

CONFIDENTIAL

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

REPORT

Review No. 21-6617

The Board of the Office of Congressional Ethics (hereafter “the Board”), by a vote of no less than four members, on July 16, 2021, adopted the following report and ordered it to be transmitted to the Committee on Ethics of the United States House of Representatives (hereafter “the Committee”).

SUBJECT: Representative Alex Mooney

NATURE OF THE ALLEGED VIOLATION: Rep. Mooney’s campaign committees reported campaign disbursements that may not be legitimate and verifiable campaign expenditures attributable to bona fide campaign or political purposes. If Rep. Mooney converted campaign funds from his campaign committees to personal use, or if Rep. Mooney’s campaign committees expended funds that were not attributable to bona fide campaign or political purposes, then Rep. Mooney may have violated House rules, standards of conduct, and federal law.

Rep. Mooney may have omitted required information from his Federal Election Commission (“FEC”) candidate committee reports. If Rep. Mooney failed to disclose required information in his FEC candidate committee filings, then he may have violated House rules, standards of conduct, and federal law.

RECOMMENDATION: The Board recommends that the Committee further review the above allegation concerning Rep. Mooney because there is substantial reason to believe that Rep. Mooney converted campaign funds from his campaign committees to personal use, or Rep. Mooney’s campaign committees expended funds that were not attributable to bona fide campaign or political purposes.

The Board recommends that the Committee further review the above allegation concerning Rep. Mooney because there is substantial reason to believe that Rep. Mooney failed to disclose required information in his FEC candidate committee filings.

VOTES IN THE AFFIRMATIVE: 6

VOTES IN THE NEGATIVE: 0

ABSTENTIONS: 0

MEMBER OF THE BOARD OR STAFF DESIGNATED TO PRESENT THIS REPORT TO THE COMMITTEE: Omar S. Ashmawy, Staff Director & Chief Counsel.

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FINDINGS OF FACT AND CITATIONS TO LAW

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UNITED STATES HOUSE OF REPRESENTATIVES

FINDINGS OF FACT AND CITATIONS TO LAW

Review No. 21-6617

On July 16, 2021, the Board of the Office of Congressional Ethics (hereafter “the Board”) adopted the following findings of fact and accompanying citations to law, regulations, rules and standards of conduct (*in italics*). The Board notes that these findings do not constitute a determination of whether or not a violation actually occurred.

I. INTRODUCTION

A. Summary of Allegations

1. Rep. Mooney’s campaign committees reported campaign disbursements that may not be legitimate and verifiable campaign expenditures attributable to bona fide campaign or political purposes. If Rep. Mooney converted campaign funds from his campaign committees to personal use, or if Rep. Mooney’s campaign committees expended funds that were not attributable to bona fide campaign or political purposes, then Rep. Mooney may have violated House rules, standards of conduct, and federal law.
2. The Board recommends that the Committee further review the above allegation concerning Rep. Mooney because there is substantial reason to believe that Rep. Mooney converted campaign funds from his campaign committees to personal use or Rep. Mooney’s campaign committees expended funds that were not attributable to bona fide campaign or political purposes.
3. Rep. Mooney may have omitted required information from his Federal Election Commission (“FEC”) candidate committee reports. If Rep. Mooney failed to disclose required information in his FEC candidate committee filings, then he may have violated House rules, standards of conduct, and federal law.
4. The Board recommends that the Committee further review the above allegation concerning Rep. Mooney because there is substantial reason to believe that Rep. Mooney failed to disclose required information in his FEC candidate committee filings.

B. Jurisdictional Statement

5. The allegations that were the subject of this review concern Rep. Mooney, a Member of the United States House of Representatives from the 2nd District of West Virginia. The Resolution the United States House of Representatives adopted creating the Office of Congressional Ethics (“OCE”) directs that, “[n]o review shall be undertaken ... by the [B]oard of any alleged violation that occurred before the date of adoption of this resolution.”¹

¹ H. Res. 895 of the 110th Congress § 1(e) (2008) (as amended) (hereafter “the Resolution”).

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The House adopted this Resolution on March 11, 2008. Because the conduct under review occurred after March 11, 2008, review by the Board is in accordance with the Resolution.

C. Procedural History

6. The OCE received a written request for preliminary review in this matter signed by at least two members of the Board on March 8, 2021. The preliminary review commenced on March 9, 2021.²
7. On March 10, 2021, the OCE notified Rep. Mooney of the initiation of the preliminary review, provided him with a statement of the nature of the review, notified him of his right to be represented by counsel in this matter, and notified him that invoking his right to counsel would not be held negatively against him.³
8. At least three members of the Board voted to initiate a second-phase review in this matter on April 7, 2021. The second-phase review commenced on April 8, 2021.⁴ The second-phase review was scheduled to end on May 22, 2021.
9. On April 7, 2021, the OCE notified Rep. Mooney of the initiation of the second-phase review in this matter, and again notified him of his right to be represented by counsel in this matter, and that invoking that right would not be held negatively against him.⁵
10. The Board voted to extend the second-phase review by an additional period of fourteen days on May 7, 2021. The additional period ended on June 5, 2021.
11. The Board voted to refer the matter to the Committee for further review and adopted these findings on July 16, 2021.
12. The report and its findings in this matter were transmitted to the Committee on July 23, 2021.

D. Summary of Investigative Activity

13. The OCE requested documentary and in some cases testimonial information from the following sources:
 - (1) Rep. Mooney;
 - (2) Witness 1, a high-level employee in Rep. Mooney's congressional office;
 - (3) Witness 2, a campaign finance consultant for Rep. Mooney's campaign committees;

² A preliminary review is "requested" in writing by members of the Board of the OCE. The request for a preliminary review is received by the OCE on a date certain. According to the Resolution, the timeframe for conducting a preliminary review is 30 days from the date of receipt of the Board's request.

³ March 10, 2021 Letter from Omar S. Ashmawy, Chief Counsel and Staff Dir., Office of Cong. Ethics, to Rep. Mooney.

⁴ According to the Resolution, the Board must vote (as opposed to make a written authorization) on whether to conduct a second-phase review in a matter before the expiration of the 30-day preliminary review. If the Board votes for a second phase, the second phase commences the day after the preliminary review ends.

⁵ April 7, 2021 Letter from Omar S. Ashmawy, Chief Counsel and Staff Dir., Office of Cong. Ethics, to Rep. Mooney.

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- (4) Capital One Bank (USA), N.A.;
- (5) Bank of Charles Town;
- (6) Ace Adventure Resort;
- (7) Rooster's Amish Shed;
- (8) Shepherdstown Pedal & Paddle;
- (9) Advance Auto Authority Services Inc.;
- (10) Canaan Valley Resort & Conference Center; and
- (11) Smoke Hole Caverns & Log Cabin Resort.

14. The following individuals and entities refused to cooperate with the OCE's review:

- (1) Capital One Bank (USA), N.A.;
- (2) Canaan Valley Resort & Conference Center; and
- (3) Smoke Hole Caverns & Log Cabin.

II. REP. MOONEY MAY HAVE CONVERTED CAMPAIGN FUNDS TO PERSONAL USE FOR TRAVEL AND SMALL-DOLLAR MEAL EXPENSES

A. Applicable Law, Rules, and Standards of Conduct

15. Federal Statutes

Pursuant to 52 U.S.C. § 30114(b)(1), a "contribution or donation [to a Member of Congress] shall not be converted by any person to personal use."

52 U.S.C. § 30104 states that "[e]ach treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of this subsection."

18 U.S.C. § 1343 states that "[w]hoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both."

16. Federal Elections Commission Regulations

Pursuant to 11 C.F.R. § 113.1(g), which defines personal use of campaign funds: "Personal use means any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder."

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11 C.F.R. § 113.1(g)(1)(i) FEC Personal Use Definition

“(g) Personal use. Personal use means any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.

(1)(i) Personal use includes but is not limited to the use of funds in a campaign account for any item listed in paragraphs (g)(1)(i)(A) through (J) of this section: . . .

(E) Mortgage, rent or utility payments -

(1) For any part of any personal residence of the candidate or a member of the candidate's family; or

(2) For real or personal property that is owned by the candidate or a member of the candidate's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage.

. . .

(J) A vacation.”

11 C.F.R. § 113.1(g)(1)(ii) Personal Use Case-By-Case Determinations

“The Commission will determine, on a case-by-case basis, whether other uses of funds in a campaign account fulfill a commitment, obligation or expense that would exist irrespective of the candidate's campaign or duties as a Federal officeholder, and therefore are personal use.

