# APPENDIX D

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August 2, 2010

Honorable Michael McCaul, Ranking Republican Member
Adjudicatory Subcommittee
Committee on Standards of Official Conduct
U.S. House of Representatives
The Capitol, HT-2
Washington, D.C. 20515

Re: In the Matter of Representative Charles B. Rangel

Dear Ranking Republican Member McCaul:

As you acknowledged last Thursday, the Adjudicatory Subcommittee must ensure that the proceedings involving Congressman Rangel are "fair, open and conducted in a strictly nonpartisan manner." Handling the matter objectively is essential in order that the public trust the ability of Congress to judge its own Members. Remarks of Rep. Michael T. McCaul as delivered at the opening hearing of the Adjudicatory Subcommittee, July 29, 2010. In that spirit, I write to you on behalf of Congressman Rangel pursuant to Standards Committee Rules 9(e) and 23(a) to respectfully request that you recuse yourself from further participation in this matter.

A substantial portion of the charges in the pending Statement of Alleged Violation ("SAV") issued June 17, 2010 relate to Congressman Rangel's efforts on behalf of the Charles B. Rangel Center for Public Service ("Rangel Center"). The SAV alleges that Congressman Rangel improperly solicited donations to the Rangel Center using official resources, that donations to the Rangel Center were an improper gift to Congressman Rangel and that his conduct violated the Code of Ethics for Government Service (Count II), the Gift Rule (Count III) and the remaining counts that incorporate such conduct (Counts XII and XIII).

Over the past two-plus years, you have repeatedly criticized the Rangel Center and Congressman Rangel's involvement in it, calling it, among other pejorative terms, a "Monument to Me" and an "egregious example[] of pure vanity." Your prior statements imply that a Member derives an improper (and, perhaps unlawful) benefit from an earmark to a program named in his or her honor. For example:

- In an April 19, 2008 op-ed in the Houston Chronicle, you called the Rangel Center "textbook wasteful spending," and a "'monument to me' earmark." Your op-ed described that earmark as the product of a system that ***"breeds corruption"*** and leads to ***"Members of Congress accepting illegal contributions to line their own pockets."*** Such earmarks, your op-ed contended, have "spiral[ed] out of control into a case study in self-serving and wasteful government spending, or worse, ***criminal behavior***." Reform is

necessary, you argued, in order to spare the taxpayers from "those who have ***corrupted the process for their personal gain***."[1] A copy of the op-ed is attached.

- In July 2008, you proposed an amendment to a military construction bill barring projects named for sitting Members. In the floor debate regarding the amendment, you stated: "One of the ***most egregious examples of pure vanity and arrogance*** that we see in Washington is the practice of naming projects after current Members of Congress, or, as I call them, monuments to me. . . . And a few examples I think illustrate this ***problem that we have with ethics today*** in the Congress. The Robert Byrd Center for Hospitality and Tourism, [etc. . . .] and the Charlie Rangel Center For Public Service."[2] The Standards Committee was considering Congressman's Rangel's request to have the Committee review his conduct regarding the Rangel Center at the time of these remarks by one of its Members.[3]

- In a January 9, 2009 letter posted to your website, you stated that you had just filed the "No Monument to Me" bill, to "end the practice of using taxpayers' money to fund projects named after members of Congress," citing as "[p]erhaps the most controversial example of such spending" "Rep. Charles Rangel's (D-NY) earmark for $1.9 million to help jump-start the 'Charles B. Rangel Center for Public Service' at the City College of New York, dubbed the 'Monument to Me'." The letter noted as a concern the common view that "projects in Congress bearing a sitting Member's name are more likely to receive government funding regardless of their legitimacy."[4] The obvious implication is that you question the legitimacy of Congressman Rangel's support for the Rangel Center.

- In a May 2009 floor debate over another amendment that you introduced to bar public funding of projects named for sitting Members, you stated: "I think it's the ***height of arrogance*** for us to name, at taxpayer expense, buildings after sitting Members of Congress, people in the Congress, currently serving, and that's what the American people resent about this institution. . . . [I]t is entirely inappropriate for a Member of Congress to use taxpayer dollars to name a building after himself or herself ***to glorify themselves***."[5]

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[1] Congressman Michael McCaul, *McCaul Op-Ed: No bridges to nowhere in my backyard*, Houston Chronicle (Apr. 19, 2008), *available* at http://mccaul.house.gov/index.cfm?sectionid=30&parentid=7&sectiontree=7,30&itemid=168 (emphasis added). This op-ed was published shortly after you introduced legislation to ban appropriations for projects named for sitting Members of Congress. *See* H,R, 5771, 110th Congress, 2d Session, introduced April 10, 2008.

