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**S. 885—TO MODIFY CONGRESSIONAL
RESTRICTIONS ON GIFTS**

Y 4.0 74/9: S. HRG. 103-195

S. 885-To Modify Congressional Rest...

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF
GOVERNMENT MANAGEMENT

OF THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

S. 885

TO LIMIT THE ACCEPTANCE OF GIFTS, MEALS, AND TRAVEL BY MEM-
BERS OF CONGRESS AND CONGRESSIONAL STAFF, AND FOR OTHER
PURPOSES

JULY 19, 1993

Printed for the use of the Committee on Governmental Affairs



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1993

70-652 -

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-041502-0

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S. 885—TO MODIFY CONGRESSIONAL RESTRICTIONS ON GIFTS

MONDAY, JULY 19, 1993

U.S. SENATE,
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT
MANAGEMENT, COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:10 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Carl Levin, Chairman of the Subcommittee, presiding.

Present: Senator Levin.

Staff Present: Linda J. Gustitus, Staff Director and Chief Counsel; Peter K. Levine, Counsel; Frankie deVergie, Chief Clerk; James Calvin Cunningham III and Michael McGaughey, Interns.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. The Subcommittee will come to order.

Today's hearing is on S. 885, a bill introduced by Senator Frank Lautenberg to limit the acceptance of gifts, meals, and travel by Members of Congress and congressional staff, so that the rules in the Congress would then be substantially similar to restrictions that are applicable to executive branch officials.

This bill comes to our Subcommittee with the added momentum of a Senate resolution adopted on May 6, 1993, which expressed the sense of the Senate that we should enact a comprehensive gift ban this year, in this session of the Congress.

While legislation pertaining to Senate rules is ordinarily directed to the Senate Rules Committee, this particular bill, because it proposes statutory restrictions on the acceptance of gifts applicable to both the Senate and the House, was referred by the Parliamentarian to the Governmental Affairs Committee.

There is no question in my mind that the current congressional gift rules are inadequate and are subject to abuse. For example, while the gift rules applicable to executive branch employees prohibit the acceptance of even a single gift with a value in excess of \$20, unless the circumstances indicate that the gift is motivated by family relationship or personal friendship, our rules permit the acceptance of any number of gifts under \$100 from the same source.

In theory, that means that we could accept a \$95 gift from the same source every day and, by the way, not even disclose it. Even gifts of more than \$100 are allowed, up to a total of \$250 a year from a single source.

At a time when the public's confidence in Congress is at an all-time low, the disparity between our gift rules and those applicable to executive branch officials only serves to worsen the problem.

I don't believe that Members or staff are influenced by the routine gifts and meals that they are allowed to accept, but I do believe that the acceptance of such gifts can create the appearance of favoritism. Such an appearance is poison for public confidence in government. It is not good for the Congress and it is not good for the country.

I believe we must tighten our rules on gifts, so that they are comparable to executive branch rules. I also believe that we can do so, without impinging upon our responsibility to our constituents or our role as elected representatives and decisionmakers. There are, of course, some differences between legislative and executive branches, which would make it difficult for our gift rules to precisely mirror the executive branch rules.

For example, first, the representative responsibility of Members of Congress creates a relationship with the public that is very different from that of executive branch officials. As a result, Members of Congress often perform ceremonial functions, attend functions of constituent groups and promote home State products in a manner that might be prohibited for executive branch officials.

Second, the executive branch rules apply to gifts from people, known as "prohibited sources," whose actions could be affected by the actions of the recipient. Because the official actions of executive branch employees typically affect only a narrow sector of the economy, such as a specific regulated industry, the number of prohibited sources is generally fairly limited. By contrast, the official actions of a Member of Congress are likely to have an impact on every person in the country. As a result, the prohibited source rule used in the executive branch cannot easily be applied to the Congress.

While the differences between the two branches mean that our rules cannot be identical, I do not believe that they justify the disparity in the rules that exists today. For example, I can see no reason why we should permit gifts of up to \$250 in value, while the executive branch prohibits any gift of more than \$20. Where there is no legitimate basis for a distinction, the rules should be comparable.

I commend Senator Lautenberg for his initiative in introducing S. 885 and leading the fight for a tighter ban on gifts. Certainly, the approach that he has chosen, an effective gift ban, is superior to the gift disclosure approach. If a gift is inappropriate in appearance or reality, it should be banned, not merely disclosed. Mere disclosure of such gifts just gives them wider publicity, further undermining public confidence in government, instead of strengthening it.

I hope that today's hearing will help us move this legislation forward and help restore public confidence in this institution. And I look forward to the testimony of all of our witnesses and the written testimony which a number of people have asked to submit.

PREPARED STATEMENT OF SENATOR LEVIN

Today's Subcommittee hearing is on S. 885, a bill introduced by Senator Frank Lautenberg to limit the acceptance of gifts, meals, and travel by Members and Congressional staff in a manner substantially similar to the restrictions applicable to executive branch officials. This bill comes to our Subcommittee with the added momentum of a Senate resolution adopted on May 6, 1993, which expressed the sense of the Senate that we should enact a comprehensive gift ban this year, in this session of the Congress.

While legislation pertaining to Senate Rules is ordinarily directed to the Senate Rules Committee, this particular bill—because it proposes statutory restrictions on the acceptance of gifts applicable to both the Senate and House—was referred by the Parliamentarian to the Governmental Affairs Committee.

There is no question that the current congressional gift rules are inadequate and vulnerable to abuse. For example, while the gift rules applicable to executive branch employees prohibit the acceptance of even a single gift with a value in excess of \$20 (unless the circumstances indicate that the gift is motivated by family relationship or personal friendship), our rules permit the acceptance of any number of gifts under \$100 from the same source. In theory, that means that we could accept a \$95 gift from the same source every day—and by the way, not even disclose it. Even gifts of more than \$100 are allowed, up to a total of \$250 a year from a single source.

At a time when the public's confidence in Congress is at an all time low, the disparity between our gift rules and those applicable to executive branch officials only serves to exacerbate the problem. I don't believe that Members or staff are influenced by the routine gifts and meals they are allowed to accept, but I do believe that the acceptance of such gifts can create the appearance of favoritism. Such an appearance is poison for public confidence in government. It isn't good for the Congress, and it isn't good for the country.

I believe that we must tighten our rules on gifts so they are comparable to the executive branch rules. I also believe that we can do so without impinging upon our responsibility to our constituents or our role as elected representatives and decision-makers. There are, of course, some differences between the legislative and executive branches, which would make it difficult for our gift rules to precisely mirror the executive branch rules. For example—

- The representative responsibility of Members of Congress creates a relationship with the public that is very different from that of executive branch officials. As a result, Members of Congress often perform ceremonial functions, attend functions of constituent groups, and promote home-state products, in a manner that might be prohibited for executive branch officials.
- The executive branch rules apply to gifts from people—known as “prohibited sources”—whose actions could be affected by the actions of the recipient. Because the official actions of executive branch employees typically affect only a narrow sector of the economy, such as a specific regulated industry, the number of prohibited sources is generally fairly limited. By contrast, the official actions of a Member of Congress are likely to have an impact on every person in the country. As a result, the prohibited source rule used in the executive branch cannot easily be applied to the Congress.

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I commend Senator Lautenberg for his initiative in introducing S. 885 and leading the fight for a tighter ban on gifts. Certainly the approach he has chosen—an effective gift ban—is superior to the gift disclosure approach. If a gift is inappropriate in appearance or reality, it should be banned and not merely disclosed. Mere disclosure of such gifts just gives them wider publicity—further undermining public confidence in government, instead of strengthening it.

I hope that today's hearing will help us move this legislation forward, and help restore public confidence in this institution. I look forward to the testimony of our witnesses.

We will start with the sponsor of this legislation, a good friend of mine and a good friend of ethics in government, Senator Frank Lautenberg, who has introduced this bill with a number of cospon-

sors. He is leading the fight to tighten our gift rules and to ban a significant number of additional gifts which now are permitted that, in my opinion and in his opinion, should not be.

We are delighted you are here today, Senator Lautenberg, and we call on you to proceed.

**TESTIMONY OF THE HON. FRANK LAUTENBERG,¹ A U.S. SENATOR
FROM THE STATE OF NEW JERSEY**

Senator LAUTENBERG. Thank you, Mr. Chairman, for holding this hearing and for the encouraging words that I heard you give here.

I want to express my appreciation to you for your support of the Congressional Ethics Reform Act and for your willingness to move the legislation quickly. I also want to acknowledge the cosponsors of the bill, Senator Boren and yourself, Mr. Chairman, and Senators Wellstone, Feingold and Kohl.

The Congressional Ethics Reform Act would significantly tighten rules governing the acceptance of gifts, meals, and travel by Members of Congress and congressional staff.

Mr. Chairman, I may not be able to stay, but I could not help but note with interest the appearance of a dear friend and a former Senator, a distinguished Member of this body, Senator Birch Bayh, whom I had the pleasure of knowing when the roles were reversed, when he was the Senator and I was "the civilian."

But it was always with a great deal of respect, and I must say admiration and affection, Mr. Chairman, that I met with Birch Bayh, followed his career and his leadership, and this is not intended to soften up any differences that we may have on this particular issue, but, of course, I hope he will hear my words.

Mr. Chairman, the mission here is to significantly tighten the rules governing the acceptance of gifts, meals, and travel by Members of Congress and congressional staff. At its most basic level, the goals of this legislation are simple.

To reduce the ability of lobbyists and special interests to buy access and influence on Capitol Hill and to ensure that average Americans and the broader public interest, the constituents who sent us here, have their interests coming first.

Americans today—and you mentioned this, Mr. Chairman—are deeply distrustful of the Congress and they are angry. Poll after poll says that there is a great deal of cynicism and suspicion. They see Members of Congress as captives of special interests, unconcerned about ordinary people. In the view of many, Congress is out of touch, in part, because Members enjoy an assortment of special perks and privileges that are unavailable to the general public.

Mr. Chairman, I know that many of my colleagues believe—and I share their belief—that these perceptions are inaccurate, or at least overstated. But the fact is that Members of Congress do enjoy many special advantages that ordinary Americans do not, and many of these special perks are specifically intended, and we can't kid ourselves about this, to influence Members in the performance of their official duties.

¹ The prepared statement of Senator Lautenberg appears on page 62.

I cannot understand why a gift suddenly developing out of a relative stranger's largess seems not to strike a note of curiosity. Why did I get the 57th clock that I have gotten since I have been here? Perhaps it has to do with the timeliness with which the Senate meets. But the fact is, there is no good reason to allow these gifts.

The bottom line is, the people are entitled to be suspicious. It is not just a problem of perception. Special interests do have too much political power and we are obliged to do something about it.

Obviously, the Congressional Ethics Reform Act is not the only step that we have to take. We need to overhaul our campaign finance laws, toughen regulation of lobbyists, close the revolving door and fundamentally change the policymaking environment here on Capitol Hill. But imposing strict new limits on the acceptance of gifts, meals, and travel is also essential.

If the phrase "business as usual" means anything, it includes the many special favors provided to Congress as a way to influence policy. It is not unusual for lobbyists to provide Members with free tickets to shows or sporting events or take them out for lavish dinners at expensive restaurants. Sometimes they provide Members with trips, free trips, typically involving stays at expensive luxury hotels, along with various forms of sport and entertainment.

Mr. Chairman, when lobbyists take a Senator or a key staff member out to dinner, it is not just to see that they are well fed. They are buying access, and access is power.

Ordinary citizens do not have that access. They cannot just take their Senator to a quiet dinner in an expensive restaurant and explain what it is like to be without work, what it is like to be worried about the roof over your head, what it is like to be concerned about your kids' education.

They cannot take their Congressman to the ball game, sit in the box seats, and discuss the problems they are having meeting their obligations in connection with educating kids. And they certainly cannot spend a relaxing weekend at the typical resort, teeing off on a beautiful golf course with key legislators, while they, "Joe, working persons," review their concerns and anxieties about the future. For most of our citizens, they could not even afford it, if they scrimped and saved for a month or more.

If any Member doubts the value of this kind of access, just ask a lobbyist for their corporate clients and see what their fees are. What are those fees for? It is to gain influence. It is to convince a Member of the Senate or the Congress of a particular point of view. If the point of view was so overwhelmingly just, it would not need the extraneous meals or weekends. Only the most disingenuous will claim that they provide these exotic trips out of the goodness of their heart. They pay because it gets results. They pay because it buys clout.

Similar thinking is involved when tickets are given to Members to a show or a sporting event, or other gifts. Often, the tickets buy access to the Members for nine innings or four quarters or I guess even a few chucks, although I don't know how many there are in a polo game. But if not, they buy good will, even if they do not buy access directly. And good will is also power. It can mean the difference between getting your calls returned or your letter taken seriously, and that can translate into millions, even billions of dollars,

at the expense of ordinary Americans who have no lobbyists to represent them.

Mr. Chairman, I was the CEO of a pretty good-sized company, and one of the rules that I personally established was to forbid purchasing agents or those who negotiated leases for our company from accepting gifts from suppliers or landlords. There was the potential for undue influence, and the stakes were high, and I wanted that staff member to have an allegiance only to my company, to our company, to ADP. The same concerns apply to Congress, where the stakes are infinitely greater.

Unfortunately, the Senate rules on the acceptance of gifts, meals and travel, to put it mildly, are far too lax. Currently, as you know, Mr. Chairman, Senators may accept gifts worth up to \$250 from any person. However, gifts worth less than \$100 are not even counted. Thus, a lobbyist legally may provide Senators with unlimited numbers of gifts worth \$99. I assume that buys a lot of golf balls, tennis balls, tennis rackets, and you name it.

Moreover, some types of gifts are excluded from the limits altogether. There is no limit, for example, on the number of meals at restaurants that lobbyists can provide to Senators. In addition, the rules allow Members broad latitude to accept reimbursement for various travel expenses, regardless of cost.

By contrast, officials in the executive branch must abide by much stricter rules of conduct. Generally speaking, executive branch officials may not accept gifts from any person who does business with the official's agency or who has an interest that may be substantially affected by the performance of the employee's official duties. There are limited exceptions, such as awards, honorary degrees and other items worth less than \$20. However, the rules apply broadly to any items of value, including meals and travel expenses.

The Congressional Ethics Reform Act would require Members of Congress and congressional staff to abide essentially by the same rules as the executive does on gift acceptance. However, there are a few modifications designed to strengthen the rules further and to adapt them to the Congress.

For example, the bill's proposed limits would apply to acceptance of gifts not just from certain prohibited sources, but from any person other than a family member or an established personal friend.

Perhaps the bill's most important provision is its prohibition on accepting reimbursements for pleasure trips. Under this bill, only trips directly related to official duties could be paid for by outside parties, and no travel expense could be reimbursed for items beyond those reasonably necessary to participate in the event.

To give the Subcommittee some idea of what I am getting at, let me give you a couple of examples. One powerful interest group invited top congressional aides for a lavish weekend at a fancy resort. The event was called a "congressional staff seminar," but the formal meetings were held only in the morning. At other times, the staffers were free to enjoy the resort's facilities, including tennis, swimming, horseback riding and croquet.

Another example comes from a report prepared by Public Citizen called "They Love to Fly . . . And it Shows." The report describes

a 1990 trip sponsored by an industry lobbying group. The group invited 25 Members to the luxurious La Quinta Hotel in Palm Springs, California. While there were a few meetings in the early morning, the rest of the days were set aside for golf, tennis, swimming and relaxing at this very high-priced resort. All expenses were picked up by the industry group, including greens fees, and extra plane tickets for some of the lawmakers' spouses and children. As the report concludes, "The event was clearly meant to curry favor with lawmakers."

Mr. Chairman, these types of trips are not aberrations. They are typical, and they should be prohibited. There is no reason why lobbyists should be allowed to finance trips where the primary purpose isn't to conduct legitimate business, but to have fun. That is influence peddling, pure and simple, and it is wrong.

The intent of my bill is to eliminate those trips. Unless Members and staff are working on matters related to official business full-time, they should not be accepting reimbursements from third parties.

Under the bill, the Ethics Committee would have to approve trips in advance. The legislation prohibits reimbursement for items beyond those reasonably necessary to engage in legitimate business, and requires the Committee to reject any trip that raises concerns about the integrity of the Member or the Congress.

This is designed to be a very high standard. And the Ethics Committee, though they do not need additional work, we obviously need additional rules or standards here, the Ethics Committee should resolve all doubts against allowing reimbursement. We may want to spell this out more specifically in the legislation.

Another protection included in the bill is a requirement that trip details be published afterwards in the Congressional Record. Now, some have suggested requiring such disclosures in advance of the trip, and it seems like a good idea. If Members know that they may well confront their local press or their political opponent on their trip, most would toe-the-line very carefully.

Taken together, Mr. Chairman, these protections seem strong and are intended to prevent any trips that would raise ethical questions. I recognize that some believe, as a matter of principle, that no trips should be privately financed. And I understand that view, though I believe there are occasions, including foreign travel, when such trips help officials perform their duties more effectively and would otherwise be impossible, given the budget constraints facing Congress. That is permitted in the executive branch.

My bottom line is that I want to prevent all trips that raise ethical questions, and I have an open mind about the best way to do that.

Mr. Chairman, in the interest of time, I will not go into all of the bill's provisions. But before I close, I want to emphasize that I do not mean to impugn the integrity of any Member of Congress. Many of us, including myself, have followed the rules in the past and accepted some items, without providing any special treatment in return.

But public cynicism has reached deeply disturbing levels. And as a consequence, practices that may have seemed unimportant and

innocuous a few years ago clearly are not so today. And we cannot ignore that widespread feeling. We have got to address it head-on.

Mr. Chairman, S. 885 attempts to deal fairly with many issues related to gifts, meals, and travel. No doubt it can be improved, and I remain open to further suggestions. But I hope that this Subcommittee will proceed without delay. As you know, on May 6th, the full Senate voted 98 to 1 that the Senate should approve reform legislation as soon as possible this year. As public cynicism continues to grow, the need for prompt action grows as well.

I thank you very much for the opportunity to testify, and I am pleased by your encouragement for this legislation.

Senator LEVIN. Thank you, Senator Lautenberg. Again, the Nation is very much in your debt for your leadership in this area. Actual abuse creates terrible problems, and need to be addressed. But even the appearance of abuse is corrosive to public confidence. It has got to be addressed and your bill addresses it in a comprehensive way, and we congratulate you for it.

Just a couple of questions. Your bill, as you indicated, does cover meals and entertainment. For instance, the tickets which have been received for a Super Bowl or World Series or what have you would no longer be allowed, greens fees for golfing, and free dinners at restaurants would no longer be permitted under your bill.

It is also my understanding, however, that you would allow a Member, for instance, to go to an event like a charity dinner to speak to that dinner or to attend that dinner under a—

Senator LAUTENBERG. A widely attended function.

Senator LEVIN. That is what I was going to make reference to, is you have an exception for widely attended events. It is an exception in your bill.

Senator LAUTENBERG. Right.

Senator LEVIN. I think that is a necessary exception.

What about an invitation, a personal dinner invitation to a private home? You make reference in your bill to a situation where you have an invitation from a long-time friend, I believe.

Senator LAUTENBERG. An established personal relationship.

Senator LEVIN. There are many circumstances where there is an invitation to somebody's home where there is no personal connection whatsoever. For instance, you may be in a small town where there is no hotel or motel to stay in and you stay at the home of a constituent that has been opened up to you, where you have got no long-standing relationship whatsoever. Say you are visiting a little town and the mayor says, well, instead of going 30 miles to a motel, why don't you stay with us tonight. Would that be permitted, or should it be permitted, even though there is no long-standing personal relationship?

Senator LAUTENBERG. Under the guidelines of the legislation thus far, Senator Levin, it would be prohibited. Now, if there is an overriding reason that would have one, I guess, at a place that was so inconvenient that you couldn't go elsewhere, perhaps an exception could be made for that.

Again, we are going to be looking at writing some of this language a little bit more tightly as time goes on.

Senator LEVIN. But you don't have any particular problem with that, if it can be written in, if there is no personal relationship involved?

Senator LAUTENBERG. I would want to think about it, to make sure that this isn't just a loophole. If someone other than a family member or established personal friend invited a Member and had white-gloved attendants serve a gourmet meal, with fine wines, pate and whatever else goes along, that could be even better than you are going to get in a restaurant, and could raise suspicions, in my mind.

Senator LEVIN. What about dinner at the home of a political supporter, but not a long-time personal friend, just a dinner at the home of that supporter, not for any fund-raising purpose, just purely for social purposes, to get to know them better?

Senator LAUTENBERG. Mr. Chairman, the mission is to reduce the opportunity to establish access and influence, and I think that should be the guideline. It ought not to be. If a contributor happens to be a friend and there is an established relationship, one has to think it through before one accepts it. This does not make life easy, that is for sure, but it does make it more open and more honest, in my view, and some of these things will just be eliminated. It will be a high level of discomfort for some, but that is the way it has got to be.

Senator LEVIN. One final question: As you pointed out in your testimony, there are some who would oppose any reimbursement at all for travel. You allow it in a very narrow situation, where it is only for the person going, not for family. It is only for doing business there, not for entertainment or recreation. You have got to be doing business full time, and then if you have a meal or stay overnight, that could be reimbursed by the private party.

Senator LAUTENBERG. Right.

Senator LEVIN. One of the suggestions or one of the differences that we have to address has to do with where there is that acceptance of, say, that one night's lodging in those circumstances where you are going to speak to an association on your bill or whatever.

Under your bill, the Ethics Committee would have to give advance approval, I believe, for all reimbursed congressional travel. We are going to get testimony later on today on this point, and I would be interested in getting your reaction to it while you are here.

Public Citizen is going to testify later today that they oppose that approval by the Ethics Committee, for the following reasons, and I am quoting now from their testimony:

"There will be enormous pressure on the committees to avoid disapproving any trips at all, so as not to alienate a colleague or any particular special interest group. A likely result of this unwieldy arrangement is that the Ethics Committee will become rubber stamps, legitimizing special interest travel that most citizens already find abhorrent.

"Furthermore, unlike the executive branch agencies, where officials are essentially agents of the President, each Member of Congress is an elected official. As such"—and this is their suggestion—"Members should be responsible for their own conduct, including the decision to accept private money for trips. They should not be

able to turn to another body made up of their colleagues to make these decisions for them, thereby displacing their responsibility."

Now, let me be real clear on the point here. Public Citizen will testify that they disapprove reimbursement altogether. They do not like the idea of any reimbursement. But they say if there is going to be reimbursement permitted even under the very, very narrow constraints that you put in your bill, then the Member of Congress should make that decision on his own or her own, rather than having the Ethics Committee approve it, because of the rubber stamp argument.

I just want to give you an opportunity, if you would like, to react to that point.

Senator LAUTENBERG. I would say this, that while the Congress, including the Ethics Committee, has been criticized for some decisions, the glass bowl under which we live gets ever clearer, people are asking more questions, and I think that it would be very difficult in times like this for the Ethics Committee to simply do *pro forma* approvals of travel.

I don't know whether the public is better informed or less informed, if the Member makes that decision. But one advantage of giving this responsibility to the Ethics Committees is that the committees would be able to develop uniform standards and procedures that would expedite these things and clarify what constitutes a necessary trip, an informational exchange, and that is going to be the first level of the test.

The second level will be, well, if something is held in Europe, you may need a day or two to recover on either end, but that is it. But if you are going to go to Bermuda, you do not need 3 days or 2 days on either end to recover from that arduous trip. I think that a set of conditions will evolve that are fairly clear, and the Ethics Committee, I think, is going to be ever more under scrutiny to make its decisions very clearly.

Mr. Chairman, when I came here as a freshman Senator, now 10 years ago, and traveled to the Far East, I thought it was kind of the routine, that is what happened in order to learn what was going on, whether it was in Japan or Singapore and so forth.

When I looked at the cost for the trip, which is *ex post facto*, I was dumb-founded at the amount of money that was spent to transport a few to these distant places. We probably could have traveled for a sixth or a tenth of that. I think it gets to be a pretty easy decision. We were not invited by anyone. I was on the Banking Committee and we were seeing some of the financial institutions and the financial parts of government of the countries we visited. Those are just unacceptable any more. You see article after article about these things.

We are going through a refining process, one that is changing habit and custom that has been there for decades, maybe even a century, if we look far enough back. So while we do not have every answer and every "i" dotted here, I think that as you, Mr. Chairman, and your Subcommittee develops its hearings and we have a chance to debate it on the floor, we are going to get down to a pretty good system. It will not be perfect at first, but it will say to the American public that we are trying to do something differently than we used to do it. This is a different world that we live in. The

scrutiny is much clearer and people are demanding more, and I think we have very little choice but to get this program under way.

Senator LEVIN. Senator Lautenberg, I hope we do get to that system. If we do and if we significantly restrict what gifts we are allowed to accept, as I hope we will, it will be in large measure because there are a few people willing to take the lead in this effort. You have done that, and I congratulate you and thank you for your testimony.

Senator LAUTENBERG. Thank you very much, Mr. Chairman. I cannot help but think of the situation that we may have to resolve, and that is who produces the best blueberries, Mr. Chairman, New Jersey or Michigan, and its distribution of colleagues around here.

Senator LEVIN. I will revise my remarks later on that event.

Senator LAUTENBERG. Thank you very much.

Senator LEVIN. Thank you.

Senator Wellstone, one of the newer Members of the Senate, he has also been involved in trying to improve public confidence in government. He is a cosponsor of the legislation before us today.

Senator Wellstone, welcome.

TESTIMONY OF THE HON. PAUL D. WELLSTONE,¹ A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator WELLSTONE. Thank you, Mr. Chairman.

Mr. Chairman, thank you for calling these important hearings on S. 885, the Congressional Ethics Reform Act of 1993. I am an original cosponsor of this important reform proposal, and I am here to join my colleague Senator Lautenberg in urging the Committee to report promptly a gift ban bill to the full Senate for its consideration.

I am delighted to join you, Mr. Chairman, and Senator Lautenberg in supporting this effort, and wanted to appear personally to show my interest in getting a tough new set of gift ban rules enacted into law. Your Committee has agreed to move forward on an issue which is sensitive within the Congress, yet which must be addressed straightforwardly and firmly. Mr. Chairman, I commend you for your courage.

