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Congress of the United States
House of Representatives
Washington, DC 20515

February 26, 2021

COMMITTEES:
NATURAL RESOURCES
REPUBLICAN LEADER, SUBCOMMITTEE ON
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CRIME, TERRORISM, AND HOMELAND
SECURITY
SUBCOMMITTEE ON
THE CONSTITUTION, CIVIL RIGHTS AND
CIVIL LIBERTIES

The Honorable Theodore Deutch
Chairman
House Committee on Ethics
1015 Longworth House Office Building
Washington, D.C. 20515

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

Dear Chairman Deutch and Ranking Member Walorski:

On February 5, 2021, I received a "Notification of a Violation of House Resolution 73" from the Acting Sergeant at Arms, informing me that as a result of "failure to complete security screening" prior to entering the House Chamber on February 4, 2021, a fine of \$5,000.00 is imposed pursuant to section 1(a) of House Resolution 73. This Notification is incorrect in its allegation, because I had satisfactorily complied with the noticed requirement to stop to go through the metal detector, be wanded if it sounded off, and then enter the House "Chamber" or "Floor." I did all of that to enter the House Floor. Further, there was no notice of a change in the requirement that once all of the requirements were met and the House Floor was entered, that I would have to be wanded when returning from the restroom mere feet from the Speaker's Lobby where there was no metal detector. In addition, the fine is arbitrary and capricious in the manner of its assessment, and on the day of the assessment the non-noticed new requirement was exceedingly arbitrary and discriminatory in the manner of its enforcement, as well as being administratively improper and unconstitutional. As such, the purpose of this letter is to appeal this important matter to your good Committee.

First, this fine should not be imposed because it is based on erroneous facts and the arbitrary and capricious application of House Resolution 73 to an act that it overtly does not cover. The notice sent to me accuses me of having "failed to complete security screening prior to entering the House Chamber on February 4, 2021." The fact is that I went through the metal detector properly, having taken the metal out of my pockets, and being surprised when the alarm sounded. The metal detector was apparently set quite sensitively, because when I was wanded, which I was THOROUGHLY, my pants zipper and the small amount of metal in my belt which has never set off an airport metal detector, was all that was noted. Only after being wanded after complying with the metal detector requirement did I go onto the House Floor.

During the weeks that the metal detectors have been in place, I have entered the House Floor previously after being screened through the metal detector, then later gone to the Members' restroom immediately beside the Speaker's Lobby many times. I have never before

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been wanded on coming from the restroom to the House Floor. There was no metal detector at either end of the Speaker's Lobby. There are plenty available to the Capitol Police if that had been the desire. We were "told" multiple times we were going to have to start going through the metal detector as a new requirement the Speaker had demanded and pushed through. There was no metal detector between the Floor at the short distance to the restroom. It made good sense that there did not need to be. There are not even any tanks on toilets so someone could hide a gun in them like in the Godfather movie.

As has happened on previous days, my turn to be recognized and engage in speech and debate on the House Floor was nearing, so I headed for the restroom right before I was to speak. That is something I often do before speaking publicly. As I did, I mentioned to the officers on the day in question that I was going to the restroom right by the Speaker's Lobby, and they watched me go in and within probably less than three minutes, watched me return. The officer said I needed to be wanded but since I had already been through the metal detector thoroughly and having never before been required to be wanded after already having entered the Floor properly, I returned to the House Floor to engage in my turn to debate the bill under consideration. Having received no notice whatsoever of a new need to be to be wanded on returning from the restroom beside the House Floor after proper clearance through the metal detector protocol, I was not screened yet again with the wand. That was especially true since that had not been required for the numerous days that I had been through the metal detector, wanded to get onto the House Floor, and then because of the long votes, would come out and go to the restroom by the Speaker's Lobby with no additional screening necessary when I came back from the restroom.

I have personally been witness to arbitrary enforcement of the metal detector requirement. On the very day on which my actions are being questioned, Democrat Congress Member Nydia Velázquez walked straight through the metal detector without taking any metal out. She set off the metal detector and kept walking. Congress Member Jeff Duncan was in front of me and behind Congress Member Velázquez and spoke out loudly as she topped the stairs into the House Floor saying to the Capitol Police, "Are you not going to say anything to her? She just went straight through and set it off!" The officers still remained silent, but Congress Member Velázquez heard Congress Member Duncan's loud retort, turned around, and came all the way back to the metal detector, took out metal, then went back through. The officers were clearly arbitrary with their enforcement, and were allowing her to enter the House Floor without compliance. As you know, Member Velazquez is a Democrat and I am a Republican.

