

**UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT**

**Citizens for Responsibility and Ethics
in Washington
Complainant**

**Hon. Bob Ney, M.C.
Respondent**

COMPLAINT

Parties

1. Citizens for Responsibility and Ethics in Washington is non-profit organization committed to a more ethical and accountable government.

2. Bob Ney is a duly elected member of the 109th Congress from the 18th District of Ohio.

Jurisdiction

3. This complaint is brought pursuant to House Rule X, cl. 1(p), which assigns to the House Committee on Standards of Official Conduct (“Ethics Committee”) jurisdiction over all matters pertaining to the House *Code of Official Conduct*, which is codified at House Rule XXIII. In addition, House Rule XI, cl. 3(b)(2)(A) provides that the Ethics Committee may “undertake an investigation relating to the official conduct of an individual Member . . . or employee of the House only . . . upon receipt of information offered as a complaint in writing and under oath, from a Member . . .”

Background

4. Rep. Bob Ney is a close associate of well-known Republican lobbyist Jack Abramoff. In the fall of 2004, Senator John McCain (R-AZ) and the Senate Select

Committee on Indian Affairs held hearings regarding Mr. Abramoff's relationship with several Indian tribes, including the Tigua tribe of El Paso, Texas.

5. A November 17, 2004 hearing of the Senate Select Committee on Indian Affairs focused on Mr. Abramoff's relationship and representation of the Tigua. In his opening statement, Senator McCain explained that in February 2002, "the Ysleta del Sur Pueblo of El Paso, Texas, also known as the Tigua, was fighting for its financial life in the Texas courts and legislature . . . because the State of Texas had sought a judicial order closing the tribe's Speaking Rock Casino." Oversight Hearing Regarding Tribal Lobbying Matters, et. al. Before the Senate Comm. on Indian Affairs, S. Hrg. 108-720 at 222 (2004) (statement of Senator John McCain) [hereinafter *Hearing*].

6. Evidence demonstrates that Mr. Abramoff worked with his friend and business partner Michael Scanlon, as well as with Christian activist Ralph Reed, behind the scenes in Texas to quash the Tigua's attempts at a legislative solution. *Id.* In an e-mail, Mr. Abramoff wrote to Mr. Reed "It's not shuttered yet. let's [*sic*] get this thing closed and then we'll see what we can do. As we type they are gambling away." E-mail from Jack Abramoff to Ralph Reed, January 7, 2002 (attached as Exhibit A). Mr. Reed responded, "Done. Hope these developments help with the client." E-mail from Ralph Reed to Jack Abramoff, January 7, 2002 (part of Exhibit A). Later on in the e-mail exchange, Mr. Abramoff tells Reed: "we should continue to pile on until the place is shuttered. Perhaps we could get one of our guys in the legislature to introduce a bill which disqualifies from state contracts any vendor who provides goods or services to a casino in the state? This way, Perry [Lt. Governor of Texas] and Cornyn [then Texas

Attorney General] can sit back and not be scared.” E-mail from Jack Abramoff to Ralph Reed, January 7, 2004 (part of Exhibit A).

7. At 10:39 a.m. on Wednesday, February 6, 2002, Mr. Reed sent Mr. Abramoff an e-mail informing him that the Tigua had asked the 5th Circuit Court of Appeals for a stay allowing the tribe’s casino to remain open pending appeal. E-mail from Ralph Reed to Jack Abramoff, February 6, 2002 (attached as Exhibit B). At 10:42 a.m., Mr. Abramoff forwarded the e-mail to Mr. Scanlon, and at 10:54 a.m., Mr. Abramoff sent an e-mail to Mr. Scanlon indicating that he (Mr. Abramoff) was on the phone with the Tigua and saying: “Fire up the jet baby, we’re going to El Paso!!” E-mail from Jack Abramoff to Mike Scanlon, February 6, 2002 (attached as part of Exhibit B). Shortly thereafter, Mr. Scanlon replied, “I want all their MONEY!!!” E-mail from Mike Scanlon to Jack Abramoff, February 6, 2002 (attached as part of Exhibit B).

