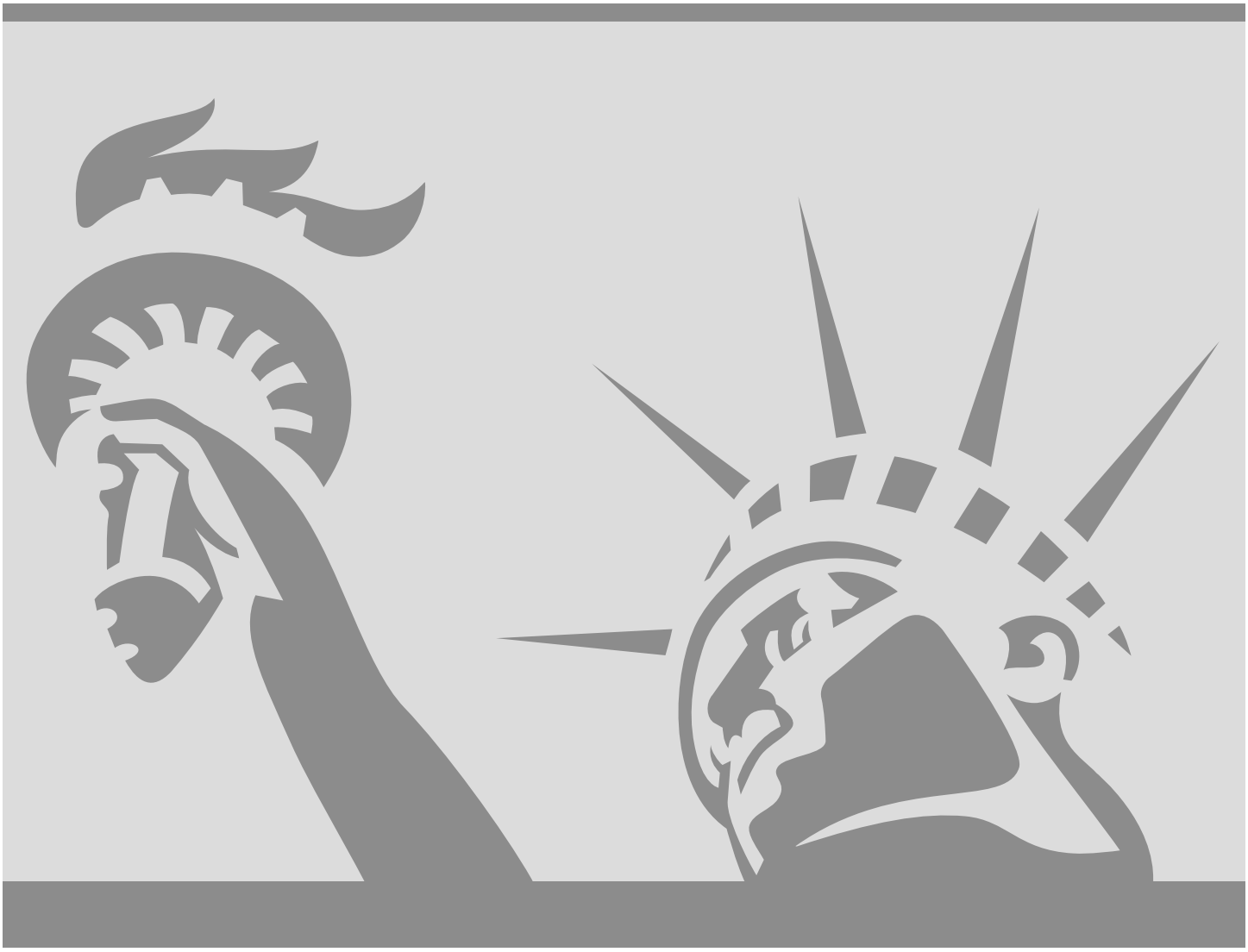

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The Case for Independent Ethics Agencies

The Office of Congressional Ethics Six Years Later, and a History of Failed Senate Accountability

Acknowledgments

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I. Introduction: Office of Congressional Ethics has Enhanced Ethics Accountability in the House

The Office of Congressional Ethics (OCE), established in March 2008 by the U.S. House of Representatives, is the first semi-independent office in history to oversee and complement implementation and enforcement of the congressional ethics process. OCE is a nonpartisan, fact-finding entity, with the primary purpose of investigating allegations of improper conduct by Members and congressional staff and making meritorious investigations a matter of public record. If the initial investigation warrants further action, the cases are then referred to the House Ethics Committee. The House Ethics Committee has exclusive authority to determine whether to adjudicate cases and offers recommendations to the full House concerning what actions, if any, should be taken as a result of the investigations.

In addition to providing a case record to supplement formal investigations of possible ethical misconduct, referrals made from OCE to the House Ethics Committee eventually become public record. This added transparency alone highlights the significance of OCE in the congressional ethics process and reaches to its core mission, which is to "give the public a 'window' into ethics enforcement in the United States House of Representatives."[1]

Previously, the ethics process in both chambers of Congress had been run entirely by Members of Congress themselves and the investigations and formal actions of the ethics committees generally remained out of the public domain – until such time as a news story was leaked or public reprimands were issued by Congress. This air of secrecy resulted in a widely perceived moribund ethics process that became alarmingly obvious in the wake of the Jack Abramoff scandals.

This analysis finds that the work of the Office of Congressional Ethics has had a dramatic impact on the activity and accountability of the House Ethics Committee. As shown below, the number of disciplinary actions taken by the House Ethics Committee – though certainly not large in overall numbers – increased drastically in the six short years that OCE has been operating as compared to the full previous decade of the Committee's history. From 1997 through 2005, the House Ethics Committee issued only five recorded disciplinary actions against Members or staff of the House. From 2006 through 2008, the three years highlighted by the Abramoff scandal that resulted in nearly two dozen convictions or guilty

[1] Office of Congressional Ethics blog, "Welcome to the New Online OCE," (June 1, 2010), available at: http://oce.house.gov/2010/03/welcome-to-the-oces-new-site.html

pleas by the Department of Justice,[2] the House Ethics Committee again issued only five disciplinary actions. **But the House Ethics Committee has issued 20 disciplinary actions between 2009 and 2014, largely done with the help of the investigations and transparency of OCE.** [*See* Appendix A, "Congressional Ethics Enforcement: From Decade of Inaction to OCE Period of Accountability."]

