



The Congressional Ethics Enforcement Gap

A Comparative Analysis of Ethics Enforcement in the
U.S. Senate and U.S. House of Representatives



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INTRODUCTION

In recent decades, an ethics enforcement gap has widened between the U.S. House of Representatives and the U.S. Senate.

In the House, the nonpartisan and independent Office of Congressional Ethics (“OCE”) routinely conducts investigations of alleged unethical conduct and exposes evidence of lawmakers’ misdeeds to the public. But the OCE only has jurisdiction in the House.

In the Senate, the only destination for an ethics complaint is the Senate Select Committee on Ethics, a secretive body composed of senators who are tasked with investigating their colleagues. This ineffective system of self-policing has created an environment in which published ethics investigations are extremely rare and enforcement is practically nonexistent.

Ten years ago, Campaign Legal Center and Public Citizen sent a letter to the leadership of the Senate Ethics Committee imploring them to advance the creation of an equivalent to the OCE in the Senate.¹

On the anniversary of our request to create a structure for meaningful accountability in the chamber, we decided to review recent patterns of ethics complaints and investigations and compare what happens in the House versus the Senate when allegations of unethical and/or illegal conduct are made against an elected official.

In the 10 years since our letter, CLC, other public interest organizations, and citizens have filed hundreds of complaints before the Senate Ethics Committee. The Committee has not once issued any sanctions against a senator.

Moreover, in comparing similar ethics complaints filed in the House and Senate, we found that where the OCE investigates and publishes a report detailing the evidence to substantiate an allegation, the Senate Ethics Committee does not issue a public report or acknowledge that an investigation occurred.

This contrast between the chambers – a degree of accountability for representatives and impunity for senators – demonstrates the need for an independent ethics enforcement body in the Senate.

CLC renews its call to establish an independent ethics office in the Senate so that ethics complaints in both chambers will be thoroughly and transparently investigated. This would provide a means for the public to learn about the evidence supporting an allegation and evaluate whether it has merit when voting, and add necessary pressure to encourage the Senate

¹Campaign Legal Center & Public Citizen (2014), https://campaignlegal.org/sites/default/files/Boxer_Isakson_Ethics_Committee_Letter_6-16-14.pdf.

Ethics Committee to act on complaints moving forward.

COMPARING HOUSE AND SENATE ETHICS ENFORCEMENT

A comparison of how the Senate Ethics Committee and the OCE have evaluated complaints from 2009 to 2023 illustrates that public accountability for ethics violations in the Senate is practically nonexistent.



While the OCE and the Senate Ethics Committee dismiss cases at similar rates – 53% and 56%, respectively – cases that are not dismissed meet a very different fate in each chamber.

The OCE found evidence of a violation in 43% of its cases. The Senate Ethics Committee found evidence of a violation just 3% of the time.

In 45% of the OCE cases, the Office's reports were made public, allowing voters to review for themselves evidence of a possible ethics violation. By contrast, the Senate Ethics Committee released a report in just 4% of its cases.²

While these summary statistics speak volumes about the disparity in accountability between the House and Senate, our case-by-case comparison of allegations in each chamber places this context in deeper relief.

DOUBLE STANDARD FOR ETHICS VIOLATIONS IN THE SENATE AND HOUSE

CLC analyzed 20 years of past ethics cases in both chambers and found a clear pattern.

Over the years, allegations of similar offenses have been brought before both the Office of Congressional Ethics and the Senate Ethics Committee. In these cases, the OCE conducted investigations and found evidence of ethics violations – but the Senate Ethics Committee either dismissed the complaints or remained silent.

² Campaign Legal Center, *Congressional Ethics Enforcement: 2009-2023* (2023), <https://campaignlegal.org/sites/default/files/2024-02/OCE%20v.%20Senate%20Ethics%20Committee%201-24%20update.pdf>.

ETHICS DOUBLE STANDARDS: HOUSE VS. SENATE

ETHICS VIOLATION	HOUSE OCE	SENATE ETHICS COMMITTEE
<p>Insider Trading</p>	<p>Rep. Mike Kelly accused of providing confidential information to spouse for stock trade</p> <p>Enforcement: Published investigation found evidence of violations</p>	<p>Sen. Richard Burr accused of trading stocks based on confidential COVID briefings</p> <p>Enforcement: No published investigation</p>
<p>Undisclosed Stock Trades</p>	<p>Reps. Pat Fallon and Tom Suozzi accused of failing to report hundreds of stock trades</p> <p>Enforcement: Published investigation found evidence of violations</p>	<p>Sen. Rand Paul accused of intentionally failing to disclose a stock trade for a year to cover up insider trading</p> <p>Enforcement: No published investigation</p>
<p>Illegal Gifts</p>	<p>Rep. Alexandria Ocasio-Cortez accused of accepting gifts related to Met Gala attendance</p> <p>Enforcement: Published investigation found evidence of violations</p>	<p>Sen. Ted Cruz accused of accepting free services to produce and market his podcast while the same company lobbied his committee</p> <p>Enforcement: No published investigation</p>
<p>Illegal Payments to Staff</p>	<p>Rep. David Schweikert accused of excessive payments to staff using taxpayer funds</p> <p>Enforcement: Published investigation found evidence of violations</p>	<p>Sen. Ron Johnson accused of giving \$280,000 in cash gifts to staffer for unknown purposes</p> <p>Enforcement: No published investigation</p>
<p>Official Acts for Campaign Contributions</p>	<p>Reps. Todd Tiahrt and Pete Visclosky accused of accepting campaign contributions in exchange for earmarks</p> <p>Enforcement: Published investigation found evidence of violations</p>	<p>Sen. Mary Landrieu accused of accepting campaign contributions in exchange for earmarks</p> <p>Enforcement: No published investigation</p>

INSIDER TRADING

Ethics Rule

The Stop Trading on Congressional Knowledge (STOCK) Act of 2012³ reinforced existing insider trading laws by, *inter alia*, clarifying that members of Congress and other government officials are prohibited from trading securities based on nonpublic information they gain as part of their official responsibilities.⁴ Numerous government ethics rules on nondisclosure, conflicts of interest, gifts, and other issues also prohibit members from using information they learn on Capitol Hill for their personal financial benefit in the markets.