8. On Monday, February 18, 2002, following a visit to the Tigua in El Paso, Mr. Abramoff sent an e-mail to the Tigua’s political consultant, Marc Schwartz, attaching the “Operation Open Doors” plan for re-opening the casino. In the e-mail, Mr. Abramoff notes that his firm will work on a “pro-bono basis” until such time as the casino is re-opened. E-mail from Jack Abramoff to Marc Schwartz, February 18, 2002 (attached as Exhibit C). Mr. Scanlon’s work, however, will cost the tribe \$5,400,000. Mr. Abramoff explains that Scanlon’s plan represents “the best chance the tribe has to overcome the gross indignity perpetuated by the Texas State authorities,” that he expects to re-open the casino with the assistance of “Republican leaders in Washington” and that the tribe will need to make “approximately \$300,000 in federal political contributions.” Id.

9. On Tuesday, February 19, 2002, Mr. Scanlon forwarded Mr. Abramoff a clip from the *El Paso Times*, titled “450 casino employees officially terminated,” apparently thrilled because this bad news appeared on the front page of the paper the same day that the tribe was voting on whether or not to approve the plan submitted by Mr. Abramoff and Mr. Scanlon. E-mail from Mike Scanlon to Jack Abramoff, February 19, 2002 (attached as Exhibit D). Mr. Abramoff replied, “Is life great or what!!!” E-mail from Jack Abramoff to Mike Scanlon, February 19, 2002 (attached as part of Exhibit D).

10. Neither Mr. Abramoff nor Mr. Scanlon ever told the Tigua about their roles in closing down the casino in the first place. *Hearing, supra* at 223.

11. Senator McCain explained that Mr. Abramoff’s plan was to have “one or more Representatives or Senators slip into a conference report very discreet language allowing the Tigua to reopen their casino.” *Id.* at 225.

12. By the end of March 2002, the Tigua had sent Mike Scanlon a total of \$4.2 million and on April 8, 2002, Mr. Scanlon’s public relations firm, Capital Campaign Strategies paid half of that, \$2.1 million, to Mr. Abramoff’s Kaygold company. *Id.* Still, Mr. Abramoff and Mr. Scanlon wanted more money from the tribe. From mid to late 2002, Mr. Abramoff asked the tribe to contribute money to a private school he ran, the Eskhol Academy, as well as to his private foundation, the Capital Athletic Foundation, to cover part of the cost of a golf trip to Scotland. *Id.*

13. Ultimately, no legislation was ever passed to reopen the Tigua’s casino and the tribe never learned what its \$4.2 million was spent for. *Hearing* at 225. Congressman Ney, however, was integrally involved in Mr. Abramoff’s plan to reopen the Tigua casino and played a significant role in deceiving the tribe as well.

Rep. Ney's Involvement

14. On March 20, 2002, Mr. Abramoff sent Mr. Scanlon an e-mail stating, "Just met with Ney!!! We're f'ing gold!!!! He's going to do Tigua. Call me." E-mail from Jack Abramoff to Mike Scanlon, March 20, 2002 (attached as Exhibit E). On March 26, 2002, Mr. Abramoff sent Mr. Schwartz an e-mail explaining that Rep. Ney was the "chairman of the committee doing election reform," and asking that Mr. Schwartz, "get us the following checks for him asap: Bob Ney for Congress - \$2,000, American Liberty PAC - Federal - \$5,000 and American Liberty PAC - non-Federal - \$25,000." Mr. Abramoff asked that Mr. Schwartz send the checks to him via Federal Express. E-mail from Jack Abramoff to Marc Schwartz, March 26, 2002 (attached as Exhibit F). Later the same day, Mr. Schwartz was sent an e-mail providing him with the addresses for each of the three PACs. E-mail to Marc Schwartz, March 25, 2002 (attached as Exhibit G).