I also commend Senator Lautenberg for his willingness to take the initiative to address the persistent problem of gifts being lavished on Members of Congress from outside sources, one of the most important issues on the political reform agenda.

As he observed when he introduced this bill, "It is indisputable that these kinds of special favors have contributed to America's deepening distrust of government . . . as public trust diminishes, the ability of Congress to address our Nation's problems diminishes as well."

Despite the assertions of our colleagues that they are completely unswayed by fancy dinners, or even by all-expense-paid trips to the Bahamas, such gifts have the appearance of impropriety—Mr. Chairman, I think you already referred to that—eroding public confidence in Congress as an institution, and in each of us person-

¹ The prepared statement of Senator Wellstone appears on page 71.

ally as representatives of our constituents. And I think that really is the essential point.

I am sure my colleagues would agree, because many have told me that they hear it constantly in town meetings that they hold in their States. People are frustrated, people are angry, and people are demanding change. People feel that they have been left out of the loop. And recent public opinion polls show us, and it is an unpleasant truth that we really cannot walk away from: public confidence in Congress is eroding.

I am not so sure, Mr. Chairman, that this loss of public confidence is based completely on fact. Sometimes I have real questions about where this kind of anger, of disillusionment, the real politics of anger is going to take us. I do not want it to be an across-the-board denigration and bashing of public service. I think that will lead to a further decline in democracy. It troubles me deeply. I think that is why this legislation, which you strongly support, is such an important step in the right direction.

Banning outside gifts would be an important signal of our willingness to respond to the demands of many Americans for a system of government that is more responsive to its citizens and less responsive to lobbyists and others with influence and access to Members of Congress. Simply by conforming congressional gift rules to the executive branch's more stringent treatment of gifts from outside sources, we can take another step down the road of reform.

I think, Mr. Chairman, that people just want to see more sunshine and they want to see more accountability in the process, and I really think Democrats and Republicans are for that, and I hope we will get very strong support for this.

Political reform was an important part of my mandate from Minnesota, Mr. Chairman, as it is for many new Members of Congress—and even for many veteran Members of Congress. Americans are demanding real change. That is evident from the polls. And to my colleagues who say, “well, this is just good government or goo-goo reform,” and “people really are concerned about the bread and butter economic issues,” and “it is just a fad and people will forget about it soon.” I do not think so. I think this is a central dynamic in American politics today, and I think it is extremely important that we respond to this, because I think that representative democratic institutions such as the Senate and the House of Representatives are very important.

I view this bill as just one element in a much more sweeping reform agenda which would include genuine campaign finance reform—and I know, Mr. Chairman, you are committed to that; you were the one that reminded me that with the voluntary expenditure limits in the bill that we passed in the Senate, although I was not so keen on it as a major reform effort, you were the one that reminded me that this was at least a significant step in the right direction—tough new lobby disclosure rules, strict limits on political contributions from lobbyists, and reform and reorganization of the Congress and Federal agencies.

Legislation in each of these areas should be acted upon by Congress as soon as possible. If we fail to move forward now on this comprehensive reform agenda, we will have missed an historic opportunity. This is the best time in two decades for fundamental

reform, when we have a President who is committed to change, a Congress elected on pledges of change, and a citizenry that is angry enough to demand change.

Too many here in Washington, from politicians to pundits, are cynical about real reform. Only public pressure will force President Clinton's promised "revolution in government" to rescue American politics from being held hostage—and I think this does happen—by big money special interests. We must restore the basic democratic principle, and it is a core principle, that each person counts as one and only one. That is the very issue of accessibility and openness, and the test of representative democracy.

During Senate floor consideration of the Lobby Disclosure Act in early May, I offered an amendment to that bill to require itemized disclosure of financial benefits that lobbyists give to Members of Congress and their staffs. That amendment was adopted by the full Senate.

A similar lobby disclosure bill is currently pending before the House Judiciary Committee. That Committee has held a hearing on the disclosure bill, and they are expected to act on it soon. I am hopeful that they will incorporate the provisions of my amendment in the House bill in the Committee markup, and that you will retain that provision in conference. I understand that there is growing support for such disclosure on the House side, as will be evidenced by the introduction of my disclosure amendment on a separate piece of legislation later this month, interestingly enough, by several 1st-term representatives.

Of course, I agree that the preferable and most straightforward way to address the gift problem would be to enact the bill you are considering today. But until we impose a man, a comprehensive set of new disclosure requirements on gifts from those most likely to give such gifts—well-heeled special interest lobbyists with legislative agendas before the Congress—should be enacted. Indeed, disclosure may help to hasten the day when we enact such a ban.

This bill would go further than simple lobbyist disclosure by prohibiting Members of Congress and their staffs from receiving gifts and other financial benefits from all private sources, subject to certain limited exceptions. It would apply to gifts valued at over \$20 at a time, provided the aggregate value does not exceed \$50 in any calendar year. This \$20 minimum and \$50 calendar year limit tracks the levels of prohibited gifts for the executive branch.

Current congressional policy—and Senator Lautenberg referred to this—which allows gifts worth up to \$250 from one source during a year, and which does not count gifts of less than \$100 toward that limit, stands in sharp and embarrassing contrast to the long-standing policy and practice of the executive branch.

I suspect that some will argue today that the nature of the institutions justifies different standards for the congressional and executive branches. I disagree. I do not think those arguments meet what I call the "Minnesota Cafe Test," the common sense assessment of constituents I meet in Minnesota cafes, on the street, in the post offices and in meeting halls.

Those people ask: Why should we in Congress not live under basically the same rules as an official in the State Department or in the Labor Department or another executive office? By adopting

these rules as a basis for congressional reform, S. 885 will help to restore the credibility and integrity of the Congress. Its restrictions on gifts, meals, and entertainment, travel and contributions to charities all clearly reflect considerable work and thought on the part of Senator Lautenberg and the organizations with whom he consulted in developing the bill.

I know, too, that there will be disagreements over whether to allow this minor exception or that, over how to regulate privately funded staff travel, or over the minimum gift thresholds provided for in the bill. But I believe the basic structure of the bill and the executive branch standards it contains are fair and reasonable. I urge the Committee during its consideration of the bill not to stray too far from its essential form.

Finally, let me reiterate what I said at the outset: I commend you, Mr. Chairman, for cosponsoring the Lautenberg bill. I know that you are sincerely committed to this reform agenda and have been trying for many years to clean up the system. I know that you will do everything you can to enact tough new standards into law.

I am grateful, Mr. Chairman, for your friendship and for your counsel on this issue and many others. And though we had a tactical disagreement on my lobby disclosure amendment, you were, as always, gracious and kind in that disagreement.

I thank you for this opportunity to testify and I assure you of my continued enthusiastic support for moving this bill to the Senate floor and getting it enacted promptly into law.

Senator LEVIN. Thank you very much, Senator Wellstone.

I have just a few questions. I asked Senator Lautenberg about some specifics. And I think your main point is correct, that we should focus on the basic structure and to try to mirror-image as much as we can the executive branch rules, and I think that is the main thrust of the bill and that is going to be the main thrust of my effort. But we also have to write some specifics, since it is legislation we are writing here.

And one of the specifics has to do with this personal hospitality exception. I asked him about the meal, for instance, at the home of a constituent who is not a long-time friend, just a meal there, but it might go above the \$20 threshold, I guess if the wrong variety of wine were served. Do you have any problem with accepting a meal at a private home, even if it is not a long-time friend? Would that give you a lot of trouble?

Senator WELLSTONE. Not if it was a good meal.

In a more serious vein, I heard the question that you had put to Senator Lautenberg, and I know that what Senator Lautenberg was saying is let's not create some big loophole. On the other hand, I think when you get into a tremendous amount of micro-managing, you almost undercut the essence of what you are trying to do. And I think if we can have some language that would allow for that, I do not believe we would be doing any injustice to what it is we are trying to clean up here.

Senator LEVIN. And the other one is staying overnight with a constituent. I gave the example of where you just stay overnight in a town that does not have a motel, or even if it does, you just stay overnight at somebody's home.

Mr. WELLSTONE. My response would be the same.

Also, Mr. Chairman you did not ask this question, but I was also listening very carefully with interest to the question about the Ethics Committee, the whole issue of private travel by staff. I know that Public Citizen, which I quite often agree with, is opposed to that.

I am thinking this through and it is not a final position, I am just sort of thinking out loud, which I guess is a little dangerous to do, but I used to do it teaching and I do not see why I cannot do a little of it before your Committee.

I think that I would not want to see an outright ban. I think the Ethics Committee would develop, on the basis of having to make these decisions, as opposed to the individual Senator, I think the Committee would develop, if you will, a fairly clear set of standards and precedents on the basis of having to make these decisions, which then would become the framework for making these decisions under new rules, and I think they could do a good job of it.

Again, given the fact that the political ground has shifted somewhat and people are holding us to higher standards, I think the Ethics Committee would be rigorous in its approach. I would probably prefer, if we do not have the outright ban—and I would need to hear more about it before making a final decision—I think that would be preferable to individuals making their own decisions without guidance from the Committee. I like that philosophy that each of us ought to be directly accountable. But I think probably the Ethics Committee would be the place where that guidance should be developed, with the final decision, of course, resting with the Member. This lodges accountability where it should be.

Senator LEVIN. If you are not going to have an outright ban?

Senator WELLSTONE. If we are not.

Senator LEVIN. But you are not decided as to whether there should be or not?

Senator WELLSTONE. I am not sure one way or the other, and I do not like to waffle. I think I lean toward not having an outright ban.

Senator LEVIN. Thank you.

Senator WELLSTONE. Thank you very much.

Senator LEVIN. We appreciate your comments. Thank you, Senator Wellstone.

Next we have a couple of old friends of mine, and of other Members of the Senate and the House. Birch Bayh, who served here from 1963 to 1981, was on the Senate Judiciary Committee. I remember working well with him on many issues, including a constitutional amendment to provide for the direct election of the President.

And Frank Horton, who was in the House of Representatives for actually even a longer period of time. I am not so sure I even ought to disclose how long you were in the House. It was around 30 years.

Mr. HORTON. It is public record. It has already been disclosed.

Senator LEVIN. It has already been disclosed, so it is 30 years that Frank was in the House of Representatives. Both now practice law in Washington. Both came to the Congress together in 1963 and both are, as I said, good friends of just about everybody in both bodies.

We thank you for coming. Birch, why don't we start with you.

TESTIMONY OF THE HON. BIRCH BAYH,¹ BAYH, CONNAUGHTON, FENSTERHEIM & MALONE, AND FORMER U.S. SENATOR FROM THE STATE OF INDIANA

Mr. BAYH. Thank you, Mr. Chairman.

I consider it a privilege to follow two distinguished Members of the body. You have been with such distinction, Senator Lautenberg and Senator Wellstone. It is good to see you again, Senator Levin, and I compliment you and the Committee for the efforts that you are making and to share some thoughts with my friend Frank. I had a chance to visit with Joan Claybrook, who has served the citizens of our country so well. I am sure there are others who will express their opinion.

Let me resist the temptation to abbreviate a 4-minute statement into a 20-minute statement. As much as I dislike to read a text, I have given a little thought to this, and let me just quickly do it and then yield to any questions.

Senator LEVIN. Would you pull the mike a little closer to you, Birch?

Mr. BAYH. So far you haven't missed a thing. [Laughter.]

Senator LEVIN. Well, we miss your sense of humor around here.

Mr. BAYH. You may be able to say the same thing after I am through.

Senator LEVIN. We may ask you to push the mike back further. [Laughter.]

Mr. BAYH. I do appreciate the opportunity to share some thoughts with you. I want to begin by saying I am not completely comfortable in doing so. It goes to my concern that I am really not comfortable in trying to judge others. I guess I recall that biblical admonition that "he who is without fault should cast the first stone." And try as I have over the past years to correct my own shortcomings, I am painfully aware that I have failed in many, many areas.

It has been my good fortune to work with you and many men and women of both political parties, those who have served both the local, State and national government. It is my firm conviction that those that I have had a chance to know are by and large honest, dedicated, hard-working, by any definition, good public servants. Their standards of conduct and morality are consistent with or perhaps even above the norm of the constituency who elect them.

I would be naive, if I did not recognize the fact that there are those who succumb to temptation and violate the public trust. I know that you and those who have preceded me feel very strongly about the nature of public trust.

If one individual violates this public trust, they do irreparable damage to public confidence, and I think that is part of the problem we have now with the loss of faith of our constituency. When they see one person do wrong, they equate that to the generally accepted norm, which I do not think is accurate.

I am not suggesting we need a collection of saints in public service. It might be sort of dull serving, if that were the case. However,

¹ The prepared statement of Mr. Bayh appears on page 74.

I think that those of us who are concerned about public attitude and public confidence, and understand the important role that plays in a democratic system, understand that we must be sensitive to various individual or institutional practices which raise serious doubts in the average citizen's mind.

I made a comment about my assessment of the people who serve here, and in dealing specifically with the question of gifts, I have to say very frankly I do not believe that there is a single Member of Congress that I have had the good fortune to know, or even that I do not know, who could be bought or influenced by a dinner or a gift.

But I am quick to say that I do not think my opinion prevails among the public generally, and so I think it is that public perception that you are quite wisely dealing with. And I think the fact that of holding these hearings and the Committee expressing its concern, will help to allay some of the public concern.

As Senator Lautenberg's and Senator Wellstone's comments and the comments of others are heard by individual citizens, slowly, but surely, we can begin to repair the damage that has been done to the confidence level of the average citizen.

Let me deal, if I may, just specifically with a few factors that I think you need to consider in your discussions. I, frankly, am not wise enough to know at what dollar level a Member will succumb to temptation or at what dollar level a citizen's confidence will be restored. I leave that to your judgment. But there are certain factors I recommend for your consideration.

As was said earlier, I think we cannot overemphasize the importance of the appearance of impropriety. It is not just the misdeed. It is the fact that people thoughtlessly are entrapped or intentionally do something that they are accustomed to doing by habit, with no real understanding of what the average citizen thinks about it. And I think that is every bit as important, to deal with the appearance of impropriety.

I think you need to consider, as the legislation has, the relationship of individuals. Are they family members or are they long-time friends? I think you need to consider whether there is constituent interest involved. I think it is a valuable part of being a representative, to be able to communicate and travel back and forth and visit with many different people with various interests. If you have to a chance to hear from all of them and witness all they do, I think you are serving your constituency well. Whatever you do legislatively in this area, I think it is important to maintain this critical opportunity.

A determining factor would be whether a Member can assimilate knowledge which will assist him or her in fulfilling their legislative responsibilities. Sometimes this knowledge is obtained by visiting certain places that are outside one's constituency, and I think that should be considered.

The circumstances are important to consider. Are there people there who really have an ax to grind? Do they have a vested interest in having you be there? Is that the reason that you are invited? Is that the reason for the occasion? I think these things need to be considered.

I think another aspect you need to be concerned about is whether restrictions make it more difficult for a Member to conduct his or her legislative activities or to fulfill his or her family responsibilities.

Let's prohibit specific activity which will erode public confidence. Do not limit it, prohibit it. However, I also think the Committee understands the importance of public disclosure. You are really seeking balance, where a Member's personal activity and relationships really can be kept private on one hand, and at the same time you seek means of preventing other activities and relationships which may have undue influence upon the conduct of a Member's official responsibilities or may have the appearance thereof.

Now, I would like to point out that these conflicts are not confined to the issues under consideration here. We have discussed them over the years when you and I served together, and you are still continuing to discuss some of them. These concern a Member's business or financial holdings or activities. The question of honoraria and campaign contributions have received similar attention. Some limitations and outright prohibitions have been imposed with respect to these latter three areas.

However, in my judgment, we have also resorted to public disclosure. Certain things are personal in nature and cannot be prohibited, but the constituency and the public generally has a right to know, so we require disclosure.

Let me close on one comment which may be a bit discordant.

I think the manner in which the Senate and the House campaigns are financed does more damage to citizens' confidence in our democratic institutions than anything else. The millions of dollars which are spent in political campaigns is a blight upon our political system.

You have to say there is a little inconsistency for Congress to say you can't spend more than \$20 to buy someone a meal, but can conduct a campaign that costs \$2, \$10 or \$20 million to be elected to the U.S. Senate, and not understand the impact this has on the people at home.

A large majority of our citizens are suspicious and have serious doubts about the integrity and objectivity of decisions reached through such a process. I know I am speaking to the choir here, because you are equally concerned about this, but I pray that you and your colleagues will find a way and have the wisdom to deal with this problem the same as with the one that you invited me here to comment upon.

Thank you.

Senator LEVIN. Birch, thank you.

Congressman Horton.

**TESTIMONY OF THE HON. FRANK J. HORTON,¹ VENABLE,
BAETJER, HOWARD & CIVILETTI, AND FORMER REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NEW YORK**

Mr. HORTON. Thank you, Mr. Chairman.

¹ The prepared statement of Mr. Horton appears on page 77.

It is an honor for me to appear before the Subcommittee. I do have a statement and I would like to ask that it be put in the record at this point, and then I will try to summarize it.

Senator LEVIN. We thank you, and it will be made a part of the record.

Mr. HORTON. I would also like to introduce the Subcommittee and staff to John Cooney, who is sitting in the row back of me. He is a partner in the law firm of Venable, Baetjer, Howard and Civiletti, where I am located now. He specializes in regulatory and environmental matters. He previously served from 1982 to 1987 as Deputy General Counsel of the White House Office of Management and Budget, where, among other matters, he was responsible for legal issues concerning acceptance of gifts and travel by OMB officials.

I have benefited from his experience in the executive branch and some of the problems that he has brought to my attention, with which I was not as familiar. I want to express my appreciation to him for working with me on this matter, and also giving me the background of his experience with Federal Government regulations and rules as they relate to the executive branch.

In my approach to this, I would suggest there are several basic principles the Subcommittee might follow in addressing this issue. I would like to just tick them off quickly.

Whatever rule is adopted I think should apply to the Members of the Congress themselves and their staffs, rather than to have something that would rely upon disclosures by lobbyists, as contrasted to the Members having to be familiar with and handle it themselves.

The second item is that the same standard should apply to Members of both the House and the Senate and the senior staff who receive salaries of \$75,000 or more. I know that senior staff is included and should be included. I think it is important that standards apply to both the House and the Senate alike. In other words, we ought not to have different standards in each house, as we have had on some occasions. I hope that can be accomplished.

Then the standards should follow basically the executive branch model, with suitable modifications to allow Members to perform their duties.

As a general proposition, the standards applicable to Members should follow the rules that are applicable to employees of the executive branch. However, our job responsibilities as Members of Congress are quite broader than those of executive officials, and unlike executive appointees, we are directly accountable to the electorate for our actions.

These differences are important, and there are several areas where I think there should be differences. One has to do with products and items from our district and to promote those products of our home States and districts.

As a matter of fact, I heard Senator Lautenberg refer to blueberries. He claimed New Jersey blueberries are better than those from Michigan. As a matter of fact, New York has some very good blueberries, too. So one of the things I think has to be remembered is that there are products of our States that should be exempt from this proposed legislation.

Second, we do have to be responsive to our constituents. We have to attend a wide variety of social receptions and functions. I know, in my 30 years in the Congress, I attended a lot, not only in my district, but also here. People would come from my district to Washington and would want to have dinner. I remember the first time I went to dinner. I had not been here more than a week. I made a mistake, because I went out for dinner with a group of real estate people. The number kept growing and didn't start on time. Finally dinner was ordered. I got home about 2 a.m. I never did that again. People do come to Washington from the district and they want you to attend. Provision should be made for this.

The matter of trips is a very touchy area. It is important for Members of Congress to make trips and to have the opportunity to see first-hand what the problems are at different places, not only in the United States, but also overseas. If a program that is adopted prohibits Members from doing that, then that would not be advantageous to the Member being able to do his job.

I find, as a result of what is going on now, that more and more Members are not making the trips they should be making. It is a very difficult area, but there does have to be a provision made to permit trips.

The implementation of restrictions on acceptance of gifts can be done either by legislation or by rules. My concern with legislation is that there are criminal implications. It would permit the Legislative Branch to be examined by the executive branch.

My suggestion would be you consider it by way of rules, rather than by legislation, in order to avoid the criminal aspects. My personal judgment is that the amendment of the rules of each body would be better than to do it by legislation.

With regard to the amount of the gifts. I have some problems with the limit of \$20. I think \$20 is a pretty low level. For example, I brought along with me this little gift that was given to me. I sent a young man to the Naval Academy and ultimately he became a Commander in the Navy. He commanded the Lewis & Clark, a submarine. He asked me to be the principal speaker at his change of command ceremony, which I was very happy to do.

When we got finished, he gave me this pen and pencil set. It is probably worth more than \$20. I have not priced it. It was inscribed with the name of his submarine on it. I certainly would not want to be denied the opportunity, as a Member of Congress, of receiving this small gift. This is just one of the examples we keep in mind when we start to pass this kind of legislation.

I also brought along an Eagle given to me by FAPAC. As you know, I was the author of legislation that began the Asian Pacific American Heritage Week. Now it is a month, and it is permanent. One of the groups, which is the Federal Asian Pacific American Council, gave me this Eagle plaque last year. I am sure it is worth more than \$20. Under Senator Lautenberg's bill, I would be prohibited from taking this award. Thus an award should be considered when we are talking in terms of gifts.

The other point I would make with regard to the \$20 gift is we ought not prohibit gifts entirely. But if you do set the level at \$20, then you are, for all practical purposes, prohibiting any type of gift. I know a lot of people want to prohibit gifts entirely, but I am

not in that camp. Thus I think \$20 is too low. On the other hand, I agree with the Committee and with Senator Lautenberg that it is important for us to take a look at this entire matter. I think that the \$250 cap and the \$100 limitation is out of line and should be tightened up.

Basically those are the views that I have with regard to the present legislation. I do commend your Committee. I commend Senator Lautenberg for bringing the matter up. I think it is something that does need to be addressed, and I think this is the time to do it. The American people are looking for answers, and this is a time to have answers.

Thank you.

Senator LEVIN. Thank you, Congressman Horton, for that helpful testimony.

Both of you have a lot of practical experience, both in the Congress and in life, real life, and that is why we are so delighted you were able to accept our invitation to come and help this Committee, to assist us in kind of piecing our way through this.

I think both of you would agree we have got to tighten the rules. On the other hand, from your testimony, I think you both would agree that there is some *de minimis* gifts, some token gifts that, as a representative, you do not want to have to refuse, such as a plaque, such as a pen and pencil set, such as home State products that you are trying to promote, be they blueberries, peaches, cherries or anything else which we all have from our home States in different varieties.

A handmade pillow embroidered by a woman who is thanking you for what you helped her on a social security matter, it could be worth \$23. But a hand-embroidered pillow that is personally given by a constituent as a thank you, it seems to me most of us would say we should not have to return that. You could really do damage to that person needlessly, by having to return that kind of a handmade item that was just a simple human thank you, although its value may be \$23 at some antique show or whatever.

So far, would you agree with that? I do not want to put words in your mouth. I think you said, Congressman Horton you would. Let me just ask Senator Bayh, so far we are together, would you say?

Mr. BAYH. Yes.

Mr. HORTON. If you are from Michigan and they offer you an automobile, that would be another matter. Eastman Kodak was in my district. You know, they could offer you a camera that would be worth a lot more than \$250.

Senator LEVIN. Absolutely. The premise is how do you draw the line? How do you make sure that *de minimis* token items are OK, but you don't want us and I don't want us accepting World Series tickets and Super Bowl tickets and trips and things like that, so there is necessarily a line to be drawn and it gets complicated.

I asked the earlier witnesses what about a meal at someone's home, and we got a different answer from each of the witnesses on that. Do either of you have any problem with accepting a meal at somebody's home, personal home?

Mr. BAYH. To me, there is no absolute formula for this. I think what we are trying to do is to not keep a Congressman or a Senator and a constituent from exchanging memorabilia, but we are

trying, it seems to me, to deal with whatever it is that destroys faith or lessens faith in the system.

I cannot imagine anybody having a concern about you spending a night at somebody's home that you are visiting, particularly if that someone is a constituent. My goodness, that is what being a representative is all about, it seems to me. However, if a person asks you to stay in his home and he had dancing girls and a band, you could put together a scenario that would destroy or lessen faith. But the normal kind of thing, it seems to me, would be something that someone would say, "Ho hum, what difference does it make, it is nice that he spent an evening in his own State or even whatever State it might be."

Senator LEVIN. Staying in a constituent's home having a home-made meal and sleeping overnight, that wouldn't bother anybody. I think your test is exactly the right test, which is what promotes credibility and what undermines credibility. I think that is the test and should be the test in everything we do, frankly.

Mr. HORTON. I agree with that 100 percent.

Senator LEVIN. All right.

Mr. HORTON. I didn't have any problem with the other one, where it was someone you didn't know that well, either.

Senator LEVIN. No, I am saying someone you don't know.

Mr. HORTON. In my district, I had those little towns and there was no hotel and no place to stay.

Senator LEVIN. Now let me get to the travel issue. This, in a way, is the most complicated of all the issues, as I think maybe both of you said, because here we have got a fundamental question as to whether we allow any private organization at all to reimburse a Member of Congress for a trip.

If I go back to Michigan, I think it complicates it, because I think that is going to be paid for out of my official travel and probably should be any time I go to my home State. But let's say I go to another State. I go to Illinois and make a speech at an AMA convention and come right back to Washington the same day. I run out there in the morning and make a speech at lunch and come back to Washington to vote in the evening.

The subject of my speech is the health care bill that is in front of the Senate, and I give my views on it, with no honorarium. I have never accepted an honorarium, anyway, and that is simple for me. Let's assume that is not an issue, no honorarium. It is just a question of whether or not you can be paid that air fare back and forth by that organization. Some say no. If it is official business, if you are there making a speech as a Senator, giving your point of view, you should charge that to your travel account and the taxpayers should pay for it.

Others say we have limits as to how much we can spend, and if we do not get reimbursed by the entity that is sponsoring that convention in Chicago for that speech, you probably are not going to be able to go at all, just because we do not have enough travel funds to go, that there is nothing wrong there, that there is no playing golf, there is no staying overnight at a resort. You are running out making a speech at lunch and coming right back.

Under your confidence test—I will ask you, instead of my saying anything—what is your reaction to the speech, running out for

lunch to Chicago, flying out and coming back? Do you have any reaction to that?

