



# FACT

FOUNDATION FOR  
ACCOUNTABILITY  
AND CIVIC TRUST

April 4, 2023

Omar Ashmawy  
Chief Counsel  
Office of Congressional Ethics  
U.S. House of Representatives  
425 3rd Street, S.W., Suite 1110  
Washington, DC 20024

Email: [oce@mail.house.gov](mailto:oce@mail.house.gov)

RE: Rep. Wiley Nickel (NC-13)

Dear Mr. Ashmawy,

The Foundation for Accountability and Civic Trust (FACT) is a nonprofit organization dedicated to promoting accountability, ethics, and transparency in government and civic arenas. We request the Office of Congressional Ethics (OCE) immediately investigate whether Representative Wiley Nickel has used a social media account in violation of House rules and abused official resources for political purposes.

TikTok is a social media company owned by the Chinese company ByteDance Ltd, which has raised U.S. government concerns that users' data could be given to China's authoritarian government.<sup>1</sup> In 2018, after another Chinese app "Neihan Duanzi" was shut down by China's State Administration of Radio and Television, the app's CEO (and ByteDance's current CEO), Zhang Yiming, released a public apology because the company "veered off course" by going against "core socialist values," and "did not do a thorough job in guiding public opinion."<sup>2</sup> In addition, Zhang Yiming claimed he would further deepen the cooperation with China's state run media and improve distribution of state run media content.<sup>3</sup> This was described as a "reminder"

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<sup>1</sup> Dara Kerr, *Armed With Influencers And Lobbyists, TikTok Goes On The Offense On Capitol Hill*, [NPR](#), Mar. 22, 2023.

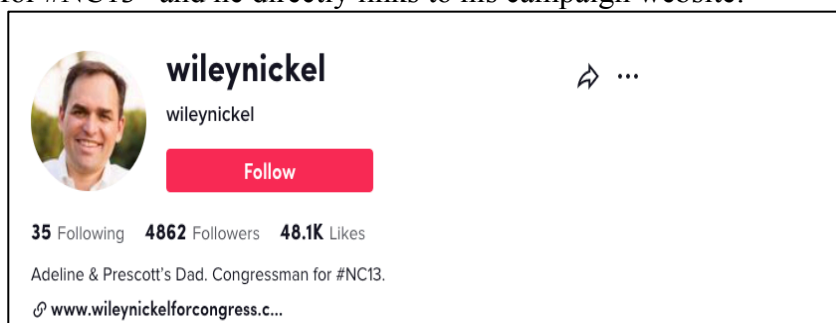
<sup>2</sup> Tara Francis Chan, *A Chinese Tech CEO Was In A Similar Position To Mark Zuckerberg This Week - And What Happened Shows How Much Power Beijing Has*, [Business Insider](#), April, 12, 2018.

<sup>3</sup> *Id.*

to Chinese companies, which are required to not “contravene” against seven “bottom lines” that include the socialist system, the country’s national interests, public order, and morality.<sup>4</sup>

Both the Federal Bureau of Investigation and the Federal Communications Commission have warned that data from TikTok such as biometric identification, browsing history, and location could be shared with the Chinese government.<sup>5</sup> China’s 2017 National Security Law requires Chinese companies to “support, assist, and cooperate” with national intelligence efforts.<sup>6</sup> The FBI and Justice Department have reportedly began investigating whether TikTok has spied on U.S. citizens, including journalists.<sup>7</sup> Moreover, the Biden administration has expressed concern over the ownership of the company.<sup>8</sup> Specifically, along with the federal government, the House of Representatives banned the TikTok app from all official devices.<sup>9</sup>

In spite of this, Rep. Nickel has a TikTok account that he is clearly using for both official House and political purposes. The biography portion of the account describes him as a “Congressman for #NC13” and he directly links to his campaign website:<sup>10</sup>



<sup>4</sup> *Id.*; Tara Francis Chan, *China’s ‘Great Firewall’ is Taller Than Ever Under ‘President-for-Life’ Xi Jinping*, [Insider](#), Mar. 24, 2018.

While Chinese citizens are subject to censorship and arrest for their speech, this is not limited to Chinese apps or geographical boundaries. For instance, a Chinese citizen was prosecuted for “insulting the government” based upon a conversation from an encrypted non-Chinese app and China has cracked down “on overseas dissidents whose families are still in the mainland.” *Id.*

<sup>5</sup> Kelvin Chan and Haleluya Hadero, *Why TikTok’s Security Risks Keep Raising Fears*, [The Associated Press](#), Mar. 22, 2023.

