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FINAL INVESTIGATION REPORT
Submitted May 26, 2021 by Melissa Healy, Stoel Rives LLP

This report summarizes the findings of the investigation into a formal Legislative Branch Personnel Rule 27 (“Rule 27”) conduct complaint made by David Hartsfield against Representative Michael Nearman on February 23, 2021, along with a conduct report from multiple legislators concerning Rep. Nearman. Effective March 25, 2019, the Legislative Administration Committee (“LAC”), acting by and through the Legislative Administrator under ORS 173.720, engaged Stoel Rives LLP to perform services under the State of Oregon Contract for the Purchase of Services (“Contract”). Following appointment of the Acting Legislative Equity Officer (“LEO”), the Contract was amended in December 2019 to substitute the LEO for the LAC.

I. Executive Summary

On December 21, 2020, a group of demonstrators entered the Capitol building, which was closed to the public due to the ongoing COVID-19 pandemic, after Rep. Nearman opened and exited through an exterior door. The events were captured on nearby security cameras. Mr. Hartsfield, the Facility Services Manager, later made a conduct complaint alleging that Rep. Nearman’s actions put staff members and law enforcement in danger. I also received a conduct report from elected officials. As detailed below, the evidence supports a conclusion that Rep. Nearman more likely than not intentionally assisted demonstrators in breaching security and entering the Capitol, and that his conduct more likely than not set into motion a chain of events that impeded the ability of Mr. Hartsfield and others to function in the workplace, and denied them the benefits of the workplace.

II. Investigation Methodology

I interviewed Mr. Hartsfield by telephone on January 19, 2021. Given the indisputable video footage, and because I found Mr. Hartsfield credible as to the effect Rep. Nearman’s actions on December 21, 2020 had on him in the workplace, it was unnecessary to interview additional fact witnesses at that time.

As further explained below, in May 2021, I learned the names of several impacted parties who had signed the above-referenced conduct report (which, when I initially received it in January 2021, was in anonymous form and did not meet the requirements for a conduct report or conduct complaint under Rule 27). I subsequently interviewed the following impacted parties:

- Representative David Gomberg (by telephone on May 6, 2021)
- Representative Khanh Pham (by video on May 11, 2021)
- Representative Andrea Salinas (by video on May 11, 2021)
- Representative Teresa Alonso Leon (by telephone on May 12, 2021)
- Representative Rachel Prusak (by telephone May 12, 2021)
- Speaker Tina Kotek (by telephone May 17, 2021)

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- Representative Barbara Smith Warner (by telephone May 17, 2021)

Rep. Nearman is represented by counsel. On March 31, 2021, Rep. Nearman's counsel stated that he had advised Rep. Nearman not to answer any questions concerning the events of December 21, 2020, citing an ongoing criminal investigation into the matter. Therefore, I did not interview Rep. Nearman or receive an explanation from him, if any, as to his actions on December 21. (I did, however, ask his counsel to contact me if his position changed. I did not hear anything further.) I am not aware of any public or private statement made by Rep. Nearman denouncing or denying his actions. A party's refusal to participate in the investigatory process does not create an insurmountable barrier to my fact-finding role. That is particularly true here, given the indisputable video footage and because Rep. Nearman's intent is irrelevant to my factual findings and conclusions and, ultimately, to the Committee's determination of whether his conduct on December 21, 2020 violates Rule 27.

At the beginning of the interviews, I explained my role as an investigator under Rule 27, including the fact that I would write a report with the factual findings but would have no role in any disciplinary decision that may follow. I asked interviewees to keep the matter confidential to the extent possible to ensure the integrity of the investigation, but also explained that I could not guarantee confidentiality of the information provided to me. I encouraged the individuals who I interviewed to ask questions, provided them with my contact information, and invited them to contact me if they thought of any additional information after the meeting. I also reminded them that there could be no retaliation either by or against them for their participation in the investigation. All witnesses spoke with me voluntarily.

I reviewed the following items:

- Mr. Hartsfield's written conduct complaint (originally dated January 20, 2021; finalized as a conduct complaint on February 23, 2021)
- Letter to then-Acting LEO Jackie Sandmeyer from legislators with signing parties' names redacted, indicating intent to file a conduct complaint (dated January 12, 2021)
- Conduct report from legislators sent to current Acting LEO Nate Monson (dated April 30, 2021)
- Legislative Branch Personnel Rule 27: Harassment-Free Workplace as revised by HCR 221 (enacted August 10, 2020)
- Security footage from December 21, 2020
- Badge history report for Rep. Nearman on December 21, 2020
- Media and social media coverage (including videos) of the events on December 21, 2020
- Map of Capitol building with Rep. Nearman's exit and entry points marked

III. Procedural Background

Separate from Mr. Hartsfield's conduct complaint, in January 2021, I received a copy of a letter that had been sent to Mx. Sandmeyer, which stated that the signing parties were "writing to file a formal Conduct Complaint" based on Rep. Nearman's actions on December 21, 2020.