Sen. Richard Burr (R-NC)

Allegations

In March 2020, a complaint alleged that Sen. Richard Burr violated ethics rules and federal law by selling millions of dollars in stock after a closed-door briefing on the early stages of the COVID-19 pandemic.⁵ The stocks included companies whose businesses were ultimately affected, positively or negatively, by the pandemic, including hotels and telework software.⁶

The complaint also alleged that Sen. Burr made public statements that contradicted his financial positions: Sen. Burr said “the United States today is better prepared than ever before to face emerging public health threats, like the coronavirus.”⁷ Privately, Sen. Burr took a

³ STOCK Act, S. 2038, 112th Cong. §1 (2012).

⁴ 15 U.S.C. § 78u-1.

⁵ CREW, *Request for Investigation of Sens. Richard Burr (R-NC) and Kelly Loeffler (R-GA)* (2020), <https://www.citizensforethics.org/wp-content/uploads/legacy/2020/03/2020-3-20-Burr-and-Loeffler-insider-trading.pdf>.

⁶ *Id.* at 1-2.

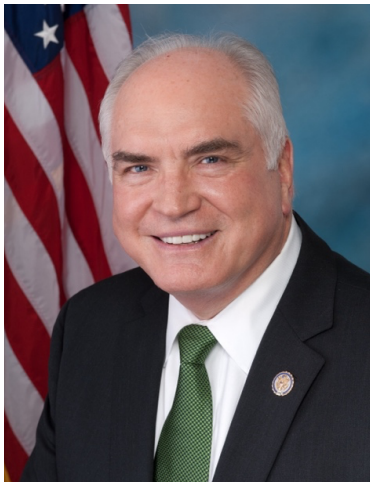
⁷ *Id.*

much different position: The same month, he told a small group at a private Republican club on Capitol Hill that COVID-19 “is much more aggressive in its transmission than anything that we have seen in recent history” and “is probably more akin to the 1918 pandemic.”⁸

After years of lawsuits, a federal district court unsealed documents detailing an investigation by the FBI into Burr’s stock trades. The Department of Justice ultimately declined to file criminal charges in the case – but the FBI documents showed substantial evidence that Burr had engaged in insider trading and violated Senate ethics rules. Investigators found calls and texts between the Senator, his wife, her brother, and her brother’s wife on the same day the families sold hundreds of thousands of dollars of stock; evidence that Sen. Burr had received nonpublic information on COVID-19 the same day he ordered \$110,000 in stock sales; and a purchase of U.S. Treasury bonds – an instrument typically used as protection against a market downturn – on the same day markets were at their highest level ever.⁹

Published Investigation

None. Despite the findings of the DOJ probe, the Senate Ethics Committee has not publicly acknowledged investigating Sen. Burr or taken any other action on the allegations.



Rep. Mike Kelly (R-PA)

Allegations

In 2020, Rep. Mike Kelly’s wife allegedly purchased stock based on nonpublic information

⁸ Tim Mak, *Weeks Before Virus Panic, Intelligence Chairman Privately Raised Alarm, Sold Stocks*, NPR (Mar. 19, 2020), <https://www.npr.org/2020/03/19/818192535/burr-recording-sparks-questions-about-private-comments-on-covid-19>.

⁹ Chris Young, *Less-redacted Search Warrant Records Shed New Light on Investigation into Sen. Richard Burr*, Reporters Committee for Freedom of the Press (Sept. 9, 2022), <https://www.rcfp.org/sen-burr-search-warrant-unsealing/>.

that Rep. Kelly learned as a member of Congress.¹⁰ When a steel plant in Rep. Kelly's district threatened to close unless the Trump administration enacted tariff protections for its products, he helped the company to lobby the Department of Commerce to protect its interests. When Rep. Kelly's office learned that the Department would announce an official investigation of the matter – but before the Department made its public announcement – Rep. Kelly's wife purchased tens of thousands of dollars in stock in the company, despite having liquidated all of her other stock market holdings the prior year. She later sold the stock for nearly four times the price she paid.

Published Investigation

In October of 2021, the House Ethics Committee publicly released a report by the OCE detailing evidence that the stock trades were made based on information Rep. Kelly learned on Capitol Hill.¹¹ Although Rep. Kelly, his wife, his chief of staff, and Commerce Secretary Wilbur Ross all refused to cooperate, the OCE investigated anyway and found “substantial reason to believe” that the stock purchases were based on confidential information.

The OCE requested evidence from the Department of Commerce and the steel company, and interviewed, as anonymous witnesses, members of Rep. Kelly's staff, staff at the Department of Commerce, and government relations officials at the company. The OCE asked the House Ethics Committee to subpoena the witnesses who did not cooperate and further review the allegations based on its findings that there was reason to believe the Kellys violated ethics rules. As of this writing, the House Ethics Committee has not completed its investigation,¹² but thanks to the OCE, evidence corroborating the allegations has been released to the public.

¹⁰ Campaign Legal Center, *CLC Complaint to OCE Regarding Rep. Mike Kelly* (2021), <https://campaignlegal.org/document/clc-complaint-oce-regarding-rep-mike-kelly>.

