

## SENATOR JOHN ENSIGN

Senator John Ensign (R-NV) is a two-term senator from Nevada. His ethics issues stem from an extramarital affair with a former campaign staffer.

### Affair with Campaign Committee Staffer

On June 16, 2009, Sen. John Ensign announced he had engaged in extramarital affair with an unnamed former campaign staffer from December 2007 until August 2008.<sup>1</sup> The staffer was later identified as Cynthia Hampton, whose husband Doug Hampton, was a close friend and top aide to the senator.<sup>2</sup>

In a letter to FOX News anchor Megyn Kelly, Mr. Hampton stated that although the two families had been “lifelong friends,” Sen. Ensign pursued and engaged in a relationship with Mr. Hampton’s wife.<sup>3</sup> He said Sen. Ensign’s “conduct and relentless pursuit of my wife led to our dismissal in April 2008.”<sup>4</sup> Mr. Hampton further stated that because of Sen. Ensign’s conduct, Mr. Hampton’s family “lost significant income, suffered indescribable pain and emotional suffering. We find ourselves today with an overwhelming loss of relationships, career opportunities and hope for recovery.”<sup>5</sup>

Mr. Hampton confronted Sen. Ensign several times about the affair, including once in February 2008 at “C Street,” a secretive group-home for Christian lawmakers.<sup>6</sup> There, in the presence of Sen. Tom Coburn (R-OK) and others close to Sen. Ensign, Mr. Hampton “endured an emotional meeting” on forgiveness.<sup>7</sup> According to Mr. Hampton, at that meeting Sen. Coburn suggested Sen. Ensign pay off the mortgage on the Hamptons’ Las Vegas home and move them to Colorado.<sup>8</sup>

Both Doug and Cynthia Hampton received payments from Sen. Ensign after leaving his employ. After his departure, Mr. Hampton received \$6,000,<sup>9</sup> an amount Sen. Ensign’s office

---

<sup>1</sup> Molly Ball and Steve Tetreault, Ensign Admits Affair with Ex-Campaign Staffer, *Las Vegas Review-Journal*, June 16, 2009 (Exhibit 1).

<sup>2</sup> Id.

<sup>3</sup> Letter from Doug Hampton to Megyn Kelly, June 11, 2009, reprinted in *Las Vegas Sun*, June 19, 2009 [hereinafter “Hampton Letter”] (Exhibit 2).

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.; Manuel Roig-Franzia, The Political Enclave That Dare Not Speak Its Name, *Washington Post*, June 26, 2009 (Exhibit 3); Behind the Closed Doors on C Street, *Las Vegas Sun*, July 19, 2009 (Exhibit 4).

<sup>7</sup> Hampton Letter; Roig-Franzia, *Washington Post*, Jun. 26, 2009.

<sup>8</sup> Jon Ralston, Face to Face, *Las Vegas 1*, July 8, 2009 (available at: <http://www.lasvegassun.com/videos/sets/2009/jul/08/exclusive-interview/>) (Exhibit 5); J. Patrick Coolin and Lisa Mascaro, Hampton Portrays Ensign as Relentless, *Las Vegas Sun*, July 9, 2009 (Exhibit 6).

<sup>9</sup> Paul Kane, Ensign Defends Payments to Woman He Had Affair With, *Washington Post Capitol Briefing*, June 19, 2009 (Exhibit 7).

claimed was “equal to 12 days of unused vacation,” and was not a severance package,<sup>10</sup> an understanding confirmed by Mr. Hampton.<sup>11</sup>

Cynthia Hampton was paid \$1,885 a month, working for both Sen. Ensign’s campaign and his leadership political action committee, Battle Born PAC.<sup>12</sup> In January 2008, a month after their affair began, Mrs. Hampton’s salary doubled after she took on increased responsibilities with the re-election committee and took over as treasurer for the PAC.<sup>13</sup> An individual close to Sen. Ensign’s family said that after the senator confessed the affair to his wife, reconciled with her and attended counseling, he fired Ms. Hampton, providing her with a severance payment paid from his own pocket.<sup>14</sup>

