

Statement of Chairman Paul Vinovich and Co-Chairman Mike Barnes

Committee on House Administration – Subcommittee on Oversight

Oversight Hearing on the Office of Congressional Ethics

June 13, 2023

Thank you for the opportunity to appear before you today to discuss the Office of Congressional Ethics (“OCE”) and its successful 15-year history of overseeing independent, non-partisan ethics enforcement in the House of Representatives (the “House”).

The 2007 Special Task Force on Ethics Enforcement (the “Task Force”) Report that led to the creation of the OCE stated, “[t]he Task Force feels strongly that part of any reform to the ethics process must include a more transparent system that contains recognizable and predictable timeframes, along with an independent review of alleged ethics violations by individuals who are not Members of Congress.”¹

The OCE has fulfilled that mission for the last 15 years. The goal of these remarks is to assist the work of this committee, demonstrate how the OCE has achieved the objectives set out for it by the House, and establish a path for Congress to strengthen the OCE’s work for the years to come.

Overview of the OCE’s Process

The OCE was created by House Resolution 895 in the 110th Congress as an independent, non-partisan entity charged with reviewing allegations of misconduct against Members, officers, and employees of the House of Representatives, and referring matters to the House Committee on Ethics (the “Committee”) when the OCE Board determines such review is warranted. Members of the OCE’s six-person Board must authorize each stage of the OCE investigative process and ultimately decide whether to recommend that the Committee further review a matter or dismiss it. Board members are private citizens, cannot work as lobbyists or be employed by the federal government, and must agree not to run for congressional office for three years following their service.²

The Board consists of six voting members and two alternates. The Speaker of the House appoints three members and an alternate, designating one Board member as Chair. The Minority Leader appoints three members and an alternate and designates one Board member as Co-Chair.

The OCE staff consists primarily of attorneys and other professionals with expertise in ethics law and investigations. The OCE staff is nonpartisan and impartial in its investigations, and also must agree not to run for congressional office for three years following their employment.³ The

¹ Report of the Democratic Members of the Special Task Force on Ethics, 110th Cong., 1st Sess. (Dec. 2007) at 11.

² H. Res. 895 of the 110th Cong. (2008), as amended, Sec. 1(k) [Hereafter “H. Res. 895”].

³ *Id.*

OCE's professional staff and Board are governed by a strict code of conduct to ensure confidentiality, integrity, and ethical standards.

OCE investigations are divided into two parts: Preliminary Review and Second-Phase Review. A preliminary review can only be initiated when at least one Republican and Democrat appointee request that an investigation be commenced, and it can last a maximum of 30 days.⁴ The evidentiary standard to initiate an OCE review is "reasonable basis."⁵

At the end of a preliminary review, the Board must conclude whether there is sufficient evidence to extend the investigation into a second phase. The standard to extend a review is "probable cause," meaning that if the evidence does not establish probable cause to believe a violation occurred, the investigation must be terminated.⁶ A terminated investigation remains confidential.

If at least three members of the Board think the evidence supports "probable cause" and vote to extend the review into a second phase, the office has an additional 45 days to investigate.⁷ During that time, the Board can extend the second phase by an additional 14 days by a vote of four of its six members.⁸

Accordingly, an OCE investigation can last no more than 89 days.

At the end of the review period, the Board must evaluate the evidence and conclude whether it is sufficient to establish a basis to refer the matter to the Committee for further review or dismissal. To refer an investigation for further review, a minimum of four members of the Board must conclude the evidence meets the standard of "substantial reason to believe."⁹ If not, the matter is forwarded to the Committee for dismissal. An investigation forwarded for dismissal remains confidential as long as the Committee affirmatively votes to dismiss the matter.

The OCE's process also includes strong procedural fairness protections to ensure confidentiality,¹⁰ protect the right to counsel,¹¹ provide notice to the subject of the review and the Committee at each stage of the process,¹² and allow the subject the opportunity to directly address the Board prior to its final decision on the matter.¹³

⁴ H. Res. 895 Sec. 1(c)(1)(B).

⁵ OCE Rule 7(A).

⁶ OCE Rule 8(A) explains, "[i]n the event the Office is unable to obtain information reasonably believed to exist and necessary to reach a determination of probable cause, the Board may authorize a second-phase review if it determines there is a reasonable basis to believe the allegation(s)."

⁷ H. Res. 895 Sec. 1(c)(2)(A)(i).

⁸ H. Res. 895 Sec. 1(c)(2)(A)(ii).

⁹ OCE Rule 9(A).

¹⁰ H. Res. 895 Sec. 1(f)(1); OCE Code of Conduct, Rule 2(d).

¹¹ H. Res. 895, as amended by H. Res. 5 of the 115th Congress Sec. 4(c)(6); OCE Rule 14.

