

APPENDIX C

RPTS COCHRANDCMN NORMAN

PENDING BUSINESS

Thursday July 29, 2010

House of Representatives,
Adjudicatory Subcommittee,
Committee on Standards
of Official Conduct,
Washington, D.C.

The adjudicatory subcommittee met, pursuant to call, at 2:00 p.m., in Room HVC-210, Capitol Visitor Center, Hon. Zoe Lofgren [chairwoman of the subcommittee] presiding.

Present: Representatives Lofgren, McCaul, Butterfield, Castor, Welch, Conaway, Dent, and Harper.

Also Present: Representatives Green and Bonner.

Staff present: Blake Chisam, Chief Counsel/Staff Director; Morgan Kim, Deputy Chief Counsel; Daniel J. Taylor, Counsel to the Chair; Todd Ungerecht, Counsel to the Ranking Republican Member; Sheria Clarke, Counsel; Tom Rust, Counsel; Marc Borodin, Counsel; and Deborah

Morris, Counsel.

The Chairwoman. This meeting of the adjudicatory subcommittee in the matter of Representative Charles B. Rangel will come to order.

I would ask, if possible, for the press to recede a little bit so we can see our two witnesses, and I would like to make a brief statement before I recognize the ranking member of the subcommittee.

The Constitution authorizes the House to discipline its Members, and the importance of that authority was described in the Federalist Papers by James Madison, who wrote, "The aim of every political constitution is or ought to be, first, to obtain rulers for men who possess most wisdom to discern and most virtue to pursue the common good of society, and in the next place to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust." The Code of Public Ethics also states clearly that a public office is a public trust.

Now, we live in a time where public skepticism about the institutions in our country is very high. It has been the goal of our Ethics Committee throughout this Congress to, by our actions, rebuild and earn trust by the public and our colleagues. To do so, we have to date in every case acted unanimously, even though we all know we live in an intensely partisan environment and even though our committee is the only one in Congress that is evenly divided with five Democrats and five Republicans.

We are also a committee that operates with a professional nonpartisan staff. This staff was selected unanimously by the bipartisan committee and answers equally to all of us.

Bound as we are by the precedents of the House, our obligation is to act fairly and without bias or partisanship. To do anything else would dishonor this House and would be a disservice to our country.

In the House, the Committee on Standards of Official Conduct is charged with recommending and enforcing ethical standards that ensure that Members and staff act in a manner befitting the public trust. It is under that authority that we are meeting here today.

The purpose of this meeting is organizational. The agenda for today includes hearing from the investigative subcommittee in this matter. Representatives Gene Green and Jo Bonner, who led that subcommittee as chair and ranking member, will share with the members of this subcommittee a summary of what they learned during the course of their investigation.

First, though, I would like to provide an overview of how we got to this stage in the ethics process in this particular matter and what an adjudicatory subcommittee is and what our role is in the process.

Nearly 2 years ago, Representative Rangel asked the Ethics Committee to investigate various allegations that had been made regarding his conduct. After conducting a preliminary investigation, on September 24th of 2008 the committee voted to impanel an investigative subcommittee to conduct an investigation into his conduct. Representatives Gene Green, Doc Hastings, Bobby Scott and Jo Bonner were selected to served on the subcommittee. At that time, Representative Green was chair of the subcommittee, and Representative Hastings was its ranking member.

As the investigation took its course, the committee twice voted to expand the jurisdiction of the subcommittee, first on December 9th, 2008, and again on October 8th, 2009.

Over the course of the investigation, the investigative subcommittee found "substantial reason to believe that a violation of the Code of Official Conduct or of a law, rule, regulation, or other standard of conduct applicable to the performance or official duties or the discharge of official responsibilities by a Member has occurred."

Accordingly, on July 22nd of this year, the investigative subcommittee transmitted a statement of alleged violations, otherwise known as an SAV, to the committee, pursuant to committee rules, and pursuant to those rules. As chair of the committee, I then appointed the members of this adjudicatory subcommittee. That transmittal completed the work of the investigative subcommittee, with the exception of their report to us today.

I would like to take a moment to thank all four members of the investigative subcommittee. Over the course of 2 years, they gave substantial time and effort to this challenging task. On behalf of the rest of this subcommittee and the full committee, we do thank you.

With the investigative subcommittee's work completed, the work of the adjudicatory subcommittee begins. Since this phase of the ethics process is unfamiliar to many, I think it is important to briefly describe, for the benefit of our colleagues in the House and to the public, the role of this subcommittee.

The role of the adjudicatory subcommittee is to determine at a hearing whether any count in the statement of alleged violation has been proved by clear and convincing evidence. As part of this process, the subcommittee would make findings of fact. The Ethic Committee's nonpartisan professional staff would act as the moving party under those proceedings, making the case for the violations alleged by the investigative subcommittee. Mr. Rangel's counsel would present his side of the story.

The adjudicatory hearing may include witnesses and other evidence, and by rule the hearing would be open to the public unless the subcommittee determines that the hearing or any part of it should be closed.

At the conclusion of any such hearing, the subcommittee would determine by a vote of at least five members, which would necessarily be a bipartisan vote, whether each count or any of the counts in the statement of alleged violation has been proven. The findings of the subcommittee would then be reported to the committee. If the adjudicatory subcommittee were to find that any count in the statement had been proved, the committee would then proceed to a sanctions phase.

As a clarifying note, two of the members of the full Ethics Committee are not serving on this adjudicatory committee. First, our colleague and ranking member of the full committee, Jo Bonner, has served on the investigative subcommittee for the last 2 years, and accordingly, under our rules, may not serve on the adjudicatory subcommittee.

Second, ordinarily two members of the committee serve on the investigative subcommittee. Representative Green, who served as chair of the subcommittee, was acting chair of the full committee when he took on this assignment. Since then, his committee assignments have changed; he is no longer on the committee. With Mr. Bonner ineligible to serve, we would have an uneven 5-4 split between Democrats and Republicans on the subcommittee, and since we require an evenly balanced committee, I have designated four Democrats and four Republicans to serve.

These rules serve an important purpose. The point is to bifurcate the investigative portion of the ethics process from the adjudicative phase. One group of members leads an investigation to determine if there is a basis to believe that a violation may have occurred. When that subcommittee concludes that there is substantial reason to believe that a violation occurred, a separate group of members who were not involved in the investigation weighs the evidence, makes findings of fact, and determines whether any violation has been proven.

The eight of us did not learn of the substantive conclusions of the investigative subcommittee until it concluded its work last week and sent its statement of alleged violations to the full membership of the Ethics Committee last Thursday. The rules separate it out this way so we are not influenced by the proceedings of the investigative subcommittee whose work preceded ours. Furthermore, it is our obligation to decide, if facts are established, whether those facts make up a violation of the rules of the House.

The members of this subcommittee reflect the breadth and diversity of the House. My colleagues to either side of me, Representatives McCaul and Butterfield, are a former prosecutor and a former judge. However, as members of the adjudicatory subcommittee, we are neither accusers nor are we defenders of our colleague, Mr. Rangel. Our job is to act impartially as finders of fact and law. We are honor-bound to do so without regard to partisanship or bias of any sort. We are required to act honestly and fairly based on the evidence presented to us during this hearing.

As I noted earlier, a public office is a public trust. Our task is to determine whether Representative Rangel's conduct met that standard. As I chair these proceedings, I plan to do so in the fairest way possible to all parties involved, as well as to the House.

With that, I would now be pleased to recognize Congressman Mike McCaul, the ranking member of the adjudicatory subcommittee, for his opening statement.

Mr. McCaul. Thank you, Madam Chair. Thank you for holding this meeting.

This is an important day, both for Mr. Rangel and for the Ethics Committee, for the Congress, but most importantly, for the American people. As a member of this committee and a former Federal prosecutor in the Public Integrity Section of the Department of Justice, I take this responsibility very seriously.

For the committee, we have been presented by the investigative subcommittee with 13 very serious allegations relating to Mr. Rangel's

conduct. The committee has not held a public hearing like this since 2002 when it considered evidence against James Traficant who was convicted in Federal Court of multiple felony counts and subsequently served more than half a decade in prison.

For Mr. Rangel, these proceedings present a fair and public opportunity to be heard before his peers and address each of the serious allegations against him. These actions and these allegations, if proven, would violate multiple provisions of House rules and Federal statutes. This includes his alleged violation of the most fundamental code of conduct, which states: A Member of the House shall conduct himself at all times in a manner that shall reflect credibility on the House.

And credibility is exactly what is at stake here, the very credibility of the House of Representatives itself before the American people.

I am mindful, as are my colleagues, of the solemn responsibility we bear when we are called upon to hear allegations of misconduct against a fellow Member. We have an obligation to Mr. Rangel that he has his day in court, so to speak, to present his own version of the events. But we also have an obligation to the American people to protect the integrity and credibility of the House and present evidence supporting each of the 13 counts against him.

It is certainly not lost on any member of this subcommittee on the approval ratings of this body. With only 11 percent of the public having a positive view of this institution, the pressure is even greater

to ensure these proceedings are fair, open, and conducted in a strictly nonpartisan manner. In the mind of the American people, Congress has become completely self-serving and so tone deaf its Members somehow feel the rules just don't apply to them. We must regain the people's trust.

There has been talk in the media about Mr. Rangel negotiating a settlement. Let me be clear that Mr. Rangel under these rules was given opportunities to negotiate a settlement during the investigation phase. We are now in the trial phase and the American people deserve to hear the truth in this case and the charges against him, and that is precisely why we are having this meeting here today.

The Speaker herself has said that we are entering into an era of transparency and accountability. I agree. Let us begin today. Let justice be served.

The evidence to be evaluated by the investigative subcommittee must be presented to this subcommittee in the clearest and most straightforward way possible. Mr. Rangel must be allowed the opportunity to adequately defend himself against this evidence. There is no place for presumed guilt before innocence in this process, and there will not be in this case. Only this type of process will allow each member of this subcommittee to make an informed and independent determination as to whether clear and convincing evidence has been presented to prove each count alleged against Mr. Rangel.

Turning from process to substance for a moment, it is important to note that the allegations presented to us are nothing less than

serious. The investigative subcommittee found that Mr. Rangel solicited foundations and corporations with business before the Ways and Means Committee to fund a center bearing his name at the City College of New York. The allegations are that Mr. Rangel used his office staff and supplies at the taxpayers' expense, including the frank, to make solicitations, and personally met with corporate executives and lobbyists as part of his efforts to build the center bearing his name.

On the Lenox Terrace issue, the investigative subcommittee found that Mr. Rangel's landlord permitted Mr. Rangel for over a decade to use a rent-stabilized apartment in his residential apartment building for his campaign office.

The investigative subcommittee also looked at Mr. Rangel's financial disclosures and taxes. As a Member of Congress for nearly 40 years and chairman of the Ways and Means Committee which has jurisdiction over tax matters, Mr. Rangel, according to the charges, failed to report rental income on his Federal tax returns and on his villa in the Dominican Republic over a period of years.

According to the investigative subcommittee, over the course of nearly a decade, Mr. Rangel failed to report more than \$600,000 on his financial disclosure statements for these periods. These actions, if proven, would demonstrate that Mr. Rangel violated multiple provisions of the House rules and Federal statutes.

As we prepare to hear the charges against one of our most tenured colleagues in the House, we need to ensure we have done everything to reassure to the American public as a whole that we will handle this

matter with the utmost professionalism and nonpartisanship that it deserves. We can never forget that public office is a public trust.

With that, I yield back.

The Chairwoman. Thank you, Mr. McCaul.

As I said earlier, we are here because the investigative subcommittee has transmitted to us a statement of alleged violations to the full committee.

Joining us today are Representative Gene Green, who chaired the subcommittee, the investigative subcommittee, joined by Representative Jo Bonner, who was the ranking member of the investigative subcommittee and who also serves as ranking member of the full Ethics Committee.

We have invited them to address the subcommittee today to summarize their findings, and the chair will recognize each of them for about 5 minutes.

So, first, Mr. Green, if you could proceed.

Mr. Green. Thank you, Madam Chair.

The investigative subcommittee recently concluded its 21-month-long investigative process and transmitted the statement of alleged violation, the SAV, in the matter of Mr. Charles B. Rangel to the full committee.

This investigation in the subcommittee began at the request of Mr. Rangel. None of the members of the investigative subcommittee volunteered for this assignment. I think it is safe to say that none of us enjoyed the assignment. No one wants to investigate their peers,

but we recognized this was a task that was requested of us, and the investigative subcommittee spent a significant amount of time closely examining the factual and legal issues involved in this matter.

The members and staff of the investigative subcommittee worked diligently throughout this investigation conducting approximately 50 depositions, as well as many informal interviews. One deposition was conducted with Mr. Rangel on December 15th of 2009. The investigative subcommittee also met with Mr. Rangel two additional times, including one meeting specifically requested by Mr. Rangel.

Throughout the course of the investigation, the subcommittee issued over 160 formal requests for documents, as well as many informal requests, reviewed over 28,000 pages of documents and testimony, and held more than 60 investigative subcommittee meetings.

The investigative subcommittee spent many hours together discussing at length the evidence and whether the evidence merited any charge in a statement of alleged violation. After weeks of discussion, the investigative subcommittee adopted an SAV on June 17th, 2010.

The charges in the statements of alleged violation relate to four general subject matters: One, solicitations and donations to the Rangel Center for Public Service at the City College of New York; two, errors and omissions on Representative Rangel's financial disclosure statements; three, use of a rent-subsidized residential apartment by respondent's campaign committees; and, four, failure to report and pay taxes on rental income on respondent's Punta Cana beach villa.

The 13 charges are as follows:

Count 1, conduct in violation of the solicitation and gift ban;
Count 2, conduct in violation of the Conduct of Ethics for Government Service, clause 5;

Count 3, conduct in violation of the House gift rules;

Count 4, conduct in violation of Postal Service laws and Franking Commission regulations;

Count 5, conduct in violation of the franking statute;

Count 6, conduct in violation of the House Office Building and Commissions Regulations;

Count 7, conduct in violation of the purpose law and the Members Congressional Handbook;

Count 8, conduct in violation of the letterhead rule;

Count 9, conduct in violation of the Ethics in Government Act and House Rule XXVI;

Count 10, conduct in violation of Code of Ethics for Government Service, clause 5;

Count 11, conduct in violation of the Code of Ethics for Government Service, clause 2.

Count 12, conduct in violation of Code of Conduct letter and spirit of the House rules;

Count 13, conduct in violation of the Code of Conduct, reflecting discredibility on the House.

