

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF MARION

DIEGO HERNANDEZ, individually
and as an elected official and member of
the Oregon House of Representatives,

Plaintiff,

v.

**THE OREGON LEGISLATURE,
THE OREGON HOUSE OF
REPRESENTATIVES, RON NOBLE**,
in his official and personal capacity,
JULIE FAHEY, in her official and
personal capacity, **JACKIE
SANDMEYER**, in her official and
personal capacity, and **TINA KOTEK**,
in her official and personal capacity,

Defendants.

Case No: 21CV05290

**COMPLAINT - Declaratory Judgment,
Preliminary Injunction, 42 U.S.C. § 1983,
Discrimination**

Demand for Jury Trial; Claim Not Subject to
Mandatory Arbitration

Monetary Claim for \$1,000,000

Plaintiff Diego Hernandez (“Plaintiff”) alleges, at all times material herein:

VENUE AND JURISDICTION

1.

Venue and jurisdiction are appropriate in this Court because the events giving rise to
this Complaint occurred primarily in Marion County, Oregon.

2.

Plaintiff is the duly elected Representative from House District 47 and has been
serving as a member of the Oregon House of Representatives since January 2019. Plaintiff is
Latino.

3.

Defendant the Oregon Legislature (“Legislature”) is the legislative body of the State
of Oregon, organized under Article IV of the Oregon Constitution. Defendant the Oregon

1 House of Representatives (“House of Representatives”) is one of two bodies comprising the
2 Legislature.

3 4.

4 The House of Representatives constituted a Conduct Committee, of which Defendant
5 Julie Fahey (“Fahey”) and Defendant Ron Noble (“Noble”) are the Co-Chairs. The Conduct
6 Committee consists of four members of the House of Representatives.

7 5.

8 Defendant Jackie Sandmeyer (“Sandmeyer”) is the head of the House Legislative
9 Equity Office (“LEO”).

10 6.

11 Defendant Tina Kotek (“Kotek”) is the presiding officer and Speaker of the House of
12 Representatives.

13 7.

14 At all material times, Fahey, Noble, Sandmeyer and Kotek were acting within the
15 course and scope of their employment or, in the alternative, in an agency capacity for the
16 Legislature and were acting under color of state law.

17 8.

18 Plaintiff requests a jury trial on all claims for which a jury trial is allowed in this
19 matter.

20 **FACTUAL ALLEGATIONS**

21 9.

22 In or around April 2020, a complaint was made against Plaintiff alleging that he had
23 mistreated women with whom he had consensual relationships with. These women were not
24 members or employees of the Legislature.

25 10.

26 Kotek reported this complaint to the LEO, which triggered an investigation under

1 Legislative Branch Personnel Rule 27 ("Rule 27"), attached to this Complaint as Exhibit 1 and
2 incorporated by this reference.

3 11.

4 On or around May 5, 2020, Plaintiff was notified that Sandmeyer was conducting a
5 Rule 27 investigation into his alleged conduct. Unbeknownst to Plaintiff, Sandmeyer's
6 spouse had previously worked for Kotek, the person who made the complaint to the LEO.
7 Neither Sandmeyer nor Kotek disclosed this relationship to Plaintiff and Sandmeyer did not
8 recuse from this matter.

9 12.

10 Pursuant to Rule 27(6)(e), the LEO had 10 days to appoint an investigator after
11 receiving the formal complaint. The LEO hired an outside investigator for this matter and
12 Plaintiff fully complied with the investigation.

13 13.

14 Pursuant to Rule 27 (6)(h), the investigator has 60 days from appointment to conduct
15 the investigation and present a draft finding of fact and recommendations to the Human
16 Resources Director, the Office of the Legislative Counsel, the complainant, and the person
17 alleged to be involved with the harassment. The person alleged to be involved with the
18 harassment has a right to be promptly informed of any extensions granted to the investigator
19 and must be provided with the reason for any delay.

20 14.

21 That did not occur during this investigation. Plaintiff's investigation was delayed for
22 nearly 200 days to encourage additional complainants to come forward and make complaints
23 against Plaintiff. Plaintiff was not provided with an explanation for such delay and Plaintiff
24 did not learn of that fact until February 3, 2021, during the Conduct Committee hearings on
25 this matter. Prolonging an investigation for the express purpose of encouraging new
26 complaints or complainants is not allowed under Rule 27.

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15.

Rule 27 (6)(k) provides that a respondent (in this case Plaintiff) must receive a copy of the investigator’s final findings of fact and recommendations within 10 days of its submission. In this case, Plaintiff did not receive a copy of the investigator’s final report until January 22, 2021.

16.

The Conduct Committee must provide the person alleged to be involved with the harassment a meaningful chance to respond to the allegations in a public hearing. Pursuant to Rule 27(8)(e), the person alleged to be involved with the harassment has 10 days to submit his objections to the final findings of fact and recommendations. In this case, Plaintiff was given only seven days to present his response and rebuttal to the final report, which Plaintiff did on January 29, 2021. (Plaintiff’s initial response is attached as Exhibit 2, and incorporated into this Complaint by this reference).

17.

In the investigator’s final report, the investigator found that Plaintiff had engaged in inappropriate conduct related to his interactions with women who were dubbed Subjects 1, 2 and 4. Plaintiff’s responses were directly contradictory to those allegations.

18.

For example, after having a consensual intimate relationship with Plaintiff, Subject 1 then claimed that she did not want to socialize with Plaintiff. Plaintiff’s response showed that Subject 1, after claiming she did not want to socialize with Plaintiff, texted Plaintiff inviting him to “HH” (Happy Hour) near her residence, asked Plaintiff to call her, and stated that she wanted to see him to vent.

19.

In addition, Plaintiff’s response showed that Subject 2, while claiming that she did not want to socialize with Plaintiff, was emailing Plaintiff’s then-partner trying to encourage the

1 partner to end her relationship with Plaintiff, so that Subject 2 could pursue such a
2 relationship with Plaintiff. Further, Plaintiff's response showed that Subjects 2 and 4 were
3 sisters; a close relationship that the investigator and Sandmeyer should have disclosed to the
4 Committee.

5 20.

6 The LEO refused to accept Plaintiff's response because it contained the names of the
7 complainants. Plaintiff's response showed that two of the complainants were sisters, a fact
8 that was never disclosed to the Conduct Committee. Rule 27 requires that all persons subject
9 to the Rule must guard against the disclosure of the identity of the complainants. Plaintiff did
10 not follow that request because the complainants involved here are adults and are not claiming
11 to be victims of any crime. Further, Plaintiff's constitutional due process rights are superior
12 to the Rule 27 requirements of anonymity.

13 21.

14 Upon the LEO's request, Plaintiff submitted a new response with the names and
15 identifiers redacted (Plaintiff's second response, redacted as described, is attached as Exhibit
16 3, and incorporated into this Complaint by this reference). Sandmeyer again refused to
17 provide this response to the four members of the Conduct Committee and further redacted the
18 response as shown in Exhibit 4, incorporated into this Complaint by this reference.

19 22.

20 Sandmeyer excessively and needlessly redacted Plaintiff's response to the point that
21 none of his evidence was ever seen by the Conduct Committee. Sandmeyer redacted dates,
22 how Plaintiff knew the subjects, multiple pages of text message threads and Facebook posts,
23 any reference to the fact that two of the subjects were sisters, any reference to the fact that the
24 subjects wanted to rekindle a romantic relationship with Plaintiff, and any reference to Kotek.

25 23.

26 Plaintiff's response contained evidence that directly rebutted the investigator's report.

1 Sandmeyer's refusal to present this evidence to the Conduct Committee and the Conduct
2 Committee's decision to refuse to read, review and consider Plaintiff's evidence prevented
3 Plaintiff from having a fair hearing before the Conduct Committee. The Conduct Committee,
4 chaired by Noble and Fahey, specifically refused to consider Plaintiff's evidence. If the
5 Conduct Committee had considered Plaintiff's evidence, the Committee would have heard
6 substantial evidence that rebutted the claims and testimony of the subjects who claimed that
7 Plaintiff had harassed them or given them unwanted attention.

8 24.

9 In another example of how the process was flawed, the investigator read to the
10 Conduct Committee one of Subject 2's texts to Plaintiff. In the text, provided in Plaintiff's
11 response, Subject 2 included the term "LOL." That term was left out when read by the
12 investigator, creating a completely different context. By refusing to read and review
13 Plaintiff's evidence, the Committee was denying Plaintiff a meaningful opportunity to be
14 heard. Plaintiff's response was full of similar evidence that rebutted the allegations of the
15 subjects, all of which was withheld from the Committee by Sandmeyer and refused to be
16 presented to the Committee by Noble and Fahey.

17 25.

18 The Conduct Committee convened a hearing on February 1-5, 2021 to putatively
19 review the allegations against Plaintiff. Under Rule 27, the Conduct Committee is required to
20 make factual findings and determine whether Plaintiff's alleged conduct violated Rule 27 and
21 make recommendations to the House of Representatives regarding what sanctions Plaintiff
22 should be given if any.

23 26.

24 Before and during the hearing, Plaintiff notified the Conduct Committee that several
25 of the allegations occurred before Rule 27 prohibited the alleged misconduct. Despite
26 Plaintiff's arguments, the Conduct Committee failed to address whether Rule 27 was being

1 applied ex post facto and, in making its findings and determinations, the Conduct Committee
2 applied Rule 27 in a manner that found Plaintiff violated the Rule at times when Plaintiff's
3 conduct was not prohibited by the Rule. In addition, Rule 27 did not previously apply beyond
4 employees of the Legislature, which these subjects were not.

5 27.

6 During the Conduct Committee hearing, Plaintiff, although designated the
7 "Respondent" in the proceedings, was forced by Noble and Fahey to testify first. Plaintiff had
8 the assistance of counsel. Plaintiff requested that he be allowed to testify and that his counsel
9 be able to make a statement and further represent him. The Conduct Committee refused to
10 allow both Plaintiff and his counsel to make a statement, and refused to allow Plaintiff's
11 counsel to actively represent Plaintiff.

12 28.

13 After Plaintiff presented his response to the allegations through his counsel, the
14 Conduct Committee allowed five anonymous subjects to testify. After those subjects
15 presented testimony, the Conduct Committee denied Plaintiff and Plaintiff's counsel the
16 opportunity to question the subjects or present rebuttal testimony and evidence.

17 29.

18 The Conduct Committee made findings of fact and determined that Plaintiff had
19 violated Rule 27 with respect to three subjects/complainants. These findings and
20 determinations were made without reading, reviewing or considering the evidence presented
21 by Plaintiff. These findings and determinations were made without allowing Plaintiff to have
22 the assistance of counsel in his representation. These findings and determinations were made
23 without allowing Plaintiff to respond to or rebut the new evidence that was presented in the
24 Conduct Committee hearings from the subjects who testified after Plaintiff. Plaintiff was
25 forced to testify before hearing the new evidence presented by the witnesses. Only one of the
26 subjects testified in person; the others were allowed to read statements through proxies

1 without identifying themselves.

2 30.

3 After finding that Plaintiff had violated Rule 27, the Conduct Committee voted to
4 recommend, 3-1, that Plaintiff be expelled from the House of Representatives. Plaintiff will
5 next be subjected to a vote of the House of Representatives in which he will similarly not be
6 able to present evidence or defend himself. The vote may occur as soon as February 16, 2021.

7 31.

8 Kotek and Sandmeyer are preventing the members of the House of Representatives
9 from seeing the evidence that Plaintiff has submitted rebutting and responding to the
10 allegations. Members of the House of Representatives have asked that they be able to review
11 the evidence that Plaintiff presented in his response, but Sandmeyer and Kotek refuse to allow
12 the members to review Plaintiff's evidence. As such, Plaintiff will potentially be expelled
13 from the House of Representatives by members who have never seen or considered his
14 evidence, upon a recommendation from a Committee that never saw or considered his
15 evidence.

16 32.

17 Plaintiff receives a salary for his work as a legislator, together with per diem pay while
18 the House of Representatives is in session. Plaintiff as an employee of the Legislature
19 receives benefits for his work, such as PERS retirement contributions and other paid benefits.
20 If Plaintiff is expelled from the House of Representatives, he will lose his position as a
21 member of the Legislature and his compensation and benefits. Plaintiff receives
22 approximately \$5,000 per month in compensation and benefits due to his position as a
23 member of the House of Representatives and a \$151 per diem stipend while the House of
24 Representatives is in session.

25 33.

26 If Plaintiff is expelled from his position as a member of the House of Representatives,

1 he will be unable to represent his constituents from District 47 who elected him to the
2 position, thereby disenfranchising the citizens of District 47.

3 34.

4 If Plaintiff is expelled from his position as a member of the House of Representatives,
5 he will suffer irreparable harm to his reputation without having had an opportunity to
6 adequately defend himself.

7 **FIRST CLAIM FOR RELIEF**

8 **Declaratory Judgment**

9 **(All Defendants in their Official Capacity)**

10 **Count 1- Facially Unconstitutional and Void**

11 35.

12 Plaintiff re-alleges and incorporates paragraphs 1 through 34 by reference.

13 36.

14 Pursuant to ORS 28.010 and ORS 28.020, there is a justiciable controversy between
15 Plaintiff and Defendants inasmuch as Defendants violated Plaintiff’s state and federal
16 constitutional rights. Plaintiff contends that Rule 27 is facially unconstitutional.

17 37.

18 Rule 27 violates the provisions of the Oregon Constitution that provides for the
19 election of members to the House of Representatives.

20 38.

21 Rule 27 violates the due process clause of the Fourteenth Amendment to the United
22 States Constitution in that it prevents a member of the House of Representatives from having
23 a meaningful opportunity to be heard regarding allegations against the member and provides
24 that a member may be expelled from their position without providing due process of law.

25 39.

26 Rule 27 violates the due process clause of the Fourteenth Amendment to the United

1 States Constitution in that it allows a member's reputation to be diminished without allowing
2 the member an opportunity to meaningfully respond to the allegations against the member.

3 40.

4 Rule 27 prevents a member from exercising the member's right of freedom of
5 speech/expression under both the Oregon Constitution, Article 1, Section 8, and the First
6 Amendment to the United States Constitution. Rule 27 characterizes any attempt by the
7 member to defend himself or herself as "retaliation" subject to further sanction under Rule 27.
8 Characterizing exercising one's freedom of speech/expression as "retaliation" chills the
9 member's lawful exercise of their freedom of speech/expression. In this way, Rule 27
10 operates as a prior restraint on speech/expression.

11 41.

12 This Court should declare Rule 27 facially unconstitutional. This Court should order
13 Defendants to cease and desist in its efforts to remove Plaintiff from his duly elected position.

14 **Count 2- Unconstitutional as applied to Plaintiff and Void**

15 42.

16 Plaintiff re-alleges and incorporates paragraphs 1 through 41 by reference.

17 43.

18 Pursuant to ORS 28.010 and ORS 28.020, there is a justiciable controversy between
19 Plaintiff and Defendants inasmuch as Defendants violated Plaintiff's state and federal
20 constitutional rights. Plaintiff contends that Rule 27 is unconstitutional as applied to Plaintiff.

21 44.

22 Rule 27 is unconstitutional as applied to Plaintiff because the process described above
23 violated Plaintiff's constitutional rights under the Oregon and Federal Constitutions. Rule 27
24 is being applied ex post facto to Plaintiff's alleged misconduct. At the time of Plaintiff's
25 alleged misconduct, Rule 27 did not prohibit the conduct or provide sanctions for the conduct.
26

1 45.

2 Rule 27 prevents Plaintiff from having a meaningful opportunity to be heard regarding
3 allegations against him and allows Plaintiff to be expelled without due process of law.

4 46.

5 Rule 27 allows a Plaintiff's reputation to be diminished without allowing the member
6 an opportunity to meaningfully respond to the allegations against him.

7 47.

8 Rule 27 also prevents Plaintiff from exercising his right of freedom of
9 speech/expression under both the Oregon Constitution, Article 1, Section 8, and the First
10 Amendment to the United States Constitution because Rule 27 characterizes any attempt by
11 Plaintiff to defend himself or herself as "retaliation" subject to further sanction under Rule 27.
12 In fact, Plaintiff has already been accused of retaliation under Rule 27 for posting a statement
13 in opposition to the Rule 27 proceedings against him on Facebook. Characterizing exercising
14 one's freedom of speech/expression as "retaliation" chills the member's lawful exercise of
15 their freedom of speech/expression. In this way, Rule 27 operates as a prior restraint on
16 speech/expression.

17 48.

18 This Court should declare Rule 27 unconstitutional as applied to Plaintiff. This Court
19 should order Defendants to cease and desist in its efforts to remove Plaintiff from his duly
20 elected position.

21 **SECOND CLAIM FOR RELIEF**

22 **Injunctive Relief**

23 **(All Defendants in their Official Capacity)**

24 49.

25 Plaintiff re-alleges and incorporates paragraphs 1 through 48 by reference.

26 50.

1 Plaintiff will be irreparably harmed if the House of Representatives and Legislature is
2 allowed to proceed with expulsion as described above and there is no other adequate legal
3 remedy.

4 51.

5 Plaintiff requests that this Court issue an injunction prohibiting the House of
6 Representatives and Legislature from proceeding with expulsion or any other sanction,
7 punishment or adverse action that would deprive Plaintiff of his liberty or property interests
8 due to the constitutional infirmities of Rule 27 facially and/or as applied to Plaintiff.

9 52.

10 Plaintiff also requests an injunction of this Court prohibiting Defendants from placing
11 restraints or sanctions on Plaintiff for exercising his freedom of speech/expression.

12 53.

13 The people of Oregon will not be harmed by this Court granting the injunctive relief
14 request, but rather, the greater public interest and welfare will be served by granting the relief
15 requested.

16 **THIRD CLAIM FOR RELIEF**

17 **42 U.S.C. §1983**

18 **(Fahey, Noble, Sandmeyer and Kotek in their Personal Capacity)**

19 **Count 1 - Violation of Procedural Due Process**

20 54.

21 Plaintiff re-alleges and incorporates paragraphs 1 through 53 by reference.

22 55.

23 42 U.S.C. § 1983 provides that a party shall be liable where “under color of any
24 statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be
25 subjected, any person of the United States . . . deprivation of any rights, privileges, or
26 immunities secured by the Constitution and laws of the United States.”

1 56.

2 The Fourteenth Amendment to the United States Constitution guarantees procedural
3 due process protecting individuals from erroneous or unjustified deprivations of life, liberty or
4 property. Plaintiff possessed a protected liberty interest in his reputation and a protected
5 property interest in his work benefits, such as PERS retirement contributions and other paid
6 benefits.

7 57.

8 As described in more detail above, Fahey, Noble, Sandmeyer and Kotek knowingly
9 deprived Plaintiff of his protected liberty interest and property interest without due process of
10 law. Fahey, Noble, Sandmeyer and Kotek delayed Plaintiff's investigation by nearly 200 days
11 for improper purposes, did not notify Plaintiff of the reasons for the delay, failed to give
12 Plaintiff the final findings of fact within 10 days of its submission, only provided Plaintiff
13 with seven days to respond to the allegations, prevented Plaintiff from presenting evidence at
14 the fact finding hearing, prevented Plaintiff from testifying without forfeiting his right to
15 counsel, required Plaintiff to present his defense first, and precluded Plaintiff from
16 questioning other witnesses or providing rebuttal evidence and testimony.

17 58.

18 Fahey, Noble, Sandmeyer and Kotek acted outside of the legitimate sphere of
19 legislative authority and activity. The unlawful actions they engaged in was in the employee-
20 employer context more so than their official positions as legislatures. Moreover, Rule 27 is
21 applied on a case-by-case basis without creating a binding rule of conduct, applies to only a
22 few individuals rather than the public at large, and does not bear all the hallmarks of
23 traditional legislation in its character or effect.

24 59.

25 As a direct, proximate, and foreseeable result Fahey, Noble, Sandmeyer and Kotek's
26 illegal deprivation of Plaintiff's constitutional rights, Plaintiff has endured emotional distress

1 in the form of anguish, embarrassment, loss of reputation, fear, worry, grief, anger, confusion,
2 frustration, loss of sleep, and interference with usual life activities.

3 60.

4 Plaintiff requests non-economic damages in the form of emotional distress against
5 Fahey, Noble, Sandmeyer and Kotek in the amount of \$1,000,000, along with reasonable
6 attorney fees, expert witness fees, costs, and interest pursuant to 42 U.S.C. §1988.

7
8 **Count 2 - Equal Protection against Fahey, Noble, Sandmeyer and Kotek**

9 61.

10 Plaintiff re-alleges and incorporates paragraphs 1 through 60 by reference.

11 62.

12 The Fourteenth Amendment to the United States Constitution provides that no state
13 shall deny to any person the equal protection of the laws.

14 63.

15 Plaintiff is Latino. The Legislature has had many Caucasian members who have
16 committed much more severe acts than Plaintiff, but have never proposed expulsion for a
17 Caucasian member. Fahey, Noble, Sandmeyer and Kotek's actions to expel Plaintiff are
18 based substantially on Plaintiff's race and/or national origin and thus, violate Plaintiff's
19 Fourteenth Amendment right to Equal Protection.

20 64.

21 Fahey, Noble, Sandmeyer and Kotek acted outside of the legitimate sphere of
22 legislative authority and activity. The unlawful actions they engaged in was in the employee-
23 employer context more so than their official positions as legislatures. Moreover, Rule 27 is
24 applied on a case-by-case basis without creating a binding rule of conduct, applies to only a
25 few individuals rather than the public at large, and does not bear all the hallmarks of
26 traditional legislation in its character or effect.

