



May 20, 2021

Chairman David Skaggs
Co-Chairman Paul Vinovich
Office of Congressional Ethics
425 3rd Street, SW Suite 1110
Washington, DC 20024

Sent via email (oce@mail.house.gov)

Dear Chairman Skaggs and Co-Chairman Vinovich:

Campaign Legal Center (“CLC”) respectfully requests that the Office of Congressional Ethics (“OCE”) investigate whether Rep. Kevin McCarthy violated House rules. Evidence indicates that Rep. McCarthy rented a “room” in a luxury Penn Quarter penthouse and paid below market rate for the property, making the lodging an improper gift in violation of House ethics rules.¹ In the alternative, he may have violated the personal use ban if he used leadership PAC funds to cover the rental cost of the apartment.² OCE should investigate whether Rep. McCarthy improperly accepted a gift or whether he converted campaign funds to personal use in violation of House rules.

¹ See Glenn Kessler, *Kevin McCarthy says he rented a ‘room’ — in a 7,000-square-foot penthouse*, WASH. POST (May 5, 2021), <https://www.washingtonpost.com/politics/2021/05/05/kevin-mccarthy-says-he-rented-room-7000-square-foot-penthouse/>; Daniella Byck, *Kevin McCarthy Claims He Pays Fair Market Value for a Room in a Penn Quarter Penthouse. What Will \$1,500 Rent Actually Get You in DC?*, WASHINGTONIAN (May 6, 2021), <https://www.washingtonian.com/2021/05/06/kevin-mccarthy-claims-he-pays-fair-market-value-for-a-room-in-a-penn-quarter-penthouse-what-will-1500-rent-actually-get-you-in-dc/>.

² Glenn Kessler, *McCarthy leadership PAC made payments to Luntz firm*, WASH. POST (May 15, 2021), <https://www.washingtonpost.com/politics/2021/05/15/mccarthy-leadership-pac-made-payments-luntz-firm/>.

The gift prohibition prevents corruption by ensuring members of the House are acting impartially, free from the influence of gifts or favors. If a member of the House accepts a gift in violation of the rules and is not held accountable, it creates the perception that lawmakers are susceptible to improper influence efforts and damages the public's confidence in the integrity of the government. OCE should investigate whether Rep. McCarthy violated House rules.

House Rules Prohibit Members of the House from Accepting Gifts Unless an Exception Applies

House Rule 25 prohibits members of the House from knowingly accepting gifts from outside sources unless the gift falls under an enumerated exception.³ A gift is defined as a “gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.”⁴

An improper gift includes the provision of goods or services at less than market rate.⁵ For purposes of the gift rule, “a gift may be valued at the lowest price at which the item is available to the general public.”⁶ “Anything for which the Member. . . pays the market value” is not subject to the gift restriction.⁷

Gifts from personal friends are permissible under the gift rule, “unless the Member. . . has reason to believe that, under the circumstances, the gift was provided because of the official position of [the member of Congress] and not because of the personal friendship.”⁸ If the gift is offered because of

³ RULES OF THE HOUSE OF REPRESENTATIVES OF THE U.S. 117TH CONG. (2021), House Rule 25, cl. 5(a)(1)(A)(i).

⁴ *Id.* at House Rule 25 cl. 5(a)(2)(A).

⁵ COMM. ON STANDARDS OF OFFICIAL CONDUCT, 110TH CONG., HOUSE ETHICS MANUAL 32 (2008), *available at*

https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf. (“[T]here can be an improper gift to a Member, officer, or employee when, for example, he or she is sold property at less than market value, or receives more than market value in selling property. There can also be an improper gift when a Member or staff person is given a loan at a below-market interest rate, or, in the context of outside employment, when a Member, officer, or employee is compensated in an amount greater than the value of the services rendered.”).

⁶ *Id.* at 73.

⁷ House Rule 25 cl. 5(a)(3)(A), *supra* note 3.