Examples of such other uses include:

(A) Legal expenses;

(B) Meal expenses;

(C) Travel expenses, including subsistence expenses incurred during travel. If a committee uses campaign funds to pay expenses associated with travel that involves both personal activities and campaign or officeholder-related activities, the incremental expenses that result from the personal activities are personal use, unless the person(s) benefiting from this use reimburse(s) the campaign account within thirty days for the amount of the incremental expenses”

11 C.F.R. § 113.1(g)(5) Officially Connected Expenses

“(5) Political or officially connected expenses. The use of campaign funds for an expense that would be a political expense under the rules of the United States House of Representatives or an officially connected expense under the rules of the United States Senate is not personal use to the extent that the expense is an expenditure under subpart D of part 100 or an ordinary and necessary expense incurred in connection with the duties of a holder of Federal office. Any use of funds that would be personal use under paragraph (g)(1) of this section will not be considered an expenditure under subpart D of part 100 or an ordinary and necessary expense incurred in connection with the duties of a holder of Federal office.”

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17. Federal Elections Commission Campaign Guide

Mixed Travel

*“When a candidate makes a trip involving both campaign and noncampaign stops, only the travel costs related to the campaign are expenditures. If, however, a candidate conducts any campaign activity at a given stop, that stop is considered campaign related, unless the campaign activity is merely incidental. In no case, however, may campaign funds be used for non-travel expenses that are not related to official or campaign-related activity.”*⁶

“Expenditures for campaign-related stops are calculated on an actual cost-per-mile basis, starting at the point of origin of the trip, including each campaign-related stop, and ending at the point of origin.”

*“As explained in Chapter 8, campaign funds may be used for mixed use travel; however, the committee must be reimbursed within 30 days for the entire amount associated with the personal activities (the amount over and above what the cost would have been had the trip/vehicle use been solely for campaign/officeholder-related purposes). 113.1(g)(1)(ii) (C). Individuals other than candidates must allocate their mixed campaign and noncampaign travel expenses on a reasonable basis.”*⁷

18. House Rules

House Rule 23, clause 6 states: “A Member, Delegate, or Resident Commissioner— (a) shall keep the campaign funds of such individual separate from the personal funds of such individual; (b) may not convert campaign funds to personal use in excess of an amount representing reimbursement for legitimate and verifiable campaign expenditures; and (c) except as provided in clause 1(b) of rule XXIV, may not expend funds from a campaign account of such individual that are not attributable to bona fide campaign or political purposes.”

19. House Ethics Manual

*The House Ethics Manual states, “Members have wide discretion in determining what constitutes a bona fide campaign or political purpose to which campaign funds and resources may be devoted, but Members have **no** discretion whatsoever to convert campaign funds to personal use. Furthermore, House rules require that Members be able to verify that campaign funds have not been used for personal purposes.”*⁸

⁶ Federal Elections Commission Campaign Guide: Congressional Candidates and Committees (updated June 2014) at 70 (citing AO 2002-05).

⁷ *Id.*

⁸ House Ethics Manual (2008) at 173 (emphasis in original). With respect to verification, the Manual also explains: “With the huge number of outlays that Members’ campaigns typically make, often on a nearly continuous basis, the propriety of particular outlays may not be subject to review for months or years after the fact, when recollections as to the circumstances or specific purposes of an outlay may well have faded. Absent a requirement for verification, the prohibition against converting campaign funds to personal use would be nullified in substantial part. Furthermore, the verification requirement should serve to cause Members and their campaign staffs to exercise caution in spending campaign funds, and to ensure that no outlay is for an impermissible personal purpose.”

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*With respect to meals, the Manual explains: “use of campaign funds to pay for any meal when the only individuals present are a Member and the Member’s personal friends or relatives inherently raises concerns of conversion of campaign funds to personal use. The only circumstance in which payment for such a meal with campaign funds may be permissible is if the other attendees actively work in the Member’s campaign, and if the meal is merely incident to a meeting having a clear, specific agenda of campaign business. Campaign funds may also be used to pay the meal expenses incurred when a Member or campaign worker is traveling on campaign business. Campaign funds may also be used to pay meal expenses when a Member has a social meal with constituents (other than personal friends or relatives of the Member) who are visiting Washington.”*⁹

*The Manual goes on to say: “In order to be able to verify that there was a proper campaign purpose for meal outlays, the Standards Committee strongly advises that campaign committees maintain records that note both the individuals who were present at each meal, and the specific campaign or political purpose served by the outlay. When the attendees include only friends or relatives, and the above-stated requirements for campaign payment for such a meal are satisfied, the maintenance of specific, written records is essential. In these circumstances, the records should specifically describe the campaign agenda of the meal.”*¹⁰

*A May 8, 2002 Advisory Memoranda cited in the House Ethics Manual states, “Members may use funds of their principal campaign committee to pay food and beverage expenses at events sponsored by their Member office, as well as at other official House events in which they or a member of their staff are participating.”*¹¹ *The Memoranda concluded with five cautionary points, including “outlays of campaign funds for food and beverages are among those that can in certain circumstances, raise concerns of impermissible personal use. Accordingly, any Member considering using the permission granted here in a context other than **a specific scheduled event sponsored by a congressional office** should first review those pages of the Campaign Activities booklet and consult with the Committee’s Office of Advice and Education.”*¹²

*According to the House Ethics Manual, “a Member or employee must take reasonable steps to ensure that any outside organization over which he or she exercises control – including the individual’s own authorized campaign committee ... operates in compliance with applicable law.”*¹³

Members and their campaign staffs should bear in mind that the verification requirement imposed by the House rules is separate from, and in addition to, whatever recordkeeping requirements are imposed by the Federal Election Commission on federal candidates generally (or, with regard to Members who are candidates for a state or local office, the requirements imposed by applicable state or local law).” *Id.* at 164-65.

⁹ *Id.* at 159.

¹⁰ *Id.* at 170.

¹¹ House Committee on Standards of Official Conduct, Memorandum on Member Use of Campaign Funds to Pay Food and Beverage Expenses at Events Sponsored by Their Office and Other Official House Events (May 8, 2002) at 1.

¹² *Id.* at 3 (emphasis in original).

¹³ *Id.* at 123.

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B. Background Information on The Campaign Committees

20. The evidence gathered in this review indicates that, before Rep. Mooney and his campaign committees' spending garnered attention from the OCE and media, spending regulations and reporting requirements were frequently not observed due to a lack of adequate policies and procedures, as well as a lack of individuals with knowledge of FEC regulations and House Rules.
21. The Board notes that Rep. Mooney fully cooperated with this review, and in many cases made efforts to remedy violations as they became apparent to him during the review. The OCE recognizes and appreciates that cooperation.
22. However, as explained in detail below, it became clear during the review that the absence of any appreciable campaign finance compliance program lead to numerous instances of personal use and deficient FEC reporting. Further, the inadequate campaign finance recordkeeping and reporting served to conceal more instances of personal use.
23. Rep. Mooney has utilized numerous campaign committees that have been active over different campaign seasons in congressional races in Maryland and West Virginia. Older committees include Mooney for Congress and Mooney for Congress 2016.¹⁴ Rep. Mooney explained in his interview that when his brother contemplated running in another jurisdiction, he established Alex Mooney for Congress to distinguish himself by his first name.¹⁵ He has since established another campaign committee, Mooney for Congress 2022.¹⁶ This report largely focuses on spending reported by Alex Mooney for Congress, as it was the committee almost exclusively active from 2017 to present.
24. From his election in 2014 up to 2019, when Rep. Mooney began hiring outside counsel and campaign finance professionals to bring his campaign committees into compliance, it appears no individual or group of individuals exercised primary authority over meeting the committees' regulatory obligations. A varied and shifting assortment of campaign staffers collected finance records like receipts and invoices and used a third-party platform to enter expenditures and automatically generate FEC reports.¹⁷ As one witness described it, "there were staffers all over the place, and things just weren't being tracked carefully."¹⁸
25. It is unclear who, if anybody, was responsible for reviewing those reports and ensuring their completeness and accuracy. When Rep. Mooney was asked to provide a list of individuals who had worked on his campaign committees' FEC reports, he provided the names of eleven current and former campaign staffers and consultants, but did not include the names of the two individuals, Betty DeHaven and Peter Onoszko, who had been listed as his campaign

¹⁴ See FEC Statements of Organization for Mooney for Congress and Mooney for Congress 2016.