¹¹ Office of Congressional Ethics Review No. 21-9221 (July 16, 2021), https://ethics.house.gov/sites/ethics.house.gov/files/documents/OCE%20Report%20and%20Findings_3.pdf.

¹² H. R. Rep. No. 117-706, at 214 (2023).

UNDISCLOSED STOCK TRADES

Ethics Rule

The STOCK Act requires members of Congress and other government officials to file a periodic transaction report (“PTR”) disclosing any stock, bond, or commodity trade that exceeds \$1,000 within 30 to 45 days of the transaction.¹³ Transparent disclosure of stock trades informs the public of potential conflicts of interest and helps to prevent members from trading on nonpublic information.



Sen. Rand Paul (R-KY)

Allegations

In August of 2021, a complaint alleged that Sen. Rand Paul failed to disclose, for over a year, a large purchase of stock by his wife in Gilead Sciences in February of 2020.¹⁴ Gilead is the manufacturer of remdesivir, the first drug to be approved for treating COVID-19. Sen. Paul was possibly aware of nonpublic information about the impending pandemic at a time when the U.S. had only 15 confirmed COVID-19 cases.

Sen. Paul’s stock purchase was made the day before Sen. Richard Burr made his closed-door remarks that warned COVID-19 was a serious threat. The news regarding Sen. Burr’s suspicious transactions was reported on March 19, 2020, days before Sen. Paul’s deadline to report his wife’s transactions. The timing indicated that Sen. Paul may have deliberately delayed filing his disclosure to avoid the scrutiny Sen. Burr faced, in violation of the STOCK Act.¹⁵

¹³ Office of Congressional Ethics, *supra* note 25.

¹⁴ Campaign Legal Center, *CLC Complaint to Senate Ethics Committee Regarding Sen. Rand Paul* (2021), <https://campaignlegal.org/document/clc-complaint-senate-ethics-committee-regarding-sen-rand-paul>.

¹⁵ *Id.*

Sen. Paul's spokeswoman told *The Washington Post* that "the senator completed a reporting form for his wife's investment last year but learned only recently, while preparing an annual disclosure, that the form had not been transmitted."¹⁶ Sen. Paul's office never provided any further detail about when the PTR was prepared or why it was not successfully "transmitted."

Published Investigation

None. There is no indication that the Senate Ethics Committee ever investigated Sen. Paul's trades or his explanation for the late filing.



Rep. Pat Fallon (R-TX) and Rep. Tom Suozzi (D-NY)

Allegations

In 2022, a complaint alleged that Reps. Pat Fallon and Tom Suozzi intentionally failed to comply with stock trade reporting deadlines.

For the first 4.5 years of his tenure, Rep. Suozzi reported hundreds of stock trades on his annual reports but failed to file a single PTR, meaning that the public was in the dark about Rep. Suozzi's changing financial interests until each annual deadline.

Published Investigation

The OCE's review found that Rep. Fallon failed to timely disclose 122 transactions, valued between \$9 million and \$21 million, and that Rep. Suozzi had indeed failed to file any PTRs at all.

Even after a spokesperson issued a statement promising to be "in compliance with future filings," Rep. Fallon went on to file three separate PTRs with late disclosures. While he paid a

¹⁶ Isacc Stanley-Becker, *Rand Paul Discloses 16 Months Late that his Wife Bought Stock in Company Behind Covid Treatment*, Wash. Post (Aug. 12, 2021), <https://www.washingtonpost.com/politics/2021/08/11/rand-paul-gilead-stock/>.

small, required fine for the late filings, he refused to cooperate with the OCE's investigation.¹⁷

In an attempt to "correct" his own reporting failures, Rep. Suozzi filed a single PTR that disclosed 453 transactions valued between \$6 and \$19 million. But the OCE reviewed Rep. Suozzi's financial records and found an additional 31 transactions that Rep. Suozzi still had not reported.¹⁸

The House Ethics Committee would ultimately dismiss the allegations for a lack of evidence that the violations were "knowing or willful," and noted that the members "were generally unclear on the requirements relating to PTR filings." Nevertheless, the OCE investigations exposed to the public a pattern of late filings by these members.¹⁹

¹⁷ Office of Congressional Ethics Review No. 21-3355 (Feb. 18, 2022), <https://oce.house.gov/sites/evo-subsites/oce.house.gov/files/documents/OCE%20Rev.%20No.%2021-3355%20Referral.pdf>.

¹⁸ Office of Congressional Ethics Review No. 21-6367 (Feb. 18, 2022), https://oce.house.gov/sites/evo-subsites/oce.house.gov/files/documents/OCE%20Rev.%20No.%2021-6367_Referral.pdf.

¹⁹ U.S. House of Representative, *Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Pat Fallon, Representative Chris Jacobs, and Representative Thomas Suozzi* (July 19, 2022), <https://ethics.house.gov/press-releases/statement-chairman-and-ranking-member-committee-ethics-regarding-representative-pat-1>.

ILLEGAL GIFTS

Ethics Rule

Members of Congress may only accept gifts pursuant to the Gift Rules of the Senate²⁰ or House²¹ – strict rules designed to ensure that legislators are not unduly influenced, or even bribed, through lavish gifts. With certain exceptions, a member of Congress is banned from receiving any gift from a lobbyist and may only accept gifts valued under \$50 from a non-lobbyist.



