

# CONFIDENTIAL REPORT

January 22, 2021

*Investigation  
of Case #53*

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## **I. INTRODUCTION**

The Legislative Equity Office (“LEO”) retained the law firm of Jackson Lewis P.C. to investigate mandatory reports received by LEO regarding the conduct of Representative Diego Hernandez. Two individuals were the subject of the mandatory reports relating to conduct of Rep. Hernandez. In addition, several individuals who either worked or did business at the Capitol were identified in our investigation that reasonably suggested the possibility of a pattern of behavior. The individuals who were the subject of mandatory reports and those who we identified as possibly subject to a pattern of behavior, are identified in this Report as Subjects. There are five Subjects in all. The facts forming the basis for the mandatory reports, as well as related issues were investigated as described more fully below.

This Report contains factual findings based upon the information made available in the course of investigating this matter. Based on our factual findings, this Report makes conclusions regarding disputed events, except where otherwise noted.

## **II. INVESTIGATIVE FRAMEWORK / PROCESS**

### **A. RULE 27**

As relevant to this, Report, Rule 27<sup>1</sup> states that the Legislative Branch is committed to providing a safe and respectful workplace. Rule 27(1)(b). “Members of the Legislative Assembly ... are expected to conduct themselves in a manner that is free of harassment and to discourage all harassment in the workplace and at professional meetings, seminars, or at any event at which the Legislative business is conducted.” Rule 27(1)(e). Rule 27 is designed to enhance options to

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<sup>1</sup> Rule 27 was amended, effective August 10, 2020, after this investigation commenced. See HCR 221. The amended Rule 27 does not differ in any way material to this investigation from the Rule that was in effect when the investigation began. HCR 20. Therefore, this investigation was conducted pursuant to HCR 20. Additionally, some of the conduct that is the subject of this investigation occurred during prior iterations of Rule 27. See HCR 11 and Rule 27, approved January 16, 2016. Unless noted, the prior versions of Rule 27 do not differ from HCR 20 in any material respect. All citations to Rule 27, unless noted, refer to HCR 20, which was in effect from November 2019 to August 2020.

redress harassment in the workplace and is available to witnesses who seek to remain anonymous.  
Rule 27(1)(f)(A). *See also* Rule 27(1)(g).

1. Sexual Harassment Under Rule 27

Sexual harassment that creates a hostile work environment is prohibited by Rule 27. Rule 27(8). Under Rule 27(5)(a), sexual harassment is defined as “unwelcome conduct of a sexual nature, including but not limited to sexual advances, requests for sexual favors, sexual comment, unwanted or offensive touching or physical contact, 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 an individual’s job, leave request, benefits, business before the Legislative Assembly, influence or opportunity of the individual to engage professionally with the Legislative Assembly, its members or staff; 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. For purposes of this rule ‘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,

though a withdrawal of consent must be communicated to the person for whom consent is being withdrawn.”<sup>2</sup>

An individual creates a “hostile work environment by engaging in behavior that is unwelcome and is so severe or pervasive that it either affects a person’s ability to function in the workplace or denies a person the benefits of the workplace.” Rule 27(4)(c).

Rule 27(5)(b) provides examples of sexual harassment:

- (A) Unwanted sexual advances, flirtations or propositions.
- (B) Demands for sexual favors in exchange for favorable treatment or continued employment.
- (C) Sexual jokes.
- (D) Verbal abuse of a sexual nature.
- (E) Verbal commentary about the body, sexual prowess or sexual deficiency of an individual.
- (F) Leering, whistling, touching or physical assault.
- (G) Using sexually suggestive, insulting or obscene comments or gestures.
- (H) Displaying sexually suggestive objects or pictures.
- (I) Sending or forwarding electronic mail or other communications of an offensive or graphic sexual nature.
- (J) Discriminatory treatment based on sex.

## 2. Retaliation Under Rule 27

Rule 27 prohibits retaliation. Rule 27(8)(d). Retaliation occurs when a person treats another individual less favorably because the individual made a good-faith complaint about conduct prohibited by the rule or participated in an investigation about conduct that is prohibited by the rule, or because an individual engaged in a process described in Rule 27. Rule 27(6)(a and b). We read Rule 27 to prohibit retaliation even if an underlying violation (such as discrimination or harassment) is not substantiated.

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<sup>2</sup> The prior iterations of Rule 27 did not contain the requirement that withdrawal of consent must be communicated to the person for whom consent is being withdrawn. *See* prior Rule 27(1)(g) (version adopted January 2019) and prior Rule 27(2)(g) (version adopted January 2016).

### 3. Who is Protected Under Rule 27?

Anyone who conducts business at the Capitol or engages professionally with the Legislative Assembly, or its members or staff, are encompassed within the prohibitions of Rule 27. Rule 27 provides that “any individual who experiences behavior prohibited by the Rule may utilize its reporting options.”<sup>3</sup> Rule 27(2)(A); *see also* Rule 27(1)(f) and (g). Rule 27 is designed to promote a respectful and inclusive environment at the state Capitol and in any setting in which conduct violative of Rule 27 has the ability to create an intimidating, hostile or offensive Capitol environment. Rule 27(1)(A).<sup>4</sup> Thus, conduct that occurs outside the Capitol can violate Rule 27 if it creates an intimidating, hostile, or offensive environment at the Capitol. The sexual harassment section of Rule 27 expressly provides that sexual harassment occurs when a person expressly or by implication conveys that declining to submit to the conduct will affect an individual’s job, leave request, benefits, *business before the Legislative Assembly, influence or opportunity of the individual to engage professionally with the Legislative Assembly, its members or staff.*” Rule 27(5)(a)(B) (emphasis supplied).<sup>5</sup>

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<sup>3</sup> The version of Rule 27 adopted in January 2016 stated “this Rule applies to members of the Legislative Assembly and all employees of the Legislative branch. This rule and the processes described in this rule do not apply to persons who are not members of the Legislative Assembly or employees of the Legislative branch, except as provided under subsection 3 of this rule.” Subsection 3 of the 2016 version of the rule imposes an obligation upon appointing authorities or supervisors to take appropriate action to prevent, promptly correct, and report harassment, about which the appointing authority or supervisor knew or, with the existence of reasonable care, should have known. Rule 27(3)(b) (version adopted January 2016). It should be noted that Rep. Hernandez argues that the version of Rule 27 adopted in January 2016 prohibits only harassment, discrimination, and retaliation of employees of the Legislative branch or members of the Legislative Assembly.