1 65.

2 As a direct, proximate, and foreseeable result Fahey, Noble, Sandmeyer and Kotek's
3 illegal deprivation of Plaintiff's constitutional rights, Plaintiff has endured emotional distress
4 in the form of anguish, embarrassment, loss of reputation, fear, worry, grief, anger, confusion,
5 frustration, loss of sleep, and interference with usual life activities

6 66.

7 Plaintiff requests non-economic damages in the form of emotional distress against
8 Fahey, Noble, Sandmeyer and Kotek in the amount of \$1,000,000, along with reasonable
9 attorney fees, expert witness fees, costs, and interest pursuant to 42 U.S.C. §1988.

10 **Count 3 - First Amendment against Fahey, Noble, Sandmeyer and Kotek**

11 67.

12 Plaintiff re-alleges and incorporates paragraphs 1 through 66 by reference.

13 68.

14 The First Amendment to the United States Constitution, as incorporated by the
15 Fourteenth Amendment, protects individual's right to freedom of speech.

16 69.

17 Fahey, Noble, Sandmeyer and Kotek's actions as described above violated Plaintiff's
18 right to freedom of speech under the First Amendment to the United States Constitution.
19 Plaintiff had a constitutional right to express his opposition to the proceedings against him.
20 Fahey, Noble, Sandmeyer and Kotek deprived Plaintiff of his right to free speech by labeling
21 his statements as "retaliation" and taking adverse actions against him.

22 70.

23 Fahey, Noble, Sandmeyer and Kotek acted outside of the legitimate sphere of
24 legislative authority and activity. The unlawful actions they engaged in was in the employee-
25 employer context more so than their official positions as legislatures. Moreover, Rule 27 is
26 applied on a case-by-case basis without creating a binding rule of conduct, applies to only a

1 few individuals rather than the public at large, and does not bear all the hallmarks of
2 traditional legislation in its character or effect.

3 71.

4 As a direct, proximate, and foreseeable result Fahey, Noble, Sandmeyer and Kotek's
5 illegal deprivation of Plaintiff's constitutional rights, Plaintiff has endured emotional distress
6 in the form of anguish, embarrassment, loss of reputation, fear, worry, grief, anger, confusion,
7 frustration, loss of sleep, and interference with usual life activities

8 72.

9 Plaintiff requests non-economic damages in the form of emotional distress against
10 Fahey, Noble, Sandmeyer and Kotek in the amount of \$1,000,000, along with reasonable
11 attorney fees, expert witness fees, costs, and interest pursuant to 42 U.S.C. §1988.

12 WHEREFORE, Plaintiff demands the following for its claim for relief:

- 13 1. A declaration the Rule 27 is constitutionally invalid, as described more
14 particularly above;
- 15 2. Injunctive relief, as described more particularly above;
- 16 3. Non-economic damages in the amount of \$1,000,000;
- 17 4. Attorney fees, expert witness fees, costs, and interest pursuant to 42 U.S.C.
18 §1988;
- 19 5. Costs and disbursements incurred in this matter; and
- 20 6. Any other relief this Court deems just and equitable.

21 DATED this 10th day of February, 2021.

22 /s/ Kevin T. Lafky
23 Kevin T. Lafky, OSB#852633
24 klafky@lafky.com
25 Amanda L. Reilly, OSB#194422
26 areilly@lafky.com
LAFKY & LAFKY
Attorneys for Plaintiff

HOUSE CONCURRENT RESOLUTION 11**Be It Resolved by the Legislative Assembly of the State of Oregon:**

That Legislative Branch Personnel Rules as amended and in effect for the Seventy-ninth Legislative Assembly are adopted for the Eightieth Legislative Assembly except as otherwise provided in this concurrent resolution.

Legislative Branch Personnel Rule 27 is amended as follows:

Rule 27. Harassment-Free Workplace.

(1) Policy.

(a) The Legislative Branch is committed to providing a safe and respectful workplace that is free of harassment. Members of the Legislative Assembly and all Legislative Branch employees are expected to conduct themselves in a manner that is free of harassment and to discourage all harassment in the workplace and at events, professional meetings, seminars or any events at which legislative business is conducted.

(b) This rule is designed to provide members and employees with informal and formal options to correct harassing conduct before it rises to the level of severe or pervasive harassment or discrimination. The Legislative Branch encourages members and employees to address potentially harassing conduct through reports to Employee Services or other avenues set forth in this rule.

(2) Terms. As used in this rule:

(a) "Employees" includes legislative interns and volunteers performing services for the Legislative Branch.

(b) "Harassing conduct" or "harassment" includes sexual harassment or workplace harassment. "Harassing conduct" may include conduct by a non-employee located in the workplace such as a vendor or member of the public.

(c) "Knowledge" of harassing conduct includes conduct about which an appointing authority or supervisor knows or, with the exercise of reasonable care, should know.

(d) "Protected class" means a class of individuals defined by a characteristic that may not be targeted for discrimination, including age, race, sex, sexual orientation, gender, gender identification, national origin, disability and religion.

(e) "Retaliation" means action taken against an employee with respect to a term or condition of employment for the reason that the employee has opposed conduct that is prohibited under this rule.

(f) "Sexual harassment" means unwelcome conduct in the form of a sexual advance, sexual comment, request for sexual favors, unwanted or offensive touching or physical contact of a sexual nature, unwanted closeness, impeding or blocking movement, sexual gesture, sexual innuendo, sexual joke, sexually charged language, intimate inquiry, persistent unwanted courting, sexist insult, gender

stereotype, or other verbal or physical conduct of a sexual nature, if:

(A) Submission to the conduct is made either explicitly or implicitly a term or condition of a person's employment;

(B) A person expressly or by implication conveys that declining to submit to the conduct will affect a person's job, leave request, benefits or business before the Legislative Assembly; or

(C) The unwelcome conduct has the purpose or effect of unreasonably interfering with a person's job performance, or creates a work environment that a reasonable person would find intimidating, hostile or offensive.

(g) "Unwelcome conduct" means conduct that an individual does not incite or solicit and that the individual regards as undesirable or offensive. An individual may withdraw consent to conduct that was previously welcomed by the individual.

(h) "Workplace harassment" means unwelcome conduct in the form of treatment or behavior that, to a reasonable person, creates an intimidating, hostile or offensive work environment. "Workplace harassment" includes discrimination based on a person's protected class. "Workplace harassment" also includes unwelcome conduct that occurs outside of work during nonworking hours if the conduct creates a work environment that a reasonable employee would find intimidating, hostile or offensive. "Workplace harassment" does not include every minor annoyance or disappointment that an employee may encounter in the course of performing the employee's job.

(3) Appointing authorities and supervisors.

(a) As used in this subsection, "supervisor" means a person who directs the regular work assignments of any employee.

(b) An appointing authority or supervisor shall take appropriate action to prevent, promptly correct and report harassment about which the appointing authority or supervisor knew or, with the exercise of reasonable care, should have known. "Harassing conduct" may include conduct by a nonemployee located in the workplace such as a vendor or member of the public.

(c) If an appointing authority or supervisor has knowledge of harassing conduct, the appointing authority or supervisor shall report the conduct to the Human Resources Director or the Legislative Counsel.

(4) Members or employees subjected to harassment.

(a) A member of the Legislative Assembly or employee of the Legislative Branch who is subject to what the member or employee believes to be harassment should report the conduct as soon as possible.

(b) An employee may report what the employee believes to be harassment to any of the following individuals:

(A) The employee's supervisor. An employee may report conduct that the employee believes to be harassing conduct to the employee's supervisor. If

an employee does not have a supervisor or is unaware of a supervisor, an employee may report concerns to other individuals listed in subparagraphs (B) to (D) of this paragraph.

(B) The employee's appointing authority. An employee may report conduct that the employee believes to be harassing conduct to the employee's appointing authority.

(C) Employee Services. An employee may report conduct that the employee believes to be harassing conduct to Employee Services.

(D) The Office of the Legislative Counsel. An employee may report conduct that the employee believes to be harassing conduct to the Legislative Counsel. The Legislative Counsel shall direct employees with concerns regarding harassing conduct to designated staff within the Office of the Legislative Counsel.

(c) A member may report what the member believes to be harassment to any of the following individuals:

(A) Employee Services. A member may report conduct that the member believes to be harassing conduct to Employee Services.

(B) The Office of the Legislative Counsel. A member may report conduct that the member believes to be harassing conduct to the Legislative Counsel or the Chief Deputy Legislative Counsel.

(d) If an employee works for the person alleged to be involved in the harassment, the employee should report to an alternative point of contact listed in this subsection.

(5) Informal reporting process.

(a) A person who believes that the person may have been subjected to harassment may simply want particular conduct to stop, but may not want to go through a formal complaint process or legal proceeding. The informal reporting process is designed and intended to meet that need.

(b) A member of the Legislative Assembly or employee of the Legislative Branch may, within *[one year]* **four years** of the date of the alleged harassment, initiate an informal reporting process described in this subsection by reporting the harassing conduct to any of the parties listed in subsection (4) of this rule.

(c) The report must include specific details of the alleged harassment, the name of the person alleged to be involved in the harassment and the dates and times of the alleged harassment.

(d) Except as subject to applicable statutes of limitation and time limitations set forth in this rule, the selection of any one option does not preclude a reporting party from pursuing other options at any time.

(e) Even if no report is generated, Employee Services, in consultation with the Legislative Counsel, shall investigate instances of severe or pervasive harassment or discrimination based on a protected class, which may result in corrective action against a member or employee who engages in harassment as described in this rule.

(f) When an informal report is made under this subsection, Employee Services or the Legislative Counsel shall immediately take appropriate action to ensure that the reporting party has a safe and non-hostile work environment.

(g) If Employee Services conducts an investigation based on a report under this subsection, subject to the reporting requirement under subsection (3) of this rule, all members and employees involved in the investigation shall cooperate and keep information regarding the matter confidential. However[.]:

(A) Certain Legislative Branch records are subject to public records requests under ORS 192.410 to 192.505.

(B) Individuals directly involved in the incident or matter being reported are not subject to confidentiality restrictions.

(h) After an informal report is made, or at any time during the informal reporting process, a reporting party may decide to institute a formal complaint process under subsection (6) of this rule.

(i) Institution of a formal complaint process supersedes and terminates any informal reporting process brought by the reporting party.

(6) Formal complaint process.

(a) A member of the Legislative Assembly or employee of the Legislative Branch may, within *[one year]* **four years** of the date of the harassment, initiate a formal complaint process by submitting a complaint with the Human Resources Director. In the event of a conflict with the Human Resources Director, the member or employee may initiate a formal complaint process with a representative from Employee Services or the Chief Deputy Legislative Counsel.

(b) A formal complaint shall be in writing and include:

(A) The name of the complainant;

(B) The name of the person or persons alleged to be involved in the harassment;

(C) The names of all parties involved, including witnesses;

(D) A description of the conduct that the member or employee believes is discriminatory or harassing;

(E) The date or time period in which the alleged conduct occurred; and

(F) A description of the potential remedy the member or employee desires.

(c) The office or person that receives the complaint may require that an incomplete complaint be supplemented by the complainant to correct deficiencies.

(d) When a formal complaint is submitted, Employee Services or the Office of Legislative Counsel shall immediately take appropriate action to ensure that the complainant has a safe and nonhostile work environment.

(e) The persons who receive a formal complaint shall, within 10 days after receipt of the complaint, appoint an investigator. In all instances in which the person alleged to be involved in the harassment

is a member of the Legislative Assembly, the investigator may not be an employee of the Legislative Branch and shall have experience conducting investigations of harassment. With respect to any other complaint, the persons who receive the complaint shall appoint an investigator who is an employee of Employee Services, an employee of the Office of Legislative Counsel or an investigator unaffiliated with the Legislative Branch with experience conducting investigations of harassment.

(f) All members and employees involved in the investigation shall cooperate with the investigation *[and keep information regarding the investigation confidential. However, certain Legislative Branch records are subject to public records requests under ORS 192.410 to 192.505]*.

(g) The person alleged to be involved in the harassment shall be notified that a formal complaint has been received and an investigation has been initiated.

(h) The investigator shall conduct an investigation and present a draft findings of fact and recommendations within 60 days of appointment under paragraph (e) of this subsection. The investigator may be granted an extension of time by the Human Resources Director or the Office of Legislative Counsel to complete the investigation.

(i) Notification and copies of the draft findings of fact and recommendations will be given to the Human Resources Director, the Office of the Legislative Counsel, the complainant and the person alleged to be involved in the harassment.

(j) Within five days after notification under paragraph (i) of this subsection, recipients may request modifications to the findings of fact. Any requests to modify the findings of fact must be made in writing and must explain the reason for the modification. Requests for modification may be granted at the discretion of Employee Services and the Office of the Legislative Counsel.

(k) Within 10 days after receipt of the final report, the Human Resources Director or the Office of the Legislative Counsel shall submit the investigator's final findings and recommendations report to the complainant, the person alleged to be involved in the harassment and the appointing authority of the person alleged to be involved in the harassment.

(L) The appointing authority shall act on recommendations received as soon as practicable after receipt.

(m) Even if no formal complaint process is initiated, Employee Services, in consultation with the Office of the Legislative Counsel, shall investigate instances of severe or pervasive harassment or discrimination based on a protected class, which may result in corrective action against a member or employee who engages in harassment as described in this rule.

(7) Reporting requirements for informal reports and formal complaints.

(a) Appointing authorities and supervisors shall report allegations of, or knowledge of, alleged har-

assing conduct to the Human Resources Director or the Legislative Counsel.

(b) If a party informally reports harassment and wishes the report to remain anonymous or wishes that no action be taken, the Human Resources Director or the Legislative Counsel shall determine appropriate action.

(c) In the case of an informal report of harassing conduct and with consent from the party making the report, Employee Services or the Legislative Counsel shall take the following steps, in addition to any steps taken under paragraph (b) of this subsection:

(A) If the person alleged to be involved in the harassment is a member of the Legislative Assembly, notify the highest ranking member of the same caucus as the alleged harasser of the fact that a report has been made and the name of the reporting party. The highest ranking member shall immediately notify the alleged harasser of the fact that a report has been made under this rule and the name of the reporting party.

(B) If the member alleged to be involved in the harassment is the highest ranking member of a caucus, notify the presiding officer of the chamber in which the alleged harasser serves, or if the member alleged to be involved in the harassment is the presiding officer, notify the caucus leader of the same caucus as the presiding officer. The member who is notified of the report shall immediately notify the alleged harasser of the fact that a report has been made under this rule and the name of the reporting party.

(C) If the person alleged to be involved in the harassment is a personal staff member, caucus staff member or leadership office staff member, notify the appointing authority of the fact that a report has been made and the name of the reporting party. The appointing authority shall immediately notify the alleged harasser of the fact that a report has been made and the name of the reporting party.

(D) If the person alleged to be involved in the harassment is a member of the nonpartisan staff, notify the agency head or parliamentarian of the agency or parliamentary office of which the alleged harasser is an employee. The agency head or parliamentarian shall immediately notify the alleged harasser of the fact that a report has been made and the name of the reporting party.

(E) If the person alleged to be involved in the harassment is an agency head, notify the presiding officers. The presiding officers shall immediately notify the alleged harasser of the fact that a report has been made and the name of the reporting party.

(F) If the person alleged to be involved in the harassment is a parliamentarian, notify the presiding officer of the chamber that elected the parliamentarian. The presiding officer shall immediately notify the alleged harasser of the fact that a report has been made and the name of the reporting party.

(d) In the case of a formal complaint, in addition to any steps taken under subsection (6) of this sec-

tion, the office receiving the formal complaint shall deliver a copy of the formal complaint:

(A) In a case where the person alleged to be involved in the harassment is a member of the Legislative Assembly, personal staff member, caucus staff member or leadership office staff member, to the highest ranking member of the caucus of the chamber in which the alleged harasser serves or works.

(B) In a case where the person alleged to be involved in the harassment is an employee of a legislative agency, to the agency head.

(C) In a case where the person alleged to be involved in the harassment is an employee of a parliamentary office, to the parliamentarian of the chamber the parliamentary office serves.

(e) Notwithstanding paragraph (d) of this subsection, if the person alleged to be involved in the harassment is a person required under paragraph (d) of this subsection to receive the written complaint, then in lieu of service under paragraph (d) of this subsection, the office receiving the report shall deliver a copy of the report:

(A) In a case where the person alleged to be involved in the harassment is a caucus leader or a parliamentarian, to the presiding officer of the chamber in which the caucus leader or parliamentarian serves.

(B) In a case where the person alleged to be involved in the harassment is a presiding officer, to the caucus leader of the same caucus and chamber as the presiding officer.

(C) In a case where the person alleged to be involved in the harassment is an agency head, the Human Resources Director or the Legislative Counsel, to the presiding officers of both chambers.

(8) Formal complaints against members.

(a) If the person alleged to be involved in the harassment is a member of the Legislative Assembly, the final report shall be given to the respective special committee on conduct of the chamber in which the member serves. Special committees on conduct are established as prescribed in subsection (12) of this rule.

(b) When a special committee on conduct receives an investigator's final findings and recommendations report, the committee shall schedule a public hearing and give notice to the complainant and alleged harasser of the date and location of the hearing. The hearing may not be set for a date that is less than 14 days nor more than 45 days after the committee receives the investigator's final report.

(c) At the hearing, the complainant and the alleged harasser, or their attorneys, may present documents or other evidence and may suggest witnesses. Only committee members may question or otherwise address witnesses. Committee members shall limit the scope of their questions to topics that a court in this state would deem relevant in a civil action involving the same conduct.

(d) The committee shall deliberate on the investigator's final report, testimony and other evidence presented at the hearing and report a recommendation. The committee may recommend:

(A) Reprimand;

(B) Censure;

(C) Expulsion; or

(D) That the committee take no further action.

(e) The committee shall report its recommendation to the complainant and the person alleged to be involved in the harassment. The complainant and the person shall each have 10 days to request that the committee review the recommendations. A request for review shall be in writing and shall state the requester's objections to the recommendation. A copy of the request for review shall be given to the other party, who shall have five days to respond in writing to the request for review. The committee shall consider the request for review and response and report its recommendation within 10 days after the date for the filing of the response to a request for review.

(f) At the end of any review period under paragraph (e) of this subsection, the committee's recommendation shall be made to the chamber for which the committee serves. The chamber shall take action on the recommendation on the next day that it convenes. Any sanction considered by a chamber shall be adopted by the chamber only upon receiving at least a two-thirds majority vote in favor of adoption of the sanction.

(9) Independent investigator costs. The costs of an independent investigator hired pursuant to this rule shall be borne by the Legislative Assembly.

(10) Retaliation prohibited. Retaliation against any person who participates in a process described in this rule is prohibited. Retaliation constitutes harassment under this rule.

(11) Liberty interest hearing for terminated employees.

(a) A former employee of the Legislative Branch may request a hearing under this rule within one year of the date of the employee's termination if the employee reasonably believes that the employer has violated the employee's liberty interest.

(b) A reasonable belief that an employee's liberty interest has been violated exists if:

(A) The employer accuses the employee of conduct that impairs the employee's reputation for honesty, integrity, ethical behavior, morality or other characteristics necessary for continued employment;

(B) The accusations were made in connection with the employee's termination;

(C) The employee contests the accuracy of the accusations;

(D) The employer publicly discloses the accusations; and

(E) The accusations foreclose the employee's opportunities for future public employment.

(12) Presiding officer duties. As soon as practicable after the Legislative Assembly convenes in organizational session the Senate President and the Speaker of the House of Representatives shall each appoint the members of a special committee on conduct for their respective chambers. Each committee shall consist of an equal number of members from the majority party and the minority party. If a

member of a special committee on conduct is the complainant or the person alleged to be involved in the harassment, the appropriate presiding officer shall discharge the member from the committee and appoint another member from the same party.

(13) Human Resources Director duties.

(a) The Human Resources Director shall give the following notice to all members of the Legislative Assembly and employees of the Legislative Branch:

If you believe you have been a victim of harassment, you have options. You can tell the alleged offender about the harassing conduct that disturbed you and ask the alleged offender to stop. You can communicate to the alleged offender in person or in writing. You may also use the informal report or formal complaint process set forth in Legislative Branch Personnel Rule 27 to pursue a report or complaint of harassment if you:

(A) Do not want to confront the alleged offender directly;

(B) Have talked to the alleged offender and the harassing conduct has not stopped; or

(C) Believe your report or complaint has resulted in retaliation. In addition, you have the right to seek redress with administrative agencies or the courts.

(b) The Human Resources Director shall ensure that the text of the notice set forth in paragraph (a) of this subsection is posted in common work areas for all members and employees, and is available on the Legislative Intranet.

(c) The Human Resources Director shall notify all employees that an employee who engages in harassment as described in this rule may be subject to discipline, including dismissal.

(d) The Human Resources Director shall notify all employees involved in any aspect of an investigation conducted under this rule that retaliating against a person for making a report or complaint of discrimination, workplace harassment or sexual harassment will not be tolerated and that employees engaging in harassing conduct in violation of this policy may be subject to disciplinary action, including dismissal.

(e) The Human Resources Director shall notify members and employees with supervisory responsibilities of their obligations under this rule.