¹² OCE Rule 11.

¹³ OCE Rule 9(B); H. Res. 895 Sec. 1(f)(3).

Review of OCE Activity and Key Metrics

The OCE Board authorized its first investigation on February 23, 2009. In the more than 14 intervening years, the OCE Board has authorized a total of 242 cases to date. In several instances, cases are still pending or the OCE lost jurisdiction of a subject. In total, the Board has affirmatively resolved a total of 228 cases.

Of the 228 cases in which the Board has made a final determination, the OCE has made a referral to the Committee on Ethics for further review (meaning there has been a finding of substantial reason to believe that a violation occurred) in 104 cases. Accordingly, less than half of the cases resolved, approximately 46%, have resulted in a referral for further review.

Historically, OCE cases are more likely to result in termination or dismissal than further review. Of the 228 cases in which the Board has made a final determination, 50 cases have been referred for dismissal and 73 cases have terminated at the conclusion of the investigation's preliminary review.¹⁴

This tally means that approximately 54% of cases in which the Board has made a final determination resulted in termination or dismissal by the OCE Board. As such, the majority of reviews that the OCE initiates are never required to become public.

These statistics exhibit the prudence and gravity with which the OCE approaches its work. One of many misconceptions about the office is that the OCE process is self-determinative—that a preliminary review will always result in a referral for further review. That is simply not the case. To the contrary, if the OCE initiates an investigation, the matter is more likely to be resolved in favor of the subject.

The OCE's Demonstrated Non-Partisanship

One key tenet of the Task Force's work was a departure from the historical partisanship that impacted the House's self-policing function and that often infiltrates the Committee's decision-making. The Task Force emphasized, "[i]t is essential that the Office of Congressional Ethics remain nonpartisan in design and function. All staff must be professional and conduct themselves in a strictly nonpartisan manner."¹⁵

The OCE's Code of Conduct clearly and unequivocally states that the Board and staff shall be guided by the principles of "[d]ischarging all official duties in a non-partisan manner"¹⁶

It is with this principle in mind that the office conducts its mission. Both in and out of the office, the staff and the Board are asked to be mindful of the OCE's mission. All staff and Board members are required to sign oaths to not run for congressional office for three years after their

¹⁴ In one instance, a matter resulted in a tie vote and is not reflected in the statistics.

¹⁵ Report of the Democratic Members of the Special Task Force on Ethics, 110th Cong., 1st Sess. (Dec. 2007) at 9.

¹⁶ OCE Code of Conduct, Rule 2(b).

work with the office is complete.¹⁷ The Board is prohibited from engaging in any political activities that have a nexus to the House of Representatives, and staff is prohibited from engaging in any partisan political activity.¹⁸

However, even more fundamentally, OCE staff function exclusively as professional, non-partisan actors. By personal observation, staff has never acted in a manner that caused pause or made one question the motivations behind their work product. In fact, never has a member of the staff made his or her political affiliation evident while working on a review.

The same is true of the Board. Although the Board obviously is appointed by political leaders, the individual members of the OCE Board deliberate without regard to politics or policy positions.

Two characteristics have allowed for this commitment to non-partisanship to flourish: the evidence-based process laid out in the OCE's rules, and the independence provided the office.

As previously addressed, OCE rules require a fidelity to evidence and evidentiary standards. In practice, this means that an investigation is weighed by a professional review of the facts as objectively demonstrated by the documents, communications, and testimony received by the OCE. These facts are then compared to the law. At each stage of the process, the facts and law must meet a particular evidentiary standard: reasonable basis, probable cause, or substantial reason to believe.

If the evidence before the Board meets the applicable evidentiary standard, then the matter proceeds. If it does not, then the investigation is either terminated or dismissed. This process occurs without regard to politics, political affiliation, or policy position.

It may surprise this committee, but over the years the Board has heard from both Democrats and Republicans suggesting that the OCE favors the political party with whom they are unaffiliated.

However, even a cursory review of the statistics associated with OCE investigations clearly demonstrates what a commitment to non-partisanship and an evidence-based process can achieve.

Of the 104 cases that resulted in a Board recommendation of further review in the OCE's entire history of referrals, 52 have involved Republicans and 52 have involved Democrats. This equal divide is purely coincidental; however, it demonstrates how the OCE's independence and non-partisanship have resulted in parity in its review process.

¹⁷ H. Res. 895 Sec.1(k).

¹⁸ OCE Code of Conduct, Rule 12.