These were adopted, each of these counts were adopted by majority vote of the investigative subcommittee.

For each of these subject matters, the investigative subcommittee

found a substantial reason to believe that Congressman Rangel's conduct merits the charges in the statement of the alleged violation.

The subcommittee was also tasked with investigating Mr. Rangel's compliance with House Administration rules regarding the storage of a vehicle in the House parking garage. The SAV does not make a recommendation regarding Mr. Rangel's compliance with parking rules. An additional report on the parking matter is enclosed with the SAV and the transmittal letter. The report and transmittal letter sent to the Standards Committee make a recommendation to House Administration to examine the current parking rulings and enforcement of these rules.

This has been a long process, longer than any of us would have liked. We have detailed some of the reasons for the length of the investigation in our transmittal letter to the committee.

Throughout the course of the investigation, there has been a lot of speculation and inaccuracies reported in the media about the investigation itself and what Mr. Rangel knew about the investigation. To say Mr. Rangel and his attorneys were unaware of the work of the subcommittee would be incorrect and a disservice to the members of this investigative subcommittee.

Due to the Standards Committee rules regarding confidentiality, the investigative subcommittee has been unable to publicly respond to these inaccurate comments. The transmittal letter to the full committee and the SAV shall give greater clarity to the actions of the subcommittee.

I would like to take this opportunity as chair of the subcommittee to submit a written response to Mr. Rangel's response to the SAV to the chair of the full committee.

I am thankful to say that the investigative subcommittee has now completed its work and I would like to thank both my colleague Congressman Jo Bonner, as well as the other members of the investigative subcommittee, Congressman Bobby Scott and Congressman Doc Hastings, for their service on the subcommittee.

One of the most difficult tasks assigned to a Member of Congress is to sit in judgment of a colleague. The task is even more difficult when the subject of the investigation has befriended and mentored so many new Members of Congress, myself being one of them. I am not envious of the role of the members of the adjudicatory subcommittee, and I know that all parties look forward to a final resolution to this matter.

Thank you, Madam Chairman.

The Chairwoman. Thank you, Mr. Green.

Now we would be pleased to recognize Representative Bonner for about 5 minutes.

Mr. Bonner. Thank you, Madam Chair, Ranking Member McCaul, and members of the adjudicatory subcommittee.

By the very nature of this rare but not unprecedented public meeting of this subcommittee, there are naturally many questions that many of our colleagues in Congress, and, I believe more importantly, many of the American people have as it relates to what is going on today

in Washington, D.C. In the 5 minutes that I have been given, allow me to attempt to answer some of those questions.

First, there is no doubt that Congressman Charles Rangel has a compelling story. He was a private, as his autobiography states, left to die on a battlefield in what is now North Korea. He earned the Purple Heart and the Bronze Star for bravery. He was a fatherless high school dropout who went from pushing a handtruck in the garden district of New York City to becoming one of the most powerful and, I believe it is safe to say, well-liked Members of Congress and public figures on Capitol Hill.

But Mr. Rangel's life story is not what we are discussing today. It is not why we are here. For in a very real way, every American has his or her own story to tell. Instead, Congressman Green and I are here to present to this subcommittee and to the American people a summary of a different story altogether.

We have a responsibility to submit evidence to the adjudicatory subcommittee that Mr. Rangel may have broken the rules of the House and brought discredit to this body at a time when the American people have such little faith in our ability as their elected representatives to do our job on their behalf.

As has been noted earlier, according to Article I, Section 4 of the United States Constitution, it is the duty of the House to punish its Members for disorderly behavior. As such, this is truly a sad day where no one, regardless of their partisan stripes, should rejoice.

I want to take another minute to explain how we got to where we

are. As has been noted, the investigation into Mr. Rangel's activities has been ongoing for almost 2 years. These matters are serious. And I believe the record will show that even before the Ethics Committee took the referral from Mr. Rangel in a formal setting, that these matters were being looked to in the informal process that is granted under rule 18(a) to the chair and the ranking member.

During the course of this investigation, Mr. Rangel was given multiple opportunities to settle this matter. Instead, he chose to move forward into this public trial phase.

Since the beginning of the investigation, the full committee has been led by three different chairpersons and two different ranking members. On the investigative subcommittee that today is presenting this statement of alleged violation, we have been well-served by Mr. Green of Texas as chair, while I have served as ranking member. As also has been noted, we have also been served in this bipartisan subcommittee by Mr. Scott of Virginia and Mr. Hastings of Washington State.

Madam Chair, I can say with certainty that each of us had every intention of completing this investigation before the end of 2008, but due in part to additional evidence that was submitted, multiple delays in receiving information we requested and subpoenaed, and an extension on two separate occasions of the investigative subcommittee's jurisdiction because of new facts that came before the subcommittee, this investigation has concluded just within the past few days.

Not everyone in this room, much less everyone watching at home

on TV, may know that the House Ethics Committee is the only truly bipartisan committee, with an equal number of Democrats and Republicans, the only one in the entire House. Five Democrats and five Republicans sit on this committee in judgment of our peers. Today, there are four Democrats and four Republicans, as has already been noted, none of whom volunteered for this duty, but who sit now with this responsibility of the adjudicatory phase.

While at times members of the investigative subcommittee disagreed on some of the counts ultimately included in the statement of alleged violation, the record should note that all supporting evidence was transmitted to the full committee with the unanimous support of the bipartisan investigative subcommittee. And while my role as ranking member of the investigative subcommittee now comes to an end, I want to thank Mr. Green, Mr. Scott, Mr. Hastings, and especially the committee staff, who have worked countless hours day and night over the span of almost 2 years devoted to this matter.

Whatever happens from this point forward, I believe it is incumbent upon each of us to do our part individually and collectively to take a measured step forward in the direction of helping to restore the trust that the American people have placed in us, in this, the people's House, where we are all privileged to serve.

Thank you very much.

The Chairwoman. Thank you very much, Mr. Bonner and Mr. Green.

As I noted at the outset, this is an organizational meeting of the subcommittee. The respondent, Representative Rangel, is not here

and he is not required to attend this session, as today's meeting is not a forum for the parties to make their case. Representative Rangel has submitted a written statement which will be accepted by this subcommittee.

The adjudicative subcommittee has received a number of documents from the investigative subcommittee, including the statement of alleged violations, various motions filed by the respondent, and the investigative subcommittee's orders responding to those motions.

In addition, as mentioned earlier, Mr. Rangel had submitted a written statement, which will be accepted along with Mr. Green's and Mr. Bonner's statement.

[The information follows:]

***** COMMITTEE INSERT *****

The Chairwoman. By committee rules and authorization of the full committee, those materials will be made public today. Our colleagues and members of the public can access those documents shortly on the committee's Web site, ethics.house.gov

The subcommittee will make additional public statements and notices of meetings and hearings, as necessary. And now this meeting is adjourned.

[Whereupon, at 2:28 p.m., the subcommittee was adjourned.]

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
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COMMITTEE ON THE JUDICIARY
• CHAIR – SUBCOMMITTEE ON IMMIGRATION,
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INTERNATIONAL LAW
• SUBCOMMITTEE ON CRIME, TERRORISM, AND
HOMELAND SECURITY
• SUBCOMMITTEE ON COMMERCIAL AND
ADMINISTRATIVE LAW

COMMITTEE ON HOUSE ADMINISTRATION
• CHAIR – SUBCOMMITTEE ON ELECTIONS
• THE JOINT COMMITTEE ON THE LIBRARY

COMMITTEE ON HOMELAND SECURITY
• SUBCOMMITTEE ON BORDER, MARITIME AND GLOBAL
COUNTERTERRORISM

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CO-CHAIR, DIVERSITY & INNOVATION CAUCUS

CO-CHAIR, CONGRESSIONAL HAZARDS CAUCUS

Statement of Chairwoman Zoe Lofgren
Adjudicatory Subcommittee on the matter of Rep. Charles B. Rangel
July 29, 2010
(as prepared)

This meeting of the Adjudicatory Subcommittee in the Matter of Representative Charles B. Rangel will come to order.

The Constitution authorizes the House to discipline its members. The importance of that authority was described in the Federalist Papers by James Madison, who wrote:

The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust.

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First, though, I would like to provide an overview of 1) how we got to this stage in the ethics process in this particular matter, and 2) what an adjudicatory subcommittee is, and what our role is in the process.

Rangel matter background

Nearly two years ago, Representative Rangel asked the Ethics Committee to investigate various allegations that had been made regarding his conduct. After conducting a preliminary investigation, on September 24, 2008, the Committee voted to empanel an investigative subcommittee to conduct an investigation into the conduct of Mr. Rangel. Representatives Gene Green, Doc Hastings, Bobby Scott, and Jo Bonner were selected to serve on the subcommittee. At that time, Representative Green was the chair of the subcommittee and Representative Hastings was its ranking member.

As the investigation took its course, the Committee twice voted to expand the jurisdiction of the subcommittee, first on December 9, 2008, and again on October 8, 2009.

Over the course of the investigation, the investigative subcommittee found "substantial reason to believe that a violation of the Code of Official Conduct, or of a law, rule, regulation, or other standard of conduct applicable to the performance of official duties or the discharge of official responsibilities by a Member" has occurred.

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That transmittal completed the work of the investigative subcommittee. I would like to take a moment to thank all four members of the investigative subcommittee. Over the course of two years, they gave substantial time and effort to this challenging task. On behalf of the rest of the Committee, thank you.

Role of adjudicatory subcommittee

With the investigative subcommittee's work completed, the work of the adjudicatory subcommittee begins. Since this phase of the ethics process is unfamiliar to many, I think it's important to briefly describe for the benefit of our colleagues in the House and to the public the role of this subcommittee.

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The adjudicatory hearing may include witness testimony and other evidence. By rule, the adjudicatory hearing would be open to the public, unless the subcommittee determines that the hearing, or any part of it, should be closed.

At the conclusion of the adjudicatory hearing, the adjudicatory subcommittee would determine, by a vote of at least five members, which would necessarily be a bipartisan vote, whether each count in the Statement of Alleged Violation has been proved.

The findings of the adjudicatory subcommittee would then be reported to the Committee. If the adjudicatory subcommittee finds that any count in the Statement of Alleged Violation has been proved, the Committee would proceed with the sanction phase in this matter.

As a clarifying note, two members of the Committee are not serving on the adjudicatory subcommittee. First, our colleague and the Ranking Member of the full Committee, Jo Bonner, served on the investigative subcommittee. Under our rules, members who serve on that subcommittee may not then serve on the adjudicatory subcommittee.

Second, ordinarily, two members of the Committee serve on an investigative subcommittee. Representative Green, who served as chair of the investigative subcommittee, was acting chair of the full Committee at the time he took on this assignment. Since then, his committee assignments have changed, and he is no longer on the committee. With Mr. Bonner ineligible to serve on the adjudicatory subcommittee, we would have an uneven 5-4 split between Democrats and Republicans on the subcommittee. Since our rules require balanced representation, I designated four Democrats and four Republicans to serve on the subcommittee.

These rules serve an important purpose. The point is to bifurcate the investigative portion of the ethics process from the adjudicative phase. One group of members leads an investigation, to determine if there's a basis to believe that a violation may have occurred. When that subcommittee concludes that there is a substantial reason to believe that a violation occurred, a separate group of members who were not involved in the investigation hears and weighs evidence, makes findings of fact, and determines whether any violation has been proved.

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The members of this subcommittee reflect the breadth and diversity of the House. My colleagues to either side of me, Representatives McCaul and Butterfield, are a former prosecutor and a former judge.

However, as members of the Adjudicatory Subcommittee we are neither accusers nor are we defenders of our colleague, Mr. Rangel. Our job is to act impartially as finders of fact and law. We are honor bound to do so without regard to partisanship or bias of any sort. We are required to act honestly and fairly based on the evidence presented to us during the adjudicatory hearing..

As I noted earlier, a "public office is a public trust." Our task is to determine whether Representative Rangel's conduct met that standard.

As I chair these proceedings, I plan to do so in the fairest way possible to all parties involved, as well as to the House.

Congressman Michael T. McCaul (R-TX)
Ranking Member, Adjudicatory Subcommittee
Committee on Standards of Official Conduct

Remarks as Delivered
July 29, 2010, 1:00pm EDT

Thank you, Madam Chair. Thank you for holding this hearing.

This is an important day, both for Mr. Rangel, for the Ethics Committee, for the Congress, but most importantly for the American People. As a Member of this Committee and a former federal prosecutor in the Public Integrity Section of the Department of Justice I take this responsibility very seriously.

For the Committee, we have been presented by the Investigative Subcommittee with 13 very serious allegations relating to Mr. Rangel's conduct. The Committee has not held a public hearing like this since 2002, when it considered evidence against James Traficant, who was convicted in federal court of multiple felony counts and subsequently served more than half a decade in prison.

For Mr. Rangel, these proceedings present a fair and public opportunity to be heard before his peers and address each of the serious allegations against him. These actions, if proven, would violate multiple provisions of House rules and federal statutes. This includes his alleged violation of the most fundamental code of conduct, which states "a Member... of the House shall conduct himself at all times in a manner that shall reflect credibility on the House."

And credibility is exactly what is at stake here. The very credibility of the House of Representatives itself before the American people. I am mindful, as are my colleagues, of the solemn responsibility we bear when we are called upon to hear allegations of misconduct against a fellow Member. We have an obligation to Mr. Rangel that he has his day in court - so to speak - to present his own version of the events. But we also have an obligation to the American people to protect the integrity and credibility of the House and present the evidence supporting each of the 13 counts against him.

It is certainly not lost on any member of this subcommittee on the approval ratings of this body. With only 11% of the public having a positive view of this institution, the pressure is even greater to ensure these proceedings are fair, open, and conducted in a strictly nonpartisan manner. In the mind of the American people Congress has become completely self-serving, and so tone-deaf, its members somehow feel the rules just don't apply to them. We must regain the people's trust.

There has been talk in the media about Mr. Rangel negotiating a settlement. Let me be clear that Mr. Rangel under these rules was given opportunities to negotiate a settlement during the investigation phase. We are now in the trial phase. And the American people deserve to hear the truth in this case and the charges against him. And that is precisely why we are having this hearing today. The Speaker has said we are entering into an era of transparency and accountability. I agree, let us begin today. Let justice be served.

The evidence to be evaluated by the investigative subcommittee must be presented to this subcommittee in the clearest and most straightforward way possible. Mr. Rangel must be allowed the opportunity to adequately defend himself against this evidence. There is no place for presumed guilt before innocence in this process and there will not be in this case.

