

Opinions

A new House rule is a gift to lawmakers trying to hide criminal acts

Correction: An earlier version of this column misstated details of a dispute between former House member Aaron Schock and the Justice Department over access to records from Schock's congressional office. The column stated incorrectly that "Schock backed down in the face of a second subpoena, and his indictment quickly followed." This subpoena dealt with Schock's personal records, not office records, and it was issued more than a year before Schock was indicted on Nov. 10. In addition, the column should have noted that Schock has denied having his congressional office decorated in homage to the television program "Downton Abbey." The text below has been updated.



Then-Rep. Aaron Schock (R-Ill.) speaks to reporters in Peoria. (Seth Perlman/Associated Press)

By Anne Weismann and Patrice McDermott

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Anne Weismann is a former executive director of Campaign for Accountability and former chief counsel of Citizens for Responsibility and Ethics in Washington. Patrice McDermott is executive director of OpenTheGovernment.org.

While all eyes were focused on [failed House efforts to eliminate](#) the Office of Congressional Ethics — the only independent watchdog with jurisdiction over House members — Republican congressmen led by Majority Leader Kevin McCarthy (Calif.) quietly succeeded on another dubious ethical front: They [adopted a rule](#) designating records created, generated or received by a member's congressional office "exclusively the personal property" of that member and granting members "control over such records."

Making congressional records the personal property of members seems tailor-made for the next lawmaker who, like former congressman Aaron Schock (R-Ill.), hopes to evade criminal responsibility by barring access to material allegedly showing how he misspent public funds.

Schock was indicted in November on [24 criminal counts](#) stemming from his use of his congressional office and campaign committee funds. The fraud charges were based on a range of conduct that allegedly included seeking reimbursement for approximately 150,000 miles of personal travel, purchasing a new vehicle for his personal use and using campaign funds to [decorate his congressional office](#) in an homage to the hit British period drama “[Downton Abbey](#),” with [accouterments such as](#) a crystal chandelier, a gold wall sconce and arrangements of pheasant feathers. ([Schock has said](#) that the show did not inspire the decor of the office.)

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Before the indictment, the Justice Department engaged in a protracted legal battle with Schock’s lawyers over who controlled thousands of pages of congressional office records from his tenure. Both Schock and the House general counsel argued that Schock [personally owned](#) the records and could not be compelled to produce them. In arguing for the right to access documents showing how Schock spent public funds, the government called Schock’s ownership claim “repugnant to the fundamental principle that no man is above the law.” In other court papers, [Justice lawyers pointed out](#) that Schock’s congressional office “does not exist and has never existed solely to represent and serve the interests and goals of Schock or any other Congressman.”

Now, with the latest rule change, members will be shielded from Justice Department subpoenas for records like those at issue in Schock’s case, including [Members’ Representational Allowances](#) offering a window into whether members have used taxpayer funds to advance their own interests. With this change, the House essentially has claimed that members’ personal interests in protecting themselves from compelled disclosure trump the interests of constituents and the public. Such a change tilts the scale in favor of the member in any future investigation of the theft of taxpayer funds from Congress.

This rule change also represents yet another example of Congress exempting itself from the same record and accountability system that governs the executive branch. Congress is not subject to either the Freedom of Information Act or Federal Records Act. Although the [Center for Legislative Archives](#) houses records of historic value of the House and Senate, the records remain the legal property of the House and Senate.

Now, by making the records of congressional offices the personal property of members, the House has ensured that none of these records will be available for posterity. How ironic that Republican-controlled congressional committees have relied on statutes such as FOIA and the Federal Records Act to fault the practices of then-Secretary of State Hillary Clinton, yet members have cloaked themselves in an impenetrable secrecy that allows them to escape public accountability.

This is yet another example where President Trump’s “drain the swamp” rhetoric is contradicted by the actions of his own party.

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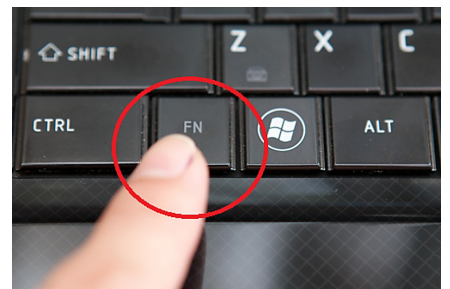
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