

Cleaning House (and Senate)

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Despite all of the proposed lobbying and ethics changes piling up on Capitol Hill, plenty of needed reforms are being left out.

It was a short speech, but one that seemed to capture all of the embarrassment, anxiety, and fervor for change on Capitol Hill.

Lobbying scandals "have shaken the public's confidence in this great House," the lawmaker admonished. "It is time the public knew who is lobbying who, and for how much. It is time members stop taking contributions from lobbyists for legal defense funds or charities they control.

"The people send us here to represent them in the greatest legislative body ever conceived," the lawmaker continued. "That is what it's all about. Not the lobbyists. Not the trips. Not the gifts. And the American people know that. We need to send a clear, bipartisan message ... that we know that, too."

The speaker could have been Rep. John Boehner, R-Ohio, who has made lobbying and ethics reform a centerpiece of his race to become House majority leader. It could have been Senate Minority Leader Harry Reid, D-Nev., who has stepped up his attacks on what Democrats like to call the GOP's "culture of corruption."

But it was Rep. Carolyn Maloney, D-N.Y., who took to the House floor in 1995. More than a decade before lobbyist Jack Abramoff pleaded guilty to conspiracy, fraud, and tax evasion, Maloney was rallying her colleagues to support the Lobbying Disclosure Act, which included tough new reporting rules intended to bring lobbying activities out in the open.

The law took effect in 1996, but it didn't do much to stem lobbying and ethics controversies. If anything, critics now say, the lobbying activities of the late 1990s laid the groundwork for some of the worst abuses in recent memory.

In 1995, newly installed GOP leaders launched the now-notorious K Street Project, which

rewarded lobbying firms that hired only Republicans, and which invited buddies from private industry into weekly closed-door meetings on the Hill. The new law required timely reporting, but House and Senate administrators in charge of overseeing the task gathered records -- often on paper -- into spotty, inconsistent, and unsearchable databases.

With no enforcement, literally thousands of lobbyists failed to file. An ineffectual Federal Election Commission, along with moribund House and Senate Ethics committees, gave lawmakers little incentive to play by the rules. No wonder, then, that 10 years after the Lobbying Disclosure Act took effect, Congress appears to be right back where it started.

"This is an ongoing, constant struggle," observed Dennis Thompson, a professor of public policy at Harvard University. "Anytime you have any kind of ethics reform or campaign finance reform, you have groups or individuals who find the loopholes. And the next time around, the reformers close the loopholes. And then there are more loopholes. So the idea that there would finally be a fix is illusory."

To be sure, the Abramoff scandal has the potential to trigger significant -- perhaps even dramatic -- lobbying, ethics, and institutional changes. Abramoff's admission that he bilked Indian tribes, passed huge sums of money through foundations and front groups, and showered lawmakers with meals, skybox tickets, and foreign junkets has shocked even the most seasoned political observers.

And Abramoff's willingness to tell Justice Department investigators just what legislative and other favors he got in return has members of Congress -- and many lobbyists -- sweating bullets. Another top lobbyist caught in the scandal, ex-GOP aide Michael Scanlon, also appears poised to spill his secrets. Additional indictments -- of lawmakers, aides, and lobbyists -- may be just around the corner.

"We're dealing with problems of an order of magnitude that most people have never seen before, and a depth of concern that goes far beyond the other scandals Congress has faced," said Chellie Pingree, president of the pro-reform group Common Cause.

Like many activists for change, Pingree has jumped on the Abramoff mess to press for a sweeping overhaul of ethics and campaign finance rules. Her group has lost no time in trotting out a package of reforms that calls for an independent ethics commission, and even public financing for congressional campaigns. "We are looking at this as an incredible opportunity," she declared.

Still, the failures of the 1995 Lobbying Disclosure Act signal danger ahead. Some experts wonder whether Congress can, with a few quick rules changes, really alter the way that lobbyists and lawmakers interact.

The Abramoff affair has pulled back the curtain on an ingrained system of relationships, oiled with money that flows through multiple channels -- campaign accounts, leadership political

action committees, receptions at political conventions, even lawmakers' favorite charities. To truly tackle all of that would require changing myriad campaign finance, ethics and lobbying, and tax laws.

