

State Representative
KC BECKER
Colorado State Capitol
200 East Colfax Avenue, Room 307
Denver, Colorado 80203
Office: 303-866-2578
KCBecker.house@state.co.us



MAJORITY LEADER
Member:
Executive Committee of
Legislative Council
Legislative Council
Committee

COLORADO
HOUSE OF REPRESENTATIVES
STATE CAPITOL
DENVER
80203

Investigation of Complaints Against Representative Steve Lebsock

I. Recommendation for Expulsion

After reviewing the Investigation Report (“Report”) prepared as the result of an investigation conducted in response to multiple allegations of sexual harassment against Representative Steve Lebsock (“Rep. Lebsock”), the investigator’s findings of facts, and Rep. Lebsock’s actions in the course of this process, it is my recommendation that the Colorado House of Representatives expel Rep. Lebsock from its membership. This recommendation is based on the Report, which demonstrates a pattern of offensive and objectionable conduct in violation of the Workplace Harassment Policy of The General Assembly, as well as Rep. Lebsock’s antagonistic and retaliatory behavior toward parties involved in the investigation preceding and during the investigative process. The investigation involved complaints from five women including 11 allegations of workplace harassment, ten of which were allegations of sexual harassment and one of which was an allegation of retaliation. After considering the totality of these circumstances, I concluded that Rep. Lebsock’s behavior reflects a pattern of behavior that is extraordinarily unbecoming of an elected official and merits his removal from the Colorado House of Representatives.

II. Background

On November 10, 2017, Complainant A publicly alleged that, in May 2016, Rep. Lebsock sexually harassed her at the annual Sine Die party at Stoney’s Bar in Denver.¹ That same day, Rep. Lebsock issued a statement apologizing for his conduct and encouraged Complainant A, as well as “any anonymous accusers,” to file formal complaints through the harassment complaint process established by the Workplace Harassment Policy of The Colorado General Assembly (“the Policy”).² Rep. Lebsock made another statement to the news media indicating he did not

¹ See <http://www.kunc.org/post/lawmakers-and-lobbyists-accuse-steve-lebsock-sexual-harassment->

² Statement released to the media and also on Rep. Lebsock’s State Treasurer Campaign webpage: <https://www.stevelebsockforcolorado.com/press-release-1/#pressreleases>, The General Assembly’s Workplace Harassment Policy and Joint Rule 38, can be found on the Colorado General Assembly website at: <https://leg.colorado.gov/sites/default/files/workplace-harassment-policy.pdf>

remember the statements made to Complainant A at the Sine Dine party. Two additional complainants – Complainant D and Complainant E – made public allegations of sexual harassment against Rep. Lebsock the same day.³

On November 11, 2017, Rep. Lebsock issued a second statement apologizing for his actions.⁴ On November 13, 2017, Complainant A filed a formal complaint under the Policy against Rep. Lebsock. On November 14, 2017, Rep. Lebsock made several statements to the public and news media asserting that he did not sexually harass anyone and alleging blackmail.⁵ Later that day on November 14, 2017, Complainant E filed a formal complaint under the Policy against Rep. Lebsock.

III. Investigation Process

I entered into an agreement with Employers Council, Inc.⁶ on November 21, 2017 to conduct an investigation of claims against Rep. Lebsock. The scope of issues for investigation expanded as additional complainants came forward and new issues were presented. As part of the fact-gathering process, nineteen persons were interviewed, including four separate interviews with Rep. Lebsock and two separate interviews with Complainant A.

Each participant was informed of the investigator's purpose in this process, which is to conduct an appropriate investigation – one that is prompt, impartial, and thorough. Participants were asked to assist the investigator in drafting individual summary statements intended to represent their individual perspectives accurately. All participants were informed of expectations of confidentiality as appropriate, the prohibition against retaliation for initiating the investigation or participating in the investigation, and the expectation that he or she provide complete and truthful information. Interviews concluded with the participant's opportunity to modify his or her statement to support accuracy and veracity as attested to by his or her signature. Interviews included people whom the Complainants and Rep. Lebsock identified as relevant to the investigation.