Mr. HORTON. I agree with you. You get into another problem, if you try to have it all financed by the Federal Government. You will get criticism, because the Federal Government is going to be paying for your travel to Chicago to make a speech.

Now, no matter how you slice it, the constituents are going to be upset, because you go out there either at government expense, or you go out paid for by the organization that has invited you to come out. I think the lesser of the two evils is to do it with the AMA so long as you have to report it. I do not see any problem with that.

Senator LEVIN. Birch.

Mr. BAYH. You know, I suppose one word has been mentioned more than any other, and that is influence. We are concerned about influencing a Member. Well, there is another side of that coin. What about influencing your constituency? A democracy depends upon a flow of information. Unfortunately, a lot of folks at home do not have time to read the Congressional Record, unless they don't have any sleeping pills and need to go to sleep at night. This two-way dialogue I think is critical.

This may be a *mea culpa* here and I don't think I did anything illegal, but it is the kind of thing that would be prohibited. As you know, I was involved in certain legislative issues and I had a list of places that I went in order to talk to a group about the legislation that I had sponsored, because I wanted that particular group to support it. Legislation, I thought, was good for the country—for example, the 25th Amendment that ultimately got passed and the direct election of the President, which never got passed.

I remember flying to Dallas to the League of Women Voters' State convention, flying back to Washington all night, and the League of Women Voters picked up the tab. The group is not doing you a favor, if you have to travel out there and turn around and come right back. I don't see how they have any undue influence on you, and such an exchange of views is part of the dialogue.

You hear their position on issues and you have a chance to report what is happening in Congress, and I think that is a positive contribution. From the standpoint of influence, you would probably be a lot better off if you could stay home and spend a night with your family, instead of speaking to a group, particularly outside your State.

Senator LEVIN. Does it make any difference whether or not the AMA at that Chicago speech or the League of Women Voters that you spoke to in Texas, whether they pay the House of Representatives or the Senate for the price of the ticket, instead of paying you directly into your account? Does that make any difference, the mechanics? Some people say the best way to do this, to insure confidence in government, is for you to use your travel money and then to have the League of Women Voters reimburse the Senate or the House of Representatives. Others say what difference does it make? They are reimbursing the government, in any event.

Mr. HORTON. Sometimes, too, they provide the ticket. They might get a special rate on a ticket which you might not be able to get. I do not think it makes that much difference.

Senator LEVIN. Do you think the mechanics make any difference?

Mr. HORTON. The mechanics, in my judgment, don't make any difference.

Senator LEVIN. Birch.

Mr. BAYH. I agree. They do not. Obviously, the amount you are paid is the price of a ticket. There is no windfall there. If there is, you have trouble in more ways than one.

Mr. HORTON. As I said before, I think this is one of the toughest thickets to get into. For example, both parties, Democrats and Republicans, go to retreats and lobbyists usually pay for those retreats, going and coming. That is another problem that is going to have to be addressed. I don't have an answer to that.

Senator LEVIN. That one is addressed and should be, because that to me is where I draw the line. It is one of the places I draw the line. No way should we permit lobbyists to be paying for our retreats.

Mr. HORTON. I say it has been done and it should be looked at and tightened up.

Mr. BAYH. I have to say what I said before: I don't think any Member who goes to a retreat which is paid for by a lobbyist feels that he or she is compromising himself. However, any lobbyist who is there and has a chance to visit with the Member is going to have an easier opportunity of getting to talk to him when he gets back to Washington than if the lobbyist hadn't sponsored the event. So I think it is an influence that you need to deal with, and I am glad you are.

Senator LEVIN. And there is an appearance issue there very, very clearly, in any event. It clearly just breeds disrespect for the institution and I think corrodes public confidence, when you have got lobbyists paying for travel to retreats.

The same thing would be true, if you go and make a speech. Instead of going and making your speech and come back or going and making your speech and staying overnight and coming back the next morning, if you go make a speech and stay a couple days and then play golf and everything else for a couple of days. That is a very different situation, which I think we ought to prohibit. But I think that is very different from going out and making a speech and then turning around and coming back or immediately the next morning coming back. I think we have to make those distinction and they are not easy to make, but I think we have to make those distinctions.

Mr. HORTON. I would also point out, in that connection, the trips like the U.S.-Canadian Interparliamentary, that is paid for by the government, and there is criticism when you go on those kind of trips. The U.S. North Atlantic Assembly, where Members go to meet with parliamentarians from the NATO countries. This is not subject to what you are talking about here, but, again, you get criticism. So you are going to get criticism on the travel issue any time you make a trip.

But the caveat I want to add again is don't throw the baby out with the bath water. I think it is important that Members do have an opportunity, accompanied by spouses, to go on some of these

type of trips. I would not want to prohibit them. I would certainly want to require very strict disclosure.

Senator LEVIN. Just one last question, which we have gotten into and which does come up in the travel issue, and that is whether or not it is better to have travel which is allowed in that narrow band, where it is not pleasure travel, it is not recreation travel, it is travel to make a speech or to participate in a seminar, where I think many people would say yes, that travel we should permit. Would you require that that be approved by the Ethics Committees, or would you leave it to each individual to meet a standard?

Mr. HORTON. My problem with the Ethics Committee is right now I think they are overloaded. And if you are going to deal with 535 Members of Congress and all of the top staff people, you are talking about a paperwork burden that I think might be almost impossible. So I am not sure that you ought to leave it up to the Ethics Committee, because each and every one is going to have to be examined and you are going to build up a new bureaucracy, in my judgment.

Senator LEVIN. Birch.

Mr. BAYH. I would emphasize that if you travel some place and you can't look yourself in the mirror in the morning and say the trip passes muster as far as your constituents are concerned, then you had better not do it.

The foreign travel is a very difficult kind of thing, Frank. A specific example I had was that the taxpayers paid for me to take a trip to Israel, and I financed my older son, who was about 17 or 18, and his mother to go with me.

I remember standing on the Golan Heights looking out on the valley, and my 17-year-old saying to me, "Dad, I can sure see why it would be a problem if there was ever artillery up in these places." You couldn't get that in a textbook, but going there certainly impressed me, and it impressed a 17-year-old. There are other instances just like that where touching and feeling and going and associating with people who have to live with the problem give you a better understanding, and you have to vote on the issue whether or not you take trip.

Senator LEVIN. Thank you, both. We really appreciate your blend of ethical approach to issues and your practical experience.

Mr. HORTON. Thank you.

Mr. BAYH. Thank you.

Senator LEVIN. Thank you.

Next, Steve Potts, Director of the Office of Government Ethics. Mr. Potts, thank you for appearing again in front of us, and perhaps you could tell us who is with you today, although I think we know.

TESTIMONY OF STEPHEN D. POTTS,¹ DIRECTOR, OFFICE OF GOVERNMENT ETHICS, ACCOMPANIED BY GARY DAVIS, GENERAL COUNSEL, AND LESLIE WILCOX, ASSOCIATE GENERAL COUNSEL

Mr. POTTS. Thank you, Senator. I am very happy to introduce Ms. Leslie Wilcox, who is associate general counsel of the Office of

¹ The prepared statement of Mr. Potts appears on page 85.

Government Ethics. Ms. Wilcox is the principal architect of the Standards of Ethical Conduct for the executive branch. On my left is Mr. Gary Davis, who is general counsel of the Office of Government Ethics. Needless to say, I brought them along in case the questions got too tough, and I could deflect them over to them.

I do want to thank you very much for the opportunity to appear today to discuss S. 885, a bill to limit the acceptance of gifts, meals, and travel by Members of Congress and congressional staff.

I would also, Senator, like to take this opportunity to thank you and your staff for helping us both to draft and to implement the Standards of Conduct for the executive branch. Your support has been invaluable in our ability to get that job done.

Senator LEVIN. Thank you.

Mr. PORTS. Mr. Chairman, you indicated in your letter of invitation that the Senate had earlier adopted an amendment expressing the sense of the Senate that it should limit the acceptance of gifts in a manner substantially similar to the restrictions applicable to executive branch employees. And in my written statement, I provided some discussion of the major differences between the executive branch rules and the provisions in S. 885.

There are also some technical differences which I did not put into that written statement that my staff would be happy to discuss with yours whenever you wish.

In your letter, you asked that I address three specific issues, and I have done that in my written testimony. These issues deal with the process followed by OGE in issuing its rules, OGE's implementation of the agency gift authority for the payment of official travel expenses by private sources, and any differences between the branches that might justify a difference in conduct rules.

First, as to the rulemaking process, just very briefly, my office issued the gift rules for the executive branch as part of the overall standards of conduct for executive branch employees. And, as you are aware, all administrative rules must go through a notice and comment procedure. After lengthy internal discussion and review of previous department and agency rules, we issued the proposed rules in July of 1991. They received substantial comment—in fact, we received about 1,200 sets of comments on those rules. About 800 of those really focused on the provisions concerning participation in professional associations.

However, it is true that the gift rules also received their share of comments. Then, in August of 1992, OGE issued the standards of conduct in final with a 180-day delayed effective date in order to allow the executive agencies time to train their employees on the rules before they went into effect.

Now, the gift rules that are applicable here are really divided into two subparts. The first one, subpart B, deals with gifts from outside sources, and the second, subpart C, deals with gifts between employees. I have attached a general outline of these subparts to my testimony.

The way the system works is that each agency administers these rules by providing guidance and, if necessary, by taking appropriate administrative action, if an employee of the agency is found to have violated a provision of the rules. OGE continues to provide guidance to agencies with regard to the rules through written and

oral communications and conferences with ethics officials that each agency has to have, a designated agency ethics official. And in fact, in some instances, we provide guidance to those who are considering offering gifts to executive branch employees. In other words, sometimes we get calls from the private sector before they have taken action to offer a gift, asking us whether it would be appropriate or proper.

You also asked me to address OGE's implementation of a statutory authority that permits executive branch agencies to accept travel expenses from non-Federal sources or official travel to meetings or similar functions. Actually, it was the General Services Administration that was assigned the lead in implementing 31 U.S.C. Section 1353, which is the citation of the statute that provided that authority. But it is true that OGE provided substantial assistance to GSA in furtherance of our consultative role.

Prior to the enactment of Section 1353, we estimated that only about one-third of executive branch agencies had statutory gift acceptance authority permitting them to accept gifts of travel or travel expenses from the private sector. Moreover, there was generally no authority for individual employees to accept travel expenses from non-Federal sources, even when that funding was thought to be advantageous to the agency.

Consequently, OGE supported the enactment of a statute very similar to Section 1353 which permits agencies to accept funding from outside sources. So on that point, let me be clear. We were in support of something very analogous to Section 1353, and, indeed, we support Section 1353 and that it be continued on the books.

Now, even though the statute, Section 1353, is silent as to conflict of interest considerations, we urged GSA to promulgate an implementing regulation that required an agency to weigh the acceptance of travel expenses against any circumstances that would give rise to a conflict of interest or an apparent conflict of interest.

The conflict of interest standard initially adopted by GSA proved to be quite controversial, and basically, it was thought to be controversial because it was too liberal in allowing agencies to go ahead and accept travel funds even though perhaps there was some appearance or shadow of a conflict of interest.

But later on, as a result of our urging and the urging of others, that provision was revised to make clear that an agency may never justify acceptance of a payment when acceptance would give rise even to an appearance of a conflict of interest.

Now, interestingly, although GSA was assigned the primary role of implementing the statute, OGE was assigned the responsibility of collecting the required semiannual agency reports and making them available to the public. The quality of the reports has actually varied quite a bit, and we have received a number of complaints concerning the administrative burden imposed by the reporting requirement. Those complaints have come from the reporting agencies, and as I indicated, the variance in the thoroughness with which the agencies are preparing and submitting the reports varies quite a lot.

Finally, turning back to your third question, you asked that I provide you with any views I might have on the differences between the legislative and executive branches of government, and

the issues that may be raised by such differences. Well, the most obvious difference that I can think of in the context of a gift rule is determining who would be a prohibited source of gifts for Members and congressional staff. For officers and employees of agencies in the executive branch, in fact, whether those agencies are executive or legislative agencies, it is really pretty easy to focus on those private sources which have some official nexus to either the employee or the agency. So that makes it fairly easy for us to identify what is a prohibited source.

But, of course, for Congress, that literally could be anyone, and usually is anyone. We note that you have tried to address this by making all sources of gifts initially prohibited and then setting forth the exceptions to that rule. And frankly, I think this is probably a reasonable approach for Congress under those circumstances.

Now, there may also be some legitimate reason for treating all elected officials differently in some respects from all other employees. For instance, I note that you have, I believe, reasonably recognized that Members may be given home State products for the purpose of redistributing them to others. As they hold representative positions, I believe that is certainly appropriate. Since no one in the executive branch is elected by a limited number of citizens, I don't feel that is an exception that would be appropriate for the executive branch.

Before closing, I know you have raised several questions to the preceding witnesses, and if I may, let me just make a few comments about those.

Senator LEVIN. Sure.

Mr. POTTS. First, you raised two questions having to do with perhaps one night's lodging after a speech, staying with a constituent, or home hospitality by a political supporter. There are a couple of exceptions built into the standards of conduct for the executive branch that I think are instructive in that regard.

One has to do with an exception under subpart B, subpart B being that part which pertains to gifts from outside sources to Members of the executive branch. There is an exception for social invitations from persons other than prohibited sources. And that particular exception says that "an employee may accept food, refreshments and entertainment, not including travel or lodgings, at a social event attended by several persons where (1) the invitation is from a person who is not a prohibited source and (2) no fee is charged to any person in attendance." Basically, we built that in because it is really quite common for people in the executive branch to receive invitations of a social nature that they really can't say when they arrive in Washington that that invitation is from a personal friend, and yet is perhaps from someone whom they wish to get to know and establish some contact with. So we built that exception in under those circumstances.

Senator LEVIN. Would that cover small dinner parties?

Mr. POTTS. It would cover a small dinner party, exactly.

We had another provision which I think also is instructive, and it is really related in the same way. This is in subpart C, which pertains to gifts between subordinates and superiors.

Senator LEVIN. By the way, does that cover lodging, too, or just the meals?

Mr. PORTS. It would not cover lodging in the first case we were talking about.

Senator LEVIN. Do you have any particular objection?

Mr. PORTS. Well, no. I think that the comments that Congressman Horton and Senator Bayh made about if you are going out as a congressman, and you are staying somewhere in a small town where there is no motel or whatever, I think it is a little absurd to think that you have to pack up and go 15 or 20 miles to stay in the Days Inn rather than stay in someone's home.

I think there is some language, however, in this next part that might be helpful to include in this draft legislation to get around—I think Senator Bayh was correctly pointing out that it is one thing if you are thinking about modest lodging and modest entertainment, but you can create a scenario where they bring in a fancy orchestra, and they have an incredibly fancy meal and things that are really much out of the ordinary. You can create a situation like that where you could think I would be concerned about that. But I think we deal with that in this particular section about personal hospitality provided at a residence. This could be, in other words, that a subordinate can entertain a superior in the executive branch if it is personal hospitality provided at his home—they can't do it at a club or a restaurant, but at home—provided it is of a type and value customarily provided by the employee to personal friends.

So I think a little cautionary language of that sort might go a long way in making clear what we are talking about here, and not providing a loophole for lavish entertainment.

On the other question you raised having to do with travel, we would oppose the idea of an outright ban, and as you know, the section we discussed earlier, Section 1353, does allow government agencies—not individual employees, but government agencies—by statute, limited to the agency, to be reimbursed for the travel of an employee where that travel has been cleared in advance by the agency.

So I guess in thinking about some of the differences between the Congress and our situation, and also some of the similarities—certainly, one of the similarities is that we are both under increasingly constrained budgets, and so the amount of travel that we could afford out of our own budgets is probably going to lessen rather than increase or even stay the same. And, again, I think Senator Bayh put his finger on something—that it is extremely important for both executive branch employees as well as Members of Congress not to be imprisoned here in Washington. It is vitally important to really understand what is going on and what the real issues are for Members of the executive branch and Members of the Congress to get out beyond the beltway and really meet with people and talk to them and find out what is really going on. So I think it is important for both branches to have this opportunity to enjoy more travel. In other words, we not only get information, but it is also important when there is a policy that has been adopted by the executive branch, or if you as a Senator have some program you are trying to marshal support for, or support for a bill that you have introduced, you can't do that simply by sitting in your office.

You have got to get out there in the hustings. We have to do exactly the same thing. So I think it is important for us to have some flexibility in getting out there and getting the word out.

Also, I am comforted by the fact that the possibility for abuse is greatly lessened by what I perceive as a much greater sensitivity by the public and by the press on these ethical issues. And I think that if somebody really started abusing that, there are a lot of means for getting that out and embarrassing that individual so it is a practice that would not be allowed to continue. Of course, in the case of Members of Congress, they run the risk of being voted out of office.

I would also say that I think that pushes me in supporting the idea of having disclosure of a trip before it occurs so that the Member—just as in the case of the executive branch, we are in a situation where there will be prior approval in the executive branch of any kind of trip—I would say in the legislative branch, certainly some sort of prior approval, and if actually that information were available even in advance of a trip, that would certainly be another brake on any kind of abuse.

Finally, I would observe that I think that as we proceed, if you had the ethics committees having this responsibility for prior approval, a body of precedent would quickly grow up as to which kinds of trips were thought to be appropriate and which trips would not be appropriate.

That concludes my testimony.

Senator LEVIN. Thank you.

On the travel issue, I think you made reference early in your testimony to private reimbursement being acceptable where it is advantageous to the agency, or words to that effect. Is there any standard such as that that is written in? Is that a limit on the acceptance of private reimbursement?

Mr. PORRS. Let me ask Ms. Wilcox. She worked pretty extensively with GSA on helping them develop their regulation.

Ms. WILCOX. I'd have to review the regs, Senator.

Senator LEVIN. While you are looking that up, let me ask a more general question. As you and others have pointed out, we in this legislation are hoping to come close to what the executive branch did, and we are using them as a model. That is the Lautenberg bill's model basically for a new congressional gift statute.

Have the rules which you helped to create and the executive branch adopted come in for any major criticism either because they are not restrictive enough, or they are too restrictive? Can we learn from the experience with those rules?

Mr. PORRS. So far, I would say the comments we get are about half and half. And we have not formally asked for comments. The way we have gotten comments is through the annual conferences that we have held; there has been one since the rules went into effect. Also, we have brown bag lunches with the ethics officials, inviting them to come in both one at a time and then in groups of about 10 or 15, specifically to hear what is going on. And I would say it is about 50-50, some saying it is too restrictive, some saying it is not restrictive enough.

Senator LEVIN. Has there been a lot of response?

Mr. POTTS. Really, not much. In fact, I would say most of it has been generated by us getting people in a conference or a brown bag lunch saying, "Hey, you've got to tell us; how is it going out there?" It isn't like they have been battering on our door, saying this is too tough or it's too loose or whatever.

Senator LEVIN. One of the things that struck me as we read through those rules is that you have a series of exceptions that permit the acceptance of certain gifts such as gifts based on a personal relationship, awards and honorary degrees, gifts based on outside business or employment relationships. You also have a separate rule which says that notwithstanding any of those exceptions, no Federal employee may solicit the offering of a gift.

Could that lead to some anomalies? For example, would an executive branch official violate your rules if he or she solicited a gift from her parent?

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

Senator LEVIN. You don't think it should, but would it in terms of the stricter language? Ms. Wilcox is trying to get your elbow there.

Mr. POTTS. Well, let me put it this way. It wouldn't as long as I am sitting there, whatever technical interpretation of the rule you might make.

Senator LEVIN. I agree with you that it should, but Ms. Wilcox?

Ms. WILCOX. We have run into a slight technical problem on the rule because of that language. It came up that one employee's car was broken down, and his neighbor worked for a corporation that was a prohibited source, and his question was could I ask my neighbor to jumpstart my car. Clearly, that was not the problem that we had in mind. So there is a technical problem on that language about solicitation. It hasn't been a big issue so far.

Senator LEVIN. All right.

Mr. POTTS. Senator, I think there is always that old saying about the whole essence of management is making reasonable exceptions to the rules, and that certainly fits in that category.

Senator LEVIN. What about requesting a benefit for which he or she is eligible by virtue of outside employment?

Ms. WILCOX. Where an outside organization offers something, such as benefits for which one can apply, or a discount, we regard the employee not as soliciting those benefits but rather as accepting an offer of the benefits, and it has not been a problem.

Senator LEVIN. All right. Did you get the answer to that other question?

Ms. WILCOX. Yes. We basically have a requirement that the employee be authorized to go to the meeting in his official capacity, on official duty. That assumes an agency interest in the matter. And then, if the non-Federal person offering the payment is someone who could be affected by the performance of the employee's duties, we require an affirmative determination that it won't raise an appearance problem. So we have an interest determination in allowing the person to go in the first place, calling it official duty. It is built in.

Senator LEVIN. Can somebody go to—I was going to ask the next witness this question, too, so maybe if she can listen, she'll have a better answer for it—can somebody accept the reimbursement of

travel to a convention where the employee, for instance, is an expert as a hobbyist, nothing to do with their official duties?

Ms. WILCOX. No. It would have to be someplace that the government could pay for the employee to go using appropriated funds in the first place.

Senator LEVIN. Otherwise, for instance, if the employee works for the Department of Health and Human Services but in his or her spare time is also a stamp collector, could they go and speak as an expert stamp collector to the philatelist convention and be reimbursed—they could personally be reimbursed.

Mr. POTTS. They've got a problem now under the honorarium prohibition, of course.

Senator LEVIN. But other than that, they don't have a problem.

Mr. POTTS. That's right.

Senator LEVIN. OK. I guess the basic question here is if this person is traveling on official business, or must have some good official purpose in order to be traveling, why should we allow a private party to pay for the travel which is official travel any more than we wouldn't let the telephone company pay for our telephone?

Mr. POTTS. Well, it really is a matter of balancing the situation now. We have on the one hand the desire to make sure that our Federal officials, both executive and legislative, get out in the field and meet and really understand what the problems are; we also are faced with limited budgets, and at least looking as far as we can into the future, it would appear that the travel funds would be so constrained—I can say this for the executive branch more confidently than I can about the legislative—but our funds are going to be so restricted I know in fiscal year 1994 that our travel is going to be extremely limited. And that is certainly true of many of the other executive branch agencies. So the risk is that they are going to be stuck right here and not be able to get out as much as they should be able to get out.

So it is balancing those considerations.

Senator LEVIN. Has the travel provision been working all right from your perspective in the executive branch?

Mr. POTTS. This GSA regulation?

Senator LEVIN. No; the reimbursement approach.

Mr. POTTS. I frankly am a little troubled about the role of the Office of Government Ethics in it, because our role is to be the repository of these travel reports. But the legislation doesn't tell us to do anything with them. And we don't have a duty to look at them and see if there are any kinds of violations or whatever, so here these things are—and they are massive, and they are piling up in tremendous quantities—and we have frankly just taken on our own initiative to try to do some analysis which showed that there was considerable confusion about what ought to be reported.

In fact, for example, people were reporting things where they had gift acceptance authority under something else; or we would find trips reported where in fact the agency had not been reimbursed by a private source, but they had simply paid for the travel.

So it is kind of a little bit of a confused situation right now as to what our role is, and frankly, we would like to clarify that to make sure we are doing what is expected of us.

Senator LEVIN. We may be able to address that issue on the re-authorization bill. Right now, you make those forms available to the public immediately upon being filed?

Mr. POTTS. Yes. In fact, as Gary Davis just pointed out, initially, the first reporting cycle, we had a tremendous amount of interest from the press, and they came over and pawed through all these things. But since then, we have seen neither hide nor hair of them.

Senator LEVIN. Could you give us an estimate of how many of those forms would be filed on travel in one quarter? Would it be hundreds?

Mr. POTTS. Well, there are hundreds filed because each agency has to file a report, and there is an incredible difference between the Department of Defense, NASA, and some of the others, that have a huge stack, thousands of reports, and others will report none. So it varies all over the lot.

Senator LEVIN. And you don't catalog them, you just pile them up?

Mr. POTTS. We pile them up, and we have reviewed them, because I just felt that in order to be responsive to you, really, we needed to just understand a little bit better what is coming in the door, even though the statute doesn't tell us what to do with them.

Senator LEVIN. Mr. Potts, we thank you for your testimony, for the good work that you and your office perform. Thanks for coming today.

Mr. POTTS. Thank you, Senator.

Senator LEVIN. Finally, Joan Claybrook, former head of the National Highway Traffic Safety Administration under President Carter, now President of Public Citizen.

Ms. CLAYBROOK, we are delighted to have you with us today. We gave you a chance to think about our hardest question, too, on the travel, so I know you've got a good answer for me on that. But we'll save that for later.

We will make your statement part of the record in full, and please proceed as you wish.

TESTIMONY OF JOAN CLAYBROOK,¹ PRESIDENT, PUBLIC CITIZEN

Ms. CLAYBROOK. Thank you, Mr. Chairman.

I really appreciate the opportunity to testify today, and I will try not to duplicate what others have already commented on here.

We believe this legislation is very important, and we commend you and Senator Lautenberg for your leadership in bringing this legislation forward. We also commend you for the work on S. 349, the Lobbying Disclosure Act, which you passed last May, which contained a provision requiring the disclosure of a wide range of gifts and other financial items valued at more than \$20. We believe this provision, which reaches beyond the traditional concept of gifts but deals with, as you have mentioned, tickets to sporting events and expensive dinners, is very important.

Your new legislation requires disclosure of a financial benefit to "an entity that is established, maintained, controlled, or financed

¹ The prepared statement of Ms. Claybrook appears on page 95.

by a covered legislative branch official." This language speaks to the increasingly common practice of a lobbyist directing a donation to a foundation or organization established or connected to a lawmaker. We believe it is very important that the bill we are discussing today, which attempts to go further by instituting some prohibitions against financial benefits, be as broad as your Lobbying Disclosure Act.

We are very pleased to see that the current bill, S. 885, prohibits Members of Congress from accepting gifts of over \$20 from private groups, and we believe this limit makes very good sense. The current policy of allowing gifts up to \$250 a year and not counting any gifts below \$100 stands in sharp contrast, as you have mentioned, to the standard in the executive branch. I would say that I have had some experience in the executive branch during the time I was at the Department of Transportation. We were not allowed to accept any gifts over \$20, and also we were not allowed to accept any travel paid for by any private sources. And I didn't find that these limits inhibited me in any way.