[2] 154 Cong. Rec. 129, H7764 (daily ed. July 31, 2008) (emphasis added).

[3] Congressman Rangel's letter filed with Standards Committee regarding the Rangel Center at CCNY on July 22, 2008.

[4] The McCaul Minute, *No "Monuments to Me"*, (Jan. 9, 2009), *available at* mccaul.house.gov/uploads/mm%201-8-09.pdf.

[5] 155 Cong. Rec. 79, H5972 (daily ed. May 21, 2009) (emphasis added).

These statements reject in advance key elements of Congressman Rangel's defense. As set forth in his response to the SAV, the Congressman contends that: (1) he received no improper benefits from his support for the Rangel Center; (2) the Center was not a vanity project but a legitimate effort to bring educational and economic opportunities to his constituents and to diversify the public service; and (3) even if Congressman Rangel used official resources rather than personal ones in his charitable solicitations, he did not, to paraphrase your op-ed, corrupt the process for his personal gain or accept an illegal contribution to line his own pockets. Your prior statements thus give rise to an appearance that you have prejudged issues central to the case and are predisposed to find that Congressman Rangel's conduct in connection with CCNY did not comply with fundamental ethical obligations not to use public office for private gain. A Member who has repeatedly declared his firmly-held views on a matter cannot be expected to adjudicate that same matter objectively and impartially. As you observed at the outset of the first hearing, "There is no place for presumed guilt before innocence in this process."

With public approval of Congress so low, as your opening remarks noted, the credibility of the ethics process is particularly important. The proceedings must not only be, but must be seen to be, fair, open and nonpartisan in all respects. "[A]ny tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias." *Commonwealth Coatings Corp. v. Cont'l Cas. Co.*, 393 U.S. 145, 150 (1968) (vacating decision of arbitration panel because arbitrator had not disclosed circumstances giving rise to possible bias); *see also Haines v. Liggett Group Inc.*, 975 F.2d 81, 98 (3d Cir. 1992) ("Impartiality and the appearance of impartiality in a judicial officer are the sine qua non of the American legal system."). Regardless of a decision-maker's intention to act solely on the merits, there can be no appearance of impartiality if the decision-maker's prior statements suggest pre-formed views regarding those merits. *Haines, id.* (reassigning tobacco case from judge "well known and respected for magnificent abilities and outstanding jurisprudential and judicial temperament," and whom the appellate court believed could adjudicate the matter free from bias, because his prior statements made it otherwise "impossible . . . to vindicate the requirement of 'appearance of impartiality'"). Thus, considerations of fairness and due process of law sometimes require the disqualification of a judge who would do his very best to put aside preconceptions and weigh the scales of justice objectively, if the circumstances would influence the judgment of the average decision-maker. *Caperton v. A.T. Massey Coal Co.*, 129 S. Ct. 2252, 2263, 2264 (2009) (due process requires recusal of judge if, "under a realistic appraisal of psychological tendencies and human weakness," the circumstances "would offer a possible temptation to the average . . . judge to . . . lead him to not to hold the balance nice, clear and true.") (internal quotations and citations omitted).

Just as the Adjudicatory Subcommittee must assess how a reasonable person would regard Congressman Rangel's actions on behalf of the Rangel Center,[6] so too must its Members

[6] *See, e.g.*, Count II, alleging that, in connection with the Rangel Center, Congressman Rangel accepted benefits

consider how their own conduct will be viewed. How would a reasonable person in Congressman Rangel's position (or that of his constituents) view your fairness or objectivity in this most important matter? In the words of Supreme Court Justice Felix Frankfurter, "justice must satisfy the appearance of justice." *Offutt v. United States*, 348 U.S. 11, 14 (1954). As a former prosecutor, you are surely especially sensitive to the need to avoid raising unnecessary questions about the fairness of the adjudicatory process. We therefore respectfully request that you recuse yourself on the grounds that you cannot render an impartial and unbiased decision, in order to ensure that this hearing satisfies the appearance of impartiality.

