

on which the yeas and nays were ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Iowa (Mr. LOEBACK) that the House suspend the rules and agree to the resolution, H. Res. 493, as amended.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 400, nays 0, not voting 29, as follows:

[Roll No. 119]

YEAS—400

Abercrombie	Courtney	Hayes
Ackerman	Cramer	Heller
Aderholt	Crenshaw	Hensarling
Akin	Crowley	Herger
Allen	Cubin	Herseth Sandlin
Altmire	Cuellar	Higgins
Andrews	Culberson	Hinchee
Arcuri	Cummings	Hinojosa
Baca	Davis (AL)	Hirono
Bachus	Davis (CA)	Hobson
Baird	Davis (IL)	Hodes
Baldwin	Davis (KY)	Hoekstra
Barrett (SC)	Davis, David	Holden
Barrow	Davis, Lincoln	Holt
Bartlett (MD)	Deal (GA)	Honda
Barton (TX)	DeFazio	Hoyer
Bean	DeGette	Hulshof
Becerra	Delahunt	Hunter
Berkley	Diaz-Balart, L.	Inglis (SC)
Berman	Diaz-Balart, M.	Inslee
Berry	Dicks	Israel
Biggert	Doggett	Issa
Bilbray	Donnelly	Jackson (IL)
Bilirakis	Doolittle	Jackson-Lee
Bishop (GA)	Doyle	(TX)
Bishop (NY)	Drake	Jefferson
Bishop (UT)	Dreier	Johnson (GA)
Blackburn	Duncan	Johnson (IL)
Blumenauer	Edwards	Johnson, E. B.
Blunt	Ehlers	Johnson, Sam
Boehner	Ellison	Jones (NC)
Bonner	Ellsworth	Jones (OH)
Bono Mack	Emanuel	Jordan
Boozman	Emerson	Kagen
Boswell	Engel	Kanjorski
Boucher	English (PA)	Kaptur
Boustany	Eshoo	Keller
Boyd (FL)	Etheridge	Kennedy
Boyd (KS)	Everett	Kildee
Brady (PA)	Fallin	Kind
Brady (TX)	Farr	King (IA)
Braley (IA)	Fattah	King (NY)
Broun (GA)	Feeney	Kingston
Brown (SC)	Ferguson	Kirk
Brown, Corrine	Filner	Klein (FL)
Brown-Waite,	Flake	Kline (MN)
Ginny	Forbes	Knollenberg
Buchanan	Fortenberry	Kucinich
Burgess	Fossella	Kuhl (NY)
Burton (IN)	Foster	LaHood
Buyer	Fox	Lamborn
Calvert	Frank (MA)	Lampson
Camp (MI)	Franks (AZ)	Langevin
Campbell (CA)	Frelinghuysen	Larsen (WA)
Cannon	Gallely	Larson (CT)
Cantor	Garrett (NJ)	Latham
Capps	Gerlach	LaTourette
Capuano	Giffords	Latta
Cardoza	Gilchrest	Lee
Carnahan	Gillibrand	Levin
Carney	Gingrey	Lewis (CA)
Carter	Gohmert	Lewis (KY)
Castle	Gonzalez	Linder
Castor	Goode	Lipinski
Chabot	Goodlatte	LoBiondo
Chandler	Gordon	Loebuck
Clarke	Granger	Loftgren, Zoe
Clay	Graves	Lowey
Cleaver	Green, Al	Lucas
Clyburn	Green, Gene	Lungren, Daniel
Coble	Grijalva	E.
Cohen	Gutierrez	Lynch
Cole (OK)	Hall (NY)	Mack
Conaway	Hall (TX)	Mahoney (FL)
Conyers	Hare	Maloney (NY)
Cooper	Harman	Manzullo
Costa	Hastings (FL)	Marchant
Costello	Hastings (WA)	Markey

Marshall	Pitts	Smith (NE)
Matheson	Platts	Smith (NJ)
Matsui	Poe	Smith (TX)
McCarthy (CA)	Pomeroy	Smith (WA)
McCarthy (NY)	Porter	Snyder
McCaul (TX)	Price (GA)	Solis
McCollum (MN)	Price (NC)	Souder
McCotter	Putnam	Space
McDermott	Rahall	Spratt
McGovern	Ramstad	Stark
McHenry	Regula	Stearns
McHugh	Rehberg	Stupak
McIntyre	Reichert	Sullivan
McKeon	Renzi	Sutton
McMorris	Reyes	Tanner
Rodgers	Reynolds	Tauscher
McNerney	Richardson	Taylor
McNulty	Rodriguez	Terry
Meek (FL)	Rogers (AL)	Thompson (CA)
Meeks (NY)	Rogers (KY)	Thornberry
Mica	Rogers (MI)	Tiberi
Michaud	Rohrabacher	Tierney
Miller (FL)	Roskam	Towns
Miller (MI)	Ross	Tsongas
Miller (NC)	Roybal-Allard	Turner
Miller, Gary	Royce	Udall (CO)
Miller, George	Ruppersberger	Udall (NM)
Mollohan	Ryan (OH)	Upton
Moore (KS)	Ryan (WI)	Van Hollen
Moore (WI)	Salazar	Velázquez
Moran (KS)	Sali	Visclosky
Murphy (CT)	Sánchez, Linda	Walberg
Murphy, Patrick	T.	Walden (OR)
Murphy, Tim	Sanchez, Loretta	Walsh (NY)
Murtha	Sarbanes	Walz (MN)
Musgrave	Saxton	Wamp
Myrick	Schakowsky	Waters
Nadler	Schiff	Watson
Napolitano	Schmidt	Watt
Neal (MA)	Schwartz	Waxman
Neugebauer	Scott (GA)	Weiner
Nunes	Scott (VA)	Welch (VT)
Obey	Sensenbrenner	Weldon (FL)
Oliver	Serrano	Weller
Ortiz	Sessions	Westmoreland
Pallone	Sestak	Wexler
Pascarella	Shadegg	Whitfield (KY)
Pastor	Shays	Wilson (NM)
Paul	Shea-Porter	Wilson (OH)
Payne	Sherman	Wilson (SC)
Pearce	Shimkus	Wittman (VA)
Pence	Shuler	Wolf
Perlmutter	Shuster	Wu
Peterson (MN)	Simpson	Wynn
Peterson (PA)	Sires	Yarmuth
Petri	Skelton	Young (AK)
Pickering	Slaughter	Young (FL)

NOT VOTING—29

Alexander	Hooley	Rangel
Bachmann	Kilpatrick	Ros-Lehtinen
Boren	Lewis (GA)	Rothman
Butterfield	McCrary	Rush
Capito	Melancon	Tancredo
Davis, Tom	Mitchell	Thompson (MS)
DeLauro	Moran (VA)	Tiahrt
Dent	Oberstar	Wasserman
Dingell	Pryce (OH)	Schultz
Hill	Radanovich	Woolsey

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised 2 minutes remain in the vote.

□ 1917

So (two-thirds being in the affirmative) the rules were suspended and the resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. TIAHRT. Mr. Speaker, on rollcall No. 119, I was unavoidably delayed. Had I been present, I would have voted "yea."

PERSONAL EXPLANATION

Mr. DENT. Mr. Speaker, on rollcall Nos. 117, 118 and 119, I was detained at a meeting with firefighters and missed the votes. Had I been present, I would have voted "no" on

rollcall No. 117, "yes" on rollcall No. 118, and "yes" on rollcall No. 119.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H. CON. RES. 312, CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2009

Ms. SUTTON, from the Committee on Rules, submitted a privileged report (Rept. No. 110-548) on the resolution (H. Res. 1036) providing for consideration of the concurrent resolution (H. Con. Res. 312) revising the congressional budget for the United States Government for fiscal year 2008, establishing the congressional budget for the United States Government for fiscal year 2009, and setting forth appropriate budgetary levels for fiscal years 2010 through 2013, which was referred to the House Calendar and ordered to be printed.

ESTABLISHING AN OFFICE OF CONGRESSIONAL ETHICS

Ms. SUTTON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1031 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1031

Resolved, That House Resolution 895, amended by the amendment printed in the report of the Committee on Rules accompanying this resolution, is hereby adopted.

The SPEAKER pro tempore. The gentlewoman from Ohio is recognized for 1 hour.

Ms. SUTTON. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from California (Mr. DREIER). All time yielded during consideration of the rule is for debate only.

GENERAL LEAVE

Ms. SUTTON. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days within which to revise and extend their remarks and to insert extraneous materials into the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

PARLIAMENTARY INQUIRIES

Mr. ABERCROMBIE. Mr. Speaker, parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. ABERCROMBIE. Will time be allowed on the Democratic side of the aisle in opposition?

The SPEAKER pro tempore. Each of the managers controls 30 minutes.

Mr. ABERCROMBIE. Will time be allotted on the Democratic side of the aisle for opposition?

The SPEAKER pro tempore. The time is not allocated on the basis of the attitude of Members towards the measure. The gentlewoman from Ohio

will control the time on her side of the aisle.

Mr. ABERCROMBIE. Parliamentary inquiry.