Sen. Ted Cruz (R-TX)

Allegations

In 2022, a CLC complaint alleged that Sen. Ted Cruz violated the lobbyist-gift ban by accepting a podcast deal from a media company lobbying a Senate committee on which he served.²²

When Sen. Cruz started *Verdict with Ted Cruz*, it recorded once a week from a “basement” in Washington. A deal with radio giant iHeartMedia changed all that: iHeartMedia provided syndication to its 850 stations, as well as free production and marketing services.²³

²⁰ U.S. Senate Select Committee on Ethics, *Gifts*, <https://www.ethics.senate.gov/public/index.cfm/gifts>.

²¹ *House Ethics Manual*, 117th Cong. at 258 (2022), <https://ethics.house.gov/sites/ethics.house.gov/files/documents/2022/House-Ethics-Manual-2022-Print.pdf>.

²² Danielle Caputo, *CLC Seeks Investigation into Senator Cruz Podcast Deal with iHeartMedia*, CLC (Dec. 1, 2022), <https://campaignlegal.org/update/clc-seeks-investigation-senator-cruz-podcast-deal-iheartmedia>.

²³ Nicole Silverio, *Ted Cruz Gets Syndication Deal, Expands Podcast to Three Times a Week*, Daily Caller (Oct. 10, 2022), <https://dailycaller.com/2022/10/10/ted-cruz-syndication-deal-expands-podcast-%20three-times-a-week/>.

At the same time the company provided Sen. Cruz and his podcast with these services, it was also lobbying on media industry bills before his committee – meaning iHeart’s deal to “fund production [and] dump a whole bunch of money into marketing,” as Sen. Cruz put it,²⁴ appeared to be a lobbyist gift in violation of ethics rules.

Published Investigation

None. As of this writing, the Senate Ethics Committee has not publicly acted on CLC’s complaint over the podcast deal.



Rep. Alexandria Ocasio-Cortez (D-NY)

Allegations

In September of 2021, a complaint alleged that Rep. Alexandria Ocasio-Cortez of New York violated the gift rule by accepting a ticket to the Met Gala, the costumed event to benefit the Metropolitan Museum of Art. According to the complaint, tickets could cost up to \$50,000, and Ocasio-Cortez’s acceptance of the ticket amounted to an impermissible gift.²⁵

Published Investigation

A publicly released OCE investigation found substantial reason to believe that multiple aspects of Rep. Ocasio-Cortez’s attendance at the Met Gala were impermissible.²⁶ While it did

²⁴ Office of Congressional Ethics, *supra* note 35.

²⁵ American Accountability Foundation, *Ethics Violation by Representative Alexandria Ocasio-Cortez 1* (2021), https://9b57ee93-8fae-434e-a844-6b3e2e6dcd24.usrfiles.com/ugd/9b57ee_0bbb09db34774fedae37979172f56e21.pdf.

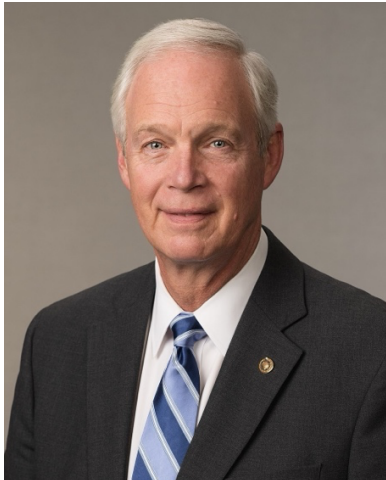
²⁶ Office of Congressional Ethics Report, Review No. 22-8546 (Mar. 2, 2023), https://oce.house.gov/sites/evo-subsites/oce.house.gov/files/documents/OCE%20Rev.%2022-8546_Referral%20FINAL.pdf.

not find an ethics violation in her acceptance of the invitation, it did find that Rep. Ocasio-Cortez accepted the use of a couture dress, handbag, shoes, jewelry, hairdressing, makeup services, transportation, and a ready-room – gifts worth thousands of dollars in equivalent value, and none of which she paid for until after the OCE initiated its investigation. The OCE recommended that the House Ethics Committee further review its findings. The Ethics Committee announced in March of 2023 that it is reviewing the matter.

ILLEGAL PAYMENTS TO STAFF

Ethics Rule

Federal law, and Senate and House ethics rules, caps the salaries that staff can earn in their positions and restricts the amounts they may earn in outside income to ensure they “do not use the influence or prestige of their position ... for personal gain, and to preclude conflicts of interest.”²⁷



Sen. Ron Johnson (R-WI)

Allegations

In 2022, a complaint alleged that Sen. Ron Johnson paid his former chief of staff and his wife \$280,000 in cash gifts for unknown purposes.

Senators and Senate staff are prohibited from receiving gifts of cash that are not from relatives or an inheritance. In addition to being a violation of Senate rules, the transfers raised questions about why Sen. Johnson transferred hundreds of thousands of dollars to a staffer.

²⁷ *Rules of the U.S. Senate*, 113th Cong. (2013), Senate Rule XXXVI, <https://www.rules.senate.gov/imo/media/doc/CDOC-113sdoc18.pdf>; *House Ethics Manual*, 117th Cong. at 223 (2022), <https://ethics.house.gov/sites/ethics.house.gov/files/documents/2022/House-Ethics-Manual-2022-Print.pdf>; 5 U.S.C app. § 501.

One potential explanation was that the transfers to the staffer, a longtime friend of Sen. Johnson's, were intended as additional compensation that would circumvent the tax and payroll withholdings of ordinary Senate salaries.

In response to the complaint, another staffer noted that the senator had offered to pay for a cancer treatment for his chief of staff in 2003; but the statement did not claim that the payments were for that purpose. In addition, the cash gifts took place more than a decade later, between 2014 and 2020.

Published Investigation

None. No action on the complaint has been publicly disclosed by the Senate Ethics Committee.



