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BOARD MEETING AND PUBLIC MEETING

Friday, January 23, 2009

OFFICE OF CONGRESSIONAL ETHICS

Washington, D.C.

The members of the OCE board met, pursuant to call, at 10:00 a.m., in Room 1310, Longworth House Office Building, Hon. David Skaggs [chairman of the OCE board] presiding.

Present: David Skaggs (Chair); Porter Goss (Co-Chair); Yvonne B. Burke; Karan English; Jay Eagen; Allison Hayward; Bill Frenzel; and Abner Mikva.

Staff Present: Leo Wise, Chief Counsel and Staff Director; and Bill Cable, Assistant Director.

The Chairman. Good morning, everyone. Let me call this meeting of the board of the Office of Congressional Ethics to order. Welcome to you all. I would like to introduce the other members of the board. I am David Skaggs, former Member from Colorado and Chair. To my right is Porter Goss, former Congressman from Florida. Allison Hayward, law professor at George Mason, correct? Karan English, former Member of Congress from Arizona. Bill Cable, who is the assistant director of the office. To my left, Leo Wise, our chief counsel and staff director. Jay Eagen, former chief administrative officer of the House and now in Durango, Colorado. What is the name of the ski area? Durango Mountain Resort. Yvonne Burke, former Member of Congress from California, and recently retired from the Los Angeles Board of Supervisors. And the distinguished gentleman from the State of Minnesota, former Member of Congress, Bill Frenzel, now at the Brookings Institute.

Let me briefly for the benefit of those that may not be aware of how we got here today mention -- oh, I beg your pardon. Thank you, Porter. On the phone with us but unable to be here in person is Abner Mikva, former D.C. Circuit Court judge, former Member of Congress from Illinois, former counsel to the President of the United States. Ab loves to comment that he has made a travesty of separation of powers during the course of his career. And we are delighted that he could be part of this operation and we are sorry

that he is not here in person.

We are an, I think, a strictly and assiduously nonpartisan operation. Each of the members of the board was appointed by either the Speaker or the Republican leader of the House of Representatives, but with the consent of the other. So we are blessed by the leadership on both sides of the aisle in the House and are determined to proceed in a completely nonpartisan fashion.

The board was created by House Resolution 895 in the 110th Congress, reauthorized and reappointed under the rules package, House Resolution 5 passed at the beginning of the 111th Congress. We have not yet accepted any business, if you will. We wanted to have a clearly defined process for handling cases before we were essentially open for business. And the primary purpose of this meeting this morning is to take public comment and discuss and we hope adopt our rules of procedure as well as a Code of Conduct for the board and our staff.

I will call in a minute on Leo Wise to run through a summary of the draft rules and Code of Conduct. We will then hear from Members of Congress that may wish to address the board and members of the public that may wish to comment and take such action as may seem advised at that point on adoption of the rules and the Code of Conduct we hope today, but depending on what need for revisions may come to light, we may need to act on things later on.

Just a few contextual observations about this board. It is, I believe, from the action taken by the House in creating us,

intended to provide a way for anyone to bring allegations of ethical misconduct by Members of Congress or staff to the attention of an appropriate authority. We are charged with conducting an expeditious but necessarily preliminary inquiry into allegations, determining if there is good and substantial reason to refer a matter to the internal Standards of Official Conduct Committee or not. And I think we will be very careful to make sure that we are acting in good faith to deal with matters of substance and not trivial matters.

We are absolutely committed to providing a professional unbiased nonpartisan service to the House and to the public in making these kinds of initial determinations. Although House Res. 895 that created this board provides for various actions to be taken by two votes, one from each appointing authority or four votes, our initial conversations among the board, I think it is fair to say, we are committed to acting whenever we possibly can by consensus.

We should note that the Ethics Committee, the internal Committee on Standards of Official Conduct, is the only authority that is permitted under House procedures to initiate formal complaints, whether they may be based on referred matters from this board or otherwise, and they are the only ones that can determine any sanction against a Member or a staff person. That is its exclusive constitutional role and not ours. So in other words, this board and this office is meant I think to supplement

but not supplant the responsibilities of the Ethics Committee. Most of the rules provisions that we will be dealing with this morning are essentially prescribed by the terms of House Resolution 895. Our rules are intended to translate those provisions into operating guidelines that will give Members and staff and the public a clear understanding of how we will be handling these matters under our jurisdiction. We will be endeavoring to make the operations of the Office of Congressional Ethics as transparent as possible, given that we are also charged with maintaining the confidentiality of our proceedings in all cases except when House Resolution 895 directs disclosure.

All told, we want and intend to provide an important service to the House and to the public, contributing we hope to the underlying objective of House Resolution 895, and that is assuring the trustworthiness and integrity of the House of Representatives.

Let me yield to my distinguished cochair, Porter Goss, for any comments he may wish to make. And then we are honored to have the newly named chairperson of the Standards of Official Conduct Committee, Zoe Lofgren, who would like to make some comments.

Mr. Porter?

Mr. Goss. Mr. Chairman may I yield to the distinguished chairwoman recently appointed because I know she is on a time schedule and we are going to be here a little bit longer, with your permission.

The Chairman. Yes, indeed. Welcome.

Ms. Lofgren. Thank you very much. I am just here to welcome you and to thank you for your service. I know that all of you are very distinguished leaders in our Nation, and that you share, as I do, a desire for --

The Chairman. Excuse me. Would you put --

Ms. Lofgren. I know that you share, as I do and Mr. Bonner does, the Speaker and the minority leader, a desire that the highest ethical standards be in place and that there be transparency and confidence in this institution. I am here just to say how much I look forward to working with you. I pledge complete cooperation with your body, and I know that you will discharge your duties with great distinction and with a complete lack of partisanship.

That is the intention of Mr. Bonner and myself and the entire Committee on Standards of Official Conduct. I think we are embarking on a wonderful new journey here today that will instill the confidence that is necessary in our Nation, in this wonderful institution, the People's House. So thank you so much. I know this is not always an easy job, and all of you have earned the right to be free of this public obligation. That you have taken it on really means a great deal to all of us, and you have certainly earned our respect. So thank you very much for your service. And now I will get out of your hair and let you do your important work. Thank you very much.

The Chairman. Thank you very much, Madam Chairman. And we

look forward to meeting with you and your colleagues on the committee at our earliest opportunity. Mr. Goss.

Mr. Goss. Thank you very much, Mr. Chairman. Thank you, Madam Chairwoman. Those are welcome words and I wish you well in your duties, all of them.

Ms. Lofgren. Thank you.

Mr. Goss. Thank you. Mr. Chairman, I think you covered it very comprehensively in your opening remarks and underscored those areas which we were all focused on in the last 6 months or so. I would like to comment that I felt the institution responded with extraordinary alacrity, great coordination, cooperation for us to get from notification that we were going to undertake these duties in late July to the point we are today is a zero to 60 speed in Washington that we don't normally see.

And I really feel that the outside groups, the Members, the committees, the staff that have been so cooperative all along to support it and make it work in the spirit and in the efficiency that it was hoped that it could, I think has been proven to this point. And for all involved, I want to say thank you, and particularly to Leo and Bill for really pulling together many loose ends into what I think is today a workable proposal for us to consider this afternoon. Thank you.

