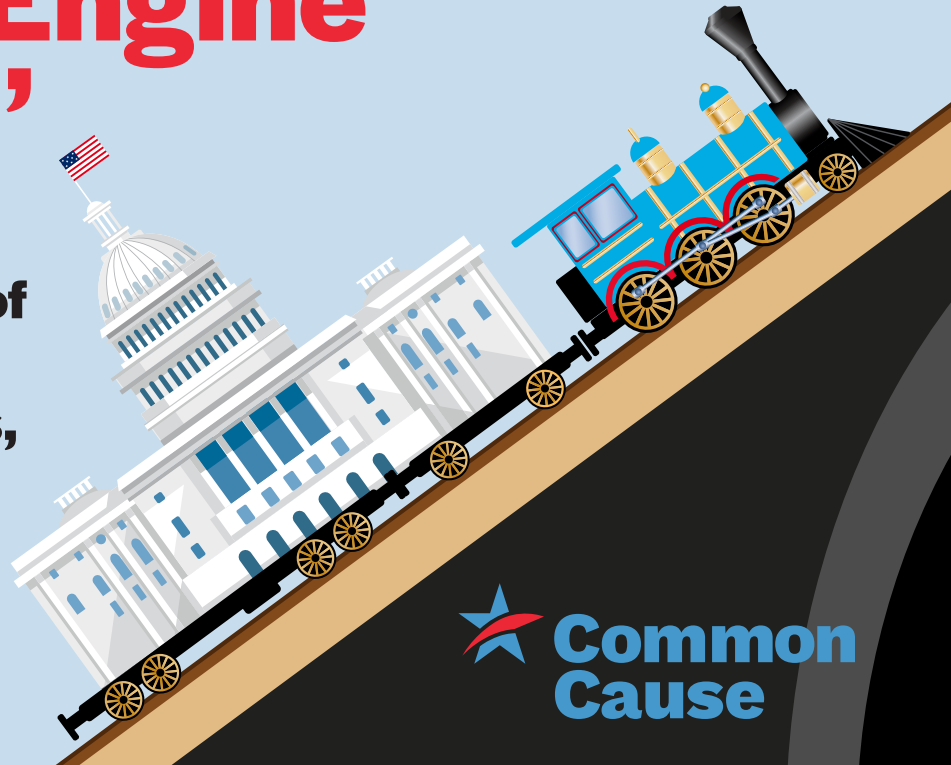


‘The Little Engine that Could’

15 Years of the Office of Congressional Ethics: Successes, Challenges, and Opportunities

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Introduction

The Office of Congressional Ethics (OCE) has been a remarkable success since its creation. The OCE has brought accountability to the ethics process within the House of Representatives—accountability that was sorely lacking for decades before its creation. The independent ethics body has survived and continued to thrive despite regular efforts by some House Members to defund, hamstring, or even do away with the office entirely.

The OCE formally convened for its first meeting on January 23, 2009,¹ and it’s been upholding ethics and accountability in the House of Representatives ever since, all while having a target on its back. The OCE has more than proven its worth. It has ended a deeply-rooted culture in the House that routinely saw members of both parties look the other way, and by inaction, condoned truly reprehensible behavior. This short report highlights the successes, challenges, and opportunities for the OCE after 15 years and looks at how certain reforms, such as codifying it into law and giving it subpoena power, could further strengthen this independent watchdog.

History Behind the OCE

Over the last fifty years, there have been a number of congressional scandals—from ABSCAM to the House banking scandal to the House Post Office scandal—involving Members of the House of Representatives whose behavior had gone unchecked in a legislative body with a long history of “looking the other way” that repeatedly proved unable to police itself. And then In the mid-2000s, a series of

¹ https://oce.house.gov/sites/evo-subsites/oce.house.gov/files/migrated/pdf/Hearing_on_January_23_2009.pdf

scandals in the U.S. House involving mostly Republican Members of Congress (such as Tom DeLay, John Doolittle, Duke Cunningham, Bob Ney, and Mark Foley, who all retired, resigned, or were defeated after their scandals were brought to light predominantly by investigative journalists, who served as a primary watchdog by default) and the Jack Abramoff scandal helped provide the final catalyst to reform the internal House ethics process that too often allowed corruption to be swept under the rug.²