<sup>4</sup> The most recent iterations of Rule 27 refer to a respectful and inclusive environment at the state Capitol. The two prior iterations (those adopted in January 2016 and January 2019) refer to a safe and respectful workplace.

<sup>5</sup> The current and most recent iteration of Rule 27 contain this language. The two prior versions (adopted in January 2016 and January 2019) provided that sexual harassment occurs when 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. Rule 27(2)(f)(B) (version adopted January 2016 and version adopted January 2019).

B. ROLE OF THE INVESTIGATOR

1. Engagement and Independence

The Legislative Equity Office (“LEO”) hired Jackson Lewis P.C. to conduct an independent investigation into allegations relayed by mandatory reporters that Rep. Hernandez violated Rule 27. Our investigation was independent from the LEO and the Oregon Legislature, neither of which conducted, directed, or otherwise managed or influenced our investigation in any manner. Neither the LEO nor other representatives of the Oregon Legislature imposed limits on our access to information, nor did either require or prohibit any specific investigative steps. We had sole discretion to employ investigative resources, techniques, and processes appropriate in our professional judgment to complete the investigation and issue this Report. Rule 27 imposes deadlines on our investigation, but the LEO has discretion to grant extensions to those deadlines. In this case, several of the witnesses were reluctant to participate in the investigation and, in fact, one of the Subjects of our investigation, while identified early on, was initially unwilling to participate and did not participate until September 2020. As a result of these delays and others,<sup>6</sup> the LEO granted extensions of our Rule 27 deadlines and encouraged us to take the time we needed to conduct a comprehensive and thorough investigation and prepare this Report.

The facts and findings set out in this Report are our own and are based on our evaluation of the evidence we have collected and reviewed. No changes or edits were made to this Report by anyone outside of the Jackson Lewis investigative team at any time, and no draft or advance copy of the Report was shown to or reviewed by anyone outside of Jackson Lewis except in connection with the draft review process required under Rule 27 and outlined below.

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<sup>6</sup> Some delay was due to a two-month lag by Rep. Hernandez in providing documents, and some delay was due to unexpected professional/personal commitments of one of the investigators.

## 2. Determination

Unlike investigations regarding the conduct of those who are not members of the Legislative Assembly, Investigators are not asked to determine whether Rule 27 has been violated. Rule 27(14)(d)(B). Rule 27 directs the investigator to use best practices in conducting the investigation and to make findings of fact relevant to the allegations.

## 3. The Report

Section 14(d)(A) requires the Investigators to prepare draft written findings of fact at least eight (8) days before the investigation is concluded and to provide that draft to the Complainants and the Respondent. A draft of this Report was provided to Respondent on December 23, 2020. Consistent with prior practice, a draft of this report was provided to LEO. A draft of this Report was also shared with the five Subjects on December 23, 2020, to provide them with an opportunity to comment, as well as to express any concerns that the Report contained information that would enable the reader to determine their identities. Under Rule 27, the Respondent and Subjects had seven (7) days to provide responses to the draft written findings. Rule 27(14)(d)(C). At the request of the Respondent, this deadline was extended by five (5) calendar days. Responses were received from the Respondent and four of the Subjects, and the report was revised by the Investigators accordingly.

### **III. INTERVIEWS / DOCUMENTS REVIEWED**

We conducted extensive document and data review and a significant number of witness interviews. We identified witnesses by reviewing documents and conducting interviews.

Interviews were conducted by Sarah J. Ryan and Kira Johal of Jackson Lewis, P.C.<sup>7</sup> (the “Investigators”). In all, the Investigators interviewed 30 individuals – some multiple times – by

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<sup>7</sup> The investigative team was headed by Sarah J. Ryan, an attorney who has practiced for 37 years and specializes in employment matters. Ms. Ryan has conducted hundreds of investigations regarding claims of discrimination,

telephone or Webex (video conference). We interviewed elected officials, current and former Legislative staff, lobbyists, and community members who have business at the Capitol. In addition, we interviewed the five Subjects described below – some multiple times. We also conducted two interviews of Rep. Hernandez, who was represented by counsel at each interview. Rep. Hernandez’s participation in the investigation is described in more detail below. Further, to identify other individuals who may have experienced or had relevant knowledge of Rep. Hernandez’s alleged conduct, we attempted to conduct interviews of all staff members who had worked for Rep. Hernandez at the Legislature since he was sworn in in early 2017. We sought to interview 14 staff members and reached out to each multiple times, except that we could locate no contact information for one former staff member. Four staff members did not respond to our requests for an interview. As a result, we interviewed nine current or former staff members.

We do not identify third-party witnesses or Subjects by name in this Report for two reasons. First, some witnesses and all Subjects<sup>8</sup> stated that they were unwilling to participate in our investigation unless we provided assurances that they would not be identified by name in this Report. Some stated they were concerned about retaliation if they were named in this Report. Many were concerned about their private matters being shared with the public at large. Two witnesses stated that they believed that Rep. Hernandez’s May 11, 2020, tort claim notice may have chilled some potential witnesses from coming forward. More generally, identifying witnesses by name in this process would likely have a chilling effect on individuals who are asked to participate in future investigations.

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harassment, and retaliation. Kira Johal is also an attorney focusing on workplace law matters. She is a former Board member for the Center for Human Rights and Justice Society and a member of the South Asian Bar Association of Washington and the National Association of Women’s Lawyers. Both are members of the Oregon State Bar.

<sup>8</sup> The names of the Subjects were communicated to Rep. Hernandez’s counsel.



We reviewed thousands of pages of documents, including, but not limited to text messages, emails, and Court filings and records. We reviewed text messages between Rep. Hernandez and three of the Subjects. We also reviewed personnel records obtained from the Interim HR Director and miscellaneous records supplied by witnesses, Subjects, and Rep. Hernandez. Finally, a member of our Jackson Lewis team reviewed information regarding Subject Two's social media accounts.