Filed in the office of Secretary of State January 22, 2019

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January 29, 2021

Oregon Legislature
Members of the Conduct Committee

Re: Rebuttal to Final Report/Investigation regarding Rep, Hernandez

Greetings:

I am writing to respond to the final Report concerning the Rule 27 investigation of Representative Diego Hernandez. This investigative process has been flawed from the beginning. Rep. Hernandez has not been allowed to present important evidence in the investigation. Rep. Hernandez's testimony, despite being supported by abundant evidence, has been ignored. Although the investigation has dragged on for many months, somehow there was a need to rush a report out without allowing Rep. Hernandez to respond to new allegations.

Process

On May 5, 2020, Rep. Hernandez was notified of a LBPR 27 ("Rule 27") investigation. The notice contained the names of two individuals, Subjects 1 and 2, who were named by mandatory reports from Speaker Kotek and Sen. Gelser. Under Rule 27, the investigation was supposed to be concluded "promptly" and in no more than 84 days. The time may be extended after "advance notice" to Rep. Hernandez, which was **never provided**. The draft report was issued on December 23, 232 days later. We were given 7 days to respond.

We were not notified of any new subjects until December, seven months after the investigation started. In the Report Subject 4 was labeled as a mandatory report, which should have required this immediate follow up according to the Rule:

- (e) The independent investigator shall promptly:
 - (A) Deliver a copy of the conduct complaint to the person accused of engaging in behavior prohibited by this rule, who shall thereafter be the respondent.

This was never done; as you can see by the attached emails, our efforts to obtain this information was characterized by the investigator as “tedious.”

Under HCR221 14B(c) it states that “The independent investigator shall keep the complainant and the respondent apprised of the investigation timeline and the status of the investigation at the outset of an investigation, on a regular basis thereafter and upon request of the complainant or respondent.” We made several requests for timelines and updates to the investigators; we were ignored and we were never given a timeline, nor the status of the investigation.

Rep. Hernandez was interviewed for hours on August 19th, 2020. On December 17, 2020, for the first time in this process, Ms. Ryan informed Rep. Hernandez’s attorney that there were two new subjects that she was investigating. She asked whether she could interview Rep. Hernandez again concerning these new subjects. By email on December 17-18, Rep. Hernandez’s attorney requested any documents that related to these new subjects, and particularly “any documents that have caused these new investigations to be initiated.” Rule 27 requires that the respondent be notified of who and what he is being accused of. Ms. Ryan refused that request, calling the attempt to honor Rep. Hernandez’s rights under Rule 27 and due process “tedious.”

Rep. Hernandez wanted an opportunity to interview again and provide additional information once he had full knowledge of the new allegations, but that was refused. Right in the middle of Rep. Hernandez’s attempts to obtain the documents regarding the new allegations, Ms. Ryan issued her draft report on December 23 after 5:00pm. It is clear that the report was already drafted and the request to interview Rep. Hernandez was a sham.

The Confidential Report focuses on three women whom Rep. Hernandez dated in 2017 and 2019. The Report is seriously flawed in a number of ways.

- The Report does not make clear that none of these women filed a complaint; or names who filed the complaints. Including omitting Speaker Kotek filing of a report.
- The Report notes that additional time was needed for the investigation. Legislative rules require reports be completed in 84 days. This report required 9 months.
- The Report does not make clear that these three women were not legislative employees and were not subject to legislative rules at the time of the alleged conduct – much of which was over four years ago, when Rule 27 was narrower in scope.
- None of the evidence was submitted under penalty of perjury as would be required in legislative rules had the “complainants” complained directly.
- The Report fails to note the salient detail that two of these women [REDACTED] with the obvious potential for bias and collusion.
- The Report fails to note that in several cases, intimate relations continued after the so-called “break-up” of the relationship.
- The Report states that Rep. Hernandez refused to meet with investigators. This is completely untrue.

- The Report concludes that these women perceived a level of undue pressure from Rep. Hernandez because of his status as a legislator, despite the fact that each of the relationships here preceded Rep. Hernandez's election to the Legislature. The Report completely fails to provide proper context for how Rep. Hernandez knew these people, and what the nature of the relationships were long before he ran for political office. The Report fails to consider that these same women may have perceived more pressure to complain or cooperate from the Speaker.

One of the challenges of this process is anonymity. While the rights of complainants should be respected, the process denies two basic rights that have always been associated with any fair administration of justice. The first is the right to question one's accusers. Without the ability to question the accuser, and obtain evidence from them, the process is skewed. The respondent is dependent on the fairness and impartiality of the investigator. But if the investigator doesn't obtain the evidence, or ignores evidence, then the process is flawed, as the respondent is unable to obtain the evidence and question witnesses. The second issue is anonymity itself. The respondent is forced to defend himself, and potentially lose his Legislative seat and associated benefits, while the complainant (who may not have even complained) is cloaked in anonymity, free to have their accusations vetted by a sympathetic investigator but not a process designed to insure a fair outcome.

Speaker Kotek's role in this process should be carefully reviewed.

- 
- The speaker knew of Rep. Hernandez's 2017 personal relationships in 2017 and used HCR 11 and an older iteration of rule 27 that was in place at the time to address the concerns that were brought to her; Rep. Hernandez complied with her directives after meeting with her.
- The Speaker knew that legislative rules in force at that time did not apply to the relationships in this case because the subjects were not legislative employees.
- The Speaker publicly called for his resignation before any investigation was initiated. Incorrect information was leaked to the press regarding possible complaints. And during this time, he never had access to the details of any allegations against him. In fact, **this Report was leaked to the media within two hours of it being submitted to the Legislative Office of Equity and Inclusion.**
- The Speaker removed Rep. Hernandez from legislative committees before investigations were complete, even though there was no credible allegation of any harm or risk to Capital employees or visitors.
- Inflammatory accusations were raised that women might be fearful for their safety and the Conduct Committee was asked to implement interim safety measures. The Report contains no evidence that personal safety was ever a consideration.
- The investigation was allowed to drag on for months in a failed attempt to identify new subjects or witnesses. Rather than be concluded promptly, the investigation was delayed through the 2020 election cycle.

Below/attached/linked are specific documents containing relevant emails and rebuttals to many of the assertions in the Report. I apologize for the length of this document but so much evidence has been ignored that it is necessary to complete the record. Please let me know if there are any questions or requests for any additional evidence.

Sincerely,

LAFKY & LAFKY

s/Kevin T. Lafky

Kevin T. Lafky

cc: client

Subject 1:

Important highlights:

- In the Fall of 2017, Subject 1 switched to a job in the political campaign realm, which meant Rep. Hernandez would have to work more closely with subject 1
- It is important to note that Rep. Hernandez has not spoken to subject 1 since October 2017.
- In Late October, Speaker Kotek counseled Rep. Hernandez to not speak to or engage with Subject 1. Rep. Hernandez complied.
- Subject 1 and Rep. Hernandez worked in the same spaces throughout 2018 without any issues.

Responses to claims:

- It was never made explicitly clear to Rep. Hernandez that the relationship had ended until May, although Rep. Hernandez does acknowledge that subject one was becoming more distant in late March/April.
- What made it confusing for Rep. Hernandez was that they were still intimate in March/April and he misunderstood that as continued interest on her part.
- Rep. Hernandez meant no harm in sending a gift box, and flowers. Rep. Hernandez got the gift box idea in December of 2016 from Subject 1 when she sent him a message from that company. Rep. Hernandez saved the image.



- In May, after it became clear to Rep. Hernandez that they were just going to be friends. Rep. Hernandez took that literally and mistakenly to mean they were actually going to be friends. When he invited her to go on a walk and happy hour, he did so under these beliefs.



- o The report lists a series of dates A.310-A3.17 and asserts that Subject 1 consistently tried to avoid all contact with Rep. Hernandez after the May 17 meeting where explicit clarity was given. It asserts that no meetings were sought that wasn't specific to her lobbying job and also that she brought another person with her due to her discomfort.
- o Please read for yourselves the text messages from that time to get context and see how perhaps Rep. Hernandez viewed their relationship as having evolved to a supportive friendship. Note her outreach to him on June 22 at 9pm starting with

“Can I call you?” and Subject 1’s unsolicited offer to reschedule the June 22 social meeting for the next week.

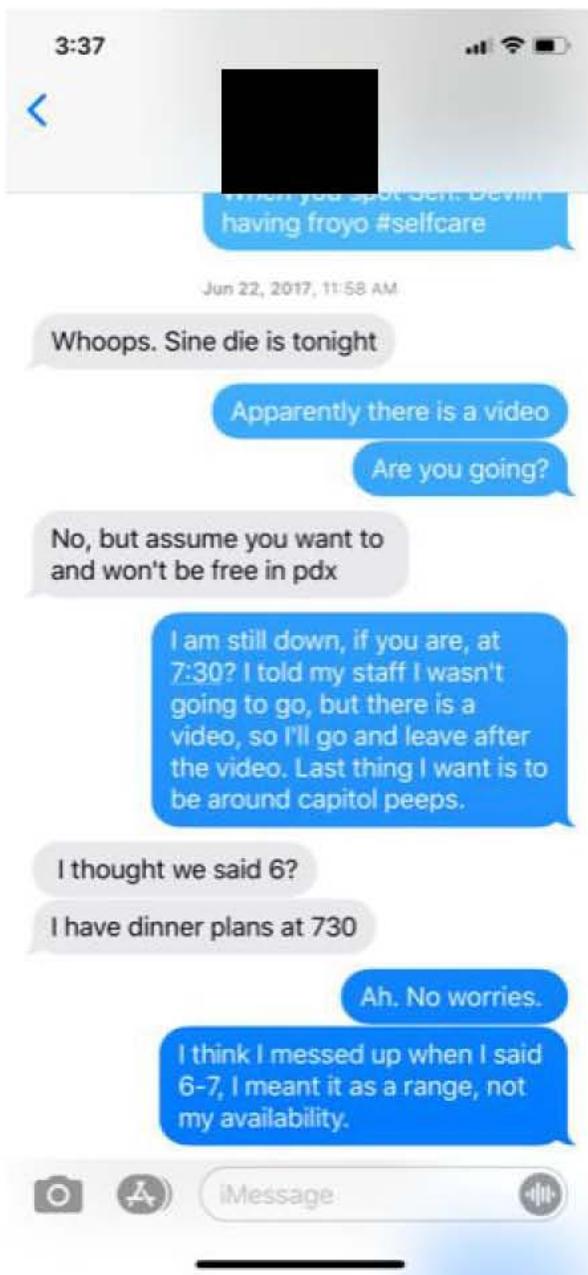








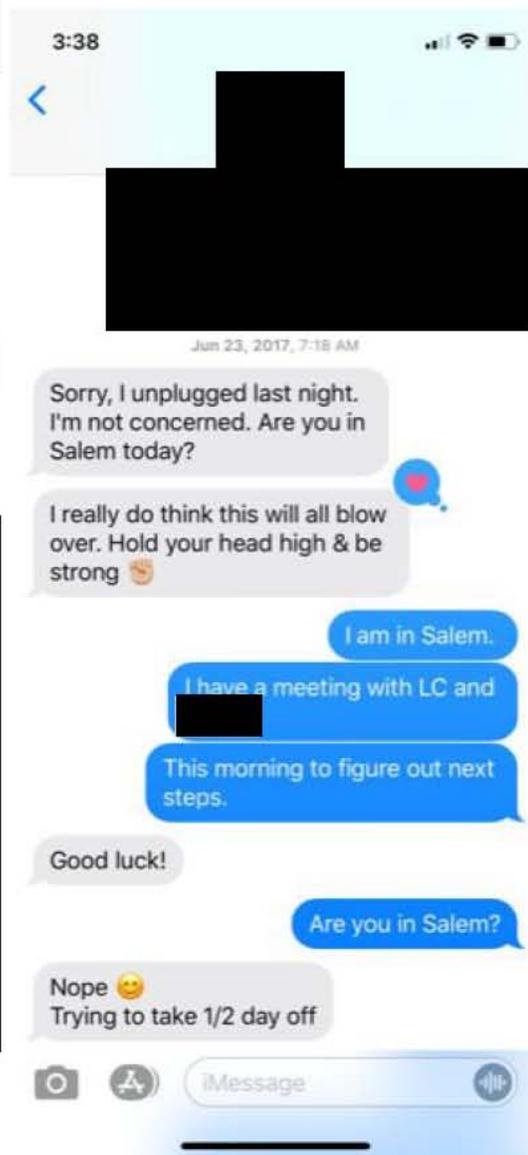


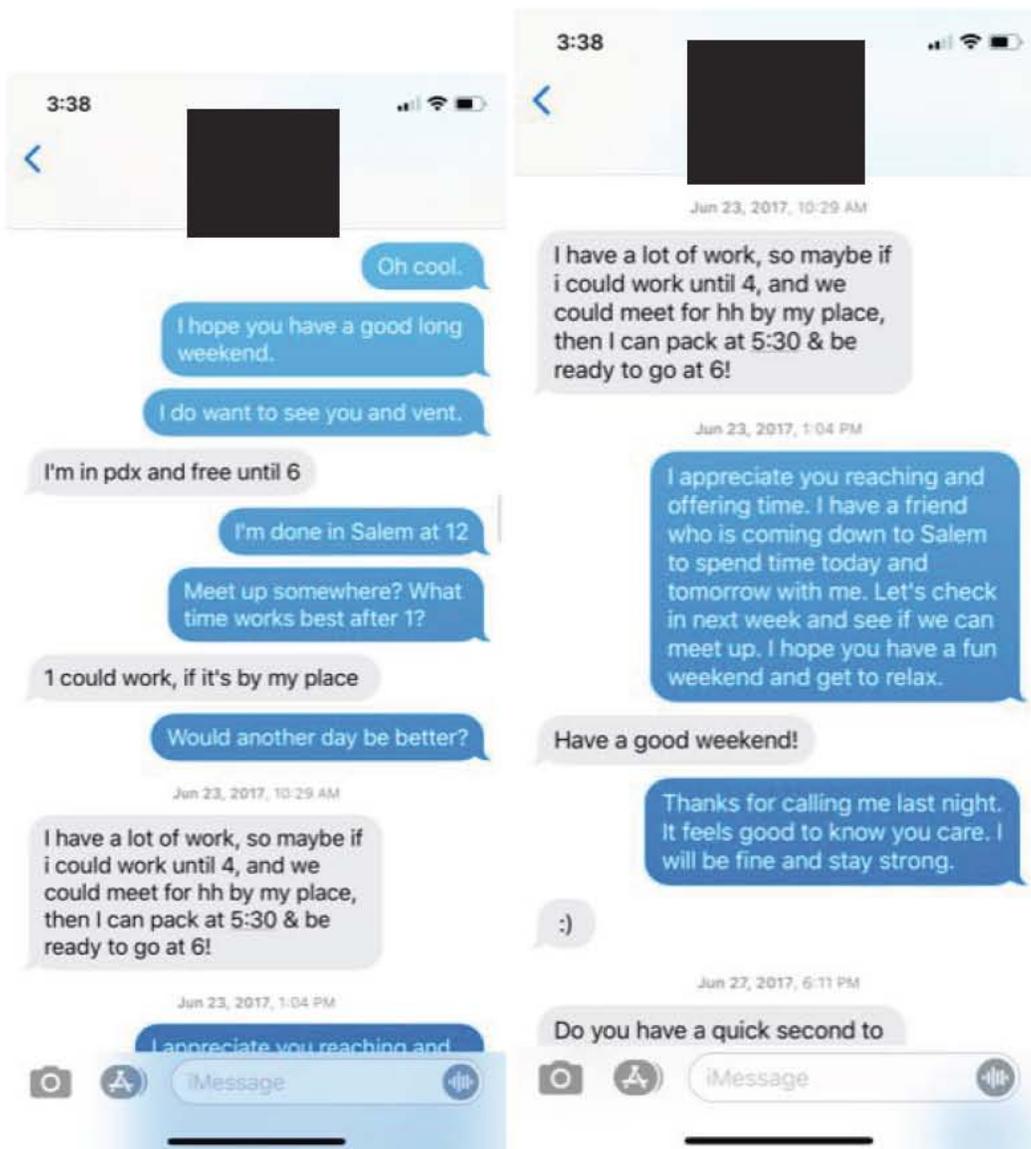








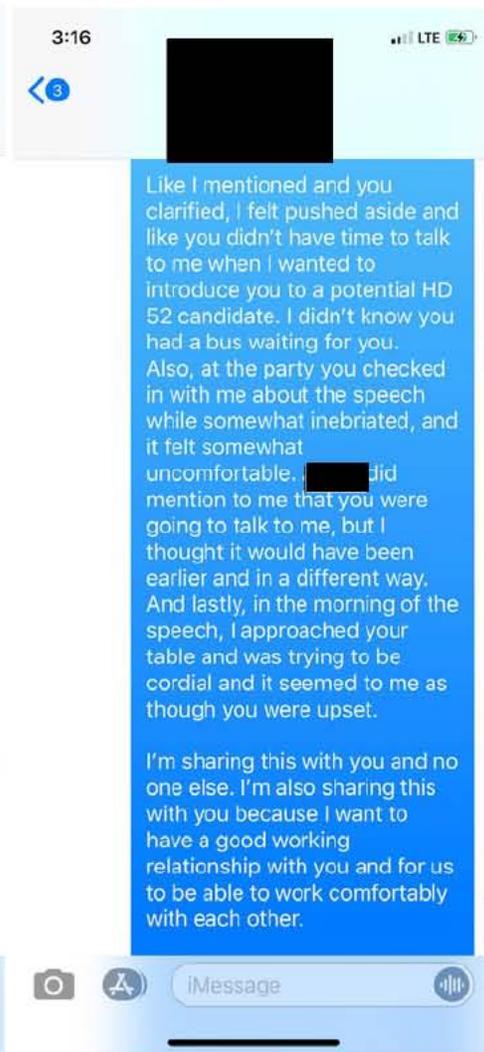




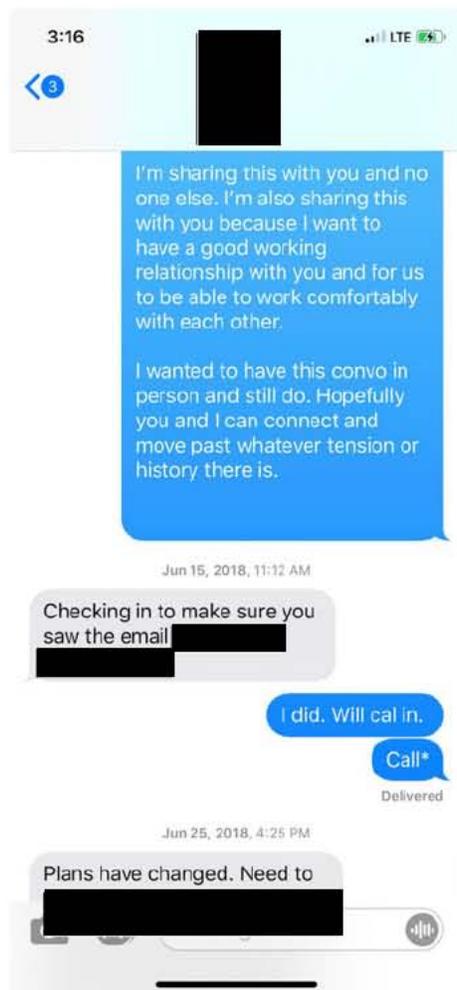
- **3.19:** Rep. Hernandez has never “knocked on Subject 1’s apartment door unannounced.” That would be impossible as her apartment complex has a main door which is locked and has a separate entry system that requires being buzzed in to then walk to any of the unit’s inside doors. He told the investigators this and yet you were not presented this critical information.
- In October of 2017, Subject 1 had a new job in the political campaign realm. At a political event, Rep. Hernandez was trying to introduce Subject 1 to a woman of color who was thinking of running for office, [REDACTED]. The political organization Subject 1 worked for was known to only recruit white people to run for office. She didn't just put Rep. Hernandez off, she put the woman of color candidate off as well while the potential candidate was standing next to

Rep. Hernandez. He was concerned about the message it would send to other candidates [REDACTED]. He did later discover that she was late for a bus.

- [REDACTED] he checked in with Rep. Hernandez [REDACTED] at a party where she seemed inebriated. Rep. Hernandez felt uncomfortable. Hence Rep. Hernandez's text that memorialized this whole experience. The report implies a harsh message that made her fear for her job and we would like you to see it for yourself in its entirety.