The Chairman. Thank you very much. Any other members of the board care to make any opening remarks? Very well. Let me now call on Leo Wise to first walk us through in general the process

that we expect to follow and then in very summary fashion the draft rules. And then we will be happy to hear from anyone that wishes to comment further and give us your counsel about anything that we need to consider by way of amendment. So Mr. Wise.

Mr. Wise. Thank you, Mr. Chairman. The OCE process has two phases and essentially three decisions. And as the chairman pointed out, the resolution creating the office sets the parameters for those. The two phases are a preliminary review and a second phase review. And they are sequential and relatively short.

The three decisions are the initial decision to begin that preliminary review, which the board may or may not make. The second decision is the decision to move to a second phase review, which the board may or may not make, and then the final is the decision to either refer something to the Standards Committee for further review or for dismissal, which is a decision the board is required to make. And stepping back for a moment, I think it might be helpful just to briefly address how information would move through those two phases and those three decisions. Information can come before the office in one of two ways. It can come from citizens, it can come from the outside essentially or it can come from within the board or the staff itself.

And just by way of example, if information came in from, for instance, was submitted by a citizen, that information would be looked at a number of different ways on a number of different

occasions. The first look that information would get was to determine whether the allegations fall within the jurisdiction of the office. And the resolution itself makes very clear where the jurisdiction lies. There is a time requirement that only conduct that occurs after the date of adoption of the resolution that created the office is within the jurisdiction of the Office of Congressional Ethics. So nothing essentially before last spring falls within the office's jurisdiction.

There is a jurisdictional requirement that the allegations be against a current Member or staff person. And I think those are two very important initial jurisdictional issues. And then there are other jurisdictional questions that would have to be addressed right at the outset. If the information submitted falls within the jurisdiction, then the next essentially decision will be whether the board chooses to initiate a preliminary review. And that would be done as the resolution provides and as the rules will lay out on the written request of two Members. Once that decision has been made, the preliminary review begins and can last no longer than 30 days. The purpose of the preliminary review will be to attempt to test that information, corroborate it or disprove it using the tools that are available to the office under the resolution.

At the end of that period, the board can either let the preliminary review terminate without further action or can at that point vote to move to a second phase, which can last no longer

than 45 days with the possibility of a 14-day extension. And that phase is also meant to test the information to prove or corroborate or disprove the information using the tools that are available and that are outlined in the resolution. And then at the end of that phase, the board under the terms of the resolution must vote whether to refer a matter for further review to the Standards Committee or to recommend dismissal of a matter and may also at that time make certain findings of fact, indicate information that the board was unable to attain and why it was unable to attain it, make recommendations for the issuance of subpoenas as appropriate and identify the statutes or regulations or standards that the allegations relate to. And that is essentially the OCE process.

At a later date under circumstances that are outlined and really dictated by the resolution, the board's referral under certain circumstances will become public and under certain circumstances will not become public. And the rules based on the resolution lay those out. At this point, I would like to briefly, as the Chairman has asked, summarize the rules in the current draft.

The Chairman. If I may, Mr. Wise, these were distributed last week broadly to Members of the House to staff to interested groups that we knew were following this process. So there is, I hope, an ample opportunity for the public to take a look at this and give us their input. Please.

Mr. Wise. Thank you, Mr. Chairman.

Rule 1 deals with the jurisdiction of the office, which, as I mentioned in the brief overview is the first filter that information will pass through. And it lays out the bounds of the office's jurisdiction which again derive directly from the resolution. Rule 2 discusses the fact that the board will meet regularly and lays out, as is typical, some of the operational details of how the board will function. Rule 3 addresses the first or one of the two ways, as I mentioned, information will come to the office and lays out the specific pieces of information that the board and the office need, for instance, to determine if the office has jurisdiction, and then to begin the process of corroborating, proving, disproving reviewing the information that is submitted.

And so it requests the kind of information that is typical in any investigation, in any review of facts, things like witnesses, things like documents that might relate to a specific set of allegations. But I think like all parts of the process, it lays out a very practical and pragmatic set of data points that the office and the board have to rely on to do a very practical and pragmatic job. And that is to attempt to look at allegations and determine -- determine the validity at a very preliminary stage of those allegations.

This rule also discusses the second way information comes to the board and that is either from the staff or board members

themselves. Rule 4 deals with the various kinds of evidence the board may consider in making the three decisions that I outlined. Information or evidence from witnesses, from documents, from posing questions to parties and Rule 4 also addresses some of the procedural questions that will make -- that make the process fair and impartial including privileges, including whether evidence was obtained properly or improperly and the requirement that information that witness statements or documents include and an acknowledgement of the false statements act which comes from the resolution that created the office.

Rule 5 sets a principle that the investigator is impartial and that reflects the fact that the office and the OCE process is not an advocacy process, and therefore, the investigator will follow the information wherever it goes, whether it proves or disproves an allegation without regard to whether at the outset it proves or disproves an allegation. Rule 6 establishes the principle of cooperation with the office and that a failure to cooperate can draw a negative inference that the board may know in its referral to the Standards Committee. Rule 7 lays out the procedural steps involved in the preliminary review and like really most of the framework, nearly all of the framework if not all of the framework, it derives directly from the resolution. It lays out the duration that I mentioned earlier, the number of members of the board required to initiate a written request and -- to initiate a preliminary review and a written request, to

terminate a preliminary review.

And it articulates the fact that before a preliminary review from a practical standpoint, there will be a certain amount of fact gathering that occurs so that the board can make an informed decision about whether or not to initiate a preliminary review.

Rule 8 deals with the next phase, the second phase that I alluded to earlier. And like the first -- like the preliminary review lays out the standard of proof, how the second phase initiates its duration and how it may terminate.

Rule 9 addresses the third decision, really the end of our process, and that is referrals to the Standards Committee, again articulates the standard of proof, provides a procedural safeguard that a subject, in other words, the person against whom allegations are made will have an opportunity in all cases, if they so desire, to address the board before it votes on whether to make a referral to the Standards Committee, outlines the contents of the board's report in terms of findings, information that the board was unable to obtain, recommendation for issuance of subpoenas and citations of the law or rules or regulations that may have been violated.

And addresses one or two other procedural matters. Rule 10 addresses a period of suspension of referrals around elections that derives directly from the resolution. Rule 11 provides for notice provisions that derive from the resolution and reflect the balance, Mr. Chairman, that you referred to between transparency

and at the same time reducing the risk that incorrect or inaccurate allegations are publicly released and the intended harm that could cause and the notice provisions are provided for at each of the stages of the board's work. Rule 12 addresses requests from the Standards Committee, another procedural mechanism contained in the resolution whereby the Standards Committee, if something is being investigated, and the Standards Committee can request that the office terminate its review and refer the matter before the final phase that otherwise would result in a referral. Rule 13 addresses referrals to other entities within the House, including the Office of Compliance, the commission on congressional mailing standards and then to State and Federal authorities obviously outside of the House. Rule 14 provides for the right to counsel in these proceedings either by a subject or by a witness. Rule 15 addresses ex parte communications. And Rule 16 includes a mechanism to adopt alternate procedures and reflects a desire to have the procedures meet the needs again, the sort of practical pragmatic needs of individual matters to move expeditiously and to have the board conduct its mandate in a way that is not overly bureaucratic and overly time consuming.