Our Report describes conduct that we found to be supported by the evidence collected in the course of our investigation. In some cases, we identify the absence of evidence or conflicts in evidence that we were unable to resolve. Our Report does not detail every piece of information we collected in our investigation, but, instead, contains the information we believe necessary to explain our factual findings and provide the Conduct Committee with information to enable it to determine whether violations of Rule 27 occurred.

#### **IV. RESPONDENT'S PARTICIPATION IN THE INVESTIGATION**

On August 19, 2020, Respondent, along with his counsel, participated in a Webex interview of approximately 2.5 hours. During that interview, the Investigators requested that Rep. Hernandez provide certain documents. That request was confirmed in writing on August 20, 2020, and is hereafter referred to as the "Interview Request." On August 19, 2020, following the interview, the Investigators requested additional information from Rep. Hernandez. This additional request is hereafter referred to as the "August 19 Post Interview Request." As set forth more fully below, Rep. Hernandez, through his counsel, denied the August 19 Post Interview Request.

On September 5, 2020, Rep. Hernandez provided the documents requested in the Interview Request, including text messages with some of the Subjects. On September 28, 2020, the

Investigators requested documents that appeared to have been missing from Rep. Hernandez's September 5, 2020, production. Rep. Hernandez provided the documents requested on November 26, 2020.

On December 11, 2020, the Investigators requested a follow up interview with Rep. Hernandez of up to two hours by Webex. Rep. Hernandez's counsel responded that a follow up interview was excessive. Ultimately, On December 18, 2020, Rep. Hernandez, through his counsel, refused to proceed with the follow up interview, arguing that they were entitled to first view confidential information that had been provided to the Investigators. We declined that request and issued our draft report the following week. Thereafter, Rep. Hernandez submitted extensive materials in rebuttal and sat for a second Webex interview of almost three hours on January 13, 2021.

## **V. SUMMARY OF REPORTS AND ISSUES PRESENTED AND RESPONSES AND FINDINGS**

Five individuals who were either the subject of mandatory reports under Rule 27 or were identified in connection with our investigation raised concerns regarding conduct by Rep. Hernandez that implicated Rule 27. We anonymize these individuals in order to preserve their privacy.<sup>9</sup> We do not describe or name the specific positions held by these individuals to avoid revealing their identities. Each Subject is addressed below.

### **A. SUBJECT ONE**

#### **A.1. Report: Response**

Subject One was the subject of a mandatory report received by LEO. Subject One did not initially make a report to LEO, a mandatory reporter did in compliance with the requirements of Rule 27. Subject One stated that she had a brief, consensual, romantic relationship with Rep.

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<sup>9</sup> As stated above, Rep. Hernandez has been provided with the identity of the Subjects of this Report.

Hernandez that she ended. After Subject One advised Rep. Hernandez that she was not interested in a romantic relationship, Rep. Hernandez continued to pursue a romantic relationship with her while she worked at or did business at the Capitol. Subject One expressed concern that Rep. Hernandez criticized her Capitol work performance after she rebuffed his efforts to rekindle their romantic relationship. Rep. Hernandez admitted a consensual relationship with Subject One, but he denied the assertion that he continued to pursue a romantic relationship once advised by Subject One that she was no longer interested. Rep. Hernandez also denied threatening or engaging in any retaliatory behavior.

#### A.2. Findings

We find it more likely than not that Rep. Hernandez, over the course of several months, continued to pursue a romantic relationship with Subject One after Subject One advised Rep. Hernandez that she was no longer interested in a romantic relationship. We also find that Subject One reasonably felt pressured to resume a romantic relationship with Rep. Hernandez. We further find that Subject One was reasonably concerned that her work at the Capitol would be jeopardized given her lack of interest in continuing a romantic relationship with Rep. Hernandez, even though Rep. Hernandez did not explicitly connect the nature of their relationship with Subject One's work at the Capitol.

#### A.3. Basis for Findings

A.3.1. Subject One and Rep. Hernandez were in a consensual relationship. Subject One stated that the relationship was brief (a matter of weeks) and began in January 2017 after Rep. Hernandez was elected and about the time he was sworn into the House

of Representatives. On the other hand, Rep. Hernandez stated that the romantic<sup>10</sup> relationship began prior to his election. It is unnecessary to resolve this dispute for purposes of our findings.

A.3.2. Subject One did business at the Capitol throughout 2017 and thereafter to the present.

A.3.3. Subject One stated that she ended the relationship with Rep. Hernandez around February 2017. Rep. Hernandez stated the relationship ended in April 2017. Based primarily on a review of text messages between Subject One and Rep. Hernandez, we find it more likely than not that the relationship between Rep. Hernandez and Subject One ended before April 2017.

A.3.4. On April 3, 2017, Rep. Hernandez arranged to have gift boxes delivered to Subject One's home without identifying himself as the sender. The description of the gift box was "Singles Swag." On the same day, Rep. Hernandez sent Subject One a text message stating that he hoped she had a good weekend and that she was doing well. The text did not mention the gift box. Subject One stated that she did not suspect the gift box was sent by Rep. Hernandez because they had ended their romantic relationship at that point. Rep. Hernandez acknowledged he sent the gift box and stated that he and Subject One were still together when he ordered the gift box. Rep. Hernandez asserts that when he ordered the gift box online, he was not able to identify himself as the sender. Currently, that is an option with this vendor and in our experience, one who orders gifts online is able to identify themselves as the gift giver, even if the gift is sent directly to the recipient. We find it more likely than not that the gift box was sent after the relationship ended because it was sent anonymously and because of the somewhat impersonal nature of the April 3 text message referenced above. Subject One received another gift box

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<sup>10</sup> This report uses the terms "intimate" and "romantic" interchangeably. We use the description of the relationship supplied by the Subjects.

approximately a month later, which we conclude is also attributable to Rep. Hernandez, and was likely ordered when the first gift box was ordered.

A.3.5. Subject One and Rep. Hernandez communicated regarding Legislative business in April and May 2017. During this timeframe, they also communicated regarding personal goals, separate social activities, and politics.

A.3.6. On May 3, 2017, Rep. Hernandez asked Subject One if she wanted to join him for a walk. She declined.