¹⁵ Transcript of Interview of Rep. Alex Mooney ("Rep. Mooney Transcript"), May 14, 2021 (Exhibit 1 at 21-6617_0025).

¹⁶ *Id.*

¹⁷ Transcript of Interview of Witness 2 ("Witness 2 Transcript"), June 2, 2021 (Exhibit 2 at 21-6617_0132-33, 137); Rep. Mooney Transcript (Exhibit 1 at 21-6617_0010-18, 92-94). See also List of Individuals Involved in FEC Reporting, provided by Rep. Mooney (Exhibit 25 at 21-6617_0437).

¹⁸ Witness 2 Transcript (Exhibit 2 at 21-6617_0130).

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treasurers during the relevant period.¹⁹ When asked, Witness 2—a campaign finance consultant who had been working with Rep. Mooney’s campaign committees for two years—did not know who DeHaven or Onoszko were or what roles they had on the campaign.²⁰

26. Beyond accurate reporting, there appears to have been a general void as to individuals with knowledge of FEC regulations and House Rules regarding campaign expenditures. Witness 1, a high-level employee in Rep. Mooney’s congressional office and an individual who frequently coordinated events that required campaign spending, had a clear idea of who to consult when he had questions about spending from the MRA, but when it came to campaign budgeting and spending, he stated he was unsure who had authority.^{21, 22} Instead, when campaign funds were needed, he simply retrieved the campaign bank card from “whomever the campaign worker was.”²³
27. Witness 2’s testimony corroborates that experience. When asked which individuals on the campaign had knowledge of FEC regulations he stated, “I mean, I would say Michael Hough had the—had the most knowledge, but even then, he would ask me for advice.”²⁴ Michael Hough is Rep. Mooney’s chief of staff who holds no title or official position with the campaign.²⁵
28. Witness 2 was retained in early 2019, along with outside counsel, to “come in and . . . help clean up some of the back reports and . . . identify any mistakes that had been made.”²⁶ He identified a number of issues including incorrectly recorded salaries,²⁷ expenses that should not have been charged to the campaign because they were not campaign expenditures,²⁸ missing receipts and underlying documentation,²⁹ unitemized disbursements to Rep. Mooney,³⁰ and failures to report complete information related to spending with gift cards.³¹
29. Having uncovered a profusion of compliance deficiencies, Rep. Mooney and his campaign committees also hired PDS Compliance, a compliance company retained to assist with campaign finance record keeping, processing, and generating accurate FEC reports. Rep. Mooney stated that PDS Compliance was brought on to “professionaliz[e]” the campaign committees’ operations.³² Witness 2 and PDS Compliance’s work has resulted in the amendment and refile of nearly every FEC report filed by Alex Mooney for Congress since

¹⁹ See List of Individuals Involved in FEC Reporting, provided by Rep. Mooney (Exhibit 25 at 21-6617_0437).

²⁰ Witness 2 Transcript (Exhibit 2 at 21-6617_0124, 126-27).

²¹ Transcript of Interview of Witness 1 (“Witness 1 Transcript”), May 26, 2021 (Exhibit 24 at 21-6617_0393).

²² While Witness 1 generally disavowed any knowledge of or involvement in campaign spending, it was clear that he was deeply involved in planning events that required significant campaign spending, such as the all-staff meetings and site visits addressed below. See *id.* at 392-93.

²³ *Id.* at 394.

²⁴ Witness 2 Transcript (Exhibit 2 at 21-6617_0147).

²⁵ Rep. Mooney Transcript (Exhibit 1 at 21-6617_0012-13).

²⁶ Witness 2 Transcript (Exhibit 2 at 21-6617_0125).

²⁷ *Id.* at 128-29.

²⁸ *Id.* at 129.

²⁹ *Id.* at 129-30.

³⁰ *Id.* at 139.

³¹ *Id.* at 142.

³² Rep. Mooney Transcript (Exhibit 1 at 21-6617_00105).

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2017, in many cases requiring four or five rounds of amendments per periodic filing, and in at least one case requiring nine amendments.³³

30. The OCE has gathered further evidence, detailed below, indicating that many of these reporting and spending concerns constitute violations of FEC regulations and House Rules.

C. Categories of Spending for Which the OCE Found Likely Violations

31. The OCE focused its review on several categorizes of potentially problematic spending by Rep. Mooney and his campaign committee, Alex Mooney for Congress (“the campaign committee”), namely small-dollar meal expenses, in-district travel, and several large expenditures for auto repairs, a storage shed, and travel for staff retreats. In analyzing evidence from third parties and information gathered in interviews with Rep. Mooney and his employees, the OCE identified spending on small-dollar meals and in-district travel that was personal in nature. Other expenditures, detailed below, do not appear to run afoul of personal use rules.³⁴
32. In analyzing the severity of these violations, the OCE also considered Rep. Mooney’s cooperation with this review as well as several remedial measures taken by Rep. Mooney and his official and campaign staff to correct past violations and prevent future mistakes. While Rep. Mooney’s cooperation greatly facilitated this investigation, and he attempted to remedy violations as they became apparent to him and his counsel during this review, the nature and overall pattern of the violations raised concerns for the OCE, and some violations remain unaddressed.

i. Small-Dollar Meal Expenses

33. One category of unresolved problematic spending relates to Rep. Mooney’s frequent purchases of small-dollar meals, especially at fast-food restaurants, that are near his home or district office. The OCE focused on small-dollar expenditures both because of the regularity with which they appear on the campaign committee’s FEC reports, and because the dollar amounts indicate that they are likely for a single person, as opposed to a campaign meeting for multiple people at which food was provided.
34. Meals purchased during travel for campaign business and meals that are merely incident to a meeting having a clear campaign purpose are properly chargeable to the campaign. However, the use of campaign funds for day-to-day individual meals near a Member’s or a campaign or congressional employee’s home or office, that are not incident to a meeting with a clear campaign or political purpose, constitutes personal use.³⁵
35. Rep. Mooney’s FEC filings indicate a clear pattern of these sorts of day-to-day meal expenditures in his district and near his home or office. For example, the OCE requested documents for two, two-week periods during which the campaign made frequent small-dollar

³³ See e.g., Alex Mooney for Congress, 2020 July Quarterly Report, filed April 4, 2021 (9th amendment).

³⁴ See *infra* Part II.C.

³⁵ House Ethics Manual (2008) at 159.

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meal expenditures at establishments like Chick-Fil-A, Panera, Taco Bell, and a variety of pizza vendors near Rep. Mooney's home and office.³⁶

36. In response to that request, Rep. Mooney provided explanations and justifications for the purchases that evidence a misunderstanding of personal use regulations as they relate to meals.³⁷ With regard to one \$12.84 meal at Wingstop, the response stated "[Rep. Mooney] retrieved campaign mail from the post office in Martinsburg, West Virginia and stopped at Wingstop afterwards for lunch and to visit constituents."³⁸
37. Other explanations offered in Rep. Mooney's response indicate that this sort of individual, day-to-day meal spending extended at least to Rep. Mooney's campaign manager, as well: "[Campaign Manager] was given usage of a campaign card and purchased \$8.19 worth of food for himself at Chick-Fil-A that day in Ranson, West Virginia which is located near the campaign office. As part of his duties as campaign manager, he was in charge of door knocking, recruiting volunteers, helping with mail, and many other duties typical of any campaign manager. He was permitted to purchase food for himself while performing his various duties throughout West Virginia as campaign manager."³⁹
38. In interviews, the OCE sought to gather more information about Rep. Mooney and his campaign's understanding of FEC regulations and House Rules as they pertain to individual meals.
39. In his interview, Rep. Mooney stated that he feels justified in charging meals to the campaign any time there are constituents at the location he happens to choose to eat at that day:⁴⁰

OCE: When do you charge the campaign for a meal?

Rep. Mooney: Generally when I'm visiting with constituents.

OCE: Okay. So for—when you say visiting with constituents, what do you mean? Do you mean a planned meeting?

Rep. Mooney: Not necessarily, no, as I described earlier a lot of site visits I do, I just walk in and say "hi."

...

OCE: So if you—lets say you go to Chick-Fil-A and you charge that to the campaign, the justification for that, being that there are constituents at the Chik-Fil-A that you spoke to?

Rep. Mooney: Yes. Yeah, I was meeting with constituents.

