


ADOPTED BY THE COMMITTEE ON ETHICS ON JULY 27, 2017

**115TH CONGRESS, 1ST SESSION
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ETHICS**

**IN THE MATTER OF ALLEGATIONS RELATING TO
REPRESENTATIVE BEN RAY LUJÁN**

August 1, 2017

 Ms. BROOKS from the Committee on Ethics submitted the following

REPORT

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ONE HUNDRED FIFTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

August 1, 2017

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The Honorable Karen L. Haas
Clerk, House of Representatives
Washington, DC 20515

Dear Ms. Haas:

Pursuant to clauses 3(a)(2) and 3(b) of Rule XI of the Rules of the House of Representatives, we herewith transmit the attached report, "In the Matter of Allegations Relating to Representative Ben Ray Luján."

Sincerely,

Susan W. Brooks
Chairwoman

Theodore E. Deutch
Ranking Member

CONTENTS

I.	INTRODUCTION	1
II.	PROCEDURAL BACKGROUND.....	2
III.	HOUSE RULES, LAWS, REGULATIONS, AND OTHER STANDARDS OF CONDUCT	2
IV.	BACKGROUND	4
	A. REPRESENTATIVE LUJÁN’S EMAIL TO A CAMPAIGN VOLUNTEER	5
	B. THE JUNE 22, 2016, CAMPAIGN EMAIL BY BOULDER STRATEGIES	5
	C. THE JUNE 23, 2016, CAMPAIGN EMAIL BY BOULDER STRATEGIES	8
V.	FINDINGS	10
	A. SOLICITATION OF CAMPAIGN CONTRIBUTIONS AND OTHER CAMPAIGN ACTIVITY IN HOUSE BUILDINGS	10
	1. REPRESENTATIVE LUJÁN’S EMAIL DID NOT SOLICIT CAMPAIGN CONTRIBUTIONS.....	10
	2. THE RECORD DOES NOT SHOW THAT REPRESENTATIVE LUJÁN ENGAGED IN CAMPAIGN ACTIVITY IN A HOUSE BUILDING.....	11
	B. BOULDER STRATEGIES’ USE OF AN IMAGE OF THE HOUSE FLOOR IN THE JUNE 23, 2016, CAMPAIGN SOLICITATION	12
VI.	CONCLUSION	14
VI.	STATEMENT UNDER HOUSE RULE XIII, CLAUSE 3(C)	14
	APPENDIX 1: REPORT AND FINDINGS OF THE OFFICE OF CONGRESSIONAL ETHICS (REVIEW NO. 17-8362)	
	APPENDIX 2: REPRESENTATIVE LUJÁN’S SUBMISSION	
	APPENDIX 3: EXHIBITS TO COMMITTEE REPORT	

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Ms. BROOKS from the Committee on Ethics submitted the following

R E P O R T

In accordance with House Rule XI, clauses 3(a)(2) and 3(b), the Committee on Ethics (Committee) hereby submits the following Report to the House of Representatives:

I. INTRODUCTION

On May 11, 2017, the Office of Congressional Ethics (OCE) transmitted to the Committee a Report and Findings (OCE's Referral) regarding Representative Ben Ray Luján. OCE reviewed allegations that Representative Luján violated laws, House rules, and other standards of conduct by (1) improperly conducting campaign or political activity from the floor of the House of Representatives; (2) improperly soliciting campaign contributions from a federal building; and (3) improperly using an image of a House of Representatives floor proceeding for campaign and political purposes.¹

OCE found that there was "substantial reason to believe that Representative Luján conducted campaign or political activity from the House Floor, solicited a campaign contribution from a federal building, or used an image of a House Floor proceeding for campaign or political purposes."² For that reason, OCE recommended that the Committee further review these allegations.³ However, OCE acknowledged that "the evolving nature of electronic communications and campaign solicitations sometimes presents novel issues that are not directly addressed by the House Ethics Manual," and that OCE's review "raised difficult questions about the application of House rules to solicitations via email."⁴ OCE suggested that "Members may benefit from additional guidance regarding campaign activities and electronic communications."⁵

¹ OCE's Referral at 1 (Appendix A).

² *Id.* at 1, 16.

³ *Id.* at 1.

⁴ *Id.* at 15.

⁵ *Id.*

The Committee agreed that this was an area where additional guidance could be useful, and did further review the allegations. Following its review, the Committee concluded that the evidence is insufficient to warrant further action against Representative Luján. Specifically, the Committee did not find that Representative Luján engaged in campaign or political activity, or solicited campaign contributions, from the House Floor or any other federal building. The Committee did find that Representative Luján's campaign consultant used an image of House proceedings from the House recording system in a campaign communication, which was an inadvertent, technical violation of House Rule V, clause 2(c)(1). Members are ultimately responsible for actions taken in their name that they delegate to third parties. Thus, Members should take reasonable steps to ensure that their campaign committees or consultants comply with all applicable laws, rules, and regulations. However, given the limited nature of the violation, as well as Representative Luján's subsequent efforts to prevent any recurrence of this issue, the Committee did not find that a sanction was warranted.

