

C A M P A I G N F O R

ACCOUNTABILITY

July 11, 2018

BY FAX: 202-226-0997

Omar Ashmawy
Staff Director and Chief Counsel
Office of Congressional Ethics
1017 Longworth HOB
Washington, D.C. 20515

RE: Request for Investigation of Rep. Devin Nunes

Dear Mr. Ashmawy:

Campaign for Accountability (“CfA”), a nonprofit, non-partisan organization, respectfully requests that the Office of Congressional Ethics (“OCE”) investigate whether Rep. Devin Nunes (R-CA) violated federal law and House ethics rules by failing to include information on his personal financial disclosure forms and accepting an impermissible gift.

Background

Alpha & Omega Winery LLC

According to his 2006 personal financial disclosure statement (PFD), Rep. Nunes purchased a stake in Alpha & Omega Winery LLC on February 1, 2006 for between \$50,001 and \$100,000.¹ Rep. Nunes’ exact ownership percentage is unknown; his PFD lists his position as “limited partner.”² The winery, located in Napa Valley, opened in 2006, the same year Rep. Nunes bought into it, hired well-known winemakers to blend its wines, and undertook major renovations to increase its capacity to handle several hundred visitors per day. Alpha & Omega has a staff of approximately 22 employees³ and its wines retail for \$44 to \$100 per bottle.

¹ Rep. Devin Nunes, Financial Disclosure Statement for Calendar Year 2006, May 15, 2007, available at http://pfds.opensecrets.org/N00007248_2006.pdf.

² *Id.*

³ LMR Rutherford Estate Winery, “Winery Comparison Analysis,” p. 3, prepared for Planning Commission Hearing, June 7, 2017, available at <https://services.countyofnapa.org/AgendaNet/DownloadDocument.aspx?type=PlanningAgenda&doctype=ATTACHMENT&id=42496>.

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Despite this apparent success, Rep. Nunes declared no income on his stake in Alpha & Omega Winery until 2013, during which he said he took in between \$1,001 and \$2,500.⁴ He reported the same income in 2014, and between \$2,501 and \$5,000 in 2015, 2016 and 2017.⁵

Phase 2 Cellars LLC

According to his 2015 PFD, Rep. Nunes bought shares of Phase 2 Cellars LLC, Alpha & Omega's sister winery in San Luis Obispo, for between \$50,001 and \$100,000 in 2015. As with Alpha & Omega, Rep. Nunes' exact ownership interest is unknown and he described the asset as a "Limited Partnership."⁶

On July 19, 2015, Rep. Nunes' wife, Elizabeth Nunes, received an email entitled "Phase 2 Cellars, LLC Subscription Documents" forwarded from the iPhone of someone whose name has been redacted.⁷ The original email, dated July 17, 2015, is from a law firm partner with several individuals at Alpha & Omega Winery copied.⁸ The email, addressed to "Soon-to-Be-Partner in Phase 2 Cellars," included the subscription agreement, investor suitability questionnaire, and signature page as attachments. The lawyer requested all paperwork by July 24, and noted funds were due by July 31, with closing on August 3.⁹ The signature page of the investor subscription agreement reveals that the minimum investor buy-in was a minimum of 10 units at \$20,000 per unit, or \$200,000.¹⁰

Despite the apparent requirement that investors purchase a minimum of 10 units at a cost of \$200,000, on his 2015 PFD Rep. Nunes reported making an investment of only between \$50,000 and \$100,000 on July 28, 2015.¹¹ The discrepancy between the minimum \$200,000 investment amount listed in offering documents and the value Rep. Nunes assigned to his stake in Phase 2 Cellars on his PFD raises questions about whether he either misreported his investment amount or was permitted to invest at a reduced rate.

The high cost of the investment also raises questions about how Rep. Nunes financed the purchase. According to his PFD for 2015, at the time of the purchase, Rep. Nunes' only reported

⁴ Rep. Devin Nunes, Amended Financial Disclosure Statement for Calendar Year 2013, September 4, 2014, available at http://clerk.house.gov/public_disc/financial-pdfs/2013/10004300.pdf.

⁵ Rep. Devin Nunes, Financial Disclosure Statement for Calendar Year 2014, May 14, 2015, available at http://clerk.house.gov/public_disc/financial-pdfs/2014/10005245.pdf; Rep. Devin Nunes, Financial Disclosure Statement for Calendar Year 2015, April 28, 2016, available at http://clerk.house.gov/public_disc/financial-pdfs/2015/10009889.pdf; Rep. Devin Nunes, Financial Disclosure Statement for Calendar Year 2016, May 11, 2017, available at http://clerk.house.gov/public_disc/financial-pdfs/2016/10015896.pdf; Rep. Devin Nunes, Financial Disclosure Statement for Calendar Year 2017, May 14, 2018, available at http://clerk.house.gov/public_disc/financial-pdfs/2017/10020954.pdf.