I did have an experience—everyone talks about their own experiences—but I did have an experience when I was visiting Fiat Motor Company in Italy where four of us from the same agency were presented with very luxurious and beautiful briefcases, and we had to turn them down. We had to return them, and it was very difficult because our hosts did not understand the reason behind our refusal of their gifts. But I think that these standards are very important for public perception, as you have mentioned, as well as for our own integrity.

It does seem to me that if an assistant secretary can't accept a gift over \$25, there is no reason that a Member of Congress should, and we believe these rules should be the same.

One of the biggest concerns that we have in S. 885 lies in the privately funded travel section. The bill stops short of banning trips and instead calls for stricter disclosure. We heartily approve of stricter disclosure, but we believe that the best solution would be to ban all privately funded travel. There is just too much abuse of this perk today, too much difficulty in drawing the line between appropriate and inappropriate private travel, and if any trip is truly important enough to warrant the Member's attention and time, which I think is more valuable in many cases than the monetary cost itself, then Congress should pay for the trip just as Congress pays for congressional offices and staff and publications and hearings and investigations.

Taxpayers will not object to Members of Congress traveling with public money when the trip has a substantive purpose—for example, a fact-finding trip to an area of the country that has suffered a natural disaster. They will not tolerate, I don't think, the financing of a junket to Florida in December where the featured activity appears to be playing golf and swimming with special interest lobbyists.

If there is any doubt about this practice of Congress accepting trips and that there are widespread abuses, let me say that we have spent a considerable amount of time at Public Citizen studying this issue. We did put out a report on the 101st Congress in the House of Representatives. We found that there were 4,000 privately

funded trips. On average, Members took nine trips. There were only a handful who did not take any. Over two-thirds were paid for by corporations or trade associations that were lobbying the Members, and there was a relationship between the companies that financed the trips and the committee jurisdiction on which these Members served. And not surprisingly, many of these trips occurred during the popular winter months when Washington is less desirable.

Among the top sponsors were the National Cable Television Association, which sponsored 75 trips, and the National Association of Broadcasters, which picked up the tab for 67 trips. Members went to Las Vegas, Palm Springs, New Orleans, and Los Angeles for these trips. And at the time, the two associations were locked in a major legislative battle over the cable television re-regulation bill. Along with the millions of dollars that they gave to the campaigns of the Members during this period of time, they used these trips as an overall lobbying strategy to gain an edge on Capitol Hill. And not surprisingly, many of the Members who travelled were Members of the House Energy and Commerce Committee.

Recently, ABC's television program, "Primetime Live," aired a segment showing 10 Members of Congress and their spouses visited Florida's Captiva Island, a trip sponsored by the Electronics Industry Association. The lawmakers met with trade representatives for a few hours in the morning and then spent the rest of the day playing golf or tennis. The companies that sponsored this trip were TRW, Magnavox, Martin Marietta, Texas Instruments, and DuPont. The cost per couple—the wives were invited—was about \$2,500 per couple for the 3- or 4-day trip.

Senator Lautenberg has mentioned the trip the American Medical Association sponsored for staffers when they went to the Greenbrier in West Virginia, where rooms cost \$424 a night.

S. 885 attempts to limit such abuses by setting the standard for the approval of privately funded trips as the "condition approval on a determination by the Ethics Committee that acceptance of reimbursement would not cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of the Member, the Congress, or congressional operations."

This criterion is a rough copy of the executive branch standard, but we believe this is an example where the executive branch rules may not be appropriate. The provision allowing executive branch staff to accept privately funded travel was slipped into the 1989 Ethics in Government Act at the last moment, and I believe it was subject to no hearings or prior debate, and our fears about the abuses that could occur under this provision, we believe, have been realized.

In a 1992 review of privately funded executive branch travel, Common Cause noted that NASA officials accepted travel from McDonnell Douglas, Boeing, Dow Chemical, United Technologies, DuPont and IBM—all companies whose work relates to that agency. Defense Department officials had travel paid by Grumman, Bell Aerospace Systems Group, the Harris Space Systems, and so on. Clearly these companies have a direct interest in the agencies' actions, and yet these trips were approved under the present standards of the executive branch.

We have thought very carefully about the standard that S. 885 would establish—that if the average person would consider the acceptance of a trip from a certain interest to pose a conflict of interest for a lawmaker, then the trip should not be approved. After analyzing privately funded trips over the years, we believe that most of the trips would in fact raise concerns in the eyes of the average citizen since the trip sponsors target their trips to key Members of Congress sitting on committees with jurisdiction over those industries.

It is for that reason that we have come to the conclusion that such a standard as S. 885 would establish seems unworkable, because either it would be interpreted as the equivalent of a ban, or it could be interpreted so that many of these would be approved on an automatic basis.

Instead of following the executive branch example, we believe that the bill should ban congressional travel as well as executive branch travel. That said, I would also like to go forward and make some suggestions for strengthening the disclosure provisions in the bill as well.

First, we think that the Ethics Committee should not be given the authority for approving privately funded trips. First of all, I agree with Frank Horton that it would be a paperwork nightmare. You have already heard about the executive branch, which probably has a much larger staff than the Congress, its difficulties in managing the paper flow and analyzing and looking at what is going on. The Lautenberg bill would require the Ethics Committee to approval travel in advance, and we believe that this puts a burden on the Ethics Committee either to avoid disapproving any trips at all so as not to alienate people, or any particular interest group.

The likely result of this unwieldy arrangement is that the Ethics committees will become rubber stamps, legitimizing the special interest travel that citizens really find abhorrent. Furthermore, unlike the executive branch, where the officials are the agents of the President, as you mentioned earlier in other testimony, in the Congress each Member is an elected official, and we believe that Members should be responsible for their own conduct, including decisions about taking privately funded trips. They should not turn to another body, made up of their colleagues, to make this decision for them, displacing their own responsibility. And in the case of travel by staff, we believe the Members should make that decision for their own staff.

Second, we believe there should be strict restrictions on privately funded trips; that if a Member of Congress or staff do go on a privately funded trip—that is, if the bill does not ban such trips—that it should be a 24-hour trip, that it should be coach fare only, and that it shouldn't involve spouses and other family members. No such limits exist presently. There is a provision now in law that in the Senate, it is 4 days, and in the House it is 3 days, that the Member is allowed to travel at private expense. These turn into mini vacations, and we think if there is going to be a limit that it should be a very strict limit so that the example you gave of going to Chicago and coming back in one day would be reasonable. Obvi-

ously, for California, you could not do that, so it would be going out and coming back with an overnight.

We believe there should be both pre-trip and post-trip disclosure in a timely manner. The bill does require trips to be reported in the Congressional Record twice a year after the trips are taken, and to improve this, we believe Members should be required to report trips before they travel. Mr. Potts' endorsement is very appreciated; we think that that is appropriate, and that the disclosure should include the sponsor of the trip, the trip designation, the dates of the travel, and this information could be submitted as late as 48 hours before a trip. If you are going to require Ethics Committee approval, this disclosure certainly is not a larger burden. By providing such advance reports, the public would be alerted about the Member's plans and could therefore monitor the activity.

And furthermore, we believe that when a Member returns from a trip he or she should file a report in the Congressional Record within 10 days of their return. The Record could compile these reports, for example, on a quarterly basis so that the information would appear in one place for easy access.

I would say, having studied congressional travel, that it is very difficult to get all this information because it is either very late or in the way that it is compiled, it is hard to find. So we believe that these disclosure requirements would be very effective. It seems to me that if the travel is worth the Member's time, they ought to provide a report.

I think of Senator John Kerry of Massachusetts, as a model. He has gone to Vietnam and to investigate the MIA issue, and when he comes back, he provides a report to the public about what his trip was about and what he learned and so on.

I believe that Members should be required to provide the public with more precise information about their trips. Members often argue that these trips are necessary to do their jobs. If it is true, the public deserves to know what the Members have learned on these trips, and they should write up statements for the record in doing that. And also, we believe the format should be improved. The House has a form for the format of reporting trips that is better than the Senate's, and we would urge you to look at that issue and have there be continuity between both the House and the Senate.

The House form is more user-friendly in that it has a separate column provided for each piece of information, for example, the date of the trip, and whether there is any time not at the sponsor's expense, while the Senate form is much briefer. Many times, Senators do not provide complete information, and having a separate column for each piece of information would improve disclosure significantly.

In addition, we think Members should be required to spell out the names of the organizations who are the sponsors. Sometimes, the acronyms are incomprehensible, particularly to the public at large.

And then, finally, we do support the lower threshold for gifts from \$250 to \$20, and we think that there ought to be a lower dis-

closure as well because some trips could fit in within the \$250 limit.

We believe that, as many of your witnesses have said today, voter confidence has plummeted in part because of the presumption that wealthy special interests are overly affecting Members of Congress, whether it is through campaign contributions or through gifts or trips, and we think that we should respond to the call of the public which has clearly been stated over and over again, both with strong campaign finance reform and improved lobby disclosure, as well as banning gifts and privately funded travel.

Thank you.

Senator LEVIN. Thank you, Ms. Claybrook.

Let's just focus on the travel because I think that's the part that you have spent most of your time on in your testimony, and it is one of the more complicated questions that we face.

Your main proposal is that we not permit private reimbursement at all.

Ms. CLAYBROOK. Right.

Senator LEVIN. I want to just give you some situations and ask you if you have problems with private reimbursement. The American Cancer Society has a "Legislator of the Year Award" dinner, let's assume—I don't know if they do or not; I have not been honored that way by them yet—but let's assume they have it, in New York City. And they pick a Member of the Congress to be their "Legislator of the Year," and it is a draw for them. They are not lobbying anybody. They are saying we are going to present that person with a scroll saying that they are the legislator of the year. Let's further assume that it is a charitable organization that does no lobbying. I don't know if that is true of the American Cancer Society, but assume for the sake of discussion it is a charitable organization that does not do any lobbying whatsoever; it is 501(c)(3) and does not do any lobbying.

Do you have a problem with the American Cancer Society paying the air fare to New York and back for that legislator?

Ms. CLAYBROOK. Much less of one. We did distinguish in our own travel study the difference between nonprofit organizations that were not trade associations and privately funded corporate travel. So I do think it is fair to make a distinction there, and I also think that whether or not they are lobbyists makes an important difference as well.

Senator LEVIN. OK. So that you would not prohibit, even under your ideal approach, you would not necessarily prohibit that reimbursed travel.

Ms. CLAYBROOK. No, I don't think so. I think that in most cases when Members of Congress travel, it is for an official function and an official purpose, and I think that Mr. Potts made that quite clear, that the first distinction is, is this official, is this a piece of official business?

Senator LEVIN. Well, I think the one I gave you is arguably official.

Ms. CLAYBROOK. It is. You know, everyone can dream up an award, Senator, and a lot of people do.

Senator LEVIN. Well, does that fit your test of official?

Ms. CLAYBROOK. No. I think that that is probably official business—particularly I am more interested in it not being a problem because it is a nonprofit charitable organization, and there is no lobbying.

Senator LEVIN. But just to pin down your position, even in your ideal approach, you would permit that reimbursement for that trip?

Ms. CLAYBROOK. Yes. I would certainly prefer it be at government expense, and I think that maybe the way to look at this, so that one Member of Congress doesn't go to 50 award dinners a year, is to perhaps consider some kind of special appropriation for Members of Congress to have one or two trips that are of that nature, so we have a fair allocation.

Senator LEVIN. In terms of promoting public confidence, do you think it is going to promote public confidence for someone to spend taxpayers' money to go to New York to get an award?

Ms. CLAYBROOK. No, not really, I don't. But then, does it promote public confidence in officials that they are spending their time doing that? I think one of the issues that we really don't focus a lot of energy on here is how are legislators spending their time. And one of the reasons that we really care about the issue of travel and campaign contributions is because we want legislators who are legislators, and not legislators who are running all over the place.

Senator LEVIN. Well, I think we would agree travel is useful, so "running all over the place" may be a bit extreme.

Ms. CLAYBROOK. Well, if you add in the trips that are used for campaign fundraising, for example—

Senator LEVIN. I want to stay away from campaign fundraising. I want to give you a situation which I think is clear, but I am curious about your views. Let's make it even clearer. It is on a Sunday night that that award dinner is in New York—so maybe people are allowed a few hours off around here—would you, even under your ideal scenario, where there is no reimbursed travel by private parties, allow for reimbursement to go to New York and back on a Sunday for a 501(c)(3) charitable foundation dinner of an organization that never lobbies?

Ms. CLAYBROOK. I wouldn't mind that, no.

Senator LEVIN. OK. Next, would you permit reimbursement in the other situation I mentioned a little earlier today—let's assume a Member of Congress is also a stamp collector, and on a Sunday night goes to a philatelist society dinner in Chicago, is the main speaker, is a draw, because that person is a well-known stamp collector, and then comes back to Washington that Sunday night from Chicago. So that's all it is—it is just the airplane fare, a free dinner, and back, totally unrelated to official business; it is just their hobby. Would you permit that? I'd better add a fact, because you are struggling. Let's assume that the hobby organization is also a nonlobbying organization.

Ms. CLAYBROOK. I have less of a problem with that. The question that was asked before had to do with the executive branch, and there I think it depends on whether or not it is a weekend, and it is a hobby, and it has nothing to do with official business, or if it is during the week, you are on annual leave, so it is a purely personal thing and has nothing to do with your agency's jurisdiction; and

presumably, there is no lobbying or jurisdiction of the Congress that would affect the stamp collecting.

I have less of a problem with that. I think people are entitled to a certain personal life and to do personal things, and that Member of Congress might well have been invited whether or not they were a Member of Congress.

Senator LEVIN. No, I doubt it.

Ms. CLAYBROOK. Oh—you said they would only be invited because they were a draw for the organization.

Senator LEVIN. They are a draw, yes. They are a Member of Congress, they are well-known, and they happen to be a stamp collector, and their hobby organization thinks this person will—

Ms. CLAYBROOK. Well, I have less of a problem with that. Our real interest here is in lobbying organizations that are concerned about Members of Congress, jurisdiction over the committees and the industries that they represent.

Senator LEVIN. Are you familiar with the Aspin Institute?

Ms. CLAYBROOK. Yes.

Senator LEVIN. Are you familiar with their meetings that they have? This is, I think, a nonprofit organization, and it also does no lobbying—

Ms. CLAYBROOK. Right.

Senator LEVIN [continuing]. And it brings together parliamentarians to meet with each other and to study, and they never lobby. For instance, I have gone to a number of their meetings overseas, met with other parliamentarians very intensively half the day, the other half of the day basically not, just time off for socializing. But they never lobby, and their goal is just to have parliamentarians meet.

Do you have a problem with that?

Ms. CLAYBROOK. Well, I have been to Aspin Institute meetings, also, and some of them actually are funded by corporate sponsors, and the corporate CEOs attend.

Senator LEVIN. None of the meetings that I have attended—

Ms. CLAYBROOK. Well, that's one kind that they have, the corporation and society type meetings. But then they also have these parliamentarian ones, and I have, again, less of a problem with that. I know that former Senator Clark wrote quite a stinging letter about our study that we did in the House, where all we did was disclose what the travel was, and we did segregate out the non-lobbying charitable organizations, or nonprofit organizations.

Senator LEVIN. And finally, what about, for instance, former Soviet republics want some advice on democracy in action, and they have a session that is funded by, let's say, the German Marshall Fund in Boston, and they want to know can we come up there on a Saturday and meet with representatives of the former Soviet republics just to talk about legislative activity. So let's assume it is on a Saturday, and it is funded by the German Marshall Fund.

Do you have any problem with that travel?

Ms. CLAYBROOK. Well, I think both in that example and in the example of the Aspin Institute, if it deals with issues that are relevant to the official duties of the Congress, I would prefer to have the funding by the government itself. I think that those last two examples are both appropriate ones for government funding—

Senator LEVIN. They may be. I am not saying they are not appropriate for government funding. The question is do you have any problem with the private German Marshall Fund funding that, even though it might also be—

Ms. CLAYBROOK. It doesn't have conflict of interest issues involved in it that most of the travel that we talk about or study has, but I think that to the extent it is possible, wherever there are official responsibilities involved, it is far preferable to have the government pay for it. It is such a tiny amount of money in the scheme of things, and it just removes all of these other conflicts that constantly arise.

But you are right, the examples that you have given are "clean" examples, and they are hard to argue with. I mean, it is always possible to find an exception to—

Senator LEVIN. Well, the question is do you want to make exceptions for those "clean" examples?

Ms. CLAYBROOK. I would say that anything that deals with government responsibility or is relevant to the job of the Member, that it is preferable to have it be funded by the government. And the reason why is that—at least this is true in the executive branch—the standards that are set for the approval of those trips, and there is a certain amount of money in the pot that is available for travel—people then choose things on the basis of what is most important to them, and there are standards set for the amount of reimbursement and per diem, so that it becomes a standardization of that travel, and it is not one that is subject to all of the problems that are associated with privately funded travel.

Senator LEVIN. I just want to pin you down on one point. I understand your position that it is preferable, but also, is it fair to say that if an exception were worked out for the nonprofit, nonlobbying groups, that you don't object to that exception?

Ms. CLAYBROOK. No, I don't vigorously object. I do hope that it would be the lobbying as defined under your new legislation, not the lobbying as defined under current rules, because there are lots of people who lobby today who don't register, who will tomorrow under your legislation.

Senator LEVIN. Well, if we can get the bill passed, yes.

Ms. CLAYBROOK. Right.

Senator LEVIN. Thank you, Ms. Claybrook.

Ms. CLAYBROOK. Thank you very much for having the hearing.

Senator LEVIN. There may be some additional questions for the record particularly of our government witnesses, perhaps for other witnesses as well. We thank you all for coming, and the Subcommittee stands adjourned.

[Whereupon, at 4:35, the Subcommittee was adjourned.]

A P P E N D I X

II

103D CONGRESS
1ST SESSION

S. 885

To limit the acceptance of gifts, meals, and travel by Members of Congress and congressional staff, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 4 (legislative day, APRIL 19), 1993

Mr. LAUTENBERG (for himself, Mr. BOREN, Mr. LEVIN, Mr. WELLSTONE, Mr. FEINGOLD, and Mr. KOHL) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To limit the acceptance of gifts, meals, and travel by Members of Congress and congressional staff, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Congressional Ethics
5 Reform Act".

6 **SEC. 2. GENERAL STANDARDS.**

7 (a) **GENERAL PROHIBITIONS.**—A Member or em-
8 ployee shall not, directly or indirectly, solicit or accept a
9 gift from any source except as provided in this Act.

1 (b) RELATIONSHIP TO ILLEGAL GRATUITIES STAT-
2 UTE.—Unless accepted in violation of subsection (c)(1),
3 a gift accepted under the standards set forth in this Act
4 shall not constitute an illegal gratuity otherwise prohibited
5 by section 201(c)(1)(B) of title 18, United States Code.

6 (c) LIMITATIONS ON USE OF EXCEPTIONS.—A Mem-
7 ber or employee shall not—

8 (1) accept a gift in return for being influenced
9 in the performance of an official act;

10 (2) solicit or coerce the offering of a gift;

11 (3) accept gifts from the same or different
12 sources on a basis so frequent that a reasonable per-
13 son would be led to believe the Member or employee
14 is using his public office for private gain;

15 (4) accept a gift in violation of any statute; or

16 (5) accept vendor promotional training contrary
17 to any applicable regulations, policies, or guidance
18 relating to the procurement of supplies and services
19 for the Congress.

20 **SEC. 3. DEFINITIONS.**

21 For purposes of this Act—

22 (1) EMPLOYEE.—The term “employee” means
23 an employee of the legislative branch.

24 (2) GIFT.—The term “gift” includes any gratu-
25 ity, favor, discount, entertainment, hospitality, loan,

1 forbearance, or other item having monetary value. It
2 includes services as well as gifts of training, trans-
3 portation, local travel, lodgings and meals, whether
4 provided in-kind, by purchase of a ticket, payment in
5 advance, or reimbursement after the expense has
6 been incurred. It does not include—

7 (A) modest items of food and refresh-
8 ments, such as soft drinks, coffee, and donuts,
9 offered other than as part of a meal;

10 (B) greeting cards and items with little in-
11 trinsic value, such as plaques, certificates and
12 trophies, which are intended solely for presen-
13 tation;

14 (C) loans from banks and other financial
15 institutions on terms generally available to the
16 public;

17 (D) opportunities and benefits, including
18 favorable rates and commercial discounts, avail-
19 able to the public or to a class consisting of all
20 Government employees, whether or not re-
21 stricted on the basis of geographic consider-
22 ations;

23 (E) rewards and prizes given to competi-
24 tors in contests or events, including random
25 drawings, open to the public unless the Mem-

1 ber's or employee's entry into the contest or
2 event is required as part of his official duties;

3 (F) pension and other benefits resulting
4 from continued participation in a Member or
5 employee welfare and benefits plan maintained
6 by a former employer;

7 (G) anything which is paid for by the Gov-
8 ernment or secured by the Government under
9 Government contract;

10 (H) any gift accepted by the Congress
11 under specific statutory authority;

12 (I) anything for which the market value is
13 paid by the Member or employee; and

14 (J) any books, written materials, audio
15 tapes, videotapes, or other informational mate-
16 rials.

17 (3) MARKET VALUE.—The term “market
18 value” means the retail cost the Member or em-
19 ployee would incur to purchase the gift. A Member
20 or employee who cannot ascertain the market value
21 of a gift may estimate the market value by reference
22 to the retail cost of similar items of like quality. The
23 market value of a gift of a ticket entitling the holder
24 to food, refreshments, entertainment, or any other
25 benefit shall be the face value of the ticket.

1 (4) MEMBER.—The term “Member” has the
2 meaning given such term in section 109(12) of the
3 Ethics in Government Act of 1978 (5 U.S.C. App.
4 6 sec. 109).

5 (5) SOLICITATION OR ACCEPTANCE.—(A) A gift
6 is solicited or accepted because of the Member’s or
7 employee’s official position if it is from a person
8 other than a Member or employee and if a reason-
9 able person with knowledge of all relevant facts
10 would conclude that it would not have been solicited,
11 offered, or given had the Member or employee not
12 held his position as a Member or employee.

13 (B) A gift which is solicited or accepted indi-
14 rectly includes a gift—

15 (i) given with the Member’s or employee’s
16 knowledge and acquiescence to his or her par-
17 ent, sibling, spouse, child, or dependent relative
18 if a reasonable person with knowledge of all rel-
19 evant facts would conclude that the gift was
20 given because of that person’s relationship to
21 the Member or employee; or

22 (ii) given to any other person, including
23 any charitable organization, on the basis of des-
24 ignation, recommendation, or other specification
25 by the Member or employee, except as per-

1 mitted for the disposition of perishable items by
2 section 5(a)(2).

3 (6) ETHICS COMMITTEE.—The term Ethics
4 Committee with respect to the House means the
5 Committee on Standards of Official Conduct and
6 with respect to the Senate means the Select Com-
7 mittee on Ethics.

8 (7) VENDOR PROMOTIONAL TRAINING.—The
9 term “vendor promotional training” means training
10 provided by any person for the purpose of promoting
11 its products or services. It does not include training
12 provided under a congressional contract or by a con-
13 tractor to facilitate use of products or services it fur-
14 nishes under a congressional contract.

15 **SEC. 4. EXCEPTIONS.**

16 The prohibitions set forth in section 2 do not apply
17 to a gift accepted under the circumstances described in
18 paragraphs (1) through (10) of this section and a gift ac-
19 cepted in accordance with one of those paragraphs will not
20 be deemed to violate section 2 of this Act.

21 (1) GIFTS OF \$20 OR LESS.—A Member or em-
22 ployee may accept unsolicited gifts having an aggre-
23 gate market value of \$20 or less per occasion, pro-
24 vided that the aggregate market value of individual
25 gifts received from any one person or entity under

1 the authority of this paragraph shall not exceed \$50
2 in a calendar year. This exception does not apply to
3 gifts of cash or of investment interests such as
4 stock, bonds, or certificates of deposit. Where the
5 market value of a gift or the aggregate market value
6 of gifts offered on any single occasion exceeds \$20,
7 the Member or employee may not pay the excess
8 value over \$20 in order to accept that portion of the
9 gift or those gifts worth \$20. Where the aggregate
10 value of tangible items offered on a single occasion
11 exceeds \$20, the Member or employee may decline
12 any distinct and separate item in order to accept
13 those items aggregating \$20 or less.

14 (2) GIFTS BASED ON A PERSONAL RELATION-
15 SHIP.—A Member or employee may accept a gift
16 given under circumstances which make it clear that
17 the gift is motivated by a family relationship or per-
18 sonal friendship rather than the position of the
19 Member or employee. Relevant factors in making
20 such a determination include the history of the rela-
21 tionship and whether the family member or friend
22 personally pays for the gift.

23 (3) DISCOUNTS AND SIMILAR BENEFITS.—In
24 addition to those opportunities and benefits excluded

1 from the definition of a gift by section 3(2)(D), a
2 Member or employee may accept—

3 (A) reduced membership or other fees for
4 participation in organization activities offered
5 to all Government employees by professional or-
6 ganizations if the only restrictions on member-
7 ship relate to professional qualifications; and

8 (B) opportunities and benefits—

9 (i) offered to members of a group or
10 class in which membership is unrelated to
11 congressional employment; or

12 (ii) offered to members of an organi-
13 zation, such as an employees' association
14 or congressional credit union, in which
15 membership is related to congressional em-
16 ployment if the same offer is broadly avail-
17 able to large segments of the public
18 through organizations of similar size.

19 A Member or employee may not accept for personal
20 use any benefit to which the Government is entitled
21 as a result of an expenditure of Government funds.

22 (4) HONORARY DEGREES.—(A) A Member or
23 employee may accept an honorary degree from an in-
24 stitution of higher education (as defined in section
25 1141(a) of title 20, United States Code) based on a

1 written determination by the Ethics Committee that
2 the timing of the award of the degree would not
3 cause a reasonable person to question the Member's
4 or employee's impartiality in a matter affecting the
5 institution.

6 (B) A Member or employee who may accept an
7 honorary degree pursuant to subparagraph (A) may
8 also accept meals and entertainment given to him
9 and to members of his family at the event at which
10 the presentation takes place.