15. On May 13, 2002, Mike Scanlon sent Marc Schwartz a memo advising him that the plan was moving along. Mr. Scanlon noted that the House had not yet selected conferees, "but our relationships and activities with the key leaders in the House continue to reassure us that the process will move ahead smoothly. We expect that the conferees will be named this week, and we remain active in Ohio, the home state of the committee Chairman, Rob [*sic*] Ney (R-OH)." Memo from Mike Scanlon to Marc Schwartz, May 13, 2002 (attached as Exhibit H).

16. Less than a month later, Mr. Abramoff sent Mr. Schwartz an e-mail with the subject line "our friend." The e-mail continues:

Asked if we could help (as in cover) a Scotland golf trip for him and some staff (his committee chief of staff) and members for August. The trip will be quite expensive (we did this for another member – you know who) 2 years ago. I anticipate that the total cost – if he brings 3-4 members and wives – would be around \$100K or more. I can probably get another of my tribes to cover some of it. let [*sic*] me know if you guys could do \$50K and I'll get them to do the other \$50K, though I'll have to get him to bring someone who has relevance to their matters – our friend does not as you can imagine. They would probably do the trip through the Capital Athletic Foundation as an educational mission. I have to start planning this now to make sure they can get tee times. Can you let me know if this would be OK, and possibly start to process it as a donation to Capital Athletic Foundation? Thanks.

E-mail from Jack Abramoff to Marc Schwartz, June 7, 2002 (attached as Exhibit I). In his testimony before the Senate Indian Affairs Committee, Mr. Schwartz stated that Mr. Ney was “our friend.” *Hearing, supra* at 229 and 240. Mr. Schwartz also stated that the reference to a similar trip for another member referred to a trip taken by Rep. Tom DeLay (R-TX). *Id.* at 240. According to Mr. Schwartz, the request for the Tigua’s to help fund the cost of the golf trip had been made directly by Rep. Ney. *Id.* at 238.

17. A week later, Mr. Abramoff sent another e-mail to Mr. Schwartz regarding the trip, stating that Capital Athletic Foundation would, indeed, sponsor the trip and asking that the check be sent to cover the costs be sent to him. E-mail from Jack Abramoff to Marc Schwartz, June 13, 2002 (attached as Exhibit J). On August 2, 2002, Mr. Abramoff again pushed the Tigua for a check for the Capital Athletic Foundation. E-mail from Jack Abramoff to Marc Schwartz, August 2, 2002 (attached as Exhibit K).

18. In the meantime, on July 25, 2002, Rep. Ney met with Senator Christopher Dodd (D-CT) and was apparently quite surprised to learn that Sen. Dodd was unwilling to attach the Tigua’s legislation to the pending election reform legislation. E-mail from Jack Abramoff to Mike Scanlon, July 25, 2002 (attached as Exhibit L).

19. Senator Dodd's position was not, however, conveyed to the Tigua. Concerned about the inaction on the legislation, Mr. Schwartz requested a meeting between tribal representatives and Rep. Ney. *Hearing, supra* at 229 (testimony of Marc Schwartz). E-mail exchanges in early August indicate that Mr. Abramoff set up the meeting. E-mail from Jack Abramoff, August 2, 2002 and E-mail to Jack Abramoff, August 8, 2002 (attached as Exhibit M). Notably, prior to the meeting, scheduled for August 14, 2002, Mr. Abramoff cautioned Mr. Schwartz not to discuss Rep. Ney's golf trip to Scotland stating, **"BN had a great time and is very grateful, but is not going to mention the trip to Scotland for obvious reasons. He said he'll show his thanks in other ways which is what we want. We can discuss on the phone. did [sic] you get the other \$50K done?"** [*emphasis added*] E-mail from Jack Abramoff to March Schwartz, August 10, 2002 (attached as Exhibit N).

20. Despite the fact that Senator Dodd had clearly indicated his opposition to the legislation during the July 25th conversation he had with Rep. Ney, the Tigua heard nothing about this at the August 14th meeting, which lasted for nearly two hours. *Hearing, supra* at 241. In fact, Rep. Ney assured the members of the tribal council that he would fix the Tigua's problem through a conference committee report. Id.