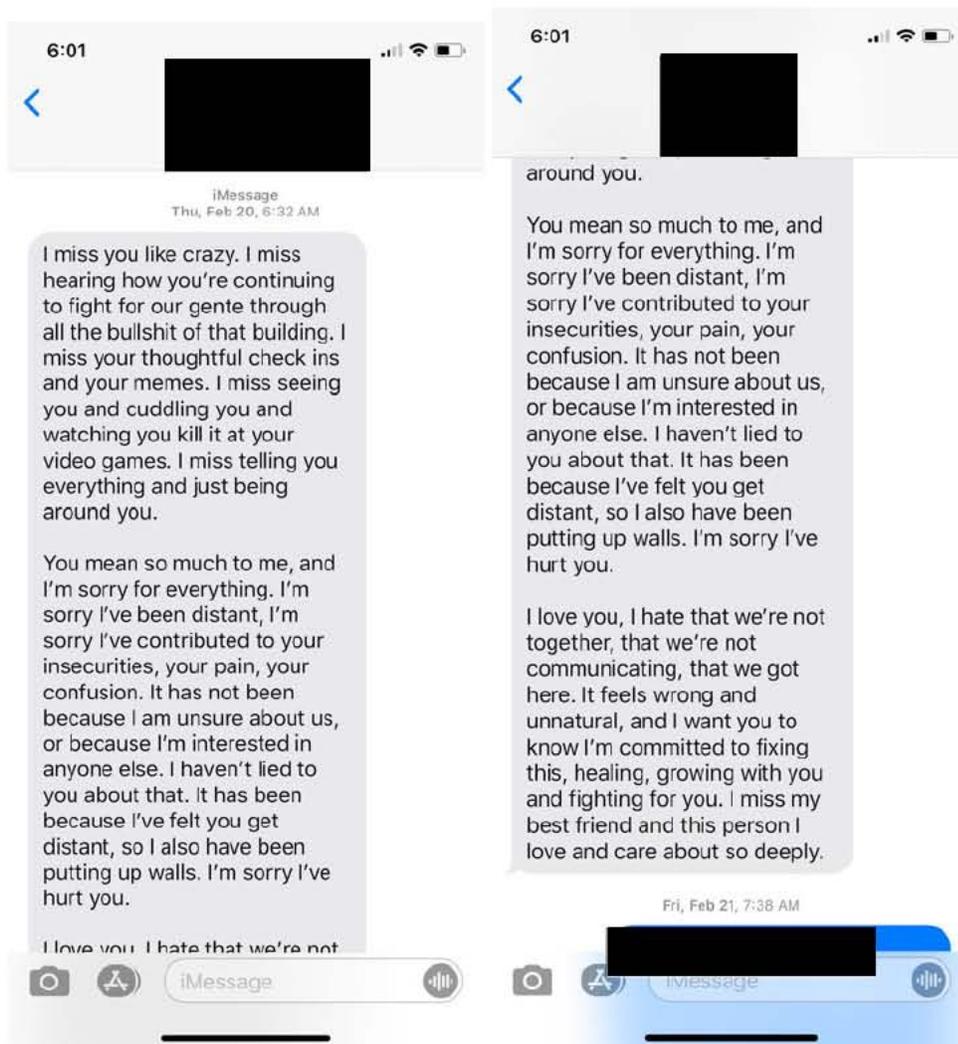
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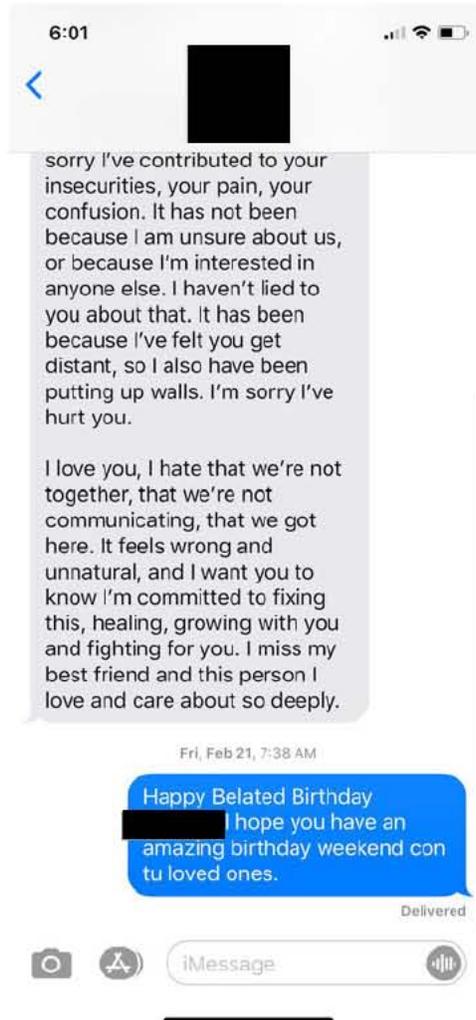


- The claim that she feared for her job is contradicted with evidence that we provided where Rep. Hernandez clearly states “she’s the right person for the job.” For Rep. Hernandez this was about a working relationship and constructive feedback.
- Speaker Kotek met with Rep. Hernandez the day after this text message. She counseled Rep. Hernandez and Rep. Hernandez understood and complied with the counseling and ceased communicating entirely with subject 1.
- Rep. Hernandez and Subject 1 worked together professionally throughout 2018 without any issues.

Subject 2

- Rep Hernandez has admitted to throwing a phone at a table during a verbal argument with subject 2 in July of 2019. He deeply regrets that act.
- The last time Rep. Hernandez and Subject 2 communicated was in late February of 2020, Subject 2 was trying to rekindle a relationship with Rep. Hernandez. After this didn't work, subject 2 contacted Rep. Hernandez's partner to try to get her to terminate the relationship. Please see the messages below in full:







- We hope it is clear by now to the committee that the conflict between them wasn't about her safety as was presented to the media and this committee last May but instead how Rep. Hernandez broke her heart.
- Rep. Hernandez declined to engage with her after her heartfelt text message that she would “fight for me” and her profession that she “missed her best friend” and this person she “loves and cares about so deeply”. The next day she sent the aggressive email to his girlfriend and about 10 days later she filed [redacted] [redacted] him for an incident that had occurred nearly a year before.
- The report finding says she was uncomfortable around him after their relationship ended. Rep. Hernandez is also uncomfortable around her too. We don't see how

the committee could have an accurate picture of the situation without these details, yet they were not included in the report.

- In the draft report, 2 text messages were originally labeled “jealous and controlling,” and in the final report the 2 text messages were relabeled “abusive and controlling.”
 - In one of the text messages, Rep. Hernandez asked why Subject 2 sat in the front of the Uber. His concern was purely over her safety and there had been media reports of drivers assaulting women who were on a trip booked by someone else, as was the case in this situation.
 - In another text message, Rep. Hernandez asked Subject 2 to prove to her she had sent a text that he had not received.
 -
- B.3.12 - The report uses the extremely loaded term when saying Rep. Hernandez was accused of having “hacked into her account and cancelled her Oregon State Legislature subscription” to his newsletter. It then says Rep. Hernandez admitted to doing so. **This is a completely false and absurd statement** - He didn’t admit to “hacking” anything - legislators know that they can ask Information Systems or other staff to remove people’s email from our newsletter distribution list (GovDelivery) without “hacking” into accounts.
- We believe the investigators used this loaded term to try and continue a false narrative that they had hinted at in the previous item when he was accused of “hacking” into a social media account of Subject 2 and saying he can “hack a little.’ What they didn’t tell you was they pulled this quote from a January 2018 messenger thread where he was referring to high school and also said “I like tech I use to be better but things progress so fast that I get behind quick and old shit don’t work anymore, coding has advanced so much.”

Subject 4

Important highlights:

- Subject 4 worked for a ██████████ County ██████████ when she and Rep. Hernandez dated in the Summer of 2017.
- Rep. Hernandez has repeatedly asked the investigators what “Capitol business” was being conducted by Subject 4, he has asked for examples and asked for the report to include specifics and those requests were ignored. Rep. Hernandez did not conduct any Capitol business with Subject 4. Rep. Hernandez has not seen Subject 4 since August 2018.
- In the Winter of 2017, Subject 4 got a new job in the political campaign realm.
 - Rep. Hernandez asked investigators to be very clear and provide examples of what this new job had to do with Capitol business, instead of a broad general statement. This request was ignored.
- In the final report the investigators stated: *“Rep. Hernandez admitted a consensual intimate interaction with Subject Four, but he denied that there was any type of relationship with Subject Four.”*
 - This is incorrect, in Rep. Hernandez’s draft report written rebuttal we stated: “The relationship between Subject 4 and Rep. Hernandez turned intimate in July 2017. They went on dates in July and August of 2017...Their dating relationship never turned into anything serious.”
- The claim is that Rep. Hernandez suddenly became interested in Subject 4 and that Rep. Hernandez pursued the subject. **This claim is false.**
 - Rep. Hernandez has known Subject 4 since 2015, Rep. Hernandez was best friends with her sister for a long time.
 - Subject 4 has been asking for Rep. Hernandez’s help since 2015, in finding a job, ██████████
 - Subject 4 asked Rep. Hernandez out to “party” in late May 2017.
 - In the draft report Subject 4 claimed that throughout the fall/winter of 2017 that Rep. Hernandez kept trying to rekindle the relationship, Rep. Hernandez provided evidence to the investigators that Subject 4 was the one who was trying to meet with Rep. Hernandez, contradicting the claim. But then, the claim got flipped to Rep. Hernandez didn’t want to meet with Subject 4 because he wanted a personal relationship with her. So if he would have met with her he would have been trying to rekindle a relationship and if he didn’t was because he was trying to rekindle a relationship.
- **Background/Context:**
 - For context, Rep. Hernandez went to college with Subject 4’s sisters, ██████████ ██████████ Rep. Hernandez met Subject 4 through her sister ██████████ around 2015; she had moved from another state to Portland. ██████████ asked Rep. Hernandez to help find Subject 4 a job around 2015, Rep. Hernandez introduced her to someone in politics and Subject 4 ended up getting a job with

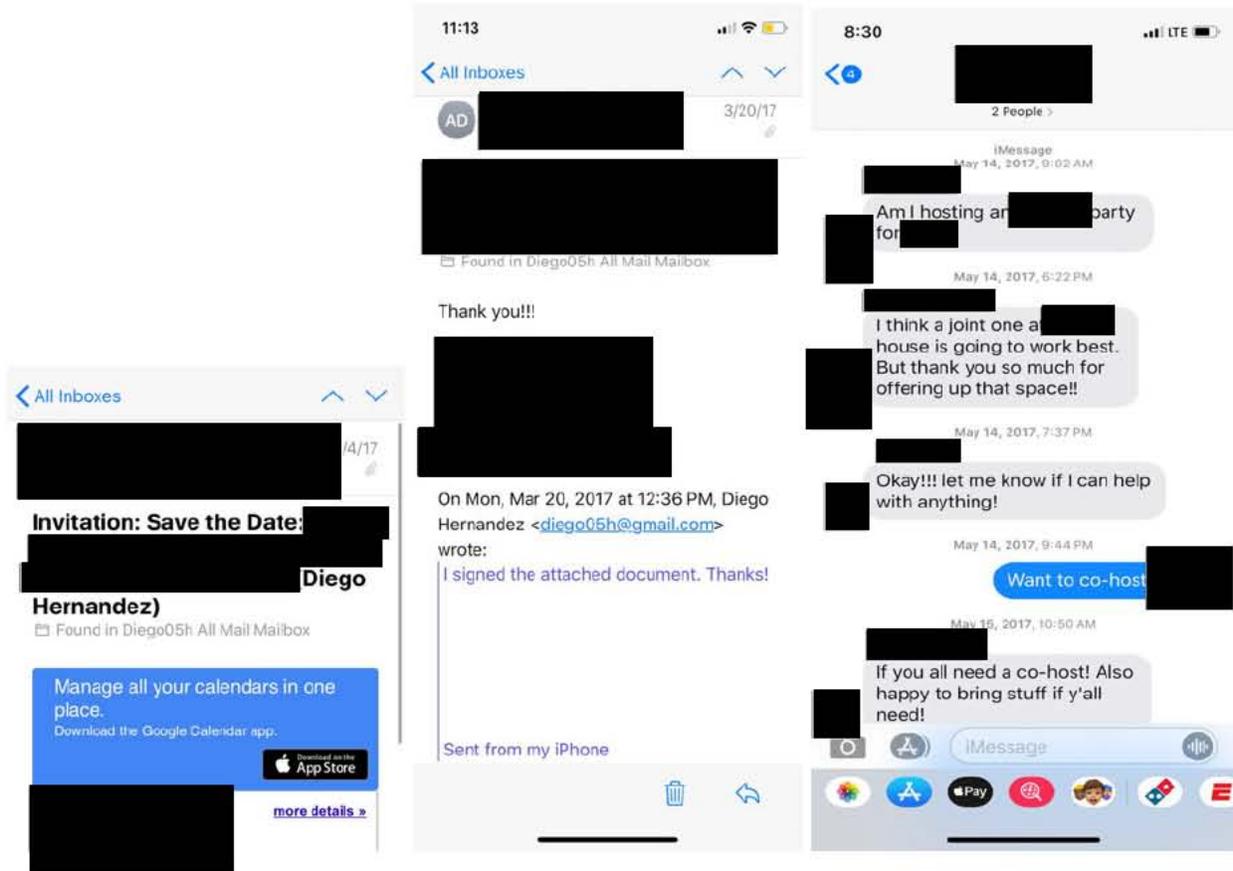
█████. Subject 4 and Rep. Hernandez were friends. Rep. Hernandez would spend some holidays with their families, their kids knew Rep. Hernandez as “Uncle Diego.” In December 2016/January of 2017, Subject 4 shifted her job to a county job ██████████. Subject 4 was hired onto a new job related to campaigns. The political campaign organization does not conduct business at the Capitol as it is a Political organization associated with political campaigns and does not conduct work at the Capitol nor does business at the Capitol.

- For context, ██████████ and Subject 4 had a very volatile relationship. There was a lot of animosity, competition, mistrust and unresolved conflict and it had been like that since they were teenagers. You will see this theme come up in the evidence Rep. Hernandez is providing. This is relevant because it did have an impact on Subject 4's and Rep. Hernandez's friendship/relationship/ This is context to some of Subject 4's and Rep. Hernandez 'conflict that she has brought up in her claims. Evidence of this will appear throughout below.
- In late 2016/early 2017, Subject 4 ██████████ asked for Rep. Hernandez's help ██████████. ██████████ she asked Rep. Hernandez ██████████ to give her money, ██████████ Evidence of this is linked below.
- In early 2017, Subject 4's and Rep. Hernandez's friendship was growing. Rep. Hernandez always looked at Subject 4 as a friend, she was Rep. Hernandez's best friend's sister, and Rep. Hernandez wanted to be on good terms with her and their community of friends and family. In May 2017, Subject 4 asked Rep. Hernandez out on a date (text in evidence below), Rep. Hernandez was a little thrown off by it, because Rep. Hernandez didn't think she liked Rep. Hernandez like that.
- The relationship between Subject 4 and Rep. Hernandez turned intimate in July 2017. They went on a few dates in July and August 2017. Rep. Hernandez was really busy in the summer traveling and she was busy as well so their schedules rarely aligned.
- Their dating relationship never turned into anything serious; their dating naturally phased out. Their relationship did have conflict in October/November of 2017, when ██████████ asked Rep. Hernandez to get Subject 4's endorsement for her political race and Subject 4 did not want to endorse ██████████
- Rep. Hernandez attempted to reconcile their friendship and so did she in November/December 2017.

- As you'll see in detailed evidence below, from January-July 2018, Subject 4 and Rep. Hernandez became close friends again soon after December 2017; they had a friendship. Rep. Hernandez helped her out on several occasions, including an incredible hardship in March that Subject 4 experienced.
- In July/August, Subject 4 and Rep. Hernandez started to get closer, but then [REDACTED] was going through a separation with her partner and that threw a big wrench in Subject 4 and Rep. Hernandez relationship. Rep. Hernandez set clear boundaries with Subject 4 on August 13th of 2018 that Rep. Hernandez did not want an intimate relationship.
- In early November 2018, Subject 4 contacted Rep. Hernandez at night about [REDACTED] and sent Rep. Hernandez a very personal email (evidence provided below). Rep. Hernandez took it as an attempt on her part to rekindle the relationship, Rep. Hernandez did not respond and they have not spoken since.

Claim/Response:

- [REDACTED], Rep. Hernandez has provided evidence below that she was reaching out to Rep. Hernandez for help and information. Throughout 2017, Subject 4 asked for Rep. Hernandez's help in her [REDACTED]
[REDACTED]



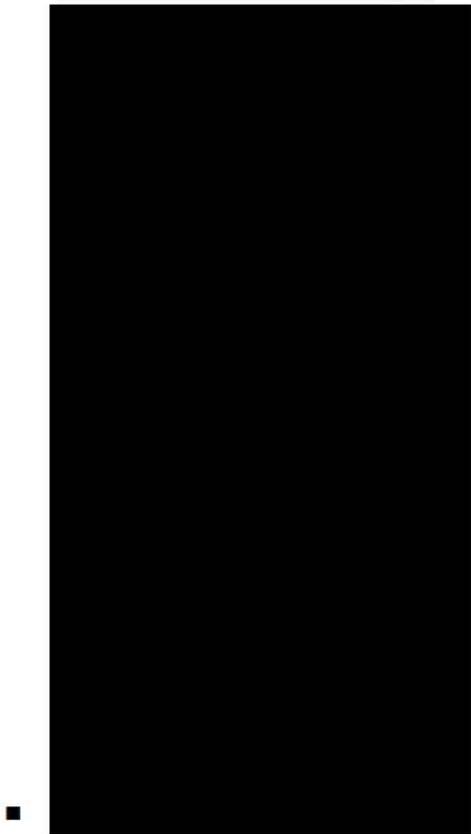
- On May 13, 2017, subject 4 invited Rep. Hernandez to go out with her and party/drink with her.



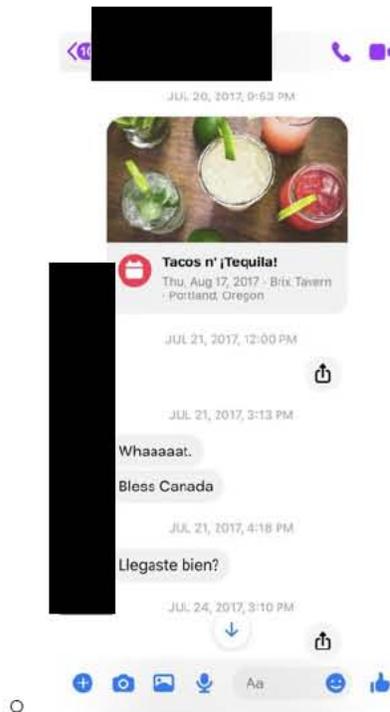
- Rep. Hernandez and Subject 4 ended up spending time together this night; Rep. Hernandez invited others to tag along. Subject 4 did tell Rep. Hernandez later that night that she was just hoping it was the two of them. There was absolutely no attempt on Rep. Hernandez's part for any form of intimacy at this point. At the end of the night, Subject 4 did kiss Rep. Hernandez before she went home.



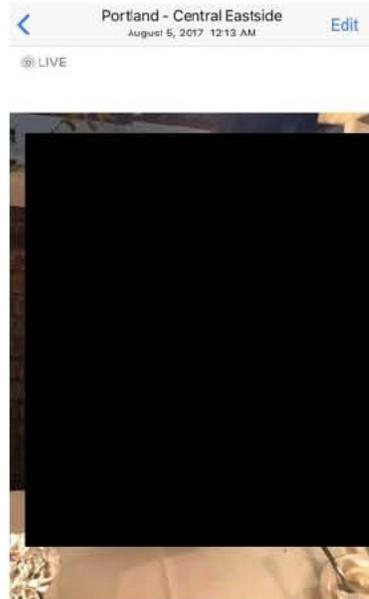
- During this night, subject 4 asked Rep. Hernandez and others to host a party for her.



- [Redacted]
- Rep. Hernandez co-organized the event on [Redacted] 2017 as requested by subject 4 [Redacted]
- On the night of July [Redacted] 2017, Subject 4 invited Rep. Hernandez over to her hotel and they did get intimate.
- On July 20, 2017 Subject 4 Invited Rep. Hernandez to a "Tacos and Tequila" [Redacted]



- On August 4th and 5th 2017, Subject 4 and Rep. Hernandez went on dates, wine tasting and dinner.



- On August 2, 2017, they discussed their relationships and some of her concerns, not over anything professionally oriented, but because she was afraid of what her sister would think and do over her and Rep. Hernandez seeing each other. Rep. Hernandez told Subject 4 that she had full control over her and Rep. Hernandez's relationship and told her he was going to back away since she vocalized a

concern. She immediately responded by saying "I'm not asking you to back away at all." There is more in this text thread that continues to contradict Subject 4's claims that she was concerned that Rep. Hernandez was pursuing an intimate relationship for professional reasons.

<p>Diego Hernandez</p> <p>Hypocrit?</p> <p>Aug 2, 2017, 8:14 PM</p> <p>[REDACTED]</p> <p>I'm not asking you to back away at all. That's not what I'm trying to say. I just feel like a bit of a hypocrite, and I'm afraid of what will happen to my relationship with andrea. But I'm grown and fully aware of those possibilities, and I still choose to engage, I'm not saying otherwise, just being intentional and present to all the dynamics. Sorry, maybe I shouldn't have shared that with you</p> <p>Aug 2, 2017, 8:06 PM</p>	<p>Diego I'm not saying at all that you aren't a positive part of my life. I actually think I led with "I really like you and I really like chilling with you." I was just trying to also hold space for nuance and I'm sorry if I made something out of nothing. I'm grown, you're not hurting me or burdening me, quite the opposite actually. I'm sorry if any of this is confusing, I really didn't mean it to be.</p> <p>Aug 2, 2017, 8:23 PM</p>
<p>Diego Hernandez</p> <p>Well you have full control. So I'm going to back away.</p> <p>Aug 2, 2017, 8:03 PM</p> <p>[REDACTED]</p> <p>You too?</p> <p>Aug 2, 2017, 8:03 PM</p>	<p>Diego Hernandez</p> <p>You set pretty clear boundaries and expectations early on. I knew what I was getting into and I shared those as well. If my role in your life is not a positive one, then I'd prefer not to do that to you. The last thing I want is to be a burden to you, or for me to hurt you.</p> <p>Aug 2, 2017, 8:20 PM</p>
<p>Diego Hernandez</p> <p>Word,</p> <p>Aug 2, 2017, 8:03 PM</p> <p>[REDACTED]</p> <p>I really like talking to you. Enjoying getting to know you and hanging out. And I also can't shake this feeling that we're doing something wrong. I don't really wanna talk about it, but just wanna acknowledge that's something that's coming up for me.</p> <p>Aug 2, 2017, 8:02 PM</p>	<p>Diego Hernandez</p> <p>Am I'm a part of that.</p> <p>Aug 2, 2017, 8:18 PM</p> <p>[REDACTED]</p> <p>My biggest gripe with her right now is that she doesn't talk to me, doesn't share anything about her life or her plans or her hopes and dreams. And here I am doing exactly the same thing. And it goes beyond you of course, but there's a feeling of hypocrisy in wanting from her what I've been unwilling to provide myself. That sisterly kind of intimacy and support.</p> <p>Aug 2, 2017, 8:17 PM</p>
	<p>Diego Hernandez</p> <p>Hypocrit?</p> <p>Aug 2, 2017, 8:14 PM</p>

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- On September 30, 2017 subject 4 invited Rep. Hernandez dancing.