The Chairman. Thank you very much, Mr. Wise. Before we go to public witnesses or comments, are there any questions for Mr. Wise from members of the board? Very well.

We did not have a formal sign-up list. But any of you that

may wish to speak to the board about these matters are welcome to raise your hand and come forward. Ms. McGehee.

Ms. Burke. Mr. Chairman, will there be any time limit on witnesses at all?

The Chairman. Well, I think this is one of those at the discretion of the chair. I would ask that witnesses -- I don't see that we have a huge number of people that want to speak to us. So maybe if we can leave it at a 10 minutes or so max. Does that feel all right? Would you please identify yourself, make sure the mic is on and any organization that you may represent.

STATEMENT OF MEREDITH McGEHEE, POLICY DIRECTOR, CAMPAIGN LEGAL CENTER

Ms. McGehee. Good morning. My name is Meredith McGehee. I am the policy director of the Campaign Legal Center, a nonpartisan nonprofit that works on issues involving campaigns, elections, ethics and lobbying disclosure. And I have been working on these issues, dealing with ethics and lobbying disclosure for many years. And I first want to commend those of you, the members of the panel here who have agreed to take on this somewhat onerous duty. And it is a good thing that we have people that are willing to step up on public service on ethics.

So I hope everyone appreciates that that has happened. As some of you may know, I did express some concerns when this office was being created because specifically the lack of subpoena power. That is not something that you can do anything about. Subpoena power to me is one of the key elements of a true investigatory authority. But we now have this office. And I think for the purpose of the public and ethics, it is important to try to do what we can to make the office work as best as it can. And then move forward from there with experience showing us if any changes need to be made. What I would just like to spend a few minutes doing is really just raising questions based very much just on these rules. Some of these are fairly minute small things. But I

guess this is the moment to raise them. And I will put them mostly as a series of questions for further clarification.

I would like to start at Rule 2. This is an item in lines 10 through 14 that address the fact that a member of the board may place additional items on the agenda. It may be something that the office wants to look at about, is that a public or private process? Is there anything when the agenda is published that indicates who has added items to the agenda? And also for that, what power does the Chairman at that point have to accept anything that any other member of the panel wants to put on? So I just would raise that, that that process might be clarified a little bit as much for the panel members as for the public to understand how that process would actually work.

In that same section, it talks about an alternate being appointed. It is not clear how it is determined which alternate is actually selected, if it is a Republican who then steps aside as the Republican alternate automatically the one that is considered? It is actually not specified here which alternate and if a partisan requirement is something that was anticipated here.

Going on to the next Rule 3, and I am looking at line 21, it talks about in this initial stage the board spending and staff spending a reasonable amount of time gathering information. I have some concern about that rather vague language in the sense that if someone sends something in with an allegation, it seems to me reasonable that within 30 days there would be some ability of

this office to say what has happened to that.

As you know, in the past one of the problems in the process has been the black hole. And while a reasonable amount of time may seem reasonable, I think it may actually not be specific enough to ensure that there is some notification about the status, whether or not it is still being investigated, whether it indeed has been received and the status of that. Also I would just note here that there is not a very clear -- within the rules generally -- articulation of the duties specifically of the staff in terms of -- it says that they shall investigate. But there is not a clear articulation of really what the staff should do in that or some more direction.

So I just wanted to raise that. In the commentary of that section, one of the things it talks about is the difference between beginning an investigation that is within the board and submitting information to the office. And it talks about the difference between submitting information and filing a formal complaint. I would just recommend to the board that I don't think the public probably understands what that difference is between filing an actual complaint with the Ethics Committee and submitting information to the office. So I think anything that the board could do to more clearly define for the public what the differences are or what the requirements are would be helpful.

I am now going to Rule 5, investigator is impartial, which is obviously very good to see. It talks about the individual -- and

this applies in, I think, both for the investigator and for the board about when they feel that they can no longer be impartial or unbiased. One of the standards that is not in here either for the staff or for the board is the question of an appearance of a conflict. As you know, sometimes you may feel you can be impartial but the appearance of a conflict can undermine an ethics investigation. And that standard does not appear either in here for the board members or for the staff.

The example that I have noted in the past is if a sitting board member had received campaign contributions from the person that they are supposed to be investigating, that would obviously potentially create an appearance of a conflict. And that is something that I think should be looked at as one of the questions that when someone wants to -- should recuse themselves is whether or not such a conflict -- an appearance of a conflict would arise.

I am now going to Rule 8. And this is about the second phase review. And I just wanted again -- I may not have understood this clearly so if that is the case, I apologize. But it talks about three members of the board convened with a quorum may vote to initiate a second phase review. It is not clear again whether that needs to be members of both parties. In other instances, that is articulated that there needs to be one from each party. Could that be three Democrats or three Republicans? Or how would that actually work? I just wanted to make sure that that is clear.

Lastly, and I hope I have stayed within the time limits here, is in the last section -- in Rule 13 about referrals to State and Federal authorities, it talks about the ability to refer information to State and Federal authorities in the event that the information indicates imminent harm or threat to public safety. I would just raise with the board whether that is the appropriate standard. There are times when information could come to this office that might indicate the commission of a crime that may not rise to the standard of imminent harm or a threat to public safety but which indeed may say that there is a crime involved.

What is the -- I would ask you to look at that standard again, and also if you could clarify at what point the relationship between this office and the Department of Justice is appropriate, whether if you come across information that you believe should be given to the Department of Justice, does that have to go to the Ethics Committee first and do they have to refer it? Or can the office itself refer it directly?

The Chairman. Thank you very much. Are there questions for Ms. McGehee? Just to elaborate a little bit on my opening comment, we are going to take all of the comments that we received, some actually by mail and e-mail prior to this morning, and depending on whether or not any of these are show-stoppers for purposes of adopting a set of rules today, we may need to come back and revisit. But I think we are eager to be open for business as promptly as possible. And we appreciate very much

your advice about some things that may need clarification. Hopefully none of the comments you have made would indicate that we shouldn't proceed with this draft and do some additional clarification and clean up as may be advised next time.

Ms. McGehee. I think most of this can be handled just with additional clarification and explanation and justification. But again, I want to thank all of you who have decided to do this. This is not something that makes people popular. But I am hopeful -- and I think it is important that the office get to work quickly.

The Chairman. Thank you very much. Mr. Wertheimer, did you have your hand up?

Mr. Wertheimer. Thank you, Mr. Chairman. And let me join with Meredith in thanking all of you for the service you have undertaken. This is a precedent-setting board.

The Chairman. Would you please identify yourself and your organization?

STATEMENT OF FRED WERTHEIMER, PRESIDENT, DEMOCRACY 21

Mr. Wertheimer. Fred Wertheimer. President of Democracy 21. This is a precedent-setting board. It was a very tough battle in the Congress before it was created. It has a very important role to play, and it is very important that you succeed. And I would just like to say that for our organization, we intend to do everything we can to help you succeed. We think there is a great stake in your success.

I have a couple of specific comments that I mentioned to Mr. Wise yesterday. But I would like to make a few general comments. I guess I am concerned about the public understanding what your role is and what it isn't because I think it is very important that people -- the media and the public know that you have a very important but a limited role to play here because it can quickly turn into the fact that the public thinks you are

supposed to make decisions, undertake actions that are not within your mandate. And the more the public understands your role, I think the better chances we will have of the public seeing this board as a success.

