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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 (H.Res. 38), noticed on May 20th, 2021.

I appeal this fine for the reasons explained below and request the opportunity to appear before the Committee to discuss this alleged violation.

The Constitution states that “each House may determine the rules of its proceedings.” It does not state that the Speaker shall make the rules.

On January 12th, 2021, a majority of the House of Representatives voted in favor of H. Res. 38, which provided for consideration of H. Res. 21. Sec. 4(a)(1) of H. Res. 38 states: “[T]he Sergeant-at-Arms is authorized and directed to impose a fine against a Member . . . for failure to wear a mask in contravention of the Speaker's announced policies of January 4, 2021.”

On April 28th, 2021, President Biden addressed the House chamber without a mask.

On May 11th, 2021, the Speaker announced an update to the policies of January 4th, stating that “Members are permitted to remove masks temporarily while under recognition.”

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Subsequently, the Speaker, along with Members recognized by the Speaker, ignored the mask policy that was outlined on January 4th and adopted as a House Rule by H. Res. 38. Pursuant to the Speaker's new directive of May 11th, the Sergeant-at Arms began selective enforcement of the House-passed rule set forth in the text of H. Res. 38.

The Speaker and Sergeant-at-Arms therefore disregarded the House Rule as adopted by the text of H. Res. 38. This disregard of the rule was not based on a vote of the majority of the House, but was instead based upon the Speaker's unilateral statement. House Rules are set by a vote of the House, not solely by the Speaker. This should apply particularly to rules for which the penalty involves a deprivation of personal property or a diminishment of a Member's compensation.

A Committee on Ethics document dated March 9th, 2021 entitled "Special Policies and Procedures Relating to Fine Notifications and Appeals" states in paragraph 10 that "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 law or with principles of fairness; (b) not made consistent with required procedures; or (c) unsupported by substantial evidence."

Enforcement of H. Res. 38, the actual governing House Rule, became "arbitrary" on May 11th when only Members recognized by the Speaker were spared a fine. Allowing only the Speaker to grant immunity from the mask fine was "an abuse of discretion." The change in the rule was not a change at all, because there was no vote on the new rule. Therefore, the fine was "not made consistent with required procedures."

On January 4th, the Speaker herself recognized that her statements issued to maintain decorum do not carry the weight of House Rules when she stated: "The Chair would remind members that the Chair has the authority and responsibility to preserve order and decorum in the Chamber, even prior to the adoption of the rules of the House." The Speaker cannot countermand a duly passed House Resolution with a statement of decorum.

I also note that this Committee has recently upheld appeals of fines related to the metal detector rule, for both Majority Whip James Clyburn (D-S.C.) and Rep. Hal Rogers (R-Ky.), and, given this arbitrary enforcement of House Rules, submit that if the rules are not enforced across the board, without fear or favor, they should not be enforced at all.

I am also appealing the fine because federal statutes set Congressional salary, because there is no statutory basis for the issuance of a fine to deprive a member of pay, and because no House Rule has undergone passage in both houses of Congress and been presented to the President as required by the Presentment Clause, which would permit the deprivation of property. In short, no resolution setting forth a rule can override statutory pay provisions that have been set forth in law.

I am further appealing the fine because the reduction in pay and fine under these circumstances violates the Twenty-Seventh Amendment to the United States Constitution, the

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First Amendment to the United States Constitution, the Fifth Amendment to the United States Constitution, and the Eighth Amendment to the United States Constitution.

Turning to the circumstances at issue; the fine is arbitrary and capricious, an abuse of discretion, and otherwise not consistent with law or with principles of fairness. The mask mandate is not in accordance with the latest recognized science, including, without limitation, evidence that those who are vaccinated and those who have previously had and overcome COVID-19 are conferred immunity from the virus.¹ The undersigned has previously had and overcome COVID-19 and thus, based on the aforementioned research, has immunity.

Thank you for your consideration.

Sincerely,



THOMAS MASSIE,
Member of Congress

¹ <https://apps.who.int/iris/handle/10665/341241> (last visited 6/10/2021); <https://www.nytimes.com/2021/05/26/health/coronavirus-immunity-vaccines.html> (last visited 6/10/2021); <https://www.nih.gov/news-events/nih-research-matters/lasting-immunity-found-after-recovery-covid-19> (last visited 6/10/2021); <https://www.cidrap.umn.edu/news-perspective/2021/04/previous-covid-19-may-cut-risk-reinfection-84> (last visited 6/10/2021); <https://www.usnews.com/news/health-news/articles/2021-05-28/immunity-after-covid-19-illness-may-last-at-least-1-year> (last visited 6/10/2021); <https://www.medrxiv.org/content/10.1101/2021.04.20.21255670v1.full.pdf> (last visited 6/10/2021); <https://www.medrxiv.org/content/10.1101/2021.06.01.21258176v2.full-text> (last visited 6/10/2021).