<sup>6</sup> Clothilde Goujard, *What The Hell Is Wrong With TikTok?*, [Politico](#), Mar. 22, 2023. “The regulations also require the tech companies to monitor and keep records of chats for six months, and report any illegal activity to authorities. The companies have essentially been ordered to spy on their users.” Tara Francis Chan, *China’s ‘Great Firewall’ is taller than ever under ‘president-for-life’ Xi Jinping*, [Insider](#), Mar. 24, 2018.

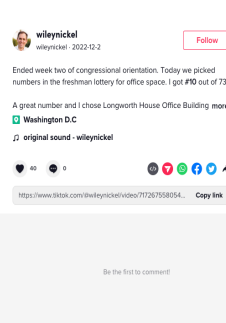
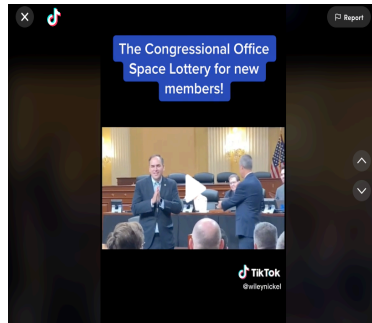
<sup>7</sup> Dara Kerr, *Armed With Influencers And Lobbyists, TikTok Goes On The Offense On Capitol Hill*, [NPR](#), Mar. 22, 2023.

<sup>8</sup> John D. McKinnon, *U.S. Threatens Ban If TikTok’s Chinese Owners Don’t Sell Stakes*, [The Wall Street Journal](#), Mar. 15, 2023.

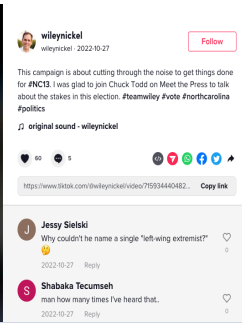
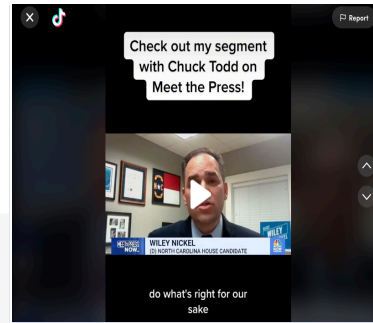
<sup>9</sup> Brian Fung, *US House Bans TikTok from Official Devices*, [CNN](#), Dec. 30, 2022; *TikTok Banned on U.S. Government Devices, and The U.S. Is Not Alone. Here’s Where the App is Restricted.*, [CBS News](#), Mar. 1, 2023.

<sup>10</sup> Wiley Nickel, [TikTok](#), last accessed March, 29, 2023.

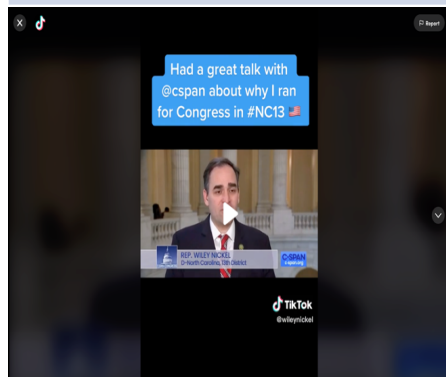
Nickel's TikTok has campaign and political posts, including video of campaign advertisements, video of Nickel at campaign events, and videos of campaign interviews. Along with this political content, Nickel has also made posts that used official government resources, including video filmed in the Capitol and a C-SPAN interview filmed in the Capitol while he was wearing his Member pin. A few examples of Rep. Nickel's TikTok posts are below:



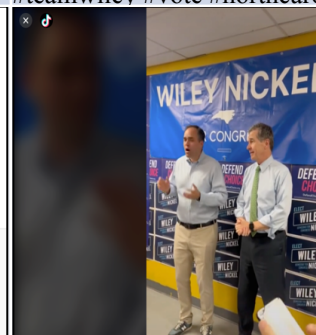
A video apparently filmed in the Capitol, which was captioned “The Congressional Office Space Lottery for new members!” Wiley Nickel, [TikTok](#), Dec. 22, 2022.



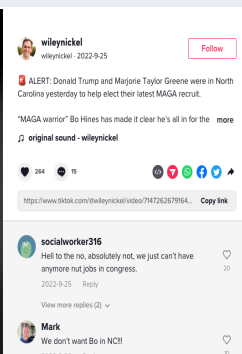
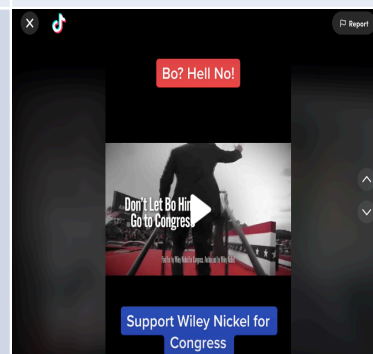
A video interview on Meet the Press, with the caption: “This campaign is about cutting through the noise to get things done for #NC13. I was glad to join Chuck Todd on Meet the Press to talk about the stakes in this election. #teamwiley #vote #northcarolina #politics”.



