



# UTAH HOUSE OF REPRESENTATIVES

## REPORT OF THE SPECIAL INVESTIGATIVE COMMITTEE

MARCH 11, 2014



# SPECIAL INVESTIGATIVE COMMITTEE

## UTAH HOUSE OF REPRESENTATIVES

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## Acknowledgement

A complex and politically sensitive investigation such as this one can only be accomplished through the hard work, assistance, and cooperation of many persons and groups. The Committee acknowledges and thanks all of those who assisted us in our work, but singles out, with thanks and gratitude, those listed in this Acknowledgement.

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*Salt Lake City, Utah*

*March 11, 2014*

*Jim Dunnigan*

*Rebecca Chavez-Houck*

*Brad Dee*

*Susan Duckworth*

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## **EXECUTIVE SUMMARY**

## **I. Overview of the Committee's Investigation and Findings**

On January 7, 2013, John E. Swallow was sworn in as Utah's Attorney General. Within days, allegations of improper and potentially illegal conduct by him surfaced in the press, driven by a Utah businessman named Jeremy Johnson who was under indictment by the federal government. A firestorm ensued and, on July 3, 2013, the Utah House of Representatives established a Special Investigative Committee (the "Special Committee" or "Committee") to investigate and report on these and other allegations of misconduct by Mr. Swallow. The Committee's final report presents the Committee's investigative findings. This Executive Summary provides an overview of the report's principal conclusions.

The Committee, with the assistance of Special Counsel and an investigative staff, conducted approximately 165 witness interviews and reviewed and analyzed tens of thousands of pages of documents over the course of its investigation. The vast majority of the Committee's work occurred prior to November 21, 2013, the date on which Mr. Swallow announced his resignation from the Attorney General's Office (the "Office"), effective in early December.

The Committee's investigation revealed that, during his tenure in the Office, Mr. Swallow compromised the principles and integrity of the Office to benefit himself and his political supporters. In so doing, Mr. Swallow breached the public's trust and demeaned the offices he held. Indeed, the Committee concludes that Mr. Swallow hung a veritable "for sale" sign on the Office door that invited moneyed interests to seek special treatment and favors. While the corruption of any public office is unacceptable, the corruption of the office specifically tasked with ensuring equal justice under law is particularly harmful because it undermines the public's faith that justice in the State is being dispensed equally and without regard to economic, social or political status.

The Committee found that the effect of Mr. Swallow's misconduct on those who worked under him was profound. Over a period of months, many courageous current and former employees of the Office affirmatively sought out the Committee's investigators, and welcomed them in their homes, to share their deep anger and frustration about what occurred during Mr. Swallow's tenure. Not infrequently, these individuals became highly emotional when describing what they had seen. These loyal public servants had known for years that what was happening in the Office was wrong, yet they felt powerless to stop the wrongdoing because it came directly from the top.

Beyond these issues, early in its investigation, the Committee received information that a significant amount of Mr. Swallow's email was missing from the Office's servers. As its investigation proceeded, the Committee learned that a large quantity of other data and data devices belonging to Mr. Swallow had also gone missing. The Committee became concerned that some or all of this data and device loss may have been intentional. Relatedly, the Committee also came to understand that certain documents presented by Mr. Swallow in response to a Committee subpoena were fabricated well after the events they purported to record. This troubling combination of missing and fabricated documents leads the Committee to conclude that Mr. Swallow intentionally endeavored to obstruct inquiry into his conduct.

The Committee sought to interview Mr. Swallow about these matters, but he refused to talk with us. The Committee believes that Mr. Swallow and others responsible for the abuses described in this report must be held accountable for their actions. To achieve such accountability, the Committee today refers these matters to appropriate law enforcement and professional licensing authorities for their review. A clear message must be sent to the citizens

of Utah, and to those who seek to hold the public's trust, that such conduct will not be tolerated in this State.

## **II. The Attorney General's Office For Sale**

From the time Mr. Swallow joined the Office, and even before then, he cultivated a series of relationships with individuals and particular Utah-based industries that resulted in a pattern of benefits, including campaign contributions, political favors, and cash and other benefits, flowing back and forth between him and them. Mr. Swallow used these relationships for his own professional, personal, and political benefit. The Committee's investigation ultimately focused on three specific instances in which the exchange of benefits with individuals or industries substantially undermined the Office's mission to uphold the law and protect the public.

First, Mr. Swallow provided his friend and political ally Jeremy Johnson unique access to the Office and a favorable legal opinion regarding the permissibility of processing money derived from online poker gambling, all while the wealthy Mr. Johnson shared the benefits of his luxurious lifestyle with Mr. Swallow. Second, Mr. Swallow promised his friend and patron Richard Rawle that, as Attorney General, he would be an ally to the payday lending industry, all while Mr. Rawle helped Mr. Swallow solicit hidden campaign contributions from that very industry—contributions that, in part, funded nearly untraceable negative attacks of political opponents of Mr. Swallow and the payday industry. Finally, Mr. Swallow compromised the Office's position in a pending wrongful mortgage foreclosure lawsuit when he, after the plaintiffs in the lawsuit hosted a fundraiser for him, helped make the lawsuit disappear in an effort to keep his embarrassing ethical conflict from coming to light. In so doing, Mr. Swallow, with the assistance of his predecessor as Attorney General, Mark Shurtleff, sold out the interests of thousands of Utah homeowners who would have benefitted if the Office had continued to pursue the case.

**A. Mr. Swallow Provided Extraordinary Access to the Office to His Friend and Political Ally Jeremy Johnson and Provided Johnson with a Beneficial Opinion Regarding Utah Law**

The Committee's investigation found that the wealthy Jeremy Johnson cultivated a relationship with Mr. Swallow and made a concerted effort to ply him with personal benefits and political favors. In return, Mr. Swallow granted Mr. Johnson extraordinary access to the Office that was not available to Utah citizens generally, and in particular took actions in his official capacity that improperly conferred individual benefits on Mr. Johnson and his business interests. These actions severely compromised the principles and integrity of the Office.

While Mr. Swallow was serving as Mark Shurtleff's chief fundraiser, he met the seemingly successful Mr. Johnson. Mr. Johnson impressed Mr. Swallow as a potential big catch for Mr. Shurtleff's campaign financing operation, and Mr. Johnson proved his value early on by generously donating to the Shurtleff campaign. In 2009, Mr. Shurtleff brought Mr. Swallow into the Office as Chief Deputy for the express purpose of grooming him to be the next Attorney General. Mr. Swallow plainly recognized the financial benefits that Mr. Johnson could offer a future Swallow campaign, and the allure of those benefits caused Mr. Swallow to ignore a drumbeat of warning signs about Mr. Johnson's activities.

Starting just after Mr. Swallow joined the Office in 2010, Mr. Johnson used his relationship with Mr. Swallow to seek the Office's blessing for an online poker processing operation with which Mr. Johnson was involved. That operation had the potential to be highly profitable, but its legality was in doubt under Utah law. Mr. Swallow determined to help his friend. Mr. Swallow arranged for a meeting among representatives of the online poker industry, himself and Attorney General Shurtleff, to discuss the industry's concerns. During that meeting, the leaders of the Office expressed a willingness to assist the industry obtain a favorable judicial interpretation of Utah law by filing a so-called amicus or "friend of the court" brief in litigation

that the industry was thinking of filing in Utah's courts. Significantly, experts within the Office concerning the legality of online poker were excluded from that meeting.

In the summer of 2010, just as he was pushing Mr. Swallow for an official blessing of his poker interests, Mr. Johnson hosted Mr. Swallow and his family for a vacation on his (Johnson's) luxury houseboat. And, significantly, during this same timeframe, Mr. Swallow sent Mr. Johnson an email communication saying that he, the Chief Deputy Attorney General, found nothing in Utah law to prohibit the poker processing activity in which Mr. Johnson sought to engage. This was a communication of potentially great value to Mr. Johnson's operation.

The Committee concludes that the access that Mr. Johnson had to the Office's highest-ranking officials, and the nod toward the legality of online poker that Mr. Swallow provided, reflected the cozy relationship between the men. That relationship was based on Mr. Swallow's taste for Mr. Johnson's money and Mr. Johnson's desire for the kind of access that would benefit his business interests. The average Utah citizen would not have had the kind of access that Mr. Johnson had, and Mr. Johnson used that access in a clear effort to advance his significant economic interests. Such pay-to-play relationships are highly corrosive of the public's trust in its government institutions, particularly when the access being sold involves those charged with enforcing the State's criminal and civil laws.

**B. Mr. Swallow Made a Secret Promise to Support the Payday Lending Industry in Exchange for Campaign Support, and then Hid the Industry's Support From Utah's Voters**

Mr. Swallow arrived in the Office in 2009 having forged a deep connection to the payday lending industry. One of his earliest and most generous political supporters was Richard Rawle, the wealthy owner of the Check City chain of payday lending retail outlets. Mr. Rawle and his associates had given substantial support to Mr. Swallow's unsuccessful campaigns for a seat in

the U.S. House of Representatives, and Mr. Rawle later hired Mr. Swallow to serve as general counsel and a lobbyist for Mr. Rawle's payday-lending businesses.

When Mr. Swallow launched his campaign for Attorney General, the payday lending industry was thus a natural source of support. The much-criticized industry was interested in backing a candidate who knew and would advance the industry's interests while in office. The problem for Mr. Swallow was that his ties to the controversial industry left him politically vulnerable, and by his own admission he wanted to avoid having the election become a "payday race."

One answer would have been to reject the industry's financial support. But Mr. Swallow solved the problem another way, by simply keeping the industry's backing a secret. He accepted direct support for his campaign from Mr. Rawle but did not disclose it. The undisclosed benefits included Mr. Rawle allowing Mr. Swallow to use Rawle-owned office space for campaign work, and taking money from Mr. Rawle that was funneled to him via a prepaid debit card.

Even more broadly, Mr. Swallow worked hard to solicit the industry's support, telling his contacts (but not the electorate) that, for example, "I look forward to being in a position to help the industry as an AG following the 2012 elections." Then, to keep Utah voters from learning the extent to which he had put himself in the industry's debt, he asked his donors to obscure the source of funds provided for his support. "As much as possible," he told a key industry figure, "I would like to raise money from companies and individuals not tied to payday." So if donors "have another company that does not do payday, so much the better," he said; and any funds that had to come directly from payday lending sources should be given to a separate political action committee (PAC) that did not bear Mr. Swallow's name, which would provide perceived space between him and the industry support.



That arrangement made it difficult for voters in the State to uncover the deep connection between Mr. Swallow and the industry. Indeed, the Committee concludes that that was Mr. Swallow's goal. But, under Utah law, a PAC has to disclose its donors, and as the Committee's report sets out in detail, an intrepid investigator could still have connected the dots to show the payday link behind some of the PAC donations that Mr. Swallow successfully solicited. To fully obscure the link required more sophisticated machinery, so Mr. Swallow, with the assistance of his campaign consultant Jason Powers, built that machinery. The men established a string of not-for-profit and tax-exempt entities that shielded from public view the source of contributions that ultimately were used for Mr. Swallow's benefit. Mr. Swallow was able to direct money from politically inconvenient donors to these entities because, at that time, Utah law did not require those entities to report from whom they received money.

The Committee found that, through a network of political entities and hidden contributors, the Swallow campaign raised approximately \$452,000 (including a likely \$100,000 given by Mr. Rawle himself) that was not reported to the state elections office—an amount that had a pronounced effect on the 2012 Attorney General campaign. By using these daisy chains of entities, the Swallow political machine was able to obscure Mr. Swallow's heavy reliance on the payday lending industry for campaign support. Moreover, channeling payday money through these dark entities had the additional benefit that the money could then be spent on negative and even misleading campaign maneuvers while allowing Mr. Swallow to deny involvement in such controversial tactics and with little risk that anyone could prove the actual connection to him.

The Committee concludes that that is exactly what happened here. One of the dark entities constructed by Messrs. Swallow and Powers was called the Proper Role of Government Education Association (PRGEA), which spent some of the \$452,000 it obtained from payday

sources to put out political “hit” ads attacking Mr. Swallow’s primary opponent, Sean Reyes. Along the same lines, evidence obtained by the Committee showed that Mr. Powers, with Mr. Swallow’s acquiescence, authorized a push-poll designed to sway voters’ views of Mr. Reyes by asking questions like, “Would it influence your vote if you knew that Sean Reyes vandalized as a teenager, or called Mexicans ‘brown people’?” The Swallow campaign denied involvement in both the ads and the push poll, and the hidden flow of undisclosed funds made it impossible for voters to assess the campaign’s denials before Election Day 2012 arrived.

The silent payday money was also used to attack Representative Brad Daw, who had twice introduced legislation to regulate that industry, and in an effort to intimidate other legislators into leaving the payday industry alone. Mr. Powers used large sums of PRGEA money to send anti-Daw mailers to every one of Rep. Daw’s constituents. The mailer was also sent to all sitting Utah legislators—a move whose evident purpose was to show legislators the tactics that would be used against them if they supported legislation that the payday industry disliked. Mr. Powers, secure in his belief that the mailers could not be traced to payday sources, publicly denied that the mailers were payday-related. Mr. Swallow, secure in his belief that the mailers could not be traced to donors and entities affiliated with his campaign, reportedly told Rep. Daw that the mailers personally “offend[ed]” him (Swallow). Rep. Daw, whom Mr. Powers’s consulting company characterized as a “popular incumbent,” went on to lose the Republican nomination for the seat he had previously held.

It is a central tenet of open and fair elections that voters should have available to them information that discloses the sources of a candidate’s financial support. Indeed, the Legislature enacted legislation in 2009 and again in 2012 to assure precisely such transparency in State elections. Whether, in 2012, the voters of Utah wanted to elect an Attorney General who

received significant financial support from the payday lending industry should have been a decision made by the voters of Utah armed with full knowledge of the sources from which Mr. Swallow had raised his campaign funds. The Committee concludes that this information was intentionally hidden from Utah's voters by Mr. Swallow and his campaign, and that the spirit, if not the letter, of Utah's campaign financing laws was violated by these deliberately non-transparent activities.

**C. Mr. Swallow Undermined the State's Efforts to Protect Utahns From Improper Mortgage Foreclosures Through Efforts to Benefit a Campaign Contributor (and Hide What He Was Doing)**

Timothy and Jennifer Bell are Utah residents who filed a lawsuit to fight a foreclosure on their home undertaken by a Bank of America affiliate called ReconTrust. In July 2012, the Office, with Mr. Swallow's official involvement, inserted itself into that litigation and sought to bar the foreclosure on grounds that Utah law only allowed Utah-based persons or entities to serve as the trustee under a deed of trust and that ReconTrust was not a Utah-based entity. While the Bells were seeking to protect their own home, the Office was involved in the litigation to protect many more Utahns whose homes were also being foreclosed upon by ReconTrust. Indeed, if the Office prevailed in the litigation, thousands of Utah homeowners might have been saved from foreclosure.

A month after the Office joined the litigation, the Bells hosted a campaign fundraiser for Mr. Swallow. It was evidently at that fundraiser that an offhand remark by Jennifer Bell caused Mr. Swallow to realize that the Bells were the same Bells with whom the Office was involved in litigation. His campaign "freaked out" once it learned of the connection because having individuals involved in litigation with the Office host a fundraiser raised serious ethical concerns. Mr. Swallow could have publicly disclosed his mistake, refunded the money that the Bells had expended for the fundraiser, and simply recused himself from further involvement in the Bell

lawsuit. Indeed, when this overlap of his political interests and professional responsibilities later came to light, recusing himself is what he claimed to have done.

But Mr. Swallow did not publicly disclose the problem, refund the Bells' money or actually recuse himself. Instead, having accepted the benefits of the fundraiser, he continued to directly involve himself in negotiations with the bank to settle the Bells' litigation. The evidence suggests that Mr. Swallow used his position in the Office to help the Bells get a favorable settlement in their case, thereby saving their home from foreclosure. Moreover, the evidence reflects that Mr. Swallow suggested to Bank of America that the Office would drop its own affirmative lawsuit in favor of Utah citizens generally in exchange for the bank's settling with the Bells. This offer improperly compromised the State's broader legal position in favor of Utah homeowners and was made to obtain a private benefit for a campaign contributor.

Further, Mr. Shurtleff (who, through his lawyer, refused to be interviewed by the Committee) attempted to prevent Mr. Swallow's entanglements with the Bells from coming to light by formally terminating the State's involvement in the litigation. That conclusion is substantiated by an email that Mr. Shurtleff sent to an attorney in the Office which, remarkably, explicitly said that he (Shurtleff) had withdrawn the State's claims in order to spare Mr. Swallow embarrassment resulting from his ethical dilemma.

And that was not the end of the efforts to paper over Mr. Swallow's compromised position with respect to the Bells. After the Bell fundraiser, but while the campaign for Attorney General was still active, the Swallow campaign sought to elicit continued financial support from the Bells while avoiding disclosure requirements that could raise questions about Mr. Swallow's involvement with them. The campaign later engaged in an effort to prevent these improprieties

from coming to light by engineering the submission of false campaign finance reports to the Office of the Lieutenant Governor.

### **III. Mr. Swallow's Fabrication and Elimination of Evidence**

As noted, early in its investigation, the Committee received information that a significant amount of Mr. Swallow's email was missing from the Office's servers. As its investigation proceeded, the Committee obtained additional information suggesting that other data or data devices belonging to Mr. Swallow had also gone missing. The Committee became concerned that some or all of this data and device loss may have been intentional. In addition, the Committee developed concerns that some of the documents that Mr. Swallow had provided to the Committee were not authentic and had been created after the events they described in order to mislead those who might inquire about those events. As facts emerged, it appeared that the timing of the evidence fabrication and suspicious data loss correlated with the Krispy Kreme meeting that Messrs. Swallow and Johnson had on or about April 30, 2012, and which was revealed in the press shortly after Mr. Swallow took office in January 2013.

The circumstances relevant to Mr. Swallow's obstruction began with two sets of related events. On the one hand, in 2010, Mr. Swallow did some consulting work for a business venture of Mr. Rawle's called the Chaparral Limestone & Cement Company. Around the same time, Mr. Johnson asked Mr. Swallow for advice regarding an investigation he (Johnson) was facing at the hands of the Federal Trade Commission (FTC), and Mr. Swallow referred Mr. Johnson to Mr. Rawle to see if Rawle could provide lobbying assistance with the problem. Mr. Johnson ultimately paid Mr. Rawle \$250,000 for Mr. Rawle to assist him with persuading the federal government to cease its investigation. But the money expended did not achieve the hoped-for result: shortly after the payment, the FTC brought a lawsuit against Mr. Johnson.

The primary difficulty that these two overlapping projects caused for Mr. Swallow stemmed from the fact that Mr. Rawle paid Mr. Swallow \$23,500 out of the funds that Mr. Johnson paid to Mr. Rawle. Mr. Swallow has contended that this money was payment for the Chaparral consulting work, and denied that it was a finder's fee for the FTC lobbying effort. On or about April 30, 2012, right in the middle of Mr. Swallow's campaign for Attorney General, Mr. Johnson turned up the heat on Mr. Swallow in an effort to enlist Mr. Swallow's assistance in getting a refund of some portion of the \$250,000 paid to Richard Rawle.

In a secretly recorded conversation with Mr. Swallow that day at a Krispy Kreme shop in Orem, Utah, Mr. Johnson threatened that if Mr. Swallow failed to get that refund, Mr. Johnson might implicate Mr. Swallow in an alleged effort to bribe Senate Majority Leader Harry Reid. Alternatively, at various points in the conversation Mr. Johnson suggested that he might implicate Mr. Swallow in a bribery scheme in which Mr. Swallow was paid to provide Mr. Johnson with the favorable interpretation of Utah law regarding online poker that was discussed above. In short, the conversation appeared to be a shakedown. And Mr. Swallow, evidently terrified at the prospect of professional ruin and criminal investigation, took the threat seriously and agreed to try to recover at least a portion of the money that Mr. Johnson was demanding.

The Krispy Kreme meeting had a marked effect on Mr. Swallow—in his words, he was “scared to death.” In the days and months following the Krispy Kreme meeting, the Committee concludes that Mr. Swallow engaged in the fabrication and elimination of documents and data or data devices.

The documents fabricated by Mr. Swallow had been demanded by a Committee subpoena seeking materials related to his dealings with Mr. Rawle and the Chaparral project. In response to the subpoena, Mr. Swallow showed the Committee a number of entries in a day planner

purporting to reflect work he performed on the Chaparral project, and two invoices that also purported to relate to that work. After extensive analysis and weeks of prodding Mr. Swallow's attorneys with questions about the documents, Mr. Swallow admitted, through those attorneys, that the documents had been created after-the-fact. That information was not volunteered by Mr. Swallow, nor lightly given up. Instead, the Committee had to confront Mr. Swallow before he acknowledged that the documents were fakes.

The Committee's investigation showed that Mr. Swallow took two other actions designed to create a false record relating to his work with Mr. Rawle and Mr. Johnson. After the Krispy Kreme meeting, Mr. Swallow returned the \$23,500 that he had received from Mr. Rawle and asked that Mr. Rawle send funds that were unconnected to Jeremy Johnson. Mr. Swallow made this request in an effort to bolster his claim that he was paid for Chaparral consulting work and not for bringing Mr. Johnson to Mr. Rawle related to the FTC inquiry. Separately, while Mr. Rawle, now deceased, was nearing death, Mr. Swallow and his (Swallow's) attorney drafted a declaration supporting Mr. Swallow's version of events relating to the Chaparral and FTC work and had Mr. Rawle sign it. In an effort to bolster the credibility of the declaration, Mr. Swallow later falsely claimed that it had been drafted by Mr. Rawle.

These actions, the Committee concludes, were intended to, and had the actual effect of, misleading investigators and the public regarding the quantity and reliability of contemporaneous documentation purporting to corroborate Mr. Swallow's contention that the \$23,500 he was paid had no connection to Jeremy Johnson or a purported plan to bribe Majority Leader Reid.

The Committee's investigation further revealed that, at or shortly after the time of the events described above, Mr. Swallow engaged in a parallel effort to eliminate data or data devices. The Committee first identified these concerns when, in September 2013,



representatives of the Office told the Committee that a potentially large volume of Mr. Swallow's email from 2010 was missing. As the Committee's investigation of the loss of these emails progressed, Mr. Swallow publicly attributed that loss to a November 2012 statewide migration of State email accounts from one service provider to another.

The Committee went to great lengths to try to recover that missing email, and to assess the accuracy of Mr. Swallow's contention that the loss was attributable to the migration. After months of effort, which included retaining the services of a forensic expert to create forensic images of a number of the Office's servers, and the undertaking of expensive litigation with the Office, the Committee obtained a sworn declaration and other evidence which demonstrated that Mr. Swallow's email had not, in fact, been lost in the statewide migration. At that point, faced among other things with evidence directly contrary to his public assertions about what caused the email loss, Mr. Swallow resigned from office. And, after resigning, he reversed his prior statements and acknowledged that he knew all along that the data was not lost in the migration but was already missing by the "summer of 2012"—shortly after the Krispy Kreme meeting.

The Committee obtained evidence that no systemic malfunction was responsible for the email loss, leaving manual deletion as the only possibility. The evidence also strongly suggested that Mr. Swallow was the person who deleted the email. And the evidence established that it would require an implausible series of actions for him to have accidentally deleted such a large volume of email.

In addition to the missing Office email, the Committee's investigation revealed an extraordinary number of instances in which data or data devices belonging to Mr. Swallow were rendered unavailable in the period following the Krispy Kreme meeting. For example, the Committee learned that, as he had been urged to do by Jeremy Johnson during their April 30,

meeting, Mr. Swallow purchased and used a prepaid cellular phone. Such phones facilitate communication that does not leave a digital footprint.

Beyond that, just as Mr. Swallow deleted a large volume of email from his Office account, he has admitted in sworn testimony that he deleted email from his personal email account, and Office personnel additionally discovered, while responding to a Committee subpoena, that Mr. Swallow's electronic Office calendars for the years 2010 and 2011 are missing entries. Moreover, among a long list of Mr. Swallow's digital devices—a home computer, several Office computers, a personal cellular phone, two Office cell phones, an Office iPad, a campaign iPad, and an external hard drive—the Committee is not aware of a single device whose data survived without incident the months that followed the Krispy Kreme meeting.

The Committee concludes that Mr. Swallow's actions following the Krispy Kreme meeting, including the fabrication and elimination of evidence, were part of a concerted effort to evade and obstruct any future investigation into his conduct. The Committee expended significant resources cutting through the fog of the false and misleading stories that Mr. Swallow and his representatives told about these events, and the Committee's work was further hindered and delayed as a result.

## **PART I**

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### **THE COMMITTEE'S INVESTIGATION**

## **I. The Committee's Investigation**

### **A. Overview of this Report**

The Utah House of Representatives established a Special Investigative Committee (the “Special Committee” or “Committee”) on July 3, 2013 to investigate and report on allegations of misconduct by then-Attorney General John E. Swallow. This final report presents the Committee’s findings.

Part I of this report begins by describing the circumstances surrounding the Special Committee’s formation. It explains the House’s decision to convene the Committee, what the House charged the Committee to do, the powers given to the Committee by the House and under Utah law, and the policies and procedures that the Committee adopted to govern its investigation. Part I then explains how the Committee approached and conducted its investigation, including the effect that Mr. Swallow’s resignation from office on November 21, 2013 (effective at 12:01 a.m. on December 3, 2013) had on the scope and progress of the Committee’s work. Part I also describes some of the resistance that the Committee faced in carrying out its work, and the litigation in which the Committee was required to engage to carry out the mandate that the House had given it.

Part II of this report presents the information and evidence gathered by the Committee. This section presents in detail the evidence that relates to the primary areas where significant evidence of wrongdoing emerged from the investigation, notes additional areas where the evidence raised concerns, and sets forth yet others where the evidence was either inconclusive or suggested that no wrongdoing occurred. Where appropriate, the report explains the legal framework that guided the Committee’s investigation of the issue being discussed. Where the evidence has led the Committee to draw conclusions about the conduct under investigation, those

conclusions are stated and explained. Likewise, the Committee notes in this section where further investigation of certain issues may be appropriate.

Part III provides a summary of the suggestions for potential statutory changes that the Committee received from various persons and entities involved in the investigation. Some of the items summarized in Part III have already been incorporated into bills being considered during the 2014 annual general session of the Utah Legislature. Other items summarized in Part III could be referred to an interim committee or could become the subject of proposed legislative action.

The Appendix to this report contains the documents upon which the Committee has primarily relied in preparing this report, including documentary evidence that supports the Committee's factual findings and conclusions. Some additional non-documentary supporting materials, such as video and audio recordings, cannot be reproduced in the printed version of this report; these are available in the electronic version of this report posted on the Legislature's website and will be filed with the Utah state archivist.

## **B. The Special Committee's Formation and Mandate**

Shortly after he was sworn into office on January 7, 2013, then-Attorney General Swallow became the subject of public allegations of potential illegal, improper, or unethical conduct. In brief, the allegations relating to Mr. Swallow that gave rise to public concern included the following:

- Jeremy Johnson is a Utah businessman who was indicted by a federal grand jury in 2011 and who, at the time of this report, was awaiting trial on federal fraud-related charges. An article published in the *Salt Lake Tribune* on January 12, 2013 recounted allegations by Mr. Johnson regarding Mr. Swallow. Mr. Johnson asserted that, while his business dealings were facing scrutiny from the federal government, he sought Mr. Swallow's assistance. According to the article, Mr. Johnson alleged that he and Mr. Swallow were involved in an effort to "pay Senate Majority Leader Harry Reid \$600,000 to make a federal investigation into Johnson's company go away." According to the allegations as recounted in the article, Mr. Swallow told Mr.

Johnson that his (Swallow's) associate, Richard Rawle, had a "connection" to Senator Reid, and Mr. Swallow then arranged for Mr. Johnson to pay money to Mr. Rawle, some of which was to be used to pay Senator Reid. According to the article, Mr. Swallow denied the allegations, stating that he had "never had a financial arrangement with Mr. Johnson and no money has ever been offered or solicited." Mr. Swallow was reported to have "acknowledged doing consulting work for Rawle on a Nevada limestone project," but reportedly "said the payments did not violate Utah law." A series of related press articles followed in the ensuing weeks, all of which attracted significant public attention.

- In connection with his allegations, Mr. Johnson apparently provided the *Salt Lake Tribune* with a recording of a conversation between Mr. Johnson and Mr. Swallow that took place at a Krispy Kreme shop in Orem, Utah on or about April 30, 2012. The recording reflected that at that meeting, the two men discussed the situation with Senator Reid as well as Mr. Swallow's use of a houseboat owned by Mr. Johnson. An article published in the *Salt Lake Tribune* on January 30, 2013 suggested that Mr. Swallow's use of the houseboat at a time when he was a public official might constitute the acceptance of an impermissible gift, and that the houseboat use may therefore have been improper.
- On March 9, 2013, a petition filed with the Utah Lieutenant Governor's office alleged that Mr. Swallow violated Utah laws requiring financial disclosures by candidates seeking public office. Among other claims, the petition alleged that Mr. Swallow failed to properly disclose money that he had received from entities affiliated with Mr. Rawle, and that he had taken improper steps to hide the source of those funds. The Lieutenant Governor's office announced on May 14, 2013 that it would pursue an investigation into certain of the allegations set forth in the petition.
- Marc Sessions Jenson, an individual convicted of fraud who is currently incarcerated, publicly alleged that Mr. Swallow participated in a conspiracy to extort funds from him. Mr. Jenson asserted that at the direction of then-Attorney General Mark Shurtleff, and with the participation of Mr. Swallow, the Utah Attorney General's Office targeted him for prosecution and then pursued him in an elaborate "shakedown" in which he was extorted for hundreds of thousands of dollars in cash and favors for state officials and campaign donors, and that he was asked for millions more. He further alleged that when he stopped making the extorted payments, Mr. Shurtleff and Mr. Swallow retaliated. According to the allegations, Mr. Shurtleff and Mr. Swallow did that by causing the Attorney General's Office to revoke a plea deal with Mr. Jenson, causing Mr. Jenson to be incarcerated, and further retaliated by causing the Office to file new criminal charges against him.
- Among the financial contributors to Mr. Swallow's campaign are a number of companies and individuals in the telemarketing and personal wealth building industries. Public allegations emerged that Mr. Swallow solicited donations to his and Mr. Shurtleff's campaigns with the assurance that the donors' businesses would receive more favorable treatment from the Attorney General's Office than some of them had received in prior dealings with Utah's Division of Consumer Protection.

Related to these general allegations, in May 2013, a former Utah government employee alleged in a complaint filed with the Utah bar that Mr. Swallow improperly communicated with an individual named Aaron Christner. Mr. Christner was at the time the subject of an enforcement action by the Consumer Protection Division. An informal transcript appended to the petition purported to show that the conversation at issue, between Mr. Swallow and Mr. Christner, related both to Mr. Christner's legal difficulties and to Mr. Swallow's effort to raise funds for his campaign.

By the summer of 2013, several investigations related to these allegations were known to be pending. These included: a federal criminal investigation conducted by the Public Integrity Section of the United States Department of Justice;<sup>1</sup> two coordinated criminal investigations conducted by the offices of the Salt Lake County District Attorney and the Davis County Attorney;<sup>2</sup> an investigation into certain alleged election law violations by the Office of the Lieutenant Governor, conducted with the assistance of an outside Special Counsel;<sup>3</sup> and two non-public investigations conducted by the bar of the State of Utah, of which Mr. Swallow is a member.<sup>4</sup> Public calls were made for Mr. Swallow to resign and for his impeachment. The Utah Constitution gives the Utah House of Representatives the sole power of impeachment.<sup>5</sup>

Against this backdrop, the House determined that an investigation into potential wrongdoing by Mr. Swallow was called for. On June 28, 2013, Speaker of the Utah House of Representatives Rebecca Lockhart called the House into special session "to pass House Rules

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<sup>1</sup> After the Johnson allegations emerged, Mr. Swallow referred them to the United States Attorney for the District of Utah. In May 2013, Utah U.S. Attorney David Barlow announced that he was recusing his office from the investigation; the investigation was then taken up by the Public Integrity Section of the United States Department of Justice. The Public Integrity Section reportedly informed Mr. Swallow in early September 2013 that it would not pursue charges based on the Johnson allegations.

<sup>2</sup> The coordinated county investigations are ongoing. As of the filing of this report, eleven search warrants in furtherance of these investigations issued in December 2013 and January 2014 by Utah's Third District Court had been unsealed and one individual, Tim Lawson, had been criminally charged.

<sup>3</sup> The Lieutenant Governor's investigation culminated in a report finding probable cause to believe that violations of Utah election laws had occurred. *See* Report of the Investigation of Attorney General John E. Swallow (Nov. 20, 2013). However, in light of Mr. Swallow's resignation from office, the Lieutenant Governor determined not to pursue litigation concerning the violations alleged.

<sup>4</sup> The bar reportedly closed both of its investigations without taking formal action.

<sup>5</sup> Utah Const., art. VI, § 17.



forming a special investigative committee.”<sup>6</sup> On July 3, 2013, the House passed H.R. 9001, which created the Special Committee.<sup>7</sup>

The House charged the Special Committee with “investigat[ing] allegations against the current attorney general” and “matters related to the current attorney general that arise as part of the investigation,” and with “report[ing] to the House findings of fact about the matters investigated and the need, if any, for legislation.”<sup>8</sup> The resolution provided that the Committee “may investigate allegations of misconduct against the current attorney general which conduct occurred while the current attorney general: (i) served as deputy attorney general; (ii) was a candidate, as defined in Section 20A-11-101, for attorney general; and (iii) has served as attorney general.”<sup>9</sup> The investigation thus encompassed allegations of wrongdoing dating to the time Mr. Swallow joined the Office as Chief Deputy in December 2009.<sup>10</sup> The House tasked the Committee to prepare a final report presenting the information and evidence the Committee gathered, and to provide the House with any legislative recommendations.<sup>11</sup> It also authorized the submission of a minority report by any members of the Committee who did not vote in favor of the Committee’s final report.<sup>12</sup> Finally, the House provided that the Committee would terminate upon the submission of the final report and any minority report.<sup>13</sup>

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<sup>6</sup> Proclamation (June 28, 2013).

<sup>7</sup> H.R. 9001 (enacting HR3-1-202).

<sup>8</sup> HR3-1-202(7).

<sup>9</sup> HR3-1-202(8)(a).

<sup>10</sup> The resolution further provided that the Committee, by majority vote, could expand the scope of its investigation to encompass “allegations of misconduct that occurred before the current attorney general became deputy attorney general” if those “the allegations of misconduct relate to the current attorney general’s fitness to serve as attorney general.” HR-3-1-202(8)(b).

<sup>11</sup> HR3-1-202(11)(e).

<sup>12</sup> HR3-1-202(11)(c).

<sup>13</sup> HR3-1-202(12).

The House required the Speaker of the House to appoint nine House members to the Committee and to designate its chair.<sup>14</sup> Speaker Lockhart appointed Rep. James A. Dunnigan to chair the Committee, and appointed Reps. Rebecca Chavez-Houck, Brad L. Dee, Susan Duckworth, Francis D. Gibson, Lynn N. Hemingway, Mike K. McKell, Lee B. Perry, and Jennifer M. Seelig to serve on the Committee.<sup>15</sup> The Committee was required to adopt guidelines and procedures to be followed in conducting its investigation.<sup>16</sup>

The House provided that the Office of Legislative Research and General Counsel of the Legislature of the State of Utah (OLRGC) would “provide staff support to the Special Investigative Committee.” John L. Fellows, General Counsel, and Eric N. Weeks, Deputy General Counsel, both of OLRGC, oversaw OLRGC’s provision of staff support to the Committee.

The House further permitted OLRGC or the House to “contract for outside services to assist in the staffing of the Special Investigative Committee.”<sup>17</sup> OLRGC issued a request for proposals on July 9, 2013, seeking outside counsel to provide legal services to the Committee in relation to its investigation. From a pool of sixty-one responders from across the country, the Committee selected the law firm of Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”) as its Special Counsel. On August 15, 2013, OLRGC signed a retainer agreement with Akin Gump. Akin Gump partners Steven F. Reich and Steven R. Ross oversaw the investigation and provision of legal services to the Committee. Mr. Reich previously had served as special counsel to the Connecticut House of Representatives during an impeachment inquiry relating to that

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<sup>14</sup> HR3-1-202(2) & (3).

<sup>15</sup> Speaker Lockhart initially appointed Rep. V. Lowry Snow to the Committee and designated him as Committee chair. Rep. Snow recused himself from the Committee on July 25, 2013 because the law firm in which he was a partner apparently had previously represented Jeremy Johnson in a legal dispute. Speaker Lockhart then designated Rep. Dunnigan as chair, and appointed Rep. Gibson to fill the vacancy left by Rep. Snow’s recusal.

<sup>16</sup> HR3-1-202(10).

<sup>17</sup> HR3-1-202(7).

state's Governor, while Mr. Ross had served for a decade as General Counsel of the United States House of Representatives.

On August 13, 2013, OLRGC issued a second request for proposals seeking an investigative firm or firms that would conduct the necessary fact investigation together with and under the direction of the Committee's Special Counsel. Firms from across the country submitted proposals. On August 30, the Committee selected national investigative firm The Mintz Group and Utah investigative firm Lindquist Associates to conduct the investigation. Mintz Group President Jim Mintz and senior investigators Andrew Melnick and Patrick Kelkar oversaw the conduct of the factual investigation. Mr. Mintz previously had served as chief investigator during the Connecticut impeachment inquiry noted above.

### **C. The Special Committee's Powers, Policies and Procedures**

In a special session called by Governor Gary R. Herbert by proclamation dated July 15, 2013, the Utah Legislature passed legislation granting the Committee certain powers considered necessary and appropriate to further its investigation.<sup>18</sup> As amended by the newly-enacted legislation, Utah Code § 36-12-9 gave a committee designated by rule as a special investigative committee the power to close its meetings under certain circumstances in order to obtain legal advice, discuss investigative strategy, and question a witness, and designated the records of an investigation conducted by such a committee as protected records for purposes of Utah's Government Records Access and Management Act (GRAMA) during the pendency of the investigation. As amended, Title 36, Chapter 14 of the Utah Code gave a special investigative committee, by its chair, the power to issue legislative subpoenas to compel witnesses to give testimony and to produce documents and things. And, as amended, Utah Code § 77-22b-1 gave

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<sup>18</sup> Governor's Proclamation 2013/1/S: Calling The Sixtieth Legislature Into The First Special Session (July 15, 2013); H.B. 1001.

a special investigative committee the power to grant use immunity to a witness who refused or was likely to refuse to give testimony or provide evidence on the basis of the witness's privilege against self-incrimination. Finally, the Legislature amended both the statutes governing the unauthorized practice of law and providing for the licensing of private investigators in Utah to allow the out-of-state Special Counsel and investigators it had retained to assist the Committee in its inquiry consistent with Utah law.

As required by the House resolution, the Committee adopted policies and procedures governing its proceedings.<sup>19</sup> The Committee's procedures provided that at any evidentiary hearing, defined as a public hearing at which a witness was to testify under oath, the witness would be entitled to have counsel present and confer with counsel regarding assertions of privilege, and to assert claims of privilege based on constitutional rights or House or Committee rules. The procedures further provided that Mr. Swallow and his counsel were permitted to attend any evidentiary hearing and that if documentary evidence was to be offered through witnesses, the documentary evidence would be provided to Mr. Swallow's counsel at the meeting. The procedures also provided Mr. Swallow or his counsel the opportunity to make requests of the Committee by providing such requests in writing to the Committee chair or staff.

The Committee's policies and procedures also set forth rules authorizing Special Counsel to conduct transcribed interviews of witnesses under oath. Those rules permitted any witness to be represented by counsel of the witness's choosing at an interview under oath, and permitted the recording of such interviews by a stenographer or videographer. The policies and procedures required that all Committee members keep matters discussed in a closed meeting confidential, and provided that any breach of confidentiality would be grounds for the chair or the Committee

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<sup>19</sup> Policies and Procedures of the House Special Investigative Committee (adopted Nov. 5, 2013).

to seek the removal and replacement of a Committee member. The policies and procedures provided that the Committee would not receive comment or testimony from the public other than in the context of actual sworn testimony before the committee unless the Committee specifically provided notice that a meeting or portion of a meeting was a public hearing; they further provided that members of the public were permitted to submit written comments to the Committee.

#### **D. The Committee's Investigative Process**

The Committee initially convened on August 6, 2013 to discuss how the investigation would proceed, and to discuss other preliminary matters.<sup>20</sup> On September 11, 2013, Special Counsel and the investigative team met with the Committee to present an investigative plan.<sup>21</sup> As explained to the Committee, investigators would begin by reviewing the public record relating to the events under investigation, and would then proceed initially by collecting and reviewing documents collected through the Committee's subpoena process or provided voluntarily by witnesses, and by informally interviewing witnesses. The Committee's investigators anticipated that as the investigation progressed, it could become necessary to compel witnesses to give testimony, including by granting immunity to witnesses who would otherwise invoke their privilege against self-incrimination.

The Committee began interviewing witnesses on or about September 19, 2013. The Committee issued its first subpoenas for documents on or about September 25, 2013. In all, the Committee issued 17 subpoenas, many of which were, as described below, resisted by their recipients.

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<sup>20</sup> Minutes of the House Special Investigative Committee (Aug. 6, 2013).

<sup>21</sup> Minutes of the House Special Investigative Committee (Sept. 11, 2013).

As recounted in detail below, early in its investigation the Committee learned from senior officials designated as liaisons by the Office of the Attorney General that a potentially significant volume of the Attorney General's email on the Office's servers was missing and apparently unrecoverable. The Committee's investigation determined that multiple additional sources of electronic data and data devices belonging to the Attorney General were missing or otherwise unavailable. The Committee held a public hearing on October 8, 2013, at which it heard preliminary evidence regarding this missing data.<sup>22</sup> On November 20, it was reported in the *Salt Lake Tribune* that the Lieutenant Governor's investigation was in its final stages, and that a report would be released imminently.<sup>23</sup> The article, citing anonymous sources, recounted that the Lieutenant Governor's report would find that Mr. Swallow knowingly failed to disclose certain revenue and business interests on his candidate forms when he filed to run for Attorney General, and would recommend taking civil action against Mr. Swallow, including possibly seeking to have his election invalidated. Also on November 20, 2013, the Office of the Attorney General provided to counsel for Mr. Swallow a copy of a sworn declaration obtained by the Committee from an individual on the Attorney General's Office's information technology staff that detailed highly damaging facts relating to the Attorney General's missing data.

The following day, November 21, Mr. Swallow announced that he had tendered his resignation as Attorney General, effective December 3,<sup>24</sup> to Governor Herbert and that the Governor had accepted the resignation. In announcing his resignation, Mr. Swallow criticized the Committee's work as a "political investigation," stating that he was "deeply disappointed that what I believe is the agenda of political enemies and people with a personal agenda to hurt me or

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<sup>22</sup> Robert Gehrke, "Sources: Judge may invalidate Swallow's election," Salt Lake Tribune (Nov. 20, 2013).

<sup>23</sup> Minutes of the House Special Investigative Committee (Oct. 8, 2013).

<sup>24</sup> The resignation date selected by Mr. Swallow assured that his pension based on his time in public service was vested.

to help themselves at my expense has led to the resignation of the Attorney General duly elected by the people in the Fall of 2012.” He further stated, “I maintain my innocence of all allegations.”

Following Mr. Swallow’s resignation, the chair of the Committee instructed Special Counsel and the Committee’s investigators to halt further work while the Committee decided whether and how to proceed with the investigation. On December 7, the Committee determined that it would promptly hold one or more public meetings at which the Committee and the public would be briefed by Special Counsel and the Committee’s investigators on the facts found to-date; that if needed, the Committee would authorize Special Counsel and its investigators to proceed with investigative work in support of making a presentation of the then-current findings; and that the Committee would produce a final written report of its work.<sup>25</sup> In essence, following Mr. Swallow’s resignation, the Committee’s work was limited to conducting such investigation as was deemed necessary to conclude the Committee’s review and provide a report to the House of the Committee’s efforts.

