

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. 17-8362

The Board of the Office of Congressional Ethics (“the Board”), by a vote of no less than four members, on May 5, 2017, adopted the following report and ordered it to be transmitted to the Committee on Ethics of the United States House of Representatives.

SUBJECT: Representative Ben Ray Luján

NATURE OF THE ALLEGED VIOLATION: In June 2016, Representative Luján requested that his congressional campaign committee issue communications during a “sit-in” demonstration. The committee issued emails stating Representative Luján was on the House floor at the time the emails were sent. One of the emails specifically requested a campaign contribution and contained an image of the House floor.

If Representative Luján conducted campaign or political activity from the House floor, solicited a campaign contribution from a federal building, or used an image of a House floor proceeding for campaign or political purposes, then he may have violated House rules, standards of conduct, and federal law.

RECOMMENDATION: The Board recommends that the Committee on Ethics further review the above allegation because there is substantial reason to believe that Representative Luján conducted campaign or political activity from the House floor, solicited a campaign contribution from a federal building, or used an image of a House floor proceeding for campaign or political purposes.

VOTES IN THE AFFIRMATIVE: 5

VOTES IN THE NEGATIVE: 1

ABSTENTIONS: 0

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

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

FINDINGS OF FACT AND CITATIONS TO LAW

Review No. 17-8362

TABLE OF CONTENTS

I. INTRODUCTION 3

 A. Summary of Allegations..... 3

 B. Jurisdiction Statement 3

 C. Procedural History..... 4

 D. Summary of Investigative Activity 4

II. REPRESENTATIVE LUJÁN MAY HAVE VIOLATED HOUSE RULES AND STANDARDS OF CONDUCT BY REQUESTING THAT A CAMPAIGN COMMITTEE SOLICIATION BE ISSUED WHILE IN A HOUSE BUILDING..... 5

 A. Applicable Law, Rules, and Standards of Conduct..... 5

 B. Representative Luján Participated in a Sit-in on the House Floor from June 22, 2016 to June 23, 2016 6

 C. During the Sit-in Representative Luján Requested that His Campaign Issue a Communication..... 7

 D. Representative Luján’s Campaign Committee Sent an Email Stating that Representative Luján Was on the House Floor 10

 E. Representative Luján’s Campaign Committee Sent Another Email Stating that Representative Luján Was on the House Floor and Specifically Requested a Campaign Contribution 13

III. CONCLUSION..... 16

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

FINDINGS OF FACT AND CITATIONS TO LAW

Review No. 17-8362

On May 5, 2017, 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. On June 22 and 23, 2016, Representative Luján participated in a “sit-in” on the floor of the House of Representatives. On June 22, Representative Luján requested that his campaign committee “get something out” related to the sit-in. Representative Luján may have been on the House floor or inside a federal building when he made the request.
2. Representative Luján’s campaign committee then sent an email with language stating that Representative Luján was on the House floor at the time. The email contained links so that potential visitors to the site could make campaign contributions to his campaign committee.
3. On June 23, Representative Luján’s campaign committee sent another email that again contained language that Representative Luján was on the House floor. That email specifically requested a campaign contribution and also contained an image of the House floor.
4. The Board recommends that the Committee on Ethics further review the above allegation because there is substantial reason to believe that Representative Luján conducted campaign or political activity from the House floor, solicited a campaign contribution from a federal building, or used an image of a House floor proceeding for campaign or political purposes.

B. Jurisdiction Statement

5. The allegations that were the subject of this review concern Representative Ben Ray Luján, a Member of the United States House of Representatives from the 3rd District of New Mexico. The Resolution the United States House of Representatives adopted creating the Office of Congressional Ethics (hereafter “OCE”) directs that, “[n]o review shall be undertaken... by the board of any alleged violation that occurred before the date of adoption of this resolution.”¹ The House adopted this Resolution on March 11, 2008.

¹ H. Res. 895, 110th Cong. §1(e) (2008) (as amended).

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

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 February 3, 2017. The preliminary review commenced on February 4, 2017.² The preliminary review was scheduled to end on March 5, 2017.
7. On February 6, 2017, the OCE notified Representative Luján 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.
8. At least three members of the Board voted to initiate a second-phase review in this matter on March 3, 2017. The second-phase review commenced on March 6, 2017. The second-phase review was scheduled to end on April 19, 2017.
9. On March 6, 2017, the OCE notified Representative Luján of the initiation of the second-phase 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.
10. The Board voted to refer the matter to the Committee on Ethics for further review and adopted these findings on May 5, 2017.
11. The report and its findings in this matter were transmitted to the Committee on Ethics on May 11, 2017.