Most of the proposed reforms would impose strict rules for lobbyists but demand little or nothing from lawmakers. Lobbyists are being called on to submit to extensive, elaborate reporting requirements. But lawmakers haven't breathed a word about strengthening the all-but-meaningless ethics process on Capitol Hill. Nor is there any talk of how any of the new rules will be enforced -- a fatal omission, critics say.

"If we could enforce the current rules and laws on campaign finance, on ethics and lobbying -- really enforce them -- that would make more difference than enacting new, tougher rules that are not enforced," Thompson said.

To be sure, just taking the first step -- enacting legislation -- would require overcoming a host of looming obstacles, not the least of them lawmakers' resistance to changing their accustomed ways. Already, some Republicans are grumbling that one of the leading reforms on the table -- a ban on all privately funded travel -- would unfairly curtail educational trips. (Never mind that those trips often take place at high season and involve popular resorts and golf greens.)

The partisan tensions that predictably complicate disputes over political money, lobbying, and ethics have already surfaced. Democrats were all for enacting big reforms -- until Republicans

began to champion them, too. If Democrats conclude that they can score more political points by hammering at Republican corruption, they may not play along on passing legislation.

"Is it going to be a tough battle? Yes," admitted Fred Wertheimer, president of Democracy 21, which backs ethics and campaign finance changes. "All of these battles are tough battles, particularly when you're going at the way of life in Washington."

Lobbying Reform, Take Five

Past attempts at lobbying reform attest to the tenaciousness of the relationship between lawmakers and private individuals who want something from them. Way back in 1876, the House first approved a resolution requiring lobbyists to register with the chamber's clerk, but the rule was never enforced and was soon ignored.

In the 1930s, congressional hearings looked into lobbying abuses; legislation was introduced, but nothing came of it. In 1938, Congress did enact the Foreign Agents Registration Act, which principally set out to limit foreign propaganda on the eve of World War II.

Part of the problem, of course, is that the Constitution protects lobbying. The Bill of Rights specifically recognizes the right of citizens to petition their government. As lobbyists and their allies point out, for every Jack Abramoff, there's an earnest senior citizen or Cub Scout coming to Capitol Hill to ask for help in cutting through red tape or to give his representative a baseball cap.

Constitutional concerns were one reason that the 1946 Federal Regulation of Lobbying Act -- which for the first time required lobbyists to register their names, addresses, and clients on the Hill -- never worked effectively. The act was ostensibly poorly drafted, and the Supreme Court, in rulings in the 1950s and 1960s, increasingly narrowed its scope.

Congress debated the Lobbying Disclosure Act of 1995 for years before finally passing it. The instigators included a 1991 study by the GAO, now called the Government Accountability Office, showing that at least three-quarters of the estimated 13,500 lobbyists in Washington had failed to register. Even among those who had registered, the GAO found, 60 percent reported no financial activity.

Record-keeping problems have plagued the 1995 act from the start. Both the House clerk and the secretary of the Senate have repeatedly promised improvements but have yet to create an easily searchable, downloadable electronic database. Lobbyists' ranks have mushroomed to nearly 30,000 in recent years, and many still fail to consistently register and report their activities.

The big problem, say reform advocates and lobbyists alike, is the absence of any enforcement mechanism. "No single agency is vested with enforcement authority of the LDA," noted a 2005 report by the watchdog group Public Citizen. It added that neither the secretary of the Senate nor the House clerk "has a particular interest in ensuring that the filings are complete and accurate."

Even some lobbyists bemoan the inconsistent, outdated reporting systems and the lack of a clear enforcement body. In recent visits to Capitol Hill, said American League of Lobbyists President Paul Miller, he's been asking congressional aides one question about the proposed reforms: " 'If you're going to do this, how are you going to enforce these rules?' Nobody can answer that right now."

In theory at least, the House and Senate Ethics committees could sanction lawmakers for improper dealings with lobbyists. But both the House Standards of Official Conduct (Ethics) Committee and the Senate Ethics Committee have virtually stopped functioning in recent years.