40. The OCE also conducted the interview of Witness 2, who has been listed at times as "comptroller" for the campaign committee and has previously been identified in FEC reports as the Treasurer for Rep. Mooney's more recently established campaign committee, Mooney

³⁶ March 10, 2021 Request for Information to Rep. Mooney at 3.

³⁷ Expenditure Justifications for Small-Dollar Meal Expenses (Exhibit 3 at 21-6617_0162).

³⁸ *Id.* at 179.

³⁹ *Id.* at 162.

⁴⁰ Rep. Mooney Transcript (Exhibit 1 at 21-6617_0103-04).

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41. First, Witness 2 stated that when traveling or doing campaign work, Rep. Mooney could charge his meals to the campaign.⁴² When asked whether he understood FEC regulations to require an individual to be a certain distance from his home or office to be considered “traveling,” Witness 2 said he did not know. As for “campaign work,” he stated that “talking with constituents” would constitute campaign work.⁴³
42. He further stated that meals purchased while going to or from meeting with a constituent, whether planned or impromptu, within 10 or 15 minutes of his home or district office, could be charged to the campaign.⁴⁴ When asked about a specific hypothetical—in which Rep. Mooney leaves his district office, drives a few minutes to eat a campaign-funded lunch at a Chick-Fil-A, and speaks to the constituents that happen to be present—Witness 2 waived and stated he did not know if that was properly considered a campaign expense.⁴⁵
43. Because of the frequency of these types of expenditures and because FEC reporting standards do not require a level of detail that would make clear who purchased the meal, the OCE was not able to determine exactly which small-dollar meal charges fall into the above-described prohibited category, that is, individual meals purchased by Rep. Mooney or his employees in close proximity to their home or office, when the meal is not incident to a meeting with a clear campaign or political purpose. However, summary numbers indicate that the total amount spent since 2017 in this category could easily total in the thousands of dollars.
44. Since 2017, Rep. Mooney’s campaign committee, Alex Mooney for Congress, has made 220 disbursements for \$25 or less at food vendors in West Virginia, totaling \$3,475,12.⁴⁶ While some portion of these meal expenses may have been incident to campaign or political meetings or may have occurred while the individual was in fact traveling, Rep. Mooney’s clear conviction that individual day-to-day meals can be paid for by the campaign indicate that a large portion fall within the prohibited category.
45. In addition to those small-dollar meal expenditures that appear on FEC reports, the OCE discovered many other local, small-dollar meal expenses that were obscured by Rep. Mooney’s deficient FEC reporting. As explained below, the OCE reviewed 45 unitemized lump-sum reimbursements from the campaign to Rep. Mooney, between January 24, 2017 to December 29, 2020, totaling \$22,865.05.⁴⁷ Those unitemized reimbursements comprise hundreds of underlying purchases made by Rep. Mooney that have not been disclosed, as required by FEC regulations. Records obtained during this review indicate that many of the

⁴¹ Compare Alex Mooney for Congress, FEC Statement of Organization, filed Aug. 5, 2020 (listed as “comptroller”) with Mooney for Congress 2022, FEC Statement of Organization, filed Feb. 7, 2021 (listed as Treasurer).

⁴² Witness 2 Transcript (Exhibit 2 at 21-6617_0150).

⁴³ *Id.* at 151.

⁴⁴ *Id.* at 156-57.

⁴⁵ *Id.* at 157.

⁴⁶ Data compiled from Alex Mooney for Congress FEC expenditure reports.

⁴⁷ See *infra* Part III.A.

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unreported underlying expenditures were for Rep. Mooney's personal meals while on district travel near his home or office.⁴⁸

46. As detailed below, of the \$22,865.05 in reimbursements made to him, Rep. Mooney only provided documentation and transaction details for about \$8,461.11 worth of the underlying spending. That additional documentation revealed at least 72 additional small-dollar meal purchases in West Virginia, totaling \$848.15.

ii. Travel for "Site Visits" within Rep. Mooney's District

47. In-district travel is another category of expenditures that presented personal use concerns. Rep. Mooney stated in his interview that he conducts what he calls "site visits" throughout his district to familiarize himself with the area and meet constituents.⁴⁹ These site visits involve meeting with constituents, visiting small business and resorts, and touring other popular destinations in his district.⁵⁰ He explained that site visits can be planned or impromptu, and frequently involve a mix of planned and unplanned stops.⁵¹

48. However, at least two site visits described by Rep. Mooney and Witness 1, a high-level staffer, appear to involve some level of personal use.

49. The first of these site visits occurred in late December of 2018 at the Canaan Valley Resort and Conference Center.⁵² Canaan Valley Resort is approximately 2.5 hours from Rep. Mooney's home and is not located in his Congressional District, but it is near the border of his district in the 1st Congressional District of West Virginia.⁵³

50. On this site visit, Rep. Mooney, his wife, and three children stayed for "a few days" at the Canaan Valley Resort.⁵⁴ When asked if the late-December trip was planned around Christmas or New Years, Rep. Mooney stated, "[n]o. It was more of a site visit is what I intended. . . . So visiting employees and visiting those who work in the area. That was my intention."⁵⁵ However, when asked who he visited he could not remember and said he'd have to check his schedule.⁵⁶

51. He also claimed that he planned to visit with a donor named Greg Pohanka. But that visit never occurred, as Rep. Mooney explained: "I attempted to visit him. He wasn't available."⁵⁷

⁴⁸ See Expenditure Justifications for Reimbursements to Rep. Mooney (Exhibit 4 at 21-6617_0188-236); Expenditure Justifications for May 2021 Reimbursements from Rep. Mooney (Exhibit 5 at 21-6617_0238-257).

⁴⁹ Rep. Mooney Transcript (Exhibit 1 at 21-6617_0042-44).

⁵⁰ *Id.* at 42, 65.

⁵¹ *Id.* at 44-45.

⁵² *Id.* at 39-42; Summary of April 2021 Reimbursed Expenses (Exhibit 6 at 21-6617_0261).

⁵³ Google (Google Maps directions to drive from Rep. Mooney's residential address to 230 Main Lodge Rd, Davis, WV), retrieved July 9, 2021.

⁵⁴ Rep. Mooney Transcript (Exhibit 1 at 21-6617_0042, 45).

⁵⁵ *Id.* at 42.

⁵⁶ *Id.* at 44.

⁵⁷ *Id.* at 43.

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52. There were no other planned stops for that multi-day site visit and Rep. Mooney was not accompanied by any campaign staff.⁵⁸ Rep. Mooney articulated no other campaign or political purpose for this site visit.
53. Documents produced by Rep. Mooney show that he spent at least \$2,445.22 on the resort stay.⁵⁹ Those disbursements were made in late 2018 and Rep. Mooney allowed that amount to remain on the campaign's ledger despite the lack of any campaign purpose.⁶⁰
54. This trip was identified as part of Rep. Mooney's counsels' efforts to take remedial steps to address concerns raised by the OCE's review.⁶¹ Counsel identified the \$2,445.22 in expenditures related to this trip and recommended Rep. Mooney reimburse his campaign for those expenses. That reimbursement was made in April of 2021, nearly two and a half years after the expenditures were made and shortly after the OCE commenced its review.⁶²
55. The evidence suggests that the trip to Canaan Valley Resort is most appropriately characterized as a multi-night, resort holiday vacation for Rep. Mooney and his family, paid for with campaign funds, that he unsuccessfully attempted to characterize as an official site visit during his interview.
56. Rep. Mooney's treatment of the above-described December 2018 Canaan Valley Resort vacation as a campaign expenditure raised concerns for the OCE that other similar trips may have been inappropriately charged to the campaign.
57. The OCE identified another trip to a popular tourist destination in Rep. Mooney's district that raised similar personal-use concerns and has not been reimbursed.
58. From May 13 to May 14, 2020, after COVID-19 restrictions on indoor and group gatherings had been put in place, Rep. Mooney traveled with one or two of his daughters for a one-night stay at Smoke Hole Caverns and Log Cabin Resort ("Smoke Hole Resort") in the Monongahela National Forest region.⁶³
59. A confirmation email from Smoke Hole Resort, sent on the morning of May 12, 2020, shows that one room was booked for two adults in a Sweetheart Log Cabin at a rate of \$189.28 from May 13 to May 14, 2020.⁶⁴ All Sweetheart Log Cabin rooms at Smoke Hole Resort are single-bed rooms.⁶⁵ The evidence suggests that there were no other individuals on the trip and no other rooms booked at Smoke Hole Caverns.⁶⁶

⁵⁸ *Id.* at 45.