Only this type of process will allow each Member of this subcommittee to make an informed and independent determination as to whether clear and convincing evidence has been presented to prove each count alleged against Mr. Rangel.

Turning from process to substance for a moment, it is important to note that the allegations presented to us are nothing less than serious.

- The Investigative Subcommittee found that Mr. Rangel solicited foundations and corporations with business before the Ways and Means Committee, to fund a center bearing his name at the City College of New York. That allegations are that Mr. Rangel used his office staff and supplies at the taxpayers expense, including the Frank, to make the solicitations and personally met with corporate executives as part of his efforts to build the Center bearing his name.
- On the Lenox Terrace issue, the Investigative Subcommittee found that Mr. Rangel's landlord permitted Mr. Rangel, for over a decade, to use a rent-stabilized apartment in his residential apartment building for his campaign office.
- The Investigative Subcommittee also looked at Mr. Rangel's financial disclosures and taxes.
- As a Member of Congress for nearly 40 years and Chairman of the Ways and Means Committee – which has jurisdiction over tax matters, Mr. Rangel, according to the charges, failed to report rental income on his federal tax returns and on his villa in the Dominican Republic over a period of years.
- According to the Investigative Subcommittee, over the course of nearly a decade, Mr. Rangel failed to report more than \$600,000 on his financial disclosure statements for these periods.

These actions, if proven, would demonstrate that Mr. Rangel violated multiple provisions of the House rules and federal statutes.

As we prepare to hear the charges against one of our most tenured colleagues in the House, we need to ensure we have done everything to reassure to the American public as a whole – that we will handle this matter with the utmost professionalism and nonpartisanship that it deserves.

We can never forget that public office is a public trust. And with that I yield back.

(END REMARKS)

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**Statement of Representative Gene Green, Chairman of Investigative Subcommittee in the
Matter of Charles B. Rangel
Adjudicatory Subcommittee Meeting in the Matter of Charles B. Rangel
7/29/10**

Thank you, Madame Chair.

The investigative subcommittee recently concluded its 21 month long investigative process and transmitted the Statement of Alleged Violation (SAV) in the matter of Mr. Charles B. Rangel to the Full Committee.

This investigation in the subcommittee began at the request of Mr. Rangel. None of the Members of the investigative subcommittee volunteered for this assignment.

I think it's safe to say that none of us enjoyed the assignment- no one wants to investigate their peers. But we recognize this was a task that was requested of us and the investigative subcommittee spent a significant amount of time closely examining the factual and legal issues involved in this matter.

The Members and staff of the investigative subcommittee worked diligently throughout this investigation conducting approximately 50 depositions, as well as many informal interviews.

One deposition was conducted with Mr. Rangel on December 15, 2009. The investigative subcommittee also met with Mr. Rangel two additional times including one meeting specifically requested by Mr. Rangel.

Throughout the course of the investigation, the subcommittee issued over 160 formal requests for documents, as well as many informal requests; reviewed over 28,000 pages of documents and testimony; and held more than 60 investigative subcommittee meetings.

The investigative subcommittee spent many hours together, discussing at length the evidence and whether the evidence merited any charges in a

Statement of Alleged Violation. After weeks of discussion, the investigative subcommittee adopted a SAV on June 17, 2010.

The charges in the Statement of Alleged Violation relate to four general subject matters:

- (1) solicitations and donations to the Rangel Center for Public Service at the City College of New York;
- (2) errors and omissions on Respondent's Financial Disclosure Statements;
- (3) use of a rent-stabilized residential apartment by Respondent's campaign committees; and
- (4) failure to report and pay taxes on rental income on Respondent's Punta Cana beach villa.

For each of these subject matters, the investigative subcommittee found a substantial reason to believe that Congressman Rangel's conduct merited charges in a Statement of Alleged Violation.

The subcommittee was also tasked with investigating Mr. Rangel's compliance with House Administration Rules regarding the storage of a vehicle in the House parking garage.

The SAV does not make recommendation regarding Mr. Rangel's compliance with parking rules. An additional report on the parking matter is enclosed with the SAV and transmittal letter.

The report and transmittal letter sent to the Standards Committee make a recommendation to House Administration to examine the current parking rules and the enforcement of those rules.

This has been a long process – longer than any of us would have liked. We have detailed some of the reasons for the length of the investigation in our transmittal letter to the Committee.

Throughout the course of this investigation, there has been a lot of speculation and inaccuracies reported in the media about investigation itself and what Mr. Rangel knew about the investigation.

To say Mr. Rangel and his attorneys were unaware of the work of the subcommittee would be incorrect and a disservice to the Members of the investigative subcommittee.

Due to the Standards Committee rules regarding confidentiality, the Investigative Subcommittee has been unable to publicly respond to these inaccurate comments. The transmittal letter to the full committee and the SAV should give greater clarity to the actions of the subcommittee.

I would also like to take this opportunity, as Chair of the subcommittee, to submit a written response to Mr. Rangel's response to the SAV, to the Chair of the full committee.

I am thankful to say that the investigative subcommittee has now completed its work. I would like to thank Congressman Jo Bonner, as well as the other Members of the Investigative Subcommittee, Congressman Bobby Scott and Congressman Doc Hastings for their service on the subcommittee.

One of the most difficult tasks assigned to a Member of Congress is to sit in judgment of a colleague. The task is even more difficult when the subject of the investigation has befriended and mentored so many new Members of Congress.

I am not envious of the role of the Members of the adjudicatory subcommittee, and I know that all parties look forward to a final resolution in this matter.

Written Statement of Representative Gene Green,
Chairman of the Investigative Subcommittee
in the Matter of Representative Charles B. Rangel

On June 17, 2010, the Investigative Subcommittee adopted a Statement of Alleged Violation (SAV) alleging that, with respect to each of the 13 counts contained in the SAV, the Investigative Subcommittee found a “substantial reason to believe that a violation of the Code of Official Conduct, or of a law, rule, regulation, or other standard of conduct applicable to the performance of official duties or the discharge of official responsibilities by a Member . . . has occurred.” Following motions practice in connection with the SAV, Respondent submitted, on July 21, 2010, a document entitled “Respondent’s Answer and Defenses to Statement of Alleged Violation,” in which Respondent denied all counts alleged in the SAV and asserted numerous defenses.

Committee Rule 22(a)(1) permits a respondent “[w]ithin 30 days from the date of transmittal of a Statement of Alleged Violation” to “file with the investigative subcommittee an answer[.]” That same rule requires that a respondent’s answer to an SAV be made “in writing and under oath, signed by respondent and respondent’s counsel.” Respondent’s answer was due to be filed on July 19, 2010. The Investigative Subcommittee, at Respondent’s request, extended the period for submission of an answer until July 21, 2010.

On July 21, 2010, Respondent’s counsel submitted an eight-page document styled as “Respondent’s Answer and Defenses to Statement of Alleged Violation” While signed by both Respondent and his counsel, the July 21, 2010, submission was not signed under oath.

As a result, the Investigative Subcommittee determined that Respondent’s July 21, 2010, submission did not constitute an “answer” under Committee Rule 22(a)(1). Notwithstanding the deficiency in the July 21, 2010, submission, the Investigative Subcommittee provided Respondent with an opportunity to cure the defect in his submission. His counsel was notified, in writing, of the defect in your submission on July 21, 2010, and Respondent was given until 12:00 p.m. on July 22, 2010, to sign his July 21, 2010, submission under oath.

On July 22, 2010, Respondent’s counsel sent, at 12:37 p.m., a different 35-page submission. This submission also failed to contain a proper oath.

The Investigative Subcommittee determined that Respondent’s July 21, 2010, submission, which was never signed under oath, was not in the proper form, not timely, and, therefore, not in compliance with the requirements of Committee Rule 22(a).

By letter dated July 22, 2010, Respondent was notified of this determination and provided notice that the Committee considered his failure to file an answer in conformance with the requirements of Rule 22(a) as a denial of each count alleged in the SAV.

Following transmittal of the SAV, the Chair, after consulting with the Ranking Republican Member of the Adjudicatory Subcommittee, permitted Respondent to submit a written statement in response to the Statement of Alleged Violation. The Chair also invited the Chair and Ranking Republican Member of the Investigative Subcommittee to make a statement addressing that response.

As permitted by the Chair, Respondent filed a 32-page document styled as "Statement of Charles B. Rangel in Response to the Statement of Alleged Violation." Respondent's statement largely raises issues that were addressed by the Investigative Subcommittee in its Order on Respondent's Motion for Bill of Particulars and Memorandum in Support of Order and its Order on Respondent's Motion to Dismiss and Memorandum in Support of Order. The Investigative Subcommittee does find it appropriate to respond to certain procedural defenses that Respondent has asserted in his "First Defense." Those defenses are addressed below.

Respondent was provided a full and fair opportunity to respond

The Investigative Subcommittee provided Respondent with a full and fair opportunity to respond to the Statement of Alleged Violation and to present an adequate defense.

On May 25, 2010, the Investigative Subcommittee notified Respondent that it intended to adopt an SAV on June 17, 2010. Following execution of a non-disclosure agreement by Respondent and his counsel, a copy of the proposed SAV, along with the evidentiary record, was provided to Respondent on May 27, 2010. House and Standards Committee rules require that a respondent be provided a proposed SAV and the evidentiary record at least 10 days prior to the scheduled vote on the SAV. Respondent was provided these items 21 days prior to the scheduled vote – more than twice the amount of time required by House and Committee rules.

On June 17, 2010, the Investigative Subcommittee adopted the SAV. On that same date, the Chair of the Investigative Subcommittee, acting pursuant to Committee Rule 22(e)(2), entered an order setting forth deadlines for Respondent to file any motions (Order). In shortening certain deadlines, the Investigative Subcommittee took into consideration several factors. Included was the fact that Respondent had been provided a 40-page SAV, which was far more detailed than a typical SAV. Another consideration was the fact that Respondent had been provided a copy of the proposed SAV 21 days prior to the vote and more than twice the amount of time required by the rules. In addition, most of the evidentiary record had been provided to the Investigative Subcommittee by Respondent, and, no later than January 2010, Respondent had obtained copies of documents produced by certain third parties to the Investigative

Subcommittee. Respondent, accordingly, had access to much of the evidentiary record for several months before any motions or answer were due under the Order.

Also considered was the length of the investigation, including Respondent's repeated public statements regarding its length. These public statements were troubling to the Investigative Subcommittee, particularly in light of the fact that, in several instances, the actions of Respondent and his counsel caused significant delays. For example, on October 8, 2008, the Investigative Subcommittee made its first written request to Respondent for documents. The request had a return date of October 28, 2008. While Respondent did begin producing documents on that date, all of the responsive documents were not produced until December 11, 2008. In another instance, the Investigative Subcommittee requested documents from Respondent on April 15, 2010. Respondent, through his counsel, refused repeated requests for those documents, necessitating the need for service of a subpoena on Respondent. After the subpoena was served, the documents were produced on June 10, 2010. In several other instances, Respondent produced documents after the return date set by the Investigative Subcommittee.

Another event that caused a significant delay in the investigation was Respondent's assertion of certain privileges, set forth in a 40-page privilege log. The log was not produced until May 29, 2009. After the Investigative Subcommittee and Respondent reached an agreement that permitted subcommittee counsel to review certain documents, subcommittee counsel reviewed certain documents for which privileges had been asserted. Upon review of the documents, counsel determined that many of the claims of privilege were, in fact, not valid. A review of those materials led to the interview of additional witnesses, which could have been completed earlier but for Respondent's improper claims of privilege as to those documents.

The inquiry was further delayed pending receipt of a forensic accountant's report, which Respondent volunteered to produce. In September 2008, Respondent publicly announced his intention to hire a forensic accountant. Respondent issued a press release on November 13, 2008, stating that he had retained a forensic accounting firm to review his Financial Disclosure Statements and tax returns. The accountant's report was not sent to the Investigative Subcommittee until May 12, 2009, six months after Respondent's public statements. Respondent submitted amended Financial Disclosure Statements for the calendar years 1998 through 2007, as well as his original Financial Disclosure Statement for calendar year 2008, on August 12, 2009, almost one year after Respondent publicly pledged to correct his Financial Disclosure Statements.

The delays in the investigation caused by Respondent were a factor in the Investigative Subcommittee's determination that "special circumstances" existed under Committee Rule 22(e)(2). The Investigative Subcommittee's action in shortening certain deadlines was consistent with Committee rules, as well as Respondent's repeated public requests for the investigation to be completed.

In providing Respondent with a copy of the evidentiary record, the Investigative Subcommittee provided more evidence than required by Committee rules. For example, Committee Rule 26(c) requires the disclosure only of evidence that the subcommittee “intends to use to prove” the charges in the SAV. Committee rules permit testimony by deposition transcript in lieu of live witnesses “if the witness is unavailable.” As such, there is no intention to use any deposition transcripts in lieu of testimony (which is subject to change if a witness becomes unavailable), and no obligation to provide any transcripts. The Investigative Subcommittee, in a spirit of full disclosure, nonetheless provided Respondent an extensive number of transcripts.

Respondent has been provided exculpatory documents

Respondent asserts that the investigative subcommittee violated “the rule requiring that it furnish Congressman Rangel with all exculpatory evidence and has impaired Congressman Rangel’s ability to defend himself” by failing to produce a copy of a lease application for an apartment to be occupied by Steven Rangel which contains the handwritten notation “16M.” The Investigative Subcommittee did not produce the lease application for Steven Rangel referenced in Respondent’s Answer because the document is not exculpatory. Respondent has been charged with a non-conforming use of apartment 10U, a residential rent-stabilized apartment, for his campaign committees. The notation of “16M” on a lease application has no bearing on Respondent’s use of apartment 10U.

Even if this document was exculpatory, the Investigative Subcommittee’s failure to produce it has not “impaired” Respondent’s defense. Respondent already has referred to that document in a submission to the Investigative Subcommittee dated January 8, 2010. Since Respondent has already used the subject document, his argument that his defense has been “impaired” is spurious.

**Statement of Representative Jo Bonner
Ranking Member of the Investigative Subcommittee in the Matter of Charles B. Rangel**

Adjudicatory Subcommittee Meeting in the Matter of Charles B. Rangel

July 29, 2010

Thank you, Madam Chair, Ranking Member McCaul and members of the Adjudicatory Subcommittee.

By the very nature of this rare – but not without precedent – public meeting of this Subcommittee, there are naturally many questions that are out there... questions by other Members of Congress about what is happening to one of our colleagues and, I believe, more importantly, questions by the American people.

In the five minutes I have been given, allow me attempt to answer some of these questions.