The Committee convened for two days of public hearings on December 19 and 20, 2013. At the hearings, Special Counsel and the Committee’s investigators briefed the Committee on the investigation’s findings to date. The Committee was presented with evidence of actions by Mr. Swallow during his campaign for Attorney General and while in office, and with additional facts relating to the deletion and evident fabrication of evidence by Mr. Swallow.

On January 14, 2014, the Committee convened to hear a report by representatives of the Lieutenant Governor summarizing the findings of his investigation. The Committee heard that there was probable cause to believe Mr. Swallow violated Utah’s election law in five respects

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<sup>25</sup> Minutes of the House Special Investigative Committee (Dec. 7, 2013)



during the 2012 Attorney General campaign, and was presented with recommendations for potential legislative reforms stemming from the Lieutenant Governor's investigation.

On January 29, 2014, the Committee received from Mr. Swallow's counsel a production of documents from Mr. Swallow's recovered home computer hard drive in further response to the Committee's September 25, 2013 subpoena. The Committee had been investigating whether data could be recovered from the hard drive since September, when the Committee first learned that the drive had supposedly stopped functioning in January 2013. A forensic expert retained by the Committee recovered more than 99% of the hard drive's data, a restored copy of which was provided to Mr. Swallow on December 11, 2013. Under an agreement with the Committee, Mr. Swallow's counsel was to review material on the restored drive and produce non-privileged, responsive documents. A second production of recovered documents was made by Mr. Swallow on February 26, 2014.

The Committee's efforts to restore the supposedly non-operational hard drive yielded important evidence supporting the Committee's factual findings as set forth in this report. In particular, the late-produced materials make clear the extensive efforts that Mr. Swallow undertook to curry favor with the payday lending industry in order to win financial support for his campaign for Attorney General, and the commitments that he made to the industry in return for that support. Further, these documents reflect Mr. Swallow's personal involvement in the earliest stages of his campaign's effort to construct a web of entities that could be used to hide the industry's support from public view and in the efforts to attack Rep. Daw. Because these materials were not provided to the Committee in a timely manner, the Committee had undertaken costly and time-intensive efforts to establish these same facts from other sources. Those efforts would not have been necessary but for Mr. Swallow's professed inability to

produce materials that were clearly responsive to the Committee’s subpoena to him. Rather remarkably, just prior to the filing of the Committee’s final report, Mr. Swallow demanded that the State’s taxpayers reimburse him nearly \$23,000 for costs he says he incurred in reviewing documents recovered from his own hard drive.

Consistent with the Committee’s authorizing resolution requiring a 21-day review period for this final report, the Committee circulated a draft of this report to all members on February 12, 2014. On March 11, 2014, the Committee convened and approved the adoption of this report and its transmission to the House.

Together with the submission of this report to the House, the Committee refers these matters to appropriate law enforcement and professional licensing authorities for their review and consideration.

Pursuant to the House resolution that created the Committee and which governs its operation, the submission of this final report to the House terminates the Committee’s investigation and retires the Committee.

## **E. Investigative Challenges Faced by the Committee**

### **1. The Attorney General’s False or Misleading Statements, Improper Invocations of Privilege, Withholding of Documents, and Refusal to Testify**

The pursuit of the Committee’s investigation required the Committee to seek documents and information from Mr. Swallow, the person who knew more about the matters under review than anyone else. Mr. Swallow publicly announced that he would “cooperate fully” with the Committee’s investigation.<sup>26</sup> Contrary to Mr. Swallow’s public claims of full cooperation, he did not cooperate fully with the Committee’s investigation. In pursuing its investigation, the Committee encountered the following resistance from him:

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<sup>26</sup> E.g., Nineveh Dinha, “Feds end investigation into Swallow, Shurtleff,” Fox 13 News (Sept. 12, 2013).

- As described in detail in the body of this report, Mr. Swallow presented fabricated documents to the Committee that purported to be contemporaneous documentation of certain transactions and events but were not. Moreover, Mr. Swallow engaged in a broad pattern of evidence elimination designed to obscure the facts of the matters under review. The evidence fabrication and elimination that the Committee has confirmed hindered, delayed and obstructed the Committee's work.
- As also described in the body of this report, Mr. Swallow made false statements to the public during the course of the investigation, and allowed his representatives in certain instances to provide the Committee with inaccurate or incomplete information.
- Mr. Swallow insisted that significant numbers of documents of interest to the Committee would not be produced under the Committee's validly issued subpoena because they were "confidential," and instead insisted that the Committee review those documents in his attorney's office. The Committee was not permitted to retain copies of these documents, and to date many responsive documents have not been provided to the Committee even in redacted form. Upon reviewing the materials at the office of Mr. Swallow's counsel, the Committee determined that there was no valid basis for designating many of these documents as confidential and that Mr. Swallow's true purpose in refusing to provide copies of those documents was to impede or slow the Committee's work, to avoid public embarrassment through their release, or both.
- Mr. Swallow claimed that significant numbers of documents responsive to the Committee's subpoena were legally privileged, and refused to produce these documents to the Committee. Mr. Swallow produced a log identifying these documents on November 26, 2013. The log was 161 pages long and listed in excess of 3,000 documents as to which Mr. Swallow claimed privilege. While some of the claims of privilege appeared to be legitimate based on the limited information in the log, many other documents were evidently not privileged on the grounds asserted by Mr. Swallow.

The Committee further notes that, after Mr. Swallow produced the privilege log, the Committee recovered material from the personal hard drive he had represented to be inoperable and returned that material to Mr. Swallow for review consistent with the agreed-upon protocol. Mr. Swallow later produced additional documents to the Committee from the recovered material, but claimed privilege with respect to other recovered documents. He repeatedly promised the Committee an updated privilege log reflecting those new claims of privilege, but as of the date of this report has not produced one, so the Committee is unable to assess the validity of Mr. Swallow's additional claims of privilege with respect to these documents. The Committee notes that some of the documents Mr. Swallow produced on February 26, 2014 contain redactions for which no apparent basis exists and which the Committee would have challenged in court had this investigation continued.

- Before the public hearings held on December 19 and 20, the Committee invited Mr. Swallow to sit for a videotaped interview under oath with state and federal law enforcement officials invited to attend and participate. Mr. Swallow had previously sat for videotaped testimony in connection with the Lieutenant Governor's investigation. Despite this, Mr. Swallow refused to be interviewed by the Committee. In refusing the invitation on Mr. Swallow's behalf, Mr. Swallow's attorney cited videotaping of the session as a "deal breaker." Mr. Swallow did not explain why he had gone forward with videotaped testimony in the Lieutenant Governor's proceeding while refusing to be videotaped by the Committee. We note, however, that state and federal law enforcement officials were not present during his testimony in the Lieutenant Governor's proceeding.

## **2. Litigation Challenging the Special Committee's Document Subpoenas**

In conducting its investigation, the Committee relied on its statutory subpoena authority to compel witnesses to turn over documents and material things. While some subpoena recipients complied with the subpoenas without quarrel, the Committee's subpoenas evoked multiple legal challenges to the Committee's authority and spawned multiple litigations, typically with those deemed by the Committee to be at the core of the conduct under review. In each instance, the Committee believes that the challenge was without legal basis and that the subpoena recipient's refusal to produce documents was in derogation of its legal duty to respond to validly issued legal process. The Committee exercised discretion in determining the timing and substance of its responses to these challenges in light of the importance of the subpoenaed information to the investigation, the constitutional prerogatives of the legislature, strategic considerations, the cost of litigation to Utah taxpayers, and the Committee's sensitivity to other ongoing investigations.

1. As part of its work, and as set forth in Part II of this report, the Committee learned that a significant volume of Mr. Swallow's email was missing from servers of the Office of the Attorney General. Mr. Swallow initially contended that this email had gone missing during the Office's migration of its email systems in November 2012 from one email platform to another. The Committee undertook to recover the missing email from the Office's computer servers, and

also to test Mr. Swallow's contention that the email was lost in the migration. To do that, and in an effort to recover other potentially missing data, the Committee was required to create exact copies, called "forensic images," of the hard drives of a number of the Office's servers and workstations.

The Office agreed to permit the Committee to create these forensic images, but informed the Committee that it would not release the images absent a court order because of concerns said to arise about sensitive personal health information governed by the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Office advised the Committee that, in its view, a court order was necessary to legally release the forensic copies made by the Committee. The Committee filed a motion to compel compliance with its subpoenas in Utah's Third District Court. Ultimately, the Committee and the Office agreed on stipulated terms governing the release of the images. The court approved the order on November 15, 2013.<sup>27</sup>

2. The Committee directed subpoenas to several individuals affiliated with Mr. Swallow, or to entities related to those individuals. For example, the Committee subpoenaed Richard Rawle-affiliated entities Softwise, Inc. and Tosh, Inc., as well as Swallow campaign consultant Jason Powers and a number of entities related to Mr. Powers. These individuals and their related entities lay at the very core of the conduct under review by the Committee. Notwithstanding offers of reasonable accommodations by the Committee designed to address purported confidentiality concerns of these subpoena recipients, all of the recipients flatly refused to produce any documents responsive to the subpoenas. Indeed, all of them chose to

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<sup>27</sup> See Order, *In re House Special Investigative Committee*, No. 130907538 (Nov. 15, 2013). While the Committee strongly disagreed with the position taken by senior Office officials with regard to this issue, the Committee recognizes that their position was based on a good faith, albeit in the Committee's view, overly cautious, interpretation of applicable law.

litigate with the Committee. The Committee vigorously pursued enforcement of the subpoenas through the time of Mr. Swallow's resignation from office.

However, as noted earlier, upon the resignation of Mr. Swallow from office, the Committee decided to conclude its investigation with hearings and a final report presenting the information gathered to-date in the investigation. In light of that decision, and the cost that would have been incurred in continuing to litigate, the Committee agreed that all parties should withdraw from the pending litigation.

#### **F. The Committee's Sources of Evidence**

The Committee's investigation and the preparation of this final report called on the Committee to rely on evidentiary materials from a variety of sources. Fifteen investigators working with the Committee's investigative firms conducted approximately 165 witness interviews between September and December 2013. Investigators, typically working in teams of two, principally conducted interviews in person; some interviews were conducted by telephone. Many witnesses approached the Committee to volunteer information. Other witnesses were first approached by the Committee. The Committee encountered resistance to its efforts to elicit information voluntarily. For example, witnesses Mark Shurtleff, Jason Powers, Jeremy Johnson, A.J. Ferate, and Jason Smith refused either personally or through their counsel to speak to the Committee.

In some instances, investigators and Special Counsel worked with witnesses to produce voluntary sworn written statements attesting under penalty of perjury to critical facts in the case.

The Committee gathered documents primarily by compelling production through the use of its subpoena power. The Committee's initial subpoenas were directed to the Office of the Attorney General and to Mr. Swallow personally. Additional subpoenas to several other entities and persons followed. In all, the Committee issued 17 subpoenas and gathered more than 20,000

pages of documents through the exercise of its subpoena power.<sup>28</sup> The Committee also relied on notes its Special Counsel or investigators took describing documents that were reviewed at the offices of Mr. Swallow's attorney but which the Committee was not permitted by Mr. Swallow to keep. The Committee gathered additional documents, leads and evidence through the voluntary assistance of multiple sources, including confidential sources. The Committee also reviewed materials in the public record such as press reports and publicly available governmental records such as court filings.

The Committee canvassed the public record for statements by Mr. Swallow, including recorded interviews of Mr. Swallow, recordings of public statements by him, and press accounts reporting his statements relating to the matters under investigation. The Committee made multiple requests for information to Mr. Swallow's attorney, and received some information in response in the form of representations by Mr. Swallow's counsel. In addition, the Committee obtained, by agreement with the Lieutenant Governor's office and counsel for Mr. Swallow, the transcript of the Lieutenant Governor's sworn interview of Mr. Swallow. Mr. Swallow initially refused to release the videotape of the Lieutenant Governor's interview to the Committee, but the Committee eventually obtained a copy after the Lieutenant Governor's Office made it public. Mr. Swallow also refused, as noted, to be interviewed by the Committee.

In addition, in conducting its investigation the Committee received substantial cooperation from government authorities conducting parallel investigations into overlapping subject matters. The Committee is profoundly grateful for the cooperation of these agencies and

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<sup>28</sup> The Committee issued subpoenas to John Swallow (Sept. 25, 2013); the Office of Utah Attorney General (Sept. 25, 2013; Nov. 8, 2013; and Dec. 6, 2013); Softwise, Inc. (Oct. 4, 2013); Guidant Strategies (Nov. 8, 2013); Jason Powers (Nov. 8, 2013); Proper Role of Government Action Fund (Nov. 8, 2013); Proper Role of Government Defense Fund (Nov. 8, 2013); Proper Role of Government Education Association (Nov. 8, 2013); Protect Utah PAC (Nov. 8, 2013); the Utah State Travel Office (Nov. 8, 2013); Utah's Prosperity Foundation (Nov. 8, 2013); Jeremy Johnson (Nov. 12, 2013); Timothy Lawson (Nov. 12, 2013); Tosh Inc. (Nov. 12, 2013); and the Utah Department of Financial Institutions (Dec. 6, 2013).

their personnel. The citizens of Utah were well-served by the coordination and cooperation between investigations occurring across Branches of government, by the extent of the interest that investigators took in assuring that information was shared as fully and efficiently as possible under applicable law, and that the activities of one investigative agency did not negatively impact the work of others. The Committee also appreciates the significant cooperation it received from senior officials of the Office of the Attorney General who were designated to liaise with the Committee. While the Committee did not always agree with the positions taken by the Office in this matter, it recognizes that those positions were taken in good faith and to protect what those officials deemed to be the institutional interests of the Office. In the end, the Committee and the Office reached accommodations that allowed the Committee to fulfill its mandate while respecting the concerns that the Office advanced.



## **PART II**

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### **THE INFORMATION AND EVIDENCE GATHERED BY THE COMMITTEE**

**I. Mr. Swallow Compromised the Principles and Integrity of the Office of the Attorney General In Order to Benefit Himself, His Friends and His Political Supporters**

The Committee investigated allegations that Mr. Swallow provided friends and political supporters preferential access to, and treatment by, the Office. The Committee found that on multiple occasions, Mr. Swallow compromised the principles and integrity of the Office, thereby breaching the public's trust and demeaning the offices he held. The Committee concludes that, in effect, Mr. Swallow hung a "for sale" sign on the Office door. The corruption of any public office through pay-to-play schemes is unacceptable. The corruption of the office tasked with administering equal justice under law is intolerable.

It became clear during interviews of Office personnel that the subversion of the Office's principles had taken an often painful toll on those who worked there. Many courageous current and former employees of the Office affirmatively sought out the Committee's investigators, or welcomed them in their homes, to share their own personal observations of, and deep anger and frustration about, what occurred during Mr. Swallow's tenure. Not infrequently, these individuals became highly emotional about what they had seen during Mr. Swallow's tenure. Sometimes, emotions boiled over in these meetings because these individuals had known for years that what was happening in the Office was wrong, yet they felt powerless to stop it because it came directly from the top.

In part, this is why the Committee believes that those responsible for these abuses must be held accountable in the investigations that continue. A clear message must be sent to the citizens of Utah, and to those who seek to hold the public's trust, that such conduct will not be tolerated in this State.

From the time Mr. Swallow joined the Office, and even before then, he cultivated a series of relationships with members of the online marketing and payday lending industries. The

Committee found a pattern of benefits, including campaign donations, political favors, cash and other benefits, that flowed back and forth between Mr. Swallow and these individuals and entities. Mr. Swallow used these relationships for his own professional, personal and political benefit. The Committee's investigation focused on three instances in which such exchanges of benefits substantially undermined the Office's mission.

First, Mr. Swallow provided his friend and political ally Jeremy Johnson unique access to the Office and a favorable legal opinion regarding the permissibility of processing money derived from online poker gambling, all while the wealthy Mr. Johnson shared the benefits of his luxurious lifestyle and contacts with Mr. Swallow. Second, Mr. Swallow promised his friend and patron Richard Rawle that, as Attorney General, he (Swallow) would be an ally to the payday lending industry, all while Mr. Rawle helped Mr. Swallow solicit hidden campaign contributions from that very industry. Finally, Mr. Swallow compromised the Office's position in a pending wrongful foreclosure lawsuit when he, after the plaintiffs in the lawsuit hosted a fundraiser for his campaign, agreed to dismiss the case in an effort to keep the embarrassing ethical conflict from coming to light. In so doing, Mr. Swallow, with the assistance of his predecessor, Mark Shurtleff, sold out the interests of thousands of Utah residents who would have benefitted if the Office had continued to pursue the wrongful foreclosure case.

#### **A. Utah's Laws to Combat Government Corruption**

The facts discussed in this section could implicate a number of laws intended to protect Utah's citizens from the corruption of their political institutions. Below is a summary of some of those statutes. The Committee offers this discussion solely to provide context for the facts set forth below. Decisions about the applicability of these laws to the facts are for officials of the Executive Branch to make.

Both the Utah Criminal Code (Title 76) and the Utah Public Officers' and Employees' Ethics Act (Title 67) establish robust requirements for the disclosure of conflicts of interest by public officials and prohibitions on the receipt and solicitation of bribes. The Utah Criminal Code also prohibits "official misconduct" designed to secure a personal benefit, and includes a little-used "theft of services" provision that may apply to a public employee who uses government resources, including his own time "on the job," for his own private benefit.

*Disclosure of Conflict of Interest Required.* Utah Code § 67-16-7 requires a public officer to disclose any "substantial interest in any business entity which is subject to the regulation" of the officer's agency. Failure to disclose a substantial interest or role in such a business entity prohibits the official from participating in an official capacity or receiving compensation "in respect to any transaction between the state or any of its agencies and [the] business entity." § 67-16-8(1). Public officials are also generally prohibited from having "personal investments in any business entity which will create a substantial conflict between his private interests and his public duties." § 67-16-9.

Any public officer or public employee who "knowingly and intentionally" violates § 67-16-8 or § 67-16-9 may be dismissed from employment or removed from office and may be convicted of a felony in either the second or third degree or of a class A or class B misdemeanor. § 67-16-12. In addition, a state constitutional officer, including the attorney general, may be found guilty of a misdemeanor if the officer does not disclose, "before or during the execution of any order, settlement, declaration, contract or any other official act of office in which a state constitutional officer has actual knowledge that the officer has a conflict of interest which is not stated on the financial disclosure form."<sup>29</sup>

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<sup>29</sup> See Utah Code Ann. § 76-8-109(2)(a). See also Utah Code Ann. § 76-8-105(1)(g). The term "state constitutional officer" means "the governor, the lieutenant governor, the state auditor, the state treasurer, or the

*Bribery, Privileges, and Certain Gifts Prohibited.* Under Utah law, “[a] person is guilty of receiving or soliciting a bribe if that person asks for, solicits, accepts, or receives, directly or indirectly, any benefit with the understanding or agreement that the purpose or intent is to influence an action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion, of a public servant, party official, or voter.” § 76-8-105(1). Likewise, under § 76-8-103, a person is guilty of “bribery or offering a bribe if that person promises, offers, agrees to give or gives, directly or indirectly, any benefit” with the same understanding. Bribery is punishable as a second or third degree felony in Utah. A public officer may also not “knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself or another a gift of substantial value or a substantial economic benefit tantamount to a gift” that satisfies any one of the following three conditions outlined in § 67-16-5:

- The gift “would tend improperly to influence a reasonable person in the person’s position to depart from the faithful and impartial discharge of the person’s public duties;”
- The public officer “knows or . . . a reasonable person in that position should know” that the gift is “primarily for the purpose of rewarding” official action taken by the public officer; or
- The public officer “recently has been, is now, or in the near future may be involved in any governmental action directly affecting the donor or lender,” unless properly disclosed.

Consistent with the First Amendment to the United States Constitution, a campaign contribution, without more, cannot be an improper gift or the basis for a bribery prosecution under Utah law.<sup>30</sup>

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attorney general.” § 76-8-105(1)(g). Thus, Mr. Swallow would not have been subject to this requirement while serving as Chief Deputy Attorney General.

<sup>30</sup> §§ 76-8-105 and 76-8-103 must also be read in conjunction with § 76-8-102, which states that “[n]othing in [Chapter 8 of the Utah Criminal Code] shall be construed to prohibit the giving or receiving of campaign contributions made for the purpose of defraying the costs of a political campaign. No person shall be convicted of an offense solely on the evidence that a campaign contribution was made and that an appointment or nomination was subsequently made by the person to whose campaign or political party the contribution was made.”

It is unlawful in Utah for a public officer to either “disclose or improperly use controlled, private, or protected information acquired by reason of his official position or in the course of official duties” or “use or attempt to use his official position” in order to “further substantially the officer’s or employee’s personal economic interest or to secure special privileges or exemptions for himself or others.” §§ 67-16-4(1)(b), (c). A public officer is also prohibited from accepting other employment that he might expect would either “impair his independence of judgment in the performance of his public duties” or “interfere with the ethical performance of his public duties.” §§ 67-16-4(1)(d), (e). Punishment under the statute may include removal from office, and conviction of either a misdemeanor or felony. § 67-16-12(1), (2).

*Official Misconduct and Theft of Services.* Utah imposes criminal penalties on any public servant who, “with an intent to benefit himself or another or to harm another . . . knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.” § 76-8-201. A violation of this statute requires evidence that the public official “acted in his capacity as a public servant; acted with an intent to benefit himself or another or to harm another; and knowingly committed an unauthorized act which purported to be an act of his office or knowingly refrained from performing a duty imposed on him by law or clearly inherent in the nature of his office.” *State v. Tolman*, 775 P.2d 422 (Utah App. 1989).

In addition, by depriving the State of Utah or a subdivision thereof of his or her time and other resources, an employee or official of the State of Utah may be guilty of theft of services under § 76-6-409. Under this law, “A person commits theft if, having control over the disposition of services of another, to which he knows he is not entitled, he diverts the services to

his own benefit.” § 76-6-409(2). Such theft may be punishable as a misdemeanor or as up to a second degree felony. § 76-6-412.

Finally, while not directed solely at public corruption, the Committee notes that Utah’s Pattern of Unlawful Activity Act targets conduct that may be present here.<sup>31</sup> The section, in essence, protects against the corruption of a legitimate enterprise and makes it a felony for an individual associated with any such enterprise “to conduct or participate, whether directly or indirectly, in the conduct of that enterprise's affairs through a pattern of unlawful activity.” Utah Code § 76-10-1603, 1603.5. Among many others, the unlawful activities that could constitute a pattern of unlawful activity include bribery to influence official or political actions, threats to influence official or political action, receiving a bribe or bribery by public servant, receiving a bribe or bribery for endorsement of person as public servant, and official misconduct. § 76-10-1602(4)(ss) – (ww). The statute specifically authorizes liability on a conspiracy theory. § 76-10-1603(4).

**B. Mr. Swallow Provided Extraordinary Access to the Office to His Friend and Political Ally Jeremy Johnson and Provided Johnson with a Beneficial Opinion Regarding Utah Law**

On January 12, 2013, the *Salt Lake Tribune* published allegations that while Mr. Swallow served as Chief Deputy, he granted Jeremy Johnson extraordinary access to the Office while, at the same time, accepting favors from Mr. Johnson, including the use of Johnson's luxury houseboat and private airplanes. In connection with these allegations, various communications between Mr. Johnson and Mr. Swallow were publicly released, including emails and an audio recording and transcript of a conversation they had at a Krispy Kreme store in Orem, Utah, on or about April 30, 2012. The release of the Krispy Kreme audio, which apparently was made

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<sup>31</sup> The December 12, 2013 criminal charges filed against Tim Lawson, discussed later in this report, included a count under this section.

without Mr. Swallow's knowledge, raised numerous questions about the dealings that the two men had had over the years, and suggested that those dealings were now under review by federal law enforcement officials.

The Committee investigated the allegations surrounding Mr. Johnson and Mr. Swallow. In doing so, the Committee conducted dozens of interviews, including those of Utah state officials, federal regulators, pilots of Mr. Johnson's airplanes, operators and managers of Mr. Johnson's houseboat, participants in the poker and banking industries, lawyers for the online poker industry, and many of Mr. Johnson's former employees and business associates. The Committee also mined corporate records, and reviewed documents from a number of criminal, civil, and regulatory proceedings around the country, as well as documents produced to the Committee under subpoena. The Committee served a document subpoena on Mr. Johnson, but he did not respond to it. Mr. Swallow's resignation from office led to a decision by the Committee not to pursue litigation against Mr. Johnson to enforce its subpoena.<sup>32</sup>

The Committee's investigation found that Mr. Johnson cultivated a relationship with Mr. Swallow and made an effort to provide him with personal benefits and political favors. In return, Mr. Swallow granted Mr. Johnson extraordinary access to the Office's leadership that was not available to Utah citizens generally, and, in particular, took actions in his official capacity that

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<sup>32</sup> The Committee also sought to interview Mr. Johnson about his allegations but his attorney said that Mr. Johnson's ongoing legal entanglements presented an obstacle to such an interview. Despite the Committee's efforts to assuage his counsel's concerns, the Committee never obtained an interview of Mr. Johnson. At the same time, and apparently without the knowledge of Mr. Johnson's attorney, Mr. Johnson's supporters engaged in what the Committee believes was a parallel effort to manipulate the Committee's investigation through selective and largely unfulfilled offers of cooperation. One associate of Mr. Johnson approached the Committee and promised bombshell evidence, including audio tapes, mobile phone recordings, text messages, and emails involving Mr. Swallow. The Committee obtained certain materials from this Johnson associate but what was provided failed to live up to its billing by a wide margin. The Committee came to believe that it was being intentionally manipulated by Johnson's associates in an effort to create a narrative of events that would assist Mr. Johnson's defense of criminal and civil charges that have been brought against him by the federal government. The Committee therefore limited its efforts to seek cooperation from Mr. Johnson and his associates, and concluded that these witnesses and their allegations could not be relied upon absent independent corroboration. As noted below, prior to the termination of its investigation, the Committee was unable to independently corroborate certain allegations made by the Johnson team and therefore does not rely on those allegations here.



improperly were aimed at conferring benefits on Mr. Johnson and his business interests. These actions severely compromised the principles and integrity of the Office and regrettably lead to the conclusion that during Mr. Swallow's tenure in office there were two systems of justice that he administered: one for the wealthy and politically connected, and one for everyone else.

As set forth in detail below, while Mr. Swallow served as Mark Shurtleff's chief fundraiser, he met the seemingly successful Mr. Johnson. Mr. Johnson impressed Mr. Swallow as a potential big catch for Mr. Shurtleff's campaign financing operation, and Mr. Johnson proved his value early on by generously donating to the Shurtleff campaign. Perhaps mindful that as the "heir apparent" to the Attorney General seat he might personally benefit from Mr. Johnson's largesse in the future, Mr. Swallow evidently was eager to keep Mr. Johnson happy. And Mr. Johnson took advantage of his access to the State's top law enforcers. In particular, Mr. Johnson used his relationship with Mr. Swallow to seek the Office's blessing for his (Johnson's) online poker processing operation, the legality of which was, at best, significantly in doubt. Mr. Swallow obliged, and the Committee concludes that Mr. Swallow misused the power of his office in so doing. The story of Mr. Swallow's relationship with Mr. Johnson is a cautionary tale about the concrete dangers the electorate and the State face when public officials sell their office to those who seek to influence them through the provision of campaign funds and personal benefits.

### **1. How Mr. Swallow's Relationship with Mr. Johnson Developed**

Mr. Swallow and Mr. Johnson first became acquainted in 2008, when Mr. Swallow was in private law practice and acting as chief fundraiser for Mr. Shurtleff's 2008 campaign for Attorney General. From their first encounter, Mr. Swallow was interested in what Mr. Johnson could provide politically and financially. In sworn testimony in the Lieutenant Governor's investigation (see Exhibit ("Ex.") 1), Mr. Swallow said that he flew to Santa Monica, California,

in 2008 to meet Mr. Johnson because he “wanted to get to know him for purposes of helping Mark Shurtleff raise money for his campaign and also for the rainmaking opportunities for me as a lawyer.” Ex. 1 at 224. At the time, Mr. Johnson was the wealthy mastermind behind I Works, Inc., a St. George-based multi-million-dollar online marketing and sales business that purported to specialize in helping its customers apply for government grants. The federal government would later conclude that the business was a fraud that ripped-off consumers.

Mr. Swallow’s fundraising efforts paid off. I Works contributed \$50,000 to Mr. Shurtleff’s 2008 campaign, and when Mr. Shurtleff’s inauguration was held several months later, Mr. Johnson’s name was included on the invitation list as a “major contributor.” Ex. 2. Mr. Johnson’s apparent success, widely publicized humanitarian efforts, and willingness to support the Shurtleff campaign, were alluring to Mr. Swallow, and he set out to make Mr. Johnson an ally to the Shurtleff-Swallow political machine.

As Mr. Swallow cultivated his relationship with Mr. Johnson, he wanted to learn more about the I Works business. Mr. Swallow and Mr. Shurtleff twice toured the company’s St. George headquarters and “kicked the tires.” Ex. 1 at 226:1. The visits occurred in late 2008 and March 2009, less than two years after Mr. Johnson had been served with citations from the Utah Division of Consumer Protection alleging 55 counts of charging a consumer for non-consensual transactions or for violations of the Telephone Fraud Prevention Act.<sup>33</sup> Exs. 3, 4, 5, 6.

Mr. Swallow and Mr. Shurtleff apparently liked what they learned about the company and did not seem bothered by the tactics that were so troublesome to Utah consumers and eventually resulted in the federal government shutting down the business. Even last year, in May 2013, Mr. Swallow continued to say that the visits made him feel “comfortable” with I Works.

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<sup>33</sup> Mr. Johnson’s matters with the Utah Division of Consumer Protection pre-dated Mr. Swallow’s tenure in the Office.

Ex. 4. Indeed, he made this statement years after the company crumbled under the weight of the far-reaching federal government investigation that alleged the company had been running a massive “scam” since at least 2006.

## **2. Mr. Johnson’s Interest in Processing Online Poker Payments**

The story of Mr. Johnson’s interest in processing payments from online poker playing has its roots in 2006, when the United States enacted a new federal law called the Unlawful Internet Gambling Enforcement Act (UIGEA). UIGEA prohibited an entity “engaged in the business of betting or wagering” from “knowingly accept[ing]” credit card payments, electronic fund transfers, checks, and certain other forms of payment “in connection with the participation of another person in unlawful Internet gambling.” The statute defined “unlawful Internet gambling” as betting using the Internet if the betting itself was otherwise “unlawful under any applicable Federal or State law.”

When a gambler plays poker at an actual casino, wins and losses are tallied immediately in chips that are backed by hard currency. Online poker is different. To make the game work, wins and losses are tallied electronically and there must be an entity involved to electronically move the money derived from the game into bank accounts of both the players and the online “casino.” The entity that moves the money is called a processor. In 2010, online poker generated \$973.3 million, according to academic researchers. Ex. 7. But UIGEA made it difficult for many online poker companies to make and receive payments from players, and indeed, after Congress passed UIGEA, some online poker companies stopped operating entirely in the United States. Others continued operating, using companies that specialized in processing only poker payments to handle the transfer of funds. But because the legality of the entire online poker industry was in dispute, many banks refused to set up accounts for processors to deposit

funds.<sup>34</sup> Without bank accounts, online poker companies could not operate in the United States, and the multi-million dollar industry was threatened with collapse.

In 2009, poker payment processor Chad Elie started looking for ways to convince banks, and law enforcement officials, that processing poker payments was legal notwithstanding UIGEA. At the heart of his approach was the complex interplay between federal and state law. UIGEA, as noted, prohibited transmitting payments related to online poker playing—if the poker playing itself was in violation of federal or state law. If playing online poker for money was legal under the law of a particular state, then the payment processors could advance an argument that processing payments related to poker playing was also legal in that state. In many states there was little room to argue that poker playing was legal; so the challenge for the industry was to find a state where they could argue that online poker playing was legal, and to find a bank willing to accept their arguments and therefore accept deposits from the online game.

Mr. Johnson provided the solution. Mr. Elie got to know Mr. Johnson in 2009, and learned that Mr. Johnson had a connection to a bank that was a strong candidate for handling the payments.<sup>35</sup> He (Johnson) was friendly with officials at SunFirst Bank in his hometown of St. George, and SunFirst was in financial and regulatory difficulty and desperately in need of an infusion of capital. In June 2009, the Federal Deposit Insurance Corporation (FDIC) and the Utah Department of Financial Institutions (DFI) had found “unsafe and unsound banking practices” at SunFirst because of low capital reserves. Ex. 8. Mr. Johnson and Mr. Elie were willing to solve that capital reserve problem by investing millions of dollars in the bank—on the

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<sup>34</sup> According to federal prosecutors, some processing companies deceived banks in order to set up the needed accounts, pretending that the money they sought to deposit came from sales of miscellaneous products such as flowers or billiard tables. Those arrangements, however, when discovered, drew federal criminal charges and resulted in millions of dollars of assets being frozen.

<sup>35</sup> The Committee notes that Mr. Elie is a convicted felon who apparently had a bitter falling out with Mr. Johnson in 2011 and refused to be interviewed by the Committee. The Committee did not rely on Mr. Elie’s statements absent independent corroboration.

condition that SunFirst agree to process poker money. The bank struck an informal deal with Mr. Johnson and Mr. Elie to do exactly that in September 2009. Mr. Johnson eventually invested \$4.4 million in SunFirst, mostly in the name of his brother or a family partnership.

From the start of their relationship, according to Mr. Elie, Mr. Johnson also boasted about the influence he had with the Attorney General's Office. Ex. 9. "It was his thing, that he had the A.G. in his pocket," Elie said in a 2012 interview. "He was always with the attorney general at events, signed off on everything he was doing." For a payment processor with an interest in persuading a bank that handling online poker money was legal, a strong connection to a state's top legal officer was a significant benefit. Mr. Johnson's connection to SunFirst and his promised insider status in the Attorney General's Office made Mr. Elie believe, he said in 2012, that SunFirst "would be the best place ever to process with." Ex. 10 at 9.

SunFirst and Elie's processing company, called Elite Debit, began processing online poker receipts in early December 2009.

### **3. Mr. Swallow Joins the Office and Further Develops His Relationship With Mr. Johnson**

Also in December 2009, Mr. Swallow joined the Office as Chief Deputy. As he would later explain in an email to a potential campaign donor, Mark Shurtleff brought him into the Office to pave the way to his becoming Attorney General:

"Our AG, Mark Shurtleff does not plan on running in 2012 and he has brought me in to prepare me to replace him. So I'll not only have the experience as Chief Deputy, but I'll also have his backing. That will be important as I seek the nomination in 2012." Ex. 11.

With a campaign for the Attorney General job already on the horizon, Mr. Swallow — fully aware that Mr. Johnson had been a "major contributor" to Mr. Shurtleff's 2008 campaign— stayed in contact with Mr. Johnson and communicated his willingness to be helpful to him.

In February 2010, two months after Mr. Swallow joined the Office, he emailed Mr. Johnson to promote a business project between Mr. Johnson and Mr. Swallow's former employer, Richard Rawle. Ex. 12. The project would apparently have combined I Works' online marketing abilities with Mr. Rawle's payday loan and check cashing business. In the email, Mr. Swallow encouraged Mr. Johnson to proceed with the deal, and noted that I Works would be "getting a discount because of our relationship." He also told Mr. Johnson that Check City would "teach you the business, which they are doing as a favor to me." Two days later, Mr. Swallow sent another email to Mr. Johnson to advance the project. He wrote that Check City "also want[s] to meet with us" and proposed that Mr. Johnson come to town for the meeting. Ex. 13.

Soon after that exchange, one of Mr. Swallow's associates in the Office, then-Criminal Division Chief Kirk Torgensen, warned Mr. Swallow to stay away from Mr. Johnson, apparently because he (Torgensen) had heard that Mr. Johnson and I Works were under federal investigation. Mr. Swallow did not follow that advice. In fact, he did the opposite: he arranged to introduce Mr. Johnson to members of the Legislature on Capitol Hill. Exs. 14, 15. On March 2, 2010, Mr. Swallow emailed Mr. Torgensen to tell him that "you're not going to like this but Jeremy Johnson is coming up to the capitol for a few minutes today to say hello to David Clark, who I think is his Representative." He explained that "Jeremy and I got to know each other when I worked as Mark [Shurtleff]'s campaign finance chair." "Mark and I went down there and really checked him out," he said, and noted that Mr. Johnson had "given a lot of money to governor Herbert." "Let's not give him a key to the office," Mr. Swallow said—"but let's also be cool." Mr. Torgensen replied that he would "be cool," but warned Mr. Swallow that "the

Gov's office has some concerns about getting close to him," and that while "[t]his guy may be the greatest," there "is a buzz out there about him." Ex. 15.

#### **4. Trouble Looms for SunFirst's Poker Processing Operation and Mr. Johnson Requests a Legal Opinion**

Just a few months into their processing of poker money, the bankers at SunFirst Bank learned their new operation was headed for trouble with federal officials. Around March and April 2010, SunFirst received subpoenas relating to poker processing from federal prosecutors in New York and Maryland. In response to the subpoenas, Mr. Johnson undertook, with the online poker industry's support, to persuade Messrs. Swallow and Shurtleff to give the industry a formal opinion that poker was legal in Utah.

On March 4, 2010, an industry lawyer sent Jeremy Johnson a five-page draft of such an opinion. All the opinion needed was Mr. Shurtleff's signature. "Please take a look at this," the lawyer told Mr. Johnson in an email. "We would like you to deliver this to the Utah AG and request that he meet next week T-W or Th, with me and the Executive Director of the Poker Players Alliance . . . who he already knows. Can you get this done?"

The draft opinion letter being transmitted for Mr. Shurtleff's signature began: "This opinion letter is issued in response to your request for a legal opinion as to whether playing Texas Hold 'Em poker for money violates the Utah criminal code." It described the rules of the game, analyzed Utah statutory and case law, and stated, "skilled poker players win more often than unskilled players." Its last paragraph said, "Thus, under the predominance test employed by Utah's courts, Texas Hold 'Em poker is a game of skill rather than a game of chance, and as such does not come within the prohibitions of Utah Code § 76—10-1102." Ex. 16 at 7.

The poker industry believed that that conclusion would have meant SunFirst's poker processing was legal in Utah. And, getting the state's top law enforcement officer to sign it

would have provided powerful ammunition in attempting to hold off poker and poker processing prosecutions by the federal government.

Utah law specifies the circumstances under which the Attorney General may issue a formal opinion. Under § 65-7-1(7), the Attorney General will “give the attorney general's opinion in writing and without fee to the Legislature or either house and to any state officer, board, or commission, and to any county attorney or district attorney, when required, upon any question of law relating to their respective offices.” The law neither requires nor authorizes the Attorney General to provide an opinion to a member of the public. The Attorney General’s Office Manual sets forth the Office’s actual procedures for drafting and issuing opinions authorized by law, and among other things provides that “[i]ssues that are the subject of pending or likely litigation” are generally “not appropriate subjects” for such opinions. Ex. 17 at 62. Thus, providing an opinion on the legality of online poker to the industry was not authorized by either Utah law or Office policy.

On March 4, 2010, Mr. Johnson forwarded the draft opinion letter to Mr. Swallow’s personal (not work) email address and asked, “Can we do this?” Mr. Swallow replied, “I don’t know yet. I’m abt halfway through the doc. Mark gets back tomorrow from DC and we’ll discuss. I’m still new enough that I’ve got to see what we can and can’t do. I like the analysis so far.”

Accompanying the draft opinion letter that Mr. Johnson sent to Mr. Swallow were other lawyers’ opinions arguing that federal law does not define online poker as criminal. Thom Roberts, the assistant attorney general who has informally handled gambling issues for the Office since joining in 1989, told the Committee that Mr. Swallow brought him a thick binder of these opinions and asked him to review it in preparation for a meeting with a poker industry trade



association. AAG Roberts told the Committee that Mr. Swallow stated that he wanted Roberts to attend the meeting with industry representatives.

Four days after his first email, Mr. Johnson wrote Mr. Swallow again: “Any Progress on this opinion? Do you think I can come up and meet with Mark about it this week?” Mr. Swallow replied to Mr. Johnson that day: “Mark and I met today and we discussed it and he read it like I did. Can I call you tomorrow and we can talk about it? Utah law is less lenient than federal law. But I have some ideas that should help. Let’s talk tomorrow. John.” Ex. 18 at 2. Since neither Mr. Swallow’s nor Mr. Johnson’s lawyers would let their client talk to the Committee, the Committee was not able to determine precisely what “ideas” Mr. Swallow had to “help” Mr. Johnson navigate this problem. Still, the Committee found that Mr. Swallow seemed willing to find a way forward.

Three days later, an industry representative followed up on Mr. Johnson’s requests to meet with the Office’s leadership. The representative wrote to the secretary of Messrs. Swallow and Shurtleff requesting a meeting. He mentioned meeting Mr. Shurtleff at the Republican Attorney Generals’ Association meeting a few days before, and said: “We discussed the prospect of a follow-up meeting regarding federal legislation to license and regulate online poker.” He added that “another issue has arisen more directly related to the laws in Utah and how they govern poker.”

The two Office leaders agreed to meet with Mr. Johnson and the poker group, and they set a meeting for April 1, 2010. Mr. Johnson was scheduled to attend, but on the date of the meeting he emailed other attendees to say he was trapped by bad weather in St. George and could not make it. He added: “I am having a call today with them”—an apparent reference to a call with Messrs. Swallow and Shurtleff—“and will update them on what you are looking for.”

Ex. 19. AAG Thom Roberts, the Office's gambling law expert whom Mr. Swallow had earlier said he wanted to attend the meeting was not told that the meeting was occurring. AAG Roberts told the Committee that, in retrospect, he thinks that he was "disinvited" for some reason.

An industry lawyer who was not present at the meeting, but was who given a summary of the meeting by his law firm partner who did attend, related to the Committee the account that he was given. According to the attendee's summary, the meeting lasted about 45 minutes. Mr. Shurtleff and Mr. Swallow said they were not ready then to sign the draft opinion letter deeming poker legal in Utah. They also advised the industry representatives that issuing the opinion might backfire by prompting Utah legislators to pass a law clearly declaring online poker to be illegal. The two Utah officials added, however, that they were willing to discuss how they might help the poker interests over time. Mr. Swallow and Mr. Shurtleff said they would consider signing a so-called "friend of the court" or "amicus" brief in a legal proceeding that the industry was considering filing in Utah seeking a ruling that online poker was legal. The two officials also discussed with their visitors how Utah's taking its own stand on poker could, politically, be portrayed as consistent with Utah's view of federalism.

**5. Mr. Swallow Provides a Written Nod Toward the Legality of Poker Payment Processing in Utah While, at the Same Time, Accepting Personal and Political Favors from Mr. Johnson**

Through the summer of 2010, Mr. Johnson continued to press Mr. Swallow for the Office to formally bless the legality of online poker in Utah.<sup>36</sup> At the same time, he was providing Mr. Swallow with personal benefits. Mr. Johnson then owned a luxury 75-foot houseboat that he

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<sup>36</sup> In June 2010, AAG Roberts received an email sent by a representative of the U.S. Attorney's Office in Maryland, which at the time apparently was investigating SunFirst's poker-processing activities. Ex. 20. The email said that an Assistant U.S. Attorney in Baltimore had heard that the Utah AG's office sent a letter to some combination of SunFirst Bank and/or entities in the online poker industry that stated that Internet poker was "legal according to Utah law, or something to that effect." AAG Roberts replied that he had not sent any such letter, and no such letter was produced by the Office to the Committee during its investigation.

harbored on Lake Powell in Page, Arizona. He let Mr. Swallow use this houseboat in June 2010, as Mr. Swallow has publicly confirmed. According to a former assistant to Mr. Johnson, Mr. Swallow stayed on the houseboat for a “few days.”<sup>37</sup> (In 2012, Mr. Swallow was sufficiently concerned about his use of Mr. Johnson’s houseboat that he sought Mr. Johnson’s assurance that no “paper trail” existed that could lead investigators to discover it. Ex. 21 at 29:22.<sup>38</sup>)

The evidence also suggests that in June 2010, Mr. Swallow enlisted Mr. Johnson in an effort to raise money for the U.S. senatorial campaign of a political ally of Mr. Swallow’s, now-Senator Mike Lee. Mr. Swallow was “working hard” to raise money ahead of Senator Lee’s June 22 Republican primary. Ex. 22. An email exchange between Mr. Swallow and Mr. Johnson on June 21, 2010 suggests that he had asked Mr. Johnson to round up donations: his email told Mr. Johnson that “four of those checks bounced,” to which Mr. Johnson replied, “I am really sorry about the checks. I will get it fixed ASAP! Let me know whos [sic] bounced. I was in a mad rush to get those so maybe I pushed a few people too hard.” Ex. 22.<sup>39</sup> Mr. Swallow forwarded the email exchange to a member of the Lee campaign staff. These emails suggest that Mr. Swallow had been coordinating fundraising efforts on behalf of Lee with Mr. Johnson. And,

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<sup>37</sup> The same assistant, who said he had handled scheduling for Mr. Johnson’s houseboat and properties, told the Committee that Mr. Swallow used the houseboat again in August 2010, and once more in either September or October 2010; he also said that Mr. Swallow stayed several times in homes that Mr. Johnson owned, including once in a home in St. George just prior to the June 2010 houseboat stay. The witness told the Committee that documentation may exist to corroborate these allegations but did not provide any such documentation to corroborate them. The Committee sought documents from Unlimited Houseboat Services, a company that provided Mr. Johnson with a captain and other services for the houseboat, but the company refused to release its records without a subpoena. The issuance of a subpoena for those records was rendered moot after Mr. Swallow resigned from office.