Rep. David Schweikert (R-AZ)

Allegations

A 2018 complaint alleged an unusual financial relationship between Rep. David Schweikert and his chief of staff.²⁸

In addition to the salary his chief of staff earned in Rep. Schweikert's office, the complaint showed that the representative's campaign committees were also paying him through a company called "Chartwell Associates, LLC," which the staffer admitted was a "one-man-shop." It alleged that he failed to report the full scope of the income he received through Chartwell on his required financial disclosures, and that he made illegal in-kind contributions to Rep. Schweikert's campaign committees by paying for campaign expenses, which the committees later reimbursed.

²⁸ Laurie Coe, Request for Investigation of Representative David Schweikert (R-AZ) (Jan. 29, 2017), https://www.phoenixnewtimes.com/media/pdf/ethics_complaint.pdf.

Published Investigation

A publicly released investigation by the OCE substantially confirmed the complaint's allegations: It found evidence that the staffer may have violated the outside earned income limits through Chartwell and potentially through other outside companies as well.²⁹ It also found evidence to suggest he made impermissible contributions to Rep. Schweikert's committees and that he may have spent taxpayer funds on personal matters, including a trip to Arizona that involved the Super Bowl and Phoenix Open.

The staffer, his family, Rep. Schweikert, and his committees refused to cooperate with the OCE, but other staffers and business associates participated in the investigation. A few months after the investigation, the staffer resigned.³⁰

The OCE investigation into the staffer led to a broader investigation into unethical conduct by Rep. Schweikert, which was referred to the House Ethics Committee. The investigations uncovered a wide range of unethical and unlawful acts, from false campaign finance reporting to misuse of taxpayer funds and official resources.

Rep. Schweikert ultimately admitted to 11 counts of ethics violations, accepted a reprimand for his conduct, and paid a fine of \$50,000.³¹

²⁹ Office of Congressional Ethics Report Review No. 17-4790 (Apr. 17, 2019), <https://oce.house.gov/sites/evo-subsites/oce.house.gov/files/documents/Referal%20OCE%20Review%20No.%2017-4790%20-%20Rep.%20Schweikert.pdf>.

³⁰ Associated Press, *Schweikert's Chief of Staff Resigns Amid Ethics Probe*, Associated Press (July 10, 2018), <https://apnews.com/article/cb08b753fcab4a25a10ffd1b2cf9ce6b>.

³¹ U.S. House of Representatives, *Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative David Schweikert* (July 30, 2020), <https://ethics.house.gov/press-releases/statement-chairman-and-ranking-member-committee-ethics-regarding-representative-13>.

OFFICIAL ACTS FOR CAMPAIGN CONTRIBUTIONS

Ethics Rule

Under ethics rules, “a solicitation for a campaign or political contributions may not be lined with an official action”³²



Sen. Mary Landrieu (R-LA)

Allegations

In 2007, a complaint alleged that Sen. Mary Landrieu received a campaign contribution in exchange for requesting an earmark, violating bribery and ethics laws.³³ The complaint was based on a report by *The Washington Post* about a \$2 million earmark requested by Sen. Landrieu for the “Voyager Expanded Learning” program, despite being “a new product with virtually no track record” and a “mixed review” from the Department of Education.³⁴

Voyager secured the earmark after arranging a meeting between the company’s founder and Sen. Landrieu. After the meeting, a member of Landrieu’s staff asked him whether he’d host a fundraiser, which he subsequently did – where Landrieu received more than \$30,000 in contributions from Voyager’s employees and relatives. Four days later, Landrieu filed an appropriations amendment to provide the earmark.³⁵

³² *House Ethics Manual*, 117th Cong. at 160 (2022), <https://ethics.house.gov/sites/ethics.house.gov/files/documents/2022/House-Ethics-Manual-2022-Print.pdf>.

³³ CREW, *Request for Investigation of Senator Mary Landrieu 1* (2008), <https://web.archive.org/web/20090210050601/http://citizensforethics.org/files/Boxer-Cornyn.pdf>.

³⁴ James V. Grimaldi, *a Reading Program’s Powerful Patron*, *Wash. Post* (Dec. 19, 2007), <https://www.washingtonpost.com/archive/national/2007/12/20/a-reading-programs-powerful-patron/d989d782-cf9a-48f7-a6f9-e2847c1f7017/>.

³⁵ *Id.*

Published Investigation

None. The Ethics Committee is not known to have investigated the allegations against Sen. Landrieu.



Rep. Pete Visclosky (D-IN) and Rep. Todd Tiahrt (R-KS)

Allegations

In November of 2008, the FBI raided the offices of a lobbying firm, the PMA Group,³⁶ as part of an investigation into illegal campaign contributions. The president of the firm, Paul Magliocchetti, a former staffer of Rep. John Murtha,³⁷ was ultimately sentenced to 27 months in prison for using friends, family members, and lobbyists as conduits for illegal contributions that were far in excess of federal limits and from corporations.³⁸

The DOJ investigation also led to the OCE investigation of seven members: Reps. John Murtha, Norm Dicks, Marcy Kaptur, James Moran, C.W. Bill Young, Todd Tiahrt, and Peter Visclosky, to determine whether they had solicited or accepted contributions from PMA Group in exchange for securing earmarks that would benefit its clients.³⁹

Published Investigation

The OCE recommended dismissing the allegations against Reps. Murtha, Dicks, Kaptur,

³⁶ ABC News, *FBI Raided Lobbying Firm Connected to Murtha*, ABC News (Feb. 9, 2009), <https://abcnews.go.com/Blotter/Story?id=6840438&page=1>.