11 (5) GIFTS BASED ON OUTSIDE BUSINESS OR
12 EMPLOYMENT RELATIONSHIPS.—A Member or em-
13 ployee may accept meals, lodgings, transportation
14 and other benefits—

15 (A) resulting from the business or employ-
16 ment activities of a Member's or employee's
17 spouse when it is clear that such benefits have
18 not been offered or enhanced because of the
19 Member's or employee's official position; or

20 (B) resulting from his or her outside busi-
21 ness or employment activities when it is clear
22 that such benefits have not been offered or en-
23 hanced because of his or her official status.

24 (6) POLITICAL EVENTS.—A Member or em-
25 ployee may accept meals, lodgings, transportation

1 and other benefits, including free attendance at
2 events, when provided in connection with active par-
3 ticipation in political management or political cam-
4 paigns by a political organization described in sec-
5 tion 527(e) of the Internal Revenue Code of 1986.

6 (7) WIDELY ATTENDED GATHERINGS AND
7 OTHER EVENTS.—

8 (A) SPEAKING AND SIMILAR ENGAGE-
9 MENTS.—When a Member or employee partici-
10 pates as a speaker or panel participant or oth-
11 erwise presents information related directly or
12 indirectly to the Congress or matters before the
13 Congress at a conference or other event, his or
14 her acceptance of an offer of free attendance at
15 the event on the day of the presentation is per-
16 missible when provided by the sponsor of the
17 event. The Member's or employee's participa-
18 tion in the event on that day represents a cus-
19 tomary and necessary part of the performance
20 of his or her responsibilities and does not in-
21 volve a gift to him or to the Congress.

22 (B) WIDELY ATTENDED GATHERINGS.—(i)
23 A Member or employee may accept a sponsor's
24 unsolicited gift of free attendance at all or ap-
25 propriate parts of a widely attended gathering

1 of mutual interest to a number of parties. A
2 gathering is widely attended if, for example, it
3 is open to members from throughout a given in-
4 dustry or profession or if those in attendance
5 represent a range of persons interested in a
6 given matter.

7 (ii) A gathering is not widely attended if it
8 is a congressional retreat to which a majority of
9 Members of either House of Congress or the
10 majority of the Members of a political party in
11 one or both Houses are invited and which is
12 held outside the United States Capitol grounds.

13 (C) FREE ATTENDANCE.—For purposes of
14 subparagraphs (A) and (B), free attendance
15 may include waiver of all or part of a con-
16 ference or other fee or the provision of food, re-
17 freshments, entertainment, instruction and ma-
18 terials furnished to all attendees as an integral
19 part of the event. It does not include travel ex-
20 penses, lodgings, entertainment collateral to the
21 event, or meals taken other than in a group set-
22 ting with all other attendees.

23 (D) COST PROVIDED BY SPONSOR OF
24 EVENT.—The cost of the Member's or employ-
25 ee's attendance will not be considered to be pro-

1 vided by the sponsor where a person other than
2 the sponsor designates the Member or employee
3 to be invited and bears the cost of the Mem-
4 ber's or employee's attendance through a con-
5 tribution or other payment intended to facilitate
6 that Member's or employee's attendance. Pay-
7 ment of dues or a similar assessment to a spon-
8 soring organization does not constitute a pay-
9 ment intended to facilitate a particular Mem-
10 ber's or employee's attendance.

11 (E) ACCOMPANYING SPOUSE.—When oth-
12 ers in attendance will generally be accompanied
13 by spouses, a Member or employee may accept
14 a sponsor's invitation to an accompanying
15 spouse to participate in all or a portion of the
16 event at which the Member's or employee's free
17 attendance is permitted under subparagraph
18 (A) or (B).

19 (8) PROTOCOL EXCEPTION.—A Member or em-
20 ployee who is on official travel to a foreign area or
21 who is attending an event sponsored by a foreign
22 government may accept food, refreshments, or enter-
23 tainment in the course of such travel or event pro-
24 vided that such acceptance is in accordance with any
25 rules that the Ethics Committee may establish.

1 (9) GIFTS ACCEPTED UNDER SPECIFIC STATU-
2 TORY AUTHORITY.—The prohibitions on acceptance
3 of gifts contained in this Act do not apply to any
4 item, receipt of which is specifically authorized by
5 statute.

6 (10) ITEMS PRIMARILY FOR FREE DISTRIBU-
7 TION TO CONSTITUENTS.—A Member or employee
8 may accept food or other items of minimal value in-
9 tended primarily for free distribution to visiting con-
10 stituents.

11 **SEC. 5. PROPER DISPOSITION OF PROHIBITED GIFTS.**

12 (a) IN GENERAL.—A Member or employee who has
13 received a gift that cannot be accepted under this Act
14 shall—

15 (1) return any tangible item to the donor or
16 pay the donor its market value (a Member or em-
17 ployee who cannot ascertain the actual market value
18 of an item may estimate its market value by ref-
19 erence to the retail cost of similar items of like
20 quality);

21 (2) when it is not practical to return a tangible
22 item because it is perishable, the item may be given
23 to an appropriate charity or destroyed;

24 (3) for any entertainment, favor, service, bene-
25 fit or other intangible, reimburse the donor the mar-

1 ket value (subsequent reciprocation by the employee
2 does not constitute reimbursement); and

3 (4) dispose of gifts from foreign governments or
4 international organizations in accordance with rules
5 established by the Ethics Committee.

6 (b) USE OF APPROPRIATED FUNDS TO RETURN
7 GIFTS.—A Member or employee may use appropriated
8 funds and franked mail to return gifts.

9 (c) PROMPT COMPLIANCE.—A Member or employee
10 who, on his own initiative, promptly complies with the re-
11 quirements of this section will not be deemed to have im-
12 properly accepted an unsolicited gift. A Member or em-
13 ployee who promptly consults his Ethics Committee to de-
14 termine whether acceptance of an unsolicited gift is proper
15 and who, upon the advice of the Ethics Committee, re-
16 turns the gift or otherwise disposes of the gift in accord-
17 ance with this section, will be considered to have complied
18 with the requirements of this section on his own initiative.

19 **SEC. 6. CHARITABLE DESIGNATION OF OUTSIDE EARNED**
20 **INCOME.**

21 Subsection (c) of section 501 of the Ethics in Govern-
22 ment Act of 1978 is repealed.

23 **SEC. 7. REPEAL OF OLD RULE.**

24 Section 901 of the Ethics Reform Act of 1989 (2
25 U.S.C. 31-2) is repealed.

1 **SEC. 8. ACCEPTANCE OF TRAVEL AND RELATED EXPENSES**
2 **FROM NON-FEDERAL SOURCES.**

3 (a) IN GENERAL.—The Ethics Committees shall pre-
4 scribe rules establishing the conditions under which their
5 respective Houses may accept payment, or authorize a
6 Member or employee to accept payment on the House's
7 behalf, from non-Federal sources for travel, subsistence,
8 and related expenses with respect to attendance of the
9 Member or employee (or the spouse of such Member or
10 employee) at any meeting or similar function relating to
11 the official duties of the Member or employee. Any cash
12 payment so accepted shall be credited to the appropriation
13 applicable to such expenses. In the case of a payment in
14 kind so accepted, a pro rata reduction shall be made in
15 any entitlement of the Member or employee to payment
16 from the Government for such expenses.

17 (b) RULES.—The rules prescribed pursuant to sub-
18 section (a) shall—

19 (1) require that the Ethics Committee approve
20 in advance all travel for which related expenses are
21 to be reimbursed;

22 (2) condition such approval on a determination
23 by the Ethics Committee that acceptance of reim-
24 bursement would not cause a reasonable person with
25 knowledge of all the facts relevant to a particular

1 case to question the integrity of the Member, the
2 Congress or congressional operations; and

3 (3) prohibit reimbursement for items beyond
4 those reasonably necessary for the Member or em-
5 ployee to participate in the event.

6 (c) GENERAL PROHIBITION.—Except as provided in
7 this section or any other statute, no Member, employee,
8 or House of Congress may accept payment in cash or in
9 kind for expenses referred to in subsection (a). A Mem-
10 ber or employee who accepts any such payment in violation
11 of the preceding sentence—

12 (1) may be required, in addition to any penalty
13 provided by law, to repay, for deposit in the general
14 fund of the Treasury, an amount equal to the
15 amount of the payment so accepted; and

16 (2) in the case of a repayment under paragraph
17 (1), shall not be entitled to any payment from the
18 Government for such expenses.

19 (d) REPORTS.—

20 (1) IN GENERAL.—The Ethics Committees
21 shall, in the manner provided in paragraph (2), pub-
22 lish in the Congressional Record reports of payments
23 of more than \$250 accepted under this section.

24 (2) CONTENTS.—The reports required by para-
25 graph (1) shall, with respect to each payment—

1 (A) specify the amount and method of payment,
2 the name of the person making the payment, the
3 name of the Member or employee, the nature of the
4 meeting or similar function, the time and place of
5 travel, the nature of the expenses, and such other in-
6 formation as the Ethics Committee may prescribe;

7 (B) be submitted not later than May 31 of each
8 year with respect to payments in the preceding pe-
9 riod beginning on October 1 and ending on March
10 31; and

11 (C) be submitted not later than November 30
12 of each year with respect to payments in the preced-
13 ing period beginning on April 1 and ending on Sep-
14 tember 30.

15 **SEC. 9. SOLICITATION OF REGISTERED LOBBYISTS.**

16 A Member or employee shall not knowingly solicit
17 contributions from any registered lobbyist for an organiza-
18 tion described under section 501(c) of the Internal Reve-
19 nue Code of 1986. For purposes of this section, the fact
20 that the name of a Member or employee is on the letter-
21 head of a solicitation is not sufficient to establish that the
22 named Member or employee has solicited a contribution.

EXCERPT OF STANDING RULES OF THE SENATE

RULE XXXV

GIFTS

(As amended by Ethics Reform Act of 1989 and Leg. Appr. Act, PL 102-90 pursuant to S. Res. 192, 10/31/91: Effective date, Jan. 1, 1992)

1. (a) No Member, officer, or employee of the Senate, or the spouse or dependent thereof, shall knowingly accept, directly or indirectly, any gift or gifts in any calendar year aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or \$250, whichever is greater from any person, organization, or corporation unless, in an unusual case, a waiver is granted by the Select Committee on Ethics.

(b) The prohibitions of subparagraph (a) do not apply to gifts—

(1) from relatives;

(2) with a value of \$100 or less as adjusted under section 102(a)(2)(A) of the Ethics in Government Act of 1978;

(3) of personal hospitality of an individual.

2. For purposes of this rule—

(a) the term "gift" means a payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, including food, lodging, transportation, or entertainment, and reimbursement for other than necessary expenses, unless consideration of equal or greater value is received, but does not include (1) a political contribution otherwise reported as required by law, (2) a loan made in a commercially reasonable manner (including requirements that the loan be repaid and that a reasonable rate of interest be paid), (3) a bequest, inheritance, or other transfer at death, (4) a bona fide award presented in recognition of public service and available to the general public, (5) a reception at which the Member, officer, or employee is to be honored, provided such individual receives no other gifts that exceed the restrictions in this rule, other than a suitable memento, (6) meals or beverages consumed or enjoyed, provided the meals or beverages are not consumed or enjoyed in connection with a gift of overnight lodging, or (7) anything of value given to a spouse or dependent of a reporting individual by the employer of such spouse or dependent in recognition of the service provided by such spouse or dependent;

(b) the term "relative" has the same meaning given to such term in section 107(2) of title I of the Ethics in Government Act of 1978 (Public Law 95-521).

(c) the term "necessary expenses" means reasonable expenses for food, lodging, or transportation which are incurred by a Member, officer, or employee of the Senate in connection with services provided to (or participation in an event sponsored by) the organization which provides reimbursement for such expenses or which provides the food, lodging, or transportation directly, however necessary expenses do not include—

(1) the provision of food lodging, or transportation, or the payment for such expenses, for a continuous period in excess of 3 days exclusive of travel time within the United

States or 7 days exclusive of travel time outside of the United States unless such travel is approved by the Committee on Ethics as necessary for participation in a conference, seminar, meeting or similar matter, and

(2) the provision of food, lodging, or transportation, or the payment for such expenses, for anyone accompanying a Member, officer, or employee of the Senate, other than the spouse or child of such Member, officer, or employee of the Senate or one Senate employee acting as an aide to a Member.

3. If a Member, officer, or employee, after exercising reasonable diligence to obtain the information necessary to comply with this rule, unknowingly accepts a gift described in paragraph 1, such Member, officer, or employee shall, upon learning of the nature of the gift and its source, return the gift or, if it is not possible to return the gift, reimburse the donor for the value of the gift.

4. (a) Notwithstanding the provisions of this rule, a Member, officer, or employee of the Senate may participate in a program, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization if such participation is not in violation of any law and if the Select Committee on Ethics has determined that participation in such program by Members, officers, or employees of the Senate is in the interests of the Senate and the United States.

(b) Any Member who accepts an invitation to participate in any such program shall notify the Select Committee in writing of his acceptance. A Member shall also notify the Select Committee in writing whenever he has permitted any officer or employee whom he supervises (within the meaning of paragraph 11 of rule XXXVII) to participate in any such program. The chairman of the Select Committee shall place in the Congressional Record a list of all individuals participating; the supervisors of such individuals, where applicable; and the nature and itinerary of such program.

(c) No Member, officer, or employee may accept funds in connection with participation in a program permitted under subparagraph (a) if such funds are not used for necessary food, lodging, transportation, and related expenses of the Member, officer, or employee.

Gifts to Supervisors.—Section 402 of PL 101-194 (Ethics Reform Act of 1989) amends section 7351 of title 5 U.S. Code to permit exceptions to the prohibition on gifts from employees to supervisors as set forth by regulation issued by the supervising ethics office.

Testimony of

SENATOR FRANK R. LAUTENBERG

before the
Subcommittee on Oversight of Government Management
Committee on Governmental Affairs
United States Senate

on

S.885, the Congressional Ethics Reform Act

A bill to limit the acceptance of gifts, meals and travel
by Members of Congress and congressional staff

July 19, 1993

Mr. Chairman, Senator Cohen and members of the Subcommittee, thank you very much for holding this hearing, and for the opportunity to testify. I also want to express my appreciation to you, Mr. Chairman, for your support of the Congressional Ethics Reform Act, and for your willingness to move the legislation quickly.

As you know, the Congressional Ethics Reform Act would significantly tighten rules governing the acceptance of gifts, meals and travel by Members of Congress and congressional staff.

At its most basic level, the goals of this legislation are simple: to reduce the ability of lobbyists and special interests to buy access and influence on Capitol Hill, and to ensure that average Americans and the broader public interest come first.

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Americans today are deeply distrustful of the Congress, and they're angry. They see Members as captives of special interests, unconcerned about ordinary people. In the view of many, Congress is out of touch in part because Members enjoy an assortment of special perks and privileges that are unavailable to the general public.

Mr. Chairman, I know many of my colleagues believe that these perceptions are inaccurate, or at least overstated. But the fact is, Members of Congress do enjoy many special advantages that ordinary Americans do not. And many of these special perks are specifically intended to influence Members in the performance of their official duties.

The bottom line, in my view, is this: the people are entitled to be suspicious. This isn't just a problem of perception. Special interests do have too much political power. And it's time to do something about it.

Obviously, the Congressional Ethics Reform Act is not, by itself, the only step we must take. We need to overhaul our campaign finance laws, toughen regulation of lobbyists, close the revolving door, and fundamentally change the policymaking environment here on Capitol Hill. But, imposing strict new limits on the acceptance of gifts, meals and travel is also essential.

If the phrase "business as usual" means anything, it includes the many special favors provided to Congress as a way to influence policy. It is not unusual for lobbyists to give

Members free tickets to shows or sporting events, or to take them out for lavish dinners at expensive restaurants. Sometimes they provide Members with free trips, typically involving stays at expensive luxury hotels along with various forms of entertainment.

Mr. Chairman, when lobbyists take a Senator or key staff member out to dinner, they're not just buying a meal. They're buying access. And access is power.

Ordinary citizens don't have that access. They can't just take their Senator to a quiet dinner at an expensive restaurant and explain what it's like to be unemployed. They can't take their Congressman to a ballgame to discuss the problems they have making ends meet or educating their kids. And they certainly can't spend a relaxing weekend at a tropical resort, playing golf with key legislators while reviewing their concerns and anxieties about the future.

If any Member doubts the value of this kind of access, just ask a lobbyist or their corporate clients. Only the most disingenuous will claim that they provide these exotic trips out of the goodness of their heart. They pay because it gets results.

They pay to buy clout.

Similar thinking is involved when lobbyists give Members tickets to a show or sporting event, or other gifts. Often, the tickets buy access to Members at the event itself. But if not,

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they buy good will. And good will also is power. It can mean the difference between getting your calls returned, or your letter taken seriously. And that can translate into millions, even billions of dollars -- at the expense of ordinary Americans who have no lobbyists to represent them.

Mr. Chairman, when I was a CEO in the private sector, my company strictly forbade purchasing agents from accepting gifts from suppliers. There was the potential for undue influence, and the stakes were so high. The same concerns apply to Congress, where the stakes are infinitely greater.

Unfortunately, the Senate rules on the acceptance of gifts, meals and travel, to put it mildly, are far too lax. Currently, Senators may accept gifts worth up to \$250 from any person. However, gifts worth less than \$100 are not counted. Thus, a lobbyist legally may provide senators with unlimited numbers of gifts worth \$99.

Moreover, some types of gifts are excluded from the limits altogether. There is no limit, for example, on the number of meals at Washington restaurants that lobbyists can provide to senators. In addition, the rules allow Members broad latitude to accept reimbursement for various travel expenses, regardless of cost.

By contrast, officials in the Executive Branch must abide by much stricter rules of conduct. Generally speaking, Executive Branch officials may not accept gifts from any person who does business with the official's agency or who has

interests that may be substantially affected by the performance of the employee's official duties. There are limited exceptions, such as awards, honorary degrees, and other items worth less than \$20. However, the rules apply broadly to any items of value, including meals and travel expenses.

The Congressional Ethics Reform Act would require Members of Congress, and congressional staff, to abide essentially by the same rules on gift acceptance that already apply to the Executive Branch. However, there are a few modifications designed to strengthen the rules further and to adapt them to the Congress. For example, the bill's proposed limits would apply to acceptance of gifts not just from certain prohibited sources, but from any person other than a family member or an established personal friend.

Let me add at this point that I have heard some concerns about the bill provision that allows a Member or employee to "accept a gift given under circumstances which make it clear that the gift is motivated by...personal friendship rather than the position of the Member or employee." The concern is that Members would attempt to skirt the rule by claiming that lobbyists are personal friends.

Given this concern, I want to emphasize that this language is designed to be read very strictly. The exception applies only under circumstances which make it clear -- and I emphasize the term, "clear" -- that the gift is motivated by personal friendship. If there is ambiguity about the motivation, this standard would not be met.

I also would point out that, as under the Executive Branch rules, the bill provides that "Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift." Thus, in the typical case, where a lobbyist has got to know a Member only in the course of doing legislative business, and where the lobbyist's firm or client is paying for the gift, this exception would not apply.

While the bill's language is strong, it also may be worth considering additional protections where a Member is claiming a registered lobbyist as a personal friend. One possibility would be to include an explicit presumption that gifts from registered lobbyists are not motivated by a personal friendship if the relationship was established after the Member was first elected to the Congress. Another possibility would be to require disclosure in the Congressional Record of substantial gifts to Members from registered lobbyists who they claim as personal friends.

Incidentally, as a general matter, I want to state for the record that while the bill proposes limited exceptions to an outright gift ban, items so exempted should not necessarily be exempted from disclosure requirements.

Let me turn now to perhaps the bill's most important provision, its prohibition on accepting reimbursements for pleasure trips. Under the bill, only trips directly related to official duties could be paid for by outside parties. And no

travel expenses could be reimbursed for items beyond those reasonably necessary to participate in the event.

To give the Subcommittee some idea of what I'm getting at, let me give you a couple of examples.

One powerful interest group invited top congressional aides for a lavish weekend at a fancy resort. The event was called a "congressional staff seminar", but the formal meetings were held only in the morning. At other times, the staffers were free to enjoy the resort's facilities, including tennis, swimming, horseback riding, and croquet.

Another example comes from a report prepared by Public Citizen, called "They Love to Fly...And it Shows". The report describes a 1990 trip sponsored by an industry lobbying group. The group invited twenty-five Members to the luxurious La Quinta Hotel in Palm Springs, California. While there were a few meetings in the early morning, the rest of the days were set aside for golf, tennis, swimming, and relaxing at the high-priced resort. All expenses were picked up by the industry group, including greens fees and extra plane tickets for some of the lawmakers' spouses and children. As the report concludes, "The event was clearly meant to curry favor with lawmakers."

Mr. Chairman, these types of trips are not aberrations. They're typical. And they should be prohibited. There is no reason why lobbyists should be allowed to finance trips where the primary purpose isn't to conduct legitimate business, but to have fun. That's influence-peddling, pure and simple. And it's

wrong. The intent of my bill is to eliminate all such trips. Unless Members and staff are working on matters related to official business full-time, they shouldn't be accepting reimbursements from third parties.

Under the bill, the Ethics Committee would have to approve all trips in advance. The legislation prohibits reimbursement for items beyond those reasonably necessary to engage in legitimate business, and requires the Committee to reject any trip that raises concerns about the integrity of the Member or the Congress. This is designed to be a very high standard, and the Ethics Committee should resolve all doubts against allowing reimbursement. We may want to spell this out more explicitly in the legislation.

Another protection included in the bill is a requirement that trip details be published afterwards in the Congressional Record. Some have suggested requiring such disclosure in advance of the trip. This seems like a good idea. If Members know that they may well confront their local press or their political opponent on their trip, most would toe the line very carefully.

Taken together, these protections seem strong, and are intended to prevent any trips that would raise ethical questions. I recognize that some believe as a matter of principle that no trips should be privately-financed. I understand that view, though I believe there are occasions, including foreign travel, when such trips help officials perform their duties more effectively, and would otherwise be impossible

given the budget constraints facing Congress. This is permitted in the Executive Branch, and I have not been made aware of any abuses.

My bottom line is that I want to prevent all trips that raise ethical problems, and I have an open mind about the best way to do that.

Mr. Chairman, in the interests of time, I will not go into all the bill's provisions. But before I close, I want to emphasize that I do not mean to impugn the integrity of any Member of Congress. Many of us, myself included, have followed the existing rules in the past and accepted some items, without providing any special treatment in return.

But public cynicism has reached deeply disturbing levels. As a consequence, practices that may have seemed innocuous a few years ago clearly are not innocuous today.

We can't ignore that widespread feeling. We've got to address it head-on.

Mr. Chairman, S.885 attempts to deal fairly with many issues related to gifts, meals, and travel. No doubt it can be improved, and I remain open to further suggestions. But I hope the Subcommittee will proceed without delay. As you know, on May 6, the full Senate voted 98-1 that the Senate should approve reform legislation as soon as possible this year. As public cynicism continues to grow, the need for prompt action grows as well.

Again, thank you very much for the opportunity to testify.

Statement of Senator Paul D. Wellstone
before the Senate Committee on Governmental Affairs
on S. 885, the Congressional Ethics Reform Act of 1993

July 19, 1993

Mr. Chairman, thank you for calling these important hearings on S. 885, the Congressional Ethics Reform Act of 1993. I am an original cosponsor of this important reform proposal, and I am here to join my colleague Senator Lautenberg in urging the committee to report promptly a gift ban bill to the full Senate for its consideration.

I am delighted to join you and Senator Lautenberg in supporting this effort, and wanted to appear personally to show my interest in getting a tough new set of gift ban rules enacted into law. Your committee has agreed to move forward on an issue which is sensitive within the Congress, yet which must be addressed straightforwardly and firmly. I commend you for your courage.

I also commend Senator Lautenberg for his willingness to take the initiative to address the persistent problem of gifts being lavished on Members of Congress from outside sources, one of the most important issues on the political reform agenda. As he observed when he introduced this bill, "It is indisputable that these kinds of special favors have contributed to America's deepening distrust of government...as public trust diminishes, the ability of Congress to address our nation's problems diminishes as well." Despite the assertions of our colleagues that they are completely unswayed by fancy dinners, or even by all-expense-paid trips to the Bahamas, such gifts give the appearance of impropriety, eroding public confidence in Congress as an institution and in each of us personally as representatives of our constituents.

I am sure my colleagues would agree, because many have told me they hear it constantly in town meetings in their states. People are frustrated and angry, and they are demanding change. They feel they have been left out of the loop of government decisionmaking, and they want back in. Recent public opinion polls demonstrate clearly that public trust in Congress is at an historic low, and the demand for political reform is very high. Banning outside gifts would be an important signal of our willingness to respond to the demands of many Americans for a system of government that is more responsive to its citizens, and less responsive to lobbyists and others with influence and access to Members of Congress. Simply by conforming Congressional gift rules to the executive branch's more stringent treatment of gifts from outside sources, we can take another step down the road of reform.

Political reform was an important part of my mandate from Minnesota, as it is for many of the new Members of Congress. Americans are demanding real change.

That is evident from the polls and from the rising popularity of Ross Perot and his political reform efforts. We must deliver real change.

I view this bill as just one element in a much more sweeping reform agenda which includes genuine campaign finance reform, tough new lobby disclosure rules, strict limits on political contributions from lobbyists, and reform and reorganization of Congress and the federal agencies.

Legislation in each of these areas should be acted upon by Congress as soon as possible. If we fail to move forward now on this comprehensive reform agenda, we will have missed an historic opportunity. This is the best time in two decades for fundamental reform, when we have a President committed to change, a Congress elected on pledges of change and a citizenry angry enough to demand change.

Too many here in Washington, from politicians to pundits, are cynical about real reform. Only public pressure will force President Clinton's promised "revolution in government" to rescue American politics from being held hostage by big-money special interests. We must restore the basic democratic principle of one person, one vote by enacting this reform agenda into law.

During Senate floor consideration of the Lobby Disclosure Act in early May, I offered an amendment to that bill to require itemized disclosure of financial benefits that lobbyists give to Members of Congress and their staffs. That amendment was adopted by the full Senate. A similar lobby disclosure bill is currently pending before the House Judiciary Committee.