<sup>38</sup> Chad Elie has also alleged that he saw Mr. Johnson give Mr. Swallow a bag containing \$20,000 in cash. He said that Mr. Johnson pulled the cash from one of many safes on his property in St. George. A court-appointed Receiver in a case against Mr. Johnson has confirmed that Mr. Johnson kept large amounts of cash at some of his properties, but Mr. Elie’s story is otherwise uncorroborated.

<sup>39</sup> The email evidently referred to four bounced checks totaling \$9,600 that the Lee campaign received in June 2010 from Arvin Lee Black, Atia Black, and Matthew Black. Court documents show that the Black family had ties to Mr. Johnson.

the Committee notes that Mr. Johnson himself gave \$2,400 to Mr. Lee’s primary campaign—the federal limit—on June 21, 2010.<sup>40</sup>

At nearly the same time, in early July 2010, a poker industry lawyer sent Mr. Johnson an email referring to the poker interests’ plan to file a lawsuit in Utah in which the industry would seek to obtain a favorable ruling on the permissibility of online poker under State law. The email said, “it is very important that we receive the AG’s view of this proposed action before we file. We would of course like the AG to weigh in with an Amicus brief in support of our requested relief.” Ex. 24.

On July 4, 2010, Mr. Johnson emailed Mr. Swallow, attaching another legal opinion from a lawyer attesting to online poker’s lawfulness. Mr. Johnson added that SunFirst’s poker processing should be deemed legal in the state because Elite Debit, Mr. Elie’s poker processing company, was blocking Utahns from participating, and therefore only non-Utahns were taking part in the online activity. Mr. Johnson wrote, “We have decided that the law is unclear on if Poker is legal to play online if you are residing in Utah so we are blocking transactions from anyone in Utah but we still think it is legal to process the transactions for other states and countries. Let me know your thoughts. Jeremy.”<sup>41</sup>

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<sup>40</sup> An email recovered by the Committee from Mr. Swallow’s personal hard drive reveals that Mr. Swallow asked Mr. Shurtleff in February 2010, “can i [sic] introduce Mike Lee to Jeremy Johnson?” Mr. Shurtleff replied, “Sure.” Ex. 23. This document was produced by Mr. Swallow’s attorney only a week and a half before the filing of this report.

<sup>41</sup> The Committee notes that this email is consistent with AAG Roberts’ memory of discussing with Mr. Swallow whether such a scenario would be a possible way to render online poker processing legal in the State. In a first interview with the Committee, AAG Roberts told the Committee that beginning when Mr. Swallow joined the Office, he (Swallow) would periodically call him with questions about poker or poker processing. (AAG Roberts could not recall the time frame of these calls.) At times, AAG Roberts said, Mr. Swallow seemed to be asking whether something he had just said to someone on those topics, or something he was going to say to someone, was legally defensible under State law. AAG Roberts said that both Mr. Swallow and Mr. Shurtleff used to call him about poker or poker processing issues, and they sometimes asked whether there was “wobble room” (Roberts’s words) in what was allowable under State law. In a second interview with the Committee, AAG Roberts was vaguer in his recollections of these events. He said that Mr. Swallow and Mr. Shurtleff “might have asked over time” about the legality of poker processing, but said he was not certain. He vaguely recalled, however, that one of the scenarios

At this point, Mr. Swallow faced a key decision. He could have advised Mr. Johnson that the answer was “no,” the proposed activity was not legal under Utah’s criminal laws. That was the view he would have heard if he had asked Kirk Torgensen, the Office’s lead attorney in charge of criminal matters. Mr. Swallow also could have referred the issue to Mr. Torgensen, to AAG Roberts, or to another attorney in the Office with substantive expertise in the issue, for an official review. Or he could have declined to respond at all citing Utah law and Office policy regarding such requests for advisory opinions. The Committee is confident that an ordinary Utah citizen would not have expected to receive a substantive response to a request sent to the Chief Deputy Attorney General asking for his “thoughts” about that citizen’s personal legal problems.

Mr. Swallow did not choose any of the options outlined above. His choice became clear the next day, July 5, 2010, when he replied to Mr. Johnson’s email and wrote, “Jeremy, I am not aware of any such law in Utah to prohibit what you are doing. I’ll have one of our assistant attorneys general look into it tomorrow. Let’s talk tomorrow.”

It was a carefully crafted response that threaded the needle between giving Mr. Johnson the official opinion he wanted (but that might ultimately backfire), and providing the bottom-line help that Mr. Johnson asked for. On its face, the email appeared hedged: Mr. Swallow did not take a definitive position, and instead suggested that someone would “look into” the question. But if it were clear that processing online poker payments in Utah was unlawful, the Chief Deputy Attorney General reasonably could have been expected to say that. So a regulator could conclude from the email that, while the Office had not taken a definitive position, the Office recognized that there was room for debate about the issue.

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that his two superiors described was one in which the processing of poker receipts would exclude online bettors in Utah.

At the same time, because the email promised that someone in the Office would look into the question, the email preserved Mr. Swallow's ability to argue that he had not staked out a definitive position and so there was nothing wrong with the email. In fact, Mr. Swallow never asked anyone in the Office to look into the issue. As noted, the Office had a legal expert on gambling law, AAG Thom Roberts. But Mr. Swallow never asked him to study the question as his (Swallow's) email suggested he was going to. AAG Roberts told the Committee that Mr. Swallow never approached him about Mr. Johnson's July 4 request, and AAG Roberts was never informed that Mr. Swallow had provided an opinion to Mr. Johnson.

The Committee concludes that Mr. Swallow's email to Mr. Johnson was improper in at least two respects. First, there is, at minimum, a strong appearance of impropriety when a senior official in the Office of the Attorney General provides an opinion on the scope of Utah law upon the request of a "major contributor" to the Attorney General's campaign and in derogation of the law and rules governing the provision of such opinions. That concern is heightened here, because Mr. Swallow, just weeks before sending this email, had been treated to a several-days' vacation on board Mr. Johnson's luxury houseboat.

Second, Mr. Swallow's email did not reflect a bona fide effort to offer guidance regarding Utah law. As a matter of process, Mr. Swallow improperly excluded the Office's relevant experts in responding to Mr. Johnson's question. Not only did Mr. Swallow not speak to AAG Roberts before (or after) responding, he also left out Mr. Torgensen, then the attorney in charge of the Office's criminal division. Mr. Torgensen told the Committee that he was shocked to learn, after the fact, that Mr. Swallow and Mr. Shurtleff had been communicating with poker industry figures about the legality of processing poker payments through a Utah bank. Mr. Torgensen said that because the poker issue involved an application of Utah criminal law, he was

surprised that neither he nor anyone from the criminal division of the Office was consulted by Mr. Swallow or Mr. Shurtleff on the issue while they were meeting and emailing with poker industry figures.

And, as a matter of substance, Mr. Swallow's email simply did not reflect the view of the Office's experts. AAG Roberts believed that many Utah prosecutors would take the view that state law prohibitions against aiding and abetting gambling should be interpreted to make poker processing a crime. And Mr. Torgensen said he was also surprised to learn of Mr. Swallow's email to Mr. Johnson in part because, in his view, the processing of poker proceeds fell within the definition of money laundering under state law and therefore carried significant legal risk for anyone who engaged in it. Given their expertise, it seems Mr. Swallow normally would have consulted with these two men with knowledge of the law at issue, and would have incorporated their analysis into his response to Jeremy Johnson.

While it was not the official opinion letter that the poker industry had hoped to obtain from the Office, the email from Mr. Swallow was a thing of potential value to Mr. Johnson. It was a statement in writing from the state's second most powerful law enforcement officer that he saw nothing in Utah law that barred an activity for which the federal government was already investigating Elite Debit and SunFirst.

The Committee did not conclusively determine whether Mr. Johnson got an opportunity to use Mr. Swallow's nod toward the legality of poker. As events unfolded, there was little time for anyone to exploit it because the federal government was quickly closing in on SunFirst. In November 2010, federal regulators shut down SunFirst's entire payment processing operation, including of online poker money. A November 8, 2010 letter from the FDIC's San Francisco office to the bank's board of directors said the bank was "in contravention of existing guidance"

regarding Internet gambling, and that its entire payment processing operation “was undertaken without adequate due diligence” and “threatens the Bank’s viability.” On April 15, 2011, the U.S. Attorney’s Office in New York unsealed a superseding indictment charging Mr. Elie, SunFirst VP John Campos, and nine other individuals with alleged illegal gambling or banking-related offenses. Mr. Johnson, though referred to in the charging document as “Elie’s partner,” was not charged.<sup>42</sup> Mr. Elie and Mr. Campos both entered guilty pleas, and each received a sentence of incarceration.

According to the indictment, the SunFirst experiment that Mr. Elie and Mr. Johnson partnered to create processed more than \$200 million in poker payments through SunFirst, and the bank was paid \$1.5 million for the service.

**C. Mr. Swallow Made a Secret Promise to Support the Payday Lending Industry in Exchange for Campaign Support, and then Hid the Industry’s Support From Utah’s Voters**

During the course of its investigation, the Committee encountered allegations that Mr. Swallow’s campaign for attorney general received secret, unreported contributions. It was reported to the Committee that the campaign used various corporate vehicles in order to hide controversial donors from public view.

The Committee found a troubling relationship between the Swallow electoral operation and a string of not-for-profit and campaign entities that shielded from public view the source of contributions that ultimately were used for Mr. Swallow’s benefit. Mr. Swallow was able to direct money from politically inconvenient donors to these entities because, at that time, Utah law did not require those entities to report the donors from whom they received money. The result was that benefits to Mr. Swallow from people or entities he was entangled with were

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<sup>42</sup> News accounts speculated that Mr. Johnson was not charged because the FTC had a pending criminal investigation into his much larger payment processing operation at both SunFirst and other banks, which is discussed below.



hidden from voters. By using these daisy chains of entities, the Swallow campaign maintained the public appearance of independence from individuals and entities that actively sought Mr. Swallow's election, but whose public support would have been a political liability.

The Committee found that the politically inconvenient donors largely came from the payday lending industry. Months before he formally created his own campaign committee, and even longer before he formally declared his candidacy, Mr. Swallow launched his payday industry fundraising efforts with the help of leading payday executive Richard Rawle. Then, Mr. Swallow and his advisors set up a series of entities designed to shield from the public's view the flow of payday lenders' money into the campaign. As time progressed, this increasingly complicated web of secret entities not only allowed Mr. Swallow and his campaign advisor Jason Powers to hide the source of Swallow's campaign funding from the public, but also provided the mechanism to advance the Swallow machine's political agenda while pretending those activities were the actions of an independent organization unrelated to the Swallow campaign.

The Committee concludes that, through its network of political entities and hidden contributors, the Swallow campaign raised approximately \$452,000 that was not reported to the state elections office and that had a pronounced effect on the 2012 Attorney General campaign. The Committee found strong evidence that the movement of money for Mr. Swallow's benefit through a series of such entities helped finance attacks on Mr. Swallow's primary opponent, Sean Reyes, and on a member of the Legislature who had introduced legislation hostile to the politically active payday lending industry, Representative Brad Daw, while giving the Swallow campaign the ability to publicly deny any connection to those politically incendiary operations.

Ex. 25.

It is a central tenet of open and fair elections that voters should have available to them information that discloses the source of a candidate's financial support. Whether, in 2012, the voters of Utah wanted to elect an Attorney General who received such significant financial support from the payday lending industry should have been a decision made by the voters of Utah armed with full knowledge of the sources from which Mr. Swallow had raised his campaign funds. But the Committee concludes that this information was intentionally hidden from Utah's voters by Mr. Swallow and his campaign and that the spirit, if not the letter, of Utah's campaign financing laws was violated by these deliberately non-transparent activities.

### **1. Mr. Rawle's Support of the Swallow Campaign**

The financing of Mr. Swallow's campaign focuses centrally on the relationship he had with payday lending industry giant Richard Rawle.

#### **a. The Beginning of Mr. Swallow's Relationship with Mr. Rawle and the Payday Lending Industry**

Mr. Swallow's relationship with Richard Rawle began, according to Mr. Swallow's sworn testimony in the Lieutenant Governor's investigation, with Mr. Swallow's 2002 and 2004 congressional campaigns. In each of those years, Mr. Swallow ran unsuccessfully for a seat representing Utah in the U.S. House of Representatives. Though he lost both elections, his campaign efforts netted him a powerful political ally in Mr. Rawle.

By 2002, Mr. Rawle was a prominent figure in the Utah business community. He was the patriarch of a Provo-based network of payday loan and check cashing businesses, most visibly including Check City Check Cashing, a multi-state chain of payday lending storefronts, and Tosh Inc., the parent company of Check City. The Rawle family also owned Softwise, Inc., a software company that specialized in check cashing and payday loan software, and Mr. Rawle

was a director of the Community Financial Services Association of America, a national payday-lending industry group.

Mr. Rawle and several Rawle family members donated to Mr. Swallow's 2002 House campaign, contributing \$9,000 in total.<sup>43</sup> According to Mr. Swallow, he was first introduced to Mr. Rawle because of Mr. Rawle's initial contribution to that campaign. Ex. 1 at 192:4-15. According to a witness who knew both men, Mr. Rawle's and Mr. Swallow's political views were aligned, and the two men became good friends by the time of Mr. Swallow's 2004 campaign. Mr. Rawle and his family were major campaign contributors in the 2004 House race: Mr. Rawle, his wife, four children, and their spouses together gave the Swallow campaign a total of \$54,000 for Mr. Swallow's bid.<sup>44</sup> Another Tosh, Inc. director gave an additional \$6,000,<sup>45</sup> bringing the total contributions from the Rawle camp to \$60,000.

Although Mr. Swallow failed to win a congressional seat, his relationship with Mr. Rawle continued to develop. Ex. 1 at 193. Within several years, in 2006 or 2007, Mr. Swallow joined the Rawle family enterprise when he was retained to serve as the general counsel to Check City and its affiliated entities. Ex. 1 at 194. Mr. Swallow moved his private legal practice, Swallow & Associates, into Check City's offices in Utah. In addition to the legal work he did for Check City, Mr. Swallow registered with the State as a lobbyist for Tosh Inc. and Softwise, Inc. Ex. 26.

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<sup>43</sup> According to federal records filed by Mr. Swallow's 2002 congressional campaign, Mr. Rawle and his family made the following political donations: Mr. Rawle contributed \$2,000; his wife Judy Rawle gave \$2,000; his son Tracy Rawle gave \$1,000; his daughter-in-law Janalee Rawle gave \$1,000; his daughter Amber Rawle Callister gave \$1,000; his son Todd Rawle gave \$1,000; and a "Marie Rawle" gave \$1,000. The Committee notes that "Marie" may have been an inadvertent spelling of Marnie Rawle, Mr. Rawle's daughter-in-law, who is listed on the 2004 Swallow campaign's disclosures.

<sup>44</sup> According to federal records filed by Mr. Swallow's 2004 congressional campaign, Mr. Rawle and his family made the following political donations: Mr. Rawle contributed \$6,000; his wife Judy Rawle gave \$6,000; his son Tracy Rawle, \$6,000; his daughter-in-law Jan Rawle, \$2,000; his son Todd Rawle gave \$6,000; his daughter-in-law, Marnie Rawle, \$6,000; his son Tosh Rawle, \$4,000; his daughter-in-law Janalee Rawle, \$6,000; his daughter Amber Rawle Callister, \$6,000; and his son-in-law Greg Callister gave \$6,000.

<sup>45</sup> According to federal records, James Marchesi contributed \$6,000 to Mr. Swallow's 2004 congressional campaign.

From his work with Mr. Rawle and Check City, Mr. Swallow learned the business, and the Committee was told that Mr. Swallow often served as Mr. Rawle's surrogate with the payday loan industry.

In December 2009, Mr. Swallow took on his new position working under then-Attorney General Mark Shurtleff in the Office of the Attorney General. When Mr. Shurtleff announced that Mr. Swallow would join the Office as chief deputy, critics of the payday loan industry questioned Mr. Swallow's affiliation with Check City. Mr. Swallow promised that his past clients would not affect the performance of his public duties, and that if any potential conflicts arose in matters before the Office, he would "have to disclose that and make sure there was nothing I was involved in that would in any way taint what is happening with the state." Ex. 27.

And yet, as we have already seen, while serving in his new public role, Mr. Swallow remained involved in Mr. Rawle's business affairs, including with his payday lending business. As noted, in February 2010, Mr. Swallow brought together Mr. Johnson and Mr. Rawle in a proposed business venture between Check City and I Works. The project, which did not pan out, would have combined I Works' online marketing abilities with the Rawle payday loan and check cashing business. Mr. Swallow, while Chief Deputy, praised Check City, telling Mr. Johnson that "IWorks is getting a discount because of our relationship," and promising that Check City would teach Mr. Johnson the business "as a favor to me."<sup>46</sup> And in September 2010, as discussed in detail below, Mr. Swallow recommended that Mr. Johnson retain Mr. Rawle to try to get I Works out from under an investigation by the Federal Trade Commission. (That

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<sup>46</sup> Because the Committee was unable to interview Mr. Swallow or Mr. Rawle, and because its document subpoenas to Mr. Rawle's companies resulted in litigation and the production of no documents by the Rawle entities, the Committee is unaware whether Mr. Swallow expected or hoped to be compensated for his role if this business venture had succeeded.

transaction, which is the subject of the widely reported “Krispy Kreme meeting,” is discussed at length in the next section of this report.)

After he joined the Office of the Attorney General, Mr. Swallow still helped Mr. Rawle and his enterprise craft political strategy. In an email sent on April 23, 2010, Mr. Swallow wrote to Mr. Rawle, “Mark Shurtleff is holding a fundraiser and I need to talk to you about some others who I’d like for you to support . . . Give my best to my friends back there.” Ex. 28. The following spring, Mr. Swallow arranged a March 21, 2011 meeting between Check City and U.S. Representative Jason Chaffetz. On February 16, 2011, Mr. Swallow wrote to the Chaffetz campaign manager, “Got two corps set up who would like to meet with the Congressman . . . I already have a \$9600 commitment from Check City.” Ex. 29. Mr. Swallow requested that the Congressman spend an hour touring the businesses, and he told the campaign staff that he would “set them up personally” and that he would attend as well. Exs. 30, 31.

**b. The Payday Lending Industry’s Sponsorship of the Swallow Campaign and Mr. Swallow’s Efforts to Keep that Sponsorship a Secret**

Given Mr. Rawle’s past support for Mr. Swallow’s congressional bids, and the close relationship between the two men, the Committee expected that Mr. Rawle would appear as a substantial contributor in Mr. Swallow’s 2012 Attorney General campaign disclosures. But the campaign reported \$0 in contributions from Mr. Rawle. Instead, the public record reads as if one of Mr. Swallow’s most enthusiastic and wealthy supporters abandoned him. The Committee found no evidence that the two men had had a falling out and the lack of public support by Mr. Rawle for Mr. Swallow’s 2012 electoral efforts suggested to the Committee that further inquiry was warranted to determine whether Mr. Swallow’s campaign had received money from Mr. Rawle and others through undisclosed channels.

That line of inquiry led the Committee to conduct a review of the Rawle-Swallow relationship and the financing of Mr. Swallow's campaign. Given Mr. Rawle's death and Mr. Swallow's refusal to be interviewed by the Committee, the investigation of their relationship focused on a review of relevant documents and interviews of individuals affiliated with the two of them. The Committee interviewed dozens of witnesses, including Swallow campaign staffers and government officials, some of whom made documents available to the Committee. The Committee also reviewed campaign disclosures and many documents made available by government agencies and obtained under subpoena.

The Committee's investigation was made more difficult by the lack of cooperation it received from Mr. Rawle's businesses and from Mr. Powers. Certain individuals and businesses associated with Mr. Rawle declined to cooperate with this investigation. Additionally, counsel for Softwise, Inc. declined to allow the Committee to conduct a follow-up interview of a key witness on a topic that surfaced after the Committee first spoke with the witness. As discussed above, two of Mr. Rawle's corporations, Softwise, Inc. and Tosh Inc., failed to respond to document subpoenas and instead, Softwise, Inc. moved to quash the subpoena in court. The seven subpoenas issued to Mr. Powers and the campaign entities discussed below also went unanswered and led to litigation. In short, entities and individuals the Committee believed had information that would expose facts that had been carefully hidden from public view took aggressive and expensive steps to resist the Committee's investigation. Despite this, the Committee uncovered the truth regarding the relationships that these individuals and entities had with Mr. Swallow.

The Committee found that Mr. Rawle was one of Mr. Swallow's biggest supporters and a very significant donor to his 2012 campaign for Attorney General. As set forth below, Mr.

Rawle was involved in Mr. Swallow's campaign months before Mr. Swallow declared his candidacy. Mr. Rawle and his family personally provided undisclosed funds and office space intended to support Mr. Swallow's campaign. And more broadly, he marketed Mr. Swallow to the payday lending industry while Mr. Swallow promised that industry he would actively support it while in office. And then Mr. Swallow, working with the assistance of Mr. Rawle's consultant, Jason Powers, constructed a campaign machine designed to hide the deal Mr. Swallow had made with the industry, allowing the industry to pour funds into his campaign effort without public disclosure. And, all the while, Mr. Swallow publicly and falsely proclaimed his independence from payday lending interests.

## **2. The Beginnings of Mr. Swallow's Campaign and the Plan to Court the Payday Industry**

### **a. Building the Swallow Campaign**

Before Mr. Swallow even joined the Office as Chief Deputy, many believed he would succeed his boss to become the next Attorney General, and Mr. Swallow actively promoted that view. By the spring of 2011, Mr. Swallow was planning to run in the 2012 race to lead the Office, and he hired Jason Powers as his senior campaign advisor to help him do so.

Mr. Powers and Mr. Swallow had known each other for years. Mr. Swallow had retained Guidant Strategies, the campaign consulting firm run by Mr. Powers in Park City, Utah for his own campaigns, and over the years Mr. Swallow had recommended other clients to the firm. Mr. Swallow was responsible for helping Mr. Powers land several major clients, including the Utah Consumer Lending Association (a payday lending organization), and Mr. Rawle's payday lending businesses. Also, in the years before Mr. Swallow took office, he was apparently paid

by Mr. Powers for certain “consulting work” Mr. Swallow performed.<sup>47</sup> Finally, Mr. Swallow and Mr. Powers were business partners in Infolock, which made software allowing customers who lost their cell phones to have the data on the phone completely deleted.<sup>48</sup> So by the time Mr. Swallow began paying Mr. Powers for advice about the 2012 attorney general race, Mr. Swallow had been locating big clients for Mr. Powers, and Mr. Powers had been bringing significant business opportunities and money to Mr. Swallow.

### **b. The Payday Dilemma**

As he pondered his race for Attorney General, Mr. Swallow undoubtedly recognized that mounting a state-wide campaign, a race which would include a spirited Republican primary battle as well as the general election, would require raising significant sums of money.<sup>49</sup> For Mr. Swallow, one likely source of considerable financial support was the payday lending industry that, thanks to Mr. Rawle, was an industry Mr. Swallow knew well. But financing a political campaign with payday lenders’ money carried significant political risk. The industry and its practices have been the subject of considerable criticism, with some maintaining that the industry preys on the poor and charges unconscionably high interest rates that can reportedly be as high as

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<sup>47</sup> Mr. Swallow testified in the Lieutenant Governor’s investigation that Mr. Powers paid a Swallow family entity called P Solutions \$7,000 in May 2011, while Swallow was Chief Deputy, for campaign consulting work that Mr. Swallow claimed he had done before taking office. Ex. 1 at 145:20-24.

<sup>48</sup> In his testimony in the Lieutenant Governor’s investigation, Mr. Swallow recalled that Mr. Powers brought him an opportunity to become a 50-50 partner with Mr. Powers in Infolock, which was formed in 2009. Ex. 1 at 102-04. It was the interest in the venture that later became Infolock that led Mr. Swallow to seek the estate planning advice provided from Lee McCullough in 2008.

In addition, documents recovered by the Committee from Mr. Swallow’s hard drive reveal that Mr. Swallow and Mr. Powers continued to pursue joint business opportunities while Mr. Swallow was in office. In 2011, the two men explored a franchise opportunity involving GungHo energy supplements. Exs. 32, 33, 34, 35, 36. It is unclear from these documents, which were produced by Mr. Swallow’s counsel only a week and a half before the filing of this report, whether Mr. Swallow derived any income from the venture.

<sup>49</sup> A document recovered by the Committee from Mr. Swallow’s personal hard drive reveals another reason why a successful fundraising operation was important. On March 10, 2011, Mr. Swallow emailed Mr. Powers about the possibility of Mr. Swallow later running for governor. He wrote, “the tea party groups are going to be very upset with the Governor and he has not taken a lead in some of the important issues. Is he going to be vulnerable? Who do you know that could take him? Could I if I raised \$500k to \$750k for a Convention or Primary? Strategy would be to prep for AG race and wait and see.” Ex. 37.



1,564%. Ex. 38 at 137. Whether the voters of Utah would elect as their attorney general a candidate seemingly beholden to the payday lending industry was a very real concern for the Swallow campaign.

This posed a dilemma for Mr. Swallow and his team: Was there a way to fund his campaign with payday lenders' money without the voters knowing? If so, he could have his cake and eat it, too. His campaign could be flush with money from the payday industry but he would not be vulnerable to political attack for taking the funds. So as much as Mr. Swallow wanted or felt he needed financial support from the payday industry, the Committee found, he was determined to hide that support from public view.

**c. Mr. Swallow's Payday Pitch**

The Committee found that by spring 2011, Mr. Swallow was determined to secretly raise hundreds of thousands of dollars from the payday industry. To do so, he and Mr. Powers would construct a series of alternative entities to receive, shuffle, and eventually spend, the money they hoped to raise. Of course, they would first have to convince the payday lenders to contribute large sums of money. While the secret network they constructed used a series of entities designed to obscure from public view what was going on, the appeal to the payday lenders was crystal clear and it was made by Mr. Swallow himself.

One email to the president of a Tennessee payday lender came from Mr. Swallow on March 7, 2011—more than nine months before Mr. Swallow's public announcement that he would run for Attorney General. "I look forward to being in a position to help the industry as an AG following the 2012 elections," Mr. Swallow wrote. Ex. 11. On March 16, 2011, Mr. Swallow sent an email to a campaign staffer with a long list of "Findraising [sic] donors" that included "Payday Companies--\$50,000," "Richard Rawle," "Online lenders," and many others

from whom Mr. Swallow apparently hoped to raise a total of \$500,000.<sup>50</sup> Ex. 39. Then, on June 29, 2011, Mr. Swallow confidentially told leaders of Utah's payday loan industry that he was committed to rescuing them from regulatory dangers that were closing in around them, and he promised to advance their interests generally. He then made a pitch for the large sums he expected from their industry. It was a brazen linking of an aggressive pitch for political cash with a commitment to deliver results for the donors.

The email was directed to Kip Cashmore, who headed a payday lender in Ogden, Utah, called USA Cash Services and who was vice president of the Utah Consumer Lending Association (the same association that Mr. Swallow reportedly steered to Guidant Strategies). Copied on the email was Mr. Rawle, payday heavyweight and patron of Mr. Swallow. Ex. 41. Mr. Swallow wrote:

As AG, I will be in a position to help other AGs understand the importance of the cash advance industry. With the passage of the Dodd Frank bill, the CFPB [the federal Consumer Financial Protection Bureau] was created, giving far reaching power to the State AGs. This industry will be a focus of the CFPB unless a group of AG's [sic] goes to bat for the industry. I am ready and willing to help lead out on that, and having worked with the Utah Association and also in Montana and Wyoming, I well understand and can help create a critical mass of support among the conservative AGs. I have already presented on a panel before AG's [sic] on the CFPB issue.<sup>51</sup>

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<sup>50</sup> Another potential donor on this list was Jeremy Johnson, and \$20,000 was listed next to his name as an apparent fundraising goal. By the time this email was sent, it was well known that the FTC had taken action against Mr. Johnson, as the complaint in that matter was filed several months prior and had attracted widespread attention. Thus, this email shows that Mr. Swallow sought to raise money from someone whom the federal government was accusing of widespread fraud.

The next month, Mr. Swallow sent an updated version of the fundraising list to Mr. Powers. The new April 12, 2011 version had been expanded to include additional prospective donor names, including Kip Cashmore, a payday lending executive discussed below. Ex. 40. This document was also recovered by the Committee from Mr. Swallow's personal hard drive.

<sup>51</sup> The Committee learned that Mr. Swallow also trumpeted his influence with the Republican Attorneys General Association (RAGA) when soliciting the support of payday lenders. A witness told the Committee that Mr. Swallow aspired to become president of RAGA. In that position, Mr. Swallow would have been able to advocate for payday issues on the national stage. During his campaign for Attorney General, Mr. Swallow tapped other

Mr. Swallow went on to say that he had already received commitments from the payday industry to raise money for him, including a \$100,000 commitment from the Online Lenders Alliance, an association of Internet-based payday lenders.

But, Mr. Swallow explained, it would be best if the money did not come from publicly identifiable payday companies. He said, “As much as possible, I would like to raise money from companies and individuals not tied to payday, so I do not make this a payday race.” Mr. Swallow’s point was that payday companies, to the greatest extent possible, should contribute to him using entities with innocuous sounding names, or through people whose ties to the payday business were not easily traceable. He suggested two ways that the industry could direct campaign donations to accomplish this goal: (1) send the funds from a different, non-payday business entity (Mr. Swallow appealed to them that if payday sources “have another company that does not do payday, so much the better”); and (2) direct any payday funds to a separate political action committee that would support Mr. Swallow but publicly provide separation between him and industry money.

Having made the pitch for industry money and explicitly linked his election to actions he would take to support the industry, Mr. Swallow ended the email with a request, “Please do not forward this email.”

**d. With Mr. Rawle’s Support, An Early Payday Fundraising Trip**

The \$100,000 commitment that Mr. Swallow touted in his email had likely been obtained just a few days prior. The Committee found that Mr. Swallow’s June 29, 2011, email to the payday executives followed shortly after a fundraising visit by Mr. Swallow to Midwestern payday officials. During the week before he sent his June 29 email, the Committee believes Mr.

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RAGA insiders for their support, and the Committee understands that a number of the payday donors discussed in this section also had close connections to RAGA.

Swallow traveled to Kansas City, Missouri, to meet with executives from companies that recruit payday borrowers over the Internet. This sector of the industry is represented by an organization called the Online Lenders Alliance (OLA), the same organization that, according to Mr. Swallow's pitch email, committed to raising \$100,000.

The OLA's membership and sponsorship director, Greg Porter, told the Committee that he helped arrange Mr. Swallow's visit to Kansas City to meet some OLA members because, he said, the city is home to a cluster of online loan companies. Mr. Porter said the online lenders were new to Mr. Swallow. "John didn't know much about the online side [of the payday industry]; he knew about the storefront side," Mr. Porter said. Mr. Porter said Mr. Swallow knew well about storefront payday lenders because of his role as general counsel of Mr. Rawle's Check City and Mr. Swallow's affiliation with the Consumer Financial Services Association of America, the national payday lending group for which Mr. Rawle served as a director. Asked why the OLA supported Mr. Swallow, Mr. Porter said, "he served in one of the companies. When you have friends running for office, you support them. We knew him. . . . Obviously we're supportive of John."<sup>52</sup> Mr. Porter was more candid in an email he sent to OLA member Cash America to solicit a donation. He requested "\$5,000 (corporate) for John Swallow" and wrote, "We are supporting him heavily because he will be a great advocate for us if we get him in office . . . ." Ex. 42.

Mr. Swallow's connections to the Utah payday industry not only garnered the OLA's support; they also helped pay for the trip. The Committee found evidence that the trip was funded by Mr. Rawle with cash he provided to Mr. Swallow on a prepaid debit card. According to Mr. Swallow's testimony in the Lieutenant Governor's investigation, Mr. Rawle had opened a

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<sup>52</sup> Mr. Porter added that he knew of no action that Mr. Swallow took as Chief Deputy or as Attorney General that benefitted the OLA.

Netspend prepaid debit card account in Mr. Swallow's name as a way for Mr. Rawle to pay Mr. Swallow for gold coins that Mr. Swallow sold to Mr. Rawle. In his testimony, Mr. Swallow said that before he left Check City to become Chief Deputy Attorney General, Mr. Rawle gave him 12 one-ounce pure gold coins as a gift. Ex. 1 at 51:9 - 52:16. After becoming Chief Deputy, Mr. Swallow decided to sell the coins because, he told the Lieutenant Governor's Office, he "wanted to have a little bit of extra expense money." According to Mr. Swallow, Mr. Rawle agreed to repurchase the coins he previously had given Mr. Swallow as a gift and, between June 2011 and February 2012, Mr. Swallow sold the coins back to Mr. Rawle, one or two or three at a time, for about \$1,300 apiece. Rather than write a check to Mr. Swallow, Mr. Rawle instead made deposits to the Netspend account as the coins were sold. In total, Mr. Swallow received \$17,000 from Mr. Rawle on this prepaid card.<sup>53</sup>

The Committee found evidence to suggest that Mr. Swallow used the Netspend account to pay expenses related to the Kansas City trip. The Committee notes that the Netspend account was created, and the first deposit received, on June 1, 2011—the same month that Mr. Swallow began to build his campaign and fundraising structures. The next deposit, in the amount of \$1,900, was added to the Netspend card on June 27, 2011, and just one day later the card's account statement reflects a charge for the Intercontinental Hotel in Kansas City.<sup>54</sup>

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<sup>53</sup> The Lieutenant Governor's investigation found that Mr. Swallow failed to properly report this income on his tax returns. According to the Netspend records, Mr. Swallow's account received \$13,500 during 2011, none of which was reported on his 2011 tax returns. It was not until 2013, when Mr. Swallow's 2012 tax returns were prepared and after public allegations concerning Mr. Swallow had arisen, that he partially accounted for the money. The Lieutenant Governor's investigation concluded that Mr. Swallow only reported on his 2012 tax returns the \$15,600 that Mr. Swallow and Mr. Rawle had allegedly agreed upon, and not the full \$17,000 that Mr. Swallow actually received. Ex. 43 at 8.

<sup>54</sup> There are conflicting dates in the documents obtained by the Committee related to the Kansas City trip. A May 30, 2011 email indicates that Mr. Swallow originally planned to tack on a trip to Kansas City after a National Association of Attorneys General meeting in Chicago that was held June 19 to June 22. Because, as noted above, the Kansas City hotel charge was incurred on June 28, according to the Netspend account records, the Committee believes that Mr. Swallow was likely in Kansas City on or about June 28, but the Committee could not confirm this date. Mr. Porter did not recall the precise date of the trip, and none of Mr. Swallow's calendars that were provided

After he returned from the trip, Mr. Swallow let Mr. Rawle know, in the June 29, 2011, email described earlier, that OLA, the payday group whose members he had visited in Kansas City, had committed to raise \$100,000 for him. As discussed below, the Committee believes much of that money would later flow from the OLA's members through hidden channels. But some contributions are revealed in campaign disclosures. The Committee's review of Utah's campaign finance records revealed that on one day in mid-September 2011, five contributions totaling \$20,000 went to a political action committee that Mr. Swallow had identified in his original email to Messrs. Cashmore and Rawle as a likely recipient of funds to be used to support him quietly, the Protect Utah PAC. Mr. Porter confirmed that those donors were the same OLA members Mr. Swallow met on that Midwestern trip.

Though these contributions to the PAC were disclosed in State records, they nonetheless provide an illustration of how even these kinds of publicly reported political donations can be confusing to the public. Of the five donations (all from Kansas or Tennessee), three came from companies with non-descriptive names, such as Rare Moon Media LLC, and the other two came from individuals with no easily detectable connection to the payday business.

Identifying some of those donors was no easy task for the Committee, and it would have been even more difficult for members of the public to uncover the connections to the payday industry. Utah campaign finance records showed, for example, that Telepayment Solutions of Shawnee Mission, Kansas, contributed \$5,000 to Mr. Swallow's Protect Utah PAC in September 2011. The Committee could not locate a working telephone number for Telepayment. Searching corporate records nationwide, the only entity the Committee found with that name was Telepayment Solutions, LLC, a Delaware-registered company that filed designations as a foreign

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to the Committee contained any notes about the visit to Kansas City. The Committee would have liked to ask Mr. Swallow about this issue but, as we have noted, he refused to be interviewed by the Committee.

company in December 2011, according to yet another source, the Nevada Secretary of State's online records. These records showed that the manager of Telepayment Solutions was Mark Curry, who had a Las Vegas address. The Committee concluded that Mark Curry is the person who, in 2007, purchased a townhouse at 330 Maryland Avenue NE in Washington, D.C. The Committee found that Catalyst Group, a public advocacy firm in which OLA's Mr. Porter is a partner, lists the townhouse as its address, as well. Mr. Porter told the Committee that Mark Curry indeed runs Telepayment and is a co-founder of OLA who has been generous to its cause. This is just an example of how difficult it would have been in 2012 for voters in Utah to understand even the limited public disclosures concerning Mr. Swallow's financial connections to the payday industry.<sup>55</sup> It is also an example of the efforts the Committee was required to undertake without access to many of Mr. Swallow's emails—documents that, it turned out, had resided on Mr. Swallow's home hard drive and were only provided to the Committee in 2014 after the Committee undertook extensive forensic recovery efforts.

Indeed, as discussed below, in January 2014 Mr. Swallow provided the Committee with more than a thousand emails that had been recovered from his home computer's supposedly non-operable hard drive. Several of these recovered emails pertain to Mr. Swallow's fundraising trip to Kansas City, and one includes an itinerary of the meetings that Mr. Porter had scheduled for Mr. Swallow. Ex. 45. The Committee found that all four of the individuals listed on Mr. Porter's itinerary contributed to Mr. Swallow, and all had ties to payday lending that were at

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<sup>55</sup> Mr. Curry may have been drawn to Mr. Swallow because of the candidate's expressed willingness to advocate for the payday industry with state attorneys general. A number of states have filed formal complaints against Mr. Curry and one of his payday companies, Geneva-Roth, alleging they engaged in a range of improprieties. In 2010, for example, Arkansas officials filed a complaint against Geneva-Roth and Mr. Curry saying that they charged interest rates as high as 1,365% APR (annual percentage rate), a loan rate the complaint described as "unconscionable and usurious." Ex. 44 at 2, 4. An attorney for Mr. Curry told the Committee that Mr. Curry decided to donate to Mr. Swallow's campaign in 2011 via his Telepayment company not because he wanted to disguise ties to the payday business, but out of convenience. This same lawyer said the payday industry is often misunderstood, and that when a weeks-long or months-long loan is expressed as an annual loan rate, it can seem extremely high.

times difficult to discern from the campaign disclosures. The same Mark Curry discussed above was on the itinerary, as was Josh Mitchem, a trustee of Rare Moon Media LLC, also discussed above. A third individual on the itinerary, Josh Landy, is the sole officer and director of Northern American Universal Management Inc., which also contributed \$5,000 to the Protect Utah PAC in September 2011. The fourth individual, Bart Miller, is the CEO of Centrinex, an OLA member that contributed \$2,500 to Mr. Swallow's campaign in December 2011.<sup>56</sup>

**3. Building the Campaign Web: How Mr. Swallow Shielded Payday Support from Public View**

**a. Step One: Utah's Prosperity Foundation and Protect Utah PAC**

**i. Establishing Two New PACs**

When Mr. Swallow began to court the payday industry, he had not yet officially launched his own campaign committee. Under Utah law, a candidate's campaign committee is the "committee appointed by a candidate to act for the candidate,"<sup>57</sup> and Mr. Swallow's committee, Friends of John Swallow, would not be established for another five months. But there was another path that allowed the payday money to get to Mr. Swallow, and in fact documents recovered by the Committee from Mr. Swallow's personal hard drive show that the payday money was never intended to come directly into Mr. Swallow's campaign. As early as March 2011, Mr. Swallow described the targeted fundraising donors—which, discussed above, included Richard Rawle, payday companies, and online lenders—as "[t]hose to contribute to Jason's private company" or, in other words, not directly through Mr. Swallow's campaign. Ex. 39.

By June 2011, an alternative route for the donations was created. On June 30, 2011, one day after Mr. Swallow sent his email pitch to Mr. Cashmore and Mr. Rawle, two PACs that Mr.

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<sup>56</sup> As discussed below, Centrinex also later contributed \$2,500 to another entity, PRGEA.

<sup>57</sup> Utah Code Ann. § 20A-11-101(30).



Swallow mentioned by name in his email, Utah’s Prosperity Foundation and Protect Utah PAC, were formed. Under Utah law, a PAC is “an entity, or any group of individuals or entities within or outside this state, a major purpose of which is to” solicit or receive contributions or make expenditures for political purposes.<sup>58</sup> Like candidate committees, PACs are required to register with the State and to report contributions and expenditures.<sup>59</sup>

On June 30, 2011, Utah’s Prosperity Foundation was created as a non-profit PAC with Swallow campaign consultant Mr. Powers listed as its registered agent. Ex. 46. According to the PAC’s statement of organization, Mark Shurtleff was the primary officer, Mr. Powers the second officer, and Corie Chan, who would also become the Swallow campaign’s treasurer, the CFO.<sup>60</sup>

The Committee concludes that, notwithstanding Mr. Shurtleff’s role as the primary officer, this non-profit PAC was created not for the benefit of Mr. Shurtleff, but instead for the benefit of Mr. Swallow. At the time of its creation, Mr. Shurtleff was not running for any office. More than a year had passed since Mr. Shurtleff had dropped out of a race for the United States Senate, and months had passed since he announced he would not run again for Utah Attorney General. Ex. 47. Indeed, in an email sent months before the PAC was even created, a campaign staffer wrote Mr. Swallow, “More money in Mark’s PAC is more money for you down the road.” Ex. 48. In essence, the Committee concludes, Utah’s Prosperity Foundation was formed to allow contributors to support Mr. Swallow while creating the impression that the PAC was for the benefit of Mr. Shurtleff.

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<sup>58</sup> Utah Code Ann. § 20A-11-101(32).

<sup>59</sup> See Utah Code Ann. § 20A-11-101(601) – (603).

<sup>60</sup> Ms. Chan’s roles in the Protect Utah PAC and Proper Role of Government Defense Fund are discussed below.

The Committee's investigation found that, over the course of Mr. Swallow's campaign, the following contributions were made to Utah's Prosperity Foundation by payday industry companies:

- Cash America, a Fort Worth, Texas company, contributed \$5,000;
- QC Holdings, an Overland Park, Kansas company, contributed \$5,000;
- Axxess Financial Services, a Cincinnati, Ohio company, contributed \$10,000;
- TC Loan Services LLC, a Fort Worth, Texas company, contributed \$10,000.

Exs. 49 at 2, 50 at 2.

