

# Timing of Contributions: OCE Refers Fundraising Probes to House Ethics

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In late August, the Office of Congressional Ethics (OCE) of the U.S. House of Representatives forwarded eight related inquiries to the House Committee on Standards of Official Conduct (the Ethics Committee). These eight inquiries implicate questions of compelling importance to House Members and to corporate and association PACs alike: Can the timing of a campaign contribution in relation to House action on legislation of interest to the donor, by itself, be problematic under House ethics standards? If not, what additional factors will cause the House's two ethics enforcement offices to view a matter of timing with concern rather than as mere coincidence, and will the two offices even apply the same standards?

The OCE's inquiries, which began in June 2010, apparently focused on alleged linkage between congressional action on the "Wall Street Reform and Consumer Protection Act of 2009" in or around December 2009, and campaign fundraising activity by eight named Members during this same time frame involving entities or individuals registered to lobby on the bill. According to statements by, or on behalf of, the Members under inquiry, in forwarding the matters the OCE recommended Ethics Committee dismissal of the inquiries involving Rep. Jeb Hensarling (R-TX), Rep. Christopher Lee (R-NY), Rep. Frank Lucas (R-OK), Rep. Earl Pomeroy (D-ND) and Rep. Mel Watt (D-NC). The OCE recommended further review by the Ethics Committee, however, of allegations involving Rep. John Campbell (R-CA), Rep. Joseph Crowley (D-NY) and Rep. Tom Price (R-GA).

OCE documents obtained by and published in the press indicate that the OCE based its inquiries (and, presumably, based its recommendation for further Ethics Committee review of Representatives Campbell, Crowley and Price) on the premise that, if

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a Member "solicited or accepted contributions in a manner which gave the appearance that special treatment or access was being provided to donors or the appearance that the contributions were linked to an official act, then he may have violated House Rules and Standards of Conduct."

The OCE's commencement of its Preliminary Reviews in these matters in June raised concerns that it was applying an unprecedented standard under which an ethics violation could be found based solely on a coincidence in time between a Member's acceptance or solicitation of campaign contributions from representatives of an industry group and House action on legislation of interest to that industry. There may still be cause for concern that such an unprecedentedly strict standard-and low threshold-could form the basis for future Preliminary Reviews by the OCE of Member fundraising (and, although not within the OCE's direct jurisdiction, of PAC giving). However, the fact that the OCE recommended Ethics Committee dismissal of five of its eight original fundraising inquiries suggests that-at least before the OCE will go so far as to recommend further investigation by the Ethics Committee-the OCE Board will require *some arguable evidence of something more* than mere proximity in time between Member fundraising from an industry group and House action on legislation of interest to that industry. This is not to suggest any actual conclusions as to the nature or level of the evidence in the three fundraising matters referred by the OCE to Ethics for further review; it is important to note that the three Members named in those matters have denied impropriety in fundraising.

How will the Ethics Committee act on the OCE's recommendation for further review in the Campbell, Crowley and Price matters? By rule, the OCE's findings in these matters have not been made public at this stage of the process, so it is not possible to predict the Ethics Committee's response. In their brief history together, however, operating in parallel on matters of House ethics enforcement, the OCE and the Ethics Committee have already disagreed publicly and pointedly more than once, not only on whether specific standards of conduct should apply in specific situations but also on the meaning and scope of those standards.

Any agreement or disagreement between the OCE and the Ethics Committee on relevant standards in the Campbell, Crowley and Price matters is likely to include consideration and application of Committee statements from its October 2004 letter of admonishment of then Majority Leader Tom DeLay. On the one hand, in the DeLay letter the Committee condoned the targeting of entities or lobbyists with particular legislative interests for attendance at particular campaign fundraising events. The Committee stated in the letter: "As a general matter, fundraisers directed to a particular industry or to others sharing a particular federal interest are permissible, and at such events Members are free to talk about their record and positions on issues of interest to attendees."

On the other hand, the Committee also indicated in the DeLay letter that the timing of industry-specific fundraisers is at least *a factor* to consider in evaluating allegations of special treatment, special access or improper "linkage." With regard to Rep. DeLay's participation in an energy industry golf fundraiser, the Committee stated that, of the considerations that made this participation "objectionable," "[i]n particular, there was the timing of the fundraiser, *i.e.*, it took place just as the House-Senate conference on major energy legislation . . . was about to get underway" and the fact that DeLay was "in a position to significantly influence the conference." But even while emphasizing the significance of the factor of "timing," the Committee noted the presence of additional factors leading to its conclusion that Rep. DeLay's participation in the fundraiser

was improper, including: attendance at the event of two key members of his staff; the two-day length of the event and commensurately increased opportunities for contact with industry representatives; the limited number of attendees at the event; and an email between event organizers that apparently tied the event to the House-Senate conference.

Under its rules of procedure, from the date of the OCE's referral of the Campbell, Crowley and Price matters, the House Ethics Committee has a limited period within which to: dismiss one or more of the matters, with or without making the reports and findings of the OCE public; empanel an investigative subcommittee in one or more of the matters; or, if it takes no action on a matter, make public the OCE's report and findings in that matter. (The normal maximum total of 90 days within which the Committee must undertake one of these responses is extended here by a moratorium on Committee action within 60 days of an election.)

The Ethics Committee already has a great deal on its plate right now, including pending, separate public adjudicatory hearings on Rep. Charles Rangel (D-NY) and Rep. Maxine Waters (D-CA). But in terms of potential impact to all House Members-and to the industry and association PACs and individuals from whom Members may legally and properly raise campaign funds-no pending Ethics Committee matters are likely to be more important, or more urgent, than the most recent referrals from the OCE.