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HOUSE OF REPRESENTATIVES {

REPORT

115-__

IN THE MATTER OF ALLEGATIONS
RELATING TO REPRESENTATIVE
RUBEN KIHUEN

R E P O R T
OF THE
COMMITTEE ON ETHICS



November 16, 2018.—Referred to the House Calendar and ordered
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**115TH CONGRESS, 2ND SESSION
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ETHICS**

**IN THE MATTER OF ALLEGATIONS RELATING TO
REPRESENTATIVE RUBEN KIHUEN**

NOVEMBER 16, 2018

Ms. BROOKS from the Committee on Ethics submitted the following

REPORT

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ONE HUNDRED FIFTEENTH CONGRESS

U.S. House of Representatives

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November 16, 2018

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The Honorable Karen L. Haas
Clerk, House of Representatives
Washington, DC 20515

Dear Ms. Haas:

Pursuant to clauses 3(a)(2) and 3(b) of Rule XI of the Rules of the House of Representatives, we herewith transmit the attached report, "In the Matter of Allegations Relating to Representative Ruben Kihuen."

Sincerely,

A handwritten signature in blue ink that reads "Susan W. Brooks".

Susan W. Brooks
Chairwoman

A handwritten signature in blue ink that reads "Theodore E. Deutch".

Theodore E. Deutch
Ranking Member

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**115TH CONGRESS, 2ND SESSION
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REPRESENTATIVE RUBEN KIHUEN**

NOVEMBER 16, 2018

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R E P O R T

In accordance with House Rule XI, clauses 3(a)(2) and 3(b), the Committee on Ethics (“Committee”) hereby submits the following Report to the House of Representatives:

I. INTRODUCTION

On December 21, 2017, the Committee, in accordance with House Rule XI, clause 3, and Committee Rules 10(a)(2) and 18, unanimously voted to establish an investigative subcommittee (“ISC”) to determine whether Representative Kihuen engaged in conduct that constitutes sexual harassment, in violation of House Rules, law, regulations, or other standards of conduct. On September 26, 2018, the ISC transmitted its Report to the full Committee, summarizing its findings and recommending that the Committee reprove Representative Kihuen for his conduct.

The Committee agrees with the findings and conclusions the ISC reached following its thorough nine-month investigation.¹ Specifically, the Committee found that Representative Kihuen made persistent and unwanted advances towards women who were required to interact with him as part of their professional responsibilities. The Committee also found that Representative Kihuen’s actions violated clause 1 and clause 2 of the Code of Official Conduct, and that his conduct warrants reproof by the Committee.

On November 15, 2018, the Committee voted to adopt the ISC’s Report, which, along with this Report, will serve as a reproof of Representative Kihuen. The ISC’s Report is transmitted as an appendix to this Report.²

II. PROCEDURAL HISTORY

On December 21, 2017, the Committee voted to establish an ISC to investigate allegations involving Representative Kihuen. On January 2, 2018, the Committee announced that

¹ The Committee thanks the Members of the ISC for their efforts and attention to this matter.

² See Appendix A.

Representative Kenny Marchant was designated ISC Chairman, Representative Yvette Clarke was designated ISC Ranking Member, and Representative Jackie Walorski and Representative Brian Higgins were designated Members of the ISC.

The ISC issued voluntary requests for information to Representative Kihuen and six other individuals. In response to those requests, the ISC obtained and reviewed over 2,700 pages of materials. The ISC met a total of eleven times and interviewed twelve witnesses, including individuals who have publicly raised allegations against Representative Kihuen, corroborating witnesses, members of Representative Kihuen's campaign and congressional staffs, character witnesses proffered by Representative Kihuen, and Representative Kihuen himself. In addition, the ISC reviewed Representative Kihuen's written submissions regarding the allegations in this matter.

On September 26, 2018, the ISC unanimously voted to adopt and issue its Report, finding that Representative Kihuen violated clause 1 and clause 2 of the Code of Official Conduct. The ISC did not recommend a sanction requiring floor action by the House of Representatives, but did recommend that the Committee reprove Representative Kihuen, a sanction which the Committee is authorized by the House Rules to issue on its own authority.³ As the Committee has noted previously, reproof by the Committee is "intended to be a clear public statement of rebuke of a Member's conduct issued by a body of that Member's peers acting . . . on behalf of the House of Representatives."⁴

Pursuant to House Rule XI, clause 3(a)(2), which provides that the Committee may report to the House its findings and conclusions for final disposition of investigative matters after "notice and hearing," the Committee provided Representative Kihuen with a copy of the ISC Report on October 2, 2018, and offered him the opportunity to be heard orally and/or in writing by the full Committee. Representative Kihuen responded to the ISC's Report through a written submission and by appearing before the Committee on November 15, 2018. Representative Kihuen's written submission is attached as an appendix to this Report.⁵ The Committee considered the ISC's Report, as well as Representative Kihuen's submissions and appearance before the Committee, and agreed with the ISC that Representative Kihuen's actions violated clause 1 and clause 2 of the Code of Official Conduct.

