



THE ETHICS BLIND SPOT

How the House and Senate Ethics Committees fail to uphold high ethical standards—and solutions to fix the problem.



issueone.org



Acknowledgments

This Issue One report was written by Executive Director Meredith McGehee and Deputy Communications Director William Gray, with additional research by Casey Simmons and Mark Horvatin. Design by Evan Ottenfeld.

About Issue One

Issue One is a nonpartisan, nonprofit advocacy organization dedicated to political reform and government ethics in order to strengthen democracy and return government to the American people. Learn more at issueone.org.

Issue One
1401 K Street NW, Ste. 350
Washington, D.C. 20005
© 2018 Issue One

Media Contact

William Gray
wgray@issueone.org | (202) 204-8553

issueone.org | [f facebook.com/issueonereform](https://facebook.com/issueonereform) | [@issueonereform](https://twitter.com/issueonereform)

EXECUTIVE SUMMARY

The U.S. House of Representatives and U.S. Senate are the only [constitutionally mandated](#) legislative bodies responsible for punishing and expelling members of Congress when they act unethically or break federal law.

Article I, Section 5 of the U.S. Constitution, the document from which the United States' form of government is derived, mandates that in the legislative branch, “Each House may determine the Rules of its Proceedings, punish its members for disorderly Behavior, and, with the Concurrence of two-thirds, expel a Member.”

With this backdrop, as allegations of sexual harassment, discrimination and self-dealing roil Capitol Hill, it is abundantly clear that relying solely on members of Congress to police themselves has proven inadequate. Cases of ethical misconduct by elected lawmakers and their staff continue to permeate throughout the legislative branch, undermining a culture of compliance and high moral standards.

Instead, the House and Senate too often allow their respective ethics committees to politicize investigations and delay many of them for years. When faced with the difficult task of passing judgment on a fellow lawmaker, the committees tend to wait for a member of Congress to resign, lose re-election or leave office voluntarily. **In the House, this happened in at least 15 cases since 2009:** The pending investigations are closed; no judgment is reached; voters never know what really happened; the lawmakers who were innocent of the allegations do not receive a clean bill of health; ethical violators are never held accountable. This is no way to foster a culture of accountability or public trust in those elected by the people.

Rather than choosing to quickly adjudicate any but the most extreme cases of ethical violations with appropriate transparency, the committees focus on administrative work—issuing advisory opinions, conducting trainings for officers and members of Congress—that is largely blameless and requires little more than perfunctory oversight. Keep in mind a Committee member may be investigating a colleague, and the next day that same member may be asking that colleague for support on a bill or vote.

And while the House rightly voted to establish the Office of Congressional Ethics (OCE) a decade ago, attempts to weaken the body recur. OCE’s ability to exist, to conduct independent investigations and to have a reliable source of funding are in jeopardy. For example, at the beginning of the 115th Congress, House Republican leadership tried to [covertly gut OCE](#)—and ethics enforcement—in the House of Representatives. More recently, the House moved to place new limitations on OCE’s jurisdiction and role in [addressing harassment and discrimination](#) with no public explanation why the changes were made.

Some members of Congress routinely justify these actions by denouncing OCE as an unaccountable body run amok. The truth is the exact opposite: **More than 21,000 private citizens have contacted OCE since 2009—and OCE has referred only 74 cases to the House Ethics Committee for continued review after performing due diligence and vetting such complaints.**

For context, since 2008, the House Ethics Committee has only punished members of Congress or staff in a dozen cases. It recommended the House issue one censure in a matter, a reprimand in another and 10 letters of reproof, the equivalent of slaps on the wrist. Five of those cases were originally referred from OCE. In seven other cases referred by OCE, the House Ethics Committee issued updated guidance to House rules and practices even after clearing of wrongdoing. In effect, OCE's record of conducting independent investigations helps the House iterate and improve its internal ethics oversight processes.

Members of Congress clearly prefer a system, supported by the ethics committees, that operates behind closed doors. For instance, **the House Ethics Committee has resolved at least 125 cases confidentially since the 112th Congress, compared to just 55 cases with publicly disclosed outcomes over the same period.** In other words, nobody but the accused party and the House Ethics Committee know what the allegations and conclusions were in those cases. Perhaps worse, a handful of cases before the House Ethics Committee have been under investigation for more than three years—or at least one full election cycle, negating voters their role in public oversight as they head to the ballot box every two years.

The message to the public is clear: Within the House and Senate there remains a group of elected leaders who would rather hide the conflicts of interest or ethical violations from the public.

To restore public faith in the institutions of the legislative branch, Congress should embrace the contributions of OCE which, while in no way perfect, have been a net positive for the congressional ethics process. While it is true the House Ethics Committee should consider cases more quickly to further improve the current system, Congress should make the following additional steps:

1. OCE should be made statutory—rather than simply reauthorized every new Congress;
2. OCE should be given subpoena power;
3. A similar body to OCE should also be created in the U.S. Senate to conduct independent investigations free from the political process;
4. And lastly, with public approval ratings of Congress remaining at historic lows, both the House and Senate ethics committees should commit to appropriate transparency in their own operations because the current, opaque system that characterizes the work in both bodies serves neither the elected lawmakers or the public.

Until these oversight problems are addressed, Congress as a whole will continue to be painted with the same broad brush as the worst ethical violators, further eroding public confidence in our system of government.

THE ETHICS BLIND SPOT

How the House and Senate Ethics Committees fail to uphold high ethical standards—and solutions to fix the problem.

U.S. Constitution, Article I, Section 5: *Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.*

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two-thirds, expel a Member.

As recent [allegations](#) of sexual harassment, discrimination and unethical behavior roil Capitol Hill, the congressional ethics review process as a whole has come under scrutiny. The scandals have triggered questions as to whether the current procedures and oversight bodies in Congress are indeed serving to uphold the high ethical standards needed to ensure public confidence in the first branch of the United States' federal government.

As former Representative and Chair of the 9/11 Commission Lee Hamilton (D-IN) writes in his book, "[Strengthening Congress](#)":

Maintaining high standards of ethical conduct is not peripheral to the proper functioning of Congress, it lies at the heart of it. It is essential to its legitimacy.