Cases that Resulted in Further Review by Year of Initiation	Total Democrats for Further Review	Total Republicans for Further Review
2009	11	2
2010	5	4
2011	5	5
2012	2	1
2013	4	7
2014	1	4
2015	9	5
2016	1	3
2017	4	4
2018	0	4
2019	4	2
2020	0	1
2021	3	9
2022	3	0
2023 (still pending)	0	1
Total	52	52

Of the 242 total reviews initiated by the OCE Board in the OCE’s entire history, 118 have involved Democrats and 124 have involved Republicans. In its first five years of conducting reviews, from 2009 through 2013, the OCE investigated 27 Democrats and 19 Republicans. From the beginning of 2013 to the present, the OCE has opened reviews involving 62 Democrats and 78 Republicans. In the last five years, starting from the beginning of 2018, the OCE has opened reviews involving 28 Democrats and 28 Republicans. While there is some ebb and flow to the partisan affiliation of the subjects who are investigated over time, these numbers speak to the overall statistical even-handedness of the OCE’s review process.

Cases Started by Year of Initiation	Total Democrats	Total Republicans
2009	21	4
2010	21	23
2011	12	10
2012	2	9
2013	4	13
2014	8	10
2015	9	14
2016	5	7
2017	8	6
2018	3	4
2019	8	7
2020	1	2
2021	7	13
2022	3	0
2023 (still pending)	6	2
Total	118	124

Finally, another strong indicium of the non-partisan nature of the OCE’s work is the fact that of the 155 cases that have reached the end of second phase (requiring the Board to consider whether there is substantial reason to believe that a violation occurred), 83% of the votes have been unanimous decisions with no abstentions or nay votes.

The Critical Role of Independence

As previously addressed, while one of the sources of the OCE’s success has been its commitment to non-partisanship, an equally important characteristic is its historic independence. The Task Force explained, “through the implementation of these recommendations the Task Force expects to... provide for an independent element of consideration by individuals who are not current Members of the House of Representatives.”¹⁹

The importance of the independence afforded to the office cannot be overstated. OCE Board Members have included many distinguished former Members of Congress, but also a former federal judge, a retired brigadier general in the U.S. Army, former senior congressional staff, and experts in the field of ethics and campaign finance law. These private citizens can make decisions removed from the day-to-day politics of the legislature and ever-present campaign considerations. The independence afforded the office insulates it from these concerns and makes it distinguishable from other congressional ethics bodies.

Moreover, procedurally, OCE cases need not commence through a complaint process limited to sitting Members or through public submissions which must be approved by a full committee

¹⁹ Report of the Democratic Members of the Special Task Force on Ethics, 110th Cong., 1st Sess. (Dec. 2007) at 2.

vote. Instead, OCE investigations require the request of two of these congressionally appointed private citizens.

The likely reason why 83% of Board conclusions have been unanimous is precisely because the OCE is not a part of traditional Washington, DC politics. Instead, the office, its Board, and its staff are independent from it. This independence is a necessary element for an ethics oversight body to flourish in the House—it permits the Board to make decisions based exclusively on evidence and not be influenced by political concerns.

In every single investigation the OCE has conducted, evidence has guided the Board to its conclusion. Thankfully, there has been very little effort by outside entities to influence the OCE's process and the Board's deliberations, and it is commendable that there has never been any effort whatsoever by House Leadership—regardless of party—to influence the OCE and its mission. The commitment Republican and Democratic leadership has shown to the office's independence, and therefore its success, should be noted by all those observing the OCE's work.

Commitment to Confidentiality and Transparency in the OCE's Process

Another characteristic key to the OCE's success in its mission is the Board's commitment to the equally important twin principles of confidentiality and transparency.

Pursuant to the Resolution and OCE rules, the OCE operates under strict provisions of confidentiality.²⁰ All information obtained during investigations is confidential unless and until the Committee releases an OCE report to the public.

The OCE does not make public statements identifying the subjects of its ongoing investigations, and the OCE staff does not identify the subject of an investigation even when contacting third-party witnesses.

The majority of OCE investigations are never made public. If a matter is terminated at the end of the first phase of an investigation, then it remains confidential. Similarly, if the Board recommends dismissal and the Committee also votes to dismiss the matter, then the investigation is not made public. In this way, the process appropriately protects the subject of a review from any improper reputational harm.

This strict adherence to confidentiality during the OCE's review process is balanced against the importance of transparency. As the Task Force explained, "...it is the goal of the Task Force to ensure that the public is made aware of information concerning each significant alleged violation in a timely fashion. As such, Members of Congress and the general public can be assured that the OCE and [the Committee] are aware of certain allegations and that the process for consideration of those matters has been triggered."²¹

²⁰ H. Res. 895 Sec. 1(f)(1); OCE Code of Conduct, Rule 2(d).

²¹ Report of the Democratic Members of the Special Task Force on Ethics, 110th Cong., 1st Sess. (Dec. 2007) at 17.

