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March 15, 2022

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

Subj: APPEAL OF NOTIFICATION OF VIOLATION OF HOUSE RESOLUTION 38

Chairman Deutch,

This letter records my official appeal of notifications of violation of House Resolution 38 on the dates of February 1, 2, 3, 4, 7, 8, and 9 of 2022.

As you are aware, the Constitution establishes that “each House may determine the rules of its proceedings.” This provision allows for the House of Representatives to vote on the adoption of rules by which the body governs itself. On January 12th, 2021, the House of Representatives adopted House Resolution 38 (H.Res. 38), of which Sec. 4(a)(1) states, “[T]he Sergeant-at-Arms is authorized and directed to impose a fine against a Member...for the failure to wear a mask in contravention of the Speaker’s announced policies of January 4, 2021.”

The language of H.Res. 38 does not provide for a modification of enforcement of the Speaker of the House’s announced January 4th policy by any member of this body, but explicitly provides for enforcement of the stated January 4th policy. Being that the Speaker chose to update the House’s “mask policy” on May 11th, 2021, which no longer confers with the rule as adopted by the House on January 12th, H.Res. 38 may no longer be used to enforce fines unless the House chooses to vote to amend the rule to apply its enforcement mechanism to the Speaker’s updated policy issued on May 11th.

Moreover, as you are aware, President Biden addressed the House chamber on April 28th, 2021, without a mask as required by the January 4th policy, indicating a deeply troubling example of selective enforcement.

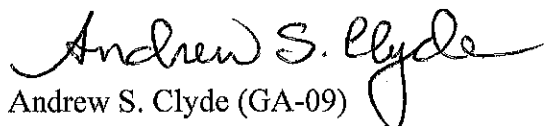
As you are also aware, the 27th Amendment to the Constitution prohibits an increase or decrease to member compensation until an election of Representatives shall have intervened. Not only is the Speaker’s updated policy of May 11th unenforceable under the adopted rule of H.Res. 38, but any such rule affecting an adjustment of member compensation in the same Congress is a direct violation of the 27th Amendment.

Finally, as you are likely aware, House Attending Physician, Brian P. Monahan, announced in a letter dated February 27, 2022, that indoor masking, including on the House floor, was no longer a requirement. However, this is in direct contravention to H.Res. 38, which states that fines for not wearing masks were to be imposed as

directed by “the Speaker’s announced policies of January 4, 2021,” which are to be determined by the Speaker in consultation with the Attending Physician during the “covered period” extension of the “ongoing health emergency due to a novel coronavirus” as defined by H.Res. 965 (116th Congress). While Attending Physician Monahan’s determination is appreciated, based on a strict reading of H.Res. 38, only the Speaker may issue new policies on the wearing of masks on the House floor. While the merit and enforcement of H.Res. 38 and the Speaker’s announced policy is problematic, precedent established by Ethics Committee decisions on the resolution indicate that any member not wearing a mask on the House floor since February 27th has been in violation of the House rule and the Speaker’s announced policy. Yet no member is known to have been in violation since the date of Attending Physician Monahan’s letter. This is a further example of the complete lack of consistent enforcement of this policy that should render the entire policy and its enforcement null and void.

Considering the concerns outlined here, I respectfully request that my appeal be granted, and any citation related to a violation of H.Res. 38 be permanently voided.

Sincerely,

A handwritten signature in cursive script that reads "Andrew S. Clyde". The signature is written in black ink and is positioned above the printed name and title.

Andrew S. Clyde (GA-09)

Member of Congress

cc: The Honorable Jackie Walorski
Ranking Member, Committee on Ethics