⁵⁹ Summary of April 2021 Reimbursed Expenses (Exhibit 6 at 21-6617_0261).

⁶⁰ *Id.*

⁶¹ Rep. Mooney Transcript (Exhibit 1 at 21-6617_0039, 43).

⁶² April 7, 2021 Email from Dirk Haire to Sean Quinn (Exhibit 7 at 21-6617_0266).

⁶³ Rep. Mooney Transcript (Exhibit 1 at 21-6617_0063-67, 70); May 12, 2020 Email from Smoke Hole Resort (Exhibit 8 at 21-6617_0270-71).

⁶⁴ May 12, 2020 Email from Smoke Hole Resort (Exhibit 8 at 21-6617_0270-71).

⁶⁵ See Sweetheart Log Cabins, available at <https://www.smokehole.com/honeymoon-log-cabins.htm>, last accessed July 22, 2021.

⁶⁶ Rep. Mooney and Witness 1 offered different accounts of who accompanied Rep. Mooney on this trip. Rep. Mooney originally stated that only his 15-year-old daughter accompanied him. See Rep. Mooney Transcript (Exhibit

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60. In addition to the room charge, FEC reports show a \$302.10 expenditure at Smoke Hole Outfitters for May 14, 2020.⁶⁷ Smoke Hole Outfitters is located in the Smoke Hole Resort area and offers guided fishing and outdoor tours.
61. The OCE requested documentation related to this \$302.10 expenditure,⁶⁸ and while Rep. Mooney produced no receipts or invoices, he stated that the charge was for fishing for staff while on an official district tour.⁶⁹ However, the weight of the evidence indicates that no staff members were present on this tour.⁷⁰
62. Rep. Mooney described the purpose of the trip as “[s]ite visits” and specifically noted that he hiked Seneca Rocks, a popular tourist destination and hiking trail in the national forest.⁷¹ He explained he was accompanied by two national park staff members on the hike and further stated “[l]ook, I’m a politician, that’s what I do. You’re asking a lot of questions about why I do stop [sic] and I understand, but it’s my job to be out and about meeting people. So on this hike, I’m saying ‘hi’ to families.”⁷²
63. Rep. Mooney wanted to visit Seneca Rocks because he had “never hiked Seneca Rocks and [he] gets asked about it a lot and it’s a wonderful tour”⁷³
64. An email produced by Rep. Mooney, sent in the late evening of May 12, 2020 from one of Rep. Mooney’s employees to park ranger staff, confirms that Rep. Mooney’s scheduler arranged a guided hike.⁷⁴
65. Rep. Mooney did not independently recall any other site visits but testified that he likely visited other places because he generally does so to say “hi” to people wherever he goes.⁷⁵

1 at 21-6617_0066). He momentarily speculated that his chief of staff may have accompanied him as well, and then retracted that statement. *See id.* (“I think my chief of staff came too. I don’t want to misspeak. I don’t know. I don’t actually—I’m not sure. I don’t know. I don’t remember.”) When Rep. Mooney was shown an email indicating it was his other daughter, age 5, that accompanied him, he stated it was both daughters that must have been on the trip, *id.* at 70, though that email only mentioned one other daughter. *See* May 12, 2020 Email with Hardy Telecommunications (Exhibit 9 at 21-6617_0274) (“He just confirmed and he will have his very active 5 year old with him.”). Witness 1, who did not attend the site visit but helped facilitate Rep. Mooney’s travel remotely, stated that Rep. Mooney’s district director, a district employee, Rep. Mooney’s mother, Rep. Mooney’s chief of staff, and Rep. Mooney’s daughter were all present on the trip. *See* Witness 1 Transcript (Exhibit 24 at 21-6617_0426). That testimony is contradicted by Rep. Mooney, the hotel records, and the contemporaneous email mentioned above. Additionally, the timing—during the height of the COVID-19 pandemic and quarantine protocols—indicates that travel with a large group including older individuals, like Rep. Mooney’s mother, would be unlikely. Weighing the evidence, the OCE concludes that Rep. Mooney likely attended this trip with only one or two of his children.

⁶⁷ Alex Mooney for Congress, 2020 Pre-Primary Report, filed April 4, 2021 at 63.

⁶⁸ Exhibit A to March 10, 2021 Request for Information to Rep. Mooney.

⁶⁹ Smoke Hole Outfitters Expenditure Justifications (Exhibit 10 at 21-6617_0279).

⁷⁰ The document stating that the fishing trip involved staff was created by Witness 1, the same individual who is the only source for any evidence that individuals other than Rep. Mooney and his daughter(s) were present on this trip. *See* Witness 1 Transcript (Exhibit 24 at 21-6617_0383-85). Given that Witness 1’s testimonial evidence is supported only by a document he created, and is refuted by Rep. Mooney’s own recollection and other documents in the case, the OCE gives little weight to Witness 1’s assertion that Rep. Mooney’s staff or mother were on this trip.

⁷¹ Rep. Mooney Transcript (Exhibit 1 at 21-6617_0065-67).

⁷² *Id.* at 66.

⁷³ *Id.* at 65.

⁷⁴ May 12, 2020 Email with Forest Service Public Affairs Officer (Exhibit 11 at 21-6617_0282).

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66. A contemporaneous email sent on the evening of May 12, 2020 shows that Rep. Mooney also visited Hardy Telecommunications, a local business supplying internet to Hardy County in Rep. Mooney's district. The email is from one of Rep. Mooney's congressional employees to an employee of Hardy Telecommunications, and it states: "Congressman Mooney is unexpectedly going to be in Moorefield tomorrow and he asked me to ask if you would be open to having him stop in and getting [sic] a quick update on how things are going with your business. He will be available between 10-10:30 tomorrow."⁷⁶ A later email in the same chain states that Rep. Mooney "will have his very active 5 year old with him" but does not indicate that he will be accompanied by any others.⁷⁷
67. Rep. Mooney recalled the site visit upon reviewing the email, and stated that he stopped there on his way to Smoke Hole Resort from his home in Martinsburg.⁷⁸ He then also added that "I'm pretty sure I walked up and down the main street of Moorefield. It's a beautiful town. What I generally do, I may have one [site visit] set like this and I then would often walk up and down and I might stop into an antique store. I might stop into a library. I particularly like going to libraries"⁷⁹
68. The driving distance from Rep. Mooney's home to the Hardy Telecommunications office in Moorfield, West Virginia is approximately 1 hour and 38 minutes.⁸⁰ Smoke Hole Resort is an additional 25 minutes west of Hardy Telecommunications in the direction of Seneca Rocks.⁸¹
69. Considering the totality of the circumstances, it appears that this trip was primarily personal in nature, or at best mixed travel, incorporating both travel for personal enjoyment with his daughters and some incidental official or campaign work along the way.
70. Exploring a popular tourist destination in one's district is not a sufficient political or campaign purpose to justify campaign expenditures for a resort stay and private guided fishing tour for a Member and his family members.
71. The activities and manner of planning give the clear impression that the trip was primarily recreational. The only official or campaign work done on this trip was a 30 minute or less stop at a business that was close enough for an independent half-day trip from Rep. Mooney's home.⁸² And emails indicate this stop was merely incident to the trip to Smoke Hole Resort and Seneca Rocks: it was described as an "unexpected[]" stop; it was planned after reservations had already been made at Smoke Hole Resort; and Rep. Mooney offered

⁷⁵ Rep. Mooney Transcript (Exhibit 1 at 21-6617_0066).

⁷⁶ May 12, 2020 Email with Hardy Telecommunications (Exhibit 9 at 21-6617_0275).

⁷⁷ *Id.* at 274.

⁷⁸ Rep. Mooney Transcript (Exhibit 1 at 21-6617_0071-72).

⁷⁹ *Id.* at 73.

⁸⁰ Google (Google Maps directions to drive from Rep. Mooney's residential address to 121 S. Main St., Moorefield, WV), retrieved July 9, 2021.

⁸¹ Google (Google Maps directions to drive from 121 S. Main St., Moorefield, WV to 5413 N Fork Hwy, Cabins, WV), retrieved July 9, 2021.

⁸² *See supra* para. 68 note 79.