Also on June 30, 2011, a political action committee known as Protect Utah PAC was formed as a non-profit corporation in Utah. Ex. 51. Mr. Powers was listed as the registered agent and the registered address for Protect Utah PAC was identical to that of the Shurtleff entity, Utah's Prosperity Foundation. Ex. 52. According to its statement of organization, Jeffrey Eastman was listed as the Protect Utah PAC's primary officer, Brad Pelo<sup>61</sup> as the second officer, and Corie Chan as the CFO.

In 2011, Protect Utah PAC received \$95,000 in contributions, and its total expenditures were \$89,000, of which \$75,500 was diverted to Utah's Prosperity Foundation in December 2011. Ex. 53 at 3. As discussed below, Utah's Prosperity Foundation would later funnel hundreds of thousands of dollars into Friends of John Swallow, Mr. Swallow's campaign committee.

As the contributions that followed Mr. Swallow's Kansas City fundraising trip reveal, not only did payday entities make contributions to benefit Mr. Swallow through these PACs, but a number of the contributors seemed to follow Mr. Swallow's request to contribute through, as he

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<sup>61</sup> In 2002, Mr. Pelo and Mr. Swallow co-founded On International, Inc., a company that attempted to develop a "super light bulb," according to a media report.

put it in his June 2011 email, “another company that does not do payday.” The Committee was told that the Swallow campaign asked payday contributors to give money via a holding company or media company to shield the fact that it was coming from the payday industry. This is one of a number of reasons it would have been difficult for the citizens of Utah to identify some of the payday money as such.

The Committee concludes that the network of campaign entities, starting with Utah’s Prosperity Foundation and Protect Utah PAC, was created specifically to implement the contribution laundering strategy that Mr. Swallow and his advisors had been developing for months. While Mr. Swallow’s connection to the network was not evident to Utah voters, documents recovered by the Committee from Mr. Swallow’s personal hard drive reveal that Mr. Swallow had direct knowledge of and involvement in the entities’ creation. One email provided to the Committee from the recovered drive on February 26, 2014, shortly before the filing of this report, shows that on June 14, 2011 (weeks before the entities were registered), Mr. Swallow was provided Utah’s Prosperity Foundation’s tax identification number. Ex. 54. Another recovered document reveals that Mr. Swallow was involved in discussions about whether his name should be listed on the PACs—these communications also show, in stark black and white, the real reason for the PAC network. A campaign staffer wrote, “If payday money is going into Proper Role of Government Defense Fund, is there any reason why [Mr. Swallow] shouldn’t be on his own PAC?” Ex. 55. But for the forensic recovery efforts undertaken by the Committee, these facts would never have come to light.

#### **ii. Using Free, Unreported Payday Office Space**

The Committee learned that, as the groundwork was being laid for the campaign, and at a time when funds and other resources may have been low, Mr. Rawle allowed the campaign to use office space at two Check City locations without charge. Neither Mr. Rawle nor the

campaign disclosed an in-kind contribution regarding the use of Check City's offices for campaign activity.

The Committee was told that from August to November 2011, Mr. Swallow and his campaign staff used office space at two Check City locations multiple times to meet and make campaign calls. The Check City facilities were located at State and 21st South in Salt Lake City, and at 106th Street in Sandy. The Committee understands that Mr. Swallow went to each location approximately a dozen times and that he also met with Mr. Rawle during the campaign at Mr. Rawle's office in Provo. The substance of the meetings that occurred between Mr. Swallow and Mr. Rawle is unknown.<sup>62</sup> But the fact of Mr. Rawle's continued involvement as a go-between for Mr. Swallow's campaign and the payday industry during this time is clear. On September 6, 2011, Mr. Swallow forwarded a news article about the Attorney General's race to Mr. Rawle and asked, "Can you get this to our supporters like Cashmore and friends?" Ex. 57.

**b. Step Two: The Swallow Campaign Committee is Formed**

On November 20, 2011, Friends of John Swallow, Inc. was formed as a non-profit corporation in Utah, according to Utah Secretary of State records, which noted its purpose as "campaign committee for John Swallow." Ex. 58. In January 2012, six months after he sent his email to Mr. Cashmore and Mr. Rawle and began to solicit payday money, Mr. Swallow formally announced that he would run for attorney general. Ex. 59.

The Committee found that over the course of the 2012 campaign, about \$965,000 flowed in to Friends of John Swallow, the candidate's campaign committee. The money swirled in and out of various PACs. Some \$95,000 of the money raised by Mr. Swallow was directed to the Protect Utah PAC. And approximately \$437,000 first came in to the PAC associated with Mr.

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<sup>62</sup> Even after the campaign rented its own space in November 2011, the free use of Check City office space seems to have continued. A document obtained by the Committee shows that Mr. Swallow and his campaign staff scheduled a meeting at Check City's offices in early January 2012. Ex. 56.

Shurtleff, Utah's Prosperity Foundation, more than half of which was then passed on to Friends of John Swallow. Between December 2011 and August 2012, Utah's Prosperity Foundation contributed \$262,000 to the Swallow campaign entity. From August 2011 to October 2012, Utah's Prosperity Foundation gave \$115,000 to another PAC, Shurtleff 2008,<sup>63</sup> in more than 11 contributions. The movement of money was, the Committee concludes, an effort at contribution laundering that, strictly speaking, may have been legal under Utah law but that completely undermined the intent of Utah laws requiring transparency in the campaign funding process. For a voter to analyze Mr. Swallow's campaign contributions, one would have needed to first trace the money trail back to Utah's Prosperity Foundation and then research who had given to that PAC. A simple look at Mr. Swallow's own campaign disclosures would not have shown the whole picture of the money that came in.

The Committee further notes that Mr. Powers' consulting company, Guidant Strategies, was paid for consulting for a number of the entities discussed above: Friends of John Swallow paid Guidant Strategies, \$275,499; Protect Utah PAC paid Guidant \$12,000; and Utah's Prosperity Foundation gave it \$63,000.

**c. Step Three: The Proper Role of Government Education Association (PRGEA)**

**i. PRGEA's Non-Profit Status**

By August 2011, the Swallow campaign determined that there was a better way to shield payday donors from public view. The Committee found that the Swallow campaign created a new construct, which constituted a kind of parallel universe, where almost nothing was reported publicly and contributions could be made in secret. Money was passed through daisy-chains of

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<sup>63</sup> Shurtleff 2008 had been formed in April 2008, according to Utah Department of Commerce records, which noted its purpose was to "operate Mark Shurtleff's campaign for Attorney General and other charitable purposes." Ex. 60. The Committee notes that Shurtleff 2008's registration status expired in May 2011.

opaque entities, with the result that campaign goals were accomplished without anyone being able to trace who funded the campaign. Whereas it was difficult before for members of the public to trace money given to the Swallow campaign through the political action committees described above, now it became nearly impossible.

On August 4, 2011, a new entity was registered with the State that was run by the same political professionals who administered the Swallow campaign entities that operated slightly more visibly to the Utah public. A nonprofit called the Proper Role of Government Education Association (PRGEA) was created under Mr. Powers' name. Ex. 61. At the time of incorporation, the directors were Mr. Powers; his wife, Malinda Powers; and Jessica Fawson, Mr. Swallow's campaign manager.<sup>64</sup> The Committee was told that Ms. Chan—the accountant or director of Mr. Swallow's campaign committee and of the Protect Utah PAC and Utah's Prosperity Foundation—became the bookkeeper for PRGEA. The Committee reviewed documents indicating that Anthony J. Ferate, an Oklahoma lawyer who has been identified publicly with setting up a number of PACs and 501(c)(4) entities, was PRGEA's attorney.<sup>65</sup>

Beyond the fact of shared campaign staff, Utah's voters would not have been able to uncover ties between Mr. Swallow and PRGEA. But those ties existed even before PRGEA was formally established. The Committee obtained an email among Mr. Swallow, Mr. Powers, and a Swallow campaign staff member that reveals the truth. In the email, sent on July 29, 2011, one week before PRGEA was registered, the campaign staffer asked Mr. Swallow and Mr. Powers about obtaining liability insurance “for all 3 PACs” and also asked, “Jason, do you think we will

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<sup>64</sup> On May 4, 2012, Dan Hauser replaced Jessica Fawson as a director, according to the Utah Department of Commerce.

<sup>65</sup> Mr. Ferate was also the attorney for Fight for the Dream, a super PAC that purchased negative advertisements in a 2012 GOP Pennsylvania primary, and was part of a larger daisy-chain of political entities, according to an August 2012 OpenSecrets article. The Committee sought to interview Mr. Ferate about the matters discussed in this report and even sent him a list of questions that the Committee wanted to ask. The Committee never heard from him again after he received the list of questions.

need it for the 501 [i.e., PRGEA]? Maybe I should ask AJ what he thinks.” Ex. 62. Thus, Mr. Swallow was, from the earliest stages, aware of PRGEA’s role in his campaign. The Committee notes that the email establishing his early awareness was not provided to the Committee by Mr. Swallow until January 2014. It was among the documents that the Committee’s forensic expert recovered from Mr. Swallow’s supposedly non-operable personal hard drive.

PRGEA filed tax forms with the Internal Revenue Service as a so-called 501(c)(4) entity, named for the section of the tax code that establishes its tax-exempt status. On its tax forms, the organization’s listed purpose was “to educate the citizenry on the proper role of government.”

Unlike the political action committees first used by the Swallow machine to distance itself from controversial contributors, as a 501(c)(4), PRGEA did not have to register with the Utah elections office, much less disclose its donors or the amount of money it raised. At the time of the Swallow campaign, the disclosure obligations of these third-party entities were rather limited under Utah law. Thus, by creating PRGEA, the campaign hoped to be able to keep voters completely in the dark about the identity of the industries and individuals funding political activities on Mr. Swallow’s behalf.<sup>66</sup>

ii. **Payday Contributions to PRGEA at Mr. Swallow’s Request**

The Committee has concluded that Mr. Swallow and Mr. Powers used PRGEA to raise hundreds of thousands of dollars away from public scrutiny, mostly from the payday industry. An email recovered from Mr. Swallow’s personal computer’s hard drive shows that the payday industry contributed \$75,000 (and pledged another \$90,000) to PRGEA in 2011 for the “Wasatch

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<sup>66</sup> A year ago, the Legislature addressed one component of the problem when lawmakers approved HB 43, which requires a political issues committee, such as a 501(c)(4) entity, making at least \$750 in political expenditures to disclose “a detailed listing of all contributions received and expenditures.” Utah Code Ann. § 20A-11-802. As noted, however, this was not the law at the time of the 2012 Attorney General campaign.

Shotgun Blast” fundraiser hosted by Mr. Swallow and Mr. Shurtleff. Ex. 63. Mr. Powers emailed a list of the event’s donors to Mr. Swallow on October 5, 2011, noting that the list “contains the 501c4 contributors.” A spreadsheet attached to the email showed that PRGEA had received \$5,000 from CashAmerica and \$10,000 each from: Check into Cash, Check n Go AKA: Axxess Financial, QC Holdings, Cottonwood Financial, USA Cash Services, Texas EZPawn, and Money Tree. The spreadsheet also indicates that the following individuals pledged to contribute the following amounts:

- Kip Cashmore, \$40,000
- Mike Turpen, \$20,000
- Richard Rawle, \$10,000
- “Ricardo (Evan Bybee),” \$10,000
- “Advance America: Carol Stewart,” \$10,000

This recovered email shows that Mr. Swallow was keenly aware that a significant amount of payday money was being laundered through PRGEA for his own benefit. In total, documents reviewed by the Committee suggest that approximately \$452,000 came in to PRGEA. The Committee reviewed documents (including the date, company making the contribution, and “notes” sections) indicating that PRGEA received the following checks:<sup>67</sup>

- September 6, 2011; QC Holdings; \$10,000; notes: Mike Waters
- September 6, 2011; Axxess Financial Services Inc.; \$10,000; notes: John Rabenold
- September 7, 2011; Texas EZ Pawn, LP; \$10,000
- September 8, 2011; USA Cash Services; \$10,000; notes: Kip Cashmore

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<sup>67</sup> As noted earlier, PRGEA and other Jason Powers-related entities refused to comply with the Committee’s subpoenas. Without access to PRGEA’s financial records, the Committee was unable to determine whether some of these contributions are duplicative of the entries listed in the “Shootout Report” email discussed above.



- March 28, 2012; Advance America; \$10,000; notes: Carol A. Stewart
- April 30, 2012; Axxcess Financial Services Inc.; \$10,000; notes: John Rabenold
- May 3, 2012; Check into Cash of Utah; \$10,000; notes: Jabo Covert
- May 3, 2012; Cash America; \$5,000; notes: Rob Jolley
- May 4, 2012; Cash Cure LLC; \$1,250; notes: Greg Porter
- May 4, 2012; Blackthorn Advisory Group, LLC; \$1,250; notes: Greg Porter
- May 4, 2012; Government Employees Credit Center; \$1,250; notes: Greg Porter
- May 4, 2012; Sure Advance LLC; \$1,250; notes: Greg Porter
- May 7, 2012; Macfarlane Group Inc.; \$2,500; notes: Greg Porter
- May 25, 2012; Go Cash LLC; \$2,500; notes: Greg Porter
- May 25, 2012; Centrinex LLC; \$2,500; notes: Greg Porter
- May 29, 2012; Star Loans Inc. dba American Cash Advance; \$2,500; notes: Josh Landy
- August 17, 2012; Check Smart; \$10,000; notes: Ted Saunders

Two publicly held corporations voluntarily reported their PRGEA contributions to the State, even though doing so was not required. QC Holdings made a \$10,000 donation to PRGEA in May 2012, according to that company's filing, which described the donation as a "PAC contribution," notwithstanding the fact it was made to a 501(c)(4) entity, not a political action committee. In addition, Cash America also voluntarily reported its \$5,000 donation to PRGEA in May 2012, describing it as a "campaign contribution." These public reports reflect understandable confusion about exactly what PRGEA was. The Committee believes that the other payday lenders that gave to PRGEA did not reveal their donations publicly, and at the time they were not required by Utah law to do so.

The Committee’s investigation found that donors contributed to PRGEA because Mr. Swallow or his campaign staff asked them to do so. Many times, Mr. Swallow himself directed to what entities the contributions should go. The Committee was told that Mr. Swallow routinely made an initial solicitation call to a potential contributor, and when he was successful at getting a commitment to contribute, he would tell a campaign staffer which entity should receive that contribution—Friends of John Swallow, one of the PACs discussed above, or PRGEA. When he wanted PRGEA to receive it, Mr. Swallow would sometimes direct the contribution to “PRG” or “the 501” (referring to PRGEA’s status as a 501(c)(4) entity). The staffer would then follow-up with the donor, telling him or her where to send the money based on Mr. Swallow’s instructions, the Committee was told. Typically, whether the contributor was controversial or not determined the entity to which it was directed: controversial donations were funneled to entities that would make it difficult or impossible for the public to identify the source.

The Committee learned that soon after PRGEA was created in August 2011, Mr. Swallow began directing his payday contributors to contribute specifically to PRGEA. Documents recovered from Mr. Swallow’s personal hard drive show how Mr. Swallow tapped his campaign staff to direct the contributions from the payday industry. On July 22, 2011, Mr. Swallow wrote to Greg Taylor at Cottonwood Financial, a payday loan business that operates under the name The Cash Store, “If Trevor<sup>68</sup> wants to make a contribution he can make it payable to the Protect Utah PAC. . . . If it is directly from Cottonwood, I may have you make it out to our fundraiser PAC for reasons we discussed earlier.” Ex. 64. On August 5, 2011, Mr. Swallow emailed Mr. Powers to ask him to “please call Jabo [Covert]. He’s with a payday company and needs details on where to send a check and who to make it out to.” Ex. 65. On

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<sup>68</sup> “Trevor” likely referred to Trevor Ahlberg, the company’s CEO.

September 5, 2011, Mr. Swallow emailed Mr. Powers to ask, “Can you send address and who to make check out to for Mike Waters of QC Holdings?” Ex. 66. On September 22, 2011, Mr. Swallow told Carol Stewart of Advance America that his campaign staff would contact her with information regarding where to send a check. Ex. 67. According to the list of Wasatch Shotgun Blast contributors that Mr. Swallow received on October 5, 2011, all four of these donations were directed to PRGEA.<sup>69</sup>

Mr. Porter of the OLA also confirmed that some of the group’s members were solicited by the Swallow campaign to give to PRGEA and, as discussed earlier, at least one (Centrinex) did so. Mr. Porter said he found the request unremarkable, because payday companies sometimes prefer contributing anonymously, given what he considered the unfair controversies surrounding the payday loan industry. Payday companies would not want to hurt Mr. Swallow politically by having their support become public, Mr. Porter told the Committee. Members of Mr. Swallow’s campaign staff agreed, and the Committee was told that the campaign viewed Mr. Swallow’s ties to the payday industry as the biggest threat to success in his race for attorney general. Campaign staff believed it would fuel opposition to the Swallow campaign if the public knew he was raising so much money from the payday lending industry.

As noted, in total the Committee found that PRGEA received approximately \$452,000. The Committee understands that this money came overwhelmingly from the payday industry. The Committee was provided access to documents identifying the contributors of about a quarter of that amount, and more contributors were revealed through the newly-recovered emails on Mr. Swallow’s home hard drive. Among all the PRGEA contributors, the Committee was told, the largest contributor was Mr. Rawle.

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<sup>69</sup> The spreadsheet listed a \$10,000 contribution to PRGEA from “Cottonwood Financial: Greg Taylor,” a \$10,000 contribution to PRGEA from “Check Into Cash: Jabo Covert,” a \$10,000 contribution to PRGEA from “QC Holdings: Mike Waters,” and a \$10,000 pledge to PRGEA from “Advance America: Carol Stewart.”

iii. **Mr. Rawle's Alleged \$100,000 Donation**

The Committee learned that Mr. Swallow told his campaign staff that, among all his political relationships, Mr. Rawle was in a category by himself. Mr. Swallow's attitude toward Mr. Rawle was described to the Committee as one of "reverence." The Committee was told that Mr. Swallow did not allow his campaign staff to solicit contributions from Mr. Rawle or even to have Mr. Rawle's phone number. From time to time during the campaign, Mr. Swallow had meetings at Mr. Rawle's office in Provo that campaign staff were not invited to or briefed on.

As noted above, the Committee's investigation of the campaign financing structure began, in part, because it seemed incongruous that a friend and supporter like Mr. Rawle did not make any on-the-record contributions to Mr. Swallow's campaign, to his PAC, or even to Mr. Shurtleff's PAC. However, in investigating the PRGEA machine, the Committee received credible information that Mr. Rawle, Mr. Swallow's friend, patron and former employer, made a substantial donation to Mr. Swallow by giving \$100,000 to PRGEA.

The Committee sought to corroborate this information, and, as discussed above, sent multiple subpoenas to both the Rawle and Powers camps. All nine of these subpoenas either went unanswered or were challenged with litigation. Given Mr. Swallow's resignation, the Committee determined that it was not in the public interest to continue to pursue costly litigation aimed at gaining compliance with the subpoenas. That said, the Committee believes that answering the question whether Mr. Rawle contributed \$100,000 to PRGEA is an important step in understanding the full extent to which Mr. Swallow was compromised and, potentially, the full extent to which Utah's anti-corruption laws were violated. The Committee believes that investigators who pursue this issue will want to know the answer to this question.

#### **4. How the PRGEA Funds Were Used to Protect Mr. Swallow and the Payday Industry**

##### **a. The Movement of PRGEA Funds**

The Committee's investigation showed that \$156,000 of the \$452,000 that PRGEA raised went to another 501(c)(4) entity—this one domiciled in Wyoming—called Energy Alternatives, Inc. According to its tax forms, Energy Alternatives' primary tax exempt purpose was "to promote, educate, research and lobby on issues relating to alternative energy production and related public health and safety concerns." Nothing about the flow of money from PRGEA to Energy Alternatives was reported publicly because the entities at both ends of the money transfer were 501(c)(4)s. No disclosure was required.

But, the \$156,000 transfer noted above was not the end of the daisy chain. Some of the money moved again. In September 2012, a federal PAC based in Nevada called It's Now or Never, Inc. received \$11,000 from Energy Alternatives, according to a report that, as a PAC, It's Now or Never was required to file with federal regulators.<sup>70</sup> Ex. 68 at 6.

The Committee discovered another flow of money into that PAC. From April 2012 to June 2012, It's Now or Never, Inc. received \$161,000 from an entity with a similar name, It's Now or Never 501(c)(4). These two It's Now or Never entities—Inc. (a PAC) and the 501(c)(4)—shared the same address: 840 South Rancho Drive, Suite 4175, in Las Vegas, Nevada. The established purpose of Its Now or Never Inc. was reportedly "to educate citizens on the current economic situation."

The Committee's investigation found reason to believe that Energy Alternatives provided funds to both of the It's Now or Never entities. In addition to the \$11,000 Energy Alternatives

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<sup>70</sup> Because It's Now or Never, Inc. was a federal PAC, it was required to report where its money came from.

sent to It's Now or Never, Inc., it appears that Energy Alternatives sent another \$161,000 to It's Now or Never 501(c)(4).

Additionally, the Committee learned the following information, all of which leads the Committee to conclude that the entities discussed above were tied together:

- Anthony J. Ferate was not only the attorney for PRGEA, but also the treasurer of It's Now or Never, Inc. Ex. 69.
- Jason Smith was a board member of It's Now or Never, Inc. and also later became a director of Energy Alternatives when it changed its name to Hope Change Opportunity, Inc. in August 2013. Ex. 70 at 2.
- An informal consultant to the Swallow campaign, Chuck Warren, had a management role in Energy Alternatives. Energy Alternatives paid his company, Silver Bullet LLC, \$118,000 for "management" services, according to its filings. Ex. 71 at 8. The Committee was told that Mr. Warren was an informal consultant to the Swallow campaign and that Mr. Warren often spoke on the phone with Mr. Swallow and Mr. Powers during the campaign. In May 2012, Mr. Warren gave a \$1,000 in-kind contribution to the Swallow campaign for an event. Ex. 72 at 5.

In sum, the Committee concludes that Mr. Swallow and his associates established and relied upon a sophisticated network of non-profit entities that exploited loopholes in Utah law that allowed those entities to contribute large sums of money to his campaign with no meaningful ability for the public to understand where that money came from. In effect, this was campaign contribution laundering—the use of a chain of entities for the purpose of washing the taint of payday industry money from large dollars being given for the benefit of Mr. Swallow. Using this network of entities, Mr. Swallow could publicly claim not to be beholden to the payday industry while, the Committee concludes, the opposite was actually true.

#### **b. PRGEA Contributions Funded Sean Reyes Attack Ads**

The Committee believes that it traced the ultimate use of much of the money that passed through these various entities.

On June 14, 2012, in the midst of the primary race between Mr. Swallow and Sean Reyes, It's Now or Never, Inc. reported sending \$140,000 to a media company called Crossroads Media, in Alexandria, Virginia. Ex. 73 at 10. The purpose of this expenditure, according to an It's Now or Never, Inc. filing, was "Media opposing Sean Reyes UT AG Race."

Crossroads Media immediately used that money to purchase ad space from KSL-TV, according to a KSL order report obtained by the Committee. Ex. 74. This document noted "Now or Never" was the advertiser and attached an agreement form for non-candidate/issue advertisements that listed Anthony Ferate as the treasurer of It's Now or Never, Inc. Ex. 75.

On June 15, 2012, the day after It's Now or Never, Inc. reported sending money to Crossroads Media and the first anti-Reyes attack ads aired, Mr. Swallow, Mr. Powers and two other campaign consultants received an email from a Utah advertising agency that listed all of the attack ads against Reyes and said, "It's Now or Never Was on KSL 12 times so far. They started running yesterday." Ex. 76. Mr. Swallow, Mr. Powers and the others continued to receive updates on the airings for the next week.

The anti-Reyes television and radio ads minced no words in attacking Mr. Reyes's integrity. The television ad alleged that Mr. Reyes had "major ethics issues" and the ads' announcers breathlessly trumpeted an alleged campaign finance violation that had previously been investigated and dismissed. The ads stated that Mr. Reyes admitted to making a "\$5,000 under the table, misreported cash payment" to his political consultant. In the radio ad, one of the characters states, "That's completely unethical." The ad continued by calling Mr. Reyes, "a candidate for Attorney General who has ethics issues with his own campaign." The television ad concluded, "Sean Reyes, skirting campaign laws, not the ethics we need for Attorney General."

Soon after the ads began airing, a problem developed. The negative nature of the anti-Reyes ads attracted significant attention and questions began to be asked about who had funded them. Less than a week later, on June 21, 2012, Jason Powers sent an email to Mr. Swallow, the campaign's manager, Jessica Fawson, and a campaign consultant, suggesting a script for how the campaign should publicly address the ads. "Jessie [Fawson] should talk about this, 'The campaign did not authorize these ads; John Swallow has never heard them. However, we're appalled by the Super PAC run by Democrats in support of Sean Reyes sending out 30,000 false last-minute mailers, filled with unsubstantiated rumors and innuendo about John Swallow.'" A few minutes later, Mr. Swallow responded, "Looks good." Jessica Fawson was copied on the email. Ex. 77.

Later that day, Ms. Fawson carried out the Swallow-approved script when she publicly denied any connection to the anti-Reyes ads. According to a June 2012 media report, Ms. Fawson asserted that the campaign "had nothing to do with those ads." She also said, "We're actually really proud of the fact that we've been running a positive campaign from the very beginning." Ex. 78.

The Committee also learned that between February 2012 and April 2012, Mr. Reyes was attacked by a so-called push poll. Push polling is a tactic in which, under the guise of conducting an opinion poll, voters are asked skewed or misleading questions about a candidate to try to alter their views of that candidate. A delegate to the State Republican convention described in a contemporaneous email to Mr. Reyes a push poll call he had just received: "[J]ust got off the phone from taking what was obviously a push poll for the Swallow campaign. I thought you would want to know that they are making the most outrageous charges against you, everything



from not following campaign laws to throwing eggs at cars and calling mexicans brown people.”

Ex. 79.

The Committee interviewed this delegate, who confirmed the substance of the email described above. The delegate said that the caller did not identify a company or entity behind the call, and the “poll” consisted of approximately 10 questions. The questions were reportedly along the lines of, “Would it influence your vote if you knew that Sean Reyes vandalized as a teenager, or called Mexicans brown people?”

It is the understanding of the Committee that Mr. Powers was behind this anti-Reyes push-polling, and that Mr. Swallow acquiesced in it.<sup>71</sup> The Committee was told by a Swallow campaign staffer that Mr. Powers paid for the push-polling using the same Nevada PAC that paid for the anti-Reyes ads described above. The Committee was also told that before the push-polling was launched, Mr. Swallow heard details about it. Mr. Swallow reportedly did not like what he heard and initially said he did not want Mr. Powers to go ahead with the push-poll. But ultimately Mr. Swallow “shrugged his shoulders,” the Committee was told, and campaign staff understood that it was all right to proceed.

The Committee learned that later in the campaign, a staffer saw an email on Mr. Swallow’s laptop, “over [Swallow’s] shoulder” or when Mr. Swallow had stepped away. The email was from Mr. Powers, and contained the scripts of the push-polls as well as the tallies of the responses to the polls. This staffer remembered that one of the push-poll questions was, essentially, “If I told you Sean Reyes’ father was an illegal immigrant, how would that affect your vote?”

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<sup>71</sup> This is another issue that the Committee hoped would be highlighted in documents subpoenaed from Mr. Powers and his various entities. However, as discussed above, the Committee’s efforts were slowed by Mr. Powers’ resistance to the subpoenas served on him and his entities, and then cut short by Mr. Swallow’s resignation.

As soon as the push-polling began, campaign staffers were asked about it everywhere they went, and one Swallow campaign staffer told the Committee, “everyone knew it was Jason, but no one could prove it.” At the time, the campaign denied any connection to the push-polling. The Committee was told that staffers for other candidates not involved in the Attorney General’s race confronted Swallow campaign staffers about the push-polls, saying they were a “low blow.”

The Committee believes that further investigation is warranted to conclude whether Mr. Swallow or any member of his campaign had knowledge of the It’s Now or Never anti-Sean Reyes television and radio ads and the anti-Reyes push–polling. In the Committee’s view, these are key questions, as the laws in this area were intended to prevent a candidate like Mr. Swallow from using or blessing an outside group’s attacks on his opponent without disclosing his role in that effort. Under Utah law, if Mr. Swallow or his campaign coordinated the efforts, they were required to report them as campaign donations. Coordination occurs if a good or service is provided for the benefit of a candidate and, for example, it was done with the candidate’s prior knowledge and the candidate did not object.<sup>72</sup>

The Committee notes that the Legislature took steps in 2009 to address the problem of coordination between campaigns and third-party entities. The Committee believes that its examination of Mr. Swallow’s hidden money trail disclosed a violation by Mr. Swallow and his political machine of the spirit, and perhaps the letter, of the 2009 law that this body enacted. When Mr. Swallow resigned, one of the leads the Committee was pursuing was a PRGEA document the Committee was shown which listed an expenditure of approximately \$10,000 for “Swallow Poll” during March 2012, one of the months when the push-polling occurred.

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<sup>72</sup> See Utah Code Ann. § 20A-11-101(6).

**c. PRGEA Contributions Funded Attacks on Representative Brad Daw**

The Committee discovered that PRGEA also used the payday money it raised to attack Representative Brad Daw, who served as a member of the Utah House of Representatives for eight years until his defeat in 2012.

For some years before that, Rep. Daw had criticized the payday industry and promoted measures to regulate its activities. The Committee's investigation showed that the attacks on Rep. Daw were part of the Swallow machine's effort to advance a confidential agenda to help Mr. Swallow's favored industry by raising money from that industry and then deploying some of the funds to attack the industry's political enemy. Mr. Swallow was not only doing a favor for the payday lenders, he was transforming his entire campaign organization into a weapon for them. And, he was doing so outside the ability of the public or Rep. Daw to understand who had taken aim at him.

PRGEA worked against Rep. Daw in three ways: (1) it sent \$52,600 to the PAC that circulated anti-Daw mailers among his constituents and to members of the Utah Legislature; (2) it contributed more than \$3,800 worth of "signs" and a "telephone town hall" to Rep. Daw's opponent (without his opponent knowing at the time the source of the materials); and (3) according to documents reviewed by the Committee, PRGEA spent an additional \$22,000 in a way that is currently unknown; a PRGEA document that the Committee reviewed mentioned an expenditure in that amount and had a notation next to it saying, "Brad Daw."

Rep. Daw told the Committee that in February or March 2011, at the end of the 2011 general legislative session, he introduced legislation to regulate the payday lending industry. Although his bill was defeated, it attracted the attention of Utah's payday industry, and

specifically of its leader, Mr. Rawle. The Committee learned that Mr. Swallow told a campaign staffer, essentially, “it’s important to Richard to oppose Brad Daw.”

Later that spring, Rep. Daw told the Committee, he received a phone call from the House administrative office secretary who informed him that Jason Powers’ brother, Greg Powers, had retrieved all the publicly available records regarding his voting records and disclosures. The Committee also learned that Mr. Rawle was a client of Powers’ firm, Guidant Strategies, when this occurred. A document recovered by the Committee from Mr. Swallow’s personal hard drive, and one that was provided by Mr. Swallow’s counsel only a week and a half before the filing of this report, confirms Rep. Daw’s account and shows that Mr. Swallow was personally involved in the effort. On April 19, 2011, Mr. Powers wrote to Mr. Swallow, “Brad Daw knows we after [sic] him. Somebody at the legislative office told him I ordered his voting history.” Ex. 80. Mr. Swallow’s obvious involvement in the attack on Rep. Daw directly flies in the face of the statement Mr. Swallow later made to Rep. Daw, discussed below, that the attack “really offends me.”

In January 2012, at the time of the general session, Rep. Daw re-introduced legislation to regulate the payday lending industry. Rep. Daw told the Committee that the proposed legislation would have required payday lenders to use a searchable database to determine whether a potential borrower was in default on any other loans. This would, in turn, have limited the number of customers to whom the lenders could make loans.

On February 15, 2012, when Rep. Daw’s proposed bill was discussed at a meeting of the House Business and Labor Committee, payday industry leader Kip Cashmore spoke against Rep. Daw’s measure. Ex. 81 at 3. This was the same Kip Cashmore to whom Mr. Swallow sent an email early in his campaign for Attorney General seeking financial support from the payday

industry and promising a friend in office if his campaign were successful. Mr. Cashmore told the committee that day that if the legislation passed, “[W]e [payday lenders] would be the only institution that was being monitored by a state-run database. No one else. Not your title lenders. Not your installment lenders. . . . Just us. Why?”

As Mr. Cashmore spoke to the committee, PRGEA was preparing to fund a series of attacks on Rep. Daw. The Committee learned that the payday industry decided to try to end Brad Daw’s political career. Because Rep. Daw had been sponsoring payday bills, the Committee was told, the industry’s view was that “it was time to take him out.”

Within weeks, and just before the end of the 2012 legislative session, a mailer was sent to voters in Rep. Daw’s district, and to every member of the Legislature, Rep. Daw told the Committee. The mailer showed a picture of Rep. Daw next to President Obama and asserted that Rep. Daw crafted legislation similar to “ObamaCare,” which the mailer dubbed “DawCare.” Ex. 82. In small type at the bottom of the mailer, it said: “Paid for by the Proper Role of Government Defense Fund. Not authorized by any candidate or candidate’s committee.”

This was the first in a series of about a dozen different mailers that were sent to Rep. Daw’s constituents; they attacked him on issues such as failing to vote on immigration reform and voting against anti-bullying bills. None of the mailers mentioned Rep. Daw’s position on payday lenders. The extent, and the cost, of this anti-Daw effort, was extraordinary.

The sending of the mailers to every member of the Utah Legislature is particularly interesting. Legislators representing other parts of the state were obviously not voters in Rep. Daw’s District. Unlike mailers sent to potential voters to influence their vote, the Committee believes this effort may have been intended to intimidate any other member of the Legislature who attempted to regulate the payday lending industry.

In February or March 2012, Rep. Daw told the Committee that he bumped into Mr. Swallow outside the House chamber. Rep. Daw had the “DawCare” mailer with him, and he showed it to Mr. Swallow. Mr. Swallow reportedly responded, “Jason Powers is a friend of mine, but this really offends me.” Mr. Powers, for his part, took credit for the anti-Daw mailers in the press and on Guidant Strategies’ website, but kept the funding of the effort well-hidden. The *Salt Lake Tribune* reported in March 2012 that “Powers said the mailer had nothing to do with payday lenders.”

In June 2012, Rep. Daw lost to his Republican primary opponent. His opponent received \$3,828 in in-kind contributions from the Proper Role of Government Defense Fund for “signs” and a “telephone town hall,” according to election filings. Ex. 83. The opponent was quoted as saying that she received an unsolicited donation of signs in her driveway and did not know the signs came from Mr. Powers until after the primary. Rep. Daw’s defeat was trumpeted on Guidant’s website, which read:

Direct mail campaigns can be especially effective in the small voting universes present in local legislative races. Representative Brad Daw was a popular incumbent. Polling at the beginning of the race showed him with more than a 4:1 favorable to unfavorable image, as well as more than a 25-point lead over his opponent. These mailers were instrumental in turning the tide in just over a month and defeating Brad Daw by nearly ten percentage points. Ex. 84.

**d. IRS Scrutiny of PRGEA’s Use of Funds**

To qualify as a section 501(c)(4) social welfare organization, PRGEA was required to: (a) be registered as a non-profit, and (b) operate “exclusively to promote social welfare.” The promotion of social welfare “does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.” However, PRGEA could engage in some political activities and still maintain its tax-exempt status as a 501(c)(4) so long as that was not its “primary activity.”

In October 2012, the Internal Revenue Service sent a letter to PRGEA requesting information on PRGEA's activities and expenditures, according to documents reviewed by the Committee. (That IRS action was also detailed in recently unsealed search warrants and supporting affidavits issued by State law enforcement officials in December 2013, which sought records from Mr. Powers's Guidant Strategies firm.)

The Committee reviewed documents that detailed the efforts of Mr. Powers and A.J. Ferate (PRGEA's lawyer) to develop their response to the IRS inquiry, including revising the descriptions of expenditures by PRGEA. The expenditures included transfers totaling \$156,000 from PRGEA to the Energy Alternatives 501(c)(4), which the Committee believes was used to fund the attack ads against Mr. Swallow's opponent, Sean Reyes (as described above). The Committee learned that after the IRS's letter of October 2012, Mr. Powers changed the classification of these transfers from "electioneering" to "non-electioneering." The Committee believes that the purpose of these re-classifications was to lead the IRS to believe that PRGEA's "primary activity" was not political when, in fact, it was.

According to the affidavit supporting law enforcement's search warrant, a confidential source, who worked for Mr. Powers and Guidant Strategies on the Swallow campaign, told law enforcement that together with Mr. Powers and Mr. Ferate, the source "participated in making false statements to the Internal Revenue Service including sending falsified documents because the actual expenditures of PRGEA did not meet the qualifications of the 501(c) entity." Indeed, the Committee's evidence reflects that Mr. Powers and Mr. Ferate sent PRGEA's response to the IRS inquiry letter in December 2012.

The affidavit submitted by law enforcement in support of its search warrant further stated, "The CS [Confidential Source] told your affiant that the falsified documents included a

ledger on which the designations of the expenditures had been purposely listed incorrectly.”

From a review of documents and interviews, it is the Committee’s understanding that the falsified documents referred to in this affidavit described the transfer of money from PRGEA to the various entities used to attack Sean Reyes and former Representative Brad Daw.

The IRS sent a follow-up letter to PRGEA in early 2013, asking for additional details on the purpose of PRGEA’s expenditures and its activities. The Committee learned that Mr. Powers and Mr. Ferate again spent time over the course of some months on multiple drafts of a detailed response to the second IRS inquiry. The Committee was told, however, that around May 2013, after a nationwide controversy involving alleged IRS targeting of conservative nonprofit groups was reported in the press, Mr. Powers and Mr. Ferate apparently concluded that the IRS now had little leverage over them, and they decided to send only a limited response to the second IRS letter. In that limited response, they said that PRGEA had already provided all the information the IRS needed. PRGEA’s second response was sent to the IRS in or around July 2013, and it is the Committee’s understanding that there was no further communication from the IRS on this subject.

**e. Mr. Rawle’s Family Donated \$20,000 in “Federal Dollars” to Benefit Mr. Swallow’s Campaign**

The Committee also found that a month before the election, in October 2012, Mr. Rawle’s wife, Judy, and son, Todd, contributed \$20,000 in so-called “federal dollars” in order to benefit Mr. Swallow’s campaign. The Committee was told by a campaign source that this was part of an effort by the Swallow campaign to raise “federal money” (campaign donations obtained from permissible donors to the state party’s segregated account, which a state party can then use to support candidates running for federal office) for the state Republican Party and, in exchange, get back double the amount in so-called “state money” (campaign funds raised by the



state party for the purpose of supporting state and local candidates). It is considered more difficult for state parties to raise money for their “federal” accounts because federal law imposes a significantly stricter set of limitations on who may make contributions as well as the amount they may donate. State parties often seek the help of state candidates in soliciting federally-permissible contributions from individuals, and then take that fundraising assistance into account in determining how to allocate their available “state” funds. Such arrangements are not uncommon and have not been viewed by federal regulators as prohibited. In essence, the State Republican Party told the Swallow campaign that if it could raise “federal” dollars that were more highly regulated, the Party would send double the amount back to the campaign in the easier to obtain “state” dollars. The Committee concludes that the Rawle family aided the Swallow campaign by providing federal dollars. Indeed, the Committee obtained an October 8, 2012, campaign email attaching a spreadsheet bearing Mr. Rawle’s name and reflecting a \$20,000 donation. Ex. 85.

The Committee was unable to determine whether the state dollars ultimately came back to the Swallow campaign, but the Committee’s investigation shows that these donations by the Rawle family were intended to benefit Mr. Swallow by gaining him credit with the state party for the money. And again, this was a benefit that was invisible to the people of Utah.

## **5. The Success of the Swallow Campaign/Payday Mission**

In the end, Mr. Swallow and his campaign aides were successful in preventing the voters of Utah from learning about the central role played by the payday lending industry in bankrolling and electing Utah’s top law enforcement officer—at least during the 2012 primary and general election campaigns, when it mattered. The industry’s large donations to Mr. Swallow’s campaign simply never emerged into public view, denying Utah voters the ability to make anything resembling an informed decision about the candidate’s funding, alliances and agenda.

That is not to say that payday lending was not a campaign issue, because it was. Mr. Swallow and his Democratic opponent, Dee Smith, clashed repeatedly on the ethics of the payday sector, and over questions about how to regulate it. In a debate only weeks before the election, Mr. Smith said payday lenders were “predatory” in their manipulation of those who used their services. Ex. 86. According to a news account of the debate, “Swallow defended the industry, saying such lenders can only earn interest on the first 10 weeks of the loan and that they are regulated by the Utah Department of Financial Institutions.” If payday companies abide by the rules laid down by the Legislature and DFI, Mr. Swallow reportedly said, they should be “left alone.”

Mr. Swallow defeated Mr. Reyes to win the 2012 Republican primary and went on to win the 2012 general election to become Utah’s Attorney General. On the day he was being sworn in to Office, he sent a special text message of thanks to two of the men from the payday loan industry—the men to whom he emailed his payday pitch in June 2011 and who appeared nowhere in his public campaign donation records—Richard Rawle and Kip Cashmore. In that private message, Mr. Swallow expressed his special thanks to the pair, the two leaders of Utah’s payday industry, for their invaluable help in the campaign.<sup>73</sup> And all the while, the public record of Mr. Swallow’s support during the campaign left the people of Utah to assume that he was independent of the very entities that he himself acknowledged helped assure his victory.

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<sup>73</sup> Mr. Swallow allowed the Committee to review this text message but refused to provide a copy, claiming that the text message was “confidential.” The assertion that this text message is “confidential” evidences the utter disregard for the Committee’s authority that Mr. Swallow demonstrated even as he was assuring the public that he was cooperating fully with the Committee’s investigation.

**D. Mr. Swallow Undermined the State's Efforts to Protect Utahns From Improper Foreclosures Through His Efforts to Benefit a Campaign Contributor (and to Hide What He Was Doing)**

The Committee also investigated allegations related to Mr. Swallow's interactions with two Utah residents named Timothy and Jennifer Bell. The Bells had filed a lawsuit to fight the foreclosure on their home by a Bank of America affiliate called ReconTrust. The information received by the Committee suggested that in July 2012, the Office of the Attorney General, with Mr. Swallow's official involvement, inserted itself into that litigation and sought to bar the foreclosure, and that at around the same time the Bells hosted a fundraiser for Mr. Swallow's campaign for attorney general.

The Committee was also told that then-Attorney General Shurtleff later improperly caused the Office to dismiss its own claims against Bank of America and ReconTrust in the case. The Office's litigation, if successful, could have helped thousands of Utahns facing similar foreclosures. It was alleged that Mr. Shurtleff dismissed this action to protect Mr. Swallow from having to grapple with troublesome questions arising from his and the Office's multi-pronged entanglement with the Bells. Because of the possible overlap between Mr. Swallow's conduct of official state business and his campaign activities, the Committee investigated to determine whether the allegations were accurate and whether any of the related conduct was improper.

To examine these allegations, the Committee reviewed campaign-finance disclosures, emails, court filings, phone records, and expense receipts, and conducted more than a dozen interviews, including with lawyers in the Attorney General's Office, members of Mr. Swallow's campaign staff, and Mr. and Mrs. Bell and their counsel.

Based upon its investigation, the Committee concludes that Mr. Swallow was actively involved in the Bells' lawsuit after the campaign fundraiser held for his benefit, and that he appears to have used his position in the Office to help the Bells get a favorable settlement in their

case, thereby saving their home from foreclosure. The Committee's evidence further suggests that Mr. Swallow led Bank of America to believe that the Office would drop its own affirmative lawsuit against the bank in exchange for the bank's settling with the Bells, thus improperly offering to compromise the State's legal position in favor of Utah citizens generally in order to obtain a private benefit for a campaign contributor.