³ See, e.g., <https://coloradopolitics.com/rep-lebsock-issues-another-apology-woman-accusing-sexual-misconduct-say-not-enough/>

⁴ Statement released to the media and also on Rep. Lebsock's State Treasurer Campaign webpage: <https://www.stevelebsockforcolorado.com/press-release-1/#pressreleases>.

⁵ Rep. Lebsock held a press conference at 1pm on November 14, 2017, during which he made these statements; see, e.g., <https://www.denverpost.com/2017/11/14/steve-lebosck-blackmail-sexual-harassment-allegations/>

⁶ Employers Council, Inc. provides professional services including training, legal advice, and human resource expertise to over 4,000 employers in Colorado including the General Assembly.

For each of the several allegations the investigator reached findings using the preponderance of evidence standard. This is the standard of proof applied in most civil court cases addressing equal employment opportunity matters. A preponderance of evidence means that a version of facts or causes is deemed more likely than not the correct version. Due to the nature of the complaints, the investigator identified a need to determine credibility of the complainants and the accused in order to reach a finding based on a preponderance of evidence. The findings employ the language, "more likely than not," or its counterpart, "less likely than so."

IV. Summary of Findings

1. The investigator finds it more likely than not that that at approximately 12:30 am on May 12, 2016, Representative Steve Lebsock made multiple unwelcome statements to Complainant A in his pursuit of a sexual encounter during conversation at Stoney's Bar and Grill for the annual Sine Dine party after learning Complainant A's husband was away, including: "Oh so you don't have any plans tonight then? Well you know it is the end of session and we really should be happy. If you came with me right now I could make you happy and do things to you that your husband wouldn't." In response to her declining, he said, "Come on [Complainant A], you don't even know how happy I could make you. How hard I could make you come," to which she said, "Steve, you are drunk. Go home," and he replied, "You know you would love to leave with me. I know you could do things to make me really happy too." Complainant A next said, "Steve, go home to your girl-friend," and he replied, "Come on, just leave with me. Make me happy," to which she said, "No, Steve. Leave me alone," and he repeated, "Come on just make me happy," before he stumbled after reaching for her elbow.
2. The investigator finds it more likely than not that Rep. Lebsock tried to grab Complainant A's elbow following his alleged remarks during the same interaction with her.
3. The investigator finds it more likely than not that Rep. Lebsock touched Complainant A's lower back or upper buttocks area as a result of him stumbling into her during the same interaction with her.
4. The investigator finds it more likely than not that that on July 1, 2017, as the two were getting into their cars after a meeting, Rep. Lebsock said to Complainant B "Don't you need a fuck buddy? I need a fuck buddy."
5. The investigator finds it more likely than not that, while meeting with Complainant C in his office during the 2015 Session, Rep. Lebsock said to her, "Would you fuck me?" and she confirmed to the investigator that he was asking her to have sex with him.

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6. The investigator finds it more likely than not that Rep. Lebsock approached Complainant D at the Colorado Young Democrats after-party in April 2014, and told her that she looked, “really, really great” in her dress while staring at her chest, and then added, “No, your breasts look great in that dress.”
7. The investigator finds it more likely than not that Rep. Lebsock approached Complainant D during an event hosted by the Colorado Young Democrats on March 24, 2015, and unbuttoned the top button of her shirt and said, “That’s better,” before Complainant D slapped his hand away and then turned away while Rep. Lebsock laughed in response.
8. The investigator finds it more likely than not that while having lunch with Complainant E near the Capitol, Rep. Lebsock raised the subject of them “fucking,” to which she replied, “No that’s off the table,” and he responded, “It doesn’t have to be on the table.”
9. The investigator finds it more likely than not that while sitting on a bench with Complainant E outside the Capitol Building in the spring of 2016, Rep. Lebsock said something about her about looking almost perfect, but needing to shave the top part of her legs.
10. The investigator finds it more likely than not that Rep. Lebsock approached Complainant E at a CLAW caucus event on April 20, 2017, and remarked, “Man, your hair is gray.”
11. The investigator finds it more likely than not that Rep. Lebsock has threatened to sue Complainants A and D. The investigator further finds it more likely that not that Rep. Lebsock has discussed the allegations of Complainants A, D and E publicly and released information publicly in direct response to their complaints.