The SPEAKER pro tempore. The gentleman is recognized.

Mr. ABERCROMBIE. Can the Speaker inquire of the gentlelady whether time will be given in opposition on the Democratic side of the aisle?

The SPEAKER pro tempore. The gentleman may ask the manager for time.

Ms. SUTTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. ABERCROMBIE. Mr. Speaker, I am under the impression that a question has been directed to the gentlelady.

The SPEAKER pro tempore. Does the gentlewoman yield for a parliamentary inquiry?

Ms. SUTTON. If there is time available, we will entertain that.

Mr. ABERCROMBIE. That's my question, Mr. Speaker.

The SPEAKER pro tempore. Will the gentlewoman yield for a parliamentary inquiry to the Chair?

Ms. SUTTON. Yes.

Mr. ABERCROMBIE. Will time be made available on the Democratic side in opposition?

Ms. SUTTON. If there is time remaining that hasn't already been assigned or requested, we will certainly not preclude opposition.

Mr. ABERCROMBIE. Does any time remain?

Ms. SUTTON. We're working on the list.

Mr. ABERCROMBIE. Mr. Speaker, that's nonresponsive. Mr. Speaker, I have permission to ask, and I'm trying to get an answer. That's certainly fair. Will there be time or not?

Ms. SUTTON. Mr. Speaker, I can't guarantee the time.

Mr. ABERCROMBIE. And this is about ethics.

Ms. SUTTON. Mr. Speaker, I reclaim my time.

The SPEAKER pro tempore. The gentlewoman from Ohio has the time.

Mr. ABERCROMBIE. Mr. Speaker, parliamentary inquiry.

The SPEAKER pro tempore. The gentleman is recognized.

Mr. ABERCROMBIE. I want to make sure I understand.

The SPEAKER pro tempore. Pardon the Chair, The gentleman is not recognized. The gentlewoman has reclaimed her time and does not yield for a parliamentary inquiry.

Mr. ABERCROMBIE. Will the gentlelady yield?

Ms. SUTTON. Mr. Speaker, I reclaim my time.

The SPEAKER pro tempore. The gentlewoman does not yield. The gentleman is recognized.

Ms. SUTTON. Mr. Speaker, H. Res. 1031 provides for the adoption of H. Res. 895, which establishes an Office of Congressional Ethics in the House of Representatives. I rise in support of this important rule that will allow us to enact one of the most important

ethics reforms this House has ever seen.

Mr. Speaker, the issue of ethics and accountability has long been on the minds of the people that I represent. During my campaign to become a Member of this esteemed body, everywhere I went, people asked about it. They believed and, Mr. Speaker, they were absolutely right, that the corruption and unfair influence that existed in past Congresses was having an effect on our policies, deflecting us from making progress on issues important to them and families across this great Nation.

So last year, Mr. Speaker, on my first day in office representing the people of Ohio's 13th District, I was very proud to stand on the floor of the House of Representatives to support the new ethics and lobbying reforms which have now become law. We ended the K Street Project and cut off the gifts and the perks used far too often by lobbyists to woo lawmakers. The historic rules package we passed was extraordinary in its scope and breadth. But it was only the beginning of actions necessary to restore the public trust and to cut off the abuses of recent years.

Mr. Speaker, trust is a fragile thing. It's difficult to win and easy to lose. It finds its hold on promises kept and honesty sustained and unquestionable integrity.

Many of us, Mr. Speaker, came to this new Congress as new Members dedicated to acting to change the way business was being conducted. In May of last year, I stood side by side with my freshman Democratic colleagues, some of whom we'll hear from today, calling for the creation of a non-partisan and independent body that could initiate and examine ethics investigations. And today, we are acting to make this change happen.

With this bill, we continue the mission of pushing back against corruption. We are forging ahead to restore trust and confidence in this great institution.

Mr. Speaker, House Resolution 895 will help end the culture and abuses that have hurt the American people, both in policy and in spirit. This legislation is the culmination of hard work of Representative CAPUANO and the special task force on ethics enforcement. He deserves our appreciation.

Speaker PELOSI and Majority Leader HOYER also deserve praise for their tireless efforts to move this issue forward, sometimes in contentious times. The independent ethics panel will help cure many of the inherent structural flaws that restrain our present ethics structure by eliminating the conflicts of interest that can be found in our current system. The formation of this office is the next step in our mission to repair the damage to the public trust caused by corruption and to ensure that any potential abuses in the future will be identified and addressed.

And it's important to emphasize, Mr. Speaker, that our bill establishes an

independent, bipartisan office of congressional ethics. The words "independent" and "bipartisan" are worth stressing.

We may hear today about the desire of some who want to delay action on this important measure, but the American people have waited and waited, and this bill has been a long time in the making. This bill was made necessary by abuses of the past that have robbed the public of their faith and trust in this institution, and this new bill was made possible by the commitment of this new Congress to ensure that we will do what it takes to prevent the excesses and abuses of the past and hold those who violate the rules accountable.

Safeguarding the trust of the American people is not a part-time job. The integrity of this institution and the trust of the American people must be paramount. And make no mistake, we take this step not only to restore the public trust, we must take this step to ensure that we will be an institution worthy of that trust. That's why we're acting today. The American people are waiting. I urge my colleagues on both sides of the aisle to join in support of this resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. DREIER. Mr. Speaker, I thank my friend for yielding me the customary 30 minutes, and with that, I yield myself such time as I might consume.

(Mr. DREIER asked and was given permission to revise and extend his remarks.)

Mr. DREIER. Mr. Speaker, as legislators there can be no issue of more fundamental importance than the strength and the integrity of our institution. None of our work here, none of our legislative or political priorities matter if we don't have the integrity and the trust of the people that are necessary to be an effective body.

The Founders of our Republic, the authors of our Constitution, were well aware of the inherent challenges in making government fully accountable. They understood human nature and the pitfalls that go with investing power in individuals.

□ 1930

After all, Madison famously wrote in Federalist 51: "But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place oblige it to control itself." Those were the brilliant words of the Father of our Constitution.

Our Founders recognized, Mr. Speaker, these challenges and knew the answer was to empower institutions rather than individuals. They knew that

the House of Representatives, like all government institutions, must have the authority and the imperative to preserve its integrity and to punish those individual Members who would tarnish its reputation, diminish its stature, and erode its ability to serve as the representative of the people.

They gave explicit constitutional authority to do so. As we all know, Article II, section V, clause 2 of the Constitution directs Congress to "determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member."

Ultimately, Mr. Speaker, they knew that the most important guarantor of accountable and trustworthy government is democracy itself. No individual Member of Congress ever acts with impunity because we are judged every 2 years by the people who sent us here. And, of course, no one is above the law.

As we speak, there are former colleagues of ours serving time in jail for their abuses of the offices that we hold. Outside watchdog groups, the media, individual voters and our criminal justice system are all working, and working quite effectively, to shed some light on this body and ensure Members are held accountable.

Externally, Mr. Speaker, the pressure is on. The problem is how to deal with accountability internally; how do we fulfill our constitutional imperative to police ourselves and preserve the integrity of this body. Our current process is broken. It's hamstrung by two key problems: partisan deadlock and a lack of transparency. This a serious challenge. It is so serious that some Members of this body apparently feel that we are not up to the job.

A task force was established to consider the question of whether we should just throw up our hands, concede that we are not capable of fulfilling our constitutional duty to police ourselves and set up another body to do it for us.

This was a dubious task to begin with, but I believe that it was tackled with all sincerity and commitment. Mr. CAPUANO and Mr. SMITH took on the role assigned to them and very carefully considered the question. But the breakdown came when it was time to make its recommendation.

The proposal put forth by Mr. CAPUANO, which ignores the real problem of a broken, internal ethics process, and in fact exacerbates the problem by adding a new partisan outside body, was not endorsed by his Republican counterpart. It met immediate criticism on both sides of the aisle. The Democratic leadership had no choice but to pull it.

Now, Mr. SMITH offered a very thoughtful alternative, and we were told that consideration of Mr. CAPUANO's proposal was being postponed in order to work with Mr. SMITH and consider his suggestion. That bipartisan negotiation, to my knowledge, Mr. Speaker, never took place. Mr. WAMP and Mr. HILL also submitted a

proposal, a bipartisan proposal; but it was disregarded as well. Instead, we are back here confronting essentially the same deeply flawed proposal that was yanked from the schedule a couple of weeks ago.

They may have put lipstick on that pig, but it is still a pig, Mr. Speaker. This proposal still sets the stage for partisan witch hunts. It may take bipartisan support to initiate investigations, but they can be advanced purely on partisan lines. So at the very beginning, when little information is known, bipartisanship is called for. But once the process begins, the flood gates for partisan attacks are wide open. The minor modifications made to the original proposal do nothing more than attempt to obfuscate the utterly partisan nature of the proposed Office of Congressional Ethics.

As we have seen countless times under the Democratic leadership, a bad proposal demands a draconian process to get it through. And the worse the proposal is, the worse the process needs to be. We've seen an explosion of closed rules in this Congress. And what does a closed rule do? It severely restricts debate and shuts out all amendments. This has become the go-to rule for this new majority. And that's as bad as it could possibly get. Right? There is nothing worse that they could do than to shut out all amendments and alternatives. Right?