D. Summary of Investigative Activity

12. The OCE requested testimonial and in some cases documentary information from the following sources:
 - (1) Representative Luján;
 - (2) Representative Luján's Former Communications Director;
 - (3) The Democratic Congressional Campaign Committee ("DCCC") Chief of Staff; and;
 - (4) The President of Boulder Strategies.

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 H. Res. 895 of the 110th Congress, as amended (hereafter "the Resolution"), the timeframe for conducting a preliminary review is 30 days from the date of receipt of the Board's request.

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

II. REPRESENTATIVE LUJÁN MAY HAVE VIOLATED HOUSE RULES, STANDARDS OF CONDUCT, AND FEDERAL LAW BY REQUESTING THAT A CAMPAIGN COMMITTEE COMMUNICATION BE ISSUED WHILE ON THE HOUSE FLOOR

A. Applicable Law, Rules, and Standards of Conduct

13. House Ethics Manual

*“Official resources of the House must, as a general rule, be used for the performance of official business of the House, and hence those resources may **not** be used for campaign or political purposes”³*

“The House buildings, and House rooms and offices . . . are supported with official funds and hence are considered official resources. Accordingly, as a general rule, they may not be used for the conduct of campaign or political purposes.”⁴

*“Among the specific activities that clearly may **not** be undertaken in a congressional office or using official House resources (including official staff time) are the solicitation of contributions; the drafting of campaign speeches, statements, press releases or literature; the completion of FEC reports; the creation or issuance of a campaign mailing; and the holding of a meeting on campaign business.”⁵*

*“The prohibition against House Members or employees soliciting campaign or political contributions in or from House offices, rooms, or buildings is very broad.”⁶ The House Ethics Manual also explains, “the House rooms, offices, and buildings are considered official resources, and as such, they are **not** [sic] be used for the conduct of **any** campaign or political activity, including the solicitation of contributions.”⁷*

“Moreover, under these rules, 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 or, for example, a ‘leadership PAC’ – operates in compliance with applicable law.”⁸

In addition, “[a]nything supported with official funds is an official resource, including congressional offices. The House Office Building Commission, comprised of the Speaker, the Majority Leader, and the Minority Leader, has issued regulations governing the use of House facilities. These regulations generally ban solicitation and commercial activity, limit photography, restrict use of meeting rooms to congressionally related purposes, and impose various health and safety restraints. In addition, as is true of all official

³ House Ethics Manual (2008) at 123-24 (emphasis in original).

⁴ *Id.* at 127.

⁵ *Id.* at 124 (emphasis in original).

⁶ *Id.* at 144.

⁷ *Id.* at 145 (emphasis in original).

⁸ *Id.* at 122.

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

resources, congressional offices may not be used for the conduct of campaign or political activities.”⁹

“Broadcast coverage and recordings of House floor proceedings may not be used for any political purpose under House Rule 5, clause 2(c)(1). In addition, under House Rule 11, clause 4(b), radio and television tapes and film of any coverage of House committee proceedings may not be used, or made available for use, as partisan political campaign material to promote or oppose the candidacy of any person for public office.”¹⁰

14. 18 U.S.C. § 607

(a) Prohibition (1) In general -

It shall be unlawful for any person to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election from a person who is located in a room or building occupied in the discharge of official duties by an officer or employee of the United States. It shall be unlawful for an individual who is an officer or employee of the Federal Government, including the President, Vice President, and Members of Congress, to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election, while in any room or building occupied in the discharge of official duties by an officer or employee of the United States, from any person.

B. Representative Luján Participated in a Sit-in on the House Floor from June 22, 2016 to June 23, 2016

15. Representative Luján participated in a June 22, 2016 “sit-in” on the floor of the House of Representatives.¹¹ He told the OCE that he was in his office during a meeting and saw on C-SPAN that House members were gathering on the House floor concerning the “No-fly, No-buy” bill.¹² He did not recall what time he made the decision to go to the House floor and participate, but told his staff to “clear the day.”¹³ Representative Luján’s participation in the sit-in began on June, 22, 2016, continued overnight, and ended on June 23, 2016.¹⁴
16. Representative Luján described to the OCE various instances when he may not have been directly on the House floor, or in the Capitol complex during the sit-in.
17. Representative Luján stated that on June 22, 2016, he recalled an afternoon meeting “around” lunchtime where he left the Capitol in a vehicle.¹⁵ He then came back to the

⁹ *Id.* at 325.