A.3.7. On May 8, 2017, Rep. Hernandez left flowers for Subject One on her car, without identifying himself as the source.

A.3.8. On May 15, 2017, Subject One asked Rep. Hernandez if he left flowers on her car. He responded that he did not think that she would ask him, and he did not want to lie, just bring a smile to her on a Monday.

A.3.9. On May 17, 2017, Subject One and Rep. Hernandez met in person. Subject One felt she needed to meet with Rep. Hernandez in person to make it very clear that she was not interested in a romantic relationship. Subject One felt this was necessary because Rep. Hernandez left the flower on her car and asked her for a walk after she ended the romantic relationship. A friend in whom Subject One was confiding suspected that Rep. Hernandez had sent the gift box, and when asked, Rep. Hernandez acknowledged having done so at the May 17, 2017, meeting. Subject One again told Rep. Hernandez that she was only interested in moving forward as friends. Rep. Hernandez acknowledges that Subject One told him that she was not interested in a romantic relationship during this meeting. Rep. Hernandez asserts that this was the first time Subject One had advised him that she was not interested in a romantic relationship. Subject One denies this, and we find it more likely than not that she had advised Rep. Hernandez

that she was not interested in a romantic relationship several months earlier, based on text exchanges between Subject One and Rep. Hernandez during this timeframe.

As Subject One and Rep. Hernandez were walking to Subject One's car after the May 17, 2017, meeting, Subject One told Rep. Hernandez that he was making things uncomfortable and asked him to stop the gifts and efforts to rekindle their romance. Rep. Hernandez stated that he did not think that he could drive home which Subject One interpreted as a veiled request for her to invite him to stay with her. Subject One told Rep. Hernandez that she did not want him to drink and drive but that she could not invite him to stay with her. Later that night, Subject One memorialized this conversation in a text to a friend. Later that night, Rep. Hernandez sent Subject One a text stating that he was staying in Portland and would not risk the drive to Salem. His text also stated that he was glad he and Subject One could move forward as friends. Subject One responded that she was too and she told Rep. Hernandez to be safe.

A.3.10. Two days later (May 19, 2017), Rep. Hernandez invited Subject One to get together, and she declined. In response, Rep. Hernandez expressed a desire to continue hanging out. Although reluctant, Subject One said, "Sure."

A.3.11. Four days later, Subject One and Rep. Hernandez were scheduled to co-present at an event. Rep. Hernandez asked Subject One if she was going to the happy hour event following the presentation. She said no.

A.3.12. On May 25, 2017, Rep. Hernandez asked Subject One if she wanted to get together that weekend. She declined. Rep. Hernandez stated: "I'll keep trying to see when I can see you again." He added that he had a few things that he wanted to say that he did not get a chance to say previously. Subject One responded that she was not sure that there was anything left to say. Rep. Hernandez asked Subject One if she wanted him to step back and give

her some space. She responded that she was okay being friendly, but she did not want to talk about their relationship anymore because friends did not need to do that on a regular basis.

A.3.13. On May 30, 2017, Rep. Hernandez asked Subject One if she wanted to get together for food and drinks late in the evening. Subject One declined. After Subject One ended the romantic relationship with Rep. Hernandez, she never requested a face-to-face meeting with him other than at the Capitol when they met on Legislative business.

A.3.14. In May and June 2017, Subject One and Rep. Hernandez exchanged written communications regarding Legislative business.

A.3.15. On June 19, 2017, Rep. Hernandez asked Subject One to have a drink. They made plans to get together on June 22, 2017, but those plans were cancelled.

A.3.16. During June 2017, Rep. Hernandez and Subject One were discussing Legislative business. Subject One states that she began to bring another person with her when she met with Rep. Hernandez at the Capitol because she was feeling uncomfortable around him.

A.3.17. On June 23, 2017, Rep. Hernandez again asked to see Subject One.

A.3.18. On June 27, 2017, Rep. Hernandez made a comment about “sexist, patriarchal, ageist, bros. (including me) that ... make things worse.” Subject One responded that Rep. Hernandez did not fit in that category.

A.3.19. At some point in the summer, Subject One met with Rep. Hernandez at his request. Subject One felt that she needed to meet with Rep. Hernandez again face-to-face to let him know that she was feeling uncomfortable with his repeated requests to get together in person. She scheduled the meeting for mid-afternoon and told Rep. Hernandez that she needed to do something later that afternoon, in order to avoid a prolonged evening together.

Subject One and Rep. Hernandez met for a few hours. He needed to leave for an event and suggested they get together later. The suggestion made Subject One uncomfortable and she did not respond. Later that evening, Rep. Hernandez showed up at Subject One's apartment and knocked on the door. Subject One had not invited Rep. Hernandez to her home. She did not answer and hid in her closet where she could not be seen through the window. Rep. Hernandez denies that he went to Subject One's house unannounced or that he ever visited her house and was not let in. We find it more likely than not that Rep. Hernandez went to Subject One's house unannounced and that she hid in her closet to avoid being seen by Rep. Hernandez.

A.3.20. In the spring, summer, and fall of 2017, Subject One shared with friends and a professional contact that she had discontinued the relationship with Rep. Hernandez but that he continued to pursue her. Subject One informed these individuals that Rep. Hernandez's continued pursuit made her uncomfortable due to her role at the Capitol.

A.3.21. In June, July, and early August 2017, Subject One and Rep. Hernandez continued to communicate regarding Legislative business.

A.3.22. In August 2017, Rep. Hernandez sent Subject One a number of pictures and videos, which he later deleted. Subject One did not respond to most of these communications.

A.3.23. In mid-October 2017, Subject One and Rep. Hernandez attended a political conference.

A.3.24. During the conference, Rep. Hernandez told Subject One that he had a dream about her in which they were saving people from a flood.

A.3.25. During the conference, Subject One and Rep. Hernandez interacted with each other. At one point, Rep. Hernandez tried to speak to Subject One, and she



declined because a bus was waiting for her. Rep. Hernandez states that he thought Subject One was rude because Rep. Hernandez was trying to introduce her to a potential candidate of color.