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Mx. Sandmeyer redacted the signing parties' names before sending the letter to me, and stated that they would process counsel the signing parties and send me contact information for anyone who wanted to move forward as a named complainant. Shortly thereafter, Mx. Sandmeyer informed me that all of the individuals who signed the letter (per Mx. Sandmeyer, around 30 elected officials) had decided not to proceed as named complainants in this matter. Accordingly, I was unable to learn their identities or interview them. Furthermore, because the January 12 letter did not meet the requirements of a conduct complaint under HCR 221 § (12)(b), I did not disseminate the letter as would be required for a conduct complaint. I completed the investigation into Mr. Hartsfield's conduct complaint regarding the same incident and issued a draft report, which I sent to Mr. Hartsfield and Rep. Nearman and his attorney on April 29, 2021.

I subsequently learned from Mr. Monson (who started in April 2021) that some of the individuals who signed the January 2021 letter had, in fact, intended to proceed as named complainants. It is my understanding that Mr. Monson process counseled (or further process counseled) the individuals who had previously signed the January 2021 letter in early May. He then provided me with names and contact information of the parties who opted to move forward. I subsequently conducted the additional interviews as noted above and prepared an amended draft report, which I sent to Mr. Hartsfield and Rep. Nearman on May 18, 2021.¹ HCR 221 § 14(d)(D) provides that the parties have seven days to respond to the draft findings. Here, neither party submitted any requests for modifications.

IV. Rule 27

This matter falls under the current iteration of Rule 27 as amended by HCR 221 during the Second Special Session of 2020.² Rule 27 prohibits conduct that “[c]onstitutes harassment and creates a hostile work environment.” HCR 221 § (8)(a). Harassment is defined as “verbal or physical conduct, including making a visual display or causing a visual display to be shown, that denigrates or shows hostility toward an individual or group of individuals,” including “[t]hreatening, intimidating or hostile acts that relate to a protected class.” HCR 221 § (4)(a). The rule also states, however, that “[h]arassment does not include every minor annoyance or disappointment that an employee may encounter in the course of performing the employee’s job.” HCR 221 § (4)(b). A hostile work environment occurs when an individual “engag[es] 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.” HCR 221 § (4)(c).

V. Interim Safety Measures

On January 15, 2021, the House Committee on Conduct issued interim measures against Rep. Nearman related to this matter, including requirements that: (1) Rep. Nearman provide 24-

¹ I did not send the amended draft report to the elected officials because they made a conduct report, as opposed to a conduct complaint, and are not “complainants” who are entitled to receive draft findings under HCR 221 § 14(d)(A).

² The Legislature also maintains a Respectful Workplace Policy; however, that policy did not go into effect until January 1, 2021 and it does not apply retroactively.

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hour notice before entering the Capitol; (2) Rep. Nearman's badge access be revoked; (3) Rep. Nearman not provide (or ask others to provide) non-authorized personnel with access to the building; and (4) Rep. Nearman limit his movement in the building to areas where legislative business might be conducted.³

VI. Summary of Factual Findings

The factual findings, which are primarily derived from publicly available security videos and thus are not capable of dispute, are summarized below.⁴

1. On December 20, 2020, a group named Patriot Prayer posted a sign on its Twitter account stating:

CALLING ALL PATRIOTS! YOUR PRESENCE IS NEEDED!
THE STATE LEGISLATORS WIL BE MEETING IN PERSON
ON MONDAY 12/21/20 AT THE CAPITOL! WE NEED TO
HAVE 1,000 PEOPLE THERE AND MAKE OUR VOICES
HEARD!!! NONPERMITTED FLASH MOB!! END THE
LOCKDOWN[.]

2. On December 21, 2020, legislators held a special session in the Capitol building. The Capitol was closed to the public due to COVID-19 restrictions, although staff members and some journalists were in the building. A group of demonstrators gathered outside.

3. Mr. Hartsfield, who was working that day, described an "intense and stressful situation" for building occupants that morning as demonstrators attempted to break into the building by kicking on a door and squeezing through an open window. He noted that law enforcement presence had increased and described the day as one where people were on "high alert." Other witnesses echoed that characterization, and described an openly angry and agitated demeanor from the demonstrators that set this day apart from typical protests at the Capitol.

4. At approximately 8:29 a.m., Rep. Nearman entered a vestibule off the Capitol rotunda through an interior door, then exited the building through a glass exterior door. A demonstrator carrying a large flag that appeared to have the "Punisher" skull logo on it (and wearing a shirt with the same design) was visible outside, waiting immediately beyond the exterior door before Rep. Nearman opened it. When Rep. Nearman exited, he pushed open the door slightly and stepped around the demonstrator, who rushed past him into the building vestibule, followed closely by a second demonstrator who held the exterior door open. Rep. Nearman did not appear to engage with the demonstrators and continued down a walkway along

³ My colleague Brenda Baumgart testified at this hearing and recommended the interim safety measures that were adopted by the Committee, along with Mx. Sandmeyer.

