A Question of Ethics
Are There Grounds for a Complaint Against Obama?

September 2, 2008

Q: I do not believe that Sen. Barack Obama (D-Ill.) is ready to be president. While I blog about this constantly, my readership is limited so I am looking for other ways to impact the election. I know that watchdog groups sometimes file ethics complaints against Senators who engage in misconduct, and I am considering filing one against Obama. I think that there are a number of potential grounds. Most notably, Obama proposed an earmark for University of Chicago Hospitals after they promoted his wife and tripled her salary. In addition, Obama has filed several false financial disclosure forms — the same offense for which Sen. Ted Stevens (R-Alaska) has been indicted. Aren't these grounds for ethics complaints?

A: Because both presidential candidates are Senators, they are both vulnerable to potential Senate ethics complaints. Last week’s column addressed grounds for a potential complaint against Sen. John McCain (R-Ariz.) and concluded there were none, and this week’s will address your question regarding a complaint against Obama.

The first grounds you propose relate to Michelle Obama’s job at the University of Chicago Hospitals. In 2002, Michelle Obama joined UCH as executive director for community affairs. In 2005, a few months after Barack Obama took office, UCH promoted her to vice president for community and external affairs, and increased her salary from $121,910 to $316,962. In 2006, the Senator requested a $1 million earmark for construction of a pavilion at UCH. The request was denied.

Taken alone, it would be hard to argue that these facts amount to a violation of Senate ethics rules, as there is no precedent for sanctions under these circumstances. While it is true that ethics rules prohibit a Senator from taking an official act for the purpose of benefiting a spouse, there is no evidence that Obama did so. In fact, the circumstances of the raise and the earmark suggest just the opposite.

As to the raise, UCH officials have said that her compensation was in line with others in similar positions, and that her promotion had nothing to do with Obama’s election to the Senate. In fact, UCH said, Michelle Obama had previously turned down the very same promotion and had also rejected a more lucrative offer from another organization in order to stay at UCH. As to the earmark, there is nothing to suggest that the earmark would have affected Michelle Obama’s compensation in any way. Moreover, UCH was merely one of many hospital systems for whom Obama requested earmarks. Neither the House nor Senate ethics committees have ever interpreted the rules to disqualify an entity from receiving earmarks merely because the entity employs a Member’s spouse. In the absence of any evidence showing that Michelle Obama stood to gain from the earmark, there is no basis for an ethics complaint.

The other grounds you have proposed concern Obama’s financial disclosure forms. The Ethics in Government Act requires every Senator to file an annual disclosure report containing information regarding income, assets, liabilities and gifts received. False reports can result in criminal liability and ethics sanctions. Earlier this year, Roll Call reported that Obama’s 2005 report contained errors. Obama acknowledged the errors and said he would file an amended form. Obama had twice previously filed amendments to correct errors in his report. As you point out, filling a false report is the same violation alleged in the recent indictment of Stevens.

Nonetheless, the circumstances of Obama’s errors again would make an ethics complaint difficult to sustain. Whereas Stevens is accused of concealing large gifts, Obama’s error was that he failed to include $2,000 of capital gains from a 2005 stock sale. The Obama camp has since stated that Obama’s 2005 tax returns, which were also made public, provided detailed information about the capital gains, and that it would file an amended disclosure report to reflect the information in the tax returns. There is no precedent for sanctions based on minor, inadvertent errors, and it would be hard to argue that Obama’s were anything but just that.

In addition, as Roll Call reported at the time, many other Members have made the exact same error on their disclosure reports: failure to include capital gains as income. None of those Members has been subject to ethics complaints. While Senators should certainly take care to ensure the accuracy of their disclosure reports and avoid the liability that can result from false reports, not every error — however inadvertent — gives rise to an ethics complaint.

Therefore, you do not appear to have grounds for an ethics complaint. If it’s any consolation, I am not sure how effective a political weapon an ethics complaint would have been anyway. In July, Judicial Watch filed an ethics complaint against Obama alleging he received a home loan below market rate, claims the Obama camp has denied. The Ethics Committee has since made no public comment about the complaint, and it does not appear to have had any discernible impact on Obama’s campaign. I’m afraid that you might be better off working on your blog.

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