

Campaigning with Congressional Staff: How the House and Senate Ethics Rules Enable Indirect Government Subsidization of Incumbents' Reelection Bids

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The ethics rules of the U.S. House of Representative and U.S. Senate seek to minimize the use of government resources to support incumbents' reelection campaigns. Government-paid congressional staff are prohibited from engaging in campaign activity during their working hours. However, congressional staff may engage in paid or uncompelled volunteer campaign activities outside of their working hours—on their “own time.” As applied, this rule allows incumbent members of Congress to pay their official staff additional salaries or stipends from their campaign accounts and task them with campaign responsibilities. This structure leaves open serious questions of fairness. Even when staff follow the rules and confine all campaign activity to their “own time,” this practice can reduce campaign staffing costs for incumbents, as government-paid staff can leverage the knowledge, experience, and relationships they accumulate on government time to more efficiently and expeditiously complete campaign tasks. Consequently, this practice can offer incumbents a financial advantage over non-incumbent challengers, which undermines the democratic principles at the core of our political system. This Note assesses the fairness of this practice, examines whether it indirectly enables government resources to bolster incumbents' reelection campaigns, and proposes legislation prohibiting campaigns from disbursing funds to official congressional staff.

Part I provides an overview of the current House and Senate ethics rules as they relate to campaign activity and an assessment of the mechanisms available to enforce them. Part II explains how congressional staffers'

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campaign activity during their “own time” undermines democratic principles by enabling government resources to flow indirectly to incumbents’ reelection campaigns. It then discusses the absence of mechanisms to challenge these rules and the practices they allow. Part III encourages Congress to amend the Federal Election Campaign Act to prohibit congressional campaigns from disbursing campaign funds to official congressional staff. This solution would limit official staff participation in campaigns to uncompelled volunteer activity, and it would provide the Federal Election Commission with enforcement authority. As a result, any volunteer campaign activity conducted by official staff would be subject to a higher level of scrutiny as to whether it is truly uncompelled.

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INTRODUCTION

Jane was a candidate for the U.S. House of Representatives. She was running against Congressman Cash, a five-term incumbent.¹ Jane—a teacher—did not have much personal money to support her own grassroots campaign. She worked hard to raise funds from her supporters and was able to hire a small campaign staff.² But Jane was constrained by the cost of maintaining personnel—the more of her scarce funds she spent on staff, the less she had left over to spend on other campaign expenses.³ In contrast, Congressman Cash had no shortage of funds, which he solicited from his supporters and transferred from his personal accounts. This already put Jane at a clear disadvantage.⁴ Congressman Cash maintained a team of 10 campaign staffers, which he paid from his campaign funds.⁵ As a sitting congressman,

1. Jane and her opponent are fictitious candidates created for the purpose of this illustrative hypothetical scenario.

2. Hiring campaign staff is a permissible use of campaign funds. See FED. ELECTION COMM’N, CAMPAIGN GUIDE: CONGRESSIONAL CANDIDATES AND COMMITTEES 61 (2021), <https://www.fec.gov/resources/cms-content/documents/policy-guidance/candgui.pdf> [<https://perma.cc/QQ76-QRR9>] (“Payments for day-to-day expenses, such as staff salaries . . . are permissible operating expenses.”).

3. Other permissible expenses include “rent, travel, advertising, telephones, office supplies and equipment, and fundraising.” *Id.*

4. Based on FEC data available as of February 2025, in 2024, 93.92% of House candidates and 87.88% of Senate candidates who outspent their opponents won their elections. See *Did Money Win?*, OPEN SECRETS, <https://www.opensecrets.org/elections-overview/winning-vs-spending?cycle=2024> [<https://perma.cc/9QBF-DBHB>] (last visited Feb. 17, 2025).

5. See FED. ELECTION COMM’N, CAMPAIGN GUIDE, *supra* note 2 (noting that campaign staff salaries are an acceptable use of campaign funds).

he was also entitled to government-paid congressional staff to assist in his official legislative duties.⁶

During the election cycle, a labor dispute broke out between the district's largest employer and its most powerful union. Jane and Congressman Cash both sought to capitalize on this issue for their campaigns. Jane asked her communications director to study the intricacies of the dispute and draft a speech for her to deliver at the picket line. This task required 20 hours of work. It was a costly use of staff time and campaign funds, but Jane knew this was an important issue in the district. Meanwhile, Congressman Cash monitored this issue both in his capacity as a candidate *and* as an incumbent congressman. He directed his government-paid press secretary to study the intricacies of the dispute. This task took 18 hours, but at no cost to Congressman Cash's campaign, as the assignment fell under the press secretary's official duties as a congressional staffer. Congressman Cash then offered to pay his government-paid press secretary an additional hourly rate from his campaign funds to write a speech about the labor dispute over a weekend. Nothing in the House ethics rules stopped him from asking his government-paid staff to help out with campaign tasks during their "own time."⁷ Because his press secretary had already studied the issue at length during the normal workday, writing the speech took only two hours, which Congressman Cash billed to his campaign.

What cost Jane's campaign 20 hours of labor cost Congressman Cash's campaign only two. Further, Congressman Cash routinely engaged his government-paid staff in campaign work in this manner, saving his campaign a sizable amount of money which he instead spent on advertising and voter outreach. This exacerbated Jane's steep financial disadvantage. She ultimately lost the election by a quarter of a percentage point.

Local political strategists attributed Jane's narrow loss to her financial disadvantage: She was a strong candidate with a well-

6. He cannot, pursuant to the ethics rules of the House, task his government-paid congressional staff with campaign work as part of their official jobs. *See* COMM. ON ETHICS, HOUSE ETHICS MANUAL 145 (2022) [hereinafter HOUSE ETHICS MANUAL], <https://ethics.house.gov/wp-content/uploads/2023/12/Dec-2022-House-Ethics-Manual-website-version.pdf> [<https://perma.cc/3KE2-96PT>] (noting that congressional staff may only engage in campaign activity during their "own time," and therefore, may not do so during time that they are paid by the government to carry out their official duties).

7. Assuming the weekend is considered the staffer's "own time," the House ethics rules do not prohibit this practice. *See id.* at 145 ("What constitutes a staff member's 'own time' is determined by the personnel policies that are in place in the employing office.").

run campaign, but unlike Congressman Cash, she did not have enough money to host voter outreach events and run expensive television advertisements. Jane was unable to draw on the knowledge and experience of a government-paid team of full-time staff. Instead, her campaign incurred the total cost of developing that same knowledge and experience.

Although Jane's story is merely a hypothetical, the challenges that she faced are real for non-incumbent candidates seeking seats in Congress. Overall, incumbents frequently seek and win reelection.⁸ Incumbents' congressional staffers—through their official roles—develop specialized knowledge of their bosses' districts and/or states, relationships with stakeholders, and relevant policy expertise.⁹ When engaged in campaign activity,

8. At the start of the 118th Congress (2023–2024), the House of Representatives seated 434 members, of which only 75 were first-term representatives. See James M. Lindsay, *The 118th Congress by the Numbers*, COUNCIL ON FOREIGN RELATIONS: THE WATER'S EDGE BLOG (Jan. 9, 2023, at 5:07 ET), <https://www.cfr.org/blog/118th-congress-numbers> [https://perma.cc/9NSA-HYY9]. The other 359 representatives had previously been incumbent members of the 117th Congress who sought and won reelection. See *id.* Similarly, the Senate—which had 35 seats up for election in 2022—began the 118th Congress with only seven new members. See *id.* In fact, every single incumbent Senator who sought reelection in 2022 won his or her race. See Greg Giroux, *Warnock Win Seals Perfect 2022 for Senators Seeking Re-election*, BLOOMBERG L. (Dec. 7, 2022, at 5:46 ET), <https://news.bloomberglaw.com/us-law-week/warnock-win-seals-perfect-2022-for-senators-seeking-re-election> [https://perma.cc/BK9Y-ENSS]. Sixteen incumbent members of the House of Representatives ran unopposed in the general election. See *Uncontested: The 35 House Districts with Only One Major Party Ballot*, 270TOWIN (Sep. 15, 2022), <https://www.270towin.com/news/2022/09/15/uncontested-the-35-house-districts-with-only-one-major-party-ballot/1419.html> [https://perma.cc/KM6R-YF3F]. Of those races, eight were completely uncontested, with no challengers to the incumbent in the primary election or the general election. See, e.g., *Louisiana's 4th District Congressional Election, 2022*, BALLOTPEdia, <https://ballotpedia.org/Louisiana%27s/4th/Congressional/District/election,/2022> [https://perma.cc/3QV7-SAPV] (last visited Sep. 24, 2025) (reporting the uncontested election of Rep. Mike Johnson (R-LA) in one of the seven uncontested elections of Republican representatives that year); *Massachusetts' 4th District Congressional Election, 2022*, BALLOTPEdia, <https://ballotpedia.org/Massachusetts%27/4th/Congressional/District/election,/2022> [https://perma.cc/4MJG-7W5L] (last visited Sep. 24, 2025) (reporting the uncontested election of Rep. Jake Auchincloss (D-MA) who ran as the only uncontested incumbent Democrat after the Republican candidate withdrew from the race). Overall, this data demonstrates that incumbents are quite successful in winning reelection, and, consequently, challengers struggle to unseat incumbents.

9. See Barbara S. Romzek & Jennifer A. Utter, *Congressional Legislative Staff: Political Professionals or Clerks?*, 41 AM. J. POL. SCI. 1251, 1259 (1997) (“Congressional legislative staff rely upon specialized knowledge about the politics and processes of supporting members of Congress, including constituent casework, legislative processes, and substantive public policy issues.”); Kimberly Leonard et al., *The Dirty Little Secret on How Congressional Staff Thrive in the Always-On World of Modern Politics is Doing Moonlight Work Like 80-Hour Weeks, Including Unpaid Saturdays and Sundays*, BUS. INSIDER (Jun. 4, 2022, at 6:05 ET) (noting that “congressional staffers know their boss’ policy positions and the needs of their constituents”).

congressional staffers can draw on this specialized knowledge and experience to support their bosses' reelection campaigns. Incumbents seeking reelection to the House or Senate can—and do—engage their government-paid congressional staff in their campaigns,¹⁰ so long as the campaign work is uncompelled, conducted during staffers' "own time," and not handled with government resources or in government facilities.¹¹

This Note examines the House and Senate ethics rules that regulate the campaign activities of incumbent Members of Congress and their staff. As it stands, these rules permit incumbents to offer congressional staff additional compensation from campaign funds to engage in campaign activities during their "own time."¹² This practice is in conflict with the stated purpose of the House and Senate ethics rules on campaign activity¹³ because—as this Note argues—it allows incumbents to indirectly subsidize their campaigns with government resources. After evaluating the lack of mechanisms currently available to challenge these rules, this Note suggests reconceptualizing this ethics issue as a matter of campaign finance, an area already regulated under the Federal Election Campaign Act (FECA).¹⁴ Specifically, using FECA as its vehicle, it proposes an enforceable legislative solution that would prohibit incumbents from disbursing campaign funds to their congressional staff, consequently narrowing the scope of their campaign activity to uncompelled volunteer work.¹⁵

10. See Sandra Fish, *Colorado Congressional Staffers Sometimes Double as Campaign Staff and Are Paid with Campaign Funds*, COLO. SUN (July 26, 2023, at 12:04 MT), <https://coloradosun.com/2023/07/21/colorado-congressional-delegation-staff-pay/> [<https://perma.cc/P8SN-9R3C>] (reporting that in 2023, "[n]ine of the 10 members of Colorado's congressional delegation paid official staff for campaign work. . ."); Leonard et al., *supra* note 9 ("[M]ore than a dozen current and former staffers revealed that the practice of working on both campaigns and on Capitol Hill was widespread."). Limitations on this practice are set by the House and Senate ethics rules. See also *infra* Part I (explaining the House and Senate ethics rules on staff campaign activity).

11. See HOUSE ETHICS MANUAL, *supra* note 6, at 145–47; SELECT COMM. ON ETHICS, SENATE ETHICS MANUAL 139–142 (2003) [hereinafter SENATE ETHICS MANUAL], <https://www.ethics.senate.gov/downloads/pdffiles/manual.pdf> [<https://perma.cc/Z79L-YQ83>].

12. See HOUSE ETHICS MANUAL, *supra* note 6, at 145–47; SENATE ETHICS MANUAL, *supra* note 11, at 139–142.

13. See *infra* Part II.A.

14. See Richard Briffault, *The Federal Election Campaign Act and the 1980 Election*, 84 COLUM. L. REV. 2083, 2083 (1984) (reviewing HERBERT E. ALEXANDER, FINANCING THE 1980 ELECTION (1983) and ELIZABETH DREW, POLITICS AND MONEY (1983)) (noting that FECA "closely re[regulates] the activities of candidates, parties, private organizations, and individuals in raising and spending campaign money").

15. See *infra* Part III.B.

I. THE PERMITTED USE OF OFFICIAL CONGRESSIONAL STAFF FOR CAMPAIGN ACTIVITY

The House and Senate ethics rules, adopted pursuant to Article I, Section 5, Clause 2 of the U.S. Constitution (the Rulemaking Clause),¹⁶ permit government-paid congressional staff to conduct campaign activity for their bosses' campaigns during their "own time."¹⁷ Part I begins with an overview of the official duties and campaign (or "unofficial") activities of members of Congress ("Members"¹⁸), with an emphasis on the distinction between the two categories. It then proceeds with a discussion of the House and Senate ethics rules which allow government-paid congressional staff to conduct campaign activities, subject to several limitations. Part I concludes by explaining the House Committee on Ethics's and the Senate Select Committee on Ethics's enforcement procedures for these rules to demonstrate the present limitations on enforcement.

A. OFFICIAL AND UNOFFICIAL RESPONSIBILITIES OF MEMBERS OF CONGRESS

The Constitution and the congressional ethics rules prescribe no particular duties for individual representatives or senators,¹⁹ but in practice, Members of Congress have many different responsibilities. Their official duties typically involve representation, legislation, constituent services, and communication.²⁰ Incumbents who seek reelection or election to

16. See U.S. CONST. art. I, § 5, cl. 2 ("Each House [of Congress] may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member."); HOUSE ETHICS MANUAL, *supra* note 6, at 3; SENATE ETHICS MANUAL, *supra* note 11, at 3.

17. See HOUSE ETHICS MANUAL, *supra* note 6, at 145; SENATE ETHICS MANUAL, *supra* note 11, at 140–141.

18. This Note uses the terms "Members" and "incumbents" interchangeably to refer to incumbent members of Congress.

19. See R. ERIC PETERSEN, CONG. RSCH. SERV., RL33686, ROLES AND DUTIES OF A MEMBER OF CONGRESS: BRIEF OVERVIEW 1 (2022), <https://www.congress.gov/ers-product/RL33686> [<https://perma.cc/892Y-GG28>] ("The U.S. Constitution establishes qualifications for Representatives and Senators, but it is silent about the roles and duties of an individual Member of Congress."). See generally HOUSE ETHICS MANUAL, *supra* note 6 (explaining the ethical standards of the House of Representatives, but not the official duties of individual Members); SENATE ETHICS MANUAL, *supra* note 11 (explaining the ethical standards of the Senate, but not the official duties of individual Members).

20. See PETERSEN, ROLES AND DUTIES OF A MEMBER OF CONGRESS, *supra* note 19, at 1 ("In current practice, the roles and duties carried out by a Member of Congress are

another office also engage in electoral activities.²¹ The rules and laws of the House and Senate consider electoral activities such as campaigning and raising funds to be separate from a Member's official duties.²² Therefore, these latter activities can be understood as a Member's "unofficial" or "campaign" activities.²³

Many activities that Members engage in are exclusively considered official or unofficial under the rules and laws of the House and Senate.²⁴ For example, drafting and introducing legislation is unquestionably official activity, while soliciting campaign funds is indisputably unofficial activity.²⁵ However, there are certain activities that do not fit neatly into one category or the other.²⁶ For example, a Member who marches in a town parade could conceivably do so in an official or unofficial capacity—or both.²⁷ Similarly, a Member who makes specific campaign promises, while simultaneously using government resources to develop and publicize a plan to deliver on those promises, engages

understood to include representation, legislation, and constituent service and communication. . . .").

21. *See id.* at 5 ("A significant part of the work of some Members of Congress includes their electoral plans, which might include reelection or election to another office.").

22. *See id.* ("Under House or Senate rules and law, electoral activity is separate from official congressional duties.").