The board was formed to deal with some very important problems that had existed in the past, the so-called black hole problems, where ethics problems disappeared in the Ethics Committee with no accountability and no one ever knowing what happened to them. You play an action-forcing mechanism. The role really is to prevent serious matters from disappearing without consideration and determination, and that is a filter role, not a decision making role about violations or sanctions. The way this process is designed, if and when you determine a matter should go forward to the Ethics Committee, at that point we have new built-in accountability. Because if the Ethics Committee decides not to act on a matter that you have sent them, which is their prerogative, that becomes public and the report you send to them accompanying your recommendation also becomes public. So there is now built-in accountability in terms of what the Ethics Committee does.

This committee also plays, in my view, a very important role in being able to clear Members of frivolous charges. I think that is just as important as the other roles you have to play because I think Members are entitled to it, the institution is entitled to it, and the public is entitled to it.

On the question of resources, it is very important for this board to have the resources that are necessary to carry out the job. That may take some time to figure out, but I believe it is essential for the board to determine over time the resources it needs and to request them from the leadership and to make clear to the public what kinds of resources you need. The same thing with your powers to investigate. If this board determines that it needs additional powers of any kind in order to gather the information it needs to make recommendations, I think it is essential for the board to make that clear to the public and to the leadership. If this board can help ensure that the Ethics Committee does its job properly in addressing serious ethics matters and also helps and credibly dismisses noncredible or frivolous ethics matters, I think you will have done your job and provided a great service to the institution, the Members and to the public.

I just have a couple of points I want to make about the rules. In the preliminary inquiry portion of these rules, the word "may" is used, a preliminary view may commence only upon the written request. A preliminary review may be triggered by a written request, as stated on pages 10 and 11, I think that should be shall. The resolution itself in effect directs the board to undertake a preliminary inquiry upon the request of one Member from each side of the aisle. I don't think this has to be done now, or any of my comments have to be done now, but I do think

that that should be changed to conform with the resolution itself.

I believe that there is a 7-day period after a preliminary inquiry kicks in when the preliminary inquiry is supposed to begin. That is stated in the resolution. I don't think it is mentioned in the rules, and I just think technically it should be.

The third issue may well be at your discretion but you may want to take another look at it. And that is whether or not a formal decision has to be made by the board on deciding not to go beyond the preliminary inquiry. I think the way it reads now -- and it may reflect the resolution -- if the number of days pass without anything being done, the matter is disposed of. And I think you may want to consider taking responsibility for disposing of any matter that you do dispose of rather than just having it automatically. It is your own -- it will increase your own accountability in dealing with these matters.

I think this is quite an unusual and important move that Congress has made in setting up this body. Many of you who have been in the Congress understand how difficult a process the Ethics Committee process is, and many of you have served on it, I know you have done service above and beyond the call of duty.

I think this board will very much help the process and help the Members and help the public in dealing with these issues in a more credible way or at least adding credibility to the process. And I wish you the very best of success because your success is our success as citizens and the country's success. Thank you.

The Chairman. Thank you very much, Mr. Wertheimer. I would make one observation and then see if there are questions for you and that is on the resources issue. We have been given everything that we have reasonably requested by the House to do our work. But we are also starting small. So we are not hiring a large staff. We want to make sure that we are frugal in carrying out these responsibilities and ask for resources as needed rather than creating a large operation to start with because we simply don't know what the demands will be. But so far, we are certainly being given every support that we need from the House of Representatives. Questions for Mr. Wertheimer? Mr. Goss.

Mr. Goss. Mr. Chairman, may I just add to that, that we have been assured that obviously there are unknowns in this that whatever it takes, reasonably of course, will be made available for this board to do its work. And we have a good-faith commitment on that and I think a complete understanding. So while the figures aren't firm and fixed and final, there is enough to start and a very strong commitment, I think, from everybody that we get this job done properly.

Mr. Wertheimer. I think that is excellent. I am not questioning that in any way. I just want to put on the record that your ability to succeed depends on your resources, and we just want to make sure you have what you need.

The Chairman. Thank you. And by the way, I think that we will have an amendment to be offered later on that deals with the

"may" versus "shall" matter. So thank you for having flagged that for us. Ms. Burke.

Ms. Burke. I would like to get a better understanding of what you would anticipate as a formal method of evaluating rather than the process that is set up here for terminating preliminary.

Mr. Wertheimer. A vote.

Ms. Burke. You mean, for instance, a public vote or --

Mr. Wertheimer. No. Whatever your voting procedures are. Rather than just having a preliminary inquiry terminate on its own, that you vote to terminate it.

The Chairman. Mr. Frenzel.

Mr. Frenzel. I just wanted to note that the chairman indicated we will probably be taking up your shall/may amendment. I wanted to assure the other witnesses that that amendment is pretty simple and it came to us in a form that we could deal with with some advancement. And so those whose suggestions are not accepted today does not mean that we are not going to review them carefully. Some of them that have already been given to us, I think, are going to be very helpful to us.

The Chairman. Thank you for that clarification, Mr. Frenzel. Absolutely. Very well. Thank you, Mr. Wertheimer.

Mr. Wertheimer. Thank you very much.

The Chairman. Ms. Sloan, did you wish to join us? And if you would identify yourself and your organization. Thank you.

STATEMENT OF MELANIE SLOAN, EXECUTIVE DIRECTOR, CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON

Ms. Sloan. Good morning. I am Melanie Sloan. I am the executive director of Citizens For Responsibility and Ethics in Washington. I too want to thank you for taking on a thankless job that I think is going to be very difficult. I have to admit that my organization has been more skeptical of your ability to do your job, not because of any lack of good will and good effort on any of your parts, but I think the lack of subpoena power is going to be a big problem for you. But nevertheless, I am really hopeful that I am wrong and it will all go much better than I anticipate. More specifically, I had given Mr. Wise a letter and I had e-mailed him earlier with just two concerns. And I also want to say that I agree with what Meredith and Fred have both said. But in the Code of Conduct for board members, section 6 -- and Meredith touched on this -- that Member could be asked to recuse themselves from reviewing matters if they have engaged in political activity.

I think it is really critical that if any board member or staff member has made a political campaign contribution, a PAC

contribution or a contribution to a legal defense fund, they are automatically recused. I don't know if all of you were paying attention or remember but this was a very big issue in the DeLay investigation where there were members of the Ethics Committee that had contributed to Mr. DeLay's legal defense fund and whether or not the people on the committee believe that they could still be impartial, it completely undermined the credibility of the committee.

The Chairman. Ms. Sloan, let me interrupt, if I may, just so the public is not misunderstanding. We are dealing presently with the rules of procedure. And I think you are addressing yourself to one of the elements of the Code of Conduct. And we haven't imposed on Mr. Wise to go through the brief on that. I am happy to have you make those comments, but you are leaping ahead a little bit.

Ms. Sloan. Anyway, that is my only point on that, that you would make them mandatory. And then on the Code of Conduct -- I mean -- I am sorry -- and on the rules themselves then, I agree again with Meredith, it is rule 13 c. I don't really understand the justification for using the referrals to State and Federal authorities only for imminent harm or a threat to public safety. You are not going to be seeing issues of violence, which is what that suggests to me. Members of Congress, if there was a suggestion they were engaged in some kind of threats, violence, it would be way out of your -- somebody else would be handling that

anyway. I think you are much more likely to see things like bribery, pay to play, abuse of office, illegal gratuities, and campaign finance violations.

