ETHICS REFORM

HEARING

BEFORE THE

COMMITTEE ON RULES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

H. RES. 168

TO IMPLEMENT THE RECOMMENDATIONS OF THE BIPARTISAN HOUSE ETHICS REFORM TASK FORCE

SEPTEMBER 17, 1997

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H.RES.168, TO IMPLEMENT THE RECOMMENDATIONS OF THE BIPARTISAN HOUSE ETHICS REFORM TASK FORCE

Wednesday, September 17, 1997

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RULES,
Washington, D.C.

The committee met, pursuant to call, at 2:50 p.m. in Room H-313, The Capitol, Hon. Gerald B.H. Solomon [chairman of the committee] presiding.

Present: Representatives Solomon, Dreier, Linder, Pryce, Diaz-Balart, McInnis, Hastings, Myrick, Moakley, Frost, Hall and Slaughter.

The CHAIRMAN. The committee will come to order.

The measure before the Rules Committee today is House Resolution 168, which implements the recommendations of the bipartisan House Ethics Reform Task Force.

I want to begin this hearing by commending the two cochairmen of this bipartisan task force, the Chairman of the Appropriations Committee, Mr. Livingston, and Mr. Cardin.

The gentleman from Louisiana and the gentleman from Maryland have put in long hours negotiating every word and every phrase in the resolution before the Rules Committee today, and I mean every word and every phrase. We are grateful to them for their work.

The Ethics Reform Task Force was bipartisan, consisting of six Republicans and six Democrats. Those of us who served on the task force, including four members of the Rules Committee, can attest that all of the task force members put in long hours of hearings and markup sessions over a period of months, certainly Mr. Moakley, the Ranking Member of the Rules Committee, and Mr. Frost. Incidentally, Mr. Goss, was called back to Florida because of a serious illness in his family, and unfortunately can't be here with us today and that is too bad, because he put in such a lot of work, both on the ethics committee with you, Ben, and on the task force itself.

Having said that, the House established this task force back in February of this year in order to recommend reforms in the House standards process. There are many of us who feel that the existing process did not function well in the last Congress, and needs improvement, particularly in trying to remove the politics from the ethics committee. It is a very, very serious matter.

At the same time this task force was established, the House also approved a moratorium on the filing of new ethics complaints, which, as a result of a number of extensions remained in effect until September 10th, 1997. As I understand it, the two cochairmen may have a bipartisan manager's amendment to make it clear that any complaints that are filed after September 10, but before the adoption of this resolution, will be considered under the new procedures in this resolution.

As we begin this hearing, there are a couple points that should be made about the functions of the Committee on Standards of Official Conduct. First, the committee is not a court of law. Members of Congress, like any other citizens, are already answerable in the courts for any violations of law, particularly since a law that we passed back in the beginning of 1995, which brings Members of Congress, and all of this Congress, under all of the laws that the rest of the American citizens have to live under. The Committee on Standards of Official Conduct, the ethics committee, as it is better known, is a peer review mechanism.

The United States Constitution, in Article 1, provides that each House may punish its Members for disorderly behavior, and with the concurrence of two-thirds they may even expel a Member, which they have done on other occasions.

I would like to emphasize that the Constitution says that each House may punish its Members; it does not say that some outside group will punish Members.

It should also be noted the House of Representatives' Code of Official Conduct sets a higher standard than just conforming to the laws. For example, under the Code of Conduct, a Member, officer, or employee of the House of Representatives, shall conduct himself or herself at all times in a manner which shall reflect creditably on this House of Representatives that we are all so privileged to serve in. The Committee on Standards of Official Conduct is the mechanism by which Members should hold themselves to that higher standard. We should set the example, I think, for the rest of society.

The resolution which is before the Rules Committee today is a somewhat controversial matter. Members have different opinions and they hold those opinions very strongly. We need to remember to respect those opinions of other Members, even as we disagree. Sometimes that is hard to do when you are very opinionated, and I guess I am one of those Members.

Now, if my colleague on the Minority side has an opening statement, I would be pleased to recognize him, after which we will certainly go to the testimony of these very, very distinguished Members of this House of Representatives. Mr. Moakley.

Mr. MOAKLEY. Thank you very much, Mr. Chairman.

Mr. Chairman, I am very glad this committee is finally considering the hard work of the bipartisan ethics task force, and I very much hope that I won't be disappointed in the outcome.

As you all know, 9 months ago, Mr. Chairman, you, Mr. Frost, Mr. Goss and I, along with eight other people, began work on the ethics task force. We had at least 36 meetings, and every single one of us negotiated on very important issues, because all of us, Democrats and Republicans alike, thought our work was going to

amount to something. In fact, nearly every Member of the House thought our work was going to become something.

The Democratic leadership agreed to nine separate ethics moratoriums and, thanks to the moratoriums, we have had 9 months during which no ethics complaints have been filed. It wasn't for nothing.

The task force came up with some very good suggestions on how to improve our ethics process. These suggestions were approved by 11 of the 12 members of the task force, and while the task force was meeting, we agreed, in no uncertain terms, that no amendments would be offered to the package, unless they were agreed to by the cochairs, Congressman Livingston and Congressman Cardin, who both did outstanding work. I hope my Republican colleagues will stick to that agreement.

Because my Republican colleagues decided to use their muscle to make partisan changes to the House ethics process, it will be the first time in history, Mr. Chairman, the first time in the history of this House that recommendations of a bipartisan ethics task force would have been undermined by partisan Members. If you turn this into a partisan issue, how can any Member, Democrat or Republican, ever have faith in the ethics committee?

For my part, I sincerely hope my colleagues stand by our agreement. Democrats have dealt in good faith throughout this entire process, now Republicans must do the same.

So I prevail on you, my friend, Chairman Solomon and Mr. Goss and all of us, to honor the work of the task force on which you served. If these recommendations don't have the support of the House, then so be it. But at least allow it to be considered for an up or down vote. So I urge my colleagues to protect this package from the vagaries of the House floor, unless both Mr. Cardin and Mr. Livingston agree to those changes.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Mr. Moakley, you are my friend and you always will be, but I just have to take exception to some of your statement, particularly in the last part, the ″vagaries of the House.″ Now I don't understand that, but I do know that there are 435 Members of the Congress, I respect all of them, even though we vehemently disagree with some of them from time to time.

You mentioned ″use their muscle″ for partisan amendments. Let me just assure you that since I made the announcement on the floor almost a week ago, that Members would be invited to offer amendments to this package, because they are equally representative, from the 435 districts in this country, representing approximately 600,000 people each, that they are entitled to be heard. We received 10 amendments that are before us, 5 of them are bipartisan, and 5 of them are partisan, meaning they do not have an opposite party cosponsor. There were about 15 other amendments that were sent to us without names, some have arrived anonymously and others were dropped off, but they were just suggestions to us. I did not even bother to print those that were dropped off anonymously.

Mr. MOAKLEY. I commend you for that, Mr. Chairman.

The CHAIRMAN. We have the other amendments that do have a sponsor listed on the sheets before you, and after we receive the

testimony from these two distinguished Members, we can debate the issues. But I will say this, I will exercise the prerogative of the Chair and guarantee that there will be no partisan amendments allowed on the floor on this issue. There could be three or four, including a bipartisan amendment by the cochairs of the committee, that I believe should be allowed. Let the House work its will, but only on those that are truly of a bipartisan nature.

Now having said that, let me again express my gratitude to both Members, to Bob Livingston and Ben Cardin, you are both highly respected Members, that is why you were chosen to head this very, very important task force to try to bring some semblance of comity to the House and have ethics we can all be proud of.

Having said that, let me now recognize Bob Livingston. Mr. Livingston, you have the floor, sir.

STATEMENT OF THE HON. BOB LIVINGSTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. LIVINGSTON. Thank you very much, Mr. Chairman, and I am delighted to appear before you with my cochair, Ben Cardin, who has worked tirelessly with me, and all of the members of the task force, to try to restore some integrity and some credibility to the rules by which Members are judged under the standards of official conduct.

I want to pay a special tribute, not only to Mr. Cardin, but to you, sir, Mr. Chairman, for your service on the Task Force, for that of Mr. Moakley, and as well, Bill Thomas, Porter Goss, Mike Castle, Jim Hanson, Lou Stokes, Martin Frost, Nancy Pelosi, and Howard Berman. Each of them in their respected capacities as members of the task force were tireless, were dedicated, were conscientious, were honest and decent about trying to bring about a package which removes the ethics process, the determination of whether people may or may not have violated the standards set by the House of Representatives for its Members for ethical conduct, so that what may have happened in the last Congress, and before, when the process may have gotten bogged down into politics, will never happen again.

Now obviously that is a tall order, Mr. Chairman. Witness after witness came before us and said that you can have the very best rules that God could design. In fact, you could have the ten commandments themselves and if you had an individual or individuals on the Committee on the Standards of Official Conduct who wanted to misuse those rules to his own purposes or to his political purposes, for the benefit of himself or his party, those rules would do no good, that they could not serve well, and that you might as well not have any rules at all.

Now that being said, I think we have done a pretty good job. I think we have got a superb package, which I recommend to you in its totality. All of the members pitched in from early February of this year, through June. We hashed out every word, paragraph, dot and jot in the bill, and then again went back and did it in the report.

We closed the bill to amendment by a vote of 12 to nothing, and the report, by formal or informal vote, was adopted by a vote of 11 to 1. I think that was significant in and of itself.

We then took our final package, with Minority views, printed them up, made them available to all of the membership of the House of Representatives, over a period of this last 3 months, if Members chose to, they could have paid attention, they could have delved into this process, into as great a degree as they wanted to, to come up with amendments which may or may not be considered by this subcommittee. But as you pointed out, we have encouraged Members, if they intended to amend them, that they do so in a bipartisan fashion, and I think that is significant because this was a bipartisan package. In fact, the ethics process which began roughly after the years of Watergate has evolved only as Mr. Moakley has pointed out, in a bipartisan fashion.

Generally speaking, neither party has come to the floor and offered up its own amendments or its own proposals for the disposition of the rules of the House. So I, as one of the cochairs, with Mr. Cardin, have believed it was important we come up with a strongly bipartisan package initially, but I do not believe that we were vested with the wisdom of the ages that were so perfect that other Members couldn't offer up suggestions if they did so to change our proposals in a bipartisan fashion.

And so I have no significant objection to your allowing amendments, if you accept them from Members of both parties, together, or jointly, so long as I—so long as what they offered does not disrupt the overall fabric or tenor or content of the package that we have evolved and contributed so vitally to.

What we have come up with is a package which provides nonpartisan operations of the Standards Committee; it enhances the confidentiality of the Standards Committee's activities; it improves the system for filing information, which is offered as a complaint; it more efficiently administers the standards of the committee; it provides greater due process for Members, officers, and employees of the House of Representatives; it provides greater involvement by Members in the process; it provides faster resolution of matters before the Standards Committee; it gives greater latitude to the Chairman and Ranking Member to rid themselves of inconsequential or frivolous matters; in fact, gives the power to the committee itself to deal with frivolous complaints; and I think presents an overall package of significant peer review.

Doctors who are professionals are in charge of policing their own within the medical community. Likewise, lawyers police their own within the legal community, and university professors do as well. Well, I think it is very appropriate for Members of Congress to do it as well.

