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Joan Claybrook, President

April 19, 2007

The Hon. Mike Capuano, Chairman
The Hon. Lamar Smith, Ranking Member
Special Task Force on Ethics Enforcement
1530 Longworth House Office Building
Washington, D.C. 20515

RE: A Meaningful Ethics and Lobbying Enforcement entity

Dear Chairman and Ranking Member:

As the Special Task Force on Ethics Enforcement grapples with one of the most important legislative proposals under consideration in the 110th Congress – strengthening the monitoring and enforcement procedures for ethics rules and lobbying laws – Public Citizen would like to highlight some important considerations for the Task Force.

We deeply appreciate the work of this task force, and the recent improvements to ethics and lobbying rules passed in both houses of the 110th Congress. On Day One of the new session, the House nearly unanimously adopted a series of gift, travel and earmark rules to address some causes of the scandals that afflicted the previous Congress. The Senate followed suit with a lobbying and ethics bill (S. 1) that is the most comprehensive reform legislation the public has seen in decades.

But the rules and laws that are on the books may not be worth the paper upon which they are written unless fair and effective procedures are established for ensuring compliance with them.

Public Citizen strongly urges the task force to fulfill its promise by developing a legislative proposal to create an independent enforcement entity charged with monitoring and enforcing ethics rules and lobbying laws.

Several proposals emerged in the course of this year's debate that would effectively achieve this goal. Two separate proposals, one by freshmen Reps. Zack Space (D-Ohio) and Baron Hill (D-Ind.) and another by Rep. Mike Castle (R-Del.), would create an entirely independent ethics agency. A second approach, by Reps. Marty Meehan (D-Mass.) and Christopher Shays (R-Conn.), would establish a reasonably independent investigative staff (known as the Office of Public Integrity) within the current structure of the congressional ethics committee. Either proposal would bring accountability back to Congress and make the new package of ethics and lobbying reforms meaningful in practice.

It would, on the other hand, be a definitive failure of this task force to continue to leave the ethics process at the mercy of political and partisan currents. The past few years have made it clear that

the Congressional ethics process far too consistently follows revelations of wrongdoing, rather than leading them, and does not adequately protect the integrity of the institution of Congress. The current structure of the congressional ethics committee – in which members sit in judgment of each other in a process divided by partisanship, and hampered by allegiances to congressional leaders, remains riddled with conflicts of interest. It is a model that impugns common sense and imperils the public trust.

The current model for lobbying and ethics enforcement is simply a mess, with responsibilities dispersed among a multitude of governmental agencies. Lobbyists' financial reports are filed in duplicate with the Clerk of the House and the Secretary of the Senate, neither of which has any enforcement authority over lobbyists. Lobbyists' disclosure violations, if ever detected by the House Clerk or Senate Secretary, must be referred to the U.S. attorney's office for enforcement. Compliance with congressional ethics rules generally is the purview of the House and Senate ethics committees. While these committees retain enforcement authority over sitting members, they lack the staff or resources to adequately educate members and staff about the ethics rules, or to constantly monitor compliance and fully investigate potential violations. The most egregious violations are usually taken over the Department of Justice, frequently without the assistance, or even the knowledge, of the ethics committees.

Moreover, serving on congressional ethics committees places members of Congress in a very difficult political situation. Many members are reluctant to serve on the committees. Proceedings can consume a great deal of time, and members may be criticized by the public for being too lenient, or by congressional colleagues if they are perceived as being too harsh. Even the simple act of dismissing a complaint, when done by the members themselves, may now become a political tempest and subject members to charges of cronyism.

The record is clear that the current procedures for enforcing ethics and lobbying laws are an abject failure for both the public and Congress. They must be fundamentally restructured.

Key components for effective enforcement procedures of ethics rules and lobbying laws include:

- Creation of a nonpartisan, professional enforcement entity with the responsibility and duty to administer both congressional ethics rules and federal lobbying laws.
- The enforcement entity must employ individuals of distinction and credibility who are not sitting members of Congress.
- The entity should be charged with compiling all lobbyist disclosure filings and congressional ethics records, and monitoring these reports for compliance with federal laws and congressional ethics rules.
- It should manage the public records database of lobbyists' and ethics reports.
- The entity must have the authority to receive and investigate complaints that are initiated outside of the Congress and to initiate and conduct investigations on its own authority.
- The enforcement entity could either be an entirely independent ethics agency outside of Congress with its own powers of adjudication, or a professional career office within Congress that makes public recommendations to the ethics committees for final adjudication.

Public confidence in the integrity of Congress cannot be rebuilt upon a foundation in which the members are permitted to be the sole arbiters of ethical behavior, nor could such a process allay the well-founded skepticism of a scandal-fatigued public.

We strongly encourage the task force to lead, rather than follow, by delivering a proposal to establish an enforcement entity that is truly independent of partisan politics and free from conflicts of interest. The work of the task force on this issue will mark the single most important accomplishment – or failure – of the 110th Congress in changing the way that business is done on Capitol Hill.

Respectfully Submitted,



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