And it seems that it would be reasonable for you when you have sufficient evidence that such a violation has occurred that you would immediately send it both to the House Ethics Committee and also to the appropriate law enforcement authorities. I don't see any reason why the SEC, for example, shouldn't hear about a campaign finance violation that you discover, or frankly if it seems more serious and it is a Justice Department matter, like a bribe or an illegal gratuity why you shouldn't be sending it over. And I think that the threat to public safety seems a much too high a standard.

So I would really encourage you to make that change as quickly as possible. And other than that, I wish you good luck and thank you for allowing me to speak to you.

The Chairman. Please don't go away in case there are questions. Mr. Eagen.

Mr. Eagen. Just a clarification, Melanie. On the recusal provisions in the Code of Conduct, the present language says, "a board member who has engaged in political activity on behalf of the subject or of the subject's opponent in an election." I guess the question would be, does a campaign contribution qualify as engaging in political activity? Your point, just to be specific, is, you would want that to be automatic whereas this leaves a

little bit of discretion in the process, is that correct?

Ms. Sloan. I think it does leave discretion. It is not automatic and it is also not completely clear to me what constitutes political activity, and if a contribution is enough and also a contribution to a legal defense fund I don't think would be considered political activity even in a broader view. So I would want that to be included.

The Chairman. Other questions? Mr. Frenzel.

Ms. Burke. Would you see that there should be some time limit on that provision? Should it be one election, during that election cycle, two election cycles? Or -- first of all, we are delighted not to have to make campaign contributions, let's start with that. But we would want to know exactly what period of time that that involves in terms of our coming forward to say we are conflicted.

Ms. Sloan. Well, I will let you know that I feel certain that if you had made any contribution ever to somebody who then turned out to be under your jurisdiction, there would be a story in The Washington Post about that. I think that so much of what you want to do here is avoid even the appearance of a conflict, that I would say any contributions are not good. You know, you should, at the minimum, I would limit it to a certain period, say 5 years. But you should be aware that every time there is a story, it undermines your overall credibility. And especially if there are repeated stories, well, this person made a contribution

4 years ago, this other person made one. And then pretty soon you have a series of stories about members on the board who have made contributions to people they have investigated. And if you decide not to do something in many of those cases, it will just inevitably undermine the credibility of whether or not that is fair.

The Chairman. Any other questions? Okay. Thank you very much, Ms. Sloan. You are welcome to come back when we get to that --

Ms. Sloan. Thank you.

The Chairman. Anyone else care to address the draft rules for procedure? Anyone else care to address the draft rulings of procedure? Seeing none, let's go ahead and take up the Code of Conduct. And again, I would call on Mr. Wise to give us a quick run-through on that.

Mr. Wise. Thank you, Mr. Chairman.

The resolution creating the office imposes the obligation to adopt a Code of Conduct and specifies some but not all of the provisions that are contained within it. And just at the outset I think an important explanatory note is that the staff of the office is under the obligations of the code of official conduct of the House and the other restrictions that are placed on any staff member of the House. The board by virtue of its status as an independent body that is by specific terms of the resolution not employees of the House has taken on itself to adopt certain

restrictions on its activities that both derive from the letter and I think the spirit of the resolution.

So that, I think, is the general -- the sort of general frame. The specific provisions of the Code of Conduct include item 1, the general ethical standards that are found under the Code of Conduct of the House. Item 2 is the oath that is required by the resolution restricting candidacy for Congress to a period of 3 years after an end to service. The third rule under the Code of Conduct, the third item addresses compensation for board service and that the -- essentially the per diem provided for is the only form of compensation that would be received. Provision 4 provides for financial disclosure. Provision 5, following on the disclosure requirement, lays out a procedure for disqualification for financial conflicts of interest that may arise. Provision 6 lays out the recusal process again with impartiality as the touchstone.

Much as the rules require the investigator, the professional staff person to be impartial, the standard of impartiality carries into the board's decisions, and 6 lays out the recusal obligations and procedure. Item 7 is the prohibition on public disclosure that derives from the resolution that is imposed on the board and the staff. Item 8 follows on from that and specifically addresses the issue of public speaking by board members and staff. Nine, item nine addresses appearance before the office by former board members and staff and imposes restrictions on how that -- how

appearances can be made. And item 10 addresses the board and the office of anti-discrimination policy. Item 11 addresses partisan activity by staff and embodies the nonpartisan mandate included in the resolution. And item 12 is an enforcement mechanism essentially that requires resignation or dismissal for violations.

The Chairman. Thank you, Mr. Wise. Questions from board members of Mr. Wise on the Code of Conduct provisions? Seeing none, are there members of the audience that wish to address themselves to the Code of Conduct? And we have heard from Ms. Sloan on this, but she is welcome to -- no? All right. Yes, Ms. Harned.

Ms. Harned. Thank you very much for the opportunity to address the board. Is my microphone on? You can hear me? First of all, I want to --

The Chairman. Would you identify yourself and your organization, please.

STATEMENT OF PATRICIA HARNED, PRESIDENT, ETHICS RESOURCE CENTER

Ms. Harned. My name is Patricia Harned. I am the president of the Ethics Resource Center which is a nonpartisan nonprofit organization that conducts research around the kinds of ethics initiatives that are effective in raising ethical standards within organizations. And we also assess public and private institutions with respect to the effectiveness of their programs.

The Chairman. And we appreciate the letter that we received and your thoughtful comments.

Ms. Harned. Thank you. I actually would like to just speak for a few minutes about some of the things that I pointed out in my letter, the rationale behind it and then to hit some of the highlights.

The first thing I would say is that we know from our research at the Ethics Resource Center that a written set of standards is a very important communication both to the members of an organization but also to the broader public about how seriously you are taking ethical conduct.

So as much as this is a document to govern the behavior of the board and potentially the staff, it is also a very important communication outside of this body. And that is why I applaud you for doing this. I know that it was something that you have taken very seriously. I want to point out a couple of things that were

absent in the Code. I think that what you have done so far is a very good start. I would suggest that there are a few revisions that are needed before it really becomes a finalized document, although I know that is not exactly what you want to hear this morning.

The first thing I would point out is that in the very beginning of the Code in line 5 on the first page, while it indicates that this Code of Conduct is adopted by the board, as Mr. Wise has suggested, the staff of the office are governed by the House Ethics Rules. But the provisions of the Code speak to both the board and the staff. And I would just submit that it should be clarified who does this Code of Conduct govern? Is it to govern the behavior of the board and staff? Simply the board? That is something that can be a bit confusing as you read the document. The second thing that I would suggest comes from what we have seen in other organizations as a very effective element within the Code of Conduct.

The first thing to note is that no Code of Conduct can ever anticipate all the ethics issues that will come up for you as members of a board or for members of the staff if they fall under the jurisdiction of this document. And so it is very helpful to have a set of principles that guide your understanding of what actually is right conduct. I would also add to that that as you are having to speak to members of the public or be accountable to the House as a whole as to how you are engaging yourselves in your

process, having some standards to point to can be very effective. So if one of the overarching principles of the Code is that you will respect the confidentiality of people involved in the process, you can point to that provision of the Code as you are explaining why you are not speaking publicly about some portions of the process that is going on. The letter that we submitted contains some suggestions for principles. I know that there will probably be others that you would want to include.