III. FINDINGS AND CONCLUSIONS

Three women testified before the ISC that Representative Kihuen made unwanted physical and verbal advances towards them between 2013 and 2017.⁶ A Washington D.C. employee whose firm worked with Representative Kihuen's re-election campaign in 2017 ("D.C. Firm Employee") testified that Representative Kihuen made unwanted physical and verbal advances towards her including, among other things, touching her lower back and shoulders, repeatedly kissing her on

³ House Rule XI, clause 3(a)(1).

⁴ Comm. on Ethics, *In the Matter of Allegations Relating to Representative Ed Whitfield*, H. Rep. 114-685, 114th Cong. 2d Sess. 2 (2016) (hereinafter *Whitfield*) (quoting Comm. on Standards of Official Conduct, *In the Matter of Representative E.G. "Bud" Shuster*, H. Rep. 106-979, 106th Cong. 2d Sess. 113 (2000) (hereinafter *Shuster*)).

⁵ See Appendix B.

⁶ See generally ISC Report.

the cheek, asking her personal questions such as did she live alone, commenting on her physique, and suggesting that he could help her career if she were willing to entertain his romantic interests.⁷ A staffer on Representative Kihuen's 2016 congressional campaign ("Campaign Staffer") also testified that she was subjected to unwanted physical and verbal advances by Representative Kihuen during his 2016 congressional campaign, including, among other things, the touching of her thigh on two occasions, comments on how she looked, suggestions that Representative Kihuen would take her out if she did not work for him, a suggestion that she and Representative Kihuen should get a hotel room together, and questions regarding whether she would ever cheat on her boyfriend.⁸ Finally, a female lobbyist who worked with Representative Kihuen in Nevada between 2013 and 2015 ("Nevada Lobbyist") testified before the ISC that Representative Kihuen made unwanted physical and verbal advances towards her including, among other things, sliding his hand under her dress and onto her thigh, grabbing her buttocks, messages asking her to come and sit on his lap, asking her what color her panties were, suggesting she would look good naked, and messages suggesting, through the use of emojis, that they make a sex tape together.⁹

Representative Kihuen generally denied the allegations of unwanted advances.¹⁰ Despite Representative Kihuen's denials, each of the complainant's allegations were supported by documentary evidence and some of the alleged incidents were corroborated by third party witnesses.¹¹ Furthermore, at least two outside entities were made aware of Campaign Staffer and D.C. Firm Employee's allegations and approached Representative Kihuen, and his campaign, about his behavior in 2016 and 2017.¹²

Similarities in the allegations bolster the credibility of the complainants.¹³ Two unrelated women, Campaign Staffer and Nevada Lobbyist, both testified that Representative Kihuen touched their thighs while they were riding in a car with him.¹⁴ Two unrelated women, Campaign Staffer and a partner at the D.C. firm, both testified that Representative Kihuen asked them if they have ever or would ever cheat on their boyfriend or husband.¹⁵ Two unrelated women, D.C. Firm Employee and Nevada Lobbyist, testified and/or produced evidence that Representative Kihuen spoke to them about their career or career advancement in the course of hitting on them.¹⁶ Finally, two unrelated women, Campaign Staffer and Nevada Lobbyist, both testified that Representative

⁷ *Id.* at 3-9.

⁸ *Id.* at 9-15.

⁹ *Id.* at 15-20.

¹⁰ Some of the allegations were outside the Committee's jurisdiction. While the Committee cannot make a finding of a violation on the basis of conduct outside of its jurisdiction, the Committee can consider all relevant evidence. Representative Kihuen's denials made it particularly important to consider the allegations outside the Committee's jurisdiction.

¹¹ ISC Report at 3-20.

¹² *Id.* Representative Kihuen responded to the discussion regarding his behavior towards employees at the D.C. Firm by asking the D.C. Firm Partner confronting him if she would ever cheat on her husband. *Id.* at 8-9.

¹³ *Id.* at 3-15.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

Kihuen grabbed the back of their thigh or their buttocks while they were alone in an office with him.¹⁷

The Committee has accepted the ISC’s findings that “Representative Kihuen’s complainants [are] credible based on their testimony and accompanying supporting evidence.”¹⁸ On November 15, 2018, the Committee voted to adopt the ISC’s Findings and Conclusions and to release this public Report finding that Representative Kihuen violated clauses 1 and 2 of the Code of Official Conduct by making persistent and unwanted advances toward women who were required to interact with him as part of their professional responsibilities.