23. This Note describes electoral activities as "unofficial" to draw a distinction between activities that are official congressional responsibilities and those that are not. The use of the phrase "unofficial" is not intended to suggest that campaign activities cannot be described as "official" in their own context.

24. *See* PETERSEN, *supra* note 19, at 5 ("Under House or Senate rules and law, electoral activity is separate from official congressional duties.").

25. Congress and the Supreme Court have long recognized a distinction between "official representational and legislative duties" and "political activities." *See* SENATE ETHICS MANUAL, *supra* note 11, at 140. The statute governing franked mail defines "official business, activities, and duties" as "matters which directly or indirectly pertain to the legislative process or to any congressional representative functions generally, or to the functioning, working, or operating of the Congress and the performance of official duties in connection therewith. . . ." 39 U.S.C. § 3210(a)(2). In *Buckley v. Valeo*, the Supreme Court drew a distinction between certain official activities and "activities designed to win elections by legislators in their other role as politicians." *See* SENATE ETHICS MANUAL, *supra* note 11, at 140–41 (citing *Buckley v. Valeo*, 424 U.S. 1, 84 n. 112 (1976)).

26. *See* SENATE ETHICS MANUAL, *supra* note 11, at 141 (noting that "some legitimate representative duties . . . might yield some political benefits. . .").

27. For example, Senator Sheldon Whitehouse (D-RI) posted photos of himself attending the 2022 Gaspee Days celebration on both his official and campaign X (formerly Twitter) accounts. *See* image posted by Sheldon Whitehouse (@SheldonforRI), X, (June 11, 2022, 6:25 ET), <https://x.com/SheldonforRI/status/1535750206217650179> [<https://perma.cc/QJV4-GKLU>]; image posted by Sheldon Whitehouse (@SenWhitehouse), X (June 11, 2022, at 2:51 ET), <https://x.com/SenWhitehouse/status/1535696339077681152> [<https://perma.cc/UQC3-USEJ>].

in both official and unofficial activity in pursuit of the same goal.²⁸ Accordingly, drawing the line between official and unofficial activities is challenging or even impossible in certain contexts.²⁹

Members are not expected to carry out their official congressional responsibilities alone. Congress annually appropriates a budget to each Member from which Members can, among other things, hire congressional staff to assist them in their official duties.³⁰ The House and the Senate maintain separate formulas for calculating each individual Member's budget.³¹ In Fiscal Year 2024, the average annual budget for a Senator was \$4,349,735, and the average annual budget for a Representative was \$1,928,100.³² Members typically hire personnel to staff their offices in Washington, D.C., and their offices in their home district or state.³³ This includes legislative staff, communications staff, constituent services staff, administrative staff, and senior staff to manage and oversee all of these operations.³⁴ House and Senate

28. For a recent example of this practice at the municipal level, see Nick Garber, *Lander, Other Candidates Walk Ethical Line Between Campaigning and Governing*, CRAIN'S N.Y. BUS. (Jan 15, 2025, at 5:00 ET), <https://www.crainsnewyork.com/politics-policy/nyc-mayoral-candidates-walk-ethical-line-between-campaigning-governing> [<https://perma.cc/3HLB-G44K>]. Comptroller Brad Lander, after making campaign promises to end street homelessness affecting people with severe mental illness, developed and released a plan through the Comptroller's office. *See id.* Most of this plan, however, could only be implemented by the mayor. *See id.* Soon after, Lander's mayoral campaign publicized the plan along with a request for campaign contributions, characterizing the plan as something Lander would implement if elected as the next mayor. *See id.*

29. *See Common Cause v. Bolger*, 574 F. Supp. 672, 683 (D.D.C. 1982), *aff'd*, 461 U.S. 911 (1983) ("To state the obvious, it simply is impossible to draw and enforce a perfect line between the official and political business of Members of Congress."); *People v. Ohrenstein*, 77 N.Y.2d 38, 47 (1990) ("[T]he line between political and governmental activities is not so easily drawn in cases dealing with legislators and their assistants.").

30. Each Member of the House of Representatives receives an annual Members' Representational Allowance (MRA), and each Senator receives an annual Senators' Official Personnel and Office Expense Account (SOPOEA). *See* IDA A. BRUDNICK, CONG. RSCH. SERV., RL30064, CONGRESSIONAL SALARIES AND ALLOWANCES: IN BRIEF 4, 8 (2024). The MRA and SOPOEA are available to support Members in their official and representational duties, which includes hiring staff. *See id.* at 4, 8–9.

31. *See id.* at 5, 8–9. Individual budgets in the Senate vary based on a state's population and its distance to Washington, DC, as well as a franked mail allocation. *See id.* at 8–9. Individual budgets in the House vary based on travel expenses, district office rent, and the number of "nonbusiness delivery stops in a congressional district." *See id.* at 5.

32. *See id.* at 7–8.

33. *See* CONG. MGMT. FOUND., KEEPING IT LOCAL: A GUIDE FOR MANAGING CONGRESSIONAL DISTRICT & STATE OFFICES xii–xiii (3rd ed. 2010) (describing the distribution of congressional staff between Washington, D.C., and district/state offices).

34. *See* R. ERIC PETERSEN, CONG. RSCH. SERV., R46262, CONGRESSIONAL STAFF: DUTIES, QUALIFICATIONS, AND SKILLS IDENTIFIED BY MEMBERS OF CONGRESS FOR SELECTED POSITIONS 3 (2024), <https://www.congress.gov/ers-product/R46262> [<https://perma.cc/4KAT-FHB2>]. *See also* Joel Foster, *Congressional Staff: A Comprehensive Guide on the Roles and*

staff, in addition to their salaries, receive various employment benefits, which are funded by the federal government as well.³⁵ Although these staffers are paid from government funds to assist Members with their official duties, they are not entirely restricted from also engaging in campaign activities.³⁶

B. HOUSE AND SENATE ETHICS RULES: LIMITS ON CAMPAIGN ACTIVITY BY CONGRESSIONAL STAFF

The ethics rules of the House and Senate expressly prohibit Members from tasking their congressional staff with campaign responsibilities at the government's expense.³⁷ On the issue of campaign activity, the House and Senate ethics manuals both cite a quote from *Common Cause v. Bolger* as their guiding principle: "Congress has recognized the basic principle that government funds should not be spent to help incumbents gain reelection."³⁸

Responsibilities, LEGISTORM: BLOG (Dec. 8, 2023, at 11:28 ET), <https://info.legistorm.com/blog/congressional-staff-roles-responsibilities> [<https://perma.cc/Z6TR-FGVY>] (describing the broad areas of responsibility to which congressional staff are assigned). The average number of staffers in a House Member office in 2023 was approximately 15. See R. ERIC PETERSEN, CONG. RSCH. SERV., R43947, HOUSE OF REPRESENTATIVES STAFF LEVELS, 1977-2023 9 (2023), <https://www.congress.gov/crs-product/R43947> [<https://perma.cc/TQW2-B99X>] (reporting a total of 6,680 staffers across 441 House Member offices). The average number of staffers in a Senate office in 2022 was approximately 41. See R. ERIC PETERSEN, CONG. RSCH. SERV., R43946, SENATE STAFF LEVELS, 1977-2022 3 (2023), <https://www.congress.gov/crs-product/R43946> [<https://perma.cc/7NDG-CKTR>] (reporting a total of 4,162 staffers across 100 Senate offices).

35. Senate staff, for example, receive subsidized health insurance and a retirement plan with employer-matching contributions, among other things. See *Senate Employment*, SENATE EMP. OFF., <https://employment.senate.gov/senate-employment/> [<https://perma.cc/JS2W-J2HV>] (last visited Sep. 19, 2025).

36. See *infra* Part I.B (explaining the congressional ethics rules' limitations on staff campaign activity).

37. See HOUSE ETHICS MANUAL, *supra* note 6, at 145; SENATE ETHICS MANUAL, *supra* note 11, at 140-141. Members would otherwise have a clear advantage over their non-incumbent challengers if they could use government funds to compensate staff for campaign activity. See James A. Gardner, *The Uses and Abuses of Incumbency: People v. Ohrenstein and the Limits of Inherent Legislative Power*, 60 FORDHAM L. REV. 217, 224 (1991) ("Use of [government] resources gives incumbents access to the resources of government in addition to their own, an advantage that can be tantamount to direct government intervention on their behalf."). Separately, and not pursuant to the Rulemaking Clause, the Hatch Act places restrictions on political activity for federal executive branch employees, but it does not apply to congressional employees. See HOUSE ETHICS MANUAL, *supra* note 6, at 145 (noting that the Hatch Act (5 U.S.C. §§ 7321-7326) does not apply to congressional employees); 5 U.S.C. § 7322(1) (defining "employee" to exclude congressional staff).

38. See HOUSE ETHICS MANUAL, *supra* note 6, at 133 (citing *Common Cause v. Bolger*, 574 F. Supp. 672, 683 (D.D.C. 1982), *aff'd*, 461 U.S. 911 (1983)); SENATE ETHICS MANUAL, *supra* note 11, at 140 (citing *Common Cause*, 574 F. Supp. at 683). *Common Cause* did not, however, address the use of staff in campaign activity. Rather, this case presented a

Accordingly, the House and Senate ethics manuals seek to prevent Members from using official funds for any purpose other than official business.

1. *House Rules*

The House Ethics Manual—updated most recently in 2022 by the House Committee on Ethics—imposes limitations on when and where congressional staff can engage in campaign activity.³⁹ Specifically, it states that “[o]nce House employees have completed their official duties, they are free to engage in campaign activities on their own time, as volunteers or for pay, as long as they do not do so in congressional offices or facilities, or otherwise use official resources.”⁴⁰ As a qualification, it adds that Members or their offices may not “compel a House employee to do campaign work.”⁴¹ Acts of compulsion include “threatening or attempting to

constitutional challenge to 39 U.S.C. § 3210, the statute that enables Members of Congress to send franked mail through the U.S. Postal Service. *See Common Cause*, 574 F. Supp. at 673. The plaintiff alleged that franked mail offers incumbents an unconstitutional subsidy, as it “inevitably has the effect of aiding Members’ reelection efforts.” *Id.* The Court found no constitutional violation. *See id.* at 685.

39. The House Ethics Committee does not regularly update its ethics rules on campaign activity. On June 12, 2025, the Committee announced the formation of a bipartisan working group that will make recommendations to “improve, clarify, and modernize” the Committee’s ethics guidance with respect to campaign activity. *See* Press Release, House Comm. on Ethics, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding the Establishment of a Working Group (June 12, 2025), <https://ethics.house.gov/wp-content/uploads/2025/06/Press-Release-20250612-Campaign-Activity-Working-Group.pdf> [<https://perma.cc/26LY-YLET>]. The Committee, however, did not specify the impetus for establishing this working group. *See* Hailey Fuchs, *House Ethics Committee will Review Campaign Activity Guidance*, POLITICO (June 12, 2025, at 6:43 ET), <https://www.politico.com/live-updates/2025/06/12/congress/new-house-ethics-working-group-00403846> [<https://perma.cc/WA8B-EB6Z>].

40. HOUSE ETHICS MANUAL, *supra* note 6, at 145.

41. HOUSE ETHICS MANUAL, *supra* note 6, at 145. The House Ethics Committee has, on several occasions, investigated and recommended disciplinary action against Members who have compelled their official staff to engage in campaign work. *See* John H. Cushman Jr., *Democrat Reprimanded for Misusing Staff in Race*, N.Y. TIMES (Aug. 1, 2012), <https://www.nytimes.com/2012/08/02/us/politics/representative-laura-richardson-reprimanded-by-house.html> [<https://perma.cc/Q8A2-6ZAZ>] (reporting that the House Ethics Committee found that Rep. Laura Richardson (D-CA) compelled her staff to engage in campaign activity, and, as such, required her to pay a fine of \$10,000); *see also* H.R. Rep. No. 116-465, pt. 1, at 4 (2020) (finding that, among other things, Rep. David Schweikert (R-AZ) compelled official staff to engage in campaign work); *id.* at 7 (recommending that the House of Representatives impose a fine of \$50,000 on Rep. Schweikert (R-AZ) for his ethics violations).

intimidate employees” and “directing or otherwise pressuring them” to engage in campaign activities.⁴²

The Manual delegates to each Member the ability to determine which hours constitute their staffers’ “own time” (i.e., the time during which staff are not considered to be “on the clock”).⁴³ A staffer’s “own time” is the “time that is available to a staff member . . . to engage in personal or other outside activities. . . .”⁴⁴ Nevertheless, given the irregular nature of the work of Congress, the House Ethics Manual recognizes that a staffer’s “own time” will not necessarily “correspond to evenings and weekends.”⁴⁵ A Member may not, however, reduce a staffer’s official work requirements in order to increase that staffer’s “own time” available for campaign work.⁴⁶ But, House employees may also free up more time for campaign activities by “reducing their employment in the congressional office to part-time status, with a corresponding reduction in salary” or by taking “Leave Without Pay” status consistent with the requirements set forth by the Committee on House Administration.⁴⁷

2. Senate Rules

The Senate Ethics Manual—updated most recently in 2003 by the Senate Select Committee on Ethics—imposes restrictions similar to those established in the House Ethics Manual.⁴⁸ With respect to campaign activity, the Senate Ethics Manual notes that “as long as [Senate employees] do not neglect their official duties, Senate employees are free to engage in campaign activities on their own time, as volunteers or for pay, provided they do not do so in congressional offices or otherwise use official resources.”⁴⁹

42. HOUSE ETHICS MANUAL, *supra* note 6, at 145.

43. *See id.* at 145 (“What constitutes a staff member’s “own time” is determined by the personnel policies that are in place in the employing office.”).

44. *Id.* at 145–46.

45. *Id.* at 146.

46. *See id.*

47. *Id.*

48. *See* SENATE ETHICS MANUAL, *supra* note 11, at 139–142.

49. SENATE ETHICS MANUAL, *supra* note 11, at 140. The Senate Ethics Manual recognizes that there may reasonably be some “overlap” between official and campaign responsibilities, and, therefore, “it is the Member’s responsibility to keep campaign related activities by staff during duty hours to a ‘de minimis’ amount. . . .” *Id.* at 141. *See also* Manu Raju & Jack Forrest, *Sen. Lindsey Graham ‘admonished’ by Senate Ethics Committee for Soliciting Funds in Capitol*, CNN: POLITICS (Mar. 23, 2023, at 9:57 ET), <https://www.cnn.com/2023/03/23/politics/lindsey-graham-ethics-violation-herschel-walker>

Further, Senate employees “may not be required to do [campaign] work as a condition of Senate employment.”⁵⁰

The Senate Ethics Manual explains that an employee’s “own time” is the “time beyond regular working hours, any accrued annual leave, or non-government hours of a part-time employee.”⁵¹ Like its counterpart in the House, the Senate Ethics Manual acknowledges the irregular nature of the congressional work schedule, and as such, recognizes that a Senate employee’s “own time” might occur during “what is typically considered the conventional workday.”⁵² Although the Senate ethics rules prohibit congressional staff from taking a “leave of absence” to conduct campaign work, they allow Senate employees to leave the Senate payroll or take a reduced salary, commensurate with their corresponding reduction in official activity, if they intend to spend more of their overall time engaging in campaign activities.⁵³ Further, the Senate Ethics Manual—using language more forceful than its House counterpart—explicitly conveys that employees who spend substantial time working on campaign activities should not concurrently receive a full Senate salary.⁵⁴

In addition to setting forth the above rules, the Senate Ethics Manual also discusses the potentially harmful public perception of engaging staff in campaign activity, even when the Member and staff follow all applicable rules.⁵⁵ Specifically, it notes that “[w]hen official staff are involved in a Member’s reelection campaign, such

[<https://perma.cc/ZVR2-DLA4>] (reporting that the Senate Ethics Committee admonished Sen. Lindsey Graham (R-SC) for soliciting campaign donations on five occasions during a media interview that occurred in a Senate office building).

50. SENATE ETHICS MANUAL, *supra* note 11, at 140.

51. *Id.* at 140.

52. *Id.* at 141.

53. *See id.* at 140 (prohibiting leaves of absence, but allowing Senate staff to leave the Senate payroll for the purpose of engaging in more campaign activity). With respect to this approach, the Senate Ethics Manual cautions that “if the amount of time an individual continues to provide services to the Senate were to go too low . . . the arrangement could raise a question as to whether Senate benefits are being used for an individual whose benefits should more appropriately be paid by the campaign.” *Id.* at 140.