While the increase in public disciplinary actions shows a more active and accountable House Ethics Committee, there is little indication that the Committee is becoming over-zealous in its ethics monitoring and enforcement. The number of disciplinary actions is still not high, and within each case, the Committee usually moved slowly and considered and ruled upon a preponderance of evidence.

The Office of Congressional Ethics is also demonstrating the same prudence in approaching its work. Of the thousand or more private allegations of misconduct that OCE receives throughout each Congress, only thirty to fifty cases receive preliminary reviews. For the 112th Congress, OCE opened 32 preliminary reviews, five of which were promptly terminated, and 10 of which ended in dismissal upon extended investigation.

This prudent, but noticeable, increase in the efficacy of the House Ethics Committee also serves as a stark contrast to the continued lethargy of the Senate Ethics Committee. In the absence of an independent fact-finding office to assist (and encourage) the Senate Committee's efforts, a negligible number of disciplinary actions have been taken. The analysis below compares the lack of Ethics Committee censures and punishments in the Senate with well-known incidents of corruption among Senators as reported in the media to make the case for an Office of Public Integrity to serve as a supplemental investigatory body to the Senate Ethics Committee.

II. History and Operations of OCE

Neither the House Ethics Committee nor the Senate Ethics Committee has historically inspired much confidence with the public. Both committees are run exclusively by Members and managed by their own staff. The ethics committees are evenly divided by Republican and Democratic Members, a measure that lessens the fear of partisanship enforcement actions at the cost of generating heightened bipartisan inactivity. In addition, the pledge of confidentiality among all committee Members and staff is sometimes taken to

[2] Dan Froomkin, "Jack Abramoff, In New Book, Decries Endemic Corruption," *Huffington Post* (Oct. 28, 2011), available at: http://www.huffingtonpost.com/2011/10/28/jack-abramoff-new-book-corruption-in-washington_n_1064602.html

such extremes that the public may never know when, or if, allegations of unethical behavior have been addressed.

Simply put, having current Members police themselves and their colleagues contains an inherent conflict. The ethics committees are condemned as partisan and opportunistic if they are aggressive, and condemned as covering up problems if they are passive.[3] While the public has had little cause to feel the former concern, given the low rates of disciplinary action taken by either committee, the latter is clearly what the public believed when they read about scandal after scandal on Capitol Hill and yet saw very few disciplinary actions pursued by the ethics committees.

That set in motion a campaign for congressional and lobbying ethics reforms, culminating in the Honest Leadership and Open Government Act of 2007, as well as a drive to change the congressional ethics enforcement process. An independent panel to oversee the work of the Senate Ethics Committee, known as the Office of Public Integrity, was proposed by Sens. Susan Collins (R-Maine) and Joseph Lieberman (D-Conn.) in 2006, but was rejected by the Senate Homeland Security and Government Affairs Committee. Meanwhile, former Speaker Nancy Pelosi (D-Cal.) formed a task force to study and propose a similar independent ethics panel for the House. The task force, chaired by Rep. Michael Capuano (D-Mass.), proposed the Office of Congressional Ethics as a complement to the work of the House Ethics Committee. The proposal was approved in 2008 as a rule governing the procedures of the House as H.Res. 895.

H.Res. 895 established OCE as a non-partisan and semi-independent agency, run by an eight-person Board of Governors (six active board members and two alternates). Members of the Board of OCE cannot serve as Members of Congress, work for the federal government, or be registered lobbyists. Four Board members each are appointed by the Speaker of the House subject to the concurrence of the Minority leader, and four Board members are appointed by the Minority Leader subject to the concurrence of the Speaker. In its inception, the members of the Board had a term limit of two Congresses (in other words, four years), but the House has since amended its rules to allow members of the Board to continue serving without limit.

OCE may receive complaints from any source or initiate investigations on its own. However, the agency lacks subpoena power. In order to open a preliminary review lasting no more than 30 days, two Board members (one appointed by the Speaker, one by the Minority leader) must find reasonable evidence to proceed. To authorize a second-phase investigation lasting no longer than 59 days, three Board members must find probable cause. For OCE to make a referral to the House Ethics Committee for further review, four Board members must find substantial reason to believe a violation occurred. OCE's report

[3] Norm Ornstein, "The Senate Is Unable to Police Itself Adequately," *Roll Call* (March 8, 2006).

to the Ethics Committee may not make any determination of guilt or recommendation for penalties.

Reports from OCE to the Committee shall be made public within 45 calendar days (subject to extension by the Committee for another 45 days), or at the conclusion of any investigation by the Committee, whichever comes later. The Committee may delay disclosure of the report if requested to do so by a law enforcement agency, though it must notify the public annually that it is deferring taking action pending the request.

III. House Rules: A Brief Explanation

According to the Constitution, at the commencement of each session of Congress, the members of that Congress can choose their own rules of procedure. In the Senate, since only one third of the body is up for election or reelection at a time, the body is by and large continuous from session to session. Therefore, the Senate rules remain on the books effectively unquestioned during the turnover between Congresses, unless there is an active desire to revisit and amend or repeal one of the rules. (As such, if an office similar to OCE were to be established in the Senate rules, it would exist without incident or need for re-approval until there was a motion to revisit it.)

Conversely, since the entirety of the House stands for reelection every two years, at the start of each new Congress it is functionally a completely new body. For this reason, the House rules must be re-approved at the start of each new session. And while each Congress typically takes the rules from the previous one and adopts them as their own (generally through a House Resolution pulling forward the old rules, such as H.Res. 5 in the 113th Congress), there is always the potential for amendments or eliminations from the preexisting rules.

