

Testimony of

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“An Independent Entity for the House Ethics Process?”  
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\*The views expressed in this testimony are solely my own and should not be ascribed to the trustees, officers, or other staff of The Brookings Institution.

Chairman Capuano, Congressman Smith, and other members of the Task Force, thank you for inviting me to share my views on the desirability and efficacy of creating an independent entity for the House ethics process. Since I will be out of town and unable to attend the initial public meeting of your task force, I ask that this statement be made a part of the record.

Your task is not an easy one. The well-publicized failures of the House ethics process in recent years – the politicization of ethics charges, partisan abuse of the process, and failure to deal with cases of egregious misconduct – have led to demands for an independent ethics enforcement mechanism. Without such a step, Congress is likely to be behind the curve once again as new charges are filed by the Department of Justice and press stories about the culture of corruption in Congress return to the headlines.

At the same time, your colleagues in the House (as well as in the Senate) have gone beyond understandable caution to near-paranoia when it comes to structural changes that would delegate to an independent staff or commission each chamber's authority and responsibility for policing the behavior of its members. Members of Congress easily conjure up an image of an out-of-control independent counsel or special prosecutor driven to bag his prey, one way or another. They worry about the ways in which an independent process might be manipulated by political foes to damage or end their career in elective office. But there are ways to build in safeguards that keep an appropriate balance.

My view is that the time has come for you and your colleagues to bite the bullet and take the measured steps necessary to restore credibility to the ethics process. Legislators in the states and in other democracies have embraced independent ethics entities and found the changes worked to their benefit. The best ethics process is one that prevents unethical behavior. Clear rules and guidelines, transparency requirements to help avoid conflicts of interest, sustained educational efforts with members and staff, and a credible enforcement process not subject to partisan abuse through action or inaction are more likely to keep members and staff out of trouble than they are to put them unfairly at risk. Longstanding practices have proven inadequate to the task. Real change is in order.

Once you agree in principle to some form of an independent ethics entity, you can craft a mechanism that avoids the potential problems envisioned by your colleagues. My recommendation is that you locate this new entity within the legislative branch; that it supplement, not replace, the Committee on Standards of Official Conduct; that it be a commission consisting mainly – but not exclusively -- of former members of Congress, with equal numbers appointed by the Speaker and Minority Leader; that it receive complaints and initiate inquiries of its own, conduct preliminary investigations to determine their merit, dismiss frivolous charges with penalties imposed on those filing them, and forward to the Standards Committee only those charges that merit further investigation or action (with or without a recommendation, as it chooses); that it operate under workable procedures assuring necessary confidentiality and transparency; and that it have

available to it a professional staff (to conduct preliminary investigations, provide ethics advice and education to members and staff, and to receive and disclose relevant reports filed by members, staff and lobbyists). Under this scheme, the Standards Committee and the full House would retain their responsibility for determining the disposition of ethics cases, but much of the initial work, which often proves the most politically difficult for the Congress to manage on its own, would be performed by an independent commission (one knowledgeable about legislative life) and professional staff.

I would be happy to discuss at your convenience the details of my recommendations. Once you make the critical decision to create an independent ethics mechanism, I am confident that you will be able to design it in a way that both satisfies public expectations and reassures most of your colleagues. You have a wonderful opportunity to improve the integrity and effectiveness of the first branch of government. I wish you well.