There were suggestions by very well-intentioned, well-meaning Members of Congress that we go outside to other persons, other very highly qualified citizens of this country, to entrust the fate of Members to their hands to determine whether or not they had violated the rules of conduct, and I think by a overwhelming majority of the task force votes that thought, that concept, was not approved and was rejected.

We believe that in the citation that you provided in your very eloquent opening statement, under the Constitution, that we are the arbiters of our own conduct, and that we should judge our peers and we should not be relieved of that responsibility, nor should we

do so in partisan manner or should we, in any way, inject politics into the process.

The fact that in the opinion of many of us, politics was delved in in this process in the past, has unfortunately done much to poison the well of feeling of Members of confidence in the rules. It is our hope that this process, this work product, will restore that confidence, that we, as a body of 435 Members in the House, and additional delegates, will understand that the administration of the rules of conduct in this House will not be maintained or undertaken in a partisan fashion, and that all fairness, all due process, will be accorded to the Members, but that meaningful and significant violations of the rules of conduct will be dealt with and developed—dealt with fairly and justly and severely if necessary.

The CHAIRMAN. Chairman Livingston, thank you very, very much, and, again, I commend you for all of your work on this issue.

The CHAIRMAN. Mr. Cardin, you have the floor, sir.

STATEMENT OF THE HON. BENJAMIN L. CARDIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. CARDIN. Thank you, Mr. Chairman.

I first want to thank you, Mr. Chairman, Mr. Moakley, Mr. Frost, and Mr. Goss for your service on this joint committee. I think the members of the Rules Committee should appreciate the leadership that was shown by the four members of the Rules Committee on our task force. They provided a great deal of insight about the history of the ethics process and the work of this committee, and I really want to first thank you for your dedication to this institution and the valuable contributions that each of you have made. One does not get many fringe benefits for serving on the ethics committee or the ethics task force.

Mr. DREIER. Or on Rules Committee.

Mr. CARDIN. Or on Rules Committee.

The one fringe benefit I gained was to get to know Bob Livingston and see him dedicate his leadership to this institution. I must tell you, he conducted himself at all times with the best interest of this institution at heart, including on some very difficult days, and we have worked in a bipartisan manner, and for that I am grateful.

The Republicans are in the majority in Congress, Bob Livingston conducted the work of our task force in a truly bipartisan manner, and I am deeply appreciative of that. He listened to everyone, and I think as a result of his leadership we have a product that I hope will be approved by the full House.

Bob has touched on some of the provisions. Let me just cover them quickly, because I think it is important that we do not miss this opportunity to improve the ethics process.

The package before you will make the process less partisan by providing for professional nonpartisan staff to be appointed by the ethics committee, by allowing the ranking member as well as the chairman to have access to establishing the agenda of the ethics committee.

It promotes confidentiality within the committee and its work, something that I know every Member of Congress is concerned

about. It makes it clear that all investigative meetings of the ethics committee will be closed and provides for confidentiality oaths for members who serve on the ethics committee. In order to protect a Member's confidentiality, it allows the ethics committee to directly refer, to Federal agencies, matters without having to first take such matters to the House floor if there is an extraordinary vote within the committee.

It improves the system on the filing of complaints. We have abolished or recommend the abolition of the three-member refusal, and it is substituted with the process that we think makes much more sense, direct following by people who are nonmembers of Congress, but they must have personal knowledge in order to file such a complaint.

We provide for a more efficient administration of the committee itself. The initial fact finding would be done by the chairman and ranking member, preserving the bifurcated process of the ethics committee. Subpoenas and expansions of scope of authority of an investigation would be handled within the subcommittee, again, protecting the bifurcation of the ethics process and allowing investigations to be handled more efficiently.

Due process for the Member is protected at every point by giving the Member notice of a statement of alleged violations that is going to be voted on by the committee, as well as expanding the notice that Members receives at every aspect of an ethics investigation.

There is greater involvement of the Members of Congress in the ethics process. We establish for the first time a pool of 20 additional Members who can assist the ethics committee in investigation, getting more Members involved in the ethics process.

We limit to four years the service on ethics committee and provide for rotation of its members, again, in order to involve more people in understanding how the ethics process itself works.

We provide for more timely resolutions of matters that are before the committee. The chairman and ranking member have 14 days to determine on an initial complaint that is filed whether or not such a complaint meets the standards for what is a complaint. The chairman or ranking member have certain authority to manage the case load of the committee and to recommend disposition on matters that can be handled very quickly. There are time limits on when matters must be referred into fact finding so that a matter can't just sit with the Chairman and ranking Member in definitely.

These are all positive changes in the ethics process. Now how are we going to get this done? We need a vote on the floor of the House to approve this ethics package, and I would urge this committee to bring this recommendation out with a closed rule. Every Member of this House has already had an opportunity to submit his or her recommendations to our task force. Many took advantage of that. Many of those recommendations are included in the product that is before us. So the Members of the House have already had an opportunity to present their recommendations to the bipartisan task force.

I am deeply concerned that when you start to allow one amendment to be considered on a matter that has been compromised by the task force in order for it to have bipartisan support, you can lose that bipartisan nature of this recommendation.

I have spoken to many, many, Democrats and Republicans, and they all agree. However, speaking on behalf of the Democrats, we are confident that this package can go as is and there is no need for any amendments to be made in order.

Lastly, let me point out, I have looked over the amendments that have been suggested, Mr. Chairman. In just about every case, you will recall that these matters were before our task force. We debated them, we went through them, and we came to a conclusion that these changes should not be in the package that we submit.

For example, we reviewed the possibility of imposing deadlines that would require dismissal. However, we concluded that that would just encourage partisan activity in the committee and would lead to delay rather than more efficient operation of the committee. We also reviewed whether or not we should restrict the way complaints can be filed. We concluded that if our current proposal is not updated, we would need to go back to the current rules to at least provide nonmembers some opportunity such as that which exists under the current practice. So these matters have already been reviewed.

I talked about the scope of an investigation or subpoena power. It is important for a subcommittee to have those particular rights, so that we don't compromise the bifurcation of the process. I am afraid that with such short debate on the House floor, it is going to be virtually impossible for us to go through how an amendment, as well intended as it may be, received the type of debate in our task force that it did. As you know, we spent days debating each of these subjects, went through all the ramifications. It is not going to be possible for us to do that on the floor of the House. That is why the joint leadership constituted a bipartisan task force in order to bring out the recommendations.

So I would urge the committee, in its wisdom, to let the recommendations come forward to the full House and to give us a closed rule.

I have looked over all the amendments. None of the amendments that are offered can truly be called bipartisan. We have already debated them within the taks force and we have already taken action on them.

Lastly, let me say, Mr. Chairman, although I do hope you bring out this matter as a closed rule with just the manager's amendment being in order, if other amendments are made in order, then I do hope that you will preserve the Minority's right for a motion to recommit, with or without instructions.

Thank you.

The CHAIRMAN. Thank you.

Thank you again, and let me just say to your last statement, under the rules of the House, this is a simple House resolution which does not require the right of Minority to have a motion to recommit.

However, it would be the intention, I am sure, of the committee, if amendments are made in order, we extend that to this simple House resolution as well. Again, I don't want to belabor the amendments that have been offered. There are a number of them.

There were three areas that really concerned, I think, Members of both sides of the aisle that I personally heard from, others, and

you, that were, as you stated correctly, debated in our task force, and one is the ability of outside organizations to file complaints; another is the question of dismissal, so that complaints don't lie in limbo for just an indefinite period of time; and the question of a subcommittee, once it had been given jurisdiction, within a particular scope, that it not be allowed to go beyond that scope without having to go back to the full committee. And certainly you, who served on the ethics committee so admirably all those years, you understand that.

We had those concerns that were stated by former members of the ethics committee, worried that subcommittees might go beyond the scope that they were originally given jurisdiction for.

So these are areas that I personally was concerned about, as you recall, after hearing our debates. We can debate that here, and we can state an honest opinion of where we stand.

Now having said that, I am going to apologize for having to leave the floor here just for a moment. I had previously scheduled a meeting with two very distinguished noted people from the private sector, and I am going to go off to the floor here just for a few minutes to chat with them. I will be right back. I hope you understand. One is a noted actor, somewhat renowned. His name is John Travolta, and he is sitting in the back, back here. And another, if you like jazz music, which I do, is Chick Corea, who is a famous jazz musician.

Mr. Dreier, if you would like to take over for a moment.

Mr. MOAKLEY. Mr. Chairman, I hope this is a screen test you are going to have.

The CHAIRMAN. Just because you look like the man who came to dinner.

Mr. DREIER. We prefer it to be a screen test, rather than having you start to play the piano in the next room.

Let me extend my appreciation to both of you for your very hard work. Since we are introducing people in the room, I should note the fact that Lee Hamilton is sitting in the front row, and the last time we had a project such as the one your task force undertook was four years ago. In 1993, in the wake of a wide range of scandals, we established what was known as the Joint Committee on the Organization of Congress.

During that period of time—I heard Joe Moakley mention a number of hearings and the meetings you all had—we spent a great deal of time in a bipartisan way working with both the House and the Senate on the issue of ethics reform. Unfortunately—and I would argue it is the fact we weren't in majority; I think most Democrats will even admit that—the package we came out with didn't move to the floor, and I don't think we got as far as the Rules Committee on it; Lee, back then, we weren't able to move ahead with it.

But we did have a specific recommendation as it related to the ethics issue, and Lee and I testified before the task force on it, and we are sorry you weren't able to incorporate that in your proposal. I know there are a number of Members who opposed it, but I am going to be speaking with Mr. Hamilton in support of the effort to do some things that I think you all have touched on, and I think if we had our proposal, we would not only not undermine the integ-

rity, but in fact would really enhance the integrity of the work product that you have. And that is not to, in any way, cede our constitutional responsibility for policing the actions of our colleagues, but simply to have some outsiders—in fact, a pool from which the committee would draw—appointed jointly by the Speaker of the House and the Minority Leader to make a determination; people who would simply do the fact-finding. And we, in a very, very bipartisan way supported that.

We had a number of very distinguished Democrats and Republicans who served on the Joint Committee on the Organization of Congress. When we knew of the work you all were proceeding with, Lee and I came to testify, as I said. And I think that if we are going to be making amendments in order, it is a bipartisan amendment, I would hope very much that we could make ours in order.

I am going to take a few minutes to explain the package with Lee before the committee, but you all are familiar with it, and maybe you would like to comment on it now, and I would certainly welcome that.

Mr. CARDIN. Well, first, Mr. Dreier, I want to thank you, and Mr. Hamilton, for the work you have done. I think it is a good proposal which looks at a different way to handle ethics issues in the Congress. But you can't avoid the constitutional responsibility. It is up to the Members of the House to judge their own, it is required in the Constitution, and how we do that is how we will be judged.

I am concerned that your proposal compromises the Constitution's responsibility. We did consider it. We rejected the proposal. It is truly a bipartisan effort; I would acknowledge that there is interest on both sides of the aisle, Democrats and Republicans, who believe we should use outsiders at least in the initial stages of investigation. And there are also some credible outside groups that have also made that recommendation, so I think it is a very credible proposal.