When in 2008, the House created the Office of Congressional Ethics, it did so by passing a resolution (H.Res. 895) incorporating OCE's existence into the House Rules. Language regarding OCE was added to Section X of the Rules, which concerns special committees; OCE exists, therefore, as a supplement to the House Committee on Ethics prescribed in the rules. H.Res. 895 effectively implemented OCE for the duration of the 110th Congress, and provided the language in the House Rules stipulating the terms of its existence; the hope, clearly, was that by inserting this language into the rules, future Congresses would simply re-approve OCE at the start of each new session, since all they had to do was continue using this language.

To date, Congress has done so; the 113th Congress even took proactive action, amending some of the terms surrounding OCE to eliminate the term limits of Board members (a promising step, since it eliminates the delay at the start of each new Congress during which

the Speaker and Minority Leader had to spend time on selecting Board members). However, this is no guarantee that future Members will, or have to, keep OCE.

Therefore, as it currently stands, the existence of the Office of Congressional Ethics is put into flux at the outset of each new Congress. There have been complaints from both sides of the aisle about the workings of OCE; we would do well, however, to recall that none of the complaints has been due to the inefficacy of the Office. Rather, the complaints seem to spring from Members of Congress disgruntled at just how well the House Committee and OCE work together to promote accountability, thereby inhibiting Members' ability to act unnoticed.

There are other options for how to adequately define and house OCE. One, which we have recommended before, would involve codifying the Office through legislation. In other words, create a law mandating the existence of OCE; in that case, the only way to eliminate the Office would be by actively amending or repealing the law. Until that point, there would be no need for re-approval of the Office.

But getting a law through both the House and Senate is an ambitious goal; there is another possible solution to be found in appropriations legislation. To remain in existence, OCE requires both authorization, which currently stems from the House rules, and funding for its work, which comes from appropriations bills. Appropriations legislation, however, could act as authorization for OCE's existence, either by including language to that effect or by citing language from a previous House resolution. In other words, if an appropriations bill is allocating money to an office that has been authorized in a previous resolution, that office itself must, almost by definition, continue to exist. This would mean that the House rules would not necessarily have to include an explanation of OCE's functions, since that language already exists elsewhere.

IV. OCE Is a Critical Companion to the House Ethics Process

The Office of Congressional Ethics has played a key role in enhancing the work of the House Ethics Committee, proving to be a crucial adjunct to the Committee without supplanting Congress as the final arbiter on ethics. The supplemental investigative work and additional transparency offered by OCE unquestionably has helped boost the case record of the Ethics Committee, which is drawing praise from many quarters, including Public Citizen. Yet, this boost in ethics accountability does not appear to be overwhelming and is being handled prudently and reasonably by the House Ethics Committee. Neither OCE nor the House Ethics Committee has gone on an investigative rampage, and both organizations issue findings only after lengthy testimony, investigation, and deliberation.

Despite this ostensible success, it is unsurprising that the relationship between OCE and the Ethics Committee has at times been testy, especially at the outset of their partnership. Given the newness of the independent panel and the sometimes overlapping nature of their responsibilities, a bit of tension was bound to occur. But cooperation between OCE and the Committee clearly improved over the course of the 112th Congress, and by the 113th Congress the two seem to be working in tandem quite happily, as evidenced by the fact that the Committee has acted on every referral from OCE and even publishes these referral reports themselves. The Committee proudly displays and explains its relationship with OCE on its website, and includes information in its annual and quarterly reports about the referrals it receives from OCE. OCE in turn designates a staff person as the point of contact with the Committee on each referral in order to provide clarification or supplemental information more efficiently.

Promisingly, in the years since the most recent report on OCE's efficacy, the rate of investigations, both by OCE and by the Committee itself, has not slowed. The 112th Congress ended its term having opened 73 new investigations, 13 coming out of referrals from OCE, and 20 of which were concluded with public resolutions. The 113th Congress, meanwhile, has thus far instigated 23 new investigations and carried over 35 from the 112th Congress.

Moreover, the increased transparency of OCE's recommendations and investigations has quite possibly galvanized the Committee into launching more investigations of its own. Thus far in the 113th Congress, OCE has sent 11 referrals to the Committee, while the Committee has opened 23 investigations, clearly demonstrating that the Committee is taking more initiative with its own research. It would be no stretch to infer that OCE's public investigation records and recommendations have played some role in this trend.

It is time to recognize that the Office of Congressional Ethics and House Ethics Committee have evolved as responsible partners in the congressional ethics process. OCE must not only be re-authorized, but the House should seriously consider measures to make OCE a more stable and lasting institution to avoid unnecessary interruptions in ethics monitoring and enforcement.

It is also time for the U.S. Senate to consider taking similar steps toward a more accountable ethics process.

V. The Need for an Equivalent Senate Organization

To see how much the U.S. Senate Select Committee on Ethics could benefit from an organization like OCE to work alongside it, one need only to compare the House Committee data in the years since OCE with that of the Senate's. In the years since 2007 (the first year for which Annual Report data is available for the Senate, thanks to the Honest Leadership and Open Government Act), exactly zero disciplinary actions beyond a few letters of admonitionhave been taken against senators. The Committee has issued a grand total of three letters of admonition. Of the alleged violations reported to the Committee each year, a number which ranges from 26 (in 2013) to 99 (in 2009), the overwhelming majority are dismissed without even a preliminary inquiry.

The disparity between the House and the Senate is better seen in percentages. In 2013, there were 26 alleged ethics violations reported to the Senate Committee; of those 26 allegations, 19 were dismissed for lack of jurisdiction or lack of evident misconduct, and seven were dismissed due to "lack of facts." Only two preliminary investigations were commenced (a mere 7% of the allegations), and neither led to even an adjudicatory review, let alone sanctions. Conversely, in the first quarter of 2014 alone, OCE received 110 private reports of potential misconduct. From these 110 reports, OCE launched 17 preliminary investigations (just over 15%), five of which went into Phase II, and one of which was referred to the House Committee for further review. Clearly, with 11 of those 17 investigations resulting in almost immediate termination, OCE is not overzealous in its hunt for misconduct and is exercising restraint in its referrals for review. However, its case record is consistently higher than the Senate's, inspiring more confidence in the Office's commitment to integrity than the Senate Committee's.