In the lead up to the 2006 midterm elections, then-Minority Leader Nancy Pelosi (D-CA) campaigned on a promise to “clean up Washington.”³ One plank of her reform package was the creation of an independent, non-partisan House ethics body that would investigate and examine potential wrongdoings by House Members,⁴ separate from the House Ethics Committee. For far too long, the broken House Ethics Committee process created a culture in which both parties agreed to ignore scandals and look the other way. The Congressional Research Service noted that “[s]elf-discipline by the Committee on Ethics has, at various times, been considered problematic,”⁵ which is a diplomatic way of saying that Members are generally reluctant to punish their own colleagues.

Just the creation of an independent ethics body was in itself a challenge, as Members of Congress are always reluctant to create additional checks and more accountability for themselves. On January 31, 2007, several weeks after Democrats claimed their majority, Speaker Nancy Pelosi and then-Minority Leader John Boehner (R-OH) announced the creation of the Special Task Force on Ethics Enforcement,⁶ and it helped design the entity for what would become the OCE (and also helped lead to the passage of the Honest Leadership and Open Government Act in 2007). Speaker Pelosi delegated then-Rep. Mike Capuano (D-MA) to chair the Task Force.⁷ Common Cause was one of a handful of groups that regularly provided feedback to the Task Force⁸ and strongly advocated for the creation of an independent House ethics body—what would become the OCE.

However, then-Rep. Baron Hill (D-IN) and some fellow Blue Dog Democrats, along with a number of House Republicans, proposed an alternative, weaker ethics commission,⁹ but after significant debate, the House ultimately passed (very narrowly) a resolution to create the OCE. The vote on the rule to create the OCE was nearly defeated—the rule to consider the OCE resolution passed by only one vote (207-206) with four Republicans voting for the rule,¹⁰ which happens extremely rarely. In her floor speech on the day the resolution creating the OCE passed, Speaker Pelosi noted Common Cause’s support for the effort,¹¹ and after nearly a year of meetings,

“It’s been my privilege to fight alongside Common Cause... Together, we created the Office of Congressional Ethics to hold our leaders to a higher standard.”

— *Speaker Emerita Nancy Pelosi*
June 8, 2023

2 <https://www.washingtonpost.com/politics/2023/01/03/house-republicans-again-set-their-sights-ethics-watchdogs/>

3 <https://rollcall.com/2018/05/21/democrats-pitch-voting-rights-ethics-overhaul-with-focus-on-trump/>

4 <https://swampland.time.com/2010/06/23/ethics-under-attack/>

5 <https://crsreports.congress.gov/product/pdf/R/R40760/35>

6 [https://crsreports.congress.gov/product/pdf/R/R40760/35 Page 7](https://crsreports.congress.gov/product/pdf/R/R40760/35_Page_7)

7 <https://www.wbur.org/news/2009/11/25/capuano-profile>

8 <https://www.govinfo.gov/content/pkg/CPRT-110JPRT41815/pdf/CPRT-110JPRT41815.pdf>

9 <https://www.congress.gov/bill/110th-congress/house-resolution/1018>

10 <https://clerk.house.gov/Votes/2008121>

11 <https://pelosi.house.gov/news/press-releases/pelosi-statement-on-house-passage-of-major-ethics-reform>

proposals, and discussions,¹² the House of Representatives voted to create the Office of Congressional Ethics on March 11, 2008.¹³

Successes

Although the creation of the OCE was contentious, the fact that it garnered enough Republican votes (33) and was opposed by some Democrats (23)¹⁴ demonstrates that this entity wasn't created for partisan purposes and that it had cross-ideological buy-in, as conservative groups such as Judicial Watch had testified in support of the OCE.¹⁵ Then-Minority Leader John Boehner, although he voted against its creation, participated in the OCE process and repeatedly named Republican board members to the OCE when there were vacancies.¹⁶¹⁷ And when he became Speaker in January 2011, he faced significant pressure from watchdogs to preserve the OCE, which he ultimately did.¹⁸

The OCE has always maintained this bipartisan (and non-partisan) culture throughout its work. As of Summer 2023 (the date for which the most recent figures are publicly available), the OCE has investigated a total of 242 cases—118 have involved Democrats and 124 have involved Republicans.

