.S. Attorney had, in fact, been introduced into the Record before the House SIC, withdrew his objection to that letter. (Tr. 37-38.)[14] The April 10 letter was ultimately admitted into the Record as Select Committee Exhibit 8.[15]

III. EVIDENCE AND ARGUMENT AT THE FINAL HEARING

The House Managers placed a number of exhibits into evidence without objection from Respondent. The first was the oath of office taken by Respondent when he was sworn into office, for the purpose of demonstrating that Respondent was aware of his duty to "faithfully discharge the duties of the office of Representative in the General Assembly for the 10th Representative District of the State of Illinois to the best of [his] ability." (Tr. 13 (House Managers' Opening Statement); *see also* Tr. 23-24 (offering Oath into evidence).) The House Managers introduced into evidence a certification that Respondent had completed his ethics training required by state law. (Tr. 25.) The House Managers introduced into evidence certified copies of House Journals noting the presence of Respondent in the State capital during sessions of the House of Representatives on the following dates in 2012: February 12 and 28; and March 1, 6, 8, and 9. (Tr. 25.)

A. GROUP EXHIBIT 4 AND THE BUTLER AFFIDAVIT

In addition, the House Managers introduced, without objection from Respondent, the transcripts of proceedings from hearings of the House SIC on March 27, April 26, and May 10, 2012 as Select Committee Group Exhibit 4. (Tr. 24.) In their July 6, pre-hearing disclosure of these transcripts, the House Managers stated that they were introducing these transcripts to "detail the record of the House proceedings against Rep. Smith, including the procedures followed and the *evidence presented*."[16] In their July 6 disclosure, the House Managers also provided a copy of this May 10 transcript to Respondent, as required by Procedural Rule 6(a)—in addition to the fact that a copy of that May 10 transcript had been online on the General Assembly website, under the House SIC's link, since mid-May.[17]

Having had the opportunity to review the House Managers' July 6 disclosure, Respondent, in his July 13 response to that disclosure, answered that he had "[n]o objection" to these transcripts being admitted into evidence for the reasons given by the House Managers. Respondent's counsel also reiterated at the Final Hearing that he had no objection to this evidence. (Tr. 24.)

This detail is important because, as referenced above, the May 10 transcript of the House SIC hearing contained a lengthy discussion between committee counsel and Respondent's counsel concerning

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[13] Copies of this email correspondence between Committee Counsel and Respondent's Counsel, including by "cc" the House Managers, is located at the link referenced in footnote 1.

[14] *See* footnote 11 for a more detailed discussion of the conversation in which Respondent, the House Managers, and the Chairperson concurred that all evidence introduced at the House SIC was incorporated into the Record before this Committee.

[15] The April 10 letter presumably suffered from the same evidentiary problems as the Butler Affidavit, including lack of foundation and possibly hearsay. But like the Butler Affidavit—at a minimum those portions quoted at the May 10 hearing of the House SIC—the parties stipulated to its admission and waived any objection under House Rule 95(c).

[16] *See* House Managers' Proposed Exhibit List at ¶ 3 (emphasis supplied), located at http://www.ilga.gov/house/committees/97documents/HSCD/House%20Managers'%20Proposed%20Exhibit%20List.pdf.

[17] *See* http://www.ilga.gov/house/committees/Reports.asp?CommitteeID=1169&GA=97.

specific portions of the Butler Affidavit, cited specifically and quoted verbatim. The House Managers offered this transcript into evidence to detail the "evidence presented" against Respondent, and Respondent did not object. Thus, while Respondent certainly might have lodged objections as to hearsay, foundation, and possibly other objections, Respondent did not do so. Because Respondent waived the application of the rules of evidence under House Rule 95(c), this portion of the Butler Affidavit could be considered for its truth.

Moreover, because Respondent's counsel agreed that the entirety of the record before the House SIC had been incorporated into the Record before this Committee (Tr. 37; *see also* footnote 11, *supra*), it would appear that the *entire* Butler Affidavit was admitted into the Record before this Committee without objection.[18] However, out of an abundance of caution, the Members of this Committee choose only to consider those portions of the Butler Affidavit that were specifically quoted and discussed between the Committee and Respondent's counsel during the May 10, 2012 House SIC hearing and introduced as Group Exhibit 4, to which Respondent raised no objection at any time.

These portions of the Butler Affidavit included paragraph 16, in which Special Agent Butler swore under oath that Respondent "agreed to and did write a letter of support for Daycare Owner's purported ECCG [Early Childhood Construction Grant] application in exchange for a $7,000 bribe." (Select Committee Group Exh. 4, Tr. 5/10/12, at p. 22.) This sworn testimony goes directly to the Charge presented to this Committee, that Respondent "abused the power of his office by participating in a scheme to obtain a personal benefit in exchange for his official acts." This sworn statement from Special Agent Butler, alone, if believed to be credible, could support a finding of fault against Respondent in this matter.

But the portions of the Butler Affidavit quoted in the May 10 House SIC hearing went far beyond that general allegation. Portions of the Affidavit were quoted in which Agent Butler swore under oath that multiple conversations occurred between Respondent and the cooperating source regarding the scheme to exchange a letter of support for a cash bribe; that Respondent signed that letter of support; and that Respondent accepted the $7,000 in cash.