A.3.26. On October 22, 2017, Rep. Hernandez texted Subject One, asking for a chance to check in, so they could have a working relationship and stated that the weekend felt uncomfortable.

A.3.27. In an October 23, 2017 text, Rep. Hernandez told Subject One that he felt pushed aside by her based on her not taking the time to talk to him. In the same text, after saying that Subject One was the perfect person for her job, Rep. Hernandez criticized her work performance. The text noted that both Subject One and Rep. Hernandez were uncomfortable working with each other. Rep. Hernandez's text requested an in-person meeting so they could discuss having a good working relationship.

A.3.28. Subject One was unwilling to meet with Rep. Hernandez in person, and Rep. Hernandez and Subject One spoke by telephone shortly after his October 23, 2017 text. As a result of that conversation and the text that preceded it, Subject One became concerned that Rep. Hernandez would use his position in the Legislature to jeopardize her professional standing and that Rep. Hernandez was using his position to get Subject One to meet with him in person, which she did not want to do.

A.3.29. Subject One shared her concerns with an elected official.

A.3.30. The elected official spoke to Rep. Hernandez and advised him that his contact with Subject One was making her uncomfortable and asked him to stop contact.

A.3.31. After the other elected official spoke to Rep. Hernandez, he ceased contact with Subject One except that Subject One and Rep. Hernandez exchanged brief text messages regarding legislative business. When Subject One sent Rep. Hernandez brief texts

regarding upcoming or urgent Legislative events, she did so because he did not respond to group emails, which she sent to a broader audience.

A.3.32. Since 2017, Subject One has continued to have business at the Capitol. To the present, she remains uncomfortable at the Capitol due to Rep. Hernandez's conduct as outlined above.

B. SUBJECT TWO

B.1. Report: Response

Subject Two was the subject of a mandatory report to the LEO. Subject Two did not initially make a report to LEO, a mandatory reporter did in compliance with the regulations of Rule 27. During our interview with Subject Two, she stated that Rep. Hernandez was physically, verbally, and mentally abusive in connection with their intimate relationship. Subject Two's job and role as an elected official required her to conduct business at the Capitol. Subject Two states that she is not comfortable and feels unsafe doing business at the Capitol due to the abusive nature of their prior, intimate relationship. Rep. Hernandez admits he had an intimate relationship with Subject Two but denies the assertion of abuse. Subject Two also reported that she had been hacked and surveilled, and that she believed this was retaliatory behavior from Rep. Hernandez for raising her concerns publicly. Rep. Hernandez denies any retaliation.

B.2. Findings

Rep. Hernandez admits throwing a cell phone at a table at which Subject Two was sitting in the course of their intimate relationship. We also find that Rep. Hernandez sent Subject Two two text messages, which reasonably could be interpreted as controlling and abusive.

Subject Two further asserts that she was uncomfortable doing business at the Capitol once their intimate relationship ended, at least to the extent her business involved interacting with Rep.

Hernandez. We find it more likely than not that Subject Two's uncomfortableness working around Rep. Hernandez was reasonable.

B.3. Basis for Findings

B.3.1. Rep. Hernandez and Subject Two have known each other for many years.

B.3.2. Subject Two and Rep. Hernandez were engaged in a consensual, intimate relationship for approximately a year and a half. Subject Two and Rep. Hernandez dispute whether their consensual, intimate relationship ended in late 2019 or early 2020. Resolution of that dispute is not necessary to our findings, and we were unable to determine the precise timeframe in which the consensual, intimate relationship ended. Subject Two and Rep. Hernandez also dispute who ended the intimate relationship. Resolution of this dispute is not necessary to our findings. Rep. Hernandez produced evidence that Subject Two desired to re-kindle their romantic relationship after it ended. However, Rep. Hernandez acknowledges "that it is not uncommon for victims of domestic abuse to continue to love and pursue their abusers, even in the face of abhorrent violence." Resolution of this dispute is not necessary to our findings.

B.3.3. Due to her professional position and policy advocacy, Subject Two has business at the Capitol.

B.3.4. Subject Two asserted that Rep. Hernandez was jealous and verbally and physically threatening during their intimate relationship. Rep. Hernandez denies this assertion. However, Rep. Hernandez admits throwing his cell phone at a table at which Subject Two was sitting. In reference to this incident, Rep. Hernandez told Subject Two that he should not have made her feel unsafe.

B.3.5. Rep. Hernandez sent Subject Two text messages that she interpreted as jealous and controlling. On October 25, 2019, Rep. Hernandez sent Subject Two a text asking her why she sat in the front seat of a Lyft and asking why she was not answering his calls. Rep. Hernandez stated that he sent his text because he was concerned for Subject Two's safety. But Subject Two could have reasonably interpreted this text message as controlling and isolating. On another occasion, Rep. Hernandez asked Subject Two to prove where she had been a few nights prior. Rep. Hernandez agrees that this text message was controlling.

B.3.6. On February 24, 2020, Subject Two shared concerns regarding her safety vis-à-vis Rep. Hernandez with a friend.

B.3.7. One other witness, who appeared to be disinterested, advised us that Rep. Hernandez has anger management issues and provided examples. Another witness commented on his anger. Two other witnesses stated that they believed Rep. Hernandez engaged in controlling and/or jealous behavior with regard to his intimate partners, but the information from one of those witnesses was second hand.

B.3.8. On the other hand, one witness refuted Subject Two's assertion that Subject Two was fearful in a particular instance, separate and distinct from the incidents outlined above, and we make no findings as to that incident.

B.3.9. Subject Two asserted that Rep. Hernandez's abusive behavior frequently occurred when he was under the influence of drugs or alcohol. Two witnesses expressed concern that Rep. Hernandez sometimes drank to excess. In a text message, Rep. Hernandez appeared to admit being under the influence of a combination of drugs and alcohol. Rep. Hernandez asserts that the drugs referred to in his text were edible THC/CBD, which was legal at the time. Rep. Hernandez also submitted a drug test taken on a hair sample collected in late April

2020 that showed negative results for a number of substances, including cannabinoids. The sample collected was body hair, which Rep. Hernandez asserted would show positive results for usage within the prior 12 months. An internet search suggested that positive results are shown for up to three months of prior usage. Subject Two disputes that Rep. Hernandez's drug use was limited to edibles.