Accordingly, the Committee unanimously voted to dismiss this matter, publish this Report, and take no further action. Upon publication of this Report, the Committee considers the matter closed.

II. PROCEDURAL BACKGROUND

OCE commenced a preliminary review of this matter on February 4, 2017. On March 6, 2017, OCE initiated a second-phase review. On May 5, 2017, the OCE Board voted five to one to adopt the Findings and refer the matter to the Committee with a recommendation for further review.

The Committee received OCE's referral on May 11, 2017. The Committee issued voluntary requests for information to Representative Luján, and he responded by voluntarily providing documents and other information to the Committee. In total, the Committee reviewed over 1,250 pages of materials, including the transcripts of four voluntary interviews.

On July 27, 2017, the Committee unanimously voted to release this Report and take no further action with respect to Representative Luján.

III. HOUSE RULES, LAWS, REGULATIONS, AND OTHER STANDARDS OF CONDUCT

Federal law, 18 U.S.C. § 607, makes it "unlawful for . . . Members of Congress, to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election, while in any room or building occupied in the discharge of official duties by an officer or employee of the United States, from any person." According to the *House Ethics Manual*, "[t]he prohibition against House Members or employees soliciting campaign or political contributions in or from House offices, rooms, or buildings is very broad."⁶ With one minor exception – an allowance for Members to solicit campaign contributions from other Members in House buildings

⁶ See *House Ethics Manual* (2008) (hereinafter "*Ethics Manual*") at 144.

– “the prohibition applies to all forms of solicitations – solicitations made in person, over the telephone, or through the mail.” The *Ethics Manual* specifically notes that a Member may not prepare or make a campaign communication in a House building, even if the Member uses his own phone or other communications device.⁷

A separate statute, 31 U.S.C. § 1301(a), requires that “appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.” Based on this statute, the Committee has long cautioned Members and House employees against the use of House buildings for unofficial activities. With respect to the use of official resources, including House buildings, for campaign or political activity, the *Ethics Manual* states that the statutory prohibition is absolute:

A provision of the *Members’ Handbook* permits the incidental personal use of House equipment and supplies “when such use is negligible in nature, frequency, time consumed, and expense.” However, this policy applies only to incidental **personal** use of those resources, and **not** to their use for campaign or political purposes.⁸

In addition, the *Ethics Manual* states that “the House rooms, offices, and buildings are considered official resources, and as such, they [should] **not** be used for the conduct of **any** campaign or political activity.”⁹ “Among the specific activities that clearly may **not** be undertaken in a congressional office . . . are the solicitation of contributions; the drafting of campaign speeches, statements, press releases or literature; the completion of FEC reports; the creation or issuance of a campaign mailing; and the holding of a meeting on campaign business.”¹⁰

The purpose of these laws and rules is generally to preclude campaign or political activity from taking place in a congressional office. However, the Committee has recognized that there are certain limited activities that, while related to a Member’s campaign, may properly take place in a congressional office. The Committee’s view has been that it would be impractical and unnecessary to attempt to prohibit these specific activities. In this regard, the Committee has long advised that certain very limited and very specific activities are permissible.¹¹

⁷ See *id.* at 144-45 (“A telephone solicitation from a House office or building would not be permissible merely because the call is billed to a credit card of a political organization or to an outside telephone number, or because it is made using a cell phone in the hallway. Similarly, when a House Member or employee makes solicitation calls somewhere else, such as at one of the campaign committee offices, and has to leave a message, the individual should not leave his or her House office telephone number for the return call. In addition, a fundraising mailing should not be either prepared or assembled in a House room or office, even if no House equipment or supplies are used in the process.”).

⁸ *Id.* at 126 (emphasis in original).

⁹ *Id.* at 145 (emphasis in original); see also *id.* (“In addition, the rules issued by the House Office Building Commission concerning the use of the House office buildings prohibit the soliciting of contributions in the buildings other than for certain charitable purposes.”)

¹⁰ *Id.* at 124 (emphasis in original).

¹¹ *Id.* at 132-35.

The Committee's jurisdiction is of current House Members, officers, and employees. However, many Members delegate certain campaign communications functions to outside entities. Anticipating this practical reality, the *Ethics Manual* states that "under these rules, a Member or employee must take reasonable steps to ensure that any outside organization over which he or she exercises control – including the individual's own authorized campaign committee or, for example, a 'leadership PAC' – operates in compliance with applicable law."¹²

With respect to use of images from the House Floor, House Rule V, clause 1, provides that "[t]he Speaker shall administer, direct, and control a system for close-circuit viewing of floor proceedings of the House," and clause 2(c) states that "[c]overage made available under this clause, including any recording thereof - (1) may not be used for any partisan political campaign purpose."¹³ The *Ethics Manual* further explains that "[b]roadcast coverage and recordings of House Floor proceedings may not be used for any political purpose under House Rule V, clause 2(c)(1)."¹⁴