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

12 <https://crsreports.congress.gov/product/pdf/R/R40760/26>

13 <https://clerk.house.gov/Votes/2008122>

14 <https://clerk.house.gov/Votes/2008122>

15 <https://crsreports.congress.gov/product/pdf/R/R40760/35 Page 8>

16 <https://www.cbsnews.com/news/pelosi-boehner-name-members-of-office-of-congressional-ethics/>

17 <https://pelosi.house.gov/news/press-releases/boehner-pelosi-announce-appointments-to-office-of-congressional-ethics>

18 <https://thehill.com/blogs/blog-briefing-room/news/78062-report-boehner-will-keep-controversial-outside-ethics-office/>

Of these cases, 228 have been resolved, with the OCE making a referral to the Ethics Committee for further review in 104 of these cases. Perhaps coincidentally, the OCE has referred the same number of Democrats and Republicans—52 have involved Republicans and 52 have involved Democrats.

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

As a built-in safeguard, all staff and Board members are required to sign oaths to not run for congressional office for three years after their service has been completed. The Board is prohibited from engaging in any political activities that have a nexus to the House of Representatives, and staff is prohibited from engaging in any partisan political activity.

The OCE continues to regularly receive and investigate hundreds of complaints, including from concerned citizens,¹⁹ something which was not possible under the broken House Ethics Committee structure which only allowed internal complaints.

For 155 cases that have reached the end of second phase (requiring the Board to consider whether there is substantial reason to believe that a violation occurred), 83% of the votes have been unanimous decisions with no abstentions or nay votes.²⁰

Challenges

In its 15 years of existence, the OCE has faced constant attacks to reduce its authority, shrink its funding, and even outright eliminate it. Because the OCE is only included in House rules and not codified

19 https://oce.house.gov/sites/evo-subsites/oce.house.gov/files/evo-media-document/oce-third_quarter_2023_report_final.pdf

20 <https://docs.house.gov/meetings/HA/HA06/20230613/116071/HHRG-118-HA06-Wstate-AshmawyO-20230613.pdf> Page 6

into law, it requires reauthorization every two years and necessitates continued vigilance from outside groups and Hill champions to defend it. Although some of these efforts to weaken the OCE have occurred privately since Members of Congress do not want to be publicly seen as weakening ethics rules, there have been a number of public fights about the OCE since its creation. These attempts to defang the OCE have come mostly from House Republicans but also occasionally from House Democrats, especially those who have been the subject of investigations.

2011

Then-Rep. Mel Watt (D-NC), who was investigated by the OCE over alleged improper conduct²¹ (a case referred to the House Ethics Committee, which declined to further investigate²²), offered an amendment to an appropriations bill that would've cut OCE funding by more than \$600,000,²³ or 40% of its budget, claiming that the OCE was duplicative. After significant pushback from Common Cause²⁴ and other groups, the amendment was defeated 102-302 (with 7 voting present) with strong bipartisan support.²⁵

2016

Then-Rep. Steve Pearce (R-NM), whose office was also the subject of an OCE investigation,²⁶ similarly offered a floor amendment to a House appropriations bill to cut OCE funding by nearly \$200,000.²⁷ (He also tried to offer an amendment to completely eliminate the OCE's \$1 million budget, but the House Rules Committee didn't make it in order.²⁸) Common Cause and other good government groups again opposed this effort to decrease OCE funding.²⁹ Although this amendment to slash nearly \$200,000 from the OCE budget was ultimately defeated with bipartisan support (137-270³⁰), a majority of Republicans supported the effort to cut funding, which foreshadowed future Republican attempts to try to weaken the OCE.