¹⁰ *Id.* at 128.

¹¹ Transcript of Interview of Rep. Luján, Mar. 2, 2017 (“Rep. Luján TOI”) (Exhibit 1 at 17-8362_0024)

¹² *Id.* at 17-8362_0024-25.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 17-8362_0027.

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

House floor later on June 22, 2016, “during the night.”¹⁶ From that time, Representative Luján stated that he was on the House floor “off and on” until the morning of June 23, 2016.¹⁷

18. Representative Luján told the OCE that during the sit-in, crowds had gathered outside the Capitol and members would sometimes leave the Capitol to greet the crowds.¹⁸ He did not say whether he took part in greeting the crowds. Representative Luján also stated that “bathroom breaks, walking outside to the front of the building of the Capitol, just to get a breath of fresh air. . .” and getting a drink of water were all reasons Members may have left the House floor during the sit-in demonstration.¹⁹
19. When describing the timeframe when he may have left the House floor, after his afternoon meeting, and into the night, Representative Luján stated that it “wasn’t just during the time that the sun went down . . . what I would describe as nighttime. It was throughout that period that I would [leave the House floor].”²⁰
20. Representative Luján told the OCE that he concluded his participation in the sit-in and “walked home” on June 23, 2016 at “6:00 or 7:00”AM.

C. During the Sit-in Representative Luján Requested that His Campaign Issue a Communication

21. On June 22, 2016 at 3:00PM, Representative Luján received an email from Representative Michelle Luján Grisham’s campaign committee concerning the “No-fly, No-buy” bill, claiming that Representative Luján Grisham was “literally on the House floor”²¹ The email asked recipients to “add your name to this petition”²² The email did not appear to request a campaign contribution.

¹⁶ *Id.* Rep. Luján later told the OCE that he returned from the meeting “later on that day” instead of at night. *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 17-8362_0026.

¹⁹ *Id.* at 17-8362_0026, 28.

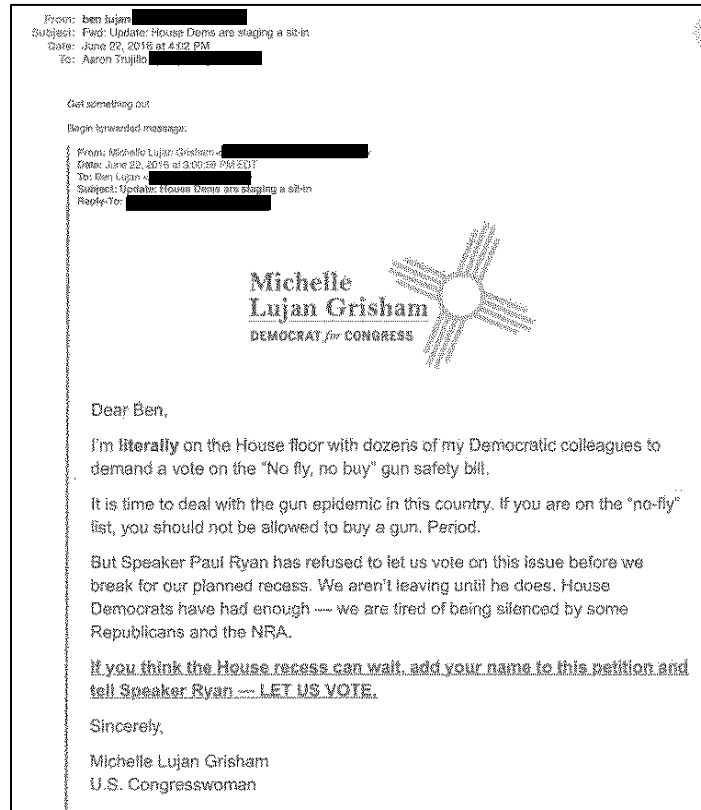
²⁰ *Id.* at 17-8362_0028.

²¹ Email from Rep. Michelle Luján Grisham’s Campaign Committee to Rep. Luján, June 22, 2016 (Exhibit 2 at 17-8362_0061).