First, there is no doubt that Congressman Charles Rangel has a compelling story – he was a private – as his autobiography says, “left to die on a battlefield in what is now North Korea.”

He earned the Purple Heart and Bronze Star for his bravery. He was a fatherless high school dropout who went from pushing a hand truck in the Garden District of New York City to becoming one of the most powerful – and well-liked – figures on Capitol Hill.

But Mr. Rangel’s life story is not why we are here today for in a very real way, every American has their own unique story to tell.

Instead, Congressman Green and I are here to present to this Subcommittee – and the American people – a summary of different story altogether.

We have a responsibility to submit evidence to this Adjudicatory Subcommittee that Mr. Rangel may have broken the Rules of the House and brought discredit to this body at a time when the American people have such little faith in our ability – as their elected Representatives - to do our job.

In fact – according to Article 1, Section 4 of the United States Constitution – it is the duty of the House to “punish its Members for disorderly behavior.”

As such, this is truly a sad day where no one – regardless of their partisan stripes – should rejoice.

I want to take another minute to explain how we got to where we are.

As has been noted, the investigation into Mr. Rangel’s activities has been ongoing for almost two years. These matters are serious and I believe the record will show were being looked into by the Ethics Committee at the time Mr. Rangel wrote the Committee and requested a formal review.

During the course of the investigation, Mr. Rangel was given multiple opportunities to settle this matter. Instead, he chose to move forward to this public trial phase.

Since the beginning of this investigation, the Full Committee has been led by three different Chairpersons and 2 different Ranking Members. On the Investigative Subcommittee – that today is presenting the Statement of Alleged Violation – we have been served by Mr. Green of Texas as Chair, while I served as Ranking Member.

The other members of this bipartisan Subcommittee were Mr. Scott of Virginia and Mr. Hastings of Washington State.

Madam Chair, I can say with certainty that each of us had every intention of completing this investigation before the end of 2008.

But in part due to additional evidence that was submitted, multiple delays in receiving information we requested and subpoenaed, and an extension on two separate occasions of the Investigative Subcommittee's jurisdiction because of new facts that came before the Subcommittee, this investigation concluded just last week.

Not everyone in this room - or watching this at home on TV - may know that the House Ethics Committee is the only truly-bipartisan Committee with an equal number of Democrats and Republicans.

5 Democrats and 5 Republicans sit on the Full Committee, in judgment of our peers.

And today there are 4 Democrats and 4 Republicans -- as has already been noted, none of whom volunteer for this duty – who sit on this Adjudicatory Subcommittee.

While at times some Members of the Investigative Subcommittee disagreed on some of the counts ultimately included in the Statement of Alleged Violation the record should note that all supporting evidence was transmitted to the Full Committee with the unanimous support of the bipartisan Investigative Subcommittee.

While my role as Ranking Member of the Investigative Subcommittee has now come to an end, I want to thank Mr. Green, Mr. Hastings, Mr. Scott and the Committee staff for their dedication and time devoted to this matter.

And whatever happens from this point forward I believe it is incumbent upon each of us to do our part – individually and collectively – to take a measured step in the direction of helping to restore the trust of the American people in this, “The People’s House” where we are all privileged to serve .

Thank you, Madam Chair.



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July 28, 2010

BY ELECTRONIC MAIL

R. Blake Chisam
Staff Director and Chief Counsel
Committee on Standards of Official Conduct
U.S. House of Representatives
HT-2, The Capitol
Washington, DC 20515

Re: *In the Matter of Representative Charles B. Rangel*

Dear Blake:

Enclosed please find the Statement of Charles B. Rangel in Response to the Statement of Alleged Violation ("Statement") and the exhibits thereto. Please notify us immediately if the Adjudicatory Subcommittee determines that the Statement is not in conformance with the Committee's Rules so that we can cure immediately any defects and ensure a timely filing.

We also ask you to confirm in writing that: (1) the Statement has been accepted by the Adjudicatory Subcommittee; and (2) the Statement shall be included in any report of the Adjudicatory Subcommittee or Standards Committee to the same extent as the Statement of Alleged Violation to which it responds.

Please feel free to call me if you have any questions.

Sincerely,

Leslie B. Kiernan

Encls.

UNITED STATES HOUSE OF REPRESENTATIVES
Committee on Standards of Official Conduct
Adjudicatory Subcommittee

In the Matter of

Representative Charles B. Rangel

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STATEMENT OF CHARLES B. RANGEL IN RESPONSE
TO THE STATEMENT OF ALLEGED VIOLATION¹

For forty years, Congressman Rangel has faithfully served the people of New York's Fifteenth District. He has at all times acted in his constituents' best interests and has brought them economic and educational opportunities, as exemplified by his tireless support for the City College of New York ("CCNY"). Congressman Rangel donated his official papers to CCNY, secured appropriations to support the College's academic program in public service, and promoted the program to education-minded philanthropists. The benefit Congressman Rangel received from this work was the satisfaction of fulfilling his obligations to his constituents. He did not profit economically, nor did he ever link his work for CCNY with matters before the Ways & Means Committee. The Statement of Alleged Violation ("SAV") in this case is deeply flawed in its factual premises and legal theories, not only with regard to CCNY, but also as to the other claims. The undisputed evidence in the record— assembled by the Investigative Subcommittee over its nearly two-year investigation—is that Congressman Rangel did not dispense any political favors, that he did not intentionally violate any law, rule or regulation, and that he did not misuse his public office for private gain.

¹ This Response has been prepared by counsel and is submitted pursuant to Standards Committee Rule 7(f).

I. CCNY: CONGRESSMAN RANGEL'S ACTIVITIES ON BEHALF OF CCNY'S RANGEL CENTER DID NOT VIOLATE HOUSE RULES.²

Congressman Rangel helped a public college in his Congressional district to establish and fund an academic program in public service for disadvantaged students. To support that effort, he agreed to donate his official papers, allowed the school to name the program in his honor and introduced college officials to potential donors. Congressman Rangel is hardly the only member of the Congressional leadership to engage in such activity. Senate Minority Leader McConnell, for example, has donated his official papers, lent his name and raised millions of dollars from corporate donors to launch the McConnell Center for Political Leadership at the University of Louisville; former House Judiciary Committee Chairman Peter Rodino donated his papers to Seton Hall Law School, where they are housed in the Peter W. Rodino, Jr. archives, a division of the Peter W. Rodino Law Library.³ Without pausing to consider, Congressman Rangel treated this effort as constituent service, in pursuit of not one, but two, important national priorities—providing educational opportunities for disadvantaged and minority students and promoting diversity in our nation's public service.

The charges in the SAV magnify an issue about the proper scope of Congressman Rangel's official duties into an attack on his integrity. The Congressman did not abuse his official position or enrich himself financially. He did not target for solicitation foundations, corporations or individuals with business before the Ways & Means Committee, nor did he offer or provide preferential treatment or favors to potential contributors. He received no prohibited benefit, direct or indirect, from his work on behalf of this program that violates the ethics rules.

² Congressman Rangel responds herein to paragraphs 1-10 and 23-92 of the SAV. Paragraphs 11-22 are omitted from this section and addressed in a separate section, as they pertain to Congressman Rangel's service as a trustee of the Ann S. Kheel Charitable Trust and not to the Rangel Center.

³ Senators Byrd, Lott and Helms are among the many Members of Congress to have established similar programs.

In retrospect he recognizes that the public would have been better served if he had consulted the Standards Committee staff in advance regarding his desire to help CCNY. If he mistakenly used the wrong letterhead or other modest resources in this worthy cause, the error was made in good faith.⁴

A. Congressman Rangel Has Consistently Supported Educational Programs like the Rangel Center as Part of His Official Responsibilities.

CCNY, located in the heart of Congressman Rangel's Congressional district, has a distinguished history of opening higher education to disadvantaged, minority and immigrant students. Congressman Rangel grew up four blocks from CCNY, is a lifelong resident of its Harlem neighborhood and has represented its Congressional district for forty years. As a high school dropout who completed his education through the G.I. Bill after the Korean War, the Congressman benefited from and enthusiastically advocates for educational opportunities for underserved students, particularly those designed to increase minority participation in public service.⁵

The idea for the Rangel Center originated with CCNY President Gregory Williams, following years of discussion with Congressman Rangel about "ways we could get more people of color involved in government service." Williams Tr. at 8-11 (CSOC.CBR.00017725-28). President Williams envisioned a Center for Public Service that would offer new undergraduate and master's degree programs, and would also house a conference center, library, and additional

⁴ Members traditionally exercise broad discretion to determine what activities lie within the scope of their official duties. See 123 Cong. Rec. 5900 (daily ed. Mar. 2, 1977) (statement of Rep. Hamilton) ("There are essentially no rules and regulations" that define what is appropriately an official expense. "It is left up to the Members."). The Standards Committee does not second-guess the reasonable judgments of a Member, made in good faith, that particular communications lie within his role as the people's representative. Statement of the Committee on Standards of Official Conduct Regarding Complaints Against Rep. Newt Gingrich, at 63 (Comm. Print Mar. 8, 1990) (The Ethics Committee "is particularly sensitive when its actions might be viewed as limiting a Member's ability to speak publicly on issues").

⁵ Long before CCNY founded the Rangel Center, the Congressman sponsored a two-year fellowship program operated jointly by Howard University and the U.S. State Department to promote the entrance of minorities in the Foreign Service. See http://www.howard.edu/rjb/rangelprogram_old.htm (last visited July 20, 2010).

programs to provide the training necessary to prepare young men and women for public service careers. *See* CSOC.CBR.00000291-317 (proposal to establish the Rangel Center). By naming the Center after Congressman Rangel and housing his official papers in its fledgling public service archive, CCNY hoped to enhance its ability to attract the necessary private and public funds to hire first-rate faculty and provide financial aid for needy students. *See* CSOC.CBR.00000311-14 (outlining initial budget elements). CCNY also planned to restore a vacant brownstone to be the Center's future home.

Congressman Rangel promoted the Rangel Center not only because of his longstanding personal commitment to creating opportunities for minority and economically disadvantaged students, but because diversifying the public service was an important official responsibility. He was simultaneously assisting a substantial institutional constituent, CCNY, which brings jobs to his district and has for generations made education available to people of limited means from Harlem and the surrounding area.

B. Congressman Rangel Did Not Target Persons with Business Before the Ways & Means Committee, nor Did He Offer or Extend Favorable Consideration in Official Matters to any Donor.

Section 7353 of Title 5 of the United States Code and related House ethics rules prohibit Members asking for anything of value from persons who seek official action from the House or have interests likely to be substantially affected by the performance of official duties. Subject to certain limitations, Members may, and many do, raise funds for tax-exempt non-profit educational and charitable organizations, so long as they do not receive a personal benefit or suggest that the donor will receive "favorable consideration in official matters." Ethics Manual at 348-49 ("As a general matter the Committee permits (without the need to seek prior Committee approval) Members . . . to solicit on behalf of [non-profit] organizations . . ."). These rules are intended to prevent Members from targeting solicitations to individuals or entities that

may feel obliged to make donations in order to protect their legislative interests or that may use charitable giving to influence a Member's official action.

Congressman Rangel's efforts on behalf of CCNY never targeted donors based on their legislative interests. Dalley Tr., Vol I., at 54 (CSOC.CBR. 00017590) (no effort to target people with Ways & Means business); *see also* Butler Tr., Vol. II, at 25 (CSOC.CBR.00027269) (testimony from CCNY's Vice President for Development and Institutional Advancement, who spearheaded fundraising for the Rangel Center, that neither the Congressman nor his staff ever discussed seeking donations from individuals or entities that might have business before the Ways & Means Committee). Instead, he wrote letters or reached out personally to foundations and business leaders with a demonstrated interest in educational philanthropy. At the direction of the Congressman's chief of staff, an unpaid fellow compiled from a Council on Foundations directory a mailing list of granting organizations with interests in education, public service or minority education.⁶ *See* Dalley Tr., Vol. I, at 44 (CSOC.CBR.00017580). Prior to sending the letters, the Congressman reviewed the list of potential addressees and believed—based on his familiarity with the range of matters before the Ways & Means Committee—that none of the recipients were seeking official action or were likely to be substantially affected by the performance of his official duties. Rangel Tr. at 33-34 (CSOC.CBR.00027449-50).⁷

It was not Congressman Rangel, but Robert Morgenthau, the longtime District Attorney of New York and also a strong supporter of CCNY, who contacted his good friend Eugene

⁶ The recipients included individuals with demonstrated commitments to education, without regard to their legislative interests, such as Ivan Seidenberg, Chairman and CEO of Verizon. From a working class family in New York, after high school, Mr. Seidenberg worked as a telephone lineman. Following military service in Vietnam, he returned to school and earned his degree from CCNY's parent, the City University of New York. He went on to attend business school at Pace University, to which he donated \$15 million. Mr. Seidenberg's rise from lineman to CEO and CUNY education made him a clear choice to receive a CCNY letter.

⁷ Vague allegations that potential contributors lobbied unspecified "members of the House" during an undefined "relevant period" about a laundry list of issues (SAV ¶¶ 89-92) indicate nothing about what Congressman Rangel knew at the time that he reviewed the mailing list.

Isenberg, CEO of Nabors Industries, about the Rangel Center. Mr. Morgenthau invited Congressman Rangel and CCNY's leadership to meet with Mr. Isenberg because he believed Mr. Isenberg's past generosity to educational institutions made him a natural supporter for the Rangel Center. Morgenthau Tr. at 9 (CSOC.CBR.00027842) (“[S]ince I had helped Isenberg in two of his prior educational ventures . . . I thought [the Rangel Center] was something that would interest him.”); *see also id.* at 14 (CSOC.CBR.00027847) (“Mr. Isenberg is very interested in the education of minorities.”). At the meeting arranged by Mr. Morgenthau, the participants discussed their shared interest in enabling underprivileged students to become leaders in public life. Morgenthau Tr. at 13 (CSOC.CBR.00027846); Isenberg Tr. at 11 (CSOC. CBR.00017332). There was no discussion at the meeting of any legislative matter affecting Mr. Isenberg or his company. Morgenthau Tr. at 15 (CSOC.CBR.00027848); Isenberg Tr. at 11 (CSOC.CBR.00017332); Rangel Tr. at 48 (CSOC.CBR.00027464); Butler Tr., Vol. II, at 36 (CSOC.CBR.00027280). Importantly, Congressman Rangel did not take part in the subsequent discussions between CCNY and Mr. Isenberg that resulted in a substantial gift to the Center. Butler Tr., Vol. II, at 59 (CSOC.CBR.00027303); Isenberg Tr. at 11-12 (CSOC.CBR.00017332-33).