I would hope, though, that the House will give our process a chance to work. And when you take a look at the many cases and matters that have been handled over time by the ethics committee, you can see that the committee has done a pretty good job.

We talk about having deadlocks within the committee. In fact, there hasn't been a single case that has not been able to be handled within the ethics process. Some cases may have taken a while, but the ethics committee was able to resolve them and, I think, satisfactorily.

So I hope we can reform the process for internal review. Although our recommendation defers from your type of recommendation, let us see whether the new procedures won't satisfy many of the concerns that have been raised.

Mr. DREIER. Before Mr. Livingston says anything, I should open by congratulating you by saying we are now voting on final passage on the Treasury-Postal appropriations bill on the House floor, so congratulations, Mr. Chairman.

Now you can malign my amendment, if you would like.

Mr. LIVINGSTON. I would never malign your amendment, and I thank you for the opportunity to reply.

Actually, my response is very brief. I agree with Mr. Cardin. We did consider your proposal in depth, but unfortunately, I think you

are premature. Among the members that were on this task force, there was not a lot of support. That is not to say that at some future date your amendment may not ultimately become the rule of the day.

Mr. DREIER. There is a serious problem with that, though. Lee Hamilton is retiring at the end of this Congress, and we want to get this through before Lee retires.

Mr. LIVINGSTON. You will forgive us if we don't leap on it immediately today, but in the name of Mr. Hamilton, I know other members will gleefully join with you in future years to offer it, and future task forces will have the opportunity to consider it, and I am pleased to say that I won't be on one of those task forces.

I would only add, Mr. Chairman, in addition, that I neglected something, and it is very important. Each of us, as members of the task force, were represented by personal staff, and the staff was headed up by Richard J. Leon, Special Counsel; and David H. Laufman, Assistant to the Special Counsel, who also serves as counsel on the Standards of Official Conduct Committee.

My own staff, Stan Skocki; and Mr. Cardin's staffperson, Michelle Ash, worked with the staff representatives of the other members and were of invaluable service. We put countless hours in on this work product and despite the fact we left out your very worthwhile proposal, Mr. Chairman, I think we did come up with a very good product, and we couldn't have done it without good staff.

Mr. DREIER. Congratulations. Mr. Cardin.

Mr. CARDIN. I am glad Mr. Livingston mentioned the staff because they did a tremendous job, and we appreciate it.

Mr. DREIER. Mr. Moakley.

Mr. MOAKLEY. I really want to commend you, both gentlemen. I had the good fortune to be appointed to the task force against my will. I had the opportunity to see how both you gentlemen worked and, believe me, it was as fair a process as I have seen during my entire term in the Congress, and I think you came out with a great package.

It is not perfect, but nothing is. And I think we should allow for our membership to vote the entire package up and down.

I agree with Mr. Cardin. I think the amendments that were proposed, amendments that we went through word by word, sentence by sentence, and found them lacking; and I just think that your product should be given to the House for their ability to vote up and down.

Mr. LIVINGSTON. Mr. Moakley, if I may reply, I would only reinforce your statement, not to the exclusion of any well-meaning, well-intentioned bipartisan amendment. But the fact is, our work product has been reviewed by numerous groups.

I might say that Mr. Gary Ruskin of the group that is affiliated with Ralph Nader doesn't like our package. Common Cause, represented by Ms. Ann McBride doesn't like our package. But on the other hand, David Mason of the Heritage Foundation, Thomas Mann of The Brookings Foundation, and the American Enterprise Institute represented by Norman Ornstein are all in favor of it and have testified for it and have written in favor of it; they think it is a good package as well.

Mr. MOAKLEY. That is like getting a thumbs-up from Siskel and Ebert.

Mr. CARDIN. We should point out that those groups that are not happy with the package would like to have seen us go further than we did. True there are some parts of the package which are controversial with some of the outside groups. However, by and large, there is praise for many sections of the package by all parties that have been through the process.

Mr. MOAKLEY. As I say, I am very happy to be even a small part of this. I was very fortunate to be able to be in the room and watch the two gentleman opposing areas and come right down the middle and work it out, and it wasn't political, and I commend you for it and I am willing to vote up or down right now on this package.

Mr. DREIER. Mr. Linder.

Mr. LINDER. No questions.

Mr. DREIER. Mr. Frost.

Mr. FROST. I just have a question or two for Mr. Livingston, particularly about the Murtha-Tauzin amendment, No. 4. We debated this at great length in the committee on the task force. This amendment, if it were adopted by the House, would totally remove the ability of any private citizen to file a complaint before the ethics committee if that private citizen could not convince a Member of Congress to attach his or her name to that complaint. What is your position on that?

Mr. LIVINGSTON. Mr. Frost, of all of the amendments, I think this is the one that is probably felt more deeply by more members than any of the others. This one does in fact revert to the Rules of the House prior to 1989, and the revision of those rules, which you and I participated in.

As you recall, there was great pressure to open the rules, back in 1989, to outside persons to file against Members of the House, and we adopted what I call the ″Three Blind Mice Rule.″ The rule says, you can't come in directly, but if you get a member to sponsor your filing or if in fact you get three people who say they will not sponsor your filing in writing, you can file whatever you want.

Our proposal felt that that was disingenuous and had been poorly used, so we abandoned that in this task force program and what we proposed was to elevate the standard to require personal knowledge of the person filing, to constitute their review of personal or records kept in the ordinary course of business or personal affairs in Federal-State agencies, or that they had to either have seen the event, of which they complained, or been told by the person who saw the event, thereby being one step removed from hearsay.

I think that is a pretty good package. However, there are those members on both sides of the aisle who feel very strongly that by going that far and opening the complaint process to any person in the whole world puts some members under political pressure for their political views on specific issues, which might engender some manufactured complaint against them simply because some other person or group might disagree with their political views.

I cannot deny that that is a very strongly felt emotion, and for that reason, I am not opposed to this committee making the amendment in order. I do believe our package is solid and sound;

however, I can understand the feelings of those who favor that amendment.

Mr. FROST. If I understand the procedures in the United States Senate, the Senate permits third-party groups to file complaints, individuals in third-party groups, without being sponsored by a Member of the Senate.

Mr. LIVINGSTON. Mr. Frost, they do, but it is my experience that they exercise their judgment in selecting those complaints which might be entertained as complaints before the committee, very judiciously, very strictly. In other words, they really don't recognize very many of those complaints.

Mr. FROST. That, of course, is a separate issue in terms of how the committee itself functions. This amendment would be seen as closing down the process, and making it more difficult for private citizens to raise matters before the ethics committee; and quite frankly, though, I wasn't 100 percent in agreement with a provision that we ultimately came up with in the committee. I think that provision is far superior to this provision, and I think it would be a mistake for us to make this amendment in order or for the House to adopt this amendment.

Mr. LIVINGSTON. That is a valid argument, Mr. Frost, but I would say, as you know, we banned outside people from using press clippings as the underpinning for private complaints.

Mr. FROST. As we should have.

Mr. LIVINGSTON. And there is nothing to stop, however, the committee taking press clippings of its own volition and under its scrutiny and initiating its own complaint, nor is there any prohibition against individual members bringing those clippings to the attention of members and thereby encouraging a complaint.

The CHAIRMAN. [Presiding.] If I might, we only have about a minute left on this vote. This is the last vote of the day. It is final passage on a bill, so I would suggest we recess for 7 minutes, go down and vote, and come right back. I think there are people who have other questions of you.

The committee stands in recess for 7 minutes.

The CHAIRMAN. The committee will come back to order. We are in the process of recognizing Members for the purposes of making statements or asking questions. Ms. Slaughter, you are recognized. You may proceed.

Ms. SLAUGHTER. First, I want to compliment you for this, Mr. Chairman. It is bipartisan and the extraordinary way you put this together is something we are all proud of. This 20-person pool of Members that is going to be chosen at the beginning of a term and called on when necessary, what would trigger that?

Mr. CARDIN. The Majority and Minority Leader would appoint the pool at the beginning of the term of Congress. It would be an equal number of Democrats and Republicans. The Chairman and Ranking Member of the committee would call upon this pool when they believed it was necessary for pool members to supplement committee. They would need to choose an equal number of non-committee members to work with permanent members of the committee so that there will always be an equal number of Republicans and Demorcrats. There is no standard other than the workload of the committee justifying—

Ms. SLAUGHTER. Would you choose directly off the list top to bottom or would you pick certain Members for various expertise?

Mr. CARDIN. That is not really clear. I think the Chairman and Ranking Member would probably work with the presiding officer and the Minority Leader to figure out what system to use. One of the problems is that, in some cases, you may not want to use a Member from a particular State because the person being reviewed by the ethics committee is from that State. Therefore, there may be a need for flexibility in order to make sure that there are Members who can sit objectively in evaluation of a Member.

Mr. LIVINGSTON. If I may, the reason for the jury pool was because that we found in testimony of witnesses and in the experiences of counsel and previous Members that the workload of prior Standards of Official Conduct Committee members was intense, that all of the workload was being done by the full committee, that they were constantly being chained to the committee room in order to deal with the myriad of allegations that were before them against so many Members.

Of course, we have 435 Members plus delegates. So there was a possibility of just unlimited service. Instead of having a 12-member committee in and of itself, we opted for a 10-member committee who would preside over the full committee. It would be parceled off into subcommittees. Subcommittees would be comprised of at least two, possibly four members of the full committee to investigate the activities alleged and would be supplemented with members in the jury pool for the investigative stages only. And the theory is, under our proposal, is that only a few Members will investigate in depth the allegations against a single Member and that that will free up the full committee to serve as the adjudicatory committee with the remaining Members not serving on the subcommittee to actually adjudicate once and the investigative subcommittee reports to them. And it was really primarily a division of workload proposal that prompted us to go to this outside jury strictly for the investigative stage.

Ms. SLAUGHTER. Thank you.

The CHAIRMAN. Before yielding to other Members, I had been concerned, as you know, during the task force proceedings about frivolous complaints being filed. I had attempted to offer an amendment which would have forced those who were obviously deliberately filing frivolous complaints and creating an expense to the ethics committee, to be responsible for reimbursing the committee.

Ben, I know you were involved in that. We ended up with a watered down version. Could you explain to us where we stand on that issue in the base text of the bill that will go to the floor? We do not have an amendment dealing with it. I am going to go along with whatever we did. Just for the record, could you explain it to us?

Mr. CARDIN. Mr. Chairman, you were extremely active in the task force in pointing out the need to really protect the Member, protect the institution, and protect the process from complaints that are filed for frivolous reasons. We are all very much concerned about that and we want to make sure that we discourage those types of matters. There is a provision in the resolution that is before you. Section 19, says if a complaint, or information offered as

a complaint, is deemed frivolous by an affirmative vote of the majority of the members of the Committee on Standards of Official Conduct, the committee may take such action as it, by an affirmative vote of a majority of its Members, deems appropriate in the circumstances.

I think it is a clear message. By having a specific provision in the rules, we expect the committee to take action against a member who files a frivolous complaint. There are already implicit provisions in current ethics rules for such abuses of the process. We are now putting an explicit provision in the committee rules, actually in the House rules to make it clear that we will not tolerate such misconduct.

The CHAIRMAN. I thank you very much. I think that might go a long way towards trying to remove some of the politics that invariably pop up. If Members know that they are going to be held responsible monetarily for frivolous complaints, I think it will help correct that problem. I thank you for your work in that area. Questions of the witness?