B.3.10. Subject Two stated that Rep. Hernandez was verbally aggressive in connection with her work at the Capitol after their intimate relationship ended. Rep. Hernandez denied this. As set forth above, Subject Two stated that she was uncomfortable and felt unsafe doing business at the Capitol (either in-person or virtually) due to the abusive nature of her relationship with Rep. Hernandez. Subject Two also expressed the concern that during their intimate relationship, Rep. Hernandez blurred the lines between their professional and personal relationships by asking Subject Two to provide professional favors to support his Legislative work.

B.3.11. Subject Two expressed concern that Rep. Hernandez had hacked into at least one of her password protected social media accounts and sent a fraudulent, threatening message that purported to be from her to a mutual friend. That threatening text, Subject Two asserts, impacted Subject Two's ability to conduct business in the workplace. Subject Two expressed concern that Rep. Hernandez was responsible for hacking into her social media account in retaliation for Subject Two publicly sharing her experiences with Rep. Hernandez. Subject Two shared that Rep. Hernandez knew her social media passwords. Rep. Hernandez denies that he knew her passwords or hacked into Subject Two's social media accounts. One of the members of the Jackson Lewis team skilled in cyber-security, reviewed data and materials supplied by Subject Two in connection with this concern. We conclude it was more likely than not that someone other than Subject Two logged on to Subject Two's social media account on or about

April 13, 2020, and sent a message that purported to be from Subject Two. We requested information from Rep. Hernandez that might have assisted us in determining whether or not he was or could have been responsible for this activity, but he declined to provide the requested information. Additionally, in a text exchange with another Subject, Rep. Hernandez told that individual that he can install malware and Trojans and “hack a little.”

B.3.12. Subject Two also expressed concern that Rep. Hernandez had hacked into her account and cancelled her Oregon State Legislature subscription to Rep. Hernandez’s newsletter after Subject Two publicly shared her concerns regarding Rep. Hernandez’s conduct in their intimate relationship. Rep. Hernandez admits to doing so (directly or through his staff) but stated he understood he was compelled to have no contact with Subject Two and that is why he cancelled the newsletter.

C. SUBJECT THREE

C.1. Issue: Response

Subject Three alleged that Rep. Hernandez was physically aggressive with her at a political event in March 2018. Rep. Hernandez denies this assertion.

C.2. Findings

We were unable to substantiate this assertion.

C.3. Basis for Failure to Substantiate

C.3.1. Subject Three and Rep. Hernandez have had two interactions relevant to this investigation. The first was in February 2018, when Subject Three testified at a committee hearing at which Rep. Hernandez was participating. Subject Three stated that Rep. Hernandez smirked at her while she was testifying. In our interview, however, Subject Three said

that she was not certain that Rep. Hernandez was smirking. Subject Three stated her uncertainty arose out of the fact that she was emotional and sad given the topic of her testimony.

C.3.2. Subject Three and Rep. Hernandez supported different candidates for a local elected position.

C.3.3. Subject Three and Rep. Hernandez again interacted and discussed differing local candidates at a March 2018 political event. Subject Three asserts that Rep. Hernandez was aggressive in that interaction, that he was sputtering, yelling, and invading her personal space and that she had to ask him to step back. Rep. Hernandez denies this assertion. One eyewitness stated that Rep. Hernandez was composed and that it was Subject Three who was yelling. We heard from another eyewitness that Rep. Hernandez was yelling at Subject Three and that Subject Three asked Rep. Hernandez to get away from her several times, and he did not do so. As a result of these conflicting statements, we are unable to substantiate this issue.

D. SUBJECT FOUR

D.1. Issue: Response

Subject Four stated that she had a consensual, intimate relationship with Rep. Hernandez, which ended in 2017. Subject Four expressed concern that Rep. Hernandez distorted the boundaries between his personal and professional position during their brief, consensual, intimate relationship.

Subject Four felt Rep. Hernandez attempted to rekindle their intimate relationship after it ended. In addition, Subject Four stated that Rep. Hernandez threatened her professional position (which involved business at the Capitol) and refused to engage with Subject Four professionally after their intimate relationship ended.

Subject Four stated that Rep. Hernandez continued to pursue an intimate relationship with her after she advised him that she was not interested in such a relationship and while she worked at or did business at the Capitol. Subject Four stated that she felt pressured to resume an intimate relationship with Rep. Hernandez and briefly did so in mid-2018.

Rep. Hernandez admitted a consensual intimate interaction with Subject Four, but he denied that there was any type of relationship with Subject Four. Rep. Hernandez denies that Subject Four conducted any business at the Capitol. Rep. Hernandez admitted he did not respond to Subject Four's attempts to discuss shared professional goals after their brief relationship ended.

#### D.2. Findings

We find it more likely than not that Rep. Hernandez created an environment that Subject Four reasonably found to be intimidating, hostile, and offensive during their intimate relationship and thereafter. We further find it more likely than not that Rep. Hernandez distorted the boundaries of his personal and professional position during his intimate relationship with Subject Four, for example, by assisting with his work at the Capitol. We further find that Rep. Hernandez made statements that Subject Four reasonably interpreted as threatening her professional position (which involved work with the Legislature) in late 2017 after the intimate relationship with Subject Four ended. We further find that Rep. Hernandez continued to raise an interest in a personal relationship with Subject Four when she endeavored to keep the relationship professional. We further find that Subject Four was reasonably concerned about her ability to conduct work at the Capitol when Rep. Hernandez continued to pursue a personal relationship. We note that Rep. Hernandez did not explicitly connect the nature of their relationship with Subject Four's work at the Capitol.



D.3. Basis for Findings

D.3.1. Subject Four and Rep. Hernandez knew each other for a few years. Subject Four and Rep. Hernandez were in a short consensual, intimate relationship in mid-2017.

D.3.2. Subject Four did business at the Capitol throughout 2017 and 2018 and thereafter. Subject Four and Rep. Hernandez communicated regarding Legislative business throughout 2017 and 2018 and thereafter. According to Subject Four, Rep. Hernandez supported and became growingly involved with Subject Four's Legislative business throughout 2017. Subject Four was confused by Rep. Hernandez's sudden interest in her and her work in the Capitol.