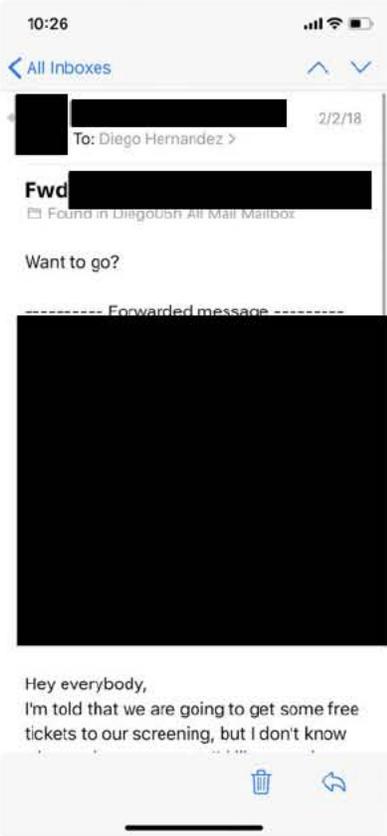
- Subject 4 and Rep. Hernandez loosely dated from July 14th to September of 2017; Rep. Hernandez was out of town a lot during this time, as you can see in the facebook messenger evidence, and Subject 4 had very limited childcare. Their relationship was never formal, they eventually became good friends and the first corroborating evidence that Rep. Hernandez has of this is a September 30, 2017 facebook messenger message. Her quote after texting Rep. Hernandez about her ex being in town at her apartment [Redacted]: "I would hope that as my friend you would be looking out for me to not get roped into such a toxic situation."



- D3.16: There is a lot of context missing from this that could shed more light on what fully transpired. Around Sept/October/November of 2017, Rep. Hernandez was a campaign manager for ██████████ bid for office. ██████████ had asked Rep. Hernandez to help get ██████████, Subject 4, to endorse her. Rep. Hernandez tried, but Subject 4 did not want to support ██████████. Rep. Hernandez regrets being involved in this contentious ██████████ issue, but it was not his doing or actions that fueled this situation.
- D3.13-D3.15: It should be noted that the investigators do not know how to distinguish between political campaign work and legislative business.
 - Throughout the winter of 2017, Subject 4 was trying to ask Rep. Hernandez for political favors. Subject 4 wrote on messenger “I want and need to be able to debrief/process with you about overall strategy ... That’s why I asked to meet up for coffee, when you can. Eventually if you’re able to push past the resentment ... I want to be able to collaborate with you so we can make major moves” These conversations were not about bills or budgets, these conversations were about ██████████.

- If you look at Subject 4 and Rep. Hernandez's Facebook messenger conversation on January 16th, 2018 at 9:35pm, Subject 4 messaged Rep. Hernandez a video and asking Rep. Hernandez "Do I really do this?? [REDACTED]"
 - Rep. Hernandez replied: It was hard to stay focused watching this, but if the question is whether or not you are passive aggressive in communicating your feelings and thoughts then yes...if the question is whether you push people away if they do a pet peeve you have then my answer is idk."
 - On January 17th, 2018 3:17am Subject 4 messaged Rep. Hernandez an emoji which woke Rep. Hernandez up. They continued our conversation as you can read in the thread.
 - On January 17th, 2018 3:44am she wrote:
 - "My bad, there's no reason for you to be up listening to my personal problems lol I'm sorry again for waking you."
 - Rep. Hernandez replied "Anytime. I know you and I are like in this weird place where we can virtually communicate but can't do it physically for whatever reason...I'm still your friend and want to be."
 - On January 17th, 2018 9:41am Subject 4 messaged Rep. Hernandez back:
 - "I don't know how to get out of this weird place. I do know that I am still mad at you. But I want to work through it."
 - [REDACTED] replied "Diddo, I'm upset at you in some ways. Working though it would be good."
 - Subject 4 replied "I know, I suck and I'm sorry. We'll figure it out. Being friends is cool, but also we got too much important ass work to do to stay salty with each other for much longer. That's my personal opinion anyway."
 - Rep. Hernandez replied " Well I didn't think it would get salty. How did it? It's not my style."
 - Subject 4 replied "I don't know. Maybe cuz we're two hot headed ass people with no tolerance for bullshit. And we were both on some bullshit."
 - Rep. Hernandez replied "lol you have a way with words"
 - She replied: "Am I wrong tho? I mean I know I'm salty, why are you salty??"
 - Rep. Hernandez replied: "Prob not wrong For several reasons But just cause I was doesn't mean i would treat you differently when I saw you you change your behavior if you're salty which I didn't get Understand**"
 - Subject 4 replied: "And I didn't understand how you could expect my behavior to be the exact same until and unless we had the opportunity to sit down and squash the beef properly. **I felt curved like it wasn't a priority for you to make peace with me.**" This also goes to contradict the narrative that Rep. Hernandez was the one trying to reconcile the relationship. [REDACTED]"
 - Rep. Hernandez replied "Woah I believe I tried your schedule was wack You would send me your availability and an it was like 7am lol and when we scheduled it you canceled for good reasons but still"

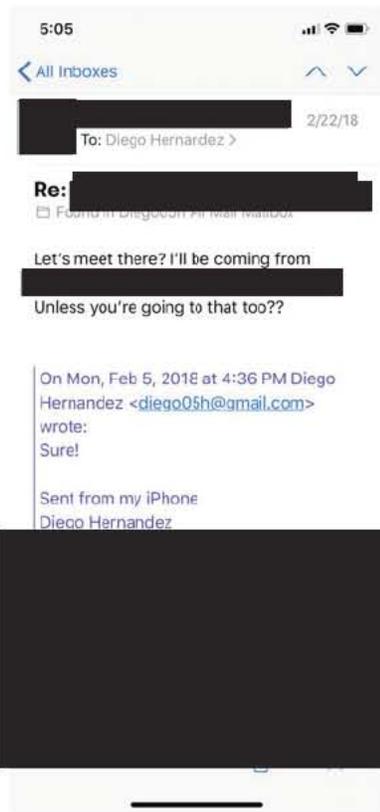
- Subject 4 replied “I know that. And Maybe we both could have tried harder. **We should have tried harder.**”
 - Rep. Hernandez replied “My behavior doesn’t change.”
 - Subject 4 replied “I don’t know about that”
 - Rep. Hernandez replied “I reflect what I read in body language and behavior [REDACTED]”
 - Subject 4 replied: “[REDACTED]”
 - Rep. Hernandez replied [REDACTED]
[REDACTED]
[REDACTED] So I wasn’t going to go against your obvious boundaries and behavior. Dim sum, you said hi to every one but me, which was a red flag and sign for me not to engage. [This was a family holiday event with [REDACTED] partner and kids, Rep. Hernandez has historically spent holidays with them]
 - Subject 4 replied: “Ok for dim sum yes you’re right, I was hella rude and I apologized for that. The other events I dipped cuz of my kids. And I stayed my distance from you because I was feeling really ambivalent, mixed feelings and didn’t want to expose myself to those feelings in a professional setting.”
 - Subject 4 wrote: “I also want to listen and understand you as well. I just don’t know how this one got to such a funky place. A lesson learned I guess. That’s prob the biggest reason why I’m angry with you, tbh. I feel like despite best intentions, I ended up losing a friend during a time in my life when I really needed one.”
 - Rep. Hernandez replied “Well you never lost me as a friend. It just got funky. And I’m sorry. That I wasn’t able to be there for you when you needed me. I didn’t know, I would have put whatever aside to help.
 - Subject 4 replied “It wasn’t that simple. My trust in you was compromised, I didn’t really feel like I could call on you like that anymore.
 - Rep. Hernandez replied “I violated your trust?”
 - She replied “I felt like, during the time when all the stuff happened with [REDACTED] campaign, that for whatever reason you didn’t take me and my point of view seriously. I felt judged and like you assumed the worst of my character, and to me that was a violation of trust that you would have my back. To be fair, I never expected you to take my side. But I hoped that you’d at least be able to honor and respect where I was coming from. **And I didn’t feel like you cared enough to make an effort.**”
- February 2nd 2018, Subject 4 invited Rep. Hernandez to [REDACTED] of a film [REDACTED]
[REDACTED]



- February 13th 2018 Subject 4 and Rep. Hernandez met up for drinks, a mutual friend joined them. Rep. Hernandez memorialized this through Rep. Hernandez's instagram story and a video.

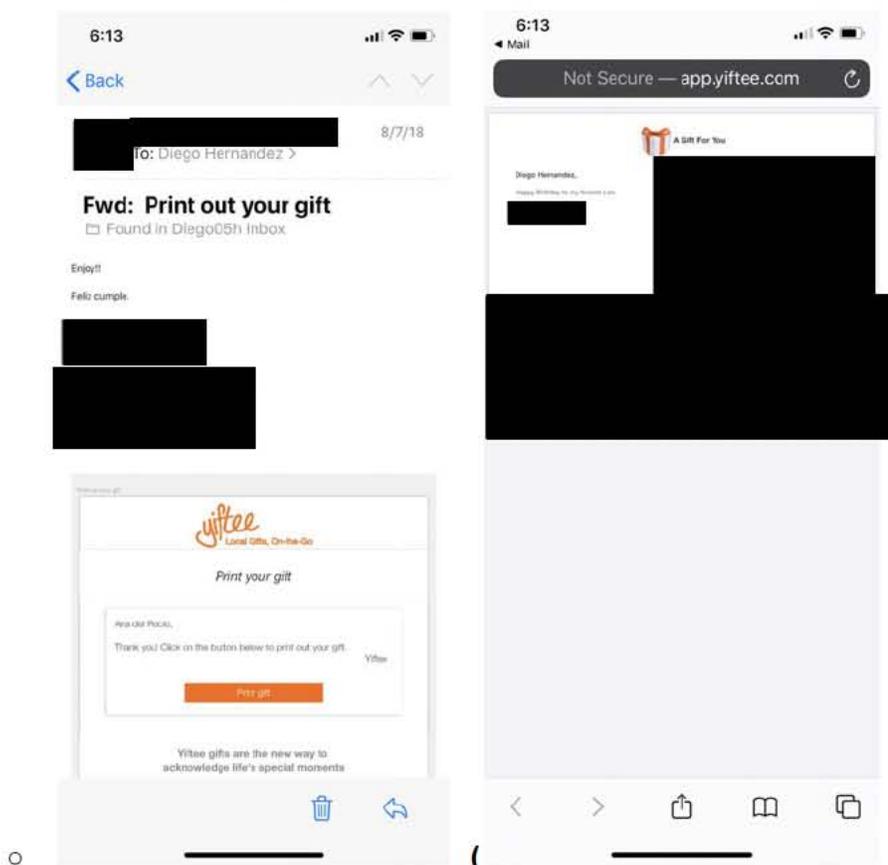


- February 22, 2018, Subject 4 emails Rep. Hernandez about meeting up at the event.
[Redacted]



- March [REDACTED], 2018, Subject 4 joined a private party event Rep. Hernandez hosted. [REDACTED]
- On March [REDACTED], 2018, Subject 4 took Rep. Hernandez's place to give a speech at an event because Rep. Hernandez couldn't make it, and Rep. Hernandez asked her if she could take Rep. Hernandez's place because they were looking for an inspirational person [REDACTED] to speak and she said yes. Rep. Hernandez paid for her transportation costs. (Evidence [REDACTED] You can also find this in the FB Messenger thread for this date, Rep. Hernandez have provided that as html above)
- On March [REDACTED], 2018, Subject 4 left Rep. Hernandez a voicemail. Subject four had been [REDACTED] and she used her call to contact Rep. Hernandez and ask Rep. Hernandez for help. The voicemail is here: [REDACTED]
 - Rep. Hernandez coordinated picking up her kids from school and making sure they were safe. [REDACTED]
 - Rep. Hernandez retained an attorney to get her out. [REDACTED]
 - On March 17th, Subject 4 asked Rep. Hernandez to help draft a [REDACTED] about the incident. [REDACTED]

- On March 19, 2018, Subject 4 asked Rep. Hernandez for a ride to her news channel interview [REDACTED]
- On April [REDACTED] 2018, Subject 4 asked Rep. Hernandez to present at a [REDACTED]
- On April 29, 2018, Subject 4 invited Rep. Hernandez to her house to come drink and work. [REDACTED]
- On May 12, 2018 Subject 4 and a group of friends invited Rep. Hernandez to her house for drinking. Rep. Hernandez did not go [REDACTED]
- On August 7th, 2018, Subject 4 sent Rep. Hernandez a Birthday gift card. The card read “Happy Birthday to my favorite Leo” It was a \$125 gift card to a restaurant that is known for romantic dinners and dates.



- It is important to note that subject Rep. Hernandez thinks it is strange that she is saying she “felt” obligated, when they did not have any work whatsoever at the Capitol. Session was over in February 2018. Also, Rep. Hernandez’s support is never contingent on a relationship; Rep. Hernandez’s work is focused and centered on social justice. Subject 4 and Rep. Hernandez’s friendship ended in November 2018 because Rep. Hernandez wanted to end it. And even after that, Rep. Hernandez still supported Subject 4

politically, and Rep. Hernandez proved that, by doing a news interview that supported Subject 4 [REDACTED] and the next year when Rep. Hernandez worked on legislation pertaining to Subject 4's [REDACTED] even though they didn't have a continuing relationship.

- On November 1st, 2018 11:10pm, Subject 4 messaged Rep. Hernandez regarding her [REDACTED] and her ex. Rep. Hernandez made the assumption that Subject 4 was looking for information because she wanted to know if Rep. Hernandez was dating [REDACTED] [REDACTED] Rep. Hernandez also believed that Subject 4 was still interested in an intimate relationship with Rep. Hernandez and that she was looking to sabotage any potential relationship Rep. Hernandez would have with [REDACTED]
- On November 2nd, Rep. Hernandez's assumptions became more like presumptions when Rep. Hernandez received a really long and personal email from Subject 4. Please read this email, because it shows a different picture from what she tried to paint with the investigators about Rep. Hernandez. [REDACTED]
 - Rep. Hernandez never responded to her email. Rep. Hernandez did not want any relationship with Subject 4 after that because Rep. Hernandez's belief was that she knew that Rep. Hernandez was potentially getting in a relationship with [REDACTED] [REDACTED] she was going to try to sabotage it because she wanted to be in a relationship with Rep. Hernandez. Rep. Hernandez ceased to communicate with subject 4.

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January 29, 2021

Oregon Legislature
Members of the Conduct Committee

Re: Rebuttal to Final Report/Investigation regarding Rep, Hernandez

Greetings:

I am writing to respond to the final Report concerning the Rule 27 investigation of Representative Diego Hernandez. This investigative process has been flawed from the beginning. Rep. Hernandez has not been allowed to present important evidence in the investigation. Rep. Hernandez's testimony, despite being supported by abundant evidence, has been ignored. Although the investigation has dragged on for many months, somehow there was a need to rush a report out without allowing Rep. Hernandez to respond to new allegations.

Process

On May 5,2020, Rep. Hernandez was notified of a LBPR 27 ("Rule 27") investigation. The notice contained the names of two individuals, Subjects 1 and 2, who were named by mandatory reports from [REDACTED]. Under Rule 27, the investigation was supposed to be concluded "promptly" and in no more than 84 days. The time may be extended after "advance notice" to Rep. Hernandez, which was **never provided**. The draft report was issued on December 23, 232 days later. We were given 7 days to respond.

We were not notified of any new subjects until December, seven months after the investigation started. In the Report Subject 4 was labeled as a mandatory report, which should have required this immediate follow up according to the Rule:

- (e) The independent investigator shall promptly:
 - (A) Deliver a copy of the conduct complaint to the person accused of engaging in behavior prohibited by this rule, who shall thereafter be the respondent.

This was never done; as you can see by the attached emails, our efforts to obtain this information was characterized by the investigator as “tedious.”

Under HCR221 14B(c) it states that “The independent investigator shall keep the complainant and the respondent apprised of the investigation timeline and the status of the investigation at the outset of an investigation, on a regular basis thereafter and upon request of the complainant or respondent.” We made several requests for timelines and updates to the investigators; we were ignored and we were never given a timeline, nor the status of the investigation.

Rep. Hernandez was interviewed for hours on August 19th, 2020. On December 17, 2020, for the first time in this process, Ms. Ryan informed Rep. Hernandez’s attorney that there were two new subjects that she was investigating. She asked whether she could interview Rep. Hernandez again concerning these new subjects. By email on December 17-18, Rep. Hernandez’s attorney requested any documents that related to these new subjects, and particularly “any documents that have caused these new investigations to be initiated.” Rule 27 requires that the respondent be notified of who and what he is being accused of. Ms. Ryan refused that request, calling the attempt to honor Rep. Hernandez’s rights under Rule 27 and due process “tedious.”

Rep. Hernandez wanted an opportunity to interview again and provide additional information once he had full knowledge of the new allegations, but that was refused. Right in the middle of Rep. Hernandez’s attempts to obtain the documents regarding the new allegations, Ms. Ryan issued her draft report on December 23 after 5:00pm. It is clear that the report was already drafted and the request to interview Rep. Hernandez was a sham.

The Confidential Report focuses on three women whom Rep. Hernandez dated in 2017 and 2019. The Report is seriously flawed in a number of ways.

- The Report does not make clear that none of these women filed a complaint; [REDACTED]
- The Report notes that additional time was needed for the investigation. Legislative rules require reports be completed in 84 days. This report required 9 months.
- The Report does not make clear that these three women were not legislative employees and were not subject to legislative rules at the time of the alleged conduct – much of which was over four years ago, when Rule 27 was narrower in scope.
- None of the evidence was submitted under penalty of perjury as would be required in legislative rules had the “complainants” complained directly.
- The Report fails to note the salient detail that two of these [REDACTED] with the obvious potential for bias and collusion.
- The Report fails to note that in several cases, intimate relations continued after the so-called “break-up” of the relationship.
- The Report states that Rep. Hernandez refused to meet with investigators. This is completely untrue.

Below/attached/linked are specific documents containing relevant emails and rebuttals to many of the assertions in the Report. I apologize for the length of this document but so much evidence has been ignored that it is necessary to complete the record. Please let me know if there are any questions or requests for any additional evidence.

Sincerely,

LAFKY & LAFKY

s/Kevin T. Lafky

Kevin T. Lafky

cc: client

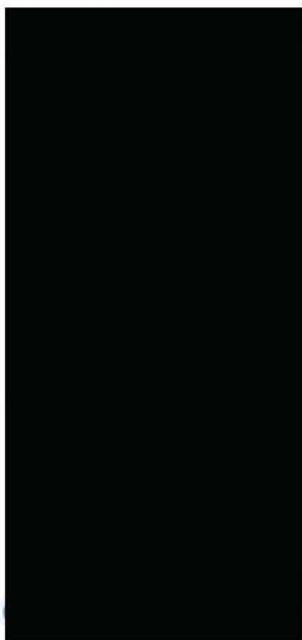
Subject 1:

Important highlights:

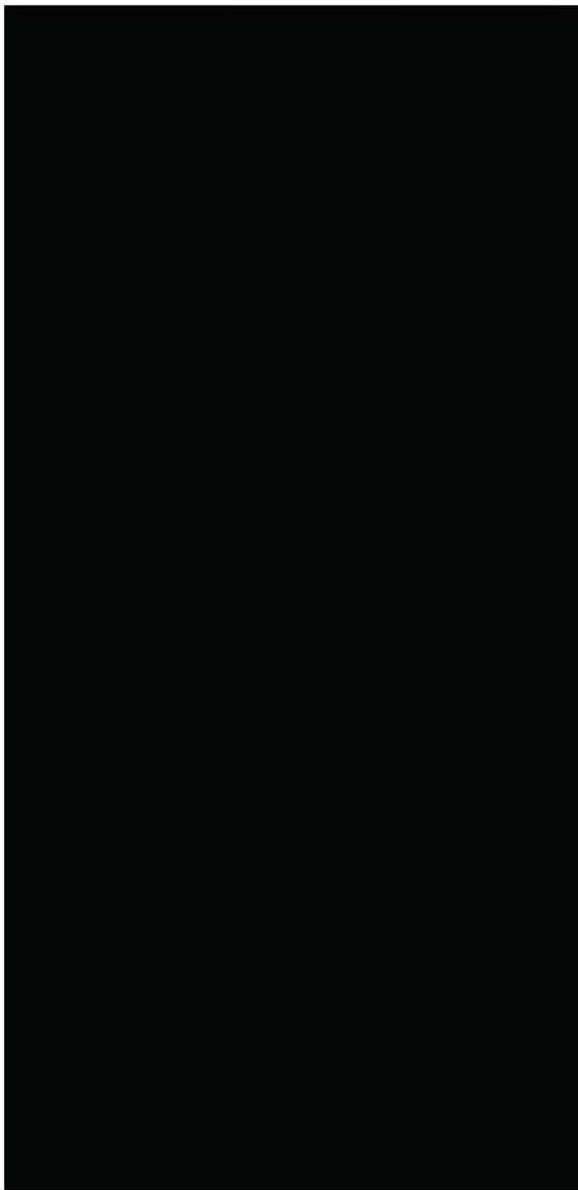
- In the Fall of 2017, Subject 1 switched to a job in the political campaign realm, which meant Rep. Hernandez would have to work more closely with subject 1
- It is important to note that Rep. Hernandez has not spoken to subject 1 since October 2017.
- In Late October, [REDACTED] counseled Rep. Hernandez to not speak to or engage with Subject 1. Rep. Hernandez complied.
- Subject 1 and Rep. Hernandez worked in the same spaces throughout 2018 without any issues.