The Committee further concludes that Mr. Shurtleff (who, through his lawyer, refused to be interviewed by the Committee) attempted to prevent Mr. Swallow's entanglements with the Bells from coming to light by prematurely dismissing the State's affirmative complaint in the case, thereby compromising the State's legal position that Bank of America and its affiliates lacked legal authority to foreclose on mortgages in Utah. The Committee concludes that a favorable outcome in the State's litigation would have benefitted Utah foreclosure victims, and that the Office's withdrawal from the suit was contrary to the interests of these Utahns, and improperly intended to benefit Mr. Swallow personally and politically as he took office as Attorney General.

The Committee additionally concludes that after the Bell fundraiser, but while the campaign for Attorney General was still active, the Swallow campaign sought to elicit continued financial support from the Bells while avoiding disclosure requirements that could raise questions about Mr. Swallow's involvement with them; and that the campaign later engaged in an effort to prevent these improprieties from coming to light by engineering the submission of false campaign finance reports to the Office of the Lieutenant Governor.

In sum, the Committee concludes that Mr. Swallow's involvement in these matters was an egregious abuse of public trust that implicates numerous criminal prohibitions.

## **1. The Bells' Lawsuit Against Bank of America**

Between 2009 and 2011, Bank of America foreclosed on the homes of numerous Utah homeowners. The bank used its affiliate, ReconTrust, to perform many of these foreclosures. ReconTrust is a non-Utah-based company. Utah law provides that only a Utah attorney, Utah title insurance company, or other expressly authorized Utah entity, may act as a trustee under a deed of trust. That legal requirement provided a potential ground for challenging the legality of many of the bank's foreclosures against Utah citizens.

A number of Utah homeowners filed lawsuits against Bank of America during this period. Among those plaintiffs were Mr. and Mrs. Bell. Mr. Bell is the owner of BellMed Resources, a medical device company. The Bells owned a home in Holladay, Utah that was facing foreclosure by ReconTrust. The Bells filed their lawsuit in March 2011 in federal district court in Utah challenging the legality of the foreclosure efforts undertaken by the bank. Ex. 87.

## **2. The Office's Decision to Participate in the Bell Case**

Approximately one year into the Bells' case, in March 2012, Senior U.S. District Judge Bruce Jenkins issued a ruling on a preliminary issue that strongly favored the Bells. Judge Jenkins wrote that ReconTrust lacked "the authority to exercise the power of sale in a non-judicial foreclosure action in Utah" because it was a non-Utah based entity. Ex. 88 at 29. The court thus indicated that, in its view, ReconTrust likely could not conduct foreclosures in Utah because it was not a qualified Utah entity. This ruling strongly signaled that the Bells were likely to prevail in their lawsuit against ReconTrust. The ruling also had significant implications for other Utah citizens for whom ReconTrust served as the trustee on their deeds of trust. If Judge Jenkins' ruling were upheld, Utah citizens facing foreclosures at the hands of ReconTrust had a valid legal defense to assert in their own foreclosure proceedings.

At the time of the court's ruling, the Office was monitoring Bank of America foreclosure litigations in the State. AAG Jerry Jensen, an attorney in the Office's civil division, was the Office's lead attorney on that issue. After Judge Jenkins issued his decision, AAG Jensen considered the Bell case to be the strongest and most promising of the wrongful foreclosure cases pending in the State.

On March 20, 2012, five days after Judge Jenkins' ruling, AAG Jensen emailed Mr. Swallow—who as Chief Deputy had supervisory authority over the Office's civil legal work, including foreclosure matters—about the ruling. AAG Jensen alerted Mr. Swallow that he (Jensen) intended for the Office to “intervene” in the case as a so-called third-party plaintiff. Ex. 89. Intervention is a legal procedure that, with permission of the court, allows a non-party to a case to insert itself into the case as a party. Courts typically allow a non-party to intervene in a pending case only when the non-party has a strong interest in how the case may come out and the issues the non-party seeks to assert are closely related to those already being litigated in the case.

AAG Jensen filed the State's motion to intervene as a plaintiff (i.e., on the Bells' side of the litigation) on April 10, 2012. The motion stated that “the sole purpose of this intervention is for the State to protect the validity and application of its statutes to national banks acting in the State of Utah.” Ex. 90 at 2. According to the State's brief, it was “the belief of the Attorney General of the State of Utah that the Court would be aided by the presence of an interested party like the State to address the issue of the validity of its statutes” and to “represent the public interest.” Ex. 91 at 6. Thus, the State asserted that it should be allowed to participate in the Bells' litigation to protect the interests of Utah citizens generally in the application of the Utah law requiring trustees under a deed of trust to have a Utah connection.

### **3. Mr. Swallow's Personal Involvement in the Litigation**

In June 2012, while the Office's motion to intervene in the Bell case was pending before the court, Mr. Bell reached out to Mr. Swallow's campaign manager, Jessica Fawson, and said that he wanted to help the campaign. Ex. 92.<sup>74</sup> Ms. Fawson put Mr. Bell in touch with a Swallow campaign aide, and Mr. Bell and the aide were in touch regularly as they began to plan a fundraiser for Mr. Swallow to be held at the Bells' home on August 17, 2012.

The foreclosure case proceeded over the summer. In July 2012, the State's motion to intervene in the Bell lawsuit was granted by Judge Jenkins. AAG Jensen proceeded to file a separate complaint against Bank of America on behalf of the State. Ex. 93. The State's motion to intervene and its separate intervenor complaint showed that the Bells' interests and the State's asserted interests were generally aligned, but not identical. While the Bells were fighting what they believed to be a wrongful foreclosure on their own home, the State's asserted interest was in upholding the statute requiring trustees under deeds of trust to be qualified Utah entities.

After the State filed its complaint, and in the weeks before the fundraiser at the Bell residence on August 17, 2012, the Committee's investigation showed that Mr. Swallow was involved in managing the lawsuit filed by the State, including on day-to-day matters:

- On August 7, 2012, Mr. Swallow and then-Attorney General Mark Shurtleff met with Bank of America's attorneys in the case and with Jerry Kilgore, a lobbyist for the bank. Ex. 94 at 2.<sup>75</sup>

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<sup>74</sup> Mr. Bell had previously invested in the Mt. Holly ski resort project promoted by Marc Sessions Jenson. As discussed in Section III.A.5 below, Mr. Bell had previously communicated with Mr. Shurtleff and had dealings with the Office in connection with its fraud case against Mr. Jenson. One individual that the Committee interviewed suggested that Mr. Bell proposed hosting a fundraiser in part to thank Mr. Swallow because the Office had put Marc Sessions Jenson in jail. When interviewed by the Committee, the Bells themselves did not identify the Office's prosecution of Mr. Jenson as a reason for their support of Mr. Swallow.

<sup>75</sup> Prior to representing Bank of America, Mr. Kilgore had served as Attorney General of the Commonwealth of Virginia. The Committee asked Mr. Kilgore to submit to a voluntary interview about Mr. Swallow's involvement in the foreclosure matter, but Mr. Kilgore's law firm said the Committee would have to subpoena him, citing legal privilege concerns. Following Mr. Swallow's resignation, the Committee determined

- On August 10, 2012, Mr. Kilgore asked Mr. Shurtleff’s assistant to forward a message to Mr. Swallow seeking additional time for Bank of America to respond to the State’s complaint in the Bell case. He wrote, “In the meeting”—presumably the August 7 meeting—“we discussed the looming filing due on the Bell case (early next week).” Ex. 95. Mr. Swallow received this email and forwarded it to AAG Brian Farr, the division chief supervising the line attorneys in the Bell case, and to Mr. Shurtleff.
- On August 15, 2012, Bank of America requested an extension of time from the court to file its answer to the State’s complaint. The Office consented to the extension; according to line attorneys that the Committee interviewed, the order to consent to the extension came from Mr. Shurtleff and Mr. Swallow.

These facts show that when the campaign fundraiser at the Bells’ home occurred two days later, on August 17, 2012, Mr. Swallow was in the midst of dealing with Bank of America in response to the complaint filed by the Office in the Bell foreclosure case. It was not, however, until the fundraiser itself that Mr. Swallow appears to have realized that the foreclosure litigation involved the very Bell family that was hosting the fundraiser. It is Mr. Swallow’s actions following that revelation that have been the focus of the Committee’s work and concerns.

#### **4. The Bells’ Lavish Fundraiser for Mr. Swallow**

On August 17, 2012, Mr. Swallow attended the fundraiser at the Bells’ home in Holladay—ironically, the same home that was the subject of the foreclosure action. Ex. 96. Though more than 250 people had been invited, it turned out to be a small gathering with only about 30 attendees, according to the event’s planner and records reviewed by the Committee. It was, according to witnesses, a lavish event with catered food, a string quartet, flowers, and decorations floating in the Bells’ pool.

According to information obtained by the Committee, it was at the fundraiser itself that Mr. Swallow first realized that the Bells were the same Bells in whose lawsuit the Office had recently intervened. The Bells told the Committee that at some point in the evening the two of

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that pursuing the issuance of a subpoena for Mr. Kilgore by a Virginia court was not a prudent use of public resources.



them were talking to Mr. Swallow by a fire pit in their backyard. According to the Bells' account, Jennifer Bell mentioned to Mr. Swallow that the Bells were in the middle of a lengthy battle with Bank of America, commenting that the suit had been very difficult on her family. Mr. Swallow responded, with evident surprise: "Oh, you're the Bells." One witness told the Committee it was as though a "light bulb went off" when Mr. Swallow realized that his hosts were the plaintiffs in a lawsuit in which the Office was also involved, and that Mr. Swallow then became visibly uncomfortable.

## **5. The Swallow Campaign's Efforts to Hide the Bells' Support**

Swallow campaign staff members interviewed by the Committee said they were unaware of the foreclosure case before the fundraiser.<sup>76</sup> When they learned about it, Ms. Fawson told the Committee, campaign staff "freaked out." Ms. Fawson and other staffers said they were concerned that there would appear to be a conflict of interest for Mr. Swallow, and that the campaign tried to be very careful about any public connection with the Bells from that point forward. Subsequent events show that while the campaign was careful to avoid any further contributions from the Bells that would have to be publicly disclosed, in fact the campaign continued to welcome financial support flowing from Mr. Bell so long as it would not have to be publicly disclosed. The evidence specifically shows that the campaign unwound a \$5,000 contribution from Mr. Bell in order to avoid disclosing it, while attempting to have the same money redirected to the campaign through alternative sources so the campaign could benefit from the contribution but not have to disclose that Mr. Bell was the source.

In connection with the fundraiser, the Bells had made two contributions to Mr. Swallow's campaign: an in-kind contribution purportedly for the cost of the event, and a \$5,000 direct

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<sup>76</sup> The fact that campaign staff was unaware that a campaign contributor had a matter pending before the Office reflects the absence of sufficient procedures to vet campaign donors.

campaign donation from Mr. Bell. Both BellMed, Mr. Bell's company, and Mr. Swallow's campaign reported the in-kind contribution to the Elections Division of the Lieutenant Governor's Office, valuing the cost for the August 17, 2012 fundraiser as \$15,000 when the event was first disclosed. Ex. 97 at 15. Campaign staff members interviewed by the Committee said that, despite concern about the Office's role in the foreclosure litigation, they did not think they could return the in-kind contribution because the money had already been spent.

The \$5,000 donation was not reported and was instead returned to Mr. Bell. Mr. Bell told the Committee that a campaign staffer told him the campaign was returning the money. The staffer asked Mr. Bell whether he (Mr. Bell) could instead help direct other contributions to the campaign. Consistent with that account of events, an internal campaign email stated that "Tim is giving \$5k through some other means." Ex. 98.

In an interview with the Committee, Mr. Bell confirmed he told his brother, Troy Bell, to "pony up" a contribution to the Swallow campaign in an effort to replace the \$5,000 that had been returned. Troy Bell's company, TriBell, then donated \$1,000 to Mr. Swallow's campaign, according to a disclosure it filed with the Lieutenant Governor's Office. Ex. 99 at 3. A campaign staffer forwarded the transaction receipt for the TriBell donation to other staffers, writing, "This looks like Tim Bell, correct?" Ex. 100.

The campaign staff simultaneously coordinated Tim Bell's attendance at another fundraiser just days later. On August 21, 2012, four days after the event at his home, Mr. Bell attended a fundraiser for Mr. Swallow called the "Wasatch Shotgun Blast." A friend of Mr. Bell's paid for Mr. Bell's ticket. Mr. Swallow was made aware of Mr. Bell's attendance: the day before the Shotgun Blast, a campaign staffer wrote an email directly to Mr. Swallow about this event, saying that, "We told Tim we would put him at the highest donation range because of

everything he has done for us.” Ex. 101. One staffer told the Committee they were comfortable inviting Bell to the Shotgun Blast because his ticket was paid for by a friend and his name therefore would not have to be publicly disclosed as a contributor. The staffer told the Committee that from the public’s perspective, “it was like he was not even there.”

#### **6. Mr. Swallow’s Assistance To the Bells In Settling their Litigation**

At the same time that the Swallow campaign was seeking to hide Mr. Bell’s support for Mr. Swallow, Mr. Bell solicited a meeting with Mr. Swallow regarding his family’s foreclosure lawsuit. On August 22, 2012, a few days after the fundraiser, and the day after Mr. Bell attended the Shotgun Blast event, Mr. Bell sent an email to a campaign staffer asking, “When is the best time to follow-up W/John on Bank of America stuff?” The Committee notes that Mr. Bell sent this email request to a Swallow campaign aide rather than to the Attorney General’s Office even though the litigation was being handled by the Office and not the campaign. This fact reflects the disturbingly close connection that the fundraiser bore to official action by Mr. Swallow.

The campaign aide responded to the request: “John is considering the best approach to everything. He wants to make sure that whatever he does isn’t going to look bad. I am working to set something up where you can both sit down and talk.” Ex. 102. Notably, the campaign aide’s response did not suggest that a request regarding the official business of the Attorney General’s Office should be directed to the Office rather than to Mr. Swallow’s political campaign. Nor did the staffer indicate any substantive concerns about the linkage between official business of the Office and a campaign contributor. Rather, the concern expressed was one of “optics”—*i.e.*, the staffer indicated that Mr. Swallow was concerned that a meeting not “look bad.”

Recently, Mr. Swallow publicly asserted that he removed himself from the foreclosure lawsuit after the Bell fundraiser. In a December 17, 2013 article in *City Weekly*, Mr. Swallow was quoted as saying the following:

When I learned Mr. Bell was a plaintiff in a case that the state was involved in (on the same side, not on opposite sides) I discussed it with the Attorney General and he took final responsibility for the case, including negotiations. That might not have been necessary because our interests were aligned but we wanted to screen me off the case once we became aware of that fact. Ex. 103 at 2.

Contrary to Mr. Swallow's recent public statement, the Committee concludes that Mr. Swallow remained actively involved in the foreclosure case—and maintained contact with Mr. Bell directly—for four months after the August fundraiser. Mr. Swallow's direct involvement continued until December 2012, near the very end of the case. Thus, even as recently as December 2012, Mr. Swallow has continued to dissemble about his role in the Bell matter.

Indeed, contrary to his public statements, even after the fundraiser Mr. Swallow participated in settlement discussions between Bank of America and the Attorney General's Office, and again participated in a decision of the Office to provide a second extension of a deadline for Bank of America to respond to the State's complaint in the case. Mr. Swallow's participation in these matters was openly discussed in a September 27, 2012 court hearing in the case. Ex. 104 at 11. Counsel for Bank of America told the court, in response to a question, that Mr. Swallow had personally participated in efforts to resolve the case.

During that September 27 court hearing, the court ordered the Office and Bank of America to file a joint report disclosing all settlement meetings. From that report and witness interviews, the Committee learned that, following the Bell fundraiser and his realization that the Bells were involved in litigation in which the Office was participating, Mr. Swallow's involvement in discussions with Bank of America included the following:

- On August 27, 2012, Mr. Swallow met with Bank of America lobbyist Jerry Kilgore regarding the Bell case.
- On August 29, 2012, Bank of America again requested additional time to respond to the State's complaint, according to the court docket in the case. Mr. Swallow personally called Division Chief Brian Farr to direct him to grant the extra time.
- On September 5, 2012, a Bank of America lawyer wrote to Division Chief Farr: "Per Jerry Kilgore's conversation with Chief Deputy Swallow today, we request that your Office let us know its position with respect to the Bell case no later than Monday next week." Ex. 105 at 1.
- On September 26, 2012, Mr. Swallow had another phone call with Mr. Kilgore to discuss the Bell case.

The Committee's investigation also found that Mr. Swallow remained in contact with Mr. Bell as the foreclosure case proceeded. On October 1, 2012, Mr. Swallow reached out directly to Mr. Bell, sending him a text message that read, "Hi Tim. Can you call? John Swallow." Mr. Bell responded, "Hi John, just getting your text. Let me know good time to talk . . . ." Ex. 106 at 1. Later that night, phone records show, Mr. Swallow and Mr. Bell had a six-minute cell phone conversation. Ex. 107. Mr. Bell did not recall the details of that conversation, but told the Committee that he was probably hoping that Mr. Swallow would tell Bank of America to settle the foreclosure lawsuit.

For months while their lawsuit was pending, the Bells and their attorney had been trying to gain admission to a Department of Justice mortgage modification program available to those whose homes had been the subject of improper foreclosure proceedings, and which would grant the Bells a favorable adjustment to their mortgage. Bank of America eventually offered the Bells the modification, but later stopped responding to questions from the Bells' attorney about it. The Bells became concerned as time passed. On October 28, 2012, more than two months after Mr. Swallow claims he recused himself from the matter, Mr. Bell reached out to Mr. Swallow

directly for help, and specifically asked Mr. Swallow to contact Bank of America on his behalf.

Mr. Bell's text message to Mr. Swallow read as follows:

I've been waiting to share with you our heart-felt-thanks with our home, as we did end up being offered a modification . . . . Anyway, I'm sorry to bother you with this, but if you're able, I wondered if you might be able to reach out to your BoA contacts to see if we can get this Mod confirmed and be done with case, etc.? Ex. 106 at 2-3.

Two days later, on October 30, Bank of America provided the Bells with proposed modified mortgage terms.<sup>77</sup> The Bells accepted the modification, and their specific claims in their lawsuit against Bank of America effectively were settled, according to an email exchange between their attorney and the Assistant Attorney General representing the State's claims in the case. Ex. 108. Of course, the settlement by the Bells left unaffected the broader claims in the case that had been asserted by the Office on behalf of Utah citizens who were similarly situated. Those claims remained live and appropriate for litigation by the Office.

On November 7, 2012, the day after Mr. Swallow won election as Attorney General, Tim Bell texted the following message to Mr. Swallow:

Congratulations John, as you're the best man for the job! Please call, if there's ANYTHING I can do! PS looks like we got the house deal done— thanks so much, and all the best! Cheers, Tbell.

Mr. Swallow replied, "So glad. John Swallow." Ex. 106 at 4.

## **7. Mr. Swallow's Resistance to Proceeding With the State's Claims in the Case**

The Committee's investigation found that Mr. Swallow actually remained involved in the State's case against Bank of America even after the Bells' claims in the case settled. As noted

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<sup>77</sup> The modifications that the Bells received followed the standard modification guidelines for homeowners who qualified for the Department of Justice loan modification program. In the Bells' case, the modification entailed a \$1.13 million reduction in their loan balance, and reduction of their interest rate from 7.5% to 2.65%. It was the Bells' acceptance into this program, rather than the specific terms of the modification, that the Bells had to negotiate with Bank of America. Because Mr. Swallow refused to be interviewed by the Committee, the Committee was unable to ask him whether he had a role in the Bells' qualifying for the modification program, or whether he contacted Bank of America to expedite the confirmation of the Bells' loan modification.

above, although the Bells had reached a settlement with Bank of America, the complaint that the State of Utah filed against the bank remained active. The Assistant Attorneys General on the case wanted to continue pursuing the State's complaint because they believed the Bell-initiated case was the State's best vehicle for prevailing on the larger question of whether ReconTrust or other out-of-state companies could foreclose on Utah homeowners. The Bells' own lawyer urged the State to stay in the case even after his clients accepted a settlement. The consensus among the line attorneys in the Office and the Bells' attorney was that a ruling in the State's favor would benefit thousands of Utah homeowners by strengthening their claims against the bank.

Division Chief Farr told the Committee that he spoke with Mr. Swallow about the status of the State's foreclosure case shortly after the Bells reached their settlement. Mr. Farr conveyed his intention to continue pursuing the case. Mr. Swallow did not indicate during that conversation that he had recused himself from the matter. To the contrary, Mr. Swallow responded negatively to his Division Chief's plan, explaining to Mr. Farr that he (Swallow) might have given Bank of America the impression that, if the bank settled with the Bells, the case with the State would "go away." This, Mr. Swallow told his Division Chief, put him (Swallow) in an "awkward position" if the case continued. Mr. Swallow was reportedly "troubled" that if the Office went forward, it would "impugn his integrity" given his apparent commitment that the claims asserted by the State would be dismissed if the Bells were allowed to settle their claims. Consistent with this, Bank of America lobbyist Jerry Kilgore was, according to Mr. Farr, surprised that the Office was still planning to pursue the State's claims even after the Bells settled.

On November 19, 2012, Mr. Farr emailed Mr. Swallow to tell him that he (Farr) planned to file a so-called motion for summary judgment in the State's case against Bank of America. Ex. 109. A motion for summary judgment is a request that the court make a final ruling in a case without the need for trial. The State's planned motion was an effort to convert the judge's preliminary ruling limiting the rights of banks to foreclose in certain instances into a final order that could be used against the bank in other cases to benefit thousands of Utah mortgage holders.

Mr. Farr told the Committee that Mr. Swallow asked him to "hold off" on filing such a motion because, Mr. Swallow said, "we're trying to work this out." Mr. Farr was frustrated and told Mr. Swallow he planned to move forward notwithstanding Mr. Swallow's stated preference.

#### **8. Mr. Shurtleff's Dismissal of the State's Claims on Behalf of Utah Homeowners**

At this point in the case, in December 2012, Mr. Swallow announced to AAG Thom Roberts, who had assumed the lead day-to-day role in the case that he, Mr. Swallow, was purportedly "out of the Bell case." However, Mr. Swallow did not follow established Office procedures for a formal recusal.

The Attorney General's Office Manual sets forth the Office's procedure governing "conflict screens," which are internal procedures for making sure that an attorney with a conflict of interest does not participate in the relevant case. The manual provides that "Conflict screens shall be established as necessary to protect against real or potential conflicts of interest." It provides that "[t]he relevant Division Chief in consultation with the Attorney General or Chief Deputy shall determine whether a conflict screen is necessary," and that "[t]he Office Ethics and Conflicts Committee may also be consulted." According to the Manual, "[a] conflict screen is constructed by: (1) giving notice within the Office; and (2) sequestering physical and electronic files related to the screened matter." The Manual further provides that the "relevant Division



Chief shall give notice of the conflict screen by email to all affected attorneys and staff. . . .”

The email must “attach[] a memorandum substantially in the form provided by the Office”—*i.e.*, a standardized conflict screen memo. The Committee interviewed a number of the Assistant Attorneys General involved in the Bell case, and none of them was aware of any screen that walled Mr. Swallow off from the Bell case being implemented in December 2012, or, for that matter, at any other time. The Committee therefore concludes that the purported recusal was not consistent with Office policy and ineffective, at best.

After Mr. Swallow asserted to AAG Roberts that he was “out” of the case, line attorneys continued to advocate within the Office for continuing to press the State’s claims in the lawsuit. On December 12, 2012, AAG Roberts sent a letter to Bank of America’s lawyers in which he informed the bank that the Bells’ settlement did not impact the State’s claims in the matter. Ex. 110. AAG Roberts told the Committee that he met with Mr. Shurtleff to “pitch” filing the motion for summary judgment in the Bell case in early to mid-December 2012, and he told Mr. Shurtleff that he believed the State would prevail. AAG Roberts followed up with a memo to Mr. Shurtleff on December 14, 2012, further arguing that the State should file the motion for summary judgment. Ex. 111.

But the next week, on December 19, 2012, according to a later court transcript, Mr. Shurtleff personally called Bank of America lobbyist Mr. Kilgore and said that the State was going to drop the case. Ex. 112 at 16:13-20. Rather amazingly, Mr. Shurtleff did not inform his own lawyers in the Office, the same lawyers who had been leading the case in an effort to serve the public interest, about this decision.

On December 27, 2012, in his final days in office, Mr. Shurtleff overrode the will of his line attorneys, reversed the Office’s stated commitment to continuing the litigation, and

unilaterally dropped the case. In the document that he filed with the court dismissing the claims asserted by his office, Mr. Shurtleff actually crossed out the names of the Assistant Attorneys General working on the case—both of whom wanted to pursue the matter—in the signature line of the court filing and signed his name in their place. Ex. 113 at 3. The Committee’s investigation revealed that Mr. Shurtleff took this action without the knowledge of those line attorneys.

When AAG Jensen, the original line attorney on the Bell case, learned about the dismissal, he emailed Mr. Shurtleff to ask him why he had dismissed the action over the objections of the attorneys who knew the case best. Mr. Shurtleff replied by email, “Sorry, I meant to email you and Thom [Roberts] before you got the hard copy but got busy.” Mr. Shurtleff explained that he dismissed the case because it “was becoming a very complicated issue for John given Bell hosted a fundraiser for him in the subject home, and Bell is also a person of interest in a fraud matter we are investigating. I felt that given those facts and the settlement with Bell, as well as the fact that Jenkins lengthy ruling on the Motion to Dismiss is before the Tenth Circuit, that it was best for Utah and the Office of the AG to not go forward. Really sorry to disappoint.” Ex. 114.<sup>78</sup>

On January 3, 2013, the *Salt Lake Tribune* published an article about the State’s “180” turn in the case. The article reported that Mr. Shurtleff had “blindsided” his Assistant Attorneys General by overruling them and pulling the State out of the Bell lawsuit. Ex. 115. Mr. Shurtleff told the reporter that he knew the Assistant Attorneys General disagreed with his decision. Contrary to his non-public email to AAG Jensen in which he attributed his decision to an effort

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<sup>78</sup> The description of Mr. Bell as a “person of interest in a fraud matter we are investigating” is a reference to Mr. Bell’s role in the Mt. Holly case. He was never charged in that matter.

to protect Mr. Swallow from his entanglement with the Bells, Mr. Shurtleff publicly stated that he terminated the case in an effort to conserve state resources.

Within days of the article, Judge Jenkins called a hearing to discuss Mr. Shurtleff's decision to pull out of the case. According to the transcript from the January 15, 2013 hearing and several witnesses, Judge Jenkins was unhappy about Mr. Shurtleff's decision and he demanded an explanation of the State's reversal. Several of the AAGs interviewed by the Committee stated that Judge Jenkins provided the Office an opportunity to reconsider Mr. Shurtleff's decision since, by then, he had left the Office.

A team of attorneys in the Office met on or about January 18, 2013 to discuss what action, if any, the Office should take in response to Judge Jenkins's invitation. According to one of the attorneys who was present at the meeting, Mr. Swallow was present at the start of the session but left almost immediately because of the topic to be discussed. The consensus view among the attorneys at the meeting was that it would not be appropriate for the Office to revisit and reverse a decision made by a prior Attorney General that they believed had been based on the merits, so they decided not to attempt to reopen the case. Those involved in the meeting were apparently unaware of the email that Mr. Shurtleff had sent to AAG Jensen stating that he (Shurtleff) had dismissed the case in order to protect Mr. Swallow politically.

## **9. The Swallow Campaign's Effort to Whitewash the Bell Contributions**

In January 2013, shortly after Mr. Shurtleff dropped the case and Mr. Swallow took office as Attorney General, a Swallow campaign staffer called Mr. Bell. Mr. Bell told the Committee that the staffer said the campaign was conducting an "audit," and the staffer asked Mr. Bell to "revisit" the cost of the fundraiser that had been reported as a \$15,000 in-kind contribution. After the call, the staffer sent the following text message to Bell:

"801-538-1041, \$1,000, Thank you!" Ex. 116.

The telephone number that the staffer provided is the number for the Elections Division of the Lieutenant Governor’s Office. The staffer was evidently telling Mr. Bell how to amend the disclosure report that the Bells had filed after the event. The amendment was made and is reflected in the campaign disclosures maintained by the Lieutenant Governor’s Office. Those records show that on January 16, 2013—five months after the fundraiser and four days after Jeremy Johnson made public allegations of impropriety by Mr. Swallow—both Mr. Bell’s company, BellMed, which sponsored the fundraiser, and Mr. Swallow’s campaign, filed amendments revising the amount of the in-kind contribution. Both amendments dropped the dollar amount from \$15,000 to \$1,000. Exs. 117, 97 at 15.<sup>79</sup> The next day, Mr. Bell replied to the staffer by text message, “Got it updated . . . .” The staffer replied, “Thanks a million.”

In May 2013—more than six months after Mr. Swallow won the Attorney General election that the Bells’ contribution was intended to help him win—Mr. Swallow emailed Mr. Powers. Mr. Swallow, who was by then the focus of intense media and public scrutiny, instructed Mr. Powers to “refund the Bell family or company in kind donation with a check.” Mr. Swallow stated in the email that, “I want to avoid even the appearance of impropriety.” Ex. 119. No such refund appears in the campaign’s ledger. The Bells told the Committee that they never received a refund for any portion of their in-kind donation. The Committee is struck by the Swallow email and its assertion of a desire to “avoid even the appearance of impropriety.” As we discuss below, the Committee’s investigation makes clear that Mr. Swallow was acutely aware of the power of paper trails and, once he understood that he was likely to be the subject of inquiry, focused his efforts on creating records that dovetailed with his narrative of questionable

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<sup>79</sup> When Mr. Bell amended the amount of the contribution, he mis-reported the contribution’s recipient, apparently inadvertently. Mr. Swallow’s campaign staff thereafter contacted Mr. Bell by telephone to instruct him on how to re-amend his disclosure. Ex. 118. Thus, the disclosure form was actually amended twice in January 2013.

events. The Committee concludes that the Swallow email referenced above is another example of his effort to create a favorable narrative and is a clear reflection of his anxiety about events involving the Bell family.

Recently, Mr. Swallow claimed that the amendments regarding the Bell fundraiser were made to correct a “mistake” that over-inflated the cost of the fundraiser. In the December 17, 2013, *City Weekly* article discussed above, Mr. Swallow responded to questions regarding the cost of the fundraiser and the reason for the amendment. Ex. 103. The article quoted him as saying:

“As I understand it, the contribution was an ‘in kind’ contribution and was supposed to be the cost of the event.” He continued, “A mistake was made in the report which attributed an enormous sum to the cost of the fundraiser,” that sum being \$15,000. The fundraiser was held at the Bell residence, he noted, and the “only expense was refreshments and a string quartet.”

The Committee’s investigation revealed, however, that the fundraiser cost the Bells \$28,024. Ex. 120.<sup>80</sup> Event receipts show that the two expenses Mr. Swallow mentioned specifically—the string quartet and the refreshments—alone cost \$1,300 and \$9,000, respectively. Ex. 122. The Bells had invited more than 250 people to the fundraiser, and witnesses told the Committee that the Bells spent accordingly even though only approximately 30 guests attended. The Bells told the Committee they spent more on the fundraiser than they intended, and that they, together with their accountant, determined that \$15,000 was an appropriate amount initially to report as an in-kind contribution on the theory that some of the cost was actually a business expense and therefore not reportable as an in-kind contribution. Whatever validity that theory may or may not have, the Committee notes that Mr. Swallow’s recent statement minimizing the cost of the event has no basis in fact. The statement appears to

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<sup>80</sup> On January 6, 2014, following the Committee’s hearings on this topic, BellMed filed another amended disclosure raising the total amount of the in-kind contribution for the fundraiser from \$1,000 to \$28,024. Ex. 121.

be yet another in a series of public statements by Mr. Swallow designed to quell public controversy regardless of whether the statements bear any relationship to the truth.

## **II. Mr. Swallow Fabricated and Eliminated Evidence in an Effort to Impede Any Investigation Into his Misconduct**

### **A. Overview of the Obstruction in Which Mr. Swallow Engaged**

Early in its investigation, the Committee received information that a significant amount of Mr. Swallow's email was missing from the servers of the Office of the Attorney General. As its investigation proceeded, the Committee obtained additional information suggesting that other data or data devices belonging to Mr. Swallow had also gone missing. The Committee became concerned that some or all of this data and device loss may have been intentional. In addition, the Committee developed concerns that some of the documents that Mr. Swallow had provided to the Committee were not authentic and had been created after the events they described in order to mislead those who might inquire about those events. As facts emerged, it appeared that the timing of the evidence fabrication and suspicious data loss correlated with the Krispy Kreme meeting between Mr. Johnson and Mr. Swallow, discussed in detail below, that occurred on or about April 30, 2012 and which was revealed in the press shortly after Mr. Swallow took office in January 2013.

The Committee invested considerable time and resources investigating these issues. In developing the facts related to the Krispy Kreme meeting itself, the Committee relied on an audio recording of the conversation that Mr. Johnson created (Ex. 21), apparently without the knowledge of Mr. Swallow. The Committee also reviewed a transcript of that recording prepared by a certified court reporter.<sup>81</sup> Both the recording and the transcript were publicly released in January 2013. The Committee also interviewed a Swallow campaign aide who was

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<sup>81</sup> The Committee reviewed the transcript as an aid to understanding the audio recording, but relied on the audio recording as authoritative where the transcript appeared to diverge from the spoken words.

present at the Krispy Kreme shop during the meeting, and reviewed the statements Mr. Swallow made under oath in the Lieutenant Governor's investigation regarding the meeting. Mr. Johnson and Mr. Swallow both declined through their respective counsel to speak with the Committee about the meeting or any other issue. To investigate the data fabrication and elimination issues, the Committee relied on email, calendar and instant messaging records from the Office and other sources, interviewed State personnel, reviewed Mr. Swallow's public statements and public statements of his representatives, reviewed documents provided by, or shown to the Committee by, Mr. Swallow in response to the Committee's subpoena, and corresponded with Mr. Swallow's counsel. The Committee also undertook independent forensic recovery efforts.

The Committee believes that one possible explanation for some of Mr. Swallow's subsequent actions is that the Krispy Kreme meeting had a marked effect on Mr. Swallow. In listening to the audio recording, it is possible to conclude that Mr. Johnson conveyed a threat to Mr. Swallow: if Mr. Swallow did not recover certain money for Mr. Johnson that had been paid to Richard Rawle, there was a danger that Mr. Swallow's reputation could be ruined, that his campaign for Attorney General fatally damaged, and that he would perhaps be implicated, wrongly or not, in criminal conduct that could attract the attention of federal criminal investigators. Mr. Swallow has admitted that he was "scared to death" by the meeting.

The Committee concludes that after the meeting, Mr. Swallow, apparently prompted by Mr. Johnson's threats, fabricated evidence designed to mislead anyone who might inquire into his business dealings with Richard Rawle. And the Committee concludes that, at nearly the same time, Mr. Swallow embarked on an effort to systematically eliminate large amounts of data, including official email, records on his official calendar, and personal email, and to discard, damage, erase or eliminate a number of data devices, including the hard drives on two Office-

issued computers, the hard drive on his home computer, his Office cell phone, his personal cell phone, and his campaign iPad. The Committee further obtained evidence strongly indicating that, at Mr. Johnson's suggestion, Mr. Swallow acquired a prepaid cell phone that he could use to place or receive calls or text messages while making it difficult or impossible for law enforcement or others to track his usage. The acquisition of this prepaid phone is, in the Committee's view, fully consistent with Mr. Swallow's keen awareness of, and concern about, his digital footprint relating to the events under review.

As catalogued in detail below, a number of these instances of intentional evidence fabrication and elimination of data or data devices have been fully confirmed by the Committee's investigation. But for Mr. Swallow's resignation, other instances would have warranted continued investigation by the Committee to verify the scope and cause of the evidence fabrication or loss. The instances of evidence fabrication and destruction that the Committee has confirmed actually hindered, delayed and obstructed the Committee's work. Moreover, during the course of the Committee's investigation, Mr. Swallow, both personally and through his representatives, asserted a narrative of these events that was sometimes false and other times highly misleading. The Committee expended significant resources cutting through the fog of these false and misleading stories, and the Committee's work was further hindered and delayed as a result. In part, this is why the Committee today has referred these matters to appropriate law enforcement and professional licensing officials for review and consideration.

Mr. Swallow has proposed innocent explanations for many of the incidents discussed in this section, but the Committee does not believe that one person could innocently suffer all of the adverse technological events that Mr. Swallow experienced, and does not believe that the slew of evidence creation and elimination can be innocently explained consistent with common sense or



human experience. Moreover, in the view of the Committee, Mr. Swallow's constantly shifting explanations for many of the data loss incidents fatally undermine the credibility of his contentions. Instead, the Committee concludes that Mr. Swallow's actions following the Krispy Kreme meeting were part of a concerted effort to evade and obstruct any future investigation into his conduct.

## **B. Legal Background to the Committee's Findings Regarding Obstruction**

The fabrication and elimination of evidence discussed in this section could implicate a number of Utah statutes authorizing criminal sanctions.<sup>82</sup> The following is a brief discussion of the legal elements of the Utah statutes the Committee has identified as most relevant to the conduct described in this section of the report. The purpose of this legal discussion is to provide context for the Committee's factual findings and for its belief that its investigation was actually obstructed by Mr. Swallow's conduct. The Committee recognizes that decisions about the extent to which these statutes are implicated by the facts discussed below is within the province of the Executive Branch.

### **1. Utah's Obstruction Statutes Related to Investigations of Criminal Conduct and Official Proceedings**

Several Utah statutes prohibit acts taken with the intent to hinder, delay, or prevent an investigation of potentially criminal conduct or an official proceeding, and therefore potentially are implicated by a wide range of conduct in which the Committee finds Mr. Swallow to have

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<sup>82</sup> These events also implicate several federal criminal statutes, including 18 U.S.C. §§ 1503 (obstruction of justice), 1512 (witness and evidence tampering), and 1519 (document destruction). A full discussion of these statutes is not provided here because the Department of Justice, by taking the unusual step of assigning the Federal Bureau of Investigation to work under the direct and exclusive supervision of state prosecutors, has apparently decided to forego federal inquiry into these matters. Regardless, the Committee believes that it is important to note that federal statutes related to evidence fabrication and elimination were a part of the overall legal framework governing Mr. Swallow's behavior at the time of the events described in this section. Whether the Department of Justice chooses to consider the federal interest inherent in these events or not, the Committee finds that there is a significant public interest in ensuring that a high-ranking state law enforcement official abides by the requirements of federal criminal law.

engaged. The general obstruction of justice statute, § 76-8-306 of the Utah Code, prohibits a wide range of obstructive acts, including the alteration or concealment of evidence and the presentation of false evidence, if the acts are performed with the intent to “hinder, delay, or prevent the investigation, apprehension, prosecution, conviction, or punishment of any person regarding conduct that constitutes a criminal offense.”<sup>83</sup> Alternatively, those same acts of evidence alteration, concealment or presentation can be prosecuted under Utah’s evidence tampering statute, § 76-8-510.5, so long as they are taken with the intent to delay, hinder, or prevent an investigation or proceeding regarding underlying conduct that does not also constitute an offense under the obstruction of justice statute.<sup>84</sup> Importantly, neither of these two statutes requires that an actual investigation or proceeding be pending or even about to be instituted, or that the person who commits the obstruction or tampering be the target or subject of the investigation or proceeding. So long as the obstructive act is taken with the intent to affect a qualifying investigation or proceeding against any person, the intent element of the relevant statute is satisfied. The Committee notes that, at the time Mr. Swallow appears to have engaged in the behavior discussed in this section, both criminal and civil proceedings against Jeremy Johnson had already been commenced by the federal government.

Moreover, tampering with a witness and making false statements are prohibited by statutes that apply to criminal and non-criminal investigations and proceedings alike. Utah’s witness tampering statute, § 76-8-510, prohibits attempts to cause another person to “testify or

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<sup>83</sup> Utah Code Ann. § 76-8-306(1).

<sup>84</sup> Utah Code Ann. §§ 76-8-510.5(2) (“A person is guilty of tampering with evidence if, believing that an official proceeding or investigation is pending or about to be instituted, or with the intent to prevent an official proceeding or investigation or to prevent the production of any thing or item which reasonably would be anticipated to be evidence in the official proceeding or investigation, the person knowingly or intentionally: (a) alters, destroys, conceals or removes any thing or item with the purpose of impairing the veracity or availability of the thing or item in the proceeding or investigation; or (b) makes, prevents, or uses any thing or item which the person knows to be false with the purpose of deceiving a public servant or any other party who is or may be engaged in the proceeding or investigation.”); 76-8-510.5(3) (“Subsection (2) does not apply to any offense that amounts to a violation of Section 76-8-306”).

inform falsely” or “withhold any testimony, information, document or item” if the person makes the attempt “believing that an official proceeding or investigation is pending or about to be instituted, or with the intent to prevent an official proceeding or investigation.”<sup>85</sup> Likewise, “in any official proceeding,” a person is guilty of a felony if he makes or affirms a false material statement and he does not believe the statement to be true.”<sup>86</sup> As discussed below, these particular statutes may be implicated by the conduct associated with the creation of Richard Rawle’s dying declaration.<sup>87</sup>

## **2. Utah’s Obstruction Statutes Related to Government Records**

Several other Utah statutes prohibit actions taken with respect to government records, regardless of whether an investigation or official proceeding is under way, and therefore are implicated by the Committee’s findings in this section. Pursuant to § 76-8-413, it is a misdemeanor to alter, falsify, remove, or secrete any record “filed or deposited in any public office.”<sup>88</sup> If the person who alters, falsifies, removes, or secretes the record is the public “officer” who had “custody” over the record, the officer is guilty of a felony under § 76-8-412.<sup>89</sup> Likewise, a person is guilty of a misdemeanor if, knowing that it is unlawful to do so, he

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<sup>85</sup> Utah Code Ann. § 76-8-508(1).

<sup>86</sup> Utah Code Ann. § 76-8-502 (“A person is guilty of a felony of the second degree if in any official proceeding: (1) He makes a false material statement under oath or affirmation or swears or affirms the truth of a material statement previously made and he does not believe the statement to be true; or (2) He makes inconsistent material statements under oath or affirmation, both within the period of limitations, one of which is false and not believed by him to be true.”). Even if the false statement is *not* material, if it otherwise satisfies the requirements of § 76-8-502, the person who makes the statement is guilty of a misdemeanor under § 76-8-503.

<sup>87</sup> The circumstances surrounding the Rawle declaration may not be the only ones implicating the witness tampering statute. We note that in a sworn affidavit submitted by a state law enforcement officer, it is alleged that in November 2012, Mr. Swallow spoke with a known associate of Jeremy Johnson’s and asked that the associate convey to Mr. Johnson that he (Swallow) was still Mr. Johnson’s “friend” and that “the only way he (John Swallow) could help him (Jeremy Johnson) was if he (John Swallow) was in office as the Attorney General.” Mr. Swallow also told Mr. Johnson’s associate that Brent Ward, the federal prosecutor then assigned to the criminal case against Mr. Johnson, was Mr. Swallow’s friend. Ex. 123 at ¶ 64. At the time of that conversation, federal criminal charges were pending against Mr. Johnson and Mr. Johnson had sought to obtain immunity for Mr. Swallow as part of a negotiated plea with federal authorities.

<sup>88</sup> Utah Code Ann. § 76-8-413.

<sup>89</sup> Utah Code Ann. § 76-8-412.

“intentionally destroys, conceals, or otherwise impairs the verity or availability of “anything belonging to, received, or kept by the government for information or record, or required by law to be kept for information of the government.”<sup>90</sup> Lastly, Utah’s Public Records Management Act makes it a class B misdemeanor to “intentionally mutilate, destroy, or otherwise damage or dispose of the record copy of a record knowing that the mutilation, destruction, damage or disposition is in contravention of a government entity’s properly adopted retention schedule.”<sup>91</sup>

With this legal framework in mind, the Committee turns next to a discussion of certain critical events that provide context for the obstructive behavior in which the Committee concludes Mr. Swallow engaged.