D.3.3. In [REDACTED] 2017, Subject Four and Rep. Hernandez attended the same [REDACTED] event. Subject Four reported that Rep. Hernandez attempted to engage in sexual activity, and Subject Four rejected his attempt. [REDACTED]

[REDACTED] Rep. Hernandez then attempted to engage in sexual activity, but she declined. Rep. Hernandez denied that he attempted to engage in sexual activity with Subject Four at this time. Thereafter, Subject Four stated that Rep. Hernandez increased his communication with Subject Four in an effort to pursue an intimate relationship. Rep. Hernandez denied he pursued an intimate relationship with Subject Four and asserts that Subject Four initiated the intimate relationship. We find it more likely than not that Rep. Hernandez initiated the intimate relationship with Subject Four.

D.3.4. On [REDACTED] 2017, Subject Four and Rep. Hernandez attended another [REDACTED] event together. [REDACTED] Subject Four and Rep. Hernandez engaged in consensual, sexual activity. Rep. Hernandez admitted that he became intimate with Subject Four [REDACTED]. Subject Four expressed concern that Rep. Hernandez was pursuing an intimate

relationship for professional rather than personal reasons. Rep. Hernandez denied he was doing so.

D.3.5. In August 2017, Rep. Hernandez increased his requests for Subject Four's assistance with his Legislative business. Subject Four stated she felt obligated to assist Rep. Hernandez based on their intimate relationship and his previous support [REDACTED] of Subject Four's professional aspirations.

D.3.6. In October 2017, Rep. Hernandez had a disagreement with Subject Four regarding Subject Four's endorsement of a local political candidate. The disagreement was via text and a phone call. Subject Four felt Rep. Hernandez became increasingly hostile and was intimidating and pressuring her to support a candidate Rep. Hernandez desired to support. Subject Four describes this as the beginning of the end of their intimate relationship. Rep. Hernandez, on the other hand, asserts that they had no relationship to end. We find it more likely than not that they had a relationship that was ended by Subject Four.

D.3.7. After the intimate relationship ended, Subject Four told Rep. Hernandez that she wanted to maintain only a professional relationship. However, Rep. Hernandez sent Subject Four several text messages asking about the status of their "friendship." Subject Four interpreted these inquiries as invitations to engage in a friendship with sexual benefits.

D.3.8. Subject Four expressed that she felt uncomfortable around Rep. Hernandez because she was trying to keep things on a professional level and he was discussing on the personal. She expressed that she felt obligated to communicate with Rep. Hernandez due to their professional relationship. Based on text messages, we find it more likely than not that Rep. Hernandez continued to engage Subject Four in communications about personal, non-Capitol related matters, after she ended the intimate relationship.

D.3.9. In mid-October 2017, Rep. Hernandez continued to contact Subject Four in an effort to discuss their personal relationship. Subject Four felt pressured to engage with Rep. Hernandez, but continued to avoid him, including at any events involving Legislative business. Subject Four felt compelled to send a text message to Rep. Hernandez days after their intimate relationship ended stating, “I’m not avoiding you ...” because Rep. Hernandez made efforts to communicate with her by text and other forms of communication. Subject Four expressed that she did not want to risk straining their professional relationship and, therefore, felt obligated to respond to Rep. Hernandez.

D.3.10. On October 8, 2017, Rep. Hernandez texted Subject Four stating: “This shouldn’t be hard and it is. It is confusing because we haven’t defined or been clear with each other ...” Subject Four ended the text conversation amicably despite her discomfort.

D.3.11. On October 11, 2017, Rep. Hernandez texted Subject Four three separate times. Subject Four did not respond. On October 11, 2017 at 10:56 p.m., Rep. Hernandez texted Subject Four a fourth time, stating “I’m trying to figure out where you and I are at. When you said pl[a]tonic friends, did you mean acquaintances instead? Maybe I don’t need clarity and just assume we aren’t actually going to be friends, but I’d rather hear it from you.”

D.3.12. On October 16, 2017, Subject Four reached out to Rep. Hernandez via social media as a professional courtesy [REDACTED]. Subject Four stated, “Ideally I would have told you in person but I’m not ready for that yet, hope you can understand.” Subject Four expressed that she still did not feel comfortable engaging with Rep. Hernandez. Although Rep. Hernandez’s communications were supportive in nature, Subject Four also felt he was again trying to rekindle an intimate relationship. Rep. Hernandez messaged Subject Four stating, “...

Know that you don't have to tell me anything in person or see me at all, you can always just text or message me. I've come to accept that more likely than [sic] not we aren't going to be able to be friends ... You do you and I'll understand and support." Subject Four accepted his support and acknowledged she was still processing their situation. Subject Four thanked Rep. Hernandez for being considerate of her time and space despite Subject Four feeling that Rep. Hernandez was once again pushing for a personal relationship, which Subject Four did not desire.

D.3.13. In November 2017, Rep. Hernandez sent a text to Subject Four in which she felt Rep. Hernandez was implying that he would use his professional weight and position against Subject Four to jeopardize her work at the Capitol. (The text was provided by Subject Four and not Rep. Hernandez.) Subject Four reported that she was offended and concerned by what she perceived as a threat by Rep. Hernandez relating to the candidacy disagreement mentioned above. Subject Four memorialized the conversation in a text to a friend. In a text exchange with Rep. Hernandez, Subject Four told Rep. Hernandez: "I've been asking to talk to you about this for a while because I value reaching understanding with you. But apparently you've already made a decision to not 'be okay' with me. It honestly calls into question your intentions from the get-go, like were you always trying to leverage a relationship with me ...?" Based on a text exchange, we find it more likely than not that Subject Four reasonably felt that Rep. Hernandez was using his professional weight to threaten Subject Four's ability to conduct business at the Capitol.

