

EXHIBIT 3

**SELECT COMMITTEE TO
EXAMINE THE
QUALIFICATIONS OF
REPRESENTATIVES CINDY
GAMRAT AND TODD
COURSER**

**SELECT COMMITTEE TO EXAMINE THE QUALIFICATIONS
OF REPRESENTATIVES CINDY GAMRAT AND TODD COURSER**

**Combined Statement of the House Business Office and
the Office of the General Counsel, Michigan House of Representatives**

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I. Introduction

A little over a year ago, the Michigan House of Representatives passed—in overwhelming, bipartisan fashion—legislation implementing “The Detroit Grand Bargain”. Some have considered this the apex of bipartisanship and geographical partnership in Michigan politics. Sadly, the House is presented with another opportunity to engage in bipartisan, geographical partnership, as it must determine whether to discipline Representative Todd Courser and Representative Cindy Gamrat for their involvement in a bizarre cover-up of their adultery and additional wrongdoing unearthed during the ensuing investigation.

As explained below, it is the recommendation of the General Counsel of the Michigan House of Representatives that Rep. Courser be expelled immediately and that Rep. Gamrat receive a censure with severe conditions attached.

II. Background

A. Investigation and Report

Hours after Chad Livengood of the *Detroit News* broke the story about the extramarital affair between Rep. Courser and Rep. Gamrat, Speaker of the House Kevin Cotter ordered an internal investigation by the House Business Office. As General Counsel for the House, Brock Swartzle implemented what is commonly referred to as a “litigation hold” on all potentially relevant materials. This consisted of multiple steps, including but not limited to (1) preserving all House network drives, emails, calendars, and other Outlook-related matters; (2) seizing the laptops of Rep. Courser, Rep. Gamrat, and their past and current staff; (3) seizing all hardcopy documents from the offices of Rep. Courser and Rep. Gamrat; and (4) instructing

Republican and Democrat senior staff to review all of their files for any records potentially relevant to the investigation. The House Business Office implemented this order, and the litigation hold remains in place today.

On Saturday, August 8, 2015, the House Business Office began reviewing hardcopy records seized from the offices of Rep. Courser and Rep. Gamrat. On Sunday, August 9, 2015, the House Business Office began reviewing electronic records seized as part of the litigation hold. A review of relevant records continued during the following days and weeks. Also on that Sunday, Mr. Swartzle apprised the Democrat legal counsel of the steps that had been taken to-date.

As part of the investigation, Tim Bowlin determined that he wanted to meet with people who might have potentially relevant information. Based on the advice of outside legal counsel, the following procedure was used by the House Business Office when taking statements: (1) Mr. Bowlin was the primary interviewer, though other persons in the room could ask questions; (2) at least two other persons with the House Business Office or legal staff would also be in the room to take detailed notes of the questions and responses; (3) the person being interviewed could be accompanied by private legal counsel; (4) the interviewee was asked to bring any potentially relevant records with them or provide such records later; (5) the House Business Office would type the interview questions and answers; and (6) the interviewee had the opportunity later to review the written questions and answers and supplement or correct the answers prior to the statements becoming final. The final interview statements are part of the evidentiary record now before the Select Committee.

The bulk of the factual investigation wrapped up by Monday, August 24, 2015, although additional records were provided throughout that week. Records compiled by the House Business Office included 13 interview statements; emails; hardcopy notes; and approximately five hours of audio recordings¹ made by Ben Graham. Mr. Bowlin and legal counsel spent many hours reviewing the evidentiary record.

The House Business Office completed a draft report on August 24, 2015, and, that same day, Mr. Swartzle ordered a review of that draft report and the evidentiary record by outside legal counsel. Outside legal counsel reviewed the draft report and evidentiary record, and, in consultation with counsel, the House Business Office issued its final report² on Monday, August 31, 2015.

As stated in its report, the House Business Office concluded that “[t]he audio and documentary evidence were the most reliable evidence reviewed as part of the investigation.”³ In her prepared statement to the Select Committee, Rep. Gamrat admits that “[t]he emails and audio that led to [the HBO Report’s] findings are

¹ The audio recordings were subsequently transcribed.

² Some commentators have mistakenly claimed that the House Business Office did not issue its “full report” on August 31, 2015. This claim appears to be based on the erroneous assumption that the evidentiary record is part of the “full report”. Without quibbling too much about labels, there is a conceptual distinction between the “full report” (i.e., the House Business Office’s factual findings) and the evidentiary record upon which the findings were based. In any event, as the Speaker’s office stated on August 31, 2015, the complete evidentiary record will be made public, redacted only for matters involving personal medical, identification, or other matters covered by state or federal law. Moreover, the full, unredacted evidentiary record will be retained, and the litigation hold will remain in-place, until all civil and criminal investigations, if any, are exhausted or the applicable statutes of limitation expire.

³ Report on the Investigation of Alleged Misconduct by Representative Todd Courser and Representative Cindy Gamrat (“HBO Report”) at 4.

accurate and those conclusions are appropriate.”⁴ Based on the evidentiary record, the House Business Office recommended that the Select Committee review the qualifications of Rep. Courser and Rep. Gamrat.

Later that day, Speaker Cotter announced the members of the Select Committee.

B. Select Committee

The Select Committee held its initial public meeting on Tuesday, September 1, 2015. The Select Committee adopted its rules and, after the committee adjourned, each member and legal counsel received a complete copy of the full, unredacted evidentiary record. Given the bulk of the material, including the length of the audio recordings, it was determined that each member and legal counsel should be given sufficient time to review and study the materials prior to the next meeting.

Rep. Courser and Rep. Gamrat, along with their legal counsel, were provided an opportunity to review and take notes of the full, unredacted evidentiary record. They could identify parts of the record of which they wanted copies, and the House Business Office would provide such copies (after appropriate redactions were made, as described above).

III. Factual Findings

A. “Oh, what a tangled web we weave, When first we practice to deceive!”⁵

The fountainhead for these proceedings is the extramarital affair of Rep. Courser and Rep. Gamrat and the subsequent cover-up. Both principals have acknowledged that they had an extramarital affair, and it is clear from the record that the affair lasted

⁴ Statement to the Select Committee to Examine the Qualifications of Representatives Cindy Gamrat and Todd Courser (“Gamrat Statement”) at 1.

