

February 26, 2018

Omar Ashmawy
Chief Counsel and Staff Director
Office of Congressional Ethics
U.S. House of Representatives
P.O. Box 895
Washington, D.C. 20515

Re: Request for Investigation into Representative Don Bacon (NE-2)

Dear Mr. Ashmawy:

We respectfully request that the Office of Congressional Ethics (“OCE”) commence an investigation into Representative Don Bacon for the misuse of official House of Representatives resources for campaign purposes, in blatant disregard of the House Code of Official Conduct and the regulations of the Committee on House Administration. The House Code of Official Conduct prohibits the use of official resources for *any* political activity, whether related to a Member’s own reelection campaign or any other political undertaking.¹ Further, Committee on House Administration rules governing the use of the Members’ Representational Allowance (“MRA”) do not permit the MRA to be used to pay for political or campaign expenses.² Rep. Bacon has apparently violated these rules on at least two occasions by tweeting overtly political messages from his official House of Representatives Twitter handle. Accordingly, we respectfully request that OCE investigate these claims and take appropriate remedial action against Rep. Bacon if necessary.

Factual Background

Rep. Don Bacon currently serves as the Representative for Nebraska’s Second Congressional District.³ A former U.S. Representative who previously held this congressional seat, Brad Ashford, has launched a campaign to challenge Rep. Bacon in the 2018 elections.⁴

Rep. Bacon is active on the social media platform Twitter using at least two Twitter handles.⁵ One of these handles, @RepDonBacon, is plainly intended to serve as an official House of Representatives handle because the Twitter page associated with it links to Rep. Bacon’s official

¹ See Comm. on Standards of Official Conduct, 110th Cong., 2d Sess., House Ethics Manual, at 124 (hereinafter “House Ethics Manual”).

² Members’ Congressional Handbook, Committee on House Administration 115th Congress, United States House of Representatives, at 2 (hereinafter “Members’ Handbook”).

³ See United States Congressman Don Bacon, “Meet Don,” <https://bacon.house.gov/about-don>.

⁴ See Brad Ashford for Congress, <http://bradashfordforcongress.com/>; see also Brad Ashford for Congress, FEC Form 1, Statement of Organization (amended Dec. 3, 2015).

⁵ See Rep. Don Bacon (@RepDonBacon), TWITTER, <https://twitter.com/RepDonBacon>; Don Bacon (@DonJBacon), TWITTER, <https://twitter.com/donjbacon>.

House website, and vice versa.⁶ It also links to a Facebook page which states that it is the “Official Facebook Page for Congressman Don Bacon” and lists an official, district office phone number as the contact information.⁷

On November 18, 2017, this official Twitter handle responded to a tweet referencing the Tax Cuts and Jobs Act of 2017. The tweet included a candid critique of Brad Ashford’s policy platform, and also directly called for the election of state and local officials who prioritize lower taxes. The tweet reads, “[a]nd I agree on this, time to elect state and local officials who fight to lower taxes ... Ashford in Lincoln for 16 years was part of the problem.”⁸ This tweet—sent from Rep. Bacon’s official House handle—has two blatantly political purposes. First, it explicitly invokes state and local elections and suggests that readers should elect state and local officials who pledge to lower taxes. Second, it seeks to undermine Brad Ashford’s record as an elected official, in a context in which Ashford and Rep. Bacon are political opponents vying for the same Nebraska congressional seat in an upcoming election.⁹ By making this allegation about Ashford and urging people to elect state and local officials who will lower taxes, Rep. Bacon is using his official Twitter handle to simultaneously advance his own reelection campaign and benefit Republican candidates who are currently running for state and local office in Nebraska.

Moreover, the November tweet was not an isolated incident. On January 22, 2018, Rep. Bacon attacked his political opponent Brad Ashford yet again through his official Twitter handle. Rep. Bacon tweeted, “[u]nlike my predecessor I try best to never miss committee hearings,” and shared an article from a conservative newspaper alleging that Ashford missed congressional committee hearings during his previous term in Congress.¹⁰ This tweet was an obvious attempt by Rep. Bacon to influence public opinion of his electoral opponent, using an official House Twitter handle as his medium.