**C. The \$23,500 That Mr. Swallow Received From Mr. Rawle—and its Connection to Mr. Johnson**

The circumstances relevant to Mr. Swallow’s obstruction begin in 2009 and require examination of two sets of related events: (1) Mr. Swallow’s work on behalf of a business venture of Mr. Rawle’s, and (2) Mr. Swallow’s efforts to connect Mr. Johnson with Mr. Rawle to assist Mr. Johnson in resolving legal problems he (Johnson) was having with federal regulators. Mr. Swallow undertook both of these projects while serving as Chief Deputy Attorney General.

**1. Mr. Swallow’s Consulting Work on the Chaparral Limestone & Cement Project**

In 2009, Richard Rawle entered into a venture that planned to revitalize a disused cement plant near Las Vegas, Nevada. At the time, Las Vegas had no local cement source and shipped cement in from out of state. The venture’s business plan was to produce cement locally to undercut out-of-state prices. Mr. Rawle and his partners established a Utah limited liability company, Chaparral Limestone & Cement, and acquired the abandoned cement plant, a

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<sup>90</sup> Utah Code Ann. § 76-8-511.

<sup>91</sup> Utah Code Ann. § 63A-12-104.

limestone quarry, and other mining rights near Logandale, Nevada. They hoped to sell their plant and collection of mining rights to an investor or a large cement manufacturer for as much as \$100 million.

In the fall of 2010, Mr. Rawle, who owned 19% of the company, and his partners wanted to approach the Moapa Band of Paiute Indians (“Moapa Tribe”), which owned land a few miles from the plant, to see whether the tribe would permit Chaparral to mine limestone on the reservation. Additionally, the partners wanted to determine whether the Moapa Tribe was negotiating with any other cement company with which the Rawle interests might have to compete. The partners asked Mr. Rawle to look into these questions. Mr. Rawle, in turn, recruited Mr. Swallow’s assistance. According to Mr. Rawle’s partners in the Chaparral project, interfacing with the Moapa Tribe was Mr. Swallow’s sole assignment for the project.

Chaparral partners told the Committee that Mr. Swallow attended at most three or four meetings in Provo and participated in another two by phone, none of which were particularly long. The Committee’s investigation found that Mr. Swallow’s most significant contribution to the Chaparral project was a pair of introductions he facilitated between the project’s partners and attorneys whom Mr. Swallow believed could contribute to the project. The first prospect was Dave Colvin, a former attorney for the Las Vegas Band of Moapa Indians and Mr. Swallow’s law school classmate; the second was Dennis Ickes, a former attorney with the Bureau of Indian Affairs. Mr. Ickes told the Committee that his meetings and telephone calls with Mr. Swallow amounted to no more than two hours. The Chaparral partners told the Committee that they remembered being introduced to Mr. Colvin and Mr. Ickes, and that neither attorney was ever retained in connection with the Moapas (although the group did retain Mr. Colvin for other work).

Mr. Swallow, for his part, has provided conflicting accounts of the scope and timing of his own role in the project. In a text message to Mr. Shurtleff on February 12, 2013, Mr. Swallow described his work on the project while serving as Chief Deputy as a “continuation project” since he had begun discussing the matter with Mr. Rawle in 2009, before Mr. Swallow joined the Office. However, Mr. Swallow testified in the Lieutenant Governor’s investigation that though Mr. Rawle had mentioned the project in 2009, it wasn’t until late summer or early fall 2010, about eight months after he joined the Office, that Mr. Rawle asked him to work on the project and it was only then, Mr. Swallow said, that he became “involved” with it. Ex. 1 at 57–59.

There were similar discrepancies regarding the termination of Mr. Swallow’s involvement in the Chaparral project. He first testified in the Lieutenant Governor’s investigation that his involvement “petered out” after June or July 2010 and that he may have had a meeting on the project with Mr. Ickes as late as November 2011. Ex. 1 at 86. But when presented with a June 2012 email from Mr. Rawle that discussed the “project that John has been working on,” Mr. Swallow acknowledged that his post-summer 2010 involvement with the project might have lasted not just a few months but nearly two years. He said, “it was kind of a blurry line about how long the work went, and so I would assume that I was still working with Richard on this at this point in time” Ex. 1 at 87.

The Committee is unable to say whether Mr. Swallow actually worked all of the hours for which he was paid \$23,500 by Mr. Rawle. The evidentiary record compiled by the Committee reflects that Mr. Swallow did perform some consulting work related to the Chaparral project in 2010 and 2011. Mr. Swallow’s story is in part corroborated by an email he sent to Mr. Rawle on April 8, 2011, stating that he “would like to invoice the company the amount of \$15,000 for

services rendered on our Nevada project.” Ex. 124. Mr. Rawle signed RMR Consulting’s second check to Mr. Swallow’s affiliated entity, P Solutions, for \$15,000, that same day. Ex. 125. And partners in the Chaparral project told the Committee that Mr. Swallow was involved in the project.

The Committee’s investigation found no authentic evidence, however, that Mr. Swallow spent anywhere close to the 94 hours of work he has claimed to have performed and which would have been required to justify \$23,500 in compensation at the hourly rate of \$250 to which he claims he and Mr. Rawle agreed.

## **2. Mr. Swallow Refers Mr. Johnson to Mr. Rawle, Who Undertakes a \$250,000 Effort to Resolve Mr. Johnson’s Legal Problems**

The second set of events relevant to Mr. Swallow’s obstructive behavior center on his reference of Jeremy Johnson to Rawle for assistance with his (Johnson’s) problems with the Federal Trade Commission (FTC).

In 2010, Mr. Johnson and his I Works company were under investigation by the FTC for suspected illegal marketing and billing practices. In August 2010, as the investigation of Mr. Johnson appeared to be reaching a boiling point, Mr. Johnson reached out to Mr. Swallow for help. Mr. Johnson was looking for ways that he might halt the FTC investigation and prevent action from being taken by the federal government against his company. Mr. Swallow, by then the Chief Deputy Attorney General, nevertheless agreed to assist.

Mr. Swallow began by asking Mr. Shurtleff to call in a favor with Senator Orrin Hatch in order to help Mr. Johnson with what Mr. Swallow described as “some games being played by the FTC.” Ex. 126. In an email to Mr. Shurtleff, Mr. Swallow acknowledged that derailing federal action against Mr. Johnson would be a heavy lift, but “[a]s you probably understand, Hatch will need to work this one if it is going to do any good, and that would probably only happen as a real

favor to you.” Ex. 126. Mr. Swallow testified in the Lieutenant Governor’s investigation that he, Mr. Johnson and Mr. Shurtleff all met with Senator Hatch at the Senator’s Salt Lake City office in order to “explain to Senator Hatch the FTC was not listening to [Mr. Johnson], that they didn’t understand what his business was doing, and he wanted someone like Senator Hatch to maybe reach out to the FTC and ask them to at least sit down with him and understand what his company was doing.” Ex. 1 at 229. Remarkably, Mr. Swallow testified that he was not acting in an official capacity on behalf of the Attorney General’s office at the meeting, but instead that he and Mr. Shurtleff were acting as “friends of Jeremy Johnson.”

The meeting with Senator Hatch failed to solve Mr. Johnson’s problem: the FTC did not go away. Mr. Swallow next suggested that Mr. Johnson seek Richard Rawle’s help in dealing with the FTC. He told Mr. Rawle, he testified, that his “friend” was “having a problem getting his story in front of the FTC, and I don’t know much about the FTC and the lobbying of the FTC and I can’t do it myself.” Ex. 1 at 237. Mr. Rawle’s political connections included individuals reportedly with close ties to Senate Majority Leader Harry Reid. According to Mr. Swallow, Mr. Rawle recommended they reach out to Senator Reid through these connections.

On September 29, 2010, Mr. Swallow wrote to Mr. Johnson that he had spoken with Mr. Rawle about contacting an associate of Mr. Rawle’s whom Mr. Swallow described as “Harry Reid’s guy.” Mr. Swallow told Mr. Johnson that “‘Harry Reid’s guy’ . . . needs a brief narrative of what is going on and what you want to happen.” Mr. Swallow—a former lobbyist himself—proposed language for Mr. Johnson in communicating with Senator Reid’s “guy,” suggesting that he describe I Works as “an Internet sales company that sold various products over several years,” and that he say I Works “sold real products that benefitted their customers, they followed all the rules and they had well organized and effective customer service.” Ex. 127. Mr.



Swallow's email suggested that the goal of the outreach would be to have Mr. Johnson or other I Works representatives "sit down" with Senator Reid and determine whether Senator Reid would "be willing to encourage the FTC" to rethink its approach to the investigation. Mr. Swallow further suggested trying to get Senators Reid and Hatch to work together on the issue. In his email, Mr. Swallow warned Mr. Johnson, "I don't know the cost, but it probably won't be cheap. . . . I'm not sure what they have invested in this person however, they have been building capital for quite a while and this will be a serious withdrawal of capital . . . ."

Mr. Johnson ultimately retained Mr. Rawle for the effort. The cost was \$250,000. On October 14, 2010, Mr. Rawle established a new entity for the effort called RMR Consulting LLC, and I Works wired \$50,000 to RMR Consulting on November 2, 2010. Scott Leavitt, a Johnson employee, mortgaged his house to come up with additional money, and paid another \$200,000 to RMR Consulting on December 2, 2010. Ex. 128. The day after Mr. Leavitt's money was received, \$50,000 was wired from the RMR Consulting account to a lobbyist in Las Vegas, Nevada, named Jay Brown, and another \$50,000 went to a lobbyist in Washinton, D.C., named Tim Rupli.<sup>92</sup>

On December 10, 2010, Mr. Rawle and Mr. Johnson discussed by email the timing of a meeting that was apparently to take place with the FTC. From the email, it appears that Mr. Johnson had already delayed the meeting once before, and might need to do so again. Mr. Rawle wrote Mr. Johnson, "If you are not ready I think it more appropriate to have your Attorneys try to negotiate a delay. We don't however want to piss off the commissioners<sup>93</sup> before we have a

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<sup>92</sup> Both Mr. Brown and Mr. Rupli have worked as lobbyists for the Community Financial Services Association, a national association of payday lenders that Mr. Rawle helped lead for years. In addition, media reports have asserted that Mr. Brown is a decades-long friend of Senator Reid, as well as a periodic business associate of the Senator's.

<sup>93</sup> The FTC is governed by five commissioners who are appointed by the President and confirmed by the Senate.

chance to work with them. How did they react to the last delay?” Mr. Rawle then forwarded the email exchange to Mr. Swallow, who replied to Mr. Rawle with this advice: “You get one shot. If someone has to have a heart attack, someone has to sacrifice. I would strategically delay b[ecause] it gives you more time. . . . [T]here needs to be a reason since they did it before.” Thus, the State’s second highest law enforcement officer clearly suggested that Messrs. Rawle and Johnson should do *whatever* needed to be done to delay the federal investigation of Johnson.

Whether the meeting took place is unknown. What is known is that the purported lobbying effort failed. On December 21, 2010, the FTC filed a civil complaint in federal district court in Nevada against Mr. Johnson, I Works, and other defendants. Ex. 129.<sup>94</sup> The complaint alleged that Mr. Johnson and others violated federal law by luring consumers into paying recurring monthly charges for worthless products. In June 2011, Mr. Johnson and I Works were indicted in Utah federal district court and charged with mail fraud. Ex. 130.<sup>95</sup>

### **3. Mr. Swallow’s Compensation for His Work with Mr. Rawle**

Mr. Swallow’s work on Chaparral, and his effort to connect Mr. Johnson with Mr. Rawle on the FTC issue, both began in the summer or fall of 2010. As noted, after the start of both

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<sup>94</sup> The Committee received an allegation that after the filing of the complaint, Mr. Swallow again offered to help quiet Mr. Johnson’s legal troubles, and asked for \$120,000 to do so. An attorney named Travis Marker told the Committee that he was retained by Mr. Johnson and other I Works defendants to assist in the FTC lawsuit and, later, the federal criminal case against Johnson. Mr. Marker said that, at Mr. Johnson’s request, he (Marker) met with Mr. Swallow twice in June or July 2011 at a café near the Capitol to discuss how Mr. Swallow might help with the case. Mr. Marker said they discussed whether there were other “attorneys or individuals who might have insights on how to proceed with” the Utah U.S. Attorney. At a third meeting in August 2011 at the cafeteria in the Senate building on Utah’s Capitol Hill, Mr. Marker said, Mr. Swallow suggested that Mr. Johnson would “have more options” if he could pay an amount that Mr. Marker recalled was approximately \$120,000. Mr. Marker said that Mr. Swallow appeared nervous during this meeting and did not explain how the money would be used. Mr. Marker told Mr. Swallow that Mr. Johnson’s assets had been frozen and he (Johnson) would not be able to come up with the money. Mr. Marker provided the Committee with a sworn declaration attesting to these facts, but the Committee was unable to independently verify his claims.

<sup>95</sup> On March 6, 2013, federal prosecutors filed a superseding indictment in Mr. Johnson’s criminal case that charged Mr. Johnson, I Works, and other defendants with 31 counts of money laundering, 21 counts of wire fraud, 13 counts of bank fraud, 10 counts of making false statements to a bank, 9 counts of participation in fraudulent banking activities, conspiracy, and conspiracy to commit money laundering. Ex. 131. The superseding indictment remains pending as of the submission of this report and Mr. Johnson awaits trial on those charges.

projects, on October 14, 2010, Mr. Rawle established a new entity called RMR Consulting. Six days later, on October 20, 2010, Mr. Swallow established a new entity named P Solutions LLC.<sup>96</sup> Mr. Johnson made his initial \$50,000 payment to RMR Consulting on November 10. On November 24, 2010, an \$8,500 check from RMR Consulting was deposited into the P Solutions bank account. Ex. 133. Mr. Johnson made his second payment, of \$200,000, to RMR Consulting in December 2010. Mr. Rawle issued a second check to P Solutions, for \$15,000, on April 8, 2011. Ex. 125. Together, Mr. Rawle's two payments to P Solutions, and thus to Mr. Swallow, totaled \$23,500.

Mr. Swallow has testified that this money was paid in exchange for his services on the Chaparral project. According to Mr. Swallow's testimony in the Lieutenant Governor's investigation, the original deal he struck with Mr. Rawle was that Mr. Rawle promised him "a piece" of the equity in Chaparral in return for his services. The percentage of the equity share was not specified, according to Mr. Swallow; instead, Mr. Swallow testified that he felt that if the project was successful, Mr. Rawle would "be generous" to Mr. Swallow. Ex. 1 at 61. Mr. Swallow said he felt there was enough promise in the project that he decided to form P Solutions LLC to hold the anticipated equity interest.<sup>97</sup>

But according to Mr. Swallow's recent testimony, the agreed-upon compensation structure changed when Mr. Rawle offered to pay Mr. Swallow for bringing Mr. Johnson and his FTC problem to Mr. Rawle. Mr. Swallow testified that he was "not interested" in being paid for the introduction, and said, "I felt like I owed more to Jeremy than to accept money for

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<sup>96</sup> A document recovered by the Committee from Mr. Swallow's personal hard drive shows that Mr. Swallow instructed his attorney, Lee McCullough, to create the P Solutions entity one week prior on October 13, 2010. Ex. 132.

<sup>97</sup> The Committee sought to interview Cort Walker, a former business associate of Mr. Rawle's, to confirm Mr. Swallow's testimony that he was promised an equity stake in the Chaparral project. An attorney for the Rawle interests refused to make Mr. Walker available for an interview on this topic.

encouraging him to spend money with Richard Rawle.” Ex. 1 at 62-64. Instead, Mr. Swallow said he suggested that Mr. Rawle pay him an hourly rate for the work that Mr. Swallow had been performing on the Chaparral project. Mr. Swallow said that if the project succeeded, the money paid at the hourly rate could later be subtracted from Mr. Swallow’s equity interest. Mr. Swallow testified that Mr. Rawle agreed to this arrangement, and they purportedly settled on an hourly fee of \$250. At that \$250-per-hour rate, it would have taken Mr. Swallow 94 hours of work on the Chaparral project to earn the \$23,500 that he was paid by Mr. Rawle in November 2010 and April 2011.

With this background, we turn to the meeting between Mr. Swallow and Mr. Johnson at the Krispy Kreme shop in Orem, Utah on or about April 30, 2012 that the Committee concludes provided the impetus for Mr. Swallow’s obstructive activity.

#### **D. The Krispy Kreme Meeting and its Aftermath**

The Committee’s evidence strongly suggests that the fabrication and elimination of evidence undertaken by Mr. Swallow had, as its genesis, his Krispy Kreme meeting with Mr. Johnson, which included discussion between the two men of Mr. Johnson’s payment of \$250,000 to Richard Rawle and the work that Mr. Swallow had done on the Chaparral project.

According to Mr. Swallow’s sworn testimony in the Lieutenant Governor’s investigation, the Krispy Kreme meeting was arranged that same morning when Mr. Johnson called him to request that the two men meet. Mr. Swallow testified that they chose the doughnut shop because the location “happened to be convenient for” Mr. Swallow. Ex. 1 at 261. Mr. Swallow brought a campaign aide with him to the doughnut shop, and the aide sat nearby while Mr. Swallow and Mr. Johnson spoke for a little more than an hour.

As set forth in detail below, the recording of that conversation shows that Mr. Johnson wanted Mr. Swallow to get a refund of most of the \$250,000 that he (Johnson) and Mr. Leavitt

paid to Mr. Rawle. At the time of the meeting, Mr. Swallow was running to be the State's top law enforcement officer but he nevertheless agreed to sit alone with an individual who was under federal indictment and had been sued by the FTC. Mr. Johnson communicated during the meeting that, if Mr. Swallow could not get a refund of the money, Mr. Johnson might implicate Mr. Swallow in an alleged effort to bribe Senator Reid. Alternatively, at various points in the conversation Mr. Johnson suggested that he might implicate Mr. Swallow in a bribery scheme in which Mr. Swallow was paid to provide Mr. Johnson with a favorable interpretation of Utah law regarding the lawfulness of online poker. In short, the conversation appeared to be a shakedown.

Mr. Johnson said during the meeting that the FBI had been probing his (Johnson's) business dealings. But, he also told Mr. Swallow, the investigators were probably after more. Mr. Johnson said he thought that what the FBI really wanted was to make a case against a public official—as Mr. Swallow was—in connection with the Rawle payments. Federal law enforcement “would love to roast a public official even more than me,” he said—in fact, “[p]robably the only one they'd [] like to roast more than me is a public official.” Ex. 21 at 9; Ex. 134-A.

Mr. Johnson explained that he and Scott Leavitt were very upset that the money they had paid to Richard Rawle had had no effect on the FTC. “It was \$250,000 or 300,000,” he said, and “Nothing happened. Like, literally. There was no meeting, there was no nothing. And if you try and talk to Richard he hangs up the phone.” Ex. 21 at 7; Ex. 134-B.

“My frustration is not geared towards you,” he told Mr. Swallow, but “I feel like Richard took us to the cleaners.” Exs. 21 at 7; Ex. 134-C. But Scott Leavitt, on the other hand—“he's mostly mad at you.” Ex. 21 at 7; Ex. 134-C. And Mr. Johnson was worried, he said, that the federal government was “going to track down Scott and say . . . what's this money for?” And

Mr. Leavitt would tell them, he worried, that “John Swallow said we had to send this in. That’s the way we get our . . . FTC issues resolved.” Ex. 21 at 8; Ex. 134-D. Mr. Johnson then painted a picture for Mr. Swallow in which Mr. Leavitt would tell federal investigators that the money paid to Mr. Rawle was intended to bribe Senator Reid to quash the FTC case.<sup>98</sup> And, he told Mr. Swallow, he himself was under pressure from his (Johnson’s) own attorney to do what he could to avoid a bribery charge. His attorney, he said, was telling him that “you got an issue here where it’s like you’re—you’re bribing—you guys are trying to bribe a United States senator to help you get rid of charges,” and that, “for you, Jeremy, what you need to be thinking about is getting immunity from that.” Ex. 21 at 21; Ex. 134-E.

Alternatively, Mr. Johnson in places spun out a different story that he warned federal prosecutors might construct. As discussed in detail earlier in this report, in July 2010, Mr. Swallow—then Chief Deputy—sent Mr. Johnson an email stating that he was “not aware of any such law in Utah to prevent” the processing of proceeds from online poker transactions. Ex. 18 at 5. Mr. Johnson said his attorney was worried that “the government thinks that this might be tied to the poker processing” and specifically to Mr. Johnson “sending money to an official to get permission to process poker.” Ex. 21 at 17; Ex. 134-F. The danger to Mr. Swallow, in this version of Mr. Johnson’s story, was that if any money from the Johnson-Rawle payment had ultimately gone to Mr. Swallow, the government could come to the conclusion that he (Johnson) “paid you to send me an e-mail saying that it was okay.” Ex. 21 at 17; Ex. 134-G.

Mr. Swallow protested that the money paid to Rawle had gone to a legitimate lobbying effort, but Mr. Johnson told him, “I think we both know damn well [it] didn’t” go to a bona fide lobbyist. Ex. 21 at 12; Ex. 134-H. Mr. Johnson said that Mr. Rawle had told him he had

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<sup>98</sup> As noted, in early 2013, Mr. Johnson asserted this bribe allegation publicly. Mr. Johnson’s claim of illegality was apparently reviewed by the United States Department of Justice, which, according to public statements by Mr. Swallow’s counsel, declined to institute criminal proceedings.

“engaged a lobby group,” but when Mr. Johnson asked who the lobbyist was and when he could meet with them to discuss strategy, Mr. Rawle said, “well, you know what kind of a lobby group I’m talking about.” Ex. 21 at 13; Ex. 134-I. “And so that,” Mr. Johnson said to Mr. Swallow, “makes me believe that he didn’t really give it to a lobby group.” Ex. 21 at 13; Ex. 134-J.

Mr. Swallow insisted that Mr. Johnson “may have a wrong idea,” and that he (Swallow) thought “that they” (presumably Mr. Rawle and his affiliates) “have lobbyists that they pay on retainer.” Ex. 21 at 21; Ex. 134-K. But, critically, Mr. Johnson said he had emails showing that the scheme was a bribery scheme—and that the emails tied Mr. Swallow to the effort. “I know there’s one in there from you to me saying about Senator Reid’s guy,” he told Mr. Swallow. Ex. 21 at 22; Ex. 134-L. Later he elaborated: Mr. Swallow’s email, he claimed, told Mr. Johnson “about what this money was going to do,” and specifically “how it was going to go to Reid” through “Reid’s guy.” Ex. 21 at 32; Ex. 134-M. And, he said, “it’s not just those e-mails.” There were also, he told Mr. Swallow, “e-mails from me . . . corroborating on this saying hey, I just talked to Swallow, John Swallow, and I know—I know you guys are nervous and you feel like we’re giving up our money, [that] we should be giving it to attorneys, but he [Swallow] assured me this is what we gotta do, this is going to fix our problems with the FTC.” Ex. 21 at 33; Ex. 134-N.

Mr. Swallow responded to these statements during the Krispy Kreme meeting with shock and concern. “Wow . . . No wonder they’re after me.” Ex. 21 at 33; Ex. 134-O. “[I]f the FBI thinks what it looks like on paper say, then they’re going to come hot after me.” Ex. 21 at 34; Ex. 134-O.

Mr. Johnson continued to push. “The reality is,” he said, that “even if they indict you and try and bring you to a trial, they’ll probably lose—but they’ll wreck your life in the process.

They will destroy you. You'll be a pariah just like me . . . . I wouldn't wish this on anyone. . . .” Ex. 21 at 48; Ex. 134-P. The dire scenario that Mr. Johnson laid out had its intended effect. Mr. Swallow—concern evident in his voice as captured on Mr. Johnson’s tape—replied:

Mr. SWALLOW: I’m a lawyer.

Mr. JOHNSON: What’s that?

Mr. SWALLOW: I’m a lawyer. What do I do? If I can’t be a lawyer?

Ex. 21 at 49; Ex. 134-Q.

Mr. Johnson continued to drive his point home by saying that he (Johnson) was the key to the government connecting Mr. Swallow to the purported wrongdoing, a fact that was critical to Mr. Johnson’s effort to leverage Mr. Swallow. Mr. Johnson proceeded to explain that the government must not have what it needed to come after Mr. Swallow—and would not have it without Mr. Johnson’s help. Indeed, he suggested, the government’s focus was surely on Majority Leader Reid—apparently intending to convey that the focus would stay on Senator Reid unless Mr. Johnson pointed them to Mr. Swallow. But Mr. Swallow remained openly worried that federal law enforcement would come after him:

Mr. SWALLOW: Do you think they need you . . . to make that connection?

Mr. JOHNSON: How would they be—why would they be pounding my lawyer, willing to cut whatever deal to get me to sit down and talk to them about these transactions? There's no other reason. So if they had it, they'd—they'd indict you now. They'd make a huge mess of your life. I don't—I'm telling you when it comes back to the thing at the end of the day, they give a s\*\*\* about you. I think they want to—I think they want Reid. . . .

. . .

Mr. SWALLOW: I think I’m their target.



Ex. 21 at 52; Exs. 134-R, 134-S.

In Mr. Johnson's telling, the key to Mr. Swallow's avoiding all of this—a federal investigation, and possibly a federal indictment—was the return of the money by Mr. Rawle. At the start of the conversation, Mr. Johnson told Mr. Swallow that “Scott [Leavitt]” was “going to have to have at least 175” of the \$250,000. Ex. 21 at 4; Ex. 134-T. By the end of the conversation, Mr. Johnson told Mr. Swallow that he (Johnson) would get him (Swallow) copies of the emails that purportedly implicated Mr. Swallow in a bribery scheme. And Mr. Swallow agreed that he would try to get the Rawle money refunded:

Mr. JOHNSON: . . . I'm going to get the e-mails, you're going to talk to Richard. Please try and get him to pay the 175.

Mr. SWALLOW: I will. I'll do everything I can.

Mr. JOHNSON: It will make my life immensely better.

Mr. SWALLOW: Because I think I can get that done. I really do. . . . I don't know I can get 175.

Mr. JOHNSON: You try for 175.

Mr. SWALLOW: I will. I'll do my darnedest.

. . .

Mr. JOHNSON: Whatever you—if you do 175, great. I think it makes a lot of relief on the situation. If it's a less amount tell me what it is, I will do my best.

Mr. SWALLOW: Okay. I will.

Ex. 21 at 59-60; Ex. 134-U.

Ultimately, then, Mr. Swallow agreed to try to recover at least a portion of the money that Mr. Johnson was demanding.

Three particular points about the Krispy Kreme conversation bear additional emphasis because they are critical to understanding the evidence that the Committee obtained regarding what Mr. Swallow did after the meeting.

First, throughout the conversation, Mr. Johnson repeatedly warned Mr. Swallow that if he (Swallow) had received any money that could be traced to the Johnson payment to Richard Rawle, that would tie Mr. Swallow to the purported bribery scheme. “I think they [*i.e.*, federal investigators] think that somehow you got money from this,” Mr. Johnson said. “That’s why I was asking you about RMR Consulting,” the Rawle entity to which the \$250,000 had been paid. Ex. 21 at 11; Ex. 134-V. “[I]f they go in there and look up RMR, I’m sure they have ways of tracing all other wires in and out. As long as it doesn’t go to you, . . . I think that could potentially hopefully end it for you and you know what I’m saying?” Ex. 21 at 11 (diverging from recording); Ex. 134-W.

Later in the conversation, Mr. Swallow said that he had been paid by Mr. Rawle for other consulting work—presumably a reference to the Chaparral project. Mr. Johnson asked, “Did he pay you out of RMR Consulting? I’d go check that . . . go see where that money came from. . . . Talk to Richard saying dude, what is RMR, did you ever pay me from it.” Ex. 21 at 30-31; Ex. 134-X. “I’m telling you that’s going to be a death nail [*sic*],” Mr. Johnson explained, because even if money that Mr. Swallow received from RMR was for legitimate consulting work, “it’s going to look like” it was related to Mr. Johnson’s payment to Mr. Rawle.” Ex. 21 at 31; Ex. 134-Y. “I would find out for damn sure if you ever got paid from RMR,” Mr. Johnson continued later. “I think that’s important to know, for me at least, because if I go in and say a bunch of stuff about RMR . . . and what that money was sent for, even though—even though I know damn well we never paid you anything to hook us up on this Reid deal, that’s exactly the picture they’ll

be able to paint. They will be able to get an indictment, they will flash that out in the news, and it will be a nightmare. It doesn't matter if that's the truth or not." Ex. 21 at 51; Ex. 134-Z.

A second key point concerning the Krispy Kreme meeting is that Mr. Johnson recommended that Mr. Swallow purchase a prepaid cell phone that would allow Mr. Swallow and Mr. Johnson to speak or text each going forward without fear of a record of their communications being created. "[G]o to Wal-Mart and get a \$20 phone," Mr. Johnson recommended. "I researched everywhere. You can't trace these things because they're not in anyone's name. They're just pay with a credit card or whatever . . . ." Ex. 21 at 28; Ex. 134-AA. Mr. Johnson reiterated that suggestion four more times during the conversation. Ex. 21 at 44, 45, 48, 49; Ex. 134-BB. Mr. Swallow did not reject the suggestion, and ultimately appeared to agree:

Mr. JOHNSON: I'll get the e-mails, you talk to Richard, get a Wal-Mart phone and call me.

Mr. SWALLOW: I will.

Ex. 21 at 49-50; Ex. 134-CC.

Third, Mr. Johnson repeatedly emphasized during the meeting that old emails could be a major source of problems for Mr. Swallow. Mr. Johnson specifically asked whether Mr. Swallow might have emails of concern in an email account at Softwise, Inc., the entity owned by Richard Rawle and for which Mr. Swallow previously served as counsel and a lobbyist. He told Mr. Swallow that the central, purportedly incriminating email from Mr. Swallow about paying money to Senator Reid's "guy" was sent from a Softwise email address that belonged to Mr. Swallow. Ex. 21 at 32; Ex. 134-DD.

Mr. Swallow wondered whether the FBI could get Softwise emails: do "those guys . . . have the power to go to Richard and get his e-mails"? Ex. 21 at 46; Ex. 134-EE. "No," Mr.

Johnson replied, but he suggested that Mr. Swallow “tell Richard to delete s\*\*\* off—to be wary that there could be an investigation and if there’s anything on his server that he doesn’t want the government to have . . . .” Ex. 21 at 46; Ex. 134-EE. Mr. Swallow then wondered whether those emails might be stored externally by Softwise’s internet service provider; Mr. Johnson told him that no, all of the Softwise email was “stored on Richard’s server.” Ex. 21 at 47; Ex. 134-FF. Mr. Johnson told Mr. Swallow that Mr. Rawle could “go in and hit Delete” to make the documents disappear. Ex. 21 at 47; Ex. 134-GG. As for Mr. Swallow’s own personal email, Mr. Swallow told Mr. Johnson, “I don’t keep my emails . . . I’ve deleted them all after a year.” Mr. Johnson replied, “Okay. Good.” Ex. 21 at 53; Ex. 134-HH.

In all, the recording of the Krispy Kreme meeting shows that Mr. Swallow appeared to feel threatened with likely political ruin, and possibly worse, if Mr. Swallow did not get Mr. Rawle to return \$175,000 to him. It shows that Mr. Swallow took the threat seriously and was scared by it. And in testimony Mr. Swallow provided under oath in the Lieutenant Governor’s investigation, he confirmed that this was his reaction. He said that Mr. Johnson was “trying to scare me” and “trying to extort me.” Ex. 1 at 264:8-9. And it worked, he said: Mr. Swallow acknowledged that he was “scared to death” by his recognition that Mr. Johnson’s allegations, if made public, would upend Mr. Swallow’s run for Attorney General. Mr. Swallow said he spent the meeting with Mr. Johnson “trying not to make him so mad that he’d try to . . . blow me up before the primary.” Ex. 1 at 264:14-17.

#### **E. The Fabrication of Evidence by Mr. Swallow Following the Krispy Kreme Meeting**

In the hours, days and months following the Krispy Kreme meeting, Mr. Swallow took several actions to address the threats that Jeremy Johnson had made. In Section II.F below, this report will describe the evidence relating to Mr. Swallow’s purchase of a disposable prepaid

phone and to his apparent efforts to eliminate electronic data and data devices. In this section, this report sets forth the evidence uncovered by the Committee that Mr. Swallow fabricated documents in order to falsely bolster the record with respect to \$23,500 that he received from Mr. Rawle.

The Committee concludes that, taken together, these actions were intended to, and had the actual effect of, misleading the Committee, other investigators and the public, regarding the quantity and reliability of contemporaneous documentation purporting to corroborate Mr. Swallow's contention that the \$23,500 received by P Solutions from RMR Consulting had no connection to Jeremy Johnson or a purported plan to bribe Majority Leader Reid.<sup>99</sup>

#### **1. Mr. Swallow's Fabrication of Invoices and Day Planner Entries**

On September 25, 2013, the Committee issued a subpoena to Mr. Swallow in his personal capacity that demanded, among other things, "[a]ll documents referring or relating to consulting work [Mr. Swallow] performed for a Nevada project investigating the potential of mining limestone in Nevada . . . including, but not limited to . . . invoices referring or relating to work that [Mr. Swallow] performed in connection with the project." Ex. 135. Mr. Swallow, through his attorneys, informed the Committee that he intended to withhold certain "confidential" documents from production. In order to move forward with the review of documents expeditiously and not become enmeshed in time-consuming and expensive litigation, the Committee entered into a written agreement with Mr. Swallow that, among other things, formalized a process by which he would make documents designated as "confidential" available

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<sup>99</sup> While the Committee has no evidence to suggest that Mr. Swallow's attorneys were aware of the deception being perpetrated, the Committee notes that they nevertheless were the vehicle through which much of the deception was perpetrated. If prosecutors or licensing authorities intend to pursue these issues, the Committee notes that Mr. Swallow's counsel would be central witnesses to these events and, as those familiar with the professional guidelines governing lawyers are aware, lawyers cannot serve as counsel in a matter in which they are also a witness.

for review only in the offices of his counsel. Ex. 136 at ¶ 3.<sup>100</sup> This meant that the Committee could review, but not have copies of, documents that he designated as confidential.

The Committee conducted a review of the first collection of “confidential” documents withheld by Mr. Swallow on October 14 and 15, 2013. Among the purportedly confidential documents was a letter from Mr. Swallow to Mr. Rawle dated May 2, 2012 (the “May 2 Letter”) and a pair of invoices for consulting services purportedly provided by Mr. Swallow on behalf of P Solutions. The May 2 Letter appeared to memorialize a recent conversation between Mr. Swallow and Mr. Rawle in which they discussed the possibility that funds paid from Mr. Rawle’s RMR Consulting to Mr. Swallow’s P Solutions could be traced to a separate payment from Jeremy Johnson to Mr. Rawle for assistance with negotiations with the FTC.

In the May 2 Letter, Mr. Swallow also stated that Mr. Swallow had invoiced Mr. Rawle “sometime in October 2010” for consulting work on the Chaparral project performed in the then-preceding months. Mr. Swallow also stated in the letter that he invoiced Mr. Rawle “and Chaparral” again in April 2011 for “project work done during the latter part of December 2010 through early April, 2011.” Ex. 137.

Upon initial review, the two invoices reviewed by the Committee on October 14 and 15 appeared to be the contemporaneous invoices to which Mr. Swallow’s May 2 Letter to Mr. Rawle referred. One invoice sought payment of \$8,500 for 34 hours of work related to the Chaparral project between August and mid-October 2010. The second invoice sought payment of \$15,000 for 60 hours of work performed between December 15, 2010 and April 5, 2011. Both

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<sup>100</sup> Having reviewed hundreds of documents withheld by Mr. Swallow as “confidential,” the Committee concludes that only a fraction of those documents contained any information that was even arguably confidential, and that, within that fraction, all or nearly all of the documents could have been produced with minimal redactions that would have resolved all confidentiality concerns without need for a “review only” protocol. At the time of Mr. Swallow’s resignation, the Committee was in the process of scheduling a formal meeting with counsel to contest some of Mr. Swallow’s confidentiality designations with the possibility of litigation if those informal efforts at resolution failed. Future legislative investigative committees should carefully evaluate the benefits and risks of such “review only” protocols as their efficacy depends, in large part, on the good faith of the party on the other side.

invoices contained detailed descriptions of the consulting work that Mr. Swallow purportedly performed during the relevant billing periods.

Read in conjunction with the May 2, 2012 letter, the invoices appeared to provide support for Mr. Swallow's claim that he contemporaneously invoiced Mr. Rawle for his consulting work in October 2010 and April 2011.

On October 18, 2013, soon after the Committee's initial review of the invoices, Mr. Swallow notified the Committee that he would make additional "confidential" documents available for review at the offices of his counsel. Among the new documents was a copy of an excerpt from a spiral-bound day planner which contained entries for the period from September 2, 2010 to January 26, 2011. Ex. 138.

The day planner excerpt contained several descriptions of work that Mr. Swallow purportedly performed for the Chaparral project. Each entry in the day planner included a circled number that Mr. Swallow's counsel subsequently confirmed to be the number of hours of work Mr. Swallow purportedly performed in completing the work described in the corresponding entry. Ex. 139. For example, the words "Cement: more research into market for NV. Project" appear immediately before a circled number "4" in the notes column next to the spaces in the day planner provided for appointments on October 18 and October 19, 2010. Ex. 138 at 16.

Based on the explanation of the circled number from Mr. Swallow's counsel, the Committee understood the description to signify that Mr. Swallow had performed four hours of market research for the Chaparral project on either October 18 or October 19. In total, the number of hours attributed to the work descriptions in the day planner excerpt added up to almost exactly the 94 hours of work for which Mr. Swallow billed Mr. Rawle in the two invoices that had previously been made available for the Committee's review. Ex. 138 (circled numbers

following descriptions of consulting work on Nevada cement project add up to 93 hours). These work descriptions appeared to be contemporaneous records strongly corroborative of Mr. Swallow's assertions that the \$23,500 in payments from RMR Consulting related to actual consulting work on the Chaparral project.

Mr. Swallow did not alert the Committee to any irregularities in the invoices or day planners at the time those documents were made available for review. But certain aspects of the invoices and day planner began to give rise to doubts by the Committee about their authenticity and reliability. First, the fact that neither of the invoices bore a date was unusual: invoices are typically dated. Second, some of the descriptions of the consulting work on the Chaparral project stood out from among the other entries in day planner because they contained more detail than non-Chaparral entries. Third, several of the entries for consulting work appeared on pages in the day planner on which Mr. Swallow had not made any other entries, suggesting that Mr. Swallow may not in fact have been actively using the planner during those periods. Ex. 138 at 46 (showing entries for January 10-12, 2011). And fourth, the day planner entries relevant to the Committee's work contained little or no information that was actually confidential, suggesting that Mr. Swallow may have designated them as confidential in this investigation in order to restrict the Committee's access to them or, alternatively, to keep them out of the public eye.

In order to test the Committee's concern that these items might not be authentic, the Committee cross-referenced the descriptions of consulting work in the day planner excerpt against official timesheets of the Office of the Attorney General that had been provided to the Committee. The Committee quickly identified several potential discrepancies that called into question the veracity of the work descriptions in the day planner. Several of the descriptions of consulting work in the day planner appeared improbable in light of the number of hours Mr.



Swallow billed to Office work on particular days. Three entries in particular convinced the Committee that further inquiry was warranted:

- In the column next to the spaces in the planner for October 18 or October 19, 2010, Mr. Swallow wrote “Cement: more research into market for NV. Project” and circled the number “4.” Ex. 138 at 16. According to Mr. Swallow’s Office timesheets, however, he worked 14 official hours on both October 18 and October 19. Ex. 140 at 24. As a result, Mr. Swallow would have worked a total of 18 hours in a single day if he had actually performed four hours of consulting work on either day. While a total workday of 18 hours is not impossible, it struck the Committee as unlikely.
- In the column next to the space in the planner for December 16, 2010, Mr. Swallow wrote “Cement work” and circled what appears to be the number “5.” Ex. 138 at 37.<sup>101</sup> According to Mr. Swallow’s Office timesheets, Mr. Swallow worked 15 hours for the Office on December 16. Ex. 140 at 28. Again, a purported 20 hour workday stuck the Committee as unlikely.
- In the column next to the space for January 24, 2011, Mr. Swallow wrote “Discussions w/ Dennis Ickes, Back & forth on terms, Set up Mtg w/ group, various mtgs w/ team abt core drilling test & work on & review of prospecuts[;] multipl mtgs w/ reps” and circled the number “12.” Ex. 138 at 50. According to Mr. Swallow’s Office timesheets, Mr. Swallow worked 12 hours for the Office on January 24, 2011. Ex. 140 at 31. In total, Mr. Swallow would have worked 24 hours on January 24 if both entries were accurate.

These discrepancies and others caused the Committee to seriously question whether Mr. Swallow performed the consulting work described in the day planner. And, because the day planner entries had at first appeared to corroborate the invoices for the Chaparral work, the discrepancies further called into question the authenticity of the invoices.

On November 8, 2013, the Committee sent Mr. Swallow’s attorneys an email specifically asking: (1) whether the invoices and day planners were created contemporaneously with the events they purported to record; (2) if not, why the invoices and/or day planners would have been created at a later date; and (3) on what date the invoices and day planners had been created? Ex. 141. The Committee received no response.

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<sup>101</sup> The column also included an entry for four hours of cement work closer to the boundary between the areas set aside for December 16 and December 17, 2010.

Six days later, on November 14, 2013, the Committee sent a follow-up email requesting a response to the November 8, 2013 email. Ex. 142. In an email response sent the following day, November 15, 2013, Mr. Swallow’s counsel acknowledged that he did not believe that the invoices or day planner entries were created contemporaneously with the events they purported to recite. Ex. 142. Mr. Swallow’s counsel referred to the day planner entries as “summaries created at a later date.” Ex. 142. The Committee sent a follow-up email the next day, November 16, 2013, asking Mr. Swallow’s counsel to identify “the month and year that the invoices were created and the month and year that the day timer entries were created.” Ex. 143. Two days later, Mr. Swallow’s counsel replied that both the day planner entries and the invoices were created in 2012. Ex. 143. Because Mr. Swallow’s counsel did not respond to the Committee’s request for the months in which the invoices and planner entries were created, the Committee reiterated the request for the months of creation later in the day on November 18, 2013. Ex. 143. Two days later, on November 20, 2013, Mr. Swallow’s counsel responded: “to put the shoe on the other foot, why do you want this information? How does it help you? I do not know when in 2012 these events happened.” Ex. 144. This response—or lack of response—was both telling and highly disappointing given Mr. Swallow’s public pledges of full cooperation with the Committee’s inquiry.

The month in which the invoices and the day planner entries were created was critical to the Committee’s understanding of Mr. Swallow’s motive for creating, well after the fact, purported records of the consulting work he claimed to have performed. The Committee suspected that the records were created in the aftermath of the April 30, 2012 Krispy Kreme meeting with Mr. Johnson and reflected the level of panic that Mr. Swallow experienced following that meeting—panic sufficient to cause the State’s second highest law enforcement

officer and a candidate for Attorney General to fabricate documents. The Committee's suspicions regarding these events were confirmed when the Committee obtained the transcript of Mr. Swallow's testimony in the Lieutenant Governor's investigation, in which Mr. Swallow confirmed that the invoices "were prepared some time after April 30th of 2012." Ex. 1 at 69:9-13.<sup>102</sup> And Mr. Swallow further admitted in his testimony in that investigation that the audience for the invoices was "anybody who would be interested at some point in time, including the court, including anybody." Ex. 1 at 281:11-16. Thus, it became clear to the Committee that the invoices and day planner entries were designed to influence all who might inquire into these matters, including the Committee. And, indeed, the Committee's inquiry was delayed by the fog created by these false entries and the highly restrictive manner in which Mr. Swallow allowed the Committee to review them.

The Committee notes that Mr. Swallow has provided the following explanation for creating the invoices after the April 30, 2012 meeting with Mr. Johnson:

I think that what I wanted to do as soon as I found out it could become an issue possibly, while the recollection is as fresh on my mind and Richard's mind as possible, knowing it was a year later, without too much time going by to try to document our relationship, the work I had done on the project, which was hard enough going back a year, and have things documented so that if I ever needed to go back, if there was ever a question, I would have the most contemporaneous recollection I could possibly have, contemporaneous to the events and to what I'd found out that the money had come from the same account, because basically Jeremy Johnson in the phone conversation said that he thought I might have gotten paid on his other issue. Ex. 1 at 280:9–281:3.