The House Ethics panel showed some signs of life in 2004, when then-Chairman Joel Hefley, R-Colo., was in charge. That fall, the committee issued three admonishments to then-House Majority Leader Tom DeLay, R-Texas, including one that called his participation in a 2002 golf fundraiser attended by officials of Westar Energy "objectionable" because DeLay was sitting on a conference committee that was about to consider legislation important to the company.

But House Speaker Dennis Hastert, R-Ill., in a move that still angers reform activists, retaliated. In early 2005, Hastert removed Hefley and several other Republicans from the panel and installed Rep. Doc Hastings, R-Wash., as chairman. Hastings, who is more closely allied to GOP leaders than Hefley was, and ranking member Alan Mollohan, D-W.Va., proceeded to bicker over staffing and procedural matters, rendering the committee inoperative to this day.

For its part, the Senate Ethics Committee has made no move to investigate any of the various recent ethics controversies, including the Abramoff affair. Watchdog groups have called for both panels to scrutinize numerous lawmakers, both Democrats and Republicans, but to no avail.

House Minority Leader Nancy Pelosi, D-Calif., has assailed Hastert for failing to ensure an "active and functioning" Ethics panel. Even some House Republicans are concerned. The speaker "needs to send a signal that he wants the ethics process in the House, and the Ethics Committee, to work the way that it should," said Rep. Ray LaHood, R-Ill. "And I think members need to express that also."

Without enforcement, warned Common Cause's Pingree, the reforms being talked about so eagerly on the Hill could end up as so much window dressing. "If they just put [in place] another travel ban but don't look for a way to police who's traveling," Pingree said, "it won't do any good."

Common Cause has set out to rally support for its proposal to establish an independent ethics commission staffed by former federal judges who would review complaints and recommend action to the House and Senate Ethics panels.

The idea is not as far-fetched as it may appear. In 1995, a specially appointed Joint Committee on the Organization of Congress -- co-chaired by Rep. David Dreier, R-Calif., now the chairman of the House Rules Committee -- proposed allowing outsiders to participate in Ethics Committee investigations. The idea was to restore public confidence in the process. But the idea died, even as Republicans embraced other institutional reforms of the Newt Gingrich era.

Dramatic changes to the ethics process seem highly unlikely now. For one thing, reformers have yet to reach a consensus solution. Democracy 21's Wertheimer, for example, does not endorse the idea of an outside ethics panel. He argues instead for an office in Congress that would be "the equivalent of [the Justice Department's] Office of Public Integrity." The office would oversee lobbying and disclosure laws, provide guidance, and play a key role in investigations.

"Everyone knows that the FEC doesn't enforce the campaign finance laws, and the Congress doesn't enforce the lobbying laws or the congressional ethics rules," Wertheimer said. "And in that atmosphere, it's kind of a license for the people who want to cheat."

Another glaring hole in the discussion over lobbying reform is the role of nonprofit organizations.

Abramoff funneled money through a host of tax-exempt groups, including an Orthodox Jewish organization, a conservative think tank, and a front group known as the Capital Athletic Foundation.

The Justice Department, despite alleging tax evasion, has failed to penalize Abramoff for his use of the Capital Athletic Foundation, complained Rick Cohen, executive director of the National Committee for Responsive Philanthropy. Cohen's group has called on the Internal Revenue Service to investigate the athletic foundation's grant-making. The foundation "remains an icon of blatant philanthropic abuse that has escaped the IRS's attention or concern," Cohen said in a statement.

Nonprofit organizations, including foundations with close ties to members of Congress, are ripe territory for abuse, according to campaign finance experts. Nonprofits face virtually no reporting requirements, yet they have been cited in investigations involving DeLay, Abramoff, and many others, both Republicans and Democrats.

"We've got to start to examine the tax laws and disclosure requirements that protect the freedoms of nonprofits, but also make sure that there is some disclosure, somewhere, of where the money is coming from and what it's being used for," said Norman Ornstein of the American Enterprise Institute, who along with Thomas Mann of the Brookings Institution has helped members of Congress craft some of the reform proposals under consideration.