Ms. PRYCE. I would just like to commend the gentlemen for their very hard work. It has been very difficult. You came up with a wonderful product. I believe myself it can be improved upon minimally. But as a former judge, with a keen eye for fairness, I think you have done a great service to this body. I want to give you my personal thank you. This is something that has potential to touch every Member and we cannot be too careful. So once again, thank you.

The CHAIRMAN. Mr. Diaz-Balart.

Mr. DIAZ-BALART. You have done great work. Thank you very much.

Mr. MCINNIS. Mr. Chairman, I also want to commend the Members for putting a lot of effort into this. They have done an excellent job.

The CHAIRMAN. Mr. Hastings.

Mr. HASTINGS. I would like to associate my comments with what has been said here. I do not envy you going through this. In my time in the State legislature we did not have an ethics committee. I don't know if that is good or bad, but I commend you for trying to come up with a product that both sides can accept. I congratulate you on that.

The CHAIRMAN. Gentlemen, we want to again thank you for your diligent work. It is more than likely that we will be on the floor with this matter tomorrow and we will certainly take your testimony into consideration.

Mr. LIVINGSTON. One last note, Mr. Chairman. Of course, Mr. Cardin, and I have agreed to offer a manager's amendment which makes applicable, which would make the complaints, make the rules that we are adopting, assuming the House does adopt them, applicable to all complaints filed since the moratorium was lifted until the day that we adopt them so that there is no anomaly between the time that the complaints were filed and the ultimate rules are adopted.

Likewise, we will have colloquy on the floor to the effect that any previous complaints which are accepted by the committee which might have been filed previously will be treated in the same man-

ner, under the new rules adopted. That, of course, is up to the discretion of the full committee. I might simply ask for the record, though, with respect to the motion to recommit that you intend to grant to the Minority, I have no objection to that, that motion to recommit be confected in the same bipartisan fashion that we have done everything else so that we are not surprised or taken off guard by some partisan maneuver.

The CHAIRMAN. Just without question, your manager's amendment containing that information will be made in order. That will not require a lot of debate, would it? Ten minutes?

Mr. CARDIN. That is fine.

The CHAIRMAN. Thank you very much. That is appreciated.

The next scheduled witness is the Vice Chairman of the Committee on Rules, Mr. David Dreier of California, accompanied by one of the most respected Members of this body, the gentleman from Indiana, Mr. Hamilton. And Mr. Shays also, if he shows up, he is welcome to join you. Your entire statements will appear in the record, without objection. I recognize Mr. Dreier.

STATEMENT OF THE HON. DAVID DREIER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. DREIER. Mr. Chairman, I thank you very much. Let me first express my appreciation, as I have already done so, to Lee Hamilton for the effort that he has put into this and, of course, for Chris Shays who is joining us and Paul McHale. We clearly wanted to subscribe to what both you, Mr. Chairman, and Mr. Moakley have said; that is, a bipartisan spirit in dealing with this.

Having heard the names of Tom Mann and Norm Ornstein from the chairman of the task force, I also should underscore the fact that when the Joint Committee on the Organization of Congress met, they played a key role in fashioning this amendment, as they at least have been supportive of much of the package that has come forth from the task force.

I think that if one listened to the description that I heard from Mr. Livingston as I was walking back in from that vote we were having downstairs, I was struck by the fact that he was really describing exactly what it is that our amendment would do, only he was using present Members whereas we called for the involvement of outsiders.

I know that that sends a red flag up for many people and a number of people are concerned about that. But in the Joint Committee on the Organization of Congress, we spent a great deal of time on this, as you well know. Mr. Chairman, you were a member of that committee that Lee and I cochaired and there are a number of others here who were part of that effort. We spent a great deal of time looking at this.

We know that this institution has a credibility problem among our colleagues, within the press corps and among the American people. I think the words of the present Chairman of the ethics committee, Jim Hansen, are very key as he, in his statement that he signed in the report of this task force made it clear that we on the horizon will, if we do not adopt this amendment, clearly see outsiders involved.

Mr. Cardin mentioned in response to my statement his concern about the constitutionality of moving ahead with this. That obviously was a key item that Lee and I had discussed in the joint committee. We clearly want to ensure that Members of Congress adjudicate and do handle the policing of our colleagues. At the same time, we would have the Speaker of the House and the Minority Leader jointly, and I underscore the word jointly, appoint 20 individuals, whether they are former Members of Congress, retired judges, outsiders, not lobbyists, but others who again would jointly be selected, meaning that the Speaker could not all of a sudden appoint people who he thought would go after the Minority and vice versa, so this would be something that would be done in tandem. I think that it would help a lot.

One of the issues that Mr. Livingston raised was this workload question for the task force. When I look back at our colleague, Porter Goss, and the work that he went through last December, it was obviously very overwhelming. It seems to me that one of the things that this amendment would do is it would allow the fact finding part of it to be done by those people who have been appointed. So I really do believe that this amendment does not undermine the integrity of the excellent work of this task force. I have been very supportive of it.

Again, I do not think that it raises the kinds of constitutional concerns that others have. I appreciate the fact that Chris Shays has supported a similar proposal that has come forward. Curt Weldon has indicated his interest in this, and Paul McHale as well. There are a wide range of Republicans and Democrats all the way across the board who are supportive of this. Had we not had such diversity in the Joint Committee on the Organization of Congress in 1993 supporting it, I do not think that we would have gotten to the point where we are today.

Mr. Chairman, I thank you for the consideration. I say again that I hope that we will be able to do this before Lee Hamilton does retire. As you have said, he will be sorely missed. So that is why I sort of suspect that this just might be the only opportunity before Lee Hamilton retires for us to do it. That is why I have chosen to seize upon it.

[The prepared statement of Mr. Dreier follows:]

Congress of the United States
House of Representatives
Washington, DC 20515

STATEMENT OF THE HON. DAVID DREIER
BEFORE THE
HOUSE RULES COMMITTEE
CONSIDERATION OF RULE FOR H.RES. 168
RECOMMENDATIONS ON ETHICS PROCESS REFORM
TUESDAY, SEPTEMBER 16, 1997

Mr. Chairman, I want to thank Chris Shays and Paul McHale for joining Lee Hamilton and I as cosponsors of our amendment. We are all cosponsors of free standing legislation to bring responsible private citizens into our ethics process. We have joined together on this amendment because utilizing independent fact finders, serving at the discretion of the Standards Committee, can help bolster public confidence in our ethics system without abdicating our constitutional responsibility for self-enforcement.

I want to commend the members of the bipartisan task force on the ethics process for the recommendations they have put forward. Our amendment would complement, not undermine, those recommendations. It is simply a substitute to Section 1 of H.Res. 168. That section creates a 20-person pool of members (ten Republicans and ten Democrats) to supplement the Standards Committee membership as potential appointees to investigative subcommittees. Our amendment replaces that provision with an alternative authorizing the Speaker and Minority Leader to jointly appoint 20 private citizens as independent fact finders at the beginning of each Congress to be called upon at the discretion of the Standards Committee to conduct investigations involving allegations of ethical misconduct.

Essentially, our amendment contains the ethics reform recommendations that were developed in 1993 when Lee and I served as House co-chairmen of the Joint Committee on the Organization of Congress. It is based on the testimony the Joint Committee received from former Ethics Committee leaders, other Members of Congress and academic experts like Tom Mann of the Brookings Institution and Norm Ornstein of the American Enterprise Institute. The final report of the Joint Committee included a recommendation that the Committee on Standards of Official Conduct be allowed to use a panel of private citizens as the fact finders in place of the current practice of establishing a subcommittee of Members who serve on the full Committee. At that time, the arguments for independent fact finders to lessen some of the conflicts that are inherent in a completely self-disciplining system were compelling, and I believe they are even more compelling today.

Specifically, our amendment authorizes the Speaker and Minority Leader to appoint jointly 20 independent fact finders at the beginning of each Congress. These private citizens could then be called upon to conduct ethics investigations for the Standards of Official Conduct Committee. The definition of private citizens includes, among others, former Members, staff aides, and officers of Congress, but not lobbyists.

The amendment grants discretionary authority to the Standards Committee to decide, on a case-by-case basis, when to request that private citizens be used to conduct investigations involving allegations of ethical misconduct. It provides that an even number of fact finders--four or six--shall be appointed jointly from the standby pool by the Chairman and ranking Minority Member of the Standards Committee. Daily pay, travel, and per diem costs are provided to the fact finders when they are engaged in ethics investigative work. Staff aides of the Standards Committee are authorized to assist the fact finders in carrying out their responsibilities.

The job of the fact finders is to conduct a preliminary review of an ethical complaint. They are to make the detailed inquiries, accumulate relevant background materials, gather pertinent evidence, and so on -- all activities that usually consume enormous amounts of time.

After the preliminary review of the ethics complaint has been completed, the private citizens would report their findings and recommendations to the full Standards Committee. If the fact finders determine that their findings justify further formal action by the Committee, they may, by majority vote, transmit a "statement of alleged violations" to the panel.

In the event that a statement of alleged violations is sent to the Standards Committee, that panel will then act as an "adjudicatory" subcommittee as provided in the Committee's rules. The full Ethics Committee will then conduct its own review of the information transmitted to it by the fact finders, including, if required, the convening of public hearings.

The amendment addresses a number of persistent problems that plague the current ethics process. These include:

(1) Time Commitment/Work Load Burdens on Committee Members -- Given recent rules changes and the rise in complaints filed with the Committee on Standards of Official Conduct, the work load of that Committee has steadily increased. In the 104th Congress, the Committee held more than 100 full Committee meetings, as compared with 12 meetings in the 103rd Congress. In addition, members of that Committee have additional time commitments relating to subcommittee work. The use of outside investigators would lessen the disproportionate burden placed on a handful of members.

(2) Peer Review Conflict of Interest -- To maintain the integrity of the House as an institution, violations of ethical norms are enforced internally through a process of peer review. Unfortunately, we have learned that self-enforcement can never succeed in a political institution if Members are allowed to abuse the process for partisan gain. The use of independent fact finders for ethics investigations would prevent political abuse and interference in the process. As noted in the JCOC's report: "Allowing outside

individuals to be used in the process should enhance the public's confidence in Congress. The public believes that internal self-discipline presents inherent conflicts for Members who have difficulty judging their peers. Members would be better insulated from charges that they are inclined to protect colleagues, and contrarily, from pressure to deliver excessively harsh punishments."

(3) Questions of Outside Influence -- House Rules and the rules of the Committee on Standards of Official Conduct constrain members of that Committee from discussing any pending business before the Committee -- and constrain all members from discussing business pending before that Committee on the House floor. However, news accounts have frequently appeared quoting unidentified "sources" about proceedings of the Committee. Based on those accounts, members and outside organizations have issued frequent public comment, including calls for certain actions to be taken by the Committee. Independent fact finders would be less susceptible to outside influences which can compromise the integrity of the ethics process.