Because of the powers vested in them as public officials, members of Congress are held accountable to common-sense congressional rules in order to ensure they do not abuse their authority. A healthy democracy demands legislators who are not unduly influenced by gifts, lavish foreign travel or other unethical practices. During a [series of lectures](#) delivered at Harvard University, former Senator Paul Douglas (D-IL), who chaired the

proceedings in the 1960s to create the Senate Select Committee on Ethics, stated:

Public office is an honor, and in return for that honor men should be willing to make some sacrifices. At the present time, in order to restore men's faith in government and public life, there is need for men of fine character...to submit themselves to some scrutiny in order to reassure the public.

Pair the senator's statement with Rep. Hamilton's [reminder](#) of the mistaken view some members of Congress take on ethical oversight in the legislative branch:

For [members of Congress], as close as they are to daily legislative life, they may not always see the need for vigorous ethics enforcement—especially if they expect their political opponents to use it against them or other members of their party. That is too narrow a judgment, though. It ignores the interest of the institution itself, and undermines the foundation on which public trust of democratic institutions is built.

And it is through this lens, along with recent allegations of misconduct and purposefully lax ethics enforcement by some members of Congress, that the state of ethical oversight in the House and Senate is scrutinized.

In our [previous analysis](#), Issue One examined a decade of public reports released by the Senate Ethics Committee and explained in detail why the Committee is rightfully perceived as a black hole where allegations linger indefinitely or are dismissed without public statement.

In this report we examine the House oversight process which features the House Ethics Committee and the Office of Congressional Ethics (OCE). Both bodies have roles, yet distinct responsibilities in the effort to prevent conflicts of interest and maintain high standards of conduct in the U.S. House of Representatives.

An ethics showdown in 2017

Just how explosive ethics issues can become on Capitol Hill was encapsulated by the ethics showdown at the beginning of the 115th Congress when Republican leaders sought to sabotage OCE.

Established in 2008, OCE was created in the aftermath of ethics scandals involving [former lobbyist Jack Abramoff](#). It was the first independent body overseeing ethics within the House of Representatives and remains [generally unpopular](#) with members of Congress. This is in part because of its record of conducting independent investigations and rendering impartial judgments after reviewing allegations of misconduct against lawmakers' offices and staff in both parties, and because of a degree of transparency that was built into OCE's process.

THE ETHICS BLIND SPOT

This latest attempt to undermine the body occurred the night before the 115th Congress was sworn into office. The next day, Bloomberg News Congressional Correspondent Billy House [tweeted](#) that the House Republican Conference would attempt to disarm OCE, [hamstringing](#) ethics oversight of House members and staff. Buried in the House rules to be adopted for the new Congress, the Republican leaders [sought a rules change](#) that would have placed OCE directly under the jurisdiction of the House Ethics Committee, barring the Office from employing a spokesperson or investigating anonymous tips.

When word spread that evening about the plan, [public uproar](#) quickly followed. It became the leading story across [myriad news outlets](#), even prompting President Trump to [tweet](#) the following morning about the maneuver. The proposed House rules changes were quickly withdrawn and redrafted, reversing course on the worst features of leadership's ploy while still leaving some [poison pills](#) that could be used to undermine the Office in the future.

One of those poison pills is that the House speaker no longer has to have the concurrence of the minority leader on who should be named co-chairs of OCE. Rather, Speaker Paul Ryan (R-WI) now has *de facto* power over the selections as he simply has to "consult" the minority leader on any new appointees. The speaker may now appoint whomever he or she pleases, a purposeful and potentially dangerous crippling of OCE.

This kind of dead-of-night machination encapsulates the challenges that continue to plague ethics enforcement in the legislative branch. While the public and advocates clamor for more oversight, transparency and common-sense interpretation of standards of conduct in government, members of Congress view the ethics oversight process and OCE particularly with hostility and suspicion. Too many elected lawmakers—though not all—see the House and Senate Ethics Committees as advisory offices, satisfied for the bodies to be more concerned with keeping things under wraps than enforcing robust ethics rules and standards.

The House ethics oversight process

The House Ethics Committee was [established](#) 50 years ago, originally as the Committee on Standards of Official Conduct. It is the only standing Committee of the House—meaning it exists from Congress to Congress like other committees such as Agriculture and Foreign Affairs—comprised of an equal number of Republican and Democratic representatives (five and five). It has wide-ranging responsibilities, from training and advising members of Congress and staff, to conducting investigations, meting out punishments and recommending penalties to the full House of Representatives.

Two rules make the Committee unique: First, it is authorized to enforce standards of conduct for members, officers and employees of the House, and maintains sole jurisdiction over

Out of all the allegations that OCE has received, it has initiated a preliminary review of only 182 matters and referred just 74 of those cases (40 percent) to the House Ethics Committee for continued review.

interpreting the [Code of Official Conduct](#) governing the body. Second, the Committee employs a nonpartisan staff by rule. Beyond its investigatory capacity, it also issues opinions and advises lawmakers or staff about rules governing travel, gifts, outside income and financial disclosure requirements, among other things.

What sets OCE apart from the standing House and Senate ethics committees is that the independent office exists primarily to review allegations of misconduct by members of Congress, officers and staff (including anonymous tips). OCE also maintains a public record of its actions and recommends cases to the House Ethics Committee for either dismissal or further review. Since the Office began conducting investigations in February 2009, [more than 21,000](#) private citizens have contacted it for information about ethics oversight in Congress or to submit allegations of misconduct. Out of all the allegations that OCE has received since 2009, it has initiated a preliminary review of only 182 matters and referred just 74 of those cases to the House Ethics Committee for continued review, according to an Issue One analysis of publicly available reports from the Office. Indeed, the number of cases referred to the Committee has decreased over time.

OCE's role in the ethics oversight process—by rule—is to accept and investigate allegations of ethical misconduct involving members of Congress, officers and staff and then refer the cases they review to the House Ethics Committee with a recommendation for continued investigation or dismissal.

Since the Office began conducting independent investigations in 2009, it has developed a transparent, impactful track record that stands in stark contrast to the performance of the House Ethics Committee. Thanks to reforms to the ethics process passed when OCE was originally established, case reports and annual summaries from both ethics bodies allow the public to compare their decisions and recommendations. A review of these records reveals that, too often, the House Ethics Committee is an inherently political body that has proven itself to be an “ethics” committee in name only. Rather than considering cases using a [“reasonable person test”](#) appropriate to ethics enforcement, it instead often reaches convoluted conclusions which appear to focus more on absolving members of Congress rather than punishing infractions or promoting high standards of ethical conduct.

Why the Office of Congressional Ethics is necessary

Context is important to understand why OCE became necessary as an independent ethics body charged with oversight in the House of Representatives.