On July 8, 2009, Mr. Hampton said Sen. Ensign had personally paid Ms. Hampton over \$25,000 in severance.<sup>15</sup> Sen. Ensign’s attorney, Paul Coggins, quickly contradicted that claim, stating Sen. Ensign’s parents paid Ms. Hampton and her family \$96,000 after they had learned of the affair.<sup>16</sup> Mr. Coggins insisted the payments were not made from campaign or official funds, nor were they related to any campaign or official duties. Rather, he explained, the April 2008 payments were “gifts made out of concern for the well-being of long-time family friends during a difficult time.”<sup>17</sup> Each of Sen. Ensign’s parents made out four checks in the amount of \$12,000 to Cynthia Hampton, her husband and two of their children.<sup>18</sup> Sen. Ensign’s office claimed the alleged \$25,000 severance payment was part of his parents’ \$96,000 “gift.”<sup>19</sup>

Additionally, the National Republican Senatorial Committee, which Sen. Ensign chaired, paid the Hamptons’ 19-year-old son \$1,000 a month from March through August of 2008 for his work as an intern.<sup>20</sup>

---

<sup>10</sup> Id.

<sup>11</sup> Jon Ralston, Face to Face, *Las Vegas I*, July 9, 2009 (available at: <http://www.lasvegassun.com/videos/sets/2009/jul/09/exclusive-interview-part-2/>) (Exhibit 8).

<sup>12</sup> Kane, *Washington Post*, June 19, 2009.

<sup>13</sup> Id.

<sup>14</sup> Jim Rutenberg and Steve Friess, After Affair, Senator Resigns Leadership Job, *New York Times*, June 18, 2009 (Exhibit 9).

<sup>15</sup> Ralston, *Las Vegas I*, July 8, 2009.

<sup>16</sup> Press Release, Fish & Richardson P.C., Statement on Behalf of Senator John Ensign, July 9, 2009 (Exhibit 10); David Stout, Senator’s Parents Gave Mistress Thousands, *New York Times*, July 10, 2009 (Exhibit 11).

<sup>17</sup> Press Release, Fish & Richardson P.C., Statement on Behalf of Senator John Ensign, July 9, 2009.

<sup>18</sup> Dan Eggen and Chris Cilliza, Ensign’s Parents Made Payments to Mistress, Her Family, *Washington Post*, July 10, 2009 (Exhibit 12).

<sup>19</sup> Al Kamen, Hillary Clinton, Back After a Break, *Washington Post*, July 15, 2009 (Exhibit 13).

<sup>20</sup> Kane, *Washington Post*, June 19, 2009; Zachary Roth, Timeline Suggests Ensign Help for Hampton Was Hardly Routine, TPM Muckraker, June 19, 2009 (Exhibit 14).

Sen. Ensign originally indicated he went public because he was being extorted.<sup>21</sup> He later admitted, however, that he went public because he had learned Mr. Hampton had written to FOX News with details of the affair, asking the network to investigate the matter and downgraded the alleged extortion to a legal demand.<sup>22</sup> Sen. Ensign's spokesman, Tory Mazzola, stated "Within the past month, Doug Hampton's legal counsel made exorbitant demands for cash and other financial benefits on behalf of his client. Doug Hampton's outrageous demand was referred to Senator Ensign's legal counsel, who is handling the matter going forward."<sup>23</sup>

### **Sexual Harassment**

The Senate Select Committee on Ethics previously has held sexual harassment is a form of sex discrimination that violates the Official Code of Conduct.<sup>24</sup> In fact, Senate Rule 42 specifically applies the rights and privileges of the Civil Rights Act of 1964 to employment with the United States Senate.<sup>25</sup> The rule provides:

No Member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof --

- (a) fail or refuse to hire an individual;
- (b) discharge an individual; or
- (c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment

-- on the basis of such individuals' race, color, religion, sex, national origin, age, or state of physical handicap.<sup>26</sup>

It is well established that sexual harassment is a form of sex discrimination under Title VII.<sup>27</sup> In fact, the Senate has previously investigated a senator for sexual harassment. On May 17, 1995, the Select Committee on Ethics unanimously adopted a resolution calling for an

---

<sup>21</sup> John Stanton, Ensign Scandal Rattles Senate, *Roll Call*, June 18, 2009 ("According to several Republicans, Ensign told colleagues and others close to him that he was the subject of a blackmail scheme because of the affair.") (Exhibit 15); Domenico Montanaro, Ensign Admits Affair, Claims Extortion, *MSNBC.com*, June 16, 2009 ("NBC News has confirmed that Ensign told other senators earlier today that the reason he decided to go public about the affair is that his ex-mistress was indeed trying to extort money out of him.") (Exhibit 16).