(4) Artificial Divisions Within the Full Committee -- The bifurcated approach, which separates the "investigation" phase of consideration of an ethics case from the "adjudication" phase, involves only members of the full Committee on Standards of Official Conduct. Because the Committee is broken down into subcommittees at certain stages of its action on a pending complaint, some members of the full Committee have responsibility for and access to in-depth investigatory material that is not made available to the full Committee until the conclusion of the investigation. Nonetheless, the full Committee is held accountable in the public's eye for its internal proceedings. Independent fact finders would create the separation needed to ensure proper accountability and instill public confidence in the process.

(5) Disposition of Frivolous Complaints -- In its 1989 report, the Bipartisan Task Force on Ethics concluded that "for the most part, existing ethics committee rules contain sufficient safeguards to protect members against frivolous complaints and procedural unfairness." The Committee's rules currently provide that the Committee must, by majority vote, adopt a Resolution of Preliminary Inquiry or decide to dismiss the complaint. However, the increasing number of complaints being filed against Members, coupled with the increasing perception of outside influence, indicate that new safeguards are needed -- safeguards that exist with the use of independent fact finders.

Mr. Chairm, the ethics process in the House, which was designed to ensure fair and impartial disciplinary proceedings while enhancing the integrity of the institution and its proceedings, has not been up to the task in recent years. Our amendment provides an innovative and flexible approach that complements the bipartisan task force's effort to strengthen the system. On those high profile and complex cases, the Ethics Committee can turn to a pool of private citizens to conduct the investigations. For ethics complaints that appear minor, the Committee can continue to appoint its own subcommittee to conduct the preliminary inquiry.

Everyone who serves in Congress understands that public trust in the legislative branch is not especially high. To be sure, many factors have contributed to this development, such as heightened cynicism in the body politic, but public misgivings about how Congress handles ethical charges against its own Members also contribute to the lack of public confidence. This institution must devote more time and attention to congressional ethics, which is why I strongly endorsed the establishment of the bipartisan task force.

Members and citizens alike have a large stake in an improved ethics process. The strength of representative government rests fundamentally on public confidence in the integrity of our proceedings. There is an inherent conflict-of-interest when only Members are involved in evaluating ethics complaints against their peers. Our amendment addresses this issue by allowing private citizens to assist in ethics investigations on a case-by-case basis. It is a rational approach to improving and strengthening our system of self-enforcement.

Mr. MOAKLEY. We can file them with the rest of the Hamilton papers.

The CHAIRMAN. First of all, we want to thank you, David, and Lee Hamilton for the Herculean effort that you made in reforming this House. Your effort has made it a better House. We are going to miss Lee Hamilton and his family dearly. As I said before, he is one of the most respected Members of this body.

Lee, although it is a long time away, a whole year and a quarter yet, we know that you are going to have a lot of legislation come to the floor between now and then.

You are recognized.

STATEMENT OF THE HON. LEE HAMILTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. HAMILTON. Mr. Chairman, it is always a pleasure to come before the Committee on Rules because you give very courteous treatment to me and to other Members. We deeply appreciate it.

I want to say that Mr. Livingston and Mr. Cardin have done an excellent job. I do not think you can find two busier Members in this institution. They have enormous responsibilities. And yet they have taken many, many hours, to produce this task force report. I think the whole body should express appreciation to them.

I think the proposal that Mr. Dreier and I have put together is certainly bipartisan. I think it is very moderate. I think it is serious and I think it is meaningful.

I want to say a special word of appreciation today to Dave Dreier. I hope I do not offend anyone by saying this, but it is really very unusual for a member of the Committee on Rules to disagree with their party leadership. And he is doing that in this case. That is extraordinary. It is not unprecedented; it has been done, but it does not happen very often.

Mr. DREIER. What has happened to those who have gone down that path?

Mr. MOAKLEY. They are doing very well in the private sector.

Mr. HAMILTON. They usually go before the ethics committee.

The CHAIRMAN. I do not mean to interrupt you. I almost found out when I led the fight against NAFTA a few years ago.

Mr. HAMILTON. I, of course, would like my statement put into the record.

The CHAIRMAN. Without objection.

Mr. HAMILTON. Let me try to respond to a couple of things.

I think the thing that worries the task force a lot about our proposal, which is to appoint this pool of 20 independent fact-finders to be called upon by the Standards Committee for ethics investigations, as needed, is the sense of loss of control. Members are losing control.

May I suggest that that really is not the case because what you are doing here is keeping the power in the Standards Committee, but giving them an option that they now do not have, and that is the option to appoint outsiders. They do not have to use them; it is within their discretion. If they don't want to use them, they don't have to. But if they are in circumstances where they think it would be helpful, they can.

So you do not lose control if you expand options. And I think that is what we are doing here.

Let me emphasize that under our process you use the independent fact-finders only when the committee itself makes the judgment that the independent fact-finders are helpful.

The second point I want to address is the point that Mr. Cardin made and that is that he saw here an avoidance of constitutional responsibility. Dave talked about that. I would agree with that if, in fact, we put into the hands of the fact-finders the power to adjudicate. But we do not do that.

What we do is delegate one function, and that is the investigatory function, and they report to the committee and the committee acts on their recommendation. They don't have to accept it. That is not an avoidance of constitutional responsibility because the House and the committee retain the authority for adjudication.

Mr. Cardin described our proposal as a very creditable proposal. I thank him for a that, and Dave and I believe that to be the case. If it is the case, then it seems to me that the Committee on Rules ought to give the Members of this House the chance, the option to vote on it, up or down.

I do not have the slightest idea how the vote will come out. I have run no counts. I know the leadership on both sides is opposed to it, so you would normally expect that the amendment would not be accepted; but I am not sure of that. But I am sure that the Members think enough of this proposal that they ought to have a chance to vote on it.

Mr. Livingston made quite a point, I think, or rather it was Mr. Cardin who said that members of the task force reviewed very carefully these proposals. I have no doubt of that; I am sure they have. But I think Members ought to have that same opportunity.

The advantage of this proposal is that it reduces the inherent conflict of interest involved when Members judge fellow Members. I think it would reduce the partisan rancor that has often accompanied the ethics process. I think it would help reduce the stalling that has occurred.

I think it was either Mr. Livingston or Mr. Cardin who said that the ethics process has worked fairly well. I guess I don't agree with that judgment. I do not think you would have appointed a task force if it had been working so well. The reason the task force was appointed is because the leadership saw that it was not working very well. I think you have to have a creditable task force report or product here if you are going to gain greater public confidence in the process.

I hope you will give this serious consideration. I think it is a very modest proposal, indeed and one that would reflect credit on the House. I am just quite confident Members would appreciate the opportunity to vote on it. I thank you for your consideration.

The CHAIRMAN. Thank you for your testimony, Lee. I know you were very sincere in your statement.

[The prepared statement of Mr. Hamilton follows:]

Amendment: Rep. Dreier and I request that we be allowed to offer a floor amendment to H.Res. 168, which is the resolution containing the recommendations of the Ethics Reform Task Force. Our amendment would reform the House ethics process by allowing the Standards Committee to use a panel of outsiders-- private citizens-- to help investigate charges of misconduct against a House Member.

History of proposal: This proposal developed out of our work on the Joint Committee on the Organization of Congress, which we headed up during the 103rd Congress. The Joint Committee considered numerous reforms to make Congress work better, and ethics process reform was a major focus of the Committee's efforts. This proposal was recommended by the Joint Committee with broad, bipartisan support.

Outline of proposal: Under our proposal, the Speaker and the Minority Leader would jointly appoint a pool of 20 "independent fact-finders" to be called upon by the Standards Committee for ethics investigations as needed, on a case-by-case basis. These individuals would be private citizens, and might include, for example, former Members or retired judges. Lobbyists and other individuals with business before the House would not be eligible.

In a particular case, the Standards Committee could call upon 4 or 6 of these independent fact-finders to investigate charges of misconduct against a Member. They could question witnesses, collect and examine evidence, and then report their findings of fact and recommendations to the full Committee. The Standards Committee would then make recommendations to the full House, and the full House would make the final decision on whether sanctions are appropriate.

The amendment would strike Title I of H.Res. 168 and replace it with our proposal. The current Title I sets up a pool of 20 House Members to be available to help the Committee investigate charges of misconduct against a Member. That is a step in the right direction, but we would go further. We agree completely with Standards Committee Chairman Jim Hansen that we should go beyond this and "entrust this important responsibility to persons who are not as subject to the partisanship that has torn this House and this Committee asunder".

Moderate: I believe our proposal is a moderate one, which still preserves a significant role for the Standards Committee. It would only be used by the Committee as it deems necessary. The Standards Committee could still handle routine cases on which there is bipartisan agreement, and only call on a pool of independent fact-finders for more difficult or politically charged cases.

In addition, we are not simply handing the process over to these independent fact-finders. Their findings and recommendations would be given to the Standards Committee, which then decides what to recommend to the full House. As someone who served on the Standards Committee, I recognize the need for a continued role for the Committee, as well as the need for the full House to fulfill its constitutional responsibility to police its Members for official misconduct.

Benefits: Although the role of these independent fact-finders thus has limits, involving them in the investigation of Member misconduct still has several advantages.

--Conflicts of interest: Most importantly, it will help restore confidence in the House ethics process by reducing the inherent conflicts of interest involved when Members judge fellow Members-- the conflicts of interest to either protect a friend or powerful colleague or to misuse the ethics process to attack an opponent. As mentioned, we believe this is a major advantage over the current Title I which still calls on House Members to investigate fellow House Members.

--Partisan rancor: Involving outsiders should help reduce the partisan rancor and remove the ethics process one step from the political hothouse of the Congress.

--Stalling: Involving outsiders will also help ensure that action on complaints is not stalled in the Standards Committee for political purposes.

--Time burdens: And it will also help alleviate the enormous time burdens on Members who serve on the Standards Committee.

Meaningful amendment: Mr. Chairman, as you know, my general position is that Members should be allowed to debate and consider on the House floor the major policy alternatives to a particular bill. Although a majority of the 12 Members selected to serve on the Ethics Reform Task Force decided, for whatever reason, not to support our proposal, I believe it is a meaningful reform proposal that Members should at least be given the opportunity to consider and to vote on-- for or against-- on the floor. Our proposal has broad support:

--As I mentioned, it enjoyed broad, bipartisan support by the Joint Committee on the Organization of Congress.

--Chris Shays and Paul McHale, who introduced a similar proposal to involve outsiders in the ethics process, are cosponsors of this amendment, and we greatly appreciate their considerable efforts to move this reform along.

--Congressoutsiders like Tom Mann at Brookings and Norm Ornstein at AEI have been major proponents of our approach.

--One of the foremost scholars on congressional ethics, Dennis Thompson, Director of Harvard's Program in Ethics and the

Professions, has long argued for such a change.

--The use of outsiders to help consider ethics cases has been used increasingly, and successfully, by state legislatures.

--Our proposal has been supported by various editorials, including a Christian Science Monitor editorial.

--And such a reform is supported by the Chairman of the Standards of Official Conduct Committee, Jim Hansen. As you know, he-- more than anyone else in the House-- will be involved in the consideration of House ethics cases, and he has developed considerable expertise in this area, serving on the Standards Committee for more than 12 years. We are very pleased that he supports this approach.

It is a serious proposal that at least should be given the opportunity to be considered on the floor.