The uncontroverted evidence is that Congressman Rangel never suggested that any donor to the Rangel Center would receive favorable consideration in legislative matters and never gave preferential treatment to any contributor. Every witness who was asked confirmed this for the Subcommittee:

- John L. Buckley, Majority Chief Tax Counsel of the Ways & Means Committee testified that Congressman Rangel kept the Rangel Center separate from his work with the Ways & Means Committee. Indeed, Mr. Buckley testified that he did not learn about the Rangel Center until a New York Times reporter called him about it. Buckley Tr. at 46 (CSOC.CBR.00018233). He also testified that Nabors Industries did not receive any special treatment from Congressman Rangel. *Id.* at

53-54 (CSOC.CBR.00018240-41).

- Janice Mays, Chief Counsel & Staff Director of the Ways & Means Committee testified that she knew of no special treatment of anyone in connection with the Committee's work, and that Congressman Rangel generally keeps his work with the Committee separate from his work with his district and constituents. Mays Tr. 13 (CSOC.CBR.00017944). She also testified that there was no connection between any Ways & Means legislation and any donation by AIG to the Rangel Center. *Id.* at 13, 53 (CSOC.CBR.00017944, CSOC.CBR.00017984).
- Mr. Isenberg testified that he never sought nor received any special consideration from Congressman Rangel because of his donation to CCNY. Isenberg Tr. at 13 (CSOC.CBR.00017334); *see also* Kies Tr. at 22 (CSOC.CBR.00018390) (same). They did not discuss legislative matters in the September 2006 meeting arranged by Mr. Morgenthau about the Center, and did not discuss the Center in their brief communications about potential legislation in February and June 2007. Isenberg Tr. at 30-31 (CSOC.CBR.00017351-52); Kies Tr. at 17-18, 24-25 (CSOC.CBR.00018385-86, CSOC.CBR.00018392-93); *see also* Morgenthau Tr. at 15 (CSOC.CBR.00027848).
- Susan Berresford, former President of the Ford Foundation, testified that in meetings with Congressman Rangel regarding the Rangel Center there was no discussion of legislative or policy issues. Berresford Tr. at 16 (CSOC.CBR.00019131).
- Rachelle Butler and Gregory Williams of CCNY testified that Congressman Rangel did not discuss any Congressional action or Ways & Means Committee business at any of the meetings they attended with potential donors concerning the Rangel Center, including the meeting with Eugene Isenberg. Butler Tr., Vol. II, at 27, 35-36, 61 (CSOC.CBR.00027271, CSOC.CBR.00027279-80, CSOC.CBR.00027305); Williams Tr. at 18, 22 (CSOC.CBR.00017735, CSOC.CBR.00017739).

Although the SAV says much about the jurisdiction of Congressman Rangel's Committees and identifies certain issues before them, it fails to cite a single instance in which the Congressman catered to the interests of an actual or potential donor to the Center or failed to act solely on the merits of a matter before him. Thus, it is clear that Mr. Isenberg's contribution to the Rangel Center did *not* affect the Congressman's action on a tax inversion provision in minimum wage legislation in 2007. In his testimony, John Buckley, Chief Tax Counsel to the Ways & Means Committee, confirmed that the inversion provision never came before

Congressman Rangel or the Ways & Means Committee. On February 1, 2007, nearly two weeks before Mr. Isenberg and his company's lobbyist first contacted Congressman Rangel concerning possible tax legislation, the Committee staff had already drafted a bill that made the subject irrelevant, and that bill had been introduced on February 9, three days before Congressman Rangel learned of Nabors Industries' interest in tax inversion.⁸ Ex. 1, Letter from John Buckley, Chief Tax Counsel, House Committee on Ways and Means, to Editors and Reporters, publicly released on Dec. 5, 2008 ("Buckley Ltr."); Buckley Tr. at 23-25 (CSOC.CBR. 00018210-12) (stating that the issue of tax inversion was never presented to Congressman Rangel); Mays Tr. at 25 (CSOC.CBR.00017956) ("Inversions were not discussed in our markup and weren't really discussed by the Members at all."). In fact, Congressman Rangel never gave Mr. Buckley any instructions regarding the inversion issue. Buckley Ltr. at 3; Buckley Tr. at 24-25 (CSOC.CBR.00018211-12) (Congressman Rangel's direction to Mr. Buckley was to work out a non-controversial bipartisan bill). In this and other matters, the record clearly establishes that Congressman Rangel kept his Ways & Means Committee business separate from his work on behalf of the Rangel Center.

C. Congressman Rangel Did Not Benefit Improperly from His Support for the Rangel Center.

The SAV's charge that Congressman Rangel received a gift or otherwise benefited improperly from money donated to CCNY or from the donation of his own official papers to

⁸ The minimum wage bill passed by the Senate would have retroactively increased taxes for companies that had incorporated offshore in 2002 and 2003, but maintained the majority of their operations in the United States, a process known as "inversion." The inversion provision was one of many revenue offsets included in the Senate bill to pay for corporate tax cuts. Because the House bill did not contain the corporate tax cuts favored by the Senate, it did not require such revenue offsets. Instead, at the direction of then-Chairman Rangel and Ranking Member McCrery, the Ways & Means staff had prepared a bipartisan, non-controversial bill, which had been introduced three days before Mr. Isenberg mentioned the matter to Congressman Rangel. SAV ¶ 157. The House bill contained nothing about inversion. H.R. 976, 110th Cong. (2007). The Senate Finance Committee staff decided not to raise the issue when the bill went to conference. As a result, the inversion tax provision never came before the House when the final bill was enacted into law on May 25, 2007 as Pub. L. No. 110-28.

CCNY is not supported by the law.

Count III relies on House ethics rules and 5 U.S.C. § 7353, which prohibit a Member from receiving a gift, defined as a “gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.” Count II is based on Clause 5 of the Code of Ethics for Government Service (“CEGS”), which provides that a public official should “never accept for himself or his family, favors or benefits that might be construed as influencing the performance of governmental duties.” As a matter of law, however, charitable contributions made to CCNY in connection with the Rangel Center cannot be construed as an improper favor or benefit to Congressman Rangel.

It is undisputed that every single charitable contribution in this case went to CCNY, a public educational institution, and *not* to the Congressman. The SAV charges that he benefited indirectly from contributions to CCNY for the Rangel Center because the Center preserved his legacy by naming the Center in his honor, providing an office for him, and storing and archiving his official papers. But these were not favors to Congressman Rangel; they were integral parts of the Center’s academic program, and CCNY, not Congressman Rangel, was the beneficiary.

It was plainly permissible under House ethics rules for Congressman Rangel to allow CCNY to name the Center for him. The House Ethics Manual expressly encourages Members “to lend their names to legitimate charitable enterprises and otherwise promote charitable goals.” Ethics Manual at 44 (internal quotations omitted); *see also* Ethics Manual at 347 (“Clause 11 of House Rule XXIII is not intended to restrict a Member’s . . . ability to lend one’s name in support of a private group.”). These rules reflect a recognition that the naming is not for the benefit of the Member, but, as here, for the benefit of the organization.

To the extent that the naming of the Center can be viewed as an indirect reputational

benefit to the Congressman, it is a benefit authorized by the House ethics rules. The Standards Committee's parameters for solicitations on behalf of charitable organizations recognize that indirect benefits may properly accrue to Members. Indeed, the prohibition extends only to direct benefits: "No *direct* personal benefits may result [from charitable solicitations] to the soliciting official." Ethics Manual at 348 (emphasis added). A Member is, however, expressly permitted to accept non-monetary forms of recognition of his public service, even though the honor has the incidental effect of enhancing his reputation. Ethics Manual at 66, 76.⁹ Whatever personal interest the Congressman may have in the "perpetuation of his legacy" (SAV ¶¶ 1, 189), contributions to a Center named in his honor do not violate CEGS or the gift rule.

The availability of an office at the Center similarly cannot as a matter of law be construed as a gift or favor to Congressman Rangel. First, its intended purpose was for the benefit of the students, to provide a place where they could meet with him as part of their academic program. Williams Tr. at 23 (CSOC.CBR.00017740). The undisputed testimony is that the Congressman did not seek such an office; it was proposed by CCNY. Butler Tr., Vol. II, at 28 (CSOC.CBR.00027272). Second, the undisputed testimony is that no office was actually set aside for his use and he will not receive it in the future because the idea was abandoned early on for space and funding reasons. *Id.*

The claim that the Congressman will benefit impermissibly from the archiving of his

⁹ Ethics Committee precedent establishes that for something to be a gift under House ethics rules or a "favor or benefit" under the CEGS, it must have some pecuniary benefit to the Member or his family. *See* H. Rep. 104-866 (Jan. 2, 1997), § IV.A.3. (free broadcasting of lectures in Rep. Gingrich's college course "did not constitute either a gift or a favor to Representative Gingrich within the meaning of House rules or applicable standards" because the benefit to Rep. Gingrich consisted only of publicity). Further, the Investigative Subcommittee's theory contradicts the plain meaning of the statute and the House gift rule. The use of the word "other" in the phrase "gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or *other* item having monetary value," plainly signifies that the preceding terms are examples of items having monetary value. It is a basic rule of statutory interpretation that the phrase "A, B, or any other C" means that "A is a subset of C." *United States v. Williams-Davis*, 90 F.3d 490, 509 (D.C. Cir. 1996); *see also* *Dong v. Smithsonian Inst.*, 125 F.3d 877, 880 (D.C. Cir. 1997); *United States v. Delgado*, 4 F.3d 780, 786 (9th Cir. 1993).

official papers rests on the flawed premise that CCNY is providing a service to him. But the evidence is that Congressman Rangel agreed to *donate* the papers to CCNY, a routine practice by Members of Congress.¹⁰ The Rangel papers are valuable property, which CCNY will archive not as a favor to Congressman Rangel but in order to preserve and maximize its value to the College. The Congressman will relinquish both the papers themselves and control over them.¹¹

Other Members of Congress have donated their papers and raised funds for institutions bearing their names under virtually identical circumstances:

- Senator Mitch McConnell raised funds from corporate donors—including Humana Foundation, Ashland Inc., RJR Nabisco, Toyota and military contractor United Defense Industries—to launch the McConnell Center for Political Leadership at the University of Louisville, together with the McConnell-Chao Archives, which employs an archivist paid more than the budget for CCNY’s archivist. Senator McConnell also secured an earmark for the building in which his archive is located. *See* University of Louisville video thanking Senator McConnell for his support for the University, available on YouTube at <http://www.youtube.com/watch?v=koqh1unTqf8> (last visited on July 20, 2010); *see also* www.youtube.com/watch?v=RzYii5tBe7Y (dedication of McConnell-Chao archives) (last visited on July 20, 2010).
- Senator Robert Byrd donated his papers to the Byrd Center for Legislative Studies at Shepard University in Sheperdstown, West Virginia. The Center includes archival research facilities, offices and classrooms. *See* www.byrdcenter.org (last visited on July 20, 2010).
- Senators Trent Lott and Jesse Helms established centers at universities during their respective tenure in Congress and participated in fundraising for them. Senator Lott appeared onstage at a Kennedy Center fundraiser that raised \$10

¹⁰ The Manuscript Division of the Library of Congress stores and archives the papers of innumerable federal officials bound by CEGS and the gift rule, including nine hundred Members of Congress. http://www.loc.gov/r/r/mss/mss_abt.html (last visited on July 19, 2010). We are unaware of any suggestion that the curation of the historically important documents donated by these officials should be treated as a personal benefit to the individual, rather than a service provided by the Library of Congress to the public. A comprehensive list of hundreds of congressional archives maintained at academic and other research institutions can be found at <http://www.archives.gov/legislative/repository-collections/name.html> (last visited on July 20, 2010).

¹¹ Moreover, the archivist will be a Rangel post-doctoral fellow—a student pursuing an advanced degree, not a professional librarian. *See* CSOC.CBR.00000300. The archivist will “provide assistance to the other scholars, CCNY students, and the Harlem community, while pursuing his/her own research in the papers.” CSOC.CBR.00000300. Thus, the position provides much needed financial support for a post-doctoral student with an academic interest in the subject matter, as well as broader educational benefits to the scholarly community.

million from corporate donors for one of the centers named for him. The center named for Senator Helms had a working office that was designated for his use after retirement, in addition to a replica of his office in the Dirksen Building.

We provide these examples, not as part of an “everyone does it” defense, but rather to demonstrate that these activities have never been regarded as creating an improper benefit to a Member.

The House conclusively determined in 2007 that funds for the Rangel Center did not provide an improper financial benefit to Congressman Rangel when it approved an appropriation for the Center. That decision forecloses these ethics charges. In an unsuccessful effort to eliminate a \$1.9 million earmark for the Rangel Center, Congressman John Campbell of California read from a brochure describing the role of the archivist/librarian to “organize, index and preserve for posterity all documents, photographs and memorabilia relating to Congressman Rangel’s career,” and the office that CCNY contemplated providing. *See* 153 Cong. Rec. H8133 (daily ed. July 19, 2007). Speaking in support of the appropriation, Congressman Rangel described the Center’s public purpose and his role in it, including his participation in fundraising. After floor debate on the issue, 316 Members voted in favor of the earmark. 153 Cong. Rec. H8133-35 (debate); H8163-64 (recorded vote) (daily ed. July 19, 2007). The overwhelming majority of Members thus concluded correctly that neither the archivist nor the office improperly benefited the Congressman or gave him an interest in financial support for the Center; such an interest would have rendered the earmark improper and required the Members to vote against it. House Rule XXIII, clause 17; Ethics Manual at 185, 239 (earmark prohibited if Member or spouse has a pecuniary interest, but is permitted notwithstanding “remote, inconsequential, or

speculative interests”).¹²

And if, as the House plainly concluded in 2007, Congressman Rangel will not receive anything of value from CCNY by virtue of the archiving of his official papers (or the since-abandoned proposal for him to have an office at the Center), then he will not receive an “indirect gift” (SAV ¶ 190) from the charitable contributions that CCNY will use to fund that and other Center expenses. The Rangel Center is a *bona fide* academic program undertaken by CCNY to meet a critical social and educational need, not a vanity project for the Congressman, as the SAV implies, and CCNY is not, as the SAV alleges, a conduit for gifts to the Congressman. Whatever reservation the Subcommittee may have about Congressman Rangel’s role in fundraising is properly analyzed as a solicitation issue, and not transmuted into a gift issue by unprecedented legal alchemy.