²² *Id.*

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

22. At 4:02PM the same day, Representative Luján forwarded the email to the DCCC Chief of Staff, directing him to “Get something out.”²³ At the time, the DCCC Chief of Staff was Representative Luján’s primary contact for campaign messaging with Boulder Strategies, an online fundraising and digital strategy firm Representative Luján hired in 2016.²⁴



23. Representative Luján could not recall where he was physically located at 4:02PM on June 22, 2016.²⁵ When asked if it was possible that he sent the email while in a House building or within the Capitol complex, he responded that “I think anything’s – it’s possible, but I was – like I said, depending on where I was moving to or moving from.”²⁶

24. Representative Luján told the OCE that upon receiving the email from Representative Luján Grisham’s campaign committee, he thought that “Michelle had a good idea” and that his intention was to tell the DCCC Chief of Staff to “get something out.”²⁷

²³ Email from Rep. Luján to the DCCC Chief of Staff, June 22, 2016 (Exhibit 2 at 17-8362_0061).

²⁴ Rep. Luján TOI (Exhibit 1 at 17-8362_0008-09). The DCCC Chief of Staff had previously worked in Rep. Luján’s congressional office and continued to provide services to Rep. Luján’s campaign committee in a volunteer capacity. Transcript of Interview of the DCCC Chief of Staff, Mar. 1, 2017 (“DCCC Chief of Staff TOI”) (Exhibit 3 at 17-8362_0070).

²⁵ Rep. Luján TOI (Exhibit 1 at 17-8362_0036).

²⁶ *Id.*

²⁷ *Id.* at 17-8362_0032.

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

25. The OCE asked Representative Luján repeatedly about the meaning and intention behind telling the DCCC Chief of Staff to “get something out.” Representative Luján told the OCE that he wanted the DCCC Chief of Staff to “Get a message out, maybe get something out, take a look at this good idea . . .” and “It was to tell [the DCCC Chief of Staff] get something out, I guess. So I guess something similar [to Representative Luján Grisham’s email], yeah. Get something out.”²⁸
26. He stated further that “Michelle had a good idea here to say she wanted to create some attention that whatever – all the work that people were doing, and lend your voice to say, sign a petition and say, let us vote . . . This wasn’t a solicitation for money, that was in this email . . . it was my hope that we could get something out that would ask people to lend their voices.”²⁹
27. Representative Luján told the OCE that he recalled that Boulder Strategies generally would “send solicitations for contributions and also send emails that were petitions, asking people to sign on with different policy issues.”³⁰
28. In this instance, Representative Luján told the OCE that both the DCCC Chief of Staff and Boulder Strategies had the authority to decide whether the campaign message would be in the form of a petition or solicitation for campaign contributions.³¹
29. After receiving the email from Representative Luján to “get something out,” the DCCC Chief of Staff told the OCE that he did not believe the message from Representative Luján was a “directive to go get something out.”³² He believed “it was him just like expressing that he thought this was either a good way to talk about the issue, or maybe he thought the [email from Representative Luján Grisham] looked good or something, kind of left up to my own interpretation a little bit.”³³
30. In contrast to the DCCC Chief of Staff’s testimony, the President of Boulder Strategies told the OCE that he was “instructed” to send a campaign email on behalf of Representative Luján’s campaign committee on June 22, 2016 and that although he could not recall specifically who issued the instruction, typically it would have been from the DCCC Chief of Staff.³⁴

²⁸ *Id.* at 17-8362_0029-30.

²⁹ *Id.* at 17-8362_0032.

³⁰ *Id.* at 17-8362_0011.

³¹ *Id.* at 17-8362_0033-35.

³² DCCC Chief of Staff TOI (Exhibit 3 at 17-8362_0120).

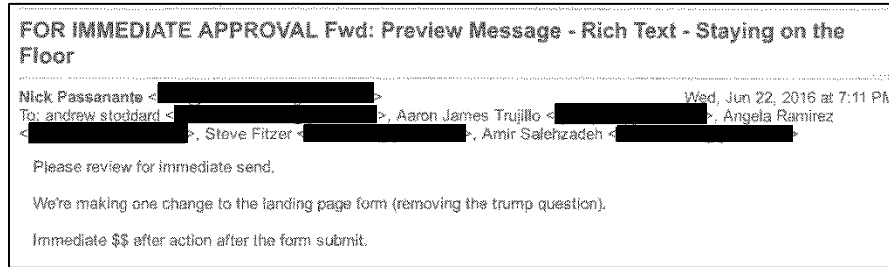
³³ *Id.*

³⁴ Transcript of Interview of President of Boulder Strategies, Feb. 28, 2017 (“Boulder Strategies President TOI”) (Exhibit 4 at 17-8362_0172).