Specifically, Agent Butler testified under oath to a conversation that was allegedly recorded on January 24, 2012 between Respondent and the cooperating source, CS-1. In that conversation, Agent Butler swore that the following conversation took place:

> "CS-1 told Smith that Daycare was planning some 'renovations' and 'modifications.' CS-1 told Smith that Daycare Owner was looking for a 'capital …' and Smith finished CS-1's sentence with 'improvement.' CS-1 said, 'Yeah. That's what they tryin' to do. You know … you think you might be able to handle it?' Smith responded, 'We can go talk to her [Daycare Owner], but be sure and talk to, uh, [Alderman A].' Later in the meeting, Smith said, "I try to, I try to help … [Unintelligible] … I know what you're saying.' CS-1 said, 'The broad [Daycare Owner] is gonna give …' Smith interrupted and said, 'I got you, mother fucker. I told your ass, I got you.' CS-1 said, 'Look, look. The broad is gonna give seven [$7,000], with no problem.' Smith responded, 'Okay.'"

(*Id*. at 44-45 (quoting ¶ 17 of Butler Affidavit).) This sworn testimony from Agent Butler, if accepted as credible, reveals the hatching of a plot whereby Respondent would assist a daycare owner with a capital improvement in exchange for $7,000.

Agent Butler also swore that a conversation took place on February 11, 2012, between CS-1 and Respondent, which was recorded by CS-1, and during which CS-1 and Respondent "discussed the amount Daycare Owner was willing to pay" for the letter of support. (*Id*. at 49 (quoting ¶ 24 of Butler Affidavit).) Agent Butler swore that the following exchange was recorded:

> "Smith: What's she [Daycare Owner] doin'?
>
> CS-1: They gonna try to get that buildin'. Knock that wall out.
>
> Smith: No, I mean …
>
> CS-1: Expand her shit …

[18] The Butler Affidavit was entered into the Record before the House SIC as Exhibit 3. *See* http://www.ilga.gov/house/committees/Reports.asp?CommitteeID=1169&GA=97.

Smith: What she gonna do?

CS-1: For the money? Okay. What you want man? It's a letter. What you want? Tell me what to do?

Smith: You said …

CS-1: I'll see if I can get it done.

Smith: You already said a number now. I'm just tryin' to see if you remember what you said.

CS-1: I know exactly what I said. Okay, she, she's talkin' about getting' us $7,000 man.

Smith: All right.

CS-1: All right … That's what you want? That's what you get. That's what you want? You got to tell me man, so I know what to do.

Smith: You already said what you said, I ain't sayin' nothin'.

CS-1: Okay, that's good …

Smith: [Unintelligible] said what you said.

CS-1: We rock and roll. Get the letter, I get that chop [money].

Smith: I'll give her a letter of support. But she gotta say who, to who."

(*Id*. at 49-50 (quoting ¶ 24 of Butler Affidavit).) Agent Butler testified to another recorded conversation between Respondent and CS-1 on March 4, 2012, in which the following exchange occurred:

> "During the call, Smith and CS-1 again discussed the form of payment and CS-1 suggested that Smith ask for 'cash.' Smith responded, 'Yeah.' CS-1 said, 'Ain't no strings attached.' Smith responded, 'Yeah, but … what did they agree to, seven stacks?' CS-1 said, 'Yeah.'"

(*Id*. at 54 (quoting ¶ 44 of Butler Affidavit).) If Agent Butler's sworn testimony is to be believed, these conversations on February 11 and March 4, 2012 indicate a continuing discussion between Respondent and CS-1 in which Respondent affirmed that he would accept $7,000 in exchange for writing a letter of support for a daycare owner.

Agent Butler also swore under oath that, in accordance with the alleged agreement to write a letter of support for a capital grant in exchange for $7,000 in cash, Respondent did his part: "Ultimately, Smith agreed to write an official letter of support for Daycare Owner's purported ECCG grant application. Smith provided the official letter of support on March 2, 2012." (*Id*. at 24 (quoting ¶ 16 of Butler Affidavit.) Special Agent Butler swore that the contents of that letter of support were as follows: "As a State Representative for the West Humboldt Park neighborhood, I support [Daycare Owner's purported organization] in their application for a $50,000 Early Childhood Construction Grant from the Illinois Capital Development Board." (*Id*. at 28 (quoting ¶ 39 of the Butler Affidavit).)

Agent Butler swore under oath that, in a recorded conversation on March 10, 2012, Respondent and CS-1 agreed to meet for the purpose of transferring the $7,000 in cash from CS-1 to Respondent:

> "During the call, CS-1 asked Smith if he could meet between 2:30 and 3:00 p.m. Smith told CS-1 to call him and Smith would give CS-1 his location. Smith asked, 'You got it? You got it?' CS-1 answered, 'I got you. Don't worry about it.'"

(*Id*. at 55 (quoting ¶ 48 of Butler Affidavit).)

Finally, Agent Butler swore under oath that, again on March 10, 2012, at approximately 2:56 pm, CS-1 met with Respondent in Respondent's vehicle and the following conversation was recorded:

> "During the meeting, CS-1 stated, 'You thought I was bullshitting didn't you?' (CS-1 and Smith laugh.) CS-1 then stated (while counting the money), 'One. Two. Three. Four. Five. Damn, stuck together. Six. Seven. (Unintelligible.) Talk to you later.' Smith then asked, 'You don't want me to give you yours now?'"

(*Id*. (quoting ¶ 50 of Butler Affidavit).)

If Special Agent Butler's sworn testimony is determined to be credible, his testimony quoted above demonstrates that Respondent agreed to a plot to obtain $7,000 in cash in exchange for writing a letter of support for a capital grant to a state agency; that Respondent did, in fact, undertake the official act of writing that letter of support and intended for it to be sent to the Illinois Capital Development Board; and that Respondent received the promised $7,000 in cash for doing so. In other words, if Special Agent Butler's sworn testimony is accepted as credible, Respondent agreed to an illegal and unethical plot to sell an official act for cash, he did his part in the illegal plot, and he received his illegal reward.