First, ethics scandals in the 1980s and 1990s led to the resignations of Democratic Speaker [Jim Wright \(TX\)](#), Republican Speaker [Newt Gingrich \(GA\)](#) and presumptive speaker [Bob](#)

Livingston (R-LA). Then beginning in 1998, both political parties entered into an unstated understanding—known as the “ethics truce”—that Republicans and Democrats would not file ethics complaints against the opposing party, a sort of political standoff.

Then in 2007, the truce fell apart as House Majority Leader Tom DeLay (R-TX) became embroiled in ethics controversies. Scandals involving the energy company Enron and Abramoff also dominated the headlines. With the House Ethics Committee’s reputation in tatters and partisanship infecting its every move, then-Speaker of the House Nancy Pelosi (D-CA) and then-Minority Leader John Boehner (R-OH) established a bipartisan task force to review House ethics procedures and to take public testimony on potential reforms. The task force found that the existing system, consisting only of the House Ethics Committee, was insufficiently enforcing ethical standards and that the congressional ethics process had lost public credibility.

In many instances, because conflicts of interest and politics are built into the fabric of the House Ethics Committee, cases experience significant delays when under review. To wit: a Committee member may be investigating a colleague, and the next day that same member may be asking that colleague for support on a bill or vote. The OCE does not operate under those same social and political constraints.

As a result, the House Democratic leadership offered a resolution to create the Office of Congressional Ethics to conduct independent investigations, which would be comprised of six voting members and two alternates. The resolution establishing the OCE stated that none of those individuals on the board could be sitting members of Congress, employees of the federal government or lobbyists, contrary to membership of the House and Senate Ethics Committees. That resolution passed by a vote of 229-182.

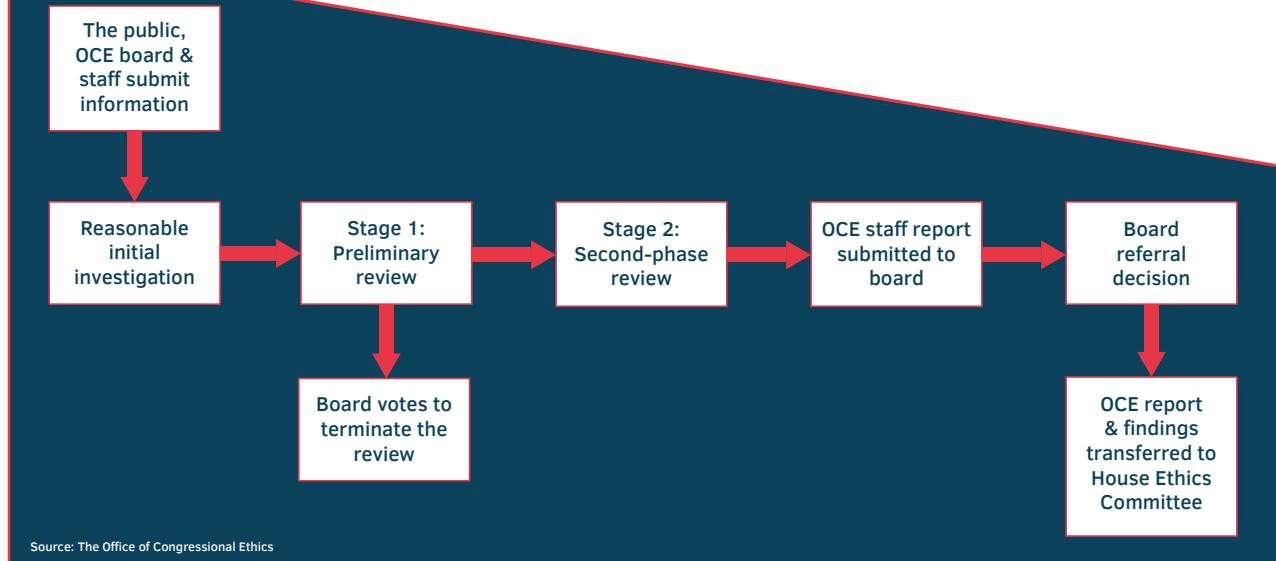
The bipartisan board of OCE votes to terminate or refer cases to the House Ethics Committee for dismissal or further review. Until last year, the speaker of the House and the House minority leader each appointed three members and an alternate to the board, while the chairman is appointed by the speaker and co-chairman by the minority leader. However, due to the controversial rules change in the 115th Congress noted above, the speaker of the House now has full authority to determine the OCE’s membership.

When it comes to investigating allegations, OCE is the only ethics body in Congress that works with strict timelines. Professional staff gather evidence and conduct investigations that are presented to the board with recommendations, which votes to authorize each step of the investigative process. This consists of two stages: a **preliminary** and **second-phase review**. A preliminary review needs at least **two votes out of six** and is a maximum of **30 days** long, during which the staff investigates to determine whether a violation of a “law, regulation, or other

A Committee member may be investigating a colleague, and the next day that same member may be asking that colleague for support on a bill or vote. The OCE does not operate under those same social and political constraints.

Office of Congressional Ethics

Review Process



Source: The Office of Congressional Ethics

standard of conduct" had reached a [threshold of probable cause](#). The board then votes to either dismiss the matter or proceed to the next stage of review. If the board votes to proceed, it must have **three votes** to begin the **45-day** second-phase review, with the option to extend for 14 additional days. At the conclusion of the second phase, the board considers all of the evidence presented to it in a staff report and determines if there is "substantial reason to believe" that a violation has occurred.

At the end of the second phase of review, the board of OCE must decide whether to recommend cases to the House Ethics Committee for further review or dismissal. The Ethics Committee then decides whether to investigate further, dismiss or impose sanctions. OCE conducts these investigations of ethical misconduct without subpoena power, which hampers the Office's ability to compile complete, accurate information. Over time, there has been a trend among those who seek the advice of counsel to [refuse to cooperate](#) with the Office's investigations, further challenging OCE's ability to pursue allegations of misconduct.

By design, OCE's process for reviewing and recommending actions on cases is purposefully public in a way that the House and Senate ethics committees' procedures are not. In fact, prior to its establishment, the public was completely in the dark about the processes behind reviewing allegations of misconduct, harassment and abuse of public office in Congress until the cases were featured in breaking news stories.