Legal Analysis

Rep. Bacon has engaged in behavior that reflects discreditably on the House by using his official House Twitter handle to conduct overtly political activity. House ethics rules prohibit Members from participating in political activity in their official capacities, and also prohibit the use of official resources for campaign purposes.¹¹ The House Ethics Manual specifies that “official resources of the House ... may *not* be used for campaign or political purposes.”¹² “Official resources” include any goods and services paid for using federally-appropriated funds, including

⁶ See Rep. Don Bacon (@RepDonBacon), TWITTER, <https://twitter.com/RepDonBacon>.

⁷ Rep. Don Bacon, “About,” FACEBOOK, https://www.facebook.com/pg/RepDonBacon/about/?ref=page_internal.

⁸ Rep. Don Bacon (@RepDonBacon, TWITTER (Nov. 18, 2017, 8:56 AM), <https://twitter.com/RepDonBacon/status/931929237841354752>.

⁹ See Brad Ashford for Congress, <http://bradashfordforcongress.com/>.

¹⁰ Rep. Don Bacon (@RepDonBacon, TWITTER (Jan. 22, 2018, 6:08 AM), <https://twitter.com/RepDonBacon/status/955442028191592449>.

¹¹ House Ethics Manual, at 123.

¹² *Id.* (emphasis original).

congressional staff time.¹³ The Members' Congressional Handbook is also explicit that the MRA cannot pay for political or campaign expenses.¹⁴

A Member's official Twitter account is supported by federally-appropriated funds through the MRA, and maintained by official House staffers working on official computers and telephones which are also supported with MRA funds. Thus, an official Twitter handle is an official House resource, and a Member is prohibited from engaging in political activity through this platform. In violation of this clear rule, Rep. Bacon used his official Twitter handle to attack his political opponent in the 2018 elections on two separate occasions.¹⁵ He also used his official Twitter handle to advocate for the election of state and local candidates who share his policy position on taxes.¹⁶

Congress created a Code of Official Conduct to ensure that Members of the House of Representatives "behave...in a manner that...reflect[s] creditably on the House,"¹⁷ and to protect "the House collectively, its safety, dignity, and the integrity of its proceedings; and... the rights, reputation, and conduct of Members individually, in their representative capacity."¹⁸ The misuse of official resources "is a very serious matter" that undermines the credibility of the House of Representatives.¹⁹ Accordingly, we urge OCE to immediately commence an investigation into whether Rep. Bacon has violated the House Code of Official Conduct by engaging in blatant politicking through his official House Twitter handle.

I understand that 18 U.S.C. § 1001 applies to the information I am providing. To the best of my knowledge and ability all evidence submitted was not obtained in violation of any law, rule or regulation.

Sincerely,

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¹³ *Id.*

¹⁴ See Members' Handbook, at 2; House Ethics Manual, at 125.

¹⁵ Rep. Don Bacon (@RepDonBacon, TWITTER (Nov. 18, 2017, 8:56 AM), <https://twitter.com/RepDonBacon/status/931929237841354752>; Rep. Don Bacon (@RepDonBacon, TWITTER (Jan. 22, 2018, 6:08 AM), <https://twitter.com/RepDonBacon/status/955442028191592449>.

¹⁶ Rep. Don Bacon (@RepDonBacon, TWITTER (Nov. 18, 2017, 8:56 AM), <https://twitter.com/RepDonBacon/status/931929237841354752>.

¹⁷ Rules of the House of Representatives, Code of Official Conduct (currently codified at Rules of the House of Representatives, Rule 23, Clause 1.).

¹⁸ Final Committee on the Organization of Congress, Enforcement of Ethical Standards in Congress, n.18 (Dec. 1993) (quoting H.R. Rep. No. 90-1176, 90th Cong., 2d Sess. (1968)), available at <http://archives.democrats.rules.house.gov/Archives/jcoc2.htm>.

¹⁹ House Ethics Manual, at 124.