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended only a 30 minute window in which to make the site visit, indicating that he was willing to make the stop only if it fit his preexisting travel schedule.⁸³

72. The private guided fishing tour, for which there is no stated campaign or political purpose, confirms the recreational nature of the trip.
73. And as to the hike, while the presence of national park rangers adds a patina of official work, the timing of the emails shows that the resort stay was booked before Rep. Mooney received confirmation that park rangers would be available to give him a tour.⁸⁴
74. It appears most likely that a personal trip with his daughters was the primary purpose for the travel, and the minimal official or campaign activity was incident to that purpose.

D. Miscellaneous Expenditures That Are Likely Permissible

75. The OCE reviewed several other large expenditures that were raised in media reporting as potentially problematic. Evidence reviewed by the OCE indicates that these were likely permissible expenditures.
- i. Yearly All-Staff Meetings
76. Rep. Mooney and his staff arranged yearly all-staff meetings at local resorts and conference centers, including Smoke Hole Resort and Canaan Valley Resort.⁸⁵ Expenses at these meetings included lodging for staff, meals including alcoholic beverages, and some limited spending on recreation activities, which, over the years, included activities such as evening camp fires, trout fishing at a local pond, snow tubing, and cigar smoking. The OCE requested documents related to these all-staff meetings to confirm that the nature of the trips was official as opposed to recreational.⁸⁶
77. The documents produced included detailed agendas for the all-staff meetings occurring from 2017 to the present. Those agendas show that the multi-day events included meetings, seminars, and lectures focused on staff development, legislative issues, administrative policies and procedures, and guest lecturers presenting on topics relevant to Rep. Mooney and his staff's official duties.⁸⁷ Further, Rep. Mooney produced other material tending to show that the meetings and seminars were substantive and focused on official work. These materials included slide decks for various presentations,⁸⁸ staff evaluations of the planned events,⁸⁹ and action items developed during these meetings.⁹⁰

⁸³ See May 12, 2020 Email with Hardy Telecommunications (Exhibit 9 at 21-6617_0275) (request for meeting sent at 6:13 PM on May 12, 2020).

⁸⁴ Compare May 12, 2020 Email from Smoke Hole Resort (Exhibit 8 at 21-6617_0270-71) (hotel reservation confirmation sent at 9:22 AM on May 12, 2020) with May 12, 2020 Email with Forest Service Public Affairs Officer (Exhibit 11 at 21-6617_0282) (request for guided tour sent at 10:16 PM on May 12, 2020).

⁸⁵ Rep. Mooney Transcript (Exhibit 1 at 21-6617_0036-37).

⁸⁶ March 10, 2021 Request for Information to Rep. Mooney at 2.

⁸⁷ See e.g., 2019 All-Staff Meeting Agenda (Exhibit 12 at 21-6617_0284).

⁸⁸ District Presentation PowerPoint Document (Exhibit 13 at 21-6617_0288).

⁸⁹ 2020 All-Staff Meeting Completed Evaluations (Exhibit 14 at 21-6617_0294).

⁹⁰ Action Items Document (Exhibit 15 at 21-6617_307).

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78. As noted above, Rep. Mooney and his staff engaged in some recreational activities at these all-staff meetings, but the OCE determined that they were limited in cost, generally took place after a full day of substantive official work, and did not change the overall official nature of these events.⁹¹

ii. Rooster's Amish Shed

79. The OCE also reviewed documents and other evidence related to a storage shed that was purchased by the campaign committee from Rooster's Amish Shed and installed on Rep. Mooney's personal property at a cost of \$4,450.⁹² The storage shed was of particular concern because payments for improvements to the personal residence of a candidate, especially those that would increase the value of the home, raise serious personal use concerns.⁹³

80. Several factors indicate, however, that the purchase of the storage shed was permissible in this narrow circumstance.

81. First, photographic and testimonial evidence from Rep. Mooney indicates that the shed is used solely for the purpose of storing campaign materials.⁹⁴

82. Second, the method of payment for the shed and its installment indicate that Rep. Mooney was aware of the potential personal use concerns and allocated payments properly. While the shed was paid for by the campaign, Rep. Mooney personally paid for the gravel and concrete slab on which the shed was installed.⁹⁵ That slab is a permanent addition to his residential property, and he stated that he understood that changes to his "home or my yard structure" could raise personal use concerns.⁹⁶

83. Third, the shed itself is moveable and resaleable. It is not a permanent improvement to his residential property and could be sold as a campaign asset were the campaign to wind down at some point in the future.⁹⁷ Additionally, Rep. Mooney noted in his interview that the

⁹¹ For example, the trout fishing event that occurred at the 2019 all-staff meeting at Smoke Hole Resort occurred from about 6:30 PM to 8 PM on the evening Rep. Mooney's staff arrived at the Resort. The fishing was followed by an evening campfire, and the following day included meetings from 9 AM to 5 PM. *See* 2019 All-Staff Meeting Agenda (Exhibit 12 at 21-6617_0284). The cost of the trout event was minimal, as the Resort charged Rep. Mooney's office \$3 dollars per fishing rod rental, \$5 per pound of fish caught, and a \$2 cleaning fee for each trout. For seventeen people, the forecasted cost was under \$350. *See* Neeley Email re Trout Fishing (Exhibit 16 at 21-6617_0309). Additionally, because MRA funds may not be used to pay for recreational activities, *see* Members' Congressional Handbook at 21, Rep. Mooney appears to have properly allocated these expenses to the campaign, *see, e.g.*, Alex Mooney for Congress, 2019 Year End Report, filed April 4, 2021 at 92.

⁹² Compiled Rooster's Amish Shed Documents (Exhibit 17 at 21-6617_0314).

⁹³ *See generally*, FEC Advisory Opinion 2011-17 (Giffords) at 2.

⁹⁴ Photographs of shed produced by Rep. Mooney (Exhibit 18 at 21-6617_0324); Rep. Mooney Transcript (Exhibit 1 at 21-6617_0081).

⁹⁵ Rep. Mooney Transcript (Exhibit 1 at 21-6617_0082).

⁹⁶ *Id.*

⁹⁷ *See* Internal Memorandum on File with OCE re March 24, 2021 call with Rooster's Amish Shed; Rep. Mooney Transcript (Exhibit 1 at 21-6617_0083).

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purchase made financial sense for the campaign because a rental storage unit cost approximately \$85 a month, so the shed would pay for itself within 4-5 years.⁹⁸

iii. Auto Repairs

84. Finally, the OCE reviewed three expenditures at Advanced Auto Authority Services in Ranson, West Virginia from 2018 to 2020 totaling \$5,053.06.⁹⁹ An initial review of FEC reports revealed no evidence of the purchase of a campaign vehicle that would explain the significant spending on auto repairs.
85. Rep. Mooney produced sufficient evidence to show that his family had replaced their old family vehicle, a Chevrolet Tahoe, with a newer minivan purchased on May 24, 2018.¹⁰⁰ Around that time, Rep. Mooney began using the Tahoe exclusively for campaign work, though kept the title in his name.¹⁰¹ The first repairs on the Tahoe were a set of new tires, and were purchased in the fall of 2018 to get the vehicle in working order shortly before the 2018 general election.¹⁰² Subsequent repairs were further maintenance on a car that Rep. Mooney described as having “a lot of miles on it.”¹⁰³
86. Supporting Rep. Mooney’s claim that the Tahoe is used exclusively for campaign work, Rep. Mooney described the surplus of cars his family has when compared to the number of drivers in his household. In addition to the minivan, which is primarily driven by his wife, Rep. Mooney has two other cars that he drives, a Honda Accord and a Toyota Prius.¹⁰⁴ Those cars are also driven, at times, by his seventeen year old son who currently holds a provisional license.¹⁰⁵ There are no other drivers in the household.¹⁰⁶
- * * *
87. In sum, while some of the expenditures the OCE reviewed were found to be legitimate campaign expenditures, the evidence supports the conclusion that Rep. Mooney has and continues to impermissibly charge day-to-day meals to the campaign, and has, in at least two instances, allowed his campaign to pay for trips that are primarily personal in nature.
88. Based on the foregoing information, the Board finds that there is substantial reason to believe that Rep. Mooney’s campaign committees reported campaign disbursements that may not be legitimate and verifiable campaign expenditures attributable to bona fide campaign or political purposes.

⁹⁸ Rep. Mooney Transcript (Exhibit 1 at 21-6617_0079).

⁹⁹ Alex Mooney for Congress, 2020 April 15 Quarterly Report, filed April 4, 2021 at 100; Alex Mooney for Congress, 2019 October 15 Quarterly Report, filed April 4, 2021 at 79; Alex Mooney for Congress, 2018 30 Day Post-General Report, filed April 4, 2021 at 73.