I used to think so until this point, until we saw this rule. This one absolutely takes the cake, Mr. Speaker. In case you missed it when the Clerk read it, and allow me to repeat it, pay attention or you will miss it again: "Resolved, that House Resolution 895, as amended by the amendment printed in the report of the Committee on Rules accompanying this resolution, is hereby adopted." That's what the resolution says. This rule actually provides for passage of the underlying proposal without so much as one single word of debate on this proposal. They simply declare it into existence. No debate, no vote. A closed rule may shut out dissent, but this rule eliminates deliberation altogether.

Before this Congress even began, our distinguished Speaker, my fellow Californian, committed to "the most honest and open government," has managed to stoop to unprecedented lows in closed, inaccessible government that operates purely on back-room deals with no place for open, honest debate. And for what purpose? To ram through a policy so bad it has been widely and heavily criticized by both Democrats and Republicans. A policy to turn our ethics process into nothing more than cheap partisan games and a policy of abandoning our constitutional imperative to police ourselves and ensure the integrity of this great institution. This is terrible policy, brought to us by a singularly terrible rule.

I urge my colleagues to reject the rule and demand real ethics reform that actually addresses the root prob-

lems in our current system and accepts responsibility, as the Constitution directs us to, for our own ethics process.

With that, I reserve the balance of my time.

Ms. SUTTON. Mr. Speaker, I would like to state again, as I did a few moments ago, that we are going to hear, evidently today, about the desire of some to delay action on this important measure. And I just restate that the American people have waited and waited. And this bill has been a long time in the making.

I yield 6 minutes to the distinguished gentleman from Massachusetts (Mr. CAPUANO), the chairman of the Special Task Force on Ethics Enforcement.

Mr. CAPUANO. Mr. Speaker, I actually find very little in Mr. DREIER's comments I disagree with. I agree with almost everything he has said, and I commend him for that very thoughtful speech.

Mr. Speaker, before I comment on the specifics, I'd also like to thank the members of the task force, especially Mr. SMITH, who was the ranking member for Republicans. It was a great opportunity to become a friend of another Member. We did disagree in the end, but I found it to be a very thoughtful, fruitful, and enjoyable experience.

I also want to thank other members of the committee: Mr. PRICE, Mr. SCOTT, Ms. MCCOLLUM, Mr. Meehan before he left, Mr. HOBSON, Mr. CAMP, and Mr. TIAHRT. I thought we had some great meetings, and it was a pleasure to me to engage in this endeavor.

I also want to thank the Members of the freshman class of 2006. They're the ones who really kept the pressure on us to try to fix our ethics rules. They came here on the backs of public discontent with our actions, and they have kept our feet to the fire. I thank them for that.

I also want to thank the many people that helped us walk through this. There are many people whom I will list in my extension of remarks at a later time because there are too many of them. I do want to point out one staff member, in particular my own, Christina Tsafoulias, who worked countless hours trying to get through this. I want to thank her publicly for that.

On the specifics, again I think I agree with most everything Mr. DREIER said. This is really all about public trust, but the point that seems to be missed is the public does not trust us on ethics issues at this point. Maybe that's fair. Maybe that's unfair. Maybe it's based on reality. Maybe it's based on perception. But it is a fact. They do not trust us. They don't trust us for many different reasons. As I see it, I can point to two different issues in particular: the perception of the good-ol'-boy network. Now, maybe that's not fair, but it's certainly what our constituents think. They think we are all here protecting each other. They think that we operate beyond closed doors and smoke-filled rooms to make sure that

no bad things get said about our colleagues. I don't think that is true, but that's certainly the perception. When people don't have trust in the system, they don't have trust in us, and I think that's an important thing to address.

The other part of it, as was already pointed out, is transparency, or the lack thereof. That encourages people to think that the good-ol'-boy network is all that we rely on. As far as partisanship, I totally agree. Any system that results in partisanship on ethics matters is unsuccessful. But partisanship has two points: yes, there is partisanship to initiate witch hunts, and that is a concern, I believe, this proposal addresses that by requiring joint appointments and by requiring one Democratic appointment and one Republican appointment to initiate a review. It totally undermines any legitimate concerns about partisanship witch hunts.

But the other side of the coin that nobody here wants to talk about is the potential for partisan stonewalling, which we have suffered in this House in the past where one party simply says, You cannot look at our Member. Period. End of discussion. And if you do, we will remove Members from the Ethics Committee who look at that Member, which has happened in this House, and everybody knows it.

And to think that partisanship is only a one-sided witch hunt is a mistake. Partisanship is also stonewalling. It's also protecting our fellow colleagues who may or may not have done something wrong simply because they come from the same party as we do. That's just as wrong as partisan witch hunts, and I believe this proposal addresses that as well.

I also want to comment on the two proposals that were dropped on us lately. One of them had been in one form or another for a while; but both of them, in their final form, were dropped on us lately. I will simply tell you that, yes, we did look at them; and I have an opinion here which I will submit to the RECORD from the Congressional Research Service and one from the House counsel that states by bringing non-Members into a Member-oriented item to have official votes on matters in this House is likely to be unconstitutional.

Now, I know that some people don't want to hear it, and certainly it won't be definitive until the Supreme Court were ever to act on it, but there is all of these constitutional questions on everything we do. I, for one, am a lawyer. I try to figure out how unconstitutional an issue might be; and if the answer is it's more likely to be unconstitutional than not, I won't do it. If the answer is I think it's constitutional, you try it. If it gets knocked down in court later on, so be it.

So these two proposals, according to two independent agencies we could get direct answers on quickly, believe that it's unconstitutional.

As far as the rule goes, I have had a year's worth of debate, and I would

have welcomed anybody to come to any of our meetings and participated at any time they wanted to have the hours-on-hours of discussion. At the same time, this is a pretty simple proposal. I know some people don't like the concept of an independent entity having something to do with our ethics process. I respect that opinion. I disagree with it, but I respect it. It is a fair concern. At the same time, that's what this is.

An up-or-down vote on that, I think, is a fair thing for the American people to let them know how we feel about this concept.

The material I referred to previously I will insert into the RECORD at this point.

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, March 4, 2008.

MEMORANDUM

Subject: Permissibility of Non-Members Being Appointed to a Committee of the House of Representatives.

From: Jack Maskell, Legislative Attorney, American Law Division.

This memorandum responds to requests from congressional offices for a brief overview of the permissibility and constitutionality of allowing the House to appoint non-Members, that is, persons who are not current Members, Delegates, or Resident Commissioner, to a committee of the House of Representatives, with full voting privileges in committee. Although the House of Representatives has extensive authority and discretion concerning its own internal proceedings and rules, the Constitution requires that Members of the House be elected every two years by the people of the several states, and thus a rule which would allow persons who are not elected to the House to carry out the constitutional functions of the House of Representatives through full voting membership on one of its committees would raise constitutional questions.

Each House of Congress generally has broad authority to determine its own internal, procedural rules, and to establish those procedures and internal structures within the body to assist in implementing the institution's constitutional duties. Under Article I, Section 5, cl. 2 of the Constitution, which grants to each House the express authority to "determine the Rules of its Proceedings * * *," the institution of the House, within the framework of express constitutional requirements, has broad discretion concerning its own internal operations and functionings as befits a legislative assembly which is an independent, co-equal branch of government under our tripartite governmental system of separated powers. Under this authority, the courts have traditionally given deference to the explication, application, and definition of internal procedural matters in both Houses of Congress. As noted by the Supreme Court in *United States v. Ballin*: "The question, therefore, is as to the validity of this rule, and not what methods the Speaker may of his own motion resort to * * * Neither do the advantages or disadvantages, the wisdom or folly, of such a rule present any matters for judicial consideration. With the courts the question is only one of power. The Constitution empowers each house to determine its rules of proceedings. It may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations all matters of method are open to the determination

of the house, and it is no impeachment of the rule to say that some other way would be better, more accurate or even more just. It is no objection to the validity of a rule that a different one has been prescribed and in force for a length of time. The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the house, and within the limitations suggested, absolute and beyond the challenge of any other body or tribunal.

When there are interpretative and definitional "gaps" in language of constitutional provisions, for example, the courts have allowed each House to fill in the details of such constitutional provisions regarding its internal procedures. As noted by the Supreme Court in the case regarding the procedure that the Senate adopted to carry out its constitutional duties to "try" impeachment cases: "As a rule the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require * * *." The Supreme Court in *Nixon v. United States*, thus deferred to the institution of the Senate in its determination under its own rules of proceeding as to the method that the Senate uses to "try," as required by the Constitution, an impeachment of a federal judge. Specifically, the Court deferred to the judgment of the Senate to use only a small portion of the entire membership of the Senate body, in the form of a committee, to actually hear and take the evidentiary testimony (and then to report to the full Senate which votes to convict or not on the impeachment), since there was a "textual commitment to a coordinate political department" of the matter in the Constitution.