The second thing that I would add is, there needs to be some clarification of how members of the board or the staff of the office will report concerns, ethics issues that come up within this office. It should just be expected that there may be questions that arise. There may be incidents that come up in the conduct of this office. How will they be handled? Where should those individuals go when they need to either report something or they have questions that they need to have answered?

I also raised in the letter a couple of provisions in the Code that I thought needed to either be clarified or included, some prominent things that we tend to see in public sector codes or in private sector organizations. One has to do with the acceptance of gifts. Gifts are not always financial in nature. I know that you have covered that well in the Code. But are there limitations on the value of gifts that can be accepted? Some discussion of how that should be handled should be included in this document. I know there are conflicts of interest beyond

finance. It is very often an ethics issue for members of boards that when they are on travel, on official business of the board for an office, are they able to conduct other business for either their employing organization or other boards that they operate with? So those kinds of considerations, conflicts of interest that are not financial in nature can also be clarified in the document.

And finally, I want to suggest that it would be a good practice to include at the end of this document some method of certifying that members of the board and the staff have received it. I included draft language that we tend to see in other organizations. They can either be a simple statement saying I have received this Code of Conduct. It can even go so far as to say, I have received it, I understand it. I support it. And so we included language in our letter to offer some suggestions for that.

RPTS THOMAS

DCMN HOFSTAD

[11:00 a.m.]

Ms. Harned. And my last suggestion is that it is also, I think, a very important statement if the Board conducts training for itself on the code, not just the code but general ethics rules beyond this code of conduct and ethical leadership in general.

Again, thank you for the opportunity to offer comments. I am happy to answer any questions.

The Chairman. Thank you very much.

Any questions? Yes, Mr. Frenzel.

Mr. Frenzel. Well, I am intrigued by an aspect of this job I hadn't suspected before. Who is going to send us gifts, and when will we expect receipt of them?

Ms. Harned. Well, hopefully you won't encounter that situation.

The Chairman. Mr. Frenzel is violating the rule against levity that we have not yet adopted.

Other questions or jokes?

Very good. Thanks so much, Ms. Harned. We appreciate your help, both this morning and previously.

Other comments on the draft Code of Conduct? Yes, sir. And, again, would you please identify yourself and your organization?

**STATEMENT OF TONY WILHOIT, EXECUTIVE DIRECTOR, KENTUCKY
LEGISLATIVE ETHICS COMMISSION**

Judge Wilhoit. Thank you, Mr. Chairman. I am Tony Wilhoit, executive director of the Kentucky Legislative Ethics Commission. We are one of the few ethics commissions in the country that deals only with legislators, so we sort of relate to what you all do. That is our exclusive job.

As a citizen from the hinterlands, I, too, want to compliment you for being willing to do what you are willing to do. I think Mr. Wertheimer has observed this. As more people find out, out in the country, about this body, you are going to start getting information from 50 States, particularly at campaign time.

And, Mr. Frenzel, let me tell you this: My experience is, if you get a box of candy in the mail after you have had a few of these hearings, you better get somebody to taste it.

I submitted a letter, and I will be very brief. But on the code of conduct, one thing I think is very important, and that is that you have a provision that, during service on the Board, no member can contribute to the campaign of a candidate for the House for election or re-election.

Ms. Burke, that does keep you from having to make those contributions, but it also creates the right impression so that you don't have to have hearings on whether somebody ought to be

recused or not because they come and say, hey, he or she gave \$500 to this candidate; they shouldn't be sitting in on this.

Also, I think it would be very helpful that you, of course, should not serve as a fund-raiser for any candidate for Congress, nor take part in the management of the campaign. And probably you ought not to serve, I would suggest, as an officer of a political party during your service on this board.

I also would recommend that rather than a 1-year limitation on Board members or staff members coming, in a representative capacity or otherwise, before the Board again, that you lengthen that to 2 years. It just looks better, and people tend to receive that better than a 1-year limitation. The practical effect, I don't know, but you folks are dealing in appearances.

Most of the things you hear, the Congressman or -woman is not going to be guilty of anything or it is going to be de minimis. That is why it is extremely important that you all have the reputation for impartiality that each of you enjoys. If the people out in the country knew what kind of board we have got here, no problem. The problem is they don't. And if you have some of these things in place, I think it helps. I think it helps establish the credibility.

You all are going to perform such a great service for this institution. This, in my opinion, this is a giant step forward, not a little step, this is a giant step forward. And as time goes on and the House gets more comfortable with you, I think maybe

things may come about, like how to issue subpoenas or at least have access to subpoenas, that sort of thing.

But there has to be a period -- and we went through this in Kentucky, where they had to get comfortable with us. We were kind of the enemy, and then they finally found out, hey, we are here to help the institution; we are going to do our job. But more often than not, as I said, we are going to be dealing with somebody not guilty of anything or guilty of something that is de minimis. That is why you have to have your credibility up there, because when you say they are not guilty of anything or it is de minimis, then people need to say, well, they said it, it is okay. The press needs to say, Yeah, they said it, it is okay.

Now, one thing -- and it is kind of out of order, Mr. Chairman, and I should have spoken up when we were looking at your rules, and I apologize, but it didn't get covered. And that is at the initial stage when they are taking the reasonable time to investigate information that could come in, you have a provision in there that they may only proceed if the Chair and the Co-Chair agree to the further investigation by the staff.

As I put in my remarks, when you start receiving information from maybe 50 States, that is going to make your jobs almost full-time. I think probably it is better to let Mr. Wise and his folks go ahead at that stage, at that very, very investigative stage, go ahead and gather the information. Because if Mr. Wise -- a very competent man; he is going to do it right -- but if he

doesn't do it right and insists that staff do it right, you can get somebody else.

But I don't want it to be too burdensome for you all because I hope you will stick around for a while.

And other than that, those are my only comments.

The Chairman. Thank you. Please, if you would, remain at the table. And I knew of you but didn't know it was you who had raised your hand. And we should have introduced you as Judge Wilhoit, probably. Is that correct?

Judge Wilhoit. Oh, that is totally fine, Mr. Chairman.

The Chairman. And to establish my credibility with you further, my family is all from Grayson and Jefferson County, Kentucky.

Judge Wilhoit. Oh, very good.

The Chairman. So I spent much of my youth there.

Any questions for the judge?

Mr. Eagen. With regard to your recommendation on the limitation of former staff members, what standard does Kentucky go by, 1 year or 2 years?

Judge Wilhoit. Our standard only applies to the legislators. Of course, we only deal with legislators. And legislators are not permitted to, for example, serve as counselor or lobbyist 2 years after they leave office.

We are currently developing -- and that is one of the reasons I am here today -- we are currently developing regulations for

staff, and I wanted to hear some of the input here today.

But we are leaning towards 2 years, more for the appearance of things. You know, it looks less like the good old boys are back or the good old girls are back with their buddies again. After 2 years, it is --

The Chairman. Mr. Goss?

Mr. Goss. Thank you.