The remaining question is whether Agent Butler's sworn testimony in his Affidavit—that is, the portion of that Affidavit that was quoted in the May 10 House SIC hearing, which is the only portion of the Affidavit that could be considered for its truth—is worthy of credibility. It is tempting to say, as would Respondent's counsel, that this is only an Affidavit. But it is also true that this is no ordinary Affidavit. The portions of the Butler Affidavit entered into evidence in Group Exhibit 4 are not Agent Butler's subjective observations; they are not an agent's personal opinion that, for example, an individual was acting suspiciously or that he observed contraband in plain sight. Almost every one of the quoted portions of the Affidavit above is, itself, a quote—a quote of *Respondent's words*, caught on tape, recorded by the FBI.

In determining whether these portions of the Affidavit should be accepted as credible, the Members of the Committee do not have to check their common sense at the door. It is hard to believe that Agent Butler would entirely invent the existence of these recorded conversations, given that he (and the federal prosecutors with whom he works) surely understand that if he was lying about the existence of these recorded conversations, the federal prosecution against Respondent would probably collapse, and Agent Butler likely would be in jeopardy of losing his job and even facing a criminal charge of perjury. It is equally hard to believe that Agent Butler would not take care in accurately quoting these recorded conversations, for the same reason—surely he and his colleagues understand that swearing to the contents of these recordings under penalty of perjury is no small matter, and that the defense in the criminal case (led by Respondent's counsel in this proceeding, an able and zealous advocate) would pore over each recording, word-for-word, to see if Agent Butler accurately quoted them. Special Agent Butler undoubtedly would understand that if he entirely fabricated these conversations or materially misquoted them, his career as an FBI agent—and a free man—would be short-lived. The likelihood that Agent Butler's account of these recorded conversations is correct far outweighs the likelihood that it is false. Thus, the Committee finds these portions of the Butler Affidavit quoted in Group Exhibit 4 to be sufficiently reliable to support the Charge leveled against Respondent in this matter.

Respondent argues that Agent Butler should not be believed because, as the U.S. Attorney's office admitted in the April 10 letter entered into the Record as Select Committee Exhibit 8, there were inaccuracies in the Affidavit's description of the criminal history of CS-1. This is a point in Respondent's favor, but is it enough to cast doubt on the portions of the Affidavit quoted above? While it is certainly not commendable that CS-1's history was inaccurately disclosed, again, it is hard to imagine that this mistake renders all of the recorded statements made by Respondent, quoted above and sworn to by Agent Butler before a federal magistrate judge, false. Moreover, the fact that the U.S. Attorney's office took affirmative steps to correct the record after noting this discrepancy speaks to the credibility of the Affidavit overall; that office was certainly willing to own up to a factual mistake when it found one but identified no others.

In a related argument, Respondent suggests that CS-1's criminal history renders him unreliable or at least suspect. Whether that may be true, the potency of the sworn testimony of Agent Butler, detailed above and contained in Group Exhibit 4, lies not in the words or deeds of CS-1 but in the words and deeds of *Respondent*. No matter how unreliable CS-1 may be, Respondent's own words on those recorded conversations are damning by themselves.

Respondent also makes the point that, even if these portions of the Butler Affidavit are considered to be credible, many conversations between CS-1 and Respondent were not detailed in the Butler Affidavit, suggesting that only one version of the story appeared in that Affidavit and that, perhaps, Agent Butler and the team of federal agents and prosecutors omitted other conversations that would have placed Respondent

in a different, more favorable light. It is true that not all of the conversations between CS-1 and Respondent were described in the Affidavit. Moreover, insofar as Group Exhibit 4 is concerned, the Committee will consider only those conversations quoted above, which are only a small subset of the Affidavit in its entirety. Thus, there is no doubt that only certain conversations are available for the Committee's review. But again, these portions of the Butler Affidavit that the Committee *did* review, which we have determined to be sufficiently credible, show that Respondent (i) engaged in multiple discussions with an undercover operative about selling an official act for $7,000; (ii) committed that official act; and (iii) collected the $7,000. Is that not enough for the Committee to find that Respondent breached his oath of office, betrayed the public trust, and violated his duty of honest service to his constituents and the people of the State of Illinois?

We believe that it is. The portion of the Butler Affidavit that the Committee could consider for its truth, contained in Group Exhibit 4, is sufficiently credible and substantial for a Member to conclude that Respondent is at fault on the Charge, namely, that Respondent "abused the power of his office by participating in a scheme to obtain a personal benefit in exchange for his official acts." This evidence, not contradicted in any meaningful way by Respondent, is sufficient to sustain a finding of fault against Respondent.

B. THE HOUSE MANAGERS' OFFER OF PROOF AND RESPONDENT'S SILENCE

While the evidence outlined above is sufficient, by itself, to support the Charge against Respondent, the House Managers further called Respondent to testify as a witness. (Tr. 28.) Respondent did not testify under oath at the Final Hearing or even appear. (*Id.*) The House Managers, in accordance with Procedural Rule 11, made an offer of proof as to questions they would have asked Respondent had he submitted to testimony under oath.[19] These questions were freestanding questions, not specifically tied to any external source of information, though the House Manager obviously used the Butler Affidavit as his good-faith basis for the questions. While this Report will not detail all of the proffered questions, they included the following:

- "Representative Smith, didn't you and the cooperating source discuss a daycare operator in your district that was in need of a State grant and that you would help the daycare operator on condition that you would receive a campaign contribution for $5,000? And $7,000 if they were legitimate?" (Tr. 30.)

- Referring to a conversation on February 10, 2012, between Respondent and CS-1: "Representative Smith, did you say the following: 'I will write the letter?' And, Representative Smith, you also asked, 'What's she going to do?' You also said to the cooperating source, 'You already said a number. Now I'm trying to see if you remember what you said.' Cooperating source responded, 'I know exactly what I said. Okay. She's talking about $7,000.' You, Representative Smith, responded, 'All right.'" (Tr. 31.)

