

ADOPTED BY THE COMMITTEE ON ETHICS ON DECEMBER 11, 2015

**114TH CONGRESS, 1ST SESSION
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ETHICS**

**IN THE MATTER OF ALLEGATIONS RELATING TO
REPRESENTATIVE JARED POLIS**

December 11, 2015

Mr. DENT from the Committee on Ethics submitted the following

REPORT

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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 October 30, 2015, the Board of the Office of Congressional Ethics (OCE) transmitted to the Committee a Report and Findings (OCE's Referral) relating to Representative Polis. OCE reviewed allegations that Representative Polis' activities with two businesses could be perceived as official endorsements of those businesses and that he used official resources in promoting the businesses. In one case, Representative Polis appeared in a video produced and distributed by Riot Games, the company that produces the video game League of Legends.¹ In the second, Representative Polis participated in a clothing event with Ninnox Designs, LLC (Ninnox), a menswear company in his district, and publicized the event.

OCE found that there was substantial reason to believe that Representative Polis engaged in activities that could be perceived as endorsements of Riot Games and Ninnox and that he used official resources in promoting the businesses, in violation of federal law and House Rules. For that reason, OCE recommended that the Committee further review these allegations.

The Committee did further review the allegations. Following its review, the Committee concluded that Representative Polis' participation in the Riot Games video and the Ninnox event did not violate any law or House Rules regarding official endorsements or the use of official resources for the promotion of a business endeavor.

¹ See Riot Neon, "Jared Polis: Community Congressman," available at <http://na.leagueoflegends.com/en/news/community/community-spotlight/jared-polis-community-congressman>.

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

II. PROCEDURAL BACKGROUND

OCE undertook a preliminary review of this matter on June 27, 2015. On July 27, 2015, OCE initiated a second-phase review. By a split vote of four to two, on October 23, 2015, the OCE Board voted to refer the matter to the Committee and adopt the Findings. The Committee received the OCE Referral on October 30, 2015 and received supplementary information from OCE on November 4, 2015.

The Committee reviewed all of the materials provided to it by OCE, as well as a response from Representative Polis. In addition, the Committee requested that Ninox voluntarily provide information regarding Representative Polis' participation in the clothing event. Ninox cooperated with the Committee's review and provided documents and other information to the Committee. In total, the Committee reviewed 2,369 pages of materials, including interview transcripts of seven witnesses and Representative Polis, Representative Polis' response to the OCE Referral, and the information from Ninox.

On December 11, 2015, the Committee unanimously voted to dismiss this matter, adopt this Report, and take no further action with respect to Representative Polis.

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

Federal law requires that appropriations "shall be applied only to the objects for which the appropriations were made..."² Consistent with this prohibition, the *House Ethics Manual* explains that Members of the House are prohibited from using official resources for any private purpose.³ House resources acquired with appropriated funds include office phones, computers and other equipment, office supplies, office space, and staff on official time.⁴ Social media accounts are also an official resource if they are established by a Member or the Member's office to communicate information as a part of the Member's representational or legislative duties and Member and staff time is used to maintain the accounts.⁵

The House Office Building Commission has also adopted regulations regarding the use of House offices and other facilities. Those regulations ban commercial solicitation for products or

² 31 U.S.C. § 1301.

³ *House Ethics Manual* (2008) [hereinafter *Ethics Manual*] at 335 (discussing 31 U.S.C. § 1301 and House Rule XXIV). The *Ethics Manual* does not create independent duties outside of the rules and other standards discussed therein.

⁴ *Id.* at 197.