Video of Nickel's C-SPAN interview with Nickel wearing his Member pin while in the Cannon House Office Building. Wiley Nickel, [TikTok](#), Feb. 25, 2023.



Video of Nickel at a campaign event. Wiley Nickel, [TikTok](#), Nov. 7, 2022.



Campaign advertisement. Wiley Nickel, [TikTok](#), Sept. 25, 2022.

**Law: Federal law and House ethics rules require strict separation between campaign and official acts: (1) a Member is prohibited from using official resources for campaign purposes and (2) a Member is prohibited from using campaign funds for official purposes.**

Federal law states that “appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.”<sup>11</sup> The ethics rules enforce this law by also prohibiting Members from using any official resource for campaign or political purposes.<sup>12</sup> An “official resource” is anything funded by taxpayers, examples include: all government buildings and House offices,<sup>13</sup> a Member’s official website and social media accounts,<sup>14</sup> and photographs and video from the House or Senate floor.<sup>15</sup> Conversely, a Member is prohibited from using campaign funds for official purposes.<sup>16</sup>

*Government Buildings.* Official buildings are those that are paid for with taxpayer funds and include any federal building, Congressional office space, and the Capitol.<sup>17</sup> Members are prohibited from engaging in any political activity within official buildings, such as doing

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<sup>11</sup> 31 U.S.C. sec. 1301(a).

<sup>12</sup> U.S. House of Reps Comm. on Ethics, *House Ethics Manual*, at 123 (2022 Print), available at <https://ethics.house.gov/sites/ethics.house.gov/files/documents/2022/House-Ethics-Manual-2022-Print.pdf> (official House resources “may not be used for campaign or political purposes”).

<sup>13</sup> House Ethics Manual, at 127.

<sup>14</sup> House Ethics Manual, at 131 (prohibiting the use of Member and Committee websites for political purposes); U.S. House of Reps., Comm. on House. Admin., *Members’ Congressional Handbook*, at 38 (Adopted Jul. 25, 2018; Updated Dec. 30, 2022) available at <https://cha.house.gov/sites/evo-subsites/republicans-cha.house.gov/files/evo-media-document/2022-12-30-final-members-congressional-handbook49.pdf> (“[C]ontent on Social Media Accounts is subject to the same requirements as content on Member websites”).

<sup>15</sup> House Rule V, cl. 2(c)(1) (A Member is also specifically prohibited from using a House floor “recording” for “any partisan political campaign purpose.”); House Ethics Manual, at 128 (“Broadcast coverage and recordings of House floor proceedings may not be used for any political purpose under House Rule 5, clause 2(c)(1).”).

<sup>16</sup> Campaign funds may not be used for official expenses, including “communications” such as official website and official audio and video recordings and materials. House Ethics Manual, at 177-78.

<sup>17</sup> House Ethics Manual, at p. 128. The Committee on Ethics explains “official buildings . . . include[s] not only any House office building, but also all district office space, any Senate office building, the Capitol, the Library of Congress, and any federal building.” U.S. House of Rep. Comm. on Ethics, Memorandum from the Comm. to All Members, *Campaign Activity Guidance*, Aug. 15, 2014, at 3, available at: [https://ethics.house.gov/sites/ethics.house.gov/files/20140815 Pink Sheet.pdf](https://ethics.house.gov/sites/ethics.house.gov/files/20140815%20Pink%20Sheet.pdf).

campaign work, holding political meetings, soliciting campaign funds, and taking photos or video for campaign or political purposes.<sup>18</sup>

*House Floor Video.* Members are prohibited from using photographs and video of House floor proceedings for campaign or political purposes. This includes any photograph or video footage of floor proceedings even if it was reposted from a third-party source, i.e. another website or news organization.<sup>19</sup> As the Ethics Committee has stated, “Members may not re-use an image of a floor proceeding published by a third-party, if the Member could not use that image in the first instance.”<sup>20</sup>

*Websites and Social Media Accounts.* A Member is prohibited from using their official social media and websites for political purposes. Moreover, federal law and House ethics rules require a strict separation between campaign and official social media accounts. A Member’s official social media accounts may not include any of the following: personal, political, or campaign information; grassroots lobbying or soliciting support for a Member’s position; or a link to campaign or political related accounts or sites.<sup>21</sup> A Member’s campaign social media accounts may not include a link to the Member’s official House website or any official content.<sup>22</sup>

The laws at issue in this case protect taxpayer-funded resources from abuse and theft and strict enforcement addresses the public’s concerns that incumbents wrongfully use government funds to run for re-election.