⁵ Walter Scott, *Marmion*, VI, intro., st. 17 (1808).

several months.⁶ Although the affair itself is largely, if not wholly, a personal matter for the Representatives and their families to resolve, the Representatives tried to cover up the affair in ways that compromised their credibility as well as impermissibly relied, or tried to rely, on House resources.

B. Rep. Courser—I Need to “Inoculate the Herd”

When faced with an anonymous person who threatened to expose the extramarital affair, Rep. Courser did not admit the affair to his family, nor did he publicly admit the affair and ask for forgiveness from his fellow Representatives and constituents. Instead, he proposed, and Rep. Gamrat agreed, to a scheme based on deceit and misdirection. Specifically, Rep. Courser proposed to have sent a fake “false-flag” email accusing himself of doing drugs and having sex with a male prostitute behind a Lansing nightclub, as well as allege that Rep. Gamrat was a “tramp”. The motive behind the false-flag email was to convince people that someone was trying to malign the character of Rep. Courser and Rep. Gamrat so that if allegations of their extramarital affair became publicly known, the public would think that the allegations were simply part-and-parcel of that effort to malign their character.

C. “A Little Bit of Truth Mixed In With a Lot of Lies”

During the evening of May 19, 2015, Rep. Courser called Ben Graham, his long-time friend, campaign assistant, and then-House staffer. Rep. Courser called Mr. Graham after hours from his private law office in Lapeer. In Mr. Graham’s opinion, Rep. Courser sounded distraught and unstable.⁷ Rep. Courser asked Mr. Graham to

⁶ Transcript of May 21, 2015, Audio Recording at 10:14-11:2.

⁷ Interview with Ben Graham, August 18, 2015.

meet him at his law office because, as Mr. Graham recounted, "I need you to destroy me."⁸

Mr. Graham went to Rep. Courser's office and recorded their conversation without Rep. Courser's knowledge. Explaining his motive for the meeting, Rep. Courser stated, "I need an over-the-top story that's obscene about me. It will make anything else that comes out after that, that isn't video, mundane. Tame by comparison. I need a controlled burn."⁹

Rep. Courser informed Mr. Graham that "stuff is going to come out and they're going to implicate myself and Cindy Gamrat."¹⁰ He stated that he and Rep. Gamrat both received an anonymous text message saying the information about the affair was "going to come out."¹¹ He did not know if the anonymous texter had video, pictures, or audiotape.¹² Rep. Courser further stated that he had been "tracked and monitored and followed" by the texter.¹³ The anonymous texter had demanded a response, but Rep. Courser had refused.¹⁴

Rep. Courser then discussed a plan to send the false-flag email to cover-up the affair. As he explained to Mr. Graham, "I've come down to that the way to handle it is to do a controlled burn of me. It's so over-the-top that people will see it, and they'll be like holy shit, what is that. And anything that comes out after that will be mild by comparison. In a controlled burn you do a little bit of truth mixed in with a lot of

⁸ *Id.*

⁹ Transcript of May 19, 2015, Audio Recording at 6:25-7:4.

¹⁰ *Id.* at 7:8-10.

¹¹ *Id.* at 9:1-3; 9:15-10:3.

¹² *Id.* at 20:12-13.

¹³ *Id.* at 11:8-10; 13:9-19.

¹⁴ *Id.* at 15:16-18.

lies.”¹⁵ He added, “People are so disturbed they won’t print it. But anything after that is going to be suspect. It will be looking like a complete smear campaign.”¹⁶

Representative Courser then read an initial draft of the email to Mr. Graham:

“Todd Courser caught on tape behind Lansing nightclub. In truth, Courser secretly removed from caucus several weeks ago due to a male on male paid for sex. (Inaudible) prominently in some nightclub. He is a bi-sexual porn addicted sexual deviant.” And then you just get nasty about it. “His cock is hanging out all over Lansing since the election, that’s why he was thrown out of caucus.”¹⁷

Mr. Graham described the email as “ridiculous” and noted that no one would believe it.¹⁸ Rep. Courser agreed, explaining that was the point: “It is ridiculous, I need it to be over-the-top.”¹⁹ “Now anything that comes after this is part of the, is part of that. It’s a burn. And then people go I’m not listening to that, that’s bullshit, who would do that to somebody. It’s awful. They’re attacking him right.”²⁰

The two continued discussing the draft false-flag email:

TODD: Now it goes further. Work with me Benjamin. Been thinking about this since I ran for office two years ago or three years ago, whenever we did the last time out.

“Gun-toting, Bible thumping, cock-sucking freak. He’s not standing for smaller government, his whole personality is a sham. By the government (inaudible) build big government, his whole personality is a sham. He’s a tool and pawn of the establishment. In past election he was accused of child molestation and he’s done things that should have him in jail. He doesn’t work in Lansing, he’s just there feeding his habit of alcohol, drugs, and illicit sex. Most days he is high, stoned on drugs and alcohol while he is supposed to be voting. In between he’s seducing and taking advantage of Rep. Gamrat between votes. The people deserve to know the real reason she was thrown out by the Speaker is

¹⁵ *Id.* at 13:21-14:1.

¹⁶ *Id.* at 14:3-6.

¹⁷ *Id.* at 16:20-17:6.

¹⁸ *Id.* at 17:7-8.

¹⁹ *Id.* at 17:9-10.

²⁰ *Id.* at 18:2-5.

because she wouldn't stop being Courser's toy in caucus. She shouldn't be trusted as State Representative or National Committee Woman. She's a tramp, a lie, and laugh for this bisexual monster, this tea-bagger takes his title seriously moaning and goaning," blah, blah, blah, blah.

* * *

TODD: What does this do? I need to, if possible inoculate the herd against gutter politics that are coming. Unless they have something really awful, which I do not know about, okay.

BEN: Todd, this is really awful.

TODD: What's that?

BEN: You and Cindy.

TODD: Yeah.

BEN: I mean how much more awful, how much more awful could you get? I mean that shit's, that shit you came up with is pretty awful but like.

TODD: Ben.

BEN: Yeah.