21. It was not until October 8, 2002, over two months after he spoke with Senator Dodd, that Rep. Ney held a conference call with the Tigua's tribal council and expressed his outrage and disbelief that Senator Dodd had gone back on his word. Id. at 230. In contrast, in a written statement submitted to the Senate Indian Affairs Committee, Senator Dodd stated that he never represented to either Mr. Abramoff, Mr.

Scanlon, or Rep. Ney “that [he] would in any manner work legislatively to recognize the Tigua Tribe.” Id. at 230 and 253.

SunCruz Casinos

22. SunCruz, originally owned by Greek immigrant Gus Boulis, operated casino cruise ships off the coast of Florida. Susan Schmidt and James V. Grimaldi, Untangling a Lobbyist’s Stake in a Casino Fleet, *The Washington Post*, May 1, 2005 (attached as Exhibit O). In 1999, Mr. Boulis was charged with violating the Shipping Act by purchasing the vessels as a non-United States citizen. The federal government gave Mr. Boulis 36 months to sell the cruise line. Id. Mr. Boulis turned to his lawyers at Preston Gates Ellis Rouvelas Meeds, LLP. to assist him in finding a buyer. Mr. Abramoff, a partner at the firm, contacted his long-time friend, Adam Kidan, and the two of them, along with a third partner, Ben Waldman, decided to buy the cruise line. Id. The plan was to have Mr. Kidan put up most of the money and Mr. Abramoff “use his lobbying expertise and network to help expand the new company’s markets both in the U.S. and abroad.” Id.

23. To assist in the purchase of the gambling ships, on March 30, 2000, Rep. Ney inserted into the *Congressional Record* a statement criticizing Mr. Boulis. Rep. Ney stated, “Mr. Speaker, how SunCruz Casinos and Gus Boulis conduct themselves with regard to Florida laws is very unnerving. Florida authorities have repeatedly reprimanded SunCruz Casinos and its owner Gus Boulis for taking illegal bets, not paying their customers properly and had to take steps to prevent SunCruz from conducting operations altogether.” *Congressional Record*, March 30, 2000 at E469 (attached as Exhibit P).

24. By late June 2000, Mr. Abramoff, Mr. Kidan and Mr. Waldman had reached an agreement to purchase SunCruz. On June 30, 2000, Mr. Kidan, Mr. Abramoff, Mr. Abramoff's wife and Mr. Scanlon each made \$1,000 contributions to Rep. Ney's re-election campaign. July Quarterly Report, FEC Form 3 Schedule A, Itemized Receipts, p. 10, filed by Bob Ney for Congress Campaign Committee, July 14, 2000 (attached as Exhibit Q). On October 26, 2000, Rep. Ney inserted additional remarks regarding SunCruz into the *Congressional Record*. This time he stated:

. . .SunCruz Casinos now finds itself under new ownership and . . . its new owner has a renowned reputation for honesty and integrity. While Mr. Kidan certainly has his hands full in his efforts to clean up SunCruz's reputation, his track record as a businessman and as a citizen lead me to believe that he will easily transform SunCruz from a questionable enterprise to an upstanding establishment that the gaming community can be proud of.

Congressional Record, October 26, 2000 at E1953 (attached as Exhibit R).

25. Ironically, Mr. Kidan had been disbarred in New York following allegations of fraud in a business deal. John Bresnahan, Ney, Abramoff Have Long Ties, *Roll Call*, December 6, 2004 (attached as Exhibit S). In March 2001, Mr. Abramoff, Mr. Kidan and three other SunCruz officials once again donated \$1,000 each to Rep. Ney's re-election campaign and Mr. Abramoff donated another \$2,500 to Rep. Ney's political action committee in October 2001. Mid Year Report, FEC Disclosure Form 3, Schedule A Itemized Receipts, p. 2, filed by Bob Ney for Congress Campaign Committee, July 31, 2001 (attached as Exhibit T); and Year End Report, FEC Disclosure Form 3X, p. 1, filed by American Liberty Political Action Committee, Jan. 31, 2002 (attached as Exhibit U)

26. Mr. Kidan and Mr. Abramoff were indicted on August 11, 2005, for bank fraud in connection with the purchase of SunCruz. James Grimaldi, Abramoff Indicted in Casino Boat Purchase, *Washington Post*, August 12, 2005 (attached as Exhibit V). The six-count indictment charges the men with faking a \$23 million payment to Mr. Boulis. As part of the fraud, Mr. Kidan and Mr. Abramoff lied on their personal financial disclosure statements to lead the bank financing the purchase to believe the men had cash that they, in fact, did not have. Id.