That committee has held a hearing on the disclosure bill, and they are expected to act on it soon. I am hopeful they will incorporate the provisions of my amendment into the House bill in the Committee mark-up, and that you will retain the provision in conference. I understand there is growing support for such disclosure on the House side, as will be evidenced by the introduction of my disclosure amendment as a separate piece of legislation later this month.

Of course, we agree that the preferable and most straightforward way to address the gift problem would be to enact the bill you are considering today. But until we impose a ban, a comprehensive set of tough new disclosure requirements on gifts from those most likely to give such gifts -- well-heeled special interest lobbyists with legislative agendas before the Congress -- should be enacted. Indeed, disclosure may help to hasten the day when we enact such a ban.

This bill would go further than simple lobbyist disclosure by prohibiting Members of Congress and their staffs from receiving gifts and other financial benefits from all private sources, subject to certain limited exceptions. It would apply to gifts valued at over \$20 at a time, provided the aggregate value does not exceed \$50 in any calendar year. This \$20 *de minimus* and \$50 calendar

year limit tracks the levels for prohibited gifts for the executive branch. Current congressional policy, which allows gifts worth up to \$250 from one source during a year, and which does not count gifts of less than \$100 toward that limit, stands in sharp and embarrassing contrast to the longstanding policy and practice of the executive branch.

I suspect that some will argue today that the nature of the institutions justifies different standards for the congressional and executive branches. I disagree. I don't think those arguments meet what I call the "Minnesota Cafe Test," the commonsense assessment of constituents I meet in Minnesota cafes, on the street, in the post offices and meeting halls. Those people ask: Why should we in Congress not live under basically the same rules as an official in the State Department, or in the Labor Department, or another executive office? By adopting these rules as the basis for congressional reform, S. 885 will help restore the credibility and integrity of the Congress. Its restrictions on gifts, meals and entertainment, travel, and contributions to charities all clearly reflect considerable work and thought on the part of Senator Lautenberg and the organizations with whom he consulted in developing the bill.

I know too that there will be disagreements over whether to allow this minor exception or that, over how to regulate privately-funded staff travel, or over the minimum gift thresholds provided for in the bill. But I believe the basic structure of the bill, and the executive branch standards it contains, are fair and reasonable. I urge the committee, during its consideration of the bill, not to stray too far from its essential form.

Finally, let me reiterate what I said at the outset. I commend you, Mr. Chairman, for cosponsoring the Lautenberg bill. I know that you are sincerely committed to this reform agenda, and have been trying for many years to clean up the system. I know that you will do everything you can to enact tough new standards into law.

I am grateful for your friendship and your counsel on this issue and many others, and though we had a tactical disagreement on my lobby disclosure amendment, you were there, as always, gracious and kind in disagreement. I thank you for this opportunity to testify, and I assure you of my continued enthusiastic support for moving this bill to the Senate floor and getting it enacted promptly into law.

Statement of The Honorable Birch Bayh
Former Member, United States Senate

Before the Subcommittee on Oversight
of Government Management
Senate Committee on Governmental Affairs
Hearing on S.885, July 19, 1993

I appreciate the invitation to share my thoughts with you today. Let me begin by saying that I am not comfortable judging others. I recall the biblical admonition, "Let he who is without fault cast the first stones." Over the years, I have tried to strengthen my own personal short-comings. However, try as I have, I fear that many remain.

It has been my good fortune to work with and to know as friends and colleagues, men and women, of both political parties, who have served as public officials in local, state and national government. It is my firm conviction that the large majority of these individuals are honest, dedicated and hard working public servants. Their standard of conduct and morality is consistent with or above the norm of the constituency from which they are chosen.

It would be naive not to recognize that there are some who succumb to temptation and violate the public trust which is theirs from the moment they accept public responsibility. In my judgment, public trust is sacred and those who violate it do irreparable damage to the public's confidence in our governmental fabric.

I am not suggesting that a collection of saints is required for public service. However, those of us who are concerned about public attitudes toward Congress must be sensitive to individual or institutional practices which raise serious doubts in the average citizen's mind.

Now permit me to comment upon the specific issue of gifts which is the subject of your deliberations. I compliment you for doing so. Before proceeding, let me observe that I do not know of a single Member of Congress who could be bought or influenced by a dinner or gift. However, my opinion does not prevail among the public generally.

The fact that the Committee is concerned about the possible influence of gifts should be a positive step toward allaying public concerns. The concern expressed by Senator Lautenberg through his legislation is also a positive influence. Frankly, I am not wise enough to know at what specific dollar value a Member might be tempted, nor can I assess at what level the public might assume such is the case. There are certain factors which should be considered in your deliberations.

1. Appearance of impropriety is as much a part of the problem as actual misconduct.
2. What is the relationship of the individuals? Are they family members or long time friends?
3. Is there a constituent interest involved?
4. Can the Member assimilate knowledge which will assist in fulfilling his or her legislative responsibilities?
4. Is the environment such or are the individuals with whom the Member will be relating those where a Member's objectivity may be compromised on a given legislative issue? Does the individual associating with the Member have an interest in securing support for a specific legislative position? Is the occasion designed to secure the support of the Member for a specific legislative position?
5. To what extent do further restrictions make it more difficult for a Member to conduct his or her legislative activities or fulfill his or her family responsibilities?

Specific activity which will erode public confidence should be prohibited. However, I know that the Committee will recognize the important role that public disclosure can serve in the issue under consideration. You are seeking an ideal balance where a Member's personal activity and relationships can continue and will remain private. At the same time, you seek a means of preventing other activities and relationships which may have undue influence upon the conduct of a Member's official responsibilities or may have the appearance thereof. Let me point out that such conflicts are not confined to the issues under consideration. They also have been considered in respect to a Member's business and financial holdings and activities. Honoraria and campaign contributions have received similar attention. Some limitations and outright prohibitions have been imposed in respect to these latter three areas. However, in my judgment, public disclosure has also had a significant impact.

At the risk of concluding my comments upon a discordant note, I would like to suggest that the manner in which Senate and House campaigns are financed does more damage to citizen confidence in our democratic institutions than anything else. The hundreds of thousands, the millions of dollars which are spent in political campaigns is a blight upon our political system. The large majority of our citizens are suspicious and have serious doubts about the integrity and objectivity of decisions reached through such a process. I know that you, also, share this concern. I pray that you have the wisdom to resolve this serious problem.

TESTIMONY OF HONORABLE FRANK J. HORTON
BEFORE THE SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

July 19, 1993

It is a pleasure to appear before the Subcommittee today to testify on the subject of what rules should govern the acceptance of gifts, meals and travel by Members of Congress. While the Subcommittee is considering several issues, I will confine my comments to the issue of gifts, meals and travel.

I appear before the Subcommittee today as a private individual. I do not represent any other person or organization. I want to share with the Subcommittee my personal views on this issue, developed in my thirty years as a Member of the House of Representatives. For the last twenty years of my service, I was Ranking Minority Member of the House Committee on Government Operations.

Governing Principles. I believe that there are several basic principles that the Subcommittee should follow in addressing this issue:

(1) Whatever rule is adopted should apply to the Members of Congress themselves. An approach that imposes substantive restrictions and disclosure obligations on the Members themselves is greatly preferable to proposals to create a system that would operate on the basis of disclosure by lobbyists or other persons who provide gifts, meals or travel to Members.

The public is interested in how their elected representatives perform their jobs, rather than in tracking the activities of lobbyists. In other areas, the Congressional ethics system focuses on the Members' actions. It should function the same way for acceptance of gifts, meals or travel. The responsibility should rest squarely on the Member to make any required disclosure.

The standards should provide objective criteria by which Members may determine what gifts, meals or travel they may or may not accept. These standards should be backed up by a system that requires Members to disclose any gifts that they do accept. The disclosure statements should be freely available to the press and members of the public. In this fashion, the media will be able to keep track of the pattern of gifts accepted by any Member, and the public will obtain the information it needs to determine if a Member is performing his or her job satisfactorily.

(2) The same standards should apply to Members of both the House and Senate. I understand fully how proud each body is of its independence and how jealously each guards the power to set its own ethical rules for its Members. Nevertheless, there is no justification for having different standards of conduct for the House and Senate in the area of gift acceptance. There are important questions, which I will address later in my testimony, about whether the gift restrictions should be imposed by Rules adopted by each body or by a uniform statute. Whatever approach

is taken, it is important that the House and Senate agree upon common standards.

(3) The standards should follow the Executive Branch model, with suitable modifications to allow Members to perform their duties. As a general proposition, I support the position that the standards applicable to Members should, insofar as possible, follow the rules applicable to employees of the Executive Branch. However, the job responsibilities of Members of Congress are substantially broader than those of Executive officials. Further, the Members, unlike Executive appointees, are directly accountable to the electorate for their actions. These differences are important, and the gift acceptance and disclosure system should reflect the unique role of our elected officials. Members' ability to perform their jobs effectively should not be compromised in an effort to establish complete uniformity in the standards for the two Branches.

There are several respects in which the responsibilities of Members differ significantly from those of Executive employees.

--First, part of Members' work is to promote their home States and their districts. This means that there are occasions in which it is appropriate for members of Congress to accept gifts of samples of products made by people they represent, so that they can showcase those products and contribute to the economic development of their districts.

--Second, in order to be responsive to their constituents, Members inevitably must attend a wide variety of social

receptions and functions, especially when travelling in their home State or district. It is vital that the gift standards not prohibit Members from attending such functions, or accepting the same refreshments as other guests.

--Third, it often is necessary for Members to take official trips, in order to understand subjects on which they are required to legislate. No aspect of Congressional behavior is as frequently criticized as their travel. I believe that, if the public is given the facts, they will be able to look at the voting records of the Members and distinguish between those whose travel is undertaken for a true legislative purpose and those who have a pattern of accepting travel for essentially private purposes. I believe that, as long as appropriate disclosure and public access mechanisms are in place, public accountability will be fully protected in a system where Members may undertake official travel whose cost is defrayed by private parties. The proposal to establish a mechanism by which the House or Senate as an institution could be reimbursed for the costs of such travel, in lieu of direct payment to the Member, would allow for such accountability.

Implementation of the Restrictions on Acceptance of Gifts.

One question before the Subcommittee is whether the new restrictions on acceptance of gifts, meals and travel should be implemented through adoption of legislation, or by amendment of the existing Rules of each body. There are important considerations on both sides of this question.

The most important argument for proceeding through enactment of legislation is that it would establish a uniform system, and one that could be implemented through existing investigative and prosecutorial mechanisms. There also might be beneficial effects on how Congress writes laws in the future if Members have to live by the same standards they impose on Executive officials.

The major negative factor is that, under such an approach, Members could find themselves in violation of a criminal law if they innocently accepted a gift that was barred by the standards. This is a real concern. It is my understanding that implementation of the gift rules in the Executive Branch has been difficult, and that there are substantial gray areas where it is difficult for Executive employees to determine whether they may or may not accept a gift.

Implementation of the new gift rule through a statute would mean that Members of Congress would spend a substantial amount of time worrying about whether they are inadvertently breaking the law by such unremarkable activity as accepting a ride from the airport from a constituent, or staying in a constituent's home while travelling in their districts. The potential for criminal punishment would force Members to devote more time to worrying about their personal liability and less time to their jobs.

Further, while I am not sympathetic to persons who accept improper gifts, sensitive separation of powers questions would be implicated by having Executive Branch prosecutors routinely investigating gift acceptance by Members of the Legislative

Branch. Given the difficulty that the Executive Branch has had in distinguishing between a proper and an improper gift in the simpler environment in which Executive officials operate, I am concerned about the potential problems in having criminal prosecutors applying to another branch of government concepts that are so difficult to define.

My own personal judgment is that Congress should proceed by amendment of the Rules of each body. I believe that Congress can effectively police its own Members' compliance with such standards as long as the substantive criteria are well defined. And I believe the public will support this approach, if the standards that are adopted tighten existing loopholes and provide for a full disclosure system. The approach I advocate would require both bodies to adopt the same set of Rules, but there is no reason why the House and Senate cannot work this out.

Amount of Gifts that May Be Accepted. Finally, I wish to comment on proposals to reduce substantially the dollar amount of gifts that members may accept from any source. The Senate Rules currently provide that a member may not accept more than \$250 annually from any one person, but that gifts in amounts of less than \$100 need not be counted towards that annual ceiling. Under the current standard, meals and travel may be accepted without dollar limitations. I agree that these provisions are too loose and need to be tightened. In particular, I believe it appropriate to include meals and travel within an overall gift limit.

An argument can be made for prohibiting Members from accepting any gifts from anyone other than family members or close friends. But I do not think this would be a wise decision. By the nature of their duties and responsibilities, Members of Congress are going to be placed in many social situations where a flat ban on gifts would create inter-personal problems. In my judgment, an absolute ban on gifts is neither necessary nor appropriate, and would cause more problems than it solves.

In setting a ceiling on the amount of gifts a Member may accept, it is important that the standard be set at a reasonable level, and not at such a low level that Members will be forced to reject or return items that are proffered innocently and in the normal course of personal relations. I am concerned that the \$20 limit being considered is too low. Its adoption would constitute overkill in laudable efforts to identify and prohibit acceptance of gifts of significant value that either are, or create the appearance that they are, designed to curry favor with a Member.

For example, when I was a Member, I was asked to give a speech at a change in command ceremony, when an officer I previously had nominated to the Naval Academy assumed command of a ship. At the conclusion of my speech, I was unexpectedly presented with a pen and pencil set. I have no idea what the gift was worth, but I suspect it must have been more than \$20. It would have created an embarrassing social situation if I had been compelled to refuse such an innocent gift in front of this officer's family and friends and his new crew. I am concerned

that an artificially low limit would constantly put Members in such an awkward situation.

Similarly, while the current exclusion of meals from monetary limits is unjustified, I believe that the public would support a reasonable balance point, and would not insist on dollar limits that essentially would restrict Members to eating with their constituents at fast food establishments, either back in their districts or in Washington.

Finally, if the gift acceptance and reporting ceiling is set at an unrealistically low level, I am concerned that the paperwork and administrative burdens of complying with the ethics system could prove counterproductive, by reducing the amount of time Members can devote to their legislative responsibilities.

The Subcommittee is better positioned than I to determine what the proper balance point would be. But I regard the \$20 figure as unrealistic, and I believe that the public would support a more reasonable figure that is still substantially lower than the current gift limit.

STATEMENT OF

STEPHEN D. POTTS
DIRECTOR, OFFICE OF GOVERNMENT ETHICS

ON

S. 885, A BILL TO AMEND THE LEGISLATIVE BRANCH GIFT RULES

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ON

JULY 19, 1993

MR. CHAIRMAN, AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to appear today to discuss S. 885, a bill to limit the acceptance of gifts, meals and travel by Members of Congress and congressional staff. You indicated in your letter of invitation that the Senate had earlier adopted an amendment expressing the sense of the Senate that it should limit the acceptance of these gifts in a manner substantially similar to the restrictions applicable to executive branch employees. Therefore, I will provide some general comment upon how similar this bill is to existing executive branch restrictions and will also address certain specific questions you included in your letter of invitation. I will begin my testimony by addressing your questions.

You asked for an explanation of the process by which the executive branch gift rules were adopted and an outline of how the rules work. Prior to 1989, a 1965 executive order (E.O. 11222) directed the then Civil Service Commission to adopt model standards of conduct to be used by agencies in establishing their own rules and regulations. Among other things, the executive order provided a basic framework for gifts restrictions which was enhanced by the model rules promulgated in 1968. Thereafter, each agency developed its own rules which were to be consistent with that model.

As you know the Office of Government Ethics (OGE) was established in 1979, in part as a response to the inconsistencies that had developed throughout the executive branch in the application and interpretation of the various provisions of the standards of conduct. The gift rules were no exception. One of OGE's responsibilities was to attempt to bring some consistency to those interpretations, when appropriate. In 1989, President Bush determined, after receiving the report of his Commission on Federal Ethics Law Reform, that he would issue a new executive order on ethics directing OGE to develop one, single uniform set of

standards of conduct for the executive branch. Later that same year, Congress passed, as a part of the Ethics Reform Act, 5 U.S.C. § 7353, a statutory gifts restriction for all officers and employees of all three branches of the Federal Government including Members of Congress. That statute directed OGE to develop exceptions to that restriction for the executive branch.

Under those mandates, the Office began the process by reviewing the standards of conduct regulations of all the departments and of a sampling of small agencies. Those standards, of course, included the provisions dealing with gifts. Thereafter, we engaged in informal discussions with a number of agencies and in July 1991, published proposed standards of conduct on which we requested comments. The Office received approximately 1100 separate sets of comments on the proposed regulations. While most of them dealt with the provision regarding participation in professional associations, many of the rest had at least one comment on the gifts provisions. After considering the comments, the Office issued a final rule on August 7, 1992 with a delayed effective date of 180 days. The timing was selected to give agencies an opportunity to train their employees before those employees became subject to the new rules. As required by the executive order and by statute, the Office engaged in extensive consultation with the Department of Justice and the Office of Personnel Management on both the proposed rule and the final rule prior to their publication.

The gift rules are divided into two subparts--the first, subpart B, deals with gifts from outside sources and the second, subpart C deals with gifts between employees. I have attached a general outline of these subparts to this testimony. Each agency administers these rules by providing guidance, and if necessary, by taking appropriate administrative action if an employee of the agency is found to have violated a provision of the rules. OGE continues to provide guidance to agencies with regard to the rules through written and oral communications to agency ethics officials and, in some instances, to those who are considering offering gifts to executive branch employees.

You also asked us to describe OGE's implementation of the statutory authority permitting agencies to accept travel expenses from non-Federal sources for official travel. Section 1353 of title 31, United States Code, was enacted by the Ethics Reform Act of 1989, and permits acceptance of payments of travel or travel expenses in connection with official travel to "meetings or similar functions." Essentially an appropriations law, the General Services Administration (GSA) was assigned the task of implementing the statute in consultation with OGE.

Prior to the enactment of section 1353, we estimated that only about one-third of executive branch agencies had statutory authority to accept gifts of travel expenses. Moreover, even among

those who had it, policies relating to acceptance varied from agency to agency and there was no uniform reporting requirement. In too many cases, employees of agencies without gift acceptance authority would run afoul of the standards of conduct concerning the personal acceptance of gifts because they accepted gifts of travel which, although of benefit to the agency, could not legally be accepted by them or by their agency.

The statute itself is silent concerning conflict of interest considerations. Nevertheless, we urged GSA to include in the implementing regulation a provision requiring an appropriate official to weigh the acceptance of each payment in light of the identity of the donor, the duties of the employee who would perform the official travel, and other relevant factors. The initial implementing regulation, published on March 8, 1991, incorporated such a requirement. In a hearing before a House subcommittee on a related matter, however, OGE was subsequently criticized for having acquiesced in a standard that was too lenient. After additional consultations with OGE and in light of other public comments, GSA published a revised regulation which strengthened the original rule by deleting what had been characterized as the "balancing test." The current regulation lists a number of factors to be used as a guide to assist authorized agency officials so that they do not accept payment in circumstances that would cause a reasonable person to question the integrity of the agency's programs or operations. Had we imposed a flat ban on acceptance of payments from "prohibited sources," or even just on sources affected in some manner by the traveling employee's duties, we felt that we would have severely limited the utility of the statute.

Our other responsibility in this area is simply to be the public repository of the records that agencies are required to file every six months. We note that S. 885 requires that these reports be published in the Congressional Record. The Ethics Committees may find that they need some assistance in the form of an incentive in the statute in order to get the reports necessary to make that publication. We have had to regularly call agencies who have not filed reports in a timely manner to get them to do so. This has caused some administrative headaches for us.

Finally, turning back to your third question, you asked that I provide you with any views I might have on the differences between the legislative and executive branches of Government and the issues that may be raised by such differences. The most obvious difference that I can think of in the context of a gift rule is determining who would be a prohibited source of gifts for Members and Congressional staff. For officers and employees of agencies, be those agencies executive or legislative, it is easier to focus on those private sources which have some official nexus to the employee or the agency. For Congress, that could be anyone. We note that you have tried to address this by making all sources of gifts initially prohibited and then setting forth exceptions.

This is probably a reasonable approach for Congress under the circumstances. It may not, however, prove as reasonable for the individuals who are employees of legislative branch agencies such as the Library of Congress, the General Accounting Office, Government Printing Office or Copyright Royalty Tribunal.

There may also be some legitimate reason for treating all elected officials differently in some respects than all other employees. For instance, I note that you have reasonably recognized that Members may be given home state products for the purpose of redistributing them to others. As they hold representative positions, I believe that is certainly appropriate. Since no one in the executive branch is elected by a limited number of citizens, that is not an exception that would be appropriate for the executive branch.

I also think there is now an opportunity to review the statute relating to the disclosure of gifts. In the 1991 Legislative Appropriations Act, the threshold reporting requirements were substantially increased and one provision was amended so as to cause unnecessary expense to the executive branch in amending its forms. Section 314 of Public Law 102-90 amended the Ethics in Government Act so that only gifts with an aggregate value of \$250 or the minimal value for Foreign Gifts acceptance, whichever was more, had to be reported. Just prior to that time, the threshold value had been raised from \$75 to \$100 for tangible gifts with travel expenses and reimbursements remaining at \$250.

This amendment has already caused an unnecessary expense to the Government because it creates a system that requires changes to the reporting forms and their instructions which in practice will only be able to occur with a retroactive effective date. In the executive branch that is a costly process and it will only create periods of substantial confusion. I would be quite willing to work with the subcommittee to address this issue on a Government-wide basis.

My staff and I would be happy to work with the staff of the subcommittee on a technical analysis of the differences between the provisions of S. 885 and the executive branch rules. With regard to the gifts provisions contained in this bill, generally, we found these to be the major differences:

1. 5 U.S.C. § 7353, which applies to all Federal officers and employees, sets forth a description of who is a "prohibited source" of gifts to employees in the executive branch. S. 885 does not use this concept; rather it applies a restriction to all gifts regardless of donor and then attempts to set forth exceptions that will cover all instances where it would not be inappropriate to accept a gift.

2. The executive branch rules note that an indirect acceptance by an employee includes gifts given at the employee's designation, recommendation, or other specification except as to those honoraria that are properly directed to charitable organizations pursuant to that authority in the statutory restrictions on honoraria. Section 6 of S. 885 eliminates the option of officers and employees of all three branches from making such a charitable designation. We, of course, would recommend that the entire honoraria restriction be amended and that the option be left for executive branch employees to continue to designate to charity an honorarium in any case where it would be acceptable to take the honorarium directly. The executive branch has never allowed an employee to give to charity what he or she was offered because of an official speech, article or appearance.

3. There is no definition of the word "person" which becomes a problem when the term is used to note a source of gifts. For instance, during the course of a year could five different employees of one corporation each give a Member gift with a cumulative value in excess of \$50? Under the executive branch definition of person, the five could not. The source in that case would be considered the corporation and the gifts from all five together would have to meet the \$50 test. That is not clear in S. 885 and could be viewed as a major difference.

4. S. 885 does not include a bona fide public service awards exception as do the executive branch rules. If an employee or Member were to be offered the Nobel Peace Prize with its monetary award, there would be no exception available to allow that individual to accept it or to designate that it be paid to a charity.

5. Under the exception for opportunities and benefits, S. 885 does not include an exception for offers made to an employee as part of a group when the group is not defined on the basis of official responsibility or rank. The usefulness of that exception comes into play, for example, when all employees in a particular Government building are offered a discount at some local establishment in the same way as all employees in two neighboring private buildings.

6. S. 885 also does not include an exception for bona fide job interview reimbursements for those who are seeking to leave the Government. The executive branch includes that exception coupled with any necessary disqualification from duties because often individuals will seek employment in the same field as that in which they have been serving in the Government. The private employers in that field may very well be prohibited sources of gifts of travel expenses even if they are incident to a bona fide job interview.

7. There is an exception in the executive branch rules for gifts of entertainment and food if it is offered incident to an

employee's authorized participation as a panelist or at a widely attended gathering. The value of those gifts need not fit within the \$20 exception. One of the crucial tests of the exception is that the employee is assigned to speak or that attendance at the widely attended gathering is determined, usually by someone other than the employee, to be in the agency's interest. S. 885 has a similar exception but does not include any concept of assignment or determination of Congressional interest. It appears each Member or employee can make that determination him or herself. We see that as potentially being a provision that could in practice be put to a troublesome use. While each Member as the head of his office may be in a position to decide for him or herself what is in the interests of the office or the Congress or when the speech he or she is giving is official or personal, you may want to consider some review procedures for all other officers and employees. This would include not only a review of the official nature of the participation but of the event to determine if it fits the widely attended definition.

8. As mentioned earlier, the executive branch rules set forth two reasons a gift must be analyzed under the rules: first if it comes from a "prohibited source" and second if it is given simply because of Government position, i.e. status gifts. If neither of those reasons is present, then the gift may be accepted without reference to any exception. While in most cases either source is treated equally by the rules, we did make an exception for certain types of gifts that were offered simply because of status and not from an otherwise "prohibited source." We call that the purely social invitation exception which S. 885 does not contain. While there are a number of facts that must be present before the social invitation exception can apply, the typical Washington event that does come within its scope is the at-home dinner party hosted by persons known for their soirees who wish simply to have well-known people in Washington as their guests, as much for themselves as to enhance the likelihood that other invitees will attend. If the hosts invite a new Cabinet member and a new committee chairman because of their new positions, under the executive branch rules the cabinet member could go if he or she wished and under the restrictions in S. 885, the new committee chairman could not attend. (The assumption in both cases is that the hosts are not close personal friends and that they are not "prohibited sources" of gifts to officers and employees of the Cabinet secretary's department.) Since these types of events do happen in Washington, the legislative branch may want to consider adding an exception for in-home entertainment. The executive branch language could not be used because of the "prohibited source" concept.

9. We note that S. 885, while addressing gifts from foreign governments, does not include any exception for gifts from other sources when traveling or stationed outside the United States. We would assume that when traveling abroad, Members or employees may find themselves in situations where gifts of entertainment and

hospitality are offered by foreign businesses, U.S. companies doing business abroad, non-profit organizations or educational institutions. The executive branch has an exception for gifts given under those circumstances. While it may be envisioned that Members and Congressional staff may always be hosted by a government or the U.S. may pay their expenses, we note that legislative branch agencies, such as GAO, do have employees who travel to audit various U.S. operations abroad. In some places abroad, the \$20 exception may not be realistic for even the most minor offer of hospitality. The executive branch rule is based upon the U.S. per diem rates for the country in which the gift is offered, a rate adopted as a reasonable measure of costs in the country.