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<sup>102</sup> As of November 18, 2013, when the Committee had inquired about the dates the documents were created, the transcript of that deposition had not yet been made available to the Committee and the Committee therefore did not know when the documents were created. The Committee obtained Mr. Swallow's consent to review the transcript, and obtained the transcript itself, only after Mr. Swallow resigned from office. The Committee notes that at the time Mr. Swallow's counsel told the Committee that he did not know when in 2012 the invoices were created, Mr. Swallow had already testified in the Lieutenant Governor's investigation that the invoices were created after April 30, 2013 and counsel had been present during that testimony.

The Committee does not credit Mr. Swallow's statement that his intent in creating the invoices months after the fact was to establish an account of his arrangement with Mr. Rawle that was as contemporaneous as possible. In the period after April 30, 2012, Mr. Swallow could have recorded any recollection he had of the events of 2010 and 2011 in a document bearing the then-current date and accurately stating what it was: a memorandum in 2012 of Mr. Swallow's recollection of events that had occurred many months earlier. Instead, Mr. Swallow created documents that falsely appeared to be contemporaneous with the events they described. When the work entries in Mr. Swallow's day planner are compared with Mr. Swallow's Office timesheets for the same dates, it appears that the day planner entries reflect work that it would have been virtually impossible for Mr. Swallow to perform. And the invoices purport to demand payment of money, but were created at a time when the money had already been paid. Moreover, these materials were presented to the Committee with no indication that they were something other than what they purported to be. Had all this been undertaken in good faith, the Committee would have expected Mr. Swallow to be forthright in his presentation of these materials. He was not. Indeed, even after questions about the materials were presented to Mr. Swallow, he bobbed and weaved around the truth. And, he did so while assuring the public that he was fully cooperating with the Committee's inquiry.

The Committee concludes that Mr. Swallow fabricated the invoices and day planner entries with the intent to deceive anyone who might inquire into the Johnson-Rawle story in the future. The fact that Mr. Swallow created false records of these matters does little to provide comfort that the 93-94 hours of work claimed by Mr. Swallow were legitimately invested in the project, and the false records further raise questions about the terms of his agreement with Mr. Rawle and what the money Rawle paid him was actually for.

## **2. The Effort to Unwind the P Solutions Payment Made by Mr. Rawle**

In the weeks following the April 30, 2012 Krispy Kreme meeting, Mr. Swallow also orchestrated a multi-step effort to unwind the \$23,500 P Solutions payment received from RMR Consulting and to obtain a substitute payment from funds unconnected to Jeremy Johnson, in an apparent effort to break the perceived taint of the connection among these events.

As discussed in Section II.C above, RMR paid Mr. Swallow a total of \$23,500 in two payments, one of \$8,500 in November 2010 and one of \$15,000 in April 2011. The money was paid to Mr. Swallow's affiliated entity, P Solutions. In the letter that Mr. Swallow wrote to Mr. Rawle immediately after the Krispy Kreme meeting, Mr. Swallow asked Mr. Rawle to inform him (Swallow) whether any of the \$23,500 paid to P Solutions by RMR Consulting related to Mr. Rawle's work for Jeremy Johnson. Ex. 137. Mr. Swallow also stated in that letter that he intended to refund any Johnson-related funds directly to RMR Consulting with the expectation that Mr. Rawle would find another source from which to pay Mr. Swallow, purportedly for Chaparral-related work. Ex. 137.

Mr. Swallow wrote a refund check for \$23,500 from the account of P Solutions to RMR Consulting dated May 15, 2012. By the time of the refund, P Solutions had disbursed most of the \$23,500 in payments to Mr. Swallow's wife, so its checking account only contained approximately \$8,000. Mr. Swallow and his wife loaned \$16,000 to P Solutions to allow it make the payment to RMR. Ex. 145 at 4, 7.

Mr. Rawle initially refused to deposit the refund check, but Mr. Swallow insisted, and Mr. Rawle eventually deposited the refund check from P Solutions to RMR Consulting.<sup>103</sup> Mr. Rawle then paid the same amount back to Mr. Swallow from a new source unconnected to Mr.

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<sup>103</sup> Before depositing the check, Mr. Rawle informed Mr. Swallow that the check had been lost, prompting Mr. Swallow in November 2012 to provide a new check for \$23,500 from P Solutions. In the interim, Mr. Rawle found the first check and cashed it. Ex. 1 at 159:10—160:2.

Johnson. In September 2012, having received the new \$23,500 check from Mr. Rawle, P Solutions formally repaid the \$16,000 loan from Mr. Swallow and his wife. Ex. 1 at 159:10–160:2.

In his testimony in the Lieutenant Governor’s investigation, Mr. Swallow claimed that the purpose of these transactions outlined above was to improve the “optics” of the original payment of \$23,500 from Mr. Rawle:

What I was interested in was making sure that I was not benefitting from an introduction that I’d made to Richard on behalf of Jeremy Johnson and that, you know, I discussed it with my lawyer, and we both agreed that legally it didn’t make much of a difference, but optically it would be better if I returned that money and that there would be really no way someone could say that the money I had retained, had somehow come from a transaction between Richard Rawle and Jeremy Johnson. Ex. 1 at 279:7-17.

In other words, Mr. Swallow claimed that, through the refund, he was trying to show that he had reacted to learning of the connection between the \$23,500 paid to P Solutions and Mr. Rawle’s work for Jeremy Johnson by “trying to make it right, optically at least.” Ex. 1 at 280:5-8. As the Committee’s investigation has shown, this focus on “optics” and not substance was characteristic of many of Mr. Swallow’s actions following the Krispy Kreme meeting.

### **3. The Rawle Declaration that Mr. Swallow Drafted and Then Mischaracterized**

In December 2012, Mr. Swallow took one additional step to modify the body of information available to the public and investigators regarding the connection between Jeremy Johnson and the \$23,500 he (Swallow) received from Mr. Rawle. As Mr. Rawle’s health took a turn for the worse,<sup>104</sup> Mr. Swallow “prepared some notes” that he provided to his attorney in order to draft a declaration to be signed by Mr. Rawle. Ex. 1 at 282:19-24. By that time, Mr. Swallow knew that Mr. Johnson was threatening to disclose Mr. Swallow’s role in connecting

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<sup>104</sup> As noted earlier, Mr. Rawle became gravely ill toward the end of 2012 and died on December 8, 2012.

Johnson and Rawle with respect to the FTC’s investigation of Johnson. Mr. Swallow testified in the Lieutenant Governor’s investigation that he authorized the drafting of the Rawle declaration because he was “interested in making sure that [Rawle’s] testimony would survive him.” Ex. 1 at 285:23–286:2.

After Mr. Swallow’s attorney prepared the draft declaration based on Mr. Swallow’s notes, the attorney sent the draft to Cort Walker, a business associate of Mr. Rawle. Ex. 1 at 282:20–283:2. According to Mr. Swallow, Walker revised the declaration “extensively” before presenting it to Mr. Rawle “through his attorney.” Mr. Rawle’s declaration, as drafted by Mr. Swallow’s attorney and revised by Walker (Ex. 146), supports Mr. Swallow’s position that Mr. Swallow had no substantive role in the arrangement between Mr. Johnson and Mr. Rawle and that the \$23,500 that Mr. Rawle paid to Mr. Swallow was not a finder’s fee but instead related exclusively to consulting work on the Chaparral project. Ex. 146 at ¶¶ 14, 16, 24-27. Mr. Swallow provided Mr. Rawle’s declaration to the media soon after Mr. Johnson’s allegations went public and referred to the declaration as a “‘critical’ piece of his defense to the allegations.” Ex. 147. He neglected to say that it was a “critical” piece of the defense that he and his lawyer—not Mr. Rawle—had drafted.

While journalists debated the merits of Mr. Rawle’s declaration, e.g. Ex. 148, Mr. Swallow granted an on-camera interview designed to advance his defense of Mr. Johnson’s allegations. In a television interview with KUTV that KUTV told the Committee was taped on January 14, 2013, Mr. Swallow stated:

Mr. Richard Rawle, three days before he died . . . facing his maker, had his people prepare an affidavit for him, which he reviewed, changed, modified and signed, and it says, “this [alleged scheme] did not happen.”

Ex. 149. Although KUTV never aired the interview, other journalists reviewed the tape and published quotes from the interview in Utah newspapers. Ex. 148. After reading a newspaper

article about the interview, Cort Walker informed the attorney for his employer, Softwise, that “the first time we saw this affidavit, it came from [Mr. Swallow’s attorney] who probably co-wrote it with Swallow. I cannot backup Swallow’s statement.” Ex. 150.

The Committee was struck by the circumstances of this interview and Mr. Swallow’s willingness to look straight into a television camera, invoke Mr. Rawle’s “maker,” and then say something that he knew was patently untrue.

#### **F. Mr. Swallow’s Extensive Elimination of Evidence**

During the course of its investigation, the Committee also learned of a large number of instances in which electronic data or data devices belonging to Mr. Swallow became missing or were rendered unavailable at the hands of Mr. Swallow. These include:

- Mr. Swallow’s purchase and probable use of a prepaid cell phone;
- Mr. Swallow’s deletion, before the fall of 2012, of a large quantity of his 2010 email from servers maintained by the Office;
- Mr. Swallow’s deletion, in the summer of 2012, of a large quantity of his pre-June 2012 personal email;
- The disappearance, in or after 2012, of calendar entries from Mr. Swallow’s electronic Office calendar for 2010 and 2011;
- Mr. Swallow’s instruction to Office IT personnel, in July 2012, to erase all of the data on his two Office-issued computers;
- Mr. Swallow’s loss of an external hard drive allegedly containing copies of the data on those two computers;
- The failure of the hard drive on Mr. Swallow’s home computer in January 2013;
- Mr. Swallow’s replacement of his allegedly malfunctioning personal cellular phone in November 2012 and the resulting loss of text messages on the phone sent or received before that date;
- Mr. Swallow’s request, in November or December 2012, that the Office replace all of his Office-issued digital equipment; and
- Mr. Swallow’s loss of his campaign-purchased iPad in February 2013.



The Committee concludes that certain of these data and device losses were intentional. While the Committee lacks sufficient information to determine whether the remaining incidents of data and device loss were intentional or inadvertent, the Committee notes that the combination of these events strongly suggests they were not accidental. Indeed, the timing of many of these actions is best explained as an effort by Mr. Swallow to systematically dispose of electronic data and devices in reaction to the Krispy Kreme meeting. The Committee concludes that this widespread elimination of data and devices, including State-owned data protected by GRAMA and potentially subject to Office litigation holds or subpoenas served on the Office, is a serious matter that warrants additional investigation.

#### **1. Mr. Swallow's Purchase and Probable Use of a Prepaid Cell Phone**

The Committee developed evidence that, shortly after the Krispy Kreme meeting, Mr. Swallow ordered an employee of his campaign to purchase a prepaid cell phone<sup>105</sup> that allowed him (Swallow) to make or receive calls or text messages while making it difficult or impossible for law enforcement or others to track his usage.

As noted earlier, the idea to buy such a phone came from Jeremy Johnson during the Krispy Kreme meeting. The Committee was told by the campaign staffer who accompanied Mr. Swallow to the Krispy Kreme store that he (Swallow) seemed “uneasy” following the Krispy Kreme meeting, and that soon after the conversation, Mr. Swallow asked the staffer to buy him a prepaid phone. The conversation about the phone was described to the Committee as being “uncomfortable.” According to the campaign staffer, Mr. Swallow said that someone had

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<sup>105</sup> Prepaid cell phones, often called “burner phones,” can be used by those engaged in illegal activities who want to be able to communicate, but not have law enforcement track their identities or usage. They are called “burners” because those engaged in illegal activities typically use them for short periods of time and then “burn” or get rid of them.

recommended to him that he buy a prepaid phone, although he (Swallow) did not disclose who had made that recommendation.

The Committee was also told that an employee of Guidant Strategies, the consulting firm run by Jason Powers, advised the campaign staffer to pay for the phone in cash so that it could not be traced back to the campaign.

On May 7, 2012, approximately one week after the Krispy Kreme meeting, the staffer who purchased the phone emailed the campaign's bookkeeper the following: "John needed me to make a purchase that could not come back to the campaign at all. I paid cash. Which, worked out pretty nice because I had a friend take my wallet to pick up my groceries at Costco, they accidentally used the campaign card. The amounts were pretty close to the same." Ex. 151. The staffer confirmed to the Committee that this email referred to the purchase of the prepaid cell phone. The email exchange corroborates what the Committee was told about these events.

The Committee was told that the phone was loaded with 1,000 minutes of talk time at the time it was purchased. The Committee was initially told by the campaign staffer, who was Mr. Swallow's "body man" and frequent companion on the campaign trail, that he did not believe Mr. Swallow actually used the phone. That same staffer later said that he saw Mr. Swallow use the phone on more than one occasion, and that although he never discussed Mr. Swallow's use of the phone with Mr. Swallow, his impression was that Mr. Swallow used the phone to talk to people that "he didn't trust." The staffer also told the Committee that the phone was reloaded with additional minutes by Guidant Strategies at least once, which suggests that Mr. Swallow, in fact, used the phone to make or receive calls.

The fact that Mr. Swallow ordered the purchase of a prepaid phone for his own use after the Krispy Kreme meeting shows the effect that that meeting had on him. The Committee

concludes that his purchase and apparent use of the phone show his awareness of the potential evidentiary impact of his digital footprint, and are consistent with an effort to hide conduct that Mr. Swallow knew was improper.

## **2. Mr. Swallow's Deletion of Email Contained on Office Servers**

On September 25, 2013, the Committee issued a subpoena to the Office seeking specified categories of documents. In connection with the subpoena, the Committee requested a meeting with representatives of the Office's IT staff to discuss the Office's IT systems. At a meeting in late September with Office and State IT officials and senior members of the Office who had been designated to coordinate the Office's response to the subpoena, the Committee was told that a potentially large volume of Mr. Swallow's email was missing. As best the Committee can determine, no other investigative body—not federal or state prosecutors or investigators, not the Lieutenant Governor's Office, not State bar authorities—were aware of the missing data until the Committee established the fact of the loss and thereafter made public revelation of that fact.

The Committee was told during the late September meeting that Mr. Swallow had attributed the lost email to a November 2012 statewide migration from one email platform to another that had been overseen by the State Department of Technology Services (DTS). In February 2012, the State announced a plan to change the email technology used by State offices. Previously, State offices had used an email system running Novell GroupWise. The new system was to use the Google Mail email service provided by Google. Existing emails in the GroupWise system were to be moved, or "migrated," to the new Google Mail system so that users would continue to have access to them. Over several days in the middle of November 2012, the email accounts of Office personnel were migrated to the new Google Mail service.

The Committee held a public hearing regarding this data loss issue on November 5, 2013. After that hearing, Mr. Swallow and his representatives publicly asserted that the data had been

lost during the November 2012 migration led by DTS. An article published just after the Committee’s hearing cited Mr. Swallow’s personal attorney as saying “[t]he emails were lost . . . due to technical issues when the state changed systems last year[.]” Ex. 152. Another article reported that “[Office Spokesman Paul] Murphy says emails from 2010 were lost when the state changed systems,” and that “Murphy said that when state agencies transitioned from GroupWise to Google in November 2012, none of Swallow’s emails from 2010 made the transition.” Ex. 153. A third article said, “state agencies switched their email system from Novell’s GroupWise to Google Mail,” and “[i]n the process, [Swallow counsel Rod] Snow said, Swallow noticed some emails from 2010 — when his client was chief deputy attorney general — that did not make the transition.” Ex. 154. The article continued that “Snow said others in the office had the same issue and that Swallow was told to be patient. When the lost emails didn’t arrive, Swallow checked again and was told the office’s information-technology people were working on it.” “It’s that simple,” Snow said. “It’s not anything John orchestrated or did or had his hands in.”

Mr. Swallow himself went on a radio program on November 7, 2013 and provided the following explanation for his missing 2010 email:

Well, I don’t want to get into too many details, because again, we don’t know a lot of the answers, but, I noticed last year, back in 2012 that I was missing some documents and it had me concerned, and so I went to the Attorney General at the time and talked to him about [it] and he said “you know, it’s probably just an issue about the transition from GroupWise to Google, don’t worry about it.”

Mr. Swallow and his representatives thus publicly and repeatedly blamed DTS for the lost email.

The Committee went to great lengths and invested large sums of money in forensic efforts to determine whether Mr. Swallow’s claim was correct. Among other efforts, the Committee undertook to make electronic copies, or “forensic images,” of certain of the Office’s servers and computers, with the intention, in part, of employing forensic specialists to determine

whether records from the migration were available to corroborate or disprove Mr. Swallow's assertion. This process required extensive on-site work by the Committee's investigators, who interviewed Office IT personnel, identified a large number of relevant servers and computers, and copied potentially relevant data from those machines to external hard drives.

The Office initially agreed to permit the Committee to take custody of these forensic images. While the imaging process was underway, however, the Office identified a legal concern that, in the Office's view, prevented the Office from releasing the forensic images into the Committee's custody. In the Office's view, the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104–191, prohibited the Office from providing the forensic images because of the possibility that some of the information contained in the images was protected by HIPAA.<sup>106</sup> The Office explained that providing the forensic images to the Committee could constitute a prohibited disclosure of health information under HIPAA, and that a judicial order would be required before the Office could release the images.

The Committee did not seek to obtain or review protected health-related information, but because the substantive content of the relevant servers and computer hard drives, including any HIPAA-protected information, was intertwined with the data the Committee sought, the Office's position created an impasse and halted the Committee's effort to recover data. The Committee disagreed with the Office's understanding of HIPAA's requirements because, in the Committee's view, HIPAA permits the production of documents pursuant to a lawful legislative subpoena without the need for judicial intervention. Because the Office would not permit the Committee

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<sup>106</sup> Federal regulations under HIPAA generally prohibit a "covered entity"—a health care provider or similar entity—from disclosing "individually identifiable health information." 45 C.F.R. § 164.502(a); *see also id.* § 164.103 (defining terms). A "business associate," including an attorney, is also covered by HIPAA if it receives HIPAA-protected information in the course of providing service to a covered entity. *Id.* As explained to the Special Committee by the Office, certain agencies of the State of Utah are required to protect information under HIPAA and those agencies at times provide protected information to the Office, which serves as their counsel. According to the Office, the Office was thus required to protect covered health information from disclosure under HIPAA.

to take the data without a judicial order, however, the Committee was forced to litigate the issue, and the Committee filed a motion to compel the Office to turn over the drives. Ultimately, the Committee and the Office reached an agreement in which they stipulated to the terms under which the data would be released to the Committee, and that agreement was so-ordered by the court. In the meantime, the litigation added substantially to the cost of the Committee's investigation, and delayed its effort to confirm the accuracy of Mr. Swallow's assertions.<sup>107</sup>

While the litigation with the Office was pending, the Committee obtained a sworn statement from Chris Earl, an employee of the IT Department in the Office. Ex. 155. Mr. Earl confirmed that the migration took place in the fall of 2012. Ex. 155 at ¶ 3. He explained that Mr. Swallow first came to him to discuss missing email in January 2013, after the Johnson story first emerged in the press, and that he asked Mr. Earl to attempt to recover the missing email. Ex. 155 at ¶ 11. At the time he spoke to the Committee, Mr. Earl believed that Mr. Swallow said the missing email was from 2010. Ex. 155 at ¶ 11.

Mr. Earl then described in detail the process he went through in an attempt to recover the lost data. Ex. 155 at ¶¶ 12–18. Most significantly, he explained that his first step was to “inspect the server backup for the day of the migration to GoogleMail,” and that the missing email was not there on that day. Ex. 155 at ¶ 13. He then attempted to restore Mr. Swallow's emails from earlier pre-migration backups and eventually reached the most distant in time of these backups. Ex. 155 at ¶¶ 15, 18. Using this process, Mr. Earl explained, he was able to recover about 3030 emails in Mr. Swallow's Sent folder for 2010, and 229 emails in his Inbox for 2010, but was not able to recover all of the missing email. Ex. 155 at ¶ 16. Mr. Earl could not say how many emails he was not able to recover. Ex. 155 at ¶ 16.

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<sup>107</sup> While the Committee strongly disagreed with the Office's legal position, it believes that that position was taken as part of a good faith, albeit overly conservative, reading of HIPAA.

The fact that Mr. Swallow's email was missing on backups that pre-dated the migration led Mr. Earl to conclude that "whatever caused email or data to become missing from Attorney General Swallow's Office account occurred before the migration from Novell Group Wise to GoogleMail and was not related to the migration." Ex. 155 at ¶ 19. Mr. Earl's sworn statement is consistent with the position on this issue taken by DTS, both publicly and in interviews with the Committee: namely, that the migration was not the cause of Mr. Swallow's email being lost. This conclusion of Mr. Earl and DTS personnel directly refuted the public claims by Mr. Swallow and his representatives that DTS had lost the email during the November 2012 migration to GoogleMail.

On the evening of November 20, the night before Mr. Swallow announced his resignation from office, the Committee was contacted by the Office of the Attorney General. The Office informed the Committee that Mr. Swallow's lawyer had learned of the existence of the Earl declaration and asked for a copy. The Office had assisted in the drafting of the Earl declaration and had retained a final copy of the declaration and felt obligated to provide a copy to Mr. Swallow. The Office also told the Committee that an important decision was being made that night and that it was the Office's view that the Earl declaration would assist in making that decision—this, it turned out, was Mr. Swallow's decision to resign from office. The Office did provide Mr. Swallow with a copy of the Earl declaration that evening.

Mr. Swallow announced his resignation the following day. And after receiving the Earl statement and resigning, Mr. Swallow fundamentally changed his story regarding the data loss. On December 6, 2013, Mr. Swallow—through his attorney—acknowledged to the Committee, for the first time, that he had discovered his email loss sometime, he claimed, before or during the summer of 2012. His attorney wrote to the Committee that by "the summer of 2012, John

had realized many 2010 state emails were missing and made an attempt to recover them without success.” Ex. 156.

That summer 2012 date was well before the November 2012 migration of the Office’s email occurred, and his attorney’s email means that Mr. Swallow’s earlier statements attributing the email loss to the migration are false.

In sum, after the Committee aired the data loss issue at a hearing on November 5, Mr. Swallow personally, and his representatives speaking on his behalf, publicly blamed the statewide email migration for the loss of his 2010 email. The Committee spent many thousands of dollars on factual investigation, forensic analysis, and litigation to determine whether Mr. Swallow’s claim was truthful. The night before he resigned, and indeed as he was deciding whether to resign, Mr. Swallow asked for a copy of the Earl declaration. He received a copy of that statement, which directly contradicted his story. The next day he resigned, and one week later his attorney admitted for the first time that the data loss had nothing to do with the migration.

The Committee thus—after much expense that could have been avoided had Mr. Swallow told the truth at the outset—ruled out the migration as a possible cause for the missing email.

The only alternative explanation identified by the Committee for a year’s worth of email going missing from a Novell GroupWise account is that they were deleted manually. The conclusion that this is what happened is supported by Mr. Earl’s sworn statement, which makes clear that he is unaware of any systemic issues that could account for the lost data. Ex. 155 at ¶ 19.



To establish who was responsible for manually deleting the email, the Committee asked Mr. Earl to determine who had access to Mr. Swallow's email account and therefore the ability to delete the email. Exactly three people did: Mr. Swallow, Mr. Swallow's executive assistant, and Mr. Earl. Mr. Earl testified that he did not delete email from Mr. Swallow's account. Ex. 155 at ¶¶ 17, 19. The Committee separately obtained a sworn statement from Mr. Swallow's executive assistant that she, too, did not delete the missing email from Mr. Swallow's account. Ex. 157. What remains is the conclusion that Mr. Swallow manually deleted the missing email himself.

With that in mind, the Committee next set out to determine whether the email could have been deleted accidentally. In response to the Committee's inquiries, Mr. Earl explained that if a user in the Office deleted an email from his inbox in Novell GroupWise, the message would move to the email account's "trash" folder. Unlike other State offices, however, the Attorney General's Office had opted out of the State's default policy under which trash items would be automatically purged after a period of time. Instead, in the Office, email would remain in the user's trash bin until the user affirmatively "emptied" the trash. Indeed, the Committee learned that some Office employees had thousands of emails in their trash folders, and used the trash as an archive for old emails without deleting or losing them.

This suggested that a user of the GroupWise system in the Office would have to take affirmative extra steps to permanently delete email from his or her account. The Committee asked Mr. Earl to demonstrate what would be required. The Committee learned that one way to permanently delete email would be to move the email to the trash bin, and then to "empty" the trash. But to take that second, permanent step, the user would have to click a specific menu option to empty the trash. And upon the user doing so, the GroupWise program would display a

prompt asking: “Are you sure you want to empty all items in the trash?” Ex. 158. The user would have to specifically select “Yes” before the program would permanently empty the items from the trash.

Alternatively, Mr. Earl showed the Committee, GroupWise permitted a user to permanently delete email directly from a mailbox such as the inbox. As Mr. Earl demonstrated, a user who selected one or more messages in the inbox (or another box) and then clicked with the right mouse button on those messages would see a menu of options. One of those would be to “Delete” the messages; that would move the messages to the ordinary trash folder, and the user would then have to take the additional step of emptying the trash as just described. A second option would be to select the option for “Delete and Empty.” Ex. 159. This, Mr. Earl showed the Committee, would permanently delete the email rather than storing it in the trash. But again here, the GroupWise software would not let the user permanently delete the messages without confirmation that that was the desired outcome. On selecting “Delete and Empty,” the user would see a prompt warning “Items selected will not be recoverable,” and asking, “Do you want to continue?” Ex. 160. Again, the user would have to affirmatively select “Yes” in order to proceed with the permanent deletion.

In all, because the software interposed these warnings and asked the user to specifically confirm that he or she intended to permanently delete messages, the Committee’s conclusion is that it is not plausible that Mr. Swallow deleted his 2010 emails accidentally. Instead, the Committee concludes that the only plausible explanation is that Mr. Swallow deleted his email intentionally. That conclusion is bolstered by the myriad additional data loss concerns described in succeeding sections of this report.

The Committee notes that Mr. Swallow has repeatedly emphasized publicly that he made efforts to recover the lost email, and that he was pleased when some of the email was recovered. As noted earlier, according to Mr. Earl, Mr. Swallow “appeared elated” when Mr. Earl informed him that some of the missing 2010 email had been recovered. In his radio interview after the Committee’s November hearing, Mr. Swallow described himself as “thrilled” that Mr. Earl was able to recover some of the lost email. Ex. 161. And his attorney emphasized that Mr. Swallow was “anxious” to recover the emails. Ex. 162.

The actual facts uncovered in this investigation give the Committee reason to doubt the sincerity of those protestations. The facts finally acknowledged by Mr. Swallow make clear that he knew of the missing email by the summer of 2012, but said nothing about it to Office IT personnel until January of 2013—after Mr. Johnson’s allegations emerged and the public’s attention was focused on Mr. Swallow. That several-months delay—which, significantly, is longer than the 90-day span for which the Office kept backups of its email files—is inconsistent with a sincere desire to recover the email.

Further eroding Mr. Swallow’s credibility is his assertion in a radio interview that he informed his predecessor as Attorney General, Mr. Shurtleff, that his (Swallow’s) email was missing and that Mr. Shurtleff told him not to worry because the loss was probably associated with the statewide migration to Google Mail. Mr. Swallow has now acknowledged that he knew of the data loss long before the statewide migration. Even assuming Mr. Swallow raised the issue with Mr. Shurtleff (and the Committee is not confident that that is the case), Mr. Shurtleff’s reassurance should have given Mr. Swallow no comfort as Mr. Swallow had to know that the migration played no role in the data loss.

The Committee lacks sufficient evidence to determine exactly *when* Mr. Swallow deleted his 2010 email. That question warrants additional investigation. The Committee observes that the timeframe given by Mr. Swallow's attorney for the date on which Mr. Swallow purportedly noticed that his email was missing, the "summer of 2012," is consistent with the conclusion that Mr. Swallow deleted the email not long after the Krispy Kreme meeting and as part of the same scheme of evidence elimination discussed in this section.

### **3. Mr. Swallow's Deletion of His Personal Email**

Also during the "summer of 2012," according to his own sworn testimony in the Lieutenant Governor's investigation, Mr. Swallow deleted a large volume of email from his personal email account.

Mr. Swallow maintains a personal email account with Google's personal email service, Gmail. Mr. Swallow also apparently stored the emails in an iCloud account maintained by Apple, Inc. According to Mr. Swallow, "periodically it's been my custom and practice to go through a document retention policy, an e-mail retention policy, and the last time I did that was in the summer of 2012." In Mr. Swallow's usage, "go[ing] through a document retention policy" apparently means the wholesale deletion of personal email.

The Committee notes that Mr. Swallow denied that his June 2012 decision to delete personal email was prompted by his Krispy Kreme meeting with Jeremy Johnson. He testified in the Lieutenant Governor's investigation that the reason he deleted personal email in the summer of 2012 was that he "was released as a Bishop from my church in June of 2012, and I just was wrapping up a primary and felt like it was a good time to go through that process that I go through about once every year or year and a half, and I've done that consistently through my career." Mr. Swallow was specifically asked whether "threats made by Jeremy Johnson" had "anything to do with you deleting e-mails in the summer of 2012." He responded, "No, not

really at all.” He explained that the reason that threats from Mr. Johnson were not what prompted him to delete email is that any email relating to Mr. Johnson had already been deleted. According to Mr. Swallow’s testimony, he “hadn’t retained e-mails from the time period I had been working with Jeremy Johnson following 2011, so I don’t recall having any e-mails that would have been relevant to Jeremy Johnson at the time I went through my latest document retention exercise.”

The Committee believes that additional investigation is warranted to determine the facts and circumstances of the deletion of Mr. Swallow’s personal email.

#### **4. Mr. Swallow’s Missing Electronic Office Calendar Entries**

The evidence uncovered by the Committee also revealed that a significant number of Mr. Swallow’s calendar entries for the period 2010 to 2011 are missing from the Office’s servers.

The Committee obtained the sworn statement of Mr. Swallow’s executive assistant, who served in that capacity from the time he joined the Office in December 2009. Mr. Swallow’s assistant attested that “[t]hroughout the time I have worked with the Attorney General, I routinely have made recurring and non-recurring entries in the Attorney General’s electronic calendar. In particular, in 2009 through 2011, I created various recurring and non-recurring entries in the Attorney General’s electronic calendar, including for various regularly scheduled office meetings, such as meetings with his executive staff and division chiefs.” Ex. 157.

She continued that, “[o]n October 9, 2013, I gathered the Attorney General’s electronic calendars from 2009 to the present in connection with a response to a subpoena.” And she attested that, “[d]uring my review of the Attorney General’s electronic calendars, I noticed that some or all of the entries for the recurring meetings described . . . above no longer appeared in the calendars for 2009 through 2011,” and that “[b]ased on my review, I also believe that numerous other non-recurring appointments that I and the Attorney General entered in the

Attorney General's electronic calendar from 2009 through 2011 no longer appear in the calendar." Mr. Swallow's executive assistant "did not delete the missing calendar entries." This testimony is consistent with the documentary evidence gathered by the Committee: the Office calendars produced to the Committee show few entries for Mr. Swallow for the 2009 to 2011 period, including some months with no entries at all, while the calendars for 2012 and 2013 show a crowded schedule with multiple entries for almost every day. Exs. 163, 164, 165.

Because Mr. Swallow's Office calendar entries have gone missing in a context in which Mr. Swallow fabricated evidence and intentionally eliminated other evidence, including email on the same Office servers, the Committee believes that the most likely explanation for the missing entries is that Mr. Swallow also intentionally deleted them, notwithstanding his denial of having done so. Ex. 161.

#### **5. Mr. Swallow's July 2012 Instruction to Wipe His Office Desktop and Laptop Computers**

In July 2012, less than 90 days after the Krispy Kreme meeting, Mr. Swallow ordered the immediate deletion of data from his office desktop and laptop computers by Office IT personnel.

The sworn statement of Chris Earl, the Office's IT technician, also addresses this event. Mr. Earl told the Committee that on July 19, 2012, approximately one month after Mr. Swallow mass-deleted email from his personal Gmail account, Mr. Swallow instructed Office IT personnel to wipe his office desktop and laptop computers by the end of the day. According to Mr. Earl, "on or about July 19, 2012, then-Chief Deputy Attorney General Swallow called me and asked me to come to his office." In Mr. Swallow's office, Mr. Swallow told Mr. Earl that "he wanted me to perform a wipe of the data on the hard drives of both his Office Apple desktop computer and his Office Apple laptop computer by the end of the day."

Mr. Swallow told Mr. Earl that he wanted this data wipe performed “to protect confidential information on the machines that members of his Ward had provided him in the course of his duties as a Bishop in the Church of Jesus Christ of Latter Day Saints.” Mr. Earl explained that “[a]t the time he made the request, Chief Deputy Attorney General Swallow appeared nervous and anxious.”

Mr. Earl further testified that it is his “customary practice, before conducting a wipe of a user's hard drive, to advise the user that data that has not been stored elsewhere . . . will not be recoverable after I perform the wipe[;]” that he is “sure that I followed my customary practice” in this instance; and that “consistent with my customary practice, before conducting the wipe, I would have made sure that Chief Deputy Attorney General Swallow indicated to me that he was aware that he would not be able to recover data from the wiped hard drives and that he had everything that he needed from the hard drives.”

The Committee concludes that in ordering the mass wiping of these two computers, Mr. Swallow almost certainly violated the requirements of Utah statutes relating to the preservation of official records, including statutes imposing criminal penalties for violations that, like here, are knowing and intentional. More broadly, the timing of this event, coming just months after the Krispy Kreme meeting and the manual deletion of his 2010 email from Office servers, strongly suggests that his order to wipe these devices was part of a concerted effort to eliminate evidence in the wake of Jeremy Johnson’s threats.

#### **6. Mr. Swallow’s Crashed Personal Hard Drive and Lost External Hard Drive**

During the course of its investigation, the Committee also learned of a complex series of events surrounding the hard drives on Mr. Swallow’s Office and home computers that resulted in apparent data losses.

Early in the investigation, in September 2013, Committee counsel met with Mr. Swallow's personal attorney. During that initial meeting, Mr. Swallow's attorney volunteered that there had been a loss of data on Mr. Swallow's personal computer. The attorney also stated that Mr. Swallow had previously attempted to recover the missing data from the computer but was unsuccessful.

The Committee then wrote to Mr. Swallow's counsel on September 29 asking six questions about this data loss: which computers were affected; the scope of the data loss; when Mr. Swallow first learned of it and how; what efforts were made to recover the data; what caused the data loss and when it happened; and whether Mr. Swallow was still in possession of the affected computer or computers? Ex. 166.

The Committee received a partial, vague, and equivocal response: "I think," Mr. Swallow's attorney wrote, that "both a personal and an office computer were impacted." His "understanding," he said, is that "it happened as a routine practice" and "long before anyone had thought about the DOJ or other investigations." "Recovery from one of the computers was significant," the attorney "recall[ed]," while the "other computer" had "crashed and recovery . . . was unsuccessful." The response did not explain, as requested, what data was lost, when each loss occurred, when and how Mr. Swallow learned of each loss, or what specific efforts were undertaken to recover the data. Ex. 166.

The Committee responded that it saw the losses of data from multiple computers as "potentially serious issues" and invited Mr. Swallow to explain why that view was incorrect. Ex. 166. The eventual response from Mr. Swallow's counsel was, "I have no doubt you would like this to be a serious issue" but that in his judgment "it was not a serious matter." "Are you suggesting," he asked, "that you never delete e-mails—that your firm preserves e-mails and



does not have a policy of regularly deleting many e-mails?” He said that, in his view, “what John [Swallow] was doing” was “consistent with that type of policy.” Ex. 167.

That day, the Committee wrote again to Mr. Swallow’s counsel asking for answers to the six questions posed on September 29. Ex. 168. In subsequent conversations, Mr. Swallow’s counsel clarified that Mr. Swallow was in possession of the crashed hard drive from his personal computer and that he had previously asked a third party vendor to retrieve documents from the drive but that the vendor had reported that the drive was inoperable.

The Committee asked for and received a copy of a report that the vendor had prepared. To the Committee’s surprise, the report disclosed for the first time that, in addition to seeking to recover data from the personal hard drive, Mr. Swallow had also evidently taken personal custody of the two hard drives from his former Office computers—drives belonging to the State—and provided those to the vendor in connection with his own personal document reconstruction efforts.

The Committee is sharply critical of Mr. Swallow’s decision to take personal custody of devices belonging to the State and provide them to a vendor working for him personally. That decision was particularly egregious since the hard drives—which had been wiped clean by Office IT personnel—clearly had significant evidentiary value in light of Jeremy Johnson’s allegations of wrongdoing. Mr. Swallow was well aware of those allegations prior to taking possession of the drives and, indeed, the Committee concludes that the allegations of wrongdoing and ensuing investigation are what prompted Mr. Swallow’s efforts to determine whether, and how much, data might have survived his earlier efforts to have the hard drives wiped clean.

The Committee asked Mr. Swallow for the personal hard drive so the Committee could conduct its own forensic review.<sup>108</sup> Mr. Swallow, through his attorney, at first agreed to produce the personal drive. When the Committee's investigators arrived at Mr. Swallow's counsel's office on October 15, 2013 to retrieve it, the investigators were turned away. Mr. Swallow later insisted that he would turn over the drive only on the condition that the Committee not review any data recovered from the drive and instead provide any recovered data for his review and the production of responsive, non-privileged material. After negotiations, the Committee agreed to take custody of the drive subject to that condition in order to determine whether any data on the drive was recoverable. The Committee agreed to this limitation in order to speed its review and avoid protracted and costly litigation.

The Committee then engaged its forensic expert and a data recovery firm to assist in its efforts to recover data on the personal drive.

While the Committee's data recovery efforts were underway, Mr. Swallow resigned from office. Shortly after the resignation—and only then—the Committee received an email from Mr. Swallow's counsel describing an odd series of events supposedly involving a number of the hard drives containing data from Mr. Swallow's work computers. Ex. 156. According to the account provided to the Committee by Mr. Swallow's attorney, and supplemented with facts subsequently ascertained by the Committee:

- Before returning his two Office computers to Office IT staff in July 2012, Mr. Swallow “had the data on the Macs transferred to an external hard drive.”
- As discussed above, Mr. Swallow then instructed Office technician Chris Earl to wipe the two hard drives on the returned computers by the end of the day. If Mr.

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<sup>108</sup> Mr. Swallow's vendor determined that the Office drives had, indeed, been wiped clean by Office IT personnel after, as discussed earlier, Mr. Swallow in July 2012 instructed his IT staff to wipe them immediately. Following that confirmation, Mr. Swallow returned the drives to the Office IT Department. The Committee then obtained the drives and the Committee's forensic expert likewise confirmed that the Office drives had been wiped clean.

Swallow's story is to be believed, this meant that as of the return of the computers, the data from the Office drives continued to exist in one place: the external hard drive to which he had apparently transferred the data.

- Sometime before July 30, 2013, Mr. Swallow brought his own personal computer to the Office for the repair of a broken glass screen by Office personnel. On July 30, 2013, Mr. Earl texted Mr. Swallow, noting that the screen had been fixed and that he (Earl) "swapped the hard drive." The Committee has not been told whether, when Mr. Earl swapped out the drive, the data on the original drive was transferred to the replacement drive that was inserted in the personal computer. For his part, Mr. Earl was unable to recall whether he replaced the hard drive in Mr. Swallow's personal computer at Mr. Swallow's request or at his (Earl's) own initiative. The Committee found no evidence that Mr. Swallow paid for either the screen replacement or the replacement hard drive and further investigation would reveal whether state funds were used for Mr. Swallow's personal benefit.
- Mr. Swallow "believes" that the data on the external hard drive was "transferred to his home computer, as," according to his attorney, "the data on the Macs or at least some of that data remains on the home computer." If (and that is a big "if") that belief is correct then two copies of the data now existed: on the home computer, and on the external hard drive.
- According to his counsel, Mr. Swallow then lost the external hard drive "in November of 2012 on a flight from Phoenix to SLC." Mr. Swallow "thinks it fell out of his brief case while in the overhead bin." That left the original data from the Office computer existing only on Mr. Swallow's personal home computer, and only if Mr. Swallow is correct that the Office data was actually copied to the home computer.
- The hard drive on Mr. Swallow's personal home computer then began "crashing," which Mr. Swallow's attorney earlier had told the Committee he "believe[d]" happened in January 2013. Ex. 169.
- "When the home computer was crashing," according to Mr. Swallow's attorney, the Office technician "attempted to transfer data from that hard drive to another external hard drive." That transfer was described only as an "attempt," and no representation was made to the Committee concerning whether that attempt was successful. Mr. Swallow's attorney has reported that this second external hard drive was searched in response to the Committee's subpoena to Mr. Swallow, but that no responsive documents were located on it.
- The personal computer hard drive then crashed in January 2013, rendering the personal home computer inoperable, at least until the Committee's forensic experts restored it to operability.

In the Committee's view, this chain of events as discovered by, or described to, the Committee is a highly improbable saga of hardware failure, purported data transfer, and

accidental loss that defies common sense. At the conclusion of its investigation, the Committee has insufficient information to draw a conclusion regarding the accuracy of any portion of Mr. Swallow's account of these events. The Committee believes these events warrant further investigation, particularly in light of the other significant evidence that Mr. Swallow deliberately altered or lost data or data devices relevant to these issues. Even beyond the question of how relevant data became missing (until, as explained below, the Committee recovered it), the Committee has significant concerns that this tale of woe was spun with the intent to obstruct the work of the Committee and other investigators reviewing these events.

With respect to the personal computer hard drive of which the Committee took custody, the Committee was able to recover substantial material that Mr. Swallow reported to the Committee as having been lost. The Committee's forensic expert succeeded, at taxpayer expense, in recovering more than 99% of the data on the hard drive. The Committee was not able to determine the cause of the failure of the hard drive. As agreed, the original, damaged personal drive and a copy of the recovered data was provided to Mr. Swallow on December 11, 2013. On January 17, 2014, the Committee was advised by Mr. Swallow that the hard drive contained documents dating to 1994 and contained approximately 1,550 documents that were "potentially responsive" to the subpoena, of which only "a few" were privileged. Mr. Swallow produced some 1,300 new documents to the Committee on January 29, 2014.

The Committee found that the vast majority of these documents consisted of email communications between Mr. Swallow and his campaign staff (chief among them Jason Powers) and email communications between Mr. Swallow and Richard Rawle. Many of the recovered emails pertained to the early stages of Mr. Swallow's campaign, and they revealed evidence of the efforts Mr. Swallow undertook to secretly woo payday lending donors in 2011. Other

documents recovered from the hard drive included communications between Mr. Swallow and Mr. Johnson regarding the legality of online poker processing, and what appears to be an early draft of Mr. Rawle's declaration regarding the FTC lobbying effort, discussed above. In all, the recovered documents were highly relevant to the Committee's investigation and the Committee has relied on a number of them in this report.<sup>109</sup> The fact that documents that disappeared in the period after the Krispy Kreme meeting included material of significant evidentiary value strongly suggests that the disappearance was not accidental.

The Committee reviewed the keywords that Mr. Swallow used to search his hard drive for potentially responsive documents and determined that that list was insufficient. The Committee then provided Mr. Swallow with an additional set of keywords that should be used to search the drive. Mr. Swallow agreed to conduct a supplemental search of the documents using the Committee's keywords. On February 26, 2014, Mr. Swallow produced an additional 431 pages of documents generated by the additional search terms requested by the Committee. These documents yielded yet more highly relevant communications with Mr. Johnson, Mr. Powers, and other members of Mr. Swallow's campaign staff. The emails also provided additional important insight into Mr. Swallow's involvement in the creation of his campaign's network, and the efforts to attack Rep. Daw. Many of these documents have been included in this report.<sup>110</sup>

We note that the Committee's forensic efforts were limited to restoring the personal hard drive to the condition it was in when it ceased functioning in January 2013 and imaging the drive

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<sup>109</sup> Had the documents been produced in a timely manner instead of shortly before the submission of this report, the Committee would have followed numerous leads that they offered.