⁸ House Rule 25 cl. 5(a)(3)(D)(i), *supra* note 3. Before accepting a gift based on personal friendship, the member of Congress must consider the circumstances surrounding the receipt of the gift, including the relationship with the giver, including any past exchange of gifts; if the friend paid for the gift personally, or if the friend will seek a business reimbursement or tax deduction; and if the same or similar gift was or will be offered to another member of Congress. House Rule 25 cl. 5(a)(3)(D)(ii), *supra* note 3.

personal friendship and its fair market value exceeds \$250, the member must seek formal Committee on Ethics approval to accept the gift.⁹

Rep. McCarthy Rented A Penthouse “Room” in a Luxury Apartment Complex Near Capitol Hill

During a television appearance on May 4, 2021, Rep. McCarthy admitted to “rent[ing]” living quarters from a well-known political consultant named Frank Luntz:

“Frank [Luntz] has been a friend of mine for more than 30 years. ... I’ve rented a room from Frank for a couple of months, but don’t worry, I’m back to—going back to where I normally am, on my couch in my office. But, yeah, we pay fair market rate.”¹⁰

Mr. Luntz is a well-connected pollster and political consultant. He has worked for high-ranking politicians¹¹ and Fortune 500 companies like Anheuser-Busch, McDonald’s, Merrill Lynch, and Pfizer.¹²

The room in question is reportedly part of a 7,000-square-foot space in the Penn Quarter neighborhood of Northwest DC, roughly a 20-minute walk from the Capitol Building.¹³ The penthouse is a combination of four individual three-bedroom apartment units in The Clara Barton with what appear to be combined homeowner’s association (“HOA”) fees of nearly \$5,000 per month.¹⁴ Luntz purchased the four adjoining penthouse units in 2018,

⁹ House Ethics Manual, *supra* note 5, at 39.

¹⁰ Interview with Steve Doocy and Rep. Kevin McCarthy, *Fox & Friends*, FOX NEWS CHANNEL (May 4, 2021) [https://archive.org/details/FOXNEWSW_20210504_100000_FOX_and_Friends/start/8760/episode/8820].

¹¹ Molly Ball, *The Agony of Frank Luntz*, *The Atlantic* (Jan. 6, 2014),

<https://www.theatlantic.com/politics/archive/2014/01/the-agony-of-frank-luntz/282766/>.

¹² Frank Luntz, “About,” <https://www.filuntz.com/about> (last visited May 19, 2021); Stuart Elliott, *Republican Pollster Teams With Madison Avenue Agencies*, *N.Y. TIMES* (Jan. 8, 2014), <https://www.nytimes.com/2014/01/09/business/media/republican-pollster-teams-with-madison-avenue-agency.html>.

¹³ See Walking Directions from “United States Capitol, First St SE, Washington, DC 20004” to “Clara Barton, 616 E St NW, Washington, DC 20004”, GOOGLE MAPS, <https://www.google.com/maps/dir/United+States+Capitol,+First+St+SE,+Washington,+DC+20004/Clara+Barton,+616+E+St+NW,+Washington,+DC+20004/@38.8929819,-77.019553,16z/data=!3m1!4b1!4m14!4m13!1m5!1m1!1s0x89b7b82921a2cf17:0x482a3f7c10cf8c4!2m2!1d-77.0090505!2d> (last visited May 19, 2021).

¹⁴ The Redfin listings for the units comprising the penthouse show HOA fees of \$1,244 per month for each unit, bringing the total monthly HOA cost to \$4,976. See Listing for 616 E St. NW Unit #1146, REDFIN, <https://www.redfin.com/DC/Washington/616-E-St-NW-20004/unit-1146/home/10343137> (last visited May 19, 2021); Listing for 616 E St. NW Unit #1147, REDFIN, <https://www.redfin.com/DC/Washington/616-E-St-NW-20004/unit->

began merging the units in November 2019, and received a final building inspection in October 2020.¹⁵ The combined penthouse now has 12 bedrooms, 12 full bathrooms, and 4 half bathrooms.¹⁶ The penthouse is in a luxury apartment building where residents enjoy “full-service” amenities like a 24/7 concierge, a rooftop pool, a fitness center, a media room, a business center, and a party room.¹⁷