The courts have thus recognized the authority of committees, and have allowed the committees broad investigative and oversight authority, for example, because committees of the House act as the House for those purposes that are expressly delegated to those committees by the Rules of the House (and have only those authorities and powers that are in fact delegated from the full institution). The Supreme Court has recognized the House's "utilization of its committees" to carry out a "legislative function belonging to it under the Constitution." Since the committees act as and on behalf of the House pursuant to its Rules, are creatures of the House, and are in legal and actual essence a division or sub-entity of the entire institution (carrying out and exercising the constitutional functions of that institution delegated to them), there is a very strong indication that such committees exercising such functions may generally be composed only of Members of the House.

Article I, Section 2 of the Constitution provides that Members of the House must be elected every two years by the people of the several States. Membership in the House, and by extension on committees acting for the House, would thus appear to require that a Member be elected by the people of the several states. In a brief review of legal sources, we have not discovered any precedent where non-Members of the House have been members of a House committee with full privileges and votes similar to any Member of the House, and thus we have found no judicial decisions and rulings on its permissibility, other than in the case of the elected delegates or resident commissioners in the House. In *Michel v. Anderson*, the United States Court of Appeals, District of Columbia Circuit, found that there exists what one might describe as an "historical exception" to the general constitutional proposition that the House must only be made up of Members elected from the several states, and that exception, recognized in law from the

very first Congress (1 Stat. 50, 52 (1789)), was that people in territories and districts under the jurisdiction of the United States could have a non-voting delegate or commissioner in the House (that is, that such delegate may not vote on legislation on the floor) to “represent” them: “The territorial delegates, representing those persons in geographic areas not admitted as states, then, always have been perceived as would-be congressmen who could be authorized to take part in the internal affairs of the House without being thought to encroach on the privileges of membership.”

Such non-voting representatives, in the form of elected delegates from the territories and districts not admitted as states, have in practice sat on House committees, and could, according to the court, if authorized by the House, vote in the “Committee of the Whole” (but only if their vote was not the determinative vote), but could not vote on legislation on the floor.

However, the court in *Michel v. Anderson* expressly noted that this historical exception for territorial delegates was limited, and noted, in dicta, that such exception and permission for territorial delegates to participate in certain internal matters in the House could not be extended or applied to allow the House to adopt a rule putting other non-Members on House committees: “The appellees, for their part, forthrightly concede that the House could not permit persons other than the traditional delegates to perform the role currently played by the delegates. It would, thus, not be open to the House to authorize by rule, say, the mayors of the 100 largest cities to serve and vote on House committees.”

In the case of allowing persons not elected as Members of the House to be full voting members of a committee of the House, such as in certain proposals concerning the House Committee on Standards of Official Conduct, the precedent of allowing territorial delegates to participate in certain internal processes of the House, including voting in committee, may be distinguished on three basic grounds. First, there is historical precedent recognized from the first Congress for the people of territories and districts, not recognized as states, to have some limited, non-voting representation in the House. In the proposals seeking to add non-Members to the standing House Committee on Standards of Official Conduct, no such purpose of representation of persons in geographic regions under the jurisdiction of the United States is provided, intended, or accomplished. Secondly, as discussed above, the court noted in its opinion that this historical permission for territorial delegates, provided by law, to participate in certain House proceedings, was a limited exception, and would not open the House to “authorize by rule” the addition of other persons (such as mayors of cities) “to serve and vote on House committees.” Finally, the court noted that the voting of a territorial delegate, even in a House committee or in the “Committee of the Whole” (with the revote provision), is “largely symbolic” because the vote could not immediately affect legislation, such as a vote on legislation on the House floor would. The duties and authority of the House Committee on Standards of Official Conduct to both recommend the discipline of a Member directly to the House, and to issue a “letter of reproof” on its own accord, upon the requisite number of the votes of its members, may be seen as part of the express constitutional authority of the House under Article I, Section 5, cl. 2, to “punish its Members for disorderly Behaviour.” As such, these activities might be considered part of the direct and express constitutional function of the House, delegated to and exercised in some

part by one of its committees made up of its own Members, and thus something more than merely the “symbolic act” which was the subject of the *Michel v. Anderson* case.

A committee of the House, such as the House Committee on Standards of Official Conduct, could clearly employ staff to assist the committee in carrying out its functions, and could use an “outside counsel,” an advisory committee, or “task force” made up of non-Members (and even including on its membership some sitting House Members) to assist the committee in its investigative work, fact-finding, and even recommending to the Committee that it take certain action on matters. However, it may be argued that under existing decisions and precedent, allowing persons who are not elected as Members (or as delegates representing persons under the jurisdiction of the United States in geographic regions that are not states) to be full voting members of a House committee exercising the constitutional functions of the House delegated to it could, in the words of the U.S. Court of Appeals, “encroach on the privileges of membership.”

JACK MASKELL
Legislative Attorney.

From: John Filamor.

Sent: March 5, 2008.

To: Christina Tsafoulas

Subject: H. Res. 1003

CHRISTINA: You asked whether H. Res. 1003 (110th Cong.)—which would, among other things, alter the House Rules to give four former Members of the House voting rights on the Committee on Standards of Official Conduct—raises any constitutional concerns. While we cannot give you a definitive answer as to the constitutionality of H. Res. 1003, the proposal to vest former Members of the House with full voting rights on a standing committee of the House that is responsible in the first instance for carrying out the authority vested in the House by article I, section 5, clause 2—the Discipline Clause—certainly raises very substantial constitutional questions for all the reasons set forth in Jack Maskell’s March 4, 2008 memorandum (“Permissibility of Non-Members Being Appointed to a Committee of the House of Representatives”) We think those constitutional questions are heightened somewhat by the fact the Standards Committee has, in addition to its authority to investigate and recommend disciplinary action to the full House, the authority under current committee rule 24(c) to, on its own, issue a “Letter of Reproof or take other appropriate committee action.” However, we do not believe that the elimination of that particular authority from committee rule 24(c) would eliminate the constitutional questions that H. Res. 1003 raises. Mr. Maskell notes in his memo that “[s]ince the committees act as and on behalf of the House pursuant to its Rules . . . there is a very strong indication that such committees exercising such functions may generally be composed only of Members of the House.”

JOHN FILAMOR,
*Office of the General Counsel,
House of Representatives.*

Mr. DREIER. Mr. Speaker, I am happy to yield 2 minutes to a hard-working member of this so-called bipartisan task force on ethics reform, my friend from Michigan (Mr. CAMP).

Mr. CAMP of Michigan. Mr. Speaker, I rise in strong opposition to the Democrats’ flawed ethics proposal. This bill would actually weaken ethics enforcement in the House by adding an unnecessary and even unconstitutional layer of bureaucracy to an already failing ethics process.

During our work on the special task force on ethics enforcement, Republican Members consistently voiced our opposition to creating an ineffective, redundant, and duplicative committee. The Constitution explicitly states that the House is solely responsible for punishing its Members for disorderly behavior. Creating an Office of Congressional Ethics calls into question our constitutional duties to discipline our own Members.

Let me take a minute to point out some of the absurd provisions in the Democrat proposals.

□ 1945

First, board members of the so-called Office of Congressional Ethics would be appointed to 4-year terms, yet the House reassembles itself every 2 years and must renew its internal rules on a biennial basis.

Second, reviews by the board would advance on tie votes. This is undemocratic and runs contrary to our entire system of majority government.

Third, when board reviews are concluded, the findings are referred to the Ethics Committee for further action. This puts us right back to the failed system in which we find ourselves today.

Quite frankly, the most glaring failure of the Democrats’ proposal is that it does nothing to address the problems inherent to the Ethics Committee. Rather than adding a layer of bureaucracy, ethics reform should address the problems plaguing the Ethics Committee. I support measures that reform the Ethics Committee by creating greater bipartisanship, transparency, and accountability in the investigations process.

We should require that all Members appointed to the Ethics Committee be chosen jointly by the Speaker and minority leader to end partisan gridlock. We should also mandate monthly status reports by the committee on pending investigations. The Republican proposal would implement these and other important changes, but the Rules Committee blocked consideration of our proposals.

My fellow Members, we must reform the House ethics process and restore a sense of public confidence and accountability in this institution. The Democrats’ bill does neither. I hope you will join me in voting down this flawed partisan proposal.

Ms. SUTTON. Mr. Speaker, at this time, it is my pleasure to yield 2 minutes to the distinguished gentleman, my colleague from Ohio (Mr. SPACE).

Mr. SPACE. I thank my colleague from Ohio for yielding time.

I would like to thank my colleague from Massachusetts (Mr. CAPUANO) for his diligent work under very difficult circumstances for months on end. It was difficult for Mr. CAPUANO because many Members of this House did not believe that this resolution is necessary, despite what Mr. CAPUANO has referred to tonight as a problem with

public perception and a lack of transparency. The Members of this House, many of them, still do not get it.

Our current ethics process is filled with flaws: the conflicts of interest exist; only Members can file complaints; the public is left in the dark regarding investigations. We haven't been very good at policing ourselves. This resolution is necessary because, as Mr. CAPUANO mentions, the American public has lost faith in the institution of Congress, and we ignore that loss of faith at our own peril.

