

House Calendar No. ___

116TH CONGRESS

2nd Session

}

HOUSE OF REPRESENTATIVES {

REPORT

116-__

IN THE MATTER OF ALLEGATIONS
RELATING TO REPRESENTATIVE
DAVID SCHWEIKERT

R E P O R T

OF THE

COMMITTEE ON ETHICS



July 29, 2020.—Referred to the House Calendar and ordered to be
printed

U.S. GOVERNMENT PUBLISHING OFFICE

XX-XXX

WASHINGTON : 2020

ADOPTED BY THE COMMITTEE ON ETHICS ON JULY 29, 2020

**116TH CONGRESS, 2ND SESSION
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ETHICS**

**IN THE MATTER OF ALLEGATIONS RELATING TO
REPRESENTATIVE DAVID SCHWEIKERT**

July 29, 2020

Mr. DEUTCH, from the Committee on Ethics, submitted the following

REPORT

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ONE HUNDRED SIXTEENTH CONGRESS

U.S. House of Representatives

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July 30, 2020

The Honorable Cheryl L. Johnson
Clerk, House of Representatives
Washington, DC 20515

Dear Ms. Johnson:

Pursuant to clauses 3(a)(2) and 3(b) of Rule XI and clause 5(a)(5) of Rule XIII of the Rules of the House of Representatives, we herewith transmit the attached report, "In the Matter of Allegations Relating to Representative David Schweikert."

Sincerely,

Theodore E. Deutch
Chairman

Kenny Marchant
Ranking Member

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**116TH CONGRESS, 2ND SESSION
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July 29, 2020

Mr. DEUTCH, from the Committee on Ethics, submitted the following

R E P O R T

I. INTRODUCTION

The Committee on Ethics (Committee) hereby submits this privileged report pursuant to House Rule XI, clause 3(a)(2) and House Rule XIII, clause 5(a)(5), which authorize the Committee to investigate any alleged violation by a Member, officer, or employee of the House of Representatives, of the Code of Official Conduct or any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee and to submit to the House a privileged report recommending action by the House as a result of such investigation.

This report: (1) summarizes the Committee's investigation of Representative David Schweikert relating to violations of House Rules, the Code of Ethics for Government Service, federal laws and other applicable standards related to campaign finance violations and reporting errors by his authorized campaign committees, the misuse of his Members' Representational Allowance for unofficial purposes, pressuring official staff to perform campaign work, and his lack of candor during the investigation; (2) adopts the attached report of the Investigative Subcommittee (ISC) in the Matter of Representative Schweikert;¹ (3) addresses Representative Schweikert's views on the ISC Report; and (4) recommends to the House of Representatives that, pursuant to Article I, Section 5, Clause 2 of the United States Constitution and Committee Rule 24(e), the House of Representatives adopt this report and, by such action, Representative Schweikert be reprimanded and fined \$50,000.

II. PROCEDURAL HISTORY

On April 16, 2018, the Office of Congressional Ethics (OCE) sent referrals (OCE's First Referrals) to the Committee recommending that the Committee further review allegations that: Representative Schweikert and his then-Chief of Staff, Richard Oliver Schwab, may have misused or authorized the misuse of House resources; Representative Schweikert may have failed to ensure

¹ The Committee thanks the Members of the ISC for their efforts and attention to this matter.

that his campaign committees complied with applicable rules regarding contributions from congressional employees; Mr. Schwab may have improperly made personal outlays on behalf of Representative Schweikert's principal campaign committees; and Mr. Schwab may have received income beyond the outside earned income limit for senior staff. On June 14, 2018, the Committee unanimously voted to establish an ISC to review the allegations in OCE's First Referrals.²

On September 5, 2018, OCE sent a second referral (OCE's Second Referral) to the Committee recommending the Committee further review allegations that: (1) Representative Schweikert may have used official resources to benefit his campaign or pressured congressional staff to perform political activity; (2) Representative Schweikert may have authorized compensation to an employee who did not perform duties commensurate with his House employment; (3) Representative Schweikert or his campaign committee may have received loans or gifts from a congressional employee; and (4) Representative Schweikert may have omitted required information from his annual House financial disclosure statements (FD Statements) and Federal Election Commission (FEC) candidate committee reports.³ On December 20, 2018, the Committee unanimously voted to expand the ISC's jurisdiction to include the allegations contained in OCE's Second Referral.