2017

At the beginning of the 115th Congress when Republicans, who had been in the majority for several years, were writing the House rules package for the next two years, they attempted to include language that would've essentially folded the OCE into the Ethics Committee and renamed it the "Office of Congressional Complaint Review."³¹ This would have greatly diminished the authority of the OCE and its ability to conduct independent investigations. Common Cause and others mobilized hundreds of thousands of calls, emails, and social media posts directed at House Republicans urging them not to weaken the OCE.³²

21 <https://thehill.com/homenews/house/163597-office-of-congressional-ethics-focuses-on-auto-amendment-offered-by-rep-watt/>

22 <https://www.politico.com/blogs/on-congress/2011/07/watt-moves-to-slash-ethics-office-budget-by-40-percent-037680>

23 <https://www.congress.gov/amendment/112th-congress/house-amendment/698>

24 <https://www.politico.com/blogs/on-congress/2011/07/watt-moves-to-slash-ethics-office-budget-by-40-percent-037680>

25 <https://clerk.house.gov/Votes/2011622>

26 <https://rollcall.com/2015/01/13/pearce-pushed-house-rule-change-to-provide-protection-in-ethics-cases-2/>

27 <https://www.congress.gov/amendment/114th-congress/house-amendment/1173>

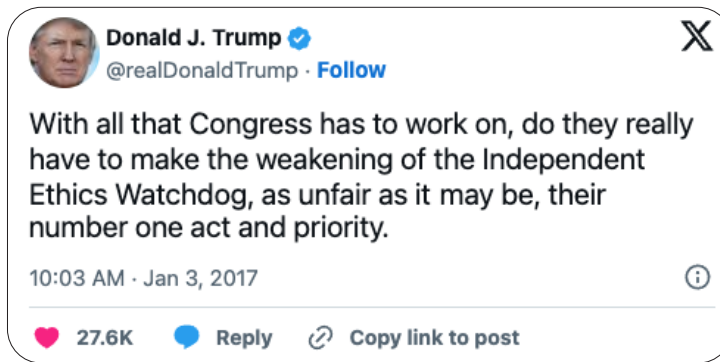
28 <https://rules.house.gov/bill/114/hr-5325>

29 <https://www.lwv.org/money-politics/league-opposes-reduction-office-congressional-ethics-budget>

30 <https://clerk.house.gov/Votes/2016292>

31 <https://crsreports.congress.gov/product/pdf/R/R40760/26> Page 26

32 <https://www.commoncause.org/media/effort-to-gut-oce-is-irresponsible-would-only-lead-to-more-scandals/>



President-elect Trump’s tweet generated significant opposition to the effort to weaken the OCE and helped encourage House Republicans to reverse course. Although this effort to fold the OCE into the House Ethics Committee was ultimately scrapped after significant pushback from tens of thousands of concerned citizens, House Republicans did pass a small change in the 115th Congress House rules package that eliminated the requirement for the Speaker and Minority Leader to concur in each other’s appointments to the OCE; they instead only have to “consult” each other.³³ This change has been kept in future House rules packages since then.

2023

When Republicans won back control of the House in the 2022 elections, their next attempt to gut the OCE came when they assembled the House rules package in early 2023.³⁴ After a lengthy Speaker fight, the House rules package imposed arbitrary term limits for existing OCE board members (which affected only Democratic-appointed members), as well as hindered certain staffing decisions by limiting hiring to the first 30 days after a new rules package passed and required staffing decisions to win support from a majority of board members.³⁵ Despite these harmful provisions passing as part of the House rules package, the quick action of House Minority Leader Hakeem Jeffries (D-NY) to fill positions has allowed the OCE to continue functioning smoothly.

In each of these instances, Common Cause helped lead the opposition to these efforts to weaken the OCE. Because compliance from House offices with OCE investigations is voluntary since it lacks subpoena power, and because the OCE must be reauthorized (and funded) every Congress, the OCE has a constant target on its back because it is disliked by many Members of Congress for doing its job. Common Cause and other watchdog organizations will continue to come to its defense to ensure that the OCE can fulfill its goals and uphold accountability in the U.S. House of Representatives for years ahead.