A spokesperson for Rep. McCarthy claimed that he paid fair market rate for his living arrangement:

“McCarthy rented a room of approximately 400 square feet, and under House Ethics guidelines, calculated the fair market amount at \$1,500/month by comparing what other members of Congress were also paying to live in the building and additional comparables for the space in the building and neighborhood.”¹⁸

Describing this arrangement as a “room” rental appears to be a severe mischaracterization. Mr. Luntz’s penthouse is almost 7,000 square feet, comprised of four individual combined apartment units with three bedrooms each. Besides Mr. Luntz, Rep. McCarthy has not suggested he was sharing the accommodation with any other people. The building’s bylaws specifically prohibit the lease of “any Unit (other than the entire Unit) . . . for any period,” and “[n]o lease shall be for a term of less than six (6) months.”¹⁹ If Mr. Luntz and Rep. McCarthy followed the building’s bylaws, Rep. McCarthy would have likely been required to rent, at minimum, a three-bedroom unit in the combined property.

As such, Rep. McCarthy’s accommodations appear to be comparable to a three-bedroom apartment (if not a twelve-bedroom apartment), rather than a 400 square foot room. Rep. McCarthy may only be *sleeping* in a 400 square foot room, but evidence indicates his rental comprises a three-bedroom

[1147/home/10343139](https://www.redfin.com/DC/Washington/616-E-St-NW-20004/unit-1147/home/10343139) (last visited May 19, 2021); Listing for 616 E St. NW Unit #1148, REDFIN, <https://www.redfin.com/DC/Washington/616-E-St-NW-20004/unit-1148/home/10343141> (last visited May 19, 2021); Listing for 616 E St. NW Unit #1149, REDFIN, <https://www.redfin.com/DC/Washington/616-E-St-NW-20004/unit-1149/home/10343143> (last visited May 19, 2021); *see also* Kessler, *supra* note 1.

¹⁵ Kessler, *supra* note 2.

¹⁶ *Id.*

¹⁷ The Clara Barton, “About the Clara Barton,” <http://clarabartondc.com/about-the-building.html> (last visited May 19, 2021).

¹⁸ Ryan Saavedra, *EXCLUSIVE: Kevin McCarthy’s Office Responds To Tucker Carlson Segment About Price Of Room He Rents From Frank Luntz*, THE DAILY WIRE (May 4, 2021), <https://www.dailywire.com/news/exclusive-kevin-mccarthys-office-responds-to-tucker-carlson-segment-about-price-of-room-he-rents-from-frank-luntz>.

¹⁹ Bylaws, The Clara Barton at Penn Quarter Condominium (2004), at B-18, *available at* <https://www.scribd.com/document/507413532/Clara-Barton-Condo-Bylaws-Full>.

penthouse unit with full access to the building's luxury amenities. In the normal and usual DC housing market, rent is calculated based on the full price of the unit that a tenant occupies and has access to, rather than the size of an individual bedroom that they choose to occupy.

Redfin estimates the rental cost for each of the individual three-bedroom apartment units comprising Luntz's penthouse as ranging between \$4,621 and \$5,182 per month.²⁰ According to rental site Zillow, the only currently available three-bedroom apartment in the Penn Quarter neighborhood rents for \$5,500 per month.²¹ Even a one-bedroom apartment in The Clara Barton costs more than \$1,500 per month: a one-bedroom unit that is less than half the square footage of one of the apartments forming the penthouse where Rep. McCarthy was staying is available in June 2021 for \$2,200 per month, plus utilities.²² At time of writing, the lowest available rent for a one-bedroom apartment in Penn Quarter available on public rental sites was \$1,814 per month.²³

Federal Election Commission ("FEC") filings show that Rep. McCarthy's leadership PAC, Majority Committee PAC or MC PAC, paid Mr. Luntz's firm FIL, Inc. \$38,350 for "PAC polling" in September and December of 2020,²⁴ shortly before moving in to Mr. Luntz's penthouse in January. Outside of a small \$1,140 disbursement in 2015, neither McCarthy's campaign committee nor his leadership PAC had ever paid Mr. Luntz or his firms previously.²⁵

²⁰ See sources cited *supra* note 14.