Equally troubling in the Senate is the fact that since 2007, the number of alleged violations reported to the Committee has been consistently declining. In 2007-2009, reports of alleged violations were usually in the high 80s or even 90s, whereas by 2012 that number had dropped to 47, and by the following year was down to 26. It seems reasonable to assume that this comes less from an increased ethical commitment among senators than from decreased vigilance and reporting by those around them. Clearly the time has come for the Senate to embrace a partner organization along the lines of OCE, given that reports of misconduct are waning and conversion of allegations into concrete disciplinary action seems, frankly, nonexistent.

Nor is the Senate Ethics Committee's inaction a new phenomenon. In its long history, the Senate has had a remarkable tradition of protecting its own members. The Senate website proudly states that since 1789, the Senate has expelled only 15 members, 14 of whom were expelled for supporting the Confederacy during the Civil War. Since 1862, there have been

a handful of expulsion cases, most of which resulted in no expulsion, and six of which were concluded when the senators resigned before a verdict was reached.

But leaving aside expulsion, which is admittedly a drastic measure, even the number of censured senators is astonishingly low. Not so –between 1789 and 1990, they censured only nine Senators. Since 2002, the Ethics Committee has issued five public "Letters of Qualified Admonition" to its members. Unless United States Senators exhibit a degree of integrity unlike that of their House counterparts, there is clearly an institutional deficit in monitoring unsavory activity in the Senate. [*See* Appendix B, "Senate Ethics Committee Inactivity."]

VI. Senate Scandals

Of course, a lack of disciplinary action in the Senate doesn't necessarily mean that the Ethics Committee is not policing senators strictly enough; it could be that there is simply less malicious activity to punish or investigate among senators. Evidence, however, points elsewhere. Take the case of former Senator Ted Stevens, a vocal opponent of an organization along the lines of OCE for the Senate. At the very same time that the Senate voted not to establish an independent ethics office, claiming that the Ethics Committee worked just fine, allegations of corruption against Stevens were first surfacing. Stevens, ironically once the chairman of the Senate Select Committee on Ethics, remodeled his Anchorage home with the use of an oil corporation called VECO. The remodel would have cost the Corporation and its various contractors easily $250,000; Stevens, however, paid $160,000. Bill Allen, founder of the VECO Corporation, meanwhile, had earlier pled guilty to bribing Alaskan state legislators. These discrepancies were investigated by both the FBI and the IRS, given that Stevens reported no gifts from VECO, and a grand jury indicted Stevens of seven counts of failing to properly report gifts in July 2008. Three months later, he was convicted of all seven counts, making him only the fifth senator ever to be convicted by a jury in the United States' history.

Throughout this entire investigation, which was, notably, conducted through the Public Integrity Section of the Department of Justice, the Senate Committee on Ethics remained notably silent. After Stevens' conviction, at which point he was still running for reelection in Alaska, numerous members of both the Republican and Democratic Party called for his resignation. Senator McConnell intimated that a convicted felon would not find the Senate particularly welcoming, suggesting that the Senate would swiftly vote to expel him.

Despite McConnell's harsh words, however, the Committee's records themselves indicate very little preoccupation with Stevens' misconduct. The Annual Report from 2008 states that of the 85 alleged violations that year, of which one might imagine numerous concerned Senator Stevens, none resulted in disciplinary action. Two resulted in private or public

letters of admonition; even on this matter, it was not made public whether one of those letters had to do with the matter of Stevens' conviction.

Nor is Mr. Stevens the only senator to have been involved in publicly-alleged wrongdoings in recent history. Take, for example, Senator David Vitter (R-LA), who is frequently cited by the Center for Responsibility and Ethics and Washington (CREW) as one of the most corrupt politicians today. According to reports, Senator Vitter sent a letter to then-Secretary of the Department of the Interior Ken Salazar informing him that Salazar's salary was up for a raise, and that Vitter would resist the raise unless Salazar issued exploratory permits. Conceivably, this threat could be prosecuted as a form of bribery: Senator Vitter made a pay raise contingent on Salazar complying with his wishes. Salazar responded by declining to comply, and he sent his refusal to Senators Reid and McConnell. The result? The Senate Ethics Committee dismissed the complaint against him, explaining that there was "currently no clear Senate guidance addressing such conduct."[4] Instead of finding him in violation of ethics rules, the Committee dismissed the case for lack of precedent and then clarified to the Senate that, for future reference, this was something senators ought not do.

That is not all – take Senator John Ensign's affair with his PAC Treasurer, Cynthia Hampton, followed by his eight payments of $12,000 to the Hampton family following the resignation of Doug Hampton (Ensign's administrative assistant and Cynthia Hampton's husband). The incident occurred in 2009; Ensign resigned from the Senate in 2011. In that two-year window, the Senate Ethics Committee made no visible progress towards even admonishing Senator Ensign.

Nor did the Ethics Committee admonish Senators Dodd and Conrad for allegedly receiving special treatments on mortgages from Countrywide Financial Corp. during the subprime mortgage meltdown.

The list of incidents goes on. Watchdog groups such as CREW consistently decry corrupt senators and lodge public filings of complaint with the Ethics Committee; these complaints, however, have yet to be translated into concrete disciplinary actions. And yet, when the Senate voted down the creation of a supplementary Office of Public Integrity in 2006, multiple Senators insisted that the Committee was doing its job. The then-chairman, Senator George Voinovich (R-OH), archly claimed that "the laws and rules are enforced,"[5] while others argued that an office to check up on the committee would waste resources policing an already fully-functioning committee. This data suggests otherwise.