- "And also on … March 4, isn't it true that the cooperating source told you that the money would come from petty cash fund from the daycare center? And you also told the cooperating source that payment would be split $50,000 to me, Derrick Smith—$5,000 to Derrick Smith and $2,000 to the cooperating source?" (Tr. 34.)

- "Also on March 4th, did you also say to the cooperating source that you'd be back from Springfield the next day because, quote, unquote, 'Shit, I can't let you hold the money long. I may have to kill your ass,' laughing." (*Id.*)

- "March 10th, 2012, 3:00 p.m., Representative Smith, didn't you meet with the cooperating source, listen to the cooperating source count out the money, 'One, two, three, four, five—damn, stuck together—6 and 7? I would like for you to explain what that means." (Tr. 35.)

- "Did you accept the cash? Did you also tell the cooperating source that 'You don't want me to give you yours now,' and also say to the cooperating source, 'I'm going to get your (inaudible).'" (*Id.*)

[19] Respondent did not object to the House Managers' offer of proof.

• "Did you accept $7,000 of United States currency from a purported daycare center for your official assistance in securing a grant?" (*Id*.)

• "Did you ever reject the offers by the cooperating source? Did you ever stop and say, 'This is wrong?' Did you ever retreat?" (Tr. 35-36.)

• "I would next ask him whether or not he reported this bribe to any law enforcement official." (Tr. 36.)

It is important to emphasize that, while Manager Durkin clearly used the Butler Affidavit as his good-faith basis for these questions, the Committee only considered the Butler Affidavit for its truth in a limited manner (pursuant to an oral order by the Chairperson, only those portions of the Affidavit quoted in Group Exhibit 4 and stipulated as admissible by Respondent). Regardless of the source for the questions, Respondent was asked, point-blank, whether he accepted $7,000 in exchange for writing an official letter of support for a daycare center, and whether he engaged in multiple conversations with an undercover informant where this plot was conceived and executed—and he declined to answer these serious questions. More importantly, Respondent did not deny any of the sworn testimony in the Butler Affidavit that was admitted into evidence for its truth, without objection, in the May 10 hearing of the House SIC as part of Group Exhibit 4.

Much was made at the Final Hearing about the drawing of an "adverse inference" from Respondent's refusal to testify. It is true that, if Respondent were an ordinary citizen in a civil lawsuit conducted within the Judicial Branch, the finder of fact would be entitled to draw an adverse inference from his refusal to testify and deny the charges against him, even if criminal charges were pending over the same subject matter and he feared that his answers in the civil proceeding could jeopardize his criminal case.[20] Likewise, if Respondent were facing an administrative disciplinary proceeding within the Executive Branch, the fact-finder could draw an adverse inference if he refused to testify, even with criminal charges pending on the same subject.[21]

We believe that the Members of this Committee, in their individual discretion, are equally entitled to draw an adverse inference from Respondent's refusal to testify.[22] We interpret House Rule 95(c) as permitting us to do so. Certainly, Respondent's counsel never claimed that we could not; while he argued that Members of this Committee should choose not to draw an adverse inference from Respondent's refusal

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[20] *See People v. Hauer*, 365 Ill.App.3d 682, 687-690 (2nd Dist. 2006) (adverse inference could be drawn from defendant's refusal to testify at a civil proceeding, even though criminal charges were pending regarding the same conduct); *Jacksonville Savings Bank v. Kovack*, 326 Ill. App. 3d 1131, 1135 (4th Dist. 2002) ("Not only is it permissible to conduct a civil proceeding at the same time as a related criminal proceeding, even if that necessitates invocation of the Fifth Amendment privilege, but it is even permissible for the trier of fact to draw adverse inferences from the invocation of the Fifth Amendment in a civil proceeding'") (quoting *Keating v. Office of Thrift Supervision,* 45 F.3d 322, 326 (9th Cir.1995)).

[21] *Giampa v. Civil Serv. Comm'n*, 89 Ill. App. 3d 606, 613 (1st Dist. 1980) (adverse inference may be drawn despite existence of pending criminal charges and despite fact that defendant would lose his State employment; "there is nothing inherently repugnant to due process in requiring plaintiff to choose between giving testimony at the [administrative proceeding] and keeping silent, even though testimony at the hearing may damage his criminal case").

[22] The legislature's right to draw an adverse inference has been typically discussed in the context of a legislative hearing similar to this one, that of an impeachment proceeding. *See Office of Governor v. Select Comm. of Inquiry*, 858 A.2d 709, 714 n.6 (Conn. 2004) (in context of gubernatorial impeachment before Connecticut House of Representatives, distinguishing between compelled testimony and governor's "legal obligation to testify," such that, while governor could not be imprisoned or cited for contempt for refusing to testify, the House could draw an adverse inference from his refusal to testify). "[T]he impeachment power necessarily implies a [legislative] power to inquire about [Executive] wrongdoing, as well as a corresponding obligation on the part of the [Executive] to respond to such inquiries." *Id*. at 738; *accord* F. Bowman III & S. Sepinuck, "High Crimes & Misdemeanors: Defining the Constitutional Limits on Presidential Impeachment," 72 S. Cal. L. Rev. 1517, 1539 n.111 (1999) (Congress may draw adverse inference from President's refusal to testify at impeachment hearing); M. Gerhardt, "The Constitutional Limits to Impeachment and its Alternatives," 68 Tex. L. Rev. 1, 93 (1989).

to testify, he *conceded* that the Committee Members had the authority to do so in their individual discretion.[23]

In our opinion, however, the more salient question is not whether Members should draw what is technically considered an adverse inference—that is, to infer that the reason Respondent did not deny these charges is because they are true. We prefer, instead, to view this issue more broadly, consistent with the purposes of this proceeding. The Members of this Committee are State Representatives, representing the constituents of our individual districts but, in a broader sense, also representing every citizen of this State. The purpose of this disciplinary process is not to punish a fellow Member but to protect our State citizenry from improper conduct by our Members and to preserve the public's faith in the institution of the House of Representatives. Yes, our principal task in this proceeding is to determine whether credible evidence exists against a Member to warrant discipline. But we must, at all times, also be cognizant of whom we are representing, and that is the citizens of this State, the people who sent us to Springfield.