IV. BACKGROUND

On June 22 and June 23, 2016, Representative Ben Ray Luján, Representative for New Mexico's 3rd District, participated in a sit-in on the House Floor. The sit-in was an organized attempt by Democratic Members to force a vote on the "No Fly No Buy" bill prior to adjourning for the July 4th recess.¹⁵ Representative Luján joined the sit-in around midday on June 22, 2016,¹⁶ and participated in the sit-in until he left and went home after 7:00 AM on June 23.¹⁷ According to Representative Luján, he did not remain on the House Floor throughout the entire sit-in. Instead, he recalls leaving the House Floor for a pre-scheduled "lunch or [] meeting outside of the building."¹⁸ Representative Luján also stated that he "left for a bit of time and then [] came back to the floor during the night,"¹⁹ and recalled leaving the House Floor to take bathroom breaks and to walk "outside to the front of the building of the Capitol, just [to] get a breath of air."²⁰ In

¹² *Id.* at 123.

¹³ House Rule V.

¹⁴ *Ethics Manual* at 128.

¹⁵ See Exhibit 5 to OCE's Referral (attaching June 22, 2016, Boulder Strategies email explaining Representative Luján's call for action via the sit-in).

¹⁶ Representative Luján's June 22, 2016, calendar indicates that he was scheduled to take lunch at 11:30 AM, see Exhibit 7, and email correspondence from Representative Luján's staff indicates that he was "heading to the floor" at 12:13 PM, see Exhibit 8, and that he cancelled 12:30 PM and 2:30 PM meetings to remain on the House Floor, see Exhibit 9. When questioned regarding what time he joined the sit-in on the House Floor, Representative Luján stated that he could not recall the exact time but that it was around lunchtime. See Exhibit 1 to OCE's Referral, Interview of Representative Luján at 24.

¹⁷ Exhibit 1 to OCE's Referral, Interview of Representative Luján at 22-24; Exhibit 1 (6:32 AM message indicating that Representative Luján was still on the House Floor and had been asked to speak "during the 7 o'clock hour."). Emails produced by Representative Luján also indicate that at 9:37 AM on June 23, 2016, he was en route to a meeting at the offices of the Democratic Congressional Campaign Committee (hereinafter "DCCC"), and he arrived there shortly after 9:45 AM. See Exhibit 2 & Exhibit 4.

¹⁸ Exhibit 1 to OCE's Referral, Interview of Representative Luján, at 23-25.

¹⁹ *Id.* at 23-24.

²⁰ *Id.* at 24.

addition, Representative Luján told OCE that “[t]here were people gathering outside the Capitol, so members would leave periodically to go and either just stand with the crowd or speak to the crowd.”²¹

A. Representative Luján’s Email to a Campaign Volunteer

On June 22, 2016, at 3:00 PM, while Representative Luján was on or near the House Floor for the sit-in, he received an email from Representative Michelle Luján Grisham’s campaign committee. The email stated that Representative Luján Grisham was “literally on the House floor,” and requested that the recipients “add your name to this petition,” which related to the “No Fly No Buy” bill.²² The email did not request a campaign contribution.²³

At 4:02 PM, Representative Luján forwarded Representative Luján Grisham’s email to a volunteer for his campaign (Campaign Volunteer),²⁴ with a one-sentence email stating “Get something out.”²⁵ The email was sent from Representative Luján’s personal email account to Campaign Volunteer’s personal email account, and the email did not provide additional details regarding what Representative Luján wanted to “get out.”²⁶ Representative Luján does not recall whether he was on the House Floor, inside the Capitol, or inside any other federal building at the time he forwarded the email to Campaign Volunteer.²⁷

B. The June 22, 2016, Campaign Email by Boulder Strategies

Representative Luján’s principal campaign committee, People for Ben, contracted with Boulder Strategies, a private political consulting firm, to handle campaign solicitations and petitions through “[o]nline fund-raising and digital strategy.”²⁸ Boulder Strategies’ responsibilities included creating a calendar of when to send targeted email correspondence based on current events, the news cycle, and items relevant to Representative Luján’s voting base.²⁹ Boulder Strategies sent both “solicitations for contributions and also [] emails that were petitions,

²¹ *Id.*

²² Exhibit 2 to OCE’s Referral.

²³ *Id.*

²⁴ Campaign Volunteer is the Chief of Staff for the DCCC, but Representative Luján has asserted that he was acting in his personal capacity in assisting Representative Luján’s campaign. See June 2, 2017, Letter from Representative Luján to Chairwoman Brooks and Ranking Member Deutch (hereinafter “Representative Luján Submission”), at 6. During the course of the sit-in, it appears Campaign Volunteer’s email correspondence with Boulder Strategies, Representative Luján, and Representative Luján’s campaign committee was limited to emails from his personal email account.