⁵ Committee on House Administration, *Members' Congressional Handbook* (2015) at 27.

services, and the display or distribution of commercial advertising, among other things, in House offices and other House spaces.⁶

General ethics principles also restrict how Members, acting in their official capacity, may interact with commercial enterprises. As the *Ethics Manual* explains, Members are frequently approached by individuals or organizations seeking assistance for business undertakings.⁷ It states, “obtaining information for constituents regarding government contracts and services, as well as helping them deal with government regulations, is an important aspect of a Member’s representational duties.”⁸ The Code of Ethics for Government Service, however, requires that any person in government service “never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his government duties.”⁹

In providing guidance regarding these standards, the *Ethics Manual* further cautions that when conducting casework for constituents and participating in privately-sponsored events involving commercial entities, Members must avoid becoming too closely affiliated with such entities, in order to avoid any appearance that they are accruing benefits by virtue of improper influence exerted from their position in Congress, or are dispensing special favors.¹⁰ It states, “in participating in a privately-sponsored event a Member must take care to avoid any action that may be perceived as an endorsement of the private sponsor.”¹¹ The *Ethics Manual* also says that Members and employees should undertake for one individual or business no more than they would be willing to do for others similarly situated.¹²

When a Member has determined that they wish to recognize an individual or business, they should also be mindful of the content of that recognition. In general, when responding to requests for support, Members and staff should draft communications so that they do not lend themselves to misinterpretation as an official endorsement from the Congress.¹³ Moreover, where such recognition may be made in an official government document, the regulations of other entities, such as the Franking Commission or Joint Committee on Printing, may apply.¹⁴ The *Ethics Manual* notes that while it is appropriate for a Member to insert remarks in the Congressional Record that “publicly ... congratulate a local business for achieving an award or

⁶ House Office Building Commission, *Rules and Regulations Governing the House Office Buildings, House Garages and the Capitol Power Plant* (Feb. 1999), ¶ 4.

⁷ *Ethics Manual* at 349.

⁸ *Id.* at 349-50.

⁹ Code of Ethics for Government Service, 72 Stat., Part 2, B12 (1958), H. Con. Res. 175, 85th Cong.

¹⁰ *Ethics Manual* at 350.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 325-26.

celebrating a significant anniversary,” in making such remarks, “Members should refrain from overtly commercial promotions.”¹⁵

Finally, House Rule XXIII, clauses 1 and 2 state that “[a] Member . . . of the House shall behave at all times in a manner that shall reflect creditably on the House,” and “shall adhere to the *spirit and the letter* of the Rules of the House . . .” (emphasis added).

IV. BACKGROUND

A. Representative Polis’ Appearance in the Riot Games Video

Representative Polis appeared in a web-based video produced by Riot Games, the developer of a free, online video game called “League of Legends.”¹⁶ Representative Polis is a self-described “gamer” and has played League of Legends for many years.¹⁷ While League of Legends is free to download and play, players may purchase virtual items within the game through “micro-transactions,” such as buying “skins” to dress a character or unlocking a particular character.¹⁸

The video that features Representative Polis is part of a series of videos produced by Riot Games’ Marketing Department called the “Queuing Up project” (Queuing Up).¹⁹ The goal of Queuing Up is to improve player retention and lapsed player reactivation by increasing positive player sentiment around the League of Legends community.²⁰ The videos feature League of Legends players who have interesting stories to tell.²¹ One video profiles a professional chef that creates video game-themed food and runs a YouTube channel with videos about video game-themed recipes.²² Other videos in the project feature couples who were brought together by League of Legends and college students that organize play at their schools.²³ Riot Games’ Brand Manager told OCE that the goal of the project is not to attract new players or advertise the in-game products players could buy, but to have a positive impact on perceptions of the game within the League of Legends community.²⁴ The Brand Manager explained that the longer a player is happy and interested in the game, the more likely they are to keep playing the game and spend money.²⁵ Riot Games spent approximately \$25,000 on the video featuring Representative Polis. That amount was a fraction of Riot Games’ 2015 budget for the Queuing Up project as a whole.

¹⁵ *Id.* at 326.

¹⁶ OCE’s Referral, Ex. 1 at 3.

¹⁷ *Id.*, Ex. 3 at 2.