In circumstances where evidence supports a Board’s conclusion that a matter must be referred to the Committee on Ethics for further review, the Committee must eventually release the OCE’s report and findings to the public.²² Public release is required within 90 days.²³

The release of the report and findings, however, can be delayed if the Committee decides to create an investigative subcommittee to further investigate the matter.²⁴ In that case, the OCE report must still be released within a year.²⁵ Release of an OCE report may also be delayed if law enforcement is acting in the matter and requests that the Committee defer public release.²⁶

These important elements of confidentiality and transparency built into the House rules should provide the Members and staff of this institution, and the public at large, increased confidence in the House’s ethics process.

The OCE’s Impact After 15 Years

The OCE has become an indispensable part of the House because of its overall impact on congressional ethics enforcement, deterrence, and guidance.

From an enforcement perspective, the OCE has been on the front foot of most of the largest congressional ethics controversies in recent years—often acting as the first office in any branch of government involved in a matter. The OCE works efficiently and expeditiously to determine relevant facts. While cases frequently remain pending in the Committee on Ethics 18A review process²⁷ for years or never reach a resolution when a Member leaves Congress, the OCE’s work ensures prompt review under strict transparency guidelines.

No doubt, the existence of the OCE has helped the Committee increase its own level of activity and accountability. Cases that originated with the OCE have resulted in significant sanctions and other penalties after eventually making their way through the Committee process following an OCE referral.

Regardless of the disposition by the Committee, since OCE referrals for further review eventually become public, they can become part of the public dialogue in a manner that leads to a more informed citizenry.

Moreover, the OCE frequently takes the lead on investigating matters where there previously was a dearth of ethics enforcement or where current House practices are themselves at issue. All of this has combined to create a more robust structure for ethics enforcement in the House, bring

²² House Rule XI, clause 3(b)(8)(A).

²³ *Id.*

²⁴ House Rule XI, clause 3(b)(8)(B)(iii).

²⁵ *Id.*

²⁶ House Rule XI, clause 3(b)(8)(C).

²⁷ Committee on Ethics Rule 18(a).

about more comprehensive guidance from the Committee to help Members better understand their obligations as public servants, and promote a culture of deterrence and enhanced fidelity to House rules and standards of conduct.

Strengthening the Work of the OCE

As with any organization or institution, there are still changes or improvements that could help the OCE better perform its mission. The OCE's process and administration have allowed the office to succeed in ways that may not have been imaginable 15 years ago. Nevertheless, with the experience of a decade and a half and given changes made to House rules over the years, if the committee is considering reforms to improve the operations of the OCE, we offer the following suggestions.

The first recommendation is to grant the OCE subpoena power for third parties so that it can obtain documents and testimony as needed to complete its function. Over the years, the OCE has interacted with numerous entities that want to cooperate with an investigation but are confined by either law or policy. These entities wish to cooperate, but would like the OCE to issue a subpoena so as to meet whatever perceived legal obligation they think they may have as custodians of the requested evidence. A third-party subpoena would allow the OCE to gather important documents from these entities, but would not grant the OCE subpoena power to compel participation by the Member or other subjects of the review.

Second, at the beginning of the 115th Congress, a change to the House rules amended the process by which Board members are selected.²⁸ The original resolution provided for the Speaker of the House and the Minority Leader to each appoint three Board members and an alternate with one another's concurrence. However, the House rules currently state that the previous requirement for concurrence be treated only as a consultation. As a result, no agreement is needed between the Speaker and Minority Leader. The former arrangement of concurrence is a better process as it ensures that every member of the OCE Board has bipartisan support and will help maintain the nonpartisan function of the office into the future.

At the beginning of this Congress, the amended House rules reimposed a two-term limit for Board members and inserted a requirement that the Board appoint OCE staff and set their compensation within 30 calendar days of adoption of the Rules resolution.²⁹ While the Board was appointed within 30 days in this Congress, past experience indicates that such a timely appointment is the exception and cannot be guaranteed from one Congress to another. Accordingly, a delay in the appointment of Board members might result in a Board unable to appoint staff within the required timeframe—effectively, and inadvertently, dismissing all staff. The House should remove the 30-calendar-day timeframe in the hiring provision or amend it allow the Board to act 30 days from the time it is appointed.

²⁸ H. Res. 895, as amended by H. Res. 5 of the 115th Cong. Sec. 4(c)(3).

²⁹ H. Res. 895, as amended by H. Res. 5 of the 118th Cong. Sec. 4(d)(6)-(7).

Conclusion

In the past 15 years, the OCE has helped execute Article I of the U.S. Constitution's self-discipline provision by conducting thorough, fact-based, independent investigations without partisanship, strengthening this institution, and promoting public trust in the legislative body. The OCE looks forward to continuing this important work and answering this committee's questions.