Sincerely,

Deborah J. Jeffrey

Enclosure

cc: Honorable Zoe Lofgren, Chair
Honorable Charles B. Rangel
R. Blake Chisam, Staff Director and Chief Counsel
Leslie B. Kiernan, Esquire

"under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties." SAV ¶ 178.

# McCaul Op-Ed: No bridges to nowhere in my backyard



April 19, 2008

Houston Chronicle

(Washington D.C.)- As a former Federal Prosecutor in the Public Integrity Section of the Department of Justice and a current member of the House Ethics Committee, holding all public officials to the highest ethical standards is not new to me. Doing the right thing for the American people, in opposition to the self-serving, business-as-usual policy in Washington, is also not new to me. I have been called upon by the people of the Tenth District of Texas to exercise common sense judgment on issues that matter; issues on which the average American feels Washington has become so completely self-serving and tone-deaf. Their repeated calls for someone to stand up and simply say enough is enough are outweighed by the addiction to bringing home the federal bacon. This is the system we operate in now and it is wrong.

Common sense is also knowing that the first step to breaking any addiction is admitting you have a problem. We have many problems in Congress, and one of the most undeniable is the earmark process. It is broken system which breeds corruption. This is not my opinion, but a fact, and a problem as inconspicuous to the American people as a two-ton pink elephant standing in their living room. They see with alarming clarity what those whom they have chosen to represent them have refused to see, or admit, which is that Members of Congress from both sides of the aisle bear the responsibility for letting a legitimate process, intended to directly fund worthy projects in their Congressional districts with Federal dollars, spiral out of control into a case study in self-serving and wasteful government spending, or worse, criminal behavior.

Admitting we have this problem does not mean all earmarks are bad. In fact, most are legitimate and submitted in an effort to help the largest number of people by funding meaningful and worthwhile requests. I, for one, voluntarily publish all of my earmark requests, and which requests are eventually funded, each year. However, their virtue has become overshadowed by the lack of complete transparency and accountability in the process. As the number of earmark requests continues to grow behind closed doors, this process continues to bloat already unprecedented government spending, and lead to well publicized abuses like the infamous Alaskan "bridge to nowhere" and Members of Congress accepting illegal contributions to line their own pockets instead of serving the American public. Enough is simply enough.

Since joining the House of Representatives in 2005, I have taken my responsibility to safeguard the taxpayers' money seriously and worked hard to ensure the projects I supported are both legitimate and worthy of taxpayer funding. However, due to some Members of Congress abusing this solemn privilege for their own benefit and destroying the taxpayers' trust, even the legitimate requests must be halted until the process is reformed. For this reason, earlier this year I joined 158 of my House Republican colleagues in cosponsoring legislation calling for a temporary ban on earmarks until the system can be reformed and made more transparent. The price of not funding worthy projects and programs that help improve the daily lives of my constituents is not insignificant, nor one that I take lightly. It is, however, a necessary price to pay to restore the public trust. Interestingly, despite almost unanimous agreement on both sides of the aisle that sunlight is the best disinfectant, the Majority leadership of the House of Representatives has yet to take up this bill.

It comes as no surprise that in the hometown of wanting to have your cake and eat it too, many of my colleagues who have called for a moratorium continue to perpetuate the broken process and request earmarks. I believe that actions speak louder than words, and this is why I have chosen to lead by example. Along with 35 of my House colleagues, both Republican and Democrat, I am not requesting earmarks until meaningful, common sense reforms are made. What are these reforms? At a minimum, they are to allow every earmark request the opportunity of an up or down vote on the House floor and be fully transparent as to its sponsor and benefactor. This is neither unrealistic nor unreasonable, except to those who have corrupted the process for their personal gain.

Speaker Nancy Pelosi said to the Wall Street Journal in July 2006, "Personally, myself, I'd get rid of all of them. None of them is worth the skepticism, the cynicism the public has... and the fiscal irresponsibility of it." Yet now that she has the power to enact meaningful reforms, she has declined to do so. She has declined to do so in the face of textbook wasteful spending like Rep. Charlie Rangel's (D-NY) earmark for the "Rangel Center for Public Service" and a $39 million provision for the National Drug Intelligence Center in Johnstown, PA, a duplicative center which has been accurately described as a "boondoggle." This is the type of calculated doublespeak which deservedly earns Congress' low approval rating.

