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Congress of the United States

House of Representatives

Washington, DC 20515-4605

October 27, 2021

The Honorable Theodore E. Deutch
Chairman, Committee on Ethics
U.S. House of Representatives
1015 Longworth House Office Building
Washington, D.C. 20515

The Honorable Jackie Walorski
Ranking Member, Committee on Ethics
U.S. House of Representatives
1015 Longworth House Office Building
Washington, D.C. 20515

RE: APPEAL OF NOTIFICATION OF VIOLATION OF HOUSE RESOLUTION 38

Chairman Deutch and Ranking Member Walorski,

This letter serves as my official appeal of a notification of violation of House Resolution 38, noticed on September 24, 2021, for a mask violation. I appeal this fine for the reasons enumerated below. I further request the opportunity to appear before the Committee and address the reasons for my appeal.

I. House Resolution 38 is unconstitutional because it violates the 27th Amendment, the 5th Amendment, Article 1, Section 5, and the 8th Amendment of the United States Constitution.

A. House Resolution 38 changes the compensation of a Representative without an intervening election as guaranteed by the 27th Amendment.

The plain reading of the Amendment makes this fine unconstitutional, “No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.” By imposing a policy on January 4, 2021, any change in compensation cannot be imposed until the 118th Congress.

B. A fine imposed by House Resolution 38 takes away property without due process of law as guaranteed by the 5th Amendment.

Having a fine imposed first with no hearing, no opportunity to confront witnesses or to call into question evidence but only the ability to appeal later is a clear violation of the constitutional protection not to “be deprived of life, liberty, or property, without due process of law . . .”

C. House Resolution 38 is not a rule of the House as determined under the authority of Article 1, Section 5.

Article I, Section 5 of the Constitution states that “Each House may determine the Rules of its Proceedings.” It does not state that the “Speaker of the House may determine the Rules of its Proceedings.”

On January 4, 2021, the U.S. House passed House Resolution 8 which adopted the rules of the House for the 117th Congress. The rules did not then, nor do they now, include a provision to fine Members of the United States House of Representatives who do not wear a mask on the House floor. At no time has the House of Representatives voted to change the rules of the House to require face coverings to be worn.

House Resolution 38 passed the House on January 12, 2021. The resolution did not amend the rules of the House to require the use of masks on the House floor. Instead, the resolution stated that “a fine imposed pursuant to this section shall be treated as though imposed under clause 3(g) of rule II” of the Rules of the House.

The fine to be imposed is for violating the “Speaker’s announced policies” and not a House rule. The Constitution does not give the authority to the Speaker of the House to create policies that fine its Members without specific authorization by the House rules.

D. House Resolution 38 is an excessive fine for failure to wear certain attire and would therefore violate the 8th Amendment.

No member has been fined for wearing a mask that has zero, or near zero, efficacy in preventing the transmission of the COVID-19 virus. Therefore, the fine is not for wearing a mask that prevents the transmission of a virus but for failure to wear certain attire. As such, the \$2500 fine contemplated by House Resolution 38 is excessive and therefore a violation of the 8th Amendment.

For the aforementioned reasons, House Resolution 38, and subsequently its enforcement, is a violation of the U.S. Constitution.

II. Imposition of fines under House Resolution 38 are arbitrary, an abuse of discretion and inconsistent with the principles of fairness.

Under the Committee on Ethics document of March 9, 2021, paragraph 10 states “the Committee may agree to an appeal if it determines the fine is (a) arbitrary and capricious, an abuse of discretion, or otherwise not consistent with principles of fairness”

House Resolution 38 specifically, though unconstitutionally, references Section 3(g) of the rules of the House.

Section 3(g) of rule II is referenced by House Resolution 38 and the provision of the House rules states:

“The Sergeant-at-Arms is authorized and directed to impose a fine against a Member, Delegate, or the Resident Commissioner for the use of an electronic device for still photography or for audio or visual recording or broadcasting in contravention of clause 5 of rule XVII and any applicable Speaker’s announced policy on electronic devices.”

Further, clause 5 of rule XVII states:

When the Speaker is putting a question or addressing the House, a Member, Delegate, or Resident Commissioner may not exit or cross the Hall. When a Member, Delegate, or Resident Commissioner is speaking, a Member, Delegate, or Resident Commissioner may not pass between the person speaking and the Chair. During the session of the House, a Member, Delegate, or Resident Commissioner may not wear non-religious headdress or a hat or remain by the Clerk’s desk during the call of the roll or the counting of ballots. A person on the floor of the House may not smoke or use a mobile electronic device that impairs decorum. The Sergeant-at-Arms is charged with the strict enforcement of this clause.

A. The House rules relied upon by House Resolution 38 do not contemplate a fine for wearing or not wearing certain attire OR for exiting the House, nor are those specific provisions enforced, making the selective enforcement arbitrary.

1. Clause 5 is explicit in the prohibited behavior that can be enforced by the Sergeant-at-Arms. Clause 5 prohibits certain attire, though the Sergeant-at-Arms does not enforce it, but does not require attire that must be worn on the floor of the House. Moreover, there is no provision anywhere in the House rules imposing a fine for wearing or not wearing certain attire. Make no mistake, a cloth face covering which would comport with House Resolution 38 but would not prevent the transmission of a virus is nothing more than attire and no fine should be imposed to be consistent with other standards of attire within the House Rules.
2. Clause 5 also expressly prohibits exiting the House of Representatives when the speaker is putting a question to or addressing the House. There are no provisions in the House rules imposing a fine for violating this section of Clause 5 either (and it is not being enforced by the Sergeant-at-Arms).

B. The Sergeant-at-Arms does not enforce the fine specifically outlined by the House rules referenced by House Resolution 38 making enforcement of this fine an abuse of discretion.

The only violation in section 3(g) of rule II of the House Rules that specifically allows for a fine is for use of an electronic device. To my knowledge no member has been fined for taking a picture with their cell phone on the House floor in the 117th Congress, and possibly ever. Therefore, the non-enforcement of one set of fines specifically authorized by House Rules balanced against the enforcement of a fine NOT specifically authorized by House Rules means that this is an abuse of discretion by the Sergeant-at-Arms.

C. The Sergeant-at-Arms does not enforce House Resolution 38 or House Resolution 85 against the Speaker of the House for well-documented violations, making the imposition of fines of other Members under House Resolution 38 an abuse of discretion and a violation of the principles of fairness.

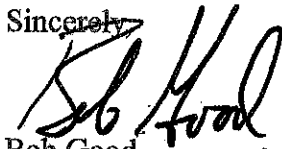
Members of the House have witnessed the Speaker of the House in violation of her unconstitutional policies on face coverings and metal detectors, and up to this time, no fines have been levied against her. However, multiple Members have been fined under both policies in a clear abuse of discretion and a violation of the principles of fairness.

For the aforementioned reasons, the imposition of a fine under House Resolution 38 not only does not comport with the plain reading and practice of enforcing the House Rules, but it is arbitrary, an abuse of discretion and a clear violation of the principles of fairness.

In summary, the fine imposed under House Resolution 38 is unconstitutional, out-of-step with the plain reading and current enforcement practices of House Rules, and a clear violation of the Ethics Committee guidelines. Therefore I ask that my appeal be upheld.

Thank you for your consideration.

Sincerely,



Bob Good

Member of Congress