The House Ethics Committee “in action”

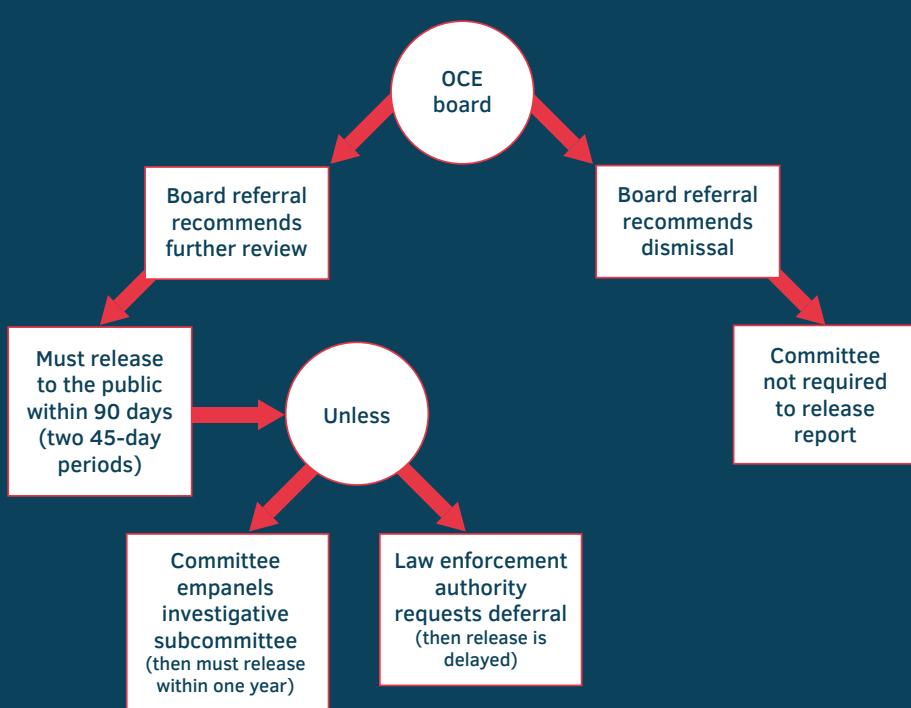
When the House Ethics Committee decides to investigate allegations of misconduct, either by itself or through a referral from OCE, it has a number of tools at its disposal. The least-used tool for review is the empanelment of an investigative subcommittee (ISC), in which the Committee names a chair, ranking member and two other members to investigate allegations. The Committee has publicly empaneled 15 investigative subcommittees out of more than 190 investigative matters commenced since the 111th Congress, according to an Issue One analysis. These cases include:

- ▶ [Rep. Blake Farenthold \(R-TX\)](#): The ISC's inquiry regards allegations of sexual harassment, discrimination, improper use of House resources to benefit Rep. Farenthold's congressional campaigns and potential false statements or omissions in testimony to the House Ethics Committee. The case is still under review and Rep. Farenthold has declined to run for re-election.
- ▶ [Rep. Ruben Kihuen \(D-NV\)](#): Allegations arose that Rep. Kihuen may have engaged in conduct that constitutes sexual harassment, including during his initial campaign for office. The case is still under review and Rep. Kihuen has declined to run for re-election.
- ▶ [Rep. Trent Franks \(R-AZ\)](#): The ISC examined whether he improperly approached two staff members to act as potential surrogates for Rep. Franks and his wife—conduct that would constitute sexual harassment and/or retaliation for opposing harassment. He resigned immediately after the investigation was announced.
- ▶ [Rep. Ed Whitfield \(R-KY\)](#): He was found to have violated House rules by allowing a registered lobbyist inappropriate access to his staff. The ISC report served as public reproof of his actions.
- ▶ [Rep. Chaka Fattah \(D-PA\)](#): The ISC probed allegations of conspiracy, bribery and wire fraud. This followed a 29-count indictment against Rep. Fattah, who eventually resigned following his conviction before the ISC could complete its investigation.
- ▶ [Rep. Robert Pittenger \(R-NC\)](#): He requested the House Ethics Committee investigate whether he was in compliance with House rules regarding his business, Pittenger Land Investments (PLI). By request, the ISC deferred consideration of the matter for years while the FBI and IRS examined issues surrounding personal loans and PLI. No charges were filed. The case is still under review by the Committee.

The House Ethics Committee has publicly empaneled 15 investigative subcommittees out of more than 190 investigative matters commenced since the 111th Congress.

- ▶ [Rep. Corrine Brown \(D-FL\)](#): The ISC investigated allegations that she was connected to fraudulent activities, including improper use of campaign funds, tax evasion, improper disclosure to the House and Federal Election Commission (FEC), among other issues. The Department of Justice requested the ISC defer consideration of the case, where Rep. Brown was eventually found guilty. She lost re-election before the ISC could conclude its investigation.
- ▶ [Rep. Robert Andrews \(D-NJ\)](#): It was alleged that Rep. Andrews improperly used campaign funds to pay for a family trip to Scotland, among other travel. He resigned before the Committee could complete its investigation and the FEC eventually dismissed its investigation into the issue because Rep. Andrews had repaid the trip's costs.
- ▶ [Rep. Don Young \(R-AK\)](#): The Committee concluded he used campaign funds to pay for hunting and travel expenses not permissible under House rules, accepted improper gifts from donors and failed to report some gifts on his financial disclosure statements.

When Must the *House Ethics Committee* Release an OCE Report to the Public?



Source: The Office of Congressional Ethics

THE ETHICS BLIND SPOT

- ▶ [Rep. Michael Grimm \(R-NY\)](#): The ISC's inquiry regarded allegations of illegal campaign contributions and improper solicitation of donations. The Department of Justice requested the ISC defer consideration of the case. He was sentenced to eight months in prison for tax fraud and resigned from Congress before the ISC could conclude its investigation. Former Rep. Grimm announced in 2017 that he was running for re-election.
- ▶ [Rep. Henry "Trey" Radel \(R-FL\)](#): The ISC investigated conduct that formed the basis for charges of possession of cocaine in the District of Columbia. He pleaded guilty, was sentenced to one year of supervised probation and resigned from office before the ISC could complete its investigation.
- ▶ [Rep. Eric Massa \(D-NY\)](#): Allegations of sexual harassment and misconduct toward members of his staff led to a House Ethics Committee investigation. The ISC report regarding the allegations—and whether others knew about the harassment or were complicit in it—has never surfaced despite the matter lingering across multiple Congresses.
- ▶ [Carib News Foundation Multi-National Business Conferences](#): The ISC investigated whether conferences hosted by Carib News were sponsored, in part, by corporations and whether the Foundation lied to members of Congress. The ISC found that Representatives Yvette Clarke (D-NY), Carolyn Cheeks Kilpatrick (D-MI), Donald Payne (D-NJ) and Bennie Thompson (D-MS), as well as Delegate Donna Christensen (D-VI) “did not receive an improper gift of travel.” However, Rep. Rangel was found to have violated the House gift rule by accepting trips to the conferences and that he was also responsible for the actions of his staff who knew about the sponsorships, according to the Committee. The investigative report served as public admonishment and Rep. Rangel was eventually censured by the House.
- ▶ [Rep. Laura Richardson \(D-CA\)](#): She was [reprimanded](#) by the full House for compelling her congressional staff members to work on her re-election campaign. The ISC in this matter also explained that, “If the Committee fails to exact a steep price for such conduct, the message is one of a set of rules with a toothless enforcement mechanism.”
- ▶ [Rep. Maxine Waters \(D-CA\)](#): Please refer to page 20 of this report for an explanation of the case.