D. Congressman Rangel Did Not Violate Rules Concerning the Use of Official Resources.

Consistent with House ethics rules that permit Members to fundraise for charitable organizations,¹³ the crux of Counts VII and VIII of the SAV is merely that the Congressman used the wrong letterhead, copying paper, office equipment, and the like. But for the inadvertent use of these resources, the charges recognize that there was nothing inherently wrong in his activities on behalf of the Rangel Center. The work related to a charitable endeavor on behalf of

¹² The plethora of earmarks for projects named for Members reflects the recognition that the intangible reputational benefit of such honors is too remote, inconsequential and speculative to give rise to ethics concerns. Recent earmarks for educational institutions have supported the Robert C. Byrd National Technology Transfer Center at Wheeling Jesuit University, the Robert C. Byrd Technology Center at Alderson-Broaddus College, Pat Roberts Hall at Kansas State University, the Harkin Grants program for local school remodeling in Iowa, the Shelby Engineering and Computing Sciences building at the University of South Alabama, and the Thad R. Cochran Marine Aquaculture Center at the University of Southern Mississippi.

¹³ The general ban on solicitation contains a broad exception for tax-exempt non-profit, educational and charitable organizations, on behalf of which Members may raise funds without prior Committee approval, provided they do not use official resources, receive a personal benefit, or suggest that the donor will receive “favorable consideration in official matters.” Ethics Manual at 348-49 (“As a general matter the Committee permits (without the need to seek prior Committee approval) Members . . . to solicit on behalf of [non-profit] organizations . . .”).

an important public institution in Congressman Rangel's district and the resources used were modest at best.

With respect to staff time, binding Ethics Committee precedent establishes as a matter of law that no ethics violation occurs unless the staff's unofficial activities interfere with the performance of their official duties. Thus, the Committee dismissed a complaint that Speaker Newt Gingrich improperly used the services of his congressional staff in writing one of his books. Although staff members had worked on the book, the Committee concluded that no violation took place because there was no evidence that this work caused them to neglect their official duties. *See* Statement of the Committee on Standards of Official Conduct Regarding Complaints Against Rep. Newt Gingrich, at 40 (Comm. Print Mar. 8, 1990) (“[D]ue to the irregular time frames in which the Congress operates, it is unrealistic to impose conventional work hours and rules on Congressional employees. . . . As long as employees complete those official duties required by the Member and for which they are compensated from public funds, they are generally free to engage in personal, campaign or other nonofficial activities.”).

As in the *Gingrich* matter, nothing in the record here indicates that the modest time spent on activities related to the Rangel Center¹⁴ interfered with any staff members' performance of their official duties. Furthermore, the work was done by an unpaid fellow, Dalley Tr., Vol. I, at 44 (CSOC.CBR.00017580), and had no effect on the office budget, the predicate for the claim that official resources were misused. SAV ¶¶ 210-14 (alleging misuse of the “Member's Representational Allowance,” the office budget for staff, equipment and supplies, which is reserved solely for official expenses). There is similarly no evidence of what telephone, email or office equipment was utilized in connection with such activities. If Congressman Rangel used

¹⁴ As Congressman Rangel testified, he spent very little personal time on this matter and believes the same is true of his staff. Rangel Tr. at 16-17, 63-64 (CSOC.CBR.00027431-32, CSOC.CBR.00027479-80).

the wrong resources in support of CCNY, the resources involved were modest, the policies underlying the House rules were upheld, and the goal of increasing minority representation in public service was well-meaning and praiseworthy.

E. Congressman Rangel Did Not Intentionally Misuse the Frank in Violation of 18 U.S.C. § 1719.

Section 1719 of Title 18 of the U.S. Code prohibits the use of the frank to “avoid the payment of postage.” The statute by its very terms requires a showing that the franking privilege was used for the specific purpose of avoiding payment of postage. The user’s intent is critical because merely mistaken use or misuse on a good faith belief that the mailing is official, the most that happened in this case, do not constitute violations of this statute. Under generally accepted principles of law, intent and knowledge cannot be read out of a provision of Title 18:

The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.

Morissette v. United States, 342 U.S. 246, 250 (1952).

Count V alleges only that Congressman Rangel “used his frank on materials that were not official business.” SAV ¶ 201. There is no allegation that he did so in order to avoid paying postage that was legitimately due, and the record contains no evidence whatsoever to suggest such a specific intention. To the contrary, the Congressman and his staff believed in good faith that mailings concerning the Rangel Center fell within their official duties. *See, e.g.*, Dalley Tr., Vol. I, 51 (CSOC.CBR.00017587) (“[W]e thought of this as a legitimate use of the letterhead.”); Rangel Tr. 22-23 (CSOC.CBR.00027438-39) (“I considered [sending the letters out] an official part of my responsibility.”). They used the frank because they believed that doing so was proper, not improperly to avoid paying required postage. Accordingly, the SAV

does not allege, and the Subcommittee cannot prove, that Congressman Rangel violated 18 U.S.C. § 1719.

II. ANN S. KHEEL CHARITABLE TRUST: THE DONATIONS TO CCNY FOR THE ANN S. KHEEL SCHOLARSHIPS DID NOT BENEFIT THE RANGEL CENTER OR CONGRESSMAN RANGEL.

Congressman Rangel rejects the allegation that he benefited from the charitable activities of the Ann S. Kheel Charitable Trust (“Trust”), of which he serves as a trustee. The SAV suggests that the establishment by the Trust of a scholarship program at CCNY named for Mrs. Kheel somehow constituted “self-dealing” by Congressman Rangel. SAV ¶¶ 11-21. That theory is without any factual basis—undisputed evidence establishes that the gifts made by the Trust to CCNY for the Ann S. Kheel Scholars Program were neither directed to, nor spent on, the Rangel Center.

Ann Kheel, who died in 2003, devoted her life to civic activities in support of racial equality and opportunities for the disadvantaged and was deeply engaged in efforts to improve the lives of others, including through education. *See* Ex. 2 at ¶ 2 (Decl. of Ellen Jacobs, Mrs. Kheel’s daughter and Executive Director of the Trust). To honor Mrs. Kheel’s memory, her husband, Theodore Kheel, established the Trust to provide assistance to organizations that are dedicated to improving the lives of disadvantaged New Yorkers. *Id.* Congressman Rangel was a lifelong friend of Ann and Ted Kheel, and he has been honored to chair the Board of Trustees of the Trust. *See id.* at ¶ 4.

In December 2004, CCNY submitted a proposal to the Trust to create the Ann S. Kheel Scholars Program at CCNY. *See* CSOC.CBR.00009592-605. As envisioned by CCNY, the Program would provide scholarships to CCNY applicants “who demonstrate need, engage in public service to disadvantaged communities, make satisfactory progress, and maintain the College’s required GPA throughout the four years.” *See id.* at CSOC.CBR.00009600. The

trustees considered the proposal and approved a \$440,000 multi-year commitment program for the program. Ex. 2 at ¶ 7.¹⁵

Before the trustees approved the contribution to CCNY, Congressman Rangel fully disclosed his connection to the Rangel Center and urged that any scholarship program approved by the Trust be independent of it. May 31, 2005 Minutes (CSOC.CBR.00009668-70). Accordingly, the Ann Kheel Scholarships are available to students at any of CCNY's programs or divisions, without regard to their affiliation with the Rangel Center. *See, e.g.*, June 3, 2005 Trust Minutes (CSOC.CBR.00009690-91). No Trust funds were directed for the Rangel Center, and no Trust donation has funded anyone associated with the Center. *See* Butler Tr., Vol. I, at 23-24 (CSOC.CBR.00027234-35) ("Q: And have any of the [Ann Kheel] grant moneys been allocated or used or appropriated to the Rangel Center? A: No."); Sept. 26, 2008 E-mail from Theodore Kheel to Ellen Jacobs (CSOC.CBR.00009755); Ex. 2 at ¶ 8. The only benefit that Congressman Rangel has derived from his service as a trustee is the personal satisfaction that Ann Kheel's values are being passed down to students who share her commitment to serving the community. Ex. 2 at ¶¶ 9-10 (Congressman Rangel did not receive any economic benefit from the establishment of the Ann S. Kheel Scholarship Program). The evidence contradicts any suggestion that he received any other benefit or that he used his position as a trustee to funnel support to the Rangel Center.

III. FINANCIAL DISCLOSURE STATEMENTS AND AMENDMENTS: RESPONDENT ACTED PROMPTLY TO CORRECT UNINTENTIONAL MISTAKES.

Nearly two years ago, Congressman Rangel acknowledged mistakes in his Financial Disclosures Statements relating to the financing of his Punta Cana unit. Having become aware

¹⁵ The Trust has also funded scholarships at Hunter College and the National Urban League. Ex. 2 at ¶ 3.

of these errors, he publicly committed to undertake a review of prior Financial Disclosure Statements, to identify and correct any other, unrelated errors, for the sole purpose of ensuring compliance with House ethics standards. Thus, it was Congressman Rangel who alerted the Standards Committee to the very mistakes with which he is now charged, and which he corrected nearly one year ago in comprehensive amendments.

Even before the Investigative Subcommittee was formed at his request, the Congressman promised publicly to hire a forensic accountant to review his past Financial Disclosure Statements and to make whatever amendments this voluntary review showed to be necessary. Sept. 14, 2008 Press Statement. Preliminary drafts of the amendments prepared by the accountant were provided to Committee staff for review and comment in July 2009, and the staff's input was incorporated into the amended Financial Disclosure Statements filed on August 12, 2009.

In retrospect, Congressman Rangel did not devote sufficient personal attention to the preparation of his original annual financial disclosures. *See* Rangel Tr. at 98 (CSOC.CBR.00027514). Instead, he relied upon experienced staff, in particular his former Chief of Staff, George Dalley, to complete them. Rangel Tr. at 97 (CSOC.CBR.00027513). Mr. Dalley is a Columbia Law School graduate and experienced Hill staffer who served in various capacities with Respondent for nearly 30 years, until his retirement in June 2009. Respondent believed that Mr. Dalley had all of the information that he needed to complete the Financial Disclosure Statements. Rangel Tr. at 100 (CSOC.CBR.00027516). Mr. Dalley confirmed to the Investigative Subcommittee that he prepared the Financial Disclosure Statements, was "responsible for collecting the information" and assembled it principally from the Congressman's files and from Mrs. Rangel, who handled the family's financial affairs and

maintained their financial records. Dalley Tr., Vol. I, at 8 (CSOC.CBR.00017544). The process was flawed, and it resulted in incomplete reporting. The extraordinary measures voluntarily undertaken by the Congressman attest to his sincere regret, good faith and acceptance of responsibility for the mistakes that were made in his financial disclosures.

Congressman Rangel does, however, take issue with two allegations in the SAV relating to his amended financial disclosures: paragraph 125, alleging that he should have disclosed the forgiveness of mortgage interest on his Punta Cana unit, and paragraph 142, describing as a violation the inadvertent omission from the 2008 Statement of his service on the Board of the Ann Kheel Trust. As to the former, the Congressman's counsel addressed the issue with the staff on more than one occasion, providing Committee staff with the views of the Congressman's accountant on the issue. Neither then, nor in reviewing the draft amendments, did the staff suggest that they disagreed with the expert's analysis or that the information should be included in the amendments.¹⁶ As to the latter, as soon as Congressman Rangel learned of the inadvertent mistake in the 2008 Statement, his counsel vetted with the staff the Congressman's intention to defer amending the disclosure solely because of the pendency of this proceeding. *See* Rangel Tr. at 233 (CSOC.CBR.00027649) (Committee counsel's confirmation of these conversations). The staff expressed no objection and made no suggestion that doing so would violate the ethics rules. In both cases, the Subcommittee's charge is thus inconsistent with the Congressman's consultations with the Committee's staff. At the very least, the Congressman should have been given notice of the staff's concerns and an opportunity to correct the 2008 filing prior to being charged with an ethics violation. *See* Ethics Manual p. 264.

¹⁶ *See, e.g.,* internal Committee note *available at* <http://www.scribd.com/doc/23242405/Tiahr-Ethics-Investigation#> (last visited July 20, 2010) (showing that the staff had reviewed the draft amendments and concluding that the "drafts appear[ed] in good shape").

IV. CONGRESSMAN RANGEL HAS FULLY COMPLIED WITH HIS TAX OBLIGATIONS.

Congressman Rangel acknowledged publicly, prior to the establishment of the Investigative Subcommittee, that his tax returns omitted rental income derived from his investment in the Punta Cana resort located in the Dominican Republic and that he had filed amendments and paid additional taxes. Congressman Rangel has done everything within his power to fulfill his legal obligations in this regard, and to the best of his knowledge, nothing further is required.

V. LENOX TERRACE: THE USE OF APARTMENT 10U AS A CAMPAIGN OFFICE WAS NOT A PERSONAL BENEFIT OR FAVOR TO CONGRESSMAN RANGEL.

The owner of Lenox Terrace leased Apartment 10U to Congressman Rangel for use as a campaign office not as a favor to him, but rather to obtain a paying tenant for a long-vacant apartment. The campaign always paid the maximum rent allowed by law. Experts consulted by the Investigative Subcommittee and who are employed by the New York state agency that administers the rent stabilization laws testified that non-residential use of the apartment was permitted under those laws and did not affect the rent ceilings. The Congressman received no special benefits or favors from his landlord, and he took no official action on behalf of the landlord that was, or even appeared to be, influenced by the lease of Apartment 10U. Accordingly, Respondent did not violate Clause 5 of the Code of Ethics for Government Service. *See* Code of Ethics for Government Service, cl. 5 (violation requires acceptance of a favor or benefit “under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties”).

Since 1989, Congressman Rangel and his wife have made their home in Lenox Terrace, an apartment complex in the heart of Harlem. In 1996, when the Congressman leased Apartment

10U as a fundraising office for his campaign, the un-air-conditioned and unrenovated unit had been vacant for several months, and the building had a 20 percent vacancy rate and was experiencing cash flow problems. *See* CSOC.CBR.00029357-58. The landlord's policy was to lease units on a first-come, first-served basis. *See* Simon Tr., Vol. I, at 26 (CSOC.CBR.00016542) ("It is usually first come, first served . . . [i]f you are there first to sign the lease and deliver your check, you would get the apartment."). Every witness associated with the landlord testified that at the inception of the lease for Apartment 10U, and for many years thereafter, ability to pay was essentially the landlord's only consideration. *See* Griffel Tr. at 38, 47, 52 (CSOC.CBR.00017785, CSOC.CBR.00017794, CSOC.CBR.00017799); Simon Tr., Vol. I, at 78-79 (CSOC.CBR. 00016594-95). There is no evidence that Congressman Rangel's status as a public official entered into the landlord's decision to lease a rent-stabilized unit to him.