²¹ Listing for 631 D St NW APT 1143, ZILLOW, https://www.zillow.com/homedetails/631-D-St-NW-APT-1143-Washington-DC-20004/68080567_zpid/ (last visited May 19, 2021). This was the lowest rental price offered on Zillow, when limiting the search criteria to three-bedroom apartments in the Penn Quarter neighborhood. Penn Quarter Washington Rental Listings, ZILLOW, <https://www.zillow.com/penn-quarter-washington-dc/rentals/3-beds/> (last visited May 19, 2021).

²² Listing for 616 E St NW Condo, FORRENT, <https://www.forrent.com/dc/washington/616-e-st-nw/znhd94y> (last visited May 19, 2021).

²³ Listing for 631 D Street NW APT 931, ZILLOW, https://www.zillow.com/homedetails/631-D-St-NW-APT-931-Washington-DC-20004/68080530_zpid/ (last visited May 19, 2021). This was the lowest rental price offered on Zillow, when limiting the search criteria to one-bedroom apartments in the Penn Quarter neighborhood. See Penn Quarter Washington Rental Listings, ZILLOW, <https://www.zillow.com/penn-quarter-washington-dc/rentals/1-beds/> (last visited May 19, 2021).

²⁴ Majority Committee PAC—MC PAC, Disbursements for "fil inc," "luntz," or "word doctors," 2019-20, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00428052&recipient_name=fil+inc&recipient_name=luntz&recipient_name=word+doctors&two_year_transaction_period=2020 (last visited May 19, 2021).

²⁵ Majority Committee PAC—MC PAC or Kevin McCarthy for Congress, Disbursements for "fil inc," "luntz," or "word doctors," 2011-12, 2013-14, 2015-16, 2017-18, or 2019-20,

Rep. McCarthy May Have Accepted an Improper Gift

Rep. McCarthy has insinuated that the discount he received on his lodging would not be subject to the gift prohibition for two reasons. First, he claims he paid fair market value for the lodging, meaning the lodging was not a gift subject to the gift rule. Second, he claims that the owner of the apartment is a close personal friend of his, suggesting that even if he did not pay fair market value the gift would be permissible. For the reasons below, however, neither of these claims appears sufficient: Rep. McCarthy likely did not pay fair market value, and other exceptions seem not to apply.

First, the evidence indicates that Rep. McCarthy did not pay fair market rent for his apartment. A spokesperson for Rep. McCarthy claims that the fair market value of the “400 square f[oo]t” room Rep. McCarthy rented was \$1,500 per month.²⁶ Yet it appears that McCarthy actually occupied a three-bedroom unit in the penthouse, with access to the building’s luxury amenities;²⁷ the estimated market rental value for the three-bedroom unit is roughly \$5,000 per month.²⁸ Comparable three-bedroom apartments in Penn Quarter also rent for over \$5,000 per month.²⁹ Even a one-bedroom apartment in The Clara Barton rents for \$2,200 per month, plus utilities.³⁰ An officeholder would have to search far from the Capitol to find a small one bedroom or a studio apartment at a monthly rent of \$1,500.³¹ Because the

FEC.GOV,

https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00420935&committee_id=C00428052&recipient_name=fil+inc&recipient_name=luntz&recipient_name=word+doctors&two_year_transaction_period=2012&two_year_transaction_period=2014&two_year_transaction_period=2016&two_year_transaction_period=2018&two_year_transaction_period=2020 (last visited May 19, 2021).

²⁶ *Kessler, supra* note 1. Rep. McCarthy’s rate averages out to roughly \$50 per day, the same rate that prompted a 2018 investigation into then-EPA Administrator Scott Pruitt by the Environmental Protection Agency Inspector General. *See* Kevin Bogardus, *Investigators sought appraiser’s help on Pruitt’s condo*, E&E NEWS (May 23, 2019), <https://www.eenews.net/stories/1060385495>.