²⁵ Exhibit 2 to OCE’s Referral.

²⁶ Exhibit 1 to OCE’s Referral, Interview of Representative Luján at 34-35; Exhibit 2 to OCE’s referral.

²⁷ While it is unclear where Representative Luján was located at 4:02 PM, Representative Luján’s submissions indicate he was conferring with staff members regarding sit-in related interviews sometime between 3:35 PM and 3:58 PM. See Exhibit 3; Exhibit 1 to OCE’s Referral, Interview of Representative Luján at 34 (“I was in and out of the Capitol quite a bit. I don’t remember exactly where I was when I sent [the 4:02 PM email to Campaign Volunteer]”).

²⁸ Exhibit 1 to OCE’s Referral, Interview of Representative Luján at 6.

²⁹ Exhibit 3 to OCE’s Referral, Interview of DCCC Chief of Staff at 17-18.

asking people to sign on with different policy issues” to Representative Luján’s supporters throughout the 2016 election cycle.³⁰ Representative Luján left the decision whether a particular occasion called for a petition or a solicitation up to Boulder Strategies because Boulder Strategies was using a technology called HubSpot.³¹ HubSpot is a marketing software platform that was used by Boulder Strategies to test the type of messages and content that best captured public attention, and to determine which messages were ideal for generating fundraising revenue.³²

Campaign Volunteer told OCE he viewed Representative Luján’s email to “Get something out” as a suggestion and did not convey the message to Boulder Strategies because Boulder Strategies already had email correspondence addressing the “No Fly No Buy” bill scheduled to be released on June 22, 2016.³³ Indeed, after the Orlando shooting prompted the 2016 “No Fly No Buy” bill, Boulder Strategies scheduled multiple emails to be released on Representative Luján’s behalf regarding the bill, bill-related events, and the general issue of gun violence in America.³⁴

On June 22, 2016, at 7:11 PM, the President of Boulder Strategies sent an email³⁵ to Representative Luján’s campaign committee staff and to Campaign Volunteer, requesting that they review a draft message on behalf of People for Ben.³⁶ According to the President of Boulder Strategies, the “e-mail was a continuation of a series of e-mails [Boulder Strategies had] been doing on [the] No Fly No Buy” bill.³⁷ Boulder Strategies “simply took an e-mail that was already in the pipeline,” which they “were already planning to send,” and “inserted the first line of the e-mail that talked about [Representative Luján] being on the floor to make it relevant for the day’s topic.”³⁸

³⁰ Exhibit 1 to OCE’s Referral, Interview of Representative Luján at 9; Exhibit 3 to OCE’s Referral, Interview of DCCC Chief of Staff at 20 (“It wasn’t just solicitations. It was – it was just content delivery as well.”).

³¹ Exhibit 1 to OCE’s Referral, Interview of Representative Luján at 31-32 (“I don’t know that it’s up to Aaron to make a decision of whether something is a petition or if it’s an online solicitation for money. That’s what Boulder Strategies was hired to do and that’s their job.”); Exhibit 3 to OCE’s Referral, Interview of DCCC Chief of Staff at 56 (“They were in charge of his entire e-mail program. They are the people who physically clicked ‘send’ with their technology HubSpot or whatever they used to, like, message test and see which e-mails get more clicks and less clicks and how to include e-mail solicitations and all that other stuff, right. They were sort of the keeper of the keys when it came to that kind of stuff.”).

³² Exhibit 3 to OCE’s Referral, Interview of DCCC Chief of Staff at 21 (“they had a technology called HubSpot that basically they would like message test things . . . and from whatever technology that they had they could decide like, wow, people are really paying attention to, like, you know, this issue or that issue or whatever.”); *id.* at 22 (“It was kind of like a known fact that if an e-mail came across . . . if it had a solicitation within it that they had already identified that that was a subject matter via this technology HubSpot, that could potentially yield a good amount of campaign donations online.”).

³³ *Id.* at 71-72 (“[B]ased on what was happening I knew that there, that they were already doing their thing here to create content, and so I, I didn’t do anything.”).

³⁴ *Id.* at 31-36, 46-47.

³⁵ Boulder Strategies sent their emails on Representative Luján’s behalf from their offices in Boulder, Colorado. *Id.* at 67.

³⁶ Exhibit 5 to OCE’s Referral.

³⁷ Exhibit 4 to OCE’s Referral, Interview of President of Boulder Strategies at 6.

³⁸ *Id.*

The message included a link redirecting recipients to a contribution page allowing them “to make a contribution if they so choose.”³⁹ Representative Luján told OCE that he did not review the draft, propose any language with respect to the draft, or participate in the decision whether to include the contribution link.⁴⁰ Neither OCE nor the Committee obtained any information to the contrary.

The email was ultimately sent at approximately 8:15 PM on June 22, 2016,⁴¹ to People for Ben supporters, with the following text included:

Friend,

Today I join countless colleagues on the House floor to demand action that will make our country safer.