<sup>22</sup> Kane and Kurtz, *Washington Post*, June 21, 2009; *see also* Lisa Mascaro, Ensign's Office: Woman's Husband Approached Media With Story, *Las Vegas Sun*, June 18, 2009 (Exhibit 17).

<sup>23</sup> Kane and Kurtz, *Washington Post*, June 21, 2009.

<sup>24</sup> Senate Select Committee on Ethics, Senate Ethics Manual, 108<sup>th</sup> Cong. 1<sup>st</sup> Sess. (2003 ed.), p. 194.

<sup>25</sup> Id. at 330.

<sup>26</sup> Id.

<sup>27</sup> *See Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986); *Williams v. Saxbe*, 413 F. Supp. 654 (D.D.C. 1976); *see also Calder v. Planned Community Living*, 1995 U.S. Dist. Lexis 10773, \*21 (S.D.N.Y. 1995) (sexual relationship between supervisor and another employee may have created a sexually-biased hostile work environment preventing plaintiff from performing her job); 29 C.F.R. § 1604.11(g).

investigation into sexual harassment by Senator Robert Packwood.<sup>28</sup> The committee found it had jurisdiction under section 2(a)(1) of S. Res. 338, 88<sup>th</sup> Congress, to determine whether Sen. Packwood abused his Senate office by engaging in sexual misconduct and concluded he had.

Similarly, in 1989, in the House of Representatives, the Committee on Standards of Official Conduct issued a public letter of reproof to Rep. Jim Bates after finding he had sexually harassed two women on his personal staff.<sup>29</sup> The House also found Rep. Gus Savage had made improper sexual advances toward a female Peace Corps worker.<sup>30</sup>

If, as it appears, Mr. and Ms. Hampton were discharged directly because of Ms. Hampton's affair with the senator, Sen. Ensign may have engaged in discrimination on the basis of sex in violation of Title VII and Senate Rule 42.

### **Campaign Finance Law Violations**

Given that Sen. Ensign may personally have paid Ms. Hampton some amount of severance, that payment constitutes an in-kind contribution to either his campaign committee or PAC, or perhaps both. The Federal Election Campaign Act ("FECA") requires such contributions be reported,<sup>31</sup> yet neither the campaign committee nor the PAC reported such a contribution by Sen. Ensign. A knowing and willful failure to report a contribution of over \$25,000 is a criminal violation subject to 5 years in jail.<sup>32</sup> Thus, by failing to report his contribution to the campaign to pay Ms. Hampton, Sen. Ensign may have committed a criminal campaign finance law violation. Moreover, if Sen. Ensign paid Ms. Hampton more than \$5,000, which seems likely, he also may have made an illegal excessive contribution to the PAC, which prohibits contributions of over \$5,000.<sup>33</sup>

The FECA limits an individual to contributing \$2,400 per election to a principal campaign committee such as Ensign for Senate.<sup>34</sup> Similarly, the Act limits an individual to contributing \$5,000 per year to a leadership PAC such as the Battle Born PAC.<sup>35</sup> Accordingly, the maximum amount Sen. Ensign's parents, Michael and Sharon Ensign, together could contribute to Ensign for Senate in the current election cycle is \$9,600. The maximum amount both Michael and Sharon Ensign could have contributed to the Battle Born PAC in 2008 was \$10,000. Accordingly, there is no way Michael and Sharon Ensign could have both made \$12,000 severance payments to Cynthia Hampton without violating the dollar limits of the

---

<sup>28</sup> Senate Ethics Counsel, *The Packwood Report*, *Times Books* (1995), p. XVI; *see also* Resolution for Investigation.

<sup>29</sup> *House Ethics Manual*, (110<sup>th</sup> Cong. 2008 ed.), p. 268-69 (*citing In the Matter of Representative Jim Bates*, H. Rep. 101-293, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess. (1989)).

<sup>30</sup> H. Rep. No. 101-397, 101<sup>st</sup> Cong., 2d Sess. (1990).

<sup>31</sup> 2 U.S.C. § 434(b)(3)(A).

<sup>32</sup> 2 U.S.C. § 437g(d)(1)(A)(i).

<sup>33</sup> 2 U.S.C. § 441a(a)(1)(C); *see also* Advisory Opinion 2003-12, p. 8.

<sup>34</sup> 2 U.S.C. § 441a(a)(1)(A).