³⁷ Lindsay Renick Mayer, *Embattled Lobbying Firm PMA Targeted Members of Defense Committees*, Open Secrets (Feb. 12, 2009), <https://www.opensecrets.org/news/2009/02/embattled-lobbying-firm-pma-ta/>.

³⁸ U.S. Dept. of Justice, *Lobbyist Sentenced to 27 Months in Prison for Role in Illegal Campaign Contribution Scheme* (Jan. 7, 2011), <https://www.justice.gov/opa/pr/lobbyist-sentenced-27-months-prison-role-illegal-campaign-contribution-scheme>.

³⁹ Reuters, *Ethics Panel Clears 7 US House Members on Earmarks*, Reuters (Feb. 27, 2010), <https://www.reuters.com/article/idUSN26139868/>.

Moran, and Young. But, in a publicly released investigation, it asked the House Ethics Committee to further review the allegations against Reps. Tiahrt and Visclosky: The OCE's investigation turned up evidence that suggested they may have engaged in a *quid pro quo* for the lucrative earmarks.

In Rep. Visclosky's case, the OCE found evidence that he solicited or accepted contributions because of an official act or did so in a manner that gave that appearance. It uncovered a disturbing series of events in which Rep. Visclosky's office asked for contributions from PMA Group and its clients soon after asking for earmark requests. After receiving nearly \$50,000 from them, Rep. Visclosky requested \$14.4 million in earmarks for six PMA Group clients.⁴⁰

Rep. Visclosky and his staff refused to interview with the OCE, but internal documents from PMA Group clients indicated they believed their contributions led to the earmarks. One client made a table of its contributions to Rep. Visclosky and the earmark it secured.⁴¹ An executive at another client said the company should give the \$20,000 that Rep. Visclosky requested from PMA and its clients because "[w]e have gotten over 10M in adds from him."⁴² The record further showed that Visclosky "hosted a fundraiser specifically for PMA clients and other defense contractors requesting earmarks."⁴³

Similarly, the OCE uncovered evidence that Rep. Tiahrt received contributions from PMA Group clients in the same election cycles that he requested millions in earmarks to benefit their businesses – and although Rep. Tiahrt and his staff refused to cooperate with the OCE, internal communications from PMA clients indicated why they were giving so much to Rep. Tiahrt.⁴⁴

In one email, a PMA client official justifies a contribution to Rep. Tiahrt at a fundraiser as "a request for follow-on funding" for a \$1 million earmark. An internal questionnaire asked for specific dollar revenues that a prospective earmark would bring in for the company to secure approval for the campaign contribution and noted that Rep. Tiahrt's staff told the company he would be supporting the funding.

Although the House Ethics Committee ultimately dismissed the allegations against Reps. Tiahrt and Visclosky, the investigations exposed how companies used campaign contributions in an attempt to influence the members toward requesting multimillion-dollar earmarks on their behalf.

⁴⁰ H. R. Rep. No. 09-4486, at 16 (2009).

⁴¹ *Id.* at 18.

⁴² *Id.* at 19.

⁴³ *Id.* at 13.

⁴⁴ Office of Congressional Ethics Report Review No. 09-9012 (Feb. 26, 2010), <https://www.gpo.gov/fdsys/pkg/CPRT-111HPRT54538/pdf/CPRT-111HPRT54538.pdf>.

These cases, together with the summary statistics, show that the Senate Ethics Committee is failing in its duty to transparently enforce the law. An independent office, like the House's Office of Congressional Ethics, is desperately needed in the Senate to help restore public trust in the integrity of the chamber.

SENATE SECRECY VERSUS HOUSE TRANSPARENCY

The disparities in enforcement between House and Senate are a result of the contrasting institutional structures for handling ethics complaints in each chamber.

SECRECY OF THE SENATE ETHICS COMMITTEE

Both the U.S. Senate and the U.S. House of Representatives have Ethics Committees composed of senators and representatives, respectively, who are responsible for investigating alleged ethics violations and determining whether sanctions are appropriate. But ethics complaints are treated quite differently in each chamber.

In all but a handful of the most egregious, blatant, and well-publicized cases, the Senate Ethics Committee, operating in secrecy, either remains completely silent in response to a complaint or dismisses it for vague reasons.

Under Senate rules, investigations by the Ethics Committee have two structural stages: a "preliminary inquiry" that reviews the complaint and an "adjudicatory review" that the Committee can proceed to if the preliminary review found "substantial credible evidence which provides substantial cause" to conclude a violation has occurred.⁴⁵

There is rarely a way for the public to know whether a Senate Ethics Committee investigation is comprehensive, or whether any particular matter was investigated at all. But the annual statistical summaries the Senate Ethics Committee is legally required to produce indicate that ethics enforcement is not its priority.

Take the first year of the 117th Congress (2020-2021) for instance:⁴⁶

⁴⁵ *Rules of Procedure of Select Committee on Ethics*, 96th Cong. at 22 (1978) (reprint in 2021) https://www.ethics.senate.gov/public/_cache/files/01f06ea2-b5e1-4887-9250-dc84bdf88cb5/2021---blue-book---rules-of-procedure.pdf#:~:text=The%20Select%20Committee%20may%20initiate,on%20the%20merits%20by%20the.

⁴⁶ Annual Report of the Select Committee on Ethics, 117th Cong. 2nd Sess. (2022) https://www.ethics.senate.gov/public/_cache/files/9a2ce840-718c-409b-891f-42f5ebf6f365/annual-report-for-2021.pdf; Annual Report of the Select Committee on Ethics, 117th Cong. 1st Sess.

The Senate Ethics Committee received 242 complaints. (Twenty-two additional complaints were carried over from previous years.)