The ISC met four times during the 115th Congress and 22 times during the 116th Congress. The ISC interviewed 18 individuals, including former and current staff of Representative Schweikert's congressional office and campaign. The ISC issued four subpoenas and 15 requests for information, and in response received over 200,000 pages of documents. Representative Schweikert voluntarily appeared before the ISC and answered questions under oath.

Following its investigation, the ISC unanimously concluded there was substantial reason to believe that Representative Schweikert failed to uphold the laws and regulations of the United States, in violation of paragraph 2 of the Code of Ethics for Government Service and that he did not act in a manner that reflected creditably on the House, in violation of House Rule XXIII, clause 1 in connection with: his failure to take reasonable steps to ensure his campaign committees operated in compliance with applicable laws and standards of conduct; the misuse of his MRA for non-official purposes; pressuring official staff to perform campaign work; and his lack of candor and due diligence in the course of the investigation.

On June 30, 2020, following negotiations with Representative Schweikert's counsel, the ISC unanimously voted to adopt a Statement of Alleged Violations (SAV) detailing 11 violations and the facts giving rise to those violations. As part of the settlement, Representative Schweikert agreed to admit to all 11 violations in the SAV and waive all further procedural rights he was afforded under House and Committee rules. The ISC also agreed to recommend, and Representative Schweikert agreed to accept, a sanction of reprimand by the House of Representatives and a \$50,000 fine regarding the conduct set forth in the SAV.

² On July 9, 2018, Mr. Schwab left House employment after resigning from his position as Representative Schweikert's Chief of Staff. On the date of Mr. Schwab's resignation, the ISC's and the Committee's jurisdiction over Mr. Schwab ended.

³ OCE also reviewed an allegation that Representative Schweikert tied official activities to campaign or political support. OCE did not find substantial reason to believe the fifth allegation and recommended that the allegation be dismissed.

On July 1, 2020, the ISC submitted a Report to the full Committee detailing the evidence in support of its findings and the rationale for its recommendation. Representative Schweikert also submitted a response to the ISC's report stating that he continues to take responsibility for his actions, noting that he has implemented a number of corrective actions, but challenging some of what Representative Schweikert characterized as "assertions" in the ISC's Report. Representative Schweikert, however, continues to admit to the violations contained in the SAV.

In light of the above, on July 29, 2020, the Committee unanimously voted to adopt this Report and to approve Representative Schweikert's waiver agreement.

III. FINDINGS

The Committee adopts as its findings in this matter the Report of the Investigative Subcommittee, as attached.

In summary, the ISC Report details the substantial evidence in support of the violations of laws, rules and regulations contained in the SAV. First, Representative Schweikert failed to take reasonable steps to ensure his campaign committees operated in compliance with applicable laws and standards of conduct, including Federal Election Commission Act (FECA) reporting requirements. Specifically, between July 2010 and December 2017, Representative Schweikert's campaign committees erroneously disclosed or failed to disclose at least \$305,000 in loans or repayment of loans made or obtained for the benefit of his congressional campaigns; failed to report at least \$25,000 in disbursements made by his campaigns; failed to report more than \$140,000 in contributions received by his campaigns; and falsely reported making disbursements totaling \$100,000.⁴ The errors violated FECA's reporting requirements, House Rule XXIII, clause 1, which requires Members to act in a manner that reflects creditably upon the House, and paragraph 2 of the Code of Ethics for Government Services, which requires Members to uphold the laws of the United States. These errors also form the basis for Counts I through VI of the SAV.⁵