¹⁸ *Id.*, Ex. 1 at 3; *see also* Ex. 2 at 5.

¹⁹ *Id.*, Ex. 1 at 9.

²⁰ *Id.*, Ex. 4.

²¹ *Id.*, Ex. 1 at 9.

²² *Id.*

²³ *Id.*, Ex. 2 at 12-13.

²⁴ *Id.*, Ex. 1 at 7.

²⁵ *Id.*

Riot Games chose to feature Representative Polis in a video as a part of Queuing Up because he is well known in the League of Legends community.²⁶ He played an active role in opposing the Stop Online Piracy Act (SOPA) and Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property (PROTECT IP) Act (PIPA).²⁷ In 2012, Representative Polis participated in an online forum for League of Legends players to educate the community about SOPA and PIPA.²⁸

On October 28, 2013, Riot Games contacted Representative Polis' congressional office by email to express its interest in creating what it described as a "human interest piece" on Representative Polis.²⁹ In that email, Riot Games' Brand Manager explained that Riot Games was looking to "capture and share more positive, human stories of fun, talented, competitive and responsible individuals who also just happen to be part of our player base."³⁰ After Representative Polis agreed to be featured in the video, he participated in a preliminary call with Riot Games staff.³¹ Representative Polis' congressional staff prepared a short memo briefing Representative Polis before the call.³² The memo described the call as the beginning stage of a "special human interest piece" that would eventually be a "video documentary" about a "yet-to-be-determined inspiring element" of Representative Polis' career.³³ The memo also included a link to a previously-produced video as an example of what Riot Games was proposing to produce about Representative Polis.³⁴ That video was a short documentary film, not produced by Riot Games, which profiled the life of a young man who became a quadriplegic after an accident and is now a film editor. Just before the filming of the video, Representative Polis participated in a second call with Riot Games.³⁵ Representative Polis' congressional staff scheduled both calls and the times for filming the video.³⁶

Riot Games filmed at Representative Polis' home in Colorado on December 15, 2013.³⁷ They also filmed in Washington, D.C. on February 24 and 25, 2014.³⁸ In both sessions, they captured video of Representative Polis and interviewed him.³⁹ Riot Games sent Representative Polis' staff a preview of the video before it was released.⁴⁰ Representative Polis and his staff did not recall whether he reviewed the video before its release.⁴¹

²⁶ *Id.*, Ex. 1 at 9.

²⁷ *Id.* at 9-10.

²⁸ *Id.*, Ex. 3 at 4-5.

²⁹ *Id.*, Ex. 6.

³⁰ *Id.*

³¹ *Id.*, Ex. 1 at 20.

³² *Id.*, Ex. 9.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*, Ex. 1 at 20.

³⁶ *Id.*, Ex. 12.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*, Ex. 1 at 23-25.

⁴⁰ *Id.*, Ex. 10 at 9-10.

⁴¹ *Id.*, Ex. 3 at 17; Ex. 10 at 9-10.

On April 27, 2015, Riot Games released the four minute and twenty second video featuring Representative Polis on its YouTube channel and on the League of Legends forums.⁴² The video features shots of Washington, D.C., including Representative Polis at his desk in the Longworth House Office building and walking around the Capitol. It also features footage of him and his partner playing League of Legends at their home in Colorado.

The video is narrated with quotes from Representative Polis. He introduces himself as a Member of the House of Representatives from the Second Congressional District of Colorado.⁴³ He discusses his biography, his love for playing video games, specifically League of Legends, and what it is like to be a Member of Congress.⁴⁴ He also talks about his work on SOPA and PIPA.⁴⁵ Representative Polis describes how he engaged the League of Legends community regarding those bills in 2012.⁴⁶ Approximately two minutes of the video is devoted to the League of Legends' community's involvement in SOPA and PIPA and includes footage of Representative Polis on the House floor and in Committee hearings discussing that legislation in 2012. The video closes with footage of Representative Polis playing League of Legends with voiceover by him saying that he represents the Second Congressional District of Colorado, but he also hopes to be someone "that the community of League of Legends players across the country and world can turn to as a person in Congress who understands an experience and wants to protect it and is very much a part of that community."⁴⁷