The second option is for the Committee to pursue fact-gathering under Committee rule 18(a)—the two approaches differ in

A majority of alleged violations since 2009 reviewed by OCE fell into the categories of illegal campaign activity, impermissible gifts, misuse of official funds and questions about financial disclosure documents and travel.

process, not substance, according to the Committee, but under 18(a) matters may remain confidential. During both procedures staff are authorized to interview witnesses, request documents and information, issue subpoenas and undertake other investigative actions.

The third option relates to cases involving potential violation of criminal statutes. In those instances, throughout the history of the ethics committee process, the Justice Department requests the House Ethics Committee to defer its investigation to the agency instead.

Unfortunately, the Committee staff refused to respond to multiple inquiries about the publicly available data published by the Committee about its own case history. (It only directed Issue One staff to review information on its website.)

Further digging into House ethics data

An Issue One analysis of publicly available data provided by the OCE and the House Ethics Committee in their annual summaries and case reports found that:

A majority of alleged violations since 2009 reviewed by OCE fell into the categories of illegal campaign activity, impermissible gifts, misuse of official funds and questions about financial disclosure documents and travel. In **five cases referred by OCE**, the House Ethics Committee found a violation of House rules, standards of conduct or federal law. These cases included:

- ▶ [Rep. Shelley Berkley \(D-NV\)](#): She was found to have “permitted her office to take official action specifically on behalf of her husband’s medical practice.” The ISC report served as public reproof of her actions.
- ▶ [Rep. Charlie Rangel](#): He violated the House gift rule by accepting trips to conferences hosted by Carib News that were sponsored, in part, by corporations. Rep. Rangel was also responsible for the actions of his staff who knew about the sponsorships, according to the Committee. The investigative report served as public admonishment and Rep. Rangel was eventually censured by the House.
- ▶ [Rep. Ed Whitfield](#): He was found to have violated House rules by allowing a registered lobbyist inappropriate access to his staff. The ISC report served as public reproof of his actions.
- ▶ [Michael Collins](#): While serving as chief of staff to Rep. John Lewis (D-GA), he was fined and required to pay back taxes on unreported income he earned while serving in the House.

THE ETHICS BLIND SPOT

- ▶ [Rep. Jean Schmidt \(R-OH\)](#): She was ordered to repay \$500,000 to the Turkish Coalition of America, who paid her legal bills in a defamation lawsuit.

One criticism of the House Ethics Committee is that it only acts in the most extreme cases of ethical violations or abuses of power. The data supports that conclusion: In total, since 2008, the Committee recommended the House issue one censure, one reprimand and issued 10 letters of reproof. These cases, which were not referred by OCE, included:

- ▶ [Rep. David McKinley \(R-WV\)](#): He was found to have violated the Ethics in Government Act after seeking, and ignoring, the advice of the Committee in relation to a business bearing his name while he served in public office. His case extended **more than five years** with the Committee finding McKinley's "...disregard for the Committee's advice and processes not only led to substantive violation...it impaired the Committee's function in enforcing the standards set by your peers."
- ▶ [Rep. Judy Chu \(D-CA\)](#): The Committee determined she interfered in its investigation by improperly communicating with members of her staff, during the inquiry, regarding concerns that they were required to perform campaign-related work.
- ▶ [Rep. Phil Gingrey \(R-GA\)](#): He aided representatives of a bank in Georgia—that was outside of his congressional district—with “special favors and privileges” by arranging meetings with high-level government sources, according to the Committee. The congressman owned stock in the bank at the time and also served on its board of directors.
- ▶ [Rep. Don Young](#): The Committee concluded he used campaign funds to pay for hunting and travel expenses not permissible under House rules, accepted improper gifts from donors and failed to report some gifts on his financial disclosure statements.
- ▶ [Rep. Laura Richardson](#): She was [reprimanded](#) by the full House for compelling her congressional staff members to work on her re-election campaign. The ISC in this matter also explained that, “If the Committee fails to exact a steep price for such conduct, the message is one of a set of rules with a toothless enforcement mechanism.” The Committee also issued [letters of reproof](#) to Rep. Richardson’s Chief of Staff Shirley Cooks and Deputy District Director Daysha Austin.
- ▶ House Ethics Committee staff member [Dawn Kelly Mobley](#) was determined to have “improperly communicated confidential internal Committee

information” to employees of Carib News, who were under investigation. Per the report, this resulted in Mobley improperly influencing information provided to the Committee during its investigation. The investigative report served as a public admonishment.

- ▶ [Mikael Moore](#): While serving as chief of staff to Rep. Maxine Waters (D-CA), he was found to have taken official actions on behalf of OneUnited bank when he should have known of Rep. Waters’ personal financial interest in the entity.