When Respondent—a State Representative himself, with the same obligations to the people of this State—refuses to take this opportunity to deny the charges against him under oath, the public loses faith in that Member and in the institution as a whole. True, there may be a countervailing reason for Respondent's silence—his counsel argued that he did not want to jeopardize his position in the pending criminal prosecution—but should the *public* have to suffer as a result of his decision? Is the public well-served by a State Representative facing serious criminal charges, and with credible evidence against him in this proceeding, who refuses to reassure the public, under oath, that he is someone they can trust?

And this is especially true in the context of the particular Charge here. The evidence against Respondent speaks to misconduct that cuts to the very essence of honest representation. The evidence against Respondent is that he placed his personal gain over those of his constituents, that he took official acts not because they were in the best interests of the people, but because he could obtain a cash bribe for doing so. In the face of this credible and serious evidence, the public is entitled to hear more from Respondent than his attorney saying that winning his criminal case is more important than keeping his job in the legislature.

Viewed in this context, it would defy all logic to suggest that the Members of this Committee, on behalf of the people, should not demand more from Respondent than his mere silence. This is not an adverse inference; this is not assuming, from Respondent's silence, that the evidence against him is more likely to be true. This is part of the duty of each State Representative—including the twelve on this Committee—to preserve the public's confidence in the integrity of State government. Respondent was given an opportunity to preserve that confidence, and he declined. To suggest that the Members of this Committee cannot take that fact into account, as a separate and independent basis in addition to the already-sufficient evidence against Respondent outlined previously, would be to ignore each Member's greater role in this process.

For the reasons stated above, the Committee unanimously adopts a finding of fault against Respondent as to the Charge and as to each and every Specification supporting that charge.

IV. RECOMMENDED PENALTY

Having found Respondent at fault on the sole charge before this Committee, the Committee must recommend discipline. Under House Rule 96(e), the recommendations available to the Committee include no discipline; reprimand; censure; or expulsion. By a record vote of 11 to 1, the Committee adopted the recommended penalty of expulsion at the Final Hearing.

The eleven Members recommending expulsion do not make that recommendation lightly. It is clearly the harshest sanction, and one that has not been invoked for over a century. But the Charge against Respondent is as serious a charge as could be leveled against a sitting state legislator. There are any number of very serious criminal offenses that, however grave they may be, do not implicate the core functions of a state legislator.

But, as stated above, bribery is different. It is hard to imagine a more serious breach of a legislator's oath than taking a cash bribe to perform an official act. A corrupt legislator—one who does not

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[23] *See* Tr. 91 (stating that "just because you have the right to do it doesn't make it the right thing to do"); Tr. 92 (noting that the Committee members "certainly are able to draw an adverse inference from [Respondent's] failure to appear today"); Tr. 115 (noting Respondent's dilemma in that he could either "come and speak to you and jeopardize his Fifth Amendment rights, or not come and then run the risk of people drawing negative inferences").

act for the public good but rather to line his own pockets—is a threat to the integrity of the General Assembly and a threat to the people of this State. Wherever the line may be drawn between acts that warrant expulsion and those that do not, exchanging official acts for personal enrichment comfortably falls on the side warranting expulsion. Once this Committee has determined that there is competent evidence to find Respondent at fault for this Charge—which it has done unanimously—it is impossible to turn a blind eye and merely rebuke Respondent in a Resolution but allow him to continue to serve in office. It is with great sadness that the majority of the Committee concludes that the only acceptable punishment to recommend to the House is expulsion.

V. CONCLUSION AND RECOMMENDATION

For all of the reasons stated herein, the Committee unanimously adopts a FINDING OF FAULT against Respondent, State Representative Derrick Smith, on the Charge and on each Specification supporting that Charge, as preferred by the House Special Investigating Committee.

s/Barbara Flynn Currie
Representative

s/Chapin Rose
Representative

s/Edward Acevedo
Representative

s/Michael G. Connelly
Representative

s/Kim du Buclet
Representative

s/Greg Harris
Representative

s/Renée Kosel
Representative

s/Camille Y. Lilly
Representative

s/Sidney H. Mathias
Representative

s/Chris Nybo
Representative

s/Al Riley
Representative

s/Joe Sosnowski
Representative

For all of the reasons stated herein, the Committee, by a vote of 11 to 1, adopts a RECOMMENDED PENALTY OF EXPULSION from the House of Representatives as appropriate discipline against Respondent, State Representative Derrick Smith.