Representative Polis' Communications Director told OCE that on the day the video was released, Representative Polis participated in an on-line question and answer session on the website Reddit.⁴⁸ Representative Polis told OCE that he did not remember participating in the Q&A, but that he would have been amenable to doing so.⁴⁹ Representative Polis' staff also tweeted about the video on his official Twitter account after it was released.⁵⁰ Several months later, after the OCE review began, Representative Polis' staff discussed their use of Representative Polis' official Twitter account with Committee staff.⁵¹ Following this discussion, Representative Polis' congressional staff removed the tweet regarding the Riot Games video from the Member's official Twitter account.⁵²

As described above, OCE recommended further review of the allegation that Representative Polis engaged in activity that could be perceived as an endorsement of a Riot

⁴² *Id.*, Ex. 14 at 2.

⁴³ *Id.*, Ex. 15 at 1.

⁴⁴ *Id.*

⁴⁵ *Id.* at 2.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*, Ex. 16 at 10-11.

⁴⁹ *Id.*, Ex. 3 at 19.

⁵⁰ *Id.*, Ex. 16 at 9-10; *see also* Ex. 3 at 20.

⁵¹ *Id.*, Ex. 3 at 20.

⁵² *Id.*

Games product and used official resources in a manner that promoted Riot Games' business. OCE found that the video in which Representative Polis appeared was produced and distributed by a for-profit company; that the video was part of a marketing effort undertaken by a for-profit company, with a goal of increasing retention of players who would then spend money within the game; that the video was produced and distributed at substantial cost to the for-profit company; and that a significant part of the video was filmed in Representative Polis' congressional office and around the Capitol complex.⁵³ Based on these facts, OCE found that the Riot Games video could be perceived as an endorsement of Riot Games' product, the League of Legends game, and the promotion of a commercial endeavor.⁵⁴ Therefore, OCE found that there was substantial reason to believe that Representative Polis had engaged in activity that could be perceived as an endorsement of a company's product, and by permitting Riot Games to film him in his congressional office and around the Capitol complex, used official resources in a manner that promoted a business endeavor, in violation of federal law and House rules.⁵⁵

Representative Polis viewed his participation in the video as part of his representational duties.⁵⁶ He told OCE that he agreed to be featured in the video because it would be a way to interact with constituents who play League of Legends.⁵⁷ He said that from his perspective, the purpose of the video was to provide journalistic content to the League of Legends community.⁵⁸ Representative Polis' staff perceived the video in the same way. His Chief of Staff and Scheduler told OCE that they understood that the video would be a documentary about the Congressman.⁵⁹ Representative Polis did not view the video as endorsing a product because he did not tell people to play the game or to buy anything.⁶⁰ Instead, to the extent Representative Polis discussed his love of the game, he viewed those comments as biographical and compared them to telling a reporter he is a Colorado Rockies fan.⁶¹

B. Representative Polis's Participation in a Clothing Event with Ninox

After OCE initiated its preliminary review of Representative Polis' appearance in the Riot Games video, Representative Polis participated in an event sponsored by Ninox, a men's clothing designer and retailer located in his congressional district. Prior to the event, on February 28, 2014, Representative Polis was featured in a *GQ Magazine* (*GQ*) story that said he had the "worst Congressional style ever," and implored Representative Polis to let *GQ* help him with his clothes.⁶² On March 31, 2015, the founder of Ninox emailed Representative Polis' congressional office proposing that Representative Polis try on some of Ninox's clothing because

⁵³ *Id.* ¶ 5.

⁵⁴ *Id.* ¶ 107.