Beyond formal actions of punishment, one of the unwritten accomplishments of OCE is when cases it refers to the House Ethics Committee lead to a clarification and strengthening of House rules and standards of conduct. This has a lasting impact in further clarifying rules of conduct lawmakers must follow. In **seven instances referred by OCE**, the Committee cleared individuals of wrongdoing but simultaneously issued updated guidance, in the following cases:

- ▶ [Rep. Ben Ray Lujan \(D-NM\)](#) regarding fundraising activities related to official House proceedings.
- ▶ An amendment introduced by [Rep. Roger Williams \(R-TX\)](#) that could have affected his own personal financial interests, as well as the fact he did not contact the Committee before sponsoring the amendment per House rules.
- ▶ Allegations that [Rep. Vern Buchanan \(R-FL\)](#) improperly influenced the testimony of his former business partner before the FEC. The Committee “cautioned” Buchanan to exercise more diligence over his campaign affairs.
- ▶ [Rep. Buchanan](#) amended financial disclosure statements from 2007, 2008, 2009 and 2010 to more accurately report income received from entities in those same years.
- ▶ An employment discrimination lawsuit alleging unwelcome advances, comments and touching from [Rep. Alcee Hastings \(D-FL\)](#) where, during review by the House Ethics Committee, the congressman admitted to “less than professional” comments.
- ▶ A gift of impermissible foreign travel accepted by [Rep. Bill Owens \(D-NY\)](#), sponsored by a lobbying firm, where the Committee found Owens “should have known that the trip was not a proper privately-sponsored trip.” Owens voluntarily remedied the violation by repaying the gift.

- The House Ethics Committee adopted revised regulations regarding legal expense funds (LEF) following the case of [Rep. Don Young \(R-AK\)](#) and allegations his LEF accepted multiple \$5,000 contributions that may have been guided by one individual, the maximum per calendar year from any individual organization.

Today, at least nine cases referred by OCE are still under review by the House Ethics Committee, four of which were referred more than three years ago, in the 113th Congress. In other words, more than a full election cycle has passed since outstanding investigations were transferred to the Committee. These include:

- [Rep. Luis Gutierrez \(D-IL\)](#): In 2013, OCE referred to the House Ethics Committee allegations that Rep. Gutierrez may have violated House rules and federal law by using funds from his Members' Representational Allowance ("MRA") improperly when retaining the services of his former chief of staff (a consultant and lobbyist).
- [Rep. Markwayne Mullin \(R-OK\)](#): In 2013, OCE investigated and referred to the House Ethics Committee allegations that Rep. Mullin received more than the allotted outside income, personally endorsed services related to outside employment and potentially earned compensation as a member of a board of directors for Mullin Plumbing.
- [Rep. Cathy McMorris Rodgers \(R-WA\)](#): In 2013, OCE referred allegations that Rep. McMorris Rodgers may have improperly used official resources, including staff, for campaign activities and used political funds to pay for work related to her congressional office, in potential violation of House rules and federal law.
- [Rep. Bobby Rush \(D-IL\)](#): In 2014, OCE referred allegations that Rep. Rush may have accepted in-kind contributions, in the form of free office space, in violation of House rules and standards of conduct.

In the cases of allegations against [Reps. Maxine Waters, Vern Buchanan](#) and [Alcee Hastings](#), the Committee investigation lasted more than three years before coming to a conclusion. So far in the 115th Congress, **five cases** have been [referred](#) to the House Ethics Committee by OCE for further review.

This prompts the question: If the Committee sits on cases, divulging no public information, how can voters hold elected officials accountable for unethical behavior? Or, conversely, how can a member of Congress clear his or her name? In these cases, the Committee hinders the ability of the U.S. electorate to be informed, and for lawmakers to receive a timely response that has been determined through a process with integrity.

Today, at least nine cases referred by OCE are still under review by the House Ethics Committee, four of which were referred more than three years ago, in the 113th Congress.

In at least 14 cases referred by OCE since 2009, the Committee lost jurisdiction before concluding the investigation.

Ethics cases that “die on the vine”

In many instances, House Ethics Committee investigations never conclude. This gives the public the impression that the Committee is simply waiting for the member of Congress in question to retire or not run for reelection, in which case, the it loses jurisdiction and the investigation ceases. In at least 14 cases referred by OCE since 2009, the Committee lost jurisdiction before concluding the investigation. This deprives the public—and lawmakers under investigation—a conclusion to allegations of ethical misconduct:

- ▶ [Rep. Nathan Deal \(R-GA\)](#): He may have improperly used his official office to pressure state officials in Georgia to continue a vehicle inspection program that generated significant outside income for his family business. He resigned before the Committee concluded its investigation.
- ▶ [Rep. Silvestre Reyes \(D-TX\)](#): Allegations arose that Rep. Reyes held campaign meetings on House property, a violation of House rules and federal law, and used campaign funds for personal use while paying for expenses related to his daughter’s residence. He lost re-election before the Committee could conclude its investigation.
- ▶ [Rep. Robert Andrews \(D-NJ\)](#): It was alleged that Rep. Andrews improperly used campaign funds to pay for a family trip to Scotland, among other travel. He resigned before the Committee could complete its investigation and the FEC eventually dismissed its investigation into the issue because Rep. Andrews had repaid the trip’s costs.
- ▶ [Rep. Jesse Jackson, Jr. \(D-IL\)](#): The OCE cited “probable cause” that Rep. Jackson improperly raised money in an effort to win appointment to the Senate seat formerly occupied by Barack Obama before he won election to the presidency in 2008. The Department of Justice requested the House Ethics Committee defer the case and Rep. Jackson eventually resigned from the House. He pleaded guilty to violating federal campaigns laws and was sentenced in 2013 to 30 months in federal prison. He was released in 2015.
- ▶ [Rep. Paul Broun \(R-GA\)](#): The Committee began investigating whether Rep. Broun used official funds to help pay for consultant services to work on his political campaigns. He lost in the 2014 Republican primary for an open Senate seat in Georgia, and the Committee lost jurisdiction over his case when Rep. Broun left office in January 2015.