s/Barbara Flynn Currie
Representative

s/Chapin Rose
Representative

s/Edward Acevedo
Representative

s/Michael G. Connelly
Representative

s/Kim du Buclet
Representative

s/Greg Harris
Representative

s/Renée Kosel
Representative

s/Camille Y. Lilly
Representative

s/Sidney H. Mathias
Representative

s/Chris Nybo
Representative

(Voting No)
Al Riley
Representative

s/Joe Sosnowski
Representative

RE-REFERRED TO THE COMMITTEE ON RULES

On July, 27, 2012, the following bills were re-referred to the Committee on Rules pursuant to Rule 19(a) HOUSE BILLS 503, 1076, 1293, 1404, 1447, 1472, 1489, 1538, 1605, 1717, 1864, 1883, 2956, 2984, 3027, 3091, 3200, 3292, 3372, 3499, 3611, 3636, 3637, 3638, 3644, 3645, 3698, 3699, 3700, 3712, 3713, 3717, 3724, 3725, 4048, 4049, 4072, 4096, 4110, 4153, 4154, 4155, 4156, 4157, 4158, 4159, 4160, 4161, 4162, 4177, 4507, 4559, 4637, 4726, 4727, 4728, 4729, 4730, 4731, 4732, 4733, 4734, 4735, 4736, 4737, 4738, 4739, 4740, 4741, 4742, 4940, 5029, 5041, 5078, 5248, 5342, 5440, 5442, 5443, 5451, 5547, 5825, 5826, 5865, 5866, 5932, 5933, 5934, 5935, 5936, 5937, 5938, 5939, 5940, 5941, 5942, 5943, 5944, 5945, 5946, 5947, 5948, 5949, 5950, 5951, 5952, 5953, 5954, 5955, 5956, 5957, 5958, 5959, 5960, 5961, 5962, 5963, 5964, 5965, 5966, 5967, 5968, 5969, 5970, 5971, 5972, 5973, 5974, 5975, 5976, 5977, 5978, 5979, 5980, 5981, 5982, 5983, 5984, 5985, 5986, 5987, 5988, 5989, 5990, 5991, 5992, 5993, 5994, 5995, 5996, 5997, 5998, 5999, 6000, 6001, 6002, 6003, 6004, 6005, 6006, 6007, 6008, 6009, 6010, 6011, 6012, 6013, 6014, 6015, 6016, 6017, 6018, 6019, 6020, 6021, 6022, 6023, 6024, 6025, 6026, 6027, 6028, 6029, 6030, 6031, 6032, 6033, 6034, 6035, 6036, 6037, 6038, 6039, 6040, 6041, 6042, 6043, 6044, 6045, 6046, 6047, 6048, 6049, 6050, 6051, 6052, 6053, 6054, 6055, 6056, 6057, 6058, 6059, 6060, 6061, 6062, 6063, 6064, 6065, 6066, 6067, 6068, 6069, 6070, 6071, 6072, 6073, 6074, 6075, 6076, 6077, 6078, 6079, 6080, 6081, 6082, 6083, 6084, 6085, 6086, 6087, 6088, 6089, 6090, 6091, 6092, 6093, 6094, 6095, 6096, 6097, 6098, 6099, 6100, 6101, 6102, 6103, 6104, 6105, 6106, 6107, 6108, 6109, 6110, 6111, 6112, 6113, 6114, 6115, 6116, 6117, 6118, 6119, 6120, 6121, 6122, 6123, 6124, 6125, 6126, 6127, 6128, 6129, 6130, 6131, 6132, 6135, 6138, 6139 and 6151; SENATE BILLS 58, 2315, 2357, 2390, 2394, 2404, 2424, 2428, 2437, 2455, 2456, 2461 and 3749; HOUSE RESOLUTIONS 101, 108, 141, 254, 352, 680, 689, 708, 747, 767, 774, 775, 798, 830, 833, 859, 877, 897, 898, 918, 974, 1041, 1042, 1077, 1107, 1131 and 1141; HOUSE JOINT RESOLUTIONS 57, 62 and 78; SENATE JOINT RESOLUTION 51.

HOUSE RESOLUTION

The following resolution was offered and placed in the Committee on Rules.

HOUSE RESOLUTION 1191

Offered by Representative Currie:

WHEREAS, Illinois State Representative Derrick Smith, representing the 10th Representative District in the State of Illinois, was arrested on March 13, 2012, by federal agents on the charge of violating 18 U.S.C. § 666(a)(1)(B), namely that Representative Smith accepted a cash bribe in exchange for recommending an Early Childhood Construction Grant (ECC Grant) to the Capital Development Board, an Illinois State agency; and

WHEREAS, On March 12, 2012, a Criminal Complaint was filed in the United States District Court for the Northern District of Illinois, Eastern Division, against Representative Smith alleging that Representative Smith violated 18 U.S.C. § 666(a)(1)(B) by accepting a cash bribe in exchange for recommending an ECC Grant to the Capital Development Board; and

WHEREAS, Attached to the Criminal Complaint was an Affidavit sworn to and signed by Special Agent Bryan M. Butler of the Federal Bureau of Investigation (Butler Affidavit), that contained numerous factual allegations supporting the ultimate allegation that Representative Smith violated 18 U.S. C. § 666(a)(1)(B) by accepting a cash bribe in exchange for recommending an ECC Grant to the Capital Development Board; and

WHEREAS, The Butler Affidavit alleges that Representative Smith was covertly recorded engaging in several discussions with an individual cooperating with the federal government, known as the "Cooperating Source," between December, 2011 and March, 2012; and

WHEREAS, The Butler Affidavit alleges that Representative Smith and the Cooperating Source were covertly recorded on several occasions in which Representative Smith indicated that, in exchange for a cash bribe, Representative Smith would be willing to write a letter on behalf of a daycare center in support of an ECC Grant from the Capital Development Board; and

WHEREAS, The Butler Affidavit alleges that Representative Smith and the Cooperating Source were covertly recorded discussing on several occasions that the cash bribe Representative Smith would accept in

exchange for writing that letter of support would be in the amount of $7,000; and

WHEREAS, The Butler Affidavit alleges that Representative Smith did in fact sign a letter of support for an ECC Grant for the above-mentioned daycare center, and that he did so on official state letterhead; and