⁶ Nunes 2015 PFD.

⁷ Email from Unknown Individual to Elizabeth Nunes, June 19, 2015, available at <https://www.scribd.com/document/381865476/Sundale-Usd-pra-11>.

⁸ *Id.*

⁹ *Id.*

¹⁰ Phase 2 Cellars, LLC Series B Preferred Units Subscription Agreement, p. 10, available at <https://www.scribd.com/document/381865476/Sundale-Usd-pra-11>.

¹¹ Nunes 2015 PFD.

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interest-bearing asset was his investment in Alpha & Omega Winery (which had not been liquidated) and a Bank of America checking account containing no more than \$15,000.¹²

Given the common ownership of Alpha & Omega and Phase 2 Cellars, it is possible both wineries used similar investment agreements. If so, Rep. Nunes also may have misrepresented the value of his stake in Alpha & Omega Winery.

Vidonia LLC

Nowhere on any of his PFDs does Rep. Nunes list ownership of and investment in Vidonia LLC, a California financial holding company active between 2006 and 2009. Nevertheless, a Form D filed with the SEC in 2007 reveals that Rep. Nunes and his wife were one of nine couples listed as beneficial owners of Vidonia.¹³ Rep. Nunes' parents and brother and sister-in-law are also named co-investors.¹⁴ Vidonia's other investors include Tulare area dairy farmers.¹⁵

Vidonia's SEC filing named nine couple-investors whose purchases had an aggregate value of \$1 million, with the minimum investment for ownership (per couple) of \$125,000.¹⁶ Notably, if each of the nine couples had, in fact, invested \$125,000, the aggregate value should have been \$1,125,000. This suggests one of the named couples may not have paid the \$125,000.

Violations

Ethics in Government Act and False Statements

Title I of the Ethics in Government Act of 1978, as amended, 5 U.S.C. app § 101 *et seq.*, and House Rule 26 both require members of the House to file annual financial disclosure reports with the Clerk of the House. These reports must include, *inter alia*, "the source of items of earned income earned by a spouse from any person which exceed \$1,000" during the preceding calendar year. 5 U.S.C. app. § 102(e)(1)(A). Members are required to disclose "assets, financial interests, and investments."¹⁷ The House Ethics Manual specifies that the Ethics in Government Act mandates that PFDs "**must** disclose outside compensation, holdings, and business transactions, generally for the calendar year preceding the filing date."¹⁸

It is unlawful for any person to knowingly and willfully fail to report any information that person is required to report under the Ethics in Government Act. 5 U.S.C. app. § 104(a)(2)(A)(ii). Such a violation of the Ethics in Government Act is punishable by a civil penalty of up to \$50,000. 5 U.S.C. app. § 104(a)(1). Deliberately failing to include information or including inaccurate

¹² *Id.*

¹³ Vidonia, LLC, *Form D, Notice of Sale of Securities*, p 2, May 9, 2007, available at <https://www.sec.gov/Archives/edgar/vpr/0705/07054106.pdf>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ House Comm. on Official Standards, *House Ethics Manual*, p. 251, 110th Cong., 2d Sess (2008 ed.).

¹⁸ *Id.*

information on a PFD may rise to a felony under the False Statements Act, punishable by up to five years' imprisonment.¹⁹

If Rep. Nunes knowingly and willfully falsely described his assets or investments in Alpha & Omega, Phase 2 Cellars, and/or failed to report his investment in Vidonia, and/or if he failed to include loans or gifts he received that allowed him to make any of those investments, he may have violated federal criminal law each year he filed an inaccurate PFD.

Gift and Disclosure Rules

Rule 25, clause 5(1)(A)(i) of the House rules states that "a Member, Delegate, Resident Commissioner, officer, or employee of the House may not knowingly accept a gift except as provided in this clause."²⁰ The rules define "gift" to mean "a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value."²¹

While members and staff may accept gifts on the basis of personal friendship, no gifts valued at over \$250 may be accepted on this basis absent a written determination by the Committee on Standards of Official Conduct.²² Further, in calendar year 2015, the donor, description and value of any gifts of over \$375 from a single source must be disclosed on a members' personal financial disclosure statement.²³

Rule 25, clause 5(a)(3)(R)(ii) allows Members, officers, and employees to accept opportunities and benefits that are "offered to members of a group or class in which membership is unrelated to congressional employment."²⁴

If Rep. Nunes was permitted to invest only between \$50,000 and \$100,000 in Phase 2 while other investors were required to invest a minimum of \$200,000, he may have accepted an improper gift in violation of House rules. If, however, Rep. Nunes actually invested \$200,000 in Phase 2, then it appears he may have willfully violated disclosure rules as on his PFDs for 2015, 2016, and 2017, he valued the investment at between \$50,000 and \$100,000.