TODD: We decided to destroy ourselves. If this is the lead in, we go for the sham, the scam. . . . This is the best we came up with. Neither of us want to be on somebody's leash. Neither one of us really want to be in Lansing if this is how we have to do it."²¹

Rep. Courser explained that he wanted "as many e-mails as we can" from an anonymous address that could not be traced back to him.²² "[N]ormally with this sort of thing [Rep. Courser] would have like do it" because "he's done it from Gmail accounts, a series of them."²³ Yet, given their relationship, Rep. Courser asked if Mr.

²¹ *Id.* at 18:6-20:3:6.

²² *Id.* at 14:8-13.

²³ *Id.* at 14:14-18.

Graham would arrange for the email to be sent. He told Mr. Graham that he was “not going into work tomorrow” and that he is “going to be sick”:

BEN: Yeah. I’m not going to work, what am I going to do tomorrow?

TODD: Well you’re going to, you’re going to be at home after this.

BEN: I don’t know what you mean.

TODD: You’re going to do this and then go home.²⁴

Rep. Courser then asked Mr. Graham if he was “sharp enough” to send the email.²⁵ He stated that he wanted the email sent to media and “other people,” and that “I want them to be insulate [sic], you’re inoculating the whole herd.”²⁶ Mr. Graham then advised Rep. Courser against distributing the email:

BEN: This a crazy way to deal with this situation. Normally people just like front it off, head it off themselves and say hey, this happened, or quietly resign and go away. Like that’s usually what happens with this type of situation so this is kind of a crazy way to do it.

TODD: Hey, we agree.

BEN: Who?

TODD: Cindy and I.

BEN: On this?

TODD: It’s what they won’t expect. At that point if they don’t have some really, really, really offensive stuff, right, if they don’t it will be tough for them to bring it after this, right?²⁷

²⁴ *Id.* at 30:9-22.

²⁵ *Id.* at 30:24-25.

²⁶ *Id.* at 31:1-7.

²⁷ *Id.* at 31:8-21.

Mr. Graham asked Rep. Courser whether he could “think about it” and “go for a drive”.²⁸ Rep. Courser replied that he “just need[ed] to burn down.”²⁹ He added, “I need it done, buddy. I do. Whatever comes after that comes after that.”³⁰ The conversation continued:

TODD: I need this stuff done. Either help me process it further than what I’ve processed it with Cindy and her husband.

BEN: He read that?

TODD: They actually wanted it [slanted] more towards her.

BEN: To like inoculate her?

TODD: So that she would take more responsibility³¹

At one point during the conversation, a cellphone rings and Rep. Courser identifies the caller with a female voice as Rep. Gamrat:

TODD: Ben and I are sitting here, he’s trying to, trying to mentally process everything I just told him. So trying to find a different way, so. What are your thoughts? You can’t really because then there’s a record of it. And I’m not, I’m not there. No, I haven’t. I’m still heading in that direction if—Ben was trying to figure out if there’s a way to, and I think it’s good, I’d rather have him question all the, the route of it but you see another option here, another option here, Cindy? Okay. Can I call you if we have any other questions? If I have any. I won’t call unless I do. What’s that? No, I’m just saying that because I’m sitting here right now is what I’m saying. I’m saying do you have any other thoughts on it is what I’m asking you. We’re still talking about it here. Okay, bye-bye.³²

Rep. Courser then continued to press Mr. Graham about sending the email:

TODD: I want people to delete it and mark it as spam when it’s done because they’re so, they’re so, f’ing pissed that somebody sent that piece of garbage into their inbox. That’s what I want. Does it get there?

²⁸ *Id.* at 32:20-24.

²⁹ *Id.* at 33:3.

³⁰ *Id.* at 35:16-17.

³¹ *Id.* at 37:1-18.

³² *Id.* at 38:15-39-7.

BEN: I guess but it still [will] hit the media.

TODD: I want it to hit the media.³³

Rep. Courser then read the email a second time, and he and Mr. Graham made changes to the draft.³⁴

The meeting ended at about midnight. Mr. Graham left to “think about it” and “go for a drive.”³⁵ Later that morning, Mr. Graham informed Rep. Courser that he would not be involved in the cover-up plot.

D. A Tale Told by Rep. Courser, “Full of Sound and Fury, Signifying Nothing”³⁶

The false-flag email was sent the following day under the pseudonym “George Rathburn.” It reads in its entirety:

From: georgerathburn520@gmail.com
Sent: 5/20/2015 11:36:36 a.m.
Subject: Breaking scandal – Todd Courser

Breaking scandal! State Rep Courser Caught behind Lansing nightclub! Christian conservative or Godless Addicted Monster! Truth!!! Courser secretly removed from Caucus several weeks ago due to male on male paid sex behind a prominent Lansing nightclub! Action soon coming to remove Courser!

He is a bi-sexual porn addicted sex deviant! All over Lansing since the election and that is why he was thrown out of caucus! He is a FREAK! He is a gun toting bible thumping cock sucking freak! His whole personalit [sic] is a sham! He is a tool pawn of the establishment. In past election he was accused of child molestation! And he done things that should have him in jail! He doesn't work in Lansing he is just there feeding his habit of alcohol drugs and illicity [sic] sex! Most days he is high stoned on drugs and alcohol while he is supposed to be voting at the state house!

³³ *Id.* at 40:10-16.

³⁴ *Id.* at 46:7-48:9.

³⁵ *Id.* At 48:10-13; 49:6-7.

³⁶ William Shakespeare, *Macbeth*, act 5, scene 5 (1623).

Rep Gamrat knew about it all along and has helped cover his actions! Has played along and been complicit in his sorted activities and has covered for him over and over and her involvement is the real reason she was thrown out! She shouldn't have ever been trusted as state rep or national committeewoman she is a tramp, a lie, and a laugh for this bi-sexual cock sucking monster!

This Teabagger takes his title seriously! Moaning and groaning fucking and screwing man on man man on woman and whoever he can pay! Pictures and video youtube tell the hoel [sic] story and all of his exploits behind night clubs and hotels at some of the best and worst places in Lansing with all the grinding hot and sweaty sex and drug use—it is too much to hide anymore he is a scam. (Emphasis in original.)³⁷

E. “It’s Going to Come Out”

The day after Rep. Courser had the false-flag email distributed, Mr. Graham met with both Rep. Courser and Rep. Gamrat in the latter’s House office. During the meeting, there was a lengthy discussion about the Representatives’ affair and marital issues, along with Mr. Graham’s intentions and feelings about the matter.