WHEREAS, The Butler Affidavit alleges that, in exchange for writing this letter of support, Representative Smith did in fact accept $7,000 in cash; and

WHEREAS, On March 21, 2012, under House Rule 91, 5 members of the Illinois House of Representatives filed a Petition containing suggested charges against Representative Smith that outlined the allegations contained in the Criminal Complaint and the Butler Affidavit (Petition); and

WHEREAS, Under House Rule 91, following the filing of the Petition on March 21, 2012, the House Special Investigating Committee (House SIC) was formed, consisting of 3 members appointed by the Speaker of the House and 3 members appointed by the Minority Leader of the House; and

WHEREAS, On April 10, 2012, a federal grand jury indicted Representative Smith on the charge of violating 18 U.S.C. § 666(a)(1)(B), which indictment further contained a forfeiture allegation under 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) for unrecovered proceeds approximating $4,500 of the cash bribe that Representative Smith was alleged to have received; and

WHEREAS, The House SIC held a public hearing on March 27, 2012, at which Representative Jim Sacia, one of the signatories to the Petition, submitted a suggested Charge as follows: "Representative Smith provided an official letter of support on his letterhead for a daycare owner's application for a state grant from the [Illinois] Capital Development Board in exchange for personally accepting a $7,000 bribe."; and

WHEREAS, The House SIC engaged in written and oral communications with the United States Attorney for the Northern District of Illinois in an attempt to determine (1) whether the House SIC could obtain evidence in the U.S. Attorney's possession, and (2) whether the U.S. Attorney would consider any independent investigation by the House SIC to be an interference with the federal investigation; and

WHEREAS, The U.S. Attorney informed the House SIC that he could not provide the House SIC with any information or evidence in his possession and that he would consider an independent investigation by the House SIC to constitute an interference with the federal investigation, which he characterized as "ongoing"; and

WHEREAS, The House SIC held public hearings on April 26, 2012, and on May 10, 2012; and

WHEREAS, The House SIC entered into the Record eleven exhibits, including Exhibit 11, which was received from Representative Smith's counsel and which was entered into the Record by unanimous consent of the House SIC members; and

WHEREAS, The exhibits, public notices, and transcripts of hearings are included in the House SIC Record, available for public view on the General Assembly's website; and

WHEREAS, The House SIC Record is adopted and incorporated herein as if fully set forth; and

WHEREAS, The House SIC gave ample notice to Representative Smith and his attorney of each and every hearing, and confirmed with Representative Smith's attorney that he had received notice; and

WHEREAS, While the House SIC gave Representative Smith the opportunity to testify under oath, he declined to do so; and

WHEREAS, While the House SIC gave Representative Smith's attorney the opportunity to specifically admit or deny various allegations in the Butler Affidavit, he declined to do so; and

WHEREAS, The House SIC gave Representative Smith the opportunity to provide the House SIC with any information he deemed relevant to the House SIC's investigation; and

WHEREAS, The Butler Affidavit contains lengthy excerpts of alleged statements that were recorded and attributed to Representative Smith, indicating that Representative Smith was intentionally and knowingly trading a letter of support for an ECC Grant for a cash bribe of $7,000; and

WHEREAS, The House SIC unanimously found that reasonable grounds existed to prefer a Charge against Representative Smith, to wit: "Representative Derrick Smith abused the power of his office by participating in a scheme to obtain a personal benefit in exchange for his official acts."; and

WHEREAS, The Charge was supported by the following Specifications:

(1) Representative Smith, in his official capacity as a State Representative, has an obligation to faithfully discharge his duties in the best interests of the people of the State of Illinois and not for his own personal benefit;

(2) During the time period beginning on or about December, 2011 through March, 2012, Representative Smith agreed that, in exchange for a cash bribe, he would provide an official letter of support for a daycare's Early Childhood Construction Grant to the Illinois Capital Development Board;

(3) On or about March 1, 2012, Representative Smith did, in fact, sign this official letter of support in his official capacity as a State Representative and planned or intended for that letter to be submitted to the Illinois Capital Development Board;

(4) On or about March 10, 2012, Representative Smith did, in fact, receive a cash bribe in exchange for providing this official letter of support;

(5) Accepting a cash bribe in exchange for an official act, or even plotting or attempting to do so, constitutes a breach of Representative Smith's obligation as a public official to faithfully discharge his duties in the best interests of the people of the State of Illinois and warrants disciplinary action by the House of Representatives; and

WHEREAS, Under House Rule 93, the House SIC appointed Representatives Lou Lang and Jim Durkin to serve as the House Managers to present the case for disciplinary action against Representative Smith; and

WHEREAS, Under House Rule 94, a House Select Committee on Discipline (Select Committee) was formed, with 6 Members appointed by the Speaker of the House, including Representative Barbara Flynn Currie as Chairperson, and 6 Members appointed by the Minority Leader of the House, including Representative Chapin Rose as the Minority Spokesman; and

WHEREAS, The Select Committee held a Final Hearing on July 19, 2012; and

WHEREAS, Representative Smith declined to appear at the Final Hearing, but was represented by counsel in attendance on his behalf; and

WHEREAS, The Select Committee considered portions of the Butler Affidavit that were admitted into evidence by stipulation as part of Select Committee Group Exhibit 4; and

WHEREAS, Those portions of the Butler Affidavit were accepted as credible evidence by the Select Committee; and

WHEREAS, At the Final Hearing, the House Managers called Representative Smith as a witness to testify, but Representative Smith declined to do so; and

WHEREAS, At the conclusion of the presentation of the evidence and argument at the Final Hearing, the Select Committee recessed to deliberate over the evidence; and