Similarly, the Form D filed with the SEC indicates that, at least in 2007, Rep. Nunes had a minimum of \$125,000 invested in Vidonia. Yet his 2007 PFD lists investments for the year only as an AG Edwards savings account, valued at between \$15,000 and \$50,000, his Alpha & Omega Winery limited partnership, valued at between \$50,000 and \$100,000, and a Bank of

¹⁹ 18 U.S.C. 1001.

²⁰ Rules of the House of Representatives, 114th Congress, p. 42, *available at* <http://clerk.house.gov/legislative/house-rules.pdf>.

²¹ House Rule 25, clause 5 (a)(2)(A).

²² House Rule 25, clause 5(a)(5).

²³ House Committee on Ethics, Instruction Guide: Financial Disclosure Statements and Periodic Transaction Reports, Calendar Year 2015, p. 34, *available at* https://ethics.house.gov/sites/ethics.house.gov/files/CY%202015%20Instruction%20Guide%20for%20FD%20Statements%20and%20Periodic%20Transaction%20Reports%20%281%20of%20%29_1_0.pdf.

²⁴ House Rules, p. 43.

America savings account, valued at between \$1,000 and \$15,000.²⁵ Each year that Rep. Nunes maintained an investment in Vidonia, but failed to report it would constitute a violation of disclosure rules.

Alternatively, if Rep. Nunes did not personally invest in Vidonia, it appears he may have received a gift valued at \$125,000, which he would have been required to report. Further, if Rep. Nunes did not use his own money to invest in Vidonia, but nevertheless became an investor in it, the question is why Vidonia's other investors would have covered the purchase price for the congressman, and whether, in exchange, Rep. Nunes might have used or at least planned to use his position to as a member of Congress to benefit Vidonia and its other shareholders.

House Rule 23

Rule 23 of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”²⁶ This ethics standard is considered to be “the most comprehensive provision” of the code.²⁷ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.²⁸ This rule has been relied on by the ethics committee in numerous prior cases in which the committee found unethical conduct including: the failure to report campaign contributions,²⁹ making false statements to the committee,³⁰ criminal convictions for bribery,³¹ or accepting illegal gratuities,³² and accepting gifts from persons with interest in legislation in violation of the gift rule.³³

²⁵ Rep. Devin Nunes, Personal Financial Disclosure Form for Calendar Year 2007, May 14, 2008, available at http://clerk.house.gov/public_disc/financial-pdfs/2008/8135963.pdf.

²⁶ Rule 23, cl. 1.

²⁷ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 12.

²⁸ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

²⁹ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

³⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

³¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

³² House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

³³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

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First, based on his PFDs, Rep. Nunes does not appear to have had the income necessary to allow him to invest in Alpha & Omega Winery and/or Phase 2. This suggests that Rep. Nunes either has not revealed the full extent of his assets as required by law and House rules, or has received financial assistance to make these expensive investments. If the latter is true, Rep. Nunes may have received loans or gifts he impermissibly failed to disclose.

Further, assuming arguendo that Rep. Nunes does have the assets to sustain these investments, he does not appear to have accurately disclosed them. In the case of Phase 2, Rep. Nunes either deliberately under-disclosed the investment, or failed to disclose the gift he received in being permitted to invest a lesser amount of money than other investors. While CfA has not been able to review the Alpha & Omega subscription agreement, it is possible that agreement also includes a minimum investment Rep. Nunes failed to meet. If this is true, and he was permitted to invest a lesser amount because of his position in Congress, he violated the gift rules.

Finally, Rep. Nunes appears to have willfully failed to disclose in at least 2007 and likely beyond, his investment in Vidonia. In addition, Rep. Nunes may have received a gift of shares in Vidonia, which he also failed to report. By failing to follow federal law and House disclosure rules, Rep. Nunes has acted in a manner that does not reflect creditably on the House.

CfA looks forward to your prompt investigation of this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan E Stevens", with a long horizontal flourish extending to the right.

Daniel E. Stevens
Executive Director

cc: AnnaLou Tirol
Acting Chief, Public Integrity Section
Department of Justice