CLC
ADVANCING DEMOCRACY THROUGH LAW

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ETHICS PACKAGE FOR REFORMS OF THE 115TH CONGRESS

TRAVEL:

1. Close the non-profit loophole for lobbying entities while directing the House Ethics Committee to set up a certification process allowing a small number of independent entities (such as the Aspen Institute) to pay for travel related to educational events.

> **In 2017, the House Clerk's website reported 2,436 instances of travel paid for by non-profits.[1]**

Details:

- Travel is an especially valuable tool for those wishing to build relationships and foster goodwill with members of Congress, often providing important "face-time" with members and staff. In 2007, the 110th Congress passed the Honest Leadership and Open Government Act (HLOGA), which restricted lobbyists and foreign agents from paying for member travel. However, the measure included a loophole that allows lobbyists to effectively sponsor congressional travel for educational purposes. Now, rather than directly paying for travel, many lobbyists, foreign agents and their clients underwrite member travel by funneling funds through non-profit organizations that are closely aligned with the client's interests. In 2015, the House Clerk's website reported 2,555 instances of travel paid for by non-profits.

[1] http://clerk.house.gov/public_disc/giftTravel.aspx

2. Require full online disclosure of official and related travel.

> **Official travel for members of Congress cost taxpayers $19.4 million in 2016.**[2]

Details:

- According to *USA Today*, in 2014, the cost of official travel by members of Congress came in at $12.5 million, up from $9.7 million in 2013. While official travel by members of Congress can be a valuable means of learning about issues related to their official duties, there continue to be instances in which the expenditures of taxpayer funds appear to be extravagant. The best way to ensure accountability for such travel is transparency. Official travel reports are not provided on the Internet in a searchable, sortable, and downloadable database format. Similarly, the database for privately-sponsored travel also falls short of this standard. Even though the Clerk of the House and Secretary of the Senate now post the database for privately-sponsored travel on their websites and make the database available for download, key elements of the downloadable database are excluded, such as the cost of the trip. Both Senate and House rules should require full public disclosure of all congressional travel records – official travel as well as officially-connected travel – in a searchable, sortable and downloadable format.

CONFLICTS OF INTEREST:

1. Require House and Senate Ethics Committees to issue updated guidance and clarifications regarding actions that implicate conflicts of interest.

> **Stephanie Teich-McGoldrick...worked on legislation directly affecting Sandia National Laboratory while receiving a salary of $124,000 paid by Sandia.**[3]

Details:

- In December 2012, the House Ethics Committee "recommended that conflict of interest rules be submitted to a task force for review" in order to more clearly define what constitutes a conflict of interest. Yet no further meaningful action was taken. Additionally, a recent report from the Project on Government

[2] https://www.usatoday.com/story/news/politics/2017/02/27/taxpayers-fund-first-class-congressional-foreign-travel-boom-overseas/98351442/
[3] http://www.pogo.org/straus/issues/congress/2016/the-insidious-and-totally-legal-way-industry-infiltrated-congress.html

Oversight (POGO) found that the Congressional Fellowship Program sponsored by non-governmental entities is not fully disclosed nor properly monitored and often creates conflicts of interest.

Rep. Mike Kelly (R-PA) sponsored a natural gas bill in the House. At the same time, Rep. Kelly's wife was negotiating a multi-million dollar deal with Exxon.[4]

2. Require online disclosure of job negotiations to the Clerk of the House or Secretary of the Senate when there are two-way communications on employment prospects.

Details::

- Under current rules, members of Congress are required to disclose employment negotiations to the House Ethics Committee and Secretary of the Senate, but this information is not provided to the public in a meaningful or timely fashion. In the House, employment negotiations are publicly disclosed only when the member decides there is a conflict of interest. In the Senate, public disclosures are only provided once a member negotiates a specific salary. As a result, since 2008 there have been only nine employment negotiations made publicly available in the House and just a handful in the Senate. Job negotiation transparency is an important tool in preventing potential conflicts of interest and enhancing accountability.

CAMPAIGN ACTIVITIES WHILE CONGRESS IS MEETING:

1. Prohibit members of Congress from actively engaging in political fundraising and soliciting between 9 a.m. and 6 p.m. on any day in which their house of Congress is meeting. Require online disclosure of job negotiations to the Clerk of the House or Secretary of the Senate when there are two-way communications on employment prospects.

A typical United States Senator spends two-thirds of the last two years of their term raising money.[5]

Details:

- Most members of Congress spend as much as four to five hours per day

[4] https://www.theatlantic.com/politics/archive/2012/10/lucky-congress-blatant-conflict-interest-still-perfectly-legal/322790/
[5] https://bulletin.represent.us/much-time-congress-members-spend-fundraising/

fundraising. In 2013, a model daily schedule provided to incoming Democratic members of Congress showed the Democratic Congressional Campaign Committee (DCCC) pushing members to schedule four hours of "call time" while in their D.C. office. Furthermore, it is suggested that one hour be set aside for "strategic outreach" during which time members could solicit more donations. Soliciting donations during "work hours" prevents the member of Congress from performing important constituent duties and legislative tasks.