D.3.14. From late October 2017 through December 2017, Subject Four wanted to maintain a professional relationship with Rep. Hernandez based on their shared and overlapping agenda and Legislative business. Subject Four felt that Rep. Hernandez was withholding his support for shared professional goals because she was resistant to his desire for a personal relationship. Rep. Hernandez continued his attempts to engage with Subject Four

regarding their personal relationship. Subject Four felt pressured to speak or engage with Rep. Hernandez. In social media exchanges, Subject Four requested to meet with Rep. Hernandez on multiple occasions to establish boundaries to work on legislative business despite ending the personal relationship, but Subject Four felt Rep. Hernandez ignored requests. On November 28, 2017, Subject Four stated: “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 ... I can’t do it alone.” Rep. Hernandez admitted that he did not respond to Subject Four’s requests to meet and discuss Legislative business because it was not a priority at that time. Subject Four felt that Rep. Hernandez would not engage in a professional relationship unless she agreed to resume a personal relationship. Therefore, Subject Four felt obligated to continue engaging Rep. Hernandez. Based on social media exchanges, we find it more likely than not that Rep. Hernandez avoided engaging in legislative business with Subject Four, in part, at least because she was not willing to resume their personal relationship.

D.3.15. During this time, Subject Four expressed that she continued to communicate with Rep. Hernandez in an effort to maintain only a professional relationship, but these efforts were not met by Rep. Hernandez. On January 17, 2018, Rep. Hernandez stated to Subject Four over social media, “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.” Subject Four again felt obligated to appease Rep. Hernandez’s request to rekindle a relationship in order to maintain a professional relationship. Additionally, during this time, Subject Four also express that she felt Rep. Hernandez accepted her professional help but ignored her when she needed his help with legislative business.

D.3.16. From late March/early April 2018 through August 2018, Subject Four remained uncomfortable conducting direct Legislative business with Rep. Hernandez. Subject Four had her staff work mostly with Rep. Hernandez on any Legislative business. Subject Four stated that she conducted minimal Legislative business directly with Rep. Hernandez.

D.3.17. In the Summer of 2018, Subject Four and Rep. Hernandez briefly resumed their personal relationship, specifically [REDACTED].

D.3.18. Subject Four remained uncomfortable about resumption of an intimate relationship with Rep. Hernandez. Subject Four also expressed she felt obligated to rekindle an intimate relationship with Rep. Hernandez because she was fearful he would withhold his Legislative assistance to further her professional activities.

D.3.19. Up until September 2018, Subject Four stated Rep. Hernandez continued to try to rekindle their relationship by sending her sexual messages via text or social media. Rep. Hernandez does not recall sending Subject Four texts with sexual content and claims she sent him messages with sexual content. It is unnecessary to resolve this dispute for purposes of our findings. Subject Four stated she felt that Rep. Hernandez continued to distort the boundaries of his personal and professional position, and that she continued to feel pressure to engage with Rep. Hernandez.

D.3.20. In late-September 2018, Subject Four and Rep. Hernandez had a personal disagreement. Subject Four remained uncomfortable communicating with Rep. Hernandez based on his previous actions, and she no longer wanted to engage with Rep. Hernandez. Subject Four expressed that she told Rep. Hernandez that she did not want any personal relationship.

D.3.21. On September 28, 2018, Subject Four texted Rep. Hernandez that she only wanted to maintain a professional relationship. Subject Four also invited Rep. Hernandez to discuss establishing clear boundaries.

D.3.22. Subject Four stated that from late September through early November 2018, Rep. Hernandez continued to ignore her attempts to discuss and seek his help with legislative business or maintain a professional relationship, jeopardizing her work at the Capitol. Subject Four also felt that Rep. Hernandez continued to distort the boundaries of his personal and professional position. On November 2, 2018, Subject Four wrote Rep. Hernandez a personal email about a personal matter that Rep. Hernandez was familiar with and that she felt was standing in the way of her efforts to resume their professional relationship. After this time, Subject Four had no further contact with Rep. Hernandez.

D.3.23. Throughout 2019 and 2020, Subject Four continued interacting with the Legislature at the Capitol. Throughout 2019 and 2020, Subject Four remained uncomfortable conducting Legislative business with Rep. Hernandez and avoided Rep. Hernandez when doing so.

E. SUBJECT FIVE

E.1. Issue: Response

Subject Five stated that she was retaliated against by Rep. Hernandez because she complained about a flirtatious relationship between Rep. Hernandez and a staff member. She further stated that Rep. Hernandez may have promoted the staff member with whom she suspected he was in a romantic relationship due to the romantic relationship. Rep. Hernandez denied that he had a flirtatious, romantic, or intimate relationship with any staff member, and he denied any retaliation.

## E.2. Findings

We find it more likely than not that Rep. Hernandez did not engage in an intimate relationship with a member of his staff, nor did he retaliate against Subject Five for raising concerns about sexual harassment.

## E.3. Basis for Findings

E.3.1. Rep. Hernandez denied having an intimate relationship with a member of his staff.

E.3.2. The staff member with whom Rep. Hernandez was alleged to have an intimate relationship, adamantly denied any intimate or romantic relationship.

E.3.3. We interviewed two staff members who were familiar with Subject Five, and they both supported the legitimate/non-retaliatory basis for Rep. Hernandez's dealings with Subject Five.

## F. OTHER MATTERS

### F.1. Legislative Staff Members of Rep. Hernandez

As part of our investigation, we attempted to contact all current and former Legislative staff members of Rep. Hernandez. We reached out to 14 current or former Legislative staffers and interviewed nine of them. All but one of those interviewed stated that they had not been subjected to or observed any inappropriate behavior by Rep. Hernandez. Moreover, all but one of those Legislative staff members interviewed were appreciative of his behavior towards them.

### F.2. Intimate Relationships with Those Who Do Business at the Capitol

One lobbyist who is not a Subject in this Report, stated that she was uncomfortable with and avoided one-on-one interactions with Rep. Hernandez. Although the lobbyist acknowledged



that Rep. Hernandez spoke to her in a professional way, she felt that he looked at her in a way that was not professional. During our interview, Rep. Hernandez admitted to two intimate relationships with individuals who do business at the Capitol. However, we find it more likely that not that Rep. Hernandez had intimate relationships with at least four individuals who did business at the Capitol. We further find that those individuals felt that Rep. Hernandez consistently blurred the lines between their personal and professional relationships and that conduct had a negative impact on their ability to do business at the Capitol.