Facts matter - and the facts are that right now a suspected terrorist can go into a gun store and purchase a military-style assault rifle. **In what world do we think that’s a good idea?**

Sign our pledge if you demand a vote on the bipartisan *No Fly, No Buy* bill.

My Republican colleagues would rather go on a 4th of July recess before voting on this time-sensitive bill. That’s why we’re on the House floor demanding action.

Enough is enough - no bill, no break. Full stop. SIGN HERE.

I’m a strong believer in our Second Amendment rights to bear arms, but also recognize that our system is broken when it’s too easy for a powerful gun to get in the hands of someone who wants to hurt us.

The Orlando shooter, who was interviewed by the FBI just a couple years earlier, was able to *legally* purchase an AR-15, military-grade assault rifle.

Stand up if you support our sit-in.

At a minimum, we must come together, put aside our politics, and pass this commonsense measure.

³⁹ *Id.* at 8.

⁴⁰ Exhibit 1 to OCE’s Referral, Interview of Representative Luján at 36-37 (explaining that Representative Luján played no role in the drafting or editing of the email); *see also id.* at 16-17 (explaining that Boulder Strategies sent Representative Luján drafts of solicitations and petitions for the first few months of 2016, but stopped sending drafts after that and “[a]s far as editing or drafting or anything like that, I had – I never did that.”); *id.* at 22 (“I think early on, I may have received them. But later, E-mails would get sent out to whatever list Boulder Strategies had, without me seeing them or editing them at all.”).

⁴¹ *See* Exhibit 10.

Thank you,

Ben Ray
CONTRIBUTE

Paid for and authorized by People for Ben.

Based on all of the evidence the Committee collected, it is not clear where Representative Luján was physically located when Boulder Strategies released this message.

C. The June 23, 2016, Campaign Email by Boulder Strategies

On June 23, 2016, at 9:29 AM, Campaign Volunteer sent an email to the President of Boulder Strategies and the People for Ben campaign staff.⁴² The email stated “[p]lease get another email ready for this morning. The members will have been on the floor for 24 hours, as of 11:00 this morning. We need to do a \$\$ ask on this.”⁴³ Campaign Volunteer’s request was based on a perceived impending shift in the news cycle away from the sit-in and the “No Fly No Buy” bill.⁴⁴

Boulder Strategies complied with the request, and the June 23, 2016, email was sent to a campaign distribution list at 11:11 AM.⁴⁵ The email contained an image of the House Floor that was obtained from an Associated Press news article.⁴⁶ The original source of the image appears to be the House Broadcast network; Boulder Strategies included a citation to the image that stated “Credit to House Television via AP.”⁴⁷

The email from Boulder Strategies read as follows:

Friend,

As we pass the 11 am hour in Washington DC, **my Democratic colleagues and I have now been on the House floor for greater than 24-hours, staging a sit-in to demand a vote on the bi-partisan *No Fly, No Buy* bill.**

Despite the fact that Speaker Ryan has turned off the cameras and the microphones, I will stand with my colleagues to call for a vote on commonsense legislation that keeps guns out of the hands of those on the FBI Terrorist Watch List.

⁴² Exhibit 6 to OCE’s Referral.

⁴³ *Id.*

⁴⁴ Exhibit 3 to OCE’s Referral, Interview of DCCC Chief of Staff at 74-75 (“before [] the news cycle moved to another subject which it often does very quickly I had suggested to them that we should probably send out another e-mail based on everything that was going on because the news cycle was probably about to shift.”).

⁴⁵ See Exhibit 11 (Boulder Strategies’ email confirming that the June 23, 2016, “Email is out”). Boulder Strategies sent their emails on Representative Luján’s behalf from their offices in Boulder, Colorado. See Exhibit 3 to OCE’s Referral, Interview of DCCC Chief of Staff at 67.

⁴⁶ Exhibit 3 to OCE’s Referral, Interview of DCCC Chief of Staff at 66.

⁴⁷ Exhibit 4 to OCE’s Referral, Interview of President of Boulder Strategies at 12.

Do you stand with us? Chip in \$24 towards our emergency fundraising goal -- \$1 for every hour we've been in the well of the House Chamber demanding action.

A moment of silence on the House floor is simply not enough to honor the lives of those we have lost. We need action to keep guns out of the hands of suspected terrorists and it begins with a vote right here on the House floor.

Tell the GOP: It's simple -- No Fly, No Buy, No Break. Click to contribute \$24 (or whatever you can) right now to show your support!

As I said in my email last night, this is a matter of national security. We must come together to pass this commonsense bill.