I come from one of those districts that has been referenced as one that sent a freshman here on the backs of public discontent. The people that I represent back in Ohio's 18th understand all too well the perils of public betrayal.

We have an obligation to restore the public trust. We started that last January with ethics legislation that helped sever the link between lobbyists and legislators. We need to continue with that movement today by looking at ourselves, by looking inward and creating a system that is nonpartisan, but is independent, and that will vet, initiate, and conduct investigations. This resolution does that. It represents a good start. I am proud to have worked on it with my fellow freshman colleagues, Mr. HODES as well as Mr. MURPHY, who will be offering support today, as well as many others.

Quite simply, Mr. Speaker, the public is fed up with the status quo. They want Members who break the rules to be investigated and brought to justice. My esteemed colleague from California today referenced that none of what we do matters if we do not have the trust of the public. This resolution helps restore that trust. I urge its support.

Mr. DREIER. Mr. Speaker, at this time I am happy to yield 4 minutes to my friend from Pasco, the former chairman of the Committee on Standards of Official Conduct, the present ranking member, Mr. HASTINGS.

Mr. HASTINGS of Washington. I thank my friend from California for yielding.

Mr. Speaker, while I am constrained by confidentiality rules in speaking about the current work and past actions of the Ethics Committee, I want to clearly state today that I believe the current rules and structure of the ethics process should and need to be improved.

The procedures of the Ethics Committee are not perfect, and I firmly believe this House should make modifications to those procedures to better protect the integrity of the House and the faith of the American people. However, Mr. Speaker, this House must act carefully and deliberately in making any improvements, and it must be done in a bipartisan way. Mr. Speaker, that is not happening.

No consideration of a bipartisan reform proposal is permitted on the floor tonight. The House floor is shut down to any debate. No alternative is al-

lowed to be considered. No amendment may be offered. No respect, Mr. Speaker, is offered to the concerns expressed by both Democrat and Republican Members of this House.

Mr. Speaker, in 2005, at the beginning of the 109th Congress, Democrat leaders derided House rule changes that were written only by Republican leaders. Democrats demanded bipartisanship and a fair say in the rules that governs the ethics of House Members. Democrats weren't given any say then, and those one-way changes to the rules were ultimately reversed during the 109th Congress. It is now 3 years later, and the same Democrat leaders have abandoned their calls for bipartisanship and are refusing to work across the aisle to make bipartisan improvements to the ethics process.

Mr. Speaker, Republicans were wrong to do it in 2005 and Democrats are wrong doing it today. In fact, since the new Democrat majority took office a little over a year ago, this House has already had to go back twice and correct poorly written rules that Democrats passed without any input from Republicans. In both instances, Mr. Speaker, Democrat-written rules that the House had to go back and fix were ethics rules.

The House should learn from the mistakes of the past several years and not doom ourselves to repeat history by failing to insist that ethics changes be done in a bipartisan way. For the ethics process to work, bipartisanship is vital. Without bipartisanship, the process will fail.

Bipartisanship is not always easy, but it is absolutely necessary for the legitimacy of the entire ethics process. Without bipartisanship, the process degenerates into politically motivated actions, or witch hunts.

This proposal is not a good proposal, and no one, Mr. Speaker, is more disappointed than I. Because Members of the Ethics Committee are asked to do an unwelcomed job. We do it by the rules of the House. And by the rules of the House, we must remain silent, even when subjected to relentless and often inaccurate criticism and attacks on our actions.

So, Mr. Speaker, improve the ethics process. Improve the ethics ability to police its Members. Improve our ability to provide timely information to the American people. Improve the bipartisanship that is central to the ability of the ethics process to function. But, Mr. Speaker, for the sake of this institution and for ensuring an ethics process that will function properly, do not act in a partisan way by supporting a proposal written solely by one party. Oppose this proposal and demand bipartisan improvements to the entire ethics process.

Ms. SUTTON. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Connecticut, my freshman colleague, Mr. MURPHY.

Mr. MURPHY of Connecticut. Thank you very much, Representative SUTTON.

Mr. Speaker, I think we're on the precipice of an historic step forward in restoring the people's faith in this institution, but I understand how difficult this is to talk about. And giving the minority the benefit of the doubt, maybe that's why this House sat idly by for 12 years with no real major reforms to a very broken process.

But it's tough to talk about because it's not just about a broken process, it's about human nature. It's tough to talk about the failure of our ethics process because we're talking about the fallibility of all of us. It is against human nature, frankly, to rat out your friends, to investigate them, to punish your colleagues. And so that's why you can't just change people's perception of this place. You just can't fix the ethics process by tweaking the process that exists now. You have to admit the inherent fallibility of the ability for all of us to police ourselves and give that power to an independent body.

The cat is out of the bag, people figured this out long ago. There are too many Members that have violated the public trust, and they've watched too many other Members sit idly by.

Now, I, frankly, agree with my colleague Representative SPACE that this proposal could have been even a little bit stronger with the addition of subpoena power, but this is a major step forward and we should all support it. There is a generation of young people out there who stand on the precipice of losing all complete faith in government and in this institution. Tonight we have the chance to do right by them by correcting the mistakes of the past.

I thank Mr. CAPUANO and the task force for their hard work here, and I urge passage of the rule.

Mr. DREIER. Mr. Speaker, I'm happy to yield 5 minutes to my very good friend, the gentleman from San Antonio, the Republican leader of this important task force, Mr. SMITH.

Mr. SMITH of Texas. I want to thank my friend from California, the ranking member of the Rules Committee, for yielding me time.

Mr. Speaker, at the outset I want to recognize the dedication and focus that Representative CAPUANO, the chairman of the Ethics Task Force, has demonstrated throughout this process. We know the best of intentions underly his desire and the desire of all Ethics Task Force members to enhance the integrity of the House of Representatives.

While this proposal is marginally improved over the first proposal, it still contains flaws that make it defective. The fundamental flaw of the proposal is that it fails to reform the House Ethics Committee itself. The creation of another ethics entity would be an admission of the failure of the Ethics Committee.

Americans rightly feel the ethics process simply does not work. They do not know when ethics investigations are started; they do not know the status of those investigations, and they do not know whether a partisan deadlock

has resulted in stalling an investigation forever. Americans need this knowledge, and that can only come through reforms to the Ethics Committee itself that will produce more bipartisanship and greater transparency. But the proposal before us simply adds another layer of bureaucracy on top of an already broken system. It creates an entirely new entity that invites yet more partisanship under clearly undemocratic procedures.

This country and the House of Representatives is founded on the principle of rule by majority; yet this proposal allows ethics inquiries to be initiated upon the request of only two out of the six board members. Furthermore, the proposal requires ethics investigations to go forward even when majority support among the board members cannot be obtained. This is undemocratic.

The resolution before us today is different from the original resolution and includes several changes. One amendment to the resolution now provides that the Speaker and minority leader will each nominate three members of the board with the concurrence of the other. Even under such a system, three board members will have been selected by the leader of a partisan political party.

Another amendment would provide that an investigation be terminated unless three board members affirmatively voted to proceed with an investigation. But if one board member nominated by the Speaker and one board member nominated by the minority leader agreed to initiate an investigation, but upon further review either board member decides the matter should be dismissed, the investigation can still proceed with the support of only those board members nominated either by the Speaker or the minority leader.

Not only does this resolution retain the undemocratic nature of the resolution, it also allows investigations to go forward on a purely partisan 3-3 vote. This is an open invitation to a partisan free-for-all. As a recent editorial in *Roll Call* stated bluntly, "We don't deny it's a gamble."

Under this proposal, many Members who deserve better could have their reputations unfairly diminished. A recent editorial in *The Hill* newspaper entitled "Leaking Ethics" focused on this point. It said, "All it takes is one source to say the Ethics Committee may launch a probe into a Member and that lawmaker's reputation will be forever damaged whether he or she is guilty or innocent."

Whether this resolution passes or not, Congress will survive. But if it passes, Members should know there is an obvious danger the ethics process will become even more partisan and that innocent Members will be hurt.

I urge my colleagues to oppose the rule on the resolution which invites partisanship, undermines democracy, and poses unacceptable risk.

Ms. SUTTON. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Indiana (Mr. HILL).

Mr. HILL. I thank the gentlelady from Ohio for yielding this time.

Mr. Speaker, I rise not to make a recommendation to Members on how to vote on this bill; I rise to remind Members that if they decide to vote this bill down, that does not mean that there is no alternative that they can vote for.

A great deal of talk tonight has been made about bipartisanship, and I think that's very important. We need to have a bipartisan bill, and we had one. I introduced legislation last year that would create a new Ethics Committee consisting of former Members of Congress.

□ 2000

Just a few weeks ago, my good friend from Tennessee (Mr. WAMP) made a similar recommendation with a few differences. His recommendation was to have six members who were former Members and six members who are current Members. I joined with Mr. WAMP, and now we have huge bipartisan support for a concept that merits a vote.

