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VIA EMAIL AND USPS

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Re: The Washington Free Beacon Article on David Trone

Mr. Kerr, Mr. Anderson, Mr. Kamenar, and To Whom It May Concern At Their Respective Organizations,

This firm serves as legal counsel to Representative David Trone, who is the subject of the article titled "David Trone's Financial Disclosures Don't Add Up. Experts Say That Could Land Him In Legal Trouble" that was posted on May 1, 2024 on the website of The Washington Free Beacon ("Article"). We have tried but have been unable to identify any legal counsel who represent you or your organizations. To the extent that any of you are represented, please direct this communication to your counsel.

For the reasons discussed below, the Article falsely accuses Rep. Trone of engaging in criminal conduct by undervaluing his business assets, including in his annual financial disclosures with the United States House of Representatives' Committee on Ethics and in loan applications with PNC Bank. Mr. Kerr knew that such accusations were false because Rep. Trone's campaign put him on notice of that fact by way of email on April 26, 2024. Mr. Kerr and The Washington Free Beacon nevertheless made the decision to publish the false Article—and, worse, to include an accusation of criminal misconduct. We demand that The Washington Free Beacon immediately remove the Article from its website. To the extent that you refuse to do so, we ask that you publish this letter in its entirety as a response to the Article.

We would have expected that Mr. Kerr, his editors at The Washington Free Beacon, and the individuals quoted in the Article to have carefully reviewed and understood the relevant legal requirements before publishing a story accusing a member of failing to follow them. The Committee on Ethics annually publishes detailed instructions setting forth these requirements, which are available to the public on the Internet, and which specify the assets a member must disclose. *See* 2024 Instruction Guide, Financial Disclosure Reports for Calendar Year 2023 and Periodic Transaction Reports, available at https://ethics.house.gov/sites/ethics.house.gov/files/documents/FDInstructionGuide_current.pdf ("Rules"). For the reasons explained below, Rep. Trone was under no obligation to disclose any of the business assets in the years that the Article wrongly accuses he acted criminally by failing to do so.

The law requires reporting an asset only if the total value of the member's own interest in that asset is more than $1,000 at the end of the year or if the amount of income was more than $200 over the entire year. *See* Rules at 26 (required to disclose: "1. Assets (real and personal property) held for investment, or the production of income valued at more than $1,000 at the end of the reporting period; or 2. Unearned income that exceeded $200 during the reporting period.") (emphasis removed); *id*. at 41 (for privately-held businesses: "You need only disclose the total value of *your* interest in the business. . ." (emphasis in original)). The Rules recognize the difficulty of valuing privately-held businesses like those operating under the Total Wine & More trade name, which, unlike public companies that are traded on an active stock exchange, have no readily ascertainable market values. As such, the Rules expressly allow filers to value business investments by using "***the year-end book value of an interest in a non-publicly-traded company***." *See* Rules at 27 (emphasis added). The specific assets the Rules require a member report will fluctuate over the years depending on the year-end book value and amount of income generated in the specific reportable year.

Pursuant to what the Rules require, including those described above, Rep. Trone's annual financial disclosure statements have used the business entities' year-end book values to determine whether his interest exceeded $1,000 in any given year. Rep. Trone was transparent about using that method, and explained this publicly: "Zero value based on end-of-year book value of non-publicly traded company. Assets previously owned but not reported due to surpassing the reportable income level for the first time in 2020." One of the businesses mentioned in the Article, Indiana Fine Wine & Spirits, illustrates this point. The year-end book value of Rep. Trone's share in that entity was less than $1,000 in 2020 and 2022 (as reflected in the financial disclosure statement filed in 2021 and 2023), but not in 2021 (as reflected in the financial disclosure statements filed in 2022). In that case, the entity reflected a positive year-end book value in 2021, but incurred losses in 2022 when it opened a second store that resulted in a negative year-end book value. As with the Indiana Fine Wine & Spirits example, where an

entity's year-end book value exceeded $1000 (or where he derived more than $200 in income from the entity), Rep. Trone reported the business asset. Where neither requisite reporting condition was met, he did not. Rep. Trone's general practice is to voluntarily submit his financial disclosure statements to the Committee on Ethics in advance of their filing to ensure compliance with the Rules, including with respect to how he reports his business assets.

The Article also falsely claims that Rep. Trone's annual financial disclosure statements are inconsistent with pledging various Total Wine affiliates as collateral with their lending institution, PNC Bank. For the reasons discussed above, the Article's premise is based on the false assumption that the way that Rep. Trone's business interests are valued in the annual financial disclosure statements (i.e., based on year-end book values) has anything to do with what PNC requires with respect to collateral in its commercial lending relationship. As Mr. Kerr was told in advance of publication, PNC is a lender to a number of Total Wine business entities and requires, as a matter of course, that the owners of those business entities pledge their ownership interest in each business entity as collateral. In other words, they are obligated to pledge their ownership interest *regardless of* the underlying value of any one particular business or the amount of interest that any one owner has in such business. There are no parallels or inferences to be drawn, as the Article does, between the collateral PNC requires and the assets that the Rules require be disclosed. Furthermore, whatever valuation metric PNC (or Bloomberg, which also is mentioned in the Article) or any other entity may use to determine the value of Total Wine and its affiliates is inapposite to the year-end book value of any Total Wine affiliate in any given year. We would have expected Mr. Kerr and his editors to ask PNC about its general commercial lending standards, but the Article suggests that the only question posed to PNC was about Rep. Trone in particular, which the bank understandably was not permitted to discuss.

While the Rules are clear on the disclosure requirements, the Article's presentation of their application to Rep. Trone's holdings was not—and purposefully so. The use of words like "unclear, "imply," "apparent," "appears", and "presumably" are legally irrelevant and misleading because the Article plainly seeks to and does convey that Rep. Trone violated the law, notwithstanding that the only truthful facts conveyed were entirely consistent with compliance.

We trust that this communication clears up any misunderstanding about Rep. Trone's annual financial disclosure statements, and will result in the Article's removal.

Sincerely,

Meryl Governski