Rep. Courser told Mr. Graham that “Ike” sent the false-flag email.³⁸ He added, “Well he’s [Ike] done, he’s done other things in the past as well and he’s the guy obviously that, you know, I’ve done some things for and he’s done some things for me as well.”³⁹

³⁷ In her statement seeking public censure, Rep. Gamrat states that she “did not know in advance of the specific and offensive things that were in the false email that was eventually circulated,” though she did “take full responsibility for [her] role in Representative Courser’s plan and the resulting harm it has caused.” Gamrat Statement at 1.

³⁸ Transcript of May 21, 2015, Audio Recording at 6:10.

³⁹ *Id.* at 8:16-19.

Mr. Graham confronted both Representatives about the affair.⁴⁰ He repeatedly asked how long the relationship had been going on.⁴¹ Rep. Courser responded that he did not know the specific date, but that it “wasn’t back in the beginning and it wasn’t yesterday.”⁴² Mr. Graham replied that he did not think the Representatives could “reconcile” their situation by it covering up: “It’s going to come out.”⁴³

Rep. Gamrat discussed her own reasons for engaging in the affair.⁴⁴ She apologized to Mr. Graham for putting him in a difficult position and stated that she wanted to keep the affair private.⁴⁵ Mr. Graham, however, refused to be part of any cover-up:

BEN: That’s, that’s your guy’s decision. I won’t be involved in any—

TODD: Cover up.

BEN: Any cover up.⁴⁶

Both Representatives continued to state their wish to keep the affair private. At one point, Rep. Gamrat implored, “I would ask you, Ben, to just keep this private. It’s not just about protecting me, it’s also about protecting Joe and the kids.”⁴⁷

Throughout the meeting, Mr. Graham attempted (unsuccessfully) several times to get the Representatives to discuss the upcoming House session and go to committee meetings, which were taking place during this discussion.⁴⁸ Rep. Courser missed a

⁴⁰ *Id.* at 9:16-19.

⁴¹ *Id.* at 10:14-24.

⁴² *Id.* at 10:25-11:2.

⁴³ *Id.* at 11:14-16.

⁴⁴ *Id.* at 12:11-13.

⁴⁵ *Id.* at 19:2-5.

⁴⁶ *Id.* at 19:11-14.

⁴⁷ *Id.* at 28:6-8.

⁴⁸ *Id.* at 21, 22, 38:8-9.

Joint Committee Meeting of the House Standing Committee on Oversight and Ethics and the House Standing Committee on Military and Veterans Affairs.⁴⁹

Mr. Graham recorded two other meetings with both Representatives. These meetings occurred on May 26, 2015 and June 9, 2015, and both occurred in the House.⁵⁰ Accordingly, of the four discussions secretly recorded by Mr. Graham, only one (the first) took place after hours off House property.

Subsequently, on July 6, 2015, the at-will employment of Mr. Graham and Keith Allard (Rep. Courser and Rep. Gamrat's Chief of Staff) was terminated. On August 7, 2015, the *Detroit News* published Chad Livengood's article.

The ensuing investigation began.

F. Additional Wrongdoing Discovered During the Investigation

During the investigation, Mr. Graham made available to the House the four unedited audio recordings he made. In addition, staffers provided a large volume of emails to the House Business Office. The evidentiary record compiled by the House Business Office, primarily the audio and emails, confirmed a number of additional acts of wrongdoing by the Representatives. These included:

- Rep. Courser had staff forge signatures on three "bluebacks" (bills to be introduced) to subvert the efforts of other Representatives to introduce similar legislation.⁵¹

⁴⁹ Minutes of the Joint Committee Meeting of the House Standing Committee on Oversight and Ethics and the House Standing Committee on Military and Veterans Affairs, May 21, 2015.

⁵⁰ See Transcripts of May 26, 2015, and June 9, 2015, Audio Recordings.

⁵¹ Compare blueback signatures on HB 4174, 4317, and 4318, with blueback signatures on other House Bills sponsored or co-sponsored by Rep. Courser and Rep. Gamrat; see also Email dated 3/9/2015, "Re: 82 - Josh goes MMA", Cline Documents at 172-73.

- Rep. Courser consistently berated and belittled the offices' combined staff.⁵²
- Rep. Courser yelled at his staff for not getting work done over the Presidents' Day weekend and for failing to know certain legislative details, while in the same email proudly exhibiting his ignorance about the most basic of legislative tasks:

When something isn't done and hasn't been administered and I ask I shouldn't be schooled from my staff on where my time should be spent or invested; I am damn sure it is not the role of my staff in Lansing or in Lapeer to give me push back on items that are being administered or not being administered; if I say I want a warrant provision and notifications provisions or adjustments to a bill then you better damn well put that item and any item like it on your radar and calendar it out and your task tracker and your daily activity log (all of which need serious work and some of which are totally unused and not being administered and if you admining something then better know the drop dead date BECAUSE I DO NOT KNOW THESE THINGS AND I SHOULDN'T HAVE TO and then you need to know the time and then make sure we have it submitted before any of your 2 dozen holidays; to then tell me it is because we didn't meet on Thursday is disrespectful and untrue given you had a full work day on Friday to deal with it and get it in motion and it shows a lack of understanding of what my role is; and what responsibility staff has and who is in charge. I DO NOT KNOW THE AMENDMENT PROCESS NOR SHOULD I HAVE TO...Am I right on this or am I missing something here?⁵³

- Rep. Courser and Rep. Gamrat failed to create and maintain clear lines between legislative work and political/campaign work in their combined office. Numerous examples of the blurring of these lines can

⁵² Numerous emails, including: Email dated 2/16/2015, "Process Development and some other issues...", Cline Documents at 128-29; Email dated 3/27/2015, "82 - issues to deal with", Allard Documents at 6-7; Email dated 6/8/2015, "Not sure how to address this???", Allard Documents at 8-10.