54. *See id.* at 141–42 (“[T]he Senate Select Committee on Ethics has recommended on various occasions that when a staffer is to engage in campaign activities on behalf of the Member for any ‘extended’ period or to any ‘substantial’ degree that the Member either remove the staffer from the Senate payroll for that period and compensate the staffer with campaign funds, or reduce the staffer’s compensation from public funds commensurately with the reduction in official duties of the staffer during his time of increased campaign activities.”).

55. *See id.* at 142 (“[T]he public’s *perception* of the conduct of an elected official and his or her staff may have significance beyond the mere conformity with the technical requirements of rules or statutes.”).

activity may be an easy target for political opponents seeking media attention by charging that official government personnel are being used for private political campaigning, raising the specter of appearances of impropriety.”⁵⁶ These cautionary words about public perception, however, serve only as guidance—they do not impose additional limitations on staff campaign activity nor do they create enforceable obligations beyond the aforementioned rules.⁵⁷

3. *Core Principles Joining the House and Senate Rules*

Although each is explained in slightly different terms, the House and Senate ethics rules are predominantly the same with respect to congressional staff engagement in campaign activity.⁵⁸ Therefore, this Note proceeds with a joint analysis of the House and Senate rules based on the following interpretation of what they have in common: government-paid congressional staff may not engage in campaign work on official time, but may engage in paid or volunteer campaign activity during their “own time” as long as the activity is not compelled, does not use government resources, and is not conducted within government facilities.⁵⁹ Further, the hours that constitute a staffer’s “own time” are flexibly determined, with the acknowledgement that congressional office schedules often do not resemble conventional work schedules.⁶⁰ Although Members may not compel their congressional staff to engage in campaign activity, they are permitted to offer their congressional staff additional

56. *Id.*

57. *See id.* (cautioning Members about the public perception of engaging staff in their reelection campaigns, but adding no additional restrictions beyond limiting campaign activity to uncompelled work during a staffer’s “own time”).

58. Commentators generally interpret the House and Senate rules on staff campaign activity as functionally the same. *See, e.g.*, Alex Gangitano, *7 Quirkiest Rules for Staffers During Campaign Season*, ROLL CALL (Nov. 2, 2018, at 5:00), <https://rollcall.com/2018/11/02/7-quirkiest-rules-for-staffers-during-campaign-season/> [https://perma.cc/PC9N-H59P] (“[Senate and House] [s]taffers are free to engage in campaign activity on their own time, away from Capitol spaces and without using Senate and House resources.”).

59. *See supra* Part I.B.1 (explaining that pursuant to the House Ethics Manual, House staff are permitted to engage in campaign activity during their “own time”); *supra* Part I.B.2 (explaining that pursuant to the Senate Ethics Manual, Senate staff are permitted to engage in campaign activity during their “own time”).

60. *See supra* Part I.B.1 (explaining the flexibility that the House Ethics Manual affords to representatives in determining what qualifies as their staffers’ “own time”); *supra* Part I.B.2 (explaining the flexibility that the Senate Ethics Manual affords to senators in determining what qualifies as their staffers’ “own time”).

compensation,⁶¹ paid from their campaign funds, as an incentive to do so.⁶² Overall, these rules seek to ensure that government funds do not compensate congressional staff for the time they spend on campaign work.

C. ENFORCEMENT OF THE HOUSE AND SENATE ETHICS RULES

The House Committee on Ethics (House Ethics Committee) and the Senate Select Committee on Ethics (Senate Ethics Committee) maintain the authority and procedures to investigate and adjudicate ethics rules violations,⁶³ but they are not always effective at doing so. That is because enforcement requires congressional action, which is hampered by the “club spirit” of Congress that disincentivizes Members from punishing their own colleagues.⁶⁴

In the House, complaints alleging violations of the House ethics rules can be submitted to the House Ethics Committee directly or

61. Higher paid House and Senate staff whose government salaries exceed an annually set threshold are subject to a cap on outside earned income. *See* HOUSE ETHICS MANUAL, *supra* note 6, at 237; *See* SENATE ETHICS MANUAL, *supra* note 11, at 97. In 2025, this salary threshold was \$150,160, and the outside earned income cap was \$33,285. *See* Memorandum from the House Comm. on Ethics on The 2025 Outside Earned Income Limit and Salaries Triggering the Fin. Disclosure Requirement and Post-Emp. Restrictions to all Members, officers, and emps. of the House of Representatives (Mar. 12, 2025), <https://ethics.house.gov/wp-content/uploads/2025/03/FINAL-2025-Annual-Pay-Memo.pdf> [<https://perma.cc/JL6P-PHRV>]; *Financial Thresholds & Limits*, U.S. SENATE SELECT COMM. ON ETHICS, <https://www.ethics.senate.gov/public/index.cfm/financial-thresholds-limits> [<https://perma.cc/9CCU-K66Y>] (last visited Sep. 9, 2025).

62. The ability for Members to offer additional compensation to their congressional staff is presumably an effective incentive, as many staffers desire greater compensation. *See* HOUSE OFF. OF DIVERSITY & INCLUSION, 2023 HOUSE WORKFORCE STUDY EXECUTIVE SUMMARY 3 (2023) (on file with Internet Archive), <https://web.archive.org/web/20240330145104/https://diversity.house.gov/wp-content/uploads/2023/12/2023-House-Workforce-Study-Executive-Summary.pdf> [<https://perma.cc/JT6B-SB6W>] (reporting that the top reason why House staff consider new career opportunities is for “better pay and benefits”).

63. *See* JACOB R. STRAUS, CONG. RSCH. SERV., RL30764, ENFORCEMENT OF CONGRESSIONAL RULES OF CONDUCT: A HISTORICAL OVERVIEW 3, 6–14 (2015), <https://www.congress.gov/crs-product/RL30764> [<https://perma.cc/YBD7-U3TV>] (explaining the authority of the House Committee on Ethics and the Senate Select Committee on Ethics to “investigate allegations of wrongdoing by Members, officers, and employees; to adjudicate evidence of misconduct; to recommend penalties, when appropriate; and to provide advice on actions permissible under congressional rules and law”).

64. *See* Ivan Kline, *Use of Congressional Staff in Election Campaigning*, 82 COLUM. L. REV. 998, 1004 (1982) (“A frequent explanation for the reluctance to discipline is the atmosphere within Congress. A ‘club spirit’ is a salient feature of Congress, producing great loyalty and a tendency to be supportive of other congressmen.”) (citing Robert M. Rhodes, *Enforcement of Legislative Ethics: Conflict within the Conflict of Interest Laws*, 10 HARV. J. ON LEGIS. 373, 378 (1973)).

to the Office of Congressional Conduct (OCC)—previously known as the Office of Congressional Ethics (OCE).⁶⁵ Only Members may submit complaints directly to the Committee alleging misconduct or violations of the House rules.⁶⁶ A non-Member who seeks to file a complaint directly with the Committee must obtain “written certification by a Member that the information is ‘submitted in good faith and warrants the review and consideration of the committee.’”⁶⁷ Any individual, however, can file complaints with the OCC, which does not require a Member’s written certification.⁶⁸ The OCC can forward relevant findings of fact to the House Ethics Committee for further investigation.⁶⁹ In the Senate, there is no entity equivalent to the House’s OCC,⁷⁰ but anyone—including non-Members—can file complaints directly with the Senate Ethics Committee.⁷¹ The Senate Ethics Committee’s website provides a mailing address, email address, and fax line through which the general public can submit complaints.⁷²

Both committees retain significant enforcement discretion in their investigatory and adjudicatory processes, including the authority to recommend disciplinary measures that the House or Senate can vote to adopt by resolution.⁷³ Each committee requires

65. See STRAUS, *supra* note 63, at 6 (“In the 110th Congress, the Office of Congressional Ethics (OCE) was established to collect information from non-Members on potential misconduct and House rules violations by Members, officers, and staff.”). See also H.R. Res. 5, 119th Cong. § 4(d) (2025) (renaming the Office of Congressional Ethics as the Office of Congressional Conduct).

66. See STRAUS, *supra* note 63, at 6 (“Complaints alleging misconduct or House rules violations by House Members or staff can only be filed with the Committee on Ethics by a Member of the House.”).

67. *Id.*

68. See *id.* (“In the 110th Congress, the Office of Congressional Ethics (OCE) was established to collect information from non-Members on potential misconduct and House rules violations by Members, officers, and staff.”). See also H.R. Res. 5 § 4(d) (renaming the Office of Congressional Ethics as the Office of Congressional Conduct).

69. See STRAUS, *supra* note 63, at 6–7 (“[T]he OCE reviews the allegations and transmits relevant ‘findings’ to the [House Committee on Ethics] for further scrutiny, when warranted.”).

70. See *id.* at 12 (“To date, the Senate does not have a comparable entity.”).

71. See *id.* at 13 (“In the Senate, no restrictions exist on who can file a complaint or allegation with the committee.”).

72. See *Contacting the Committee*, SENATE COMM. ON ETHICS, <https://www.ethics.senate.gov/public/index.cfm/contacting-the-committee> [https://perma.cc/YJ74-6RPQ] (last visited Sep. 9, 2025).

73. See STRAUS, *supra* note 63, at 6–7, 12–13 (explaining each committee’s investigation and adjudication procedure); S. Res. 338, 88th Cong. § 2(a)(2)(A) (1964) (authorizing the Senate Ethics Committee to recommend disciplinary action in the form of a report or resolution to the Senate). See also U.S. GOV’T PRINTING OFF., A GUIDE TO THE

a simple majority vote to find that an ethics violation has occurred and to recommend disciplinary measures to its respective chambers of Congress.⁷⁴ Further, each committee maintains an even split of Democratic and Republican Members, so any action that requires a majority vote must be done on a bipartisan basis.⁷⁵

The ethics committees' enforcement mechanisms, however, are hampered by Congress' "club spirit."⁷⁶ Essentially, Members are often reluctant to enforce rules violations because they do not want to punish their own colleagues.⁷⁷ For example, on December 30, 2024, the House Ethics Committee announced a unanimous decision to close investigations into four Members—one Democrat and three Republicans—who allegedly misused campaign funds for personal use.⁷⁸ The Committee acknowledged that there was evidence that several Members did not fully comply with the rules, but in the absence of evidence of *intentional* violations, the committee closed the investigations.⁷⁹ Clause 6 of House Rule XXIII—the rule which these four Members allegedly violated—

RULES, PRECEDENTS, AND PROCEDURES OF THE HOUSE 536–37 (2024) (“[w]here the [House] Committee on Ethics after investigation recommends that disciplinary action be taken against a Member by the House, it normally files a privileged report with a form of resolution proposing the action.”).

74. See HOUSE OF REPRESENTATIVES COMM. ON ETHICS, 119TH CONG., RULES OF THE COMM. ON ETHICS 16 (2025) (setting forth vote requirements for various Committee actions); SENATE SELECT COMM. ON ETHICS, 117TH CONGRESS, RULES OF PROCEDURE 28 (2021) (setting forth that an affirmative vote of at least four Committee members is required for the Committee to engage in adjudicatory action or recommend disciplinary measures).

75. See *Members*, HOUSE COMMITTEE ON ETHICS, <https://ethics.house.gov/committee-members/> [<https://perma.cc/9KJC-VLXT>] (last visited Sep. 10, 2025) (listing four Republican and four Democratic Members of the House Committee on Ethics); *Committee Members*, U.S. SENATE SELECT COMM. ON ETHICS, <https://www.ethics.senate.gov/public/index.cfm/committee-members> [<https://perma.cc/9XGW-NJW2>] (last visited Sep. 10, 2025) (listing three Republican and three Democratic Members of the Senate Select Committee on Ethics).

76. See Kline, *supra* note 64, at 1004 (“A frequent explanation for the reluctance to discipline is the atmosphere within Congress. A ‘club spirit’ is a salient feature of Congress, producing great loyalty and a tendency to be supportive of other congressmen.” (citing Rhodes, *supra* note 64, at 373)).

77. See *id.* Indeed, the Senate Ethics Committee investigated 195 complaints between 2009 and 2023, but found evidence of violations in only three percent of its investigations. See Danielle Caputo, *The Failed Effort to Enforce Ethics in the Senate*, CAMPAIGN L. CTR. (June 18, 2024), <https://campaignlegal.org/update/failed-effort-enforce-ethics-senate#:~:text=CLC%20has%20conducted%20a%20review,more%20transparent%20about%20its%20investigations> [<https://perma.cc/ZVG6-S7Z7>].

78. See Press Release, House Comm. on Ethics, Statement of the Committee on Ethics Regarding Certain Investigative Matters Involving Allegations of Personal Use of Campaign Funds (Dec. 30, 2024), <https://ethics.house.gov/wp-content/uploads/2024/12/FINAL-Personal-Use-Public-Statement.pdf> [<https://perma.cc/8573-XA65>].

79. See *id.*

does not include a mental state requirement.⁸⁰ Nevertheless, the House Ethics Committee, without explanation, applied this mental state requirement in its decision to close these investigations.⁸¹ Daniel Schuman, the Executive Director of the American Governance Institute, criticized this decision, characterizing it as “a repudiation of the Committee’s job to hold Members of Congress to account for their wrongdoings and to be honest and forthright to the public about their behavior.”⁸² This reluctance to discipline Members—even with the presence of evidence demonstrating noncompliance with the House rules—suggests that Congress’ “club spirit” can and does hinder enforcement of the congressional ethics rules. But the effectiveness of these enforcement mechanisms is irrelevant for practices consistent with House or Senate ethics rules. Without violating any rules, Members can pay congressional staffers from campaign funds to engage in campaign activity so long as they conduct all campaign work outside of

80. See CLERK OF THE HOUSE OF REPRESENTATIVES, 118TH CONG, RULES OF THE HOUSE OF REPRESENTATIVES rule XXIII, cl. 6 (2023) (“A Member, Delegate, or Resident Commissioner—(a) shall keep the campaign funds of such individual separate from the personal funds of such individual; (b) may not convert campaign funds to personal use in excess of an amount representing reimbursement for legitimate and verifiable campaign expenditures; and (c) except as provided in clause 1(b) of rule XXIV, may not expend funds from a campaign account of such individual that are not attributable to bona fide campaign or political purposes.”).

81. See Daniel Schuman, *The New Years’ Eve Ethics Massacre*, FIRST BRANCH FORECAST: SUBSTACK, (Dec. 31, 2024), <https://firstbranchforecast.substack.com/p/the-new-years-eve-ethics-massacre/> [<https://perma.cc/R7E8-B34Z>] (“Accordingly, the Ethics Committee decided it would not punish Members who converted those funds unless there was evidence ‘that any Member intentionally misused campaign funds for their personal benefit.’”); Press Release, House Comm. on Ethics, *supra* note 78 (“However, there was no evidence that any Member intentionally misused campaign funds for their personal benefit.”).

82. See *id.* This “club spirit,” however, does not stand as a complete and total barrier to ethics committee proceedings, particularly in egregious cases. For example, in 2012, the House Ethics Committee found that Rep. Laura Richardson (D-CA) compelled her official staff to work on her 2010 reelection campaign. See Cushman, *supra* note 41. Among other things, Rep. Richardson directed her district staff to work for her campaign in the evenings. See *id.* On one occasion, she even directed one of her staffers to assume a fictitious name and volunteer for her opponent’s campaign for the purpose of gathering information. See *id.* Rep. Richardson negotiated a settlement with the House Ethics Committee that required her to accept a reprimand, admit to her violation of the rules, and pay a fine of \$10,000. See *id.* Similarly, in 2020, the House Committee on Ethics investigated and adjudicated a complaint against Rep. David Schweikert (R-AZ), and found, among other things, that Rep. Schweikert misused congressional staff time for unofficial and campaign activity and pressured congressional staff to engage in campaign work. See H.R. Rep. No. 116-465, pt. 1, at 4 (2020). The Committee recommended a fine of \$50,000. See *id.*, at 7. On July 31, 2020, the House passed a resolution adopting the Committee’s proposed disciplinary measure. See H.R. Res. 1074, 116th Cong. (2020).

government facilities, during their “own time,” and without using any government resources.⁸³

II. CONGRESSIONAL STAFF CAMPAIGN ACTIVITY: AN ELECTORAL ADVANTAGE FOR INCUMBENTS

Practices that employ government resources in support of incumbents’ reelection campaigns run counter to—and undermine—our democratic model of government.⁸⁴ Yet the House and Senate ethics rules on congressional staff campaign activity, even when followed in good faith, still enable government resources to indirectly subsidize Members’ reelection campaigns. Without violating the congressional ethics rules, a Member can task congressional staff during their “own time” with campaign responsibilities and compensate them with campaign funds for this extra work, so long as the Member does not compel any staff to do so, or make it a condition of their employment.⁸⁵ These payments from campaign funds can be made in addition to a congressional staffer’s government-funded salary and benefits.⁸⁶ Jane’s story demonstrates how this can create an unfair advantage for incumbents seeking reelection.⁸⁷ This flaw in the House and Senate ethics rules enables congressional staff to leverage the knowledge and experience that they gain at the government’s expense to conduct campaign work more efficiently during their “own time.”⁸⁸ And the increasing availability of remote work in the post-COVID-19 era only exacerbates the effect⁸⁹: by engaging in this practice, Members can reduce campaign staffing costs,

83. See SENATE ETHICS MANUAL, *supra* note 11, at 140 (allowing Senate staff to engage in paid campaign activity “on their own time . . . provided they do not do so in congressional offices or otherwise use official resources”); see HOUSE ETHICS MANUAL, *supra* note 6, at 145 (allowing House staff to engage in paid campaign activity “on their own time . . . as long as they do not do so in congressional offices or facilities, or otherwise use official resources”).