⁵⁵ *Id.* ¶ 108.

⁵⁶ *Id.*, Ex. 3 at 12.

⁵⁷ *Id.*

⁵⁸ *Id.* at 18.

⁵⁹ *Id.*, Ex. 7 at 8; Ex. 8 at 7.

⁶⁰ *Id.*, Ex. 3 at 13.

⁶¹ *Id.*

⁶² Dennis Tang, *Worst Congressional Style Ever? Yeah, Probably*, *GQ*, Feb. 25, 2014.

GQ had not done a follow-up piece.⁶³ The initial request from Ninox said it may be a “fun way to get some press.”⁶⁴

Representative Polis agreed to participate in the “makeover” and his staff assisted by working with Ninox to schedule the time and choose the location.⁶⁵ His staff also assisted Ninox with choosing the clothing he would try on at the event, to ensure it was the right size and met his preferences and requirements for dress on the House floor.⁶⁶ His staff also suggested that Representative Polis be photographed after the makeover with the sign outside of his district congressional office.

On June 30, 2015, Representative Polis participated in the makeover.⁶⁷ He tried on several pieces of Ninox’s clothing at a park in Boulder, Colorado.⁶⁸ He was photographed at the event and at his district office by Ninox’s photographer, his staff, and the media.⁶⁹ Representative Polis’ staff and Ninox reached out to the media to publicize the event before and after it occurred.⁷⁰ Several media outlets later wrote stories about the makeover, including the *Boulder Daily Camera*, the *Denver Post*, the *Washington Post* and *GQ*. Following the event, Representative Polis purchased some clothing from Ninox at full price, with his own money.⁷¹

Representative Polis’ congressional staff posted photos of the event and thanked Ninox through Representative Polis’ official Twitter and Instagram accounts.⁷² His official Twitter account also re-tweeted a tweet from Ninox about the event.⁷³

Ninox also used social media to publicize the event. It posted photographs of Representative Polis on its Twitter, Instagram and Facebook accounts, including some that referenced Ninox products.⁷⁴ Ninox also used a photograph of Representative Polis wearing sunglasses to advertise the “\$89 Polis Special,” a one-week sunglasses sale, on Facebook.⁷⁵

In addition, Ninox sent a “blast email” to 1,149 people on July 8, 2015. Entitled, “Worst-Dressed Congressman Jared Polis Gets a Style Upgrade from Ninox,” this email included a before and after picture of Representative Polis, images of Representative Polis wearing Ninox clothing, information about the clothing products he tried on, and an advertisement for the \$89

⁶³ OCE’s Referral, Ex. 18.

⁶⁴ *Id.*

⁶⁵ *Id.*, Ex. 19; Ex. 16 at 19.

⁶⁶ *Id.*, Ex. 16 at 20.

⁶⁷ *Id.*, Ex. 19.

⁶⁸ *Id.*, Ex. 3 at 25-26.

⁶⁹ *Id.*, Ex. 16 at 22, 24.

⁷⁰ *Id.*, Ex. 16 at 18.

⁷¹ *Id.*, Ex. 3 at 30.

⁷² *Id.*, Ex. 20-23.

⁷³ *Id.*, Ex. 22.

⁷⁴ *Id.* ¶ 136.

⁷⁵ *Id.* ¶ 138.

“Polis Special.” Neither Representative Polis, nor any member of his staff, were included on the email distribution list.

Currently, Ninox features Representative Polis on its website as a “Boulder Icon.”⁷⁶ The page includes photos of Representative Polis from the makeover, references the specific Ninox products that he tried on, and states that he wears the clothes around Washington, D.C.⁷⁷ It also states, “Jared became a fan of the Carson pants instantly and can be seen sporting them on the house [sic] floor.”⁷⁸ Finally, the Ninox website contains images of Representative Polis and the various articles written about the makeover.