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[4] U.S. Senate Select Committee on Ethics website, "Senator David Vitter – Letter Dismissing Complaint," (March 30, 2012), available at: http://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=ba27f460-6cf2-4330-9455-84cf04c8b8e7

[5] Jeffrey Birnbaum, "Senate Votes Down Outside Ethics Office," *Washington Post* (March 29, 2006), available at http://www.washingtonpost.com/wp-dyn/content/article/2006/03/28/AR2006032801586.html

VII. Failed Attempts at Senate Accountability Offices:

A History of Defeated Bills

The desire to create an office independent of the Senate Committee on Ethics is not a new one. The 109th Congress was a busy one in terms of lobbying reform bills introduced in both the Senate and the House. Among the many bills introduced was S. 2259, a bill "to establish an Office of Public Integrity in the Congress and a Congressional Ethics Enforcement Commission,"[6] proposed by then-Senator Barack Obama (D-IL). The bill contains numerous intriguing suggestions regarding a Congressional Ethics Enforcement Commission, whose membership would be appointed by the Majority and Minority Leaders of the Senate (independently of one another), the Speaker and Minority Leader of the House (also independently of one another), and a member chosen by some agreement between at least three of the four. Its function would be largely similar to the role OCE plays today: it would investigate citizen complaints at its discretion. If the investigation led to probable cause of an ethics violation, the committee would have the power to reprimand the violator, as well as present a case to the relevant Ethics Committee in either the House or Senate. The bill unfortunately gained little traction, partially because its proposed Office of Public Integrity would be entrusted with investigating lobbying disclosure both in the Senate and the House, an option appealing to neither party.

Meanwhile, another bill did attract more positive attention. Also in 2006, Senators Susan Collins (R-ME) and Joseph Lieberman (D-CT) proposed a substitution to Senator John McCain (R-AZ)'s S. 2128, a Lobbying Transparency and Accountability Act. The main thrust of the legislation involved tightened restrictions on who was allowed to lobby Congress and when, as well as making disclosure rules more transparent. However, one facet of the substitution also called for an Office of Public Integrity. Like Senator Obama's proposal, the Collins-Lieberman amendment would provide an independent office to advise the Senate and House Ethics Committees; but unlike Senator Obama's Office, this Office's main role would be only to oversee and enforce the work of the Ethics Committees themselves (which is how OCE works today). The job of finding senators guilty of infractions still lay with the Committee alone; the Office of Public Integrity would mainly serve to galvanize the Committees into action and help them by providing investigative assistance.

Unfortunately, while the substitution was, as a whole, very successful, passing the Senate Homeland Security and Governmental Affairs Committee by a vote of 12-1, one of the few amendments to the substitution that was made before approval was an amendment called,

[6] Library of Congress, "S. 2259," February 8, 2006, available at http://thomas.loc.gov/cgi-bin/query/z?c109:S.2259.IS:

ironically enough, the "Strengthen Ethics Committee" amendment.[7] It was proposed by Senator Voinovich, at that point the chairman of the Senate's Ethics Committee, and it struck the provision in the bill for the Office of Public Integrity. Voinovich thought that the provision was an affront to the existing Ethics Committees, and claimed that it would be nothing but a waste of funds.[8] His amendment passed by an 11 to 5 on March 2, 2006.

About a month later, the Senate as a whole rejected a similar proposal, again put forth by Senators Collins and Lieberman, this time joined by Senator McCain. Senator Lieberman stated that they had altered the proposal since its failure in committee, hopefully to make it more palatable, but the Senate still voted it down in a 67 to 30.

When, the following year, the Honest Leadership and Open Government Act passed in Congress, it passed without provisions for ethics committee oversight offices. And while former Speaker Pelosi's task force led to the creation of the Office of Congressional Ethics in the House in 2008, to date nothing of the sort has taken place in the Senate.

VIII. Conclusions and Recommendations: Make Ethics a Priority in the House and in the Senate

The Office of Congressional Ethics is a small office. It has a staff of nine with an operating budget of about $1.5 million. But despite its size, OCE has been able to achieve tangible victories, and is well on its way to effecting real change. This office is one of few functional bipartisan entities in Washington today, and those who criticize it within Congress do so more out of self-interest than out of dissatisfaction with its workings. The data from the past six years provides compelling evidence that OCE is a responsible and effective counterpart to the House Committee, and the next step in ensuring its continued success is to change its existence from a tenuous rule, subject to threats every other year, into something more permanent. The time has come to institutionalize OCE to enable it to best continue doing its much-needed work, and do so in a timely fashion without the recurring fear of being dismantled.

Moreover, given the resounding success we have seen coming out of OCE, the logical next step would also be to commit to creating a similar office in the Senate.

In order to both help the Office of Congressional ethics best continue to enforce accountability in the House and encourage the Senate to do the same, we have enclosed a number of recommendations to best strengthen the system. The most significant reforms that should be made include: (i) extending an independent ethics office to the Senate that

[7] Guest Blogger, "Summary of the Markup of the Collins/Lieberman Substitute to S.2128," Center for Effective Government (March 3, 2006), available at: http://dev.ombwatch.org/node/2814
[8] *Ibid.*

would function similarly to OCE but work separately from it and only investigate allegations concerning senators; (ii) making the independent ethics office in the House a matter of continuing resolution rather than transitory congressional rules; and (iii) granting the offices genuine investigative authority, most notably through subpoena power.

In seeking to strengthen the congressional independent ethics office, we do not want to risk endangering current House ethics rules that have established the Office of Congressional Ethics. We merely seek to forge a more long-lasting, institutionalized place in the House for OCE, which has proved itself to be a rewarding partner.

As far as the Senate goes, we believe we have provided compelling evidence that an independent office is long overdue in the Senate. Protestations to the contrary have come predominantly from members of the Ethics Committee themselves, who have a clearly vested interest in leaving their shoddy work unsupervised, and a simple consideration of the numerous senatorial scandals in recent years suffices to show the lack of rigor in the Ethics Committee's fulfillment of their duties.

The following are specific recommendations for strengthening congressional ethics enforcement.

- Create an Office of Public Integrity (OPI), via Senate rules, to serve as an independent office that investigates allegations of senatorial misconduct and makes recommendations to the Senate Ethics Committee. It will then remain in effect until such time as the Senate chooses to revisit the rules.