WHEREAS, After this consideration, the Select Committee re-convened for the purpose of taking a record vote on the Charge and Specifications; and

WHEREAS, The Select Committee unanimously voted to find Representative Smith at fault on the Charge and on each Specification; and

WHEREAS, Following this finding of fault, the Select Committee considered the appropriate penalty to recommend to the House of Representatives; and

WHEREAS, By a vote of 11 Members voting "yes" and one member voting "no," the Select Committee adopted a recommendation that Representative Smith be expelled from the House of Representatives; and

WHEREAS, Under House Rule 96, the Select Committee prepared and filed a Report with the House Clerk; and

WHEREAS, The Report of the Select Committee is adopted and incorporated herein as if fully set forth; and

WHEREAS, In its Report, the Select Committee determined that credible evidence existed that Representative Smith engaged in and carried out a plot to write an official letter of support to a daycare center for a capital grant in exchange for a bribe of $7,000 in cash; and

WHEREAS, In its Report, the Select Committee properly concluded that the principal purpose of disciplinary proceedings before the House is not to punish a Member but to protect the public from official misbehavior and to preserve the people's trust in their representatives and in the General Assembly as a whole; and

WHEREAS, In its Report, the Select Committee properly determined that Representative Smith's refusal to testify could be considered not to suggest the truth of the evidence against him but because a public official owes the people of this State an obligation to affirmatively assure them that he has put the interests of the people before his own and to assure them that he did not, in fact, trade an official act for a cash bribe; and

WHEREAS, In its Report, the Select Committee emphasized that any consideration of Representative Smith's refusal to testify was ancillary to the credible evidence presented against Representative Smith, which by itself was sufficient to reach a finding of fault on the Charge and each of the Specifications; and

WHEREAS, In its Report, the Select Committee, by a vote of 11 to one, determined that expulsion was the only appropriate remedy given the credible evidence against Representative Smith and given that the Charge against him was a breach of the public trust of the highest order; and

WHEREAS, The House finds that the Select Committee properly interpreted House Rule 95(c), including the waiver of that Rule's protection, in all respects; and

WHEREAS, The Select Committee Exhibits, the Procedural Rules adopted by Chairperson Currie, and the transcripts of proceedings before the Select Committee are adopted and incorporated herein as if fully set forth; and

WHEREAS, Article 4, Section 6(d) of the Illinois Constitution provides that no Member shall be expelled by either house of the General Assembly, except by a vote of two-thirds of the Members elected to that house; and

WHEREAS, House Rule 97(f) provides that a resolution the effect of which is to expel a member may be adopted only by the affirmative vote of 79 Members elected; therefore be it

RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE NINETY-SEVENTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, That the House of Representatives finds Representative Smith to be At Fault on the Charge and on each of the Specifications against him as preferred by the House Special Investigating Committee and as determined by the House Select Committee on Discipline; and be it further

RESOLVED, That Representative Smith is hereby Expelled from the House of Representatives, the Expulsion to take effect immediately upon adoption of this Resolution by a record vote of 79 Members elected.

At the hour of 9:31 o'clock a.m., the House Perfunctory Session adjourned.

At the hour of 10:04 o'clock a.m., the House reconvened perfunctory session.

TEMPORARY COMMITTEE ASSIGNMENTS

Representative Reboletti replaced Representative Leitch in the Committee on Rules on August 14, 2012.

Representative Thapedi replaced Representative Mautino in the Committee on Rules on August 14, 2012.

Representative Greg Harris replaced Representative Currie in the Committee on Rules on August 14, 2012.

Representative Reboletti replaced Representative Leitch in the Committee on Rules (A) on August 14, 2012.

Representative Thapedi replaced Representative Mautino in the Committee on Rules (A) on August 14, 2012.

Representative Greg Harris replaced Representative Currie in the Committee on Rules (A) on August 14, 2012.

REPORTS FROM THE COMMITTEE ON RULES

Representative Lang, Chairperson, from the Committee on Rules to which the following were referred, action taken on August 14, 2012, reported the same back with the following recommendations:

LEGISLATIVE MEASURES APPROVED FOR FLOOR CONSIDERATION:

That the bill be reported “approved for consideration” and be placed on the order of Consideration Postponed: HOUSE BILL 30.

That the resolution be reported "recommends be adopted" and be placed on the House Calendar: HOUSE RESOLUTION 1191.

That the bill be reported "approved for consideration" and be placed on the order of Second Reading--Short Debate: SENATE BILL 3168.

That the bill be reported "approved for consideration" and be placed on the order of Concurrence: HOUSE BILL 4110.

The committee roll call vote on the foregoing Legislative Measures is as follows:
4, Yeas; 0, Nays; 0, Answering Present.

Y Harris, G.(D) (replacing Currie)
Y Lang(D)
Y Thapedi(D) (replacing Mautino)
A Schmitz(R), Republican Spokesperson
Y Reboletti(R) (replacing Leitch)

Representative Lang, Chairperson, from the Committee on Rules to which the following were referred, action taken on August 14, 2012, (A) reported the same back with the following recommendations:

LEGISLATIVE MEASURES ASSIGNED TO COMMITTEE:

Personnel and Pensions: HOUSE AMENDMENT No. 2 to SENATE BILL 3168.

The committee roll call vote on the foregoing Legislative Measure is as follows:
4, Yeas; 0, Nays; 0, Answering Present.

Y Harris, G.(D) (replacing Currie)
Y Lang(D)
Y Thapedi(D) (replacing Mautino)
A Schmitz(R), Republican Spokesperson
Y Reboletti(R) (replacing Leitch)

At the hour of 10:04 o'clock a.m., the House Perfunctory Session adjourned.