In contrast, my treatment was so strict, and the metal detector set to heightened sensitivity, that I was shocked when I set it off and asked about the sensitivity of the metal detector. I pointed out that I did not ever set it off at an airport wearing exactly what I was wearing at airports. As you know, the three main entrances to the House Floor have metal detectors, but the House Floor entrances from the Speaker's Lobby do not.

It is also extremely important to note that Speaker Pelosi, on the very same day my compliance is being questioned, was seen avoiding the metal detectors by entering the House Floor through the Speaker's Lobby. The three witnesses that saw her noted that she was not wanded by anyone at all as she entered the House Floor through the Speaker's Lobby. Nor did

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any officer in the Speaker's Lobby even mention to her that she needed to be wanded. As you know, Speaker Pelosi is a Democrat.

It is also critically important to note that during a briefing on security and potential threats by the Acting Capitol Police Chief and the Acting Sergeant at Arms, the Acting Chief of the Capitol Police stated twice that there was no known intelligence from any source that any Member of Congress was a threat to any other Member or Members of Congress. The fact became crystal clear: there is no legitimate or compelling basis nor need to detain Members of Congress to require them to be screened by metal detectors or wands before they are allowed to enter into debate or voting on the House Floor.

In fact, even if some Member of Congress was a threat to everyone else, it would make no sense to only screen at the House Floor since Committee hearings, or hallways, or even Member offices would be a much more likely and easier target for inflicting harm. The requirement for which I am being fined is arbitrary and capricious having never been done in the history of the U.S. Congress since 1789, and it is being arbitrarily and capriciously enforced. Having been a felony judge for about a decade, I am quite familiar with death threats, metal detectors, their need and propriety. If there were a Member to Member threat, then we would need metal detectors after every hearing and outside our offices on Capitol Hill. But there are none there because there is no known threat.

These facts support the reality that I broke no rule with which I was ever noticed of the additional screening requirement after a compliant entrance through the metal detectors onto the House Floor. However, the notice makes it sound like I avoided the metal detectors. I did not. I did what I had done many times in going to the Members' restroom without issue or verbal notice of the new mandate. What changed on this occasion, unknown to me or any other Member that I have spoken with, is that an arbitrary and capricious decision was made to selectively start wandng Members multiple times during one trip to the House Floor, and even for a simple trip to the restroom before the Member would be allowed to take his turn at debate.

It is not simply that the facts are misleading in the notice sent to me, but there is a further problem with the misapplication of H. Res. 73 to the matter of a Member who did go through security prior to entering the House Floor and then went to the bathroom during that series. Section 1(a)(1) states that "The Sergeant-at-Arms is authorized and directed to impose a fine against a Member, Delegate, or the Resident Commissioner for failure to complete security screening for entrance to the House Chamber." No reasonable Member should construe this language to mean that a Member would need to be wanded multiple times during the same vote series or the same debate, particularly when the practice utilized with me had until that moment only required it once and only once during one visit to the House Floor.

Even the most favorable interpretation of Section 1(a)(1) would find it void for vagueness in the matter at hand. If Members cannot reasonably understand, due to the vagueness of the language and its failure to sufficiently specify what exactly is required and exactly which conduct is punishable, then in keeping with the dictates of U.S. law, the House should cease from arbitrarily seeking to enforce language that is too vague to be properly understood.

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Another fact makes the application even more capricious: a single vote under the COVID-19 protocol now drags out normally for between an hour to two hours. A five- or fifteen-minute vote takes an excruciatingly long time, often much longer than an hour. Early in the COVID-19 vote protocol, Members were to come to the Floor to vote in small groups and leave so there were few and distant people on the Floor at one time to minimize potential exposure to the virus. Now that the metal detectors have been mandated, people are getting to the House Floor and staying far longer and in much larger numbers than they did last year so the Floor fills up and stays filled for what should be five or even two minute votes, but they stay in greater numbers and for much longer when there are multiple votes, because of the metal detectors.