The 10U lease was not a special concession to Congressman Rangel, as the campaign always paid the maximum rent permitted by law for the apartment. *See* Simon Tr., Vol. I, at 51 (CSOC.CBR.00016567) (Congressman Rangel "always paid the maximum lawful rent for the apartments he has leased in the Lenox Terrace."). Gerald Garfinkle, a New York State Housing official called by the Committee as an expert on rent-stabilization law, confirmed based on publicly available records that the maximum legal rent was paid each year. Garfinkle and Melnitsky Tr. at 36 (CSOC.CBR.00017701) ("Congressman Rangel was paying the same rent increases that any rent stabilized tenant would pay."). According to the former Chief Operating Officer of the landlord and its management company, a landlord is indifferent to the use of a unit, provided that the tenant pays the maximum rent and the use is not disruptive. *See generally* Rubler Tr. at 37-39 (CSOC.CBR.00018482-84); *see also* Simon Tr., Vol. I, at 78-79 (CSOC.CBR.00016594-95).

The record establishes that the landlord understood that Apartment 10U was being used as a campaign office, and not for residential purposes:

1. The landlord knew that the Rangels resided on the 16th floor of the building, where they had lived since 1988;
2. The rent for Apartment 10U was paid with checks issued by Congressman Rangel's campaign finance committee or leadership PAC, rather than the personal checks by which Congressman Rangel or his wife paid rent for their living units. Capel Tr., Vol. I, at 52 (CSOC.CBR.00018178); Swett Tr. at 27-28 (CSOC.CBR.00019171-72). As a matter of law, the repeated acceptance of those rent checks established the landlord's agreement to the use of Apartment 10U as the campaign's office. *See, e.g., Rose v. Spa Realty Assoc.*, 366 N.E.2d 1279, 1280-82, 397 N.Y.S.2d 922, 924-25 (1977); *see also* Simon Tr., Vol. I, at 79-81 (CSOC.CBR.00016595-97) (staff is expected to inquire if payor on rent checks suggests that unit is being used other than as expected);
3. The landlord approved in advance changes designed to outfit the unit as an office, including the addition of multiple phone lines and installation of built-in desks and shelves. *See* Soundias Tr. at 20 (CSOC.CBR.00019558).
4. The campaign staff regularly interacted with the landlord's building services and management personnel. Swett Tr. at 22-24 (CSOC.CBR.00019166-68); Rankin Tr., Vol. I, at 24-25 (CSOC.CBR.00017046-47); Soundias Tr. at 20-23 (CSOC.CBR.00019558-61);
5. The campaign committee received mail and deliveries at this location. Swett Tr. at 15-16 (CSOC.CBR.00019159-60);
6. The use of Apartment 10U as a campaign office was publicly disclosed in the Congressman's Federal Election Commission reports throughout the period. *See, e.g.,* 1996 and 1997 Year-End Rangel for Congress FEC Reports, *available at* www.fec.gov/disclosure.shtml (last visited on July 20, 2010); and
7. Peter Soundias, the Assistant Superintendent at Lenox Terrace for 27 years, testified that it was common knowledge in the Lenox Terrace community that Apartment 10U was a campaign office and that he saw the staff frequently. Soundias Tr. at 17-18, 21-23 (CSOC.CBR. 00019555-56, CSOC.CBR.00019559-61).

The original lease recited that Apartment 10U was to be used "for living purposes only" (SAV ¶ 153) not because the landlord misunderstood the intended use of the apartment, but because the rental agent as a matter of routine used the company's pre-printed standard lease

form. Indeed, witness after witness confirmed to the Subcommittee that they knew well before 2006 that the unit was being used by the campaign, yet the renewal lease executed that year nevertheless recites that it is subject to the prior terms and conditions. *See, e.g.*, CBR001500-01 (2006 renewal lease); Rankin Tr., Vol. I, at 22 (CSOC.CBR.00017044); Soundias Tr. at 17-18, 21-23 (CSOC.CBR.00019555-56, CSOC.CBR.00019559-61). The landlord plainly ratified the non-residential use of the apartment by renewing the lease on multiple occasions.

Congressman Rangel did not, as the SAV implies at paragraph 150, misrepresent in an application for Apartment 10U that his son Steven would occupy the apartment. Nothing in the application references Apartment 10U. *See* Application (CSOC.CBR.00004821) (line for “Apartment” on applicant form, which was “for office use only,” is blank). The SAV omits the fact that the identical application appears in the landlord’s file for Apartment 16M, except that this copy has a handwritten notation “for Apt. 16M,” indicating that the Congressman submitted it in anticipation that his son would rent that unit. Ex. 3 (copy of application with handwritten notation). Steven Rangel discussed with his parents the possibility of renting Apartment 16M (S. Rangel Tr. at 10-11 (CSOC.CBR. 00019018-19)), a studio adjacent to his parents’ apartment, and the Rangels ultimately rented that unit to expand their living quarters while Steven attended law school and lived at home. Since Steven never considered or discussed the possibility of renting Apartment 10U, S. Rangel Tr. at 40-41 (CSOC.CBR.00019048-49), it appears that a copy of an application for Apartment 16M was simply misfiled.

Nor were the renewals of the 10U lease a favor to Congressman Rangel. Although a landlord is not legally required to renew a non-residential lease at the end of its term, the landlord is free to do so as a matter of its business judgment. Garfinkle and Melnitsky Tr. at 11 (CSOC.CBR.00017676). At Lenox Terrace, the landlord accepted subleases (even, from time to

time, unauthorized subleases that violated the lease) when in its economic interest to do so. *See* Simon Tr., Vol. I, at 71, 94-95 (CSOC.CBR.00016587, CSOC.CBR.00016610-11); Griffel Tr. at 38 (CSOC.CBR.00017785); *see also* Rubler Tr. at 37-40 (CSOC.CBR.00018482-85). (unauthorized commercial use of residential apartment acceptable to landlord if non-disruptive tenant pays full legal rent). Ousting a tenant paying the maximum lawful rent makes economic sense only if the landlord can charge the next tenant substantially more by renovating the unit. Lenox Terrace’s “very expensive renovation program” required the landlord to invest “a lot of money up front,” on the order of \$50,000, with an uncertain return on that investment. Simon Tr., Vol. I, at 49 (CSOC.CBR.00016565). Thus, business reasons dictate whether and when a landlord elects to dispossess a reliable tenant in order to renovate the unit. Simon Tr., Vol. I, at 51 (CSOC.CBR.00016567) (renovation decisions depend on market conditions, existing inventory and schedule of other renovations). In addition, this landlord generally focused its legal action against tenants who sublet their apartments for more than the stabilized rent and secretly pocketed the difference. *See* Simon Tr., Vol. I, at 92-93 (CSOC.CBR.00016608-09). But Apartment 10U was not an illegal sublet—the landlord had accepted its non-residential use—and the tenant was not secretly pocketing more rent than it was paying under the lease. *See* Capel Tr., Vol. II, at 98-99 (CSOC.CBR.00027406-07) (director of Rangel’s district office did not consider 10U lease like an illegal sublet). Thus, the fact that the landlord declined to renew the leases of some tenants (SAV ¶ 160) does not prove that it renewed the lease for Apartment 10U because Congressman Rangel was a public official.

Nor did Congressman Rangel receive any preferential treatment from the landlord because his name appeared on a “special handling list” of prominent residents, as paragraph 162 of the SAV implies. This allegation ignores the undisputed testimony in the record that:

1. None of the residents, including Congressman Rangel, were informed that their names appeared on such a list. *See* Simon Tr., Vol. II, at 20 (CSOC.CBR.00016637); Rankin Tr., Vol. II, at 17 (CSOC.CBR.00017100);
2. The list was created for the purpose of identifying prominent tenants to ensure that the staff treated them courteously. *See* Soundias Tr. at 10 (CSOC.CBR.00019548) (list was to let the staff know “don’t piss them off”);
3. The only courtesy extended to tenants on the list was the courtesy of a phone call, rather than written notice, if their rent checks were not received when due. Rankin Tr., Vol. II, at 15-17 (CSOC.CBR.00017098-100). *See generally* Simon Tr., Vol. II, at 14-15, 19-20 (CSOC.CBR.00016631-32, CSOC.CBR.00016636-37); Keene Tr. at 12-13 (CSOC.CBR.00017188-89); Rankin Tr., Vol. II, at 13-18 (CSOC.CBR.00017096-101).

Indeed, nine separate witnesses associated with the landlord or its management company testified that to their knowledge, Congressman Rangel never asked for special treatment:

- James Booker, Lenox Terrace Consultant, confirmed that the Rangels went through the same procedures as all other tenants. Booker Tr. at 10 (CSOC.CBR.00027138).
- Melissa Brown, Vice President of Residential Sales & Leasing for the Olnick Organization, owners of Lenox Terrace, said that she was never given any instructions to treat Congressman Rangel differently than anyone else. Brown Tr. at 23 (CSOC.CBR.00018437).
- Jennifer Filipelli, Operations Controller for Hampton Management, the management company, testified that Congressman Rangel was not treated “any differently” than any other tenant. Filippelli Tr., Vol. I, at 22 (CSOC.CBR.00018093).
- Harold Griffel, former Lenox Terrace Controller, stated that Congressman Rangel was accorded “no special privileges.” Griffel Tr. at 7, 9, 67-68 (CSOC.CBR.00017754, CSOC.CBR.00017756, CSOC.CBR.00017814-15) (“I didn’t give him any special privileges.”).
- Dion Keene, Lenox Terrace General Manager, affirmed that Congressman Rangel and Mrs. Rangel were not given any special treatment or treated differently than any other tenants. Keene Tr. at 9-13, 16 (CSOC.CBR.00017185-89, CSOC.CBR.00017192).
- Darryl Rankin, Vice President of the Residential Division for Hampton Management and former Lenox Terrace General Manager, said that the Rangels were treated the same as other tenants. Rankin Tr., Vol. II, at 63, 65, 68

(CSOC.CBR.00017146, CSOC.CBR.00017148, CSOC.CBR.00017151).

- Bruce S. Simon, President of the Olnick Organization, confirmed that no one has ever suggested that Congressman Rangel be given special treatment. Simon Tr., Vol. II, at 38-39 (CSOC.CBR.00016655-56).
- Peter Soundias, Assistant Superintendant of Lenox Terrace, said that he was provided no special instructions on how to treat the Rangels and that the Rangels followed the same procedures as everyone else in the building. Soundias Tr. at 6-7, 10-11 (CSOC.CBR.00019544-45, CSOC.CBR.00019548-49).
- Deborah Thompson, Lenox Terrace Leasing Agent, avowed that she was never given any instructions to treat the Rangels differently from anyone else. Thompson Tr. at 42-43 (CSOC.CBR.00019371-725).

Not a single witness testified that Congressman Rangel ever asked him or her for special treatment.

Paragraphs 163-67 of the SAV hint, but do not allege, that Congressman Rangel took official action for the benefit of the landlord. Both as alleged and as shown by the evidence, these contacts with the landlord were completely innocuous. *First*, Congressman Rangel's district director "worked with" Lenox Terrace management to resolve complaints from constituents who were the subject of eviction action. SAV ¶¶ 163-64. The testimony, however, stated clearly that the evictions were not unique to Lenox Terrace and identified only a single instance involving a Lenox Terrace tenant, whom the staff director declined to help because the sublet was clearly unauthorized. Capel Tr., Vol. II, at 39-43 (CSOC.CBR.00027347-51). There is no evidence that Congressman Rangel himself knew about this particular tenant. *Second*, with respect to the alleged rent strike (SAV ¶¶ 164-65), the record contains no evidence of any action by the Congressman, and does not even establish the subject of the tenants' complaints. Capel Tr., Vol. II, at 39-41 (CSOC.CBR.00027347-49). *Third*, paragraph 167 alleges that Congressman Rangel met with executives of Lenox Terrace's owner about proposed development plans. The record establishes that the presentation was merely informational, the

same briefing that was provided to groups of tenants, various community groups and other public officials. Rubler Tr. at 53-54 (CSOC.CBR.00018498-99). There is no evidence—or even an allegation—that Congressman Rangel took any action in response, was asked to favor, or even appeared to favor, the landlord in any official action. There is no basis to suggest that the lease of Apartment 10U in any way influenced the Congressman’s official acts.

VI. SPECIFIC DEFENSES

FIRST DEFENSE

The Investigative Subcommittee has impaired Congressman Rangel’s ability to present an adequate defense in violation of Committee Rule 22(e), Congressman Rangel’s rights under the due process clause of the Fifth Amendment to the U.S. Constitution and principles of fundamental fairness. These violations include, but are not limited to, the following:

1. The Investigative Subcommittee entered a scheduling order on June 17, 2010 shortening the time for Congressman Rangel to file motions and his Answer without providing Congressman Rangel with notice or an opportunity to be heard. The Order failed to identify the “special circumstances” that purportedly justified denying Congressman Rangel the full time allowed by the rules in which to prepare his motions and Answer, and there were none.

2. The evidentiary record in this matter was provided to Congressman Rangel in a manner that substantially impaired his ability to prepare his defense. After devoting 21 months to its investigation, the Investigative Subcommittee allowed Congressman Rangel inadequate time to review the 51 witness transcripts and thousands of pages of documents that were presented in a scrambled and disorganized manner.

Although the Investigative Subcommittee compiled and numbered the exhibits for use when questioning witnesses, those numbered exhibits have not been provided to Congressman Rangel. Thus, unless a document is described in great detail in the transcripts—which is rarely

the case—the reader is left to guess at the document the witness is addressing. Even when the document’s identity can be ascertained, the reader must nevertheless conduct a search of every document in every unnamed file folder to locate it. Consequently, without the numbered exhibits, the testimony is not complete. As a result, the full record has not been provided to Congressman Rangel, precluding the Investigative Subcommittee from relying on any testimony relating to any exhibit. Committee Rule 26(c) (Investigative Subcommittee must furnish to Congressman Rangel all portions of the record on which it intends to rely).¹⁷ The Subcommittee declined to explain its failure to provide these materials and did not respond to correspondence dated June 2, 2010, requesting these materials and putting it on notice of the insufficiency of the record in their absence. Especially in light of the truncated deadlines established by the Investigative Subcommittee’s June 17, 2010 Order, the harm to Congressman Rangel’s defense may be irreparable.