84. See PRINCIPLES OF THE L.—GOV’T ETHICS § 401 cmt. (A.L.I., Tentative Draft No. 4, 2023); see also *infra* Part II.A.

85. See *supra* Part I.C.

86. See HOUSE ETHICS MANUAL, *supra* note 6, at 145 (“[House employees] are free to engage in campaign activities on their own time, as volunteers *or for pay*. . .”) (emphasis added); SENATE ETHICS MANUAL, *supra* note 11, at 140 (“Senate employees are free to engage in campaign activities on their own time, as volunteers *or for pay*. . .”) (emphasis added).

87. See *supra* Introduction.

88. See *infra* Part II.A.

89. See *infra* Part II.B.

creating a financial advantage for themselves, and, consequently, a financial disadvantage for their non-incumbent opponents.⁹⁰

In practice, Members of Congress do actively use their congressional staff in campaigns.⁹¹ This subsidization helps incumbents entrench themselves in office, and at present, there are no mechanisms available to challenge the sections of the House and Senate ethics rules that allow it.⁹² Part II begins by identifying how the House and Senate ethics rules enable indirect government subsidization of incumbents' campaigns, and why this practice runs counter to democratic principles. It then discusses how remote work may exacerbate the effect of this practice. Part II concludes by explaining the lack of approaches presently available to challenge the fairness of the House and Senate ethics rules.

A. INDIRECT GOVERNMENT SUBSIDIZATION OF INCUMBENTS' CAMPAIGNS

Incumbency on its own offers sitting Members an electoral advantage.⁹³ The House and Senate ethics rules prohibit government compensation for the *time* that congressional staffers spend conducting campaign work.⁹⁴ What they fail to consider, however, is that congressional staff, in the course of their

90. See *infra* Part II.A.

91. See Fish, *supra* note 10 (showing that in 2023, nine out of the 10 Members of Congress who represent Colorado paid at least one of their official staffers to conduct campaign activity during their own time); Leonard et al., *supra* note 9 (offering an example of a congressional communications staffer who earned \$15,000 for campaign work he did in addition to his official responsibilities). *Cf.* Cushman, *supra* note 41 (reporting that Rep. Laura Richardson (D-CA) misused official staff for campaign purposes); H.R. Rep. No. 116-465, pt. 1, at 4 (2020) (finding that Rep. David Schweikert (R-AZ) misused official staff for campaign purposes).

92. See *infra* Part II.C.

93. See *Common Cause v. Bolger*, 574 F. Supp.672, 677 (D.D.C. 1982) (“[I]t stands to reason that incumbency alone is a valuable asset to the public official who seeks reelection. An incumbent Member of Congress enjoys a certain ‘visibility’ among his constituents that a challenger may find difficult or impossible to match.”); John W. Schoen, *Incumbents in Congress are hard to beat—and a lot of it has to do with money*, CNBC (April 26, 2018, at 10:09 ET), <https://www.cnbc.com/2018/04/26/here-is-why-incumbents-in-congress-are-hard-to-beat.html> [<https://perma.cc/SGV9-R4GW>] (“Since 1964, voters have sent their incumbent House representative back to Washington 93 percent of the time. Senators enjoy only slightly less job security—82 percent.”).

94. See HOUSE ETHICS MANUAL, *supra* note 6, at 145 (allowing House staffers to conduct campaign work on their “own time” after having “completed their official duties”); SENATE ETHICS MANUAL, *supra* note 11, at 140 (allowing Senate employees to conduct campaign work on their “own time” so long as they “do not neglect their official duties”).

government-paid official work, gain valuable experience and develop district- and state-specific knowledge.⁹⁵ Staff, when acting in their official capacities, also develop relationships with constituents and key state and district stakeholders.⁹⁶ These relationships do not simply disappear when staffers act on behalf of incumbents' campaigns. Congressional staffers, while faithfully adhering to the House and Senate ethics rules, can leverage their human capital and relationships, gained at the government's expense, to support their Members' reelection efforts. In effect, congressional staff tasked with campaign work do not start with a blank canvas. Their previous experience and knowledge may make staff more efficient with their time while also increasing the quality of their campaign work.

A non-incumbent challenger would, in many cases, need to pay their campaign staff to develop the same amount of district- or state-specific knowledge and relationships that a congressional staffer can develop during official time while compensated with government funds.⁹⁷ This phenomenon effectively increases staffing costs for non-incumbent challengers relative to their incumbent opponents.⁹⁸ Consider the following illustrative hypothetical concerning an incumbent and non-incumbent challenger preparing for an upcoming debate. Acting in accordance with the congressional ethics rules, the incumbent could pay their official legislative team using campaign funds to hold an after-hours preparation session, during which their staffers could discuss their work and the knowledge they have

95. See Leonard et al., *supra* note 9 (“After all, congressional staffers know their boss’ policy positions and the needs of their constituents.”).

96. See *Position Descriptions*, SENATE EMP. OFF., <https://employment.senate.gov/position-descriptions/> [<https://perma.cc/GLC3-XA7B>] (last visited Sep. 10, 2025) (noting that one responsibility of Senate staffers in legislative roles is to meet with constituents).

97. Congressional staffers develop district- or state-specific knowledge and relationships through their official, government-compensated work. See Leonard et al., *supra* note 9 (“After all, congressional staffers know their boss’ policy positions and the needs of their constituents.”); Romzek & Utter, *supra* note 9, at 1259 (“Congressional legislative staff rely upon specialized knowledge about the politics and processes of supporting members of Congress, including constituent casework, legislative processes, and substantive public policy issues.”). Non-incumbent challengers do not manage teams of congressional staff who can develop the same kind of knowledge at the government’s expense.

98. See *supra* Introduction (describing a hypothetical election in which Jane, a non-incumbent challenger, incurred higher campaign staffing costs than her incumbent opponent, Congressman Cash, as Jane was required to pay her staff to develop the same district-specific knowledge that Congressman Cash’s staff developed at the government’s expense).

developed during time for which they were paid by the government. In contrast, if the non-incumbent challenger seeks the same kind of preparation, they would be required to compensate their campaign staff entirely out of campaign funds for the time they spend engaging in research and preparation for the session itself.⁹⁹ Any time congressional staffers, paid to do campaign work on their “own time,” rely on knowledge gained or work done while on official time, incumbents cash in on an advantage that their challengers do not have. Challengers seeking the same work product would need to pay for campaign staffers to develop the same knowledge that congressional staff gain on official time.¹⁰⁰

Members’ ability to engage their congressional staff in their own reelection campaigns runs counter to the principle guiding the House and Senate ethics rules on campaign activity: to prevent government resources from helping incumbents gain reelection.¹⁰¹ Strict adherence to this principle is important for two reasons. First, Members’ ability to use government resources to support their reelection campaigns is unfair to non-incumbent candidates who seek to challenge them.¹⁰² Second, and more importantly, the use of government resources to support a Member’s reelection

99. Consider also the hypothetical raised in the Introduction involving Jane, a fictitious non-incumbent challenger, who compensated a campaign staffer for 20 hours of work to produce a well-researched campaign speech on an ongoing labor dispute. Her opponent was able to obtain the same product by compensating a congressional staffer for only two hours of campaign work on his “own time,” as his staffer was able to quickly write the campaign speech by leveraging the research he did on the labor dispute while compensated by the government on official time. *See supra* Introduction.

100. *See* Leonard et al., *supra* note 9 (“After all, congressional staffers know their boss’ policy positions and the needs of their constituents.”); Romzek & Utter, *supra* note 9, at 1259 (“Congressional legislative staff rely upon specialized knowledge about the politics and processes of supporting members of Congress, including constituent casework, legislative processes, and substantive public policy issues.”). In theory, a non-incumbent challenger *could* pay an incumbent’s congressional staffers to do campaign work for the non-incumbent’s campaign during their “own time,” but in practice, it’s unlikely that congressional staffers would help unseat the Member who employs them, and equally unlikely that a Member would continue to employ a staffer who engages in campaign activity in support of his opponent.

101. *See* HOUSE ETHICS MANUAL, *supra* note 6, at 133 (citing *Common Cause v. Bolger*, 574 F. Supp. 672, 683 (D.D.C. 1982), *aff’d*, 461 U.S. 911; SENATE ETHICS MANUAL, *supra* note 11, at 139 (citing *Common Cause*, 574 F. Supp. at 683).

102. *See* Gardner, *supra* note 37, at 224 (noting that incumbents’ advantage of “using government powers at their disposal in pursuit of reelection . . . offends some abstract notion of fair play in the election game”); LARRY SABATO & GLENN R. SIMPSON, *DIRTY LITTLE SECRETS: THE PERSISTENCE OF CORRUPTION IN AMERICAN POLITICS* 317 (1996) (“[W]hile the misappropriation of taxpayer funds is objectionable, government subsidization of incumbents unfairly tilts the playing field, reducing electoral competitiveness.”).

campaign undermines democratic principles. The public relies on elections as the primary means to choose its leaders and hold elected officials accountable.¹⁰³ The use of public resources in support of incumbents' reelection campaigns interferes with elections, as voters no longer independently choose who represents them in government.¹⁰⁴ Therefore, when incumbents use public resources to remain in power, it undermines the fairness of elections and, therefore, the democratic principles at the core of our political system.¹⁰⁵

B. THE EXACERBATING EFFECT OF REMOTE WORK

The availability of remote work for congressional staff has the potential to exacerbate the unfairness of the House and Senate ethics rules on staff campaign activity.¹⁰⁶ When congressional staff

103. See PRINCIPLES OF THE L.—GOV'T ETHICS § 401 cmt. (A.L.I., Tentative Draft No. 4, 2023) (“[I]n our democratic system, elections are the central mechanism that enables the public to determine who shall wield public power and to hold government officials accountable for their actions.”).

104. See *id.* (“Instead of the voters choosing their government, people in government would be using taxpayer dollars to keep themselves in power.”).

105. See *id.* (“[I]n our democratic system, elections are the central mechanism that enables the public to determine who shall wield public power and to hold government officials accountable for their actions. The ability of government officials to use government resources to favor one candidate or party over others would undermine this essential purpose of elections.”); see also Gardner, *supra* note 37, at 224. Writing about the use of government resources to support incumbents' reelection campaigns, Gardner asserts that:

[The use of government powers in the pursuit of reelection] is problematic because it upsets relationships at the heart of the notion of republican self-rule on which our system of government is based. Popular self-rule means, in large part, that the people choose the individuals who will represent them as government officials. For such self-rule to be free, the people's choices must be freely made. When the government uses its powers to improve or obstruct the fortunes of particular candidates, it deprives the people of the free choice among candidates that belongs to them alone. Such actions by the government introduce an element of nonconsensual rule—of despotism—into the system of self-rule inherent in republican democracy. Thus, abuse of the powers of incumbency by elected officials, at least in its more extreme manifestations, ultimately threatens democracy itself. *Id.*

106. In response to the COVID-19 pandemic, some congressional offices adopted policies allowing their staff to work remotely. See Chris Cioffi, *This Is the Future of Remote Work on Capitol Hill*, ROLL CALL: HEARD ON THE HILL (July 29, 2021, at 6:30 ET), <https://rollcall.com/2021/07/29/this-is-the-future-of-remote-work-on-capitol-hill/> [<https://perma.cc/ME7A-73CD>]. Remote work remains an option for congressional staff in offices that choose to adopt a telework program. See COMM. ON HOUSE ADMIN., TELEWORK POLICY FOR MEMBER & COMMITTEE OFFICES 1 (2024), <https://cha.house.gov/cache/files/e/b/eb75aa47-7e1f-4441-b8eb-298e40c3570a/69ED5DF57E76694A28C20D993F002C79.2024-telework-policy-for-member-committee-offices.pdf> [<https://perma.cc/ANT4-UX48>]. In 2023, 82 percent of House employees surveyed reported that they had “access to telework, hybrid,

work in person, they are not permitted to conduct any campaign activity while in House or Senate facilities, even if they do so during their “own time.”¹⁰⁷ Working from home, staffers face just two formal ethics barriers between official and campaign tasks: (i) the resources they use (e.g., laptop, office supplies) and (ii) whether the work falls within their “own time.”¹⁰⁸

Given the leeway in defining what constitutes a congressional staffer’s “own time,” however, staffers who are working remotely—without violating any rules—can make themselves available for campaign work at times that are more opportune for their Members’ campaigns, while handling their official work during unconventional work hours.¹⁰⁹ Consider the following illustrative hypothetical: a House staffer working remotely starts their day drafting speeches for their boss to deliver on the House Floor. Then, at 11:00am, the staffer takes what they consider a break from their official work, switches from their government-issued laptop to a personal computer, and joins a video conference with full-time campaign staff to discuss their boss’s reelection strategy. When that call ends at 1:30pm, the staffer declares that their break is over, switches back to their government-issued laptop, and resumes working on the floor speeches until 8:00pm.¹¹⁰ Under

and/or flexible work arrangements.” HOUSE. OFF. OF DIVERSITY & INCLUSION, *supra* note 62.

107. See HOUSE ETHICS MANUAL, *supra* note 6, at 145 (“[House employees] are free to engage in campaign activities on their own time . . . as long as they do not do so in congressional offices or facilities, or otherwise use official resources.”); SENATE ETHICS MANUAL, *supra* note 11, at 140 (“Senate employees are free to engage in campaign activities on their own time . . . provided they do not do so in congressional offices or otherwise use official resources.”).

108. See HOUSE ETHICS MANUAL, *supra* note 6, at 145 (“Once House employees have completed their official duties, they are free to engage in campaign activities on their own time, as volunteers or for pay, as long as they do not do so in congressional offices or facilities, or otherwise use official resources.”); SENATE ETHICS MANUAL, *supra* note 11, at 140 (“Senate employees are free to engage in campaign activities on their own time, as volunteers or for pay, provided they do not do so in congressional offices or otherwise use official resources.”).

109. See *supra* Part I.B.3 (explaining the flexibility of what is considered an employee’s “own time”); SABATO & SIMPSON, *supra* note 102, at 213 (noting that the flexible definition of “own time” “leaves congressmen enormous leeway to use official staff for their own political purposes, while still paying them their government salary”).

110. See Leonard et al., *supra* note 9 (“One former Democratic House scheduler said she had to work most weekends on congressional duties to make up for the 20 hours a week she spent helping her boss hit up donors for money during the 2014 election cycle.”). With the availability of remote work, the distinction between official time and a staffer’s “own time” could ultimately become unworkable, particularly in cases when staffers can choose when to start and stop working on a given day. See also DENNIS F. THOMPSON, ETHICS IN CONGRESS: FROM INDIVIDUAL TO INSTITUTIONAL CORRUPTION 73 (1995) (“Assuming that the

the current congressional ethics rules on campaign activity, so long as the staffer's break is deemed their "own time," this work schedule is permissible. Congressional offices that embrace this arrangement to the fullest extent could enjoy the advantage of further integrating full-time official staff into the day-to-day activities of incumbents' campaign operations. Therefore, remote work, although not itself the problem, may exacerbate the unfair advantage of enabling congressional staff to engage in campaign work during their "own time."