Responses to claims:

- It was never made explicitly clear to Rep. Hernandez that the relationship had ended until May, although Rep. Hernandez does acknowledge that subject one was becoming more distant in late March/April.
- What made it confusing for Rep. Hernandez was that they were still intimate in March/April and he misunderstood that as continued interest on her part.
- Rep. Hernandez meant no harm in sending a gift box, and flowers. Rep. Hernandez got the gift box idea in December of 2016 from Subject 1 when she sent him a message from that company. Rep. Hernandez saved the image.

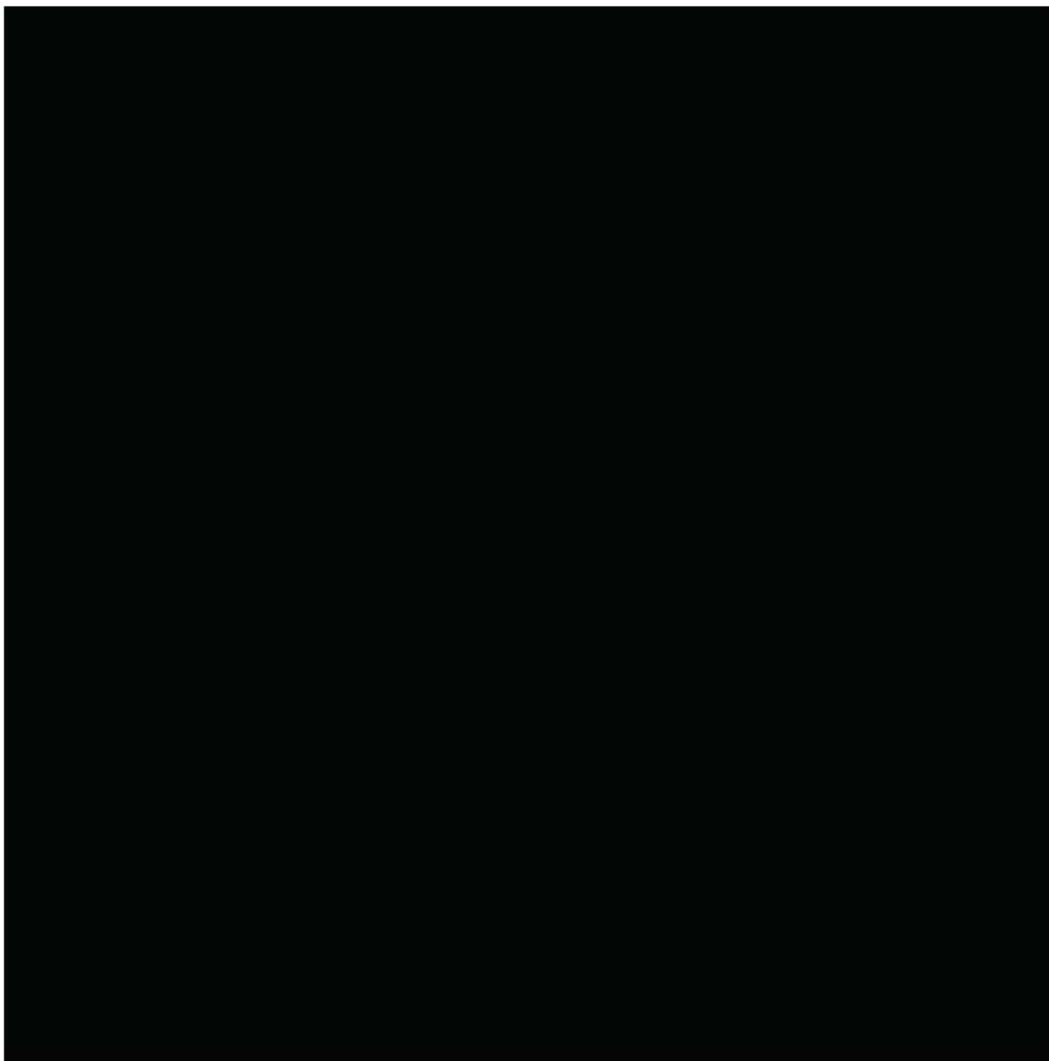


- In May, after it became clear to Rep. Hernandez that they were just going to be friends. Rep. Hernandez took that literally and mistakenly to mean they were actually going to be friends. When he invited her to go on a walk and happy hour, he did so under these beliefs.

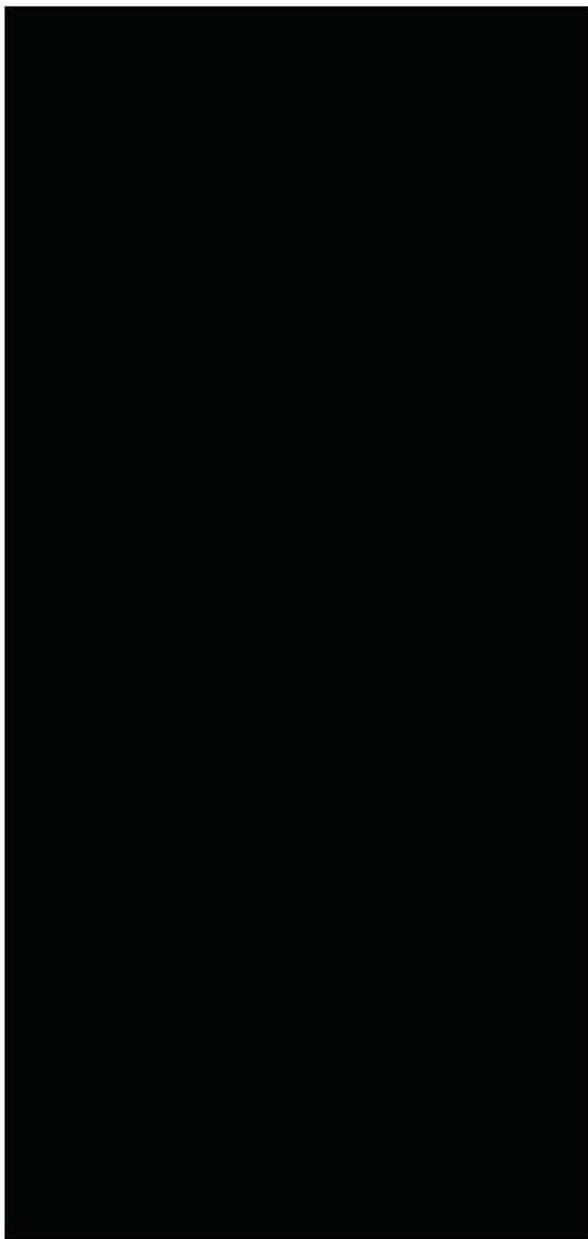


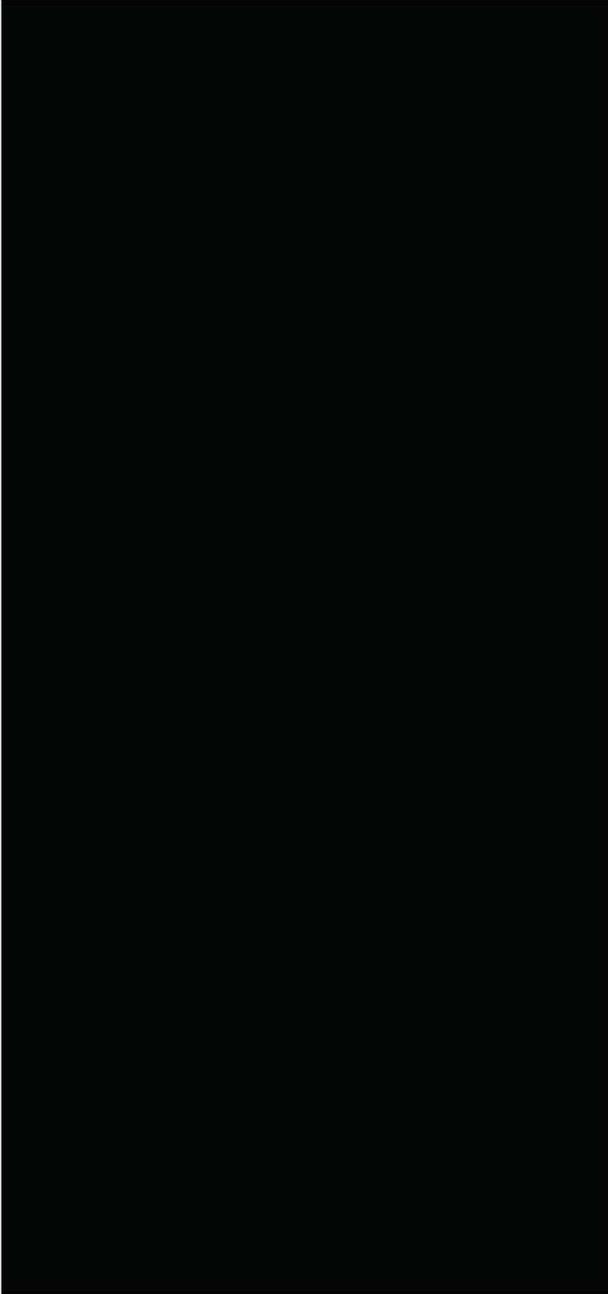
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- Rep. Hernandez now understands that Subject 1 felt pressured to resume a romantic relationship. He regrets that and wishes he could have understood that before.
- The report lists a series of dates A.310-A3.17 and asserts that Subject 1 consistently tried to avoid all contact with Rep. Hernandez after the May 17 meeting where explicit clarity was given. It asserts that no meetings were sought that wasn't specific to her [REDACTED] job and also that she brought another person with her due to her discomfort.
- Please read for yourselves the text messages from that time to get context and see how perhaps Rep. Hernandez viewed their relationship as having evolved to a supportive friendship. Note her outreach to him on June 22 at 9pm starting with

[REDACTED] and Subject 1's unsolicited offer to reschedule the June 22 social meeting for the next week.

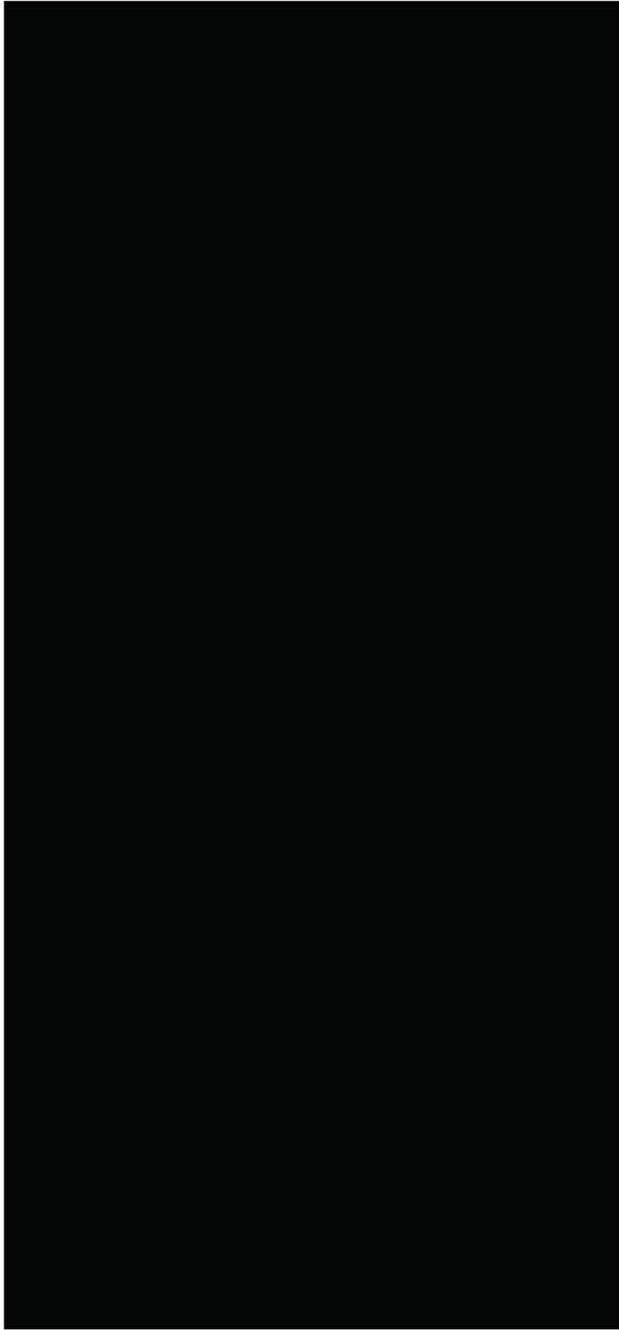


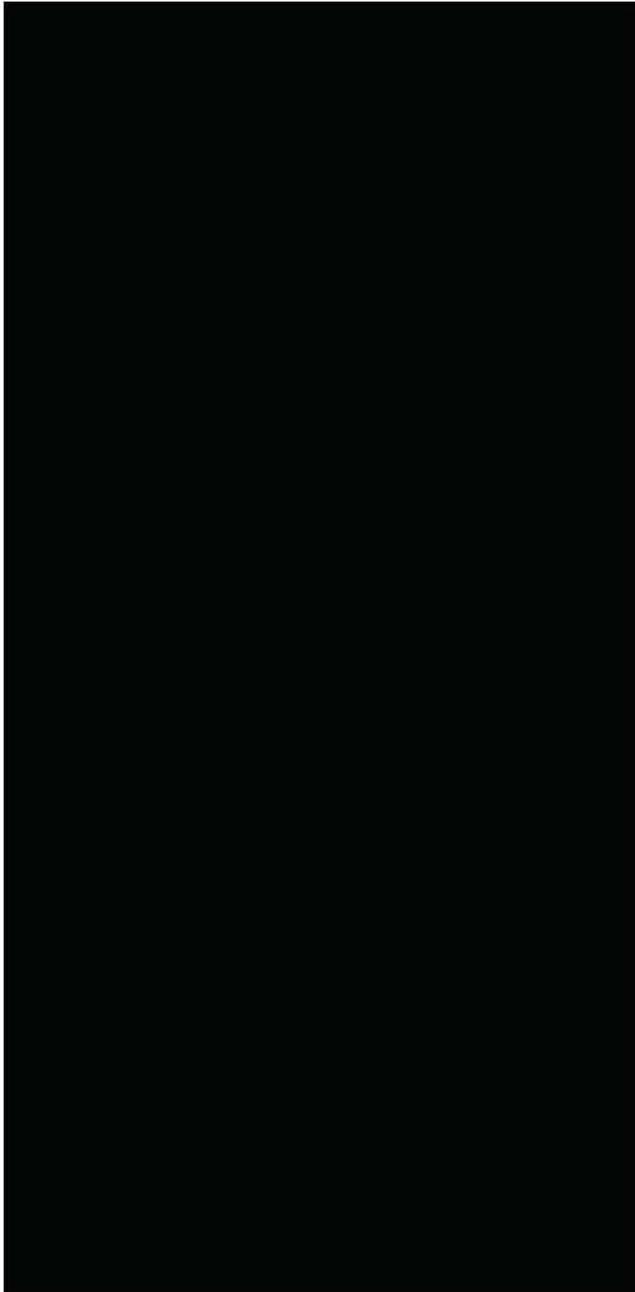
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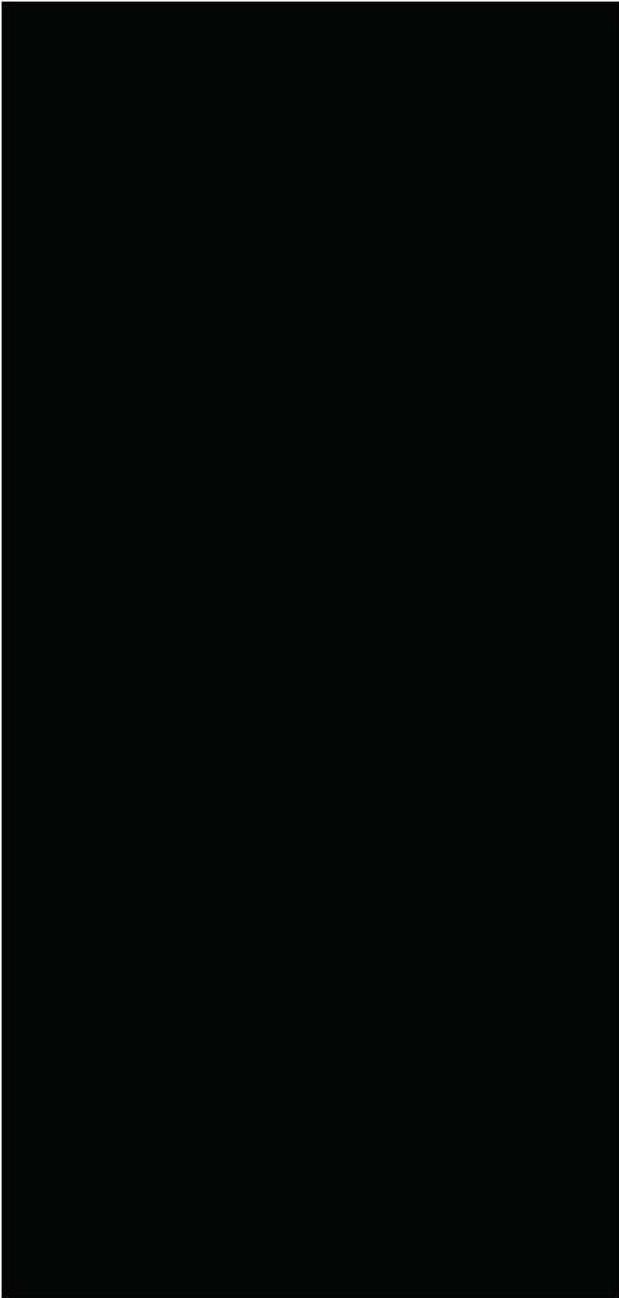