⁵³ Email dated 2/16/2015, "Process Development and some other issues...", Cline Documents at 128-29.

be found in the offices' emails.⁵⁴ While the Representatives occasionally note that political/campaign work should be done during private hours off House property,⁵⁵ they also demand that certain political/campaign work take precedent over House work and that the former be done during a time when any reasonable person would understand to be House time.⁵⁶

- As part of this blurring of legislative work and political/campaign work, Rep. Courser had the combined office set up to use NationBuilder, a database program designed and used for political work. All constituent requests sent either to Rep. Courser or Rep. Gamrat were entered into the Representatives' NationBuilder database. It appears that such information was then used for political/campaign purposes.⁵⁷
- Rep. Courser made clear that he not only asked for or expected, but rather he *demand*ed, as a condition of their House employment, that staff do political/campaign work for both Rep. Courser and Rep. Gamrat.⁵⁸ Moreover, Rep. Courser instructed staff to prioritize political tasks over legislative issues during normal operating business hours.⁵⁹

⁵⁴ See, e.g., Email dated 12/27/2015, "Fwd: Rep 80-82 - Staff meeting tentative agenda, outstanding action items, processes/procedures", Rep. Courser Documents at 7.

⁵⁵ See, e.g., Email dated 2/4/2015, "82/80 outside work", Cline Documents at 116 (showing that Rep. Courser explained to staff that if they wanted to do outside political work apart from Rep. Courser or Rep. Gamrat, then "it may just require that you take leave to do it").

⁵⁶ See, e.g., Email dated 1/30/2015, "MEDC Rollout Package", Cline Documents at 99; Email dated 3/27/2015, "82 - Issues to deal with", Allard Documents at 6-7.

⁵⁷ See, e.g., Email dated 1/7/2015, "Inbound fb messenger question - [redacted] - Constituent Question", Cline Documents at 15-16; Email dated 1/15/2015, "Agenda for staff meeting 1/20/15", Cline Documents at 66; Email dated 3/9/2015, "82/80 - need to speak to someone", Cline Documents at 178-79; Email dated 3/16/2015, "82: Data Situation", Cline Documents at 314.

⁵⁸ See, e.g., Email dated 2/15-16/2015, "82/80 Heise's bill amendments", Cline Documents at 124-27 (making clear that Rep. Courser demanded a minimum of sixty hours per week from his staff, and that some of that time had to be spent on political/campaign work).

⁵⁹ See, e.g., Email dated 1/30/2015, "MEDC Rollout Package", Cline Documents at 99 (Rep. Courser instructs staff to handle a matter involving Rep. Gamrat's PAC on Friday and handle a legislative matter over the weekend if they have time); Email dated 3/27/2015, "82 - issues to deal with", Allard Documents at 6-7; Email dated 6/12/2015, "Re: Job descriptions second try", Allard Documents at 1.

- Staff members were instructed to assist in the development and placement of social-media advertisements for Rep. Courser’s law firm.⁶⁰

IV. Argument

A. “What We Do Not Condemn, We Condone”⁶¹

Fundamentally, membership in the Michigan House of Representatives is a privilege, not a right.⁶² Accordingly, similar to the U.S. Congress and other state legislatures, the Michigan House of Representatives is the sole judge and jury of its member discipline.⁶³ The purpose of member discipline is two-fold: (1) to punish wrongdoing; and (2) to protect the institutional integrity and reputation of the legislative body. Legislative bodies, including the House, have three basic tools of discipline at their disposal, increasing in the level of severity: reprimand; censure; and expulsion.

Reprimand. A reprimand is basically a formal vote of disapproval of a particular action taken by a Representative. The House reprimands a member by passing a resolution with a majority vote. Typically, no conditions are attached to a reprimand.

⁶⁰ See, e.g., Email dated 6/24/2015, “open issues – planning on coming over to meet tomorrow”, Allard Documents at 5.

⁶¹ Statement of Sen. McCotter, 46 Journal of the Senate (5/24/2001) at 538.

⁶² 1963 Mich. Const. art. 4 § 16.

⁶³ “A legislative body has the right to regulate the conduct of its members and may discipline a member as it deems appropriate, including reprimand, censure or expulsion.” *Mason’s Manual of Legislative Procedure* § 561 (2010). Moreover, the process due to a member is materially different than the process due to a criminal defendant or even a defendant in a civil judicial or administrative proceeding. In a disciplinary proceeding before the Michigan House or Senate, the Representative is entitled to adequate notice, a public hearing where evidence is aired, and representation by an attorney (at the Representative’s private expense). See Op. Atty. Gen. 1978, No. 5295, at 415.

Censure. The House can also censure a Representative. A censure is a more serious level of disapproval than a reprimand. It too is passed by a resolution with a majority vote. The main distinction between a censure and a reprimand is that conditions on a member's service typically accompany a censure. For example, a Representative can be stripped of committee assignments as well as any authority or input over staff or expenditures. A censure is appropriate when a member commits an act of misconduct related to official duties or commits an unofficial act of a kind likely to bring the House into disrepute.

Expulsion. Finally, with the Constitution of 1963, the people of Michigan charged the House with being the sole judge and jury for whether a member should be expelled. Specifically, article 4, section 16, provides in full:

Each house shall be the sole judge of the qualifications, elections and returns of its members, and may, with the concurrence of two-thirds of all the members elected thereto and serving therein, expel a member. The reasons for such expulsion shall be entered in the journal, with the votes and names of the members voting upon the question. No member shall be expelled a second time for the same cause.

According to the Michigan Attorney General, expulsion disqualifies a person from serving as a Representative for the rest of a legislative term. An expelled member is, however, eligible to run in the following election (assuming a term limit is not itself a bar).⁶⁴

Censure v. Expulsion. There is no bright-line standard adopted by all legislative bodies to distinguish between when censure or expulsion is appropriate. The standard is, instead, the collective judgment of the particular body.

⁶⁴ See Op. Atty. Gen. 1931-1932, at 154.