Two hundred and eight of those complaints were dismissed with cryptic explanations. The Senate Ethics Committee claimed that 181 complaints were dismissed “for lack of subject matter jurisdiction or in which, even if the allegations are true, no violation of Senate rules would exist.” It claimed that an additional 27 complaints were dismissed “because they failed to provide sufficient facts as to any material violation of the Senate rules beyond mere allegation of assertion.”⁴⁷

These dismissals took place *before* the review stage – a preliminary review of the allegations was never conducted. Without more detail, the public is left unable to evaluate whether those dismissals were proper.

In 59 cases, the Committee conducted a preliminary review. *No* complaints made it past this preliminary stage. *No* complaints resulted in an adjudicatory review. *No* complaints resulted in a letter of admonition, either public or private. *No* complaints resulted in a disciplinary sanction of any kind. And *no* investigations were released so the public could evaluate the evidence for themselves.

Instead, the Senate Ethics Committee dismissed 27 complaints “for lack of substantial merit or because [the alleged violation] was inadvertent, technical or otherwise of *de minimis* nature.”⁴⁸

Inaction is a typical result for the Senate Ethics Committee. A recent analysis found that between 2007 and February 2023, the Senate Ethics Committee received at least 1,523 complaints – and *never* issued a disciplinary sanction in *any* case.⁴⁹

Since 2007, the most the Senate Ethics Committee has done in the face of this deluge of allegations of misconduct has been to issue six letters of admonition,⁵⁰ three of which were “qualified.” These letters do not result in any sanctions on the senator, and in at least one case, included language that the senator in question was able to portray as “clearing” him of wrongdoing.⁵¹

(2021) https://www.ethics.senate.gov/public/_cache/files/691e5e65-5b73-4e95-8cdb-de056570cb34/annual-report-for-2020.pdf.

⁴⁷ Annual Report of the Select Committee on Ethics, 117th Cong. 2nd Sess., *supra* note 46, at 1.

⁴⁸ *Id.*

⁴⁹ Dave Levinthal & Matt Laslo, *0-for-1,523: Senators Attempt to Explain Why They Never Punish Other Senators for Ethics Violations*, Raw Story (Feb. 22, 2023), <https://www.rawstory.com/raw-investigates/senate-ethics-violations/>.

⁵⁰ U.S. Senate Select Committee on Ethics, *Public Letters to Members*, <https://www.ethics.senate.gov/public/index.cfm/letterstomembers>.

⁵¹ C. Simon Davidson, *What is a Letter of Qualified Admonition?* Roll Call (Nov. 30, 2009), <https://rollcall.com/2009/11/30/what-is-a-letter-of-qualified-admonition/>.

Either virtually every complaint of unethical conduct made against a senator is frivolous or meritless – or the Senate Ethics Committee is not taking its statutory responsibilities seriously.

TRANSPARENCY OF THE OCE

Ethics oversight in the House of Representatives is substantially better than in the Senate, largely because of the independent OCE.

The House voted to create the OCE in March of 2008, in the wake of several high-profile ethics scandals.⁵² The Office is a nonpartisan entity tasked with investigating allegations of ethics violations by members of the House of Representatives or their staff. Even when members fail to cooperate with the OCE,⁵³ the Office investigates anyway, and commonly finds and publishes evidence of an ethics violation. While it lacks the power to issue subpoenas or discipline members, the OCE may refer its investigations to the House Ethics Committee for potential further action.⁵⁴

These referrals can expose the details of unethical conduct to the public, providing voters with the information they need to assess whether a member has committed ethics violations during their tenure. Although the House Ethics Committee does not always investigate the OCE's referrals – and like its Senate counterpart, regularly dismisses them – it is more common for the House committee to publicly investigate and even discipline a member. This demonstrates the importance of the transparency the Senate lacks.

For instance, in the 117th Congress – the same period in which the Senate Ethics Committee failed to take a single case beyond the preliminary stage – the OCE publicly released 18 detailed investigations into members and/or their staff.⁵⁵ For its part, the House Ethics Committee began or continued 72 investigations and created three investigative subcommittees to further investigate specific cases, and filed 11 public reports of its own with the full House on investigative matters.⁵⁶

While the OCE constitutes a substantial improvement over the Senate process, this system is far from perfect: The outcomes of the House Ethics Committee's proceedings often do not result in consequences for ethics violations. During the 117th Congress, the House Ethics

⁵² H. R. Res. 895, 110th Cong. (2008) (enacted).

⁵³ Campaign Legal Center, *Members of Congress are Refusing to Cooperate with Ethics Investigations* (Nov. 2, 2023), <https://campaignlegal.org/update/members-congress-are-refusing-cooperate-ethics-investigations>.

⁵⁴ Levinthal & Laslo, *supra* note 16.

⁵⁵ OCE, *117th Cong. Investigations*, <https://oce.house.gov/reports/117th-congress-investigations?page=0>.

⁵⁶ H. R. Rep. No. 117-706 (2023).

Committee only issued a single disciplinary action (a fine) and referred one matter to the DOJ.⁵⁷

The House committee also tends to dismiss investigated matters, even when they clearly appear to involve violations of ethics laws and/or rules. Take for example its most recent committee report as of this writing. Rep. Bill Huizenga faced a host of financial misconduct allegations, including taking his and his staff's families to Disney World, Mackinac Island, and Deer Valley during fundraisers paid for by the campaign; accepting contributions from congressional staffers; a pattern of large, unexplained reimbursements to staff; as well as a campaign reimbursement for a personal dinner with no apparent electoral purpose.