As described above, OCE recommended further review of the allegation that Representative Polis engaged in an activity that could be perceived as an endorsement of Ninox’s products and used official resources in a manner that promoted Ninox’s business.⁷⁹ OCE noted in the Referral that neither Representative Polis nor members of his congressional staff made any effort to address the potential use of photographs from the makeover event by Ninox for commercial purposes.⁸⁰ OCE found that Representative Polis, by engaging in and publicizing the makeover event with Ninox, engaged in activity that could be perceived as an endorsement of a company’s product and used official resources, including staff time and official social media resources, in a manner that promoted a business endeavor, in violation of federal law and House rules.⁸¹

Representative Polis viewed the makeover event as a part of his representational duties for a business in his district and stated that he did not tell anyone to buy or purchase a product.⁸² Representative Polis told OCE that the makeover was an open event so anyone could take photos and use them how they wanted.⁸³ Indeed, Representative Polis’ Communications Director invited local press members to attend and document the event.⁸⁴ The Communications Director told OCE that she assumed that Ninox was not publicizing the makeover, other than perhaps reaching out to *GQ* in connection with the magazine’s original story.⁸⁵ Neither Representative Polis nor his congressional staff was aware that Ninox used his image and name for the “Polis Special” until well after the sale ended.⁸⁶ When Representative Polis became aware, he asked Ninox to remove the post on Facebook. Ninox complied with his request.⁸⁷

⁷⁶ *Id.* ¶ 145.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.* ¶ 6.

⁸⁰ *Id.* ¶ 142.

⁸¹ *Id.* ¶ 149.

⁸² *Id.*, Ex. 3 at 23.

⁸³ *Id.* at 27.

⁸⁴ *Id.*, Ex. 16 at 18.

⁸⁵ *Id.*, Ex. 16 at 18, 25.

⁸⁶ *Id.*, Ex. 3 at 29; Ex. 16 at 31.

⁸⁷ *Id.*, Ex. 3 at 29-30.

V. FINDINGS

Federal law and House Rules govern how Members, when acting in their official capacity, may interact with commercial entities. The law and Rules do not, however, provide a “bright line” as to what Members may or may not do in relation to a corporation or business. Thus, Members have some discretion to perform representational duties related to commercial entities, but must use caution not to take actions that could be perceived as an official endorsement of a commercial entity, or to use official resources to promote a business endeavor.

The Committee considered Representative Polis’ participation in the video produced by Riot Games and the clothing event with Ninox, and concluded that Representative Polis did not use official resources for a commercial purpose or violate House Rules regarding official endorsement of a commercial entity. While it does appear that both the Riot Games video and the Ninox clothing event were intended, at least in part, to promote the businesses, this is true in virtually every instance in which a business participates in or arranges an event with a Member. Further, the video and clothing event also had clear and substantial non-commercial, representational, purposes. Moreover, based on the facts available to them at the time, neither Representative Polis nor his staff had reason to believe that Representative Polis’ participation in the video and clothing event would serve as any advertisement for the respective companies, or that Representative Polis’ image would be used to promote sales of any particular product. When Representative Polis discovered, long after the clothing event, that Ninox had used photos of him from the event to advertise a “Polis special,” he promptly asked Ninox to remove those advertisements.

Although the Committee did not find that Representative Polis’ engagements with Riot Games and Ninox violated any House Rule, law, regulation, or other standard of conduct, the Committee reminds all Members of its guidance that Members should take care when participating in activities with outside entities. The Committee encourages all Members who are contemplating participating in events with commercial entities to contact the Committee with any questions they may have, and to exercise caution to avoid any appearance of an improper official endorsement or use of official resources for a commercial purpose.

VI. CONCLUSION

Because Representative Polis’ activities did not violate House Rules, laws, regulations, or other standards of conduct regarding official endorsements or the use of official resources for the promotion of a business endeavor, the Committee has determined to take no further action in this matter, and upon publication of this Report, considers the matter closed.

VII. 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.