2. Prohibit congressional staff from engaging in paid or unpaid campaign activity in connection with congressional elections while Congress is in session and the staffer is not on leave/vacation.

Details:

- Current law prohibits members of Congress and their staff from soliciting funds in their office building, using official member accounts for campaign activities, using government equipment, such as phones, for campaign-related activities, or from performing campaign activities during official office hours. Yet, in reality, this prohibition is a fiction. Many congressional staffers spend significant amounts of time on campaign-related activities with vaguely drawn lines between official and campaign business. Allowing congressional staff members to engage in campaign activities is tantamount to using taxpayer-allocated funds to subsidize a campaign and presents a potential conflict of interest.

3. Create cooling-off periods between a member's acceptance of a contribution from a lobbyist or their client and participating in a lobbying contact with that lobbyist or client.

> **Lobbyists and their clients have spent over $3 billion lobbying politicians each year since 2008.[6]**

Details:

- Lobbyists play a key role in campaign fundraising, especially as bundlers – individuals who solicit and collect contributions and receive the political credit for delivering amounts much greater than a lobbyist's individual contribution limit. A 2011 American Bar Association (ABA) report from the Task Force on Lobbying Disclosure found that current law fails to address the "leverage that lobbyists can acquire, and the unseemly appearances they create, when they participate in campaign fundraising for the same members of Congress whom they also lobby." The ABA Task Force proposed that a cooling-off period between a lobbying contact and campaign fundraising activities by a lobbyist in order to prevent corruption and the appearance of corruption.

[6] https://www.opensecrets.org/lobby/

REVOLVING DOOR:

1. Lengthen the existing two-year revolving door limitations for members of Congress.

> **Members of Congress now make $174,000 a year – not a bad living. But usually they can at least quintuple that salary by switching over to lobbying once they retire.[7]**

Details:

- The "revolving door" refers to the common practice of outgoing members of Congress becoming registered lobbyists or "strategic advisors" for private industries - often industries with which they frequently worked while in Congress. According to *OpenSecrets*, of the 75 outgoing members of the 113th Congress, 27 are now directly involved in lobbying. By contrast, in 1974, only three percent of former lawmakers took jobs as lobbyists after leaving Congress. According to a report from *The Nation*, and Republic Report, a member of Congress turned lobbyist can expect an average pay raise of 1,452 percent, further incentivizing the revolving door practice. Current law states members of the House must wait only one year, and members of the Senate two years, before they may begin lobbying Congress. At the very least, both chambers should have a cooling-off period of a full congressional session. Better yet, extending the revolving door limitation to three or four years would strengthen the cooling-off period which is intended to reduce the timeliness of any insider information a former member may have and to reduce the likelihood of conflicts of interest.

> **In 1974, only three percent of former lawmakers took jobs as lobbyists after leaving Congress. This number is now over 50 percent.[8]**

2. To be consistent with the Senate, extend the House revolving door restrictions to senior staff to prohibit lobbying contacts with the entire House rather than just their own office.

Details:

- According to OpenSecrets, from 2010-2012, 377 former House staffers registered as lobbyists. The 377 staffers included 50 legislative assistants, 32 chiefs of staff,

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[7] https://www.thenation.com/article/when-congressman-becomes-lobbyist-he-gets-1452-percent-raise-average/

[8] https://www.techdirt.com/articles/20130819/00581624225/50-retiring-senators-now-become-lobbyists-up-3-few-decades-ago.shtml

26 legislative directors, and 22 staff assistants. Under current statute, former high-ranking congressional staffers are prohibited from directly lobbying their former bosses until their one-year "cooling-off" period has ended. However, many former staff members evade the spirit of this lobbying restriction by lobbying committees or other House members, but not directly lobbying their former bosses. The purpose of the "cooling-off" period is to ensure that insider information to which the staffer was once privy is less pertinent to the issue being lobbied, while also ensuring that the relationships fostered between the former staffers and those involved with the lobbied legislation are less likely to influence the legislative outcome.

ENFORCEMENT:

1. Give the Office of Congressional Ethics subpoena power.

> **Without subpoena power, the OCE faces substantial obstacles in fulfilling its investigatory mandate.[9]**

Details:

- The OCE is charged with investigating allegations of wrongdoing against House members and staff. Upon making a determination that there is a possible violation of House ethics rules, the OCE refers the matter to the House Committee on Ethics for further review and disciplinary action. However, without subpoena power, the OCE faces substantial obstacles in fulfilling its investigatory mandate.

