

**Campaign Legal Center • Common Cause • Democracy 21**

**League of Women Voters • Public Citizen • U.S. PIRG**

November 24, 2008

Dear Speaker Pelosi:

As you know, our organizations strongly supported the landmark ethics and lobbying reforms passed under your outstanding leadership by the 110th Congress.

The organizations include the Campaign Legal Center, Common Cause, Democracy 21, the League of Women Voters, Public Citizen and U.S. PIRG.

Following the adoption of the new House ethics rules in 2007, some problems arose that require clarification and changes and that should be incorporated into the House rules adopted at the opening of the 111<sup>th</sup> Congress.

Our organizations sent you letters on February 6, 2008 and May 21, 2008 that detailed the problems with the new ethics rules and urged that they be addressed at an appropriate time.

We are writing to strongly urge you to ensure that the clarifications and changes necessary to address these problems, as set forth below, be incorporated into the House rules that will be adopted at the outset of the 111th Congress.

A similar letter is being sent to House Republican Leader John Boehner requesting his support for this effort.

### **Ethics rules applicable to parties at the national conventions**

The House adopted a new ethics rule last year stating that during a national party convention, a Member “may not participate in an event honoring that Member ... if such event is directly paid for by a registered lobbyist ... or a private entity that retains or employs such a registered lobbyist.” Rule XXXV, cl. 8.

The purpose of this rule was to prevent lobbyists and lobbying organizations from currying favor with Representatives by paying for lavish parties to “honor” the Representatives at the national conventions, as had been done in the past.

The language and purpose of the rule make clear that this rule covers lobbyist-funded parties at the national conventions to “honor” a House member of multiple House members, such as a the

Members of a congressional state delegation, a congressional committee or a congressional caucus, or any other group of House members.

Nevertheless, the House Ethics Committee issued a guidance on December 11, 2007 stating that the new rule applies only in the case of a party to honor a Member, and does not apply to a party honoring a group of Members.

This is an indefensible interpretation that it seriously undermines the new ethics rule and its public credibility.

This would mean that the goal of the House in adopting the reform rule was to prevent lobbyists from paying for a lavish party to curry favor with a single Member, but to allow the same lobbyists to pay for a lavish party to curry favor with a group of Members.

This makes no sense and has no public credibility.

A *Washington Post* editorial (January 14, 2008) said about the interpretation, “The House ethics committee, in its wisdom, issued an interpretation of the new law last month that leaves little of it intact.”

*The New York Times* said in an editorial (February 4, 2008), “But as newly loopholed by the [Ethics] committee, the rules will only ban a single lawmaker from being so honored. Representatives are free to belly up to fetes honoring groups of them.”

The House Ethics Committee guidance is in direct conflict with the interpretation issued by the Senate Ethics Committee on a virtually identical rule in the Senate, and with an interpretation issued by the House Clerk and Senate Secretary of analogous language contained in the new lobbying disclosure law.

The Senate Ethics Committee interpretation, issued on February 3, 2008, makes clear that lobbyists and lobbying organizations cannot pay for events at national conventions to honor groups of Senators, such as a state Senate delegation.

The House Clerk and Senate Secretary similarly concluded, in a guidance they issued, that a lobbying disclosure provision requiring lobbyists to report payments made for “the cost of an event to honor or recognize a covered legislative branch official” covers payments made for an event to honor a group of Members as well as an individual Member.

The ethics rule should be clarified in the House rules adopted in January 2009 to explicitly provide that the restriction on lobbyist funding events at the national party conventions for Members covers a group of Members as well as an individual Member.

The Ethics Committee guidance also appears to permit lobbyists to finance parties at national conventions in honor of a Member indirectly by paying for the party through a conduit. This interpretation provides an easy path to circumvent the language and purpose of the ethics rule.

The Committee guidance says, “The fact that a private organization received some of its funding for an event taking place during a national convention from a lobbyist or private entity that retains or employs lobbyists, by itself, would not disqualify a Member from participating in the organization’s event.”

The guidance relies on language in the rule which prohibits a Member from participating in an event if the event “is directly paid for” by a lobbyist. Yet this language does not mean, and the House certainly could not have intended it to mean, that a lobbyist is permitted to blatantly circumvent and ignore the rule by laundering a payment through another entity.

The ethics rule should be clarified to state that it applies to direct or indirect payments and should make clear that lobbyists cannot finance convention parties to honor Members by making payments through a third party to pay for the event.

Furthermore, by limiting the coverage of the ethics rule to parties held during the days of a party convention, i.e., Monday through Thursday, the language of the rule intentionally ignores the fact that many lavish parties for Members take place during the weekend before the convention. This is a blatant and unjustified loophole in the ethics rule that seriously undermines the spirit and the purpose of the provision.

The ethics rule should be amended to provide that it covers lobbyist-funded events to honor Members during the weekend before the convention, in addition to the four days of the convention.

### **Members negotiating for new jobs while in the House**

The letter our groups sent to you on May 21, 2008 expressed our concerns about a new ethics rule as it applied to Representative Al Wynn’s acceptance of a job as a lobbyist during the session.

A basic problem with the new rule was illustrated by the Wynn case when after he took a job as a lobbyist he remained a House Member for a period of time.

The new Senate ethics rules on this matter, in contrast, prohibits a Senator from negotiating or accepting a job involving “lobbying activity,” as the term is defined in the Lobbying Disclosure Act, until after a successor is elected to the Senator’s seat.

We urge that a similar provision be incorporated into the House rules to be adopted in January 2009. The ethics rule should prohibit a Representative from negotiating or accepting a job involving “lobbying activity” until after a successor to the Representative has been elected, or the Representative has left the House.

Furthermore, the provision should require that in the event a successor to the Member is elected in the general election and the House engages in a lame duck session, the prohibition would apply during the lame duck session.

We also urge that this new ethics rule be revised to provide for meaningful public disclosure in circumstances where a Member negotiates for or accepts a new job that does not involve “lobbying activity.”

Under the current House rules, a Member must file a statement with the House Ethics Committee when the Member is engaged in negotiations for employment. The statement, however, is not made public unless the Member takes the further step of recusing himself or herself from a matter in which the Member has a conflict of interest, or the appearance of a conflict, in relation to the job involved.

Under the rule, it is solely up to the Member to decide when such a recusal is required, and there is no requirement for the Member to disclose the circumstances that caused the recusal.

These disclosure and recusal rules are inadequate to deal with the issues involved.

Any notification that a Member is involved in employment negotiations should promptly be made public. Guidelines also should be provided in the rule as to when recusals are required.

Under the current House ethics rule, the term “negotiations” is not defined. A definition should be added to the rule to provide clarity for members and the public as to what the term specifically covers.

The Office of Government Ethics, for example, defines “negotiations” to begin when an Executive Branch official or the official’s agent, (i) mutually engage in discussions with a view toward reaching an agreement on employment; (ii) made an unsolicited communication to a potential employer regarding possible employment, beyond requesting a job application; or (iii) made a response other than a rejection to an unsolicited communication from a potential employer regarding possible employment.

We strongly urge that the clarifications and changes set forth in our letter be incorporated into the House rules to be adopted at the outset of the next Congress.

Thank you for your consideration of these matters.

Campaign Legal Center  
League of Women Voters  
Common Cause  
Public Citizen  
Democracy 21  
U.S. PIRG