C. OBSTACLES TO CHALLENGING THE EXISTING ETHICS RULES

Current law provides no meaningful avenue to contest the fairness of House and Senate ethics rules that permit congressional staff to engage in campaign work.¹¹¹ Because the House and Senate ethics rules allow this practice,¹¹² it does not amount to a violation that one can raise through the enforcement procedures established by the House and Senate ethics committees.¹¹³ Rather, addressing and reducing the incumbency advantage enabled by the House and Senate ethics rules on campaign activity would require a challenge to the ethics rules themselves. This section explains why judicial challenges and media exposure are not viable avenues through which one could attempt to challenge or amend the House and Senate ethics rules.

1. *Judicial Relief Is Likely Unavailable*

One potential avenue for raising a challenge to the fairness of the House and Senate ethics rules on staff campaign activity is through the judiciary. However, such an approach is unlikely to succeed. In several instances, plaintiffs have brought constitutional or statutory claims challenging Members' uses of

district office staff can work on the campaign during their free time, what should count as free time in an office where staff routinely work overtime?").

111. See *infra* Part II.C.1–2 (describing the obstacles to challenging the existing House and Senate ethics rules that regulate campaign activity by congressional staff).

112. See *supra* Part I.B (explaining the allowable use of congressional staff in campaign activity).

113. Ordinarily, the House and Senate ethics committees have the authority to enforce their own rules. See *supra* Part I.C. However, if there are no allegations of misconduct or violations of any rules, the ethics committees seemingly have nothing to enforce or adjudicate.

official resources for campaign purposes.¹¹⁴ Courts, however, have struck down these challenges as nonjusticiable for various reasons, including the political question doctrine and a lack of traceable injury to establish standing.¹¹⁵ These precedents set up major hurdles that significantly limit—if not completely close off—judicial challenges to the fairness of the House and Senate ethics rules.¹¹⁶

In *Schonberg v. McConnell*, the plaintiff raised an unsuccessful constitutional challenge to the fairness of the Senate ethics rules on campaign activity, contending that they infringe on his Fifth Amendment guarantee of equal protection.¹¹⁷ The plaintiff, a candidate who sought the Democratic nomination to challenge Senator Mitch McConnell, alleged that Senator McConnell “enjoys an unfair advantage” because of his ability to use congressional staffers for campaign activity during their personal time.¹¹⁸ The plaintiff asserted that this practice “widens the gap between McConnell’s campaign coffers and his own.”¹¹⁹

A District Judge in the Western District of Kentucky dismissed the plaintiff’s claim, holding that the plaintiff lacked constitutional standing and that the issue was a nonjusticiable political question.¹²⁰ With respect to standing, the Court found that the plaintiff neither identified a concrete injury nor established that his claim was redressable.¹²¹ First, the Court held that electoral disadvantage does not amount to an injury in fact.¹²² Second, the Court held that the plaintiff was not presently suffering the

114. See *Schonberg v. McConnell*, 2013 WL 6097890 at *1 (W.D. Ky. Nov. 20, 2013); *United States ex rel. Joseph v. Cannon*, 642 F.2d 1373, 1375 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 999 (1982).

115. See *Schonberg*, 2013 WL 6097890 at *2–4 (holding that the plaintiff did not establish standing and that the challenge was a nonjusticiable political question); *Cannon*, 642 F.2d at 1379, 1385 (noting that political questions are “denied judicial scrutiny,” and holding that plaintiff’s claim is such a question).

116. For a more in-depth discussion of the justiciability of challenges to the benefits of incumbency, see generally Patrick T. Roath, Note, *The Abuse of Incumbency on Trial: Limits on Legalizing Politics*, 47 COLUM. J.L. & SOC. PROBS. 285 (2014) (examining various judicial challenges to the abuse of incumbency in reelection campaigns and proposing a framework for courts to assess the justiciability of such challenges).

117. See *Schonberg*, 2013 WL 6097890, at *2.

118. See *id.* at *1.

119. *Id.* at *2.

120. See *Schonberg v. McConnell*, 2013 WL 6097890, at *2–3 (W.D. Ky. Nov. 20, 2013) (finding plaintiff lacked standing); see *id.* at *4 (finding plaintiff’s challenge was a nonjusticiable political question).

121. See *id.* at *2.

122. See *id.* (quoting *Kardules v. City of Columbus*, 95 F.3d 1335, 1353 (6th Cir. 1996)).

alleged harm, as he was a Democratic primary candidate who was not competing directly against Senator McConnell, a Republican, in the primary election.¹²³ Third, the Court held that the plaintiff's alleged injury was not traceable to the Senate rules, as the rules do not compel staff campaign work.¹²⁴ Rather, staff must decide on their own to volunteer, which breaks the causal link between the rules and the alleged injury.¹²⁵ Fourth, the Court held that the plaintiff had "not demonstrated that a decision in his favor would redress his alleged injury."¹²⁶ Lastly, the Court held that it lacked "the authority to compel the Senate to adopt a rule prohibiting such volunteer activity by employees."¹²⁷

With respect to nonjusticiability, the Court held that "this matter is constitutionally committed to the Senate" pursuant to the Constitution's Rulemaking Clause, which authorizes the Senate to write its own rules.¹²⁸ Citing *United States v. Ballin*, the Court noted that the only limitations on the Senate's rule-writing power are constitutional restraints or violations of fundamental rights, neither of which it found present in this case.¹²⁹ Ultimately, the Court held that—in the absence of these limitations—the Senate rules governing staff campaign activity are "beyond the challenge of any other body."¹³⁰ *Schonberg* is the only case that squarely addresses a challenge to the fairness of the Senate ethics rules on congressional staff campaign activity.¹³¹ Yet, it shows that plaintiffs contesting the fairness of congressional ethics rules struggle to establish standing, and that courts are apt to dismiss such claims as nonjusticiable political questions.

A pair of D.C. Circuit cases concerning allegedly wrongful uses of official resources for campaign activity further suggest that

123. *See id.* at *3.

124. *See id.*

125. *See id.*

126. *See* *Schonberg v. McConnell*, 2013 WL 6097890, at *3 (W.D. Ky. Nov. 20, 2013).

127. *Id.*

128. *See id.* at *4 ("The Constitution authorizes the Senate to establish its own rules. U.S. CONST. art. 1, § 5, cl. 2. In light of such authority, and given the principle of separation of powers, the Court must respect the prerogative of the legislative branch.").

129. *See id.* ("Here, as in *Ballin* [sic], there is no 'constitutional restraint' or 'fundamental right' at issue.") (quoting *United States v. Ballin*, 144 U.S. 1, 5 (1892)).

130. *Id.* (quoting *Ballin*, 144 U.S. at 5).

131. This decision stands as a single datapoint from a district court, and, therefore, has limited precedential value. *See* *United States v. Articles of Drug Consisting of 203 Paper Bags*, 818 F.2d 569, 572 (7th Cir. 1987) ("A single district court decision . . . has little precedential effect. It is not binding on the circuit, or even on other district judges in the same district.").

courts would be unwilling to hear additional challenges to the fairness of these rules themselves. In *U.S. ex rel. Joseph v. Cannon*, the plaintiff brought a claim under Section 231 of the False Claims Act alleging that Senator Howard W. Cannon (D-NV) hired an administrative assistant with his official Senate budget, but tasked him to work on the Senator's reelection campaign.¹³² A District Judge in the District of D.C. dismissed this claim, citing a lack of jurisdiction.¹³³ On appeal, the D.C. Circuit affirmed the District Court's judgment.¹³⁴ In doing so, the D.C. Circuit invoked the political question doctrine, finding no way to resolve the question of whether government-paid Senate staff could engage in campaign activity.¹³⁵

In 1976—the election year in which Senator Cannon allegedly tasked his congressional staffer with campaign activity—the currently-applicable Senate ethics rules on campaign activity were not yet established.¹³⁶ At that time, the only campaign-related restriction that applied to official Senate staff was Senate Rule 43, which limited the ability of Senate staff to “receive, solicit, hold, or distribute campaign funds.”¹³⁷ Bringing suit under the False Claims Act, the plaintiff argued that Senator Cannon's use of his congressional staff for activities that were not “official legislative and representational duties” amounted to a false claim.¹³⁸ In its opinion, the D.C. Circuit acknowledge that all appropriated sums must be confined “to the objects for which they are respectively made,”¹³⁹ and even assumed that the funds at issue were appropriated exclusively to compensate congressional staff for

132. See *United States ex rel. Joseph v. Cannon*, 642 F.2d 1373, 1375 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 999 (1982). In addition to the first count regarding the administrative assistant's campaign activity, the Plaintiff brought a second count, alleging that Senator Cannon utilized other congressional staffers to carry out personal services for the Senator and his family. See *id.* The District Court dismissed this count for “failure to state with sufficient specificity a claim upon which relief could be granted.” *Id.* The D.C. Circuit affirmed this judgment. See *id.*

133. See *id.* (“The District Court dismissed the first count for lack of jurisdiction. . .”).

134. See *id.* (“We accordingly affirm the District Court's judgment in both respects.”).

135. See *id.* at 1379 (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)).

136. See *id.* at 1380 (“When, in 1976, Senator Cannon launched his reelection drive, the Senate restricted campaign activity by staff members only in the area of fund-handling.”). See also *id.* at 1381 (“It was not until after Senator Cannon's 1976 reelection that the Senate began to reconsider the role of staff in senatorial campaigns.”).

137. *United States ex rel. Joseph v. Cannon*, 642 F.2d 1373, 1380 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 999 (1982) (citing 31 U.S.C. § 628 (1976)).

138. *Id.* at 1376.

139. See *id.* at 1379.

conducting official activities.¹⁴⁰ Nevertheless, the Court refused to draw the line between official and unofficial activity.¹⁴¹ It concluded:

In the absence of any discernible legal standard or even a congressional policy determination that would aid consideration and decision of the question raised by appellant's first count, we are loathe to give the False Claims Act an interpretation that would require the judiciary to develop rules of behavior of the Legislative Branch. We are unwilling to conclude that Congress gave the courts a free hand to deal with so sensitive and controversial a problem, or invited them to assume the role of political overseer of the other branches of Government.¹⁴²

Although decided before the current Senate ethics rules were in place, *Cannon* demonstrates courts' unwillingness to impose "rules of behavior" on the Legislative Branch, as well as their refusal to engage in the challenging line-drawing inquiry between official and unofficial activity.¹⁴³

Cannon purports to vastly curtail the judiciary's power to adjudicate cases concerning the "rules of behavior" of the Legislative Branch, but not *all* claims alleging violations of rules of the legislative branch are nonjusticiable. In *U.S. v. Rostenkowski*—a criminal case—the D.C. Circuit, reaffirming its holding in *Cannon*, noted that judicial interpretation of ambiguous Legislative Branch rules risks intruding into a power constitutionally reserved to the Legislative Branch.¹⁴⁴ The Court

140. *See id.* at 1380 ("Even assuming, as fairly we may, that the funds appropriated were intended solely to compensate staffers for performance of their 'official' duties, we are left with the perplexing question whether campaign work is official activity.").

141. *See id.* at 1384 ("Indeed, the interpretation of the False Claims Act suggested by appellant would license the courts to monitor every action taken by a Senator and his aide in an effort to determine whether it is sufficiently 'official' or too 'political.'").

142. *United States ex rel. Joseph v. Cannon*, 642 F.2d 1373, 1385 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 999 (1982).

143. *See id.* at 1384–85.

144. *See United States v. Rostenkowski*, 59 F.3d 1291, 1306 (D.C. Cir. 1995). *See also id.* at 1306–07 ("Where, however, a court cannot be confident that its interpretation is correct, there is too great a chance that it will interpret the Rule differently than would the Congress itself; in that circumstance, the court would effectively be making the rules—a power that the Rulemaking Clause reserves to each House alone."). Rep. Daniel Rostenkowski (D-IL) was indicted on 17 counts, including two counts alleging misuse of his "Clerk Hire Allowance." *See id.* at 1294–95. Rep. Rostenkowski allegedly operated a scheme instructing staff to cash their paychecks and deliver the cash to his office manager, who

also noted, however, that if a particular rule is clear enough that the Court can confidently interpret it, the risk of intruding on the Legislative Branch's rulemaking power is both low and preferable to the risk of letting crimes go unpunished "merely because the malefactor holds legislative office."¹⁴⁵ In effect, the D.C. Circuit's application of the separation of powers doctrine to the Rulemaking Clause in *Rostenkowski* counsels courts that they should not interpret congressional rules if their meanings are at all ambiguous.¹⁴⁶

Overall, *Cannon*, *Rostenkowski* and *Schonberg* demonstrate the constitutional barriers that prevent courts from interpreting Legislative Branch rules that are promulgated pursuant to the Rulemaking Clause of the Constitution.¹⁴⁷ The political question doctrine and the difficulty of establishing standing impose major justiciability hurdles that are challenging—if not impossible—for plaintiffs to overcome. Given courts' reluctance—and in many instances, their lack of constitutional authority—to *interpret* legislative rules, it is improbable that they would entertain a challenge to such rules on the basis of fairness or on whether they effectively achieve their purpose¹⁴⁸ of preventing the flow of government funds to Members' reelection campaigns. Indeed, the D.C. Circuit made clear that absent an invitation from Congress,

would, in turn, compensate the staffers in cash at a rate substantially lower than the amount disbursed in the initial checks. *See id.* at 1295. Further, Rep. Rostenkowski allegedly used his "Clerk Hire Allowance" to pay staff for personal services, for which he was charged with stealing, embezzling, and converting funds of the United States. *See id.*

145. *See id.* at 1306 ("[A] court may interpret Senate's internal rules where it "requires no resolution of ambiguities") (quoting *United States v. Durenberger*, 48 F.3d 1239, 1244 (D.C. Cir. 1995)).

146. *See* Katherine Deming Brodie, *The Scope of Legislative Immunity Under the Speech Or Debate Clause and the Rulemaking Clause*, 64 GEO. WASH. L. REV. 1117, 1137 (1996) ("[T]he separation of powers doctrine, applied in [*Rostenkowski*] to the Rulemaking Clause, counsels courts the opposite way: to preserve the separation of powers, courts must avoid interpreting congressional rules if any doubt exists as to their meaning."). Further, when courts are asked to adjudicate disputes involving congressional rules, "the presence of a statute or rule alone doesn't necessarily provide a workable judicial standard for resolving such cases." Roath, *supra* note 116, at 324.

147. *See* U.S. CONST. art I, § 5, cl. 2 ("Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.").

148. *See* HOUSE ETHICS MANUAL, *supra* note 6, at 133 ("The laws and rules referenced in this section reflect 'the basic principle that government funds should not be spent to help incumbents gain reelection.'" (quoting *Common Cause v. Bolger*, 574 F. Supp. 672, 683 (D.C. Cir. 1982)); SENATE ETHICS MANUAL, *supra* note 11, at 139 ("It is clear from the record that Congress has recognized the basic principle that government funds should not be spent to help incumbents gain reelection.")) (quoting *Common Cause*, 574 F. Supp. at 683)).

the courts must not “assume the role of political overseer of the other branches of Government.”¹⁴⁹ Therefore, judicial challenges to the fairness of allowing congressional staff to engage in campaign activity on their “own time” are unlikely to succeed.

2. *The Insufficiency of Media Exposure and Electoral Accountability*

In the absence of a legal remedy or rule change, a non-incumbent challenger seeking to tarnish an incumbent-opponent’s reputation or to pressure the incumbent to stop hiring congressional staff on their “own time” to do campaign work could attempt to draw media attention to the unfairness of this practice—but this approach is similarly unlikely to succeed.¹⁵⁰ The intent would be to put pressure on the incumbent to stop engaging in this practice, or else risk losing support from voters who perceive the practice as unfair.¹⁵¹ Indeed, and as discussed in Part I.B.2, the Senate Ethics Manual warns of the potentially harmful public perception of engaging official staff in campaign activity, characterizing it as an “easy target for political opponents seeking media attention.”¹⁵² However, this strategy is undermined by the fact that this practice does not violate any formal rules, and that the unfairness associated with this practice is a complicated issue.¹⁵³ While a story about a Member using congressional staff

149. *United States ex rel. Joseph v. Cannon*, 642 F.2d 1373, 1385 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 999 (1982).

150. Political scientist Larry Sabato and journalist Glenn Simpson have proposed media exposure as a method to hold incumbent Members accountable for abusing the flexibility of the House and Senate ethics rules on campaign activity. *See* SABATO & SIMPSON, *supra* note 102, at 318 (suggesting “sustained media attention to abuses” to reduce the potential abuse of government resources to support incumbents’ campaigns). Specifically, they note that the “own time” (then called “free time”) language in the rules “leaves congressmen enormous leeway to use official staff for their own political purposes, while still paying them their government salary.” *Id.* at 213. The issue which Sabato and Simpson address concerns violations of, or, at a minimum, bad faith applications of the House and Senate ethics rules. This Note instead addresses the fairness of the ethics rules themselves.