Thanks for having our back,

-Ben Ray

Representative Luján left the Capitol around 7:00 AM on June 23, 2016, and went home to sleep.⁴⁸ An email from Representative Luján's staff at 9:37 AM indicated he was on his way from his home to a meeting off the Capitol grounds at the DCCC office building.⁴⁹ Based on this and other contemporaneous emails, it does not appear that Representative Luján was in a federal building when Campaign Volunteer sent his email to Boulder Strategies.⁵⁰ It is possible that Representative Luján was on the House Floor at 11:11 AM on June 23rd, when Boulder Strategies sent the second sit-in related email to supporters; the email suggested that he was "now" on the Floor, and communications between Representative Luján's staff indicated that he was hoping to return to the floor after his 9:45 AM meeting at the DCCC.⁵¹ However, given that Representative Luján did not actually write, review, or send the June 23 email to his supporters,⁵² the statement that he was "now" on the Floor may have been mere puffery, or based on an expectation of what Representative Luján would do, rather than his actual movements. And the internal communications between Representative Luján's staff do not indicate whether he actually returned to the Floor before the sit-in concluded.

⁴⁸ Exhibit 1 to OCE's Referral, Interview of Representative Luján at 22-24; Exhibit 1 (6:32 AM message indicating that Representative Luján was still on the House Floor and had been asked to speak "during the 7 o'clock hour."); Exhibit 2.

⁴⁹ See Exhibits 2 & 4.

⁵⁰ See Exhibit 4 (9:37 AM email indicating that Representative Luján was heading to a meeting at the DCCC office building but would "be a few minutes late to the 9:45" AM meeting).

⁵¹ See Exhibit 2.

⁵² Exhibit 1 to OCE's Referral, Interview of Representative Luján at 38-39.

V. FINDINGS

A. Solicitation of Campaign Contributions and Other Campaign Activity in House Buildings

1. *Representative Luján's email did not solicit campaign contributions*

As previously discussed, Representative Luján did not personally send the June 22 and June 23, 2016, emails to supporters that were the subject of OCE's Referral. Instead, Representative Luján's campaign consultant, Boulder Strategies, sent the two messages to supporters on behalf of Representative Luján's campaign committee, People for Ben. However, if the Committee found that Representative Luján, while on the House Floor, directed a third-party to solicit campaign contributions, such conduct would raise serious questions about compliance with at least the spirit of 18 U.S.C. § 607, which prohibits the solicitation of campaign contributions from a federal building.⁵³ However, in this case, the evidence does not establish any improper conduct by Representative Luján with respect to either the June 22 or June 23 emails from Boulder Strategies.

As a threshold matter, it does not appear that either campaign email was actually sent at the direction of Representative Luján. Boulder Strategies told OCE that the June 22 email to supporters was already planned and largely prepared at the time Representative Luján told Campaign Volunteer to "Get something out."⁵⁴ While the June 23 email was not planned and prepared in advance of the sit-in, it was created at the direction of Campaign Volunteer, with no input or direction from Representative Luján.⁵⁵ Boulder Strategies did send drafts of the June 22 and June 23 emails to Representative Luján's campaign committee before releasing them, but it does not appear that those drafts were shared with Representative Luján.⁵⁶ This is significant because campaign committees are permitted to work, independently but simultaneously, on campaign matters while a Member is working on official House business.⁵⁷

⁵³ House Rule XXIII, clause 2, requires Members to adhere to the spirit as well as the letter of the Rules of the House.

⁵⁴ See Exhibit 4 to OCE's Referral, Interview of President of Boulder Strategies at 6 ("We had done a series of emails about this topic already. Then when the sit-in began on the House floor, we simply took an email that was already in the pipeline, we were already planning to send an email of this type, and we simply inserted the first line of the email that talked about him being on the floor to make it relevant for the day's topic.").

⁵⁵ Exhibit 3 to OCE's Referral, Interview of DCCC Chief of Staff at 58-60 ("Did you have any communication with Representative Luján before you sent that communication to Boulder Strategies about another e-mail? [Answer]: No. Mr. Payne: So for two days you had no communication with [] Representative Luján? [Answer]: That's correct.").

⁵⁶ Exhibit 4 to OCE's Referral, Interview of President of Boulder Strategies at 7-11 (indicating that the President of Boulder Strategies crafted the language of the June 22 and June 23 emails himself, without input from Representative Luján, that Representative Luján was not provided drafts of the emails, and that Representative Luján did not sign-off on the messages).

⁵⁷ See Committee on Standards of Official Conduct, *Investigation of Alleged Improper Political Solicitation*, 99th Cong., 1st Sess. 19 (1985) ("In view of the foregoing, since the DCCC had no knowledge of Wilhelm's actions on its behalf, it follows that the DCCC should not be held liable for whatever actions Wilhelm took *vis-à-vis* the solicitation efforts, particularly as regards any alleged violation of 18 U.S.C. 602 or 607. From this it, therefore,