3. The Investigative Subcommittee failed to provide Congressman Rangel with a copy of the apartment application referenced in paragraph 150 of the SAV that contains a handwritten notation “for Apt. 16M,” indicating that Congressman Rangel submitted the application in anticipation that his son, Steven Rangel, would rent Apartment 16M, and not Apartment 10U. In failing to produce the copy of the apartment application with the “16M” notation, the Investigative Subcommittee violated the rule requiring that it furnish Congressman Rangel with all exculpatory evidence and has impaired Congressman Rangel’s ability to defend himself against the allegation that he submitted an application stating that Steven Rangel would occupy Apartment 10U.

4. Congressman Rangel’s access to witnesses has been impaired and, absent relief,

¹⁷ Similarly, the failure to identify a document about which a witness gave favorable testimony constitutes the withholding of exculpatory evidence to which Congressman Rangel is entitled by Committee Rule 25.

will continue to be impaired by the Investigative Subcommittee's instructions to witnesses not to communicate with anyone regarding any aspect of the witnesses' testimony. *See, e.g.*, Garfinkel and Melnitsky Tr. at 52 (CSOC.CBR.00017717); Butler Tr., Vol. II, at 64 (CSOC.CBR.00027308). No legal authority permits such an instruction by the Investigative Subcommittee, and it is inconsistent with well-established principles of constitutional law and the D.C. Rules of Professional Conduct, which generally prohibit a lawyer from even requesting—let alone instructing—a witness to refrain from voluntarily giving relevant information to another party. *See, e.g., Gregory v. United States*, 369 F.2d 185, 188-89 (D.C. Cir. 1966) (reversing conviction because instruction to fact witness not to cooperate with defense counsel denied defendant a fair trial); D.C. Bar Rule 3.4(f). The “quest [for truth] will more often be successful if both sides have an equal opportunity to interview the persons who have the information from which the truth may be determined.” *Gregory*, 369 F.2d at 188. The Subcommittee's instruction hampered Congressman Rangel's ability to obtain evidence from witnesses during the investigative stage of this proceeding and will continue to do so unless that instruction is rescinded formally and in writing, making it clear that witnesses may communicate with his counsel without fear of reprisal from a congressional committee.

5. The Investigative Subcommittee failed to provide a complete and meaningful response to Congressman Rangel's Motion for a Bill of Particulars and Motion to Dismiss. *See, e.g.*, Mem. in Supp. of Order Denying Mot. to Dismiss at 11 (refusing to respond on issue of whether archiving of papers constitutes a “favor or benefit” to Congressman Rangel).

SECOND DEFENSE

Congressman Rangel realleges and incorporates by reference his Motion to Dismiss filed on June 28, 2010.

THIRD DEFENSE

The Investigative Subcommittee has acted beyond the scope of its authority and exceeded its jurisdiction under one or more of the Statements of Jurisdiction adopted by the Committee on Standards of Official Conduct.

FOURTH DEFENSE

The Statement of Alleged Violation purports to state violations of the Ethics in Government Act and House Rule XXVI with respect to Congressman Rangel's 2008 Financial Disclosure Statements. These allegations violate the House Ethics Manual, which requires that the Committee on Standards of Official Conduct notify the reporting individual of a potential problem and give that individual the opportunity to amend within a specified period. When consulted about the very matters charged in paragraphs 125 and 142 of the SAV as violations, the Committee staff took no objection and made no suggestion that additional disclosures were required, tacitly agreeing that none were necessary. The Committee on Standards of Official Conduct has not provided Congressman Rangel with the notice and opportunity required by the Manual.

FIFTH DEFENSE

The allegations in the Statement of Alleged Violation related to Congressman Rangel's 2008 Financial Disclosure Statements are barred by the doctrines of laches, estoppel, and waiver.

SIXTH DEFENSE

Congressman Rangel's assistance in launching CCNY's program to educate disadvantaged students at a public university for public service careers served important public purposes and constituted a service to constituents, which he believed in good faith to be within the scope of his official duties as an elected Congressman of CCNY's district.

SEVENTH DEFENSE

The fact that Congressman Rangel sought and received earmarks for the Rangel Center demonstrates that it was properly regarded as a matter of public concern and within his official duties. It is common for Members to request that appropriations designate funds for use in specific programs named for them that benefit their constituents and the public at large (*e.g.*, the Robert C. Byrd National Technology Transfer Center at Wheeling Jesuit University, and the Thad R. Cochran Marine Aquaculture Center at the University of Southern Mississippi).

EIGHTH DEFENSE

Congressman Rangel did not “solicit” donations for the Rangel Center within the meaning of 5 U.S.C. § 7353 and the ethics rules.

NINTH DEFENSE

The SAV’s construction and application of the solicitation ban exceeds the scope of the statute and the guidelines set forth in the Ethics Manual.

TENTH DEFENSE

The work related to the Rangel Center was mainly performed by unpaid fellows. The time spent on the Rangel Center by paid staff did not interfere with the staff’s official duties, an essential element of a charge based on the misuse of staff time.

ELEVENTH DEFENSE

Paragraphs 11-21 of the SAV related to the Ann S. Kheel Charitable Trust (“Trust”) should be stricken from the SAV because they concern a matter not properly before the Subcommittee. No evidence supports the suggestion that Congressman Rangel misused his position as a member of the Board of the Trust to funnel support to the Rangel Center. The Trust did not direct its contribution to CCNY for the benefit of the Rangel Center, and no one

associated with the Rangel Center received funding from this program.

Pursuant to Committee Rule 22, Congressman Rangel denies each and every allegation of the Statement of Alleged Violation not expressly admitted herein.

By undersigned counsel, Congressman Rangel hereby gives notice that he reserves all of the protections of the Speech or Debate Clause of Article I, Section 6 of the U.S. Constitution in connection with this proceeding and the matters covered by it.

Dated: July 28, 2010

Respectfully submitted,



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Attorneys for Respondent

**UNITED STATES HOUSE OF REPRESENTATIVES
Committee on Standards of Official Conduct
Investigative Subcommittee**

In the Matter of
Representative Charles B. Rangel

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**STATEMENT OF CHARLES B. RANGEL IN RESPONSE TO
THE STATEMENT OF ALLEGED VIOLATION**

Exhibit Index

- Exhibit 1 John Buckley Open Letter (Dec. 5, 2008)
- Exhibit 2 Ellen Jacobs Declaration
- Exhibit 3 Application

EXHIBIT 1

Open letter to Editors and Reporters:

The original New York Times article concerning Chairman Rangel's actions on the small business tax bill accompanying the minimum wage increase in 2007 and the reporter's response to his letter to the editor omits and misstates important facts. These are the facts missing from, or misstated in the Times pieces. I welcome any challenge to the accuracy of the following:

1. On February 9, 2007, Chairman Rangel finalized and introduced a bipartisan small business tax relief bill with Ways and Means Ranking Member Jim McCrery to facilitate the passage of a minimum wage increase. The introduction of the bill preceded the brief conversation on February 12, 2007 with the lobbyist. This bill was the result of directions to me from the Chairman to develop a non-controversial, bipartisan, small business tax bill. According to the records of the Joint Committee on Taxation, my first request for assistance in developing such a bill occurred on February 1, 2007, approximately two weeks before the conversation on February 12, 2007.
2. There was a difference between the House Republicans and their Republican colleague Senator Grassley on the merits of each of the major revenue offsets that were contained in the Senate small business tax bill. House Republicans opposed each of them. Only a partisan bill in the House could have retained any of those offsets. As a result, the offsets in the House bill were consensus items developed pursuant to agreements between me and the Ways and Means Republican staff.
3. On February 12, 2007, there was a pro-forma markup in the Committee that approved the bill introduced by Chairman Rangel and Representative Jim McCrery on the previous Friday.

4. Contrary to the assertions of Mr. Kocieniewski, the Senate small business bill did not “arrive” in the House of Representatives before the Ways and Means Committee markup on February 12, 2007. On February 1, 2007, the Senate “passed” the House minimum wage bill, H.R. 2, with a small business tax title attached. The Senate “passage” was the legislative equivalent of an empty gesture because of the constitutional requirement that revenue measures originate in the House of Representatives.

As a result of that constitutional requirement, H.R. 2 is still on the Senate Floor and has never been sent to the House. Whether deliberate or not, the main thesis of the reporter’s article, that Chairman Rangel stripped the inversion provision from the Senate bill during the Ways and Means markup, is factually incorrect.

5. The Senate small business tax bill was first received by the House on March 30, 2007 as an amendment to an appropriations bill. This bill was substantially different than the one “passed” in the Senate on February 1, 2007. Although neither Chairman Rangel, nor Chairman Baucus were named conferees on the final legislation, it was their responsibility to develop the final tax provisions.

After agreeing on a \$5 billion total for the final package, Chairmen Rangel and Baucus delegated authority to staff to develop a consensus package and report to them any differences that could not be resolved at the staff level. The agreement brought back from the staff did not include the inversion provision, nor did it include more than a dozen other revenue offsets included in the Senate bill. These provisions were dropped by Senate Finance Committee staff in conversations with me. As normal, all of the staff decisions were subject to review by the Members. Had the Senate been insistent on including the inversion provision, Chairman Baucus could have

objected to the staff decisions and conducted direct negotiations with Chairman Rangel on that issue. He did not.

Instead, the only issue he personally raised with Chairman Rangel was the inclusion of tax benefits for rural counties, something that had not been agreed to at the staff level. The question of including the inversion provision in the final legislation never came to Chairman Rangel.

I believe that all of Chairman Rangel's actions on the small business tax bill were driven by his desire to facilitate the enactment of an increase in the minimum wage. He felt that a non-controversial, bipartisan bill would accomplish that goal. The editorial page of the New York Times reached the same conclusion in an editorial on February 15, 2007. Now, the New York Times is condemning him for actions necessary to do what they praised at the time.

I would also like to emphasize that, at no time during the consideration of the small business tax bill was I aware of any donations to City College of New York, nor of any conversation between Chairman Rangel and the lobbyist for Nabors. In fact, Chairman Rangel never once mentioned the word "Nabors" to me in the entire process. Nor did I ever receive any specific instructions from him on the inversion issue.

The Times reporter has chosen to cast Chairman Rangel's actions in a different light. To do so, he had to omit and distort the facts pertaining to the consideration of the legislation in question.

Sincerely,

John Buckley, Chief Tax Counsel, House Committee on Ways and Means

EXHIBIT 2

DECLARATION OF ELLEN JACOBS

I, Ellen Jacobs, declare as follows:

1. I am a resident of the State of New York. I am over 18 years of age and under no legal disability. I have personal knowledge of the matters set forth, and this declaration reflects my best recollection of those events.

2. My mother, Ann Kheel, who died in 2003, devoted her life to civic activities in support of racial equality and opportunities for the disadvantaged and was deeply engaged in efforts to improve the lives of others, including promoting education. To honor her memory, my father, Theodore Kheel, established the Ann S. Kheel Charitable Trust (the "Trust") to provide assistance to organizations that are dedicated to improving the lives of disadvantaged New Yorkers in this manner.

3. The Trust has been pleased to provide scholarships at Hunter College and the City College of New York and to fund scholarships at the National Urban League. The Trust has also donated funds to the Bowery Mission.

4. Congressman Charles Rangel has been the chair of the Board of Trustees of the Trust. The other four members of the Board were and are prominent individuals with excellent standing in the community. From my perspective, all of the trustees are sophisticated individuals who evaluated critically, thoughtfully and with great conscience matters relating to the Trust. The trustees volunteer their time and do not receive payment for their service.

5. I have served as the Executive Director of the Trust since its founding in 2004. This is an unpaid position.

6. As Executive Director, I have observed and kept minutes of the meetings of the Board of Trustees of the Trust. To the best of my recollection, the minutes of the Trust's

meetings accurately reflect the discussions had and the decisions taken at each meeting, and I need not repeat in this declaration what the minutes state.

7. The \$440,000 multi-year funding commitment for the Ann S. Kheel Scholarship Program in Community Service at CCNY was approved by the trustees. I do not recall any dissenting votes.

8. Thereafter, the Trust has sent checks to CCNY for Ann S. Kheel scholarships in my mother's memory. The Trust did not and has not contributed any funds to CCNY which the Trust allocated or attributed to the Rangel Center.

9. In 2008, I was advised by Rachelle Butler, Vice President of Development at CCNY, that the Trust donation had in fact been allocated to the Ann S. Kheel Scholars program at CCNY and that no Trust donation had funded anyone associated with the Rangel Center.

10. I am not aware of any fact or circumstance that would suggest that any trustee received any economic benefit from the establishment of the Ann S. Kheel Scholarship Program in Community Service.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed July 15, 2010.



Ellen Jacobs

EXHIBIT 3

INFORMATION CONCERNING APPLICANT
(PLEASE PRINT)

REDACTED

SSN# _____

SSN# _____

Name (Husband) CHARLES RANSEL (Wife) _____

Present Address 40 WEST 135 STREET

Number of Rooms at Present Address 5 No. of Persons at Present Address 3

Rent Paid \$ 900 Length of Tenancy 5 yrs Home Telephone _____

Landlord's Name and Address LENOX TERRACE

REDACTED

Previous Address 74 WEST 132 ST

Landlord's Name & Address owner

Length of Tenancy 60 yrs Rent Paid \$ _____

Occupation (Husband) US Congress Salary \$ 130,000

Name of Company Wash DC Address 205 K

Address 163 W 125 ST

Company Telephone REDACTED Length of Employment 28 yrs

Occupation _____ Dep't Head _____

(Wife or Other Working Member of Family) Salary \$ _____

Name of Company _____

Address _____

Company Telephone _____ Length of Employment _____

Additional Sources of Income other Than Employment: (Stocks, Pensions, Etc.) _____

Steven Ransel

Number of Persons to Occupy Apartment

(1) Name

5010

Relationship

Age

(2) Name

LAW STUDENT

Relationship

Age

(3) Name

ST JOHNS LAW SCHOOL

Relationship

Jamaica NY

Bank Account: Checking # _____

Number

Bank Name & Address

Savings # _____

Number

Bank Name & Address

References: Personal 1.

James Booker

2.

Pres Bill Clinton

SEE 40 W 135 ST APT 16 WP

I hereby warrant that all of my representations set forth above are true. I further represent that I am not renting a room or an apartment under any other name nor have I ever been dispossessed from any apartment, nor am I now being dispossessed.

FOR OFFICE USE ONLY

Apartment _____ No of Rooms _____ Floor _____ Bldg. NO. _____ Rental \$ _____

SIGNATURE _____

[Signature]
SIGNATURE