While there is no bright-line standard, precedent does provide a common theme. In *In re Chapman*,⁶⁵ the U.S. Supreme Court explained that conduct so egregious as to justify expulsion is that which is “inconsistent with the trust and duty of a member” or the abuse of one’s office, even if the behavior did not violate the law or was not done in the member’s official capacity. Similarly, during the expulsion process for Sen. Jaye, then-Sen. Sikkema stated on the floor of the Senate,

Now some say that he should not be expelled because he has not been convicted of a felony and that a felony conviction is, has been, and should be the standard for expulsion. This is a myth. Nowhere in the Constitution or Senate rules do we find such a standard. The standard is a level of behavior that fails to “maintain the integrity and responsibility of his or her office.” It is simply unacceptable to tolerate a pattern of behavior that clearly brings dishonor on the Senate just because it doesn’t include a felony conviction. Now this does not mean that every Senator who has had a run-in with the law or experienced a personal failing should be expelled from office. We are all human, and we would all fail the standard of perfection, but we are not addressing a pattern of behavior that is either typical or excusable. . . . Others say that we should let the voters of Senator Jaye’s district decide. You know, the voters do have the ultimate power to decide because they can overturn a decision to expel the Senator by returning that person to office. But that doesn’t alleviate us of our constitutional responsibility to pass judgment on a standard of behavior that we believe is acceptable or unacceptable.⁶⁶

It is this principle, gleaned from multiple sources—an act or a pattern of acts that is so egregious or atypical that it (1) calls into question the trustworthiness or judgment of a Representative, and (2) brings disrepute to the legislative body—that the Michigan House of Representatives should apply in determining whether expulsion or censure is warranted.

⁶⁵ 166 U.S. 661, 669 (1897).

⁶⁶ Statement of Sen. Sikkema, 46 Journal of the Senate [May 24, 2001] at 539.

B. Rep. Courser's Misconduct Is So Egregious and Atypical as to Require Expulsion

Under any standard of appropriate behavior, Rep. Courser has failed, in miserable and spectacular fashion. *First*, he had an extramarital affair with another sitting Representative. While in-and-of-itself not so outside the norm of society as to require expulsion, the personal nature of his transgression should not obscure the fact that he breached a fundamental trust in committing adultery.

Second, and more egregious and atypical, Rep. Courser tried to hide his adultery in quite possibly the most bizarre attempt at misdirection seen in the history of this Legislature. In his own words, Rep. Courser intended to “inoculate the herd” (a rather callous view of his constituents) by mixing in “a little bit of truth . . . with a lot of lies.” But, not only was he trying to misdirect people away from his affair, he was also trying to smear preemptively anyone who would actually tell the truth about him: “But anything after that is going to be suspect. It will be looking like a complete smear campaign.” This view of truth and lies—where such things are merely weapons to use against one’s political friends and foes alike—falls far below any standard of appropriate conduct for a sitting legislator.

And, the misdirection plan cannot be explained as a one-off mistake caused by extreme stress. At least with respect to Rep. Courser, the false-flag email scheme was something he had in the back of his mind for years: “Been thinking about this since I ran for office two years ago or three years ago, whenever we did the last time out.” This level of cynicism, while maybe acceptable in an undergraduate philosophy course on nihilism, has no place in the Michigan House of Representatives. That the

scheme appears not to have violated any statute does not absolve Rep. Courser of its wrongfulness.⁶⁷

Third, Rep. Courser tried to recruit Mr. Graham into this bizarre scheme. Mr. Graham had known Rep. Courser for approximately ten years and had worked on all of Rep. Courser's political ventures. He looked up to Rep. Courser as a mentor. And, needless to say, he was a House staffer who reported to Rep. Courser. Even though Rep. Courser explained the scheme to Mr. Graham after hours, off state time, and even though Rep. Courser asked him to participate in the scheme using a non-House email and off state time, it was still highly inappropriate for Rep. Courser even to ask.

Fourth, Rep. Courser continued to talk to his staff about the affair and cover-up during work hours in the House office. In doing so, he intentionally avoided performing legislative work, including attending committee. He asked his staff to help him cover up his affair by, for example, not telling anyone about it and prohibiting them from disclosing his true whereabouts to family members.

Together, the affair, the bizarre and atypical attempt at covering it up, the avoidance of legislative work, and the enlistment of House staff in this mess are alone sufficient to warrant expulsion under the principle stated above: (1) the actions call into question both the trustworthiness and the judgment of Rep. Courser, and (2) the actions have already brought the Michigan House of Representatives into disrepute and ridicule.

Yet, unfortunately, there is additional behavior that similarly fits this bill.

⁶⁷ While the false-flag email would appear at first blush to be defamatory, it would be defamatory against Rep. Courser and Rep. Gamrat. In other words, the email scheme was an act of self-defamation, which is not illegal, either under civil or criminal law.

Fifth, Rep. Courser required staff to forge his and Rep. Gamrat’s signatures on at least three bluebacks. This is a clear violation of House Rule 41(1), which provides in relevant part: “All bills to be introduced shall be approved as to form and numbering of sections by the Legislative Service Bureau and *be signed by the Member* introducing them.” (Emphasis added.) This fits within Rep. Courser’s cynical view of how he thinks the House operates.

Sixth, this cynical view was repeatedly thrust upon his staffers. As noted above, there are numerous examples where Rep. Courser makes clear his disdain for the processes and procedures of legislation, including one of the most central, if somewhat mundane, procedures—amending a bill.

Seventh, Rep. Courser was a bully to his staff. He berated them, threatened them, and demanded that they do things that no staffer should be asked to do.

Eighth, Rep. Courser impermissibly mixed legislative with political/campaign matters in his office. The House provided both Representatives and staff with clear guidance on the need to keep these matters separate. For example, in the *Principles and Guidelines for House Staff* drafted by House legal counsel—a document that both Representatives and staff receive when they start, as well as periodically throughout the session—it is explained:

- “House resources—e.g., your time on the job, office space, office property, equipment, and supplies—must be used only for official House business.”
- “The use of House resources for non-official House business—e.g., campaign, fundraising, commercial, charitable, or personal activities—is strictly prohibited.”

- “You may volunteer your time for campaign or fundraising purposes during normal office hours. You must do so, however, on your own personal time and you must record your hours off on your time sheet.”
- “As a state employee, you are a steward of taxpayer funds and have a heightened duty to safeguard public resources from misuse for political purposes.”
- “Campaigning for office is wholly distinct from serving in office. Do not mix the two.”