I find that the investigator’s findings are sufficiently well reasoned: Rep. Lebsock’s denials are not credible and his arguments that the complainants lied and are lodging a coordinated and politically motivated series of complaints are unpersuasive. The investigator indicates that it does not make sense for the women to raise false complaints under the circumstances given the absence of any common or individual motive to lie in combination with the inherent challenges of the investigation process. Rep. Lebsock’s theory of a campaign to impugn him under these circumstances is not supported.

Recurrent themes include the absence of any apparent motivation to lie for the individual complainants, including Complainant A. Rather than anything to gain by advancing complaints against Rep. Lebsock, it was more apparent that each woman suffered for the process. Conversely, the investigator identifies Rep. Lebsock’s strong motivation to protect his legislative seat amidst calls for his resignation, repeatedly communicated throughout the process as Rep. Lebsock’s commitment to expose what he calls false claims. Also, in the absence of

contemporaneous observers or a direct witness to the alleged conduct, the investigator observes the similar nature and crassness of the language attributed to Rep. Lebsock as lending credence to the allegations brought forth by Complainant B, Complainant C, and Complainant E. Similarly, the investigator notes what presents as a pattern of inappropriate sexual comments toward women.

V. Rep. Lebsock's actions violate the General Assembly's Workplace Harassment Policy

Joint Rule 387 states that "workplace harassment means any harassment based on [...] sex [...] including verbal or physical behavior or conduct [...] that has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment."

It also states that for purposes of this Joint Rule, "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when [...] such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

The Policy goes on to state that, "no person will be subject to retaliation for having complained of workplace harassment or for having assisted or participated in an investigation of alleged workplace harassment."

Given the investigator's findings, I have determined that Rep. Lebsock has demonstrated a pattern of behavior that constitutes workplace harassment generally, and sexual harassment specifically. His actions included both verbal and physical behavior. These actions took place while he was a legislator and they relate to the legislative work environment. These interactions interfered with the complainants' ability to perform their work and they created an intimidating, hostile, and offensive work environment. Rep. Lebsock is in a position of power and authority. Each of these women relied on their working relationships with legislators to effectively perform their jobs. Unwelcome sexual advances adversely impact those working relationships. Rep. Lebsock made several sexual advances and requests for sexual favors that unreasonably interfered with the legislative work environment and the work performance of the individuals involved.

Rep. Lebsock's actions toward Complainant B, although they do not fall under the workplace harassment Policy because the woman did not work at the capitol, are still consistent with a

⁷ <http://leg.colorado.gov/house-senate-rules>

pattern of behavior during his time as a legislator that is demeaning, inappropriate, intimidating, intrusive, and offensive. Therefore they are relevant for inclusion here.

Rep. Lebsock used his position of authority and influence to ask for sexual favors. These actions not only violate the Policy, but are extraordinarily unbecoming of a state legislator. Together, these allegations reflect a pattern of disturbing and offensive behavior of a sexual nature attributed to Rep. Lebsock sufficient to warrant a recommendation of expulsion.

VI. Rep. Lebsock Retaliated Against the Complainants

I also have determined that prohibited retaliation under the Policy has occurred.

The investigator finds that Allegation 11 is credible and therefore Rep. Lebsock did threaten to sue Complainant A and Complainant D and that he did reveal confidential personal information, not previously made public, about complainants during the course of the investigation explicitly intended to embarrass the complainants and undermine their credibility.