After the installation of the metal detectors, more and more Members ceased returning to their offices because they did not want to have to go through the metal detectors every time a new vote started. Ironically, that now meant because of the hour plus voting periods under the COVID-19 protocols, more Members of Congress stayed in the confined area of the House Floor for very extended periods of time. Because there were now more Members on the Floor than before, there was less room on the Floor and so Members were in closer proximity, which put everyone at greater risk of getting COVID-19 if they had not had it before. Some of us have gotten COVID even while wearing a mask. Thus, the metal detectors were putting more Members' lives at risk from COVID. In fact, one of the finest people I have known, Texas Congressman Ron Wright, returned to Congress the week of January 11, 2021 after cancer treatment. But he remained on the House Floor during some of the inordinately long voting sessions. We cannot be sure where he caught the COVID-19 virus, but he apparently caught it in Washington which then led to his tragic death on February 7, 2021.

To the question of whether or not this brand new detention process for screening was necessary to protect Members from another Member of Congress, the answer came from the Acting Chief of the Capitol Police on February 24th when she twice admitted that there was no intelligence indicating that any Member of Congress was a potential threat to any other Member or Members of Congress! That means there was no Constitutional or compelling interest to detain Members of Congress from entering the House Floor while they were scanned and normally rescanned with a wand after emptying metal from pockets along with other potentially privileged material.

On Thursday, February 25 during votes, Majority Leader Steny Hoyer announced that because so many votes had been held open for longer than an hour, he had talked to the Speaker and they were going to shorten them to 45 minutes. Unfortunately, everyone did not hear the announcement. Shortly thereafter, Congress Member Lauren Boebert was meeting with constituents in her office, left in plenty of time to come to the Floor to vote, was delayed coming on to the House Floor by the metal detector protocol, and got inside just in time to have missed voting on H.R. 5, the Equality Act.

During another vote regarding H.R. 803 on February 26, Congress Member Jeff Duncan was delayed by the detention at the metal detector. When he was allowed to enter the House Floor by the officers at the metal detector, he walked up to the closest voting machine, entered his voting card with the blue light on it lit, indicating the vote had not closed, and hit the voting button only to find at that second the machine was turned off and the vote was finalized. That meant the metal detector prevented two Members of Congress from voting that twenty-four-hour period.

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Additionally, to correct the wrong impression that no screening was necessary when returning from the restroom BACK onto the House Floor, a metal detector has now been placed at both ends of the Speaker's Lobby. That makes clear what the requirement is there also, even when returning from the restroom. That helps cure the inadequate notice that existed when I was fined.

Beyond the erroneous application of the resolution in question to the facts underlying the notice I received, the resolution certainly appears to violate Article I, Section 6, Clause 1 of the U.S. Constitution which prohibits Members of Congress from being detained on the way to or from a session of the House.

At a minimum, to avoid arbitrary and capricious enforcement of the new resolution, you would need to go backward, find all the times the Speaker has entered the House Floor without going through the metal detectors or being wanded, and fine her for all those occasions since the time the new fine was implemented. Otherwise, it leaves the evidence clear and convincing, even though that is not the standard of proof, that the rules are truly being arbitrarily and capriciously enforced.

Additionally, removing FIVE THOUSAND DOLLARS of a Member's compensation in the same Congress in which the new resolution was passed, creates an additional issue of impropriety. It changes the compensation of a Member of Congress in the same session in which the new reduction was created. Because I have sacrificed to become a public servant and am not a millionaire as is the Speaker who arbitrarily set the amount of the fine, this kind of massive fine becomes an arbitrary bar to eliminate the non-wealthy from Congress. Further, to make such a fine have some semblance of fairness, there should be a range of a potential fine to be considered by the one doing the assessment. Obviously five thousand dollars to a millionaire is a mere pittance compared to the blow to someone who is of vastly lesser means.

I appeal to you to right this wrong and remove the fine that has erroneously been imposed. I thank you in advance for your serious consideration of this important matter and its implications for me, my family, Congress, its Members, and for allowing voters to have the representation that they voluntarily chose.

Sincerely,



Louie Gohmert
U.S. Congressman