<sup>35</sup> 2 U.S.C. § 441a(a)(1)(C).

FECA. As a result, the payments made by the Ensigns may constitute illegal excessive in-kind contributions to Ensign for Senate and the Battle Born PAC.

In addition, neither Ensign for Senate nor the Battle Born PAC reported receiving any in-kind contributions from either Michael or Sharon Ensign. The failure to report an in-kind contribution is a violation of 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 104.13.

### **Improper Conduct That May Reflecting Upon the Senate**

The Senate Ethics Manual provides that “[c]ertain conduct has been deemed by the Senate in prior cases to be unethical and improper even though such conduct may not necessarily have violated any written law, or Senate rule or regulation. Such conduct has been characterized as improper conduct that may reflect upon the Senate.”<sup>36</sup> This rule is intended to protect the integrity and reputation of the Senate as a whole.<sup>37</sup> The Ethics Manual explains that “improper conduct” is given meaning by considering “generally accepted standards of conduct, the letter and spirit of laws and Rules . . .”<sup>38</sup> Notably, the Senate may discipline a member for any misconduct, including conduct or activity that does not relate to official duties when that conduct unfavorably reflects upon the Senate as a whole.<sup>39</sup>

The Senate has disciplined other members for violating this prohibition in the past. In 1967, the Select Committee on Ethics investigated the first case of improper conduct involving Sen. Thomas Dodd who was censured for converting campaign funds to personal use.<sup>40</sup> In 1990, the Senate denounced Sen. David Durenberger, in part, based on his financial arrangements in connection with a condominium he owned in Minneapolis and in 1991, Sen. Alan Cranston was severely reprimanded for improperly linking fundraising and official activities.<sup>41</sup> Perhaps most relevant, in 1995 the committee recommended Senator Robert Packwood be expelled for repeated sexual misconduct.<sup>42</sup>

Last year, the committee issued letters of admonition to two senators, Larry Craig and Pete Domenici for improper conduct reflecting discreditably upon the Senate. In February 2008, the committee found Sen. Craig engaged in improper conduct by committing disorderly conduct

---

<sup>36</sup> *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432 (108<sup>th</sup> Cong. 2003 ed.).

<sup>37</sup> Id.

<sup>38</sup> Id. at 433; *and* fn. 10, citing a 1964 investigation into the activities of Bobby Baker, then-Secretary to the Majority of the Senate, in which the Committee on Rules and Administration issued a report stating, “It is possible for anyone to follow the ‘letter of the law’ and avoid being indicted for a criminal act, but in the case of employees of the Senate, they are expected, and rightly so, to follow not only the ‘letter’ but also the ‘spirit’ of the law.” S. Rep. No. 1175, 88<sup>th</sup> Cong., 2d Sess. 5 (1964).

<sup>39</sup> Senate Ethics Counsel, The Packwood Report, *Times Books* (1995), p. 28 (citing S. Rep. 2508, 83<sup>rd</sup> Cong., 2d Sess. 20, 22 (1954)).

<sup>40</sup> Senate Ethics Manual at 434.

<sup>41</sup> Id. at 434-35.

<sup>42</sup> Id. at 432.

in a public restroom, attempting to use his official position to influence the arresting officer, and attempting to withdraw his guilty plea to evade the legal consequences of his actions.<sup>43</sup> In April 2008, the committee found that by contacting a prosecutor about a pending corruption case that might have influenced an upcoming election, Sen. Pete Domenici created an appearance of impropriety that reflected unfavorably on the Senate.<sup>44</sup>

By conducting an affair with a campaign staff member, conducting an affair with a campaign staff member married to a member of his Senate staff, terminating both staff members because of the affair, using his position as the chair of the NRSC to hire and pay the son of his mistress and her husband, failing to report the contribution he or his parents made to his campaign committee and/or PAC, potentially making an illegal excessive contribution to the PAC, perhaps improperly using official Senate funds to increase the final payment made to the improperly terminated husband, and by attempting to elicit sympathy by characterizing a legitimate effort to settle a dispute as blackmail without ever reporting the alleged crime to law enforcement authorities, Sen. Ensign has engaged in improper conduct that reflects upon the Senate.

---

<sup>43</sup> Letter from Senate Select Committee on Ethics to Senator Larry Craig, February 13, 2008.

<sup>44</sup> Letter from Senate Select Committee on Ethics to Senator Pete Domenici, April 24, 2008.