Second, between January 2011 and July 2018, Representative Schweikert's former Chief of Staff made over \$270,000 worth of impermissible outlays on behalf of Representative Schweikert's campaign⁶ and at least three other members of Representative Schweikert's congressional staff made impermissible outlays, totaling less than \$500.⁷ Representative Schweikert knew or should have known that Mr. Schwab made substantial purchases on behalf of his campaign, but did not prevent the practice. Congressional employees are prohibited under federal law from making contributions to the campaign of their employing Member; certain outlays, even if reimbursed, are considered contributions and are thus impermissible. Accordingly, Representative Schweikert did not act in a manner that reflected creditably on the House, in violation House Rule XXIII, clause 1, and failed to uphold the laws and regulations of the United States in violation of paragraph 2 of the Code of Ethics for Government Service. This violation forms the basis for Count VII of the SAV.⁸

⁴ SAV at 3.

⁵ *See id.* at 22-27.

⁶ *Id.* at 14.

⁷ *Id.* at 17.

⁸ *Id.* at 27-28.

Third, Representative Schweikert misused campaign funds for personal purposes by accepting personal items from staff that were reimbursed by campaign funds. Between 2011 and 2018, at least four members of Representative Schweikert's congressional staff paid for personal items for Representative Schweikert, including food and babysitting services, and were then reimbursed for those items by Representative Schweikert's campaign.⁹ The conversion of campaign funds to personal use violated FECA and the FEC's implementing regulations, violated House Rule XXIII, clause 6, which states campaign funds must be kept separate and cannot be converted to personal use, and violated paragraph 2 of the Code of Ethics for Government Service.¹⁰ The conversion of campaign funds to personal use also forms the basis for Count VIII of the SAV.¹¹

Fourth, Representative Schweikert's Members' Representational Allowance (MRA) was used for non-official purposes. Between January 2011 and November 2017, Representative Schweikert's official resources—including official funds, staff time, and congressional office space—were improperly used for unofficial and campaign purposes.¹² Members are responsible for ensuring proper management of their MRA and Representative Schweikert failed to provide the oversight necessary to prevent misuse of his MRA. The misuse of Representative Schweikert's MRA violated 31 U.S.C. § 1301, House Rule XXIII, clause 1 and paragraph 2 of the Code of Ethics for Government Service and formed the basis for Count IX of the SAV.¹³

Fifth, members of Representative Schweikert's congressional staff were pressured to perform campaign work. Representative Schweikert's former Chief of Staff testified that he was pressured to perform campaign work, specifically to fundraise, and in return, he had an expectation that congressional staff fundraise on behalf of the campaign.¹⁴ Pressuring official staff to perform campaign work violated House Rule XXIII, clause 1 and formed the basis for Count X of the SAV.¹⁵

Finally, Representative Schweikert violated House Rule XXIII, clause 1 by failing to exercise the proper diligence necessary in responding to the allegations and the ISC determined that his testimony lacked credibility.¹⁶ Representative Schweikert's lack of candor and due diligence formed the basis for Count XI of the SAV.¹⁷

The ISC also investigated additional allegations for which it did not find a violation. The ISC unanimously concluded allegations that Representative Schweikert may have authorized compensation to an employee who did not perform duties commensurate with his House employment and that he or his campaign committee may have received loans or gifts from a congressional employee could not be substantiated.¹⁸ The ISC further determined that no

⁹ *Id.* at 17-18.

¹⁰ *Id.* at 29.

¹¹ *Id.*

¹² *Id.* at 18-21.

¹³ *Id.* at 29-31.

¹⁴ *Id.* at 21-22.

¹⁵ *Id.* at 31-32.

¹⁶ *Id.* at 32-33.