Important opportunity: One of the very few positive aspects of the wrenching debates we have had in the House over ethics cases in recent years is that Members are now much more aware of the need for change. That gives us a rare opportunity to make some significant changes. If we miss this opportunity and only tinker with the process this time around, I believe we will again see yet another ethics process task force down the road. And I agree completely with Standards Committee Chairman Hansen when he said that the next time "use of non-House Members will be a fait accompli."

Involving outsiders in our ethics process is not a panacea, but I believe it is a significant step in the right direction. It means more openness in the spirit of good government, and reflects confidence within the institution that it is able to withstand the scrutiny.

Mr. Chairman, I urge that the amendment David Dreier and I are proposing-- along with Chris Shays and Paul McHale-- be made in order.

The CHAIRMAN. Mr. Shays.

STATEMENT OF THE HON. CHRISTOPHER SHAYS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. SHAYS. Thank you, Mr. Chairman. I know that you have opposed your leadership on a number of occasions. I hope you don't have to oppose them to bring forward this amendment. Mr. Dreier and Mr. Hamilton, in particular, deserve this opportunity since the entire body asked them to have a reform committee. It first was the Hamilton-Dreier reform committee, and then it became the Dreier-Hamilton reform committee when we changed parties, but the bottom line is, they worked on a bipartisan basis and did yeoman's work, and they are right on target.

I would say to you that Mr. McHale and I come in with a less modest proposal in that we wanted the ethics committee basically to be disbanded and people from the outside to come in and assume the role of the ethics committee and then refer the judgment and action to the Congress. This is a more modest proposal and, I think, a happy compromise between both views, one between no private membership and those with private membership.

Basically, we have had in the past the lawyers judging lawyers; and the American people have said that is an outrage. We have had doctors judging doctors, and we got people that were not doctors judging doctors; and we need to bring people who are not politicians to judge us.

But we meet the constitutional requirement without any doubt whatsoever, because it would only be a proposal to the full Congress, in this case to the ethics committee, and the ethics committee would vote out the punishment and Congress would have to vote on it. We meet the constitutional question without any question.

I would just say to you, we know the system has been abused by both parties. We all know it. We also know that the American people have no faith in the politicians, elected officials, judging each other. And we think that this proposal brings in a wonderful element of outsiders who come in and say, this has no merit. This was partisan. We do not count it as valid. And they could say that when politicians would have a difficult time saying it.

In other cases, they would say, you need to reckon this issue. I know you are all friends and I know you all like each other, but this is our view and punishment is deserved. Then they set on the record a case that we would then have to respond to.

So I strongly urge you, Mr. Chairman, to have that independent streak, if necessary—but certainly you are one with a good government streak which no one else can match—and allow for an honest and open debate on this.

I will conclude by saying, the one thing that I really believed when this new Republican majority took control, that we would have more debate and it would be open and we would let ideas win or lose on the merits of issue.

The CHAIRMAN. Thank you, Chris, very much.

Mr. Moakley.

Mr. MOAKLEY. No questions.

The CHAIRMAN. Any questions of the witnesses?

If not, again—

Mr. DREIER. May I ask unanimous consent that a statement of Mr. McHale appear in the record?

The CHAIRMAN. Without objection.

[The prepared statement of Mr. McHale follows:]

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DISTRICT OFFICES

Statement of Congressman Paul McHale before the House Committee on Rules regarding the Dreier-Hamilton-Shays-McHale Amendment to House Resolution 168

- I would like to begin by thanking Chairman Solomon, Ranking Member Moakley, and the distinguished Members of the Committee for allowing me the opportunity to appear before you today to discuss a amendment which I hope will be the first step to substantive reform of the ethics process in Congress.

- As James Madison recognized, Congress is a very human institution. We who serve in this body are bound not only by the tasks set before us, but also by shared principle, competitive partnership, regional interest and personal friendship.

- When an allegation of misconduct is brought against a Member of the House, accountability requires objectivity. Members deserve due process through an objective, fair and thorough review process. In a disciplinary process, objectivity requires the hard edge of detached judgement.

- In March, Congressman Chris Shays and I introduced The Ethics Reform Act to replace the current peer-reviewal process with an independent panel. We believe that Members of Congress and the people who elected them deserve a fair and dispassionate review of any allegations of misconduct. We are obligated to provide them as much.

- This amendment is a critical first step toward an objective review process by allowing the Ethics Committee to appoint 20 independent persons who will constitute an auxiliary panel to impartially investigate and assess allegations and complaints against Members of the House.

- While we struggle for the ideal of self-government, we must take positive steps to insure that Members are judged fairly, without personal or political motivations clouding objectivity. I commend my fellow cosponsors for advancing this amendment to inject objectivity into a process that is starved for reform.

The CHAIRMAN. The next scheduled witness is a very respected member of this body and she also was on the task force for the ethics reform.

Ms. Pelosi, if you would like to come forward. Your entire statement will appear in the record, too, without objection. You may proceed at will.

STATEMENT OF THE HON. NANCY PELOSI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. PELOSI. Thank you, Mr. Chairman.

Thank you very much, once again, for your courtesy, Mr. Moakley and members of the committee. As you mentioned, I served with you as a member of the Ethics Reform task force, and I am here to support the recommendation of the task force. I served for six years, three terms, as a member of the Ethics Committee and worked alongside you and our cochair on the task force from February until June.

As you know, we worked every day and we were very well led. In both cases, Mr. Livingston and Mr. Cardin worked hard and long. They were models of decorum and patience in trying to build a consensus from some very divergent views.

My ″additional views″ were added to the task force report because the report did not include everything I would have written personally, but that was no reason for me not to support it. The document was a compromise and a bipartisan consensus product worthy of support.

It is predicated on Members of Congress judging their peers. The Constitution requires and the American people expect Members of Congress to do just that and to uphold a high ethical standard. That aspect of the task force, I think, should remain intact. That is why I have come before you today, Mr. Chairman, to ask that you send the task force report to the floor with a closed rule.

Many of the other suggestions we are hearing today are worthy, but the last thing we need in the ethics process now is a mishmash. As I said, I would have changed some things in the task force final report, but at this point to be amending it, I think, is to change the nature of the balance we achieved during our four months of deliberations.

The only other option for the Members of Congress would be to keep the rules we have, which I do not think need major overhauling. I do think they need enforcement, but not major overhauling.

The task force product is an improvement on the current rules. Any haphazard amendment of the task force proposal will take us to a place that does not represent progress. Without current rules enforced, without the task force report, which was thoughtfully prepared, implemented having some combination that could present constitutional problems.

And yes, Congress suffers in terms of its reputation, but that does not mean that Congress is not capable of judging its own, as the Constitution requires and the American people expect.

In that spirit and on the basis of my many years of experience on the committee—and I served also for 1 year as a member of the special investigative subcommittee of the ethics committee—that

seems like ten years rolled into one, but I believe that it gave me the credentials to serve on the task force, to support its recommendations, and to come before you. It is not the report I personally would have written, but it is one that I strongly support. I urge you to bring it to the floor under a closed rule.

My request is made with the highest regard for the makers of all the other amendments. I see their case. I commend Mr. Livingston and Mr. Cardin for their leadership and the product that they have presented to the House.

[The prepared statement of Ms. Pelosi follows:]

Statement of Representative Nancy Pelosi
Before House Committee on Rules
September 17, 1997

Mr. Chairman, members of the Rules Committee:

I am here today to support a closed rule on H.Res. 168. As the Chairman knows, the Task Force conducted its business in a bipartisan manner that resulted in a good compromise. I recommend that the Committee not veer from the compromise and not include any amendments in the rule without the consent of the Task Force Co-Chairs.

The Ethics Reform Task Force, under the able leadership of Co-Chairs Bob Livingston and Ben Cardin, produced a very good document to guide the next Ethics Committee. The Co-Chairs were models of patience and decorum and led the Task Force in very detailed and productive discussions. Their commitment to this bipartisan process and their level of endurance, after over four months, is exemplary.

As a member of the Committee on Standards of Official Conduct for the previous three Congresses, it is my observation that the ethics process is neither perfect nor in need of sweeping changes. It is an evolving process that, by its very nature, will always lend itself to some revision and improvement.

As you know, the Task Force worked from February 12 through June 20 to accomplish the goals outlined by the House Republican and Democratic leadership -- to review the current ethics system and to provide recommendations on changes to the current system. The process resulted in a very good work product that reflects the best possible bipartisan compromise that could be reached.

The Task Force conducted hearings and meetings over a period of four months. We heard from outside groups and Members of Congress on their recommendations to revamp the current system. And, we spent countless hours reviewing the system and the proposals put before us.

During deliberations by the Task Force, it was apparent that the system was essentially intact. Yes, we had our differences and, no, we could not agree on everything. The recommendations included in the reform proposal were offered by both Republicans and Democrats serving on the Task Force. The report is a bipartisan, consensus document that, while not perfect, reflects the best aspects of compromise that could be reached.

Wholesale changes to the current ethics rules, in my view, were not warranted, but certain concerns had been raised during my service on the Committee on Standards of Official Conduct. Based on my previous Committee experience, I believe it is important to provide the necessary mechanisms to relieve "deadlock" and to advance the complaint review process. My recommendation on relieving deadlock in the process was not accepted by the Task Force, but I supported the overall report.

At the end of our mission, it was agreed that disagreements would be filed under "Additional Views" and that amendments to the Task Force-approved report would be supported only if they had the approval of the Task Force Co-Chairs. Because my recommendations relative to deadlock were not accepted by the Task Force, I filed "Additional Views" which are included in the report. Four of my colleagues concurred with the filing and other "Additional

Views" were filed, as well. Given the good faith efforts of the Task Force to reach a bipartisan consensus, my differences of opinion on the question of deadlock did not prevent me from supporting the overall resolution.

I think the report before you is modest and fair, and improves the current ethics process. The Task Force fulfilled its mission, as our leadership directed. As was the case with the 1989 Bipartisan Task Force on Ethics, I hope the House will adopt the recommendations of the Task Force without change. I urge the Committee to adopt a closed rule and to put the report before the House unchanged, unless the Task Force Co-Chairs agree on amendments to be offered.

Thank you, Mr. Chairman, members of the Committee for listening to my comments today. Again, I urge you to accept the Task Force report without change.

The CHAIRMAN. Ms. Pelosi, your opinion is certainly respected, and you make a lot of sense.

We have a responsibility, I think, to be fair to the entire membership while at the same time trying to protect the committee product, because the committee product, as you mentioned, was the basis of much negotiation.

You stated in the very beginning that you did not get all that you wanted. Certainly I did not get all that I wanted. I compromised far more than I ever thought I would. So I am put in a particular predicament, because some of the bipartisan amendments that have been asked for are areas that I fought for.

And I guess what I am going to do, although I haven't made up my mind, is, I will probably vote for the product no matter what the outcome of the amendments. And should the amendments all fail, it would then, in effect, be the same as a closed rule and I would probably be voting along with you, because it certainly was compromise from both sides, from liberals and moderates and conservatives from both sides of the aisle. One way or the other, it is going to be a better product than what we have to operate under today.

I appreciate your coming.

Mr. Moakley?

Mr. MOAKLEY. I just want to congratulate you, Nancy, for your diligence on this committee. You really are a leader to some of us on some of the amendments.