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

D. Representative Luján’s Campaign Committee Sent an Email Stating that Representative Luján Was on the House Floor

31. At 7:11PM on June 22, 2016, roughly three hours after Representative Luján asked the DCCC Chief of Staff to “get something out,” the President of Boulder Strategies sent an email to members of Representative Luján’s campaign committee staff and the DCCC Chief of Staff, requesting that the recipients “Please review for immediate send . . .” and stating that “Immediate \$\$ after action after the form submit.”³⁵



32. The President of Boulder Strategies told the OCE that “Immediate \$\$ after action after the form submit” meant that if someone “clicked on the link that says ‘Sign or Pledge’ . . . then it would automatically redirect to a contribution page to where they would then be able to make a contribution if they so choose.”³⁶ He stated that he was not directed to add that feature by Representative Luján or his campaign staff but that it was “standard practice” for “most petitions” that Boulder Strategies created.³⁷

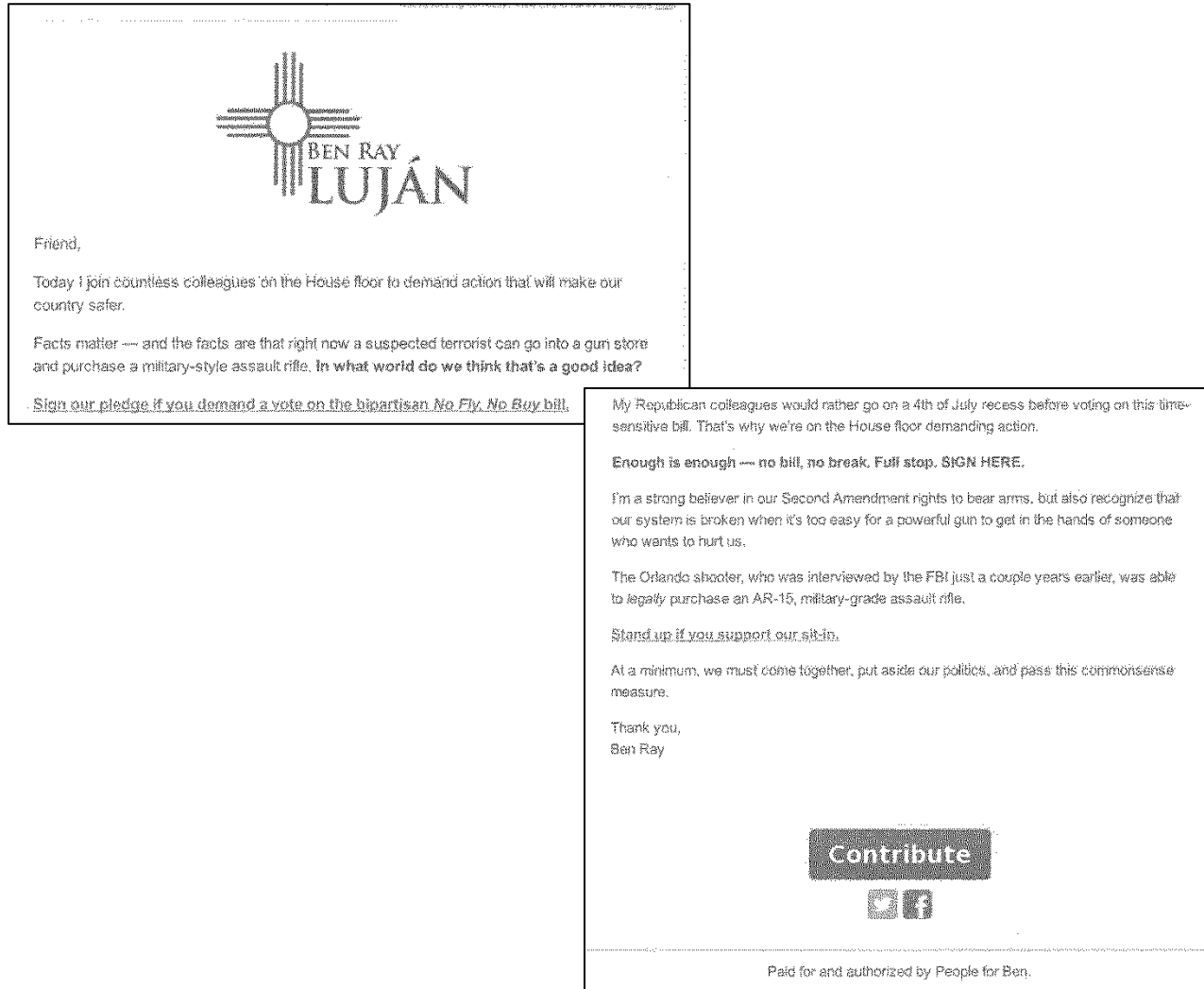
³⁵ Email from President of Boulder Strategies to Rep. Luján campaign staff and DCCC Chief of Staff, June 22, 2016 (Exhibit 5 at 17-8362_0183).