2. Clarify that the Committee on Ethics may not halt a review by the independent Office of Congressional Ethics unless it has already empaneled an investigative subcommittee to review the same allegations.

> **From 2007 through 2016, the committee received 676 allegations of wrongdoing and only 88 even got a preliminary investigation.[10]**

Details:

- Since the creation of OCE, there has been an ongoing, often behind-the-scenes struggle between the OCE and the House Ethics Committee over the use of Committee Rule 18(a), which allows the Committee to perform informal fact-gathering in order to decide whether or not to conduct an investigation. Rule 18(a) has, however, been used by the Committee to order the OCE to cease its

[9] https://www.cbsnews.com/news/how-does-a-congressional-ethics-investigation-work/
[10] https://www.issueone.org/numbers-behind-senate-ethics-committee-black-hole/

investigation of a potential transgression. For the OCE to effectively perform its job, it must be given the opportunity to investigate fully, without interference from the Ethics Committee unless the Committee is conducting a more thorough and transparent investigation through an investigative subcommittee. Create an independent Office of Senate Ethics.

3. Create an inedependent Office of Senate Ethics.

Details:

- The Senate Ethics Committee is widely regarded as a black hole for allegations of violations of Senate ethics rules. When the Office of Congressional Ethics was established on the House side, a similar effort failed in the Senate. The Committee's failure to act has led many to consider it ineffective, more concerned with protecting the reputations of senators than actually investigating potential transgressions and enacting appropriate sanctions. With no meaningful transparency in the Senate ethics process, there is no way for the public to assess whether or not the process is working. An Office of Senate Ethics, with subpoena power, should be created to independently investigate allegations of ethics violations. In turn, the Senate Ethics Committee would adjudicate the cases forwarded to it by this office.

4. Require each house of Congress to conduct random annual audits of Member Representational Allowance (MRA) and Senators' Officials Personnel and Office Expense Account (SOPOEA) accounts.

Details:

- House MRA accounts and Senate SOPOEA accounts are specific budgets, usually about $1.17-1.80 million in the House and $3.1-4.76 million in the Senate, assigned to each member to support their official and representational duties for their respective district or state, such as funding a congressional staff and maintaining an office. According to Roll Call, members in competitive districts spend, on average, three times more on MRA funded mailings and mass-communications than do members in safe districts. Requiring the House and the Senate to conduct random annual audits would help to uncover cases of improper use early on and also provide a disincentive for others to engage in the misuse of MRA and SOPOEA accounts.

GIFTS:

1. Require disclosure of donors to any non-profit organization established, maintained, controlled by or named after a member of Congress.

Contributions to these non-profits are widely viewed as an effective means to 'get on the radar screen' of powerful members of Congress.

Details:

- Non-profit organizations named after, or controlled by, a member of Congress are not currently required to disclose the names of donors funding the organizations. Donations to these connected organizations, often millions of dollars, raises the possibility of potential conflicts of interest and provides an avenue for the buying and selling of influence and access to the politician after whom the organization is named. While these foundations may perform valuable and worthwhile work, contributions to these non-profits are widely viewed as an effective means to "get on the radar screen" of powerful members of Congress..

2. Eliminate gift rules loopholes for public universities.

Many state universities rely significantly on federal grants for funding, and lobby for especially valuable earmarks from members of Congress.

Details:

- Lobbyists and lobbying entities are forbidden from directly giving "anything of value" to members of Congress and their staff. However, public universities are exempt from this rule, while private universities are not. Public universities often provide valuable gifts to members and their staff, particularly tickets to sporting events. The monetary value of these gifts can exceed thousands of dollars. Many state universities rely significantly on federal grants for funding, and lobby for especially valuable earmarks from ,embers of Congress.

ABOUT THE CAMPAIGN LEGAL CENTER

Campaign Legal Center (CLC) is a nonpartisan, nonprofit organization based in Washington, D.C. Through litigation, policy analysis and public education, CLC works to protect and strengthen the U.S. democratic process across all levels of government. CLC is adamantly nonpartisan, holding candidates and government officials accountable regardless of political affiliation.

CLC was founded in 2002 and is a recipient of the prestigious MacArthur Award for Creative and Effective Institutions. Our work today is more critical than ever as we fight the current threats to our democracy in the areas of campaign finance, voting rights, redistricting, and ethics.

Most recently, CLC argued Gill v. Whitford, the groundbreaking Supreme Court case seeking to end extreme partisan gerrymandering. In addition, CLC plays a leading watchdog role on ethics issues, providing expert analysis and helping journalists uncover ethical violations. CLC participates in legal proceedings across the country to defend the right to vote.