27. Mr. Boulis was murdered in a gangland-style killing in February 2001. Susan Schmidt and James V. Grimaldi, 3 Charged in Killing of Florida Businessman, *Washington Post*, September 28, 2005 (attached as Exhibit W). On September 27, 2005, three men were charged with the murder, two of whom had been hired by Mr. Kidan as consultants for SunCruz. Id.

28. Rep. Ney now claims to have inserted the remarks into the *Congressional Record* at the behest of Michael Scanlon. Malia Rulon, Ney had praised now-indicted businessman, *Gannett News Service*, appearing in, *The Newark Advocate*, August 13, 2005 (attached as Exhibit X). He also claims he did not know that Mr. Abramoff was connected to the deal. Id.

COUNT I

BRIBERY

29. Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act. 18 U.S.C. §201(b)(2)(A). It is well-settled that accepting a contribution to a political campaign can

constitute a bribe if a *quid pro quo* can be demonstrated. McCormick v. U.S., 500 U.S. 257, 273, 111 S.Ct. 1807, 1816 (1991), U.S. v. Biaggi, 909 F.2d 662, 695 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

30. Within days of Mr. Abramoff's March 20, 2002 meeting with Rep. Ney, Mr. Abramoff advised Mr. Schwartz to have the Tigua prepare and Federal Express three checks to Rep. Ney's political committees: a \$2,000 check to Bob Ney for Congress, a \$5,000 check to American Liberty PAC -Federal, and \$25,000 to American Liberty PAC - non-Federal. See Email from Jack Abramoff to Marc Schwartz, March 26, 2002 (*supra* Exhibit F). These contributions were duly disclosed as required by law. See FEC Disclosure Form 3 for Bob Ney for Congress, Schedule A, filed August 7, 2002 (attached as Exhibit Y); FEC Disclosure Form 3 for American Liberty PAC, filed on May 20, 2002 (attached as Exhibit Z); and IRS Form 8872 for American Liberty PAC [non-federal], filed on July 12, 2002 (attached as Exhibit AA).

31. By accepting \$32,000 in campaign contributions from the Tigua in apparent exchange for supporting the amendment to reopen the Speaking Rock Casino, Rep. Ney may have violated 18 U.S.C. §201(b)(2)(A).

32. Similarly, by accepting campaign contributions from Mr. Abramoff, Mr. Kidan, Mr. Scanlon and other individuals associated with SunCruz around the time that he inserted remarks regarding the sale of SunCruz into the Congressional Record, Rep. Ney may have violated 18 U.S.C. §201(b)(2)(A).

COUNT II

ILLEGAL GRATUITY

33. Rep. Ney may also have violated the illegal gratuity statute by soliciting the Tigua to pay for part of the 2002 golf trip to Scotland. The illegal gratuity statute prohibits a public official from directly or indirectly, demanding, seeking, receiving, accepting or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official. 18 U.S.C. §201(c)(1)(B).

34. In United States v. Sun-Diamond Growers of Cal., 526 U.S. 398, 414, 119 S.Ct. 1402, 1411 (1999), the Supreme Court considered this statute and held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official. Here the link is between Rep. Ney's efforts to have the Tigua's provision added to the election reform bill and the cost of the trip to Scotland.