- Include authorizing language for OCE in the appropriations bill responsible for its funding, thereby significantly decreasing the risk of changing House rules jeopardizing the office's existence.

- Stipulate that both OCE and OPI have board members appointed through mutual agreement. In the House, this would mean having appointees by the Speaker approved by the Minority Leader (and vice versa), and in the Senate appointees by the Majority Leader approved by the Minority Leader (and vice versa). If appointment to the board is permitted to occur through partisan selection, OCE and OPI will be relegated to partisan impotence, as has occurred in the FEC.

- Grant both agencies subpoena power. Such authority could be granted to the agencies' staff directors and chief counsels or, if it would make this investigative authority more politically acceptable, subject to approval by OCE or OPI's Board.

- Amend FECA to allow the FEC to refer matters to OCE and OPI. According to current FECA laws, the FEC may only refer apparent violations to the Attorney General, not any other government agency. [2 USC §437g(a)(5)(c)]

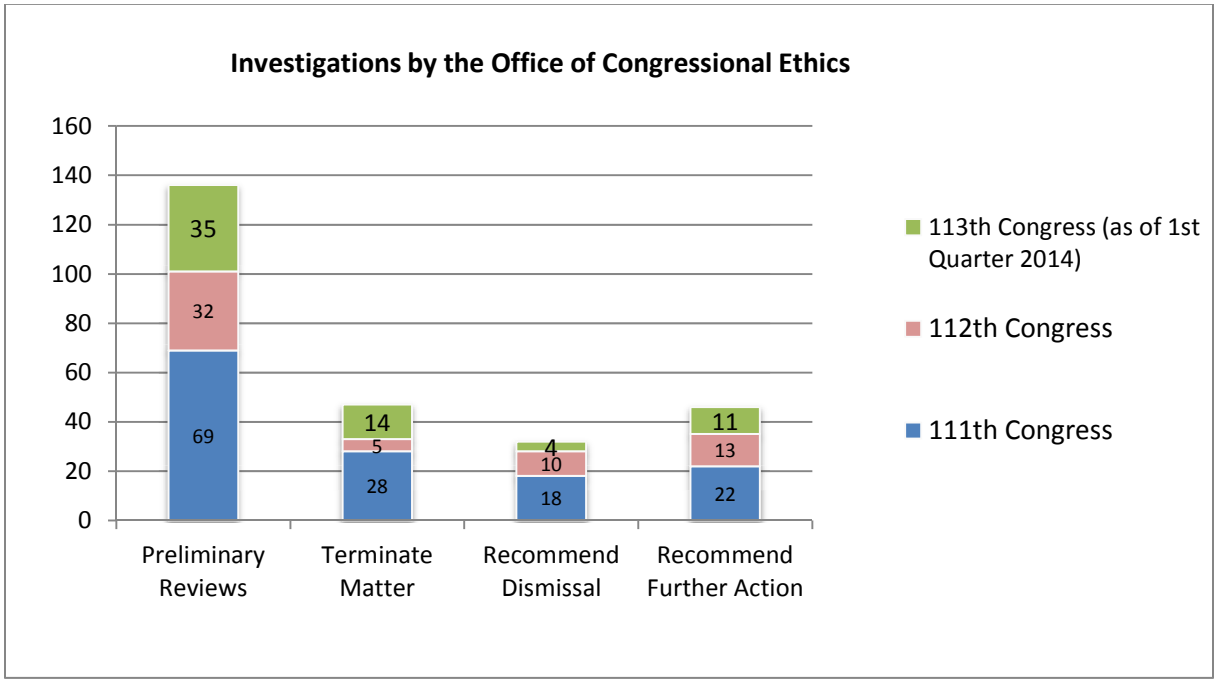
- Specify that OCE and OPI have the authority to investigate lobbyists and other outside parties of their sworn obligations under Congressional rules (House Rule 25 and Senate Rule 35) and the LD-203 statements under Lobby Disclosure Act of potential violations of congressional rules.

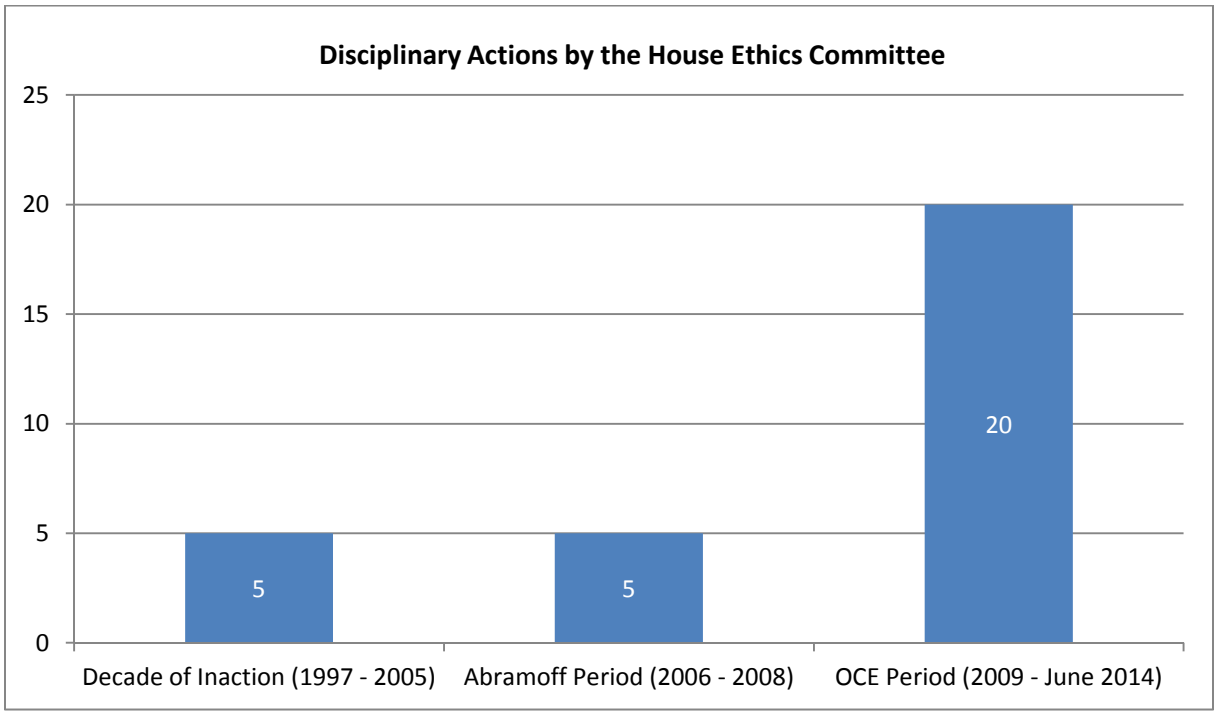
- Mandate annual reports to the House and Senate from OCE and OPI recommending changes, if any, to House and Senate rules as well as providing performance statistics of the agencies.