Conclusion: Opportunities and Recommendations

Because the Office of Congressional Ethics has to be reauthorized every two years, opponents of the OCE have regular built-in opportunities to try to chip away at it in the House rules package at the beginning of every new Congress. To avoid needing to defend its existence every two years, Common Cause and others have long called for the OCE to be made permanent by codifying it into law.

33 https://www.washingtonpost.com/powerpost/under-the-radar-change-to-house-ethics-watchdog-may-weaken-it/2017/02/08/7b-066f8e-ee31-11e6-b4ff-ac2cf509efe5_story.html

34 <https://rollcall.com/2023/01/03/advocacy-groups-denounce-gop-proposals-to-gut-ethics-office/>

35 <https://www.washingtonpost.com/politics/2023/01/03/house-republicans-again-set-their-sights-ethics-watchdogs/>

For a number of successive sessions of Congress, then-Representative Tom O'Halleran (D-AZ) had introduced the Clean Legislating and Ethical Accountability Now (CLEAN) Act,³⁶ which would codify the OCE into law, to help avoid having a floor fight at the beginning of every new Congress. As of this writing, the bill hasn't been reintroduced in the 118th Congress, but we expect it to be reintroduced in the coming months by a different Member of Congress.

In addition to making the OCE permanent, giving it subpoena authority, which the OCE has requested for third party entities,³⁷ would bolster its investigations and help ensure compliance. As it stands, compliance with OCE is completely voluntary, and House offices sometimes refuse to cooperate with investigations. Giving the OCE "sticks" that it can use to ensure cooperation will help sustain the long-term health of this independent watchdog. After House Republicans tried to gut the OCE in January 2023, Common Cause organized a letter signed by more than 25 organizations calling for the House of Representatives to make the OCE permanent and giving it subpoena authority.³⁸ There continues to be cross-ideological support for the OCE, with groups across the political spectrum voicing support for the OCE.

Separately, the Senate would greatly benefit from having an independent OCE-like ethics watchdog. The Senate Ethics Committee is notoriously hesitant to scrutinize its own members. It investigates very few cases of ethical wrongdoings, and while it can accept complaints from outside whistleblowers, it almost never holds Senators accountable.³⁹ When given the opportunity to strengthen its own internal ethics processes, the Senate has several times rejected the opportunity to create an independent ethics entity. In March 2006, the Homeland Security and Governmental Affairs Committee voted down a proposal to establish an independent office to enforce congressional ethics laws and regulations; subsequently, the full Senate defeated a similar amendment when considering a comprehensive ethics package.⁴⁰ And the following year during consideration of the Legislative Transparency and Accountability Act of 2007, the Senate voted down an amendment to establish an independent ethics entity.⁴¹

Any independent ethics body will likely face continued attacks from the elected officials it oversees, and the OCE is no different. It will likely continue to have a target on its back as it persists in upholding ethical standards in the House of Representatives in a nonpartisan manner. Strengthening the OCE by codifying it into law, giving it enhanced enforcement abilities, and removing it from the regular appropriations process (similar to how the Consumer Financial Protection Bureau is funded) would help insulate it from partisan politics and can help ensure it can continue achieving its mission for another 15 years and beyond.

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36 <https://www.congress.gov/bill/117th-congress/house-bill/7137>

37 <https://docs.house.gov/meetings/HA/HA06/20230613/116071/HHRG-118-HA06-Wstate-BarnesM-20230613.pdf, Page 9>

38 <https://www.commoncause.org/wp-content/uploads/2023/01/25-Groups-Urge-OCE-to-be-Strengthened-Codified-into-Law.pdf>

39 <https://www.msn.com/en-us/news/news/content/ar-BB1hGkyl>

40 <https://www.everycrsreport.com/reports/RL30764.html#fn31>

41 <https://www.everycrsreport.com/reports/RL30764.html#fn32>