35. In June 2002, Mr. Abramoff sent Mr. Schwartz an e-mail with the subject line "our friend" and continuing "asked if we could help (as in cover) a Scotland golf trip for him and some staff (his committee chief of staff) and members for August. The trip will be quite expensive . . . I anticipate that the total cost – if he brings 3-4 members and wives – would be around \$100K or more. I can probably get another of my tribes to cover some of it. let [sic] me know if you guys could do \$50K" E-mail from Jack Abramoff to Marc Schwartz, June 7, 2002 (*supra* Exhibit I). In his testimony before the Senate Indian Affairs Committee, Mr. Schwartz stated that Mr. Ney was "our friend." *Hearing, supra* at 229 and 240. He also testified that the request that the Tigua help fund the cost of the golf trip **had been made directly by Rep. Ney.** *Id.* at 238.

36. As it is clear that Rep. Ney solicited the funding for the trip, the only remaining question is whether or not this request was linked to a specific act, *i.e.* adding the Tigua's legislation to the election reform bill. Again, the evidence demonstrates the link. As discussed above, members of the Tigua tribal council were scheduled to meet with Rep. Ney on August 12, 2002. Prior to that meeting, Mr. Schwartz received an e-mail from Mr. Abramoff specifically mentioning the golf trip. Mr. Abramoff stated "BN had a great time and is very grateful, but is not going to mention the trip to Scotland for obvious reasons. He said he'll show his thanks in other ways which is what we want. We can discuss on the phone. did [*sic*] you get the other \$50K done?" E-mail from Jack Abramoff to March Schwartz, August 10, 2002 (*supra* Exhibit N). In other words, Rep. Ney would show his gratitude for the trip by ensuring that the Tigua's legislation passed. Regardless of whether or not the Tigua ultimately paid for the golf trip, it is evident that Rep. Ney linked the payment with the legislative assistance in clear violation of 18 U.S.C. §201(c)(1)(B).

37. The Ethics Committee has used as a basis for disciplinary proceedings and punishment of Members the acceptance of bribes and gratuities under these statutes. *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the Member from the House); *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, 96th Cong. 2d Sess. (1980).

COUNT III

SOLICITATION OF GIFTS

38. Rep. Ney's conduct also violated the federal law that prohibits Members from soliciting a gift from any person who has interests before the House. 5 U.S.C. §

7353. This provision limits not only what government officials may **accept**, but also that for which they may **ask**. The statute provides:

(a) Except as permitted by [applicable gift rules or regulations], no Member of Congress or officer or employee of the executive, legislative, or judicial branch shall **solicit** or accept anything of value from a person –

(1) seeking official action from, doing business with, or . . . conducting activities regulated by, the individual's employing agency; or

(2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties. [Emphasis added.]

5 U.S.C. §7353.

39. The prohibition against solicitation applies to the solicitation not only of money, but "anything of value." In addition, the prohibition covers solicitations of things for the personal benefit of the Member, officer or employee, as well as things that would involve no personal benefit. Again, the e-mail from Mr. Abramoff to Mr. Schwartz (*supra* Exhibit I), clearly demonstrates that Rep. Ney solicited the golf trip in violation of 5 U.S.C. §7353.

COUNT IV

HOUSE RULE XXIII

40. In addition to being illegal, the conduct of Rep. Ney may also have violated clause 3 of House Rule XXIII which provides:

A Member, Delegate, Resident Commissioner, officer, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

41. An April 25, 1997, “Memorandum For All Members, Officers and Employees” issued by the Committee on Standards of Official Conduct clarified this rule, providing:

House Members, officers and employees are generally *prohibited* from asking for anything of value from a broad range of persons: specifically, anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties.

(Memo attached as Exhibit BB). By accepting \$32,000 in campaign donations at the same time as he agreed to push the legislation benefitting the Tigua, by soliciting funding for a golf trip to Scotland, and by accepting campaign contributions for placing a statement in the Congressional Record, Rep. Ney violated Rule XXIII.

42. Moreover, even if the Committee is not convinced that Rep. Ney solicited bribes in violation of federal law, a May 11, 1999, “Memorandum For All Members, Officers and Employees” gives the Committee on Standards of Official Conduct authority to take action. In that memorandum, the Committee approvingly quoted the *Code of Ethics for Government Service*, which provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not.” (Memo attached as Exhibit CC). The Committee specifically stated that the provisions in the *Code of Ethics for Government Service* are applicable to House Members, and that formal charges may be brought against a Member for violating that code. Id.