Unlike several of the other matters, the evidence on this point is not completely one-sided. Rep. Courser (and Rep. Gamrat) did recognize on several occasions that political/campaign work should be done off premises during off hours.⁶⁸ Yet, the weight of the evidence confirms that, *at best*, Rep. Courser took a very lax attitude toward keeping legislative work separate from political/campaign work. Given all of his other transgressions, such an attitude only confirms his lack of respect for the House as an institution.

Ninth, there is some evidence that he used House resources for his personal law firm work. The evidence collected by the House Business Office on this matter is not so overwhelming to justify—*alone*—expulsion. Yet, together with the other evidence of wrongdoing, especially the lax attitude toward mixing legislative with other work, the evidence involving his law firm is consistent with the general pattern of disrespect. And, more importantly, such evidence does suggest that additional inquiry

⁶⁸ See, e.g., Email dated 2/4/2015, “82-80 outside work”, Cline Documents at 116; Email dated 10/15/2014, “Thoughts before our meeting”, Courser Documents at 12-16.

by law enforcement would be appropriate after the House has completed its review of the qualifications of Rep. Courser.

Tenth, in the days after the *Detroit News* story broke, Rep. Courser failed to appreciate or even acknowledge the extent of his wrongdoing and has shown little true remorse, all to the detriment of the House as an institution. There have been literally hundreds of news stories with damaging headlines referencing a “House Sex Scandal”. The false-flag email cover-up has even been the subject of a late-night comedy skit on television by Jimmy Fallon. In fact, instead of trying to repair the damage he caused to the House’s reputation, Rep. Courser chose to attack the integrity and legitimacy of not only the House Business Office, but also the Select Committee, which he called a “kangaroo court” before the committee had even held its first hearing. It cannot be debated that Rep. Courser’s actions have brought disgrace to the House, and correcting that type of negative attention is precisely why expulsion exists.

Given this evidentiary record—one based on incontrovertible audio recording and emails, confirmed as accurate by Rep. Gamrat herself—it is hard to fathom how Rep. Courser’s trustworthiness or judgment would not be called into question every single day he remains in office. It is equally hard to fathom how a select institution—one with only 110 members—that has Rep. Courser as a member would not be continuously subject to disrepute. For the good of the Michigan House of Representatives, the constituents of the 82nd District of Michigan, and the State of Michigan as a whole, Rep. Courser should be expelled immediately from the House.

C. "It's Déjà Vu All Over Again"⁶⁹

If history is any guide, then the Select Committee should expect that Rep. Courser will attempt to defend his actions with his favorite weapon of choice—misdirection. The Select Committee, however, has a narrow jurisdiction, namely, to consider the qualifications of Rep. Courser and Rep. Gamrat as Representatives—no more, no less. Moreover, the Select Committee unanimously adopted Rules 8 and 10, which provide that irrelevant, immaterial, or unduly repetitious evidence must be excluded. Information is not relevant unless it *both* (a) has a tendency to make a fact more or less probable than it would be without the information, *and* (b) the fact is of consequence in determining the action.⁷⁰ Accordingly, the Select Committee has the mandate, and the tools, to reject any attempts at misdirection by Rep. Courser.

What can the Select Committee expect to hear from Rep. Courser? That is anyone's guess, though a good place to start is what Rep. Courser has been saying since the *Detroit News* article broke on August 7, 2015. Following is a sample of what Rep. Courser has publicly said in "defense" of his actions:

- **Am I being targeted as a form of political retribution?** "Given my voting and my advocacy for conservatism are among the best in the legislature, maybe I shouldn't be surprised that I am singled out and put on a fast-track of expulsion."

Response:

1. Irrelevant to the qualifications of Rep. Courser as a Representative.
2. In any event, there is no mention of why other Representatives who have similar voting and advocacy records are not being similarly "targeted".

⁶⁹ Yogi Berra.

⁷⁰ Fed. R. Evid. 401.

- **Is this a political hit?** “This all comes down to tapes made by disgruntled former staffers, possibly working with the Speaker’s Office, that show conversations about family and conversations concerning politics.”

Response:

1. Irrelevant to the qualifications of Rep. Courser as a Representative.
2. In any event, the conversations about family, while sad and disturbing, are not the point. Nor are the conversations about politics. The relevant parts of the audio recordings include (a) the infidelity, (b) the cover-up, (c) the false-flag email, (d) the lack of concern for legislative work, etc.

- **Does the alleged misconduct support expulsion or another lesser penalty?** “Speaker’s office employs staffers and places them in the representative’s offices. The staff works with Speaker.” “The Speaker hand picks the evidence” and “I will be given little to no ability to defend myself.”

Response:

1. Irrelevant to the qualifications of Rep. Courser as a Representative.
2. In any event, Rep. Courser was the staffers’ *immediate supervisor*. Moreover, Rep. Courser was given ample time to study the audio recordings and emails, and, importantly, he was the main actor in *all* of the audio recordings and emails—he should remember them.

- **I should have been warned about the audio tapes.** “The tapes given an account of hours of meetings – albeit taped during the time when I am eating lunch; noting conversations that are a personal family nature and some focused on political conversations.”

Response:

1. Irrelevant to the qualifications of Rep. Courser as a Representative.
2. In any event, the substance of the audio recordings cannot be blamed on lunch.

- **Was this an attack on an activist leader who was at odds with leadership?** “I repeatedly challenged the progressive steps of leadership.”

Response:

1. Irrelevant to the qualifications of Rep. Courser as a Representative.
 2. In any event, (a) other members of the Republican caucus have challenged leadership on policy, and (b) actual "Progressives" would likely not agree with Rep. Courser's description.
- **Was this the case of a political hit?** "Hours of tape, secret meetings by the taping staff members with the Speaker's office, no warnings provided."

Response:

1. Irrelevant to the qualifications of Rep. Courser as a Representative.
 2. In any event, no recording was done with the Speaker's Office's knowledge or direction.
- **Why hasn't the Speaker's Office given a full account of meetings with former staffers?** "The Speaker's Office is directing the investigation, but can they investigate their own conduct or misconduct on issues related to the investigation."