I believe that earmarks, done properly, are an important tool for Members of Congress to help direct Federal funding to their districts. We should, after all, be infinitely better qualified than a Washington bureaucrat 2,000 miles away in a bloated Federal agency to make these decisions. Earmarks, however, should only be used when Congress has the people's trust. This is why I have decided to stand on principle rather than join the crowd to secure "my share" of the pork.

The following filing, Respondent's Motion to Disqualify Investigatory Attorneys from Counseling the Adjudicatory Subcommittee, was submitted by counsel for respondent on August 17, 2010, and withdrawn by counsel for respondent on August 18, 2010.

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

| | |
|---|---|
| *In the Matter of* | ) |
| Representative Charles B. Rangel | ) |

**RESPONDENT'S MOTION TO DISQUALIFY INVESTIGATORY ATTORNEYS FROM COUNSELING THE ADJUDICATORY SUBCOMMITTEE**

By undersigned counsel, Representative Charles B. Rangel hereby moves for an order prohibiting any attorney who counseled Members of the Investigatory Subcommittee regarding its investigation of his conduct from advising Members of the Adjudicatory Subcommittee with respect to the facts, law or merits of this matter.

In the Adjudicatory Subcommittee's opening hearing, Chairwoman Zoe Lofgren and Ranking Minority Member McCaul each emphasized the need for these proceedings to be transparent, impartial and free of bias. Counsel who advised Members of the Investigatory Subcommittee and assisted in developing the charges against Congressman Rangel have taken sides in an adversary process. They are not disinterested or impartial, and any assistance that they render to the Adjudicatory Subcommittee regarding the merits taints the impartiality of these proceedings; their *ex parte* communications with Members of the Adjudicatory Subcommittee undermine its transparency and objectivity. The Adjudicatory Subcommittee should forbid their participation in its proceedings in order to preserve the transparency, impartiality and fundamental fairness of the proceedings.

To ensure an impartial adjudication, Standards Committee rules dictate a strict separation between the role of prosecutor/investigator and the role of judge. To that end, Rule 23(a)

prohibits a Member who served on an Investigative Subcommittee from serving on an Adjudicatory Subcommittee in the same matter. As the Supreme Court has recognized in a different context, the party that levels charges has an interest in vindicating its work by securing a conviction. *In re Murchison*, 349 U.S. 133, 137 (1955) (due process prohibits trial by judge who acted as grand jury in investigating allegations and accusing defendant of misconduct, because that judge "cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused").[1]

A staff lawyer who participates in an investigation likewise cannot render impartial or disinterested advice concerning the adjudication of charges resulting from the investigation. For this reason, conflict of interest rules forbid a judicial law clerk or staff attorney from assisting a judge in any controversy in which the clerk or staff attorney previously served as counsel. Code of Conduct for Judicial Employees, Canon 3(F)(2)(a)(ii) and (v) (to avoid conflict of interest, judicial law clerk or staff attorney "should not perform any official duties" for a judge in any controversy in which he previously participated as counsel or advisor, whether as a government employee or in private practice). Indeed, by law, a judge must recuse himself from any case in which he served as counsel or adviser at the investigatory and accusatory stage. *See, e.g.*, 28 U.S.C § 455(a) (2) and (3) (judge must recuse himself from case in which he served as counsel or adviser, whether in private practice or as a government employee).

For these reasons, Congressman Rangel respectfully requests that attorneys who advised or assisted Members of the Investigative Subcommittee with regard to the merits of the case be prohibited from communicating with, or otherwise assisting, Members of the Adjudicatory Subcommittee regarding the facts, law or merits of the case. Congressman Rangel further requests that the Adjudicatory Subcommittee (1) identify for him the attorneys who rendered

[1] The Investigatory Subcommittee likened its proceedings to a grand jury investigation. Rangel Tr. at 246.

advice and assistance to Members of the Investigatory Subcommittee; and (2) advise him whether there have been any *ex parte* communications between those attorneys and Members of the Adjudicatory Subcommittee, so that he may seek additional relief.

A proposed Order is attached.