43. As a result, even without finding that Rep. Ney accepted a bribe in violation of 18 U.S.C. §201(b)(2)(A), solicited a gratuity in violation of 18 U.S.C. §201(c)(1)(B) or violated clause 3 of House Rule XXIII of the *Standards of Official Conduct*, the Committee

on Standards of Official Conduct Committee could still find that Rep. Ney was “dispensing special favors” in violation of the House Rules for his assistance both to the Tigua Tribe and to Mr. Abramoff and Mr. Kidan.

COUNT V

HOUSE RULE XXVI, CLAUSE 5

44. The August 2002 golf trip to Scotland also violates several provisions of the House gift and travel rules. House rules note that among the gift items as to which members and staff need to be especially careful are small group and one-on-one meals, tickets to (or free attendance at) sporting events and shows, and recreational activities, **such as a round of golf**. *Overview of the Gift Rule, Rules of the U.S. House of Representatives on Gifts and Travel* [*emphasis added*]. The Committee on Standards of Official Conduct posited the following example as a prohibited gift:

A Member has been invited to play golf by an acquaintance who belongs to a country club, and under the rules of the club, the guest of a club member plays without any fee. Nevertheless, the Member’s use of the course would be deemed a gift to the Member from his host, having a value of the amount that the country club generally charges for a round of golf.

What is a Gift?, Rules of the U.S. House of Representatives on Gifts and Travel.

45. Under this provision, the expenditures made for Rep. Ney to play golf at St. Andrews appear to constitute a gift accepted by Rep. Ney in violation of Rule XXVI.

46. According to the travel rules,

[l]ike any other gift, travel expenses are subject to the basic gift prohibitions . . . – including the prohibition against soliciting a gift – and they may be accepted only in accordance with the provisions of the gift rule. Indeed, travel may be among the most attractive and expensive gifts, and thus before accepting travel, a Member, officer or employee should exercise special care to ensure compliance with the gift rule and other applicable law.

Travel, Rules of the U.S. House of Representatives on Gifts and Travel.

47. Rule XXVI, clause 5(b)(1)(A) requires that all travel be related to official duties. As the June 7, 2002 e-mail from Mr. Abramoff to Mr. Schwartz demonstrates, however, the primary purpose – indeed perhaps the only purpose – of Rep. Ney’s trip to Scotland was to play golf at St. Andrews. This is confirmed by the criminal complaint against former General Services Administration (“GSA”) Chief of Staff David Safavian, who accompanied Rep. Ney on the trip. The complaint states that Mr. Safavian sent an e-mail to GSA’s ethics officer regarding his acceptance of free airfare for the golf trip. U.S. v. David Safavian, Criminal Complaint No. 05-0501M-01, par. 29 (attached as Exhibit DD). The e-mail stated, in part, “I am in need of an ethics opinion. I (along with[two] members of Congress and a few Congressional staff) have been invited by a friend and former colleague on a trip to Scotland to play golf for four days.” Id. The e-mail contains no mention of any other activities to be undertaken on the trip.

48. This obviously recreational golf trip presents a clear violation of House rules which specifically provide that “[e]vents, the activities of which are substantially recreational in nature, are not considered to be in connection with the duties of a Member.” Rule XXVI, clause 5(b)(1)(B).

49. The way the trip was financed also implicates Rule XXVI. The Committee has long taken the position that a Member, officer or employee may accept expenses for officially connected travel only from a private source that has a direct and immediate relationship with the event or location being visited. House Comm. on Standards of Official Conduct, *Investigation of Financial Transactions participated in and Gifts of Transportation*

Accepted by Representative Fernand J. St Germain, H. Rep. No. 100-46, 100th Cong., 1st Sess. 5-6 (1987).