**Analysis: Rep. Nickel Abused Official Resources for Political Purposes.** In the present case, Rep. Nickel’s use of his TikTok account itself and the content posted are both violations of

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<sup>18</sup> “The House buildings, and House rooms and offices – including district offices – are supported with official funds and hence are considered official resources. Accordingly, as a general rule, they may not be used for the conduct of campaign or political activities. Thus, for example, a Member may not film a campaign commercial or have campaign photos taken in a congressional office. . . . In addition, House rooms and offices are not to be used for events that are campaign or political in nature, such as a meeting on campaign strategy, or a reception for campaign contributors.” House Committee on Ethics, *General Prohibition Against Using Official Resources for Campaign or Political Purposes*, <https://ethics.house.gov/campaign/general-prohibition-against-using-official-resources-campaign-or-political-purposes> (accessed Mar. 23, 2023).

<sup>19</sup> Derivative use of House floor photographs and video is prohibited. Report of the Comm. on Ethics, *In re Lujan*, Aug. 1, 2017, at 13, available at: [https://ethics.house.gov/sites/ethics.house.gov/files/20170801%20Rep.%20Lujan%20Report%20-%20FINAL\\_0.pdf](https://ethics.house.gov/sites/ethics.house.gov/files/20170801%20Rep.%20Lujan%20Report%20-%20FINAL_0.pdf) (citing U.S. House of Rep. Comm. on Ethics, Memorandum from the Comm. to All Members, *Campaign Activity Guidance*, Aug. 15, 2014, at 16, available at: [https://ethics.house.gov/sites/ethics.house.gov/files/20140815 Pink Sheet.pdf](https://ethics.house.gov/sites/ethics.house.gov/files/20140815%20Pink%20Sheet.pdf)).

<sup>20</sup> *Id.*

<sup>21</sup> House Ethics Manual, at 131; see also Member’s Congressional Handbook, at 38-39 (“A Member’s official website and social media accounts are prohibited from including any personal, political, or campaign information, links to campaign-related websites, and “grassroots lobbying or solicit[ing] support for a Member’s position.”).

<sup>22</sup> See, e.g., House Ethics Manual, at 178 (“A Member’s campaign website may not include a link to the congressional office site”; and “A congressional office site may not be advertised on the Member campaign website or on materials issued by the Member’s campaign.”).

the ethics rules. First, Nickel's TikTok account contained both campaign and official content. The bio section of the account both listed him as a Congressman from North Carolina's Thirteenth District and directly linked to his campaign website. His posts include campaign advertisements and video from campaign events, along with video recorded from inside the Capitol and an interview where Nickel is wearing his official Member pin. Thus, the use of the account itself containing both political content and official government resources is a violation of the ethics rules.

Second, the content of the posts that contain video recorded in the Capitol are also violations of the ethics rules and an abuse of official resources. Nickel's TikTok account linked to his campaign website and had campaign advertisements posted on it—its political purpose is clear. However, Nickel posted two videos recorded in the Capitol (an official resource) and used those videos for political purposes. In the case of the C-SPAN interview, the ethics rules prohibit Members from reposting video obtained from a news outlet if the Member could not use the video in the first instance.

The law is clear and the posts above speak for themselves. The laws at issue in this case are important because not only do they protect taxpayer-funded resources from abuse, they also protect the integrity of official proceedings. One issue the House Ethics Manual acknowledges is the public perception that incumbents are simply using their office to run for re-election or to run for a higher office, which is remediated by strictly enforcing the laws at issue in this case.<sup>23</sup> In addition to violating the specific laws, his use of official resources does not reflect credibly on the House.<sup>24</sup> Finally, given his use of a TikTok account and government resources, the Office of Congressional Ethics should ensure Rep. Nickel does not have the banned app installed on any government device.

The Office of Congressional Ethics is responsible for ensuring each Representative fulfills the public trust inherent in the office and that they comply with the House's ethical standards. Therefore, we urge the Board to immediately investigate whether Representative Nickel used official resources for campaign purposes in violation of the House ethics rules.

To the best of my knowledge and ability, all evidence submitted was not obtained in violation of any law, rule, or regulation. Further, I am aware that the False Statements Act, 18 U.S.C. § 1001, applies to information submitted to the Office of Congressional Ethics.

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<sup>23</sup> House Ethics Manual, at 123 (stating the laws and rules prohibiting use of official resources for political purposes reflect "the basic principle that government funds should not be spent to help incumbents gain reelection").

<sup>24</sup> Members are required to "conduct themselves at all times in a manner that reflects creditably on the House." House Ethics Manual, at 1, 12 (citing House Rule 23, clause 1).

Sincerely,

/s/Kendra Arnold

Kendra Arnold

Executive Director, Foundation for Accountability & Civic Trust