¹⁷ *Id.*

¹⁸ *See* ISC Report at 90.

additional actions were necessary to address omissions in Representative Schweikert's FD Statements in consideration of the amendments filed to address those omissions.¹⁹

IV. RESPONSE TO REPRESENTATIVE SCHWEIKERT'S VIEWS

On June 27, 2020, Representative Schweikert submitted views in response to the draft report of the Investigative Subcommittee stating, "[c]ritically, I agree with the ISC's statement that I bear ultimate responsibility for ensuring that my congressional office and my campaign adhere to both the letter and spirit of the wide array of laws, rules, and regulations that govern our important work."²⁰ Representative Schweikert also accepted the ISC's conclusion that he fell short of his duty to adequately supervise his staff and others working on his behalf, deferred to the ISC's discretionary authority regarding his cooperation with its investigation, and requested that the Committee approve the settlement agreement negotiated with the ISC.²¹ Representative Schweikert, however, also challenges some of the "assertions" in the ISC report.

Representative Schweikert suggests that Mr. Schwab's testimony should not be credited because he admitted to "acts of dishonesty." The ISC, however, made clear throughout its report that it did not rely exclusively on Mr. Schwab's testimony to find violations. Furthermore, as the ISC explained, had it credited uncorroborated portions of Mr. Schwab's testimony, Representative Schweikert would likely be facing harsher penalties.²² Many aspects of Mr. Schwab's testimony were corroborated by other witnesses or documents obtained by the ISC and there is substantial evidence to support the violations contained in the SAV to which Representative Schweikert admits.

Representative Schweikert also expresses confusion at the ISC's finding that his cooperation fell short of the standards it expected, but his bewilderment ignores the ISC's central concern that he did not identify or address errors in his FEC reports identified by OCE for over a year. Representative Schweikert had reason to know of many FEC reporting errors but did not promptly advise the ISC of them, despite having numerous opportunities to do so and despite the ISC's specific requests that he identify the errors.

In addition, the Committee defers to the ISC's findings that Representative Schweikert's testimony lacked candor at times. In taking issue with the ISC's questioning strategy, Representative Schweikert attempts to shift his responsibility to provide truthful and candid testimony into an affirmative duty of the ISC to inform him whenever he gave untruthful testimony. However, the ISC findings with respect to his lack of candor were not over minor memory lapses or slight deviations from others' testimony but were due to its serious concerns regarding Representative Schweikert's own affirmative and self-serving statements, some which were not responsive to any question posed, and which were squarely inconsistent with the record the ISC obtained.²³

¹⁹ *Id.* at 93.

²⁰ Appendix E at 2.

²¹ *Id.* at 2, 6.

²² ISC Report at 7.

²³ *Id.* at 97.

The Committee appreciates that Representative Schweikert made substantial efforts to cooperate with the investigation by, among other things, producing thousands of pages of documents in response to the ISC's requests for information and by submitting a *sua sponte* report detailing his campaign's acceptance of outlays; however, as the ISC explained, "there is no number of pages produced or dollars spent on lawyers that can substitute for actually acknowledging and providing candid responses to specific allegations of unethical conduct."²⁴

Throughout the course of this investigation, Representative Schweikert made vague or misleading statements to the ISC and OCE that allowed him to evade the statute of limitations for the most egregious violations of campaign finance laws, his document productions were slow or non-responsive to several of the ISC's requests for information regarding FEC errors, and he gave self-serving testimony that lacked candor. Efforts like the ones Representative Schweikert undertook to delay and impede the ISC's investigation were not only highly detrimental to the Committee's work and reputation of the House, they were themselves sanctionable misconduct.

This matter should serve as an important reminder to all individuals within the House community that when confronted with allegations of unethical conduct, they should take immediate steps to investigate and correct the issues and ensure that they do not occur again in the future. Allowing unethical conduct to continue in a Member's campaign and/or congressional office makes that Member complicit in the violation and the offending Member will be held accountable. Moreover, when an individual delays acknowledging violations under review by the Committee that they know to be true, not only can the work of the Committee be impeded, but such stalling is inconsistent with the duty of candor owed to the Committee, may be viewed as an aggravating factor depending on the circumstances, or, as was the case in this matter, lead to a finding of a separate violation.