While an investigation into sexual harassment allegations should give the responding party the opportunity to defend him or herself, retaliation prohibitions encompass actions that would dissuade a reasonable person from making a charge of discrimination or participating in an investigation of such alleged conduct. Rep. Lebsock in several venues, at several times, shared personal information about the complainants and their allegations publicly and without their consent. I find that the investigator's finding supports a conclusion that Rep. Lebsock did retaliate against the complainants and his actions were intended to dissuade a reasonable person from making a charge against him under the Policy.

VII. Additional Concerns

In addition to the findings made in the Report, other actions taken by Rep. Lebsock also lead me to recommend that he be expelled from the Colorado House of Representatives. At several times while the investigation was being conducted, Rep. Lebsock went on the offensive and, in some instances, went beyond what should be tolerated as an appropriate defense of his character in response to sexual harassment allegations.

For example, in response to Rep. Lebsock's statements to the press that he would release detailed information about the complainants and their complaints, on December 14, 2017, I sent Rep. Lebsock a letter stating, "...this release could be construed as retaliation under the Workplace

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Harassment Policy.”⁸ As discussed above, and despite being warned, Rep. Lebsock went on the offensive and published a 28-page dossier⁹ (“the Dossier”) exposing detailed allegations and personal information against the women who had filed complaints against him.

Two days before the beginning of the 2018 legislative session, on January 8, 2018, Rep. Lebsock distributed the Dossier to all of the members of the House of Representatives and to members of the news media containing his allegations that, *inter alia*, he had been treated unfairly during the investigation process and that Complainant A and the other women who had filed formal complaints against him were all lying.¹⁰ In the Dossier, Rep. Lebsock also alleged that the allegations against him were politically motivated.¹¹ The same day, Rep. Lebsock sent an email to me explaining his belief that Complainant A was lying based on alleged discrepancies in her formal complaint.¹² On January 10, 2018, Rep. Lebsock then released a campaign video entitled “The true story of Colorado State Rep Steve Lebsock and the false allegations against him.”¹³

Similarly, on December 16, 2017, Rep. Lebsock sent an email to me, stating his belief that the investigation into the complaints against him is tarnished and that he plans to “expose all the false allegations.”¹⁴ This statement crosses the line from defending himself to threatening to publicly discredit and impugn people involved in the complaints.

Other actions show Rep. Lebsock’s threat to disclose perceived misconduct completely separate from the subjects of the investigation and demonstrate an attempt to manipulate the process. For example, Rep. Lebsock sent me a text message on January 1, 2018, that reads in pertinent part:

...[Complainant A] has to resign. If she does not withdraw her complaint I am going to expose everything. EVERYTHING I know about the democrats involved who have been complicit. [Complainant A] was drinking in the Asst. Majority Leaders Office while we were doing floor work on Sine Die in 2016. If she does not withdraw the complaint I am going to expose that too.... K.C. You know that was going on too. She must withdraw complaint or resign. If she does neither I reveal everything I know to the press

In an email to me dated January 8, 2018, and in statements made to the press, Rep. Lebsock also indicated that two unidentified attorneys wanted to file defamation lawsuits on his behalf.¹⁵

⁸ Workplace Harassment Policy of the General Assembly, G.1.

⁹ <https://coloradopolitics.com/lebsock-releases-manifesto/>

¹⁰ See dossier of documents sent to House members, dated December 14, 2017

¹¹ *Id.*

¹² Personal correspondence between Rep. Lebsock and Maj. Leader Becker

¹³ See <https://www.youtube.com/watch?v=0erxh3n-KV4>

¹⁴ Personal correspondence between Rep. Lebsock and Maj. Leader Becker

¹⁵ *Id.*

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Again, this statement goes beyond providing a response to the allegations, and constitutes an overt threat to the complainants.