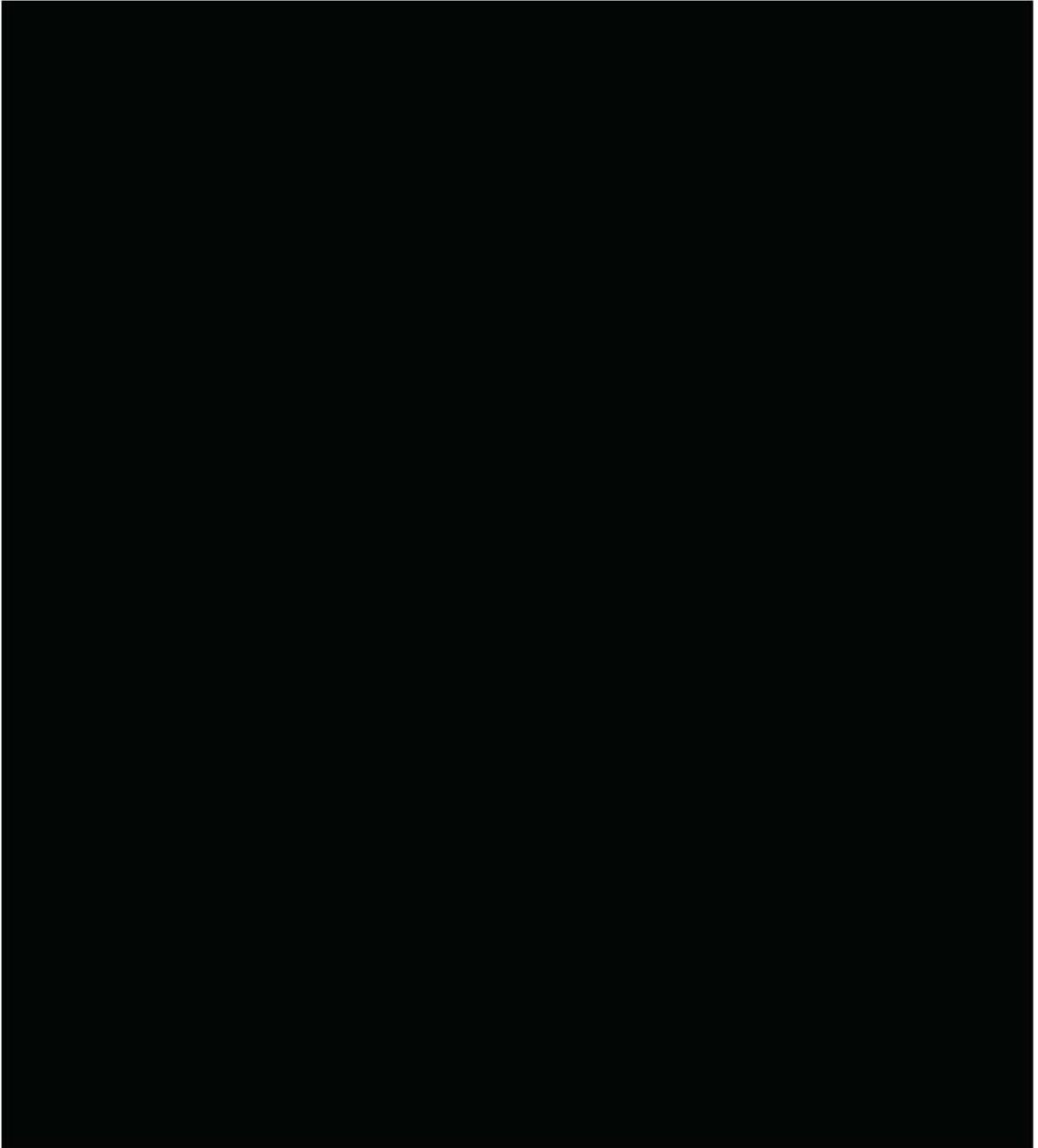










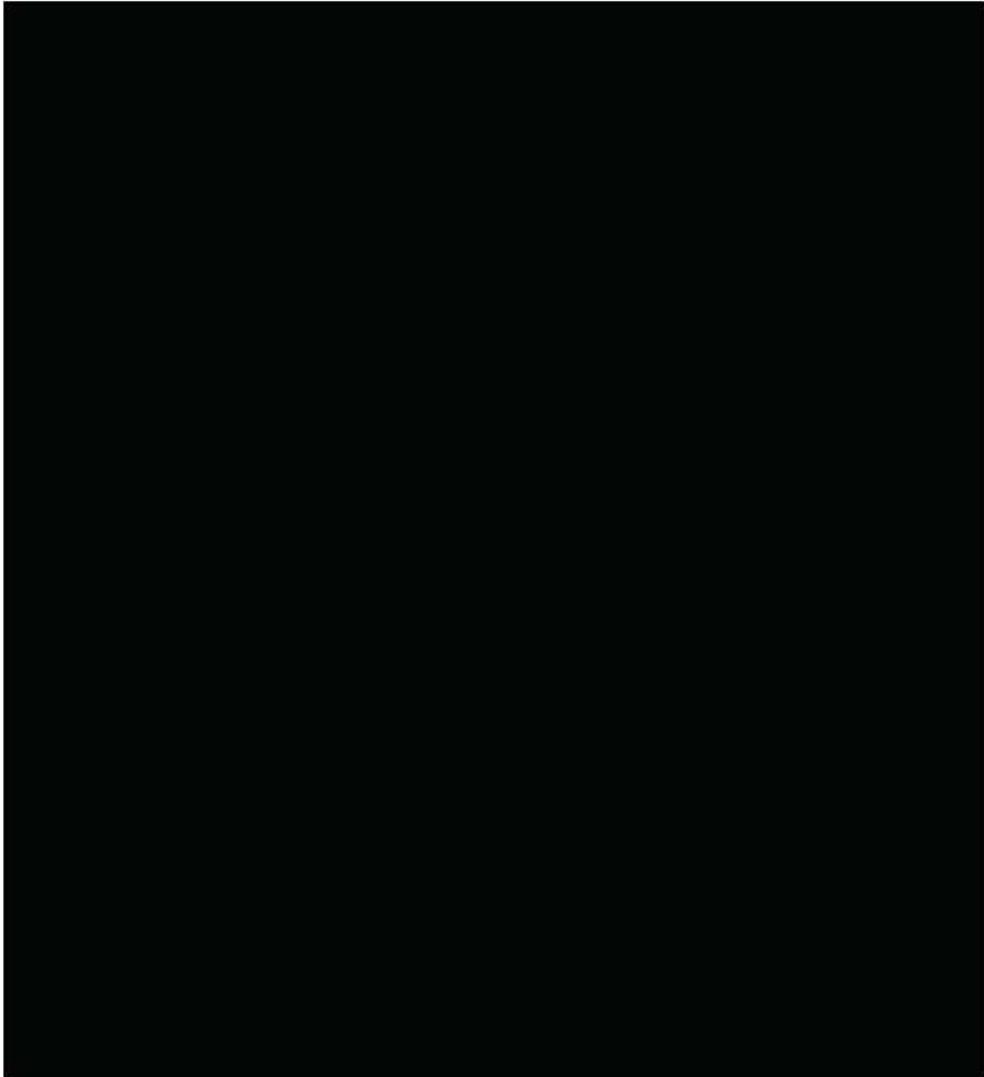




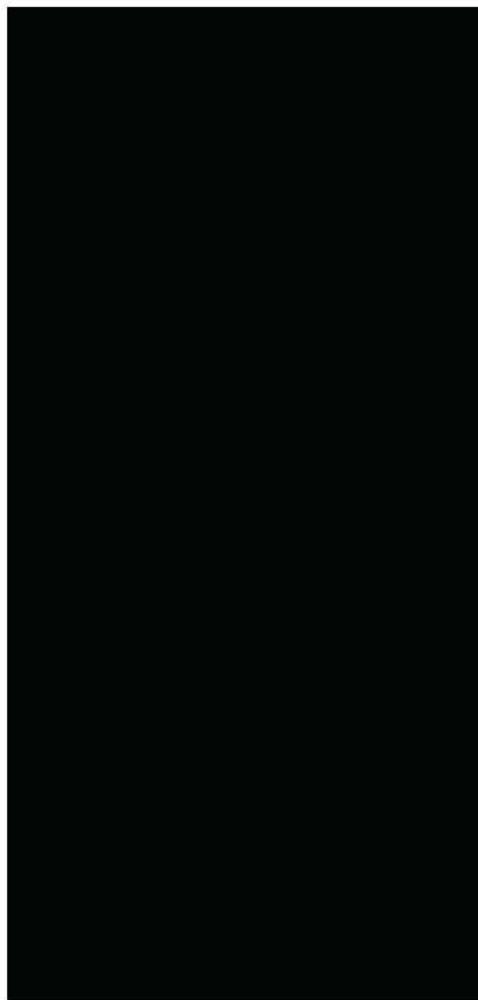
- **3.19:** Rep. Hernandez has never “knocked on Subject 1’s apartment door unannounced.” That would be impossible as her apartment complex has a main door which is locked and has a separate entry system that requires being buzzed in to then walk to any of the unit’s inside doors. He told the investigators this and yet you were not presented this critical information.
- In October of 2017, Subject 1 had a new job in the political campaign realm. At a political event, Rep. Hernandez was trying to introduce Subject 1 to a woman of color who was thinking of running for office, since it was Rep. Hernandez's job to recruit candidates [REDACTED] [REDACTED] The political organization Subject 1 worked for was known to only recruit white people to run for office. She didn't just put Rep. Hernandez off, she put the woman of color candidate off as well while the potential candidate was standing next to

Rep. Hernandez. He was concerned about the message it would send to other candidates if this was the projected image of the Organization. He did later discover that she was late for a bus.

- Subject 1 also was responsible for overseeing Rep. Hernandez's [REDACTED] during this event. She checked in with Rep. Hernandez about the [REDACTED] at a party where she seemed inebriated. Rep. Hernandez felt uncomfortable. Hence Rep. Hernandez's text that memorialized this whole experience. The report implies a harsh message that made her fear for her job and we would like you to see it for yourself in its entirety.



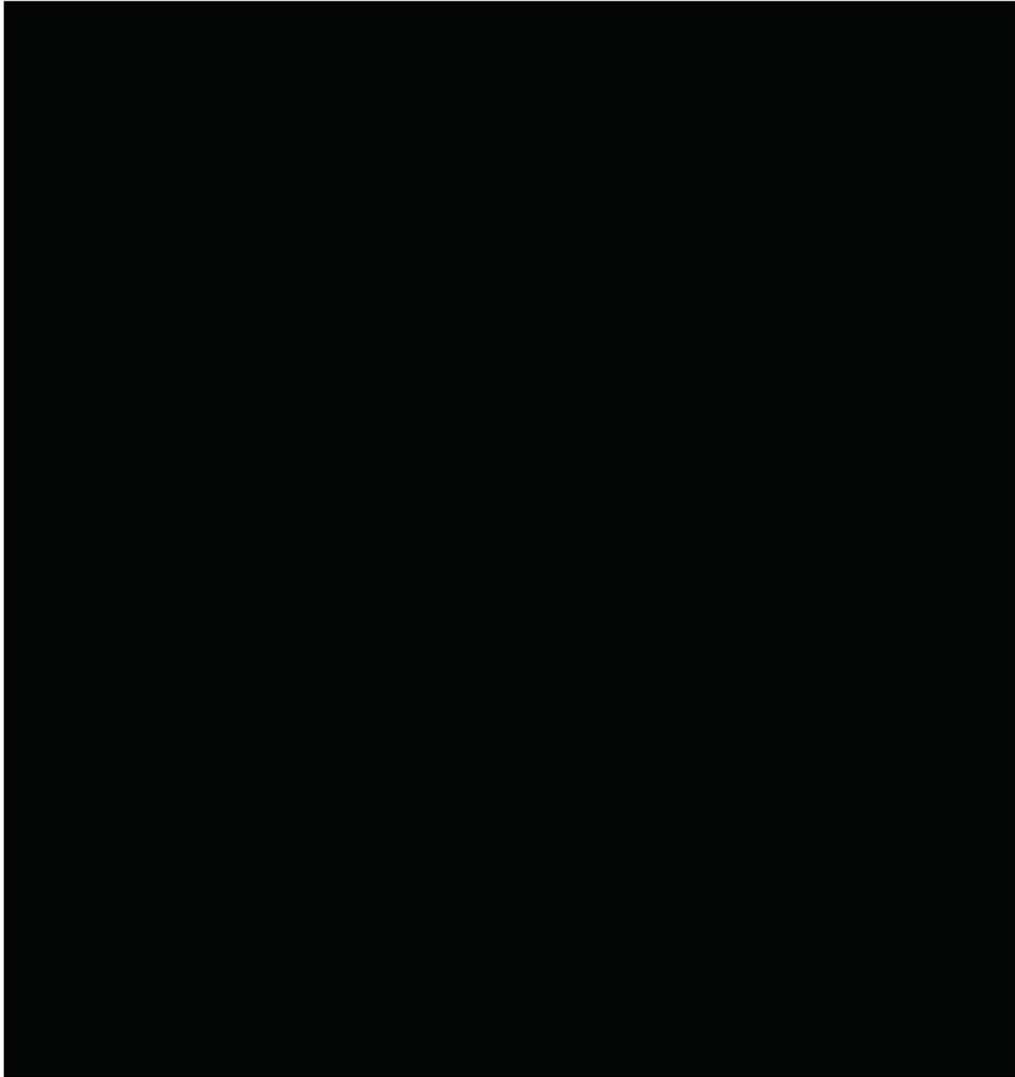
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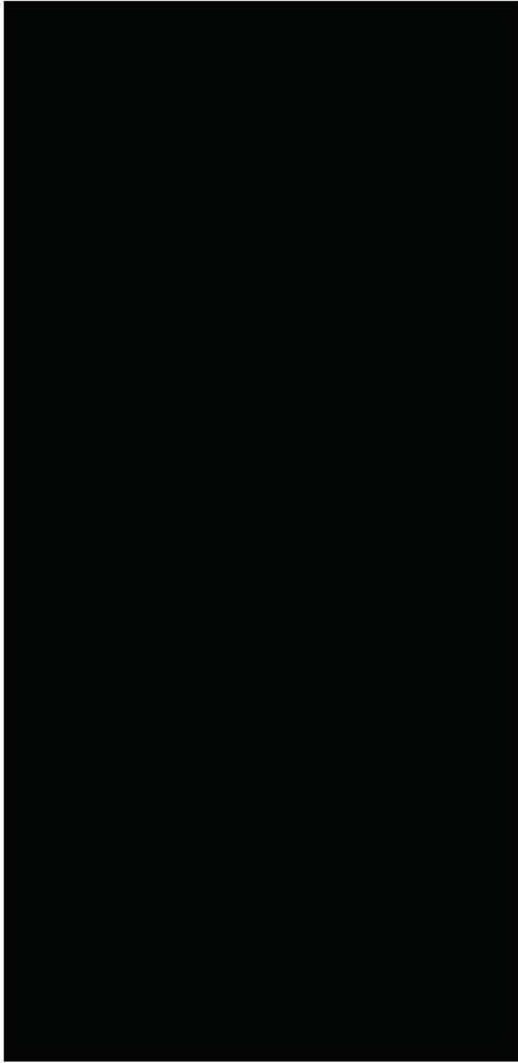


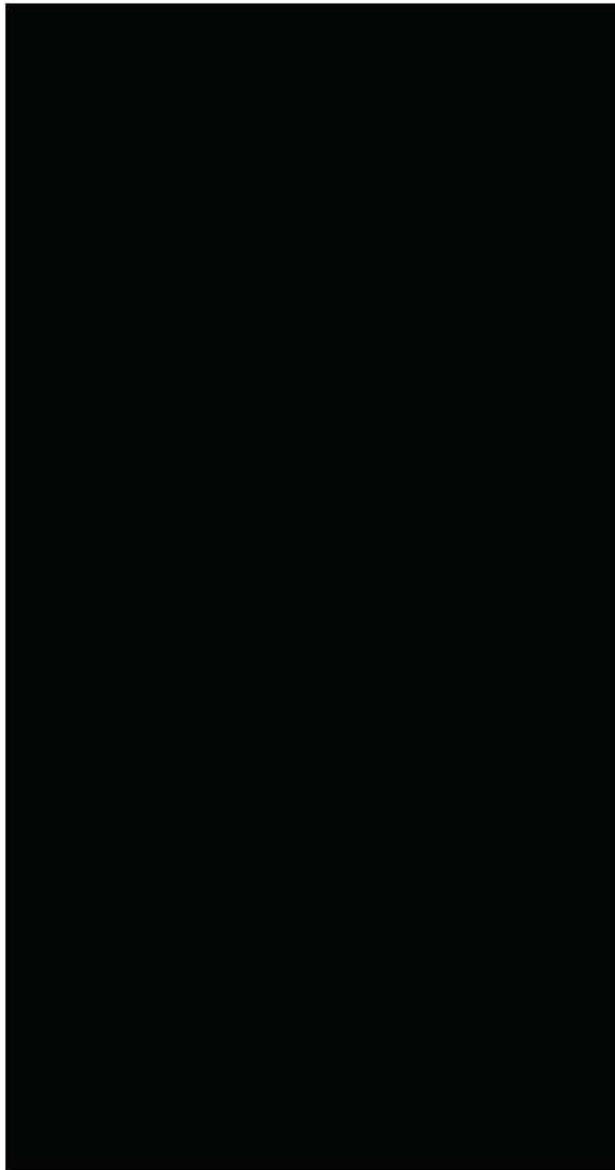
- The claim that she feared for her job is contradicted with evidence that we provided where Rep. Hernandez clearly states “she’s the right person for the job.” For Rep. Hernandez this was about a working relationship and constructive feedback.
- [REDACTED] met with Rep. Hernandez the day after this text message. [REDACTED] counseled Rep. Hernandez and Rep. Hernandez understood and complied with the counseling and ceased communicating entirely with subject 1.
- Rep. Hernandez and Subject 1 worked together professionally throughout 2018 without any issues.

Subject 2

- Rep Hernandez has admitted to throwing a phone at a table during a verbal argument with subject 2 in July of 2019. He deeply regrets that act.
- The last time Rep. Hernandez and Subject 2 communicated was in late February of 2020, [REDACTED]







- We hope it is clear by now to the committee that the conflict between them wasn't about her safety as was presented to the media and this committee last May but instead how Rep. Hernandez broke her heart.
- Rep. Hernandez declined to engage with her after [REDACTED]
[REDACTED]
- The report finding says she was uncomfortable around him after their relationship ended. Rep. Hernandez is also uncomfortable around her too. We don't see how

the committee could have an accurate picture of the situation without these details, yet they were not included in the report.

- In the draft report, 2 text messages were originally labeled “jealous and controlling,” and in the final report the 2 text messages were relabeled “abusive and controlling.”
 - In one of the text messages, Rep. Hernandez asked why Subject 2 sat in the front of the Uber. His concern was purely over her safety and there had been media reports of drivers assaulting women who were on a trip booked by someone else, as was the case in this situation.
 - In another text message, Rep. Hernandez asked Subject 2 to prove to her she had sent a text that he had not received.
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- B.3.12 - The report uses the extremely loaded term when saying Rep. Hernandez was accused of having “hacked into her account and cancelled her Oregon State Legislature subscription” to his newsletter. It then says Rep. Hernandez admitted to doing so. **This is a completely false and absurd statement** - He didn’t admit to “hacking” anything - legislators know that they can ask Information Systems or other staff to remove people’s email from our newsletter distribution list (GovDelivery) without “hacking” into accounts.
- We believe the investigators used this loaded term to try and continue a false narrative that they had hinted at in the previous item when he was accused of “hacking” into a social media account of Subject 2 and saying he can “hack a little.’ What they didn’t tell you was they pulled this quote from a January 2018 messenger thread where he was referring to high school and also said “I like tech I use to be better but things progress so fast that I get behind quick and old shit don’t work anymore, coding has advanced so much.”

Subject 4

Important highlights:

- Subject 4 worked for [REDACTED] when she and Rep. Hernandez dated in the Summer of 2017.
- Rep. Hernandez has repeatedly asked the investigators what “Capitol business” was being conducted by Subject 4, he has asked for examples and asked for the report to include specifics and those requests were ignored. Rep. Hernandez did not conduct any Capitol business with Subject 4. Rep. Hernandez has not seen Subject 4 since August 2018.
- In [REDACTED] 2017, Subject 4 got a new job in the political campaign realm.
 - Rep. Hernandez asked investigators to be very clear and provide examples of what this new job had to do with Capitol business, instead of a broad general statement. This request was ignored.
- In the final report the investigators stated: *“Rep. Hernandez admitted a consensual intimate interaction with Subject Four, but he denied that there was any type of relationship with Subject Four.”*
 - This is incorrect, in Rep. Hernandez’s draft report written rebuttal we stated: “The relationship between Subject 4 and Rep. Hernandez turned intimate in July 2017. They went on dates in July and August of 2017...Their dating relationship never turned into anything serious.”
- The claim is that Rep. Hernandez suddenly became interested in Subject 4 and that Rep. Hernandez pursued the subject. **This claim is false.**
 - Rep. Hernandez has known Subject 4 since 2015, Rep. Hernandez was [REDACTED]
 - Subject 4 has been asking for Rep. Hernandez’s help since 2015, in finding a job, in campaign related help all throughout 2016/17.
 - Subject 4 asked Rep. Hernandez out to “party” in late May 2017.
 - In the draft report Subject 4 claimed that throughout the fall/winter of 2017 that Rep. Hernandez kept trying to rekindle the relationship, Rep. Hernandez provided evidence to the investigators that Subject 4 was the one who was trying to meet with Rep. Hernandez, contradicting the claim. But then, the claim got flipped to Rep. Hernandez didn’t want to meet with Subject 4 because he wanted a personal relationship with her. So if he would have met with her he would have been trying to rekindle a relationship and if he didn’t was because he was trying to rekindle a relationship.
- **Background/Context:**
 - For context, Rep. Hernandez [REDACTED] [REDACTED] she had moved [REDACTED] to Portland. [REDACTED] Rep. Hernandez to help find Subject 4 a job around 2015, Rep. Hernandez introduced her to someone in politics and Subject 4 ended up getting a job with

them. Subject 4 and Rep. Hernandez were friends. Rep. Hernandez would spend some holidays with their families, [REDACTED]

[REDACTED] In December 2016/January of 2017, Subject 4 shifted her job to [REDACTED]

In late [REDACTED] of 2017, Subject 4 was hired onto a new job [REDACTED]

[REDACTED] The political campaign organization does not conduct business at the Capitol as it is a Political organization associated with political campaigns and does not conduct work at the Capitol nor does business at the Capitol.

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[REDACTED]

- o In late 2016/early 2017, Subject 4 [REDACTED] [REDACTED] She asked for a copy of Rep. Hernandez's campaign plan; she asked Rep. Hernandez [REDACTED] to give her money, to host fundraisers for her and to speak at her fundraisers. Evidence of this is linked below.

- o In early 2017, Subject 4's and Rep. Hernandez's friendship was growing. Rep. Hernandez always looked at Subject 4 as a friend, she was [REDACTED] [REDACTED] Rep. Hernandez wanted to be on good terms with her and their community of friends [REDACTED]. In May 2017, Subject 4 asked Rep. Hernandez out on a date [REDACTED], Rep. Hernandez was a little thrown off by it, because Rep. Hernandez didn't think she liked Rep. Hernandez like that.

- o The relationship between Subject 4 and Rep. Hernandez turned intimate in July 2017. They went on a few dates in July and August 2017. Rep. Hernandez was really busy in the summer traveling and she was busy as well so their schedules rarely aligned.