Recent lobbying reform proposals, however, make no mention of nonprofits. And some leading campaign finance groups, concerned about alienating their friends in the nonprofit sector, don't want to go there. Asked about nonprofits, Pingree cited the danger of "getting sidetracked" by a debate over controversial disclosure rules that could become "an excuse not to enact any reforms at all."

Reform plans have also largely ignored the role of campaign finance contributions in lobbyist-lawmaker relationships. Lobbyists routinely act as treasurers for lawmakers' campaign committees and leadership PACs, and they host political fundraisers as a matter of course. Some on Capitol Hill are exploring ways to curb such activity. But lobbyists barred from doling out meals, gifts, sports tickets, and trips may simply find new ways, in their dual role as fundraisers, to curry favor with members.

House Republicans have signaled that they do plan to take aim at the tax-exempt political organizations known as "527" groups, which largely favor Democrats. During the 2004 presidential campaign, such groups accepted millions in unregulated money from such controversial benefactors as George Soros.

"As we look at the issue of transparency and disclosure, it's obvious that we need to deal with the issue of so-called 527s," Dreier recently told reporters. "We are seeing millions and millions of dollars being expended surreptitiously to impact congressional elections. And I think, in the name of transparency and disclosure, it's important for us to [address] that."

Ironically, though, the GOP focus on 527s could trip up the whole reform effort. Following the 2004 election, the FEC's attempts to rein in such groups floundered, as did House and Senate efforts to pass 527 legislation. In the House, the only bill that gained momentum actually did nothing to rein in outside groups; instead, it rolled back soft-money restrictions on the political parties.

Everybody's a Reformer

Congressional Republicans now find themselves the unlikely champions of reform. Last year, GOP leaders did everything they could to squelch campaign finance and ethics changes. They beat back efforts to pass 527 reform, presidential public financing changes, and legislation to replace the FEC. Republicans dismissed ethics proposals as irrelevant to voters, while DeLay, after his September indictment, boasted that he'd be back as majority leader in no time.

For their part, many Democrats weren't all that eager to rein in their 527 allies, either. Sure, Democrats began blasting the GOP's "culture of corruption" following DeLay's indictment. But early this year, even as Abramoff's January 3 guilty plea generated headlines, Senate Democrats huddled with GOP leaders to install three controversial commissioners at the FEC. Reformers protested that the recess appointees were inexperienced party allies who would further weaken the agency.

Then, integrity fever hit Capitol Hill – literally overnight. Following Abramoff's plea, lobbying

reform became the must-pass legislation of 2006. Before you could say "travel ban," DeLay had relinquished his claim on the majority leader's post, and the candidates jockeying to succeed him sought to wrap themselves in the mantle of reform. Soon after, Hastert persuaded Rep. Bob Ney, R-Ohio, a key target of the Abramoff investigation, to temporarily step aside as chairman of the House Administration Committee, which has jurisdiction over lobbying.

DeLay remains embroiled in a Texas lawsuit alleging that he laundered unregulated money through one of his leadership PACs. It's only one of several investigations involving top GOP leaders, including a probe into possible insider trading by Senate Majority Leader Bill Frist, R-Tenn., that have prompted Republicans to suddenly make ethics changes a priority.

Now members of both parties are falling all over themselves to embrace reform proposals. Some Congress-watchers have a hard time buying it. The risk, some warn, is that Congress will usher through some fine-sounding reforms that don't get at the root of the problem, and then quickly move on.

"I fear that this will be dealt with in the same, nondeliberative process that most legislation is dealt with these days in the House, and in the Congress," said Mann, a veteran of the congressional reform wars. "It's clearly an effort to move very quickly, and to limit the political damage from the Abramoff affair."

Some observers, on the other hand, see the potential for big changes in lobbying and ethics

rules, particularly if the Abramoff scandal reaches further into Congress. "When you start to get into the relationships between lobbyists and lawmakers, everything's going to be on the table," Ornstein said.