⁴ I am not a trained law enforcement officer or forensic investigator and viewed the footage in my capacity as a workplace investigator. I do not claim to have captured every aspect or nuance of the video in my factual findings; rather, I am detailing only what was plainly visible to me as a layperson.

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the outside of the building, passing by a third demonstrator who was waving people to the door and several others who were proceeding toward the door.

5. Law enforcement officers attempted to push the demonstrators out of the vestibule for several minutes while the two groups engaged in heated conversation. At one point, an officer retreated from the crowd back into the vestibule, seemingly bent over in pain. A type of gas or spray appears to have been deployed toward the officers three times, and the fumes were noticeable to people inside the building.

6. The officers left the vestibule after the third occurrence and went back into the Capitol. Numerous demonstrators (including one with a rifle and another with a bullhorn) then entered the building, with some going beyond the vestibule to an adjacent lobby where they engaged with officers again. A group can be heard chanting “enemies of the state” and “arrest Kate Brown” inside the building.

7. Some individuals wore or carried items showing support for President Donald Trump.

8. Many demonstrators who entered the building wore military gear and carried flags or protest signs often associated with far-right political beliefs, including:

- A sign that said, “politicians are the virus, revolution is the cure” on one side and “bring back tar [and] feather” on the other.
- A flag that said, “I will not censor myself to comfort your ignorance.”
- A flag that said, “liberty or death” and “don’t tread on me.”

9. Two demonstrators, including Patriot Prayer founder Joey Gibson, wore baseball caps that said “Justice for Jay” (which, per media reports, refers to Aaron J. Danielson, who was shot and killed in August 2020 after attending a rally in downtown Portland).

10. During the confrontation, someone triggered a pull station in the vestibule and set off a fire alarm. Mr. Hartsfield, who was “running around” the Capitol as the events occurred, said it was the “most intense” situation he had seen in the building, citing the language and tone of the demonstrators, along with the fact that both demonstrators and law enforcement were armed. He said it was “terrifying” when demonstrators entered the vestibule and observed that “no one” could function or do their jobs while the confrontation was happening.

11. State police declared an unlawful assembly that morning. The protests, however, continued throughout the day and caused damage to the Capitol building.⁵

⁵ Legislative administration later sent Rep. Nearman a bill for approximately \$2,700.

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12. At 8:35:30 a.m., approximately five and a half minutes after he left the building, Rep. Nearman used his employee badge to reenter the Capitol through the West State Street door.

13. In his written complaint, Mr. Hartsfield stated:

I have thought long and hard about the decision to file this complaint, and I keep coming back to the lack of care and concern for the staff and members of this building and how the actions of this one individual jeopardized the safety and welfare of each and every person inside of the Capitol on that day. It's disheartening to see my staff who work so hard to take care of the members and staff in this building who go out of their way to keep this place clean, safe and functioning properly, be disregarded by the very member's [sic] they support. As the Facilities Manager, I feel responsible for safety and security of everyone in this building and take that responsibility seriously, and I don't think I could live with myself if I were not capable of standing up against these actions which created nothing less than a Hostile Work Environment.

14. Legislators interviewed recalled that people in the Capitol were "visibly distraught," "uneasy," and "distracted" after the incident and reported an impaired ability to work. Several mentioned the events at the U.S. Capitol on January 6, 2021 as an example of what could have happened in Oregon, and expressed concerns about Rep. Nearman's continued presence in the Capitol in light of the serious threat that his actions presented.

VII. Conclusion

Based on the above, the evidence supports a conclusion that it is more likely than not that Rep. Nearman intentionally aided demonstrators in breaching Capitol security and entering the building on December 21, 2020, when it was closed to the public. Furthermore, it is more likely than not that Rep. Nearman's conduct led to a chain of events that impeded Mr. Hartsfield's and others' ability to function in the workplace and denied them the benefits of the workplace.

Pursuant to HCR 221 § 14(d)(C), I find that it is inconclusive whether Rep. Nearman's actions constituted discrimination by denigrating or showing hostility toward a protected class. It is reasonable to conclude, based on the security footage, that many of the demonstrators at the Capitol on December 21, 2020 appeared to espouse far-right political beliefs. It is also reasonable to conclude that Rep. Nearman was likely aware of those sentiments, given the demonstrators' visible presence at the Capitol that day, and the fact that the individual who was waiting immediately outside the exterior door that Rep. Nearman opened was wearing a shirt and carrying a flag with the "Punisher" skull logo (which has been associated with far-right causes). Finally, it is reasonable to conclude that legislators and staff who believed they were a particular target of the demonstrators (either because of some protected status or because of their differing political views) would have felt most threatened by their entrance into the Capitol building. That said, it is outside my scope as a non-partisan investigator to decide whether assisting a group of demonstrators who appear to have far-right political beliefs, in itself, constitutes discrimination

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based on a protected class, nor is such a finding a necessary precursor to determining whether a violation of Rule 27 has occurred.