My question is a little more esoteric, and I generally would seek your opinion on this. The conundrum for the leadership of the House is to create an independent body, but an independent body that has enough knowledge to make a wise decision about the problems of being a Congressman and Congresswoman. There are plenty of them. It is a difficult life, as we know, as a Representative because you lose your privacy and you are in public and lots of rules and regulations and so forth.

My question is this: Everybody here on this board has had some experience with the institution, with the House of Representatives. In the appearance world, does that mean that we are already tainted and cannot make a judgment because we are part of a club? That, you know, we really meant independent when we said independent?

Judge Wilhoit. We have the same thing in Kentucky. Some of the members of our Legislative Ethics Commission are former Members of the House or Senate. They have, thus far, been so removed for 2 or 3 years that that doesn't come up.

And I think, with this group here, you didn't come out yesterday from Congress and become a member of this body today. Plus, I don't want to curry your favor but, with the reputations this group has, that is not likely to come up.

I think perhaps if somebody came out yesterday and came on this board, initially there would be some suspicion. But all of the more reason to have these rules in effect, that, "Hey, my partisan days are over. I am, in effect, becoming a judge." And that is precisely what you are doing.

The Chairman. Thank you, sir, very much.

Judge Wilhoit. Thank you.

The Chairman. Any other questions for Judge Wilhoit?

Mr. Frenzel. Yes, Mr. Chairman.

Judge, you indicated that you thought we were going to get information from all over the country about possible problems. Can you tell us something about your own experience? Did your workload build up? Did it peak? Did it drop off? What happened?

Judge Wilhoit. Mr. Frenzel, it tends to peak in election times.

Mr. Frenzel. And of course we are turned off.

Judge Wilhoit. Exactly, which I think is a pretty good idea.

But we do get it from all parts of the State. As people have found out about our existence, it can come from everywhere within the State of Kentucky. That is one of the reasons that staff needs to be able to get on it and investigate it pretty quick,

because a lot of it is junk, and if we can just get it out of the way.

And you don't want some poor legislator hanging out there in the wind that, "Hey, these charges have been made, and nobody is doing anything about them. I am not guilty of anything." And that is extremely important.

Mr. Frenzel. And a second question would be, with respect to this 1- or 2-year vacation after you are done, have you had a lot of attractive job offers?

Judge Wilhoit. Me? No. I retired from the court and was drug into this, and I am trying to get out. I am ready to retire.

Mr. Frenzel. I was going to say, you are not looking at a young group up here.

Thank you very much, Judge. We appreciate your help.

The Chairman. A couple of members of the Board are taking exception to your last comment, Mr. Frenzel.

Mr. Frenzel. Certainly not the ladies.

The Chairman. Thank you very much, sir.

Judge Wilhoit. Thank you, Mr. Chairman.

The Chairman. Anyone else here to comment on the Code of Conduct draft?

Seeing no further hands up, we appreciate very much your attendance and assistance. And today is not the end of our receptivity to comments and suggestions about how we may do our work better. So I am sure I don't need to invite, but I will

invite you to continue to give us the benefit of your advice on our rules and how we do our work.

Let me now see if there might be a motion to adopt the draft rules, and then we can consider any amendments.

Mr. Frenzel. Mr. Chairman, I move the adoption of the rules.

The Chairman. Second? Ms. Hayward seconds.

Any amendments to be offered to the rules?

Mr. Wise, you are not in a position to offer the amendment, but you may be able to describe one that someone would wish to offer.

Mr. Frenzel. Mr. Chairman?

The Chairman. Yes, Mr. Frenzel.

Mr. Frenzel. It should be no secret that we have discussed a couple of amendments that were suggested by Mr. Werthheimer, which seem to me to be worthy inclusions into our rules. And the only reason that I raise them, as against the other wonderful advice we have had, is that they are easy and they were easy to adopt into amendment form. The others I think we need to look at and consider.

But I would like to move either or both of what we might describe as the Werthheimer amendments.

The Chairman. I am sure Mr. Werthheimer is honored to have it so described. And this is changing in Rule 7 the "may" to "shall."

Is there a second to that proposed amendment?

Ms. English. I second.

The Chairman. Seconded by Ms. English.

Further discussion on this proposed amendment?

Hearing none, all those in favor, say, "Aye."

Opposed, same sign?

Adopted unanimously.

Actually, Mr. Frenzel, the -- and Mr. Wise is pointing out that the language also included the "within 7 calendar days of a written request" provision.

The other proposed amendment that we have before us in draft actually originated with the House Office of the Inspector General. And the members have that for the public -- let me just say this. It just adds to our list of other offices to which matters in their jurisdiction should be referred, matters that fall within the jurisdiction of the Office of Inspector General.

And would anyone care to offer that amendment?

Mr. Goss. Mr. Chairman, I would be particularly happy to offer it, particularly because the new authority apparently was added in H.Res. 5 of the 111th Congress. So I think that was their intent, as well.

The Chairman. And this provides that the Board may refer allegations of fraud, waste, and abuse in the operations of the House or joint entities of the Congress to the House Office of Inspector General for investigation under clause 6(c)(1) of Rule 2 of the House.

So Mr. Goss has moved.

Ms. Burke. Second.

The Chairman. Seconded by Ms. Burke.

Any further discussion on this amendment?

Seeing none, all those in favor, please say, "Aye."

Opposed, same sign?

Adopted unanimously.

Mr. Wise has indicated another amendment that we had discussed earlier with regard to conflict-of-interest issues in Rule 9. And I will read it and then see if a member of the Board wishes to move its adoption.

"Page 5, line 19, add 'and in no case shall represent any person or entity that was a subject or a witness in a matter under review during their employment.'" So this is a restriction on staff activity post-employment.

Ms. Hayward. Are we considering both the Code of Conduct and rules for investigations right now?

The Chairman. I am sorry. This is Code of Conduct. I apologize.

Any other amendments to be offered to the rules?

Seeing none, the motion is already before --

Mr. Frenzel. I renew my motion as amended.

The Chairman. Thank you, Mr. Frenzel.

And the second?

Ms. English. Second.

The Chairman. Any further discussion of the rules?

Seeing none, all those in favor of their adoption, please say, "Aye."

Opposed, same sign?

Adopted as amended unanimously.

And now to the Code of Conduct. And thank you, Ms. Hayward, for catching me on that.

Amendments to be offered there?

And I will send this down to Ms. Hayward.

Ms. Hayward. Yes. The Code of Conduct, Rule 9 presently reads, "No former member of the Board or staff shall, after the termination of his or her service or employment, represent any person or entity by making any formal appearance."

In line 19, what we want to add is "and in no case shall represent any person or entity that was a subject or witness in a matter under review during their employment."

This would be the lifetime ban on matters that a person was personally and substantially involved in, which is very similar to Code of Conduct provisions in other aspects of the law. And I think we all sort of intended that concept to be a part here, and it was an oversight, so we would like to add it in now.

Mr. Frenzel. Do you have the language of the amendment?

Ms. Hayward. Yes.

The Chairman. May I read it again?

Mr. Frenzel. Please, would you read it?

The Chairman. "In line 19, at the end, add 'and in no case shall represent any person or entity that was a subject or witness in a matter under review during their employment,'" unquote.

So, Ms. Hayward has moved it. Is there a second?

Mr. Frenzel. Second.

The Chairman. Further discussion on this amendment to the Code?

And did we move the Code so that it is before us? I don't believe so. So would there --

Mr. Frenzel. I will move the Code.