¹⁰⁰ Proof of Vehicle Purchase (Exhibit 19 at 21-6617_0326-27).

¹⁰¹ Rep. Mooney Transcript (Exhibit 1 at 21-6617_0087).

¹⁰² *Id.* at 87-88.

¹⁰³ *Id.* at 88.

¹⁰⁴ *Id.* at 89-90.

¹⁰⁵ *Id.* at 90.

¹⁰⁶ *Id.*

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III. REP. MOONEY OMITTED REQUIRED INFORMATION ON FEC REPORTS FOR REIMBURSEMENTS TO HIMSELF AND FOR SPENDING RELATED TO GIFT CARDS PURCHASED BY THE CAMPAIGN

A. Applicable Law, Rules, and Standards of Conduct

89. Federal Election Commission Regulations

11 C.F.R. § 104.3(b)(4) Itemization of Disbursements by Authorized Committees

“Itemization of disbursements by authorized committees. Each authorized committee shall report the full name and address of each person in each of the following categories, as well as the information required by each category.

(i) Each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the election cycle is made by the reporting authorized committee to meet the authorized committee's operating expenses, together with the date, amount and purpose of each expenditure.”¹⁰⁷

FEC Instructions for FEC Form 3 and Related Schedules, Instructions for Schedule B, Itemized Disbursements (Revised May 2016)

“Use Schedule B to list each disbursement required to be itemized. DO NOT combine more than one category of disbursements on the same Schedule B.”

78 Fed. Reg. 40625, 40626 (July 8, 2018), Reporting Ultimate Payees of Political Committee Disbursements – Discussion Regarding Itemization of Reimbursements

“If the political committee itemizes its reimbursement to the individual on Schedule B of its report filed with the Commission, then the political committee may also need to provide information about the vendor to which the individual made payment in a memo entry associated with the reimbursement. A memo entry is required for any reimbursement of expenses other than travel and subsistence expenses if the individual's payments to the vendor on behalf of the committee aggregate more than \$200 in a calendar year (or election cycle for authorized committees). When the reimbursement is for travel and subsistence advances that exceed \$500, a memo entry is required for each payment to a specific vendor by that individual on behalf of the political committee if total payments to that vendor by the political committee or by that individual on behalf of the committee aggregate more than \$200 in a calendar year (or election cycle for authorized committees). Each memo entry must include the name and address of the vendor, as well as the date, amount, and purpose of the payment.”

¹⁰⁷ See also FEC Guide for Congressional Candidates and Committees (June 2014) (“A committee must use a separate Schedule B for each category of disbursements that must be itemized; the committee may not mix different categories of disbursements on the same schedule.”); FEC, How to Report Credit Card Disbursements, available at <https://www.fec.gov/help-candidates-and-committees/filing-reports/credit-card-disbursements/> (last visited Feb. 15, 2021) (“The committee must also itemize, as a memo entry, any specific transactions charged on a credit card if payments to the actual vendor exceed the \$200 aggregate threshold. The memo entry must include the name and address of the vendor, the purpose of the disbursement, date the services were received, and the amount of the disbursement.”).

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B. 45 Unitemized Reimbursements totaling \$22,865.05 to Rep. Mooney

90. In reviewing FEC reports filed by the campaign committee, the OCE discovered that there were many lump-sum reimbursements made to Rep. Mooney without the itemization required by FEC regulations. Without itemizing reimbursements, it is impossible to determine who ultimately received the campaign funds and whether those funds were spent for a bona fide campaign purpose.
91. The OCE requested information from Rep. Mooney on 45 unitemized reimbursements made from the campaign to Rep. Mooney between January 24, 2017 and December 29, 2020.^{108, 109} Those reimbursements represented \$22,865.05 in unaccounted for funds paid to Rep. Mooney.
92. In his initial production, on April 2, 2021, Rep. Mooney was only able to provide underlying documentation or information for \$5,882.69 of the outstanding \$22,865.05, leaving approximately \$16,982.36 unaccounted for.¹¹⁰ And the information that was provided had numerous apparent inaccuracies. For example, for a September 28, 2020 reimbursement to Rep. Mooney in the amount of \$96.44, the production accounted for \$140.88 of expenditures, and a July 30, 2020 reimbursement for \$178.40 listed \$289.59 of underlying expenditures.¹¹¹
93. These inaccuracies are likely due to a general lack of consistent record keeping and the imprecise method used by Rep. Mooney and his staff to attempt to reconstruct his spending back to 2017. As explained by Rep. Mooney and Witness 1 in their interviews, the process for attempting to match reimbursements with underlying records involved reviewing Rep. Mooney's personal credit card records and whichever receipts may have been maintained, and attempting to match those receipt and credit card dates to dates of reimbursements and the purpose description that was provided on the relevant FEC report, if any.¹¹²
94. Rep. Mooney and Witness 2 acknowledged in their interviews that, prior to media reports about Rep. Mooney's problematic spending and the initiation of the OCE review, the campaign committee's record keeping and spending policies were inadequate and lead to inaccurate or deficient FEC reporting.¹¹³ In an effort to remedy that situation, Rep. Mooney hired Witness 2 to review prior filings and attempt to make amendments to prior reports.¹¹⁴ He also retained PDS Compliance, a campaign finance compliance firm, to handle the processing of expenditures, receipts, and reimbursements, and also to manage the campaign committees' FEC filings going forward.¹¹⁵ These remedial measures were implemented

¹⁰⁸ March 10, 2021 Request for Information to Rep. Mooney at 3.

¹⁰⁹ The original RFI requested information on 47 different reimbursements to Rep. Mooney, but it was determined that two reimbursements in that group had in fact been itemized. *See* Exhibit C to March 10, 2021 Request for Information to Rep. Mooney at 3.

¹¹⁰ Expenditure Justifications for Reimbursements to Rep. Mooney (Exhibit 4 at 21-6617_0188-236).

¹¹¹ *Id.* at 194, 197.

¹¹² Rep. Mooney Transcript (Exhibit 1 at 21-6617_0099); Witness 1 Transcript (Exhibit 24 at 21-6617_0381-82).

¹¹³ *See, e.g.*, Rep. Mooney Transcript (Exhibit 1 at 21-6617_0092-96, 106-107); Witness 2 Transcript (Exhibit 2 at 21-6617_0125, 129-130).

¹¹⁴ Rep. Mooney Transcript (Exhibit 1 at 21-6617_0107).

¹¹⁵ *Id.* at 105-107.

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended through late 2020 into 2021, and the campaign committees are now using PDS Compliance procedures to better manage their finances and FEC reporting.¹¹⁶

95. However, as explained above,¹¹⁷ the underlying documentation and transaction details that Rep. Mooney was able to gather and provide to the OCE showed that the campaign's prior lack of itemization did in fact have the effect of concealing possible personal use. Within this set of transaction details produced on April 2, 2021 were 54 small-dollar meal expenditures purchased directly by Rep. Mooney totaling \$651.62.¹¹⁸
96. Shortly after the April 2, 2021 production, Rep. Mooney's counsel informed the OCE that they had identified approximately \$8,000 in reimbursements for which Rep. Mooney lacked sufficient documentation to justify the original expenditure, also noting that the underlying expenses were "possibly compliant, but not clearly compliant."¹¹⁹ Witness 2 made a similarly ambiguous statement regarding these reimbursements: "there were items that were -- either they were missing receipts or were unclear whether they were campaign expenses, you know, or other expenses. And to expedite the filing of the amended reports, we removed many expenses and had the congressman simply reimburse the campaign for those expenses."¹²⁰
97. On April 28, 2021, Rep. Mooney produced a list of \$8,000.51 of expenditures for which he had reimbursed his campaign.¹²¹ Some of those reimbursed expenditures were clear cases of personal use. For example, Rep. Mooney reimbursed \$947.39 of propane utility bills he had split with the campaign because of his campaign's use of his basement as an office space, which is *per se* personal use under FEC regulations.¹²² This set of reimbursements also included the \$2,445.22 spent on the Canaan Valley Resort holiday vacation for Rep. Mooney and his family.¹²³
98. The OCE responded by noting that there was still a large difference between the total \$22,865.05 of disbursements to Rep. Mooney and the amount for which Rep. Mooney had either provided additional detail or reimbursed to the campaign.¹²⁴ In support of that response, the OCE identified \$9,813.16 of reimbursements to Rep. Mooney for which there was still no explanation, or for which the OCE could not determine if the amount had been reimbursed.¹²⁵
99. In telephone conversations and during Rep. Mooney's interview, Rep. Mooney's counsel stated that they would continue to review the outstanding reimbursements and would likely be recommending to Rep. Mooney that he make another round of reimbursements to his

¹¹⁶ Witness 2 Transcript (Exhibit 2 at 21-6617_0124-25).