Dated: August 17, 2010

Respectfully submitted,

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*Attorneys for Respondent*

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

| | |
|---|---|
| *In the Matter of* | |
| Representative Charles B. Rangel | |

**[PROPOSED] ORDER**

The Adjudicatory Subcommittee having considered Respondent's Motion to Disqualify Investigatory Attorneys from Counseling the Adjudicatory Subcommittee and any further briefing and argument thereon, it is by the Adjudicatory Subcommittee this ___ day of _____ 2010 ORDERED:

1. All attorneys who advised or assisted Members of the Investigative Subcommittee with regard to the merits of Congressman Rangel's case are prohibited from communicating with, or otherwise assisting, Members of the Adjudicatory Subcommittee regarding the facts, law or merits of the case.

2. Within 5 days of this Order, the Adjudicatory Subcommittee will (1) identify to Congressman Rangel the attorneys who rendered advice and assistance to the Investigatory Subcommittee with regard to the merits of his case; and (2) advise Congressman Rangel whether there have been any *ex parte* communications between those individuals and Members of the Adjudicatory Subcommittee.

_____
The Honorable Zoe Lofgren
Chair

Copies to:

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MICHAEL T. McCAUL
10TH DISTRICT, TEXAS

COMMITTEE ON
HOMELAND SECURITY
RANKING MEMBER, SUBCOMMITTEE ON
INTELLIGENCE, INFORMATION SHARING,
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COMMITTEE ON FOREIGN AFFAIRS

COMMITTEE ON SCIENCE AND TECHNOLOGY

REPUBLICAN POLICY COMMITTEE

COMMITTEE ON
STANDARDS OF OFFICIAL CONDUCT

ASSISTANT REPUBLICAN WHIP

# Congress of the United States
## House of Representatives
### Washington, DC 20515–4310

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August 19, 2010

Ms. Deborah J. Jeffrey
Zuckerman Spaeder LLP
1800 M Street, NW Suite 1000
Washington, DC 20036-5807

Re: In the Matter of Representative Charles B. Rangel

Dear Ms. Jeffrey:

I write to respond to your letter sent to me (and copied to Chair Lofgren, Representative Rangel, and Blake Chisam, the Chief Counsel of the Committee) dated August 2, 2010. I note for the record that you are employed by the law firm retained by Representative Rangel in the adjudicatory proceedings currently before the adjudicatory panel of which I am a Member. I am filing a copy of your letter together with this letter to the Chair of the adjudicatory subcommittee, and the Chief Counsel of the Committee. This letter is to provide written notice pursuant to Committee Rule 11(a), which requires all communications and pleadings pursuant to committee rules to be filed with the Committee.

Before I address your letter, I want to reiterate my support for Representative Rangel's right, pursuant to Committee Rules 23 and 26(b) to an adjudicatory hearing on the allegations against him. Adjudicatory hearings of this nature are extremely rare and new ground is being broken which requires careful adherence to Committee and House Rules. I am sure you would agree that public adjudicatory hearings must properly present the evidence supporting the two year work of the bipartisan investigative subcommittee and each of the counts of the Statement of Alleged Violations that were presented to the public two weeks ago.

As you know, Representative Rangel last week called on the subcommittee to notify him about the hearing schedule so that he can properly prepare his own defense. During his remarks on the House floor, Representative Rangel made several statements requesting to know when he could expect the subcommittee to hold hearings. He stated: "I deserve and demand the right to be heard..." and "I am asking for exposure to the facts."

As I stated during my remarks at the opening hearing of the adjudicatory subcommittee, Representative Rangel deserves a fair and public opportunity to be heard before his peers and address each of the serious allegations against him, and the process does not presume guilt before innocence. In fairness to Representative Rangel, I agree that the adjudicatory subcommittee must agree on the dates of the hearings and notify Representative Rangel and his counsel as soon as possible. I and others have suggested to the Chair that public hearings should commence when the House reconvenes in September, with a goal of completing the hearings before the House adjournment in October. I have communicated my desire to work with the Chair of the subcommittee to schedule additional hearing days in October, if necessary, to complete our duties.

Turning specifically to your correspondence, as I stated during remarks before the first public meeting of the adjudicatory subcommittee on July 29, 2010, I served as a federal prosecutor in the Public Integrity Section of the United States Department of Justice, and I take my responsibilities on this panel very seriously. I also believe strongly that the American public expects and deserves that this matter will be handled with the utmost professionalism and nonpartisanship. I do not take lightly the inferences in your letter, but I remain completely confident in my ability to participate as an adjudicator in a fair and objective manner and, as Ranking Member, to work with the Chair to direct these hearings and ensure that the subcommittee completes its responsibilities under the committee's rules.