Now, when I campaigned on this particular issue back in 2006, this gained a great deal of support in my district when I outlined the specifics. This is a good bill, and I think if you go back to the Ninth District in Indiana, they will confirm that this is a good bill. And it is a bipartisan bill. Let's for once in this body act in a bipartisan way.

As I said, I make no recommendation as to how you should vote on this bill. But if you decide that you want to defeat this bill, there is an alternative. It is bipartisan. It is substantive, and it has subpoena powers. In many ways this bill is a better bill because it is a stronger bill.

I urge Members to consider what I have said, that there is an alternative out there. It's not the end of the day. The game is not over. The game can go on. We can pass a good bill with bipartisan support.

Mr. DREIER. Mr. Speaker, at this time I am happy to yield 2 minutes to the distinguished Republican whip, the gentleman from Missouri (Mr. BLUNT).

Mr. BLUNT. I thank the gentleman for yielding.

Mr. Speaker, 3 years ago at the beginning of the 109th Congress, the minority leader, today the Speaker, said that the rules of the House should never be changed without bipartisan cooperation. I think that did not mean without a bipartisan meeting. It meant without a bipartisan effort to reach a conclusion that both sides believed would improve the ethics process in the House.

During this Congress, the Ethics Committee has not worked. I don't think anybody is going to rise to debate the other side of that. This outside commission, if it does become part of the rules tonight, through this rule, it would have no vote, no amendment, no alternative. If it does become part

of the rules, almost assures that the Ethics Committee will not work for the remainder of this Congress. This new outside group will become the reason to wait. It will take 45 or 60 days to reach agreements on people who can serve, if that can be done that quickly. It will take them another 60 days to get a staff together. Already we're clearly outside the ethics process working in this Congress.

The bill that Mr. HILL just mentioned, the bill that Mr. SMITH just mentioned would both be focused on making the process work and work now. They both would be focused on ensuring that this process does what it's supposed to do.

This rule not only rushes without any real alternative or debate, but also Members were informed today that last November the bipartisan staff of the Ethics Committee asked to evaluate the concepts behind this bill gave reason after reason after reason why they thought those concepts were flawed, concepts that have not been improved by the changes that were made in the last few days. They gave reason after reason after reason why they thought this commission would make the Ethics Committee less likely to be able to do its job effectively. And we still rushed, Mr. Speaker, to try to force this on the Congress when that information, we now know, has been available since November. We got it today.

I think we ought to give the time for the people who work on ethics every day to be able to publicly evaluate this concept.

Ms. SUTTON. Mr. Speaker, at this time I yield 2 minutes to the distinguished gentleman from New Hampshire (Mr. HODES).

Mr. HODES. I thank the gentlewoman for yielding. I also thank Mr. CAPUANO for his leadership on this matter.

Mr. Speaker, I rise in support of this bill and in strong support of accountability and transparency in all public service.

For years the former congressional leadership eroded the faith of the American people through corruption, dishonesty, and abuse of power. I came into office pledging to restore the people's trust; and as stewards of the public trust, we must hold Congress to the highest standard and end the abuses of the past.

This legislation before us is an important step in restoring the trust of the people we serve in this body. It puts ethics violations in the hands of an independent, nonpartisan board; and that is the right way to give the American people the confidence that any corruption will be investigated fairly and thoroughly.

I have also stood with my colleagues Mr. MURPHY of Connecticut and Mr. SPACE of Ohio to cosponsor an amendment that would allow this body to have subpoena power in order to give the board the real teeth an outside investigative body should have. In my

judgment, I would have preferred that the leadership and the Rules Committee had allowed this amendment to reach the floor for consideration. In the fullness of time, I believe we will see the wisdom of giving this new independent ethics body all the tools it needs to investigate alleged violation. However, even without this added power, I will support this bill because the perfect must not be the enemy of the good.

Let there be no mistake, Mr. Speaker. This bill has had bipartisan input, and the bill was even pulled from the floor to make sure that on a bipartisan basis suggestions for improvement were heard, reviewed, and incorporated.

I was sent to Congress by the people of New Hampshire to clean up Washington. This legislation may not go all the way, but it goes a long way towards helping restore trust in the people's House.

Mr. DREIER. Mr. Speaker, I would just say in response to my friend that bipartisan input has, unfortunately, not taken place. The gentleman is totally incorrect.

And to confirm that, Mr. Speaker, I am happy to yield 3 minutes to a hard-working member of the task force, my friend from Goddard, Kansas (Mr. TIAHRT).

(Mr. TIAHRT asked and was given permission to revise and extend his remarks.)

Mr. TIAHRT. I thank the gentleman from California for yielding.

Mr. Speaker, I was very excited to be part of this ethics task force. And led by the able leadership of Chairman MIKE CAPUANO and Ranking Member LAMAR SMITH, I was very hopeful that we could work in a bipartisan fashion to come up with a good, solid ethics bill.

We held over 30 hearings. We worked very hard. And I believed we were on track until about last August. And sometime during last August, the outside special interest groups got to the Democrat leadership, and this whole effort was derailed.

And what came out of this was terrible and I will just give you one specific example. This whole thing puts all of us in a vulnerable situation, but in this one specific instance there are six members appointed to the Office of Congressional Ethics, the OCE, and there are supposed to be joint appointments with the Speaker of the House and the Minority Leader. But there is a caveat. If you cannot get an agreement, and just hold off for 90 days and get your respective appointee in this position as one of the six members of the OCE.

Now, why should we be concerned that this was hijacked by the outside groups? These outside special interest groups exist to chastise and press charges against Members of Congress. That's how they raise their money. That's why they exist. And they're on both sides of the political spectrum; so

all of us are vulnerable. These groups take sides in political battles, and use any scrap of evidence they can find to try to press charges against Members of Congress.

In fact, if you have ever amended your FEC report, there are examples of how they've used that as alleged unethical charges against Members of Congress. And nothing disqualifies these members of outside groups from sitting on the OCE as one of six members.

So we're all vulnerable by these politically motivated people being incorporated into this whole process to make sure that all of us have a chance to face charges, whether justified or not.

Now, just think of your worst critic. They're out there in the blogs. They're in the call-in for your newspapers. These are the types of folks that you will be confronted with if we allow these outside groups to inject themselves in this process.

And how will you respond? Well, the first thing you will have to do is go out and hire a lawyer, and those lawyers are about \$1,000 an hour; and a minimum investigation, even when you're innocent, is going to a quarter of a million dollars. Now, some people don't mind that. Some have plenty of money to burn. But I think a majority of Members here in this Congress realize that even a false charge can bankrupt them and force them into a position where they have no financial substance. That will happen in this ethics bill.

This is just the tip of the iceberg of how this process got hijacked and how this ethics bill is not fair to Members of Congress. It's unconstitutional. And I think this rule ought to be defeated. And if you have a single ounce of self-preservation, you will vote "no" for this rule and vote "no" against this unconstitutional bill.

Mr. Speaker, rise today with reluctance and regret that I am unable to support the House rule change before us today.

Exactly 12 months ago I was both honored and excited to receive the appointment from my leader to serve on the Speaker's Special Task Force on Ethics Enforcement. At the time, like my Republican colleagues, I was excited about the possibility of forging together a bipartisan piece of legislation that would address the fundamental issues that are currently plaguing our ethics system in Congress. Under the capable and civil leadership of Chairman MIKE CAPUANO and Ranking Member LAMAR SMITH, I was hopeful of what we could achieve.

For the past 13 years I have observed the House ethics process and came to the conclusion early on that our system was not transparent enough, not efficient enough, and simply not effective. In a word, our system was broken. Sadly, today, I am forced to accept that the Speaker's Task Force has failed its mission and has produced a partisan, undemocratic, and unconstitutional bill that I am convinced will only compound our current problems—and further frustrate the wishes of the American people for this House to clean up its act.

While the Democrat proposal is flawed in several substantial ways, its biggest and most glaring failure is that it turns a democratic ethics process into an undemocratic and partisan one where justice can be easily denied. Under the proposal before us today, an investigation can be initiated by the action of only two of the six members of the new independent Office of Congressional Ethics, OCE.

The legislation also mandates that names of the two members remain secret and kept from the American public and the accused Member of Congress. An earlier version of this legislation required a majority vote of the new committee before proceeding to a second-phase review of the pending matter. However, under the version we are debating today, a full-fledged review and investigation may occur without a majority vote of the OCE. This proposal jettisons the basic and fundamental right of democracy and fair play.

Mr. Speaker, in addition to being undemocratic, this proposal also contains several provisions which are most likely unconstitutional and therefore unenforceable. The most egregious provision is the creation of the OCE.

In its 200+ years of existence, Congress has never seriously contemplated handing over one of its most important responsibilities—that of regulating and disciplining its own Members—to an outside entity that is unaccountable to the American people unlike elected Members of Congress.

The legislation before us today would do just that. However, instead of abdicating our constitutional responsibility as specified in article I, section 5 of the United States Constitution, I propose that our task force goes back to work—and finds a solution which bridges our partisan differences while adhering to our constitutional obligations.