50. The rule is concerned with the organization(s) or individual(s) that actually pay for travel. The rule provides:

. . . where a non-profit organization pays for travel with donations that were earmarked, either formally or informally, for the trip, each such donor is deemed a "private source" for the trip and (1) must be publicly disclosed as a trip sponsor on the applicable travel disclosure forms and (2) may itself be required to satisfy the above standards on proper sources of travel expenses. Accordingly, it is advisable for a Member or staff person who is invited on a trip to make inquiry on the source of the funds that will be used to pay for the trip. In addition, the concept of the rule is that a private entity that pays for officially connected travel will both organize and conduct the trip, rather than merely pay for a trip that is in fact organized and conducted by someone else.

Proper Sources of Expenses for Officially Connected Travel, Rules of the House of Representatives on Gifts and Travel.

51. Here, it is unclear who really financed Rep. Ney's trip. Rep. Ney's travel disclosure form lists the National Center for Public Policy as the sponsor, though Mr. Abramoff's e-mails indicate that the trip was actually funded through the Capital Athletic Foundation. Member/Officer Travel Disclosure Form, filed by Rep. Bob Ney on Sept. 9, 2002 (attached as Exhibit EE). In any event, whichever alleged "charity" Mr. Abramoff chose as the conduit, either clients of Mr. Abramoff's or Mr. Abramoff himself apparently provided the actual funding for the trip.

52. Rep. Ney also appears to have falsified the true purpose of the trip, stating on the disclosure form that he was going to give a speech to Scottish parliamentarians, to visit the British Parliament and to attend Edinburgh Military Tattoo. It appears that Rep. Ney may not have done any of this. An "external liaison" registry of the Scottish parliament

shows that other members of the Congress visited in August 2002, but there is no record of Rep. Ney doing so. Michael Isikoff, A Washington Sand Trap, p. 46, *Newsweek*, October 3, 2005 (attached as Exhibit FF). In fact, both the British and Scottish Parliaments were in recess at the time of the trip. Id. Moreover, Rep. Ney's office was unable to provide the names of any Members of Parliament with whom Rep. Ney met on the trip. Id.

53. A full airing of this matter requires the Committee to consider: 1) who paid for the trip, the Capital Athletic Foundation, the National Center for Public Policy, Mr. Abramoff, or some of Mr. Abramoff's clients; 2) whether Rep. Ney engaged in any official activities while on the trip, i.e. did he in fact give a speech to Scottish or British parliamentarians and attend Edinburgh Military Tattoo; 3) what the direct and immediate relationship was between the sponsoring organization and the trip; 4) if private sources funded the trip using one of the Abramoff charities as a conduit, why these private sources were not disclosed as required by House Rules; and 5) what, if any, direct and immediate relationship these private sources had with St. Andrews golf course.

54. Next, even if the Committee finds that the sources that funded the trip somehow had a direct and immediate relationship with some aspect of Mr. Ney's trip, under the travel provisions of the gift rule, one may accept reasonable expenses for transportation, lodging and meals from the private sponsor of an officially connected trip, but may **not** accept recreational activities or entertainment. Rule XXVI, clause 5(b)(4)(C). Acceptable Travel Expenses, Rules of the U.S. House of Representatives on Gifts and Travel. Thus, the Committee must also ask who paid for Mr. Ney to play golf at St. Andrews and, if the green fees were valued at over \$50, the Committee must find him in violation of the gift rule.

Conclusion

The United States Constitution gives the House of Representatives – and only the House of Representatives – the power to create its own rules and the power to police its Members. As a result, it is incumbent upon Members of the House of Representatives to protect the integrity of the House. In fact, the Committee on Standards of Official Conduct was created for this purpose. This complaint offers the House of Representatives, acting through the Committee on Standards of Official Conduct, the opportunity to uphold the integrity of the House by initiating an immediate, thorough and non-partisan investigation of Congressman Ney’s conduct.

Respectfully submitted,

Melanie Sloan
Executive Director
Citizens for Responsibility and
Ethics in Washington

I hereby certify that this complaint has a good faith basis and warrants consideration by the House Committee on Standards of Official Conduct.

Member of Congress
___ District of _____

Sworn to subscribed before me this ___th day of _____, 2005.

Notary Public