Further, the evidence does not show that when Representative Luján gave the direction to “Get something out,” he meant that his campaign consultants should send a solicitation for campaign funds. Representative Luján forwarded an email that another Member sent to supporters with a petition related to the “No Fly No Buy” bill. The other Member’s email did not include any solicitation of campaign contributions.⁵⁸ Thus, to the extent Representative Luján intended his campaign to “get out” a similar petition, there would be no solicitation, and no violation of 18 U.S.C. § 607. It is worth noting that Representative Luján gave Boulder Strategies the discretion to determine whether any particular email they sent from his campaign committee would be a solicitation or something else.⁵⁹ Thus, he created a condition in which an ambiguous instruction to Boulder Strategies could be read, and implemented, either way. Moreover, as previously discussed, the Committee holds Members responsible for ensuring that campaign consultants who work on their behalf follow all applicable laws, rules, regulations, and other standard of conduct.⁶⁰ In this case, however, there is no evidence that Representative Luján expected, or should have expected, that when he forwarded a petition from another Member’s campaign to his own campaign consultants, that would result in a campaign solicitation.

Accordingly, the Committee did not find that Representative Luján violated either the letter or the spirit of the federal law prohibiting the solicitation of campaign donations from a federal building.

2. *The record does not show that Representative Luján engaged in campaign activity in a House building*

While the evidence does not establish that Representative Luján’s email to “Get something out” solicited campaign contributions, there is a separate question whether, by sending the email, he engaged in *any* campaign or political activity from a House building. Doing so would violate both a federal statute, 31 U.S.C. § 1301(a), and regulations from the Committee on House Administration (CHA). As previously discussed, the Committee and CHA have made clear that even “incidental” campaign or political activity in a House building is not permitted.⁶¹

Representative Luján’s email, on June 22, 2016, to Campaign Volunteer, with the direction to “Get something out” about the sit-in was clearly campaign or political activity. This inference is supported by the message that Representative Luján forwarded with his direction, which was a petition about the sit-in from another Member’s campaign to her supporters,⁶² and by Campaign

also follows that, absent any DCCC responsibility for the solicitations, the respondents should similarly not be held liable for Wilhelm’s actions.”).

⁵⁸ See Exhibit 2 to OCE’s Referral.

⁵⁹ Exhibit 1 to OCE’s Referral, Interview of Representative Luján at 9, 31-32; Exhibit 3 to OCE’s Referral, Interview of DCCC Chief of Staff at 56.

⁶⁰ *Ethics Manual* at 123.

⁶¹ See *id.* at 126.

⁶² See Exhibit 2 to OCE’s Referral.

Volunteer's role with Representative Luján's campaign, and as a conduit between Representative Luján and the paid campaign consultants at Boulder Strategies.

However, any allegation that Representative Luján engaged in campaign or political activity from a federal building would require proof that Representative Luján was on the House Floor or in another federal space when he sent out his sole email at issue here, the instruction to "Get something out."⁶³ After reviewing all of the available evidence, including C-SPAN footage of the sit-in, Representative Luján's testimony to OCE,⁶⁴ and contemporaneous emails and text messages from and between the Member and his staff, the Committee could not establish Representative Luján's location when he forwarded another Member's petition to Campaign Volunteer. Without some proof of Representative Luján's location, the Committee will not find that he violated the letter or spirit of federal law or House regulations regarding campaign activity in House buildings.

Nonetheless, the Committee cautions all Members that drafting, editing, commenting on, or sending campaign or political communications from a House building is not permitted. The Committee has long recognized that there are certain limited campaign or political activities that, while related to a Member's campaign, may properly take place in a congressional office.⁶⁵ However, sending a direction to a campaign consultant or volunteer to "Get something out" does not fall within the very limited and very specific exceptions to the general rule. In this age of always-on mobile communications, Members may find it impractical or unreasonable to have to exit a House building before sending a three-word campaign email. However, that is what the relevant law, rules, and regulations require.

B. Boulder Strategies' Use of an Image of the House Floor in the June 23, 2016, Campaign Solicitation

The Committee found that Boulder Strategies' use of a still image of the House Floor⁶⁶ in campaign correspondence on behalf of People for Ben was a technical violation of House Rule V, clause 2(c)(1), which prohibits partisan use of the "system for close-circuit viewing of floor proceedings of the House," which the Speaker administers, directs, and controls.

While Representative Luján's submission to the Committee argues that Rule V only prohibits use of video footage from floor proceedings and not still images,⁶⁷ this interpretation finds no support in the express language of Rule V or the guidance historically dispensed by the

⁶³ *See id.*

⁶⁴ Representative Luján recalled that he was on and off the House Floor, and in and out of the Capitol building, during the sit-in. *See* Exhibit 1 to OCE's Referral, Interview of Representative Luján, at 23-25.

⁶⁵ *Ethics Manual* at 132-35.

⁶⁶ This image was not sourced from C-SPAN's rebroadcast of images that House Members were broadcasting from their phones, using third-party, nonofficial mobile applications, after the House Floor cameras were turned off. Rather, as previously discussed, the still image that Boulder Strategies used came from an Associated Press article, which included a screen shot from the cameras that are part of the House broadcasting system.

⁶⁷ Representative Luján Submission at 9-10.

