

Testimony of
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Before the
Task Force on Ethics Enforcement
U.S. House of Representatives
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Chairman Capuano, Ranking Member Smith, and members of the Task Force:

Democracy 21 appreciates the opportunity to testify on the issue of enforcing the House ethics rules. We also appreciate the opportunity the Task Force provided to us earlier to present our views on this subject in an informal session.

Last January, the House took a major step forward by adopting landmark reforms to strengthen the House ethics rules. We, along with other reform organizations, applauded the adoption of these strong new ethics rules.

All of this good work will be seriously undermined, however, if the House fails to establish a new, effective and publicly credible means for enforcing the House ethics rules. In this regard, Democracy 21 strongly supports the establishment of an Office of Public Integrity (OPI) to help enforce the House ethics rules.

As *The Boston Globe* said in an editorial (December 12, 2006) endorsing the creation of an Office of Public Integrity, “Any reform without enforcement is no reform at all.”

Similarly, a *Washington Post* editorial (January 4, 2007) discussed the need to strengthen the ethics enforcement process and stated, “ethics rules that are not vigorously overseen and enforced are not worth the Congressional Record they’re printed in.”

The current approach for enforcing the House ethics rules is a publicly-recognized failure. This was clearly demonstrated in the last Congress when the House Ethics Committee did not even function for more than a year and failed to investigate and address the Jack Abramoff scandals, the worst congressional corruption, lobbying and ethics scandals in three decades.

As a *New York Times* editorial (December 18, 2006) stated:

The most glaring lapse of the Republican-controlled Congress was the abject failure of the House ethics committee to police misbehavior, highlighted by the panel's studied avoidance of the Jack Abramoff lobbying mess. Members were shielded and allegations muffled. The need for an independent body staffed by nonpartisan professionals to investigate complaints would seem beyond debate.

At the core of the problems with the current ethics enforcement process is a fundamental structural and conflict problem: the House Ethics Committee is responsible for investigating potential ethics violations, prosecuting cases of such violations and deciding whether violations have occurred. Each of these functions is carried out under the control of the members of the House Ethics Committee.

In order to fix the failed House enforcement process, it is essential to separate these functions and to create a new nonpartisan, professional enforcement entity to help enforce the ethics rules. We urge the Task Force to recommend that the House establish an independent, nonpartisan and professional Office of Public Integrity. Democracy 21 supports the legislation to create an OPI (H.R. 422) introduced by Representatives Marty Meehan (D-MA) and Christopher Shays (R-CT).

The following statement, issued by a group of reform organizations including Campaign Legal Center, Common Cause, Democracy 21, the League of Women Voters, Public Citizen and U.S. PIRG, lists the elements the groups believe are essential for an OPI.

It is essential to establish a nonpartisan, professional enforcement entity with real authority to help enforce the House ethics rules. This reform is the lynchpin for all other ethics reforms. An Office of Public Integrity should be created with the following essential elements:

- The Office of Public Integrity should have the authority to receive and investigate outside complaints and to initiate and conduct investigations on its own authority, where the Office determines that a matter requires investigation.

The Office should have the powers necessary to conduct investigations, including the authority to administer oaths, and to issue and enforce subpoenas. The subject of any investigation should have the opportunity to present information to the Office to show that no violation has occurred. The Office should have the authority to dismiss frivolous complaints expeditiously and to impose sanctions for filing such complaints.

- The Office of Public Integrity should be headed by a Director or by a three-member panel, should have a professional, impartial staff and should have the resources necessary to carry out the Office's responsibilities.

If the Office is headed by a Director, the Director should be chosen jointly by the Speaker and Minority Leader. If the Office is headed by a panel, the panel should consist of three members, with one member chosen by the Speaker, one member chosen by the Minority Leader and the third member chosen by the other two members.

- The Office's Director or panel members should be individuals of distinction with experience as judges, ethics officials or in law enforcement, should not be Members or former Members, should have term appointments and should be subject to removal only for cause by joint agreement of the Speaker and Minority Leader.