³⁶ Boulder Strategies President TOI (Exhibit 4 at 17-8362_0172).

³⁷ *Id.*

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

33. The email discussed above accompanied a draft email shown below that would become the first campaign committee email issued on June 22, 2016 regarding the sit-in.³⁸ The email concludes with a “contribute” link.³⁹ The contribute link was “permanent” on any Boulder Strategies email, according to the DCCC Chief of Staff.⁴⁰



³⁸ *Id.* After edits were made to this draft by Boulder Strategies and Rep. Luján’s campaign staff, an almost identical version was used as a final campaign email.

³⁹ *Id.*

⁴⁰ DCCC Chief of Staff TOI (Exhibit 3 at 17-8362_0106-07).

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

34. The text of the draft email reads:

Today I join countless colleagues on the House floor to demand action that will make our country safer. Facts matter - and the facts are that right now a suspected terrorist can go into a gun store and purchase a military-style assault rifle. **In what world do we think that's a good idea?**

Sign our pledge if you demand a vote on the bipartisan No Fly, No Buy bill.

My Republican colleagues would rather go on a 4th of July recess before voting on this time-sensitive bill. That's why we're on the House floor demanding action. **Enough is enough – no bill, no break. Full stop. SIGN HERE.**

I'm a strong believer in our Second Amendment rights to bear arms, but also recognize that our system is broken when it's too easy for a powerful gun to get in the hands of someone who wants to hurt us.

The Orlando shooter, who was interviewed by the FBI just a couple years earlier, was able to legally purchase an AR-15, military-grade assault rifle.

Stand up if you support our sit-in.

At a minimum, we must come together, put aside our politics, and pass this commonsense measure.

Thank you,

Ben Ray

CONTRIBUTE

Paid for and authorized by People for Ben.⁴¹

35. Although Representative Luján asked the DCCC Chief of Staff to “get something out” on June 22, 2016, the President of Boulder Strategies told the OCE he created the “House floor” language shown in the email and that Representative Luján did not take part in the email’s creation.⁴² Representative Luján corroborated this information.⁴³

36. The President of Boulder Strategies also told the OCE that the email was part of a “series” of campaign emails “on this topic” that had been issued “at least a week prior.”⁴⁴

⁴¹ Email from Boulder Strategies President to Rep. Luján campaign staff and DCCC Chief of Staff, June 22, 2016 (Exhibit 5 at 17-8362_0183-84) (emphasis in original). Underlined portions appear to be hyperlinks to additional webpages.

⁴² Boulder Strategies President TOI (Exhibit 4 at 17-8362_0171).

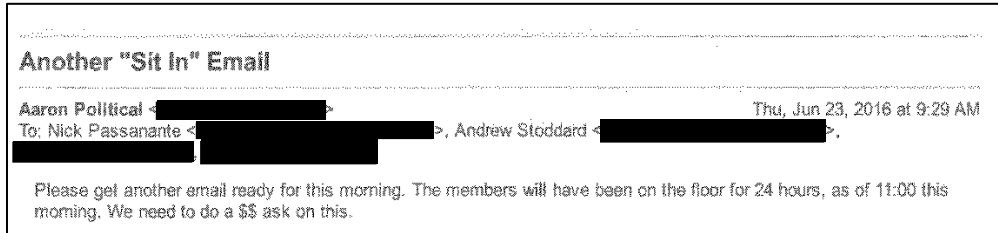
⁴³ Rep. Luján TOI (Exhibit 1 at 17-8362_0038).