151. This is a form of “negative campaigning,” which generally focuses on the defects in an opponent’s attributes. *See* Richard R. Lau & Gerald M. Pomper, *Effectiveness of Negative Campaigning in U.S. Senate Elections*, 46 *Am. J. Pol. Sci.* 47, 48 (2002) (“Negative campaigning is talking about the opponent—his or her programs, accomplishments, qualifications, associates, and so on—with the focus, usually, on the defects of these attributes.”).

152. SENATE ETHICS MANUAL, *supra* note 11, at 142.

153. In the absence of a rule that prohibits the practice, explaining the unfairness associated with official staff participation in their bosses’ campaigns is a complicated matter. The complexity of this issue makes it less likely to impact voters’ decisions. *See*

for campaign activity *during* government-paid time in violation of congressional ethics rules might gain traction,¹⁵⁴ a story about a Member following the rules and paying congressional staff from campaign funds during their “own time” seems less likely to catch the public’s attention to the extent necessary to discourage this practice through electoral pressure.¹⁵⁵

When Members engage their congressional staff in their reelection campaigns—even during their staff’s “own time”—they not only exercise an unfair advantage over their opponents, but they also engage in a practice that weakens our democratic system. This practice, however, does not conflict with any applicable laws or the congressional ethics rules.¹⁵⁶ Courts will likely dismiss any judicial challenges to the rules themselves as nonjusticiable under the political question doctrine or for a lack of standing.¹⁵⁷ Further, attempts to draw media attention to the unfairness of this practice are unlikely to effectively discourage its use.¹⁵⁸ Therefore, Congress must enact an enforceable solution to impose additional limitations on congressional staff campaign activity. Doing so would limit the indirect flow of government resources into Members’ reelection campaigns and bolster democratic principles.

III. AN ENFORCEABLE LEGISLATIVE SOLUTION

The use of congressional staff in incumbents’ reelection campaigns—as long as it is uncoerced and occurs during a staffer’s

Matthew H. Goldberg & Cheryl L. Carmichael, *Language Complexity, Belief-Consistency, and the Evaluation of Policies*, 2 COMPREHENSIVE RESULTS SOC. PSYCH. 1, 1 (2017) (“Complex policy language is problematic for American voters because it can interfere with their ability to discern whether a message is consistent or inconsistent with their beliefs.”).

154. See, e.g., Melissa Nann Burke, *Ex-Staffer: Thanedar Leans on Congressional Staff to do Campaign Work*, DETROIT NEWS (Oct. 14, 2023, at 3:07 ET), <https://www.detroitnews.com/story/news/politics/2023/10/13/shri-thanedar-campaign-work-congress-ethics-rashida-tlaib-staff-adam-abusalah/71166139007/> [https://perma.cc/Y9HW-ZHV3] (reporting that Rep. Shri Thanedar (D-MI) has allegedly compelled his congressional staff to engage in campaign activities).

155. Indeed, the author could not locate any articles criticizing a Member’s use of congressional staff for campaign activity in accordance with the congressional ethics rules.

156. See *supra* Part II.A (explaining how the congressional ethics rules enable congressional staff to engage in campaign activity).

157. See *supra* Part II.C.1 (surveying case law and existing legal scholarship on the challenges of establishing standing and the general nonjusticiability of the rules of the legislative branch).

158. See *supra* Part II.C.2 (explaining why media attention is likely an insufficient method for curtailing the use of congressional staff in incumbents’ campaigns).

“own time”—does not violate any applicable laws or rules.¹⁵⁹ Therefore, a non-incumbent challenger cannot successfully contest this practice through the relevant committees’ enforcement proceedings, the public legal system, or pressure politics.¹⁶⁰ Given these circumstances, this Note proposes an enforceable legislative solution, rooted in FECA, that would reconceptualize this issue as a matter of campaign finance rather than congressional ethics, and place enforcement authority in the Federal Election Commission (FEC).

Part III begins with an overview of FECA and the FEC’s authority to enforce it. It then proposes a novel amendment to FECA that would prohibit incumbents from disbursing any campaign funds to congressional staff who are actively on the House or Senate payroll. Part III then proceeds with an analysis of the proposed amendment’s enforceability, and concludes with a discussion of several challenges that may arise should Congress adopt this proposal.¹⁶¹

A. THE FEDERAL ELECTION CAMPAIGN ACT

Enacted in 1971, FECA “closely reg[ulates] the activities of candidates, parties, private organizations, and individuals in raising and spending campaign money.”¹⁶² Among other things, this law establishes the permitted and prohibited uses of campaign funds by candidates seeking federal office.¹⁶³ In general, FECA permits candidates to use campaign funds for campaign-related expenses, and prohibits the expenditure of campaign funds for personal use.¹⁶⁴

159. See *supra* Part I.B.3 (summarizing campaign activity by congressional staff that is allowed under the House and Senate ethics rules).

160. See *supra* Part II.C (explaining the obstacles to challenging the House and Senate ethics rules on staff campaign activity).

161. See *infra* Part III.D (explaining and responding to potential challenges, including the possibility of more uncompensated work, the ability of staff to alternate between the campaign and official payroll, and the reluctance of Congress to enact this proposal).

162. Briffault, *supra* note 14, at 2083.

163. See 52 U.S.C. § 30114 (enumerating the permitted and prohibited uses of federal campaign funds).

164. See *id.* In practice, the FEC applies the “irrespective test” to determine whether a particular use of campaign funds is considered personal use. See *Personal Use*, FED. ELECTION COMM’N, <https://www.fec.gov/help-candidates-and-committees/making-disbursements/personal-use/> [<https://perma.cc/GJ9S-R7UN>] (last visited Sep. 10, 2025). Under this test, the FEC inquires whether “the expense would exist even in the absence of the candidacy or even if the officeholder were not in office.” *Id.* If in such case a certain expense would not exist, the FEC considers that expense to be personal. See *id.*

In addition, FECA, as amended, establishes the FEC, an independent regulatory agency with exclusive civil enforcement jurisdiction over FECA's provisions.¹⁶⁵ Because of its position as an independent agency, the FEC is not infected with the "club spirit" that hampers the House and Senate ethics committees' enforcement procedures.¹⁶⁶ Pursuant to FECA, any person may submit a complaint to the FEC if they believe that a party or entity covered by FECA has violated the Act.¹⁶⁷ Upon receiving a complaint or referral, the FEC notifies the respondent, offers the respondent an opportunity to submit a reply, and determines whether to pursue enforcement.¹⁶⁸ The FEC has three methods at its disposal for pursuing enforcement: its traditional enforcement method as established in FECA,¹⁶⁹ an Alternative Dispute Resolution (ADR) Program,¹⁷⁰ and an Administrative Fine

165. See *Introduction to Campaign Finance and Elections*, FED. ELECTION COMM'N, <https://www.fec.gov/introduction-campaign-finance/> [<https://perma.cc/RJ9G-PLK7>] (last visited Sep. 10, 2025) (noting that the FEC administers and enforces FECA, and has jurisdiction over campaign finance for house, senate, presidential, and vice presidential elections). See also 52 U.S.C. § 30106(b)(1) ("The [Federal Election] Commission shall have exclusive jurisdiction with respect to the civil enforcement of such provisions.").

166. See Kline, *supra* note 64, at 1004 ("A frequent explanation for the reluctance to discipline is the atmosphere within Congress. A 'club spirit' is a salient feature of Congress, producing great loyalty and a tendency to be supportive of other congressmen.") (citing Rhodes, *supra* note 64, at 373).

167. See 52 U.S.C. § 30109(a)(1) ("Any person who believes a violation of this Act . . . has occurred, may file a complaint with the Commission."); see also *Enforcing Federal Campaign Finance Law*, FED. ELECTION COMM'N, <https://www.fec.gov/legal-resources/enforcement/> [<https://perma.cc/XDY2-DT2E>] (last visited Sep. 10, 2025) ("Enforcement cases can come from audits, complaints, referrals or self-submissions."). *Cf. supra* Part I.C (explaining the challenges associated with submitting complaints to the House and Senate ethics committees).

168. See R. SAM GARRETT, CONG. RSCH. SERV., R44319, *THE FEDERAL ELECTION COMMISSION: ENFORCEMENT PROCESS AND SELECTED ISSUES FOR CONGRESS 5–6* (2015) (explaining the FEC's enforcement process).

169. See 52 U.S.C. § 30109(a) (establishing administrative and judicial practice and procedure for enforcement). The traditional enforcement method is a lengthy process typically utilized for complex and/or controversial matters. See GARRETT, *supra* note 168, at 2 (noting that the traditional enforcement method "may entail lengthy investigations or audits, protracted negotiations . . ., substantial civil penalties, or litigation—although the pace can vary depending on individual circumstances.").

170. The ADR Program, established by the FEC, seeks to achieve settlements prior to the Commission reaching any findings that a violation has occurred. See FED. ELECTION COMM'N, *GUIDEBOOK FOR COMPLAINANTS AND RESPONDENTS ON THE FEC ENFORCEMENT PRACTICE 23* (2012), <https://www.fec.gov/resources/cms-content/documents/policy-guidance/respondent/guide.pdf> [<https://perma.cc/M4PU-MWK9>] The ADR Program places an emphasis on remedial measures. See *id.* If the ADR Office and the respondent cannot reach a settlement, the FEC may pursue the case through the traditional enforcement method. See *id.* at 24. Complaints pursued under the ADR Program "typically are simpler and less controversial" than complaints pursued through the traditional enforcement method. GARRETT, *supra* note 168, at 4.

Program (AFP).¹⁷¹ Under the traditional enforcement method, if the FEC by majority vote determines that a violation has occurred, it may impose civil penalties through a conciliation agreement with the respondent.¹⁷² If a respondent fails to comply with the conciliation agreement or conciliation does not result in an agreement, the FEC may, by majority vote, authorize a civil action in federal court against the respondent.¹⁷³

B. PROPOSED LEGISLATIVE SOLUTION AND ITS EXPECTED RESULTS

To limit the practice—and, consequently, the financial advantage—of incumbents tasking their official employees with campaign activity during their “own time,” Congress should amend FECA to prohibit the disbursement of campaign funds to official congressional staff. This Note proposes amending 52 U.S.C. § 30114, which enumerates the permitted and prohibited uses of campaign funds, to read as follows:

(b) Prohibited Use

(1) In General

A contribution or donation described in subsection (a) [Permitted Uses] shall not be converted by any person to personal use *or disbursed to or for the services of any individual who is actively on the payroll of the United States House of Representatives or the United States Senate.*

. . .

(3) House and Senate Staff

For the purposes of paragraph (1), a contribution or donation shall be considered to be disbursed to or for the services of any individual who is actively on the payroll of the

171. The AFP is reserved for violations “involving (1) failure to file reports on time, (2) failure to file reports at all, and (3) failure to file 48-hour notices of contributions.” FED. ELECTION COMM’N, GUIDEBOOK FOR COMPLAINANTS AND RESPONDENTS ON THE FEC ENFORCEMENT PRACTICE, *supra* note 170, at 21.

172. *See id.* (“If the General Counsel and the respondent enter into a conciliation agreement, the written agreement becomes effective once it is approved by the affirmative vote of four Commissioners and signed by the respondent and the General Counsel.”).

173. *See id.* (“If the respondent violates the conciliation agreement, however, the Commission can sue to enforce the terms. . .”). *See also id.* (noting that if conciliation “does not result in an agreement,” the Commission can authorize a suit in federal court “by an affirmative vote of at least four members.”).

United States House of Representatives or the United States Senate if it is—

(A) disbursed directly to an individual on a date that falls within a House of Representatives or Senate pay period during which that individual received compensation from the House of Representatives and/or the Senate;

(B) disbursed directly to an individual for services rendered during a period that falls within a House of Representatives or Senate pay period during which that individual received compensation from the House of Representatives and/or the Senate; OR

(C) disbursed to a third-party entity for services and that entity, on the date of disbursement or the period during which services were rendered, employed an individual who received compensation from the House of Representatives or the Senate in a pay period that overlaps with the date of disbursement, the period during which the individual rendered services for the third-party entity, or the period during which the third-party entity rendered services for the disbursing entity.¹⁷⁴

This proposed amendment to FECA would end the legal practice of paying congressional staff additional salaries or stipends out of campaign funds to conduct campaign work on their “own time.”¹⁷⁵ In effect, Members could choose to pay staff from *either* official government funds or campaign funds, but not both at the same time. Under this legal regime, congressional staff would still be permitted to *volunteer* for their bosses’ campaigns during their “own time” so long as their volunteer activity is not coerced.¹⁷⁶ Because of its placement in FECA, this proposed rule

174. New or amended statutory language is represented in italicized text. Existing statutory language is represented in non-italicized text.

175. This new restriction would conflict with the current House and Senate ethics manuals, which permit paying staff to do campaign work on their “own time.” *See supra* Part I.B (summarizing what the House and Senate ethics rules consider to be allowable campaign activity by congressional staff). The House and Senate would be required to update their ethics manuals to reflect this change in the law.

176. *See* SENATE ETHICS MANUAL, *supra* note 11, at 140; HOUSE ETHICS MANUAL, *supra* note 6, at 145; *see also supra* Part I.B.3 (explaining that congressional staff are permitted to engage in uncoerced volunteer campaign activity pursuant to the House and Senate ethics rules).

would be subject to enforcement by the FEC,¹⁷⁷ which can impose civil penalties for violations.¹⁷⁸

Allowing congressional staff to engage in uncompensated voluntary campaign work does not entirely eliminate the incumbency advantage of engaging congressional staff in campaign activity.¹⁷⁹ However, this proposed amendment seeks to meaningfully curtail the practice that produces this advantage by eliminating the financial incentive that Members can offer their official staff in exchange for voluntary campaign work. This would reduce this practice to the extent that an incumbent would not be able to rely on congressional staff to handle substantial amounts of campaign work unless, of course, the incumbent happens to employ exceptionally passionate staffers who genuinely want to volunteer a significant amount of their “own time” for campaign activities.

As noted above, drawing the line between campaign and official activities is often challenging, if not impossible.¹⁸⁰ Recognizing the challenges of drawing this line, scholars have proposed the imposition of a strict separation between a Member’s legislative and campaign “staff and operations.”¹⁸¹ Such an approach, however, does not entirely escape the challenges of the difficult line-drawing inquiry between official and campaign activity.¹⁸²

177. See *Introduction to Campaign Finance and Elections*, *supra* note 165 (noting that the FEC administers and enforces FECA, and has jurisdiction over campaign finance for house, senate, presidential, and vice presidential elections). See also 52 U.S.C. § 30106(b)(1) (“The [Federal Election] Commission shall have exclusive jurisdiction with respect to the civil enforcement of such provisions.”).

178. See FED. ELECTION COMM’N, *GUIDEBOOK FOR COMPLAINANTS AND RESPONDENTS ON THE FEC ENFORCEMENT PRACTICE*, *supra* note 170, at 21 (“If the General Counsel and the respondent enter into a conciliation agreement, the written agreement becomes effective once it is approved by the affirmative vote of four Commissioners and signed by the respondent and the General Counsel.”).

179. See *supra* Part II.A (arguing that congressional staff involvement in campaign activity allows indirect government subsidization of incumbents’ reelection bids).

180. See *supra* Part I.A (explaining that it is difficult or, in some cases, impossible to draw the line between Members’ official and campaign activities).

181. See THOMPSON, *supra* note 110, at 75 (“Congress should consider prohibiting any office staff from working in their member’s campaign, even if ‘on leave.’”).

182. See *supra* Part I.A (explaining the difficulty of drawing a line between what is official and unofficial activity). It is not feasible for an incumbent’s campaign and legislative operations to be strictly separated when certain activities—such as marching in a town parade—could be considered official activity, campaign activity, or, perhaps, both at the same time. Thus, when a Member asks an official staffer to attend or prepare materials for an event that could be considered both an official and unofficial event, it is equally as challenging to determine whether the official staffer is engaging in official work, campaign work, or both.

This Note's proposal stops short of completely barring congressional staff from engaging in campaign activity, as enforcement of such a rule would require case-by-case inquiries into whether certain tasks are official duties or campaign activities. Instead, this proposal entirely bypasses this sort of inquiry by creating a bright-line rule which would require only a determination of whether an incumbent's campaign disbursed funds to congressional staff.