Our Ethics Committee is broken—so why not focus on and fix the problem instead of creating a whole new set of problems that will only serve to further undermine our ethics process? If Members of Congress are truly interested in repairing our ethics process—if Members of Congress are truly committed to restoring honor and integrity to this House—it's essential that we come together in a bipartisan spirit and develop a package that both sides can agree upon and support. Unfortunately, today's legislation falls way short of hitting that mark.

Mr. Speaker, in addition to abolishing basic rights of democracy and fair play—this proposal promises to undermine ongoing Ethics Committee investigations and will likely impede Department of Justice investigations. In just one example, this legislation imposes an unreasonable period of time to investigate unethical conduct.

Quick and incomplete investigations can lead to unjust results—including charging the innocent and letting the guilty off free. It's imperative that our processes of maintaining the highest standards of ethical behavior supports and complements the House Ethics Committee—regrettably, this bill will only undermine its ability to do its job.

On September 26, 2007, David H. Laufman, a former Investigative Counsel for the House Ethics Committee from 1996–2000 and a former federal prosecutor opined the following in Roll Call:

“[T]he creation of an outside ethics panel will not solve the core problems that currently afflict the House. Real ethics reform

in the House begins with willingness on the part of both party leaderships to refrain from political intervention in the ethics process and give the ethics committee the independent, professional resources it needs to do its work. . . . Creating an outside panel, moreover, would simply create another layer of ethics bureaucracy that further slows down a process already characterized by sluggishness."

At this time I would like to submit Mr. Laufman's entire Op-Ed into the RECORD.

Mr. Speaker, instead of maintaining and fostering the cause of justice and ethical behavior in Congress, this piece of legislation may actually thwart the efforts of the Ethics Committee and Justice Department to investigate unethical behavior and punish Members appropriately. Again, if the Ethics Committee is broken lets fix or replace it—but why in the world would we want to ignore the problem by creating an additional layer of legislative red-tape—which will only serve to work against the purposes of the Ethics Committee—instead of enhancing its ability to get its job done fairly and expeditiously.

Mr. Speaker, it was an honor to serve on this Task Force and work with my 7 distinguished colleagues. Over the past 12 months I participated in over 30 hearings, listening to testimony from a wide variety of interests on this important matter before us today.

While various organizations expressed their support for the concept of creating an independent body—and their endorsements have been promoted today in this debate—it would be unfair to not recognize that several witnesses expressed their misgivings and concerns with the direction this legislation would take the House ethics process. Witnesses I suggest were more qualified than others to testify to the pros and cons of creating a new independent body.

Last March the task force met in private with former Congressmen Bob Livingston, R-LA, and Louis Stokes, D-OH, regarding their experiences from serving as cochairs of the last House Ethics Task Force in 1997. Both men had served on the House Ethics Committee and were highly esteemed by their colleagues. Congressman Stokes was a former chairman of the House Ethics Committee and shared the following statement with our task force members:

I strongly believe the current Ethics Committee structure should be preserved. I think Congress has a constitutional obligation to police its members. The mechanism exists to hire outside counsel whenever necessary, as the Committee did in the Abscam cases and also in the sex and drug investigations. In both cases the House received accolades for its work. A dangerous aspect of investigations by either a House Committee or an outside panel is interference with Justice Department investigations.

At this time I would like to submit Mr. Stokes entire written statement into the RECORD.

Mr. Speaker, I would like to raise one additional point that warrants discussion. Regardless of the outcome of today's vote, I believe it is important that this House give serious consideration to providing attorney's fees for Members of Congress that may become the subject of an OCE or Ethics Committee review in the future—but are subsequently cleared of any baseless charges. Under the OCE structure set up in this rule, it will be very easy for any two members to initiate an investigation—

for any reason—without any real evidence—which in turn will force any discerning Member to hire a DC attorney to make sure their rights are protected and their name is not damaged in the process.

Colleagues do not be fooled—this will become inevitable if this rule is enacted today.

I want to thank Chairman CAPUANO for highlighting the issue of attorney's fees in his Report and also commend him again for his leadership and hard work with the task force. While I am unable to support its outcome today, I know that every member of the task force is sincere in their desire and efforts to help fix what's wrong with our current ethics process. Unfortunately, today's rule change falls way short of our goal.

Mr. Speaker, let me acknowledge that we started out on a great glide path of bipartisanship—but eventually the Democrat leadership was influenced by various outside organizations that refused to accept any compromise that involved maintaining the current democratic rules of justice and fair play. For example, the task force members—both Democrat and Republican—had agreed in principal to allow outside entities the right to submit ethics complaints to the OCE.

In fact, this provision was requested by these various organizations and highly promoted as a vehicle to bring much needed credibility to the current ethics process. And, while I had some reservations about it I was willing to support this provision.

Unfortunately, these same organizations were not willing to be subjected to the same level of scrutiny and transparency they wished to impose upon Members of Congress—namely the disclosure of their largest donors who may or may not have an ax to grind with a Member of Congress. One official quoted in an article on the issue stated: "you can imagine how upsetting this [provision] is to the donor community."

Indeed.

And that was the end of that.

In closing Mr. Speaker, let me also thank Ranking Member LAMAR SMITH for his leadership, experience, expertise, and tireless efforts that he brought to this important effort.

Let me also thank the capable staff that assisted us throughout this process, including: Paul Taylor, Chief Republican Counsel to the House Judiciary Subcommittee on the Constitution; Ed Cassidy, Senior Advisor and Floor Assistant to the Republican Leader, and my Chief of Staff, Jeff Kahrs.

Before I end I can't help but note the irony in spending well over 100 hours of my time hearing testimony and discussing the significant ramifications of each provision within this legislation—the most sweeping ethics legislation in over 10 years—and the Democrat leadership decision to bring this bill to the floor—under the cover of darkness—and under a closed partisan rule which only allows 30 minutes of debate on each side—that's less than 30 seconds for each Member of this House to be heard on this topic.

Mr. Speaker, I hope that Members will not be fooled by the lack of an open and full debate on this important issue. I strongly oppose this rule change and respectfully urge all Members—Democrats and Republicans—to reject this proposal. It's time for the Ethics Task Force to get back to work and find a bipartisan solution to our failed ethics process that is supported by a majority of both Repub-

lican and Democrat Members. Anything less than a bipartisan solution will result in partisan failure.

[From Roll Call, Sept. 26, 2007]

OUTSIDE PANEL WON'T RESOLVE CORE ETHICS PROBLEMS

(By David H. Laufman)

Now that President Bush has signed into law S. 1, the Honest Leadership and Open Government Act of 2007, it is fair to ask what sort of enforcement regime for the new rules Members of Congress can expect from the Senate Ethics Committee and the House Committee on Standards of Official Conduct, also known as the House ethics committee. As in so much of life, the answer is: It depends.

The Senate Ethics Committee has long functioned quietly and methodically to evaluate ethics complaints and allegations of misconduct in a professional, nonpartisan manner. That track record reflects the relative collegiality of the Senate and the inclination of the respective party leaderships to leave ethics matters "to the professionals" for sorting out. There is every reason to expect that the Senate committee will bring the same balanced enforcement to the new rules that has characterized its operations in the past.

The House ethics committee, however, is a different matter. Although the committee has undertaken some tough investigations in recent years—most notably, its inquiries regarding former Majority Leader Tom DeLay (R-Texas) and former Rep. Bud Shuster (R-Pa.)—it has been cleaved by partisan turmoil and deadlock for much of the period since the conclusion of the cases against former Speaker Newt Gingrich (R-Ga.) in 1997. The nadir of this devolution occurred in 2005, when two seasoned attorneys on the committee's nonpartisan staff were fired in apparent retribution for their work on the DeLay investigation, and two committee members believed to be "politically unreliable" by their party leadership were summarily jettisoned.

Now, there is potential for even further disequilibrium in the House ethics process. At issue is the pending determination by the Special Task Force on Ethics Enforcement as to whether an outside panel should be established to conduct preliminary review of ethics complaints and make recommendations to the House ethics committee on whether investigative action should be undertaken.

As a former investigative counsel to the House ethics committee who investigated both Democrats and Republicans—and as a former federal prosecutor—I fully appreciate the importance of conducting thorough, independent investigations. I also appreciate that the establishment of an outside ethics panel might enhance public confidence in the integrity of the House ethics process. But the creation of an outside ethics panel will not solve the core problems that currently affect the House.

Real ethics reform in the House begins with a willingness on the part of both party leaderships to refrain from political intervention in the ethics process and give the ethics committee the independent, professional resources it needs to do its work. All the new ethics laws and rules in the world will amount to nothing unless the party leadership on both sides refrain from politicizing the ethics process, the committee members ultimately charged with implementing them are committed to consistent, nonpartisan enforcement, and committee members do not have to worry about retaliation from their party leadership or fellow members.

Establishing an outside ethics panel also would constitute a historic abdication of the House's constitutional responsibility for self-regulation. Article I, Section 5, Clause 2 of the U.S. Constitution states that "Each House [of Congress] may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and with the Concurrence of two thirds, expel a Member." Although the drafters of the Constitution chose the permissive "may" rather than "shall," it is clear that they intended to create a system of peer review where Members of Congress shoulder the responsibility for weighing allegations of other Members' misconduct. The establishment of an outside panel to evaluate ethics complaints would be an unprecedented deviation from more than 200 years of self-regulation. Moreover, it would be tantamount to an admission that the House is now unable to fully govern itself and needs protection against its own improper impulses.