- The Office should have the authority to present a case to the House Ethics Committee for its decision, based on the same standard that is currently used to determine when a case should be presented to the Committee. The Ethics Committee would be responsible for determining if ethics rules have been violated and what, if any, sanctions should be imposed or recommended to the House. A public report should be issued on the disposition of a case by the Ethics Committee. The Office should have the authority to

recommend sanctions to the Committee, if the Committee determines an ethics violation had occurred.

- The Office should receive, monitor and oversee financial disclosure, travel and other reports filed by Members and staff, to ensure that reports are properly filed and to make the reports public in a timely and easily accessible manner. The Office should have the same authority for lobbying reports filed under the Lobbying Disclosure Act.

Under this approach the OPI would have responsibility for receiving outside complaints, filtering out frivolous complaints, conducting investigations of potential ethics violations and presenting cases to the Ethics Committee to determine whether ethics violations have occurred and to recommend what sanctions should be imposed. These functions are critical and all are necessary to establishing an effective new ethics enforcement process.

The Committee on Economic Development (CED), a national organization of business leaders and educators, also has made similar recommendations on the need for an independent enforcement entity to help enforce House ethics rules.

According to CED, “Congress clearly needs a strong and independent enforcement authority to help Congress to punish and deter ethical violations by lobbyists and Members.” CED’s recommendations include the following:

- The ethics enforcement authority must be nonpartisan and of a stature equivalent to that of the Congressional Budget Office and the Government Accountability Office. Its officers must be persons of distinction, such as former Members of Congress and retired judges. Their appointments must be secure from political interference.
- The ethics authority must have a professional and independent staff. It must have sufficient funding and staff to fulfill all of its responsibilities.
- The ethics authority must be free to initiate its own investigations. It must be empowered to receive complaints from Members of Congress and also from the general public. It must have the authority to investigate allegations regarding Members, staff, lobbyists, and private entities that may have violated Congressional ethics laws or rules.
- The ethics authority must be empowered to see its investigations through to their conclusion; it must not serve as a mere filter for frivolous complaints, with all others passed on to the existing Ethics Committee process. To fulfill the Constitutional requirement that the Congress punish its own Members for misbehavior, the ethics authority must pass its conclusions on to the Ethics Committees for their decisions or for their transmittal to the Department of Justice if violations of law are involved. The ethics authority’s process should include: protections against the filing of frivolous complaints, including the ability for the ethics authority quickly to dismiss such complaints; a prohibition against any future complaints being submitted by the filer of a frivolous complaint; and the ability to require such person to pay the costs of processing the frivolous complaint.

- The ethics authority should also receive and oversee financial disclosure and other reports filed by Members, and lobbying reports filed by lobbyists and lobbying organizations. The ethics authority would be responsible for making these reports publicly available in an easily searchable online database. It should report its activities periodically to the public.

A piecemeal approach to reforming the ethics enforcement process will not work as a solution to the serious problems that exist. For example, simply restoring the ability for outsiders to file complaints or allowing a new outside entity to do nothing more than filter outside complaints is not an effective or credible way to address the ethics enforcement problem. Neither is providing additional disclosure about the activities of the Ethics Committee or ensuring that Members cannot be removed from the Ethics Committee during a Congress. This will not solve the fundamental problems that exist.

The House must start doing the job of effectively and credibly enforcing its ethics rules. In failing to carry out this responsibility in the past, House members have failed the American people and seriously damaged the institution in which they serve.

Criticisms of the proposal to create an OPI often overstate and mischaracterize the entity.

An OPI would not operate outside the structure of the Ethics Committee. It is not an independent Commission. Instead, an OPI would preserve the role of the Ethics Committee in making final interpretations of House ethics rules, final decisions about whether those rules have been violated, and final decisions on what sanctions to recommend to the full House.

An OPI would, however, play a critical independent, nonpartisan and professional role in screening and investigating potential ethics violations and presenting cases of potential violations to the Committee for the Committee to decide whether such violations occurred.

