

June 12, 2023

The Honorable Barry Loudermilk
1309 Longworth House Office Building
Washington, DC 20515

The Honorable Norma Torres
1216 Longworth House Office Building
Washington, DC 20515

Re: June 13, 2023, Oversight Hearing on the Office of Congressional Ethics

Dear Chair Loudermilk, Ranking Member Torres, and Members of the House Administration Oversight Subcommittee:

In anticipation of the upcoming oversight hearing on the Office of Congressional Ethics (OCE), we welcome the opportunity to share our views regarding the office and opportunities to further strengthen ethics and accountability for Members of Congress.

Established at the start of the 110th Congress, the Office of Congressional Ethics is an independent, non-partisan office in the House of Representatives responsible for reviewing allegations of misconduct against Members of Congress, offices, and staff of the U.S. House of Representatives.¹ OCE was established in the confluence of several scandals including the Jack Abramoff lobbying corruption scandal,² the Rep. Mark Foley sexual misconduct scandal, the Majority Leader Tom DeLay scandal,³ the Rep. Cunningham bribery scandal, and several scandals concerning Speaker Hastert.⁴ At the time it was clear to many that the House Committee on Ethics was unable to meet the moment.

The OCE is overseen by an independent board composed of six members and two alternates, appointed in part by the Speaker and in part by the Minority Leader. The bipartisan Board is responsible for each stage of the investigatory process and making determinations on whether to refer or dismiss matters, and routinely makes these decisions unanimously.⁵ Appropriately, most complaints are dismissed as either lacking merit or as politically motivated.

¹ See "H.Res.895 - Establishing within the House of Representatives an Office of Congressional Ethics, and for other purposes" 110th Congress, <https://www.congress.gov/110/bills/hres/895/BILLS-110hres895eh.pdf>

² Among Abramoff's many crimes, "he and others engaged in a pattern of corruptly providing things of value to public officials, including trips, campaign contributions, and meals and entertainment, with the intent to influence acts by the public officials that would benefit Abramoff and his clients." The wide ranging Abramoff scandal resulted in his conviction along with 21 others, including several White House officials, Rep. Bob Ney, and congressional lobbyists and aides. https://www.justice.gov/archive/opa/pr/2006/January/06_crm_002.html

³ "When Tom stepped down, I had to step in," *The Hill* (May 25, 2006)

<https://thehill.com/homenews/news/7999-when-tom-stepped-down-i-had-to-step-in/>

⁴ Speaker Hastert was embroiled in several scandals. In 2006, he included an earmark for a highway running through his district that would improve the value of land he owned. He worked to protect Majority Leader Tom DeLay in the midst of a corruption scandal, removing three members of the Ethics Committee and senior staff who were critical of DeLay and keeping him in his office despite a federal indictment. Speaker Hastert was later convicted for covering up his engagement in child molestation.

⁵ For more information regarding OCE's board composition, staffing, and recent actions, see "First Quarter 2023 Report: January 2023 - March 2023" House of Representatives Office of Congressional Ethics

https://oce.house.gov/sites/congressionaletics.house.gov/files/documents/OCE%20First_Quarter_2023_Report_Final_0.pdf

But when the Board decides to refer a matter for further investigation, it is often with a strong consensus.

The OCE is a fact-finding body.⁶ It can accept tips concerning misconduct from anyone, or start an investigation on its own accord, but should its Board find a substantial reason to believe a violation may have occurred, the OCE would refer its findings to the House Committee on Ethics for disposition. While the OCE investigatory process is confidential, in almost all circumstances referrals sent to the House Committee on Ethics become publicly available, providing an incentive for the Committee to dispose of matters in a timely way. In addition, the OCE provides quarterly public reporting on its activities. This contrasts significantly with the House Committee on Ethics, known for its opacity and historical failures to take action on matters for many years.

It is our view that the Office of Congressional Ethics is among the most notable positive innovations in Congress in the last two decades. No one can be the judge of their own case, and the OCE provides an independent review of allegations of misconduct and disposes of those complaints in a reasonable time. While no oversight process is perfect, the OCE generally strikes the right balance of investigative zeal, transparency, independence, and accountability.

Over time, individuals under investigation have worked to stymie its investigatory capabilities, however. For example, unlike the House Committee on Ethics, OCE does not have subpoena power. Witnesses can refuse to speak to its staff and it lacks the ability to compel third parties to turn over evidence. We recommend granting the OCE subpoena power for third parties so that it can obtain documents and testimony as appropriate. Should a delegated grant of power be inappropriate, we recommend creating a process by which the OCE can request expeditious assistance from the House Office of General Counsel to issue a subpoena on its behalf.

We note the recently adopted Rules of the House of Representatives impose a two-term limit for Board members and require the Board to appoint OCE staff and set their compensation within 30 calendar days of adoption of the Rules resolution.⁷ We are concerned that the confluence of these two provisions might inadvertently result in a Board being unable to appoint staff within the required timeframe. Board members are appointed by the Speaker and Minority Leader respectively, and should the Board lack a quorum and those appointments be delayed, the effect could be the constructive dismissal of all OCE staff with no ability to hire them. We recommend the removal of the 30 calendar day hiring provision.

We also note the Rules of the House of Representatives amends the process by which Board members are selected. The original resolution provided for the Speaker to appoint three Board members and an alternate with the concurrence of the Minority Leader, and vice versa. However, the House rules declare that the requirement for concurrence be treated as a

⁶ \$1,762,000 was appropriated for office operations in the Consolidated Appropriations Act, FY2023 <https://www.appropriations.senate.gov/imo/media/doc/JRQ121922.PDF#page=1150>

⁷ H. Res 5 (118th Congress) <https://www.congress.gov/118/bills/hres5/BILLS-118hres5eh.pdf>

consultation, so that no agreement need be reached between the Speaker and Minority Leader. We prefer the former arrangement as it ensures that every Member has bipartisan support.

Federalist 51 states: "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary." Our elected representatives do their best, and independent oversight helps keep them honest. The Office of Congressional Ethics plays a crucial accountability role in the modern House of Representatives. It is a stand-in for the people themselves, and we urge you to protect and further strengthen the OCE in its mission of assisting the House in upholding high standards of ethical conduct for Members, officers, and staff.

Sincerely yours,

American Federation of Teachers
Campaign Legal Center
Citizens for Responsibility and Ethics in Washington (CREW)
Demand Progress
DemCast USA
Democracy 21
End Citizens United/Let America Vote Action Fund
Fix Democracy First
Free Government Information (FGI)
Friends of the Earth
Government Information Watch
GovTrack.us
Greenpeace USA
Indivisible
Indivisible San Jose
Indivisible San Francisco
Media Alliance
Network for Responsible Public Policy
Open The Government
Pay Our Interns
People Power United
Project On Government Oversight (POGO)
Public Citizen
Revolving Door Project
RootsAction.org
Secure Elections Network
The Workers Circle
Transparency International U.S.

Norm Ornstein, American Enterprise Institute for Public Policy Research*
Randi Wiengarten, American Federation of Teachers*

James A. Thurber, American University*

Ambassador Norman Eisen, Senior Fellow, Brookings*

Lorelei Kelly, Georgetown Democracy, Education + Service at the McCourt School of Public Policy*

Kevin Esterling, University of California Riverside*

Richard W. Painter, Former Associate Counsel to the President and chief White House ethics lawyer 2005-07*

* = Title for identification purposes only.

Cc: Members of the Committee on House Administration