OCE is too valuable an agency for us to keep its existence permanently at risk, and the numbers from the Senate Ethics Committee are discouraging enough that we think the time has come to seriously revisit these options.

Appendix A.

Congressional Ethics Enforcement: From Decade of Inaction to OCE Period of Accountability





Appendix A: Notes

"Disciplinary actions" include formal penalties issued by the House Ethics Committee as well as informal agreements made with the Committee to correct misconduct, such as reimbursement for improper travel expenses, even with no actual finding of guilt.

From 1997 through 2008, prior to creation of the Office of Congressional Ethics (OCE), most matters before the House Ethics Committee were kept confidential, making estimates of disciplinary actions difficult to ascertain other than through news stories. The OCE period not only supplemented ethics enforcement with the work of a semi-independent agency, it also established unprecedented transparency of ethics cases.

The disciplinary actions documented during the "Decade of Inaction" includes actions against: Reps. Jay Kim (R-Cal.), James Trafficant (D-Ohio), Earl Hillard (D-Ala.), Bob Shuster (R-Pa.), and Newt Gingrich (R-Ga.).

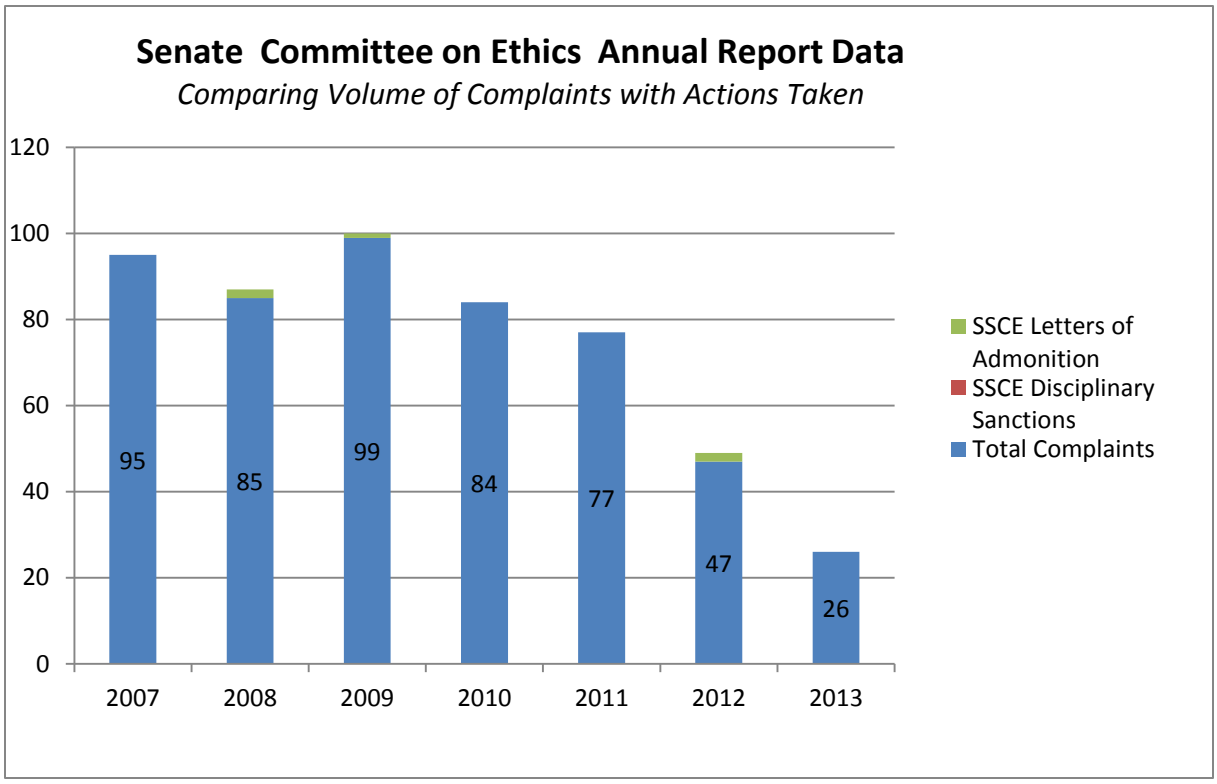
The "Abramoff Period" includes actions against: Reps. Tom DeLay (R-Texas), Nick Smith (R- Mich.), Candice Miller (R-Mich.), Curt Weldon (R-Pa.) and Tom Feeney (R-Fla.).