Members of Congress take the position that under the Constitution they have the sole responsibility for the rules governing Congress, including the congressional ethics rules. The OPI recognizes that and leaves final responsibility with the Ethics Committee to determine whether ethics rules have been violated.

Dennis F. Thompson, a noted and highly regarded expert on congressional ethics, recently described the problems that arise out of the current ethics enforcement process.¹ First, he said, members of Congress “depend on one another to do their job. They have worked together in the past and they must work together in the future.” That “collegial interdependence” makes it “difficult to judge colleagues objectively or to act on the judgments even when objectively made.” Second, in many cases, a key question is whether a Member’s conduct “has departed from the norms of the institution.” In this way, “the conduct of the members who are judging can thus become an issue when the accused member claims that what he has done is no different from what other members have done.” Thompson notes that this “was a familiar plea in

¹ See D. Thompson, “Overcoming the Conflict of Interest in Congressional Ethics,” (paper prepared for Woodrow Wilson Center Jan. 16, 2007).

the case of the Keating Five.” He says, “Unless the committee members could show how their own conduct differed, they would either have had to acknowledge their own guilt or declare their colleagues innocent.” Finally, Members who are judging their colleagues “know that they themselves will be judged by the public. The political pressures that build during the disposition of ethics cases are potent, often more potent than judicious.”

For all these reasons, Thompson concludes that “when a legislative body investigates, charges, and disciplines a member, it is not observing the principle that one should not judge in one’s own cause. It is not in the best position to reach an impartial judgment on the merits, treat members with fairness, and maintain public confidence in the process.”

These conclusions are borne out by the recent history of the House Ethics Committee. Beginning in 1997, the so-called “ethics truce” essentially shut down ethics enforcement in the House. Although there was a brief respite in 2004, most notably with the actions taken by the Ethics Committee against then-House Majority Leader Tom DeLay, the Committee was not even functional during the entire year of 2005, and failed to take any publicly known action regarding the Abramoff scandals in 2006.

This failure of the Committee to be able to operate at even a minimal level for more than a year was unprecedented, and represented a complete breakdown of the process in the House for overseeing and enforcing House ethics rules. And, despite the magnitude of Jack Abramoff’s improper activities on Capitol Hill involving current and former Members and congressional staff, there has been no indication that the House Ethics Committee has conducted any investigation of the Abramoff scandals.

Previous major congressional scandals, including the Koreagate and ABSCAM scandals in the House in the late 1970s, and the Keating Five affair in the Senate in the late 1980s, all resulted in major congressional ethics investigations.

In the Abramoff affair, however, which could turn out to be the biggest congressional corruption and ethics scandal in modern times, the House Ethics Committee has given no indication that any investigation of the matter was even begun, notwithstanding the fact that a number of current and former Members and staff were publicly swept up in the scandals. It should not be a surprise under these circumstances that the House ethics enforcement process is not publicly credible today.

Like the reform groups and CED, Professor Thompson also recommends the House establish some form of “an independent body that would supplement and partially replace the functions of the ethics committee.” Absent this step, he says, “the institutional conflict of interest inherent in members judging members remains.” Professor Thompson describes the advantages of such a body:

An outside body would be likely to reach more objective, independent judgments. It could more credibly protect members’ rights and enforce institutional obligations without regard to political or personal loyalties. It would provide more effective

accountability and help restore the confidence of the public in the ethics process.

In conclusion, we appreciate the fact that a bipartisan effort is being made through the Task Force to address the issue of ethics enforcement in the House. However, the goal here must be to effectively and credibly solve this basic ethics problem, and not to produce a bipartisan report, supported by a substantial majority of Task Force members, that fails to make the fundamental changes necessary to effectively reform the ethics enforcement process.

If the Task Force is not prepared to recommend the serious, comprehensive reforms that are essential to fixing the House ethics enforcement process, it should not make any recommendations at all and House leaders should determine how to proceed in solving this critical ethics problem.

Thank you again for the opportunity to testify and I would be happy to answer any questions you may have.