The OCE published a report finding "substantial reason to believe" the allegations, featuring an array of evidence turned up by its investigation.⁵⁸ But the House Ethics Committee simply closed the matter without any sanctions after issuing a private letter to Rep. Huizenga. The Committee claimed a lack of "any clear pattern of misspending or intentional circumvention of any standards of conduct, as well as Rep. Huizenga's consistent cooperation with this review, the significant remedial steps that his campaign has undertaken, and the widespread need for updated guidance on the personal use of campaign funds."⁵⁹

Ultimately, the voting public and the ballot box continue to be the most effective extant checks on House members facing allegations of misconduct, via the information provided in the OCE's investigative reports. The Senate Ethics Committee's secrecy acts to shield senators from this form of accountability, but unlike in the Senate, transparency is legally required in the House. If the OCE board refers a matter to the House Ethics Committee, the latter is required to release the OCE's report to the public within 45 days, unless the Committee votes to extend the period by another 45 days or to open a subcommittee to further investigate – in which case the report must still be released within a year. Only law enforcement agencies actively investigating a matter may request that a public release be further delayed.⁶⁰

The recent indictment of Sen. Robert Menendez on numerous corruption and bribery charges is another illustration of the Senate Ethics Committee's inability to execute its public interest purposes. If anyone had knowledge of the facts of the corrupt activity, including the cash, gold bars, Mercedes-Benz, engagement ring, sports tickets, and more⁶¹ that the Senator

⁵⁷ *Id.*

⁵⁸ Office of Congressional Ethics Review No. 19-2187 (Aug. 9, 2019), https://oce.house.gov/sites/evo-subsites/oce.house.gov/files/documents/OCE%20Review%20No.%2019-2187_Referral.pdf.

⁵⁹ House Committee on Ethics Report, *In the Matter of Allegations Relating to Representative Bill Huizenga*, Report 118-XXX (forthcoming) (Jun. 5, 2024), https://ethics.house.gov/sites/ethics.house.gov/files/documents/Committee%20Report_58.pdf.

⁶⁰ OCE, *Citizen's Guide*, <https://oce.house.gov/about/citizen-s-guide#:~:text=Public%20release%20is%20required%20within,subcommittee%20to%20investigate%20the%20matter.>

⁶¹ Zachary B. Wolf, *Gold Bars, Basement Carpeting and More. Here's What Prosecutors Say Bought Off a US Senator*, CNN Politics (May 12, 2024), <https://www.cnn.com/2024/05/12/politics/menendez-gold-cash-what-matters/index.html>.

and his wife are accused of accepting in exchange for his influence, filing a complaint with the Senate Ethics Committee would have been unlikely to produce a transparent investigation or consequences of any kind.⁶²

CONCLUSION

When elected officials are credibly accused of unethical, corrupt, or illegal acts, the public has the right to know that such allegations will be investigated, and precisely what the investigation shows. The U.S. Senate is not exempt from this principle. But the current system of ethics enforcement in the Senate does not accomplish these basic tenets of accountability. Our analysis shows that the Senate Ethics Committee is not engaging in the ethics enforcement that is its statutory and democratic responsibility, both broadly and in a direct comparison with the OCE of similar allegations.

The deepening of this ethics enforcement gap between the House and Senate coincides with a particularly concerning moment for America's democratic institutions. Public approval of Congress is approaching an all-time low,⁶³ and the recent high-profile corruption indictments of Sen. Menendez, Reps. Henry Cuellar,⁶⁴ Jeff Fortenberry,⁶⁵ and George Santos⁶⁶ are sure to lower Congress's esteem among the public even further. Greed and corruption are among Americans' top concerns with our political system.⁶⁷ By creating a means for substantive ethics accountability in our premier legislative body, the creation of an independent Senate ethics office similar to OCE would help to restore public trust and approval in government.

For these reasons, CLC is renewing its call to establish an independent ethics office in the Senate that will thoroughly and transparently investigate allegations of misconduct to protect the public interest, and as a key step toward the accountability that the existing Senate Ethics Committee has been unable to effect.

⁶² See Delaney Marsco, *The Menendez Indictment Reveals Exactly How Senate Ethics Enforcement Is Broken*, CLC (Oct. 10, 2023), <https://campaignlegal.org/update/menendez-indictment-reveals-exactly-how-senate-ethics-enforcement-broken>.

⁶³ Gallup, *Congress and the Public*, <https://news.gallup.com/poll/1600/congress-public.aspx>.

⁶⁴ U.S. Dept. of Justice, *U.S. Congressman Henry Cuellar Charged with Bribery and Acting as a Foreign Agent* (May 3, 2024), <https://www.justice.gov/opa/pr/us-congressman-henry-cuellar-and-his-wife-charged-bribery-unlawful-foreign-influence-and>.

⁶⁵ *In a Revived Case, a Former Congressman is Charged with Lying About an Illegal Campaign Contribution*, Associated Press (May 9, 2024), <https://apnews.com/article/jeff-fortenberry-nebraska-campaign-contribution-congress-5b6386dc84bec3e5ae6ef67a990d18cf>.

⁶⁶ Kevin Freking, *The House Expels Rep. George Santos. An Ethics Report Had Accused Him of Breaking Federal Law*, Associated Press (Dec. 1, 2023), <https://apnews.com/article/george-santos-expulsion-vote-ethics-investigation-fd0f1524065883c6b2fe3e6f9afd84db#>.

⁶⁷ Pew Research Center, *American's Dismal Views of the Nation's Politics*, Pew Research Center (Sept. 19, 2023), <https://www.pewresearch.org/politics/2023/09/19/the-biggest-problems-and-greatest-strengths-of-the-u-s-political-system/>.