Wertheimer agreed. "We're in a very unusual situation right now," he said. "This is one of those rare moments. We've got bidding wars going on between the two parties."

Indeed, lawmakers from both sides of the fence are rushing to cast themselves as the true champions of virtue, honesty, and ethics in government. This contest broke out in earnest last week, when House Democrats and Republicans held back-to-back press conferences to trot out dueling reform packages.

"The Republican Party has been, and continues to be, the party of reform," Dreier told reporters on January 17. With Hastert at his side, he outlined several tough-sounding reforms, including a ban on all privately funded travel in the House. Hastert has put Dreier in charge of bringing a package of reforms to the floor by early March.

The next day, January 18, Pelosi charged at a Democratic press conference at the Library of Congress that the House Republican leadership was proposing a "vague and insufficient set of so-called reforms."

In a carefully orchestrated event with Reid and dozens of other Democrats, amid a backdrop of banners proclaiming "Honest Leadership, Open Government," Pelosi pledged to ban all gifts and travel from lobbyists, to "kill the K Street Project," and to clean up government contracts, among other changes. "These are tough standards," Pelosi declared. "But for us, they are just the beginning. We are prepared to do even more."

Leading the GOP effort along with Dreier is Sen. Rick Santorum, R-Pa. Although Santorum, as a House member, played a role in the GOP reforms of the 1990s, his leadership in the K Street Project makes him a controversial choice. Both Dreier and Santorum are consulting closely with Sen. John McCain, R-Ariz., who introduced lobbying reform legislation in December. McCain's bill, which concentrates largely on improving disclosure rules, is similar to companion legislation introduced in the House by Rep. Christopher Shays, R-Conn.

Dreier is aggressively seeking input from Democrats, including several who introduced lobbying reform bills last year. On their side of the aisle, Sen. Russell Feingold, D-Wis., and Reps. Martin Meehan, D-Mass., and David Obey, D-Wis., are taking lead roles on reform.

Nowhere is the craze for reform more evident right now than in the House GOP leadership races, in which many of the top contenders are talking up their plans for lobbying and ethics changes, notwithstanding some of their own strong ties to K Street.

Rep. Todd Tiahrt, R-Kan., who is vying for the majority whip post, voiced some of the frustrations brewing among House conservatives. "Reform is a big part of what we're about as Republicans, whether it's reform of the lobbying community or the federal government itself," Tiahrt said in an interview. He added that Republicans "are not getting our message out," and cited the need to move "in a different direction."

Indeed, the leadership races signal that for many House Republicans lobbying abuses are far from their only problem. The bloated budget deficit, pork-barrel spending, and bills that have grown -- not shrunk -- the size of government have convinced the GOP's fiscally conservative wing that the party has lost its way.

Moreover, House GOP leaders' procedural shenanigans -- 6-inch-thick bills unveiled at the last moment, floor votes held open for three hours in the dead of night -- have left even some Republicans angry. Procedural changes to restore "regular order" in Congress may gain momentum as reform bills evolve. Already, some are targeting congressional earmarks -- which allow lawmakers to set aside money for pet projects for their home states, or for favored industries or lobbyists -- for change.

"What's at stake here is how the House is being run, the institution's capacity to do business in a transparent and credible way," said Rep. David Price, D-N.C., who introduced a package of institutional reforms last year with three other House Democrats. "And that's a bipartisan concern."

Not all Democrats are quite so eager to work with Republicans, though. Some appear more interested in bashing the GOP's "culture of corruption" than in doing the hard work of enacting legislation. This could prove a risky strategy: Recent polls show that voters regard both parties as equally corrupt, though Democrats may enjoy slightly less taint. And Democrats have been implicated in recent ethics scandals, too, as Republicans frequently like to point out.

Still, in the battle of one-upmanship on reform, Democrats may have the edge. As the party in power, Republicans are more likely to be held responsible. And looming over the reform debate are the 2006 midterm elections. "I told my leadership that I'm going with whatever package is stronger," Shays said in an interview. "And if the Democrats have the stronger package, I'm voting with them."

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