<sup>110</sup> As also noted in Part I, Mr. Swallow claimed that significant numbers of documents responsive to the Committee's subpoena were legally privileged, and refused to produce these documents to the Committee. In November 2013, he produced a log identifying some of these documents that was 161 pages long and which listed in excess of 3,000 withheld documents. Ex. 170. While some of the claims of privilege appeared to be legitimate based on the limited information in the log, many other documents were evidently not privileged on the grounds he asserted. He promised the Committee a supplemental log describing the documents recovered from the hard drive as to which he claimed privilege, but as of the date of this report had not provided the Committee with that supplemental log.

once it was restored. The Committee recommends that investigators who choose to pursue these data loss issues obtain and examine this drive for deleted data. The Committee strongly doubts that, after the drive was turned over to Mr. Swallow, he or his representatives had any incentive to search the drive for deleted material and that their production of documents was confined to “active” or “live” data. In the Committee’s opinion, determining what data had been deleted as of January 2013 would be a useful investigative course to pursue.

Rather remarkably, just prior to the filing of this report, Mr. Swallow demanded that the State’s taxpayers reimburse him nearly \$23,000 for costs he says he incurred in reviewing documents recovered from his own hard drive. Ex. 171. There is no legal basis for this demand.

#### **7. Mr. Swallow’s Personal Phone and Office Computers, Phone, and iPad**

According to his counsel, Mr. Swallow also apparently disposed of his personal cellular phone in the “fall of 2012.” Ex. 156. This issue first came to light in October 2013, during the Committee’s review of purportedly confidential documents in the offices of Mr. Swallow’s attorney. Mr. Swallow allowed the Committee to review (but not take copies of) certain of Mr. Swallow’s text messages. The Committee observed that none of these text messages predated November 10, 2012 even though the Committee’s subpoena to Mr. Swallow called for production of such materials. And in a text message dated November 15, 2012, Mr. Swallow wrote to a correspondent, in words or substance, that he had had to change phones and so had lost his old text messages.

With this information in hand, the Committee inquired of Mr. Swallow, through his attorney, whether he still had the physical phone that he had evidently stopped using and replaced in November 2012. Mr. Swallow's attorney confirmed in a telephone conversation that Mr. Swallow had replaced the phone and probably had the prior phone.

Then, in an email on November 7, 2013—just after the Committee's public hearing in which Mr. Swallow's replacement of his cell phone was discussed—one of Mr. Swallow's attorneys wrote to change the story. In that email, the attorney wrote that, with respect to whether Mr. Swallow "obtained a new personal cell phone in the latter part of 2012," she had "confirmed with the Attorney General that he has used his current cell phone since approximately November 2011." Ex. 172. Although the Committee did not have access to the transcript of the testimony at the time, this contention about the 2011 (rather than 2012) replacement of his personal phone was also Mr. Swallow's position in his testimony in the Lieutenant Governor's investigation. There, Mr. Swallow testified that "the current Droid<sup>111</sup> I have I got I think in October or November of 2011." Ex. 1 at 27. He then elaborated that "[t]hat Droid crashed in Miami when I was on a trip there, and I believe I turned it in and received a new one and recorded over all of the information." And that, he confirmed, was in the "[f]all of '11." Ex. 1 at 33. Thus, he confirmed, the Droid phone that he currently uses as his personal cell phone was the one he got as a replacement in the fall of 2011, and that—as of Mr. Swallow's October 2013 testimony—the phone was "two years old now." Ex. 1 at 33.

However, on December 6, 2103, shortly after Mr. Swallow's resignation, Mr. Swallow's story again changed. In an email that day, the Committee was advised that "[a]s we understand it, John's personal cell phone was freezing up in the fall of 2012 so he obtained a refurbished

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<sup>111</sup> It is unclear whether Mr. Swallow's cell phone was a "Droid," which is a particular type of cellphone offered by Motorola, or whether Mr. Swallow meant that he had an "Android" cell phone, which is an operating system loaded upon many different types of cell phones.

phone from Verizon and mailed his failing phone back to Verizon.” Ex. 156. That admission is consistent with the documentary evidence the Committee saw in which Mr. Swallow stated in a November 15, 2012 text that he had recently changed his cell phone. The Committee believes that Mr. Swallow did, indeed, replace his personal cell phone sometime just prior to November 10, 2012. In light of that conclusion, the Committee also concludes that Mr. Swallow provided incorrect information to the Lieutenant Governor’s Office and that the initial information provided to the Committee by his counsel was also inaccurate.<sup>112</sup>

In addition, the Committee learned that Mr. Swallow replaced his Office-issued digital equipment twice after the Krispy Kreme meeting. As noted above, Mr. Swallow asked the Office IT staff to wipe his two Office computers in July 2012. When he turned those machines over to be wiped, the Office retained them and issued Mr. Swallow a Hewlett Packard laptop in their place. Ex. 155 at ¶ 6. After Mr. Swallow won the race for Attorney General, Mr. Earl, the Office IT technician, asked Mr. Swallow if he wanted to replace his Office-issued Hewlett Packard laptop, and the Office-issued Droid mobile phone he was then using, with new Apple equipment. Mr. Swallow evidently accepted the offer. In December 2012 or January 2013, Mr. Earl “purchased a new set of Apple products for [Mr. Swallow], including a new iMac desktop computer, MacBook Pro laptop computer, iPhone and iPad to replace the set of devices he previously had used in the Office.” Ex. 155 at ¶ 7. Consistent with Office practice, the data devices returned by Mr. Swallow were wiped clean. Given Mr. Swallow’s resignation from office and the impact that that resignation had on the scope of the Committee’s work, the Committee preserved but did not endeavor to restore data on the returned devices.

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<sup>112</sup> The Committee has no evidence to suggest that counsel’s statements to the Committee were knowingly false.



## **8. Mr. Swallow Loses His Campaign iPad**

The Committee obtained evidence that, in February 2013, Mr. Swallow lost an iPad purchased for him by his campaign. According to an email sent by Jason Powers to campaign aide Jessica Fawson on February 27, 2013, Mr. Swallow lost his iPad “at naag in DC today or” the night before.<sup>113</sup> Mr. Swallow replied to the email correspondence that he would “probably” need a replacement.<sup>114</sup> The Committee believes that the repetitive losses and failures of Mr. Swallow’s data devices is far outside the mainstream of a normal data device user’s experience and strongly suggests that this series of events was not accidental.

## **III. Other Issues Investigated by the Committee**

In addition to the issues discussed above, the Committee investigated other allegations of wrongdoing reported in the press or that the Committee otherwise encountered in the course of its investigation, but with respect to which the Committee either found insufficient justification for continuing to invest resources and expend taxpayer dollars, or no evidence of wrongdoing. A summary of these issues and the Committee’s conclusions follows.

### **A. Issues Relating to Marc Sessions Jenson**

In May 2013, the *Salt Lake Tribune* reported allegations by Marc Sessions Jenson that Mr. Swallow participated in a conspiracy to extort funds from him (Jenson). Ex. 174. Mr. Jenson alleged that at the direction of then-Attorney General Mark Shurtleff, and with Mr. Swallow’s participation, the Office targeted him (Jenson) for prosecution and then pursued him in an elaborate “shakedown” to extort from him hundreds of thousands of dollars in cash and

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<sup>113</sup> “NAAG” presumably refers to a meeting of the National Association of Attorneys General.

<sup>114</sup> The Committee also notes that Fawson told the Committee that her own computer hard drive crashed after the November 2012 election and that documents related to Mr. Swallow had been lost as a result. Separately, according a search warrant affidavit related to the Salt Lake County and Davis County criminal investigation, Jason Powers sent an email on November 9, 2012 instructing a campaign aide that among the tasks that “need[ed] to get done” as part of the “closing phase of the [Swallow] campaign,” the campaign should “[w]ipe all computers of sensitive data.” Ex. 173. Thus, the deletion and loss of data extended beyond Mr. Swallow to the campaign itself.

favors. He further alleged that when he stopped making payments, the Office retaliated by revoking a plea deal that had been entered as part of the scheme, sent him to prison for 10 years, and filed new charges against him related to a resort development project in Beaver, Utah. The new charges alleged that Mr. Jenson committed fraud through his efforts to induce a small group of investors to purchase memberships in the Mount Holly Club, which Mr. Jenson planned to operate as a private golf and ski resort.

To examine these allegations, the Committee reviewed court filings, emails, and receipts, and conducted more than a dozen interviews, including with Mr. Jenson at the prison in which he is incarcerated, Mr. Jenson's defense attorneys, Mr. Jenson's business associates, Assistant Attorneys General who prosecuted Mr. Jenson's two criminal cases, and others.<sup>115</sup>

As the Committee's investigation proceeded, it became clear that much (but not all) of the conduct allegedly involving Mr. Swallow occurred prior to the time that Mr. Swallow joined the Office, and that there was a group of actors involved in the Jenson matter other than Mr. Swallow, many of whom appeared to play central roles in the story. This is not to say that Mr. Swallow was uninvolved in the events relating to Mr. Jenson; rather, the Committee concluded that to tell the full story of these events would require: (1) extensive focus on a time period that pre-dated Mr. Swallow's arrival in the Office, and (2) a review of the conduct of a wide range of people other than Mr. Swallow with whom he appeared to have acted in concert (and for whose conduct he might therefore be vicariously responsible).<sup>116</sup> Under its authorizing resolution, the

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<sup>115</sup> Because of Mr. Jenson's multiple criminal convictions for fraud, and the Committee's concern that his allegations could be motivated by self-interest, the Committee did not rely on Mr. Jenson's statements absent independent corroboration.

<sup>116</sup> The Committee notes that the pending joint Salt Lake County and Davis County criminal probe is evidently investigating Mr. Jenson's allegations more broadly, and that the District Attorney for Salt Lake County recently filed a criminal information against Tim Lawson charging him with violating multiple state criminal statutes relating to his interactions with Mr. Jenson. Ex. 175. The charging document in that case appears to reflect the belief that the activity forming the basis for the charges was undertaken jointly. As of the filing of this report, it remains to be seen who the other actors in that joint effort were.

Committee was tasked with investigating allegations of wrongdoing by Mr. Swallow dating from the time he joined the Office. Consistent with that mandate, the Committee prioritized other aspects of its investigation and determined that it would return to the Jenson allegations later in its work. Prior to that happening, Mr. Swallow resigned from office and the active phase of the Committee's investigation was terminated. However, the Committee did conduct a limited investigation of the Jenson matter focused on those aspects of Mr. Jenson's allegations that related to Mr. Swallow's conduct while serving in the Office.<sup>117</sup>

Based on its investigation, the Committee believes that Mr. Swallow likely participated in the Office's decision-making on the Jenson case when he had an actual conflict of interest with respect to that matter, and concludes that he improperly delayed screening himself from the matter. The motive for this delay, the Committee concludes, was a desire to manage the Office's handling of the Jenson case in order to protect himself and Mark Shurtleff in light of the interactions that both of them had with Mr. Jenson prior to the time that Mr. Swallow joined the Office.

### **1. Background: the Jenson Allegations**

Marc Sessions Jenson is a Utah businessman whose primary business was, for a time, making short-term bridge loans to business ventures. In 2004, one of his investors accused Mr. Jenson of deceptive investment practices. The investor pursued a successful civil suit against

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<sup>117</sup> The Committee subpoenaed documents from the Office at the outset of its investigation, including documents related to the Jenson matter. In the course of its investigation, the Committee learned that, in addition to Mr. Swallow's deleted emails, a large volume of Office emails from the time period relevant to the Jenson matter belonging to then-Deputy Attorney General Kirk Torgensen had also been intentionally deleted. As Deputy Attorney General, Mr. Torgensen oversaw the Office's Criminal Division. The Committee learned that, toward the end of either 2010 or 2011, Mr. Torgensen directed his executive assistant to delete email from his Office email account. The Committee interviewed both Mr. Torgensen and his assistant about these matters. The precise scope and timing of Mr. Torgensen's instructions to his assistant remain unclear even after those interviews. What is clear is that, in response to his instructions, the assistant came into the Office on a weekend between Christmas and the New Year of either 2010 or 2011 and eliminated a large volume of his email from the Office's servers. Because these events appeared less central to the Committee's mandate than other areas of investigation, the Committee determined not to invest the resources that would have been necessary to take testimony under oath in order to resolve factual conflicts regarding this incident. Still, these facts may be relevant to the work of other investigators.

Mr. Jenson, and the Office also pursued criminal charges against him. Mr. Jenson claimed that the criminal case was improperly instituted and maintained by Mr. Shurtleff after the investor's wife donated money to Mr. Shurtleff's campaign.

Mr. Jenson further alleged that he communicated with Mr. Shurtleff about trying to settle the criminal case, and that Mr. Shurtleff directed him (Jenson) to give money to Mr. Shurtleff's associate, Tim Lawson, to forestall the criminal charges. He claimed to have paid over \$200,000 to Lawson at Mr. Shurtleff's direction. He also claimed to have retained Mr. Swallow in 2007, before Swallow joined the Office, to help resolve the charges, purportedly because Mr. Swallow led him to believe that he (Swallow) could be helpful to him (Jenson) as a confidant of Mr. Shurtleff's and as Mr. Shurtleff's likely successor. Mr. Jenson was developing a luxury ski resort, Mount Holly, at the time, and he claimed to have given Mr. Swallow an interest in Mount Holly in return for Mr. Swallow's assistance.

Mr. Jenson then claimed that Mr. Swallow (who was in private practice at the time) and Mr. Lawson helped him (Jenson) obtain a plea-in-abeyance agreement in the securities case in 2008, which allowed him to avoid jail time so long as he abided by the agreement's terms, including committing no further crimes.<sup>118</sup> After reaching the agreement, Mr. Jenson moved to Newport Beach, California and he alleged that Messrs. Shurtleff and Swallow (still in private practice) visited him there two or three times for fundraising and to vacation. On one such trip, Mr. Jenson alleges, the two men demanded \$2 million dollars from him. When he refused, and stopped making payments to Mr. Lawson, he claims, the Office improperly filed charges against him related to the Mount Holly project and moved to revoke his plea in abeyance and send him to prison.

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<sup>118</sup> Memorandum in Support of Marc Jenson Motion to Recuse and Disqualify the Attorney General's Office at 14. Mr. Jenson said it was not clear whether Mr. Swallow "was acting as attorney for Jenson or as a liaison with the Attorney General's office" at this time. *Id.*

## **2. Mr. Swallow's Relationship with Mr. Jenson and His Role in Obtaining Mr. Jenson's Favorable Plea-in-Abeyance Agreement**

The Committee's investigation confirmed that, in negotiating his original plea deal in 2008, Mr. Jenson was in communication with Mr. Shurtleff. Ordinarily, the negotiation of the resolution of a criminal case would be handled in the first instance by the individual line attorneys responsible for prosecuting a case on behalf of the Office and not by the head of the Office. The committee finds Mr. Shurtleff's personal involvement at such an early stage to be unusual.

Attorneys that Mr. Jenson hired to defend him against the securities fraud charges informed the Committee that Mr. Swallow, at the time an attorney in private practice, had a "presence" during the negotiation of Mr. Jenson's plea in abeyance agreement. At the time, the attorneys understood Mr. Swallow to be a fundraiser for Mr. Shurtleff and someone who had "Shurtleff's ear." The Committee concludes that the involvement in criminal proceedings of a fundraiser was highly improper and contributes to a damaging perception among the citizens of Utah that the administration of justice in the State is infected with politics.

The attorneys told the Committee that Mr. Swallow attended at least one meeting with Mr. Jenson, his defense attorneys, and Mr. Lawson. According to the same attorneys, at another meeting that Mr. Swallow did not attend, a meeting participant said that Mr. Swallow was working on the plea-in-abeyance deal. The Committee notes, however, that it did not obtain documents corroborating this information provided by Mr. Jenson's attorneys or reflecting the substance of any communications between Mr. Swallow and Mr. Shurtleff regarding Mr. Jenson's plea in abeyance agreement. The Committee wanted to speak with Mr. Swallow about his role in these events but he refused to be interviewed.

### **3. 2009: Mr. Swallow's Visits to Pelican Hill**

As noted, after entering into the plea in abeyance, Mr. Jenson moved to Newport Beach, California, where he resided in a villa at the luxurious Resort at Pelican Hill. The Committee confirmed Mr. Jenson's allegation that on May 5, 2009, Messrs. Swallow and Shurtleff visited Pelican Hill for one or two nights. Mr. Jenson paid all of Mr. Swallow's and Mr. Shurtleff's expenses, including rentals of additional villas, expensive golf outings, meals and massages. Mr. Swallow was a private citizen at the time and, viewed in isolation, there was no prohibition on him receiving such benefits. The primary purpose of the trip was fundraising for Mr. Shurtleff (Mr. Shurtleff was also working to finish a book at the time and has publicly said he used the visit to continue writing). The Committee also learned of two other trips to Pelican Hill by Mr. Swallow: On July 5 and 6, 2009, Mr. Swallow again visited, this time without Mr. Shurtleff, and again Mr. Jenson paid all his expenses. On July 10 and 11, 2009, Mr. Swallow made a third trip to Pelican Hill, this time bringing his wife.<sup>119</sup> Again, because he was a private citizen at the time of these visits, his acceptance of such benefits was, in isolation, not prohibited.

### **4. 2009: Mr. Jenson Seeks to Involve Mr. Swallow in Efforts to Get the Office to Prevent a Sale of the Mount Holly Club**

Immediately following the first trip Mr. Swallow and Mr. Shurtleff took to the Resort at Pelican Hill in May 2009, Mr. Jenson and his associates began reaching out to Mr. Shurtleff to take official action to protect Mr. Jenson's investment in the Mount Holly ski development.

Mr. Jenson had founded the development with his brother, Steven. The Jenson brothers structured the development as a private ski club, in which individuals would purchase a membership and a lot on which to build a house. A term of Mr. Jenson's plea-in-abeyance agreement permitted him to continue his work as the development's marketing director on the

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<sup>119</sup> The Committee notes that Mr. Swallow has publicly maintained that he paid for most of his own expenses on the July 10-11, 2009 trip.

apparent theory that the success of the project would enhance his ability to make restitution to his victims.

It was later alleged, however, that Mr. Jenson had been defrauding his Mount Holly investors, making false statements about the status of the project, and recruiting associates to pose as other investors at events that Mr. Jenson hosted to induce prospective members to invest while, at the same time, embezzling investors' funds. By May 2009, largely as a result of Mr. Jenson's alleged embezzlement of membership fees and project financing, XE Capital, a New York-based hedge fund that had purchased debt issued by the Mount Holly Club, foreclosed on the property and was planning to purchase it through a foreclosure sale.

In an attempt to stave off the sale, Mr. Jenson sought the assistance of the Office. On May 7, 2009, immediately following Mr. Swallow's and Mr. Shurtleff's first visit to Pelican Hill, an attorney for Mr. Jenson copied Mr. Swallow on an email to Mr. Shurtleff attaching a formal complaint against the principal of XE Capital, and another investor in the property, whom Jenson alleged had deceived the Mount Holly Club and facilitated the foreclosure. Ex. 176.<sup>120</sup> After a federal judge denied the Mount Holly Club's motion for an injunction prohibiting the sale of the property, Marc Jenson's brother, Steve Jenson, forwarded Mr. Shurtleff a synopsis of the decision that another one of Mr. Jenson's attorneys had sent to Mr. Swallow earlier in the day. In his cover email, Steve Jenson wrote: "I am now appealing to your office to help stop this theft from continuing to occur." Steve Jenson copied Mr. Swallow and Tim Lawson on the email. Ex. 177.

The Office conducted a review of Mr. Jenson's complaint, and the case was presented to the Office's Case Review Committee. That Committee concluded that there was no basis to

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<sup>120</sup> At the time of this email, Mr. Swallow had not yet joined the Office.

believe the investors in the property had committed a crime and that “[e]ven if there were some tenuous probable cause, it may well be an actual conflict of interest for this office due to prior direct dealings with Marc Jenson and our ongoing investigation into his activities, and the likelihood of continued litigation. . . . There is cause to believe that he has not honored his [plea in abeyance] agreement and the office may be constrained to take further action against him.”

Ex. 178. A second similar attempt by Mr. Jenson to have the Office take action to stave off the foreclosure was similarly rejected after internal review by the Office.

### **5. March 2010: The Office, With Mr. Swallow’s Involvement, Begins Building a New Case Against Mr. Jenson**

Evidence obtained by the Committee suggests that after joining the Office, and notwithstanding his earlier involvement in these issues, Mr. Swallow was an active participant in discussions in early 2010 that coincided with a marked shift in Mr. Shurtleff’s stance toward Mr. Jenson. On March 4, 2010, Mr. Shurtleff emailed Mr. Torgensen and Mr. Reed, telling them to “haul Jenson into court” for not paying restitution to his victims. Mr. Reed asked “where the sudden interest” came from, and Mr. Torgensen replied, “Swallow advised him [Shurtleff] to cover you know what.” Mr. Reed replied, “What does Swallow know? Weird.” Ex. 179.

Only a few days later, on March 26, 2010, Mr. Shurtleff forwarded to a group of attorneys in the Office’s Criminal Division a pair of recent emails from Tim and Jennifer Bell in which they requested an investigation of Mr. Jenson arising out of the Mount Holly development.<sup>121</sup> Ex. 180. Mr. Shurtleff copied Jennifer Bell on the email and asked the attorneys to arrange a meeting with the Bells and their counsel regarding the investigation. Mr. Shurtleff also copied Mr. Swallow on the email.

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<sup>121</sup> This is the same Tim and Jennifer Bell whose later involvement in a Swallow fundraiser was discussed at length above.



Interviews with Office personnel and internal Office emails obtained by the Committee show that the Office was actively involved in building a case against Mr. Jenson on the Mount Holly charges starting no later than May 2010. Over the course of the next year, a line attorney investigated allegations of wrongdoing involving Mr. Jenson and the Mount Holly development, reviewed documents, interviewed witnesses and developed testimony.<sup>122</sup> On August 23, 2011, the Office took two actions against Mr. Jenson. First, at a hearing on a motion it had filed three months earlier, the Office successfully persuaded the court to revoke Mr. Jenson's plea in abeyance and issue a warrant for Mr. Jenson's arrest by presenting evidence that Mr. Jenson had violated the agreement through his failure to make restitution payments. Second, the Office filed new criminal charges against him stemming from his alleged fraud at Mount Holly.

As discussed above in Section I.D.8, the Office maintains a policy requiring the establishment of "[c]onflict screens" to "protect against real or potential conflicts of interest." One purpose of a conflict screen is to ensure that the legal positions taken by the Office are dictated solely by legal and enforcement policy considerations rather than by personal concerns or personal involvement in the issues. Messrs. Swallow and Shurtleff were not officially "screened off" matters related to Mr. Jenson until June 2011. Ex. 182. And, the Committee found that that conflict screen was implemented only at the insistence of the line attorney in the Office prosecuting the case. Ex. 183.

From the evidence set forth above, the Committee concludes that Mr. Swallow, while in private practice, was involved in negotiating Mr. Jenson's plea deal, although the precise scope and terms of his involvement remain unclear. The Committee concludes that Mr. Swallow had

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<sup>122</sup> A document recovered by the Committee from Mr. Swallow's personal hard drive shows that in November 2010, Mr. Swallow provided advice to Mr. Shurtleff in responding to press inquiries regarding Tim Lawson. In doing so, Mr. Swallow discussed the trips to Pelican Hill and the relationship Mr. Swallow had with Mr. Lawson prior to his tenure at the Office. Ex. 181.

personal interaction with Mr. Jenson as his guest at Pelican Hill in 2009. At least according to Mr. Torgensen's email, Mr. Swallow was then a force behind the Office's decision to pursue Mr. Jenson by revoking his plea in abeyance and prosecuting new charges against him. Based on this record, the Committee concludes that Mr. Swallow failed to timely recuse himself from the Jenson matter because he was focused on protecting his and Mr. Shurtleff's earlier involvement with Mr. Jenson.<sup>123</sup> This, the Committee concludes, was highly improper and, at minimum, raises troubling questions about whether decisions in the Jenson case were made for legitimate or illegitimate reasons.

## **B. Issues Relating to Worldwide Environmental Products**

According to a June 2012 report in the *Salt Lake Tribune*, a mailer sent to Republican voters during the Attorney General campaign accused Mr. Swallow of having improperly intervened in a Salt Lake County bidding dispute on behalf of a company in which he purportedly "had a financial stake." Ex. 185. According to the mailer, in August 2010, the California-based Worldwide Environmental Products, Inc. had lost a bid for a Salt Lake County contract to provide automobile emissions-testing equipment. The article reported that Mr. Swallow and two

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<sup>123</sup> The Committee notes that Mr. Swallow produced in this matter three handwritten documents titled "Memo to the File," which purport to be Mr. Swallow's contemporaneous notes memorializing phone conversations he had with Mr. Jenson or his representatives in April and May 2010. Ex. 184. According to these memos, on each call Mr. Swallow told the caller that it was inappropriate for him to be discussing matters related to Mr. Jenson and instructed the caller to channel further communications through Mr. Jenson's attorneys and to the attorneys in the Office handling matters related to Mr. Jenson. After reviewing the memos, the Committee had serious questions about their authenticity. The memos appeared carefully tailored to support a claim by Mr. Swallow that he had distanced himself from the Jenson matter after joining the Office. The Committee did not see any similar "memos to the file" in other documents produced by Mr. Swallow, which seemed to undercut any suggestion that Mr. Swallow had a general practice of making such memos. The formatting of the memos was uniform. And while Mr. Swallow could have easily made an electronic record of these calls with a verifiable date by, for example, sending himself or someone else in the Office an email memorializing their contents—a common business practice—these memos were handwritten and were "to the file" rather than to another person who could verify when they were written. Thus, the only indication of when they were made is the date that Mr. Swallow wrote on them. The Committee's concerns were heightened when it discovered, and when Mr. Swallow later confirmed, that he had fabricated other documents related to his activities in 2010, and had presented those documents to the Committee without any indication that they were not authentic. The Committee believes that the circumstances under which Mr. Swallow created these documents warrants further investigation.

others from the Attorney General's Office received subpoenas from a federal grand jury in April 2011 to testify about their dealings with respect to Worldwide, but that the testimony was called off the day before it was supposed to occur. Ex. 185.

To examine these allegations, the Committee initially conducted public record research and reviewed documents that were made available by several government agencies. The Committee then interviewed witnesses involved in the matter, including Attorney General's Office and Salt Lake County District Attorney's Office personnel.

The Committee learned that Nancy Sechrest, a lobbyist who was working for Worldwide, sent material regarding the failed Worldwide bid to Mr. Swallow specifically—asking for him by name—in January 2011. Ex. 186. Ms. Sechrest, whose son was an attorney representing Worldwide, wanted the Office to investigate the award of the contract by Salt Lake County. Mr. Swallow forwarded the material to Alan Bachman, an Assistant Attorney General and the Office's expert in procurement law. Ex. 187. In February 2011, Mr. Swallow, Mr. Bachman and other members of the Office met twice with representatives of Worldwide, including once with Ms. Sechrest. Worldwide wanted the Office to arrange a meeting for company officials with county representatives to discuss the failed bid. Worldwide also wanted the Office to look into alleged impropriety with respect to the awarding of the contract to another bidder.

Following the initial meeting with Worldwide, AAG Bachman called the Salt Lake County District Attorney's Office about the matter. AAG Bachman's recollection of the call differs from that of at least one of the Assistant District Attorneys (ADAs) who participated on behalf of the Salt Lake County District Attorney's Office. Bachman recalled suggesting that Salt Lake County look into Worldwide's allegation and offering to investigate the allegation if the Salt Lake County District Attorney's Office would not. When one of the ADAs challenged the

Attorney General's Office's jurisdiction to open such an investigation, AAG Bachman recalled explaining that any rigging of the bid process would be viewed as an anti-competitive act within the jurisdiction of the Attorney General's Office. AAG Bachman did not recall threatening to investigate the Salt Lake County District Attorney's Office itself or stating that he was acting at the direction of John Swallow. However, ADA T.J. Tsakalos and others in the District Attorney's Office perceived that some of AAG Bachman's remarks constituted a threat to initiate a criminal probe into county officials if Worldwide were not granted a hearing on the award of the contract to another bidder. Based on these threats, the District Attorney's Office referred the matter to the FBI in March 2011.

AAG Bachman acknowledged to the Committee that he suggested that the county look into Worldwide's allegations of impropriety in the contract award and that, if the county did not, the Attorney General's Office would. However, AAG Bachman denied threatening the District Attorney's Office in any way and told the Committee that his comments were taken out of context by the District Attorney's Office. AAG Bachman showed the Committee emails from Mr. Swallow asking Bachman and others within the Attorney General's Office to let Salt Lake County handle Worldwide's allegations concerning the contract award process. This, AAG Bachman suggested, reflected that Mr. Swallow was not deeply invested in the complaint that Worldwide had raised.

Information obtained by the Committee suggests that the federal grand jury testimony of Mr. Swallow and other members of the Attorney General's Office that had been sought by subpoena was called off by the United States Attorney's Office for the District of Utah. As the Committee understands it, this occurred after a supervisor in that office asserted that office supervisors had never authorized those grand jury appearances. The Committee found no

indication that federal investigators pursued the matter further after the grand jury testimony was called off.

The Committee is troubled by the appearance of influence created by Ms. Sechrest's involvement in this matter, particularly because it involved a potential investigation to be carried out by the Attorney General's Office. A decision by the Attorney General's Office about whether to initiate an investigation should be based upon the merits of the allegations, not upon political contacts or influence. The critical involvement of Ms. Sechrest—a lobbyist—created, at minimum, an appearance that the Office could have been influenced by political considerations. However, the Committee's preliminary efforts did not uncover evidence corroborating reports that Mr. Swallow had a financial stake in Worldwide or that he received or was promised any benefit from Worldwide or its representatives. Nor did the Committee resolve the disputed factual issue of whether officials of the Salt Lake County District Attorney's Office were threatened.

#### **C. Issues Relating to Fundraisers Sponsored by Robert Montgomery**

The Committee investigated an allegation that expenses associated with at least one fundraiser for Mr. Swallow were not reported in the campaign's filings with the Lieutenant Governor's Office. In August 2013, it was reported that two fundraisers were held for Mr. Swallow in April 2012 that were hosted by Robert Montgomery, a call-center executive with ties to Jeremy Johnson's I Works. Ex. 188. The fundraisers were primarily attended by executives from other telemarketing businesses or other so-called online business opportunity (OBO) companies.

Media reports reflected that the events raised at least \$27,750 for Mr. Swallow and that the costs of the fundraisers, including food and raffle prizes, were paid by Mr. Montgomery and not the campaign. However, reports indicated no contributions, either monetary or in-kind,

coming from Mr. Montgomery or his company, Emmediate Credit Solutions, were disclosed by Mr. Swallow as required by law. Mr. Swallow, through his campaign consultant, Jason Powers, has said publicly that he was unaware of any contributions from Mr. Montgomery.

To examine whether Mr. Montgomery contributed to Mr. Swallow's campaign, the Committee interviewed almost a dozen witnesses, including employees of Mr. Montgomery and of the businesses where the fundraisers occurred. These witnesses also provided the Committee with documents for the Committee's review.

The Committee learned that the first fundraiser was a breakfast held at Mimi's Café in Murray, Utah on April 11, 2012. Mr. Montgomery provided Mr. Swallow's campaign with a list of individuals in the OBO industry to invite, and the campaign sent an email invitation to the prospective attendees. Ex. 189. Mr. Swallow attended the fundraiser and spoke to the attendees. A receipt showed that Mr. Montgomery paid \$283.72 for food and beverages for the event. Ex. 190. Mr. Montgomery was not reimbursed by Mr. Swallow's campaign for the expenditure.

Two to four weeks after the Mimi's Café fundraiser, Mr. Montgomery hosted a second fundraiser for Mr. Swallow at the Sun River Golf Club in St. George, which was also attended by individuals from the OBO industry. Mr. Swallow attended the fundraiser and again spoke to the attendees. Mr. Montgomery paid for the food and beverages at this fundraiser, which cost between \$100 and \$200, and was not reimbursed by Mr. Swallow's campaign.

In addition to the costs of the fundraisers, the Committee found that Mr. Montgomery purchased two raffle prizes—a new Apple iPad and a pair of tickets to a Utah Jazz game—to be raffled off among those who contributed to the campaign, including those who attended the fundraisers at Mimi's Café or the Sun River Golf Club. Mr. Montgomery raffled off the prizes approximately one week after the fundraiser at Sun River Golf Club. The Committee was told

that Mr. Montgomery spent between \$1,000 and \$2,000 on these prizes, and that he was not reimbursed by Mr. Swallow's campaign for these expenses, either. Nor were they reported by the campaign as contributions, as required by law. Mr. Montgomery told the Committee there are receipts to confirm these purchases, but the receipts were not provided to us.

The Committee concludes that Mr. Montgomery paid between \$1,338 and \$2,438 for expenses associated with two fundraisers for Mr. Swallow, and that these expenses were not reported to the State as in-kind contributions as required by Utah law.

#### **D. Issues Relating to the Division of Consumer Protection**

In November 2010, the media reported that certain Utah legislators were concerned that Mr. Shurtleff and Mr. Swallow were soliciting campaign contributions by offering donors protection from enforcement actions in return for contributions—a practice known colloquially as selling “fire insurance.”

The Committee sought to determine whether these allegations were true. First, it reviewed campaign finance records for Mr. Swallow's 2012 campaign. The Committee then compiled a list of the largest donors to Mr. Swallow's official campaign vehicle, Friends of John Swallow. The Committee learned that 26 of the largest 70 donors to Friends of John Swallow were or had been subjects of either regulatory actions/fines or investigations, many overseen by DCP, and that the vast majority of these 26 companies were in the multi-level-marketing, telemarketing, online coaching and personal wealth building fields.

The Committee interviewed more than a dozen witnesses, including members of the Office, the Utah Legislature and DCP, local business executives whose companies were fined by DCP, and former staffers of Mr. Swallow's campaign, in an effort to determine whether, during Mr. Swallow's tenure, the Office had improperly intervened in investigations or enforcement

actions conducted by DCP. The Committee also reviewed documents provided by some of these witnesses.

The Committee was told by personnel of DCP that companies in the industries that donated to Mr. Swallow were among the most fined companies in Utah, and thus frequently had issues before the agency. However, the Committee was unable to identify an instance of improper intervention by the Office in investigations or enforcement actions by DCP during the time that Mr. Swallow served in the Office. Several alleged improprieties—which were reported in the press or alleged by witnesses—were investigated by the Committee and were either unproven or occurred before Mr. Swallow joined the Office and therefore fell outside the Committee’s mandate. The Committee notes that Mr. Swallow’s decision not to speak with the Committee, as well as the unavailability of documents discussed elsewhere in this report, created obstacles to fully investigating these allegations.

#### **E. Other Issues Considered by the Committee**

In addition to the above issues, the Committee notes the following areas of investigation that it briefly pursued:

1. The Committee received allegations that Mr. Swallow may have shown favoritism in attempting to assist an organization headed by the associate of a campaign donor. The Committee reviewed relevant emails and interviewed several witnesses to examine the allegations. The Committee determined there was no evidence to support the allegation that Mr. Swallow provided any substantial benefit to the organization at issue.

2. Media reports indicated that a telemarketing business executive spoke with Mr. Swallow by phone in April 2012, after the executive, his partner and others were fined \$400,000 by DCP for operating a company that was not properly bonded or licensed. During this call, which was taped and later made public, Mr. Swallow offered to have Mr. Shurtleff or others in



the Office meet with the executive to “see if there’s something that can be done to get [the fine] worked out.” The executive and his partner informed the Committee that, before the call, they had arranged for a deal through a lobbyist in which they would pay at least \$8,000 to the lobbyist, who said that through political connections—including Mr. Swallow—he could make the fine “go away.” The Committee did not corroborate Mr. Swallow’s involvement in the proposed arrangement with the lobbyist.

3. The Committee received information that Mr. Swallow’s campaign accepted a \$5,000 contribution from a company controlled by an individual who was the plaintiff in a lawsuit against the state. The Committee reviewed court filings, campaign contribution records, and emails between campaign staffers, and also interviewed the Assistant Attorneys General assigned to the case and certain government officials named individually as defendants in the case. The Committee concluded that the \$5000 was contributed during a period after the case had been dismissed and that, when the case was re-filed, the contribution was returned.

4. The Committee received information that Mr. Swallow attempted to steer a government contract to a friend. The Committee interviewed witnesses and did not substantiate the allegation.

5. The Committee received an allegation that an individual made a private donation of \$200,000 to the Office earmarked for a specific law enforcement purpose, and that the funds might have been directed elsewhere in contravention of the terms of the donation. The Committee interviewed members of the Office and reviewed a purchase order which showed the money had been spent as the donor requested. The Committee notes that there may be an outstanding issue to be addressed arising from the Office’s apparent failure to properly report a private donation that it received.

### **PART III**

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### **SUGGESTIONS RECEIVED BY THE COMMITTEE**

As part of its responsibility under HR 9001, the Special Investigative Committee asked for, and received, suggestions for potential statutory changes from various persons and entities involved in the investigation. This section of the report only summarizes these offerings; it makes no recommendations. Some of these items have already been incorporated into bills being considered during the 2014 annual general session of the Utah Legislature. Due to time constraints, not all items have been evaluated for their efficacy or potential current existence as a concept within current code or legislative rule. Items could be referred to an interim committee or could become the subject of proposed legislative action.

### **1. Campaign Finance Law (Utah Code § 20A-11-101) Reforms**

- a. Consider creating a “major donor” category (perhaps at \$5,000 in cumulative donations). “Major donors” (individuals, corporations, or other entities) would be required to file one or more independent reports detailing contributions that the major donor made to any candidate committee, political action committee or political issues committee.
- b. Consider making it an affirmative civil or criminal violation for a candidate, political party, or campaign committee to “coordinate” expenditures or activities with corporations, PACS, or other entities. Define “coordinate” to track the broader definition of “coordination” contained in federal statutes and generally use the federal statute as a model.
- c. Consider defining in-kind contribution and clarify reporting requirements for those contributions. Consider using the federal definition, which includes advances of personal funds to a campaign.

- d. Consider appropriating additional moneys to the Lieutenant Governor's Office to allow more vigorous oversight and enforcement of elections and campaign finance requirements.
- e. Consider refining the statute authorizing special investigations by the Lieutenant Governor's Office (Utah Code § 20A-7-703).
- f. Consider changing the remedies outlined for violations of the Election Law Code (§ 20A-1-704).
- g. Consider legislation requiring campaign consultants to report expenditures made for the benefit of a candidate or a candidate's personal campaign committee.
- h. Consider restricting pay to play opportunities by considering a prohibition on campaign donations during the time an individual or entity holds a government contract.
- i. Consider restricting pay to play opportunities by disqualifying an entity from receiving a government contract if the entity made certain campaign contributions during the last 12 months (or some other designated period).

**2. Ethics Law Reform (Utah Code § 67-16-1 et seq.)**

- a. Consider whether to expand the mandate of the recently-created Independent Executive Branch Ethics Commission (S.B. 86) to allow the Commission to investigate other public officials (beyond the governor, lieutenant governor, attorney general, auditor and treasurer).
- b. Consider whether to create an Inspector General for the Office of the Attorney General, or the Executive Branch more broadly,

- c. Consider revising the financial disclosure statute (Utah Code § 76-8-109) and related financial disclosure forms to clarify and expand the financial relationships that should be disclosed by filers.
- d. Consider expanding the number of government officials (such as deputies, assistants, and other senior government employees) required to submit financial disclosures, and the frequency with which they must do so.
- e. Consider a “cooling off period” for new public officials from individuals or businesses with which they were associated prior to serving in public office (expand Utah Code § 67-16-8).
- f. Consider legislation clarifying restrictions on outside employment or any other projects or activities for which a public official may receive compensation while in office.

### **3. GRAMA Reform**

- a. Consider imposing retention requirements for State email.
- b. Consider increasing penalties for intentional mutilation or destruction of protected records (Utah Code § 63A-12-105).

### **4. Reforming the State grand jury statute (Utah Code § 77-10a-2) to:**

- a. Consider providing clear standards for judges to use when determining whether a grand jury is appropriate.
- b. Consider providing for a process by which prosecutors can appeal a judge’s denial for a grand jury hearing.
- c. Consider providing for subpoena authority when conducting a grand jury inquiry.

### **5. Reform the State’s Pattern of Unlawful Activity Act (Utah Code § 76-10-1602)**

- a. Consider including evidence tampering as a predicate offense (in addition to the other offenses, including witness tampering, that are currently included)

## **6. Reforms to Strengthen Legislative Authority**

- a. Consider enacting legislation to provide an expedited process for the enforcement of legislative subpoenas (Utah Code § 36-14-5).
- b. Consider adopting a new statute to criminalize the offense of obstructing legislative function.
- c. Consider adopting a new provision that would allow the Legislature to make a referral to prosecuting authorities for criminal contempt.
- d. Consider establishing a legislative committee for the sole purpose of overseeing the State's executive branch.

## **7. Modifications to “Failure to Disclose Conflicts of Interest” statute (Utah Code § 76-8-109)**

- a. Consider broadening the scope of the statute to ensure that it covers the business and economic relationships of political officials and candidates.
- b. Consider requiring that candidates disclose all employers, not just their primary employer.
- c. Consider defining the terms “owner” and “officer.”
- d. Consider amending the statute to require disclosure of money “received by the filer either directly or indirectly,” amend the statute to ensure that it applies to individuals as well as entities, and amend the statute to require disclosure of any individual or entity that paid money to the candidate on which the candidate paid personal income tax.

- e. Consider expanding the statute to require disclosure of the names of individuals that the candidate advises and the names of managers of LLC's and general partners of general or limited partnerships in which the candidate has an interest.
- f. Consider defining the term "advisor" to include individuals engaged in consulting work and to include any services performed for economic, political, or personal gain.
- g. Consider clarifying the time limit for disclosures by making a one year uniform requirement.
- h. Consider defining the terms "occupation" and "employment".
- i. Consider requiring candidates to disclose entities owned by members of the candidate's immediate family and or entities from which immediate family members benefit, including trusts.
- j. Consider amending the statutes to allow and regulate amendments to candidate disclosures.

**8. Election Law Provisions Relating to Special Proceedings (Utah Code § 20A-1-703)**

- a. Provide more detail about special proceedings for investigations and special proceedings for prosecution.

**9. Election Law Provisions Relating to Remedies for Violations of Campaign Finance Reporting Requirements (Utah Code § 20A-1-704)**

- a. Consider evaluating and revising if necessary the constitutionality of removing someone from office for violations of campaign reporting requirements.

**10. Election Law Provisions Relating to Disclosure and Contribution Requirements (Utah Code, Title 20A generally)**

- a. Consider requiring candidates to itemize and report expenditures made by consultants and campaign personnel on the candidate's behalf.

- b. Consider prohibiting candidates from receiving any cash contribution over a particular dollar amount.
- c. Define in-kind contributions and detail how they should be reported.

**11. Strengthen Requirements Relating to Outside Work by Public Officers and Employees**

- a. Consider establishing specific guidelines in statute detailing what outside employment is or is not appropriate.

**12. Ensure that “Official Proceedings” include legislative investigations.**

- a. Consider amending the definitions of “official proceedings” in the Utah code to explicitly include legislative investigations.

**13. Regulation of Campaign managers, campaign advisors, and political consultants**

- a. Consider requiring campaign consultants, campaign advisors, and political consultants to register or obtain a license.
- b. Consider creating a statutory cause of action allowing a candidate to sue a political consultant for malpractice.
- c. Consider amending statutes to ensure that the law treats campaign managers and campaign consultants as extensions of the candidate – laws that govern/restrict candidates should also govern/restrict managers and consultants.
- d. Consider enacting a statute creating a specific crime for “lying to a legislative Committee” (Utah Code § 76-8-504.6).



## **CONCLUSION**

From the time that the Special Investigative Committee was created until the investigation ended after John E. Swallow resigned as attorney general, the Committee and its staff devoted significant time and resources to investigating the various allegations against Utah's then-attorney general.

Finally, in fulfillment of its responsibility to maintain the public trust in government and our elected officials, the House Special Investigative Committee hereby formally submits this, its final report, to the Utah House of Representatives and the people of Utah.