²⁷ *See* The Clara Barton bylaws, *supra* note 19 (prohibiting the lease of “any Unit (other than the entire Unit) . . . for any period”).

²⁸ *See* sources cited *supra* note 14 (estimating the rental cost for each of the individual three-bedroom apartment units comprising Luntz’s penthouse as ranging between \$4,621 and \$5,182 per month).

²⁹ *See* Listing for 631 D St NW APT 1143, *supra* note 21.

³⁰ *See* Listing for 616 E St NW Condo, *supra* note 22.

³¹ *See, e.g.*, Listing for 1256 New Jersey Ave. NW #4, Washington, DC 20001, ZILLOW https://www.zillow.com/homedetails/1256-New-Jersey-Ave-NW-4-Washington-DC-20001/2077362164_zpid/ (last visited May 19, 2021) (showing a 400 square foot studio apartment a little over one mile from the Capitol Building available for \$1,545 per month); The Rittenhouse Floor Plans, AKELIUS, <https://www.akelius-properties.us/the-rittenhouse0/availableunits.aspx?myOlePropertyId=1252479&floorPlans=3452210> (last

rate McCarthy paid does not appear to be anywhere close to fair market value, it seems unlikely he avoided a gift rule violation by virtue of the fair market value exception.

Second, other exceptions to the gift rule do not seem to apply. Rep. McCarthy claims that the apartment belongs to a close personal friend, but the exception for accepting a gift from a friend does not apply here. Even assuming the gift was motivated by personal friendship, the total discount provided to Rep. McCarthy would appear to exceed \$250, considering the difference between what Rep. McCarthy reportedly paid each month and what fair market value is for the type of apartment he rented, whether a one-bedroom or a three-bedroom unit. A discount of more than \$250 would require Rep. McCarthy to have sought ethics advice from the Committee on Ethics prior to accepting the gift to make it acceptable, and Rep. McCarthy does not appear to have taken that necessary step.

Similarly, Rep. McCarthy likely could not claim that the discounted lodging was a gift of personal hospitality from a friend.³² For that exception to apply to a gift of lodging, the property must not be used for commercial purposes. The fact that Mr. Luntz was charging Rep. McCarthy rent suggests that Mr. Luntz was in fact using this property for commercial purposes.³³

If Rep. McCarthy Used Leadership PAC Funds to Offset his Rent, He May Have Violated the Personal Use Ban

FEC records show that Rep. McCarthy made substantial payments from his leadership PAC to Mr. Luntz’s firm, FIL, Inc. shortly before he

visited May 19, 2021) (showing one-bedroom apartments almost six miles from the Capitol Building starting at \$1,469 per month).

³² “A gift of personal hospitality. . . of an individual other than a registered lobbyist or agent of a foreign principal” is also permitted under the gift rule if certain conditions are met. House Rule 25 cl. 5(a)(3)(P), *supra* note 3. A gift of personal hospitality falls under the exception if it is “extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family.” 5a U.S.C. § 109(14). While the host need not be present on the property for this exception to apply, the facility must be personally owned by the host, not by a corporation or through a wholly owned LLC. If the property is used for commercial purposes, e.g., the owner rents out the units to others, the gift of hospitality cannot be accepted under this provision. House Ethics Manual, *supra* note 5, at 62.

³³ Rep. McCarthy may have also violated the gift rules or other laws if Mr. Luntz covered the cost of D.C.’s “transient accommodations” tax. See Glenn Kessler, *Rental to Rep. Kevin McCarthy violated condo bylaws*, WASH. POST (May 11, 2021), <https://www.washingtonpost.com/politics/2021/05/11/rental-rep-kevin-mccarthy-violated-condo-bylaws/>; District of Columbia Office of Tax and Revenue, District of Columbia Tax Rates Changes (2018), <https://otr.cfo.dc.gov/release/district-columbia-tax-rates-changes-take-effect-monday-october-1>.

reportedly moved into Mr. Luntz’s apartment.³⁴ If those payments were used to offset the rental cost of Mr. Luntz’s penthouse, then Rep. McCarthy may have violated the ban on personal use of campaign funds.

