

Testimony of

Norman J. Ornstein

Resident Scholar

The American Enterprise Institute

Hearing on “Lobbying Reform: Accountability through Transparency”

Committee on Rules

U.S. House of Representatives

March 2, 2006

Mr. Chairman, members of the Committee, thank you for allowing me to share my views on Congress and reform this morning. I believe Congress has a rare opportunity to respond vigorously, sensibly and courageously to the challenges it faces on the ethics front in the midst of a substantial scandal that is likely to get far worse before it gets better. You cannot let the opportunity pass. Many of your colleagues, unwilling to shake up their lives by changing the ways of business around here hope that the media and public focus will fade and the pressure to act in meaningful ways will dissipate.

Public confidence in Congress is understandably low, and the need for the institution to restore some level of trust is clear. But this is not simply about responding to public cynicism or unhappiness. This is about the integrity of the Congress itself. The ethical compass on Capitol Hill is out of whack. The problem goes beyond corrupt lobbyists or the relationship between lobbyists and lawmakers. It gets to a legislative process that has lost the transparency, accountability and deliberation that are at the core of the American system; the failure to abide by basic rules and norms has contributed, I believe, to a loss of sensitivity among many members and leaders about what is and is not appropriate. Three hour votes, thousand-page-plus bills sprung on the floor with no notice, conference reports changed in the dead of night, self-executing rules that suppress debate along with an explosion of closed rules, are just a few of the practices that have become common and that are a distortion of the regular order. They should become a thing of the past. The out-of-control earmarking phenomenon has led to a culture of corruption, of which Randy “Duke” Cunningham is the poster-child, but not the only example.

I will address some of the issues of lobbying reform in a moment. But I want to begin by emphasizing a key point: no lobbying reform can work without adequate mechanisms for enforcement of ethics rules and of lobbying disclosure requirements. Serious reform of the ethics process is mandatory. My preference would be for a commission modeled on the experience of states like Kentucky and Florida, embodied in a solid and balanced bill introduced by Senator Barack Obama. I appreciate as well the idea of an Office of Public Integrity, as drafted in a bill by Chris Shays, among others. Melding the two ideas, as I wrote in my column in Roll Call yesterday, is probably the best way to go.

Create an Office of Public Integrity with a robust permanent professional staff to keep and disclose lobbyists’ reports and to serve proactively to educate members and staff on the rules and what behavior is and is not permissible. Have a chief ethics officer,

with a role and independence akin to that of the Comptroller General. But also have an outside commission, with members of impeccable integrity, like Lee Hamilton, John Porter and Nancy Kassebaum Baker, to oversee the office and to make tough initial decisions about pursuing or not pursuing complaints against individual lawmakers—with the ethics committees following up when the commission recommends further action, and the House and Senate making the final judgments.

The most important consideration is to add an outside element to the ethics process. Even if there have been periods when the ethics committees have worked reasonably well, they have not lasted for long. The current process is a “damned if you do, damned if you don’t” one-- crack down on members for ethics violations and it is seen as partisan, or driven by ambition; fail to crack down and it is the old boy network in operation. A reasonable, bifurcated process, with safeguards against a rogue independent counsel-type investigator and sensitive to the nature of a legislative and political process, will add immensely to the credibility of the institution.

On to lobbying reform. I certainly agree with my colleagues that transparency and disclosure are important. We need more and better disclosure by lobbyists of their efforts, including grass roots lobbying activities. We need regular disclosure reports filed electronically and available on line. And of course we need the staff and resources in Congress to monitor the reports and make sure they are filed on time and accurately. But disclosure alone is not enough. The lobbyist-interest group-money nexus on Capitol Hill needs serious change. The problem is not simply lobbyists throwing money around and preying on poor lawmakers. Even more significant is lawmakers desperate to raise money shaking down lobbyists to satisfy insatiable demands.

Leadership PACs need to be curtailed or abolished. And it is time to enact a provision making it a violation of the ethics code for a member to solicit a contribution from a lobbyist with any business before him.

As for gifts and meals provided by lobbyists, I do not think they are the root of all evil. It is true that nobody is bought by a fifty-dollar meal, or a hundred-dollar meal, for that matter. But frankly, if you did away with any gifts and meals, it would not be the end of the world. If members had to pay for their own meals, they would survive the trauma. I believe you can put meaningful restrictions on privately-funded travel without stopping the Aspen Institute trips or other important and educational trips funded by non-profits for members and staff. But safeguards must be put in place to make sure that non-profits are not used as conduits for money from lobbyists to finance trips for lawmakers.

Along with that set of changes, you must, in my judgment, end the practice of members flying on private jets at far-reduced costs, and especially on the practice of lobbyists joining members on such trips for hours of unfettered access. And you cannot curtail meals and travel while leaving in place the gigantic loophole in the campaign finance area that would still allow a lobbyist to take a lawmaker to the fanciest meal in town or to travel in luxury anywhere—as long as the meal was accompanied by a \$1,000 campaign check, and the trip was to go to a campaign fundraiser.

Your task is not an easy one, and any recommendations you make that are meaningful will so upend the status quo that they are unlikely to make you many new friends among your colleagues. But the steps toward a cleaner Congress that operates with integrity are necessary and urgent.