Committee. House Rule V prohibits the use of “[c]overage made available under this clause, including any recording thereof.”⁶⁸ Limiting the term “coverage” to video recordings when the provision expressly lists “recording[s]” as simply one example of coverage would be inconsistent. Further, in a 2014 “Pink Sheet” distributed to all Member offices, the Committee made clear that Members may not re-use an image of floor proceedings published by a third-party, if the Member could not use that image in the first instance.⁶⁹

Representative Luján’s submission to the Committee indicates that the image was originally sourced from the House Broadcast network, although the video capture was made by the Associated Press and published by them as a still image. Thus, Representative Luján’s campaign committee and consultant did not directly source the image from the House recording system, but made derivative use of it.⁷⁰ However, the Committee’s guidance has made clear that such a derivative use is not permissible.

Representative Luján has presented evidence that he was not aware that Boulder Strategies would include a still image of the House Floor in its email correspondence, and that he played no part in creating or reviewing the correspondence.⁷¹ The Committee has long held that Members of the House are responsible for ensuring that individuals speaking on their behalf comply with applicable House rules.⁷² The Committee believes such a Rule is necessary to ensure that individuals do not rely upon third parties to circumvent relevant House rules.⁷³ In this case, the Committee is satisfied that, after Boulder Strategies sent the email that was the subject of OCE’s Referral, Representative Luján took steps to prevent a recurrence of this issue, by instructing Boulder Strategies that “[a]s a standing rule from here out,” “[w]e will not be using any images of the [H]ouse floor in any of our emails.”⁷⁴ In addition, while the Committee disapproves of any violation of House rules, given the totality of the circumstances here, this is not the type of conduct that would merit any further action. Indeed, the Committee regularly addresses allegations of violations of House Rule V in an advisory manner, rather than investigating each such allegation.

⁶⁸ House Rule V, Clause 2(c).

⁶⁹ See Memorandum from the Committee to all Members, “Campaign Activity Guidance,” Aug. 15, 2014, at 16 (available at <http://ethics.house.gov/sites/ethics.house.gov/files/20140815%20Pink%20Sheet.pdf>).

⁷⁰ Exhibit 4 to OCE’s Referral, Interview of President of Boulder Strategies at 12.

⁷¹ While a draft of the June 23, 2016, email including the image of the House Floor was circulated to Campaign Volunteer and Representative Luján’s campaign committee approximately thirty minutes before its release, there is no evidence that Representative Luján’s campaign committee reviewed the message before it was released, and Campaign Volunteer appears to have provided an expedited sign-off on the draft message.

⁷² See *Ethics Manual* at 123.

⁷³ In a likely oversight, Representative Luján’s agreement with Boulder Strategies includes a provision that Boulder Strategies shall “comply with the applicable Federal Election Commission regulations, as well as any other applicable federal or state laws,” but does not contain a similar requirement with respect to compliance with House rules. See Exhibit 5.

⁷⁴ Exhibit 6; Exhibit 4 to OCE’s Referral, Interview of President of Boulder Strategies at 12 (after a follow-up conversation, “[w]e agreed not to use further images from the house floor, regardless of their sourcing, going forward”).

VI. CONCLUSION

As noted by OCE, “the evolving nature of electronic communications and campaign solicitations sometimes presents novel issues that are not directly addressed by the House Ethics Manual.”⁷⁵ The Committee agreed that this is an area where additional guidance could be useful.

Although the Committee did not conclude that Representative Luján made, or directed the making of, campaign solicitations from the House Floor or any federal building, the Committee cautions all Members that use of a third party to send campaign correspondence does not absolve them of their responsibility to ensure campaign correspondence complies with applicable laws and House rules. A Member’s campaign committee or consultants may release campaign correspondence on the Member’s behalf at any time, regardless of where the Member is. However, Members are reminded that, subject to very limited exceptions, they may not conduct campaign or political activity from a House building, whether hallway, office, or cafeteria, and thus, they may not draft, edit, or send campaign communications, or direct the drafting, editing, or sending of such communications, from a House building. This rule, which is embodied in federal law, applies even where the Member is using a personal or campaign communications device, and even if they are not using the House internet system.

With respect to the use of a screen shot sourced from the House recording system, the Committee found that the campaign consultant’s actions did violate House Rule V, and that Representative Luján is ultimately responsible for that violation. However, there is no evidence that Representative Luján was aware of the decision to use the image before it was included in a campaign solicitation, and Representative Luján and his campaign have taken steps to prevent any recurrence of this issue in the future. For these reasons, the Committee does not believe that any sanction of Representative Luján would be appropriate.

The Committee has determined to take no further action in this matter, and upon publication of this Report, considers the matter closed.

VI. STATEMENT UNDER HOUSE RULE XIII, CLAUSE 3(C)

The Committee made no special oversight findings in this Report. No budget statement is submitted. No funding is authorized by any measure in this Report.

⁷⁵ OCE’s Referral at 15.