⁴⁴ Boulder Strategies President TOI (Exhibit 4 at 17-8362_0170).

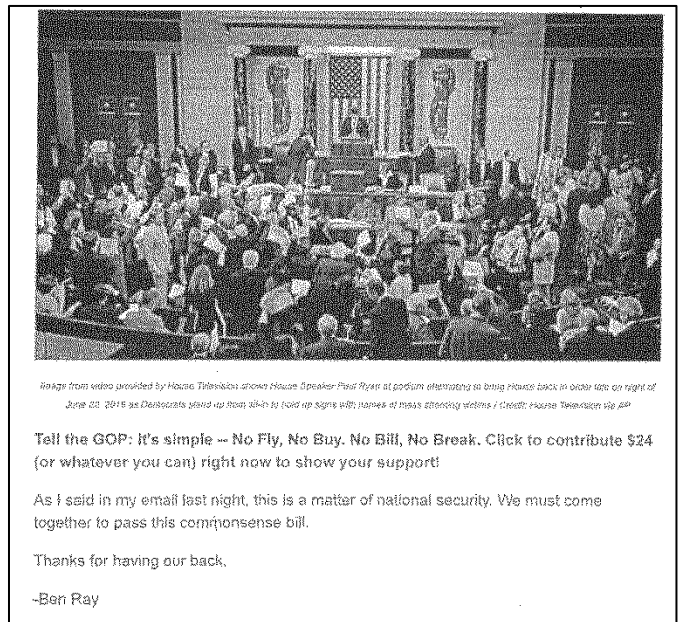
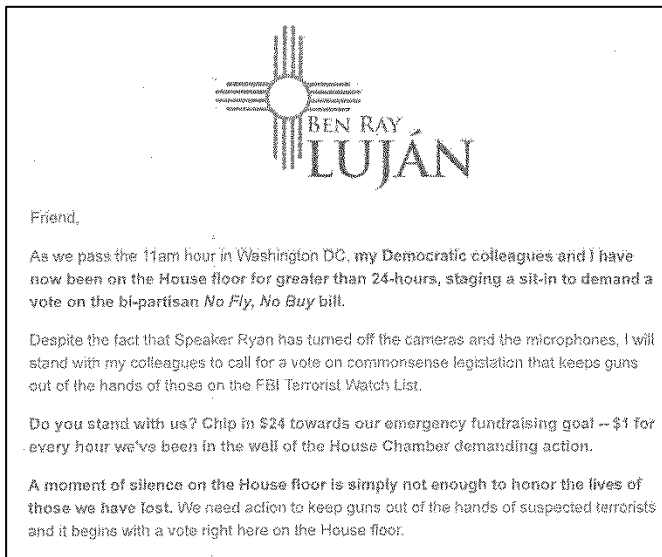
Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

E. Representative Luján’s Campaign Committee Sent Another Email Stating that Representative Luján Was on the House Floor and Specifically Requested Campaign Contributions

37. On June 23, 2016 at 9:29AM, the DCCC Chief of Staff sent an email to the President of Boulder Strategies and Representative Luján’s campaign staff, requesting “another email ready for this morning. The members will have been on the floor for 24 hours, as of 11:00 this morning. We need to do a \$\$ ask on this.”⁴⁵



38. The June 23, 2016 draft email shown below would become the second campaign committee email issued regarding the sit-in.⁴⁶



⁴⁵ Email from DCCC Chief of Staff to Boulder Strategies President and Rep. Luján’s campaign staff, June 23, 2016 (Exhibit 6 at 17-8362_0186).

⁴⁶ Email from the President of Boulder Strategies to the DCCC Chief of Staff, *et al.*, June 23, 2016 (Exhibit 7 at 17-8362_0188-89).

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

39. The text of the draft email reads:

As we pass the 11 am hour in Washington DC, **my Democratic colleagues and I have now been on the House floor for greater than 24-hours, staging a sit-in to demand a vote on the bi-partisan *No Fly, No Buy* bill.**

Despite the fact that Speaker Ryan has turned off the cameras and the microphones, I will stand with my colleagues to call for a vote on commonsense legislation that keeps guns out of the hands of those on the FBI Terrorist Watch List.

Do you stand with us? Chip in \$24 towards our emergency fundraising goal -- \$1 for every hour we've been in the well of the House Chamber demanding action.

A moment of silence on the House floor is simply not enough to honor the lives of those we have lost. We need action to keep guns out of the hands of suspected terrorists and it begins with a vote right here on the House floor.