C. ENFORCEABILITY

Enforcing this proposed amendment would be straightforward, and its placement in FECA—rather than the congressional ethics rules—would avoid many of the enforcement challenges raised throughout this Note. The data needed to determine whether an incumbent has disbursed campaign funds to congressional staff is already reported publicly on a regular basis.¹⁸³ As presently enacted, FECA requires all House and Senate campaigns to file periodic disclosure reports with the FEC itemizing all disbursements that individually exceed \$200 or aggregate to over \$200 when combined with other disbursements to the same recipient during the same election cycle.¹⁸⁴ Each itemized disclosure must include the payee's name and address, as well as the purpose, date, and amount of the disbursement.¹⁸⁵ Similarly, the House and Senate regularly publish reports disclosing each Member's official expenditures, including a list of each Member's congressional staffers, the range of dates during which each staffer was on the House or Senate payroll, and the total compensation

183. See 52 U.S.C. § 30104(a)(2) (setting requirements for periodic disclosure reports). See also *Operating Expenditures*, FED. ELECTION COMM'N, <https://www.fec.gov/help-candidates-and-committees/filing-reports/operating-expenditures/> [https://perma.cc/7XRE-NVP4] (last visited Sep. 10, 2025) (summarizing when and how House and Senate campaigns must disclose expenditures). The House of Representatives files a quarterly Statement of Disbursements. See *Statements of Disbursements*, U.S. HOUSE OF REPRESENTATIVES, <https://www.house.gov/the-house-explained/open-government/statement-of-disbursements> [https://perma.cc/LT9X-QTS7] (last visited Sep. 10, 2025). Similarly, the Senate files a semiannual Report of the Secretary of the Senate. See *Report of the Secretary of the Senate*, U.S. SENATE, <https://www.senate.gov/legislative/common/generic/report/secsen.htm> [https://perma.cc/425U-CESU] (last visited Sep. 10, 2025).

184. See 52 U.S.C. § 30104(a)(2) (setting requirements for periodic disclosure reports). See also *Operating Expenditures*, *supra* note 183 (summarizing when and how House and Senate campaigns must disclose expenditures).

185. See *Operating Expenditures*, *supra* note 183.

they each received during the reporting period.¹⁸⁶ By comparing the FEC and House or Senate disclosure reports, any individual can determine whether an incumbent has paid congressional staffers to also conduct campaign activity during the staffers' "own time."¹⁸⁷ An individual can then report relevant findings directly to the FEC for further investigation.¹⁸⁸

In addition, this solution would avoid other enforcement issues raised throughout this Note that are obstacles within the current legal landscape. First, by simply prohibiting congressional staff from receiving compensation from campaign funds, this solution would avoid the need for the enforcement authority to distinguish between official and campaign activity,¹⁸⁹ a distinction that courts have previously refused to make.¹⁹⁰ Indeed, enforcement would not require an inquiry into whether the specific tasks that a staffer handled should be characterized as official or campaign work. Instead, the FEC could simply consult House and Senate payroll data and campaign disclosure reports to determine whether any campaign funds were disbursed to congressional staffers.

Second, this solution would move enforcement out of the House and Senate ethics committees' jurisdiction and into the jurisdiction of the independent FEC.¹⁹¹ Any proposal that leaves Congress with adjudicatory authority would risk lax enforcement as a result

186. The House of Representatives files a quarterly Statement of Disbursements. *See* U.S. HOUSE OF REPRESENTATIVES, *supra* note 183. Similarly, the Senate files a semiannual Report of the Secretary of the Senate. *See* U.S. SENATE, *supra* note 183.

187. In theory, an incumbent's campaign could choose not to report any itemized payments to the candidate's congressional staffers, but this would violate 52 U.S.C. § 30104.

188. *See* 52 U.S.C. § 30109(a)(1) ("Any person who believes a violation of this Act . . . has occurred, may file a complaint with the Commission."); *see also* *Enforcing Federal Campaign Finance Law*, *supra* note 167 ("Enforcement cases can come from audits, complaints, referrals or self-submissions."). The FEC can also commence an investigation "on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities." 52 U.S.C. § 30109(a)(2).

189. *See supra* Part III.B (explaining how this solution does not require its enforcing authority to engage in the difficult task of drawing a line between official and unofficial activity).

190. *See, e.g.,* *United States ex rel. Joseph v. Cannon*, 642 F.2d 1373, 1384 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 999 (1982) ("Indeed, the interpretation of the False Claims Act suggested by appellant would license the courts to monitor every action taken by a Senator and his aide in an effort to determine whether it is sufficiently 'official' or too 'political.'").

191. By placing this restriction within FECA, the FEC, pursuant to 52 U.S.C. § 30106(b)(1), has the authority to enforce it. Others have recommended moving enforcement of campaign ethics rules to an independent body. *See* THOMPSON, *supra* note 110, at 75 ("Rules on these matters should be enforced by the Federal Elections [sic] Commission or another independent body").

of the “club spirit” of Congress.¹⁹² But placing enforcement authority in the FEC would avoid that potential problem. Congress would need to act only once to implement this solution, rather than every time a violation occurs, which would be the case if Congress maintained enforcement authority. Further, enacting the necessary amendment to FECA would require Members to support nothing more than an abstract policy change that would not directly punish any specific colleagues.

Third, this solution would avoid issues of nonjusticiability, as it would never require courts to assess or interpret rules of the Legislative Branch. The proposed amendment to FECA would be codified in a statute that regulates campaign finance—not promulgated under the Rulemaking Clause as a rule of the Legislative Branch. Therefore, it would avoid issues of nonjusticiability under the political question doctrine, effectively bringing the critical issue it seeks to address within the realm of justiciable questions.

Fourth, this solution would avoid issues of standing. In *Schonberg*, the Court held that the plaintiff—a non-incumbent challenger—did not demonstrate a concrete injury, and thus, did not have standing to bring his claim.¹⁹³ Under this Note’s approach, non-incumbent challengers would not be required to identify a concrete injury to bring a complaint, as FECA already allows anyone—regardless of a showing of injury—to submit a complaint to the FEC alleging a violation of FECA.¹⁹⁴

Lastly, this solution would very likely withstand a First Amendment constitutional challenge. In 1973, the Supreme Court held that the Hatch Act, which at the time prohibited federal executive branch employees from actively engaging in political campaigns, did not violate the First Amendment.¹⁹⁵ This proposed

192. See *supra* Part I.C; Kline, *supra* note 64, at 1004 (discussing the “club spirit” in Congress that stands as a challenge to enforcing ethics rules).

193. See *Schonberg v. McConnell*, 2013 WL 6097890, at *2 (W.D. Ky. Nov. 20, 2013) (finding that the plaintiff did not have standing to bring his claim because he did not identify a concrete injury).

194. There are no restrictions on who can submit a complaint to the FEC, and doing so does not require a demonstration of injury. See 52 U.S.C. § 30109(a)(1).

195. See *U.S. Civ. Serv. Comm’n v. Nat’l Ass’n Letter Carriers*, 413 U.S. 548, 556 (1973) (“Our judgment is that neither the First Amendment nor any other provision of the Constitution invalidates a law barring this kind of partisan political conduct by federal employees.”); see also *id.* at 567 (“We agree . . . that plainly identifiable acts of political management and political campaigning on the part of federal employees may constitutionally be prohibited.”).

FECA amendment is less restrictive than the Hatch Act's prohibition which the Supreme Court deemed constitutional, as it would still allow congressional staff to engage in political activity so long as it is uncompensated. Therefore, this Note's solution would not violate the First Amendment under existing Supreme Court precedent.

D. POTENTIAL CHALLENGES

This Note's proposed solution may have adverse consequences and face feasibility and enforcement challenges. But, overall, the potential adverse consequences do not outweigh the benefits of this Note's proposed solution, nor do the feasibility and enforcement challenges stand in the way of enacting and properly enforcing it. Part III.D discusses these foreseeable consequences and challenges, and for each one, offers a response explaining why it would not negate the effectiveness of this Note's proposed solution.

1. *The Potential for More Uncompensated Campaign Work*

This Note's proposed FECA amendment could—if unchecked—lead to more incumbent candidates expecting or encouraging their congressional staff to engage in volunteer campaign work at no additional cost, as Members would be prohibited from paying their congressional staff out of their campaign funds.¹⁹⁶ This could occasionally create a greater financial advantage for incumbents' campaigns relative to their non-incumbent opponents, as incumbents' campaigns would no longer pay anything for this labor.

However, enforcement of the existing House and Senate ethics rules and the possibility of media attention would mitigate this vulnerability. First, compelling congressional staff to engage in campaign work is already a violation of the House and Senate ethics rules.¹⁹⁷ This Note's solution would limit the permissible

196. See SABATO & SIMPSON, *supra* note 102, at 213–14 (“Suggestions and requests, especially when they come from the top, are followed as a matter of course. Therefore, staff members tend to ‘volunteer’ when they are asked to ‘volunteer’ and retreat to the district when they are asked to retreat, even though campaigning has never been included in their job descriptions.”); see also Leonard et al., *supra* note 9 (“Some [congressional staffers] told Insider that they worked for offices that pressured them to volunteer after-hours without receiving any pay.”).

197. See HOUSE ETHICS MANUAL, *supra* note 6, at 145 (“[I]n no event may a Member or office compel a House employee to do campaign work.”); SENATE ETHICS MANUAL, *supra*

participation of congressional staff in campaigns to *uncompelled volunteer activity*. That means that significant uncompensated congressional staff activity in an incumbent's campaign would be subject to a higher level of scrutiny by the House and Senate ethics committees and the general public as to whether the work is truly uncompelled.¹⁹⁸ Further, disgruntled staffers who are compelled to engage in unpaid campaign work in violation of the congressional ethics rules may be more likely to raise complaints and cooperate with ethics investigations to determine whether the campaign work was, indeed, compelled.¹⁹⁹ As discussed above, the House and Senate ethics committees are not always effective at enforcing their own rules.²⁰⁰ However, under this solution, violations may be more visibly egregious, making it harder and more reputationally damaging for the House and Senate ethics committees to ignore this conduct.

Second, although relying exclusively on House and Senate ethics committee enforcement may still be inadequate,²⁰¹ media exposure and electoral accountability may, in this case, be an effective method to penalize Members for compelling their congressional staff to engage in campaign work.²⁰² While this Note posits that media exposure would be ineffective to curtail the use of a practice the House and Senate ethics rules permit,²⁰³ one can envision an effective news report shedding light on an incumbent candidate benefiting from significant campaign work from staff paid *exclusively* by the government in *violation* of the applicable ethics rules.²⁰⁴ Incumbents would reasonably fear that such a story could make voters perceive them as corrupt and, as such,

note 11, at 140 (“Staff may not be required to do political work as a condition of Senate employment.”).

198. For example, it may raise suspicions if a Member's official communications director takes on the role of campaign communications director in a fully volunteer capacity.

199. See, e.g., H.R. REP. NO. 112-642, at 2 (2012) (noting that Rep. Laura Richardson's staff were the first to inform the House Ethics Committee of her record of compelling staff to engage in campaign work).

200. See *supra* Part I.C.

201. See Kline, *supra* note 64 at 1004 (discussing the “club spirit” in Congress that stands as a challenge to enforcing ethics rules).

202. See SABATO & SIMPSON, *supra* note 102, at 318 (proposing media exposure as a method to enforce congressional ethics rules).

203. See *supra* Part II.C.2.

204. See Michael C. Stephenson, *Corruption and Democratic Institutions: A Review and Synthesis*, in GREED, CORRUPTION, AND THE MODERN STATE: ESSAYS IN POLITICAL ECONOMY 92, 94 (Susan Rose-Ackerman & Paul Lagunes eds., 2015) (“[T]here is considerable evidence that voters in fact dislike corruption and are less likely, all else equal, to support an incumbent perceived to be corrupt.”).

jeopardize their reelection chances.²⁰⁵ The threat of such a story would therefore help discourage Members from compelling their congressional staff to engage in uncompensated campaign activity.

2. *The Potential to Alternate Between the Campaign and Official Payroll*

Under this proposed amendment to FECA, staffers could still alternate between working for an incumbent's campaign and working for an incumbent's congressional office as long as they remove themselves from the House or Senate payroll during the periods for which they are engaged in paid campaign activity.²⁰⁶ This practice would still offer incumbents' the opportunity to hire campaign staff who, at the government's expense, have developed in-depth knowledge of the incumbent's state or district.²⁰⁷ Further, by prohibiting congressional staff from concurrently engaging in paid official and paid campaign work, this proposed solution could unintentionally incentivize staff to leave the official payroll to engage in full-time paid campaign work for the months preceding an election,²⁰⁸ especially because this period is typically the least busy time in Congress.²⁰⁹ Consequently, this could result in incumbents' campaigns receiving *more* full-time support from on-leave congressional staffers.

If this proves to be a problem, Congress could stop this practice with a minor statutory adjustment that would, in effect, prohibit

205. See, e.g., Myah Ward, *GOP Rep. Steven Palazzo Loses Primary Amid Ethics Cloud*, POLITICO (June 28, 2022, at 22:00 ET), <https://www.politico.com/news/2022/06/28/gop-rep-steven-palazzo-loses-primary-amid-ethics-cloud-00043056> [<https://perma.cc/7NV5-SUFN>] (reporting that then-Rep. Steven Palazzo (R-MS)—who was running for reelection—lost his primary after an ethics investigation found that he had misused campaign funds and tasked congressional staff with personal errands).

206. See *supra* Part III.B (proposing a solution that only restricts the disbursement of campaign funds to congressional staff *actively on the House or Senate payroll*).

207. See Leonard et al., *supra* note 9 (“After all, congressional staffers know their boss’ policy positions and the needs of their constituents.”).

208. A notable example of a staffer who left the state government payroll to engage in political activity is Joseph Percoco, who served as Executive Deputy Secretary to Governor Andrew Cuomo (NY). See *Percoco v. United States*, 598 U.S. 319, 322 (2023). In April 2014, Percoco resigned from his official role to manage Governor Cuomo’s reelection campaign. See *id.* at 323. In December 2014, after Governor Cuomo was reelected, Percoco returned to his official role. See *id.*

209. See, e.g., *2024 Congressional Calendar* (illustration Jan. 1, 2023), ROLL CALL <https://rollcall.com/app/uploads/2023/11/2024CQRCCongressionalCalendar.pdf> [<https://perma.cc/HSQ4-CZ24>] (overlying the 2024 House and Senate calendars). During the 66 non-holiday weekdays preceding the 2024 election, the House had only 14 scheduled in-session days, and the Senate had only 17 scheduled in-session days. See *id.*

staffers from alternating between the official payroll and campaign payroll for a set period of time before an election. Specifically, Congress could consider placing an additional restriction in 52 U.S.C. § 30114 (FECA) prohibiting any incumbent from disbursing campaign funds to congressional staff who have worked under that incumbent's supervision while receiving a salary from the official payroll at any point during a designated period—perhaps six months to a year—preceding that incumbent's upcoming primary or general election.²¹⁰ This added restriction could disincentivize temporary departures from the official payroll, as Members who rely on particular congressional staffers to assist with their official duties would likely be reluctant to release those staffers from their official roles for the entire pre-election restriction period.

Even without this expanded restriction, however, the solution proposed in Part III.B of this Note would—on its own—reduce the financial advantage incumbents currently enjoy from regularly using congressional staff for unofficial duties. While engaging in paid campaign work, staff would not be able to actively engage with the same issues on government time and then leverage that work to more efficiently conduct their campaign work.²¹¹ For example, a staffer who has left the House or Senate payroll could not spend an entire day—while collecting a government salary and benefits—studying an active labor dispute in her boss's district, then go home during her “own time” and quickly—while on the campaign's payroll—write a campaign speech leveraging the work that she did all day.²¹² Instead, the staffer would be required to do the entirety of the work while on the campaign's payroll. Further, staffers who agree to work for their bosses' campaigns could not concurrently receive a government salary and benefits.²¹³ So,

210. This restriction would apply to an incumbents' personal, committee, and leadership staff. It would not—and should not—apply to congressional staffers who seek to leave their official jobs to work for different candidates' campaigns. Such a restriction would unfairly limit a staffer's ability to seek other employment.

211. See *supra* Part II.A (explaining the way in which government funds indirectly subsidize incumbents' campaigns when congressional staff engage in campaign activity, even during their “own time”).

212. See *supra* Introduction (describing a hypothetical situation in which an incumbent candidate's government-paid press secretary spends 18 hours at the government's expense studying a labor dispute then during his “own time” writes a campaign speech on the same issue in only two hours).