THE ETHICS BLIND SPOT

- ▶ [David Bowser](#), chief of staff to then-Rep. Paul Broun (R-GA), was eventually [indicted](#) in connection with the case.
- ▶ [Rep. Steve Stockman \(R-TX\)](#): The OCE referred a mix of allegations to the House Ethics Committee for further review, including that Rep. Stockman may have accepted campaign contributions from his congressional employees, potentially made false statements and impeded OCE's investigation among other issues. He ran for U.S. Senate in 2014 and lost during the Republican primary. Rep. Stockman was eventually [indicted](#) in 2017 on 28 counts of "fraud, conspiracy and money laundering charges."
- ▶ [Rep. Michele Bachmann \(R-MN\)](#): Campaign finance questions arose related to alleged improper payments from Rep. Bachmann's leadership PAC, campaign accounts and promotional materials tied to her book "Core of Conviction." She retired from Congress before the Committee concluded its investigation.
- ▶ [Rep. Timothy Bishop \(D-NY\)](#): In 2013, OCE referred allegations that Rep. Bishop received a campaign contribution from a constituent in connection with an official act. The Justice Department and Federal Bureau of Investigation both [closed investigations](#) without filing charges. Rep. Bishop lost re-election to his House seat in 2014.
- ▶ [Rep. Aaron Schock \(R-IL\)](#): The OCE referred allegations that Rep. Schock may have solicited more than \$5,000 for a super PAC, an independent-expenditure only committee, in violation of federal law. He resigned before the House Ethics Committee completed its investigation. The FEC eventually [fined](#) Rep. Schock for the violation.
- ▶ [Rep. Marlin Stutzman \(R-IN\)](#): Allegations arose that Rep. Stutzman may have used campaign funds for personal purposes while on a family trip to California that included campaign meetings and personal activities. He ran for Senate in 2015 and lost in the Republican primary.
- ▶ [Rep. Alan Grayson \(D-FL\)](#): A host of ethical allegations arose, including but not limited to the operation of hedge funds bearing Rep. Grayson's name as well as the potential use of official resources in support of them. The case was referred by OCE to the House Ethics Committee, but Rep. Grayson eventually ran for Senate in 2015 and lost in the Democratic primary, leaving office before the investigation was concluded.

Beginning with the 112th Congress, the Committee opened 190 investigative matters and resolved 125 of those cases confidentially. That is more than double the number of cases (55) where it publicly disclosed outcomes over the same period of time.

- ▶ [Rep. Mike Honda \(D-CA\)](#): Rep. Honda may have used official resources and staff time for both official and campaign-related business. He lost his run for re-election in 2016, at which time the House Ethics Committee had not completed its investigation.
- ▶ [Rep. John Conyers \(D-MI\)](#): In 2017, OCE referred allegations to the House Ethics Committee for continuing review that Rep. Conyers may have improperly compensated his Chief of Staff Cynthia Martin.

Equally concerning are the significant number of cases that the House Ethics Committee resolves confidentially, away from public eye. Beginning with the 112th Congress, the Committee opened 190 investigative matters and resolved 125 of those cases confidentially. That is more than double the number of cases (55) where it publicly disclosed outcomes over the same period of time.

Perhaps the most noteworthy instance of partisanship interfering with the regular order of the House Ethics Committee was the case involving [Rep. Maxine Waters \(D-CA\) and OneUnited bank](#). In 2009, OCE made a referral to the Committee after its investigation into the alleged conflict of interest, recommending further review. What followed were rampant leaks and unethical behavior by the members of Congress and staff serving on the House Ethics Committee that [compromised](#) the [investigation](#). Eventually, outside counsel William “Billy” Martin was retained to conduct a thorough and impartial investigation into the matter and before his [137-page report](#) was released, five Republicans on the Committee and the ranking Democrat all recused themselves from the case. In the end, the needlessly delayed, three-year investigation may have [wasted](#) more than \$1 million in taxpayer funds. It should have been a wake-up call to how the House handled ethics investigations.

Unfortunately, even when the House Ethics Committee does release a public conclusion to an investigation, its record is [replete](#) with cases whose findings overlooked blatant violations of standards of conduct in the House or responded with mere slaps on the wrist. The record compiled to date shows that the Committee often dismisses credible allegations of misconduct, using tortured interpretations of rules that do not pass the [“reasonable person” test](#). For example:

In a case originally uncovered by the [Center for Public Integrity](#), [Rep. Roger Williams \(R-TX\)](#), who owns an automobile dealership, introduced an amendment exempting dealerships from requiring businesses that retire automobiles to pull recalled vehicles from their fleets. OCE was asked to investigate whether Rep. Williams followed the procedures outlined in the [House Ethics Manual](#) and if he had cleared his introduction of the amendment with

the House Ethics Committee. The manual makes clear that the actions members of Congress take in connection with official duties, such as sponsoring legislation, may:

“...entail a degree of advocacy above and beyond that involved in voting...such actions may implicate the rules and standards...that prohibit the use of one’s official position for personal gain.”

In the end, OCE determined there was reason to believe Rep. Williams did indeed fail to clear his amendment, as per ethics rules. Even the Committee’s own conclusion admitted that Williams had not followed proper procedure—but that since he had neither “conceived of nor drafted the amendment,” it was clear he did not introduce the amendment to benefit himself or for any personal financial interest. The Committee cautioned members to be aware of rules in the House Ethics Manual, and cleared Rep. Williams without so much as a slap on the wrist.

In the case of Rep. Sam Graves (R-MO), OCE investigated and found he may have violated House rules when he failed to disclose that he had a financial relationship with a witness who Rep. Graves invited to testify before a Committee where he served as ranking Republican. The witness, and Rep. Graves’ wife, both held financial interests in the same renewable fuels plant in Missouri. The House Ethics Committee, however, determined Graves did not “violate any applicable rule or standard of conduct,” and closed the matter.

And in 2013, 10 House members and staff traveled to Baku, Azerbaijan on an all-expense paid, privately sponsored trip replete with “hundreds of thousands of dollars’ worth of travel expenses, silk scarves, crystal tea sets and...rugs.” The House Ethics Committee, which failed to conduct proper due diligence to uncover the original source of the funds, approved the trip. But an investigation by OCE led to allegations that the State Oil Company of the Azerbaijan Republic funneled \$750,000 through nonprofits in the United States to conceal the original source of the funding for the trip. The House Ethics Committee summarily ended OCE’s jurisdiction in the case in a way that violated House rules and attempted to close the case following OCE’s extensive investigation. It also refused to publicly release the Office’s report, violating the ethics process in order to bury the Committee’s mistake in approving the trip in the first place. The report was subsequently leaked to the public.

Each of these cases, and the resulting fencing matches between the House Ethics Committee and the Office of Congressional Ethics, serve to undermine the ethics process in the House and damage public confidence in Congress as an institution. Additionally, the Committee’s lack of action on these cases and others fails to appropriately deter potential violators in the future while undermining a House member’s ability to receive a clean bill of health from a publicly credible body.

The needlessly delayed, three-year investigation may have wasted more than \$1 million in taxpayer funds.