Ms. English. I second.

The Chairman. And a second by Ms. English.

So we are now on the Code. And Ms. Hayward has moved the amendment, seconded by Mr. Frenzel. Further discussion on the amendment?

Seeing none, all those in favor of the amendment, please say, "Aye."

Opposed, same sign?

Adopted unanimously.

Further amendment to the Code of Conduct? Mr. Eagen?

Mr. Eagen. I don't have an amendment, Mr. Chairman, but I did just want to note, and perhaps invite some discussion, that Judge Wilhoit's recommendation about no contributions during service resonated with me personally. Whether we want to put that aside for further discussion would be fine with me, but I think it

merits our consideration.

The Chairman. Thank you. I agree. We have had some earlier discussion in our first meeting, I think, about the specificity of House Resolution 895 as to any staff participation politically. It is silent in this respect as to Board participation and the question of whether we wish to impose a tighter restriction on ourselves than the resolution prescribes.

Further comment on this, Mr. Frenzel?

Mr. Frenzel. Yeah, Mr. Chairman, I think, as Jay suggests, it is certainly worthy of discussion. And if he intends to move an amendment, I would be glad to go ahead with it. I think it maybe is something we want to talk about a little bit more.

I am a little bit nervous about -- I have lost my right to run for office. I hate not to have the ability to make a contribution or two to people I think are worthy candidates. If they are lucky enough to get elected and unlucky enough to get in trouble, I would expect to recuse myself. But I am not certain that we should go so far as to ban contributions.

But I would like to hear what all of the members would like to say, and maybe it is something that we could take it up at a later date.

The Chairman. For the public's information, Mr. Frenzel refers to a provision of the resolution that required all of the members of the Board to execute an agreement not to be a candidate for Federal office for a period extending 3 years after our

service on the Board. So we have been politically neutered in this respect already, and it is a question of how much further we should proceed.

Other comments on this particular matter? Ms. Hayward?

Ms. Hayward. Yes, Mr. Chairman, I am not sure I am quite ready to amend the Code of Conduct on this question today because I would like to talk with people a little bit more about it.

One suggestion, in particular, intrigues me, which is the notion that there should be a bar not just on contributions to Members of Congress and people who might actually come before us and be part of our business, but other political parties, other types of candidates.

And the interesting thing to me is that we were picked to be here by a partisan body; either the Speaker or the House Minority Leader has identified us, with the assent of the other side. We all come from different backgrounds, but most of us have some experience in politics. But we are on a balanced board for that very reason.

You know, there are two ways that you can deal with partiality. You can either find six or eight individuals that are themselves perfectly impartial, or you can find partial people that balance each other out against each other. And I think Congress has chosen the latter path on this.

And so I think, as long as we are free from direct conflicts with Members of Congress, staff who may be running for office or

other sorts of office perhaps, that a broader prohibition, I am not necessarily sure that is appropriate. And I can see, in the fullness of time, it might make it difficult to find people to serve on this board.

So that is my initial thought on that.

The Chairman. Thank you.

Ms. Burke?

Ms. Burke. Mr. Chairman, my concern would be that there be some delineated time period. I could understand that within a 4-year period or something like that that all of us would find that reasonable. My concern is that even if the press brings out something that is 12 or 15 or 20 years previously that we contributed it to a candidate, I would like to at least have our rules have some time period that is reasonable.

The Chairman. Very well.

Mr. Eagen. I did want to clarify that what I heard Judge Wilhoit reference was no contributions during service, as opposed to going backwards.

The Chairman. Mr. Goss?

Mr. Goss. Mr. Chairman, I think Mr. Eagen is right to bring this up. Certainly we have had public testimony on the subject. And I do feel we have an opportunity to have a good, deliberative discussion amongst ourselves. There are many facets of this that deserve, I think, very close scrutiny.

My feeling that we take the time now is appropriate, because

we are now out of the election cycle. And as you will recall, we started this process when we were well into the election cycle, and it would have been a little hard to be retroactive for some people who I think we profit very much by having on this board.

So I do feel we have now a plateau that is relatively clear to have this conversation and not have to worry about the past election and think ahead about how we want to do business from this point forward.

The Chairman. Ms. English?

Ms. English. Mr. Chairman, I, like many of the comments we have heard today, am concerned about the perception. And I think that the public will perceive some of the actions in a way that would require some recusals.

So I respectfully understand your position, but I think that we should take a look and discuss a little bit further the participation in campaigns, not contributing. I really do appreciate the comments of many of the speakers today, and, if we are going to be effective, I think we need to have a very tough and high standard.

The Chairman. Thank you.

Very helpful discussion. I think we will definitely take this question and the others that have been raised during the course of the morning under advisement and, no doubt, come back and consider again in public session any changes that may seem appropriate to the rules or to the Code of Conduct.

Any further amendments to the Code, then?

Very well. It is, I think, before us as amended, and we will proceed to a vote.

All those in favor of adopting the Code of Conduct with the amendments, please say, "Aye."

Opposed, same sign?

Adopted unanimously.

This, I believe, completes the business that we intended to conduct in public session. We may well have a public session at our next planned meeting late in February in order to deal with the matters that remain pending based on the testimony and the suggestions you all have been kind enough to make.

Let me say in closing, I think all of the members of the Board wish that we were able to do more in public than we are permitted to do under the confidentiality constraints that pertain, not in the sense that we want to disclose information, but we understand that transparency here is such a critical element.

So we will be doing public meetings whenever possible, but I hope everyone understands that most of the business that we have been assigned by the House necessarily requires proceedings in confidentiality out of respect for the interests of staff and Members, allegations about whom may well be found, as Judge Wilhoit suggests will usually be the case, to be de minimis or baseless.

And we will respect that very important obligation to deal with those interests as carefully as we deal with the public interest in knowing as much as possible about the business of the office and the Board.

Any closing comments? Mr. Goss?

Mr. Goss. Mr. Chairman, I am not trolling for business here, but I do think, since this is a public forum, that it would be appropriate if Mr. Wise would explain how members of the public get in touch with this office since it is a brand-new office.

Mr. Wise. Thank you, Mr. Co-Chairman.

The office will have a Web site that is being developed right now and will go live shortly now that the rules have been adopted. I think that is probably the easiest way to interact, to see the rules and other key documents, and then provide submissions, if appropriate.

The office's e-mail address is OCE@mail.house.gov, and the office's telephone number is 202-225-9739. And the office is located in Room 1017 in the Longworth House Office Building and is open during public hours from 9:00 to 5:00.

The Chairman. Thank you, Mr. Wise.

Any further business? Mr. Eagen?

Mr. Eagen. This is a procedural question. We did receive several documents in advance of this. Do we want to make those a part of the record? I know we are doing a transcript of this proceeding. Do we want to include those for transparency's sake?

That is a question as opposed to a request.

The Chairman. I think all of the e-mail and mail that has been submitted as a prelude to this proceeding should be made part of the record. And if there is no objection, it is so ordered.

[The information follows:]

***** COMMITTEE INSERT *****

The Chairman. And Mr. Cable is pointing out that we are making a transcript of these proceedings, which we can also post on our Web site when they are available.

Any further business?

If not, the meeting stands adjourned. Thank you very much.

[Whereupon, at 11:40 a.m., the meeting was concluded.]