House Rule XXIII, clause 1 states that “[a] Member . . . of the House shall behave at all times in a manner that shall reflect creditably on the House,” and clause 2 states that “[a] Member . . . shall adhere to the spirit and the letter of the Rules of the House.” The Committee found that Representative Kihuen violated clause 1 by failing to behave in a manner that reflected creditably on the House, and violated clause 2 by violating the spirit of sexual harassment laws.¹⁹

The Committee found that, while serving as a Member of Congress, Representative Kihuen engaged in unwanted physical contact by repeatedly kissing D.C. Firm Employee’s cheek and touching her shoulders and lower back, and engaged in unwanted verbal advances by commenting on D.C. Firm Employee’s physique, commenting on her appearance, inquiring about her relationship status, asking D.C. Firm Employee if she lived alone, commenting that he lived alone, and insinuating that he would help D.C. Firm Employee with her career in exchange for a romantic relationship.²⁰ The Committee also found that Representative Kihuen behaved inappropriately when inquiring whether a partner at the D.C. Firm would cheat on her spouse during a conversation about Representative Kihuen’s behavior towards women.²¹ The Committee agreed with the ISC that the aforementioned behavior by Representative Kihuen violated clause 1 and clause 2 of the Code of Official Conduct.²²

¹⁷ *Id.*

¹⁸ *Id.* at 25.

¹⁹ *Id.* at 23-25; 29-31 (providing a detailed analysis of prevailing sexual harassment laws and their applicability to Representative Kihuen’s actions in the instant matter).

²⁰ *Id.* at 29-30.

²¹ *Id.*

²² Representative Kihuen, through counsel, argues that the ISC, and by extension the Committee, “does not have authority to find that the Congressman actually violated the Code of Official Conduct without adopting a Statement of Alleged Violation.” This is incorrect. Committee Rule 19(f) states that “[u]pon completion of the inquiry, an investigative subcommittee, by a majority vote of its members, *may* adopt a Statement of Alleged Violations if it determines that there is substantial reasons to believe that a violation of the Code of Official Conduct . . . has occurred.” (emphasis added). Rule 19(f) leaves the decision whether to issue a Statement of Alleged Violation (“SAV”), and whether to seek harsher sanctions such as expulsion from the House, within the discretion of the ISC. Committee Rule 19(g) specifically requires an ISC to issue a report to the Committee with a summary of its findings and any appropriate recommendation if it does not adopt an SAV, and the ISC followed those procedural steps. The ISC properly exercised its discretion and chose not to issue a SAV, or seek harsher sanctions for Representative Kihuen’s conduct, but chose the same procedural steps utilized by other ISCs in the past. *See Whitfield*; Comm. on Ethics, *In the Matter of Allegations Relating to Representative Don Young*, H. Rep. 113-487, 113th Cong. 2d Sess. (2014). Indeed, the Committee regularly finds Members to be in violation of the Code of Conduct without even impaneling an ISC, which is a necessary prerequisite to adopting an SAV. *See* Comm. on Ethics, *In the Matter of Allegations Relating to Representative Luis V. Gutiérrez*, H. Rep. 115-617, 115th Cong. 2d Sess. (2018); Comm. on

Likewise, the Committee found that Representative Kihuen violated clauses 1 and 2 of the Code of Official Conduct by making unwanted physical and verbal advances towards Campaign Staffer. During his 2016 campaign for election to the House, Representative Kihuen made unwanted advances towards Campaign Staffer by placing his hand on her thigh while the two of them were driving back from a meeting, by grabbing the back of her thigh as she stood up to check his computer during call time, by telling her “you look really good,” and “I would take you out if you didn’t work for me,” by suggesting that the two of them should get a room as they arrived at a hotel for a meeting, and by asking her if she ever cheated on her boyfriend.²³ While the ISC chose not to “address whether any of Representative Kihuen’s behavior prior to being sworn in as a Member of the House falls within the ISC’s jurisdiction,” the Committee has repeatedly noted it has jurisdiction over “misconduct relating to a successful campaign for election to the House,”²⁴ and Representative Kihuen’s behavior towards Campaign Staffer, especially when coupled with his conduct as a sitting Member of the House, warrants reproof.