213. The Senate Ethics Manual notes that “if the amount of time an individual continues to provide services to the Senate were to go too low . . . the arrangement could raise a question as to whether Senate benefits are being used for an individual whose benefits should more appropriately be paid by the campaign.” SENATE ETHICS MANUAL, *supra* note

incumbents' campaigns would need to employ these staffers with salaries and benefits on par with those that non-incumbents' campaigns pay their own staff. Consequently, incumbents would no longer maintain a financial advantage over their non-incumbent opponents by paying congressional staff a small campaign stipend or salary and relying on government salaries and benefits to supplement their staffers' relatively low campaign compensation.

3. *Congressional Inaction: A Potential Barrier to Enacting the Required Legislation*

The current rules offer Members a financial advantage over their non-incumbent challengers.²¹⁴ Is it realistic to believe that Congress—the only branch of government capable of enacting the proposed solution—would advance legislation prohibiting a practice that *helps* its Members?²¹⁵

Although this is a legitimate challenge to implementing this Note's proposed solution, it is not a complete barrier. A Congress composed of Members motivated purely by self-interest—as opposed to adherence to democracy and good governance—would likely not vote to impose additional restrictions on itself. But, Congress has previously enacted measures to limit practices that are advantageous to incumbents. For example, consider the current House and Senate ethics rules on campaign activity which prevent Members from tasking their congressional staff with campaign responsibilities while on government time.²¹⁶ These particular ethics rules are not constitutionally required, yet

11, at 140. By requiring staff to leave the House or Senate payroll to engage in paid campaign activity, this solution would end the flow of government-funded employment benefits to staff whose benefits “should more appropriately be paid by the campaign.” *See id.*

214. *See* Part II.A (explaining how the use of congressional staff in elections creates an electoral advantage for incumbents).

215. Nonjudicial remedies to punish ethics rules *violations* are often inadequate as Congress has a “vested interest” in using congressional staff in their campaigns. *See* Kline, *supra* note 64, at 1004 (citing JOHN HART ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* 103 (1981)). Applying this reasoning to the ethics rules themselves, it similarly seems likely that Members have a vested interest in maintaining ethics rules that enable practices that are advantageous to them.

216. *See* Part I.B.3 (summarizing the campaign activity by congressional staff that is permissible under the House and Senate ethics rules).

Congress has voluntarily restricted its Members' ability to utilize congressional staff in their reelection campaigns.²¹⁷

Consider also the Honest Leadership and Open Government Act (HLOGA), which became law in 2007.²¹⁸ Among other things, this law restricts Members from accepting gifts from lobbyists and expands disclosure requirements regarding earmarks (direct funding to projects in a Member's state or district).²¹⁹ Further, this law prohibits former representatives from lobbying Congress for one year after leaving the House, and former senators from lobbying Congress for two years after leaving the Senate.²²⁰ The HLOGA passed the House with a 411-to-8 vote, and subsequently passed the Senate with an 83-to-14 vote, thereby demonstrating that Congress is, indeed, capable of placing restrictions on itself.²²¹ Therefore, it is plausible that a Congress committed to good governance, a functioning democracy, and fair elections would be amenable to this Note's proposed solution.

4. *FEC Inaction: A Potential Barrier to Enforcing the Proposed Solution*

This Note's proposed solution relies on the ability of the FEC to enforce federal campaign finance laws.²²² The FEC has up to six

217. The Constitution grants Congress the authority to impose these rules. See U.S. CONST. art. I, § 5, cl. 2 ("Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member."). Yet, nothing in Article I of the Constitution *requires* Congress to adopt these rules. See *generally*, U.S. CONST., art. I (imposing no additional restrictions or requirements that could be interpreted to require the House and Senate ethics rules that prohibit congressional staff campaign activity while on government time).

218. See *Honest Leadership and Open Government Act of 2007*, FED. ELECTION COMM'N, <https://www.fec.gov/updates/honest-leadership-and-open-government-act-of-2007/> [<https://perma.cc/PP3Y-HXLS>] (last visited Sep. 23, 2025); Charles Babington, *Bush Signs Lobby-Ethics Bill*, WASH. POST (Sep. 15, 2007, at 5:54 ET), <https://www.washingtonpost.com/wp-dyn/content/article/2007/09/15/AR2007091500589.html> [<https://perma.cc/W8NS-GWWN>].

219. See *Babington*, *supra* note 218.

220. See *id.*

221. See *id.*; CRAIG HOLMAN & NICOLE LAZARIS, PUBLIC CITIZEN, DETAILED COMPARISON OF THE LOBBYING LAWS AND ETHICS RULES APPROVED BY THE 110TH CONGRESS 1 (2008), <https://www.citizen.org/wp-content/uploads/hloga-2007.pdf> [<https://perma.cc/7TNC-JRF3>] ("[HLOGA] was adopted by a vote of 411-to-8 in the House on July 31, 2007, approved by the Senate days later by a vote of 83-to-14 on August 2, and signed into law by the President on September 14, 2007").

222. Professor Richard Briffault argues that new campaign finance laws are "useless without an effective agency capable and committed to enforcing those laws." Richard Briffault, *We Need the FEC, and We Need It Now*, COLUM. NEWS: IN BRIEF (Oct. 9, 2019),

voting members, of which no more than three “may be affiliated with the same political party,”²²³ and requires a four-vote majority to fully engage in its rulemaking and adjudicatory powers.²²⁴ In the absence of a four-member quorum, the FEC’s capabilities are significantly limited.²²⁵ Since May 1, 2025, the FEC has lacked a quorum.²²⁶ Yet even when the FEC has its requisite four-member quorum, its design creates what one commentator has called an “institutional bias in favor of inaction.”²²⁷ This criticism often focuses on the FEC’s tendency to deadlock on votes along partisan

<https://news.columbia.edu/news/Federal-Election-Commission-Campaign-Finance> [<https://perma.cc/6PGY-9WT5>].

223. 52 U.S.C. § 30106(a)(1).

224. See 52 U.S.C. § 30106(c) (“[T]he affirmative vote of 4 members of the Commission shall be required in order for the Commission to take any action in accordance with paragraph (6), (7), (8), or (9) of section 30107(a) of this title. . . .”).

225. See Brian Svoboda and Antoinette M. Fuoto, *Federal Election Commission Loses Quorum*, PERKINS COIE (May 2, 2025), <https://perkinscoie.com/insights/update/federal-election-commission-loses-quorum> [<https://perma.cc/Y7HF-D8YV>].

226. See Daniel I. Weiner, *As of Thursday, the FEC Can’t Enforce Campaign Finance Laws—and That’s Only One of Its Problems*, BRENNAN CTR. FOR JUST.: ANALYSIS (May 2, 2025), <https://www.brennancenter.org/our-work/analysis-opinion/today-fec-cant-enforce-campaign-finance-laws-and-thats-only-one-of-its> [<https://perma.cc/TQC6-9FUG>]. On January 31, 2025, President Donald Trump penned a letter to Commissioner Ellen Weintraub declaring that he was removing her from the FEC, an action she immediately characterized as unlawful. See Andrew Howard, *Trump Ousted the Top Democratic Campaign Finance Regulator. She Says it’s Illegal*, POLITICO: POLITICS (Feb. 7, 2025, at 12:50 ET), <https://www.politico.com/news/2025/02/07/donald-trump-fec-commissioner-firing-014200> [<https://perma.cc/4N74-3E6W>]; Image posted by Ellen L. Weintraub (@EllenLWeintraub), X, *Received a letter from POTUS today purporting to remove me as Commissioner & Chair of @FEC. There’s a legal way to replace FEC commissioners-this isn’t it. I’ve been lucky to serve the American people & stir up some good trouble along the way. That’s not changing anytime soon.* (Feb. 6, 2025), <https://x.com/EllenLWeintraub/status/1887648967300694270> [<https://perma.cc/DV5M-ML8C>] (sharing President Trump’s January 31, 2025 letter purporting to remove Weintraub from the FEC). This reduced the number of commissioners on the FEC to four members. See Howard, *supra*. The FEC lost its requisite four-member quorum on May 1, 2025, following the resignation of Commissioner Allen Dickerson. See Fredreka Schouten, *Election Watchdog Loses its Enforcement Powers as Trump Seeks to Exert More Control over its Decisions*, CNN: POLITICS (April 30, 2025, at 1:38 ET), <https://www.cnn.com/2025/04/30/politics/federal-election-commissions-resignations-quorum> [<https://perma.cc/AZ22-ZPY3>].

227. See Note, *Eliminating the FEC: The Best Hope for Campaign Finance Regulation?*, 131 HARV. L. REV. 1421, 1431 (2018); see also Trevor Potter, *Money, Politics, and the Crippling of the FEC: A Symposium on the Federal Election Commission’s Arguable Inability to Effectively Regulate Money in American Elections*, 69 ADMIN. L. REV. 447, 448 (2017) (noting that Congress designed the FEC in this way to “ensure that the Commission enforced the law fairly toward all candidates and committees. . . .”).

lines.²²⁸ Indeed, in recent years, the FEC has developed a reputation of ineffectiveness.²²⁹

For several reasons, the FEC's tendency to deadlock along partisan lines may not stand as a complete barrier to enforcing this Note's proposed solution. First, this solution seeks to end a bipartisan practice—Democratic and Republican Members alike engage their staff in their reelection campaigns.²³⁰ Because this practice does not disproportionately favor one side of the aisle, commissioners may be more likely to find common ground in enforcement proceedings.²³¹ Second, enforcing this solution does not require complicated factual inquiries open to broad interpretation.²³² Instead, an inquiry would simply determine, based on public disclosures, whether a Member disbursed campaign funds to an individual who was concurrently on the payroll of the House or Senate.²³³ As such, a vote against enforcement, if motivated exclusively by partisan interests, may be

228. See *Eliminating the FEC*, *supra* note 227, at 1431 (noting that the structure of the FEC “facilitates the Commission’s often-criticized 3-3 deadlocks”).

229. See *id.* at 1421 (“In recent years, the FEC has come under increasingly harsh criticism for a perceived inability to monitor and to protect the nation’s campaign finance system.”); *We Need the FEC, and We Need It Now*, *supra* note 222 (“The [FEC] is often criticized for its ineffectiveness.”); Potter, *supra* note 227, at 448 (“In recent years, however, the FEC has changed to the point where, I believe, it can fairly be said that it has ceased to function as intended.”).

230. See, e.g., Fish, *supra* note 10 (indicating that nine Members from Colorado’s 10-Member congressional delegation disbursed campaign funds to their official staff in 2023, and of those nine, seven were Democrats and two were Republicans). See also Cushman, *supra* note 41 (reporting that Rep. Laura Richardson (D-CA) utilized her congressional staff for campaign purposes); H.R. Rep. No. 116-464, pt. 1, at 4 (2020) (finding that Rep. David Schweikert (R-AZ) utilized his congressional staff for campaign purposes).

231. Despite its tendency to deadlock, the FEC remains capable of backing bipartisan measures. See generally, e.g., FED. ELECTION COMM’N, FEDERAL ELECTION COMMISSION LEGISLATIVE RECOMMENDATIONS 2023 (2023) <https://www.fec.gov/resources/cms-content/documents/legrec2023.pdf> [<https://perma.cc/3XYL-YEXZ>] (unanimously supporting a slate of legislative recommendations, including an amendment to FECA to expand and strengthen the prohibition on the personal use of campaign funds). Indeed, on April 29, 2025, the FEC—the day before it lost its quorum—voted unanimously to impose a fine of \$68,000 on the campaign of Representative Maxine Waters. See Dave Levinthal, *FEC Fines Rep. Maxine Waters’ Campaign for Election Violations*, OPENSECRETS: NEWS & ANALYSIS (May 30, 2025, 5:07), <https://www.opensecrets.org/news/2025/05/fec-fines-rep-maxine-waters-campaign-for-election-violations/> [<https://perma.cc/VY8P-4FSW>]. The four commissioners—two Democrats and two Republicans—found that Waters’s campaign understated contributions and expenditures, accepted \$19,000 in campaign contributions above the legal limit, and improperly disbursed \$7,000 from a petty cash fund. See *id.*

232. See *supra* Part III.C (explaining that Congress and the FEC are already required by law to publicly release the data that is needed to determine whether a Member has violated this Note’s proposed solution).

233. See *supra* Part III.C (explaining that violations of this Note’s proposed solution would be apparent simply by comparing FEC and congressional payroll disclosures).

difficult for FEC commissioners to justify when the facts unequivocally support a finding that the respondent violated the law.

If, however, the FEC's partisan gridlock is motivated, as former FEC Chairman Trevor Potter argues, "not over whether to penalize one party's candidates or the other, but over whether to penalize *anyone*,"²³⁴ then enforcement of this Note's proposed solution will prove difficult under current conditions.²³⁵ Nevertheless, this proposed solution would still enshrine into our nation's campaign finance laws a much-needed restriction which would become enforceable once Congress either adjusts the FEC's structure,²³⁶ or, perhaps, designates a new enforcement model for FECA. Until then, if this solution is enacted and the FEC refuses to enforce it or lacks the requisite quorum to engage in enforcement action, challenger candidates could attempt to enforce it through media attention alleging violations of FECA.²³⁷

CONCLUSION

The House and Senate ethics rules proclaim to reflect "the basic principle that government funds should not be spent to help incumbents gain reelection."²³⁸ Yet the restrictions that these rules place on campaign activity by congressional staff do not fully adhere to this principle. By allowing congressional staff to engage in campaign activity during their "own time," government funds—albeit indirectly—can still subsidize incumbents' campaigns, creating a financial and informational disadvantage for non-

234. Potter, *supra* note 227, at 449.

235. This is especially true should the FEC remain without a quorum for an extended period of time.

236. In recent years, Members have introduced several bipartisan bills aimed at restructuring the FEC to reduce deadlocked votes. See, e.g., Restoring Integrity to America's Elections Act, H.R. 7497, 118th Cong. (2024) (restructuring the FEC to be a five-member Commission of which no more than two may be affiliated with the same political party).

237. See *supra* Part III.D.1 (explaining that media attention may be an effective method for countering Members' overt violations of campaign finance laws).

238. HOUSE ETHICS MANUAL, *supra* note 6, at 133 ("The laws and rules referenced in this section reflect 'the basic principle that government funds should not be spent to help incumbents gain reelection.'" (citing *Common Cause v. Bolger*, 574 F. Supp. 672, 683 (D.C. Cir. 1982)); SENATE ETHICS MANUAL, *supra* note 11, at 139 ("It is clear from the record that Congress has recognized the basic principle that government funds should not be spent to help incumbents gain reelection.'" (citing *Common Cause*, 574 F. Supp. at 683)).

incumbent challengers.²³⁹ This is a problem, both as a matter of fairness for non-incumbent challengers and for the strength and integrity of our democracy. To increase fairness and better align with the values underpinning our democratic system, the rules regulating congressional staff campaign activity must be adjusted to further reduce indirect government subsidization of incumbents' reelection campaigns.

While Members may not compel their congressional staff to engage in campaign activity, they can offer staff compensation from their campaign funds as an incentive to voluntarily do so.²⁴⁰ This Note proposes eliminating that incentive.²⁴¹ First, by limiting congressional staffers' engagement in campaign activity to uncompelled volunteer work, it seeks to reduce the degree to which incumbents' campaigns can benefit from congressional staffers' government-subsidized knowledge and expertise. Second, by reconceptualizing this issue as a matter of campaign finance and placing it in statute rather than the congressional ethics rules, this solution avoids issues of nonjusticiability and standing associated with the congressional ethics rules. Lastly, by moving enforcement authority to the FEC rather than the congressional ethics committees, this proposal circumvents the reluctance of Members to punish their own colleagues. As such, to further its goal to prevent the flow of government resources to incumbents' reelection campaigns, Congress should enact this Note's proposed amendment.

239. See *supra* Part II.A (explaining the advantage to incumbents of engaging their congressional staff in their campaigns).

240. See HOUSE ETHICS MANUAL, *supra* note 6, at 145 (“[House employees] are free to engage in campaign activities on their own time, as volunteers *or for pay*. . .”) (emphasis added); SENATE ETHICS MANUAL, *supra* note 11, at 140 (“Senate employees are free to engage in campaign activities on their own time, as volunteers *or for pay*. . .”) (emphasis added).

241. See *supra* Part III.B (proposing a solution to prohibit incumbents from disbursing campaign funds to staff who are actively on the House or Senate payroll).