Ms. PELOSI. It was a pleasure working with you, Mr. Moakley, and with Mr. Solomon and Mr. Goss, who also serves on the Rules Committee. We had the benefit of the thinking of members of the Committee on Rules, some of whom had served on the ethics committee as well. So some of you had triple credentials, and we all benefited from your experience.

The CHAIRMAN. Mr. Dreier?

Mr. DREIER. No questions.

The CHAIRMAN. Any questions of the witness? If not, Nancy, again, thank you very much for coming.

The next scheduled witness, I believe, is a panel. Mr. Menendez is here.

Mr. Barrett, did you want to testify along with him? Who would care to lead off?

STATEMENT OF THE HON. ROBERT MENENDEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. MENENDEZ. Thank you, Mr. Chairman. I thank you and the distinguished members of the committee for giving us an opportunity to make our case with this amendment.

Mr. Chairman, Members on both sides of the aisle talk a lot about doing away with Washington perks, but this is a chance to do something about what I consider a totally unjustifiable benefit.

The floor of the House of Representatives is one that is owned by the American people, entrusted to our care so that the elected representatives of the people have a place to do the people's business; represent the people's views through debate, negotiation, and

legislation. No other use, I think, could be defended to the American people.

In honor of their service to the people, former Members of Congress are given access to the House floor, and if this remains an honorary privilege, as I am supportive of, it could be defended. But if it is used in any way to personally or financially benefit some former Members, it is, in my view, a breach of the trust that the American people gave to us.

The current House rules permit a Member, a former Member, to use the House floor to lobby for his or her own personal or financial gain so long as it does not concern legislation pending on the floor or reported out of committee. Whether or not there is legislation pending should not matter. A former Member should not be able to use their status to lobby for any personal or financial gain on the floor.

For example, let us say a question regarding a former Member's legal fees is pending before the House or before a House committee. I believe few, if any, Members would think it is proper for that former Member to take to the House floor to lobby to have his legal fees paid. But the current rules would allow it, and they should not.

The bipartisan amendment that we are offering here with my friends, Mr. Shays of Connecticut and Mr. Barrett, would prevent these unethical situations by expanding the current prohibition to include denial of access to any Member who has a personal or a financial interest in any measure or matter under consideration in any committee or any subcommittee.

There is clear precedent for this type of change, Mr. Chairman. Under the current rules, a former Member is already barred from the floor if they represent a client for the purpose of influencing legislation under consideration in a committee or subcommittee. So why should the rules change for the Member's personal interests?

Clearly, the current rules are more lenient when it comes to a Member's personal interest, but they should not be, and this amendment would rectify that situation.

For those who might raise—and this is the final point I want to bring, Mr. Chairman—a germaneness issue, I would ask, when reforming the ethical standards and procedures of the House, what could be more critical and important than keeping the House floor a sanctuary for democracy for all, not privileged for a few, making sure that the people's House remains the people's House, not the lobbyists' House, not the former Members' House, but the people's House?

If we are here to restore the confidence of the American people in the ethical standards of the House, then this amendment exactly does that. I can think of no better vehicle for this legislation. I ask that you allow this amendment to be considered by the full House, waive any points of order that might be held against it.

The CHAIRMAN. Thank you very much, Mr. Menendez.

The CHAIRMAN. Mr. Barrett, would you like to proceed?

STATEMENT OF THE HON. THOMAS M. BARRETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. BARRETT. Mr. Chairman, it is a pleasure again to appear before your committee. You have been very kind to us in the past, and ti is especially nice for me to appear with my good friend Mr. Shays.

I was actually honored that Mr. Menendez contacted both Mr. Shays and me because both of us have appeared here many times arguing for amendments that go to the integrity of this institution. I am someone who believes that those of us who offer these amendments are doing so not to tear down the institution but actually to help improve its confidence among the public. That is why I am here today.

I think that this is a sensible rule. I think that Members of this body who have left should have the privilege of being able to return to talk to their former colleagues. But I think that there is a line, that is an important line, that should not be crossed. I think that this measure addresses that.

Clearly, there are times when there are matters before committees, whether a committee meets and is initially holding informational hearings and there is no legislation pending where, under the current rules, a former member could come and help shape the course of those informational hearings and perhaps go so far as to seek cosponsors for legislation that has not yet been introduced. I do not think that that is the spirit or the intent of what the rules should be.

That is why, when I looked at the current rule, I thought that this was a very common-sense change that I think will improve the rules of the House and in no way deny the access to Members who want to come back and talk with former colleagues.

I very much applaud the work that Mr. Livingston and Mr. Cardin have done. I think it is a very significant matter, and I am pleased that we are going to be able to vote on this matter hopefully tomorrow.

I would, lastly, share Mr. Menendez's request that any issues of germaneness be looked at in the context of what we are trying to do in the underlying issue before us today, and that is to improve the integrity of this House. This matter is before you in exactly the same spirit, and that is to improve the integrity of the House.

Thank you.

Mr. DREIER. Mr. Shays.

STATEMENT OF THE HON. CHRISTOPHER SHAYS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. SHAYS. Mr. Chairman, I could not be more grateful to cosponsor this amendment with Mr. Menendez and Mr. Barrett. I believe it is not an issue about one individual; it is an issue about the ethical process and standards of the House of Representatives.

I pray that we realize that just as we cannot allow individuals to be lobbyists, former Members to be lobbyists representing clients on the floor of the House, for the obvious reason, and really do not allow them to be on the House floor so there is not even a question

about it, that we would recognize that if they have a personal reason to be before the House and to have us be considering issues, that they should not be on the House floor as former Members. It seems like, frankly, a no-brainer for me. But I just want to emphasize, this is sometimes a particular incident, a particular issue that can bring it to our attention, but we need to take action. But you do not pass a law on a particular—about a particular person, particular issue.

I believe the sincerity of my colleagues on the other side of the aisle in bringing this forward is to improve the process for all of us and not to have it focus on one individual is there, and I sincerely hope that we realize this is a bipartisan amendment that deserves the support unanimously of the House.

The CHAIRMAN. Chris, thank you. Thank you very much.

The CHAIRMAN. Let me just say that it is my understanding that under the rules that Members should not be able to lobby on the floor. There are questions and it is a little gray, but it does not speak to the particular problem that you are concerned with. However, your amendment is not germane to this issue. I do not believe that we can support it. I know where you are coming from. As a matter of fact, I was involved on the floor, Mr. Menendez, when you were earlier today, in trying to make sure that even though I did not believe that lobbying was taking place, that it should not even be perceived as taking place and tried to take care of it.

But we understand where you are coming from. If we do not make your amendment in order today, under the new rules packages that we might be considering, we will certainly put that in the mix and perhaps it needs to be considered.

Mr. MENENDEZ. If I may very briefly, Mr. Chairman, first of all, I appreciate your comments. Let me just say, I want to join Chris Shays' comments in that I offered this as, you know, from a filing to the committee before any of today's incidents. This is not about an individual. It goes to the integrity of the House.

My example, if a former Member had legal fees pending before the House, would it be proper to have he or she on the House floor trying to lobby us to get the votes necessary to pass their legal fees. I do not think any of us want to be placed in that situation. I don't think we want to place this institution in that situation. While there may be a question of germaneness, this committee has extraordinary powers. In that respect, as someone who cosponsored the flag amendment with you and was a vocal advocate of it, let me just say why I did that is because I believe in the very principles of what it stood for, and what it stands for is part of the symbol to the rest of the world is the democracy that we have in this House and what we show the rest of the world as the democratic process.

I believe that the committee has the power to do this, and the context in which I am asking and my colleagues are asking you to do it is an appropriate context and would send the right message at a time that we are trying to build the integrity of the House back in the minds of the American people. This is beyond an individual. I would pursue this throughout this Congress if the committee does not see appropriate to provide the amendment, and into

the next Congress because I believe it is something that needs to be addressed.

I thank you for your discretion.

Mr. SHAYS. Will the Chairman entertain an additional comment?

The CHAIRMAN. Mr. Shays.

Mr. SHAYS. I would make a request to the Chairman that he contact the leadership, the Republican leadership to see, given that this is a relatively new issue and one in which I think many Members might want to address, that they consider encouraging this committee to make this amendment in order.

This is not going to go away. It is going to get worse. I think the sooner we nip it in the bud and deal with it, the better it will be for everyone, Republican and Democrat.

The CHAIRMAN. We appreciate you gentlemen coming before us. We will certainly take your views into consideration.

Mr. Moakley, any questions?

Mr. MOAKLEY. No questions.

The CHAIRMAN. Any questions of the witness?

If not, gentlemen, thank you very much for coming.

The CHAIRMAN. I think we have one last witness scheduled, that is the gentlemen who is waiting patiently, Mr. John Hostettler of Indiana.

Congressman, if you would come forward, your entire statement will appear in the record without objection, but feel free to take whatever time you feel necessary.

STATEMENT OF THE HON. JOHN N. HOSTETTLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. HOSTETTLER. I thank the committee for the opportunity to speak to you about what may be considered to be an unusual subject, one that the Parliamentarian says that there may be a problem of germaneness, but I think this discussion that we have had today highlights the point, a point that I would like to make.

The Chairman and several members of the committee and witnesses have cited the Constitution time and time again. I think that while my name is the only name on the amendment, that this is not a partisan issue. I would like to explain to the committee what has happened most recently with my situation that has brought this to the attention. This issue I think is important to the discussion of what we are talking about here and what we do as a House on the floor.

Earlier this month I was contacted by the ethics committee and was told that I would not be able to initiate a Constitution project in my district as a result of the rules of the House as they are today. There was much action that was taking place on the part of my office because we want to have the opportunity to expose young people, especially high school students, to the United States Constitution and to encourage them to read it, deliberate on it, and to make it a part of their daily life and understand the importance of it.

However, as a result of some of the parts of the Constitution project, part of the provisions of that, the committee said that they would not be able to endorse and allow me to continue on with this project. So the project has come to a standstill in the committee.

I think the committee has given a rationale for my amendment, and while I believe that I understand that there is a problem with germaneness, I think that given the fact that today is the 210th anniversary of the ratification of the United States Constitution and the constitutional convention, it is a time when we should be upholding our oath to support and defend the Constitution, to allow Members to take a very active part in putting forth the merits of studying the Constitution, understanding it and applying it in their daily life.

I would say that I would ask the committee to have this amendment made in order. However, as a result of discussions that I had with Chairman Livingston and Ranking Member Cardin on the task force, they said that they had already put their manager's amendment, completed action on that.

I was trying to get this in the manager's amendment. Both of those gentlemen felt that they were in accordance with my intent on this amendment. Congressman Cardin graciously said that he would work with the Chairman and Ranking Member on this issue to try to get that decision turned around. But if the rule, the rule of the House does not allow that to happen, then I would ask that the committee would allow for this amendment to be made in order so that Members can treat the Constitution the same way we, for example, treat the arts in this House.

This type of provision is not without precedent. The arts competition allows for the private sector to finance awards and other things to herald the merit of the arts. I think that we need to do the same thing for the Constitution.

The CHAIRMAN. John, I do not understand the ethics committee's concern here. Let me understand now. What is it that you are attempting to do that you are being told you can't do? In other words, when will you have copies of the Constitution, where did you get them? Is that a government publication?