V. REASONS FOR RECOMMENDED SANCTION

The cumulative violations in this matter are serious and occurred on a continuous and prolonged basis.²⁵ While all of the violations detailed above were concerning, the Committee was disturbed by the events described in counts three and four of the SAV in particular. Those counts detailed how Representative Schweikert's campaign committee falsely reported that he had loaned the campaign \$100,000, when no such loan had been made, and then falsely reported making \$100,000 in disbursements, which served to adjust the campaign's reported cash on hand that was propped up by the fictitious loan.²⁶ These errors were not only flagrant and egregious violations of campaign finance law, the falsely reported loan improperly inflated his campaign's finances, thus making Representative Schweikert's campaign appear to meet its financial goals while depriving the public of accurate and transparent accounting of the true state of his campaign.²⁷ The falsely reported loan was subsequently included in the Schweikerts' overall assets listed in personal financial statements they submitted to a bank in connection with a line of credit the bank provided

²⁴ *Id.*

²⁵ Compare Comm. on Standards of Official Conduct, *In the Matter of Representative Charles B. Rangel*, H. Rept. 111-661, 111th Cong. 2d Sess. 2 (2010) (seeking censure of Member based on cumulative nature of serious violations on a "continuous and prolonged bases," where Member did not enter settlement agreement) (hereinafter *Rangel*).

²⁶ SAV at 25-26.

²⁷ ISC Report at 28-30.

in support of Representative Schweikert's campaign.²⁸ However, as detailed in Count II of the SAV, the line of credit was never disclosed to the FEC.²⁹ In addition to these interconnected reporting violations, Representative Schweikert's campaign further benefited from a scheme in which his former Chief of Staff made significant, yet impermissible, campaign expenditures.³⁰ As detailed in Count VII of the SAV, Mr. Schwab waited weeks, and sometimes months, to seek reimbursements from the campaign for his purchases, thereby providing the campaign with enough liquidity to meet its other obligations, or in other instances, allowing the campaign to post higher cash on hand totals.³¹

The ISC considered whether a House-level sanction of censure was appropriate given that the violations in this matter were serious, cumulative, and occurred on a continuous and prolonged basis.³² The ISC ultimately agreed to recommend a lesser sanction than censure, "due in large part to the congressman's willingness to accept responsibility and agreement to pay a substantial monetary fine."³³ The Committee defers to the ISC's sanction recommendation, which is that Representative Schweikert be reprimanded and fined \$50,000, and recognizes that by admitting to the violations and waiving his additional procedural rights, Representative Schweikert has saved the House the further use of significant resources and allowed this matter to be closed expeditiously.³⁴

Therefore, the Committee recommends Representative Schweikert be reprimanded for the violations discussed above. In addition to public reprimand, the Committee recommends that the House, by adoption of this Report, impose a \$50,000 fine on Representative Schweikert for his misconduct and that the fine be payable to the U.S. Treasury no later than October 30, 2020.

The Committee further recommends that the House of Representative adopt a resolution in the following form and that the adoption of this Report will serve as a reprimand of Representative Schweikert and the imposition of a \$50,000 fine under the conditions outlined herein:

HOUSE RESOLUTION ---

Resolved, (1) That the House adopt the Report of the Committee on Ethics dated July 29, 2020, In the Matter of Allegations Relating to Representative David Schweikert.

²⁸ *Id.* at 21 n. 95.

²⁹ SAV at 23-25.

³⁰ ISC Report at 40-53.

³¹ SAV at 27-28.

³² *See Rangel* at 2 (censuring Member, who did not enter into a settlement agreement, for serious violations that occurred on a continuous and prolonged basis).

³³ ISC Report at 99.

³⁴ *See Comm. on Ethics, In the Matter of Allegations Relating to Representative Laura Richardson*, H. Rept. 112-642, 112th Cong. 2d Sess. 15 (2012) (seeking reprimand of Member for serious violations following negotiated settlement agreement in which a Member admitted to violations).

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.