Your letter, in summary, asserts that policy positions and statements regarding my longstanding opposition to the use of congressional earmarks for federally-funded projects named after sitting Members of Congress gives rise to an "appearance" that I have prejudged the case and that I am "predisposed" to find that Representative Rangel didn't comply with his ethical obligations. Your letter refers specifically to several counts in the Statement of Alleged Violation transmitted by the investigative subcommittee to this Committee regarding the solicitation ban, and suggests that my legislative actions and related statements in 2008 and 2009 bring into question my ability to be a fair and objective member of this panel. On behalf of Mr. Rangel, you call on me to recuse myself from participating further in adjudicatory proceedings of this matter.

I recognize Representative Rangel is within his rights to object to my participation – or the participation of any other members of this subcommittee – under the Committee Rules. I have been among those that have defended his right to do so. To that end, and pursuant to Committee Rule 23(a), I respond to your letter as follows:

Findings of Fact and Conclusions of Law

1. With respect to the specific objections to my participation, Committee Rule 23(a), provides, in relevant part, that within 10 days after a notice of the list of Members designated to serve on the adjudicatory subcommittee is transmitted to a respondent, the respondent, in writing, may "object to the participation of any subcommittee member . . . on the grounds that the member cannot render an impartial and unbiased decision." Your letter dated August 2, 2010 on behalf of Mr. Rangel was filed on the 10th day after I and the other members of the

adjudicatory subcommittee were named as adjudicatory subcommittee members by Chair Lofgren, and therefore, the objection was timely filed with the Committee.

2. Committee Rule 23(a) further provides that the member against whom an objection is made "*shall* be the sole judge of any disqualification and *may* choose to seek disqualification from serving on the subcommittee pursuant to Rule 9(e)." (Emphasis added). Further, Committee Rule 9(e) provides that "a member of the Committee *may* seek disqualification from participating in any investigation of the conduct of a Member, officer, or employee of the House of Representatives upon the submission in writing and under oath of an affidavit of disqualification stating that the member cannot render an impartial and unbiased decision." (Emphasis added). The rules require that I act as the sole judge of the objection raised on behalf of Representative Rangel. Given the responsibility to determine whether or not I should disqualify myself from this proceeding, I choose not to do so for the reasons set forth below.

3. The objection to my service on the adjudicatory subcommittee is based on allegations that are without merit and are not germane to the matters before the adjudicatory subcommittee. The August 2nd letter improperly links votes taken by me --and a vast, bipartisan majority of Members serving in both the 110th and the 111th Congress – opposing federal funds being used for projects named after sitting Members of Congress, with the adjudicatory subcommittee's review of multiple counts that Representative Rangel improperly used official resources and solicited corporate and foundations with business before a House Committee he chaired. References to statements made were policy and legislative in nature, were not issues within the jurisdiction of the investigative subcommittee, and are completely unrelated to either the investigation or the Statement of Alleged Violations now or previously before the House Ethics Committee relating to Representative Rangel.

4. On July 31, 2008, I offered an amendment to H.R. 6599—the FY 2009 Military Construction and Veterans Affairs Appropriations Act. The amendment, as printed in the Congressional Record, prohibited the use of federal funds for "a project or program named for an individual then serving as a Member, Delegate, Resident Commissioner or Senator of the United States Congress." The amendment passed by a vote of 329 to 86 (Roll Call vote number 559, August 1, 2008). Of note, 186 Republicans and 143 Democrats supported the measure, including Representatives Castor, Lofgren, Welch, Conaway, Dent, and myself. 84 Democrats, including Representative Butterfield, voted in the negative. In other words, all members of the adjudicatory subcommittee except Representative Harper, who was not then a Member of Congress, took a position on this measure, and all but one agreed with my position.

   The editorial I authored dated April 19, 2008 focuses exclusively on my opposition to congressional earmarks and wasteful spending as a policy position. In it, I pledged not to request earmarks myself, and advocated reforms to the process including an up or down vote on every earmark to ensure transparency. The editorial cited the Rangel Center as an example --amongst many others -- of sitting Members of Congress naming projects after themselves. The editorial did *not* impugn Representative Rangel's work on behalf of the

Rangel Center or suggest that he personally had engaged in any unethical or criminal activity. I might add, both the editorial and the August 1, 2008 vote on the FY 2009 Military Construction and Veterans Affairs Appropriations Act amendment occurred *prior* to any announced decision by the Committee on Standards to investigate any allegation against Representative Rangel.