Likewise, in a February 2018 email to me and to the investigator, Representative Z describes an aggressive and intimidating interaction with Rep. Lebsock. As described by Representative Z, after giving a radio interview on January 12, 2018, Representative Z described approaching Rep. Lebsock on the floor of the House the next morning to let him know he responded to a question about the investigation and said that he did his best to answer it in a way not to inflame the situation. Representative Z states:

Rep. Lebsock was visibly upset and thought my facts were off during the radio interview regarding when the Uber bill passed the House (relevant because he would never take an Uber). I replied I didn't think it was appropriate to have a long conversation about the incident and a dispute of the facts on the floor. When I was getting ready to walk away from his desk, he said "I'm going to take you down. I'm going to take you all down." I turned my back to walk down the center aisle and he repeated, "I'm going to take you down, [Z]."

Although Rep. Lebsock's conduct throughout the course of this investigation process reflects a pattern of deflection and an antagonistic posture, these specific examples go further - to demonstrate inappropriate attempts to threaten and intimidate in order to influence the proceedings and outcomes of the investigation. They are distinct from various examples of Rep. Lebsock's public claims that his accusers are presenting false claims, including the distribution of the Dossier. These actions cross the line of what could be considered reasonable actions in defense of one's character.

These actions of intimidation impugn the reputation and integrity of the House of Representatives as a whole, not just that of Rep. Lebsock. Therefore, they contribute to my determination that the appropriate response is expulsion.

VIII. Complaints Filed by Rep. Lebsock

Rep. Lebsock brought concerns to me about the investigation at multiple points during the investigation, and filed several complaints during the process. In fact, he filed several complaints with me during this investigation process. I attach to this memo each of his written complaints and my written responses to Rep. Lebsock so that members have the opportunity to review his concerns. I expect and respect Rep. Lebsock's right to defend himself and to challenge any part of the process he sees as unfair. And I gave Rep. Lebsock's complaints due consideration and notice of my findings regarding his claims.

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The summaries of my letters to Rep. Lebsock are as follows:

1. Letter dated December 14, 2017 – In response to Rep. Lebsock’s inclination to release sensitive information. This letter informed him that the release of sensitive information during the course of the investigation could be construed as retaliation under the Policy.
2. Letter dated February 14, 2018 – In response to Rep. Lebsock’s request for a determination on the jurisdiction of the General Assembly to investigate the complaints lodged against him on the basis that they did not occur on Capitol grounds. This letter enumerates that the complaints do fall within the scope of the Policy as the Policy does not explicitly state where the incidents must occur, rather the environment created in the workplace as a result of specific behavior(s).
3. Letter dated February 15, 2018 – In response to Rep. Lebsock’s claims of bias and retaliation from the investigator, and his complaint against Complainant A that she was in violation of section J of the Policy by filing a false complaint. This letter states that the claims against the investigator are not persuasive. Furthermore, the letter indicates that a determination on the factuality of Complainant A’s allegations will be reserved until the conclusion of the investigation into complaints against Rep. Lebsock.
4. Letter dated February 26, 2018 – In response to Rep. Lebsock’s concerns that I said in my February 15, 2018, letter to him that Rep. Lebsock wanted the investigation “stopped.” This letter said that based on numerous statements that Rep. Lebsock made to me that implied as much, it was reasonable for me to assume that Rep. Lebsock wanted the investigation stopped. In the letter I also apologize to Rep. Lebsock if I misunderstood his intention.

IX. Conclusion

Given the persuasive weight of evidence against Rep. Lebsock, I determine that Rep. Lebsock is untruthful in his blanket denial of the various claims made against him. I find that his actions reflect a disturbing pattern of behavior regarding his interactions with women, that these actions are an abuse of his elected office, and that they merit the removal of Rep. Lebsock from his office by expulsion from the House of Representatives.

Signed February 27, 2018,


KC Becker
House Majority Leader