The Committee has found similar conduct, *i.e.* unwanted advances towards an individual not employed by the Member, to be a violation of clause 1.²⁵ As the Committee has previously stated, “[c]ause 1 is the most comprehensive provision of the Code and was adopted, in part, so that the Committee, in applying the Code, would retain ‘the ability to deal with any given act or accumulation of acts which, in the judgment of the committee, are severe enough to reflect discredit on the Congress.’”²⁶ While the ISC could have sought harsher sanctions for Representative Kihuen’s violations, the ISC recommended and the Committee found that reproof is an appropriate sanction for the instant violations.²⁷

Finally, the Committee reiterates an important point made in the ISC’s Report. “While Members are free to pursue romantic and intimate relationships outside of the House, there is an inherent power imbalance when Members romantically pursue individuals who are required to

Ethics, *In the Matter of Allegations Relating to Representative Bobby L. Rush*, H. Rep. 115-618, 115th Cong. 2d Sess. (2018); Comm. on Ethics, *In the Matter of Allegations Relating to Representative David McKinley*, H. Rep. 114-795, 114th Cong. 2d Sess. (2016).

²³ ISC Report at 10-11.

²⁴ *Id.* at 22-23; House Comm. on Standards of Official Conduct, *In the Matter of Representative Jay C. Kim*, H. Rep. 105-797, 105th Cong. 2d Sess. (1998); House Comm. on Standards of Official Conduct, *In the Matter of Representative Earl F. Hilliard*, H. Rep. 107-130, 107th Cong. 1st Sess. (2001) (hereinafter *Hilliard*); Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Michael Grimm (Nov. 26, 2012).

²⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Gus Savage*, H. Rep. 101-397, 101st Cong. 2d Sess. 14 (1990) (finding a violation of then-Rule XLIII, clause 1, which utilized the same language now found at Rule XXIII, clause 1, based on unwanted sexual advances directed towards a Peace Corp volunteer who was not an employee of the House). Representative Kihuen seeks to distinguish the matter of Representative Gus Savage by arguing that the Committee did not find that Representative Savage violated a House Rule but instead found that his conduct was “contrary to the standard of conduct expressed” in the House Rules. Representative Kihuen’s parsing of language is nonsensical and does not restrict the ISC or the Committee’s authority to find Representative Kihuen in violation of applicable House Rules.

²⁶ *Shuster* at 9; *Hilliard* at 12.

²⁷ See House Rule XI, clause 3(a)(2) (establishing the Committee’s investigative authority); *Shuster* at 113 (explaining that reproof by the Committee is “intended to be a clear public statement of rebuke of a Member’s conduct issued by a body of that Member’s peers acting . . . on behalf of the House of Representatives.”).

interact with Members as part of their professional responsibilities.”²⁸ While Representative Kihuen repeatedly downplayed his actions when speaking with the ISC, in his written response to the ISC’s Report, he apologized to the complainants and acknowledged that his actions may have been perceived in ways other than what he intended.²⁹

Service as an elected official involves power imbalances that Members must be careful not to exploit. Indeed, each of the complainants had potential career opportunities affected by their efforts to avoid continued advances by Representative Kihuen.³⁰ Representative Kihuen now appears to better understand the effects that a power imbalance can have and the Committee joins Representative Kihuen in his hope that the “ISC investigation will make other Members of Congress cognizant of possible unintended consequences of their actions and will improve the working environment for all who interact with Members, whether as employees or not.”³¹

IV. STATEMENT UNDER HOUSE RULE XIII, CLAUSE 3(c)

The Committee made no special oversight findings in this Report. No budget statement is submitted. No funding is authorized by any measure in this Report.

²⁸ ISC Report at 30.

²⁹ See Appendix B. While Representative Kihuen apologized for his actions, he also argues that the ISC’s Report gives “short shrift” to statements by D.C. Firm Employee that she had a “plan” to get Representative Kihuen to resign and “blackmail” him. The ISC Report cites to testimony and evidence by D.C. Firm Employee, submitted voluntarily, that she used “poor” and “unfortunate” wording by telling some friends and co-workers that she had a “plan” to get Representative Kihuen to resign and by referring to her decision to speak out as “blackmail.” See ISC Report at 8. D.C. Firm Employee explained that she was “frustrated” at Representative Kihuen’s attempts to delegitimize the women speaking out against him, that she understands that her desire that Representative Kihuen resign was different than blackmail, and that she “had no intention of blackmailing him.” *Id.* The ISC considered all the evidence, questioned D.C. Firm Employee extensively on the topic, and “found no evidence that D.C. Firm Employee’s statements were anything more than an expression of her conflict about going public with allegations regarding Representative Kihuen’s behavior towards her while he was a sitting Member of Congress.” *Id.*

³⁰ See ISC Report at 7 (D.C. Firm Employee testifying regarding a decision to exclude her from a Las Vegas fundraiser in part because of Representative Kihuen’s interest in her); *id.* at 14 (Campaign Staffer explaining that her decision to leave Representative Kihuen’s campaign early, to avoid continued advances, may affect future employment opportunities); *id.* at 20 (Nevada Lobbyist explaining that she chose to forego social events that could have helped her professional development in part to avoid Representative Kihuen’s advances).

³¹ Appendix B.