10. In the proposed provisions in S. 885 on the disposition of prohibited gifts, we noted two differences from the executive branch rules. The first is that under certain circumstances, the executive branch does allow a perishable gift to be shared among the members of an office. Examples would be a fruit basket which is unwrapped at the office for all to share, or flowers placed in a public room for all to enjoy. This type of allowed disposition is not among those in S. 885. The second difference is that S. 885 does not limit the circumstances under which an individual can use appropriated funds or Government mails to return a prohibited gift. The executive branch requires that an agency decide whether it will use public funds for such purposes depending upon the circumstances. In that way an employee who uses extremely bad judgment in accepting some item cannot automatically use taxpayers money to return it. Nor can someone who sends an unsolicited but unacceptable gift expect the Government to return it to him or her at no cost. We would strongly recommend that someone other than the recipient determine whether Government funds can be used to return the item or items.

This concludes my statement. I will be happy to respond to any questions you may have.

SYNOPSIS OF SUBPART B - GIFTS FROM OUTSIDE SOURCES

BASIC PROHIBITION ON GIFTS FROM OUTSIDE SOURCES. An employee shall not solicit or accept a gift given because of his official position or from a prohibited source. A prohibited source is defined as any person, including any organization more than half of whose members are persons:

- Seeking official action by his agency;
- Doing or seeking to do business with his agency;
- Regulated by his agency; or
- Substantially affected by the performance of his duties.

DEFINITION OF A GIFT. The term "gift" includes almost anything of monetary value. However, it does not include:

- Coffee, donuts and similar modest items of food and refreshments when offered other than as part of a meal;
- Greeting cards and most plaques, certificates and trophies;
- Prizes in contests open to the public;
- Commercial discounts available to the general public or to all Government or military personnel;
- Commercial loans, and pensions and similar benefits.
- Anything paid for by the Government, secured by the Government under Government contract or accepted by the Government in accordance with a statute;
- Anything for which the employee pays market value;

EXCEPTIONS. Subject to the limitations noted below, there are exceptions which will permit an employee to accept:

- Unsolicited gifts with a market value of \$20 or less per occasion, aggregating no more than \$50 in a calendar year from any one source (this exception does not permit gifts of cash or investment interests);
- Gifts when clearly motivated by a family relationship or personal friendship;
- Commercial discounts and similar benefits offered to groups in which membership is not related to Government employment or, if membership is related to Government employment, where the same offer is broadly available to the public through similar groups, and certain benefits offered by professional associations or by persons who are not prohibited sources.
- Certain awards and honorary degrees;
- Gifts resulting from the outside business activities of employees and their spouses;

Travel and entertainment in connection with employment discussions.

Certain gifts from political organizations;

Free attendance provided by the sponsor of an event for the day on which an employee is speaking or presenting information at the event;

Free attendance provided by the sponsor of a widely-attended gathering of mutual interest to a number of parties where the necessary determination of agency interest has been made;

Invitations to certain social events extended by persons who are not prohibited sources, provided no one is charged a fee to attend the event;

Certain gifts of food and entertainment in foreign areas;

Gifts accepted by the employee under a specific statute, such as 5 U.S.C. 4111 and 7342, or pursuant to a supplemental agency regulation.

LIMITATIONS ON USE OF EXCEPTIONS. An employee may not use any of the exceptions noted above to solicit or coerce the offering of a gift or to accept gifts:

For being influenced in the performance of official duties;

In violation of any statute;

So frequently as to appear to be using public office for private gain; or

In violation of applicable procurement policies regarding participation in vendor promotional training.

DISPOSITION OF GIFTS. When an employee cannot accept a gift, the employee should pay the donor its market value. If the gift is a tangible item, the employee may instead return the gift. Subject to approval, however, perishable items may be donated to a charity, destroyed or shared within the office.

SYNOPSIS OF SUBPART C - GIFTS BETWEEN EMPLOYEES

BASIC PROHIBITION ON GIFTS BETWEEN EMPLOYEES. An employee shall not:

Give or solicit for a gift to an official superior; or

Accept a gift from a lower-paid employee, unless the donor and recipient are personal friends who are not in a superior-subordinate relationship.

DEFINITION OF A GIFT. The term "gift" has the same meaning as in subpart B. However, carpooling and similar arrangements are excluded where there is a proportionate sharing of the cost and effort involved.

DEFINITION OF AN OFFICIAL SUPERIOR. The term "official superior" includes anyone whose official responsibilities involve directing or evaluating the performance of the employee's official duties or those of any other official superior of the employee. The term is not limited to immediate supervisors but applies to officials up the supervisory chain.

EXCEPTIONS. Subject to a limitation on using any exception to coerce a gift from a subordinate, there are exceptions that:

On an occasional basis, including birthdays and other occasions when gifts are traditionally exchanged, permit giving and accepting:

Items other than cash aggregating \$10 or less per occasion;

Food and refreshments shared in the office;

Personal hospitality at a residence;

Appropriate hostess gifts; and

Leave sharing under OPM regulations;

On infrequent occasions of personal significance, such as marriage, and on occasions that terminate the superior-subordinate relationship, such as retirement, permit giving and accepting gifts appropriate to the occasion; and

Permit voluntary contributions of nominal amounts to be made or solicited for gifts of food and refreshments to be shared in the office or for group gifts on occasions such as marriage or retirement described in the preceding paragraph.



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Ralph Nader, Founder

**Testimony of
Joan Claybrook
President,
Public Citizen**

**Before the
Senate Governmental Affairs Committee
Subcommittee on Oversight of Government Management**

July 19, 1992

Mr. Chairman and members of the Subcommittee, thank you for inviting me to testify today. My name is Joan Claybrook, and I am president of Public Citizen. Founded by Ralph Nader in 1971, Public Citizen is a national consumer research and advocacy organization with more than 150,000 members nationwide.

Public Citizen has long advocated for an end to perks lavished upon Congress by special interest groups, from junkets to tropical climates in winter months to tickets to sporting events. It is no secret that lobbyists use such gifts as tools to gain access to Members of Congress -- tools which ordinary citizens cannot afford. This practice skews the legislative process toward monied interests. At a minimum, there is an appearance of impropriety. We believe strongly that Congress should enact a comprehensive ban, by statute, on the acceptance of all privately donated gifts, entertainment, travel and other financial perks.

We commend you and Sen. Lautenberg for your leadership on this important issue. Your support was instrumental in the Senate's overwhelming vote in favor of S. 349, the Lobbying Disclosure Act, last May, which contained a provision requiring the disclosure of a wide range of gifts, perks, and other financial favors valued at more than \$20. This provision reached beyond what people generally think of as "gifts" -- tickets to sporting events, expensive dinners -- to other financial favors just as common but sometimes not as well known. For example, your Lobbying Disclosure Act requires disclosure of any financial benefit given to "an entity that is established, maintained, controlled, or financed by a covered legislative branch official." This speaks to the increasingly common practice of a lobbyist directing a donation to a foundation or organization established or connected to a lawmaker. It is very important that the bill we are discussing today, which attempts to go further by instituting some *prohibitions* against accepting financial benefits, be as broad in its reach as the Lobbying Disclosure Act.

We are pleased to see that S. 885 prohibits Members of Congress from accepting gifts over \$20 from private groups. This makes good sense. The current Congressional policy of allowing gifts worth up to \$250 from one source during a year, and not counting any gifts under \$100 toward that limit, stands in sharp contrast to

the executive branch standard of banning acceptance of any gift over \$20. To the public, such a discrepancy seems odd. If an assistant secretary at a federal agency is prohibited from accepting a \$25 gift from a private entity, why is it all right for a Member of Congress to accept a \$250 gift from a trade association which wants a provision inserted in some piece of legislation? In using executive branch rules as a benchmark for reformulating rules for Congress, S. 885 goes a long way toward repairing the institution's tarnished credibility. Congress should not, however, rely on executive branch rules as its outside limit of what should be done. There are ways in which the executive branch rules also need strengthening.

One of our biggest concerns with S. 885 lies in the section on privately funded travel. The bill stops short of banning trips and, instead, calls for stricter disclosure of such trips. While we heartily approve of stricter disclosure requirements, we believe strongly that the best solution would be to ban all privately funded travel. There is just too much abuse of this perk, and too much difficulty in drawing the line between appropriate and inappropriate private travel. If any trip is truly important enough to merit a Member of Congress' attention and time, then the Congress should pay for it, just as public money pays for Congressional offices, staff, publications, hearings, and investigations. Taxpayers will not object to Members of Congress traveling with public money when the trip has a substantive purpose -- for example, a fact finding trip to an area of the country that recently suffered from a natural disaster. They will not tolerate, however, financing a junket to Florida in December where the featured activity appears to be playing golf and swimming with special interest lobbyists.

If there is any doubt that the practice in the Congress of accepting trips from private groups is not widespread, consider this evidence:

•In 1991, Public Citizen published a report that analyzed trips taken by Members of the House of Representatives during the 101st Congress (1989-1990.) Members of the House went on nearly 4,000 privately funded trips during that time period. On average, lawmakers went on nine trips each, and only a handful refused to go on such trips at all. Over two-thirds of these trips were paid for by corporations

or their trade associations who were often lobbying lawmakers on specific legislation affecting their economic interests. Not surprisingly, the most popular months for traveling were winter months, when the weather grows cool in Washington and tropical climates are all the more inviting.

Among the top sponsors of trips between 1989-1990 were the National Cable Television Association, which sponsored 75 trips, and the National Association of Broadcasters, which picked up the tab for 67 trips. Destinations included Las Vegas, Palm Springs, New Orleans, and Los Angeles.

At the time, these two trade associations were locked in a major legislative battle over the cable television re-regulation bill. Along with the millions of dollars they gave to lawmakers' campaigns, they used these trips as part of an overall lobbying strategy designed to give them the edge on Capitol Hill. Most Members invited on these trips served on the House Energy & Commerce Committee, which oversees legislation affecting the television industry.

•ABC's "Primetime Live" recently aired a segment on a trip by ten Members of the House of Representatives and their spouses to Florida's Captiva Island sponsored by the Electronics Industry Association. The lawmakers met with trade association representatives for a few hours in the morning, where they heard the industry's side on issues ranging from telecommunications policy to the environment. Then, they spent the rest of the day playing golf or tennis with lobbyists from such companies as TRW, Magnavox, Martin Marietta, Texas Instruments and DuPont. Airline tickets, accommodations, food, and golf course greens fees amounted to about \$25,000 for 10 couples - \$2,500 a couple.

•The American Medical Association (AMA) recently entertained nine high level Congressional staffers for a weekend at the luxurious Greenbrier resort in West Virginia, where the cheapest rooms go for \$424 a night, not including greens and tennis fees. (The AMA did not pay for travel expenses, but the resort is only a four hour drive from Washington.) These staffers will be critical in developing any health care reform legislation. Lee Stillwell, the AMA's senior vice president for government and political affairs, told *Wall Street Journal* reporter Timothy Noah that the purpose

of the weekend was to "to provide information and data. . . We have found it's best to change the setting, admittedly, to a more relaxed environment [because] the everyday distractions you have in your ordinary environment are counterproductive."

S. 885 attempts to limit such abuses by setting up a standard for approval of privately funded congressional trips: "condition ...approval on a determination by the Ethics Committee that acceptance of reimbursement would not cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of the Member, the Congress or congressional operations." This is a loose copy of executive branch standards, which allow federal agency officials to accept travel reimbursement from private parties if "an agency's interest in the employee's...attendance...outweighs the concern that acceptance of the payment may or may (sic.) reasonably appear to influence improperly the employee in the performance of his/her official duties."

But here is a clear case of where following the example of executive branch rules is simply not appropriate. The provision allowing executive branch officials to accept privately funded travel, slipped into the 1989 Ethics in Government Act at the last minute and subject to no hearings or debate, has only proven our fears about abuses and conflicts of interest. In a 1992 review of privately funded executive branch travel, Common Cause noted that NASA officials had accepted travel from such companies as McDonnell Douglas, Boeing, Dow Chemical, United Technologies, Dupont and IBM. Defense Department officials had travel paid for by Grumman Corporation, Bell Aerospace Systems Group and the Harris Space Systems Corporation. Clearly these companies have a direct interest in these agencies' actions. Yet the trips were approved anyway.

We have thought very carefully about the standard S. 885 would establish -- that if the average person would consider the acceptance of a trip from a certain interest to be pose a conflict of interest for a lawmaker, then the trip should not be approved. Our analysis of privately-funded trips indicates that most trips would in fact raise concerns in the eyes of the average citizen since trip sponsors target their trip giving to key members of Congress sitting on committees with jurisdiction over

their industries. Such a standard, therefore, seems unworkable.

In fact, instead of following the executive branch example, S. 885 should *ban* such travel – by Congress and the executive branch alike. Failure to enact a ban only invites more inappropriate behavior by executive branch officials and Members of Congress. It is no surprise that when news of such trips hits the media the public reacts with resentment: people know that only the very wealthy special interests can use these sorts of strategies for access to decisionmakers.

That said, we have a number of suggestions for strengthening the travel disclosure requirements set out in S. 885.

• *Don't give Ethics Committees authority for approving privately funded trips.* S. 885 delegates authority to the Ethics Committees to develop rules setting out conditions for acceptance of outside funds to pay for trips. It also requires the Ethics Committees to approve in advance all such travel. Public Citizen recognizes that the bill attempts to follow the structure of the executive branch rules, which puts authority for approving travel in a designated official at each agency. The Ethics Committees, however, are not the appropriate bodies in the Congress in which to vest such authority.

There will be enormous pressure on the Committees to avoid disapproving any trips at all, so as not to alienate a colleague or any particular special interest group. The likely result of this unwieldy arrangement is that the Ethics committees will become rubber stamps, legitimizing special interest travel that most citizens already find abhorrent. Furthermore, unlike the executive branch agencies, where officials are essentially agents of the president, each Member of Congress is an elected official. As such, Members should be responsible for their own conduct, including the decision to accept private money for trips. They should not be able to turn to another body, made up of their colleagues, to make these decisions for them, thereby displacing their responsibility. In the case of Congressional staffers, the Member of Congress who employs them should bear the responsibility for these decisions.

• *Establish strict restrictions on privately funded trips.* If Members of Congress and staff decide to go on a privately funded trip, they should follow strict guidelines.

For example, such trips should be limited to 24 hours in length; reimbursement should be coach fare rates only; and there should be a prohibition on accepting reimbursement for spouses and other family members. Such restrictions would be in line with Congress' previous actions in regulating privately funded travel -- for example the current four-day limit on privately funded domestic travel in the Senate. Allowing multi-day privately funded trips only encourages Members and staffs to make the trip into a mini-vacation with special interest dollars.

• *Require both pre-trip and post-trip disclosure -- and in a timely manner.* S. 885 requires that trips be reported to the *Congressional Record* twice a year, after trips are taken. To improve disclosure, Public Citizen believes that Members of Congress should be required to report plans to take a privately funded trip before they go on the trip. Such reports should include the sponsor of the trip, the trip destination, and the dates of travel. These reports could be submitted as late as 48 hours before a trip. (Since the bill now requires prior Ethics Committee approval of trips, there is no good argument why the same information can't be provided to the *Record*.) By providing such an advance report the public would be alerted about a Member's plans to travel and could therefore monitor that activity more effectively. Furthermore, upon returning from a trip, Members should file complete reports with the *Congressional Record* within ten days of return. The *Record* should compile all these records quarterly, so that all the information would appear in one place for easy access, but, in the meantime, the information would be more immediately available.

• *Require Members to provide the public with information about their trips.* Members of Congress often argue, privately funded trips are necessary to do their jobs adequately. If this is true, then the public deserves to know what their representatives have learned on such trips and how and why the trip was necessary. Members of Congress should, therefore, write up statements, to be published in the *Congressional Record*, which lay out their reasons for taking a trip and what they learned and accomplished.

• *Provide clear guidance on the format of travel disclosure forms.* S. 885 sets out comprehensive requirements for the content of travel disclosure reports. It is still

necessary, however, to establish guidance on the format of the forms. At present, there is a disparity between travel disclosure forms filed by Senators and Members of the House of Representatives, with the House disclosure forms being more "user friendly." On the House forms, a separate column is provided for each piece of information, i.e., whether a family member is traveling with the Member, dates of the trip, and whether any time is spent at the location *not* at the sponsor's expense. The Senate form, in contrast, simply presents Senators with a line for "dates and brief description." Many times Senators do not provide complete information on this line. Having a separate column for each piece of information would undoubtedly improve disclosure. In addition, there should be a requirement to spell out the names of organizations sponsoring trips rather than providing incomprehensible acronyms. Collectively, these points make all the difference in whether or not the information is useful to the public.

•Lower threshold for disclosure from \$250 to \$20. A \$250 threshold for reporting of trips is counterproductive. First, some trips would slip under this threshold if the trip is taken to a nearby city, such as New York City, or Homestead, West Virginia. A Member could conceivably accept daily trips to a resort in the Adirondacks and never have to report a single one. Second, the bill sets a standard for the gift ban of \$20, and that standard should be followed in the travel section of the bill.

Senator Lautenberg recognized the troubling effect these trips and gifts have on public confidence when he introduced his legislation, saying, "I know many of my colleagues will deny that they can be influenced by a free dinner or even a luxury trip to the Caribbean. However, it seems indisputable that these kinds of special favors have contributed to Americans' deepening distrust of Government...For as public trust diminishes, the ability of Congress to address our nation's serious problems also diminishes."

In 1992, voter confidence in Washington lawmakers plummeted to historically low levels. Unless Members of Congress want to face an even more hostile voting public in 1994, it is time to start responding to citizens' call for change in how

business is conducted in the nation's capital. Along with passing a strong campaign finance reform package and improved lobbying disclosure, banning most gifts and privately funded travel would go a long way toward restoring voter confidence in government. We commend this committee and Sen. Lautenberg for tackling this difficult issue.

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United States Senate

SELECT COMMITTEE ON ETHICS

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August 11, 1993

The Honorable Carl Levin
 The Honorable William S. Cohen
 Subcommittee on Oversight of
 Government Management
 United States Senate
 Washington, D. C. 20510

Dear Senator Levin and Senator Cohen:

Thank you for your July 21, 1993 letter concerning S. 885 and providing the opportunity to comment upon several provisions of the bill.

Specifically, your letter notes that Section 8 of the bill would require the Ethics Committee to:

- prescribe rules establishing the conditions under which the Senate, or Members and employees of the Senate, would be permitted to accept private reimbursement for travel expenses;
- approve in advance all travel for which related expenses are to be reimbursed, based on a determination that "acceptance of reimbursement would not cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of the Member, the Congress or congressional operations"; and
- publish in the Congressional record reports of all payments of more than \$250 accepted under the provision.

We greatly appreciate the opportunity to comment because, as your letter indicates, this section of the bill would have a significant effect on the operations of the Ethics Committee.

Fundamentally, we believe that the above provisions would be a step in the wrong direction because those provisions would shift responsibility for the decision to accept travel expenses from the shoulders of the individual involved to the Ethics Committee. We are firmly of the opinion that Members who accept travel expenses or who permit employees under their supervision to accept such expenses should be directly responsible for deciding that acceptance of such expenses will not create a conflict of interest and that the travel will benefit the Member or employee in the performance of their official duties and is in the interests of the Senate and the United

States. Also, for the Ethics Committee to make the proposed determination that acceptance of reimbursement "would not cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of the Member, the Congress or congressional operations," would appear to impose upon the Committee an overwhelming, as well as misplaced, investigative burden.

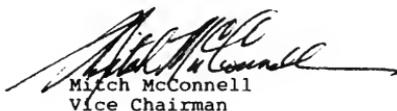
Likewise, it appears to us that the individual accepting or permitting acceptance of travel expenses, not the Ethics Committee, should bear the burden of any additional reporting requirements which might be required.

Thank you again for the opportunity to comment on this matter.



Richard Bryan
Chairman

Sincerely,



Mitch McConnell
Vice Chairman

**STATEMENT OF SENATOR RUSSELL D. FEINGOLD
BEFORE THE SENATE GOVERNMENTAL AFFAIRS COMMITTEE
SUBCOMMITTEE ON OVERSIGHT
OF GOVERNMENT MANAGEMENT ON S. 885,
THE CONGRESSIONAL ETHICS REFORM ACT OF 1993,
A BILL TO MODIFY CONGRESSIONAL RESTRICTIONS ON GIFTS**

July 19, 1993

Thank you Mr. Chairman, for allowing me the opportunity to submit my testimony on S. 885, a bill which I am proud to be an original cosponsor, and for holding this hearing on a subject that is very important to both myself, Congress, and the American public -- that is reform of the way in which Congress deals with the thousands of gifts and other perks that are offered to Members each year from individuals and organizations that seek access and influence in the United States Congress.

I would also like to thank Senator Lautenberg for introducing both the resolution that expressed the sense of the Senate that the full Senate would consider during this session, changes in the way Members and staff are allowed to accept gifts, meals and travel similar to the restrictions currently applicable to executive branch officials, and S. 885, the Congressional Ethics Reform Act of 1993. His leadership and the overwhelming margin in which the sense of the Senate resolution passed leads credence to my hope that we will be able to enact meaningful legislation this area of Congressional reform.

The current rules, which allow Members of Congress and their staff to accept gifts worth up to \$250 from one source during a year and does not include towards that limit any gifts under \$100, create the potential for conflicts of interest and the appearance of impropriety, and are yet another reason why the public's confidence in Congress has fallen to dangerously low levels.

S. 885 would, among other things, reduce these limits along the lines of the rules applicable to the Executive Branch, setting the new single gift limit at \$20, with a \$50 limit from any one source.

Although I am an original cosponsor of the Congressional Ethics Reform Act of 1993 and will work my hardest to see that change in the present system is enacted, I would like to focus my remarks on my experience with the gift ban policy I have enacted with regards to myself and my office.

For ten years as a Wisconsin State Senator, I served in a legislative body that prohibited the acceptance of anything of value from a lobbyist or a lobbying organization. My experience, as well as the State of Wisconsin's experience with the policy of a total ban, led me to adopt an office ethics policy which combines the most restrictive elements of the existing ethics policy of the United States Senate and the ethics rules followed in Wisconsin state government.

This policy includes an all out ban on the acceptance of things of value. Specifically, as under Wisconsin law, individuals employed in my office, including myself, paid staff, fellows and interns, cannot accept food, drink, transportation, lodging, employment or a thing of pecuniary value from a lobbyist or an organization that employs a lobbyist, or food, drink, transportation, lodging, employment, or any item or service of more than nominal value from any individual offered because of public position.

As under Wisconsin law, exceptions to these restrictions have been made in order to facilitate the day to day legislative related work that is conducted in my office. Therefore, these restrictions do not apply to the provision of educational or informational materials; lodging, transportation, and food or beverage offered coincidentally with the presentation of a talk or participation in a meeting, program, conference or seminar relating to official business, and by or for a political campaign committee. The restrictions also do not apply to functions sponsored by, or items provided by, federal agencies or federal officials or diplomatic functions sponsored by foreign governments where attendance at such an event is part of the individual's official responsibilities. I have attached a copy of my office ethics policy so that it can be made part of the hearing record.

This Committee will hear from many individuals and organizations who will complain that a gift ban threshold amount and reporting ceiling set at too low of a level will result in a overwhelming amount of paperwork and administrative work which could ultimately take away from the time Members of Congress spend on their legislative duties. My own experience with a gift ban set at \$0 has not borne these fears out. As of the date of this hearing, my office has logged over 220 gifts or offers that have been declined or donated to charities. I can assure you that my office ethics policy has neither interfered with my or any member of my staff's legislative responsibilities, nor created any unduly amount of administrative work for my office.

As I stated before, I am a cosponsor of S. 885, and will do all I can to help make sure that it is enacted into legislation during this Congress. The \$20 and \$100 limits are a significant step towards reducing the opportunity for potential conflicts of interest and the negative perception that permeates through and surrounds the entire Congress.

However, I would urge members of this Committee, and any member who plans on initiating a gift ban policy, to take into account the ease of administration of a flat-out ban. A general prohibition would be much easier to administer than a policy which sets an arbitrary benchmark value over which items are not to be accepted. A flat-out ban not only eases the burden of drawing the line on what is acceptable and what is not and any valuation that is necessary to administer any type of gift ban policy, but it also reduces the potential for any misperceptions of conflicts of interest or any other improprieties.

In conclusion, although I feel that a total gift ban would achieve the reform goals set out in S. 885 in a more effective and efficient manner, I would like to again thank Senators Lautenberg and Levin for their work in this area of reform, and would like to offer my help in any way necessary to enact this important legislation.

**OFFICE OF U.S. SENATOR FEINGOLD
ETHICS POLICY**

It is the policy of this office to comply voluntarily with the provisions of the Wisconsin Code of Ethics for Public Officials and Employees (Subchapter III, Chapter 19, Wisconsin Statutes) which are applicable to Wisconsin state legislative employees. Certain provisions of the Wisconsin law are more restrictive than those applicable to Senate employees under federal law and Senate rules. In other cases, federal and Senate laws are more restrictive. In each case, the office will comply with the more stringent requirement.

Specifically, as under Wisconsin law, individuals employed in this office, including the Senator, paid staff, fellows and interns, may not accept food, drink, transportation, lodging, employment or a thing of pecuniary value from a lobbyist or an organization that employs a lobbyist (Section 13.625(1)-(3)) or food, drink, transportation, lodging, employment, or any item or service of more than nominal value from any individual offered because of public position (Section 19.45(2) and (3m)).

As under Wisconsin law, these restrictions do not apply to the provision of educational or informational materials (Section 19.45(2) and 13.625(6t)); lodging, transportation, and food or beverage offered coincidentally with presentation of a talk or participation in a meeting, program, conference or seminar relating to official business (Section 19.56(1), (2), and (3)); by or for the benefit of the federal government (Section 19.56(3)(c)); or from a political campaign committee (Section 19.56(3)(d)). These exceptions are to be narrowly interpreted. For example, participation in a meeting is interpreted to mean more than simply attendance at a meeting, but rather playing an active role such as participation in a panel presentation or giving a report or speech. Under Wisconsin law, "for the benefit of the federal government" is interpreted to mean items which would otherwise be paid for by official funds. This provision will also be narrowly construed so as not to create the appearance of impropriety. Finally, staff should be aware of the fact that the Senate Ethics Rules provide additional restrictions on acceptance of expenses for domestic and foreign travel from non-governmental sources.