Further legislative actions cited, including the introduction of H.R. 420 on January 9, 2009, and the introduction and vote on May 21, 2009 on amendment 153 to H.R. 915 the FY 2009 FAA Reauthorization Act were entirely consistent with the August 1, 2008 amendment to prohibit the use of federal funds for projects named for Members of Congress or Senators. The May 21, 2009 amendment passed by a vote of 417 to 2 (Roll Call vote number 289, May 21, 2009) and every member of the Committee on Standards voted in the affirmative, with the exception of Representative Lofgren, who did not vote. Notably, Representative Rangel himself voted for this amendment. In addition, during remarks on the House floor between myself and Chairman Oberstar, I specifically stated that the amendment was not intended to be applied retroactively and it would not apply to any specific Member.

5. While the vast majority of Members from both sides of the aisle have taken the same position I have on multiple occasions on these purely legislative actions, on every occasion where votes on the House floor could be questioned relating to matters before the Committee on Standards of Official Conduct for which I have been a Member, including specific allegations relating to Representative Rangel, I have voted "present." For example, on July 31, 2008, the House voted on a motion to table H.Res. 1396—a privileged resolution declaring that Representative Rangel had dishonored himself and brought discredit to the House and merits its censure. The motion to table was approved by a vote of 254 to 138, with 34 voting present. All 10 of the then-Members of the Committee on Standards, including myself, voted present.

   On October 7, 2009, the House voted on a Motion to Refer H.Res. 805, that called for the removal of Representative Rangel as chairman of the Committee on Ways and Means pending completion of the investigation into his affairs by the Committee on Standards of Official Conduct. The Motion to Refer passed by a vote of 246 to 153, with 19 Members voting "present," including myself and every other Member of the Committee on Standards, except Chair Lofgren, who did not vote.

6. Prior to my taking the above mentioned legislative actions, and to make certain my actions were at all times construed properly and within the bounds of the ethics rules, I consulted with the Committee to confirm that not even the slightest appearance could be inferred or in any way compromise my responsibilities to be impartial as a member of the Committee.

7. Having the privilege to serve as a Member of Congress these past six years on behalf of my constituents, a number of those years serving as a Member on the Committee on Standards of Official Conduct, I understand the nature of the political process, and respect that differences of opinion on policy are more often the rule rather than the exception. However, I have no concern that any of my actions at any time have compromised my ability to be a fair and

objective participant in these proceedings, and as sole judge of this unusual circumstance, I respectfully DENY your request on behalf of Representative Rangel, and will consider the matter closed.

Sincerely,

Michael T. McCaul

Michael McCaul
Ranking Republican Member
Adjudicatory Subcommittee

cc: Blake Chisam
The Hon. Zoe Lofgren, Chair

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September 15, 2010

Honorable Michael McCaul, Ranking Republican Member
Adjudicatory Subcommittee
Committee on Standards of Official Conduct
U.S. House of Representatives
The Capitol, HT-2
Washington, D.C. 20515

Re: In the Matter of Representative Charles B. Rangel

Dear Ranking Republican Member McCaul:

I write on behalf of Congressman Rangel to express his disappointment in your refusal to recuse yourself from the Adjudicatory Subcommittee. Your letter of August 19, 2010 mischaracterizes the basis for his request and disregards substantial evidence about your bias in this most important matter.

The statement in your letter that Congressman Rangel objects to your participation because of your votes on legislative matters is a straw man. As my letter of August 2, 2010 makes clear, he seeks your recusal not because you want to eliminate use of federal funds on projects named for sitting Members, but because you have repeatedly suggested that a Member derives an improper (and, perhaps, unlawful) benefit from financial support for a program named in his honor, using such phrases as "breeds corruption," "self-serving spending," "criminal behavior," and "Members of Congress accepting illegal contributions to line their own pockets." You have repeatedly singled out the Rangel Center as an example of an improper use of funds, identifying it as emblematic of an ethics problem in Congress. These inflammatory statements distinguish you from the other Members of the Adjudicatory Subcommittee who supported the same legislation; they did not impugn the integrity of Congressman Rangel in doing so, and as your letter notes, Congressman Rangel has not objected to their participation in the adjudicatory process. Your letter does not even acknowledge the statements that you have made, much less explain why they do not give rise to an appearance of bias.