Response:

1. Irrelevant to the qualifications of Rep. Courser as a Representative.
 2. In any event, as part of the House Business Office's investigation, the Speaker's Office did provide statements with regard to meetings with staffers. Importantly, the Speaker's Office did not have possession of any audio recordings or emails that confirm the egregious actions taken by Rep. Courser.
 3. Moreover, *when* someone heard about Rep. Courser's bizarre behavior is of no consequence to the question of whether Rep. Courser did, *in fact*, engage in bizarre behavior. Thus, the precise moment when the Speaker's Office came to realize the scale and scope of Rep. Courser's transgressions is as relevant to the qualifications of Rep. Courser as a Representative as is the precise moment when Minority Leader Griemel, the Michigan Democratic Party, the Michigan GOP, Chad Livengood, or anyone else similarly came to realize the scale and scope of his transgressions.
- **Why the rush to judgment?** "There is a police investigation into the alleged extortion/wiretapping by the anonymous texter."

Response:

1. Irrelevant to the qualifications of Rep. Courser as a Representative.
2. As explained by the House Business Office, "Throughout this investigation, Representative Courser . . . failed to appreciate that the 'blackmail' allegations have no bearing on whether [he] engaged in misconduct or misused state resources."⁷¹
3. In any event, neither the Attorney General, the Michigan State Police, nor the Lapeer local prosecutor is charged with determining whether Rep. Courser should be expelled from the Michigan House of Representatives. Under the Michigan Constitution, only the House can answer that question.

- **Has there been a thorough investigation of the tape recordings?** "Staffers were in constant contact with the Speaker's office – where these the only tapes? Do the staffers have more? Does the Speaker's office hold more." "Are these tapes authenticated?"

Response:

1. Irrelevant to the qualifications of Rep. Courser as a Representative.
2. In any event, the staffers have confirmed with the House Business Office that there are no other audio recordings. Moreover, prior to the investigation, the Speaker's Office never possessed the audio recordings. Finally, Rep. Gamrat has stated in written testimony to the Select Committee that the audio recordings (and emails) were accurate.

- **Were the staffers competent or incompetent?** Rep. Courser publicly claimed that staffers were let go because they were "incompetent" and ill-suited to run a legislative office.

Response:

1. Irrelevant to the qualifications of Rep. Courser as a Representative.
2. In any event, whether the staffers were stellar, competent, or incompetent is of no moment to whether Rep. Courser mistreated them, berated them, asked them to cover up an affair while talking in a House office and missing House committee assignments, etc. The hard, incontrovertible evidence in the record—the audio recordings and the

⁷¹ HBO Report at 3.

emails—establishes without a doubt that Rep. Courser did all of these things and more.

D. Rep. Gamrat's Misconduct Is Egregious, But Censure with Severe Conditions Is Sufficient

If Rep. Courser is expelled from the Michigan House of Representatives, then how can Rep. Gamrat remain as a Representative? Frankly, the question is not one easily answered; yet, based on a review of the record evidence, Rep. Gamrat appears to have been an accomplice more than a principal, at least with respect to several of the major transgressions.

Clearly, it takes two to engage in an extramarital affair, and she is just as much a principal in that act as Rep. Courser. In other respects, however, she is just as clearly an accomplice, rather than a principal. For example, in her statement before the Select Committee, Rep. Gamrat admits that she agreed to the sending of a false-flag email, but she contends that she did not know how over-the-top and absurd it would be. Similarly, she admits that the combined staff was treated poorly, but she denies that she personally berated them or otherwise mistreated them. She should have done more to protect her staff from Rep. Courser's behavior, she admits in her statement.

Most witness statements are self-serving in some respect and, for that reason, such statements should be taken with a healthy grain of salt. In this instance, however, the emails and audio recordings largely corroborate that Rep. Gamrat was a principal for some actions, but an accomplice for most. In contrast, the emails and audio recordings confirm that Rep. Courser was a principal for *all of the actions*.

In many circumstances, an accomplice can be held just as legally liable as a principal in a court of law. Yet, the House does not sit as a court of law, and the House

can make a material distinction between the punishment appropriate for an accomplice versus the punishment appropriate for a principal.

In addition, the post-revelation actions of Rep. Gamrat should be contrasted with those of Rep. Courser. Rep. Gamrat has publicly apologized without trying to deflect blame. The same cannot be said of Rep. Courser. Moreover, Rep. Gamrat has set office hours, tried to reach out to constituents, and engaged in actions that are consistent with her position as a Representative of the 80th District. Rep. Courser has done nothing of the sort; instead, he has spent his time drafting mini-manifestoes on social media.

In the final analysis, the distinction to be drawn, if any, between Rep. Courser and Rep. Gamrat is likely one of degree, not kind. Both engaged in wrongdoing, and both showed terrible judgment. It is for the Michigan House of Representatives to decide if and how to punish Rep. Gamrat for her role in the affair. Yet, given what appears to be her accomplice role, as well as her post-revelation acts of contrition, it is recommended that she receive a censure, with severe conditions, rather than expulsion.

V. Conclusion

In his audio “apology” issued several days after the *Detroit News* story broke, Rep. Courser compared his plight to that of the Founding Fathers. Were the Founding Fathers still alive, *that* would have constituted defamation. It is true that the Founding Fathers exhibited many personal faults, but they also had incredible redeeming qualities—keen intelligence, broad statesmanship, sound judgment, and near-universal credibility, just to name a few.

As the audio recordings and emails compiled by the House Business Office have shown, Rep. Courser exhibits some of the personal faults of the Founding Fathers, but he exhibits almost none of the redeeming qualities. For the reasons explained above, it is the recommendation of the General Counsel that Rep. Courser be expelled from the Michigan House of Representatives.

With respect to Rep. Gamrat, there is sufficient evidence in the record to suggest that her role in the affair, cover-up, and other wrongdoing was a mix between principal and accomplice. Given this, and given her actions since the *Detroit News* story broke, it is the recommendation of the General Counsel that Rep. Gamrat not be expelled but, instead, that she be censured with severe conditions attached.

Submitted to the Select Committee to
Examine the Qualifications of
Representatives Cindy Gamrat and Todd
Courser,



Brock A. Swartzle



Tim Bowlin