(Image from video provided by House Television shows House Speaker Paul Ryan at podium attempting to bring House back in order late on night of June 22, 2016 as Democrats stand up from sit-in to hold up signs with names of mass shooting victims / Credit: House Television via AP)

Tell the GOP: It's simple -- No Fly, No Buy. No Bill, No Break. Click to contribute \$24 (or whatever you can) right now to show your support!

As I said in my email last night, this is a matter of national security. We must come together to pass this commonsense bill.

Thanks for having our back,

-Ben Ray⁴⁷

40. Representative Luján and the President of Boulder Strategies both stated that Representative Luján played no part in drafting the second email on June 23, 2016.⁴⁸

41. However, the President of Boulder Strategies told the OCE that he believed “there was a conversation prior to [sending the email] . . . about the Congressman wanting to time this email appropriately.”⁴⁹ Although he could not identify who specifically told him about Representative Luján’s desire to time the email appropriately, the President of Boulder Strategies assumed that the DCCC Chief of Staff told him.⁵⁰

⁴⁷ *Id.*

⁴⁸ Rep. Luján TOI (Exhibit 1 at 17-8362_0041); Boulder Strategies President TOI Exhibit 4 at 17-8362_0174).

⁴⁹ Boulder Strategies President TOI (Exhibit 4 at 17-8362_0174-75).

⁵⁰ *Id.*

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

42. He stated that the second email “was an email that was not on the calendar. It was not one that we had already prepared. It was one that they asked for specifically to be added to the schedule for the morning.”⁵¹
43. Concerning the use of a photograph of the House floor, Representative Luján’s Former Communications Director told the OCE that he believed he became aware of the photograph’s usage after the President of Boulder Strategies informed him “a couple days” after the second email was sent.⁵² The President of Boulder Strategies told the Former Communications Director that the photo came from a “news account and not directly from the floor.”⁵³
44. The President of Boulder Strategies told the OCE that he had a conversation with Representative Luján’s campaign staff about the photo and “whether the usage met certain standards.”⁵⁴ He stated that “we agreed not to use further images from the House floor, regardless of their sourcing, going forward, despite that the email went through the appropriate approval process . . . It was a photograph that we sourced from an AP article that was syndicated in thousands of papers across the country that day.”⁵⁵
45. In sum, Representative Luján may have conducted campaign or political activity by requesting that his campaign committee “get something out” while on the House floor or in a federal building. The committee then sent two emails stating that Representative Luján was on the House floor and connected campaign contributions to the sit-in. A photograph of the House floor was also used in one of the emails as partisan political campaign material.
46. The Board notes that Representative Luján was cooperative throughout the review. The Board recognizes that the evolving nature of electronic communications and campaign solicitations sometimes presents novel issues that are not directly addressed by the House Ethics Manual. This review raised difficult questions about the application of House rules to solicitations via email. Ultimately, according to House standards of conduct, Members are also responsible for the activities of their outside organizations, including their congressional campaign committees. The Board believes that Members may benefit from additional guidance regarding campaign activities and electronic communications.

⁵¹ Boulder Strategies President TOI (Exhibit 4 at 17-8362_0173).

⁵² Transcript of Interview of Rep. Luján’s Former Comm. Director, Feb. 28, 2017 (Exhibit 8 at 17-8362_0204-05).

⁵³ *Id.* at 17-8362_0205.

⁵⁴ Boulder Strategies President TOI (Exhibit 4 at 17-8362_0176).

⁵⁵ *Id.*

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

III. CONCLUSION

47. On June 22 and June 23, 2016, Representative Luján's congressional campaign committee sent campaign emails stating that Representative Luján was on the House floor contemporaneous with the email's issuance.
48. The first email, on June 22, was specifically requested by Representative Luján during a time when he may have been on the House floor or in a federal building. Although the email did not make an overt request for a campaign contribution in the email text, it may have provided links so that viewers could make a contribution to Representative Luján's campaign committee.
49. The second email, on June 23, contained similar language to the first and specifically requested a campaign contribution. The second email also contained an image of the House floor.
50. For the reasons stated above, the Board recommends that the Committee on Ethics further review the above allegation because there is substantial reason to believe that Representative Luján conducted campaign or political activity from the House floor, solicited a campaign contribution from a Federal building, or used an image of a House floor proceeding for campaign or political purposes.