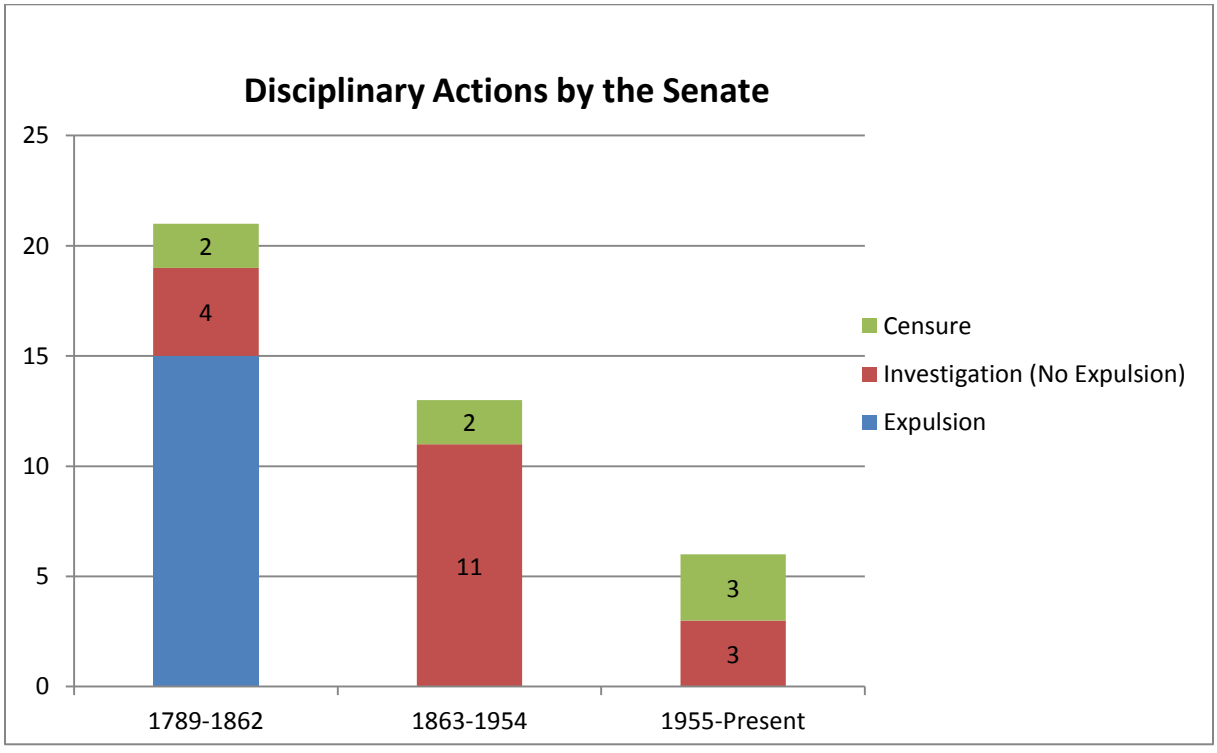
The "OCE Period" includes actions against: Reps. Bennie Thompson (D-Miss.), Yvette Clarke (D-NY), Donald Payne (D-NJ), Carolyn Kirkpatrick (D-Mich.), Donna Christensen (D-MD), Charlie Rangel (D-NY), Rangel (second finding), congressional staff Dawn Kelly Mobley, Carib News Foundation employees Karl Rodney, Faye Rodney and Patricia Lewis, Reps. Robert Andrews (D-NJ), Michael Collins (R-Ga.), Laura Richardson (D-Cal.), Jean Schmidt (R-Ohio) (no violation found but required to reimburse illicit gift), Maxine Waters' (D-Cal.) chief of staff Mikhail Moore, Jesse Jackson, Jr. (D-Ill.) (the investigation was still ongoing when he resigned from office, but an investigative subcommittee had been empaneled, and he is now serving prison time for federal campaign law violations), Laura Richardson (D-CA), Shelley Berkley (D-NV), and Don Young (R-AK).

Sources: Public Citizen (2014); and "Decade of Inaction" compiled by Common Cause (2006).

Appendix B.

Senate Ethics Committee Inactivity





Appendix B: Notes

The U.S. Senate Select Committee on Ethics only began releasing the data regarding reports, investigations, and disciplinary actions taken in 2007, which is why this is where the data in the first figure begins. Although we have included a category in the first figure for SSCE Disciplinary Actions (denoted by the color red), there were clearly no such actions; the category was still included as a pictorial representation of its absence. Data for the second figure, however, comes from information published on the Senate website, included in their "Origins and Development" section.

The list of Senators who have been expelled is as follows: William Blount (R-TN), James Mason (D-VA), Robert Hunter (D-VA), Thomas Clingman (D-NC), Thomas Bragg (D-NC), James Chestnut, Jr. (D-SC), Alfred Nicholson (D-TN), William Sebastian (D-AK), Charles Mitchel (D-AK), John Hemphill (D-TX), Louis Wigfall (D-TX), John Breckinridge (D-KY), Trusten Polk (D-MO), Waldo Johnson (D-MO), and Jesse Bright (D-IN). All of these expulsions took place in or before 1862.

The censured Senators are: Timothy Pickering (Federalist – MA), Benjamin Tappan (D-OH), Benjamin Tillman (D-SC), John McLaurin (D-SC), Hiram Bingham (R-CT), Joseph McCarthy (R-WI), Thomas Dodd (D-CT), Herman Talmadge (D-GA), and David Durenberger (R-MN).

Censure, in the Senate's definition, is not the same as a letter of admonition. According to the Senate's definition, "A censure does not remove a senator from office. It is a formal statement of disapproval, however, that can have a powerful psychological effect on a member and his/her relationships in the Senate."[9] The last senator to receive a censure, Senator Durenberger, received his in 1990.

Letters of admonition, on the other hand, serve as relatively mild rebukes from the Ethics Committee: most end with the conclusion that a senator acted inappropriately, but the scope of the misdeed or the senator's behavior after the infraction mitigates the incident. The letters have little to no lasting repercussions. Five public letters of admonition have been issued: to Robert Torricelli (D-NJ) in 2002, to Larry Craig (R-ID) in 2008, Pete Domenici (R-NM) in 2008, Roland Burris (D-IL) in 2009 and Tom Coburn (R-OK) in 2012.

Sources: Senate Public Records and Ethics Committee Annual Reports.

[9] "Expulsion and Censure," United States Senate, available at: http://www.senate.gov/artandhistory/history/common/briefing/Expulsion_Censure.htm#censure