Your remarks call your open-mindedness into question because, as explained in our letter of August 2, 2010 those comments reject in advance key elements of Congressman Rangel's defense, *i.e.*, (1) that he received no improper benefit from his support for the Rangel Center; (2) that the Center was a legitimate effort to bring educational and economic opportunities to his district, and not a vanity project; and (3) that, even if he erroneously used official resources in making a charitable solicitation, he did not corrupt the process for personal gain. Thus, your remarks are inconsistent with a fair and unbiased adjudication based solely on the evidence. You committed yourself to these views about corruption, ethics problems, and improper benefits well in advance of the start of any hearing, without seeing any evidence or hearing from a single witness.

Further compromising the impartiality of these proceedings is the fact that the individual who transmitted your response to me, identified in the email signature block as "Special Counsel to Ranking Member McCaul," previously served as counsel to Ranking Member Jo Bonner on the Investigatory Subcommittee. To ensure an impartial adjudication, Standards Committee rules dictate a strict separation between the role of prosecutor/investigator and the role of judge. To that end, Committee Rule 23(a), prohibits Ranking Member Bonner (and others who served on the Investigative Subcommittee) from adjudicating the charges that they developed against Congressman Rangel.

Like the Members of the Investigative Subcommittee, the Majority and Minority Counsel who advised them likewise assisted in developing the charges against Congressman Rangel, and they, too, are neither disinterested nor impartial. Any assistance that they render to the Adjudicatory Subcommittee regarding the facts, law or merits of the matter further taints the fairness of these proceedings, and the Adjudicatory Subcommittee should forbid those lawyers from participating in the adjudication of this matter.[1]

No respondent and no member of the public could expect an impartial and unbiased decision under the circumstances presented here. Congressman Rangel accordingly respectfully requests that you reconsider your decision to continue to serve on the Adjudicatory Subcommittee that will decide this important matter.

Sincerely,

Deborah J. Jeffrey

Deborah J. Jeffrey

Cc: Honorable Zoe Lofgren, Chair
Honorable Charles B. Rangel
R. Blake Chisam, Staff Director and Chief Counsel
Leslie B. Kiernan, Esquire

[1] As the Supreme Court has recognized, the party that levels charges has an interest in vindicating its work by securing a conviction. *In re Murchison*, 349 U.S. 133, 137 (1955) (due process prohibits trial by judge who acted as grand jury in investigating allegations and accusing defendant of misconduct, because that judge "cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused"). Because of this conflict of interest, ethical norms prohibit an attorney from participating in a court's adjudication of charges that he investigated. *See* Code of Conduct for Judicial Employees, Canon 3(F)(2)(a)(ii) and (v) (to avoid conflict of interest, a judicial law clerk or staff attorney "should not perform any official duties" for a judge in any controversy in which he previously participated as counsel or advisor, including as a government employee).

ONE HUNDRED ELEVENTH CONGRESS

# U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515–6328



SUITE HT-2, THE CAPITOL
(202) 225-7103

September 17, 2010

**CONFIDENTIAL**

Leslie B. Kiernan, Esq.
Zuckerman Spaeder, LLP
1800 M Street, N.W., Suite 1000
Washington, D.C. 20036

Re: In the Matter of Representative Charles B. Rangel

Dear Ms. Kiernan:

On September 15, 2010, the Committee on Standards of Official Conduct ("Standards Committee") considered Representative Charles B. Rangel's August 2, 2010, request that Ranking Republican Member Michael T. McCaul recuse himself from participation in the adjudicatory subcommittee. The Standards Committee also considered your September 15, 2010, request for Ranking Republican Member to reconsider his August 19, 2010, decision to not recuse himself.

The Standards Committee voted unanimously to deny your motion for recusal.

If you have any questions, please have your counsel contact the Committee's Staff Director and Chief Counsel, R. Blake Chisam, at (202) 225-7103.

Sincerely,

Zoe Lofgren
Chair

Jo Bonner
Ranking Republican Member

cc: The Honorable Michael T. McCaul, Ranking Republican Member