Mr. HOSTETTLER. The copies of the Constitution we are going to ask to be put together by two nonpartisan groups in Indiana that because we wished to put the United States Constitution with the Declaration and the Indiana State Constitution in one document, a document that has not been created, they have graciously said that they would finance that, and as a matter of fact, the Franking Commission said that a copy that was given to them, they said it was frankable but the ethics committee said that that could not be put out as part of this competition. So that is what I wish to change, part of it, the idea. But simply to say that nothing in the rules would prohibit a Member from using official sources or nonpartisan sources to create a forum for the exposure of young people to the Constitution.

The CHAIRMAN. Mr. Dreier.

Mr. DREIER. Thank you, Mr. Chairman. I just simply would like to congratulate you, John, and of course the vision of this Committee on Rules for holding this hearing at which your amendment was being able to be offered. That is, today is September 17, 1997, the 210th anniversary of the signing of the U.S. Constitution. I think that your idea is very timely, to say the least, and worthy of consideration here.

Mr. HOSTETTLER. Thank you, Mr. Dreier.

The CHAIRMAN. Mr. Moakley, do you have any questions?

Mr. MOAKLEY. No, I don't have any questions.

The CHAIRMAN. John, I don't know that we will be able to help you. There are other nongermane amendments that have been asked for. As much as I would like to, because I am very much concerned that there is even a question about this, I would like to further look into it and see if we couldn't resolve it anyway. But one way or the other, we appreciate your coming before us. We will certainly try to help you.

Mr. HOSTETTLER. Thank you Mr. Chairman.

The CHAIRMAN. Any further questions of the witness?

If not, thank you very much for coming.

The CHAIRMAN. This concludes the hearing portion of our meeting. We will stand in recess for 2 or 3 minutes, subject to the call of the Chair.

[Recess]

The CHAIRMAN. The committee will come to order. Mr. McInnis will take his seat.

Mr. MOAKLEY. Ms. Slaughter wants to vote.

The CHAIRMAN. We understand Ms. Slaughter is on the way, and out of courtesy to her, we will wait a couple of minutes before we will be in receipt of a motion.

Mr. MOAKLEY. Out of courtesy to Mr. Frost, we waited all this time. We could wait for Ms. Slaughter.

The CHAIRMAN. So, we are in brief recess.

[Recess.]

The CHAIRMAN. The committee will once again come back to order.

The pending legislation is the ethics reform package before us. The Chair will be in receipt of a motion.

Mr. DREIER. Mr. Chairman, I move the committee grant the resolution H.Res. 168 ″To Implement the Recommendations of the Bipartisan House Ethics Reform Task Force″ a modified closed rule providing 1 hour of general debate divided equally between Representative Livingston and Representative Cardin.

The rule provides that no amendments will be in order except those printed in the Rules Committee report, which may be considered only in the order printed in the report, may be offered by a Member designated in the report, will be debatable for the time specified in the report, and will not be subject to amendment.

Finally, the rule provides for one motion to recommit.

The CHAIRMAN. You have heard the motion by the gentleman from California Mr. Dreier. Let me again point out that during the hearing, the Chairman of the committee had said that it was the intention of the committee not to make in order partisan amendments, and we would only consider those that had bipartisan support and those that were of particular concern to Members on both sides of the aisle.

We have done just that in making a manager's amendment, which is bipartisan, in order, along with an amendment by Congressmen Murtha and Tauzin; another by Congressmen Tauzin and Murtha; and finally, one by Congressmen Bunning and Abercrombie, for a total of four amendments.

Is there any discussion or amendment thereto?

Mr. MOAKLEY. Mr. Chairman, I have an amendment to the rule. I move that the committee grant H.Res. 168 a modified closed rule, that it make in order only an amendment if offered by the cochairs of the task force, Representative Cardin and Representative Livingston.

Mr. Chairman, this task force met nearly every day for 3 months to reach a truly bipartisan agreement on this very sensitive and difficult matter. At that time many of us from both sides of the aisle had items which we thought would improve the final version of the resolution; however, we realized that any further change would seriously compromise this bipartisan agreement, so we agreed to not to amend the package any further unless it was agreed to or offered by both Cochairs Cardin and Livingston.

I think Members should have the opportunity to vote up or down on the bipartisan task force's recommendations, and I think to open this resolution to amendment at this point would effectively kill a truly bipartisan agreement that took many months of hard work to reach.

The CHAIRMAN. Well, Mr. Moakley, in arguing against your amendment, we, as you know, had taken this back to the caucuses of each political party. I think Mr. Cardin took it to your Democratic Party, and Mr. Livingston took it to our Republican Party, and in both caucuses there was considerable discussion about the package, and there were Members on both sides of the aisle that wanted to at least have an opportunity to debate these particular issues on the floor.

I believe that we owe it to the membership to let them at least discuss them. If, in the infinite wisdom of the full body, 435 Members, if they do not believe that these amendments should be made in order, I am sure they will vote them down. And I have no idea how the outcome will be, but I would insist that we at least give the Members that opportunity, and, therefore, I would urge defeat of your amendment.

If there is no further discussion of the gentleman's amendment, all those in favor of the Moakley amendment, say aye.

All those opposed, nay.

The amendment is not agreed to.

Mr. MOAKLEY. Roll call, Mr. Chairman.

The CHAIRMAN. A roll call is requested. The Clerk will call the roll.

The CLERK. Mr. Dreier.

Mr. DREIER. No.

The CLERK. Mr. Dreier votes no.

Mr. Goss.

[No response.]

The CLERK. Mr. Linder.

[No response.]

The CLERK. Ms. Pryce.

[No response.]

The CLERK. Mr. Diaz-Balart.

Mr. DIAZ-BALART. No.

The CLERK. Mr. Diaz-Balart votes no.

Mr. McInnis.

Mr. MCINNIS. No.

The CLERK. Mr. McInnis votes no.
Mr. Hastings.
Mr. HASTINGS. No.
The CLERK. Mr. Hastings votes no.
Mrs. Myrick.
[No response.]
The CLERK. Mr. Moakley.
Mr. MOAKLEY. Yes.
The CLERK. Mr. Moakley votes yes.
Mr. Frost.
Mr. FROST. Yes.
The CLERK. Mr. Frost votes yes.
Mr. Hall.
[No response.]
The CLERK. Ms. Slaughter.
Ms. SLAUGHTER. Yes.
The CLERK. Ms. Slaughter votes yes.
Chairman Solomon.
The CHAIRMAN. No.
The CLERK. Chairman Solomon votes no.
The CHAIRMAN. The clerk will announce the results.
The CLERK. 3 yeas and 5 nays.
Ms. SLAUGHTER. Mr. Chairman, can I ask a question? We were going to do all the bipartisan amendments, how come we overlooked Dreier and Hamilton?
Mr. MOAKLEY. We are not finished.
The CHAIRMAN. If we could go back to regular order, I would ask the clerk to announce the results and then we can discuss others, if you care to.
The CLERK. Three yeas, five nays.
The CHAIRMAN. And the amendment is not agreed to.
Are there further amendments or discussion of the package?
Ms. SLAUGHTER. I do, Mr. Chairman. I would like to make amendment that we strike all after the resolving clause and insert in lieu thereof the following: Resolved that upon the adoption of this resolution it shall be in order to consider in the House the resolution H.Res. 168 to implement the recommendations of the bipartisan House Ethics Reform Task Force.
The resolution shall be considered as read for amendment. The previous question shall be considered as ordered on the resolution, and any amendment thereto, and final passage without intervening motion or demand for division of the question except, (1) 1 hour of debate on the resolution which shall be equally divided and controlled by the Chairman and Ranking Member of the Committee on Rules or, (2) one motion to amend by Representative Livingston of Louisiana with concurrence of Representative Cardin of Maryland, which shall be in order without intervention of any point of order or demand for division of the question, shall be considered as read, and shall be separately debatable for 30 minutes equally divided and controlled by the proponent and opponent, one motion to recommit.
I liked it so much when Mr. Moakley did it, I thought if we repeat it, we could change the vote.

Mr. MOAKLEY. I would like to recall my vote and vote on Louise's.

The CHAIRMAN. I would object to recalling your vote. That vote would have to stand. But if the gentlewoman wants to insist on her amendment—

Ms. SLAUGHTER. Not at all, Mr. Chairman. I do not, Mr. Solomon.

The CHAIRMAN. You withdraw it?

Without objection, the gentlewoman will withdraw her amendment.

Ms. SLAUGHTER. If I could say, since I have withdrawn my amendment, I would like to say that I want to express my own personal disappointment that these amendments were allowed. I thought we made it very clear that all of us were extremely proud of the product and loved the bipartisanship of it, and I think it behooves us to consider that and not mess around with it, and I would much have preferred that the document as written to have stood.

The CHAIRMAN. I thank the gentlewoman for her comments.

Are there further comments or amendments to the resolution? If not, the Chair would put the question.

All those in favor of reporting the resolution will say aye.

All those opposed, nay.

And the resolution is reported.

Mr. MOAKLEY. Roll call, Mr. Chairman.

The CHAIRMAN. A roll call has been requested. The Clerk will call the roll.

The CLERK. Mr. Dreier.

Mr. DREIER. Aye.

The CLERK. Mr. Dreier votes aye.

Mr. Goss.

[No response.]

The CLERK. Mr. Linder.

[No response.]

The CLERK. Ms. Pryce.

[No response.]

The CLERK. Mr. Diaz-Balart.

Mr. DIAZ-BALART. Yes.

The CLERK. Mr. Diaz-Balart votes yes.

Mr. McInnis.

Mr. MCINNIS. Yes.

The CLERK. Mr. McInnis votes yes.

Mr. Hastings.

Mr. HASTINGS. Aye.

The CLERK. Mr. Hastings votes aye.

Mrs. Myrick.

[No response.]

The CLERK. Mr. Moakley.

Mr. MOAKLEY. No.

The CLERK. Mr. Moakley votes no.

Mr. Frost.

Mr. FROST. No.

The CLERK. Mr. Frost votes no.

Mr. Hall.

[No response.]

The CLERK. Ms. Slaughter.

Ms. SLAUGHTER. No.

The CLERK. Ms. Slaughter votes no.

Chairman Solomon.

The CHAIRMAN. Yes.

The CLERK. Chairman Solomon votes aye.

The CHAIRMAN. And the Clerk will announce the results.

The CLERK. Five yeas, three nays.

The CHAIRMAN. And this resolution which does allow the House to work its will is reported. And Mr. Solomon, the Chairman, will carry for the Majority.

Mr. MOAKLEY. And Mr. Moakley, the Ranking Minority Member, will carry for the committee.

The CHAIRMAN. Well, Joe, let me just say I hope you are Ranking Minority Member for many years to come.

Mr. MOAKLEY. No, I don't think so.

The CHAIRMAN. That is the only business to come before the body. There is a possibility that if the census problem is worked out with the administration, with the White House, that we could be meeting about 2 o'clock tomorrow afternoon. However, I would just make mention that this will be the only business that will be on the floor tomorrow, and because of the limited number of amendments that were made in order, we should be done with this by 1:30 or so, and I would hope the Members would wait around just in case we have to do a Rules Committee meeting later in the afternoon.

And I thank those of you who didn't understand that there was going to be a meeting later on tonight for returning. Thank you very much. The meeting is adjourned.

[Whereupon, at 6:15 p.m., the committee was adjourned.]

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