Other Ethics Committee responsibilities

Beyond its adjudicatory responsibilities, the Committee's core functions include training, advising and educating House members and staff, reviewing and approving requests for sponsored travel and overseeing financial disclosure requirements. It is a role that likely ensures that the [26 Committee staff](#) are constantly busy. Consider that since 2011, staff scheduled more than 360 training briefings and 3,700 "personal advisory" meetings with members of Congress, new employees and other officers. They also reviewed more than 20,000 filed financial disclosure reports of the roughly 10,000 employees and 435 lawmakers in the House chamber—a task that calls for real attention to detail. It is also worth [noting](#) that in 2012 the Committee wrote:

"Between 30% and 50% of all Financial Disclosure Statements reviewed by the Committee each year contain errors or require a corrected statement. For over 95% of these inaccurate Financial Disclosure Statements, the filer appears to be unaware of the errors until they are notified by the Committee."

Additionally, by the Committee's own count over the same time period, it fielded more than 135,000 e-mail and phone call inquiries, including those concerning financial disclosures. It is clear that the work of Congress, and ensuring that lawmakers are abiding by ethics rules and transparency regulations, is becoming more complex, not less.

By examining the scope of the House Ethics Committee's work, it is evident that the Committee requires significant resources and staff attention to conduct the day-to-day work of training offices, reviewing financial disclosures and answering inquiries in a timely fashion. In the future, the Committee should place more emphasis and resources, particularly member time, to deciding cases of alleged misbehavior and conflicts of interest in a timely fashion.

Under the current structure, with all the time-consuming responsibilities included under the Committee's jurisdiction, it is no wonder its members address only the most egregious ethical lapses that splash across headlines—and further shows why the work and resources of OCE are more necessary now than ever.

The Office of Congressional Ethics is constantly under attack

As critical as OCE's role may be, the body remains a target for lawmakers and staff who continue to try and undermine it. While OCE may have helped the House make strides toward transparency, the only body within the House with jurisdiction over enforcing standards of conduct through punishment, fines, removal from leadership positions or by recommending censure—the House Ethics Committee—continues to fall short of

its responsibility to ensure the public's trust in the Congress as an institution.

This means it is more important now than ever before to guard OCE against sabotage. The public should be on the lookout for a handful of indirect attacks that the House could use against OCE—and be ready to counter with calls to congressional offices. These attacks might include:

- ▶ **Degrading OCE's website.** The online portal is how the public engages with and finds critical information about OCE. Degrading the website would directly interfere with OCE's mission. The site also maintains the public reports that OCE has released since its creation, allowing lawmakers, staff and private citizens to review which lawmakers have violated ethical rules—and who has been cleared of wrongdoing.
- ▶ **Silencing the spokesperson for OCE.** Leadership in Congress could bar OCE from speaking publicly or employing a spokesperson. Currently, it is not always clear whom the media or concerned individuals should contact at OCE. Removing even a part-time spokesperson would further hinder OCE's purpose of reliably informing the public about its work.
- ▶ **Cutting OCE's budget.** Congress has the authority to zero out the budget for agencies and offices it disagrees with, a calculated workaround to fully axing them outright. OCE works under tight timelines for conducting its preliminary review (30 days) and its second-phase review (45 days). Therefore, purposefully reducing its number of staff would significantly affect the ability of the body to conduct its investigations. There have also been [past efforts](#) to reduce OCE's funding.
- ▶ **Inflaming partisanship.** The speaker of the House could select board members who lack a commitment to a bipartisan, reasonable interpretation of ethical standards. Dividing OCE's board along partisan lines would ensure consistent gridlock and a lack of consistent enforcement.
- ▶ **Undermining OCE's independence.** There have been attempts to move OCE under the jurisdiction of the House Ethics Committee, which often sits on investigations indefinitely or until a lawmaker leaves office, when it is then dismissed.

THE ETHICS BLIND SPOT

It is time to strengthen the Office of Congressional Ethics

Congress should not only protect OCE, but strengthen it, furnishing it with powers and authority to rebuild public trust in an ethical House of Representatives. There are three distinct ways to enhance ethics oversight in the House and Senate:

- 1. Grant OCE subpoena power.** Most credible, investigatory bodies have subpoena power, and with the trend of members of Congress refusing to cooperate with OCE's investigations, it needs more authority.
- 2. Make OCE statutory.** OCE has a reliable track-record of positive impact on the congressional ethics oversight process. It is time to save it from repeated attacks every two years when House rules are adopted.
- 3. Adopt a similar body to OCE in the U.S. Senate.** The Senate Ethics Committee oversight process is opaque, leaving voters, journalists and advocates in the dark as to the behavior or investigations of their elected leaders. Adopting an OCE in the Senate would change that.

In the end, OCE fills an essential role that neither the House nor Senate ethics committees can: That of an impartial investigator whose oversight is free from political interference. Its role is critical to minimizing conflicts of interest that arise

with investigations into elected officials and is distinguishable from the adjudicatory role that the House Ethics Committee serves under Article I of the Constitution. When comparing the two bodies in the House, OCE, while not perfect, has compiled an impressive record of fair and impartial investigations since its inception. Unfortunately, more challenges to its independence and its existence are sure to keep coming.

5 Ways Congress Could Sabotage the Office of Congressional Ethics



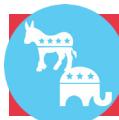
Degrade its website



Cut its budget



Silence its spokesperson



Inflame partisanship



Undermine its independence



All icons the Noun Project. Website error by Kyle Dodson. Dollar by Alexey Voropaev. Silent person by Adam Schraff. Scales by Luis Prado. Democrat and Republican by Yi Chen.

How can I support strong ethics oversight in Congress?

- 1. Tell your member to co-sponsor the CLEAN Act.** Rep. Tom O'Halleran (D-AZ) has introduced legislation to strengthen the Office of Congressional Ethics (OCE). The CLEAN Act ([H.R. 1388](#)), or Clean Legislating and Ethical Accountability Now Act, would, among other things:
 - a. Ensure OCE would be treated as a standing House committee.
 - b. Grant OCE the same subpoena power as a House standing committee.
 - c. Inform individuals who are subjects of a preliminary or second-phase review by the board that they have the right to be represented by counsel, and invoking that right should not be held negatively against them.
 - d. Ensure OCE may not take actions that would deny persons rights or protection provided under the Constitution.
- 2. Tell Congress to keep OCE free from political sabotage.** From time to time, members of Congress attack the structures that uphold strong ethical standards and norms in the legislative branch. [Tell your lawmakers](#) in the House to keep OCE independent from political sabotage.
- 3. Call on the Senate to establish its own ethics office that lives outside of the political process.** It is long-past time for the U.S. Senate to have its own equivalent of OCE—[tell your senators](#) it is time for independent ethics oversight in the Senate. More than a decade of data shows the Senate Ethics Committee is a black hole where allegations go to die.