- o Their dating relationship never turned into anything serious; their dating naturally phased out. Their relationship did have conflict in October/November of 2017, when [REDACTED]

- o Rep. Hernandez attempted to reconcile their friendship and so did she in November/December 2017.

- As you'll see in detailed evidence below, from January-July 2018, Subject 4 and Rep. Hernandez became close friends again soon after December 2017; they had a friendship. Rep. Hernandez helped her out on several occasions, including an incredible hardship in [REDACTED] that Subject 4 experienced.
- In July/August, Subject 4 and Rep. Hernandez started to get closer, but then [REDACTED] and that threw a big wrench in Subject 4 and Rep. Hernandez relationship. Rep. Hernandez set clear boundaries with Subject 4 on August 13th of 2018 that Rep. Hernandez did not want an intimate relationship.
- In early November 2018, Subject 4 contacted Rep. Hernandez at night about [REDACTED] and sent Rep. Hernandez a very personal email [REDACTED] [REDACTED] Rep. Hernandez took it as an attempt on her part to rekindle the relationship, Rep. Hernandez did not respond and they have not spoken since.

Claim/Response:

- This is not true, Rep. Hernandez's legislative agenda was already set in November of 2016. On the contrary, Rep. Hernandez has provided evidence below that she was reaching out to Rep. Hernandez for help and information. Throughout 2017, Subject 4 asked for Rep. Hernandez's help in [REDACTED] [REDACTED]. In early/mid May, Subject 4 had asked him and others to host an [REDACTED] [REDACTED]



- On May 13, 2017, subject 4 invited Rep. Hernandez to go out with her and party/drink with her.

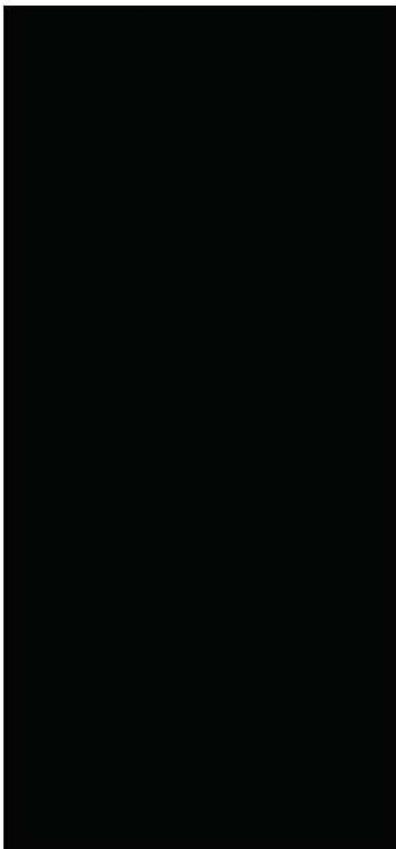


- Rep. Hernandez and Subject 4 ended up spending time together this night; Rep. Hernandez invited others to tag along. Subject 4 did tell Rep. Hernandez later that night that she was just hoping it was the two of them. There was absolutely no attempt on Rep. Hernandez's part for any form of intimacy at this point. At the end of the night, Subject 4 did kiss Rep. Hernandez before she went home.

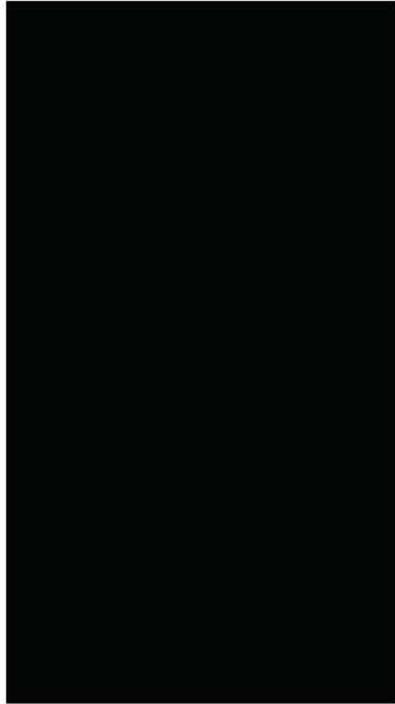


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- During this night, subject 4 asked Rep. Hernandez and others to host a party for her.

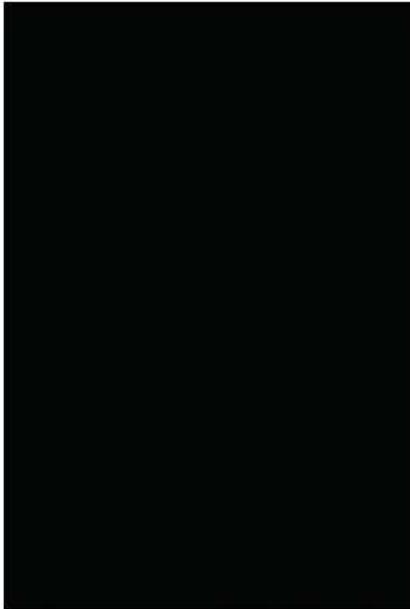


- - Rep. Hernandez co-organized the event on May [REDACTED], 2017 as requested by subject 4 [REDACTED]
- On the night of July 14, 2017, Subject 4 invited Rep. Hernandez over to her hotel and they did get intimate.
- On July 20, 2017 Subject 4 Invited Rep. Hernandez to a [REDACTED] event on Aug 17th



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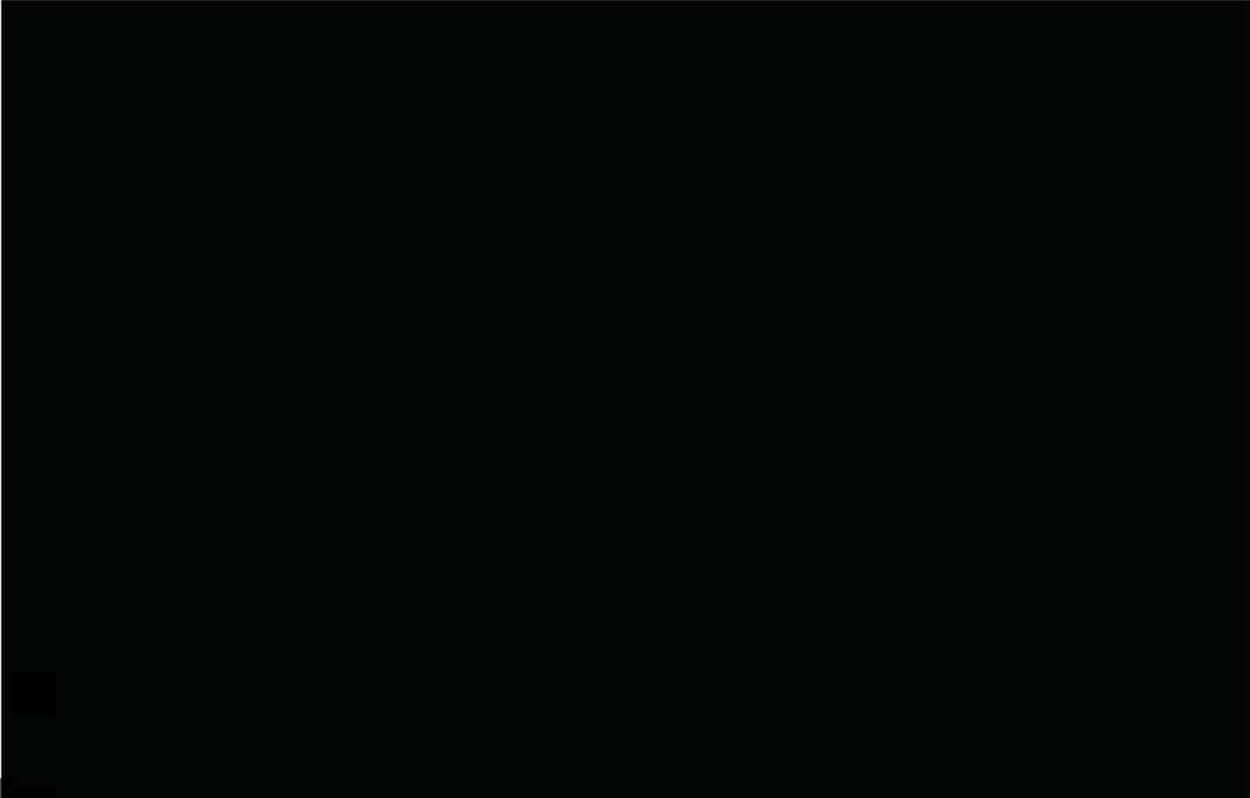
- On August 4th and 5th 2017, Subject 4 and Rep. Hernandez went on dates, wine tasting and dinner.



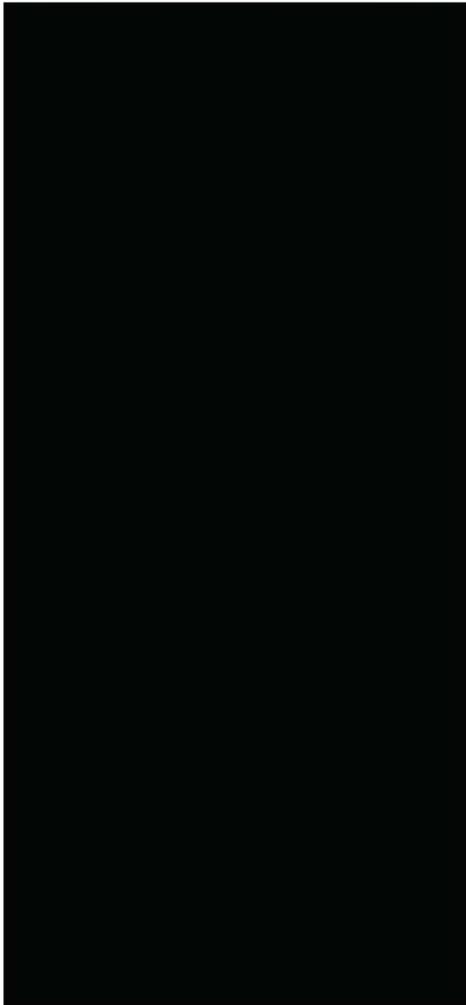
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- On August 2, 2017, they discussed their relationships and some of her concerns, not over anything professionally oriented, but because she was afraid [REDACTED] [REDACTED] would think and do over her and Rep. Hernandez seeing each other. Rep. Hernandez told Subject 4 that she had full control over her and Rep. Hernandez's relationship and told her he was going to back away since she vocalized a

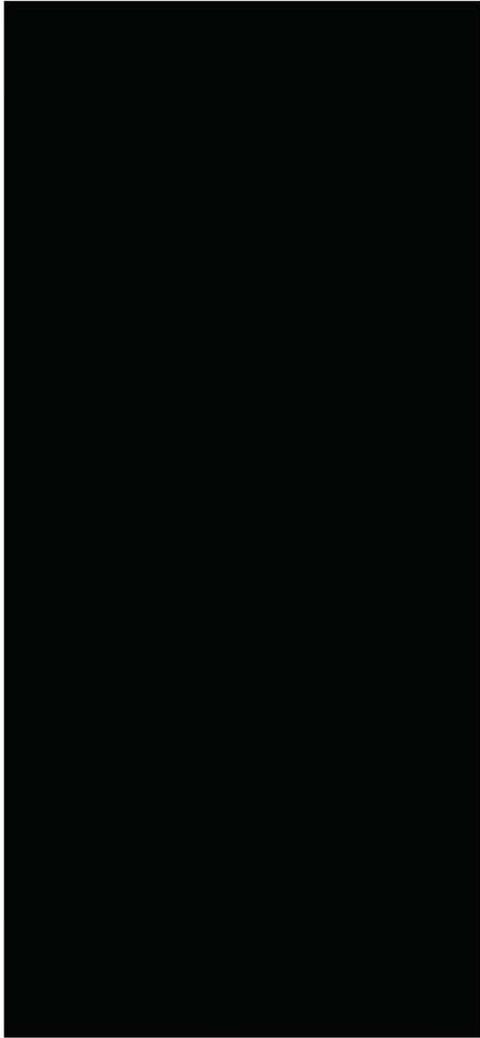
concern. She immediately responded by saying [REDACTED]
[REDACTED] There is more in this text thread that continues to contradict Subject 4's claims that she was concerned that Rep. Hernandez was pursuing an intimate relationship for professional reasons.



- On September 30, 2017 subject 4 invited Rep. Hernandez dancing.

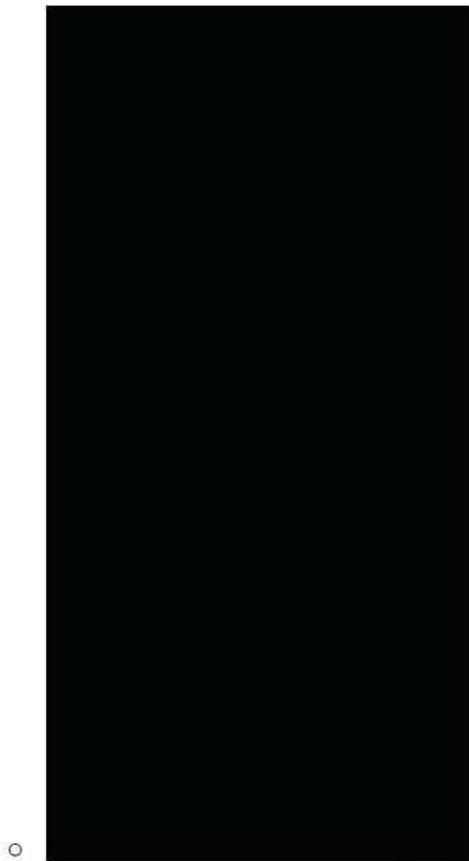


- Subject 4 and Rep. Hernandez loosely dated from July 14th to September of 2017; Rep. Hernandez was out of town a lot during this time, as you can see in the facebook messenger evidence, and Subject 4 had very limited [REDACTED] Their relationship was never formal, they eventually became good friends and the first corroborating evidence that Rep. Hernandez has of this is a September 30, 2017 facebook messenger message. Her quote after texting Rep. Hernandez about her ex being in town [REDACTED]



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- D3.16: There is a lot of context missing from this that could shed more light on what fully transpired. Around Sept/October/November of 2017, Rep. Hernandez was a [REDACTED]
[REDACTED]
- D3.13-D3.15: It should be noted that the investigators do not know how to distinguish between political campaign work and legislative business.
 - Throughout the winter of 2017, Subject 4 was trying to ask Rep. Hernandez for political favors. Subject 4 wrote on messenger [REDACTED]
[REDACTED] These conversations were not about bills or budgets, these conversations were about her new job [REDACTED]

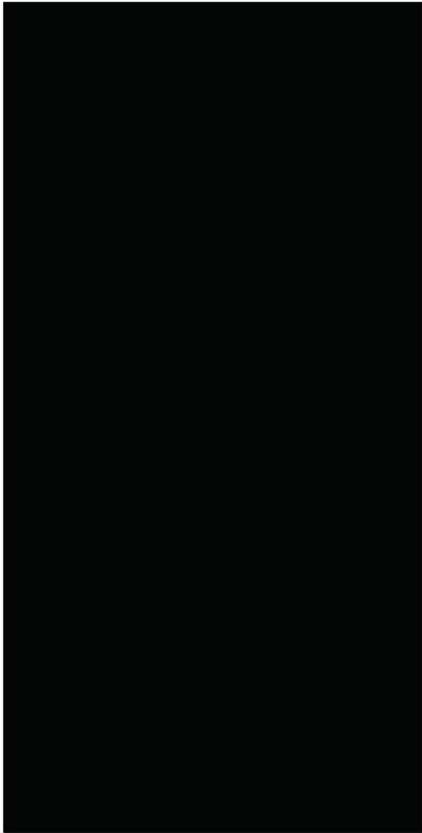


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- February 13th 2018 Subject 4 and Rep. Hernandez met up for drinks, a mutual friend joined them. Rep. Hernandez memorialized this through Rep. Hernandez's instagram story and a video.



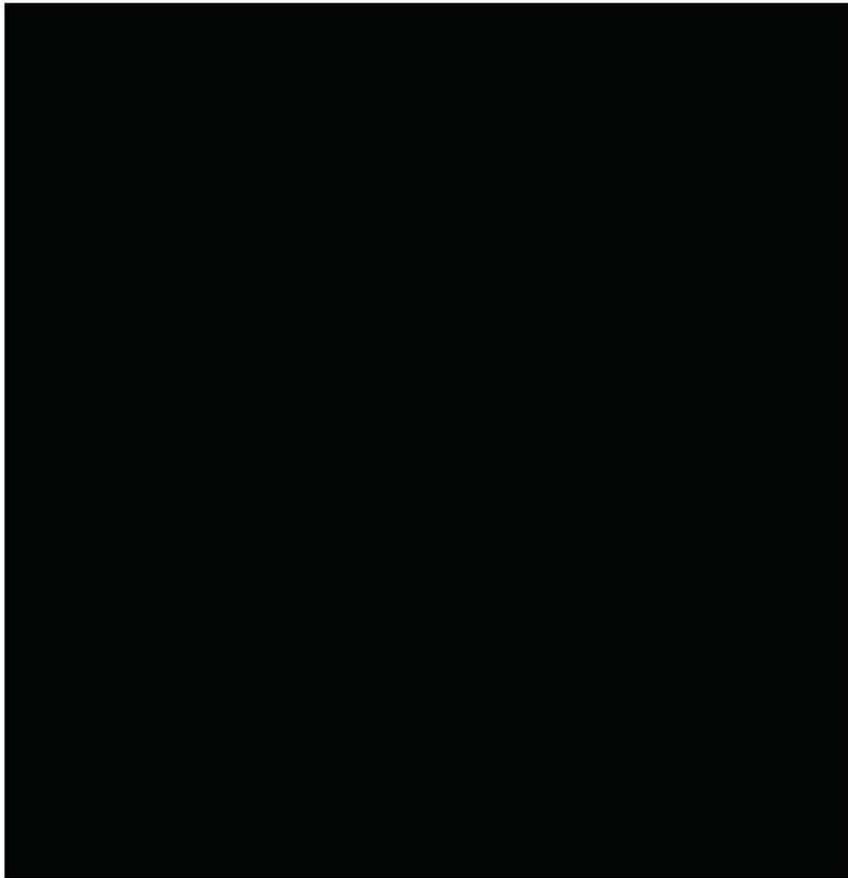
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- February 22, 2018, Subject 4 emails Rep. Hernandez about meeting up at the event.





- [Redacted]
- March [Redacted] 2018, Subject 4 joined a private party event Rep. Hernandez hosted.
[Redacted]
- On [Redacted] 2018, Subject 4 took Rep. Hernandez's place to give a speech at an event because Rep. Hernandez couldn't make it, and Rep. Hernandez asked her if she could take Rep. Hernandez's place [Redacted] to speak and she said yes. [Redacted]
[Redacted]
- On March [Redacted] 2018, Subject 4 left Rep. Hernandez a voicemail. [Redacted] and ask Rep. Hernandez for help. [Redacted]
 - Rep. Hernandez coordinated picking up her [Redacted]
 - [Redacted]
 - On March 17th, Subject 4 asked Rep. Hernandez to help draft a statement about [Redacted]

- On March 19, 2018, Subject 4 asked Rep. Hernandez for a ride to her [REDACTED]
- On April [REDACTED] 2018, Subject 4 asked Rep. Hernandez to present at [REDACTED] with her. [REDACTED]
- On April 29, 2018, Subject 4 invited Rep. Hernandez to her house to come drink and work. [REDACTED]
- On May [REDACTED] 2018 Subject 4 and a group of friends invited Rep. Hernandez to [REDACTED] for drinking. Rep. Hernandez did not go [REDACTED]
- On August 7th, 2018, Subject 4 sent Rep. Hernandez a Birthday gift card. The card read "Happy Birthday to my favorite Leo" It was a \$125 gift card to a restaurant that is known for romantic dinners and dates.



- [REDACTED]
- It is important to note that subject Rep. Hernandez thinks it is strange that she is saying she "felt" obligated, when they did not have any work whatsoever at the Capitol. Session was over in February 2018. Also, Rep. Hernandez's support is never contingent on a relationship; Rep. Hernandez's work is focused and centered on social justice. Subject 4 and Rep. Hernandez's friendship ended in November 2018 because Rep. Hernandez wanted to end it. And even after that, Rep. Hernandez still supported Subject 4

██████████ and Rep. Hernandez proved that, by doing a news interview ██████████

- On November 1st, 2018 11:10pm, Subject 4 messaged Rep. Hernandez regarding ██████████
██████████ Rep. Hernandez made the assumption that Subject 4 was looking for information because she wanted to know if Rep. Hernandez was dating ██████████
██████████ Rep. Hernandez also believed that Subject 4 was still interested in an intimate relationship with Rep. Hernandez and that she was looking to sabotage any potential relationship Rep. Hernandez would have with ██████████
- On November 2nd, Rep. Hernandez's assumptions became more like presumptions when Rep. Hernandez received a really long and personal email from Subject 4. Please read this email, because it shows a different picture from what she tried to paint with the investigators about Rep. Hernandez. ██████████
 - Rep. Hernandez never responded to her email. Rep. Hernandez did not want any relationship with Subject 4 after that because Rep. Hernandez's belief was that she knew that Rep. Hernandez was potentially getting in a relationship with ██████████
██████████ and she was going to try to sabotage it because she wanted to be in a relationship with Rep. Hernandez. Rep. Hernandez ceased to communicate with subject 4.