House rules are clear that members of the House “may not convert campaign funds to personal use.”³⁵ As the House Ethics Manual states, “Campaign funds are **not** to be used . . . to pay a Member’s personal obligations,”³⁶ and rent is clearly a personal obligation: the Federal Election Campaign Act expressly states that the use of campaign funds to pay “a home mortgage, rent, or utility payment” constitutes a prohibited personal use.³⁷

“[T]he term ‘campaign funds’ includes funds of any political committee under the Federal Election Campaign Act of 1971 [“FECA”], without regard to whether the committee is an authorized committee of the Member.”³⁸ Under House rules, the personal use ban applies to leadership PAC funds, which are “political committees” under FECA.³⁹

Rep. McCarthy’s leadership PAC, Majority Committee PAC or MC PAC, began making payments to Luntz’s FIL, Inc. shortly before he began renting Luntz’s apartment. The first payment of \$16,850 to FIL, Inc. occurred on September 25, 2020, followed by a payment of \$21,500 on December 17, 2020.⁴⁰ Rep. McCarthy reportedly moved into Mr. Luntz’s unit in January of 2021.⁴¹

³⁴ Majority Committee PAC—MC PAC, Disbursements for “fil inc,” “luntz,” or “word doctors,” *supra* note 24.

³⁵ RULES OF THE HOUSE OF REPRESENTATIVES OF THE U.S. 117TH CONG. (2021), House Rule 23, cl. 6(b), *supra* note 3. While “Members have wide discretion in determining what constitutes a bona fide campaign or political purpose to which campaign funds and resources may be devoted... Members have **no** discretion whatsoever to convert campaign funds to personal use. Furthermore, House rules require that Members be able to verify that campaign funds have not been used for personal purposes.” House Ethics Manual, *supra* note 5, at 63-64 (emphasis in original). “[T]he verification requirement imposed by the House rules is separate from, and in addition to, whatever recordkeeping requirements are imposed by the Federal Election Commission on federal candidates generally.” *Id.* at 165.

³⁶ House Ethics Manual, *supra* note 5, at 173 (emphasis in original).

³⁷ 52 U.S.C. § 30114(b)(2)(A); *see also* 11 C.F.R. § 113.1(g)(1)(E).

³⁸ House Rule 23 cl. 15(d)(1), *supra* note 3.

³⁹ *Id.*; 52 U.S.C. § 30101(4); 11 C.F.R. § 100.5(e)(6). *See also* House Ethics Manual, *supra* note 5, at 118, note 37 (“The term ‘campaign funds’ is defined broadly to include ‘leadership PAC’ funds.”).

⁴⁰ Majority Committee PAC—MC PAC, 2020 October Monthly Report, FEC Form 3X at 42 (filed Oct. 20, 2020), <https://docquery.fec.gov/pdf/341/202010209297826341/202010209297826341.pdf>; Majority Committee PAC—MC PAC, 2021 Year-End Report, FEC Form 3X at 18 (filed Jan. 29, 2021) <https://docquery.fec.gov/pdf/587/202101299414039587/202101299414039587.pdf>.

⁴¹ *See, e.g.*, Kessler, *supra* note 1.

FEC records show no prior payments to Mr. Luntz or his firms from either MC PAC or Rep. McCarthy’s candidate committee, outside of a small 2015 disbursement.⁴² OCE should consider whether the substantial and unusual payments to FIL, Inc. explain why Rep. McCarthy was permitted to rent from Mr. Luntz at such a steep discount.

Conclusion

CLC respectfully requests that OCE review whether Rep. McCarthy accepted an improper gift or converted campaign funds to personal use in violation of House rules.

Sincerely,

_____/s/_____
Delaney N. Marsco
Senior Legal Counsel, Ethics

⁴² See Majority Committee PAC—MC PAC or Kevin McCarthy for Congress Disbursements for “fil inc,” “luntz,” or “word doctors,” *supra* note 25.