Nor, if established, would an outside panel likely improve the House ethics process. First, none of the publicly reported proposals under consideration to establish an outside panel divests the House ethics committee of ultimate decision-making discretion as to whether ethics violations occurred or what sanctions to impose if a violation is found. Creating an outside panel, moreover, would simply create another layer of ethics bureaucracy that further slows down a process already characterized by sluggishness. Second, making informed assessments of allegations of misconduct requires more than the mere application of law or rules to facts: It also requires a nuanced understanding of the institutional context in which the alleged misconduct occurred. Arguably, the need for such a nuanced understanding is particularly great in the case of a political institution that has its own unique cultural attributes. It is possible that retired Members of Congress could bring the necessary perspective to bear if appointed to an outside ethics panel. It is less likely that retired jurists, academicians or individuals from other professions would be equally capable of making the necessary contextual judgments.

That the committee would retain autonomy to reject the recommendations of an outside panel ignores political realities surrounding ethics scandals. If, for example, the outside panel recommended that the committee initiate an investigation—a recommendation that almost certainly would become publicly known—the pressure on the committee from interest groups and the news media to accept the panel's recommendation would be formidable.

Clause 1 of House Rule 23, which comprises the Code of Official Conduct, states that "A Member, officer, or employee of the House of Representatives shall conduct himself at all times in a manner which shall reflect creditably on the House of Representatives." The special task force would bring credit on the House by rejecting the idea of an outside ethics panel and recommitting the House to ethics enforcement marked by bipartisanship and consensus.

CONGRESSMAN LOUIS STOKES' STATEMENT ON ETHICS REFORM

I strongly believe the current Ethics Committee structure should be preserved. I think Congress has a constitutional obligation to police its members. The mechanism exists to hire outside council whenever necessary, as the Committee did in the Abcam cases and also in the sex and drug investigations. In both cases the House received accolades for its work. A dangerous aspect of investigations by either a House Committee or an outside panel is interference with Justice

Department investigations. I think this danger may be better contained by a House Committee. Also, the House has a great educational process for members along with an approval process to keep members from going astray. Neither a House Committee nor an outside Panel or Commission can stop a member who uses his position in Congress to obtain a Rolls Royce, a yacht, a million dollar home, and other illegal gifts. The current system worked when I had men like Floyd Spence and Jim Hansen as my ranking member because we approached the business of the Committee on a bi-partisan basis. We handled the tough cases and never had a dissenting vote.

Ms. SUTTON. Mr. Speaker, I yield 1 minute to the gentleman from Hawaii (Mr. ABERCROMBIE).

Mr. ABERCROMBIE. I'm sorry, the time is incorrect. The time is 2 minutes.

Ms. SUTTON. Mr. Speaker, I yield 1 minute to the gentleman from Hawaii (Mr. ABERCROMBIE).

Mr. ABERCROMBIE. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. POMEROY). The gentlewoman from Ohio is controlling the time. She has yielded 1 minute to the gentleman from Hawaii.

MOTION TO ADJOURN

Mr. ABERCROMBIE. Mr. Speaker, I move that the House do now adjourn.

The SPEAKER pro tempore. The question is on the motion to adjourn.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. LAHOOD. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 177, nays 196, answered "present" 1, not voting 55, as follows:

[Roll No. 120]

YEAS—177

Abercrombie	Buyer	English (PA)
Aderholt	Calvert	Fallin
Akin	Camp (MI)	Ferguson
Bachmann	Campbell (CA)	Filner
Barrett (SC)	Cannon	Flake
Bartlett (MD)	Cantor	Forbes
Barton (TX)	Carter	Fortenberry
Berry	Castle	Fossella
Biggert	Chabot	Fox
Bilbray	Chandler	Frelinghuysen
Bilirakis	Coble	Gallagher
Bishop (UT)	Cohen	Garrett (NJ)
Blackburn	Cole (OK)	Gilchrest
Blunt	Conaway	Goode
Boehner	Crenshaw	Goodlatte
Bonner	Cubin	Gordon
Bono Mack	Cuellar	Granger
Boozman	Davis (KY)	Hall (TX)
Boustany	Davis, David	Hastings (WA)
Brady (TX)	Davis, Tom	Hayes
Broun (GA)	Deal (GA)	Heller
Brown (SC)	Dent	Hensarling
Brown-Waite,	Doolittle	Herger
Ginny	Drake	Hobson
Buchanan	Dreier	Hulshof
Burgess	Duncan	Hunter
Burton (IN)	Ehlers	Inglis (SC)

Issa	Mica	Shadegg
Jefferson	Michaud	Shays
Johnson, Sam	Miller (FL)	Shimkus
Jordan	Miller (MI)	Shuster
Kaptur	Miller, Gary	Simpson
Keller	Murphy, Tim	Smith (NE)
King (IA)	Musgrave	Smith (NJ)
King (NY)	Myrick	Smith (TX)
Kingston	Neugebauer	Souder
Kirk	Nunes	Stearns
Kline (MN)	Pence	Stupak
Knollenberg	Petri	Sullivan
Kuhl (NY)	Pickering	Taylor
LaHood	Pitts	Terry
Lamborn	Porter	Thornberry
Latham	Price (GA)	Tiahrt
LaTourette	Putnam	Tiberi
Latta	Regula	Turner
Lewis (CA)	Rehberg	Upton
Linder	Reichert	Walberg
LoBiondo	Reynolds	Walden (OR)
Lucas	Rogers (AL)	Wamp
Lungren, Daniel	Rogers (MI)	Weldon (FL)
E.	Rohrabacher	Weller
Mack	Roskam	Westmoreland
Manzullo	Royce	Whitfield (KY)
Marchant	Ryan (WI)	Wilson (NM)
McCarthy (CA)	Sali	Wilson (SC)
McHenry	Sanchez, Loretta	Wittman (VA)
McHugh	Saxton	Wolf
McKeon	Schmidt	Wu
McMorris	Sensenbrenner	Young (AK)
Rodgers	Sessions	Young (FL)

NAYS—196

Ackerman	Gillibrand	Moran (VA)
Allen	Gonzalez	Murphy (CT)
Altmire	Green, Al	Murphy, Patrick
Andrews	Green, Gene	Murtha
Arcuri	Hall (NY)	Nadler
Baca	Hare	Napolitano
Baird	Harman	Neal (MA)
Baldwin	Hastings (FL)	Obey
Barrow	Herseht Sandlin	Oliver
Bean	Higgins	Ortiz
Becerra	Hill	Pallone
Berkley	Hinojosa	Pascarell
Berman	Hirono	Pastor
Bishop (GA)	Hodes	Paul
Bishop (NY)	Holden	Payne
Blumenauer	Holt	Pearce
Boren	Honda	Perlmutter
Boswell	Hoyer	Platts
Boyd (FL)	Inslee	Poe
Boyda (KS)	Israel	Pomeroy
Brady (PA)	Jackson (IL)	Price (NC)
Braley (IA)	Jackson-Lee	Rahall
Brown, Corrine	(TX)	Ramstad
Capps	Johnson (GA)	Reyes
Capuano	Johnson, E. B.	Richardson
Cardoza	Jones (NC)	Rodriguez
Carnahan	Kagen	Ross
Carney	Kanjorski	Rothman
Castor	Kennedy	Roybal-Allard
Clarke	Kildee	Ruppersberger
Cleaver	Kind	Ryan (OH)
Clyburn	Kucinich	Salazar
Conyers	Lampson	Sanchez, Linda
Cooper	Langevin	T.
Costello	Larsen (WA)	Sarbanes
Courtney	Larson (CT)	Schakowsky
Cramer	Lee	Schiff
Crowley	Levin	Schwartz
Cummings	Lipinski	Scott (GA)
Davis (CA)	Loebach	Scott (VA)
Davis (IL)	Lofgren, Zoe	Serrano
Davis, Lincoln	Lowey	Sestak
DeFazio	Lynch	Shea-Porter
DeGette	Mahoney (FL)	Sherman
Delahunt	Maloney (NY)	Shuler
Diaz-Balart, L.	Markey	Sires
Diaz-Balart, M.	Marshall	Skelton
Dicks	Matheson	Slaughter
Doggett	Matsui	Smith (WA)
Donnelly	McCarthy (NY)	Snyder
Doyle	McCollum (MN)	Space
Edwards	McCotter	Spratt
Ellison	McDermott	Sutton
Ellsworth	McGovern	Tanner
Emanuel	McIntyre	Tauscher
Engel	McNerney	Thompson (CA)
Eshoo	McNulty	Tierney
Etheridge	Meek (FL)	Towns
Farr	Meeks (NY)	Tsongas
Fattah	Melancon	Udall (NM)
Foster	Mollohan	Van Hollen
Frank (MA)	Moore (KS)	Velázquez
Gerlach	Moore (WI)	Visclosky
Giffords	Moran (KS)	Walz (MN)