¹¹⁷ See *supra* para. 45-46 (detailing the small-dollar meals expenditure identified in the additional information provided by Rep. Mooney)

¹¹⁸ Expenditure Justifications for Reimbursements to Rep. Mooney (Exhibit 4 at 21-6617_0188-236).

¹¹⁹ April 7, 2021 Email from Dirk Haire to Sean Quinn (Exhibit 7 at 21-6617_0266).

¹²⁰ Witness 2 Transcript (Exhibit 2 at 21-6617_0129).

¹²¹ Summary of April 2021 Reimbursed Expenses (Exhibit 6 at 21-6617_0259).

¹²² *Id.* at 261.; Rep. Mooney Transcript (Exhibit 1 at 21-6617_0100-01).

¹²³ See *supra* Part II.B.ii.

¹²⁴ May 7, 2021 Email from Sean Quinn to Kristen Broz (Exhibit 20 at 21-6617_0329).

¹²⁵ *Id.*

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended campaign.¹²⁶ Rep. Mooney made that second reimbursement sometime in May of 2021 for \$4,138.72.¹²⁷

100. Along with the reimbursement, Rep. Mooney provided a supplemental production, including receipts and underlying information for any additional \$2,578.42 of previously unitemized reimbursements.¹²⁸
101. Again, this new set of transaction details exposed more likely cases of personal use through the purchase of small-dollar meals. Here, the new data showed an additional 18 small-dollar, in-district meal purchases totaling \$196.53.¹²⁹
102. The lack of precise record keeping, and the inexact method for reconstructing Rep. Mooney's expenditures and reimbursements make it impossible to determine exactly which reimbursements to Rep. Mooney have been accounted for or returned to the campaign. However, with certainty, the OCE can say that of the original \$22,865.05 in unitemized reimbursements, Rep. Mooney has refunded his campaign a total of \$12,139.23 for his personal expenditures.¹³⁰ Rep. Mooney's productions have also provided underlying documentation or at least some level of underlying transaction detail for an additional \$8,461.11 of the original expenditures.¹³¹ This leaves approximately \$2,264.71 of the originally unitemized reimbursements outstanding after the several rounds of reimbursements and document productions.
103. The OCE notes that merely providing the required transaction detail for the \$8,461.11 of previously unitemized expenditures does not mean that those underlying expenditures were in fact permissible. As explained above, there is substantial reason to believe that at least \$848.15 of that spending may fall into the category of impermissible individual, in-district meal purchases.
104. The OCE further notes that while Rep. Mooney has done substantial work to collect as much information as possible about the reimbursements in question, the reimbursements to him remain unitemized in the campaign committees FEC filings as of the writing of this report. FEC records and Rep. Mooney's productions show that the remedial measures he has taken have resulted in many amendments to past reports in an effort to bring them up to regulation standards. A quick review of the filings show multiple amendments to many reports, and a round of amendments on April 4, 2021 that resulted in the refile of nearly every past report for Alex Mooney for Congress.¹³² However, those amendment efforts have not yet reached this reimbursement issue, and the level of transparency required by FEC regulations remains unmet.

¹²⁶ Rep. Mooney Transcript (Exhibit 1 at 21-6617_0098).

¹²⁷ June 16, 2021 Email from Kristen Broz to Sean Quinn (Exhibit 21 at 21-6617_0338).

¹²⁸ Expenditure Justifications for May 2021 Reimbursements from Rep. Mooney (Exhibit 5 at 21-6617_0238-257).

¹²⁹ *Id.*

¹³⁰ *See supra* para. 97, 99.

¹³¹ *See supra* para. 92, 100.

¹³² *See e.g.*, Alex Mooney for Congress, 2020 April 15 Quarterly Report, filed April 4, 2021.

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C. An Additional \$17,250 in Unitemized Expenditures Related to Gift Card Purchases at St. James Parish and St. Zita's Gift Shop

105. The OCE also inquired about \$17,250 in expenditures at vendors listed on FEC reports as St. James Parish and St. Zita's. Each of these expenditures was for a round number, in most cases \$500 or \$750, with the largest expenditure being \$2,000.¹³³
106. During the review, the OCE determined that these expenditures were for gift cards to local vendors sold by Rep. Mooney's church, St. James Parish, which has a gift shop, St. Zita's Gift Shop, that sells the gift certificates.¹³⁴ Rep. Mooney told the OCE he uses these gift cards to make campaign expenditures, such as food and beverage purchases for campaign events or campaign volunteers.¹³⁵ Documents produced by Rep. Mooney show that the gift cards were all or nearly all for a grocery store called Martins.¹³⁶
107. Rep. Mooney stated that he chose this method of campaign spending because his church received some portion of the gift card purchase, approximately two to five percent of the value of the gift card.¹³⁷
108. However, this method of campaign spending circumvents and likely violates FEC regulations requiring disclosure of the ultimate recipient of campaign funds. This method of effectuating a transaction, that is, purchasing a gift card through a third party, has the effect of concealing the ultimate recipient of campaign funds and obscuring individual transaction details. As explained above, the failure to report the ultimate payee or itemize underlying purchases creates the potential for the concealment of personal use.
109. Witness 2, Rep. Mooney's campaign finance consultant, agreed with this conclusion, stating that he believed the campaign needed to report the individual purchases made with a gift card, just as if they had been made with liquid campaign funds or a campaign bank account.¹³⁸ He further explained that he had recommended that the campaign adopt this practice, and sometime in the summer of 2020, the campaign began tracking and reporting expenditures made with gift cards.¹³⁹
110. Combining the unitemized reimbursements to Rep. Mooney and the expenditures obscured through gift card purchases, Rep. Mooney's campaign has failed to disclose underlying transactions for at least \$40,115.05 of campaign spending since 2017. And there is reason to believe that the disclosure failure has had the effect, whether intended or not, of concealing thousands of dollars of personal use.
111. Based on the foregoing information, the Board finds that there is substantial reason to believe that Rep. Mooney omitted required information from his FEC candidate committee reports.

¹³³ Exhibit B to March 10, 2021 Request for Information to Rep. Mooney.

¹³⁴ Rep. Mooney Transcript (Exhibit 1 at 21-6617_0084-85).

¹³⁵ *Id.* at 85-86.

¹³⁶ St. Zita's Invoices (Redacted) (Exhibit 23 at 21-6617_0363).

¹³⁷ Rep. Mooney Transcript (Exhibit 1 at 21-6617_0085).

¹³⁸ Witness 2 Transcript (Exhibit 2 at 21-6617_0134-35).

¹³⁹ *Id.*

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IV. CONCLUSION

112. Based on the foregoing information, the Board finds that there is substantial reason to believe that Rep. Mooney's campaign committees reported campaign disbursements that may not be legitimate and verifiable campaign expenditures attributable to bona fide campaign or political purposes.
113. Accordingly, the Board recommends that the Committee further review the above allegation that Rep. Mooney converted campaign funds from his campaign committees to personal use, or Rep. Mooney's campaign committees expended funds that were not attributable to bona fide campaign or political purposes.
114. Based on the foregoing information, the Board finds that there is substantial reason to believe that Rep. Mooney omitted required information from his FEC candidate committee reports.
115. Accordingly, the Board recommends that the Committee further review the above allegation that Rep. Mooney failed to disclose required information in his FEC candidate committee filings.

**V. INFORMATION THE OCE WAS UNABLE TO OBTAIN AND
RECOMMENDATION FOR THE ISSUANCE OF SUBPOENAS**

116. The following witnesses, by declining to provide requested information to the OCE, did not cooperate with the OCE review:
- a. Capital One Bank (USA), N.A.;
 - b. Canaan Valley Resort & Conference Center; and
 - c. Smoke Hole Caverns & Log Cabin Resort.
117. The Board recommends that the Committee on Ethics issue subpoenas to Capital One Bank (USA), N.A., Canaan Valley Resort & Conference Center, and Smoke Hole Caverns & Log Cabin Resort.