These restrictions shall not apply to functions sponsored by or items provided by federal agencies or federal officials or diplomatic functions sponsored by foreign governments where attendance at such event is part of the individual's official responsibilities.

Waivers

The Senate Ethics Rules provide for waivers in the case of a significant, personal dating relationship. A similar policy will be applicable in the Feingold Office. These rules are also not applicable with respect to items received from a relative of the employee.

Disposition of Gifts, Food and Beverage

Circumstances will arise where it is not practicable to prevent a gift from being delivered. Wisconsin law provides that such items be transferred to the ownership of the public agency where the individual is employed or, if practicable, returned to the donor, or donated to a charitable organization. The Feingold Office will implement this policy in the following manner:

Those items appropriate to be accepted on behalf of the people of the state of Wisconsin (for example, books, maps, pictures, reference materials, etc.) will be stamped accordingly and retained in the office. Items such as food, sundries, plants, etc. will be donated to a local charity providing services to needy individuals and families. The donors will be notified of the disposition of the item.

Occasions will also arise when it is not possible or appropriate to reimburse a host for food and beverage. For example, an individual may be invited to someone's home under circumstances where it is apparent that the invitation is extended because of one's public employment, rather than a personal relationship. In such cases, the individual involved shall make a good faith estimate of the value of the items consumed and shall make a payment on a periodic basis to a fund which will be donated to the United States Treasury to reduce the federal deficit. This option should be used only in very limited circumstances.

Guidelines for Implementation of Feingold Office Ethics Policy

The purpose of the application of the Wisconsin Ethics Code is to avoid the appearance of members of the Senate staff being subject to influence by private interests or receiving personal benefits because of their public employment. In applying these rules, some situations will be readily apparent; others may not be as clear. Each situation should be analyzed by determining whether the item is being provided by a) a lobbyist, b) an organization that employs lobbyists, or c) because of the recipient's official position. If so, the individual should politely explain the office policy and decline.

In all circumstances, employees of this office are expected to comply with both the letter and the spirit of the Wisconsin Code of Ethics as well as federal and Senate ethics provisions. Staff are directed to consult with the Administrative Director and/or the Legislative Director on any questions regarding application of this policy.



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Ralph Nader, Founder

August 16, 1993

The Honorable Carl Levin
 Chairman
 Subcommittee on Oversight
 of Government Management
 United States Senate
 442 Senate Hart Office Building
 Washington, DC 20510

Dear Mr. Chairman:

I appreciated the chance to testify recently before your committee on S. 885, the bill to ban gifts over the value of \$20 to Congress and establish standards and disclosure for privately funded travel.

Upon reviewing the transcript of the question-and-answer portion of my testimony, I decided that it would be helpful to the committee if I reiterated Public Citizen's position on private reimbursement of Congressional travel expenses.

Public Citizen's position has been -- and remains -- that Congress should ban privately funded Congressional trips. The present system, which allows Members of Congress to go on junkets and other trips at the expense of special interests, produces countless examples of blatant conflicts of interest. It is no wonder that the voters lose faith in Congress as an institution when they need only turn on the television and see Members of Congress golfing with business lobbyists at a sunny resort. They know that they do not enjoy the same access and power with their representatives that these lobbyists do.

It is always possible to think of exceptions to the rule, and there are certainly cases when an outside group reimburses a Member of Congress for a worthwhile trip, or, at minimum, a trip that raises no great questions of conflict. The cases you proposed during the question-and-answer part of the hearing -- of an American Cancer Society benefit, an educational Aspen Institute conference, and a German Marshall-funded educational event -- provide some such examples. Nevertheless, Public Citizen believes that it is difficult, perhaps impossible, to craft a legislative proposal that would simply and generically differentiate between these sorts of trips and more problematic ones.

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For example, consider if Congress were to legislate that all privately funded travel would be banned, except that Members of Congress would be allowed to accept compensation for travel from non-governmental organizations providing that the organization was a nonprofit group and does no lobbying. (Your line of questioning seems to point toward this kind of proposal.) At first it might seem that such an exemption makes sense, since the main problem with acceptance of travel expenses from private groups is that the act often produces the appearance of a conflict. If an organization does not lobby, then there is no appearance of conflict.

Unfortunately, this line of reasoning does not hold up in the practical world. First and foremost, such an exemption would open an enormous loophole. Unhappy that they no longer can fly Members of Congress to Florida in December for a three-day "conference," the directors of a trade group might simply decide to set up a new organization. This new group would not lobby. It would be a nonprofit educational organization, and one of its main "educational activities" would be to fly Members of Congress to Florida in December for a three-day "conference." If Congress were to exempt nonprofit, non-lobbying groups from a travel ban, such a group would escape the ban. Clearly, such front groups would proliferate.

Second, what is a "clean" trip and what is problematic is often in the eyes of the beholder. Even charitable organizations such as the American Cancer Society, whether or not they lobby directly, have an enormous stake in the millions of dollars appropriated by Congress every year for cancer research. The distinction between organizations that lobby and those that don't is not a useful one for the purposes of a travel ban. Universities present another example. Consider as well the example of nonprofit organization Citizens for a Sound Economy. Their employees do not register as lobbyists, although they were active in helping to coordinate intense grassroots lobbying activity around President Clinton's proposed BTU energy tax. This same group also has, in the past, paid for travel by Members of Congress. Clearly this group has an interest in legislative policy, and has acted on that interest. By accepting reimbursement for travel from this group, a Member of Congress would risk the same sort of appearance of conflict of interest as they do when accepting trips from trade associations.

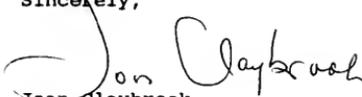
I cannot stress enough the sanitizing effect that providing public funds for substantive Congressional travel would have. Public funding of trips would force Members of Congress to think twice before setting out on a trip, knowing that they will be held accountable by taxpayers. It would limit the likelihood of inappropriately using these trips for campaign fundraising

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purposes. It would help control the frequent temptations to travel instead of legislating. It would also, however, support the necessary, substantive travel that Members of Congress should do in order to do their jobs well.

Thank you again for the opportunity to testify. I look forward to working with you in the future.

Sincerely,


Joan Claybrook
President

Common Cause

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JOHN W. GARDNER
Founding Chairman

Testimony of Fred Wertheimer
President

**on Proposals to Ban Gifts
and Other Financial Benefits Provided to Members of
Congress and Congressional Staff**

Submitted to the
Subcommittee on Oversight of Government Management
of the Senate Governmental Affairs Committee

July 19, 1993

On behalf of Common Cause, I am submitting this written testimony outlining our views regarding proposals to ban the acceptance of gifts and other financial benefits by Members of Congress and congressional staff. We commend Senator Frank Lautenberg (D-NJ) for introducing S. 885, the Congressional Ethics Reform Act, and believe his bill makes a very important contribution to reform efforts in this area. We urge this Subcommittee to act promptly to report to the full Senate Governmental Affairs Committee a comprehensive reform bill.

We believe that gifts and other financial benefits provided to Members of Congress and their staff should be banned. To the extent that any such financial benefits are not prohibited, they should be subject to effective public disclosure such as the essential disclosure provided by the amendment offered by Senator Paul Wellstone (D-MN) and included in the Senate-passed Lobbying Disclosure Act of 1993.

In the 1992 elections, the American people provided the new President and Congress with a mandate to change the country's course, and to reform and revitalize its politics. If that mandate is to be realized, there must be a fundamental change in the Washington special-interest money culture. There must be an end to the current practice of special interests engaged in the business of influencing government decisions by providing financial benefits to the elected officials who make those government decisions.

Reform of the current corrupt campaign finance system is central to changing the way business is done in Washington. The bill recently passed by the Senate, S. 3, contains a number of basic reforms, although it also is missing an essential element of campaign finance reform -- public campaign resources for candidates who agree to

spending limits.

In addition to campaign contributions, there are various other ways that special interests provide financial benefits to Members of Congress. These include tickets to the Super Bowl and Broadway shows and other entertainment, payments to elected officials for vacation and pleasure trips, and constant wining and dining. Special interests also give charitable contributions to elected officials' pet causes and to foundations the officials control. They host ski trips and golf tournaments and they finance receptions and other events held for Members of Congress, such as parties at political conventions.

These practices should be ended. The guiding principle ought to be that Members of Congress should pay their own way. Members of Congress and staff should be covered by new comprehensive statutory restrictions on the receipt of financial benefits.

Like executive branch officials, Members and staff should be prohibited from receiving gifts, with only limited exceptions. A prohibition on gifts, however, deals with only one of the ways that Members of Congress and their staff receive financial benefits from lobbyists and others. Various other financial benefits that Members and staff currently receive also should be banned. To the extent such benefits are allowed, they should be placed under very tight restrictions with public disclosure such as required in S. 349, the Lobbying Disclosure Act of 1993, passed by the Senate on May 6. This bill includes the critically important Wellstone amendment to require lobbyists to disclose on an itemized Member-by-Member basis the financial benefits they provide to Members of Congress and their staff.

As long as Members are allowed to accept and lobbyists are able to provide any financial benefits, lobbyists -- who are in the business of trying to influence Congress -- should be required to itemize and disclose the financial benefits they provide on a Member-by-Member basis. Citizens should be able to examine a registered lobbyist's

disclosure report and see on a timely basis all the financial benefits and favors that a lobbyist has provided to individual Members of Congress.

Common Cause is working to ensure that the House version of the lobby disclosure bill also contains the provisions of the Wellstone amendment.

ADDRESSING THE PROBLEM OF GIFTS

- The Association of American Railroads spent \$4,344 for Washington Capitals tickets and \$6,252 for Washington Redskins tickets in 1991 to give to Members of Congress and their staff. According to *The Arizona Republic*, in 1991 “a large manufacturing company provide[d] Baltimore Orioles tickets to a Senate aide whose responsibilities include[d] crafting trade legislation that could affect the marketing of goods produced by the firm.”
- For several years, a group of House Members met once a week at a Washington, D.C. restaurant where a lobbyist, whose clients included both labor and business interests, often ate with them and picked up the check.

Current congressional rules allow Members and congressional staff to accept gifts valued at up to \$250 per year from a single source. Gifts valued at less than \$100, however, are not counted against the overall \$250 limit. Furthermore, unlimited amounts may be spent to buy an unlimited number of meals for Members of Congress in Washington, D.C. restaurants. There is no public disclosure of any of the gifts a Member is currently allowed to accept within these limits.

In 1989, the President's Commission on Federal Ethics Law Reform called for enactment of a “uniform gift acceptance authority government-wide” and a “uniform maximum value for gifts to individuals.” S. 885 tracks the “Standards of Ethical Conduct for Employees of the Executive Branch” which went into effect in February of this year. The executive branch regulations, issued pursuant to Executive Order 12674, established a single set of standards governing ethical conduct for all executive

branch employees.

Under S. 885, Members of Congress and congressional employees are forbidden by law from accepting any item of value from any individual or entity, with limited exceptions. These exceptions include gifts valued at less than \$20, provided that the aggregate value of all gifts received from any one person does not exceed \$50 in a calendar year.

Common Cause believes this basic approach is sound.

S. 885 has an exemption, however, which allows Members of Congress and staff to accept gifts based on a personal relationship. Given past lax enforcement of ethics rules, a blanket exception for gifts from personal friends is subject to abuse and could create a serious loophole.

Recognizing the potential for abuse in this area, the House ethics committee states in the House Ethics Manual that such gifts may be accepted only in the case that they do not create a "potential conflict of interest or appearance of impropriety" and they are given because of "a long-standing personal or social relationship with a Member or employee, where it is clear that it is those relationships that are the motivating factors of the gift, rather than the fact of the individual's office or position in the Congress."

S. 885 takes a similar approach, tracking executive branch regulations requiring that it be "clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift."

We believe that these kind of provisions, if included in the statutory gift ban, could help guard against abuses, but only if they are effectively enforced. A comprehensive reform bill must include provisions to strengthen enforcement of rules regarding gifts from personal friends and ensure that this exemption is not abused.

Otherwise, this exemption should be eliminated.

RESTRICTING OTHER FINANCIAL BENEFITS

In addition to gifts, there are a number of other financial benefits provided to Members and staff which must be restricted as part of a comprehensive reform approach. This Subcommittee should avoid past practices which have construed the notion of gifts too narrowly and have failed to cover the wide range of other financial benefits which are provided to Members of Congress and congressional staff.

1. Travel Reimbursements

- A recent article in *The Wall Street Journal* described a "lavish" weekend at the expensive Greenbrier resort in West Virginia for nine staffers from the House and Senate who work on health care, all courtesy of the American Medical Association. The article noted that "a congressional staffer who stayed the full three days received amenities that, had he or she paid his own way, would likely have totaled more than \$1,500 -- and that is assuming the aide stayed in the very cheapest rooms, skipped lunch, carried his or her own golf clubs, and was a teetotaler to boot."
- A 1991 study by Public Citizen which analyzed privately funded travel by Members of the House found that they took nearly 4,000 trips paid for by private-interest groups during 1989-1990.
- In 1992, a group of key staffers of the House Energy and Commerce Committee (which oversees health and insurance matters) enjoyed the amenities of Key West, Florida as part of a three-day seminar on issues affecting the insurance industry -- paid for and attended heavily by the insurance industry.
- One House Member logged 60 days on the road in 1992 during 31 separate trips as a guest of special interests.

While executive branch rules governing the acceptance of gifts may provide a good model for the legislative branch, in the area of travel, current laws and regulations for both the executive and legislative branches are inadequate.

In the case of the legislative branch, Common Cause believes that strict provisions must be adopted to prohibit reimbursement for vacation or pleasure trips for Members of Congress. Privately financed travel for Members has too frequently become part of a lifestyle subsidized by special interests as part of their efforts to gain special access to Members of Congress and their staffs. Just as honoraria payments over the years became a conduit for special-interest money from interests trying to influence Congress and were eventually banned, reimbursements for travel have become a way for special interests interested in influencing Congress to finance vacation or pleasure trips and provide financial favors to Members and staff.

Under current rules, House Members can accept up to four days (including travel time) for expenses for so-called "fact-finding" trips or to events in which they "substantially participate." The allowance for foreign trips is seven days (excluding travel days). A Senator is allowed to take up to three days for domestic travel and seven days for foreign trips. There is no limit on the value of the travel expenses a Member or staff may receive, nor a limit on the number of trips a Member may accept from any one source.

In the area of travel, S. 885 requires the congressional ethics committees to pre-approve any payments for travel related to official duties, and to make a finding that the payments are only for items that are "reasonably necessary" and "would not cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of the Member, the Congress or congressional operations." According to Senator Lautenberg, the intent of these provisions in S. 885 is to ban pleasure trips, which are occurring under current rules as "fact-finding" trips or trips where Members "substantially participate." Once again the key to the effectiveness of

any such new rule would depend on its interpretation and enforcement by the ethics committees.

Others believe that the only way to end these special-interest financed vacations is to ban all privately financed travel for Members of Congress and staff. They reason that if a trip is deemed to be in the interest of the general public and, therefore, worth taking, it should be funded by the government.

We share the goal of ending the practice of special interests providing Members and staff with privately financed vacations and pleasure trips.

If any reimbursed travel is to be allowed, it must be done in a way that ensures the travel is not a vacation or pleasure trip in the guise of congressional business. One way of doing this is to provide that reimbursements can only be provided for one day and any expenses thereafter would be borne by the Member or staff. In addition, reimbursements should not cover such items as greens fees, ski lift tickets, tennis court time, or other entertainment costs that are collateral to the event in which they are participating. In addition, Members should be banned from stringing together a series of sponsors to underwrite day after day of privately financed travel.

In any event, any reimbursed travel that is allowed should be subject to both the pre-approval requirements contained in S. 885 and advance public disclosure through insertion in the *Congressional Record*.

We also urge the Subcommittee to revise current laws governing executive branch acceptance of travel payments from non-federal sources which were significantly weakened in 1989 and do not sufficiently protect against conflicts of interest. 31 USC §1353, which allows acceptance by agencies of reimbursements from non-federal sources, should be repealed and the General Services Administration's (GSA) interim rule issued in March 1991, which compounds the problem and undermines basic conflict-of-interest standards for the executive branch, should be withdrawn.

Inserted at the last minute into the Ethics Reform Act of 1989 at the request of the Bush Administration, 31 USC §1353 changed long-standing executive branch policies governing the acceptance of travel reimbursements from private interests. The provision allows federal agencies to accept from private sources payments for travel and related expenses for employees' official travel. This misguided change to create a new travel acceptance authority for agencies has opened the door for new conflicts of interest. In addition, the implementing regulations proposed by the GSA has compounded the problem by allowing an agency to accept reimbursements from private interests even if it creates conflicts of interest or the appearance of conflict of interest.

A review of reports filed last year under the new acceptance authority in 31 USC §1353 showed significant receipts by agencies from potentially "conflicting" interests that clearly raise potential conflicts of interest and the appearance of conflict of interest. A Treasury Secretary traveled to Mexico at the expense of an individual who heads a company which has a direct interest in U.S. trade and commerce policies. Officials at the National Aeronautics and Space Administration traveled courtesy of McDonnell Douglas, Boeing, Dow Chemical, Thiokol Corporation, United Technologies, DuPont and IBM.

Prior to 1989, rules and regulations prohibited federal officials from accepting travel reimbursements as a violation of the prohibitions against supplementing their salaries from private sources. In addition, agencies, in most cases, were barred from accepting travel reimbursements since this violated the prohibition against private augmentations of agency appropriations. The only reimbursements allowed from outside sources were, in limited instances, foreign governments, international organizations and charitable, nonprofit organizations, only if the entity did not have business before the employee's agency.

Common Cause believes the GSA interim regulation should be withdrawn and

that 31 USC §1353 should be repealed, thereby returning the executive branch to the pre-1989 standards.

2. Special Events Held on Behalf of Members of Congress

- During the Democratic convention in New York, Enron Corporation, a Houston-based oil and energy company whose chief executive headed the Host Committee for the Republican Convention, was one of the sponsors of a \$200,000 "Street Fair" at a New York restaurant honoring a Senator who sits on the Commerce and Finance Committees. Other sponsors of the event were the Distilled Spirits Council, the Tobacco Institute and the National Restaurant Association, as well as energy and labor groups.
- During the Republican and Democratic conventions, regional telephone companies underwrote parties for a number of key Members. During this same period, these telephone companies were fighting legislation in Congress dealing with the electronic publishing business. In Houston during the Republican convention, a senior Senator hosted a reception with pharmaceutical companies picking up the bill.
- A number of Capitol Hill inaugural parties this year were underwritten by corporate donors. One Senator's celebration was sponsored by 10 companies that paid \$3,000 each.

Special interests should not be financing parties held for Members of Congress. A number of these were held during the national political conventions last summer and the inauguration -- many of them quite elaborate and often in honor of a Member. As John Block, former Secretary of Agriculture and now president of the National American Wholesale Grocers Association, explained, these events give special interests an opportunity to "rub elbows with and show support for the Members of Congress who are there, and for the party. ... We're not just throwing a party for

anybody off the street.”

S. 885 fails to curb this type of financial benefit. Corporations, lobbyists and others should be banned from financing parties and other events held by or in the name of a Member of Congress.

3. Contributions to Charities and Organizations

- A House Committee Chair reported directing more than \$100,000 in honoraria to unnamed charities in 1991.
- In 1992, U.S. Tobacco, the Securities Industries Association, the American Bankers Association, Northern States Power and the Chemical Manufacturers Association were among those who gave honoraria to charities at the direction of one House Member.

Another financial benefit that special interests can provide to Members under current rules is to give honoraria fees that a Member can no longer accept to charities chosen by the Member, thus subsidizing a Member’s charitable contributions.

Citizens are responsible for making their own charitable contributions and Members of Congress should be similarly responsible. S. 885 repeals the current law allowing Members and staff to direct honoraria to charities. We strongly support this provision.

4. Members and Foundations

- During the 1980s, savings-and-loan owner Charles Keating contributed \$850,000 to three voter-registration organizations founded or controlled by then Senator Alan Cranston (D-CA) while also seeking the Senator’s intervention on behalf of Lincoln Savings and Loan.
- Since establishing his own foundation in 1985, one senior Senator has helped raise more than \$1 million a year for it, including contributions over the years of more

than \$100,000 each from Archer Daniels Midland Corporation, Anheuser-Busch, the AT&T Foundation, IBM and Marriott.

Common Cause believes that Members of Congress should be precluded from establishing, maintaining or controlling a foundation which solicits contributions. Those solicited to make contributions to the Member-controlled foundation often have interests before the Congress or even the committee on which the Member serves. These relationships raise serious conflict-of-interest and appearance questions and undermine public confidence in Congress.

S. 885, in addition to prohibiting a Member from directing honoraria to charity, prohibits a Member from designating or recommending the giving of a gift to any other entity or person, including any charitable organization. These provisions, while important, do not go far enough. For example, S. 885 does not appear to restrict a representative of a Member of Congress such as a foundation's executive director -- rather than the Member -- from soliciting and directing a gift to a Member-controlled foundation, thus avoiding the restriction on Members. In order to prevent conflicts of interest or the appearance of conflict raised by contributions from special interests to Member-controlled foundations, Members of Congress should be banned from establishing, maintaining or controlling a foundation that solicits contributions.

5. Congressional Retreats

- This year a retreat for House Republicans was sponsored by a nonprofit institute and underwritten by corporate sponsors. Individual lobbyists paid \$6,000 to attend the retreat and spend time with the Members. An additional \$15,000 bought a lobbyist attendance at eight other luncheons with the Members throughout this year.
- A similar retreat for House Democrats held this past January in Annapolis also was financed with contributions from lobbying interests, although lobbyists were



not permitted to attend as they had prior to 1989.

Special interests underwrite legislative retreats and political strategy meetings for Members and their staffs. At some of these policy retreats, lobbyists pay to attend, spend time with Members and staff as they discuss political strategy, and are able to gain better insight and information for their clients about upcoming policy decisions.

Common Cause supports Senator Lautenberg's proposal to prohibit the private financing of congressional retreats.

6. Conversion of Campaign Funds to Personal Use

- A 1990 study published in the *Los Angeles Times* found that a majority of the expenditures from campaign funds by House Members were for "items that have little or nothing to do with winning the support of ordinary voters, [such as] overhead, fund-raising costs and donations to charities and other candidates." The *Times* found that many incumbents are using their campaign treasuries as "giant slush funds -- with the money going for lavish entertainment of important constituents and for such personal indulgences as expensive cars, real estate, tuxedos, club memberships and even personal travel." For example, one Representative used campaign money to buy a \$30,000 Lincoln Continental, and 94 other Members either bought or leased a car with campaign money.
- According to *Congressional Quarterly*, nearly a third of the more than \$350,000 in operating expenditures by one Member's campaign and political action committee in 1990 and 1991 "went for items that enhanced his lifestyle or income -- travel, chauffeurs, car insurance, cable TV bills, dinner out, a golf caddy and rental payments to himself and his family."
- A 1992 article in *The Commercial Appeal* of Memphis, Tennessee reported that a former Representative received \$16,200 from his campaign fund during a two-year period by claiming non-itemized expenses for campaigning in his home state. The

Representative stated he had started claiming a daily allowance from his campaign funds, in *per diem* payment "because all his travel in his district is 'political' and he could no longer personally afford 'incidental expenses' like meals and coffee for constituents, T-shirts, newspapers, gasoline and dry cleaning." He reported this same money as personal income on his 1990 and 1992 federal tax returns. Another Representative who recently retired used his campaign funds to pay all of his personal expenses while in his congressional district.

Another way that Members are able to indirectly receive benefits financed by special interests is to, in effect, give themselves gifts by converting campaign funds to personal use. Much of these campaign funds represent contributions made by special interests. The Federal Election Commission and congressional ethics committees have compiled a record of inaction and acquiescence that has encouraged widespread abuse of the federal campaign laws and congressional rules that prohibit such conversion. By refusing to take action against colleagues, the ethics committees are protecting the flow of special-interest money through campaign accounts to Members for their personal benefit.

Common Cause believes that a comprehensive ban should include provisions to strengthen current rules and laws to ensure that the prohibitions against the conversion of campaign funds to personal use are effective and enforced.

THE IMPORTANCE OF MAKING ANY PROPOSED CHANGES STATUTORY

We strongly support Senator Lautenberg's efforts to ensure that new restrictions on gifts and other financial benefits are written into statute, not into congressional rules. Congressional rules are by definition easier to change. Past experience has demonstrated that putting ethics standards in congressional rules makes it easier to weaken what has been enacted. In early 1979, the Senate, after accepting a major pay raise for itself as part of a 1977 ethics reform-pay package, reneged on the ethics

reforms, repealing new limits that had been established on honoraria fees and other outside-earned income. The Senate was able to do this without agreement from the House or the President because the ethics reforms had been established as Senate rules rather than as a federal statute. The result was that Senate ethics reforms that had been key to enacting a pay raise were repealed shortly after the reforms took effect on January 1, 1979, while the pay raise, which became effective in 1977, stayed in effect.

The same compelling case applies when dealing with new restrictions on the acceptance of gifts and other financial benefits by Members and employees of the legislative branch. We believe it is essential for fundamental ethics measures to be permanent, statutory provisions, subject to statutory civil penalties for violations and requiring a new statute in order to make any changes.

CONCLUSION

Current legislative branch rules governing the acceptance by Members of Congress and staff of financial benefits feed the view that Members' lifestyles are being financed by special interests. Common Cause believes that, to restore public confidence in the institution, Congress must enact a comprehensive statutory ban on the receipt of financial benefits. Such a statutory ban should prohibit gifts; end the blanket exemption for meals in Washington, D.C.; place tough new restrictions on the underwriting of travel by private interests as well as events and retreats for Members by special interests; end the practice of special interests subsidizing Members' charitable contributions; prohibit Members from establishing, maintaining or controlling foundations which solicit contributions; and prohibit the conversion by Members of campaign funds to personal use. Those financial benefits not prohibited outright by such a ban should be subject to effective public disclosure such as the disclosure provided by the Wellstone amendment to S. 349, the Lobbying Disclosure Act of 1993.



ISBN 0-16-041502-0



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